

STATES SUPREME COURT OF THE UNITED

**25-6065**

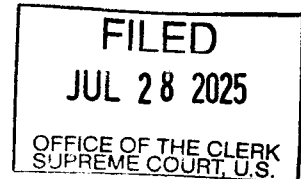
**Rashid El Malik**

**Petitioner**

**v.**

**Douglas A. Collins Secretary of Veterans Affairs**

**Respondent**



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**PETITION FOR WRIT OF CERTIORARI**

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**On petition for a writ of Certiorari to the United States Court of  
Appeals for the Federal Circuit**

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**Rashid El Malik**

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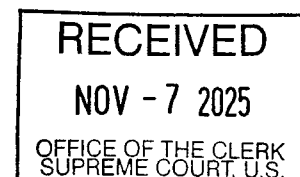
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**Date: November 1, 2025**



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

The United States Court of Appeals for the Federal Circuit has entered a decision in direct conflict with its own binding precedent in *Martin v. O'Rourke*, 891 F.3d 1338 (Fed. Cir. 2018), and *Cushman v. Shinseki*, 576 F.3d 1290 (Fed. Cir. 2009), raising an important federal question and departing so far from accepted judicial practice as to require this Court's supervisory review.

**QUESTIONS PRESENTED**

1. Whether a catastrophically disabled veteran facing imminent, life threatening harm is entitled to mandamus relief under *Martin v. O'Rourke* when a government agency has unreasonably delayed implementation of a final Board grant for over 1,185 days, no appellate remedy exists, and all *Martin* factors for unreasonable delay are overwhelmingly satisfied.
2. Whether the Federal Circuit violated its own precedent in *Cushman v. Shinseki* by permitting the Veterans Affairs agency to maintain in a veteran's file a tainted document-containing demonstrably false statements used to deny disability benefits-which the agency has effectively admitted is false, but refuses to remove absent a court order, thereby depriving the veteran of due process.

## **PARTIES TO THE PROCEEDING**

- **Petitioner-Appellant:** Rashid El Malik appearing *-pro se*, a Catastrophic disabled United States Veteran who served in the Army and Vietnam from January 1968 to June 1969.
- **Respondent:** Douglas A. Collins, Secretary of Veterans Affairs, Respondent-Appellee sued in his official capacity

## **CORPORATE DISCLOSURE STATEMENT**

- Pursuant to Supreme Court Rule 29.6, a corporate disclosure statement is not required as petitioner Not applicable. Petitioner is an individual proceeding *prose*.

## **RELATED PROCEEDINGS**

**This case is directly related to the following proceedings:**

, *El Malik v. Coffins*, U.S. Court of Appeals for Veterans Claims, No.

, 25-3872 (petition for extraordinary relief denied July 14, 2025)

- *El Malik v. Collins*, U.S. Court of Appeals for the Federal Circuit, No. 24-5450-25-1300 (mandamus petition denied and sanctions imposed, July 8, 2025)
- *El Malik v. McDonough*, U.S. Court of Appeals for the Federal Circuit, Nos. 2023-1684, 2023-2279 (mandamus petition dismissed March 14, 2024)
- *El Malk v US 20-CV-267- 24-1746*-(Dismissed February 13, 2025)

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## **STATEMENT OF RELATED CASES DEMONSTRATING PATTERN**

*El Malik v. United States*, U.S. Court of Federal Claims, No. 20-CV-267:

Petitioner pursued breach of contract claims that is a part of this case.

The Court declared Petitioner a third-party beneficiary, denied government's summary judgment motion, and ordered damages calculations, after four years of litigation, and allowed the respondent to refile a motion to dismiss. A new judge was assigned, the new judge granted defendant motion to dismiss and dismissed for lack of jurisdiction, eliminating all relief despite four years of merits-based proceedings.

