No. 26-150

In the Supreme Court of the United States

GUADALUPE LOPEZ, JR.,

Petitioner,

v.

DOUGLAS A. COLLINS,
SECRETARY OF VETERANS AFFAIRS,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioner respectfully requests rehearing and reconsideration of the denial of his petition for a writ of certiorari pursuant to Supreme Court Rules 44.2 and 10.

Petitioner submits that his petition presents compelling reasons for review concerning conflicting judicial determinations regarding the finality of a February 8, 2023, Board of Veterans' Appeals decision, the dismissal of his claim alleging clear and unmistakable error (CUE), and the application of the doctrine of *res judicata*.

Petitioner provides additional argument and case-law not previously presented in the original petition which explain the relationship between these conflicting determinations and the Federal Circuit's decision in *Smith v. Brown*, 35 F.3d 1516 (Fed. Cir. 1994), concerning collateral review for CUE under 38 C.F.R. § 3.105 (a) (1994).

I. Grounds for Reconsideration Under Supreme Court Rule 10

Supreme Court Rule 10 provides that review on a writ of certiorari is not a matter of right but of judicial discretion and will be granted only for compelling reasons. Although the considerations identified in the Rule are neither controlling nor fully measure the Court's discretion, they indicate the character of the reasons the Court considers.

Rule 10(a) identifies circumstances in which a United States court of appeals has entered a decision

in conflict with another court of appeals on the same important matter, has decided an important federal question in conflict with another court of appeals, or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

Petitioner submits that the judicial proceedings in his case present substantial grounds for reconsideration because of conflicting determinations concerning the finality of the same February 8, 2023, Board decision and the jurisdictional treatment of his CUE claim.

On August 4, 2025, a United States Court of Appeals for Veterans Claims judge entered a decision treating the February 8, 2023, Board dismissal of Petitioner's CUE claim as legally barred and the judgment as terminated on the merits.

Petitioner contends that this determination conflicts with the November 2, 2023, decision of another Veterans Court judge directing reinstatement of the February 2023 appeal.

Petitioner maintains that the November 2, 2023, reinstatement order abated the finality of the February 8, 2023, Board decision. Accordingly, the subsequent determination treating the same CUE claim as legally barred, jurisdictionally dismissed, or finally adjudicated presents an unresolved conflict concerning the legal effect of the reinstatement order.

The central federal question is whether a judicial determination of finality and *res judicata* may properly be imposed upon a CUE claim when an earlier judicial order reinstated the underlying appeal and thereby

called into question the finality of the Board decision upon which the subsequent dismissal depends.

Petitioner further contends that the 2026 Circuit Court determination concerning the finality of his legally barred CUE claim failed to reconcile these conflicting judicial decisions.

Petitioner submits that these circumstances warrant review of whether the lower courts departed from the accepted and usual course of judicial proceedings in addressing the same important federal question.

II. The Federal Circuit's Decision in *Smith v. Brown* and the Scope of CUE Review

Petitioner relies upon the Federal Circuit's August 12, 1994, decision in *Smith v. Brown*, 35 F.3d 1516 (Fed. Cir. 1994), addressing collateral review for clear and unmistakable error under 38 C.F.R. § 3.105(a) (1994).

In discussing the decision of the United States Court of Veterans Appeals in *Smith v. Principi*, 3 Vet. App. 378 (1993), the Federal Circuit explained the dispute concerning whether otherwise final Board decisions were subject to collateral review for CUE.

The original passage relied upon by Petitioner states:

> "The Secretary of Veterans Affairs appeals the decision of the United States Court of Veterans Appeals (Veterans Court) in *Smith v. Principi*, 3 Vet. App. 378 (1992), holding that otherwise final decisions of the Board of Veterans Appeals (Board) are subject to collateral review for "clear and unmistakable

> error" (CUE) under 38 C.F.R. Sec. 3.105(a) (1993). Because the Veterans Court misinterpreted Sec. 3.105(a), we reverse."

