

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

SIMON A. SOTO, INDIVIDUALLY AND ON)
BEHALF OF ALL OTHERS SIMILARLY)
SITUATED,)
) Petitioner,)
) v.) No. 24-320
UNITED STATES,)
) Respondent.)

Pages: 1 through 72
Place: Washington, D.C.
Date: April 28, 2025

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6 Petitioner,)
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8 UNITED STATES,)
9 Respondent.)
10 - - - - -

11
12 Washington, D.C.
13 Monday, April 28, 2025

14
15 The above-entitled matter came on for
16 oral argument before the Supreme Court of the
17 United States at 11:32 a.m.

18
19 APPEARANCES:
20 TACY F. FLINT, ESQUIRE, Chicago, Illinois; on behalf
21 of the Petitioner.
22 CAROLINE A. FLYNN, Assistant to the Solicitor General,
23 Department of Justice, Washington, D.C.; on behalf
24 of the Respondent.
25

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P R O C E E D I N G S

(11:32 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 24-320, Soto versus United States.

Ms. Flint.

ORAL ARGUMENT OF TACY F. FLINT
ON BEHALF OF THE PETITIONER

MS. FLINT: Mr. Chief Justice, and may it please the Court:

This case starts and ends with the text of the Combat-Related Special Compensation statute. Because that statute grants the secretary concerned authority to settle claims for CRSC, the Barring Act does not apply.

A statute grants settlement authority if it authorizes a specific government official to do two things: determine whether a claim is valid and determine the amount due.

Settlement authority does not exist if a statute merely creates a substantive right to payment. The grant of authority to a specific official to administratively determine the validity of the claim and the amount due is the touchstone.

1 The CRSC statute does that. Start
2 with subsection (d). It provides for the
3 secretary of a military department to consider
4 whether a veteran is eligible for CRSC using
5 CRSC-specific procedures and criteria. Because
6 subsection (d) authorizes the secretary to
7 consider whether a veteran is eligible for CRSC,
8 it authorizes a specific government official to
9 determine whether the claim is valid.

10 Then subsections (a) and (b) say the
11 secretary concerned shall determine the amount
12 of CRSC owed, meaning a specific official is
13 authorized to determine the amount due. The
14 CRSC statute in this way grants the secretary
15 concerned all authority needed to determine
16 validity and amount due, so the Barring Act does
17 not apply.

18 Other military compensation statutes
19 that the government has pointed to don't have
20 all of these provisions requiring a particular
21 government official to use particular procedures
22 to determine an individual's entitlement to a
23 particular benefit.

24 All of this is in the CRSC statute
25 because CRSC is different from a lot of other

1 forms of military compensation. Only veterans
2 who prove that they have a combat-related
3 disability are entitled to it. And Congress
4 provided that the secretary of the military
5 department where the veteran served is the
6 appropriate official to make that CRSC-specific
7 determination.

8 Other statutes establish substantive
9 entitlements to benefits. They don't designate
10 a particular government official to determine
11 validity of the claim and the amount due.

12 I welcome the Court's questions.

13 JUSTICE THOMAS: And yet the
14 government argues that if we agree with you,
15 there would be a considerable number of other
16 statutes that would confer settlement --
17 settlement authority.

18 MS. FLINT: Right. Yes, Justice
19 Thomas. The government has pointed to a number
20 of statutes that it says have some similarities
21 to Section 1413a.

22 JUSTICE THOMAS: So how do you
23 disagree -- I mean, where do you think the
24 government is wrong? Because, in your argument,
25 you indicate that there -- there -- there are no

1 other statutes at least in the defense area.

2 MS. FLINT: Right. So some of the
3 statutes they point to, such as the basic pay
4 statute, that's the kind of statute I was
5 referring to that establishes who's entitled to
6 the compensation and how much is owed.

7 That -- those statutes don't say
8 anything about a specific government official
9 determining validity and amount due.

10 Some of the other statutes they point
11 to authorize an official to determine one fact,
12 such as whether a service member is presumed
13 dead for purposes of the survivor annuity
14 benefit plan.

15 That too, you know, authority to
16 determine a fact, a predicate fact, that may be
17 relevant to whether a claim is valid and the
18 amount due, but that is not complete authority
19 to determine validity and amount due on a claim.

20 So looking through the statutes they
21 have cited, we've struggled to find, you know,
22 many of them that actually satisfy what we view
23 as the test for settlement authority: an
24 official with authority to determine validity
25 and the amount due.

1 JUSTICE KAGAN: When -- when you say
2 you've struggled, I mean, do you see any of
3 them? I think there are about 50 statutes in
4 the government's brief. I think there are.
5 One, two, three --

6 MS. FLINT: Right.

7 JUSTICE KAGAN: -- five? Are there
8 any that essentially would be taken down with a
9 decision in your favor?

10 MS. FLINT: So we identified one in
11 our brief, the death gratuity statute, section
12 1479. That authorizes a -- for purposes of
13 immediate payment of death gratuities, it
14 authorizes a regional command to determine
15 which -- whether a beneficiary is entitled to
16 the death gratuity and certify the amount due.
17 That sounds like settlement authority to us.

18 There's one other one that authorizes
19 the military to pay additional subsistence
20 payment if the secretary concerned determines
21 the requirements for eligibility and amount due,
22 that may be another one.

23 I think -- I completely agree with
24 you, Justice Kagan. There were about 50
25 statutes. I've -- in my best review while we

1 were working on the brief and this week
2 preparing for today, those are the two that I
3 found that seemed close.

4 Why are we talking about these? Of
5 course, none of these statutes are part of this
6 case because the government's theory is that the
7 Court should not read Section 1413a literally
8 because of the risk that these other statutes
9 will create a destabilization in their terms of
10 military pay.

11 If one or two of these statutes
12 actually does confer settlement authority, that
13 doesn't sound like destabilization to me. I
14 mean, if this is even an appropriate way to read
15 Section 1413a by reference to other statutes --
16 I don't think it is. I don't think that's the
17 way we do statutory interpretation.

18 But, if it's even appropriate, we
19 haven't gotten to the point of massive upheaval.

20 JUSTICE KAVANAUGH: Well, they --

21 CHIEF JUSTICE ROBERTS: Well, I -- I
22 think it's appropriate in the sense that if a
23 ruling that this is enough to get past the
24 Barring Act based on this statute, the idea is
25 that would sort of open the barn door, getting

1 around a statute that is critically important to
2 the -- the -- protecting the public fisc.

3 Now anytime you say your claim is
4 barred, obviously, you know, there's -- there's
5 maybe injustice or something else, but it is a
6 significant opening of the -- of the barn door.
7 I mean, is there -- what -- is there any statute
8 that has an open-ended mandate to pay that
9 doesn't have -- that is similar to -- to this
10 statute?

11 MS. FLINT: That displaces the Barring
12 Act?

13 CHIEF JUSTICE ROBERTS: Yeah, yeah,
14 yeah.

15 MS. FLINT: There are at least two
16 statutes that have been cited in the briefs in
17 this case that don't limit the time to file
18 claims but that are recognized to displace the
19 Barring Act.

20 One is the Uniformed Services
21 Employment and Reemployment Rights Act discussed
22 by the Federal Circuit in Hernandez versus
23 Department of Air Force. The Federal Circuit in
24 that case noted that that statute displaces the
25 Barring Act even though it does not use the term

1 "settle" and does not limit when claims can be
2 filed.

3 Now that statute did say explicitly
4 that claims could be filed before or after its
5 effective date. But the point is Congress did
6 not -- Congress clearly did not limit the time
7 that claims could be filed.

8 Another statute that the government
9 has cited on page 25 of its brief is the postal
10 service statute. This authorizes the postal
11 service to settle claims against it. That
12 statute too imposes no limitation on the time
13 for claims to be pursued.

14 JUSTICE KAGAN: Is there anything else
15 at issue here other than the statute of
16 limitations? In other words, is there any
17 difference between the Barring Act and 1413a
18 that would matter to anybody other than the
19 statute of limitations, or is -- really, that's
20 what we're talking about?

21 MS. FLINT: That is really what we're
22 talking about, the statute of limitations.

23 And there's plenty of reason why
24 Congress would have chosen not to limit the time
25 for claims to be filed under the CRSC statute.

1 One of them is, you know, a main -- a principal
2 reason for statutes of limitations is for claims
3 to be filed close in time to the facts that
4 support them to avoid stale claims.

5 That is not at issue with the CRSC
6 statute. By design, this statute authorizes
7 claims to be filed now no matter when the injury
8 occurred that supports the claim.

