

No. 23-178

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

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PETER VAN DERMARK,

*Petitioner,*

v.

DENIS MCDONOUGH,  
Secretary of Veterans Affairs,

*Respondent.*

—◆—  
**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Federal Circuit**

—◆—  
**BRIEF OF VETERANS' ADVOCACY LAW CLINIC AS  
AMICUS CURIAE IN SUPPORT OF PETITIONER**

—◆—  
KRISTINE A. HUSKEY  
*Counsel of Record*  
VETERANS' ADVOCACY LAW CLINIC  
THE UNIVERSITY OF ARIZONA  
JAMES E. ROGERS COLLEGE OF LAW  
1145 N. Mountain Ave.  
Tucson, AZ 85719  
(520) 626-6095  
khuskey@arizona.edu

*Counsel for Amicus Curiae*

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**INTEREST OF *AMICUS CURIAE***<sup>1</sup>

Since 2012, the Veterans' Advocacy Law Clinic ("Vet Clinic") at the University of Arizona James E. Rogers College of Law has provided *pro bono* legal assistance to over 2,000 military veterans and service members by helping them through a range of legal and *quasi*-legal issues. The Vet Clinic represents veterans and service members in veterans treatment court,<sup>2</sup> provides intake and referral services, represents them on disability benefits compensation cases, helps them upgrade their discharge status or correct their military record, and engages in community outreach to raise awareness of the legal needs of veterans and service members. The Vet Clinic focuses on removing legal barriers hindering the transition from military service to

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<sup>1</sup> Under Supreme Court Rule 37.2(a), *amicus curiae* notified counsel of record of its intent to file this brief at least 10 days prior to the due date for the brief. Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

<sup>2</sup> Veterans treatment courts (VTCs) recognize that military service and exposure to combat may have a negative impact on soldiers, not only causing profound challenges to assimilating back into civilian life, but also resulting in criminal conduct. Kristine A. Huskey, *Justice for Veterans—Does Theory Matter?*, 59 ARIZ. L. REV. 697 (Winter 2017). A VTC, like a drug treatment or mental health court, is a problem-solving court that favors treatment over incarceration because an underlying condition may have led to the misconduct. Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, 35 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 357, 364 (2009).

civilian life. This multidisciplinary legal clinic often requires working with veterans who have physical disabilities, Post-Traumatic Stress, Traumatic Brain Injury, or other mental health conditions that are a direct result of or related to their military service.

This case focuses on sections 1724, 1725, and 1728 in Title 38 of the U.S. Code, which concern reimbursing veterans for qualified emergency medical expenses that were incurred abroad.<sup>3</sup> The Federal Circuit's opinion focused on section 1724 and did not adequately consider the relevancy of sections 1725 and 1728. These two statutes apply in this case and require reimbursement in several circumstances for emergency medical treatment, with no distinction between veterans in the United States and abroad. Requiring out-of-pocket payment for emergency medical expenses despite their qualification for reimbursement under sections 1725 and 1728, hinders veterans' opportunities as they transition to civilian life. This ruling is disconnected from the modern veteran experience that comes with an increased possibility of living, traveling, working, or studying abroad.

Because the Federal Circuit's decision severely harms veteran opportunities, creates barriers for veterans in their transition to civilian life, and is antithetical to this Court's long recognized pro-veteran canon of interpretation, the Veterans' Advocacy Law Clinic at the University of Arizona James E. Rogers College of Law has a strong interest in this Court reviewing the

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<sup>3</sup> 38 U.S.C. §§ 1724, 1725, 1728.

Federal Circuit's decision and clarifying that sections 1725 and 1728 govern with respect to veterans who have received emergency medical care abroad.



### SUMMARY OF ARGUMENT

There is a cruel irony that many veterans who served honorably in deployments overseas may later not get reimbursed for emergency medical care received outside this country.

