No. 26-5349

IN THE SUPREME COURT OF THE UNITED STATES

Charles Ellis Talley,

Petitioner

v.

United States Department of Veterans Affairs

Respondent

ON PETITION FOR REHEARING OF THE ORDER DENYING THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR REHEARING

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In Forma Pauperis Status Previously Granted

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SUPREME COURT, U.S.

No. 26-5349

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.2, the Petitioner, Charles Ellis Talley, respectfully moves this Court to grant a rehearing of its order denying the Petition for a Writ of Certiorari, vacate that order, and reinstate this case on the Court's docket for a review on the merits.

Rehearing is urgently warranted due to substantial, intervening circumstances of a controlling effect under Rule 44.2 specifically, the October 5, 2026, Supreme Court oral arguments in ***Johnson v. U.S. Congress* (Docket No. 25-735)**. The structural arguments and concessions advanced during the *Johnson* hearing conclusively demonstrate that 38 U.S.C. § 511(a) does not channel pure ***ultra vires*** statutory enforcement actions.

Furthermore, rehearing is necessary because the lower courts committed a clear, manifest error of law. In dismissing this action for lack of subject-matter jurisdiction under Section 511(a), the District Court and Court of Appeals completely ignored that Congress deployed the ultimate statutory directive—the phrase **"Notwithstanding any other provision of law"** to govern the non-discretionary commands at issue. An Article III district court retains clear subject-matter jurisdiction under 28 U.S.C. § 1331 when a federal agency acts *ultra vires* by defying literal legislative mandates.

REASONS FOR GRANTING THE PETITION

I. The Intervening Oral Arguments in *Johnson v. U.S. Congress* Establish That Section 511(a) Does Not Preclude District Court Jurisdiction Over Non-Discretionary Statutory Violations.

Substantial intervening developments under Rule 44.2 demonstrate that the lower courts' jurisdictional analysis has been entirely bypassed. On October 5, 2026, this Court heard oral arguments in *Johnson v. U.S. Congress*, addressing the precise outer boundaries of statutory preclusion clauses and

the unconstitutional **"remedial gaps"** created when veterans are entirely denied an Article III forum.

The arguments in *Johnson* confirmed that 38 U.S.C. § 511(a) is strictly confined to individual, discretionary benefits determinations managed under the specialized administrative scheme. The proceedings highlighted that a due process claim or a structural challenge targeting administrative overreach cannot be swallowed by Section 511(a) where no alternative remedial path exists.

This intervening guidance directly controls the jurisdictional question here. Petitioner's case is not an aggregate challenge to a benefits calculation, nor is it an appeal of a discretionary administrative evaluation. It is a standalone statutory enforcement action to compel compliance with an absolute, non-discretionary command of Congress. The *Johnson* proceedings clarify that where an executive agency completely abdicates a literal statutory mandate, the jurisdictional channeling mechanism of Section 511(a) is wholly inapplicable, and Article III district courts retain baseline jurisdiction under 28 U.S.C. § 1331 to cure the resulting remedial gap.

II. The Plain Text of Public Law 95-126 Explicitly Strips the Respondent of Discretionary Authority Over Both Mandatory Directives.

The lower courts erroneously lumped Petitioner's statutory claims into a general administrative category barred by § 511(a). However, Public Law 95-126 contains two distinct, self-executing congressional mandates designed specifically for individuals of the 1977 Department of Defense Discharge Review Program (Special). Both mandates strictly strip the agency of any discretion:

- **The Mandatory Hearing Mandate (Section 1(a)(2)):** Congress explicitly commanded that, **"Notwithstanding any other provision of law**, (A) no [statutory provisions]... shall be provided except upon a case-by-case review by the board of review concerned and (B) any such person shall be afforded an opportunity to apply for such review."
- **The Service-Connected Healthcare Mandate (Section 2):** Congress explicitly commanded that, "Notwithstanding any other provision of law, the Administrator shall provide the type of health care and related [items] authorized to be provided under chapter 17 of title 38..."

By specifying the "type of health care" driven by a direct legislative mandate, Congress enacted an independent statutory right. Because Congress utilized the absolute phrase "Notwithstanding any other provision of law" in both instances, these two mandates legally supersede and override the jurisdictional limitations of 38 U.S.C. § 511(a). Congress did not give the Secretary the authority to decide whether to grant these rights; Congress ordered that they shall be executed.

