

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

David P. Bourke,	)	
<i>Plaintiff,</i>	)	
	)	No. 22-cv-03164
-vs-	)	
	)	<i>(Judge Kennelly)</i>
Denis Richard McDonough, in his	)	
official capacity as Secretary of	)	
Veterans Affairs,	)	
<i>Defendant.</i>	)	

**NOTICE OF APPEAL**

Notice is hereby given that David P. Bourke, plaintiff above named, hereby appeals to the United States Court of Appeals from the judgment entered in this proceeding on June 11, 2024.

Respectfully submitted,

/s/ Kenneth N. Flaxman  
Kenneth N. Flaxman  
ARDC No. 0830399  
Joel A. Flaxman  
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Chicago, Illinois 60604  
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*attorneys for plaintiff*

IN THE UNITED STATES DISTRICT COURT  
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David P. Bourke,	)	
<i>Plaintiff,</i>	)	
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Veterans Affairs,	)	
<i>Defendant.</i>	)	

**DOCKETING STATEMENT**

Plaintiff invoked the jurisdiction of the district court under 28 U.S.C. § 1331 to assert a claim arising under 29 U.S.C. § 704.

The district court entered judgment in favor of defendant and against plaintiff on June 11, 2024. The judgment resolved all claims of all parties.

Plaintiff filed his notice of appeal on July 9, 2024, and invokes the jurisdiction of the Court of Appeals pursuant to 28 U.S.C. § 1291.

/s/ Kenneth N. Flaxman  
Kenneth N. Flaxman  
ARDC No. 0830399  
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*attorneys for plaintiff*

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF ILLINOIS

David P. Bourke,

Plaintiff(s),

v.

Denis Richard McDonough, Secretary, U.

Defendant(s).

Case No. 22 C 3164

Judge Matthew F. Kennelly

**JUDGMENT IN A CIVIL CASE**

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)  
and against defendant(s)  
in the amount of \$

which ☐ includes pre-judgment interest.  
☐ does not include pre-judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

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☐ in favor of defendant(s)  
and against plaintiff(s)

Defendant(s) shall recover costs from plaintiff(s).

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☒ other: The Court grants the defendant's motion for summary judgment [dkt. no. 29] and denies Bourke's cross-motion for summary judgment [dkt. no. 34].

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This action was (*check one*):

☐ tried by a jury with Judge \_\_\_\_\_ presiding, and the jury has rendered a verdict.  
☐ tried by Judge \_\_\_\_\_ without a jury and the above decision was reached.  
☒ decided by Judge Matthew F. Kennelly on a motion .

Date: 6/11/2024

Thomas G. Bruton, Clerk of Court

Melissa Astell, Deputy Clerk

**United States District Court**  
**Northern District of Illinois - CM/ECF NextGen 1.7.1.1 (Chicago)**  
**CIVIL DOCKET FOR CASE #: 1:22-cv-03164**  
**Internal Use Only**

Bourke v. McDonough  
Assigned to: Honorable Matthew F. Kennelly  
Cause: 29:790 Rehabilitation of Labor

Date Filed: 06/15/2022  
Date Terminated: 06/11/2024  
Jury Demand: Plaintiff  
Nature of Suit: 445 Civil Rights: Americans  
with Disabilities - Employment  
Jurisdiction: Federal Question

**Plaintiff****David P. Bourke**

represented by **Joel A. Flaxman**  
Kenneth N. Flaxman P.C.  
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Chicago, IL 60604  
(312) 427-3200  
Email: jaf@kenlaw.com  
**ATTORNEY TO BE NOTICED**

**Kenneth N Flaxman**  
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(312) 427-3200  
Email: knf@kenlaw.com  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Denis Richard McDonough**  
*in his official capacity as Secretary of  
Veterans Affairs*

represented by **Nicole Suzanne Flores**  
Department of Justice, U.S. Attorney's  
Office, Northern  
219 S Dearborn St  
9th Floor  
Chicago, IL 60604  
(312) 722-2255  
Email: nicole.flores3@usdoj.gov  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
06/15/2022	<u>1</u>	COMPLAINT filed by David Bourke; Jury Demand. Filing fee \$ 402, receipt number AILNDC-19567646.(Flaxman, Kenneth) (Entered: 06/15/2022)

