

No. 25-482

IN THE
Supreme Court of the United States

JULIEN P. CHAMPAGNE,

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 *AMICUS CURIAE* THE NATIONAL
LAW SCHOOL VETERANS CLINIC CONSORTIUM
IN SUPPORT OF PETITIONER**

SETH M. OWENS
BETTY & MICHAEL D. WOHL
VETERANS LEGAL CLINIC
SYRACUSE UNIVERSITY
950 Irving Avenue
Syracuse, NY 13244

REBECCA L. FELDMANN
WIDENER UNIVERSITY
COMMONWEALTH LAW SCHOOL
3800 Vartan Way
Harrisburg, PA 17110

JUDY CLAUSEN
Counsel of Record
VETERANS AND SERVICEMEMBERS
LEGAL CLINIC
UNIVERSITY OF FLORIDA
LEVIN COLLEGE OF LAW
309 Village Drive
P.O. Box 117620
Gainesville, FL 32611
(352) 273-0800
jclausen@law.ufl.edu

Counsel for Amicus Curiae

131669



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(800) 274-3321 • (800) 359-6859

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INTEREST OF AMICUS CURIAE¹

The National Law School Veterans Clinic Consortium (“NLSVCC”) submits this brief in support of the petition of Petitioner Julien P. Champagne. The filing of this brief was authorized by the Board of the NLSVCC, a 501(c)(3) organization.

The NLSVCC is a collaborative effort led by the nation’s law school legal clinics, dedicated to addressing the unique legal needs of U.S. military veterans and supporting law school veterans clinics nationwide. The NLSVCC believes that law school veterans clinics play a fundamental role in safeguarding and advocating for veterans’ legal rights, including by advancing scholarship and training advocates for veterans.

The NLSVCC works with like-minded stakeholders to support and advance common interests with the U.S. Department of Veterans Affairs (VA), Congress, state and local veterans service organizations, court systems, educators, and other entities for the benefit of veterans. It also supports the dual teaching and advocacy missions of the nation’s law school veterans clinics through cross-clinic collaboration.

The NLSVCC’s interest in Veteran Champagne’s petition stems from our members’ commitment to

1. In compliance with Rule 37.2, counsel for amicus curiae provided notice to all parties of its intention to file an amicus brief. In compliance with Rule 37.6, *amicus* affirms that 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.

serving the legal interests of veterans, including those like the Petitioner who have service-connected cognitive impairments and must venture into the bureaucratic quagmire of the VA claims process. As an organization whose members are veterans' advocates and scholars, *amicus* NLSVCC has an important interest in requesting that this Court issue a decision in support of Veteran Champagne and similarly situated veterans, correct the Federal Circuit's interpretation of 38 C.F.R. § 3.151(a), and ensure that the VA is bound by its duty to "render a decision [for a veteran] which grants every benefit that can be supported in law." *See* 38 C.F.R. § 3.103(a).

SUMMARY OF THE ARGUMENT

The VA's duties to veterans are essential to the "pro-claimant" nature of the VA disability system. *Comer v. Peake*, 552 F.3d 1362, 1368 (Fed. Cir. 2009); *see also Bufkin v. Collins*, 604 U.S. 369, 373 (2025) (noting the "pro-veteran policy choice that dates back to the post-Civil War era"). VA claims procedures and its accompanying duties are designed to allow veterans seeking benefits for disabilities – including disabilities that impair cognition or executive function like Mr. Champagne's – to access the benefits to which they are legally entitled. Yet VA's narrow construction of 38 C.F.R. § 3.151(a) catches veterans like Mr. Champagne in a paradox: it requires them to identify the "greater benefit" to which they would be entitled, even for disabilities that impair their ability to make this determination.

VA's duty under 38 C.F.R. § 3.151(a) to ensure that veterans receive the "greater" of service-connected disability compensation or pension benefits is critical for

the significant number of veterans with a service-connected cognitive impairment—like Veteran Champagne’s cerebellar degenerative disorder (CDD). Veterans with traumatic brain injuries (TBI) and toxic exposure can exhibit cognitive impairment, as well, as can veterans with post-traumatic stress disorder (PTSD). These veterans are most at risk for indigence, homelessness, and death by suicide. The difference between pension and disability compensation can be the difference between poverty and getting by. Allowing the VA to decide when its duty to find the “greater benefit” to which the veteran is entitled places additional risk on this vulnerable population.

Reading 38 C.F.R. § 3.151(a) to require VA to find the “greater benefit” to which the veteran is entitled in all cases is further appropriate because servicemembers transitioning out of the military have historically received little guidance on how to apply for VA benefits. For Veteran Champagne and others who served before 1991, a formal Transition Assistance Program (TAP) did not exist. Congress created TAP in 1991 and revised the program multiple times to address veterans’ needs. However, servicemembers still struggle to access information about VA benefits applicable to their circumstances. The shortcomings of TAP’s coverage of VA benefits further supports Veteran Champagne’s reading of 38 C.F.R. § 3.151(a).

