No. _____

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

COMMONWEALTH OF VIRGINIA, THE VETERANS OF FOREIGN WARS OF THE UNITED STATES, IRAQ AND AFGHANISTAN VETERANS OF AMERICA, JAMES RUDISILL, KASSIDY PERKINS, PAUL YOON, ELIZABETH YOON, TOBY DORAN, KENNETH BRATLAND, and MCKENNA BRATLAND,

Petitioners,

v.

SECRETARY OF VETERANS AFFAIRS,

Respondent.

PETITION FOR REVIEW

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I. INTRODUCTION

Since World War II, the federal government has provided veterans and their families with significant education benefits through federal GI Bills. Today, veterans whose service entitles them to education benefits under both of the principal GI Bills (the Montgomery GI Bill and the Post-9/11 GI Bill) may use a total of 48 months of benefits.

For years, the Department of Veterans Affairs ("VA") has denied veterans rightfully earned education entitlements under a cramped reading of the two GI Bills. Last year, the Supreme Court corrected that error in *Rudisill v. McDonough*, 601 U.S. 294 (2024), holding that "[v]eterans who separately accrue benefits under both [GI Bills] are entitled to both benefits." *Id.* at 314. But the VA continues to deny veterans education benefits to which they are entitled—now by taking an unduly cramped reading of *Rudisill* itself.

As explained in *Rudisill*, the plain language of the GI Bills has always compelled the VA to honor the full 48 months of education benefits that veterans were promised. But for years VA rules have denied benefits to veterans who are entitled to them. Those rules are unlawful and should be set aside.

II. STATEMENT OF THE CASE

Congress provides generous education benefits to military servicemembers. In addition to 36 months of traditional GI Bill benefits, known as Montgomery benefits, *see* 38 U.S.C. § 3001 *et seq.*, veterans who served after September 11, 2001, may also qualify for up to 36 months of enhanced education benefits under the Post-9/11 Veterans Educational Assistance Act of 2008, 122 Stat. 2357, 38 U.S.C. § 3301 *et seq.* Veterans may combine benefits from both programs, up to a 48-months aggregate cap. *See* 38 U.S.C. §§ 3312(a), 3695. And although "servicemembers cannot receive disbursements from both entitlement programs at the same time, nor may they receive any combination of benefits for longer than 48 months," "[o]utside of those limitations, their service 'entitle[s]' them to the benefits that they have earned, and the VA 'shall pay' them these benefits." *Rudisill*, 601 U.S. at 302.

The Montgomery and Post-9/11 GI Bills provide independent entitlements to benefits. This was first decided in *BO v. Wilkie*, 31 Vet. App. 321 (2019), which rejected the VA's attempt to limit veterans from getting their full entitlements under both GI Bills. There, the U.S. Court of Appeals for Veterans Claims ("Veterans Court") held that a "veteran

such as BO [should] receive full benefits under both programs subject to an aggregate cap on all such benefits." *Id.* at 328. Ultimately, the Supreme Court agreed with *BO*'s result, holding that the "statute is clear" that "[v]eterans who separately accrue benefits under both the Montgomery and Post-9/11 GI Bills are entitled to both benefits." *Rudisill*, 601 U.S. at 314. As the Court explained, under the law, "what matters is that [a veteran's] lengthy service conferred two separate entitlements." *Id.* at 306.

Between the Veterans Court's decision in *BO* and the Supreme Court's decision in *Rudisill*, however, the VA issued internal "interim" rules of general applicability that had the effect of requiring VA employees to deny veterans their education benefits available under *BO*. These unpublished "interim" rules directed VA employees to deny such claims and mark them as a "BO v. Wilkie Claim" in the VA's internal processing system. Exs. 1 (Sept. 2019, as updated through at least Oct. 2019), 2 (Oct. 2019, as updated through at least Jun. 2020), 3 (Nov. 2019, as updated through at least Apr. 2020). These "interim" rules remained in effect until June 2024, *see Procedural Advisory: Changes to Original Claims Processing After* Rudisill v. McDonough *Decision*, U.S. Dep't of

Veterans Affs. (Jun. 13, 2024), https://perma.cc/HA53-JLMJ (rescinding Sept. 2019 "interim" advisory, while publicly announcing for the first time rules for implementing either *BO* or *Rudisill*). As a result, thousands of veterans (and their dependents) were wrongfully denied benefits for more than five years.

