No. 20-324

IN THE SUPREME COURT OF THE UNITED STATES

PETER BARCLAY,

Petitioner

v.

STATE OF OREGON DEPARTMENT OF JUSTICE, DANIEL R. MURPHY, GLEN D. BAISNGER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Peter J. Barclay
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Questions Presented For Review

Will this Court exercise its supervisory powers against lower court judgments which expressly hold the stare decisis of this Court "irrelevant" and where the lower courts disregard this Court's stare decisis by refusing to hold state judges culpable for committing manifest violations of U.S. sovereignty in the face of the clear statutes and this courts cases that strip state judges of authority?

Will this Court exercise its supervisory powers against lower court judgments that deny enforcement of statutory injunctions rendering the enlistment contract and protective weight of the U.S. Constitution worthless?

Additional Dependent Questions Presented For Review under 28 U. S. C. § 2101(e)

Does *res judicata* of family law courts prohibit enforcing preemption in existing cases of federal disability benefits, post 1989?

Parties to the Proceeding

This case is raised from a *sua sponte* dismissal of the original complaint in the District Court prior to summons of the defendants. The Petitioner has been the only party of the courts.

The defendants are as follows:

Oregon Department of Justice;
Daniel R. Murphy,
Glen D. Baisinger,

28 U. S. C. § 2403(b) may apply given the nature of the case and allegations against persons in a position to exercise control over the political or military action of the State of Oregon where the character and gravity of such an act constitutes a manifest violation of the United States' sovereignty threatening grave damages to clearly substantial federal interests, compare United Nations Resolution RC/Res.6: The crime of aggression, International Criminal Court with *Howell v. Howell*, 137 S. Ct. 1400, 1405 (2017) citing *McCarty v. McCarty*, 453 U.S. 210, 453 U. S. 232-235 (1981).

As such, it is most respectfully requested this case be brought to the special attention of Honorable Chief Justice Roberts as a statutory requisite of 18 U.S.C. § 2382 – Misprision of treason.

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PETITION FOR WRIT OF CERTIORARI

The petitioner, Peter James Barclay, respectfully petitions this Court for a Writ of Certiorari to review the judgment and opinion of the United States Court of Appeal for the Ninth Circuit filed on March 25, 2020, and denial of the motion for reconsideration August 4, 2020.

Opinions and Orders Below

The original opinion of the United States District Court of Eugene Oregon and dismissal was filed on Aug 13, 2019, and is attached hereto as App 1.

The original opinion and order of the United States Circuit Court for the Ninth Circuit dismissing the appeal was filed Mar 25, 2020, and is attached hereto as App 12.

The original order of the United States Circuit Court for the Ninth Circuit denying the petitioner's motion to reconsider and motion for reconsideration en banc was filed Aug 4, 2020, and is attached hereto as App 14.

Jurisdiction

The decision of the United States Court of Appeal for the Ninth Circuit denying the petitioner's motion to reconsider and motion for reconsideration en banc was filed Aug 4, 2020. This petition is filed within 90 days of that date pursuant to the Rules of the United States Supreme Court, Rule 13.1. This Court has jurisdiction to review under 28 U.S.C. § 1254.

The Petitioner requests jurisdiction of the Court under 28 U. S. C. §1651(a) because of the continued independent sovereignty of the United States is being routinely violated, the case bears the weight of mortality for 22 veterans a day and the entire country is embroiled in riots and acts of violence. Government officials have been committing violent acts against the American people. Local law enforcement actively attempts to cover up miss conduct. Prosecutors refuse to bring charges in cases where the evidence establishes an 'open and shut" guilty case. Judges use their own judicial immunity to protect criminals who have no immunity by committing fallacies under the artifice of error.

Anyone attempting to lawfully defend themselves or merely discuss their options of using lawful forms of armed force, e.g. exploring options of performing a citizen's arrest, are met with criminal prosecution, evidence tampering, or they are met with threats to their lives.

Constitutional and Statutory Provisions

Federal Constitutional Provisions

The Preamble of the Constitution provides: "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

The Fourteenth Amendment provides: "No State shall . . . deprive any person of life, liberty, or property, without due process of law ...."

Section 4 of the Fourteenth Amendment of the United States Constitution provides: "The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void."

Section 5 of the Fourteenth Amendment of the United States Constitution provides: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Federal Statutory Provisions

38 U.S.C. § 511 - Decisions of the Secretary; finality (a) provides: "The Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans. Subject to subsection (b), the decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise."

38 U.S.C. § 5301 - Nonassignability and exempt status of benefits, (a) (1) in pertinent part provides: "Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any

legal or equitable process whatever, either before or after receipt by the beneficiary."

38 U.S.C. § 5301(a)(3)(C) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited and is void from its inception.

42 U.S.C. § 405(a) - The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this subchapter, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

42 U.S.C. § 405(b)(1) The Commissioner of Social Security is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this subchapter.

42 U.S.C. § 405(h) The findings and decision of the Commissioner of Social Security after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Commissioner of Social Security or any officer or employee thereof shall be brought under section 1331 or 1346 of title 28, United States Code[82], to recover on any claim arising under this title.

42 U.S.C. § 407 - Assignment of benefits, (a) In general. The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

Statement of the Case

The Petitioner, Peter Barclay, an honorably discharged Staff Sergeant of the United State Air Force and disabled veteran, now calls on the language of our Constitution adopted after the Civil War to contest criminal activities which could be accurately described to be entangling the country in acts of terrorism and bringing us to a second Civil War.

The Petitioner performs this action under the requirements of his Enlistment Oath, 10 U.S.C. § 502(a), and requirements of Misprision of treason, 18 U.S.C. §

2382. He commences this action, authorized by law, for the rights protected by Sections 4 and 5 of the Fourteenth Amendment of the Constitution of the United States.

Mr. Barclay is a permanently disabled veteran whose sole sources of income are federal disability benefits from the Department of Veterans' Affairs ("VA") and the Social Security Administration ("SSA").

