



NVLSP

NATIONAL VETERANS LEGAL SERVICES PROGRAM

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Justice for Warriors Newsletter



May 2024

Greetings,

During Military Appreciation Month, we are delighted to share our efforts with you across many fronts to advance our mission to ensure that the government delivers to our nation's veterans, active duty personnel, and their families the benefits to which they are entitled because of disabilities resulting from their military service to our country.

Paul Wright
Executive Director

LITIGATION UPDATE

NVLSP, Swords to Plowshares Comments on VA's Long-Overdue Character of Discharge Final Rule After Nearly Nine Years and Several Lawsuits, VA COD Rule Still Falls Short

On April 25, 2024, the National Veterans Legal Services Program ([NVLSP](#)) and [Swords to Plowshares](#) issued comments on the U.S. Department of Veterans Affairs' (VA) long-



NVLSP, Swords to Plowshares Comments on VA's Long-Overdue Character of Discharge Final Rule
-After Nearly Nine Years and Several Lawsuits, VA COD Rule Still Falls Short-

FOR IMMEDIATE RELEASE: April 25, 2024

ARLINGTON, VA – Today, the National Veterans Legal Services Program (NVLSP) and Swords to Plowshares issued the following comments on the U.S. Department of Veterans Affairs' (VA) long-overdue Final Rule to Update and Clarify Regulatory Bars to Benefits Based on Character of Discharge. VA's Final Rule is in direct response to a petition for rulemaking submitted by NVLSP and Swords to Plowshares in December 2023, which sought much-needed amendments to VA rules that today bar thousands of veterans with less than honorable discharges from obtaining critical VA benefits including health care, disability compensation, and pensions that they have been wrongfully denied.

Just last week, NVLSP and Swords to Plowshares were forced to [file](#) a new petition for mandamus seeking to compel VA to publish a Final Rule after the VA failed to meet an April deadline set by a federal court in February. NVLSP and Swords to Plowshares [filed](#) an earlier lawsuit in October 2023 seeking the same result.

"Nearly nine years after our initial petition for rulemaking and two lawsuits, VA's final rule on character of discharge reflects only minor changes from its proposed rule in 2020 and still unfortunately falls short on many fronts to grant far too many deserving former servicemembers recognition as a "veteran" and access to critical services and benefits," said NVLSP Director of Litigation Renee Burbank. "Given VA's track record, in order for this new regulation to make any difference to servicemembers who have long been denied their benefits, VA needs to outline specific efforts to educate their employees to ensure they properly serve any newly recognized veterans."

"We are grateful to see that mitigating factors such as PTSD and Traumatic Brain Injury symptoms are now allowed in some cases to be considered when determining VA benefits eligibility, but these regulations are still lacking in very important ways. For example, the VA is well aware that service members of color, particularly Black service members, are much more likely to face court-martial charges than white service members. Yet, the regulations promulgated today explicitly prohibit the use of such mitigating circumstances and PTSD-related evidence in deciding cases of discharge in lieu of court-martial. After years of advocacy, to see such an unjust outcome is incredibly frustrating," said Maureen Sedor, Legal Director of Swords to Plowshares.

"VA took an important step forward to finally remove discriminatory language that harms LGBTQ+ veterans and to require consideration of the full context that led to a servicemember receiving a less-than-honorable discharge, such as mental health, sexual assault and harassment, and other extenuating circumstances. But the rule still imposes a significant burden on veterans who will have to undergo a lengthy, individualized review in order to gain access to supportive services and health care at VA. The consequence of VA's failure to fully reform these regulations is that VA is leaving veterans experiencing homelessness without access to housing services and leaving veterans experiencing

overdue Final Rule to Update and Clarify Regulatory Bars to Benefits Based on Character of Discharge. The VA's Final Rule is in direct response to a petition for rulemaking submitted by NVLSP and Swords to Plowshares in December 2015, which sought much-needed amendments to VA rules that today bar thousands of veterans with less than honorable discharges from obtaining critical VA benefits including health care, disability compensation, and pensions that they have been wrongfully denied.

