

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

|                                       |   |                    |
|---------------------------------------|---|--------------------|
| Gordon A. Graham                      | ) |                    |
|                                       | ) |                    |
| Petitioner, <i>Pro Se</i>             | ) |                    |
|                                       | ) |                    |
| v.                                    | ) |                    |
| David J. Shulkin, M.D.                | ) |                    |
| Secretary of Veterans Affairs         | ) |                    |
| Meghan Flanz                          | ) |                    |
| Interim General Counsel               | ) |                    |
| US Dept. Of Veterans Affairs          | ) |                    |
| Thomas J. Murphy                      | ) |                    |
| Undersecretary for Veterans Benefits  | ) |                    |
| U.S. Department of Veterans Affairs   | ) |                    |
| Jack Kammerer                         | ) |                    |
| Director, VR&E Services               | ) |                    |
| U.S. Department of Veterans Affairs   | ) |                    |
| )                                     | ) |                    |
| PRITZ NAVARATNASINGAM                 | ) |                    |
| Director, Seattle, WA Regional Office | ) |                    |
| US Dept. Of Veterans Affairs          | ) | Docket No. 18-0938 |

Respondents

PETITION FOR EXTRAORDINARY RELIEF  
IN THE NATURE OF A WRIT OF MANDAMUS

Mr. Gordon A. Graham  
14910 125<sup>th</sup> St. KP N  
Gig Harbor, WA 98329

## Solze Notice

Pursuant to *Solze v. Shinseki*, 26 Vet. App. 299, 301 (2013), petitioner wishes to inform the Court of potentially relevant developments in his case.

In order to avert untimely closure of his IILP plan prior to any action by the Court, petitioner reached out to the VR&E Case manager for a meeting in an effort to ascertain why his grant was downsized and the legal reasoning behind it. The effort is purely an attempt to abate the suspense date of March 14<sup>th</sup>, 2018 and to hold it in abeyance until suitable resolution by the Court. That meeting has been scheduled for March 7<sup>th</sup>, 2018 at 11:30 AM.

Petitioner notes the Court's identification of petitioner as being admitted to practice before the Court. Petitioner thought long and hard before opting to pursue a pro se filing. In light of the fact that the two prior filings for an Extraordinary Writ of Mandamus in the matter of this IILP Plan (i.e. #16-2098 & #17-1450), petitioner felt it was more appropriate to pursue this in a like manner. Should the Court desire a change of representation to reflect his acceptance as a non-attorney practitioner before the Court, he will gladly comply.

In addition, petitioner notes he egregiously omitted a salient document in his initial filing regarding the history of Independent Living Program statistics. While petitioner feels the omission is not fatal to the Writ, he equally feels the absence of the VA document deprives the Court of one ingredient it might desire to view the Writ in its proper historical perspective. Petitioner thus begs the Court's indulgence to accept this tardy filing of the document in question.

Petitioner also seeks permission to amend the petition to reflect how and why a VAF 28-8872 is an early prerequisite prior to implementation of *any* IILP plan. After extensive research following the filing of the instant Writ, petitioner discovered more enlightening information that guides VR&E personnel in the construction and implementation of an IILP plan. 38 CFR §21.1(c)(3) is explicit in its requirements for an early mutual understanding about what is needed to assure clarity and success.

38 CFR §21.1(c)(3) states:

**(3)** An individual written plan must be developed by the Department of Veterans Affairs and the veteran describing the goals of the program and the means through which these goals will be achieved.

Petitioner submits completing a VAF 28-8872 on the cusp of implementation is essentially a *fait accompli* and deprives the Veteran of discussion on the means through which these goals will be achieved.

Indeed, while not true dicta in any legal sense, the Veterans Benefits Manual (hereinafter referred to as the 2017 VBM) states on page 860 under 11.3.2:

"Before a vocational rehabilitation program is approved, the services necessary for the training **must** be identified and an individualized written plan developed that describes the goals of the training and the means of achieving those goals." (Emphasis petitioner's).