The Federal Circuit Court limited reimbursement for medical expenses based on 38 U.S.C. section 1724 despite sections 1725 and 1728. Its decision creates a significant barrier for veterans readapting to civilian life as well as those facing the realities of aging. This erroneous decision effectively negates financial support for an incredible number of veterans. Such a result is especially concerning for this population, which has a higher risk of poor health outcomes and future need for emergency care.<sup>4</sup>

First, this decision hinders veteran opportunities in their transition to civilian life. For a myriad of reasons, many may choose to pursue civilian life abroad. This chance is bolstered by several overseas jobs

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<sup>4</sup> Jose A. Betancourt et al., *Exploring Health Outcomes for U.S. Veterans Compared to Non-Veterans from 2003 to 2019*, 9 HEALTHCARE 604 (2021); see also Tamara M. Schult et al., *The Health Status of Veteran Employees Compared to Civilian Employees in Veterans Health Administration*, 184 MIL. MED. 218 (2019).

particularly suited for post-military service, including opportunities promoted by the U.S. Department of Veterans Affairs (VA).<sup>5</sup> However, pursuing any opportunity abroad will always be clouded with the risks of unsurmountable emergency medical expenses the VA will not cover. Limiting earned medical benefits inhibits veterans' ability to choose and thus, inhibits their success.

Second, this decision negatively impacts a veteran's pursuit of education after military service. Although the VA lauds opportunities to study at foreign institutions of education using the GI Bill,<sup>6</sup> this opportunity is marred with the potential of a medical emergency a veteran may not be able to pay for on their own. Instead of choosing between educational opportunities, veterans instead will face decisions between risky opportunities and medical safety or financial security.

Third, this decision disadvantages veterans significantly compared to the general public because of their higher risk of poor health outcomes.<sup>7</sup> As is evident with our Vietnam veterans, our once young brave soldiers cannot escape the aging process and the health crises that inevitably follow. These health problems are often created by, aggravated by, or related to their military

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<sup>5</sup> See *Feds Hire Vets, Agency Directory*, <https://www.fedshirevets.gov/job-seekers/veteran-employment-program-offices-directory/> (last visited Sept. 18, 2023).

<sup>6</sup> U.S. Dep't of Veterans Aff., *Education and Training*, [https://benefits.va.gov/gibill/foreign\\_schools.asp](https://benefits.va.gov/gibill/foreign_schools.asp) (last visited Sept. 3, 2023).

<sup>7</sup> Betancourt, *supra* note 4.

service.<sup>8</sup> Although the VA was created to help our men and women post-military service, the Federal Circuit decision created a glaring lapse in its care. It denies reimbursement for medical emergencies to U.S. veterans around the world and forgets them in their aging years.

In sum, it is imperative for this Court to grant the petition and reverse the Federal Circuit's decision in order to support veterans and allow them the chance to succeed unimpeded.

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## ARGUMENT

### **I. Veterans who go abroad, even temporarily, will risk financial stress if they experience a medical emergency.**

There are roughly 16.5 million U.S. military veterans living in the United States, making up 6.4% of the country's adult population.<sup>9</sup> In Arizona, there are over 500,000 veterans, making up 8.7% of the state's adult population.<sup>10</sup> Despite this population in the U.S.

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<sup>8</sup> *Id.*

<sup>9</sup> Chris Gilligan, *Who Are America's Veterans*, U.S. NEWS (Nov. 11, 2022), <https://www.usnews.com/news/best-states/articles/2022-11-11/who-are-americas-veterans>.

<sup>10</sup> Hous. Assistance Couns., *Supporting Veterans in Arizona*, <https://veteransdata.info/states/2040000/ARIZONA.pdf> (last visited Sept. 18, 2023).

declining by over a third from 26.4 million in 2000,<sup>11</sup> Arizona's veteran population has remained fairly constant.<sup>12</sup> 36.9% of Arizona veterans served in the Vietnam era while 21% served in the first Gulf War, 21% served in the Iraq-Afghanistan conflicts, and 21% served during peacetime after Vietnam.<sup>13</sup> Having a large number of Vietnam and Gulf-War eras veterans in Arizona explains why more than 50% are 65 years old or older.<sup>14</sup>

Many veterans choose to live abroad permanently in order to have a better quality of life, given the lower cost of living in many other countries.<sup>15</sup> For example, living in Mexico City in rented housing is roughly half the cost of renting in Phoenix.<sup>16</sup> Further, veterans and their families who live abroad can see new places, meet

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<sup>11</sup> U.S. Census Bureau, *Census Bureau Releases New Report on Veterans* (June 2, 2020), <https://www.census.gov/newsroom/press-releases/2020/veterans-report.html>.

