No. 25-1123

IN THE

Supreme Court of the United States

KEVIN STEELE,

Petitioner,

v.

DOUGLAS A. COLLINS,
SECRETARY OF VETERANS AFFAIRS,

Respondent.

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

BRIEF OF *AMICUS CURIAE* THE NATIONAL ORGANIZATION OF VETERANS' ADVOCATES IN SUPPORT OF PETITION FOR *CERTIORARI*

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae National Organization of Veterans' Advocates, Inc. ("NOVA") is a not-for-profit organization of accredited attorneys, agents, and other qualified members who represent veterans, survivors, family members, and caregivers across the country in Department of Veterans Affairs ("VA") disability claims and appeals. In addition to connecting veterans to counsel versed in veterans law, NOVA hosts regular training seminars and webinars. NOVA routinely advocates for the interests of veterans and their representatives, including by filing amicus briefs where appropriate.

As attorneys and advocates for disabled veterans, NOVA and its members have a keen interest in ensuring the nation's veterans law remains clear and aligned with the long-standing tradition of deference to veterans in the benefits system established by Congress and judicial decisions. NOVA is concerned that continued affirmation and application of the implicit denial rule will erode that clarity and deference, especially given the larger historical context in which most of claims affected by the rule were filed.

Mr. Steele is a veteran who filed disability claims for service-connected headaches and a scar on his

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[1] No counsel for a party authored this brief in whole or in part, 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* or their counsel made a monetary contribution to this brief's preparation or submission. Counsel of record for all parties received timely notice of *amicus*'s intent to file this brief.

scalp *pro se* in 1990. At the time, federal statute required that the VA must provide an explicit decision for each individual disability claim before those claims could be considered closed and adjudicated. Fifteen years after Mr. Steele first filed for disability, and almost twenty-five years after he was honorably discharged, the Federal Circuit created the implicit denial rule. This judicially-created rule has since been faithfully and retroactively applied to any claim brought by the more than 11 million veterans who served before 2006—the year the rule was invented. The Federal Circuit applied the rule to reject Mr. Steele's headaches disability claim and denied his petition for *en banc* review. As a result, Mr. Steele lost more than 20 years of disability benefits for a service-related disability incurred before Ronald Reagan first took office.

At its core, the Petition seeks to prevent further retroactive application of a judicially-created rule that is at odds with the regulations and precedent that existed when Mr. Steele—and many others—first filed disability claims.

Indeed, the implicit denial rule disproportionally affects claims of older veterans that were filed between the Vietnam War era and the implementation of the Veteran's Benefits, Health Care, and Information Technology Act in 2006. During that time, veterans appearing before the agency overwhelmingly lacked attorney representation and the decision notices issued to these veterans did not provide the same level of detail as those issued after the 2017 Veterans Appeals Improvement and Modernization Act ("AMA"). Any review should also consider the

practical effects of the rule's application, given when the now-denied claims were filed, under what circumstances, and under which regulations. And where those circumstances included limited access to counsel for a now-aging veterans population whose opportunities to seek redress are limited, this Court should carefully consider the effect of implicit denial on the state of veterans benefits.

This disproportional effect on older veterans' claims rises to the level of fundamental unfairness. Under precedent at the time these veterans (including Mr. Steele) filed their claims, claims remained pending until the VA complied with certain mandated procedural requirements—such as issuing an explicit decision denying a claim and providing the reasons for its denial. *See Norris v. West*, 12 Vet. App. 413, 422 (Vet. App. 1999). The affected veterans, therefore, reasonably relied on the VA's silence and believed claims remained pending if they had not received an explicit decision on them—even if that silence lasted many years. *See Ingram v. Nicholson*, 21 Vet. App. 232, 241 (Vet. App. 2007) (under the "pending claim" doctrine, a claim remains pending for as long as the Secretary fails to act on it). To apply the implicit denial rule to such claims is to apply a new rule, with new legal consequences, to claims filed by now-elderly veterans. It converts claims from pending to final, where the retroactive determination is deemed "final" at a date far past any ability to appeal. Applying the rule to a veteran's claims, therefore, extinguishes 20 to 40 years of benefits these veterans might have received because the effective date of benefits is pegged to the filing date of a still-pending claim.

