

No. 21-2095

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**In the United States Court of Appeals  
for the Federal Circuit**

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ROBERT L. DOYON,

*Plaintiff – Appellant,*

v.

UNITED STATES,

*Defendant – Appellee.*

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Appeal from the United States Court of Federal Claims  
In No. 1:19-cv-011964-LKG

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**BRIEF OF VIETNAM VETERANS OF AMERICA  
IN SUPPORT OF APPELLANT AND IN FAVOR OF REVERSAL**

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## CERTIFICATE OF INTEREST

**Case Number** 21-2095

**Short Case Caption** *Doyon v. United States*

**Filing Party/Entity** Vietnam Veterans of America, Inc., *Amicus Curiae*

I certify the following information is accurate and complete to the best of my knowledge.

Date: September 2, 2021

Signature: /s/ Alec U. Ghezzi

Name: Alec U. Ghezzi

- 1. Represented Entities.** Provide the full names of all entities represented by undersigned counsel in this case.

Vietnam Veterans of America, Inc.

- 2. Real Party in Interest.** Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.

None.

- 3. Parent Corporations and Stockholders.** Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.

None.

- 4. Legal Representatives.** List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

None.

5. **Related Cases.** Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

None.

6. **Organizational Victims and Bankruptcy Cases.** Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

None.

7. **Consent.** This brief is submitted with the consent of both parties pursuant to Federal Rule of Appellate Procedure 29(a).

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## STATEMENT OF IDENTITY AND INTEREST

This brief was authored in part by undersigned counsel.<sup>1</sup> No party, party's counsel, or any other persons contributed money intended to fund preparing or submitting this brief. Vietnam Veterans of America (VVA) is the only national veterans service organization congressionally chartered and exclusively dedicated to Vietnam-era veterans and their families. As the Vietnam war came to an end and years passed, it became clear established veterans service organizations had failed to make a priority of the issues of concern for Vietnam veterans. In response, in January 1978 VVA began its journey to put Vietnam veteran issues at the forefront.

In 1983, VVA took a significant step by founding Vietnam Veterans of America Legal Services (VVALS) to assist veterans seeking benefits and services from the government. By working under the theory that a veteran's representative should be an advocate rather than simply a facilitator, VVALS established itself as a highly competent and aggressive legal assistance program available to veterans. VVA also played a leading role in advocating for the creation of Judicial Review, championing the rights of veterans to challenge VA benefits decisions in court. In the 1990s, VVALS evolved into the current VVA Service Representative program that continues to represent and advocate for veterans today.

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<sup>1</sup> The following colleagues were instrumental in the drafting of this document: Caroline Greene, Claire Corsey, Dani Fischer, Dylan Goll, Justin Huber, and Nicholas Millington.

VVA offers a unique and important perspective on issues faced by Vietnam veterans, specifically mental health issues faced by this group and the evolution of post-traumatic stress disorder (PTSD) as an official diagnosis in the Diagnostic and Statistical Manual of Mental Disorders (DSM). Appellant and other veterans misdiagnosed in-service – especially where the misdiagnosis led to discharge – have a right to correct their military records to reflect a PTSD diagnosis and qualify for medical retirement. As such, *amicus* has a strong interest in seeking to have this Court reverse the United States Court of Federal Claims holding in the above-captioned matter and find the decision of the Board of Correction of Naval Records (BCNR) not to be supported by substantial evidence.

### **ARGUMENT**

Mr. Doyon persuasively explains why he is entitled to a reversal of the BCNR's denial of a discharge upgrade. *Amicus* respectfully submits this brief to explain more fully the history of the struggle for awareness of PTSD among veterans. For centuries, PTSD was shrouded in other medical terms, and the symptoms were overlooked and downplayed. Mr. Doyon is a victim of this injustice, having experienced trauma and PTSD years before the medical world and the Armed Forces understood or knew how to treat it. Therefore, *amicus* argues that the Court should no longer perpetuate this injustice and asks this Court to reverse the decision of the United States Court of Federal Claims.



