

CASE No _____

IN THE SUPREME COURT OF UNITED STATES

KIM ANNE FARRINGTON,

Applicant,

v.

DEPARTMENT OF TRANSPORTATION,

Respondent.

On Application for an Extension of Time
to File Petition for a Writ of Certiorari to the
Supreme Court of the United States

**PETITIONER'S APPLICATION TO EXTEND TIME TO FILE PETITION
FOR WRIT OF CERTIORARI**

THAD M. GUYER
Counsel of Record
T.M. Guyer & Friends, PC
And Government Accountability Project, Inc.
116 Mistletoe Street
Medford, OR 97501
(206) 941-2869
thad@guyerayers.com

Counsel for Applicant

To the Honorable Chief Justice, as Circuit Justice for the United States Court of Appeals for the Federal Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Petitioner Kim Anne Farrington respectfully requests that the time to file her Petition for Writ of Certiorari in this matter be extended for sixty (60) days, up to and including September 26, 2025. This extension applies solely to Petitioner.

Background

Kim Anne Farrington served as an Aviation Safety Inspector at the FAA from 1997 to 2004, specializing in flight attendant training programs. After the March 2003 AirTran Flight 356 emergency landing that resulted in passenger injuries due to flight attendant training deficiencies, Ms. Farrington disclosed systemic training failures to the NTSB and her supervisors. These disclosures, made outside her normal duties, led to retaliation including removal from her oversight responsibilities, formal counseling restrictions, and ultimately her proposed removal from federal service.

Ms. Farrington filed a whistleblower complaint with the MSPB in 2009. After years of litigation spanning the enactment of the Whistleblower Protection Enhancement Act (WPEA) in 2012, the MSPB incorrectly applied 5 U.S.C. § 2302(f)(2) to exclude her from standard whistleblower protections, despite clear evidence that her disclosures were made outside the "normal course" of her duties.

On appeal to the Federal Circuit, the court issued a one-line affirmance without opinion under Fed.Cir.R.36(a) on February 10, 2025, providing no reasoning, legal analysis, or indication that it reviewed the statutory interpretation issues presented. Ms. Farrington's petition for

rehearing en banc was similarly denied without explanation, leaving her without any substantive judicial review of the executive agency's statutory interpretation.

Identification of Judgment Sought to be Reviewed

The judgment sought to be reviewed was entered by the United States Court of Appeals for the Federal Circuit on February 10, 2025, in Case No. 23-1901. A copy of Exhibit A for the Federal Circuit Judgment is attached. This judgment affirmed, without opinion, per Federal Circuit Rule 36(a), the decision of the Merit Systems Protection Board (MSPB) in No. AT-1221-09-0543-B-2. Petitioner timely filed a Petition for Rehearing En Banc on March 28, 2025, and the denial of such review was entered on April 29, 2025 attached as Exhibit B. The 90-day period for filing a petition for a writ of certiorari, running from the denial of rehearing, will expire on July 28, 2025. Petitioner is filing this Application within the ten days before that due date.

Basis for Jurisdiction in this Court

This case presents questions of exceptional importance that go to Article III judicial power and the constitutional right to meaningful judicial review—issues fundamental to protecting whistleblowers and federal employees nationwide. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

The petition for a writ of certiorari will present three questions:

1. Whether Federal Circuit Rule 36(a) affirmances without opinion in Merit Systems Protection Board cases unconstitutionally delegate Article III judicial power to the executive branch in violation of the separation of powers. The President has asserted his Article II authority to remove MSPB members without cause, hence the MSPB is under executive control. See, *Trump v. Wilcox*, 145 S. Ct. 1415, 1416 (2025) (“The stay reflects

our judgment that the Government is likely to show that both the NLRB and MSPB exercise considerable executive power.”)

2. Whether Federal Circuit Rule 36(a) affirmances without opinion violate the Fifth Amendment guarantee of procedural due process by denying aggrieved federal employees meaningful judicial review of agency statutory interpretations.
3. Whether the MSPB and the circuit judges below erred as a matter of law in upholding the MSPB’s conclusion that 5 U.S.C. § 2302(f)(2) allows the executive branch to exclude Petitioner from standard whistleblower protections, despite clear evidence that her disclosures were made outside the "normal course" of her duties.

These questions implicate this Court's recent emphasis in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 403 (2024), that courts must exercise independent judgment in statutory interpretation and cannot defer to agency interpretations. When courts issue dispositions without any indication of legal analysis, they effectively cede their Article III responsibilities to executive agencies, leaving federal employees without meaningful judicial review of critical statutory interpretations.

