IN THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

KENNETH M. CARPENTER,	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. 19-1136
	)	
DENIS McDONOUGH,	)	
in his capacity as	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

MOTION FOR FULL COURT REVIEW

On July 9, 2021, a three-judge panel of this Court issued a decision on reconsideration that, as relevant, affirmed an October 31, 2018, Board of Veterans' Appeals ("Board") decision that upheld a categorical bar against VA-accredited representatives' unaccredited paralegals receiving remote, read-only access to consenting clients' electronic files ("eFolders") in the Veterans Benefits Management System ("VBMS"). *Carpenter v. McDonough*, __ Vet. App. ___, 2021 WL 2885977. The Appellant, Kenneth M. Carpenter ("Mr. Carpenter") now respectfully moves pursuant to U.S. Vet. App. R. 35(a)(1) for full Court review.

The three-judge panel held that *Green v. McDonald*, 28 Vet. App. 281 (2016) (per curiam order), bound it. *See* 2021 WL 2885977, at *5–8. Mr. Carpenter requests full Court review because *Green* is, with the greatest of respect, (1) wrong and (2) distinguishable in ways that, in the light of VA's categorical bar of access at issue here, are exceptionally important. Although Mr. Carpenter cautiously reserves all rights of appeal to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit"), he respectfully submits that this Court's familiarity with VBMS, the regulations and policies that govern VBMS access, and the practical importance of

remote VBMS access to representing claimants before the agency, make this Court the better-situated tribunal for addressing these matters. He asks that the Court overturn or distinguish *Green*, vacate the Board's decision, and remand the case for the Board to readjudicate.

SUMMARY OF FACTS

VBMS is an electronic database that contains, among other items, an electronic copy of all materials in a Department of Veterans Affairs ("VA") claims file. *See* 77 Fed. Reg. 42,594, at 42,599–600 (July 19, 2012); *Green*, 28 Vet. App. at 282 n.1. The Secretary has chosen to elevate VBMS eFolders to be the official copy of the administrative record. *See Robinson v. McDonald*, 28 Vet. App. 178, 187 (2016) (per curiam); VA Annual Budget Submission, FY2020, Vol. I, at LegSum-15. The Secretary also has chosen to maintain eFolders' only copy on the same computer system that houses VA's internal informational technology system. *See Green*, 28 Vet. App. at 286. Because that is where the Secretary has chosen to maintain eFolders, and also out of concern about claimant privacy, the Secretary generally restricts access to the administrative record to only those individuals who have completed the lengthy, arduous, and—for many—otherwise unnecessary process to secure VA accreditation to prepare, present, and prosecute claims before VA. *See id.* at 282 n.1; R. at 51 (51–56).

However, 38 C.F.R. § 14.629 (Note) provides that a "legal intern, law student, paralegal, or veterans service organization support-staff person, working under the supervision of an individual designated … as the claimant's representative, attorney, or agent, may qualify for read-only access to pertinent Veterans Benefits Administration ["VBA"] automated claims records as described in [38 C.F.R.] §§ 1.600 through 1.603." In June 2016, Mr. Carpenter requested remote VBMS access for his unaccredited paralegals and other support staff. *See*

2021 WL 2885977, at *2. In October 2016, this Court issued its decision in *Green*. *See* 28 Vet. App. at 281. In December 2016, VA denied Mr. Carpenter's request and, in a December 2017 Statement of the Case explaining the denial, articulated a categorical bar against remote VBMS access for a VA-accredited representative's unaccredited supervisees. *See* R. at 357–60; R. at 363–64 (361–67).

The Board affirmed. *See* R. at 4 (1–13). It reasoned in pertinent part that, in *Green*, this Court had held that VBMS eFolders do not constitute VBA automated claims records within the meaning of §§ 1.600–.603. *See id.* at 4. Accordingly, the Board held, § 14.629 (Note) does not create a regulatory right to unaccredited-supervisee remote VBMS access. *See id.*

On appeal to this Court, Mr. Carpenter argues that § 14.629 (Note) acknowledges the right that an unaccredited supervisee "may qualify" for remote VBMS access. He argues that *Green* was void *ab initio*, that its analysis of §§ 1.600–.603 is unpersuasive *dictum*, or that any initial binding effect of *Green* has self-abrogated. *See* Initial Br. at 16–20; Reply Br. at 5–6. Mr. Carpenter also has addressed why *Green* is wrong. *See* Initial Br. at 15. On the correct understanding of §§ 1.600–.603 and § 14.629 (Note), he argues, VA's categorical bar against a VA-accredited representative's unaccredited supervisees receiving remote VBMS access is unlawful because it essentially replaces § 14.629 (Note) plain guarantee that such supervisees "may qualify" for such access with, instead, "may *not* qualify." *See* Init. Br. at 13–15; Reply Br. at 2–3. The Secretary must adhere to § 14.629 (Note)'s promise of "may qualify."