On April 16, 2024, NVLSP and Swords to Plowshares were forced to [file](#) a new petition for mandamus seeking to compel VA to publish a Final Rule after the VA failed to meet an April deadline

set by a federal court in February. NVLSP and Swords to Plowshares [filed](#) an earlier lawsuit in October 2023 seeking the same result. [Read more.](#)

NVLSP and Swords to Plowshares are represented by pro bono counsel from Latham & Watkins LLP, Legal Services Center of Harvard Law School, Veterans Legal Clinic, and ZwillGen PLLC.

Supreme Court takes up RICO and Veterans "Benefit of the Doubt" Cases

Pro Bono Counsel Williams & Connolly LLP

NVLSP Reaction to Supreme Court to Review
Veteran's PTSD Benefits in *Bufkin, Thornton v.
McDonough*, among others

On April 29, 2024, the U.S. Supreme Court accepted Air Force veteran Joshua Bufkin's petition seeking to examine if the United States Court of Appeals for Veterans Claims (CAVC) should have reviewed his case history in full prior to rejecting his benefits claim for post-traumatic stress disorder (PTSD). The justices granted review in four cases involving the interpretation of the "benefit of the doubt" rule for veterans.

On February 2, 2024 the National Veterans Legal Services Program (NVLSP) filed a "friend of the Court" brief in *Bufkin, Thornton v. McDonough* urging the Supreme Court to review the U.S. Court of Appeals for the Federal Circuit and United States Court of Appeals for Veterans Claims (CAVC) application of the "take due account" provision of the benefit-of-the-doubt rule. NVLSP's brief argues that the misinterpretation of the full judicial authority granted under the Veterans Benefits Act (VBA) runs counter to Congressional intent to bolster the Veterans Court's claims review process and reduce unnecessary delays in the system. You can read our amicus brief [here](#).

Supreme Court Decision Affirming Veterans Rights to Montgomery & Post 9/11 GI Bills

No. 23-713

In the Supreme Court of the United States

JOSHUA E. BUFKIN, PETITIONER,

vs.

DENIS McDONOUGH, SECRETARY OF VETERANS AFFAIRS, RESPONDENT.

NORMAN F. THORNTON, PETITIONER,

vs.

DENIS McDONOUGH, SECRETARY OF VETERANS AFFAIRS, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

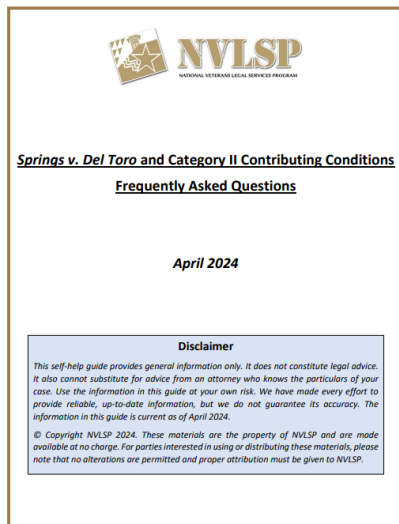
BRIEF OF NATIONAL VETERANS LEGAL SERVICES PROGRAM AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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On April 16, 2024, the National Veterans Legal Services Program ([NVLSP](#)) issued the following statement in response to the U.S. Supreme Court 7-2 [ruling](#) in favor of veteran Jim Rudisill who sought to use both his Post 9/11 GI Bill and Montgomery GI Bill benefits but was denied by the VA.