Finally, the VA’s historically interchangeable use of the terms “pension” and “compensation” must be considered when interpreting 38 C.F.R. § 3.151(a). The law conflated veterans’ pension and service-connected compensation for almost one hundred years. Vernacular understandings of “pension” and “compensation,” combined with language

in modern VA forms, magnify veterans' confusion. In this context, it becomes critical that 38 C.F.R. § 3.151(a) requires VA adjudicators to consider an application for compensation as an application for pension, and vice versa.

Given this context, the Federal Circuit's interpretation of 38 C.F.R. § 3.151(a) runs afoul of Congress's intent to give the "benefit of the doubt" to the veteran "regarding any issue material to the determination of a matter." 38 U.S.C. § 5107(b).

ARGUMENT

I. Many veterans have service-connected cognitive impairments that can limit executive functioning.

The VA's narrow construction of 38 C.F.R. § 3.151(a) presumes veteran claimants have mental competence, the ability to recount specific traumatic details, maintain medical records, and comprehend procedural rules prescribed by the Secretary. Yet, when a "pro-claimant" system fails to account for veterans' cognitive impairments, it risks penalizing them for the neurological consequences of their service. This section shows how conditions common among veterans like TBI, PTSD, and conditions associated with toxic exposure can impact veterans' ability to identify the benefits to which they are entitled and follow the steps that VA requires. Accordingly, reading 38 C.F.R. § 3.151(a) to place the burden of identifying the "greater benefit" with VA in all cases better aligns with VA's "pro-claimant" design.

A. TBI can impair cognition.

Perhaps the condition most commonly associated with veteran cognitive impairments, traumatic brain injury (“TBI”), often causes memory loss, distorted focus, and executive dysfunction that can significantly hinder veterans’ ability to navigate the complex procedural requirements of the VA system. *See* Susan Okie, *Traumatic Brain Injury in the War Zone*, 352 N. ENGL. J. MED. 2043 (2005), <https://www.nejm.org/doi/10.1056/NEJMp058102>.

Historically, TBI was often misdiagnosed as a “concussion,” which delayed recognition of its lasting cognitive effects. David J. Sharp & Peter O. Jenkin, *Concussion is Confusing Us All*, 15 PRACTICAL NEUROLOGY 172 (2015), <https://pn.bmj.com/content/15/3/172>. Evolving from the colloquial term “concussion” to the “signature wound” of the Global War on Terrorism, TBI is now better recognized and studied, revealing high rates of cognitive impairment among veterans. Megan A. Lindberg et al., *Military Traumatic Brain Injury: The History, Impact, and Future*, 39 J. NEUROTRAUMA 1133 (2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9422790/>. More than 185,000 veterans served by the VA today have been diagnosed with at least one TBI. U.S. DEP’T OF VETERANS AFF., *Office of Research and Development: Traumatic Brain Injury (TBI)*, <https://www.research.va.gov/topics/tbi.cfm> (last visited Oct. 18, 2025).

Today, veterans who suffer from TBI face medical and procedural challenges with the VA systems that aim to assist them. TBI disrupts brain systems responsible

for working memory, cognitive flexibility, and other executive functions that impair goal-setting and decision-making – vital skills to navigating the claims process. Crocker et al., *supra* at 69; Alexander V. Libin et al., *Executive Functioning in TBI from Rehabilitation to Social Reintegration: COMPASS(goal), a Randomized Controlled Trial*, 2 MIL. MED. RES. 1, 3 (2015), <https://pubmed.ncbi.nlm.nih.gov/26664736/>. Consequently, many veterans with TBI struggle to complete VA forms. A joint study by the Veterans Health Administration and Veterans Benefits Administration found that of 441,639 post 9/11 veterans exhibiting TBI symptoms, only 108,541 – or 24.6% – filed disability claims for TBI-related injuries. Gale Whiteneck, et al., *Two Decades of Department of Veterans Affairs Traumatic Brain Injury Care and Benefits for Veterans of Post-9/11 Conflicts*, 39 J. HEAD TRAUMA REHABIL. E462 (2024), <https://pmc.ncbi.nlm.nih.gov/articles/PMC11387123/>. Notably, the actual number of veterans with TBI is likely higher, due to underreporting and delays in care resulting from misdiagnosis of brain trauma. See U.S. Gov’t Accountability Off. (GAO), GAO-09-108, *Traumatic Brain Injury: Better DOD and VA Oversight Can Help Ensure More Accurate, Consistent, and Timely Decisions for the Traumatic Injury Insurance Program* 12 (2009).

Like Veteran Champagne, veterans with TBI, because of their service-connected injury, struggle to understand eligibility requirements, complete applications, and recognize which claim provides better benefits. These veterans struggle to access the VA system because the claims process demands the exact executive functioning abilities that their injury has compromised. This paradox underscores the VA’s duty to grant every benefit to which

they are entitled—or the greater of two when eligible for both. *See* 38 C.F.R. § 3.103(a); 38 C.F.R. § 3.151(a); *see also* 38 C.F.R. § 3.155(d) (requiring VA to adjudicate “any ancillary benefits” during the claim process “that arise as a result of the adjudication decision,” regardless of whether the veteran asserts entitlement). The Federal Circuit’s interpretation of what the VA “may” do under § 3.151 ignores the larger context design of the VA disability benefits system. This reading risks abdicating the VA’s duties to cognitively impaired claimants, like Veteran Champagne and the over 185,000 veterans with TBIs. U.S. Dep’t of Veterans Aff., Off. Rsch. & Dev., *Traumatic Brain Injury (TBI)*, <https://www.research.va.gov/topics/tbi.cfm> (last visited Oct. 18, 2025).

