APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS,
FEDERAL CIRCUIT.

2022-2011

Simon A. SOTO, on Behalf of Himself and All Other Individuals Similarly Situated,

Plaintiff-Appellee

v.

UNITED STATES,

Defendant-Appellant

Decided: February 12, 2024

Opinion

Dissenting opinion filed by Circuit Judge Reyna.

Opinion for the court filed by Circuit Judge Hughes.

The government appeals a decision from the United States District Court for the Southern District of Texas holding that the six-year statute of limitations in the Barring Act, 31 U.S.C. § 3702, does not apply to claims for unpaid combat-related special compensation governed by 10 U.S.C. § 1413a. Because we conclude that the district court erred by holding that the Barring Act did not apply to the settlement of those claims, we **reverse** the district court's grant of summary judgment and **remand** for further proceedings consistent with this opinion.

I

A

Under 38 U.S.C. §§ 5304–05, retired veterans generally may not receive both their retired pay and VA disability compensation and must waive a portion of their military retired pay to receive disability pay. However, retired veterans who establish that their disability is attributable to a combat-related event may receive additional compensation (combat-related special compensation, or CRSC) up to the amount of waived retired pay. 10 U.S.C. § 1413a (the CRSC statute).

Before January 1, 2008, CRSC was only available to veterans who had completed at least twenty years of military service. *See* National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, div. A, tit. VI, § 641, 122 Stat. 3, 156. But effective January 1, 2008, Congress expanded eligibility to retirees with fewer than twenty years of military service if they were medically retired under 10 U.S.C. §§ 1201–22. 10 U.S.C. § 1413a(b)(3)(B).

The CRSC statute directs the Secretary of Defense to "prescribe procedures and criteria under which a disabled uniformed services retiree may apply" for CRSC. *Id.* § 1413a(d). As part of these procedures, a service member must elect to receive CRSC, and the appropriate military department will determine whether the service member is eligible (which, generally, requires being in retired status and having a combat-related disability rated at least 10%). Department of Defense Financial Management Regulation, DoD 7000.14-R, vol. 7B, ch. 63, at 63-7. CRSC can be granted retroactively, and agency regulations state that retired service members "may submit an application for CRSC at any time" and CRSC will be paid "for any month

after May 2003 for which all conditions of eligibility were met, *subject to any legal limitations*." *Id.* at 63-6 (emphasis added).

Section 3702 of title 31, known as the Barring Act, provides a mechanism for settling[1] military-related claims against the government that are not covered in other statutory provisions. In particular, the Secretary of Defense has authority to settle all "claims *involving* uniformed service members' pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivor benefits." 31 U.S.C. § 3702(a)(1)(A) (emphasis added). As relevant here, the Barring Act contains a six-year statute of limitations. 31 U.S.C. § 3702(b)(1) (providing that all claims falling within the scope of the statute "must be received by the official responsible ... within 6 years after the claim accrues"). The Secretary of Defense can waive the statute of limitations for claims not in excess of $25,000 as long as a waiver is requested. 31 U.S.C. § 3702(e)(1), (3); *see also* Procedures for Settling Personnel and General Claims and Processing Advanced Decision Requests, DoD Instruction 1340.21, enclosure 6, ¶ 6.4 (outlining procedure permitting a claimant to apply for a waiver of the statutory time limit where a claim was untimely).

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[1] "Settling" a claim "means to administratively determine the validity of that claim." *See Adams v. Hinchman*, 154 F.3d 420, 422 (D.C. Cir. 1998) (quoting U.S. General Accounting Office, *Principles of Federal Appropriations Law* 11-6 (1982) and citing *Illinois Sur. Co. v. United States ex rel. Peeler*, 240 U.S. 214, 219, 36 S.Ct. 321, 60 L.Ed. 609 (1916) ("The word 'settlement,' in connection with public transactions and accounts, has been used from the beginning to describe administrative determination of the amount due.")).

B

With that background in mind, we turn to the facts of this case. Simon A. Soto is a retired member of the United States Marine Corps with a combat-related disability rated at least 10%. He was medically retired from active duty in April 2006 with less than twenty years of military service. Although he was eligible for CRSC as of June 2009 (when he received his disability rating), he did not apply until June 2016. At that time, the Navy informed Mr. Soto that his claim was limited under the Barring Act, and as a result, he received six years of retroactive CRSC payments, dating back to roughly July 2010. Mr. Soto did not request a waiver of the statutory time limit under § 3702(e)(1).

Mr. Soto filed a class action lawsuit[2] in the Southern District of Texas under 28 U.S.C. § 1346(a)(2) (the Little Tucker Act) on behalf of himself and others similarly situated, arguing that the Barring Act does not apply to settling claims for CRSC. Mr. Soto claimed that, based on Congress's expansion of CRSC to veterans with less than twenty years of military service, he was entitled to compensation dating back to the effective date of the amended statute, or January 1, 2008, rather than July 2010, six years prior to his application for CRSC.

The government moved for judgment on the pleadings, which the district court denied. In denying the motion, the district court held that the Barring Act did not apply to the settlement of CRSC claims

[2] The other plaintiffs in this class are similarly situated: they have all received six years of retroactive CRSC payments but were eligible for CRSC for more than six years before they applied. None of the class members applied for a waiver of the statutory time limit.

because the CRSC statute was a "specific" statute that superseded the terms of the Barring Act. *See Morton v. Mancari*, 417 U.S. 535, 550–51, 94 S.Ct. 2474, 41 L.Ed.2d 290 (1974) ("Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment."); *Hernandez v. Dep't of Air Force*, 498 F.3d 1328, 1332 (Fed. Cir. 2007) (holding that the Barring Act's "general background provisions restricting recovery against the government" were "inapplicable" because of the more specific period of recovery in the Uniformed Services Employment and Reemployment Rights Act). The district court also applied the pro-veteran canon of statutory interpretation to hold that the Barring Act did not apply. *See Brown v. Gardner*, 513 U.S. 115, 117–18, 115 S.Ct. 552, 130 L.Ed.2d 462 (1994) ("[I]nterpretive doubt is to be resolved in the veteran's favor."). The district court later granted summary judgment in favor of the class for the same reasons.

The government appealed, asking us to consider whether the six-year statute of limitations in the Barring Act applies to settling claims for CRSC. We have jurisdiction under 28 U.S.C. § 1295(a)(2).

II

Because there are no disputed issues of fact and the only question on appeal is the proper interpretations of the Barring Act and the CRSC statute, we review the district court's grant of summary judgment de novo. *Massie v. United States*, 166 F.3d 1184, 1187 (Fed. Cir. 1999).

III

The government argues that the district court erred in holding that the Barring Act does not apply to the settlement of CRSC claims because the CRSC statute

does not contain its own settlement mechanism that displaces the Barring Act. We agree.

The district court held that the CRSC statute "provides its own settlement mechanism because it defines eligibility for CRSC, helps explain the amount of benefits and instructs the Secretary of Defense to prescribe procedures and criteria for [prospective claimants] to apply for CRSC." J.A. 5. But establishing eligibility for CRSC payments does not confer settlement authority independent of the Barring Act. *See* U.S. General Accounting Office (GAO), GAO-08-978SP, *Principles of Federal Appropriations Law* 14-25 n.54 (2008) (GAO Red Book) ("While section 3702 provides an independent administrative claims handling procedure, it does not provide an independent basis for paying claims."). To confer settlement authority and displace the Barring Act, a statute must explicitly grant an agency or entity the authority to settle claims. *See, e.g.*, *Honorable Slade Gorton*, B-215494, 1984 WL 46509, at *2 (Comp. Gen. Sept. 4, 1984) (explaining that "[t]he head of the Federal agency or department concerned is *specifically authorized* by statute to settle administratively claims brought under" the Military Claims Act or Federal Tort Claims Act (emphasis added)); GAO Red Book 14-20–14-22 (describing claims settlement and listing specific statutes that allow agencies to administratively settle claims).

