

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Relying on the judicially created doctrine of implicit denial, the VA is refusing to award Kevin Steele two decades of disability benefits for debilitating headaches it agrees are caused by an injury he sustained during service in the Marine Corps. The VA's position is that a "reasonable person" would have inferred—and known to appeal—its "implicit" denial of his headache claim based on a 1991 denial of benefits for his head scar. There is no dispute that, by statute and regulation, the VA was required to provide written notice of its decision that contained "a statement of the reasons for the decision" and "clearly set forth the decision made." 38 U.S.C. § 5104 (1991); 38 C.F.R. §§ 3.103(b), (f) (1990). That never happened: the only notice the VA sent to Mr. Steele in 1991 made no mention of any decision about his headaches. 64a-68a. Yet, the Federal Circuit upheld the VA's implicit denial of his claim, and the agency continues to apply the doctrine to other veterans today.

Since the decision below, the Federal Circuit held in *Hamill v. Collins* that implicit denials are incompatible with Congress's statutory notice requirements, but only with respect to claims pending after the 2019 effective date of the AMA's amendment to § 5104. 166 F.4th 1030, 1037-39 (Fed. Cir. 2026). That decision expressly preserves the holding in Mr. Steele's case for all legacy claims. *Id.* As explained in the petition (18, § II.D), there is no defensible basis for interpreting the pre- and post-AMA requirements of § 5104 differently with respect to the permissibility of

implicit denials. The government has neither challenged *Hamill*'s holding nor defended the line it draws. Given the Federal Circuit's entrenched position and exclusive jurisdiction on the issue, the government does not contend that further percolation is likely.

Instead, the government argues that review is not worthwhile because the impact of implicit denials is "limited and diminishing." Opp. 18. But without review, the VA remains free to, and is steadily continuing to, apply the doctrine to the pending claims of veterans who served and sought benefits before 2019. This implicates the notice rights of the majority of living U.S. veterans today. NOVA 8; Pet. 32. To the extent that impact is "diminishing," it is because aging legacy claimants like Mr. Steele are dying, and those who die will never recover the benefits the VA owed. That is not a reason to deny review; it is a reason not to wait. The government does not dispute that this case is the right vehicle for doing so.

On the merits, none of the government's arguments in defense of implicit denials are reconcilable with the reasoning in *Hamill*, and they are independently wrong on the law. The government's factual defense of the doctrine's application to this case only illustrates the incongruency between the bright-line notice requirements Congress enacted and the fact-bound retrospective analysis still used to police them.

The petition should be granted.

I. The question presented is exceptionally important, and *Hamill* confirms the need for the Court’s intervention now.

The question presented concerns the veteran’s right to notice—a critical protection codified in statute and regulation that safeguards the appellate rights of individual veterans and the overall fairness of the veterans’ benefits adjudication system. Pet. 20-23; MVA 11-14. In the decades after Congress first enacted the Veterans Benefits Act of 1989 (“VBA”) to require that notice of any VA decision denying benefits contain “a statement of the reasons for the decision,” the Federal Circuit constructed a doctrine of “implicit denial” that undermined the statute’s protections without ever addressing the statute in a decision. 38 U.S.C. § 5104 (1991); Pet. 12-14; NOVA 9, 11-12. It was not until this year that the Federal Circuit finally heeded Congress’s instructions on the strictures of the notice requirement going forward. *Hamill*, 166 F.4th at 1037. While the court now prohibits implicit denials for claims filed under the AMA regime, the court has steadfastly refused to acknowledge the original error of its “judicial construct.” *Id.* As a result, any of the vast number of claims filed before 2019 for which a veteran is still awaiting benefits remains subject to implicit denial.

As explained in the petition and MVA’s brief, there is no statutory basis for prohibiting implicit denials of claims under the AMA version of § 5104 while permitting those denials under the legacy VBA statute. Pet. 10-11, 23-27; MVA 13-17. The government offers none. The Federal Circuit provides no interpretive analysis for the distinction it draws, save to say that the AMA “heightened” what had previously been

“sparse” requirements. *Hamill*, 166 F.4th at 1036. Yet the court’s reasoning on its face applies with equal force to both provisions. The key AMA language the court relies on is the requirement to provide “[i]dentification of the issues adjudicated.” *Id.* at 1037. On this requirement, the court “assume[s] Congress meant for VA decisions to include precisely that,” which means doing so *explicitly*: “we hold that under the AMA, a veteran has an appealable decision for a particular issue only if the decision gives him *explicit* notice that the issue is being adjudicated and how it is being decided.” *Id.* “After all,” the court explains, “no veteran can appeal a decision he does not understand to have been made.” *Id.* at 1038.

