No. 24-320

IN THE

Supreme Court of the United States

SIMON A. SOTO,

Petitioner,

v.

UNITED STATES,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF OF PETITIONER

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QUESTION PRESENTED

Given the Federal Circuit's holding that a claim for compensation under 10 U.S.C. § 1413a is a claim "involving . . . retired pay" under 31 U.S.C. § 3702(a)(l)(A), does 10 U.S.C. § 1413a provide a settlement mechanism that displaces the default procedures and limitations set forth in the Barring Act?

PARTIES TO THE PROCEEDING

Simon A. Soto is the Petitioner here and was the Plaintiff-Appellee below.

The United States government is the Respondent here and was the Defendant-Appellant below.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF AUTHORITIES	v
INTRODUCTION	1
DECISIONS BELOW	2
JURISDICTION	2
STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	3
A. Combat-Related Special Compensation	3
B. Corporal Soto's service and injury	9
C. The proceedings below	13
SUMMARY OF THE ARGUMENT	17
ARGUMENT	20
I. THE CRSC STATUTE AUTHORIZES SETTLEMENT OF CLAIMS FOR CRSC AND THUS DISPLACES THE BARRING ACT	20
A. An agency has settlement authority if a statute authorizes it to administratively determine the validity of a claim and the amount due	21
1. Congress has widely authorized agencies to settle claims against the United States	21
2. The Barring Act confers nonexclusive settlement authority and is displaced by an "[]other law" authorizing claims settlement	25

B. The CRSC statute confers authority to settle and pay claims for CRSC 27

1. The CRSC statutes authorizes the Secretary concerned to administratively determine the validity of a veteran's claim for CRSC and the amount due 28

2. The CRSC statute separately authorizes payment of CRSC 32

II. THE TEST CREATED BY THE FEDERAL CIRCUIT IS INCORRECT AND SHOULD BE REJECTED 33

A. There is no requirement that a statute use the word "settle" to displace the Barring Act 34

1. The Federal Circuit's "specific language" requirement is inconsistent with precedent 34

2. The CRSC Statute does not merely establish "eligibility" for CRSC 39

B. There is no requirement that a statute provide an independent statute of limitations to displace the Barring Act. 41

CONCLUSION 46

TABLE OF AUTHORITIES

Page

CASES

Adams v. *Hinchman*, 154 F.3d 420 (D.C. Cir. 1998) 23
Bond v. *United States*, 572 U.S. 844 (2014) 38
Bostock v. *Clayton Cnty.,* 590 U.S. 644 (2020) 42
CFTC v. *Schor*, 478 U.S. 833 (1986) 45
Cooke v. *United States*, 91 U.S. 389 (1875) . 22
Dep't of Agric. Rural Dev. Rural Hous. Serv. v. *Kirtz*, 601 U.S. 42 (2024) 37
Devlin v. *Berry*, 26 F. Supp. 3d 74 (D.D.C. 2014) 23
FAA v. *Cooper*, 566 U.S. 284 (2012) 37, 38
Fishgold v. *Sullivan Drydock & Repair Corp.*, 328 U.S. 275 (1946) 39
Hernandez v. *Dep't of Air Force*, 498 F.3d 1328 (Fed. Cir. 2007) 26, 35
Hobbs v. *McLean*, 117 U.S. 567 (1886) 22
Ill. Sur. Co. v. *United States*, 240 U.S. 214 (1916) 22, 32
King v. *St. Vincent's Hosp.*, 502 U.S. 215 (1991) 38, 39
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McNeil v. *United States*, 78 Fed. Cl. 211 (2007) 35, 36
Mobil Oil Corp. v. *Higginbotham*, 436 U.S. 618 (1978) 42
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Paige v. *United States*, 159 Fed. Cl. 383 (2022) 23

TABLE OF AUTHORITIES—continued

Page

Robinson v. *Shell Oil Co.*, 519 U.S. 337 (1997) 42
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Soto v. *United States*, 92 F.4th 1094 (Fed. Cir. 2024) 2
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United States v. *Corliss Steam-Engine Co.*, 91 U.S. 321 (1875) 21, 24, 25, 34, 35
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CONSTITUTION, STATUTES AND REGULATIONS

U.S. Const. art. I, § 8, cl. 1 21
U.S. Const. art. I, § 9, cl. 7 21
U.S. Const. art. IV, § 3, cl. 2 21
10 U.S.C. § 101(a)(8) 29
§ 101(a)(9) 7
§ 633 6
§ 1201 6
§ 1202 6
§ 1203 6
§ 1204 6
§ 1293 6
§ 1401(a) 40
§ 1413a 1, 13
§ 1413a(a) 2, 6, 7, 18, 28, 30, 40, 43
§ 1413a(b) 2, 43
§ 1413a(b)(1) 7, 18, 43
§ 1413a(b)(2) 31
§ 1413a(b)(3)(B) 12
§ 1413a(c) 8, 28

TABLE OF AUTHORITIES—continued

Page

§ 1413a(c)(1) 5
§ 1413a(d) 2, 7, 18, 29, 40
§ 1413a(e) 8
§ 1413a(h) 32
§ 1448(a)(1) 41
§ 1451(a) 41
§ 4712 36
§ 12731 6
§ 12731(a) 40
§ 12739(a) 40

26 U.S.C. § 104(a)(4) 3
§ 104 (b)(2)(D) 3
§ 6402(a) 36

31 U.S.C. § 3702 42
§ 3702(a) 20, 26
§ 3702(b) 20
§ 3702(a)(1)–(4) 26
§ 3702(b)(1) 27, 42
§ 3702(b)(1)(a) 27

37 U.S.C. § 204(a) 40
§ 302(a) 40

38 U.S.C. § 1110 6
§ 1131 6
§§ 4301-4333 .... 35, 41
§§ 4321-4327 41
§ 4324(c) 41
§ 5304 5
§ 5305 5

Act of May 27, 1944, ch. 209, 58 Stat. 230 .. 3, 4

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TABLE OF AUTHORITIES—continued

Page

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4 C.F.R. § 31.4 25

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Page

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INTRODUCTION

There is no question that Corporal Simon A. Soto, and the class members he represents, are entitled to Combat-Related Special Compensation ("CRSC")—a monthly benefit that Congress specifically authorized for veterans who are disabled as a result of combat-related injuries incurred while serving in the United States military. There is also no question that Corporal Soto is entitled to CRSC payments both going forward from the time his application was received and retroactively. The only question before this Court is whether Corporal Soto may receive CRSC payments for every month during which he was eligible under the statute that authorizes CRSC, 10 U.S.C. § 1413a. The government said no, contending that with respect to retroactive payments, Corporal Soto may obtain CRSC only for the six years before he applied.

Although the CRSC statute imposes no time limit for a veteran to apply for CRSC payments, the government contends that the availability of CRSC payments is limited by a different statute, the Barring Act, 37 U.S.C. § 3702. The Barring Act is a gap-filling statute, authorizing various agencies to "settle" an administrative claim against the United States—*i.e.*, to administratively determine whether the claim is valid and the amount due—in the event that no "[]other law" authorizes settlement of the claim. *Id.* § 3702(a). If a claim is settled under the Barring Act, then it is subject to the Barring Act's six-year statute of limitations. *Id.* § 3702(b). But the Barring Act has no application to claims for CRSC, because the CRSC statute authorizes settlement of such claims.

Specifically, the CRSC statute authorizes the Secretaries of the military departments to determine both the validity of claims for CRSC and the amount owed

to eligible veterans—all that is entailed in claims settlement. The Secretary concerned is directed to consider a veteran's application for CRSC under CRSC-specific "procedures and criteria" prescribed by the Department of Defense—and thereby determine whether the veteran is eligible for (and thus has a valid claim to) CRSC. 10 U.S.C. § 1413a(d). The Secretary concerned is further directed to "determine[]" the monthly amount owed to an eligible veteran using the process set forth in subsection (b). *Id.* § 1413a(a), (b). Because the CRSC statute authorizes the Secretary concerned to determine the validity of a claim to CRSC and the amount due, that statute specifically authorizes settlement of claims like Corporal Soto's to CRSC—and the gap-filling Barring Act accordingly has no application. The judgment below should be reversed.

DECISIONS BELOW

The opinion of the Federal Circuit is reported at *Soto* v. *United States*, 92 F.4th 1094 (Fed. Cir. 2024), and reproduced at Pet. App. 1a–19a. The opinion of the Southern District of Texas granting summary judgment for petitioner is unreported, but is available at 2021 WL 7287022, and reproduced at Pet. App. 32a–37a.

JURISDICTION

The judgment of the court of appeals was entered on February 12, 2024. Pet. App. 20a. The Federal Circuit denied petitioner's timely petition for rehearing *en banc* on June 20, 2024. Pet. App. 40a. The petition for

writ of certiorari was filed on September 18, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory and regulatory provisions are reproduced at Pet. App. 42a–47a. The statute addressing Combat-Related Special Compensation, 10 U.S.C. § 1413a, is reproduced at Pet. App. 42a. The Barring Act, 31 U.S.C. § 3702, is reproduced at Pet. App. 45a.

