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

## BRIEF OF MILITARY-VETERANS ADVOCACY, INC. AS AMICUS CURIAE IN SUPPORT OF PETITIONER


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## INTEREST OF AMICUS CURIAE[1]

Military-Veterans Advocacy, Inc. (MVA) is a non-profit organization that litigates and advocates on behalf of 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.

MVA believes the implicit-denial doctrine, validated by the Federal Circuit below, Pet. App. 1a-16a, erodes veterans' entitlement to hard-earned disability benefits. The Department of Veterans Affairs (VA) claims in 1991 to have implicitly denied Mr. Steele's claim for benefits based on a head injury sustained in service, in a decision that explicitly adjudicated other claims. Pet. App. 2a-3a. At the time, however, federal law in fact mandated that VA provide "a statement of the reasons for the decision" "den[ying] a benefit sought" and "a summary of the evidence considered." 38 U.S.C. § 3004.[2] The implicit-denial doctrine is "a

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[1] Pursuant to Supreme Court Rule 37.2, counsel for amicus curiae notified the parties of its intention to file this brief on April 10, 2026, more than 10 days prior to its due date. Pursuant to Supreme Court Rule 37.6, no counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than amicus curiae and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

[2] Congress renumbered § 3004 to § 5104 in 1991 without substantive amendment. Pub. L. No. 102-40, title IV, § 402(b)(1),

judicial construct," *Hamill v. Collins*, 166 F.4th 1030, 1037 (Fed. Cir. 2026), that allows VA to disregard its statutory obligation and Congress's "strongly and uniquely pro-claimant" veterans' benefits system, *Hodge v. West*, 155 F.3d 1356, 1362 (Fed. Cir. 1998). MVA urges this Court to reverse the Federal Circuit's decision and abolish the implicit-denial doctrine.

## INTRODUCTION

Congress has created a comprehensively pro-claimant veterans' benefits system, one "designed to function throughout with a high degree of informality and solicitude for the claimant." *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 311 (1985). A veteran's application for benefits triggers a constellation of VA statutory duties to claimants, including to assist and to maximize benefits. This Court has long recognized that when Congress enacted these veterans' benefits statutes it meant to benefit veterans—not VA. *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946) ("This legislation is to be liberally construed for the benefit of" veterans.). When VA has drifted from this pro-claimant mooring, Congress has legislated a course correction. *See, e.g.*, H.R. Rep. No. 100-963, 13 (1988) ("Congress has designed and fully intends to maintain a beneficial non-adversarial system of veterans benefits.").

Despite this long-standing congressional solicitude for veterans, VA has long invoked the implicit-denial doctrine to reject veterans' benefits claims

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May 7, 1991, 105 Stat. 238. All § 3004 references are to the 1990 version.

without adequate explanation, as it did here. On July 17, 1980, Mr. Steele, an active-duty Marine, hit his head on a metal pipe while participating in drills aboard ship. Pet. 16; Pet. App. 3a. He lost consciousness and awoke to a two-inch-long scalp laceration that required sutures. Pet. 16; Pet. App. 3a. In 1991, Mr. Steele filed a claim for VA disability benefits based in part on this head injury, which left him scarred and suffering headaches. Pet. 16; Pet. App. 3a. On September 12, 1991, VA concluded his "scalp scar [i]s the only residual of your head injury." Pet. App. 65a. Because it deemed the scar "less than 10% disabling," VA denied Mr. Steele's compensation claim. Pet. App. 64a. VA's rating decision made no mention of Mr. Steele's recurring headaches or the reasons VA found them non-disabling and non-compensable. Pet. App. 65a. In later proceedings, VA took the position that it had implicitly denied Mr. Steele's headache claim.

