26-6047 ORIGINAL

No. _____

Supreme Court, U.S.
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In The Supreme Court of the United States

LANCE REYNOLDS,

Petitioner,

v.

DEPARTMENT OF JUSTICE,
Respondent.

On Petition for a Writ of Certiorari from the
United States Court of Appeals for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

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Petitioner, Pro-Se

Dated: October 6, 2026

QUESTION PRESENTED

Federal Circuit precedent permits an agency to impose an indefinite unpaid suspension while criminal proceedings are pending, but requires the agency to terminate that suspension within a reasonable time after resolution of the criminal charges. Morrison v. National Science Foundation, 423 F.3d 1366, 1369 (Fed. Cir. 2005).

Here, the Merit Systems Protection Board's Administrative Judge expressly found that the Kentucky court's May 8, 2023 order placing Petitioner on conditional diversion "constituted a final disposition of the criminal proceedings against him." Pet. App. 24a. Nevertheless, the Department of Justice continued Petitioner's unpaid indefinite suspension for fifteen additional days, until May 22, 2023.

The question presented is: Whether, after the Board expressly found that the state-court diversion order constituted the "final disposition of the criminal proceedings," a reviewing court may affirm the continuation of an indefinite unpaid suspension without determining when the agency's criminal-proceeding justification terminated and without identifying a lawful, record-supported basis for continuing to withhold the employee's pay after that disposition.

PARTIES TO PROCEEDING

All parties appear in the caption. Petitioner is Lance Reynolds. Respondent is the Department of Justice.

RELATED PROCEEDINGS

Merit Systems Protection Board, No. CH-0752-23-0078-I-2, Lance Reynolds v. Department of Justice. Initial decision issued September 6, 2023; final order issued March 20, 2025.

United States Court of Appeals for the Federal Circuit, No. 2025-1773, Lance Reynolds v. Department of Justice. Judgment entered June 5, 2026; petition for panel rehearing and rehearing en banc denied July 29, 2026.

There are no other directly related proceedings known to Petitioner.

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PETITION FOR A WRIT OF CERTIORARI

Lance Reynolds respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

OPINIONS AND ORDERS BELOW

The Federal Circuit's nonprecedential decision affirming the Merit Systems Protection Board is reproduced at Pet. App. 1a–7a. The decision was issued June 5, 2026. The Federal Circuit's order denying panel rehearing and rehearing en banc, entered July 29, 2026, is reproduced at Pet. App. 8a–9a. The Merit Systems Protection Board's final order, issued March 20, 2025, is reproduced at Pet. App. 10a–18a. The Board's initial decision, issued September 6, 2023, is reproduced at Pet. App. __a-__a.

JURISDICTION

The Merit Systems Protection Board issued its final decision on March 20, 2025. The Federal Circuit had jurisdiction under 5 U.S.C. § 7703(a)(1) and 28 U.S.C. § 1295(a)(9). The Federal Circuit entered judgment on June 5, 2026. Petitioner timely sought panel rehearing and rehearing en banc, which the court denied on July 29, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1). Under 28 U.S.C. § 2101(c) and Supreme Court Rule 13.3, the time to petition runs from the denial of timely rehearing.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Relevant provisions include 5 U.S.C. §§ 5596, 7513(a), 7513(b)(1), and 7703(c), and 5 C.F.R. § 550.805. Their pertinent text is reproduced in the appendix.

STATEMENT OF THE CASE

A. The indefinite unpaid suspension

Petitioner began working for the Department of Justice at the United States Penitentiary Big Sandy in November 2019 and served as a Reentry Affairs Coordinator. In 2021, two employees alleged that

Petitioner had sexually assaulted them, and the Department's Office of Inspector General opened an investigation. On July 8, 2022, a Kentucky grand jury indicted Petitioner for Sexual Abuse in the Third Degree, a misdemeanor carrying a maximum sentence of ninety days' imprisonment.

