

No. _____

**In the
Supreme Court of the United States**

IN RE STEPHANIE MICHAEL

*On Petition for Writ of Mandamus to the U.S. District Court for
the Southern District of Texas and to the U.S. Court of Appeals
for Veterans Claims*



PETITION FOR WRIT OF MANDAMUS



STEPHANIE MICHAEL, PRO SE
P.O. BOX 96758
HOUSTON, TEXAS 77213
PHONE: (713) 545-5126
EMAIL: stephmec2@yahoo.com

QUESTIONS PRESENTED

This case presents deep issues of national importance and arises from rules of law established by seriously erroneous interpretation of statutory language of the Veterans Judicial Review Act of 1988 and 38 U.S.C. §511 of the Department of Veterans Affairs Codification Act of 1991 by the lower Courts which undermines congressional policy as expressed in other legislation. Congress speaks directly to the precise questions of law of its unambiguous legislative intent for judicial review of the administrative actions of the VA under laws affecting the provision of benefits. VA regulations 38 CFR §1.579 and 38 CFR §20.1201 promulgates the procedure for Michael civil remedy under 5 U.S.C. §552a of the Privacy Act relevant law applicable to the individual record relied upon in Board of Veterans Appeals benefit determinations. 38 CFR §14.600-14.605 establishes procedure for Michael's claim colorable under 28 USC §1346(b) and advises that "an action against the United States under 28 U.S.C. §2671- 2680 is the exclusive remedy under these circumstances."

Yet, void judgments here impose *Bivens* remedy of *Zuspann v. Brown*, 60 F.3d 1156 (1995) applying the rule of law: "Section 511 of Title 38, formerly §211, precludes judicial review of veterans' benefits determinations...Congress passed the Veterans' Judicial Review Act ("VJRA"), which clearly announced the intent of Congress to preclude review of benefits determinations in federal district courts." *In re Wick*, 40 F.3d 367 (Fed. Cir. 1994) here diminishes the jurisdiction U.S. Court of Appeals for Veterans Claims establishing a rule of law that the Court of the United States lacks authority to issue judgment against the United States under 28 U.S.C. § 2201 of the Declaratory Judgment Act. The questions presented are:

1. Whether judicial actions of the U.S. District Court and the U.S. Court of Appeals for Veterans Claims are void when such judgments obtained by fraudulent conduct of officers of the Court expand or diminish the jurisdiction of a Federal Court and subsequently modify, abridge, or enlarge the substantive and legislative rights of litigants in a manner that undermines congressional policy applicable to judicial review of the administrative agency actions that adversely affect the provision of VA benefits.
2. Whether mandamus action is appropriate under the unusual and rare circumstance that arises when a rule of law must be renounced to correct seriously erroneous interpretations of legislative intent of statutory language by the lower Courts in the absence of plenary guidance of the Supreme Court is exacerbated by improper conduct of officers of the Court.

TABLE OF CONTENTS

Questions Presented.....	i
Opinions Below.....	1
Jurisdiction.....	1
Constitutional and Statutory Provisions.....	1
Statement of the Case.....	2
Reasons to Grant Petition.....	5
A. Petitioner has no other adequate opportunity for relief from void judgments....	5
B. Void judgments in this case do not constitute judicial review of agency action consistent with 5 U.S.C. 701, et seq. of the Administrative Procedure Act expand or diminish the jurisdiction of the reviewing federal courts and modify, abridge, or enlarge the substantive and legislative rights of the litigants.....	5
1. Void judgments in this case do not constitute judicial review consistent with U.S.C. §§701, et seq. of the Administrative Procedure Act.....	6
2. Void judgments in this case expand or diminish the jurisdiction of Federal Courts.....	11
3. Void judgments in the present case modify, abridge or enlarge the substantive and legislative rights of litigants.....	19
C. Mandamus Relief is Appropriate under the Circumstances.....	27
Conclusion.....	28

APPENDIX: TABLE OF CONTENTS

APPENDIX A-December 28, 2016, Judgment, U.S. Court of Appeals for Veterans Claims.....	App.1a
APPENDIX B-August 21, 2017, Per Curiam Order, Rehearing denied. U.S. Court of Appeals for the Federal Circuit.....	App.3a
APPENDIX C-June 12, 2017, Judgment; Affirmed; U.S. Court of Appeals for the Federal Circuit.....	App.5a
APPENDIX D-March 7, 2014, Administrative Tort Claim Denied, Houston VA	

Office of Regional Counsel.....	App.11a
---------------------------------	---------

APPENDIX E-September 1, 2016, Letter, Office of the Clerk of the U.S. Court of Appeals for Veterans Claims.....	App.13a
---	---------

APPENDIX F-August 8, 2016, Order, Petition for Rehearing denied, U.S. Supreme Court.....	App. 14a
--	----------

APPENDIX G-September 17, 2015, Unpublished Opinion, Judgment. Affirmed U.S. Court of Appeals for the Fifth Circuit.....	App.15a
---	---------

APPENDIX H- February 3, 2015, Judgment, U.S. District Court for the Southern District of Texas	App.18a
--	---------

APPENDIX I-Constitutional and Legislative Provisions.....	App.21a
---	---------

TABLE OF AUTHORITIES

U.S. Constitution

Art. III. §§1, 2

Fifth Amendment, Due Process Clause

Supreme Court Cases

Abbott Laboratories v. Gardner, 387 U.S. 136 (1967)
Anderson v. Liberty Lobby, Inc. 477 U.S. 242 (1986)
Arbaugh v Y&H Corp. 546 U.S. 500 (2006)
Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)
Bowen v. Massachusetts, 487 U.S. 879 (1988)
Bowen v. Michigan Academy of Family Physicians, 476 U.S. 340 (1984)
Boys Markets, Inc. v. Retail Clerks, 398 U.S. 235 (1970)
Bush v. Lucas, 462 U.S. 367 (1983)
Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402
Cheney v. United States District Court 542 U.S. 367 (2004)
Cheng Fan Kwok v. INS, 392 U.S. 206(1968)
Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837(1984)
Commissioner v. Estate of Church, 335 U.S. 632 (1949)
Elliot v. Lessee of Piersol, 26 U.S. 308 (1828)
Encino Motorcars, LLC v. Navarro, 579 U.S. __2016
Florida Power and Light v. Lorion, 470 U.S. 729 (1985)
Hollingsworth v. Perry 558 U.S. 183 (2010)
Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694 (1982)

