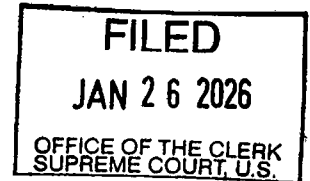


25-7496

App No. 25A558

ORIGINAL



**In The
Supreme Court of the United States**

Chantel Mitchell, Petitioner
v.
Office Depot, Inc., Respondent

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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Question Presented

Whether, in applying equitable tolling to Title VII's non-jurisdictional ninety-day filing deadline, lower courts must follow the Supreme Court's 'reasonable diligence' and 'extraordinary circumstance' standard—under which a litigant need only show that circumstances beyond their control actually stood in their way and caused their late filing—as articulated in *Holland v. Florida*, 560 U.S. 631, 649, 650, 653 (2010) and *Menominee Indian Tribe of Wisconsin v. United States*, 577 U.S. 250 (2016), or may instead impose a stricter regime that effectively demands near impossibility, total incapacity, or 'maximum feasible diligence,' denying tolling in cases like this one and producing divergent outcomes for similarly situated Title VII plaintiffs across the courts of appeals.

Statement of Related Proceedings

United States District Court for the District of Alaska

Chantel Mitchell v. Office Depot, Inc.

No. 3:22-cv-00183-SLG-KFR

Judgment entered: December 19, 2023

United States Court of Appeals for the Ninth Circuit

Chantel Mitchell v. Office Depot, Inc.

No. 24-292

Judgment entered: July 18, 2025

United States Court of Appeals for the Ninth Circuit

Order denying rehearing

No. 24-292

Order entered: August 27, 2025

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- Holland v. Florida, 560 U.S. 631 (2010)
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- Avagyan v. Holder, 646 F.3d 672 (9th Cir. 2011)
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- *Dent v. Charles Schwab & Co.*, No. 24-1480 (7th Cir. 2024)
- *Gomez v. Global Precision Systems*, 636 F. Supp. 3d 746 (W.D. Tex. 2022)
- *James v. Acre Mortgage & Financial, Inc.*, 306 F. Supp. 3d 791 (D. Md. 2018)

- *Mendoza v. Lehigh Southwest Cement Co.*, No. C 11-00192 LB, 2012 WL 996944 (N.D. Cal. Mar. 23, 2012)

- *Miller v. Sec'y, Fla. Dep't of Corrs.*, No. 3:17-cv-932-BJD-JBT (M.D. Fla. 2021)

Other Federal Courts

- *Starside Security & Investigation, Inc. v. United States* (Fed. Cl. 2025)

- *Lambro v. United States* (Fed. Cl. 2025)

Statutes

- 42 U.S.C. § 2000e-5(f)(1)

Other Authorities

- Fed. R. Civ. P. 6(a)

Citations of Opinions and Orders

Ninth Circuit Memorandum Disposition

Mitchell v. Office Depot, Inc.

No. 24-292, 2025 U.S. App. LEXIS XXXX

(9th Cir. July 18, 2025)

Ninth Circuit Order Denying Rehearing

Mitchell v. Office Depot, Inc.

No. 24-292, 2025 U.S. App. LEXIS XXXX

(9th Cir. Aug. 27, 2025)

District Court Order (Final Findings & Recommendations / 12(b)(6) Dismissal)

Mitchell v. Office Depot, Inc.

No. 3:22-cv-00183-SLG-KFR, 2023 U.S. Dist. LEXIS XXXX

(D. Dec. 19, 2023)

Jurisdiction

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on July 18, 2025. The court denied rehearing on August 27, 2025, which is the final order in the case.

Petitioner filed an application for an extension of time to file this petition on November 8, 2025, which was docketed on November 11, 2025. The application was granted, extending the time to file the petition to January 24, 2026. Under Supreme Court Rule 30.1, because January 24, 2026 falls on a Saturday, the filing deadline extends to Monday, January 26, 2026. This petition is timely under Supreme Court Rules 13.1 and 13.5.

The United States District Court had jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 2000e-5(f)(3) because petitioner's claims arise under Title VII of the Civil Rights Act of 1964.

This Court has jurisdiction under 28 U.S.C. § 1254(1), which authorizes review of judgments of the courts of appeals by writ of certiorari.

Rules 12.5 and 29.4(b)–(c) do not apply in this case.

Statutory Provisions Involved

The following statutory provisions are involved in this case:

42 U.S.C. § 2000e-5(f)(1)

(Title VII's 90-day filing deadline following receipt of the right-to-sue notice.)

42 U.S.C. § 2000e-5(f)(3)

(Jurisdictional provision for Title VII actions.)

28 U.S.C. § 1331

(Federal question jurisdiction.)

28 U.S.C. § 1254(1)

(Supreme Court jurisdiction over judgments of the courts of appeals.)

Introduction

In *Holland* and *Menominee*, this Court held that a litigant seeking equitable tolling must establish two distinct elements: that they pursued their rights with reasonable diligence, and that some extraordinary circumstance, beyond their control, stood in their way and actually caused their late filing. The Court rejected rigid or mechanical rules, emphasizing that equitable tolling is a ‘flexible,’ ‘case-by-case’ determination guided by principles of equity and fairness. The inquiry is severity-focused and individualized, requiring courts to consider the actual impact of the obstacle on the claimant’s ability to comply with the deadline.” Those decisions emphasize that the inquiry is equitable and fact-specific, not governed by rigid impossibility rules or a demand for “maximum feasible” diligence.

This case presents that question in the familiar context of Title VII’s non-jurisdictional ninety-day filing period and COVID-era barriers to access to the courts. Petitioner, a pro se Title VII plaintiff, diligently sought counsel, then researched federal law and prepared their own complaint when those efforts failed, but missed the ninety-day deadline by eight days after a late-arising COVID-19 infection, post-viral fatigue, and a clerk-imposed in-person-only filing requirement combined to derail their last-week filing plans.

The district court nonetheless dismissed the action at the Rule 12(b)(6) stage as untimely and categorically denied equitable tolling, characterizing petitioner’s circumstances as “garden-variety excusable neglect” and relying on cases suggesting that only illness amounting to total incapacity or incompetence can qualify as “extraordinary.” The court treated petitioner’s use of the last week of the ninety-day window as non-diligent as a matter of law and viewed their

ability to keep working and researching during parts of the period as defeating the extraordinary-circumstances prong. The Ninth Circuit affirmed in an unpublished disposition, holding that petitioner failed both Holland/Menominee elements because they had not shown that COVID-19 and post-viral fatigue made it “impossible” to file or rendered them “totally incapable” of managing their affairs, and because their timing reflected “procrastination” and a “garden-variety claim of excusable neglect.”

That reasoning cannot be reconciled with this Court’s articulation of equitable tolling in Holland and Menominee, or with the more faithful applications of that framework in other courts.

By contrast, the decisions below effectively revive an older, stricter regime that this Court’s modern equitable-tolling cases were meant to displace. They collapse “reasonable diligence” into something approaching “maximum feasible diligence,” treat any use of the closing days of a limitations period as suspect per se, and equate serious, documented illness and court-created filing barriers with the “garden-variety” neglect exemplified by simple deadline miscalculations in Menominee and related cases. The result is a deepening split over whether non-jurisdictional civil-rights deadlines are governed by Holland/Menominee’s two-element standard or by a quasi-jurisdictional, impossibility-based gloss that makes tolling virtually unattainable for Title VII plaintiffs who fall ill, encounter clerk-imposed restrictions, or otherwise face real-world obstacles near the deadline.