Petitioner would note that it is a matter of record that no approval for the final IILP plan submitted on or about July 10<sup>th</sup>, 2018 has yet been submitted to petitioner. Ergo, it follows that the submission to Director, VR&E Services on or about July 10<sup>th</sup>, 2017 clearly and unmistakably conflicts with the Secretary's own requirements set forth in 38 CFR §21.1 as well as §21.92(b).

Petitioner draws the Court's attention to the fact that his Case manager, Mr. Holloway, presented no less than two VAF 28-8872s for signing prior to promulgation of any "approved" plans in 2016.

Petitioner recognizes the Court forbids multiple-motion filings in one document but feels the above information more clearly frames the reasons for the Writ. If this violates the Court's rules, petitioner begs the Court's permission to withdraw the request to amend the petition and to file it separately from the Solze notice.

Attachment:

VR&E published statistics from FY 2004 to FY 2015.

**VR&E IL Case Record,  
FY2004-15**

| RO #                           | REGIONAL OFC NAMES (Alpha)         | IL Rehabs*   |              |              |              |              |              |              |              |              |              |              |              |
|--------------------------------|------------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
|                                |                                    | FY04         | FY05         | FY06         | FY07         | FY08         | FY09         | FY10         | FY11         | FY12         | FY13         | FY14         | FY15         |
| 340                            | Albuquerque Regional Office, NM    | 92           | 151          | 239          | 206          | 107          | 88           | 40           | 43           | 19           | 15           | 32           | 31           |
| 463                            | Anchorage VAMROC, AK               | 21           | 13           | 7            | 7            | 3            | 5            | 0            | 1            | 1            | 0            | 0            | 0            |
| 316                            | Atlanta Regional Office, GA        | 21           | 32           | 76           | 46           | 74           | 131          | 115          | 124          | 136          | 89           | 77           | 80           |
| 313                            | Baltimore Regional Office, MD      | 6            | 8            | 7            | 10           | 7            | 8            | 5            | 16           | 3            | 3            | 4            | 2            |
| 347                            | Boise Regional Office, ID          | 18           | 9            | 13           | 8            | 3            | 8            | 3            | 2            | 7            | 1            | 2            | 1            |
| 301                            | Boston Regional Office, MA         | 99           | 67           | 45           | 8            | 8            | 2            | 0            | 0            | 0            | 0            | 1            | 0            |
| 307                            | Buffalo Regional Office, NY        | 1            | 2            | 0            | 3            | 12           | 5            | 19           | 21           | 43           | 50           | 49           | 42           |
| 442                            | Cheyenne Regional Office, WY       | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            |
| 328                            | Chicago Regional Office, IL        | 9            | 17           | 45           | 20           | 21           | 9            | 8            | 11           | 6            | 3            | 3            | 5            |
| 325                            | Cleveland Regional Office, OH      | 101          | 96           | 74           | 26           | 11           | 9            | 20           | 40           | 39           | 21           | 21           | 34           |
| 319                            | Columbia Regional Office, SC       | 13           | 26           | 25           | 20           | 28           | 33           | 16           | 37           | 33           | 20           | 11           | 12           |
| 339                            | Denver Regional Office, CO         | 141          | 76           | 52           | 71           | 68           | 63           | 97           | 19           | 12           | 7            | 5            | 12           |
| 333                            | Des Moines Regional Office, IA     | 20           | 18           | 10           | 5            | 15           | 15           | 13           | 18           | 30           | 41           | 11           | 20           |
| 329                            | Detroit Regional Office, MI        | 47           | 46           | 43           | 69           | 74           | 126          | 137          | 136          | 134          | 165          | 159          | 105          |
| 437                            | Fargo VAMROC, ND                   | 11           | 12           | 17           | 20           | 25           | 14           | 8            | 6            | 11           | 9            | 6            | 5            |
| 436                            | Fort Harrison VAMROC, MT           | 38           | 22           | 19           | 13           | 3            | 2            | 7            | 2            | 6            | 1            | 7            | 5            |
