No. 24-6468

IN THE SUPREME COURT OF THE UNITED STATES

LEONARD W. HOUSTON, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

In Lehman v. Nakshian, 453 U.S. 156 (1981), this Court held that a "plaintiff in an action against the United States has a right to trial by jury only where Congress has affirmatively and unambiguously granted that right by statute." Id. at 168. The Camp Lejeune Justice Act of 2022 (CLJA), Pub. L. No. 117-168, Tit. VIII, 136 Stat. 1802, allows certain individuals to "bring an action" to "obtain appropriate relief for harm that was caused by exposure to the water at [the] Camp Lejeune" military base in North Carolina. CLJA § 804(b), 136 Stat. 1802. Section 804(d) confers "exclusive jurisdiction" on the United States District Court for the Eastern District of North Carolina and makes that court the "exclusive venue" for actions brought under the CLJA. CLJA § 804(d), 136 Stat. 1803. Section 804(d) further states that "[n]othing in this subsection shall impair the right of any party to a trial by jury." Ibid. The question presented is:

Whether the CLJA affirmatively and unambiguously grants a right to jury trial in suits against the United States.

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OPINIONS BELOW

The opinion of the court of appeals dismissing petitioner's appeal for lack of jurisdiction (Pet. App. 2-4) is not reported but is available at 2024 WL 4834233. The opinion and order of the district court granting the government's motion to strike the jury trial is reported at 715 F. Supp. 3d 761. The order of the district court denying petitioner's motion to certify the issue for interlocutory appeal (Pet. App. 9) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on November 20, 2024. A petition for rehearing and rehearing en banc was

denied on January 28, 2025 (Pet. App. 6). The petition for a writ of certiorari was filed on January 31, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In August 2022, Congress enacted the Camp Lejeune Justice Act (CLJA), Pub. L. No. 117-168, Tit. VIII, 136 Stat. 1802. The CLJA authorizes certain individuals to bring a tort action to obtain "appropriate relief for harm that was caused by exposure to the water at [the] Camp Lejeune" military base in North Carolina. CLJA § 804(b), 136 Stat. 1802.

The CLJA expressly precludes the United States from relying on certain defenses that would otherwise be available in tort suits against the United States under the Federal Tort Claims Act (FTCA), including the discretionary function exception, see 28 U.S.C. 2680(a), and state statutes of repose, see CLJA § 804(f) and (j). The United States had successfully invoked those defenses in FTCA suits relating to water contamination at Camp Lejeune before the CLJA's enactment. See Clendening v. United States, 19 F.4th 421, 431, 436 (4th Cir. 2021), cert. denied, 143 S. Ct. 11 (2022); In re Camp Lejeune, N.C. Water Contamination Litig., 774 Fed. Appx. 564, 566 (11th Cir. 2019) (per curiam), cert. denied, 140 S. Ct. 2825 (2020). Congress, in enacting the CLJA, made clear that such defenses cannot be invoked in suits brought under the CLJA.

The CLJA also requires claimants to first present their claims to the Department of the Navy before filing suit in district court. See CLJA § 804(h), 136 Stat. 1803 (requiring compliance with the FTCA's administrative-exhaustion provision). If the Navy does not either grant or deny an administrative claim within six months, the claimant may treat the failure to act as a denial of the claim and bring suit in court. 28 U.S.C. 2675(a).

Section 804(d) of the CLJA is titled "Exclusive Jurisdiction and Venue." CLJA § 804(d), 136 Stat. 1803. It provides that the United States District Court for the Eastern District of North Carolina "shall have exclusive jurisdiction over any action filed" under the CLJA and shall "be the exclusive venue for such an action." Ibid. Section 804(d) further states that "[n]othing in this subsection shall impair the right of any party to a trial by jury." Ibid.

2. a. Since the CLJA's enactment, over 408,000 claimants have presented CLJA claims to the Navy, and over 2,700 plaintiffs have filed suit in the United States District Court for the Eastern District of North Carolina. The pro se petitioner in this case, Leonard W. Houston, filed one such CLJA action.

