

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

KEVIN BROBST,)
 STEVEN DUDEK,)
 KATE FOLLETT,)
 TERRANCE FOWLER,)
 EARL PAULSON,)
 JACK R. PETERSON,)
 KENNETH SCHMIDT and)
 KARIN WHITLEY,)
 individually and on behalf of others)
 similarly situated,)

Petitioners,

v.

Vet. App. No. ___

DOUGLAS A. COLLINS,)
 in his capacity as Secretary of Veterans)
 Affairs,)

And

STEVEN L. LIEBERMAN,)
 In his capacity as Acting Under)
 Secretary for Health,)

Respondents.

**TABLE OF CONTENTS FOR PETITION FOR INDIVIDUAL AND
CLASS RELIEF IN THE FORM OF A WRIT OF MANDAMUS**

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INTRODUCTION

Section 1725 of U.S. Code, Title 38 requires the Secretary of Veterans Affairs (“Secretary”) to reimburse veterans who apply to recover the emergency medical expenses they incur at non-VA facilities, with certain limited exceptions. On February 22, 2023, the U.S. Department of Veterans Affairs (VA) published an interim final rule (IFR) that amended 38 C.F.R. § 17.1004, which implements the reimbursement statute. Under section 17.1004 as it existed prior to the 2023 IFR, veterans seeking reimbursement of emergency medical expenses incurred at non-VA facilities had 90 days after the veteran was discharged from the non-VA facility that furnished the emergency treatment to submit a reimbursement claim, with certain limited exceptions. The 2023 IFR added an additional exception to provide many of the veterans who were time-barred from seeking reimbursement under the prior regulation with a newly established right to reimbursement. New section 17.1004(f) provided:

Notwithstanding [the 90-day application filing deadline in] paragraph (d) of this section, VA will provide retroactive payment or reimbursement for emergency treatment received by the veteran, on or after February 1, 2010 but more than 90 days before February 22, 2023, if the claimant was eligible for partial payment from a health-plan contract for the emergency treatment and the claimant files a claim for reimbursement no later than 1 year after February 22, 2023.

88 Fed. Reg. at 10838 (Feb. 22, 2023), *codified at* 38 C.F.R. § 17.004(f).

The 2023 IFR thus opened the door to reimbursement for hundreds of thousands of veterans whose medical emergencies took place at any time during the nearly 13-year

period from February 1, 2010 to November 24, 2022. The IFR established three criteria to qualify for this newly created right of review: (1) the veteran's medical emergencies occurred during the aforementioned window period; (2) the veteran had other health insurance (hereinafter, "OHI") that covered part, but not all of the emergency treatment expenses incurred; (3) the veteran submitted a reimbursement claim between February 23, 2023, and February 22, 2024.

Unfortunately, VA did not follow its own regulation. Instead, the various Veterans Health Administration (VHA) offices that receive emergency medical care reimbursement claims had a pattern and practice of refusing to accept, and/or process for decision, claims timely filed pursuant to 38 C.F.R. § 17.1004(f). As a result, petitioners and the class of claimants they seek to represent have been systematically denied the ability to receive decisions on their reimbursement claims for medical emergencies experienced years ago.

RELIEF REQUESTED

Pursuant to Court Rules 21 and 22 and *Monk v. Shulkin*, 855 F.3d 1312 (Fed. Cir. 2017), the eight named petitioners, on behalf of themselves and those similarly situated (collectively, the "Class"), respectfully request the following relief to remedy respondents' unlawful failure to accept and process for decision the reimbursement claims they submitted or attempted to submit:

First, certify this case as a class action on behalf of all veterans or their healthcare providers (a) who at any time during the period from February 23, 2023, to February 22, 2024, submitted or attempted to submit to VA one or more claims for reimbursement of emergency treatment expenses that were incurred at non-VA facilities between February

1, 2010 and November 24, 2022; and (b) as to whom VA has failed to process such reimbursement claims for decision with a notice of appellate rights;

Second, order respondents to (a) identify the members of the class; (b) notify them that respondents will expeditiously issue a decision on all such reimbursement claims after developing, if necessary, the relevant evidence; and (c) process and adjudicate class members' reimbursement claims.

If respondents are unable to identify all members of the class, the Court should order alternative relief in aid of its jurisdiction over class members' reimbursement claims by ordering respondents to provide a new one-year period for class members to submit their reimbursement claims of emergency expenses they incurred for emergencies that took place at any time during the period from February 1, 2010 to November 24, 2022, if they had private health insurance that covered part, but not all of the emergency expenses incurred. Respondents should also be required to craft effective notice to veterans enrolled in VA health care of this right, both through individual notice and through public notice and publicization to veterans service organizations. Petitioners intend to file a Request for Class Certification and Class Action pursuant to Court Rule 22.

JURISDICTION

This Court has jurisdiction under 38 U.S.C. § 7252 and 7261(a) to review the Secretary's actions, including the authority to "compel action of the Secretary unlawfully withheld," *id.* § 7261(a). The All Writs Act authorizes "all courts established by Act of Congress [to] issue all writs necessary or appropriate in aid of their respective

jurisdictions.” 28 U.S.C. § 1651. This Court possesses jurisdiction under the All Writs Act to review acts or omissions that could cause it to “be prevented or frustrated from exercising [its] statutorily granted [appellate] jurisdiction.” *See, e.g., Wolfe v. Wilkie*, 32 Vet. App. 1, 23–24 (2019), *rev’d on other grounds, Wolfe v. McDonough*, 28 F.4th 1348 (Fed. Cir. 2022); *see Cox v. West*, 149 F.3d 1360, 1363-64 (Fed. Cir. 1998); *Kelley v. Shinseki*, 26 Vet. App. 183, 185 (2013). This Court’s jurisdiction to issue extraordinary writs to VA officials “is particularly applicable where . . . an alleged refusal to act would forever frustrate the ability of a court to exercise its appellate jurisdiction.” *Erspamer v. Derwinski*, 1 Vet. App. 3, 8 (1990). Here, the Secretary’s consistent pattern of failing to accept and/or process for decision reimbursement claims filed under 38 U.S.C. § 1725 and the 2023 IFR would forever frustrate the ability of the Court to exercise its appellate jurisdiction.

The Court also has authority to certify and adjudicate this case as a class action. *See Monk v. Shulkin*, 855 F.3d 1312, 1321–22 (Fed. Cir. 2017); *Beaudette v. McDonough* 34 Vet. App. 95 (2021), *aff’d*, 93 F.4th 1361 (Fed. Cir. 2024).

I. STATEMENT OF THE CASE

A. The Basis for the 2023 IFR

VA promulgated the 2023 IFR after years of problems with, and litigation over, VA’s implementation of amendments made in 2010 to 38 U.S.C. § 1725. For many years prior to 2010, section 1725 required respondent Secretary of Veterans Affairs to reimburse veterans for the emergency treatment costs they incur at a non-VA facility under certain circumstances. VA’s implementing regulations initially provided that VA would reimburse

a veteran enrolled in VA health care for the full amount of his or liability for such expenses, with certain limited exceptions. One exception involved veterans who had OHI (like Medicare, Medicaid, or employer-based insurance) that covered part, but not all of the veteran's liability for these emergency services. Although veterans without health insurance would be reimbursed for the full amount of their liability, the regulations provided that for veterans with OHI, VA would *not* pay reimbursement for *any part of* the veteran's liability that was not covered by the veteran's other insurance carrier, consistent with the pre-2010 version of Section 1725.

Effective February 1, 2010, however, Congress enacted the Emergency Care Fairness Act (ECFA). That law amended Section 1725 to “allow the VA to reimburse veterans for [emergency] treatment in a non-VA facility if they had a third-party insurer that would pay [only] a portion of the emergency care.” *Staab v. McDonald*, 28 Vet. App. 50 (2016) (quoting H.R. Rep. 111-55 at 3). But despite the changes made by the 2010 ECFA, the VA retained without amendment the existing regulation that completely barred reimbursement if “[t]he veteran has no coverage under a health-plan contract for payment or reimbursement, in whole or in part, for the emergency treatment.” 38 C.F.R. § 1002(f) (2015).

In 2016, this Court invalidated the part of 38 C.F.R. § 1002(f) that prohibited VA from reimbursing veterans with OHI for the part of the veteran's liability that was not covered by the veteran's insurance carrier, based upon the Court's conclusion that VA's regulation was “wholly inconsistent” with the reimbursement statute as amended by the 2010 ECFA. *Staab v. McDonald*, 28 Vet. App. 50, 55 (2016). In 2018, VA promulgated

an interim final rule (IFR) to replace the rule invalidated by *Staab*, but the 2018 IFR barred VA from reimbursing a veteran for the amount in copayments, deductibles, and coinsurance that a veteran owed under the veteran's OHI. As this Court observed, the IFR placed privately insured veterans in the same position they were in prior to *Staab* by refusing to reimburse for any of the out-of-pocket costs a veteran with OHI might have. *Wolfe v. Wilkie*, 32 Vet. App. 1, 17-18 (2019) (*Wolfe I*).

In January 2018, VA began to adjudicate under its IFR the hundreds of thousands of reimbursement claims that were then pending. These adjudications continued until September 2019, when this Court invalidated the 2018 IFR. *See Wolfe I*. VA appealed this decision to the Federal Circuit.

