

# SUPREME COURT OF THE UNITED STATES

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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 72

Place: Washington, D.C.

Date: April 28, 2025

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5   SITUATED,                                )  
6                               Petitioner,                )  
7                               v.                                ) No. 24-320  
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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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  
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 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 an 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  
7     the Court should not read Section 1413a  
8     literally because of the risk that these other  
9     statutes will create a destabilization in their  
10    terms of 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 that it is. I don't think that's  
17    the 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 think  
22    it's appropriate in the sense that if a ruling  
23    that this is enough to get past the Barring Act  
24    based on this statute, the idea is that would  
25    sort of open the barn door, getting around a

1 statute that is critically important to the --  
2 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 -- is there any statute that  
8 has an open-ended mandate to pay that doesn't  
9 have -- that is similar to -- to this statute?

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

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

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

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

1 filed.

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

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

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

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

22 And there's plenty of reason why  
23 Congress would have chosen not to limit the time  
24 for claims to be filed under the CRSC statute.  
25 One of them is, you know, a main -- a principal

1 reason for statutes of limitations is for claims  
2 to be filed close in time to the facts that  
3 support them to avoid stale claims.

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

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

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

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

20 JUSTICE BARRETT: Okay.

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

24 JUSTICE BARRETT: So what is that?  
25 2006, something like that? '08?

1 MS. FLINT: 2008 --

2 JUSTICE BARRETT: 2008?

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

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

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

16 JUSTICE BARRETT: You mean because of  
17 lifespan?

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

22 When it was initially enacted in 2008,  
23 you know, people didn't know about it, the  
24 population that's seeking these benefits are by  
25 definition individuals who have a combat-related

1 disability, which, as the amici point out, makes  
2 the application process much more burdensome  
3 potentially.

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

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

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

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

13 MS. FLINT: This lawsuit --

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

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

20 JUSTICE SOTOMAYOR: Okay.

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

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

25 MS. FLINT: For this lawsuit.

1 JUSTICE SOTOMAYOR: Yeah.

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

4 JUSTICE SOTOMAYOR: I see.

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

12 MS. FLINT: Sure.

13 JUSTICE ALITO: What is it?

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

24 JUSTICE BARRETT: Right.

25 JUSTICE ALITO: Well, no. My --

1 MS. FLINT: The facts --

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

10 MS. FLINT: Right.

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

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

23 Now CRDP is paid immediately upon  
24 eligibility. There's no application process.  
25 Once you satisfy eligibility, you start getting



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

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

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

12            MS. FLINT: In the Barring Act?

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

18            MS. FLINT: Right.

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

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

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

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

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

23                  MS. FLINT: Sure. So I respectfully  
24    disagree with the suggestion that express  
25    displacement doesn't -- isn't satisfied by the

1 text of 1413a.

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

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

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

23           Well, in this Court's recent cases, in  
24 Lac du Flambeau from a couple terms ago, in  
25 Kurtz from last term, in the sovereign immunity

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

9 JUSTICE KAGAN: Which word are you  
10 using?

11 MS. FLINT: The word --

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

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

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

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

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

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

25 And then that consideration is

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

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

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

23                 So the determinations of the secretary  
24    concerned under subsection (d), which are --  
25    that's an authority that is stated explicitly

1 for the secretary concerned under subsection  
2 (d). Those determinations are dispositive.  
3 They show --

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

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

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

21 JUSTICE GORSUCH: Ms. Flint --

22 MS. FLINT: -- not to settlement.

23 JUSTICE GORSUCH: -- on that, though,  
24 the government makes a big deal about offsets in  
25 its brief and understandably so.

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

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

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

18                  JUSTICE GORSUCH: I got that on 1.

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

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

22                  MS. FLINT: Sorry.

23                  JUSTICE GORSUCH: All right. But --  
24    but 2, the -- the \$500 that the -- the veteran  
25    happens to owe the department for whatever



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

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

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

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

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

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

23 JUSTICE SOTOMAYOR: All -- all of the  
24 offsets have been imposed by regulatory  
25 direction, correct?

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

6 JUSTICE SOTOMAYOR: And --

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

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

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

17 JUSTICE SOTOMAYOR: Okay.

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

23 MS. FLINT: That's exactly right,  
24 Justice Jackson. And, as Justice Sotomayor's  
25 question aptly noted, one way we absolutely know

1     it's not a material omission is that there's no  
2     such reference in the Barring Act either.  
3     Offsets are simply not part of establishing  
4     settlement authority.

