No. 20-1148

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 United States Court of Appeals for the Federal Circuit

BRIEF *AMICUS CURIAE* OF MILITARY-VETERANS ADVOCACY SUPPORTING PETITIONER

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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 the condition by name or 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?

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INTEREST OF *AMICUS CURIAE* [1]

Military-Veterans Advocacy Inc. (MVA) is a non-profit organization that litigates and advocates on behalf of service members and veterans. Established in 2012 in Slidell, Louisiana, MVA educates and trains service members and veterans concerning rights and benefits, represents veterans contesting the improper denial of benefits, and advocates for legislation to protect and expand service members' and veterans' rights and benefits.

The Federal Circuit's decision in *Sellers v. Wilkie*, 965 F.3d 1328 (Fed. Cir. 2020) adopts an atextual and anti-veteran interpretation of the scope of a veteran's "claim" for disability benefits. According to the court of appeals, the "claim" includes only those conditions that the veteran's claim form specifically identifies by name or symptomatology. This holding finds no support in the relevant statutes or regulations, which define a "claim" broadly to mean a statement of entitlement to a particular type of benefit (e.g., disability compensation). Pet. 14–24. It finds no support in this Court's caselaw, which uniformly instructs that veterans-benefits statutes must "always . . . be liberally construed to protect those who have been obliged to drop their own affairs to take up

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[1] The parties have consented to the filing of this brief. No counsel for a party authored any part of this brief, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to the brief's preparation or submission.

the burdens of the nation." *Boone v. Lightner*, 319 U.S. 561, 575 (1943); *see* Pet. 27–29. And it finds no support in the VA's past practice, under which the agency reviewed a claimant's records and included within the claim *all* the claimant's reasonably identifiable disabilities—not just those specifically listed on the claim form. Pet. 24–26.

This stark departure from text, precedent, and history would be bad enough. But, to make matters worse, the Federal Circuit's decision—if allowed to stand—threatens to significantly erode veterans' rights to the benefits that their service to our Nation has earned them.

Veterans attempting to navigate the disability-benefits system already face daunting obstacles. The process is complicated, slow, and inaccurate. Most veterans move through it without the aid of an attorney (indeed, veterans are statutorily *prohibited* from retaining an attorney at the beginning of the claims process). The challenge is particularly immense for the substantial number of veterans who—like Mr. Sellers—suffer from psychiatric disabilities.

The Federal Circuit's new gloss on the definition of a "claim" makes these problems worse. It creates, in essence, a booby trap for veterans at the outset of the process—the very point in time at which the veteran is most likely to be unrepresented and at which the costs of a misstep are highest. And—like the benefits system itself—that trap poses particular challenges for veterans with mental-health problems,

which are often accompanied by an inability to acknowledge the disorder itself. Pet. 37–38.

As this very case shows, the practical consequences of the Federal Circuit's decision are significant. Because benefits associated with a given claim are assessed from the date the claim was filed—and because the appeals process can drag on for so long—many years' worth of disability benefits can turn on the proper interpretation of that claim's scope. *See* Pet. 27. For some veterans, those benefits can literally mean the difference between life and death.

The decision below is wrong, and the issue presented is critically important for millions of veterans. This Court should grant the petition and reverse.

SUMMARY OF THE ARGUMENT

The Federal Circuit's holding that a disability-benefits claim must "identify the sickness, disease, or injury for which benefits are sought," Pet. App. 18a–19a, injects serious problems into an administrative regime already riddled with them. The VA-benefits system is complicated, slow, and inaccurate, and most veterans must navigate it without the benefit of legal counsel. It is little wonder that many veterans either give up or die before they obtain the benefits to which their dutiful service has entitled them.

The Federal Circuit's limitation on claim scope makes these problems worse. The rule's consequences are particularly cruel for veterans suffering from psychiatric disabilities, which often involve as

symptoms an inability or unwillingness to accurately or adequately communicate about the disease itself. And this illogical and unjust rule is not compelled by the relevant statutes or regulations—far from it. The court of appeals' new rule enjoys no provenance in statute, in regulation, in judicial precedent, or in past agency practice. This Court should grant the petition for certiorari.

ARGUMENT

I. THE FEDERAL CIRCUIT'S ATEXTUAL CONDITION-OR-SYMPTOM REQUIREMENT PLACES INTOLERABLE BURDENS ON VETERANS SEEKING DISABILITY BENEFITS.

