

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

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

Pages: 1 through 73
Place: Washington, D.C.
Date: April 28, 2025

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

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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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1 P R O C E E D I N G S

2 (11:32 a.m.)

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

6 Ms. Flint.

7 ORAL ARGUMENT OF TACY F. FLINT

8 ON BEHALF OF THE PETITIONER

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

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

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

20 Settlement authority does not exist if
21 a statute merely creates a substantive right to
22 payment. The grant of authority to a specific
23 official to administratively determine the
24 validity of the claim and the amount due is the
25 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 -- 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 -- I -- I think there
5 are. 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 --
22 I -- I think it's appropriate in the sense that
23 if a -- a ruling that this is enough to get past
24 the Barring Act based on this statute, the idea
25 is that would sort of open the barn door,

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

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

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

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

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

21 One is the Uniformed Services
22 Employment and Reemployment Rights Act discussed
23 by the Federal Circuit in Hernandez versus
24 Department of Air Force. The Federal Circuit in
25 that case noted that that statute displaces the

1 Barring Act even though it does not use the term
2 "settle" and does not limit when claims can be
3 filed.

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

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

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

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

24 And there's plenty of reason why
25 Congress would have chosen not to limit the time

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

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

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

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

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

22 JUSTICE BARRETT: Okay.

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

1 JUSTICE BARRETT: So what is that?

2 2006, something like that? 8?

3 MS. FLINT: 2008 --

4 JUSTICE BARRETT: 2008.

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

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

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

19 JUSTICE BARRETT: You mean because of
20 lifespan?

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

25 When it was initially enacted in 2008,

1 you know, people didn't know about it. The
2 population that's seeking these benefits are by
3 definition individuals who have a combat-related
4 disability, which, as the amici point out, makes
5 the application process much more burdensome
6 potentially.

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

10 JUSTICE SOTOMAYOR: Isn't there a lump
11 sum limit on payment?

12 MS. FLINT: There's not a lump sum
13 limit.

14 JUSTICE SOTOMAYOR: Isn't it limited
15 to \$10,000?

16 MS. FLINT: This lawsuit --

17 JUSTICE SOTOMAYOR: Am I thinking of a
18 different case?

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

23 JUSTICE SOTOMAYOR: Okay.

24 MS. FLINT: -- which limits claims to
25 \$10,000. That's not because of the statute.

1 JUSTICE SOTOMAYOR: Okay. So
2 there's -- there's an upper limit there?

3 MS. FLINT: For this lawsuit.

4 JUSTICE SOTOMAYOR: Yeah.

5 MS. FLINT: There could be larger
6 claims under the CRSC statute.

7 JUSTICE SOTOMAYOR: I see.

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

15 MS. FLINT: Sure.

16 JUSTICE ALITO: What is it?

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

1 doesn't mean the benefits will go back that far.

2 JUSTICE BARRETT: Right.

3 JUSTICE ALITO: Well, no. My --

4 MS. FLINT: The facts --

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

13 MS. FLINT: Right.

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

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

1 Now CRDP is paid immediately upon
2 eligibility. There's no application process.
3 Once you satisfy eligibility, you start getting
4 it. Not true for CRSC. Of course, you have to
5 apply. You have to prove that your disability
6 is combat-related.

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

13 JUSTICE KAVANAUGH: What should we
14 make of the waiver provision?

15 MS. FLINT: In the Barring Act?

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

21 MS. FLINT: Right.

22 JUSTICE KAVANAUGH: -- or how that
23 factors in, if at all.

24 MS. FLINT: Well, that, of course,
25 only applies to claims that are settled under

1 the Barring Act. Of course, we don't think our
2 claim is, so the waiver provision doesn't come
3 into play.

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

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

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

1 respond to that?

2 MS. FLINT: Sure. So I respectfully
3 disagree with the suggestion that express
4 displacement doesn't -- isn't satisfied by the
5 text of 1413a.

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

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

23 Now the government has suggested,
24 okay, you don't have to use the word "settle,"
25 but you should use a word more like it than the

1 words in the CRSC statute.

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

13 JUSTICE KAGAN: Which word are you
14 using?

15 MS. FLINT: The word --

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

22 MS. FLINT: Well, subsection (d), I
23 think, is actually fairly direct, to
24 respectfully disagree. It says --

25 JUSTICE KAGAN: Yeah. I mean,

1 subsection (d), I mean, that -- that's your best
2 subsection, but even there, the secretary
3 concerned kind of comes in midway through. It's
4 really -- it's really a provision about the
5 Secretary of Defense stating general standards,
6 and then it kind of -- it seems to sort of
7 assume that the secretary of the military
8 department has some role in this but without
9 really giving the secretary of the department
10 the authority to settle.

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

22 Second, subsection (d) says veterans
23 apply, that's submit a claim, and their
24 application is to be considered by the secretary
25 of the military department or the secretary

1 concerned. I read -- that's fairly explicit.

2 It is to be considered by the secretary
3 concerned.

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

16 So those provisions work together to
17 establish it's the secretary concerned
18 determining the payment amount.

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

1 combat-related.

