

2001 statutes) exclusively to the Federal Circuit¹¹ (and returning to a single level of judicial review, as originally intended) should further the purposes of the program, reduce litigation costs for claimants and the taxpayers, and serve the interests of justice.

ENDNOTES

1. *Russell*, 637 F.2d 1261 (1980); *Holstine*, No. 80-7477 (Aug. 4, 1982), 688 F.2d 846 (table).

2. *Rose v. Arkansas State Police*, 479 U.S. 1, 4 (1986) (quoting legislative history).

3. E.g., *Dawson*, 75 Fed. Cl. 53 (2007); *LaBare*, 72 Fed. Cl. 111 (2006); *Cook*, No. 05-1050C (Jun. 15, 2006); *Porter*, 64 Fed. Cl. 143 (2005); *One Feather*, 61 Fed. Cl. 619 (2004); *Davison*, No. 99-361C, (Apr. 19, 2002); *Brister*, No. 01-180C (Mar. 27, 2002); *Yanco*, 45 Fed. Cl. 782 (2000); *Ramos-Vélez*, No. 93-588C (Jan. 31, 1995); *Chacon*, 32 Fed. Cl. 684 (1995); *Nease*, No. 91-1518C (Mar. 29, 1993); see also *Cartwright*, 16 Cl. Ct. 238 (1989); *Durco*, 14 Cl. Ct. 423 (1988); *Wydra*, No. 764-83C (Jan. 31, 1986); *Tafoya*, 8 Cl. Ct. 256 (1985); *North*, 555 F.Supp. 832 (1982). When appealed, these decisions invariably have been affirmed.

4. E.g., *Winuk*, 77 Fed. Cl. 207 (2007) (holding that the Department was required to accept, as legally sufficient certifications, instruments and language that would have been insufficient even for an ordinary certificate of service in court); *White*, 74 Fed. Cl. 769 (2006), appeal filed, No. 2007-5126; *Hillensbeck*, 74 Fed. Cl. 477 (2006) (holding that the position of the Department (which was actually correct, see, e.g., *Nease*, *supra*, slip op. at 5 n.4; 132 Cong. Rec. 27,928-929 (1986) (colloquy between Sens. Sasser and Thurmond)) was “substantially unjustified”); *Bice*, 72 Fed. Cl. 432 (2006); *Groff*, 72 Fed. Cl. 68 (2006); *Messick*, 70 Fed. Cl. 319 (2006); *Hillensbeck*, 69 Fed. Cl. 369 (2006) (this holding immediately occasioned the enactment of corrective legislation, Pub. L. 109-162, §1164(a)(2)); *Cassella*, 68 Fed. Cl. 189 (2005); *Hawkins*, 68 Fed. Cl. 74 (2005) (this holding immediately occasioned the enactment of corrective legislation, see Pub. L. 109-162, §1164(a)(4)); *Hillensbeck*, 68 Fed. Cl. 62 (2005); *Bice*, 61 Fed. Cl. 420 (2004); *Davis*, 50 Fed. Cl. 192 (2001); *Demutiis*, 48 Fed. Cl. 81 (2000); *Davis*, 46 Fed. Cl. 421 (2000); *Greeley*, 30 Fed. Cl. 721 (1994); see also *Canfield*, No. 339-79C (July 27, 1982).

5. E.g., *Winuk*, 77 Fed. Cl. at 225 (directing the agency to pay only one of two living parents the full benefit amount, despite the statutory command that the amount be divided between living parents “in equal shares”), and at 224 (holding certain instruments to be legally sufficient certifications, even though they did not contain elements expressly required by the statute—e.g., “identification of all eligible payees of benefits,” and acknowledgment that the decedent actually was “employed by [the certifying] agency” itself), and at 220-21 (holding that “under the statute the [agency] is directed to expedite payment without further inquiry upon the requisite certification,” even though the statute distinguishes between “eligible payees of benefits” (i.e., individuals—potentially eligible for payment of benefits under the statute—for whom the certifications are made by the public safety agencies), on the one hand, and “qualified beneficiaries” (i.e., individuals whose claims the Department of Justice determines to qualify for benefits under the statute and implementing regulations, upon considering those certifications as *prima facie* evidence), on the other), and at 218-225 (holding that a certification under the 2001 statutes could go to status (i.e., that they authorize certification that an individual was an officer at the time of injury), even though, under those statutes, such certifications may go only to line-of-duty (i.e., properly speaking, they

authorize certification only that an individual, acknowledged otherwise to have the requisite status, “was killed or suffered a catastrophic injury” under the required circumstances); *Hillensbeck*, 69 Fed. Cl. 381-82 and 68 Fed. Cl. at 73-74 (holding, despite an express statutory reference to “public employee member of a rescue squad or ambulance crew,” that the agency committed legal error in understanding the statute to require members of rescue squads or ambulance crews to be public employees).

