

No. 24-320

IN THE
Supreme Court of the United States

SIMON A. SOTO,

Petitioner,

v.

UNITED STATES,

Respondent.

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

**BRIEF OF MILITARY-VETERANS ADVOCACY
INC. AND DISABLED AMERICAN VETERANS
AS AMICI CURIAE IN SUPPORT
OF PETITIONER**

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INTEREST OF AMICI CURIAE¹

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.

Disabled American Veterans (DAV) is a federally chartered veterans service organization, founded to serve the interests of the nation's disabled veterans. 36 U.S.C. § 50301. DAV has nearly a million members, all of whom are service-connected disabled veterans. Although DAV operates several charitable programs that serve the interests of its constituency, its marquee program is the National Service Program. Through that program, DAV service officers provide free assistance to veterans with their claims for benefits from the Department of Veterans Affairs (VA).

Amici are dedicated to protecting and advancing the rights of our nation's veterans. The ruling below, which incorrectly narrowed a statute intended to benefit veterans, runs contrary to Congress's intent in enacting veterans-benefits laws. Amici are invested in

¹ 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 and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

ensuring that veterans receive the full benefits to which they are entitled. They file this brief in support of Mr. Soto and others like him: uniquely deserving retirees who were previously forced to sacrifice retired pay for combat-related disability compensation, and whom Congress sought to make whole through the statute at issue in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress created the Combat-Related Special Compensation (CRSC) program in 2002 to provide payments to military retirees with combat-related disabilities. 10 U.S.C. § 1413a. Before CRSC was enacted, these veterans were required to forfeit a portion of their retirement pay to receive full disability compensation. These veterans have gone above and beyond the call of duty and deserve to be compensated fully and fairly for disabilities incurred during combat-related service. This is what Congress intended and what the CRSC statute provides.

Qualifying for CRSC payments, however, is no easy feat. At a minimum, a servicemember must retire—based on either length of service (at least 20 years) or disability—*and* have suffered a disability through combat or other exceptionally hazardous service. After meeting those essential criteria, retirees must bear the additional burden of satisfying the CRSC eligibility criteria. Importantly, this elaborate program is not cabined by any statute of limitations. Because it provides for the Secretary of the applicant's military department to validate and settle combat-related claims with specific appropriated funds, it

does not fall under the Barring Act’s default time bar. Pet. Br. 27-31 (Secretarial authority), 32-33 (funding authority).

Congress intended to fully compensate these especially valiant military retirees for their sacrifices. The CRSC statute—enacted to rectify an “unjust” reduction in retirement pay for disability compensation—displaces the Barring Act’s six-year statute of limitations to ensure these veterans are made whole. 148 Cong. Rec. H2265-02, H2272, 2002 WL 940013 (daily ed. May 9, 2002) (statement of Rep. Bilirakis) (describing “this unjust law” that forces “service-disabled retirees [to] surrender a portion of their retired pay”).

As the statutory language and history make clear, Congress sought to restore compensation for eligible veterans, not silently limit it by way of a separate statute. The Federal Circuit misapplied the Barring Act’s statute of limitations to CRSC payments, to the detriment of thousands of military retirees. This Court should reverse.

ARGUMENT

I. CRSC Exists To Fully Compensate Disabled Combat Veterans.

Petitioner and thousands of other retirees have sustained life-altering disabilities during active combat and comparably hazardous non-combat duties. Pet. Br. 9-12. In recognition of their unique situation, Congress created a unique remedial regime to protect them from the unfair forfeiture of their retirement

pay. It did not create, nor intend to impose, more-stringent default rules that limit these veterans' hard-earned compensation. Having given nearly "the last full measure of devotion," these military retirees deserve their full measure of recompense. Abraham Lincoln, *Gettysburg Address* (Nov. 19, 1863).