The rule appeals to judicial efficiency, as its application can transform a claim from 'pending' to retroactively 'denied,' without the VA ever issuing a proper denial notice for that claim. As a practical matter, however, applying the implicit denial rule creates confusion among veterans, like Mr. Steele, who filed their initial benefits claims *pro se*—years before the advent of the implicit denial rule—and, generally, filed them without legal representation and without familiarity with the complexity of the regulations. Its application also creates a more adversarial relationship between veterans like Mr. Steele and the VA, against the VA and Congress's stated aims for VA benefits adjudication to be non-adversarial. *See Butler v. Principi*, 244 F.3d 1337, 1340 (Fed. Cir. 2001) (describing VA benefits adjudication as "nonadversarial and paternalistic"). To combat such confusion, to encourage transparency, and to support a less adversarial process for veterans, Congress enacted the AMA—and it precludes use of the implicit denial rule on claims filed after its adoption. *See Hamill v. Collins*, 166 F.4th 1030, 1036–37 (Fed. Cir. 2026).

NOVA here provides the relevant context and history necessary to understand why veterans overwhelmingly lacked representation for their benefits claims until the mid-2000s, even though the veterans could have greatly benefited from legal advice on how to interpret the non-standardized decision notices they received during that time period. This context makes clear that the rule's application causes a predictable and disproportionate impact on aging veterans who, when filing their claims, could not have foreseen the advent of the judicially crafted implicit denial rule decades after. Because these veterans face denial

of decades worth of benefits in silence, not knowing their claims were retroactively and implicitly denied, and because they have little avenue for review absent a change in the implicit denial rule by this Court, this Petition provides a strong avenue to rectify the judicially created error of implicit denial. NOVA writes in support of Mr. Steele's Petition for certiorari and requests the Court to consider how implementing the implicit denial rule disproportionately affects these veterans, given the historical context NOVA provides here.

SUMMARY OF ARGUMENT

The United States, through the VA, provides for veterans as a way to "honor[] our debt of gratitude" to those who have served their country. Inst. of Med. of the Nat'l Academies, A 21st Century System for Evaluating Veterans for Disability Benefits 23 (Michael McGeary et al. eds., 2007). As such, the policies and regulations of the VA disabilities benefits program are designed to be pro-veteran. For example, in examining a veteran's claim for disability benefits, the VA must resolve any reasonable doubt about "service origin, the degree of disability, or any other point" in the veteran's favor and, where the veteran files pro se, the VA is required to give a sympathetic reading to any such filing. 38 C.F.R. § 3.102; *Andrews v. Nicholson*, 421 F.3d 1278, 1282–83 (Fed. Cir. 2005). Moreover, veterans who file disability claims have long been entitled to decision notices containing clear explanations of the decisions made. 38 C.F.R. § 3.103(a)–(b), (f) (1990 amendment).

These policies and regulations support (1) transparency in the VA disability claims process and (2) a

non-adversarial, pro-veteran benefits adjudication system. They are also in tension with the implicit denial rule, which is a product of more recent judicial analysis. Specifically, the implicit denial rule creates a safe harbor for VA adjudicators who issue non-compliant decision notices. It does so by allowing the Board of Veterans' Appeals or the Court of Appeals for the Federal Circuit to retroactively determine that a decision notice that fails to explicitly address each pending claim—in violation of VA's notice regulations—may yet provide sufficient information for a "reasonable claimant" to infer that an unmentioned pending claim was "implicitly" denied. *See Hamill v. McDonough*, 37 Vet. App. 65, 73–74 (Vet. App. 2023).

Considering the historical context of the claims most affected by the implicit denial rule, the consequences of this rule undermine clarity and reduce deference. Many of the claims affected by the implicit denial rule would have been brought pro se, and a pro se veteran is not equipped to manage the ambiguities that arise when, on the one hand, regulations require the explicit denial of claims and, on the other, legal professionals are encouraged to undertake a post-hoc review through which they can decide that a claim had been implicitly denied years prior. Such a veteran is even less equipped to manage the heightened ambiguities that arise where the benefits notifications the veteran might have received were issued at a time when the regulations did not require the VA to provide standardized information in support of that decision. These consequences are serious enough to rise to the level of fundamental unfairness: the rule disparately impacts aging veterans who reasonably relied on pre-2009 precedent for their belief that claims for which

they had not received an explicit denial remained pending. That reasonable reliance caused their claims to be extinguished without the possibility of appeal when the courts created the new rule and retroactively applied it years after these veterans filed their initial claims. With the period for appeal long passed, the veterans may well end up losing decades of benefits because their effective dates must be re-set by more recent, re-filed claims.

