No. 25-609

IN THE

Supreme Court of the United States

CLINTON SIPLES,
Petitioner,

v.

DOUGLAS A. COLLINS,
SECRETARY OF VETERANS AFFAIRS,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF OF *AMICI CURIAE* THE NATIONAL ORGANIZATION OF VETERANS' ADVOCATES AND THE NATIONAL LAW SCHOOL VETERANS CLINIC CONSORTIUM IN SUPPORT OF PETITION FOR *CERTIORARI*

CARLOS H. SALGUERO
VENABLE LLP
151 W. 42nd St.
New York, NY 10036

ELIZABETH C. RINEHART
Counsel of Record
J. DANIEL EVERSON
VENABLE LLP
600 Mass. Ave., NW
Washington, DC 20001
(410) 528-4646
LCRinehart@Venable.com

Counsel for Amici Curiae

December 22, 2025

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Regulations

Other Authorities

INTRODUCTION AND INTEREST OF *AMICI CURIAE*[1]

Amici curiae National Organization of Veterans' Advocates, Inc. ("NOVA") and the National Law School Veterans Clinic Consortium ("NLSVCC") are organizations dedicated to serving this country's 17 million living veterans[2] and ensuring that promises made by their Government are kept.

A keystone of that compact between the veteran and her country is that if a veteran becomes injured or disabled during her military service, she can apply for service-related disability benefits. 38 U.S.C. § 1110. Moreover, the veteran can expect to encounter a non-adversarial, pro-claimant disability benefits scheme. *See Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 431 (2011). Indeed, Congress has bestowed on our country's veterans numerous favorable statutory protections in the context of claiming disability benefits, and this Court has repeatedly affirmed the "high degree" of "solicitude" that veterans are to be afforded in the adjudication of their service-related disability claims. *Id.*

Without this Court's intervention and correction, though, the decision below threatens to break that

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[1] No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made a monetary contribution to this brief's preparation or submission.

[2] U.S. Dep't of Veterans Affairs, *Veteran Population*, Nat'l Ctr. for Veterans Analysis & Stats. (last updated Mar. 26, 2025), https://tinyurl.com/VAVetsStats.

compact by upholding an ahistorical and misguided understanding of the Department of Veterans Affairs' ("VA") "clear and unmistakable error" review standard ("CUE"). For over a century, CUE and its forebears have been an invaluable safety valve for veterans subject to adverse benefits adjudications. CUE provides the veteran with a congressionally approved avenue to collaterally challenge a disability decision that was fatally infected with a "clear and unmistakable error" of fact or law. *See* 38 C.F.R. § 3.105(a)(1).

Just three years ago, this Court addressed CUE and held that this now statutorily codified term of art is rooted in the "old soil" of history and agency practice. *See George v. McDonough*, 596 U.S. 740, 746 (2022). But the Federal Circuit's analysis and outcome in the decision below "exhibit[s] the very characteristics that Congress sought to discourage." *Shinseki v. Sanders*, 556 U.S. 396, 408 (2009). Under the precedent that now controls in that court, Mr. Siples—and indeed *all* future veteran disability claimants who find CUE in their disability decisions—must now carry an additional burden of establishing that the relevant *law* governing the benefits decision was also "undebatable" at the time of the original adjudication. *Siples v. Collins*, 127 F.4th 1325, 1332 (Fed. Cir. 2025).

This holding is unmoored from nearly a century of "old soil" history of CUE as applied in the veterans' benefits context. That history confirms that § 3.105 can only be understood as being concerned with the outcome determinativeness of CUE. Instead of following this Court's instruction in *George* to till the old soil of CUE, the Federal Circuit decided to completely

ignore it. Moreover, this stark about-face by the Federal Circuit not only shut out Mr. Siples—a 25-year veteran of the United States Air Force with a shoulder disability—from his disability benefits but risks the unnecessary deprivation of benefits for leagues of current and future disabled veterans.

Indeed, in 2023 alone, the Veterans Benefits Administration ("VBA") processed over 2.2 million claims for disability compensation. *See* Gov't Accountability Off., *VA Disability Benefits: Training for Claims Processors Needs to Be Enhanced*, *GAO-24-107510* (July 23, 2024), https://tinyurl.com/GAO-24-107510.

