No.

IN THE

Supreme Court of the United States

ROBERT M. SELLERS,

Petitioner,

v.

DENIS R. MCDONOUGH,
SECRETARY OF VETERANS AFFAIRS,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Abigail Colella
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019

Kenneth M. Carpenter
John Niles
CARPENTER, CHARTERED
1525 SW Topeka Blvd., Suite D
Topeka, KS 66601

John F. Cameron
250 Commerce Street
Montgomery, AL 36124

Counsel for Petitioner

Melanie L. Bostwick
Counsel of Record
Thomas M. Bondy
James Anglin Flynn
Anne W. Savin
ORRICK, HERRINGTON & SUTCLIFFE LLP
1152 15th Street, NW
Washington, DC 20005
(202) 339-8400
mbostwick@orrick.com

QUESTION PRESENTED

When a veteran initiates a claim for disability benefits, the Department of Veterans Affairs must determine whether the veteran's impairment is causally connected to a disease or injury suffered during military service. When a veteran is ultimately awarded disability benefits, the award's effective date depends on when the veteran initiated the claim. This case concerns the standard for determining which disabling conditions are within the scope of a veteran's claim.

The Federal Circuit held that, even where a veteran's disabling condition is obvious on the face of the veteran's service records, that condition is not within the claim's scope unless the veteran's claim form specifically identifies that condition by name or by symptomatology. This condition-or-symptom restriction on claim scope appears nowhere in the text of the governing statutes or regulations. The only place where the rule even arguably appears is on a VA form for veterans to fill out to initiate the claims process. Ignoring this Court's repeated admonitions about the primacy of statutory text, the Federal Circuit gave legal effect to those instructions. In so doing, it allowed the language on an agency form to override a statute conferring benefits on a disabled veteran.

The question presented is: When a veteran has submitted an application for disability benefits, does the veteran's claim encompass all reasonably identifiable conditions within the veteran's service records?

RELATED PROCEEDINGS

Robert M. Sellers v. Robert L. Wilkie, Secretary of Veterans Affairs, No. 19-1769 (Fed. Cir. judgment entered July 15, 2020)

Robert M. Sellers v. Robert L. Wilkie, Secretary of Veterans Affairs, No. 16-2993 (Vet. App. judgment entered Jan. 30, 2019)

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INTRODUCTION

"Claim" is one of the foundational concepts in our nation's system of veterans' benefits. Veterans and their family members request benefits to which they are entitled by initiating a claim, typically on a Department of Veterans Affairs (VA) claim form. And when a benefit is granted, the effective date of the award generally is tied to the date the claim was initiated.

This petition asks the Court to resolve longstanding confusion over the requirements for and scope of a "claim" under Title 38. *See, e.g.*, *Rice v. Shinseki*, 22 Vet. App. 447, 451-52 (2009) (noting that "the broad definition of 'claim,' as used by VA and reflected in [38 C.F.R.] § 3.1(p) [(2008)], and the Court's fluid use of the term would benefit from an attempt to bring some precision to its use in the future"); *Shea v. Wilkie*, 926 F.3d 1362, 1367 & n.3 (Fed. Cir. 2019) (flagging ambiguity of regulation requiring claims to identify "benefits sought").

In the decision below, the Federal Circuit held that a veteran's claim for disability compensation is limited in scope to the disabling conditions specifically identified on the veteran's application form, even when the presence of additional disease or injury is facially obvious from the veteran's service medical records.

This departs from the plain language of the relevant statutes and regulations, which define a "claim" broadly, relating to a veteran's present state of disability in the aggregate, rather than requiring that a

veteran identify particular disabling conditions. And it conflicts with VA's duty to assist a veteran with the development of facts pertinent to the veteran's benefits claim, 38 U.S.C. § 5107(a), and to fully and sympathetically develop the veteran's claim to its optimum based on all of the record evidence, 38 C.F.R. § 3.103(a).

This departure from text and precedent matters. In Petitioner's case, VA actually obtained and reviewed extensive documentation of his psychiatric disability, including a then-recent in-service hospitalization. Yet as obvious as that disability was from the evidence, VA was permitted to ignore it because Mr. Sellers did not list it on a VA form. The Federal Circuit's artificial and incorrect limitation on claim scope will deprive veterans of much-needed disability compensation—particularly with respect to psychological impairments, a symptom of which is often the denial or minimization of the disability itself.

In short, the Federal Circuit has concocted "a regime that has no basis in the relevant statutes and does nothing to assist, and much to impair, the interests of those the law says [VA] is supposed to serve." *Mathis v. Shulkin*, 137 S. Ct. 1994, 1995 (2017) (Gorsuch, J., dissenting from denial of certiorari).

Because the Federal Circuit has exclusive jurisdiction to decide the issue, no circuit conflict on the question presented is possible, and the decision below will have immediate nationwide effect on one of the country's largest and most important public-benefits programs. This Court's review is warranted to determine the scope of a "claim" under Title 38 and to

answer the lower courts' calls for clarification of this key statutory term.

OPINIONS AND ORDERS BELOW

The opinion of the Court of Appeals is reported at 965 F.3d 1328, Pet. App. 1a-22a, and the denial of rehearing en banc is reproduced at Pet. App. 75a-76a. The opinion of the United States Court of Appeals for Veterans Claims is reported at 30 Vet. App. 157, Pet. App. 23a-38a, and the denial of full-court review is available at 2019 WL 361687, Pet. App. 77a-78a. The opinion of the Board of Veterans' Appeals is not officially reported but appears at 2016 WL 3161639. Pet. App. 39a-74a.

JURISDICTION

The Federal Circuit entered judgment on July 15, 2020, Pet. App. 1a-22a, and denied a timely petition for rehearing en banc on October 1, 2020, Pet. App. 75a-76a. This Court has jurisdiction under 28 U.S.C. § 1254(1) (2018).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Relevant portions of 38 U.S.C. §§ 1110, 5101, 5107, and 5110 are reproduced at Pet. App. 82a-88a. Relevant portions of 38 C.F.R. §§ 3.1, 3.152, 3.159, 3.102, and 3.103 are reproduced at Pet. App. 89a-97a.

STATEMENT OF THE CASE

During his military career, Mr. Sellers is repeatedly treated for psychiatric conditions, culminating in an involuntary hospitalization

The son of two World War II veterans, Robert Sellers knew from a young age that he wanted to serve our country. On his seventeenth birthday, he enlisted in the U.S. Navy. Record Before the Agency (R.B.A.) 2410. He served honorably in the Navy from 1964 to 1969 and in the U.S. Army from 1981 until his retirement in 1996. Pet. App. 25a.

