No. 24-320

IN THE

Supreme Court of the United States

SIMON A. SOTO, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Petitioner,

v.

UNITED STATES,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF OF *AMICUS CURIAE* THE NATIONAL LAW SCHOOL VETERANS CLINIC CONSORTIUM IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Table of Contents

TABLE OF CITED AUTHORITIES

Page

Cases

Statutes, Rules and Regulations

Cited Authorities

Page

Page

Other Authorities

Cited Authorities

Page

Cited Authorities

Page

Page

Page

INTEREST OF *AMICUS CURIAE*[1]

The National Law School Veterans Clinic Consortium ("NLSVCC") submits this brief in support of the position of Petitioner Simon A. Soto. The filing of this brief was authorized by the Board of the NLSVCC, a 501(c)(3) organization.

The NLSVCC is a collaborative effort led by the nation's law school legal clinics dedicated to addressing the unique legal needs of U.S. military veterans and to supporting veterans law clinics at law schools nationwide. The Consortium believes that law school veterans clinics play a fundamental role in safeguarding and advocating for the legal rights of veterans, including by advancing veterans and military law scholarship and training veterans advocates.

The Consortium works with like-minded stakeholders to support and advance common interests with the Department of Veterans Affairs, Congress, state and local veterans service organizations, court systems, educators, and all relevant entities for the benefit of veterans throughout the country. It also supports the dual teaching and advocacy missions of the nation's law school veterans clinics through cross-clinic collaboration.

The NLSVCC's interest in Mr. Soto's petition stems from our members' commitment to serving the legal

1. In compliance with Rule 37.6, *amicus* affirms that no counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than *amicus curiae* and its counsel made a monetary contribution intended to fund the preparation or submission of the brief.

interests of U.S. military veterans, including the legal interests of combat-injured retirees like Mr. Soto and the class. As an organization whose members are veterans' advocates and veterans law scholars, *amicus* NLSVCC has an important interest in requesting that this Court issue a decision in support of Mr. Soto and his fellow class members, correct the Federal Circuit's misinterpretation of the CRSC's statutory text, and allow the Department of Defense to settle these veterans' claims fairly without the strictures of the Barring Act's six-year statute of limitations.

SUMMARY OF THE ARGUMENT

The Federal Circuit's refusal to recognize that the Combat-Related Special Compensation (CRSC) statute's plain text displaces the Barring Act frustrates the procedural generosity that the statute's structure grants combat-wounded retirees. The Federal Circuit's decision is, further, misaligned with CRSC's place in our nation's deep tradition of extending its most generous monetary benefits to combat-wounded veterans. From our early history, Congress provided special compensation to combat-wounded veterans, recognizing their heightened claim to benefits above standard military retirement. CRSC restores this deep tradition for military retirees, finally addressing the unfairness of the prohibition on concurrent receipt of military retired pay and Department of Veterans Affairs (VA) disability compensation. As the statute explicitly states, CRSC is distinctly "not retired pay." 10 U.S.C. § 1413a(g). Unlike retired pay, which incentivizes service retention, CRSC honors the impact of combat. It ensures that combat-disabled retirees are fairly recognized for their military careers and also

are specifically compensated for their injuries on the battlefield.

The room for procedural generosity that Section 1413a creates permits the Department of Defense (DoD) to respond to the multiple substantial barriers that combat-wounded retirees will uniquely face in navigating the CRSC system. These include the physical and mental health symptoms of the very combat-related conditions that often make applicants eligible for CRSC, like post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI). Additional barriers to accessing CRSC can include the near-contemporaneous transition from deployment or active duty to home, civilian, and retired military life. Finally, to qualify for the benefit, applicants must first obtain a VA disability rating before filing, requiring them to navigate the processes and procedures of two federal agencies—each of which poses its own distinct challenges. Given the challenges common to this population, it is unsurprising that the CRSC statute provides its own settlement mechanism apart from the strictures of the Barring Act.

The Federal Circuit's ruling improperly deprives combat-wounded retirees of the full benefits that the CRSC statutory text permits them to receive. This Court should reverse the decision and hold that CRSC claims are not subject to the Barring Act's six-year limitations period, ensuring that combat-wounded retirees receive the full compensation that their service and sacrifice earned.

ARGUMENT

CRSC's place in a long tradition of especially generous benefits for combat-wounded veterans confirms that Congress intended that Section 1413a displace the default Barring Act. Section 1413a grants the Department of Defense the power and duty to provide CRSC to eligible combat-wounded retirees in an amount equal to their retired pay less the veteran's receipt of disability compensation from the Department of Veterans Affairs. 10 U.S.C. § 1413a(a). It further authorizes the Secretary to "prescribe procedures and criteria" for filing CRSC applications, and limits CRSC payments in only that they cannot exceed an amount that would allow a retiree to receive their full retired pay and disability compensation for the month. 10 U.S.C. § 1413a(d). It does not contain any additional language limiting an individual's receipt of CRSC on a monthly or backpay basis. Thus, Section 1413a authorizes the Secretary to pay CRSC for any month in which a retiree is eligible, including backpay. Even if CRSC "involves . . . retired pay" within the meaning of the Barring Act, CRSC's statutory language displaces the Barring Act's six-year statute of limitations. *See* 31 U.S.C. § 3702(b).

