No. 23-178

IN THE

Supreme Court of the United States

PETER VAN DERMARK,

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

BRIEF OF MILITARY-VETERANS ADVOCACY, JEWISH WAR VETERANS OF THE U.S.A, NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, PARALYZED VETERANS OF AMERICA, ROCKY MOUNTAIN VETERANS ADVOCACY PROJECT, SERVICE WOMEN'S ACTION NETWORK, AND VETERANS LEGAL SERVICES AS AMICI CURIAE IN SUPPORT OF PETITIONER

Melanie L. Bostwick
Counsel of Record
Melanie R. Hallums
ORRICK, HERRINGTON & SUTCLIFFE LLP
1152 15th Street, NW
Washington, DC 20005
(202) 339-8400
mbostwick@orrick.com

Counsel for Amici Curiae

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTERESTS OF AMICI CURIAE.............................1

INTRODUCTION AND SUMMARY OF ARGUMENT..4

ARGUMENT 6

I. Certiorari Is Warranted To Ensure That Veterans Receive The Protection Congress Intended. 6

A. Veterans living and traveling abroad face challenges in obtaining health care. 6

B. Congress sought to protect veterans needing emergency treatment. 9

II. The Federal Circuit Erred By Failing To Harmonize Statutes Meant To Benefit Veterans. 12

A. The statutes can and should be read harmoniously. 12

B. The Federal Circuit erred by disregarding the pro-veteran canon. 14

C. Other canons of interpretation also support interpreting these statutes in favor of veterans. 20

CONCLUSION..22

TABLE OF AUTHORITIES

Page(s)

Cases

Boatswain v. Gonzales,
414 F.3d 413 (2d Cir. 2005) 18

Boone v. Lightner,
319 U.S. 561 (1943)...17

Brown v. Gardner,
513 U.S. 115 (1994)...................................6, 14, 18

Burden v. Shinseki,
727 F.3d 1161 (Fed. Cir. 2013)...........................18

Caminetti v. United States,
242 U.S. 470 (1917)...13

Coffy v. Republic Steel Corp.,
447 U.S. 191 (1980)...17

Crawford Fitting Co. v. J. T. Gibbons, Inc.,
482 U.S. 437 (1987)...21

Epic Sys. Corp. v. Lewis,
138 S. Ct. 1612 (2018)...................................14, 20

Ernst & Ernst v. Hochfelder,
425 U.S. 185 (1976)...13

Fishgold v. Sullivan Drydock & Repair Corp.,
328 U.S. 275 (1946)...17

Henderson v. Shinseki,
562 U.S. 428 (2011).................6, 14, 15, 16, 18, 19

King v. St. Vincent's Hosp.,
502 U.S. 215 (1991)..18

Manhattan Gen. Equip. Co. v. Comm'r,
297 U.S. 129 (1936)..13

Morales v. Trans World Airlines, Inc.,
504 U.S. 374 (1992)..21

Morton v. Mancari,
417 U.S. 535 (1974)..20

NOVA v. Sec'y of Veterans Affairs,
260 F.3d 1365 (Fed. Cir. 2001)...........................18

Radzanower v. Touche Ross & Co.,
426 U.S. 148 (1976)..21

Shinseki v. Sanders,
556 U.S. 396 (2009)..15

Sykes v. Columbus & Greenville Ry.,
117 F.3d 287 (5th Cir. 1997)...............................19

Travers v. Fed. Express Corp.,
8 F.4th 198 (3d Cir. 2021)...................................18

