

APPENDIX

CODIFY GARDNER*

This Appendix provides the dataset used in the Note, *Codify Gardner*. The table below lists the decisions that cited *Gardner*'s presumption, or the pro-veteran canon, between 2013 and 2023, as identified by editors of the *Harvard Law Review*.¹

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WAS THE CANON DETERMINATIVE?	CASE	CITATION	DATE
No — No ambiguity. ²	Viegas v. Shinseki	705 F.3d 1374, 1378–80	1/31/13
No — Marriage case controlled by state law.	Burden v. Shinseki	727 F.3d 1161, 1169	7/16/13
No — Decided under <i>Chevron</i> and <i>Auer</i> .	Mason v. Shinseki	743 F.3d 1370, 1374, 1376 & n.5	2/21/14
No — No ambiguity.	Spicer v. Shinseki	752 F.3d 1367, 1371	5/30/14
No — Cited only in concurrence.	Johnson v. McDonald	762 F.3d 1362, 1367 (O'Malley, J., concurring)	8/6/14
No — <i>Chevron</i> trumps <i>Gardner</i> .	Nat'l Org. of Veterans' Advocs., Inc. v. Sec'y of Veterans Affs.	809 F.3d 1359, 1363	1/13/16
No — No ambiguity.	Sullivan v. McDonald	815 F.3d 786, 790–92	3/8/16
Yes.	Hudgens v. McDonald	823 F.3d 630, 637	5/18/16
No — No ambiguity, and the canon is otherwise inapplicable.	Parrott v. Shulkin	851 F.3d 1242, 1251	3/13/17
No — Cited <i>Gardner</i> , but not for the canon.	Ollis v. Shulkin	857 F.3d 1338, 1341–43	5/26/17
No — Cited in passing.	Gazelle v. Shulkin	868 F.3d 1006, 1012	8/22/17

* This is the Appendix to Note, *Codify Gardner*, 138 HARV. L. REV. 2093 (2025).

¹ This dataset builds on cases identified by Board of Veterans Appeals Associate Counsel Carolyn Ryan. Carolyn Ryan, *The Common Law Solution to Gardner's Presumption*, 8 VETERANS L. REV. 24, 35 (2016). It focuses on Federal Circuit cases rather than ones from the Court of Appeals for Veterans Claims, as the former set more likely presented questions that implicated canons of interpretation. Moreover, it includes only published decisions, as unpublished ones are not binding authority.

² The canon applies only in cases of ambiguity. Note, *Codify Gardner*, *supra* note *, at 2093 nn.2–3.

No — Cited only in dissent.	Parkinson v. DOJ	874 F.3d 710, 722 (Linn, J., dissenting)	10/26/17
No — Cited only in dissent from the denial of rehearing en banc.	Kisor v. Shulkin	880 F.3d 1378, 1379 (O’Malley, J., dissenting)	1/31/18
No — Cited in passing.	PDS Consultants, Inc. v. United States	907 F.3d 1345, 1357	10/17/18
No — No ambiguity.	Procopio v. Wilkie	913 F.3d 1371, 1380	1/29/19
No — No ambiguity.	Kisor v. McDonough	995 F.3d 1316, 1325	8/12/20
No — No ambiguity.	Kisor v. Wilkie	969 F.3d 1333, 1342	8/12/20
No — Referenced in passing.	Murphy v. Wilkie	983 F.3d 1313, 1318	12/21/20
No — Cited only in noncontrolling opinions in relation to the denial of rehearing en banc.	Kisor v. McDonough	995 F.3d 1347, 1348, 1360 (Hughes, J., concurring), 1361 (Dyk, J., concurring), 1366 (O’Malley, J., dissenting)	4/30/21
No — Cited only in concurrence.	Arellano v. McDonough	1 F.4th 1059, 1096 (Dyk, J., concurring in the judgment)	6/17/21
No — Referenced in passing.	Taylor v. McDonough	3 F.4th 1351, 1366–67	6/30/21
No — Cited for reenactment.	Mil.-Veterans Advoc. v. Sec’y of Veterans Affs.	7 F.4th 1110, 1139	7/30/21
No — Cited only in dissent.	Buffington v. McDonough	7 F.4th 1361, 1374 (O’Malley, J., dissenting)	8/6/21
No — Cited in passing.	Nicely v. United States	23 F.4th 1364, 1369	1/20/22
No — Argument not developed enough.	Veteran Warriors, Inc. v. Sec’y of Veterans Affs.	29 F.4th 1320, 1327 n.4	3/25/22
Yes.	Nat’l Org. of Veterans’ Advocs., Inc. v. Sec’y of Veterans Affs.	48 F.4th 1307, 1317	9/20/22
No — No ambiguity.	Rudisill v. McDonough	55 F.4th 879, 887	12/15/22
No — No ambiguity.	Cranford v. McDonough	55 F.4th 1325, 1328	12/19/22
No — No ambiguity.	Cooper v. McDonough	57 F.4th 1366, 1373	1/23/23
No — No ambiguity.	Spicer v. McDonough	61 F.4th 1360, 1363	3/8/23