Beyond the statute's plain language, CRSC's purpose also supports this reading. Unlike general military retired pay or disability compensation, CRSC was specifically created to restore benefits to combat-wounded veterans in recognition of their extraordinary service. This historical and legislative backdrop reinforces the conclusion that Congress intended CRSC to be paid in full, including as backpay. Combat-wounded retirees are particularly deserving of this procedural generosity, as

they face unique barriers in filing CRSC claims. The very conditions that make them eligible for CRSC—such as PTSD and TBI—also impair their executive functioning. This makes it more difficult for them to navigate complex administrative processes. Yet, these symptomatic challenges are only the start; combat-wounded retirees must also near-simultaneously transition from active duty to civilian and retired military life while contending with the processes and procedures of two distinct and complex federal agencies.

Applying a six-year statute of limitations to CRSC claims after applicants successfully navigate the system disregards these challenges and unjustly deprives Mr. Soto and similarly situated veterans of the full benefits Congress intended them to receive.

I. The history of combat-related compensation like CRSC, as compared to retired pay, confirms that Section 1413a permits retirees to receive full CRSC backpay.

Historical context provides good reason to read Section 1413a as displacing application of the Barring Act's statute of limitations. From the founding era, Congress provided special compensation for combat-wounded veterans, recognizing their heightened moral claim to benefits distinct from ordinary military retirement or other veterans benefits. From Revolutionary War pensions to modern disability compensation, history demonstrates a deep-rooted commitment to compensating combat-related disabilities as a unique matter of national honor and obligation.

The enactment of CRSC follows this tradition, ensuring that combat-disabled retirees receive full and fair compensation for their injuries. The significance of CRSC is, in this way, meaningfully distinct from the significance of retired pay, which emerges from a separate and more utilitarian history. Applying the Barring Act's statute of limitations for retired pay and similar claims despite its displacement in the CRSC statutory text contradicts this deeply rooted legislative purpose and arbitrarily withholds compensation from deserving veterans.

A. The CRSC statute should be read as situated within a deep tradition of especially generous compensation for combat-wounded veterans.

CRSC is situated in a deep and abiding American tradition of providing our most generous public benefits to combat-wounded veterans. Special concern for compensating combat-wounded veterans predates even our Constitution, as it was first considered by the Continental Congress at the time of the Revolution. Theda Skocpol, *America's First Social Security System: The Expansion of Benefits for Civil War Veterans*, 108 Pol. Sci. Q. 85, 91–92 (1993). Over the nearly two hundred and fifty years since our founders first contemplated such compensation, Congress has repeatedly acted to honor and protect combat-wounded veterans even as it made cuts elsewhere in veteran spending. It is from this long line of heightened benefits for combat-wounded veterans that CRSC emerges.

Congress authorized the first payments to veterans disabled in wartime service, including by sickness, in a

series of enactments in the years following the Revolution. As one contemporary newspaper put it, these original pensions were understood as being "for the benefit of the unfortunate [i]nvalids who have suffered in the cause of their country." Joseph Whipple, *Take Notice!*, New Hampshire Gazette, June 3, 1790. These pensions shaped an early sense of national identity and character, even as they met legal and political challenges. For example, *Hayburn's Case* challenged the Invalid Pension Act of 1792 on the grounds that it unconstitutionally interfered with the separation of powers. *Hayburn's Case*, 2 U.S. 409, 411 (1792). Justices Cushing and Jay referenced the "just and benevolent views of Congress so conspicuous on this occasion" and their "feelings as men for persons whose situation requires the earliest as well as the most effectual relief," going as far as to say, "[T]he objects of this act are exceedingly benevolent, and do real honor to the humanity and justice of Congress." *Id.* at n.2 (Opinion of the Circuit Court for the District of New York, comprised of Chief Justice Jay, Justice Cushing, and District Judge Duane). It is clear that special pay for combat-wounded retirees held keen moral weight to our founders and contributed to an early sense of the United States as a nation that cares for those wounded in its battles.

Compensating those who had been disabled in the fight for American independence was understood to be of such gravity in the earliest years of our nation that Henry Knox, while still a major general, wrote in 1782 to John Hancock on the subject of a wounded officer that "the States have too much dignity and too high a character to support to permit the men who have shed their blood in their cause . . . to solicit the icy hand of charity for food." Laurel Daen, *Revolutionary War Invalid Pensions and*

the Bureaucratic Language of Disability in the Early Republic, 52 Early Am. Lit. 141, 151 (2017). Rather than leave combat-wounded retirees to the mercy of private or local poorhouses, Knox and like-minded founders sought to establish a secure living for Revolutionary War veterans.

When Knox ultimately became War Secretary and was tasked with overseeing so-called "invalid pensions," the practical challenge of standardizing the evaluation of disability and pension eligibility across still largely disunified states was great. Knox and his allies dedicated years to overhauling the pension system, driven by a commitment to ensure that benefits truly honored combat veterans. They contended that the original pension act's vague link between combat service and disability failed to adequately reward those injured in battle. *See* Daen, *supra*, at 153 (describing Knox's efforts to separate out combat-wounded from sickened veterans). Consequently, in the 1793 revision, Congress embraced many of Knox's proposals—tightening medical evaluations and demanding a clearer connection between combat service and disability—to guarantee that only those with service-related injuries received support. Daen, *supra*, at 156. Nonetheless, Congress ensured that veterans disabled by the "direct effect of known wounds or hurts received while in the actual line of duty" would continue to receive compensation as long as they could provide affidavits of credible witnesses setting forth the time and place of wounds. *Id.* (describing An Act to Regulate the Claims to Invalid Pensions, ch. 17, 1 Stat. 324 (1793)). In the late 1790s, a commission of the House of Representatives reviewed pension legislation and administration and recommended no changes to the Act of 1793. It is a testament to the importance of payments for combat-

wounded retirees that in the early years of the Republic, as political and administrative issues abounded, such singular and repeated attention was paid to pensions for combat-wounded retirees specifically.

