

No. 20-5659

IN THE
SUPREME COURT OF THE UNITED STATES

GABRIEL M. ROBLES, — PETITIONER
(Your Name)

ROBERT L. WILKIE, vs.
Secretary of Veterans Affairs, — RESPONDENT(S)

**United States Court of Appeals
for the Federal Circuit**

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITIONER'S RESUBMISSION

OF MOTION FOR RECONSIDERATION

GABRIEL M. ROBLES

(Your Name)

1243 SW Western Avenue, Apt. B-18

(Address)

Topeka, Kansas. 66604

(City, State, Zip Code)

(785) 224-8195

(Phone Number)

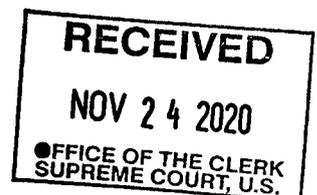


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IN THE
SUPREME COURT OF THE UNITED STATES

GABRIEL M. ROBLES,

— PETITIONER
(Your Name)

VS.
Robert L. Wilkie
Sec. of Veterans Affairs,

— RESPONDENT(S)

MOTION FOR RECONSIDERATION

NOW COMES the Petitioner Gabriel M. Robles, pro se and indigent, on this 3rd day of November, in the Year of our LORD 2020, to seek and Pray for RECONSIDERATION by at least 3 Justices of this Court, of the "Order" issued in this matter October 19, 2020.

GROUND FOR RECONSIDERATION

1.) Racism and Tokenism:

In the recent Grand Jury hearing in Kentucky (State) by an African-American Attorney General named Daniel Cameron, the members of that Jury felt somewhat cheated out of being allowed to consider more serious charges against white police officers that killed an innocent African-American woman that committed no crime. People of color are pretty sure Mr. Cameron withheld evidence from the Grand Jury simply because as a black man, no one would question his integrity.

GROUNDS FOR RECONSIDERATION (pg. 2)

2.) The Petitioner in this matter is Mexican (born and raised in Barstow, California) and attempted to bring attention to this Court this type of racism cover-up several times. Two (2) instances stand out: In the first; Respondent cited, the Veterans disability compensation is denied because "..the result of the Veteran got non expert opinion from somebody in the library...".

In the second; Both lower courts agree; "Robles does not lack adequate alternative means to attain the desired relief..." Petitioner Robles then attempts to pursue those "alternative means" with the respondent and is met with phone tag calls and two (2) broken english voice-mails that sound Latino. Those voicemails were left on July 9 and July 12, 2020.

A subsequent letter to the Veterans Board of Appeals that left those voicemails, was for some unknown reason re-routed by a U.S. Postal employee. First letter was sent August 18, 2020. The second letter was sent September 25, 2020. No response from either letter.

3.) CONFLICT OF INTEREST:

On October 20, 2020, the Petitioner inquired as to the the status of his Writ. A female clerk stated this; "Your, yeah, well the Informa Pauperis was denied back (word not intelligible) come when (sic?) you filed several cases before..." Could the clerks have been alluding to my

GROUNDS FOR RECONSIDERATION (pg. 3)

3.) CONFLICT OF INTEREST:

...signature that is now different because of permanent damage to the Petitioner's right wrist?

An email dated May 10, 2014, to Chief Justice Roberts wife accusing "the Clerk's office of tampering and conspiracy to conceal a default judgment against U.S. Attorney Eric Holder & the U.S. government." ?

(Correction: Letter dated 5/10/14. Email dated 6/2/14.)

Robles v. Amarr Garage Door's et al., SC No. 12-10098

Phone call dated February 4, 2015, with SCOTUS clerk Michael Duggan explaining Rule 33.1 which was cited in my Writ being denied. Mr. Duggan explained the clerk's office "thought Petitioner was a lawyer trying to avoid paying filing fees." (Robles v. State Farm et al., SC No. 12-9883.)