A. The CRSC program recognizes especially deserving combat veterans.

Congress enacted the CRSC program in 2002 to compensate military retirees with combat-related injuries, by restoring compensation that was previously forfeited because of their receipt of VA disability pay. 10 U.S.C. § 1413a. The CRSC statute has since been amended and expanded to provide benefits to veterans who have been medically retired as well as veterans retired with at least 20 years of service. *See* National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, 122 Stat. 3. The program recognizes an exceptionally deserving subset of veterans with combat-related injuries—those who have served at least 20 years or who have sacrificed their health to their service.

Indeed, when the CRSC legislation was introduced, congressional representatives emphasized that these payments were meant to repay military retirees for their exceptional service: "We in Congress need to ensure that our military retirees who have become disabled as a result of military service receive all the benefits to which they are entitled because of service-connected disabilities. ... This is what is fair; this is what is decent. They are the ones who made the sacrifices for our wonderful country, and the least

we can do is to ensure that we repay the debt that we truly owe them.” 148 Cong. Rec. H7854-03, H7856, 2002 WL 31273552 (daily ed. Oct. 10, 2002) (statement of Rep. Skelton); *see also Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 393 (2024) (“The text ... means what it says. And a look at its history if anything only underscores that plain meaning.”); *Milner v. Dep’t of Navy*, 562 U.S. 562, 572 (2011) (“[C]lear evidence of congressional intent may illuminate ambiguous text.”).

Legislating at a time when the war in Afghanistan was only a year old and while the buildup for the war in Iraq was underway, Congress understood the long, arduous, and dangerous work that servicemembers are asked to perform. The CRSC program was one way to take care of military retirees with combat-related injuries. “As we stand poised on the brink of possible military action [against Iraq], ... this bill will provide the men and women in uniform with the ... pay and benefits they deserve.” 148 Cong. Rec. S10858-01, S10858, 2002 WL 31520009 (daily ed. Nov. 13, 2002) (statement of Sen. Levin). As one senator explained, these veterans “deserve [these payments] as much as anyone deserves anything in the world. They are going to get help. ... We are taking care of our veterans.” *Id.* at S10859-60 (statement of Sen. Reid).

Putting an even finer point on it: “[I]f a man or woman served in uniform and retired honorably, they deserve to receive the retirement pay they were promised. If in the course of that service, that military member was injured and sustained a lasting disability, they should be compensated for that as well. One

was earned for service and one was earned for sacrifice.” H.R. Rep. No. 107-772 (Conf. Rep.), Extension of Remarks, at E2131 (Nov. 22, 2002) (statement of Rep. Jones).

And while all military veterans deserve the benefits they have earned, CRSC compensates particularly worthy military retirees: Purple Heart recipients when their disability is attributable to the injury that earned them the award, and those retirees whose disabilities result from their participation in combat or other particularly hazardous duties. Qualifying duties include those associated with engaging in armed conflict, real or simulated, or other hazardous duty, such as flying, parachuting, demolition, diving, or using explosives. See Kristy N. Kamarck & Mainon A. Schwartz, Cong. Rsch. Serv., R40589, *Concurrent Receipt of Military Retired Pay and Veteran Disability: Background and Issues for Congress 6* (June 22, 2023) (“*Concurrent Receipt*”). The definition of “combat-related” encompasses disabilities associated with the actions of enemy forces, munitions explosions, inhalation of toxic gases, or the use of military weapons, vehicles, ships, or aircraft. See *id.* Disabilities may be physical and mental. *Id.* at 19.

The CRSC program provides economic support for over 95,000 veterans. See *id.*; see also Dep’t of Defense, *Statistical Report on the Military Retirement System 25* (Sept. 2022), <https://tinyurl.com/b4wdukhh> (“*Statistical Report*”). More than 60 percent of these veterans are between 90 and 100 percent disabled, and nearly half of them are 100 percent disabled. *Statistical Report* at 68.

As the accounts below illustrate, CRSC beneficiaries are highly deserving of the full amount of compensation that Congress provided. Their compensation should not be restricted based on an in-applicable (and ill-suited) default limitations provision.

