IN THE UNITED STATES COURT OF APPEALS

FOR VETERANS CLAIMS

Leslie Clyde Long Jr.	)
	)
Petitioner, *Pro Se*	)
	)
v.	)
David J. Shulkin, M.D.	)
Secretary of Veterans Affairs	)
Meghan Flanz	)
Interim General Counsel	)
US Dept. Of Veterans Affairs	)
Thomas J. Murphy	)
Undersecretary for Veterans Benefits	)
U.S. Department of Veterans Affairs	)
PRITZ NAVARATNASINGAM	)
Director, Seattle, WA Regional Office	)
US Dept. Of Veterans Affairs	)
	) Docket No. 18-_____

Respondents

PETITION FOR EXTRAORDINARY RELIEF
IN THE NATURE OF A *WRIT OF MANDAMUS*

Certificate of Service

Appendix

Mr. Leslie C. Long Jr.
[redacted]

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Petition for Extraordinary Relief

Now comes petitioner Leslie Clyde Long Jr., pursuant to 38 USC § 7261(a)(2), US Vet. App. 21 and 32 and respectfully submits to the U.S. Court of Veterans Appeals (CAVC) his *pro se* petition in the nature of a Writ of Mandamus. In support of this petition, petitioner relies on the Court's final pronouncement on November 13th, 2017 in CAVC # 17-3214 wherein petitioner was advised of his right to return to seek a new Writ in the inconceivable event the Secretary were to refuse to act.

Statement of Relief sought

The petitioner demonstrates below that he has a clear entitlement to relief from this Court in the form of an Extraordinary Writ of Mandamus for the following unresolved benefits claims:

1. Issuance of a decision on petitioner's Notice of Disagreement (NOD) filed on August 4th, 2016 as promised in the October 26th 2017 Declaration.

Facts Relevant to the Petition

1. That on or about January 10th, 2018, petitioner, through his VA advocate, sought an audience with the Seattle Regional Director to ensure timely compliance with the agreed upon 90 days as proffered by the Veterans Service Center Manager. Granting four days for national holidays, that yielded a date of January 28th, 2018

2. That on or about January 17th, 2018, a meeting was arranged between petitioner's advocate and the Assistant Director of the Seattle Regional Office

3. That on January 25th, 2018, the agreed-upon meeting convened at 10:00 AM PST.

4. That during said meeting, the Assistant Director tacitly and freely admitted the petitioner's NOD was ready for a decision.

5. That on February 23rd, 2018, petitioner's VA advocate contacted the Regional Office Director's secretary by telephone to ascertain the status of petitioner's NOD.

6. That on February 23, 2018 petitioner's advocate was informed the NOD still had not been adjudicated. The VA employee also informed the advocate that the VA Director or Assistant Director would have a "reply" to the inquiry not later than the close of business (4:30 PM) on February 26th, 2018.

Petitioner's Argument for the right to Extraordinary Relief in the form of a Writ of Mandamus

A. The Petitioner lacks the alternative means to attain the desired relief.

The first rule for Extraordinary Writs is that the petitioner must be without alternate means to obtain the desired relief thus ensuring the Writ is not used as a substitute for the appeals process. Petitioner submits that he has patiently appealed his claims through normal channels but eventually found himself homeless through no fault of his own. Petitioner thus was advanced on the docket due to hardship. Additionally, due to a medically emergent situation (amputation of right leg above the knee), he requested a decision sooner so as to have funds for a suitable residence which addressed his disabilities.

Pursuant to petitioner's Writ (CAVC # 17-3214), the Seattle Regional Office, in the person of the Veterans Service Center Manager, one Stephen A. Strope, caused to be issued on October 26th, 2017, a Declaration under penalty of perjury that petitioner's decision on his NOD "will be ready for decision when development is completed on the August 4th, 2016 NOD, which is expected to occur within the next ninety days".

Petitioner has patiently waited a month past the promised adjudication and now suspects the Secretary is not bargaining in good faith or, in the alternative, suffers from calendar dyslexia.