As a not-for-profit organization of attorneys and similar professionals who advocate for disabled veterans across the country, *amicus curiae* NOVA holds a significant interest in ensuring this important issue of veterans' disability law is not overlooked by this Court. In addition to connecting veterans to counsel versed in veterans' law, NOVA also hosts regular training seminars and connects its extensive network of experts to veterans in need. NOVA routinely advocates for the interests of veterans and their representatives, including by filing amicus briefs. *See* Brief *Amicus Curiae* of NOVA, *et al.*, *Gray v. Wilkie*, No. 17-1679 (Jul. 20, 2018); Brief *Amicus Curiae* of NOVA, *et al.*, *Kisor v. Wilkie*, No. 18-15 (Jan. 31, 2019); Brief *Amicus Curiae* of NOVA, *Sellers v. McDonough*, No. 20-1148 (Mar. 24, 2021). As attorneys and advocates for disabled veterans, NOVA and its members have a keen interest in ensuring the nation's veterans law remains clear and aligned with the long-standing tradition of deference to veterans in the benefits system.

Amicus curiae NLSVCC is a collaborative effort of the nation's law school legal clinics and pro bono advocates dedicated to addressing the needs of veterans and servicemembers. NLSVCC's interest in this case stems from its members' commitment to ensuring that the courts' jurisprudence is consistent with Congress's intent in creating and sustaining a non-adversarial VA benefits scheme. NLSVCC has also filed amicus briefs in connection with its veterans advocacy. *See* Brief *Amicus Curiae* of NLSVCC, *Bufkin v. McDonough,* No. 23-713 (Feb. 1, 2024); Brief *Amicus Curiae* of NLSVCC, *Bufkin v. McDonough*, No. 23-713 (July 2, 2024); Brief *Amicus Curiae* of NLSVCC, *Feliciano v. Dep't of Transportation*, No. 23-861 (Aug. 26, 2024); Brief *Amicus Curiae* of NLSVCC, *Soto v. United States*, No. 24-320 (Oct. 21, 2024); Brief *Amicus Curiae* of NLSVCC, *Frantzis v. McDonough*, No. 24-452 (Nov. 21, 2024); Brief *Amicus Curiae* of NLSVCC, *Soto v. United States*, No. 24-320 (Mar. 10, 2025); Brief *Amicus Curiae* of NLSVCC, *Champagne v. Collins*, No. 25-482 (Nov. 19, 2025). As an organization comprised of veterans' advocates, scholars, and veterans themselves, NLSVCC likewise shares significant concerns with keeping the state of veterans' benefits law aligned with traditional understandings of the pro-claimant system.

SUMMARY OF ARGUMENT

This Court should grant the Petition for a Writ of Certiorari to clarify that the VA's CUE standard only requires that the *outcome* of an erroneous decision be "undebatable" but for the clear and unmistakable error. *Russell v. Principi*, 3 Vet. App. 310, 313 (1992). The Federal Circuit's novel and unprecedented

standard will harm veterans and contradict Congress's intent to provide them with a pro-claimant benefits scheme and a plain reading of the controlling regulation's own text. *See* 38 C.F.R. § 3.105(a)(1).

Allowing the decision below to stand should bring this Court great pause, as it will prevent untold numbers of current and future disabled veterans with otherwise valid disability claims infected by clear and unmistakable errors from receiving due compensation for their service.

What is more, in *George*—a decision directly addressing CUE relief itself—this Court exhorted that, as CUE is a legal term of art, it "brings the old soil with it." 596 U.S. at 746 (cleaned up). Put another way, "Congress codified and adopted the clear-and-unmistakable-error doctrine as it had developed under prior agency practice" by examining the "long regulatory history" of CUE. *Id.* The Federal Circuit failed to till this old soil. Had it done so, it would have found that today's CUE standard descends from nearly a century of verbatim veterans regulation analogues that can only be understood as requiring CUE to be outcome-determinative.

This Court should grant the Petition.

ARGUMENT

I. ABSENT THIS COURT'S CORRECTION, THE FEDERAL CIRCUIT'S ABERRANT NEW PRECEDENT WILL NEEDLESSLY DENY COUNTLESS VETERANS THEIR RIGHTFUL BENEFITS.

This is not a case that presents purely conjectural legal questions. The CUE standard provides necessary protection for millions of veterans like Mr. Siples, helping them to reverse erroneous benefits decisions for injuries suffered in connection with their military service. Indeed, CUE appeared in the discussions of over 3,600 Board of Veterans' Appeals ("BVA") claims decisions this year alone.