The four district judges in the Eastern District of North Carolina have adopted various measures to manage and coordinate the large volume of suits filed in that single district. The judges have created a master docket for submitting filings related to the Camp Lejeune litigation and appointed a

plaintiffs' leadership group. See In re Camp Lejeune Water Litigation, No. 23-cv-897 (E.D.N.C.). The judges have adopted joint protocols for discovery, trial, and settlement. And pursuant to the court's orders, the parties have identified the first 25 cases to be tried, with those trials scheduled to begin by 2026. Petitioner's case is not among those selected to be tried first and is currently stayed for all purposes. 23-cv-897 D. Ct. Doc. 23, at 4.

The plaintiffs' leadership group filed a master complaint, which (among other things) demanded a jury trial on plaintiffs' CLJA claims. 23-cv-897 D. Ct. Doc. 25 (Oct. 6, 2023). Petitioner filed the requite short-form complaint, which incorporated the allegations in the master complaint, provided additional details about petitioner's case, and demanded a jury trial on his CLJA claim. D. Ct. Doc. 13 (August 16, 2023). The United States moved to strike plaintiffs' jury trial demand, explaining that the Seventh Amendment does not guarantee a jury trial in actions against the federal government and that the CLJA does not independently confer such a right. 23-cv-897 D. Ct. Doc. 51 (Nov. 20, 2023).

b. In an order signed by all four district judges overseeing the Camp Lejeune litigation, the district court granted the motion to strike, concluding that the CLJA does not grant plaintiffs the right to trial by jury.

The district court explained that the operative question is "whether Congress 'unequivocally expressed' and 'affirmatively and unambiguously' granted the right to a trial by jury in the CLJA," so as to have "'clearly and unequivocally' departed from its usual practice of not permitting a jury trial against the United States." 23-cv-897 D. Ct. Doc. 133, at 11-12 (Feb. 6, 2024) (quoting Lehman v. Nakshian, 453 U.S. 156, 160-162, 168 (1981)). The court determined that "[n]o part of the CLJA's text contains an unequivocal, affirmative, and unambiguous right to a trial by jury against the United States." Id. at 15-16. The court emphasized that the sole provision in the CLJA that references a jury trial is "phrased in the negative," stating only that the statute "does '[n]othing' to 'impair the right of any party to a trial by jury' that may exist outside subsection 804(d)." Id. at 18, 27 (first brackets in original) (quoting CLJA § 804(d), 136 Stat. 1803). Section 804(d), the court explained, thus cannot be construed to "affirmatively[] and unambiguously provide plaintiffs the right to a trial by jury in actions" brought under the CLJA. Id. at 28.

c. The plaintiffs' leadership group moved, on behalf of two plaintiffs, to certify the jury-trial issue for interlocutory appeal under 28 U.S.C. 1292(b). 23-cv-897 D. Ct. Doc. 137 (Oct. 31, 2023). Petitioner submitted his own pro se motion to certify the jury-trial issue for interlocutory appeal under 28 U.S.C. 1292(b). Pet. App. 11-12.

On the master docket, the district court declined to certify its order, finding no "substantial ground for a difference of opinion" on the merits of the legal question. 23-cv-897 D. Ct. Doc. 204, at 5 (May 13, 2024). The court explained that its ruling reflected a straightforward application of the governing "legal standard under Lehman * * * and other applicable precedent and canons of construction." Ibid. The court further observed that the judges in the Eastern District of North Carolina are "prepared to proceed expeditiously with bench trials," and that any dissatisfied party "can challenge [the] ruling concerning jury trials" in an appeal from final judgment. Ibid.

In this case, the district court entered a text order denying petitioner's certification motion, referencing the order denying certification on the master docket. Pet. App. 9.

3. a. The two plaintiffs represented by the plaintiffs' leadership group petitioned the court of appeals for a writ of mandamus, which the Fourth Circuit summarily denied. On December 23, 2024, those plaintiffs petitioned this Court for a writ of certiorari from the denial of mandamus. See McBrine v. United States, No. 24-685. The government submitted a brief in opposition to that petition on March 28, 2025.

b. The pro se petitioner in this case filed a notice of appeal from the text order denying certification under 28 U.S.C. 1292(b). D. Ct. Doc. 15 (Aug. 25, 2023). The court of appeals

dismissed the appeal for lack of jurisdiction. Pet. App. 2-4. The court explained that "[t]he order [petitioner] seeks to appeal is neither a final order nor an appealable interlocutory or collateral order." Id. at 3. In a footnote, the court "decline[d] to exercise [its] discretion to construe [petitioner's] filing as a petition for a writ of mandamus" given that the court had "recently rejected" a mandamus petition raising the same issue in McBrine. Id. at 3 n.*.

