

No. 22-5696

In The UNITED STATES SUPREME COURT

October Term 2022

MATT (Maddy) NASUTI,
Petitioner,

vs.

ADRIAN HOLM, JUDITH JOHNSON-MEKOTA, DENIS RICHARD
MCDONOUGH, U.S. DEPARTMENT OF VETERANS AFFAIRS, and DOES 1,
Respondents.

PETITION FOR WRIT OF CERTIORARI

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Plaintiff, *Pro Se* - (Pauper)

Eight Circuit Court of Appeals

Case No. 22-8015

Decision – September 14, 2022

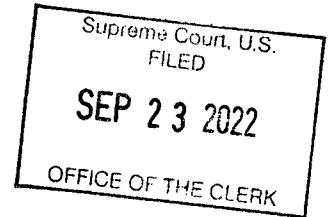
The Circuit Refused to Rule on the Constitutionality of the
Department of Veterans Affairs'
"Black" Program, Cloaked under 38 C.F.R. §17.107

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Southern District of Iowa

Civil No. 3:22-cv-00025-RGE-SBJ

The Court Refused to Enjoin the Department of Veterans Affairs'
Secret "Star Chamber" Tribunals (38 C.F.R. §17.107)



Questions Presented

The Department of Veterans Affairs, pursuant to 38 C.F.R. §17.107, has created a sinister and quite scary “Star Chamber” tribunal program. It ominously refers to them as “committees.” They operate under excessive secrecy, with no due process nor any functioning checks and balances. A first-year law student would easily find that this VA workplace violence - “red flag” regulation is unconstitutional and, as applied, has abused countless American veterans.

I was the victim of an anal assault by a VA physician; then was “convicted” by a secret VA tribunal (charges unknown), and issued an anonymous threatening letter by the VA. For ten months I have been denied medical treatment for chest injuries and a crippled-left hand. I am in pain every day. I am 65 years old, 5’4”, 132 pounds, a pauper, physically helpless and I lean towards the feminine. It is quite horrible for the VA to secretly label me a “threat” to the nation?

On May 2, 2022, I filed my application for an emergency injunction to declare 38 C.F.R. §17.107 unconstitutional and to enjoin the VA’s abusive implementation of this regulation (VA officials are misusing this rule to crush dissent and silence critics of its shoddy medical care).

I also pleaded with Judge Ebinger to assign me a U.S. Marshal protective detail whenever I had a VA appointment, as I fear more unfounded allegations against me. She and the 8th Circuit (to their discredit) refused to rule on my motion, thus both essentially kicked my case to this Court. As a low-income nobody, I apparently do not merit from them any consideration or protection.

Questions

Can Secret Trials Ever Be Constitutional?

May Federal Agencies Adjudicate Violent Behavior Cases in Secret “Star Chamber” Tribunals, and Then Bar the Victims From All Information Regarding Their “Convictions”?

Is the Veterans Administration Permitted to Have a “Black” Program?

Current Precedent Strictly Limits “Scarlet Letter” Punishments to Criminal Conviction Cases – Can They Now Be Extended to Secret Administrative Tribunals?

When the U.S. Government Issues an Anonymous Threatening Letter to a VA Patient Warning Them Against a Repetition of Their Actions, But Then It Refuses to State What Those Actions Consist Of, Is That Not Orwellian and Without Any Rational Basis?

Is It Ever Permissible for the U.S. Government to Issue an Anonymous Threatening Letter to Any American Citizen?

Is the VA Misusing 38 C.F.R. §17.107 to Silence Victim-Critics Who Are Protesting Shoddy Medical Care and Abuse by VA Physicians? [Appendix G Reveals – Yes]

In 2013, the VA OIG, in Report 11-02585-129, Criticized This VA Program for Having No Definition for “Disruptive Behavior.” The OIG Report Has Been Ignored by the VA for Nine Years. As a Result, Are All VA Decisions in This Program Arbitrary & Capricious *per se*?

Does This Secret VA Program Violate Elonis v. U.S., 575 U.S. 723 (2015) in Which This Court Raised the Federal Bar as to What is a “true threat.”

Did the S.D. Iowa and the 8th Circuit Err in Refusing to Issue the Requested Nation-Wide Emergency Injunction Against 38 C.F.R. §17.107?

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See Appendix C for more on the nation-wide abuses of this secret VA program [**How the VA “Red Flags” Patriots** (2019)] and [**How the VA red-flags “disruptive” vets** (2014)]. A very brief summary of other VA abuses is attached. This agency is truly Un-American. The VA horror stories are endless, and Nothing ever ever changes.

