

APPENDIX B

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

RASHID EL MALIK,
Claimant-Appellant

v.

**DOUGLAS A. COLLINS, SECRETARY OF
VETERANS AFFAIRS,**
Respondent-Appellee

2025-1300

Appeal from the United States Court of Appeals for
Veterans Claims in No. 24-5450, Judge William S. Green-
berg.

Decided: July 8, 2025

RASHID EL MALIK, Palos Verdes Estate, CA, pro se.

THOMAS J. ADAIR, Commercial Litigation Branch, Civil
Division, United States Department of Justice, Washing-
ton, DC, for respondent-appellee. Also represented by
MICHAEL GRANSTON, MARTIN F. HOCKEY, JR., PATRICIA M.
MCCARTHY.

Before LOURIE, REYNA, and STARK, *Circuit Judges*.
PER CURIAM.

Rashid El Malik appeals from a decision of the United States Court of Appeals for Veterans Claims (“Veterans Court”) denying his request for a writ of mandamus ordering the Department of Veteran’s Affairs (“VA”) to comply with an April 7, 2022 Board of Veteran’s Appeals (“Board”) decision. Because we lack jurisdiction to hear portions of this appeal, we dismiss-in-part. On the issue within our jurisdiction, we affirm.

I

Mr. El Malik is a disabled veteran who was awarded certain home modifications under the Veteran Readiness and Employment (“VR&E”) living plan. A modification of his award, which included, in pertinent part, installation of hardwood flooring in his home and a light in his garage, was outlined in an April 7, 2022 Board decision. Appx. 1-5.¹

The modification project for Mr. El Malik’s home began in June 2018, and as of May 2022 at least eleven modifications had been successfully completed. Appx. 81. To date, the cost of these modifications has exceeded \$685,000. Appx. 99. Notwithstanding this progress, Mr. El Malik has repeatedly petitioned the Veterans Court for a writ of mandamus directing the VA to implement the Board’s April 2022 decision. The present case is Mr. El Malik’s third appeal to this Court on the exact same issue: denial of a writ seeking an order to implement the Board’s April 2022 decision. *See El Malik v. McDonough*, Case Nos. 2023-1684, 2023-2279 (consolidated), 2024 WL 1109263 (Fed. Cir.

¹ “Appx.” refers to the Government’s Corrected Appendix, Volumes I and II, which can be found at ECF Nos. 13-1 and 13-2, respectively.

2024). As Mr. El Malik did in his prior appeals, he again argues that the Veterans Court erred in denying his petition for a writ of mandamus he contends is justified by the VA's continued failure to implement the Board's April 2022 decision, resulting in unreasonable delay, and VA's reliance on purported mischaracterizations of fact. Open. Br. at 10-15. We concluded in connection with each of Mr. El Malik's prior appeals that we lacked jurisdiction to decide the majority of the issues Mr. El Malik raised. *El Malik*, 2024 WL 1109263, at *1.

II

Our jurisdiction to review mandamus decisions of the Veterans Court is limited. *Id.* at *3; *see also Love v. McDonough*, 100 F.4th 1388, 1392 (Fed. Cir. 2024). "Although we have jurisdiction to 'decide all relevant questions of law, including interpreting constitutional and statutory provisions,' 38 U.S.C. § 7292(d)(1), we 'may not review (A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case,' *id.* § 7292(d)(2)." *Id.*

Mr. El Malik again argues that the VA is engaged in a pattern of violating Board orders and ignoring congressional communications regarding implementation of his VR&E award. Open. Br. at 5. The Veterans Court, however, considered this contention and ultimately determined there was "no evidence that the Secretary is refusing to implement the April 2022 Board decision" and, thus, "[t]he issue appears to be confusion over the procurement process with [Special Adaptive Housing]." Appx. 5. We lack jurisdiction to review this factual determination. *See El Malik*, 2024 WL 1109263, at *4 ("The court based its denial of writ on Mr. El Malik's failure to demonstrate that the VA refused to comply with the Board's April 2022 order. We thus discern no . . . issue appropriate for our review in these appeals."). While we may review fact issues in connection with constitutional challenges, we may not do so where, as