B. CRSC is best illustrated by the real-life stories of our most deserving veterans.

The military retirees who qualify for combat-related special compensation are among the veterans who have sacrificed the most. CRSC benefits are vital to helping compensate them for their service. Here are some of their stories.

An Air Force Technical Sergeant, a mid-level non-commissioned officer, participated in a Special Operations raid on an improvised explosive device (IED) manufacturer in Iraq in 2007. On the way back to base, his Humvee was struck by an IED blast and small arms fire. The left side of his body directly absorbed the IED blast wave, causing severe chest and body pain. He did not seek immediate medical treatment out of concern for his career progression.

Two years later, he was diagnosed with arthritis in his left hip, which continued to worsen. He also suffered from headaches and was diagnosed with a traumatic brain injury. His doctors linked these conditions to the IED blast.

In 2014, he was awarded the Purple Heart based on statements from eyewitnesses and the commander to whom the incident was contemporaneously reported. Two years later, he was medically retired for his hip injury, with the explicit determination that this condition was combat-related.

He applied for CRSC, which was initially denied because of the lack of medical treatment on the day of the blast. He appealed to the Court of Federal Claims, which remanded the case to the Air Force Board for Correction of Military Records. He provided considerable evidence—including the Purple Heart award and eyewitness statements—that his injuries were caused by the blasts. The Air Force Corrections Board agreed and concluded that his hip condition and traumatic brain injury met the definition of a combat-related disability. National Veterans Legal Services Program, *2023 Pro Bono Report 20* (2023), <https://tinyurl.com/49bmetmr>.

An Army avionics and weapons mechanic deployed to Afghanistan during the global war on terror. While there, his combat post was attacked 30 to 40 times each day by mortars, a type of close-range, indirect artillery. *See generally* Army Training Circular 3-22.90, *Mortars* (Mar. 17, 2017). The daily attacks required him to run for cover multiple times a day as artillery exploded around him. One evening, while riding back to the barracks, a rocket-propelled grenade narrowly missed his vehicle. He was medically

retired for post-traumatic stress, with an explicit finding by the Army's Physical Evaluation Board that his disability was combat-related.

The veteran applied for CRSC at the Army Board for Correction of Military Records, but it was denied. He then filed a complaint at the Court of Federal Claims, which remanded the matter with direct instructions to address the medical records and the prior finding that his post-traumatic stress was combat-related. On remand, the Army Corrections Board awarded CRSC benefits, concluding that his post-traumatic stress was caused by his combat. *2023 Pro Bono Report* at 21.

An Air Force officer deployed to Iraq, where he enabled critical base life support, transportation, and personnel security services to over 90,000 soldiers, sailors, and airmen. He was subjected to enemy attacks on his base. He was medically retired for post-traumatic stress, but the Physical Evaluation Board found that his condition was not combat-related.

He applied for CRSC and was initially denied. He sought reconsideration and submitted a Command Statement attesting to his experience of daily mortar attacks. He also obtained a letter from the Air Force Historical Support Division, which stated that during his deployment, Iraqi insurgents conducted 47 indirect fire attacks as well as launched 79 rockets, 24 mortars, and 30 unidentified weapons at his base. The veteran was awarded CRSC for his post-traumatic stress with a combat-related rating of 50%. *Id.* at 22.

An Army intelligence officer and engineer who deployed to Iraq and Afghanistan was exposed to burn pits, where soldiers disposed of trash, chemicals, and even medical waste in the absence of proper facilities. As a Horizontal Construction Platoon Leader in Iraq, he was responsible for constructing and maintaining the burn pits, which burned 24 hours a day and were his base's sole means of waste disposal. A burn pit was also located just outside the perimeter of his base in Afghanistan, leaving a smoke cloud hanging above the base, along with the inescapable stench of burning waste.