Smith v. Brown, 35 F.3d at 1517.

The Federal Circuit thus reversed the Veterans Court's interpretation of § 3.105(a). The decision is relevant to Petitioner's claim because it addresses the legal relationship between final Board decisions, jurisdiction, and the authority to conduct collateral review for CUE.

The decision also examined the application of the plain-meaning rule and the competing interpretations of the regulatory language. Petitioner specifically relies upon the following discussion, reproduced as originally submitted:

> [A]pplication of the plain meaning rule, *see, e.g., Weddel v. United States,* 23 F.3d 388, 391-92 (Fed.Cir.'94) (collecting cases), to the language of § 3.105 standing alone compels this court to adopt the contrary interpretation and hold Board decisions subject to review for CUE — the Secretary's interpretation to the contrary notwithstanding, *see, e.g., Estate of Cowart v. Nicklos Drilling Co.,* ___ U.S. ___, ___, 112 S.Ct. 2589, 2594, 120 L.Ed.2d 379 ('92) (no deference to agency interpretation that conflicts with unambiguous text); *Board of Governors of the Fed. Reserve Sys. v. Dimension Fin. Corp.,* 474 U.S. 361, 368, 106 S.Ct. 681, 685-86, 88 L.Ed.2d 691 ('86) (same). They reason that since the words "decisions" and "determinations" appear in the CUE provision without any express

> qualification that might limit the scope of their coverage, and since the part of the regulations in which § 3.105 is located bears the general heading "Adjudication," we have no choice but to hold that § 3.105(a) provides for mandatory CUE review of all final adjudicatory decisions, original and appellate alike. As a policy matter, we are urged to accept that this interpretation is most consistent with and in furtherance of the uniquely pro-claimant principles underlying the veterans' benefits dispensation scheme.

Smith v. Brown, 35 F.3d at 1522.

The foregoing discussion addresses an interpretation advanced in favor of broader CUE review. The Federal Circuit ultimately rejected that interpretation and reversed the Veterans Court's decision.

Nevertheless, Petitioner submits that the analysis in *Smith v. Brown* demonstrates the importance of correctly determining the nature and finality of the adjudicatory decision before deciding whether collateral review for CUE is available.

Petitioner maintains that the principles concerning finality and the jurisdictional limits of CUE review discussed in *Smith v. Brown* are inextricably intertwined with the question presented in his petition.

Specifically, Petitioner contends that the February 8, 2023, Board dismissal of his CUE claim cannot properly be evaluated without first determining the legal effect of the November 2, 2023, Veterans Court order reinstating the February 2023 appeal.

III. The Conflict Between the Reinstatement Order, Finality, and *Res Judicata*

Petitioner submits that his original petition failed to articulate adequately the relationship between the following judicial determinations:

1. The February 8, 2023, Board decision dismissing his claim of clear and unmistakable error;

2. The November 2, 2023, Veterans Court decision directing reinstatement of the February 2023 appeal, which Petitioner maintains abated the finality of the Board decision;

3. The August 4, 2025, Veterans Court determination treating the CUE claim as legally barred and the judgment as terminated on the merits; and

4. The subsequent 2026 Circuit Court determination concerning finality and *res judicata* as applied to the same CUE claim.

Petitioner contends that these determinations cannot be reconciled without addressing whether the November 2, 2023, reinstatement order affected the finality of the February 8, 2023, Board decision.

The doctrine of *res judicata* depends upon the existence of a qualifying final adjudication. Where the finality of the underlying decision has been affected by a judicial order reinstating the appeal, Petitioner submits that the courts must first determine the legal effect of that order before relying upon finality to dismiss the CUE claim.

Petitioner further maintains that the subsequent treatment of the claim as legally barred, without adequately reconciling the earlier reinstatement order,

presents an important federal question concerning the proper application of jurisdictional limitations and finality principles.