here, the constitutional challenge is not genuine but, instead, frivolous. *See Love*, 100 F.4th at 1392 (“We have jurisdiction to review the Veterans Court’s decision whether to grant a mandamus petition that raises a non-frivolous legal question.”) (internal citation and punctuation omitted). Although Mr. El Malik alleges VA is violating his constitutional right to due process, *see* Open. Br. at 2, 6, 11, his claim is frivolous. *See El Malik*, 2024 WL 1109263, at *3-4 (“[Mr. El Malik] does not raise a constitutional challenge that confers on us jurisdiction that we otherwise lack.”) (internal quotation marks omitted). Accordingly, we lack jurisdiction over these claims.

Mr. El Malik’s appeal does raise one issue within our jurisdiction, namely, a purported violation of the VA’s finality rule. Open. Br. at 10-11. On this issue, we affirm the Veterans Court’s dismissal, as res judicata bars Mr. El Malik from again litigating this already-resolved dispute. *See, e.g., Sharp Kabushiki Kaisha v. ThinkSharp, Inc.*, 448 F.3d 1368, 1370 (Fed. Cir. 2006) (“Res judicata . . . refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided.”) (citing *Migra v. Warren City Sch. Dist. Bd. Of Educ.*, 465 U.S. 75, 77 n.1 (1984)); *see also El Malik*, 2024 WL 1109263, at *3 (rejecting an identical finality challenge as the one Mr. El Malik presses here).

Accordingly, Mr. El Malik’s appeal is affirmed-in-part and dismissed-in-part.

III

In its response, the government asks this court to “take appropriate actions” to prevent “further abuse of the legal process” by Mr. El Malik. Resp. Br. 2. In support of its request, the government cites our most recent decision addressing identical issues to those Mr. El Malik again raises in this appeal. *El Malik*, 2024 WL 1109263, at *3 n.4 (noting Mr. El Malik has filed 17 suits against VA that have been appealed to this court and dismissing for at least the

second time, an appeal relating to implementation of his VR&E award); *see also* Resp. Br. at 10 (listing prior appeals). In that opinion, we cautioned Mr. El Malik against “rais[ing] this issue yet again in another appeal from a denial of a petition of a writ of mandamus” warning him that “[t]his court has previously sanctioned pro se petitioners who have attempted to relitigate previously adjudicated issues,” including by “imposing the opposing party’s attorneys fees” and “requiring individuals to seek leave from the court before filing any future appeal.” *Id.*

Mr. El Malik disregarded our warning by filing this duplicative appeal. Thus, the government suggests “it may be time for this Court to consider appropriate action given Mr. El Malik’s apparent disregard of the Court’s prior warnings,” although it does not take a position on what sanctions would be appropriate. Resp. Br. at 2. Considering the totality of the circumstances, including Mr. El Malik’s repeated relitigation of the same issue despite our warnings, on the one hand, and his status as a disabled veteran on the other, we have concluded it is appropriate to require Mr. El Malik to obtain court approval to file any new notices of appeal. *See Constant v. United States*, 929 F.2d 654, 659 (Fed. Cir. 1991) (explaining that court had concluded it “cannot assume the papers [appellant] may hereafter file . . . will be well-founded and presented in good faith”). We will today issue a restrictive filing order instructing the Clerk of Court to require Mr. El Malik to obtain leave consistent with what we have set out here from this point forward.

IV

We have considered Mr. El Malik’s remaining arguments and find they lack merit. Because we lack jurisdiction to review all but one of Mr. El Malik’s challenges to the Veterans Court’s denial of a writ of mandamus and his remaining challenge is barred by res judicata, we affirm-in-part and dismiss-in-part. Because this appeal is

duplicative and frivolous, Mr. El Malik is sanctioned and the court will enter a restrictive filing order.

AFFIRMED-IN-PART AND DISMISSED-IN-PART

COSTS

No costs.

Designated for electronic publication only

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 24-5450

RASHID EL MALIK, PETITIONER,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS, RESPONDENT.