Congress and the courts have long recognized the "unique" and "special sacrifices made by veterans." *See Johnson v. Robison*, 415 U.S. 361, 381 n.15 (1974) (citation omitted). "A veteran, after all, has performed an especially important service for the Nation, often at the risk of his or her own life." *Shinseki*, 556 U.S. at 412. Thus, since the Founding, Congress has provided "for [the veteran] . . . his widow and his orphan." *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 309 (1985) (quotation marks omitted). "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*, 556 U.S. at 400. As of 2024, the VA reported over 5.9 million veterans and over 500 thousand surviving spouses and surviving children as receiving service-connected disability benefits. U.S. Dep't of Veterans Affairs, *VBA Annual Benefits Report Fiscal Year 2024* 73 (Apr. 2025),

https://tinyurl.com/VBAReport2024 ("VBA Compensation Report").

Mr. Siples is one of 4.3 million veterans seeking benefits related to musculoskeletal disability, one of the most common bases claimed for receiving benefits. VBA Compensation Report at 73. It is undisputed that "[f]ollowing decades of service from 1978 to 2003, Mr. Siples sought compensation for bilateral shoulder problems following a history of dislocations and subluxations." *Siples v. McDonough*, No. 19-7957, 2021 WL 5919626, at *1 (Vet. App. Dec. 15, 2021) ("*Siples I*"), *aff'd sub nom. Siples v. Collins*, 127 F.4th 1325 (Fed. Cir. 2025) ("*Siples II*"). Yet, he was denied benefits based on this musculoskeletal disability under 38 C.F.R. § 4.59 ("Painful Motion") because the Court of Appeals for Veterans Claims and the Federal Circuit wrongly held that Mr. Siples was required to show that it was "undebatable" that § 4.59 applied outside non-arthritic painful motion at the time of the decision. *See* 127 F.4th at 1332–34.

The BVA has been quick to deny CUE relief to many others in Mr. Siples's position. Indeed, a search of its decisions database reveals that VLJs have relied on *Siples I* and *II* and denied CUE relief for veterans claiming § 4.59-related disability in at least 20 reported cases.[3]

[3] *See* No. 190321-4911 (BVA Jan. 20, 2022), https://www.va.gov/vetapp22/Files1/A22000825.txt (denying CUE based on CAVC's reading of Siples reading of 38 C.F.R. § 4.59); No. 181210-1380 (BVA Apr. 26, 2022), https://www.va.gov/vetapp22/Files4/A22007487.txt (same); No. 200518-84149 (BVA May 10, 2023), https://www.va.gov/vetapp23/Files5/A23009644.txt (same); No.

Moreover, the Federal Circuit's flawed reading of CUE is not limited to interpretations of § 4.59 and will

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20-05 234 (BVA Aug. 15, 2023), https://www.va.gov/vetapp23/Files8/23045218.txt (same); No. 231120-395981 (BVA Jan. 5, 2024), https://www.va.gov/vetapp24/Files1/A24000662.txt (same); No. 220830-273693 (BVA Oct. 25, 2024), https://www.va.gov/vetapp24/Files10/A24069000.txt (same); No. 211129-200773 (BVA Oct. 30, 2024), https://www.va.gov/vetapp24/Files10/A24070274.txt (same); No. 210202-133290 (BVA Oct. 1, 2024), https://www.va.gov/vetapp24/Files10/A24062262.txt (same); No. 201208-153244 (BVA Aug. 8, 2024), https://www.va.gov/vetapp24/Files8/A24045068.txt (same); No. 210405-150196 (BVA Oct. 28, 2024), https://www.va.gov/vetapp24/Files10/A24069269.txt (same); No. 210623-169323 (BVA Dec. 11, 2024), https://www.va.gov/vetapp24/Files12/A24082422.txt (same); No. 210419-154368 (BVA Nov. 13, 2024), https://www.va.gov/vetapp24/Files11/A24073988.txt (same); No. 231214-402116 (BVA Mar. 17, 2025), https://www.va.gov/vetapp25/Files3/A25024469.txt (same); No. 220616-252735 (BVA Jan. 28, 2025), https://www.va.gov/vetapp25/Files1/A25007379.txt (same); No. 230511-347612 (BVA Feb. 24, 2025), https://www.va.gov/vetapp25/Files2/A25016426.txt (same); No. 230411-337775 (BVA Mar. 20, 2025), https://www.va.gov/vetapp25/Files3/A25026215.txt (same); No. 220922-280832 (BVA Aug. 15, 2025), https://www.va.gov/vetapp25/Files8/A25069388.txt (denying CUE based on Federal Circuit's *Siples II* precedent for § 4.59-related disability); No. 211220-205928 (BVA Apr. 16, 2025), https://www.va.gov/vetapp25/Files4/A25034937.txt (same); No. 230104-310807 (BVA Apr. 23, 2025), https://www.va.gov/vetapp25/Files4/A25037520.txt (same); No. 210927-187554 (BVA Feb. 13, 2025), https://www.va.gov/vetapp25/Files2/A25013946.txt (same); No. 250327-526132 (BVA June 12, 2025), https://www.va.gov/vetapp25/Files6/A25051851.txt (same).