This Court's three-judge panel held that *Green* was not void *ab initio*, that its analysis of §§ 1.600–.603 is not *dictum*, and that *Green*'s binding effect has not self-abrogated. *See* 2021 WL 2885977, at *5–8. The three-judge panel held this to be dispositive as to Mr. Carpenter's

§ 14.629 (Note) arguments because *Green*, as a prior precedential panel decision, bound the panel to hold that VBMS eFolders are not VBA automated claims records. *See id.* at *8; *Bethea v. Derwinski*, 2 Vet. App. 252, 254, (1992). In turn, it held, § 14.629 (Note) does not create a right to unaccredited-supervisee remote VBMS access. *See* 2021 WL 2885977, at *8.[1]

ARGUMENT

For the reasons that follow, *Green* is, with the greatest of respect, wrong. *See infra* Part I. In the alternative, it is distinguishable. *See infra* Part II. Enforcing 38 C.F.R. § 14.629 (Note)'s prohibition of a categorical bar against accredited representatives' unaccredited supervisees from receiving remote VBMS access is exceptionally important. *See infra* Part III.

I. VETERANS BENEFITS MANAGEMENT SYSTEM EFOLDERS ARE, CONTRARY TO *GREEN*, VBA AUTOMATED CLAIMS RECORDS WITHIN THE MEANING OF 38 C.F.R. §§ 1.600–.603.

On the correct understanding, VBMS eFolders constitute "pertinent Veterans Benefits Administration automated claims records" for which the Secretary by regulation has promised that persons working under the supervision of a claimant's designated representative "may qualify" for read-only access. 38 C.F.R. § 14.629 (Note); *see Recognition of Organizations and Accreditation of Representatives, Attorneys, and Agents*, 68 Fed. Reg. 8,541, 8,543 (Feb. 24, 2003) ("[W]e are adding a note at the end of § 14.629 to clarify that persons working under the

[1] The panel also rejected statutory and constitutional arguments that Mr. Carpenter had raised. *See* 2021 WL 2885977, at *9–12. Mr. Carpenter reserves all rights of appeal with respect to this case's statutory and constitutional issues. He does not, however, seek full Court review as to them, other than to note that granting the relief that he seeks as to the above regulatory issue would suffice for this Court to vacate the Board's denial *in toto* and to remand for Board readjudication of (1) that issue and (2) any other issue that remains necessary to resolve this legacy appeal, with Mr. Carpenter free to submit additional evidence and argument to the Board on remand. *See Kutscherousky v. West*, 12 Vet. App. 369, 372 (1999) (per curiam order).

supervision of a claimant's designated representative may qualify for read-only access to the claimant's Veterans Benefits Administration automated claims records.").

The access that § 14.629 (Note) addresses is to VBA automated claims records "as described in §§ 1.600 through 1.603." Sections 1.600 through 1.603 do not define the term "automated claims records." *See* 38 C.F.R. §§ 1.600–.603; *Green*, 28 Vet. App. at 290 ("Standing alone §§ 1.600-.603 do not define 'automated VBA claims records' or 'automated claimants' claims records.'"). However, the context and structure of §§ 1.600–.603 make plain that VBA automated claims records include VBMS eFolders.

The structure of § 1.600 is as follows. Paragraph (a) describes §§ 1.600–.603's purpose: to "establish policy, assign responsibilities and prescribe procedures with respect to" VBA automated claims records access and use. 38 C.F.R. § 1.600(a). One purpose is to address "[w]hen and under what circumstances, VA will grant authorized claimants' representatives read-only access to the automated [VBA] claims records of those claimants whom they represent." *Id.* § 1.600(a)(1). A second purpose is to address "[t]he exercise of authorized access by claimants' representatives." *Id.* § 1.600(a)(2). A third purpose is to address "[t]he bases and procedures for disqualification of a representative for violating any of the requirements for access." *Id.* § 1.600(a)(2).

