No.

IN THE

Supreme Court of the United States

CLINTON SIPLES,

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In the uniquely pro-claimant veterans-benefits system, Congress has provided that an otherwise-final agency decision is subject to revision if that decision was based on "clear and unmistakable error," or "CUE." Regulations and longstanding agency practice dictate that CUE is "the kind of error, of fact or of law, that when called to the attention of later reviewers compels the conclusion, to which reasonable minds could not differ, that the result would have been manifestly different but for the error." 38 C.F.R. §§ 3.105(a)(1)(i), 20.1403(a), (c). And, as this Court confirmed in *George v. McDonough*, 596 U.S. 740 (2022), the error must be based on the law that applied at the time of the original decision, not a later change in law or interpretation.

In the decision below, the Federal Circuit misread *George* to require more. It held that a CUE claimant must show not only that a legal error had a clear effect on the outcome of a benefits decision, but also that the law itself was undebatably clear at the time of the prior decision.

The question presented is: To establish "clear and unmistakable error" based on legal error, must a veteran show that there was an error of law at the time of the challenged decision which undebatably altered the outcome of the benefits decision, as the regulatory text provides, or must a veteran also show that the meaning of the law itself was undebatable, as the Federal Circuit held?

RELATED PROCEEDINGS

Clinton Siples v. Douglas A. Collins, Secretary of Veterans Affairs, No. 22-1528 (Fed. Cir. judgment entered Feb. 7, 2025).

Clinton Siples v. Denis McDonough, Secretary of Veterans Affairs, No. 19-7957 (Vet. App. judgment entered Jan. 7, 2022).

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INTRODUCTION

This case presents an important question of veterans law that requires resolution following the Court's decision in *George v. McDonough*, 596 U.S. 740 (2022); that the Federal Circuit, which has exclusive jurisdiction over the issue, decided incorrectly and in a manner that contravenes *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024); and that will, without this Court's intervention, deprive untold numbers of veterans of the benefits that they earned through service.

In the strongly pro-claimant veterans-benefits system, otherwise final decisions by the Department of Veterans Affairs (VA) remain subject to revision on grounds of "clear and unmistakable error," or "CUE." 38 U.S.C. §§ 5109A, 7111. CUE might occur, for example, if critical facts were not before the agency, or if the agency misapplied the law. If a veteran demonstrates CUE, the original decision is corrected, and the veteran receives the benefits he should have gotten all along.

Four terms ago, in *George*, this Court held that CUE is a narrow form of error based solely on "the law that existed at the time of the prior" adjudication. 596 U.S. at 747 (internal quotation marks omitted). So a veteran claiming CUE because of a legal error in an earlier benefits decision must demonstrate that that decision was wrong based on the law as it was then, and cannot invoke subsequent changes. *Id.*

The inquiry thus requires an assessment of *what the law was* at the time of the challenged adjudication. In the opinion below, the Federal Circuit went far beyond *George* and held that CUE requires the veteran to establish that the meaning of the law at the time of the prior adjudication not only favored him, but was "*undebatably*" clear. Pet. App. 16a (emphasis added). According to the Federal Circuit, if there is any room for disagreement as to what the meaning of a statute or regulation governing the original benefits decision was, CUE revision is not available.

That is not the standard. The text of the CUE regulation and traditional agency practice establish that this remedy is available when there was (1) an error in the prior adjudication that (2) undebatably altered the outcome of that adjudication. *See* 38 C.F.R. §§ 3.105(a)(1)(i), 20.1403(a), (c). In other words, what must be "undebatable" is not the meaning of the governing law, but that the error in applying that law resulted in a less favorable benefits determination. The Federal Circuit's decision conflated the two parts of the analysis and erroneously heightened the standard for showing what law governed the original decision.

The Federal Circuit's holding is also contrary to *Loper Bright*. The essential teaching of *Loper Bright* is that the task of ascertaining what the law is—or what the law was—does not end simply because the law appears ambiguous or disagreement exists about its meaning. *See* 603 U.S. at 392. Laws, "no matter how impenetrable, do—in fact, must—have a single, best meaning," which adjudicators must pursue

through "independent judgment." *Id.* at 398, 400. Veterans deserve the benefit of "the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment"—"even those [questions] involving ambiguous laws." *Id.* at 391-92. CUE adjudicators are not authorized to abandon their inquiry into what the law was and deny relief merely because there is room for debate.

The Federal Circuit's decision threatens to raise the bar for CUE so high that it is effectively unattainable. Whether legal meaning can fairly be debated is "in the eye of the beholder"; room for disagreement can almost always be found if one goes looking. *Id.* at 408 (quotation marks omitted). Barring CUE unless a veteran can establish that the law was well and truly undebatable would inevitably result in denying countless veterans the benefits they rightfully earned—the opposite of what Congress intended by creating a special path for veterans to correct erroneous benefits determinations. The decision also threatens to sow systematic confusion in the veterans-benefits system because it opens a conflict with a recent decision of another Federal Circuit panel, which the Federal Circuit declined to resolve en banc. This Court's review is thus urgently needed.

The Court should grant certiorari and reverse.

OPINIONS AND ORDERS BELOW

The decision of the United States Court of Appeals for the Federal Circuit is published at 127 F.4th 1325 and reproduced at Pet. App. 1a-18a. The

decision of the Court of Appeals for Veterans Claims is unreported and reproduced at Pet. App. 19a-28a. The decision of the Board of Veterans' Appeals is unreported and reproduced at Pet. App. 29a-56a. The 2004 decision of the Roanoke Regional Office is unreported and reproduced at Pet. App. 57a-66a.

JURISDICTION

The Federal Circuit entered judgment on February 7, 2025. Pet. App. 1a. A timely petition for rehearing was denied on August 21, 2025. Pet. App. 67a-68a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

38 U.S.C. § 5109A provides in pertinent part:

> A decision by the Secretary under this chapter is subject to revision on the grounds of clear and unmistakable error. If evidence establishes the error, the prior decision shall be reversed or revised.

38 U.S.C. § 7111 provides in pertinent part:

> A decision by the Board is subject to revision on the grounds of clear and unmistakable error. If evidence establishes the error, the prior decision shall be reversed or revised.