STATEMENT OF THE CASE

A. Combat-Related Special Compensation

1. On December 2, 2002, Congress enacted the CRSC statute to recognize and additionally compensate a select and particularly deserving group of uniformed services retirees. The CRSC statute is unique in both whom it serves and how it operates. In most cases, Congress prohibits simultaneous receipt of military retirement pay and Department of Veterans Affairs ("VA") benefits. Congress first barred concurrent receipt of both military retirement pay and veteran's disability pension in 1891. Congressional Research Service, *Concurrent Receipt of Military Retired Pay and Veteran Disability: Background and Issues for Congress* (June 22, 2023), available at https://crsreports.congress.gov/product/pdf/R/R40589/18 at 5. That prohibition remained in place until 1944, when Congress eased the prohibition by allowing retired military personnel to waive part of their retirement pay to receive veteran's disability compensation. Act of May 27, 1944, ch. 209, 58 Stat. 230, 230–31. This change was modest, allowing some retirees to draw at least a partial disability benefit, which is nontaxable. *Id.*; 26 U.S.C. § 104(a)(4) & (b)(2)(D). But still, the law prohibited concurrent receipt of both benefit types because it required any moneys received from veteran's disability

compensation to be subtracted from any retirement funds received. Act of May 27, 1944, ch. 209, 58 Stat. 230, 230–31. Hoping for better, veterans and advocacy groups pushed for a change in law to allow receipt of all or some of both payments.

In 1999, Congress partially heeded that call. The 1999 statute, Special Compensation for Severely Disabled Military Retirees, relaxed the prohibition on duplicate benefits (also called concurrent receipt) by allowing veterans with at least 20 years of military service and a VA service-connected disability rated at 70 percent or higher to receive some monthly retirement benefit. See Nat'l Def. Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65, § 658(a)(1), 113 Stat. 512, 668–69 (1999). While this statute represented progress, both the number of persons eligible and the amount of compensation were minimal: the monthly benefit maxed out at $300 and was available only to the most severely disabled veterans. *Id.*

Congress's enactment of the CRSC statute a few years later represented a sea change. The program introduced a higher cash benefit, closer to what concurrent receipt would provide. However, in implementing this change, Congress still saw fit to limit the benefit to a select group of military retirees whose service wrought some of the greatest sacrifices.[1]

A provision of the Bob Stump National Defense Authorization Act of 2003, the CRSC statute authorized

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[1] Congress also enacted Concurrent Retirement and Disability Pay ("CRDP") in 2004, which allows longevity military retirees to receive both military retired pay and VA disability compensation. Nat'l Def. Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, § 641(a), 117 Stat. 1392, 1511–14 (2003). A veteran cannot receive both CRSC and CRDP; if a veteran qualifies for both payments, the default payment will be the higher of the two.

compensation to military retirees who either (1) sustained a disability that is "attributable to an injury for which the member was awarded the Purple Heart" and is assigned at least a 10% disability rating by the VA; or (2) had a disability rated at least 60% by the VA resulting from involvement in armed conflict, hazardous service, duty simulating war, or through an instrumentality of war. Bob Stump Nat'l Def. Authorization Act for Fiscal Year 2003, Pub. L. No. 107-314, § 636, 116 Stat. 2458, 2574–76 (2002) (codified as amended at 10 U.S.C. § 1413a(e)). Since its inception, Congress has amended and expanded the CRSC statute to provide benefits to thousands of additional veterans with combat-related disabilities.

At first, the statute limited eligibility for CRSC to longevity retirees (those who completed at least twenty years of service). Pub. L. No. 107-314, § 636; 10 U.S.C. § 1413a(c)(1). The 2004 NDAA removed the 60% disability rating threshold for longevity retirees. Pub. L. No. 108-136, § 642. The 2008 NDAA further expanded CRSC eligibility to anyone medically retired, including retirees with fewer than twenty years of service, effective January 1, 2008. Nat'l Def. Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, 122 Stat. 3 (2008).

To be clear, the CRSC statute does not end the requirement that a retiree's military retired pay be reduced by the amount of their total VA disability compensation. 38 U.S.C. §§ 5304, 5305. Instead, CRSC beneficiaries receive "special compensation": a particular, Congressionally authorized payment to select retirees that is in addition to whatever amount the veteran is authorized to receive in military retirement and VA disability compensation. In contrast, a medical retiree who sustained a service-connected but non-combat-related injury would not be eligible for such

special compensation. Additionally, unlike some other military or VA benefits, CRSC is available only to the veteran from the time the veteran becomes eligible to the end of the veteran's life—it does not extend to surviving spouses or other heirs. See 10 U.S.C. § 1413a(a), (c).

The CRSC statute stands apart as the first and only form of compensation that distinguishes veterans wounded as a result of combat. Neither VA service-connected disability compensation nor longevity retirement nor medical retirement requires the veteran beneficiary to suffer injury related to combat. See, *e.g.*, 38 U.S.C. § 1110 (VA basic entitlement—time of war); 38 U.S.C. § 1131 (VA basic entitlement—peacetime); 10 U.S.C. § 633 (longevity retirement for certain officers not recommended for promotion with 28 years of active commissioned service); 10 U.S.C. §§ 1201–1204 (military medical retirement); 10 U.S.C. § 1293 (longevity retirement for warrant officers with 20 years of service); 10 U.S.C. § 12731 (reservist longevity retirement). As such, the statute carves out unique benefits to a tailored group of retired service members whom legislators singled out as particularly deserving. See 148 Cong. Rec. S10,859 (daily ed. Nov. 13, 2002) (statement of Sen. Harry Reid) (stating that the injured veterans aided by CRSC "deserve it as much as anyone deserves anything in the world"); *id.* at S10,860 (statement of Sen. John Warner) (CRSC is "compensation for those veterans we deemed formed that category deserving of added funds").

2. The CRSC statute provides: "The Secretary concerned shall pay to each eligible combat-related disabled uniformed services retiree who elects benefits under this section a monthly amount for the combat-related disability of the retiree determined under

subsection (b)." 10 U.S.C. § 1413a(a).[2] The statute goes on to define how the Secretary concerned is to determine which applicants for CRSC are eligible and how much each eligible applicant is to be paid.

The statutory term "eligible combat-related disabled uniformed services retiree" is defined in subsection (c) to mean a service member who both is entitled to retired pay and has a "combat-related disability." The term "combat-related disability" is defined in subsection (e) to mean a disability that is attributable to an injury for which the member was awarded the Purple Heart or that was incurred in armed conflict, through an instrumentality of war, under conditions simulating war or other hazardous activity. Whether an applicant is eligible under the statutory definitions is to be "considered" by the Secretary concerned according to "procedures and criteria" that the Secretary of Defense has prescribed. *Id.* § 1413a(d); see also Joint Appendix ("JA") 77–107 (January 2004 Guidance promulgated by the Department of Defense pursuant to subsection (d)); JA 108–113 (January 2008 Supplemental Guidance promulgated by Department of Defense pursuant to subsection (d)).

The amount to be paid to eligible applicants is set forth in subsection (b) of the statute. That provision details how to determine "the monthly amount to be paid an eligible combat-related disabled uniformed services retiree under subsection (a) for any month." 10 U.S.C. § 1413a(b)(1). The CRSC statute thus provides the framework for the Secretary of each military branch to determine which veterans are eligible, and

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[2] "Secretary concerned" is defined to mean the Secretary of the Army, Navy, Air Force, or Homeland Security, depending on which branch of the armed forces is concerned. 10 U.S.C. § 101(a)(9).

how much CRSC is due to a particular eligible veteran, based on the criteria and classifications provided in the statute.

CRSC is not automatic. Eligible retirees must apply for the special compensation through the military branch from which they retired, and must document that they meet eligibility criteria. In particular, an applicant must document not only that they have a disability rating of 10 percent or greater, but also that their disability stems from one of the qualifying situations that are classified as "combat-related." See 10 U.S.C. § 1413a(c), (e); JA 87–90 (Guidance, Federal Circuit Deferred Appendix "Appx." 101–03). For example, if a veteran claims entitlement to CRSC based on disability due to an injury for which the veteran was awarded the Purple Heart, the veteran must provide "documentary information that there is a sufficient causal relationship between the disability and the injury for which a Purple Heart was awarded to conclude that the disability is attributable to such injury." JA 87 (Guidance, Appx. 101).[3] Disabilities that a veteran

[3] As examples of the documentation required, the Army's website on "CRSC Frequently Asked Questions" states:

> Send to CRSC copies of DD 214/215s, as well as All VA-rating decisions including the VA letter, the VA rating decisions and the VA code sheets, Medical Records from MTF or VA physicians only, unless referred to a private physician by the VA, other typical official documents include, service medical record extracts, military personnel file extracts, military personnel data system printouts, prior military disability board decisions, line of duty determinations, safety mishap (accident) reports, next of kin notification (Western Union Telegrams), casualty reports, morning reports, duty status reports, order/travel voucher, official documents not in the military personnel record, etc. Be sure to retain a copy for Soldier's records.

U.S. Army Hum. Res. Command, *CRSC Frequently Asked Questions FAQs*,

cannot demonstrate are combat-related "will not be considered in determining eligibility for CRSC or the amount of CRSC payable." JA 89 (Guidance, Appx. 102). This process distinguishes CRSC from other benefits programs like CRDP, for which one need not affirmatively apply.

