

No. \_\_\_\_\_

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*In The*  
**Supreme Court of the United States**

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Robert G. Thornton, In Pro Se

*Applicants,*

v.

UNITED STATES OF AMERICA and

Robert Wilkie, Secretary,

United States Department of Veterans Affairs,

*Respondents.*

**APPLICATION FOR EXTENSION OF TIME  
TO FILE PETITION FOR WRIT OF  
CERTIORARI**

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To the Honorable John Roberts, Jr.  
Chief Justice of the United States Supreme Court and D.C.  
Circuit: John Roberts, Jr.

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*In Pro Se for Applicant*

**To the Honorable John Roberts, Jr. Chief Justice of the United States Supreme Court and D.C. Circuit John Roberts, Jr.**

Applicant-Plaintiff, Robert G. Thornton (“Applicant”) respectfully request an extension of time to file a petition for writ of certiorari. Sup. Ct. R. 13.5. The earliest deadline for Applicants to file their petition is Wednesday, Feb 27, 2019, which is ninety days from Thursday, Nov 29, 2018, the date when the 11/29/2018, En Banc, filed denying petition for rehearing en banc order. For good cause set forth herein, Applicants ask that this deadline be extended by sixty days so that the new deadline would be Sunday, April 28, 2019.

**BACKGROUND**

<sup>1</sup>1:17-cv-00623-CRC D C Federal Circuit Thornton filed a petition for constitutional as -applied challenge to the VJRA 511(a) (“511(a)”) of the NON-REVIEWABLE clause of the statue citing:

**04/05/2017 ...COMPLAINT** ...alleges 38 U.S. Code § 511(a) is unconstitutional as applied to the facts of his case, and the VA violated his due process and Equal Protection rights guaranteed by the First and Fifth Amendment of the U.S. Constitution, and alleges the following:

The instant Petitioner alleges that 38 U.S.C. Section 511(a) is unconstitutional because, as applied to this Veteran, 511(a) has no provision that allows the Federal Courts to adjudicate instances of actual fraud, and in this case Petitioner alleges and documents the fraud and conspiracy that defrauded this veteran of his 5th Amendment rights as used in many instances to deny him the right to be heard by

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<sup>1</sup> The applied-challenge is properly before the U S District Court, *See .. Chem. Waste Mgmt., Inc. v. EPA*, 56 F.3d 1434, 1437 (D.C. Cir. 1995) (“[W]e . . . are unable to reach the merits because petitioners have not made a proper facial challenge. . . . [I]f petitioners are to succeed, they must bring a constitutional challenge as applied specifically to them.”); Dorf, *supra* note 1, at 239 (“Under *Salerno*,

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the BVA.

Plaintiff alleges that this particular application of §511(a) is unconstitutional since his due process rights were violated *pre-adjudication* by the BVA, and because it was pre-adjudication, appeals courts are loath to recognize such averments in order to protect the existing VA system over valid constitutional claims.

Petitioner is alleging, not whether the Administrator's decision granting or denying benefits in his particular case was right or wrong, but rather whether the Administrator had acted consistently with his grant of authority, or had exceeded his authority and acted in violation of veterans' rights guaranteed by the Fifth Amendment.

Petitioner alleges that the V.A. employees acted with a common plan or scheme under the color of law, by knowingly and purposefully violating petitioners' rights for the purpose of preventing his claim from reaching the BVA.

**On defendants' 07/05/2017 MOTION to Dismiss (MTD) for Lack of Jurisdiction** the trial court's Memorandum of Opinion states "Mr. Thornton's claims would require the Court to determine whether the VA acted properly in adjudicating Mr. Thornton's request for disability benefits. This Court is precluded from doing so, however, under Title 38, Section 511(a). Accordingly, the Court lacks subject-matter jurisdiction and Mr. Thornton's complaint must be dismissed.

Plaintiff Robert Thornton is a Vietnam War veteran who is unsatisfied with a decision by the United States Department of Veterans Affairs ("VA") denying him additional disability benefits. He alleges that the VA's denial was founded upon

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a litigant bringing a facial rather than an as-applied challenge gains nothing.")

fraud and conspiracy on the part of VA employees and thereby violated his constitutional rights to due process and equal protection of the laws....B. Mr. Thornton's Pursuit of Additional Benefits.....the Defendant list numerous as he called "Pursuit of Additional Benefits" (Id.)