Johnson v. Robison, 415 U.S. 361 (1974)
Kontrick v. Ryan, 540 U.S. 452 (2004)
La Buy v. Howes Leather, 352 U.S. 249 (1957)
Lujan v. Defenders of Wildlife 504 U.S. 555 (1992)
Mohawk Indus. v. Carpenter, 558 U.S. 100 (2009)
Old Wayne Mut. L. Assoc. v. McDonough 204 U.S. 8 (1907)
Pacific States Box and Basket Co. v. White, 296 U.S. 176
Palmore v. United States, 411 U.S. 389 (1973)
R. de Quijas v. Shearson. Am. Express, 490 U.S. 470 (1989)
Reed Elsevier, Inc. v. Muchnick, 559 U.S. 154 (2010)
Roche v. Evaporated Milk Ass'n 319 U.S. 21 (1943)
Ruhrgas v. Marathon Oil, 526 U.S. 574 (1999)
Schlagenhauf v. Holder, 379 U.S. 104 (1964)
Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962)
Steel Co. v. Citizens for Better Environment 523 U.S. 83 (1998)
Tolan v. Cotton, 572 U.S. 2014
Traynor v. Turnage, 485 U.S. 541-545 (1988)
U.S. S.A. Empresa de Vicao Aerea Rio Grandense (Varig Airlines) 467 U.S. (1984)
United States v. Chemical Foundation, 272 U.S. 1 (1926)
United States v. Cotton 535 U.S. 625(2002)
United States v. Gaubert 499 U.S. 315 (1991)
United States v. King, 395 U.S. 1 (1969)
United States v. Sherwood, 312 U. S. 584 (1941)
Wilko v. Swan, 346 U.S. 427 (1953)

Federal Circuit Cases

Herring v. United States, 424 F.3d 384 (3rd Cir 2005)
In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions, 538 F.2d 180, 195 (8th Cir.1976)

In re Wick, 40 F.3d 367 (Fed. Cir. 1994)
Zuspan v. Brown 60 F.3d 1156 (5th Cir. 1995)

U.S. Court of Appeals for Veterans Claims Cases

Mokal v. Derwinski, 1Vet.App.,12, 13-15 (1990)
Nagler v. Derwinski,

STATUTES

38 U.S.C. 7251, et seq. Veterans Judicial Review Act of 1988
 5 U.S.C. 701, et seq. Administrative Procedure Act
 38 U.S.C. 501, et seq. Department of Veterans Affairs Codification Act of 1991
 5 U.S.C. 552a, Privacy Act
 28 U.S.C. 1346(b) and 28 U.S.C. 2671, et seq. Federal Tort Claims Act
 28 U.S.C. 2201, Declaratory Judgment Act

VA REGULATIONS

38 CFR 1.579, 38 CFR 20. 1201- Privacy Act
38 CFR Part 14
38 CFR 14.600-14.605, Federal Tort Claims Act

Federal Rule of Civil Procedure 12(b)(1)

Table of Authorities	
U.S. Constitution.....	
Supreme Court Cases.....	
Courts of Appeals Cases.....	
U.S. Court of Appeals for Veterans Claims.....	

STATEMENT OF THE CASE

Michael submitted Standard Form 95, Claim for Damage, Injury or Death to Houston VA Regional Counsel in observance of VA regulation 38 CFR 1.579 which promulgates the U.S. Department of Veterans Affairs compliance with 5 U.S.C. 552a of the Privacy Act of 1974 twice. In the present case on March 7, 2014 Michael's administrative tort claims were denied advising her. "We again take the opportunity to inform you (as we did in our letter of September 5, 2012 related to your last SF-95 filing) that the issues which you have raised in your last submission-VA benefit matters – cannot by law be considered under the Federal Tort Claims Act. Thus your submission constitutes a non-payable claim which cannot be considered under the FTCA. Accordingly, your claim is hereby denied."

She was again was informed of "option to file suit in an appropriate U.S. District Court under 28 U.S.C. 2675(a)" and was advised that she:

"may file suit in accordance with the Federal Tort Claims Act, sections 1346(b) and 2671-2680, title 28, United States Code, which provides that a tort claim that is administratively denied may be presented to a Federal district court for judicial consideration." and: "if you do initiate such a suit, you are further advised that the proper party defendant is the United States, not the Department of Veterans Affairs (28 U.S.C. §§ 1346(b) and 2671-2680)."

In each timely filed action she sought to invoke the U.S. District Court for the Southern District of Texas under the waiver of the United States sovereign immunity 5 U.S.C. 701, et seq. of the Administrative Procedure Act and 28 U.S.C. 1346 and 2671-2680 of the Federal Tort Claims Act and names the United States each time as the proper party defendant. Michael's claims against the United States have been dismissed upon grant of the Government's Fed. Rule Civ. P. 12(b)(1) for

summary motions to dismiss for lack of subject matter jurisdiction applying res judicata according effect to *Zuspann v. Brown*, 60 F.3d 1156 (1995) as the rule of law applicable to her FTCA and Privacy Act Claims for her claims against the United States. Her Motion for Rule 60(b)(4) relief from void judgments; Motion to Strike; a Motion for Reconsideration; and a Motion for Interlocutory Appeal under the Collateral Order Doctrine were all denied.

The U.S. Court of Appeals for the Fifth Circuit affirmed the U.S. District Court's ruling and denied her petition for rehearing. Michael's petitions for certiorari and rehearing were both denied by this Honorable Supreme Court. She then presented a Motion for Leave to Proceed because the March 7, 2014 decision of the Secretary informed Michael her judicial remedy relief appropriate for her administrative tort claim denied was under the Federal Tort Claims Act in the U.S. District Court.

