

JUL 10 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARLA LARSEN,

Plaintiff - Appellant,

v.

COMMISSIONER SOCIAL SECURITY  
ADMINISTRATION,

Defendant - Appellee.

No. 08-35422

D.C. No. 3:07-cv-01481-HU

MEMORANDUM and ORDER \*

Appeal from the United States District Court  
for the District of Oregon  
Dennis James Hubel, Magistrate Judge, Presiding

Submitted July 8, 2009\*\*  
Portland, Oregon

Before: PREGERSON, RYMER, and GRABER, Circuit Judges.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Carla Larsen appeals from the district court's order dismissing her appeal in this social security case for lack of subject matter jurisdiction. We affirm.<sup>1</sup>

In *Matlock v. Sullivan*, 908 F.2d 492, 492-93 (9th Cir. 1990), this court held that "jurisdiction was lacking" over the "Appeals Council's discretionary refusal to consider an untimely request for review." See 42 U.S.C. § 405(g); 20 C.F.R. § 416.1403(a)(8). *Matlock* squarely controls this case. Therefore, Larsen's reliance on *McNatt v. Apfel*, 201 F.3d 1084 (9th Cir. 2000), is misplaced.

Larsen's contention that waiver of the exhaustion requirement is warranted also fails. Larsen's claim is an allegation of individual errors that is intertwined with her claim for relief, and development of an agency record would serve the purposes of exhaustion; accordingly, waiver of exhaustion is not warranted. *Kildare v. Saenz*, 325 F.3d 1078, 1082-83, 1084 (9th Cir. 2003).

Because Larsen failed to raise a due process claim before the district court, this claim is waived on appeal. See *Edlund v. Massanari*, 253 F.3d 1152, 1158 & n.7 (9th Cir. 2001); *Crawford v. Lungren*, 96 F.3d 380, 389 n.6 (9th Cir. 1996).

AFFIRMED.

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<sup>1</sup> Because we affirm the district court's conclusion that it lacked jurisdiction, we deny the Commissioner's motion to strike, and Larsen's motion to supplement the record on appeal, as moot.