

No. 25-735

---

---

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

---

FLOYD D. JOHNSON, PETITIONER

*v.*

UNITED STATES CONGRESS

---

*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT*

---

**BRIEF FOR THE RESPONDENT**

---

D. JOHN SAUER  
*Solicitor General  
Counsel of Record*

BRETT A. SHUMATE  
*Assistant Attorney General*

CHARLES W. SCARBOROUGH

CAROLINE D. LOPEZ  
*Attorneys*

*Department of Justice  
Washington, D.C. 20530-0001  
SupremeCtBriefs@usdoj.gov  
(202) 514-2217*

---

---

### **QUESTION PRESENTED**

Whether the district court had jurisdiction over petitioner's constitutional challenge to the reduction of his veteran's benefits, notwithstanding the administrative and judicial review scheme established by the Veterans' Judicial Review Act, Pub. L. No. 100-687, Div. A, 102 Stat. 4105 (1988).

**TABLE OF CONTENTS**

	Page
Opinions below .....	1
Jurisdiction .....	1
Statement.....	1
Discussion .....	7
Conclusion.....	20

**TABLE OF AUTHORITIES**

Cases:

<i>Arellano v. McDonough</i> , 598 U.S. 1 (2023).....	16
<i>Axon Enter., Inc. v. FTC</i> , 598 U.S. 175 (2023) .....	13
<i>Beamon v. Brown</i> , 125 F.3d 965 (6th Cir. 1997) .....	18
<i>Bowling v. McDonough</i> , 38 F.4th 1051 (Fed. Cir. 2022).....	14
<i>Bufkin v. Collins</i> , 604 U.S. 369 (2025) .....	16
<i>Cary v. Curtis</i> , 44 U.S. (3 How.) 236 (1845) .....	7
<i>City of Chicago v. Morales</i> , 527 U.S. 41 (1999) .....	14
<i>Copeland v. Shinseki</i> , 26 Vet. App. 86 (2012) .....	13
<i>Dacoron v. Brown</i> , 4 Vet. App. 115 (1993) .....	18
<i>Disabled American Veterans v. United States Dep't of Veterans Affairs</i> , 962 F.2d 136 (2d Cir. 1992) .....	16, 17
<i>Elgin v. Department of the Treasury</i> , 567 U.S. 1 (2012) .....	6-8, 10, 13-15, 19
<i>Estrada v. Shinseki</i> , No. 11-3439, 2013 WL 64489 (Vet. App. Jan. 7, 2013) .....	9
<i>Evans v. Greenfield Banking Co.</i> , 774 F.3d 1117 (7th Cir. 2014) .....	18
<i>FDA v. Brown &amp; Williamson Tobacco Corp.</i> , 529 U.S. 120 (2000) .....	11
<i>Fishgold v. Sullivan Drydock &amp; Repair Corp.</i> , 328 U.S. 275 (1946) .....	16
<i>George v. McDonough</i> , 596 U.S. 740 (2022).....	2

IV

Cases—Continued:	Page
<i>Hall v. West</i> , 16 Vet. App. 391, 1999 WL 59690 (Feb. 9, 1999), aff'd, 217 F.3d 860, 1999 WL 1072252 (Fed. Cir. Nov. 17, 1999).....	5, 9
<i>Henderson v. Shinseki</i> , 562 U.S. 428 (2011).....	2, 15, 16
<i>Hicks v. Veterans Admin.</i> , 961 F.2d 1367 (8th Cir. 1992) .....	19
<i>Jackson v. Principi</i> , 265 F.3d 1366 (Fed. Cir. 2001).....	8, 15
<i>Johnson v. Robison</i> , 415 U.S. 361 (1974) .....	2, 3, 6, 10, 11, 13
<i>Johnson v. United States</i> , No. 13-2405, 2013 WL 6502818 (N.D. Cal. Dec. 11, 2013).....	19
<i>Larrabee v. Derwinski</i> , 968 F.2d 1497 (2d Cir. 1992).....	10
<i>Marozsan v. United States</i> , 90 F.3d 1284 (7th Cir. 1996) .....	18
<i>Pereida v. Collins</i> , No. 2024-2018, 2025 WL 1099947 (Fed. Cir. Apr. 14, 2025) .....	13
<i>Prewitt v. McDonough</i> , 633 F. Supp. 3d 195 (D.D.C. 2022).....	19
<i>Quiban v. United States Veterans Admin.</i> , 713 F. Supp. 436 (D.D.C. 1989), rev'd, 928 F.2d 1154 (D.C. Cir. 1991) .....	18
<i>Quiban v. Veterans Admin.</i> , 928 F.2d 1154 (D.C. Cir. 1991), cert. denied, 513 U.S. 918 (1994) .....	18
<i>Recinto v. United States Dep't of Veterans Affairs</i> , 706 F.3d 1171 (9th Cir.), cert. denied, 571 U.S. 820 (2013) .....	17, 19
<i>Rudisill v. McDonough</i> , 601 U.S. 294 (2024).....	16
<i>Seiflein v. Collins</i> , No. 2024-1090, 2025 WL 2267022 (Fed. Cir. Aug. 8, 2025).....	14
<i>Thunder Basin Coal Co. v. Reich</i> , 510 U.S. 200 (1994) .....	13, 14
<i>Traynor v. Turnage</i> , 485 U.S. 535 (1988).....	3

