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

BRIEF OF SWORDS TO PLOWSHARES, CONNECTICUT VETERANS LEGAL CENTER, AND THE VETERAN ADVOCACY PROJECT AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

The question presented is whether, 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, or must a veteran also show that the meaning of the law itself was undebatable.

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INTEREST OF *AMICI CURIAE*[1]

Amici are three non-profit organizations dedicated to serving veterans.

Swords to Plowshares, founded by veterans in 1974, is a community-based, not-for-profit 501(c)(3) organization supporting approximately 3,000 low-income and at-risk veterans in the San Francisco Bay Area every year. Swords' mission is to heal the wounds of war; to restore dignity, hope, and self-sufficiency to all veterans in need; and to prevent and end homelessness and poverty among veterans. To that end, Swords provides veterans with housing, access to healthcare, counseling, employment support, and veterans benefits assistance. Each year, Swords' Legal Services Unit provides hundreds of low-income and unhoused veterans with pro bono advice and representation regarding their Department of Veterans Affairs (VA) benefits claims. All of Swords' veteran clients are low-income, and 57% report living with a disabling condition, such as post-traumatic stress disorder (PTSD) or a traumatic brain injury (TBI).

Swords' Legal Services Unit targets its services to homeless and other low-income veterans. It regularly represents clients with VA claims that were previously denied years (and sometimes decades) ago, hoping to have them successfully re-adjudicated today. Thus, Swords has a strong interest in the matter before the Court in this case.

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[1] Pursuant to Supreme Court Rule 37.2, *amici curiae* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Both parties received notice of the filing of this brief as required in Rule 37.2.

The Connecticut Veterans Legal Center ("CVLC") provides legal representation at no cost to low-income veterans and is the creator of the nation's first medical-legal partnership co-located with the Department of Veterans Affairs ("VA"). CVLC's mission is to empower, support, and improve the lives of Connecticut veterans by providing free legal assistance to help them overcome legal barriers to housing, healthcare, income, and recovery. As part of this work, CVLC attorneys assist veterans in VA service-connected disability claims, which frequently include supplemental claims for previously denied benefits and Clear and Unmistakable Error ("CUE") claims. In addition to representing individual veterans, CVLC advocates for policy changes to create a more inclusive veterans benefit system for the most vulnerable low-income veterans: those who are living with mental illness, trauma, substance dependence, and homelessness as a result of their service, those who have experienced military sexual trauma, and those who have been harmed by discrimination or other injustices in the military and VA systems.

The Veteran Advocacy Project ("VAP") ensures access to health care, housing, and benefits for low-income veterans and their families, with a focus on those living with post-traumatic stress, brain injury, substance dependency, and other mental health conditions. VAP's clients are among the most vulnerable veterans; the majority are unhoused and in need of healthcare while trying to navigate complex bureaucracies. VAP advocates remove barriers to the vast federal resources these individuals have earned. The veterans law practice focuses on character of discharge determinations and works on several hundred VA claims each year. Many of these cases are decades old and involve multiple legal errors—and because there are not enough nonprofit attorneys to

assist low-income veterans with their legal needs, CUE review is vital.

Amici each have a strong interest in ensuring that CUE review remains a meaningful safety valve for veterans to obtain benefits that they earned through their service to this Country, but that were wrongly denied in the VA benefits process.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court should grant the petition for a writ of certiorari and reverse because the Federal Circuit's "legal undebatability" standard both exceeds the statutory requirement and all but eliminates a vital statutory safety valve.

Under the Federal Circuit's approach, erroneous benefits denials could be corrected only if the law at the time of the decision was *undebatably* clear. This exacting standard is wrong. The CUE statute, regulatory text, and historical agency practice each confirm that "undebatability" is not required at step one of the CUE analysis when evaluating a legal error. "Undebatability" is instead required only at step two of the CUE analysis, when evaluating whether an error was outcome determinative. This misapplication of the CUE standard has significant practical implications: "Undebatability" is an extraordinarily demanding standard, and it will almost never be satisfied because legal propositions are virtually always subject to non-frivolous debate. The decision below thus largely nullifies the CUE safety valve.

In doing so, the decision below will cause serious harm to veterans, especially those veterans served by *amici* who have fewer resources and are particularly vulnerable to a wrongful loss of benefits. Moreover,

practical realities of the VA benefits process will magnify the harm to veterans.