Other provisions implement those purposes. Section 1.600(b) sets forth when and under what circumstances VA will grant remote, read-only access to VBA automated claims records. *See id.* § 1.600(b). Importantly, though VBA has multiple automated claims records systems, § 1.600(b) does not purport to restrict access among or within any individual system. *See id.*; *see also, e.g.*, Notice of Modified System of Records, 84 Fed. Reg. 4138, at 4149 (Feb. 14,

2019) (identifying multiple VBA automated claims records systems); Notice of Amendment of System of Records, "VA Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA," 77 Fed. Reg. 42,594, at 42,594–95, 42,599–600 (July 19, 2012) (same). It instead speaks to accessing VBA automated claims records systems generally.

Section 1.600(c) sets out system-specific access restrictions. As currently drafted, it limits access within only the Benefits Delivery Network ("BDN"). *See* 38 C.F.R. § 1.600(c)(1)–(2). The BDN is a VBA automated claims records system that predates VBMS. *See Green*, Vet. App. No. 16-740, Sec'y's Suppl. Mem. of Law, at 4 (July 19, 2016). It holds basic, summary claims information such as "name, social security number, gender, date of birth, and military service information"; and "folder location, claims status, establishment date, processing and history." *Id.* Section 1.600(c) limits representatives' and supervisees' access within BDN to certain "inquiry commands" and data, which § 1.600(c)(1) and (2) specify. Aside from those specific access limitations within the BDN, though, current § 1.600(c) does not restrict access to or within VBA automated claims records.

Further demonstrating that the Secretary intentionally limited § 1.600(c) to restricting access within a single "system," the Secretary elsewhere within § 1.600–.603 speaks in terms of "systems." In § 1.603, the Secretary attaches penalties, up to and including "access privileges … to all claimants' records in the VBA automated claims benefits systems," for infractions including accessing or attempting to access "data other than the data specified in these regulations." *Id.* § 1.603(b), (b)(3). The reference here to "VBA automated claims

benefits *systems*," by comparison to § 1.600(c)'s reference to only a single *system*, the BDN, also shows the Secretary's intent to cabin § 1.600(c)'s limitations to just that one *system*.[2]

Interpreting § 1.600(c)'s carve-out to restrict *all* automated claims records access to *only* the specified inquiry commands and data within the one particular system, BDN, that § 1.600(c) identifies would (1) contravene the structure that the Secretary has chosen for § 1.600 and (2) swallow nearly the entire provision of VBA automated claims records access, in whatever form automated claims records developed over time, without any consideration of precisely what § 1.600(c) would be barring. Such a sweeping exclusion, in turn, would undermine the purpose for which the Secretary has provided access to VBA automated claims records in the first place: "assisting the individual claimant whose records are accessed in a claim for benefits administered by VA." 38 C.F.R. § 1.600(b)(3); *accord id.* § 1.602(a)(5).

Section 1.600's paragraph (d) recites that "[s]ections 1.600 through 14.603 are not intended to, and do not" waive sovereign immunity or create any enforceable rights or benefits. Even by its own terms, though, the paragraph does not stretch to section 14.629.[3]

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[2] Indeed, the Secretary has proposed to amend § 1.600(c) to remove its references to specific "IT systems and commands" in favor of describing "affected IT systems more generally." Proposed Rule, *Individuals Accredited by the VA Using VBA Information Technology Systems to Access VBA Records Relevant to a Claim While Representing a Claimant Before the Agency*, 85 Fed. Reg. 9435, 9437. (Feb. 19, 2020). The purpose is to move system-specific restrictions out of regulation and into subregulatory agency policies. *See id.* (describing the amendment's purpose as being "[t]o ensure VA's regulations stay current regardless of future IT developments, and to allow VA flexibility to provide access to only those IT systems which are necessary to providing representation while minimizing risk to IT system integrity and privacy should VA develop new systems in the future"). For now, though, § 1.600(c) continues to set forth restrictions as to only the single BDN system.

[3] This Court appears to have interpreted § 1.600(d)(2)'s reference to §§ 1.600 "through 14.603" to reflect a scrivener's error, characterizing the paragraph to "provide[] that

Section 1.600 thus, quite sensibly, uses the following structure. First, paragraph (a) sets out a broad scope of VBA automated claims records systems access that a veterans' advocate may receive. The breadth provides flexibility, permitting access to VBA automated claims records systems without the need for a new regulation each time that they change or develop. Second, paragraph (b) addresses when this access may be remote. Third, current paragraph (c) delineates specific exceptions regarding access for particular records in particular, known, existing VBA automated claims records systems. Paragraph (d) purports not to create rights but neither extends to § 14.629 (Note) nor informs whether VBMS eFolders are VBA automated claims records.

