No. 21-972

In the Supreme Court of the United States

THOMAS H. BUFFINGTON, PETITIONER

v.

DENIS R. MCDONOUGH,
SECRETARY OF VETERANS AFFAIRS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
MARK B. STERN
DANIEL AGUILAR
Attorneys
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

Federal law provides for monetary "compensation" for a veteran who is disabled as the result of an injury suffered or disease contracted "in [the] line of duty," during war or peacetime. 38 U.S.C. 1110, 1131. Since 1957, Congress has provided that a veteran may not receive disability-based compensation "for any period for which such person receives active service pay," 38 U.S.C. 5304(c), and that such compensation of a veteran who returns to active duty and receives "active service pay" is "discontinu[ed]" on "the day before the date such pay began," 38 U.S.C. 5112(b)(3); see Veterans Benefits Act of 1957, Pub. L. No. 85-56, §§ 912(c)(5), 1004(c), 71 Stat. 120, 123. The statute does not specify the effective date of a recommenced disability-based compensation award when a veteran who had returned to active duty is subsequently released from service. Regulations in force since 1962 specify that, if a claim for recommenced compensation is made within one year after a veteran is released from active duty, the effective date for any resulting award will be the day following the veteran's release, and that otherwise the effective date will be one year before the date of the claim for recommencement. 27 Fed. Reg. 11,886, 11,890 (Dec. 1, 1962) (38 C.F.R. 3.654(b)(2)). The questions presented are as follows:

1. Whether the court of appeals correctly held that petitioner—a veteran who received disability-based compensation, who then returned to and subsequently was released from active duty, but who did not file a claim for recommencement of compensation until several years after his release—was entitled to renewed disability-based compensation with an effective date one year before his claim for recommencement.

2. Whether *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), should be overruled.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-30a) is reported at 7 F.4th 1361. The opinion of the Veterans Court (Pet. App. 31a-57a) is reported at 31 Vet. App. 293.

JURISDICTION

The judgment of the court of appeals was entered on August 6, 2021. On October 27, 2021, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including December 6, 2021. On November 30, 2021, the Chief Justice further extended the time to and including January 3, 2022, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress has established a framework for providing disabled veterans with monetary benefits. 38 U.S.C. 1101 *et seq.* The Department of Veterans Affairs (VA) administers the veterans-benefits program. *Henderson* v. *Shinseki*, 562 U.S. 428, 431 (2011); see 38 U.S.C. 301(b). Congress has long vested the Secretary of Veterans Affairs and his predecessor with "authority to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by the [VA] and are consistent with those laws, including," *inter alia*, "regulations with respect to the nature and extent of proof and evidence and the method of taking and furnishing them in order to establish the right to benefits under such laws" and "the forms of application by claimants under such laws." 38 U.S.C. 501(a)(1) and (2); accord Act of Sept. 2, 1958 (1958 Act), Pub. L. No. 85-857, sec. 1, § 210(c), 72 Stat. 1114-1115 (38 U.S.C. 210(c) (1958)); Veterans Benefits Act of 1957 (1957 Act), Pub. L. No. 85-56, § 210(c), 71 Stat. 92.

A veteran generally is entitled to monthly monetary "compensation" if he or she is disabled because of an injury or disease incurred "in [the] line of duty" during military service. 38 U.S.C. 1110, 1131. The amount of that compensation generally depends on the severity and nature of the disability. See 38 U.S.C. 1114, 1134.

Title 38 establishes a general rule that awards of compensation and pension benefits become effective no earlier than the veteran's application for such benefits, 38 U.S.C. 5110(a)(1), but that general rule is subject to exceptions, see 38 U.S.C. 5110. For disability-based compensation in particular, if a veteran's application is received within one year after discharge, the effective date of any resulting compensation award is the day

following the discharge. 38 U.S.C. 5110(b)(1). In certain other, limited circumstances, an award on an original claim for disability-based compensation may be made retroactive—with an effective date up to one year before the date the application was received—provided that the application is determined by the Secretary to be "fully-developed * * * as of the date of the submittal" and was filed in a specified period. 38 U.S.C. 5110(b)(2)(A); see 38 U.S.C. 5110(b)(2)(C); see also 38 U.S.C. 5110(b)(3), (4), and (c) (addressing effective dates of awards of increased compensation; pension benefits for veterans who are "permanently and totally disabled" and prevented from applying for at least 30 days; and veterans disabled by medical treatment or similar care).

Congress also has provided that disability-based compensation and other benefits may be reduced or discontinued for various reasons and has identified the dates on which such "reduction[s]" or "discontinuance[s]" will take effect. 38 U.S.C. 5112(b). Of particular relevance here, since 1957, Congress has prohibited payment of disability-based compensation to a veteran "on account of [his or her] own service * * * for any period for which such person receives active service pay." 38 U.S.C. 5304(c); see 1958 Act, sec. 1, § 3104(c), 72 Stat. 1231; 1957 Act § 1004(c), 71 Stat. 123. For a veteran who receives disability-based compensation and then returns to active duty, "[t]he effective date of * * * [a] discontinuance of compensation * * * by reason of receipt of active service pay * * * shall be the day before the date such pay began." 38 U.S.C. 5112(b)(3); see 1958 Act sec. 1, § 3012(c)(5), 72 Stat. 1227; 1957 Act § 912(c)(5), 71 Stat. 120. But no statutory provision specifies the date on which disability-based compensation payments will resume—or what if any

preconditions to resumption of payments may apply—when a veteran receives disability-based compensation, returns to active service and receives active-service pay, and is then released from active service.