| 308                            | Hartford Regional Office, CT       | 32           | 64           | 108          | 79           | 88           | 59           | 60           | 32           | 35           | 41           | 46           | 18           |
| 459                            | Honolulu VAMROC, HI                | 239          | 114          | 65           | 80           | 71           | 49           | 17           | 20           | 43           | 7            | 14           | 9            |
| 362                            | Houston Regional Office, TX        | 75           | 174          | 166          | 94           | 109          | 81           | 95           | 140          | 106          | 87           | 70           | 36           |
| 315                            | Huntington Regional Office, WV     | 25           | 15           | 11           | 11           | 4            | 6            | 13           | 18           | 22           | 14           | 0            | 0            |
| 326                            | Indianapolis Regional Office, IN   | 29           | 23           | 22           | 53           | 70           | 63           | 55           | 97           | 80           | 96           | 67           | 47           |
| 323                            | Jackson Regional Office, MS        | 7            | 10           | 14           | 8            | 7            | 9            | 24           | 16           | 22           | 26           | 26           | 9            |
| 334                            | Lincoln Regional Office, NE        | 2            | 1            | 4            | 4            | 9            | 11           | 9            | 1            | 14           | 5            | 0            | 0            |
| 350                            | Little Rock Regional Office, AR    | 59           | 31           | 26           | 8            | 9            | 9            | 22           | 17           | 12           | 23           | 4            | 12           |
| 344                            | Los Angeles Regional Office, CA    | 186          | 161          | 186          | 279          | 91           | 50           | 56           | 60           | 16           | 21           | 21           | 20           |
| 327                            | Louisville Regional Office, KY     | 57           | 34           | 64           | 33           | 60           | 52           | 30           | 31           | 23           | 11           | 10           | 21           |
| 373                            | Manchester Regional Office, NH     | 4            | 1            | 3            | 2            | 0            | 3            | 1            | 1            | 2            | 4            | 3            | 0            |
| 358                            | Manila Regional Office, PI         | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            |
| 330                            | Milwaukee Regional Office, WI      | 32           | 40           | 46           | 34           | 16           | 15           | 8            | 4            | 9            | 4            | 4            | 2            |
| 322                            | Montgomery Regional Office, AL     | 38           | 152          | 128          | 127          | 175          | 219          | 177          | 163          | 149          | 165          | 165          | 136          |
| 351                            | Muskogee Regional Office, OK       | 134          | 204          | 101          | 25           | 31           | 24           | 36           | 39           | 30           | 14           | 11           | 11           |
| 320                            | Nashville Regional Office, TN      | 28           | 29           | 22           | 30           | 23           | 20           | 16           | 16           | 19           | 11           | 12           | 12           |
| 321                            | New Orleans Regional Office, LA    | 32           | 57           | 3            | 10           | 6            | 5            | 8            | 25           | 39           | 24           | 20           | 19           |
| 309                            | New York Regional Office, NY       | 140          | 114          | 130          | 188          | 157          | 138          | 139          | 148          | 198          | 128          | 135          | 147          |
| 306                            | Newark Regional Office, NJ         | 7            | 25           | 36           | 47           | 50           | 65           | 62           | 49           | 25           | 69           | 37           | 68           |
| 343                            | Oakland Regional Office, CA        | 92           | 89           | 149          | 133          | 146          | 113          | 115          | 58           | 67           | 32           | 39           | 31           |
| 310                            | Philadelphia Regional Office, PA   | 65           | 81           | 40           | 59           | 34           | 18           | 18           | 11           | 10           | 14           | 11           | 12           |
| 345                            | Phoenix Regional Office, AZ        | 197          | 138          | 189          | 246          | 208          | 158          | 113          | 100          | 63           | 86           | 79           | 100          |
| 311                            | Pittsburgh Regional Office, PA     | 5            | 1            | 2            | 2            | 2            | 2            | 4            | 4            | 8            | 6            | 3            | 7            |
