

No. 25-1123

In the Supreme Court of the United States

KEVIN STEELE, PETITIONER

v.

DOUGLAS A. COLLINS,
SECRETARY OF VETERANS AFFAIRS

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether written notice provided by the Department of Veterans Affairs regarding its 1991 denial of a claim for veterans' benefits, which would have made clear to a reasonable person that the denial implicitly encompassed a particular component of that claim, provided notice of the denial of that part of the claim that was sufficient under 38 U.S.C. 5104(b)(1) (2012) (superseded 2017) and 38 C.F.R. 3.103 (1991).

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	10
Conclusion	18

TABLE OF AUTHORITIES

Cases:

<i>Adams v. Shinseki</i> , 568 F.3d 956 (Fed. Cir. 2009)	4, 9-11
<i>Barnett Bank v. Nelson</i> , 517 U.S. 25 (1996)	15
<i>Cogburn v. McDonald</i> , 809 F.3d 1232 (Fed. Cir. 2016)	4
<i>Deshotel v. Nicholson</i> , 457 F.3d 1258 (Fed. Cir. 2006)	4
<i>Hamill v. Collins</i> , 166 F.4th 1030 (Fed. Cir. 2026)	4, 18

Statutes and regulations:

Veterans Appeals Improvement and Modernization Act of 2017, Pub. L. No. 115-55, § 2(e) and (x)(1), 131 Stat. 1106, 1115	18
38 U.S.C. 3004(a)(1) (Supp. II 1990)	3
38 U.S.C. 5104 (2012)	14
38 U.S.C. 5104(a)	3, 11
38 U.S.C. 5104(b) (2012)	4, 11, 16-18
38 U.S.C. 5104(b)(1) (2012)	3, 10, 11, 14, 15, 17, 18
38 U.S.C. 5104(b)(1) (2024)	3
38 U.S.C. 7292(c)	14
38 U.S.C. 7292(d)(1)	14
38 C.F.R. (1991):	
Section 3.103(a)	3
Section 3.103(b)	16

IV

Regulations—Continued:	Page
Section 3.103(b)(1)	3, 16
Section 3.103(f)	3, 10, 16

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-16a) is reported at 135 F.4th 1353. The decision of the Court of Appeals for Veterans Claims (Pet. App. 17a-25a) is available at 2023 WL 2153686. The decision of the Board of Veterans' Appeals (Pet. App. 26a-36a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 1, 2025. A petition for rehearing was denied on October 31, 2025 (Pet. App. 73a-74a). On January 21, 2026, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including March 10, 2026. On March 5, 2026, the Chief Justice further extended the time to and including March 17, 2026, and

the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This case presents a question about the sufficiency of the notice that the Department of Veterans Affairs (VA) provided to petitioner about its decision on one of his claims for veterans' benefits, which petitioner described in his 1991 application as a "Head Injury." C.A. App. 17. That claim was based on an injury that petitioner had sustained in 1980 when he hit his head on a pipe on a military ship. *Id.* at 21.

The VA's 1991 decision denying petitioner's claim determined that petitioner had suffered a "superficial laceration" requiring stitches. Pet. App. 71a. The decision stated that petitioner "[i]nitially" had "some complaints of a headache" but then had "no further complaints of headaches during service." *Ibid.* The decision and the VA's 1991 letter describing the decision both explained that the VA had found a service connection for petitioner's scalp scar as "the only residual of [his] head injury," but that the scar was not considered disabling and thus was "noncompensable." *Id.* at 65a, 72a.

In 2016, 25 years after the VA notified petitioner of its decision and more than 35 years after petitioner hit his head on the pipe, petitioner filed a new benefits claim for "headaches." Pet. App. 4a. The VA granted petitioner service-connection and disability benefits for that claim, effective no earlier than 2013. *Ibid.* Petitioner argued that the effective date of the award should have been 1991, on the theory that his 1991 "claim for service connected headaches" had never been finally adjudicated—and thus remained pending decades later—because the VA had not given him sufficient notice of the denial of that claim. *Id.* at 4a-5a. The Federal Cir-

cuit held that the VA’s 1991 notice was sufficient. *Id.* at 1a-16a.

