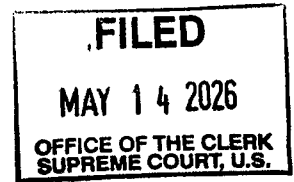


No. \_\_\_\_\_

ORIGINAL

25-7485



**IN THE  
SUPREME COURT OF THE UNITED STATES**

**BYRON C. FARLEY**

*PETITIONER*

VS.

**MERIT SYSTEM PROTECTION BOARD**

*RESPONDENT*

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

**PETITION FOR WRIT OF CERTIORARI**

Byron C. Farley  
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## QUESTIONS PRESENTED

1. Whether attorney withdrawal that violates modern ethical standards—specifically the duties articulated in ABA Formal Opinion 516—can constitute an “extraordinary circumstance” warranting equitable tolling under *Irwin v. Department of Veterans Affairs*, 498 U.S. 89 (1990), and *Holland v. Florida*, 560 U.S. 631 (2010).
2. Whether the Federal Circuit erred by affirming the MSPB’s refusal to apply equitable tolling based on a factual premise contradicted by the record, where the petitioner worked continuously and diligently after counsel’s last-minute withdrawal.
3. Whether the longstanding rule that “clients are responsible for their attorneys’ errors” should apply when the attorney’s withdrawal is professionally improper under contemporary ethical standards and occurs at the eve of a jurisdictional deadline.

## **PARTIES TO THE PROCEEDING**

Petitioner is **Byron C. Farley**, a pro se federal whistleblower appellant.

Respondent is the **Merit Systems Protection Board**.

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## **TABLE OF AUTHORITIES**

### Cases

*Holland v. Florida*, 560 U.S. 631 (2010)  
*Irwin v. Department of Veterans Affairs*, 498 U.S. 89 (1990)  
*Lozano v. Montoya Alvarez*, 572 U.S. 1 (2014)  
*United States v. U.S. Gypsum Co.*, 333 U.S. 364 (1948)  
*Warne v. Merit Systems Protection Board*, 2025 WL 3135456 (Fed. Cir. 2025)

### Statutes and Regulations

28 U.S.C. § 1254(1)  
5 U.S.C. § 7703  
5 C.F.R. § 1209.5

### Other Authorities

ABA Formal Opinion 516 (2022)

**IN THE SUPREME COURT OF THE UNITED STATES**  
**PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

The Federal Circuit's nonprecedential opinion for Farley v. MSPB Case No. 2025-1827 Decided: January 15, 2026, affirming the Boards final decision dismissing Farley's IRA appeal. (Appx. A)

MSPB No. DA-1221-25-0189-W-1, Initial/Final Order dismissing petitioner's IRA appeal on April 3, 2025 as untimely is unreported. (Appx. B)

Federal Circuit Order is nonprecedential. ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC, It Is Ordered That: The petition for panel rehearing and rehearing en banc is denied. **April 2, 2026.** (Appx. C)

**JURISDICTION**

The Federal Circuit entered JUDGEMENT on January 15, 2026. (Appx. A-1) A timely petition for rehearing was filed on March 2, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1). (Appx. D)

**CONSTITUTIONAL AND STATUTORY PROVISIONS**

28 U.S.C. § 1254(1)

5 U.S.C. § 7703

5 C.F.R. § 1209.5

Relevant portions of ABA Formal Opinion 516 (2022)

## SUMMARY OF THE ARGUMENT

This case presents a clean and important question about the intersection of equitable tolling, attorney withdrawal, and modern ethical standards. The Federal Circuit affirmed the dismissal of petitioner's whistleblower appeal as untimely based on two premises: (1) that petitioner was negligent because he "waited" for his attorney, and (2) that attorney withdrawal is always attributable to the client. Both premises are incorrect. (Appx. A 4-5)

The record shows that petitioner worked continuously and diligently after his attorney's last-minute withdrawal—beginning immediately on January 22, 2025, working 15 hours that day. He continued working at 7:00 AM the next morning January 23 and continued uninterrupted into January 24. He attempted to contact counsel repeatedly, researched MSPB procedures, prepared supporting documents, and ultimately filed only three hours and twenty-three minutes after the deadline. These facts demonstrate diligence "to the point of exhaustion," not negligence. (Appx. E 2-3)

The panel also overlooked **ABA Formal Opinion 516**, which clarifies that attorneys must avoid withdrawal that causes a *material adverse effect*, must provide adequate notice, must allow reasonable time for the client to act, and must take affirmative steps to protect the client when withdrawal occurs near a deadline. Petitioner's attorney violated each of these duties.