The Department placed Petitioner on paid administrative leave on July 12, 2022. It proposed an indefinite suspension without pay on August 15, 2022, and the suspension began October 20, 2022. The final suspension notice stated that the suspension would remain in effect until disposition of the criminal charges or until sufficient evidence existed either to return Petitioner to duty or support further administrative action.

Petitioner does not seek review of the Federal Circuit's determination that the Department initially possessed authority to impose the suspension.

B. The May 8, 2023 final disposition and restoration to paid status.

On May 8, 2023, the Kentucky criminal court entered an order placing Petitioner on conditional diversion. In subsequently reviewing the agency's

suspension action, the MSPB Administrative Judge expressly found that the May 8 order "constituted a final disposition of the criminal proceedings against him." Pet. App. 24a. The Administrative Judge further found that the diversion imposed specified conditions for a two-year period. Pet. App. 24a.

The Department did not end Petitioner's unpaid indefinite suspension on May 8. Instead, after learning of the diversion agreement, the Department ended the indefinite suspension and placed Petitioner on paid administrative leave effective May 22, 2023, fifteen days after the final disposition identified by the Administrative Judge. Pet. App. 24a. The Administrative Judge also found that the agency's internal investigation was not completed until July 2023, after conclusion of the criminal case. Pet. App. 25a.

The issue presented therefore does not require this Court to determine in the first instance whether the May 8 order constituted a disposition of the criminal proceeding. The Board's own Administrative Judge expressly characterized it as the "final disposition of the criminal proceedings." The issue is what legal standard governed the Department's continued withholding of Petitioner's pay after that disposition, and whether the Federal Circuit could affirm the continued unpaid suspension without identifying a lawful, record-supported basis for the post-disposition period.

C. Proceedings before the Board

Petitioner appealed to the Merit Systems Protection Board. The administrative judge affirmed the suspension on September 6, 2023. As quoted by the Federal Circuit, the administrative judge concluded that the agency "properly continued the suspension pending the outcome of the criminal proceeding against [Petitioner] when he entered into a diversion agreement."

The Board denied Petitioner's petition for review on March 20, 2025 and affirmed the initial decision. Petitioner then sought review in the Federal Circuit.

D. The Federal Circuit's decision

The Federal Circuit affirmed. After sustaining the Department's initial authority to impose the indefinite suspension, the court separately considered Petitioner's contention that the suspension should have ended earlier. Quoting Morrison, it recognized that an agency may suspend an employee pending criminal proceedings, "but then the agency must terminate the suspension within a reasonable amount of time after resolution of the criminal charges." 423 F.3d at 1369.

The Federal Circuit then observed that the agency restored Petitioner to paid status fifteen days after entry of the diversion order and concluded that Petitioner had not established that his suspension should have terminated earlier. But the court did not reconcile that conclusion with the Administrative Judge's express finding that the May 8 order "constituted a final disposition of the criminal proceedings against him." Pet. App. 24a. Nor did the court determine when the agency's criminal-proceeding justification ceased to authorize continued unpaid suspension, explain whether the unfinished internal investigation independently authorized continued unpaid status after the final

disposition, or identify the findings supporting the reasonableness of the fifteen-day post-disposition period.

The Federal Circuit denied panel rehearing and rehearing en banc on July 29, 2026.

REASONS FOR GRANTING THE WRIT

I. The decision below leaves undefined the federal rule governing when an indefinite suspension tied to a criminal proceeding must end.

The Federal Circuit relied on Pararas-Carayannis v. Department of Commerce, 9 F.3d 955 (Fed. Cir. 1993), and Henderson v. Department of Veterans Affairs, 878 F.3d 1044 (Fed. Cir. 2017), among other authorities, in sustaining the Department's initial authority to suspend Petitioner based on reasonable cause to believe he had committed a crime for which imprisonment could be imposed. Petitioner does not challenge that initial-imposition holding.