B. PTSD can impair cognition.

From “shell shock” to “psychiatric casualties,” the U.S. military has recognized the psychological repercussions of combat-related trauma, burdening servicemembers and veterans for more than a century. MAJ Tiffany M. Chapman, *Leave no Soldier Behind: Ensuring Access to Health Care for PTSD-afflicted Veterans*, 204 MIL. L. REV. 1, 6 (2010). PTSD diagnoses have risen gradually, affecting approximately 30% of veterans who served in Iraq and Afghanistan. U.S. Dep’t of Veterans Aff., *How Common is PTSD in Veterans?*, https://www.ptsd.va.gov/understand/common/common_veterans.asp (last visited Oct. 15, 2025). Although PTSD may be less commonly associated with cognitive impairment in the public’s understanding, many of these veterans experience significant impairment in “memory functioning, attentional processes, . . . working memory, and executive functioning.” Genevieve LaGarde et al., *Memory and Executive Dysfunctions Associated*

with Acute Posttraumatic Stress Disorder, 177 PSYCH. RSCH. 144, 146-47 (2010). These impairments affect the abilities required to navigate the VA claims system.

A veteran experiencing such impairments *may* or *may not* be able to distinguish between “pension” and “compensation” benefits or comprehend procedural requirements when filing a claim, but they *will* still be required to complete the process like others. *See* 38 C.F.R. § 3.151 (2019); Laura D. Crocker et al., *Worse Baseline Executive Functioning is Associated with Dropout and Poorer Response to Trauma-Focused Treatment for Veterans with PTSD and Comorbid Traumatic Brain Injury*, 108 BEHAV. RSCH. & THERAPY 68, 73-74 (2018). If the Federal Circuit’s interpretation of 38 C.F.R. § 3.151 stands, the VA’s duties to these veterans are minimized, creating a paradox wherein veterans with cognitive impairments are required to engage in a cognitively demanding process to secure benefits for those cognitive impairments. *See* 38 C.F.R. § 21.1032; 38 C.F.R. § 3.102; 38 C.F.R. § 3.151(a).

C. Toxic burn pit exposure can impair cognition.

Approximately 4 million veterans deployed over the last thirty years were exposed to burn pits. *See* U.S. Dep’t of Veterans Aff., *VA Health Sys. Rsch, HSR&D Adds to the Knowledge about Veterans’ Risk Related to Burn Pit Exposure* (June 2, 2023), <https://www.hsrdr.research.va.gov/impacts/burn-pits.cfm>. These veterans risk developing illnesses that impact cognitive functioning.

A 2025 GAO study found that in a sample of veterans who served in Vietnam from 1964–75, 90% cited concerns

about their toxic exposures to open-air burn pits, often noting that they never received personal protective equipment when in their proximity. *See* U.S. Gov’t Accountability Off., GAO-25-107504, *Information about Veterans’ Exposure to Open-Air Burning in Vietnam* 13–22 (2025). The use of burn pits remained the primary method of waste management in Iraq and Afghanistan until 2010. *See* INST. MED. OF THE NAT’L ACADS. PRESS, *Long-Term Health Consequences of Exposure to Burn Pits in Iraq and Afghanistan* 17 (2011), <https://doi.org/10.17226/13209> (last visited Oct. 25, 2025).

Studies have shown that chronic exposure to the toxins that burn pits emit can result in inflammation, oxidative stress, and neuronal damage, which can contribute to neurodegenerative diseases and cognitive impairment. Athena W. Brooks et al., *Neuroinflammation and Brain Health Risks in Veterans Exposed to Burn Pit Toxins*. 25 INT. J. MOL. SCI. 1, 1 (2024). Moreover, the permeability of the blood-brain barrier (BBB) can be affected by chronic exposures to the toxins emitted from burn pit materials. *Id* at 3. Additionally, veterans exposed to burn pit toxins have higher rates of “neuroinflammatory markers, cognitive impairments, mental health disorders,” and increased risk for brain and other cancers. *Id* at 8. For these veterans with cognitive impairments, like Veteran Champagne and those with PTSD or TBI, navigating the complex procedural processes within the VA disability system can make it exceedingly difficult to properly file claims.