V

Cases—Continued:	Page
<i>Veterans for Common Sense v. Shinseki</i> , 678 F.3d 1013 (9th Cir. 2012), cert. denied, 568 U.S. 1086 (2013) .....	11, 17
<i>Wanless v. McDonough</i> , No. 23-0326, 2023 WL 8764419 (Vet. App. Dec. 19, 2023).....	9
<i>Webster v. Doe</i> , 486 U.S. 592 (1988) .....	11
<i>Zuspann v. Brown</i> , 60 F.3d 1156 (5th Cir. 1995), cert. denied, 516 U.S. 1111 (1996).....	18
Constitution and statutes:	
U.S. Const. Art. III, § 1 .....	3, 7, 15
Rehabilitation Act of 1973, 29 U.S.C. 701 <i>et seq.</i> .....	3
Veterans’ Judicial Review Act, Pub. L. No. 100-687, Div. A, 102 Stat. 4105 .....	3
38 U.S.C. 211(a) (1970).....	2, 4, 6, 10, 11, 18
38 U.S.C. 301(b) .....	2
38 U.S.C. 502 .....	15
38 U.S.C. 511(a) .....	4, 8-11, 14
38 U.S.C. 511(b) .....	8
38 U.S.C. 511(b)(4).....	4, 8
38 U.S.C. 1110 .....	2
38 U.S.C. 1310 .....	2
38 U.S.C. 5313 .....	5, 7, 9, 13, 14
38 U.S.C. 7101(a) .....	2, 15
38 U.S.C. 7104(a) .....	15
38 U.S.C. 7104(c).....	15
38 U.S.C. Ch. 72 .....	4, 8
38 U.S.C. 7251.....	3
38 U.S.C. 7252.....	3
38 U.S.C. 7252(a) .....	8, 10, 15
38 U.S.C. 7261(a)(1) .....	3, 8
38 U.S.C. 7261(a)(3)(B).....	3, 8, 9

VI

Statutes—Continued:	Page
38 U.S.C. 7292.....	3
38 U.S.C. 7292(c) .....	3, 4, 6, 9, 10, 12, 14
38 U.S.C. 7292(d)(1).....	4, 6, 9

Miscellaneous:

H.R. Rep. No. 963, 100th Cong., 2d Sess. (1988).....	12, 14
--	--------

# In the Supreme Court of the United States

---

No. 25-735

FLOYD D. JOHNSON, PETITIONER

*v.*

UNITED STATES CONGRESS

---

*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT*

---

**BRIEF FOR THE RESPONDENT**

---

## **OPINIONS BELOW**

The opinion of the court of appeals (Pet. App. 1a-16a) is reported at 151 F.4th 1287. The order of the district court (Pet. App. 21a-23a) is available at 2022 WL 18716714.

## **JURISDICTION**

The judgment of the court of appeals was entered on August 19, 2025. On November 3, 2025, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including December 17, 2025, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## **STATEMENT**

1. a. “The law entitles veterans who have served on active duty in the United States military to receive benefits for disabilities caused or aggravated by their mili-

tary service.” *George v. McDonough*, 596 U.S. 740, 743 (2022) (citation omitted). The Department of Veterans Affairs (VA) determines when veterans or their families are entitled to benefits for disability or death incurred in connection with eligible military service. 38 U.S.C. 301(b), 1110, 1310.

A veteran’s claim for benefits is initially resolved by a VA regional office. *Henderson v. Shinseki*, 562 U.S. 428, 431 (2011). If the regional office denies his claim, the veteran may appeal its decision to the Board of Veterans’ Appeals (Board), an administrative body “within the VA that makes the agency’s final decision in cases appealed to it,” *ibid.*, and “is under the administrative control and supervision of a chairman directly responsible to the [VA] Secretary,” 38 U.S.C. 7101(a).

“Before 1988, a veteran whose claim was rejected by the VA was generally unable to obtain further review.” *Henderson*, 562 U.S. at 432. For example, 38 U.S.C. 211(a) (1970) provided that “the decisions” of the VA Administrator (the predecessor of the Secretary) “on any question of law or fact under any law \* \* \* providing benefits for veterans and their dependents or survivors shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision.” “No-review clauses similar to § 211(a) have been a part of veterans’ benefits legislation since 1933.” *Johnson v. Robison*, 415 U.S. 361, 368 (1974).