Amicus NOVA submits that the Court should grant Mr. Steele's Petition and consider the tenability of the implicit denial rule given its practical consequences in the cases that it disproportionately affects and the fundamental unfairness it causes to aging veterans as a result.

ARGUMENT

I. PRE-2006, SETTLED PRECEDENT APPLIED THE PENDING CLAIMS DOCTRINE, WHICH REQUIRED A CLAIM TO REMAIN PENDING UNTIL THE VA COMPLIED WITH STATUTORY MANDATES LIKE PROVIDING CLEAR NOTICE OF DENIAL AND A STATEMENT OF THE CASE

At the time Mr. Steele filed his initial benefits claim, the relevant regulations required the VA to provide decision notices to a claimant for each benefits decision made that affected benefits payments or other grants of relief. 38 C.F.R. § 3.103(f) (1990 amendment). Those decision notices had to clearly state each decision, as well as the reasons for that decision, though the VA was not yet required to provide those reasons in a standardized format. *Id*.

And Mr. Steele is not alone: The Census Bureau reported in 2023 that roughly 15.8 million Americans are veterans. *Who are the nation's veterans?*, USA Facts (Apr. 14, 2025), https://usafacts.org/articles/who-are-the-nations-veterans/. Of those, some 72% served prior to the events of September 11, 2001, meaning more than 11 million veterans served before the 2006 invention of the implicit denial rule. *Id*. Their dates of service matter: some 11 million veterans have service experience capable of generating claims before the implicit denial rule, and before they ever had reason to suspect a claim for disability could be silently denied by the inaction, rather than the explicit notification, of the government they fought to serve.

Pre-2006 precedent also dictated that a claim remains pending until the VA procedurally complies "with statutorily mandated requirements" that provide veterans with the information necessary to pursue an appeal—like explicit notice of denial or reasons for that denial. *See Myers v. Principi*, 16 Vet. App. 228, 235 (Vet. App. 2002); *Norris v. West*, 12 Vet. App. 413, 422 (Vet. App. 1999); *Tablazon v. Brown*, 8 Vet. App. 359, 361 (Vet. App. 1995). Where, for example, the VA provided explicit denials for some but not all of a veteran's (related) claims, those for which the VA did not provide explicit denial were not considered final. *See Best v. Brown*, 10 Vet. App. 322, 325 (Vet. App. 1997) (dismissed as to veteran's generalized anxiety disorder claim for lack of jurisdiction because the VA did not explicitly deny this claim when it denied the veteran's personality disorder and adjustment reaction claims). As late as July 2006, the Court of Appeals for Veterans Claims held that a claim must be explicitly denied to be considered adjudicated, based on the relevant notification regulations. *Ingram v. Nicholson*, 20 Vet. App. 156, 164 (Vet. App. 2006), *withdrawn and superseded on reconsideration by Ingram v. Nicholson*, 21 Vet. App. 232 (Vet. App. 2007). In so holding, it emphasized that accepting a "doctrine of sub silentio denials has grave implications for due process and protecting the appellate rights of veterans" because "even a savvy veteran" may not be aware of what is being adjudicated when because multiple claims may be "developed and decided" separately. *Id.* at 170.

Congress echoed these worries in advocating for, and then adopting, the AMA. Legislators and stakeholders emphasized the need for veterans to receive clear and explicit notice of claims decisions, which need, they believed, was unmet leading up to the

AMA's enactment. *Hamill*, 166 F.4th at 1036–37. As quoted in a recent Federal Circuit decision, Rep. Esty emphasized that "you certainly shouldn't have to hire a lawyer when you are a veteran to demystify . . . very vague notice." *Id.* (cleaned up). The Director of the Veterans of Foreign Wars said, "I can't stress the importance of improved notification notices enough. It is transparency, and it arms veterans to navigate their own benefits." *Id.* at 1037. The Senate report explained that the AMA would "modify the VA's claims decision notices to ensure that they are *clearer and more detailed*." *Id.* at 1036 (cleaned up) (emphasis added in original). Upon review of Congress's stated intent for adopting the AMA, the Federal Circuit found that the AMA prohibits the implicit denial rule's application to claims filed post-AMA adoption.