Exercising the rulemaking authority conferred by Congress, the Secretary has addressed that issue in a regulation that has been in force for six decades. A rule promulgated in 1962, and still in force today, provides that compensation "[p]ayments, if otherwise in order, will be resumed effective the day following release from active duty if claim for recommencement of payments is received within 1 year from the date of such release: otherwise payments will be resumed effective 1 year prior to the date of receipt of a new claim." 27 Fed. Reg. 11,886, 11,890 (Dec. 1, 1962) (38 C.F.R. 3.654(b)(2)).

2. From 1992 to 2000, petitioner served on active duty in the U.S. Air Force. Pet. App. 3a, 58a. Following his service in the Air Force, petitioner sought disability-based compensation. *Id.* at 3a. In 2002, the VA found that petitioner "suffered from service-connected tinnitus, rated his disability at ten percent, and awarded him disability compensation." *Ibid.*; see *id.* at 32a, 59a.

In July 2003, petitioner, who continued to serve in the Air National Guard, was recalled to active duty. Pet. App. 58a-59a. In August 2003, petitioner submitted to the VA a form in which he "elected to receive pay and allowances for the performance of active/inactive duty in lieu of his VA benefits." *Id.* at 59a. In October 2003, the VA informed petitioner that it proposed to terminate his VA benefits because his unit had been activated. *Id.* at 33a. Petitioner responded by submitting a form "in which he again elected to waive VA benefits in lieu of military pay." *Ibid.* In December 2003, the VA "informed [petitioner] that it had stopped his benefits the day before

he was recalled to active duty." *Ibid.* The VA's letter further stated: "When you have been released from active duty, please provide our office with a copy of your [Form] DD-214"—*i.e.*, his discharge documents—"so that we may reinstate your benefits." *Ibid.* (brackets and citation omitted). Petitioner served on active duty in the Air National Guard from July 2003 to June 2004, and again from November 2004 to July 2005. *Id.* at 33a, 58a.

3. a. In January 2009, petitioner "requested that VA restart his benefits." Pet. App. 60a. The VA's regional office did so, and it recommenced petitioner's benefits "at the same 10 percent service connected disability rating" that he had been "awarded prior to [his] return to active duty." *Id.* at 70a. Applying the regulation that specifies the effective date for recommencement of disability-based compensation after a return to and subsequent release from active duty, 38 C.F.R. 3.654(b)(2), the VA reinstated petitioner's compensation effective February 1, 2008—one year before he had filed his request for recommencement. Pet. App. 3a, 71a. The VA explained that, because it had "received [petitioner's] request for the reinstatement of [his] VA compensation benefits more than 1 year after [his] release from active duty," it could make retroactive payments only for the one year preceding the agency's receipt of his request. *Id.* at 33a (brackets and citation omitted).

Petitioner asked the Board of Veterans' Appeals to review the VA regional office's decision. Pet. App. 58a-69a. The Board rejected petitioner's request for an effective date of recommenced disability-based compensation that was more than one year before the VA's receipt of his application. The Board explained that such an effective date "is impermissible under law because

VA cannot resume compensation payments more than one year prior to the date of claim." *Id.* at 65a. The Board observed that the form petitioner had submitted to the VA in August 2003—electing to waive disability-based compensation in lieu of active-service pay—had stated that petitioner's "waiver w[ould] remain in effect, while [he was] entitled to receive VA disability payments, unless [he] notif[ied] VA otherwise in writing." *Id.* at 67a. The Board further noted the VA's direction to petitioner to provide his form DD 214 following his release from active duty "so that [it] may reinstate [his] benefits." *Ibid.* "Those letters," the Board explained, "clearly informed [petitioner] that the consequences of failing to notify VA of his cancelling his waiver of VA benefits would be the continued waiver of those benefits." *Ibid.*

b. The Court of Appeals for Veterans Claims (Veterans Court) affirmed. Pet. App. 31a-57a.

Petitioner contended that the applicable VA regulation, 38 C.F.R. 3.654(b)(2), conflicts with 38 U.S.C. 5304(c), which petitioner construed to authorize the withholding of disability-based compensation only while a veteran is actually receiving active-service pay. Pet. App. 35a. The Veterans Court rejected that argument. *Id.* at 40a-49a. The court explained that Section 5304(c) "does not address the effective date for the discontinuation of benefits or, as relevant here, the effective date and terms for the recommencement of benefits." *Id.* at 42a. Instead, the court noted, "Congress separately addressed the effective date for the discontinuation of benefits by reason of active service pay in section 5112(b)(3)," and construing Section 5304(c) to address that same question "would effectively render Congress's specific directive in section 5112(b)(3) superfluous." *Id.*

at 42a-43a. The court thus found "a gap in the statute" with respect to "how interruptions in the payment of benefits shall be administered." *Id.* at 43a.