The officer was later diagnosed with chronic lymphocytic leukemia, a disease that is predominantly found in older adults and rarely in individuals under the age of 40. See Mayo Clinic, *Chronic Lymphocytic Leukemia*, <https://tinyurl.com/2sy5x6x9> (last updated Dec. 2024). He responded well to medication, but the side effects of his medication included chronic fatigue, insomnia, and hand tremors. He medically retired with a 100% disability rating.

He filed a CRSC application for his leukemia as covered by the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (the "PACT Act"). Because the PACT Act does not identify his specific leukemia, he had to persuade the Secretary of the Army that his condition was a subtype of a cancer presumptively service-connected by the PACT Act. The veteran was awarded CRSC at 100% for his leukemia condition

with the explicit determination that it qualifies under the PACT Act. *2023 Pro Bono Report* at 22-23.

A Navy Master Explosive Ordnance Disposal Technician was frequently exposed to blasts and explosions. In Iraq, he experienced an explosion from less than four feet away, and he worked to disarm a live improvised explosive device. Later, while deployed to Afghanistan as the explosive ordnance disposal team leader, a rocket-propelled grenade hit a tree six feet above his head. Immediately after the blast, he engaged in a firefight with the enemy.

He was medically retired for migraines and shoulder, neck, and back conditions. He applied for CRSC, but he was denied for failing to complete preliminary eligibility requirements. He submitted additional evidence of his multiple conditions, including post-traumatic stress, and his direct engagement in combat. The veteran was awarded CRSC at a combined combat-related disability rating of 100% for multiple conditions. *Id.* at 23-24.

An Army Paratrooper deployed twice to Afghanistan. While at his home base in the United States, he suffered an accident during a parachute training jump, landing on a stack of construction pipes and injuring his right knee and shoulder. He further injured his right foot and both ankles in tactical exercises.

After he was medically retired, he applied for CRSC and was denied. He sought reconsideration based on medical evidence dated shortly after the bad parachute landing, which attributed pain in his right knee and shoulder to the incident. He also submitted documentation of the medical conditions caused by tactical exercises. The veteran was awarded CRSC for these conditions as well as tinnitus with a combined combat-related disability rating of 60%. *Id.* at 23.

These stories reveal the profound sacrifices our troops make and evoke the many untold stories of military retirees who suffer from combat-related disabilities. Each of them served their country honorably and now soldier on with lifelong debilitating conditions. And each of them qualified for CRSC payments to help restore a portion of their earned retirement pay. For each of them, the journey to secure CRSC benefits started with an application to the Secretary of their military department. *Pet. Br.* 27-31.

Congress wanted to fully compensate these retirees for their disabilities, enacting a special program explicitly for their benefit. Nowhere did Congress seek to limit this compensation, much less with a general, default time bar.

II. Given The Obstacles To Qualifying For CRSC, Congress Did Not Time-Limit This Benefit.

In 1892, Congress prohibited veterans from simultaneously receiving disability compensation and

military retired pay. *See Concurrent Receipt* at 1 & n.2. Even as it created the pro-claimant system of modern veterans' benefits after World War I, Congress continued to require retired military personnel to offset part of their retired pay against their VA disability compensation. *See id.*; *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 309 (1985). In 2001, before Congress enacted the CRSC program, the prohibition on paying both full retirement benefits and veterans' disability benefits resulted in \$1.3 billion withheld from nearly 75,000 eligible retirees—on average, more than \$17,000 per retiree. H.R. Rep. No. 107-436, at 442, 2002 WL 848335 (May 3, 2002).

Members of Congress began to recognize the injustice of requiring retirees who demonstrated unique valor “to actually fund their own disability compensation by waiving a portion of their retiree benefits.” 148 Cong. Rec. E1867-03, E1867, 2002 WL 32097999 (daily ed. Oct. 10, 2002) (statement of Rep. DeLauro). They offered these veterans “a beacon of financial support ... a lifeline, alleviating the financial strain on those who have sacrificed their well-being in the line of duty.” Veterans Benefit Blog, *Unveiling the Essence of Combat-Related Special Compensation (CRSC)* (last visited Mar. 1, 2025), <https://tinyurl.com/akz7pnpn>. To remedy this injustice, in 2002 Congress enacted the CRSC program, codified at 10 U.S.C. § 1413a. While strictly speaking it does not end the offset of VA disability pay against retired pay, it provides especially deserving retirees “the financial equivalent of concurrent receipt as ‘special compensation.’” *Concurrent Receipt* at 6.