Under original jurisdiction over actions arising under 42 U.S.C. §§ 1983 and 1985, the Fifth and Fourteenth Amendment to the United States Constitution, Rule 57 of the Federal Rules of Civil Procedure and where the District Court has jurisdiction over all claims for relief pursuant to 28 U.S.C. Sections 1331, 1343. The Plaintiff alleged and cited:

> "During divorce proceedings, in the face of the clearly valid statute and the existing cases of the U.S. Supreme Court, Daniel Murphy and Glen Basinger, usurped authority of the United States, divided and assigned the federal benefits to another party [former spouse].
>
> When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost. *Rankin v. Howard*, 633 F.2d 844 (1980), cert den. *Zeller v. Rankin*, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326.
>
> These orders are in violation of the federal statutory injunction 38 U.S.C. § 5301(a)(3)(C). They are void from inception."

Mr. Barclay also alleged that defendant the Oregon Department of Justice ("ODOJ") has been enforcing the orders by sending garnishment requests to the SSA.

On Aug 13, 2019, the district court dismissed the claims with prejudice. The Court held the ODOJ is immune from suit in federal court and the named defendants entitled to absolute immunity.

The District Court explained Eleventh Amendment immunity covers not just the state itself, but also the state's agencies, *P. R. Aqueduct & Sewer Auth. v. Metcalf*, 506 U.S. 139, 144 (1993).

In the motion, Mr. Barclay conceded to the District Court's knowledge, which now also appears flawed, for the Eleventh Amendment immunity in this case for the Oregon Department of Justice.

The District Court then explains its reasoning for holding the defendants Daniel Murphy and Glenn Baisinger to have immunity.

> "State court judges are entitled to absolute immunity from claims for damages based on their handling of judicial proceedings. *Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988). The only time a judge loses absolute immunity is when he or she (1) "performs an act that is not judicial in nature" or (2) "acts in the clear absence of all jurisdiction." Id. Even "[g]rave procedural errors or acts in excess of judicial authority do not deprive a judge of this immunity." Id.

The Court then provides its reasoning by pointing at the two prongs that provide the foundation for the existence of a judge's immunity, albeit referring to them as exceptions.

> "Here, the first exception does not apply because plaintiff's claims against Judge Murphy and Judge Basinger are based on their conduct while presiding over divorce proceedings, specifically by entering either child- or spousal-support orders. *Stump v. Sparkman,* 435 U.S. 349, 362 (1978) (a "judicial act" is one that "is a function normally performed by a judge" when the parties "dealt with the judge in his [or her] judicial capacity").
>
> Similarly, the second exception does not apply because the allegations do not show a complete absence of jurisdiction. When assessing judicial immunity, courts construe jurisdiction "broadly." *Franceschi v. Schwartz,* 57 F.3d 828, 830 (9th Cir. 1995) (per curiam). The focus is on the court's subject-matter jurisdiction over the dispute. *New Alas/la Dev. Corp. v. Guetschow,* 869 F.2d 1298, 1302 (9th Cir. 1989). Thus, lack of jurisdiction means a lack of power to hear or determine the case. Here, plaintiff asserts that Judge Murphy and Judge Basinger had no authority to assign his federal disability benefits to another party. But even accepting that allegation as true, plaintiff has, at most, shown that the judges acted in *excess* of their jurisdiction, which is not enough to strip them of judicial immunity."

In his motions to both the District and the Ninth Circuit, Mr. Barclay first challenges judicial immunity on the basis both prongs did not exist. Second Mr. Barclay challenges immunity when the defendant's acts are in the face of clearly valid statutes and binding cases expressly depriving them of jurisdiction. Third, even assuming judicial immunity does exist, sovereign immunity is not a bar to the entry of injunctive or declaratory relief, as such relief is prospective.

Proceedings Below

Neither the District nor the Appeals Court for the Ninth Circuit provides reasoning for not enforcing the statutory injunction other than to hold the defendants immune from suit. However, that would oppose this Court's binding

authority. *Missouri v. Jenkins,* 495 U.S. 33, 109 S.Ct. (1990); *Pulliam v. Allen*, 466 U.S. 522, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984); *Hutto v. Finney*, 437 U.S. 678, 98 S.Ct. (1978), *Supreme Court of Virginia v. Consumers Union*, 446 U.S. 719, 719–720 (1980).

Equally, the courts have not answered how benefit decisions are judicial acts nor how a state judge has jurisdiction to make benefit decisions nor how a judge in excess of jurisdiction still holds immunity when acting "in the face of the clearly valid statute and the existing cases of the U.S. Supreme Court", *Rankin v. Howard*, 633 F.2d 844, (1980), *Turner v. Raynes,* 611 F. 2d 92 (1980), *Bradley v. Fisher*, 80 U.S. (13 Wall.) at 351 (1872), and *Stump v. Sparkman*, 435 U.S. 349, 362 (1978).

Historical Framework

Exclusive Jurisdiction of Federal Disability

For decades the courts had only *Wissner v. Wissner*, 338 U. S. 655 (1950) for the use of federal benefits in family law courts. While the opinions of the lower courts were scattered from agreement, this Court intentionally withheld clarity.

> *Rose v. Rose*, 481 U.S. 619 at 659 (1987), "As the Court acknowledges, ante at 481 U. S. 631-632, until *Ridgway*, we had carefully refused to hold that anti-attachment provisions similar to § 3101(a) shield the beneficiary from the support claims of his spouse and children."

After the added confusion of the Child Support Enforcement Act of 1975, this Court began providing clarity. Over another decade this Court provided clarity through rulings that include *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979); *Ridgway v. Ridgway*, 454 U.S. 46, 54 (1981); *McCarty v. McCarty*, 453 U.S. 210 (1981); *Rose v. Rose*, 481 U. S. 619 (1987); and *Mansell v. Mansell* 490 U.S. 581 (1989).

