No. 15-1054

IN THE

Supreme Court of the United States

CURTIS SCOTT,

Petitioner,

v.

ROBERT A. MCDONALD, SECRETARY OF VETERANS AFFAIRS,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF OF THE NATIONAL VETERANS LEGAL SERVICES PROGRAM AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The National Veterans Legal Services Program ("NVLSP") is an independent nonprofit organization that has worked since 1980 to ensure that the United States government provides our nation's 25 million veterans and active duty personnel with the federal benefits they have earned through their service to our nation. NVLSP has been instrumental in the passage of landmark veterans' rights legislation, and it has successfully challenged unfair practices by the Department of Veterans Affairs ("VA") that deprived veterans and their families of hundreds of millions of dollars in benefits. It also serves as a national support center that recruits, trains, and assists thousands of volunteer lawyers and veterans' advocates. NVLSP publications provide veterans, their families, and their advocates with the information necessary to obtain the benefits to which they are entitled under the law. For more than ten years, NVLSP has published the Veterans Benefits Manual, which has become the leading guide for advocates and attorneys who help veterans and their families obtain benefits from the VA.

In addition, and of particular relevance here, NVLSP is a veterans' service organization recognized by the Secretary of Veterans Affairs under 38 U.S.C.

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amicus curiae*, their members, and counsel, made any monetary contribution towards the preparation and submission of this brief. Petitioner and Respondent have consented to the filing of this brief. Letters reflecting such consent have been filed with the Clerk.

§ 5902 to assist veterans in the preparation, presentation, and prosecution of claims for benefits before the VA. In this capacity, NVLSP has directly represented thousands of veterans in proceedings before the VA, the Board of Veterans' Appeals ("BVA"), and the Court of Appeals for Veterans Claims ("CAVC"). NVLSP also represents veterans in federal courts, where most of its efforts focus on impact litigation, cases that, if successful, will benefit large groups of veterans and their families. NVLSP has frequently appeared as amicus curiae before the United States Supreme Court and the federal courts of appeals.

Given this experience and expertise, NVLSP is well positioned to describe the adjudication of claims and the challenges faced by veterans presenting claims before the VA. As relevant here, NVLSP has an interest in protecting the rights of veterans, who were not represented by counsel before the agency, to raise arguments in the CAVC that were not raised during the non-adversarial and inquisitorial administrative proceedings before the Board.

SUMMARY OF THE ARGUMENT

1. This Court should grant Mr. Scott's petition for a writ of certiorari because the Federal Circuit's ruling is contrary to the pro-claimant regime established by Congress. The Federal Circuit and CAVC have been creating precedent on issue exhaustion, which is increasingly at odds with the pro-claimant nature of the VA benefits system. Since its beginning, the VA has had a uniquely pro-veteran claims process. However, the Federal Circuit's judicially created issue exhaustion rule has been methodically expanded to block increasingly more categories of appeals by veterans. This latest addition to issue exhaustion blocks

veterans from appealing procedural anomalies they encountered below. Neither the Federal Circuit nor the CAVC has shown any indication that they will narrow their application of the issue exhaustion rule. Only this Court can correct this disturbing and anti-veteran trend and restore Congress's intended pro-claimant regime.

2. This judicially created issue exhaustion rule is inconsistent with the pro-claimant nature of the VA system because it will be applied mostly to unrepresented claimants and those represented by non-lawyers, who will have difficulty understanding and complying with the legalistic rule. This is inconsistent with Congress's plan for the VA System because the statutory scheme encourages most representation to be undertaken by non-lawyer advocates from Veterans Service Organizations.

The trap for the unwary created by an issue exhaustion rule is magnified by VA Form 9, the form used for appeals to the Board of Veterans Appeals. The text of that form indicates that a veteran may appeal "all issues" by checking a box, but this will not always avoid an issue exhaustion bar. This is but one way that a veteran who has done everything the agency asked of him might still be blocked by issue exhaustion during his appeal.

ARGUMENT

I. THE FEDERAL CIRCUIT IS ESTABLISHING BRIGHT-LINE RULES ON ISSUES THE COURT OF APPEALS FOR VETERANS CLAIMS CAN NEVER HEAR, IN DIRECT CONFLICT WITH THE PRO-VETERAN STATUTORY SCHEME. ONLY THIS COURT CAN RESOLVE THE ISSUE.