Within the structure that the Secretary chose for current § 1.600, then, if the Secretary had wanted categorically to restrict VBMS records access for VA-accredited representatives or their unaccredited supervisees, the way to accomplish that would have been to promulgate new regulatory restrictions, following the format of § 1.600(c)'s restrictions regarding BDN, to specify the particular restrictions for VBMS. The Secretary has not done so, which in turn indicates an intentional choice not to. *Cf. Yonek v. Shinseki*, 722 F.3d 1355, 1359 (Fed. Cir. 2013) ("Where [an agency] includes particular language in one section of a regulation but omits it in another …, it is generally presumed that [the agency] acts intentionally and purposely in the disparate inclusion or exclusion." (quoting *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) (alterations in *Yonek*)).

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§§ 1.600-.603" do not create rights. 2021 WL 2885977, at *2. Mr. Carpenter agrees; § 1.600(d)(2) plainly was not intended to sweep the entire span of §§ 1.600 "through 14.603."

In short, nothing in §§ 1.600 through 1.603 suggests that VBMS, or any other system in which VBA maintains electronic records, falls beyond what these access regulations contemplate as "automated VBA claims records" for which access may be granted. VBMS, in turn, is within the scope of "automated VBA claims records" for which 38 C.F.R. § 14.629 (Note) promises that a supervisee may qualify for access. For the reasons that Mr. Carpenter has argued at greater length in this case's briefing, VA's categorical bar against such access contravenes that promise and therefore is unlawful. *See* Initial Br. at 13–15; Reply Br. at 2–5.

Green's error is to conflate § 1.600(c)'s narrow exception with the broad general rule. "By limiting access to categories of data and information enumerated in § 1.600(c)(1)," *Green* states, "the regulation provides some context in which to understand the meaning of 'VBA automated claims records.'" 28 Vet. App. at 290. "Here," *Green* continues, "the categories of accessible data do not include VBMS files or a claimant's electronic claims file. To the contrary, § 1.600(c)(1)(ii) specifies that the BDN will provide the '[c]laims history and processing data *such as folder location*.'" *Id.* "Thus, the Court discern[ed] no merit in Mr. Green's argument that the regulations should be interpreted to authorize access to his VBMS file." *Id.*

This analysis in *Green* errs because it misunderstands that, for the reasons described above, § 1.600(c) provides only BDN-specific exceptions from the general grant of the permissible scope of access. Section 1.600(c)'s silence as to VBMS (and other VBA electronic record systems) reflects the Secretary's intent to provide *broader*, not *narrower*, access rights. VBMS eFolders are automated VBA claims records.

But for the Board's reliance on *Green*'s erroneous analysis, the Board would or at least could have concluded that VBMS eFolders are VBA automated claims records within the

meaning of § 14.629 (Note). In turn, it would or at least could have concluded, VA's categorical bar against an accredited VA representative's unaccredited supervisees from receiving remote VBMS access violates § 14.629 (Note). After all, the categorical bar essentially replaces the regulation's plain language "may qualify" with, essentially, "may *not* qualify." *See* Init. Br. at 13–15; Reply Br. at 2–3. The Secretary must give effect to regulations' plain language. Because the categorical bar contravenes § 14.629 (Note)'s plain language, it is unlawful.

Accordingly, the Board's reliance on *Green*'s erroneous analysis is prejudicial within the meaning of 38 U.S.C. § 7261(b)(2). *See Davis v. McDonough*, 34 Vet. App. 131, 137 (2021) (holding that an error is prejudicial when it disrupted the Board proceedings' essential fairness, which "can be shown by demonstrating that it (1) prevented the claimant from effectively participating in the adjudicative process, or (2) affected or could have affected the outcome of the determination." (quoting *Simmons v. Wilkie*, 30 Vet. App. 267, 279 (2018))); *Simmons*, 30 Vet. App. at 279–85 (providing details and examples).