2 So the determinations of the secretary
3 concerned under subsection (d), which are --
4 that's an authority that is stated explicitly
5 for the secretary concerned under subsection
6 (d). Those determinations are dispositive.
7 They show --

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

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

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

25 JUSTICE GORSUCH: Ms. Flint --

1 MS. FLINT: -- not to settlement.

2 JUSTICE GORSUCH: -- on that, though,
3 the government makes a big deal about offsets in
4 its brief and understandably so.

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

16 But somebody's got to do the business
17 in the middle, and who does it and how and under
18 your understanding of the statute?

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

22 JUSTICE GORSUCH: I got that on 1.

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

24 JUSTICE GORSUCH: I'm giving -- I'm
25 giving you that.

1 MS. FLINT: Sorry.

2 JUSTICE GORSUCH: All right. But --
3 but 2, the -- the \$500 that the -- the veteran
4 happens to owe the department for whatever
5 reason, who does that and how before the
6 secretary of the relevant military department is
7 authorized to pay?

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

10 JUSTICE GORSUCH: That's why I'm
11 asking the question.

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

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

25 MS. FLINT: That's exactly right.

1 None of these statutes talk about offsets.

2 JUSTICE SOTOMAYOR: All -- all -- all
3 of the offsets have been imposed by regulatory
4 direction, correct?

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

10 JUSTICE SOTOMAYOR: And --

11 MS. FLINT: That's not part of the
12 settlement process.

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

18 MS. FLINT: Right. Offsetting
19 procedures, if they apply, I don't have any
20 quibble with that.

21 JUSTICE SOTOMAYOR: Okay.

22 JUSTICE JACKSON: You're just saying
23 that this is not a -- that this is not a
24 material omission from this statute from the
25 standpoint of determining whether it confers

1 settlement authority?

2 MS. FLINT: That's exactly right,
3 Justice Jackson. And, as Justice Sotomayor's
4 question aptly noted, one way we absolutely know
5 it's not a material omission is that there's no
6 such reference in the Barring Act either.
7 Offsets are simply not part of establishing
8 settlement authority.

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

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

16 MS. FLINT: It works -- the six years
17 works backwards from the time the claim was --
18 the application was filed.

19 JUSTICE JACKSON: The application was
20 filed?

21 MS. FLINT: Yes.

22 JUSTICE JACKSON: So you get six -- so
23 we -- we don't have to care -- it's not a
24 prospective thing, like when did it start
25 accruing? It's just whenever the application

1 comes in, if there were a statute of limitations
2 applicable here --

3 MS. FLINT: Right.

4 JUSTICE JACKSON: -- it would just go
5 back six years?

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

13 JUSTICE JACKSON: Doesn't apply.

14 JUSTICE SOTOMAYOR: But he can't start
15 the application process until he's gotten a VA
16 rating, correct?

17 MS. FLINT: That's right. A VA rating
18 is required.

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

23 MS. FLINT: That's right.

24 JUSTICE SOTOMAYOR: And so, if the VA
25 has a huge backlog of which exists right now,

1 he's now barred from recovery not from his own
2 fault but because of the VA process?

3 MS. FLINT: That's potentially true.

4 In our view, we think eligibility begins at the
5 effective date of the VA rating decision rather
6 than the date the rating decision is issued,
7 but --

8 JUSTICE SOTOMAYOR: Either way --

9 MS. FLINT: Either way --

10 JUSTICE SOTOMAYOR: Yeah.

11 MS. FLINT: -- delay is critical.

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

20 MS. FLINT: That's exactly right.

21 JUSTICE SOTOMAYOR: It's in the VA's
22 control.

23 JUSTICE JACKSON: But I guess --

24 JUSTICE SOTOMAYOR: That was your
25 answer to --

1 JUSTICE JACKSON: But there is --
2 there is a -- could be in some cases a pretty
3 significant difference, and I'm just trying to
4 understand it.

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

8 MS. FLINT: That's right.

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

15 MS. FLINT: For people who -- who were
16 eligible before the -- the --

17 JUSTICE JACKSON: Yes.

18 MS. FLINT: -- who satisfied other
19 requirements for eligibility.

20 JUSTICE JACKSON: Correct.

21 MS. FLINT: Right.

22 JUSTICE JACKSON: So, you know, it
23 could be a long time in some instances if there
24 is no statute of limitations operating, and I
25 just -- I guess I'm circling back to Justice

1 Alito's question of, you know, are we certain
2 that Congress intended for that entire span to
3 be covered and why would you think in this
4 circumstance they would want -- Congress would
5 want that.

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

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

18 CHIEF JUSTICE ROBERTS: Thank --

19 MS. FLINT: -- for this population.

20 CHIEF JUSTICE ROBERTS: Thank you,
21 counsel.

22 Justice Thomas?

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

1 Is there some -- some reason to think
2 that in this situation, the claimant is less
3 capable of realizing that the claimant is
4 eligible for this than in other situations so
5 that there's something similar to the tolling
6 rule that would suggest that a statute of
7 limitations is not appropriate here?