United States v. Oregon,
366 U.S. 643 (1961)..14

United States v. Ron Pair Enters., Inc.,
489 U.S. 235 (1989)..13

Walters v. Nat'l Ass'n of Radiation Survivors,
473 U.S. 305 (1985)..16

Watt v. Alaska,
451 U.S. 259 (1981)..20

Statutes

36 U.S.C. § 110103(5)...2

36 U.S.C. § 110103(7)...2

38 U.S.C. § 1110..16

38 U.S.C. § 1131..16

38 U.S.C. § 1724.............4, 5, 8, 10, 12, 13, 19, 20, 21

38 U.S.C. § 1724(a)..12

38 U.S.C. § 1725...................4, 5, 6, 10, 11, 12, 13, 21

38 U.S.C. § 1725(a)..10

38 U.S.C. § 1728.........................4, 5, 6, 11, 12, 13, 21

38 U.S.C. § 1728(a)...9, 10

38 U.S.C. § 5103A 16

38 U.S.C. § 5107(b)..16

38 U.S.C. § 7251..16

38 U.S.C. § 7252..16

Other Authorities

145 Cong. Rec. H8392-02 (daily ed. Sept. 21, 1999) 10, 11

145 Cong. Rec. H12046-01 (daily ed. Nov. 16, 1999) 11

Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012) 11

Crystal Kupper, *Overseas expat: Many military families choose to live abroad permanently*, Military Families (Mar. 3, 2023), https://tinyurl.com/49mtweky 7

Find a New Job Overseas for Veterans, Military-Civilian, https://tinyurl.com/4mnk6xvd 7

H.R. Rep. No. 100-963 (1988) 16

Katharina Buchholz, *U.S. Fighters From Abroad*, Statista (Nov. 17, 2020), https://tinyurl.com/39jwshxc 7

Leo Shane III, *Tens of thousands of US vets living overseas left to find COVID vaccine doses on their own*, Military Times (Apr. 30, 2021), https://tinyurl.com/2reawvux 9

Make a Healthy Difference by Volunteering Abroad (2023), https://tinyurl.com/yrs9cz6a 7

S. Rep. No. 92-776 (1972)................................9, 10, 11

U.S. Dep't of Veterans Affairs, *Foreign Programs* (Oct. 12, 2022), https://tinyurl.com/z5atbf65 8

U.S. Dep't of Veterans Affairs, *History Overview* (Aug. 17, 2023), https://tinyurl.com/y6jhxrh2................................15

U.S. Dep't of Veterans Affairs, *The Origin of the VA Motto* (Sept. 16, 2023), https://tinyurl.com/nhem8tc6...................15

U.S. Gov't Accountability Office, GAO-20-620, *VA Should Continue to Improve Access to Quality Disability Medical Exams for Veterans Living Abroad* (Sept. 2020), https://tinyurl.com/2p8yn6c5.................................7

William Skipworth, *U.S. Travel Abroad Has Finally Reached Pre-Pandemic Levels-Here's Where Americans Are Going*, Forbes (Aug. 16, 2023), https://tinyurl.com/vvztc88v 8

Z. Joan Wang et al., *2021 Survey of Veteran Enrollees' Health and Use of Health Care*, Advanced Survey Design, LLC (Sept. 24, 2021), https://tinyurl.com/3yktdxyk 8

INTERESTS OF AMICI CURIAE[1]

Amici curiae are seven organizations dedicated to protecting and advancing the rights of our nation's veterans. The ruling below, which misapplied statutes intended to benefit veterans and declined to apply the pro-veteran canon, runs contrary to this Court's precedent and Congress's intent in enacting veterans-benefits laws. Amici are invested in ensuring that veterans receive the full benefits to which they are entitled and, relatedly, in restoring the pro-veteran canon to its rightful place among the traditional tools of statutory interpretation.

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

The Jewish War Veterans of the United States of America, Inc. (JWV), organized in 1896 by Jewish veterans of the Civil War, is the oldest active national veterans' service organization in America. Incorporated in 1924 and chartered by an act of Congress in

[1] The parties were notified of the intention to file this brief per Rule 37.2(a). No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than amici curiae and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

1983, JWV's objectives include "encourag[ing] the doctrine of universal liberty, equal rights, and full justice to all men," and "preserv[ing] the spirit of comradeship by mutual helpfulness to comrades and their families." 36 U.S.C. § 110103(5), (7).

The National Organization of Veterans' Advocates, Inc. (NOVA) is a nonprofit educational membership organization comprising hundreds of attorneys and other qualified members who represent veterans and their families before the Department of Veterans Affairs and federal courts. NOVA works to develop high standards of service and representation for all persons seeking veterans' benefits.

Paralyzed Veterans of America (PVA) is a congressionally chartered veterans service organization whose mission is to employ its expertise on behalf of veterans who have experienced a spinal cord injury or disorder (SCI/D). PVA provides representation to its members and other veterans throughout the VA claims process and in federal court. PVA also seeks to improve the quality of life for veterans and all people with SCI/D by advocating for quality healthcare, research, and education addressing SCI/D; for benefits based on its members' military service; and for civil rights, accessibility, and opportunities that maximize independence for its members and all veterans and nonveterans with disabilities.