38 C.F.R. § 3.105(a)(1)(i) provides in pertinent part:

> A clear and unmistakable error is a very specific and rare kind of error. It is the kind of error, of fact or of law, that when called to the attention of later reviewers compels the conclusion, to which reasonable minds could not differ, that the result would have been manifestly different but for the error. If it is not absolutely clear that a different result would have ensued, the error complained of cannot be clear and unmistakable.

38 C.F.R. § 4.59 provides in pertinent part:

> The intent of the schedule is to recognize painful motion with joint or periarticular pathology as productive of disability. It is the intention to recognize actually painful, unstable, or malaligned joints, due to healed injury, as entitled to at least the minimum compensable rating for the joint.

These statutes and regulations are reproduced in full at Pet. App. 69a-86a.

STATEMENT OF THE CASE

Congress Creates A Uniquely Pro-Claimant System For Veterans-Benefits Adjudication

"The law entitles veterans who have served on active duty in the United States military to receive benefits for disabilities caused or aggravated by their military service." *Shinseki v. Sanders*, 556 U.S. 396, 400 (2009); *see* 38 U.S.C. § 1110. Congress designed the system of veterans-benefits adjudication against

this "uniquely pro-claimant" backdrop. *Harris v. Shinseki*, 704 F.3d 946, 948 (Fed. Cir. 2013); *see United States v. Oregon*, 366 U.S. 643, 647 (1961) ("The solicitude of Congress for veterans is of long standing."). The system is "'unusually protective' of claimants," and the agency claims process is "nonadversarial." *Henderson v. Shinseki*, 562 U.S. 428, 431, 437 (2011). Indeed, as this Court has observed, "[t]he contrast between ordinary civil litigation … and the system that Congress created for the adjudication of veterans benefits claims could hardly be more dramatic." *Id.* at 440.

A veteran seeking disability benefits "must first file a claim with the VA," after which a "regional office of the VA then determines whether the veteran satisfies all legal prerequisites" for benefits. *George*, 596 U.S. at 743. Veterans can appeal the regional office's decision to the Board of Veterans' Appeals, an agency tribunal whose members function like administrative law judges. 38 U.S.C. §§ 7104(a), 7105(b)(1). If the Board denies relief, veterans may then appeal to the Court of Appeals for Veterans Claims (Veterans Court). 38 U.S.C. §§ 7252(a), 7266(a). Congress established the Veterans Court in 1988 as part of the Veterans' Judicial Review Act, which also established judicial review over veterans-benefits claims for the first time. The Veterans Court applies an APA-like standard of review to Board decisions. 38 U.S.C. § 7261. Either party may appeal an adverse Veterans Court decision to the Federal Circuit, which has a more limited scope of review but "shall decide all relevant questions of law," 38 U.S.C. § 7292(d)(1), and ultimately may seek relief in this Court, 28 U.S.C. § 1254(1).

Erroneous Benefits Decisions May Be Revised On Grounds Of Clear And Unmistakable Error

Congress has also codified multiple avenues for collateral review, reflecting its uniquely pro-claimant approach to finality in the veterans' context. In veterans' cases, a "denial of benefits has no formal res judicata effect." *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 311 (1985); *see also* H.R. Rep. No. 105-52, at 2 (1997) ("There is no true finality of a decision" in "[t]he VA claim system."). So, separate from the direct-review process described above, a veteran at any time may seek revision or readjudication of a final benefits decision on two different grounds.

First, a veteran can file a supplemental claim based on "new and relevant evidence." *See* 38 U.S.C. § 5108(a). In general, a veteran who prevails on a supplemental claim is entitled to benefits dating back to the date they filed the supplemental claim, not the date of the original benefits decision. *See* 38 U.S.C. § 5110(a)(1), (3).

Second, a veteran can "ask the Board or regional office to revise a final benefits decision on grounds of 'clear and unmistakable error.'" *George*, 596 U.S. at 744; *see* 38 U.S.C. §§ 5109A (CUE by regional office), 7111 (same standard for CUE by Board). A veteran can make this request "at any time" after the original benefits decision becomes final. 38 U.S.C. §§ 5109A, 7111. If the veteran establishes CUE, she is owed benefits from the time of the original, erroneous decision. 38 U.S.C. §§ 5109A(b), 7111(b); 38 C.F.R. § 3.400(k).

CUE review has deep roots in the veterans-benefits system, dating back at least to a 1928 regulation providing that "the rating board may reverse or amend a decision … where such reversal or amendment is obviously warranted by a clear and unmistakable error." Veterans' Bureau Reg. 187 § 7155 (1928). After undergoing revisions over some decades, in 1959, the regulation was imported into 38 C.F.R. § 3.105, which has been the main regulation governing CUE review ever since. *See Smith v. Brown*, 35 F.3d 1516, 1525 (Fed. Cir. 1994).

Section 3.105 defines CUE as

> the kind of error, of fact or of law, that when called to the attention of later reviewers compels the conclusion, to which reasonable minds could not differ, that the result would have been manifestly different but for the error. If it is not absolutely clear that a different result would have ensued, the error complained of cannot be clear and unmistakable.

38 C.F.R. §§ 3.105(a)(1)(i) (CUE by regional office), 20.1403(a), (c) (CUE by Board, setting out substantively identical standard). Congress codified this longstanding agency practice into statute in 1997. *See* 38 U.S.C. §§ 5109A, 7111.

This Court recently addressed the CUE standard in *George*. VA had denied a veteran's claim for disability benefits "after concluding that his condition predated his military service and was not aggravated by it." 596 U.S. at 744-45. The statute at the time

required VA to prove non-aggravation, but VA's regulation did not impose that burden on the agency; VA adjudicators therefore did not require such proof in Mr. George's case. Decades later, the regulation was invalidated, and Mr. George requested CUE relief. This Court held that CUE does not encompass a subsequent "change in law … or a change in interpretation of law," such as a later-invalidated regulation. *Id.* at 747. CUE relief is available only if a veteran demonstrates that his benefits decision was erroneous "based on the record and law *that existed at the time of the prior VA decision*." *Id.* (quotation and alteration marks omitted).