## **OPINIONS BELOW**

The order of the United States Court of Appeals for the Federal Circuit affirming the denial of Petitioner's mandamus petition and imposing filing restrictions was entered on July 8, 2025 (*El Malik v. Collins*, No. 25-1300). The order is unreported and included in the **(Appendix B)**

The order of the U.S. Court of Appeals for Veterans Claims denying Petitioner's motion for leave to file petition for extraordinary relief was entered on July 14, 2025 (***El Malik v. Collins*, No. 25-3872**). The order is unreported and included in the **(Appendix C)**

## **JURISDICTION**

The judgment of the Court of Appeals for the Federal Circuit was entered on July 8, 2025. This petition is timely filed within 90 days of that judgment. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

**The Fifth Amendment to the United States Constitution provides in relevant part:**

"No person shall be...deprived of life, liberty, or property, without due process of law..."

**U.S. Constitution, Article I §1;** All legislative Powers herein granted shall be vested in a Congress of the United States..."

**38 U.S.C. § 7104(d)(1) provides:**

"A decision by the Board is final unless appealed to the United States Court of Appeals for Veterans Claims under section 38 U.S.C. § 7252

**38 CFR § 20.1100** All BVA decisions become final on the date stamped on the face of the decision. Decisions are not subject to change or review except outlined in **38 U.S.C. 1975**, 1984, or chapters 37 and 72

**M21-5, Chapter 7, Section G.1.e (Reviewing the Claims Folder and/or Implementing the Board Decision) provides:**

\When a decision has been made, the Board returns the claim to the Decision Review Operations Center (DROC) or the RO for review of the claims folder and implementation of the decision, if necessary."

**Important:** "The assigned DROC or RO should implement the Board's grant or partial grant of benefits in any favorable decision *before* initiating development of the remand."

**M28R Manual, Chapter 1, Section 1.03 provides:**

"Implementation of Board grants is a non-discretionary ministerial duty.

## STATEMENT OF THE CASE

### I. THE LIFE-THREATENING EMERGENCY

Petitioner is a catastrophically disabled, wheelchair-bound veteran who cannot escape from a very important rear exit of his home in case of fire or emergency based on a collapse rear deck (**Appendix D**) that the Board approved to be replaced with a lift to evacuate from the second floor. On April 7, 2022, the Board of Veterans' Appeals granted four critical safety modifications to prevent his death in a fire emergency:

- Automatic door openers (never installed)

**G** A lift for emergency evacuation (never installed)

- Two-story addition to the rear of his home to include living room, dining room, master bed room, and kitchen on the first floor, bedrooms, family room, and stair well on the second floor (never installed)
- Non-Slip Hardwood flooring throughout the home to replace marble flooring (**Appendix E** April 7, 2022, Grant Order)

**On October 1, 2024, the Board granted** deck replacement widening all doors, and remodel kitchen (never implemented) Veteran Court No, 24-8553

**Today marks over 1,185 + days since the grant. None of the modifications have been implemented. "Martin Violation"**

The rear deck, essential for emergency egress, has collapsed, creating a complete evacuation failure. Petitioner's home is located in Palos Verdes Estates, California, in a Very High Fire Hazard Severity Zone where catastrophic wildfires pose constant threat. Without these modifications, Petitioner can die if fire breaks out.

## **II. TAINTED DOCUMENT MAINTAINED AFTER ADMISSION**

### **A. The tainted Document and Its Improper Use**

**In September 2018, VA official Anthony Roebach inserted a Report of General Information form (27-0820) into Petitioner's file containing demonstrably tainted statements: (Appendix F)**

- California District Court dismissed case because veteran "lied about injuries"
- Personally witness Petitioner walking for 2+ hours
- Mischaracterized lawsuit damages as "\$200 million"

- Lift for his wheelchair had been installed in other parts of his home to be able to access the 2<sup>nd</sup> floor provided in other parts of the home so there were no reasoning to be on the stairs.

The Board went outside the scope of evidence to use this document to deny Petitioner disability claim violating their own procedures that require review of only officially submitted evidence from the regional Office. The Board made material credibility findings based on this prohibited evidence, leading to benefit denial. **(Appendix G-2019 Board Decision)** Petitioner requested an investigation-No Response

## **LEGAL ARGUMENT /REASONS FOR GRANTING THE PETITION**

The question whether a catastrophically disabled veteran facing the imminent death may seek mandamus relief under *Martin v. O'Rourke* when a Government agency causes self-inflicted unreasonable delays to implement a Board grant that is now over 1,185 + days since the inception of the grant, with no appellate remedy exists, and all Martin factors for unreasonable delay are overwhelmingly satisfied.

