

Wiley Files Supreme Court Briefs in Support of Petitions for Certiorari in *Feliciano v. Department of Transportation* and *Flynn v. Department of State*

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Washington, DC – On behalf of the Reserve Organization of America (ROA), Wiley Rein LLP filed briefs of amicus curiae in support of petitions for writs of certiorari in *Feliciano v. Department of Transportation* and *Flynn v. Department of State*, asking the U.S. Supreme Court to overturn the U.S. Court of Appeals for the Federal Circuit’s decision to deny the petitioners their reservist differential pay. The Federal Circuit’s decision to refuse differential pay to the petitioners, reservists who were mobilized to active duty, disincentivizes reservists from volunteering for important active duty missions, deters potential servicemembers from pursuing military service, and ultimately impacts the readiness and effectiveness of the U.S. Armed Forces, ROA argued.

Nick Feliciano, who works as an air traffic controller for the Federal Aviation Administration, was mobilized from July 2012 through September 2014. Similarly, Charles Flynn, who worked as a Special Agent in the Bureau of Diplomatic Security, mobilized to the Office of Military Commissions from March 2020 to 2022. Both were denied reservist differential pay on the basis that they volunteered for their active duty missions.

ROA argues that the Court should grant the petitions for review to “remedy the Federal Circuit’s interpretive error and to ensure that it does not continue to injure Reservists and hinder military readiness.” Specifically, ROA’s briefs argue that the Federal Circuit erred in its reading of Congress’ differential pay statute, ignoring the text of the

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statute to instead rely on policy preferences, such as whether a reservist's service is voluntary or involuntary.

As Wiley explained, "perhaps most egregious is the Federal Circuit's distinction between voluntary and involuntary mobilizations." There is little reason to believe that Congress meant to draw a distinction between voluntary and involuntary deployments, considering that the United States "ended involuntary military service 50 years ago[.]" "[T]he Federal Circuit's reading of the differential-pay statute will actively thwart Congress's intent."

The ROA is represented on a pro bono basis by Scott A. Felder, Boyd Garriott, Kahlil H. Epps, Wesley E. Weeks, and Lukman Azeez.