In 2022, the Federal Circuit held that VA is not required to reimburse the amount of the veteran's liability for deductibles, but that "coinsurance is the very type of partial coverage that Congress did not wish to exclude from reimbursement" under 38 U.S.C. § 1725. *Wolfe v. McDonough*, 28 F.4th 1348, 1356 (Fed. Cir. 2022) (*Wolfe II*). In a subsequent case, the Court thus held unlawful and set aside the 2018 IFR's prohibition on coinsurance reimbursement and ordered VA to publish within 120 days of the Court's decision a final revised rule that rescinded the prohibition on coinsurance reimbursement. *Kimmel v. Sec'y of Veterans Affairs*, No. 2022-1754, 2022 U.S. App. LEXIS 29615, at *4-5 (Fed. Cir. Oct 25, 2022).

In response to the Federal Circuit's order, VA published the 2023 IFR, which not only authorized coinsurance reimbursement on pending or future claims, but also

established a pathway for veterans to obtain coinsurance reimbursement based on medical emergencies that took place long ago. *See* 88 Fed. Reg. 10836-10842 (Feb. 22, 2023). In its commentary to the 2023 IFR, VA stated that following VA’s 2018 IFR, it received two nearly identical comments from the U.S. House Committee on Veterans’ Affairs and members of the U.S. Senate concerning the need for retroactive application of the *Staab* decision. These comments requested that VA cover those veterans whose claims were decided between the February 1, 2010 date of enactment of the ECFA and the date of the *Staab* decision “so that veterans can take full advantage of a benefit Congress intended for them to receive.” 88 Fed. Reg. at 10837.

In response, the Secretary stated in letters to each member of Congress who made these comments that the Secretary shared their concern, and further, that:

- VA can reach claims that were finally denied prior to *Staab*, if the veterans file new claims for the same benefits that were previously denied;
- VA will, in addition, adjudicate claims from veterans who chose not to apply for reimbursement due to their awareness of the former regulation’s complete bar to reimbursement applicable to veterans with OHI; and
- VA would amend its rules to avoid denial of these new claims as untimely under the current 90-day filing deadlines in VA’s rules. *Id.*

VA’s commentary to the 2023 IFR also stated that it would similarly open the door to new reimbursement claims to “anyone who had been potentially adversely affected by the issues raised in the *Wolfe* litigation, or the subsequent *Kimmel* petition.” 88 Fed. Reg.

at 10838. According to VA, “they would also be able to seek adjudication under the new standard” requiring reimbursement for coinsurance. *Id.*

VA’s 2023 IFR thus opened the door to new reimbursement claims from veterans based on medical emergency treatment received between February 1, 2010 and 90 days before February 22, 2023 (*i.e.*, November 24, 2022). 38 C.F.R. § 1004(f). But VA determined that this door should not stay open for long, stating that it “believes that a one-year filing deadline is reasonable and gives these claimants an adequate opportunity to seek payment or reimbursement for costs incurred during the covered time-period.” 88 Fed. Reg. at 10838.

B. VA Refuses to Process Petitioners’ Reimbursement Claims Submitted During the One-Year Open Period

Petitioners are all veterans who received emergency medical care at non-VA facilities during the period covered by the 2023 IFR. All of them tried to obtain payment or reimbursement for costs incurred during the covered time period, but all of them were denied the “adequate opportunity to seek payment” promised by the 2023 IFR. 88 Fed. Reg. at 10838. Instead, as discussed below, VHA personnel either (a) affirmatively informed the veteran that they would not accept the claim because it was not within VA’s authority to decide the claim; (b) received the claim, but then mailed it back to the veteran or an outside organization without an explanation or a decision; or (c) warehoused the submitted claim without processing it for decision.

The petitioners' experiences demonstrate a pattern of VA officials refusing to accept claims properly submitted to VHA medical facilities as directed by VA's medical reimbursement claim form, and of those same officials sending petitioners on wild goose chases to try to find someone at the VA who would process their claim for a decision.

1. Petitioner Kevin Brobst received emergency medical care at non-VA facilities on eight separate occasions between 2013 and 2021. He paid an aggregate of more than \$11,000 to his emergency care providers that his private insurance carrier did not cover. *See* Declaration of Kevin Brobst (Exhibit A hereto) at ¶ 3.

In early February 2024, Mr. Brobst received an email from the Illinois Department of Veterans Affairs about VA's one-year open period set by the 2023 IFR. *Id.* at ¶ 4.

During the relevant one-year period for claims under section 1002(f), VA Form 10-583 was the form that veterans could use to file claims under 38 U.S.C. § 1725 for reimbursement of emergency medical expenses at non-VA facilities. That form states that veterans should send these claims forms and supporting documents "to the VA Medical Facility where the Veteran is enrolled for medical care."¹ A copy of this claims form is attached hereto as Exhibit B.

Therefore, on February 6, 2024 – 10 days before the application deadline – Mr. Brobst traveled to the Danville VA Medical Center (VAMC), where he is enrolled in VA health care, with a completed VA Form 10-583 and supporting documents for his eight

¹ Veterans enrolled in VA health care receive medical care at one of the 170 VA Medical Centers and 1,193 outpatient clinics. *See* <https://www.va.gov/health/>

medical emergencies. *Id.* at ¶ 6. He tried to submit these claim documents to the Patient Advocate Office at that facility, but the staff there refused to accept his reimbursement claims because they did not believe there was a one-year open period to file reimbursement claims for years-old medical emergencies. *Id.* at ¶ 9. The staff instructed Mr. Brobst to go home with his claim documents, and the staff would have someone telephone him if they figured out what could be done. *Id.* at ¶ 10. But thereafter, Mr. Brobst never received communication from anyone at VA about this matter. *Id.* at ¶ 14. Mr. Brobst also telephoned and spoke to several VA employees who were each unable to inform him where his reimbursement claims should be filed, until he finally reached a VA employee who told him to submit his claims to the VA Payment Operations office in St. Louis. *Id.* at ¶ 14.

Two days before the application deadline, on February 20, 2024, the St. Louis Payment Operations office received Mr. Brobst's signed VA Form 10-583 and supporting documents for the eight medical emergencies. *Id.* at ¶ 16. On February 16, 2024, Mr. Brobst also mailed directly to the Danville VAMC the same VA Form 10-583 and supporting documents for his eight medical emergencies. *Id.* at ¶ 17.

Since February 2024, when the St. Louis VA Payment Operations office and Danville VAMC received his reimbursement claims, Mr. Brobst has not received any communications from VA about these claims. *Id.* at ¶ 18.

2. Petitioner Steven Dudek received emergency medical care at non-VA facilities on three separate occasions between 2016 and 2017, and he paid an aggregate of

more than \$18,000 to his emergency care providers that his private insurance carrier did not cover. *See* Declaration of Steven Dudek (Exhibit C hereto) at ¶ 3.

On February 12, 2024 – 10 days before the application deadline in the 2023 IFR – the VA hospital in Murfreesboro, Tennessee, where Mr. Dudek is enrolled in VA health care, received his signed VA Form 10-583 and supporting documents for his 2016 and 2017 medical emergencies. *Id.* at ¶ 6.

Since the VA hospital in Murfreesboro, Tennessee received his reimbursement claims in February 2024, Mr. Dudek has not received any communication from VA about these claims. *Id.* at ¶ 7.

3. Petitioner Kate Follett received emergency medical care at a non-VA facility in October 2010 and paid an aggregate of more than \$3,300 to her emergency care providers that her private insurance carrier did not cover. *See* Declaration of Kate Follett (Exhibit D hereto) at ¶¶ 3, 5.

On February 21, 2024 – one day before the application deadline in the 2023 IFR – Mrs. Follett traveled to the VA Medical Center in Walla Walla, Washington, where she is enrolled in VA health care, with a completed VA Form 10-583 and supporting documents for her emergency in 2010. *Id.* at ¶ 8. She tried to submit this claim to the front desk at that facility, but the VA staff told Mrs. Follett that they had never seen this type of claim and did not know what to do with it. *Id.* at ¶ 8. Mrs. Follett requested the VA staff to make a copy of her claim and date stamp it to show the date of VA receipt. *Id.* at ¶ 8. The VA staff complied with this request and kept a copy of the date-stamped claim. *Id.* at ¶ 8. The

VAMC later sent the same date-stamped copy of Mrs. Follett's claim to a veterans service organization that was not her representative, without any explanation or decision. *Id.* at ¶ 8; *see also*, Declaration of Alessandra Venuti ("Venuti Dec.") (Exhibit K hereto) at ¶ 8. When Mrs. Follett called the VAMC in October 2024 to find out the status of her claim, a VA representative told her there was no claim for reimbursement in her files at VA. *Id.* at ¶ 9.

Since the VA Medical Center in Walla Walla received her reimbursement claim in February 2024, Mrs. Follett has not received any communication from VA about these claims, other than in her call to VA in October 2024. *Id.* at ¶ 10.

4. Petitioner Terrance Fowler received emergency medical care at non-VA facilities on two separate occasions in 2018, and he paid an aggregate of at least \$1,800.00 to his emergency care providers that his private insurance carrier did not cover. *See* Declaration of Terrance Fowler (Exhibit E hereto) at ¶¶ 3, 5.

On February 2, 2024 – 20 days before the application deadline in the 2023 IFR – the VA medical facility in Watertown, NY, where Mr. Fowler is enrolled in VA health care, received Mr. Fowler's signed VA Form 10-583 claim and supporting documents for his 2018 emergencies. *Id.* at ¶ 8. When Mr. Fowler called the Watertown VA facility in September 2024 to find out the status of his claim, a VA representative told him to call VA's toll-free non-VA-care billing department for this information. Mr. Fowler spoke by telephone with a representative at that billing department who, after searching VA databases, told Mr. Fowler that there was no record of his claim for reimbursement in his files at VA. *Id.* at ¶ 9.