Applying this Court's decision in *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the Veterans Court concluded that 38 C.F.R. 3.654(b)(2) permissibly filled that gap. Pet. App. 44a-49a. The court observed that Section 3.654(b)(2) "falls within the Secretary's authority 'to determine the forms of application [for] benefits, and the manner of awards.'" *Id.* at 45a (citation omitted; brackets in original). The court noted the government's argument that, because a veteran's return to active duty results in termination of a prior compensation award, the VA must "readjudicate and evaluate a veteran's service-connected disability upon return from active duty to ascertain the current level of severity." *Id.* at 45a-46a. The court also explained that the VA had analogized the regulation's one-year look-back approach to the statutory framework that establishes the effective date of an initial award of disability-based compensation. *Id.* at 46a (citing 38 U.S.C. 5110(b)(1)). The court found the applicable regulation to be "necessary and appropriate to carry out the laws administered by the [VA]," and it observed that the regulation "has remained unchanged since 1962." *Id.* at 47a.

Judge Greenberg dissented. Pet. App. 56a-57a. In his view, Section 5304(c) "delineates the period for which veterans may not receive VA benefits," and the VA's regulation is inconsistent with that statutory directive. *Id.* at 56a; see *id.* at 56a-57a.

4. The Federal Circuit affirmed in a divided decision. Pet. App. 1a-30a.

a. The court of appeals held that "the statutory scheme is silent regarding the effective date for recommencing benefits when a disabled veteran leaves active service." Pet. App. 9a; see *id.* at 6a-9a. The court noted that Section 5304(c) "bars duplicative compensation when a veteran receives active service pay," and that Section 5112(b)(3) "set[s] the effective date (start date) for discontinuing disability benefits based on active service." *Id.* at 6a. The court explained, however, that "Congress did not establish when or under what conditions compensation recommences once a disabled veteran leaves active service," but rather had "left a gap in the statutory scheme" on that question. *Id.* at 6a-7a.

Petitioner contended that Section 5304(c) addresses the date of recommencement of disability-based compensation when a veteran who previously received such compensation has returned to and subsequently been released from active duty. The court of appeals rejected petitioner's argument, Pet. App. 6a-9a, explaining that "[n]owhere in § 5304(c)'s plain terms or in the broader statutory structure did Congress speak directly to that issue," *id.* at 7a. The court acknowledged that Section 5304(c) bars compensation during "any period" when a veteran receives active-service pay, and that "the word period refers to a length of time" that "has a beginning date—when active service compensation starts—and an end date—when active service compensation ends." *Ibid.* The court noted, however, that "§ 5304(c) does not say compensation must cease *only* for that period," and it declined to "read into § 5304(c) words that Congress did not enact." *Ibid.* The court concluded that "Congress was silent regarding whether other conditions, such as timely filing of an application, could justify a later effective date for any recommencement of compensation,"

and had "neither required nor prohibited consideration of such conditions." *Ibid.*

The court of appeals additionally noted that petitioner's "concessions throughout this case * * * undermine [his] position" that Section 5304(c) precludes the imposition of any condition on the recommencement of benefits. Pet. App. 8a. Petitioner had "agreed," for example, that "the VA can 'require that a veteran notify it that the veteran is no longer receiving active duty pay before benefits can be paid'"—"[t]hat is, the VA can require a veteran to apply for recommencement of disability benefits," *ibid.* (quoting Pet. C.A. Br. 32) (emphasis omitted)—as the VA's regulation does, *ibid.* (citing 38 C.F.R. 3.654(b)(2)). Petitioner had further "conceded that 'the government can certainly require reapplication'" for disability-based compensation, "'can require a veteran to appear for an additional medical exam,'" and "'can reconsider the amount of disability compensation.'" *Ibid.* (citation omitted). The court noted that petitioner's own view of the statute thus confirmed that, "when a disabled veteran returns to active service, his disability benefits are discontinued," and that further steps may be required to reinstate them. *Ibid.*

The court of appeals additionally explained that construing Section 5304(c) to "set both the date for discontinuing benefits and the date for recommencing benefits based on active service" "would lead to impermissible surplusage." Pet. App. 9a. The court noted that Congress has "already enacted a statute"—Section 5112(b)(3)—"that sets the date for discontinuing benefits based on active service." *Ibid.* The court stated that petitioner's reading of Section 5304(c), as specifying when benefits are discontinued and may resume, "would render § 5112(b)(3)

superfluous." *Ibid.* "To avoid reading language into § 5304(c) and rendering § 5112(b)(3) superfluous," the court concluded that the statute was "silent regarding the effective date for recommencing benefits." *Ibid.* The court also explained that, "[b]ecause [it] h[e]ld the statutory scheme is silent," it "need not resolve the parties' dispute regarding the pro-veteran canon." *Id.* at 9a n.5 (citing *Terry* v. *Principi*, 340 F.3d 1378, 1383 (Fed. Cir. 2003), cert. denied, 541 U.S. 904 (2004)).

The court of appeals further held that Section 3.654(b)(2) "is a reasonable gap-filling regulation." Pet. App. 11a; see *id.* at 9a-11a. It explained that the rule "encourages veterans to seek recommencement of disability benefits in a timely fashion" but "always provides a veteran with some compensation." *Id.* at 11a. And the court found it "reasonable for the VA to require timely reapplication" for disability-based compensation, "since a disability may improve or worsen over time." *Ibid.*

b. Judge O'Malley dissented. Pet. App. 12a-30a. She viewed the statutory scheme as leaving no "gap" because she construed Section 5304(c) to address the date when benefits recommence after a veteran is released from active service. *Id.* at 14a-25a. She additionally concluded that any doubt should be resolved in petitioner's favor under the veterans canon. *Id.* at 26a-28a. Finally, Judge O'Malley would have held Section 3.654(b)(2) to be an unreasonable gap-filling measure because, in her view, many of its objectives are addressed by other statutes. *Id.* at 28a-30a.