For over a century, the CUE standard has served as a key tool for veterans to obtain the benefits that they have earned when the denial is based on legal error. This Court should step in to restore that critical protection.

ARGUMENT

I. The Decision Below Misapplies the CUE Standard and All But Eliminates the CUE Safety Valve for Legal Errors.

"The solicitude of Congress for veterans is of long standing." *United States* v. *Oregon*, 366 U.S. 643, 647 (1961). Against this backdrop, Congress has created a "unusually protective" and "nonadversarial" process for veterans to seek benefits from the VA. *Henderson* v. *Shinseki*, 562 U.S. 428, 431, 437 (2011).

A critical part of this pro-veteran scheme is the availability of "clear and unmistakable error" ("CUE") review, which sets aside ordinary principles of finality to permit collateral review of decisions denying or limiting VA benefits. Congress provided 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); 38 U.S.C. 7111 (Board of Veterans' Appeals). Congress codified CUE review as a safety valve to protect veterans from erroneous benefits decisions, in recognition of "the sacrifices of those who have left private life to serve their country." *George* v. *McDonough*, 596 U.S. 740, 762 (2022) (Gorsuch, J., dissenting).

The statute does not define what constitutes a "clear and unmistakable error," but a "robust regulatory

backdrop fills in the details." *George*, 596 U.S. at 746. VA benefits caselaw long employed a two-step framework for determining whether an alleged error met the CUE standard. *See* Pet. 18–20. It first assessed whether there was "some degree of specificity as to what the alleged error is." *Fugo* v. *Brown*, 6 Vet. App. 40, 44 (1993). If so, it next evaluated whether there were "persuasive reasons . . . as to why the result would have been *manifestly* different but for the alleged error." *Ibid.* (emphasis in original). Under this two-step framework, receiving CUE relief required showing only that the error was undebatably outcome determinative—that is, "but for the error the result would have been 'clearly and unmistakably' different." *Berger* v. *Brown* 10 Vet. App. 166, 169 (1997). It did not require showing that the law at the time of the original decision was undebatably in the veteran's favor. *See* Pet. 21–26.

Consistent with this caselaw, the VA adopted regulations defining CUE as "the kind of error . . . 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. 20.1403(a) (emphasis added). The regulation hinges relief on a finding that the VA's error undebatably altered the result—not that the legal proposition VA relied on to reach that erroneous decision was also undebatable. The VA regulation ensured that CUE review retained its historic role of providing a limited but meaningful mechanism for veterans to obtain important benefits that were wrongly denied.

The decision below breaks sharply from that "robust regulatory backdrop," *George*, 596 U.S. at 746, and largely nullifies CUE review for legal errors. The panel

held that, to warrant CUE relief, a legal error itself needed to be "undebatably erroneous." Pet. App. 15a. The Federal Circuit emphasized that the law needed to be "undebatably understood" to require relief or "so clear on its face as to compel" relief. *Id.* at 2a. This "undebatability" standard conflates the two-step CUE framework; although undebatability is required at step two when evaluating the error's impact, it is *not* required at step one when assessing the VA's error. *Ibid.*

By wrongly importing an "undebatability" requirement into step one of the CUE analysis, the decision below will make the CUE standard extraordinarily difficult to meet. Indeed, the Federal Circuit's "undebatability" standard is so exacting that it resembles scenarios in which a statute or regulation explicitly calls for a heightened showing of legal error, such as habeas corpus, *see* Pet. at 28, even though there is no such requirement in the CUE statute, regulatory text, or historical agency practice.

To take another example, the Federal Circuit's regime now resembles the requirements for sanctions under Rule 11 of the Federal Rules of Civil Procedure. Sanctions are triggered by "baseless filings" that no attorney, after "reasonable inquiry," would believe was well grounded in fact and law. *Cooter & Gell* v. *Hartmarx Corp.,* 496 U.S. 384, 393 (1990). This standard is extraordinarily difficult to meet. *See Eastway Const. Corp.* v. *City of New York*, 762 F.2d 243, 254 (2d Cir. 1985) (explaining that to violate Rule 11 a legal argument must have "absolutely no chance of success under the existing precedents, and … no reasonable argument can be advanced" to support it).