When the immediate pressures of war had subsided and the federal government was unburdened by the vast costs of large-scale conflict, Congress took a more expansive approach to veterans' pensions by including veterans whose disabilities arose later in life as a result of in-service injuries, impoverished war veterans, and their widows generally. Skocpol, *supra*, at 92. However, the devastating human toll of the Civil War left hundreds of thousands of Americans disabled or widowed, leading Congress to restrict pensions yet again by requiring proof of a nexus to an in-service wartime injury. *Id.* at 93 (citing Act to Grant Pensions, 1862, ch. 166, 12 Stat. 566 (1862)). These Civil War pensions were conceived as recognition from a grateful nation of the highest form of bodily sacrifice in our nation's time of need. *See* Floor remarks of Rep. William Steele Holman of Indiana, Congressional Globe (Washington), vol. 32, pt. 3, May 13, 1862, p. 2102 ("Government in consideration of the hardships endured, the perils incurred, the sufferings borne by those soldiers who may be disabled in the service of the country, an expression of gratitude and a provision against want.").

At the end of the nineteenth century, Congress again expanded pension access by eliminating the requirement that a war veteran's disability be service-related. Dependent Pension Act of 1890, ch. 634, sec. 2–4, 26 Stat. 182, 182–83 (1890). As a result of this and other enactments, between 1880 and 1910 over a quarter of federal spending was directed at pensions.

Skocpol, *supra*, at 85. Political backlash to broad pension spending laid the groundwork for the modern veterans disability compensation system, which emerged from the First World War with the goal of creating a system for compensating veterans for the disabling effects of injuries connected to wartime service. *See* James D. Ridgway, *Recovering an Institutional Memory:* 5 Veterans L. Rev. 1, 6–9 (2013). As such, the modern VA service-connected disability compensation system would have originally been understood to be primarily compensation for war-related injuries. *See* World War Veterans' Act of 1924, Pub. L. No. 68-242, 43 Stat. 607 (codifying the 1917 disability compensation system for veterans of the First World War). Later, Congress also established a separate monthly pension program for veterans living in poverty due to disabilities not connected to service, but restricted access to this means-tested benefit to wartime veterans only. *See* Act of June 17, 1957, Pub. L. No. 85-56, sec. 310–15, sec. 401–04, 71 Stat. 83, 96–104. As in earlier eras, the modern veterans benefits structure seeks to protect the dignity of all wartime veterans, but ensures that those wounded in combat receive the most generous compensation.

Today, CRSC is one of just two ways that military retirees can access both their full VA disability compensation and the full value of their retired pay.[2] The

2. Retirees with a service-connected disability not related to combat that VA rates as 50 percent disabling or higher are eligible to have a portion of their waived retired pay "restored." 10 U.S.C. § 1414. The amount of retired pay restored increases as the retiree's disability rating increases. 10 U.S.C. § 1414(c). This "concurrent payment" is a true restoration of retired pay as compared to CRSC, which instead offers distinct payments based on the value of withheld retired pay. 10 U.S.C. § 1413a(b); 10 U.S.C. § 1413a(g).

deep American tradition of extra-generous compensation for those wounded on the battlefield supports a reading of the CRSC that would allow these veterans to access all of the pay for which they are statutorily eligible.

B. CRSC is meaningfully distinct from retired pay, which is subject to the Barring Act's statute of limitations.

Even if CRSC "involv[es] . . . retired pay" within the meaning of the Barring Act, 31 U.S.C. § 3702, and even though the CRSC statute uses a retiree's retired pay to calculate the amount of CRSC payments, 10 U.S.C. § 1413a(b), CRSC is by its own terms "not retired pay." 10 U.S.C. § 1413a(g). This distinction is historical and symbolic, but also has practical effect. To begin, retired pay's statutory text does not affirmatively displace the Barring Act. While Congress gave the Department of Defense broad discretion to offer CRSC beneficiaries procedural generosity, 10 U.S.C. § 1413a(d), Congress has carefully dictated the procedures and criteria surrounding retired pay. *See*, *e.g.*, 10 U.S.C. § 1405 (setting specific calculation rules for determining years of service); 10 U.S.C. § 1415 (setting rules for lump sum retired pay); 10 U.S.C. § 12731 (setting specific age and service requirements for Reserve retirement). In addition to not being subject to the Barring Act, CRSC is not like retired pay in that it is exempt from taxation—a practical consequence that makes CRSC more like VA disability compensation. 38 U.S.C. § 5301(a)(1); 26 U.S.C. § 104(b)(2). Further, retired pay is divisible property. 10 U.S.C. § 1408. Because by its own terms CRSC is "not retired pay," Section 1413a(g) bars courts from including CRSC in a court order dividing property, just as VA disability

compensation is non-divisible. *Id.* CRSC's place in the long tradition of compensation for combat-wounded veterans is further highlighted by the gulf between that history and the history of retired pay.