The Promise to Address Comprehensive Toxics (PACT) Act aimed to expand VA healthcare and presumptive conditions for veterans with illnesses related to toxic

exposure. See Pub. L. No. 117-168, 136 Stat. 1759 (2022). Included in these presumptive conditions are various cancers which lead to cognitive impairment—either from the condition itself or from the required treatment. See U.S. Dep’t of Veterans Aff., *Disability Benefits, Exposure to Burn Pits and Other Specific Environmental Hazards* (June 2, 2023), <https://www.va.gov/disability/eligibility/hazardous-materials-exposure/specific-environmental-hazards/>; PDQ® Supportive and Palliative Care Ed. Bd., *PDQ Cognitive Impairment in Adults with Cancer*, NAT’L CANCER INST., <https://www.cancer.gov/about-cancer/treatment/side-effects/memory/cognitive-impairment-hp-pdq> (last accessed 10/18/2025). Often, cognitive symptoms like difficulty remembering, speaking, understanding, concentrating, and other loss of executive functioning begin years before diagnosis. See NAT’L CANCER INST., *Cognitive Symptoms*, <https://www.cancer.gov/rare-brain-spine-tumor/living/symptoms/cognitive> (last visited Oct. 25, 2025); J. Cara Pendergrass et al., *Cognitive Impairment Associated with Cancer: A Brief Review*. 15 INNOV CLIN NEUROSCI. 36, 37 (2018) (identifying cognitive impairment in newly diagnosed patients with cancer).

Like Veteran Champagne and veterans with PTSD or TBI, veterans with cognitive impairment related to toxic exposure may struggle to navigate the VA claims process because of the very condition for which they seek compensation. For these veterans, the Federal Circuit’s interpretation of 38 C.F.R. § 3.151(a) risks undermining the “pro-claimant” nature of the VA. *Comer v. Peake*, 552 F.3d 1362, 1368 (Fed. Cir. 2009).

D. Service-connected cognitive impairments place veterans at a higher risk for homelessness and death by suicide.

Veterans face higher risks of homelessness and death by suicide than other U.S. adults, and the danger is acute for those with service-connected cognitive impairments. Although veteran homelessness has declined since 2009, 32,882 veterans—5.3% of the U.S. adult population—were still unhoused in 2024. Tanya de Sousa, et al., U.S. Dep’t Housing & Urban Dev., *The 2024 Annual Homelessness Assessment Report (AHAR) to Congress* 49 (2024). Because the 2009 AHAR highlighted the plight of over 73,000 homeless veterans, new policy initiatives focused on developing a “housing first” model of programs to provide stability and utilized special healthcare teams designed to address the unique needs of these veterans. *See* U.S. Dep’t Veterans Affs, Off. Rsch & Dev., *Homelessness* (Sep. 30, 2025), <https://www.research.va.gov/topics/homelessness.cfm>; U.S. Dep’t Veterans Affs., *National Center on Homelessness Among Veterans (NCHAV)* (Sep. 30, 2025), <https://www.va.gov/homeless/nchav/index.html>. VA researchers have shown that the most consistent risk factors contributing to veteran homelessness are substance abuse, mental health problems and psychotic disorders (including PTSD), and low income/unemployment. *See* Jack Tsai and Robert A. Rosenheck, *Risk Factors for Homelessness Among U.S. Veterans*, 37 EPIDEMIOL REV. 177–78, 191 (2015).

Similarly, the epidemic of veteran suicide has been recognized as “a public health and national security crisis.” Exec. Off. of the President, *Reducing Military and Veteran Suicide: Advancing a Comprehensive,*

Cross-Sector, Evidence-Informed Public Health Strategy 4 (2021). One study indicated a 102.9% increased likelihood of death by suicide based on veteran status alone. William Hudenko, PhD, Beeta Homaifar, PhD, & Hal Wortzel, MD, *The Relationship Between PTSD and Suicide* (Sept. 30, 2025), https://www.ptsd.va.gov/professional/treat/cooccurring/suicide_ptsd.asp; U.S. Dep't Veterans Aff., *2024 National Veteran Suicide Prevention Annual Report* 4 (Dec. 2024) (hereinafter *VA 2024 Suicide Prevention Report*). To address this issue, VA has implemented early interventions, crisis hotlines, interagency task forces, national suicide prevention campaigns, and other interdisciplinary approaches. See White House, *Reducing Military and Veteran Suicide: Advancing a Comprehensive, Cross-Sector, Evidence-Informed Public Health Strategy* 4-8 (2021) (discussing the plethora of federal programs aimed at reducing veteran deaths by suicide). Despite these efforts, the rate of veteran suicide continues to remain higher than that of non-veteran adults because of the correlation to combat wounds, including PTSD. See *VA 2024 Suicide Prevention Report* at 4; see also Tim A. Bullman, MA, and Han K Kang, DrPH, *The Risk of Suicide among Wounded Vietnam Veterans*, 86:5 AM. J. PUB. HEALTH 662, 666 (1996) (correlating multiple combat wounds or being hospitalized for a combat wound to an increased risk for suicidal behavior); Matthew Jakupcak, et al., *PTSD as a Risk Factor for Suicidal Ideation in Iraq and Afghanistan War Veterans*, 22:4 J. TRAUMATIC STRESS 303, 305 (2009) (finding PTSD can make a veteran four times more likely to report suicidal ideation even when controlling for age, depression, and substance abuse).