While veterans filing more recent claims certainly "shouldn't have to hire a lawyer" to "demystify . . . very vague notice," (emphasis added) older veterans who filed claims between the Vietnam era and 2006 disproportionately couldn't hire a lawyer to demystify the notices provided to them. And with the Federal Circuit passing on *en banc* review in this matter and continuing to apply the implicit denial rule to the detriment of the aging veteran's population, this Petition may well be the last chance some veterans have to challenge wrongful denials of benefits via the implicit denial rule.

II. THE JUDICIARY CREATED THE IMPLICIT DENIAL RULE AS A NEW MECHANISM FOR RETROACTIVELY FINALIZING PENDING CLAIMS, WHICH APPLICATION DISPROPORTIONATELY AFFECTS UP TO 11 MILLION OLDER VETERANS' DISABILITY BENEFITS

Just after the initial decision in *Ingram*, the Federal Circuit began to change the law. It found shortly thereafter that a decision notification that explicitly addresses just one claim out of several filed simultaneously can be seen as implicitly denying the other, unmentioned, claims. *Deshotel v. Nicholson*, 456 F.3d 1258, 1261 (Fed. Cir. 2006).

Though *Deshotel* began the *in utero* development of the "implicit denial rule," it was not judicially born until 2009, when the Federal Circuit invoked it as a "notice provision." *Adams v. Shinseki*, 568 F.3d 956, 961 & 965 (Fed. Cir. 2009).[2] That court reasoned that the regulations required the VA to issue explicit decisions for each pending claim so that claimants would receive adequate notice if a claim was denied. Since the purpose of the regulations is to ensure adequate notice of a benefits decision, the court concluded, benefits could be deemed denied where the VA issued an explicit decision on one of the pending claims and that decision provides sufficient information to put a "reasonable claimant" on notice that their other related, pending claims were denied—even though the VA failed to provide the explicit denials for each claim as

[2] A Westlaw search confirmed that *Adams* was the first time this term was used in a decision related to veterans benefits claims.

the regulations required. *Id.* at 962–64. With *Deshotel*, the Federal Circuit introduced a new mechanism for closing out a pending claim and, with *Adams*, it refined this mechanism and outlined the criteria for its application. Thus the implicit denial rule emerged, fully formed and armored, from the heads of the judiciary.

III. THE RULE'S "REASONABLE PERSON" STANDARD IS APPLIED RETROACTIVELY BY LEGAL EXPERTS TO CLAIMS AGING VETERANS FILED YEARS PRIOR

Until the Federal Circuit's decision in *Adams*, there was no clearly articulated, structured doctrine that correlated the VA's silence on the outcome of a claim with denial of that claim under a "reasonable person" standard. In coining and articulating the "implied denial rule," the judiciary also created and articulated what constitutes a "reasonable person."[3]

From *Adams*, implicit denial is presumed if the "reasonable claimant" has been provided sufficient notice to know their pending claim must also fail. 568 F.3d at 963. To determine whether the "reasonable claimant," then, had been provided such notice requires the judiciary to set aside their extensive,

[3] In *Adams*, as well as in other cases cited herein, a "reasonable person" is a "reasonable veteran," who is also a "reasonable claimant." *See, e.g.*, 568 F.3d at 963–64. As the phrase "reasonable claimant" more completely captures the context in which the implicit denial rule is applied—*i.e.*, the court determining what a reasonable veteran who filed a benefits claim with the VA would have understood—NOVA uses the phrase "reasonable claimant."

specialized, knowledge of veterans benefits law and, instead, read the explicit denial in the place of an average veteran—one who likely had no access to counsel when they received the denial. That "reasonable claimant" is almost certain to know nothing of the implicit denial rule or to be savvy enough to read every VA communication with an eye to the possibility that adverse decisions on all sorts of benefits claims may hide behind its explicit text.[4] This understanding, however, has not been uniformly applied. This failure is, perhaps, not surprising given that the judiciary, a body well-versed in legal nuances, gained the retroactive power to decide who a "reasonable claimant" is and what they might glean from a non-compliant decision notice when it created the implicit denial rule.