The Rocky Mountain Veterans Advocacy Project (RMVAP) is a Denver-based non-profit dedicated to providing affordable legal advocacy to veterans in the Rocky Mountain region and increasing access to legal services for veterans, military service members, and

their families. The RMVAP strives to ensure these communities receive proper legal representation, with special emphasis on assisting prior service members in pursuit of the disability compensation and discharge characterization they rightfully deserve. The RMVAP also offers experiential learning opportunities to law students as part of its commitment to fostering and expanding the next generation of veterans' advocates.

Service Women's Action Network (SWAN) is a nationwide nonprofit organization that advocates for and supports the needs of both service women and women veterans, regardless of rank, military branch, or years of experience. SWAN's goal is to see service women receive the opportunities, protections, benefits, and respect they earned. SWAN's efforts have included opening all military jobs to qualified service women, working to hold sex offenders accountable in the military justice system, expanding access to a broad range of reproductive healthcare services, and eliminating barriers to disability claims for those who have experienced military sexual trauma.

Veterans Legal Services (VLS) is an independent nonprofit organization that provides free and comprehensive civil legal aid services to economically disadvantaged military veterans in Massachusetts. VLS helps former service members obtain the stability and financial security necessary to live the healthy, happy, and dignified lives they deserve. VLS specializes in eviction/homelessness prevention, helping veterans access financial and medical benefits, appealing discharge orders, and promoting healthy family relationships.

Many of amici's members live or travel outside the United States and will be harmed by the Federal Circuit's erroneous statutory interpretation. This Court should grant certiorari.

INTRODUCTION AND SUMMARY OF ARGUMENT

More than 18,000 U.S. military veterans enrolled in the VA health care system live outside of the United States, and untold numbers of veterans travel abroad each year. When faced with medical emergencies, these veterans must seek treatment wherever they are. Although VA generally does not provide routine medical services to veterans abroad, when veterans receive emergency treatment, federal law requires the agency to reimburse veterans for that treatment, no matter where they receive it.

Congress passed two statutes that require VA to reimburse veterans for emergency medical treatment they receive in non-VA facilities. *See* 38 U.S.C. §§ 1725, 1728. Neither statute places any geographic limit on where treatment is received to be reimbursable. As the Federal Circuit recognized, "there is no mention of treatment abroad" in either statute. Pet. App. 24a.

Despite this omission, the Federal Circuit misread the statutes to forbid reimbursement for emergency treatment that veterans receive outside of the United States. It did so by linking the reimbursement statutes to 38 U.S.C. § 1724, a separate and more general statute that precludes VA from providing medical

care to veterans abroad (unless the medical care relates to a service-connected disability). But nothing in the text of §§ 1725 and 1728 suggests that they are cabined in any way by § 1724. And, to the extent there were any tension between § 1724's prohibition and the reimbursement statutes' commands, there is a simpler and more reasonable way to reconcile them. Under the plain language of § 1724, VA cannot provide "medical services" to veterans abroad. By contrast, §§ 1725 and 1728 expressly require VA to reimburse veterans for "emergency treatment" received in non-VA facilities, with no geographical limitations.

Reading the three statutes together, VA may not provide general medical services to veterans abroad (unless related to service-connected disabilities), but it must reimburse veterans for emergency treatment wherever they receive it. Not only does this interpretation give effect to the plain language of each statute, but it also supports the legislative purpose of expanding benefits to veterans receiving emergency medical treatment.

Instead of applying this reasonable (and harmonious) reading of the statutes, however, the Federal Circuit interpreted the reimbursement statutes against veterans' interests. It interpreted statutes designed to reimburse veterans for costs of emergency treatment as excluding thousands of veterans who live and travel abroad. And it did so while disregarding the pro-veteran canon.

The pro-veteran canon provides that, in construing a statute concerning veterans, "interpretive doubt

is to be resolved in the veteran's favor." *Brown v. Gardner*, 513 U.S. 115, 118 (1994). This approach effectuates Congress's legislative intent to "place a thumb on the scale in the veteran's favor in the course of administrative and judicial review of VA decisions." *Henderson v. Shinseki*, 562 U.S. 428, 440 (2011) (citation omitted). Moreover, the canon is meant to provide clarity and consistency in the laws governing veterans' benefits. The long history of this Court's application of this and similar canons illustrates its proper role.