Mr. Siples Seeks CUE Revision Of His Original Benefits Decision

Clinton Siples joined the Air Force in 1978 and served honorably for 25 years. CAFC App. 29. While serving in the Air Force, Mr. Siples began to receive treatment for bilateral shoulder dislocations. CAFC App. 16. After his retirement, with the help of a non-lawyer representative, he sought benefits for shoulder disability connected to injuries that occurred during service. CAFC App. 11-17, 64. VA's medical examination concluded that his "range of motion" in both shoulders was "limited by pain and pain is the major functional impact." CAFC App. 20. The regional office granted him benefits for this service-connected disability. Pet. App. 57a-58a.

When the regional office grants a disability-benefits claim, it determines the relevant diagnostic code (or "DC"). It then looks to VA's Schedule for Rating Disabilities, which "provides an extensive list

of disabilities identified by unique diagnostic codes, each of which has at least one corresponding disability rating." *Webb v. McDonough*, 71 F.4th 1377, 1378 (Fed. Cir. 2023) (citing 38 U.S.C. § 1155; 38 C.F.R. pt. 4). That rating corresponds to the degree of severity of the veteran's condition, 38 U.S.C. § 1155; C.F.R. § 4.1, and determines the monthly compensation the veteran receives, *see* Dep't of Veteran Affs., Current Veterans Disability Compensation Rates (Dec. 1, 2024), https://perma.cc/T77H-V3XL. In some cases, "it is possible that a particular veteran's disability does not clearly fall under one of the delineated diagnostic codes." *Webb*, 71 F.4th at 1378. In that circumstance, the disability may be rated by analogy to a "closely related" condition in which "the functions affected, … the anatomical localization[,] and symptomatology are closely analogous." 38 C.F.R. § 4.20.

In 2004, the regional office assigned Mr. Siples a 10% disability rating for each shoulder by analogy to DC 5203. CAFC App. 25. That code relates to clavicle or scapula impairment. 38 C.F.R. § 4.71a. But DC 5203 does not mention the limited range of motion that the examiner had diagnosed. Mr. Siples did not appeal the regional office's decision, and that decision became final.

In 2017, Mr. Siples requested that VA revise its decision on the basis of CUE. CAFC App. 26; *see* 38 U.S.C. § 5109A. His CUE claim relied on 38 C.F.R. § 4.59, VA's regulation titled "Painful motion," which had been in place at the time of the 2004 regional office decision. Section 4.59 provides details on identifying painful motion of joints. And it states that the

"intent" of the rating schedule is "to recognize actually painful, unstable, or malaligned joints" and to afford them "at least the minimum compensable rating for the joint." 38 C.F.R. § 4.59. Mr. Siples contended that § 4.59 required the regional office in 2004 to assign him a rating for his painful shoulder motion, and that the "minimum compensable rating" for this disability would be 20% under the relevant diagnostic code, DC 5201. CAFC App. 26; *see* Veterans Benefits Admin., *Department of Veterans Affairs Adjudication Procedures Manual M21-1* ("M21-1 Manual"), at V.iii.1.A.1.a (updated May 2025), https://perma.cc/39ZY-P42T (explaining an "actually painful joint" entitles veteran to minimum compensable rating regardless of whether "the specific criteria" in the DC are met).

The regional office and the Board both denied Mr. Siples's CUE claim. The Board concluded that it was debatable in 2004 whether § 4.59 applied to painful joint motion that, like Mr. Siples's condition, did not involve arthritis. Pet. App. 29a-66a. The first sentence of the regulation reads: "With any form of arthritis, painful motion is an important factor of disability …." 38 C.F.R. § 4.59; Pet. App. 3a-4a. And the regulation contains one other mention of "arthritis of the spine." Certain non-precedential Veterans Court decisions had reached different outcomes on whether the regulation was limited to arthritis claims. The VA Secretary ultimately acknowledged that § 4.59 applies in non-arthritis contexts. *Burton v. Shinseki*, 25 Vet. App. 1, 2-3 (2011). And the Veterans Court agreed: Although "[e]xamining the first sentence [of § 4.59] out of context can lead one to consider that the regulation might apply only to the

evaluation of arthritis claims," looking at the whole regulation, "arthritis is explicitly mentioned only in the first and third sentences and is not the subject of the majority of the regulation." *Id.* at 4.

The Board reasoned that *Burton* could not "provide a basis for finding CUE" because it was issued after Mr. Siples's initial benefits decision. Pet. App. 43a. But the Board also held that the text of § 4.59 alone was not enough, because in 2004 "VA understood § 4.59 to apply solely to cases of arthritis." Pet. App. 22a. In short, the Board required Mr. Siples to show that the correct legal meaning of § 4.59 at the time of the original benefits decision was undebatable. *See* Pet. App. 36a. (characterizing CUE as requiring an "undebatable" legal error).

Mr. Siples appealed, and the Veterans Court affirmed. Pet. App. 19a-28a. The CUE inquiry, it said, asks whether "(1) the adjudicator … incorrectly applied statutes or regulations in effect at the time," "(2) the alleged error was undebatable, not merely a disagreement as to how … the law was applied[,]" and "(3) the commission of the alleged error … manifestly changed the outcome of the decision." Pet. App. 22a. The Veterans Court characterized *Burton* as demonstrating that, before 2011, "there was a prevailing interpretation that § 4.59 *did not* apply to non-arthritis claims, or there was not yet a settled interpretation that § 4.59 *did* apply to non-arthritis claims." Pet. App. 25a. "Either way," the Veterans Court reasoned, "it cannot be said that § 4.59 was undebatably understood to apply to non-arthritis claims in 2004." *Id.*

The Federal Circuit Affirms, In Conflict With Recent Precedent

Mr. Siples appealed to the Federal Circuit, arguing that the Veterans Court erred in requiring § 4.59 to have been "undebatably understood to apply to non-arthritis claims in 2004." CAFC Opening Br. 2. That is because an adjudicator is not "require[d] … to review CUE in the context of how a law could have been understood; rather, CUE is an assessment of what the law actually required." *Id*. As Mr. Siples explained, in the first step of the CUE analysis, VA "must first determine what the regulation means, and then determine whether the RO correctly applied that interpretation." CAFC Reply Br. 6; *see also* CAFC Opening Br. 7-8; CAFC Reply Br. 4. In other words, Mr. Siples took the position that the agency's CUE assessment must start with a determination of what the law was at the time of the original decision, not whether the law was settled or undebatable.

