

No. 19-7573

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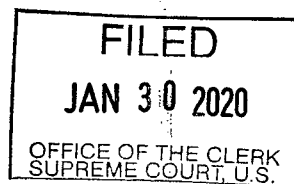
IN THE

SUPREME COURT OF THE UNITED STATES

Sean M. Donahue — PETITIONER
(Your Name)

vs.

Eugene Scalia, Secretary of Labor, et al RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

US Court of Appeals For The Third Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Sean M. Donahue
(Your Name)

625 Cleveland Street
(Address)

Cleveland Street, Hazleton, PA 18201
(City, State, Zip Code)

570-454-5367
(Phone Number)

QUESTIONS PRESENTED

Question I. WHAT IS THE APPROPRIATE ENFORCEMENT MECHANISM FOR 38 U.S.C. §4215?

SUGGESTED ANSWER: US DISTRICT COURT

Question II. WHAT IS THE NEXT BEST ENFORCEMENT MECHANISM ABSENT THE US DISTRICT COURT?

SUGGESTED ANSWER: STATE TRIAL COURTS

Question III. SHOULD A STATUTE SHORT OF AN ENFORCEMENT MECHANISM BE STRUCK UNDER THE VOID FOR VAGUENESS DOCTRINE?

SUGGESTED ANSWER: YES

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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via
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Wilkes Barre, PA 18702

United States Senate
via
Senator Bob Casey
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A.2 to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix A.5 to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 17, 2019.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 28, 2019. The Petitioner received a letter on Dec 6, 2019 instructing him to correct the petition for rehearing. The Petitioner mailed the correction on December 9, 2019. It was due on December 10, 2019. The US Third Circuit never responded or ruled on the

Petition for Rehearing.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including February 15, 2020 (date) on January 22, 2020 (date) in Application No. 19 A 812.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

INTRODUCTION

Addition Of Pennsylvania State Legislature As A Proper Respondent:

The Petitioner adds the Pennsylvania State Assembly as a proper respondent to this Petition. The Petitioner serves the Pennsylvania State Assembly through state Assemblyman Eddie Pashinski. The Petitioner avers that in the absence of a federal mechanism, the fifty state assemblies may create a state mechanism for enforcing 38 U.S.C. §4215. Such a mechanism must allow the Petitioner to bring suit against federal employees and officials in state trial courts to enforce 38 U.S.C. §4215.

A path to request extradition of federal officials to Pennsylvania to stand trial in cases brought under 38 U.S.C. §4215 must be allowed in order for a state level enforcement mechanism to be effective. It is the Petitioner's argument that every state employee and NGO¹ contractor and/or employee thereof who willfully continues to provide services to non veterans, while knowing that there is at least one veteran who is demanding services, is actively engaging in misappropriation and/or embezzlement of federal block grant funds that have been provided to Pennsylvania.

If Pennsylvania state agencies continue to refuse to provide these services to the Petitioner, the Petitioner will continue to sue them. He will also sue the NGOs and the individual employees and officials who are denying him his earned benefits. The Petitioner will file private state criminal charges against said individuals for

¹ Non Governmental Organization (NGO)

the willful misappropriation of funds by those who continue to provide services to non veterans, including foreigners. The Petitioner considers all federal employees and officials who are complicit in these activities to be equally as guilty of state crimes intended to police the misappropriation and embezzlement of federal block grant funds that are provided to Pennsylvania and will file private criminal charges against them in state courts. Alternatively, the high court can identify a mechanism for enforcing 38 U.S.C. §4215.

Addition Of The US Congress As A Proper Respondent:

The Petitioner adds the US House of Representatives and the US Senate as proper respondents to this Petition. The Petitioner serves the US House of Representatives through US Congressman Matthew Cartwright and serves the US Senate through US Senator Bob Casey. The US Congress is charged with the constitutional obligation to prescribe a mechanism to enforce 38 U.S.C. §4215. It has thus far failed to do so.

THE SINGLE STATUTORY PROVISION INVOLVED

The ONLY statute in question is the Jobs For Veterans Act:

“38 U.S.C. §4215:

(a) Definitions.—In this section:

(1) The term “covered person” means any of the following individuals:

(A) A veteran

...

(2)The term “qualified job training program” means any workforce preparation, development, or delivery program or service that is directly funded, in whole or in part, by the Department of Labor and includes the following:

- (A) Any such program or service that uses technology to assist individuals to access workforce development programs (such as job and training opportunities, labor market information, career assessment tools, and related support services).
- (B) **Any such program or service under the public employment service system, one-stop career centers, the Workforce Investment Act of 1998,[1] a demonstration or other temporary program, and those programs implemented by States or local service providers based on Federal block grants administered by the Department of Labor.**
- (C) Any such program or service that is a workforce development program targeted to specific groups.