Before GREENBERG, *Judge*.

O R D E R

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

I.

On August 5, 2024, the pro se petitioner petitioned the Court for extraordinary relief in the nature of a writ of mandamus, asking the Court to compel the Secretary to implement an April 7, 2022, Board of Veterans' Appeals (Board or BVA) order. The petitioner alleged that in April 2022, the Board ordered Veteran Readiness and Employment (VR&E) to install hardwood floors in the petitioner's home. Petition at 1. The petitioner further alleged that the former chief of VR&E issued a referral to the special adaptive housing (SAH) department to implement the April 2022 Board order. *Id.* The petitioner then alleged that the SAH department granted an application to install hardwood flooring in the house and provided the petitioner with a list of approved contractors. *Id.* The petitioner claimed that he entered into a contract with one of the approved contractors and sent the contract to the new VR&E chief for approval. Petition at 2. Yet the petitioner claimed that the new chief of VR&E has failed to move forward on the contract. *Id.*

II.

Based on the petitioner's allegations, the Court deemed a response by the Secretary necessary. In October 2024, the Secretary responded to the Court. The Secretary provided the following procedural history:

1. April 7, 2022: Veteran Readiness and Employment (VR&E) received the Board of Veteran[s]' Appeal[s] (BVA) order noting a grant of purchase of new hardwood flooring, installation of automatic door openers, a complete two-story addition to the rear of the home and installation of a lift at the back of home.

2. May 16, 2022: VR&E completed the final payment to Moderno for the completion of the construction project which began on May 30, 2018. The project noted completion of an adaptative master bedroom, bathroom, new hardwood flooring in bedroom and tile flooring in bathroom, automatic doors on front door, master bathroom outside exit door and elevator doors, three-stop elevator in the home and two[-]stop elevator at the rear of the home.
3. August 2, 2022: VR&E received a medical opinion from Dr. Peter Glassman regarding additional nine matters remanded from the April 7, 2022, BVA ruling.
4. August 22, 2022: VR&E submitted a referral for the VR&E housing adaptation grant to request a Specially Adaptive Housing (SAH) Agent assist with the garage lighting and hardwood flooring.
5. August 30, 2022: VR&E issued a [S]upplemental [S]tatement of the [C]ase (SSOC) to the Mr. El Malik.
6. September 26, 2022: Mr. El Malik responded to the SSOC.
7. September 30, 2022: VR&E provided Mr. El Malik with an updated SSOC. The Veteran requested a delay on returning the SSOC until his medical appointment on November 2, 2022.
8. December 20, 2022: VR&E issued an edited SSOC to the Veteran.
9. December 22, 2022: BVA remands the matter to VR&E for 90 days following November 28, 2022, correspondence to the Veteran that granted a 90-day extension to submit additional evidence.
10. January 6, 2023: VR&E sent a follow up letter to Mr. El Malik regarding the referral to SAH for using the VR&E housing adaptation grant.
11. January 25, 2023: Mr. El Malik declined to move forward with SAH on the hard[][wood] floor and garage light due to the method of procurement.
12. March 17, 2023: VR&E issued the SSOC to the Veteran.
13. March 23, 2023: The SSOC was returned to BVA.
14. July 31, 2023: BVA remanded the matter to VR&E for more development prior to final adjudication of the claim on appeal.
15. November 24, 2023: VR&E sent a third letter to the Veteran requesting information about names, addresses, dates of treatment of all medical care providers, VA, and Non-VA.
16. February 22, 2024: Mr. El Malik provided contact information and dates of service for all medical providers.
17. April 5, 2024: an independent medical opinion was completed.
18. May 3, 2024: . . . SSOC[] was issued. This SSOC noted three of the four grant issues had been implemented; however, the remaining matter was intertwined with remand matters which denied the requested items.
19. May 6, 2024: Mr. El Malik responded to the SSOC.
20. May 13, 2024: Mr. El Malik provided additional information regarding the SSOC.
21. June 24, 2024: VR&E returned the completed remand to BVA and informed Mr. El Malik of this action.
22. June 25, 2024: Docket notification letter sent by the Board.