The CRSC statute does not limit the number of months for which an applicant may obtain payment. It does not state that CRSC will be paid only prospectively, or that it will be paid for a limited number of months for which the applicant was eligible before his or her CRSC application was submitted. To the contrary, subsection (b) specifies the amount to be paid to eligible applicants "for any month."

B. Corporal Soto's service and injury

Corporal Simon A. Soto served honorably in the United States Marine Corps from 2000 to 2006. Pet. App. 22a. During that time, he served two tours of active combat duty in Operation Iraqi Freedom. JA 15 ¶ 53. During his first tour, Corporal Soto's unit served in Mortuary Affairs. *Id.* ¶ 54. Mortuary Affairs operations oversee the collection and dignified transfer of the remains of fallen soldiers. Those serving in an overseas Mortuary Affairs unit, as Corporal Soto did, are responsible for entering into combat zones to retrieve their fallen comrades, identifying them, and preparing them for reunification with their surviving loved ones. Joint Publ'n 4-06, Mortuary Affairs *xiii-xiv* (2011), https://irp.fas.org/doddir/dod/jp4_06.pdf. Retrieval is a risky operation, as it frequently occurs while combat is ongoing or has just ended, when danger from mines, explosives, or enemy combatants

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https://www.hrc.army.mil/content/CRSC%20Frequently%20Asked%20Questions%20FAQs (last visited Mar. 1, 2025).

remains particularly high. Members of the unit place their own bodies in harm's way to ensure that no soldier, living or deceased, is left behind on the battlefield. As such, service in a Mortuary Affairs unit is simultaneously physically dangerous and emotionally taxing. Studies show that mortuary affairs personnel experience some of the highest rates of Post-Traumatic Stress Disorder ("PTSD") in the service, due to the gruesome nature of the assignment, the emotional link between the soldier and the fallen, and the persistent physical threats endured by the member of the unit. Michael Sledge, *Soldier Dead: How We Recover, Identify, Bury, and Honor Our Military Fallen* 61 (2005), https://www.jstor.org/stable/10.7312/sled13514.6.

Corporal Soto's experience reflects this. While deployed, Corporal Soto witnessed daily atrocities as he went out to "search for, recover, and process the remains" of war casualties. JA 15 ¶ 54. Whenever his Mortuary Affairs unit received a report of casualties, members of the unit would go out and place any recovered remains in plastic or body bags and transport them to the military base for identification and relocation to the United States. *Id.* Corporal Soto recalls one mission in which he and other service members retrieved "over 300 pieces of five or seven soldiers" who had been killed. *Id.* at 15–16 ¶ 55. As Corporal Soto related, "it wasn't really easy to identify who and it was just literally chunks and pieces of flesh that we were processing." *Id.*

While serving, Corporal Soto began having suicidal thoughts, vivid nightmares, and difficulty concentrating as a result of his experiences in Mortuary Affairs. JA 16 ¶ 56. After deployment, Corporal Soto found adjustment to civilian life incredibly difficult. *Id.* His physicians documented the correlation between his

distressing combat experiences in Iraq and his later diagnosis of PTSD. *Id.* ¶ 57.

Because Corporal Soto's PTSD rendered him "unfit" to continue his service, he was placed on the Temporary Disability Retirement List ("TDRL"), and medically retired from the Marine Corps on April 28, 2006. Pet. App. 22a. This entitled him to military retirement pay. *Id.* In recognition of his honorable service, the military awarded Corporal Soto numerous medals and commendations, including the Army Commendation Medal, which is awarded to members of the Armed Forces who "distinguish themselves by heroism, outstanding achievement, or meritorious service"; the Navy and Marine Corps Achievement Medal, "awarded for meritorious service or achievement in either combat or noncombat based on sustained performance or specific achievement of a superlative nature;" the Iraqi Campaign Medal, and the Global War on Terrorism Service Medal. JA 15 ¶ 52; https://veteranmedals.army.mil/home/us-army-medals-award-badges-ribbon-and-attachments-information/us-army-service-campaign-medals-and-foreign-awards-information; https://www.marines.mil/Combat-Awards/Article/1831663/navy-marine-corps-achievement-medal/. Subsequently, Corporal Soto was removed from the TDRL and given permanent disability retirement, which continued his entitlement to military retirement pay. *Id.* at 16 ¶ 58.

Corporal Soto then sought service-connected disability benefits from the VA for his PTSD. *Id.* ¶ 59. In June 2009, the VA issued a rating decision awarding him a disability rating of 50 percent for his PTSD (effective April 26, 2006), followed by a rating of 30 percent (effective November 1, 2006), and then a rating of 100 percent (effective December 31, 2008). *Id.* A rating of 100 percent means the VA concluded Corporal Soto

exhibited "Total occupational and social impairment due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name." 38 C.F.R. § 4.130 (General Rating Formula for Mental Disorders, DC 9411 (PTSD)).

Against this backdrop of devastating symptoms, in June 2016, Corporal Soto petitioned the Navy seeking CRSC based on his combat-related PTSD. Pet. App. 22a. In October 2016, the Navy affirmed that Corporal Soto was eligible, finding that his PTSD was a combat-related disability and awarding him CRSC. *Id*. However, the Navy assigned a CRSC effective date of July 2010, Pet. App. 4a, notwithstanding the fact that Corporal Soto met all of the CRSC eligibility criteria as of January 1, 2008—the effective date of the 2008 NDAA, which as explained above, had extended CRSC to medical retirees such as Corporal Soto. JA 17 ¶ 61. See 10 U.S.C. § 1413a(b)(3)(B). As a result, the Secretary of the Navy awarded him only six years of retroactive CRSC (from July 2010 to June 2016), not eight-and-one-half years of retroactive CRSC (from January 2008 until June 2016). JA 17 ¶¶ 61–62.

The Secretary of the Navy explained its restriction of Corporal Soto's payment as follows:

> CRSC is subject to the 6-year statute of limitations United States Code (U.S.C.) 31, Section 3702(b). In order to receive the full retroactive CRSC entitlement, you must file your CRSC claim within 6 years of any VA rating decision that could

> potentially make you eligible for CRSC or the date you became entitled to retired pay, whichever is most recent. If you file your claim more than 6 years after initial eligibility, you will be restricted to 6 years of any retroactive entitlement.

JA 11 ¶ 35 (brackets in original). Through the Secretaries of the military branches, the United States has used this six-year statute of limitations policy to pay no more than six years of retroactive CRSC to thousands of other United States military combat veterans entitled to CRSC.

C. The proceedings below

On March 2, 2017, Corporal Soto brought this action in the U.S. District Court for the Southern District of Texas on behalf of a class of U.S. military veterans who, like him, are eligible for CRSC due to significant disabilities they incurred through combat injuries. The suit asserted a single claim pursuant to 10 U.S.C. § 1413a (referred to above as the "CRSC statute") based on the United States' "nationwide and unlawful policy to pay no more than six years of retroactive CRSC " JA 1. The proposed nationwide class consisted of:

> [f]ormer service members of the United States Army, Navy, Marine Corps, Air Force, or Coast Guard whose CRSC applications under 10 U.S.C. § 1413a were granted, but whose amount of CRSC payment was limited by Defendant's application of the statute of limitations contained in 31 U.S.C. § 3702 and have a claim less than $10,000.

Pet. App. 31a. On August 31, 2017, the District Court denied the government's motion for judgment on the pleadings. Order Denying Def's. Mot. For J. on the Pleadings, No. 1:17-cv-00051 (S.D. Tex. Aug. 31, 2017), Dkt. 39. The court first recognized that "[e]ntitlement to CRSC is set forth by statute in 10 U.S.C. §1413a, which grants the Secretary concerned the authority to pay an 'eligible combat-related disabled uniformed services retiree' a monthly amount of benefits for the combat-related disability." *Id.* at 5. It then reasoned, "[t]he Court is aware of no legal basis to conclude that Congress intended any other statute to govern CRSC claims." *Id.* In particular, the Barring Act could not supersede the mechanism for awarding CRSC within the CRSC statute. While the Barring Act is "a 'general act' applicable to a multitude of uniformed service members' claims," the CRSC statute is a "'specific act' statute," the detailed provisions of which "take[] precedence over" the Barring Act. *Id.*

The District Court later certified the proposed class on February 11, 2019. Pet. App. 31a. The government identified 9,108 former service members whose retroactive CRSC had been limited by application of the Barring Act.[4] JA 71.

The District Court granted summary judgment to Corporal Soto on December 16, 2021. Pet. App. 38a–39a. The court held that the CRSC statute separately authorizes settlement of claims for CRSC "because it defines eligibility for CRSC, helps explain the amount of benefits and instructs the Secretary of Defense to

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[4] The number of class members described above is based on information provided by the government pulled from the list of CRSC recipients as of August 5, 2019. The number of affected veterans has certainly increased in the more than five years since that information was collected.

prescribe procedures and criteria for individuals to apply for CRSC." Pet. App. 35a–36a. Accordingly, the court held that the CRSC statute is "another law," displacing the Barring Act and its six-year statute of limitations. Pet. App. 35a. The court entered final judgment in favor of Corporal Soto and the class, finding the government liable to the veterans for compensation withheld when applying the Barring Act. Pet. App. 38a–39a.