Since the VA medical facility in Watertown received his reimbursement claim, in February 2024, Mr. Fowler has not received any communication from VA about these claims, other than in his call to VA in September 2024. *Id.* at ¶ 10.

5. Petitioner Earl Paulson received emergency medical care at a non-VA facility in April 2016, and paid an aggregate of at least \$3,000 to his emergency care providers that his private insurance carrier did not cover. *See* Declaration of Earl Paulson (Exhibit F hereto) at ¶¶ 3, 5.

On February 21, 2024 – one day before the application deadline in the 2023 IFR – the VA medical facility in Indianapolis, IN, where he is enrolled in VA health care, received Mr. Paulson’s signed VA Form 10-583 claim and supporting documents for his 2016 emergency. *Id.* at ¶ 9.

Since the VA hospital in Indianapolis, IN, received his reimbursement claims in February 2024, Mr. Paulson has not received any communication from VA about these claims. *Id.* at ¶ 10.

6. Petitioner Jack R. Peterson received emergency medical care at a non-VA facility in December 2018, and paid an aggregate of at least \$2,100.00 to his emergency care providers that his private insurance carrier did not cover. *See* Declaration of Jack R. Peterson (Exhibit G hereto) at ¶¶ 3, 9.

On April 26, 2023 – nine months before the application deadline in the 2023 IFR – Mr. Peterson sent a letter requesting reimbursement for the 2018 emergency, along with his supporting documentation, to VHA POM Office in Vancouver, WA. *Id.* at ¶ 10. On

July 7, 2023 Mr. Peterson called VHA community care to find out the status of his claim, and the VA employee with whom he spoke told him that the veteran (allegedly) sent his claim to an incorrect address. *Id.* at ¶ 11. Rather than assisting the veteran by sending his claim to the correct address, the VA representative told Mr. Peterson to resubmit his claim to a VA Payment Center in Fort Harrison, Montana. *Id.* at ¶ 11.

On October 4, 2023, Mr. Peterson again sent a letter, along with his supporting documentation, requesting reimbursement for the 2018 emergency, this time to the VA Payment Center in Fort Harrison, Montana. *Id.* at ¶ 12. A few days after October 4, 2023, Mr. Peterson received a telephone call from a VA employee who said she was calling about his claim for reimbursement. *Id.* at ¶ 13. The VA employee told Mr. Peterson that she needed an explanation of benefits (EOB) to process his claim and told him she would contact his medical facilities and Medicare herself to gather his EOBs. *Id.* at ¶ 13. On February 15, 2024, Mr. Peterson called VA community care again to find out the status of his claim. *Id.* at ¶ 16. The VA employee with whom Mr. Peterson spoke told him nothing had been entered in VA's system about a claim for reimbursement from him. *Id.* at ¶ 16.

Mr. Peterson therefore submitted his claim once again, making every attempt to ensure that VA received his claim within the one-year period prescribed by the 2023 IFR. On February 21, 2024 – one day before the application deadline in the 2023 IFR – the VA medical facility in Boise, ID, where Mr. Peterson is enrolled in VA health care, received his signed VA Form 10-583 claim and supporting documents for his 2018 emergency. *Id.* at ¶ 17. On February 22, 2024, Mr. Peterson also traveled to the VA Medical Center in

Boise, ID and hand-delivered another copy of his completed VA Form 10-583 and supporting documents for his 2018 emergency and a VA employee date-stamped his claim and provided him with a copy. *Id.* at ¶ 18.

Since a VA employee confirmed in October 2023, that VA had received his reimbursement claim, and since the VA medical facility in Boise, ID received his reimbursement claim in February 2024, Mr. Peterson has not received any communications from anyone at VA about these claims. *Id.* at ¶ 19.

7. Petitioner Kenneth Schmidt received emergency medical care at a non-VA facility in March 2018, and paid an aggregate of at least \$3,364.13 to his emergency care providers that his private insurance carrier did not cover.

On February 16, 2024—six days before the application deadline in the 2023 IFR—the VA medical facility in Milwaukee, WI, where he is enrolled in VA health care, received Mr. Schmidt’s signed VA Form 10-583 claim and supporting documents for his 2018 emergency. *See* Declaration of Kenneth Schmidt (Exhibit H hereto) at ¶ 3.

Since the VA hospital in Milwaukee, WI, received his reimbursement claims in February 2024, Mr. Schmidt has not received any communications from VA about these claims. *Id.* at ¶ 4.

8. Petitioner Karin Whitley received emergency medical treatment at a non-VA facility on May 8, 2016, and paid nearly \$2,000 to the treatment providers for her liability for their services. Declaration of Karin Whitley (Exhibit I hereto) at ¶¶ 3, 5.

On November 27, 2023—months before the February 22, 2024 application deadline in the 2023 IFR—the VA Hospital in Tampa, Florida, where Ms. Whitley is enrolled in VA health care, received Ms. Whitley’s signed VA Form 10-583 claim and supporting documents for her 2016 medical emergency. *Id.* at ¶ 10. When she called that facility two months later to find out the status of her claim, a VA representative told her – incorrectly -- that she had sent her claim to the wrong place. The VA representative told Ms. Whitley that she should send her claim again, but this time to the VA Payment Center in Bay Pines, Florida. *Id.* at ¶ 11.

The Bay Pines Payment Center received her signed VA Form 10-583 and supporting documents on February 2, 2024. *Id.* at ¶ 13. On February 16, 2024—six days before the application deadline—a VA employee telephoned Ms. Whitley and told her VA had received her reimbursement claim, but that VA had won an appeal regarding reimbursement claims and as a result, her claim was now closed and there was nothing that could be done. *Id.* at ¶ 14. The representative further stated that he had been told by VA to stop working on these cases. *Id.*

On February 22, 2024—the last day of the one-year period under the 2023 IFR—Ms. Whitley received by mail an envelope containing the application documents she had sent weeks earlier to the Bay Pines Payment Center. *Id.* at ¶ 15. No explanation or other information was enclosed in the envelope. *Id.* The return address on the envelope contained the name and address of the Bay Pines Payment Center. *Id.*

Ms. Whitley has not received any communication from anyone at VA since the Bay Pines Payment Center returned her claim in February 2024. *Id.* at ¶ 16.

C. Petitioners’ Experiences Were Part of a VHA Pattern and Practice of Failing To Accept and Process Claims Authorized by the 2023 IFR

Petitioners’ experiences were not outliers. Instead, evidence available to Petitioners and their counsel demonstrate that VHA officials’ refusal to accept or process their claims was part of a national failure of VA to implement the 2023 IFR.

First, respondents and their agents did not effectively notify the appropriate VHA employees about the 2023 IFR’s one-year open period and explain their responsibility to accept and begin to process the new claims authorized by that IFR. On information and belief, VA never provided VA medical facility employees—those responsible for accepting and beginning to process reimbursement claims according to VA Form 10-583—any document written for the purpose of informing and/or training these VA employees about the one-year reimbursement rule.²

² In a lawsuit brought under the Freedom of Information Act (FOIA), counsel for petitioners sought disclosure of all agency documents used to communicate, train, or inform VHA personnel, including VA medical facility personnel, about the one-year reimbursement rule in the 2023 IFR. In response, VA disclosed, among other documents, a VHA document entitled “Emergency Treatment Reimbursement Communications Plan,” which indicated that VHA *planned in the future* to send a Field Announcement to the directors of all VA medical centers providing them with the “window for retroactive claims, adjusted claims criteria, expectations, and location of additional information” for the 2023 IFR. Declaration of Ryan Kelley (Exhibit J hereto) at ¶ 5. The VHA Plan was dated April 25, 2023 – two months after the one-year open period had begun – and listed the entity responsible for producing and transmitting this Field Announcement as “TBD.” *Id.* Although VA later affirmed that it had located and disclosed all of the records requested in the FOIA lawsuit, VA did not produce any records purportedly provided to VHA medical facility employees about the one-year reimbursement period. *Id.* at ¶ 6.

If VA did attempt to provide VHA medical facility employees with information about the one-year reimbursement rule, those attempts were wholly ineffective. In addition to individual petitioners' experiences, undersigned counsel received unsolicited communications directly from VA employees that reveal the systemic problems with respondents' implementation of and compliance with the 2023 IFR. In 2024, for example, the National Veterans Legal Service Program (NVLSP) received an e-mail from an employee in the business office of the VA Medical Center (VAMC) in Nashville TN stating that she had heard from a veterans service officer that VA would accept reimbursement claims for medical emergencies at non-VA facilities that occurred after 2010. The VAMC employee's e-mail indicated that she had never heard about this program, and had "checked with Community Care, CPAC, and even the VA Regional Office However, no one has even heard anything at all about this Reimbursement for Post-2010 Medical Expenses." Venuti Dec. at ¶ 4.