06/15/2022	<u>2</u>	CIVIL Cover Sheet (Flaxman, Kenneth) (Entered: 06/15/2022)
06/15/2022	<u>3</u>	ATTORNEY Appearance for Plaintiff David Bourke by Kenneth N Flaxman (Flaxman, Kenneth) (Entered: 06/15/2022)
06/16/2022	<u>4</u>	ATTORNEY Appearance for Plaintiff David Bourke by Joel A. Flaxman (Flaxman, Joel) (Entered: 06/16/2022)
06/16/2022		CASE ASSIGNED to the Honorable Matthew F. Kennelly. Designated as Magistrate Judge the Honorable Jeffrey T. Gilbert. Case assignment: Random assignment. (khg, ) (Entered: 06/16/2022)
06/16/2022		CLERK'S NOTICE: Pursuant to Local Rule 73.1(b), a United States Magistrate Judge of this court is available to conduct all proceedings in this civil action. If all parties consent to have the currently assigned United States Magistrate Judge conduct all proceedings in this case, including trial, the entry of final judgment, and all post-trial proceedings, all parties must sign their names on the attached <u>Consent To</u> form. This consent form is eligible for filing only if executed by all parties. The parties can also express their consent to jurisdiction by a magistrate judge in any joint filing, including the Joint Initial Status Report or proposed Case Management Order. (khg, ) (Entered: 06/16/2022)
06/16/2022		SUMMONS Issued as to DENIS R McDONOUGH, U.S. Attorney, and U.S. Attorney General (emc, ) (Entered: 06/16/2022)
07/07/2022	<u>5</u>	DESIGNATION of Nicole Suzanne Flores as U.S. Attorney for Defendant Denis Richard McDonough (Flores, Nicole) (Entered: 07/07/2022)
07/23/2022	<u>6</u>	MINUTE entry before the Honorable Matthew F. Kennelly: By no later than 8/4/2022, the parties (or, if no defendant has yet appeared, the plaintiff(s)) are to file a joint status report that includes the following information: (1) the status of service of process upon each defendant; (2) a description of each party's claims and defenses; (3) details regarding any discussions concerning settlement, whether before or after the filing of the lawsuit; (4) a proposed discovery and pretrial schedule; and (5) any other matters that any party wishes to bring to the Court's attention. The case is set for a case management conference under Federal Rule of Civil Procedure 16 on 8/11/2022 at 8:55 a.m. The case management conference will be conducted by telephone, using the following call-in number: 888-684-8852, access code 746-1053. Plaintiff's counsel is directed to provide a copy of this order to any defendant that has not yet appeared by counsel via regular mail at the address at which the defendant has been or is to be served with process. (mk) (Entered: 07/23/2022)
08/04/2022	<u>7</u>	STATUS Report <i>[joint]</i> by David P. Bourke (Flaxman, Kenneth) (Entered: 08/04/2022)
08/06/2022	<u>8</u>	MINUTE entry before the Honorable Matthew F. Kennelly: The Court has reviewed the parties' joint status report and sets the following discovery and pretrial schedule. Rule 26(a)(1) disclosures are to be made by 9/19/2022. Written discovery requests are to be served by 10/17/2022. The deadline for amending the pleadings and adding parties is 11/30/2022. Fact discovery is to be completed by 5/22/2023. The telephonic status hearing set for 8/11/2022 is vacated and reset to 11/9/2022 at 9:05 a.m., using the following call-in number: 888-684-8852, access code 746-1053. A joint status report detailing the progress of discovery and any settlement discussions is to be filed on 11/2/2022. (mk) (Entered: 08/06/2022)
08/22/2022	<u>9</u>	ANSWER to Complaint by Denis Richard McDonough(Flores, Nicole) (Entered: 08/22/2022)

