



July 24, 2019

The Honorable Robert Wilkie
Secretary of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20571

Mr. Secretary:

On behalf of the millions of veterans, service members, their families and survivors that our organizations represent, we call on you to lift or modify the blanket stay on all Blue Water claims issued on July 1, 2019, and immediately begin processing, adjudicating, granting and paying veterans for Agent Orange-related claims. While the stay was based on a discretionary authority in the *Blue Water Navy Vietnam Veterans Act of 2019* (P.L. 116-23), the law does not mandate that VA must stay any or all claims; nor does it codify or supersede the ruling of the U.S. Court of Appeals for the Federal Circuit in the case of *Procopio v. Wilkie*.

Regrettably, the decision to stay all Blue Water claims until January 1, 2020, will unnecessarily delay the provision of VA health care and benefits to thousands of aging and ill Vietnam veterans and survivors. Many of these men and women have waited decades for the recognition that they too were exposed to Agent Orange and suffered negative health consequences as a result. It is unacceptable to force them to wait another six months at least for access to life-changing health care and benefits when VA has the authority to grant their claims right now.

As you know, in *Procopio* the Court ruled that veterans who served in Vietnam's territorial seas extending 12 nautical miles from shore must be treated the same as those who served on the landmass. Subsequently, the House and Senate both approved H.R. 299, the *Blue Water Vietnam Veterans Act*, which was signed into law on June 25, 2019 (P.L. 116-23). This legislation adds a new section 1116A to title 38, which extends the presumption of Agent Orange exposure to veterans who served in the waters offshore beyond the 12 nautical miles recognized by *Procopio*, up to 90 nautical miles from Vietnam's shoreline in some locations, based on a series of grid coordinates. The law, which takes effect on January 1, 2020, also expands benefits to veterans exposed to Agent Orange while serving along the Korean DMZ and to children born with spina bifida due to a parent's exposure in Thailand.

However, the law does not remove or amend Section 1116 of title 38, the subject of the *Procopio* decision. As such, the stay issued under the authority of Section 1116A should not prevent VA from processing claims that can be granted based on Section 1116, as correctly interpreted by the Court in *Procopio*. We believe this is entirely consistent with the intention of the bill's sponsors, House Veterans' Affairs Committee Chairman Mark Takano and Ranking Member Phil Roe, as stated in House Report 116-58 accompanying H.R. 299, at the bottom of page 13, which stated:

"H.R. 299, as amended... allows the Secretary to begin awarding benefits permitted under these sections prior to the completion of the rulemaking process. The ability to award immediate benefits during the interim period between passage of H.R. 299, as amended, and promulgation of relevant regulations reflects the urgency of need for veterans and family members afflicted by herbicide related diseases."

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Similarly, in their July 15 letter to you, Senate Veterans' Affairs Committee Ranking Member Jon Tester and nine other Senators made clear their understanding of the law, stating:

"Although the Blue Water Navy Vietnam Veterans Act does not go into effect until January 1, 2020, Blue Water Navy Veterans who served within Vietnam's territorial waters are currently eligible for benefits due to the recent Procopio v Wilkie ruling."

We agree that the *Procopio* decision gives VA the authority right now to begin granting claims for veterans who served up to 12 nautical miles from shore, while those who served beyond 12 nautical miles – up to the limits established by P.L. 116-23 – may have to wait until January 1, 2020. There are potentially thousands of claims pending or about to be filed for which VA already has sufficient evidence of record confirming the veteran's location on a ship within 12 nautical miles and therefore VA could grant benefits without additional development. There are also many Blue Water veterans who are terminally ill, over the age of 85 or impoverished whose claims VA should begin expediting immediately and if granted, payments should be made as soon as possible this year.

We understand that some Blue Water claims will require further development and some cannot be granted until next year when P.L. 116-23 becomes fully effective. We also recognize that VA will require additional personnel and resources to process these new claims while continuing to provide timely decisions for other pending claims, and we would be supportive of such requests.

Mr. Secretary, thousands of Blue Water Navy veterans have waited far too long to receive justice on their Agent Orange claims; many are gravely ill and some will not survive until next year. On their behalf, we urge you to lift or modify the blanket stay and begin processing, adjudicating, granting and paying Blue Water Navy veterans now, before it's too late.

Respectfully,



Dennis R. Nixon.
National Commander
DAV (Disabled American Veterans)



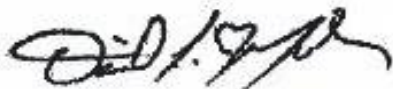
Robert E. Wallace
Executive Director
Veterans of Foreign Wars of the United States



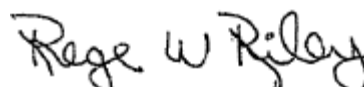
Brett P. Reistad
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Vietnam Veterans of America



David L. Zurfluh
National President
Paralyzed Veterans of America



Rege W. Riley
National Commander
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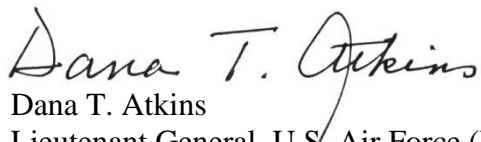
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Felix Garcia
National Commander
Military Order of the Purple Heart



Thomas J. Snee
National Executive Director
Fleet Reserve Association



Dana T. Atkins
Lieutenant General, U.S. Air Force (Ret.)
President
Military Officers Association of America

Cc: The Honorable Mark Takano, Chairman, House Veterans Affairs' Committee
The Honorable Phil Roe, M.D., Ranking Member, House Veterans' Affairs Committee
The Honorable Johnny Isakson, Chairman, Senate Veterans' Affairs Committee
The Honorable Jon Tester, Ranking Member, Senate Veterans' Affairs Committee