The Federal Circuit's decision in *Smith v. Brown*, together with the authorities cited therein, demonstrates the importance of determining the proper scope of CUE review within the governing statutory and regulatory framework.

Petitioner therefore submits that the 2026 Circuit Court determination of finality, the earlier Veterans Court reinstatement order, and the February 8, 2023, Board dismissal are inextricably intertwined and must be considered together.

Failure to reconcile these decisions, Petitioner contends, resulted in an inconsistent application of finality and *res judicata* to the same CUE matter.

IV. Petitioner's Difficulties in Presenting the Legal Questions

Petitioner sincerely apologizes to this Court for any inconvenience caused by his inability to interpret and comply fully with the Rules of this Court.

Petitioner is an older disabled veteran experiencing multiple physical and emotional disabilities that have substantially complicated his ability to understand the applicable procedural rules and present the legal questions in an organized manner.

These difficulties have been compounded by his inability to obtain experienced legal representation despite contacting numerous law firms seeking assistance.

Petitioner has alleged that relevant evidence of record was omitted during the adjudication of his claims, conduct which he believes constituted obstruction of justice. He sought legal assistance to address these allegations involving judicial conduct but was repeatedly unsuccessful in obtaining representation.

Petitioner reports that certain firms expressed reluctance to undertake representation challenging the conduct of Veterans Court judges, including the statement: "We do not bite the hand that feeds us."

Petitioner does not present these circumstances as a substitute for the legal grounds required for rehearing. Rather, he respectfully submits them to explain his inability to articulate fully, in his original petition, the relationship between the controlling authorities and the conflicting judicial determinations.

Petitioner acknowledges that he failed in his initial attempt to explain adequately how the February 8, 2023, dismissal of his CUE claim, the November 2, 2023, reinstatement order, and the subsequent determinations concerning finality and *res judicata* are legally intertwined.

He further acknowledges that he did not adequately explain the relevance of *Smith v. Brown* and the Federal Circuit's discussion of the plain-meaning rule, regulatory interpretation, and collateral review for CUE under 38 C.F.R. § 3.105(a) (1994).

Petitioner respectfully asks that these circumstances be considered in evaluating his effort to present the substantial federal questions raised by his petition.

V. Request for Rehearing Under Supreme Court Rule 44.2

Petitioner respectfully requests rehearing pursuant to Supreme Court Rule 44.2 and submits that the unresolved conflict concerning the finality of the February 8, 2023, Board decision presents substantial grounds for reconsideration.

Petitioner maintains that his original petition did not adequately identify the legal consequences of the November 2, 2023, Veterans Court order reinstating the underlying appeal, particularly its relationship to the subsequent August 4, 2025, determination and the 2026 Circuit Court decision treating the CUE claim as legally barred or finally adjudicated.

Petitioner further submits that the question of whether *res judicata* may properly be applied under these circumstances is inseparable from the federal principles governing finality and CUE review discussed in *Smith v. Brown*.

Petitioner respectfully requests that the Court consider whether the conflicting judicial treatment of the same underlying decision presents substantial grounds not adequately addressed in his original petition and whether the circumstances warrant the exercise of this Court's discretionary review.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant rehearing, reconsider the denial of his petition for a writ of certiorari, and determine whether the conflicting judicial decisions concerning the February 8, 2023, Board dismissal, the November 2, 2023, reinstatement order, and the subsequent determinations of finality and *res judicata* warrant review under Supreme Court Rule 10.

Petitioner further requests such other and additional relief as this Court deems just and appropriate.

Respectfully submitted,

/s/ Guadalupe Lopez, Jr.

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October 28, 2026

RULE 44 CERTIFICATE

I, GUADALUPE LOPEZ, JR., petitioner pro se, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:

1. This petition for rehearing is presented in good faith and not for delay.

2. The grounds of this petition are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

/s/ Guadalupe Lopez, Jr.

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