This case presents urgent questions of exceptional national importance concerning the constitutional rights of veterans and the proper enforcement of binding agency and judicial mandates. The lower courts' refusal to enforce the clear standards articulated in *Martin v. O'Rourke* and *Cushman v. Shinseki* threatens to render veterans' rights illusory, especially for the most vulnerable.

There is no traditional circuit split because the Federal Circuit has exclusive jurisdiction over veterans' appeals. However, this Court's intervention is warranted where, as here, lower courts depart from controlling precedent and constitutional standards established by this Court and the Federal Circuit. The issues raised are recurring and

impact millions of veterans dependent on fair and timely benefits administration.

The agency's prolonged refusal to implement a final Board grant—leaving a catastrophically disabled veteran in life-threatening danger—and its deliberate maintenance of a tainted document in the veteran's file, despite effective admission of its falsity, constitute arbitrary government action that shocks the conscience and violates due process. The lower courts' failure to remedy these violations, and their imposition of sanctions for seeking judicial relief, raise fundamental questions about access to the courts and the rule of law.

Immediate Supreme Court review is essential to restore the proper application of *Martin* and *Cushman*, vindicate veterans' constitutional rights, and ensure the integrity of the veterans' benefits system.

**I. The Lower Courts Abdicated Their Duty Under *Martin v. O'Rourke* by Ignoring a Clear Case of Unreasonable Delay.**

The Court's precedent in *Martin v. O'Rourke*, 891 F.3d 1338 (Fed. Cir. 2018), was intended to provide a clear, six-factor test to prevent precisely this kind of agency inertia. The facts here overwhelmingly satisfy that test. The delay of over 1,185 + days is facially unreasonable,

and the prejudice to a veteran in need of home modifications is self-evident.

Critically, the agency's stated reasons for the delay were exposed as pretextual. The November 2022, "Clarification Memo" request after the Board granted the claim in April 2022, and following petitioner's writ to the Veterans Court was disavowed by the BVA response to Congressman Ted Lieu office inquiry in July 2024, itself, confirming it was an administrative fiction.

The agency's subsequent actions—including a 2024 decision in violation of the finality rule 38 U.S.C. § 7104(d)(1) that removed two components from the original 2022,

grant causing more chaos and delays where Board decision are final unless a CUE is declared and in spite of the Board July response to Ted Lieu—are not good-faith administrative processes; they are acts of defiance. Such executive action, which is arbitrary and "shocks the conscience," is the very definition of a substantive due process violation under *County of Sacramento v. Lewis*, 523 U.S. 833 (1998).

By ignoring the pretextual nature of the delay and dismissing the Petitioner's writ, the lower courts abdicated their judicial responsibility. The agency's defiance places its authority at its "lowest ebb," as

described in Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

Congress established a clear statutory scheme where BVA decisions are final and subject to judicial review. By refusing to implement a final decision, the agency acts in a manner incompatible with the expressed will of Congress, undermining the very structure of administrative accountability. Ted Lieu inquiry was totally ignored by the Regional Office, the Board, the Veterans Court, and the Federal Court of Appeals; thereby, rendering Congress established clear statutory scheme useless.

Therefore, under the ***Youngstown analysis***, the VA's refusal to implement the BVA's decision is not just an administrative delay; it is an unlawful overreach that upsets the constitutional balance of power between the executive and legislative branches. Under Justice Jackson's framework the VA's actions are unconstitutional and should be subject to the highest level of judicial scrutiny.