B. Petitioner demonstrates a clear and indisputable right to the Writ.

The second requirement of Extraordinary Writs of Mandamus posits the petitioner must demonstrate a clear and indisputable right to the Writ. Petitioner relies on the promises made by the Secretary through his assigns on October 26th, 2017 as stated in the aforementioned Declaration in item LXVII appended to Respondent's Response in CAVC #17-3214.

C. Under the circumstances of this petition, the Court must conclude that a Writ is warranted.

The third codicil states the Court must be convinced, given the petitioner's unique circumstances, that the issuance of the Writ is warranted. Petitioner readily acknowledges the Court's admonition in its November 13th, 2017 Order that petitioner's avenue to address any deficiency in the Secretary's action[s] is an appeal. Petitioner also relies heavily on the subsequent codicil that, perchance were the Secretary to renege on such promises made in the Declaration to the Court on October 26th, 2017, that he would be "within his rights" to return to the Court and file anew an Extraordinary Writ seeking to accomplish what his prior one failed to elicit.

Petitioner submits he has contemplated the possibility that the Secretary's delay is a product of an overburdened system and has allowed for that possibility fully a month over before squandering the Court's scarce judicial resources on yet another Extraordinary Writ.

Petitioner would also point out that promises lightly given and later abrogated cast a pall on the judicial process and call into question whether the Secretary is abusing the judicial system. Specifically, in Jones v. Derwinski, 1 Vet.App. 596, 606 (1991), the Court held that it has the power to sanction those who abuse the judicial process under the inherent power of the federal courts. In each case, the Court "must take care to determine that the conduct at issue actually abused the judicial process." See Jones,1 Vet.App. at 607. Petitioner submits that the instant case qualifies under these specific circumstances.

There has always been animated discussion in petitions for an Extraordinary Writ of Mandamus before the Court of Appeals for Veterans Claims vis-à-vis the Secretary's proclivity to occasionally dawdle until prodded by an Extraordinary Writ to act. This proclivity was recognized in Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources, 532 U.S. 598, 121 S. Ct. 1835, 149 L. Ed. 2d 855, 2001 U.S. 4117 and provoked the coining of the term "catalyst theory". The Secretary's sudden propensity to act immediately upon the filing of a petitioner's Writ is a legal perception marked by frequent occurrence or an incredible coincidence. Once filed, the *perceived* refusal to act on the matter evaporates instantly and the refusal essentially becomes a moot point after granting that which was sought. Granted, petitioners of all stripes generally view this propensity favorably as it induces action sooner rather than later. However, when a promise to the Court is lightly given and then abrogated with such disdain as here, it sets a poor precedent.

Conclusion

Petitioner begs the Court once again to exert that unique judicial pressure which only it can. Petitioner has exhausted any and all tools in his judicial tool pouch in a nonadversarial manner to effect a resolution to his dilemma. Reasonable minds can agree that these efforts have been to no avail. At the January 25th, 2018 meeting at the Regional Office, the Assistant Director made no effort to hide the fact from petitioner's advocate that petitioner's NOD was ripe for a decision. Oddly, when queried as to when this might occur, his answer was no answer whatsoever other than an enigmatic Cheshire Cat-like smile. Unfortunately, he made no promises when (or if) he or the Secretary would comply with the January 28th, 2018 suspense date. Veterans of all stripes deserve better.

Bureaucratic ennui seems to be the operable phrase here. In spite of President Lincoln's immortal utterance at Gettysburg, Pennsylvania, long enshrined as the motto of the Dept. of Veterans Affairs, a new mantra seems to be the catch phrase- Justice Delayed is not Justice Denied. While this might be tolerated below at the Agency level, petitioner submits the Secretary's perceived "Let them eat cake" approach to Declarations made under penalty of perjury to the Court might be viewed as misfeasance or worse-malfeasance.

Be that as it may, petitioner has much much smaller fish to fry and once again begs the intervention of the Court in his pursuit of justice. Petitioner will be interested, however, to see how the Court reacts to the Secretary's inactions in light of petitioner's request to stay action on his earlier petition. Petitioner had a strong premonition, given his prior experiences, that this very same scenario was in the cards. In fact, it was this very same ennui and arbitrary refusal to act that prompted the earlier Writ in the first place.

Respectfully Submitted,

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Leslie C. Long Jr.
pro se