Military retirement has a long and complicated history dating back to the 1760s, a history that has evolved alongside but separate from the history of veterans' disability compensation. Although the legislation has evolved in stages within the respective services and across the military as a whole, the varied purposes of retired pay have always made it more similar to salary than to compensation for those wounded in combat. *See* Donald J. Brown, *A Survey of Military Retirement*, 15 JAG J. 83, 83 (July 1961). The Act for the Better Administration of the Military Establishment, enacted in 1861, is often seen as the basis for modern military retirement. An original purpose of non-disability retirement was to provide a means of financial security upon withdrawal for superannuated military officers.[3] Not only would

3. Notably, legislation that enables a young and vigorous military force reaches back to an 1855 statute that authorized the Secretary of the Navy to involuntarily terminate officers deemed no longer equipped for duty, placing such officers on a reserved list. Wener Vieux, *The Military Retirement System: A Proposal for Change*, 218 Mil. L. Rev. 1, 6 (2013); Act to Promote the Efficiency of the Navy, ch. 127 § 2, 10 Stat. 616–17 (1855). Moreover, the 1861 Act authorized the President to retire officers of all military branches upon completion of forty years of service. Vieux, *supra*, at 7; Act of August 3, 1861, ch. 42, §§ 15, 21, 12 Stat. 287, 289, 290 (1861).

Remarkably, there was no legislative act that authorized voluntary retirement for enlisted service members until 1885. Vieux, *supra*, at 7; Act of February 14, 1885, ch. 67, 23 Stat. 305

encouraging retirement afford younger and presumably more vigorous officers the space to ascend the ranks, but it would also serve as a "retainer" payment for retired officers, as they remain subject to recall to active duty. *See* U.S. Gov't Accountability Off., FPCD-77-81, *The 20-Year Military Retirement System Needs Reform*, 2 (1978); 10 U.S.C. § 688(a).

Over the years, non-disability military retirement has evolved to meet purposes distinct from the purpose of CRSC. The first goal remains to keep the military forces young and vigorous and ensure promotion opportunities for younger service members. Cong. Rsch. Serv., Military Retirement: Background and Recent Developments 1 (Sept. 13, 2018). Servicemembers are expected to age out of prime fitness relatively young given the unique challenges of continued military service—such as repetitive tours, overseas combat, and high operational tempo of military service—to which long-serving military members succumb. *Id.*

Second, it has been especially important for the armed forces to remain competitive with private-sector employers and retain quality officers until retirement. *Id.* After the First World War, Congress recognized

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(1885); *see also* Department of Defense, Military Compensation Background Papers, 6th ed. 695 (2005). In keeping with the goal of preserving a young and vigorous military force, legislation passed in 1899 authorizing the Navy to approve voluntary and involuntary retirement requests for officers between the pay grades of O-4 and O-6. Vieux, *supra*, at 7; Act of March 3, 1899, ch. 413, § 8, 30 Stat. 1004, 1006 (1899); *see also* Department of Defense, Military Compensation Background Papers, 6th ed. 687 (2005).

the necessity of addressing the elevated rate of officer resignations due to favorable employment opportunities in the private sector. Vieux, *supra*, at 7. Around this time, the Hook Commission conducted the first comprehensive review of military compensation since the early 1900s. The Commission compared military compensation with the private sector, helping ensure service members were compensated. *Id.* at 9–10. As a result of the Commission's recommendation, legislation involving retirement saw beneficiary-friendly advancements like a noncontributory retirement system. Along with early vesting and a noncontributory retirement system, military retirement is adjusted annually to reflect the cost of living. *Id.* at 10–11. Retirees maintain exchange and commissary privileges, space-available travel on Department of Defense aircraft, and TRICARE health insurance. *Id.* These monetary and non-monetary benefits provided to military retirees provide a means for the military forces to adequately compete with private sectors. *Id.* at 7–10.

The third goal of retired pay remains to provide a reserve field of experienced military service members that can be called back during time of war or national emergency. Cong. Rsch. Serv., Military Retirement: Background and Recent Developments 1 (Sept. 13, 2018). In order to ensure that all of these goals are met, the amount of military retired pay must be sufficient to assure future and current retirees that they will have some basic measure of economic security. *Id.*

CRSC is distinct, too, from military medical retirement. Medical retirement is for servicemembers who suffer from a permanent physical condition rated at least 30 percent disabling that renders them unfit for continued

service. 10 U.S.C. § 1201(a), (b). Although this permanent physical condition must have been incurred or aggravated within the line of duty—meaning on active duty or in certain federal training statuses—it need not have been incurred in combat or even in a uniquely military activity. *See* 10 U.S.C. § 1201(c). In other words, servicemembers can be medically retired, yet not eligible for CRSC. Because the basis for medical retirement is similar to the basis for modern VA disability compensation—service-connected disability compensation is also awarded for conditions incurred while on active duty, regardless of the relationship to military duties[4]—it is also subject to the concurrent receipt prohibition that bars collection of both retired and disability compensation pay for most military retirees. 38 U.S.C. §§ 5304, 5305.

C. Reading a statute of limitations into CRSC minimizes its meaningful exclusion from the concurrent receipt prohibition.

For much of our nation's history, Congress took extraordinary steps to ensure that combat-wounded retirees received robust financial support in recognition of their sacrifices. This commitment was rooted in the belief that those who risked life and limb in service of the country

4. 38 U.S.C. § 1110; 38 U.S.C. § 1131. A veteran is eligible for service-connected disability compensation for a knee injury incurred skiing on the weekend just the same as a knee injury incurred in a car accident coming home from base, a knee injury incurred practicing rappelling during a training exercise, or a knee injury caused by a bullet in combat. The basic requirement is simply that a veteran's current medical condition has a medical nexus to an illness, injury, or event while on active duty. *See Caluza v. Brown*, 7 Vet. App. 498, 506 (1995).

deserved not just gratitude, but meaningful compensation that acknowledged both their past service and ongoing disabilities. However, in the 1890s, Congress deviated from this tradition, introducing the first prohibition—since modified—on receiving both military retired pay and disability compensation, a restriction now known as the "concurrent receipt" rule. Act of March 3, 1891, ch. 548, 26 Stat. 1081–82. This limitation reflects a flawed understanding that military retired pay and disability compensation serve identical purposes, despite their distinct histories and rationales.