Appendix B, page 2, 23,24,25, and Page 3, 1-6, show how Judge Kathryn H. Vratil ignored attorney's wishes to make a case against the Petitioner to "go away." (USDC Dist. of KS. Case No. 10-2310-KHV) On July 7, 2011, the Petitioner was forced to attend a "Settlement Conference" out of town to fire his attorney, scold 4 other lawyers, and force the Magistrate to pay us so me and my wife could be on our way. Judge Vratil later went on to rule against the Petitioner in his medical malpractice case against the Respondent in this current matter.

GROUNDS FOR RECONSIDERATION (pg. 4)

Appendix C is a copy of a letter dated April 13, 2015, by Sen. Charles E. Grassley, Chairman of the U.S. Senate Judiciary Committee, to U.S. Attorney General Eric Holder. Sen. Grassley asked AG Holder to explain why "99.3% of all names in the NICS "mental defective" category are reported from the VA,.." (Veterans Administration)

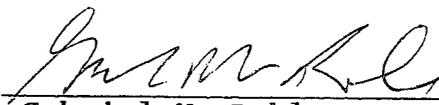
The Petitioner submits the Respondent uses mental illness to avoid medical care and disability benefits to Veterans and their families in order to line the pockets of VA employee's.

IN CONCLUSION:

Based on the entire record since July 4, 2013, the Court should Order that the Respondent find the Petitioner 100% disabled under 38 U.S.C. 1151, Individual Unemployability, and Housebound Status pay from 07/04/13 to 07/04/2016. *for life, am*

Page 2, paragraph 3, of this Motion shows the Respondent has NO intention of following the lower courts order.

Date: November 3, 2020.

By 
Gabriel M. Robles. pro se

1243 SW Western Ave., B-18
Topeka, Kansas. 66604
(785)224-8195

Appendix A

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 19, 2020

Mr. Gabriel M. Robles
1243 SW Western Ave.
Apt. B-18
Topeka, KS 66604

Re: Gabriel M. Robles
v. Robert Wilkie, Secretary of Veterans Affairs
No. 20-5659

Dear Mr. Robles:

The Court today entered the following order in the above-entitled case:

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8.

Sincerely,



Scott S. Harris, Clerk

Rec: 10-27-20 ?

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

GABRIEL M. ROBLES,)
)
Plaintiff,) Civil Action
) Case No. 10-2310-KHV
)
vs.) Kansas City, Kansas
)
CREDIT PROTECTION)
ASSOCIATION LP,) June 2, 2011
)
Defendant.)
)

STATUS CONFERENCE - Telephone conference

BEFORE THE HONORABLE KATHRYN H. VRATIL, Chief District
Judge

TRANSCRIPT ORDERED BY: Mr. Robles

APPEARANCES:

For the Plaintiff: Mr. J. Mark Meinhardt
Attorney at Law
4707 College Boulevard, Ste 100
Leawood KS 66211

For the Defendant: Ms. Desarae G. Harrah
Martin, Leigh, Laws & Fritzen, PC
1044 MainStret, Ste 900
Kansas City, MO 64108

Mr. Justin M. Penn
Hinshaw & Culbertson LLP-Chicago
222 North LaSalle St, Ste 300
Chicago, IL 60601

Court Reporter: Theresa E. Hallberg, RMR, CRR
511 US Courthouse
500 State Avenue
Kansas City, Kansas 66101
913-735-2314

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(Whereupon, the following proceedings were had in chambers by way of telephone conferencing:)

THE COURT: Hello. This is Judge Vratil. Good morning. I just wanted to touch base with you. I guess Linda told you where you are standing now on our trailing docket which isn't really happy news, probably, for you, but there's a lot of time between now and July 5th, so a lot of things could change during the interim.

Tell me, is there anything in particular that you all want to talk about?

MR. PENN: Judge, I'll jump in. This is Justin Penn. I represent the defendant. We are just speaking briefly about potentially -- recently there was an order granting sanctions. And one of the -- this is a an FD CPA case, I would characterize it as small only by small in terms of what you normally see, so I mean no offense to the plaintiff about that. I just mean dollar amounts.

And the total amount at issue for the plaintiff as far as statutory damages is less than the sanction amount he has been ordered to

1 pay. To me, it seems like this is probably one
2 that should go away. I hope it goes away. And
3 counsel and I were just sort of -- I don't want
4 to speak for Mr. Meinhardt, but we were just
5 speaking about ways that that might be
6 accomplished.

