

Gary Kendall  
PO Box 6017  
Boise, ID 83707  
Pro Persona

**IN THE UNITED STATES NINTH CIRCUIT COURT OF APPEALS**

**PLAINTIFF(S)**

- 1) Gary Kendall, Pro Persona,  
representative of the class.
  - 2) Edwin Crosby III, Pro Persona,  
assistant class representative.
  - 3) Barbara Wright, Pro Persona,  
assistant class representative.
  - 4) Mary Reynolds, Pro Persona,  
assistant class representative.
  - 5) Class of Named Plaintiffs, Veterans  
and their families.
  - 6) Class of unnamed Plaintiffs,  
Veterans and their families.
- vs

**RESPONDENT(S)**

- 1) UNITED STATES OF AMERICA  
(a corporate fiduciary, contract  
agent of governance)
- 2) UNITED STATES  
DEPARTMENT OF VETERANS  
AFFAIRS (an executive agency of  
the UNITED STATES OF  
AMERICA) corporate fiduciary
- 3) Secretary of the US Dept of  
Veterans Affairs, corporate  
fiduciary, Eric Ken Shinseki.

All respondents are sued in their  
corporate, legal, fiduciary, official and  
personal capacities.

)  
) Appellate Case No.: 12-35841

)  
) USDC ID Case No.: 12-330-CV-LMB

)  
) **SECOND AMENDMENT OF ARGUMENT**  
) **ON APPELLANT'S OPENING BRIEF**  
) **DUE TO NEW AND CRITICAL EVIDENCE**

)  
) **IMPACT AND MANDATE OF US CIRCUIT**  
) **COURT JUDGE PLAGER'S RULING AND**  
) **REBUKE OF VA, MARCH 21, 2013**

)  
) **IN**  
) **NATIONAL ORGANIZATION OF**  
) **VETERANS ADVOCATES, INC**

)  
) **V.**  
) **SECRETARY OF VETERANS AFFAIRS**  
) **CASE NO.: 2011-7191**

)  
) **VA HAS SYSTEMICALLY VIOLATED**  
) **VETERANS' CIVIL AND DUE PROCESS**  
) **RIGHTS FOR DECADES.**

1 **I. INTRODUCTION**

- 2 A. Comes now the plaintiff classes, by and through their elected representative of the class,  
3 Gary Kendall, **WITH Order to Proceed In Forma Pauperis**, making argument on new and  
4 previously unknown evidence which is critical evidence of their rights to approach the US  
5 District Courts with their complaints, now proven by Order of the US Court of Appeals for  
6 the Federal Circuit via NATIONAL ORGANIZATION OF VETERANS ADVOCATES,  
7 INC. (NOVA) VS. SECRETARY OF VETERANS AFFAIRS, USCAFC, 2011-7191,  
8 MARCH 21, 2013.
- 9 B. This new evidence has been make know to the clerk with the letter of notification of the  
10 Addition of Supplemental evidence which accompanied this filing.

11 **II. WEIGHT OF AND ARGUMENT OF EVIDENCE**

- 12 A. This evidence is of undeniable applicability to the complaints in this Veterans Civil rights  
13 Class Action as it is an official ruling that VA has systemically and systematically deprived  
14 Veterans of their civil and due process rights – as a routine method of operation in defiance  
15 of existing law and previous court rulings to VA to cease a desist certain practices.
- 16 B. As a ruling that VA HAS deprived Veterans – as a class – of their civil rights, the issues of  
17 this case complaint have been ruled as FACT OF LAW by the USCAFC in NOVA 2011-  
18 7191.
- 19 C. **Of most critical evidence in this class action** are the words of Judge Plager’s Order in  
20 which he states:
- 21 **1.** *“Because we find the Government’s conduct in this case to be potentially sanctionable,*  
22 *this is an Order for the Government to show cause why sanctions should not be imposed*  
23 *on the responsible officials. So there will be no misunderstanding, we explain in detail*