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

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

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

22 JUSTICE ALITO: All right. Thanks.

23 CHIEF JUSTICE ROBERTS: Justice
24 Sotomayor?

25 JUSTICE SOTOMAYOR: Is there something

1 special about the conditions that would make a
2 veteran not know he or she is eligible? I mean,
3 there are certain -- PDST you may not know.
4 There are other conditions you may not know are
5 militarily related, correct?

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

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

1 JUSTICE SOTOMAYOR: Thank you.

2 CHIEF JUSTICE ROBERTS: Justice Kagan?

3 Justice Gorsuch?

4 Justice Kavanaugh?

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

13 MS. FLINT: I don't have a -- a -- I
14 don't have a basis to dispute it.

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

21 MS. FLINT: That's right. We think
22 this statute is written the way it is to
23 displace the Barring Act. That's part of why we
24 don't think the 50 statutes that we talked about
25 earlier, Justice Kagan, are much of a concern

1 here, because this statute is written
2 differently from those other statutes. And
3 we're not arguing that this is a broad-based
4 change.

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

11 MS. FLINT: Thank you, Justice
12 Kavanaugh.

13 CHIEF JUSTICE ROBERTS: Justice
14 Barrett?

15 JUSTICE BARRETT: No, thanks.

16 CHIEF JUSTICE ROBERTS: Justice
17 Jackson?

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

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

24 JUSTICE JACKSON: You don't know?
25 Okay.

1 MS. FLINT: There definitely are other
2 statutes that displace the Barring Act that
3 don't have statutes of limitations.

4 JUSTICE JACKSON: That displace the
5 Barring Act --

6 MS. FLINT: Yes.

7 JUSTICE JACKSON: -- and, therefore,
8 allow claims without a statute of limitations?

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

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

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

22 JUSTICE JACKSON: Thank you.

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel.

25 Ms. Flynn?

1 ORAL ARGUMENT OF CAROLINE A. FLYNN
2 ON BEHALF OF THE RESPONDENT

3 MS. FLYNN: Mr. Chief Justice, and may
4 it please the Court:

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

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

15 Text, history, and context resolve
16 this case. Dating back 200 years, claims for
17 all kinds of military pay and benefits,
18 including retired pay, have been settled under
19 3702 and its predecessors, and since 1940, those
20 pay claims have been subject to the time bar.

21 Congress enacted the CRSC statute,
22 which essentially restores retired pay for some
23 members, against that uniform practice. Yet
24 Congress did not use any of the clear hallmark
25 language that had been recognized to displace

1 3702, including by simply using the word
2 "settle" or simply providing a different timing
3 rule. It follows that the CRSC statute should
4 be read harmoniously with 3702 and that
5 statute's limitations period, which the
6 Secretary of Defense may waive.

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

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

21 But we know that can't be right
22 because then Congress's recent amendment of the
23 death gratuity statute to provide a time limit
24 applicable only to miners would be inexplicable.
25 That illustrates that Petitioner's

1 function-based standard does not capture
2 congressional intent and threatens destabilizing
3 results.

4 I welcome the Court's questions.

5 JUSTICE THOMAS: Other than using the
6 word "settle," how would you draft this statute,
7 CRSC statute, to confer settlement authority?

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

13 I think other kind of hallmark --

14 JUSTICE THOMAS: Well, let's -- let's
15 leave the word "settle" out. How would you
16 draft it?

17 MS. FLYNN: So --

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

22 MS. FLYNN: So we believe that there
23 are hallmark-like formulations that Congress has
24 used. Often just the word "settle," but there
25 are other examples, like speaking of claims

1 being allowed or disallowed or referring to a
2 finding being final and conclusive.

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

11 We just don't think that's how
12 Congress has -- has acted when it wants to
13 displace the sort of specialized accounting
14 authority and especially here, where, as Justice
15 Kagan sort of alluded to, the upshot of having
16 3702 apply in this context really is just
17 whether or not the six-year time bar applies.

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

23 JUSTICE JACKSON: So is your argument
24 that the only thing that gets picked up under
25 your rule is the time bar? In other words,

1 would -- are -- are all of the other CS --
2 whatever the name of the statute is -- are all
3 of the other statutory requirements still in
4 effect?

5 MS. FLYNN: Of the CRSC statute?

6 JUSTICE JACKSON: Yeah.

7 MS. FLYNN: Yes, we agree that
8 everything in the CRSC statute is read
9 harmoniously with 3702.

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

25 So, here, like, this dispute really

1 does just come down to whether the statute of
2 limitations, which DOD has interpreted as a -- a
3 sort of -- an ability to go back a certain
4 number of years and awarding retroactive
5 benefits, whether or not that applies to this
6 kind of military compensation.

7 JUSTICE JACKSON: But doesn't --

8 CHIEF JUSTICE ROBERTS: What --

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

16 And so we have to determine whether
17 the other statute actually confers settlement
18 authority. And I guess I'm just trying to
19 understand what your test or criteria are for
20 settlement.