A. Veterans face massive hurdles in navigating the disability-benefits system.

"The system to provide benefits to veterans was never intended to be adversarial or difficult for the veteran to navigate." 106 Cong. Rec. S9211, S9212 (daily ed. Sept. 25, 2000) (statement of Sen. Rockefeller). Unfortunately, in practice, the system is both adversarial *and* tremendously complicated—not to mention incredibly slow. The veterans attempting to utilize it often lack the benefit of legal counsel. And the VA's track record of accurately adjudicating claims is abysmal. The result—a process that is complicated, slow, hostile to lawyers, and mistake-ridden—poses, at the risk of understatement,

substantial problems for veterans seeking the benefits to which their service has entitled them.

1. David Shulkin, the former VA secretary, candidly acknowledged that the system as it currently functions is "adversarial." Krause, *Veterans Affairs Secretary Admits VA Is 'Adversarial' For Veterans* (Nov. 8, 2017).[2] And it presents "daunting" challenges for veterans seeking disability benefits. Simcox, *The Need for Better Medical Evidence in VA Disability Compensation Cases and the Argument for More Medical-Legal Partnerships*, 68 S.C. L. REV. 223, 224 (2016); *see also* Wright, *The Potential Repercussions of Denying Disabled Veterans the Freedom to Hire an Attorney*, 19 FED. CIR. B.J. 433, 433–34 & n.5 (2009) ("Cases demonstrating the glacial pace of the VA in determining benefits, the difficulty of . . . navigating the bureaucracy, and VA blunders in general are legion.") (collecting cases). Indeed, "one of the most frequently cited barriers to veterans receiving—or even applying for—VA benefits is a veteran's inability to understand the system." Pomerance, *Fighting on Too Many Fronts: Concerns Facing Elderly Veterans in Navigating the United States Department of Veterans Affairs Benefits System*, 37 HAMLINE L. REV. 19, 45–46 (2014).

Even a brief description of the system makes evident why veterans have so much difficulty understanding it.

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[2] *Available at* https://www.disabledveterans.org/2017/11/08/veterans-affairs-secretary-admits-va-adversarial-for-veterans/.

The process begins when the veteran submits a request for benefits—i.e., a "claim"—to a VA Regional Office (RO). 38 U.S.C. § 5101(a); *see generally* Reed, *Parallel Lines Never Meet: Why the Military Disability Retirement and Veterans Affairs Department Claim Adjudication Systems Are A Failure*, 19 WIDENER L.J. 57, 82–97 (2009) (describing the claims process). "Filing a claim involves a significant amount of paperwork. This is a daunting endeavor for those who lack focus and are unable to complete tasks, which is typical of veterans who return from engagements . . . ." Liang & Boyd, *PTSD in Returning Wounded Warriors: Ensuring Medically Appropriate Evaluation and Legal Representation Through Legislative Reform*, 22 STAN. L. & POL'Y REV. 177, 182 (2011). The current edition of the form is 12 pages long and contains extensive and complex instructions. *See* VA Form 21-562EZ.[3] https://www.vba.va.gov/pubs/forms/VBA-21-526EZ-ARE.pdf. And these VA "standardized forms pose questions that are ambiguous or even misleading." Pomerance & Eagle, *The Pro-Claimant Paradox: How the United States Department of Veterans Affairs Contradicts Its Own Mission*, 23 WIDENER L. REV. 1, 15 (2017).

Next, the RO gathers the veteran's service records and military medical records and schedules a "Compensation[] & Pension Examination," which is designed to assess the veteran's disabilities and

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[3] *Available at* https://www.vba.va.gov/pubs/forms/VBA-21-526EZ-ARE.pdf.

determine whether and to what extent they are service-connected. Liang & Boyd, *supra*, at 182–83; Reed, *supra*, at 84–85. A "rating specialist" assesses the claim and recommends a rating decision. Reed, *supra*, at 85–86. The statutes contain no deadline for the RO to act on a claim, meaning claims sometimes remain pending "for years." *Id.* at 109.