A. The CRSC statute strictly limits eligibility.

As structured by Congress, the CRSC statute requires the Department of Defense Military Retirement Fund to pay this “special compensation” to qualifying military retirees. 10 U.S.C. § 1413a(h). The statute strictly limits eligibility. Veterans are eligible only if they: (1) are entitled to retired pay, *and* (2) have a service-connected disability (3) rated by VA as at least 10% disabling (4) that was incurred during active combat or combat-like service. 10 U.S.C. § 1413a(c) & (e); *see also Concurrent Receipt* at 5-6.

To understand how exceptional this compensation is, it’s helpful to understand baseline eligibility for VA disability compensation. *Any* veteran meeting certain basic criteria is entitled to monthly compensation for service-connected disabilities. 38 U.S.C. §§ 1110, 1131. To be eligible for standard disability compensation, the veteran must have retired or been discharged under honorable or general conditions. 38 U.S.C. § 101(2). The veteran must suffer a disability linked to personal injury or disease contracted or aggravated in the line of active duty—in other words the disability must be “service-connected.” *See* 38 U.S.C. §§ 1110, 1131. The disability must not result from the veteran’s own willful misconduct or substance abuse. 38 U.S.C. §§ 1110, 1131. The veteran is entitled to monthly compensation once VA rates the condition as 10% or more disabling. 38 U.S.C. §§ 101(13), 1114, 1134.

To qualify for CRSC, a veteran must first meet these baseline standards. 10 U.S.C. § 1413a(e). But

she must then prove much more. She must demonstrate an entitlement to retired pay, either because she served on active duty for at least 20 years, 10 U.S.C. Chapters 741 (Army), 841 (Navy and Marine Corps), 941 (Air and Space Forces), or because she suffered a disability severe enough to force her into early retirement, 10 U.S.C. § 1201. Establishing this requirement is straightforward, as the applicant and the validating Secretary have ready access to proof of retired pay. See Dep't of Defense, *Combat-Related Special Compensation (CRSC) Section 1413a, Title 10, United States Code, As Amended Revised Program Guidance January 2004* 13-14 (April 15, 2004) (“2004 Program Guidance”), <https://ti.nyurl.com/fvwv6jfr>.

A retiree faces a much higher hurdle in proving the remaining element—that her VA-rated service-connected disability is “combat-related.” 10 U.S.C. § 1413a(e); see *2004 Program Guidance* at 9. A combat-related, service-connected disability is uncommon, arising in only limited circumstances. If the injury giving rise to the disability resulted in the award of the Purple Heart—a military decoration awarded to servicemembers wounded or killed in action, Exec. Order No. 13,758 (Jan. 12, 2017)—the injury is per se combat-related. 10 U.S.C. § 1413a(e)(1). Purple Hearts, however, are uncommon today.² In the

² No comprehensive data on Purple Heart awards is publicly available, but rough estimates are possible. VA estimated that, by September 2013, at least 1,724,058 servicemembers had deployed to Iraq or Afghanistan. Dep't of Veterans Affairs, War Related Illness & Injury Study Center, *Operation Enduring Freedom, Operation Iraqi Freedom, and Operation New Dawn* 6,

absence of the Purple Heart, a retiree is eligible for CRSC only if the injury giving rise to the disability was incurred (i) directly from armed conflict, (ii) while engaged in hazardous service, (iii) in the performance of duty under conditions simulating war, or (iv) through an instrumentality of war. 10 U.S.C. § 1413a(e)(2).