(6) E.g., *Winuk*, 77 Fed. Cl. at 222 (holding the agency to have committed legal error, “in the absence . . . of a regulatory definition of service to a public agency in an official capacity”); but see 28 C.F.R. §32.3 (containing a highly relevant definition of “Official capacity”), and at 220-21 (holding that “under the statute the [agency] is directed to expedite payment without further inquiry upon the requisite certification”); but see 28 C.F.R. §32.3 (definitions of “Eligible payee” ¶(1), “Employed by a public agency” ¶(1), & “Qualified beneficiary” ¶(1)(i), 32.6(b)(2)(ii), 32.53(b)(2)); *Bice*, 61 Fed. Cl. at 434 (finding the agency to have committed prejudicial legal error when it declined to consider action by a private non-profit memorial foundation chartered under State law to be “evidence [or a] finding[] of fact presented by [a] State, local, [or] Federal administrative [or] investigating agenc[y]” under since-repealed 28 C.F.R. §32.5).

(7) E.g., (a) *Winuk*, 77 Fed. Cl. at 221-22, 225 (giving dispositive effect to post-hoc State government action purporting to alter the actual facts at issue; but see *Chacon*, 48 F.3d 508, 513 (1995) (post-hoc State government actions “do not erase the fact[s]”); cf. also *Groff*, 493 F.3d 1343, 1355 (2007) (“post-mortem statements” of government agencies do not “transform [private parties] into government employees”), and at 218-21 (declaring it erroneous for the agency not to have understood “should” to mean “must”; but see *Maggitt*, 202 F.3d 1370, 1378 (2000) (“should” in benefits law not understood to mean “must”), and at 224 (holding the decedent’s lack of any legal authority or legal duty to engage in public safety activity to be irrelevant to whether he was a public safety officer (as opposed to being a good Samaritan); but see *Amber-Messick*, 483 F.3d 1316, 1323-25 (2007) (public safety officer status turns on actual legal authority to engage in requisite public safety activity); *Cassella*, 469 F.3d 1376, 1386 (2006) (public safety officer status turns on whether one is “appointed for and given the authorization or obligation to perform [requisite public safety] duties”); *Hawkins*, 469 F.3d 993 (2006) (the decedent’s “actual responsibilities or obligations as appointed, rather than some theoretical authorizations, are controlling” for determining public safety officer status); *Howard*, 231 Ct. Cl. 507, 510 (1981) (“eligibility under the Act turns on whether the specific activity causing death was an inherent part of employment as an officer and whether it was required” of the decedent); *Budd*, 225 Ct. Cl. 725, 726-27 & n.6 (1980) (the activity causing “the death must be ‘authorized, required, or normally associated with’ an officer’s . . . duties”));

(b) *White*, 74 Fed. Cl. at 776-79 (terming “ridiculous” the agency’s position that the inchoate right to the gratuity expired upon the death of the statutory beneficiary prior to actually receiving it); but see *Simple*, 24 Ct. Cl. 422 (1889) (the inchoate right to a legal gratuity expires upon the death of a statutory beneficiary prior to actually receiving it); cf. also 16 Att’y Gen. 408 (1879);

(c) *Hillensbeck*, 74 Fed. Cl. at 481 (directly contrary to the precise rationale that informs the Federal Circuit’s reversal of the same judge, a few days earlier, in a substantially-similar case, *Hawkins*, 469 F.3d 993, 1002

(2006)), and at 482-84 (adjusting and awarding attorney fees in a manner directly contrary to the holding in *Levernier Constr.*, 947 F.2d 497, 503-04 (1997)); and

(d) *Davis*, 50 Fed. Cl. at 211 and 46 Fed. Cl. at 424-25 (declaring controlling language in *Budd*, 225 Ct. Cl. at 727 n.6, to be mere “dicta” and “non-precedential,” and either “erroneous[]” or “mistaken[]”); but see *Howard*, 229 Ct. Cl. at 510 (holding that same *Budd* language to be legally “dispositive”).