NVLSP filed a “friend of the Court” [brief](#) in *Rudisill v. McDonough* urging the United States Supreme Court to reverse the Federal Court’s ruling and reaffirm Congress’s establishment of two GI Bills benefits programs with three other veterans services organization including Service Women’s Action Network (SWAN), Student Veterans of America® (SVA) and Veterans Education Success (VES). The veterans’ advocates filed their amici curiae brief with the pro bono assistance of Morgan Lewis LLP. [Read more.](#)



Veterans Win Landmark Class Action Settlement From the U.S. Navy For New Disabilities Ratings Including Contributing Conditions Pro Bono Counsel Dechert LLP

More Than 3,300 Navy and Marine Corps Veterans Denied Medical Retirement Benefits will be Provided New Review of Ratings for Contributing Conditions

On March 23, 2024, the United States District Court for the District of Columbia entered a landmark order requiring the Navy to provide new disability ratings to thousands of Navy and Marine Corp veterans. The ruling stems from the class action lawsuit, [Springs v. Del Toro](#), which challenged the

Navy’s unlawful practice that denied military medical retirement benefits to more than 3,300 Navy and Marine Corps veterans for more than 15 years.

The veterans, represented by pro bono counsel Dechert LLP, in coordination with the National Veterans Legal Services Program ([NVLSP](#)), sought declaratory and injunctive relief under the Administrative Procedure Act in order to force the Navy to correct their records to accurately reflect their full disability ratings as mandated by law. The lawsuit alleged that the Navy's failure to provide disability ratings for conditions that contributed to unfitness unjustly deprived class members of critical military medical retirement benefits, including access to healthcare, essential for veterans injured during their service and their families' well-being. [Read more.](#)

NVLSP has prepared [frequently asked questions](#) (FAQs) to provide guidance for Navy and Marine Corps veterans who may need guidance to determine if they were denied medical retirement as a result of the lack of a rating for an unfitting contributing condition. NVLSP encourages veterans to email LSW.ClassAction@nvlsp.org to learn more about this case.

BURN PITS CLAIMS ASSISTANCE PROGRAM UPDATE

**NVLSP and Stronghold Freedom Foundation Partner to Assist
Veterans & Survivors Obtain VA Disability and Death Benefits**

The National Veterans Legal Services Program ([NVLSP](#)) and the Stronghold Freedom Foundation ([SFF](#)) announced a new partnership to facilitate veterans' and their survivors' access to VA disability and death benefits related to toxic exposure during military service.

"Even with the PACT Act's passage, countless veterans and their families still battle to access the vital benefits owed to them due to toxic burn pit exposures. Many face the uphill struggle of proving service connections, while others remain unaware they can challenge past claim denials with new evidence. Through NVLSP's [Burn Pits Claims Assistance Program](#), we're on a mission to empower these heroes, offering life-changing support at zero cost," said NVLSP Executive Director Paul Wright. "Teaming up with SFF, we're poised to amplify awareness, ensuring more veterans grasp the lifeline NVLSP extends at no expense, while holding the government accountable to its promises."

"Stronghold Freedom Foundation deeply appreciates the partnership with NVLSP. We work to address the Burn Pit toxic exposures of military veterans who were deployed to Karshi-Khanabad, Uzbekistan during Operation Enduring Freedom, ensuring access to all available benefits for the veterans and their families," said Matthew Erpelding, Stronghold Freedom Foundation Executive Director. [Read more.](#)

NVLSP STAFF ON THE MOVE



NVLSP'S RENEE BURBANK TESTIFIES AT THE HOUSE OF VETERANS AFFAIRS COMMITTEE

NVLSP Director of Litigation Renee Burbank testifying on behalf of NVLSP at a House Veterans Affairs Committee Subcommittee on Disability Assistance and Memorial Affairs hearing on pending legislation on April 10,

2024. You can find her testimony [here](#).

MICHIGAN VETERANS HONOR FLIGHT

NVLSP staff and family were proud to welcome Michigan Veterans Honor Flight into Ronald Reagan Washington National Airport through an event with the U.S. Court of Appeals for Veterans Claims (CAVC) Bar Association on May 4, 2024.



Left to right: Jim Bartoszczyk, NVLSP Director of CAVC Litigation Stacy Tromble, Scott Albrecht, NVLSP Project Coordinating Attorney Brandy Disbennett-Albrecht and baby, NVLSP Appellate Attorney Alec Ghezzi, Jennifer Roos, NVLSP Director of Human Resources & Operations Rafael Resto-Olivo, and NVLSP Appellate Attorney Emily Woodward Deutsch and her daughters.

