No. 26-284

In the Supreme Court of the United States

JAMES M. KERNZ, PETITIONER

v.

DOUGLAS A. COLLINS,
SECRETARY OF VETERANS AFFAIRS

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Petitioner submitted an application for disability benefits to the Department of Veterans Affairs (VA). The Board of Veterans' Appeals (Board) dismissed petitioner's appeal from a VA regional office's adverse decision on the ground that the appeal was untimely. After petitioner sought review in the Court of Appeals for Veterans Claims (Veterans Court), the Board determined that it had miscalculated the filing deadline, and it therefore reinstated petitioner's case. The Veterans Court dismissed petitioner's appeal from the Board's prior decision, and the Federal Circuit in turn dismissed petitioner's appeal of the Veterans Court's dismissal order. The question presented is as follows:

Whether petitioner's appeal to the Veterans Court was rendered moot, and petitioner lacked standing to seek further review in the Federal Circuit, because the Board's reinstatement of the case had provided petitioner all the relief that a successful appeal could have produced.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-21a) is reported at 171 F.4th 1364. The order of the Court of Appeals for Veterans Claims (Pet. App. 22a-85a) is reported at 36 Vet. App. 372. The order of the Board of Veterans' Appeals (Pet. App. 86a-92a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 3, 2026. On May 22, 2026, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including August 31, 2026, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Department of Veterans Affairs (VA) administers various federal benefits for veterans who have

served in the United States military. See *Shinseki* v. *Sanders*, 556 U.S. 396, 400 (2009). Most benefits claims are decided in the first instance by the VA's regional offices. See *ibid.* A claimant who receives an adverse decision may seek review in the Board of Veterans' Appeals (Board) and then in the Court of Appeals for Veterans Claims (Veterans Court). See *ibid.* Subject to limitations that are not at issue here, either the claimant or the government may appeal an adverse Veterans Court decision to the Federal Circuit. See *id.* at 400-401.

Petitioner is a veteran who filed a claim with the VA for disabilities allegedly caused by substandard VA medical care. Pet. App. 4a. A regional office denied the claim, and petitioner appealed that decision to the Board. *Ibid.* The Board dismissed the appeal on the ground that it was untimely. *Id.* at 97a-99a.

2. Petitioner then appealed to the Veterans Court. Pet. App. 5a. While that appeal was pending, the Board determined that it had miscalculated petitioner's filing deadline and that his appeal from the regional office's decision had been timely. *Id.* at 96a. Acting on its own motion, the Board restored petitioner's case to its active docket. *Ibid.*; see *id.* at 5a.

The en banc Veterans Court dismissed as moot petitioner's appeal from the Board's earlier dismissal order. Pet. App. 22a-85a. The court explained that petitioner "sought to have the Court hold that his [appeal to the Board] was timely," but that "everyone [now] agrees that [the appeal] was, in fact, timely," and that the Board had already "provided [the] precise relief" petitioner requested. *Id.* at 43a-44a.

Judge Toth issued a concurrence expressing the view that the Board "had the authority to take remedial action here to correct obvious error." Pet. App. 64a; see

id. at 63a-64a. Judge Falvey issued a concurrence that "emphasize[d] just how moot [this case] is." *Id.* at 65a; see *id.* at 64a-67a. Chief Judge Bartley, joined by two other judges, dissented. *Id.* at 67a-85a. The dissenting judges would have held that, once petitioner sought review in the Veterans Court, "the Board was divested of jurisdiction" and "had no authority to continue processing the appealed issue." *Id.* at 67a.

3. Petitioner appealed to the Federal Circuit, which dismissed his appeal for lack of appellate standing. Pet. App. 1a-21a. The court also resolved a consolidated case that raised overlapping issues, but the veteran in that case has not sought this Court's review. *Id.* at 3a.

Petitioner argued that his appeal continued to present "a live controversy" because petitioner had not received "clarity and confirmation as to the 'evidentiary window' available to him on remand" and had not yet prevailed with respect to "service connection disability benefits for kidney failure." Pet. App. 16a. In addressing petitioner's case, the court of appeals did not dispute that issues regarding petitioner's ultimate entitlement to VA benefits remained unresolved after the Veterans Court issued its decision. The court explained, however, that allowing petitioner's current appeal to go forward would not provide the clarity on those issues that petitioner claimed to seek because "the only issue properly presented to the Veterans Court * * * was the timeliness of [petitioner's] Board appeal." *Id.* at 17a. The court concluded that, because petitioner "ha[d] already received the entirety of the relief he could have hoped to be granted by prevailing" on that issue, he had "no standing to pursue that timeliness issue on appeal in [the Federal Circuit]." *Id.* at 18a.

Meanwhile, after the Board restored petitioner's case to its docket, the VA granted "nearly all of the substantive claims [he] had filed." Pet. App. 7a. The VA denied one claim, "a decision that is the subject of a separate, ongoing appeal." *Id.* at 8a; see *id.* at 7a-8a.