This Court's equitable-tolling jurisprudence, including *Holland v. Florida*, recognizes that attorney misconduct can constitute an extraordinary circumstance when it goes beyond "garden-variety negligence." Petitioner's attorney assured him that work was underway, provided no draft or guidance, withdrew three days before the deadline, ignored multiple calls, and provided only user guides at 2:38 PM on the final day. This conduct directly prevented timely filing despite extraordinary diligence. (Appx. E)

The question presented is exceptionally important and recurring. Thousands of federal employees rely on counsel during OSC proceedings. Attorney withdrawal near deadlines is common. The MSPB's rigid rule—predating modern ethical standards—disproportionately harms pro se appellants and undermines access to

administrative justice. This case is an ideal vehicle: the facts are undisputed, the record is complete, and the legal issue is cleanly presented.

## STATEMENT OF THE CASE

### A. Background

Petitioner filed a whistleblower complaint with the Office of Special Counsel (OSC) on October 21, 2024. OSC closed its investigation on November 20, 2024. Under 5 C.F.R. § 1209.5(a)(1), petitioner had 65 days to file an Individual Right of Action (IRA) appeal with the Merit Systems Protection Board (MSPB).

Petitioner retained counsel at FedLaw to prepare and file the MSPB appeal. Counsel repeatedly assured petitioner that they were preparing the filing, including as late as January 8, 2025. (Appx. F 5)

### B. Counsel's last-minute withdrawal

On January 21, 2025—**three days before the filing deadline**—counsel abruptly informed petitioner that the firm would not file the appeal. Counsel provided no draft, no analysis, and no procedural guidance. (Appx. F 5)

Petitioner immediately began preparing the appeal pro se. He worked **15 hours preparing the appeal** on January 22, 2025. On January 23, approximately 7:00 AM he continued working on the appeal **through the day**, and **continuously** into January 24. He attempted to contact counsel multiple times each day.

Counsel did not return calls until **2:15 PM on the final day**, when they sent two user guides for the MSPB's e-Appeal system. Upon beginning submission of the appeal into e-Appeal, Petitioner had worked **over 36 consecutive hours** and completed filing the appeal **3 hours and 23 minutes** after the deadline. (Appx. E 2-3)

### C. MSPB and Federal Circuit decisions

The MSPB dismissed the appeal as untimely and refused to apply equitable tolling, holding that petitioner "waited" for his attorney and was therefore negligent. (Appx. B 3-4)

The Federal Circuit affirmed, holding that attorney withdrawal is attributable to the client and that petitioner's continuous efforts did not constitute diligence. (Appx. A 5)

Neither the MSPB nor the Federal Circuit considered **ABA Formal Opinion 516**, which directly addresses attorney withdrawal and the resulting "material adverse effect" on a client.

## **REASONS FOR GRANTING THE WRIT**

### **I. The decision conflicts with *Holland v. Florida***

This Court held in *Holland* that attorney misconduct can constitute an extraordinary circumstance when it goes beyond "garden-variety negligence." Petitioner's attorney:

- assured him work was underway
- provided no draft
- withdrew **three days before the deadline**
- ignored multiple calls
- provided only user guides at **2:38 PM on the final day**

This conduct is far more serious than the negligence in *Holland* and directly prevented timely filing despite extraordinary diligence.

The Federal Circuit's rule—that all attorney withdrawal is attributable to the client—cannot be reconciled with *Holland*.

### **II. The Federal Circuit overlooked ABA Formal Opinion 516**

ABA Formal Opinion 516 clarifies that attorneys must:

- avoid withdrawal that causes a **material adverse effect**
- provide **adequate notice**
- give **reasonable time** for the client to act
- take **affirmative steps** to protect the client near deadlines

Petitioner's attorney violated each of these duties.

This Court has long recognized that equitable doctrines must be interpreted in light of contemporary professional standards. The Federal Circuit's refusal to consider Opinion 516 creates a conflict between ethical obligations and administrative law.

III. The decision rests on a factual premise contradicted by the record.

The Federal Circuit affirmed the MSPB's finding that petitioner "waited" for his attorney. (Appx. A 5)

The record shows the opposite: (Appx. E 2-3)

- petitioner worked **immediately** after withdrawal
- he worked **36+ hours straight**
- he attempted to contact counsel repeatedly
- he researched procedures and prepared documents
- he filed only **3 hours and 23 minutes** late

A decision based on a misapprehension of material facts warrants review. *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948).

IV. The question presented is exceptionally important and recurring.

The issue affects:

- federal whistleblowers
- pro se litigants
- administrative due process
- the integrity of attorney-client relationships

The MSPB's rule—predating modern ethical standards—disproportionately harms pro se appellants and undermines access to justice.

This case is an ideal vehicle: the facts are undisputed, the record is complete, and the legal issue is cleanly presented.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Byron C. Farley

Byron C. Farley

Date: 5-14-2026

**CERTIFICATE OF COMPLIANCE**

This petition contains fewer than 9,000 words, excluding the parts exempted by Rule 33.1(d).

**PROOF OF SERVICE**

I certify that on this date, I served this Petition for a Writ of Certiorari on the Merit Systems Protection Board, Office of the General Counsel, 1615 M Street NW, Washington, DC 20419.

Date: 5-14-2026

Signature: Byron C. Farley  
Byron C. Farley