The Office of the Clerk of Court declined to present Michael's motion to the Court and informed her by letter on September 1, 2016: "The Court can only act within the authority given it by Congress which is limited to review of final decisions of the Board of Veterans Appeals." The letter does not serve as a court order or decree, so Michael presented a petition for judgment against the United States to the Court of Appeals for Veterans Claims under 28 USC 2201 of the Declaratory Judgment Act. The Secretary responded to the extent of an appearance of counsel and there was no response from the Government to her motion for declaratory judgment. The U.S. Court of Appeals for Veterans Claims denied Michael petition for declaratory relief declaring it lacks authority to issue declaratory judgments.

Michael appealed to the U.S. Court of Appeals for the Federal Circuit. Prior to submission of her informal brief to the appellate court, she sought correction of the caption to name the United States as an indispensable party because the Court of Appeals would not name the United States as a party to the action before it and addressed the judicial orders at issue as the basis for standing for declaratory relief. The Secretary responded to Michael's petition and submitted to the Court record the March 7, 2014 notice of administrative exhaustion to the Federal Circuit Court record yet asserted *In re Wick* deprived the U.S. Court of Appeals for Veterans Claims from issuing judgment under 28 U.S.C. 2201 of the Declaratory Judgment Act. The U.S. Court of Appeals for the Federal Circuit declined to vacate the U.S. Court of Appeals for Veterans Claims decision. The judgment of the Court of Appeals for the Federal Circuit concludes "the Veterans Court cannot entertain petitions for declaratory judgments because it is not 'a court of the United States within the meaning of [28 U.S.C. 2201] and cannot derive any powers therefrom' applying the rule of law of *In re Wick* 40 F.3d 367, 372 (Fed. Cir. 1994)(citing *Nagler v. Derwinski*, 1 Vet. App. 297, 306 (1991))."

Due inclement weather and illness petitioner was unable to timely submit her petition for certiorari from the U.S. Court of Appeals for the Federal Circuit. The petition sought mandamus relief in the alternative but such relief was not considered; the petition was subsequently returned. Here Michael, now submits this petition for relief from void judgments in this mandamus action and prays good

cause is shown that relief sought is necessary and appropriate under the circumstances.

REASONS TO GRANT PETITION

The issuance of a writ of mandamus to a lower court is warranted when a party establishes that “(1) ‘no other adequate means [exist] to attain the relief he desires,’ (2) the party’s ‘right to issuance of the writ is “clear and indisputable,” ’ and (3) ‘the writ is appropriate under the circumstances.’ ” *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam) (quoting *Cheney v. United States Dist. Court*, 542 U.S. 367, 380-381 (2004)). Congress unambiguously speaks directly to the precise question of whether Michael has a clear and indisputable legislative and substantive right to judicial relief sought, yet void judgments undermine congressional policy expressed in legislation applicable to judicial review of administrative actions related to the provision of VA benefits.

Absent mandamus relief from this Supreme Court, she is without any other opportunity for relief from void judgments. “It is clear and well established law that a void order can be challenged in any Court.” *Old Wayne Mut. L. Assoc. v McDonough*, 204 U.S. 8, (1907) and “the objection that a federal court lacks subject-matter jurisdiction, see Fed. Rule Civ. Proc. 12(b)(1), may be raised by a party, or by a court on its own initiative, at any stage in the litigation, even after trial and the entry of judgment.” *Arbaugh v. Y&H Corp.* 546 U.S. 500. (2006).

A. Petitioner has no other adequate opportunity for relief from void judgments.

This Court holds law “authorizing this Court to prescribe rules of procedure in civil actions gave it no authority to modify, abridge or enlarge the substantive rights of

litigants or to enlarge or diminish the jurisdiction of federal courts” and legislatively expressed waivers of sovereign immunity are to be “strictly construed”. *United States v. Sherwood*, 312 U.S. 584, 585, 590 (1941). In the absence of guidance by this Supreme Court, the lower Courts misapprehend congressional intent for enactment of the Veterans Judicial Review Act of 1988 (VJRA) and 38 U.S.C. §511 of the Department of Veterans Affairs Codification Act of 1991. As a result Michael suffers actual harm and further harm will be “immediate and irreparable” absent action from this Court due to the deprivation of access to her clear and indisputable right to the relief she seeks.

In *R. de Quijas v. Shearson/American Express*, 490 U.S. 470 (1989) this Supreme Court renounced *Wilko v. Swan*, 346 U.S. 427 (1953) concluding: “It was incorrectly decided, and is inconsistent with the prevailing uniform construction of other federal statutes.” Here, it is not asserted that this Supreme Court decided *Johnson v. Robison*, 415 U.S. 361 (1974) or *Traynor v. Turnage*, 485 U.S. 535 (1988) incorrectly. Rather that following these rulings, Congress has repealed 38 U.S.C. §211 and established “an elaborate remedial system...with careful attention to conflicting policy considerations.” *Bush v. Lucas*, 462 U.S. 367 (1983). Consistent with *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), current VA regulations and other congressional policy establish that no *Bivens* action lies against employees of the U.S. Department of Veterans Affairs. *Zuspan v. Brown*, 60 F.3d 1156 (1995).

B. Void judgments in this case do not constitute judicial review of agency action consistent with 5 U.S.C. 701, et seq. of the Administrative Procedure Act expand or diminish the jurisdiction of the reviewing federal courts and modify, abridge, or enlarge the substantive and legislative rights of the litigants in the present case.

“No action of the parties can confer subject matter jurisdiction upon a Federal Court.” *Ins. Co. Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982) and “All Courts have an independent obligation to determine the existence of its own subject matter jurisdiction even in the absence of a challenge from any party.” *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006) (citing *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999)).”