Like many veterans, Mr. Sellers's service was characterized by injuries and the traumatic loss of fellow servicemembers. As a paratrooper assigned to a Special Forces unit, he suffered serious knee and hip injuries from a parachute malfunction in the 1980s and was reassigned to transport and administrative duties. R.B.A. 73, 75-76. These in-service physical injuries continue to affect Mr. Sellers to this day.

While in service, Mr. Sellers also began experiencing symptoms of depression and post-traumatic stress disorder (PTSD) following the deaths of friends and classmates. Pet. App. 44a. During parachute training, Mr. Sellers witnessed a classmate's fatal 250-foot fall. R.B.A. 2621, 2624. Many other friends were killed while serving in the Vietnam War. For decades, Mr. Sellers has suffered nightmares and survivor's guilt stemming from these events. *See* Pet. App. 44a.

Mr. Sellers began receiving treatment for his psychiatric symptoms while still on active duty. His

superiors recommended counseling in the late 1980s, R.B.A. 2015, and by 1990 he was in active treatment with a military psychiatrist who prescribed antidepressants and group therapy. R.B.A. 1047.

His psychiatric symptoms persisted. In 1993, Mr. Sellers's commander referred him for a psychiatric fitness-for-duty evaluation. Pet. App. 25a. The military psychiatrist noted "prominent" insomnia and diagnosed Mr. Sellers with depression but concluded that the symptoms were not "severe enough to make him unfit for duty." Pet. App. 25a.

In 1995, Mr. Sellers threatened suicide. Pet. App. 25a. His commanders referred him for an emergency mental-health evaluation. Mr. Sellers underwent extensive psychological testing and was involuntarily hospitalized for three weeks. Pet. App. 25a. This time, Mr. Sellers was diagnosed with both depression and personality disorder with obsessive-compulsive traits. His military psychologist also noted that he "tends to minimize / deny problems" and "sees self as normal and without fault." R.B.A. 2922. Less than a year later, in 1996, Mr. Sellers retired from service.

VA ignores Mr. Sellers's documented psychiatric conditions when assessing his initial claim for disability compensation

In March 1996, just one month after his retirement, Mr. Sellers filed a pro se claim application for disability compensation by submitting a VA Form 21-526, titled Veteran's Application for Compensation or Pension. Pet. App. 98a-119a. The precise wording of that form, like the wording of the statutes and

regulations at issue in this case, has changed in immaterial ways over the intervening years. None of those changes affects the statutory question presented.[1] *See infra* § I.

In 1996, the four-page form included a box with three blank lines that asked the veteran to list the "sickness, disease or injuries for which this claim is made." Pet. App. 104a. Mr. Sellers listed several physical ailments, including right-leg numbness, left-knee injury, back injury, injuries to fingers on his right hand, and hearing loss. *Id.* Additionally, in a box labeled "remarks," he wrote "request s/c [service connection] for disabilities occurring during active duty service." Pet. App. 116a.

In VA parlance, service connection is a determination that a disabling condition was "suffered," "contracted," or "aggravat[ed]" while "in line of duty." 38 U.S.C. § 1110; *accord id.* § 1131. It requires "(1) the existence of a present disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship between the present disability and the disease or injury incurred or aggravated during service." *Saunders v. Wilkie*, 886 F.3d 1356, 1361 (Fed. Cir. 2018).

Importantly, "the term 'disability' refers to a functional impairment, rather than the underlying cause of the impairment." *Id.* at 1362. Indeed, veterans who experience functional impairment and seek disability

[1] Except where indicated, citations in this Petition refer to the 1996 editions of the U.S. Code and Code of Federal Regulations in effect when Mr. Sellers first sought disability benefits.

benefits often do not know the cause; they are not medical experts and do not necessarily understand their current diagnoses, much less their service medical history. VA has a statutory duty to assist the claimant in developing their claim to the fullest. 38 U.S.C. § 5103A. That includes, at a minimum, reviewing service medical records and often includes VA medical examinations as well. *See* 38 C.F.R. § 3.159(b); 38 C.F.R. § 3.103(a).

If VA determines that a veteran's disability is service connected, it must also determine the effective date—that is, the starting date for any compensation and related benefits. The effective date generally may be no earlier than "the date of receipt of [the veteran's] application," 38 U.S.C. § 5110(a); *see also* 38 C.F.R. § 3.400(b)(2).

VA in 1996 obtained and reviewed Mr. Sellers's service records, including his medical records, and ordered two physical examinations. C.A. Appx133. Ultimately, VA granted service connection for several physical conditions, including one (a toe fracture) not listed on Mr. Sellers's claim form. Despite ample evidence of psychological trauma and illness in his service records, and despite Mr. Sellers's broad request for service connection for in-service incidents, VA did not adjudicate any psychiatric conditions at that time.

Mr. Sellers eventually obtains compensation for his longstanding psychiatric disability but is denied an effective date based on his initial claim

Mr. Sellers continued to suffer psychiatric symptoms, especially nightmares and insomnia. *See* Pet. App. 52a-53a. In September 2009, he again sought disability compensation, this time specifically citing post-traumatic stress. R.B.A. 2647. According to a VA examiner, Mr. Sellers experiences "occupational and social impairment with deficiencies in most areas, such as work, judgement, thinking, family relations and mood." Pet. App. 55a. His physical and psychiatric impairments, taken together, "preclude[] gainful employment." Pet. App. 65a.

Although VA's Regional Office initially denied service connection for PTSD, it subsequently granted service connection for major depressive disorder (MDD) after Mr. Sellers was diagnosed with that condition during a VA examination. Pet. App. 26a; R.B.A. 3011-13, 3029. VA assigned Mr. Sellers's MDD a 70% disability rating and an effective date of May 13, 2011—the date of the VA examination. *Id.* At that point, Mr. Sellers obtained counsel to assist him in pursuing benefits, including seeking appeal.

On appeal, the Board of Veterans' Appeals determined that Mr. Sellers had established service connection for PTSD, and it modified the effective date for MDD to September 18, 2009—the date Mr. Sellers specifically sought compensation for his psychiatric symptoms. Pet. App. 64a-65a. It denied Mr. Sellers's request for an effective date tied to his 1996 claim

application because, according to the Board, that submission "did not include any claim for psychiatric disorder or problems that could reasonably [be] construed as a claim for service connection for psychiatric disability." *Id.*

This difference in effective dates—between 1996 and 2009—matters. For Mr. Sellers, it means losing 13 years' worth of compensation for a disabling condition that all agree stems from his service and has affected him for decades.

The Veterans Court reverses, explaining that a "claim" encompasses conditions that are reasonably identifiable from service medical records

Mr. Sellers appealed to the Court of Appeals for Veterans Claims, urging that he was entitled to an earlier effective date based on his 1996 claim.