ARGUMENT

The court of appeals correctly upheld the VA's determination that petitioner's disability-based compensation would be recommenced with an effective date one year before the agency received his recommencement

application, rather than effective as of petitioner's release from active duty as petitioner urged. That holding does not conflict with any decision of this Court or of any other court of appeals.

Petitioner contends (Pet. 11-29) that review is warranted to address the interplay between the "pro-veteran canon" (Pet. i) and *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), or to revisit *Chevron* itself. Those arguments lack merit. The court of appeals did not address the relationship between those two principles, and it found the veteran-specific interpretive aid inapposite for other, context-specific reasons. In urging the Court (Pet. 29-35) to overrule *Chevron*, petitioner has not carried his burden of demonstrating any special justification that could plausibly warrant such a departure from *stare decisis* principles. In any event, this case would be an unsuitable vehicle to address that question, since the decision below does not implicate the concerns with *Chevron* that petitioner asserts (Pet. 25-35). Further review is not warranted.

1. The court of appeals held that the effective date of petitioner's recommenced disability-based compensation would be one year before his application for recommencement was received. Pet. App. 4a-12a. That holding is correct and does not warrant review.

Congress has enacted a "[p]rohibition against duplication of benefits," 38 U.S.C. 5304, that, *inter alia*, bars a veteran from receiving disability-based compensation "for any period for which such person receives active service pay," 38 U.S.C. 5304(c). When a veteran who is receiving disability-based compensation returns to active duty and receives active-service pay, the disability-based compensation is "discontinu[ed]" as of the "day

before the date [active-service] pay began." 38 U.S.C. 5112(b)(3). It is undisputed that petitioner was awarded disability-based compensation in 2002—based on an earlier service-connected injury—and then returned to active duty on July 21, 2003. Pet. App. 3a, 33a; see Pet. 6-7. The VA therefore properly "discontinued paying [petitioner] disability compensation effective July 20, 2003, the day before his active service began." Pet. 7. Indeed, upon his return to active duty, petitioner expressly and repeatedly "waive[d]" his right to continue receiving disability-based compensation, electing instead to receive active-service pay. Pet. App. 33a.

Petitioner instead has challenged the VA's determination of the effective date on which his disability-based compensation would resume after he was released from active duty. *E.g.*, Pet. App. 3a-4a; Pet. 2, 7-8. As the court of appeals recognized, however, the statute does not address the effective date of any recommenced compensation award in these circumstances, or the conditions a veteran must satisfy to receive recommenced disability-based benefits. Pet. App. 6a-8a.

Section 5112(b)(3) addresses only when a "discontinuance" becomes "effective," not when or in what circumstances it may end. 38 U.S.C. 5112(b). Petitioner relied below on 38 U.S.C. 5304(c), but "[n]owhere in § 5304(c)'s plain terms or in the broader statutory structure did Congress speak directly to that issue." Pet. App. 7a. Construing Section 5304(c)'s prohibition on disability-based compensation in "any period" that the veteran receives active-service pay as delineating the precise beginning and end dates of the discontinuance requires "read[ing] into § 5304(c) words that Congress did not enact," and it would render superfluous Section 5112(b)(3), which specifies when a discontinuance takes effect. *Id.*

at 7a; see *id.* at 7a-9a. The court of appeals correctly found that the statutory text is "silent" on "when or under what conditions compensation recommences." *Id.* at 7a. Indeed, petitioner acknowledged below that the VA may make recommenced compensation contingent on the veteran's satisfaction of various conditions, such as notifying the VA that he has been released from active duty; applying for recommencement; or even reapplying for compensation and submitting to a new medical examination and disability evaluation. *Id.* at 8a.

Because Congress has not addressed when or in what circumstances a discontinued compensation award may be recommenced, the court of appeals properly turned to the VA regulation that addresses that question. Pet. App. 9a-11a; see 38 C.F.R. 3.654(b)(2). That regulation was adopted in 1962, see 27 Fed. Reg. at 11,890 (superseding 26 Fed. Reg. 1561, 1599 (Feb. 24, 1961)); 26 Fed. Reg. at 1563 (citing as authority 38 U.S.C. 210 (1958)), pursuant to the agency's authority "to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by the [VA]," including "the forms of application by claimants," 38 U.S.C. 501(a)(2); see 38 U.S.C. 210(c) (1958). The regulation establishes a simple, two-part rule for recommencement. So long as a veteran's claim for recommencement is received within one year after his release from active service, his compensation is recommenced as of the "day following release." 38 C.F.R. 3.654(b)(2). If a veteran waits more than one year after his release from active duty to submit a claim to recommence disability-based compensation, reinstated compensation will be retroactive only for one year before

the receipt of the veteran's recommencement claim. *Ibid.**

The dispute between the parties here involves a narrow quasi-procedural issue. Petitioner does not contend that a veteran's release from active service, standing alone, creates a legal obligation for the VA to resume payments of disability-based benefits to veterans who previously received them. Rather, petitioner has acknowledged that the VA can make actual payment of such recommenced benefits contingent on the veteran's submission of an application for them, together with any supporting documentation the agency reasonably deems appropriate. See pp. 9, 13, *supra*. As applied to a veteran who requests recommenced disability-based compensation within one year after being released from active service, Section 3.654(b)(2) is consistent with petitioner's position, providing that any such award will take effect the "day following release." 38 C.F.R. 3.654(b)(2). The dispute between the parties concerns the proper effective date of a recommenced compensation award—or, to put the same point slightly differently, the