9 So it is clear that Vietnam veterans,
10 individuals who were injured in combat in
11 Vietnam, could file a claim today in 2025 and be
12 awarded CRSC notwithstanding the distance in
13 time. So that --

14 JUSTICE BARRETT: It would be like, I
15 don't know how many hundreds of thousands of
16 dollars that might be, that would be a lump sum
17 then that the Vietnam veteran would be entitled
18 to because of the retrospective?

19 MS. FLINT: The payment is cut off at
20 the enactment of the CRSC statute.

21 JUSTICE BARRETT: Okay.

22 MS. FLINT: So a Vietnam veteran would
23 not be entitled to payment back before the
24 statute.

25 JUSTICE BARRETT: So what is that?

1 2006, something like that? '08?

2 MS. FLINT: 2008 --

3 JUSTICE BARRETT: 2008?

4 MS. FLINT: -- is the version of the
5 statute under which Corporal Soto is entitled to
6 CRSC.

7 JUSTICE BARRETT: But, if you kept
8 going forward, I mean, so let's say 2008
9 forward, I mean, it could be a lump sum if it
10 were, you know, 40 years, if it was 2048.

11 MS. FLINT: Well, certainly,
12 Your Honor is right that, you know, as we go
13 forward, there will be more years back to 2008.
14 It's unlikely, however, or impossible, frankly,
15 that we would have claims going all the way back
16 to 2008, you know, forever. These -- the --

17 JUSTICE BARRETT: You mean because of
18 lifespan?

19 MS. FLINT: Yeah, because of lifespan,
20 that necessarily limits when people can seek
21 CRSC. And, beyond that, of course, this is now
22 a statute that's been around for a while.

23 When it was initially enacted in 2008,
24 you know, people didn't know about it. The
25 population that's seeking these benefits are by

1 definition individuals who have a combat-related
2 disability, which, as the amici point out, makes
3 the application process much more burdensome
4 potentially.

5 This has now been around for a while.
6 You know, we don't have to -- we shouldn't
7 expect for the --

8 JUSTICE SOTOMAYOR: Isn't there a lump
9 sum limit on payment?

10 MS. FLINT: There's not a lump sum
11 limit.

12 JUSTICE SOTOMAYOR: Isn't it limited
13 to \$10,000?

14 MS. FLINT: This lawsuit --

15 JUSTICE SOTOMAYOR: Am I thinking of a
16 different case?

17 MS. FLINT: You're right, but this
18 lawsuit, the reason the \$10,000 limit applies in
19 this lawsuit is that the suit was filed under
20 the Little Tucker Act --

21 JUSTICE SOTOMAYOR: Okay.

22 MS. FLINT: -- which limits claims to
23 \$10,000. That's not because of the statute.

24 JUSTICE SOTOMAYOR: Okay. So
25 there's -- there's an upper limit there?

1 MS. FLINT: For this lawsuit.

2 JUSTICE SOTOMAYOR: Yeah.

3 MS. FLINT: There could be larger
4 claims under the CRSC statute.

5 JUSTICE SOTOMAYOR: I see.

6 JUSTICE ALITO: I think you started to
7 say that there is something about this situation
8 that would -- might have made Congress think
9 that in this particular situation, unlike most
10 other situations, there's no need for a statute
11 of limitations, but I didn't quite understand
12 your answer to -- to that problem.

13 MS. FLINT: Sure.

14 JUSTICE ALITO: What is it?

15 MS. FLINT: Well, one of the main
16 purposes of a statute of limitations doesn't
17 apply here because we know that claims are going
18 to be filed related to injuries that occurred
19 potentially decades ago. The flame -- the form
20 that the Department of Defense uses actually
21 includes World War I as a incident of combat
22 that someone could have been injured in. So
23 we're talking about going back a long way. That
24 doesn't mean the benefits will go back that far.

25 JUSTICE BARRETT: Right.

1 JUSTICE ALITO: Well, no. My --

2 MS. FLINT: The facts --

3 JUSTICE ALITO: -- my question -- my
4 question is not what -- what can be inferred
5 from the statute. My question is what might
6 have motivated Congress to think -- you know,
7 generally, we want to have a statute of
8 limitations for submission of claims to the
9 government or for many other things, but in this
10 particular situation, we don't want that.

11 MS. FLINT: Right.

12 JUSTICE ALITO: And that's what I
13 don't understand your answer to.

14 MS. FLINT: Another reason, a reason
15 why they might not have wanted it here, is CRSC
16 and one other form of benefit called Concurrent
17 Retirement and Disability Pay, these are the two
18 benefits that are exceptions from what's called
19 the ban on concurrent receipt, which means most
20 veterans may not receive retired pay and
21 disability compensation at the same time. But
22 two groups of veterans have this exception:
23 CRSC recipients and CRDP recipients.

24 Now CRDP is paid immediately upon
25 eligibility. There's no application process.

1 Once you satisfy eligibility, you start getting
2 it. Not true for CRSC. Of course, you have to
3 apply. You have to prove that your disability
4 is combat-related.

5 Making the benefits go back to the
6 beginning of eligibility in this way makes it
7 parallel to CRDP. CRSC recipients and CRDP
8 recipients are on the same footing because they
9 both get benefits from the beginning of
10 eligibility.

11 JUSTICE KAVANAUGH: What should we
12 make of the waiver provision?

13 MS. FLINT: In the Barring Act?

14 JUSTICE KAVANAUGH: Mm-hmm. In other
15 words, it's not strictly limited to six years.
16 There's a provision that authorizes waivers to
17 go back further, and I'd just like you to
18 address that, what you think --

19 MS. FLINT: Right.

20 JUSTICE KAVANAUGH: -- or how that
21 factors in, if at all.

22 MS. FLINT: Well, that, of course,
23 only applies to claims that are settled under
24 the Barring Act. Of course, we don't think our
25 claim is, so the waiver provision doesn't come

1 into play.

2 And, of course, it's quite different
3 to have entitlement as of right to payments
4 going back to when eligibility began. That's
5 quite different from having the opportunity to
6 pursue a discretionary waiver under a statute
7 that, in our view, doesn't apply in the first
8 place.

9 JUSTICE KAVANAUGH: And then, on how
10 to read the statutes together, the government
11 points to the GAO Red Book, which talks about
12 this and then says, going back to 1982, Red Book
13 says: In the absence of legislation expressly
14 placing the authority elsewhere, claims
15 settlement jurisdiction under 3702 controls.

16 And I think their point there is that
17 that was the accepted understanding that
18 Congress would have been operating under. And
19 so, if we're guessing or speculating about what
20 the language means, that probably doesn't
21 satisfy what the settled understanding of
22 express displacement was. Do you want to
23 respond to that?

24 MS. FLINT: Sure. So I respectfully
25 disagree with the suggestion that express

1 displacement doesn't -- isn't satisfied by the
2 text of 1413a.

3 So 1413a speaks expressly about
4 authorizing the secretary concerned to determine
5 the validity and amount due on claims. Now it
6 does not use the word "settle." It does use the
7 word "determine." It doesn't use the word
8 "settle."

9 But nobody thinks that -- the
10 government's brief makes this clear. The
11 Federal Circuit agreed. Nobody thinks the word
12 "settle" is required for another statute to
13 displace the Barring Act. I don't think that's
14 what the GAO Red Book from 1982 was saying. I
15 don't think it was saying the word "settle" was
16 required. And if it was, I think it's, you
17 know, mistaken. That's necessary, that makes
18 sense, because of this Court's case law saying
19 we don't use magic words requirements.

20 Now the government has suggested,
21 okay, you don't have to use the word "settle,"
22 but you should use a word more like it than the
23 words in the CRSC statute.

24 Well, in this Court's recent cases, in
25 Lac du Flambeau from a couple terms ago, in

1 Kurtz from last term, in the sovereign immunity
2 context, the Court has said that's wrong. I
3 mean, first, Congress does not have to use a
4 particular word. Second, even if Congress has
5 used a particular word in a variety of statutes
6 like, you know, there are some statutes that use
7 the word "settle," that does not foreclose
8 Congress from using a different word the next
9 time. We don't require --

10 JUSTICE KAGAN: Which word are you
11 using?

12 MS. FLINT: The word --

13 JUSTICE KAGAN: I mean, which word do
14 you -- are you pointing to here? Because
15 whatever -- you -- you might -- yes, we don't
16 demand magic words, but this is a peculiarly
17 indirect way of giving settlement authority to
18 the secretary concerned.

19 MS. FLINT: Well, subsection (d), I
20 think, is actually fairly direct, to
21 respectfully disagree. It says --

22 JUSTICE KAGAN: Yeah. I mean,
23 subsection (d), I mean, that -- that's your best
24 subsection, but even there, the secretary
25 concerned kind of comes in midway through. It's

1 really -- it's really a provision about the
2 Secretary of Defense stating general standards,
3 and then it kind of -- it seems to sort of
4 assume that the secretary of the military
5 department has some role in this but without
6 really giving the secretary of the department
7 the authority to settle.

