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SUPREME COURT, U.S.

No. 25-1021

In the Supreme Court of the United States

RICHARD CORNELIUS JACKSON,

Petitioner,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Merit Systems Protection Board and the Federal Circuit erred in denying equitable tolling under the Veterans Employment Opportunities Act where the agency's failure to respond to Freedom of Information Act requests concealed evidence of its violation, thereby preventing the petitioner from effectively pursuing his claim in violation of his right to due process.

RELATED PROCEEDINGS

United States Merit Systems Protection Board:

*Richard Cornelius Jackson v. Department
of Homeland Security*, No. CH-3330-23-
0216-I-1 (Aug. 3, 2023) (initial decision)

*Richard Cornelius Jackson v. Department
of Homeland Security*, No. CH-3330-23-
0216-I-1 (Feb. 4, 2025) (final decision)

United States Court of Appeals (CAFC):

*Richard Cornelius Jackson v. Department
of Homeland Security*, No. 25-1614 (Nov.
13, 2025) (affirming the Board)

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Appendix A

Opinion [Not Precedential], United States
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*Richard Cornelius Jackson v. Department
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No. 25-1614 (Nov. 13, 2025) App-1

Appendix B

Final Decision [Not Precedential], United
States Merits Systems Protection Board,
*Richard Cornelius Jackson v. Department
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(Feb. 4, 2025) App-7

Appendix C

Initial Decision, United States Merits Sys-
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OPINIONS BELOW

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JURISDICTION

The Federal Circuit's decision was entered on November 13, 2025. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Veterans Employment Opportunities Act (VEOA) and the Due Process Clause of the Fifth Amendment to the United States Constitution are involved. 5 U.S.C. §7703(c) provides the standard of judicial review for decisions of the Merit Systems Protection Board.

STATEMENT OF THE CASE

A. Factual Background

Petitioner Richard Cornelius Jackson, a former Immigration Services Officer with the Department of Homeland Security (DHS), applied for ten positions within the agency over a two-year period. Petitioner alleges that DHS violated the VEOA by failing to properly apply his preference-eligible veteran status, thereby altering his submitted job applications by surreptitiously removing evidence that supported his 10-Point Preference Eligibility. DHS, through its Chief of Human Capital and Training Officer, admitted to this fact in a position statement submitted to the

investigator assigned to the Petitioner's other complaint filed pursuant to the Uniformed Services Employment Rights and Reemployment Rights Act (USERRA).

In July 2022, seeking to substantiate his claims that DHS had violated the VEOA and support his complaint to the U.S. Department of Labor (DOL), Petitioner submitted a Freedom of Information Act (FOIA) request seeking the relevant hiring information of the selectees. Of note, this FOIA request was submitted pursuant to the precedent set forth in *Core v. USPS*, 730 F.2d 946, 948 (CA4 1983) and DHS Instruction 262-11-001. DHS's Management Directive 255-001 also required the release of evidence if a FOIA request was filed. DHS would ignore the precedent set forth in *Core* and its own DHS Instruction and Management Directive.

On July 25, 2022, Petitioner filed a VEOA complaint with DOL. However, because DHS failed to respond to his FOIA requests, Petitioner lacked the necessary evidence to prove the agency's VEOA violation. Consequently, he was forced to withdraw his DOL complaint on July 28, 2022. He subsequently refiled a substantively identical complaint in February 2023, which the DOL rejected as untimely.

C. Proceedings Below

1. The Merit Systems Protection Board

Petitioner appealed DOL's rejection to the Merit Systems Protection Board. The Board affirmed the DOL's decision, holding that Petitioner failed to file his second complaint within the 60-day statutory period and did not establish equitable tolling. The Board found that Petitioner's voluntary withdrawal of the first complaint demonstrated a lack of reasonable diligence.

2. The Federal Circuit

Petitioner appealed to the Federal Circuit. On November 13, 2025, the Federal Circuit affirmed the Board's decision in *Jackson v. Dep't of Homeland Sec.*, No. 25-1614. The Federal Circuit held that Petitioner was not entitled to equitable tolling because he failed to demonstrate reasonable diligence under the standard set forth in *Pace v. DiGuglielmo*, 544 U.S. 408 (2005). The Federal Circuit declined to address Petitioner's argument regarding the agency's deception and concealment of evidence, reasoning that such allegations could not redeem a lack of diligence.

REASONS FOR GRANTING THE PETITION

This case presents a fundamental question regarding the application of equitable tolling when a federal agency obstructs a petitioner's ability to pursue a claim by withholding critical evidence.

I. The Decision Below Conflicts with Decisions of Other United States Courts of Appeals on the Same Important Matter

S. Ct. R. 10(a) indicates that a writ of certiorari will be considered when "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter."

In the decision below, the Federal Circuit held that equitable tolling was barred due to a lack of diligence, despite the agency's concealment of evidence. This stands in contrast to principles applied in other circuits regarding government misconduct and equitable tolling. The current disparity in the application of equitable tolling principles undermines public confidence in the judiciary and creates confusion for veterans seeking to enforce their employment rights.

II. The Lower Court's Decision Sanctions a Departure from Accepted Judicial Proceedings

Under S. Ct. R. 10(c), certiorari is appropriate when a lower court "has decided an important question of federal law that has not been, but should be, settled by this Court." Furthermore, this Court has intervened when lower courts misconstrue the government's position or legal concessions. See *Miller v. United States*, 520 U.S. 172 (1997).