A common thread among these vulnerable veterans is their service-connected cognitive impairments. While

approximately 65% of homeless veterans utilized the VA's Health Care for Homeless Veterans (HCHV) and the VA's Homeless Chronically Mentally Ill (HCMI) Programs, "[n]early 70 percent of veterans who end their lives by suicide have not recently received healthcare services from the [VA]." Nat'l Coalition for Homeless Veterans, *What are Risk Factors for Veteran Homelessness?* (Sept. 30, 2025), <https://nchv.org/veteran-homelessness/>; Exec. Order No. 13,861, National Roadmap to Empower Veterans and End Suicide, 84 Fed. Reg. 8585, 8585 (Mar. 8, 2019). These statistics highlight the challenges faced by these cognitively impaired veterans and the importance of ensuring their access to VA benefits.

The VA's duties to veterans, embedded in statute and regulation, risk being diminished by the Federal Circuit's ruling. *See Bufkin v. Collins*, 145 S. Ct. 728, 734 (2025) (quoting *Henderson v. Shinseki*, 562 U.S. 428, 431 (2011)) ("Congress designed the VA's adjudicatory process to function 'with a high degree of informality and solicitude for the claimant.'"). These considerations underscore the need to interpret 38 C.F.R. § 3.151(a) consistently with the history and purpose of the overarching statutory framework. *Kisor v. Wilkie*, 588 U.S. 558, 575 (2019).

II. The historic inadequacy of transition programs further underscores the importance of interpreting 38 C.F.R. § 3.151(a) in a manner consistent with the pro-claimant statutory framework.

Shortcomings in transition programs leave veterans uncertain as to how to identify and apply for benefits to which they are entitled. Early programs, including those for veterans who served and were discharged around the same time as Veteran Champagne provided

scarce coverage on how to apply for earned benefits. *See* Veterans' Readjustment Assistance Act of 1952, Pub. L. No. 82-550, 66 Stat. 663 (1952). Although there has been progress from initial transition programs, programming devotes minimal time to the preparation of veterans' benefits like compensation and pension. *See* U.S. Dep't of Veterans Aff., Off. Transition & Econ. Dev. (TED), *Post-Separation Transition Assistance Program (TAP) Assessment (PSTAP) 2019 Cross-Sectional Survey Report* 34 (2020), <https://benefits.va.gov/TRANSITION/docs/pstap-assessment.pdf>.

Because veterans cannot usually attain legal help until the appeals stages and Veterans Service Organizations are not universally accessible, many must rely on their own knowledge to fill out the proper forms. Without guidance on the meanings of and differences between VA terms, such as "compensation" and "pension," mistakes by the filing veteran are inevitable. *See* 38 U.S. Code § 5904(c) (1); Julie A. Whitworth, Brian Smet, & Bridget Anderson, *Reconceptualizing the U.S. Military's Transition Assistance Program: The Success in Transition Model*, 6 J. Veterans Stud. 25, 25 (2020), <https://doi.org/10.21061/jvs.v6i1.144>.

Veteran Champagne, and others like him, should not bear the burden of structural pitfalls, like the compensation and pension form, when they were not provided training or guidance on how to avoid them. 38 C.F.R. § 3.151(a) should be interpreted with this important context in mind in a manner that comports with the intentionally veteran-friendly statutory framework.

A. Historically, veteran transition programs have had mixed success.

Veterans' transition programs have had varied success, as evidenced by the evolving legislation to aid veterans after discharge. During World War II, Congress passed the G.I. Bill, which aimed to assist veterans' adjustment to civilian life via funds for education, home loans, and readjustment allowances for unemployed veterans. *See* Servicemen's Readjustment Act of 1944, Pub. L. No. 78-346, 58 Stat. 284 (1944). Congress continues to amend the G.I. Bill to better suit veterans' needs. *See* Veterans' Readjustment Assistance Act of 1952, Pub. L. No. 82-550, 66 Stat. 663 (1952) (extending benefits to Korean War veterans and adding safeguards against benefits abuse); GI Bill Amendments Act of 1979, Pub. L. No. 96-22, 93 Stat. 47 (1979) (expanding VA healthcare programs and disability benefits); Veterans' Rehabilitation and Education Amendments of 1980, Pub. L. No. 96-466 (1980) (expanding rehabilitation programs and education provisions); Post-9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252, Title V, §§ 5001–5003, 122 Stat. 2357 (2008) (expanding educational benefits after noting the previous program was outmoded); Harry W. Colmery Veterans Educational Assistance Act of 2017, Pub. L. No. 115-48 (2017) (further expanding educational assistance by removing time limit for certain veterans). For generations of veterans, offboarding related to available benefits, and application guidance has been inadequate because official programming to train veterans about benefits and how to access them did not begin until 1991. *See* National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510, 104 Stat. 1485 (1990).

Today, law school clinics nationwide serve generations of veterans who struggle to understand the VA claims process, in part because the veterans received little to no information during their separation. These veterans find the pension and compensation applications difficult to navigate on their own. In fact, “[s]ixty percent of these servicemembers describe ... navigating [VA] programs, services, and benefits as challenging.” *See* Whitworth, Smet & Anderson, *supra*, 25. In a claimant-friendly system, this context should be considered.