Throughout this litigation, VA has defended this implicit denial—and others like it—even though the practice disregards Congress's legislation (enacted shortly before VA denied Mr. Steele's claim) by failing to explain a decision "den[ying] a benefit sought." 38 U.S.C. § 3004(a)(2). The Federal Circuit below ratified VA's atextual implicit denial. Its reading permits VA to ignore the mandatory notice regarding denied claims that VA "shall" give a veteran. *Id.*; *see also* 38 U.S.C. § 5104(b) (2017). This Court should grant the petition to abolish the implicit-denial doctrine and ensure VA provides disabled veterans the unequivocal notice federal law has long demanded.

## ARGUMENT

### I. Congress Enacted A Comprehensive, Pro-Veteran System For Benefits Adjudication.

Congress created an "unequivocally pro-claimant scheme … for reviewing veterans' disability claims." *Dixon v. Shinseki*, 741 F.3d 1367, 1376 (Fed. Cir. 2014). The benefits are generous, including medical care, tuition, housing loans, disability payments, and burial benefits. *Walters*, 473 U.S. at 309-11; *see, e.g.*, 38 U.S.C. §§ 1110-1176, 3311, 3710, 3742. This system favors veterans at every turn. *See* 38 C.F.R. §§ 3.1-3.1010.

A veteran initiates a claim by filing an application with VA. 38 U.S.C. § 5101; 38 C.F.R. § 3.155. Federal law directs VA to "decide all questions of law and fact necessary to a decision by [VA] under a law that affects the provision of benefits … to veterans." 38 U.S.C. § 511(a). To that end, VA must notify the claimant of additional information required to complete the application before rendering an adverse decision. 38 U.S.C. §§ 5102(b), 5103; *see* 38 C.F.R. § 3.159(b). VA also must assist the claimant to obtain supporting evidence. 38 U.S.C. § 5103A; 38 C.F.R. § 3.159(c).

A veteran may support a disability claim with private medical records. 38 U.S.C. § 5103A(b); 38 C.F.R. § 3.326. VA may also schedule a medical examination at no cost to the veteran, who may seek a second opinion from an outside expert. 38 U.S.C. § 5109; 38 C.F.R. §§ 3.159(c)(4), 3.326, 3.328. Congress has enacted presumptions of service-connection for a variety

of injuries and diseases to further ease a claimant's burden of proof. *See* 38 U.S.C. §§ 1116-1120; 38 C.F.R. §§ 3.307, 3.309.

The veteran is entitled to a non-adversarial hearing. 38 C.F.R. § 3.103(d); *Walters*, 473 U.S. at 309-10. VA must award benefits if the assembled evidence supports the claim or is in "approximate balance"; only when evidence "persuasively favors" the government may VA deny it. 38 U.S.C. § 5107(b); *Lynch v. McDonough*, 21 F.4th 776, 781-82 (Fed. Cir. 2021) (en banc). Once made, a "finding favorable to the claimant" binds all VA adjudicators unless rebutted with clear and convincing evidence. 38 U.S.C. § 5104A. VA must "grant[] every benefit that can be supported in law." 38 C.F.R. § 3.103(a); *see also* 38 C.F.R. § 3.155(d)(2) (requiring adjudication of even "ancillary benefits"). A claimant who disagrees with VA's decision may appeal first to the Board of Veterans' Appeals, then the Court of Appeals for Veterans Claims and the Federal Circuit, and finally this Court. 38 U.S.C. §§ 7105, 7266, 7292.

Congress manifests its "special solicitude for the veterans' cause" by providing for the benevolent adjudication of these generous benefits. *Shinseki v. Sanders*, 556 U.S. 396, 412 (2009); *Gilbert v. Derwinski*, 1 Vet. App. 49, 54 (1990) ("It is in recognition of our debt to our veterans that society has through legislation taken upon itself the risk of error."). The laws governing veterans' appeals must be read in harmony with this evident congressional purpose. *See, e.g.*, *Rudisill v. McDonough*, 601 U.S. 294, 314 (2024) ("If the statute were ambiguous, the pro-veteran canon would favor Rudisill."); *Henderson v. Shinseki*, 562 U.S. 428,

440-41 (2011) (reaffirming "'the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor'" (citation omitted)).