Congress sought to reimburse eligible veterans for emergency treatment they receive. The Federal Circuit misinterpreted §§ 1725 and 1728 to the detriment of potentially millions of veterans who live and travel abroad. This Court should grant the petition and reverse.

ARGUMENT

I. Certiorari Is Warranted To Ensure That Veterans Receive The Protection Congress Intended.

The Federal Circuit's decision has the potential to adversely affect a large population of U.S. veterans who live and travel outside the country. This Court's review is critical to protect these deserving veterans.

A. Veterans living and traveling abroad face challenges in obtaining health care.

More than 18,000 veterans enrolled in VA's health care system live outside of the United States.

See Crystal Kupper, *Overseas expat: Many military families choose to live abroad permanently*, Military Families (Mar. 3, 2023), https://tinyurl.com/49mtweky. And there is evidence that the number of veterans living overseas is increasing. From 2014 to 2019, for example, the number of disability claims processed for veterans living abroad increased by 14%. *See* U.S. Gov't Accountability Office, GAO-20-620, *VA Should Continue to Improve Access to Quality Disability Medical Exams for Veterans Living Abroad*, at 9 (Sept. 2020), https://tinyurl.com/2p8yn6c5. (Unlike medical care, veterans outside the United States are entitled to the same disability benefits as veterans living domestically.)

Veterans who live outside the United States choose to do so for many reasons, such as proximity to family members, marriage to a resident of a foreign country, or positive experiences during their military service. *See* Pet. 31. Moreover, approximately 13% of U.S. veterans—amounting to 2.3 million individuals—were born outside the United States or are children of immigrants. *See* Katharina Buchholz, *U.S. Fighters From Abroad*, Statista (Nov. 17, 2020), https://tinyurl.com/39jwshxc. And this figure does not even account for veterans born outside the country to U.S.-citizen parents. These veterans may naturally want to live in the place where they were born or where their family members reside.

Veterans might also work or volunteer abroad, including in positions related to their service. *See, e.g.*, *Find a New Job Overseas for Veterans*, Military-Civilian, https://tinyurl.com/4mnk6xvd; *Make a Healthy Difference by Volunteering Abroad*, Military.com

(2023), https://tinyurl.com/yrs9cz6a. Or they might study overseas under the GI Bill. *See* U.S. Dep't of Veterans Affairs, *Foreign Programs* (Oct. 12, 2022), https://tinyurl.com/z5atbf65. In addition, like many Americans, veterans and their families who live in the United States may travel abroad. *See, e.g.*, William Skipworth, *U.S. Travel Abroad Has Finally Reached Pre-Pandemic Levels—Here's Where Americans Are Going*, Forbes (Aug. 16, 2023), https://tinyurl.com/vvztc88v (reporting that 40 million Americans traveled abroad in 2023 through July).

But veterans who choose to live and travel abroad must make certain sacrifices, especially when it comes to routine health care. Approximately 9 million veterans are enrolled in the VA health care system, and one third of these enrollees report using VA services for all of their health needs. *See* Z. Joan Wang et al., *2021 Survey of Veteran Enrollees' Health and Use of Health Care*, Advanced Survey Design, LLC, at 1, 95 (Sept. 24, 2021), https://tinyurl.com/3yktdxyk. If these veterans move or travel outside the country, however, they must find their own routine hospital and medical care (again, unless related to a service-connected disability). VA is statutorily barred from "furnish[ing]" hospital care and "medical services outside any State." 38 U.S.C. § 1724.

Even when care is available abroad, veterans may face obstacles in receiving it. For example, during the height of the COVID-19 pandemic, Congress authorized VA to provide vaccines to veterans living abroad who participate in the Foreign Medical Program (that is, those who receive care for service-connected disabilities). Yet, except for the Philippines, VA refused to

administer vaccines to veterans outside the United States—offering reimbursement, but leaving veterans on their own to try to find a dose. *See* Leo Shane III, *Tens of thousands of US vets living overseas left to find COVID vaccine doses on their own*, Military Times (Apr. 30, 2021), https://tinyurl.com/2reawvux. Veterans living abroad must navigate these and other obstacles when trying to obtain medical care.