1. Since 1989, Congress has required the VA to provide each claimant “notice of [its] decision” on his or her claim for veterans’ benefits. 38 U.S.C. 5104(a) (formerly 38 U.S.C. 3004(a)(1) (Supp. II 1990)). From 1989 until 2017, the statute further provided that if the VA “denie[d] a benefit sought,” the notice was required to include “a statement of the reasons for the decision.” 38 U.S.C. 5104(b)(1) (2012) (superseded 2017). In 2017—after the events relevant to this case—Congress amended the statute to eliminate that requirement and instead to require the VA to provide notice of denials with several specific categories of information, including an “[i]dentification of the issues adjudicated.” 38 U.S.C. 5104(b)(1) (2024) (added 2017).

When the VA notified petitioner of its 1991 decision denying his benefits claim, the agency’s regulations articulated the VA’s “policy” that each veterans’-benefits claimant was entitled to “written notice of the decision made on his or her claim.” 38 C.F.R. 3.103(a) (1991). Those regulations stated that, in “[g]eneral,” “[s]uch notice shall clearly set forth the decision made, any applicable effective date, [and] the reason(s) for the decision.” 38 C.F.R. 3.103(b)(1) (1991). A regulatory provision entitled “Notification of decisions” directed more specifically that the claimant “will be notified in writing of decisions affecting the payment of benefits or granting relief,” and that the “[n]otice will include the reason for the decision,” “the date it will be effective,” and information about the claimant’s right to appeal. 38 C.F.R. 3.103(f) (1991).

The Federal Circuit has addressed the criteria that should be used to determine whether notice by the VA

under the pre-2017 statute was sufficient to inform a claimant of a VA benefits decision where the claimant had multiple pending claims. The court of appeals described the “key question” in this circumstance as “whether it would be clear to a reasonable person that the [VA’s] action that expressly refers to one claim is intended to dispose of others,” such that the agency communication gives the claimant “adequate notice of, and an opportunity to respond to, the [VA’s] decision.” *Adams v. Shinseki*, 568 F.3d 956, 964-965 (Fed. Cir. 2009).

Under the relevant Federal Circuit precedents, if the information the VA provides to a claimant would make it “clear to a reasonable person” that the VA has denied a claim, that “claim for benefits will be deemed to have been denied, and thus finally adjudicated, even if the [VA] did not expressly address that claim in its decision.” *Adams*, 568 F.3d at 961, 964 (discussing *Deshotel v. Nicholson*, 457 F.3d 1258, 1261 (Fed. Cir. 2006)); see, e.g., *Hamill v. Collins*, 166 F.4th 1030, 1034 (Fed. Cir. 2026); *Cogburn v. McDonald*, 809 F.3d 1232, 1235 (Fed. Cir. 2016). The Federal Circuit has determined that precedents addressing the sufficiency of notice given before the 2017 amendments to Section 5104(b) do not govern veterans’ benefits claims to which the 2017 amendments apply, *i.e.*, claims for which notice of a decision was provided on or after February 19, 2019. *Hamill*, 166 F.4th at 1035, 1037-1039.

2. a. Petitioner is a non-combat veteran of the United States Marine Corps. He enlisted in the Marines in July 1978, when he was 18 years old, and he was honorably discharged in April 1982, after less than 2.5 years of active service. Pet. App. 2a, 28a; C.A. App. 14-15; see *id.* at 21 (age).

In July 1986, more than four years after his discharge, petitioner ruptured two lumbar discs “while doing heaving lifting,” prompting multiple back surgeries. C.A. App. 21. In 1991, petitioner reported that his “back pain [had been] persistent intermittently ever since”; that he had last been employed in 1986 and had experienced difficulty “obtaining a job because he had limited physical activity after the last [back] surgery”; and that more surgery was contemplated to address his ongoing back problems. *Ibid.*; see *id.* at 18. Petitioner also reported that in 1989 he had “applied and obtained Social Security Disability because of the low back injury.” *Id.* at 21.

b. In June 1991, nine years after his military discharge, petitioner also applied for veterans’ disability benefits. Pet. App. 2a. The application form (C.A. App. 16-19) asked for information about the “nature of [the] sickness, disease or injuries for which this claim is made and [the] date each began,” but petitioner left that section blank. *Id.* at 17. The only information that the application supplied about the nature of petitioner’s claim was in a section for information about any treatment received in service, where petitioner identified without elaboration a “Head Injury,” “Left Side Injury,” “Right Elbow Injury,” and “Ank[le] Injury.” *Ibid.*