**I. The growing recognition of PTSD in the military supports the conclusion that a veteran whose discharge was due to a misdiagnosed mental condition should be able to correct their military records to seek medical retirement.**

PTSD is a multifactorial, disabling psychiatric condition characterized by intrusion, avoidance, negative alterations in cognitions and mood, and marked alterations in arousal and reactivity following a traumatic event. *See* AM. PSYCH. ASS'N, DIAGNOSTIC & STATISTICAL MANUAL OF MENTAL DISORDERS § 2 (5<sup>th</sup> ed. 2013). Those diagnosed display a wide range of variable symptoms that often include flashbacks, dissociation, inability to experience positive emotions, irritable behavior, angry outbursts, reckless or self-destructive behavior, and sleep disturbances. *Id.*

Although PTSD was initially recognized in the DSM in 1980, the condition itself has been part of the collective consciousness for millennia. References in Deuteronomy and the *Epic of Gilgamesh* allude to the fear, panic, and personality changes that follow the trauma of battle and loss. William Shakespeare's famous Queen Mab speech invokes the image of a fairy tormenting battle-worn soldiers with nightmares and insomnia, matching "sleep disturbances" modernly associated with PTSD. Marc-Antoine Crocq, MD & Louis Crocq, MD, *From shell shock and war neurosis to posttraumatic stress disorder: a history of psychotraumatology*, 2(1) DIALOGUES CLIN. NEUROSCI. 47-55 (Mar. 2000). Throughout the history of modern psychiatry, PTSD has been misdiagnosed and misunderstood. Early diagnoses

include "cardiorespiratory neurosis," "idiotism," "trauma hysteria," "soldier's heart," and "combat hysteria." *Id.* During World War I, "shell shock" was popularized by soldiers describing symptoms of fatigue, confusion, tremors, and nightmares. Dr. Edgar Jones, *Shell Shocked*, 43(6) MONITOR ON PSYCH. 18 (2012). While some contemporary psychologists advocated for psychotherapeutic treatment, their theories and recommendations were drowned out by those who attributed the syndrome to weakness, malingering, and cowardice. Joanna Burke, *Shell Shock during World War One*, BBC (Mar. 3, 2010), [http://www.bbc.co.uk/history/worldwars/wwone/shellshock\\_01.shtml](http://www.bbc.co.uk/history/worldwars/wwone/shellshock_01.shtml). The term "shell shock" was replaced with "war neurosis" and "combat fatigue" during World War II, when about 1.4 million men were treated for the condition. Although the importance of addressing psychological injury was more widely recognized at the time, suspicions persisted. Erin Blakemore, *How PTSD went from 'shell-shock' to a recognized medical diagnosis*, NATIONAL GEOGRAPHIC (Jun. 16, 2020), <https://www.nationalgeographic.com/history/article/ptsd-shell-shock-to-recognized-medical-diagnosis>. General George Patton once wrote, "The greatest weapon against the so-called battle fatigue is ridicule. If soldiers would realize that a large proportion of men allegedly suffering from battle fatigue are really using an easy way out, they would be less sympathetic." Alexander G. Lovelace, "*Slap Heard*

*around the world*": *George Patton and Shell Shock*, 49(3) THE US ARMY WAR COLLEGE QUARTERLY PARAMETERS 79-80 (2019).

Veterans of the Vietnam war experience a lifetime PTSD prevalence of over 30 percent, compared to 7 to 8 percent in the civilian population. *See* Blakemore, NATIONAL GEOGRAPHIC. Although the psychological injury of combat was more widely studied and better understood than in previous wars, Vietnam veterans still suffered from untreated trauma-induced distress. The DSM lacked a classification for trauma-related stress, and veterans' symptoms were instead relegated to other diagnoses, such as depression, schizophrenia, or personality disorders. *Id.*

Personality disorders have many overlapping symptoms with PTSD. They are "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment." *See* AM. PSYCH. ASS'N, *Diagnostic and Statistical Manual of Mental Disorders* § 2 (5<sup>th</sup> ed. 2013). Those with PTSD generally suffer from similarly impaired functioning and aberrant patterns of behavior. *Id.* Dr. Sally Satel, speaking before the House Committee on Veterans' Affairs, explained that behavior appearing to be "misconduct" or "disobedience" can very well be a stress reaction or "full-blown PTSD." *See* Post Traumatic Stress Disorder and Personality Disorders: Challenges for the U.S. Department of Veterans Affairs Before the Comm. on