spread to other aspects of claim review, affecting many millions of veterans. In 2024, the VBA completed processing on more than 2.5 million disability and pension claims, with only half a million new veterans and dependents receiving benefits. *Compare* U.S. Dep't of Veterans Affairs, *Detailed Claims Data*, Veterans Benefits Administration Reports (last visited Dec. 10, 2025), https://tinyurl.com/VBAReports *with* VBA Compensation Report at 72.

That means in 2024, more than 2 million veterans had their disability or pension claims denied by the VBA. *Id*. Of those 2 million denials, appeals raising CUE challenges are doubtless to follow in a great many cases, particularly given that *amici* and other organizations stand ready to advocate and provide legal services on behalf of the veterans in question. In 2025, the year in which the Federal Circuit decided *Siples*, some 3,600 BVA claims decisions mention the CUE standard, and 141 considered the same regulation on painful motion, 38 C.F.R. § 4.59, as Mr. Siples raised.

Placing the cost—both financially and emotionally—of the Federal Circuit's error on veterans is antithetical to the special solicitude given to veterans in the benefits system in exchange for the sacrifices they have already made while serving their nation.

But with the Federal Circuit's erroneous decision on the books, the longstanding history and tradition of deference to veterans in our legal system remains at risk. This Court should step in and correct this error.

II. CONGRESS AND THIS COURT HAVE ALWAYS GRANTED VETERANS SPECIAL SOLICITUDE IN CLAIMS FOR DISABILITY BENEFITS

Given their unique duties and sacrifices to their country, veterans have historically received special "solicitude" from Congress and the courts when it comes to claims for service-connected disability benefits. *See United States v. Oregon*, 366 U.S. 643, 647 (1961) (noting the reliance of veterans on this "solicitude," as "[m]any veterans . . . have had to depend upon these benefits for long periods of their lives."). For example, "[t]he VA differs from virtually every other agency in being itself obliged to help the claimant develop his claim, and a number of other provisions and practices of the VA's administrative and judicial review process reflect a congressional policy to favor the veteran." *Shinseki*, 556 U.S. at 415 (Souter, J., dissenting) (citing 38 U.S.C. § 5103A) (internal citation omitted).

Gardner presumption is yet another exemplar of the "decision to place a thumb on the scale in the veteran's favor in the course of administrative and judicial review of VA decisions[.]" *Id.* at 416. That "longstanding" interpretive rule provides "that interpretive doubt is to be resolved in the veteran's favor." *Id.* (quoting *Brown v. Gardner*, 513 U.S. 115, 118 (1994)).

CUE, which lies at the heart of this case, is another "comparable benefit." *Id.* Unlike other traditional adjudicatory benefits schemes, in which firm rules of

finality govern agency determinations,[4] CUE allows a disabled veteran to seek collateral review of an adverse VA benefits decision on the basis that the decision was infected with clear and unmistakable error. 38 C.F.R. § 3.105(a)(1)(i). CUE is another essential brick in the wall of veterans' law, upholding the special "solicitude" that a proud Nation affords to its military servicemembers. *Oregon*, 366 U.S. at 647.