## II. Congress Intervened To Correct VA's Persistently Vague And Inadequate Rating Decision Notices.

Unfortunately for veterans like Mr. Steele, VA has not always abided by this congressional intent. VA long denied claims in conclusory fashion, preventing veterans from understanding its decisions and handicapping their appellate rights. (§ II.A.) After a scathing 1989 report, Congress enacted the first statutory requirements for VA decision notices. (§ II.B.) After further decades of VA failures, Congress in 2017 enacted additional legislation enumerating the common-sense requirements of adequate notice that inexplicably eluded VA. (§ II.C.)

### A. VA decision notices proved chronically inadequate.

Until 1989, the content of VA adjudication notices was governed only by regulation. VA had only to "inform[]" the veteran "of the decision reached and the reason therefor," as well as "his right of appeal." 38 C.F.R. § 2.1007 (1938); *accord* 38 C.F.R. § 3.103(e) (1980). Courts interpreting VA's regulation concluded it did not require detailed statements of benefits decisions. *Natali v. Principi*, 375 F.3d 1375, 1380 (Fed. Cir. 2004) (before 1989, the "rating board was not required to set forth in detail the factual bases for its decisions").

Despite the theoretical requirement of adequate notice, VA consistently failed to provide it. After witnesses testifying before Congress in 1987 alleged VA "fail[ed] to provide appropriate notices to veterans," members of the House Committee on Veterans Affairs commissioned the General Accounting Office "to determine whether and to what extent claims-processing practices were violating veterans' due process rights or resulting in their being treated unfairly." Gen. Acct. Off., HRD-89-24, *Veterans' Benefits: Improvements Needed in Processing Disability Claims* 1, 11 (1989), https://tinyurl.com/ncp8a5dz.

GAO's report was scathing. Nearly two-thirds of the VA notices it reviewed proved inadequate. GAO found that denial notices were especially poor, "[s]imply telling a veteran that service connection was not found." *Id.* at 14. GAO also identified problems in "notices for partially awarded claims" like Mr. Steele's, which failed to explain "how VA reached its decision, the evidence considered," or other "important pieces of information for the veteran to consider in deciding whether to accept or appeal a VA decision." *Id.* at 15. In other words, VA routinely failed to "provide a clear and full explanation of [its] decision[s]." *Id.* at 14. GAO recommended that Congress require VA to give veterans "meaningful explanations of the reasons for [its] actions." *Id.* at 23.

### B. Responding to VA's failure, Congress enacted the first statutory notice requirements.

Congress responded by enacting the first statutory requirement for VA decision notices. Veterans'

Benefits Amendments of 1989, Pub. L. No. 101-237, title I, § 115(a)(1), 103 Stat. 2062, 2065. It acknowledged "serious deficiencies in VA's provision of notices to claimants regarding its decisions" because they were "unclear and not informative." S. Rep. No. 101-126, 295 (1989). Because most veterans were unrepresented before VA Regional Offices and "representation by attorneys is discouraged and infrequent," VA must "fully and clearly" apprise claimants of "the reasons for the negative decisions regarding benefits" so they may "mak[e] well-informed choices" about whether to appeal. *Id.* at 297.

The resulting legislation required VA to notify claimants of any decision "affecting the provision of benefits to a claimant." 38 U.S.C. § 3004(a)(1). Congress mandated at least three elements in VA benefit-denial notices: "a statement of the reasons for the decision," "a summary of the evidence considered by the Secretary," and "an explanation of the procedure for obtaining review." *Id.* § 3004(a). Section 3004 took effect on January 31, 1990. *Machado v. Derwinski*, 928 F.2d 389, 392 (Fed. Cir. 1991). VA issued the rating decision at issue here on September 12, 1991. Pet. App. 64a-68a.