The VA examined petitioner and his records to ascertain the nature of his disability claim. See Pet. App. 71a-72a; C.A. App. 20-22. Petitioner, who was then represented by the Disabled American Veterans, disclosed during his VA medical examination that, in July 1980, he had injured his head by hitting it against a metal pipe on a military ship, requiring stitches. C.A. App. 21; see *id.* at 20 (noting representation); Pet. App. 35a (same).

c. In its August 1991 rating decision on petitioner's benefits claim (Pet. App. 69a-72a), a VA Regional Office addressed the head-injury component of that claim. The Regional Office determined that petitioner had sustained a two-inch "superficial laceration" on his scalp requiring stitches and that he had lost consciousness, but that a neurological examination had found no abnormalities and that petitioner was fully oriented. *Id.* at 71a; see C.A. App. 21 (examiner's explanation that after striking his head, petitioner had been "dazed momentarily" but "did not completely lose consciousness"). The Regional Office also determined that petitioner "[i]nitially * * * had some complaints of a headache" after his July 1980 injury, but that he had "no further complaints of headaches during [his nearly two years of subsequent military] service," which had ended in April 1982. Pet. App. 71a; see *id.* at 69a (identifying April 1982 Release from Active Duty); C.A. App. 15-16. The VA's decision accordingly granted service connection "for the scar of [petitioner's] scalp as the only residual of [his] head injury in service," but the agency determined that the scar had produced no disability and therefore was "noncompensable." Pet. App. 72a.

The 1991 rating decision also addressed each of the three other injuries that petitioner's VA benefits application had identified. First, petitioner had identified a "Left Side Injury," C.A. App. 17, caused by an incident in which petitioner had fallen into a bush with thorns during training, *id.* at 21. That incident had led to a 1981 surgery, using local anesthesia, to remove a foreign body from petitioner's left side. *Ibid.*; see Pet. App. 71a. The rating decision observed that petitioner had a "one-half inch scar" on his left side "with no residual pain," and the VA granted petitioner service connec-

tion for the scar, which had produced no disability and therefore was noncompensable. Pet. App. 71a-72a.

Second, the decision determined that in 1982 petitioner had “f[a]ll[en] down and lacerated his right elbow,” requiring stitches and leaving a scar, but that this scar likewise had produced no disability and therefore was noncompensable. Pet. App. 72a. Finally, the VA denied benefits for petitioner’s fourth injury. The agency found that the evidence showed a “severe left ankle sprain and possible other injury prior to service,” and it concluded that petitioner’s “current subjective complaints” could not be related to a single incident in which he had twisted his ankle in service “without evidence of trauma.” *Ibid.*; see *id.* at 71a (stating that petitioner’s enlistment medical history had identified “fractured ankles in September 1977”).

d. The VA’s September 1991 letter to petitioner (Pet. App. 64a-68a) explained the Regional Office’s denial of benefits. The letter’s first sentence stated that “[w]e cannot grant your claim for payment of disability benefits.” *Id.* at 64a. The letter then stated that the VA had reviewed evidence including petitioner’s service medical records and his 1991 medical examination; addressed each of the four injuries on which petitioner had based his claim, *id.* at 65a; and informed petitioner of his right to appeal within one year of the date of the letter, *id.* at 66a.

Most relevant here, the letter (like the VA’s decision) stated that the VA had granted service-connection for petitioner’s “scalp scar as the only residual of [his] head injury in service.” Pet App. 65a. The letter, like the decision, added that the scar was “not considered disabling” and therefore was “noncompensable.” *Ibid.*

The letter further stated that “service-connection is also established for the scar of [petitioner’s] left abdomen and [his] right elbow scar,” but that those scars also were nondisabling and “noncompensable.” Pet. App. 65a. Finally, the letter stated that “[t]he evidence [did] not establish service connection” for petitioner’s “left ankle condition” or the “limited motion” associated with it. *Ibid.* The letter reiterated that petitioner had sustained a “severe left ankle sprain and possible other injury prior to [his] term of service,” and that his “current subjective complaints” were not related to an incident in service. *Ibid.*

Petitioner did not appeal the denial of benefits. Pet. App. 27a.