Throughout, social security disability was used as the example to show how state family law courts were preempted from exercising authority. Veteran disability also has a statutory injunction and the protective weight of the Constitution under Section 4 of the Fourteenth Amendment.

Congress abrogated several of the cases because of this Court's law. When held state courts lacked authority over retirement funds, Congress responded; on railroad retirement with Pub. L. 98-76, tit. IV, s. 419(a)(3), 97 Stat. 938 (1983) and for military retirement with Public Law 97-252, Title 10 U.S.C. § 1408, (1983), the Uniformed Services Former Spouses' Protection Act (FSPA).

Congress never responded to this Court's decisions which denied state court authority over federal disability awards for social security or veteran benefits. Congress only responded to the single instance where this Court had interpreted state courts had authority over veteran benefit decisions.

For the enactment of the Veterans' Judicial Review Act, Pub. L. No. 100-687, 102 Stat. 4105 (1988), (VJRA), Congress declared their intent to overturn the Supreme Court precedent in *Rose* that construed the jurisdiction language of 38 U.S.C. § 211 (currently § 511) had authorized states to make veteran benefit decisions including the Apportionment process 38 U.S.C. § 3107 (currently 5307) and remove them from the adversarial conditions of family law courts, H.R. Rep. No. 100-963, at 19-22 (1988).

Since then, the exclusivity of jurisdiction has been held by consensus and the scope to be so broad as to include questions of Tort and Constitutionality. *Little v. Derwinski*, 1 Vet. App. 90, 91-92 (1990); *Belton v. Department of Veterans Affairs* 107 F.3d 14 (9th Cir.1997); Veterans for Common Sense v. Shinseki, 678 F.3d 1013, 1016 (9th Cir. 2012); *Anestis v. United States*, 749 F.3d 520 (6th Cir.2014); *Beamon v. Brown* 125 F. 3d 965 (6th Cir.1997); *Larrabee, by Jones v. Derwinski*, 968 F.2d 1497 (2d Cir.1992); *Hicks v. Veterans Administration*, 961 F.2d 1367 (8th Cir.1992); *Zuspann v. Brown*, 60 F.3d 1156 (5th Cir.1995); *Hanlin v. US*, 214 F.3d 1319 (Fed. Cir. 2000); *Turner v. United States*, 501 Fed. App'x 840, 843 (10th Cir. 2012); *Henderson v. United States*, No. 14-15194 (11th Cir. 2014).

The Two Prongs of Immunity

This Court has used the term prongs. Mr. Barclay tends to use the terms strap and boss for wielding a shield of Judicial Immunity. Importantly, they are not exceptions to an automatic God-given right of protection simply because someone is called a judge. To assume Judicial Immunity exists and for the protection of the judge is a display of unjustifiable arrogance and evidence of the systemic problem that brings this case forward.

Judges are fearless warriors that use this shield to protect the rights of all litigants to unfettered judgement. They are bestowed a title that affords the assumption of respect for the honor they must have. Judicial Immunity must be established and created for each case and act. It is extremely powerful and may be impossible to defeat once wielded but it requires two foundational pieces to hold it up first. This process is important to ensure the shield is not wielded against the litigents and for cases such as today's; where two jurisdictions can come into play.

A judge must be able to both grip the boss and strap it to their arm to wield its protection; one or the other is not good enough. Additionally, this allows Mr.

Barclay to explain the exception to general subject matter jurisdiction to produce an absolute loss of jurisdiction. If a judge turns on the litigants by acting in the face of binding authority of a higher court or a clear statute stripping away the jurisdiction for an act, the strap is cut and the shield cannot be weilded to betray the litigants.

> *Rankin v. Howard*, 633 F.2d 844, (1980) cert den. *Zeller v. Rankin*, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326.: "But when a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost. See *Bradley v. Fisher*, 80 U.S. (13 Wall.) at 351 ("when the want of jurisdiction is known to the judge, no excuse is permissible"); *Turner v. Raynes*, 611 F.2d 92, 95 (5th Cir. 1980) (Stump is consistent with the view that "a clearly inordinate exercise of unconferred jurisdiction by a judge — one so crass as to establish that he embarked on it either knowingly or recklessly — subjects him to personal liability")[14]
>
> [14] ("In Stump, although Indiana law did not expressly grant subject matter jurisdiction over sterilization petitions, the Court found it "more significant that there was no Indiana statute and no case law in 1971 prohibiting a circuit court, a court of general jurisdiction, from considering a petition of the type presented to Judge Stump." 435 U.S. at 358, 98 S.Ct. at 1105. The implication is that, had there been Indiana law expressly prohibiting the defendant judge from exercising jurisdiction, a clear absence of jurisdiction would have been established. Here the plaintiff contends that Kansas law expressly prohibited the defendant judge from exercising jurisdiction over Rankin. If this contention is correct, the judge lost his immunity.")

Jurisdiction may have been established to handle a family law dispute but it was not established to handle the claims of support and welfare from Uncle Sam. Assuming it found that a judge is only in excess of one jurisdiction because they performed an act which was similar to an act of another jurisdiction, the defendants still acted in the face, willfully and with knowledge of the clear cases of this Court and the statutes which strip them of authority from both subject matters and acts. No matter how you look at it, the defendants have no immunity.

A Judicial Act

In *Rose v. Rose*, 481 U.S. 619 (1987), this Court explained a state court could be operating under the state's family law jurisdiction and the subject matter of benefits decision.

> (d) The factors determining whether an act by a judge is "judicial" relate to the nature of the act itself (whether it is a function normally performed by a

judge) and the expectation of the parties (whether they dealt with the judge in his judicial capacity), and here, both of these elements indicate that the Circuit Judge's approval of the sterilization petition was a judicial act, even though he may have proceeded with informality. Pp. 435 U. S. 360-363. *Stump v. Sparkman,* 435 U.S. 349 at 350 (1978)

To determine if an act is judicial, we also call on the stare decisis of *Ex Parte Virginia,* 100 U.S. 339 (1879). When we look at who traditionally has made family law support decisions, we are compelled to see it is a judicial act.

