

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

VETERANS LEGAL ADVOCACY GROUP,	)	
Petitioner,	)	
	)	
v.	)	Docket No. 20-8291
	)	
DENIS MCDONOUGH,	)	
Secretary of Veterans Affairs,	)	
Respondent.	)	

**MOTION FOR RECONSIDERATION**

The Court dismissed this petition as moot.<sup>1</sup> But it is not.

Veterans Legal Advocacy Group asked for injunctive relief to prevent future harm from the VA’s ongoing mismailing. The Court granted none. And the VA continues to mismail our documents.

The VA’s representations to the Court have been mostly inaccurate,<sup>2</sup> causing the Court to think the issue is resolved. The Court—having taken the VA’s word so often —should not accept it again. What the Court has done thus far has been ineffective:

- Congress required the VA to mail important documents to veterans’ attorneys.

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<sup>1</sup> Court’s February 14, 2022, Order.

<sup>2</sup> See e.g.: VA’s March 2, 2021, Response at 2, 8, 13-15; VA’s May 14, 2021, Response at 3-8; OA at 24:44; OA at 28:50.

- VetLAG is a law firm of veterans' attorneys.
- VetLAG complained that the VA was sending mail to the wrong address and asked the Court to order the VA to mail documents to the correct address.
- The VA incorrectly responded that its mismailings are VetLAG's fault; it need not fix the problem; and that there is no problem.
- VetLAG pointed out the VA continued to send mail to the wrong address and proved that it was the VA's fault.
- VetLAG and the VA told the Court that the VA databases do not communicate with one another and that fixing one database will not fix the mail problem.
- The Court asked the VA to tell it whether it updated VetLAGs address in one database.
- The VA said it did.
- The Court said the VA fixed its problem and dismissed the petition.
- The VA continued to send mail to the wrong address.

## **WHAT MAKES A CASE MOOT?**

A case becomes moot when there is no longer a “cognizable interest in the outcome.”<sup>3</sup> It is not moot unless it “is impossible for a court to grant any effectual relief whatever to the prevailing

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<sup>3</sup> *City of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979).

party.”<sup>4</sup> A party cannot moot a case by temporarily fixing a problem. The Court should be assured that “there is *no reasonable expectation* that the alleged violation will recur;” and that a defendant’s acts “have *completely and irrevocably* eradicated the effects of the alleged violation.”<sup>5</sup>

This petition is not moot “[i]f there is any chance of money changing hands” due to its litigation.<sup>6</sup> And it is not moot even if the Court is unsure of how the order VetLAG seeks—for the VA never again to send incorrectly addressed mail to VetLAG, or pay when it does—will affect the VA’s actions.<sup>7</sup>

### **THIS PETITION IS NOT MOOT**

VetLAG tried for many years to get the VA to fix its mail problem without involving the Court, but the VA never fixed it. The VA has repeatedly sent correspondence—including private medical

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<sup>4</sup> *Knox v. Serv. Emps. Int’l Union, Loc. 1000*, 567 U.S. 298, 307 (2012).

<sup>5</sup> *City of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979).

<sup>6</sup> *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1660 (2019).

<sup>7</sup> *Chafin v. Chafin*, 568 U.S. 165, 175 (2013).

records—to wrong addresses hundreds of times despite hundreds of requests from us to fix it.<sup>8</sup>

Our request was straightforward:

- 1) Order the VA to cease sending our clients’ claims documents and private medical records to the wrong address;
- 2) keep the petition open for at least one year; and
- 3) assess sanctions for \$1,000 for each instance the VA sends our mail to the incorrect address.<sup>9</sup>

But ultimately, the Court chose not to order the VA to do anything except tell the Court if the petition was moot because the VA fixed VetLAG’s address in the corporate database. And the Secretary responded he had. Then the Court dismissed the petition.

In dismissing the petition as moot, the Court said, “the Secretary shows that petitioner has received the requested relief” and assumed we had nothing to say because we did not reply to the VA’s response.<sup>10</sup> That is wrong. We had nothing to add to the VA’s response because everything the VA said in its response was true,

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<sup>8</sup> Petition at 1-2.

<sup>9</sup> Petition at 2.

<sup>10</sup> Court’s February 14, 2022, Order at 5.

and it answered the questions this Court had posed.<sup>11</sup> In short, there was nothing to respond to. But that does not mean the VA had fixed the problem. The Court *never* ordered the VA to fix the problem. It instead asked the VA a few questions about a database. But both parties already told the Court that updating a database would not fix the problem.<sup>12</sup> If the Court asked, we would have told it the VA still has not fixed the mailing problem.

And now the VA has used wrong addresses again, both for VetLAG and for other attorneys. So the problem remains.

We again ask the Court to order the VA to do what is required by law. Not doing so will erode faith in this Court's authority and neutrality. The Court should issue an explicit order. It can be as simple as "Do not mail any more of VetLAG's documents to the wrong address." The law is clear on the VA's duty to mail documents to the correct address.

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<sup>11</sup> Court's November 5, 2021, Order; *see also* VA's January 10, 2022, Response in which he responded "to the Court's *inquiry*." (emphasis added).