Statement of the Case

Petitioner brought a Title VII employment-discrimination action against Office Depot, Inc, alleging a pattern of racial discrimination and a hostile work environment over a nine-year period. After receiving a right-to-sue notice from the Equal Employment Opportunity Commission on May 2, 2022, petitioner was required to file their federal complaint within ninety days. See 42 U.S.C. § 2000e-5(f)(1). Applying Federal Rule of Civil Procedure 6(a), the filing deadline fell on August 1, 2022. Petitioner's complaint was received and docketed on August 9, 2022, eight days late as a matter of law (and nine days after the Sunday calendar date the courts below treated as the deadline).

During the ninety-day filing window, petitioner pursued their rights with documented diligence. Between May and mid-July 2022, they contacted multiple law firms and individual attorneys through phone calls and email seeking representation, as reflected in contemporaneous email correspondence. When those efforts were unsuccessful, they pivoted to self-representation, conducting legal research and drafting their own complaint. In mid-July, petitioner became acutely ill and was diagnosed with COVID-19, which developed debilitating symptoms that effectively prevented the petitioner from pursuing the claim.

Contemporaneous text messages with Petitioner's employer reflect that they missed work on July 15 and 16, 2022 due to illness and reported a positive COVID-19 test on July 18, 2022 and remained in quarantine through July 19. That day petitioner informed their employer that they continued to experience a sore throat and cough even as they agreed to return to work the following morning corroborating both the timing and persistence of their symptoms. Upon returning to work petitioner experienced significant post-viral fatigue that impaired their ability

to complete and file the complaint as the deadline approached. Their subsequent exchanges with their supervisor further document that they resumed their regular work schedule despite ongoing post viral fatigue and respiratory issues, demonstrating that they remained symptomatic throughout the final days of the filing period. Their decision to return to work reflected the end of their isolation period and the need to preserve their employment, not any meaningful recovery. The messages with their supervisor further confirm that they returned while still symptomatic, not because their COVID-19 illness or resulting post viral fatigue had resolved.

Despite these limitations, petitioner prepared a checklist of required documents on July 22, substantially completed their complaint by July 24, and, operating under the mistaken impression that the deadline fell on August 2, drafted a motion for an extension on that date. They finalized the complaint and mailed it on August 5; it was received and filed by the district court on August 9, 2022. Throughout the 90 day period petitioner repeatedly contacted the clerk's office for general guidance and was informed towards the end of the filing period that new civil actions had to be initiated in person at the courthouse, and they were not advised of any electronic or mail-filing alternative, compounding the practical effect of their illness and recovery in the final days before the deadline.

Petitioner acknowledges that, when they initially calculated the ninety-day period, they mistakenly concluded that the deadline fell on August 2 rather than August 1, 2022. The actual deadline became known to petitioner only when the court specified the number of days by which the filing was late. By late July, however, their COVID-19 contraction, post-viral fatigue, and the clerk-imposed requirement that new civil actions be filed in person at the courthouse had already impeded their ability to reach the courthouse and file in a timely manner. Even had they calculated the deadline correctly, these combined obstacles would still have delayed their filing.

In the final days, they ultimately mailed the completed complaint on August 5 as the final opportunity to place the matter before the court, despite having been told that new actions could not be initiated by mail, further underscoring their efforts to pursue their rights within the constraints imposed by their illness and the clerk's procedures

The United States District Court granted Office Depot's Rule 12(b)(6) motion and dismissed the action as untimely, holding that petitioner was not entitled to equitable tolling. The court characterized their circumstances as a "garden-variety" claim of excusable neglect rather than "extraordinary circumstances" warranting tolling, emphasizing that they had "ample time" before and after their illness to file and that their decision to wait until the last week of the ninety days reflected non-diligence. Relying on cases describing tolling for illness as appropriate only where a condition renders a litigant totally incapacitated or incompetent, the court reasoned that petitioner's documented ability to continue working and conducting legal research during the relevant period necessarily defeated their claim to extraordinary circumstances. That approach effectively collapsed Holland's "reasonable diligence" standard into something like "maximum feasible diligence" and treated the extraordinary-circumstances prong as demanding near-total incapacity rather than an external obstacle that "stood in [their] way and prevented timely filing."

On appeal, the Ninth Circuit affirmed in an unpublished memorandum disposition. It accepted that petitioner drafted their own complaint when they were unable to obtain legal representation, contracted COVID-19, suffered post-viral fatigue, and was advised of the clerk's in person only filing procedures, but held that these circumstances did not satisfy either element of the equitable-tolling test. The panel concluded that petitioner had not exercised sufficient diligence, stressing the time available before and after their illness, and that the "extraordinary circumstances" prong required a level of severity beyond what the petitioner alleged. In doing so,

the court focused on the abstract length of the ninety-day period rather than the clustering of petitioner's illness and the clerk-imposed in-person filing requirement in the final days of that period, and it invoked an "impossible to file" / "totally incapable" gloss that this Court has treated as inconsistent with Holland's and Menominee's two-element, causation-based standard.

Petitioner now seeks this Court's review. The petitioner contends that the lower courts misapplied the equitable-tolling framework articulated in Holland and Menominee by effectively reviving a rule that requires total incapacity, treating use of the final week of a non-jurisdictional limitations period as per se non-diligent, and failing to conduct the individualized, severity-focused inquiry those decisions and their non-habeas progeny require. The Third Circuit in *D.J.S.-W. v. United States*, (3d Cir. 2020), confirms that Holland's two-element test governs non-habeas federal limitations and that diligence and extraordinary circumstances are distinct prongs, both of which must be satisfied but neither of which collapses into an impossibility standard; with the diligence element covering affairs within the litigant's control and the extraordinary-circumstances element limited to causes of delay that are "both extraordinary and beyond [the litigant's] control." 962 F.3d at 754–56. The District of Maryland in *James v. Acre Mortgage & Financial, Inc.*, (D. Md. 2018), likewise applies Menominee's test outside habeas, emphasizing that the diligence required is "reasonable diligence," not "maximum feasible diligence," and that equitable tolling is appropriate where obstacles beyond the litigant's control render filing or discovering critical information realistically unavailable despite such diligence—quoting Menominee's formulation in a RESPA setting. The Court of Federal Claims has followed the same approach in contexts ranging from FLSA collective-action requirements to procurement deadlines, treating equitable tolling as available for non-jurisdictional deadlines and asking, in a claimant-specific way, whether diligent pursuit was thwarted by circumstances "both

extraordinary and beyond [the litigant's] control.” (See *Starside Security & Investigation, Inc. v. United States* (Fed. Cl. 2025)). Petitioner’s contemporaneous emails, file timestamps and draft motions, corroborate their continuous, good-faith efforts during the filing period and the substantial impact of their late-arising COVID-19 infection, post-viral fatigue, and clerk-created filing barriers on their ability to file within ninety days under the Holland/Menominee standard as properly applied in these decisions.

This petition asks the Court to resolve that conflict and to confirm that equitable tolling of Title VII’s filing deadline is governed by the same “reasonable diligence” and “extraordinary circumstance” standard that Holland and Menominee articulate for other non-jurisdictional limitations periods, rather than by a stricter rule that demands near-impossibility, total incapacity, or the rarest imaginable obstacles before tolling is even considered.