(3)The term “priority of service” means, with respect to any qualified job training program, that a covered person shall be given priority over nonveterans for the receipt of employment, training, and placement services provided under that program, notwithstanding any other provision of law. Such priority includes giving access to such services to a covered person before a non-covered person or, if resources are limited, giving access to such services to a covered person instead of a non-covered person.

(b)Entitlement to Priority of Service.—

(1)A covered person is entitled to priority of service under any qualified job training program if the person otherwise meets the eligibility requirements for participation in such program.

(2)The Secretary of Labor may establish priorities among covered persons for purposes of this section to take into account the needs of

disabled veterans and special disabled veterans, and such other factors as the Secretary determines appropriate.

(c)Administration of Programs at State and Local Levels.—An entity of a State or a political subdivision of the State that administers or delivers services under a qualified job training program shall—

(1)provide information and priority of service to covered persons regarding benefits and services that may be obtained through other entities or service providers; and

(2)ensure that each covered person who applies to or who is assisted by such a program is informed of the employment-related rights and benefits to which the person is entitled under this section.

(d)Addition to Annual Report.—

(1)In the annual report required under section 4107(c) of this title for the program year beginning in 2003 and each subsequent program year, the Secretary of Labor shall evaluate whether covered persons are receiving priority of service and are being fully served by qualified job training programs. Such evaluation shall include—

(A)an analysis of the implementation of providing such priority at the local level;

(B)whether the representation of veterans in such programs is in proportion to the incidence of representation of veterans in the labor market, including within groups that the Secretary may designate for priority under such programs, if any; and

(C)performance measures, as determined by the Secretary, to determine whether veterans are receiving priority of service and are being fully served by qualified job training programs.

(2)The Secretary may not use the proportion of representation of veterans described in subparagraph (B) of paragraph (1) as the basis for determining under such paragraph whether veterans are receiving

priority of service and are being fully served by qualified job training programs.

(Added Pub. L. 107-288, § 2(a)(1), Nov. 7, 2002, 116 Stat. 2033; amended Pub. L. 112-56, title II, § 239, Nov. 21, 2011, 125 Stat. 727.)” (Appendix B)

STATEMENT OF THE CASE

The US Congress is charged with the constitutional obligation to prescribe a mechanism to enforce 38 U.S.C. §4215. It has thus far failed to do so.

The Manifestation of Congressional Failure In The Instant Case.

The US Third Circuit erred when it found the following false fact;

“Donahue did not demonstrate that he is clearly entitled to have the Department of Labor provide him with job placement services or to have the state courts overturn his conviction. Notably, Donahue has not meaningfully challenged the Magistrate Judge’s conclusion that a “substantial element of discretion ... is an inherent part of many Department of Labor job placement programs.” *Bartlett Mem’l Med. Ctr., Inc. v. Thompson*, 347 F.3d 828, 831 (10th Cir. 2003) (“Because we find that the Secretary [of Health and Human Services] did not owe any clear, non-discretionary duty to Plaintiffs, we hold that mandamus jurisdiction does not lie[.]”). And, of course, Donahue had other means of challenging his criminal sentences. See *Coady v. Vaughn*, 251 F.3d 480, 485- 86 (3d Cir. 2001) (providing that the proper avenue for challenging a state conviction in federal court is 28 U.S.C. § 2254).” (*Donahue v. Acosta*, No. 17-3841, pp4-5, (3d Cir. Oct. 17, 2019), Appendix A)

Bartlett Mem'l Med. Ctr., Inc. v. Thompson, 347 F.3d 828, 831 (10th Cir. 2003) is inapposite to the instant case. The Medicare law in Bartlett explicitly established the discretionary authority of the Secretary of Health and Human Services (HHS) to determine how much reimbursement could be paid to "disproportionate share hospitals". In Bartlett, there was no prescribed statutory mathematical formula or hard line in the sand rule that HHS was required to adhere to. That is not the case in 38 U.S.C. §4215.

