

24-5304

No. _____

FILED

AUG 05 2024

OFFICE OF THE CLERK
SUPREME COURT, D.C.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Angela Goldman Selby — PETITIONER
(Your Name)

vs.

Denis McDonough — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeal for the Federal Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Angela Goldman Selby

(Your Name)

1937 S US Hwy 79

(Address)

Carthage, TX 75633

(City, State, Zip Code)

(318) 560-7567

(Phone Number)

QUESTION(S) PRESENTED

1. Did the Veteran Affairs act in Color of Law when they created a regulation and applied it as if it was an order of the District Court consent decree instead of paying the estate of deceased veterans money owed to them at time of death for exposure to Agent Orange as ordered? Title 18, U.S.C., Section 242
2. Did the Veteran Affairs activate the Takings Clause and violate a veteran's Fifth Amendment Right by taking money owed to him due to service connected disabilities from exposure to Agent Orange, and dispersing it against the order of court and his Last Will and Testament probated in the state of Texas?
3. Is it a violation of the Fifth Amendment Right to Due Process to disburse money owed to a deceased veteran before giving his personal representative the Right to Appeal?

LIST OF PARTIES

- x] All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- Selby v. McDonough, No. 2024-1066, U.S. Court of Appeals, Federal Circuit. Judgement entered May 7, 2024.
- Selby v. McDonough, No. 22-5763, U.S. Court of Appeals for Veterans Claims. Judgement entered September 6, 2023.
- Appeal of Angela G. Selby in the case of James D. Goldman, Board of Veteran Appeals, No. 220610-252413. Judgement entered September 21, 2022.
- Award of Service-Connected decision letter, June 21, 2022.

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Walters v. Radiation Survivors, 473 U.S. 305 (1985)	4
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STATUTES AND RULES

38 C.F.R 3.816

18 U.S.C. § 242

VAOPGCADV 28-90

VAOPGCPREC 27-91

VAOPGCPREC 69-91

VAOPGCPREC 5-98

VAOPGCPREC 3-2019

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

is unpublished.

1.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 7, 2024.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

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

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Nehmer Consent Decree

38 C.F.R. 3.816

Title 18, U.S.C., Section 242

U.S. Constitution, 5th Amendment, Due Process

U.S. Constitution, 5th Amendment, Takings Clause

STATEMENT OF THE CASE

Our veterans take an oath to defend and protect the Constitution of the United States when they enlist. Without them and their sacrifice we would not have this great nation or the Constitution. The Veteran Affairs are taking the rights away from our veterans when they are supposed to be taking care of them.

The Federal Court of Appeals does not believe I addressed a Constitutional issue, but the Supreme Court addressed veterans' disability compensation is protected under the 5th amendment as a property interest and due process of law, 473 U.S. 305 (1985). If this is truly property protected under the 5th amendment how does the VA, a federal agency, have authority to disperse a veteran's property when the veteran has a valid Will probated under state law?

The class action lawsuit *Nehmer v. Veteran Affairs* started in 1986. Judge Henderson was asked to clarify the consent decree in that case several times and every time it was explained that if a veteran had deceased before payment was made, payment goes to the estate. The VA defied the courts and refused to do so.

Precedent opinions within the VA are opinions of law given by general counsel and those opinions bind VA officials and employees to abide by them. VAOPGCADV 28-90 allows the Secretary to make any amendment and regulation, and they should be applied liberally. VAOPGCPREC 27-91 explains that if the VA has made an erroneous decision in a determination of benefits, the Secretary has the discretion under Section 210 to provide relief as he sees fit. In VAOPGCPREC 69-91 the Secretary is not prohibited from making a liberalizing amendment to part 3, title 38 of the Codes of Federal Regulations. In VAOPGCPREC 5-98 John Thompson stated that the VA did not have authority to disperse funds that belonged to a deceased veteran, and was not aware that any laws existed. In 2002, the class action case of *Nehmer* was back in court, the Ninth Circuit affirmed the interpretation of the District Court's order in the consent decree to pay the estates of deceased veterans and the judge