After briefing was complete, the Federal Circuit decided *Perciavalle*, holding that "the language of [a] regulation itself can establish the existence of CUE." 74 F.4th 1374, 1382 (Fed. Cir. 2023). In *Perciavalle*, the veteran requested CUE relief where, at the time of his original benefits decision, there was no on-point authority governing the issue in his case. *Id.* at 1377-78. It was only later that the Veterans Court opined on the issue and VA's General Counsel issued a precedential opinion. *Id.* at 1378. But, citing *George*, the *Perciavalle* panel explained that "the correct CUE inquiry is simply whether the original decision was a 'correct application of a binding regulation' or law, regardless of later changes in the law

or later decisions by the agency or a court." *Id.* at 1382 (quoting *George*, 596 U.S. at 749). "In short, a legal error may be clear for the purpose of CUE despite the fact that there was no preceding court or agency decision on the precise legal question." *Id.*

The panel in Mr. Siples's case ordered supplemental briefing to address *Perciavalle*. CAFC Dkt. 32; *see* CAFC Dkt. 34 (Siples Supp. Br.); CAFC Dkt. 33 (Gov't Supp. Br.).[1] In his supplemental brief, Mr. Siples argued that the Veterans Court improperly "requir[ed] an authoritative source to publish that the plain meaning was the plain meaning" in order to find CUE. CAFC Dkt. 34 at 4. As Mr. Siples pointed out, *Perciavalle* rejected the notion that "unless or until 'a court decision or VA publication' identifies a legal error, 'it cannot be CUE.'" CAFC Dkt. 34 at 4.

The Federal Circuit affirmed the denial of Mr. Siples's CUE claim. The first part of its opinion reaffirmed, at length, *George*'s holding that "a determination that there was 'clear and unmistakable error' must be based on the record and the law *that existed at the time of the prior VA decision*"—something Mr. Siples has never disputed. Pet. App. 11a (quoting 596 U.S. at 747); *see generally* Pet. App. 11a-14a.

The panel then turned to the "correct standard for assessing a legal-based CUE," Pet. App. 15a. It

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[1] The court did not have the benefit of supplemental briefing regarding the significance of *Loper Bright*, because that decision issued after the panel's decision. *See infra* 28 n.2.

framed that standard in terms of whether the law "undebatably" favored Mr. Siples. Pet. App. 15a. First, the panel concluded that, because of "the regulation's express references to arthritis," it could not say that the "plain language of § 4.59 as a whole *clearly applies* to cases beyond those involving arthritic painful motion." Pet. App. 16a (emphasis added). It "emphasize[d]" that it was "not called upon in this case to conclusively determine the correct interpretation of § 4.59." Pet. App. 16a. Next, the panel canvassed Veterans Court decisions issued prior to or around the time of the original 2004 benefits decision. And it concluded there was a "lack of a settled interpretation of § 4.59." Pet. App. 16a. Finally, the panel explained that a 1998 VA General Counsel precedential opinion did not answer the question whether § 4.59 applies to non-arthritis claims, either. Pet. App. 17a-18a. Thus, the Federal Circuit affirmed the CUE denial because "§ 4.59 was not undebatably understood as applying to cases other than arthritis, nor was it so clear on its face as to compel applicability to non-arthritis claims." Pet. App. 18a.

Mr. Siples sought rehearing, explaining that the panel had misapplied the CUE standard in a manner inconsistent with both circuit and Supreme Court precedent. Although Mr. Siples had consistently argued that CUE is not about "how a law could have been understood"—that is, whether the meaning of the law was undebatable—but rather "of what the law actually required," CAFC Opening Br. 2, the government's primary argument against rehearing was that Mr. Siples had forfeited this argument. The

Federal Circuit denied rehearing without explanation. Pet. App. 67a-68a.

REASONS FOR GRANTING THE WRIT

The Court should grant certiorari and correct the Federal Circuit's misconstruction of the CUE standard. CUE revision is available where (1) a benefits decision was erroneous, and (2) that error undebatably altered the outcome of the original decision. But the Federal Circuit's opinion now requires the claimant to show that the meaning of the law governing the original benefits decision was undebatable—a heightened standard for showing error that appears nowhere in the text codifying the CUE standard, is contrary to the traditional CUE inquiry, and conflicts with *Loper Bright*'s instruction to determine the "best" meaning of the law. The Federal Circuit's holding requires this Court's correction because it introduces conflict into the Federal Circuit's caselaw and represents a fundamental misunderstanding of this Court's decision in *George* and the application of *Loper Bright* in the veterans-benefits context.

I. The Decision Below Is Incorrect.

A. CUE calls for a two-step analysis.

1. The CUE statute provides broadly that "[a] decision by the Secretary under this chapter is subject to revision on the grounds of clear and unmistakable error." 38 U.S.C. § 5109A (regional office); *id.* § 7111 (Board). The statute does not define what the phrase "clear and unmistakable error" means.

But as the Court explained in *George* and as noted above (at 8) a "robust regulatory backdrop" fills the gap. 596 U.S. at 746.

The governing regulation, which codifies the longstanding CUE standard, establishes two principal elements. A clear and unmistakable error that can be corrected on collateral review is (1) a legal or factual error (2) that is undebatably outcome-determinative. The regulation defines CUE as "the kind of error, of fact or of law, that when called to the attention of later reviewers compels the conclusion, to which reasonable minds could not differ, that the result would have been manifestly different but for the error." 38 C.F.R. §§ 3.105(a)(1)(i), 20.1403(a), (c).

CUE is thus "narrower than error *simpliciter*." *George*, 596 U.S. at 746-47. Determining whether a benefits decision is infected with CUE and eligible for revision does not turn on the mere existence of "garden-variety 'error,'" *id.* at 746, but requires an adjudicator to perform a sequential two-step analysis.

The first step asks whether the original decision was infected with legal or factual error. Under *George*, the existence of error is based "on the record and the law that existed at the time of the prior VA decision." *Id.* at 747 (quotation and alteration marks omitted); *see also* 38 C.F.R. § 3.105(a)(1)(iii) ("Review for clear and unmistakable error in a prior final decision of an agency of original jurisdiction must be based on the evidentiary record and the law that existed when that decision was made."). The CUE

adjudicator must assess whether there was an error solely based on the record, "binding regulation[s]," and statutory law then in existence. *George*, 596 U.S. at 749.

