

No. _____

In The

Supreme Court of the United States

Kimberly A. Patrick,

Pro Se Applicant,

vs.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC),

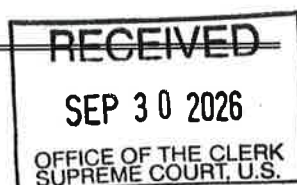
Respondent

On behalf of the FDIC, Department of Justice attorney Thomas J. Adair

APPLICATION FOR A 60-DAY EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

**APPLICATION DIRECTED TO THE
HONORABLE U.S. SUPREME COURT CHIEF JUSTICE JOHN G. ROBERTS, JR.
AS THE ALLOTTED JUSTICE FOR THE
U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

Ms. Kimberly Adair Patrick, *Pro Se Applicant*
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Parlin, New Jersey 08859
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TO HONORABLE U.S. SUPREME COURT CHIEF JUSTICE JOHN G. ROBERTS, JR.:

U.S. Supreme Court Rule 13.5 holds that, for good cause, a Justice may extend time to file a petition for a writ of certiorari when an application provides the party seeking the extension; the basis for jurisdiction; the judgment sought to be reviewed, including a copy of the opinion and any order respecting rehearing; and specific reasons why an extension of time is justified.

PARTY SEEKING EXTENSION/JUDGMENT SOUGHT TO BE REVIEWED – Due to a 2/1/2008 district court protective order, I, Kimberly Patrick, file this application *pro se* to respectfully request a 60-day time extension to file a petition for writ of certiorari to review the judgment of my civil case, *Kimberly A. Patrick, Petitioner vs. Federal Deposit Insurance Corporation, Respondent*; Short caption *Patrick v. FDIC*; Case # 2024-1962 from the U.S. Court of Appeals for the Federal Circuit. Attached is a copy of the 3/11/2026 non-precedential opinion of Judges Raymond Clevenger, Raymond Chen, and Jimmie Reyna for my case which affirmed the decisions of the 4/29/2024 non-precedential Final Order of the U.S. Merit Systems Protection Board (MSPB) or the "Board". The Board consisted of former MSPB Chairman Cathy A. Harris and former Vice Chairman Raymond A. Limon. Also, attached is a copy of the 7/21/2026 non-precedential order of Judges Clevenger and Chen which denied my 6/25/2026 petition for panel rehearing at ECF No. 70.

The MSPB's Final Order regarded my whistleblower termination case, *Kimberly Patrick vs. FDIC*, Docket # NY-0752-12-0130, whereby the Board upheld the FDIC's 1/16/2009 non-disciplinary removal of me as a **FDIC Bank Examiner**, CG-0570-12, in the Wall Street area of New York, New York. My protected disclosures expressed that I believed that FDIC staff, in order to receive job praise, bonuses, and promotions, engaged in systemic corruption which could cause widespread, systemic financial institution failures as well as danger and deaths. Removal, with no warning, was for use of FDIC-approved Family and Medical Leave Act (FMLA) absences from 12/12/2007 to 3/10/2008 and other leave, which the FDIC referred to as "excessive absences". Removal was taken despite that examining healthcare providers indicated to the FDIC that illness and absences were due to the FDIC's hostile work environment and had a foreseeable end.

Precedent adjudication decisions hold that removal for approved leave must be fully reversed because it is inequitable and does not promote the efficiency of service when an agency chooses to approve leave under its authority when it should have denied leave with proper reasons and evidence such as if there were no foreseeable end to absences based on examining healthcare providers, absences caused a burden to the agency, or the position needed to be filled. Also, precedent decisions hold that removal must be reversed when there was no warning that removal would occur for approved leave, even

though it is inactionable, and if removal occurred for use of approved FMLA leave because it is illegal.

The MSPB and appellate record evidence that FDIC termination participants at least included Manager Barry Gonzalez, who made a 10/6/2008 recommendation to remove me after I filed seven of my eight whistleblower grievances against him and named him 17 times in the 8/18/2008 second amended complaint for my 10/22/2007 district court whistleblower lawsuit; Manager James C. Watkins, who proposed removal on 10/15/2008 and attached documents which noted that I filed prior grievances and a lawsuit; Manager Daniel E. Frye, whose 1/9/2009 removal decision letter to me evidenced that he knew that I filed past grievances and a lawsuit and he notified me that I could file suit under whistleblower legislation, 12 USC 1831 (j), for my whistleblower allegations and the removal; and the 5-member FDIC Board, including former FDIC Chairman and Chairman of the Board Sheila C. Bair and former Vice Chairman Martin Gruenberg, who approved removal on 1/16/2009. Bair was served my 10/22/2007 *Doe I* whistleblower lawsuit and other filings which pended on the 1/16/2009 termination date.