8 MS. FLINT: I read subsection (d)
9 differently. First, the fact that it authorizes
10 the Secretary of Defense to establish procedures
11 and criteria to resolve CRSC claims, that alone
12 is significant. That tells you we're outside of
13 the procedural world that applies to the Barring
14 Act. There is a whole set of regulatory
15 structure -- regulatory provisions dealing with
16 claims settled under the Barring Act, and they
17 don't apply to CRSC claims, which are settled
18 under these specific procedures.

19 Second, subsection (d) says veterans
20 apply, that's submit a claim, and their
21 application is to be considered by the secretary
22 of the military department or the secretary
23 concerned. I read -- that's fairly explicit.
24 It is to be considered by the secretary
25 concerned.

1 And then that consideration is
2 determinative because subsection (a) tells the
3 secretary concerned to pay eligible retirees
4 eligible under the consideration of the
5 secretary concerned under subsection (d). Then
6 amount due, that comes right out of (a) and (b).
7 Subsection (a) says pay an amount determined
8 under subsection (b), the secretary concerned
9 shall pay an amount determined under subsection
10 (b). Subsection (b) says determine -- here's
11 how you determine the amount to be paid under
12 subsection (a), paid by the secretary concerned.

13 So those provisions work together to
14 establish it's the secretary concerned
15 determining the payment amount.

16 And another thing about payment
17 amount, subsection (d) says it's the secretary
18 of the military department, the secretary
19 concerned, who determines which disabilities are
20 combat-related that determines payment amount
21 to. Subsection (b)(1) says explicitly payment
22 is based only on disabilities that are
23 combat-related.

24 So the determinations of the secretary
25 concerned under subsection (d), which are --

1 that's an authority that is stated explicitly
2 for the secretary concerned under subsection
3 (d). Those determinations are dispositive.
4 They show --

5 JUSTICE ALITO: What about the
6 situation where -- the situation where the
7 veteran owes a lot of money to the government?
8 Can the payment amount be regarded as having
9 been settled before that offset is taken into
10 account?

11 MS. FLINT: Well, the CRSC statute is
12 about settling claims for CRSC, so the result of
13 that process is how much CRSC is this person
14 owed.

15 Now, if the -- if they're owed, let's
16 say, you know, \$100, and if they in turn owe
17 \$500 so that the entire \$100 payment amount is
18 offset, that means they won't be paid \$100 in
19 cash. Instead, they will be paid \$100 in
20 reduction of their otherwise existing debt.
21 That goes to payment, not --

22 JUSTICE GORSUCH: Ms. Flint --

23 MS. FLINT: -- not to settlement.

24 JUSTICE GORSUCH: -- on that, though,
25 the government makes a big deal about offsets in

1 its brief and understandably so.

2 In your understanding of the statute,
3 who does the offsets? How are they accounted
4 for? Because I think it's one thing to
5 determine the validity of the claim; it's
6 another thing then to say whether there are
7 offsets. And then -- and then it's a third
8 thing still to say pay. And you've got in -- in
9 the statute a good deal of language, as you
10 pointed out with Justice Kagan, on the first
11 step, determine the validity of the claim, and
12 maybe on the third, the authority to pay.

13 But somebody's got to do the business
14 in the middle, and who does it and how under
15 your understanding of the statute?

16 MS. FLINT: Right. So the business in
17 the middle first includes the amount due on the
18 CRSC claim, and that is part of settlement.

19 JUSTICE GORSUCH: I got that on 1.

20 MS. FLINT: Oh, that's in 1. Okay.

21 JUSTICE GORSUCH: I'm giving -- I'm
22 giving you that.

23 MS. FLINT: Sorry.

24 JUSTICE GORSUCH: All right. But --
25 but 2, the -- the \$500 that the -- the veteran

1 happens to owe the department for whatever
2 reason, who does that and how before the
3 secretary of the relevant military department is
4 authorized to pay?

5 MS. FLINT: Right. The CRSC statute
6 doesn't specify who needs to do that.

7 JUSTICE GORSUCH: That's why I'm
8 asking the question.

9 MS. FLINT: The -- the -- the way --
10 the way it works in real life is DFAS does that.
11 The guidance actually even talks about this
12 context, the guidance that the Secretary of
13 Defense promulgated for -- for CRSC claims. The
14 guidance says that the DFAS considers offsets in
15 the context of paying claims of overpayment.

16 JUSTICE SOTOMAYOR: I was looking at
17 all the statutes that the government concedes,
18 like the uniform, et cetera, that don't use the
19 word "settlement." None of them talk about
20 offsets. I'm not sure the Bearing Act talks
21 about offsets.

22 MS. FLINT: That's exactly right.
23 None of these statutes talk about offsets.

24 JUSTICE SOTOMAYOR: All -- all of the
25 offsets have been imposed by regulatory

1 direction, correct?

2 MS. FLINT: Yes, or there are some
3 other statutes that refer to offsets, but you're
4 exactly right, Justice Sotomayor, none of these
5 statutes addressing settlement deal with offsets
6 one whit.

7 JUSTICE SOTOMAYOR: And --

8 MS. FLINT: That's not part of the
9 settlement process.

10 JUSTICE SOTOMAYOR: -- at least, if
11 that's going to be an issue, you're not raising
12 it. You accept that the -- the Secretary of
13 Defense's procedures to offset CRSC benefits
14 applies?

15 MS. FLINT: Right. Offsetting
16 procedures, if they apply, I don't have any
17 quibble with that.

18 JUSTICE SOTOMAYOR: Okay.

19 JUSTICE JACKSON: You're just saying
20 that this is not a -- that this is not a
21 material omission from this statute from the
22 standpoint of determining whether it confers
23 settlement authority?

24 MS. FLINT: That's exactly right,
25 Justice Jackson. And, as Justice Sotomayor's

1 question aptly noted, one way we absolutely know
2 it's not a material omission is that there's no
3 such reference in the Barring Act either.
4 Offsets are simply not part of establishing
5 settlement authority.

6 JUSTICE JACKSON: Can you help me just
7 to understand a pure factual and legal point?
8 Because I'm trying to understand it.

9 In the Barring Act, when there's a
10 six-year statute of limitations, do we know from
11 when it accrues, or does it work backwards from
12 the person's application?

13 MS. FLINT: It works -- the six years
14 works backwards from the time the claim was --
15 the application was filed.

16 JUSTICE JACKSON: The application was
17 filed?

18 MS. FLINT: Yes.

19 JUSTICE JACKSON: So you get six -- so
20 we -- we don't have to care -- it's not a
21 prospective thing, like when did it start
22 accruing? It's just whenever the application
23 comes in, if there were a statute of limitations
24 applicable here --

25 MS. FLINT: Right.

1 JUSTICE JACKSON: -- it would just go
2 back six years?

3 MS. FLINT: It would just go back six
4 years. We all agree Corporal Soto is entitled
5 to compensation going forward and going back six
6 years. It's just that we think he's entitled to
7 an additional 30 months because the six-year
8 cutoff under the Barring Act should not apply
9 here.

10 JUSTICE JACKSON: Doesn't apply.

11 JUSTICE SOTOMAYOR: But he can't start
12 the application process until he's gotten a VA
13 rating, correct?

14 MS. FLINT: That's right. A VA rating
15 is required.

16 JUSTICE SOTOMAYOR: And so it doesn't
17 really matter when it occurred, when the injury
18 occurred. He has to apply for the VA rating and
19 he can't control how long they're going to take.

20 MS. FLINT: That's right.

21 JUSTICE SOTOMAYOR: And so, if the VA
22 has a huge backlog of which exists right now,
23 he's now barred from recovery not from his own
24 fault but because of the VA process?

25 MS. FLINT: That's potentially true.

1 In our view, we think eligibility begins at the
2 effective date of the VA rating decision rather
3 than the date the rating decision is issued,
4 but --

5 JUSTICE SOTOMAYOR: Either way --

6 MS. FLINT: Either way --

7 JUSTICE SOTOMAYOR: Yeah.

8 MS. FLINT: -- delay is critical.

9 JUSTICE SOTOMAYOR: Whatever the
10 effective date. I don't know what that means
11 because I don't know if they say it and then put
12 it in writing or not, but the point is that,
13 unlike other benefits where eligibility is
14 determined by the incident, when you're injured,
15 here, it's outside of your control when you can
16 file.