That said, when Mr. Barclay and his former spouse entered that courtroom as petitioner and respondent, they came to have divisible income and property divided. They did not come with Uncle Sam as party to the case with a claim to determine how much the United States was culpable for their support and welfare.

Simply put, a benefit decision is not. State judges never participate in the benefit decisions of Veteran Benefits, Social Security Disability, TANIF, SNAP's, HUD, WIC, or any other disability or federally funded programs. Even programs co-funded and administered by the state are required to have oversight by their corresponding federal agency and administrative staff.

In this case, we are solely dealing with veterans and social security benefits. We can look at their history. The stories of Congress constantly removing jurisdiction show these are not judicial acts. They cannot be if judges are never allowed to make them.

For veteran benefits, this could not be more obvious. See in total James D. Ridgway, "The Splendid Isolation Revisited: Lessons from the History of Veterans' Benefits Before Judicial Review", Department of Veterans' Affairs, Board of Veterans' Appeals, Veterans Law Review-Vol.3, 2011. Ever since state judges crashed the first benefit system in 1820 by inventing the criminal scheme of stolen valor, Congress has done everything it can to keep state courts out of these decisions.

The interest of the defendants in provisioning support is preventing the dependents from laying claim to the benefits co-funded by the state. The defendants made a benefit decision to divide Mr. Barclay's federal disability benefits to prevent his former spouse and child from receiving a favorable benefit decision from the state. The defendant's acts were solely involved in benefit provisions. Family law jurisdiction was not involved to allocate any divisible funds as none existed.

Following this, Mr. Barclay's complaint is not that the defendants performed a family law decision but performed a benefit decision and the claim of immunity is

under the charade of performing a family law decision. To emphasize and explain this point, Mr. Barclay called on the statement of Chief Justice Roberts in the hearing of the recent *Howell* case:

> Page 42 of the *Howell* hearing transcript
>
> CHIEF JUSTICE ROBERTS: So you have a law that says --you have a law that says you can't divide disability pay, and yet, you say it's okay to say, well, I'm not going to divide it, but I'm just going to award you an amount equal to what it would be if I divided it.
>
> MS. EISENSTEIN: Well, let me be clear.
>
> CHIEF JUSTICE ROBERTS: That's the sort of thing that gives, you know, law a bad name. It's just -¬
>
> (Laughter.)
>
> CHIEF JUSTICE ROBERTS: It makes a charade out of the statute.

While the Court stated it has access to the state record, Mr. Barclay included samples of judgments by the defendants, App 15-24. The defendants are not blindly setting a family law support amount. They point directly to the disability benefits to justify the setting of the award amounts. In App 16, lines 5-7, Daniel Murphy further illuminates this charade by literally stating the $800 award "is based on Respondent's receipt of the $800 per month in social security benefits".

Under social security law, that award would have been divided between both children and not solely provided to the child in the former spouse's custody. The defendants have never been tasked with making benefits decisions. Having no experience performing a task that is not a judicial act, it is no surprise it was also wrong.

Jurisdiction

In cases of being in excess of jurisdiction, some believed consensus holds a difference exists between accidental error and actions that are corrupt, malicious, or illegal.

> *Rankin v. Howard*, 633 F.2d 844, (9th Cir. 1980) citing "*Turner v. Raynes*, 611 F.2d 92, 95 (5th Cir. 1980) (*Stump* [*v. Sparkman*, 435 U.S. 349, 362 (S. Ct. 1978)] is consistent with the view that 'a clearly inordinate exercise of unconferred jurisdiction by a judge — one so crass as to establish that he embarked on it either knowingly or recklessly — subjects him to personal liability')"

Some claim the Ninth Circuit balks at itself and the consensus in *O'Neil v. City of Lake Oswego*, 642 F.2d 367, 370 (9th Cir. 1981), where the Circuit may contradict *Rankin* by holding intent does not factor into the jurisdictional analysis. However, Mr. Barclay believes this can be clarified by stating, knowledge of the lack of jurisdiction is the exception but is also a reckless display of intent as others describe.

Regardless, Mr. Barclay's claim is the defendants acted knowingly to perform benefit decisions. He simply also uses the knowledge of the lack of jurisdiction with other factors, e.g. orders signed coinciding with Veterans Day and the celebrated birth of the nation, when describing intent and motives of the defendant's crimes.

For lower Courts to hold the state judges to have acted in excess of jurisdiction when they acted in the face, *Rose, Ridgeway,* and the VJRA would have to be unclear. However, *Howell* presents this to be a contradiction.

> "State courts cannot "vest" that which (under governing federal law) they lack the authority to give. Cf. 38 U.S.C. § 5301(a)(1) (providing that disability benefits are generally nonassignable)."
>
> "This Court's decision in *Mansell* determines the outcome here. In *Mansell*, the Court held that federal law completely pre-empts the States from treating waived military retirement pay as divisible community property." ... "The question is complicated, but the answer is not. Our cases and the statute make clear that the answer to the indemnification question is 'no.'"...", *Howell v. Howell*, 137 S. Ct. 1400, 1405 (2017)

The current statutes and this Court's existing cases, referencing the 1989 case of *Mansell*, have made the answers to even the most complex, time conflated and convoluted question clear. Today's case is simple.

If the Courts were to take Mr. Barclay's claim on its face, the defendants performed benefit decisions and 38 U.S.C. § 511, the VJRA and statement of purpose by Congress, establishes no doubt the state judges have been completely stripped of authority thus cannot establish immunity to perform benefit decisions.

Instead, the lower Courts attempt to rewrite Mr. Barclay's claim and convolute jurisdiction to be an excess of family law. However, the defendants are still absent jurisdiction. *Stump*, 435 U.S. at 358, holds a judge loses immunity over any matter the law specifically denies jurisdiction. In our case, *Rose* and *Ridgeway* hold 38 U.S.C. § 3101 (currently § 5301) denies jurisdiction under family law. Absolutely no jurisdiction thus no immunity.