<sup>12</sup> VA's May 14, 2021, Response at 2-3, 5, 9-11; Petition; VetLAG's June 14, 2021 (refiled October 27, 2021) Reply at 7-9.

***The problem continued during this litigation despite repeated assurances from the VA that it fixed the problem.***

The Court concluded that “[VetLAG’s] petition has already remained open for nearly 14 months while VA actively worked with [VetAG] to ensure that it properly addressed petitioner’s allegations.”<sup>13</sup> That is not accurate. The VA never worked with VetLAG to fix its errors except when ordered by the Court. VetLAG has never petitioned this Court where the VA worked with us to fix a problem. We file petitions only when the VA refuses to work with our clients and us. We told the Court about the VA’s opposition to correcting its problem in every filing. Even during this litigation, the VA has repeatedly misrepresented that the VA mailing problem is fixed and even tried to blame veterans’ attorneys for the problems.<sup>14</sup> We responded, proving that the VA had continued to mismail documents.<sup>15</sup>

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<sup>13</sup> Court’s February 14, 2022, Order.

<sup>14</sup> Examples of the VA claiming the problem is fixed or there is no problem: VA’s March 2, 2015, Response at 2, 8, 13-15; OA at 24:44. Examples of the VA blaming veterans’ attorneys for its mistakes: VA’s May 14, 2021, Response at 2-3; OA at 28:50.

<sup>15</sup> VetLAG’s June 14, 2021 (refiled October 27, 2021) Reply.

***The Court did not order the VA to stop mismailing documents, fix their mail problems, or any other affirmative action that could solve this problem.***

We asked the Court *to order the VA to fix* its problem with a *threat of sanctions* if it does not.<sup>16</sup>

After oral argument, the Court asked the VA more questions.<sup>17</sup> The only affirmative thing the Court ordered was for us to give the VA more info—which the VA has been given many times over and has had for years—so the VA could answer the Court’s “inquiry.”

While the VA was trying to correct our address manually, it sent us old mail we never knew about and gave us information about our clients we should have had long ago. We learned of: appeals that had become final, clients that had died—some of whom we’ve been trying to locate for a while, and clients that had new attorneys. But we know we haven’t received everything.

The VA answered the Court’s questions. To the VA’s credit, it was honest and never said the problem was fixed. And it isn’t.

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<sup>16</sup> Petition.

<sup>17</sup> Court’s November 5, 2021, Order.

***The VA continues to mail documents to incorrect addresses.***

The parties told the Court that the VA's problem is not just careless employees, but also that VA databases do not communicate.<sup>18</sup> The VA even told the Court that sharing data across VA platforms is too technically advanced for the VA.<sup>19</sup> But then it convinced the Court that there was one database that controlled them all. And the Court accepted that "VA pulls mailing addresses from these databases when sending correspondence."<sup>20</sup> But VetLAG would not have received mail with so many address variations if that were the case. In just the last month, the VA addressed my name ten different ways:

- HAROLD HOFFMAN
- HAROLD LOGSDON
- HAROLD HOFFMAN III
- HAROLD H HOFFMAN III
- HAROLD H HOFFMAN III, ATTORNEY
- HAROLD HOFFMAN-LOGSDON
- HAROLD H HOFFMAN-LOGSDON III
- HAROLD H HOFFMAN and HAROLD H HOFFMAN III
- HAROLD H HOFFMAN III and HAROLD H HOFFMAN-LOGSDON III
- Harold H Hoffman-Logsdon III

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<sup>18</sup> VetLAG's June 14, 2021 (refiled October 27, 2021) Reply at 7-9.

<sup>19</sup> VA's May 14, 2021, Res. at 2-3, 5, 9-11.

<sup>20</sup> Court's February 14, 2022, Order at 1.



And it has not been much more consistent with how it writes our address:

- 2776 S ARLNGTN ML DR STE 804 ARLINGTON VA 22206-3402
- 2776 S ARLNGTN ML DR STE 804 ARLINGTON VA 22206-3402
- 2776 S. ARLINGTON MILL DR. SUITE 804 ARLINGTON VA 22206-3402
- 2776 S ARLINGTON MILL DRIVE SUITE 804 ARLINGTON VA 22206-3402
- 2776 S. ARLINGTON MILL DR STE 804 ARLINGTON VA 22206-3402
- 2776 S. ARLINGTON MILL DRIVE SUITE 804 ARLINGTON VA 22206-3402
- 2776 S ARLINGTON MILL DR. SUITE 804 ARLINGTON VA 22206-3402
- 2776 S ARLINGTON MILL DRIVE SUITE 804 ARLINGTON VA 22206
- 2776 S. ARLINGTON MILL DRIVE SUITE 804 ARLINGTON VA 22206<sup>21</sup>

At least those were correct. Or at least they are good enough to get to our mailbox. But if there is one database that produces an address, we would not see a single attorney's name written out ten different ways and our address nine different ways. But there are some that are not close enough.

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<sup>21</sup> Exhibit 7 (provides some examples; we can provide more if asked).