The second step requires a heightened showing going beyond "error *simpliciter*." *George*, 596 U.S. at 746-47. It asks whether an error identified at step one was undebatably outcome-determinative—meaning that reasonable minds could not dispute that the error resulted in a benefits decision less favorable than the veteran otherwise would have received. Only errors for which "the result would have been manifestly different but for the error" qualify as CUE. 38 C.F.R. §§ 3.105(a)(1)(i), 20.1403(a), (c).

This second step of the inquiry presents a high bar. A veteran must establish not only that the error was outcome-determinative for his benefits case, but that "reasonable minds could not differ" on that question and that the significance of the error is "absolutely clear." 38 C.F.R. §§ 3.105(a)(1)(i), 20.1403(a), (c). It must be undebatable that the error was not harmless and that "the result would have been manifestly different but for the error." 38 C.F.R. §§ 3.105(a)(1)(i), 20.1403(a), (c). In colloquial terms, a clear and unmistakable error is an obviously harmful error—one that clearly and unmistakably affected the outcome of a veteran's case.

2. The statutory and decisional background to the CUE statute confirms the same two-step understanding of CUE set out in the regulatory text.

When Congress enacted the CUE statute in 1997, it was aware of and incorporated contemporaneous VA caselaw articulating the CUE standard. *See Cook v. Principi*, 318 F.3d 1334, 1344-45 (Fed. Cir. 2002) (en banc). These pre-codification decisions repeatedly articulate the traditional two-step understanding of CUE. A CUE claim requires a showing of error, plus "persuasive reasons … as to why the result would have been *manifestly* different but for the alleged error." *Fugo v. Brown*, 6 Vet. App. 40, 44 (1993). CUE requires an initial showing of error, after which the appellant must "demonstrate, bearing in mind the extra burden of persuasion there is to do so, that but for the error the result would have been 'clearly and unmistakably' different." *Berger v. Brown*, 10 Vet. App. 166, 169 (1997).

VA's practices—similarly forming part of the "robust regulatory backdrop" informing the meaning of the CUE statute, *George*, 596 U.S. at 746—confirm the same understanding. To this day, VA's Adjudication Procedures Manual states CUE "exists" if "the statutory or regulatory provisions extant at the time were incorrectly applied," and that error would have "manifestly changed the outcome." M21-1 Manual, at X.ii.5.A.1.a, https://perma.cc/G4F9-7TWR. The Manual confirms that what it means for an error to be "clear and unmistakable" is that it be "undebatable" and "absolutely clear that a different outcome would have resulted" if not for the error. *Id.*

The legislative history of the CUE statute supports the same conclusion. The House Report quoted the regulatory language and reiterated that CUE is "is the kind of error, of fact or of law, that when

called to the attention of later reviewers compels the conclusion, to which reasonable minds could not differ, that the result would have been manifestly different but for the error." H.R. Rep. 105-52, at 3 (quoting *Russell v. Principi*, 3 Vet. App. 310, 313 (1992)). The Report elaborated: "Even where the premise of error is accepted, if it is not absolutely clear that a different result would have ensued, the error complained of cannot be, *ipso facto*, clear and unmistakable." *Id.*

3. The two-part analysis ensures that CUE focuses on correcting substantive errors that clearly dictated the outcome of benefits decisions, and does not invite later reviewers to parse mere process failures or adopt a "grading papers" approach to earlier decisions.

Thus, according to the Veterans Court decisions that informed Congress's enactment of the CUE statute in 1997, VA's "failure to give reasons [or] bases" for a denial of benefits could not be CUE, even if doing so obviously constituted legal error, without a "compelling case that the result would have been manifestly different." *Fugo*, 6 Vet. App. at 44. But the failure to apply governing law that entitled the claimant to a more favorable benefits rating could. *E.g.*, *Look v. Derwinski*, 2 Vet. App. 157, 160 (1992) (CUE where VA "erred in determining that appellant was not entitled to disability benefits for residuals of a herniated disc pursuant to 38 U.S.C. § 1151"). This Court in *George* highlighted "VA's failure to apply an existing regulation to undisputed record evidence" as an exemplar of CUE—a scenario that lends itself to the heightened showing of out-

come-determinativeness because the veteran's legal entitlement is clear, the record evidence is undisputed, and the significance of the error is obvious. 596 U.S. at 747.

The two-step standard also reflects Congress's goal of correcting errors in benefits adjudication through an administrable process. Giving a veteran the opportunity to point out an error in the first instance focuses the attention of the reviewing adjudicator on the original decision and facilitates an evenhanded inquiry into whether that decision was infected with error. Requiring the veteran then to make the further showing that the error was undebatably outcome-determinative facilitates a manageable process for revising erroneous decisions. It protects the agency's resources by limiting the scope of collateral review to consequential, substantive errors. And it saves adjudicators from the need to revisit stale records or reweigh evidence to make close calls about harmlessness. Only errors that the CUE adjudicator can easily tell obviously made a difference count.

B. The Federal Circuit conflated the two steps and misconstrued the CUE standard.

1. The Federal Circuit adopted the rule that, to establish CUE, a veteran must demonstrate not just that the original decision was incorrect, but also that the applicable rule of law under which he should have prevailed was undebatable. This holding conflates the two steps of the CUE standard and wrong-

ly transplants the undebatability showing to step one.

The panel denied relief because Mr. Siples had not shown that "§ 4.59 … *undebatably* appl[ied] to non-arthritic conditions" at the time of his original decision. Pet. App. 16a (emphasis added). The Court skipped the task of determining what the governing law had been at the time of the original decision, because it observed that there may have been room for disagreement as to its meaning. The panel specifically stated that it was "not called upon in this case to conclusively determine the correct interpretation of § 4.59," Pet. App. 16a, and thus neither analyzed nor decided whether the original decision denying benefits contained legal error.

The panel stopped its analysis of the text of § 4.59, applicable precedent, and other informative materials as soon as it discerned that there were multiple possible interpretations. The panel ended its examination of the text once it concluded that it "cannot say that the plain language of § 4.59 as a whole *clearly* applies to cases beyond those involving arthritic painful motion." Pet. App. 16a (emphasis added). The panel did not examine precedent regarding § 4.59 to determine the correct construction, but simply noted that a handful of unpublished contemporaneous decisions had "diverged" over whether § 4.59 applies to non-arthritic claims, and that none of these decisions had confronted the question directly. Pet. App. 17a.

