

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 08-5161

September Term, 2008

FILED ON: APRIL 7, 2009

WILLIAM G. WHITE, ET AL.,

APPELLANTS

v.

ERIC K. SHINSEKI, SECRETARY OF VETERANS
AFFAIRS AND VETERANS ADMINISTRATION,

APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:79-cv-01426)

BEFORE: BROWN AND GRIFFITH, *CIRCUIT JUDGE*, AND SILBERMAN, *SENIOR CIRCUIT
JUDGE*

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. It is

ORDERED AND ADJUDGED that the district court order filed March 28, 2008, be vacated, and the case be remanded to the district court with instructions to transfer the

case in the “interest of justice” under 28 U.S.C. § 1631, to the United States Court of Appeals for the Federal Circuit, for the reasons stated in the accompanying memorandum.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

PER CURIAM

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/
Scott H. Atchue
Deputy Clerk

MEMORANDUM

We lack jurisdiction, but in light of the *Bleak House*-like history of this case—which now spans six presidential administrations—we now apply our authority under 28 U.S.C. § 1631 to transfer this matter to the Federal Circuit “in the interest of justice.”

The Veterans’ Judicial Review Act provides that the “decision of the Secretary as to any [question of law or fact affecting the provision of benefits to veterans] shall be final and conclusive and may not be reviewed . . . by any court,” except for such matters as are subject to § 502 of the Act. 38 U.S.C. § 511(a), (b). Section 502 vests exclusive jurisdiction for review of claims relating to FOIA publication requirements and APA notice and comment rulemaking in the Federal Circuit.¹

In *LaFontant v. INS*, 135 F.3d 158, 161-65 (D.C. Cir. 1998), we considered whether the Antiterrorism and Effective Death Penalty Act of 1996, 8 U.S.C.A. § 1105a, which stripped the jurisdiction of circuit courts to review certain deportation orders, could be applied to cases pending at the time of the statute’s enactment. Relying on a host of Supreme Court precedent, we held that “in order to determine whether a statute applies to a case that was filed prior to passage of the statute, courts must determine whether the statute is ‘procedural’ in nature, or whether it affects ‘substantive entitlement to relief.’” 135 F.3d at 163 (quoting *Lindh v. Murphy*, 521 U.S. 320, 327 (1997)). Under normal circumstances, application of a new jurisdictional statute “takes away no substantive right, but simply changes the tribunal that is to hear the case.” *Landgraf v. USI Film Prods.*, 511 U.S. 244, 274 (1994) (quoting *Hallowell v. Commons*, 239 U.S. 506, 508 (1916)).

Such is the case here. Given this overwhelming body of binding precedent, the isolated and ambiguous legislative history cannot be controlling. See, e.g., *Gen. Dynamics Land Sys. v. Cline*, 540 U.S. 581, 599 (2004). A statute has a “retroactive effect” when it “attaches new legal consequences to events completed before its enactment.” *Landgraf*, 511 U.S. at 269-70. Appellants have some argument that dismissal of their case on jurisdictional grounds may risk the time-barring of their claim via the independent operation of the applicable statute of limitations, but the language of the Act did nothing to alter the limitations period. (We note that the Appellants are likely to have a strong argument for equitable tolling of the statute, particularly in light of the decade-long delay between the filing of their petition with the district court in 1979 and the passage of the Act in 1989, which delay appears not to have been their fault.)

We therefore vacate and remand to the district court with instructions to transfer the case to the Federal Circuit under 28 U.S.C. § 1631, which should resolve any time-bar concerns. The Federal Circuit has the accumulated expertise of twenty-one years in

¹ Alternatively, the Act vests jurisdiction in the Court of Appeals for Veterans Claims, which was newly created at the time of the Act’s passage in 1989 and thus unavailable to Appellants, who filed with the district court in 1979.

dealing with claims such as Appellants'. While it may be that the Federal Circuit will *also* deny that it has jurisdiction over this case, see *Brown v. Sec'y of Veterans Affairs*, No. 95-7067, 1997 WL 488930 (Fed. Cir. Aug. 22, 1997), it is the only place where jurisdiction is conceivable.