These four categories sometimes overlap. To establish that a qualifying injury was sustained during armed conflict, a retiree must show “a definite causal relationship” between armed conflict and disability, not merely that the injury was incurred during a time of war or in a combat zone. *2004 Program Guidance*, Attachment 1-1 at 1. Armed conflict includes “a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerrilla action, riot, or any other action in which Service members are engaged with a hostile or belligerent nation, faction, force, or terrorists” or while a prisoner of war. *Id.* Examples of qualifying injuries include those resulting from a bullet fired by enemy forces or diving

<https://tinyurl.com/4u8968fu> (last visited Mar. 4, 2025). In 2012, an article in the National Archives’ Prologue Magazine estimated “more than 25,000” Purple Hearts had by then been awarded for service in those conflicts. Fred L. Borch, *A Heart of Purple: The Story of America’s Oldest Military Decoration and Some of Its Recipients*, Prologue 22 (Winter 2012), <https://tinyurl.com/36yx6ded>. Rounding up to 26,000, allowing for an additional year of Purple Hearts at a yearly average of 2,364 (26,000 across the 11 years of war between 2001 and 2012), and conservatively assuming no servicemember received a Purple Heart more than once, by 2013 the U.S. military likely awarded Purple Hearts to fewer than 2% of Afghanistan and Iraq War veterans.

for cover from incoming rounds. *See id.* at 2. It could also include post-traumatic stress resulting from killing enemy troops. *See id.* at 1.

A retiree may be eligible for injuries incurred during “hazardous service” if she is injured while performing recognized high-risk duties, including flight, parachute, demolition, or diving duty. *Id.*; *see also* 37 U.S.C. § 301(a) (defining hazardous duties eligible for incentive pay). Exemplary injuries include a traumatic brain injury resulting from a bad parachute landing, paralysis caused by decompression sickness during a salvage dive, or broken bones resulting from the hard landing of an aircraft. *See 2004 Program Guidance*, Attachment 1-1 at 1-2.

A retiree injured under conditions simulating war must show injury arising from specific types of military training, such as war games, tactical exercises, airborne operations, grenade and live-fire weapons practice, bayonet training, and hand-to-hand combat training. *2004 Program Guidance*, Attachment 1-1 at 1. Qualifying injuries could include a fractured wrist suffered during hand-to-hand combat training, a broken leg suffered falling from a building during simulated urban warfare, or a traumatic brain injury caused by helicopter cargo dropped on a soldier. *See id.* This category does not include activities common to daily physical training, such as running, ruckmarching, or calisthenics. *Id.*

An injury arising from an instrumentality of war must have “a direct causal relationship” with a military vehicle, vessel, or device such as a rifle, an armored personnel carrier, a fighter jet, or ordnance and

ammunition. *Id.* at 1-2. Qualifying injuries could include shrapnel injuries received during live grenade training at a U.S. Army base, tinnitus caused by continual exposure to military aircraft aboard an aircraft carrier, or a broken arm sustained when a Humvee overturned during training. *See id.*

If an eligible retiree suffers an injury under such circumstances, and that injury results in a service-connected disability that VA rates as at least 10% disabling, then the retiree is eligible for CRSC.

B. The CRSC statute requires a detailed claims settlement process.

The CRSC statute—not the Barring Act—details the required claims settlement process, which is further elaborated by the *2004 Program Guidance*. Retirees must apply for CRSC through the Secretary of the military department from which they retired. 10 U.S.C. § 1413a(d). As a threshold matter, an applicant must submit a Department of Defense Form (DD Form) 2860, which requests personal information and service history. *2004 Program Guidance* at 2. She must identify the nature of combat-related injury (for example, hazardous service) and where her injury occurred. Finally, an applicant who may qualify for both CRSC and concurrent retirement and disability payments under 38 U.S.C. §§ 5304-05 must elect which compensation to receive. 10 U.S.C. § 1413a(a)-(b).