After the Supreme Court rejected the VA's attempt to wrongfully deny veterans the full 48 months of benefits to which they were entitled under the plain and clear statutory text, *see Rudisill*, 601 U.S. at 314, the VA replaced its unpublished "interim" rules. The newly issued rules are enshrined in the public claims processing manual M22-4 "Education Procedures," specifically Part 3, Chapter 3, Subchapter 2, Section 3.10, and Part 4, Chapter 13, Subchapter 10 (hereinafter, the "2024 Education Directives").[1] A copy of the 2024 Education Directives is attached as Exhibit 4.

The 2024 Education Directives, which must be followed by claims examiners in evaluating claims for education benefits from veterans and their family members, prescribe how the VA will deny or grant veterans'

[1] As explained below, the 2024 Education Directives also include the attachments and materials explicitly incorporated into them by the VA. Ex. 4.

education benefits, allegedly in compliance with the *Rudisill* decision. But the 2024 Education Directives flatly defy *Rudisill* by requiring the VA to deny benefits to veterans who have served long enough to accrue Post-9/11 and Montgomery benefits but do not have a break in service. They also prevent veterans from transferring those benefits to their children, who should have been able to use those benefits under *BO*, and prohibit the retroactive award of benefits for those denied benefits under the previous "interim" rules.

Applying the 2024 Education Directives, the VA denied James Rudisill, Paul Yoon, Elizabeth Yoon, and Kassidy Perkins their rightfully earned education benefits. The VA also threatens to now deny Toby Doran, Kenneth Bratland, and McKenna Bratland their rightfully earned education benefits (extending the harm initially done by the previous "interim" rules' unlawful withholding of those benefits)[2] by

[2] These systemic denials were contrary to the VA's representations during the *Rudisill* litigation that it was "in the process of implementing" the *BO* decision. *See*, *e.g.*, Respondent-Appellant's Opp. to Claimant-Appellee's Emergency Mot. for Expedited Schedule, *Rudisill v. Wilkie,* Fed Cir. No. 20-1637, at 8 n.4 (Apr. 7, 2020) ("[T]he VA is in the process of implementing the [*BO*] decision of the Veterans Court across the agency."). The systemic denials also violated the Veterans Court order

refusing delimiting date extensions to dependents who were prevented from using their benefits by the VA and by failing to provide for the retroactive award of benefits unlawfully withheld. In turn, those wrongful denials have increased the Commonwealth of Virginia's burdens and costs in caring for its veterans, including Virginia residents in the same circumstances as Petitioners James Rudisill, Paul Yoon, Elizabeth Yoon, Kassidy Perkins, Toby Doran, Kenneth Bratland, McKenna Bratland, and members of the Veterans of Foreign Wars of the United States ("VFW") and Iraq and Afghanistan Veterans of America ("IAVA").

The 2024 Education Directives are incompatible with the plain text of the GI Bills, as interpreted by the Supreme Court in *Rudisill*. Namely, they unlawfully deny benefits to veterans who chose to serve their country continuously without a break in service—nonsensically denying benefits to many of this country's longest serving veterans—and arbitrarily distinguish between veterans, requiring certain veterans to

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denying the VA's request to stay the precedential effect of *BO*. *BO v. Wilkie*, 16-4134, 2020 WL 62631 (Vet. App. Jan. 7, 2020); *see Tobler v. Derwinski*, 2 Vet. App. 8, 11 (1991) (requiring VA to apply Veterans Court decisions absent a stay).

relinquish benefits based on when their periods of service began. In so doing, the 2024 Education Directives directly contradict the Supreme Court's explicit explanation that the benefits "analysis does not focus on [a veteran's] periods of service"; "[r]ather, what matters is that his lengthy service conferred two separate entitlements." *Rudisill*, 601 U.S. at 306. Similarly, the Court rejected the VA's interpretation that Sections 3222 and 3227 require servicemembers to elect to relinquish benefits, holding that because "nothing in § 3327, § 3322, or anywhere else purports to alter [their] entitlement[s,]" a veteran whose lengthy service entitles him to benefits under both GI Bills "may use his benefits, in any order, up to § 3695's 48-month aggregate-benefits cap." *Id.* at 310, 314.

The 2024 Education Directives also arbitrarily deny certain veterans' dependents an extension of the date by which restored benefits must be used and fail to provide for the retroactive award of benefits unlawfully withheld. The 2024 Education Directives thus compound legal errors of the VA's own making in its prior application of the GI Bills, continue to ignore the plain text of the statute, and defy the Supreme Court's clear holding in *Rudisill*. Accordingly, they are arbitrary and

capricious, exceed the VA's statutory authority, unlawfully withhold mandatory educational entitlements, and are otherwise not in accordance with law.