That omission concerns the governing legal standard, not merely the application of settled law to disputed facts. An agency's authority to impose an indefinite suspension is exceptional because the action may deprive an employee of pay for an uncertain period without constituting ordinary discipline. Morrison therefore places a temporal limit on that authority.

Unless the triggering event is identified, however, the reasonable-time requirement has no defined starting point.

That temporal limitation is consistent with the Federal Circuit's earlier indefinite-suspension precedent. In Dunnington v. Department of Justice, 956 F.2d 1151, 1156 (Fed. Cir. 1992), the court recognized that an indefinite suspension tied to criminal proceedings must terminate within a reasonable time following resolution of the criminal charges. Likewise, Richardson v. United States Customs Service, 47 F.3d 415, 419 (Fed. Cir. 1995), recognized that although such a suspension may be indefinite, the agency's authority to maintain it is not unlimited. Morrison later reaffirmed that temporal restriction by requiring termination within a reasonable time after resolution of the criminal charges.

The problem is illustrated by this case. The May 8 order did not leave the original indictment unchanged. It amended the charge that had supplied the agency's asserted criminal-proceeding justification and placed the amended charge into diversion. The agency itself moved Petitioner to paid status fifteen days later. If May 8

constituted resolution for Morrison purposes, the reasonable-time inquiry began then. If it did not, a reviewing court must identify what later event constituted resolution and the legal basis for treating the intervening period as part of a continuing criminal-proceeding suspension.

The decision below did neither. It stated the rule and the elapsed time, then affirmed. That leaves federal employees and agencies without a defined standard for materially altered criminal proceedings that do not end in immediate conviction, acquittal, or unconditional dismissal.

II. The Federal Circuit's approach permits the initial justification for an extraordinary suspension to substitute for the required inquiry into its continued legality.

The Federal Circuit relied on authorities concerning an agency's initial authority to suspend an employee when there is reasonable cause to believe the employee committed a crime for which imprisonment may be imposed. Petitioner does not challenge that initial-imposition holding.

Initial authority and continuing authority, however, are distinct inquiries. The existence of reasonable cause when the Department imposed the

suspension in October 2022 does not itself establish authority to continue withholding Petitioner's pay after the proceeding underlying that justification reached what the Administrative Judge expressly found to be its "final disposition" on May 8, 2023. Pet. App. 24a.

Indeed, the agency's own suspension decision contemplated an ascertainable endpoint. The Administrative Judge quoted the decision as providing that the suspension would remain in effect "until such time as there is a disposition of the charges against [Petitioner], or there is sufficient evidence to return [him] to duty or to support administrative action against [him]." Pet. App. 24a. The Administrative Judge later identified resolution of the criminal case as the determinable condition subsequent that brought the suspension to a conclusion. Pet. App. 25a.

The Federal Circuit's disposition nevertheless allowed the initial criminal indictment to carry the analysis through the post-disposition period. It did not determine what authority supported continued unpaid status after May 8, whether the unfinished internal investigation supplied an independent lawful basis for

withholding pay, or what findings demonstrated that the fifteen-day period satisfied Morrison's reasonable-time limitation.

That distinction matters beyond the calculation of fifteen days in this case. If the initial justification for an indefinite suspension is sufficient, standing alone, to sustain continued unpaid status after the identified condition subsequent occurs, the temporal limitation recognized in Morrison loses much of its force. Review is warranted to clarify that the legality of imposing an indefinite suspension and the legality of continuing it after resolution of the proceeding that justified it are separate inquiries.

III. The issue is properly legal and reviewable even though reasonableness may require factual findings on remand.

Rule 10 cautions that certiorari is rarely granted merely to correct erroneous factual findings or the misapplication of a properly stated rule. This petition does not ask the Court to decide, as an original factual matter, that fifteen days was unreasonable.

Nor does the petition require this Court to determine in the first instance whether the May 8 order constituted a disposition of the criminal proceeding. The

Administrative Judge already found that it "constituted a final disposition of the criminal proceedings against" Petitioner. Pet. App. 24a.