17 MS. FLINT: That's exactly right.

18 JUSTICE SOTOMAYOR: It's in the VA's
19 control.

20 JUSTICE JACKSON: But I guess --

21 JUSTICE SOTOMAYOR: That was your
22 answer to --

23 JUSTICE JACKSON: But there is --
24 there is a -- could be in some cases a pretty
25 significant difference, and I'm just trying to

1 understand it.

2 Here, we have 30 months if we count
3 back six years. That is the difference between
4 your preferred rule and the government's rule.

5 MS. FLINT: That's right.

6 JUSTICE JACKSON: I suppose, you know,
7 it could be that someone doesn't get this rating
8 from, you know, a long, long, long time, and the
9 count back to when the statute was effective,
10 which is the date that you say is the starting
11 point in terms of how -- how much it covers --

12 MS. FLINT: For people who -- who were
13 eligible before the -- the --

14 JUSTICE JACKSON: Yes.

15 MS. FLINT: -- who satisfied other
16 requirements for eligibility.

17 JUSTICE JACKSON: Correct.

18 MS. FLINT: Right.

19 JUSTICE JACKSON: So, you know, it
20 could be a long time in some instances if there
21 is no statute of limitations operating, and I
22 just -- I guess I'm circling back to Justice
23 Alito's question of, you know, are we certain
24 that Congress intended for that entire span to
25 be covered and why would you think in this

1 circumstance they would want -- Congress would
2 want that.

3 MS. FLINT: Well, of course, the best
4 indication of Congress's intent is the -- is the
5 text. In Section 1413a, it is best read to
6 authorize determination of validity and amount
7 due. Section -- the Barring Act, you know,
8 if -- if another statute authorizes that, the
9 Barring Act doesn't apply. So that's the
10 clearest indication.

11 But, as I discussed with Justice Alito
12 earlier, there are ample reasons why Congress
13 would have chosen in this context not to -- not
14 to use that six-year statute of limitations --

15 CHIEF JUSTICE ROBERTS: Thank --

16 MS. FLINT: -- for this population.

17 CHIEF JUSTICE ROBERTS: Thank you,
18 counsel.

19 Justice Thomas?

20 JUSTICE ALITO: Well, I -- I must be
21 dense on this point, but I don't know what those
22 ample reasons are. Maybe you can tell me.

23 Is there some -- some reason to think
24 that in this situation, the claimant is less
25 capable of realizing that the claimant is

1 eligible for this than in other situations so
2 that there's something similar to the tolling
3 rule that would suggest that a statute of
4 limitations is not appropriate here?

5 That's what I'm -- I'm not asking for
6 this as a policy matter. I'm just trying to
7 figure out why Congress might have wanted to do
8 what you think they clearly did in the statute.

9 MS. FLINT: Well, other forms of
10 military compensation -- the most relevant one
11 is CRDP -- automatically are paid as soon as the
12 veteran entitled to it is eligible.

13 Treating the CRSC statute this way
14 makes it the same. So Congress views CRDP as
15 appropriately provided to a veteran every month
16 in which he's eligible. That same
17 application -- that same policy, the same
18 congressional intent applies here too.

19 JUSTICE ALITO: All right. Thanks.

20 CHIEF JUSTICE ROBERTS: Justice
21 Sotomayor?

22 JUSTICE SOTOMAYOR: Is there something
23 special about the conditions that would make a
24 veteran not know he or she is eligible? I mean,
25 there are certain PTSD you may not know. There

1 are other conditions you may not know are
2 militarily related, correct?

3 MS. FLINT: Absolutely. And, I mean,
4 one thing that separates CRSC from other forms
5 of compensation also is the application
6 requirement. So a veteran needs to know that
7 this benefit exists, and, of course, this is
8 only relevant to veterans, as Your Honor was
9 suggesting, who have combat-related
10 disabilities, including disabilities like PTSD,
11 which, as our amici point out, is a particular
12 problem for this kind of bureaucratic
13 interaction.

14 So the need to apply is unique to this
15 statute. That sets it apart. And the need to
16 apply is also especially burdensome to the
17 population that the statute exists to serve. So
18 not imposing this time limitation for this, you
19 know, unusual form of statute for this
20 particularly deserving but, by definition,
21 combat-related disabled population makes perfect
22 sense to me.

23 JUSTICE SOTOMAYOR: Thank you.

24 CHIEF JUSTICE ROBERTS: Justice Kagan?
25 Justice Gorsuch?

1 Justice Kavanaugh?

2 JUSTICE KAVANAUGH: So, on page 34 of
3 the government's brief, they say that other than
4 this case and one other federal claims case,
5 there's no comptroller general, Department of
6 Defense, or judicial decision that finds section
7 3702(b)(1)'s limitations period inapplicable to
8 any form of military compensation in Title 10 or
9 Title 37. I just want -- is that accurate?

10 MS. FLINT: I don't have a -- a -- I
11 don't have a basis to dispute it.

12 JUSTICE KAVANAUGH: Okay. And then
13 they say from there that you're not suggesting
14 that GAO and the Department of Defense have been
15 wrong to apply that limitation to all those
16 other forms of military compensation. Is that
17 accurate?

18 MS. FLINT: That's right. We think
19 this statute is written the way it is to
20 displace the Barring Act. That's part of why we
21 don't think the 50 statutes that we talked about
22 earlier, Justice Kagan, are much of a concern
23 here, because this statute is written
24 differently from those other statutes. And
25 we're not arguing that this is a broad-based

1 change.

2 JUSTICE KAVANAUGH: Right. And then
3 they -- we've repeated this, but then they say
4 you're viewing this as unique and, therefore,
5 you need a clear statement, but we've covered
6 that ground, so I'll let you go with that.

7 Thank you.

8 MS. FLINT: Thank you, Justice
9 Kavanaugh.

10 CHIEF JUSTICE ROBERTS: Justice
11 Barrett?

12 JUSTICE BARRETT: No, thanks.

13 CHIEF JUSTICE ROBERTS: Justice
14 Jackson?

15 JUSTICE JACKSON: And -- and it's my
16 understanding that there are other
17 circumstances, other statutes in the veterans'
18 disability area that don't have statute of
19 limitations, is that right?

20 MS. FLINT: I'm not aware of one.

21 JUSTICE JACKSON: You don't know?
22 Okay.

23 MS. FLINT: There definitely are other
24 statutes that displace the Barring Act that
25 don't have statutes of limitations.

1 JUSTICE JACKSON: That displace the
2 Barring Act --

3 MS. FLINT: Yes.

4 JUSTICE JACKSON: -- and, therefore,
5 allow claims without a statute of limitations?

6 MS. FLINT: Right. It is not the case
7 that every single statute that has ever
8 displaced the Barring Act has its own separate
9 statute of limitations. That is not the case.

10 Other statutes that displace the
11 Barring Act that don't use its six-year statute
12 of limitations also don't impose their own
13 statute of limitations.

14 So CRSC might be the only disability
15 compensation, military disability compensation
16 statute that has been found to apply in that
17 way, but it's not the only statute that applies
18 in that way.

19 JUSTICE JACKSON: Thank you.

20 CHIEF JUSTICE ROBERTS: Thank you,
21 counsel.

22 Ms. Flynn?

23 ORAL ARGUMENT OF CAROLINE A. FLYNN
24 ON BEHALF OF THE RESPONDENT

25 MS. FLYNN: Mr. Chief Justice, and may

1 it please the Court:

2 The text of 3702(a)(1)(A) expressly
3 provides that claims of military service members
4 for various forms of unpaid compensation are to
5 be settled under 3702 and its six-year
6 limitations period.

7 Petitioner is nonetheless arguing that
8 claims for this form of military compensation,
9 CRSC, are not subject to that time bar because
10 the CRSC statute contains its own settlement
11 mechanism without providing its own time limit.

12 Text, history, and context resolve
13 this case. Dating back 200 years, claims for
14 all kinds of military pay and benefits,
15 including retired pay, have been settled under
16 3702 and its predecessors, and since 1940, those
17 pay claims have been subject to the time bar.

18 Congress enacted the CRSC statute,
19 which essentially restores retired pay for some
20 members, against that uniform practice. Yet
21 Congress did not use any of the clear hallmark
22 language that had been recognized to displace
23 3702, including by simply using the word
24 "settle" or simply providing a different timing
25 rule. It follows that the CRSC statute should

1 be read harmoniously with 3702 and that
2 statute's limitations period, which the
3 Secretary of Defense may waive.

4 Petitioner instead asks this Court to
5 parse the various details that the CRSC statute
6 does cover and conclude that they implicitly add
7 up to -- to what would be a highly unusual
8 result: a congressional intent to subject the
9 Department of Defense to open-ended retroactive
10 liability.