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

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

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

15                JUSTICE JACKSON: The application was  
16    filed?

17                MS. FLINT: Yes.

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

24                MS. FLINT: Right.

25                JUSTICE JACKSON: -- it would just go

1 back six years?

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

9 JUSTICE JACKSON: Doesn't apply.

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

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

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

19 MS. FLINT: That's right.

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

24 MS. FLINT: That's potentially true.  
25 In our view, we think eligibility begins at the

1 effective date of the VA rating decision rather  
2 than the date the rating decision is issued,  
3 but --

4 JUSTICE SOTOMAYOR: Either way --

5 MS. FLINT: Either way --

6 JUSTICE SOTOMAYOR: Yeah.

7 MS. FLINT: -- a delay is critical.

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

16 MS. FLINT: That's exactly right.

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

19 JUSTICE JACKSON: But I guess --

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

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

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

4                   MS. FLINT: That's right.

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

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

13                  JUSTICE JACKSON: Yes.

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

16                  JUSTICE JACKSON: Correct.

17                  MS. FLINT: Right.

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

1 want that.

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

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

14 CHIEF JUSTICE ROBERTS: Thank --

15 MS. FLINT: -- for this population.

16 CHIEF JUSTICE ROBERTS: Thank you,  
17 counsel.

18 Justice Thomas?

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

22 Is there some -- some reason to think  
23 that in this situation, the claimant is less  
24 capable of realizing that the claimant is  
25 eligible for this than in other situations so

1     that there's something similar to the tolling  
2     rule that would suggest that a statute of  
3     limitations is not appropriate here?

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

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

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

18            JUSTICE ALITO: All right. Thanks.

19            CHIEF JUSTICE ROBERTS: Justice  
20    Sotomayor?

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



1       militarily related, correct?

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

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

22                  JUSTICE SOTOMAYOR: Thank you.

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

25                  Justice Kavanaugh.

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

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

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

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

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

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

9 CHIEF JUSTICE ROBERTS: Justice  
10 Barrett?

11 Justice Jackson?

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

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

18 JUSTICE JACKSON: You don't know?  
19 Okay.

20 MS. FLINT: There definitely are other  
21 statutes that displace the Barring Act that  
22 don't have statutes of limitations.

23 JUSTICE JACKSON: That displace the  
24 Barring Act --

25 MS. FLINT: Yes.

1 JUSTICE JACKSON: -- and therefore  
2 allow claims without a statute of limitations?

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

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

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

16 JUSTICE JACKSON: Thank you.

17 CHIEF JUSTICE ROBERTS: Thank you,  
18 counsel.

19 Ms. Flynn?

20 ORAL ARGUMENT OF CAROLINE A. FLYNN  
21 ON BEHALF OF THE RESPONDENT

22 MS. FLYNN: Mr. Chief Justice, and may  
23 it please the Court:

24 The text of 3702(a)(1)(A) expressly  
25 provides that claims of military service members

1     for various forms of unpaid compensation are to  
2     be settled under 3702 and its six-year  
3     limitations period.

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

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

15            Congress enacted the CRSC statute,  
16    which essentially restores retired pay for some  
17    members, against that uniform practice. Yet  
18    Congress did not use any of the clear hallmark  
19    language that had been recognized to displace  
20    3702, including by simply using the word  
21    "settle" or simply providing a different timing  
22    rule. It follows that the CRSC statute should  
23    be read harmoniously with 3702 and that  
24    statute's limitations period, which the  
25    secretary of defense may waive.

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

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

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

23           I welcome the Court's questions.

24           JUSTICE THOMAS: Other than using the  
25    word "settle," how would you draft this statute,

1 CRSC statute, to confer settlement authority?

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

7 I think other kind of hallmark --

8 JUSTICE THOMAS: Well, let's -- let's  
9 leave the word "settle" out. How would you  
10 draft it?

11 MS. FLYNN: So --

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

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

22 But we do reject the idea that there  
23 is a function-based test where you sort of look  
24 to whether -- whether the details of program  
25 administration provided in a statute add up to

1 a -- something that looks like making  
2 determinations relevant to eligibility or  
3 determinations relevant to how much will  
4 ultimately be paid out.

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

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

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

23 MS. FLYNN: Of the CRSC statute?

24 JUSTICE JACKSON: Yes.

25 MS. FLYNN: Yes, we agree that



1 everything in the CRSC statute is read  
2 harmoniously with 3702.