On appeal, the Federal Circuit reversed the District Court in a split decision. Pet. App. 11a. The majority held that the Barring Act was not displaced—and that its statute of limitations applied to limit the CRSC available to Corporal Soto and the class—based on its conclusion that the CRSC statute "conveys no" settlement authority. *Id.* at 7a. According to the Federal Circuit, in order to displace the Barring Act a statute "must explicitly grant an agency or entity the authority to settle claims" using "specific language," which the majority stated "will typically be done by the use of the term 'settle'." *Id.* at 6a–7a. Because the CRSC statute does not "mention[] settlement," the Federal Circuit concluded that "it only establishes who may be *eligible* for CRSC payments, not *how* claimants can have those claims settled." *Id.*

The majority separately held that "[w]ithout specific language authorizing the Secretary of Defense to *settle* a claim[,] . . . the CRSC statute cannot displace the Barring Act, unless another statute provides a 'specific' provision setting out the period of recovery." Pet. App. 7a. The majority concluded that "the CRSC statute does not meet either of those requirements." *Id.*

Judge Reyna dissented. Pet. App. 12a. First, he explained, "there is no dispute in this case" that "'[s]ettling a claim' . . . means administratively determining the validity of the demand for money against the

government and the amount of money due." *Id.* at 12a–13a. Here, he wrote, "the CRSC statute permits the government to administratively determine the validity of a veteran's demand for CRSC, as well as the amount of CRSC due to the veteran in retroactive and future monthly compensation. In light of these provisions, the Barring Act does not apply." *Id.* at 13a–14a.

In particular, the statute "defines eligible retirees," thus allowing for the determination of "whether they have a right to demand money under the statute—that is, whether they have a 'claim.'" Pet. App. 14a. Further, "the CRSC statute describes how the Secretary must determine the 'monthly amount to be paid.'" *Id.* at 15a (quoting 10 U.S.C. § 1413a(b)(1)). "By these common and plain terms, the CRSC statute specifies the 'settlement' of a 'claim' against the government. It therefore takes precedence over the Barring Act." *Id.* at 15a–16a.

Judge Reyna went on to criticize the majority's demand for "'specific language'" before a statute could be read to authorize claims settlement as "unprecedented":

> [T]he long-understood meaning of "settling" a "claim" against the government includes no such limitations. Raising these new requirements, the majority also raises the bar to a new and unprecedented standard for what a statute must state to supersede the Barring Act. Although a statute involving resolution of conflict may "typically" use the words "settle" and "claim," the majority does not explain why this phrasing should be "typical" for statutes that involve a more general, remedial, administrative determination of eligibility for money from the government and the amount due. And the majority's alternative requirement—that a statute state a "specific" period of recovery—

> requires a level of specificity in statutory language that finds no support in our canons of statutory interpretation.

Pet. App. 18a.

"[I]n rendering this decision," Judge Reyna wrote, "the majority denies benefits to a highly-deserving class of veterans seeking compensation granted by statute for combat-related injuries incurred in service to this country." Pet. App. 19a.

SUMMARY OF THE ARGUMENT

Before an administrative claim for compensation from the United States may be paid, the claim must be "settled." This Court has long held, and the parties agree, that to "settle" a claim in this context means to administratively determine whether the claim is valid and how much is owed. As the entity with ultimate control over use of U.S. funds, Congress determines which agency within the U.S. government has authority to settle which claims.

In the founding era, when far fewer administrative claims were pursued against the United States, Congress lodged settlement authority exclusively with the Treasury Department. But in the subsequent two centuries, as the number of statutes authorizing ad-ministrative claims against the government has proliferated, settlement authority has been broadly delegated, with numerous agencies deemed authorized to settle various claims. In addition, Congress has enacted the Barring Act to act as a gap-filler: If a claim is presented and no other statute authorizes a specific agency to settle it, then the Barring Act kicks in by default, and details which agency should settle which type of claim.

The question before the Court is whether the statute directing the Secretaries of the military branches to pay CRSC to eligible veterans authorizes settlement of CRSC claims—or, in the alternative, whether such claims are subject to the Barring Act (and its six-year statute of limitations) by default. The text of the CRSC makes the answer plain. That statute on its face authorizes the Secretary concerned to determine whether a veteran is eligible for (and thus has a valid claim to) CRSC, and what amount of CRSC should be paid. The Barring Act has no application here.

First, as to determining eligibility, the statute states that "a disabled uniformed services retiree may apply to the Secretary of a military department to be considered to be an eligible combat-related disabled uniformed services retiree," with the Secretary's "consideration" of the application to be conducted according to CRSC-specific "procedures and criteria" to be prescribed by the Secretary of Defense. 10 U.S.C. § 1413a(d). Upon consideration of the claimant's application, the Secretary concerned is directed to "pay" CRSC "to each eligible combat-related disabled uniformed services retiree." *Id.* § 1413a(a). As to determining the amount owed, the statute states that the Secretary concerned shall pay "a monthly amount for the combat-related disability of the retiree determined under subsection (b)." *Id.* Subsection (b), in turn, details precisely how the Secretary is to make the requisite "determination." *Id.* § 1413(b)(1) (titled "determination of monthly amount").

In short, the plain statutory text directs the Secretary concerned to determine both the validity of a veteran's claim to CRSC and the amount owed. The CRSC statute therefore confers settlement authority, and the Barring Act does not apply.

The Federal Circuit reached a different conclusion by applying a novel, anti-settlement canon of construction. According to that court, a statute should not be construed to grant settlement authority unless it uses "specific language" ("typically . . . the term 'settle,'" according to the Federal Circuit), or imposes an explicit statute of limitations. Pet. App. 7a. Neither requirement holds water.

First, statutory history and this Court's precedents confirm that settlement authority exists whenever an agency has authority to administratively determine the validity and amount of a claim, regardless of the particular terms used. No authority supports the Federal Circuit's "specific language" requirement—and this Court's case law teaches away from interpreting statutes based on the presence or absence of "magic words." To the extent any canon of construction was applied here, the Federal Circuit should have applied the veterans canon—which was widely accepted, and presumably known to Congress, at the time the CRSC statute was enacted.

Additionally, the statutory text squarely refutes the Federal Circuit's conclusion that (because it does not use the word "settle") the CRSC statute "only establishes who may be eligible for CRSC payments." Pet. App. 7a. The statute on its face authorizes the Secretary concerned to determine eligibility and amount due, and to pay CRSC claims—distinguishing it from other military compensation statutes that, unlike the CRSC statute, address only an individual's entitlement to pay, and not the Secretary's authority to settle claims and make payment on them.

Finally, the Federal Circuit's suggestion that the CRSC statute must impose a statute of limitations to displace the Barring Act is inconsistent with the text of the Barring Act. The text makes clear that the

Barring Act—all of it, including its statute of limitations—does not apply to a claim if "another law" provides for settlement, without regard to whether the other law also includes a statute of limitations. 31 U.S.C. § 3702(a)–(b). Indeed, the absence of a statute of limitations on CRSC claims makes perfect sense given how the CRSC statute operates. CRSC becomes available only after a veteran is retired from the military, and is awarded only during the veteran's lifetime, and not to the veteran's heirs. Further, interest is not available on retroactive CRSC payments. Given these constraints—and the obstacles that disabling combat-related injuries may pose to a veteran's ability to complete the CRSC application process—it is unsurprising that Congress chose to make CRSC payments available for the entire period of a veteran's eligibility. The decision below should be reversed.

ARGUMENT

I. THE CRSC STATUTE AUTHORIZES SETTLEMENT OF CLAIMS FOR CRSC AND THUS DISPLACES THE BARRING ACT.

The Federal Circuit held that claims for CRSC must be settled under the Barring Act—and are accordingly subject to the Barring Act's six-year statute of limitations—based on its conclusion that the CRSC statute does not authorize settlement of claims for CRSC. Pet. App. 7a. The Federal Circuit was incorrect. Settlement authority exists if a statute authorizes an agency to administratively determine the validity of a claim and the amount due. The CRSC statute authorizes the Secretaries of the military departments to administratively determine both whether an applicant is eligible for (*i.e.*, has a valid claim to) CRSC, and what amount of CRSC the applicant is entitled to. Because the CRSC statute authorizes settlement of CRSC claims,

it is "another law" that displaces the Barring Act, see 31 U.S.C. § 3702(a), and neither the Barring Act's settlement procedures nor its statute of limitations applies to claims for CRSC.

A. An agency has settlement authority if a statute authorizes it to administratively determine the validity of a claim and the amount due.

1. Congress has widely authorized agencies to settle claims against the United States.

The Constitution grants Congress exclusive authority to "pay the Debts" of the United States, and to "dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. art. I, § 8, cl. 1; *id.* art. IV § 3, cl. 2. Further, "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." *Id.*, art. I, § 9, cl. 7. Accordingly, for a claimant to obtain payment from the United States, Congress must have authorized both acceptance of the claim and payment using appropriated funds. See*, e.g.*, *United States* v. *Corliss Steam-Engine Co.*, 91 U.S. 321, 322 (1875) (power to settle and pay claims on behalf of the United States is "limited by the legislation of Congress"); U.S. Gov't Accountability Off., GAO-08-978SP, *Principles of Federal Appropriations Law* 14-2–14-3 (3d ed. 2008) ("*GAO Red Book*") ("[C]laims against the United States may not be approved, … and appropriated funds (or other resources) may not be used to satisfy claims against the United States, unless there is constitutional and/or statutory authority that both allows the claim to be pursued and makes funds (or other resources, available for that purpose.").