JURISDICTION – This Court has jurisdiction under 28 U.S.C. § 1254(1) which holds that cases in the court of appeals may be reviewed by writ of certiorari granted upon the petition of any party to any civil case after judgment is rendered.

REASONS A TIME EXTENSION IS JUSTIFIED – My petition for a writ of certiorari must be filed on or before 90 days after the 7/21/2026 date of the denial of my petition for rehearing or by a 10/19/2026 deadline. I respectfully request a 60-day extension of the deadline and a new deadline of 12/18/2026. My application dated 9/28/2026 occurred at least ten days before the current deadline of 10/19/2026.

A time extension is needed because FDIC attorney Scott Cooper and other FDIC attorneys threatened to seek contempt of court sanctions against me if I violated a 2/1/2008 district court protective order penned by the administration of former FDIC Chairman Sheila Bair for which the district court ruled has, among many things, attorney restrictions for me not to exercise my rights for speech to retain an attorney or to present bank examination evidence. Because I am not an attorney and have attorney restrictions, I cannot work fast to meet deadlines.

Also, a time extension is justified because I anticipate that, even with diligent efforts, it will be difficult to research, prepare, finalize, and file a satisfactory petition, which is for numerous important legal questions, by the current deadline of 10/19/2026 due to the characteristics of the case. The case is complex; past events and/or adjudications impacting this case date back 24 years to 2002; records, including the hearing recording and transcript are voluminous and/or unavailable; and the decisions and orders come from many

forums – the Southern District of New York (SDNY), the U.S. Court of Appeals for the Second Circuit, the MSPB, and the Federal Circuit.

As later explained, I filed two district court whistleblower lawsuits against the FDIC, one on 10/22/2007, which had a seal and protective order with nondisclosure terms, and the other on 1/13/2011 for job termination. After both suits received 2/27/2012 jurisdictional dismissals for lack of jurisdiction for 12 USC 1831 (j), I appealed the dismissals and certain terms of the seal and protective order at the U.S. Court of Appeals for the Second Circuit. The Second Circuit affirmed jurisdictional dismissal and certain seal and protective order terms. Then, on 3/28/2012, I filed a MSPB whistleblower termination case which pertained to events in the two whistleblower lawsuits, and that case pended over twelve years until 4/29/2024. The MSPB's 10/24/2018 Initial Decision indicated, among many things, that my whistleblower protections were protected but did not contribute to the removal, and removal is justifiable for use of approved leave. However, because the FDIC violated my U.S. Constitutional rights for due process, the FDIC must reverse termination and, based on law, provide me with interim relief of pay and benefits effective 10/24/2018 until petitions are exhausted. Though the FDIC never provided interim relief for over seven years or ever, adjudicators allowed the FDIC to file and process a petition anyway. The Board's 4/29/2024 nonprecedential Final Order and Federal Circuit's 3/11/2026 nonprecedential opinion upheld that my

protected disclosures did not contribute to removal and that removal, which was for use of approved leave, is justifiable.

INTRODUCTION/BACKGROUND

Disclosures and Actions to try to correct Wrongdoing/FDIC Retaliation – Evidence and adjudication records indicate that I was hired in August 1998 for non-managerial FDIC bank examination duties which included, but were not limited to, participating in or directing safety and soundness regulatory examinations for all bank areas; rating/assessing the safety and soundness of banks and compliance with laws, rules, and regulations by bankers; and issuing reports of examination and assessments with supporting evidence. The job description, travel design, and FDIC written procedures do not allow any one examiner's absence to harm the efficiency of examinations and FDIC mission.

My education, past work experience, and FDIC job performance and findings far surpassed co-workers and managers because they indicated that they did not have, as I did, high-band FDIC job technical scores for NASDAQ testing; a *magna cum laude* degree in Business, concentrated in finance; and a *summa cum laude* Master's degree in Mathematics which elevated my analysis of financial statistics and complex mathematical models, especially to assess performance of Mortgage-Backed Securities and a bank's sensitivity to market and interest rate risk. Also, I had prior U.S. Treasury Department work experience in a unit where the Bank Secrecy Act (BSA), codified at 31 USC § 5311 and elsewhere, was created and staff analyzed Currency Transaction Reports,

Suspicious Activity Reports, and red flags for financial crimes, including money laundering, fraud, tax evasion, and terrorist financing which can pose a substantial danger to public health and safety. The work unit was reorganized into the Financial Crimes Enforcement Network (FinCEN). FDIC managers designated me as a BSA Subject Matter Expert (SME).