The Veterans Court agreed that Mr. Sellers's 1996 claim application potentially warranted the earlier effective date for MDD. It recognized two key statutory principles: that the veteran must initiate a claim by identifying the benefits sought and that VA has an obligation to develop the veteran's claim fully and sympathetically. Pet. App. 28a-29a. The court then rejected VA's contention that Mr. Sellers's claim application fell short by making only "a general statement of intent to seek benefits for unspecified disabilities." Pet. App. 29a. Here, Mr. Sellers's psychiatric disability was "identified in the record by military medical professionals well before" the 1996 claim, and those records were "in VA's possession at the time of

the initial decision." Pet. App. 29a-30a. When Mr. Sellers sought disability benefits, then, VA was not permitted to "ignore in-service diagnoses of specific conditions" just because they were not listed on a claim form. Pet. App. 30a. When such a diagnosis is "reasonably identifiable" to VA, it is incompatible with VA's statutory duties to simply ignore it. Pet. App. 30a.

Whether a particular condition is "reasonably identifiable" from service records, the Veterans Court explained, is a factual question for the Board that turns on the nature of the underlying records and the facts of the particular claim: While detailed, repeated, in-service diagnoses of significant illnesses may not be ignored, vague, undiagnosed symptoms or fleeting mentions of minor conditions (e.g., a stubbed toe) likely do not pass the test. Pet. App. 30a-31a. Because the Board had not assessed whether MDD was reasonably identifiable here, the Veterans Court remanded for it to do so. Pet. App. 32a.

The Federal Circuit imposes an extra-statutory "condition or symptom" restriction apparently drawn from instructions on VA's form

VA appealed, and the Federal Circuit reversed. It held that, to assert a claim for disability benefits linked to a particular condition (and thereby secure an effective date for such benefits), the veteran must on the claim form itself "provide information, even at 'a high level of generality,' … to identify the sickness, disease, or injury for which benefits are sought." Pet. App. 18a-19a.

The court observed that, under 38 U.S.C. § 5101(a), "[a] specific claim in the form prescribed by the Secretary ... must be filed in order for benefits to be paid…." Pet. App. 15a. It then examined the operative version of VA Form 21-526, which instructed veterans to "identify in block 17 the 'nature of sickness, disease or injuries for which this claim is made.'" Pet. App. 15a. The Federal Circuit concluded that this kind of instruction effectively limits the statutory right to benefits, such that any disabling condition not identified on the form may be excluded from the scope of the claim. Pet. App. 16a-17a.

The court did not, however, purport to tie its reasoning to any particular statutory or regulatory text or determine that any deference was warranted to any actual regulation. Instead, it presumed that a regulation existed in 1996 imposing a condition-or-symptom restriction on claim scope. That presumption was wrong: it repeated an error from an earlier Federal Circuit decision, in which the court considered a 2014 VA rule that *does* purport to impose such a requirement. *See* Pet. App. 16a-19a (citing *Veterans Justice Grp., LLC v. Sec'y of Veterans Affairs*, 818 F.3d 1336 (Fed. Cir. 2016)).

In *Veterans Justice*, veterans organizations challenged a 2014 VA regulation instructing that a "complete claim" must contain "a description of any symptom(s) or medical condition(s) on which the benefit is based." *Id.* at 1354-55 (quoting 38 C.F.R. § 3.160(a) (2015)). In that case, the Federal Circuit

examined 38 U.S.C. § 5107 (2012)[2] and the challenged 2014 rule under the two steps of *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984). At step one, the Federal Circuit held that § 5107, concerning a veteran's burden to present and support a claim for benefits, "does not directly address whether the VA must develop claims unrelated to the claim presented." *Veterans Justice*, 818 F.3d at 1354 (capitalization omitted). At step two, the court held that VA's 2014 rule was a reasonable interpretation of § 5107 and deferred to the agency. *Id.* at 1356. The central basis for the *Veterans Justice* court's step-two reasoning was that the 2014 rule did "not substantively diverge from the VA's prior regulation." *Id.* The court, however, cited no such pre-2014 regulation.

In Mr. Sellers's case, the Federal Circuit used the same reasoning in reverse: because the 2014 rule was (per *Veterans Justice*) a reasonable interpretation of the statute, the "prior" regulation must have been reasonable, too. Pet. App. 18a (noting that the 2014 rule did "not substantially differ from the regulations that do apply to this [1996 claim]"). But, again, the court cited no actual 1996 regulation before ruling that this non-existent rule was reasonable and applicable. *See* Pet. App. 16a-19a. There is none.

Instead, the Federal Circuit effectively gave the force of law to the instructions on a VA claim form,

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[2] Although the current statute and the version of § 5107 in effect in 1996 describe the veteran's burden using slightly different words, the Federal Circuit did not view the difference as meaningful. Pet. App. 18a n.9. Petitioner agrees that "claim" should be given the same meaning under both versions.

applying a condition-or-symptom restriction drawn from those instructions to deny benefits otherwise due to Mr. Sellers. It did so despite a history of in-service psychiatric disability, treatment, and hospitalization, extensively documented by military doctors in Mr. Sellers's service records. Pursuant to its duty to assist Mr. Sellers, VA obtained and reviewed those records. But, according to the Federal Circuit, VA was permitted to ignore all that evidence because Mr. Sellers's claim form did not list depression—a disability that often manifests as difficulty acknowledging the disability itself.

REASONS FOR GRANTING THE WRIT

I. The Federal Circuit Imposed An Atextual And Anti-Veteran Limitation On The Scope Of A Disability Claim.

This case presents yet another instance in which the Federal Circuit has concocted "a regime that has no basis in the relevant statutes and does nothing to assist, and much to impair, the interests of those the law says [VA] is supposed to serve." *Mathis*, 137 S. Ct. at 1995 (Gorsuch, J., dissenting from the denial of certiorari).

In the decision below, the Federal Circuit held that, for a disability "claim" to be "legally sufficient," the veteran's claim application must "identify the sickness, disease, or injury for which benefits are sought." Pet. App. 18a-19a.

But the relevant statutes and regulations make clear that a claim application need only identify the

type of benefit sought—such as disability compensation or burial benefits. At that point, the duty falls to VA to assist in developing the claim (including by requesting the veteran's service medical records in the case of disability claims) and to maximize the award to the veteran based on all the evidence before it.

In holding otherwise, the Federal Circuit cited no statutory text and instead relied on a non-existent regulation, VA's inaccurate account of its historical practice, and the instructions on VA's form. But none of these is a basis for limiting the scope of a claim for statutory benefits, particularly in light of the pro-veteran canon, under which "provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 441 (2011) (quoting *King v. St. Vincent's Hosp.*, 502 U.S. 215, 220 n.9 (1991)). The Federal Circuit's limiting rule is anti-veteran and without basis in any valid source of law.