An applicant must supplement this form with records documenting her service and disabilities. Documents typically accompanying an application include

the servicemember's DD Form 214 (a detailed certificate of discharge from active duty), retirement orders, and copies of all VA rating decisions and supporting documents. *See 2004 Program Guidance* at 9. An applicant who was medically retired, for example, may submit the records of her Medical Evaluation Board and Physical Evaluation Board (which respectively decide whether a servicemember with a medical condition meets military retention standards and, if not, whether the servicemember should be returned to duty, separated, or retired). *See* U.S. Army Human Resources Command, *Apply for CRSC* (Jan. 21, 2025), <https://tinyurl.com/44cvz6hx>.

Each military department will review its retirees' applications to validate combat-related disabilities and settle claims. *2004 Program Guidance* at 8. Each department applies a preponderance-of-the-evidence standard, and the burden of proof lies with the applicant. *Id.* at 9. If an application is denied, the department will explain to the servicemember the reasons for denial and the requirements for reconsideration. *Id.* If the department awards the compensation, the CRSC effective date is retroactive to the date of the retiree's VA rating decision for the combat-related disability or the date of retirement, whichever is later. Pet. 6 (quoting Secretary's decision on Mr. Soto's claim).

C. Notorious VA delays often hinder CRSC awards.

This process sounds very straightforward and efficient. Retire, get a VA rating, apply for combat-relatedness, receive CRSC. In practice the process is

anything but, in large part because veterans have long struggled to clear the first hurdle after retirement—securing a VA rating for their disability.

To secure CRSC, a retiree must have a VA rating. *Supra* 14. The effective date of the CRSC is the effective date of VA’s rating for the combat-related disability underscoring the CRSC award. *Supra* 19. Because the VA rating must precede the CRSC award, the latter will inevitably be retroactive. *Id.* But that’s not the only retroactivity at play. Generally, the effective date of a VA rating is retroactive to the date VA *receives* a retiree’s original claim for compensation. 38 U.S.C. § 5110(a)(1); *see also id.* at § 5110(b)(1) (creating an exception for claims received within a year of service-member’s retirement or separation). By the time a retiree has satisfied the CRSC prerequisites, the effective date of her VA rating—which triggers her CRSC award—may be years or decades in the past.

By way of quick background, to initiate a claim for benefits, a veteran files a claim online, by mail, or in person at a VA regional office. *See* 38 C.F.R. § 3.155; Dep’t of Veterans Affairs, *How to file a VA disability claim*, <https://tinyurl.com/nhj9ddvy> (last updated Mar. 5, 2025). The process that follows is meant to function with a “high degree of informality and solicitude for the claimant.” *Walters*, 473 U.S. at 311. Indeed, claimants are supposed to be able to navigate this system without the aid of a lawyer; introducing lawyers into the proceedings would, this Court long ago observed, “be quite unlikely to further” Congress’s goal of keeping the proceedings “as informal and non-adversarial as possible.” *Id.* at 323-34. In theory, VA

should act in the veteran’s interest, guiding her toward an outcome that reflects the full benefits provided by the law. *See, e.g.*, 38 U.S.C. § 5103A (obligating VA to assist claimants); 38 C.F.R. § 3.103(a) (stating VA policy “to render a decision which grants every benefit that can be supported in law”).

But Congress’s beneficence is not reflected in the byzantine modern VA system. David Shulkin, who served as the Secretary of Veterans Affairs from 2017 to 2018, candidly acknowledged this problem during his tenure. In a speech to the National Press Club, then-Secretary Shulkin opined that “[t]he system, it appears to me, puts VA in an adversarial relationship with veterans.” David Shulkin, U.S. Sec’y of Veterans Affairs, Address at the National Press Club on Improving the VA Healthcare System 8 (Nov. 6, 2017), <https://tinyurl.com/mr25nys8>; *see also, e.g.*, Stacey-Rae 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) (noting that “the overall implementation of the [VA] system ... is not terribly efficient or effective”).