Renouncement of precedent opinions *Johnson v. Robison*, 415 U.S. 361 (1974) and *Traynor v. Turnage*, 485 U.S. 535 is necessary for correction of seriously erroneous interpretation of statutory language of the Veterans Judicial Review Act of 1988 and the 38 U.S.C. 511 of the Department of Veterans Affairs Codification Act of 1991. The absence of Supreme Court guidance on the legislative creation of a second forum for judicial review of Board of Veterans Appeals benefit adjudications and the repeal of 38 U.S.C. 211 has been profound. The lower courts and this Court have been susceptible to the fraud upon the Courts by officers of the Court of the VA and the Department of Justice. The Supreme Court explains in *R. de Quijas v. Shearson/American Express* circumstances where renouncement is considered:

“Although we are normally and properly reluctant to overturn our decisions construing statutes, we have done so to achieve a uniform interpretation of similar statutory language, *Commissioner v. Estate of Church*, 335 U. S. 632, 335 U. S. 649-650 (1949), and to correct a seriously erroneous interpretation of statutory language that would undermine congressional policy as expressed in other legislation, *see, e.g., Boys Markets, Inc. v. Retail Clerks*, 398 U. S. 235, 398 U. S. 240-

241 (1970) (overruling *Sinclair Refining Co. v. Atkinson*, 370 U. S. 195 (1962)).”

“Jurisdiction” refers to “a court’s adjudicatory authority.” *Kontrick v. Ryan*, 540 U. S. 443, 455 (2004) The Government’s moved for summary dismissal for lack of subject matter jurisdiction and withheld evidence of agency record material to obtain valid judgments observant of relevant law and procedure. *Herring v. United States* 424 F.3d 384 (3rd Cir. 2005) aids petitioner pro se in articulating that all elements necessary to establish fraud upon the courts are present:

“The concept of fraud upon the court challenges the very principle upon which our judicial system is based: the finality of a judgment. The presumption against the reopening of a case that has gone through the appellate process all the way to the United States Supreme Court and reached final judgment must be not just a high hurdle to climb but a steep cliff-face to scale.”

“In order to meet the necessarily demanding standard for proof of fraud upon the court we conclude that there must be: (1) an intentional fraud; (2) by an officer of the court; (3) which is directed at the court itself; and (4) in fact deceives the court. We further conclude that a determination of fraud on the court may be justified only by “the most egregious misconduct directed to the court itself,” and that it “must be supported by clear, unequivocal and convincing evidence.” *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 538 F.2d 180, 195 (8th Cir.1976) (citations omitted).”

Petitioner respectfully scales this steep cliff.

1. Void judgments in this case do not constitute judicial review consistent with 5 U.S.C. §§701, et seq. of the Administrative Procedure Act

“It is the agency’s responsibility to develop the record on which its decision will be based, and then, if its decision is challenged, to compile that record and submit it to

the court.” *Florida Power & Light Co. v. Lorion*, 470 U.S. 729 (1985). VA regulation 38 CFR 14.505 requires:

“All submissions will set forth the question of law on which the opinion is desired, together with a complete and accurate summary of relevant facts. Files, correspondence, and other original papers will not be submitted unless pertinent portions thereof cannot practicably be summarized or copies made and attached as exhibits.”

Here, “the lower courts based their review on the litigation affidavits that were presented” by the Government...”and they clearly do not constitute the “whole record” compiled by the agency: the basis for review required by § 706 of the Administrative Procedure Act.” *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971). The Supreme Court further concluded in *Overton Park*. “Certainly, the Secretary's decision is entitled to a presumption of regularity. *See, e.g., Pacific States Box & Basket Co. v. White*, 296 U. S. 176, 296 U. S. 185 (1935); *United States v. Chemical Foundation*, 272 U. S. 1, 272 U. S. 14-15 (1926). But that presumption is not to shield his action from a thorough, probing, in-depth review.”

In making the foregoing determinations, all reviewing Courts have declined to review the “whole record or those parts of it cited by a party”, which includes submissions to the Courts by Michael, a party to the actions at issue. By failing to believe any of the nonmovant, here Michael, or draw any justifiable inferences her favor, the judicial actions favorable to the Government do not constitute judicial review consistent with 5 U.S.C. §§701 et seq. of the Administrative Act.

a. Text of 5 U.S.C. §706 of the Administrative Procedure Act

It is necessary here to consider 5 U.S.C. §706 of the Administrative Procedure Act due to the departure from “fundamental principles of judicial review of agency actions” by considering only the record submitted by the Government as the proper scope of review for the present action.

5 U.S.C. §706 in its entirety provides:

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
 - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.”

b. The Government’s motion for Fed. Rule Civ. P. 12(b)(1) dismissal of Michael’s claims from the U.S. District Court is for summary judgment for lack of subject matter jurisdiction.

In *Arbaugh*, 546 U.S. 509”, the Supreme Court recognizes what “the Second Circuit incisively observed”: “Judicial opinions often obscure the issue by stating that the court is dismissing ‘for lack of jurisdiction’ when some threshold fact has not been established, without explicitly considering whether the dismissal should be for lack

of subject matter jurisdiction or for failure to state a claim.” *Da Silva v. Kinsho International Corp.*, 229 F. 3d 358, 361 (CA2 2000).

The Government’s litigation affidavits conceal the material threshold fact that Michael observed the procedure established by valid VA regulations 38 C.F.R. §§14.600-14.605; but Michael’s pleadings throughout assert evidence applicable to the concealed record. “A strong showing of such “bad faith or improper behavior” would permit a district court to look beyond the agency-compiled record.” *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 420 (1971). Michael invites the Court’s attention to the following of judicial record to demonstrate such strong showing.

(1) March 7, 2014 decision of Houston VA Regional Counsel of agency record material to the U.S. District Court’s subject matter jurisdiction determination.

(2) review of the judicial orders granting void Fed Rule Civ. Proc 12(b)(1) judgments barring Michael’s FTCA and Privacy Act claims against the United States “with prejudice to refiling in the United States District Courts” holding that the U.S. Court of Appeals for Veterans Claims is the Court of competent jurisdiction for her claims. ; and

(3) September 1, 2016 letter from the Office of the Clerk of U.S. Court of Appeals for Veterans Claims informing Michael after being presented with the March 7, 2014 notice of administrative exhaustion and the judicial orders holding that it is the Court of competent jurisdiction that it could not “act beyond the authority given it by Congress.”