III. THE "OLD SOIL" OF CUE ESTABLISHES THAT WHAT MUST BE "UNDEBATABLE" IS THE ERROR'S OUTCOME-DETERMINATIVENESS

A. The CUE Standard Only Requires That a Veteran Establish That a Different Outcome Would Have "Undebatably" Occurred Absent the Error

Pursuant to CUE, Congress provides a veteran like Mr. Siples an avenue to seek a revision or reversal of an adverse final disability benefits decision if the veteran "establishes" the existence of a "clear and unmistakable error" in the decision. 38 U.S.C. § 7111 (addressing Board of Veterans' Appeals); 38 U.S.C. § 5109A (same, addressing the Secretary of Veterans Affairs). As explained in *George*, Congress has provided no further definition of CUE. 596 U.S. at 746. Instead, and as discussed below, CUE carries the "'same meaning' that the VA had long applied" in its

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[4] Consider, for example, the Social Security Administration's regime, wherein final determinations of the agency are appealable only to the courts, not by collateral attack to the agency itself. *See* 42 U.S.C. § 405(g) (providing federal courts jurisdiction to review social security matters).

previous iterations since the 1920s. *Id.* (citation omitted).

Presently, VA regulations define CUE as "a very specific and rare kind of error." 38 C.F.R. § 3.105(a)(1)(i).[5] "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." *Id.* "If it is not absolutely clear *that a different result would have ensued*, the error complained of cannot be clear and unmistakable." *Id.* (emphasis added).

Until now, this "reasonable minds could not differ" language has long been understood and interpreted to mean that the *errors* themselves—not the state of law at the time of disability decision—would be "undebatable."[6] *Russell*, 3 Vet. App. at 313–14 (establishing CUE in a prior decision requires showing the error would "undebatably" "change the outcome"); *Cook v. Principi*, 318 F.3d 1334, 1345 (Fed. Cir. 2002) (en banc) (making *Russell*'s CUE test law of the circuit and explaining that CUE will not lie "even where the premise of error is accepted, if it is not absolutely clear that a different result would have ensued"); *Willsey v. Peake*, 535 F.3d 1368, 1373 (Fed. Cir. 2008) (no CUE

[5] Regulations governing the Board of Veterans' Appeals decisions lay out a substantially identical CUE standard. *See* 38 C.F.R. § 20.1403.

[6] To be clear, *amici* do not take issue with that portion of the Federal Circuit's decision opining that "a determination that there was a 'clear and unmistakable error' must be based on the record and the law that existed at the time of the prior VA decision." *George*, 596 U.S. at 747.

because it was entirely debatable whether a reasonable adjudicator could weigh the evidence in the way the adjudicator did).

But instead of following its own settled precedent, the court below erred by injecting a novel anti-claimant gloss to CUE: A "legal-based CUE" now requires a veteran to further establish that the law covering the claim was "undebatably" clear at the time of the decision to be successful on collateral review. *Siples*, 127 F.4th at 1331–34. Following this new and misguided formula, the Federal Circuit concluded that Mr. Siples cannot ever receive benefits for his injuries, despite his 25 years of service. The Court reasoned that while the law today would entitle him to minimum disability compensation under 38 C.F.R. § 4.59 even though he does not have arthritis, because the understanding of the scope of § 4.59 was purportedly up for debate at the time of his decision in 2004, no CUE can lie. *See generally id.* But that is never what CUE in any of its forms asked for or concerned itself with. *See infra* Part B. The CUE statutes' text necessarily relies on the CUE regulation and the "old soil" of CUE doctrine and VA practice to give the words "clear and unmistakable error" definition. As shown below, since the 1920s, the VA was only ever concerned with error-correcting outcome-determinative mistakes; it was silent about whether a veteran must also show that the law to be applied at the time of the decision was settled beyond a reasonable doubt in order to successfully benefit from CUE.

As this Court repeatedly instructs and the Federal Circuit acknowledges, the "goal when interpreting a statute is to give effect to the intent of Congress."

Pierce v. Principi, 240 F.3d 1348, 1352 (Fed. Cir. 2001).

If Congress "meant to transform" CUE "into something sharply contrary to what it had been, we would have heard about it." *Hall v. Hall*, 584 U.S. 59, 74–75 (2018). For the sake of veterans at risk of losing out on just compensation, this Court should grant the petition to clarify that the Federal Circuit erred when it took CUE, "a term that had meant, for more than a century," one thing and "silently and abruptly reimagine[d]" it to lay more burdens on veterans. *Id.*

B. The Federal Circuit Failed to Consider and Account for the "Old Soil" in Which CUE Was Planted

Compounding this error is the fact that the Federal Circuit expressly acknowledged in the decision below that the relevant benefits "statutes do not define CUE," then cited to *George*—a case in which this Court *did* address how to import meaning into CUE from "old soil"—but then entirely failed to undertake such an analysis.