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* Petitioner cites an earlier version of Section 3.654(b) promulgated in 1961, which provided that compensation payments may "be resumed the day following release from active duty if otherwise in order" but did not address the manner or time in which a veteran may request recommencement of compensation benefits. Pet. 6 (quoting 26 Fed. Reg. at 1599). But the precursor of that 1961 regulation expressly contemplated the submission and adjudication of a claim for recommencement of payments, see 38 C.F.R. 3.1299 (Supp. 1947); Vet. Aff. Op. Gen. Couns. Prec. 5-95, ¶ 9, 1995 WL 17875504, at *3 (Feb. 6, 1995), and the 1961 regulation that petitioner cites (Pet. 6) did not displace that understanding. In all events, the 1961 regulation was superseded by the 1962 regulation on which the court of appeals relied, which explicitly requires the submission of a claim. 27 Fed. Reg. at 11,890.

amount of *retroactive* compensation that the agency must pay when such an award is made—when a veteran applies for recommenced disability-based compensation more than one year after his release from active service.

The court of appeals properly determined that no statutory provision addresses that question, and it accordingly gave effect to Section 3.654(b)(2), which the court described as "a reasonable gap-filling regulation." Pet. App. 11a. The rule "encourages veterans to seek recommencement * * * in a timely fashion," which in turn "promotes the efficient administration of benefits." *Ibid.* But Section 3.654(b) "does not promote efficiency at all costs," and instead "always provides a veteran with some compensation." *Ibid.* As the government explained below, the regulation's approach mirrors the framework that Congress prescribed for initial awards of disability-based compensation: such awards are effective the day after discharge so long as an application "is received within one year from [the] date of discharge or release." 38 U.S.C. 5110(b)(1); see Pet. App. 46a; see also 38 U.S.C. 5110(b)(2) (authorizing retroactive awards on original claims for compensation, effective up to one year before the date an application is received, if the application is deemed "fully developed" when submitted and was filed in a specified period). Carrying over that approach to the present context is particularly reasonable because "a disability may improve or worsen over time." Pet. App. 11a.

In 2003, when the VA discontinued petitioner's disability-based compensation at his request, the VA advised petitioner that he should provide his discharge documents to the VA when he was "released from active duty * * * so that [the agency] may reinstate [his] benefits." Pet. App. 33a (brackets and citation omitted).

And the form petitioner submitted waiving disability-based compensation in favor of active-service pay stated that the "waiver [would] remain in effect, while [he was] entitled to receive VA disability payments, unless [he] notifi[ed] the VA otherwise in writing." *Id.* at 67a (citation omitted). Petitioner was released from active duty in July 2005, *id.* at 3a; Pet. 7, but he did not request recommencement of disability-based compensation until January 2009. The court of appeals thus properly applied the regulation in upholding the VA's determination that petitioner was entitled to retroactive compensation only for the one-year period preceding its receipt of his application. Pet. App. 6a-11a.

2. In this Court, petitioner does not contend that the court of appeals misapplied Section 3.654(b) to the circumstances of his case. And although petitioner disagrees (Pet. 24) with the court of appeals' reading of Section 5304(c), he offers (*ibid.*) only conclusory assertions in support of his own construction of that provision. Petitioner does not argue that the proper interpretation of Section 5304(c) warrants this Court's review, and he identifies no decision of this Court or of another court of appeals that has construed that provision differently. Instead, petitioner principally contends (Pet. 11-23) that review is warranted to clarify the relationship between the "pro-veteran canon" (Pet. 11) and deference under *Chevron* to administrative agencies' interpretations of statutes they administer. That argument lacks merit.

a. The court of appeals did not address any broader issues regarding the interaction of the veterans canon and *Chevron*. Instead, the court reserved judgment on "the parties' dispute regarding the pro-veteran canon" because it found the canon inapposite for an independent

reason. Pet. App. 9a n.5. The court had previously recognized that the veterans canon is implicated only where "statutory language gives rise to interpretive doubt that must be resolved in favor of the veteran." *Terry* v. *Principi*, 340 F.3d 1378, 1383 (Fed. Cir. 2003) (citing *Brown* v. *Gardner*, 513 U.S. 115, 118 (1994)), cert. denied, 541 U.S. 904 (2004). That interpretive aid for selecting between two alternative meanings of ambiguous statutory text does not apply in answering a question that the statute does not address. See *ibid.* Instead, where such a "gap [is] left by the statute" and Congress has "made it clear that the agency was to fill [such] gap[s]," courts should accept the answer that the agency has provided "unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'" *Ibid.* (quoting *Chevron*, 467 U.S. at 844); see *Capital Cities Cable, Inc.* v. *Crisp*, 467 U.S. 691, 699 (1984) ("Where Congress has directed an administrator to exercise his discretion, his judgments are subject to judicial review only to determine whether he has exceeded his statutory authority or acted arbitrarily." (quoting *Fidelity Fed. Sav. & Loan Ass'n* v. *de la Cuesta*, 458 U.S. 141, 153-154 (1982))).