3. In 2016, 25 years after the VA denied his 1991 claim, petitioner applied for veterans’ benefits for “headaches.” Pet. App. 4a. In January 2017, a VA Regional Office granted service connection for “headaches,” which were later assigned an effective date of no earlier than 2013. *Ibid.* Petitioner argued that his 1991 claim for “headaches” remained open—and therefore entitled him to a 1991 effective date—on the theory that the VA had never given him sufficient notice that it had denied that 1991 claim. See *id.* at 4a, 29a.

a. The Board of Veterans’ Appeals (Board) rejected petitioner’s request for a 1991 effective date. Pet. App. 26a-36a. The Board concluded that “for several reasons,” any “claim of service connection for headaches” from 1991 did not remain pending. *Id.* at 31a. First, the Board stated that, “to the extent” petitioner argued that his report of headaches during his 1991 VA examination “rais[ed] a separate claim of service connection for headaches, it does not meet the criteria of a claim as that criteria was defined in August 1991.” *Id.* at 31a-

32a. Second, the Board concluded that the VA's "August 1991 rating decision * * * considered, but rejected, headaches as a [traumatic brain injury] residual." *Id.* at 31a. Third, the Board determined that the VA's rating decision, "at the very least, implicitly denied" "the issue of service connection for headaches." *Ibid.*; see *id.* at 32a-36a.

b. The Court of Appeals for Veterans Claims (Veterans Court) affirmed. Pet. App. 17a-25a. The court found no error in the Board's determination that the VA's regional office had denied petitioner's claim for service-connected headaches in 1991 and had provided sufficient notice of the denial. *Id.* at 20a-25a.

4. The Federal Circuit affirmed. Pet. App. 1a-16a. The court of appeals observed that a claim "will be 'considered to be pending,' rather than finally adjudicated," if the VA has failed to "notify the claimant of the denial of his claim." *Id.* at 7a (citation omitted). But the court upheld the determinations of the Board and the Veterans Court that the VA's "1991 [Regional Office] Decision and the 1991 Notice Letter" had provided sufficient notice of the VA's denial of disability benefits for any head-injury-related headaches. *Id.* at 2a, 15a; see *id.* at 5a-16a.

The court of appeals explained that the VA supplies sufficient notice of its denial of a claim if "it would be clear to a reasonable person" that the VA's "action that expressly refers to one claim is intended to dispose of [a related claim] as well," "even if the VA did not expressly address that related claim in its decision." Pet. App. 8a (quoting *Adams*, 568 F.3d at 961, 964) (brackets omitted). Because the VA's explanation of its decision in such circumstances "put[s] the claimant on notice that the related claim was being considered and rejected,"

id. at 12a (quoting *Adams*, 568 F.3d at 963) (brackets omitted), the court rejected petitioner’s contention that an “explicit” explanation of the reasons for the denial is necessary to satisfy Section 3.103(f)’s requirement that the VA notify the claimant of “the reason for the decision,” *id.* at 11a (quoting 38 C.F.R. 3.103(f) (1991)). See *id.* at 9a-15a.

The court of appeals further determined that the Board had applied the correct mode of analysis and had considered the appropriate factors in assessing the adequacy of the notice given to petitioner in 1991. Pet. App. 15a. The court found “no legal error in this analysis or the Board’s findings or the Veterans Court’s affirmation.” *Id.* at 16a.

The court of appeals also observed that “one might question whether the terse statement of the reason for the explicit denial here was sufficient to satisfy the implicit denial standard.” Pet. App. 16a. The court explained, however, that the Board’s application of that standard in this case involved “a question of fact beyond [the court’s] jurisdiction to address.” *Ibid.* The court also noted that, for the first time at oral argument, petitioner had argued that the court should limit its analysis only to the notice provided by the VA’s 1991 letter (and not its 1991 rating decision). *Id.* at 15a n.5. The court stated, however, that petitioner had failed to explain why the VA’s “decision itself cannot provide the reasons” for the decision, and that petitioner had “forfeited this argument by not making it in his opening brief.” *Ibid.*