11 But the mine run of military pay
12 statutes include the same kinds of details.
13 Indeed, that's true of the statutes governing
14 the death gratuity benefit, which Petitioner has
15 agreed in his reply brief and I believe my
16 friend agreed today would convey independent
17 settlement authority under his test.

18 But we know that can't be right
19 because then Congress's recent amendment of the
20 death gratuity statute to provide a time limit
21 applicable only to miners would be inexplicable.
22 That illustrates that Petitioner's
23 function-based standard does not capture
24 congressional intent and threatens destabilizing
25 results.

1 I welcome the Court's questions.

2 JUSTICE THOMAS: Other than using the
3 word "settle," how would you draft this statute,
4 CRSC statute, to confer settlement authority?

5 MS. FLYNN: So I think, if Congress
6 had provided in the very first subsection that
7 the secretary concerned may settle and pay, that
8 would be the straightforward way to do it that
9 it had used in other military contexts.

10 I think other kind of hallmark --

11 JUSTICE THOMAS: Well, let's -- let's
12 leave the word "settle" out. How would you
13 draft it?

14 MS. FLYNN: So --

15 JUSTICE THOMAS: You said -- you say
16 in your brief that this isn't -- there's no
17 magic words requirement. So what words other
18 than "settle" would you use?

19 MS. FLYNN: So we believe that there
20 are hallmark-like formulations that Congress has
21 used. Often just the word "settle," but there
22 are other examples, like speaking of claims
23 being allowed or disallowed or referring to a
24 finding being final and conclusive.

25 But we do reject the idea that there

1 is a function-based test where you sort of look
2 to whether -- whether the details of program
3 administration provided in a statute add up to
4 a -- something that looks like making
5 determinations relevant to eligibility or
6 determinations relevant to how much will
7 ultimately be paid out.

8 We just don't think that's how
9 Congress has -- has acted when it wants to
10 displace the sort of specialized accounting
11 authority and especially here, where, as Justice
12 Kagan sort of alluded to, the upshot of having
13 3702 apply in this context really is just
14 whether or not the six-year time bar applies.

15 You would expect Congress to have just
16 said something about what kind of timing rule it
17 wanted either for retroactive benefits or
18 otherwise, and we just don't see anything about
19 timing in this provision.

20 JUSTICE JACKSON: So is your argument
21 that the only thing that gets picked up under
22 your rule is the time bar? In other words,
23 would -- are all of the other CS -- whatever the
24 name of the statute is -- are all of the other
25 statutory requirements still in effect?

1 MS. FLYNN: Of the CRSC statute?

2 JUSTICE JACKSON: Yeah.

3 MS. FLYNN: Yes, we agree that
4 everything in the CRSC statute is read
5 harmoniously with 3702.

6 The other key thing that -- that 3702
7 does, which might be more important in other
8 contexts, is that it says who has ultimate
9 authority for settling claims. In the military
10 context, just as a matter of how things work on
11 the ground, there are so many cross-delegations
12 between the Secretary of Defense and the
13 secretaries concerned. For instance, the
14 Secretary of Defense has delegated his 3702
15 settlement authority to process claims to the
16 secretaries concerned, but in turn, the
17 secretaries concerned have delegated their
18 accounting function, so that's the calculation
19 and payment functions, over to DFAS, which is at
20 the D -- DOD level.

21 So, here, like, this dispute really
22 does just come down to whether the statute of
23 limitations, which DOD has interpreted as a -- a
24 sort of -- an ability to go back a certain
25 number of years and awarding retroactive

1 benefits, whether or not that applies to this
2 kind of military compensation.

3 JUSTICE JACKSON: But doesn't --

4 CHIEF JUSTICE ROBERTS: What --

5 JUSTICE JACKSON: -- doesn't it also
6 come down to the meaning of "settle?" Because,
7 in order to harmonize these two statutes, I
8 think you have to look at the fact that the
9 Barring Act says: "Except as provided in
10 another statute, all claims shall be settled as
11 follows."

12 And so we have to determine whether
13 the other statute actually confers settlement
14 authority. And I guess I'm just trying to
15 understand what your test or criteria are for
16 settlement.

17 Your -- your friend on the other side
18 was very clear that settlement in their view is
19 determining whether a claim is valid and
20 determining the amount due, both of which occur
21 under the CRSC statute.

22 You seem to suggest that something
23 more is necessary. Maybe it's the words. I
24 don't know. But what -- what more is necessary
25 to settle a claim from the government's

1 perspective?

2 MS. FLYNN: So what -- what needs to
3 be located in the statute is one of those
4 hallmark formulations or for Congress to
5 otherwise make its intent unmistakably clear
6 that it wants to displace the 3702 regime.

7 JUSTICE KAGAN: But why --

8 JUSTICE GORSUCH: No, I -- I --

9 JUSTICE KAGAN: -- why isn't this
10 clear --

11 JUSTICE GORSUCH: Please.

12 JUSTICE KAGAN: Why isn't this clear
13 enough, is -- is -- is my question. I mean,
14 this isn't the most obvious way to convey
15 settlement authority, but, on the other hand,
16 the (d) provision does say to a retiree, you
17 know, you may apply to the secretary of a
18 military department to make the eligibility
19 determination, and then subsection (a) says that
20 secretary shall pay the appropriate amount to a
21 person who has been found eligible.

22 So it seems as though, even though
23 it's a little bit backhanded in the way this is
24 phrased, you have everything that's necessary to
25 convey settlement authority here.

1 MS. FLYNN: So I have a few responses
2 to that. The first is that this Court was very
3 clear in Illinois Surety that payment authority
4 is different from settlement authority. They're
5 considered different.

6 JUSTICE KAGAN: Well, I was just
7 saying you have both. You have the --

8 MS. FLYNN: Yeah.

9 JUSTICE KAGAN: -- the secretary shall
10 pay, and you also have a statement that makes it
11 clear that the way this is expected to work is
12 that the retiree applies to the secretary
13 concerned to determine eligibility, so determine
14 the validity of the claim.

15 MS. FLYNN: And what I'd say about the
16 application is that is also just -- I'm going to
17 rely heavily on contextual considerations here,
18 but a statute -- the military pay statute that
19 involves an application is also not unusual.

20 And so my point is that Congress would
21 not have thought that adding that detail along
22 with the other details that it talked about --

23 JUSTICE KAGAN: I'm sorry, could you
24 say again what's not unusual?

25 MS. FLYNN: To have an application

1 process that Congress provides -- and we
2 discuss this in our brief when we're going
3 through the --

4 JUSTICE KAGAN: An application
5 process, but this specifically says go apply to
6 the secretary of the department, right?

7 MS. FLYNN: Yes. And I --

8 JUSTICE KAGAN: He or she is going to
9 be the one who's going to determine your
10 eligibility and thus is going to determine the
11 validity of your claim. And, once it says that,
12 like, really, what more do you need, other than
13 something along the lines of, well, you should
14 have said it in the active voice rather than the
15 passive voice or something?

16 MS. FLYNN: So I can point to, I mean,
17 at least one other statute, the basic needs
18 allowance. This is at 37 U.S.C. 402b; b is part
19 of the section heading. That also has an
20 application required, and that one is also one
21 that says the secretary concerned shall pay to
22 each member who is eligible under subsection (b)
23 a basic needs allowance in the amount determined
24 for such member under subsection (c).

25 I think that meets all of what

1 Petitioner is saying is necessary, which I think
2 basically just comes down to whether a specific
3 person is named when you're setting forth
4 eligibility and calculation rules.

5 I'd also say that it's a little -- I
6 mean, a little odd for Congress to say we're
7 displacing the Barring Act by, you know, naming
8 a particular Department of Defense official to
9 be making these determinations when, before this
10 was transferred to the Secretary of Defense, the
11 Barring -- the 3702 authority, GAO was the one
12 making the -- who had the 3702 authority.

13 So there was always kind of a
14 divergence between the -- the sort of
15 administration of this pay and these organic
16 statutes setting -- authorizing the forms of
17 payment and GAO with its authority under 3702.
18 But, as came up earlier, there was no finding
19 that any other form of military pay or
20 compensation was not subject to the six-year
21 time bar.

22 CHIEF JUSTICE ROBERTS: Counsel,
23 what -- what is the concern you have broader
24 beyond -- beyond this particular statute? I
25 mean, to be eligible for benefits here, you have

1 to have gotten a Purple Heart, be disabled as a
2 result of armed conflict, hazardous service,
3 performance of duty under conditions of war.

4 I -- I can't believe there are people
5 in Congress saying, you know, we're giving too
6 much money to Purple Heart recipients, so let's
7 tighten it up. I mean, what is the -- there
8 must be a bigger concern that the department is
9 worried about.