(8) E.g., *Winuk*, 77 Fed. Cl. at 225 (declaring the 2001 statutes to be “remedial laws”); *White*, 74 Fed. Cl. 773 (declaring P.L. 94-430 to be a “remedial statute”); *LaBare*, 72 Fed. Cl. at 124 (a correct ruling, overall, but unfortunately describing P.L. 94-430 as “remedial legislation”); *Bice*, 72 Fed. Cl. at 450 (declaring P.L. 94-430 to be a “remedial statute”); *Groff*, 72 Fed. Cl. at 79 (declaring P.L. 94-430 to be “remedial in nature”); *Bice*, 61 Fed. Cl. at 435 (declaring P.L. 94-430 to be a “remedial statute”); *Davis*, 50 Fed. Cl. at 208 (describing P.L. 94-430 in remedial terms); *Demutiis*, 48 Fed. Cl. at 86 (declaring P.L. 94-430 to be “remedial in nature”); but see *Rose*, 479 U.S. at 4 (holding the program benefit to be a legal “gratuity” (cf. *Lynch*, 292 U.S. 571, 577 (1934); 36 Att’y Gen. 227, 230 (1930))). No opinion of the Federal Circuit/Court of Claims describes the program as “remedial.”

(9) *Groff*, 493 F.3d 1343 (2007) (two cases); *Amber-Messick*, 483 F.3d 1316 (2007); *Cassella*, 469 F.3d 1376 (2006); *Hawkins*, 469 F.3d 993 (2006); *Demutiis*, 291 F.3d 1373 (2002); *Yanco*, 258 F.3d 1356 (2001); *Greeley*, 50 F.3d 1009 (1995); *Chacon*, 48 F.3d 508 (1995); *Canfield*, No. 339-79 (Dec. 29, 1982); *Russell*, 231 Ct. Cl. 1022 (1982); *Melville*, 231 Ct. Cl. 776 (1982); *Howard*, 231 Ct. Cl. 507 (1981); *Smykowski*, 647 F.2d 1103 (1981); *Morrow*, 647 F.2d 1099 (1981); *Budd*, 225 Ct. Cl. 725 (1980); *Harold*, 634 F.2d 547 (1980). No opinion was issued in *Bice*, 227 Fed. App’x 927 (2007); *Porter*, 176 Fed. App’x 111 (2006); or *One Feather*, 132 Fed. App’x 840 (2005).

(10) Without opinion, in *Bice*, the Federal Circuit affirmed the Federal Claims Court judgment, which was based entirely on a misapplication of this same now-repealed regulation.

(11) In providing that the “appeals from final decisions of the Bureau” that it refers to specifically include those “under any statute authorizing payment of benefits described under subpart 1” of Pub. L. 90-351, title I, part L (i.e., the 2001 statutes), the legislation (among other things) is framed to counter the holding in *Winuk*, 77 Fed. Cl. at 220-21, that “under the statute the [agency] is directed to expedite payment without further inquiry upon the requisite certification,” as a result of which holding the Department was ordered by the court to accept as “certified” purported “facts” that were known not to be true, and, further, to accept such “certification” not as mere *prima facie* evidence (rebuttable by other evidence) of those purported “facts,” but as dispositive and binding on the Department, thus purporting to deny it its legal authority to render meaningful, substantive “final decisions” under those statutes.

HONORING BRADLEY NEW

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 2008

Mr. GRAVES. Madam Speaker, I proudly pause to recognize Bradley New of Gladstone, Missouri. Bradley is a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active

part in the Boy Scouts of America, Troop 1354, and earning the most prestigious award of Eagle Scout.

Bradley has been very active with his troop, participating in many scout activities. Over the many years Bradley has been involved with scouting, he has not only earned numerous merit badges, but also the respect of his family, peers, and community.

Madam Speaker, I proudly ask you to join me in commending Bradley New for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

IN HONOR OF REPRESENTATIVE
MICHAEL McNULTY

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 2008

Mr. RANGEL. Madam Speaker, I rise today to recognize and celebrate the illustrious congressional career of a friend—a fellow New Yorker, Democrat, and member of Ways and Means—Representative MICHAEL McNULTY, who for nearly 40 years has served his constituents in the Empire State superbly well. That four-decade-long résumé boasts posts as mayor of Green Island, New York, as a State assemblyman, and since 1988, a widely respected and beloved U.S. Congressman. He leaves us at the end of this year the same as he was when he first entered these Halls—unblemished in record and integrity, full of vigor and focus, impassioned about and preeminently concerned with the uplift of those he served.

As chairman of the Social Security Subcommittee, he maintained his unrelenting commitment to the program and the senior citizens whose livelihoods depend on it. Having worked with MIKE closely on the committee, I can vouch for his incredible work ethic and delicate parsing of the issues. The vivacity he brought to the job interwoven with his serious, reflective intellect has served the committee well—has served the country well. He is a fervent champion of working families, a man of impeccable credentials and record on those matters of import to the middle class.

On this day, his birthday, it is with honor that I join the chorus of colleagues, friends, and family who today laud his very many accomplishments. It is with cheer and celebration in our hearts that we wish MIKE well in retirement. His presence will still be felt in the next Congress: in the hearts of those he touched, on those issues he left an indelible mark, on the legacy he leaves behind for us all to emulate.