TABLE OF CONTENTS

| | |
|---------------------------------------------------------------------------------------------------------------------------|-----|
| Table of Authorities | ii |
| Index of Appendices | iii |
| List of Parties and Related Cases | iii |
| I. Petition for Writ of Certiorari | 1 |
| II. “Opinions” Below | 1 |
| III. Jurisdiction | 2 |
| IV. Legal Provisions Involved | 2 |
| V. Statement of the Case | 3 |
| Secret Trials Must Always Be Deemed Unconstitutional | 5 |
| The Iowa City VA, Combined with This U.S. Attorney’s Office, Has Terrified Me Away From the Whole VA System | 7 |
| The Veterans Administration Admits Its Illegal Conduct | 8 |
| Golfing Instead of Testifying | 8 |
| VI. Reasons for Granting the Writ | 9 |
| Current Precedent Strictly Limits “Scarlet Letter” Punishments to Criminal Conviction Cases | 10 |
| It is Never Permissible for the U.S. Government to Issue an Anonymous Threatening Letter to Any American Citizen | 10 |
| VII. Conclusion | 11 |

TABLE OF AUTHORITIES

| | |
|---------------------------------------------------------------------------------------|--------|
| The First Amendment | 2, 5 |
| The Fifth Amendment’s due process clause | 2, 5 |
| <u>Wisconsin v. Constantineau</u> , 400 U.S. 433 (1971) | 10 |
| <u>Elonis v. U.S.</u> , 575 U.S. 723 (2015) | 5 |
| <u>Bhogaita v. Altamonte</u> , 765 F.3d 1277 (11 th Cir. 2014) | 1 |
| <u>Groome v. Parish of Jefferson</u> , 234 F.3d 192 (5 th Cir. 2000) | 1 |
| <u>Motor Vehicle Manufactures v. State Farm</u> , 463 U.S. 29 (1983) | 5 |
| <u>U.S. v. Gementera</u> , 379 F.3d 596 (9 th Cir. 2004) | 10 |
| The Administrative Procedure Act: 5 U.S.C. §552b, §554 and §555 | 2, 6 |
| The Freedom of Information Act (FOIA) | 2, 6 |
| The Privacy Act | 6 |
| Wire Fraud (18 U.S.C. §1341) | 2, 6 |
| 28 U.S.C. §1254(1) | 2 |
| 28 U.S.C. §1292 | 1 |
| 38 U.S.C. Chapter 17 | 2, 6 |
| 38 C.F.R. §17.33(a) 1-2 | 2, 6 |
| 38 C.F.R. §17.107 | Passim |
| Rule 11 | 9 |
| FRAP Rule 5 | 1 |
| Federal Rule of Civil Procedure 65 | 2 |

INDEX OF APPENDICES

| | |
|------------|-------------------------------------------------------------|
| Appendix A | 8 th Circuit Ruling |
| Appendix B | S.D. Iowa Non-Rulings |
| Appendix C | Background to this Nation-wide VA Scandal |
| Appendix D | Anonymous Threatening Letter from the VA |
| Appendix E | VA – OIG Report (Executive Summary Excerpt) |
| Appendix F | VA Demand for \$4,200 (Attempted Wire Fraud) |
| Appendix G | VA FOIA Denial - Star Chamber Proceedings Are Secret |
| Appendix H | McDonough Golf Trip to Iowa (but he cannot appear in Court) |
| Appendix I | “justice” Department Scarlet Letter Guidance |

LIST OF PARTIES AND RELATED CASES

All the parties listed in the caption have generally appeared and actively litigated over the past five months. There are no other parties to this petition.

There are no related cases.

I. PETITION FOR WRIT OF CERTIORARI

This case is akin to a class action or a private attorney general action, as Mr. Garland has shirked his duty to the American public and its veterans. I seek an Order enjoining implementation of 38 C.F.R. §17.107, on the grounds that it is unconstitutional as written and as implemented. It has spawned a host of “Star Chamber” tribunals, which the VA ominously calls “committees,” which operate under illegal secrecy, and with no functioning due process, or checks and balances. This KGB-style “red flag” program is being misused by unscrupulous VA officials to silent dissent and suppress criticism by victims of shoddy medical care.

II. “OPINIONS” BELOW

On May 2, 2022, I filed my application for an emergency injunction to declare 38 C.F.R. §17.107 unconstitutional and to enjoin its abusive implementation.

Judge Ebinger refused to rule on anything I filed (Appendix B), which was quite cruel. After 120 days, I deemed my application to have been denied and I filed an alternative FRAP Rule 5 appeal and a 28 U.S.C. §1292 appeal.