<sup>12</sup> Christy Richardson & Judith Waldrop, *Veterans: 2000*, U.S. CENSUS BUREAU (May 2003), <https://usa.ipums.org/usa/resources/voliiii/pubdocs/2000/c2kbr-22.pdf>.

<sup>13</sup> Gilligan, *supra* note 9.

<sup>14</sup> Valorie Rice, *An Economic Snapshot of Arizona's Veterans*, UA ARIZ.'S ECON. (Dec. 2, 2021), <https://www.azecconomy.org/2021/12/economy/an-economic-snapshot-of-arizonas-veterans/>.

<sup>15</sup> Christina Ralph, *VA Denies Healthcare to Some Overseas Veterans*, SYRACUSE UNIV. IMPUNITY WATCH (Aug. 19, 2023), <https://impunitywatch.com/va-denies-healthcare-to-some-overseas-veterans/>.

<sup>16</sup> Numbeo, *Costs of Living Comparison Between Mexico City and Phoenix, AZ*, [https://www.numbeo.com/cost-of-living/compare\\_cities.jsp?country1=Mexico&country2=United+States&city1=Mexico+City&city2=Phoenix%2C+AZ](https://www.numbeo.com/cost-of-living/compare_cities.jsp?country1=Mexico&country2=United+States&city1=Mexico+City&city2=Phoenix%2C+AZ) (last visited Sept. 18, 2023).



new people, and experience different cultures.<sup>17</sup> They may also want to continue living abroad if they enjoyed the foreign country they were stationed in during their service.<sup>18</sup>

The risk of no reimbursement for emergency treatment can extend beyond permanent overseas residents to any former service men and women who travel abroad temporarily. In 2021, 18.21 million Americans traveled abroad, with over 40 million Americans traveling before COVID-19 in 2018 and 2019.<sup>19</sup> In 2023, a record high of more than one in five Americans are expected to travel abroad.<sup>20</sup> Many Arizonans travel abroad, such as to Mexico’s Puerto Peñasco—aka “Rocky Point.”<sup>21</sup> In 2023, 152,000 Arizonans visited “Arizona’s

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<sup>17</sup> Crystal Kupper, *Overseas expat: Many military families choose to live abroad permanently*, MIL. FAMILIES MAG. (Mar. 3, 2023), <https://militaryfamilies.com/military-travel/overseas-expat-many-military-families-choose-to-live-abroad-permanently/>.

<sup>18</sup> Poppin’ Smoke, *Expatriate Military Retiree Profile: Living and Working on Yokota Air Base, Japan*, <https://www.poppinssmoke.com/expat-military-retiree-yokota-japan/> (last updated April 26, 2023).

<sup>19</sup> Statista, *Number of United States residents travelling overseas from 2002 to 2021*, <https://www.statista.com/statistics/214774/number-of-outbound-tourists-from-the-us/> (last visited Sept. 18, 2023).

<sup>20</sup> Safiyah Riddle, *Record number of Americans plan on traveling abroad in the next 6 months*, REUTERS (Aug. 29, 2023), <https://www.reuters.com/world/americas/record-number-americans-plan-traveling-abroad-next-6-months-2023-08-29/>.

<sup>21</sup> Sean McLaughlin, *Rocky Point sees an increase in Spring Break ’23 travelers*, ARIZ.’S FAMILY (Apr. 21, 2023), <https://www.azfamily.com/2023/04/22/rocky-point-sees-an-increase-spring-break-23-travelers/>.

Beach” in Rocky Point during “spring break,” a 12% increase from 135,000 people in 2022.<sup>22</sup>

Veterans may also travel overseas for reasons besides vacationing, such as for visiting family and loved ones. Indeed, the U.S. government incentivizes foreign-born people to enlist by reducing the requirements for naturalization when foreign-born members serve in the military for a certain period of time.<sup>23</sup> Since 2002, 158,000 members of the military have become naturalized and, just over 33,000 service members were naturalized between 2018 and 2022.<sup>24</sup> The government incentive has produced strong results: over half a million veterans are foreign born.<sup>25</sup> It is likely many of these men and women have loved ones living outside any state, whom they may wish to visit. Furthermore, many *U.S.-born* veterans likely have family that live outside a state. 1.9 million veterans were born in the United States to immigrant parents, making roughly 13% of veterans of immigrant origin.<sup>26</sup>

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<sup>22</sup> Ralph, *supra* note 15.

