

No. 17-9323

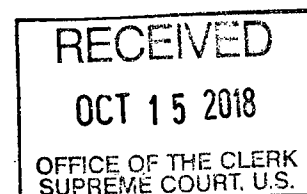
**In the
Supreme Court of the United States**

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*

Application for Extension to file Petition for Writ of Mandamus

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To the Honorable Associate Justice, Circuit Justice for the U.S. Court of Appeals for the Fifth Circuit, Samuel A. Alito, Jr. of the Supreme Court of the United States:

On October 10, 2018, Stephanie Michael, pro se, respectfully and timely files this request for an extension of time to file Petition for Writ of Mandamus to the U.S. District for the Southern District of Texas and the U.S. Court of Appeals for Veterans Claim. On October 1, 2018 the Honorable Court denied petition to proceed in forma pauperis has allowed the Petitioner to proceed upon filing petition conforming with Supreme Court Rule 33.1 and pay the filing fee by October 22, 2018. Petitioner requests an extension to file conforming petition with filing fee on or before December 4, 2018.

JURISDICTION STATEMENT

This Court would have jurisdiction as provided by 28 USC §1651(a) All Writs Act.

WHY IS THIS PETITION IMPORTANT?

PROCEDURAL BACKGROUND

“On appeal—even for the first time at the Supreme Court—a party may attack jurisdiction after the entry of judgment in the district court and all courts have an “independent obligation to determine whether subject matter jurisdiction exists, even in the absence of a challenge from any party.” *Arbaugh v. Y&H Corp.* 546 U.S. 500 (2006). The Government can summarily obtain void Fed. Rule Civ. P. 12(b)(1) judgments based on the rule of law according *Johnson v. Robison* and *Traynor v. Turnage* precedential effect on the question of whether matters covered under

Chapter 72, Title 38, of United States Code are within the subject matter jurisdiction of the U.S. District Court and U.S. Court of Appeals for Veterans Claims.

This exceptional circumstance is exacerbated by the U.S. Court of Appeals for the Federal Circuit's advancement of the Government's litigation positions with its precedent opinion *In re Wick*, 40 F.3d 367 (Fed Cir. 1994). The Federal Circuit, takes due account of 38 U.S.C. §7252 as the statute identified by Congress as the jurisdictional statute defining the subject matter jurisdiction of the U.S. Court of Appeals for Veterans Claim, yet acts beyond its appellate authority [38 U.S.C §7292] and by statutory construction created 28 U.S.C. §451 and 38 U.S.C. §7253 as a legislative basis to diminish the subject matter jurisdiction of the U.S. Court of Appeals for Veterans Claims to issue declaratory judgements to resolve the ongoing controversy introduced to matters covered under Title 38 U.S.C. Chapter 72.

Judicial orders of this Honorable Court, U.S. Court of Appeals for the Fifth Circuit in effect affirm the conferral of subject matter jurisdiction of Petitioner Pro Se Federal Tort Claims Act and Privacy Act Claims upon the U.S. Court of Appeals for Veterans Claims, by the U.S. District Court for the Southern District of Texas. Michael presented these judicial orders, a Motion for Leave to Proceed, and the attached March 7, 2014 Notice of Administrative Exhaustion to the U.S. Court of Appeals for Veterans Claims for judicial review and remedy set forth by the decision of the Secretary to deny request for amendment of record as provided by VA regulations and the Privacy Act accordingly.

The U.S. Court of Appeals for Veterans Claims declined to exercise the authority conferred upon it by judicial order —as well as the authority provided it by Congress to provide judgments under 28 U.S.C. 2201 of the Declaratory Judgement Act and waiver of sovereign immunity provided within 5 U.S.C. §702 of the Administrative Procedure Act.

On appeal, the U.S. Court of Appeals for the Federal Circuit applied *In re Wick*, 40 F.3d 367 (Fed Cir. 1994). The precedent opinion cites several Supreme Court opinions; in direct conflict with them all and existing valid law extant that time, yet the conclusion returns to its own opinion. The Federal Circuit explains its interpretation of its appellate authority in the determination 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.

“If the Court of Veterans Appeals lacked jurisdiction over the matter, then "we have jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the court in entertaining the suit."

See *Bender*, 475 U.S. at 541, 106 S. Ct. at 1331 (*quoting United States v. Corrick*, 298 U.S. 435, 440, 56 S. Ct. 829, 832, 80 L. Ed. 1263 (1936)).”