For example, settlement claims brought pursuant to the FTCA are not subject to the Barring Act because the FTCA explicitly provides that the heads of federal agencies have the right to "consider, ascertain, adjust, determine, compromise, and *settle any claim* for money damages" falling within the scope of the statute. 28 U.S.C. § 2672 (emphasis added). The FTCA further

allows agencies to use various means of adjudication, such as arbitration or alternative dispute resolution, to settle claims. *Id.* § 2672 ("Each Federal agency may use arbitration, or other alternative means of dispute resolution under the provisions of subchapter IV of chapter 5 of title 5, to settle any tort claim against the United States ...."). Similarly, the Military Claims Act provides the Secretary of Defense the authority to "*settle*, and pay in an amount not more than $100,000, a claim against the United States" that falls within the purview of that statute. 10 U.S.C. § 2733(a) (emphasis added).

By contrast, the CRSC statute conveys no such authority—it only establishes who may be *eligible* for CRSC payments, not *how* claimants can have those claims settled. *See id.* § 1413a (providing the Secretary authority to, among other things, "*pay* to each eligible combat-related disabled uniformed services retiree who elects benefits" but not mentioning settlement (emphasis added)); *see also Illinois Sur. Co.*, 240 U.S. at 218–19, 36 S.Ct. 321 ("The pivotal words are not 'final payment,' but 'final settlement,' and in view of the significance of the latter term in administrative practice, it is hardly likely that it would have been used had it been intended to denote payment."). A statute setting out who is eligible for payment is not the same as a statute establishing how eligible claims may be settled. Without specific language authorizing the Secretary of Defense to *settle* a claim—which will typically be done by use of the term "settle"—the CRSC statute cannot displace the Barring Act, unless another statute provides a "specific" provision setting out the period of recovery. *See Hernandez*, 498 F.3d at 1331–32. As we have explained, the CRSC statute does not meet either of these requirements.

The dissent focuses on our allegedly narrow understanding of a "claim" and "settlement." Dissenting Op. 1102, 1103–04. The dissent would read the CRSC statute to permit the Secretary to settle claims, thereby displacing the Barring Act's six-year statute of limitations, because it defines which veterans are eligible for CRSC (10 U.S.C. § 1413a(c)), provides that the Secretary "shall pay" CRSC to eligible veterans (*id.* § 1413a(a)) in a certain amount (*id.* § 1413a(b)), and designates the source of payments (*id.* § 1413a(h)). Dissenting Op. 1102–03. But these provisions establish a veteran's *substantive* right to CRSC and authorize its payment. They do not authorize the Secretary to "administratively determine the validity" of a claim. *Adams*, 154 F.3d at 422 (citation omitted). The CRSC statute lacks the sort of clear language authorizing the Secretary to settle CRSC claims sufficient for an exception to the Barring Act.[3]

Mr. Soto argues that the DoD's Program Guidance suffices to displace the Barring Act's statute of limitations because it explains that a veteran "may submit an application for CRSC" and will be paid "for any month after May 2003, for which all conditions of eligibility were met." Appellee's Br. 24 (quoting the Department of Defense's 2004 Program Guidance). But this program guidance cannot grant settlement authority where, by statute, there is none. The program guidance Mr. Soto cites does nothing more than authorize the agency to grant retroactive

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[3] The dissent would also rely on the pro-veteran canon to resolve what it views as interpretive doubt about the meaning of the CRSC statute. Dissenting Op. 1103 n.4 (citing *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221, 112 S.Ct. 570, 116 L.Ed.2d 578 (1991)). We need not reach the pro-veteran canon because there is no interpretative doubt to resolve.

payments, which is already authorized in the CRSC statute.

Mr. Soto also contends that the Barring Act should not apply to the CRSC statute because 31 U.S.C. § 3702(a)(1) only applies to claims involving "retired pay," and paragraph (g) of the CRSC statute specifies that "[p]ayments under this section are not retired pay." Appellee's Br. 13. This is unpersuasive. The Barring Act extends to claims *involving* retired pay—there can be no dispute that the CRSC statute "involves" retired pay, because the amount of compensation awarded under the CRSC statute is dependent upon the amount of retired pay a service member may receive. 31 U.S.C. § 3702(a)(1)(A) ("The Secretary of Defense shall settle ... *claims involving* uniformed service members' pay, allowances, travel, transportation, payments for unused accrued leave, *retired pay*, and survivor benefits." (emphasis added)); 10 U.S.C. § 1413a(b)(3)(B) (providing "the amount of the payment under paragraph (1) for any month may not, *when combined with the amount of retired pay* payable to the retiree ... cause the total of such combined payment to exceed the amount equal to the retired pay percentage" (emphasis added)). And even if the CRSC statute somehow did not "involve" retired pay, paragraph (a)(1) of the Barring Act only sets forth which agency is responsible for adjudicating claims: subparagraph (a)(4) confers authority to the Office of Management and Budget to settle all other claims not covered by paragraphs (a)(1)–(3), meaning that, if Mr. Soto's argument is accepted, it would only change *which agency* settles CRSC claims, not the applicable statute of limitations. 31 U.S.C. § 3702(a).

Finally, Mr. Soto argues that the statute of limitations in the Barring Act should be tolled because

we have been continuously at war since 1990 and 31 U.S.C. § 3702(b)(2) provides that a claim brought by a "member of the armed forces [which] accrues during war or within 5 years before war begins" is tolled until "5 years after peace is established." This argument lacks merit. The phrase "member of the armed forces" in the current Barring Act replaced the phrase "person serving in the military or naval forces of the United States" in the prior version of the Barring Act. Pub. L. No. 97-258, § 3, 96 Stat. 877, 970 (repealing the prior version of the Barring Act, then codified at 31 U.S.C. § 71a, and recodifying the Act at 31 U.S.C. § 3702); *see also* H.R. Rep. No. 97-651, at 131 (1982) ("In subsection (b)(2), the words 'member of the armed forces' are substituted for 'person serving in the military or naval forces of the United States' for consistency with title 10."). The now-operative enacted public law expressly states that the recodification "may not be construed as making a substantive change in the laws replaced." Pub. L. No. 97-258, § 4(a), 96 Stat. at 1067; *see also id.* § 1, 96 Stat. at 877 ("An Act [t]o revise, codify, and enact without substantive change certain general and permanent laws."). Thus, the term "member of the armed forces" in 31 U.S.C. § 3702(b)(2) still refers only to service members who are on active duty during times of war.