In *Johnson v. Robison*, however, this Court held that Section 211(a) did “not extend \* \* \* to actions challenging the constitutionality of laws providing benefits for veterans.” 415 U.S. at 373. The Court suggested that a contrary reading of the statute, as precluding all judicial review of such claims, would “raise serious ques-

tions concerning the constitutionality of § 211(a).” *Id.* at 366. The Court also concluded that “neither the text nor the scant legislative history of § 211(a) provides the ‘clear and convincing’ evidence of congressional intent required by this Court before a statute will be construed to restrict access to judicial review.” *Id.* at 373-374 (citation omitted). The Court later extended *Robison*’s reasoning to allow district-court review of a claim that a VA benefits regulation was invalid under the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.* See *Traynor v. Turnage*, 485 U.S. 535, 541-545 (1988).

b. In the Veterans’ Judicial Review Act (VJRA), Pub. L. No. 100-687, Div. A, 102 Stat. 4105 (1988), Congress established a comprehensive administrative and judicial review scheme for VA benefits decisions. The VJRA created the United States Court of Appeals for Veterans Claims (Veterans Court), an “Article I” court vested with “exclusive jurisdiction to review decisions of the Board of Veterans’ Appeals.” 38 U.S.C. 7251, 7252. In reviewing Board decisions, the Veterans Court may, among other things, “decide all relevant questions of law, interpret constitutional, statutory, and regulatory provisions,” and “hold unlawful and set aside decisions” as “contrary to constitutional right” and on other grounds. 38 U.S.C. 7261(a)(1) and (3)(B).

Under 38 U.S.C. 7292, further review is available in the United States Court of Appeals for the Federal Circuit. That Article III court has “exclusive jurisdiction to review and decide any challenge to the validity of any statute or regulation or any interpretation thereof brought under [Section 7292], and to interpret constitutional and statutory provisions, to the extent presented and necessary to a decision.” 38 U.S.C. 7292(c). Like the Veterans Court, the Federal Circuit “decide[s] all

relevant questions of law, including interpreting constitutional and statutory provisions,” and can set aside decisions as “contrary to constitutional right” and on other grounds. 38 U.S.C. 7292(d)(1). Further review may be available in this Court by writ of certiorari. 38 U.S.C. 7292(c).

The VJRA also amended Section 211(a), which is now codified at 38 U.S.C. 511(a). 102 Stat. 4105. That provision now states:

The Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans. Subject to subsection (b), the decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise.

38 U.S.C. 511(a). Subsection (b) cross-references the provisions that authorize review of VA decisions in the Veterans Court and Federal Circuit. 38 U.S.C. 511(b)(4); see 38 U.S.C. Ch. 72.

2. Petitioner is an Army veteran who, in 2013, “was convicted of several state felonies and sentenced to 40 years of imprisonment.” Pet. App. 2a; see *id.* at 24a. “During his incarceration,” petitioner applied to the VA “for disability benefits based on service-related post-traumatic stress disorder.” *Id.* at 2a. The VA “initially approved [petitioner’s] application at a 70 percent [disability] rate and later increased it to 80 percent following an administrative appeal.” *Ibid.* But the VA later lowered petitioner’s “benefits to a 10 percent rate under section 5313 of the Veterans’ Benefits Act, which limits disability benefits to veterans incarcerated for more

than 60 days due to a felony conviction.” *Ibid.*; see 38 U.S.C. 5313. Section 5313 reflects Congress’s concern with “providing government benefits to individuals who [a]re already being provided for by taxpayer funding of penal institutions.” Pet. App. 28a (citation omitted). The statute has been “uniformly and consistently upheld \* \* \* against various constitutional challenges,” *id.* at 29a (citation omitted), including by the Veterans Court and the Federal Circuit, see *Hall v. West*, 16 Vet. App. 391 (Tbl.), 1999 WL 59690 (Feb. 9, 1999), *aff’d*, 217 F.3d 860 (Tbl.), 1999 WL 1072252 (Fed. Cir. Nov. 17, 1999) (per curiam).

Rather than seek review of his benefits reduction through the VJRA scheme, petitioner filed a *pro se* complaint in the United States District Court for the Middle District of Florida, naming Congress as the sole defendant and alleging that Section 5313 is unconstitutional on bill-of-attainder and equal-protection grounds. Pet. App. 3a. A magistrate judge, after stating that the district court “may have jurisdiction over [petitioner’s] claim for veterans benefits to the extent he alleges only facial constitutional challenges to 38 U.S.C. § 5313,” recommended that the complaint be dismissed on the merits. *Id.* at 28a; see *id.* at 29a-30a. The district court adopted that recommendation. *Id.* at 21a-22a. Petitioner then appealed to the Eleventh Circuit, which appointed counsel to represent him. *Id.* at 20a.