Enforcing Statutory Injunctions

Judicial Immunity does not bar a right of action for declaratory or injunctive relief. Other than holding the defendants immune in conflict with this Court's existing rulings, neither the District nor Ninth Circuit explain their refusal to enforce this core tenant of the enlistment contract.

In unison, Bankruptcy and Circuit Courts have protected the statutory injunctions under 11 U.S.C. § 524(a), which arises upon the debtor's receipt of a bankruptcy discharge, by remedy under section 105(a), E.g., *Matter of Rosteck*, 899 F.2d 694 (7th Cir. 1990); *In re Elias*, 98 B.R. 332 (N.D.Ill. 1989); *In re Wagner*, 87 B.R. 612 (Bankr.C.D.Cal. 1988).

While there is no statutory provision (equivalent to 11 U.S.C. § 362(h)) providing relief against those who attempt to collect debts that have been discharged, it has been assumed that the power to address such infractions must exist or the statutory injunction is hollow E.g., *In re Elias*, 98 B.R. 332 (N.D.Ill. 1989), *In re Colon*, 114 B.R. 890 (Bankr. E.D. Pa. 1990).

If the same must be true for willful violations of 11 U.S.C. § 362(a) in the absence of 11 U.S.C. § 362(h) then there must be enforcement of 38 U.S.C. § 5301(a)(3)(C), E.g., *In re Miller*, 22 B.R. 479 (D.Md. 1982); *Fidelity Mortg. Investors v. Camelia Builders, Inc.*, 550 F.2d 47 (2d Cir. 1976), cert. denied, 429 U.S. 1093, 97 S.Ct. 1107, 51 L.Ed.2d 540 (1977).

This Court has held immunity doctrines do not preclude suits against judges for this relief. *Missouri v. Jenkins,* 495 U.S. 33, 109 S.Ct. (1990); *Pulliam v. Allen*, 466 U.S. 522, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984); *Hutto v. Finney*, 437 U.S. 678, 98 S.Ct. (1978), *Supreme Court of Virginia v. Consumers Union*, 446 U.S. 719, 719–720 (1980).

In the hearing of *Howell v. Howell*, 137 S. Ct. 1400, 1405 (2017), Justice Breyer posited the effects of finality on a 13-year-old family law decision:

> Page 24 of the *Howell* hearing transcript
>
> JUSTICE BREYER: "Suppose it turns out that in time one, we enter a divorce decree. The divorce decree says and in addition, you're going to get half of what Uncle Joe gives Sam, the husband. By that time, it turns out to be --I mean, from the beginning, Uncle Joe leaves property in a form that it's illegal to give to the woman. I can imagine cases."

"I mean, can the State give money that later on it turns out that it was absolutely illegal to give that person that money? I don't know how that works. I would be very surprised if res judicata in divorce cases says: Okay, I'm sorry, we have a decree here, and then we're going to violate Federal law because the decree violates Federal law, as it turns out."

Supremacy and The Debt to One's Family

Some believe comparing the mechanics of bankruptcy to the enlistment contract is not appropriate thus may feel it inappropriate to enforce the injunctions equally. However, in *Rose v. Rose*, 481 U. S. 619 (1987), that opinion is one that was stated to be "disdained".

The offending opinion is that because the statutory injunction of bankruptcy has been held unable to discharge and protect against the debt and claims of one's family, that the statutory injunction for veteran benefits cannot discharge or protect against the claims of the family as well.

The reason for the disdain of this opinion is the bankruptcy contract was not designed for that purpose and the enlistment contract was. The bankruptcy is a simple contract with the U.S. regarding simple debts, with no sacrifice and where the debts go unpaid.

The enlistment contract is very a special contract, specifically designed to address the special debt to one's family, always requiring significant sacrifices, too many times requiring an ultimate sacrifice and where the debt is guaranteed to be paid with a level of protection that it was specifically added to the Constitution.

Over the 150 years of the Supreme Court's rulings affirming the preemptive authority of Congress, including, *Tarble's Case*, 80 U.S. 397, 405-407 (1872); *Street v. United States*, 133 U.S. 299, 307 (1890); *Wissner v. Wissner*,338 U. S. 655 (1950); *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979); *Ridgway v. Ridgway*, 454 U.S. 46, 54 (1981); *McCarty v. McCarty*, 453 U.S. 210 (1981); *Rose v. Rose*, 481 U. S. 619 (1987); *Mansell v. Mansell* 490 U.S. 581 (1989); *Barker v. Kansas*, 503 U.S. 594 (1992); and *Howell v. Howell*, 137 S. Ct. 1400, 1405 (2017), this Court has held the reasons for protections of veteran benefits a fortiori.

"this inquiry, however, need be only a brief one, for it is manifest that the application of community property principles to military retired pay threatens grave harm to 'clear and substantial' federal interests. See *United States v. Yazell*, 382 U.S. at 382 U. S. 352.", *McCarty v. McCarty*, 453 U.S. 210, (1981)

"Thus, the conclusion that we reached in *Hisquierdo* follows a fortiori here: Congress has weighed the matter, and '[i]t is not the province of state courts to strike a balance different from the one Congress has struck.' 439 U.S. at 439 U. S. 590.", *McCarty v. McCarty*, 453 U.S. 210, (1981)

"The basic reasons *McCarty* gave for believing that Congress intended to exempt military retirement pay from state community property laws apply a fortiori to disability pay. See 453 U. S., at 232–235 (describing the federal interests in attracting and retaining military personnel)." *Howell v. Howell*, 137 S. Ct. 1400, 1405 (2017);

The acts by the defendants are already void. They lack legal finality. Without enforcement, not only is the statutory injunction to protect our injured soldiers hollow but the protective weight of the Constitution is equally empty.