ARGUMENT

Petitioner contends (Pet. 23-27) that the VA’s 1991 written notification of its decision denying petitioner’s June 1991 disability claim was insufficient under 38

U.S.C. 5104(b)(1) (2012) (superseded 2017). Petitioner argues (Pet. 27) that the 1991 notification should have explicitly—rather than implicitly—denied his “headache claim” and given reasons for that denial. The court of appeals correctly upheld the sufficiency of the VA’s notice. That decision, which does not conflict with any decision of this Court or another court of appeals, does not warrant further review. Review is particularly unwarranted because the 2017 amendments to Section 5104(b), which apply to every veterans’ benefits decision rendered since February 19, 2019, replaced the legal framework that the court of appeals applied in this case. The petition for a writ of certiorari should be denied.

1. a. Section 5104(a) states that the Secretary of Veterans Affairs shall provide to a claimant “notice of [each] decision” by the Secretary “affecting the provision of benefits to [the] claimant.” 38 U.S.C. 5104(a). Before it was amended in 2017, Section 5104(b)(1) additionally required that the notice include “a statement of the reasons for the decision” in any case in which the Secretary “denie[d] a benefit sought.” 38 U.S.C. 5104(b)(1) (2012) (superseded 2017). That requirement was satisfied where, as here, the written rationale in a VA decision and letter providing notice of that decision would make “clear to a reasonable person” that the VA was denying one aspect of a claim, even if those statements did not “expressly address” that aspect. Pet. App. 8a (quoting *Adams v. Shinseki*, 568 F.3d 956, 961, 964 (Fed. Cir. 2009)).

This case illustrates the principle. Petitioner’s June 1991 application for disability benefits identified four injuries: a “Head Injury,” “Left Side Injury,” “Right Elbow Injury,” and “Ank[le] Injury.” C.A. App. 17. The

VA's August 1991 rating decision (Pet. App. 69a-72a) addressed and rejected each of petitioner's four claimed bases for benefits. See pp. 5-7, *supra*.

Most relevant here, the decision addressed a head injury that petitioner had sustained eleven years earlier (in July 1980) when he hit his head on a pipe in a military ship. See p. 5, *supra*. The VA's 1991 decision explained that petitioner had sustained a two-inch "superficial laceration" on his scalp that was sutured, and that petitioner had exhibited "[n]o abnormalities" during a neurological examination. Pet. App. 71a. The decision also specifically referenced headaches associated with the injury, stating that petitioner "[i]nitially * * * had some complaints of a headache," but that "[t]here were no further complaints of headaches during" the nearly two remaining years of petitioner's military service, *ibid.*, which ended in April 1982, *id.* at 69a.

The VA's 1991 decision concluded that service connection had been established for petitioner's "scar of the scalp as the *only residual* of the head injury," but that the scar was not disabling and was therefore "non-compensable." Pet. App. 72a (emphasis added). The VA's September 1991 letter (*id.* at 64a-68a) describing the agency's decision likewise explained that petitioner's "scalp scar [was] the only residual of [his] head injury" and that, while the VA had granted service connection for the scar, the scar was not disabling. *Id.* at 65a. To be sure, neither the decision nor the letter explicitly stated that petitioner no longer experienced headaches as of the date of the decision. But those written materials, particularly the VA's statements that petitioner's scar was the "only residual of the head injury," reflected the agency's unambiguous determination that the headaches petitioner had initially experi-

enced had not persisted. Petitioner evidently believes that this determination was incorrect, and he could have appealed at the time to make that argument. There was, however, no ambiguity as to what the agency had determined.

The broader context of the VA's August 1991 decision and September 1991 letter confirm the clarity of the VA's notice. Petitioner had submitted only one application for veterans' disability benefits, identifying four distinct injuries. C.A. App. 16 § 9B, 17 § 26. The first sentence of the VA's letter regarding its decision on that application stated without qualification that "[w]e cannot grant your claim for payment of disability benefits." Pet. App. 64a. The letter, like the VA's decision, then addressed each of the four injuries that petitioner had identified, and it explained why each was noncompensable. See pp. 7-8, *supra*. That point-by-point correspondence between petitioner's benefits claim and the VA's responsive documents confirmed that the VA had fully resolved petitioner's disability claim, leaving nothing left for adjudication.