On the Board's analysis, then, vacatur and remand are warranted. *See SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947) ("[A] reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency. If those grounds are inadequate or improper, the court is powerless to affirm …."); *accord SEC v. Chenery Corp.*, 318 U.S. 80, 93–94 (1943); *Tadlock v. McDonough*, 5 F.4th 1327, 1334–36 (Fed. Cir. 2021); *Ray v. Wilkie*, 31 Vet. App. 58, 74 (2019). Mr. Carpenter requests that the full Court grant that relief.

II. *GREEN* IS DISTINGUISHABLE.

Mr. Carpenter respectfully submits that *Green* did not need to resolve whether VBMS eFolders constitute VBA automated claims records for purposes of 38 C.F.R. §§ 1.600–.603. It instead needed to resolve only Mr. Green's U.S. Vet. App. Rule 10(d) motion. Rule 10(d) permits the Secretary to subject attorneys' inspection and copying of original material in the record before the agency to "reasonable regulation." Mr. Green's Rule 10 motion challenged the reasonableness of VA policies that required an attorney to receive VA accreditation before obtaining remote VBMS access. The policies were not what might be called capital-'R' *Regulations*; they appeared nowhere in the Code of Federal Regulations. *See* 38 C.F.R. §§ 1.601(a)(1)–(2) (describing agency accreditation and court representation as independent bases for remote access). Nor did the outcome that the little-'r' *regulation* at issue in *Green* — that is, the extra-*Regulatory* VA policy to require attorneys before this Court to receive VA accreditation as a precondition to receiving remote, read-only access to the eFolder—was reasonable require this Court to pass upon any provision in §§ 1.600–.603. To the contrary, that the *regulation* was reasonable sufficed to deny Mr. Green's Rule 10 motion.

That is so irrespective of the fact that Mr. Green through his counsel presented this Court with a §§ 1.600–.603 argument. It also is so irrespective of the following five facts. First, Mr. Green's counsel included Mr. Robert V. Chisholm. Second, Mr. Chisholm has represented Mr. Carpenter before the agency in this matter. Third, Mr. Chisholm separately requested unaccredited-supervisee remote VBMS access. Fourth, VA denied Mr. Chisholm's request for nearly identical reasons as Mr. Carpenter's. Fifth, Mr. Carpenter's and Mr. Chisholm's appeals to this Court long were consolidated. None of these facts alters that *Green* did not need to

address whether VBMS eFolders are VBA automated claims records for purposes of §§ 1.600–.603. *Green*'s ruling on that issue therefore is *dictum*. *Green*'s necessary holding, that VA's extra-*Regulatory* policy there before the Court was a "reasonable *regulation*" of access pursuant to Rule 10(d), is distinguishable from the issues that Mr. Carpenter presents here. Accordingly, to the extent that the Court would be inclined to give deference to a prior three-judge panel's decision on the same issue before it, that consideration should not apply. The Court can grant relief to Mr. Carpenter without doing violence to *Green*'s necessary holding.

III. ENFORCING 38 C.F.R. § 14.629 (NOTE)'S PROHIBITION OF A CATEGORICAL BAR AGAINST ACCREDITED REPRESENTATIVES' UNACCREDITED SUPERVISEES FROM RECEIVING REMOTE VBMS ACCESS IS EXCEPTIONALLY IMPORTANT.

Whether the Secretary's categorical bar against VA-accredited representatives' unaccredited supervisees from receiving remote VBMS access to consenting clients' eFolders violates § 14.629 (Note)'s promise that such supervisees "may qualify" for such access is exceptionally important. It forces VA-accredited representatives to spend time performing all VBMS-related tasks, including administrative tasks that law, ethics, and clients all contemplate delegating to supervisees.

Swamping VA-accredited representatives with such otherwise delegable tasks undermines their ability to apply their more substantive expertise to assist our country's veterans, dependents, and survivors who retained them competently and diligently before the agency. *See* Initial Br. at 6–8, 20–23; Reply Br. at 10, 11, 12. That has far-reaching consequences. It undermines claimants' ability to find and retain a representative by reducing how many clients any single representative can accept. The reduction in capacity also makes it more difficult for existing representatives—including Mr. Carpenter—to keep the lights on,

and increases significantly the barrier to entry in representing VA claimants at all. *See* Initial Br. at 1, 7–8, 22–23; Reply Br. at 1–2; Appellants' Resp. to Court Order of July 16, 2020, at 1–2, 4–6 (filed July 30, 2020). For claimants who are fortunate enough to secure a representative, the Secretary's unilateral prohibition of delegating these time-consuming but administrative tasks causes delay—bad both of itself and because it increases the risk of missing VA claims deadlines. *See* Initial Br. at 7, 22–23; Reply Br. at 12.