Under 38 U.S.C. § 502 (and necessarily 5 U.S.C. § 706), Federal Rule of Appellate Procedure 15(a), and Federal Circuit Rule 15(f), Petitioners ask this Court to review (and ultimately set aside or vacate) the 2024 Education Directives. The 2024 Education Directives are rules under 5 U.S.C. § 552(a)(1) and thus are reviewable as final agency action. *See Nat'l Org. of Veterans' Advocs., Inc. v. Sec'y of Veterans Affs.*, 981 F.3d 1360, 1382 (Fed. Cir. 2020) (hereinafter "*NOVA*").

III. JURISDICTION

This Court has jurisdiction under 38 U.S.C. § 502. Section 502 vests this Court with jurisdiction to review VA actions "to which section 552(a)(1) . . . of title 5 . . . refers." 38 U.S.C. § 502. Among other actions, section 552(a)(1) refers to "interpretations of general applicability formulated and adopted by the agency." 5 U.S.C. § 552(a)(1)(D). This Court has already held that a VA manual's instructions may be reviewed as "interpretations of general applicability" under § 552(a)(1). *NOVA*, 981 F.3d at 1375–76.

Here, the 2024 Education Directives are rules of general applicability under which the VA has wrongfully denied veterans' educational entitlements. *See*, *e.g.*, Opinion, *Perkins v. Collins*, No. 24-6515, at 14 (Vet. App. May 16, 2025) (overturning VA's denial of benefits and reasoning that the VA "again seeks to thwart the efforts of a veteran with lengthy service to receive all the benefits to which she is due"); Order at 2, Yoon v. Collins, No. 25-1839 (Fed. Cir. June 26, 2025) ("The Department of Veterans Affairs, however, granted the Yoons only two months of benefits—the remaining portion of the 36-months of benefits under only the Montgomery GI Bill—because the Department understood that benefits under the Post-9/11 GI Bill require a break in service, which Mr. Yoon does not have."). Thus, this Court has jurisdiction to review the 2024 Education Directives.

IV. TIMELINESS

This petition is timely because it is within the six-year statute of limitations for facial challenges to final rules. 28 U.S.C. § 2401(a); Fed. Cir. R. 15(f)(1); *NOVA*, 981 F.3d at 1384–86. The VA issued internal "interim" rules of general applicability that had the effect of requiring VA employees to deny veterans their education benefits available under *BO*

beginning in September 2019. *See supra*. These "interim" rules remained in effect until 2024, when the VA promulgated the 2024 Education Directives. *See Procedural Advisory: Changes to Original Claims Processing After* Rudisill v. McDonough *Decision*, U.S. Dep't of Veterans Affs. (Jun. 13, 2024), https://perma.cc/HA53-JLMJ (rescinding Sept. 2019 "interim" advisory, while publicly announcing for the first time rules for implementing either *BO* or *Rudisill*). This petition, therefore, is filed within the statute of limitations.

V. PARTIES ADVERSELY AFFECTED

Petitioners the Commonwealth of Virginia, the VFW, IAVA, James Rudisill, Paul Yoon, Elizabeth Yoon, Kassidy Perkins, Toby Doran, Ken Bratland, and McKenna Bratland are adversely affected by the 2024 Education Directives. All have standing to bring this challenge.

The Commonwealth of Virginia is adversely affected by the 2024 Education Directives. The Commonwealth is home to approximately 700,000 veterans, many of whom rely on federal benefits. The Commonwealth has veterans support programs of its own and allocates tens of millions of dollars annually to its Department of Veterans Services to administer these programs. *See* Va. Dep't of Veterans Servs.,

Commissioner's 2024 Annual Report (Dec. 1,2024), at 61, *available at* https://tinyurl.com/ys9y8r4p. But the federal GI Bills account for the "vast majority of spending on veteran education benefits." Jennie W. Wenger & Jason M. Ward, *The Role of Education Benefits in Supporting Veterans as They Transition to Civilian Life*, RAND Corporation (Jan. 10, 2022), *available at* https://tinyurl.com/5z5cdv7h. The 2024 Education Directives perpetuate the VA's unlawful denial of these federal benefits, which harms Virginia's veterans programs.