### C. After decades of persistently inadequate notices, Congress again strengthened VA notice requirements.

Despite Congress's mandate, little at VA changed over the ensuing decades. House members reported constituents complaining that VA rendered "very vague" decisions denying their claims. Hearing Before the U.S. House Committee on Veterans' Affairs, 115th

Cong. 22 (2017) (statement of Rep. Elizabeth Esty, D-Conn.). Representatives of veterans' service organizations like Veterans of Foreign Wars and Disabled American Veterans testified that "inadequate notification letters have been a fundamental failure in the VA claims process for decades" because they lacked "[a] clear and complete explanation of why a claim was denied." *Id.* at 43 (statement of Ryan M. Gallucci, VFW), 38 (statement of Jim Marszalek, DAV).

The Federal Circuit compounded the problem of VA's inadequate notice in 2006 by creating the implicit-denial doctrine out of whole cloth. *Hamill*, 166 F.4th at 1037 ("the implicit denial doctrine" is "a judicial construct created under the legacy system"). As a result of statutory notice requirements, courts had long recognized that a claim not explicitly adjudicated remained "pending" and subject to adjudication at VA. Pet. 12; *Ingram v. Nicholson*, 20 Vet. App. 156, 164 (2006), *opinion withdrawn and superseded on reconsideration*, 21 Vet. App. 232, 254 (2007) ("accepting a broadly interpreted doctrine of sub silentio denials has grave implications for due process and protecting the appellate rights of veterans"). In *Deshotel v. Nicholson*, however, the Federal Circuit held that the explicit denial of one claim may be interpreted as the implicit denial of another. 457 F.3d 1258, 1262 (Fed. Cir. 2006) (VA's grant of compensation for only physical disability arising from in-service head injury implicitly denied claim for psychiatric disability); Pet. App. 8a.

The Federal Circuit expanded on its "judicial construct" in *Adams v. Shinseki*, 568 F.3d 956, 960 (Fed. Cir. 2009). Disregarding congressional solicitude for

veterans and the existing statutory and regulatory notice requirements, the court sanctioned the implicit-denial rule as "a notice provision" that "reflects an appropriate balance between the interest in finality and the need to provide notice to veterans when their claims have been decided." *Id.* at 963, 965. In lieu of existing requirements, the Federal Circuit created a "reasonable claimant" standard for measuring the adequacy of an implicit denial. *Id.* at 963.

Faced with VA's continual failure to provide meaningful notice and the birth of the implicit-denial doctrine, Congress in 2017 again legislated improvements in VA decision notices. Congress recognized that VA's "appeals process is broken," in part because veterans still needed to "better understand VA's decision on their claims." H.R. Rep. No. 115-135, at 3, 5 (2017). Despite the existing statute, Congress felt obliged to reiterate that VA's decision notices must "explain why the claim was denied, and describe the evidence VA would need to grant service connection or the next higher-level of compensation." *Id.* at 3.

Congress left little to VA's discretion in remediating the agency's decades-long failure. The new statute enumerated eight required elements for the notice, including, in cases of denial, identifying "the issues adjudicated," the "elements not satisfied," and "the criteria that must be satisfied to grant service connection." Veterans Appeals Improvement and Modernization Act of 2017, Pub. L. No. 115-55, § 2(e), 131 Stat. 1106 (codified at 38 U.S.C. § 5104(a)-(b)). By requiring VA expressly to identify "the issues adjudicated,"

Congress deemed the implicit-denial doctrine "fundamentally incompatible" with its pro-claimant veterans' benefits system. *Hamill*, 166 F.4th at 1037.

## III. Implicit Denial Is Inconsistent With Congress's Pro-Claimant Veterans' Benefits Scheme.

The implicit-denial doctrine is incompatible with the "unequivocally pro-claimant scheme created by Congress for reviewing veterans' disability claims." *Dixon*, 741 F.3d at 1376. The Court should abolish the doctrine.

