

NOTE: This order is nonprecedential.

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

DAVID SCOTT BRIMER,
Petitioner

v.

DEPARTMENT OF THE NAVY,
Respondent

2024-1388

Petition for review of the Merit Systems Protection
Board in No. AT-3330-21-0119-I-1.

ON PETITION FOR REHEARING EN BANC

DANIEL COOLEY, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Reston, VA, filed a petition for rehearing en banc. Also represented by J. DEREK MCCORQUINDALE; ALEXANDER EDISON HARDING, JASON LEE ROMRELL, Washington, DC.

STEPHEN J. SMITH, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, filed a response to the petition for rehearing en banc. Also represented by PATRICIA M. MCCARTHY, BRETT SHUMATE, FRANKLIN E. WHITE, JR.

Before MOORE, *Chief Judge*, LOURIE, DYK, PROST, REYNA,
TARANTO, CHEN, HUGHES, STOLL, CUNNINGHAM, and
STARK, *Circuit Judges*.¹

PER CURIAM.

ORDER

David Scott Brimer filed a petition for rehearing en banc. A response to the petition was invited by the court and filed by the Department of the Navy. The petition was referred to the circuit judges who are in regular active service. The court conducted a poll on request, and a majority of the judges who are in regular active service voted for en banc consideration.

Accordingly,

IT IS ORDERED THAT:

(1) The petition for rehearing en banc is granted to the extent discussed in Part I of the modified opinion and judgment accompanying this order.

(2) The precedential opinion and judgment issued December 17, 2025, are withdrawn and replaced with the modified opinion and judgment.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

August 14, 2026
Date

¹ Circuit Judge Newman did not participate.