The first step in this process—determining that a claimant has a valid claim against the United States, and what amount is owed on such claim—is often (but not exclusively) referred to as "settlement." "The word 'settlement,' in connection with public transactions and accounts, has been used from the beginning to describe administrative determination of the amount due." *Ill. Sur. Co.* v. *United States*, 240 U.S. 214, 219 (1916). Specifically, the authority "to settle and adjust" a claim against the United States is the authority "to determine upon the validity of" the claim and the amount owed on it. *Id.* at 219–20 (emphasis omitted) (quoting *Cooke* v. *United States*, 91 U.S. 389, 399 (1875)).[5] And this Court has made clear that *settlement* of a claim is a distinct step that precedes *payment* of a claim. See *id.* at 218–19 (statutory term "settlement" of claims could not be interpreted to "denote payment" of claims); *Cooke*, 91 U.S. at 399–400 (assistant-treasurer was authorized to make payments using appropriated funds, but had "no authority to settle and adjust, that is to say, to determine upon the validity of, any claim against the government").

Notably, the term "settlement," when used to denote administrative processing of a claim, does not have the same meaning as when that term is used in litigation. "[T]he term 'settlement' in the litigation context means compromise." Off. of Gen. Counsel, GAO, *Principles of Federal Appropriations Law* 11-6 (1st ed. 1982). But the authority to administratively

> settle and adjust claims does not . . . include the

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[5] A "claim" in this context is "a right to demand money from the United States . . . which can be presented by the claimant to some department or officer of the United States for payment, or may be prosecuted in the court of claims." *Hobbs* v. *McLean*, 117 U.S. 567, 575 (1886).

> authority to compromise claims. In the context of payment claims, the rationale for this is simply that a claim determined to be valid should be paid in full. Likewise, public funds should not be used to pay any part of a claim determined not to be valid. Thus, the authority to compromise a given claim against the United States depends on the existence of statutory authority above and beyond the authority to "settle and adjust" claims of that type.

Id. (citations omitted). This long-established use of the term "settlement"—to mean administrative determination of the validity of a claim and amount due—continues to this day. See*, e.g.*, *Adams* v. *Hinchman*, 154 F.3d 420, 422 (D.C. Cir. 1998) (per curiam) (citing *Ill. Sur.* and holding: "to settle a claim means to administratively determine the validity of that claim") (quoting Off. of Gen. Counsel, GAO, *Principles of Federal Appropriations Law* 11-6); *Paige* v. *United States*, 159 Fed. Cl. 383, 386 (2022); *Devlin* v. *Berry*, 26 F. Supp. 3d 74, 79 (D.D.C. 2014). Relevant here, "there is no dispute in this case regarding what it means to 'settle' such a claim." Pet. App. 12a (Reyna, J., dissenting); see also Brief for Appellant at 29-30, *Soto* v. *United States*, No. 2022–2011 (Fed. Cir. Oct. 12, 2022); Pet. App. 3a n.1.

In the earliest days of the republic, Congress retained authority to settle claims, and itself "adjudicate[d] each individual money claim against the United States." *Off. of Pers. Mgmt.* v. *Richmond*, 496 U.S. 414, 430 (1990). As the nation grew and the need for timely processing of claims increased following the Revolutionary War, Congress in 1789 established the Treasury Department, and granted it authority to "settle" and "audit" accounts on behalf of the United States. An Act to Establish the Treasury Department,

ch. XII, 1 Stat. 65, 66–67 (1789). Shortly thereafter, in 1817, Congress expanded this delegation, legislating that "all claims and demands whatever, by the United States or against them, and all accounts whatever, in which the United States are concerned, either as debtors or as creditors, shall be settled and adjusted in the Treasury Department." An Act to Provide for the Prompt Settlement of Public Accounts, ch. XLV, § 2, 3 Stat. 366, 366 § 2 (1817).

In this early period, reviewing and paying claims against the United States was "much simpler," because Congress had not yet authorized many claims, and "the possibility of obtaining redress for claims against the government was limited." *GAO Red Book* at 14-20–14-21. In the subsequent two centuries, however, "[t]he law has undergone a sea change," with the number of statutes authorizing claims against the government proliferating. *Id.* at 14–21. "Now, there are many statutes that, in varying degrees of detail, waive sovereign immunity and bestow authority to administratively entertain claims." *Id.*

Indeed, unlike Congress's early legislation decreeing that the Treasury Department should settle "all claims," Congress has in subsequent years dispersed settlement authority across the federal government. In the U.S. Code, there are "many authorities available today to administratively settle claims against the federal government," by numerous federal agencies. *Id.*; *id.* (offering "a brief sampler" of statutes authorizing various agencies to settle claims).

And Congress is not alone: judicial interpretation and agency practice have similarly spread settlement authority more widely. For example, this Court, in *Corliss Steam-Engine*, concluded that the Secretary of the Navy's statutory authority to enter into contracts to acquire naval machinery necessarily encompassed

the power to settle claims for payment under such contracts—including claims for partial performance. "As, in making the original contracts, he must agree upon the compensation to be made for their entire performance, it would seem, that, when those contracts are suspended by him, he must be equally authorized to agree upon the compensation for their partial performance." 91 U.S., at 322–23. The Court reasoned, "it would be of serious detriment to the public service if the power of the head of the Navy Department did not extend to providing for all such possible contingencies by modification or suspension of the contracts, and settlement with the contractors." *Id.* at 323.

Additionally, after Congress created the General Accounting Office and by statute transferred to that agency the authority to settle claims of the United States, Budget and Accounting Act of 1921, Pub. L. No. 67-13, § 305, 42 Stat. 20, 24 (1921), the GAO adopted the practice of delegating the settlement function to other agencies. Rather than settle claims itself, "GAO's policy was to leave initial settlement of a claim to the agency from whose activities the claims arose." 42 Stat. at 14–24; see also 4 C.F.R. § 31.4 (1998) ("A claimant should file his or her claim with the administrative department or agency out of whose activities the claim arose. The agency shall initially adjudicate the claim.").

2. The Barring Act confers nonexclusive settlement authority and is displaced by any "[]other law" authorizing claims settlement.

Given this history, it is unsurprising that the current Barring Act—a much-amended statutory descendant of the 1817 law directing the Treasury to settle all claims, *GAO Red Book* at 14-5 n.28—is explicit that no agency has exclusive authority to settle claims

against the United States. Instead, at this point in the nation's history, the Barring Act is no more than a "general background provision[]" that is "inapplicable" where any other statute authorizes claims settlement. *Hernandez* v. *Dep't of Air Force*, 498 F.3d 1328, 1332 (Fed. Cir. 2007).

Specifically, the Barring Act provides that, "*[e]xcept as provided in this chapter or another law*, all claims of or against the United States Government shall be settled as follows." 31 U.S.C. § 3702(a) (emphasis added). Subject to the "another law" carveout, the Barring Act then assigns settlement authority as to claims involving specified topics to the Secretary of Defense, the Director of the Office of Personnel Management, and the Administrator of General Services, respectively, with the Director of the Office of Management and Budget assigned to "settle claims not otherwise provided for by this subsection or another provision of law." *Id.* § 3702(a)(1)–(4).

Congress reiterated the nonexclusive nature of settlement authority in the legislation enacting the current version of the Barring Act. There, Congress explained that the settlement function previously lodged with the GAO would be transferred to the Director of OMB, but expressly provided that "[t]he Director may delegate any such function, in whole or in part, to any other agency or agencies if the Director determines that such delegation would be cost-effective or otherwise in the public interest." Legislative Branch Appropriations Act, Pub. L. No. 104-53, § 211, 109 Stat. 514, 535 (1995). And, pursuant to this statutory authority, OMB has delegated its residual settlement authority to various agencies, depending on the nature of the claim. See Memorandum from Comptroller Gen., B-275605, *Transfer of Claims Settlement and Related*

Advance Decisions, Waivers, and Other Functions 1–2 (Mar. 17, 1997), https://perma.cc/89K2-DBKA.

The Barring Act also sets forth a time limit for claims settled under that statute: "A claim against the Government presented under this section . . . must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within 6 years after the claim accrues." 31 U.S.C. § 3702(b)(1). As the provision states expressly, this statute of limitations applies only to claims "presented under this section"—*i.e.*, claims settled pursuant to the authority conferred in the Barring Act. Additionally, even for claims settled under the Barring Act, the six-year limit is displaced if "another law" provides otherwise. *Id.* § 3702(b)(1)(A).

In sum, under current law, any agency may settle a claim against the United States if a statute authorizes the agency to administratively determine the validity of the claim and the amount due on it. To the extent no other statute authorizes settlement of a particular claim, the Barring Act acts as a gap-filler, supplying general settlement authority to various agencies. When a claim is settled under the general authority conferred in the Barring Act, instead of under specific settlement authority conferred in "another law," the claim is subject to the Barring Act's default six-year statute of limitations.