<sup>23</sup> U.S. Citizenship and Immigr. Servs., *Naturalization Through Military Service*, <https://www.uscis.gov/military/naturalization-through-military-service> (last visited Sep. 18, 2023).

<sup>24</sup> U.S. Citizenship and Immigr. Servs., *Military Naturalization Statistics*, <https://www.uscis.gov/military/military-naturalization-statistics> (last visited Sep. 18, 2023).

<sup>25</sup> Jie Zong & Jeanne Batalova, *Immigrant Veterans in the United States*, MIGRANT POL’Y INST. (May 16, 2019), <https://www.migrationpolicy.org/article/immigrant-veterans-united-states> (estimating that 530,000 veterans are foreign-born).

<sup>26</sup> *Id.*

Due to proximity, it is no surprise that many veterans have family ties to Central and South America. In 2018, among foreign-born veterans, 17% were born in Mexico and 37% were Hispanic in ethnicity.<sup>27</sup> In the same year, among veterans born in the U.S., roughly 6% were Hispanic or Latino; in Arizona, 12.3% were Hispanic or Latino.<sup>28</sup>

Veterans may also travel abroad for temporary work or travel for their domestic jobs. There are numerous jobs particularly suited for them in countries all over the world such as in Afghanistan, Kuwait, and Germany.<sup>29</sup> These jobs include working as analysts, intelligence advisors, and counselors.<sup>30</sup> Since 2015, over 500 veterans, including former high-ranking officers, have worked as contractors and consultants for foreign governments.<sup>31</sup> When it comes to travel for domestic jobs, there are numerous opportunities for veterans to go abroad just like non-veteran workers. In the civilian world, the world in which veterans make their living, approximately twelve million business trips took place

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Clearance Jobs, *OCONUS*, <https://news.clearancejobs.com/category/oconus/> (last visited Sep. 18, 2023).

<sup>30</sup> *See Id.*

<sup>31</sup> Craig Whitlock & Nate Jones, *Key Finding from the Post's Series on Veterans' Lucrative Foreign Jobs*, THE WASHINGTON POST (Oct. 18, 2022), <https://www.washingtonpost.com/investigations/interactive/2022/veterans-foreign-jobs-foia-takeaways/> (updated Dec. 5, 2022, 6:39 AM).

overseas in 2009, by over two million travelers.<sup>32</sup> Of the 400 million U.S.-originated business trips annually, 33% of business travel is to Mexico—making it the leading international business destination for Americans.<sup>33</sup>

For many veterans, transitioning to civilian life comes with many challenges such as finding steady employment, creating structure, and connecting with the community.<sup>34</sup> As a society, it is imperative that these challenges are minimized by maximizing the opportunities available for veterans to succeed after their service. Government agencies such as the VA<sup>35</sup> and the Department of Defense emphasize the importance of helping veterans make the transition to the civilian world through assistance programs.<sup>36</sup> There are thirty-four federal programs that help veterans move

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<sup>32</sup> William D. Chalmers, *The Great American Passport Myth: Why Just 3.5% of Us Travel Overseas*, HUFFPOST (Nov. 29, 2012), [https://www.huffpost.com/entry/the-great-american-passpo\\_b\\_1920287](https://www.huffpost.com/entry/the-great-american-passpo_b_1920287).

<sup>33</sup> Adam Grucela, *Business Travel: 90+ Statistics, Facts, and Trends [2023]*, PASSPORT-PHOTO.ONLINE (June 12, 2023), <https://passport-photo.online/blog/business-travel-statistics/#gref>.

<sup>34</sup> U.S. Dep't of Veterans Aff., *Veterans Employment Toolkit*, [https://www.va.gov/vetsinworkplace/docs/em\\_challengesreadjust.asp](https://www.va.gov/vetsinworkplace/docs/em_challengesreadjust.asp) (updated Aug. 6, 2021).