Reasons for Granting The Writ

This case squarely presents a recurring and important question about the boundaries between “reasonable diligence” not “maximum feasible diligence”, as well as, “garden-variety excusable neglect” and the “extraordinary circumstances” that can justify equitable tolling under this Court’s decisions in Holland and Menominee. Invoking *Irwin v. Department of Veterans Affairs*, 498 U.S. 89 (1990), the Ninth Circuit affirmed dismissal of petitioner’s pro se Title VII action as untimely on the ground that, although the ninety-day filing period is subject to equitable tolling, their documented COVID-19 infection, resulting impairment and an in person filing requirement, together amounted only to “a garden variety claim of excusable neglect” to which tolling “does

not apply.” In doing so, the court recited *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005), for the two-prong standard, but effectively adopted the rigid “very high threshold” implementation reflected in decisions like *Coleman v. Allison* 2015, C.D. Cal., 223 F. Supp. 3d 1035 and *Bunney v. Mitchell* 2001, 9th Cir., 241 F.3d 1151, which describe equitable tolling under AEDPA as a ‘very high’ and ‘sparing’ remedy, and, in practice approach a demand that an external obstacle make filing effectively impossible and treat any lapse in using available calendar days as dispositive of extraordinary circumstances.

That approach conflicts with decisions such as *Menominee*, which insist that courts separately analyze diligence and whether an external obstacle actually “stood in the [litigant’s] way to prevent timely filing,” and reject conflating a litigant’s miscalculation with the absence of an extraordinary, external barrier.

In the wake of the COVID-19 pandemic, lower courts are increasingly confronted with serious but time-bounded illnesses and pandemic-related disruptions in applying filing deadlines. This case is an ideal vehicle for clarifying whether such events can ever qualify as “extraordinary circumstances” for reasonably diligent litigants under *Holland* and *Menominee*, or whether, as the Ninth Circuit held here, they must always be treated as ordinary, *Irwin*-type “excusable neglect” whenever there was theoretical time to file before and after the illness.

I. The decision below exacerbates a deep conflict in how lower courts apply *Holland* and *Menominee* to non-jurisdictional civil-rights deadlines and creates serious intra-circuit tension within the Ninth Circuit

Although this Court has not formally held that *Holland* necessarily governs outside habeas (see *United States v. Kwai Fun Wong*, 575 U.S. 402, 420 n.5 (2015)), its equitable-tolling decisions

remain binding on lower courts, which typically treat the Supreme Court's equitable-tolling guidance as controlling across federal statutes and routinely apply *Holland* in non-habeas settings, including Title VII. In that doctrinal space, the courts of appeals and federal trial courts have moved in opposite directions.

Lower courts are now sharply divided on how *Holland v. Florida* and *Menominee Indian Tribe of Wisconsin v. United States* apply to non-jurisdictional civil-rights deadlines such as Title VII's ninety-day filing period. This Court has made clear that equitable tolling turns on two distinct elements: (1) reasonable diligence, and (2) an extraordinary circumstance, beyond the litigant's control, that stood in the way and prevented timely filing. Although the lower courts now uniformly recite the same two-element equitable-tolling test in practice their applications have diverged significantly.

Numerous courts have implemented the Supreme Court's instructions faithfully and applied *Holland* and *Menominee*'s two-element, plaintiff-specific framework across a wide range of non-habeas contexts-adhering to *Holland*'s individualized, causation-based inquiry and recognize that equitable tolling does not require literal impossibility or total incapacity.

Consistent with *Holland*, these courts require only "reasonable diligence, not maximum feasible diligence," *Holland*, 560 U.S. at 653, explaining that diligence does not demand an overzealous or exhaustive pursuit of every conceivable avenue of relief. Rather, it requires the level of effort a reasonable person would be expected to exert under [their] particular circumstances. See *Kwai Fun Wong v. Beebe*, 732 F.3d 1030, 1052 (9th Cir. 2013) (en banc) (quoting *Doe v. Busby*, 661 F.3d 1001, 1015 (9th Cir. 2011)).

Courts applying this framework likewise follow *Menominee*'s instruction that extraordinary circumstances are those "both extraordinary and beyond [the litigant's] control." *Menominee*, 577 U.S. at 257. Courts of appeals have emphasized that this inquiry is plaintiff-specific and severity-focused: the question is whether the circumstance functioned as a serious obstacle to timely filing for that particular litigant, not how unusual the circumstance may be in the abstract. The Second and Third Circuits have articulated this principle most clearly, explaining that the proper inquiry "is not how unusual the circumstance alleged to warrant tolling is ... but rather how severe an obstacle it is for the litigant endeavoring to comply with the limitations period." See *Pabon v. Superintendent*, 654 F.3d 385, 400 (3d Cir. 2011); *Dillon v. Conway*, 642 F.3d 358 (2d Cir. 2011).

In sharp contrast, other courts have adopted a markedly stricter approach that departs from *Holland*'s case-specific inquiry and, in practice, imposes categorical or impossibility-based requirements which transforms *Holland* and *Menominee* into an almost insurmountable barrier, insisting that tolling is available only in "extraordinary and carefully circumscribed" or "rare and exceptional" instances, and then denying relief whenever any plaintiff-side judgment, timing choice, or miscalculation played a role in the delay—even where the record shows serious obstacles and good-faith efforts. These courts treat equitable tolling as an extraordinary remedy available only in the rarest circumstances and routinely deny relief where the plaintiff exercised reasonable diligence but faced substantial, real-world barriers to timely filing.

Several decisions effectively require a showing of literal impossibility, total incapacity, or complete externality—standards that *Holland* rejected as "too rigid"—and treat pro se confusion, agency misinformation, illness, logistical barriers, and even attorney error as categorically insufficient as a matter of law. Under this line of authority, equitable tolling is functionally

unavailable in most civil-rights cases, producing outcomes that cannot be reconciled with Holland's individualized, causation-focused framework or Menominee's instruction that the inquiry turns on whether the circumstance actually prevented timely filing for the particular litigant.

A. Courts Applying Holland and Menominee's Causation-Based Standard

A growing number of courts in non-habeas, often civil-rights-type settings treat equitable tolling as Holland and Menominee describe it: a two-element test requiring (1) reasonable diligence and (2) an extraordinary circumstance, beyond the litigant's control, that actually prevented timely filing. These courts conduct a claimant-specific, causation-focused inquiry, not a categorical fault analysis.

This Court's decision in *United States v. Kwai Fun Wong*, 575 U.S. 402 (2015), confirms that non-jurisdictional federal time limits retain an equitable "safety valve" where a litigant diligently pursues their rights but an extraordinary circumstance prevents timely filing. *Id.* at 407–12.

The Third Circuit's decision in *D.J.S.-W. v. United States*, 962 F.3d 745 (3d Cir. 2020), is exemplary. Addressing the FTCA's presentment deadline, the court held that its standard is "the same test that the Supreme Court uses" in habeas, applied Holland's two-element test verbatim, and adopted Menominee's clarification that diligence and extraordinary circumstances are distinct elements. *Id.* at 750–51. It reaffirmed that extraordinary circumstances exist where delay is attributable to conditions "both extraordinary and beyond [the litigant's] control," without imposing an impossibility or maximum-feasible-diligence gloss.

In *Granger v. Aaron's, Inc.*, 636 F.3d 708 (5th Cir. 2011), the court evaluated diligence and extraordinary circumstances separately using the same two-element framework later articulated in *Holland* for a title vii plaintiff, recognizing that employer misdirection and OFCCP lack of notification constituted external obstacles that prevented timely filing. In *Lugo-Resendez v. Lynch*, 831 F.3d 337 (5th Cir. 2016), the court held that the 90-day deadline for motions to reopen immigration removal proceedings is subject to *Holland's* standard and emphasized that the agency must meaningfully consider whether a later change in law prevented timely filing.