At the time that Mr. Sellers was working his way through the system,[4] the remainder of the process operated as follows: If a claim were denied in whole or in part, the veteran could then submit a "Notice of Disagreement." Liang & Boyd, *supra*, at 183. "[T]his requirement alone appear[ed] difficult for some wounded warriors, as fewer than 14% of denied claims [were] contested." *Id.* Specifically, a veteran who wished to contest an initial RO decision had to

> take six steps. First, the veteran must draft an application for benefits, with

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[4] In 2017, Congress passed the Veterans Appeals Improvement and Modernization Act of 2017, Pub. L. No. 115-55, 131 Stat. 1105, which—despite its name—arguably makes the appeals process even more complicated than it was for Mr. Sellers. The 2017 statute established "multiple pathways, each with very different processes and ends," that the veteran can choose if he or she is dissatisfied with an RO decision. *See* Simcox, *Thirty Years of Veterans Law: Welcome to the Wild West*, 67 U. Kan. L. Rev. 513, 549–51 (2019) (describing the new process). The complexity is worsened by the fact that the new system will proceed in parallel with the "legacy" system (which still applies to old claims) for the foreseeable future. *Id.* at 555–56. Even more troubling, the 2017 law eliminates the duty to assist once the RO issues an initial decision on the veteran's claim. *Id.* at 556–58; *see* 38 U.S.C. § 5103A(e)(2).

> supporting medical documentation. Second, the veteran must adequately answer any VA requests for additional information . . . . Third, . . . the veteran must understand the [RO]'s decision and the fact that the veteran has the right to an appeal. Fourth, the veteran must compile the evidence that the VA did not take into account in the initial decision . . . . Fifth, the veteran must draft an NOD explaining in clear, concise, complete, and precise language why the [RO]'s decision is incorrect and how the evidence that the veteran has compiled proves the [RO] decision to be incorrect; and he or she must request that the [RO] reconsider its decision. Sixth, the veteran must decide whether to have the NOD sent directly to a [Decision Review Officer] and, if so, whether to request a meeting with a DRO, or go directly to the BVA.

Wright, *supra*, at 444 (citations omitted). Calling this process "complex" would be an understatement. And it was made even more complex by the difficulty many veterans encountered in obtaining their medical records from the VA. *See* Pomerance & Eagle, *supra*, at 14 (noting that many "claimants end up waiting for unreasonably long periods of time to receive their [files] from the VA").

The VA then would then issue a "Statement of the Case" explaining the RO's decision. After the

Statement of the Case issued, the veteran had 60 days to file a formal appeal with the Board of Veterans Appeals. *See* Liang & Boyd, *supra*, at 184.

The BVA appeals process is "slow and highly inefficient," often taking years to complete. *Id.* at 184–85; *see also* Reed, *supra*, at 92–93, 100, 109. The average time a veteran waits to have an appeal favorably decided by the Board and implemented is over six years. Simcox (2019), *supra*, at 513, 532.

The veteran can appeal an adverse decision from the BVA to the Court of Appeals for Veterans Claims; the veteran may appeal from there to the Federal Circuit and then to this Court. Liang & Boyd, *supra*, at 185. These additional appeals can take many more years to complete—meaning that a disabled veteran may struggle through the appeals process for a decade or more, all the while "either receiving no compensation or lower compensation than that to which they are entitled because of an error by the VA." *Id.* at 185–86.[5]

The result is a system with "layers of procedural complexity" and "a process that can seem interminable" for veterans attempting to navigate it. Ridgway, *The Veterans' Judicial Review Act Twenty Years Later: Confronting the New Complexities of the*

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[5] It is not uncommon for elderly claimants to die while attempting to navigate the claims process, in which case "the disability claim dies" as well "and the federal government does not pay the claim." O'Reilly, *Burying Caesar: Replacement of the Veterans Appeals Process Is Needed to Provide Fairness to Claimants*, 53 ADMIN. L. REV. 223, 224 (2001).

Veterans Benefits System, 66 N.Y.U. ANN. SURV. AM. L. 251, 295–96 (2010); *see also id.* at 296–97 (noting that "the National Veterans Legal Services Program's guide and reference materials for adjudication of veterans claims run 4000 pages"); Liang & Boyd, *supra*, at 177 (referring to the claims process as a "minefield"). Indeed, many veterans are simply "incapable of developing the factual record alone and . . . may not know the requisite language for recognition of benefits claims or the procedural rules for appeals." Estrada, *Welcome Home: Our Nation's Shameful History of Caring for Combat Veterans and How Expanding Presumptions for Service Connection Can Help*, 26 T.M. COOLEY L. REV. 113, 125 (2009).

