

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

TIMOTHY MOORE,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2022-1475

Appeal from the United States Court of Federal Claims
in No. 1:21-cv-01931-CFL, Senior Judge Charles F. Lettow.

SUA SPONTE HEARING EN BANC

PETER BROIDA, Arlington, VA, for plaintiff-appellant.

RAFIQUE OMAR ANDERSON, Commercial Litigation
Branch, Civil Division, United States Department of Jus-
tice, Washington, DC, for defendant-appellee. Also repre-
sented by REGINALD THOMAS BLADES, JR., BRIAN M.
BOYNTON, PATRICIA M. MCCARTHY.

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

PER CURIAM.

O R D E R

This case was argued before a panel of three judges on February 6, 2023. A sua sponte request for a poll on whether to consider this case en banc was made. A poll was conducted, and a majority of the judges who are in regular active service voted for sua sponte en banc consideration.

Accordingly,

IT IS ORDERED THAT:

This case is heard en banc sua sponte under 28 U.S.C. § 46 and Federal Rule of Appellate Procedure 35(a) for the limited purpose of overruling *Yant v. United States*, 588 F.3d 1369 (Fed. Cir. 2009). The court en banc consists of all circuit judges in regular active service who are not recused or disqualified.

FOR THE COURT

April 28, 2023

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court