All this should extend to the VBA’s requirement for a “statement of the reasons for a decision.” 38 U.S.C. § 5104 (1991). Nothing in the word “identification” in the AMA statute demands greater clarity or directness than the word “statement” in the VBA. As with the “identification” requirement in the AMA provision, the purpose of the “statement” requirement in the VBA is to inform the veteran that a claim “is being adjudicated and how it is being decided.” Notably, the Federal Circuit pointed to the VA’s requirement for “written notification” in 38 C.F.R. § 3.103(f) as an indication that the VA interpreted its statutory notice obligation to require explicit notice. *Hamill*, 166 F.4th at 1037. That same regulatory requirement was present in pre-AMA versions of § 3.103(f). 77a (“the claimant or beneficiary will be notified in writing of decisions”).

The Federal Circuit nonetheless took pains to draw a firm line that leaves legacy claimants subject to implicit denials:

Moreover, the effect of our decision on previously-issued VA decisions is limited because it applies only to claims subject to the AMA and does not affect veterans claims under the legacy system. 38 U.S.C. § 101 note (Effective Date of 2017 Amendment); *see also* Oral Arg. at 18:26–19:19 (Gov’t admission); *id.* at 40:38–41:08 (Mr. Hamill admission).

Hamill, 166 F.4th at 1039. That holding, issued shortly after the Federal Circuit’s denial of rehearing in this case, makes clear that the court will not revisit its precedent on implicit denials. The Federal Circuit’s precedential decision in this case, alongside its limited jurisdiction to review applications of law to facts, makes it unlikely that future challenges to implicit denials will even reach the circuit and even less likely that challenges will result in reasoned precedential decisions suitable for review on certiorari. The government does not contend otherwise.

Instead, the government urges that review is not worthwhile. Opp. 18. But there can be no dispute that the VA is continuing to deem steady numbers of claims implicitly denied each month. Since the filing of the petition, the number of Board decisions applying the implicit denial rule since the Federal Circuit’s decision in this case has nearly doubled.¹ The vast

¹ Westlaw search for “(impli! /2 deni!) /p (adams or Hamill or deshotel or cogburn or steele)” in Department of Veterans Affairs Administrative Decisions dated on or after May 1, 2025: 226 results.

majority of living U.S. military veterans today filed claims under the legacy system, and the majority of them were precluded from engaging paid counsel in deciding whether to appeal an initial claim denial and undertook that decision *pro se*. NOVA 16. Some of them, like Mr. Steele, submitted claims before the implicit denial rule existed, yet are still subject to its retroactive application. NOVA 3. Many, like Mr. Steele, are also aging and ailing, some as a result of their uncompensated service-connected disability. The court should reject the government’s urging to leave these legacy claimants behind and let their claims die with them.

The impact of the doctrine’s survival is not limited to the individuals whose claims are denied. It extends to the fairness and transparency of the benefits adjudication system. Pet. 22-23. Numerous veterans advocates have noted the systemic harm of a doctrine that retroactively runs out the clock on appellate rights veterans did not know they had. *See, e.g.*, Gregory M. Rada, *Hamill v. Collins: No More Implicit TDIU Denial Under the AMA*, After Service LLC (Mar. 10, 2026) (“veterans lost appellate rights on claims they didn’t even know had been decided. And the doctrine was especially damaging in the TDIU context, where the claim is often raised by the evidence in the file rather than by the veteran’s own formal application.”)²; Theresa Aldrich, *Federal Circuit Kills VA’s “Implicit Denial” Doctrine*, Hadit (Feb. 4,

² Available at <https://afterservice.com/hamill-v-collins-implicit-denial-tdiu/>.