B. Congress established the Transition Assistance Program (TAP) to mitigate veterans’ challenges when transitioning from service to civilian life.

The “pro-claimant” benefits system Congress envisioned is indispensable, given the historical inadequacy of programs to prepare servicemembers to transition to civilian life. Recognizing the challenges of this transition, Congress authorized the first formal Transition Assistance Program (“TAP”) in the National Defense Authorization Act for Fiscal Year 1991. *See* Kristy N. Kamarck, Cong. Rsch. Serv., R48114, *Military Transition Assistance Program (TAP): Background and Issues for Congress*, Intro, 5 (June 27, 2024), <https://www.congress.gov/crs-product/R48114>. TAP strove to “implement a uniform, aggressive program” requiring the military to provide pre-separation counseling on veteran benefits and services, government-sponsored employment programs, and job-training assistance. S. Rep. No. 101-384, at 173 (1990). While TAP represented progress, its implementation did not fully prepare servicemembers to access earned benefits and resources. TAP’s shortcomings were especially pronounced in its early years, when

it primarily targeted workforce reintegration and failed to address other aspects of transition. U.S. Gov't Accountability Off., GAO-05-544, *Military and Veterans' Benefits: Enhanced Services Could Improve Transition Assistance for Reserves and National Guard* 8 (May 2005).

Initially, TAP provided only a few days of generalized instruction on post-service employment and job training. U.S. Dep't of Veterans Affs., *The Military to Civilian Transition 2018* 6 (2018), <https://www.benefits.va.gov/TAP/docs/mct-report-2018.pdf>. This training prioritized job placement over education about VA benefits and was not grounded in research-based data on supporting individuals in periods of transition. See Whitworth, Smet & Anderson, *supra*, at 25–35. As late as 2004, the military identified TAP's central goal as preparing servicemembers for “successful reentry into the nation's civilian workforce.” U.S. Gov't Accountability Off., GAO-05-544, *supra*, at 8. TAP participation remained largely voluntary, further limiting the program's reach. *Id.*

In response to these concerns, the National Defense Authorization Act for Fiscal Year 2005 mandated that the GAO review whether TAP addressed servicemembers' needs. *Id.* at Intro. The GAO noted that the TAP components addressing the VA benefits system were not mandatory. *Id.* at 27. Because these components were voluntary, servicemembers struggled to be released from military duty to attend TAP, because commanders prioritized the military mission. *Id.* at 7. The VA reported that training on disability benefits was provided to all servicemembers receiving care from VA providers. *Id.* at 17. However, the GAO could not assess servicemembers'

participation in this TAP component or its success in supporting disabled servicemembers because the VA did not track that information. *Id.* at Intro.

The first three decades of TAP emphasized employability over benefit entitlement, leaving many disabled veterans without adequate knowledge about available VA benefits. This critical gap underscores why the VA’s “pro-claimant” obligations, including those under 38 C.F.R. § 3.151(a), must be construed liberally.

C. Amendments to TAP highlight congressional awareness of the need to address veterans’ confusion on how to access benefits.

Congress amended TAP approximately fifteen times to respond to veterans’ needs, illustrating concerns that a one-size-fits-all approach has not worked. Kamarck, Cong. Rsch. Serv., R48114, *supra*, at 12–13. In 2011, TAP shifted from largely voluntary to mostly mandatory. VOW to Hire Heroes Act of 2011, Pub. L. No. 112–56, 125 Stat. 713 (2011). TAP faced another overhaul in 2019, moving the training up in the transition timeline. John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115–232, 132 Stat. 1636 (2018). As TAP exists today, there is one day of training on disability benefits. Kamarck, Cong. Rsch. Serv., R48114, *supra*, at 2.²

2. To their credit, the VA and DoW have also attempted to reduce the post-separation gap in benefits delivery through the Benefits Delivery at Discharge (BDD) program, which allows servicemembers within 90–180 days of separation to file for disability-compensation benefits while still on active duty. U.S. Dep’t of Veterans Affairs, Benefits Delivery at Discharge (“BDD”) Program (Apr. 16, 2025), <https://www.va.gov/benefits/benefits->

Unfortunately, surveys of veterans have revealed that existing programs have not been entirely successful in creating a smooth transition from service to civilian life. For example, a VA survey found “many respondents said they needed more time with the information provided within the VA briefings.” TED, *PSTAP 2019 Cross-Sectional Survey Report*, *supra*, 34. Veterans rated the VA briefings as the most helpful part of TAP, but they wanted more, stating, “There are so many benefits and so little time to know about them.” *Id.* at 2, 35. Similarly, another survey found that “[o]nly 15% of veterans strongly agree[d] that they got good guidance on VA benefits and resources when exiting the military.” Allsup, *Navigating VA Disability Benefits* 5 (2022), <https://www.allsup.com/media/jftmrdh/allsup-veterans-survey-report-nov2022.pdf>.

