

17-1679 GRAY V. WILKIE

DECISION BELOW: 875 F.3d 1102

LOWER COURT CASE NUMBER: 2016-1782

QUESTION PRESENTED:

Under 38 U.S.C. § 502, the Federal Circuit has jurisdiction to adjudicate preenforcement challenges to substantive rules, interpretive rules, and statements of general policy issued by the Department of Veterans Affairs (VA). 38 U.S.C. § 502 (cross-referencing 5 U.S.C. §§ 552(a) (1), 553). In this case, a divided panel of the Federal Circuit held that VA interpretive rules are nonetheless *not* reviewable under Section 502 if VA chooses to promulgate those rules by publishing them in the agency's adjudication manual. App. 8a-12a. Three judges dissented from the denial of rehearing en banc, emphasizing the "exceptional importance" of the issue, the panel's erroneous interpretation of Section 502, and the decision's "widespread impact on the efficient adjudication of veterans' claims." App. 37a.

The question presented is whether the Federal Circuit has jurisdiction under 38 U.S.C. § 502 to review an interpretive rule reflecting VA's definitive interpretation of its own regulation, even if VA chooses to promulgate that rule through its adjudication manual.

CERT. GRANTED 11/2/2018