The Ninth Circuit likewise applies *Holland* outside habeas. In *Johnson v. Lucent Technologies Inc.*, 653 F.3d 1000 (9th Cir. 2011), the court addressed timeliness of a discrimination charge and expressly imported the habeas-developed *Bills v. Clark* standard into the employment setting, holding that mental incompetence may toll deadlines where the plaintiff shows an extraordinary circumstance beyond his control and diligence "to the extent he could understand." *Id.* at 1009–10, thus applying *Holland's* two-prong structure outside habeas. In *Avagyan v. Holder*, 646 F.3d 672, 679–80 (9th Cir. 2011), the court rejected any requirement of total incapacity and held tolling appropriate due to the fact deficient immigration "consultants" and lack of access to files actually prevented timely filing despite sustained efforts.

The Fourth Circuit's decision in *Battle v. Ledford*, 912 F.3d 708 (4th Cir. 2019), likewise applied *Holland* and *Menominee* to evaluate a civil rights case involving a PLRA that legally barred the plaintiff from filing suit until he completed mandatory grievance procedures, the court held that where federal law makes suit unavailable, the limitations period must be tolled for that period.

In *Clark v. Hanley*, No. 22-302, 2023 WL 8850230, at *3–4 (2d Cir. Dec. 20, 2023), the Second Circuit treated equitable tolling as an individualized, fact-intensive inquiry, recognizing that

sworn allegations of serious health-related barriers warrant evidentiary development rather than categorical rejection. *Dillon v. Conway*, 642 F.3d 358, 362 (2d Cir. 2011), applied *Holland* flexibly, granting tolling even where counsel's error was a simple one-day miscalculation, underscoring that "garden-variety" negligence is not an absolute bar when causation and diligence are satisfied.

The Federal Circuit in *Sneed v. Shinseki*, 737 F.3d 719 (Fed. Cir. 2013), applied *Holland* and *Menominee* to the Veterans Court appeal deadline, stressing that the two components are elements, not merely factors, and "Remarkably, that [the] "egregious misconduct" standard is the same one recognized by the Supreme Court in *Holland* and adopted by the majority here" effectively using language essentially identical to *Holland's* standard.

In *Mendoza v. Lehigh Southwest Cement Co.*, No. C 11-00192 LB, 2012 WL 996944 (N.D. Cal. Mar. 23, 2012), the court rejected the contention that *Holland* is confined to habeas and recognized that the Ninth Circuit has imported habeas equitable-tolling standards into Title VII cases.

James v. Acre Mortgage & Financial, Inc., 306 F. Supp. 3d 791 (D. Md. 2018), an RESPA class action case, expressly adopts *Menominee's* *Holland* test outside habeas holding that *Menominee* "admits of no exceptions" to the two-element test and reiterated that diligence means reasonable diligence, not "maximum feasible" diligence and treats fraudulent concealment and other external barriers that render critical information undiscoverable despite such diligence as the paradigmatic "extraordinary circumstance." In *Bezek v. First Mariner Bank*, 293 F. Supp. 3d 528, 533-35 (D. Md. 2018), the court applied *Menominee's* two-element framework and treated attorney misconduct and procedural confusion as extraordinary circumstances.

Gomez v. Global Precision Systems, 636 F. Supp. 3d 746, 753–55 (W.D. Tex. 2022), holds that FLSA limitations are subject to equitable tolling under *Holland/Menominee*, finds reasonable diligence where already-identified opt-in plaintiffs actively sought to join and court-caused delay, misleading employer communications, and procedural confusion may constitute extraordinary circumstances. The Court of Federal Claims has applied the same framework to FLSA collective actions and procurement rules, asking whether the plaintiff pursued their rights with reasonable diligence and whether some circumstance “both extraordinary and beyond [their] control” actually prevented timely filing. (See *Lambro v. United States* (Fed. Cl. 2025); *Starside Security & Investigation, Inc. v. United States* (Fed. Cl. 2025).)

In *Miller v. Sec’y, Fla. Dep’t of Corrs.*, No. 3:17-cv-932-BJD-JBT (M.D. Fla. 2021), the court recognized that both serious mental-health impairments and COVID-19 lockdown restrictions may constitute extraordinary circumstances where they are beyond the litigant’s control and actually impede timely filing.

B. Courts Applying a Rigid, Fault-Based Standard That Effectively Constrict Equitable Tolling To A Near-Impossibility Standard

Other courts recite the same two-element formula but apply it in a way that collapses equitable tolling into a near-impossibility standard, treating any plaintiff-side mistake, confusion, or delay as dispositive against tolling.

The D.C. Circuit’s approach in *Menominee Indian Tribe of Wisconsin v. United States*, 614 F.3d 519 (D.C. Cir. 2010), is the leading example. The court treated the Tribe’s delay as “reasonable

inaction” and “garden-variety neglect,” an approach this Court on remand held was “too rigid” and inconsistent with Holland’s case-specific inquiry. Menominee illustrates how lower courts, while invoking Holland and Irwin, can drift into rigid, fault-based formulations: treating any plaintiff-side ‘mistake’ or ‘reasonable inaction’ as dispositive against tolling and effectively approaching an impossibility or total-faultlessness standard.

In *Dyson v. District of Columbia*, 710 F.3d 415 (D.C. Cir. 2013), the court rejected confusion about EEOC procedures and reliance on the agency’s timeline as extraordinary circumstances, treating the filing deadline as nearly absolute.

In *Brookens v. Acosta*, 297 F. Supp. 3d 40 (D.D.C. 2018), the court held that confusion over the MSPB/Federal Circuit/district-court review scheme was not extraordinary but ordinary fault. Consistent with the D.C. Circuit’s instruction that equitable tolling is available only in “extraordinary and carefully circumscribed instances.”

In *Robinson v. DHS Office of Inspector General*, 76 F.4th 1, 14 (D.C. Cir. 2023), the court denied tolling to a pro se litigant who mailed his complaint four days before the deadline during the COVID-19 emergency, labeling the one-day delay “garden-variety neglect.”

In *Dent v. Charles Schwab & Co.*, No. 24-1480 (7th Cir. 2024), the court held that a minor ECF filing error—despite timely payment of the filing fee—was “garden-variety neglect” and not an extraordinary circumstance.

In *Lee v. Cook County*, 635 F.3d 969 (7th Cir. 2011), the court considered equitable tolling of Title VII’s 90-day right-to-sue period, quoted Holland and Pace but refused tolling even where

plaintiff's relied on a district court's refiling instructions, holding that counsel's failure to refile within the court-ordered period was mere negligence.

In *Cadet v. Florida Department of Corrections*, 853 F.3d 1216 (11th Cir. 2017), the court held that attorney negligence—even gross negligence—can never qualify as an extraordinary circumstance, limiting tolling to true abandonment and requiring continuous, exacting diligence which, is in contrast to *Holland*.

In *Belagio Fine Jewelry, Inc. v. Commissioner*, T.C. Memo. 2025, the Tax Court denied tolling where counsel's staff used the wrong FedEx service, treating the mailing error as classic “garden-variety” negligence imputable to the client.