Petitioner was represented by a national veterans' organization when he pursued his 1991 disability claim, and he did not appeal the VA's decision. And there is no indication that in the next 25 years petitioner (or his representative) ever inquired about the status of his 1991 claim for benefits, including benefits for any headaches believed to be associated with his head injury. That inaction further suggests that petitioner understood what the VA's written notice made clear: The VA had fully denied his claim for benefits, and it had concluded that the evidence at the time did not establish that petitioner was experiencing headaches attributable to his earlier injury.

The VA's 1991 decision and letter thus were sufficient to give petitioner notice of the denial of his claim and the reasons for that denial. As the court of appeals required, those written materials were sufficient to make "clear to a reasonable person" that the VA had denied any claim based on headaches associated with petitioner's head injury. See Pet. App. 8a (citation omitted). The court of appeals correctly determined that the Board had permissibly applied that standard to conclude that the VA's notice was sufficient. *Id.* at 15a-16a.¹

b. Petitioner's contrary arguments lack merit. Petitioner contends that Section 5104(b)(1)'s former requirement of "a statement of the reasons for the [VA's] decision," 38 U.S.C. 5104(b)(1) (2012) (superseded 2017), required an "explicit[]" articulation of the VA's denial of each component of his 1991 claim and the reasons therefor because, in petitioner's view, a "statement" must be "something *stated*." Pet. 24 (citation omitted).² But

¹ Petitioner notes (Pet. 15) but does not challenge the court of appeals' determination that the question whether the VA's 1991 notice in this case satisfies the legal standard for sufficient notice is "a question of fact beyond [the Federal Circuit's] jurisdiction," Pet. App. 16a. Cf. 38 U.S.C. 7292(c) and (d)(1) (granting jurisdiction to review decisions of the Veterans Court but excluding from review "determination[s] as to a factual matter").

² The court of appeals' decision does not discuss Section 5104, see Pet. App. 1a-16a, because petitioner did not cite or discuss Section 5104 in his appellate briefing. See Pet. C.A. Br. 1-17; Pet. C.A. Reply Br. 1-17. Petitioner instead invoked Section 5104 for the first time in his rehearing petition, as support for his request that the court of appeals overrule its precedents holding that the VA's written notice of its decisions may provide sufficient notice to claimants by implicitly rejecting components of claims in a manner that would be clear to a reasonable person. See C.A. Reh'g Pet. 13-15. The court denied rehearing without discussing petitioner's request. Pet. App. 73a-74a.

it does not follow that the required “statement” of reasons must state the reason for each aspect of the decision “explicitly.”

Suppose for example, that the VA explained its denial of disability benefits for a knife wound by stating: “Claimant sustained a cut on his arm and initially complained of significant pain when he was injured five years ago, but the only residual effect of the injury is now a scar and that scar is not disabling.” That explanation plainly constitutes a “statement of the reasons for the decision” denying benefits. 38 U.S.C. 5104(b)(1) (2012). And by explaining that a non-disabling scar is the *only* remaining effect of the injury, the statement clearly—albeit implicitly—conveys the VA’s determination that the significant pain initially caused by the injury is no longer present and therefore is not a basis for benefits. There is no other reasonable understanding of the statement that the scar is “the only residual effect of the injury.”

Petitioner asserts that such communications are insufficient because Congress required “a *clear* ‘statement’ of the ‘reason for the decision.’” Pet. 24 (emphasis added). But the word “clear” does not appear in the text that Congress enacted. And in any event, a statement may clearly reject a proffered rationale for benefits without addressing that rationale in so many words. Cf. *Barnett Bank v. Nelson*, 517 U.S. 25, 31 (1996) (explaining that Congress may enact “nonspecific statutory language” that “nonetheless reveal[s] a clear, but implicit,” textual instruction).