By the 1940s, rather than abandoning this misguided restriction, Congress entrenched it further by requiring retirees to waive a portion of their retired pay equal to the amount of VA disability compensation they received. Act of May 27, 1944, ch. 209, 58 Stat. 230, 230–31. This system persists today, effectively forcing disabled retirees to forfeit retired pay in favor of tax-free disability compensation. 38 U.S.C. §§ 5304, 5305. Despite decades of campaigning by retirees to restore full concurrent receipt, this constraint remains in place—a deviation from our deep national tradition of providing special protections for those wounded in combat.

It is therefore unsurprising that Congress sought to fully restore our proud tradition of honoring those wounded in combat following the attacks of September 11, 2001 in the form of CRSC. It is further unsurprising that Congress explicitly characterized CRSC as "not retired pay," ensuring that it would be protected from taxation, property division, and other markers of workaday salary and pension pay. This reaffirmation in the CRSC of our longstanding commitment to combat-wounded retirees

stands in stark contrast to the concurrent receipt prohibition, which remains an aberration in our benefits tradition rather than a fundamental principle of military compensation. It would only extend this aberration to read the Barring Act's statute of limitations into the CRSC provisions at issue in this case, rather than respect CRSC's clear place not in retired pay, but in the long tradition of our nation's generous expressions of thanks to those wounded in battle.

II. Lifting the Federal Circuit's Application of the Barring Act's Deadline Is Vital to Ensuring that Combat-Wounded Retirees Have Access to the Full Extent of Benefits Congress Intended.

Combat-wounded retirees are particularly deserving of the procedural generosity afforded to them in the CRSC statute; they face unique barriers in navigating the CRSC system. This reality provides good reason to read the CRSC statute without the Barring Act's default statute of limitations.

That is because the very disabilities that make a combat-wounded retiree eligible for CRSC often complicate their process of filing a CRSC claim. Indeed, DoD and VA each agree that PTSD and TBI, among other conditions, significantly impact servicemembers' behavior and executive functioning.

Yet, the symptoms of a combat-wounded retiree's physical or mental health disability are only the beginning. They must also navigate, near-simultaneously, the difficult transitions from deployment and active military service to home, civilian, and retired military life. Amidst

this backdrop, they must also negotiate the complex administrative processes of two federal agencies—each presenting its own distinct challenges—to receive CRSC.

For any one or all these reasons, CRSC applicants are more likely to struggle to access CRSC compared to general military retirees and other veteran populations. Applying a six-year default statute of limitations on this population after they successfully navigate the CRSC system is unjust, and deprives Mr. Soto and others similarly situated of the full benefits that Congress intended them to receive.

A. Combat-related disabilities significantly impact combat-wounded retirees' ability to navigate the CRSC system.

Mr. Soto is not alone in having his CRSC reduced to only six years. Pet. Br. 9; cert-stage Pet. Br. 6–7. He is joined by at least 9,108 similarly situated veterans. Pet. Br. 14; cert-stage Pet. Br. 6–7. Yet, these combat-wounded retirees have survived what most civilians cannot begin to imagine. They carry the weight of their experiences for far longer than six years. It is unjust to deprive them of the full CRSC benefits that Congress intended for them.

The plain text of the CRSC statute requires that an eligible retiree experience a compensable, or symptomatic, disability because of his or her service. 10 U.S.C. § 1413a(e). This includes a symptomatic physical or mental disability arising from engaging in armed conflict, hazardous service, conditions simulating war, an instrumentality of war, or an injury or the result of an injury for which the retiree received the Purple Heart. 10 U.S.C. § 1413a(e)(2).

Here, Mr. Soto enlisted in August 2000. Pet. Br. 9; cert-stage Pet. Br. 4. During his first deployment to Iraq, he was assigned to Mortuary Affairs and tasked with searching for, recovering, and processing the remains of war casualties. Pet. Br. 9-10; cert-stage Pet. Br. 4. On one mission alone, he and other servicemembers recovered over 300 pieces of five to seven deceased soldiers. Pet. Br. 9-10; cert-stage Pet. Br. 4.

Other combat veterans identify similarly distressing experiences. According to Pew Research Center, approximately half of all combat veterans experience emotionally traumatic events during service, such as watching a member of their unit die or become seriously injured. Kim Parker et al., Pew Research Center, *The American Veteran Experience and the Post-9/11 Generation* 14 (2019). Others describe exposure to fire from enemy forces, roadside bombs, land mines, suicide bombers, mass graves, and human remains. RAND Center for Military Health Policy Research, *Invisible Wounds of War* 52 (2008).

Mr. Soto's experiences during service caused him to begin experiencing suicidal thoughts, vivid nightmares, and difficulty concentrating—all hallmark symptoms of PTSD. Pet. Br. 10–11; cert-stage Pet. Br. 4. PTSD is common among combat-wounded retirees because combat is characterized by trauma in the clinical sense of the term. Charles W. Hoge et al., *Combat Duty in Iraq and Afghanistan, Mental Health Problems, and Barriers to Care*, 351 New Eng. J. of Med. 13, 14 (2004). In fact, it is approximately three times more prevalent among veterans with combat exposure compared to those without. Tyler C. Smith et al., *New Onset and Persistent*

Symptoms of Post-Traumatic Stress Disorder Self-Reported After Deployment and Combat Exposures: Prospective Population Based US Military Cohort Study, 336 British Med. J. 366, 366 (2008).