10 MS. FLYNN: Yes. And so, you know, as
11 I think we -- we suggested in our brief, we're
12 not saying that or suggesting there might be a
13 staggering amount of liability based under this
14 particular type of benefit, and there is also a
15 waiver authority where this time bar can be
16 waived for individuals with CRSC claims or other
17 claims.

18 What -- I -- I would submit that our
19 primary concern here is this kind of -- if there
20 were an adoption of the kind of function-based
21 test the Petitioner is asking for where you look
22 statute by statute and say, well, is there an
23 eligibility determination not in the passive
24 voice but assigned to a person, is it a
25 sufficiently important eligibility

1 determination, because I took my friend to say
2 some were not sufficiently important, do we
3 think this calculation function is assigned to
4 that person or not, we might be in a world where
5 we have lots of different military pay
6 compensation statutes --

7 CHIEF JUSTICE ROBERTS: Well, you
8 might be --

9 MS. FLYNN: -- that now could be
10 awarded --

11 CHIEF JUSTICE ROBERTS: I was going to
12 say you might be, but is it the judgment of the
13 department that you are? I mean, the -- these
14 aren't -- it's not a magic words argument, I
15 understand that, but, you know, they do have
16 words here that are pretty close to the ones
17 that are in the Barring Act.

18 MS. FLYNN: So we -- I can point this
19 Court to six statutes that I believe meet
20 Petitioner's test, at least as clarified in the
21 reply brief.

22 I imagine, even if I'm wrong about
23 that, there would certainly be litigation about
24 it. There will be litigation about other
25 provisions that start to seem similar enough to

1 this one or the next one that gets decided. And
2 then we're in a world where we just really can't
3 predict what kind of open-ended retroactive
4 liability the Department of Defense is facing,
5 which, to repeat what I said earlier, we're
6 aware of no other military pay or compensation
7 statute that opens up the department in that
8 way. And so I -- I -- you know, we -- we want
9 to be careful --

10 CHIEF JUSTICE ROBERTS: You're not
11 aware of any one that opens the department in
12 the way that you -- you argue this one does?

13 MS. FLYNN: Right, to -- to open-ended
14 liability for payments in the past with no kind
15 of -- of time bar.

16 JUSTICE GORSUCH: Is that -- so you
17 say there are six. Your friend says there are
18 two.

19 MS. FLYNN: Yes.

20 JUSTICE GORSUCH: I want to hear what
21 the six are and do all of them contain statutes
22 of limitations, or are some of them lack them
23 too?

24 MS. FLYNN: SO the six provisions I'm
25 pointing to -- so the first is the death

1 gratuity statute --

2 JUSTICE GORSUCH: Yeah.

3 MS. FLYNN: -- which is the one
4 by Petitioner --

5 JUSTICE SOTOMAYOR: I'm sorry, say
6 that again.

7 JUSTICE GORSUCH: The death --

8 MS. FLYNN: Sorry. The death gratuity
9 statute. So those provisions are at 10 U.S.C.
10 1475 through 1480.

11 JUSTICE GORSUCH: Right. You don't
12 need to cite them. Just give them to me. So
13 death -- death gratuity.

14 MS. FLYNN: Yes.

15 JUSTICE GORSUCH: Subsistence, I think
16 Ms. Flint also suggested.

17 MS. FLYNN: See, I'm not sure -- I --
18 I take her word for that.

19 JUSTICE GORSUCH: You're not sure
20 about that one.

21 MS. FLYNN: I'm not sure about that.

22 JUSTICE GORSUCH: Okay.

23 MS. FLYNN: So I guess that would make
24 it seven, but sure.

25 JUSTICE GORSUCH: Just quickly let's

1 tick off the others.

2 MS. FLYNN: Sure. Okay. So a certain
3 form of the disability retirement pay. This is
4 at 10 U.S.C. 1204. The next would be disability
5 severance pay. Those relevant provisions are 10
6 U.S.C. 1203 and 1216. Involuntary discharge
7 separation pay in 10 U.S.C. 1174. And one of
8 the forms of transitional compensation to
9 dependents of members separated for dependent
10 abuse, the exceptional eligibility provisions,
11 and those are located at 10 U.S.C. 1059(1).

12 But if I could go back to the death
13 gratuity provision for --

14 JUSTICE GORSUCH: Before we get to
15 that --

16 MS. FLYNN: Yeah.

17 JUSTICE GORSUCH: -- do those contain
18 statutes of limitations or not?

19 MS. FLYNN: None except for the death
20 gratuity provision, which is the one that I --
21 where I want to make the point about how that
22 one shows the Petitioner's test can't be right.

23 JUSTICE GORSUCH: Okay. Go ahead.

24 MS. FLYNN: So that one does have a
25 statute of limitations that Congress added in

1 the 2025 NDAA, I believe. And, before, it had
2 no statute of limitations and the understanding
3 was that the -- the Barring Act applied.

4 Congress then added a statute of
5 limitations that is only applicable to
6 beneficiaries or survivors who are under the age
7 of 21.

8 JUSTICE GORSUCH: Right.

9 MS. FLYNN: It essentially gives them
10 more time. That would be inexplicable --

11 JUSTICE GORSUCH: I got that.

12 MS. FLYNN: -- if Congress didn't
13 understand that.

14 JUSTICE GORSUCH: I understand the
15 point.

16 And I just want to be clear. Is the
17 government taking the position that should it
18 lose in this case, it will also lose in those
19 six other cases, or are you reserving the right
20 to distinguish them?

21 MS. FLYNN: We are absolutely
22 reserving the right to distinguish them. Our
23 point is more that I certainly think there would
24 be questions about them and there would be sort
25 of fine-tune parsing of whether, you know, do

1 you have to look outside of this provision to
2 find something else, so --

3 JUSTICE GORSUCH: Okay. But we're
4 down from 50 to six or two?

5 MS. FLYNN: Well, it also just
6 depends, I suppose, on what you find to be
7 the -- the -- the relevant line.

8 So, here, I mean, I'm not sure that
9 this statute even meets Petitioner's test
10 because one of the things that Petitioner is
11 saying is -- or my friend is saying is that the
12 responsibility to calculate the amount has to be
13 specifically assigned to a named person.

14 I'm not sure the statute does that.
15 It speaks in the passive voice about the
16 determination and determined.

17 And so, if we think this one counts,
18 then is that close -- you know, then what does
19 that mean for the other ones?

20 JUSTICE GORSUCH: Thank you. Thank
21 you.

22 JUSTICE BARRETT: Ms. Flynn, can I --
23 oh.

24 JUSTICE SOTOMAYOR: All right.

25 JUSTICE BARRETT: Can I just step back

1 for a minute? We rephrased the question
2 presented here to say that a claim for
3 compensation under 1413a would count as a claim
4 for retired pay under the Barring Act.

5 MS. FLYNN: Yes.

6 JUSTICE BARRETT: Do you think we were
7 right to do that? I mean, is it clear that the
8 claim for this kind of compensation is retired
9 pay?

10 MS. FLYNN: Yes. So the Federal
11 Circuit found this in its decision. And, of
12 course, you know, I -- I want to just preface
13 that I also agree -- understand this Court to
14 have taken this issue out of the question
15 presented.

16 But the Federal Circuit's reasoning,
17 which we agree with, is that the way CRSC works
18 is that, because of the concurrent receipt bar
19 that my friend referenced, the background rule
20 is that some members who are entitled to both
21 retired pay and disability compensation have to
22 waive some amount, and that usually means
23 they're waiving retired pay because disability
24 compensation isn't taxable.

25 What this is saying is that that rule

1 still applies, but we're just going to give you
2 a separate income stream to make up for a
3 portion of that that's connected with the
4 disability that's combat-related under this
5 definition.

6 And so it essentially restores
7 retirement pay that these -- these members would
8 have otherwise had to give up. It's calculated,
9 tied to what retired pay they would have
10 otherwise had to give up, and it's also paid out
11 of the military retirement fund, which is how
12 retired pay is paid.

13 So we think those considerations mean
14 this is a claim involving retired pay within the
15 meaning of the --

16 JUSTICE BARRETT: And is there any
17 argument that the litany of other statutes that
18 you cite might not fall within the Barring Act
19 for that separate reason, that, you know, the
20 Barring Act applies to pay allowances, travel,
21 transportation, you know, et cetera, on the
22 list?

23 I mean, but you think they all would
24 qualify, under your understanding, under
25 those -- but that -- but that the implications

1 of this would be it's just entirely
2 inapplicable?

3 I guess what I'm saying is: Is there
4 a reason to think the Barring Act might not
5 apply to those anyway because they don't fall in
6 these categories?