The Schucker Case

The District and Appeal Court is flawed in analysis with the use of *Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988). This case is similar only in that it is a claim against a judge for assignment of military benefits in a support award. Instead of an example of judicial immunity holding for judgments prior to Supreme Court clarity, the case appears as an attempt to conflate the issue by disregarding the fact in today's case the defendants acted after clarity was presented.

Mr. Schucker had a 1976 amended interlocutory judgment of dissolution of marriage. The appeal on his federal complaint was submitted on March 24, 1988. Between these two dates, as discussed *supra*, this Court had heard and put forth clear findings on the jurisdiction for family law judges for the federal benefits including military retirement and veteran disability benefits.

From these rulings, Mr. Schucker believed he could show that Judge Jourdane did not have jurisdiction. However, in the *Rose* case, Justice Scalia *supra* emphasized the Supreme Court had been intentionally withholding clarity until 1981. It would be impossible for Judge Jourdane, in 1976, to have made a decision "in the face" of clarity that did not exist. Thusly, in *Schucker*, the Ninth Circuit ruled:

"Even assuming Judge Jourdane's assumption of jurisdiction was 'in excess of his jurisdiction,' the act was not done 'in the clear absence of jurisdiction."

The *Schucker* case acknowledges judicial immunity is lost if the act was done in a clear absence of jurisdiction citing *Stump* 435 U.S. at 356-357 but stops short of *Stump* 435 U.S. at 358 where this Court explained this includes situations where the law specifically denies jurisdiction. By not completing this step of the analysis,

the use of the *Schucker* case for the current case only serves to conflate the issue with the timings of judgments. The defendants' actions began in 2008.

Reasons for Granting the Writ

If this Court will not defend the Constitution in the face of manifest violations of U.S. Sovereignty and defend its stare decisis from rejection, this Country may be lost. It will not be Congress but the Judiciary, who may, at some time, perhaps, be hostile to the soldier that places the security of veteran pensions and their family's means of support beyond the power of Congress by holding the sovereignty of the United States extinct, borrowing from the words of Senator Wade, Cong. Globe, 39th Cong., 1st Sess. 2769 (1866).

The Petitioner's great-great-grandfather, Charles Dutton Barclay had served the Union in the Civil War. He was represented in Ohio by Senator Wade who drafted the first sentence and stated: "This section of my amendment goes further, and secures the pensioners of the country", Id. Adding, the motivation for this provision was to "do something to protect those wounded patriots who have been stricken down in the cause of their country", Id. Further expanding that he was "anxious to put the pensions of our soldiers and their widows and children under the guardianship of the Constitution..." Id.

Codes of Conduct

Oregon Code of Judicial Conduct

Rule 2.1 Promoting Confidence in the Judiciary

(A) A judge shall observe high standards of conduct so that the integrity, impartiality and independence of the judiciary and access to justice are preserved and shall act at all times in a manner that promotes public confidence in the judiciary and the judicial system.

(B) A judge shall not commit a criminal act.

(C) A judge shall not engage in conduct that reflects adversely on the judge's character, competence, temperament, or fitness to serve as a judge.

(D) A judge shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation

Rule 3.11 Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty,

trustworthiness, or fitness as a judge in other respects, shall inform the appropriate authority.

(B) A judge having knowledge that a lawyer has committed a violation of the Oregon Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate authority.

These codes are ubiquitously found in some form for all judges, servicemembers, and law enforcement to ensure there is absolutely no reason to suspect they are anything but servants to the American people. While there are additional reasons, judges receive judicial immunity, and veterans receive benefits, both can be lost by failing to serve with honor.

Mr. Barclay's father, Lewis P. Barclay, served for 23 years and during Vietnam. While he served with honor, no one shook his hand and thanked him for his service. Hatred of American servicemembers came to a pivotal head. Appalling acts in Vietnam were being committed but not by the vast majority of servicemembers. However, all returned to suffer insults and called rapists, murderers, and baby killers.

In these times, if a servicemember got in a bar fight, regardless if they were inexcusably in the wrong, every servicemember and veteran would jump to their defense and pummel the civilian. This is exactly the type of mentality held by judges and law enforcement. It was the perception of the people because of these actions that led them to conclude all servicemembers were responsible for murder, rape, and baby killing.

Only a few soldiers committed atrocities where all were condemned for those actions because the servicemembers who witnessed or were in charge of dealing with these atrocities failed. The Petitioner's father did not remain blind to this and instilled higher integrity in his son. The newer generations of servicemembers now actively self-enforce integrity amongst their peers.

Today, if a servicemember gets into a fight, even if the civilian is completely in the wrong and solely intent on instigating a fight, all other servicemembers and veterans will again jump up but to pummel and drag that servicemember out. The servicemember will be chastised and punished for allowing themselves to get into a situation that might lead a single person to believe a servicemember is beating civilians.

Judges and Law Enforcement have very difficult and honorable jobs that are essential to society. They are trusted with tremendous powers. Today, it can be

argued they are hated more than servicemembers ever were. See KGW Staff, August 6, 2020, "The most horrific displays of hate that I've ever seen' | Portland police describe front lines of protests". Petitioner highly recommends viewing the 1-hour video included online.

Resistance to Culpability

This case, not only serves to show how judicial immunity is lost but that the resistance to enforcement presents as violations of the codes of conduct. These codes mean the perception of the public is vital to continued independence and trust with the powers they are bestowed. It is the duty of every judge to ensure the perception by the people is the correct one. Judges must actively respond to their peer's infractions. The actions of the lower courts, in this case, could be suggested as symptomatic of the problem posed by this case.

The courts routinely recognize *Haines v. Kerner* 404 U.S. 519 520-521 (1972) for liberal reading and benefit of the doubt but fail to see how any claim by a veteran against any state judge, agency or other is automatically entitled to declaratory and injunctive relief against claims of their benefits.