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

18 So, here, like, this dispute really  
19 does just come down to whether the statute of  
20 limitations, which DOD has interpreted as a -- a  
21 sort of -- an ability to go back a certain  
22 number of years and awarding retroactive  
23 benefits, whether or not that applies to this  
24 kind of military compensation.

25 JUSTICE JACKSON: But doesn't --

1 CHIEF JUSTICE ROBERTS: What --

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

8 And so we have to determine whether  
9 the other statute actually confers settlement  
10 authority. And I guess I'm just trying to  
11 understand what your test or criteria are for  
12 settlement.

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

18 You seem to suggest that something  
19 more is necessary. Maybe it's the words, I  
20 don't know, but what -- what more is necessary  
21 to settle a claim from the government's  
22 perspective?

23 MS. FLYNN: So what -- what needs to  
24 be located in the statute is one of those  
25 hallmark formulations or for Congress to

1 otherwise make its intent unmistakably clear  
2 that it wants to displace the 3702 regime.

3 JUSTICE KAGAN: But why --

4 JUSTICE GORSUCH: No, I -- I --

5 JUSTICE KAGAN: -- why isn't this  
6 clear --

7 JUSTICE GORSUCH: Please.

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

18 So it seems as though, even though  
19 it's a little bit backhanded in the way this is  
20 phrased, you have everything that's necessary to  
21 convey settlement authority here.

22 MS. FLYNN: So I have a few responses  
23 to that. The first is that this Court was very  
24 clear in Illinois Surety that payment authority  
25 is different from settlement authority. They're

1 considered different.

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

4 MS. FLYNN: Yeah.

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

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

16 And so my point is that Congress would  
17 not have thought that adding that detail along  
18 with the other details that it talked about --

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

21 MS. FLYNN: To have an application  
22 process that Congress provides -- and we  
23 discuss this in our brief and we're going  
24 through the --

25 JUSTICE KAGAN: An application

1 process, but this specifically says go apply to  
2 the secretary of the department, right?

3 MS. FLYNN: Yes. And I --

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

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

21 I think that meets all of what  
22 Petitioner is saying is necessary, which I think  
23 basically just comes down to whether a specific  
24 person is named when you're setting forth  
25 eligibility and calculation rules.

1                   I'd also say that it's a little -- I  
2     mean, a little odd for Congress to say we're  
3     displacing the Barring Act by, you know, naming  
4     a particular Department of Defense official to  
5     be making these determinations when, before this  
6     was transferred to the Secretary of Defense, the  
7     Barring -- the 3702 authority, GAO was the one  
8     making the -- who had the 3702 authority. So  
9     there was always kind of a divergence between  
10    the sort of administration of this pay and these  
11    organic statutes setting -- authorizing the  
12    forms of payment and GAO with its authority  
13    under 3702. But, as came up earlier, there was  
14    no finding that any other form of military pay  
15    or compensation was not subject to the six-year  
16    time bar.

17                  CHIEF JUSTICE ROBERTS: Counsel,  
18    what -- what is the concern you have broader  
19    beyond -- beyond this particular statute? I  
20    mean, to be eligible for benefits here, you have  
21    to have gotten a Purple Heart, be disabled as a  
22    result of armed conflict, hazardous service,  
23    performance of duty under conditions of war.

24                  I -- I can't believe there are people  
25    in Congress saying, you know, we're giving too

1 much money to Purple Heart recipients, so let's  
2 tighten it up. I mean, what is the -- there  
3 must be a bigger concern that the department is  
4 worried about.

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

13 What -- I -- I would submit that our  
14 primary concern here is this kind of -- if there  
15 were an adoption of the kind of function-based  
16 test the Petitioner is asking for where you look  
17 statute by statute and say, well, is there an  
18 eligibility determination not in the passive  
19 voice but assigned to a person, is it a  
20 sufficiently important eligibility  
21 determination, because I took my friend to say  
22 some were not sufficiently important, do we  
23 think this calculation function is assigned to  
24 that person or not, we might be in a world where  
25 we have lots of different military pay

1 compensation statutes --

2 CHIEF JUSTICE ROBERTS: Well, you  
3 might be --

4 MS. FLYNN: -- that are now going to  
5 be awarded --

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

13 MS. FLYNN: So we -- I can point this  
14 Court to the six statutes that I believe meet  
15 Petitioner's test, as least as clarified in the  
16 reply brief.