A. Under the relevant statutes and regulations, a veteran's "claim" for disability compensation extends to all reasonably identifiable conditions in the record.

Since 1988, the procedure for obtaining veterans' benefits has been codified in Chapter 51 of Title 38 of the United States Code. The same procedural statutes apply to all benefits administered by the Secretary—from educational assistance to death benefits. And, in all cases, the process begins by initiating a "claim." 38 U.S.C. § 5101.

The statutory language (and the language of corresponding VA regulations, both in 1996 and today) makes clear that a "claim" is a statement of entitlement to a particular type of benefit administered by VA—one of which is disability compensation. If a veteran files a claim for disability compensation and mentions a particular injury incurred during service (say, vision loss), the "claim" is still one for disability compensation writ large; it is not synonymous with, nor limited to, the facts about vision loss that might support the veteran's entitlement.

This view of "claim" is also consistent with the VA-driven, pro-veteran system envisioned by Congress. VA's receipt of a "claim" triggers a statutory obligation to determine whether the requested benefit is warranted. In the case of disability benefits, VA's obligation includes requesting and reviewing medical records, assisting in developing the claim, and maximizing benefits. In fulfilling those obligations, VA may find evidence or entitlements the veteran missed; but the veteran's lack of medical or legal expertise does not exclude such information from the scope of his claim.

1. A "claim" is simply a statement of entitlement to a particular type of benefit.

Under 38 U.S.C. § 5101(a), "[a] specific claim in the form prescribed by the Secretary … must be filed in order for benefits to be paid." The statute consistently describes and categorizes "claims" as being "for" a type of benefit (such as education benefits or disability compensation) rather than "for" a particular

disabling condition. For instance, a claim "for compensation … shall also be considered to be a claim for death pension." 38 U.S.C. § 5101(b); *see also id.* § 5103 (provision does not apply to "a claim for Government life insurance benefits").

VA's regulations describe "claims" just as broadly. In 1996, those regulations defined "claim" as "a formal or informal communication in writing requesting a determination of entitlement or evidencing a belief in entitlement, to a benefit." 38 C.F.R § 3.1.[3] And, just like the statute, the regulations characterized different claims as requests for different types of benefits. *See* 38 C.F.R. § 3.151(a) (requiring a "specific claim" and offering examples like "claim for pension" or "claim for compensation"); 38 C.F.R. § 3.152 (describing "claims for death benefits").

Moreover, the regulations describing how to initiate a "claim" offered no indication that a claim would be limited to specific underlying conditions. They explained that claimants could initiate a "formal" claim by filing a Form 21-526. 38 C.F.R. § 3.155(a). Consistent with the pro-claimant nature of the system, VA would also accept as an "informal claim" "[a]ny communication or action, indicating an intent to apply for one or more benefits under the laws

[3] Again, the current regulation is not meaningfully different. A "claim" is "a written or electronic communication requesting a determination of entitlement or evidencing a belief in entitlement, to a specific benefit under the laws administered by [VA] submitted on an application form prescribed by the Secretary." 38 C.F.R. § 3.1 (2019).

administered by [VA]." 38 C.F.R. § 3.155(a). Upon receipt of an informal claim, the agency would forward the claimant any relevant application forms. 38 C.F.R. § 3.155(a); *see also* 38 U.S.C. § 5103. And if the claimant "execut[ed]" and returned the application form within one year, it would be "considered filed as of the date of receipt of the informal claim." 38 C.F.R. § 3.155(a).[4] The filing of a claim triggered VA's duty to develop the claim to its fullest, including by requesting and reviewing medical records. *See supra* p. 7.

VA's current regulations, adopted in 2014, add provisions requiring a disability claimant to identify specific symptoms on which the claim is based. *See infra* pp. 22-24 (explaining how the Federal Circuit wrongly upheld these new regulations as a valid interpretation of the statute). But the regulatory text continues to use "claim" broadly to mean a request for a type of benefit, not a request based on a particular disease or condition. They provide that a single "claim" for disability compensation may include multiple "issues"—each issue constituting an "entitlement to compensation for a particular disability." 38 C.F.R. § 3.151(c) (2019) (noting that "a knee condition" and "an ankle condition" would be separate "issues," not separate "claims").

Finally, this broad understanding of claim scope also squares with how the statutory scheme treats awards of disability benefits. A veteran's award is

[4] The VA has since reformed the "informal claim" concept as an "intent to file" process that, in practice, operates in a similar manner. 38 C.F.R. § 3.155(a) (2019).

determined not by adding together individual monetary amounts for each condition but by accounting for the veteran's overall level of disability. *See, e.g.*, 38 U.S.C. §§ 1155, 1157; 38 C.F.R. § 4.25. It therefore makes little sense to equate a "claim" with a particular condition, rather than a type of benefit.

By requiring claimants to submit a "specific claim in the form prescribed by the Secretary," 38 U.S.C. § 5101(a), the statute simply indicates that a veteran must identify the kind of benefit sought and use the corresponding VA procedure or form. A "claim" is the right to a particular type of benefit administered by VA—such as disability compensation—not a request for compensation for a particular disease or injury. Indeed, the statutes outlining the "claim" procedures apply across the board, including to benefits (like educational assistance) that are not premised on the existence of a service-connected disease or injury. Given that context, the Federal Circuit's condition-or-symptom restriction—which limits the scope of the claim to conditions and symptoms listed on the application form, even if the service medical records indicate that other conditions contribute as well—is unduly restrictive.

2. VA is statutorily required to assist in developing the claim, including by obtaining and reviewing service records.

A broad definition of a claim also squares with Congress's intentionally "paternalistic veterans' benefits system." *Jaquay v. Principi*, 304 F.3d 1276, 1280 (Fed. Cir. 2002). As noted above (at pp. 6-7), veterans

are not medical experts and often do not know the cause of their current functional impairment. VA bears the responsibility of developing the claim and maximizing benefits, including by requesting and reviewing service medical records.

Indeed, this non-adversarial process is designed to put veterans in VA's hands: veterans are generally not permitted to obtain paid representation until after their claim form has been received and the claim adjudicated by the Regional Office. *See* 38 U.S.C. § 5904(c). Limiting the scope of the claim to factual matter listed on a veteran's application form—even when additional conditions are evident on the face of the record—would be incongruent with that structure and with VA's duties.