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

1 You seem to suggest that something
2 more is necessary. Maybe it's the words. I
3 don't know. But what -- what more is necessary
4 to settle a claim from the government's
5 perspective?

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

11 JUSTICE KAGAN: But why --

12 JUSTICE GORSUCH: No, I -- I --

13 JUSTICE KAGAN: -- why isn't this
14 clear --

15 JUSTICE GORSUCH: Please.

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

1 So it seems as though, even though
2 it's a little bit backhanded in the way this is
3 phrased, you have everything that's necessary to
4 convey settlement authority here.

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

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

12 MS. FLYNN: Sure.

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

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

25 And so I -- my point is that Congress

1 would not have thought that adding that detail
2 along with the other details that it talked
3 about --

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

6 MS. FLYNN: To have an application
7 process that Congress provides -- and we
8 discuss this in our brief when we're going
9 through the --

10 JUSTICE KAGAN: An application
11 process, but this specifically says go apply to
12 the secretary of the department, right?

13 MS. FLYNN: Yes. And I --

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

22 MS. FLYNN: So I can point to, I mean,
23 at least one other statute, the basic needs
24 allowance. This is at 37 U.S.C. 402b; b is part
25 of the section heading. That also has an

1 application required, and that one is also one
2 that says the secretary concerned shall pay to
3 each member who is eligible under subsection (b)
4 a basic needs allowance in the amount determined
5 for such member under subsection (c).

6 I think that meets all of what
7 Petitioner is saying is necessary, which I think
8 basically just comes down to whether a specific
9 person is named when you're setting forth
10 eligibility and calculation rules.

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

19 So there was always kind of a
20 divergence between the -- the sort of
21 administration of this pay and these organic
22 statutes setting -- authorizing the forms of
23 payment and GAO with its authority under 3702.
24 But, as came up earlier, there was no finding
25 that any other form of military pay or

1 compensation was not subject to the six-year
2 time bar.

3 CHIEF JUSTICE ROBERTS: Counsel,
4 what -- what is the concern you have broader
5 beyond -- beyond this particular statute? I
6 mean, to be eligible for benefits here, you have
7 to have gotten a Purple Heart, be disabled as a
8 result of armed conflict, hazardous service,
9 performance of duty under conditions of war.

10 I -- I can't believe there are people
11 in Congress saying, you know, we're giving too
12 much money to Purple Heart recipients, so let's
13 tighten it up. I mean, what is the -- there
14 must be a bigger concern that the department is
15 worried about.

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

24 What -- I -- I would submit that our
25 primary concern here is this kind of -- if there

1 were an adoption of the kind of function-based
2 test the Petitioner is asking for where you look
3 statute by statute and say, well, is there an
4 eligibility determination not in the passive
5 voice but assigned to a person, is it a
6 sufficiently important eligibility
7 determination, because I took my friend to say
8 some were not sufficiently important, do we
9 think this calculation function is assigned to
10 that person or not, we might be in a world where
11 we have lots of different military paying
12 compensation statutes --

13 CHIEF JUSTICE ROBERTS: Well, you
14 might be --

15 MS. FLYNN: -- that now could be
16 awarded --

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

24 MS. FLYNN: So we -- I can point this
25 Court to six statutes that I believe meet

1 Petitioner's test, at least as clarified in the
2 reply brief.

3 I imagine, even if I'm wrong about
4 that, there would certainly be litigation about
5 it. There will be litigation about other
6 provisions that start to seem similar enough to
7 this one or the next one that gets decided. And
8 then we're in a world where we just really can't
9 predict what kind of open-ended retroactive
10 liability the Department of Defense is facing,
11 which, to repeat what I said earlier, we're
12 aware of no other military pay or compensation
13 statute that opens up the department in that
14 way. And so I -- I -- you know, we -- we want
15 to be careful --

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

19 MS. FLYNN: Right, to -- to -- to
20 open-ended liability for payments in the past
21 with no kind of -- of time bar.

22 JUSTICE GORSUCH: Is that -- so you
23 say there are six. Your friend says there are
24 two.

25 MS. FLYNN: Yes.

1 JUSTICE GORSUCH: I want to hear what
2 the six are and do all of them contain statutes
3 of limitations, or are some of them lack them
4 too?

5 MS. FLYNN: SO the six provisions I'm
6 pointing to -- so the first is the death
7 gratuity statute --

8 JUSTICE GORSUCH: Yeah.

9 MS. FLYNN: -- which is the one
10 by Petitioner --

11 JUSTICE SOTOMAYOR: I'm sorry, say
12 that again.

13 JUSTICE GORSUCH: The death --

14 MS. FLYNN: Sorry. The death gratuity
15 statute. So those provisions are at 10 U.S.C.
16 1475 through 1480.

17 JUSTICE GORSUCH: Right. You don't
18 need to cite them. Just give them to me. So --
19 death gratuity.

20 MS. FLYNN: Yes.

21 JUSTICE GORSUCH: Subsistence, I think
22 Ms. Flint also suggested.

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

25 JUSTICE GORSUCH: You're not sure

1 about that one.