3. The court of appeals vacated the district court’s judgment and remanded with instructions to dismiss for lack of jurisdiction. Pet. App. 1a-16a. The court first held that Congress was “not a proper defendant” because it had not waived sovereign immunity. *Id.* at 7a. Although petitioner had asked the court “to construe his complaint as naming a proper defendant or to grant

him leave to amend on appeal to substitute a proper party,” the court declined to do so. *Ibid.* The court of appeals concluded that “any amendment would be futile because Congress has vested exclusive jurisdiction to review challenges to the constitutionality of veterans’ benefits laws in the Court of Appeals for Veterans Claims and in the United States Court of Appeals for the Federal Circuit.” *Ibid.*

The court of appeals explained that, because the VJRA “does not eliminate judicial review” but “instead channels review” to the Veterans Court and the Federal Circuit, the availability of district-court review turned on “‘whether Congress’ intent to preclude district court jurisdiction is fairly discernible in the statutory scheme.’” Pet. App. 9a (quoting *Elgin v. Department of the Treasury*, 567 U.S. 1, 9-10 (2012)) (brackets and internal quotation marks omitted). The court found that “Congress clearly barred district courts from exercising jurisdiction over constitutional claims related to veterans’ benefits decisions.” *Id.* at 9a-10a. The court emphasized the VJRA provisions “vesting in the Federal Circuit ‘exclusive jurisdiction’ to interpret constitutional provisions ‘necessary to a decision’ and empowering that federal court to set aside any regulation or interpretation found ‘contrary to constitutional right.’” *Id.* at 9a (quoting 38 U.S.C. 7292(c) and (d)(1)).

The court of appeals noted petitioner’s concession that the VJRA “strips district courts of jurisdiction over as-applied constitutional challenges to statutes affecting individual benefits decisions.” Pet. App. 10a. And the court found “no textual support in the Act distinguishing between facial and as-applied claims.” *Id.* at 11a. The court also found inapposite this Court’s construction of former 38 U.S.C. 211(a) in *Robison, supra*,

because that decision involved “materially different” statutory language and the potential preclusion of all judicial review rather than the channeling of judicial review to a specified forum. Pet. App. 14a; see *id.* at 15a.

#### DISCUSSION

Petitioner contests (Pet. 21-36) the court of appeals’ holding that the Veterans’ Judicial Review Act precluded district-court jurisdiction over his constitutional challenge to a statutory provision (38 U.S.C. 5313) that reduced his VA disability benefits in light of his imprisonment. The court of appeals’ decision is correct. But that decision conflicts with precedent of two other circuits; the question presented is recurring and important; and this case is a suitable vehicle for resolving the question. This Court’s review is therefore warranted.

1. The court of appeals correctly held that the VJRA barred the district court from adjudicating petitioner’s constitutional challenge. Pet. App. 7a-16a.

a. The Constitution empowers Congress to establish inferior federal courts, “invest[] them with jurisdiction either limited, concurrent, or exclusive, and \* \* \* withhold[] jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good.” *Cary v. Curtis*, 44 U.S. (3 How.) 236, 245 (1845); see U.S. Const. Art. III, § 1. Petitioner appears to accept (Pet. 21) that, because the VJRA does not foreclose all judicial review of VA benefits decisions but “simply channels judicial review” to the Veterans Court and the Federal Circuit, “the appropriate inquiry is whether it is ‘fairly discernible’ from the [VJRA] that Congress intended covered [veterans] appealing covered agency actions to proceed exclusively through the statutory review scheme, even in cases in which [they] raise constitutional challenges to federal statutes.” *El-*

*gin v. Department of the Treasury*, 567 U.S. 1, 9-10 (2012). The court of appeals correctly held that it is not only fairly discernible, but “clear[],” that Congress “barred district courts from exercising jurisdiction” over petitioner’s present constitutional challenge. Pet. App. 9a-10a.

The VJRA’s “text, structure, and purpose” foreclose petitioner’s jurisdictional argument. *Elgin*, 567 U.S. at 10. Section 511(a) states that the VA Secretary “shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans.” 38 U.S.C. 511(a). The Secretary renders those decisions through the VA’s regional offices and the Board of Veterans’ Appeals. See *Jackson v. Principi*, 265 F.3d 1366, 1370 (Fed. Cir. 2001). Subject to the exceptions in Section 511(b), “the decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other official or by any court.” 38 U.S.C. 511(a). Here, the only relevant exception in subsection (b) to the VA’s exclusive authority over benefits decisions is the paragraph that cross-references the VJRA’s provisions authorizing review by the Veterans Court and the Federal Circuit. See 38 U.S.C. 511(b)(4); 38 U.S.C. Ch. 72.

The latter provisions confirm that the VJRA’s exclusive review scheme encompasses constitutional claims. The statute provides that the Veterans Court “shall have exclusive jurisdiction to review decisions of the Board of Veterans’ Appeals,” 38 U.S.C. 7252(a), and shall, among other things, “decide all relevant questions of law, interpret constitutional \* \* \* provisions,” and “hold unlawful and set aside decisions” that are “contrary to constitutional right,” 38 U.S.C. 7261(a)(1) and

(3)(B). The Federal Circuit, in turn, has “exclusive jurisdiction” on appeal from the Veterans Court “to review and decide any challenge to the validity of any statute \* \* \* , and to interpret constitutional and statutory provisions, to the extent presented and necessary to a decision.” 38 U.S.C. 7292(c); see 38 U.S.C. 7292(d)(1) (providing that the Federal Circuit “shall decide all relevant questions of law, including interpreting constitutional and statutory provisions,” and “hold unlawful and set aside” decisions that are “contrary to constitutional right”).

