

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 15 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MANSUR H. LEE,

Plaintiff - Appellant,

v.

ROBERT F. KENNEDY, Jr., Secretary of
the United States Department of Health and
Human Services,

Defendant - Appellee.

No. 26-1820

D.C. No.

8:26-cv-00444-DOC-KES

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Argued and Submitted August 31, 2026
San Francisco, California

Before: GOULD, BYBEE, and BRESS, Circuit Judges.

Dr. Mansur H. Lee (“Lee”) appeals from a district court order dismissing his complaint for lack of subject matter jurisdiction because he did not exhaust his administrative remedies, and denying as moot a pending preliminary injunction motion. The district court did not err in dismissing Lee’s *ultra vires* claim, but erred

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

in dismissing Lee’s due process claim. We reverse in part and remand Lee’s due process claim to the district court.¹

Lee is a board-certified internal medicine and hospice and palliative medicine physician who served as the medical director at Passion and Love Hospice (“PLH”) from July 2019 through March 2025. While serving as PLH’s medical director, Lee also worked as a hospitalist at Providence St. Jude Medical Center (“St. Jude”). On March 25, 2025, the Center for Medicare and Medicaid Services (“CMS”)² revoked PLH’s Medicare billing privileges, concluding that PLH submitted reimbursement claims without documentation to support patients’ terminal illness prognoses. On May 15, 2025, CMS notified Lee it had revoked his Medicare billing privileges, imposed a 10-year re-enrollment bar, and placed him on its publicly-accessible Preclusion List.³ CMS explained in its notice that it found Lee’s role as a medical director at PLH was an affiliation that posed “an undue risk of fraud, waste, or abuse to the Medicare Program.”

The Medicare Act and associated regulations set out the following administrative appeals process. A party may “request reconsideration” of the initial

¹ Lee’s motion for injunctive relief, Dkt. 4, is DENIED without prejudice to him re-raising the request in the district court on remand.

² CMS is an agency within the Department of Health and Human Services (“HHS”).

³ According to the notice provided to Lee, a healthcare provider on the Preclusion List is blocked from receiving payment for healthcare services “furnished under a Medicare Advantage benefit.”

determination, 42 C.F.R. § 498.22. In handling a reconsideration request, CMS considers “written evidence and statements” submitted by the party, as well as any “evidence considered in making the initial determination.” *Id.* § 498.24. The party can appeal the reconsidered determination to an ALJ, who holds a hearing and can hear testimony. *Id.* §§ 498.40, 498.58, 498.60, 498.61. The ALJ’s decision can be appealed to the Department Appeals Board, *id.* §§ 498.74–498.84, and the Board’s decision is subject to judicial review, *id.* § 498.5.

Lee requested reconsideration of the initial determination, and CMS denied reconsideration and upheld its initial determination. Lee then sued the Secretary of HHS in the district court, alleging that (1) due process required a pre-deprivation hearing and (2) CMS’s imposition of sanctions amounted to *ultra vires* agency action. Lee claims that he lost his hospitalist position at St. Jude because of the sanctions. On March 24, 2026, the district court dismissed Lee’s case and denied as moot his motion for a preliminary injunction. The district court held that it did not have subject matter jurisdiction because Lee had not yet exhausted the appropriate administrative channels—at the time, he had an appeal pending before an ALJ. Lee timely appealed the district court’s order.

We review questions of subject matter jurisdiction *de novo*. *Lake v. Ohana Military Communities, LLC*, 14 F.4th 993, 1000 (9th Cir. 2021). To determine whether the district court had subject matter jurisdiction over a claim related to

Medicare, we first determine whether the claim “arises under” Medicare, so that the Act’s administrative channeling requirement applies. *Sensory Neurostimulation, Inc. v. Azar*, 977 F.3d 969, 975–76 (9th Cir. 2020); *see* 42 U.S.C. § 405(h). For claims arising under Medicare, we consider whether a plaintiff satisfied the administrative channeling requirements by presenting the claim and either exhausting the pertinent administrative channel or satisfying the requirements for judicial waiver of exhaustion. *Sensory Neurostimulation*, 977 F.3d at 976.