The panel also brushed off other relevant sources of meaning, deeming them further sources of ambi-

guity. A 1998 VA General Counsel's opinion had characterized "38 C.F.R. §§ 4.40, 4.45, and 4.59" as applying to "arthritis *and other musculoskeletal disabilities*"—strongly supporting Mr. Siples's position—but the panel merely stated that this decision further "contribute[d] to the lack of clarity regarding the applicability of § 4.59 to non-arthritis claims at the time of the RO's July 2004 decision." Pet. App. 17a-18a.

In short, the Federal Circuit denied relief not because it rejected Mr. Siples's claim of legal error, but because it perceived room for disagreement about what the law was.

2. This holding is wrong and conflates the two components of the CUE analysis. While an undebatability requirement applies at step two—outcome-determinativeness—there is no such requirement bearing on the initial showing of error. At the first step, the CUE standard directs the adjudicator to evaluate whether the original benefits decision was legally incorrect, not whether the law was subject to any possible interpretive debate.

As explained above, the Federal Circuit's error is plain from the regulatory text, providing that CUE is "the kind of error, of fact or of law, that when called to the attention of later reviewers compels the conclusion, to which reasonable minds could not differ, that the result would have been manifestly different but for the error." 38 C.F.R. §§ 3.105(a)(1)(i), 20.1403(a), (c). The phrase "to which reasonable minds could not differ" applies only to the question whether "the result would have been … different but

for the error." *Id*. The text underscores that conclusion by requiring that the result must have been "manifestly different but for the error," and dictating that, "[i]f it is not absolutely clear that a different result would have ensued, the error complained of cannot be clear and unmistakable." *Id*. What must be "absolutely clear"—the thing on which "reasonable minds" must not "differ"—is that a "manifestly different … result would have ensued" but for the error. *Id*. Nothing in the regulatory text imposes an undebatability requirement on the showing of what the law was at the time of the original decision.

The Federal Circuit's error is also plain from the decisional law forming the background of and baked into the CUE statute itself—another important part of the "robust regulatory backdrop" informing the meaning of CUE, *George*, 596 U.S. at 746. Prior to the enactment of the current statute in 1997, CUE was understood to encompass a decision's failure "to conform to the 'true' state of … the law that existed at the time of the original adjudication." *Russell*, 3 Vet. App. at 313; *see also Look*, 2 Vet. App. at 160 (finding CUE in a Board decision that was contrary to statute, describing the step-one inquiry as "whether the [Board] erred in determining that appellant was not entitled to disability benefits for residuals of a herniated disc pursuant to 38 U.S.C. § 1151").

The pre-1997 decisions focused the heightened undebatability showing on the outcome-determinativeness question, not the meaning of the law. In *Fugo*, for example, the Veterans Court explained that once "the premise of error is accepted, if

it is not absolutely clear that a different result would have ensued, the error complained of cannot be, *ipso facto*, clear and unmistakable" 6 Vet. App. at 43-44. That is, after establishing error, "persuasive reasons" and a "compelling case … must be given as to why the result would have been *manifestly* different but for the alleged error," but no heightened standard applies to the demonstration of legal error in the first place. *Id*. at 44.

Similarly in *Berger*, decided shortly before the enactment of the CUE statute, the Veterans Court reiterated that "[t]he error must be such that the appellant is able to demonstrate, bearing in mind the extra burden of persuasion there is to do so, that but for the error the result would have been 'clearly and unmistakably' different." 10 Vet. App. at 169. And *Russell*—one of the principal influences on Congress's understanding of CUE as it considered the 1997 legislation, *see Cook*, 318 F.3d at 1344-45—defined CUE as "the sort of error which, had it not been made, would have manifestly changed the outcome at the time it was made." *Russell*, 3 Vet. App. at 313-14. Indeed, *Russell* appears to be the source of the "undebatable" concept in the CUE context, and the Veterans Court clearly used that term to refer to the *effect* of the error, not the meaning of the law. *See id.* (characterizing CUE as "errors that are undebatable, so that it can be said that reasonable minds could only conclude that the original decision was fatally flawed").

The Federal Circuit thus fundamentally misconstrued the CUE standard as traditionally understood and as incorporated into the statute: What must be

"undebatable," "manifest," "clear," and "unmistakable" is not the meaning of the law under which error is established, but that the error altered the outcome of the benefits decision.

3. The Federal Circuit repeatedly invoked *George*, Pet. App. 9a-13a, but *George* does not authorize VA or a court to impose an "undebatability" hurdle on the initial showing of legal error. As noted above (at 17-18), *George* held that the CUE analysis is strictly limited to the law and facts as they existed at the time of the original benefits decision. 596 U.S. at 747. But *George* did not hold that a veteran faces the additional burden of proving that the meaning of the law was undebatable at that time. And nothing in *George* establishes a deferential regime in which CUE relief is available only if the law could not possibly be read to support the agency's original decision. The Federal Circuit erroneously decided an issue that *George* did not reach.

II. The Federal Circuit's Decision Is Contrary To *Loper Bright*.

In imposing an undebatability hurdle on the initial showing of legal error, the Federal Circuit not only erroneously construed the CUE standard and misapplied *George*; it also contradicted *Loper Bright*.

The Federal Circuit's holding that CUE relief is available only if the law *undebatably* favored the claimant at the time of the original decision requires CUE adjudicators to stop their analysis of error and deny relief when there is ambiguity or room for disagreement about the meaning of the law. It

directs CUE adjudicators not to seek the correct reading of regulations and statutes or the best synthesis of other applicable legal resources, but instead to end their inquiry if the meaning of those authorities could reasonably be debated.

Loper Bright held that courts must set out to determine the "single, best meaning" of the law when they are charged with deciding what the law is. 603 U.S. at 391-92, 400. The Court abolished *Chevron* deference because the APA requires courts to decide "all relevant questions of law"—"even those involving ambiguous laws"—and does not authorize courts to end their inquiry because discerning the meaning of the law is difficult. *Id.* at 391-92. When courts are directed to "decide … 'relevant questions of law,'" the Court reasoned, they must do so "by applying their own judgment"—employing "no deferential standard" unless separately required to do so by a controlling authority. *Id.*; *see also id.* at 416 (Gorsuch, J., concurring) (courts must "offer independent judgments about 'what the law is' without favor to either side").