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

3 JUSTICE GORSUCH: Okay.

4 MS. FLYNN: So I guess that would make
5 it seven, but sure.

6 JUSTICE GORSUCH: Just quickly let's
7 tick off the others.

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

18 But if I could go back to the death
19 gratuity provision for --

20 JUSTICE GORSUCH: But -- but before we
21 get to that --

22 MS. FLYNN: Yeah.

23 JUSTICE GORSUCH: -- do those contain
24 statutes of limitations or not?

25 MS. FLYNN: None except for the death

1 gratuity provision, which is the one that I --
2 where I want to make the point about how that
3 one shows the Petitioner's test can't be right.

4 JUSTICE GORSUCH: Okay. Go ahead.

5 MS. FLYNN: So that one does have a
6 statute of limitations that Congress added in
7 the 2025 NDAA, I believe. And, before, it had
8 no statute of limitations and the understanding
9 was that the -- the Barring Act applied.

10 Congress then added a statute of
11 limitations that is only applicable to
12 beneficiaries or survivors who are under the age
13 of 21.

14 JUSTICE GORSUCH: Right.

15 MS. FLYNN: It essentially gives them
16 more time. That would be inexplicable --

17 JUSTICE GORSUCH: I got that.

18 MS. FLYNN: -- if Congress didn't
19 understand that.

20 JUSTICE GORSUCH: I understand the
21 point.

22 And -- I just want to be clear. Is
23 the government taking the position that should
24 it lose in this case, it will also lose in those
25 six other cases, or are you reserving the right

1 to distinguish them?

2 MS. FLYNN: We are absolutely
3 reserving the right to distinguish them. Our
4 point is more that I certainly think there would
5 be questions about them and there would be sort
6 of fine-tune parsing of whether, you know, do
7 you have to look outside of this provision to
8 find something else, so --

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

11 MS. FLYNN: Well, it also just
12 depends, I suppose, on what you find to be
13 the -- the -- the relevant line.

14 So, here, I mean, I'm not sure that
15 this statute even meets Petitioner's test
16 because one of the things that Petitioner is
17 saying is -- or my friend is saying is that the
18 responsibility to calculate the amount has to be
19 specifically assigned to a named person.

20 I'm not sure the statute does that.
21 It speaks in the passive voice about the
22 determination and determined.

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

1 JUSTICE GORSUCH: Thank you. Thank
2 you.

3 JUSTICE BARRETT: Ms. Flynn, can I --
4 oh.

5 JUSTICE SOTOMAYOR: All right.

6 JUSTICE BARRETT: Can I just step back
7 for a minute? We phrase -- rephrased the
8 question presented here to say that a claim for
9 compensation under 1413a would count as a claim
10 for retired pay under the Barring Act.

11 MS. FLYNN: Yes.

12 JUSTICE BARRETT: Do you think we were
13 right to do that? I mean, is it clear that the
14 claim for this kind of compensation is retired
15 pay?

16 MS. FLYNN: Yes. So the Federal
17 Circuit found this in its decision. And, of
18 course, you know, I -- I want to just preface
19 that I also agree -- understand this Court to
20 have taken this issue out of the question
21 presented.

22 But the Federal Circuit's reasoning,
23 which we agree with, is that the way CRSC works
24 is that, because of the concurrent receipt bar
25 that my friend referenced, the background rule

1 is that some members who are entitled to both
2 retired pay and disability compensation have to
3 waive some amount, and that usually means
4 they're waiving retired pay because disability
5 compensation isn't taxable.

6 What this is saying is that that rule
7 still applies, but we're just going to give you
8 a separate income stream to make up for a
9 portion of that that's connected with the
10 disability that's combat-related under this
11 definition.

12 And so it essentially restores
13 retirement pay that these -- these members would
14 have otherwise had to give up. It's calculated,
15 tied to what retired pay they would have
16 otherwise had to give up, and it's also paid out
17 of the military retirement fund, which is how
18 retired pay is paid.

19 So we think those considerations mean
20 this is a claim involving retired pay within the
21 meaning of the --

22 JUSTICE BARRETT: And is there any
23 argument that the litany of other statutes that
24 you cite might not fall within the Barring Act
25 for that separate reason, that, you know, the

1 Barring Act applies to pay allowances, travel,
2 transportation, you know, et cetera, on the
3 list?

4 I mean, but you think they all would
5 qualify, under your understanding, under
6 those -- but that -- but that the implications
7 of this would be it's just entirely
8 inapplicable?

9 I guess what I'm saying is: Is there
10 a reason to think the Barring Act might not
11 apply to those anyway because they don't fall in
12 these categories?

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

21 JUSTICE BARRETT: So you see the
22 Barring Act as just sweeping very broadly -- the
23 word involving these categories, it would pull
24 all those things in anyway?