Although Congress intended TAP to facilitate a smooth transition from military to civilian life, barriers preventing TAP from functioning as Congress intended have limited TAP’s success. Contrary to assertions from the military and the VA, TAP continues to employ a “one-size-fits-all” model that struggles to meet the diverse needs and capacities of separating servicemembers. *See* Whitworth, Smet & Anderson, *supra*, at 25. As TAP evolves, its shortcomings in this period of reform have fallen most heavily on those least equipped to manage transition — disabled veterans, including those with

delivery-discharge-program.asp (explaining that the BDD program “allows Service members ... to apply for VA disability compensation benefits between 180 to 90 days prior to separation”). However, the BDD program is underutilized and is only available to certain servicemembers during a narrow window of opportunity (90-180 days before separation from active duty).

cognitive impairments like Veteran Champagne. These inadequacies illustrate why Congress placed the burden on the VA, not the veteran, to identify and develop claims within a “pro-claimant” framework. Yet the Federal Circuit’s restrictive reading of § 3.151(a) undermines that congressional safeguard, leaving the most vulnerable veterans exposed to procedural quagmires that Congress designed the statute to prevent.

For Veteran Champagne and others, TAP did not exist and, even for veterans with access to the program, TAP’s training on VA benefits is not sufficient. These shortcomings support reading 38 C.F.R. § 3.151(a) in a manner that is consistent with the VA’s overarching statutory framework and pro-claimant design.

III. The VA’s historically interchangeable use of the terms “pension” and “compensation” is an essential point of context underlying the interpretation of 38 C.F.R. § 3.151(a).

The VA’s historically interchangeable use of the terms “pension” and “compensation” creates ambiguity and provides essential context in interpreting 38 C.F.R. § 3.151(a). Historical conflation of the two programs has leaked into vernacular use, meaning that the public and veterans alike often refer to pension and compensation interchangeably even today. The history of veterans’ “compensation” and “pension” benefits began at the founding of the nation. The newly minted federal government, fresh off the heels of the Revolutionary War, decided to provide a benefit to “invalids who were wounded and disabled during the war.” Act of September 29, 1789, 1 Stat. 95. Thirty years later, Congress issued another

monetary benefit program, this time for veterans who were “by reason of [their] reduced circumstances in life . . . in need of assistance from his country for support.” Act of Mar. 18, 1818, § 1, 3 Stat. 410.

The twin “compensation” and “pension” systems evolved piecemeal over the twentieth century. *See generally* James D. Ridgway, *Recovering an Institutional Memory: The Origins of the Modern Veterans’ Benefits System from 1914 to 1958*, 5 VETERANS L. REV. 1 (2013). During that time, Congress and the public conflated the “compensation” and “pension” systems, treating them as unified. *See* James D. Ridgway, *The Splendid Isolation Revisited: Lessons from the History of Veterans’ Benefits Before Judicial Review*, 3 VETERANS L. REV. 135, 170 (2011). Veterans receiving either benefit were receiving a “pension.” *See* Pub. L. No. 73-2, § 1, 48 Stat. 8 (1933); *see also* Exec. Order No. 6156 (1933). Some “pensions” were even reserved for veterans with service-connected disabilities. *See* 38 U.S.C. § 155 (1926). Legislative enactments in 1934 similarly demonstrate the historic conflation of “pension” and “compensation.” *Compare* 38 U.S.C. §§ 151–52 (1934) (service-connected disability “pension” for Civil War veterans) *and* §§ 161–62 (non-service-connected “pension” for peacetime veterans) *with* § 471 (service-connected disability compensation for WWI veterans) *and* § 700 (service-connected benefits to WWI veterans “entitled ‘compensation’ and not ‘pension’”).

Most confusing of all, until 2019, a veteran could apply for either compensation or pension using a single form. *See* U.S. Dep’t of Veterans Aff., *M21-1, Adjudication Procedures Manual* Part II, Subpart iii, Chapter 1, Section A.2.a (Nov. 4, 2024), <https://tinyurl.com/bdzvesff>

(last visited Oct. 29, 2025 (discontinuing VA Form 21-526 as of Feb. 19, 2019 in favor of VA Form 21-526EZ); *see also* U.S. Dep’t of Veterans Aff., *Agency Collection (Veteran’s Application for Compensation and/or Pension): Activity Under OMB Review*, 79 Fed. Reg. 15621 (Mar. 20, 2014). Although VA now uses separate forms to allow veterans to apply for compensation or pension, the agency still uses a single form to allow veterans to establish the effective date of a claim for compensation, pension, or both. *See* VA Form 21-0966, Intent to File a Claim for Compensation and/or Pension, or Survivors Pension and/or DIC 2 (hereinafter VA Form 21-0966, <https://www.vba.va.gov/pubs/forms/VBA-21-0966-ARE.pdf> (last visited Oct. 24, 2025)); *see also* 38 C.F.R. § 3.155(b) (discussing how a veteran may establish their intent to file a claim).