When it comes to enforcing 38 U.S.C. §4215, the US Congress drew a very hard line in the sand. As is explicitly stated in the above cited statute, the Defendants have a clear nondiscretionary duty to the Petitioner under 38 U.S.C. §4215(a)(1)(A), 38 U.S.C. §4215(a)(2)(B) & 38 U.S.C. §4215(a)(3). The controlling statute gives the Defendants no choice other than to provide the Petitioner with priority job placement services. They must continue to do so until they have succeeded in helping the Petitioner attain gainful employment, which means a job that pays enough money to cover all costs of living, saving for retirement and paying student loans. (Appendix C)

The Defendants can either accept the Petitioner's education, training and experiences and help him get a job that is appropriate for the level of education, training and experiences that he already has, i.e., they can provide him with job placement services, or Defendants can build upon the education that the Petitioner already has and train the Petitioner for a new job but that job must be equal to or

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greater in terms of reward, recognition, socioeconomic stature and pay than would be a job that is appropriate for the level of education, training and experiences that the Petitioner already has. The Defendants may build upon what the Petitioner already has but they may not ignore it because they are envious and resentful and want him to have less reward than is due for his education, training and experiences.

Any job that the Defendants assist the Petitioner in getting must pay enough to cover the total cost of student loans, plus household expenses and must also reward the Petitioner for his education. Anything short of that threshold is not gainful employment and would still entitle the Petitioner to services.

In Bartlett, the court found the following;

"A. Mandamus Jurisdiction

The Medicare Act incorporates 42 U.S.C. § 405(h), which states:

No action against the United States, the [Commissioner of Social Security], or any officer or employee thereof shall be brought under section 1331 [federal question jurisdiction] or 1346 [United States as defendant] of Title 28 to recover on any claim arising under this subchapter.

42 U.S.C. §§ 405(h) (incorporated into the Medicare Act via 42 U.S.C. § 1395ii). Section 405(h) does not, however, explicitly bar mandamus jurisdiction under 28 U.S.C. § 1361 for Medicare claims. The Supreme Court has thus far declined to decide whether mandamus jurisdiction is available for claims arising under the Medicare Act, *Your Home*, 525 U.S. at 456, 119 S.Ct. 930; *Heckler v. Ringer*, 466 U.S. 602, 616, 104 S.Ct. 2013, 80 L.Ed.2d 622 (1984), but this Court has held that such jurisdiction is available if a suit, rather than seeking a right to benefits, requests "a procedure through which the right to benefits can be contested." *Dockstader v. Miller*, 719 F.2d 327, 329 (10th Cir. 1983).

Because we conclude that Plaintiffs are challenging "a procedure

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through which the right to benefits can be contested," we find that Dockstader permits the consideration of mandamus jurisdiction in this case.

Mandamus relief is available to "a plaintiff only if he has exhausted all other avenues of relief and only if the defendant owes him a clear nondiscretionary duty." Ringer, 466 U.S. at 616, 104 S.Ct. 2013; *836 Cordoba v. Massanari, 256 F.3d 1044, 1047 (10th Cir. 2001). We conclude that, although Plaintiffs satisfy the exhaustion requirement, they have failed to demonstrate that the Secretary owed them a clear, non-discretionary duty. Thus, mandamus jurisdiction cannot lie." (Bartlett supra pp835-836)

REASONS WHY THE COURT SHOULD GRANT CERTIORARI

Title 38 does not give the US Secretary of Labor the same kind of discretion that the Medicare Act gives to the Secretary of HHS. As noted above, unlike the Medicare Act, US Title 38 does draw clear nondiscretionary hard lines in the sand. 38 U.S.C. §4215(a)(1)(A) explicitly states that a "veteran" is a "covered person". 38 U.S.C. §4215(a)(2)(B) clearly and explicitly states that a "covered person" is entitled as a matter of law to priority access to *"[a]ny such program or service under the public employment service system, one-stop career centers, the Workforce Investment Act of 1998,[1] a demonstration or other temporary program, and those programs implemented by States or local service providers based on Federal block grants administered by the Department of Labor."* 38 U.S.C. §4215(a)(3) clearly and explicitly states that *"[t]he term "priority of service" means, with respect to any qualified job training program, that a covered person shall be given priority over nonveterans for the receipt of*

employment, training, and placement services provided under that program, notwithstanding any other provision of law. Such priority includes giving access to such services to a covered person before a non-covered person or, if resources are limited, giving access to such services to a covered person instead of a non-covered person."