The VJRA scheme plainly encompasses petitioner’s constitutional challenge to 38 U.S.C. 5313. The VA’s decision to reduce petitioner’s disability benefits pursuant to Section 5313 is “a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans.” 38 U.S.C. 511(a). The constitutionality of Section 5313 is a “question[] of law” that necessarily bears on that decision. *Ibid.* And the above-cited provisions for review of VA benefits decisions by the Veterans Court and the Federal Circuit make clear that the VJRA judicial-review scheme includes resolution of any constitutional questions that bear on a veteran’s entitlement to benefits. In fact, the same constitutional challenges to 38 U.S.C. 5313 that petitioner raises here have repeatedly been adjudicated (and rejected on the merits) within that framework. See *Hall v. West*, 16 Vet. App. 391 (Tbl.), 1999 WL 59690 (Feb. 9, 1999), *aff’d*, 217 F.3d 860 (Tbl.), 1999 WL 1072252 (Fed. Cir. Nov. 17, 1999) (per curiam); *Wanless v. McDonough*, No. 23-326, 2023 WL 8764419, at \*4-\*5 (Vet. App. Dec. 19, 2023); *Estrada v. Shinseki*, No. 11-3439, 2013 WL 64489, at \*10-\*12 (Vet. App. Jan. 7, 2013).

By its plain terms, the VJRA channels claims like petitioner's to the Veterans Court and the Federal Circuit and excludes them from the jurisdiction of the district courts. See 38 U.S.C. 511(a), 7252(a), 7292(c). Permitting such claims to proceed in district court would undermine Congress's objective in the VJRA to establish a comprehensive, uniform, and specialized review scheme for VA benefits decisions. See *Elgin*, 567 U.S. at 14; *Larrabee v. Derwinski*, 968 F.2d 1497, 1501 (2d Cir. 1992) (noting the VJRA's goal of "maintaining uniformity by establishing an exclusive mechanism for appellate review of decisions of the Secretary"). The court of appeals correctly held that the district court lacked jurisdiction.

b. Petitioner's counterarguments lack merit.

i. Petitioner principally relies (Pet. 1-4, 21-26) on this Court's holding in *Johnson v. Robison*, 415 U.S. 361 (1974), that 38 U.S.C. 211(a) (1970)—the predecessor of 38 U.S.C. 511(a)—did not bar district courts from exercising jurisdiction over constitutional challenges to VA benefits statutes. 415 U.S. at 373. But *Robison* "involved a materially different statutory scheme that has since been amended." Pet. App. 13a; contra Pet. 23. The *Robison* Court emphasized that, while Section 211(a) barred review of the VA Administrator's decisions "on any question of law or fact under any law administered by the Veterans' Administration providing benefits for veterans," 415 U.S. at 367 (quoting 38 U.S.C. 211(a)) (emphasis omitted), a challenge to the constitutionality of such a law "arise[s] under the Constitution, not under the statute whose validity is challenged," *ibid.* (citation omitted).

The VJRA, however, amended Section 211(a) to encompass "all questions of law and fact necessary to a

decision by the [VA] under a law that affects the provision of [VA] benefits.” 102 Stat. 4105; see 38 U.S.C. 511(a). By separating the “question of law” clause from the “under any law” clause, and broadening the latter to cover a law “affect[ing] the provision” of benefits (rather than one “administered by” the VA), the VJRA “expanded” Section 211(a)’s coverage. *Veterans for Common Sense v. Shinseki*, 678 F.3d 1013, 1022 (9th Cir. 2012) (en banc), cert. denied, 568 U.S. 1086 (2013). In contrast with the version of the statute that was at issue in *Robison*, the amended version comfortably encompasses constitutional questions that bear on a veteran’s entitlement to benefits. See Pet. App. 14a-15a.

The statutory framework at issue in *Robison* was different from the VJRA in another fundamental way. Whereas the pre-VJRA framework did not authorize judicial review of VA benefits decisions at all, the VJRA vests the Veterans Court and the Federal Circuit with exclusive jurisdiction to review such decisions and explicitly empowers those courts to resolve constitutional issues. See pp. 3-4, *supra*. If those provisions had existed when *Robison* was decided, they plainly would have borne on the Court’s construction of Section 211(a), for “[i]t is a ‘fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.’” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citation omitted). In particular, such review provisions would have obviated the *Robison* Court’s constitutional concerns with interpreting the statute as precluding all judicial review of a constitutional claim. See 415 U.S. at 366-367, 373-374; *Webster v. Doe*, 486 U.S. 592, 603 (1988) (noting “the ‘serious constitutional question’ that would arise if

a federal statute were construed to deny any judicial forum for a colorable constitutional claim”) (citation omitted); *Elgin*, 567 U.S. at 9 (explaining that “*Webster’s* heightened standard” for inferring congressional intent to preclude judicial review of constitutional claims “does not apply where Congress simply channels judicial review of a constitutional claim to a particular court”).