11/01/2022	<u>10</u>	MOTION by Defendant Denis Richard McDonough for protective order , <i>agreed</i> (Flores, Nicole) (Entered: 11/01/2022)
11/02/2022	<u>11</u>	STATUS Report <i>[JOINT]</i> by David P. Bourke (Flaxman, Kenneth) (Entered: 11/02/2022)
11/03/2022	<u>12</u>	MINUTE entry before the Honorable Matthew F. Kennelly: The Court has reviewed the parties' joint status report and notes that it states that plaintiff has not yet served any written discovery requests despite the fact that the deadline for doing so--jointly requested by the parties--was over two weeks ago, on 10/17/2022. Unless plaintiff serves written discovery requests by 11/10/2022, he will have forfeited the right to do so. The telephonic status hearing set for 11/9/2022 is vacated and reset to 1/3/2023 at 8:50 a.m., using the following call-in number: 888-684-8852, access code 746-1053. A joint status report detailing the progress of discovery and any settlement discussions is to be filed on 12/20/2022. (mk) (Entered: 11/03/2022)
11/03/2022	<u>13</u>	AGREED PRIVACY ACT AND HIPAA ORDER signed by the Honorable Matthew F. Kennelly on 11/3/2022: Agreed motion for protective order <u>10</u> is granted. (mk) (Entered: 11/03/2022)
12/19/2022	<u>14</u>	STATUS Report , <i>joint</i> , by Denis Richard McDonough (Flores, Nicole) (Entered: 12/19/2022)
12/26/2022	<u>15</u>	MINUTE entry before the Honorable Matthew F. Kennelly: Based on the parties' joint status report, the telephonic status hearing set for 1/3/2023 is vacated and reset to 3/1/2023 at 9:10 a.m., using the following call-in number: 888-684-8852, access code 746-1053. A joint status report detailing the progress of discovery and any settlement discussions is to be filed on 2/22/2023. (mk) (Entered: 12/26/2022)
12/29/2022	<u>16</u>	ANNUAL REMINDER: Pursuant to <u>Local Rule 3.2 (Notification of Affiliates)</u> , any nongovernmental party, other than an individual or sole proprietorship, must file a statement identifying all its affiliates known to the party after diligent review or, if the party has identified no affiliates, then a statement reflecting that fact must be filed. An affiliate is defined as follows: any entity or individual owning, directly or indirectly (through ownership of one or more other entities), 5% or more of a party. The statement is to be electronically filed as a PDF in conjunction with entering the affiliates in CM/ECF as prompted. As a reminder to counsel, parties must supplement their statements of affiliates within thirty (30) days of any change in the information previously reported. This minute order is being issued to all counsel of record to remind counsel of their obligation to provide updated information as to additional affiliates if such updating is necessary. If counsel has any questions regarding this process, this <u>LINK</u> will provide additional information. Signed by the Executive Committee on 12/29/2022: Mailed notice. (tg, ) (Entered: 12/29/2022)
02/22/2023	<u>17</u>	STATUS Report by David P. Bourke (Flaxman, Kenneth) (Entered: 02/22/2023)
02/23/2023	<u>18</u>	MINUTE entry before the Honorable Matthew F. Kennelly: Based on the parties' joint status report, the telephonic status hearing set for 3/1/2023 is vacated and reset to 4/20/2023 at 9:05 a.m., using the following call-in number: 888-684-8852, access code 746-1053. A joint status report detailing the progress of discovery and any settlement discussions is to be filed on 4/13/2023. (mk) (Entered: 02/23/2023)
04/13/2023	<u>19</u>	STATUS Report <i>[JOINT]</i> by David P. Bourke (Flaxman, Kenneth) (Entered: 04/13/2023)
04/14/2023	<u>20</u>	MINUTE entry before the Honorable Matthew F. Kennelly: Based on the parties' joint status report, the telephonic status hearing set for 4/20/2023 is vacated and reset to 6/15/2023 at 9:10 a.m., using the following call-in number: 888-684-8852, access code