2024 WARRIOR CARE CONFERENCE

Left to right: NVLSP Staff Attorney Amy Fulmer, Equine Immersion Project Lead Wrangler John Rhimer, K-9 Finn, NVLSP Senior Managing Attorney Esther Leibfarth, First Sergeant (R) Jason Belford, K-9 Havoc, and Equine Immersion Project CEO and Founder Tara Mahoney at USSOCOM hosted 2024 Warrior Care Conference on April 10, 2024 in Orlando, Florida.




VIRGINIA STATE BAR MILITARY AND VETERANS LAW SYMPOSIUM

NVLSP Director of Training and Publications Rick Spataro provided his insights at the Virginia State Bar Military Law Section's Military and Veterans Law Symposium on April 12, 2024.


VIRGINIA VALUES VETERANS WORK SUMMIT

NVLSP Director of Human Resources and Operations Rafael Resto-Olivo presents at Virginia Values Veterans (V3) Work Summit on March 28, 2024.

Virginia Values Veterans (V3) Workforce Summit



- The National Veterans Legal Services Program (NVLSP) along with 200 Northern Virginia employers participated in the Virginia Values Veterans (V3) Workforce Summit organized by the Virginia Department of Veteran Services (VDVS) and the Fairfax County Economic Development Authority.
- NVLSP's Director of Human Resources & Operations Mr. Rafael Resto represented NVLSP at the summit.



NVLSP IN THE NEWS

- NVLSP Director of Litigation Renee Burbank was quoted in several articles regarding the VA's new Character of Discharge Rule (COD) rule including [Connecting Vets](#) (4/28/24), [Military.com](#) (4/25/24), [Stars and Stripes](#) (4/30/24), and was interviewed by Quil Lawrence on NPR's May 10, 2024 episode of *Morning Edition*. [Listen here.](#)
- NVLSP Staff Attorney Abigail Reynolds discussed the new self-help manual on discharge upgrades with host Tom Temin on [Federal News Network](#) on March 18, 2024.
- [Latham & Watkins](#) featured NVLSP Executive Director Paul Wright and Director of Lawyers Serving Warriors®, Pro Bono Program of NVLSP, Rochelle Bobroff in a [video](#) in early May about their dedicated pro bono work which resulted in a precedential victory for Mr. Sissel, who was wrongfully denied benefits for many years.

WEBINARS

NVLSP continues its dedication to veteran law education by growing its webinar schedule in an effort to educate more veterans advocates on strategies for securing disability benefits for their clients. Experienced NVLSP attorneys will lead discussions on the following topics:



- Understanding the VA's Rating of Traumatic Brain Injuries (May 21, May 22, May 23)
- Changes to the VA's Character of Discharge Regulation (June 25, June 26, June 27)

NVLSP also has a [comprehensive library](#) of over 20 previously recorded webinars that are available at your convenience.

Webinar topics include:

- VA Accreditation Training: Attorney and Agent Practice before the VA
- Navigating the VA's Modernized/AMA Review System
- VA Benefits Based on National Guard and Reserve Service
- How Involvement with the Criminal Justice System Impacts VA Benefits
- And many more!

For more information on NVLSP's Training and Publications program [watch this video](#).

NVLSP's Training & Publications program also offers: [in-person training](#), the [Online Basic Training Course](#), the [Veterans Benefits Manual](#), and the [VA Benefit Identifier App](#).

WAYS YOU CAN HELP

We hope this newsletter inspires you to become more active with NVLSP. If you want to help NVLSP do more for our veterans, here are a few suggestions.



1. You can follow us on [Twitter](#), connect with us on [LinkedIn](#), and like us on [Facebook](#).
2. Help us promote our free [App](#) for veterans.
3. Tell a friend about [NVLSP](#).

We look forward to connecting with you again soon!

STAY CONNECTED:



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