Indeed, the DoD has consistently interpreted that language to apply only to service members who are on active duty during times of war. *See Charles V. Waldron*, 59 Comp. Gen. 463, 463 (1980) ("The exception to the 6-year statute of limitations ... tolling the running of the 6-year period for members of the armed forces in wartime, is applicable only to members on active duty."); *id.* at 464 ("[I]f an individual serving in the armed services had a claim which accrued during war or his claim accrued and subsequently war

broke out, such individual is granted additional time following the establishment of peace to file a claim because of the *potential inability to file because of his duties in wartime*." (emphasis added)). Plaintiffs offer no persuasive reason why we should interpret the Barring Act differently. If we were to accept Mr. Soto's argument here, that would mean that all claims for any kind of military compensation, brought by any service member, would be indefinitely tolled until the Persian Gulf War is officially ended. We decline to interpret the statute so broadly.

Accordingly, we hold that the Barring Act applies to settlement claims regarding CRSC because the CRSC statute does not explicitly provide its own settlement mechanism and these claims are therefore subject to the settlement mechanisms laid forth in the Barring Act. And as relevant here, we hold that the six-year statute of limitations contained in the Barring Act applies to CRSC settlement claims.[4]

IV

We have considered the remainder of Mr. Soto's arguments and find them unpersuasive. Accordingly, we **reverse** the district court's grant of summary judgment, and **remand** to the district court for further proceedings consistent with this opinion.

REVERSED AND REMANDED

Costs

No costs.

Reyna, Circuit Judge, dissenting.

Today, the majority holds that Mr. Soto and other similarly-situated veterans injured as a result of combat cannot recover more than six years of retroactive Combat-Related Special Compensation (CRSC). I believe that the CRSC statute addresses the settlement of claims against the government and displaces the Barring Act's six-year statute of limitations. I would affirm the lower court decision finding that the Barring Act does not apply to CRSC claims.

I respectfully dissent.

By its own terms, the Barring Act and its six-year statute of limitations can be superseded. The Barring Act's statute of limitations does not apply to limit the available compensation if "another provision of law" addresses how "claims of or against the United States Government shall be settled." 31 U.S.C. § 3702(a)(4); *see also id.* § 3702(a); *see, e.g.*, *Hernandez v. Dep't of Air Force*, 498 F.3d 1328, 1332 (Fed. Cir. 2007). As demonstrated below, the CRSC statute is another provision of law that addresses how claims of or against the United States government shall be settled.

In considering the limits on the Barring Act's applicability when settling a government claim, it is important to address what it means to "settle" a "claim" against the United States. As the district court recognized, there is no dispute in this case regarding what it means to "settle" such a claim. *Soto v. United States*, No. 1:17-CV-00051, 2021 WL 7286022, at *2 & n.2 (S.D. Tex. Dec. 16, 2021). "[T]o settle a claim means to administratively determine the validity of that claim." *Adams v. Hinchman*, 154 F.3d 420, 422 (D.C. Cir. 1998) (internal quotations omitted) (quoting U.S. General Accounting Office (GAO), *Principles of Federal*

Appropriations Law 11-6 (1982)); *see also Illinois Sur. Co. v. United States*, 240 U.S. 214, 219, 36 S.Ct. 321, 60 L.Ed. 609 (1916) (defining "settlement" in the context of public transactions).

The meaning of a "claim" itself has also been defined in the federal appropriations context. In *Hobbs v. McLean,* the Supreme Court describes a claim as "a right to demand money from the United States .... which can be presented by the claimant to some department or officer of the United States for payment, or may be prosecuted in the court of claims."[1] 117 U.S. 567, 575, 6 S.Ct. 870, 29 L.Ed. 940 (1886); GAO, *Principles of Federal Appropriations Law* 14-10 (2008).

"Settling a claim," therefore, means administratively determining the validity of the demand for money against the government and the amount of money due. This definition contrasts with a use of the term "settlement" to solely refer to resolving a conflict, often one involving a lawsuit or anticipated lawsuit. And this broader understanding of "settling a claim" deserves more than just the footnote's worth of discussion rendered in the majority opinion. *See* Maj. Op. 1097 n.1. Indeed, it must guide any analysis of whether a statute supersedes the Barring Act's six-year statute of limitations.

Here, the CRSC statute permits the government to administratively determine the validity of a veteran's demand for CRSC, as well as the amount of CRSC due to the veteran in retroactive and future monthly

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[1] Mr. Soto and the class filed their case in district court under the Little Tucker Act, 28 U.S.C. § 1346, which gives the district courts concurrent jurisdiction with the Court of Federal Claims to entertain certain types of monetary claims against the United States for amounts not exceeding $10,000.

compensation. In light of these provisions, the Barring Act does not apply.

First, the CRSC statute defines eligible retirees,[2] including by clarifying what constitutes a "combat-related disability."[3] 10 U.S.C. § 1413a(c), (e). Veterans thus are informed whether they have a right to demand money under the statute—that is, whether they have a "claim." *See also id.* § 1413a(d).

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[2] The CRSC statute defines eligible retirees in subsection (c), which states:

> **(c) Eligible retirees.** —For purposes of this section, an eligible combat-related disabled uniformed services retiree referred to in subsection (a) is a member of the uniformed services who—
>
> **(1)** is entitled to retired pay (other than by reason of section 12731b of this title); and
>
> **(2)** has a combat-related disability.

10 U.S.C. § 1413a(c).

[3] A "combat-related disability" is defined in subsection (e) of the CRSC statute:

> **(e) Combat-Related Disability.**—In this section, the term "combat-related disability" means a disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that—
>
> **(1)** is attributable to an injury for which the member was awarded the Purple Heart; or
>
> **(2)** was incurred (as determined under criteria prescribed by the Secretary of Defense)—
>
> **(A)** as a direct result of armed conflict;
>
> **(B)** while engaged in hazardous service;
>
> **(C)** in the performance of duty under conditions simulating war; or
>
> **(D)** through an instrumentality of war.

Id. § 1413a(e).

Second, the CRSC statute specifically grants the "Secretary concerned" authority to pay eligible retirees "a *monthly amount*" for the combat-related disability covered by the statute. *Id.* § 1413a(a) (emphasis added). This grant of authority is not limited to future monthly payments and is directed to more expansive authority for the Secretary to determine an "amount" due to an eligible veteran.

Third, the CRSC statute describes how the Secretary must determine the "monthly amount to be paid." *Id.* § 1413a(b)(1). In other words, it provides instructions on the administrative calculation of the amount due to satisfy an eligible veteran's claim. *See id.* In this regard, while the CRSC statute states that CRSC is not "retired pay," *id.* § 1413a(g), it allows the veteran to maximize the amount of compensation she would receive, including as a result of reductions in retired pay for a particular month, *id.* § 1413a(b). *See also id.* § 1413a(f).

Finally, the CRSC statute specifies the "source of payments" for CRSC. *Id.* § 1413a(h). The statute is careful to specify that members of the Army, Navy, Air Force, Marine Corps, and Space Force will be paid out of the Department of Defense Military Retirement Fund. *Id.* "[A]ny other member for any fiscal year shall be paid out of funds appropriated for pay and allowances payable by the Secretary concerned for that fiscal year." *Id.* These provisions give the Secretary further guidance for administratively providing a veteran with the "monthly amount" due to her, no matter the year in question for which compensation is owed.