| 348                            | Portland Regional Office, OR       | 82           | 23           | 32           | 26           | 15           | 17           | 4            | 10           | 16           | 10           | 14           | 13           |
| 304                            | Providence Regional Office, RI     | 71           | 54           | 39           | 32           | 18           | 6            | 13           | 14           | 9            | 5            | 5            | 5            |
| 354                            | Reno Regional Office, NV           | 16           | 16           | 16           | 12           | 11           | 7            | 21           | 20           | 28           | 23           | 22           | 13           |
| 314                            | Roanoke Regional Office, VA        | 1            | 13           | 8            | 5            | 2            | 1            | 0            | 9            | 2            | 4            | 9            | 5            |
| 331                            | Salt Lake City Regional Office, UT | 21           | 12           | 23           | 24           | 23           | 23           | 20           | 6            | 5            | 1            | 12           | 3            |
| 335                            | San Diego Regional Office, CA      | 28           | 57           | 68           | 58           | 22           | 56           | 24           | 14           | 38           | 32           | 28           | 17           |
| 317                            | San Juan Regional Office, PR       | 1            | 2            | 3            | 2            | 3            | 1            | 1            | 3            | 2            | 0            | 1            | 7            |
| 341                            | Seattle Regional Office, WA        | 41           | 30           | 25           | 37           | 32           | 19           | 33           | 19           | 14           | 12           | 16           | 7            |
| 377                            | Sioux Falls VAMROC, SD             | 26           | 50           | 54           | 52           | 44           | 15           | 18           | 7            | 5            | 20           | 5            | 3            |
| 355                            | St. Louis Regional Office, MO      | 3            | 3            | 23           | 4            | 20           | 23           | 15           | 31           | 43           | 51           | 40           | 18           |
| 346                            | St. Paul Regional Office, MN       | 67           | 60           | 80           | 38           | 46           | 6            | 4            | 7            | 0            | 2            | 3            | 4            |
| 438                            | St. Petersburg Regional Office, FL | 95           | 112          | 125          | 80           | 72           | 70           | 69           | 126          | 93           | 120          | 118          | 140          |
| 402                            | Togus VAMROC, ME                   | 0            | 1            | 0            | 5            | 2            | 16           | 16           | 14           | 16           | 22           | 8            | 3            |
| 349                            | Waco Regional Office, TX           | 56           | 36           | 93           | 44           | 71           | 70           | 59           | 70           | 78           | 64           | 87           | 95           |
| 372                            | Washington Regional Office, DC     | 27           | 30           | 16           | 12           | 3            | 0            | 1            | 3            | 3            | 3            | 2            | 4            |
| 405                            | White River Junction VAMROC, VT    | 2            | 2            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            |
| 452                            | Wichita VAMROC, KS                 | 6            | 2            | 1            | 0            | 3            | 0            | 3            | 7            | 7            | 9            | 1            | 4            |
| 460                            | Wilmington VAMROC, DE              | 3            | 4            | 4            | 7            | 0            | 3            | 0            | 1            | 0            | 2            | 0            | 2            |
| 318                            | Winston-Salem Regional Office, NC  | 20           | 33           | 42           | 18           | 23           | 15           | 13           | 12           | 5            | 15           | 8            | 12           |
| <b>Annual IL Rehab Totals:</b> |                                    | <b>2,689</b> | <b>2,693</b> | <b>2,839</b> | <b>2,540</b> | <b>2,235</b> | <b>2,035</b> | <b>1,880</b> | <b>1,899</b> | <b>1,836</b> | <b>1,708</b> | <b>1,544</b> | <b>1,426</b> |
| <b>New IL Case Totals:</b>     |                                    | <b>N/A</b>   | <b>2,588</b> | <b>2,213</b> | <b>2,115</b> | <b>1,728</b> | <b>1,680</b> | <b>2,456</b> | <b>2,539</b> | <b>2,428</b> | <b>2,152</b> | <b>1,723</b> | <b>1,410</b> |

Data Sources: Annual data is from the VR&E Intranet Reports/Rehabilitated Ch31 Cases. New IL Case Totals have their source in a Discoverer query for current FY inclusive IL applications.

\*Note that year end rehabilitation counts may vary slightly from roll-up information provided by state. This variance occurs due to date differences of data pulls. Variances are not significant.