<sup>35</sup> U.S. Dep't of Veterans Aff. *Outreach, Transition and Economic Development*, <https://www.benefits.va.gov/transition/tap.asp> (last visited Sept. 18, 2023).

<sup>36</sup> U.S. Gov't Accountability Off., *Helping Servicemembers Transition Back to Civilian Life*, <https://www.gao.gov/helping-servicemembers-transition-back-to-civilian-life> (last visited Sept. 18, 2023).

on to new careers following their military service.<sup>37</sup> Such programs include Employment Fundamentals of Career Transition (EFCT), eLearning, and the Wounded Warrior and Caregiver Employment Workshop (WWCEW).<sup>38</sup> Yet, by denying reimbursement for emergency medical treatment abroad, the VA counteracts its goal of helping veterans transition to civilian life. The 77,000 veterans living abroad will obviously be affected.<sup>39</sup> They do not have access to a VA medical facility or a VA-approved provider, unless they travel back to the U.S. Traveling back to the U.S., however, may not be possible given the extent or urgency of the medical condition.

Veterans who live overseas permanently are not the only ones impacted. Any veteran who travels abroad—whether for leisure, family, or work—will also be affected, as there is always a risk that emergency care will be required. Arizona veterans are a prime example of who will be affected, given Arizona’s proximity to the U.S.-Mexico border. These veterans may vacation to places like Rocky Point as thousands of

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<sup>37</sup> U.S. Gov’t Accountability Off., *Military and Veteran Support: Performance Goals Could Strengthen Programs that Help Servicemembers Obtain Civilian Employment* (July 9, 2020), <https://www.gao.gov/products/gao-20-416>.

<sup>38</sup> U.S. Dep’t of Lab., *Transition Assistance Program*, <https://www.dol.gov/agencies/vets/programs/tap> (last visited Sept. 18, 2023).

<sup>39</sup> Ralph, *supra* note 15.

other Arizonans do during “spring break.”<sup>40</sup> Perhaps instead, they decide to visit family in Mexico, which is highly likely because there are thousands of Hispanic veterans having family ties to Mexico.<sup>41</sup> For work, many veterans may have to travel to Mexico for temporary work in jobs like contracting or for business trips, since Mexico is the most popular destination for international business travel by American workers.

Regardless of why a veteran is abroad, there will always be risks of injuries that will require emergency care, which could financially debilitate them. The last thing veterans should be concerned about is having to choose between new opportunities or family abroad and forgoing such opportunities to ensure physical safety and financial security. Having this added burden for thousands, if not millions of our former service members, will only make transitioning to civilian life more difficult. Society can do better for its veterans in ensuring adequate care by reimbursing them for emergency medical expenses abroad.

## **II. Veterans will lose educational opportunities that are available to non-veteran students, impairing their transition to civilian life.**

Arizona has the thirteenth largest population of veterans in the United States. Not only do they retire here, but many also move to or live in Arizona to attend

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<sup>40</sup> *Id.*

<sup>41</sup> Zong & Batalova, *supra* note 25.

college and earn a degree to aid their transition into civilian life. There are over 7,180 military and veteran students currently enrolled at Arizona State University.<sup>42</sup> The University of Arizona, which houses *amicus* Vet Clinic, has a rich history of supporting this country's military, dating back to 1896 when the Army ROTC was launched at the University to train cavalry troops.<sup>43</sup> During the 2019-2020 academic year, there were over 1,800 veterans enrolled at the University of Arizona.<sup>44</sup>

VA education benefits provide veterans, service members, reservists, and certain family members "educational resources to supplement missed opportunities due to military service."<sup>45</sup> These services and benefits assist members of the Armed Forces and veterans with their "readjustment to civilian life."<sup>46</sup> More veterans have started studying at institutions of postsecondary education in the last five years due to the expansion of educational benefits outlined in the

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<sup>42</sup> Ariz. State Univ., *Admissions – Veterans*, <https://admission.asu.edu/apply/veterans/> (last visited Sept. 14, 2023).

<sup>43</sup> The Univ. of Ariz., *Veterans Education & Transition Services*, <https://vets.arizona.edu/milcampus> (last visited Sept. 14, 2023).

