



# NVLSP

NATIONAL VETERANS LEGAL SERVICES PROGRAM

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## Justice for Warriors Newsletter



**Summer 2024**

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Dear Friends,

Welcome to the summer edition of NVLSP's newsletter! NVLSP remains steadfast in our commitment to advocating for the rights and benefits of our nation's veterans. This edition brings you the latest updates on our ongoing initiatives, notable legal achievements, and vital information to help veterans and their families. Dive in to learn how NVLSP is making strides in securing justice and support for those who have served our country. Thank you for your unwavering support as we work together to uphold the promise made to our veterans.

Paul Wright  
Executive Director

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### NVLSP COMMENTS

**NVLSP Comments in Support of Court of  
Federal Claims' Proposed Amendments to  
Rules on Military Pay**

Lisa L. Reyes  
Clerk of Court  
United States Court of Federal Claims  
717 Madison Place, NW  
Washington, DC 20439

RE: Proposed Amendments to the Rules of the United States Court of Federal Claims

Dear Ms. Reyes:

On June 3, 2024, the United States Court of Federal Claims (COFC) announced that it was seeking public comment on a series of proposed amendments to the Rules of the United States Court of Federal Claims (RCFC).<sup>1</sup> The National Veterans Legal Services Program (NVLSP) is pleased to offer these comments on the proposed changes with a particular emphasis on the proposed amendments RCFC 52.1 and the newly-proposed Appendix K "Procedure in Military Pay Cases."

NVLSP is a national nonprofit organization that has worked since 1981 to ensure that the government delivers to our nation's 18 million veterans and active-duty personnel the benefits they have earned through their military service to our country.<sup>2</sup> An important component of NVLSP's work is assisting veterans who have been wrongfully denied medical retirement benefits. That component of NVLSP's mission manifests itself at the COFC through our representation of veterans in military pay cases.

The availability of timely, efficient, and effective judicial review in the COFC of administrative decisions by military records correction boards denying medical retirement benefits is critical to our ability to serve our nation's veterans. Given our deep understanding of the challenges veterans face when litigating military matters before the COFC, we believe we have an important perspective to share on the importance of adopting the proposed changes to RCFC 52.1 and Appendix K and do so in some detail below.

#### A. Background

Military pay cases in the COFC commonly involve the review of administrative decisions, made by the military, determining whether a service member should be medically retired due to being unfit "to perform the duties of [their] office, grade, rank, or rating."<sup>3</sup> In plain language, the core question at

<sup>1</sup> [https://www.uscfc.uscourts.gov/sites/default/files/24-06-03%20Notice%20of%20Proposed%20Rules%20Amendments\\_0.pdf](https://www.uscfc.uscourts.gov/sites/default/files/24-06-03%20Notice%20of%20Proposed%20Rules%20Amendments_0.pdf)

<sup>2</sup> Additional information on NVLSP can be found here: <https://www.nvlsp.org/what-we-do/>

<sup>3</sup> DoD Instruction 1332.18 "Disability Evaluation System," available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/133218e.pdf?ver=HBMKYOIh4EotQIbezIA%3D%3D>

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The National Veterans Legal Services Program [filed](#) comments in support of the U.S. Court of Federal Claims' proposed amendments to their rules governing procedure in military pay cases. NVLSP's comments underscore the importance of these changes to veterans who have been wrongfully denied medical retirement benefits. The proposed rules would make military pay cases more efficient for litigants, enhance veterans' ability to obtain meaningful judicial review, and achieve greater judicial economy. Read NVLSP's comments [here](#).