Veterans Affairs, 110<sup>th</sup> Cong. (2007). Additionally, she argues PTSD can cause symptoms commonly associated with personality disorders and ultimately induce personality changes. *Id.* This confusion has persisted for decades, in spite of modern developments in diagnostics. Between 2001 and 2010, more than 31,000 service members were discharged for personality disorder diagnoses and denied benefits. The finding prompted congressional investigations, revealing that up to 60% were discharged in violation of Department of Defense (DoD) policy. Melissa Ader et al.,  *Casting Troops Aside: The United States Military's Illegal Personality Disorder Discharge Problem*, JEROME N. FRANK LEGAL SERVICES ORGANIZATION AT YALE LAW SCHOOL (2012); *see also* KRISTOFER GOLDSMITH & DR. JUDITH RUSSELL, COLUMBIA UNIVERSITY, *RESTORING HONOR TO VETERANS WITH INVISIBLE INJURIES* 14-17 (2015). In response, DoD revised its policy concerning discharges and increased compliance reporting, resulting in a 76% decrease in personality disorder discharges the following year. The Government Accountability Office estimated hundreds if not thousands of veterans between the years 2001 and 2007 were illegally discharged. *See* Ader (2012).

Thirty years prior, service members returning from Vietnam with misdiagnosed psychological maladies were met with woefully inadequate mental health care and resources. In lieu of formal treatment, Vietnam veterans collectively established their own support systems, which included "group rap" sessions where

they could work through their feelings of isolation and anger together. In 1972, Dr. Chaim Shatan, an early advocate for veterans' mental health treatment, coined the term "post-Vietnam syndrome." See Chaim F. Shatan, Op-Ed., *Post-Vietnam Syndrome*, N.Y. TIMES, May 6, 1972, at 35. After years of hearings on Capitol Hill, exclusion from veteran service organizations, and denials of benefits from the Department of Veterans Affairs, post-Vietnam syndrome was officially added to the DSM III under the designation "posttraumatic stress disorder."

**II. Appellant's experiences in the Navy rise to the level of in-service stressors, and his subsequent psychological symptoms were, according to a VA doctor, a manifestation of PTSD from these stressors.**

Appellant, while serving on the *U.S.S. Intrepid*, experienced significant trauma that coincides with DSM criteria for PTSD. *Doyon v. United States*, No. 19-1964C (Fed. Cl. Jan. 13, 2021). An airplane carrying a missile exploded in front of him, causing the death of over 130 of his shipmates and injuring another 160. *Id.* at 3. The explosion and aftermath were directly witnessed by Appellant and other shipmates, some of whom deserted following the explosion. *Id.* Soon after, Appellant's parents noticed his deteriorating mental health and wrote a letter to Senator Edward Kennedy expressing their concerns. *Id.* A month later, Appellant went AWOL for two days and, upon return, was referred to sick bay for his "inability to get along with his peers, his recent mental agitation and deteriorating work habits, and his expression of admiration for several of 1967's famous four deserters." *Id.* at

3.

Thereafter, Appellant was evaluated for his mental condition in May 1968, and was diagnosed with passive aggressive personality disorder. Shortly following, Appellant was given another mental evaluation and diagnosed with “emotionally unstable personality with noted paranoid trait.” *Id.* at 3-4. This diagnosis led to Appellant’s unsuitability discharge in November 1968. *Id.*

Finally, nearly 50 years after his experience on the *U.S.S. Intrepid*, Appellant was officially diagnosed with PTSD. *Id.* at 4. The VA psychiatrist who evaluated him opined Appellant had experienced stressors in service, and that the symptoms for which Appellant was discharged were a manifestation of the PTSD he had, rather than the other diagnoses the Navy gave him. *Id.*

Unfortunately, Appellant is far from the only veteran to have suffered from PTSD and its various symptoms for years – and in some cases decades – prior to the inception of PTSD as an official diagnosable condition. VVA has represented numerous Vietnam era veterans who have faced similar difficulties as Appellant. Evidence suggests Vietnam era veterans diagnosed with PTSD post-service (or misdiagnosed in service) have experienced similar situations and challenges from the time they began suffering from symptoms to an official diagnosis of PTSD years

after the fact. Two veterans<sup>2</sup> represented by VVA have striking similarities to Appellant's case, including the nature of their military service, the events leading up to their discharge, the symptoms they suffered after experiencing an in-service stressor, and their formal PTSD diagnosis. No. 14-41 398A, 2020 LEXIS 20050581 (BVA July 29, 2020); No. 18-32 999, 2019 LEXIS 19136062 (BVA May 9, 2019).