explained in detail how they could when the VA once again opposed. In 2003 the VA posted in the Federal Register that Judge Henderson's consent decree was 38 CFR 3.816, which I believe is fraud under U.S.C. 1001 because the statement is false. In *Nehmer v. US Dept. of Veterans Affairs*, 494 F. 3d 846, Court of Appeals, 9th Circuit 2007, the VA appealed the Nehmer case trying to get out of the consent decree order of the District Court. The statement I found most alarming from the judge was, "We are unwilling to read 38 U.S.C. § 502 as granting to the VA the power to unilaterally eliminate jurisdiction of a district court, to forfeit that court's right to supervise and implement its own equitable orders, and to redirect what is effectively a motion to vacate an injunction from a district court to a court of appeals in another circuit. Finally, the VA's proffered interpretation of § 502 would raise a most troubling question of separation of powers under the Constitution, a question that, because the VA's argument fails for so many other reasons, we need not definitively answer today."

There was another Precedential Opinion issued in, VAOPGCPREC 3-2019, which explains in detail why they won't be following court orders from the District Court and applying 38 CFR 3.816 and will let the court know, Appendix H. This level of arrogance shows that they are rarely held accountable for their actions, and the ones that are suffering are the veterans and their families. During a time when so many veterans are suffering due to exposure to Agent Orange and needs help the most, they are denied.

James Goldman was one of those veterans. He served in Vietnam and was exposed to Agent Orange during his service. He was diagnosed with bladder cancer in 2006 and went through many procedures of scraping his bladder and inserting chemo before he eventually lost his bladder and prostate in 2008. My father came to live with me when he was first diagnosed so I could care for him and I never left him after that. After the surgery we went into a VA Urologist Clinic to have the stints removed from the tubes that once went to his bladder and then went to his stoma. The clinic failed to make sure there was adequate urine output before sending us home and later that evening my father started having extreme pain. When I noticed there was no fluid in his bag, I rushed him back to the VA. The tubes had collapsed and all of that fluid had backed up onto his kidneys which caused him to go into kidney failure.

They were able to get one kidney to function again, but the other one never came back. There were so many hospital trips and clinic visits, and since my son was sick too with chronic asthma most of my days and nights were caring for them both while trying to work. We fought for six years from 2006 to 2012, and during those years I was responsible for my little family financially as I looked after their care. I was all James Goldman had, and I gladly put my life on hold to give him the best quality of life I could. The VA talks about the last illness, the whole last 16 years of his life was a struggle but I always refused to let him face any struggle alone. I was not able to get aid and attendance or care givers help. I had to sell our home after he passed away because I wasn't able to work or go back to school the last several years of his life so I couldn't afford it. The reason I continue to fight this case now is because it was bad enough for the VA to wait until after he died to recognize that his suffering was due to exposure while serving his country. It was a bigger blow for them not to honor his last wishes that he took the time to make law binding. This compensation was due to the suffering James Goldman endured for 16 years. They did not even compensate him for the hole in his side that I had to glue a bag onto every other day so it could collect his urine. The VA did not share in that with him, in fact, they added to it by denying him when he needed it most and then giving it to those that aided in part of his suffering. I am the only person able to collect any money owed to James Goldman because he gave me that right. He certainly did not sign any waiver for the VA to do so. The VA took James Goldman's right to property away by not allowing me to collect on his behalf per his explicit wishes, and they denied mine as well under Color of Law. The VA also violated the Fifth amendment on two counts: 1) The Takings Clause by taking money ordered to go to me and dispersing it against a court order and the Constitution, 2) Due Process by not giving me the right to an appeal before dispersing the money.

REASONS FOR GRANTING THE PETITION

Our veterans deserve so much better than what they have been given. The VA should be held to a higher standard. This level of behavior makes me wonder who holds them accountable? I think it is time that politics stay out of the Veteran Affairs. No veteran should be suffering at the hands of our government and left to fight that burden alone, but so many still do. I want to hold them accountable not just for my father, but for every other veteran that does not or did not have anyone to represent them or care for them. Every body of government should be ashamed that this is happening to our veterans, and do more to prevent it.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Cengiz Goldna Es

Date: 8-5-2024