B. The CRSC statute confers authority to settle and pay claims for CRSC.

The CRSC statute, on its face, grants authority to the Secretaries of the military departments to settle claims for CRSC. Because claims for CRSC are properly settled under the specific settlement authority granted in the CRSC statute, that statute

constitutes "another law" that displaces the Barring Act. Accordingly, the Barring Act's provisions—including the six-year statute of limitations in § 3702(b)—do not apply to CRSC claims.

1. The CRSC statute authorizes the Secretary concerned to administratively determine the validity of a veteran's claim for CRSC and the amount due.

The CSRC Statute begins as follows:

> (a) Authority.—
>
> The Secretary concerned shall pay to each eligible combat-related disabled uniformed services retiree who elects benefits under this section a monthly amount for the combat-related disability of the retiree determined under subsection (b).

10 U.S.C. § 1413a(a).

Validity. Subsection (a) grants the Secretary concerned "[a]uthority" to administratively determine the validity of a claim for CRSC, in that it directs the Secretary concerned to pay CSRC only to an "*eligible* combat-related disabled uniformed services retiree who elects benefits under this section." *Id.* (emphasis added.) And the statute elsewhere confirms that it is the Secretary concerned who is authorized to administratively determine the eligibility of an applicant electing CRSC benefits (and hence, a claim's validity).

Eligibility is defined in subsection (c). That section, titled "Eligible retirees," provides that "[f]or purposes of this section, an eligible combat-related disabled uniformed services retiree referred to in subsection (a) is a member of the uniformed services who—(1) is entitled to retired pay . . .; and (2) has a combat-related disability." *Id.* § 1413a(c) "Combat-related disability" is defined in subsection (e) to mean a disability

"attributable to an injury for which the member was awarded the Purple Heart" or that was incurred "as a direct result of armed conflict," "while engaged in hazardous service," "in the performance of duty under conditions simulating war," or "through an instrumentality of war."

Subsection (d), in turn, provides that it is the Secretary concerned who must "consider[]" whether an applicant for CRSC is "an eligible combat-related disabled uniformed services retiree" under these definitions and details how that consideration is to be conducted. *Id.* § 1413a(d). In particular, subsection (d) states that "[t]he Secretary of Defense shall prescribe procedures and criteria under which a disabled uniformed services retiree may apply to the Secretary of a military department[[6]] *to be considered to be an eligible combat-related disabled uniformed services retiree*." (Emphasis added.) Thus, Congress expressly directed that whether an applicant electing CRSC benefits is "an eligible combat-related disabled uniformed services retiree"—*i.e.*, whether an applicant has a valid claim to CRSC benefits—is a matter to be "considered" by the Secretary concerned, according to CRSC-specific procedures to be established by the Department of Defense. In short, by directing the Secretary concerned to "consider" whether an applicant is eligible for CRSC benefits—and to pay CRSC only to eligible applicants—the statute's plain text authorizes the Secretary concerned to administratively determine

[6] "Secretary of a military department" refers to the Secretary of the Army, Navy, or Air Force. *See* 10 U.S.C. § 101(a)(8) (defining "military departments"). The Secretary of a military department considering an individual applicant's eligibility will be the Secretary of the department from which the applicant retired. JA 81, 92.

the validity of each applicant's claim to CRSC payments.

This reading of the statutory text is echoed in the Guidance published by the Department of Defense under subsection (d). JA 77. That document makes clear that—as the statute provides—"[t]he Military Departments determine which applicants are entitled to CRSC." *Id.* At each step, the Guidance issued under the statute reiterates that the administrative determination of the validity of an applicant's claim is to be performed by the relevant Military Department. *Id.* at 80 ("Applications for CRSC will be processed by the respective Military Department under these guidelines."); *id.* at 87 ("[T]he Military Departments will determine whether the member's disabilities are qualifying combat-related disabilities as prescribed below."); *id.* ("A retiree is entitled to CRSC only if the Service determines that the member has Combat-Related Disabilities."); *id.* at 92 ("Each Military Department will receive and process CSRC applications submitted by members retired from that Military Department" with an application to be approved "only if the applicant satisfies" all CRSC eligibility criteria).

The Guidance accords with the statutory text: The Secretary concerned is authorized under the statute to administratively determine whether an applicant is eligible for CRSC, and thus has a valid claim for compensation by the U.S. government.

Amount due. Subsection (a) also authorizes the Secretary concerned to administratively determine the amount of CRSC owed on an eligible veteran's claim. Subsection (a) states that the Secretary concerned shall pay "a monthly amount for the combat-related disability of the retiree *determined under subsection (b).*" 10 U.S.C. § 1413a(a) (emphasis added). Under the plain text of subsection (a), therefore, "[a]uthority" is

conferred on the Secretary concerned to "determine[]" the monthly amount owed by applying subsection (b).

Subsection (b) in turn "provides instructions on the administrative calculation of the amount due to satisfy an eligible veteran's claim." Pet. App. 15a. Subsection (b)(1), titled "Determination of monthly amount," states that "the monthly amount to be paid," subject to additional conditions set forth in subsections (b)(2) and (b)(3), "for any month is the amount of compensation to which the retiree is entitled under title 38 for that month, determined without regard to the disability of the retiree that is not a combat-related disability." Subsection (b)(2) puts a cap on the amount described in (b)(1), stating that the maximum amount of CRSC for any month cannot exceed the amount of retired pay that the veteran waived by electing to receive VA benefits. *Id.* § 1413a(b)(2) (citing 38 U.S.C. §§ 5304, 5305). And subsection (b)(3) sets forth special rules for Chapter 61 disability retirees,[7] providing distinct, explicit formulae to follow when determining the amount due depending on the veteran's situation. The effect of these provisions is to "allow[] the veteran to maximize the amount of compensation she would receive, including as a result of reductions in retired pay for a particular month." Pet. App. 15a (citing 10 U.S.C. § 1413a(b)). In sum, the statute authorizes the Secretary to "determine[]" the amount due to an eligible veteran—and directs how to make that determination.

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[7] 10 U.S.C. ch. 61 governs retirement of service members who have been determined to be unfit for duty due to disability. *See* Dep't of Def., *Military Compensation: Disability Retirement*, https://tinyurl.com/ykyuek45 (last visited Feb. 28, 2025).

2. The CRSC statute separately authorizes payment of CRSC.

Finally, providing further confirmation that subsection (a)'s grant of "authority" to the Secretary concerned confers *settlement* authority is that the statute separately authorizes the *payment* of CRSC claims from specific appropriated funds. As noted above, settlement of claims and payment of claims are separate functions that must be separately authorized. See *Ill. Sur.*, 240 U.S. at 218–19 (statutory term "settlement" of claims could not be interpreted to "denote payment" of claims); see also *GAO Red Book* at 14–29 ("Just because a claim is approved through the claims settlement process does not necessarily mean that it can or will be paid. For the claim to be paid, appropriated funds must be available for that purpose.").

Consistent with this longstanding understanding, the CRSC statute confers authority not only to settle claims, as described above, but also to make payment on settled claims using particular appropriated funds. Subsection (h) sets forth the "Source of payments" of CRSC: Payments to veterans of the Army, Navy, Air Force, Marine Corps, or Space Force "shall be paid from the Department of Defense Military Retirement Fund," while payments for any other member "shall be paid out of funds appropriated for pay and allowances payable by the Secretary concerned for that fiscal year." 10 U.S.C. § 1413a(h).

This separate provision for payment of CRSC is telling. It is consistent with typical legislative practice to provide for both settlement of claims and payment of claims using appropriated funds in the same statute. In the words of the *GAO Red Book*, "When considering what appropriation to use to pay an administratively settled claim, the first place to look is the statute authorizing the settlement." *GAO Red Book* at 14–45.

Where, as with the CRSC statute, a statute "governing specific types of claims contain[s] detailed provisions governing the payment of those claims," *id.* at 14–44, then the statute establishes a self-contained compensation scheme—here, providing for both administrative determination of the validity of CRSC claims and amount due thereon, as well as the ultimate payment of settled claims.

* * * * *

Because the CRSC statute authorizes the Secretary concerned to administratively determine (a) whether an applicant is eligible for CRSC, and (b) how much CRSC the applicant is owed, the CRSC statute authorizes the Secretary concerned to settle claims for CRSC. The CRSC statute is thus "another law" that displaces the Barring Act. The Federal Circuit's contrary decision was erroneous.

II. THE TEST CREATED BY THE FEDERAL CIRCUIT IS INCORRECT AND SHOULD BE REJECTED.

The Federal Circuit majority held that the Barring Act was not displaced—and that its statute of limitations applied to limit the CRSC available to Corporal Soto and the class—based on its conclusion that the CRSC statute "conveys no" settlement authority. Pet. App. 7a. According to the Federal Circuit, in order to displace the Barring Act a statute "must explicitly grant an agency or entity the authority to settle claims" using "specific language," which the majority stated "will typically be done by the use of the term 'settle.'" *Id.* at 6a–7a. Thus, rather than review the CRSC statute's provisions to determine whether it authorized claims settlement, the majority simply evaluated whether the statute "mention[s] settlement." *Id.* Not finding the word "settle," the Federal Circuit

concluded that the CRSC statute "only establishes who may be *eligible* for CRSC payments, not *how* claimants can have those claims settled." *Id.* The majority further held that "[w]ithout specific language," the CRSC statute would need to "provide[] a 'specific' provision setting out the period of recovery," a requirement the majority said also was not satisfied. *Id.*

This two-part test disregards this Court's definition of "settlement," imposes unjustified requirements on Congress, and otherwise lacks a basis in the law of statutory interpretation. The Court should reject it.