A. This Court Should Grant Review To Ensure That Congress's Intent To Establish A Pro-Veteran Statutory Scheme Is Honored.

This case is of critical importance to the millions of veterans and their families who are eligible to apply for benefits from the VA. The Federal Circuit's issue exhaustion ruling is contrary to the pro-claimant regime established by Congress and will be detrimental to veterans seeking the benefits they legally deserve.

The United States has a long history of providing benefits to veterans that traces its roots back to the Plymouth Colony. U.S. Dep't of Veterans Affairs, History – VA History, http://www.va.gov/about_va/vahistory.asp (last visited Mar. 17, 2016). That tradition continued after the Revolutionary War:

> Congress began providing veterans pensions in early 1789, and after every conflict in which the nation has been involved Congress has, in the words of Abraham Lincoln, "provided for him who has borne the battle, and his widow and his orphan." The VA was created by Congress in 1930, and since that time has been responsible for administering the congressional program for veterans' benefits.

Walters v. *Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 309 (1985).

Importantly, the process of applying for, and appealing denials of, benefits has always been pro-claimant. See, *e.g.*, *Henderson* v. *Shinseki*, 562 U.S. 428, 440 (2011) ("The solicitude of Congress for veterans is of long standing") (quoting *United States* v. *Oregon*, 366 U.S. 643, 647 (1961)). The statutes governing veterans' benefits are "strongly and uniquely pro-claimant." *Hodge* v. *West*, 155 F.3d 1356, 1362 (Fed. Cir. 1998). The adjudication process is intended to be "a nonadversarial, *ex parte*, paternalistic system." *Collaro* v. *West*, 136 F.3d 1304, 1309-10 (Fed. Cir. 1998). It is the "antithesis of an adversarial, formalistic dispute resolving apparatus." *Forshey* v. *Principi*, 284 F.3d 1335, 1360 (Fed. Cir. 2002) (en banc), *superseded on other grounds by statute as stated in Sullivan* v. *McDonald*, No. 2015-7076, 2016 WL 877961 (Fed. Cir. Mar. 8, 2016).

While the system is meant to be pro-claimant, there is a growing concern among judges and commentators that veterans law is becoming so complex that veterans' rights are not being vindicated. As one judge noted: "There is an unfortunate—and not entirely unfounded—belief that veterans law is becoming too complex for the thousands of regional office adjudicators that must apply the rules on the front lines in over a million cases per year." *DeLisio* v. *Shinseki*, 25 Vet. App. 45, 63 (2011) (Lance, J., concurring). Imposing an issue exhaustion rule fit for an adversarial process on top of this already increasingly complex system will undermine the pro-veteran regime that Congress established.

B. The Federal Circuit Has Established Bright-Line Rules That Conflict With The Statutory Scheme.

Since 2000 many claimants have encountered an issue exhaustion requirement at the CAVC because of Federal Circuit precedent. Beginning in *Maggitt* v. *West*, the Federal Circuit established that, "when Congress has not clearly mandated the exhaustion of particular administrative remedies, the exhaustion doctrine is not jurisdictional, but it is a matter for the exercise of 'sound judicial discretion.'" 202 F.3d 1370, 1377 (Fed. Cir. 2000) (citing *McCarthy* v. *Madigan*, 503 U.S. 140, 144 (1992)). Magitt held that while the CAVC could hear arguments for the first time on appeal, "it is not compelled to do so in every instance." *Id*. Instead, "[w]hether the doctrine of exhaustion should be invoked thus entails a case-by-case analysis of the competing individual and institutional interests . . . ." *Id.* at 1378. However, the Federal Circuit later said that the case-by-case determination does not require a court to articulate the competing interests of the government and the claimant. *Bernklau* v. *Principi*, 291 F.3d 795, 801 (Fed. Cir. 2002).