17 I imagine even if I'm wrong about  
18 that, there would certainly be litigation about  
19 it. There will be litigation about other  
20 provisions that start to seem similar enough to  
21 this one or the next one that gets decided. And  
22 then we're in a world where we just really can't  
23 predict what kind of open-ended retroactive  
24 liability the Department of Defense is facing.

25 Which to repeat what I said earlier,



1 we're aware of no other military pay or  
2 compensation statute that opens up the  
3 department in that way. And so I -- I -- you  
4 know, we -- we want to be careful --

5 CHIEF JUSTICE ROBERTS: You're not  
6 aware of anyone that opens the department in the  
7 way that you -- you argue this one does?

8 MS. FLYNN: Right, to -- to open-ended  
9 liability for payments in the past, with no kind  
10 of -- of time bar.

11 JUSTICE GORSUCH: Is that -- so you  
12 say there are six.

13 MS. FLYNN: Yes.

14 JUSTICE GORSUCH: Your friend says  
15 there are two. I want to hear what the six are.  
16 And do all of them contain statutes of  
17 limitations or are some of them lacking too?

18 MS. FLYNN: SO the six provisions I'm  
19 pointing to -- so the first is the death  
20 gratuity statute --

21 JUSTICE GORSUCH: Yeah.

22 MS. FLYNN: -- which is one  
23 my Petitioner --

24 JUSTICE SOTOMAYOR: I'm sorry, say  
25 that again.

1 JUSTICE GORSUCH: The death --

2 MS. FLYNN: Sorry. The death gratuity  
3 statutes. So those provisions are at 10 U.S.C.  
4 1475 through 1480.

5 JUSTICE GORSUCH: Right. You don't  
6 need to cite them. Just give them to me. So  
7 death -- death gratuity.

8 MS. FLYNN: Yes.

9 JUSTICE GORSUCH: Subsistence, I think  
10 you've -- Ms. Flint also suggested.

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

13 JUSTICE GORSUCH: You're not sure  
14 about that one. Okay.

15 MS. FLYNN: I'm not sure about that.  
16 So I guess that would make it seven, but sure.

17 JUSTICE GORSUCH: Just quickly -- just  
18 tick off the others.

19 MS. FLYNN: Okay. So a certain form  
20 of the disability retirement pay. This is at 10  
21 U.S.C. 1204. The next would be disability  
22 severance pay. Those relevant provisions are 10  
23 U.S.C. 1203 and 1216. Involuntary discharge  
24 separation pay, in 10 U.S.C. 1174.

25 And one of the forms of transitional

1 compensation to dependents of members separated  
2 for dependent abuse, the exceptional eligibility  
3 provisions, and those are located at 10 U.S.C.  
4 1059(1).

5 But if I could go back to the death  
6 gratuity --

7 JUSTICE GORSUCH: Before --

8 MS. FLYNN: -- provision for --

9 JUSTICE GORSUCH: Before we get to  
10 that --

11 MS. FLYNN: Yep.

12 JUSTICE GORSUCH: Do those contain  
13 statutes of limitations or not?

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

18 JUSTICE GORSUCH: Okay. Go ahead.

19 MS. FLYNN: So that one does have a  
20 statute of limitations that Congress added in  
21 the 2025 NDAA, I believe. And before, it had no  
22 statute of limitations and the understanding was  
23 that the Barring Act applied.

24 Congress then added a statute of  
25 limitations that is only applicable to

1 beneficiaries or survivors who are under the age  
2 of 21 --

3 JUSTICE GORSUCH: Right.

4 MS. FLYNN: -- and essentially gives  
5 them more time. That would be inexplicable --

6 JUSTICE GORSUCH: I got that.

7 MS. FLYNN: -- if Congress didn't  
8 understand that.

9 JUSTICE GORSUCH: I understand the  
10 point.

11 And I just want to be clear. Is the  
12 government taking the position that should it  
13 lose in this case, it will also lose in those  
14 six other cases, or are you reserving the right  
15 to distinguish them?

16 MS. FLYNN: We are absolutely  
17 reserving the right to distinguish them. Our  
18 point is more that I certainly think there would  
19 be questions about them and there would be sort  
20 of fine-tune parsing of whether, you know, do  
21 you have to look outside of this provision to  
22 find something else.

23 JUSTICE GORSUCH: Okay. But we're  
24 down from 50 to six or two.

25 MS. FLYNN: Well, it also just

1 depends, I suppose, on what you find to be  
2 the -- the relevant line.