23. June 27, 2024: Mr. El Malik confirmed to BVA that he has no additional materials to submit.
24. September 4, 2024: VR&E informs Mr. El Malik by email that the May 2024 SSOC contains VBA's positions on the remanded items.

Secretary's Response at 2-4.

The Secretary then stated on October 1, 2024, the Board issued its decision on appeal. Secretary's Response at 9-10. In discussing the hardwood floor issue that the appellant seeks a writ for, the Board found:

Having addressed all of the issues remaining on appeal, the Board will briefly address the four equipment purchases/home modifications it previously granted in April 2022. In the May 2024 SSOC, the AOJ [agency of original jurisdiction] noted that, in granting the purchases and modifications in that decision, the Board may not have been aware that a modification project was underway at that time and was subsequently completed in May 2022. In that regard, the AOJ provided updates and sought further clarification.

As to the hardwood flooring, the Board previously found that "[a]ll floor surfaces throughout the house must allow for a wheelchair to move uninhibited. . . . In-home use of an electric wheelchair will require a solid surface floor of some type." See April 2018 VA examination. The AOJ explained that during the modification project, the Veteran was provided hardwood floors in the bedroom and tile flooring in the bathroom. According to the AOJ, the remainder of the flooring consists of marble-type flooring that allows for a wheelchair to move uninhibited. The AOJ then explained that, to the extent additional hardwood flooring is necessary, an SAH agent was assigned to work with the Veteran on installation of the approved modification. However, the Veteran declined to move forward as he disagreed with the procurement method being utilized by VR&E.

As noted by the AOJ, the Board addressed this issue in its April 2024 decision. Specifically, the Board found that Public Law 115-177 proscribes further processing of the Veteran's case under the provisions of 38 U.S.C. Chapter 31, and mandates that it be processed under the provisions of 38 U.S.C. § 2102B. Accordingly, as the Board remarked in April 2024, to the extent that further hardwood flooring remains to be installed, the Veteran should work with his assigned SAH agent to ensure the approved modifications can be made in a timely manner.

Secretary's Response at 37-38, Attachment B.

III.

"The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations." *Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402, 96 S. Ct. 2119, 48 L. Ed. 2d 725 (1976). Three

conditions must be met before the Court can issue a writ: (1) the petitioner must demonstrate the lack of adequate alternative means to obtain the desired relief, thus ensuring that the writ is not used as a substitute for the appeals process; (2) the petitioner must demonstrate a clear and indisputable right to the writ; and (3) the Court must be convinced, given the circumstances, that issuance of the writ is warranted. *See Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81, 124 S. Ct. 2576, 159 L. Ed. 2d 459 (2004). Failure to establish any of the three Cheney conditions may be sufficient to deny a petition. *See Amgen Inc. v. Hospira, Inc.*, 866 F.3d 1355, 1362-63 (Fed. Cir. 2017) (denying a petition for an extraordinary writ of mandamus for failure to satisfy the second *Cheney* condition without addressing the first and third conditions).

The Court will deny the petition as unwarranted. The petitioner has provided no evidence that the Secretary is refusing to implement the April 2022 Board decision. The issue appears to be confusion over the procurement process with SAH. The documents and procedural history of the case appear to show that all the petitioner needs to do for his desired relief is reach out to SAH to implement the April 2022 Board decision about hardwood flooring. *See* Secretary's Response at 2-4, 37-38; *id.* Attachment B. Thus, there is no relief to be provided by the Court in the context of a petition as a granting a writ would not be in aid the Court's prospective jurisdiction. *See* 28 U.S.C. § 1651(a). Thus, the Court will deny the petition as unwarranted.

To the extent that the petitioner disagrees with anything said in the October 1, 2024, Board decision, the appellant can appeal that decision and make any arguments in a Substantive Appeal. It is

IV.

ORDERED that the August 5, 2024, petitioner for extraordinary relief is DENIED as unwarranted.

DATED: October 31, 2024

BY THE COURT:


WILLIAM S. GREENBERG
Judge

Copies to:

Rashid El Malik

VA General Counsel (027)

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