The submission of a "claim for benefits" triggers VA's statutory duty to assist the veteran in "developing the facts pertinent to the claim." *Id.* § 5107; 38 C.F.R. § 3.159(a) ("[T]he Department of Veterans Affairs shall assist a claimant in developing the facts pertinent to his or her claim."). This "duty to assist" includes obtaining and reviewing service records. 38 C.F.R. § 3.159(b). Based on the veteran's form and records and any other evidence or communications, VA might also determine that a medical examination is warranted.

Once VA has performed its duty to assist in developing evidence, a second duty arises: the duty to maximize benefits. VA is required to "consider[] … all evidence and material of record." 38 U.S.C. § 5107. And where "there is an approximate balance of positive and negative evidence regarding the merits of an

issue material to the determination of the matter," VA must give "the benefit of the doubt in resolving each such issue … to the claimant." *Id.* Ultimately, VA must look at all the evidence before it and grant every benefit supported by that evidence and consistent with law. *See* 38 C.F.R. § 3.103(a).

When VA applies the three-element test (described above, at p. 6) to determine whether a veteran is entitled to disability benefits, the veteran's application is a helpful and sometimes critical piece of evidence. If the application form lists problems with a specific condition or body part, that is strong evidence of a present disability, especially if corroborated by medical records and an examination. But VA still has a duty to review all the evidence, even if only some (or no) conditions are listed on the application. The application merely supports the veteran's claim; it does not limit it.

B. The Federal Circuit's rule is without basis in law.

Although it was ostensibly interpreting a statute, the Federal Circuit committed a fundamental error: it failed to start with the text. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1737 (2020); *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019) ("In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself.") (citation omitted); *Milner v. Dep't of the Navy*, 562 U.S. 562, 569-72 (2011). In fact, the Federal Circuit never even pinpointed what statutory text it was interpreting and applying when it imposed the condition-or-

symptom restriction on the scope of Mr. Sellers's claim. Instead, it purported to derive this rule from an unidentified, uncited combination of "the relevant statutes, regulations, and judicial precedent." Pet. App. 18a. By declining to start with the text and instead grounding its reasoning in purported policy and practice, the Federal Circuit employed the kind of faulty, atextual reasoning that this Court has described as "a relic from a 'bygone era of statutory construction.'" *Food Mktg.*, 139 S. Ct. at 2364. The Federal Circuit was attempting to craft a policy solution in a complex regulatory area, but "[w]hen the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest." *Bostock*, 140 S. Ct. at 1737.

1. No applicable statute or regulation contemplates the Federal Circuit's rule.

No statute supports the Federal Circuit's rule. The statutory scheme for veterans' benefits directs veterans to submit "[a] specific claim in the form prescribed by the Secretary." 38 U.S.C. § 5101(a)(1)(A). And it authorizes the Secretary to "prescribe all rules and regulations which are necessary or appropriate to carry out" that scheme, including "the forms of application by claimants." *Id.* § 501(a)(2). There is no dispute that Mr. Sellers used the correct form, nor that the Secretary deemed Mr. Sellers's form sufficiently complete and accepted it. This is not a case like *Fleshman v. West*, for example, where the Secretary rejected and returned the veteran's form as incomplete for failure to sign and date it and to provide an address. 138 F.3d 1429, 1430-32 (Fed. Cir. 1998). Mr.

Sellers used the correct form, completed it, and submitted it to VA to initiate a "specific claim"—a claim for disability compensation under § 1110.

Similarly, the 1996 version of § 5107(a) required veterans to "submit[] evidence sufficient to justify" their claims. Mr. Sellers did, identifying his service medical records—which, as VA now has conceded, demonstrate a compensable service-connected psychiatric disability. Pet. App. 23a-24a & n.1. The question is not one of evidentiary proof but rather whether that condition was within the scope of Mr. Sellers's claim.

Likewise, no regulation supports the Federal Circuit's rule, and the court cited none. Instead, the court incorrectly assumed that some regulation imposing the condition-or-symptom restriction must have been in force at the time of Mr. Sellers's claim. Pet. App. 18a.

There was no such regulation in 1996. The Federal Circuit's confusion seemed to stem from a similar—and similarly erroneous—statement in the court's earlier decision in *Veterans Justice*. There, the Federal Circuit addressed VA's 2014 rule, which does impose a condition-or-symptom restriction on veterans' claim forms. 818 F.3d 1336. At step one of *Chevron*, the court concluded that the relevant statutory text "does not directly address" the question of claim scope. *Id.* at 1356. *But see supra* § I.A. At step two, the court held that the 2014 rule is a reasonable interpretation of the statute, in large part because the 2014 rule did "not substantively diverge from the VA's prior regulation." *Id.* at 1356. But the court cited no prior regulation, because there was none.

The *Sellers* panel then magnified the Federal Circuit's earlier error. It, too, presumed incorrectly that some prior regulation imposed the condition-or-symptom restriction. Pet. App. 18a. It cited *Veterans Justice* for the proposition that the 2014 rule did "not substantially differ from the regulations that do apply to this case," concerning a 1996 claim. *Id.* Then, the court reversed the logic of *Veterans Justice*, reasoning that because the 2014 rule was determined to be reasonable in that case, the earlier regulations must have been reasonable, too. *Id.* The *Sellers* court did not reckon with the circularity of this reasoning, in which two regulations circularly render each other reasonable. Nor did it confront the fundamental error in *Veterans Justice*.

Whether or not VA has the statutory authority to impose the condition-or-symptom restriction by regulation, it had not done so in 1996 when Mr. Sellers filed his application. There was no statutory or regulatory basis to impose that test in this case.

The importance of the question presented here is not diminished by the fact that VA has since promulgated its 2014 rule codifying a condition-or-symptom restriction, upheld by the Federal Circuit in *Veterans Justice*. The panels in both that case and this one made the same mistake with respect to historical regulations, and both were wrong about the meaning of "claim." As a result, the Federal Circuit erred in concluding that the 2014 rule was a reasonable statutory interpretation, just as it erred in retroactively imposing such a rule on Mr. Sellers's claim. Indeed, before and after the 2014 rule, the question remains the same: whether a "claim" under the statute is defined

by the type of benefit sought (as Title 38 indicates) or by the particular condition or symptom a veteran specifies on a form (as VA and the Federal Circuit would have it).

2. VA's purported historical practice does not justify the rule.

In lieu of identifying a preexisting statute or regulation providing the condition-or-symptom restriction, VA pointed to its supposed "long-standing practice" of limiting claims to the symptoms and conditions listed on a veteran's application. C.A. Op. Br. 13-14. VA added that it "generally does not sua sponte add to a claim 'entirely separate conditions never identified' by the claimant." C.A. Op. Br. 14. As an initial matter, this Court has repeatedly held that an agency's purported practice, even a longstanding one, is insufficient to constrain a citizen's statutory rights or override a statute's text. *See, e.g.*, *Cent. Laborers' Pension Fund v. Heinz*, 541 U.S. 739, 748 (2004); *SEC v. Sloan*, 436 U.S. 103, 118 (1978).