Like Appellant, Veterans 1 and 2 displayed a willingness to serve the United States, as evidenced by service medals they received including: the Purple Heart, Vietnam Service Medal, Vietnam Campaign Medal, National Defense Service Medal, and Good Conduct Medal. *Id.* Despite this, Veterans 1 and 2 experienced significant in-service stressors that led them to go AWOL and were eventually discharged as a result. *Id.* Veteran 1 witnessed comrades being killed and injured in Vietnam and was the victim of assault by a fellow service member, and as a result went AWOL several times before he was eventually discharged as "undesirable" for continued service. No. 14-41 398A, 2020 LEXIS 20050581 (BVA July 29, 2020). Veteran 2 was the victim of military sexual trauma and went AWOL for some time after the assault. No. 18-32 999, 2019 LEXIS 19136062 (BVA May 9, 2019). Veteran 2 was medically evaluated in service, diagnosed with passive aggressive personality, and discharged as psychologically unfit for continued service. *Id.*

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<sup>2</sup> To protect the identities of these veterans, VVA will refer to them as Veteran 1 and Veteran 2 within this Amicus Brief.

Additionally, Veterans 1 and 2, like Appellant, began displaying PTSD symptoms while in service after experiencing their in-service stressors. No. 14-41 398A, 2020 LEXIS 20050581 (BVA July 29, 2020); No. 18-32 999, 2019 LEXIS 19136062 (BVA May 9, 2019). Veteran 1 reported after witnessing comrades being killed and assaulted, his mental state began deteriorating and continued post-service; he experienced intrusive memories related to the events, nightmares, anxiety, detachment, and persistent negative beliefs and emotions. *See* No. 14-41 398A, 2020 LEXIS 20050581 (BVA July 29, 2020). Additionally, the VA physician who examined Veteran 1 opined he most likely would have been diagnosed with PTSD based on DSM-5 criteria had the official diagnosis existed at the time. *Id.* Veteran 1 was officially diagnosed with PTSD in 2019, after suffering from symptoms for nearly five decades. *Id.* Veteran 2 reported after his military sexual trauma he became withdrawn and detached, experienced recurrent nightmares, had anxiety while still in service, and suffered from significant memory loss related to the trauma. No. 18-32 999, 2019 LEXIS 19136062 (BVA May 9, 2019). Veteran 2 was officially diagnosed with PTSD due to military sexual trauma in 2017, after suffering from symptoms for over five decades. *Id.*

As evidenced above, numerous Vietnam era veterans suffered similar symptoms, circumstances, and difficulties as Appellant. Many displayed an initial willingness to serve the United States selflessly, only to experience significant in-



service stressors and traumas that led to discharge from service as unfit, and enduring PTSD-related symptoms for years, unaware that it was PTSD at the time.

**III. The intent of Congress in writing Title 38 was to create a pro-veteran system, an intent which is supported by established jurisprudence and should be extended to apply to cases of correction of military records.**

In formulating Title 38 of the Code of Federal Regulations, Congress created a claims process that undoubtedly favors veterans. Title 38 has a longstanding history of being non-adversarial and “pro-veteran.” See Rory E. Riley, *The Importance of Preserving the Pro-Claimant Policy Underlying the Veteran’s Benefits Scheme: A Comparative Analysis of the Administrative Structure of the Department of Veterans Affairs Disability Benefits System*, 2 VETERAN’S L. REV. 77 (2010). Further, the language chosen by Congress for Title 38 is “strongly and uniquely” pro-veteran. *Id.* at 1 (citing to *Hodge v. West*, 155 F.3d 1356, 1362 (Fed. Cir. 1998) (“This court and the Supreme Court both have long recognized that the character of the veterans’ benefits statutes is strongly and uniquely pro-claimant”)). A clear example of this is the VA’s Benefit of the Doubt doctrine, wherein when the facts of a claim are relatively equal, any reasonable doubt “must be resolved in the favor of the veteran.” 38 C.F.R. § 3.102 (2014).