A. There is no requirement that a statute use the word "settle" to displace the Barring Act.

1. The Federal Circuit's "specific language" requirement is inconsistent with precedent.

The Federal Circuit's demand for "special language" addressing settlement finds no support in statutory history or case law.

First, no authority supports the notion that the word "settle" must appear for a statute to confer settlement authority. While some statutes addressing claims settlement use the term "settle," others use different terms (such as "adjust," "audit," "adjudicate," or "determine") or confer authority to settle claims by authorizing conduct that encompasses claims settlement.

That is the upshot of this Court's decision in *Corliss Steam-Engine*. There, the Court acknowledged that the power to settle claims "is, of course, limited by the legislation of Congress," but concluded that the Secretary of the Navy had legislative authority to settle a claim for payment for partial performance on a manufacturing contract without regard to the presence or

absence of "special language" in the statute. 91 U.S. at 322–23. Instead, the Court concluded that the requisite settlement authority existed because "discharge of the duty devolving upon the secretary necessarily requires him to enter into numerous contracts," some of which would inevitably have to be suspended, and he accordingly was necessarily "authorized to agree upon the compensation for their partial performance." *Id.* In short, the Secretary's authority to settle claims was found through a functional analysis of the authorities granted to him in the statute—not simply by asking whether the statute "mention[ed] settlement" as the Federal Circuit majority did here. Pet. App. 7a.

Similarly, in *Hernandez*, the Federal Circuit addressed whether the Barring Act applied to settlement of claims brought under the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), 38 U.S.C. §§ 4301–4333. 498 F.3d at 1330–31. The Federal Circuit concluded that settlement of claims under USERRA is governed exclusively by 38 U.S.C. § 4324(c), which provides that "[t]he Merit Systems Protection Board shall adjudicate any complaint." According to the Federal Circuit, this language—which refers neither to "settlement" nor "claims"—was sufficient to displace the Barring Act. 480 F.3d at 1331.

And in *McNeil* v. *United States*, 78 Fed. Cl. 211 (2007), the Court of Federal Claims held that a series of statutes each could serve as "another law" providing the Secretary of the Treasury with authority to settle claims of or against the United States, displacing the Barring Act. *Id.* at 221. Among other things, the *McNeil* court pointed to 26 U.S.C. § 6402(a), which provides that "[i]n the case of any overpayment [of taxes], the Secretary, within the applicable period of limitations, may credit the amount of such overpayment . . . against any liability in respect of an internal revenue

tax on the part of the person who made the overpayment and shall . . . refund any balance to such person." Just like the CRSC statute, § 6402(a) authorizes the Secretary to determine (a) whether a tax refund is owed (*i.e.*, whether there is a valid claim) and (b) the amount of such refund—and then authorizes the Secretary to pay it. Thus, just like the CRSC statute, 26 U.S.C. § 6402(a) authorizes settlement of claims and displaces the Barring Act. *McNeil*, 78 Fed. Cl. at 221.

The OMB has recognized yet more statutes that confer settlement authority without using the term. For example, OMB delegated to the Department of Defense its authority to settle claims under 10 U.S.C. § 2575, a statute that does not mention settlement, but instead authorizes the Secretary of any military department to dispose of unclaimed personal property "under such regulations as they may … prescribe." See Transfer of Claims Settlement and Related Advance Decisions, Waivers, and Other Functions, 97-1 Comp. Gen. Proc. Dec. P123 (Comp. Gen. Mar. 17, 1997), Attachment A. Likewise, 10 U.S.C. § 7712, formerly codified at 10 U.S.C. § 4712, relates to claims for the proceeds of effects of persons who pass away in locations under Army jurisdiction. When Congress initially drafted the statute, it included a subsection (g), which used the word "settlement" to vest authority in the GAO to address claims. See 10 U.S.C. § 4712 amended by Gen. Acct. Off. Act of 1996, Pub. L. No. 104-316, 110 Stat. 3826 (1996) (current version at 10 U.S.C. § 7712). Ultimately, Congress decided to remove that subsection, intending to transfer the authority from GAO to the Department of Defense. See §§ 201, 202(g), 110 Stat. at 3842 (noting that "[t]he purpose of this title is to amend provisions of law to reflect, update, and enact transfers and subsequent delegations of functions . . . as in effect immediately before this title takes effect);

In re Transfer Claim Settlement and Related Advance Decisions, 97-1 Comp. Gen. Proc. Dec. P123, at *9 (Mar. 17, 1997) (acknowledging that 110 Stat. 3826 transferred settlement authority for claims under 10 U.S.C. § 4712 to DoD). Thus, as it stands, 10 U.S.C. § 7712 does not contain the word "settle"—yet Congress plainly intended to provide settlement authority.

More broadly, this Court has rejected an approach to statutory interpretation that requires "magic words" in a statute, as the Federal Circuit's test does. In the context of the Government's waiver of sovereign immunity—like settlement authority, a legislative prerequisite to payment of claims out of government funds—this Court has said that "Congress need not state its intent [to waive sovereign immunity] in any particular way. We have never required that Congress use magic words." *FAA* v. *Cooper*, 566 U.S. 284, 291 (2012). Instead, the Court requires only "that the scope of Congress' waiver be clearly discernable from the statutory text in light of traditional interpretive tools." *Id;* See also *Dep't of Agric. Rural Dev. Rural Hous. Serv.* v. *Kirtz*, 601 U.S. 42, 48–49 (2024) (although Congress's intent to waive sovereign immunity must be "unmistakably clear," "Congress need not state its intent in any particular way," "need not use magic words," and need not "make its clear statement in a single section or in statutory provisions enacted at the same time") (citations and internal quotation marks omitted); *Lac du Flambeau Band of Lake Superior Chippewa Indians* v. *Coughlin*, 599 U.S. 382, 394 (2023) ("[T]he clear-statement rule is not a magic-words requirement.").

Here, Congress squarely authorized the Secretaries of the military departments to administratively determine both whether an applicant has a valid CRSC claim and the amount due. Had the Federal Circuit

used "traditional tools of statutory interpretation" rather than presuming a statute does not grant settlement authority in the absence of "specific language," see *Cooper*, 566 U.S. at 291, it would have held that the CRSC confers settlement authority and therefore displaces the Barring Act.

Indeed, the Federal Circuit's "specific language" test amounts to a novel substantive canon of construction: it presumes that statutes do *not* grant settlement authority in the absence of "specific language." See *Rudisill* v. *McDonough*, 601 U.S. 294, 315 (2024) (Kavanaugh, J., concurring) ("A substantive canon is a judicial presumption in favor of or against a particular substantive outcome."); see also Pet. App. 16a n.4 (Reyna, J., dissenting) (noting that the majority's "search for 'clear language'" indicates "doubt" as to the statutory meaning). But applying this unprecedented presumption in interpreting a statute drafted two decades earlier—when no court or other authority had identified a "specific language" requirement for settlement authority—was inappropriate. Although Congress is presumed to legislate with knowledge of this Court's canons and interpretive principles, see *Bond* v. *United States*, 572 U.S. 844, 857 (2014); *King* v. *St. Vincent's Hosp.*, 502 U.S. 215, 220 n. 9 (1991), it can hardly be presumed to have drafted the CRSC statute with foreknowledge that the Federal Circuit would two decades later interpret any statute without "specific language" not to afford settlement authority.

To the extent the Federal Circuit saw fit to resort to a substantive canon of construction, it should have considered the veterans canon long recognized by this Court. See *Rudisill*, 601 U.S. at 314 (Kavanaugh, J., concurring) ("Under the veterans canon, statutes that provide benefits to veterans are to be construed 'in the veteran's favor.'") (quoting *Brown* v. *Gardner*, 513 U.S.

115, 118 (1994)); *King*, 502 U.S. at 221 (same); *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946) ("[L]egislation is to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need."). To be sure, some members of this Court have lately called the veterans canon into question. *Rudisill*, 601 U.S. at 314–15 (Kavanaugh, J., concurring); *id.* at 329 (Thomas, J., dissenting). Whatever the ongoing viability of the veterans canon may be, as of 2003, "[i]t is presumable that Congress legislate[d] with knowledge" of the at-that-time widely accepted veterans canon. *King*, 502 U.S. at 220 n.9 (internal quotation marks and citation omitted). To the extent the Federal Circuit concluded that settlement authority could not be unambiguously discerned from the plain text of the CRSC statute, it should have interpreted perceived Congressional silence to favor veterans entitled to CRSC benefits—and not, as it did, to preclude settlement authority.

2. The CRSC statute does not merely establish "eligibility" for CRSC.

With its myopic search for "specific language" related to settlement, the Federal Circuit misread what the CRSC statute actually says. In the majority's reading, the statute "only establishes who may be *eligible* for CRSC payments, not *how* claimants can have those claims settled." Pet. App. 7a; see also *id.* at 8a (the CRSC statute "establish[es] a veteran's *substantive* right to CRSC," but "do[es] not authorize the Secretary to administratively determine the validity of a claim") (citation and internal quotation marks omitted). As Judge Reyna wrote in dissent, "[t]his is belied by the provisions of the CRSC statute itself." *Id.* at 18a.