For example, family members of wrongly-denied veterans will likely continue turning to the Virginia Military Survivors and Dependents Education Program ("VMSDEP") for benefits that the federal government has unlawfully withheld. That program covers undergraduate and graduate-school tuition for the dependents of veterans who have been disabled, have been missing or killed in action, or are prisoners of war. The nature of the federal and state programs would typically make dual-enrollment for GI-Bill benefits and VMSDEP benefits redundant. But if the VA maintains its policy of wrongfully denying benefits to veterans, then numerous eligible dependents would likely instead continue turning to VMSDEP and stretch the

Commonwealth's resources for the program.[3] Over 30,000 Virginians received veteran education benefits under the Post-9/11 GI Bill in fiscal year 2023, whereas in 2024 only 8,000 Virginians received VMSDEP benefits. The Commonwealth's programs were not designed to fill the breach opened by the VA's refusal to provide the full federal benefits to which veterans and their family members are entitled under the 2024 Education Directives' erroneous interpretation of the statutes.

The VFW is a nonprofit veterans service organization. It was established in 1899 and, together with its Auxiliary, represents more than 1.4 million members. The VFW was formed by veterans who, after returning home from war in the late 1800s wounded or sick, found that they were left to care for themselves. These veterans responded by founding local organizations to secure rights and benefits for their military service. Many of these veterans and the organizations they formed then banded together to become what is now known as the VFW.

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[3] For example, the VMSDEP program provides benefits to dependent children up to the age of 29, whereas the GI Bills only provide benefits to age 26. As noted in more detail below, the VA has arbitrarily denied dependent children access to benefits that they were wrongfully denied before they turned 27 and aged out of GI Bill eligibility. As a result, dependent children 27–29 years old will likely resort to VMSDEP funding to cover expenses that should have been covered by the GI Bills.

Although the VFW's role has expanded over the past 126 years, its core purposes of advocating for veterans and ensuring that they and their families receive the benefits they earned remain unchanged. The VFW's mission and vision statements focus on serving those who have served and advocating to ensure that they receive their earned entitlements:

> Our Mission: To foster camaraderie among United States veterans of overseas conflicts. To serve our veterans, the military and our communities. To advocate on behalf of all veterans.
>
> Our Vision: Ensure that veterans are respected for their service, always receive their earned entitlements, and are recognized for the sacrifices they and their loved ones have made on behalf of this great country.

About Us, Veterans of Foreign Wars, https://www.vfw.org/about-us (accessed Aug. 12, 2025).

The VFW helped establish the VA and create both the World War II GI Bill and the Post-9/11 GI Bill. Many of its members qualify for benefits under both the Montgomery and the Post-9/11 GI Bill. To be a member, you must meet two requirements. First, you must be currently serving in the Armed Forces of the United States or have previously served and received either an Honorable or General (under honorable conditions) discharge. Second, you must have served in a war, campaign, or expedition on foreign soil or in hostile waters. Many members, by

meeting this membership criteria, necessarily qualify for benefits under both the Montgomery and Post-9/11 GI Bills.

The interpretation of these two GI Bills and the provision of education benefits to veterans under them are therefore vitally important to the VFW and its mission. The interpretation of these veterans' benefits laws impacts many of the VFW's members and the VFW's past and future efforts to ensure that veterans receive respect for their service, always get the entitlements they have earned, and are recognized for the sacrifices they and their loved ones have made.

The VFW has standing to bring this suit on behalf of its members. *See, e.g.*, *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977); *Mil.-Veterans Advoc. Inc. v. Sec'y of Veterans Affs.*, 63 F.4th 935, 943–44 (Fed. Cir. 2023). VFW members would otherwise have standing to sue here in their own right because many thousands of them are harmed or will be harmed by the 2024 Education Directives that incorrectly interpret and arbitrarily and capriciously limit or apply the veterans' benefits laws here. In fact, one of the other petitioners, Mr. Rudisill, is a VFW member. The 2024 Education Directives wrongly deny or limit VFW members' earned entitlements, contrary to law and

Supreme Court precedent, as discussed above and below. Protecting these members' entitlement to benefits is squarely within the VFW's mission and purpose. And neither the claims asserted nor the relief sought here require that individual VFW members participate because this petition raises purely legal questions that do not require individualized proof to resolve.

IAVA is a nonprofit and nonpartisan organization dedicated to improving the lives of Iraq and Afghanistan veterans and their families. It is the first and largest national veterans service organization dedicated exclusively to current and former volunteer service members. Its membership comprises more than 425,000 active veterans and civilian supporters across all 50 states. Many of IAVA's members qualify for benefits under both the Montgomery and the Post-9/11 GI Bill.

