## IN THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NICOLO PORRIELLO, Appellant,	)	
V.	)	Vet.App. No. 16-2880
DAVID J. SHULKIN, M.D.,	)	
Secretary of Veterans Affairs,	)	
Appellee.	)	

## APPELLEE'S OPPOSED MOTION FOR LEAVE TO FILE APPELLEE'S MOTION TO DISMISS

Pursuant to Rule 27(a) and 28(g) of this Court's Rules of Practice and Procedure (Rules), the Secretary respectfully requests leave of the Court to file Appellee's Motion to Dismiss.

The Court's rules prohibit the filing of a motion other than a joint motion for remand or termination from any party after the Court has issued notice to file a brief to Appellant. Rule 28(g). However, a party may raise an objection to a federal court's jurisdiction at any stage of litigation. See Arbaugh v. Y & H Corp., 546 U.S. 500, 506 (2006). The Secretary respectfully asserts that the Court lacks jurisdiction to consider this appeal because no case or controversy exists for its review. See Mokal v. Derwinski, 1 Vet.App. 12, 13 (1990) (The United States Court of Appeals for Veterans Claims adheres to the case or controversy jurisdictional restraint adopted by Article III courts). Resolution of this jurisdictional issue prior to briefing may conserve the resources of this Court.

Counsel for Appellant is opposed to this motion.

**WHEREFORE**, the Secretary respectfully requests that the Court grant his Motion for Leave to File Appellee's Motion to Dismiss.

Respectfully submitted,

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/s/ James B. Cowden

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