Petitioner’s reliance (Pet. 25) on statutory context is unavailing. Even assuming that former Section 5104(b)(1)’s notice-focused provision reflected Congress’s intent “to make notices of decisions understand-

able and informative to unrepresented veterans,” *ibid.*, that purpose is fulfilled where, as the court of appeals has required, the VA provides a claimant written notice that is “clear to a reasonable person,” Pet. App. 8a (citation omitted). That objective standard for evaluating the sufficiency of the VA’s written communications ensures that each claimant receives an understandable and informative explanation of the agency’s decision. To the extent petitioner suggests that each claimant must subjectively understand the relevant aspects of the VA’s decision—regardless of the clarity of the notice the claimant receives—nothing in Section 5104(b) requires that impractical rule. Cf. Pet. 21 (suggesting that a claimant must “*actually kn[o]w*” that his claim was denied, regardless of what a “‘reasonable claimant’ ‘*would have known*’”) (citation omitted).

Petitioner suggests (Pet. 25-26) that 38 C.F.R. 3.103(b)(1) (1991), which announced the general policy that the VA would provide written notice that “clearly set[s] forth the decision made,” *ibid.*, separately requires “a clear explicit statement” of the decision and its reasons, Pet. 25. That argument again confuses the concept of clarity with a supposed requirement that every finding that supports denial of a claim must be articulated explicitly. If petitioner had cited Section 3.103(b)(1) in his appellate briefing, the court of appeals could have explained as much.³

³ During the proceedings below, petitioner relied on different language in Section 3.103(f) to support a different argument, see Pet. C.A. Br. 8-10, 13, which the court of appeals rejected. Pet. App. 9a-15a. Petitioner first invoked Section 3.103(b) in his petition for rehearing to support his request that the court of appeals overrule its precedent governing implicit denials of claims. See C.A. Reh’g Pet. 1, 7-8, 14-15.

Finally, petitioner argues (Pet. 27-29) that amendments to Section 5104(b) enacted in 2017 indicate that Congress requires “explicit notice” of each VA decision and its reasons. Pet. 27 (emphasis omitted). But as petitioner acknowledges (Pet. 3, 32), the amendments have an effective date of February 19, 2019. The 2017 amendments therefore shed no meaningful light on whether the VA’s 1991 notice to petitioner in this case was consistent with Congress’s now-superseded directive that the VA’s notice of each benefit-denying decision include “a statement of the reasons for the decision,” 38 U.S.C. 5104(b)(1) (2012) (superseded 2017).

c. Petitioner also appears to suggest that the sufficiency of the VA’s notice should have been judged based solely on the VA’s September 1991 “notice letter,” Pet. 27, because the VA Regional Office’s August 1991 rating decision “was not provided to him,” Pet. 16-17. Petitioner thus suggests that the rating decision’s discussion of his headaches should be disregarded, and he argues that “[n]othing in the notice letter” itself indicated that “the VA had considered and denied his headache claim.” Pet. 27; see Pet. 16.

That argument is not properly before the Court. This case was litigated below on the understanding that “the 1991 [Regional Office] Decision and the 1991 Notice Letter” taken together supplied the relevant notice whose sufficiency petitioner had challenged. Pet. App. 15a. At oral argument in the Federal Circuit, petitioner asserted that the analysis should be limited to the VA’s letter; but the court of appeals held that petitioner had “forfeited this argument” by not presenting it in his appellate briefing. *Id.* at 15a n.5. Petitioner’s certiorari petition does not seek review of that forfeiture ruling. See, *e.g.*, Pet. i (question presented).

2. Petitioner asks this Court to grant review to construe language in 38 U.S.C. 5104(b)(1) (2012) that no longer exists. The current text of Section 5104(b), as enacted in 2017, applies to every veterans' benefits decision for which the VA has given notice since February 19, 2019. See Veterans Appeals Improvement and Modernization Act of 2017, Pub. L. No. 115-55, § 2(e) and (x)(1), 131 Stat. 1106, 1115 (2017 amendment and effective date); see also Pet. 3 (discussing effective date of the 2017 amendments). And as petitioner acknowledges (Pet. 31), the Federal Circuit has determined that cases to which the 2017 amendments to Section 5104(b) apply are *not* governed by the court of appeals' decisions addressing the sufficiency of VA notice under the pre-amendment statute. See *Hamill v. Collins*, 166 F.4th 1030, 1037-1039 (Fed. Cir. 2026). Although the pre-2017 statute continues to govern determinations as to the adequacy of VA notice given before February 19, 2019, the limited and diminishing practical significance of the question presented is an additional reason to deny review here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JULY 2026