## NVLSP Statement on the U.S. Department of Veterans Affairs Office of Inspector General Report: Veterans Benefits Administration Did Not Identify All Vietnam Veterans Who Could Qualify for Retroactive Benefits

"It is an outrage that the VA continues to deny tens of thousands of Vietnam veterans exposed to Agent Orange and their survivors their rightful benefits," said Bart Stichman, Special Counsel and Co-Founder of NVLSP. "The class action court order VA agreed to 33 years ago required VA in 2021 to identify and redetermine the claims of approximately 100,000 Vietnam veterans and their survivors who previously sought benefits for three diseases, including bladder cancer, that were recently added to the list of Agent Orange-related diseases. But the OIG report concludes that VA neglected to redetermine the claims of tens of thousands of veterans who are likely entitled under the 1991 agreement to hundreds of millions of dollars in retroactive compensation."

This [report](#) documents the latest example of VA's failure to fully comply with the class action order to which VA agreed in 1991. The report examined the eligibility for VA benefits based on the landmark case of *Nehmer v. U.S. Department of Veterans Affairs*, a class action lawsuit brought by NVLSP attorneys in 1986 to challenge a VA regulation, former 38 C.F.R. 3.311a, that stated, among other things, that chloracne is the only disease that scientific evidence shows is associated with exposure to herbicides like Agent Orange used by the United States in Vietnam. You can read our full statement [here](#).

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## LITIGATION UPDATE

### NVLSP Files Supreme Court Amicus Brief with National Organization of Veterans' Advocates Supporting "Benefit of the Doubt" Rule for Veterans

Pro Bono Counsel Williams & Connolly LLP

On July 9, 2024, the National Veterans Legal Services Program (NVLSP) [filed](#) another amicus curiae brief in *Joshua E. Bufkin and Norman F. Thornton v. Denis*

*McDonough, Secretary of Veterans Affairs* urging the Supreme Court to hold that the U.S. Court of Appeals for Veterans Claims (Veterans Court) must review factual findings by the VA to ensure that veterans receive the benefit of the doubt on any close issue relating to their eligibility for service-related benefits. NVLSP’s brief argues that the lower court misinterpreted how the benefit-of-the-doubt rule applies to the Veterans Court and that Congress intended to bolster the Veterans Court’s review process and reduce unnecessary delays in the system. The National Organization of Veterans’ Advocates (NOVA) joined NVLSP’s brief. The amici curiae brief was filed with the pro bono assistance of Williams & Connolly LLP.

23-713

**In the Supreme Court of the United States**

JOSHUA E. BUFKIN,  
PETITIONER,  
v.  
DENIS MCDONOUGH,  
SECRETARY OF VETERANS AFFAIRS,  
RESPONDENT.

NORMAN F. THORNTON,  
PETITIONER,  
v.  
DENIS MCDONOUGH,  
SECRETARY OF VETERANS AFFAIRS,  
RESPONDENT.

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

**BRIEF OF NATIONAL VETERANS LEGAL SERVICES  
PROGRAM AND NATIONAL ORGANIZATION OF VETERANS’  
ADVOCATES AS AMICI CURIAE IN SUPPORT OF  
PETITIONERS**

RENÉE A. BURBANK ZACHARY R.M. OUTZEN BARTON F. STICHMAN NATIONAL VETERANS LEGAL SERVICES PROGRAM 1100 Wilson Blvd., Ste. 900 Arlington, VA 22209 <i>Renee.Burbank@nvlsp.org</i>	D. SHAYAN GHOSH <i>Counsel of Record</i> F. GREG BOWMAN LIAM J. MONTGOMERY ANDREW G. BOHRASSO LUKE R. SANDOR WILLIAMS & CONNOLLY LLP 680 Maine Avenue, S.W. Washington, DC 20024 (202) 431-5000 SGhosh@wcc.com
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*Counsel for Amici Curiae*

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*Additional counsel listed on inside cover*

No. 23-1281

IN THE  
**Supreme Court of the United States**

RYAN G. CARTER AND KATHLEEN E. COLE,  
*Petitioners,*  
v.  
UNITED STATES OF AMERICA,  
*Respondent.*

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

**BRIEF OF NATIONAL VETERANS LEGAL  
SERVICES PROGRAM AND SAVE OUR  
SERVICEMEMBERS AS AMICI CURIAE  
IN SUPPORT OF PETITIONERS**