Similarly, NVLSP received in 2024 a facsimile from the Sterling VA Clinic in Illinois consisting of a copy of (1) a page from NVLSP's website discussing the one-year reimbursement rule in the 2023 IFR and (2) a veteran's completed VA Form 10-583 reimbursement claim and supporting documents. Venuti Dec. at ¶ 5. The facsimile listed the veteran's name and date of birth, the telephone number of the Sterling VA Clinic, and the first name of the VA clinic employee who sent the facsimile. An NVLSP attorney spoke by telephone with the employee, who confirmed that she had sent the facsimile. *Id.* The employee told the NVLSP attorney that the veteran walked into the VA clinic intending to

deliver his reimbursement claim, but the employee did not know what to do with the claim, so she thought it best to send the claim and supporting documents to NVLSP.³

ARGUMENT

To obtain a writ of mandamus, petitioners and the veterans they seek to represent need to satisfy three requirements: (1) the party seeking the writ must have “no other adequate means” to obtain the desired relief; (2) the party’s right to the writ must be “clear and indisputable”; and (3) if these first two conditions are met, “the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.” *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380-81 (2004); *Beaudette v. McDonough*, 93 F.4th 1361, 1366 (Fed. Cir. 2024); *Mote v. Wilkie*, 976 F.3d 1337, 1342 (Fed. Cir. 2020). The petitioners satisfy all three requirements.

I. The Right to a Writ of Mandamus is Clear and Indisputable

The 2023 IFR and 38 U.S.C. § 1725 required respondents to accept and process for decision the reimbursement claims petitioners and the proposed class submitted or attempted to submit to VHA during the one-year open period set forth in the 2023 IFR. But they did not. Instead, respondents refused to either accept and/or process for decision the reimbursement claims that the named petitioners and the proposed class submitted or attempted to submit.

³ *Id.* As of the date of the facsimile, neither NVLSP nor any of its employees represented the veteran identified in the facsimile on any type of VA claim.

Federal agencies like the VA are required by law to comply with their own regulations. *Morton v. Ruiz*, 415 U.S. 199, 235 (1974); *Dofflemyer v. Derwinski* 2 Vet. App. 277, 280-81 (1992) (“It is beyond question that the VA must follow its own regulations”). On that basis alone, petitioners’ right is clear and unmistakable.

The Due Process Clause of the Fifth Amendment also required respondents to accept and process for decision petitioners’ and proposed class members’ reimbursement claims. As the Federal Circuit held in *Cushman v. Shinseki*, 576 F.3d 1290 (Fed. Cir. 2009), veterans have a property interest in obtaining VA monetary benefits, and reimbursement of emergency treatment expenses incurred by veterans is a monetary benefit. The process due to such veterans plainly includes the fundamental step of accepting and processing their reimbursement claims for decision.

II. Petitioners and the Proposed Class Lack Adequate Alternative Means to Obtain the Relief Sought

Petitioners and the proposed class lack adequate alternative means to obtain a decision on their reimbursement claims. The 2023 IFR makes clear that resubmitting their claims now would not result in relief because the one-year open period for submitting these claims is closed. Moreover, the experience of the many petitioners who went beyond legal requirements by submitting multiple reimbursement claims to different VHA offices during the one-year open period demonstrates that repeated requests for compliance with the 2023 IFR was not an adequate means to obtain compliance.

III. The Court Should Grant the Requested Individual and Class Relief

The 2023 IFR gave Petitioners and the veterans whom petitioners seek to represent the right to VA consideration of, and a decision on, their timely filed reimbursement claims. The evidence presented in this petition indicates that respondents violated the rights of these veterans by failing to accept and process their claims for decision. As a result, the Court should “compel action of the Secretary unlawfully withheld” pursuant to its authority under 38 U.S.C. § 7261(a)(2). Specifically, the Court should order respondents to expeditiously process and issue a decision with a notice of appellate rights by a date certain on each of their reimbursement claims.

Respondents will have an opportunity in response to this petition to demonstrate whether they can identify all putative class members and currently retain a copy of their reimbursement claims and supporting documents. But given the evidence that accompanies this petition, it appears unlikely that respondents will be able to make this showing. For example, VA representatives told Mr. Fowler and Mr. Peterson that there was no record of their claim, even though they both sent their claims to their VHA medical facility, as directed by VA Form 10-583, and the VHA facilities received their claims. For Ms. Whitley’s claim, VA apparently took the extraordinary step of returning her submitted claim back to her, refusing to keep the claim. And when Mrs. Follett successfully insisted that VHA staffers retain a copy of her claim, VA then mailed that copy outside the VA and later told Mrs. Follett it had no record of her claim.

Therefore, if VA cannot provide decisions to all petitioners and putative class members because it refused to accept or retain a copy of their timely reimbursement claims, the Court should order respondents to take additional action to ensure that an appropriate remedy is available to petitioners and the putative class members whose rights respondents have violated but whose applications and supporting documents respondents are unable to locate. The Court has the authority to order such relief because this petition is made under the Court's All Writs Act jurisdiction. Under the All Writs Act, this Court enjoys great flexibility to fashion the appropriate relief in a given case. The Supreme Court has long made plain that the issuance of a writ is "largely controlled by equitable principles," *Duncan Townsite Co. v. Lane*, 245 U.S. 308, 311-12 (1917) (Brandeis, J.); *see also Clinton v. Goldsmith*, 526 U.S. 529, 537 (1999) ("The All Writs Act invests a court with a power essentially equitable"); *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944) ("The essence of equity jurisdiction has been the power . . . to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it."). In addition, district courts reviewing agency action under the Administrative Procedure Act, which is largely parallel to this Court's review of agency action under 38 U.S.C. § 7261(a), have ordered agencies to reopen opportunities for the public to take advantage of a regulatory process when the agency failed to comply with their procedures. *See, e.g., Simmons v. Block*, 782 F.2d 1545, 1550 (11th Cir. 1986) (requiring agency to readvertise property for sale to the public as remedy for the agency's sale of the property without following the required agency sale procedures); *Payne v. Block*, 714 F.2d 1510 (11th Cir. 1983), *rev'd on other grounds, sub nom. Lyng v. Payne*,

476 U.S. 1986) (ordering the Secretary of Agriculture to reopen an emergency loan program whose application deadline had expired as remedy for procedural violations of the agency's rules preventing farmers from applying for a loan).

The Court should order respondents to notify by USPS mail by a date certain all veterans enrolled in the VA health care system that they have a right to apply for reimbursement of emergency expenses they incurred for emergencies that took place at any time during the period from February 1, 2010 to November 24, 2022, if they (1) had private health insurance that covered part, but not all of the emergency expenses incurred; and (2) submit a reimbursement claim during the one-year period identified in the notifications.⁴ The Court should require that the notifications describe with specificity the information that should be contained in such reimbursement claims and the address to which such claims should be submitted.

Because some members of the putative class who were, but may not now be, enrolled in VA health care, the Court should also order respondents to place, by a date certain in prominent spaces on the VA's website, a complete description of the foregoing opportunity to apply for reimbursement, and to notify by a date certain each veterans service organization recognized by respondents for the representation of VA claimants with a complete description of such opportunity.

⁴ Under the law in effect both before and after the 2023 IFR, veterans are not eligible for reimbursement of their emergency treatment expenses if they are not enrolled in VA health care. VHA maintains a list of all veterans enrolled in VA health care, and most of the living putative class members in this case should be among the veterans on that list.

CONCLUSION

For the foregoing reasons, as well as those set forth in petitioners' forthcoming Request for Class Certification and Class Action, the issuance of a writ for individual and class action relief is warranted.⁵ Petitioners respectfully request the that Court order the relief itemized in section III of this petition.

Dated: June 23, 2025

Respectfully submitted,

/s/ Barton F. Stichman

Barton F. Stichman

Renée A. Burbank

Alessandra M. Venuti

Ryan T. Kelley

National Veterans Legal Services Program

1100 Wilson Blvd. Suite 900

Arlington, VA 22209

(202) 621-5677

⁵ In the unlikely event that respondents assert that they have both retained in their possession, and have taken some concrete steps to process for decision, the reimbursement claims that petitioners and the proposed class attempted to file during the one-year open period in the 2023 IFR, petitioners reserve the right to seek to amend this petition for a class writ of mandamus based on respondents' unreasonable delay in issuing a decision on these reimbursement claims.

Appendix

(Kevin Brobst et al. v. Douglas A. Collins and Steven L.
Liberian)

Exhibit A

(Kevin Brobst et al. v. Douglas A. Collins and Steven L.
Lieberman)

Declaration of Kevin Brobst

I, Kevin Brobst, declare:

1. I served on active duty in the United States Marine Corps from 1971 to 1975 and received an Honorable Discharge.
2. I live in Oreana, Illinois.
3. Between 2013 and 2021, I received emergency medical care at non-VA facilities on eight separate occasions. During this period, I paid an aggregate of \$11,532.66 for these emergencies. I had to go to non-VA facilities for all eight emergencies because the non-VA facilities were much closer than the VA facilities and some of these emergencies required surgery.
4. In early February 2024, I received an email from The Illinois Department of Veterans affairs about a notice from the National Veterans Legal Services Program (NVLSP) about VA's one-year open period during which veterans could apply for VA reimbursement of their emergency medical expenses at non-VA facilities for emergencies that occurred between February 1, 2010 and November 24, 2022, and explained that the deadline to file this claim was February 22, 2024 deadline.