B. Congress sought to protect veterans needing emergency treatment.

Although veterans facing these restrictions can make choices about how they obtain and pay for their *routine* medical care, those who need *emergency* medical treatment often do not have time to find an affordable provider or to find one that is covered by their health care plan. In recognition of this fact, Congress sought to protect eligible veterans who receive emergency treatment in non-VA facilities.

In two statutory provisions, Congress directed VA to reimburse eligible veterans for their out-of-pocket costs for "emergency treatment." Under the first provision, VA "shall ... reimburse" a veteran "for the customary and usual charges of emergency treatment" where the treatment was related to a service-connected disability or provided to a veteran with "a total disability permanent in nature from a service-connected disability." 38 U.S.C. § 1728(a). This statute "broaden[ed] the scope" of VA's previous practice of only reimbursing emergency care related to service-connected conditions. S. Rep. No. 92-776, at 29 (1972) (Conf. Rep.). It expanded coverage "to include reim-

bursement to veterans with 100 percent service-connected disabilities who are furnished emergency care and treatment for non-service-connected disabilities." *Id.* In other words, VA must reimburse veterans with total service-connected disabilities, like Mr. Van Dermark, for their emergency medical treatment.

Under the second provision, VA "shall reimburse" an eligible veteran "for the reasonable value of emergency treatment furnished the veteran in a non-[VA] facility." 38 U.S.C. § 1725(a). This provision further expanded coverage to include reimbursement for eligible veterans, regardless of whether their emergency treatment was received for service-connected disabilities or the other conditions listed in Section 1728(a). Section 1725 also "makes sure that veterans are reimbursed for emergency care *no matter where* they get that treatment." 145 Cong. Rec. H8392-02, H8403 (daily ed. Sept. 21, 1999) (statement of Rep. Reyes, cosponsor) (emphasis added).

Neither provision contains a geographic limitation like the one in § 1724. Nor would it make any sense to impose a geographic limit on the reimbursement of emergency treatment. By their very nature, emergencies are unplanned and not confined to any one part of the world. Moreover, the statutes do not require VA to *provide* emergency care directly (which arguably could conflict with § 1724's bar), but merely to reimburse veterans for the cost of such care. And there is no discernable reason to restrict such reimbursement to just those veterans who receive emergency treatment in the United States.

On the contrary, Congress intended through the reimbursement statutes to expand benefits to veterans. As one of the cosponsors of the legislation that became § 1725 stated: "Emergency care is a potentially catastrophic 'hole' in the safety net veterans believe they have with VA health care." 145 Cong. Rec. H12046-01, H12048 (daily ed. Nov. 16, 1999) (statement of Rep. Evans).

Sections 1725 and 1728 were meant to help fill this hole. As another cosponsor of the legislation observed, "Veterans and their families deserve to know that they can obtain emergency care and not later be financially strapped or devastated because the VA refuses to reimburse them. This bill rectifies this situation, following the request of the VA and the President's Patients' Bill of Rights. It also allows VA to reimburse any high priority enrolled veterans for medical emergencies." 145 Cong. Rec. H8392-02, H8403 (statement of Rep. Reyes); *see also* S. Rep. 92-776, at 29 (explaining that § 1728 "will make clear that reimbursement of private medical expenses may be authorized … for [eligible] veterans treated … in a medical emergency under situations where VA or other Federal facilities were not feasibly available, or an attempt to use them would have not been reasonable, sound, wise, or practical").

The Federal Circuit should have interpreted these veterans-benefits statutes in a way that benefits veterans. "A textually permissible interpretation that furthers rather than obstructs the document's purpose should be favored." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 4, at 63 (2012).

II. The Federal Circuit Erred By Failing To Harmonize Statutes Meant To Benefit Veterans.

A. The statutes can and should be read harmoniously.

Despite the twin commands of §§ 1725 and 1728, the Federal Circuit held that a veteran is not entitled to reimbursement of out-of-pocket costs for emergency treatment received abroad. The court relied on an earlier-enacted statutory provision, which states that VA "shall not furnish hospital or domiciliary care or medical services outside any State." 38 U.S.C. § 1724(a). It concluded that § 1724's bar on "furnishing" medical care abroad cabins the separately enacted reimbursement statutes and prohibits reimbursement of costs for emergency treatment received by a veteran abroad. *See* Pet. App. 10a, 24a.

