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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 21-3565

BRIAN M. AUMILLER, ET AL,

PETITIONERS,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS,

RESPONDENT.

Before GREENBERG, MEREDITH, and FALVEY, *Judges*.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

On May 25, 2021, the petitioners, Brian M. Aumiller, Tamora E. Diez, and Roger A. Georges, through counsel filed a petition for extraordinary relief in the nature of a writ of mandamus. Because the Court's Rules of Practice and Procedure do not contemplate the joinder of parties in a single action, the Court ordered the parties to submit memoranda of law addressing what standard the Court should apply to assess whether joinder is appropriate and why the petitioners satisfy the proffered standard. In their initial responses, the parties presented different views on what standard the Court should apply, and the Secretary maintained that joinder is not appropriate in this case. The Court then submitted the matter to a panel and scheduled oral argument to address this procedural question. Proceedings have otherwise been stayed because closely related issues pertaining to the merits of the petition are currently under review by a panel of the Court in *Love v. McDonough*, U.S. Vet. App. No. 21-1323 (oral argument held Oct. 22, 2021).

The Court subsequently granted the Secretary's unopposed request for leave to file a response to the petitioners' reply and to amend his position regarding whether joinder is appropriate in this case. In his response, the Secretary explains that he is *unopposed* to the petitioners' request for joinder, asserting that the petitioners satisfy the standard applied by the en banc Court in *Monk v. Shulkin*, No. 15-1280, 2018 WL 507445 (Vet. App. Jan. 23, 2018) (en banc order). *See id.* at *5 (applying, "for purposes of this case," the standard established in Federal Rule of Civil Procedure 20 to determine whether permissive joinder was appropriate). As the matter is now unopposed, the Court will allow the joinder of the petitioners in this case and direct the Clerk of the Court (Clerk) to revoke the order scheduling oral argument. Accordingly, it is

ORDERED that the petitioners' construed request for permissive party joinder is granted. It is further

ORDERED that the Clerk revoke the September 21, 2021, order scheduling this matter for oral argument. It is further

ORDERED that proceedings are otherwise stayed pending the disposition of the petition in *Love*. See U.S. VET. APP. R. 5(a)(3).

DATED: November 4, 2021

PER CURIAM.

Copies to:

John Niles, Esq.

VA General Counsel (027)