VA claims processing delays are legendary. In 2018, for example, the current Chief Judge of the Federal Circuit expressed incredulity at the fact that it took VA “an average of 773 days” to certify a veteran’s internal agency appeal—“a ministerial process that involves checking that the file is correct and complete and completing a two-page form which could take no more than a few minutes to fill out.” *Martin v. O’Rourke*, 891 F.3d 1338, 1349-50 (Fed. Cir. 2018)

(Moore, J., concurring).³ Even today, the average time between filing a “legacy appeal” (one filed before February 19, 2019) of a disability benefits denial and disposition by the Board of Veterans’ Appeals (BVA) is 2,180 days—in other words, six years. *2024 Board Report* at 39. For appeals brought under the so-called Veterans Appeals Improvement and Modernization Act of 2017, such appeals still take 1,091 days—three years. *Id.* at 40.⁴ Those appellate timelines don’t count the time it takes VA to render its initial claim decision or a veteran to appeal beyond the BVA to the Court of Appeals for Veterans Claims and the Federal Circuit.

And these delays have persisted for decades—certainly since 10 U.S.C. § 1413a was first enacted. *See, e.g.*, Dep’t of Veterans Affairs, Board of Veterans’ Appeals, *Fiscal Year 2003 Report of the Chairman* 10, <https://tinyurl.com/5avb7vpn> (1,283 days, or 3.5 years, for average BVA appeal). Veterans hoping to obtain disability benefits often face a years- or decades-long process. *See, e.g.*, Hugh B. McClean, *Delay, Deny, Wait Till They Die: Balancing Veterans’ Rights*

³ Last year, this “ministerial process” still took an average of 152 days—more than five months. *See* Dep’t of Veterans Affairs, Board of Veterans’ Appeals, *Annual Report Fiscal Year 2024* 40, <https://tinyurl.com/4dsmn5ff> (“*2024 Board Report*”).

⁴ Although means and medians are not directly comparable, the median time in 2024 between filing a notice of appeal and disposition in federal circuit courts ranged from 4.5 to 13.6 months. U.S. Courts, *U.S. Courts of Appeals Federal Court Management Statistics—Summary* 2 (Dec. 31, 2024), <https://tinyurl.com/yznwwa5b>.

and Non-Adversarial Procedures in the VA Disability Benefits System, 72 SMU L. Rev. 277, 280-81 (2019).

To recap, CRSC awards are retroactive to the effective date of the VA disability rating. VA disability ratings are retroactive to the date a veteran filed her original claim for benefits. But with egregious delays in VA claims processing, retroactivity can stretch back years and decades. Applying the Barring Act’s six-year statute of limitations to CRSC awards penalizes veterans mired in a prolonged VA rating process.

Congress enacted a unique compensation program to ensure that military retirees with combat-related injuries do not have to sacrifice hard-won retired pay to receive the full measure of their veterans’ disability compensation. Resorting to a default six-year statute of limitations is incompatible with the statute’s text and remedial purpose of restoring vested rights in the full value of retirement compensation to uniquely deserving military retirees. Congress did not draft this statute to penalize our most valorous retirees for VA’s inadequacies. Congress did not restrict their compensation; the Department of Defense must not either.⁵

⁵ Although not raised before this Court, the Barring Act—should it apply here—tolls servicemembers’ pay claims during wartime. *See* 31 U.S.C. § 3702(a)(1)(A), (b)(2). A “member of the armed forces” whose claim is tolled must include a retiree—subject to recall at any time, *see* 10 U.S.C. § 688—whose combat-related disability was unquestionably incurred on active duty. This provision renders timely Mr. Soto’s full retroactive claim. The Federal Circuit based its contrary holding on “inapplicable

CONCLUSION

This Court should reverse the judgment below.

Respectfully submitted,

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authority and tenuous evidence.” Pet. App. 16a n.5 (Reyna, J., dissenting). The United States decides when its soldiers go to war; it should be bound by its decision.