

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

ALFRED PROCOPIO, JR.,
Claimant-Appellant

v.

**ROBERT WILKIE, SECRETARY OF VETERANS
AFFAIRS,**
Respondent-Appellee

2017-1821

Appeal from the United States Court of Appeals for
Veterans Claims in No. 15-4082, Judge Coral Wong
Pietsch.

SUA SPONTE HEARING EN BANC

Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,
and STOLL, *Circuit Judges*.*

PER CURIAM.

* Circuit Judge Hughes did not participate.

O R D E R

This case was argued before a panel of three judges on May 4, 2018. The panel sua sponte requested a poll on whether to consider this case en banc. A poll was conducted, and a majority of the judges who are in regular active service voted for en banc consideration.

Accordingly,

IT IS ORDERED THAT:

- (1) The court sua sponte orders that this case be heard en banc under 28 U.S.C. § 46 and Federal Rule of Appellate Procedure 35(a). The en banc court shall consist of all circuit judges in regular active service who are not recused or disqualified.
- (2) The parties are requested to file new briefs. The briefs should address the following issues:
 - a. Does the phrase “served in the Republic of Vietnam” in 38 U.S.C. § 1116 unambiguously include service in offshore waters within the legally recognized territorial limits of the Republic of Vietnam, regardless of whether such service included presence on or within the landmass of the Republic of Vietnam?
 - i. What role, if any, does the pro-claimant canon play in this analysis?
- (3) The en banc briefs and briefs of any amici curiae shall be electronically filed in the ECF system, and thirty paper copies of each brief and any appendix shall be filed with the court. Two paper copies of all filings shall be served on opposing counsel.
- (4) Mr. Procopio’s en banc brief is due 45 days from the date of this order. Any amicus brief supporting Mr. Procopio’s position or supporting neither position is due within 10 days thereafter. The Secretary’s re-

sponse brief is due within 30 days of service of Mr. Procopio's en banc brief. Any amicus brief supporting the Secretary's position is due within 10 days thereafter. Mr. Procopio's reply brief is due within 15 days of service of the Secretary's response brief. Briefs shall adhere to the type-volume limitations set forth in Federal Rule of Appellate Procedure 32 and Federal Circuit Rule 32.

- (5) Briefing should be limited to the issues set forth above.
- (6) The court invites the views of amici curiae. Any such amicus briefs may be filed without consent and leave of court, but otherwise must comply with Federal Rule of Appellate Procedure 29 and Federal Circuit Rule 29. All amicus briefs shall be filed as stated above.
- (7) This appeal will be heard en banc on the basis of the new briefing ordered herein and oral argument.
- (8) Oral argument will be scheduled at a later date.

FOR THE COURT

August 16, 2018

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court