Here, the Federal Circuit's new standard requires that veterans prove the *law* at the time of VA's adjudication was undebatable. This transforms CUE

relief into a standard so strict that it is akin to Rule 11's daunting requirements, available at best only in a narrow sliver of extreme cases. Given Congress's longstanding solicitude for veterans, however, the CUE safety valve cannot reasonably be understood to be so narrow that it is satisfied only when VA committed the kind of error that would expose attorneys to legal sanctions. On the contrary, Congress's goal was to create an opportunity for veterans to correct erroneous benefits decisions. *See* Pet. at 29.

The Federal Circuit's decision is contrary not only to Congressional intent and traditional agency practice, but also to its own prior decisions granting veterans relief based on legal errors without a requirement that the law be undebatably clear. Consider *Pirkl* v. *Wilkie*, 906 F.3d 1371 (Fed. Cir. 2018). That case addressed Navy veteran Robert Pirkl, whose benefits "based on a service-connected psychiatric condition" were wrongfully reduced for over 35 years due to an erroneous VA decision. *Id.* at 1373. The Federal Circuit awarded retroactive benefits because the VA's basis for reducing Mr. Pirkl's benefits went against "the plain language of the regulation." *Id.* at 1379.

Notably, the government subjected that position to actual debate: the government argued that the VA's benefits decision was not erroneous at all. *Ibid.* (summarizing the government's argument that the regulation did not apply). Although the Federal Circuit rejected the government's position, the court did not describe the government's position as frivolous. Instead, the Federal Circuit seriously considered the government's arguments, distinguished a prior ruling, and rejected the government's position on the merits in a published opinion. *Id.* at 1380. This shows the legal issue in *Pirkl* was subject to reasonable debate—even

though the CUE standard was still satisfied. The decision below, however, would apparently deny relief to future veterans in Mr. Pirkl's shoes, and all but eliminate CUE relief in realistic cases involving legal error.

II. The Decision Below Will Harm Vulnerable Veterans For Whom CUE Relief is Critical.

President Lincoln recognized the fundamental principle on which the VA's mission rests: Our country must "care for him who shall have borne the battle and for his widow, and his orphan." Abraham Lincoln, Second Inaugural Address, 1865; *see also* U.S. Dep't of Veteran Affairs, *The Origin of the VA Motto*.[2] The practical realities of the VA bureaucracy and the veteran population it serves make the CUE safety valve particularly critical to achieving that objective, and the Federal Circuit's restrictive regime in turn particularly damaging.

1. CUE review serves as a critical backstop for vulnerable and under-resourced veterans who are less able to meaningfully appeal erroneous decisions in the first instance. Veterans with PTSD, for example, frequently face difficulty with executive functioning. Miranda Olff et al., *Executive Function in Post-traumatic Stress Disorder (PTSD) and the Influence of Comorbid Depression*, 112 Neurobiology of Learning & Memory 114 (2014). That makes it particularly difficult for those veterans to attend to focused tasks, an essential skill for navigating the VA's labyrinthian appeals process.

The experience of veterans with PTSD in other parts of the VA process shows that they are "especially likely to fall through the cracks." Brian A. Liang & Mark S.

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[2] Available at https://perma.cc/6Z9B-SR4L.

Boyd, *PTSD in Returning Wounded Warriors: Ensuring Medically Appropriate Evaluation and Legal Representation Through Legislative Reform*, 22 Stan. L. & Pol'y Rev. 177, 178 (2011). The appeals process, with its complex procedures and paperwork, "can be quite overwhelming for veterans with PTSD who are likely lacking in focus and unable to complete tasks." *See* Amitis Darabnia, *To Care for Him Who Shall Have Borne the Battle: Government's Response to PTSD*, 25 Fed. Cir. B.J. 453, 477-478 (2016) (discussing the claims process as a whole).

Similarly, "[f]rom the time of the Vietnam War, and continuing as veterans returned from wars in Iraq and Afghanistan, data show that veterans have experienced homelessness at rates exceeding their representation in the general population." Libby Perl, *Veterans and Homelessness*, Cong. Research Serv., Report No. RL34024 (2023); *see* Brent D. Mast, *Veteran and Nonveteran Homelessness Rates: New Estimates*, 25 Cityscape 379, 379–85 (2023) (similar). Unhoused veterans are less likely to be able to successfully navigate the VA benefits system, including by identifying errors and bringing appeals based on them.