Faced with what it viewed as a conflict between §§ 1725 and 1728's specific commands, on the one hand, and § 1724's general prohibition, on the other, the Federal Circuit purported to "harmonize" all three provisions by concluding that §§ 1725 and 1728 apply only to emergency treatment received in the United States. Pet. App. 23a-24a. This was error.

As an initial matter, a plain reading of the three statutes demonstrates no obvious textual conflict. Section 1724 precludes VA from providing hospital care or medical services to veterans outside the United States, unless they have a service-connected disability or are in the Philippines. 38 U.S.C. § 1724.

Sections 1725 and 1728 require VA to reimburse veterans for emergency treatment they receive, with no geographical limits on where they receive such treatment. 38 U.S.C. §§ 1725, 1728.

Section 1724 therefore governs where VA can provide routine medical services. Sections 1725 and 1728, in contrast, govern when VA can cover the costs of emergency treatment provided by others. None of these statutes cabins VA's ability to pay for emergency treatment based on where it takes place. Sections 1725 and 1728 simply require the VA to reimburse eligible veterans for emergency treatment they receive. "[W]here, as here, the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)).

Rather than enforcing the plain terms of the statutes, however, the Federal Circuit relied on VA's "longstanding practice" of not paying for medical treatment abroad, except in certain circumstances. App 19a. But that practice does not comply with §§ 1725 and 1728, which require reimbursement to veterans who must pay for emergency medical treatment. And an agency rule that "operates to create a rule out of harmony with the statute[] is a mere nullity." *Manhattan Gen. Equip. Co. v. Comm'r*, 297 U.S. 129, 134 (1936); *see also Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 212-14 (1976) (explaining that an agency's "broad view of [a rule] … cannot exceed the power granted … by Congress").

B. The Federal Circuit erred by disregarding the pro-veteran canon.

The Federal Circuit went astray at the outset of its analysis by ignoring the pro-veteran canon, which directs courts to construe veterans' benefits statutes "in the beneficiaries' favor." *Henderson*, 562 U.S. at 441. That canon, like other "traditional tool[s] of statutory construction," must guide a court's determination of whether two statutory schemes are in tension with one another. *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1630 (2018) (assessing alleged conflict between Arbitration Act and National Labor Relations Act). And, even if the Federal Circuit (bearing the canon in mind) had found some tension between a bar on furnishing medical care and a mandate to reimburse emergency treatment fees, the pro-veteran canon should have reminded the court that "interpretive doubt is to be resolved in the veteran's favor." *Gardner*, 513 U.S. at 117-18.

Yet the Federal Circuit saw "no role for the pro-veteran interpretive canon" in its statutory analysis. Pet. App. 12a. The appellate court's frequent failure to consider this key guide to congressional intent makes this Court's certiorari review crucial.

1. As this Court has explained, the pro-veteran canon stems from Congress's intent to help veterans when enacting legislation providing them benefits. "The solicitude of Congress for veterans is of long standing." *United States v. Oregon*, 366 U.S. 643, 647 (1961). This Court has consistently "recognize[d] that Congress has expressed special solicitude for the veterans' cause. ... A veteran, after all, has performed an

especially important service for the Nation, often at the risk of his or her own life." *Shinseki v. Sanders*, 556 U.S. 396, 412 (2009) (citation omitted). And that special solicitude is "plainly reflected" in laws like the reimbursement statutes at issue here. *Henderson*, 562 U.S. at 440.

Throughout its history, this country has prioritized repaying the debt owed to those who risk their lives and livelihoods to protect the American public. Dating back to the Revolutionary War, the government has provided medical care and benefits to our veterans. *See* U.S. Dep't of Veterans Affairs, *History Overview* (Aug. 17, 2023), https://tinyurl.com/y6jhxrh2. This has included pensions for veterans with disabilities, as well as hospital and medical care. *Id.*