CUE adjudicators are required to decide whether a prior benefits decision was infected with error. Under *Loper Bright*, ascertaining what the law binding on that prior decision was requires them to evaluate it and offer their independent judgments, "even" if it appears "ambiguous." *Id.* at 391-92. CUE adjudicators are not permitted to abandon their inquiry once they encounter room for disagreement. On the contrary, CUE adjudicators must independently assess whether a challenged benefits

decision was contrary to then-prevailing law, without favor to one side or the other.

By directing the CUE adjudicator to rule against the claimant whenever the law does not undebatably favor him, the Federal Circuit adopted a rule analytically parallel to the *Chevron* regime *Loper Bright* rejected: Where there is ambiguity or room for disagreement, the challenging party loses. Like *Chevron*, the Federal Circuit's decision requires the adjudicator "to *ignore*, not follow, 'the reading [it] would have reached' had it exercised its independent judgment." *Loper Bright*, 603 U.S. at 398-99. Without a separate statutory or regulatory command to adopt such a stance, that holding cannot survive *Loper Bright*.[2]

The Federal Circuit's holding is especially conspicuous because the CUE regime is designed to be different from other collateral-review devices that *do* impose an undebatability requirement on the showing of legal error. *See Loper Bright*, 603 U.S. at 392 (noting that the "omission" of a "deferential standard" in the text of the APA is "telling" because it contrasts with other provisions). A prime example is the familiar deferential regime governing federal habeas petitions. A habeas petitioner must typically demonstrate not just that a state court decision was contrary to federal law, but that it was contrary to "*clearly established* Federal law," 28 U.S.C. § 2254(d) (emphasis added)—in other words, that the law itself

[2] *Loper Bright* was decided after the original briefing in this case. At minimum, the Court should grant, vacate, and remand for further consideration in light of *Loper Bright*.

was undebatable. In that context, an undebatability requirement on the showing of legal error directly follows from an independent statutory mandate.

With CUE, however, there is no such mandate. This is by design: With habeas, Congress provided for relief only if a state court decision was contrary to "clearly established Federal law" as a way of balancing the importance of enforcing constitutional rights with competing values like finality and the rights of States. *See Calderon v. Thompson*, 523 U.S. 538, 554-55 (1998). By contrast, Congress adopted the longstanding CUE doctrine as a special form of collateral review to facilitate the correction of errors in VA benefits decisions, in keeping with the goal of an "informal[]" VA "adjudicatory 'process'" affording veterans special "solicitude," *Henderson*, 562 U.S. at 431. Congress's goal was to provide an affirmative channel for veterans to obtain the benefits they should have been receiving all along. Imposing an undebatability hurdle on the initial showing of error is inconsistent with that design.

Affording veterans the benefit of *Loper Bright*'s promise of independent and neutral legal interpretation without a thumb on the scale against them if the legal analysis turns out to be difficult thus fully implements Congress's goals for benefits adjudication.

III. The Question Presented Is Important And Recurring.

The importance of this case amply warrants certiorari. Not only did the decision below tee up a con-

flict with prior Federal Circuit precedent that calls for this Court's review, but it also tests how that intra-circuit conflict should be harmonized with *George*, *Loper Bright*, and the relevant statutory and regulatory CUE provisions. Meanwhile, the question presented will recur in the many CUE claims adjudicated each year, affecting a significant number of veterans.

A. The Federal Circuit created and failed to correct an intra-circuit conflict.

The panel's decision created an intra-circuit conflict that will remain unresolved absent this Court's intervention. The ruling here squarely conflicts with the Federal Circuit's decision in *Perciavalle*, which properly applied this Court's decision in *George* and is consistent with *Loper Bright*.

Perciavalle rejected what the panel here embraced: that whenever an error "has yet to be identified as erroneous by a court decision or VA publication," it cannot be CUE. 74 F.4th at 1382. The panel in Mr. Siples's case determined that, because he failed to show the precise legal question in his case was "undebatably understood" by the agency or courts at the time of the original benefits decision, his CUE claim must fail. Pet. App. 18a. That flouts *Perciavalle*'s holding that "a legal error may be clear for the purpose of CUE despite the fact that there was no preceding court or agency decision on the precise legal question." 74 F.4th at 1382.

Moreover, in *Perciavalle*, the Federal Circuit explained that the job of a CUE adjudicator is to de-

termine the "'correct application of a binding regulation' or law," as of the time of the original benefits decision. *Id.* at 1382. In fact, the court expressly couched this conclusion as the application of *George*, reasoning that *George* made "clear … that the correct CUE inquiry is simply whether the original decision was a 'correct application of a binding regulation' or law, regardless of later changes in the law or later decisions by the agency or a court." *Id.* This focus on the "correct" view of the law is also consistent with this Court's mandate in *Loper Bright*: that adjudicators charged with deciding what the law is (or was) must do so independently and without deference unless directed otherwise by binding authority. *See supra* 26-29.

Applying that standard to this case underscores the intra-circuit conflict. In both *Perciavalle* and this case, "the alleged legal error or disputable question of law was resolved by a court decision or official Agency publication (such as a General Counsel precedential decision) issued *after* the decision the veteran seeks to collaterally attack became final." *Perciavalle*, 74 F.4th at 1382 (emphasis added). Still, the *Perciavalle* court explained that a CUE claim was permissible in that scenario because the "CUE regulation does not prohibit CUE claims simply because the law at issue was the subject of a later decision." *Id. Perciavalle* drew that principle directly from *George*: "[R]egardless of … later decisions by the agency or a court," *Perciavalle*'s CUE inquiry simply would have asked "whether the original decision was a 'correct application of a binding regulation' or law," period. *Id.* (quoting *George*, 596 U.S. at 749). In rejecting the heightened standard the panel

below embraced, *Perciavalle* properly applied the Supreme Court's mandate in *George*, consistent with *Loper Bright*.

B. The issues are critical to veterans and certain to recur frequently.

As a doctrinal matter, the issues presented in this case are inherently recurring and important. They test how *Loper Bright*, *George*, *Perciavalle*, and the applicable statutory and regulatory CUE provisions will be harmonized and applied going forward in the extremely common CUE context.