The right of veterans to receive an order of protection at the same ease as the certificate of eligibility for home loan protections may one day be argued but it is the lack of a single instance of one that is a testament by district courts; that the protective weight of the Constitution does not exist. The perception that courts issue platitudes to disguise their complete hatred of servicemembers, that they hold political bias when upholding the Constitution, and that it goes unchecked by the refusal to enforce standards among their peers is across the board.

This case far exceeds the ability to prove a preponderance of the evidence. The evidence of signed orders come as confessions from the defendants capable of proving guilt beyond a reasonable doubt. Yet the lower court judgments infer lack of probability and rewrite Mr. Barclay's claims of willful acts to be claims of accidental procedural error.

The lower court raised the question of immunity on behalf of the defendants, citing a case that has major differences, then snubs this Court's words of analysis the defendants would fail. The general public could easily perceive the District as acting in the automatic interest of protecting their peer versus taking Mr. Barclays' claim on its face.

The *Howell* case was an attempt to defend the acts of state court judges by confusing this Court with complicated issues on the timing of judgments and treating the *Mansell* case as an irrelevant dead letter. Assuming *Howell* extremely

narrow, where is the culpability of the original judges in that case? Today it can appear lower courts are using *Schucker* to create confusion on the timing of judgments, reject *Stump* 435 U.S. at 358 thus calling the *Howell* case "irrelevant".

The District Court held "Because the defendants in this case are entitled to immunity from plaintiff's claims the Court concludes that plaintiff's appeal is frivolous and, therefore, plaintiff's in forma pauperis status should not continue for appeal". The Circuit Court in *Schucker* did not find his claim to be frivolous. On the contrary, they held "we do not believe that Schucker's appeal was groundless".

Mr. Schucker had guidance from Justice Scalia the year prior to his appeal, saying the Supreme Court had intentionally withheld clarity and Mr. Barclay has the guidance of *Howell*, supra, stating the statutes and their cases cited from 1989 made the answers clear. Why is Mr. Barclay not afforded the same treatment?

Instead, the Circuit Court erroneously defames Mr. Barclay's actions, by claiming "The district court certified that this appeal is not taken in good faith". While having full immunity, where is the culpability to the codes for a criminally libelous statement? Many people would see this as the courts protecting the defendants from culpability and attacking Mr. Barclay.

These points are not here to crucify the adjudicators of this case. They are to demonstrate that it does not matter if every judge nationwide feels these perceptions are wrong. The perceptions exist! Their existence is an offense to Canon 2: A Judicial Employee Should Avoid Impropriety and the Appearance of Impropriety in All Activities, Guide to Judiciary Policy, Vol. 2A, Ch. 3 § 320.

It does not matter if judges are ruling like umpires. The vast majority of people do not believe this because of the lack of culpability and the constant perception of uncorrected impropriety. There are too many instances where otherwise good individuals have been overlooking these codes by allowing the perception to exist.

The enforcement must come from one's peers first. Who else would be equally trained and equipped to address the impropriety of a servicemember; a judge; a law enforcement officer?

This Court has received tremendous feedback from both sides of the isle and the President. Chief Justice Roberts has personally responded to the President's claims and the rhetoric threats from Congress. With utmost respect, all branches are seen bickering like children and the response seen by some as proclaiming "Am not!" with no proof.

This may not be easy to hear, but the people are the parents of the branches and when the trust of bestowed powers is revoked it is not often judiciously decided but weighed in the courts of public opinion.

The United States Demands Accountability

The United States is no longer waiting for the exercise of intelligent forethought and decisive action sufficiently far in advance of any likely crisis. The veteran community has been decimated and the entire country is on fire.

The Petitioner has used this Court's highest standard for due diligence and questioning immunity. However, many Americans nationwide are no longer willing to give due process a chance. They believe corruption has destroyed the American system and have thrown it aside. They have set fires and left bombs at police departments and courthouses.

The lack of peer enforcement and the increase of unjustified hubris has been met by a growing force of public outcry and violent retaliation in response to atrocities. Maybe frustrated most are servicemembers who cannot understand how judges and law enforcement have not learned from the lessons of Vietnam.

On July 7, 2016, Micah Xavier Johnson, an Army Reserve Afghan War veteran, ambushed and fired upon a group of police officers in Dallas, Texas, killing five officers and injuring nine others. July 17, 2016, Gavin Eugene Long, U.S. Marine Corps veteran, shot six police officers in Baton Rouge, Louisiana. Both of these men acted under their strong beliefs they were defending the people from judges and law enforcement that had become completely corrupt and oppressive from lack of peer enforcement, see App 26 or 29 (transcribed).

The Petitioner's injuries were caused by Timothy McVeigh, a highly decorated Army veteran. He was so disenchanted with our government because of the sieges on Ruby Ridge in 1992 and Wako in 1993 that he blew up a building in Oklahoma City.

Mr. Barclay has physical evidence of being threatened by government officials, including law enforcement, for stating, while he has no intent or desire, he has a right to perform a citizen's arrest. Even when he provides copies of rulings and the Oregon State Statutes, ORS 133.225, and ORS 161.255, in resistance to the mere discussion that a judge has acted criminally, he is threatened.

Mr. Barclay is required to report these crimes to an individual such as the judges of this case. Mr. Barclay cannot in good faith believe he has completed this action when judges refuse to accept the claim and have not followed through to

notify proper authorities, Guide to Judiciary Policy, Vol. 2A, Ch. 3 § 320, Cannon 3(C)(1).

Today, the United States is on fire amid protests that have turn into violent riots every night for months with no end in sight. Cities including Los Angeles, Seattle, Minneapolis, New York, Miami, Nashville, Salt Lake City, Raleigh, Louisville, Atlanta, Dallas, Washington DC and Portland Oregon. See Joanna Walters, May 31, 2020, "*George Floyd protests: the US cities that became hotspots of unrest*", The Guardian.