The question presented involves the rights of veterans to fair consideration in federal employment. Leaving the decision below undisturbed will allow the Federal Circuit to enforce a rule that penalizes veterans for an agency's failure to comply with transparency laws.

III. The Court's Decision Overlooked a Due Process Violation Arising from the Agency's Concealment of FOIA-Requested Information, Which Constitutes Extraordinary Circumstances Warranting Equitable Tolling

The Federal Circuit's decision affirms a denial of equitable tolling that fundamentally disregards the agency's role in preventing the Petitioner from timely pursuing his claim. Under *Pace*, a litigant is entitled to equitable tolling if he establishes "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way." 544 U.S. at 418. Similarly, in *Wallace v. Kato*, this Court noted that equitable tolling is a remedy for unusual circumstances. 549 U.S. 384, 396 (2007)

In this case, the "extraordinary circumstance" was DHS's failure to respond to Petitioner's FOIA request. Petitioner alleged during the proceedings before the Merit Systems Protection Board that the agency had deceptively removed his veterans' preference documentation from his submitted job applications. Petitioner cannot say for certain *why* this occurred, but postulates it was done to weaken his applications under VEOA. However, to confirm his suspicion that the non-selections were due to violations of VEOA, and

support his complaint to DOL, he filed a FOIA request in July 2022. The agency's failure to provide this crucial information created an insurmountable barrier, forcing Petitioner to withdraw his initial July 2022 complaint to DOL because he could not substantiate his allegations without the withheld records. Petitioner was forced to file a second complaint without the evidence sought via his FOIA because DHS continued to refuse to release the requested evidence.

The Federal Circuit erred by relying on the Board's finding that "there [was] no indication that the evidence was previously unavailable because the agency improperly concealed it." App.5. This finding is "arbitrary, capricious, [and] an abuse of discretion" under 5 U.S.C. §7703(c). The very nature of the FOIA violation meant that the evidence *was* unavailable to the Petitioner. By withholding the administrative records sought through FOIA, the agency effectively concealed the evidence of its own alleged misconduct. Moreover, the administrative judge did not substantively address the Petitioner's argument in the Initial Decision that DHS surreptitiously removed veteran specific documents from his job applications. Likewise, in the Petition for Review, the full Board failed to address the Petitioner's argument that the administrative judge failed to substantively address his allegation that DHS altered his submitted job applications.

The lower court's analysis conflates the two prongs of the *Pace* test. It held that the deception-based allegations spoke only to the second prong (extraordinary circumstances) and could not redeem a lack of diligence. However, Petitioner's withdrawal of the initial complaint was a direct result of the extraordinary circumstance created by the agency's concealment of

relevant FOIA records. A petitioner cannot be expected to pursue a claim “diligently” in a vacuum, stripped of the very evidence required to prove that claim due to the opposing party’s statutory violations. By failing to recognize the agency’s FOIA noncompliance as a valid basis for equitable tolling, the Federal Circuit has sanctioned a violation of due process and rendered the VEOA’s protections illusory for veterans facing administrative stonewalling.

IV. Additional Supporting Authority

The application of equitable tolling where the government conceals information is consistent with federal jurisprudence. In *Kirkendall v. Department of the Army*, the Federal Circuit confirmed that deadlines under the VEOA are subject to equitable tolling, emphasizing that the legislative intent of the VEOA aligns with the liberal construction of veterans’ benefits statutes. 479 F.3d 830 (CAFC 2007) The Federal Circuit applied the factors from *United States v. Brockamp*, to determine that Congress did not intend to bar tolling, a principle that should extend to cases where the agency effectively blocks the veteran’s claim. 519 U.S. 347 (1997).

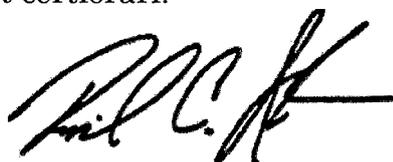
Furthermore, courts have recognized that fraudulent concealment by a defendant is a valid basis for equitable tolling. In *Richardson v. Caliber Home Loans, Inc.*, the court discussed that a plaintiff must show the defendant took affirmative steps to prevent the plaintiff from suing in time, such as hiding evidence. 2020 WL 3932811 (E.D. Mich. 2020) Here, DHS’s failure to produce the FOIA records serves as the functional equivalent of hiding evidence, as it kept

Petitioner ignorant of the necessary facts to prove his claim.

The severity of withholding information is further illustrated by FOIA jurisprudence. In *Buzzfeed, Inc. v. Dep't of Justice*, the court examined the “Glomar response,” where an agency refuses to confirm or deny the existence of records. 344 F. Supp. 3d 396 (CADDC 2018). While permissible in limited national security contexts, such secrecy underscores the difficulty a petitioner faces when an agency controls the flow of information. Similarly, in *Islamic Shura Council v. Federal Bureau of Investigation*, the Ninth Circuit held that agencies must provide detailed affidavits to justify withholdings so that courts can make an independent assessment. 635 F.3d 1160 (CA9 2011). In Petitioner’s case, the agency’s silence—neither confirming, denying, nor justifying its withholding—deprived him of the opportunity to assess his claim, constituting an extraordinary circumstance that warrants equitable tolling.

CONCLUSION

This Court should grant certiorari.



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February 11, 2026

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