Today, many veterans file their claims *pro se*. *See* U.S. Court of Appeals for Veterans Claims, Fiscal Year 2020 Annual Report 1, <https://www.uscourts.cavc.gov/documents/FY2020AnnualReport.pdf> (last visited Oct. 29, 2025) (noting 41% of petitions and 23% of appeals to that court were *pro se* in FY2020). Completing VA forms correctly can be daunting for veterans who are unrepresented. As discussed above, this challenge becomes even more daunting for veterans with cognitive disabilities resulting from their service. For example, the VA’s form allowing veterans to establish their intent to file a claim (and thus establish that claim’s effective date), allows veterans to choose compensation, pension, or both as the benefit for which they are applying, by checking one or two boxes. By contrast, the same form has a single box for a veteran’s surviving dependent to elect survivor’s pension “and/or” disability and indemnity compensation. VA Form 21-0966, *supra*, at 2. The fact that a single VA

form may establish the effective date for any, and more than one, of multiple types of benefits only compounds the confusion that veterans may face due to the historic interchangeability of “compensation” and “pension.”

Potentially adding to that confusion is the name of the compensation application itself, which highlights that it is an application not just for disability compensation, but also for “related compensation benefits.” U.S. Dep’t of Veterans Aff., VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits 9, <https://www.vba.va.gov/pubs/forms/VBA-21-526EZ-ARE.pdf> (last visited Oct. 24, 2025) (hereinafter VA Form 21-526EZ). The form’s instructions list 12 variations of “compensation” benefits covered by this form. *Id.* at 1. Although pension is not one of those covered benefits, the length and title of the form, combined with the historic interchangeability of terms and the vernacular definitions of “compensation” and “pension” can, understandably, cause confusion. That confusion is only heightened for those veterans whose service left them with cognitive disabilities.

Additionally, when a *pro se* veteran reviews VA Form 21-526EZ, the veteran may use a vernacular understanding of the form’s language to determine how to proceed. This creates a possibility of conflicting definitions, as the VA’s language diverges from the plain English meaning of key words. *See e.g., Struck v. Brown*, 9 Vet. App. 145, 154 (1996) (distinguishing the definition of ‘insanity’ in 38 C.F.R. § 3.354 as unique to veterans law); *see also Zang v. Brown*, 8 Vet. App. 246, 255–56 (1995) (addressing the insanity definition and chronicling a “confusing tapestry of VA regulations” that it urges

review and revision of). The VA provides a definition of “compensation” that is, appropriately, narrower than the colloquial understanding of that term. Compare 38 CFR §3.4(a) (defining VA disability compensation) to Merriam-Webster Dictionary, *Compensation*, <https://www.merriam-webster.com/dictionary/compensation> (last visited Oct. 29, 2025) (defining compensation more broadly). The colloquial understanding of “pension” incorporates characteristics of, while differing from, VA’s definitions of “pension” and “compensation.” See Merriam-Webster Dictionary, *Pension*, <https://www.merriam-webster.com/dictionary/pension> (last visited Oct. 29, 2025) (defining “pension,” *inter alia*, as “a fixed sum paid regularly. . . under given conditions to a person following retirement from service”). These differing definitions further highlight the challenges that veterans face when determining which form(s) to file.

Congress and the law conflated veteran pensions and service-connected compensation for almost one hundred years. Vernacular understandings of “pension” and “compensation,” combined with language in even modern VA forms, compounds that confusion. In this context, it is critical that 38 C.F.R. § 3.151(a) require VA adjudicators to consider an application for compensation as an application for pension, and vice versa. This interpretation is the most reasonable reading of the regulation in light of the “solicitude of Congress for veterans” and the rest of the statutory scheme. See *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428 (2011) (quoting *United States v. Oregon*, 366 U.S. 643, 647 (1961)); see also *Roberson v. Principi*, 251 F.3d 1378, 1384 (Fed. Cir. 2001) (recognizing the VA’s duty to “determine all potential claims raised by the evidence”).

CONCLUSION

Compensation and pension are crucial VA benefits. For most of the VA's history, those two benefits have been intricately intertwined. Historically, an application for one of these benefits has been treated as an application for the other. Moreover, the VA has unique duties to assist claimants that are especially critical for veterans with cognitive impairment resulting from in-service injuries or toxic exposure. In this "uniquely pro-claimant" system, where the VA has an affirmative duty to award the greater of those two benefits, it must also have a corresponding responsibility to determine which is the appropriate benefit to award. Accordingly, *Amicus* respectfully requests that this Court grant the petition for certiorari and correct the Federal Circuit's interpretation of 38 C.F.R. § 3.151(a).

Respectfully submitted,

<p>SETH M. OWENS BETTY & MICHAEL D. WOHL VETERANS LEGAL CLINIC SYRACUSE UNIVERSITY 950 Irving Avenue Syracuse, NY 13244</p> <p>REBECCA L. FELDMANN WIDENER UNIVERSITY COMMONWEALTH LAW SCHOOL 3800 Vartan Way Harrisburg, PA 17110</p>	<p>JUDY CLAUSEN <i>Counsel of Record</i> VETERANS AND SERVICEMEMBERS LEGAL CLINIC UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW 309 Village Drive P.O. Box 117620 Gainesville, FL 32611 (352) 273-0800 jclausen@law.ufl.edu</p>
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Counsel for Amicus Curiae