For 6 ½ continuous years from June 2002 to the 1/16/2009 termination, I disclosed to FDIC staff, submitted eight whistleblower National Treasury Employees Union (NTEU) grievances from 5/26/2005 to March of 2007, and had a pending 10/22/2007 district court whistleblower disclosure and retaliation lawsuit which, among many things, indicated that I believed that FDIC bank examination and other evidence showed that FDIC heads and managers, in order to receive job praise, bonuses, and promotions, engaged in systemic corruption which could cause wide-spread, systemic bank failures, danger, and death. I indicated that systemic corruption included that FDIC officials tied good performance evaluations to how little time was used to examine banks to identify weaknesses; violated law, rule, and regulation by preventing or abbreviating bank examinations and reviews so that they would not be thorough enough to identify bank weaknesses or result in full, detailed reports, especially by violating nondiscretionary rules of the Maximum Efficiency Risk-Focused Institution Targeted (MERIT) Program; gave scathing and factually inaccurate performance evaluations if FDIC corruption was disclosed during examinations; engaged in fraud schemes with bankers to inflate negative

capital; destroyed or ordered the destruction of bank examination evidence; and deleted from regulatory reports and electronic databases findings of bank weaknesses, red flags for financial crimes such as terrorist financing which was shocking to the conscience, and violations by bankers. Deletions made the true status of a bank's safety and soundness unknown. The FDIC Office of Inspector General's (OIG) auditing indicated that deletions of reported and documented red flags for BSA violations and financial crime occurred in *all* FDIC regions nationally, and the phenomenon was called "**phantom violations**". The OIG 3/31/2004 audit report to Congress about missing violations is *Supervisory Actions taken for BSA Violations*, Report No. 04-017.

From 2002 to 1/16/2009, after knowledge of my disclosures of FDIC wrongdoing and activity to try to correct the wrongdoing, FDIC staff soon engaged in severe and various retaliation, including a hostile work environment. From about the fall of 2004 and for about four years before the 1/16/2009 termination, the hostile work environment grew extremely fierce and FDIC managers stripped me of my job duties and Subject Matter Expert designation; prohibited me to be trained, conduct BSA and other examinations, and communicate bank findings to relevant staff; and ordered me to purge my work files on my work laptop computer and in my work cubicle retroactively for about seven years dating back to my 1998 hire and indefinitely in the future so that **a virtually empty work cubicle (photographs) and laptop computer resulted**. This was contrary to FDIC practice and laws, rules, and regulations in FDIC Rule

1210.18, *the Federal Records Management Program*, which required public servants to maintain a record of their federal service. Four years before termination, the hostile work environment prohibited me to do any or significant work, making it immaterial whether I was or was not at work or sick or well.

Long-term retaliation made me ill and absent. Two days after my 10/22/2007 whistleblower lawsuit was filed, FDIC officials, from 10/24/2007 to 8/15/2008 and in noncompliance with laws, rules, regulations, began demanding excessive medical and personal information such as confidential diagnoses for my prescheduled leave requests. They demanded it under false pretenses, without giving any legal authorities, and with threats that if I did not give the information, they would not approve my leave requests which could lead to disciplinary action. Under threats, I provided medical letters, and staff widely disseminated it to unauthorized persons within and outside the FDIC and on the public internet without medical releases and without my knowledge. Staff did not answer some leave requests while I was employed but approved all leave after removal.

My examining healthcare providers wrote FDIC staff to indicate that my illness and absences developed from the FDIC's hostile work environment which had risen to the level of litigation, but absences had a foreseeable end because, with treatment, recovery was anticipated near a specified date range of 12/21/2008. Thereafter, the FDIC falsely indicated that my absences had no foreseeable end because the FDIC, without my knowledge, obtained a 7/3/2008 letter from a FDIC medical consultant, Dr. Neal Presant, who never

met, talked to, or examined me and who had reviewed the letters of my healthcare providers. Dr. Presant issued a speculative guess or assumption which was not based on direct facts, personal knowledge, and evidence which stated, among many things, that there was no medical release; he did not have enough information; and he had no reason to assume that I will return to the FDIC. The FDIC terminated my health insurance for treatment on 12/20/2008, the day before anticipated recovery, and, after about a 10.5-year employment period, removed me on 1/16/2009 for use of FDIC-approved leave without first warning me that removal was going to occur for use of approved leave.