7 So I'm hopeful that nobody will have to
8 show up on July 5th and that you can have the
9 other people duke it out for your docket.

10 THE COURT: Okay. Well, I noted in the
11 Pretrial Order that you had been to mediation
12 before Alan Galis at one point.

13 MR. PENN: Yes, that's right, Judge.

14 THE COURT: Do you think it would be
15 helpful to go back to him or do you think this is
16 something that you can address on your own?

17 MR. PENN: Speaking on behalf of the
18 defendant, I think it probably will be addressed
19 on our own if it can be addressed.

20 MR. MEINHARDT: I would agree, Judge,
21 for the plaintiff. Mr. Penn's outline is
22 something I think may work if we can get our
23 clients to agree to it.

24 THE COURT: Okay. All right, then.
25 Well, do I need to take more of your time then?

1 Is there anything else that you want to talk
2 about?

3 MR. MEINHARDT: Nothing for the
4 plaintiff, Judge.

5 MR. PENN: No, Judge.

6 MS. HARRAH: No, Your Honor.

7 THE COURT: Okay. Well, I'm going to
8 make a note that this will probably settle, but
9 keep us posted, okay?

10 MR. PENN: We'll let you know as soon
11 as we know and I'm hopeful we'll be able to
12 resolve it in the next eight to ten days.

13 THE COURT: Okay. That's super. Thank
14 you.

15 MR. MEINHARDT: Thank you, Your Honor.

16 MS. HARRAH: Thank you, Your Honor.

17 MR. PENN: Thank you, Judge.

18 * * * * *

C E R T I F I C A T E

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I, Theresa E. Hallberg, Certified
Shorthand Reporter, do hereby certify that the
foregoing transcript is a true and correct
transcript of my notes in said case to the best
of my knowledge and ability.

SIGNED, OFFICIALLY SEALED, AND FILED
WITH THE CLERK OF THE UNITED STATES DISTRICT
COURT
this _____ day of _____, 2011.

S/Theresa E. Hallberg
Theresa E. Hallberg, RMR, CRR

Appendix C

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORPIN G. HATCH, UTAH
JEFF SESSIONS, ALABAMA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
JEFF FLAKE, ARIZONA
DAVID VITTER, LOUISIANA
DAVID A. PERDUE, GEORGIA
THOM TILLIS, NORTH CAROLINA

PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
CHARLES E. SCHUMER, NEW YORK
RICHARD J. DURBIN, ILLINOIS
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
AL FRANKEN, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KULAN L. DAVIS, *Chief Counsel and Staff Director*
KEITH J. LUCI, *Democratic Chief Counsel and Staff Director*

April 13, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Holder:

The National Instant Criminal Background Check System (NICS) is effectively a national gun ban list and placement on the list precludes the ownership and possession of firearms. According to the Congressional Research Service, as of June 1, 2012, 99.3% of all names reported to the NICS list's "mental defective" category were provided by the Veterans Administration (VA) even though reporting requirements apply to all federal agencies.¹ And that percentage remained virtually unchanged as of April 2013.² Given the numbers, it is essential to ensure that the process by which the VA reports names to the Department of Justice (DOJ) for placement on the NICS list recognizes and protects the fundamental nature of veterans' rights under the Second Amendment.

Questionable VA Standards

Specifically, once the VA determines that a veteran requires a fiduciary to administer benefit payments, the VA reports that veteran to the gun ban list, consequently denying his or her right to possess and own firearms. In the past, the VA has attempted to justify its actions by relying on a single federal regulation, 38 C.F.R. § 3.353, which by its plain language grants limited authority to determine incompetence, but only in the context of financial matters:

¹ Names reported by the VA are not only veterans but also include non-veteran dependents. See also, William J. Krouse, CONG. RESEARCH SERV., r42987, Gun Control Proposals in the 113th Congress: Universal Background Checks, Gun Trafficking, and Military Style Firearms (2014).

² Senate Report, 113-86, Veterans Second Amendment Protection Act (2013).

