

24-6889

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BENJAMIN LACOUNT II, *pro se* — PETITIONER

VS.

UNITED STATES OF AMERICA — RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

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ORIGINAL

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QUESTIONS PRESENTED

1. Does the Veterans' Judicial Review Act (VJRA) bar judicial review of procedural due process and Administrative Procedure Act (APA) violations by the Department of Veterans Affairs (VA)?
2. Can the APA and the Fifth Amendment Due Process Clause provide judicial review for the VA's procedural violations, including falsification of documents?
3. Did the Court of Appeals err in affirming dismissal for lack of subject matter jurisdiction, depriving the petitioner of a remedy for the VA's statutory and procedural violations?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

No directly related cases have been identified.

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States District Court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was February 6, 2025.

A timely petition for rehearing and rehearing *en banc* was denied by the United States Court of Appeals on March 11, 2025 and a copy of the order denying rehearing and rehearing *en banc* appears at Appendix C.

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

CONSTITUTIONAL AND STATUATORY PROVISIONS INVOLVED

1. The Fifth Amendment to the United States Constitution: "No person shall be ... deprived of life, liberty, or property, without due process of law ..."
2. The VJRA, 38 U.S.C. § 511(a).
3. The APA, 5 U.S.C. §§ 551-559, 701-706.
4. Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b).
5. 38 U.S.C. § 3107.
6. 38 CFR 21.197
7. 38 CFR 21.57

STATEMENT OF THE CASE

A. Factual Background

On April 29, 2021, Monica Coker, a GS-12 vocational rehabilitation counselor for the VA, identified the petitioner as having an employment handicap, initiating fiduciary responsibilities under 38 U.S.C. § 3107. Coker enrolled the petitioner in a vocational rehabilitation program yet failed to adhere to statutory and regulatory mandates critical to the petitioner's rehabilitation.

From July 2021 to July 2022, Coker disregarded procedural safeguards, including those under 38 CFR 21.57, by failing to place the petitioner into extended evaluation status. These omissions left the petitioner financially burdened and unsupported. Furthermore, Coker wrongfully removed the petitioner from rehabilitation services in July 2022, violating 38 CFR 21.197. Compounding the harm, she falsified compliance reports and included defamatory statements in the petitioner's records, which obstructed the petitioner's re-entry into the program in February 2023.

B. Procedural History

The petitioner, proceeding *pro se*, filed a FTCA lawsuit, alleging that the VA's violations of 38 U.S.C. § 3107, 38 CFR 21.197, and 38 CFR 21.57 caused severe financial and emotional harm. Despite presenting substantial evidence of misconduct, the district court dismissed the case, citing jurisdictional bars under the VJRA, 38 U.S.C. § 511(a).

On appeal, the petitioner argued that the VA's actions exceeded the discretionary protections afforded by the VJRA, constituting actionable violations of statutory and procedural duties. Nevertheless, the Court of Appeals affirmed the dismissal, citing a strict interpretation of § 511(a). This case raises critical constitutional questions regarding procedural due process under the Fifth Amendment and the limits of VJRA jurisdiction, necessitating the Supreme Court's intervention.

REASONS FOR GRANTING THE PETITION

1. Resolution of Critical Constitutional Questions

This case presents an important constitutional issue: whether the VJRA unjustly bars judicial review of procedural due process claims and APA violations by the VA. The ambiguity surrounding the interplay of the VJRA, the Due Process Clause of the Fifth Amendment, and the APA creates a legal void that deprives veterans of meaningful access to justice. Without judicial intervention, this gap will continue to undermine the constitutional protections guaranteed to one of the nation's most vulnerable populations: disabled veterans seeking vocational rehabilitation. By granting certiorari, this Court has the opportunity to resolve this legal uncertainty and reaffirm that no agency, including the VA, operates beyond the reach of constitutional safeguards. This case strikes at the heart of the principle that no individual should be denied their right to procedural due process due to ambiguities in statutory interpretation.

2. Conflict with Established Precedents

The lower court's decision directly conflicts with key Supreme Court precedents. In *Johnson v. Robison*, this Court held that statutory restrictions do not preclude the adjudication of constitutional claims. Similarly, in *Webster v. Doe*, the Court reaffirmed that constitutional claims must remain subject to judicial review, even when statutes impose jurisdictional limits. These principles have guided the judiciary in ensuring that statutory protections do not shield agencies from

accountability for constitutional violations. Moreover, the Ninth Circuit's decision in *Veterans for Common Sense v. Shinseki*, underscores the judiciary's vital role in addressing systemic procedural failures within the VA. The Fifth Circuit's narrow interpretation of § 511(a) departs from these precedents and creates an untenable precedent that allows the VA to avoid scrutiny for its procedural violations, including the falsification of records and denial of due process.

3. Nationwide Importance and Impact on Veterans' Rights

The systemic implications of this case extend far beyond the petitioner's individual harm. The VA's Vocational Rehabilitation and Employment (VR&E) program, with 131,179 participating veterans in 2023, is critical to the economic stability and well-being of disabled veterans. Yet systemic inefficiencies and procedural failures within the program continue to deny veterans their statutory and constitutional rights. For instance, service discontinuations in the VR&E program have outpaced rehabilitations annually, with discontinuations growing an average of 32.8% annually compared to a 1.64% growth in rehabilitations since 2014. In 2023 alone, there was a two-to-one ratio of discontinuations to successful rehabilitations. Many of these discontinuations occur without proper procedural safeguards, leaving veterans without recourse and exacerbating their financial and emotional vulnerabilities. The lack of judicial oversight under the VJRA intensifies this harm, effectively insulating the VA from accountability and perpetuating systemic injustice. This Court's intervention is crucial to protect the rights of disabled veterans and to clarify the judiciary's role in ensuring agency

accountability. By addressing these issues, the Court can provide guidance on the balance between agency discretion and veterans' access to justice.

4. Opportunity to Clarify the Boundaries of the VJRA

This case also provides an opportunity to clarify the boundaries of the VJRA, ensuring that its jurisdictional limitations do not swallow veterans' constitutional and statutory rights. The lower courts' strict interpretation of § 511(a) leaves veterans without a forum to challenge unlawful agency actions, creating a legal paradox that conflicts with fundamental principles of fairness and due process. A decision from this Court could establish clear guidance on the interplay between the VJRA, the APA, and constitutional protections, reaffirming the judiciary's role as the ultimate guardian of individual rights in the face of agency misconduct.

CONCLUSION

The lower courts' decisions undermine the foundational principles of due process and administrative accountability, leaving disabled veterans without meaningful recourse for systemic agency violations. This Court's intervention is necessary to resolve conflicts in precedent, address critical constitutional questions, and ensure that federal agencies remain subject to the rule of law. For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



Benjamin LaCount II

Date: March 17, 2025