ARGUMENT

Petitioner contends (Pet. 15-36) that this suit presents an Article III case or controversy even though the Board previously acknowledged that his appeal was timely and restored that appeal to its docket. The Federal Circuit correctly rejected that contention, and its decision does not conflict with any decision of this Court or another court of appeals. The petition for a writ of certiorari should be denied.

1. Article III authorizes federal courts to exercise only "judicial Power," which extends only to "Cases" and "Controversies." U.S. Const. Art. III, § 2, Cl. 1. Two aspects of that case-or-controversy requirement are pertinent here. First, a party may initiate a federal-court proceeding, whether by filing suit in a court of first instance or by "seeking appellate review," only if he has standing. *West Virginia* v. *EPA*, 597 U.S. 697, 718 (2022). To establish standing to appeal, an appellant must show that he has suffered a judicially cognizable injury, that the injury was caused by the judgment below, and that a favorable ruling from the appellate court would redress that injury. See *ibid.* Second, Article III allows a court to adjudicate only live cases, not moot ones. See *Chafin* v. *Chafin*, 568 U.S. 165, 172 (2013). A case becomes moot "when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Ibid.* (citation omitted).

Those principles govern proceedings not only in the Federal Circuit, but also in the Veterans Court. Though

the Veterans Court is not an Article III court, it "has adopted the Article III case-or-controversy requirements." Pet. App. 41a. Petitioner has not challenged that aspect of the Veterans Court's procedure here.

This litigation does not satisfy Article III's case-or-controversy requirement. The judicial proceedings here commenced after the Board dismissed as untimely petitioner's appeal from an adverse decision of a VA regional office. See Pet. App. 5a. The "only issue" raised by petitioner's appeal to the Veterans Court was whether that timeliness determination was correct. *Id.* at 18a. While that appeal was pending, the Board recognized that its timeliness determination was erroneous and restored petitioner's case to its docket. See *id.* at 5a. Through that action, the Board gave petitioner "the full extent of the relief" that he had been seeking in his pending Veterans Court appeal. *Id.* at 3a. Because the Veterans Court could not have granted petitioner any further relief even if his appeal had gone forward and had been resolved in his favor, his appeal to that court was moot. Similarly, because petitioner faced no further injury that could be redressed by a favorable Federal Circuit ruling, he lacked standing to appeal to that court from the Veterans Court's dismissal order.

2. Petitioner's contrary arguments lack merit.

Petitioner primarily contends (Pet. 16) that, because "the filing of an appeal from the Board to the Veterans Court transfers jurisdiction to the court," the Board lacked the authority to reinstate his case sua sponte. That premise is open to debate. A judge of the Veterans Court concluded that the reinstatement of petitioner's case fit within the Board's statutory authority to "correct an obvious error" "on its own motion." 38 U.S.C. 7103(c); see Pet. App. 64a (Toth, J., concurring).

In any event, the proper resolution of the standing issue here does not depend on the legality of the Board's conduct. Even assuming that the Board acted unlawfully by reinstating petitioner's case, continued prosecution of petitioner's appeal still does not satisfy Article III's case-or-controversy requirement. A party may not invoke a federal court's jurisdiction simply to vindicate a generalized interest in "executive officers' compliance with the law." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 577 (1992). The party must instead show that the alleged violation of the law caused an injury that would be redressed by a favorable ruling.

The Board did not injure petitioner by acknowledging that his appeal was timely and reinstating his case. To the contrary, by taking those steps the Board "provided th[e] precise relief" that petitioner had sought from the Veterans Court. Pet. App. 43a. Neither the Veterans Court nor the Federal Circuit could have awarded petitioner any further relief in his appeal from the Board's dismissal order.

Petitioner contends (Pet. 18) that the actions taken by the Board after the appeal to the Veterans Court were "legal nullities." But Article III requires a party to identify a judicially redressable injury that exists "in the real world." *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 426 (2021) (citation omitted). As a real-world matter, the Board has in fact reinstated petitioner's case, and the government has not suggested at any point that it will seek to undo the Board's decision on the ground that the reinstatement was a "legal nullit[y]." Pet. 18. Regardless of the actual legality of the reinstatement, this suit no longer presents "a real controversy with real impact on real persons." *TransUnion*, 594 U.S. at 424 (citation omitted).

Petitioner argues (Pet. 18) that the court of appeals' decision enables the VA "to strategically evade judicial review." But judicial review is not an end in itself; it is instead a means for correcting agency errors that injure private persons. It is "legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy." *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 471 (1982) (citation omitted). When the Board realized its mistake and corrected its own error, it did not "evade judicial review." Pet. 18. Instead, it provided all the relief that petitioner could have obtained through a Veterans Court appeal, without the delay that such review would ordinarily involve.