Moreover, VA's actual historical practice is the opposite of what it described to the Federal Circuit. Reflecting VA's affirmative duties to veterans, VA's internal manual directs agency adjudicators to "consider" "soliciting claims for unclaimed, chronic disabilities shown by the evidence" when they encounter such evidence in their review. M21-1 § III.iv.6.B.5.a. Historical versions of VA's manual reflect the same pro-veteran approach, directing agency officials to review all of a veteran's records and to evaluate all of the disabilities noted therein—not just those listed on an application form. *E.g.*, VA, *Adjudication*

Procedures § 46.02(a) (Mar. 28, 1985), https://perma.cc/J6M6-RV5J; VA, *Adjudication Procedures* § 5.06(b) (Nov. 8, 1991), https://perma.cc/EZ2S-FJWE. In sum, VA adjudicators are affirmatively told to review the records for unclaimed disabilities–exactly what would be required by the Veterans Court's "reasonably identifiable" test, which VA paradoxically challenged in the Federal Circuit as an "unreasonable burden." C.A. Op. Br. 27.

Mr. Sellers's rating decision here provides an example. In October 1985, Mr. Sellers sustained an in-service injury, fracturing his right big toe. C.A. Appx134; R.B.A. 2668, 855. As with his psychiatric disability, Mr. Sellers did not expressly identify his toe fracture on his 1996 claim application. Pet. App. 98a-119a; R.B.A. 2684-87. Yet when the VA adjudicator reviewed Mr. Sellers's service records, that officer encountered a page in the evidentiary record referring to the fracture. R.B.A. 2667. Based on that single page, which was reasonably identifiable in the record, VA properly determined on its own initiative that Mr. Sellers's toe fracture was within the scope of the claim and granted service connection. R.B.A. 2668. The Federal Circuit expressed concern that if a veteran does not list a condition on a claim application, VA "does not know where to begin to develop the claim to its optimum." Pet. App. 20a. But VA's approach to Mr. Sellers's toe fracture shows why that concern is unfounded. VA began here, as it always does, with the veteran's service records.

VA has never had the longstanding practice it described. Instead, it tells its officers to look for

unclaimed, chronic disabilities in veterans' service records. That approach squares with VA's relative expertise in reviewing such evidence compared to veterans, and it recognizes the nature of psychological disabilities, which are often latent and may go unrecognized or unacknowledged by the veteran. VA took this approach with the one page of evidence concerning Mr. Sellers's toe fracture; it should have done the same with the extensive documentation of his psychiatric disability, too.

3. The instructions on a form cannot be given binding legal effect.

Instead of interpreting the applicable statutes and regulations, the Federal Circuit in effect adopted its condition-or-symptom restriction from the instructions on the Form 21-526 submitted by Mr. Sellers. Box 17 of that form instructed veterans to list the "nature of sickness, disease or injuries for which this claim is made and date each began." Pet. App. 104a. Working backward from this result, the Federal Circuit concluded that a test reflecting the form's instructions was (in the court's view) consistent with the governing statutes—but not that it was codified or mandated by them.

There was no lawful basis for giving legal effect to the instructions on an agency form. Veterans' rights are determined by law—by the statutes and regulations that apply to their claims. The courts of appeals have long held that agency forms and instructions "do not themselves have the force of law, and therefore cannot impose a legal duty" or, similarly, constrain legal rights set out by statute and regulation. *United*

States v. Gimbel, 830 F.2d 621, 626 (7th Cir. 1987); *accord United States v. Reinis*, 794 F.2d 506, 508 (9th Cir. 1986). In the tax context, for example, the government has successfully persuaded the courts that the language of a government form is not a legitimate source of law—except where the form itself has been promulgated as a regulation—and must give way to statutory and regulatory text. *Reinis*, 794 F.2d at 508; *see also United States v. Murphy*, 809 F.2d 1427, 1430-31 & n.4 (9th Cir. 1987).

Nor can VA contend that the instructions on its form are a statutory or regulatoryw interpretation eligible for deference. The instructions flunk all the traditional tests for agency deference. The form was not promulgated as a regulation, it does not "emanate from those actors, using those vehicles, understood to make authoritative policy in the relevant context," *Kisor v. Wilkie*, 139 S. Ct. 2400, 2416 (2019), and its instructions do not even reflect the agency's actual practice.

4. The pro-veteran canon underscores the error of the Federal Circuit's approach to statutory interpretation.

The Federal Circuit's failure to identify any statutory basis for its condition-or-symptom restriction is a glaring enough error to warrant review. But even if the Federal Circuit had properly identified an applicable statute, its holding would run afoul of another governing principle this Court has repeatedly emphasized: the pro-veteran canon.

This Court has long instructed that "provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." *Henderson*, 562 U.S. at 441 (quoting *King*, 502 U.S. at 220 n.9); *accord Brown v. Gardner*, 513 U.S. 115, 117-18 (1994); *Boone v. Lightner*, 319 U.S. 561, 575 (1943). Likewise, VA has "a defined and consistently applied policy … to administer the law under a broad interpretation" and resolve any "reasonable doubt [that] arises regarding the degree of disability … in favor of the claimant." 38 C.F.R. § 4.3.

The Federal Circuit took the opposite tack here. To the extent there was any ambiguity in the governing statutes, the Federal Circuit resolved that ambiguity in VA's favor. The condition-or-symptom restriction has no plausibly pro-veteran gloss: it is a one-way ratchet that denies benefits to which veterans are legally entitled.

The condition-or-symptom restriction is especially troubling for what it ignores about the realities of veterans' lives. A veteran eligible for disability benefits is by definition suffering from "a condition that impairs normal functioning." *Saunders*, 886 F.3d at 1362. For psychological disabilities in particular, this functional impairment may include difficulty acknowledging and communicating about the illness itself, as military doctors observed regarding Mr. Sellers. The Federal Circuit's rule defies the pro-veteran canon, resolving any interpretive doubt against disabled veterans, giving them the burden to enumerate all disabling conditions—even where those conditions are evident and known to VA based on the individual's service records.

Thus, even if the Federal Circuit's interpretation were otherwise plausible, it would warrant review as a departure from this Court's instructions regarding Congress's pro-veteran intent for this statutory scheme. In statutory interpretation—as in the VA adjudication process itself—the benefit of the doubt was required to go to the veteran.

II. The Question Presented Is Recurring And Important.

The Federal Circuit's atextual and anti-veteran decision potentially affects tens of millions of American veterans, their dependents, and their survivors. Only this Court can rectify the Federal Circuit's error.