In 1865, President Abraham Lincoln gave his second inaugural address as the Civil War was nearing its end. Seeking to heal a divided nation, he asked the country "to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow, and his orphan." U.S. Dep't of Veterans Affairs, *The Origin of the VA Motto* (Sept. 16, 2023), https://tinyurl.com/nhem8tc6. These words later became the VA motto, when two plaques reciting them were installed at the entrance to VA's Washington, D.C., headquarters in 1959. *Id.* As VA itself has affirmed, "President Lincoln's words have stood the test of time, and stand today as a solemn reminder of VA's commitment to care for those injured in our nation's defense and the families of those killed in its service." *Id.*

Congress has repeatedly enacted legislation to ensure that VA carries out that commitment. It created a non-adversarial claims system to help veterans receive compensation for their service-connected conditions. *See* 38 U.S.C. §§ 1110, 1131 (establishing entitlement to compensation); *id.* § 5103A (requiring VA to assist veterans with their disability claims); *id.* § 5107(b) (giving claimants the benefit of the doubt in close cases). Unlike civil litigation, "proceedings before the VA are informal and nonadversarial," and are "designed to function throughout with a high degree of informality and solicitude for the claimant." *Henderson*, 562 U.S. at 431, 440 (quoting *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 311 (1985)). Rather than opposing veterans' claims, "[t]he VA is charged with the responsibility of assisting veterans in developing evidence that supports their claims, and in evaluating that evidence, the VA must give the veteran the benefit of any doubt." *Id.* at 440.

Congress reiterated its intent to provide a cooperative pro-veteran benefits process when it enacted the Veterans Judicial Review Act, which authorized judicial review of decisions adverse to veterans in federal court. *See, e.g.*, 38 U.S.C. §§ 7251, 7252. The House Report explained: "Congress has designed and fully intends to maintain a beneficial non-adversarial system of veterans benefits." H.R. Rep. No. 100-963, at 13 (1988). Congress further stated that it "expects VA to fully and sympathetically develop the veteran's claim to its optimum before deciding it on the merits" and "to resolve all issues by giving the claimant the benefit of any reasonable doubt." *Id.*

2. Acknowledging Congress's clear and well-established intent to help veterans, this Court has recognized the pro-veteran canon for more than 80 years. In *Boone v. Lightner*, for example, the Court considered the Soldiers' and Sailors' Civil Relief Act of 1940, a federal law providing protections for active-duty servicemembers. 319 U.S. 561 (1943). The Court explained that the legislation "is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation." *Id.* at 575.

A few years later, when discussing the Selective Training and Service Act of 1940, the Court reiterated this pro-veteran approach to statutory construction: "This legislation is to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need." *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946). The Court stated that it must "construe the separate provisions of the Act as parts of an organic whole and give each as liberal a construction for the benefit of the veteran as a harmonious interplay of the separate provisions permits." *Id.* Likewise, the Court explained decades later that the Vietnam Era Veterans' Readjustment Assistance Act of 1974 "is to be liberally construed for the benefit of the returning veteran." *Coffy v. Republic Steel Corp.*, 447 U.S. 191, 196 (1980).

More recently, the Court reaffirmed the canon's vitality in construing the Veterans' Reemployment Rights Act. The Court noted that, if the meaning of the text was unclear, it "would ultimately read [an uncertain] provision in [the veteran]'s favor under the

canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." *King v. St. Vincent's Hosp.*, 502 U.S. 215, 220 n.9 (1991). The Court further stated that it "will presume congressional understanding of such interpretive principles." *Id.*

The Court again relied on the pro-veteran canon in *Henderson v. Shinseki*, explaining that it has "long applied 'the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor.'" 562 U.S. at 441 (quoting *King*, 502 U.S. at 220 n.9). In *Henderson*, the Court concluded that Congress did not intend the deadline for filing a notice of appeal with the Court of Appeals for Veterans Claims to be jurisdictional. "Particularly in light of this canon, we do not find any clear indication that the 120-day limit was intended to carry the harsh consequences that accompany the jurisdiction tag." *Id.*

The canon is also well recognized by the courts of appeals, including the Federal Circuit in exercising its exclusive jurisdiction over veterans-benefits matters. *See Burden v. Shinseki*, 727 F.3d 1161, 1169 (Fed. Cir. 2013) ("[I]n construing veterans' benefits legislation 'interpretive doubt is to be resolved in the veteran's favor.'") (quoting *Gardner*, 513 U.S. at 118); *NOVA v. Sec'y of Veterans Affairs*, 260 F.3d 1365, 1378 (Fed. Cir. 2001) (referring to the pro-veteran canon as one of "the usual canons of statutory construction"); *see also Travers v. Fed. Express Corp.*, 8 F.4th 198, 208 n.25 (3d Cir. 2021) ("[A]ny interpretive doubt is construed in favor of the service member, under the pro-veteran canon."); *Boatswain v. Gonzales*,