III. The Respondent's 40-Year Evasion Constitutes a Reviewable Ultra Vires Action Beyond the Scope of Section 511(a).

The core of Petitioner's case is that the Respondent actively blocked both prongs of this statutory mandate. Because Petitioner was out of the country in Japan and was never provided the mandatory statutory notice required by Section 1(b)(1) of the Act, he was completely denied the case-by-case Discharge Review Board hearing mandated by Congress.

Concurrently, the Respondent's July 13, 1978 Administrative Decision completely cut off the service-connected directives guaranteed by Section 2 of Public Law 95-126.

An Article III district court has clear jurisdiction under 28 U.S.C. § 1331 to hear a standalone action when an executive agency operates completely *ultra vires* by defying literal statutory commands. Evaluating whether the Respondent completely ignored two explicit "Notwithstanding" directives does not require a court to review a discretionary administrative determination; it requires the court to enforce the sovereign text of Congress and federal law.

IV. Section 511(a) Does Not Bar Pure Ultra Vires Enforcement Actions.

The jurisdictional channeling mechanism of 38 U.S.C. § 511(a) is confined exclusively to matters managed under the discretionary authority of the Secretary where the agency weighs evidence, evaluates ratings, and calculates individualized administrative determinations.

Petitioner's lawsuit does not operate within that administrative world. It has absolutely nothing to do with traditional administrative functions or individual benefit claims. Rather, this case belongs entirely to Congress's world. In enacting Public Law 95-126, Congress exercised its absolute legislative authority to issue a direct command to the executive branch. By

deploying the ultimate statutory phrase **"Notwithstanding any other provision of law"**, Congress stripped the agency of any decision-making authority, review, or administrative discretion. Under the plain text of the Act, the agency's sole statutory duty is to comply.

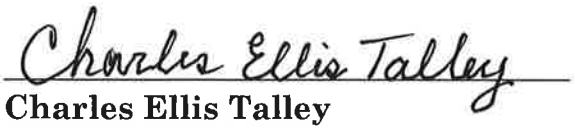
When an executive agency completely defies a literal statutory mandate, it acts entirely outside its jurisdiction. The agency's 40-year evasion of this directive is a classic *ultra vires* act. An executive agency's control over its own administrative realm cannot swallow up a direct, non-discretionary command from Congress.

If district courts cannot hear this case, the agency would effectively be left to police its own allegedly unauthorized conduct. Because this is a pure statutory enforcement action to compel compliance with federal law, Article III district courts possess clear subject-matter jurisdiction under 28 U.S.C. § 1331, and Section 511(a) is wholly inapplicable.

CONCLUSION

Despite Petitioner repeatedly establishing that this enforcement action targets an *ultra vires* statutory violation rather than a discretionary administrative benefits decision, the lower courts consistently failed to acknowledge this fundamental jurisdictional barrier. Because the intervening arguments in *Johnson v. U.S. Congress* confirm that Section 511(a) does not reach non-discretionary statutory commands, and because the lower courts completely failed to recognize that the **"Notwithstanding"** clause applies equally to the mandatory hearing and the service-connected healthcare, Petitioner respectfully requests that this Court grant rehearing, vacate the denial of certiorari, and hear this case on the merits.

Dated: October 14, 2026
Respectfully submitted,



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PROOF OF SERVICE

I, Charles Ellis Talley, do hereby certify that on this 14th day of October, 2026, I served a copy of the foregoing Petition for Rehearing on the Respondent by mailing a copy, first-class postage prepaid, addressed to the Solicitor General of the United States, Room 5616, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

Charles Ellis Talley

Charles Ellis Talley
Petitioner pro se
Dated: October 14, 2026
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CERTIFICATE OF GOOD FAITH

Pursuant to Supreme Court Rule 44.2, I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is strictly limited to the substantial intervening circumstances and manifest errors of law specified herein.

Charles Ellis Talley

Charles Ellis Talley
Petitioner pro se
Dated: October 14, 2026
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October Term, 2026

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CHARLES ELLIS TALLEY,
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v.

U.S. DEPARTMENT OF VETERANS AFFAIRS,
Respondent.

CERTIFICATE OF WORD COUNT

As required by Supreme Court Rule 33.1(h), I certify that the Petitioner's Petition for Rehearing contains **1,320 words**, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 14, 2026.



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Supreme Court of the United States of America

Scott S. Harris, Clerk

Enclosed for filing in Case No. 26-5349, Charles Ellis Talley v. U.S. Department of Veterans Affairs, please find a Petition for Rehearing. Also enclosed with the Petition on page 5 are the required Certificate of Good Faith, and Proof of Service. Page 6 is the Word Count Certificate.

Thank you for your assistance with this matter.

Charles Ellis Talley October 14, 2026

Charles Ellis Talley

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