In *George*, this Court squarely addressed Congress's use of the phrase "clear and unmistakable error" in the context of veterans' benefits. *George* reaffirmed the teaching that, where Congress employs a "term of art," like CUE, in a statute that is "obviously transplanted from another source," then the "old soil" of that term comes with it and provides definition absent contrary indication. 596 U.S. at 740 (citing *Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019)) (cleaned up). *See Sekhar v. United States*, 570 U.S. 729, 732–33 (2013) ("[A]bsent other indication, Congress

intends to incorporate the well-settled meaning of the common-law terms it uses." (cleaned up)).

Stated differently,

> [W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed."

Morissette v. United States, 342 U.S. 246, 263 (1952). *See, e.g.*, *Taggart*, 587 U.S. at 561 (finding that bankruptcy code provisions carried with them the "old soil" of civil contempt power); *Traynor v. Turnage*, 485 U.S. 535, 546 (1988) (Congress intended that the term "willful misconduct" in the Rehabilitation Act receive the same meaning for purposes of that statute as it had received for purposes of other veterans' benefits statutes).

Practically speaking, determining what "old soil" a term of art like CUE carries calls for an inquiry into the legislative history, regulatory history, and administrative practice of the VA, to see what it "reveal[s]" about the term as adopted by Congress. *See George*, 596 U.S. at 741; *Johnson*, 415 U.S. at 368 (looking to administrative practice of the VA and legislative history behind bar of judicial review of constitutional questions within the BVA); *see also Vidal v. Elster*, 602 U.S. 286, 301 (2024) (looking to "history and tradition" and the Lanham Act's "deep roots in our legal

tradition" in holding that the Act's "names clause" did not violate free speech).

Taking in the "robust regulatory backdrop" of CUE as old soil, *George* made clear that Congress "codif[ied] and adopt[ed]" the CUE "doctrine as it had developed under prior agency practice." 596 U.S. at 746 (citation and quotation marks omitted); *see id.* at 753 (explaining that "statutory 'silence' on the details of prior regulatory practice [with respect to CUE] leave the matter where it was pre-codification.").

While *George* concerned the issue of whether the application of a later invalidated VA regulation could amount to CUE (it does not), it never addressed the issue raised here by Mr. Siples—whether CUE precluded where any debate or doubt existed as to the scope of the regulation at the time of the decision. Had the Federal Circuit tilled this old soil, it would have found in the same robust regulatory history its answer: No. Instead, it kicked silt into the river and muddied the water for veterans like Mr. Siples and *amici*, who make it their mission to advocate for this country's millions of servicemembers.

C. Tilling the Old Soil of § 3.105(a) Establishes That the *Outcome* of a Decision Was Required to Be "Undebatable" Under CUE Review

For nearly a century, some form of CUE has existed in the context of veterans' benefits claims. A Veterans' Bureau ("Bureau") regulation from 1924, for example, permitted review of benefits ratings under a CUE analogue:

> In exceptional and unusual cases wherein there is *clear and unmistakable proof* that an error has occurred, the [B]ureau may upon application or on its own motion review such previous rating in accordance with facts even though that may involve a revision for a period of more than six months prior to the date of correction[.]

Veterans' Bureau Regulation ("VBR") No. 86, § 3065(b)(3) (1924), *in* U.S. Veterans' Bureau, *Regulations and Procedure: Active and Obsolete Issues as of December 31, 1928,* 140–41 (1930) (emphasis added).

Even earlier Bureau regulations describe such CUE errors as including a "glaring error (such as confusion of name, a misfiling of report, etc.)." *See, e.g.*, VBR No. 50 (1920) (allowing revision effective dates of compensation), No. 65 (1924) (same), *in id.* at 54, 126. Clearly, nothing could be more outcome-determinative than establishing that the wrong veteran was entitled to the claimant's benefits due to an error of fact. And the outcome-determinative effect of the error only became clearer as the regulation evolved.

A 1928 Bureau regulation establishing Regional Rating Boards provided:

> That the rating board may reverse or amend a decision by the same or any other rating board where such reversal or amendment is obviously warranted by a clear and unmistakable error *shown by the evidence in file* at the time the prior decision was rendered[.]

VBR No. 187, § 7155 (1928), *in id.* at 21 (emphasis in original).