2026) (“For years, the VA used implicit denials as a way to close claims without ever telling the veteran. You’d file for three things. They’d decide two. The third just disappeared—and if you didn’t catch it, your appeal clock ran out on a decision nobody told you about.”)³.

This case presents an ideal vehicle to definitively resolve the problems posed by implicit denials. The government does not deny that the question presented is dispositive and squarely presented or that a similarly strong vehicle is unlikely to arise again. This Court can and should address the issue now.

II. The government’s merits arguments are irreconcilable with *Hamill* and underscore the need for review.

1. The government offers only sparse reasoning for the core question of why the statutory and regulatory requirement to provide a “statement” of reasons for a decision and written notice “clearly setting forth” the decision and reasoning can be satisfied *implicitly*. Opp. 11-17. As discussed above, *supra* 4, none of these arguments are reconcilable with the Federal Circuit’s holding that analogous language in the AMA version of § 5104 requires *explicit* disclosure. The government offers no basis for squaring its arguments with *Hamill*. Its arguments also misstate the law:

a. *Barnett Bank v. Nelson* does not stand for the government’s proposition that “a statement may clearly reject a proffered rationale for benefits without addressing that rationale in so many words.” Opp. 15;

³ Available at <https://hadit.com/hamill-v-collins-implicit-denial-eliminated/>.

517 U.S. 25, 31 (1996). *Barnett* does not purport to construe any veterans benefit statute or the meaning of “statement” in any legislation. The case addresses when *courts* can discern pre-emptive intent in a *federal statute*, a question entirely irrelevant to the meaning of “statement” in notices provided to *uncounseled disabled veterans*.

b. The requirement in 38 C.F.R. § 3.103(b) that the VA “clearly set forth” its decisions and reasons is not “general policy,” as the government asserts. Opp. 3, 16. Regulations promulgated through notice and comment “have the ‘force and effect of law,’” *Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92, 96 (2015). Nothing in the text of § 3.103(b) is discretionary. While *subsection (a)* of 3.103 is titled “[s]tatement of policy,” *subsection (b)* is separately titled “[t]he right to notice.” The first paragraph of subsection (b) is titled “[g]eneral” to distinguish from later paragraphs; it does not say that its mandate applies “*in [g]eneral*,” as the government asserts. Opp. 3 (emphasis added). The text of § 3.103(b) is unequivocally mandatory: “Claimants and their representatives are entitled to notice of any decision made by VA affecting the payment of benefits or the granting of relief. Such notice *shall clearly set forth* the decision made...[and] the reason(s) for the decision[.]” 77a.

2. The bulk of the opposition merely defends the outcome of the case on the facts—an analysis the government admits the Federal Circuit could not review. Opp. 14 n.1. Regardless, its mischaracterizations of the record and reliance on “facts” with no bearing on the 1991 notice letter highlight the problems with the

hindsight inquiry at the heart of the implicit denial rule:

a. The government's proffered "reason" for the VA's implicit denial of Mr. Steele's headache claim contradicts the record, highlighting the dangers of reconstructing purportedly "unambiguous determination[s]" in hindsight. Opp. 12. Piecing together statements from the notice letter and internal rating decision, the government argues that the VA must have decided that Mr. Steele "no longer experienced headaches as of the date of the decision." Opp. 12. But the VA's rating decision itself stated otherwise in summarizing his medical exam: "[t]he veteran claimed ... occasional headaches as a residual [of his head injury]." 71a. Nowhere in the record did the agency note disagreement with that report of his symptoms. Implications deemed clear in hindsight cannot substitute for the explicit contemporaneous reason-giving Congress required.

b. The statements in the VA's 1991 internal rating decision (69a-72a) are irrelevant to the adequacy of the notice provided to Mr. Steele. As explained in the petition, and noted by Mr. Steele during oral argument, the rating decision was never published or sent to Mr. Steele; it was not the VA's practice at the time to do so. Pet. 17 n.3; Oral Arg. at 15:02-15:24. Mr. Steele's opening brief before the Federal Circuit consistently pointed to the defective *notice letter* as

the basis for VA’s noncompliance with its notice obligation.⁴ The government acknowledged this argument but never made any showing that anything beyond the notice letter was provided to Mr. Steele.⁵ Rather than engaging with the fundamental and squarely presented question of what information was conveyed to Mr. Steele, the Federal Circuit elected to dispose of the issue as “forfeited.” 15a n.5. It was not and could not be. Regardless, the government concedes that nothing in the rating decision supplies the explicit statement of “the reason(s) for the decision” on Mr. Steele’s headache claim that is undisputably missing from the 1991 notice letter. Opp. 12 (“[t]o be sure, neither the decision nor the letter explicitly stated” the VA’s purported reason for the decision).