A. The Federal Circuit's exclusive jurisdiction over decisions of the Veterans Court favors this Court's prompt intervention.

The Federal Circuit has exclusive jurisdiction to review decisions of the Veterans Court. 38 U.S.C. § 7292(c) (2018). Thus, no circuit conflict can arise regarding the scope of a claim under Title 38. But where, as here, the Federal Circuit deviates from a statute and pro-veteran principles, this Court has routinely intervened and corrected the Federal Circuit's misinterpretation. *See* S. Ct. R. 10(c); *Kisor*, 139 S. Ct. at 2424 (remanding to the Federal Circuit to "seriously think through" its decision that VA regulation was ambiguous); *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969 (2016) (VA must apply pro-veteran contracting rules to every award where statute says "shall"); *Henderson*, 562 U.S. at 441 (120-

day deadline for appealing from Board not jurisdictional "[p]articularly in light of [the pro-veteran] canon"); *Scarborough v. Principi*, 541 U.S. 401 (2004) (veteran's EAJA application timely where curative amendment was filed outside filing period); *Brown*, 513 U.S. 115 (overturning as inconsistent with controlling statute VA regulation requiring veterans seeking certain benefits to prove disability resulted from negligent VA treatment). The Federal Circuit's atextual and anti-veteran interpretation of a benefit claim's scope likewise warrants this Court's review and correction.

B. The Federal Circuit's error affects a large, nationwide public-benefits program.

Without this Court's prompt intervention, the Federal Circuit's error will improperly narrow a nationwide public-benefits program that provides critical sustenance to a large population—one made more vulnerable by a system that discourages early reliance on legal counsel and effectively discriminates against veterans with "invisible" injuries. Nat'l Council on Disability, *Invisible Wounds* 8 (2009), https://perma.cc/Q272-X4PX (25-40% of deployed personnel return with "less visible wounds").

There are approximately 19.2 million living United States veterans, 22.6 million veterans' dependents, and 616,000 veterans' survivors—that is, nearly 42.3 million actual and potential veterans' benefits claimants. 1 VA, *FY 2021 Budget Submission* 5 (2020). In 2019, more than five million veterans or survivors received disability compensation, and VA

anticipates paying nearly six million beneficiaries in 2021. VA, *FY 2021 Budget Submission: Budget in Brief* 1 (2020). The Federal Circuit's condition-or-symptom restriction may adversely affect any of these millions of veterans and their families. The restrictive rule limits disability compensation benefits to those veterans who understand, at the time they file their initial claim application, not only what diseases and injuries they experienced in service but which ones contributed to any post-service disability. *Supra* pp. 6-7; *see* 38 C.F.R. § 4.10 (2019). Such questions plague expert policymakers and medical professionals, yet the Federal Circuit's rule penalizes uncounseled veterans whose initial claim applications fail to answer them correctly.

The Federal Circuit's rule will have a particularly harsh impact on the vast majority of veterans and family members who file claims without a lawyer's help. Veterans are statutorily barred from paying a lawyer to represent them when filing their initial claim application or during the Regional Office's initial adjudication. 38 U.S.C. § 5904(c)(1) (2018). Most veterans therefore file their initial claim applications without the benefit of a lawyer. U.S. Gov't Accountability Off., GAO-13-643, *VA Benefits* 4 (2013) (for pending claims in November 2012, 22% of veterans represented themselves, 76% were represented by service organizations, and 2% by attorneys or non-attorney "agents"); *Comer v. Peake*, 552 F.3d 1362, 1369 (Fed. Cir. 2009) (assistance from a veterans' service organization "is not equivalent to representation by a licensed attorney"). Without the help of trained lawyers at this critical juncture, many veterans will be

unable to satisfy the Federal Circuit's stringent condition-or-symptom restriction.

VA's 2014 rule mistakenly assumes these unrepresented veterans can correctly identify the service-connected symptoms and conditions underlying their claims. As discussed above, *supra* § I, the 2014 rule contradicts the statutory characterization of a claim as a statement of entitlement to a particular type of benefit. But even if *Veterans Justice* had been correctly decided and the 2014 rule were valid, it applies only to claims filed on or after March 24, 2015. 79 Fed. Reg. 57,660 (Sept. 25, 2014). The rule therefore does nothing to resolve the question presented for the millions of unrepresented veterans who filed claims before its effective date. As demonstrated by this case, the issue may not arise for a particular veteran until years after a claim form is filed. There are decades of claims, across multiple wars, still governed by the pre-2015 regime. *See*, *e.g.*, VA, *Annual Benefits Report FY 2019: Compensation* 18 (2020) (74,476 new FY2019 disability compensation recipients served in World War II, Korean War, or Vietnam War). If Mr. Sellers is any indication, the question presented here will affect pre-2015 claimants for years to come.

While it disadvantages all unrepresented veterans filing claims, the Federal Circuit's condition-or-symptom restriction is especially harmful to the most vulnerable veterans—those unable to acknowledge or articulate conditions like psychological disorders, traumatic brain injuries, or sexual trauma. Mr. Sellers's own case proves the inherently discriminatory effect of the rule. Unprompted, VA identified from a single page of his service medical records an

inconsequential, decade-old physical injury to his big toe that he did not identify on his 1996 claim form at any "level of generality" and granted service connection for it. At the same time, VA ignored then-recent, repeated, and severe psychiatric diagnoses that were unquestionably obvious from the same records.

Troublingly, this discriminatory treatment of physical versus psychological disabilities has potentially enormous impact because mental-health conditions like Mr. Sellers's are common among veterans. Nearly 4.5 million veterans received VA primary care in 2010—and more than 25% were diagnosed with at least one mental illness. Ranak B. Trivedi et al., *Prevalence, Comorbidity, and Prognosis of Mental Health Among U.S. Veterans*, 105 Am. J. Pub. Health 2564, 2566 (2015), https://perma.cc/4DPM-7W7L. And demand for mental-health treatment among veterans continues to grow, with 1.8 million veterans receiving clinical mental-health services from VA in 2019. VA, *FY 2021 Budget Submission: Budget in Brief*, *supra*, at 12.