<sup>44</sup> *Id.*

<sup>45</sup> U.S. Dep't of Veteran's Aff., *Annual Benefits Report Education FY-2022*, <https://www.benefits.va.gov/REPORTS/abr/docs/2022-education.pdf> (last visited Sept. 3, 2023).

<sup>46</sup> *Id.*

Post-9/11 GI Bill, which went into full effect in 2009.<sup>47</sup> They are eligible for education benefits, which include tuition payments, a housing allowance, and a book stipend.<sup>48</sup> In 2012 more than 900,000 U.S. veterans used their higher education benefits, an increase from 550,000 in 2009.<sup>49</sup> Within the last five fiscal years (FY) of 2018 to 2022, the number of veterans using their higher education benefits ranged from a high in a pre-pandemic year of 909,422 in FY 2019 to slightly lower within two years of the pandemic in FY 2022 to 834,460.<sup>50</sup>

The VA allows veterans to use their GI Bill benefits at foreign education institutions.<sup>51</sup> In FY 2019, 2,169 used their Post-9/11 GI Bill to attend an international institution.<sup>52</sup> In FY 2022, 1,311 used their Post-9/11 Bill to attend an international institution.<sup>53</sup> This decrease is likely attributed to the effects of COVID-19 on educational institutions domestic and abroad, as well as travel restrictions and other challenges. Despite the decrease, in FY 2022, veterans used their

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<sup>47</sup> Charlotte West, *Helping Veteran Students Study Abroad* (2016), <https://www.nafsa.org/professional-resources/publications/helping-military-veterans-study-abroad#main-content>.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> U.S. Dep't of Veterans Aff., *supra* note 45.

<sup>51</sup> U.S. Dep't of Veterans Aff., *Education and Training* (2023) [https://benefits.va.gov/gibill/foreign\\_schools.asp](https://benefits.va.gov/gibill/foreign_schools.asp).

<sup>52</sup> U.S. Dep't of Veterans Aff., *Annual Benefits Report Education FY-2019*, <https://www.benefits.va.gov/REPORTS/abr/docs/2019-education.pdf> (last visited Sept. 3, 2023).

<sup>53</sup> U.S. Dep't of Veterans Aff., *supra* note 45.



Post-9/11 GI Bill in 39 different countries across the globe.<sup>54</sup> For example in 2022, there were 83 veterans in Australia, 231 in the United Kingdom, 37 in Mexico, and 46 in Grenada.<sup>55</sup> All over the world they are utilizing their education benefits to live and learn, in ways that support and complement their transition into civilian life.<sup>56</sup>

Arizona ranks fourth in the country for the number of veterans using their GI Bill education benefits.<sup>57</sup> Fellow Mexican-border states, Texas and California, rank first and second in the country, respectively.<sup>58</sup> Larger states bordering Canada also have substantial numbers of veterans using their GI bill, with Washington ranking fifteenth and New York ranking tenth.<sup>59</sup>

The Yellow Ribbon Program allows institutions of higher learning to enter into a voluntary agreement with the VA to contribute funds to a veteran's unmet education costs that remain after using the GI Bill.<sup>60</sup>

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> U.S. Dep't of Veterans Aff., *GI Bill Comparison Tool*, [https://www.benefits.va.gov/GIBILL/docs/job\\_aids/ComparisonToolData.xlsx](https://www.benefits.va.gov/GIBILL/docs/job_aids/ComparisonToolData.xlsx) (last visited Sept. 3, 2023).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Regis College, *Yellow Ribbon Program*, <https://www.regiscollege.edu/admission-and-aid/veterans-programs/yellow-ribbon-program> (stating that Yellow ribbon funds may not be used for unnecessary costs associated with education at domestic institutions, such as study abroad programs or room and board expenses.); see U.S. Dep't of Veterans Aff., *Yellow Ribbon Program*

Yellow Ribbon funds are eligible to use at foreign institutions if the institution participates in the program.<sup>61</sup> There are currently over 5,000 institutions participating in the Yellow Ribbon program for the 2023-2024 school year, providing hundreds of thousands of dollars for study at foreign and domestic institutions.<sup>62</sup> Of the states that border Mexico, California has the most Yellow Ribbon associated institutions with 559 schools.<sup>63</sup> Texas has 188, Arizona has 112, and New Mexico has 23.<sup>64</sup> States that border Canada also have a significant number of Yellow Ribbon accredited institutions, most notably New York with 304 institutions and Michigan with 141.<sup>65</sup>

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(2023), <https://www.va.gov/education/about-gi-bill-benefits/post-9-11/yellow-ribbon-program/>.