The Supreme Court by per curiam order vacated and remanded the decision of the Fifth Circuit in *Tolan v. Cotton* 572 U.S._2014 upon consideration that “In articulating the factual context of the case, the Fifth Circuit failed to adhere to the

axiom that in ruling on a motion for summary judgment, “the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Anderson v. Liberty Lobby, Inc.*, 477 U. S. 242, 255 (1986).”

Similarly, the reviewing courts believed no evidence presented by Michael or drew any justifiable inference in her favor. Federal Courts have failed to adhere to this axiom in its ruling on the Government’s motion for summary Fed. Rule Civ. P. 12(b)(1) judgment for dismissal of Michael’s FTCA and Privacy Act Claims against the United States.

2. Void judgments in this case expand or diminish the jurisdiction of Federal Courts.

The application of *Zuspann v. Brown* 60 F.3d 1156 (1995) and *In re Wick*, 40 F.3d 367 (Fed. Cir. 1994) in the present case are such unrefined dispositions this Supreme Court has described as “drive-by jurisdictional rulings” that should be accorded “no precedential effect” on the questions whether the federal courts had authority to adjudicate the claim in suit” *Arbaugh*, 546 U.S. 509, 510 citing *Steel Co.*, 523 U. S., at 91. “When a court reviews an agency’s construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.” *Chevron U.S.A, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837. (1984).

a. Congress speaks directly to the precise question of whether 38 U.S.C. 511 is intended as a jurisdictional statute or one of general application.

The Fifth Circuit in *Zuspann* explains: “Federal courts are courts of limited jurisdiction. Section 511 of Title 38, formerly § 211, precludes judicial review of veterans' benefits determinations. In 1988, Congress passed the Veterans' Judicial Review Act (“VJRA”), which clearly announced the intent of Congress to preclude review of benefits determinations in federal district courts.” 38 U.S.C. 511 of the Department of Veterans Affairs Codification Act of 1991 is presently interpreted and applied as a showing of clear and convincing evidence of legislative intent by the lower Court’s to restrict Michael’s access to relief under the Federal Tort Claims Act and the Privacy Act. *See Abbott Laboratories v. Gardner*, 387 U.S. 136, 141 (1967). So, the text and legislative history of 38 U.S.C. §511 must be considered in its entirety to determine whether the intent of Congress is clear.

38 U.S.C. §511 in its entirety reads:

(a) 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.

(b) The second sentence of subsection (a) does not apply to—

(1) matters subject to section 502 of this title;

(2) matters covered by sections 1975 and 1984 of this title;

(3) matters arising under chapter 37 of this title; and

(4) matters covered by chapter 72 of this title.

b. Legislative History of Judicial Review of VA Administrative Actions in Context of Present Case

Zuspann v. Brown is applied as a valid rule of law showing of clear and convincing legislative evidence of congressional intent that “Section 511 of Title 38, formerly §211, precludes judicial review of veterans' benefits determinations” relying on Supreme Court precedent *Johnson v. Robison* 415 U.S. 361 (1974). In so doing, the Fifth Circuit declines to give effect to the 1976 amendment of 5 U.S.C. §§701, et. seq. of the Administrative Procedure Act on October 21, 1976, a partial waiver of the United States sovereign immunity allowing suit to be brought against the United States, any of its agencies, and any of its officers. As a result, the administrative actions of the VA affecting the provision of benefits were no longer shielded from judicial oversight. In *Traynor v. Turnage*, 485 U. S. 541-545 (1988); the Supreme Court considered whether 38 U.S.C. §211 precluded suit brought under statutes applicable to all Federal agencies and valid VA regulations:

The text and legislative history of § 211(a) provide no clear and convincing evidence of any congressional intent to preclude a suit claiming that § 504 of the Rehabilitation Act, a statute applicable to all federal agencies, has invalidated an otherwise valid regulation issued by the VA and purporting to have the force of law. The present cases involve the issue whether the law sought to be administered is valid in light of a subsequent statute whose enforcement is not the exclusive domain of the VA. Permitting these cases to go forward will not undermine § 211(a)'s purposes.”

Shortly thereafter, Congress created the now U.S. Court of Appeals for Veterans Claims; an Article I Court with limited subject matter jurisdiction as set forth by 38 U.S.C. §7251, et seq. of the Veterans Judicial Review Act of 1988. The Fifth Circuit in *Zuspann* takes due account that 38 U.S.C. §7252 is the statute which Congress

has clearly states is jurisdictional in character, but only considers 38 U.S.C. §7252(a) concluding “Jurisdiction to review the Board's decisions is conferred exclusively on the Court of Veterans Appeals” in support of the determination and “in 1988, Congress passed the Veterans' Judicial Review Act (“VJRA”), which clearly announced the intent of Congress to preclude review of benefits determinations in federal district courts.”

Reed Elsevier Inc. v. Muchnick, 559 U.S. 154 (2010) considers relevant: “A statutory requirement is considered jurisdictional if Congress “clearly states that it counts as jurisdictional”; a condition “not ranked” as such should be treated “as nonjurisdictional in character.” *Arbaugh v. Y & H Corp.*, 546 U. S. 500, 515–516.

First, ‘Chapter 5, Title 38 United States Code, Subchapter I’ identifies §§ 501-517 as General Authorities applicable to the authorities and duties of the Secretary; so interpretation of 38 U.S.C. §511 as a statute of general construction and “not ranked as jurisdictional in character by Congress” is consistent with congressional intent. Second, the exception expressed by § 511(b)(4) communicates congressional intent that judicial review of any “matters covered under Chapter 72” is not prohibited. Third, 38 U.S.C. §7252, though specific to the scope of review of the U.S. Court of Appeals for Veterans Appeals as clearly stated by Congress, the statute does not impose limits on the subject matter jurisdiction of the Federal District Court as established by Congress.

c. Congress speaks directly to the precise questions of whether “matters covered under Chapter 72” of Title 38, United States Code are precluded from judicial review in the U.S. District Courts.