Mr. Soto began seeking treatment for his PTSD symptoms in December 2005, during service. Cert-stage Pet. Br. 4. In this respect he is distinct; most servicemembers do not feel comfortable seeking treatment for mental health symptoms during service. Indeed, "[v]eterans often failed to disclose severe and pervasive suicidal thoughts when screened because: (1) they considered suicidal thoughts as shameful and a sign of weakness; (2) they believed suicidal thoughts were private and not to be divulged to strangers; [and] (3) they worried that disclosure would lead to unwanted hospitalization or medication recommendations." Linda Ganzini et al., *Trust is the Basis for Effective Suicide Risk Screening and Assessment in Veterans*, 28 J. Gen. Intern. Med. 1215, 1215 (2013); *see also* Jennifer L. Villatte et al., *Suicide Attempt Characteristics Among Veterans and Active-Duty Service Members Receiving Mental Health Services: A Pooled Data Analysis*, 3:4 Mil. Behav. Health 316, 316–27, 324–25 (2015) (noting "the understandable reluctance of service members to report previous suicidal behavior").

For others, PTSD and its symptoms do not always arise during military service. In fact, "studies [consistently] show high rates of delayed-onset PTSD," or PTSD arising many months or years after withdrawal from service, in veteran populations. Bernice Andrews et al., *Delayed-Onset Posttraumatic Stress Disorder: A Systemic Review of the Evidence*, 164:9 Am. J. of Psych. 1319, 1324 (2007). TBI, often called the "signature wound" of modern war,

is also prevalent and overlapping in this population. *See* Peter Hayward, *Traumatic Brain Injury: The Signature of Modern Conflicts*, 7 The Lancet Neurology 200, 200 (2008). The DoD confirms that mental health conditions, such as PTSD and TBI, "impact veterans in many intimate ways, are often undiagnosed or diagnosed years afterwards, and are frequently unreported." Memorandum from A.M. Kurta, Under Sec'y Def., Memorandum for Secretaries of the Military Departments, Aug. 25, 2017, ¶ 26(d); Memorandum from Robert L. Wilkie, Under Sec'y Def., Memorandum for Secretaries of the Military Departments, July 25, 2018, ¶ 6(h).

Moreover, both PTSD and TBI are characterized by executive dysfunction, a symptom that directly inhibits a person's capacity to make and execute plans effectively. *See* Geneviève LaGarde, Julien Doyon, & Alain Brunet, *Memory and Executive Dysfunctions Associated with Acute Posttraumatic Stress Disorder*, 177 Psych. Rsch. 144, 146–147 (2010); Brenna C. McDonald, Laura A. Flashman, & Andrew J. Saykin, *Executive Dysfunction Following Traumatic Brain Injury: Neural Substrates and Treatment Strategies*, 17 NeuroRehabilitation 333, 333-336 (2002); *see also* Laura D. Crocker et al., *Worse Baseline Executive Functioning is Associated with Dropout and Poorer Response to Trauma-Focused Treatment for Veterans with PTSD and Comorbid Traumatic Brain Injury*, 108 Behav. Rsch. and Therapy 68, 69 (2018). The DoD confirms that these conditions "inherently impact one's behavior and choices causing veterans to think and behave differently than might otherwise be expected." Memorandum from A.M. Kurta, Under Sec'y Def., Memorandum for Secretaries of the Military Departments, Aug. 25, 2017, ¶ 26(d); Memorandum

from Robert L. Wilkie, Under Sec'y Def., Memorandum for Secretaries of the Military Departments, July 25, 2018, ¶ 6(h).

Indeed, the VA agrees that veterans with a 100% disability rating for a mental health condition, like Mr. Soto, experience "total occupational and social impairment" for such symptoms as "gross impairment in thought processes or communication, persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others," "disorientation to time or place, severe memory," and/or an "intermittent inability to perform activities of daily living." 38 C.F.R. § 4.130 (2024); *see also* Pet. Br. 11. Likewise, a veteran with a 100 percent rating for TBI experiences severe limitations in any of ten areas, including for symptoms like "severe impairment of memory, attention, concentration or executive function resulting in severe functional impact" and "severely impaired judgment" when faced with routine and familiar decisions that renders them "unable to identify, understand, and weigh the alternatives, understand the consequences of choices, and make a reasonable decision," among other limitations. 38 C.F.R. § 4.124a (2024). Any or all of these symptoms would significantly impact a combat-wounded retiree's ability to navigate CRSC process.

In sum, the very disabilities that make a combat-wounded retiree eligible for CRSC will also severely impact their ability to file a CRSC claim. The DoD and VA each agree that PTSD and TBI, among other conditions, significantly impact servicemembers' behavior and executive functioning. These limitations directly impact their ability to navigate the CRSC system. Imposing a six-year statute of limitations on this population's ability

to recover for their combat-related disabilities after they successfully navigate the CRSC system is unjust.

B. The transition from active-duty military to combat-wounded retiree would likewise impede ability to navigate the CRSC system.

Navigating the well-documented difficulties of transitioning home from a deployment, and from active military service into civilian retired military life, provides additional reasons to believe that combat-wounded retirees are likely to face challenges in applying for CRSC.