By these common and plain terms, the CRSC statute specifies the "settlement" of a "claim" against the

government.[4] It therefore takes precedence over the Barring Act, such that a veteran eligible to receive CRSC is not subject to the Barring Act's six-year statute of limitations. 31 U.S.C. § 3702(a), (a)(4). Instead, an eligible veteran may seek retroactive CRSC back to the original date that she first became eligible for it. And because the majority opinion is incorrect in its conclusion that the Barring Act and its six-year statute of limitations applies, we need not reach the question of whether the Barring Act's wartime exception might otherwise toll that Act's statute of limitations.[5] *See id.* § 3702(b)(2). Instead, it

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[4] The majority asserts that the pro-veteran canon has no application because there is "no interpretive doubt." Maj. Op. 1099 n.3. This statement, however, is belied by the majority's search for "clear language," a requirement that I find to be an expression of doubt. *Id.* at 1099–1100. Given this expression of interpretive doubt as to whether there is "clear language" in the statute under the proper definitions of "settling" and "claim," the pro-veteran canon applies and supports that the Barring Act does not apply given the remedial nature of the CRSC statute. *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221, 112 S.Ct. 570, 116 L.Ed.2d 578 (1991).

[5] Although I reach this conclusion, I note my concerns with the majority's analysis of the Barring Act's wartime exception. There is no dispute that the term "uniformed service *member*" in subsection (a)(1)(A) of the Barring Act applies to both active and retired military personnel. Indeed, the majority finds that this subsection of the Barring Act applies to Mr. Soto's claim for CRSC. *See* Maj. Op. 1100. Yet the majority concludes that the similar phrase "*member* of the armed forces" in subsection (b), the wartime exception, only applies to "service members who are on active duty during times of war." *Id.* at 1100–01. It bases this conclusion on a non-binding Comptroller General decision interpreting a *prior* version of the Barring Act's wartime exception, as well as on a *general statement* in the legislative history regarding omnibus amendments to a series of statutes, including this provision of the Barring Act. This conclusion relies on inapplicable authority and tenuous evidence that at most

is here that the inquiry should end. *See Paige v. United States*, 159 Fed. Cl. 383, 386–87 (2022); *Soto*, 2021 WL 7286022, at *3 n.3.

The majority opinion concludes that the CRSC statute does not address the settlement of government claims and that the Barring Act's six-year statute of limitations thus applies. *See, e.g.*, Maj. Op. 1098–99. To reach its decision, the majority applies an incorrect interpretation of the phrase "settling a claim," creates new requirements for determining when a statute settles a government claim, and ignores the plain language of the CRSC statute itself.

Citing to the Federal Torts Claims Act (FTCA) and the Military Claims Act (MCA), the majority praises their use of the words "settle" and "claim" and faults the CRSC statute for not "convey[ing]" the same "authority." *Id.* at 1098–99. The majority overlooks that both the FTCA and the MCA involve circumstances where an individual believes that the government or a government representative has *injured* or *caused harm* to the individual or the individual's property. 28 U.S.C. § 2672; 10 U.S.C. § 2733. These statutes specify how the government can recompense the individual for a "claim" of alleged harm caused by the government, and thus resolve the conflict between the government and the individual through, for example, a "settlement." They do not involve claims arising from combat related disabilities. By finding fault with the CRSC statute's language compared to the language of these statutes, the majority effectively turns to a narrower definition of "settling" a "claim." But "settling

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support ambiguity in the meaning of the phrase "member" where, again, the pro-veteran canon should play a role in its ultimate interpretation.

a claim" against the government can involve a more general remediation of benefits that is not reflected in these statutes or their use of the word "settle," and the CRSC statute is an example of a statute that provides the Secretary with authority to do so.

The majority exacerbates its error by then asserting that "specific language" is required for a statute to *settle* a government claim: a statute should "typically" use the word "settle." Maj. Op. 1098–99. If it does not, the majority contends that it can still settle a claim only if it provides a "specific" provision setting out the period of recovery. *Id.* But the long-understood meaning of "settling" a "claim" against the government includes no such limitations. Raising these new requirements, the majority also raises the bar to a new and unprecedented standard for what a statute must state to supersede the Barring Act. Although a statute involving resolution of conflict may "typically" use the words "settle" and "claim," the majority does not explain why this phrasing should be "typical" for statutes that involve a more general, remedial, administrative determination of eligibility for money from the government and the amount due. And the majority's alternative requirement—that a statute state a "specific" period of recovery—requires a level of specificity in statutory language that finds no support in our canons of statutory interpretation.

The majority asserts that the CRSC statute only establishes who may be eligible for CRSC, not how eligible veterans' claims are settled. *Id.* at 1098–99, 1099–1100. This is belied by the provisions of the CRSC statute itself, which provide information regarding eligibility for CRSC as well as how to calculate the "monthly amount" of CRSC owed to the veteran. But the majority similarly discounts these

provisions, falling back on its demand for "clear language" authorizing the Secretary to "settle" claims. *Id.* at 1099–1100.

The majority's decision today is contrary to both the common meaning of "settling" a "claim" against the government and to the CRSC statute itself. The majority opinion reviews select language from unrelated statutes and relies on that language to redefine these terms and legislate its preferences. And in rendering this decision, the majority denies benefits to a highly-deserving class of veterans seeking compensation granted by statute for combat-related injuries incurred in service to this country.

I would affirm the decision of the district court concluding that the Barring Act's six-year statute of limitations does not apply to the CRSC statute and its judgment holding the government liable to Mr. Soto and the class for additional CRSC. I respectfully dissent.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

2022-2011

SIMON A. SOTO, On Behalf Of Himself And All Other Individuals Similarly Situated,

Plaintiff-Appellee

v.

UNITED STATES,

Defendant-Appellant

Appeal from the United States District Court for the Southern District of Texas in No. 1:17-cv-00051, Judge Rolando Olvera, Jr..

JUDGMENT

THIS CAUSE having been considered, it is ORDERED AND ADJUDGED:

REVERSED AND REMANDED

February 12, 2024
Date

FOR THE COURT

/s/ Jarrett B. Perlow
Jarrett B. Perlow
Clerk of Court

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Civil Action No. 1:17-c-00051

SIMON A. SOTO, on behalf of himself and all individuals similarly situated,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER GRANTING PLAINTIFF'S AMENDED MOTION FOR CLASS CERTIFICATION

This case arises from Simon A. Soto's (hereafter "Plaintiff") claim for retroactive Combat-Related Special Compensation (hereafter "CRSC"). Plaintiff request the Court rule the United States of America (hereafter "Defendant") unlawfully withheld CRSC from Plaintiff and others similarly situated. Before the Court is "Plaintiff's Simon Soto's Amended Motion for Class Certification" (Docket No. 53) (hereafter "Plaintiff's Motion for Class Certification"). For the reasons set forth herein, Plaintiff's Motion for Class Certification (Docket No. 53) is **GRANTED.**

I. FACTUAL BACKGROUND[1]

Plaintiff is a veteran of the United States Marine Corps, serving between August 2000 and April 2006. During his first deployment, Plaintiff was assigned to "search for, recover, and process the remains" of war casualties. Plaintiff began suffering from mental health issues particularly post-traumatic stress disorder (hereafter "PTSD") and began receiving treatment for PTSD on December 19, 2005. Plaintiff medically retired from active duty April 28, 2006 and was placed on the Temporary Disability Retirement List (hereafter "TDRL"). Plaintiff was subsequently removed from the TDRL and awarded a permanent medical disability retirement.