## **II. THE FEDERAL CIRCUIT'S REFUSAL TO APPLY CUSHMAN PERMITS AGENCIES TO MAINTAIN ADMITTEDLY TAINTED DOCUMENTS**

Whether Government agencies violate *Cushman v. Shinseki* by maintaining a tainted document in veterans' files that contain statements the agency has effectively admitted are tainted through judicial admission by silence when ordered to respond to specific falsity allegations and refuse to remove the tainted document without a Court Order.

### **A. Cushman Violation Clearly Established**

*Cushman v. Shinseki* held that tainted documents in veterans' files violate due process by tainting all subsequent proceedings. This case presents all *Cushman* elements:

- 1. Tainted Document:** Board's judicial admission by silence when ordered to respond to falsity allegations proves the document contains tainted statements under established legal principles.
- 2. In Veterans' File:** Document remains in official file affecting all proceedings.
- 3. Taints All Proceedings:** Board used document for material credibility findings; *Cushman* holds such taint violates due process in all subsequent proceedings.

**4. Never Removed:** Despite effectively admitting falsity, agency refuses removal. **FRCC (8) (b)(6)** Board did not dispute falsity

**5. Government Announces:** it would not remove the tainted document until ordered by a Court (**Appendix H-(response by respondent 22-5317 at 8**

**B. This Case Presents Worse Constitutional Violation Than  
Cushman**

**In Cushman:** Agency acted properly when confronted with tainted document—they removed it.

The Agency here stated "No Order of the Court, or other legal finding, required VA to remove the September 2018 statement from Petitioner's file. This action taints the whole judicial system and even if an appeal was appropriate the outcome is prejudicial, and a fair hearing is negated. Therefore, the appeal process is not applicable the removal of the tainted document is the only legal recourse. *Beaudette v McDonough* 34 Vet App 95 (2021

When government agencies ignore their own binding regulations and Court precedent for over 1,185+ days while a catastrophically disabled veteran faces possible imminent death, such conduct transcends administrative error and enters the realm of conscience-shocking arbitrary action.

The life-threatening emergency circumstances show why *Martin* and *Cushman* protections are essential and require clear enforcement standards.

**III. THE COURT OF APPEAL FOR VETERANS' CLAIMS AND THE  
FEDERAL CIRCUIT'S REFUSAL TO PROPERLY APPLY MARTIN  
AND APPLYING SANCTIONS TO THE PETITIONER CREATES  
AN IMPOSSIBLE STANDARD FOR VETERANS SEEKING  
RELIEF FROM IMPLEMENTATION DELAYS**

This case presents a fundamental breakdown of administrative law and due process within the veterans/ benefits system. It reveals a situation where a veteran, having secured a final and binding grant of benefits from the Board of Veterans ' Appeals (BVA), is left with a right that exists only on paper. The lower courts have not only failed to provide a remedy for the agency's flagrant and prolonged non-compliance but have gone so far as to sanction the Petitioner for attempting to invoke the sole judicial tool available to him.

**• RETALIATION**

Under the principles established in *Hartman v. Moore*, 547 U.S. 250 (2006), and affirmed in *Nieves v. Bartlett*, 139 S. Ct. 1715 (2019), the First Amendment is violated when the government takes retaliatory action against a citizen for engaging in protected speech or petitioning activity. The elements of such a claim are clearly met in this case.

- **Protected Activity:**

The Petitioner engaged in a constitutionally protected activity by petitioning the court for a writ of mandamus to compel the VA to implement a final, favorable decision from the Board of Veterans' Appeals. Seeking to enforce a legally granted benefit is a fundamental exercise of the right to petition the government for a redress of grievances.

- **Adverse Action :**

In direct response to this protected activity, the Petitioner was classified as a "vexatious filer." This is a severe adverse action designed to punish the Petitioner and restrict his future access to the courts. For the Petitioner, a 75-year-old veteran subsisting solely on Social Security and VA disability compensation, and is now required by the Veteran Court to file the filing fee, seek permission to file a writ, and the Federal Circuit requirement to seek permission to appeal into their jurisdiction, coupled with the threat of sanctions, is not an abstract legal concept—it is a tangible financial wall that threatens his basic livelihood

This action carries significant stigma and concrete legal consequences far beyond a minor slight.