A review of the caselaw reveals that Congressional intent to favor veterans extends beyond Title 38. In *Fishgold v. Sullivan Drydock & Repair Corp.* the U.S. Supreme Court interpreted the Selective Training and Service Act of 1940, under

Title 50, and held that “Congress, in enacting the Selective Service Act, undertook to give the veteran protection within the framework of the seniority system plus a guarantee against demotion or termination of his employment relationship without cause for a year.” 328 U.S. 275 (1946).

When Congress enacted the Veterans’ Judicial Review Act of 1988, it recognized the unique nature of veterans’ benefits. In debating the merits of the Act, Sen. Murkowski observed VA’s duty to assist “is not how Social Security or any other program operates... This is a system which, in its scope and approach, is unique in our Government.” VETERANS’ ADMIN. ADJUDICATION PROC. AND JUD. REV. ACT, 134 Cong. Rec. S9178-02 (statement of Sen. Frank H. Murkowski). Sen. Murkowski explained, “There is a reason for that kind of system, Mr. President, and the reason is this: Veterans are special. They are a special class of our citizens. These men and women have agreed to put themselves in harm’s way in service to their country. There is ... no other class of citizens like them. The Congress has historically granted special benefits for these men and women.” *Id.*

This Congressional intent of treating veterans as a special class is also evident through the evolution of VA’s policies on mental health. The VA and military have taken a progressively liberal view on mental health issues and given significantly more preference to veterans as the nature of and complexities of these issues are further understood. The 2013 National Defense Authorization Act provided new

provisions addressing the need for mental health care support among veterans. National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, 126 Stat. 1632 (2013). This was followed by a change in Navy policy requiring a medical professional to decide if a mental health condition, such as PTSD, was a “contributing factor” to the alleged misconduct that led to separation from service. U.S. DEP’T OF NAVY, MILPERSMAN 1910-702, GENERAL GUIDANCE FOR SEPARATION AUTHORITIES (SA), (Jan. 2018).

This progression of the VA and military’s understanding of mental health issues and the implementation of policies that are sympathetic toward affected veterans has led to the Hagel Memo. The Hagel Memo was issued by DoD in response to a lawsuit regarding a Veteran with PTSD arguing to upgrade his discharge despite being outside the fifteen-year window for discharge review boards, and recognized PTSD in its implementation of a “liberal consideration” of these petitions. SEC’Y OF DEFENSE, SUPPLEMENTAL GUIDANCE TO MIL. BOARDS FOR CORRECTION OF MIL./NAVAL REC’S. CONSIDERING DISCHARGE UPGRADE REQS. BY VETERANS CLAIMING POST TRAUMATIC STRESS DISORDER (Sept. 3, 2014). This was supplemented by the Kurta Memo which extended the “liberal consideration” approach to other conditions, such as TBI, sexual assault and sexual harassment. SEC’Y OF DEFENSE, CLARIFYING GUIDANCE TO MIL. DISCHARGE REV. BOARDS AND BOARDS FOR CORRECTION OF MIL./NAVAL REC’S. CONSIDERING REQS. BY

VETERANS FOR MOD. OF THEIR DISCHARGE DUE TO MENTAL HEALTH CONDITIONS, SEXUAL ASSAULT OR SEXUAL HARASSMENT (Aug. 25, 2017).

The memo established a policy framework intended to bring justice to veterans who received a dishonorable discharge when the misconduct leading to the discharge may have been due to PTSD. *Id.* Specifically, it requires that discharge review boards use liberal consideration when determining whether a veteran's actions that led to a dishonorable discharge were related to PTSD. *Id.* This framework of liberal consideration not only demonstrates the progression of the VA and military's understanding of the complex nature of mental health issues, but also mirrors and promotes the intention to favor Veterans in the appeals process set out in Title 38 and subsequent caselaw.