CITIZENSHIP DAY

HON. MICHAEL M. HONDA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 2008

Mr. HONDA. Madam Speaker, as chair of the Congressional Asian Pacific American Caucus, I rise to celebrate Citizenship Day.

Today, we celebrate our allegiance to the United States of America, a country that hon-

ors freedom, opportunity, and justice for all; whose promise of opportunity has inspired people—from around the world—throughout our history, to leave their homelands to take part in the American dream.

Citizenship Day gives us the opportunity to reflect upon our country and its dream.

From our founding and at our very core, America has always been a nation of immigrants, documented and undocumented, who have made great contributions to our Nation. They built our transcontinental railroad that injected new life and industry into the American West, and their entrepreneurship and labor spurred the economy in our early American cities.

By now, we should know that “immigrant” is not a dirty word. In 2006, the Boston Globe reported that immigrants started one in four venture-backed companies since 1990, and two in five in high technology. Foreign-born entrepreneurs have certainly made their mark in my district in Silicon Valley, helping to found companies including Intel, Ebay, Yahoo and Google.

Their contributions are also felt in the small business sector, as immigrants are one of the fastest-growing segments of small business owners in the U.S. Immigrant women are starting businesses at a rate 57 percent higher than native-born women. And immigrant men start businesses at a rate 71 percent higher than native-born men.

Looking toward our future with our aging workforce and our Social Security crisis, we need their contributions now more than ever. And despite this tough economy and in this tough economy, their entrepreneurial spirit is helping to keep our American dream alive.

After all, generation after generation of immigrants have taken oath to become American citizens with love of country and commitment to America's promise. The faster we embrace each generation, the faster they become integrated as new Americans, and the stronger we are as a truly united country.

That is why I introduced The Strengthening Communities through Education & Integration Act. The Act would invest in adult education programs for English-language learners, including civics programs that teach newcomers about the rights and responsibilities of citizenship. As a former principal and school teacher, I know the importance of investing in our youth. This bill would ensure that our Nation's children and schools have adequate funding and resources for vital literacy programs for English-language learners. It would assist schools with teacher recruitment for English-language learners. It would provide tax incentives for employers to offer training and ESL programs to their employees, and would support State and local initiatives in English-language and civics education.

My legislation is supported by a broad coalition of business groups, labor unions, literacy and education coalitions, immigrant advocacy organizations, Asian American and Hispanic advocates, and faith-based organizations, all who realize the importance of integrating new American communities.

In the spirit of Citizenship Day, I invite you to join me as a cosponsor of H.R. 6617.

HONORING JOSEPH RICHEY

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 2008

Mr. GRAVES. Madam Speaker, I proudly pause to recognize Joseph Richey of Parkville, Missouri. Joseph is a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 1314, and earning the most prestigious award of Eagle Scout.

Joseph has been very active with his troop, participating in many scout activities. Over the many years Joseph has been involved with scouting, he has not only earned numerous merit badges, but also the respect of his family, peers, and community.

Madam Speaker, I proudly ask you to join me in commending Joseph Richey for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

TRIBUTE TO BARRY GOTTEHRER,
JOURNALIST, AUTHOR, NEW
YORK CITY POLITICAL CRU-
SADER, AND FRIEND

HON. TERRY EVERETT

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 2008

Mr. EVERETT. Madam Speaker, during my four decades in journalism and politics, I've been blessed with many friends, but few have impacted me personally as much as Bronx-born journalist turned political crusader, Barry Gottehrer, who passed away in April at the age of 73.

Barry Gottehrer was what all good journalists aspire to be but few are fortunate enough to attain—a real force for change. During the racial turmoil of the mid 1960's, Barry Gottehrer combined a young reporter's burning ambition with a mission to force America's largest city to confront its darkest problems. He soon directly challenged the world he reported on, employing his skills as a gifted negotiator to unite a politically fractured city.

While at The New York Herald Tribune, Barry Gottehrer penned a powerful series of stories starkly but accurately profiling New York as a “City in Crisis.” According to The New York Times, his work was credited with bringing New York mayor John Lindsay to office. But that was just the beginning. Barry Gottehrer joined the Lindsay administration and reached out to dialogue with the unsavory from New York's criminal underworld to its street gangs.

Gottehrer's efforts to keep New York's disparate and sometimes warring factions from turning the city into chaos are chronicled in his 1975 book, “The Mayor's Man.” He summed up his work this way: “. . . during those feverish days of the 1960s and early 1970s when hundreds of our cities went up in flames, when rebellion and disorder swept through our streets, our public schools, our college campuses . . . when the very fabric of our country seemed ready to shred, I was the Mayor's Man at the brink of this revolution—a white in