C. Intra-Circuit Conflict

The Ninth Circuit's own decisions have occupied the more flexible side of this divide. In cases such as *Doe v. Busby*, 661 F.3d 1001 (9th Cir. 2011) and *Bills v. Clark*, 628 F.3d 1092 (9th Cir. 2010), the court has emphasized that the standard is “reasonable diligence, not maximum feasible diligence,” refused to penalize petitioners for relying on counsel, and asked whether circumstances “made it sufficiently difficult” to file, not whether timely filing was literally impossible. In *Grant v. Swarthout*, No. 22-55291 (9th Cir. Sept. 23, 2025), the court explained that equitable tolling can be appropriate even when timely filing was “technically” possible if, under the external constraints, the petitioner “would have likely been unable” to do so. And in *Brown v. Davis*, 482 F. Supp. 3d 1049 (E.D. Cal. 2020), the district court-applying *Holland* and Ninth Circuit precedent—expressly rejected any requirement of literal impossibility and granted

tolling where COVID-era constraints made timely filing realistically unattainable despite diligence. Those decisions, taken together, recognize equitable tolling as a genuine safety valve keyed to reasonable diligence and real-world obstacles, not a rigid incapacity-only doctrine.

In contrast, The Ninth Circuit's own en banc decision in *Smith v. Davis*, 953 F.3d 582, 599–600 (9th Cir. 2020), underscores the doctrinal tension now at work in the circuit. *Smith* expressly reaffirmed that equitable tolling 'aligns with the flexible and fact-specific nature of equity' and 'does not impose a rigid impossibility standard,' adopting the same causation-focused framework this Court articulated in *Holland and Menominee*. Yet in application, *Smith* denied tolling in substantial part because the petitioner had unused calendar days earlier in the limitations period, treating long stretches of unobstructed time as powerful evidence against both diligence and causation. The decision below pushes that calendar-days-focused approach still further, effectively treating petitioner's use of the final week of the filing period as non-diligent and requiring a showing approaching total incapacity before an illness or clerk-imposed barrier can qualify as 'extraordinary.' The result is an internal inconsistency: the Ninth Circuit recites *Smith*'s flexible standard while, in practice, applying an increasingly rigid, near-judicial rule that sits uneasily with both *Smith*'s doctrinal statements and this Court's equitable-tolling precedents.

The unpublished disposition here further aligns the Ninth Circuit with the strict, impossibility-based approach and deepens both the national split and an intra-circuit conflict. By demanding that petitioner show illness "so severe" as to render them totally incapable of managing their affairs, faulting them for planning to file in the final week of the ninety days, and dismissing sworn allegations of COVID-related impairment and clerk-created barriers as "garden-variety excusable neglect," the decision below departs from *Doe*, *Bills*, *Grant*, and *Brown* and instead

mirrors the D.C. district court's Menominee decision and related cases that equate any delay involving litigant judgment or timing with disqualifying "fault." The decision below illustrates just how far the lower courts have drifted toward an impossibility-or-total-incapacity gloss that key Ninth Circuit habeas precedents themselves caution against.

D. The Resulting Split

The consequence is that civil-rights litigants face dramatically different standards depending on geography: in some circuits, equitable tolling of non-jurisdictional employment-discrimination deadlines is functionally unavailable; in others, it remains a meaningful safeguard against gross injustice. The flexible circuits preserve Holland and Menominee's two-element structure and conduct a genuine, claimant-specific inquiry. The restrictive circuits collapse the extraordinary-circumstances prong into a generalized fault test and demand near-perfect diligence. The result is a deep, outcome-determinative split over whether equitable tolling remains a meaningful safety valve for non-jurisdictional civil-rights deadlines or is effectively unavailable whenever a plaintiff could have done anything differently in hindsight

Although these decisions arise under different federal statutes, they all apply this Court's equitable tolling framework and thus illustrate the divide between courts that treat the Holland / Menominee standard as a flexible, fact-specific inquiry and those that effectively require impossibility or total incapacity.

That is the classic kind of square conflict this Court grants certiorari to resolve and, here, to clarify that equitable tolling in civil-rights cases requires reasonable diligence and recognition of genuine external barriers, not proof of literal impossibility or total incapacity.

II. The decision below conflicts with *Holland*, *Menominee* and with the plaintiff-specific application of their framework in other courts

Equitable tolling is a judicially created doctrine that permits courts to extend statutory deadlines in extraordinary circumstances, ensuring that litigants are not unfairly barred from pursuing their claims due to events beyond their control. The Supreme Court has repeatedly emphasized that equitable tolling is rooted in principles of equity and must be applied flexibly, with careful attention to the specific facts of each case.

Building on that foundation, *Holland* reaffirmed that this Court “previously made clear that courts of equity can and do draw upon decisions made in other similar cases for guidance. But the exercise of a court’s equity powers... must be made on a case-by-case basis, rather than through the application of mechanical rules... “In our view, this standard is too rigid (*Holland* 560 U.S. 631 (2010)... In applying equitable tolling, these courts “follow[] a tradition in which courts of equity have sought to relieve hardships which, from time to time, arise from a hard and fast adherence” to rigid time limits that, if strictly applied, risk “the evils of archaic rigidity.” *Holland*, 560 U.S. at 650–51 (quoting *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 248 (1944)). That tradition empowers courts to “meet new situations [that] demand equitable intervention” and to provide the relief necessary to correct particular injustices.

Consistent with that mandate, multiple courts have declined to limit equitable tolling under Title VII to a fixed, exhaustive list of circumstances and instead conduct a flexible, case-specific inquiry keyed to diligence and the actual obstacles faced. See *Brown v. Parkchester S. Condos.*, 287 F.3d 58, 60–61 (2d Cir. 2002); *Granger v. Aaron’s, Inc.*, 636 F.3d 708, 712 (5th Cir. 2011); *Seitzinger v. Reading Hosp.*, 165 F.3d 236, 240 (3d Cir. 1999). These decisions reflect the same equitable tradition Holland describes: one that rejects categorical limitations and demands attention to the real-world obstacles that impede timely filing.

As demonstrated in the preceding analysis, this Court has articulated that equitable tolling turns on two distinct elements: reasonable diligence over matters within the litigant’s control, and an extraordinary circumstance beyond their control that stood in their way and prevented timely filing. Diligence means ‘reasonable,’ not ‘maximum feasible,’ and the extraordinary-circumstances element is satisfied when the delay is attributable to circumstances ‘both extraordinary and beyond [the litigant’s] control.’ Courts applying that standard treat the two elements as conceptually distinct, insist on an individualized, severity-focused inquiry into obstacles such as illness or government-created barriers, and reject any requirement of literal impossibility or total incapacity.

The judgment below recited *Pace* for the two-prong formula, which the Ninth Circuit has frequently interpreted as requiring a showing of literal impossibility, even though this Court in *Holland* rejected that formulation (See, e.g., *Roberts v. Marshall*, 627 F.3d 768, 772 (9th Cir. 2010) (requiring the petitioner to show that mental impairment made timely filing ‘impossible’) and additionally layered on four doctrinal errors: it generalized away petitioner’s specific obstacles as “ordinary” because other pro se litigants face similar burdens, replaced the “stood in [their] way and prevented timely filing” test with an effective “unable to manage [their] affairs”

or total-incapacity requirement, treated use of the final days of the limitations period as per se evidence of non-diligence, and collapsed the diligence and extraordinary-circumstances elements into a backward-looking inquiry whether petitioner “could have” filed earlier. Each step conflicts with Holland, Pace, and Menominee, as well as with the more flexible, plaintiff-specific approach taken by other courts.