"The procedure for claiming and appealing benefits has been likened to a hamster wheel because veterans' claims are developed, denied, appealed, and remanded *ad infinitum*." McClean, *Delay, Deny, Wait Till They Die: Balancing Veterans' Rights and Non-Adversarial Procedures in the VA Disability Benefits System*, 72 SMU L. REV. 277, 283 (2019) (citing *Coburn v. Nicholson*, 19 Vet. App. 427, 434 (2006) (Lance, J., dissenting)). This "merry-go-round of appeals and remands . . . can take years to resolve," often leading veterans to "become discouraged and simply give up." Estrada, *supra*, at 128; *accord* Pomerance, *supra*, at 46. Hence the oft-repeated "slogan for disabled American veterans": "Delay, Deny, Wait Till They Die." McClean, *supra*, at 277.[6]

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[6] Elderly veterans "are particularly hindered by this extremely intricate system." Pomerance, *supra*, at 47. "For instance, veterans with vision impairments (the occurrence of

2. The byzantine complexities of the VA benefits-application process make it a challenge for even experienced attorneys to navigate. But most veterans go at it alone. And nearly all claimants lack legal representation at the outset of the process because they are statutorily barred from paying an attorney to represent them before the RO. *See* Pet. 31 (citing 38 U.S.C. § 5904(c)(1)); Reiss & Tenner, *Effects of Representation by Attorneys in Cases Before VA: The "New Paternalism"*, 1 VETERANS L. REV. 2, 3 & n.10 (2009). This proscription on retained attorneys dates back to the Civil War, when Congress passed a law prohibiting a claimant for paying an attorney more than $10 for representation in a VA benefits claim. *See* Act of July 14, 1862, ch. 166, § 6, 12 Stat. 566, 568, amended by Act of July 4, 1864, ch. 247, § 12, 13 Stat. 387, 389. The underlying rationale was that "the system for administering benefits should be managed in a sufficiently informal way that there should be no need for the employment of an attorney to obtain benefits to which a claimant was entitled, so that the claimant would receive the entirety of the award

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which is greater in older adults) can have a tough time just reading through the pages and pages of detailed requirements, much less filling out all of the required forms." *Id.* Moreover, the evidence necessary to show service connection can become increasingly more difficult to find with the passage of time: records may be lost or destroyed, and memories fade. Kabatchnick, *Obstacles Faced by the Elderly Veteran in the VA Claims Adjudication Process*, 12 MARQ. ELDER'S ADVISOR 185, 205–08 (2010). And many elderly veterans struggle with mental-health issues and may lack knowledge about the potential benefits to which they are entitled. *See id.* at 210–15.

without having to divide it with a lawyer." *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 321 (1985). More generally speaking, the system has long displayed a hostility to attorney involvement—largely a product of lawmakers' desire to keep the system informal and non-adversarial. Simcox (2019), *supra*, at 519; *see also* Ridgway, *supra*, at 261.

Veterans may retain legal representation for proceedings that occur after the RO issues a NOD. *See* 38 U.S.C. § 5904(c)(1). But by that point, of course, the veteran's "claim" has already been submitted—meaning that many veterans are without legal counsel "during their time of greatest need," when they could ensure that their claim is "complete." Liang & Boyd, *supra*, at 178–79; *see also* Wright, *supra*, at 441 (noting that "th[e] law allows a veteran to hire an attorney only after most of the record for appeal has been created"). Indeed, the time of claim submission is *the* single most critical point in the process, because "the veteran need not enter the time-consuming thicket of the appellate process if the Regional Office approves his or her claim outright." Pomerance, *supra*, at 56.

As one commentator colorfully put it:

> Imagine if our legal system were set up so that plaintiffs were forced to assemble, file, and argue their own lawsuits, and that attorneys could only be paid for their assistance after the initial case was lost (which, predictably, most would be). This

> unbelievable situation in reality is the state of veterans law today.

Kabatchnick, *After the Battles: The Veterans' Battle with the VA*, 35 A.B.A. HUM. RTS. 13, 13 (2008).

And lawyers make a difference. All the available data "indicates that legal representation may provide significant benefits to veterans." Liang & Boyd, *supra*, at 207–08; *see also* Wright, *supra*, at 447–48; Dowd, *No Claim Adjudication Without Representation: A Criticism of 38 U.S.C. S 5904(c)*, 16 FED. CIR. B.J. 53, 79 (2006) (noting that "several former judges of the CAVC have suggested that attorneys add value to the claims process"). The most recent annual BVA report indicates that attorneys achieve substantially better results for their clients than non-lawyer representatives from Veterans Service Organizations (VSOs). Department of Veterans Affairs (VA) Board of Veterans' Appeals Annual Report Fiscal Year (FY) 2020, at 36.[7]

3. Unfortunately—but perhaps unsurprisingly in view of the system's complexity and its hostility to attorney representation—the available evidence suggests that the VA frequently denies disability compensation to deserving veterans.

