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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

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**JONATHAN L. HAAS,  
Claimant-Appellee,  
v.  
JAMES B. PEAKE, M.D., Secretary of Veterans Affairs,  
Respondent-Appellant.**

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**Appeal From The United States Court of Appeals For Veterans Claims  
In 04-4091, Judge William A. Moorman**

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**RESPONDENT-APPELLANT'S OPPOSITION TO COMBINED PETITION  
FOR PANEL REHEARING OR REHEARING EN BANC**

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September 12, 2008

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Respondent-Appellant, James B. Peake, M.D., the Secretary of Veterans Affairs, respectfully submits this opposition to the combined petition for panel rehearing or rehearing en banc. Rehearing en banc is only warranted when the Panel's decision conflicts with precedent from this Court or the Supreme Court or presents a precedent-setting question of exceptional importance. Fed. R. App. P. 35. The Panel applied well-established principles of deference to conclude that the Secretary had reasonably interpreted the statutory requirement "service in the Republic of Vietnam," to require service on the land mass. Because the Panel's decision correctly applied precedent and did not involve a precedent-setting question of exceptional importance, the petition should be denied.

**I. The Panel Properly Concluded That The Statutory Requirement Of "Service In The Republic of Vietnam" Was Ambiguous**

The Agent Orange Act of 1991 provides a statutory presumption that veterans who served "in the Republic of Vietnam" were exposed to herbicides. See 38 U.S.C. 1116. The presumption eliminates the obligation to demonstrate actual exposure and entitles veterans to service connection for a delineated set of conditions or diseases. Id. After an exhaustive analysis of the statutory and legislative history, the Panel properly concluded that the phrase "service in the Republic of Vietnam" was not plainly defined by Congress and, thus, was appropriate for reasonable interpretation by the Department of Veterans Affairs.

Haas v. Peake, 525 F.3d 1168, 1184-85 (Fed. Cir. 2008).

**A. “Service In Vietnam” Does Not Have A Single, Plain Meaning**

Mr. Haas’s primary argument for rehearing is that the Panel erred in finding the statutory phrase “service in the Republic of Vietnam” ambiguous. According to Mr. Haas, when Congress refers to a sovereign nation it necessarily intends to include its territorial waters. Pet. 3. This argument is incorrect. There is no “one size fits all” definition for what Congress intends when it refers to a country – there are multiple possible meanings. The statutory context and purpose must be examined in order to determine congressional intent. In this case, the Panel properly concluded that Congress’ intent was ambiguous.

The extent of a nation's boundary or jurisdiction depends entirely upon the issue presented for resolution. The territory under a nation's jurisdiction may include that nation's landmass, its internal waters, territorial sea, archipelagic waters, contiguous zone, continental shelf, and exclusive economic zone. See, e.g., I. E.D. Brown, *Sea-Bed Energy and Mineral Resources and the Law of the Sea: The Areas within National Jurisdiction* I.1 3 (1984). Thus, depending upon the context, the definitional boundary can be limited to the landmass or it can encompass far greater areas of land, sea or airspace.

Congress routinely makes distinctions between a nation's territory and its territorial waters. At least one statute directly related to Vietnam veterans specifically referred to the country's land mass as well as its waters in defining such a veteran. Section 513 of Public Law No. 96-466 stated: "veterans who served . . . in Vietnam, in air missions over Vietnam, or in naval missions in the waters adjacent to Vietnam shall be considered to be veterans who served in the Vietnam theatre of operations."<sup>1</sup> Likewise, in the statute defining veterans who served during the Mexican Border War, 38 U.S.C. § 101(3), the reference to Mexico did not intrinsically include service in the territorial waters. Rather, Congress specifically referred to veterans who "served in Mexico, on the borders thereof, or in the waters adjacent thereto." These references indicate Congress' understanding that a statutory reference to being "in" a country does not inherently include being in the adjacent waters and that when Congress intends to include veterans who served in the territorial waters, it has done so explicitly. Moreover, although these references involve different contexts and different purposes than the presumption of herbicide exposure, they emphasize that in determining the

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<sup>1</sup> Pub. L. No. 96-466 amended what is now 38 U.S.C. § 4107 to provide expanded rehabilitation and educational benefits. Section 513 is set forth in the notes following 38 U.S.C. § 4107, and relates to a requirement to publish labor market statistics regarding the employment of Vietnam veterans.