Accordingly, although petitioner notes that the House committee report for the VJRA described *Robison* as “clearly correct,” Pet. 6, 23 (quoting H.R. Rep. No. 963, 100th Cong., 2d Sess. 19 (1988) (House Report)), the Court in *Robison* interpreted a markedly different statute. The House Report viewed *Robison* as correct “in asserting judicial authority to decide whether statutes meet constitutional muster,” House Report 22, but the VJRA now provides for such review in the Veterans Court and the Federal Circuit. The report also stated that, under the VJRA, “district courts would no longer have jurisdiction to entertain challenges to the constitutionality of any matter affecting veterans benefits.” *Id.* at 30. That language reflected the understanding that review of constitutional claims through the VJRA mechanisms would replace the district-court review that had previously been available.

Indeed, petitioner has acknowledged that the VJRA “strips district courts of jurisdiction over *as-applied* constitutional challenges to statutes affecting individual benefits decisions,” Pet. App. 10a (emphasis added), and no court of appeals has held otherwise, cf. Pet. 10-12. And while petitioner contends that *facial* constitutional challenges may nevertheless proceed outside of the VJRA’s review scheme, there is no statutory basis for that distinction. See Pet. App. 12a; see also, *e.g.*, 38 U.S.C. 7292(c) (vesting the Federal Circuit with “exclu-

sive jurisdiction to review and decide any challenge to the validity of any statute \* \* \* brought under this section”). *Robison* itself did not draw any such line. See 415 U.S. at 366-374. This Court previously rejected a similar effort to confine a jurisdiction-channeling framework to as-applied constitutional claims, describing such a distinction as “amorphous.” *Elgin*, 567 U.S. at 15. No matter how petitioner’s constitutional claim is labeled, it is inextricably tied to his claim for veteran’s benefits and therefore must be adjudicated through the VJRA system.

ii. Petitioner also invokes (Pet. 31-36) a multifactor test derived from *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994), for determining whether Congress has implicitly precluded district-court jurisdiction over particular claims. Even assuming that the *Thunder Basin* framework applies to a statute (like the VJRA) that *explicitly* precludes such jurisdiction, cf. *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 185 (2023), the *Thunder Basin* factors do not help petitioner’s cause.

First, preclusion of district-court jurisdiction would not “foreclose all meaningful judicial review” of petitioner’s constitutional challenges to 38 U.S.C. 5313, *Thunder Basin*, 510 U.S. at 212-213, because the VJRA vests the Veterans Court and the Federal Circuit with jurisdiction to adjudicate those challenges and to grant any appropriate relief. Indeed, those courts have previously considered, and rejected on the merits, the same constitutional challenges to Section 5313 that petitioner seeks to raise in this suit. See pp. 5, 9, *supra*.<sup>1</sup> It is there-

---

<sup>1</sup> Even if the Veterans Court could resolve only as-applied constitutional claims, as the government argued in a 2024 brief, see Pet. 17, 35-36 (citing *Pereida v. Collins*, No. 2024-2018, 2025 WL 1099947, at \*3 (Fed. Cir. Apr. 14, 2025)); but see, e.g., *Copeland v.*

fore beside the point that the Board has “equivocate[d]” about its own authority to hold federal statutes unconstitutional. Pet. 16; see *Elgin*, 567 U.S. at 17-21; cf. House Report 27 (explaining that, under the proposed VJRA, “if a veteran alleges that a statute is unconstitutional, \* \* \* the Administrator must take a position with respect to such a contention if it is necessary to a decision in a case”). Contrary to petitioner’s suggestion (Pet. 17), the authority of the Veterans Court and the Federal Circuit to decide a constitutional issue does not depend on the Board’s having decided it first. See *Bowling v. McDonough*, 38 F.4th 1051, 1059 (Fed. Cir. 2022); cf. *Seiflein v. Collins*, No. 2024-1090, 2025 WL 2267022, at \*2 (Fed. Cir. Aug. 8, 2025) (per curiam) (declining to reach a constitutional issue that “the *Veterans Court* did not decide”) (emphasis added; citation omitted).

Second, petitioner’s challenge to Section 5313 is not “wholly ‘collateral’” to the VJRA review scheme. *Thunder Basin*, 510 U.S. at 212 (citation omitted). Petitioner’s constitutional claim is “the vehicle by which [he] seek[s] to reverse” the reduction of his veteran’s benefits, which “is precisely the type of [agency] action regularly adjudicated” through the VJRA framework. *Elgin*, 567 U.S. at 22; see 38 U.S.C. 511(a).