Since *Maggitt*, the Federal Circuit has repeatedly exercised its exclusive jurisdiction to restrict veterans' options for appealing their decisions by establishing blanket rules regarding two categories of cases that require issue exhaustion before they will be heard. The CAVC and the Federal Circuit will not hear a challenge to a VA medical examiner's competency for the first time in court. See *Parks* v. *Shinseki*, 716 F.3d 581, 586 (Fed. Cir. 2013) (holding that the CAVC did not have to address Mr. Parks' objections to the competency of a nurse practitioner since he did not raise the argument before the

Board); *Sickels* v. *Shinseki*, 643 F.3d 1362, 1366 (Fed. Cir. 2011) ("Mr. Sickels failed to raise his concern regarding the medical examiners' ability to understand the [VA's] instructions before the Board and we conclude that his failure to do so relieves the Board of its burden to address the issue."); *Bastien* v. *Shinseki*, 599 F.3d 1301, 1306-07 (Fed. Cir. 2010) (holding that the claimant failed to raise his concern about the VA's medical expert, even when she sent a letter during the agency proceeding before the Board questioning the medical expert's objectivity). Another category, as evidenced in the instant case, is when procedural errors are at issue, *Scott* v. *McDonald*, 789 F.3d 1375, 1381 (Fed. Cir. 2015).

While the Federal Circuit has stated that "an absolute rule [regarding issue exhaustion] would be inconsistent with the nonadversarial *ex parte* system that supplies veterans benefits," *Maggitt*, 202 F.3d at 1377, its actions have shown otherwise and violate the pro-veteran statutory scheme. By requiring issue exhaustion in many cases, the Federal Circuit is essentially creating an absolute rule through its precedent which is in direct conflict with the case-by-case approach of *Maggitt*. This indicates that the Federal Circuit is drifting away from the proper pro-veteran approach, a situation which only this Court can correct.

C. Requiring Issue Exhaustion Is A Continual Problem That Can Only Be Resolved By This Court.

The issue exhaustion rules created by the Federal Circuit have the potential to affect an even broader array of cases when applied by the CAVC. The CAVC has stated that issue exhaustion it is not necessary and noted that since "a claim proceeds through a nonadversarial administrative review . . . exercising

discretion to hear a claimant's argument is the most appropriate course." *Collins* v. *Shinseki*, No. 12-0807, 2013 WL 6000535, at *5 (Vet. App. Nov. 13, 2013) (citation omitted). The court even explicitly stated that it has "discretion to consider issues that are raised for the first time on appeal." *Id.* (quoting *Kyhn* v. *Shinseki*, 26 Vet. App. 371, 374 (2013).

But in practice, the CAVC is not heeding its own advice, and is regularly demanding issue exhaustion on appeals before the court. See, *e.g.*, *Carter* v. *Shinseki*, 26 Vet. App 534, 542-43 (2014), *vacated and remanded on other grounds sub nom Carter* v. *McDonald*, 794 F.3d 1342 (Fed. Cir. 2015) (The CAVC requires issue exhaustion at the agency level "when an attorney agrees to a joint motion for remand based on specific issues and raises no additional issues on remand, the Board is required to focus on the arguments specifically advanced by the attorney in the [joint] motion [for remand], . . . and those terms will serve as a factor for consideration as to whether or to what extent other issues raised by the record need to be addressed.") (citation omitted); *Turney* v. *Peake*, No. 06-1134, 2007 WL 4694695, at *1 (Vet. App. Dec. 21, 2007) (holding that Mr. Turney could not raise his argument that he was not provided notice of his appointments to be examined by the Veterans Administration for the first time on appeal); *Nelson* v. *Principi*, No. 99-2273, 2001 WL 957684, *1-2 (Vet. App. June 1, 2001) (even if a 30-day notice period was applicable to the appellant, he did not raise it to the Board and the court will not discuss).

Without resolution by this Court, the problem will continue. The BVA decisions can only be appealed to the CAVC. A decision by the CAVC can only be appealed to the Federal Circuit. The Federal Circuit does not benefit from the views of other circuits and a

circuit split is not possible. See Pet. 24-25. Thus, only this Court can stop the increasingly pro-agency trajectory the Federal Circuit is taking veterans law, and restore it to the pro-claimant regime established by Congress.

II. LEGALISTIC RULES LIKE ISSUE EXHAUSTION, WHEN COMBINED WITH NON-LAWYER REPRESENTATION AND CONFUSING FORMS, WILL LEAD TO DENIAL OF BENEFITS FOR VETERANS.