Bender, 475 U.S. at 541,543 holds:

(a) Federal courts have only the power that is authorized by Article III of the Constitution and the federal statutes enacted pursuant thereto. Every federal appellate court must satisfy itself that the party seeking

to invoke its jurisdiction has a sufficient stake in the outcome of the litigation to support that jurisdiction.”

Michael has standing since she suffers injury in fact by the Government’s conduct which invades her legally protected interest to obtain judicial review of administrative actions of VA refusal to amend her effective date for payment of relief benefits. The Government’s conduct in Michael’s FTCA and Privacy Act proceedings have resulted void judicial orders affirming in the waiver, forfeiture, and judicial conferral of subject matter jurisdiction of the upon the U.S. Court of Appeals for Veterans Claims by the U.S District Court, this is concrete, actual, and particularized. She suffers further imminent injury incurring expense to submit a third petition to the Honorable court and the loss of relief benefits in which she has a property interest. Her claims are effectively unreviewable absent action from this Court. Congress has spoken directly and precisely through congressional policy for Michael to obtain relief sought yet denied.

Where a court has jurisdiction, it has a right to decide any question which occurs in the cause, and whether its decision be correct or otherwise, its judgments, until reversed, are regarded as binding in every other court. But if it acts without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a remedy sought in opposition to them, even prior to a reversal. They constitute no justification, and all persons concerned in

executing such judgments or sentences are considered in law as trespassers. *Elliot v. Lessee of Piersol*, 26 U.S. 328 (1828)

The U.S. Court of Appeals for the Federal Circuit has in authority it does not possess has issued a decision the U.S. Court of Appeals for Veterans Claims observes as stare decisis that the U.S. Court of Appeals for Veterans Claims is not by definition under 28 U.S.C. §451 a Court of the United States because of the term limits on the judges in service to the Article I Court, and therefore lacks authority to issue judgments under 28 U.S.C. §2201 of the Declaratory Judgement Act. This is addressed in Petitioner Pro Se Petition for Panel Rehearing denied by per curiam order:

“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.”

The U.S. Court of Appeals for Veterans Claims is an Article I court, an inferior Court Congress has ordained and established by enactment of the Veterans Judicial Review Act of 1988, consistent with Article III, §1 authority:

“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 behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.”

38 U.S.C. §7252 is the statute ranked as the jurisdictional statute established under statutory authority by Chapter 72, Title 38, United States Code. This Court holds that only Congress has the authority determine the subject matter jurisdiction of a lower Court”; the Courts cannot pick and choose between legislative enactments;

much less have “authority to modify, abridge or enlarge the substantive rights of litigants or to enlarge or diminish the jurisdiction of federal courts.” Furthermore, Article III, 1 stipulates good behavior is required of judges, whether “supreme and inferior courts” of all judges during their continuance of office, therefore is consistent with language applicable to a statute of general application.

Michael, as well as many other veterans, are without access to their indisputable right to judicial review of decisions of the Secretary of matters covered under Chapter 72, Title 38, of the United States Code under laws affecting the provision of VA benefits. 38 U.S.C. §511(b)(4) is what this Court terms, “in effect, a specialized forum selection clause” in the U.S. District Court or the U.S. Court of Appeals for Veterans Claims. The procedure for judicial relief sought consistent with the subject matter jurisdiction of these Federal Courts is established by decisions of the Secretary published in the U.S. Federal Register as law, that are final and conclusive that may not be reviewed by any other official,(i.e. the Government, officers of the court, or federal employees), or by any Court, whether by an action in the nature of mandamus or otherwise.

WHY MUST THIS COURT ACT?

ONLY THIS COURT HAS AUTHORITY TO CONTROL VEHICLE.

Johnson v. Robison 415 U.S. 361 (1974) and *Traynor v. Turnage* 485 U.S. 535 (1988) are the case law which directly controls questions of law related to judicial review of administrative actions of the VA under laws affecting the provision of benefits. Inherently questions related to subject matter jurisdiction must be resolved.

First, Federal Courts have a duty to perform their independent obligation to determine whether subject matter jurisdiction exists. Second, this Honorable Court holds that subject matter jurisdiction of a lower Court can only be determined by Congress, therefore it cannot be waived or forfeited, nor conferred, much less be determined based on any actions of the parties. Third, in addition to performing duties consistent with the authority provided them by Congress, the lower Courts must follow the case which directly controls and are to “leave to this Court the prerogative of overruling its own decisions.”