The atrocities of Vietnam still haunt the American conscience. By some estimates, 1.5 million veterans returned from that conflict with war-induced PTSD. DEAN, ERIC T., *SHOOK OVER HELL: POST-TRAUMATIC STRESS, VIETNAM, AND THE CIVIL WAR* (2d ed. 1999). A recent study by Yale University reviewed 14 million newspaper articles between 1900-2016, and found trauma-related symptoms such as flashbacks, trouble sleeping, and severe anxiety throughout World Wars I and II, Korea, Vietnam, and the Gulf War. Adam M. Chekroud et al., *PTSD and the War of Words*, 2 *CHRONIC STRESS* 1-5 (2018).

Appellant was exposed to the horrors of war in a multitude of ways. He saw firsthand a catastrophic explosion resulting in 130 deaths and 160 casualties. *Doyon v. United States*, No. 19-1964C (Fed. Cl. Jan. 13, 2021). He endured repeated threats and harassment from fellow servicemembers and witnessed a fatal plane crash in service. *Id.* In the wake of these compound traumas, Appellant began exhibiting signs of mental distress. Based on the VA's own psychiatric opinion of record, the military's diagnoses of passive aggressive personality disorder and emotionally unstable personality with paranoia were incorrect, and the symptoms Appellant was demonstrating that led to his discharge were symptoms of PTSD related to his extensive in-service trauma. *Id.*

Because PTSD was not an available diagnosis when Appellant served, it would have been impossible for him to be diagnosed correctly on discharge. Now, Veterans discharged for in-service PTSD rated at 30 percent qualify for medical retirement with pay and can seek discharge upgrades. U.S. ARMY, *DoD Disability Retired Pay* (last rev. Dec. 14, 2020), <https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/DoD-Disability-Retired-Pay?serv=121>. Given Appellant's commanding officer requested his separation "for unsuitability citing his diagnosis of passive aggressive personality disorder," it is clear the Navy believed Appellant's psychological symptoms rendered him unable to continue serving his country. *Doyon v. United States*, No. 19-1964C (Fed. Cl. Jan. 13,

2021). Had PTSD been an existing diagnosis then, it is reasonable to believe Appellant would have received this diagnosis and, thereby, qualified for medical retirement and associated benefits. By denying the Appellant's request to correct his military records to reflect a status of military retirement, the BCNR attempts to hold Appellant to an impossibly high standard at odds with Congressional intent and precedent that makes the system veteran friendly.

Especially in light of the complex mental health challenges faced by Vietnam era veterans and the prevalence of PTSD among that veteran community, this Court should recognize the importance of applying liberal consideration to Appellant's petition to correct his military records to declare him medically retired because of his discharge for a mental health condition, later diagnosed as PTSD.

### CONCLUSION

For the foregoing reasons, *Amicus* respectfully request the Court **reverse** the decision of the United States Court of Federal Claims to grant-in-part the Government's motion to dismiss and **reverse** the finding that the decision of the BCNR was supported by substantial evidence.

Dated: September 2, 2021

Respectfully submitted,

/s/ Alec U. Ghezzi  
Alec U. Ghezzi  
Vietnam Veterans of America

*Counsel for Amicus Curiae*

**PROOF OF SERVICE**

I hereby certify that on September 2, 2021, I electronically transmitted the foregoing Brief of Amicus Curiae to the Clerk of the Court using the Court's CM/ECF document filing system. I further certify that all counsel of record are being served with a copy of this Brief by electronic means via the Court's CM/ECF system.

Dated: September 2, 2021

/s/ Alec U. Ghezzi  
Alec U. Ghezzi

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATION, TYPEFACE, REQUIREMENTS, AND TYPE STYLE  
REQUIREMENTS**

1. This brief complies with the type-volume limitation of Federal Circuit Rules 29(a) and 32(b)(1). This brief contains 3,653 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Federal Circuit Rule 32(b)(2).
2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Times New Roman 14-point font in Microsoft Word 2016.

Dated: September 2, 2021

/s/ Alec U. Ghezzi  
Alec U. Ghezzi