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

9 I'm not sure the statute does that.  
10 It speaks in the passive voice about the  
11 determination to be determined.

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

15 JUSTICE GORSUCH: Thank you. Thank  
16 you.

17 JUSTICE BARRETT: Ms. Flynn, can I --  
18 oh.

19 JUSTICE SOTOMAYOR: Sorry.

20 JUSTICE BARRETT: Can I just step back  
21 for a minute? We rephrase the question  
22 presented here to say that a claim for  
23 compensation under 1413a would count as a claim  
24 for retired pay under the Barring Act.

25 MS. FLYNN: Yes.

1 JUSTICE BARRETT: Do you think we were  
2 right to do that? I mean, is it clear that the  
3 claim for this kind of compensation is retired  
4 pay?

5 MS. FLYNN: Yes. So the Federal  
6 Circuit found this in its decision. And of  
7 course, you know, I want to just preface that I  
8 also agree -- understand this Court to have  
9 taken this issue out of the question presented.

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

19 What this is saying is that that rule  
20 still applies, but we're just going to give you  
21 a separate income stream to make up for a  
22 portion of that that's connected with the  
23 disability that's combat-related under this  
24 definition.

25 And so it essentially restores

1 retirement pay that these -- these members would  
2 have otherwise had to give up. It's calculated,  
3 tied to what retired pay they would have  
4 otherwise had to give up, and it's also paid out  
5 of the military retirement fund, which is how  
6 retired pay is paid.

7 So we think those considerations mean  
8 this is a claim involving retired pay within the  
9 meaning of the --

10 JUSTICE BARRETT: And is there any  
11 argument that the litany of other statutes that  
12 you cite might not fall within the Barring Act  
13 for that separate reason, that, you know, the  
14 Barring Act applies to pay allowances, travel,  
15 transportation, you know, et cetera, on the  
16 list?

17 But you think they all would qualify,  
18 under your understanding, under those -- but  
19 that -- but that the implications of this would  
20 be it's just entirely inapplicable?

21 I guess what I'm saying is: Is there  
22 a reason to think the Barring Act might not  
23 apply to those anyway because they don't fall in  
24 these categories?

25 MS. FLYNN: I don't think there is a

1 reason. First is that, given the phrase  
2 "involving," you know, it's not strictly those  
3 categories. But the basic needs allowance is an  
4 allowance. I talked about disability  
5 retirement. I think that would be considered  
6 involving retired pay. The disability severance  
7 pay is pay, so -- and --

8 JUSTICE BARRETT: So you see the  
9 Barring Act as just sweeping very broadly -- the  
10 word involving these categories, it would pull  
11 all those things in anyway?

12 MS. FLYNN: Yes. And that has been  
13 the background understanding against which  
14 Congress would have been legislating in 2002 and  
15 then in 2008, when it created and expanded this  
16 program.

17 JUSTICE ALITO: You have said that if  
18 the Court were to disagree with you about this  
19 particular statute, the government would argue  
20 that there's -- there are grounds for  
21 distinguishing those other six statutes that you  
22 mentioned.

23 Is there one feature that would  
24 provide the basis for that distinction or, if  
25 not, on what ground would you distinguish those?



1                   MS. FLYNN: So I -- we have to take it  
2 case by case and look at the, you know, context  
3 of that benefit and what came -- so I'm -- I'm  
4 mostly saying that I don't know how -- what  
5 arguments we would make. I'm sure we would try  
6 to find ways, but my -- Your -- I think  
7 Your Honor is asking is there sort of a lowest  
8 common denominator that would make a ruling  
9 narrow, and I'm just not really sure there is.

10                  I suppose you could write an opinion  
11 that says, you know, Petitioner flagged six  
12 aspects of this statute. All six have to be  
13 present. But if you say something like, here,  
14 there are these six features, we're not saying  
15 what's enough in the future, then I think  
16 we're -- we're off to the races.

17                  And so I'm -- I'm not sure. Maybe in  
18 an application might be a narrowing device, but  
19 even then, we pointed to, I think, five others  
20 in our brief. I pointed to one here today. I'm  
21 not sure -- I'm sure there might be some  
22 applications required by regulation.

23                  So I don't think that would  
24 meaningfully narrow it --

25                  JUSTICE SOTOMAYOR: Counsel, you --

1 JUSTICE KAGAN: And those six  
2 statutes, do they deal with big programs? Small  
3 programs? I mean, what's the extent of the  
4 liability that the government is concerned with  
5 here?