A defining characteristic of the VA system is that an overwhelming majority of claimants are represented by non-lawyers. A judicially created issue exhaustion rule will tend to apply most harshly to those not steeped in knowledge of legal minutia, such as the advocates from Veterans Service Organizations ("VSOs") and veterans themselves. Therefore, applying the issue exhaustion rule is not consistent with Congress's pro-claimant scheme, especially in light of the statutory emphasis Congress put on representation by VSOs. For example, the basic-seeming VA Form 9, used for appeals to the BVA, has confusing instructions which could lead an unwary veteran or veteran's advocate to not list a specific issue which will result in an exhaustion bar on appeal to the CAVC.

A. An Issue Exhaustion Rule Is Not Consistent With A Pro-Claimant System When Applied To Non-Lawyers.

Creation of an issue exhaustion rule should engender heightened skepticism when its effects will primarily be felt by veterans representing themselves or represented by non-lawyers, as are most veterans at the BVA level. It is well recognized that "[a]n unrepresented litigant should not be punished for his fail-

ure to recognize subtle factual or legal deficiencies in his claims." *Hughes* v. *Rowe*, 449 U.S. 5, 15 (1980) (holding that attorney's fees could not be assessed against a pro se plaintiff even if his claim did not survive a motion to dismiss when liberally construed). An issue exhaustion rule is just the type of legalistic barrier of which non-lawyers are liable to run afoul. The issue exhaustion rule has the potential to impact thousands of veterans. For example, 89.1% of veterans before the BVA in Fiscal Year ("FY") 2014 (the most recent year with data) were represented by themselves or a non-lawyer. U.S. Dep't of Veterans Affairs, *Board of Veterans' Appeals, Annual Report, Fiscal Year 2014* at 27 (July 2015), http://www.bva.va.gov/docs/Chairmans_Annual_Rpts/BVA2014AR.pdf.

A sensitivity for non-lawyer representation is present in the context of administrative hearings, as well. This Court intimated in *Sims* that non-attorneys are unlikely to be adept at complex legal problems. *Sims* v. *Apfel*, 530 U.S. 103, 112-13 (2000) (discussing the identification of issues on appeal). When discussing its understanding of the Social Security Administration's policy on appeals, the plurality opinion noted that it was "understandable" that the Administration not depend on claimants who "either have no representation at all or are represented by non-attorneys" "to identify issues for review." *Id.* at 112. The four-Justice dissent also noted a difference between attorney and non-attorney representation. It based its position in favor of an issue exhaustion rule on the fact that the claimant was represented "by an attorney." *Sims*, 530 U.S. at 118-19 (Breyer, J., dissenting) (emphasis in original). The dissent took care to point out that the Social Security Administration stated it did not apply an issue ex-

haustion rule against claimants who were unrepresented. *Id.* at 118. The Federal Circuit has specifically noted that "representation by an organization aide [from a VSO] is not equivalent to representation by a licensed attorney." *Comer* v. *Peake*, 552 F.3d 1362, 1369 (Fed. Cir. 2009).

Applying the Federal Circuit's issue exhaustion rule to appeals from the BVA to the CAVC will result in harm mostly to veterans who were represented at the agency level by non-lawyers. For FY 2014, only 10.9% of claimants were represented by attorneys during their appeals to the BVA. U.S. Dep't of Veterans Affairs, *Board of Veterans' Appeals, Annual Report, Fiscal Year 2014* at 27 (July 2015).

Pro se veterans were 9.4% of claimants, and another 2.9% were represented by an agent or a person categorized as "[o]ther." *Id.* The balance, 76.8%, were represented by non-lawyers from a Veterans Service Organization. *Id.* The rough breakdown of percentages has been fairly stable from year to year. For example, 79.3% of veterans were represented by VSOs in FY 2010 while 8.7% were represented by attorneys. U.S. Dep't of Veterans Affairs, *Board of Veterans' Appeals, Annual Report, Fiscal Year 2010* at 23 (Feb. 22, 2011), http://www.bva.va.gov/docs/Chairmans_Annual_Rpts/BVA2010AR.pdf.

Additionally, the veterans applying for VA benefits are particularly vulnerable to being trapped by administrative rules like issue exhaustion. Most disabled veterans do not have the resources, expertise, or patience to effectively navigate the pro-claimant process that is available to them. Many claimants rely on the VA's statutory duty to assist, 38 U.S.C. § 5103A, only to be forced to appeal a Regional Office ("RO") denial of a claim to the BVA, or to the CAVC to ob-

tain a remand that compels the RO to finally provide the assistance to which the veteran was entitled.