- **Causal Connection:**

The causal link between the protected activity and the adverse action is direct and unambiguous. The "vexatious filer" designation was not an unrelated event; it was imposed as a direct consequence of the Petitioner's persistent efforts to have his legally granted benefits implemented. This action flows from a clear temporal relationship with the Petitioner's filings and demonstrates the agency's institutional memory of him as an adversary.

- **Chilling Effect:**

The act of branding a vulnerable Catastrophic disabled veteran a "vexatious filer" for seeking to enforce a final BVA decision has a profound chilling effect. Contrast to a VA official false statements allowed to stay in the file and no investigation of a law Judge going outside the scope of evidence

Having established the devastating financial impact of this action, it sends a powerful message that the cost of challenging agency noncompliance is to be formally labeled an abuser of the legal system and face potential ruin. This action is designed to deter not only the Petitioner but all veterans from pursuing their rights, effectively silencing future advocacy and insulating the agency from accountability.

#### **IV. The Veteran's Court is Not an Article III Court; Its Limited Power Makes Mandamus Essential, Not Frivolous**

The entire structure of veterans' law hinges on a critical constitutional distinction: the United States Court of Appeals for Veterans Claims (CAVC) is an **Article I tribunal**, not an Article III court. Established by Congress under 38 U.S.C. § 7251, its jurisdiction is strictly limited to that which is conferred by statute. Unlike Article III courts, the CAVC lacks inherent equitable powers; it cannot grant damages for constitutional torts or fashion remedies beyond its statutory mandate.

This limitation has a profound consequence. A veteran's entitlement to benefits is a protected property interest under the Due Process Clause, as established in

*Goldberg v Kelly* 397 U.S. 254 (1970) and affirmed in the veterans' context by *Cushman v Shinseki* 576 F.3d 1290 (Fed. Cir. 2009). Once the BVA grants that right, the veteran is constitutionally owed a process that is not merely theoretical but real and effective. For a veteran whose right

has already been established by a final BVA decision, the **All-Writs Act (28 U.S.C. §1651)** is not merely one option among many-it is the **sole judicial Lifeline.**

The writ of mandamus, which compels an agency to perform a clear, non-discretionary duty, is the only mechanism provided by Congress to enforce a right the agency is unlawfully withholding. While mandamus is an extraordinary remedy, it is reserved for precisely these circumstances, to ensure that executive officials adhere to the law when a petitioner has a "clear and indisputable" right to relief, as clarified

in *Cheney v. U.S. District Court*, 542 U.S. 367 (2004). In this case, the Petitioner's right was established by the BVA's final decision. The subsequent duty of the VR&E office was not discretionary; it was a ministerial act of implementation. When the agency failed to perform that duty, the Petitioner correctly turned to the only tool available to him. To sanction the Petitioner for filing this writ is a perverse and constitutionally untenable outcome. It is a punishment for invoking the only remedy Congress has provided. It transforms the All Writs Act from a shield for the powerless into a trap for the unwary, sending a chilling message to all veterans: **do not dare ask the court to enforce your rights, or you will be penalized for it.** /*Marbury v. Madison* 5 U.S. (1 Cranch) 137 (1803)

**V. The Government's Suggestion That Petitioner Could Use the Appeal Process Is a Fallacy.**

Petitioner appeal the removal of the two components and the denial of the six remaining components to the Veterans court Appeal 38 U.S.C. § 7252 No. 24 8553" (Appendix I) Petitioner maintain the removable of the two components was a red Herring to protect the Agency after the congressional inquiry. 24 8553 addresses the Board removal of the 2 of 4 components that were taken out of the Board 2022 Grant in violation of the finality rule 38 U.S.C. § 7104(d)(1) and cannot compel implementation or address the 1,185 + day delay.