c. The “broader context” of the VA’s 1991 notice likewise does not and cannot establish the clarity of what the VA *stated* to Mr. Steele. Opp. 13.

i. There was no “point-by-point correspondence between petitioner’s benefits claim and the VA’s responsive documents” that “confirmed that the VA had fully resolved petitioner’s disability claim.” Opp. 13. The scope of Mr. Steele’s claims was not limited to the

⁴ See *Steele v. Collins*, No. 23-2049, Dkt. No. 10, at 5 (Fed. Cir. Oct. 12, 2023) (“The Veterans Court’s decision to affirm the Board’s finding that the VA’s September 12, 1991 notice was not defective as a matter of law is erroneous”).

⁵ See *Steele v. Collins*, No. 23-2049, Dkt. No. 13, at 19-20 (Fed. Cir. Oct. 12, 2023) (“Mr. Steele’s primary argument on appeal is that the VA’s September 12, 1991 notice was defective because it purportedly failed to satisfy the notice requirements set forth at 38 C.F.R. § 3.103”).

initial form he completed. As was typical, the symptoms and conditions raised during his medical exam, including ongoing headaches, became pending disability claims for benefits. 3a; 71a. The fact that Mr. Steele had a pending benefits claim for headaches in 1991 that was separate from the claim for scars adjudicated in the 1991 notice letter is not in dispute. *See* Opp. 8-9. In affirming the implicit denial, the Federal Circuit held that “by its very nature, every implicit denial of a claim rests on the VA’s explanations and findings made in support of an explicit decision on *another claim*.” 11a.⁶

This clarifies the government’s knife wound analogy. Opp. 15. The analogy assumes that the veteran made no claim for an ongoing condition at all. Thus, there was no need to state a decision that addressed any ongoing disability. If the veteran had raised a claim for an ongoing condition associated with the knife wound (*e.g.*, numbness, pain, restricted motion), then a denial would indeed need to address that claim.

ii. Mr. Steele’s representation by a veterans service organization (“VSO”) in submitting his initial claim cannot support the adequacy of the notice provided to him or his understanding of that notice. Opp. 13. VSO representatives are not attorneys, and Congress intentionally enacted the VBA’s notice provision for the benefit of unrepresented claimants. Pet. 7.

⁶ Even if Mr. Steele’s headaches and scars were part of a single claim, Congress made clear in enacting the notice statute that the obligation to provide a “statement of the reason” for each denial of “a benefit sought” extended even to “partial[]” denials of claims. 135 Cong. Rec. H9110, 1989 U.S.C.C.A.N. 1856, 1860 (Explanatory Statement).

The VA itself treats claimants represented by VSOs as *pro se*, as it did for Mr. Steele. 35a. There is no indication in this case that Mr. Steele’s representative ever received a copy of his notice letter, and the VA’s failure to copy representatives on notices was well documented. See U.S. GAO, *Veterans’ Benefits: Improvements Needed in Processing Veterans’ Disability Claims*, HRD-89-24, at 16, 31 tbl.11.1 (1989).

iii. Finally, Mr. Steele’s “inaction” on his claims in the years after 1991 says nothing about the adequacy of the notice he received. Opp. 13. Setting aside its irrelevance to the adequacy of the VA’s conduct, it is unclear what the government expects a disabled, uncounseled claimant in Mr. Steele’s shoes to do when the VA ignores his claim. If any explanation were warranted, the record sheds light on what the government omits: By the time Mr. Steele next reached out to the VA for benefits in 2013, he had become profoundly disabled, suffering from “memory loss, shaking hands, depression, and fatigue” resulting from his head injury that warranted a 50% disability rating. 3a-4a. The government cannot rightfully place the burden on him to correct the VA’s errors.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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