**In plaintiff's 07/13/2017.... Memorandum in opposition to MTD...** Thornton challenged (8) eight specific factual allegations alleging Material Misstatements of Facts and of Law in the OMTD supported by evidence that had been submitted as addendums to the complaint.

**07/26/2017.... REPLY to opposition to motion...**the defendant did not address any of the (8) eight specific factual alleged challenges.

**12/11/2017.... MEMORANDUM OPINION ... MOJ¶ 5,** the trial court states "Here, Thornton alleges that fraud committed by the VA prevented him from appealing his benefits claim to the Board of Veterans Appeals in violation of his constitutional rights. Complaint ¶ 15....He also alleges that the VA destroyed evidence relevant to his claim. Id. ¶ 27... (allegation that the VA "orchestrated the concealment of missing medical records"). Thornton seeks a declaratory judgment that these actions undertaken by the VA during the adjudication of his benefits claim violated his due process rights.... Thornton attempts to avoid this outcome by arguing that his claim is a challenge to the methods used by the VA in reaching its decision,

assessing those methods still implicates Thornton's individual benefits determination. Complaint ¶ 15, 25-27....Thornton's claim is, at bottom, a challenge to his benefits determination. In order to adjudicate Thornton's case, the Court would be forced to examine the propriety of the VA's actions in administering his benefits claim. Although Thornton attempts to avoid this outcome by arguing that his claim is a challenge to the..... Operative questions here—<sup>2</sup>**whether Thornton timely filed his appeal** and whether the VA destroyed relevant medical records— are ones of “law and fact necessary to a [benefits] decision.” 38 U.S.C. § 511(a)...Therefore, under section 511, the Court does not have jurisdiction over Thornton's claims. (Id)...Pl. Opposition ¶ 11 ...The plaintiff properly asks the court to review the methods - not the decision -of the Administrator. The counsel for the Government have deliberately mischaracterized the petitioner petitions as a disagreement of benefits decision which is contrary to the face of the pleadings properly asks the court to review the methods- not the decision- of the Administrator. Citing; Marozsan v. United States, 635 F. Supp. 578, 580 (N.D.Ill.1986)

**Plaintiff's 01/22/2018..... MOTION to Set Aside FRCP 60b3...** Said defendants' attorneys combined with VA lawyers (MTD... page 1\_\_\_\_ lines 10-13 Dated: July 18, 2017), and each of them, under the shield of 51 l(a) preclusion clause, and filed false positive averments with this Court in their Motion to Dismiss (MTD) which

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<sup>2</sup> Henderson v. Shinseki 562 U.S. (2011); "This Court has repeatedly held that filing deadlines ordinarily are not jurisdictional; indeed, they described as "quintessential claim-processing rules."

subverts the judicial process in this Court by misstatement of material fact and material misstatement of law in their MTD. These false material averments were quoted in this Court's Memorandum of Decision.

**02/07/2018 ...NOTICE OF APPEAL as to Memorandum & Opinion, order on Motion to Dismiss/Lack of Jurisdiction by ROBERT G. THORNTON**

**Plaintiff's 02/08/2018.... Memorandum in opposition to MOTION to Set Aside ... OR60b3 ¶ 2-3....** Mr. Thornton now moves for relief from that order and for unspecified sanctions, arguing that undersigned counsel for the VA committed fraud on the Court. Specifically, Mr. Thornton identifies eight representations in Defendants' motion to dismiss that he says justify revisiting the order of dismissal under Federal Rule of Civil Procedure 60(b)(3). He simply takes superficial issue with how Defendants characterized certain facts,..... Moreover... Mr. Thornton was free to offer counterarguments to Defendants' characterizations in his... opposition paper and was not prevented from fully and fairly presenting his case.

**Defendants' 02/14/2018... REPLY to opposition to motion to Set Aside ...**  
Under Justice Scalia's approach, whether a Federal Rule is valid depends on the text of the rule read in isolation and not, in any fashion, on a state law with which that rule may conflict.<sup>45</sup> Thus, "compliance of a Federal Rule with the Enabling Act is to be assessed by consulting the Rule itself, and not its effects in individual

applications. "... Plaintiff's instant action is a motion pursuant to FRCP 60(b) against defendant's attorneys for presenting false positive averments and concealment of evidence that affected the Dismissal of his lawsuit in the instant matter. The Court must look at each of the averments made by defendants' counsel contained its Motion To Dismiss and match each to the evidence of actual documents attached to plaintiff's instant lawsuit. Characterizations aside, if the Court does review the said exhibits, there will be no question that the standard of clear and convincing evidence has been met.