“an indeterminate delay has the same effect as an outright denial”
Groome v. Parish of Jefferson, 234 F.3d 192, 199 (5th Cir. 2000);
in accord, Bhogaita v. Altamonte, 765 F.3d 1277 (11th Cir. 2014)

This case was clearly ripe for Circuit review, but the 8th Circuit rejected the above authorities. Fearful of explaining itself, it summarily refused to take my case under either appeal. Appendix A. It also refused to order the District Court to act, thus consigning my injunction to permanent limbo. An Influential Party would of course never be treated in such a contemptuous and disdainful manner.

III. JURISDICTION

The 8th Circuit's opinion was issued on September 14, 2022, so this Writ is timely per Rule 13.1. The Court has jurisdiction per 28 USC §1254(1).

It was easy for Judge Ebinger and Judges Loken, Shepherd and Kelly to ignore my emergency injunction application, as I am a low-income nobody; but trying to wash ones' hands of responsibility for government abuses has never historically worked out well for judicial officials. Ultimately, the Creator may issue the real ruling in this case. It always has jurisdiction.

IV. LEGAL PROVISIONS INVOLVED

Federal Rule of Civil Procedure 65

The action targets 38 C.F.R. §17.107 as being unconstitutional as it is violative of:

- The First Amendment
- The Fifth Amendment's due process clause
- The Administrative Procedure Act: 5 U.S.C. §552b, §554 and §555;
- 38 U.S.C. Chapter 17 (a veteran's statutory right to VA treatment;
- 38 C.F.R. §17.33(a) 1-2 (a veteran's regulatory rights to be treated with dignity, and to a humane treatment environment, with no fear - from the VA);
- The Freedom of Information Act (FOIA).
- Wire Fraud (18 U.S.C. §1341) – which was committed by VA officials.

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V. STATEMENT OF THE CASE

On December 21, 2021, I was scheduled for a colonoscopy at the Iowa City VA Medical Center. Dr. Adrian Holm was to perform the surgery, but I learned afterwards that he pulled a bait & switch and substituted a student/trainee apparently named Mohammad Ansari. Holm falsified the VA consent form by illegally adding my signature to a "student informed consent" form that I had never seen, and by certifying that he solely performed the procedure. I suffered significant post-surgery complications at the hands of this trainee that the VA has to-date refused to diagnose or even acknowledge.

This would be classified as a rape under the Attorney General's revised 2022 statistical Rape reporting criteria, but the Department has refused to characterize my violation as a rape.

**[The assault, document fraud and the identity theft are
Federal felonies but not when the
"justice" Department is protecting the criminals]**

On January 2, 2022 I fell on black ice in Dubuque, Iowa causing extensive damage to my left hand (pain, numbness, swelling, loss of movement in four fingers), along with chest injuries (i.e., suspected fractured ribs). One finger had an obvious complete tendon rip. Other fingers had suspected tendon or ligament tears. I was in partial shock. The VA splinted one finger, but declined to diagnose my hand with any modern imagery. Nine months later, my hand remains undiagnosed and is partially crippled, apparently permanently, as tendon/ligament damage locks in after several months. My chest injuries and complications remain undiagnosed.

Beginning in January, I made repeated pleas (verbally, through secure e-mails and by First Class Mail) to the VA to address my assault/rape, my badly injured hand, which was exacerbated by dismally-poor VA medical care, and my chest injuries. I first appealed to the doctors involved, and then to the Iowa City VA Patient Advocate and then to the Medical Center Director, Judith Johnson-Mekota (who refused repeated requests to meet with me), then with two VA attorneys in Akron, Ohio, and finally to the VA Office of Inspector General, which ignored me.

The VA, realizing that it has badly hurt me, decided that attacking the victim was a good course of action, especially as I am a pauper nobody. In retaliation for my questions and in order to silence me, it, in March 2022, published and mail to me an anonymous menacing and threatening letter on VA Iowa City stationary. Appendix D. It accused me of unspecified violent and disruptive acts, and essentially pronounced me guilty, all by a secret Star Chamber tribunal. This letter was issued by a secret 32-member "committee" in Iowa City.

As the Court reads Appendix D, it is a DECISION letter. It terrifyingly states that there cannot be a repeat of my conduct (whatever that was). How can an agency demand that conduct not be repeated, yet refuse to inform the victim as to what that conduct was? Clearly, under the APA (1) an agency adjudication had occurred, (2) findings were entered, and (3) an agency decision reached (to issue the threatening letter). The letter recited **no due process** that I was entitled to, therefore it was Final, but with threats of more sanctions.