Mr. Soto began the process of applying for VA disability benefits during his final months in the United States Marine Corps. Pet. Br. 11; cert-stage Pet. Br. 5 (June 2009 VA rating decision awarding him service connection for PTSD effective Apr. 26, 2006, or two days before he was medically retired from active duty). Yet not all service members are so fortunate. Navigating the disability process complicates combat retirees' reintegration into civilian life, a process that can be highly destabilizing even in the best of circumstances as servicemembers leave the structure of military life behind. Shivani Sachdev & Shikha Dixit, *Military to Civilian Cultural Transition Experiences of Retired Military Personnel: A Systematic Meta-Synthesis*, 36:6 Mil. Psych. 579, 582–589 (2024).

Further, the process of applying for CRSC is structurally and conditionally delayed. That is because a combat-wounded retiree must first request and be granted service connection for a disability of at least 10 percent severity with the VA to be eligible to file for CRSC. *See* DoD 7000.14-R, Volume 7B, Chapter 63, ¶ 4.4. Indeed,

even in Mr. Soto's case, VA issued a positive rating decision roughly 37 months after his initial application. Pet. Br. 11; cert-stage Pet. Br. 5. This establishes a substantial gap in time for prospective CRSC applicants to retain memory of, plan for, and manage expectations of filing for CRSC amidst physical and mental health symptoms.

Adjusting to a new normal takes time, and almost every aspect of life changes after a combat-wounded retiree leaves military service. *See* Jeremy S. Joseph et al., *Reculturation: A New Perspective on Military-Civilian Transition Stress*, 35 Mil. Psych. 193, 195–197 (2022). In sharp contrast to the camaraderie and sense of purpose inherent to military service, retirees often feel out of place and disconnected from their loved ones and the broader public when they re-join the civilian world. *See* Sachdev & Dixit, *supra* at 589. They often experience a sense of loss of identity and purpose, and without the structure of military life, can become overwhelmed by new responsibilities and unlimited choice. *Id.* at 588–89. This is especially true for medical retirees, like Mr. Soto, who are separated from the military far earlier and more suddenly than they had planned and for reasons entirely out of their control.

Further, this period of transition is generally marked with difficulties finding stable employment and housing; it is also associated with more severe PTSD and TBI symptoms. *See* Nicholas Rattray et al., *The Association Between Reintegration, Perceptions of Health and Flourishing During Transition from Military to Civilian Life Among Veterans with Invisible Injuries*, 9 J. Veteran Stud. 224, 225 (2023). These mental health and functional challenges can be especially acute for those

having recently returned from combat deployments. *See* Nina A. Sayer, Kathleen F. Carlson & Patricia A. Frazier, *Reintegration Challenges in the U.S. Service Members and Veterans Following Combat Deployment*, 8 Soc. Issues and Pol'y Rev. 33, 39–42 (2014).

Those retirees who choose not to or cannot treat their conditions in this period face the risk of developing increasingly severe symptoms. PTSD and TBI symptoms can be amplified if left untreated, which is all too common given the social and logistical barriers veterans encounter to treatment, including stigma and the lack of adequate mental health staff within the VA. *See* Ann M. Cheney et al., *Veteran-Centered Barriers to VA Mental Healthcare Services Use*, 18 BMC Health Services Rsch. 2, 5–10 (2018). Combat-wounded retirees may also develop new combat-related disabilities or suffer the aggravation of existing disabilities, even after exiting military service. *See* 10 U.S.C. § 1413a(e)(1) (contemplating a disability that is "attributable to an injury for which the member was awarded the Purple Heart"). These worsened or new conditions will only further complicate their ability to access the CRSC system.

Expecting combat-wounded retirees to seamlessly navigate the CRSC system amidst physical and mental health residuals from their service, while also navigating the difficult transition from deployment and active duty to home, civilian, and military retired life is manifestly unjust. Applying a six-year default statute of limitations unjustly deprives this population of the full extent of benefits that they are owed for their combat injuries.

C. The CRSC process itself may be a barrier to combat-wounded retirees' timely filing, especially when compared to the VA disability process.

In addition to those challenges identified above, the CRSC statute expressly requires that a combat-injured retiree negotiate the processes and procedures of two federal agencies to become eligible for CRSC. The VA must first award a combat-injured retiree service connection for a disability and assign them a 10 percent disability rating; only then can they apply for CRSC. 10 U.S.C. § 1413a(c)(2), (e); *see also* DoD 7000.14-R, Volume 7B, Chapter 63, ¶ 4.4. Then, they must prove to the DoD that they experienced a combat-related disability.

This two-agency process establishes unique benefits and burdens for combat-wounded retirees seeking CRSC. On the one hand, by the time combat-wounded retirees apply for CRSC, they are likely to have VA-gathered service and personnel records in hand that may benefit their CRSC application. On the other hand, CRSC benefits are often more elusive than VA benefits in several respects. We address each aspect below.

Favorably, a combat-wounded retiree who successfully applies for VA disability is likely to have access to their service medical and personnel records, to the benefit of their future CRSC application. That is because the VA has a duty to assist veterans in their claims and must "[m]ake reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim." 38 U.S.C. § 5103A(a)(1). This includes "[t]he claimant's service medical records and, if the claimant has furnished the

Secretary information sufficient to locate such records, other relevant records pertaining to the claimant's active military, naval, air, or space service that are held or maintained by a government entity." 38 U.S.C. § 5103A(c)(1)(A).