Systemic Bank Failure and Foreclosure Crisis/Great Recession – Near the time of my 10/22/2007 whistleblower lawsuit, by late 2007, the matters at the core of my 6 ½ years of disclosures and activities to try to correct regulatory bank examination wrongdoing had manifested in an emerging, systemic U.S. bank failure crisis which spread globally through international banking. Congress criticized the FDIC for conducting abbreviated, no, or inadequate examinations; failing to properly identify bank weaknesses before failures; and the emerging mortgage loan/foreclosure problems which were surfacing from weak, failed, and/or improperly regulated financial institutions. By 2008, the regulatory wrongdoing caused a growing national mortgage loan and foreclosure crisis; financial institutions had mortgage-related loans, Mortgage-Backed Securities, and other assets which significantly declined in value or were worthless; and the banking insolvency crisis increased. From 2007 to 2013, about 500 U.S. banks

failed which also evidenced a failed FDIC mission to maintain stability and public confidence in the U.S. financial system by insuring and protecting deposits and by properly examining banks for safety and soundness to identify and address bank weaknesses.

Also, the bank failure crisis caused a ripple effect of other economic devastation. The crisis drained the FDIC Deposit Insurance Fund (DIF) which funds depositors when banks fail. In the *12/31/2011 FDIC Quarterly Banking Profile* which analyzed the years of the banking crises, FDIC officials indicated that hundreds of bank failures made the DIF suffer significant losses; for numerous years DIF levels were below the then 1.15% statutory minimum level of total estimated insured deposits; and the DIF balance was negative \$20.9 billion with a negative 0.39% DIF ratio in 2009, which was the year that I was terminated.

Also, the crisis caused the Great Recession, the worse U.S. economic disaster since the Great Depression. The Recession spread worldwide and caused reduced quality of lives; plummeted stock markets; high homelessness, unemployment, and poverty rates; a credit crunch; and other economic problems. It took about a decade to recovery to pre-crises levels.

Additionally, the crisis caused huge taxpayer expense. It caused an October 2008 \$700 billion taxpayer-funded Troubled Asset Relief Program (TARP) known as the "bank bail-out bill" under the George W. Bush Presidential Administration. A second taxpayer expense occurred through a 2009 \$787 billion Economic

Stimulus Act under the Barack Obama Presidential Administration to try to reverse the impact of the economic and mortgage-related disaster.

Important Legal Questions in a Future Petition for a Writ of Certiorari – Altogether, the FDIC, MSPB, and court actions and decisions have caused harmful, needless delay and financial harm to me; blocked exercise of my legal rights and privileges in the U.S. Constitution, laws, rules, and regulations with warnings of court-sanctioning of me for attempting to exercise them; and made it as if Congressional whistleblower legislation was never created for 12 USC § 1831j in FDIC Rules and Regulations and the Federal Deposit Insurance (FDI) Act as well as for 5 USC § 2302 in the Whistleblower Protection Act (WPA), effective on 7/9/1989, and the Whistleblower Protection Enhancement Act (WPEA), effective on 12/27/2012. Also, past decisions departed from or sanctioned departures of accepted and usual adjudication proceedings; were nonprecedential and conflicted with previously established precedent decisions in and outside the adjudication forums; provided no consistency, stability, and predictability in the law, rule, and regulations; were apparent violations of the U.S. Constitution, laws, rules, and regulations; and were unsupported by substantial evidence.

My future petition will address Constitutional and legal questions regarding termination for approved FMLA and other leave; whistleblower legislation; due processes; restrictions for speech, attorneys, and evidence in a court non-disclosure order; and agency petitioning despite noncompliance with interim

relief laws. The matters are important because they impact my legal rights and others, the health of the banking system and economy, and public safety.

When whistleblower legislation for government and banking industries does not exist, is not properly enforced or interpreted, or results in no accountability by regulators and bankers, repeated whistleblower retaliation and widespread banking, financial, and economic devastation occur which is usually accompanied by expensive bail-outs paid by blameless taxpayers. FDIC staff, empowered by favor of the MSPB and courts, terminated me a *second or repeat time* on 4/12/2019 for the same approved absences despite that it was already adjudicated. The repeat termination is the focus of MSPB appeal # NY-0752-19-0147 and marks the second time that former FDIC Board Member Martin Gruenberg terminated me.

Financial devastation has repeated. Prior to years of high bank failures, foreclosures, and the Great Recession emerging in 2007 which had expensive taxpayer-funded bailouts totaling about \$1.5 trillion, was the Great Depression from 1929 to 1939 when about 9,000 banks failed. After the Great Depression was the U.S. Savings and Loan (S&L) collapse from 1986 and 1995 when about 1,000 of 3,200 S&Ls failed and a taxpayer-funded bailout in the billions occurred.