Secret Trials Must Always Be Deemed Unconstitutional

It is amazing that I have to argue that secret trials are abhorrent to the U.S. Constitution, but the District Court and the 8th Circuit seem completely comfortable with such a system. This cries out for adult supervision, a lecture and in a perfect world, detention after school for those who do not understand our system of justice and the concepts set out in the Bill of Rights.

In 2010, the VA issued Directive 2010-053. It limited the use of its violence regulation to: “patients . . . posing an unusual risk of violence” and “who may pose an immediate threat.” The VA in Iowa City just ignored all of this.

In 2013, the VA OIG, in Report 11-02585-129, criticized the program for having no definition for **disruptive behavior** (which renders all VA decisions in this program arbitrary & capricious *per se*). The OIG report (Appendix E) has been ignored for 9 years. The VA still has no definitions. The VA’s own findings undermine the legality of 38 C.F.R. §17.107 and the decisions made under it. ¹

38 C.F.R. §17.107, as drafted and implemented, violates:

1. The 5th Amendment’s Due Process Clause; In Motor Vehicle Manufacturers v. State Farm, 463 U.S. 29 (1983) the court mandated that there be a rational basis for agency rulemaking, otherwise “modern government can become a monster.”
2. The 1st Amendment right to free speech (to object to shoddy treatment);

¹ **This Secret VA Program Also Violates Supreme Court Law**
In Elonis v. U.S., 575 U.S. 723 (2015), the court raised the Federal bar as to what is a “true threat.” It held that such is a specific intent offense (and is not dependant on the whim or uber-sensitivity of the recipient). The vague, arbitrary VA regulation at issue does not recognize or comply with this standard.

3. The Administrative Procedure Act: 5 U.S.C. §552b, §554 and §555;
4. 38 U.S.C. Chapter 17: My statutory right to VA treatment (see below);
5. 38 C.F.R. §17.33(a) 1-2: My VA regulatory rights to be treated with dignity, and to a humane treatment environment, with no fear (from the VA);
6. The Freedom of Information Act (FOIA). Upon receiving my “conviction,” I immediately generated a FOIA request seeking the allegations and evidence against me, the vote of this secret tribunal and the names of those who generated the threatening letter. The VA (Kelly Lebsack) responded by demanding \$4,346.01 in search fees. Appendix F. When I objected to this, the VA denied my request in toto, asserting the Privacy Act? Appendix G

Appendix F meets all the elements of Wire Fraud (18 U.S.C. §1341). The \$4,300 was an attempted theft. Ms. Lebsack had no intention of ever providing me anything in return. She is now under the protection of the U.S. Attorney, who refuses to prosecute her.

The U.S. Attorney’s Office, when faced with multiple criminal acts by Administration officials, had two options:

1. Prosecute the criminals and uphold the Constitution, or
2. Attack and smear the nobody-victim.

Which option does the Court believe it chose?

District Court Document 17 is laced with claims by AUSA Lawrence that I intend to “badger” every VA witness with “confrontational” questions (whatever that means). In Doc. 18, p. 5, Lawrence wrote that there is “legitimate cause to

conclude” that VA witnesses would be subject to “reprisal” by me (a very loaded and menacing term) if they were either identified or called to testify. He essentially argued that I can never be provided with any discovery. On p.7, he summarily asserted that all the VA suspects in this case need to be actively protected from me! When Docs. 17 and 18 are placed together, Lawrence essentially concludes that all VA witnesses are in grave peril, as the trial court is powerless to protect them from me. The vicious hysteria of AUSA Lawrence to little me, is astonishing. In the face of this abuse, the trial court has remained silent; refusing to protect me.

**The Iowa City VA, Combined with This U.S. Attorney’s Office,
Has Terrified Me Away From the Whole VA System**

AUSA Jason Lawrence has blindly supported the quite horrible VA officials in this case. He sees no problem with their using vile smears against victims, as he employs the same tactic. Even more scary, he would seemingly have no hesitation in supporting VA-fabricated criminal charges against me (which is just a small step up from its current campaign); and there are no functioning Administration or judicial checks and balances to prevent this.

As a result of all this, I cannot go back to the VA on my own – no one would, if they knew what was going on. This very successful intimidation has constructively cut me off from further medical care. I pleaded with the trial court to assign me a U.S. Marshal detail whenever I had to travel to a VA facility, in order to protect me and document that I am not being violent. It has refused to do so.

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The Veterans Administration Admits Its Illegal Conduct

Appendix G is a redacted page VA released under FOIA. It inadvertently admitted everything. It states that its "Warning Letter" was issued by the Committee as reflected in its Minutes. It then states that it was issued because I was claiming that the VA did not do its job. So criticizing the VA results in a threatening letter!