6 MS. FLYNN: Well, the death gratuity  
7 benefit is a hundred thousand dollars to a  
8 survivor. You know, I think -- I can't make  
9 very firm pronouncements about what kind of  
10 dollar figure we're talking about here, but I  
11 think the basic needs allowance is a pretty  
12 common type of benefit.

13 Disability severance pay, I -- and I  
14 would also just say that we're not saying the  
15 list stops here, again, because we just don't  
16 totally know how -- one -- once you start going  
17 one by one through 10 U.S.C., 37 U.S.C. through  
18 those titles of the U.S. Code, what else could  
19 be found by an authority to look close enough.

20 JUSTICE SOTOMAYOR: I'm going to go  
21 back through all seven of them at some point --

22 MS. FLYNN: Sure.

23 JUSTICE SOTOMAYOR: -- but were these  
24 part of that list of 50 you gave in your brief?

25 MS. FLYNN: So the basic needs

1 allowance, we cited, I think, 402(a), and I'm  
2 citing (b). So we did not cite that one. I  
3 believe the rest of them we did have them in the  
4 various --

5 JUSTICE SOTOMAYOR: Well, I know I  
6 didn't do it, but my law clerk did it and told  
7 me that the two qualifications that the other  
8 side puts forth are: Does the statute determine  
9 the validity of a claim, who's going to do it,  
10 and who determines the amount due.

11 And she claims, confirmed by my law  
12 clerk, that there were only potentially two of  
13 those fifty-odd statutes where both features  
14 were present.

15 Do you dispute that? Are you claiming  
16 that in all seven of these those two features,  
17 both, are present?

18 MS. FLYNN: I think if this statute  
19 counts, then there's certainly at least -- I --  
20 I want to be careful of, again, not trying to  
21 concede that we would lose that case if it were  
22 to come up.

23 But I think -- for instance, let me --  
24 let me take one where I think -- I believe  
25 Petitioner disputed whether it would count under

1     their test in their reply brief. That's  
2     disability severance pay.

3             So we understand 10 U.S.C. 1216(b)(4),  
4     which says the Secretary concerned shall have  
5     all powers, functions, and duties incident to  
6     the determination of this chapter of payment of  
7     disability severance pay.

8             We think that sounds like a  
9     calculation authority. I gather Petitioner  
10    thinks maybe it isn't. But that seems as close  
11    to a calculation authority as what we have here  
12    in subsection (a), where it says --

13            JUSTICE SOTOMAYOR: This has more.  
14    This says the secretary deciding eligibility and  
15    then determining the amount.

16            MS. FLYNN: Sorry. And so in that  
17    same provision, it also says that they -- I -- I  
18    elide to that part, so I was focusing on payment  
19    that same provision says the Secretary concerned  
20    shall have all the powers functions and duties  
21    incident to the determination of this chapter of  
22    entitlement to and payment of disability  
23    severance pay.

24            JUSTICE SOTOMAYOR: All right. Okay.  
25    Thank you. I'll look for --

1                   MS. FLYNN: But I -- but my point is  
2 really just to show the kinds of debates we  
3 might be having under the kind of function-based  
4 test, whereas before when you do have -- just  
5 looking for certain hallmark language or, I  
6 mean, more straightforwardly to just have a  
7 timing provision, since that is the upshot of  
8 this being a settlement --

9                   JUSTICE SOTOMAYOR: But --

10                  JUSTICE JACKSON: But there are -- but  
11 there are statutes you say that everybody agrees  
12 displace the Barring Act that don't have a  
13 timing provision. So I'm trying to understand  
14 the relevance in your view of the statute of  
15 limitations.

16                  Are you saying that you cannot be this  
17 kind of settlement statute unless you have a  
18 statute of limitations?

19                  MS. FLYNN: I am not saying that. The  
20 two examples, though, that I think Your Honor is  
21 referencing is USERRA and the postal service  
22 statutes. So those don't have to do with  
23 military pay or benefits.

24                  The USERRA provision does speak to  
25 timing. It's a provision giving to the MSPB the

1 authority to the adjudicate complaints under  
2 USERRA, and there is another subsection there  
3 that talks about the MSPB ordering, you know,  
4 various forms of relief including monetary  
5 relief.