7 MS. FLYNN: I don't think there is a
8 reason. First is that, given the phrase
9 "involving," you know, it's not strictly those
10 categories. But the basic needs allowance is an
11 allowance. I talked about disability
12 retirement. I think that would be considered
13 involving retired pay. The disability severance
14 pay is pay, so -- and --

15 JUSTICE BARRETT: So you see the
16 Barring Act as just sweeping very broadly -- the
17 word involving these categories, it would pull
18 all those things in anyway?

19 MS. FLYNN: Yes. And that has been
20 the background understanding against which
21 Congress would have been legislating in 2002 and
22 then 2008, when it created and expanded this
23 program.

24 JUSTICE ALITO: You have said that if
25 the Court were to disagree with you about this

1 particular statute, the government would argue
2 that there's -- there are grounds for
3 distinguishing those other six statutes that you
4 mentioned.

5 Is there one feature that would
6 provide the basis for that distinction or, if
7 not, on what ground would you distinguish those?

8 MS. FLYNN: So I -- we have to take it
9 case by case and look at the, you know, context
10 of that benefit and what came -- so I'm -- I
11 mostly am just saying that I -- I don't know
12 how -- what arguments we would make. I'm sure
13 we would try to find ways, but my -- Your -- I
14 think Your Honor is asking is there sort of a
15 lowest common denominator that would make a
16 ruling narrow, and I'm just not really sure
17 there is.

18 I suppose you could write an opinion
19 that says, you know, Petitioner flagged six
20 aspects of this statute. All six have to be
21 present. But, if you say something like, here,
22 there are these six features, we're not saying
23 what's enough in the future, then I think
24 we're -- we're off to the races.

25 And so I'm -- I'm not sure. Maybe in

1 an application might be a narrowing device, but
2 even then, we pointed to, I think, five others
3 in our brief. I pointed to one here today. I'm
4 not sure -- I'm sure there might be some
5 applications required by regulation. So I don't
6 think that would meaningfully narrow it if
7 that's --

8 JUSTICE SOTOMAYOR: Counsel, you --

9 JUSTICE KAGAN: And those six
10 statutes, do they deal with big programs, small
11 programs? I mean, what's the extent of the
12 liability that the government is concerned with
13 here?

14 MS. FLYNN: Well, the death gratuity
15 benefit is a hundred thousand dollars to a
16 survivor. You know, I -- I think -- I -- I
17 can't make very firm pronouncements about what
18 kind of dollar figure we're talking about here,
19 but I think the basic needs allowance is a
20 pretty common type of benefit.

21 Disability severance pay, I -- and I'd
22 also just say that we're not saying the list
23 stops here, again, because we just don't totally
24 know how -- one -- once you start going one by
25 one through 10 U.S.C., 37 U.S.C., like, through

1 those titles of the U.S. Code, what else could
2 be found by an authority to look close enough.

3 JUSTICE SOTOMAYOR: I'm going to go
4 back through all seven of them at some point.

5 MS. FLYNN: Sure.

6 JUSTICE SOTOMAYOR: But were these
7 part of that list of 50 you gave in your brief?

8 MS. FLYNN: So the basic needs
9 allowance, we cited, I think, 402(a), and I'm
10 citing (b). So we did not cite that one. I
11 believe the rest of them, we did have them in
12 the various --

13 JUSTICE SOTOMAYOR: Well, I know I
14 didn't do it, but my law clerk did it and told
15 me that the two qualifications that the other
16 side puts forth are: Does the statute determine
17 the validity of a claim, who's going to do it,
18 and who determines the amount due.

19 And she claims, confirmed by my law
20 clerk, that there were only potentially two of
21 those 50-odd statutes where both features were
22 present.

23 Do you dispute that? Are you claiming
24 that in all seven of these those two features,
25 both, are present?

1 MS. FLYNN: I think, if this statute
2 counts, then there's certainly at least -- I --
3 I want to be careful of, again, not trying to
4 concede that we would lose that case if it were
5 to come up.

6 But I think -- for instance, let me --
7 let me take one where I think -- I believe
8 Petitioner disputed whether it would count under
9 their test in their reply brief. That's
10 disability severance pay.

11 So we understand 10 U.S.C. 1216(b)(4),
12 which says the secretary concerned shall have
13 all powers, functions, and duties incident to
14 the determination of this chapter of payment of
15 disability severance pay.

16 We think that sounds like a
17 calculation authority. I gather Petitioner
18 thinks maybe it isn't. But that seems as close
19 to a calculation authority as what we have here
20 in subsection (a), where it says determine --

21 JUSTICE SOTOMAYOR: This has more.
22 This has the secretary deciding eligibility and
23 then determining the amount.

24 MS. FLYNN: Sorry. And so that same
25 provision also says that they -- I -- I elided

1 that part because I was focusing on payment.

2 But that same provision says the
3 secretary concerned shall have all the powers,
4 functions, and duties incident to the
5 determination of this chapter of the entitlement
6 to and payment of disability severance pay.

7 JUSTICE SOTOMAYOR: Okay. Thank you.
8 I'll look --

9 MS. FLYNN: But -- but my point is
10 really just to show the kinds of debates we
11 might be having under the kind of function-based
12 test, whereas before, when you do have -- just
13 looking for certain hallmark language or, I
14 mean, more straightforwardly, to just have a
15 timing provision, since that is the upshot of
16 this being a settlement mechanism --

17 JUSTICE SOTOMAYOR: In the end --

18 JUSTICE JACKSON: But there are -- but
19 there are statutes you say that everybody agrees
20 displace the Barring Act that don't have a
21 timing provision. So I'm trying to understand
22 the relevance in your view of the statute of
23 limitations.

24 Are you saying that you cannot be this
25 kind of settlement statute unless you have a

1 statute of limitations?

2 MS. FLYNN: I am not saying that. The
3 two examples, though, that I think Your Honor is
4 referencing is USERRA and the postal service
5 statutes. So those don't have to do with
6 military pay or benefits.

7 The USERRA provision does speak to
8 timing. It's a provision giving to the MSPB the
9 authority to adjudicate complaints under USERRA,
10 and there's another subsection there that talks
11 about the MSPB ordering, you know, various forms
12 of relief, including monetary relief.

13 And then the provision at issue says
14 that the -- the MSPB will adjudicate
15 complaint -- adjudicate complaints without
16 regard to whether they accrued before, on, or
17 after the effective date of that statute.

18 So it does speak to timing, and it has
19 been --

20 JUSTICE JACKSON: Yeah, it speaks to
21 timing to say don't worry about it. And so --

22 MS. FLYNN: Right.

23 JUSTICE JACKSON: -- I'm trying to
24 understand the extent to which you -- you're
25 saying that a statute can only confer settlement

1 authority and thereby displace the Barring Act
2 if it has a statute of limitations or, I guess,
3 speaks to timing. Like, what is the relevance
4 of the -- the -- the -- the speaking to timing
5 as to whether or not this is a settle -- a
6 statute that confers settlement authority? I
7 thought those were two different concepts.

8 MS. FLYNN: We're not saying that a
9 statute has to have that, but they do tend to go
10 hand in hand, that you have a provision talking
11 about the settlement of claims or the submission
12 of claims to an entity and then providing a
13 timing rule, for instance, like the Military
14 Claims Act, the Foreign Claims Act, other
15 military provisions that we cited in our brief
16 that have been found to displace --

17 JUSTICE JACKSON: I mean, in the
18 Barring Act itself, it has two separate
19 references to "except as provided," which may --
20 which -- which makes me think that Congress was
21 thinking about those as different concepts, that
22 except as provided, the government shall --
23 elsewhere, the government shall settle claims in
24 this way. And then later, when it talks about
25 the particular statutory -- statute of

1 limitations, it has another reference to "except
2 as provided," which it wouldn't have needed if
3 the whole thing turned on whether or not you
4 talked about timing or whatnot.

5 MS. FLYNN: Right. And we're -- we're
6 not saying that absolutely you have to have a
7 timing rule, but we're just saying they do tend
8 to run together because, when you are setting up
9 a claim settlement process, you, you know --

10 JUSTICE JACKSON: They do, but I guess
11 what's really hard for me about your argument is
12 I can't really figure out exactly what it is you
13 think we need to be looking for in order to say
14 the Barring Act applies or it doesn't.

15 You say something like the word
16 "settle," but it doesn't have to be the word
17 "settle," but it can't be a function test; it
18 has to be words. I -- I don't know what that
19 means in real -- real life.

20 I mean, the -- the other side says
21 what you're looking for is do you have a statute
22 that allows -- that authorizes a particular
23 entity to determine whether the claim is valid
24 and determine whether -- what the amount due is.
25 That's a pretty straightforward thing we're

1 looking for, and I appreciate that you say we
2 can find it in various other statutes. But at
3 least it's clear as to what it is they say
4 counts as settlement authority.