But unlike these veterans seeking mental-health treatment—who can acknowledge a need for help—many, like Mr. Sellers, cannot initially acknowledge their condition. R.B.A. 2918 (noting in 1995 a "denial of need to be hospitalized," minimization of symptoms, and refusal of treatment), 2922 ("[t]ends to minimize/deny problems – sees self as normal and without fault"). Moreover, Mr. Sellers's denial echoes the larger military community's stigmatization of mental illness. Charles W. Hoge et al., *Combat Duty in Iraq and Afghanistan, Mental Health Problems, and Barriers to Care*, 351 New Eng. J. of Med. 13, 13-

22 (2004) (only 38-45% of deployed personnel meeting criteria for mental-health diagnosis wanted treatment; roughly 20% did not acknowledge a problem at all). Perceived stigma inhibits military mental-health care and, by extension, veterans' disability compensation for mental illness. Thomas W. Britt et al., *The Stigma of Mental Health Problems in the Military*, 172 Military Med. 157 (2007). Indeed, the Federal Circuit has recognized "[t]he need for [VA] assistance is particularly acute where, as here, a veteran is afflicted with a significant psychological disability at the time he files" his claim. *Comer*, 552 F.3d at 1369. Nonetheless, the Federal Circuit has created a condition-or-symptom restriction that effectively singles out and punishes those veterans whose inability to clear the hurdle may be caused by the disability itself.

C. The condition-or-symptom restriction sanctions an abdication of VA's duties.

The Federal Circuit's ruling will have far-reaching effects that the court could not have intended. Among the most significant is its corrosive effect on VA's obligation to assist a claimant to develop favorable evidence establishing the "principal issues"—the extent of the veteran's disability and whether it is service connected. *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 310 (1985).

The condition-or-symptom restriction defies VA's statutory duty to assist veterans to develop their claims to the optimum and its obligation to adjudicate sympathetically the claims of unrepresented veterans. *See supra* p. 7. VA's corps of professional benefits administrators evaluate claims. 3 VA, *FY 2021*

Budget Submission 157 (2020) (VA employs 15,000+ personnel for disability compensation alone). The condition-or-symptom restriction authorizes those professionals to ignore clear and compelling evidence of a basis for compensation merely because the veteran failed to identify it on a claim application. That is true even where, as here, such evidence is unquestionably in the administrative record and the veteran has therefore met his burden to support a claim. 38 U.S.C. § 5107(a). This disregard of evident disability breaks faith with both the mandate of Congress and the nation's sacred promise to care for those who are injured in its defense. U.S. Dep't of Justice, *Final Report of the Attorney General's Committee on Administrative Procedure* 129 (1941) (VA is "a benefactory agency" that must act with "considerable leniency"); *see also Henderson*, 562 U.S. at 440 (federal laws "place a thumb on the scale in the veteran's favor in the course of administrative and judicial review of VA decisions") (quoting *Shinseki v. Sanders*, 556 U.S. 396, 416 (2009) (Souter, J., dissenting)).

Tellingly, in the nearly two years the Board applied the Veterans Court's "reasonably identifiable" test (before the Federal Circuit reversed it), that test buttressed VA's duties without imposing administratively oppressive requirements. The agency was not required to scour hundreds or thousands of pages of service medical records for trivial conditions. Instead, the Board applied a common-sense understanding of "a reasonably identifiable diagnosis." Pet. App. 32a; *see* Bd. Vet. App. 19111846, No. 18-14 552, 2019 WL 4652733, *4 (Feb. 14, 2019) ("[A] single notation indicating only a subjective history of sleep apnea is not a

reasonably identifiable in-service medical diagnosis.").

The Board sensibly granted earlier effective dates when VA had actual or constructive notice of conspicuous, formal diagnoses. For example, the Board granted an effective date of October 2013 for a veteran's herbicide-related coronary artery disease (CAD) for which he filed an informal claim in May 2015 because VA's records "clearly showed a … CAD diagnosis" at the time it evaluated his October 2013 claim for herbicide-related diabetes. Bd. Vet. App. 19124814, No. 17-01 260, 2019 WL 4584386, *6 (Apr. 3, 2019). Likewise, the Board granted a veteran an earlier effective date where his service medical records included a diagnosis of a psychiatric condition evidenced by stress-induced physical tremors—even though post-service treatment established the tremors' cause was neurologic instead. Bd. Vet. App. 19162633, No. 15-40 954, 2019 WL 5410807, *4 (Aug. 13, 2019) (finding veteran's 1993 claim for "nervous disorder" remained pending as to neurologic condition where VA earlier denied service connection only for a psychiatric condition); *see also* Bd. Vet. App. 19103392, No. 17-18 410, 2019 WL 4661805, *2 (Jan. 15, 2019) (veteran identifying migraines diagnosed in service as reason for missing unrelated VA examinations was entitled to earlier effective date stemming from such notice); Bd. Vet. App. 19129207, No. 16-34 873, 2019 WL 4589194, *3 (Apr. 15, 2019) (Department of Defense separation form identifying in-service diagnosis of aortic aneurysm was sufficient notice of intent to file claim to establish earlier effective date). VA must already "consider all information and lay and medical evidence of record," 38 U.S.C. § 5107

(2018); these cases show the Veterans Court's "reasonably identifiable" test merely reinforces VA's obligations to veterans by forbidding willful blindness in cases involving obvious in-service diagnoses reflected in available medical records.

III. This Case Is An Ideal Vehicle To Clarify The Scope Of A Veteran's Claim For Disability Benefits.

The outcome of this case—and Mr. Sellers's entitlement to 13 years' worth of benefits for a disability that unquestionably arose in service—turns squarely on the scope of a "claim" under Title 38. The Veterans Court, which is expert in this area, held that a claim encompasses "reasonably identifiable" conditions in service medical records, and remanded to the Board to apply that test in the first instance. *See* Pet. App. 32a-33a. Thus, only that legal issue is at stake, without any need to address complicating factual considerations.

At the same time, the legal question here is almost certainly outcome-determinative. At the time of Mr. Sellers's 1996 claim, his service medical records contained years of documented psychiatric symptoms, including his involuntary three-week hospitalization less than a year prior. So there can be little dispute that Mr. Sellers's psychiatric condition was reasonably identifiable to VA.

Finally, the fact that this case involves MDD allows this Court to consider the question presented in the context where it is most acute. The condition-or-symptom restriction unjustly disadvantages veterans

like Mr. Sellers who suffer from psychological disorders, which are often accompanied by a patient's denial of his or her mental state and need for treatment. Mr. Sellers's case starkly demonstrates the inequities that will result if the Federal Circuit's atextual and anti-veteran rule is allowed to stand.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

Abigail Colella
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019

Kenneth M. Carpenter
John Niles
CARPENTER, CHARTERED
1525 SW Topeka Blvd., Suite D
Topeka, KS 66601

John F. Cameron
250 Commerce Street
Montgomery, AL 36124

Melanie L. Bostwick
Counsel of Record
Thomas M. Bondy
James Anglin Flynn
Anne W. Savin
ORRICK, HERRINGTON & SUTCLIFFE LLP
1152 15th Street, NW
Washington, DC 20005
(202) 339-8400
mbostwick@orrick.com

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