		746-1053. A joint status report detailing the progress of discovery and any settlement discussions is to be filed on 6/8/2023. (mk) (Entered: 04/14/2023)
05/22/2023	<u>21</u>	MOTION by Defendant Denis Richard McDonough for extension of time to complete discovery ( <i>joint</i> )  (Flores, Nicole) (Entered: 05/22/2023)
05/24/2023	<u>22</u>	MINUTE entry before the Honorable Matthew F. Kennelly: Joint motion to extend discovery cutoff date <u>21</u> is granted; the deadline for completing discovery is extended to 8/21/2023. This deadline will not be extended again. The telephonic status hearing set for 6/15/2023 is vacated and reset to 7/15/2023 at 9:00 a.m., using the following call-in number: 888-684-8852, access code 746-1053. A joint status report listing the scheduled dates for each and every remaining deposition to be taken is to be filed on 7/8/2023. (mk) (Entered: 05/24/2023)
05/25/2023	<u>23</u>	MINUTE entry before the Honorable Matthew F. Kennelly: This order corrects docket entry <u>22</u> which contained a typographical error. Joint motion to extend discovery cutoff date <u>21</u> is granted; the deadline for completing discovery is extended to 8/21/2023. This deadline will not be extended again. The telephonic status hearing set for 6/15/2023 is vacated and reset to 7/18/2023 at 9:00 a.m., using the following call-in number: 888-684-8852, access code 746-1053. A joint status report listing the scheduled dates for each and every remaining deposition to be taken is to be filed on 7/8/2023. Mailed notice. (mma, ) (Entered: 05/25/2023)
07/10/2023	<u>24</u>	STATUS Report [ <i>JOINT</i> ] by David P. Bourke  (Flaxman, Kenneth) (Entered: 07/10/2023)
07/12/2023	<u>25</u>	MINUTE entry before the Honorable Matthew F. Kennelly: The Court has reviewed the parties' joint status report. The telephonic status hearing set for 7/15/2023 is vacated and reset to 9/7/2023 at 9:10 a.m., using the following call-in number: 888-684-8852, access code 746-1053. A joint status report is to be filed on 8/31/2023 and should include a summary of the grounds for any dispositive motion that any party intends to file. (mk) (Entered: 07/12/2023)
08/31/2023	<u>26</u>	STATUS Report ( <i>JOINT</i> ) by Denis Richard McDonough  (Flores, Nicole) (Entered: 08/31/2023)
09/01/2023	<u>27</u>	MINUTE entry before the Honorable Matthew F. Kennelly: The Court has reviewed the parties' joint status report. The telephonic status hearing set for 9/7/2023 is vacated. Defendant's summary judgment motion is to be filed by 10/13/2023. Plaintiff's response and cross-motion is to be filed by 11/10/2023. Defendant's reply/response is to be filed by 12/4/2023. Plaintiff's reply on the cross-motion is to be filed by 12/18/2023. (mk) (Entered: 09/01/2023)
10/13/2023	<u>28</u>	STIPULATION ( <i>joint</i> ) (Flores, Nicole) (Entered: 10/13/2023)
10/13/2023	<u>29</u>	MOTION by Defendant Denis Richard McDonough for summary judgment  (Flores, Nicole) (Entered: 10/13/2023)
10/13/2023	<u>30</u>	MEMORANDUM by Denis Richard McDonough in support of motion for summary judgment <u>29</u> (Flores, Nicole) (Entered: 10/13/2023)
10/13/2023	<u>31</u>	RULE 56 (a) Statement ( <i>Local Rule 56.1(a)(2) Statement of Facts</i> ) (Attachments: # <u>1</u> Exhibit Index of Exhibits, # <u>2</u> Exhibit Exhibits 1-10, # <u>3</u> Exhibit Exhibits 11-20, # <u>4</u>