Third, even assuming that the VA does not have relevant “expertise” with respect to the ultimate constitutionality of Section 5313, it likely does have expertise on other matters—such as the proper interpretation of the

---

*Shinseki*, 26 Vet. App. 86 (2012), petitioner would still not satisfy the first *Thunder Basin* factor. No one disputes that the Federal Circuit may decide facial claims, see 38 U.S.C. 7292(c), and at all events, a litigant with a meritorious facial challenge may ipso facto bring an as-applied claim, see *City of Chicago v. Morales*, 527 U.S. 41, 78 n.1 (1999) (Scalia, J., dissenting).

statute—that may bear on the disposition of petitioner’s benefits claim. See *Elgin*, 567 U.S. at 22-23. And to the extent petitioner argues that Section 5313 violates equal-protection principles, the VA’s understanding of the veterans’-benefits scheme as a whole will be relevant to any assessment of Section 5313’s rationality. The *Thunder Basin* factors therefore point to the same conclusion as the VJRA’s text, structure, and purpose.

iii. Petitioner’s remaining arguments are also unsound. He notes (Pet. 28) that “challenges to the VA’s rules and regulations can go directly to an Article III court” under 38 U.S.C. 502. Yet he omits that such review “may be sought only in the United States Court of Appeals for the Federal Circuit,” 38 U.S.C. 502, the same Article III court to which the VJRA channels his constitutional claim. Here, by contrast, petitioner filed suit in the Middle District of Florida and appealed that court’s decision to the Eleventh Circuit. Section 502’s conferral of exclusive jurisdiction on the Federal Circuit further undercuts petitioner’s contention that Congress intended to allow constitutional challenges to VA benefits statutes to be brought in federal courts across the country rather than through the VJRA framework.

Petitioner suggests that the VJRA’s “asymmetric review scheme, where only a claimant (and not the Government) can appeal an adverse administrative decision” by the Board to the Veterans Court, may raise “separation-of-powers” concerns. Pet. 29 (citing 38 U.S.C. 7252(a)). But “the Board acts on behalf of the Secretary,” and there is no reason for the VA to seek judicial review of its own decisions. *Jackson*, 265 F.3d at 1370; see *Henderson v. Shinseki*, 562 U.S. 428, 431 (2011); 38 U.S.C. 7101(a), 7104(a) and (c). If the VA “were to hold a federal statute unconstitutional” in a circum-

stance where that holding benefited the claimant, Pet. 32 (emphasis omitted), the claimant would have no need and no practical reason to seek judicial review of that decision.

Finally, petitioner appears to invoke the pro-veteran canon, urging this Court to “‘liberally construe’ Section 511(a) in [his] favor.” Pet. 36 (quoting *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946)) (brackets omitted). Even assuming that the canon is sound, but cf. *Rudisill v. McDonough*, 601 U.S. 294, 314-318 (2024) (Kavanaugh, J., concurring); *id.* at 329 (Thomas, J., dissenting), it would not apply here because the VJRA is not ambiguous in any relevant respect. See *Arellano v. McDonough*, 598 U.S. 1, 14 (2023). It would be particularly inappropriate to apply the pro-veteran canon to enable evasion of “[t]he VA’s adjudicatory process,” which Congress “designed to function throughout with a high degree of \* \* \* solicitude for the claimant.” *Henderson*, 562 U.S. at 431 (citation and internal quotation marks omitted); see *id.* at 432; see also, e.g., *Bufkin v. Collins*, 604 U.S. 369 (2025).

2. Petitioner urges (Pet. 10-14) this Court to grant a writ of certiorari to resolve a disagreement among the courts of appeals on the question whether the VJRA bars district-court jurisdiction over facial challenges to VA benefits laws. Although petitioner overstates the extent of the conflict, he is correct that a conflict exists.

The decision below conflicts with decisions of the Second and Ninth Circuits. See Pet. App. 11a-12a (acknowledging the conflict). The Eleventh Circuit held that facial and as-applied constitutional claims alike are subject to the VJRA’s exclusive framework for administrative and judicial review of VA benefits decisions. *Id.* at 16a. By contrast, in *Disabled American Veterans*

v. *United States Department of Veterans Affairs*, 962 F.2d 136 (1992), the Second Circuit held that the VJRA “does not deprive [district courts] of jurisdiction to hear facial challenges of legislation affecting veterans’ benefits.” *Id.* at 140. The court therefore concluded that a district court had jurisdiction over a facial equal-protection challenge to a statute that suspended VA benefits for certain veterans determined to be incompetent. See *id.* at 141; see also *id.* at 141-144 (rejecting the claim on the merits).

The Ninth Circuit took the same view in *Recinto v. United States Department of Veterans Affairs*, 706 F.3d 1171, cert. denied, 571 U.S. 820 (2013). The *Recinto* court recognized that the VJRA precludes district-court jurisdiction over constitutional claims that “would require review of the circumstances of individual benefits requests,” but it held that “the VJRA d[oes] not bar jurisdiction over a facial challenge to the constitutionality of a statute.” *Id.* at 1175-1176.<sup>2</sup> The court concluded that a district court had jurisdiction over a facial equal-protection challenge to a statute that provided benefits for Filipino World War II veterans. See *id.* at 1176; see also *id.* at 1177-1178 (rejecting the claim on the merits).