The parties agree that Lee’s claims arise under Medicare. And they also agree that Lee presented his claims to the Secretary before filing suit. Whether the district court had jurisdiction depends on whether waiver applies.

For waiver to apply, a claim must be “(1) collateral to a substantive claim of entitlement (collaterality), (2) colorable in its showing that refusal to the relief sought will cause an injury which retroactive payments cannot remedy (irreparability), and (3) one whose resolution would not serve the purposes of exhaustion (futility).” *Briggs v. Sullivan*, 886 F.2d 1132, 1139 (9th Cir. 1989) (internal quotations omitted). We consider each of Lee’s claims in turn.

“A plaintiff’s claim is collateral if it is not essentially a claim for benefits.” *Johnson v. Shalala*, 2 F.3d 918, 921 (9th Cir. 1993). Here, Lee’s *ultra vires* claim is not collateral, as his challenge to the Secretary’s authority to impose sanctions is inextricably intertwined with his substantive challenge to CMS’s decisions to revoke

his Medicare billing privileges and prohibit his re-enrollment for ten years. *See Elgin v. Dep't of Treasury*, 567 U.S. 1, 22 (2012) (for a claim to be “wholly collateral,” it cannot be the “vehicle by which [the plaintiff] seek[s] to reverse” the agency’s decision). The district court properly dismissed Lee’s *ultra vires* claim because he did not exhaust his administrative remedies.

Lee’s claim that he is entitled to a pre-deprivation hearing under the Due Process Clause, by contrast, is collateral to his substantive claim of entitlement, because it challenges the amount of process he received before he was subjected to public sanctions. *See Mathews v. Eldridge*, 424 U.S. 319, 330–31 (1976) (holding that a due process claim that an evidentiary hearing was required prior to the termination of social security disability benefits was “entirely collateral” to the substantive claim for benefits); *see also Cassim v. Bowen*, 824 F.2d 791, 795 (9th Cir. 1987) (citing *Ram v. Heckler*, 792 F.2d 444, 446 (4th Cir. 1986) and *Koerpel v. Heckler*, 797 F.2d 858, 862 (10th Cir. 1986)).

Lee has made a colorable showing of irreparable injury. The Secretary does not meaningfully refute Lee’s claim of irreparable injury, except to argue that Lee can retain his medical license. The Secretary also concedes that Lee can no longer bill for his services as a Medicare supplier. But the Secretary ignores that Lee lost his job as a hospitalist at St. Jude. The Secretary does not contest that “economic hardship [] constitute[s] irreparable harm.” *Johnson*, 2 F.3d at 922 (citing *Briggs*,

886 F.2d at 1140). We conclude that Lee has suffered irreparable injury.

Lee has demonstrated that exhaustion would be futile with respect to his due process claim. A plaintiff demonstrates futility of exhaustion if he shows that “[r]equiring him to exhaust administrative remedies would not serve the policies underlying exhaustion.” *Cassim*, 824 F.2d at 795. Administrative exhaustion is futile if “there is nothing to be gained from permitting the compilation of a detailed factual record, or from agency expertise.” *Briggs*, 886 F.2d at 1140. (citation modified). Here, “[g]iven the constitutional nature of his [due process] challenge, ‘there [is] nothing to be gained from permitting the compilation of a detailed factual record, or from agency expertise.’” *Cassim*, 824 F.2d at 795 (quoting *Bowen v. City of New York*, 476 U.S. 467, 485 (1986)); *Koerpel*, 797 F.2d at 862 (“Administrative exhaustion of the due process claim would be futile because the Secretary has taken a final position with respect to how much process is due at the pre-termination stage.”). We conclude that exhaustion of remedies is futile as to Lee’s due process claim.

We hold that although the district court correctly dismissed Lee’s *ultra vires* claim, it erred by dismissing his due process claim.

REVERSED IN PART AND REMANDED.