5. As advised by NVLSP's notice, I completed VA Form 10-583, Claim for Payment of Cost of Unauthorized Medical Services, for my eight claims and gathered the requested supporting documents as instructed on the Form.
6. On February 6, 2024, I went to Danville VA Medical Center to deliver my eight claims for reimbursement.
7. I went to the Danville VA Medical Center as that is the nearest VA medical facility where I get VA medical care and this is where VA Form 10-583 stated these claims should be submitted.
8. While at the Danville VA Medical Center, I was directed to the Patient Advocate Office to deliver my reimbursement claims.
9. When I tried to submit my claims for reimbursement at the Patient Advocate Office, the VA staff at this office did not believe there was a new one-year open period to submit these claims and thought that it was a scam.
10. The staff at the Patient Advocate Office tried calling the Community Care Office in Danville to find out more information about these reimbursement claims but reached a voice message system. The staff then told me that they did not want to accept or sign my reimbursement claims until they figured out what to do with them and told me to go home and that they would have someone call me when they had more information.

11. I then went home without submitting my claim because the Danville VA Medical Center would not accept it.
12. On February 8, 2024, I contacted NVLSP to find out whether they knew where I should submit my claim for reimbursement.
13. NVLSP advised that I follow the instructions on VA Form 10-583, Claim for Payment of Cost of Unauthorized Medical Services, that instructs the claimant to send the Form and relevant documents to the “VA Medical Facility where the Veteran is enrolled for medical care,” which is what I tried to do at the Danville VA Medical Center.
14. A couple days later, without receiving any calls from the Patient Advocate Office at the Danville VA Medical Center, I started making calls to the VA to determine where I should submit my claims. After trying several different VA telephone numbers and speaking with several VA employees, I finally spoke to a VA employee who told me to submit my claims to Payment Operations 1 Jefferson Barracks Dr, 04F/JB St. Louis, MO 63125.
15. On February 14, 2024, I mailed my eight reimbursement claims and supporting documents by United States Postal Service to Payment Operations 1 Jefferson Barracks Dr, 04F/JB St. Louis, MO 63125.

16. I received from the United States Postal Service a delivery receipt that said my claims submitted to the address in St. Louis were signed for on February 20, 2024 at 11:26am.
17. On February 16, 2024, I submitted the same eight claims via the United States postal service to the Danville VA Medical Center because that is where I am enrolled in VA medical care and that is what VA Form 10-583 instructed me to do.
18. As of the date of this declaration, I have not received any correspondence from VA since these claims were received by VA.
19. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 2-3-2024 Kevin Brobst
Kevin Brobst

Exhibit B

(Kevin Brobst et al. v. Douglas A. Collins and Steven L.
Lieberman)



Department of Veterans Affairs

CLAIM FOR PAYMENT OF COST OF UNAUTHORIZED MEDICAL SERVICES

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 15 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form. Comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing the burden, may be addressed by calling the Health Benefits Contact Center at 1-877-222-8387.

PRIVACY ACT INFORMATION: The information requested on this form is solicited under authority of Title 38, United States Code, "Veterans Benefits," and will be used to assist us in determining your entitlement to reimbursement for services rendered. It will not be used for any other purpose. Disclosure is voluntary. However, failure to furnish the information will result in our inability to process your claim. Failure to furnish this information will have no adverse effect on any other benefit to which you may be entitled. This form and relevant documents need to be sent to the VA Medical Facility where the Veteran is enrolled for medical care

PART I

1A. VETERAN'S NAME (Last, first, middle initial) (This is a mandatory field.)	1B. CLAIM NUMBER	1C. SOCIAL SECURITY NUMBER (Mandatory field.)
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1D. VETERAN'S ADDRESS (Include complete ZIP Code)

2A. NAME AND ADDRESS OF PERSON, FIRM OR INSTITUTION MAKING CLAIM (Leave blank if same as above)

2B. SOCIAL SECURITY NO. OR EMPLOYEE IDENTIFICATION NO.

3. STATEMENT OF CIRCUMSTANCES UNDER WHICH THE SERVICES WERE RENDERED (Include diagnosis, symptoms, whether emergency existed, and reason VA facilities were not used)

4. AMOUNT CLAIMED

Attach bills or receipts showing services furnished, dates and charges

5. COMPLETE A OR B AS APPROPRIATE

A. Amount charged does not exceed that charged the general public for similar services. Payment has not been received.

B. I certify that the amount claimed has been paid and reimbursement has not been received.

SIGNATURE AND TITLE OF PROVIDER OF SERVICE AND DATE (mm/dd/yyyy)

SIGNATURE OF VETERAN OR REPRESENTATIVE AND DATE (mm/dd/yyyy)

PART II - FOR VETERANS AFFAIRS USE ONLY

6. ACTION

APPROVED \$

DISAPPROVED

CLAIM MEETS THE REQUIREMENT OF VA REGULATION

6080

6081

7. SIGNATURE OF CHIEF, MEDICAL ADMINISTRATION SERVICE

8. DATE

9. ADMINISTRATIVE VOUCHER NUMBER

Exhibit C

(Kevin Brobst et al. v. Douglas A. Collins and Steven L.
Lieberman)

Declaration of Steven Dudek

I, Steven Dudek, declare:

1. I served on active duty in the United States Marine Corps from May 28, 1976, to May 27, 1980 and received an Honorable Discharge.
2. I live in Spring Hill, Tennessee.
3. Between March 17, 2016 and March 18, 2017, while I was enrolled in VA healthcare, I received emergency medical care at non-VA facilities on three separate occasions. During this period, I paid out-of-pocket, an aggregate of \$18,502.02 for these emergencies. I had to go to non-VA facilities for all three emergencies because the non-VA facilities were much closer than the VA facilities and I needed emergent care.
4. In January 2024 the National Veterans Legal Services Program (NVLSP) informed me about VA's one-year open period during which veterans could apply for VA reimbursement of their emergency medical expenses at non-VA facilities for emergencies that occurred between February 1, 2010 and November 24, 2022. NVLSP explained that the deadline to file this claim was February 22, 2024.
5. With assistance from NVLSP, I completed VA Form 10-583, Claim for Payment of Cost of Unauthorized Medical Services, and gathered the requested supporting documents as instructed on the Form. VA Form 10-583

instructs the claimant to send the Form and relevant documents to the “VA Medical Facility where the Veteran is enrolled for medical care.”

6. On February 5, 2024, with NVLSP’s assistance, I submitted my claim to Alvin C. York VA Medical Center in Murfreesboro, Tennessee, where I am enrolled for medical care, via USPS Priority Mail. A USPS tracking receipt shows the claim was delivered on February 12, 2024 at 11:20am.
7. As of the date of this declaration, I have not received any correspondence from VA concerning my claims for reimbursement for the 2016 and 2017 emergency medical care.
8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 3/21/25



Steven Dudek

Exhibit D

(Kevin Brobst et al. v. Douglas A. Collins and Steven L.
Lieberman)

Declaration of Kate Follett

I, Kate Follett, declare:

1. I served on active duty in the United States Army Reserves from April 2002 to September 2007 and received an Honorable Discharge.
2. I live in Walla Walla, Washington.
3. On October 28, 2010, while I was enrolled with VA Health Care, a cyst on my ovary burst. I was bleeding internally and in extreme pain. My husband drove me to the closest emergency room, Pullman Regional Hospital, which was about 4 miles from our apartment. The closest VA hospital, was about 287 miles away, and I could not reasonably wait to get medical care for this emergency by going the 287 miles to the closest VA Medical facility.
4. The staff at Pullman Regional Hospital provided me emergency health care, including emergency abdominal surgery, and kept me in the hospital for 4 days.
5. When I had this 2010 medical emergency, I had private health insurance, which did not cover all of the emergency medical expenses I incurred. I had to pay at least \$3,350.97 to the emergency health care providers.
6. In early February 2024 I became aware of a notice from the National Veterans Legal Services Program (NVLSP) about VA's one-year open period during which veterans could apply for VA reimbursement of their

emergency medical expenses at non-VA facilities for emergencies that occurred between February 1, 2010 and November 24, 2022. The NVLSP notice explained that the deadline to file this claim was February 22, 2024.

7. As advised by NVLSP's notice, I completed VA Form 10-583, Claim for Payment of Cost of Unauthorized Medical Services, and gathered the requested supporting documents as instructed on the Form. VA Form 10-583 instructs the claimant to send the Form and relevant documents to the "VA Medical Facility where the Veteran is enrolled for medical care."
8. On February 21, 2024, I went to the front desk of the Jonathan M. Wainwright VA Medical Center in Walla Walla, Washington, where I receive VA medical care, to submit my claim for reimbursement for the 2010 emergency expenses. The VA employee at the front desk told me she had never seen this type of claim and did not know what to do with it. After seeing NVLSP's notice on its website about these claims, the VA employee informed me, for reasons that I did not understand, that she was going to send a copy of my claim to NVLSP. I then requested the VA employee to make a copy of my claim and date stamp it to show the date of VA receipt. She complied with my request to date stamp my claim and then kept a copy of the date stamped claim. An attorney from NVLSP later informed me a stamped and dated copy of my claim was mailed to NVLSP from VA.

9. In October 2024, I called the Jonathan M. Wainwright VA Medical Center in Walla Walla, Washington at 509-525-5200 to find out the status of my claim for reimbursement. After speaking with an operator, I was transferred several times to several different VA employees as no one I spoke to knew anything about VA Form 10-583 nor how to look up the status of my claim for reimbursement. After speaking with several different VA employees, I was then transferred to the Compensation and Pension Department at the Jonathan M. Wainwright VA Medical Center and spoke with VA representative, Kristy. Kristy looked up my information while on the telephone with me and told me there was no copy of a claim for reimbursement in my file at VA.

10. As of the date of this declaration, I have not received any correspondence from VA concerning my claim for reimbursement for the 2010 emergency medical care.

11. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 01/06/2025



Kate Follett

Exhibit E

(Kevin Brobst et al. v. Douglas A. Collins and Steven L.
Lieberman)

Declaration of Terrance Fowler

I, Terrance Fowler, declare:

1. I served on active duty in the United States Marine Corps from March 1, 1962 to May 12, 1967 and received an Honorable Discharge.
2. I live in Lowville, New York.
3. In September and November 2018, while I was enrolled with VA Health Care, I experienced two separate emergencies. For both emergencies, my partner drove me to the closest emergency room, Lewis County General Hospital, which is 12 miles from my home. The closest VA hospital, Syracuse VA Medical Center, is approximately 101 miles away from my home, and I could not reasonably wait to get medical care for this emergency by going the 101 miles to the closest VA Medical facility.
4. The staff at Lewis County General Hospital provided me emergency health care.
5. When I had these 2018 medical emergencies, I had Medicare which did not cover all of the emergency medical expenses I incurred. I had to pay at least \$1,861.95 to the emergency health care providers.
6. In January 2024 the National Veterans Legal Services Program (NVLSP) informed me about VA's one-year open period during which veterans could apply for VA reimbursement of their emergency medical expenses at non-

VA facilities for emergencies that occurred between February 1, 2010 and November 24, 2022. NVLSP explained that the deadline to file this claim was February 22, 2024.

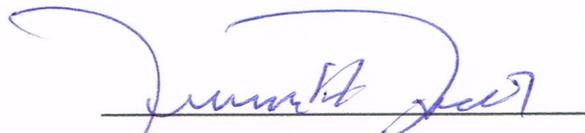
7. With assistance from NVLSP, I completed VA Form 10-583, Claim for Payment of Cost of Unauthorized Medical Services, and gathered the requested supporting documents as instructed on the Form. VA Form 10-583 instructs the claimant to send the Form and relevant documents to the “VA Medical Facility where the Veteran is enrolled for medical care.”
8. On January 29, 2024, NVLSP submitted my claim to the Watertown VA Clinic, 1222 Arsenal street, Suite 10A, Watertown NY, 13601, where I am enrolled for medical care, via USPS Priority Mail. A USPS tracking receipt shows the claim was delivered on February 2, 2024 at 3:27pm.
9. On September 26, 2024, I called the VA medical clinic in Watertown at telephone number, 315-425-8240, to find out the status of my claim for reimbursement. I spoke to VA representative, Millie. After describing my claim to Millie, Millie stated she thought this would be something community care would handle so she told me to call the “non-VA care billing department” at 877-881-7618. I then called this number and spoke with VA representative, Gregory. Gregory searched in a VA database and

while Gregory was able to find my file, Gregory told me there were no records of my claim.

10. As of the date of this declaration, I have not received any correspondence from VA concerning my claims for reimbursement for the 2018 emergency medical care.

11. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 30 Jan 2025



Terrance Fowler

Exhibit F

(Kevin Brobst et al. v. Douglas A. Collins and Steven L.
Lieberman)

Declaration of Earl Paulson

I, Earl Paulson, declare:

1. I served on active duty in the United States Navy from 1954 to 1958 and received an Honorable Discharge.
2. I live in Fishers, Indiana
3. On April 5, 2016, while I was enrolled with VA Health Care, I became seriously ill after eating at a restaurant in Elkhart, IN when I suddenly lost consciousness. When I regained consciousness, I drove myself home to my house in Bristol, IN and once I was in my home I lost consciousness again. When I regained consciousness a second time, I decided I needed and sought emergency medical care. The VA medical facility where I regularly receive medical care was in Fort Wayne, IN— about 125 miles from my home in Bristol, IN. For this reason, I asked my grandson to drive me 8 miles to Goshen Hospital, the nearest hospital to my home in Bristol, IN.
4. On April 5, 2016, medical personnel at Goshen Hospital diagnosed me with an aortic abdominal aneurysm and that same day I underwent emergency heart surgery and stayed at Goshen Hospital until April 18, 2016.

5. When I had this 2016 medical emergency, I had Medicare, which did not cover all of the emergency medical expenses I incurred. I had to pay at least \$3,000 to the emergency health care providers.
6. I (or my health care providers(s)) filed VA claims for reimbursement for emergency medical expenses incurred at several non-VA medical facilities in Indiana for the 2016 emergency.
7. I received a letter from VA dated May 25, 2016 denying my claims for reimbursement. I also received correspondence from VA dated April 17, 2020 stating that VA had previously denied my claim for reimbursement because I had other health insurance, but that in light of recent litigation, if it had all needed information, it would redecide my claim.
8. In January 2024, the National Veterans Legal Services Program (NVLSP) informed me that under a special VA rule, I had a right to apply for reimbursement of the emergency medical expenses I incurred in 2016 under today's favorable reimbursement criteria, and that to take advantage of this special rule, I had to complete, sign, and submit VA Form 10-583, Claim for Payment of Cost of Unauthorized Medical Services by an upcoming deadline in February 2024. That form is the form to use in order to file a claim for reimbursement for emergency medical expenses at non-VA facilities.

9. On February 20, 2024, at my request, NVLSP submitted my claim for reimbursement via Federal Express, including VA Form 10-583 and my supporting documentation, requesting that I be reimbursed for the emergency medical costs I incurred. The Federal Express mailing was sent to Richard Roudebush VA Medical Center, 1481 W. 10th Street, Indianapolis, IN 46202, which is the VA facility at which I receive VA health care. The claim was delivered to that Medical Center on February 21, 2024 as shown by the Federal Express receipt.
10. As of the date of this declaration, I have not received a decision from VA regarding my claim for reimbursement.
11. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: _____

3-18-25

 _____

Earl Paulson

Exhibit G

(Kevin Brobst et al. v. Douglas A. Collins and Steven L.
Lieberman)

Declaration of Jack R. Peterson

I, Jack R. Peterson, declare:

1. I served on active duty in the United States Air Force from 1969 to 1972 and received an Honorable Discharge.
2. I live in Boise, Idaho
3. I have used the Boise VA Medical Center as my primary and exclusive medical and healthcare provider since the early 1990s. On December 2, 2018, while I was enrolled with VA Health Care, I fell off the roof of my house. I yelled out for help and one of my neighbors called 911. I requested the paramedics take me to the Boise VAMC, but a VAMC representative instructed the paramedics to take me by ambulance to St. Alphonsus Regional Medical Center (SARMC) in Boise, Idaho, which is 5 miles away from my house. The closest VA hospital, Boise VA Medical Center (VAMC), is 8 miles away.
4. The staff at SARMC provided me emergency medical treatment for 8 days and then transported me on December 10, 2018 to the Boise VAMC's Community Living Center (CLC), which is its physical rehabilitation facility, where I spent approximately 7 weeks before returning home.

5. When I had this 2018 medical emergency, I had been automatically enrolled in Medicare in May of 2016, which I thought was optional and health insurance that I had never used previously. So, I told SARMC et al to bill the Veterans Administration (VA). Which they did.
6. Within a few weeks after returning home from the Boise VAMC's CLC, I began receiving invoices from SARMC et al for the 8 days of emergency medical care provided to me in December of 2018 because the VA had denied payment to them for their emergency medical care.
7. Following several telephone discussions with SARMC et al representatives, I went to the Boise VAMC's Health Administration Service (HAS) office in March of 2019. After discussing my situation with one of the HAS staff members, she electronically submitted a reimbursement claim to the VA for the emergency medical expenses I incurred at SARMC et al in December of 2018.
8. In May of 2019 I began receiving claim rejection letters from the Department of Veterans Affairs Regional Payment Center in Vancouver, WA stating "VA records indicate that the Veteran has other health insurance (OHI), therefore VA is not primary payer. By law, VA cannot reimburse remaining costs such as copayments, cost shares or deductibles associated with a Veteran's OHI."

9. I then began receiving collection calls from SARMC et al and provided each of these emergency medical care providers with my Medicare information, which covered some, but not all of the emergency medical expenses I incurred. I had to pay at least \$2,161.57 out-of-pocket to the emergency health care providers.
10. On April 26, 2023, I personally sent a letter, along with my supporting documentation, requesting that I be reimbursed for the eight days of emergency medical costs I incurred in December 2018 to VHA POM Office, POC: EOB Request Team, 1601 E Fourth Plain Boulevard, Vancouver, WA. As I understand it, this reimbursement request was submitted during the 1-year open period for reimbursement claims for medical emergencies at non-VA facilities for medical emergencies like my emergency in December of 2018.
11. On July 7, 2023 I called VHA community care at 877-881-7618 to inquire about the reimbursement claim I sent to the Vancouver office on April 26, 2023. The VA employee I spoke to, told me the Vancouver address was not the correct place to send my reimbursement claim and told me to resubmit my claim to Western Region VA Consolidated Payment Center, P.O. Box 1004, Fort Harrison, MT 59636.

12. On October 4, 2023, I again sent a letter, along with my supporting documentation, requesting that I be reimbursed for the emergency medical expenses I incurred on December 2, 2018, this time to Western Region VA Consolidated Payment Center, P.O. Box 1004, Fort Harrison, MT 59636.
13. A few days after October 4, 2023, I received a telephone call from VA employee, Verna Johnson (“Ms. Johnson”). Ms. Johnson told me she was calling about my claim for reimbursement and told me that the Medicare Summary Notices I enclosed with my claim were not what she needed and that the VA needed an Explanation of Benefits (“EOB”) to process my claim. I told Ms. Johnson that for several months I worked with Medicare to gather what Medicare considered to be EOBs and what they provided me with were the Medicare Summary Notices I enclosed with my claim. Ms. Johnson then told me that she would contact my medical facilities and Medicare herself to gather the EOBs.
14. Sometime in October 2023, I contacted the National Veterans Legal Services Program (“NVLSP”) for assistance with my claim for reimbursement.
15. NVLSP suggested that I should complete VA Form 10-583, Claim for Payment of Cost of Unauthorized Medical Services, in order to ensure that

VA recognized my claim for reimbursement for emergency medical expenses incurred at non-VA facilities.