Rochelle Bohroff Renee A. Burbank Zachary R.M. Outzen Barton F. Stichman NATIONAL VETERANS LEGAL SERVICES PROGRAM 1100 Wilson Boulevard Suite 900 Arlington, VA 22209  <i>Counsel for Amici Curiae National Veterans Legal Services Program</i>	Melanie L. Bostwick <i>Counsel of Record</i> Melanie R. Hallums Anne W. Savin ORRICK, HERRINGTON & SUTCLIFFE LLP 2100 Pennsylvania Avenue NW Washington, DC 20037 (202) 339-8400 mbostwick@orrick.com  <i>Counsel for Amici Curiae</i>
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## NVLSP Challenges Feres Doctrine in Supreme Court Amicus Brief for *Carter v. United States* Pro Bono Counsel Orrick, Herrington & Sutcliffe LLP

On June 28, 2024, the National Veterans Legal Services Program (NVLSP) and Save Our Servicemembers [filed](#) an amicus brief in *Carter v. United States*. This brief urges the Supreme Court of the United States to revisit and overrule the highly criticized Feres doctrine, which prevents servicemembers from suing the federal government under the Federal Tort Claims Act for injuries sustained “incident to service.” NVLSP argues that the doctrine is outdated and unjust, depriving servicemembers and their families of just legal

remedies. This case represents a crucial opportunity for the Court to correct this long-standing injustice. The amici curiae brief was filed with the pro bono assistance of Orrick, Herrington & Sutcliffe LLP.

## NVLSP STAFF ON THE MOVE

### 2024 Texas Veterans Commission Annual Claims Conference

On July 16<sup>th</sup> and 17<sup>th</sup>, 2024, NVLSP Executive Director Paul Wright and Director of Training and Publications Rick Spataro attended and presented at the 2024 Texas Veterans Commission Annual Claims Conference in Dallas, TX. On the right, Paul Wright is



pictured with Texas Veterans Commission Executive Director Thomas Palladino. On the left, Rick Spataro conducts an on-site training session.



### **Korean War Memorial Wall Washing**

On July 14<sup>th</sup>, 2024, staff from NVLSP and White & Case LLP volunteered to clean the Korean War Veterans Memorial.

Pictured from left to right: Park Ranger New Thanyachareon, White & Case Associate Alec Albright, NVLSP Director of Human Resources Rafael Resto-

Olivo, Rafael's wife Jennifer Roos, NVLSP Communications Assistant Izzy Angeli, NVLSP Special Counsel Christine Cote Hill, White & Case Partner Dana Foster, NVLSP Director of Communications Patty Briotta, White & Case Associate Alex Dilley, White & Case Associate Otto Nuñez-Montelongo, NVLSP Paralegal Dorrie Popovski, NVLSP Appellate Attorney Alec Ghezzi, NVLSP Development Associate Masha Danilenko, Ranger Kevin Fanning, NVLSP Senior Pro Bono Coordinating Attorney Erin Mee and Development Intern Riordan Pollock.

### **2024 Annual Joint Service Disability Evaluation System Counsel Program Training**

On July 11, 2024 NVLSP's Senior Managing Attorney Esther Leibfarth with Mike Brown of the USSOCOM Warrior Care Coalition program at the 2024 Annual Joint Service Disability Evaluation System Counsel Program Training, Verification, and Certification Course.



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## **NVLSP IN THE NEWS**

On July 25, 2024, NVLSP Co-Founder and Special Counsel Bart Stichman discussed VA-OIG's recent report that concluded VBA failed to identify tens of thousands of Vietnam veterans who could qualify for retroactive benefits with Federal News Network's Eric White. [Listen or read here.](#)



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## 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:



- Recent Changes to the VA's Rating of Digestive System Disabilities (August 27, August 28, August 29)

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](#).

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## 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!

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**STAY CONNECTED:**



**[www.nvlsp.org](http://www.nvlsp.org)**

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