The court of appeals properly applied that approach here. Based on its analysis of the statutory text and structure, the court concluded that Congress has not "sp[oken] to when or how [disability-based] benefits are recommenced." Pet. App. 9a. Citing *Terry*, the court then explained that, "[b]ecause [it] h[e]ld the statutory scheme [wa]s silent," it had no need to consider any broader questions concerning the veterans canon. *Id.* at 9a n.5. That canon was not implicated because, whatever role it might play in helping a court choose between alternative interpretations of an ambiguous statutory

provision, it could not authorize a court, faced with a question on which a statute is silent, to hypothesize an array of possible answers that Congress could have chosen and then to select the one most favorable to the veteran.

At the very most, the decision below reflects an implicit conclusion about the relationship between the veterans canon and other, settled principles of statutory interpretation that the court of appeals found applicable here—namely, that courts should not "read into" statutes "words that Congress did not enact," Pet. App. 7a (citing *Bates* v. *United States*, 522 U.S. 23, 29 (1997)), and that they should resist interpretations that render statutory text superfluous, *id.* at 9a (citing *National Credit Union Admin.* v. *First Nat'l Bank & Trust Co.*, 522 U.S. 479, 500 (1998)). Those other principles dissuaded the court from construing Section 5304(c) as expansively as petitioner urged—*i.e.*, as not merely establishing the general bar on receiving both disability-based compensation and active-service pay for the same period of time, but also as prescribing the effective date for resumed disability-based compensation when a veteran applies for such resumed benefits more than a year after his release from active duty. *Id.* at 7a-9a. The decision below might be viewed as concluding that the veterans canon could not supersede the agency's usual gap-filling role in this statutory context. But this case would afford the Court no opportunity to clarify the relationship between the veterans canon and principles of *Chevron* deference in circumstances where ambiguous statutory language actually addresses the point at issue.

b. Although the court of appeals did not reach the issue, petitioner is wrong in contending (Pet. 11-18) that a court can never accord deference to an agency's inter-

pretation of ambiguous statutory language without first exhausting every other possibly relevant interpretive aid, including the veterans canon.

As an initial matter, petitioner's portrayal (Pet. 11-16) of *Chevron* as calling for a rigidly bifurcated inquiry in every instance is incorrect and inconsistent with this Court's precedent. Courts may appropriately defer under *Chevron* to an agency's "reasonable construction of [a] statute, whether or not it is the only possible interpretation." *Holder* v. *Martinez Gutierrez*, 566 U.S. 583, 591 (2012). A court thus need not always make a threshold determination of whether the statute has a single, unambiguous meaning, or whether instead multiple reasonable interpretations exist. In *Entergy Corp.* v. *Riverkeeper, Inc.*, 556 U.S. 208 (2009), for example, the Court held that an agency's position "governs if it is a reasonable interpretation of the statute—not necessarily the only possible interpretation, nor even the interpretation deemed *most* reasonable by the courts." *Id.* at 218. The Court rejected the dissent's contention that *Chevron* invariably requires a "supposedly prior inquiry of 'whether Congress has directly spoken to the precise question at issue,'" *i.e.*, whether the statute is unambiguous. *Id.* at 218 n.4 (citations and internal quotation marks omitted); see *ibid.* ("[S]urely if Congress has directly spoken to an issue then any agency interpretation contradicting what Congress has said would be unreasonable."). And in *Martinez Gutierrez*, after concluding that the agency's position satisfied *Chevron*'s "reasonable construction" test, the Court explained that it did not "need [to] decide if the statute permit[ted] any other construction." 566 U.S. at 591.

In all events, petitioner is wrong in asserting (Pet. 13-16) that a court must apply every other available

tiebreaker, including the veterans canon, before determining whether the agency's interpretation warrants deference. Under *Chevron*, if "the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." 467 U.S. at 842-843. As petitioner stresses (Pet. 2-3, 11-14), courts employ "traditional tools of statutory construction" in determining whether "Congress had an intention on the precise question at issue," *Chevron*, 467 U.S. at 843 n.9. If such an intention has been clearly expressed, "that intention is the law and must be given effect." *Ibid.*

Some interpretive principles are relevant to that inquiry because they enable courts to "ascertain[]" Congress's clear "intention," *Chevron*, 467 U.S. at 843 n.9, and so must be applied before deferring to an administrative interpretation, see *ibid.* For example, the Court has described the presumptions against extraterritorial and retroactive application of statutes as eliminating ambiguity that would otherwise exist and thus revealing Congress's clear intention. See *Morrison* v. *National Austl. Bank Ltd.*, 561 U.S. 247, 255 (2010) ("When a statute gives no clear indication of an extraterritorial application, it has none."); *INS* v. *St. Cyr*, 533 U.S. 289, 321 n.45 (2001) ("Because a statute that is ambiguous with respect to retroactive application is construed under our precedent to be unambiguously prospective, there is, for *Chevron* purposes, no ambiguity in such a statute for an agency to resolve." (citation omitted)).

In contrast, some interpretive aids are not tools for ascertaining whether a statute has one unambiguous meaning, but instead come into play when a statute is found to be ambiguous even after ordinary interpretive tools have been applied, and provide a way to identify

which party should then prevail. For example, this Court has "used the lenity principle to resolve ambiguity in favor of the defendant only 'at the end of the process of construing what Congress has expressed' when the ordinary canons of statutory construction have revealed no satisfactory construction." *Lockhart* v. *United States*, 577 U.S. 347, 361 (2016) (citation omitted); see *Wooden* v. *United States*, 142 S. Ct. 1063, 1075 (2022) (Kavanaugh, J., concurring).