16. On February 15, 2024 I called VA community care and spoke with a VA employee named Phil, to determine the status of my claim and to try and get in contact again with VA employee Ms. Johnson. Phil told me that nothing had been entered in VA's system about my reimbursement claim and therefore could not give me an update on the status of my claim. Phil also told me that he did not have contact information for Ms. Johnson.
17. On February 20, 2024 I sent my reimbursement claim along with supporting documentation again, via USPS Priority mail, this time using VA Form 10-583 to Boise VA Medical Center where I am enrolled in VA medical care. According to the USPS tracking number, the claim was delivered on February 21, 2024.
18. On February 22, 2024, for good measure, I went to the Boise VA Medical Center and delivered another copy of my claim with supporting documentation, in person, using VA Form 10-583. I delivered my claim to VA employee LeAnn. LeAnn date-stamped my claim and provided me with a copy.
19. As of the date of this declaration, I have not received a decision from VA regarding my April 26, 2023, October 4, 2023, and February 20, 2024 claims

for reimbursement. Other than discussed earlier in this declaration, I have not received any communication from VA about my April 26, 2023, October 4, 2023, and February 20, 2024 claims for reimbursement.

20. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: March 18, 2025



Jack R. Peterson

Exhibit H

(Kevin Brobst et al. v. Douglas A. Collins and Steven L.
Lieberman)

Declaration of Kenneth Schmidt

I, Kenneth Schmidt, declare:

1. In January 2024 the National Veterans Legal Services Program (NVLSP) informed me about VA's one-year open period during which veterans could apply for VA reimbursement of their emergency medical expenses at non-VA facilities for emergencies that occurred between February 1, 2010 and November 24, 2022. NVLSP explained that the deadline to file this claim was February 22, 2024.
2. NVLSP assisted me with completing VA Form 10-583, Claim for Payment of Cost of Unauthorized Medical Services, and gathered the requested supporting documents as instructed on the Form. VA Form 10-583 instructs the claimant to send the Form and relevant documents to the "VA Medical Facility where the Veteran is enrolled for medical care."
3. On February 1, 2024, NVLSP submitted my claim to the Clement J. Zablocki Veterans' Administration Medical Center, 5000 West National Avenue, Milwaukee, WI 53295, where I am enrolled for medical care, via USPS Priority Mail. A USPS tracking receipt shows the claim was delivered on February 16, 2024 at 9:39am.

4. As of the date of this declaration, I have not received any correspondence from VA concerning my claim for reimbursement that was delivered to VA on February 16, 2024.
5. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: Mar 17 2025 Kenneth Schmidt
Kenneth Schmidt

Exhibit I

(Kevin Brobst et al. v. Douglas A. Collins and Steven L.
Lieberman)

Declaration of Karin Chapin Whitley

I, Karin Chapin Whitley, declare:

1. I served on active duty in the United States Navy from 1986 to 1990 and received an Honorable Discharge.
2. I live in Lakeland, Florida.
3. On May 8, 2016, while I was enrolled in VA Health Care, I seriously injured the area around my left rib while swimming in a pool at my house. The closest VA hospital, James A. Haley Veterans Hospital in Tampa Florida, was 39.5 miles away. I was in a lot of pain and could not reasonably wait to get medical care for this emergency by driving the 39.5 miles, so I drove to Lakeland Regional Medical Center, a non-VA medical facility, which was only 6 miles away from my house.
4. The staff at Lakeland Regional Medical Center provided me emergency health care.
5. I had to pay at least \$1,847.00 to the emergency health care providers for my 2016 emergency.
6. I filed a claim with the VA in 2016 to be reimbursed for the medical expenses I incurred from my 2016 medical emergency.

7. In August 2023, I contacted the National Veterans Legal Services Program (NVLSP) for assistance with my 2016 claim for reimbursement. NVLSP informed me about VA's one-year open period during which veterans could apply for VA reimbursement of their emergency medical expenses at non-VA facilities for emergencies that occurred between February 1, 2010 and November 24, 2022 and that the deadline to file this claim was February 22, 2024 deadline.
8. An attorney from NVLSP informed me that I needed to complete VA Form 10-583, Claim for Payment of Cost of Unauthorized Medical Services, in order to file a claim for reimbursement for emergency medical expenses at non-VA facilities. That NVLSP attorney informed me that it would help me file the claim by sending it to the proper VA address and obtain proof of the date of receipt.
9. VA Form 10-583 instructs the claimant to send the Form and relevant documents to the "VA Medical Facility where the Veteran is enrolled for medical care."
10. I completed and signed VA Form 10-583, and sent the signed Form to NVLSP, enclosing the requested supporting documents as instructed on the Form. An NVLSP attorney informed me that on November 21, 2023, NVLSP had mailed my claim for reimbursement concerning my 2016

emergency, which included VA Form 10-583 and the necessary supporting documents, to James A. Haley Veterans' Hospital, Tampa, Florida, which is the VA hospital where I am enrolled in VA healthcare, and that the hospital received my claim on November 27, 2023.

11. On January 26, 2024 I called the James A. Haley Veterans' Hospital, in Tampa, Florida at telephone number 866-400-1238 to find out the status of my reimbursement claim. I reached a VA representative by the name of Jessie. Jessie told me that the address I sent the claim to on November 21, 2023 was the wrong address and told me to resend my claim to Eastern Region VA Consolidated Payment Center, P.O. Box 5005, Att: 11FB Bay Pines, FL 33744.
12. An attorney from NVLSP informed me that on January 29, 2024 my claim and supporting documents for reimbursement was mailed via USPS Priority Mail a second time, this time to Eastern Region VA Consolidated Payment Center, P.O. Box 5005, Att: 11FB Bay Pines, FL 33744.
13. The Eastern Region VA Consolidated Payment Center in Bay Pines, Florida received my reimbursement claim on February 2, 2024, as shown by a United States Postal Service tracking receipt. A copy of this postal tracking receipt is enclosed with this declaration.

14. On February 16, 2024, I received a call from a VA employee named Jim. Jim told me he was a remote employee for the VA and that he received my claim for reimbursement for the 2016 emergency and enclosed documents. However, Jim stated that VA had won an appeal a year or two ago regarding claims for reimbursement and that the case was now closed, and he had been told by VA to stop working on these cases. Jim told me that there was nothing he could do with my claim.
15. On February 22, 2024, I received by mail a copy of my reimbursement claim along with the supporting documents that I had enclosed with my claim. The address on the envelope that my claim came in was Eastern Region VA Consolidated Payment Center, P.O. Box 5005, Bay Pines, FL 33744. There was no other information enclosed with this mailing.
16. I have not received any correspondence from VA since February 22, 2024.
17. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 9-3-24

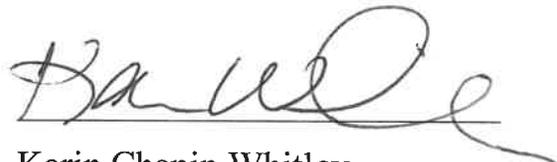

Karin Chapin Whitley

Exhibit J

(Kevin Brobst et al. v. Douglas A. Collins and Steven L.
Lieberman)

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

KEVIN BROBST,)
STEVEN DUDEK,)
KATE FOLLETT,)
TERRANCE FOWLER,)
EARL PAULSON,)
JACK R. PETERSON,)
KENNETH SCHMIDT, and)
KARIN WHITLEY,)
individually and on behalf of others)
similarly situated,)

Petitioners,

v.

Vet. App. No. _____

DOUGLAS A. COLLINS,)
in his capacity as Secretary of Veterans)
Affairs,)

and)

STEVEN L. LIEBERMAN,)
in his capacity as Acting Under)
Secretary for Health,)

Respondents.

DECLARATION OF RYAN KELLEY

I, Ryan Kelley, declare:

1. I have been employed by the National Veterans Legal Services Program (“NVLSP”) since September 2021 and currently serve as a staff attorney at NVLSP.

2. I serve as co-counsel for plaintiff NVLSP in a lawsuit filed against the U.S. Department of Veterans Affairs (“VA”) under the Freedom of Information Act (“FOIA”) on September 9, 2024 (“FOIA Lawsuit”).
3. The FOIA Lawsuit was filed in the U.S. District Court for the District of Columbia, was assigned case number 1:24-cv-2578, and sought a court order compelling VA to release certain records relating to the VA’s one-year open period for applying for reimbursement of emergency medical expenses incurred at non-VA facilities set forth in amended 38 C.F.R. § 17.1004(f), and published at 88 Fed. Reg. 10835 (Feb. 22, 2023) (hereinafter, “the one-year reimbursement rule”). Specifically, plaintiff NVLSP requested an order compelling VA to release, among others records:

All policies, memoranda, notices, guidance, training materials, publications, templates, form letters, and other records created for the purpose of implementing the one-year reimbursement rule, or for the purpose of informing and/or training VA employees about the one-year reimbursement rule.