The absolute number of veterans that could be harmed by the Federal Circuit's ruling is staggering. In fiscal year 2013, the VA estimated it would provide $59.6 billion in compensation benefits to nearly 4 million veterans. *Veterans' Disability Benefits: Challenges to Timely Processing Persist: Hearing on VA Claims Process: Review of VA's Transformation Efforts Before the S. Comm. On Veterans' Affairs,* 113th Sess. 1 (2013) (statement of Daniel Bertoni, Dir. of Educ., Workforce, and Income Sec. Issues). Furthermore, the wars in Iraq and Afghanistan have led to a new wave of claims for VA benefits. In recent years, the VA has received more than 1 million new claims each year. *Id.* at 5. Last year, the Board of Veterans Appeals ruled on 55,532 cases. U.S. Dep't of Veterans Affairs, *Board of Veterans' Appeals, Annual Report, Fiscal Year 2014* at 26 (July 2015). Of those, only 16,191 appeals were allowed. *Id.* The difference of 39,341 cases represents the number of veterans in that year alone who may need to appeal an issue to CAVC and be blocked by issue exhaustion.

B. The Non-Lawyer Advocates From VSOs Are Intended To Be At The Heart Of Veteran Representation At The BVA, But Their Effectiveness Will Be Decreased By Applying An Issue Exhaustion Rule.

The statistics above show a great majority of veterans are represented by non-lawyers from VSOs. This is no aberration. Indeed, the statutory scheme created by Congress is indicative of the great importance of representation of veterans by VSOs. Congress requires that only individuals approved by the Secretary of Veterans Affairs act as an agent for VA

claims. 38 U.S.C. § 5901. This limits the organizations which can represent veterans. Section 5902 then statutorily authorizes several VSOs, and allows the Secretary of Veterans Affairs to approve others. 38 U.S.C. § 5902(a)(1). The statute further highlights the importance of VSOs by authorizing the Secretary to provide federal office space and facilities to national VSOs. § 5902(a)(2). Congress's provision of support for VSOs is consistent with the paternalistic nature of the VA benefits system noted in *Collaro* v. *West*, 136 F.3d at 1309-10 (holding that a claimant's notice of disagreement, though it was vague and did not mention a constitutional challenge, was sufficient to give the CAVC jurisdiction to review the constitutionality of a rule change used to lower the claimant's benefits), and helps veterans receive free assistance instead of paying the typical 20% contingent fee often charged by attorneys.

The Federal Circuit has explicitly noted that Congress created the chartering process for VSOs so that VSOs could "cooperate with the VA in obtaining benefits for disabled veterans." *Comer*, 552 F.3d at 1369-70. The issue exhaustion rule created by the Federal Circuit will effectively block some of the benefits these organizations provide to veterans. That court recognized that VSOs do not provide representation equivalent to that of an attorney, *id.* at 1369, but created a rule such that VSO representatives are held to the same standard of issue exhaustion as attorneys. In response, VSOs will have to provide lawyer-like training to their advocates and reduce each advocate's caseload so that they can provide the extra review necessary to ensure that procedural issues are not missed in appeals to the BVA level. Both of these actions are time consuming, and will result in VSOs representing fewer veterans. This will leave veterans

either to represent themselves, a situation much less desirable than VSO representation; or to hire a lawyer, a costly measure contrary to the nonadversarial system Congress intended. Pro se claimants, who don't have the benefit of a VSO's familiarity with the VA system and are unlikely to catch procedural issues to avoid the issue exhaustion rule, will be left in the dark. In total, the Federal Circuit's rule creates the type of "trap for the unwary," *id.* at 1369, which *Comer* stated the VA system was not.

C. Veterans May Be Precluded From Appealing Claims Even When They Have Done Everything The VA Has Asked Of Them.

Justice O'Connor's determinative concurrence in the judgment in *Sims* hinged on the "agency's failure to notify claimants of an issue exhaustion requirement. . . ." *Sims*, 530 U.S. at 113 (O'Connor, J., concurring in part and concurring in the judgment). In simple terms, she was concerned that the claimant "did everything that the agency asked of her," yet encountered a judicially created issue exhaustion barrier. *Id.* at 114. An issue exhaustion rule for the VA would have a similar effect on veterans because of confusing VA requirements. A prime example is VA Form 9, the form required to perfect an appeal to the BVA.