		Exhibit Exhibits 21-30)(Flores, Nicole) (Entered: 10/13/2023)
11/13/2023	<u>32</u>	RULE 56 1(b)(2) Statement by David P. Bourke regarding motion for summary judgment <u>29</u> (Flaxman, Kenneth) (Entered: 11/13/2023)
11/13/2023	<u>33</u>	RULE 56 1(b)(3) Statement by David P. Bourke regarding motion for summary judgment <u>29</u> (Flaxman, Kenneth) (Entered: 11/13/2023)
11/13/2023	<u>34</u>	MOTION by Plaintiff David P. Bourke for summary judgment <i>[partial on liability]</i> (Flaxman, Kenneth) (Entered: 11/13/2023)
11/13/2023	<u>35</u>	RULE 56 1(a)(2) Statement by David P. Bourke regarding motion for summary judgment <u>34</u> (Flaxman, Kenneth) (Entered: 11/13/2023)
11/13/2023	<u>36</u>	MEMORANDUM motion for summary judgment <u>29</u> , motion for summary judgment <u>34</u> by David P. Bourke <i>[in opposition to defendant's motion and in support of plaintiff's motion]</i> (Flaxman, Kenneth) (Entered: 11/13/2023)
11/30/2023	<u>37</u>	MOTION by Defendant Denis Richard McDonough for extension of time to file response/reply as to motion for summary judgment <u>29</u> , motion for summary judgment <u>34</u> <i>(unopposed)</i> (Flores, Nicole) (Entered: 11/30/2023)
12/01/2023	<u>38</u>	MINUTE entry before the Honorable Matthew F. Kennelly: Defendant's motion for extension of time <u>37</u> is granted. Due date for combined response/reply brief is extended to 1/5/2024. Due date for plaintiff's reply brief on the cross-motion for summary judgment is extended 1/19/2024. (mk) (Entered: 12/01/2023)
12/28/2023	<u>39</u>	ANNUAL REMINDER: Pursuant to <u>Local Rule 3.2 (Notification of Affiliates)</u> , any nongovernmental party, other than an individual or sole proprietorship, must file a statement identifying all its affiliates known to the party after diligent review or, if the party has identified no affiliates, then a statement reflecting that fact must be filed. An affiliate is defined as follows: any entity or individual owning, directly or indirectly (through ownership of one or more other entities), 5% or more of a party. The statement is to be electronically filed as a PDF in conjunction with entering the affiliates in CM/ECF as prompted. As a reminder to counsel, parties must supplement their statements of affiliates within thirty (30) days of any change in the information previously reported. This minute order is being issued to all counsel of record to remind counsel of their obligation to provide updated information as to additional affiliates if such updating is necessary. If counsel has any questions regarding this process, this <u>LINK</u> will provide additional information. Signed by the Executive Committee on 12/28/2023: Mailed notice. (tg, ) (Entered: 12/29/2023)
01/03/2024	<u>40</u>	MOTION by Plaintiff David P. Bourke to file instanter <i>inadvertently omitted exhibits and to reset schedule on cross-motions [AGREED]</i> (Flaxman, Kenneth) (Entered: 01/03/2024)
01/04/2024	<u>41</u>	MINUTE entry before the Honorable Matthew F. Kennelly: Agreed motion to file omitted exhibits and to reset schedule <u>40</u> is granted. Deadline for defendant's reply/response brief is extended to 2/2/2024; deadline for plaintiff's reply brief is extended to 2/16/2024. (mk) (Entered: 01/04/2024)
01/04/2024	<u>42</u>	APPENDIX motion for summary judgment <u>29</u> , motion for summary judgment <u>34</u> <i>[exhibits]</i> (Flaxman, Kenneth) (Entered: 01/04/2024)



02/02/2024	<u>43</u>	RESPONSE by Denis Richard McDonoughin Opposition to MOTION by Plaintiff David P. Bourke for summary judgment <i>[partial on liability]</i>  <u>34</u> and Reply in Support of Motion for Summary Judgment <u>29</u> (Flores, Nicole) (Entered: 02/02/2024)
02/02/2024	<u>44</u>	RESPONSE by Defendant Denis Richard McDonough to Rule 56 statement <u>35</u> (Attachments: # <u>1</u> Exhibit Index and Exhibits)(Flores, Nicole) (Entered: 02/02/2024)
02/02/2024	<u>45</u>	RESPONSE by Defendant Denis Richard McDonough to Rule 56 statement <u>33</u> (Flores, Nicole) (Entered: 02/02/2024)
02/16/2024	<u>46</u>	RESPONSE by David P. Bourke in Support of MOTION by Plaintiff David P. Bourke for summary judgment <i>[partial on liability]</i>  <u>34</u> (Flaxman, Kenneth) (Entered: 02/16/2024)
06/11/2024	<u>47</u>	MEMORANDUM Opinion and Order: The Court grants the defendant's motion for summary judgment [dkt. no. 29] and denies Bourke's cross-motion for summary judgment [dkt. no. 34]. Civil case terminated. Signed by the Honorable Matthew F. Kennelly on 6/11/2024. Mailed notice. (mma, ) (Entered: 06/11/2024)
06/11/2024	<u>48</u>	ENTERED JUDGMENT. Mailed notice. (mma, ) (Entered: 06/11/2024)
07/09/2024	<u>49</u>	NOTICE of appeal by David P. Bourke regarding orders <u>48</u> Filing fee \$ 605, receipt number AILNDC-22221735. Receipt number: n (Flaxman, Kenneth) (Entered: 07/09/2024)
07/09/2024	<u>50</u>	DOCKETING Statement by David P. Bourke regarding notice of appeal <u>49</u> (Flaxman, Kenneth) (Entered: 07/09/2024)
07/17/2024	<u>51</u>	NOTICE of Appeal Due letter sent to counsel of record regarding notice of appeal <u>49</u> . (jn,) (Entered: 07/17/2024)