25 MS. FLYNN: Yes. And that has been

1 the background understanding against which
2 Congress would have been legislating in 2002 and
3 then 2008, when it created and expanded this
4 program.

5 JUSTICE ALITO: You have said that if
6 the Court were to disagree with you about this
7 particular statute, the government would argue
8 that there's -- there are grounds for
9 distinguishing those other six statutes that you
10 mentioned.

11 Is there one feature that would
12 provide the basis for that distinction or, if
13 not, on what ground would you distinguish those?

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

24 I suppose you could write an opinion
25 that says, you know, Petitioner flagged six

1 aspects of this statute. All six have to be
2 present. But, if you say something like, here,
3 there are these six features, we're not saying
4 what's enough in the future, then I think
5 we're -- we're off to the races.

6 And so I'm -- I'm not sure. Maybe in
7 an application might be a narrowing device, but
8 even then, we pointed to, I think, five others
9 in our brief. I pointed to one here today. I'm
10 not sure -- I'm sure there might be some
11 applications required by regulation. So I don't
12 think that would meaningfully narrow it if
13 that's --

14 JUSTICE SOTOMAYOR: Counsel, you --

15 JUSTICE KAGAN: And those six
16 statutes, do they deal with big programs, small
17 programs? I mean, what's the extent of the
18 liability that the government is concerned with
19 here?

20 MS. FLYNN: Well, the death gratuity
21 benefit is a hundred thousand dollars to a
22 survivor. You know, I -- I think -- I -- I
23 can't make very firm pronouncements about what
24 kind of dollar figure we're talking about here,
25 but I think the basic needs allowance is a

1 pretty common type of benefit.

2 Disability severance pay, I -- I --
3 and I'd also just say that we're not saying the
4 list stops here, again, because we just don't
5 totally know how -- one -- once you start going
6 one by one through 10 U.S.C., 37 U.S.C., like,
7 through those titles of the U.S. Code, what else
8 could be found by an authority to look close
9 enough.

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

12 MS. FLYNN: Sure.

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

15 MS. FLYNN: So the basic needs
16 allowance, we cited, I think, 402(a), and I'm
17 citing (b). So we did not cite that one. I
18 believe the rest of them, we did have them in
19 the various --

20 JUSTICE SOTOMAYOR: Well, I know I
21 didn't do it, but my law clerk did it and told
22 me that the two qualifications that the other
23 side puts forth are: Does the statute determine
24 the validity of a claim, who's going to do it,
25 and who determines the amount due.

1 And she claims, confirmed by my law
2 clerk, that there were only potentially two of
3 those 50-odd statutes where both features were
4 present.

5 Do you dispute that? Are you claiming
6 that in all seven of these those two features,
7 both, are present?

8 MS. FLYNN: I think, if this statute
9 counts, then there's certainly at least -- I --
10 I want to be careful of, again, not trying to
11 concede that we would lose that case if it were
12 to come up.

13 But I think -- for instance, let me --
14 let me take one where I think -- I believe
15 Petitioner disputed whether it would count under
16 their test in their reply brief. That's
17 disability severance pay.

18 So we understand 10 U.S.C. 1216(b)(4),
19 which says the secretary concerned shall have
20 all powers, functions, and duties incident to
21 the determination of this chapter of payment of
22 disability severance pay.

23 We think that sounds like a
24 calculation authority. I gather Petitioner
25 thinks maybe it isn't. But that seems as close

1 to a calculation authority as what we have here
2 in subsection (a), where it says determine --

3 JUSTICE SOTOMAYOR: This has more.
4 This has the secretary deciding eligibility and
5 then determining the amount.

6 MS. FLYNN: Sorry. And so that same
7 provision also says that they -- I -- I elided
8 that part because I was focusing on payment.

9 But that same provision says the
10 secretary concerned shall have all the powers,
11 functions, and duties incident to the
12 determination of this chapter of the entitlement
13 to and payment of disability severance pay.

14 JUSTICE SOTOMAYOR: Okay. Thank you.
15 I'll look --

16 MS. FLYNN: But I -- but my point is
17 really just to show the kinds of debates we
18 might be having under the kind of function-based
19 test, whereas before, when you do have -- just
20 looking for certain hallmark language or, I
21 mean, more straightforwardly, to just have a
22 timing provision, since that is the upshot of
23 this being a settlement mechanism --

24 JUSTICE SOTOMAYOR: In the end --

25 JUSTICE JACKSON: But there are -- but

1 there are statutes you say that everybody agrees
2 displace the Barring Act that don't have a
3 timing provision. So I'm trying to understand
4 the relevance in your view of the statute of
5 limitations.

6 Are you saying that you cannot be this
7 kind of settlement statute unless you have a
8 statute of limitations?

9 MS. FLYNN: I am not saying that. The
10 two examples, though, that I think Your Honor is
11 referencing is USERRA and the postal service
12 statutes. So those don't have to do with
13 military pay or benefits.

14 The USERRA provision does speak to
15 timing. It's a provision giving to the MSPB the
16 authority to adjudicate complaints under USERRA,
17 and there's another subsection there that talks
18 about the MSPB ordering, you know, various forms
19 of relief, including monetary relief.