6 And then the provision at issue says  
7 that the MSPB will adjudicate complaint --  
8 adjudicate complaints without regard to whether  
9 they accrued before, on, or after the effective  
10 date of that statute.

11 So it does speak to timing, and it has  
12 been --

13 JUSTICE JACKSON: Well, it speaks to  
14 timing to say don't worry about it. And so --

15 MS. FLYNN: Right.

16 JUSTICE JACKSON: -- I'm trying to  
17 understand the extent to which you -- you're  
18 saying that a statute can only confer settlement  
19 authority and thereby displace the Barring Act  
20 if it has a statute of limitations or, I guess,  
21 speaks to timing. Like, what is the relevance  
22 of the -- the -- the speaking to timing as to  
23 whether or not this is a settle -- a statute  
24 that confers settlement authority? I thought  
25 those were two different concepts.

1                   MS. FLYNN: We're not saying that a  
2     statute has to have that, but they do tend to go  
3     hand in hand, that you have a provision talking  
4     about the settlement of claims or the submission  
5     of claims to an entity, and then providing a  
6     timing rule. For instance, like the Military  
7     Claims Act, the Foreign Claims Act, other  
8     military provisions that we cited in our brief  
9     that have been found to displace --

10                  JUSTICE JACKSON: I mean, in the  
11     Barring Act itself, it has two separate  
12     references to "except as provided," which --  
13     which -- which makes me think that Congress was  
14     thinking about those as different concepts, that  
15     -- that except as provided, the government shall  
16     -- elsewhere, the government shall settle claims  
17     in this way. And then later when it talks about  
18     the particular statutory -- statute of  
19     limitations, it has another reference to "except  
20     as provided," which it wouldn't have needed if  
21     the whole thing turned on whether or not you  
22     talked about timing or whatnot.

23                  MS. FLYNN: Right. And we're -- we're  
24     not saying that absolutely you have to have a  
25     timing rule, but we're just saying they do tend

1 to run together because when you are setting up  
2 a claim settlement process, you, you know --

3 JUSTICE JACKSON: They do, but I guess  
4 it's -- what's really hard for me about your  
5 argument is I can't really figure out exactly  
6 what it is you think we need to be looking for  
7 in order to say the Barring Act applies or it  
8 doesn't.

9 You say something like the word  
10 "settle," but it doesn't have to be the word  
11 "settle," but it can't be a function test; it  
12 has to be words. I -- I don't know what that  
13 means in real -- real life.

14 I mean, the -- the other side says  
15 what you're looking for is do you have a statute  
16 that allows -- that authorizes a particular  
17 entity to determine whether the claim is valid  
18 and determine whether -- what the amount due is.  
19 That's a pretty straightforward thing we're  
20 looking for, and I appreciate that you say we  
21 can find it in various other statutes. But at  
22 least it's clear as to what it is they say  
23 counts as settlement authority.

24 Yours, I'm not so sure.

25 MS. FLYNN: So we are -- we are saying



1     you need to look for the word "settle" or other  
2     hallmark formulations that otherwise get across  
3     Congress's intent to convey this kind of  
4     specialized accounting authority.

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

22            So I -- I -- I agree that I'm  
23    taking -- I'm looking at what Congress could not  
24    have thought counted to say that means that  
25    Petitioner's test can't be right, but I think

1     that is a very strong contextual consideration,  
2     at least in the context of military statutes.

3             JUSTICE KAVANAUGH:  When you say --

4             MS. FLYNN:  That --

5             JUSTICE KAVANAUGH:  Keep going.

6     Sorry.

7             MS. FLYNN:  I'm finished.

8             JUSTICE KAVANAUGH:  When you say  
9     "hallmark formulations," just so I make sure we  
10    have those in mind.

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

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

25            MS. FLYNN:  Yes.

1 JUSTICE KAVANAUGH: -- somewhere.

2 MS. FLYNN: Yes. Yes, and you can --  
3 you can look at the statutes that --

4 JUSTICE KAVANAUGH: And what's the --  
5 as much as I enjoy talking about the GAO Red  
6 Book --

7 (Laughter.)

8 JUSTICE KAVANAUGH: -- what's the  
9 relevance of that? Would you summarize that for  
10 us?

11 MS. FLYNN: Yes. So GAO used to be  
12 the entity that had this authority, so they had  
13 to figure out what are these regimes that are  
14 going to displace our authority. And GAO was  
15 doing that even before Congress added the  
16 "except as otherwise provided by law" language  
17 in the recodification in 1982. And that's why  
18 we pointed out that the GAO Red Book was -- the  
19 first edition came out in 1982, right before  
20 Congress added that language, which Congress  
21 said in the recodification it wasn't intending  
22 to make a substantive change. That's in the law  
23 itself, and also the revision note said that  
24 this "except as otherwise provided by law"  
25 language was intended to just be clarifying.