**The agency's position creates a classic catch-22.**

The agency unlawfully withholds a benefit and, when challenged via a writ, argues its own subsequent and unlawful modification of that benefit creates an "appeal" that precludes the writ. This is not a legitimate administrative process; it is a shell game, designed to evade judicial review. The whole judicial process is tainted because of the agency's refusal to remove the tainted letter. The agency's argument is particularly misplaced because its refusal to act is not a matter of unreviewable discretion. Unlike an agency's decision not to initiate enforcement action, as discussed in *Heckler v. Chaney*, 470 U.S. 821 (1985), the VA here is not exercising discretion; it is failing to adhere to a final, binding legal mandate. When a lower court closes off all avenues for relief, the purpose of the All-Writs Act is to provide a necessary safety valve.

**Prejudice to Veteran:** The delay directly harms the veteran's health, safety, and welfare by denying him the very home modifications the BVA found necessary three years ago.

The lower court's failure to properly apply the *Martin* factors and their dismissal of the Petitioner's writ constitutes an abdication of judicial responsibility. If a 1, 185-day delay, based on a disproven pretext, for a simple ministerial task does not warrant judicial relief, then the *Martin* standard has been rendered a dead letter.

## **VI. THE CASE PRESENTS QUESTIONS OF EXCEPTIONAL NATIONAL IMPORTANCE**

### **A. Veterans' Rights Rendered Meaningless**

If agencies can ignore Board grants indefinitely while maintaining admittedly tainted documents, and courts refuse mandamus relief, veterans' rights become illusory. This systematic breakdown affects over 18 million veterans who depend on enforceable agency compliance.

### **B. Fundamental Administrative Law Principles at Stake**

**Martin Standard:** Becomes meaningless if agencies can delay a granted benefit "1,185+" implementation indefinitely without consequences

**Cushman Protections:** Become worthless if agencies can maintain admittedly tainted documents

**Mandamus Relief:** Becomes unavailable precisely when most needed for constitutional violations and to declare a declaratory right.

### **B. Emergency Circumstances Require Immediate Intervention**

Unlike typical administrative disputes; this case involves imminent threat to life. Each day of delay increases risk of preventable death, making immediate Supreme Court intervention essential.

### **C. Lower Court Conflict Requiring Resolution**

The Federal Circuit's refusal to apply clearly satisfied legal standards creates uncertainty about when veterans can obtain relief for constitutional violations, requiring this Court's clarification

## **VII. THE PETITION PRESENTS AN IDEAL VEHICLE FOR CLARIFYING MARTIN AND CUSHMAN STANDARDS**

### **A. Clean Legal Issues Without Factual Disputes**

**Martin Application:** All six factors clearly satisfied with objective evidence (1,185+ days, life-threatening emergency, Catastrophic disabled, Prejudice, time table established, pretextual delays, improper activities, (simple implementation)

**B. Cushman Application:** Board's non judicial admission eliminates any ambiguity and document, (show be removed)

## CONCLUSION

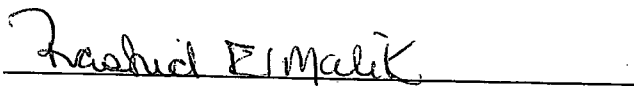
The decision of the court represents a catastrophic failure of judicial oversight and a complete breakdown of the due process rights guaranteed to this nation's veterans. The Petitioner, a catastrophically disabled veteran, secured a final, binding grant of benefits from the Board of Veterans' Appeals, a property right protected under *Cushman v. Shinseki*. Yet, for years, he has been denied this right not by legal disagreement, but by the agency's simple refusal to comply with the law. When he sought the only remedy available to him-a writ of mandamus-the lower courts did not provide relief but instead punished him for his petition, effectively closing the courthouse doors.

This case is not merely about an administrative delay; it is about an agency's deliberate and conscience-shocking misconduct. The government has openly admitted in court filings that it will not remove an admittedly tainted document from the Petitioner's official file until a court forces it to do so. This act of maintaining known falsehoods to be used against a veteran in all future proceedings is the kind of arbitrary government conduct that "shocks the conscience," as described in *County of Sacramento v. Lewis*.

The very essence of civil liberty-the right to seek protection of the laws for an injury received, as established in *Marbury v. Madison*-has been denied.

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully Submitted



Rashid El Malik

Dated: November 1, 2025