Petitioner's concerns about evasion of judicial review also overlook the voluntary-cessation doctrine. Under that doctrine, "a defendant's voluntary cessation of a challenged practice" generally does not moot a case unless it is "'absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *City of Mesquite* v. *Aladdin's Castle, Inc.*, 455 U.S. 283, 289 & n.10 (1982) (citation omitted). That doctrine ensures that an agency cannot "moot a case" but then "'return to [its] old ways'" once the case is dismissed. *Id.* at 289 n.10 (citation omitted). Petitioner has not invoked that doctrine here. Nor has he suggested that the allegedly wrongful behavior—the Board's dismissal of his appeal as untimely—could "reasonably be expected to recur." *Ibid.* (citation omitted).

Petitioner argues (Pet. 21-22) that the Board's reinstatement of his case injured him by "creat[ing] confusion" about when his window for submitting additional evidence closed, and by "distort[ing] the evidence in [his] file." The court of appeals determined, however,

that "the only issue properly presented to the Veterans Court * * * was the timeliness of [petitioner's] Board appeal." Pet. App. 17a. "Any 'confusion' as to the window for [petitioner] to submit new evidence, or any challenge [he] may wish to press with respect to the Board's subsequent refusal to consider [his] new evidence, was not raised in his [notice of appeal] to the Veterans Court and, hence, was not part of [his] appeal to th[at] court." *Id.* at 18a. "Issues that are not actually presented in an appeal cannot give rise to a live case or controversy." *Ibid.* The court of appeals accordingly explained that, if petitioner "wishes to appeal the evidence-related issues," "he will need to do so via another appeal." *Id.* at 18a-19a. The court noted that counsel for petitioner and counsel for the government had agreed at oral argument that petitioner "ha[d] other appellate options to press these issues." *Id.* at 19a n.6.

In any event, petitioner's case-specific contentions about the effects of the Board's actions do not warrant this Court's review. The Court usually does not grant certiorari "to review evidence and discuss specific facts." *United States* v. *Johnston*, 268 U.S. 220, 227 (1925); see Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of * * * the misapplication of a properly stated rule of law.").

Petitioner's insistence on continuing this litigation, even after the Board has provided him with all the relief that he could hope to obtain through a Veterans Court appeal of the initial Board decision, appears to reflect a desire to obtain class certification, see Pet. 9, or at least to set a judicial precedent that would help "thousands of [other] veterans" who may have been affected by the Board's administrative errors, Pet. 27. But where, as

here, a class has not yet been certified, the interests of potential class members can neither compensate for the named plaintiff's lack of standing nor save the case from mootness. See *Genesis Healthcare Corp.* v. *Symczyk*, 569 U.S. 66, 74-75 (2013). A federal court's role is to provide relief to the parties, not to provide relief to the world at large. Here, there is no more relief that a court could provide to petitioner in this litigation.

3. Contrary to petitioner's argument (Pet. 23-27), the court of appeals' decision does not conflict with the Seventh Circuit's decision in *Doctors Nursing & Rehabilitation Center* v. *Sebelius*, 613 F.3d 672 (2010). In that case, a nursing home sought judicial review of a Department of Health and Human Services decision, claiming that the agency had underpaid it for certain services. See *id.* at 674. While the case was pending, the agency reopened its proceedings and began to reconsider the nursing home's claims. See *ibid.* The Seventh Circuit held that the agency's action did not deprive the district court of jurisdiction. See *id.* at 677.

Doctors Nursing differs from this case because, as the Seventh Circuit emphasized, the agency in that case had not "give[n] the [plaintiff] the very thing he was asking of the court." 613 F.3d at 678. The plaintiff there had asked the court to award payment for the plaintiff's services, but instead of providing payment, the agency had merely reopened its proceedings. See *id.* at 675. Here, by contrast, petitioner did not ask the Veterans Court or the Federal Circuit to resolve his underlying benefits claim on the merits. Instead, he contested only the Board's determination that his appeal from the regional office to the Board was untimely. See Pet. App. 17a. By acknowledging that the appeal was timely and restoring petitioner's case, the Board gave petitioner

"the very thing he was asking of the court." *Doctors Nursing*, 613 F.3d at 678. As the Seventh Circuit recognized, such an agency action does deprive the court of its Article III jurisdiction. See *ibid.*

The Seventh Circuit's decision in *Gao* v. *Gonzales*, 464 F.3d 728 (2006), and the court's subsequent discussion of that decision in *Doctors Nursing*, confirm that there is no conflict between the Seventh and Federal Circuits. In *Gao*, an alien asked the Board of Immigration Appeals to reopen a decision ordering his removal. See *id.* at 729. The agency denied his motion, but after he sought judicial review, the agency changed its mind and reopened the case. See *id.* at 729-730. The Seventh Circuit then dismissed the alien's petition for review, stating that any judicial decision at that stage "would be advisory." *Id.* at 730. The Seventh Circuit later explained in *Doctors Nursing* that, "because the [alien in *Gao*] had challenged only the agency's refusal to reopen his case, there was no more relief that the court could have granted once the agency itself" reopened the administrative proceedings. 613 F.3d at 678. So too here, because petitioner challenged only the Board's dismissal of his appeal as untimely, there was no more relief that the Veterans Court or Federal Circuit could grant once the Board overturned that dismissal and reinstated petitioner's case.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

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