Substituting the "reasonable claimant" who is well-versed in the law in place of the true "reasonable claimant" is part of why the VA benefits process has "morphed into a bureaucratic leviathan that the average veteran cannot possibly understand." 115th Cong. 22 (2017) (statement of Ryan M. Gallucci). "Inadequate notification letters have been cited as a

[4] A recent article by Nino Monea, an Assistant Professor of Law at the Military Academy, West Point, emphasized how hard it may be to determine for a veteran whether one of their claims may have been implicitly denied. He noted that the VA can "silently reject entire claims" under this rule. Moreover, a passing note regarding the evidence, or lack thereof, of, *e.g.*, a psychiatric condition can be enough to invoke the rule and deny a claim, even if there is no mention of whether the RO is deciding a claim for a psychiatric condition. As Professor Monea says, "Veterans must parse VA decisions with a lawyer's eye" if they want to "know the fate of their claims." Nino C. Monea, *Just How Paternalistic is the VA? An Examination of the "Non-Adversarial" Veterans' Benefits System*, 126 W. Va. L. Rev. 77, 124–25 (2023).

"fundamental failure" that greatly contributes to this leviathan because veterans have "no reasonable way to understand how VA arrived" at a benefits decision. *Id.*

Veterans who are being disproportionately impacted by the application of the implicit denial rule may fare particularly poorly against the legally versed "reasonable claimant." These include veterans of the Gulf War, for example, who may have mild cognitive impairment at double the rate of the general population in the same age cohort.[5] The affected veterans' service dates were from 60–20 years ago and the veterans, therefore, are an aging population, where some cognitive decline—especially in executive function—is likely to occur.[6]

Allowing the legally experienced judiciary to retroactively decide who a "reasonable claimant" is and thereby decide whether a claim was implicitly extinguished creates further injustice for veterans such as these because it re-sets the effective date for such claims. Suppose, as in *Cogburn v. McDonald*, that a Vietnam veteran initially filed a disability claim in 1974 only to be told, almost 30 years later, that his

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[5] Linda L. Chao, et al, *The prevalence of mild cognitive impairment in Gulf War veterans: a follow-up study*, 17 Frontiers in Neuroscience (Jan. 22, 2024), https://www.frontiersin.org/journals/neuroscience/articles/10.3389/fnins.2023.1301066/full.

[6] Wenjie Pan, et al., *Different structural brain patterns and their association with executive function and general cognitive ability in cognitively normal elderly adults*, 18 Frontiers in Aging Neuroscience (Feb. 2, 2026), https://www.frontiersin.org/journals/aging-neuroscience/articles/10.3389/fnagi.2026.1693197/full.

claim had been implicitly denied by a different board decision in 1985. 809 F.3d 1232, 1234–35 (Fed. Cir. 2016). The veteran then re-files the disability claim, which is granted. That veteran has lost approximately 30 years of disability benefits because of the mandated effective date re-set. Or imagine, as here, that the VA pointed to a "terse statement" denying Mr. Steele's head injury claim, fifteen years later, and determined that it was sufficient notice to Mr. Steele that his service-connected headaches claim had been implicitly denied. *Steele v. Collins*, 135 F.4th 1353, 1361–62 (Fed. Cir. 2025) (questioning "whether the terse statement of the reason for the explicit denial . . . was sufficient to satisfy the implicit denial standard" but determining this to be a "question of fact" beyond the court's jurisdiction to address). Both of these scenarios highlight the impact this rule has had, and continues to have, on older veterans' disability claims.

The VA, itself, has recognized how the implicit denial rule unfairly impacts these veterans and has changed the regulations accordingly. By 2019, the VA incorporated the AMA into their regulations, thus explicitly requiring a decision notice to include seven discrete elements for each claim adjudicated. 38 C.F.R. § 3.103(f); VA Claims and Appeals Modernization, 84 Fed. Reg. Vol. 138, 167 (Jan. 18, 2019). It also requires that each notice explicitly identify each of the issues adjudicated. *Hamill*, 166 F.4th at 1036. There is, again, no longer a place for the implicit denial rule.

IV. THE IMPLICIT DENIAL RULE HAS BEEN DISPROPORTIONATELY APPLIED TO CLAIMS FILED BETWEEN THE VIETNAM WAR ERA AND THE MID-2000S, WHEN THE MAJORITY OF CLAIMS WERE FILED *PRO SE*

History reveals that the implicit denial rule disproportionately affects veterans who would have filed claims pro se, which creates further tension with the policies and regulations discussed above that support transparency in the VA disability claims process and a non-adversarial, pro-veteran benefits adjudication system. All 12 Federal Circuit decisions applying the implicit denial rule involve benefits claims initially filed prior to the Veteran's Benefits, Health Care, and Information Technology Act of 2006's enactment.