While Title 38 does contain a mandamus provision, it refers explicitly to the Secretary of Veterans Affairs, not to the US Secretary of Labor. (38 U.S. Code § 511. Decisions of the Secretary; finality) What is more, it refers explicitly to appeals of disability adjudications. In the case of disability applications and appeals, there is a formal adjudication process with discovery and a special federal appellate court to which a veteran may appeal a denial of services. (*Conley F. Monk, Jr., Et Al., Petitioners v. Robert L. Wilkie, Secretary Of Veterans Affairs, No. 15-1280 (Vet. App. 2018)*) There is no such process in the US Department of Labor or in the US Department of Veterans Affairs for adjudicating access to Labor Department services for veterans under 38 U.S.C. § 4215. Even if such a process did exist, it would have to be adjudicated under the authority of the US Department of Veterans Affairs, not under the authority of the US Department of Labor.

Title 38 of the US Code grants authority to the US Secretary of Veterans Affairs and bestows obligation upon the US Secretary of Labor. The core of the problem at hand in the instant case is that no one is enforcing 38 U.S.C. § 4215 and that no enforcement mechanism is in place to force anyone to do so. The Petitioner

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can find no cases, other than his own, in which the issue of enforcing 38 U.S.C. §4215(a)(1)(A), 38 U.S.C. §4215(a)(2)(B) & 38 U.S.C. §4215(a)(3) has been raised, formally adjudicated and appealed to the courts. There is no precedent case law that explicitly opines on 38 U.S.C. §4215.

Who Should Enforce 38 U.S.C. §4215?

Because 38 U.S.C. §4215 is a federal law, the federal courts have jurisdiction to enforce it.

28 U.S. Code § 1331. Federal question:

“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

CONCLUSION

In the instant case, the plain language of 38 U.S.C. §4215 is clear and explicit. It draws deep and bold lines in the sand. Both the US Court of Appeals for the Third Circuit and the US District Court for the Middle District of Pennsylvania have failed to enforce 38 U.S.C. §4215. Because there is no established precedent or case law for them to cite, they have turned to Medicare Law to find clarity, which is a path to which no American on Medicare would ever turn in quest to find clarity. Medicare case law is inapposite to the issues raised in the instant case.

Certiorari should be granted on the question of whether or not the law clearly identifies a mechanism to enforce 38 U.S.C. §4215. The Petitioner argues that because the law does not identify such a mechanism. Therefore, the Petitioner RESPECTFULLY REQUESTS that 38 U.S.C. §4215 be struck under the void for vagueness doctrine (or void for voidness because the law is void of an enforcement mechanism). 38 U.S.C. §4215 should be kicked back to the US Congress to remedy the matter. Any law not enforced, is a law not worth having.

Alternatively, the Petitioner turns to the Pennsylvania right to private action to file private state criminal charges against state and private recipients of federal block grant funding addressed in 38 U.S.C. §4215(a)(2)(B). The Petitioner also turns to the Pennsylvania right to private action to file private state criminal charges against federal officials and employees who enable misappropriation and embezzlement of federal block grant funds in Pennsylvania by willfully choosing not to enforce 38 U.S.C. §4215(a)(3). So long as any single veteran is denied services under 38 U.S.C. §4215, the doors to federally funded one stop centers in that state must be closed to all non veterans. *ibid*

If the appropriate enforcement mechanism is for veterans to bring *pro se* state civil and criminal charges against state, federal and NGO actors who operate outside the constraints of 38 U.S.C. §4215, then the federal courts will have no jurisdiction to intervene to prevent a veteran from doing so. (*Heck v. Humphrey*, 512 U.S. 477 (1994); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of*

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Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); *Younger v. Harris*, 401 U.S. 37 (1971))

The forgoing document is true in fact and belief and submitted under penalty of perjury.

Respectfully Submitted,

Jan 29, 2020
Date

Sean M. Donahue
Sean M. Donahue

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3841

SEAN M. DONAHUE,

Appellant

v.

R. ALEXANDER ACOSTA, UNITED STATES DEPARTMENT OF LABOR;
UNITED STATES DEPARTMENT OF LABOR; THE COMMONWEALTH OF
PENNSYLVANIA, IN ITS CAPACITY AS A SOVEREIGN SIGNATORY TO THE
U.S. CONSTITUTION; THE LUZERNE/SCHUYLKILL COUNTIES WORKFORCE
INVESTMENT BOARD, INC.; PRESIDENT DONALD J. TRUMP

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 3:17-cv-01759)
District Judge: Honorable Robert D. Mariani

Submitted Pursuant to Third Circuit LAR 34.1(a)
August 21, 2019

Before: MCKEE, COWEN, and RENDELL, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on August 21, 2019.

On consideration whereof, it is now hereby

A.1