Petitioner’s allegations, if credited, easily fit within Holland and Menominee’s framework as those courts and others have applied it. During the bulk of the ninety-day window they sought counsel, researched their claims and drafted their complaint pro se; when they contracted COVID-19 near the end of that period, they complied with quarantine, attempted to resume work, and mailed their complaint within days of when they were physically able, due to a clerk-imposed in-person filing requirement they could not comply with given the functional limitations imposed by their illness. Those are precisely the kinds of real-world efforts courts have recognized as “reasonable diligence,” and the combination of acute illness, lingering fatigue at the deadline, and court-created procedural obstacles is well within what courts have recognized as an “extraordinary circumstance” beyond a litigant’s control, one that “stood in their way” and contributed causally to an eight-day delay. By holding as a matter of law, at the Rule 12(b)(6) stage, that no amendment could render the Petitioner’s efforts reasonable or their circumstances “extraordinary,” the courts below effectively recast Holland and Menominee into a narrow incapacity-only doctrine akin to Irwin’s “garden-variety excusable neglect” baseline—precisely the constriction Menominee warns against when distinguishing self-inflicted miscalculations from bona fide external obstacles. The Second Circuit has held that equitable-tolling determinations are ‘highly case-specific’ and cannot ordinarily be resolved without factual development where a plaintiff alleges medical or mental impairments that could

have prevented timely filing (See *Brown v. Parkchester South Condominiums*, 287 F.3d 58 (2d Cir. 2002) (citing *Boos and Canales*); *Clark v. Hanley*, No. 22-302, 2023 WL 8850230, at *3–4 (2d Cir. Dec. 20, 2023)).

A. The lower courts relied on categorical generalizations, not petitioner-specific severity.

The magistrate judge concluded that petitioner’s circumstances “can hardly be considered ‘extraordinary’ because most non-lawyers who file suit must balance litigation with full-time work and efforts to obtain counsel, and because COVID-19 infections and clerk-imposed procedures were common during the relevant period. That mode of analysis conflicts with *Holland’s* and *Menominee’s* instruction that the extraordinary-circumstances inquiry asks whether the circumstances that caused the delay were both extraordinary and beyond the litigant’s control in their case, not whether similar problems are widespread in some abstract class of pro se plaintiffs.

Decisions faithful to *Holland* focus on how the alleged obstacle operated for the particular claimant—asking whether it in fact prevented timely filing despite reasonable diligence, even when the type of obstacle (such as administrative confusion or misleading government communications) is not statistically rare.

By dismissing petitioner’s combination of serious illness, clerk-mandated in-person filing, and pandemic-era constraints as non-extraordinary simply because other litigants also faced demanding circumstances, the decision below effectively converted the

extraordinary-circumstances element into a categorical bar on tolling for “routine” life burdens and pro se status, contrary to Holland’s individualized, severity-focused approach.

B. The district court imposed an “unable to manage their affairs” and near-impossibility standard that Holland and Menominee do not require.

The district court reformulated the extraordinary-circumstances prong for illness-based tolling as requiring proof that the plaintiff’s condition was “so severe that it rendered[them] unable to manage[their] affairs” and “made it impossible” to file within the ninety days, reasoning that petitioner’s return to full-time work defeated any claim of tolling. That standard is materially stricter than the governing Supreme Court framework. Holland and Menominee ask whether some circumstance beyond the litigant’s control “stood in [their] way and prevented timely filing” in a real-world sense; they do not demand that the plaintiff show they were incapable of managing any aspect of life for the entire limitations period. Courts applying Holland/Menominee outside habeas have likewise rejected any requirement of total incapacity, instead asking whether the obstacles at issue were both extraordinary and outside the litigant’s control, and whether they causally contributed to the delay despite reasonable diligence (See *Johnson v. Lucent Techs. Inc.*, 653 F.3d 1000, 1009–10 (9th Cir. 2011) (rejecting any requirement of total incapacity and asking whether mental impairment was an extraordinary circumstance beyond the litigant’s control that actually prevented timely filing despite reasonable diligence). The incapacity-only test adopted here cannot be reconciled with that understanding.

C. The lower courts treated use of the final week of the filing period as per se non-diligent, contrary to Holland and to other circuits' articulation of "reasonable diligence."

Both the magistrate and district court, joined by the Ninth Circuit panel, characterized petitioner's plan to file in the final week of the ninety-day period as "evidence of procrastination." They reduced the diligence inquiry to a categorical assessment of how many days remained before and after the illness, effectively requiring litigants to file early in anticipation of unforeseen events. That approach cannot be squared with Holland's insistence that the standard is "reasonable diligence, not maximum feasible diligence," nor with Menominee's explanation that the diligence prong "covers those affairs within the litigant's control," while the extraordinary-circumstances prong is meant to capture matters outside their control. Other courts applying Holland/Menominee have expressly rejected any requirement that litigants file "at the earliest possible moment" or exercise "superhuman vigilance," holding instead that diligence depends on what a reasonable person would do under their actual circumstances (see *Socha v. Boughton*, 763 F.3d 674, 686 (7th Cir. 2014); see *Kwai Fun Wong v. Beebe*, 732 F.3d 1030 (9th Cir. 2013) holding "diligence does not demand an "overzealous or extreme pursuit of any and every avenue of relief," but instead requires only the level of effort a reasonable person would exert under [their] particular circumstances. *Id.* at 1052.").

D. The decision below collapsed the two elements into a no-fault, impossibility-based rule.

Finally, the courts below conflated diligence and extraordinary circumstances by using petitioner's alleged "procrastination" both to negate diligence and to erase any external obstacle.

the Petitioner was
Rather than asking, as Menominee requires, whether \wedge reasonably diligent “under [their] particular circumstances” and whether an extraordinary circumstance beyond their control “stood in [their] way and prevented [them] from” filing on time, \wedge ^{the lower courts} demanded a showing that it was “virtually impossible” to file at any point during the ninety days and treated any use of the last week of the period as presumptively non-diligent. That impossibility-inflected, “without any fault” gloss tracks the D.C. district court’s reasoning in Menominee on remand, which rejected tolling where the plaintiff showed only “reasonable inaction” in the face of costs and uncertainty, and it mirrors the Brookens-line view that equitable tolling is available only in “extraordinary and carefully circumscribed instances” where the delay is entirely blameless.

By importing that rigid framework into Title VII’s non-jurisdictional ninety-day filing period, the Ninth Circuit’s unpublished disposition departed from Holland’s and Irwin’s understanding of equitable tolling as a flexible doctrine keyed to reasonable diligence and actual causation, and brought its practice in line with the strictest circuits rather than with its own Holland-faithful precedents (see *Doe v. Busby*, 661 F.3d 1001 (9th Cir. 2011); *Bills v. Clark*, 628 F.3d 1092, 1099-1110 (9th Cir. 2010); *Grant v. Swarthout*, 862 F.3d 914 (9th Cir. 2017)).

The lower courts’ treatment of this case illustrates the problem. They characterized petitioner’s circumstances as a “simple miscalculation” of the deadline—the very type of “garden-variety excusable neglect” that Menominee and similar decisions hold cannot, standing alone, justify tolling. But the record shows that petitioner did not learn the actual deadline until the court later identified it—incorrectly by one day—however, the date error played no role in their late filing. By the end of July, their COVID-19 infection, post-viral fatigue, and the clerk’s insistence on in-person initiation of new civil actions had already prevented them from filing on time; those circumstances, which were “both extraordinary and beyond [their] control,” are what “stood in

[their] way and prevented timely filing,” not any misunderstanding of the deadline. Their decision, despite illness and contrary clerk advice, to mail the completed complaint on August 5, 2022 as a last-ditch effort to reach the court underscores that they exercised reasonable diligence under Holland rather than engaging in procrastination or neglect.