ADJUDICATION DECISIONS OF ISSUE INCLUDE:

The 10/27/2007 District Court Whistleblower Lawsuit, *Jane Doe vs. FDIC, "Doe I" of II*, Docket # 1:07-CV-09435, SDNY – After FDIC staff and NTEU stewards abused grievance rules and procedures and the FDIC exercised virtually no corrective

action when I submitted eight whistleblower grievances from 5/26/2005 to March of 2007, I, through attorney Richard F. Bernstein of the Law Office of Timothy J. McInnis Law, filed *Doe I* which was served to FDIC Chairman Bair. The whistleblower allegations were filed under 12 USC § 1831j and regarded my disclosures of wrongdoing by government staff and FDIC retaliation, including a hostile work environment, before 1/16/2009 job removal.

The Seal and District Court Protective Order with Nondisclosure/Confidentiality Terms for Doe I – Before the 12/11/2007 seal order and 2/1/2008 protective order, I told the FDIC and my attorney Richard Bernstein that I had not and would not publicly disclose bank examination evidence without proper redaction, but I objected to and refused to sign any agreement to seal and require my confidentiality and nondisclosure of bank examination evidence for the *Doe I* case for the **same** reasons that I objected to and refused to sign a 6/23/2005 FDIC Confidentiality Agreement to seal and not disclose bank examination evidence for my eight whistleblower grievances. I informed the FDIC and Bernstein that sealing and nondisclosure would illegally ban exercise of my legal rights and privileges, take my whistleblowing out of the public eye, block transparency, make my whistleblowing and adjudications unsuccessful and pointless by blocking my ability to discuss and present evidence for my whistleblower affirmative defenses, and prevent accountability by the FDIC.

Also, I indicated to Bernstein and the FDIC that the FDIC themselves indicated that disclosure of bank examination evidence for adjudications was supported

by law. On 12/21/2007, the FDIC wrote attorney Bernstein indicating that your client has not signed a confidentiality agreement; "No such confidentiality agreement was ever executed by you or any attorney acting on Ms. Patrick's behalf"; and there is an administrative process pursuant to 12 CFR § 309.6 for lawful disclosure of bank examination evidence in the interest of justice.

Despite this, I learned after the fact, and without consideration, that district court Magistrate Judge Ronald L. Ellis granted a seal request by Bernstein alone on 12/11/2007 and a joint 1/14/2008 motion by the FDIC and Bernstein for a protective order with confidentiality/nondisclosure terms on 2/1/2008. The protective order indicated that the FDIC was prohibited from disclosing my medical, personal, and personnel information which is backed by the Privacy Act, 5 USC § 552a, for which I had agreed; falsely noted that I agreed that I would not disclosure FDIC bank examination evidence as described in 12 CFR § 309.5(g)(8) despite that an administrative process under 12 CFR § 309.6 could allow it in the interest of justice; and provided for sanctions for violations. Also, the protective order indicated that the *Doe I* information could only be examined, used for, spoken of, and discussed by the parties for *Doe I* and no one else such as Congress, adjudicators, and judges, and at the conclusion of *Doe I* and its appeals, my personal and employment information covered by the Privacy Act must be returned to me by the FDIC and not used and anything categorized as bank examination evidence for *Doe I* must be given by me to the FDIC and not used. Additionally, the protective order indicated that the

case was under a prior 12/11/2007 seal order and "this protective order shall not constitute a waiver of any privileges". I documented to Bernstein that he must motion to reverse seal and protective order terms for which I disagreed.

The 1/13/2011 District Court Whistleblower Lawsuit, Jane Doe vs. FDIC, Doe II of II, Docket # 1:11-CV-0307, SDNY – On 1/13/2011, I, through attorney Bernstein, filed the **second** whistleblower lawsuit, which was again served to FDIC Chairman Bair. Again, the cause of action was under 12 USC § 1831j whistleblower legislation, and the focus was my disclosures of wrongdoing by staff and FDIC retaliation via 1/16/2009 job termination and benefits termination.

The 2/27/2012 dismissals of the Doe I and Doe II lawsuits by ruling that 12 USC § 1831j whistleblower legislation had no court jurisdiction – Although jurisdiction should be immediately determined, after *Doe I* pended from 10/22/2007 to 2/27/2012 or about 4 ½ years and *Doe II* pended from 1/13/2011 to 2/27/2012 or over a year, District Court Judge Barbara S. Jones granted the FDIC's motion to dismiss the cases for lack of jurisdiction for 12 USC § 1831j. The dismissals were granted despite that FDIC staff notified me in a 1/9/2009 termination decision letter that suit could be filed under 12 USC § 1831j and despite that, since 2001 (and currently), the FDIC issued notices pursuant to the Notification and Federal Employee Anti-discrimination and Retaliation Act or No FEAR Act which indicated that employees are protected from reprisal for whistleblowing activities if they file a district court suit under 12 USC § 1831j.