In 2019 (the most recent year for which statistics are available), the CAVC reversed or remanded the Board in whole or in part more than 80% of the time. *See* U.S. Court of Appeals for Veterans Claims

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[7] *Available at* https://www.bva.va.gov/docs/Chairmans_Annual_Rpts/BVA2020AR.pdf.

Annual Report at 3 (2019).[8] This means that BVA denials of benefits are erroneous in four out of every five cases. Even worse, claimants were awarded Equal Access to Justice fees in nearly 75% of appeals. *See id.* at 4. EAJA fees are available only if a court finds that the government's position is not "substantially justified." *See generally* 28 U.S.C. § 2412. This means that, in litigating with veterans, the government takes a position that is substantially unjustified *nearly three-quarters of the time*.[9]

The preceding figures are taken from CAVC appeals, which introduces a selection bias into the numbers. Even so, the available statistics suggest that the error rate across *all* RO determinations—appealed or not—may be as high as 33%. Pomerance, *supra*, at 52 & n.293; *see also* Ridgway, *supra*, at 270 (2000 GAO report "showed that initial RO decisions were correct only 68% of the time"). And other evidence suggests that the VA fails to discharge its statutory duty to assist veterans in developing their claims in a substantial fraction of cases. *See* Simcox (2019), *supra*, at 531. As one commentator put it, "[i]n terms of making timely and accurate compensation determinations, the VA sets low standards and

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[8] *Available at* http://www.uscourts.cavc.gov/documents/FY2019AnnualReport.pdf.

[9] *See also* Oral Arg. Tr. 52, *Astrue v. Ratliff*, No. 08-1322 (2010) ("CHIEF JUSTICE ROBERTS: [T]hat's really startling, isn't it? In litigating with veterans, the government more often than not takes a position that is substantially unjustified? MR. YANG [counsel for the United States]: It is an unfortunate number, Your Honor. And it is—it's accurate.").

consistently fails to meet them." Wright, *supra*, at 439; *see also* Liang & Boyd, *supra*, at 180 ("the VBA does not have a successful performance record").[10]

B. The Federal Circuit's condition-or-symptom requirement exacerbates these difficulties.

All this adds up to a bleak picture for veterans seeking disability benefits. The system is complicated, interminable, and hard to navigate; attorneys are discouraged (and virtually forbidden at the earliest and most crucial stages of the process); and the agency gets things wrong a substantial proportion of the time.

The Federal Circuit's atextual limitation on the scope of a veteran's claim magnifies these problems. Unrepresented veterans who submit a claim for disability benefits to the VA are particularly ill-equipped to satisfy the court of appeals' requirement. They may not know that they are required to include details about *all* the conditions or symptoms for which they are seeking benefits. Even if they do know, they may be unable or unwilling to describe their condition

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[10] One former VA attorney has suggested that the high error rate in ROs is due to a perverse incentive structure: "because VA managers are evaluated in part on how many claims their offices adjudicate and how fast the claims are adjudicated, it is in the best interest of the VA managers to improperly deny claims quickly." Estrada, *supra*, at 127 (quoting Jablow, *Representing Veterans in the Battle for Benefits*, 42 TRIAL 30, 32 (2006)).

in sufficient detail to meet the Federal Circuit's test. And, even if an attorney becomes involved later in the process and explains the need for additional disclosure, it will be too late: the veteran will have forever lost benefits that otherwise would have accrued between the date of the original claim and the date of the attorney's involvement. *See* Kabatchnick (2008), *supra*, at 15. Given the length of the appeals process, that can be a very long period of time. This very case demonstrates that point in stark relief. As the petition explains, "[t]h[e] 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." Pet. 9.

The Federal Circuit itself has recognized that an unrepresented veteran "should not be punished for his failure to recognize subtle factual or legal deficiencies in his claims." *Forshey v. Principi*, 284 F.3d 1335, 1357 (Fed. Cir. 2002) (quoting *Hughes v. Rowe*, 449 U.S. 5, 9, 15 (1980)). But that is exactly what the rule created by the court of appeals does.

C. The consequences of the Federal Circuit's rule are particularly pernicious for veterans with psychiatric disabilities.

The problems created by the court of appeals' ruling loom particularly large for veterans who suffer from mental illnesses. Such veterans already face outsized difficulties in navigating the benefits system. *See* Gum, *Military Sexual Trauma and Department*

of Veterans Affairs Disability Compensation for PTSD: Barriers, Evidentiary Burdens and Potential Remedies, 22 WM. & MARY J. WOMEN & L. 689, 704 (2016) (claims process is "particularly daunting" for veterans suffering from mental illnesses). Many symptoms of mental disabilities—such as "lack of concentration" and "difficulty . . . completing tasks"—"exacerbate the complexities faced by wounded warriors and prevent some veterans from successfully completing a claim for disability." Liang & Boyd, *supra*, at 178, 200.