20 And then the provision at issue says
21 that the -- the MSPB will adjudicate
22 complaint -- adjudicate complaints without
23 regard to whether they accrued before, on, or
24 after the effective date of that statute.

25 So it does speak to timing, and it has

1 been --

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

4 MS. FLYNN: Right.

5 JUSTICE JACKSON: -- I'm trying to
6 understand the extent to which you are -- you're
7 saying that a statute can only confer settlement
8 authority and thereby displace the Barring Act
9 if it has a statute of limitations or, I guess,
10 speaks to timing. Like, what is the relevance
11 of this -- the -- the -- the -- the speaking to
12 timing as to whether or not this is a settle --
13 a statute that confers settlement authority? I
14 thought those were two different concepts.

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

24 JUSTICE JACKSON: I mean, in the
25 Barring Act itself, it has two separate

1 references to "except as provided," which may --
2 which -- which makes me think that Congress was
3 thinking about those as different concepts, that
4 except as provided, the government shall --
5 elsewhere, the government shall settle claims in
6 this way. And then later, when it talks about
7 the particular statutory -- statute of
8 limitations, it has another reference to "except
9 as provided," which it wouldn't have needed if
10 the whole thing turned on whether or not you
11 talked about timing or whatnot.

12 MS. FLYNN: Right. And we're -- we're
13 not saying that absolutely you have to have a
14 timing rule, but we're just saying they do tend
15 to run together because, when you are setting up
16 a claim settlement process, you, you know --

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

22 You say something like the word
23 "settle," but it doesn't have to be the word
24 "settle," but it can't be a function test; it
25 has to be words. I -- I don't know what that

1 means in real -- real life.

2 I mean, the -- the other side says
3 what you're looking for is do you have a statute
4 that allows -- that authorizes a particular
5 entity to determine whether the claim is valid
6 and determine whether -- what the amount due is.
7 That's a pretty straightforward thing we're
8 looking for, and I appreciate that you say we
9 can find it in various other statutes. But at
10 least it's clear as to what it is they say
11 counts as settlement authority.

12 Yours, I'm not so sure.

13 MS. FLYNN: So we are -- we are saying
14 you need to look for the word "settle" or other
15 hallmark formulations that otherwise get across
16 Congress's intent to convey this kind of
17 specialized accounting authority.

18 And the other thing I would say is
19 just that because, you know, the function-based
20 test essentially looks for various facets of
21 program administration, we just know that can't
22 be the right standard because Congress assigned,
23 under the Barring Act, the authority to settle
24 claims under all of these military pay and
25 compensation statutes, because of that conferral

1 of authority in 3702(a)(1)(A), we just know that
2 Congress wasn't envisioning that the mine run of
3 military pay and benefit statutes would be
4 something provi -- that would displace this
5 regime, because Congress specifically envisioned
6 in 1996 when it added this language that this
7 would be the authority under which those kinds
8 of claims should be settled.

9 So I -- I -- I agree that I'm
10 taking -- I'm looking at what Congress could not
11 have thought counted to say that means that
12 Petitioner's test can't be right, but I think
13 that is a very strong contextual consideration
14 at least in the context of military statutes --

15 JUSTICE KAVANAUGH: When you say --

16 MS. FLYNN: -- that --

17 JUSTICE KAVANAUGH: Keep going.

18 Sorry.

19 MS. FLYNN: I'm finished.

20 JUSTICE KAVANAUGH: When you say
21 "hallmark formulations," just so I make sure we
22 have those in mind.

23 MS. FLYNN: Yes. So -- and these can
24 be seen in the GAO Red Book, the most recent
25 version on this issue, as well as the 1982. So

1 "settle" or "settlement of claims," claims being
2 allowed or allowable or disallowable, reference
3 to either the settlement or to, like, certain
4 findings or determinations being final and
5 conclusive. And then one is, for some executive
6 branch entities, the authority to sue or be sued
7 or determine the nature and character -- or,
8 sorry, character and necessity of their
9 expenditures.

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

12 MS. FLYNN: Yes.

13 JUSTICE KAVANAUGH: -- somewhere?

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

16 JUSTICE KAVANAUGH: And what's the --
17 much as I enjoy talking about the GAO Red
18 Book --

19 (Laughter.)

20 JUSTICE KAVANAUGH: -- what's the
21 relevance of that? Would you summarize that for
22 us?

23 MS. FLYNN: Yes. So GAO used to be
24 the entity that had this authority, so they had
25 to figure out what are these regimes that are

1 going to displace our authority. And GAO was
2 doing that even before Congress added the
3 "except as otherwise provided by law" language
4 in the recodification in 1982. And that's why
5 we pointed out that the GAO Red Book was -- the
6 first edition came out in 1982, right before
7 Congress added that language, which Congress
8 said in the recodification it wasn't intending
9 to make a substantive change. That's in the law
10 itself, and also the revision note said that
11 this "except as otherwise provided by law"
12 language was intended to just be clarifying.