<sup>61</sup> Pub. L. No. 116-315, 134 Stat. 4967, § 2001 (codified as amended in 38 U.S.C. § 3317(a)) provides clarification on the eligibility requirements of the Yellow Ribbon Program and grants foreign institutions the option to participate. In accordance with the law, the participation window extends from June 1st to July 31st, therefore the VA states by “September [it will] update the 2023-24 participation list with Foreign School participants.” See U.S. Dep’t of Veterans Aff., *Yellow Ribbon Program* (2023), [https://www.benefits.va.gov/gibill/yellow\\_ribbon/yellow\\_ribbon\\_info\\_schools.asp](https://www.benefits.va.gov/gibill/yellow_ribbon/yellow_ribbon_info_schools.asp).

<sup>62</sup> U.S. Dep’t of Veterans Aff., *supra* note 57.

<sup>63</sup> U.S. Dep’t of Veterans Aff., *Find a Yellow Ribbon School*, <https://www.va.gov/education/yellow-ribbon-participating-schools> (last visited Sept. 3, 2023).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

With a large population of student veterans, Arizona is a hub for service men and women transitioning into civilian life. Opportunities range from finding a post-military service job with their degree, social immersion into student and civilian life, and most importantly, the ability to transition into a life as an engaged civilian. The opportunities provided to these students should not be lesser than those provided to non-veteran students. For example, the University of Arizona is approximately 60 miles from the United States-Mexico border. Those who are from nearby Sonora, Mexico or another Mexican state, may decide to use their GI Bill at a Mexican institution. However, if they are unable to have their emergency medical care reimbursed, then opportunities to freely choose where to use their education benefits are diminished, thus making the transition to civilian life all the more difficult.

As stated above, the VA allows the GI Bill to be used at foreign schools in addition to domestic schools. Choosing to study at a foreign school entails living abroad. Since the VA encourages veterans to use the benefits of their service at a foreign school, it would be incongruous for the VA to deny reimbursement for emergency medical expenses incurred while studying abroad. The Yellow Ribbon program also extends to institutions beyond the United States, as veterans may use Yellow Ribbon funding at any foreign institution that participates in the program. Denying veterans reimbursement for emergency medical care has many implications; especially for student veterans, who are

using their education benefits to attend an institution of their choice. Whether their chosen school is within the United States, possibly in a border state, or an institution abroad, the freedom of choice in their future is key for service men and women transitioning into post-military life. Limiting their medical benefits inhibits veterans' choices in how they live their lives after service.

### **III. Veterans are at a higher risk of needing emergency medical care compared to non-veterans.**

Because many veterans suffer from health conditions, they are likely prone to medical situations requiring immediate care.<sup>66</sup> Approximately 28,000 of the 77,000 veterans living abroad have disabilities.<sup>67</sup> In 2019, there were over 18,000 disability claims from veterans living abroad, a 14% increase since 2014.<sup>68</sup> These men and women may be at a higher than average risk of having a medical emergency regardless of whether the urgent need is related to a service-connected disability.

However, an emergency health situation can happen to anybody—healthy or not, living overseas

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<sup>66</sup> Betancourt, *supra* note 4.

<sup>67</sup> Gilligan, *supra* note 9.

<sup>68</sup> U.S. Gov't Accountability Off., *VA Disability Benefits: VA Should Continue to Improve Access to Quality Disability Medical Exams for Veterans Living Abroad* (Sept. 21, 2020), <https://www.gao.gov/products/gao-20-620>.

permanently or temporarily. Therefore, the 16.5 million veterans living in the U.S. are also at risk of uncovered emergency care if they go abroad for work, personal, or education-related travel. In essence, the Federal Circuit's decision punishes any veteran abroad who experiences an emergency medical condition that is unrelated to a service-connected disability because the VA will not reimburse them unless they meet the limited exception under section 1724(b), despite the existence of sections 1725 and 1728.