From its founding in 2004, IAVA has worked vigorously to support and expand veterans' benefits and to protect the GI Bills. In fact, in 2007 and 2008, IAVA was a leading voice among veterans service organizations in the media and in Congress in support of the Post-9/11 GI Bill then under debate. IAVA's research at the time—which IAVA published among Congressional staffers and the public—indicated that,

if enacted, the Post-9/11 GI Bill's enhanced education benefits would provide a critical boost to the military's flagging recruitment efforts. Together with other veterans service organizations and allies in Congress, IAVA helped drive the bipartisan consensus that propelled the Post-9/11 GI Bill into law.

As one of the instigating forces behind passage of the Post-9/11 GI Bill, and as the voice of more than 3 million post-9/11 veterans, IAVA has a unique interest in the scope and application of education benefits stemming from the GI Bills—the central issue in this case. How these laws are interpreted affects a significant number of IAVA members and could jeopardize the entitlements they have earned serving our country. As it has always done, IAVA will continue its efforts to ensure that all veterans receive their hard-earned entitlements, respect for their service, and recognition for the sacrifices they and their families have made for every American.

IAVA has standing to bring this suit on behalf of its members. *See, e.g.*, *Hunt*, 432 U.S. at 343; *Mil.-Veterans Advoc. Inc.*, 63 F.4th at 943–44. IAVA members would otherwise have standing to sue here because thousands of them are harmed or will be harmed by the 2024 Education

Directives that incorrectly interpret and arbitrarily and capriciously limit or apply the veterans' benefits laws here. In fact, one of the other petitioners, Mr. Rudisill, is an IAVA member. The 2024 Education Directives wrongly deny or limit IAVA members' earned entitlements, contrary to law and Supreme Court precedent, as discussed above and below. Protecting these members' entitlement to benefits is squarely within the IAVA's mission and purpose as it has continuously demonstrated throughout its existence. And neither the claims asserted nor the relief sought here require that individual IAVA members participate because this petition raises purely legal questions that do not require individualized proof to resolve.

James Rudisill is a former enlisted soldier and U.S. Army captain residing in the Commonwealth of Virginia. He is a member of both the VFW and the IAVA. He earned entitlements to Montgomery and Post-9/11 benefits by honorably serving nearly eight years in three periods of military service. Despite the Supreme Court agreeing with his plain-text interpretation of the statutory provisions, the VA on remand has not fully restored his education benefits, and under the same pre-*Rudisill* interpretation that was rejected by the Supreme Court, continues to deny

him the Montgomery benefits to which he is entitled. *See Rudisill v. Collins*, No. 25-2578 (Vet. App.).

The 2024 Education Directives prohibit further relief for Mr. Rudisill (and others like him) because they require veterans who earned Post-9/11 benefits before August 1, 2011, to have two or more periods of service separated by a break, and they require veterans who have used some of their Montgomery benefits to relinquish their remaining Montgomery benefits rather than allowing them to use their full entitlements, in the order of their choosing, up to 48 months as *Rudisill* requires. *See* Ex. 4, Subchapter 10, Part B.3.

Kassidy Perkins is a U.S. Air Force veteran residing in the Commonwealth of Virginia. She earned her entitlements to education benefits by honorably serving her country for six continuous years after August 1, 2011. The VA denied her benefits because she did not have a break in service after August 1, 2011. The Veterans Court held that the *Rudisill* decision controlled and that a veteran's length of service determines her entitlement to education benefits. *See Perkins*, No. 24-6515, at 9–11, 19. The 2024 Education Directives' requirement of two periods of service separated by a break in service and their use of August

1, 2011, as the date for determining eligibility are contrary to the clear text of the statute. *Id.* at 16–18.

Although Ms. Perkins prevailed before the Veterans Court, the VA has filed a notice of appeal in her case, delaying the requirement that relief be implemented in her case.[4] Thus, the 2024 Education Directives prohibit relief for Ms. Perkins (and others like her) because they state that veterans whose service began on or after August 1, 2011 cannot establish eligibility to both Montgomery and Post-9/11 benefits. *See* Ex. 4, Subchapter 10, Part B.4.