“Ratings agencies have sole authority to make official determinations of competency and incompetency for purposes of: insurance and...disbursement of benefits.”³

Thus, the regulation’s core purpose applies to matters of competency for financial purposes in order to appoint a fiduciary. This financial/fiduciary standard has been employed since the regulation’s initial promulgation in the 1970s and it has nothing to do with regulating firearms.⁴ Most importantly, in addition to the regulation itself, the federal statutory provision granting the VA the authority to promulgate the regulation is squarely focused on financial matters and was not designed to impose firearm restrictions.⁵

Varying Standards

In accordance with the Brady Handgun Violence Prevention Act, the Bureau of Alcohol, Tobacco and Firearms (ATF) adopted a regulation that defined a different standard for firearm regulation than that imposed by the VA. The standard adopted is a “mental defective” standard that, at its core, allows regulation only when someone is a danger to themselves and/or others. The regulation itself even states that the standard does not include persons suffering from mental illness but who are not a danger to themselves.⁶

The VA’s regulation appears to omit important findings and never reaches the question of whether a veteran is a danger to himself, herself, or others. Thus, a VA determination that a veteran is “incompetent” to manage finances is insufficient to conclude that the veteran is “mentally defective” under the ATF’s standard that is codified in federal law.

Due Process Concerns

In addition, the procedural protections the VA affords to veterans are weak. First, the standard of review is particularly low for a fundamental constitutional right: clear and convincing.⁷ Hearsay is allowed.⁸ And, there are no significant checks and balances in place to ensure that there is any evidence to conclude that a veteran is a risk to the public or themselves. Of particular concern, although VA employees can personally meet with veterans and non-

³ 38 C.F.R. § 3.353

⁴ Determinations of Incompetency and Competency, 36 Fed. Reg. 19020, 19020 (Sept. 25, 1971) (codified at 38 C.F.R. pt. 3). (“These are amendments to an existing regulation which states the criteria and procedures incidental to a Veterans Administration determination that a beneficiary’s mental condition is such that a fiduciary should manage his affairs and safeguard his funds.”). *See also* Determinations of Incompetency and Competency, 60 Fed. Reg. 55791, 55791 (Nov. 3, 1995) (codified at 38 C.F.R. pt. 3) (“This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning determinations of mental incompetency to make clear that only rating boards are authorized to make determinations of incompetency for purposes of VA benefits and VA insurance.”).

⁵ 38 U.S.C. § 501(a)(1)–(4). The VA’s authority to promulgate regulations is limited to those which “establish the right to benefits under such laws” and the “manner and form” of the process by which a veteran is to receive the benefits.

⁶ (95R–051P), 61 Fed. Reg. 47095, 47097 (Sept. 6, 1996) (codified at 27 C.F.R. § 478.11).

⁷ 38 C.F.R. § 3.353(c)

⁸ Procedural Due Process and Appellate Rights, 38 C.F.R. § 3.103, provides substantive details about the hearing process and specifically, in section (d) of the regulation, does not institute general federal evidentiary rules, but instead allows for admission of any type of evidence, which reasonably includes hearsay.

veteran dependents who are receiving VA benefits, only when VA personnel meet with veterans are they directed to consider whether competency is at issue.⁹ Thus, it appears that veterans are immediately targeted by VA personnel upon initial contact.

Furthermore, when a veteran receives a letter stating that the VA believes he is unable to manage his finances, that veteran now has the burden of proving that he is in fact competent to manage his benefit payments and does not need a fiduciary. However, underlying the hearing is a real possibility that the right to firearms will be infringed. Therefore, in light of the liberty and property interests involved, placing the burden of proof on the veteran is highly suspect. Under similar circumstances, the burden is generally on the government. Further, the hearing that takes place is inside the VA administrative system and composed of VA employees rather than a neutral decision maker.

Under the current practice, a VA finding that concludes that a veteran requires a fiduciary to administer benefit payments effectively voids his Second Amendment rights—a consequence which is wholly unrelated to and unsupported by the record developed in the VA process. Accordingly, Congress needs to understand what justifies taking such action without more due process protections for the veteran.