As discussed above, the CRSC statute describes exactly "how claimants can have [their] claims settled." To determine the validity of a CRSC claim, "a disabled

uniformed services retiree may apply to the Secretary of a military department to be considered to be an eligible combat-related disabled uniformed services retiree" under "procedures and criteria" prescribed by the Department of Defense. 10 U.S.C. § 1413a(d). Looking for the word "settle," the majority ignored this provision. To determine the amount of CRSC due to an applicant, the CRSC statute provides that the Secretary shall pay "a monthly amount … determined under subsection (b)." *Id.* § 1413a(a). The majority ignored this provision as well.

As is clear from the face of the statute, the majority was wrong to conclude that the CRSC statute solely addresses the right of eligible veterans to obtain CRSC. Instead, starting from its very first word, the CRSC statute confers "[a]uthority" on the Secretary concerned to "determine[]" and "consider[]" both the validity of claims to CRSC and the amount due. *Id.* § 1413a(a), (d).

In this way, the CRSC statute is flatly different from other statutes addressing the entitlement of active and retired service members to compensation. See Br. of the United States in Opposition ("BIO") 11 (listing such statutes). Each of the statutes identified by the government provides for *an individual's entitlement* to compensation—not *the Secretary's authority* to administratively determine what compensation is due. See, *e.g.*, 37 U.S.C. § 204(a) ("The following persons are entitled to . . . basic pay"); *id.* § 302(a) ("An officer who is an officer of the Medical Corps . . . is entitled to special pay . . . ."); 10 U.S.C. § 1401(a) ("The monthly retired pay of a person entitled thereto . . . is computed according to the following table."); *id.* § 12731(a) ("Except as provided in subsection (c), a person is entitled, upon application, to retired pay . . ."); *id.* § 12739(a) ("The monthly retired pay of a person entitled to that

pay under this chapter is the product of [two components]."); *id.* § 1448(a)(1) ("The following persons are eligible to participate in the [Survivor Benefit Plan]."); *id.* § 1451(a) (discussing what "standard annuity" is "payable to the beneficiary"). None of these statutes states, as the CRSC statute does expressly, that the Secretary or any particular person is granted "[a]uthority" encompassing the determination of the validity of and amount due on claims.

B. There is no requirement that a statute provide an independent statute of limitations to displace the Barring Act.

The Federal Circuit's majority opinion suggests, as an apparent alternative requirement to the word "settle," that a statute must include "a 'specific' provision setting out the period of recovery" to provide the authority to settle a claim and thus displace the Barring Act. Pet. App. 7a.[8] To the extent the majority believed that another statute displaces the Barring Act only if the other statute has an express statute of limitations, this conclusion, too, finds no support in either the text of the Barring Act or precedent.

The preamble of the Barring Act states, "[e]xcept as provided in this chapter or another law, all claims

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[8] The Federal Circuit cited its own *Hernandez* opinion in connection with this requirement, as the statutory provision cited in *Hernandez* indicates that a complaint for certain employment rights should be considered by the MSPB regardless of when the complaint accrued. *See* 38 U.S.C. § 4324(c). However, the entire Uniformed Services Employment and Reemployment Rights Act ("USERRA"), 38 U.S.C. §§ 4301–4333 includes a series of specific "procedures for assistance, enforcement, and investigation" of employment rights claims, *id.* §§ 4321–4327. USERRA displaces the Barring Act because it provides these procedures for settling such claims—not because it includes a subsection addressing when complaints may be filed.

against the United States Government shall be settled as follows . . ." 31 U.S.C. § 3702. If another statue provides for the settlement (*i.e.*, the administrative determination) of claims against the United States, none of the Barring Act's provisions apply. The Barring Act's limitations provision, subsection (b), applies only to claims "presented under this section"—*i.e.*, the Barring Act. *Id.* § 3702(b)(1). Thus, if another statute provides for the settlement of claims, then the Barring Act does not apply—and, because the claim is not "presented under this section," the Barring Act's statute of limitations does not apply either.

Whether another statute that authorizes claims settlement also provides for a separate statute of limitations is thus of no moment under the Barring Act. The Federal Circuit should not have read into the text a limitations requirement that it does not contain. See *Bostock* v. *Clayton Cnty.,* 590 U.S. 644, 654 (2020) ("After all, only the words on the page constitute the law adopted by Congress and approved by the President."); *Mobil Oil Corp.* v. *Higginbotham*, 436 U.S. 618, 625 (1978) ("There is a basic difference between filling a gap left by Congress' silence and rewriting rules that Congress has affirmatively and specifically enacted."); *United States* v. *Locke*, 471 U.S. 84, 95 (1985) (finding that it is not the judiciary's role to redraft statutes). This Court's inquiry can and should stop there. See *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 340 (1997) ("Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. Our inquiry must cease if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'") (quoting *United States* v. *Ron Pair Enter., Inc.*, 489 U.S. 235, 340 (1989)).

In any event, the absence of a limitations period in the CRSC statute does not call into question whether that statute confers settlement authority. As the statute makes clear, CRSC is to be paid "for any month" in which the claimant is eligible. 10 U.S.C. § 1413a(b)(1); see also JA 98 ("Members may submit an application for CRSC at any time and, if otherwise qualified for CRSC, compensation will be paid retroactively, to the extent otherwise allowed by law, for any month after May 2003, for which all conditions of eligibility were met, determined according to the requirements and entitlements as they applied each month for which benefits are considered."). Indeed, the absence of an explicit statute of limitations makes sense given how the statute operates.

First, CRSC benefits are necessarily time-limited, because they are available only from the time a service member retires through the end of his or her lifetime; CRSC does not extend to a retiree's heirs. See 10 U.S.C. § 1413a(a), (c). There is thus no risk that claimants will pursue "stale claims . . . 50 to 100 years after they first accrued" under the CRSC statute. See BIO 11. Second, no interest is paid on retroactive CRSC payments. See 10 U.S.C. § 1413a(b); *Smith* v. *Gober*, 14 Vet. App. 227, 231 (2000), *aff'd sub nom. Smith* v. *Principi*, 281 F.3d 1384 (Fed. Cir. 2002) ("Congress has enacted a comprehensive statutory scheme for the payment of veterans benefits. In this case, there is no statute or regulation that authorizes the Secretary to pay interest on past due benefits under any circumstances, to include the exercise of his equitable powers."); *Sandstrom* v. *Principi*, 358 F.3d 1376, 1379 (Fed. Cir. 2004) ("Under the longstanding 'no-interest rule,' sovereign immunity shields the U.S. government from interest charges for which it would otherwise be liable, unless it explicitly waives that immunity . . ."). CRSC

beneficiaries thus have every financial incentive to pursue CRSC claims promptly. Any veteran who chose to "wait indefinitely," BIO 11–12, rather than claim all the CRSC benefits available at the earliest opportunity, would accordingly be financially penalized.

Additionally, to the extent the passage of time makes records less accessible, see BIO 11, that too works to the detriment of veterans seeking CRSC. The burden is on applicants to collect and submit documentation demonstrating that the applicant's disability results from a combat-related injury. Supra at 6 & n.3. If necessary documents are lost or unavailable, CRSC benefits will be denied under the CRSC Guidance. See JA 98–99. Again, given the operation of the CRSC statute, all incentives favor submitting a claim promptly upon eligibility, regardless of the absence of a statute of limitations.

Even so, veterans confronting significant disabilities may face emotional and physical obstacles that make it difficult for them to apply for benefits as soon as they are eligible. See Cert-stage NLSVCC Amicus Br. 12–17 ("Medical and social challenges commonly faced by combat-wounded retirees are likely to have direct and significant negative impact on their ability to apply for CRSC within six years of eligibility."). In enacting the CRSC statute, Congress resolved that such veterans warrant special treatment in the form of compensation that is unavailable to other veterans—compensation designed to make veterans with combat-related injuries, to the extent possible, as whole as the government can to compensate for the enormous sacrifice they have made. Congress's election not to limit the time in which this especially deserving group may pursue benefits granted to them by statute is fully consistent with the statute's broader purpose.

Any suggestion that a ruling for Corporal Soto will result in an onslaught of ancient and stale claims is an unsupported "parade of horribles" argument of the sort this Court has repeatedly rejected. See *Truck Ins. Exch.* v. *Kaiser Gypsum Co.*, 602 U.S. 268, 284 (2009) ("This 'parade of horribles' arguments cannot override the statute's text . . ."); *CFTC* v. *Schor*, 478 U.S. 833, 852 (1986) (declining to endorse the respondent's argument "out of fear of where some hypothetical 'slippery slope' may deposit us."). Recognizing that the CRSC statute provides its own settlement mechanism will result in no more than the continued submission of claims by combat-disabled veterans, and their receipt of well-deserved, full compensation.

CONCLUSION

The decision of the Federal Circuit should be reversed. The district court's order granting summary judgment to Corporal Soto and the class should be affirmed.

Respectfully submitted,

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