Even if a veteran believes emergency medical treatment is related to their service-connected disability, it may not be recognized by the VA soon enough to provide adequate relief. The VA denies up to 75% of initial claims for VA benefits and up to 71% of appeals.<sup>69</sup> Furthermore, the average wait time to evaluate a veteran's disability claim is 277 days, while 40% of veterans who apply wait longer than 4 months to receive an initial decision from the VA.<sup>70</sup> Currently, there is a backlog of roughly 282,220 disability claims awaiting process by the VA.<sup>71</sup> Even if the VA or a court eventually

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<sup>69</sup> DarrasLaw, *Why are veteran disability claims delayed and denied*, <https://www.longtermdisabilitylawyer.com/2016/11/why-are-veteran-disability-claims-delayed-and-denied/> (last visited Sept. 18, 2023).

<sup>70</sup> David Abbott, *Arizona veterans struggle to get access to health care as backlogs grow. Can it be fixed?*, *AZ MIRROR* (Nov. 5, 2021), <https://www.azmirror.com/2021/11/05/arizona-veterans-struggle-to-get-access-to-health-care-as-backlogs-grow-can-it-be-fixed/>.

<sup>71</sup> U.S. Dep't of Veterans Aff., *Veterans Benefits Administration Reports*, [https://www.benefits.va.gov/reports/detailed\\_claims\\_data.asp](https://www.benefits.va.gov/reports/detailed_claims_data.asp).

grants a veteran their service-connected disability, the failure to reimburse emergency medical expenses at or near the time of the event will have already wreaked financial havoc on those who served and their families. Further, many service-connected presumptions of disability are recognized by the VA long after veterans have served, such as in the case of Vietnam veterans and the recently passed PACT Act.<sup>72</sup>

Denying reimbursement for emergency medical treatment abroad brings additional financial struggles to an already struggling population. Roughly 10% of veterans in Arizona are uninsured for medical care.<sup>73</sup> Veterans between 25 and 64 years of age reported having problems paying medical bills with 8.4% having to forgo medical care and 38.4% worrying about paying their medical bills if they had an accident or became sick.<sup>74</sup> The VA's failure to reimburse emergency medical expenses incurred abroad directly contradicts its goal of helping veterans transition to civilian life. For those who sacrificed their health and dedicated

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<sup>72</sup> Bryan Lett, *Expanded presumptive disability benefits for Vietnam Veterans*, VA NEWS (Mar. 29, 2023), <https://news.va.gov/117663/expanded-presumptive-disability-vietnam/>.

<sup>73</sup> Jennifer Haley & Genevieve M. Kenney, *Uninsured Veterans and Family Members: Who Are They and Where Do They Live?*, URBAN INSTITUTE (May 2012), <https://www.urban.org/sites/default/files/publication/25446/412577-Uninsured-Veterans-and-Family-Members-Who-Are-They-and-Where-Do-They-Live-.PDF>.

<sup>74</sup> Robin A. Cohen & Peter Boersma, *Financial Burden of Medical Care Among Veterans Aged 25-64*, by *Health Insurance Coverage: United States, 2019-2021*, 182 NAT'L HEALTH STAT. REP., 1 (2023).

their lives for this country, the VA should do everything it can under the existing statutes to set these heroes up for success after their service and later in life. The VA must carry out its mission: “To fulfill President Lincoln’s promise to care for those who have served in our nation’s military and for their families, caregivers, and survivors.”<sup>75</sup>

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## CONCLUSION

The Court should grant the petition for a *writ of certiorari* and reverse the Federal Circuit’s decision which creates barriers of uncertainty and financial insecurity for the men and women who sacrificed for the good and security of our country.

Respectfully submitted,

KRISTINE HUSKEY  
*Counsel of Record*

VETERANS’ ADVOCACY LAW CLINIC  
THE UNIVERSITY OF ARIZONA  
JAMES E. ROGERS COLLEGE OF LAW  
1145 N. Mountain Ave.  
Tucson, AZ 85719  
(520) 626-6095  
khuskey@arizona.edu

*Counsel for Amicus Curiae*

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<sup>75</sup> U.S. Dep’t of Veterans Aff., *About the Department*, <https://department.va.gov/about/> (last visited Sept. 20, 2023).