After the 2/27/2012 jurisdictional dismissal of Doe I, Enforcement of the Doe I protective order with attorney restrictions and orders to return or destroy evidence – On 3/21/2012, FDIC attorneys filed an emergency district court motion which purported that I violated the protective order because I provided, shared, or spoke of bank examination evidence to attorney Bernstein but was not allowed. The FDIC motion noted:

“The Defendant (FDIC) moves that the Court enforce the Protective Order and prohibit Plaintiff and her attorney in this Litigation from providing Confidential Information to any party, including each other....”

The 3/26/2012 district court hearing transcript with Judge Jones noted Richard Bernstein's unilateral withdrawal of representation of me with his statement that “I don't represent Ms. Patrick (anymore)” (p. 5, line 17). Judge Jones indicated that all terms of the protective order were valid and enforceable despite that I asserted that I disagreed with some of the terms before and after the fact, learned of the order after the fact, and believed that attorney restrictions, nondisclosure, and return of bank examination evidence to the FDIC, who has a documented history of altering and destroying evidence, violated my rights and privileges.

Judge Jones stated:

“Ms. Patrick, do you understand that your lawyer bound you to a confidentiality order, and that you are not permitted to disclose these documents to anyone else except your counsel in this litigation?” (p. 8, lines 16-20); “You cannot disclose these documents to **anyone** except for your counsel, and your current counsel (Bernstein) apparently is no longer

going to be representing you." (p. 9, lines 10-12) [Appx A.7] ... "I'm saying you can't disclose them until a court relieves you of your obligations under this protective order. Right now you're bound by the protective order, and until Judge Ellis and/or I rule that you can disclose these" (p. 9, lines 22-25) documents, you are bound by the protective order." (p. 10, line 1) "In other words, **if** you hire another attorney (solely) to represent you to get the protective order in this case lifted, (then) that attorney may (p. 11, lines 23-25) see these documents" (p. 12, line 1).

As a result, numerous attorneys indicated to me that they would not represent me based on the attorney restrictions and possible court sanctions. Judge Jones left office on 12/3/2012, and District Court Judge Loretta A. Preska adjudicated the protective order. Orders issued by Judge Preska included, but were not limited to, a 5/2/2014 court order which ordered that employment, medical, and personal documents and bank examination evidence for *Doe I* must be given to the party or attorney of record and not used or discussed or sanctions could result. I mailed all *Doe I* evidence to the FDIC, but the FDIC did not return all documents and continued to use and discuss hundreds of them.

Nonprecedential Second Circuit Decision affirming no jurisdiction for 12 USC § 1831j whistleblower legislation and district court seal and protective terms – Due to attorney restrictions in the *Doe I* protective order, I filed *pro se* appeals to the U.S. Court of Appeals for the Second Circuit to appeal the district court's ruling that there was no 12 USC § 1831j jurisdiction for *Doe I* (12-1947) and *Doe II* (12-1862) and to appeal seal and protective order rulings. A 1/13/2014 mandate in Document No. 183 (Case 12-1947) was issued by judges, Robert Katzmann (chief), Dennis Jacobs, and Rosemary Pooler which noted that they issued a

summary order which does not have precedential effect to affirm the district court judgment that there was no subject matter court jurisdiction for 12 USC § 1831j and to affirm the terms of the seal and protective order. Despite my claims that I never agreed to seal and protective order terms which violated my legal rights and privileges through nondisclosure, attorney restrictions, and return of evidence, judges held that my arguments had no merit because the orders were requested by attorney Bernstein and had to be imputed to me. Judges, however, unsealed and made some district court documents publicly available on the appellate docket, such as the 8/18/2008 Second Amended *Doe I* complaint, which is not publicly available on the district court docket.

The MSPB Whistleblower Termination Case, *Kimberly Patrick vs. FDIC*, Docket #

NY-0752-12-0130 – On 3/28/2012, I filed this case *pro se* due to attorney restrictions in the *Doe I* 2/1/2008 protective order. The case was assigned to Administrative Judge (AJ) JoAnn Ruggiero, who ruled that the case had jurisdiction. The case pended over twelve years until 4/29/2024 and exceeded the MSPB's 120-day duration standard to adjudicate all MSPB cases primarily because, to my objection, the AJ granted motions to dismiss the case without prejudice from 2012 to 2017 based on FDIC arguments that I must first appeal FDIC court allegations that whistleblower legislation, 12 USC § 1831j, lacked jurisdiction despite my stay requests not to first do so and based on FDIC arguments that the protective order had attorney restrictions at the MSPB for me despite that the FDIC assigned three attorneys to the MSPB case, prohibited me

to engage in discovery of my choice but allowed the FDIC to make discovery requests and not answer my discovery requests, and prohibited me to present bank examination evidence for whistleblower affirmative defenses.