Paul Yoon is a retired U.S. Army Lieutenant Colonel residing in the Commonwealth of Virginia. He earned entitlements to Montgomery and Post-9/11 benefits by continuously serving from 1998 to 2021. After initially splitting his Post-9/11 benefits between his two daughters, Hannah and Elizabeth Yoon, he allocated a total of 14 months to Elizabeth after she was accepted to law school. The VA, however,

[4] "[W]hen a party appeals to the Federal Circuit[,] in the absence of any other action, [from] a precedential decision, (1) the decision binds VA for all further adjudications at the Agency; but (2) until final it does not require implementation with respect to the named appellant." *Rudisill v. McDonough*, 34 Vet. App. 176, 184 (2021) (applying *Tobler*, 2 Vet. App. 8).

initially determined that, like Ms. Perkins, his continuous service does not qualify him for both Montgomery and Post-9/11 benefits. After Mr. Yoon, alongside other petitioners, challenged the VA's determination on an emergency basis, the VA attempted to moot his suit by issuing another determination—this time in keeping with the applicable law—and dismissing his pending Board appeal on the basis of the new determination. Consistent with the manner in which the VA administers education benefits, Ms. Yoon has received a "Detailed Education Payment Decision" from the regional office dated August 5, 2025, setting forth her "Education Benefit Eligibility" and containing "Evidence and Findings" for the semester. *See, e.g.*, 38 U.S.C. §§ 3313(l)(B)(3) (requirement to verify enrollment status monthly to continue receiving benefits), 3319(f)(2) (permitting transferor to alter transfers of benefits at any time, triggering new benefits decision(s)). Ms. Yoon expects to receive similar Detailed Education Payment Decisions on a semester-by-semester basis.

The VA, however, continues to maintain a manual that prohibits affording Mr. Yoon the full benefits to which he is entitled. Because Ms. Yoon still has two semesters' worth of benefits remaining that the VA has

not adjudicated—and because Mr. Yoon retains the ability to re-transfer any amounts of his remaining Post-9/11 entitlement to his other daughter and/or wife—the existing 2024 Education Directives, if applied by the regional offices that they bind, would again result in a denial as soon as next semester. The 2024 Education Directives prohibit Mr. Yoon (and others like him) from receiving the requested education benefits because they require veterans with one qualifying period of service (before August 1, 2011) who used Montgomery benefits before their Post-9/11 benefits to relinquish their remaining Montgomery benefits. *See* Ex. 4, Subchapter 10, Part B.2.

Elizabeth Yoon is the daughter of Lt. Col. Yoon (Ret.) and resides in the Commonwealth of Virginia. She began law school in August 2024. Mr. Yoon transferred 14 months of Post-9/11 benefits for his daughter to pursue a legal education. Because the VA initially denied her father his full benefits, Ms. Yoon was obligated to rely on alternative funding during the 2024–25 school year. Her appeal to the Board regarding the amount of benefits which her father was entitled to transfer to her, filed in 2024, was only just docketed and remains pending. While the Detailed Education Payment Decisions letter dated August 5, 2025, indicates that

Ms. Yoon is eligible for benefits for this coming semester, Ms. Yoon expects to receive further decisions from the regional office on a semester-by-semester basis.

Ms. Yoon's receipt of benefits is in danger for the same reasons applicable to Mr. Yoon. As with her father, the 2024 Education Directives prohibit relief for Ms. Yoon (and others like her) because they require veterans with one qualifying period of service (before August 1, 2011) who used Montgomery benefits before their Post 9/11 benefits to relinquish their remaining Montgomery benefits. *See* Ex. 4, Subchapter 10, Part B.2.

Toby Doran is a retired U.S. Air Force Colonel residing in the state of Oregon. He earned entitlements to Montgomery and Post-9/11 benefits by serving for more than 27 years, and he transferred his unused benefits to his son. Because the VA unlawfully and improperly applied the Montgomery and Post-9/11 GI Bills in a way that limited the benefits Mr. Doran and his family received, Mr. Doran paid significant amounts of money out of pocket to support his son's education when their family should have been able to rely on his benefits. Despite untold thousands of veterans and their families having incurred educational expenses

which should have been covered by their entitlements but were not granted because of the internal "interim" rules and the 2024 Education Directives, the VA has not taken appropriate steps to afford recovery to those harmed by the improper and unlawful application of the GI Bills, notwithstanding the VA's recently "conced[ing]" before this Court that veterans and their family members "'may be reimbursed for statutorily required education benefits that were unlawfully withheld.'" Order at 2, *Yoon*, No. 25-1839.

The 2024 Education Directives prohibit relief for Mr. Doran (and others like him) because they do not provide for the retroactive award of benefits unlawfully and improperly withheld and instead force veterans and their families to pay out of pocket for expenses that Congress intended the GI Bills to cover. *See* Ex. 4, Subchapter 10, Part C. Indeed, the 2024 Education Directives only provide for forward-looking additional benefits (which the VA has since provided to Mr. Doran in an attempt to moot his Board appeal and petition before the Veterans Court) and do not consider a retroactive award of benefits. It is arbitrary and capricious for the VA to promulgate the 2024 Education Directives

without considering how to make whole those veterans whose benefits had been unlawfully withheld.