Reasons Why an Extension of Time is Justified

Good cause exists for the requested extension, as required by Supreme Court Rule 13.5:

1. Complexity and Constitutional Significance: The issues presented are complex constitutional questions concerning the separation of powers and fundamental due process rights. The Federal Circuit's practice of affirming MSPB decisions without opinion raises novel and significant questions about the proper scope of judicial review over executive agency actions, particularly in light of this Court's recent jurisprudence. Thorough legal research and careful drafting are required to fully articulate these arguments in a manner

most helpful to the Court.

2. **Petitioner's Low-income Status and Fundraising Efforts:** Ms. Farrington is a low-income petitioner. It has taken her a considerable amount of time to raise the necessary funds for the printing and binding costs associated with filing a petition for a writ of certiorari with this Court. These costs, estimated to exceed \$2,000, represent a significant financial burden that Ms. Farrington has diligently worked to overcome. The time dedicated to these essential fundraising efforts has directly impacted the ability of counsel to finalize the petition within the original timeframe. Consequently, the Government Accountability Project (GAP), as a 501(c)(3) nonprofit organization, requires board approval for case acceptance. This approval is contingent upon the client having financial arrangements in place to cover printing costs. Board approval for this case was not secured until July 16, 2025 given that Petitioner could not tender those out of pocket expenses until July 14, 2025.
3. **Importance for Federal Whistleblowers:** This case holds significant importance for federal whistleblower protection and the mission of GAP, which represents Petitioner. The petition seeks to ensure that judicial review is a constitutional requirement, not a privilege that lower courts may waive through procedural shortcuts, thereby protecting the judicial access whistleblowers need when challenging agency retaliation. Granting an extension will allow counsel to prepare a petition that fully addresses these critical systemic impacts on federal employees.

For the foregoing reasons, Petitioner respectfully requests that the time for filing a petition for a writ of certiorari be extended by sixty (60) days, to and including September 24, 2025. This 60-day extension will not prejudice Respondent, as it maintains the status quo without delaying any ongoing proceedings.

Respectfully submitted.

/s/ THAD M. GUYER
THAD M. GUYER
Counsel of Record
T.M. Guyer and Ayers & Friends, PC
For Government Accountability Project, Inc.
116 Mistletoe Street
Medford, OR 97501
(206) 941-2869
thad@guyerayers.com

Counsel for Petitioner

APPENDIX

TABLE OF CONTENTS

	<i>Page</i>
APPENDIX A — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, FILED FEBRUARY 10, 2025	1a
APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, FILED APRIL 29, 2025	3a

NOTE: This disposition is nonprecedential.

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

KIM ANNE FARRINGTON,
Petitioner

v.

DEPARTMENT OF TRANSPORTATION,
Respondent

2023-1901

Petition for review of the Merit Systems Protection Board in No. AT-1221-09-0543-B-2.

JUDGMENT

THOMAS M. DEVINE, Government Accountability Project, Washington, DC, argued for petitioner. Also represented by STEPHANI AYERS, THAD MCINTOSH GUYER, T.M. Guyer & Friends, PC, Medford, OR.

AMANDA TANTUM, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for respondent. Also represented by BRIAN M. BOYNTON, ELIZABETH MARIE HOSFORD, PATRICIA M. MCCARTHY.

THIS CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

PER CURIAM (LOURIE, MAYER, and PROST, *Circuit Judges*).

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

February 10, 2025
Date



Jarrett B. Perlow
Clerk of Court

NOTE: This order is nonprecedential.

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

KIM ANNE FARRINGTON,
Petitioner

v.

DEPARTMENT OF TRANSPORTATION,
Respondent

2023-1901

Petition for review of the Merit Systems Protection
Board in No. AT-1221-09-0543-B-2.

ON PETITION FOR REHEARING EN BANC

Before MOORE, *Chief Judge*, MAYER¹, LOURIE, DYK, PROST,
REYNA, TARANTO, CHEN, HUGHES, STOLL, CUNNINGHAM,
and STARK, *Circuit Judges*.²

PER CURIAM.

¹ Circuit Judge Mayer participated only in the decision on the petition for panel rehearing.

² Circuit Judge Newman did not participate.

2

FARRINGTON v. DEPARTMENT OF TRANSPORTATION

O R D E R

Kim Anne Farrington filed a petition for rehearing en banc. The petition was first referred to the panel that heard the appeal, and thereafter the petition was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

April 29, 2025
Date