Congress designed a system of "laws that '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). The implicit-denial doctrine puts the thumb on the wrong side of that scale. It gives VA a free pass to ignore its statutory obligations at veterans' expense, despite clear statutory language and congressional intent to the contrary. And the reason for doing that, as the government has conceded, is to provide "a backstop, to provide the VA repose, to, you know, essentially years-, decades-long claims that, you know, …, there has to be at least some reasonable backstop to prevent an endless, open claim because the claimant says 'you didn't use magic words for this particular headache claim.'" Recording of Oral Argument at 28:07 (Mar. 7, 2025), https://tinyurl.com/mr22jxmv.

But Congress has never demanded that VA use "magic words" or imposed statutes of limitation on

veterans' claims. *Henderson*, 562 U.S. at 436. In 1991, § 3004 required only that VA "state[ its] reasons" for why it "denie[d] a benefit sought." That is a simple task. Even today, § 5104 requires only that VA provide the common-sense information essential to inform a veteran's appellate decision, including identifying the adjudicated claim and any unmet criteria. If VA fails to meet that basic obligation, VA must bear the resulting burden, not the veteran who cannot discern VA's "implicit" denial and seek review before his appellate rights expire. S. Rep. No. 101-126, at 296-97 (1989) (§ 3004 was "intended to remedy the problems found by GAO" that "seriously impede the furnishing of benefits to eligible veterans" by requiring "clearly-written notice of the rationale for the decision" "in easily understandable language").

In the veterans' benefits system, "[t]he government's interest … is not that it shall win, but rather that justice shall be done, that all veterans so entitled receive the benefits due to them." *Barrett v. Nicholson*, 466 F.3d 1038, 1044 (Fed. Cir. 2006). VA cannot escape this duty simply because it would prefer to "backstop" its decades-old errors. *See Ruel v. Wilkie*, 918 F.3d 939, 943 (Fed. Cir. 2019) (awarding surviving spouse DIC effective date in 1984 because "single sentence" denying burial benefit for lack of service-connected death did not meet the notice requirements for even "a purported explicit denial").

## IV. The Implicit-Denial Doctrine Is Incompatible With Congress's Pre- And Post-2017 VA Notice Regimes.

The Federal Circuit has now correctly recognized that the implicit-denial doctrine is incompatible with Congress's solicitous veterans' benefits system. *Hamill*, 166 F.4th at 1037. But it erred in limiting that conclusion to VA notices issued after the 2017 legislation took effect. *See id.* at 1037-39. That distinction cannot be squared with the statutory text or context. This Court should grant certiorari, reverse the decision below, and abolish the atextual implicit-denial doctrine for purposes of all claims, including those denied before Congress's most recent notice legislation.

The *Hamill* court held that the 2017 refinements to the notice statute "preclude[] the VA from implicitly denying veterans claims." *Id.* It concluded that Congress enacted a "clear statutory directive for explicit notice of what issues a decision adjudicates." *Id.* at 1037. The Federal Circuit deemed this a "substantial change[] to the veterans appeals system," which "clearly heightened the notice requirement for VA's initial decisions." *Id.* The court based this reasoning in part on the textual changes made to the statute but also drew heavily from legislative history to conclude that an enhancement of the notice standard was intended. *Id.* at 1036-37. On this basis, the court excluded from its decision "claims under the legacy system," allowing VA to continue to characterize its rulings on such claims as implicit denials. *Id.* at 1039.