VetLAG has received—luckily—two pieces of mail that did not include the suite number.<sup>22</sup> And one of our clients in San Diego received a piece of mail addressed to Harold Hoffman but with the client’s address.<sup>23</sup> We do not know of those that did not make it to our mailbox, but we know the errors don’t end there.

A VetLAG attorney received a phone call from a Board employee last week asking us to stop sending the Board mail. The VetLAG attorney emailed me:

Very strange conversation with a BVA employee today. She was very nice but very confused about mail she said the BVA received from VetLAG recently. But she read it out loud to me and it was clearly not sent from us. It was mail sent from VA to our clients with exhibits listing other peoples’ (not our clients’) names and SSNs. And at one point she asked if we had a client named “Evan Snipes” [a VetLAG attorney] because based on one of the mailings he was the veteran, not the attorney. She was aware of the address petition but thought this was not related. However she said these letters contained returned mail from years ago (2019, 2020) so they would definitely be part of the wrong address documents the petition contemplated. It was left unresolved because there was nothing I could identify we could do or had done related to these documents. The BVA employee said she would “send it all back to the Board” and see what they could make of it.<sup>24</sup>

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<sup>22</sup> Exhibit 1.

<sup>23</sup> Exhibit 2.

<sup>24</sup> Exhibit 3.

The VA is now sending our mail to the Board of Veterans' Appeals.

Although this petition only concerns VetLAG, recent VA foul-ups with other attorneys' addresses add more reason for the Court to find that "there is [a] reasonable expectation that the alleged violation will recur;" and that the VA has not "completely and irrevocably eradicated" mailing VetLAG's documents to the wrong address.<sup>25</sup>

One attorney contacted us via email last week. He left his old firm more than a year ago. But last week, the VA sent his fees to him at the old firm address.<sup>26</sup>

Attempting to use the new address change instruction, another attorney told me of a problem an attorney posted on a message board:

I sent the email as instructed to update the VBA Corporate Database on 1/14/22. I never received a response or ticket number. It's been 25 business days and I am still receiving mail at my old address. CaseFlow still has my old address. I sent a follow-up email forwarding my first email to YourIT@va.gov and vbaco\_RFIA@va.gov today.<sup>27</sup>

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<sup>25</sup> See *City of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979).

<sup>26</sup> Exhibit 4.

<sup>27</sup> Exhibit 5.

I followed up with the posting attorney, and he added:

After I sent the second email I received a response from vbaco\_RFIA folks who suggested I call the YourIT folks. So I did and spoke with someone who was very kind and helpful and had absolutely no idea what I was talking about or trying to accomplish. She was kind enough to send me her direct email so I forwarded all my emails and that sheet with the instructions from the VA to her. She did give me a ticket number over the phone.

But as we sit here today, I have never received any follow-up emails from YourIT. And aside from the email telling me to call YourIT I have not received any additional confirmation from the VBACO folks. I have no idea how to check the status of the address change and no confirmation that an update is complete. All I can do is wait a couple weeks for the system to work and if it's not, complain to someone again.<sup>28</sup>

In just a few weeks, the VA has proven that there is no basis for thinking it will not continue to mismail our documents until the Court orders it not to.

***There is no reason to believe the VA mailing problems have ceased or will cease short of a Court order.***

A case becomes moot “when the challenged conduct ceases such that there is no reasonable expectation that the wrong will be

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<sup>28</sup> Exhibit 6.

repeated.”<sup>29</sup> The VA has already repeated its bad behavior. And it will continue to until the Court orders the VA not to with the threat of sanctions.

The VA did not fix our address with a data system. It manually went through the client list we provided and fixed them individually.<sup>30</sup> While that had an immediate effect, it is not a long-term solution. It took the VA a long time to do it, and there is no way they can continue to check each system for our clients manually.

Already, we have started to see chinks in the VA’s “repair.” Non-VetLAG attorneys not part of this lawsuit and thus unaffected by the VA’s manual repair will continue to have problems. And veterans that hire VetLAG after this petition will experience the same mail problems as their predecessors. The address discrepancies and mismailings discussed in this motion all happened well after the VA’s January 2022 response. The frequency of VA’s mismailing will increase as we get further from

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<sup>29</sup> *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 287 (2000).

<sup>30</sup> Court’s February 14, 2022, Order at 4; *see also* VA’s Jan 11, 2022, Res. at 2-4.

its manual repairs that only served to get the VA out of this petition.

**CONCLUSION:  
THE COURT SHOULD ORDER RELIEF**

After fifteen months, the Court still has not ordered the VA not to send mail to the wrong address. Now it should. And the Court should sanction the VA to deter it from sending our mail to the wrong place.

The VA's mailing mistakes are causing veterans to lose benefits and us to represent fewer veterans with complicated cases because the VA's indifference is taxing our resources.

Even if the Court still hesitates to order sanctions for future violations, the Court could still order the VA not to send VetLAG's mail to the wrong address. VetLAG could petition for sanctions in the future when the VA violates the Court's order. And it is the only thing that will make the VA act.

March 7, 2022

Submitted,

/s/ Harold Hoffman

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