The decision below is precisely the kind of doctrinal divergence Menominee identified when it noted that the Court has “never held” Holland’s test necessarily governs outside habeas and left open whether a stricter or more generous standard should apply in non-habeas settings. Circuit and district courts applying Menominee in non-habeas contexts have treated its two-element framework as controlling and have analyzed diligence and extraordinary circumstances separately. The Ninth Circuit’s affirmance here, by contrast, entrenches a materially stricter, incapacity-based standard in a context—Title VII’s ninety-day deadline—that this Court and others have long understood to be non-jurisdictional and subject to equitable tolling on ordinary terms. That conflict, coupled with the court’s misapplication of Rule 6(a) in measuring the degree of lateness, underscores the need for this Court’s intervention.

E. Application to this case

As stated above, under Holland and Menominee, equitable tolling is available where a litigant has pursued their rights with reasonable diligence and where circumstances both extraordinary and beyond their control stood in their way and prevented timely filing.

Using that plaintiff-specific, severity-focused approach here, the question is not whether COVID-19, post-viral fatigue, and a clerk-imposed in-person-only filing requirement are unprecedented in the abstract and made filing impossible, but whether, in combination, they

functioned as a serious obstacle that stood in petitioner's way and prevented timely filing in the final days of their ninety-day period despite reasonable diligence.

Applied to the facts here, both elements are satisfied.

First, the record reflects continuous, good-faith efforts throughout the ninety-day window. From May through mid-July 2022, petitioner actively sought legal counsel, as shown by contemporaneous communications with multiple law firms and attorneys. When those efforts failed, they promptly pivoted to self-representation, conducting independent legal research and drafting their complaint pro se, as corroborated by file-creation and modification timestamps. They compiled a list of necessary documents on July 22, 2022, substantially completed the complaint by July 24, 2022, and drafted a motion for an extension on August 2, 2022—reflecting awareness of the deadline they thought was correct and a proactive attempt to preserve their rights.

Second, the circumstances that caused the delay were both extraordinary and beyond petitioner's control, and they struck at the most critical juncture. In mid-July 2022, they contracted COVID-19 and were required to quarantine from July 15 to July 19, 2022, during the closing days of the filing period when they were finalizing the complaint and preparing to file. Contemporaneous medical records reflect fever, systemic weakness, shortness of breath with minimal activity, nausea and vomiting, headache, severe loss of appetite, musculoskeletal pain, and throat inflammation that made speaking difficult—symptoms that together left the Petitioner struggling with basic daily tasks, let alone drafting, finalizing, and physically filing a federal complaint.

The effects of the illness did not end with quarantine; on returning to work the Petitioner experienced post-viral fatigue that further impaired their ability to complete and submit the filing on time. Contemporaneous text messages with petitioner's supervisor confirm that they reported on July 19, 2022, that they still had a sore throat and cough but agreed to return the next day because technically the quarantine period had expired and they needed to protect their income and job, not because they had recovered. They resumed their regular work schedule while still experiencing fatigue and respiratory symptoms. Their ability to force themselves to maintain that schedule in this condition did not negate the post-viral fatigue and cognitive limitations that impeded them from completing and filing a pro se federal complaint.

Compounding these health-related obstacles was a court-imposed filing procedure: petitioner was informed that new civil actions could only be filed in person, not online or by email, a significant barrier for someone recovering from illness and experiencing ongoing fatigue. They finalized and mailed their complaint on August 5, 2022, and it was received by the court on August 9, 2022, as confirmed by lower court records.

Petitioner's delay was the direct result of a documented period of acute COVID-19 illness that substantially impaired their ability to finalize or submit the complaint during the final days of the ninety-day filing window. Once their condition improved, they acted promptly, filing within days, underscoring that it was the extraordinary illness, not lack of diligence, that stood in their way and prevented timely filing.

Under Holland and Menominee, the diligence element covers ^{the Petitioners} A efforts within their control—seeking counsel, researching and drafting the complaint—while the extraordinary-circumstances element properly focuses on the late-arising COVID-19 infection, post-viral fatigue, and filing

barriers that were ‘both extraordinary and beyond [their] control’ and that in combination ‘stood in [their] way and prevented timely filing.’”

Taken together, these facts meet the modern, severity-focused test for equitable tolling. Petitioner was not idle or neglectful; the undisputed record shows continuous engagement throughout the ninety days. Petitioner’s COVID-19 infection and post-viral fatigue, combined with the clerk’s in-person-only filing regime, arose late in the limitations period and directly impeded timely filing. Under the individualized, context-sensitive inquiry Holland and Menominee require, these circumstances qualify as “extraordinary,” and the documentary evidence of petitioner’s efforts independently satisfies the “reasonable diligence” element.

III. The question presented recurs and is important, particularly in light of COVID-19 and court-imposed filing regimes

The equitable-tolling framework at issue here is not a marginal or technical doctrine. It governs a wide array of federal limitations and filing periods in civil-rights, employment, federal-benefits, and other statutory contexts, and this Court has repeatedly addressed when and how equitable tolling applies to non-jurisdictional deadlines in settings ranging from Title VII to the FTCA and administrative review schemes.

The COVID-19 pandemic and its aftermath have sharply raised the stakes of that inquiry. Courts across the country have confronted cases in which illness, quarantine, restricted courthouse access, and emergency filing rules intersected with statutory deadlines, including the ninety-day period for filing Title VII claims. In that setting, lower courts have diverged over whether, and

under what circumstances, pandemic-related obstacles and serious illness can constitute “extraordinary circumstances,” and how those obstacles interact with a litigant’s efforts to exercise “reasonable diligence. Some decisions, following Holland and Menominee closely, have granted tolling where external constraints—such as COVID-related restrictions, clerk-level barriers, or delayed access to counsel—made timely filing realistically unattainable even for diligent litigants (See *Brown v. Davis*, 482 F. Supp. 3d 1049 (E.D. Cal. 2020); see also *Brown v. Davis*, Case No. 1:19-cv-01796-DAD (E.D. Cal. May 7, 2021); *Brown v. Davis*, 1:19-cv-01796-DAD (E.D. Cal. Jan. 28, 2022). Others echoing Menominee-era formulations, have adopted a much stricter approach, insisting that illness must render a litigant “unable to manage their affairs” or totally incapacitated, and treating any untolled days somewhere within the limitations period as categorically defeating both “extraordinary circumstances” and diligence (See, e.g., *Roberts v. Allison*, 22-cv-00251-LL-BGS (S.D. Cal. Sept. 15, 2022) (denying equitable tolling where COVID-related lockdowns, loss of legal materials, and lack of legal sophistication did not make timely filing ‘impossible’ and where petitioner had unused time within the limitations period).

The decision below exemplifies this latter, rigid approach. It holds that a litigant who contracts COVID-19 and experiences significant symptoms during the final days of a non-jurisdictional filing period, while simultaneously facing a court-imposed, in-person-only filing requirement, can never obtain equitable tolling unless they were totally incapacitated for essentially the entire ninety days and refrained from using the final week of the period. That rule effectively writes equitable tolling out of the Title VII ninety-day context for any litigant whose circumstances fall short of complete incapacity, contrary to this Court’s recognition that equitable tolling remains

available where external obstacles beyond the litigant's control truly prevent timely filing despite reasonable diligence.

Clarifying that acute illness during the critical filing period can, in appropriate cases, constitute an "extraordinary circumstance" for equitable-tolling purposes would have substantial implications for access to justice, particularly for pro se litigants and individuals facing sudden health crises. The incapacity-only standard some lower courts apply conflicts with this Court's guidance that the diligence element requires "reasonable diligence," not "maximum feasible diligence," and that extraordinary circumstances are those "both extraordinary and beyond [the litigant's] control," not merely the rarest imaginable obstacles. That rigid interpretation creates unjust barriers for those who, despite sustained efforts, are severely but temporarily impeded at a decisive moment.