A long line of Supreme Court opinions consistently determine that Courts must “look to evidence ‘specific language or specific legislative history that is a reliable indicator of congressional intent,’ or a specific congressional intent to preclude judicial review that is ‘fairly discernible in the detail of the legislative scheme.’” *Bowen v. Michigan Academy of Family Physicians*, 476 U. S. 673 (quoting *Block v. Community Nutrition Institute*, 467 U. S. 340, 467 U. S. 349, 467 U. S. 351 (1984)). So, it must be determined whether there is such fairly discernible congressional intent for enactment of the Veterans Judicial Review Act of 1988 is to “preclude review of benefits determinations in federal district courts.”

38 U.S.C. §7252 establishes the subject matter jurisdiction of the U.S. Court of Appeals for Veterans Claims. In its entirety reads:

“(a) The Court of Appeals for Veterans Claims shall have exclusive jurisdiction to review decisions of the Board of Veterans’ Appeals. The Secretary may not seek review of any such decision. The Court shall have power to affirm, modify, or reverse a decision of the Board or to remand the matter, as appropriate.

(b) Review in the Court shall be on the record of proceedings before the Secretary and the Board. The extent of the review shall be limited to the scope provided in section 7261 of this title. The Court may not review the schedule of ratings for disabilities adopted under section 1155 of this title or any action of the Secretary in adopting or revising that schedule.

(c) Decisions by the Court are subject to review as provided in section 7292 of this title.”

Indeed, §7252(a) unequivocally commands that “the Court of Appeals for Veterans Claims shall have exclusive jurisdiction to review decisions of the Board of Veterans’ Appeals.” §7252(b) resonates with 5 U.S.C. §706 of the Administrative Procedure Act requiring that “review in the Court shall be on the

record of proceedings before the Secretary and the Board and that “the extent of the review shall be limited to the scope provided in section 7261 of this title.”

d. Employment of statutory construction as a means to create a legislative basis to redefine the subject matter jurisdiction of the Court of first instance exceeds Courts of Appeals authority.

The U.S. Court of Appeals for Veterans Claims failed to consider 38 U.S.C. §7251, et seq. of the Veterans Judicial Review Act or 5 U.S.C. §702 of the Administrative Procedure Act in its determination that it lacks authority to issue judgment under 28 U.S.C. §2201 of the Declaratory Judgment Act against the United States. §2201 provides “any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” “The sovereign immunity defense has been withdrawn only with respect to actions seeking specific relief other than money damages, such as an injunction, a declaratory judgment, or a writ of mandamus. *Bowen v. Massachusetts*, 487 U.S. 879 (1988).”

5 U.S.C §702 of the APA provides:

“A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party.”

In re Wick, 40 F.3d 367 (Fed. Cir. 1994), is applied as the relevant law by the U.S. Court of Appeals for the Federal Circuit to determine the U.S., Court of Appeals for Veterans Claims lacks authority to issue judgment under 28 U.S.C. 2201 of the Declaratory Judgment Act. The appellate Court explains:

“Rather, the Veterans Court cannot entertain petitions for declaratory judgments because it “is not ‘a court of the United States’ within the meaning of [28 U.S.C. 2201] and cannot derive any powers therefrom.” In *re Wick* 40 F.3d 367, 372 (Fed. Cir. 1994)(citing *Nagler v. Derwinski*, 1 Vet. App. 297, 306 (1991)). As the Court observed in *Wick*, the term “court of the United States” is defined by statute as any court created by Act of Congress whose judges “are entitled to hold office during good behavior.” *Id.* (quoting 28 USC 451) the Veterans Court judges on the other hand, are appointed by the President to serve a term of fifteen years *Id.* (citing 38 U.S.C. 7253).”

“Only Congress may determine a lower federal court’s subject-matter jurisdiction. U.S. Const., Art. III, §1.” *Kontrick v. Ryan*, 540 U.S. 452 (2004). Any Court that is not the Supreme Court is a lower Court, so the authority of the U.S. Courts of Appeals to review decisions in the Federal Courts of first instance does not allow employment of statutory construction in a manner that expands or diminish another lower Court’s subject matter jurisdiction as established by Congress. 28 U.S.C. 451 is a statute of general construction under Part I, Chapter 21, Title 28, United States Code, entitled “General Provisions Applicable to Courts and Judges” and defines the general characteristics of “Courts of the United States.

“The term “court of the United States” includes the Supreme Court of the United States, courts of appeals, district courts constituted by chapter 5 of this title, including the Court of International Trade and any court created by Act of Congress the judges of which are entitled to hold office during good behavior.”

There is no question that the U.S. Court of Appeals for Veterans Claims is a “Court created by Act of Congress” the Veterans Judicial Review Act of 1988. According to Article III, §1, “The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold

their offices during good behavior.” As a Court ordained and established by Congress consistent with Article III, good behavior is a characteristic shared by “judges, both of the supreme and inferior courts” without any regard for a term limit or lifetime appointment, so the appellate Court’s reasoning that term limits of the judges minimize the jurisdiction of a Federal Court does not resonate with Article III, §1. “Judicial power of the United States, shall be vested in one Supreme Court and in such inferior Courts as Congress shall ordain and establish.” This Court holds in *Palmore v. United States*, 411 U.S. 389 (1973):

“(a) The jurisdictional grant respecting “such inferior Courts as the Congress may from time to time ordain and establish” requires neither that only Art. III courts hear and decide cases within the judicial power of the United States nor that each inferior court be invested with all the jurisdiction flowing from Art. III.”

Presently Michael has standing as set forth by *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). She suffers injury in fact because she is deprived of her legislative and substantive right to seek civil remedy and declaratory relief sought. The injuries are not hypothetical or based on conjectural, rather they are concrete and particularized as evidenced by judicial orders. The Government’s conduct to obtain the judgments at issue renders Michael’s claims effectively unreviewable in any Court. Only a favorable decision by this Supreme Court will redress her injury to establish a rule of law consistent with the unambiguous intent of Congress for judicial review of the VA administrative actions adversely affecting the provision of her benefits.