**February 21, 2018 United States Court of Appeals FOR THE DISTRICT OF COLUMBIA CIRCUIT** No. 18-5049 ...February 21, 2018 [1718960] It is ORDERED, on the court's own motion, that this case be held in abeyance pending further order of the court. The Clerk is directed to transmit a copy of this order to the district court. The district court is requested to notify this court promptly upon the conclusion of the pending post-judgment motion.

**04/17/2018.... MINUTE ORDER denying 14 Motion to Set Aside the Judgment.**

The trial court ruled: "Plaintiff has filed a motion to set aside the judgment for fraud upon the Court under Federal Rule of Civil Procedure 60(b)(3). Plaintiff argues that Defendant made eight factual misrepresentations in its Motion to Dismiss that constitute fraud upon the Court.... Plaintiff was able to "fully and

fairly" present his case by disputing any of Defendant's factual characterizations in his Opposition to the Motion to Dismiss. The Court will therefore DENY the motion.

Signed by Judge Christopher R. Cooper (Id.)

**06/14/2018 ... APPELLEES' MOTION FOR SUMMARY AFFIRMANCE...** The D.C. Circuit ruled: "The district court properly dismissed this case because, under 38 U.S.C. § 511(a), it lacks jurisdiction to review VA decisions "affecting the provision of veterans' benefits." Price v. United States, 228 F.3d 420, 421 (D.C. Cir. 2000). The district court's conclusion in that regard is so clearly correct as to warrant summary affirmance.... Mr. Thornton includes in his complaint a claim that § 511(a) is unconstitutional as applied to him because it would prevent the district court from adjudicating the "fraud and conspiracy" he alleges the VA committed in adjudicating his benefits. But § 511 also forbids this circular, <sup>1</sup>as-applied challenge. To determine whether § 511 would unconstitutionally deprive Mr. Thornton of meaningful judicial review of a fraud and conspiracy by the VA (assuming arguendo such a claim would be viable), the district court would have to first determine whether the VA actually committed fraud and conspiracy (in other words, whether it "acted properly") in adjudicating Mr. Thornton's benefits...." (Id.)

**Plaintiff's 06/14/2018...OPPOSITION TO APPELLEES' MOTION FOR SUMMARY AFFIRMANCE...** Here before the D C Appeals court is pending FRCP 60b motions;...1. There is a pending rule 60b (3) that was a judicial error for failing

to docket the motion. See plaintiffs' brief; 2. There is a motion rule 60b (3) on appeal for abuse of discretion by the district court. Pg. 7 PLAINTIFF-APPELLANT'S BRIEF "JUDICIAL ERROR", as the rule 60b motion was file with-in 28 days of the court decision, the court should have docketed the motion when received. See Rule 4. Appeal as of Right—When Taken (a) APPEAL IN A CIVIL CASE. (4) An Effect of a Motion on a Notice of Appeal,(vi) for relief under Rule 60 if the motion is filed no later than 28days after the judgment is entered. June 18, 2018 ...

#### **QUESTIONS PRESENT, ISSUES OF FIRST IMPRESSION**

1. Whether the US District Court has Jurisdiction over "Prohibited Conduct (Intentional FRAUD) when the CONGRESSIONAL MANDATE (Legislative Intent) requires the system to be uniquely pro-claimant, paternalistic, nonadversarial system?
2. Whether an applied challenge of unconstitutional "Prohibited Conduct" to the non-reviewability of 38 U.S.C. § 511a (statute) is properly before the U S District Court?
3. Whether an Equal Protection Class-of-One Claim applies under 1st & 5th Amendment U S Constitution protecting individuals from the conduct of government and public officials where the government has acted, not through a legislative scheme, but through administrative action and is a violation of plaintiff's right to due process of the law, as well as, his equal protection rights guaranteed by

the First & Fifth Amendment of the Constitution?