As Petitioner explains, the Federal Circuit's new condition-or-symptom requirement puts veterans who suffer from psychological impairments, such as PTSD, at an even more severe disadvantage. Such disabilities often "include difficulty acknowledging and communicating about the illness itself"—meaning that veterans who suffer from them may be unable to satisfy the court of appeals' rigid rule. Pet. 2, 28, 33.

This is not a hypothetical problem. "[T]he stigma associated with PTSD" prevents many veterans from reporting symptoms in a timely manner—if they do so at all. Liang & Boyd, *supra*, at 198; Estrada, *supra*, at 140; Dubyak, *Close, But No Cigar: Recent Changes to the Stressor Verification Process for Veterans with Post-Traumatic Stress Disorder and Why the System Remains Insufficient*, 21 FED. CIRCUIT B.J. 655, 662, 673–74 (2012). And PTSD sufferers often avoid drawing attention to their stressors as part of the claims process because doing so "forces [them] to discuss and re-live events that may have been purposely avoided and suppressed for years."

Estrada, *supra*, at 136; *see also* Dubyak, *supra*, at 673–74 (noting that "manifestations of the symptoms of PTSD present[] a barrier" to veterans attempting to navigate the claims process because "[a]voidance behavior, memory repression, and the often-delayed onset of the disorder ma[k]e recollection of the details surrounding the claimed stressor incredibly difficult").

The preceding discussion focuses on PTSD because it afflicts Mr. Sellers and because it is so prevalent (recent estimates suggest that up to one-fifth of veterans develop PTSD, Dubyak, *supra*, at 664) and so dangerous (it is associated with "a variety of ancillary health problems," including "coronary heart disease, mortality, and health-compromising behaviors such as substance abuse and smoking," and even suicide, *id.* at 681). But the pernicious consequences of the Federal Circuit's rigid condition-or-symptom restriction are not limited to veterans suffering from PTSD.

Take, for example, veterans who seek benefits for psychiatric disabilities stemming from military sexual trauma. This phenomenon sadly "continue[s] to be [a] pervasive problem[] in all branches of the United States Armed Forces," Gum, *supra*, at 690; *see also* Darabnia, *supra*, at 465 (citing a 2014 VA survey indicating that one in four women had been victims of military sexual trauma). Survivors of military sexual trauma commonly suffer from alcohol dependency, major depressive disorder, and stress disorders, among others. *See* Gum, *supra*, at 702–03. These individuals are particularly likely to avoid reporting the abuse and resulting mental health problems out

of "embarrass[ment]," self-blame, or a fear of retaliation. *See id.* at 691–92, 697–98, 704–05. They are thus particularly prone to falling into the trap created by the Federal Circuit's condition-or-symptom requirement. *See* Drake & Burgess-Mundwiller, *Military Sexual Trauma: A Current Analysis of Disability Claims Adjudication Under Veterans Benefits Law*, 84 MO. L. REV. 661, 675 (2019) (discussing the difficulties that survivors of military sexual trauma face in deciding to file a disability claim with the VA).

II. THIS COURT'S REVIEW IS WARRANTED TO CORRECT THE FEDERAL CIRCUIT'S ERROR AND ENSURE THAT VETERANS RECEIVE THE BENEFITS TO WHICH THEIR SERVICE HAS ENTITLED THEM.

As explained in Mr. Sellers' petition, the question presented here is recurring and important. Pet. 29–37. Millions of veterans are currently eligible for disability compensation, and the Federal Circuit's misguided condition-or-symptom requirement creates a potential trap for every one of them. That trap is particularly likely to ensnare those who are most vulnerable—the many veterans who navigate the system uncounseled and the many more who are "unable to acknowledge or articulate conditions like psychological disorders, traumatic brain injuries, or sexual trauma." Pet. 32–33.

Contrary to the Federal Circuit's conclusion, "the relevant statutes, regulations, and judicial precedent," Pet. App. 18a, do not compel this anomalous and unjust result. In fact, they

conclusively show that the decision below is wrong. Pet. 13–29. This Court's intervention is desperately needed to correct the Federal Circuit's mistake and restore to afflicted veterans the disability benefits to which they are legally entitled.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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