Taken together, the Veterans' Bureau recognized, over a century ago, the importance of a collateral avenue for a veteran to address an erroneous rating as an additional means of extending national gratitude to its veterans. But this "old soil" makes clear that only "unmistakable proof" of erroneous facts that would "undebatably" change the *outcome* of the claim—*e.g.*, incorrect names, filing errors, or other factual evidence already contained in the veteran's file—could provide that avenue.

In 1956, the CUE standard was formally adopted into federal regulations, and this "old soil" necessarily came with it. *See* 38 C.F.R. § 3.105(a) (1956 Cum. Supp. 1963); 26 Fed. Reg. 1561, 1569 (Feb. 24, 1961) (to be codified at 38 C.F.R. pt. 3) ("Previous determinations . . . will be accepted as correct in the absence of clear and unmistakable error."). Thereafter, § 3.105(a) was amended from time to time without change to the CUE standard. *See, e.g.*, 27 Fed. Reg. 11886 (Dec. 1, 1962) (to be codified at 38 C.R.F. pt. 3) (modifying other language in § 3.105(a) but keeping CUE intact). As discussed below, later revisions to the regulation confirm that any application of the term "undebatable" was concerned with a different final outcome pertaining to the decision of whether to grant, not the state of the law at the time.

In 1997, the CUE standard was codified into statutory law. Pub. L. No. 105-11, § 1, 111 Stat. 2271 (1997). The legislative history surrounding this amendment to veterans' law demonstrates that the

purpose of CUE was to "rectify" the "kind of *errors* . . . which are egregious and undebatable" such that "the *result* would have been manifestly different." 143 Cong. Rec. 1566, 1567 (1997) (emphasis added). Clearly, it was not the intent for the state of the law to be "undebatable" before the reviewing body, but rather that the error itself created a "result" "undebatabl[y]" different from what a non-erroneous application of law would produce. And even if the legislative history were not so precise, *Gardner* presumption should tip the scales in favor of this reading: The pro-veteran canon, in addition to the "old soil" and the legislative history behind CUE's statutory adoption, should have guided the Federal Circuit here to conclude outcome-determinativeness is what must be "undebatable."

In 2019, the Department of Veterans Affairs promulgated a new rule, which added a further definition to § 3.105(a)(1)(i). *See* VA Claims and Appeals Modernization, 84 Fed. Reg. 138 (Jan. 19, 2019) (to be codified at 38 C.F.R. pts. 3, 8, 14, 19, 20, 21). In response to comments pertaining to changes in the binding nature of favorable findings (as opposed to final adjudicated decisions), the VA explained that the "clear and unmistakable standard applicable to rebuttal [of favorable decisions] is similar to the definition of CUE found in § 3.105(a)(1)(i)." *Id*. at 141–42. "However, application of the clear and unmistakable standard for rebuttal of a favorable finding is legally distinct because, for instance, it is limited to the scope of the favorable finding itself and does not require a further determination that the *outcome* of the benefit adjudication *would undebatably change,*" such as in § 3.105(a). *Id*. at 141. (emphasis added).

Thus, contrary to the Federal Circuit's decision below, there can be no mistake that the VA itself intended outcome-determinativeness to be the "undebatable" subject of a CUE assessment, not additionally the state of the law at the time of the adjudication. Its failure to reach that conclusion sets up significant harm to the state of veterans' law, something that *amici* asks this Court to undo and avoid.

Because the history and old soil of CUE contemplate that the error must "undebatably" be outcome determinative, this Court should grant the petition to clarify and harmonize the law before further courts entrench this erroneous understanding. *See, e.g.*, *Hatfield v. Collins*, No. 2023-2280, 2025 WL 1271716, at *3 (Fed. Cir. May 2, 2025) (affirming denial of a veteran's claim and applying the *Siples* panel's view of CUE to a veteran's claim).

CONCLUSION

Amici curiae urge this Court to grant the Petition for a Writ of Certiorari.

Respectfully submitted,

ELIZABETH C. RINEHART
Counsel of Record
J. DANIEL EVERSON
VENABLE LLP
600 Mass. Ave., NW
Washington, DC 20001
(410) 528-4646
LCRinehart@Venable.com

CARLOS H. SALGUERO
VENABLE LLP
151 W. 42nd Street
49th Floor
New York, NY 10036

DECEMBER 22, 2025