

**IN THE UNITED STATES COURT OF APPEALS  
FOR VETERANS CLAIMS**

<b>CARMEN L. ENCARNACION,</b>	)	
	)	
Appellant,	)	
	)	
v.	)	Vet.App. No. 21-1411
	)	
<b>DENIS MCDONOUGH,</b>	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

**APPELLEE’S RESPONSE TO APPELLANT’S OPPOSED MOTION FOR  
LEAVE TO FILE SUPPLEMENTAL BRIEFING**

Pursuant to U.S. Vet.App Rule 27(b), Appellee, Denis McDonough, Secretary of Veterans Affairs (Secretary), responds to Appellant’s November 8, 2022, motion for leave to file supplemental briefing.

The Secretary is opposed to Appellant’s motion for leave to file supplemental briefing. While the Secretary generally does not oppose a request to provide additional arguments that were not submitted by a *pro se* appellant who subsequently obtains representation by counsel, *see, e.g.*, CAVC docket number 19-4836; U.S. Vet.App Rule 27(b)(2) (“a motion will be considered unopposed if . . . (written) opposition is not filed”), here Appellant has been represented by counsel throughout the entirety of this appeal, to include the same counsel that represented her when this matter was last before the Court in CAVC docket number 19-3942. Appellant, through her counsel, made strategic choices as to what matters to pursue via a brief, and even given those strategic choices, was

afforded the opportunity to make additional arguments at oral argument. Indeed, all the issues noted in Appellant's November 8, 2022, motion were discussed at Oral Argument on October 27, 2022. No new issues were raised at the time of argument; nor have any been raised since argument on October 27, 2022. Therefore, given that the time for briefing has long passed, and as Appellant was represented by counsel for the duration of her appeal, the Secretary is opposed to Appellant's motion for leave to file a supplemental brief.

**WHEREFORE**, the Secretary responds to Appellant's November 8, 2022, opposed motion for leave to file a supplemental brief.

Respectfully submitted,

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**MARY ANN FLYNN**  
Chief Counsel

/s/ Drew A. Silow  
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