Also, delay occurred because the FDIC argued that the FDIC had to fulfill their constant threats to seek sanctioning of me for contempt of district court, which could include heavy fines and incarceration, if I did not address their numerous arguments that the MSPB case could not proceed at all or at times unless the protective order was lifted or modified and because I allegedly violated the order. On 6/2/2014, Judge Preska issued an order that my motions to lift or modify the protective order (although prompted by FDIC threats) were duplicative and vexatious and must cease unless I first obtained permission from the court or she may sanction me.

Another example of many was on 9/22/2016 when the FDIC motioned in district court that, in addition to requiring that I return or destroy Doe I bank examination evidence pursuant to the protective order, they also wanted me to return or destroy my NTEU whistleblower grievances and whistleblower filing to U.S. Office of Special Counsel (OSC) even though they were not noted in the protective order. The FDIC argued that my NTEU and OSC filings are covered under the Privacy Act and appeared to include or mention FDIC bank examination evidence. The FDIC motioned that if I did not comply with destroying them, I must be court-sanctioned, starting with heavy fines. On 1/30/2017, Judge Preska ordered that I would not be held in contempt because

I represented in a 1/20/2017 hearing that I destroyed the information. Also, she ordered that I could not exercise my Privacy Act rights to reobtain or request bank examination evidence in my filings and must first request and be granted modification of the protective order in order to file a Privacy Act request.

Although Judge Preska issued a 5/2/2014 court order that required the FDIC to return to me my employment, personal, and medical information covered under the Privacy Act and not to use it outside of *Doe I*, on 11/14/2014 and other times, the FDIC submitted hundreds of pages of it into the MSPB record. Also, although the FDIC pledged to two district court judges on 3/26/2012 and 5/1/2014 that the FDIC would provide bank examination evidence during MSPB discovery which I returned to the FDIC or destroyed under the protective order, the FDIC refused to file it into the MSPB record.

I complained and/or motioned to the AJ that FDIC arguments were meritless because protective order terms noted that it did not waive my privileges and did not contain the conditions that the FDIC purported existed; law, rule, and regulations, including those of the MSPB, allowed me to have an attorney and discovery without restrictions; the FDIC did not file bank examination evidence in the MSPB record during discovery as pledged to judges; and the FDIC obstructed MSPB proceedings in violation of 18 USC § 1505. The AJ did not specifically answer the issues or motions as required by rules in the Judge's Handbook; did not sanction the FDIC for violation of MSPB regulations, especially for not

complying with MSPB discovery regulations as was done in precedent cases; and instead warned me of sanctions if I did not comply with discovery.

Furthermore, during the twelve years of the case, for purposes of pleading my case, the AJ or MSPB, in violation of laws, regulations, and rules, including rules in the Judge's Handbook regarding *pro se* plaintiffs, did not maintain the 11/6/2017 hearing recording and about thirteen documents on the electronic repository and did not give required guidance or answer my inquiries for how to get first-time access to records not on the electronic docket, including the hearing transcript. The hearing was especially crucial for my whistleblower affirmative defenses because Daniel Frye read his 1/9/2009 termination decision letter into the record which noted that he knew of my whistleblower allegations and Barry Gonzalez acknowledged that he knew that I filed grievances.

AJ Ruggiero's 10/24/2018 Initial Decision (ID) – Regarding my affirmative defenses that removal for use of approved FMLA and other leave must be reversed because it was based on my whistleblowing as described in the WPA and WPEA and was not in compliance with various laws, rules, and regulations, the AJ'S ID had some false information; contained some decisions which were not based on a preponderance or any evidence; cited the 11/6/2017 hearing recording or transcript which were unavailable to me; and pursuant to 5 CFR § 1201, did not provide decisions and reasons for *all* material issues on the record for all of my affirmative defenses, especially for efficiency of service and whistleblowing to facilitate future appeal arguments.

The AJ disregarded precedent decision and decided that termination for use of approved FMLA and other leave must be sustained, and she only subtracted illegally barred FMLA leave days. Regarding whether termination must be reversed because it was not in accordance with various laws, rules, and regulations, the AJ did not state that removal for use of approved FMLA absences was illegal and made only one decision which was that removal must be reversed because the FDIC violated my due processes under the Fifth Amendment of the U.S. Constitution. She, correctly and based on evidence, decided that the FDIC violated my due process rights because the FDIC proposed removal of me on 10/15/2008 for seven months of approved FMLA and other leave but in a 1/9/2009 removal decision letter removed me for a materially-inflated 14 months of approved FMLA and other leave without giving me prior notice of all absences, all evidence, and an opportunity to respond before removal. The AJ did not identify any *ex parte* communications.