4. The VA produced responsive materials in the months after the FOIA Lawsuit was initiated. Thereafter, on May 7, 2025, the parties filed a Stipulation of Dismissal in which VA agreed that after the filing of the FOIA Lawsuit, it had disclosed “all responsive documents to Plaintiff.”

5. Among the records disclosed by VA was a document created for the purpose of informing and/or training VA employees about the one-year reimbursement rule, which is entitled “Emergency Treatment Reimbursement Communications Plan” (Communications Plan) and is dated April 25, 2023 (more than two months after the February 23, 2023 start of the one- year open period for applying for reimbursement). The Communications Plan indicates that veterans may use VA Form 10-583 to apply for reimbursement (a form that contains the instruction that it should be submitted “to the VA Medical Facility where the Veteran is enrolled for medical care”). A chart in the section of the Communications Plan entitled “Stakeholders Needs” lists the directors of the 170 VA Medical Centers as stakeholders to be trained via a “Field Announcement” that would announce the “window for retroactive claims, adjusted claims criteria, expectations and location for more information.” The Communications Plan lists the person or entity responsible for this training via Field Announcement as “TBD.”
6. Also among the documents disclosed by VA to plaintiff in the FOIA Lawsuit is a document entitled “VHA Office of Finance Payment Operations, 38 U.S.C. 1725 Secondary Payment User Procedure Guide” that was created to train that Office’s staff about the one-year

reimbursement rule. But none of the documents disclosed by VA to plaintiff contained or included a field announcement to provide information and training to the VA medical centers about one-year reimbursement rule. Since VA agreed in the May 7, 2025 Stipulation of Dismissal that during the lawsuit it had disclosed “all responsive documents to Plaintiff,” it appears that VA never implemented the part of the April 2023 Communications Plan calling for creation of a field announcement to provide information to and train VA medical center personnel about its responsibilities under the one-year reimbursement rule.

7. I declare to my knowledge that the foregoing is true and correct.

Dated: 6/6/25


Ryan Kelley

Exhibit K

(Kevin Brobst et al. v. Douglas A. Collins and Steven L.
Lieberman)

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

KEVIN BROBST,)
STEVEN DUDEK,)
KATE FOLLETT,)
TERRANCE FOWLER,)
EARL PAULSON,)
JACK R. PETERSON,)
KENNETH SCHMIDT, and)
KARIN WHITLEY,)
individually and on behalf of others)
similarly situated,)

Petitioners,)

v.)

Vet. App. No. _____

DOUGLAS A. COLLINS,)
in his capacity as Secretary of Veterans)
Affairs,)

and)

STEVEN L. LIEBERMAN,)
in his capacity as Acting Under)
Secretary for Health,)

Respondents.)

DECLARATION OF ALESSANDRA M. VENUTI

I, Alessandra M. Venuti, declare the following:

1. I am a senior staff attorney at the National Veterans Legal Services Program (“NVLSP”), a nonprofit veterans service organization, and I have worked at NVLSP as an attorney since 2016.

2. A major part of my work for NVLSP over the last few years has been assisting veterans with their claims for reimbursement including communicating with and

providing advice to people who contact NVLSP with questions about submitting new claims within one year of February 23, 2023 pursuant to 38 C.F.R. § 17.1004.

3. To better assist veterans, NVLSP created a dedicated e-mail address for inquiries concerning claims for reimbursement pursuant to 38 C.F.R. § 17.1004.

4. On March 5, 2024, NVLSP received an e-mail to this dedicated NVLSP e-mail address from a VA employee, who used her VA.gov email address and who provided her name and identified herself as an employee in the business office of the VA Medical Center in Nashville, Tennessee. This VA employee stated that she had heard from a veterans service officer that VA would approve reimbursement for medical emergencies at non-VA facilities that occurred after 2010. However, her email indicated that she had never heard about this program and that she had “checked with Community Care, CPAC, and even the VA Regional Office However, no one has even heard anything at all about this Reimbursement for Post-2010 Medical Expenses.”

5. On February 7, 2024, NVLSP received a facsimile from the Sterling VA Clinic in Sterling Illinois that consisted of (1) a copy of a printed page from NVLSP’s website concerning information for claims for reimbursement pursuant to 38 C.F.R. § 17.1004 and (2) a copy of a veteran’s claim for reimbursement, along with the veteran’s supporting records. The cover page of the facsimile listed the veteran’s name and date of birth with a message stating “Medical service forms, medical bills/receipts, Thank you, [name redacted], 2/7/2024 @ 10:29am.” Also listed on the cover page was a telephone number for the Sterling VA Clinic. NVLSP did not represent this veteran and did not know why we were sent the veteran’s claim. That same day, I called the telephone

number listed on the facsimile for the Sterling VA Clinic and asked for the VA employee named as the sender on the cover page of the facsimile. I was able to speak with a VA employee who confirmed she was the VA employee who sent the facsimile to NVLSP. This VA employee told me that the veteran walked into the VA clinic intending to deliver his claim for reimbursement. However, the VA employee said she did not know what to do with the claim so she thought the best thing to do was to send the veteran's reimbursement claim to NVLSP.

6. On February 21, 2024, NVLSP received a facsimile that included (1) a printed page from NVLSP's website concerning information for claims for reimbursement pursuant to 38 C.F.R. § 17.1004 and (2) a veteran's claim for reimbursement signed by a veteran whom I will refer to hereinafter as Veteran A, and supporting documents for Veteran A. NVLSP did not represent Veteran A. The cover page of the facsimile stated it was from the Department of Veterans Affairs, John H. Bradley VA Community Based Outpatient Clinic in Appleton Wisconsin. The subject line on the cover page was handwritten and said "Reimbursement..." and "...Urgent." On February 22, 2024, in an attempt to find out why NVLSP received this facsimile, I called the telephone number listed on the facsimile and spoke to a VA employee who provided his first name. When I explained that NVLSP received a facsimile from VA with a claim for reimbursement and supporting documents from Veteran A, he told me his position at VA was a "switch board operator" and would need to transfer me to someone else at VA. I was transferred to another VA employee who provided me with her first name and told me she works remotely and handles calls for parts of Wisconsin. I

explained the situation to her and she looked up Veteran A's name in her database and could not locate him. She told me she could not help me since Veteran A did not populate in her system and transferred me to a third VA employee. This VA employee provided me with her first name and told me she was a receptionist at the front desk at the VA clinic in Appleton Wisconsin (where the facsimile was sent from). After I explained the situation, she looked up the Veteran A's name in her database and also could not locate anyone by that name and told me she did not know what to do so she transferred me to the patient advocate office at the same VA clinic. The phone rang and then went to voice mail and I left a voice message detailing what had occurred and asked that someone call me back. I never heard back from anyone from VA regarding this issue. On March 11, 2024, I spoke with Veteran A by telephone and he informed me that he went in-person on February 22, 2024 to the VA medical center in Chilton, Wisconsin to deliver his claim for reimbursement. Veteran A told me that the VA employee at the front desk did not know what to do with it but said she would send his claim by facsimile to 3 different locations. He did not remember what three locations the VA employee sent his claim to. The veteran told me that, that same day, he went in-person to the VA clinic in Appleton Wisconsin to deliver his claim for reimbursement. He told me the VA employee at the front desk also did not know what to do with his claim and so she also sent his claim by facsimile to 3 different locations. He did not remember what three locations his claim was sent to.

7. On February 22, 2024, NVLSP received a facsimile with (1) a printed page from NVLSP's website concerning information for claims for reimbursement pursuant to

38 C.F.R. § 17.1004 and (2) a copy of a veteran's claim for reimbursement signed by a veteran hereinafter referred to as Veteran B, along with his supporting documents.

NVLSP did not represent Veteran B. There was no cover page for the facsimile.

However, the claim was stamped and said received on February 22, 2024 by "LP" and the header of each page of the facsimile had a series of numbers. In an attempt to find out where the facsimile came from, an employee at NVLSP typed the series of numbers found on the header into an internet search engine, which brought her to a PowerPoint presentation which was created by the Department of Veterans Affairs. On March 3, 2025, I spoke with Veteran B by telephone and he informed me that he went to the VA medical center in Portland Oregon to submit his claim for reimbursement and spoke with VA employees in the enrollment office. Veteran B told me that the VA employees told him (Veteran B) that they did not know what to do with the claim, they stamped the claim as received, and told the veteran they would fax the claim to NVLSP.

8. On February 26, 2024, NVLSP received an envelope via USPS from the Jonathan M. Wainwright VA Medical Center in Walla Walla, Washington that contained a copy of a claim for reimbursement for named petitioner in this case named Kate Follett. At that time there was no representation agreement between NVLSP and Ms. Follett. The claim was stamped with the date of February 21, 2024. Kate Follett's declaration appears at Exhibit D of the petition in this case.

9. On March 4, 2024 NVLSP received another envelope via USPS from the Jonathan M. Wainwright VA Medical Center in Walla Walla, Washington that contained a copy of a claim for reimbursement signed by a veteran hereinafter referred to as

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2025, pursuant to the Court's Rule 25, the foregoing petition and accompanying exhibits were filed using the Court's electronic case filing system, and served on the following entities:

Department of Veterans Affairs, OGC (027)
810 Vermont Avenue, N.W.
Washington D.C. 20420

Steven L. Lieberman
Acting Under Secretary for Health
Veterans Health Administration
810 Vermont Avenue, N.W.
Washington D.C. 20420

/s/ Alessandra Venuti

June 23, 2025
Counsel for Petitioners