Kenneth Bratland is a retired U.S. Air Force Colonel residing in the state of Arizona. He earned entitlements to Montgomery and Post-9/11 benefits by serving for more than 34 years and transferred his unused benefits equally to his son and daughter. Because the VA applied the internal "interim" rules to improperly limit the transfer of benefits to his children in 2021, Mr. Bratland paid significant amounts out of pocket to support his daughter's education when their family should have been able to rely on his benefits. He would transfer a portion of his remaining benefits to his daughter if the 2024 Education Directives did not now affirmatively deny delimiting date extensions to children of veterans (who ordinarily are unable to use Post-9/11 benefits after they turn 26, *see* 38 U.S.C. § 3319(h)(5)(A)).

This failure to extend the delimiting date for dependent children is particularly arbitrary considering that the statute expressly permits exceptions to the same in "emergency situations" and the VA has otherwise extended the separate delimiting dates applicable to veterans and spouses. *See id.* § 3319(h)(5)(C); *see also id.* §§ 3301(2), 3601(2)

(definitions). Mr. Bratland also challenges the VA's failure to consider and promulgate rules providing for the retroactive award of benefits unlawfully withheld and for which he was forced to pay out of pocket.

The 2024 Education Directives provide no mechanism for retroactive relief and explicitly prohibit relief to Mr. Bratland (and others like him), whose daughter turns 26 next year, by refusing any delimiting date extensions to children while automatically providing them to veterans and spouses. *See* Ex. 4, Subchapter 10, Part B.6 (Note 2: "Children are not eligible for Delimiting Date extensions."); *see also* https://perma.cc/MY7Q-VDWM. It is arbitrary and capricious for the VA to promulgate the 2024 Education Directives without considering how to make whole those veterans whose benefits were unlawfully withheld.

McKenna Bratland is the daughter of Mr. Bratland and resides in the state of Arizona. Ms. Bratland sought to use the benefits that her father had transferred to her in 2021 while a student at the University of Arizona, at which time the VA improperly limited her benefits through application of the internal "interim" rules. Ms. Bratland exhausted the limited benefits provided by the internal "interim" rules and thereafter had to rely on other funding for her education. Had she correctly been

provided with the full amount of benefits she should have received in 2021—as provided by the GI Bills, *BO*, and now *Rudisill*—she would have used them then. Ms. Bratland has a continuing need for Post-9/11 benefits to finish her education, which was interrupted due to long-term medical complications resulting from COVID-19, but that possibility is foreclosed by the VA's refusal to provide delimiting date extensions to veterans' children. Because the 2024 Education Directives affirmatively and arbitrarily refuse such delimiting date extensions, while providing such extensions to all other impacted individuals, Ms. Bratland may not realistically be able to utilize any Post-9/11 benefits transferred to her before she turns 26 next year. Again, this is arbitrary considering that the statute expressly permits exceptions to the 26-year limitation in "emergency situations" that the VA may define. *See* 38 U.S.C. § 3319(h)(5)(C); *see also id.* §§ 3301(2), 3601(2) (definitions).

The 2024 Education Directives continue the harm begun with the internal "interim" rules to Ms. Bratland (and others like her) and prohibit relief for her because they do not extend the delimiting date for her as they do for veterans and spouses. *See* Ex. 4, Subchapter 10, Part B.6; *see also* Worksheet, Rudisill DD Extension Job Aid v.4.2, at Note 2 (Jan. 16,

2025). Indeed, the directives only provide for forward-looking additional benefits and do not consider a retroactive award of benefits. It is arbitrary and capricious for the VA to promulgate the 2024 Education Directives without considering how to make whole those veterans whose benefits had been unlawfully withheld.

VI. FINAL RULES THAT REQUIRE THIS COURT'S REVIEW

Petitioners request review of two final rules found in M22-4 manual Part 3, Chapter 3, Subchapter 2, Section 3.10 "Elections" (hereinafter Section 3:10) and Part 4, Chapter 13, Subchapter 10 "Rudisill v. McDonough Claims Processing" (hereinafter Subchapter 10), inclusive of their accompanying charts and attachments. Both Section 3:10 and Subchapter 10 conflict with the plain text of the relevant statutory provisions, as the Supreme Court explained when it reviewed the statutory framework in *Rudisill*. These rules advance an erroneous interpretation of *Rudisill* under which the VA has wrongfully denied veterans' education entitlements. The rules also allow veterans to extend the date by which they must use unlawfully withheld benefits but deny veterans' dependents who wish to use those benefits the same opportunity. Moreover, they fail to provide for the retroactive award of

benefits unlawfully withheld under the "interim" rules. Because these rules are contrary to Congress' express statutory framework to provide education benefits to veterans, they are unlawful under 38 U.S.C. § 502 and 5 U.S.C. § 706.