3. Void judgments in the present case modify, abridge or enlarge the substantive and legislative rights of litigants.

The present rule of law established in the absence of Supreme Court's guidance allows the Government to vitiate the separation of powers doctrine and obtain what this Court describes as "particularly injurious or novel privilege rulings," *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 110 (2009). Although this Court affirms the Fifth Circuit's judgment, in *R. de Quijas v. Shearson/Am. Express* this Court admonishes the Courts of Appeals to follow the case which directly controls:

"We do not suggest that the Court of Appeals, on its own authority, should have taken the step of renouncing *Wilko*. If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions."

In this unusual circumstance, the U.S. District Courts and the U.S. Court of Appeals have no Supreme Court precedent to apply that is relevant law; the Government's conduct exacerbates this problem. First, *Johnson v. Robison* and *Traynor v. Turnage* were decided prior to congressional enactment of the Veterans Judicial Review Act of 1988 and the Department of Veterans Affairs Codification Act of 1991. As a result this creates a second forum for judicial review of the administrative actions of VA affecting the provision of benefits and repeals 38 U.S.C. §211. Neither precedent opinion *Johnson* or *Traynor* is equipped to address the unambiguously expressed intent of the exception of 38 U.S.C. 511(b)(4) which makes clear that "matters covered under Chapter 72" are not subject to the unambiguous bar expressed in 38 U.S.C. §511(a). Chapter 72, Title 38, United

States Code, is applicable to the subject matter jurisdiction of the U.S. Court of Appeals for Veterans Claims in general.

Second, this Court holds:

“the requirement that a court have personal jurisdiction flows from the Due Process Clause and protects an individual liberty interest...Due process is violated by a rule establishing legal consequences of a failure to produce evidence only if the defendant's behavior will not support the presumption that "the refusal to produce evidence material to the administration of due process was but an admission of the want of merit in the asserted defense." *Ins. Co. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982).

There is no dispute between the parties about whether the District Court has personal jurisdiction over the parties, however the Government's conduct to obtain judgments which violate Michael's right to due process to protect her individual liberty interests establishes legal consequences.

The March 7, 2014 notice of administrative exhaustion is evidence material to the administration of due process. The Houston VA Regional Counsel advises Michael “you may file suit in accordance with the Federal Tort Claims Act, sections 1346(b) and 2671-2680, title 28, United States Code, which provides that a tort claim that is administratively denied may be presented to a Federal district court” was omitted by the Government and not from being afforded the presumption of regularity it is due. The asserted defense by the Government that “her exclusive remedy for veterans benefits lies under the Veterans Judicial Review Act (“VJRA”), 38 U.S.C. §§ 7251 *et seq.*, and 38 U.S.C. § 511 (a)” in its Motion for Fed. Rule Civ. P. 12(b)(1) for lack of subject matter jurisdiction is want of merit. Michael has asserted the

substantive right under the Due Process Clause of the Fifth Amendment of the U.S. Constitution, yet this does not render her claims as claim relying only on the U.S. Constitution for judicial remedy warranting application of a *Bivens* remedy.

Third, simply put, the question of whether 38 U.S.C. §511 is a statutory bar to judicial review of “matters covered under Chapter 72” in the U.S. District Court has not been answered by this Court. It has been answered by Congress through promulgation of VA regulations whether Michael has a legislative right to civil remedy under the Federal Tort Claims Act and the Privacy Act whenever administrative actions of VA employees adversely affect the provision of VA benefits are without observation of applicable law procedure and evidence in the record before the agency.

VA regulations 38 CFR §1.579 and 38 CFR §20.1201 promulgate the procedure for individual VA benefit claimants to “exercise fully his or her right under 5 U.S.C. §552a” of the Privacy Act with respect to the record relied upon in Board of Veterans Appeals decisions. VA regulations 38 CFR §§14.600-14.605 establish the procedure for claims colorable under 28 U.S.C. §1346(b) that “an action against the United States under 28 U.S.C. §§2671- 2680 is the exclusive remedy under these circumstances.” *Encino Motorcars v. Navarro*, 579 U.S. ___, 2016 the Supreme Court holds:

“(a) When an agency is authorized by Congress to issue regulations and promulgates a regulation interpreting a statute it enforces, the interpretation receives deference if the statute is ambiguous and the agency’s interpretation is reasonable. See *Chevron*, *supra*, at 842– 844.

When Congress authorizes an agency to proceed through notice and comment rulemaking, that procedure is a “very good indicator” that Congress intended the regulation to carry the force of law, so Chevron should apply.”

a. Board of Veterans Appeals appellate benefit decisions must rely on a record maintained in compliance with 5 U.S.C. §552a of the Privacy Act

38 CFR §20.1201 applicable to requests for amendment of Board of Veterans Appeals decisions with specificity cite 38 CFR §1.579 and 5 U.S.C. §552a of the Privacy Act as relevant law. “A request for amendment of an appellate decision under the Privacy Act (5 U.S.C. §552a) may be entertained... The Board will review a request for correction of factual information set forth in a decision...The denial will satisfy the procedural requirements of § 1.579 of this chapter.” 5 U.S.C. §552a(g)(1)(C)(D) provides civil remedies whenever any agency, including the U.S. Department of Veterans Affairs:

“(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.”

The statute further advises the reviewing U.S. District Court in §§552a(g)(2)(A)(B) and (g)(3)(A)(B) that the Court “shall determine the matter de novo” and “the court may assess against the United States reasonable attorney fees and other litigation

costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.”

§552a(g)(4) provides: “In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

“(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.”

§552a(g)(5) particularly applicable here establishes:

“An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.”

b. VA regulations 38 CFR §§14.600-14.605 promulgate the procedure for Michael's exclusive statutory judicial remedy for claims colorable under 28 U.S.C. §1346(b).