1           *the conduct we consider sanctionable. We also identify the harms we consider to have*  
2           *resulted from the Government’s conduct, and suggest ways these harms could be*  
3           *alleviated; the Government’s showing in response to this Order will bear on whether*  
4           *sanctions are imposed, and the nature and extent of any such sanctions.” And;*

5           2.   *“Jurisdiction to review this case arose under 38 U.S.C. § 502.” And;*

6           3.   *“Worse yet, VA’s conduct has potentially harmed not just plaintiff NOVA’s organization*  
7           *but the very individuals it represents and that VA is tasked with assisting.” And;*

8           4.   *“Finally, VA’s conduct troubles the court because, rather than remedy harm caused by*  
9           *its broken promises, VA attempted to shift the burden to others such as NOVA, attorneys*  
10           *assisting veterans (oftentimes on a pro bono basis), or to the harmed veterans*  
11           *themselves.” And;*

12           5.   *“The unwarranted denial of benefits means real-world consequences to veterans.*  
13           *Promises of hypothetical relief do not pay for food or provide needed medical care.”*

14           And: *“Additionally, VA’s conduct and written communications refute its assertions that*  
15           *its violations were unintentional.” And;*

16           6.   – most damning: **“In other words, VA was well aware of this commitment**  
17           **and intentionally elected not to fulfill it.”**

18   D. It is abundantly clear – and should be undeniable to any learned adjudicator of law – that the  
19   court found the VA guilty of having deprived Veterans of their civil rights to Equality of  
20   Protection under the Law and of having deprived Veterans of their US Constitutional Due  
21   Process rights... which is EXACTLY what the class numerous complaints are regarding in  
22   this action!



1 **IV. ATTESTATION AND AFFIDAVIT**

2 County of Ada )  
3 Ss ( )  
4 State of Idaho )

5  
6 A. I, Gary Kendall, so state and certify that I am the Representative of the Class – by written  
7 order of the class - and a plaintiff in the above action, and that:

- 8 1. Under penalty of perjury applicable to a sovereign citizen, I have read the above opinions  
9 of fact, and that it is true and correct to the best of my knowledge, and;
- 10 2. **SERVICE MANDATED TO BE PROVIDED BY THE COURT:** That under Title 38  
11 USC rights of Veterans to bring their litigations on deprivations of civil rights to the  
12 courts free of charge, and under the 28 USC §1915 In Forma Pauperis rights of all  
13 disabled Veterans on disability compensation, the court is responsible to provide all  
14 process and service, and to perform all duties for the In Forma Pauperis Litigant(s),  
15 whether as a class or as individuals. In Forma Pauperis applies to ALL plaintiffs herein  
16 due to their receipt of VA disability which is prohibited by federal law from being  
17 considered as income for any other purpose than the necessary costs of living.
- 18 3. I approach this Court as a United States recognized sovereign, individual entity equal to  
19 any in the kingdoms and nation states of humans, and as a Royal Prince in the Kingdom  
20 of God, as empowered and officially recognized via the Declaration of Independence, the  
21 Paris Peace Accord of 1783 and the United States Congress ratification of that Accord as  
22 a United States Treaty and part of the supreme law of this land - and by the Constitution  
23 of the United States of America, and;
- 24 4. **OATHS AS EVIDENCE:** I accept the sworn oaths of all officers and justices of the  
25 United States, the States of the Union and all lawful Courts there-under – that each said  
26 such officer shall uphold and defend the United States Constitution, US Laws, and US  
27 Treaties, as the Supreme Law of this land, and that they shall each be BOUND thereby  
28 “ANYTHING... TO THE CONTRARY NOTWITHSTANDING” - into evidence before  
29 this Court, and that this Court – in this action - is a Court of United States Constitutional  
30 and US Law – and is therefore bound to US Constitution, US Codes, US Regulations, and  
31 US Treaties as the supreme law of the land - where Equity under the Law is Paramount  
32 and Mandatory.

33  
34  
35 \_\_\_\_\_  
36 petitioner