But despite this holding, the *Hamill* court's reasoning in fact highlights the implicit-denial doctrine's

inconsistency with the pre-2017 notice regime as well. The court recognized the essential principle that, "for a decision to be appealable, it must … put the veteran on notice that his issue has been adjudicated" because "no veteran can appeal a decision he does not understand to have been made." *Id.* at 1038. That logic applies equally to the pre- and post-2017 notice regimes. The court rejected the parade of horribles VA imagined if the court deemed implicit notice inadequate, calling them "entirely avoidable if the VA fulfills its statutory obligations and follows Congress' simple and clear directive" to provide adequate notice. *Id.* at 1039. That again is true whether VA must follow the pre-2017 requirement to provide "a statement of the reasons for the decision" denying a benefit, 38 U.S.C. § 3004, or the post-2017 requirement to "identif[y] … the issues adjudicated," 38 U.S.C. § 5104(b). Finally, the court acknowledged that the implicit-denial doctrine is indefensibly atextual, calling it a "judicial construct." *Hamill*, 166 F.4th at 1037. Nothing about the 2017 legislation changed that fundamental flaw in the doctrine, either.

In sum, the Federal Circuit's reasons for rejecting VA's implicit-denial practice apply equally to the pre- and post-2017 VA notice regimes. Congress's 2017 statutory changes were thus not so much a turning point as a capstone. The lack of adequate notice must therefore be dispositive even in cases, like this one, where the notice in question predates the 2017 legislation.

After all, VA's successive notice obligations are in their essentials quite similar. *See* Pet. 10-12, *compar-*

*ing* Veterans Appeals Improvement and Modernization Act of 2017, § 2(e), 131 Stat. at 1106, *with* Veterans' Benefits Amendments of 1989, § 115(a), 103 Stat. at 2065-66. Until 2017, VA had to identify "the reasons for the decision" to "den[y] a benefit sought" and provide a "summary of the evidence considered." § 115(a), 103 Stat. at 2065-66; *Hauck v. Nicholson*, 403 F.3d 1303, 1307 (Fed. Cir. 2005) (VA adequately stated reason for denying compensation by explaining the "causal relationship between rheumatic heart disease and right eye blindness is not established" (quotation marks and alterations omitted)). As amended in 2017, VA must (among other requirements) identify the issues adjudicated, provide a summary of the evidence, and provide the reasons for denial—specifically, the unsatisfied claim elements that led to denial and the unsatisfied criteria for service-connection or increased compensation. In either case, it is hard to imagine how VA could provide the statutorily required reasons for denying a claimed benefit without referencing the claim itself.

Moreover, the new post-2017 review options for veterans facing an initial agency denial do not meaningfully change the burden on veterans seeking to appeal adverse benefits decisions. Pre-2017 appellate options also required claimants to provide specific, detailed information to preserve their claims and to select from alternative review paths. In 2012, VA first proposed creating a standardized "Notice of Disagreement" form. 77 Fed. Reg. 42556 (July 19, 2012). In its subsequent proposed rule, it described a new Form 21-0958, Notice of Disagreement (NOD), as a mandatory step for claimants "to initiate an appeal." 78 Fed. Reg. 65490, 65502 (Oct. 31, 2013). The form warned

claimants that "[o]nly those issues that you list on this NOD will be considered on appeal." VA Form 21-0958 at 1, 2 (Sep. 2015).[3] VA would consider the form complete only if a claimant "list[ed] the issues or conditions for which you seek appellate review," "indicat[ing] the specific issue of disagreement." *Id.* at 1; *see id.* at 2 ("[T]his section is for you to individually identify each area of disagreement that you have with [our] decision notification letter…. Only those issues that you list on this NOD will be considered on appeal."). The form provided additional space for the claimant to "briefly and clearly explain why you disagree with our decision." *Id.* The form also required veterans to choose one of two alternative review paths—*de novo* review by a Decision Review Officer or "traditional appellate review" based on "new evidence or a finding of clear and unmistakable error." *Id.* VA mandated veterans use this form to initiate appeals of adverse benefits decisions on or after March 24, 2015—years before the post-2017 notice requirements took effect. 80 Fed. Reg. 46106 (Aug. 3, 2015).