In June 2016, Plaintiff applied for CRSC. Entitlement to CRSC is set forth in 10 U.S.C. § 1413a, which grants the relevant Secretary the authority to pay an "eligible combat-related disabled uniformed services retiree" a monthly amount of benefits for a combat-related disability. 10 U.S.C. § 1413a(a). CRSC payments are not considered "retired pay". 10 U.S.C. § 1413a(g). To be eligible for CRSC, a medically retired veteran must be (1) entitled to retired pay, and (2) the VA must determine the veteran has a combat-related disability compensable under the VA laws. *Id.*

In October 2016, the Navy Council of Review Boards (hereafter "Navy") awarded CRSC to Plaintiff (effective July 1, 2010). However, the Navy limited said award to six years of retroactive CRSC due to the statute of limitations contained in 31 U.S.C. § 3702 (hereafter "Barring Act"). Docket No. 21-3.

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[1] The factual statements set forth herein were obtained from the following documents: Docket Nos. 1 and 21.

Central to this action is whether the Barring Act applies to CRSC pay. The Court previously noted CRSC is not listed in any of the categories applicable to the Barring Act's six-year statute of limitations as set forth in § 3702. Docket No. 39 at 4. Thus, the Court concluded the Barring Act falls within the definition of a "general act" applicable to a multitude of uniformed service members' claims, while a CRSC claim falls within the definition of a "specific act" statute outside the jurisdiction of the Barring Act. *Id.* at 5.

II. PROCEDURAL HISTORY

On September 28, 2018, Plaintiff filed "Plaintiffs Simon Soto's Amended Motion for Class Certification" (Docket No. 53) and "Memorandum of Law in Support of Plaintiff Simon Soto's Amended Motion for Class Certification" (Docket No. 54). On November 19, 2018, Defendant filed "Defendant's Opposition to Plaintiff's Amended Motion for Class Certification" (Docket No. 57). On December 19, 2018, Plaintiff filed a "Reply Memorandum In Support of Plaintiff Simon Soto's Amended Motion for Class Certification" (Docket No. 60).

III. LEGAL STANDARD

To obtain class certification, a party must first establish the following prerequisites:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). The Court must conduct a "rigorous analysis" to ensure "the prerequisites of Rule 23(a) have been satisfied." *Comcast Corp. v. Behrend,* 569 U.S. 27, 33 (2013). Furthermore, the Court must also find that...:

> (3) . . .the question of law or fact common to class members predominates over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

Fed. R. Civ. P. 23(b)(3). The moving party must establish that all Rule 23 requirements have been satisfied. *Berger v. Compaq Comput. Corp.,* 257 F.3d 475, 479-80 (5th Cir. 2001).

Defendant does not contest prerequisite Rule 23 (a)(4) is satisfied—the adequacy of Plaintiff's proposed class counsel: Sidley Austin LLP.[2] Therefore, the Court must now determine whether Plaintiff has satisfied the remaining prerequisites.

The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1346(a)(2)—otherwise known as the "Little Tucker Act", which provides district courts original jurisdiction over claims against the federal government for less than $10,000. 28 U.S.C. § 1346(a)(2). A district court has broad discretion over whether to certify a proposed class, but that discretion must be exercised within the framework of Rule 23.

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[2] The Court notes that Plaintiff's proposed class counsel meets the requirements under Fed. R. Civ. P. 23(g) ("Class Counsel") based on qualifications, experience, and willingness to competently represent the class. *See* Docket Nos. 54 at 9-11; 54-8; 54-9; 54-10.

Castano v. Am. Tobacco Co., 84 F.3d 734, 740 (5th Cir. 1996).

IV. DISCUSSION

Plaintiff seeks an order certifying this civil case as a class action under Federal Rules of Civil Procedure 23(a), and (b)(3), on behalf of the following proposed class:

> "...all former service members of the Army, Navy, Air Force, Marine Corps, and Coast Guard whose CRSC applications under 10 U.S.C. § 1413a were granted, but who were denied the full extent of their retroactive CRSC payment as a result of Defendant's use of a Retroactive Payment Cap that is inconsistent with and violates the law."

Docket No. 54 at 4. Plaintiff's proposed class is also limited to members who have claims of less than $10,000. *Id.* Moreover, Plaintiff seeks an order appointing Plaintiff as "representative of the Class" and appointing Sidley Austin LLP as "Class Counsel". Docket No. 53 at 1-3.

A. Fed. R. Civ. P. 23(a) Prerequisites

1) Numerosity

To establish numerosity, "a plaintiff must demonstrate some evidence or reasonable estimate of the number of purported class members." *Pederson v. La. State Univ.,* 213 F.3d 858, 868 (5th Cir. 2000). A class action is appropriate when "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). A class of 100 to 150 members usually satisfies the numerosity requirement. *Mullen v. Treasure Chest Casino, LLC,* 186 F.3d 620, 624-25 (5th Cir. 1999). However, "[t]he number of members in a proposed class is not determinative of whether joinder

is impracticable." *Id.* at 624. Other factors are relevant—such as the geographical dispersion of the class, the ease of identifying other class members, the nature of the action, and the size of each plaintiff's claim. *Zeidman v. J. Ray McDermott & Co., Inc.,* 651 F.2d 1030 (5th Cir. 1981).

Plaintiff and Defendant agree that there are at least 3,600 potential class members. Docket No. 54 at 7, Docket No. 57 at 14. Despite the possibility of some "false positives," this estimate gives the Court adequate assurance that the class is sufficiently large as to make joinder impracticable. *See Boles v. Codilis LLP,* 2012 WL 12861080, at *9 (W.D. Tex. Jan. 17, 2012). Further, other factors also support a finding of numerosity: the potential class members live in all fifty states and the District of Columbia, and all have relatively small claims. Docket No. 54 at 6.

2. Commonality

Plaintiff must also show that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The common question "must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes,* 564 U.S. 338, 350 (2011). Here, the common question is whether the statute of limitations contained in the Barring Act, 31 U.S.C. § 3702(b), applies to retroactive payments of CRSC. Resolution of this question is "central to the validity" of each potential class member's claim.

3) Typicality[33]

Plaintiff must also demonstrate that his claim is "typical of the claims . . . of the class." Fed. R. Civ. P. 23(a)(3). Plaintiff must show that his claims "have the same essential characteristics of those of the putative class." *James v. City of Dallas,* 254 F.3d 551, 571 (5th Cir. 2001). Plaintiff's claims, like those of the purported class, are subject to Defendant's application of the Barring Act to CRSC payments.

The Court therefore finds that the putative class satisfies the four prerequisites for class certification set forth in Rule 23(a).

B. Rule 23(b)(3)

In addition to the four prerequisites contained in Rule 23(a), Plaintiff must show that the class is maintainable pursuant to one of the four categories set forth in Rule 23(b). Plaintiff submits that the proposed class fits within Rule 23(b)(3). Docket No. 1 at 6. Rule 23(b)(3) states that a class action which meets the prerequisites in Rule 23(a) may be maintained if:

> "... [T]he court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members; and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy."

The Court will address predominance and superiority in turn.

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[3] The Court notes that "the commonality and typicality requirements of Rule 23(a) tend to merge." *Wal-Mart Stores, Inc.,* 564 U.S. at n.5. Nonetheless, in order to be fully transparent, the Court will evaluate the two requirements separately.

1) Predominance

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 623 (1997). Plaintiff bears the burden to show that "individualized inquiries will not cast a shadow over those issues common to the entire class." *Torres v. S.G.E. Mgmt., LLC,* 838 F.3d 629, 650 (5th Cir. 2016).