In Portland, a veteran that posed no threat, purely attempted to ask officers to reconcile their actions with their oath was met with violence., also See Sarah Sicard, July 2020, "Federal officers in Portland break former Navy Seabee's hand", Military Times; also see: Marissa J. Lang, July 19, 2020, "A Navy vet asked federal officers in Portland to remember their oaths. Then they broke his hand.", The Washington Post, online includes video and highly recommended.

Police are barely able to protect judges and their courthouses. See Gillian Flaccus and Sara Cline, July 26, 2020, "Portland protesters breach fence around federal courthouse, assembly declared a riot", Associated Press reprinted KTVU.

Federal officers were sent and the Department of Homeland Security believed violence was subsiding. Homeland Security publications, "Portland Riots Read-out: August 1" and "Portland Riots Read-out: August 2". The federal government agreed to reduce federal involvement in the protection of the Courthouse in agreement that the state would increase and take a tougher stance to assume the role.

After the Oregon State Police took over, prosecution of the criminal behavior became so burdening, District Attorneys announced they would not be pursuing charges on hundreds of individuals involved in the riots. Maxine Bernstein, Aug 11, 2020, "Hundreds of Portland protesters will see their criminal cases dropped as DA announces plan to 'recognize the right to speak'", The Oregonian/OregonLive.

As a result, the Oregon State Police have left, surrendering the city. Regardless of the violence that now continues to increase, the police see no point in arresting individuals that will not be charged. Zachary Evens, August 14, 2020, "Oregon State Police Withdraws from Portland Courthouse after D.A. Announces He Won't Prosecute Most Rioters", National Review.

Regardless if a specific claim lacks civil right of action. There is no immunity for criminal complaints, *Mireles v. Waco*, 502 U.S. 9 (1991). Is a citizen's arrest the

only way an officer or judge is to be held culpable for crimes as minimal as libel and extreme as treason? Might prosecutors refuse? If not a citizen arrest, then what?

This is not a one-sided political fight. Veterans on the opposite sides of the clash are tired of violence and see no enforcement against violent criminals labeled as peaceful protesters to push their preferred method of reform. As this case comes from Oregon, we can add the example of Shane Kohfield, another U.S. Marine Corps veteran.

Kohfield wanted to throw out the citizen's arrest and go door to door hunting down the violent protestors. Fortunately, this man was stopped before more violence. However, this is only because the letters he penned to Congressman Crenshaw's office explaining how he would "systematically execute every member of Antifa". See Molly Prince, Sep 4, 2019, "No, Police Didn't Just Seize A Marine's Weapon After He Criticized Antifa, Dan Crenshaw Reveals", Daily Wire.

In St. Louis, individuals labeled as protestors but armed with a gun, damaged property to break onto private land before threatening a couple. The couple responded by standing guard of their home waving guns. Disregarding castle doctrine, the couple has been charged and reports now show prosecutor staff ordered the tampering of evidence. See Christine Byers, July 21, 2020, "St. Louis prosecutor ordered crime lab to reassemble Patricia McCloskey's gun", KSDK Channel 5.

Currently, extremists on both sides are beginning to battle in the streets. See Will Wright, Aug. 22, 2020, "Shouting Turns to Violence in Portland as Dueling Protests Converge", The New York Times.

A state congress member has been charged for involvement in violent riots. See Nicholas Reimann, Aug 17, 2020, "Virginia State Senator, NAACP Leader Charged After June Protest Damaged Confederate Monuments", Forbs.

With the increase of counter-protesting groups facing off, Governments are now responding by increasing penalties against protestors. See Kimberlee Kruesi and Jonathan Mattise, August 22, 2020, "Tennessee gov quietly signs bill upping penalties on some forms of protest, which could include loss of the right to vote", Chicago Tribune.

Whether you get your news from Fox or CNN the court of public opinion is unanimous, both law enforcement and judges display impropriety which currently goes unchecked. They have been weighed on the balances and found wanting. The difference between the political sides is their response and how to address the issue.

One side responds to this violence with violence. Sending the message: if you want to commit atrocious violence against us with no constraint or accountability, we will respond with so much violence we will make it impossible for you to get accountability from us.

The politically divided argument revolves around how to address the issue. The only question is: have a few bad apples ruined the bunch? One side believes police and judiciaries should be defunded and replaced, the other wants to keep the existing system and weed out the bad. See H. Rose Schneider, Jun 23, 2020, "Similar to police reform, courts also will reevaluate", Observer-Dispatch.

All of this is happening because there is no enforcement of one's peers. All of this is happening because even when a person brings a claim, they are met with staggering levels of resistance. The bureaucracy levels alone, earnestly created to prevent frivolous complaints, unjustly dismiss or reject righteous claims.

Regardless of which answer is chosen, this tyrannical behavior of judges and law enforcement, real and perceived, will continue to return. Unless this Court answers the country's call and helps establish a new culture of peer enforcement, neither the current system nor a new one will survive.

Conclusion

Since the Revolution and for seven generations, the Petitioner's forefathers have served in this country's military. Their honorable sacrifices along with the Petitioner's, quietly entrenched in history, have been reduced to fodder. It is time for the corrupt government of people to be held culpable by the people, for the people or it shall perish from the earth.

The American people need this Court to remind them why the title of judge is so insufficient that we call them "Your Honor". The American people to know that when their trust is violated, the non-violent methods for holding government official's culpable work. The American people need to know the Constitution, the statutes and the stare decisis of this Court shall not be disregarded.

If not for any other reason, this Court should take this case as it might serve as its opportunity in these dire times to remind us all; that America is not the concept of perfection but a never-ending journey towards perfection; that it is where people, who always hold utterly opposing views, can live peacefully and prove one can still love thy neighbor regardless of their differences in beliefs; where, regardless of one's status, the laws promote this peace, guild back anyone that runs astray and protects us from those who reject the journey; and that this is what makes America the greatest nation in the world.

Petitioner Prays

For all of the above reasons, Petitioner respectfully requests the writ be allowed.

Most respectfully submitted,

Dated: Sep 3, 2020

Peter J. Barclay, Petitioner