The Federal Circuit has described the veterans canons as the latter type of interpretive principle—as coming into play where uncertainty lingers even after a court has employed all other interpretive tools at its disposal. See, *e.g.*, *Nielson* v. *Shinseki*, 607 F.3d 802, 808 (2010) (observing that the veterans canon "is only applicable after other interpretive guidelines have been exhausted, including *Chevron*"). So understood, the canon does not aid in determining whether Congress had an unambiguous intention on a question. See *Heino* v. *Shinseki*, 683 F.3d 1372, 1379 n.8 (Fed. Cir. 2012) ("[W]e will not hold a statute unambiguous by resorting to a tool of statutory construction used to analyze ambiguous statutes."). Whatever the role of that tiebreaking tool in cases where no administrative interpretation is at issue, it is not properly applied to displace a reasonable interpretation proffered by the agency that Congress has charged with filling gaps in a statutory scheme. Instead, the central tenet of *Chevron* is that Congress intended the agency, not courts, to fill such gaps. See 467 U.S. at 843-845.

Petitioner identifies no decision of this Court applying the veterans canon to resolve a statutory ambiguity that the agency had reasonably addressed. In *Gardner*, *supra*, the Court held invalid a VA regulation on the

ground that it contravened the statutory language. 513 U.S. at 116-118. Although the Court briefly noted that interpretive doubt should be resolved in favor of veterans, *id.* at 118, it did not hold that the veterans canon supplanted *Chevron*. More recently, in *Henderson* v. *Shinseki*, 562 U.S. 428 (2011), the Court noted that its analysis of the text of 38 U.S.C. 7266(a) comported with the veterans canon. 562 U.S. at 441. But the Court did not rely on the canon to resolve the statutory ambiguity or to reject a contrary agency position; in that case, no VA regulation interpreting the relevant statute was at issue.

3. Petitioner alternatively contends (Pet. 25-35) that the Court should grant review to consider overruling *Chevron*. That argument lacks merit.

a. Petitioner, the "proponent of overruling precedent," has not carried "the heavy burden of persuading the Court that changes in society or in the law dictate that the values served by *stare decisis* yield in favor of a greater objective." *Vasquez* v. *Hillery*, 474 U.S. 254, 266 (1986). "Although not an inexorable command, *stare decisis* is a foundation stone of the rule of law, necessary to ensure that legal rules develop in a principled and intelligible fashion." *Michigan* v. *Bay Mills Indian Cmty.*, 572 U.S. 782, 798 (2014) (citations and internal quotation marks omitted); see *Kimble* v. *Marvel Entm't, LLC*, 576 U.S. 446, 455 (2015). Adherence to precedent "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne* v. *Tennessee*, 501 U.S. 808, 827 (1991).

"For that reason, this Court has always held that any departure from the doctrine demands special justi-

fication." *Bay Mills*, 572 U.S. at 798 (citation and internal quotation marks omitted). *Stare decisis* carries "'special force'" in areas where "Congress exercises primary authority * * * and 'remains free to alter what [the Court] ha[s] done.'" *Id.* at 799 (quoting *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 172-173 (1989)). That is true not only of decisions that interpret specific statutory language, but also of a decision "announc[ing] a 'judicially created doctrine' designed to implement a federal statute," which "effectively become[s] part of the statutory scheme, subject (just like the rest) to congressional change." *Kimble*, 576 U.S. at 456 (citation omitted). For many of those reasons, this Court in *Kisor* v. *Wilkie*, 139 S. Ct. 2400 (2019), refused to disturb its prior precedent—analogous to *Chevron*—that affords deference to agency interpretations of ambiguous regulations, so long as certain preconditions are satisfied. See *id.* at 2422-2423.

Petitioner bears an especially heavy burden in seeking to overrule *Chevron*, which stands at the head of "a long line of precedents" reaching back decades. *Bay Mills*, 572 U.S. at 798. The Court in *Chevron* described its approach not as an innovation, but as the application of "well-settled principles" concerning the respective roles of agencies and courts in resolving statutory ambiguities. 467 U.S. at 845; see *id.* at 842-845. Federal courts have invoked *Chevron* in thousands of reported decisions, and Congress has repeatedly legislated against its backdrop. Regulated entities routinely rely on agency interpretations that courts have upheld on *Chevron* grounds. By centralizing policy-laden interpretive decisions in expert agencies, *Chevron* promotes political accountability, national uniformity, and pre-

dictability, and it respects the expertise agencies bring to bear in administering complex statutory schemes.

Petitioner principally contends (Pet. 25-27, 29-30) that *Chevron* is incompatible with the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, 701 *et seq.*, and the Constitution's separation of powers. But this Court recently confirmed that deference to the Executive Branch's interpretations comports with the APA and the Constitution. *Kisor*, 139 S. Ct. at 2419, 2421-2422; see *City of Arlington* v. *FCC*, 569 U.S. 290, 317 (2013) (Roberts, C.J., dissenting) ("We do not ignore" the Constitution's and APA's "command[s] when we afford an agency's statutory interpretation *Chevron* deference; we respect [them]."). And far from identifying the sort of change in the legal landscape that might justify reconsideration of longstanding precedent, petitioner invokes specific APA language, see Pet. 26 (citing 5 U.S.C. 706), that was already in force when *Chevron* was decided, see 5 U.S.C. 706 (1982).