"Relatively few motions to certify a class fail because of disparities in the damages suffered by class members." *Bell Atlantic Corp. v. AT&T Corp.,* 339 F.3d 294, 306 (5th Cir. 2003). "Where virtually every issue prior to damages is a common issue," the need to individually calculate damages does not preclude class certification under Rule 23(b)(3). *Bertulli v. Indep. Ass'n of Cont'l Pilots,* 242 F.3d 290, 298 (5th Cir. 2001). "The predominance inquiry can still be satisfied under Rule 23(b)(3) if the proceedings are structured to establish liability on a class-wide basis, with separate hearings to determine—if liability is established—the damages of individual class members." *In Re Deepwater Horizon,* 739 F.3d 790, 817 (5th Cir. 2014).

Here, resolution of the common legal issue will establish Defendant's liability to every legitimate member of the proposed class. Defendant is the only party alleged to be responsible for the conduct in question, and all claimed damages arise out of the same scheme. *See Mullen* 186 F.3d at 626 (affirming district court's holding that common issues predominated because the class members "claim injury from the same defective ventilation system over the same general period of time[.]"). Further, should liability be established, the calculation of each plaintiff's damages is not likely to require much subjective evaluation or

legal skill, but can be done mostly through clerical work or objective calculations. *See* Docket No. 57-4 at 6 ("Note that the CRSC award letter already includes the CRSC effective date. If the CRSC board determined that the Barring Act limited the claim, then the CRSC Board will reflect that limitation in the award letter . . . DFAS uses the CRSC award letter to establish his CRSC records and then compute retroactive amounts of CRSC due."); *Bell Atlantic Corp.,* 339 F.3d at 306. Thus, the risk of "mini-trials" to determine each individual's damages does not "cast a shadow" over the legal issue common to the entire class. *See Torres,* 838 F.3d at 650.

2) Superiority

The superiority requirement under Rule 23(b)(3) "necessarily suggests a comparative process" between methods of adjudication. *In Re TWL Corp.,* 712 F.3d 886, 896 (5th Cir. 2013). "The superiority analysis is fact-specific and will vary depending on the circumstances of any given case." *Robertson v. Monsanto Co.,* 287 F. App'x 354, 361 (5th Cir. 2008).

Plaintiff's purported class currently contains approximately 3,600 members in all fifty states and the District of Columbia. Rather than force all members to pursue 3,600 individual claims in courts across the country, it is far more efficient to concentrate the litigation in one forum. *See* Fed. R. Civ. P. 23(b)(3)(C) (stating that "the desirability or undesirability of concentrating the litigation of the claims in the particular forum" is a pertinent matter under Rule 23(b)(3)). Additionally, due to the jurisdictional limits of the Little Tucker Act, each claim may only assert a relatively modest amount of damages—thereby reducing the chance that a plaintiff would choose to proceed individually. *See Amchem Prods., Inc.,* 521 U.S. at 617

(quoting *Mace v. Van Ru Credit Corp.,* 109 F.3d 338, 344 (7th Cir. 1997)) ("[t]he policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action[.]"). For these reasons, Plaintiff has met his burden to demonstrate that a class action before the Court is the best way to adjudicate all claims.

C. Venue in the Southern District of Texas

Lastly, Defendant argues certification should be restricted only to plaintiffs residing within the Southern District of Texas. Docket No. 57 at 16-20. Defendant did not object to venue in its "Answer" (Docket No. 20) nor in its "Defendant's Motion for Judgment on the Pleadings" (Docket No. 21). In these documents, Defendant asserted multiple defenses under Fed. R. Civ. P. 12. Docket No. 20 at 11, Docket No 21 at 1. By not asserting a defense of improper venue at that time, Defendant waived its right to contest venue. *See* Fed. R. Civ. P. 12(g)(2) ("[A] party that makes a motion under [Rule 12] must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.").

Further, the Little Tucker Act does not prohibit nationwide classes. It is sufficient that the named plaintiff, Mr. Soto, resides within the Southern District of Texas. *Abrams Shell v. Shell Oil Co.,* 343 F.3d 482, 490 (5th Cir. 2003) ("[d]istrict courts in the Fifth Circuit have consistently held that all named plaintiffs to a class action must satisfy the venue requirements"); *Bywaters v. United States,* 196 F.R.D. 458, 464 (E.D.T.X. Aug. 25, 2000) ("[e]xcluding plaintiff class members on venue grounds when those plaintiffs may not even be required to appear would defeat rather

than advance the convenience and appearance-oriented purposes of venue.").

V. CONCLUSION

For the foregoing reasons, the Court finds that Plaintiff has satisfied the requirements for class certification pursuant to Rules 23(a) and (b)(3). It is hereby **ORDERED** that Plaintiff's Motion for Class Certification (Docket No. 53) is **GRANTED**. The following class is hereby certified:

Former service members of the United States Army, Navy, Marine Corps, Air Force, or Coast Guard whose CRSC applications under 10 U.S.C. § 1413a were granted, but whose amount of CRSC payment was limited by Defendant's application of the statute of limitations contained in 31 U.S.C. § 3702 and have a claim of less than $10,000.

It is further **ORDERED** that Plaintiff shall submit to the Court a proposed notice to class members and Plaintiff's plan for providing notice to all potential class members for the Court's approval within thirty (30) days. Defendant shall then submit any objections within fourteen (14) days.

Signed on this 11th day of February, 2019.

/s/ Rolando Olvera
Rolando Olvera
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Civil Action No. 1:17-cv-0051

SIMON A. SOTO, on behalf of himself and all individuals similarly situated,

"*Plaintiff*,"

v.

UNITED STATES OF AMERICA,

"*Defendant*."

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

Before the Court are these pleadings: "Plaintiff Simon Soto's Motion for Summary Judgment" ("Plaintiff's MSJ") (Dkt. No. 88) and "Memorandum of Law in Support of Plaintiff Simon Soto's Motion for Summary Judgment" (Dkt. No 89), "Defendant's Response and Cross-Motion for Summary Judgment") ("Defendant's Cross-MSJ") (Dkt. No. 91), and "Plaintiff Simon Soto's Response and Reply in Support of His Motion for Summary Judgment" (Dkt. No. 95). For these reasons, Plaintiff's MSJ (Dkt. No. 88) is **GRANTED** and Defendant's Cross-MSJ (Dkt. No. 91) is **DENIED**.

I. BACKGROUND[1]

Plaintiff is a veteran of the United States Marine Corp and receives Combat-Related Special Compensation ("CRSC") under 10 U.S.C. § 1413a ("CRSC statute"). The United States Department of the Navy approved his CRSC application in 2016, and retroactively provided six years of benefits. But if the six-year retroactive payment cap ("Retroactive Payment Cap") in 31 U.S.C. § 3702 ("Barring Act") had not been applied, Plaintiff would have been entitled to move benefits.

This Court denied Defendant's motion for judgment on the pleadings, *see* Dkt. No. 39, and certified the following class: "Former service members of the United States Army, Navy, Marine Corps, Air Force, or Coast Guard whose CRSC applications under 10 U.S.C. § 1413a were granted, but whose amount of CRSC payment was limited by Defendant's application of the statute of limitations contained in 31 U.S.C. § 3702 and have a claim of less than $10,000" ("Class Members"). Dkt. No. 61 at 7.