The antecedent question is instead legal: once the proceeding underlying an indefinite suspension has reached the final disposition identified by the Board's factfinder, what standard governs the agency's continued withholding of pay? Relatedly, may a reviewing court affirm continued unpaid status without identifying the lawful basis for that continuation and applying *Morrison's* requirement that the suspension terminate within a reasonable time after resolution of the criminal charges?

The material chronology is undisputed. Petitioner's unpaid suspension became effective October 20, 2022. The Administrative Judge found that the criminal proceeding reached its final disposition on May 8, 2023. Pet. App. 24a. The Department returned Petitioner to paid status effective May 22, 2023. *Ibid.* The Federal Circuit itself recognized the fifteen-day interval.

Federal Circuit precedent itself illustrates why the existence of a fifteen-day interval does not answer the legal question. In Engdahl v. Department of the Navy,

900 F.2d 1572 (Fed. Cir. 1990), the court upheld a post-resolution period of approximately fifteen days only after considering the agency activity occurring during that interval. The significance of *Engdahl* is therefore not that fifteen days is categorically reasonable. It demonstrates that reasonableness depends upon the lawful basis for continued suspension and the record-supported circumstances explaining the period between resolution of the criminal proceeding and termination of the suspension.

Determining whether the agency acted within a reasonable time may require consideration of facts concerning notice, administrative processing, remaining agency action, and the basis for continued unpaid status. Those matters may properly be addressed on remand. But they can be assessed only after the governing legal standard and its starting point are identified.

That division preserves the Board's factfinding role while presenting this Court with a legal question concerning the scope and operation of the temporal limitation on indefinite suspensions recognized by the Federal Circuit itself.

IV. The case is a suitable vehicle because the Federal Circuit reached the timing issue and monetary relief remains available.

The timing issue was not left undecided below. The Federal Circuit separately addressed Petitioner's argument that "the suspension should have been terminated earlier," invoked Morrison, and rejected the claim. Petitioner therefore asks this Court to review the legal framework actually applied by the court of appeals.

Nor is the controversy moot merely because the Department ended the unpaid suspension. Petitioner sought back pay, and the disputed post-diversion period is a discrete period in which pay was withheld. Under the Back Pay Act, 5 U.S.C. § 5596, and its implementing regulation, 5 C.F.R. § 550.805, correction of an unjustified or unwarranted personnel action can affect the employee's monetary entitlement.

Petitioner does not ask this Court to calculate or award back pay. A favorable disposition would permit the Federal Circuit and Board to determine whether any portion of the continued unpaid suspension was unjustified or unwarranted under the proper standard and, if so, the resulting relief.

V. At minimum, the judgment should be vacated and the case remanded for application of a defined legal standard.

The Court need not decide in the first instance that the May 8 order definitively resolved the criminal charges, that fifteen days was unreasonable, or that Petitioner is entitled to back pay. The narrower and appropriate disposition is to vacate the judgment and remand so that the Federal Circuit can identify the triggering event under Morrison and require application of the corresponding reasonable-time inquiry to the administrative record.

On remand, the lower tribunals can determine the legal significance of the diversion order, when the agency received notice, whether a separate administrative justification lawfully supported continued unpaid status, what record-supported reasons explain the delay, and whether any corrected period warrants relief under 5 U.S.C. § 5596.

That disposition would enforce the limitation already recognized in Federal Circuit precedent without requiring this Court to resolve disputed facts or prescribe a categorical number of days that is reasonable in every case.

CONCLUSION

The petition for a writ of certiorari should be granted. Alternatively, the Court should grant the petition, vacate the judgment of the United States Court of Appeals for the Federal Circuit, and remand for application of the proper legal standard governing continuation of an indefinite unpaid suspension after the criminal proceeding underlying that suspension is materially altered.

Respectfully submitted,



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Petitioner, Pro-Se Dated:

Dated: October 6, 2026