Apart from his "belief 'that [*Chevron*] was wrongly decided,'" *Kimble*, 576 U.S. at 456 (citation omitted), petitioner offers no persuasive "special justification" for overruling it, let alone the type of "particularly special justification" that would be required to overturn such a deeply ingrained precedent. *Kisor*, 139 S. Ct. at 2423 (internal quotation marks omitted). Petitioner's suggestion (Pet. 30) that *Chevron* undermines reliance interests is perplexing. Under the well-settled *Chevron* framework, regulated entities and the public can rely on an agency's regulations and other measures to resolve ambiguities or fill gaps in a statutory scheme. Reliance interests would be undermined if regulations in force for many years—like the VA's 1962 regulation at issue

here—could be overturned by a single court that finds a different interpretation more persuasive. Indeed, overturning *Chevron* now "would cast doubt on many settled constructions" of statutes and invite "relitigation of any decision based on" *Chevron* deference. *Kisor*, 139 S. Ct. at 2422. *Stare decisis* counsels strongly against "introduc[ing] so much instability into so many areas of law, all in one blow." *Ibid.*

Petitioner additionally asserts (Pet. 32-34) that *Chevron* is unworkable. That assertion is belied by decades of experience in which courts have routinely applied what many have termed the "familiar *Chevron* framework." *Solorzano* v. *Mayorkas*, 987 F.3d 392, 397 n.5 (5th Cir. 2021); see, *e.g.*, *Contreras Aybar* v. *Secretary U.S. Dep't of Homeland Sec.*, 916 F.3d 270, 273 (3d Cir. 2019); *Sorenson Commc'ns, LLC* v. *FCC*, 897 F.3d 214, 223-224 (D.C. Cir. 2018); *Coyomani-Cielo* v. *Holder*, 758 F.3d 908, 912 (7th Cir. 2014). As with any interpretive framework, difficult cases may arise at the margin. But the existence of hard cases without more cannot justify jettisoning the framework itself.

The particular difficulties petitioner posits (Pet. 32-34) stem primarily from attempts to alter or make exceptions to *Chevron*'s framework. Debates over the precise quantum of ambiguity necessary to move from the first step to the second (Pet. 32) result at least in large part from artificially bifurcating *Chevron* into two insulated inquiries. See p. 19, *supra*. And complications created by attempts to "cabin *Chevron*'s scope" (Pet. 32) and to inject "threshold *Chevron* questions" (Pet. 33) counsel against making such alterations to the framework, not in favor of abandoning it altogether. Petitioner has offered nothing approaching the showing that would be required to revisit a decision of this Court

that is so deeply and firmly fixed in federal law, particularly a decision that Congress remains free to override or modify at any time.

b. In any event, this case would be a poor vehicle for reconsidering *Chevron*'s propriety or its scope. Although the court of appeals invoked *Chevron* in upholding the VA's regulation and its application here, the case does not implicate the concerns that petitioner associates (Pet. 25-35) with that decision.

As discussed above, the court below did not identify an ambiguous statutory provision and then defer to the agency's construction of it. See pp. 12-13, 15, 17-18, *supra*. Instead, the court concluded that "nothing in the statutory scheme speaks to" the disputed question at all. Pet. App. 9a; see *id.* at 7a (noting the absence of any congressional directive on the question of "when or under what conditions compensation recommences once a disabled veteran leaves active service"); *id.* at 6a-9a. Given (a) the absence of statutory direction on the precise issue in dispute, (b) Congress's express authorization to the VA to promulgate regulations on this and other topics, and (c) the VA's decades-old, on-point regulation, the court gave effect to that regulation after finding that it reasonably filled the statutory gap. *Id.* at 9a-11a.

Petitioners' concerns that *Chevron* causes courts to abdicate their "duty 'to say what the law is'" and "to 'decide all relevant questions of law,'" Pet. 25-26 (citations omitted), thus have no purchase in this case. Here, Congress chose to leave some interstitial matters to the agency rather than to prescribe every detail of the processes by which veterans can seek disability-based compensation. For purposes of determining the proper effective date of petitioner's renewed compensation award,

the law to be applied therefore consists of Congress's authorization to the VA to make regulations and the regulations promulgated by the agency. The court of appeals correctly applied that law here.

This case likewise does not implicate any uncertainty about how much ambiguity must remain in a disputed provision, or which interpretive tools must be exhausted in searching for a clear meaning, before a court can consider the agency's interpretation. Cf. Pet. 32. The court of appeals found that the statute contains *no* language addressing the effective date of petitioner's recommenced disability-based compensation award. If Congress had specifically authorized the VA to adopt regulations prescribing the effective dates for recommenced disability-based compensation when veterans are released from active service, the VA's choice of appropriate effective dates would raise no issue concerning the respective roles of courts and agencies in construing ambiguous statutory language. Rather, the only question for a reviewing court would be whether the agency's choice was "'arbitrary, capricious, or manifestly contrary to the statute.'" *Terry*, 340 F.3d at 1383 (quoting *Chevron*, 467 U.S. at 844); see Pet. App. 9a-11a. Given the absence of statutory language addressing the effective-date question, and the VA's general rulemaking authority under the statute, the court of appeals properly took the same approach here. Further review is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
MARK B. STERN
DANIEL AGUILAR
Attorneys

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