414 F.3d 413, 417 (2d Cir. 2005) (noting canon as a "jurisprudential doctrine[] that counsel[s] for interpretation in favor of … veterans"); *Sykes v. Columbus & Greenville Ry.*, 117 F.3d 287, 294 (5th Cir. 1997) ("To the extent that [the Veterans' Reemployment Rights Act] is capable of multiple interpretations, [the veteran] is quite correct that ambiguities should be resolved in his favor.").

Here, the Federal Circuit expressly declined to apply the pro-veteran canon. Reasoning that "each of the argued-for interpretations" of a single phrase in § 1724 "would benefit some veterans at the expense of others," the court saw "no role for the pro-veteran interpretive canon." Pet. App. 12a. In doing so, the court fundamentally misunderstood the role of the pro-veteran canon in the analytical task at hand. Had it properly bore in mind Congress's pro-veteran intent, the Federal Circuit might have recognized the readily apparent, harmonious reading of the three statutory provisions it was considering. *See supra* IIA. And it at least would have resolved any arguable tension by providing a pro-veteran interpretation *of the reimbursement statutes*. Instead, the Federal Circuit limited the important benefits Congress intended to confer by these provisions. These are the kinds of "harsh consequences" that the pro-veteran canon is meant to check against, *Henderson*, 562 U.S. at 441.

C. Other canons of interpretation also support interpreting these statutes in favor of veterans.

The Federal Circuit's statutory analysis also failed to account for other traditional tools of construction that would have resulted in a pro-veteran reading of the reimbursement statutes. Even if the three provisions were in tension (as the Federal Circuit concluded), the harmonious-reading and general/specific canons of statutory construction support interpreting the statutes in favor of veterans.

The harmonious-reading canon teaches that provisions of a statute should be interpreted in a way that makes them compatible, not contradictory. A court "must read [two allegedly conflicting] statutes to give effect to each if [it] can do so while preserving their sense and purpose." *Watt v. Alaska*, 451 U.S. 259, 267 (1981). As this Court recently explained, "[w]hen confronted with two Acts of Congress allegedly touching on the same topic, this Court is not at 'liberty to pick and choose among congressional enactments' and must instead strive 'to give effect to both.'" *Epic Sys.*, 138 S. Ct. at 1624 (quoting *Morton v. Mancari*, 417 U.S. 535, 551 (1974)). Had it faithfully applied this principle (alongside the pro-veteran canon), the Federal Circuit could not have concluded that the reimbursement statutes are in tension with § 1724.

The general/specific canon likewise supports this pro-veteran interpretation. As the petition explains (at 24-29), where a conflict among statutory provisions cannot be avoided, specific commands should

govern over a more general prohibition. *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) ("[I]t is a commonplace of statutory construction that the specific governs the general."); *Crawford Fitting Co. v. J. T. Gibbons, Inc.*, 482 U.S. 437, 445 (1987) ("As always, '[w]here there is no *clear* intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.'") (quoting *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976)).

Sections 1725 and 1728 are more specific than § 1724 in all relevant respects: (i) Emergency treatment is a subset of medical care; (ii) reimbursement is, at most, a subset of "furnish[ing]" medical care (as the Federal Circuit has interpreted that term); and (iii) §§ 1725 and 1728's focus on proximity to a federal facility through the definition of "emergency treatment" is more geographically specific than § 1724's general provision that prohibits furnishing medical care abroad. Traditional tools of statutory construction therefore support a pro-veteran reading of the reimbursement statutes.

CONCLUSION

Amici respectfully request that the Court grant the petition for certiorari.

Respectfully submitted,

Melanie L. Bostwick
Counsel of Record
Melanie R. Hallums
ORRICK, HERRINGTON &
SUTCLIFFE LLP
1152 15th Street, NW
Washington, DC 20005
(202) 339-8400
mbostwick@orrick.com

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