These are major concerns. As noted, they undermine accredited representatives' ability to help claimants in VA proceedings competently and diligently. They undermine claimants' ability to exercise their rights to competent representation in VA proceedings, by (1) reducing current representatives' capacity to offer representations, (2) increasing the barrier to entry for potential new representatives, and (3) adding to the kinds of delay and costs that ultimately force many representatives to exit this vocation.

Meanwhile, the categorical nature of VA's bar to access means that it affects thousands upon thousands of stakeholders. The harms reach beyond private representatives and the claimants who retain them—also affecting, for example, law school clinics. *See* Br. of Amicus Curiae NLSVCC, at 7–10 (filed Dec. 9, 2019) (regarding merits); Br. of Amicus Curiae NLSVCC, at 3 (filed Aug. 19, 2020) (opposing stay).

For all that, as seven members of last Congress's Senate Committee on Veterans' Affairs identified, the Secretary's articulated concerns regarding proposed, related VBMS access restrictions do not hold water. *See* Apr. 17, 2020, *Solze* Notice [Regarding SCVA Letter], Att. at 1 ("Limiting access in the name of efficiency or privacy is unnecessary in a veteran-friendly system, especially when it is the veteran who grants access to their case file to these

specific individuals for assistance."); *see also* Cmts. of Am. Bar Ass'n to Proposed Rule, at 2–3 (Apr. 20, 2020) (arguing that such prohibition is "unnecessary given the many other legal and ethical protections that exist to protect a client's private information … and would harm veterans" and that, "if an attorney must spend her time on administrative tasks such as these, her time spent performing the actual practice of law is thereby limited. This results in less available legal services for veterans … ."); Cmts. of NLSVCC to Proposed Rule, at 2 (Apr. 20, 2020) (noting pre-1988 history of administrative record access, including that "it was the VA who stood up for … nonlawyers by correctly countering [against a complaint of 'inadequate controls' on nonlawyer assistance] that such staff members are an administrative extension of the attorney"); Cmts. of Paralyzed Veterans of Am. to Proposed Rule, at 2 (Apr. 20, 2020) ("Simply put, representatives cannot do their jobs without access to their clients' records. If representatives cannot access information that VA controls to serve their clients, VA has failed veterans and only hurts itself …"; yet, "[i]nstead of ensuring all representatives have the tools to provide veterans the best advice and meet their professional obligations, VA seems to be asserting that its own IT limitations somehow trump a veteran's statutory right to a representative or that representative's obligations to their client.").

CONCLUSION

Many of our country's military veterans and their survivors and dependents desire competent, diligent representation from a VA-accredited representative who practices as part of a team. They consent to, and indeed expect, the representative to delegate to supervised team members such ministerial tasks as checking the administrative record for updates.

The Secretary, meanwhile, has chosen to enshrine VBMS eFolders as the official—and, soon, possibly the *only*—VA copy of the administrative record. In upholding the Secretary's unlawful, harmful categorical bar of a VA-accredited representative's supervisees remote access to consenting clients' VBMS eFolders, the Board committed numerous errors.

Green does, of course, loom large over this appeal. With the greatest of respect, *Green* is wrong. With the Secretary relying on *Green* to justify the categorical bar of supervisee remote VBMS access, and this Court's three-judge panel holding that *Green* bound it, *Green*'s error is causing significant harm to many of our country's veterans and their representatives. Mr. Carpenter respectfully requests that the full Court grant review and overturn *Green* or to distinguish it, limiting *Green* to the narrow decision necessary to resolve the dispute there before the Court. Mr. Carpenter requests that the Court: (1) hold, notwithstanding *Green*, that VBMS eFolders are VBA automated claims records within the meaning of 38 C.F.R. §§ 1.600–.603; (2) hold that VA's categorical bar against remote VBMS access for VA-accredited representatives' unaccredited supervisees violates 38 C.F.R. § 14.629 (Note)'s plain guarantee that such supervisees "may qualify" for that access; (3) vacate the Board's denial of Mr. Carpenter's request for unaccredited-supervisee access; and (4) remand for the Board to readjudicate this case consistent with the full Court's decision.

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Respectfully submitted,

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