5 Yours, I'm not so sure.

6 MS. FLYNN: So we are -- we are saying
7 you need to look for the word "settle" or other
8 hallmark formulations that otherwise get across
9 Congress's intent to convey this kind of
10 specialized accounting authority.

11 And the other thing I would say is
12 just that because, you know, the function-based
13 test essentially looks for various facets of
14 program administration, we just know that can't
15 be the right standard because Congress assigned,
16 under the Barring Act, the authority to settle
17 claims under all of these military pay and
18 compensation statutes, because of that conferral
19 of authority in 3702(a)(1)(A), we just know that
20 Congress wasn't envisioning that the mine run of
21 military pay and benefit statutes would be
22 something provide -- that would displace this
23 regime, because Congress specifically envisioned
24 in 1996 when it added this language that this
25 would be the authority under which those kinds

1 of claims should be settled.

2 So I -- I agree that I'm taking -- I'm
3 looking at what Congress could not have thought
4 counted to say that means that Petitioner's test
5 can't be right, but I think that is a very
6 strong contextual consideration at least in the
7 context of military statutes --

8 JUSTICE KAVANAUGH: When you say --

9 MS. FLYNN: -- that --

10 JUSTICE KAVANAUGH: Keep going.

11 Sorry.

12 MS. FLYNN: I'm finished.

13 JUSTICE KAVANAUGH: When you say
14 "hallmark formulations," just so I make sure we
15 have those in mind.

16 MS. FLYNN: Yes. So -- and these can
17 be seen in the GAO Red Book, the most recent
18 version on this issue, as well as the 1982. So
19 "settle" or "settlement of claims," claims being
20 allowed or allowable or disallowable, reference
21 to either the settlement or to, like, certain
22 findings or determinations being final and
23 conclusive. And then one is, for some executive
24 branch entities, the authority to sue or be sued
25 or determine the nature and character -- or,

1 sorry, character and necessity of their
2 expenditures.

3 JUSTICE KAVANAUGH: And that's in the
4 GAO Red Book now and in '82 or --

5 MS. FLYNN: Yes.

6 JUSTICE KAVANAUGH: -- somewhere?

7 MS. FLYNN: Yes. Yes, and you can --
8 you can look at the statutes that we're citing.

9 JUSTICE KAVANAUGH: And what's the --
10 much as I enjoy talking about the GAO Red
11 Book --

12 (Laughter.)

13 JUSTICE KAVANAUGH: -- what's the
14 relevance of that? Would you summarize that for
15 us?

16 MS. FLYNN: Yes. So GAO used to be
17 the entity that had this authority, so they had
18 to figure out what are these regimes that are
19 going to displace our authority. And GAO was
20 doing that even before Congress added the
21 "except as otherwise provided by law" language
22 in the recodification in 1982. And that's why
23 we pointed out that the GAO Red Book was -- the
24 first edition came out in 1982, right before
25 Congress added that language, which Congress

1 said in the recodification it wasn't intending
2 to make a substantive change. That's in the law
3 itself, and also the revision note said that
4 this "except as otherwise provided by law"
5 language was intended to just be clarifying.

6 So it's that -- the GAO was the one
7 sort of implementing the statute for a long
8 time, and the comptroller general decisions are
9 what we have as authorities in this area of what
10 counts. And so that's why we're relying on sort
11 of the background administrative practice
12 against which Congress would have likely --

13 JUSTICE KAVANAUGH: And the idea is
14 Congress would have spoken more clearly, is your
15 point, general point, there?

16 MS. FLYNN: Yes.

17 JUSTICE KAVANAUGH: And --

18 MS. FLYNN: In the CRSC statute, yes.

19 JUSTICE KAVANAUGH: And the other
20 point, there's no other form of military
21 compensation where the limitations period is
22 inapplicable, correct?

23 MS. FLYNN: Yeah, where there's no
24 limitations period and there is, you know,
25 mandatory open-ended liability.

1 CHIEF JUSTICE ROBERTS: Anyone else?

2 No?

3 Thank you, counsel.

4 MS. FLYNN: Thank you.

5 CHIEF JUSTICE ROBERTS: Anything
6 further? Okay.

7 Thank you.

8 Rebuttal, Ms. Flint?

9 REBUTTAL ARGUMENT OF TACY F. FLINT

10 ON BEHALF OF THE PETITIONER

11 MS. FLINT: Thank you. I'd like to
12 start where you started, Justice Thomas, and you
13 followed up, Justice Kagan. What's missing?
14 The statute authorizes determination of
15 eligibility. It authorizes determination of
16 amount due. So what's missing?

17 I think the answer I heard was a
18 hallmark formulation. We agree it doesn't have
19 to be the word "settle," but it has to be a
20 hallmark formulation. And then my friend read
21 examples of words that, in the government's
22 view, sound "hallmark" enough.

23 As Justice Jackson's questions aptly
24 call out, I don't know what counts as a hallmark
25 formulation. The way that this Court has

1 instructed to read statutes is read the words
2 that are written in the statute. Don't say
3 there's a small group, one or, you know, about a
4 dozen, I think it was, acceptable terms, and if
5 Congress uses these terms, okay, and if it
6 doesn't use these terms, then we're not going to
7 interpret the statute to have settlement
8 authority.

9 That's not how this Court has read
10 statutes. The Court rejected a very similar
11 argument in *Lac du Flambeau* about whether the
12 Bankruptcy Code abrogated tribal sovereign
13 immunity. The argument was that other statutes
14 had made express reference to tribal sovereign
15 immunity, and the Court said Congress is
16 entitled to do it differently this time. That
17 might be the more -- most straightforward way.
18 That might be arguably the most obvious way to
19 abrogate tribal sovereign immunity. But that
20 doesn't mean Congress is foreclosed from doing
21 it using different terms.

22 The same here. Maybe hallmark
23 formulations, "settlement" or otherwise, would
24 be the most obvious, most straightforward way to
25 write the CRSC statute, but that sure doesn't

1 mean it's the only way.

2 The way to interpret Section 1413a is
3 to read its text to determine whether it
4 authorizes an official to determine the validity
5 of CRSC claims and the amount due, and all of
6 that is there in the statute.

7 Now, to talk about the other statutes
8 that my friend has referred to, of course, we
9 started in the briefs with a few or more dozen.
10 We're down to -- I think it was six or seven
11 today that -- that the government thinks may be
12 implicated by application of our test. We've
13 only found two, as -- the same as your law
14 clerk, Justice Sotomayor.

15 Look, maybe these statutes do displace
16 the Barring Act. If a statute has language that
17 authorizes an official to determine the validity
18 of claims and the amount due, it is proper to
19 conclude that the Barring Act is displaced,
20 because Section 3702(a) says: If another
21 statute provides for settlement of claims, this
22 law doesn't apply. A statute that authorizes an
23 official to determine the validity and amount
24 due on claims is a statute that authorizes
25 settlement.

1 That is just the definition of
2 "settlement" that this Court said was
3 well-established as of 1916 and nobody thinks
4 has changed in the intervening years.

5 So, if there is one, two, or six
6 military statutes that courts will have to read
7 as a result of a victory for Corporal Soto here,
8 that is perfectly appropriate. And that
9 prospect certainly doesn't support not reading
10 the text of Section 1413a literally because of
11 concerns that it might give rise to, you know,
12 more lawsuits in connection with six or seven
13 other statutes, or two.

14 To address briefly the retired pay
15 question that you asked, Justice Barrett, of
16 course, we did argue below that we don't think
17 that this case involves retired pay. The
18 Federal Circuit disagreed with that. I mean,
19 that -- I -- I don't think there could be any
20 more hallmark or clear formulation of the
21 statement that CRSC is not retired pay. That is
22 the words in subsection (g) of 1413a.

23 That is a pretty obvious way to
24 conclude that Section 3702(a)(1) does not apply,
25 because this is a benefit that is not retired

1 pay, so determination of claims involving this
2 benefit are not determinations involving retired
3 pay.

4 And that would certainly alleviate any
5 other concerns, although, of course, we do
6 recognize, as my friend did, that that's not
7 part of the question presented as reformulated
8 by this Court.

9 Just to address very briefly the death
10 gratuity statute that my friend mentioned and
11 the statute of limitations, I respectfully take
12 issue with Ms. Flynn's reading of the death
13 gratuity statute.

14 Section 1479, which is the provision
15 which we have read as potentially authorizing
16 settlement, that relates only to immediate
17 payment of death gratuities under Section 1475.
18 It doesn't implicate the statute of limitations.

19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel.

21 The case is submitted.

22 (Whereupon, at 12:36 p.m., the case
23 was submitted.)

24

25

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