Michael's request for amendment of her individual record in exercise of her right under 5 U.S.C. §552a of the Privacy Act was submitted to the Secretary's delegate consistent with VA regulation 38 CFR §1.579 and as set forth by 38 CFR §14.604:

“(a) Each person who inquires as to the procedure for filing a claim against the United States, predicated on a negligent or wrongful act or omission of an employee of the Department of Veterans Affairs acting within the scope of his or her employment, will be furnished a copy of SF 95, Claim for Damage, Injury, or Death. The claimant will be advised to submit the executed claim directly to the Regional Counsel having jurisdiction of the area wherein the occurrence complained of took place. The claimant will be advised to submit the executed claim directly to the Regional Counsel having jurisdiction of the area wherein the occurrence complained of took place.”

“(b) A claim shall be deemed to have been presented when the Department of Veterans Affairs receives from a claimant, his or her duly authorized agent or legal representative, an executed SF 95, or other written notification of an incident, together with a claim for money damages, in a sum certain, for damage to or loss of property or personal injury or death”

“(c) A claim presented in compliance with paragraphs (a) and (b) of this section may be amended by the claimant at any time prior to final Department of Veterans Affairs action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a).”

On March 7, 2014, the Houston VA Regional Counsel issued notice of administrative exhaustion denying Michael's request for amendment of her record relied upon by the agency to adversely affect the provision of her benefits.

“We again take the opportunity to inform you (as we did in our letter of September 5, 2012 related to your last SF-95 filing) that the issues which you have raised in your last submission-VA benefit matters – cannot by law be considered under the Federal Tort Claims Act. Thus your submission constitutes a non-payable claim which cannot be considered under the FTCA. Accordingly, your claim is hereby denied.”

c. Congress speaks directly to whether the Government has a legislative duty to disclose evidence of agency record material to judicial review of agency actions under the Federal Tort Claims Act.

This Honorable Supreme Court, consistent with 5 U.S.C. §706 (APA); establishes that “the reviewing court must conduct a substantial inquiry.” “Scrutiny of the facts does not end, with the determination that the Secretary has acted within the scope

of his statutory authority...the court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. The final inquiry is whether the Secretary's action followed the necessary procedural requirements." *Overton Park*, 401 U.S. at 415-418. Just as Congress speaks directly to the scope of duties and authority of Federal Courts and Federal agencies, such diligence required of officers of the Courts; The duties and authority of the U.S. Department of Justice in conduct of litigation in which the United States, an agency or officer is a party of is interested must also be given effect as law.

28 U.S.C. §516 establishes the unambiguous legislative intent of Congress that: "Except as otherwise authorized by law conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, and securing evidence therefor, is reserved to officers of the Department of Justice, under the direction of the Attorney General." VA regulation 38 CFR §14.600(b) establishes: "The regulations issued by the Department of Justice at 28 CFR part 14 are applicable to claims asserted under the Federal Tort Claims Act, including such claims that are filed with VA. The regulations in §§ 14.600 through 14.605 of this part supplement the regulations at 28 CFR part 14." § 14.1 makes clear the scope of the regulations at 28 CFR part 14. "These regulations shall apply only to claims asserted under the Federal Tort Claims Act." This is such a claim.

28 CFR §14.6 (e) *Procedure*. When Department of Justice approval or consultation is required, or the advice of the Department of Justice is otherwise to be requested,

under this section, the written referral or request of the Federal agency shall be directed to the Director at any time after presentment of a claim to the Federal agency, and shall contain:

- (1) A short and concise statement of the facts and of the reasons for the referral or request;
- (2) Copies of relevant portions of the agency's claim file; and
- (3) A statement of the recommendations or views of the agency.

28 CFR §14.11 recognizes with respect to supplementing regulations of the VA:

“Each agency is authorized to issue regulations and establish procedures consistent with the regulations in this part.” Furthermore, 28 CFR 14.2(a) establishes:

“For purposes of the provisions of 28 U.S.C. 2401(b), 2672, and 2675 a claim shall be deemed to have been presented when a Federal agency receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death.”

“Where a court has jurisdiction”...“its judgment, until reversed, is regarded as binding”...But if it act without authority, its judgments and orders are nullities; they are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal, in opposition to them; they constitute no justification, and all as trespassers” *Elliot v. Lessee of Piersol* 26 U.S. 328, 329 (1828). Such is the present case.

C. Mandamus Relief is Appropriate under the Circumstances.

Mandamus relief in the present case is important to “proper judicial administration” *La Buy v. Howes Leather Co.*, 352 U.S. 249, 259–60 (1957) and an appropriate means for the Supreme Court to exercise its appellate authority to correct a district court’s answers to “basic, undecided” legal questions. *Schlagenhauf*

v. Holder, 379 U.S. 104, 110 (1964) of whether VA benefit matters are within its subject matter jurisdiction when the claim is colorable under 28 USC §1346(b). This case presents special circumstances justifying mandamus review of basic, unsettled, recurring legal issues over which there is considerable litigation producing disparate results resulting in the modification and abridgement of the substantive and legislative rights of individual VA benefit claimants to judicial review of the administrative actions and access to civil remedy.

Furthermore, “Although the writ of mandamus is extraordinary relief, this Court has explained that it is appropriately used: “to confine an inferior court to a lawful exercise of its prescribed jurisdiction” *Roche v. Evaporated Milk Ass’n*, 319 U.S. 21, 26 (1943); and to correct “particularly injurious or novel privilege rulings,” obtained by improper conduct of officers of the Court. *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 110 (2009).

CONCLUSION

The Court should vacate the void judgments of the lower courts and issue a writ of mandamus to the district court ordering to grant Michael access to her legislative and substantive right to relief denied and to officers of the Court to present the record before the agency consistent with applicable law and procedure. In the alternative, the Court should order the U.S. Court of Appeals for Veterans Claims to issue judgment against the United States under 28 U.S.C. 2201 of the Declaratory Judgment Act to resolve the question of law of whether it is the court of competent jurisdiction to review Michael’s claims colorable under 28 U.S.C. 1346(b).

Respectfully submitted,

/s/ Stephanie Michael

Stephanie Michael, Petitioner Pro Se

P.O. Box 96758

Houston, Texas 77213

Email: stephmec2@yahoo.com

Phone: (713) 545-5126