Indeed, the federal government's record keeping system has advanced since the passage of the Barring Act. *Contra* cert-stage Resp. Br. 11. That Act was adopted, in part, to ward off claims arising from long-resolved conflicts like the Revolutionary period, the War of 1812, the Civil War, etc. 86 Cong. Rec. 2296, 2308–09 (1940) (statement of representative John J. Cochran). Today, applicants have every incentive to file for CRSC but may nevertheless be limited by circumstances outside of their control, like the ones we address below. Access to records is unlikely to be one of them.

Today, service member's military records are placed in the safekeeping of DoD for 62 years after the service member's discharge or dismissal. National Archives, National Personnel Records Center, Archival (Accessioned) Official Military Personnel Files (OMPFs) and Official Personnel Files (OPFs), https://www.archives.gov/personnel-records-center/division. They are then transferred to the National Archives and Records Administration (NARA) and designated "permanent" records that are not subject to a retention schedule that will result in their destruction. *Id.* It even permits veterans to request their records personally. Request Military Service Records, National Archives, https://www.archives.gov/veterans/military-service-records (last accessed Mar. 4, 2025). That is because we are less concerned about the institutional burden of requesting

and reviewing tens of thousands of paper claims arising out of the Revolutionary period, the War of 1812, the Civil War, etc. 86 Cong. Rec. 2296, 2308–09 (1940) (statement of representative John J. Cochran). Electronic record keeping has replaced manual and physical storage.

Yet, the challenges an applicant will face in filing for CRSC arise from the rest of the application process. Even if a CRSC applicant has possession of their military records, there is no guarantee that she will even be aware of the CRSC process. Unlike the well-established and often-publicized VA benefits system, CRSC is potentially applicable to a much smaller field of veterans and is a relatively unknown benefit to most. Indeed, even Mr. Soto—who successfully received a VA disability rating—was delayed in filing his CRSC claim by eight years.

Further, even if a combat-wounded retiree knows of and can access the CRSC system, there is no guarantee that the DoD will reach the same result as the VA in compensating them for their combat-related disabilities. This is for three reasons.

First, unlike the VA, the DoD will not assist claimants in developing evidence in support of their claim; it has no duty to assist. *See* DoD 7000.14-R, Volume 7B, Chapter 63, ¶¶ 6.0–6.4, 10.0–10.3. While it "*may* request copies of certain documents (i.e., DD 214, "Certificate of Release or Discharge from Active Duty," medical records, final DVA ratings) from VA to support CRSC determinations," it has no affirmative duty to do so. DoD 7000.14-R, Volume 7B, Chapter 63, ¶ 10.1.2. Thus, even a combat-wounded retiree who successfully navigates the VA system may struggle to timely file a CRSC application because they receive

substantially less assistance from DoD in developing, supporting, and timely filing their application.

Second, unlike the VA, the DoD will not accept lay testimony as evidence to support that a disability was incurred as a direct result of combat. DoD regulations narrowly define "relevant evidence" in a CRSC claim as only that "credible, objective documentary information in the records . . . " DoD 7000.14-R, Volume 7B, Chapter 63, ¶ 10.1.1. Put another way, this expressly prohibits military departments from considering a combat-wounded retiree's lay testimony about the origins of their disability during combat. DoD 7000.14-R, Volume 7B, Chapter 63, ¶ 10.1.1. Thus, even a combat-wounded retiree who successfully obtains their records may struggle to timely file a CRSC application because their military records may not contemporaneously note the origins of their disability during a period of combat.

Yet, this evidentiary limitation is not new; veteran's records commonly will not contain notations about injuries incurred during combat. This was explicitly contemplated by Congress in establishing a favorable combat presumption in the VA system. There, the VA Secretary is directed to accept a veteran's lay testimony or other evidence that their claimed disease or injury began during combat when it is consistent with the circumstances, conditions, or hardships of his or her military service. 38 U.S.C. § 1154(b). Put another way, in the VA context, the absence of a formal record documenting the beginning of the disease or injury is not dispositive and the veteran's lay statements will suffice.

Third, even if a veteran successfully requested service connection for a combat-related disability with the VA, the DoD is not required to or inclined to accept the VA's decision. That is because the DoD adopts narrower criteria for types of combat service than the VA. Under the CRSC statute, a combat-wounded retiree must show that their combat-related disability was incurred as a result of armed conflict, hazardous service, under conditions simulating war, by an instrumentality of war, or is attributable to an injury for which the applicant received the Purple Heart. 10 U.S.C. § 1413a(e)(1), (2). By contrast, a veteran may receive VA disability compensation where the VA finds that the veteran's disability was incurred or aggravated by their service. *See* 38 U.S.C. § 1110. Thus, even a combat-wounded retiree who successfully obtains service connection may struggle to file a CRSC application because they may not be aware of the differences between the rules governing the VA and the DoD.

In sum, it would be manifestly unjust to condition full access to CRSC pay on combat-wounded retirees swiftly navigating the CRSC process amidst physical and mental health disabilities incurred during combat, while also weathering difficult transitions from deployment and active duty to home, civilian life, and retirement, and negotiating the complex administrative processes of two separate federal agencies. To counteract this injustice, the CRSC statutory text must be read to extend procedural generosity to combat-wounded retirees and the Barring Act's six-year default statute of limitations.

CONCLUSION

For the foregoing reasons, NLSVCC respectfully urges this Court to reverse the Federal Circuit's holding and find that the CRSC statutory text affirmatively displaces the Barring Act.

Respectfully submitted,

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