Plaintiff argues the Barring Act does not apply to the CRSC Statute, because CRSC is not "retired pay." Dkt. No. 89 at 5-8; 31 U.S.C. § 3702(a)(1)(A). Defendant agrees CRSC is not retired pay, but argues it falls under the broader category of pay under the Barring Act. Dkt. No. 91 at 8. Defendant also argues the CRSC Statute is subject to the Barring Act because the CRSC Statute does not provide a mechanism for settling CRSC claims, rather they are settled through the Director of the Office of Management and Budget ("OMB") as provided for under the Barring Act. *Id.* at 12-15; *see* 31 U.S.C. § 3702(a)(4). Plaintiff disputes both

[1] Unless otherwise noted, all facts were obtained from parties' "Joint Statement of Stipulated Facts" (Dkt. No. 87).

arguments, and further argues the Barring Act does not apply because the CRSC Statute has a separate settlement mechanism. Dkt. No. 95 at 3-7, 11-13; *see* 31 U.S.C. §§ 3702(a), 3702(a)(4). Plaintiff also argues that applying the Barring Act to CRSC is unlawful because the Barring Act is tolled during times of war. Dkt. No. 95 at 13-16.

II. LEGAL STANDARD

Summary judgment is proper when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party must show "there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett,* 477 U.S. 317, 325, 106 S. Ct. 2548, 2554 (1986). The burden then shifts to the nonmoving party, who must "go beyond the pleadings and... designate specific facts showing that there is a genuine issue for trial." *Id.* at 324 (internal citations omitted).

This Court has jurisdiction under the "Little Tucker Act," 28 U.S.C. § 1346(a)(2). *See Heisig v. United States,* 719 F.2d 1153, 1158 (Fed. Cir. 1983). Because the Federal Circuit has jurisdiction of appeals of district court decisions under the Little Tucker Act, *see* 28 U.S.C. § 1295(a)(2), the law of the Federal Circuit applies. *Heisig,* 719 F.2d at 1156.

III. DISCUSSION

The Barring Act provides:

> (a) Except as provided in this chapter or another law, all claims of or against the United States Government shall be settled as follows:
>
> (1) The Secretary of Defense shall settle—

> (A) claims involving uniformed service members' pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivor benefits; and
>
> […]
>
> (4) The Director of the Office of Management and Budget shall settle claims not otherwise provided for by this subsection or another provision of law.

31 U.S.C. § 3702(a).

Claims against the U.S. Government are settled under the Barring Act, "[e]xcept as provided in... another law." 31 U.S.C. § 3702(a). Thus, the six-year Retroactive Payment Cap does not apply if the CRSC Statute is "another law" with its own settlement mechanism. *See id.* § 3702(b)(1).

Under the Barring Act, "to settle a claim means to administratively determine the validity of that claim."[2] *Adams v. Hinchman,* 332 U.S. App. D.C. 98, 154 F.3d 420, 422 (1998), *citing Ill. Sur. Co. v. United States,* 240 U.S. 214, 219 (1916) ("The word 'settlement' in connection with public transactions and accounts has been used from the beginning to describe administrative determination of the amount due.").

The CRSC Statute provides its own settlement mechanism because it defines eligibility for CRSC, helps explain the amount of benefits and instructs the

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[2] Defendant appears to agree with this definition of "settle," stating in Defendant's Cross-MSJ that "[t]he term 'settle' as used in the Barring Act refers to [the Department of Defense's] authority to make an 'administrative determination of the amount due'; that is, establishing the actual dollar amount due." Dkt. No. 91 at 15 n.14.

Secretary of Defense to prescribe procedures and criteria for individuals to apply for CRSC. 10 U.S.C. § 1413a(b)-(e); *see also* Combat-Related Special Compensation (CRSC) Section 1413a, Title 10, United States Code, As Amended Revised Program Guidance January 2004 (Apr. 27, 2004) ("2004 Program Guidance"). The 2004 Program Guidance sets forth the monthly amount of CRSC, including applicable reductions and limitations, *id.* at 10-11, and establishes procedures for processing applications and appeals, *id.* at 8-10. These are procedures for an "administrative determination of the amount [of CRSC] due," *Ill. Sur. Co.,* 240 U.S. at 219, and thus constitute a settlement mechanism.

Because the CRSC Statute has its own settlement mechanism, it is "another law" and the Barring Act does not apply. *Cf. Chaney v. VA,* 906 F.2d 697, 698 n.1 (Fed. Cir. 1990) (affirming the Merit Systems Protection Board's ("MSPB") dismissal of an action not covered by the statute permitting appeal to the MSPB, and noting the action instead falls under the Barring Act because there was not "another law" providing for settlement of claims); *see also Hernandez v. Dept of the Air Force,* 498 F.3d 1328, 1332 (Fed. Cir. 2007) ("[V]eterans' benefits statutes are liberally construed in favor of the veteran.").

It follows, then, that the CRSC Statute's settlement mechanism does not fall under the Barring Act's specific categories of claims,[3] including 31 U.S.C.

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[3] The Court found CRSC was not "retired pay" under 31 U.S.C. § 3702(a)(1)(A). Dkt. No. 39 at 4. The Court need not revisit this issue, nor the argument that CRSC is in the Barring Act's category of "pay". The Court finds that the Barring Act is inapplicable to CRSC because the CRSC statute has its own settlement mechanism. *See* 31 U.S.C. § 3702(a). Similarly, the Court need not address Plaintiff's argument that applying the

§ 3702(a)(4). The OMB delegated the settlement of certain claims to the Department of Defense "Office of General Counsel, Defense Office of Hearings and Appeals" ("DOHA"). *See* Comptroller General of the United States, Memorandum B-275605, "Transfer of Claims Settlement and Related Advance Decisions, Waivers, and Other Functions" (March 17, 1997). But DOHA is not involved in the settlement of CRSC claims.[4] *See* 2004 Program Guidance at 13-14 (noting the Department of Defense offices having CRSC responsibilities without mentioning DOHA).

The CRSC Statute is "another law" with its own settlement mechanism, 31 U.S.C. § 3702(a), excluding it from the Barring Act. Thus, summary judgment for Plaintiff and the class is appropriate.

IV. CONCLUSION

For these reasons, Plaintiff's MSJ (Dkt. No. 88) is **GRANTED** and Defendant's Cross-MSJ (Dkt. No. 91) is **DENIED**. Under Federal Rule of Civil Procedure 58(b)(2)(B), final judgment is set forth in a separate document.

Signed on this 16th day of December, 2021.

/s/ Rolando Olvera
Rolando Olvera
United States District Judge

Barring Act to CRSC is unlawful because the Barring Act is tolled during times of war. Dkt. No. 95 at 13-16.

[4] Plaintiff also notes differences in the settlement of claims by the CRSC Boards and DOHA, including a different burden of proof: "preponderance of available documentary information" in CRSC claims, 2004 Program Guidance at 9, compared to "clear and convincing evidence" for claims before DOHA, Depaitment of Defense Instruction 1340.21 (May 12, 2004), Enclosure 5.7, 6.14.

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Civil Action No. 1:17-cv-00051

SIMON A. SOTO, on behalf of himself and all individuals similarly situated,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant

FINAL JUDGMENT

Plaintiff Simon Soto and the following class:

> Former service members of the United States Army, Navy, Marine Corps, Air Force, or Coast Guard whose CRSC applications under 10 U.S.C. § 1413a were granted, but whose amount of CRSC payment was limited by Defendant's application of the statute of limitations contained in 31 U.S.C. § 3702 and have a claim of less than $10,000 ("Class"),

sued the United States. This Court granted "Plaintiff Simon Soto's Motion for Summary Judgment" ("Plaintiff's MSJ") (Dkt. No 88). Thus the Court rules as follows:

Final Judgment is entered in favor of Plaintiff Simon Soto and the Class. The United States is liable

to Plaintiff Simon Soto and each member of the Class in Combat-Related Special Compensation under 10 U.S.C. § 1413a withheld following the United States' application of the retroactive payment cap in 31 U.S.C. § 3702. The district clerk is ordered to close this case.

