

**09-1036 HENDERSON V. SHINSEKI**

DECISION BELOW: 589 F.3d 1201

LOWER COURT CASE NUMBER: 2009-7006

**QUESTION PRESENTED:**

Section 7266(a) of Title 38, U.S.C., establishes a 120-day time limit for a veteran to seek judicial review of a final agency decision denying the veteran's claim for disability benefits. Before the decision below, the Federal Circuit in two en banc decisions held that Section 7266(a) constitutes a statute of limitations subject to the doctrine of equitable tolling under this Court's decision in *Irwin v. Department of Veterans Affairs*, 498 U.S. 89 (1990). In the divided en banc decision below, however, the Federal Circuit held that this Court's decision in *Bowles v. Russell*, 551 U.S. 205 (2007), superseded *Irwin* and rendered Section 7266(a) jurisdictional and not subject to equitable tolling.

The question presented is whether the time limit in Section 7266(a) constitutes a statute of limitations subject to the doctrine of equitable tolling, or whether the time limit is jurisdictional and therefore bars application of that doctrine.

JUSTICE KAGAN TOOK NO PART

CERT. GRANTED 6/28/2010