4. Whether there is a nexus between the Fast Letter policies of 07-19 and as continued in Fast Letter 08-24 set aside by the CAFC “Procedures for Handling Extraordinary Awards” and the “prohibited conduct” ?
5. Whether a statute may be invalid as applied to one state of facts and yet valid as applied to another?
6. Whether a plaintiffs’ right to petition for meaningful access to the courts and administrative agencies is a fundamental right protected by the first amendment?
7. Whether the District Court erred when it chose not to rule on the cause of action alleging Equal Protection violations of the VA to a class, the Vietnam veterans, of which Appellant is a member and of which this veteran has alleged are treated differently due to the retro-earlier effective date of claims that go back decades for early effective date (EED)?
8. Whether 38 U.S.C. § 511(a) “non-reviewability” is in conflict with the Congressional mandate of the uniquely pro-claimant, paternalistic, non-adversarial system when it shields “prohibited conduct” by the VA which is outside their mandate?
9. Whether the present statute and especially the nature of VA proceedings lacks an acquit remedy for challenges to procedures of prohibited conduct of a CONGRESSIONAL MANDATE (Legislative Intent)?
10. Whether dismissal (MTD) and FRCP 60b “fraud upon the court” can be reconciled with the “Presumption of Regularity” and the non-reviewability of 38

U.S.C. § 511a without being reconciled with the rebuttal? APPELLEES' MOTION  
FOR SUMMARY AFFIRMANCE, (REBUTTED)

**OPINIONS BELOW**

The Case No. 17-cv-623 (CRC) MEMORANDUM OPINION are reproduced at Appendix A.

August 22, 2018 18-5049 ORDERED that the motion for summary affirmance be granted Appendix B.

The 11/29/2018 18-5049, En Banc, filed denying petition for rehearing en banc Appendix C.

**JURISDICTION**

This Court has jurisdiction under 28 U.S.C. § 1257.

**REASONS EXTENSION IS JUSTIFIED**

Supreme Court Rule 13.5 provides that "An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified." Sup. Ct. R. 13.5. The specific reasons why an extension of time is justified are as follows:

1. <sup>3</sup>I am 100% disabled PTSD, 50% Hearing Loss and 10% Tinnitus by the Veterans Administration, the Hearing Loss has dramatically decreased since the 2010 of increased for that disability of 50%, all communications now require to be in writing ie. email, text ect. My PTSD causes me great distress dealing with these issues and affects my ability to focus, and concentrate.
2. I was the Detachment NCOIC from Dec 21, 1967 to April 1968

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<sup>3</sup> In preparation for the planned offensive, Giáp and the troops of the People's Army of Vietnam (PAVN) launched a series of attacks in the fall of 1967 well into late Feb 68 on isolated American garrisons in the highlands of central Vietnam and along the Laotian and Cambodian frontiers. The TET OFFENSIVE. I was awarded 4 bronze service stars for combat among other awards.

(19 years old) in charge of 20 men of a forward relay communication site engineer hill, Pleiku Vietnam (Central Highlands) I served in Vietnam July 1967 - July 1968. The end of the year and the first of the year are extremely difficult times for me. I can only hope you can understand my mental state and in doing so grant the full 60 days extension necessary to prepare the most important Brief of my life and the lives of my comrades.

3. I reside in the country of Cambodia which requires me to outsource the printing outside of the country to the USA to meet the requirements of the court.

### CONCLUSION

For the foregoing reasons and good cause shown, Applicants respectfully request that this Court grant this application for an extension of time to file a petition for writ of certiorari.

Digitally signed by Robert G  
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<sup>1</sup> The applied-challenge is properly before the U S District Court, See .. *Chem. Waste Mgmt., Inc. v. EPA*, 56 F.3d 1434, 1437 (D.C. Cir. 1995) (“[W]e . . . are unable to reach the merits because petitioners have not made a proper facial challenge. . . . [I]f petitioners are to succeed, they must bring a constitutional challenge as applied specifically to them.”); Dorf, *supra* note 1, at 239 (“Under *Salerno*, a litigant bringing a facial rather than an as-applied challenge gains nothing.”)

<sup>2</sup> *Henderson v. Shinseki* 562 U.S. (2011); “This Court has repeatedly held that filing deadlines ordinarily are not jurisdictional; indeed, they described as “quintessential claim-processing rules.”

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## Appendix A.

### The Case No. 17-cv-623 (CRC) MEMORANDUM OPINION

## Appendix B

August 22, 2018 18-5049 ORDERED that the motion for summary affirmance be granted .

## Appendix C

The 11/29/2018\_\_\_\_18-5049, En Banc, filed denying petition for rehearing en banc Appendix C.