Mr. Siples's reading of the law easily harmonizes these legal authorities. Under that reading, the availability of CUE relief turns on (1) whether a benefits decision is infected with error in light of the correct understanding of the law as it existed at the time of the original decision, without regard to whether "reasonable minds could differ" on the matter and (2) whether it was "absolutely clear" (that is, "undebatable") that the error altered the outcome of the original benefits decision.

As a practical matter, CUE relief is critical to many veterans, and the Federal Circuit's cramped interpretation of what CUE requires will adversely affect scores of veterans both now and in the future.

At the beginning of the benefits-claims process, "nearly all veteran benefits claims are resolved at the regional office stage" and go unappealed. *See Nat'l Org. of Veterans' Advocs., Inc. v. Sec'y of Veterans Affs.*, 981 F.3d 1360, 1380 (Fed. Cir. 2020) (en

banc). At this stage, nearly all veterans (including Mr. Siples) lack legal representation; in fact, they are statutorily barred from paying an attorney to represent them before the regional office. 38 U.S.C. § 5904(c)(1). And "[a]lthough aides from veterans' service organizations provide invaluable assistance to claimants seeking to find their way through the labyrinthine corridors of the veterans' adjudicatory system, they are 'not generally trained or licensed in the practice of law.'" *Comer v. Peake*, 552 F.3d 1362, 1369 (Fed. Cir. 2009). So many veterans end up saddled with a decision that becomes final without the benefit of proper legal argumentation. Moreover, many CUE claims are bought by veterans whose claims were denied during the period before judicial review became available in 1988; CUE is the only opportunity for these veterans to receive judicial scrutiny of the lawfulness of VA's denial.

Under the Federal Circuit's erroneous ruling, these veterans will be afforded CUE relief only if the law that entitled them to benefits was not only clear but *undebatably* so. Absent CUE, and absent some new and relevant evidence warranting a supplemental claim, a veteran is left (at best) with the ability to file a new claim on a theory that the law has changed since the prior denial. *See Spencer v. Brown*, 17 F.3d 368, 373 (Fed. Cir. 1994). It is far from clear that such an option would be available to Mr. Siples or similarly situated veterans, given that *the law* did not change—only VA's and the judiciary's recognition (in *Burton*) of § 4.59's meaning did. But even if this path were open, it provides benefits only to the date of the new or supplemental claim—not the original claim the veteran filed (and which

should have been granted). *Supra* 7. Given that "[t]he amount of disability benefits a veteran is eligible to receive" is calibrated to the "degree to which the veteran's ability to earn a living has been impaired," that money matters. *Mansell v. Mansell*, 490 U.S. 581, 583 (1989).

IV. This Case Is A Clean Vehicle.

This case is an excellent vehicle because Mr. Siples is entitled to relief under the correct analysis and because there are no procedural obstacles to review.

To begin, contrary to the government's contention at the rehearing stage, there is no forfeiture issue. Mr. Siples squarely preserved his argument that the undebatability requirement applies only to the question of outcome-determinativeness, not to the correct understanding of the law at the time of the original benefits decision. On appeal to the Federal Circuit, he argued that CUE must be "undebatable" in the sense that the "error … would have 'manifestly changed the outcome at the time it was made.'" CAFC Opening Br. 9. Further, he explained that the CUE standard does not require asking "how a law could have been understood; rather, CUE is an assessment of what the law actually required" at the time of the original decision. CAFC Opening Br. 2; CAFC Reply Br. 5 ("An undebatable error occurs when the [agency] fails to correctly apply the regulation or applies a misinterpretation of a regulation.").

The panel cleanly addressed and erroneously decided the issue. In its opinion, the panel expressly

separated the issue of outcome-determinativeness from the question of undebatability. Pet. App. 9a ("[T]he error must be outcome determinative *and* 'undebatable' … such that 'reasonable minds could not differ.'" (emphasis added)). And it emphasized that CUE is about whether the "understanding" of the law was undebatable at the time of the original benefits decision. Pet. App. 15a; *see also* Pet. App. 9a, 11a, 14a, 15a, 17a, 18a. In seeking rehearing, Mr. Siples renewed his contrary argument and emphasized that the condition of undebatability applies only to the outcome-determinativeness of the error. CAFC Rehearing Pet. 2, 9, 11. The question presented is thus amply preserved and teed up for the Court's review.

Furthermore, the question presented would lead to a different outcome in Mr. Siples's case. The flawed interpretation of the CUE standard—requiring the law to be undebatable—was the sole basis for both the Veterans Court's and the Federal Circuit's rejection of Mr. Siples's CUE claim. Pet. App. 2a, 15a, 22a-25a. Had the courts applied the proper CUE standard, they would have examined Mr. Siples's claim that VA failed to properly apply § 4.59 to his original decision. And the Veterans Court has already recognized that a "proper interpretation" of § 4.59 requires applying it to non-arthritis claims like Mr. Siples's; only by "[e]xamining the first sentence out of context" could one reach a contrary result. *Burton*, 25 Vet. App. at 4. It was therefore legal error for the VA in 2004 to fail to apply § 4.59 to Mr. Siples's claim, and to afford him the minimum 20% rating for painful motion

under DC 5201 (rather than the 10% rating it applied under DC 5203). *Supra* 11.

The Secretary has previously argued that, "even assuming that the RO's refusal to apply Section 4.59 in July 2004 was undebatably erroneous, this regulation can only help Mr. Siples if he was entitled to additional benefits pursuant to DC 5201." CAFC Resp. Br. 23-24. And, in the Secretary's view, Mr. Siples would be entitled to a rating under DC 5201 only if his "arm's motion is limited to shoulder level." CAFC Resp. Br. 24. The Federal Circuit did not adopt that argument, so it should not deter this Court from reviewing the important legal question presented here, which drove the Federal Circuit's decision. In any event, the government's argument is wrong. As VA's Adjudication Procedures Manual confirms, an "actually painful joint can be [the] basis for assignment of a compensable evaluation even though the specific criteria for a compensable evaluation listed in a [DC] for the joint are not met." M21-1 Manual, at V.iii.1.A.1.a, https://perma.cc/39ZY-P42T. Section 4.59 provides the predicate condition for benefits: painful motion. And so long as that condition is satisfied, the veteran is entitled to the "minimum compensable rating for the joint" under the DC, which is 20% here.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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