

The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

November 27, 2019

Peter R. Marksteiner
Office of the Clerk
United States Court of Appeals for the Federal Circuit
717 Madison Place NW
Washington, DC 20439

Re: Response to Secretary's 28(j) Letter in *Monk v. Wilkie* (No. 19-1094)

Dear Colonel Marksteiner,

Petitioners-Appellants file this response to the Secretary's November 21, 2019 Rule 28(j) letter.

On October 23, 2019, the Court of Appeals for Veterans Claims ("CAVC") denied Mr. Dolphin's petition for a writ of mandamus and dismissed the petitions of Mr. Monk, Mr. Briggs, Mr. Wood, Mr. Coyne, Mr. Merrick, Mr. Stokes, Ms. Obie, and Mr. Hudson as moot. *Monk v. Wilkie*, 2019 WL 5406570 (Vet. App. 2019). The CAVC entered judgment in that case on November 14. On November 22, seven of the Petitioners—who are all named plaintiffs in this case—filed a notice of appeal to this Court. *See* Petitioners' Notice of Appeal, *Monk v. Wilkie*, No. 15-1280 (Vet. App. Nov. 22, 2019) (appealing denial or dismissal of petitions of Mr. Monk, Mr. Dolphin, Mr. Coyne, Mr. Hudson, Mr. Merrick, Ms. Obie, and Mr. Stokes). The CAVC's decision and the subsequent appeal are relevant as an update to the Statement of Related Cases. Appellants' Br. at 1.

In addition, on June 13, 2019, the CAVC granted class certification in *Godsey v. Wilkie*, 31 Vet. App. 207 (2019). The CAVC's grant of class certification in that case does not affect its prior interpretation of Rule 23 in *Monk*, which is on appeal here. The interpretation and application of Rule 23 in *Godsey* does not resolve the questions presented before this Court. *See* Appellants' Br. at 3.

Respectfully submitted,

/s/ Lynn Neuner
Lynn K. Neuner
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017

/s/ Michael Wishnie
Michael J. Wishnie, Supervising Attorney
Renée Burbank, Supervising Attorney
Jade Ford, Law Student Intern
Arjun Mody, Law Student Intern
Madison Needham, Law Student Intern
Jesse Tripathi, Law Student Intern
Veterans Legal Services Clinic
Jerome N. Frank Legal Services Organization