Contrary to petitioner’s contention (Pet. 12-13), no court of appeals other than the Second, Ninth, and Eleventh Circuits appears to have decided whether the VJRA precludes facial constitutional challenges to VA

---

<sup>2</sup> Although the *Recinto* court based the latter holding on its prior decision in *Veterans for Common Sense*, *supra*, see *Recinto*, 706 F.3d at 1176, the nature of the claim in that earlier case meant that the court had no “need [to] decide whether an individual seeking benefits would be barred by § 511 from bringing a facial constitutional challenge in the district court.” *Veterans for Common Sense*, 678 F.3d at 1034.

benefits provisions from being brought in district court. In *Quiban v. Veterans Administration*, 928 F.2d 1154 (1991) (R.B. Ginsburg, J.), cert. denied, 513 U.S. 918 (1994), the D.C. Circuit addressed only the merits of the constitutional claim, not the district court’s jurisdiction.<sup>3</sup> The prior D.C. Circuit order in *Quiban* that petitioner describes (Pet. 12) was entered in 1987, before the VJRA was enacted. See *Quiban v. United States Veterans Admin.*, 713 F. Supp. 436, 437 (D.D.C. 1989), rev’d, 928 F.2d 1154 (D.C. Cir. 1991). In *Marozsan v. United States*, 90 F.3d 1284 (1996) (per curiam), the Seventh Circuit likewise did not address the jurisdictional issue under the VJRA. See *id.* at 1287 & n.1 (noting the court’s prior ruling that the pre-VJRA version of Section 211(a) allowed constitutional challenges in district court).

The other cases that petitioner describes (Pet. 12-14) as part of the circuit conflict did not involve facial constitutional challenges to VA benefits statutes, so any statements in those decisions about district-court jurisdiction over such claims were dicta. See *Zuspann v. Brown*, 60 F.3d 1156, 1159 (5th Cir. 1995) (agreeing with the district court that the plaintiff “did not make a facial attack”), cert. denied, 516 U.S. 1111 (1996); *Beamon v. Brown*, 125 F.3d 965, 973 (6th Cir. 1997) (“Plaintiffs here \* \* \* do not challenge the constitutionality of an act of Congress.”); *Evans v. Greenfield Banking Co.*, 774 F.3d 1117, 1123 (7th Cir. 2014) (“The complaint here \* \* \* does not challenge any of the governing statutes

---

<sup>3</sup> The Veterans Court and Board decisions cited at Pet. 15-16 thus erred in stating that the D.C. Circuit in *Quiban* had “sustained the district court’s jurisdiction to hear the constitutional claim.” *Dacoron v. Brown*, 4 Vet. App. 115, 119 (1993); Bd. Vet. App. 9628849, 1996 WL 33594503, at \*2 (Oct. 10, 1996).

or regulations.”); *Hicks v. Veterans Admin.*, 961 F.2d 1367, 1370 (8th Cir. 1992) (holding that the VJRA deprived the district court of jurisdiction over a First Amendment retaliation claim). But the decision below does conflict with the Second and Ninth Circuit decisions discussed above.

3. This Court should grant review and resolve that conflict in this case. Whether district courts have jurisdiction to review VA benefits claims based on facial constitutional challenges is an important and recurring question. See, e.g., *Prewitt v. McDonough*, 633 F. Supp. 3d 195, 205-207 (D.D.C. 2022); *Johnson v. United States*, No. 13-2405, 2013 WL 6502818, at \*10 (N.D. Cal. Dec. 11, 2013) (applying *Recinto*, *supra*). The Court has previously granted certiorari to decide whether similar claims may be brought in district court or instead are channeled into a specialized statutory scheme for administrative and judicial review. See *Elgin*, 567 U.S. 1.

This case is a suitable vehicle for resolving the question presented. While petitioner’s *pro se* complaint suffered from the additional flaw that it mistakenly named Congress as the defendant, see Pet. 9 (identifying the Secretary of Veterans Affairs as the proper defendant in this suit), the court of appeals did not treat that defect as an independently sufficient basis for the court’s judgment, which ordered dismissal of petitioner’s complaint for lack of jurisdiction. Rather, the court analyzed the preclusion issue at length, see Pet. App. 7a-15a, and concluded that amendment of the complaint to name a proper defendant would be futile because “[e]ven if [petitioner] were to remove Congress as a defendant and assert only a facial constitutional challenge to section 5313, the district court would still lack jurisdiction,” *id.* at 16a. The court’s resolution of the preclusion question

presented here therefore was essential to its disposition of the case.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted.

D. JOHN SAUER  
*Solicitor General*  
BRETT A. SHUMATE  
*Assistant Attorney General*  
CHARLES W. SCARBOROUGH  
CAROLINE D. LOPEZ  
*Attorneys*

MARCH 2026