The wording of VA Form 9 can lead a veteran to be trapped by issue exhaustion because, under the Federal Circuit's rule, appealing "all of the issues" still allows a veteran to be precluded. This will occur if the issue, such as a procedural one pendant to the substantive claim, is not mentioned in the statement of the case. Alternatively, a claimant could be misled by the form into thinking that procedural issues are not even allowed to be listed.

Block 8 of the form contains two options for appeals to the BVA. One states "I have read the statement of the case and any supplemental statement of the case I received. I am only appealing these issues: (List below.)." VA Form 9, 8. A., (July 2015) (emphasis in original). The other states "I want to appeal all of the issues listed on the statement of the case and any supplemental statement of the case that my local VA office sent to me." *Id.* at 8. B.

The second option, despite appearing to offer the ability to appeal all issues, explicitly limits a veteran to appealing only issues identified in the statement of the case, a document created by the VA regional office. The first option also indicates, though less clearly, that a veteran may only list issues for appeal which were identified in the statement of the case. A reasonable veteran might assume that they are not allowed to appeal issues not included in the statement of the case, including a procedural issue such as the failure to grant a rehearing in this case. This, of course, would later trigger the issue exhaustion rule at the CAVC level.

Not even the Code of Federal Regulations provisions for perfecting an appeal make clear to the veteran that he must list something extra on VA Form 9 to appeal a procedural issue. Section 20.202 states that "[i]f the Statement of the Case and any prior Supplemental Statements of the Case addressed several issues, the Substantive Appeal must either indicate that the appeal is being perfected as to all of those issues or must specifically identify the issues appealed." 38 C.F.R. § 20.202. This indicates that appealing all of the issues is an acceptable course of action; the provision makes no mention of what to do if issues are not listed in the Statement of the Case. The provision does to say that the appeal "should" list

"specific arguments relating to errors of fact or law," *id.*, but this language does not indicate that the recommendation is mandatory. Indeed, the Federal Circuit has acknowledged that 38 U.S.C. § 7105(d)(3), which the regulation mirrors on this language, does not prescribe "a particular degree of specificity that must be provided." *Rivera* v. *Shinseki*, 654 F.3d 1377, 1381 (Fed. Cir. 2011).

It is not an adequate remedy that a veteran facing issue exhaustion may be able to go back and re-open their claim if they are misled into leaving a certain issue off the Form 9. Such a claim would have to meet the "new and material evidence" requirement of 38 C.F.R. 3.156, adding an additional barrier to relief. Even if the re-opened claim is allowed, payment of benefits cannot commence prior to the date of the application seeking to re-open the claim. 38 U.S.C. § 5110(a). The veteran will have "lost" their benefits for the time during which they were attempting an appeal. On the other hand, a rule allowing claimants to raise new issues at the CAVC level would leave the claimant's original effective date for benefits unchanged. The latter outcome is consistent with the pro-claimant nature of the veterans benefits regime.

The present case serves as an example of how a veteran can be trapped by issue exhaustion. On his first appeal, Petitioner used VA Form 9 to appeal all issues to the BVA. Pet. 28-29. The rehearing issue was clearly known to the BVA, because its written opinion mentions that the Board denied a motion for a rehearing. Pet. App. 57a. This opinion was subsequently appealed to the CAVC, which issued an opinion and remanded the case in 2010. That opinion did not mention the rehearing issue, but correspondence following the remand informed Petitioner that "re-appeal was automatic" if the claim was denied again

and "that [n]o action was required of Mr. Scott unless he was otherwise notified." Pet. 10. It is thus no surprise that Petitioner made no further attempts to clarify or expand on his request for rehearing. The trap was then sprung on Petitioner during his re-appeal, when the BVA stated in 2012 that he had not renewed his request for a rehearing. Pet. App. 30a. The CAVC affirmed, citing the issue exhaustion rule that is the subject of this petition. Pet. App. 16a-27a. *Scott* v. *Shinseki*, No. 12-1972, 2014 WL 1089621, at *1 (Vet. App. Mar. 20, 2014) . If the rule is allowed to stand, other veterans will likely fall victim to this issue exhaustion rule.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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