1                   So it's that -- the GAO was the one  
2                   sort of implementing the statute for a long  
3                   time, and the Comptroller General decisions are  
4                   what we have as authorities in this area of what  
5                   counts. And so that's why we're relying on sort  
6                   of the background administrative practice  
7                   against which Congress would have --

8                   JUSTICE KAVANAUGH: And the idea is  
9                   Congress would have spoken more clearly, is your  
10                  point, general point, there?

11                  MS. FLYNN: Yes.

12                  JUSTICE KAVANAUGH: And --

13                  MS. FLYNN: In the CRSC statute. Yes.

14                  JUSTICE KAVANAUGH: And the other  
15                  point, there's no other form of military  
16                  compensation where the limitations period is  
17                  inapplicable, correct?

18                  MS. FLYNN: Yeah, where there's no  
19                  limitations period and there is a -- like a, you  
20                  know, mandatory open-ended liability.

21                  CHIEF JUSTICE ROBERTS: Anyone else?  
22                  All right.

23                  Thank you, counsel.

24                  MS. FLYNN: Thank you.

25                  CHIEF JUSTICE ROBERTS: Anything

1 further? Okay.

2 Thank you.

3 Rebuttal, Ms. Flint?

4 REBUTTAL ARGUMENT OF TACY F. FLINT

5 ON BEHALF OF THE PETITIONER

6 MS. FLINT: Thank you. I'd like to  
7 start where you started, Justice Thomas, and you  
8 followed up, Justice Kagan. What's missing?  
9 The statute authorizes determination of  
10 eligibility. It authorizes determination of  
11 amount due. So what's missing?

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

18 As Justice Jackson's questions aptly  
19 call out, I don't know what counts as a hallmark  
20 formulation. The way that this Court has  
21 instructed to read statutes is read the words  
22 that are written in the statute. Don't say  
23 there's a small group, one or, you know, about a  
24 dozen, I think it was, acceptable terms, and if  
25 Congress uses these terms, okay; and if it

1 doesn't use these terms, then we're not going to  
2 interpret the statute to have settlement  
3 authority.

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

17 Same here. Maybe hallmark  
18 formulations, "settlement" or otherwise, would  
19 be the most obvious, most straightforward way to  
20 write the CRSC statute, but that sure doesn't  
21 mean it's the only way.

22 The way to interpret Section 1413a is  
23 to read its text, to determine whether it  
24 authorizes an official to determine the validity  
25 of CRSC claims and the amount due. And all of

1       that is there in the statute.

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

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

21              That is just the definition of  
22       "settlement" that this Court said was  
23       well-established as of 1916, and nobody thinks  
24       has changed in the intervening years.

25              So if there is one, two, or six

1 military statutes that courts will have to read  
2 as a result of a victory for Corporal Soto here,  
3 that is perfectly appropriate. And that  
4 prospect certainly doesn't support not reading  
5 the text of Section 1413(a) literally because of  
6 concerns that it might give rise to, you know,  
7 more lawsuits in connection with six or seven  
8 other statutes, or two.

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

18 That is a pretty obvious way to  
19 conclude that Section 3702(a)(1) does not apply,  
20 because this is a benefit that is not retired  
21 pay, so determination of claims involving this  
22 benefit are not determinations involving retired  
23 pay.

24 And that would certainly alleviate any  
25 other concerns, although, of course, we do



1 recognize, as my friend did, that that's not  
2 part of the question presented as reformulated  
3 by this Court.

4 Just to address very briefly the death  
5 gratuity statute that my friend mentioned in the  
6 statute of limitations, I respectfully take  
7 issue with Ms. Flynn's reading of the death  
8 gratuity statute.

9 Section 1479, which is the provision  
10 which we have read as potentially authorizing  
11 settlement, that relates only to immediate  
12 payment of death gratuities under Section 1475.  
13 It doesn't implicate the statute of limitations.

14 CHIEF JUSTICE ROBERTS: Thank you,  
15 counsel. The case is submitted.

16 (Whereupon, at 12:36 p.m., the case  
17 was submitted.)

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## Official - Subject to Final Review

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