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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**VETERANS FOR COMMON SENSE, a
District of Columbia nonprofit
organization; VETERANS UNITED
FOR TRUTH, INC., a California
nonprofit organization, representing
their members and a class of all
veterans similarly situated,**

Plaintiffs - Appellants,

v.

**ERIC K. SHINSEKI, Secretary of
Veterans Affairs; UNITED STATES
DEPARTMENT OF VETERANS
AFFAIRS; JAMES P. TERRY,
Chairman, Board of Veterans' Appeals;
MICHAEL WALCOFF, Acting Under
Secretary, Veterans Benefits
Administration; BRADLEY G.
MAYES, Director, Compensation and
Pension Service; ROBERT A. PETZEL,
M.D., Under Secretary, Veterans Health
Administration; PRITZ K. NAVARA,
Veterans Service Center Manager,
Oakland Regional Office, Department
of Veterans Affairs; UNITED STATES
OF AMERICA,**

Defendants - Appellees.

No. 08-16728

D.C. No. 3:07-cv-03758-SC

ORDER

KOZINSKI, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.

Judge W. Fletcher did not participate in the deliberations or vote in this case.