Nation-wide, unscrupulous VA officials have weaponized this vague regulation against veterans objecting to poor care, abuse, malpractice, long waits for care and overall neglect. It is an evil bureaucrat's dream. They can label their critics as criminals and abusively punish them, all based on secret "facts" concealed in a secret proceeding. It is a true Star Chamber.

Golfing Instead of Testifying

In Doc. 17, p.3 AUSA Lawrence objected to my request that VA Secretary McDonough (a named defendant in this case) be directed to testify at an evidentiary hearing, as it is his program. Lawrence certified to the trial court that requiring McDonough to testify about his secret tribunals would cause "extreme disruption" in his schedule, and the burden on the United States would be **"astronomical."**

I then briefed the court that just for April, 2022, McDonough traveled to Vermont for a series of photo ops with Senator Sanders. He then flew to Memphis, San Diego and Louisville for more photo ops. He routinely travels all the time; but traveling to Iowa to defend his "black" program would be an "astronomical" burden? It is clearly more important for him to be before the court to address his illegal and abusive program, than to inflict another photo-op on the public.

On September 17th I learned that Secretary McDonough was here in Iowa City (just down the road from the courthouse) four days earlier for a golf clinic (Appendix H), but it was **impossible** for him to be in court to defend his unconstitutional program?

I petitioned Judge Ebinger to hold AUSA Lawrence in criminal contempt for repeatedly lying to her (see also my Rule 11 motion for his other false statements). She will, of course, never act as false official statements by the “justice” Department are seemingly expected and never prosecuted. False statement prosecutions only happen to politically out-of-favor victims, such as Martha Stewart. If I was a judge, the “justice” Department would not dare pull any of these criminal antics.

VI. REASONS FOR GRANTING THE WRIT

This should have been a dream case for Judge Ebinger. Congress never authorized this sinister VA tribunal system; the VA has an appalling record mistreating patients; and it has no constituency other than the “justice” Department.

Our Senators in Iowa, both long-time VA critics, would have applauded her for championing abused veterans. Alas, it is far too easy to do nothing. The tools of government are supposed to protect the people from the government, not the other way around. Imitating Putin’s Russia should not be U.S. policy.

This nightmare for me and many veterans can only be ended by this Court.

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Current Precedent Strictly Limits “Scarlet Letter” Punishments to Criminal Conviction Cases

Officially labeling an American citizen as a threat to the Government should be a most profound agency decision. This secret blacklisting, without any due process or checks and balances, has been essentially dismissed by the District Court and the Circuit as much ado about nothing, which is outrageous.

In Wisconsin v. Constantineau, 400 U.S. 433 (1971) this court held that where the government attaches a “badge of infamy” to a citizen, due process always comes into play.

Labeling veterans and then humiliating them is clearly a “scarlet letter” punishment. The leading ruling on this is U.S. v. Gementera, 379 F.3d 596 (9th Cir. 2004). It narrowly upheld some Scarlet Letter punishments but only in criminal cases, after a lawful conviction. Otherwise they violate the 8th Amendment.

The “justice” Department has concurred that the Government should not shame or stigmatize its citizens (See Appendix I), yet that is what is occurring all across our country.

It is Never Permissible for the U.S. Government to Issue an Anonymous Threatening Letter to Any American Citizen

The 8th Circuit’s “red line” for outrage at Government abuses is unconscionably high. This is very, very simple. The Government should never be permitted to issue an anonymous threatening letter to any citizen, ever. It is to the District Court and Circuit’s discredit that I have to seek this Court’s concurrence in such a basic liberty concept. Both courts have clearly lost their way.

The Court should grant certiorari as no other court seems interested in combating this outrageous government misconduct and abuse. Low-income victims in the 8th Circuit seemingly have no rights. Everyone is vigorously seeking to protect the people who hurt me. Access to our courts cannot be reserved solely for the Rich and Influential.

VII. CONCLUSION

I grew up during an amazing time. In the 1970's, in the New York City metropolitan area, we had Federal judges who were Super – Heroes. Everyone wanted to be them. We had the amazing Whitman Knapp on the bench in New York (one man who changed the culture of an entire city), and we had Fred Lacey and Herbert Stern in Newark. Everyone knew they were smart and courageous organized crime-fighters, who would protect the public. I have failed to find that in my Circuit, which is a shame for me, my neighbors and the judicial system.

Our people have chosen you Nine as our champions. The public is desperate for public-official heroes. Please join all together and be them.

Kindly submitted,

September 22, 2022 By:



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