In order to more fully understand the interplay between the differing standards of the VA and ATF, the procedural processes involved, and what effect it has on Second Amendment rights, please answer the following:

1. Is the primary purpose of the NICS list to preclude firearm ownership and possession by individuals who are a danger to themselves and/or others? If not, what is the primary purpose of the NICS list?
2. Is the primary purpose of the VA's reporting system to report the names of individuals who are appointed a fiduciary?
3. Out of all names on the NICS list, what percentage of them have been referred by the VA?
4. Do you believe that a veteran adjudicated as incompetent to manage finances and appointed a fiduciary is likewise mentally defective under the ATF standard? If so, what is the basis for that conclusion?

⁹ M21-1MR Part 3, General Claims Process, U.S. DEP'T OF VETERANS AFFAIRS, Subpart IV—"General Rating Process," Chapter 8—"Competency, Due Process and Protected Ratings," Section A Topic 2: "Considering Competency While Evaluating Evidence." Accessible at http://www.benefits.va.gov/WARMS/M21_1MR3.asp.

5. Does the standard employed by the VA to report names to the DOJ for subsequent placement on the NICS list comply with the protections of the Second Amendment? If so, please explain how, in light of due process concerns described above.
6. Given that the VA adjudication process can result in a complete infringement of a person's fundamental Second Amendment right, do you believe that the use of the "clear and convincing" evidentiary standard is proper? If so, why?
7. Is the DOJ satisfied that all names reported from the VA for placement on the NICS are, in fact and in law, persons who should not own or possess a firearm because they are dangers to themselves and/or others? If so, what evidence supports that conclusion?
8. Given that 99.3% of all names in the NICS "mental defective" category are reported from the VA, has the DOJ reviewed the VA's reporting standards and procedure? If so, please provide a copy of the review that took place. If no review took place, please explain why not.
9. What review process does DOJ have in place to ensure that names are properly on the NICS list?
10. How many individuals have appealed their placement on the NICS list? How many individuals were successful in their appeal?
11. In light of the fact that the Supreme Court has held the Second Amendment to be a fundamental right, has the DOJ changed any processes and procedures relating to the NICS system which were in existence prior to that holding?
12. Besides the VA, what other federal agencies have reported names to the NICS list since 2005? And how many names were reported by each agency since 2005?

Please number the responses according to their corresponding questions. Thank you in advance for your cooperation with this request. Please respond no later than April 30, 2015. If you have questions, contact Josh Flynn-Brown of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary

Appendix D

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

November 10, 2020

Gabriel M. Robles
1243 SW Western Ave.
Apt. B-18
Topeka, KS 66604

RE: Robles v. Wilkie, Sec. of Veterans Affairs
No: 20-5659

Dear Mr. Robles:

The petition for rehearing in the above-entitled case was postmarked November 3, 2020 and received November 9, 2020 and is herewith returned for failure to comply with Rule 44 of the Rules of this Court. The petition must briefly and distinctly state its grounds and must be accompanied by a certificate stating that the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 15 days of the date of this letter, the petition will not be filed. Rule 44.6.

You may resubmit a single copy of your petition for rehearing instead of the original with ten copies.

Sincerely,
Scott S. Harris, Clerk
By: _____

Michael Duggan
(202) 479-3025

Enclosures

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

August 29, 2014

Gabriel M. Robles
403 SW Huntoon Street
Apt. 7
Topeka, KS 66612

RE: Gabriel M. Robles et al. v. RMS Management Solutions, LLC, et al.

Dear Mr. Robles:

The above-entitled petition for a writ of certiorari was postmarked August 19, 2014 and received August 22, 2014. The papers are returned for the following reason(s):

The petition is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was May 2, 2014. Therefore, the petition was due on or before July 31, 2014. Rules 13.1, 29.2 and 30.1. When the time to file a petition for a writ of certiorari in a civil case (habeas action included) has expired, the Court no longer has the power to review the petition.

The time for filing a petition for a writ of certiorari is not controlled by the date of the issuance of the mandate. Rule 13.3.

Sincerely,
Scott S. Harris, Clerk
By:


Michael Duggan
(202) 479-3025

Appendix
C