VEHICLE IDENTIFICATION AND INSURANCE

The Government enjoys a vehicle that allows manipulation of the record presented in the lower courts to obtain void Fed. Rule Civ. P. 12(b)(1) judgements for dismissal for lack of subject matter jurisdiction in the U.S. District Courts and the U.S. Court of Appeals for Veterans Claims. The vehicle is insured by:

- (1) the duty of the lower courts to accord a presumption of regularity to the Government’s presentation of the record in its litigation affidavits;
- (2) to apply the controlling law leaving to this Court the prerogative to overrule its own precedent;
- (3) and the Government’s right to exercise silence rather than inform the Honorable Supreme Court of this pervasive issue when a potentially viable petition is presented.
- (4) U.S. Court of Appeals for the Federal Circuit’s seriously erroneous interpretation of Article III of the U.S. Constitution, Supreme Court precedent, and the statutory

language of laws applicable to judicial review of administrative actions of matters covered under Chapter 72, Title 38, of United States Code.

HOW IS INSURANCE OF IDENTIFIED VEHICLE MAINTAINED?

The insurance for this vehicle is maintained in the absence of plenary action and guidance from this Honorable U.S. Supreme Court. The conduct of the Government evinced here unchecked will have deleterious results beyond veterans' affairs. The U.S. Court of Appeals for the Federal Circuit' alchemic interpretation of Article III of the U.S. Constitution, U.S. Supreme Court precedent, and statutory language of matters covered under Chapter 72, Title 38 of United States Code in the case of *In re Wick*, 40 F.3d 367 (Fed Cir. 1994) is what this Court terms as a "particularly novel and injurious ruling." *Mohawk Indus. v. Carpenter*, 558 U.S. 100 (2009).

The present case addresses the dilemma of the U.S. Court of Appeals for the Fifth Circuit and the other lower Courts to include the U.S. Court of Appeals for Veterans Claims when presented with claims under laws affecting the provision of benefits by the U.S. Department of Veterans Affairs. In *R. de Quijas v. Shearson/American Express*, 490 U.S. 477 (1989) the Supreme Court adopted the Fifth Circuit's conclusion that *Wilko v. Swan* should be renounced, the Honorable Court further establishes:

"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.”

Here, the Fifth Circuit by non-precedential per curiam order, and likely the other lower courts have determined it better to abandon their duties related to determining their subject matter jurisdiction and will likely continue to do so. It is an understandable statement of reverence for the authority and immutable function of the U.S. Supreme Court by the lower Courts. It is not however, the expressed intent of other U.S. Supreme Court precedent or Article III of the Constitution, or the separation of powers doctrine that the U.S. Judiciary may be impeded by conduct by officers of this Honorable Court without essential guidance and correction from the Supreme Court. The exceptional circumstance here is not the expressed policy of law as underwritten by precedent of this Honorable Supreme Court, the U.S. Constitution, the U.S. Congress, or the Secretary of the U.S. Department of Veterans Affairs.

AND IF THE SUPREME COURT DECLINES TO ACT...

KEYS PERMISSIBLY REMAIN AVAILABLE FOR OPERATION OF VEHICLE

The Government’s conduct unchecked will likely continue if remaining permissible to usurp judicial and legislative authority to advance litigation position to shield itself from liability for administrative actions of employees related to VA benefits, especially if not compelled to respond. The exercise of silence at the Supreme Court are the essential key to access the vehicle described in this action.

POLICY OWNER IS DEEMED RESPONSIBLE

The problem with keys to a vehicle in the hands of an operator, here officers of the Court, that takes liberties that compromise the owners of judicial and legislative power and policy, the driver may become emboldened. The unchecked conduct of such an operator may navigate the vehicle into areas or circumstances that will further compromise owners of judicial and legislative power. (i.e., expansion of Bivens claims remedy into contexts as preferred, forum selection manipulation of subject matter jurisdiction of Federal Courts as preferred). The integrity of the U.S. Judiciary and the protection of the substantive and legislative rights of VA benefit claimants are at the mercy of this Honorable Supreme Court.

QUESTIONS PRESENTED

1. Whether seriously erroneous interpretation of statutory language of the Veterans Judicial Review Act of 1988 and the Department of Veterans Affairs Codification Act of 1991 undermine congressional policy as expressed in other legislation related to judicial review of administrative actions of the U.S. Department of Veterans Affairs under laws affecting individual benefit matters.
2. Whether mandamus action by the U.S. Supreme Court is warranted to provide relief from void judgments obtained due to the Government's misconduct exploiting the lower Courts decision to leave to this Court the prerogative of overruling its own decisions rather than exercise the authority provided them by Congress to adjudicate claims within their own subject matter jurisdiction.

**Additional material
from this filing is
available in the
Clerk's Office.**