To counsel's best research, of the 79 Court of Appeals for Veterans' Claims decisions invoking the implicit denial rule, approximately 75% involve claims initially filed prior to 2006 and none involve claims initially filed under the AMA. These dates are key because, as discussed below, it was not until 2006 that a veteran could obtain (and pay reasonable rates for) legal counsel to appeal their claims prior to a final decision being issued. Veterans Benefits, Health Care, and Information Technology Act of 2006, Pub. L. No. 109-461, 120 Stat. 3403. Further, prior to the AMA, the VA was not required to provide the same level of detail in its decision notices. *See supra* pp. 8–10.

V. VETERANS' ACCESS TO COUNSEL HAS HISTORICALLY BEEN CIRCUMSCRIBED

Throughout the existence of the veterans benefits system, Congress and the courts have imposed strict limits on the ability of veterans to access counsel. Initially, Congress imposed a cap on the fees that lawyers could charge veterans for benefits claims. An Act to Grant Pensions, 12 Stat. 566, 568 (1862) (capping fee lawyers can charge veterans for benefits claims at $5); 13 Stat. 387, 389 (1864) (amending cap to $10); *see also* S. Rep. 109-297, at 6 (2006). That $10 cap remained for the next 124 years until the Veterans Judicial Review Act, Pub. L. No. 100-687, 102 Stat. 4105, 4108 (1988). Then, Congress removed the $10 cap on attorney fees for representing veterans in benefits disputes but permitted veterans to hire paid counsel only after "the date on which the Board of Veterans' Appeals first makes a final decision in the case." *Id*. Thus, veterans could not access hired counsel until after the entire administrative process at the VA sets the factual record and issues the decisions that are reviewed by the appellate court in applying the implicit denial rule.

When Congress passed the Veterans Benefits, Health Care, and Information Technology Act, however, it permitted veterans to retain and pay counsel as soon as a Notice of Disagreement was filed. Pub. L. No. 109-461, 120 Stat. 3403, 3407 (2006). And with the AMA, Congress again altered this timeline to allow counsel to be retained when the claimant "is provided notice of the agency of original jurisdiction's initial decision." Veterans Appeals Improvement and Modernization Act of 2017, Pub. L. No 115-55, 1631 Stat. 1105,

1110 (codified at 38 U.S.C. § 5904(c)(1)). While these changes have permitted increased access to counsel throughout the veterans benefits claim process, the lasting impact of more than a century of strictly limited representation lingers on through the implicit denial rule's application to veterans who appeared *pro se* at a time when access to counsel was more limited.

VI. LEGAL EXPERTS CANNOT RETROACTIVELY SUBSTITUTE THEIR UNDERSTANDING OF A NOTICE FOR THAT OF THE VETERAN CLAIMANT WHEN DETERMINING WHAT A "REASONABLE CLAIMANT" MIGHT INFER

When this Court, the Federal Circuit, the Court of Appeals for Veterans' Claims, or the Board of Veterans' Appeals considers whether a prior claim has been implicitly denied, each considers, under *Adams*, whether a "reasonable claimant" has sufficient information from the explicit denial on another claim "to know that he would not be awarded benefits" for the pending claim. 568 F.3d at 963. If the language of the explicit denial provides that "reasonable claimant" with sufficient notice to know their pending claim must also fail, those claims are presumed to be implicitly denied. *Id.* When that language fails to provide such notice, however, the implicit denial rule does not apply. *Id.*

Nevertheless, any judicial review of the reasonableness of such notice necessarily requires the reviewing body to set aside their extensive, specialized, knowledge of veterans benefits law and instead to read the explicit denial notice from the position of an average veteran—historically speaking, one without

access to counsel when the explicit denial was received. That "reasonable claimant" is almost certain to know nothing of the implicit denial rule—especially those claimants who filed claims years before the rule's creation—and will not know to interpret every VA benefits communication as if it might have application to there-unmentioned claims. When considering whether the implicit denial rule should survive, this Court should consider the broader history of attorney representation in veterans appeals and the impact that access to counsel has on understanding and appreciating the legal ramifications of an initial denial notice.

CONCLUSION

Amicus curiae urge this Court to grant the Petition for a Writ of Certiorari and consider the persistent underrepresentation of veterans, and the disproportional impact the rule has on these veterans, when evaluating the future of the implicit denial rule.

Respectfully submitted,

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