Notionally, VA designed the mandatory form "to improve the quality and timeliness of the processing of veterans' claims for benefits by standardizing the … appeals process[]." 79 Fed. Reg. 57660, 57660 (Sep. 25, 2014). In fact, it reinforced barriers to compensation for disabled veterans. As one commenter observed at the time, "the form asks for unreasonably

[3] VA propounded two versions of VA Form 21-0958 before Congress enacted the new appellate system in 2017, the first in January 2015 and the second in September 2015. They are substantively identical. This brief will cite only the September 2015 version.

specific information," "shift[s] a significant burden on the veteran and assume[s] a certain level of sophistication." Nat'l Veterans Legal Servs. Program, Comment Letter on Proposed Rule "Standard Claims and Appeals Forms" 9 (Dec. 30, 2013), https://tinyurl.com/4bbu5u6w. VA rejected another commenter's suggestion to include a "catch-all" provision that would enable a veteran to disagree with a decision in its entirety. Vietnam Veterans of Am., Comment Letter on Proposed Information Collection (Notice of Disagreement) 1 (Sep. 18, 2012), https://tinyurl.com/2t42vd93. VA's expectations of specificity are even more unreasonable given that, until 2017, veterans could not retain paid counsel until *after* submitting their notice of disagreement. Pet. 7.

Although no specific NOD form was required at the time VA decided Mr. Steele's claim in 1991, applicable regulations still obligated a claimant to "express[] dissatisfaction or disagreement with [VA's] adjudicative determination." 38 C.F.R. § 19.118 (1991). The claimant had to state his disagreement "in terms which can be reasonably construed as a desire for review of that determination." *Id.* The notice had to detail "clear[ly] on its face" "the specific determinations with which the claimant disagrees," *Jarvis v. West*, 12 Vet. App. 559, 561-62 (Vet. App. 1999), to allow VA to draft a statement of the case describing the facts and applicable laws and regulations upon which "[VA] based its determination of the issue or issues." 38 C.F.R. § 19.120(a) (1991).

Thus, at no point in the modern era of veterans appeals has an implicit denial provided adequate notice for a claimant—not before 2017, and not after.

Just as VA's reliance on the implicit-denial doctrine violated the post-2017 statutory notice regime, *Hamill*, 166 F.4th at 1037-38, so too does VA's reliance on it here violate the pre-2017 statutory notice regime. In what the Federal Circuit found was an implicit denial of Mr. Steele's headache claim, VA stated (in the conclusory fashion Congress repudiated in 1989) that "[s]ervice-connection is granted for your scalp scar as the only residual of your head injury in service." Pet. App. 65a. This purported implicit denial not only failed to mention headaches by name, it also relied on technical language that undermined the notice's comprehensibility. *See Wright v. Sec'y of HHS*, 22 F.4th 999, 1005 (Fed. Cir. 2022) (referencing *Dorland's Illustrated Medical Dictionary* for a definition of "residual" in vaccine injury compensation case); *cf. Johnston v. OPM*, 413 F.3d 1339, 1343 (Fed. Cir. 2005) ("confusing notice does not satisfy the duty of notice of substantive rights"). The notice also failed to account for the contemporaneous VA examination's contrary conclusion that Mr. Steele's headaches were "[t]he only residual he has because of this head injury." Pet. App. 2a-3a (emphasis omitted).

Because VA's ruling provided no "statement of the reasons" for "den[ying] a benefit sought"—let alone accounted for contrary VA findings—and relied on confusing technical language, it was wholly inconsistent with the pre-2017 statutory notice regime. As the Court of Appeals for Veterans Claims has candidly recognized, VA invokes the implicit-denial doctrine only when, as here, "a veteran receives notice that doesn't comply with the strictures of an applicable notice provision." *Hamill v. McDonough*, 37 Vet.

App. 65, 73 (2023), *vacated sub nom. Hamill v. Collins*, 166 F.4th 1030 (Fed. Cir. 2026). This Court should recognize VA's "implicit denial" of Mr. Steele's claim as, in fact, a violation of its statutory and regulatory obligations to veterans. The Court should abolish the implicit-denial doctrine in its entirety.

## CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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April 27, 2026