In *Rudisill*, the Court *explicitly foreclosed* the non-statutory rules promulgated in Section 3:10 and Subchapter 10—and hardly could have done so more clearly. 601 U.S. at 306. The Court specifically explained that "[n]otably, our analysis does not focus on [Rudisill's] periods of service"; "[r]ather, what matters is . . . his lengthy service [.]" *Id.* Section 3:10 and Subchapter 10's interpretations of *Rudisill* cannot be squared with *Rudisill*'s clear reasoning. To the contrary, *Rudisill* requires the VA to honor a veteran's education entitlements regardless of whether they served continuously or had a break in their service.

Incredibly, Section 3:10 and Subchapter 10 would deny benefits even to Mr. Rudisill himself because they erroneously direct claims examiners to deny benefits to veterans who—like Mr. Rudisill—had different periods of service. For example, Section 3:10 states that the "bar to duplication based on a single period of service beginning on or after August 1, 2011 . . . remains unchanged" after *Rudisill*. Section

3:10(i), Note 2. Subchapter 10 repeatedly states that *Rudisill*'s holding affects only veterans with multiple periods of service, by which the manual means veterans that have a break in their service. *See*, *e.g.*, Ex. 4, Subchapter 10(A) ("The issue decided in [*Rudisill*] pertains to individuals with multiple periods of active-duty service . . . .") (cleaned up); *id.* at (B) ("The new *Rudisill* interpretation changes how multiple periods of qualifying military service impacts benefits earned.") (cleaned up); *id*. ("Service periods that began on or after August 1, 2011 . . . cannot be used to establish both [Montgomery and Post-9/11 GI Bill] benefits.") (cleaned up). That is incorrect.

The VA's claim that the statute bars duplication based on a single period of uninterrupted service is contrary to the statute's plain text. Section 3322(a) simply says that a veteran who has both Montgomery and Post-9/11 benefits "may not receive assistance under two or more such programs concurrently." 38 U.S.C. § 3322(a). It bars "duplicative receipt of benefits," *Rudisill*, 601 U.S. at 308, as in 38 U.S.C. § 3322(e), (f), (g), which the Supreme Court recognized. No statutory provision permits the VA to limit a veteran's education benefits based on whether a veteran happens to have a break in his or her service.

In fact, the Supreme Court expressly rejected any contrary suggestion in *Rudisill* itself. The Court held that a veteran whose length of service qualifies him for entitlements under both GI Bills is "separately entitled to each of [the] two educational benefits." *Rudisill*, 601 U.S. at 295. Therefore, absent a statutorily imposed limit, the VA is "statutorily obligated to pay" 48 months of combined benefits. *Id*. Whatever other limits may apply, a veteran's benefits are not contingent on having separation between distinct "periods of service," because, as the Supreme Court explained in *Rudisill*, it was Rudisill's "lengthy service" that "conferred" on him "two separate entitlements." *Id*. at 306.

Section 3:10 and Subchapter 10 also arbitrarily deny veterans' dependents the ability to use benefits that were unlawfully withheld under the internal "interim" rules. Those rules conflicted with the plain text of the GI Bills, violated the Veterans Court's orders to implement its precedential decision pending appeal, *BO*, 2020 WL 62631, at *3, and contradicted the VA's representations to this Court that it was *implementing BO*. Although the 2024 Education Directives allow veterans to have more time to use their education entitlements for the period that the VA unlawfully denied those entitlements, they do not

provide the same opportunity to certain veterans' dependents. There is no statutory or rational basis for the VA to conclude that veterans who transferred their benefits and the dependents who would use them should not all have the same opportunity.

Section 3:10 and Subchapter 10 are arbitrary and capricious, exceed the VA's statutory authority, and are not in accordance with law, and therefore should be set aside.

VII. CONCLUSION

The 2024 Education Directives unlawfully deny veterans and their families the education benefits to which they are entitled by law. Petitioners challenge those unlawful final rules and respectfully petition this Court for review to vacate and/or set aside those rules as arbitrary, capricious, in excess of statutory authority, or otherwise unlawful.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit using the Court's CM/ECF system.

I further certify that I will cause a true and correct copy of the foregoing to be served upon the following:

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