Veterans also often experience economic hardship beyond homelessness. For example, a study by the VA in 2015 found that 4.7% of employed veterans fell below the poverty line and post-9/11 veterans were more likely to be considered working poor than prior generations of veterans. *The Veteran Working-Poor: The Relationship Between Labor Force Activity and Poverty Status*, Nat'l Ctr. for Veterans Analysis & Statistics, U.S. Dep't of Veterans Affairs, (Nov. 2017). The Congressional Budget Office has also found that veterans receiving VA disability compensation earned "16 percent less than the earnings of veterans without

a VA disability rating." Congressional Budget Office, *Income of Working-Age Veterans Receiving Disability Compensation* (Dec. 14, 2023).

These vulnerabilities reduce the chances that veterans will successfully identify legal errors in the VA benefits process and pursue direct appeals, and in turn increase the importance of meaningful CUE review to provide benefits that were wrongly denied.

2. CUE relief is especially important because the VA's bureaucracy is "sprawling and Kafkaesque." Adam S. Zimmerman, *Exhausting Government Class Actions*, U. Chi L. Rev. Online (Oct. 2022). In particular, it is slow, byzantine, and riddled with errors.

First, the VA all too often wrongly denies veterans the benefits they deserve. For example, the VA Deputy Assistant Inspector General recently described how "inadequate training combines with often scattered, unclear, and underdeveloped guidance to contribute to incorrect payments to" veterans. *Statement of Brent Arronte,* Hearing on "Waste & Delays: Examining VA's Improper Payments in Its Compensation and Pension Programs" (May 14, 2025).[3] Nor is this a new trend: For the fiscal year of 1999, the VA reported that almost one-third of its initial benefits decisions were inaccurate. U.S. Gov't Accountability Off., *Veterans Benefits Administration: Problems and Challenges Facing Disability Claims Processing* at 2, 4–5 (2000). Further, the VA Office of the Inspector General "estimated that about 57 percent of denied military sexual trauma claims were still not being processed correctly from October 1 to December 31, 2019." Department of Veterans Affairs Office of Inspector General, *Improvements Still Needed in Processing*

[3] https://perma.cc/45FX-78X7

Military Sexual Trauma Claims, Report No. 20-00041-163, at ii (Aug. 5, 2021).

Second, the appeals process is a miasma with an "intractable" backlog that often leads to multi-year delays. Adam S. Zimmerman, *Exhausting Government Class Actions*, U. Chi. L. Rev. Online (2022). And even at the end, the VA often does not fully correct its errors. "The procedure for claiming and appealing benefits has been likened to a hamster wheel because veterans' claims are developed, denied, appealed, and remanded ad infinitum." Hugh McClean, *Delay, Deny, Wait Till They Die: Balancing Veterans' Rights and Non-Adversarial Procedures in the VA Disability Benefits System*, 72 S.M.U. L. Rev 277, 283 (2019) (citing *Coburn* v. *Nicholson*, 19 Vet. App. 427, 434 (2006) (Lance, J., dissenting)). This drives many veterans away from the direct appeal process.

Moreover, the direct appeal process is particularly difficult for the most vulnerable veterans who lack access to counsel and other resources. While the VA process is ostensibly non-adversarial, a study of veterans' appeals results showed that veterans with counsel were roughly 33% more likely to win their appeals. Liang & Boyd, 22 Stan. L. & Pol'y Rev. at 207–08. But many veterans lack legal counsel and thus face an uphill battle on direct appeal.

Importantly, CUE review is the only safety valve for veterans who received legally erroneous VA benefits decisions before 1988. "Before 1988, a veteran whose claim was rejected by the VA was generally unable to obtain further review." *Henderson ex rel. Henderson* v. *Shinseki*, 562 U.S. 428, 432 (2011). Further appeal outside of the VA system was extremely difficult before Congress passed the Veterans' Judicial Review Act in 1988. *Ibid.* Many of those veterans are now elderly and

have never had the ability to challenge legal errors outside the VA system. For them, CUE review is vital.

In sum, the Federal Circuit's "undebatability" standard is not only seriously wrong, but it also would substantially harm vulnerable veterans by eliminating an important protection against serious legal errors. This Court's review is accordingly warranted.

CONCLUSION

This Court should grant the petition and reverse the decision of the Court of Appeals for the Federal Circuit.

Respectfully submitted,

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