A clear, severity-focused standard would ensure that courts conduct the individualized, equitable analysis required by *Holland* and *Menominee*, rather than defaulting to categorical exclusions based on outdated incapacity language. Such an approach would promote fairness and uniformity by recognizing the realities faced by litigants who encounter acute obstacles—such as serious illness, quarantine, or clerk-created filing barriers—during the closing days of a statutory deadline. It would also provide needed guidance to lower courts, reducing inconsistent outcomes and ensuring that meritorious claims are not forfeited by inflexible, quasi-judicial constructions of non-judicial time bars.

In the context of ongoing public-health challenges and the increasing number of pro se litigants in federal court, reaffirming a flexible, case-by-case equitable-tolling inquiry is essential to maintaining meaningful access to the courts and vindicating the principles this Court

underscored in *Holland* and *Menominee*. If allowed to stand, the Ninth Circuit’s approach will govern a large volume of federal civil-rights and employment cases in one of the nation’s most populous circuits and will reinforce a broader trend toward importing rigid, incapacity-based and “very high threshold” habeas tolling formulations into non-habeas civil actions—despite *Menominee*’s insistence that, while the same basic elements apply, they must be applied in context. *Menominee* 577 U.S. 250, 257–58 (2016). Clarification from this Court is needed to ensure that *Holland*’s and *Menominee*’s two-element framework is implemented consistently across circuits and statutory schemes.

IV. This case is an excellent vehicle.

This petition presents a clean, purely legal question about the standard for equitable tolling and the meaning of “reasonable diligence” and “extraordinary circumstances” under *Holland* and *Menominee*. The material dates and operative facts are undisputed. Petitioner received their EEOC right-to-sue notice on May 2, 2022; the ninety-day filing period expired on August 1, 2022; and they filed their complaint on August 9, 2022. It is also accepted, for purposes of the Rule 12(b)(6) posture, that they were diagnosed with COVID-19 on July 17, 2022, quarantined for five days, experienced continuing symptoms and post-viral fatigue after returning to work, worked full time during much of the ninety-day period, sought counsel, researched their legal rights, drafted their complaint pro se and intended to file during the last week of the limitations period. The district court took those allegations as true and nonetheless dismissed solely on the ground that, as a matter of law, they cannot satisfy the stringent tolling standard it applied.

The order below squarely crystallizes the contested legal rule. It expressly holds that illness qualifies as an “extraordinary circumstance” only if it renders a plaintiff “unable to manage [their] affairs,” and it declares that intending to file in the last week of the limitations period is not evidence of diligence but of “procrastination.” Those are categorical legal propositions that can be reviewed de novo against this Court’s decisions in *Holland*, *Menominee* and the lower-courts applications of their two-element framework. Multiple Circuit and district courts emphasize that *Holland*’s equitable-tolling test applies in the non-habeas setting and that diligence and extraordinary circumstances are distinct “elements,” both of which must be satisfied, with the extraordinary-circumstances prong met when the cause of delay is “both extraordinary and beyond [the litigant’s] control,” while the diligence prong “covers those affairs within the litigant’s control”—*Menominee* itself reaffirmed those same points in a non-habeas context.

The magistrate judge’s Findings and Recommendations further confirm that the court applied a “very high threshold” or “impossible to file” gloss derived from habeas tolling decisions, rather than *Holland*’s and *Menominee*’s more functional formulation that tolling is available where an extraordinary circumstance “stood in [the litigant’s] way and prevented timely filing.” The magistrate judge’s approach mirrors the reasoning rejected in courts that treat the *Holland*/*Menominee* test as a two-prong, causation-based standard, not an impossibility rule.

The Rule 12(b)(6) posture and with-prejudice dismissal further underscore that this case turns on law, not fact. The district court concluded that “the complaint cannot be saved by any amendment,” making clear its view that, under the legal standard it adopted, no additional allegations about petitioner’s COVID-19 symptoms, post-viral fatigue, efforts to file, or the court’s filing regime could ever render their circumstances “extraordinary” or their efforts

“diligent.” That stance ensures that the legal standard, rather than unresolved factual disputes, is the fulcrum of the case and that this Court’s resolution of the questions presented will be dispositive.

Finally, while petitioner is pro se and their claims arise under Title VII, the legal principles at stake reach well beyond this particular statute. They concern the correct implementation of this Court’s equitable-tolling framework across federal statutory and procedural regimes, including in the growing body of cases where illness, pandemic-related constraints, and court-imposed filing practices intersect with otherwise rigid filing deadlines. In that landscape, courts should apply *Holland* and *Menominee* to non-habeas limitations periods in a way that treats “reasonable diligence” as a practical, not “maximum feasible,” standard and “extraordinary circumstances” as obstacles “both extraordinary and beyond [the litigant’s] control” that actually prevent timely filing. This case provides an ideal vehicle to clarify the meaning of “reasonable diligence” and “extraordinary circumstances,” to confirm that *Holland*’s and *Menominee*’s two-element test applies as a practical, causation-based standard rather than an impossibility or total-incapacity rule, and to ensure that equitable tolling remains a meaningful doctrine in the federal courts.

V. Conclusion and Relief Sought

This case illustrates a deep and growing conflict among the lower courts. Some circuits and district courts, following *Holland* and *Menominee* apply a trans-substantive, causation-based standard that asks whether reasonable diligence and external, real-world barriers actually prevented timely filing. Others invoke the same two-part formula but in practice demand near-impossibility or faultlessness, treating ordinary missteps, periods of illness, or minor

procedural errors as ‘garden-variety neglect’ that can never justify tolling. That entrenched split over how to implement Holland and Menominee across federal statutory schemes warrants this Court’s intervention now.

The lower courts did not merely overlook Holland and Menominee—they effectively displaced them. Their analysis substituted this Court’s individualized, fact-specific framework with a rigid, impossibility-based rule that has no grounding in traditional equitable principles. Petitioner’s diligence, measured against their illness during the critical filing period, their pro se status, and the clerk’s in-person filing requirements, was never evaluated for its actual impact on their ability to file. Instead, the courts demanded a showing approaching total incapacity—requiring petitioner to prove they were essentially unable to manage their affairs during the final days of the filing period—a standard this Court has expressly rejected. That approach cannot be reconciled with Holland’s flexible inquiry or Menominee’s causation requirement and marks a clear departure from the governing law.

The question presented is of exceptional importance. The absence of a clear rule regarding whether illness during the final days of a filing window—especially when combined with clerk-imposed barriers or pandemic-related constraints—may constitute an extraordinary circumstance has produced unpredictable and unjust outcomes across the lower courts. Pro se litigants and individuals facing acute but non-debilitating impairments are disproportionately harmed by the rigid, all-or-nothing standard applied below. Only this Court can restore uniformity and reaffirm that equitable tolling turns on severity, causation, and reasonable diligence—not on outdated notions of impossibility or categorical suspicion of pro se claimants.

For these reasons, petitioner respectfully asks the Court to grant the petition for a writ of certiorari; to reaffirm that illness arising at the end of the filing period—when shown to have actually prevented timely filing—may constitute an extraordinary circumstance warranting equitable tolling; and to reverse or vacate the judgment below, or at minimum remand for proper application of Holland, Menominee, and related precedents under a plaintiff-specific, severity-focused standard. Such guidance is essential to ensure uniformity, fairness, and meaningful access to justice in the administration of federal statutory deadlines, consistent with Holland's flexible, claimant-specific approach.

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