Signed on this 16th day of December, 2021.

/s/ Rolando Olvera
Rolando Olvera
United States District Judge

APPENDIX F

NOTE: This order is nonprecedential.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

2022-2011

SIMON A. SOTO, on behalf of himself and all other individuals similarly situated,

Plaintiff-Appellee

v.

UNITED STATES,

Defendant-Appellant

Appeal from the United States District Court for the Southern District of Texas in No. 1:17-cv-00051, Judge Rolando Olvera, Jr.

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

Before MOORE, *Chief Judge*, LOURIE, DYK, PROST, REYNA, TARANTO, CHEN, HUGHES, STOLL, CUNNINGHAM, and STARK, *Circuit Judges*.[1]

PER CURIAM.

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[1] Circuit Judge Newman did not participate.

ORDER

Simon A. Soto filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that heard the appeal, and thereafter the petition was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue June 27, 2024.

June 20, 2024
Date

FOR THE COURT

/s/ Jarrett B. Perlow
Clerk of Court

APPENDIX G

10 U.S.C. § 1413a

Combat-related special compensation

(a) Authority.–The Secretary concerned shall pay to each eligible combat-related disabled uniformed services retiree who elects benefits under this section a monthly amount for the combat-related disability of the retiree determined under subsection (b).

(b) Amount.–

(1) Determination of monthly amount.–Subject to paragraphs (2) and (3), the monthly amount to be paid an eligible combat-related disabled uniformed services retiree under subsection (a) for any month is the amount of compensation to which the retiree is entitled under title 38 for that month, determined without regard to any disability of the retiree that is not a combat-related disability.

(2) Maximum amount.–The amount paid to an eligible combat-related disabled uniformed services retiree for any month under paragraph (1) may not exceed the amount of the reduction in retired pay that is applicable to the retiree for that month under sections 5304 and 5305 of title 38.

(3) Special rules for chapter 61 disability retirees.–

(A) General rule.–In the case of an eligible combat-related disabled uniformed services retiree who is retired under chapter 61 of this title, the amount of the payment under paragraph (1) for any month may not, when combined with the amount of retired pay payable to the retiree after any such reduction under sections 5304 and 5305

of title 38, cause the total of such combined payment to exceed the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

(B) Special rule for retirees with fewer than 20 years of service.–In the case of an eligible combat-related disabled uniformed services retiree who is retired under chapter 61 of this title with fewer than 20 years of creditable service, the amount of the payment under paragraph (1) for any month may not, when combined with the amount of retired pay payable to the retiree after any such reduction under sections 5304 and 5305 of title 38, cause the total of such combined payment to exceed the amount equal to the retired pay percentage (determined for the member under section 1409(b) of this title) of the member's years of creditable service multiplied by the member's retired pay base under section 1406(b)(1) or 1407 of this title, whichever is applicable to the member.

(c) Eligible retirees.–For purposes of this section, an eligible combat-related disabled uniformed services retiree referred to in subsection (a) is a member of the uniformed services who–

(1) is entitled to retired pay (other than by reason of section 12731b of this title); and

(2) has a combat-related disability.

(d) Procedures.–The Secretary of Defense shall prescribe procedures and criteria under which a disabled uniformed services retiree may apply to the

Secretary of a military department to be considered to be an eligible combat-related disabled uniformed services retiree. Such procedures shall apply uniformly throughout the Department of Defense.

(e) Combat-related disability.–In this section, the term "combat-related disability" means a disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that–

(1) is attributable to an injury for which the member was awarded the Purple Heart; or

(2) was incurred (as determined under criteria prescribed by the Secretary of Defense)–

(A) as a direct result of armed conflict

(B) while engaged in hazardous service;

(C) in the performance of duty under conditions simulating war; or

(D) through an instrumentality of war.

(f) Coordination with concurrent receipt provision.–Subsection (d) of section 1414 of this title provides for coordination between benefits under that section and under this section.

(g) Status of payments.–Payments under this section are not retired pay.

(h) Source of payments.–Payments under this section for a member of the Army, Navy, Air Force, Marine Corps, or Space Force shall be paid from the De-partment of Defense Military Retirement Fund. Payments under this section for any other member for any fiscal year shall be paid out of funds appropriated for pay and allowances payable by the Secretary concerned for that fiscal year.

(i) Other definitions.–In this section:

(1) The term "service-connected" has the meaning given such term in section 101 of title 38.

(2) The term "retired pay" includes retainer pay, emergency officers' retirement pay, and naval pension.

31 U.S.C. § 3702

Authority to settle claims

(a) Except as provided in this chapter or another law, all claims of or against the United States Government shall be settled as follows:

(1) The Secretary of Defense shall settle–

(A) claims involving uniformed service members' pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivor benefits; and

(B) claims by transportation carriers involving amounts collected from them for loss or damage incurred to property incident to shipment at Government expense.

(2) The Director of the Office of Personnel Management shall settle claims involving Federal civilian employees' compensation and leave.

(3) The Administrator of General Services shall settle claims involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station.

(4) The Director of the Office of Management and Budget shall settle claims not otherwise provided for by this subsection or another provision of law.

(b)(1) A claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within 6 years after the claim accrues except–

(A) as provided in this chapter or another law; or

(B) a claim of a State, the District of Columbia, or a territory or possession of the United States.

(2) When the claim of a member of the armed forces accrues during war or within 5 years before war begins, the claim must be received within 5 years after peace is established or within the period provided in paragraph (1) of this subsection, whichever is later.

(3) A claim that is not received in the time required under this subsection shall be returned with a copy of this subsection, and no further communication is required.

(c) One-year limit for check claims.–(1) Any claim on account of a Treasury check shall be barred unless it is presented to the agency that authorized the issuance of such check within 1 year after the date of issuance of the check or the effective date of this subsection, whichever is later.

(2) Nothing in this subsection affects the underlying obligation of the United States, or any agency thereof, for which a Treasury check was issued.

(d) The official responsible under subsection (a) for settling the claim shall report to Congress on a claim against the Government that is timely presented under this section that may not be adjusted by using

an existing appropriation, and that the official believes Congress should consider for legal or equitable reasons. The report shall include recommendations of the official.

(e)(1) The Secretary of Defense may waive the time limitations set forth in subsection (b) or (c) in the case of a claim referred to in subsection (a)(1)(A). In the case of a claim by or with respect to a member of the uniformed services who is not under the jurisdiction of the Secretary of a military department, such a waiver may be made only upon the request of the Secretary concerned (as defined in section 101 of title 37).

(2) Payment of a claim settled under subsection (a)(1)(A) shall be made from an appropriation that is available, for the fiscal year in which the payment is made, for the same purpose as the appropriation to which the obligation claimed would have been charged if the obligation had been timely paid, except that in the case of a claim for retired pay or survivor benefits, if the obligation claimed would have been paid from a trust fund if timely paid, the payment of the claim shall be made from that trust fund.

(3) This subsection does not apply to a claim in excess of $25,000.