

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

**JEREMY BEAUDETTE AND  
MAYA BEAUDETTE,**  
individually and on behalf of others  
similarly situated,

**Petitioners,**

v.

**DAT P. TRAN,**  
in his capacity as  
Acting Secretary of Veterans Affairs,

**Respondent.**

Vet. App. No. 20-4961

**PETITIONERS' NOTICE OF SUPPLEMENTAL AUTHORITY**

On February 3, 2021, the Supreme Court issued its decision in *Salinas v. U.S. Railroad Retirement Board*, No. 19-199, 2021 U.S. LEXIS 753, 2021 WL 357253, 592 U.S. \_\_\_\_ (U.S. Feb. 3, 2021),<sup>1</sup> which held that judicial review is available for the Railroad Retirement Board's refusal to reopen a prior benefits determination under the Railroad Retirement Act. In determining that judicial review is available, the Court applied the "strong presumption favoring judicial review of administrative action," and confirmed the "heavy burden" required to rebut it. 2021 WL 357253, \*6.

The Court also rejected the Railroad Retirement Board's argument that its interpretation that would prohibit judicial review should be entitled to deference. In

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<sup>1</sup> In addition to the Lexis and Westlaw databases cited herein, the decision is also available on the Court's website: [https://www.supremecourt.gov/opinions/20pdf/19-199\\_o7jq.pdf](https://www.supremecourt.gov/opinions/20pdf/19-199_o7jq.pdf).

rejecting the argument, the Court stated, “No such deference is due here because the scope of judicial review is ‘hardly the kind of question that the Court presumes that Congress implicitly delegated to an agency.’” 2021 WL 357253, at \*8 (quoting *Smith v. Berryhill*, 587 U. S. \_\_\_, \_\_\_, 139 S.Ct. 1765, 1774 (2019)).

This new authority is relevant to (1) the general application of the longstanding presumption favoring judicial review as it applies to this case, *see* Pet. at 18, n.29 (filed July 15, 2020); Reply in Support of Pet. at 2–5 (filed Dec. 7, 2020), and (2) this Court’s line of questioning at oral argument as to whether it should accord agency deference to the Secretary’s interpretation relating to the scope of review rights under the Caregiver Program, *see* <https://www.uscourts.cavc.gov/documents/Beaudette.MP3> at 59:15–1:04:00 (Jan. 21, 2021).

Date: Feb. 9, 2021

Respectfully submitted,

/s/ Andy LeGolván  
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