

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

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**JEFFERY S. MUSSELMAN,**  
*Petitioner*

v.

**DEPARTMENT OF THE ARMY,**  
*Respondent*

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2016-2522

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Petition for review of the Merit Systems Protection Board in No. DA-1221-14-0499-W-3.

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**ON PETITION FOR HEARING EN BANC**

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ROBERT J. GAJARSA, Latham & Watkins LLP, Washington, DC, filed a petition for hearing en banc for petitioner Jeffery S. Musselman. Also represented by GABRIEL BELL, SAVANNAH KENT BURGOYNE, MICHAEL J. GERARDI, EMILY K. SAUTER.

MARIANA TERESA ACEVEDO, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, filed a response to the petition for respondent Department of the Army. Also represented by CHAD A. READLER, ROBERT E. KIRSCHMAN, JR., CLAUDIA BURKE; REBECCA E. AUSPRUNG, United States Army Litigation Division, Fort Belvoir, VA.

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

WALLACH, *Circuit Judge*, with whom NEWMAN and O'MALLEY, *Circuit Judges*, join, dissent from the denial of the petition for hearing en banc for the reasons stated in the dissent from denial of the petition for rehearing en banc in *Fedora v. Merit Systems Protection Board*, No. 15-3039.

STOLL, *Circuit Judge*, dissents without opinion from the denial of the petition for hearing en banc.

PER CURIAM.

### ORDER

Petitioner Jeffery S. Musselman filed a petition for initial hearing en banc. A response to the petition was invited by the court and filed by respondent Department of the Army. The petition and response were referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for initial hearing en banc is denied.

FOR THE COURT

July 20, 2017

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner  
Clerk of Court

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\* Circuit Judge Moore did not participate.