The court of appeals denied rehearing en banc, with no judge requesting a vote. C.A. Doc. 11 (Jan. 28, 2025).

DISCUSSION

Petitioner contends (Pet. 10) that he is entitled to a trial by jury in his suit against the United States under the Camp Lejeune Justice Act. The petitioners in McBrine v. United States, No. 24-685, have asserted a materially similar claim. For the reasons explained in our brief in opposition in McBrine, that question does not warrant this Court's review.

But even if the Court were inclined to grant the petition for a writ of certiorari to consider that question in McBrine, there would be no reason to hold this petition pending disposition of McBrine. The court of appeals correctly concluded that it lacked jurisdiction over this pro se petitioner's appeal from the text order denying certification of the jury-trial issue under 28 U.S.C. 1292(b). That order was not a "final decision[]" appealable under 28 U.S.C. 1291, because it did not "end[] the

litigation on the merits and leave[] nothing for the [district] court to do but execute the judgment." Catlin v. United States, 324 U.S. 229, 233 (1945). To the contrary, the district court held only that the CLJA does not entitle plaintiffs to a jury trial and instructed that the cases would proceed "with bench trials." 23-cv-897 D. Ct. Doc. 204, at 5. And because the jury-trial issue will not be "effectively unreviewable on appeal from [a] final judgment," the order does not belong to the "small class of collateral rulings that, although they do not end the litigation, are appropriately deemed final." Mohawk Indus., Inc. v. Carpenter, 558 U.S. 100, 106 (2009) (citation omitted). See Br. in Opp. at 21-22, McBrine, supra (No. 24-685).

Nor does 28 U.S.C. 1292(b) justify petitioner's interlocutory appeal. That statute authorizes litigants to seek permission from the court of appeals to take an immediate appeal from "an order not otherwise appealable" -- but only if the district court certifies that the statutory prerequisites are satisfied. 28 U.S.C. 1292(b). Here, the four district judges overseeing the Camp Lejeune litigation unanimously concluded that those prerequisites are not met because there is no "substantial ground for a difference of opinion" on the merits of the legal question. 23-cv-897 D. Ct. Doc. 204, at 5. "[N]o appeal is available unless the district judge enters the [certification] order." 16 Edward H. Cooper, Federal Practice and Procedure § 3929 (3d ed. 2024) (collecting cases). And

petitioner's effort to invoke Section 1292(b) is doubly defective because he did not seek the court of appeals' permission within the ten-day deadline prescribed by the statute. See 28 U.S.C. 1292(b) (providing that a court of appeals may "permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order").

The court of appeals similarly did not abuse its discretion in declining to construe petitioner's notice of appeal as a petition for a writ of mandamus. As the court explained, it had recently denied the mandamus petition in McBrine, in which the petitioners, who were represented by counsel, had asked the court of appeals to direct the district court to hold jury trials in CLJA suits against the United States. See Pet. App. 3 n.*. Accordingly, even under the "less stringent standards" that apply to pleadings filed by pro se litigants, Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam), recharacterizing petitioner's filing as a petition for a writ of mandamus would have been futile.

Petitioner does not address those jurisdictional issues, much less contend that those issues are independently worthy of this Court's review. In fact, petitioner nowhere contends that the court of appeals erred in concluding that it lacked appellate jurisdiction. Even as to the jury-trial issue that petitioner wishes to raise on the merits, the petition does not develop any substantive argument that the CLJA affirmatively and

unambiguously grants petitioner such a right. In these circumstances, it would be appropriate for this Court to deny review.

Moreover, even if this Court were to grant certiorari in McBrine and reverse, there would be no need to vacate the order here and remand to allow the Fourth Circuit to construe petitioner's appeal to that court as a writ of mandamus and grant it. Rather, petitioner -- along with thousands of other plaintiffs who have sued under the CLJA -- could request a jury trial in light of this Court's disposition of McBrine, without the need for additional extraordinary relief. There is therefore no need to hold this petition pending the Court's disposition of McBrine.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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