13 So it's that -- the GAO was the one
14 sort of implementing the statute for a long
15 time, and the comptroller general decisions are
16 what we have as authorities in this area of what
17 counts. And so that's why we're relying on sort
18 of the background administrative practice
19 against which Congress would have likely --

20 JUSTICE KAVANAUGH: And the idea is
21 Congress would have spoken more clearly, is your
22 point, general point, there?

23 MS. FLYNN: Yes.

24 JUSTICE KAVANAUGH: And --

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

1 JUSTICE KAVANAUGH: And the other
2 point, there's no other form of military
3 compensation where the limitations period is
4 inapplicable, correct?

5 MS. FLYNN: Yeah, where there's no
6 limitations period and there is, you know,
7 mandatory open-ended liability.

8 CHIEF JUSTICE ROBERTS: Anyone else?
9 No?

10 Thank you, counsel.

11 MS. FLYNN: Thank you.

12 CHIEF JUSTICE ROBERTS: Anything
13 further? Okay.

14 Thank you.

15 Rebuttal, Ms. Flint?

16 REBUTTAL ARGUMENT OF TACY F. FLINT

17 ON BEHALF OF THE PETITIONER

18 MS. FLINT: Thank you. I'd like to
19 start where you started, Justice Thomas, and you
20 followed up, Justice Kagan. What's missing?
21 The statute authorizes determination of
22 eligibility. It authorizes determination of
23 amount due. So what's missing?

24 I think the answer I heard was a
25 hallmark formulation. We agree it doesn't have

1 to be the word "settle," but it has to be a
2 hallmark formulation. And then my friend read
3 examples of words that, in the government's
4 view, sound "hallmark" enough.

5 As Justice Jackson's questions aptly
6 call out, I don't know what counts as a hallmark
7 formulation. The way that this Court has
8 instructed to read statutes is read the words
9 that are written in the statute. Don't say
10 there's a small group, one or, you know, about a
11 dozen, I think it was, acceptable terms, and if
12 Congress uses these terms, okay, and if it
13 doesn't use these terms, then we're not going to
14 interpret the statute to have settlement
15 authority.

16 That's not how this Court has read
17 statutes. The Court rejected a very similar
18 argument in *Lac du Flambeau* about whether the
19 Bankruptcy Code abrogated tribal sovereign
20 immunity. The argument was that other statutes
21 had made express reference to tribal sovereign
22 immunity, and the Court said Congress is
23 entitled to do it differently this time. That
24 might be the more -- most straightforward way.
25 That might be arguably the most obvious way to

1 abrogate tribal sovereign immunity. But that
2 doesn't mean Congress is foreclosed from doing
3 it using different terms.

4 Same here. Maybe hallmark
5 formulations, "settlement" or otherwise, would
6 be the most obvious, most straightforward way to
7 write the CRSC statute, but that sure doesn't
8 mean it's the only way.

9 The way to interpret Section 1413a is
10 to read its text to determine whether it
11 authorizes an official to determine the validity
12 of CRSC claims and the amount due, and all of
13 that is there in the statute.

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

22 Look, maybe these statutes do displace
23 the Barring Act. If a statute has language that
24 authorizes an official to determine the validity
25 of claims and the amount due, it is proper to

1 conclude that the Barring Act is displaced,
2 because Section 3702(a) says: If another
3 statute provides for settlement of claims, this
4 law doesn't apply. A statute that authorizes an
5 official to determine the validity and amount
6 due on claims is a statute that authorizes
7 settlement.

8 That is just the definition of
9 "settlement" that this Court said was
10 well-established as of 1916 and nobody thinks
11 has changed in the intervening years.

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

21 To address briefly the retired pay
22 question that you asked, Justice Barrett, of
23 course, we did argue below that we don't think
24 that this case involves retired pay. The
25 Federal Circuit disagreed with that. I mean,

1 that -- I -- I don't think there could be any
2 more hallmark or clear formulation of the
3 statement that CRSC is not retired pay. That is
4 the words in subsection (g) of 1413a.

5 That is a pretty obvious way to
6 conclude that Section 3702(a)(1) does not apply,
7 because this is a benefit that is not retired
8 pay, so determination of claims involving this
9 benefit are not determinations involving retired
10 pay.

11 And that would certainly alleviate any
12 other concerns, although, of course, we do
13 recognize, as my friend did, that that's not
14 part of the question presented as reformulated
15 by this Court.

16 Just to address very briefly the death
17 gratuity statute that my friend mentioned and
18 the statute of limitations, I respectfully take
19 issue with Ms. Flynn's reading of the death
20 gratuity statute.

21 Section 1479, which is the provision
22 which we have read as potentially authorizing
23 settlement, that relates only to immediate
24 payment of death gratuities under Section 1475.
25 It doesn't implicate the statute of limitations.

1 CHIEF JUSTICE ROBERTS: Thank you,
2 counsel.

3 The case is submitted.

4 (Whereupon, at 12:36 p.m., the case
5 was submitted.)

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