For whistleblowing, the AJ indicated that I made protected disclosures because I “argued, inter alia, that [I] was retaliated against for having reported “systemic FDIC corruption and banks’ violations of laws” [ECF No. 46, SAppx33] and reasonably believed FDIC managers and supervisors committed various abuses of authority. The AJ found that:

“Appellant made some disclosures protected under 5 USC § 2302(b)(8) — disclosures such as the ones to Ms. AT (Manager Agnes Thompson) and Mr. BG (Supervisor Barry Gonzalez) concerning changes to the

reports of bank examinations. Given that the appellant was not consulted about the changes and given that information she deemed critical was deleted from some reports, I find that she had a reasonable belief that Ms. AT and Mr. BG abused their authority." [ECF No. 46, SAppx34] ... "One matter that upset the appellant involved changes that her supervisors and managers made to reports she wrote after bank examinations. She was upset because: she was not consulted about the changes; information regarding suspicious activity on the part of some banks was deleted; and the individuals who made the changes were not the report reviewers [AT and BG]. According to her, she informed a manager, AT, and a supervisor, BG, during a meeting in early December 2004 that she believed that their altering of a certain report was unlawful and she would file a grievance." [ECF No. 46, SAppx26]. The AJ noted "Mr. BG acknowledged (in testimony) that he knew that the appellant had filed grievances." [ECF No. 46, SAppx 35].

Additionally, the AJ noted that Regional Director Doreen Eberley denied my request to remove my name from a report that Eberley sent to a bank which bore my name but was not my signature and was altered in a way that did not reflect my findings [ECF No. 46, SAppx27].

The AJ, however, falsely noted that the record did not support that my whistleblowing was a contributing factor in removal because the record had no evidence of disclosures after 2005 or for about three years before removal processes from October 2008 to 1/16/2009, which was too long. [ECF No. 46, SAppx34-35] However, the record evidences that numerous removal participants knew of my whistleblowing from 2005 through 1/16/2009 removal.

Under law, the AJ ordered the FDIC to cancel removal and give backpay and adjustments for benefits to me retroactive to 1/16/2009 if her ID became final or if a Petition for Review (PFR) is filed by either party, the FDIC must file evidence and certification of compliance with interim relief of pay, salary and

benefits, which must be given until petitions are exhausted, or the FDIC's PFR may be dismissed. Dismissal of the PFR would prompt reversal of removal.

On 11/28/2018, FDIC attorney Scott Cooper filed a PFR to the Board with a false certification under oath that the FDIC complied with the AJ's interim relief orders but never provided evidence. I filed (two) 12/3/2018 motions to dismiss the FDIC's PFR because of the false certification and oath and lack of evidence. I filed a cross-PFR on 2/25/2019. After the case closed for new information, the FDIC mailed W-2 tax statements from 2018 to 2025 to me to evidence that the FDIC did not provide interim relief for seven years or ever, which has caused great hardship to me. The Board and Federal Circuit allowed the FDIC to continue petitioning processes at all levels anyway.

The ID requires that I write FDIC staff to inquire about efforts to comply with interim relief. For my 5/9/2025 letter to FDIC attorney Scott Cooper, he provided no answer about efforts, falsely stated that I could not communicate with him about interim relief, told me to cease and desist communication with him, and falsely noted that discovery could not occur for a Petition for Enforcement for interim relief despite that 5 CFR 1201.183(a)(9) allows discovery. For my 5/22/2025 letter to current FDIC Chairman Travis Hill inquiring about efforts to comply with interim relief, Hill never responded.

The Board's 4/29/2024 Nonprecedential Final Order – The Final Order by former Board Members, Chairman Cathy Harris, who was terminated by President Donald Trump on 2/10/2025, and Vice Chairman Raymond Limon, who was

relieved of his vice chair-title and retired in February 2025, was nonprecedential and noted that it did not add significantly to the body of MSPB case law, had no precedential value, and the Board and administrative judges are not required to follow or distinguish them in any future decisions. The Order contained factually inaccurate and blanket statements which were not based on any or a preponderance of evidence, had fabrications, acknowledged that the Board did not follow law to obtain decisions, and cited the 11/6/2017 hearing recording and/or transcript which was unavailable to me.

Among many things, the Board denied my cross-PFR for unspecified reasons. Regarding interim relief, the Board fabricated that I presented evidence that the FDIC complied with interim relief despite that I filed (two) 12/3/2018 motions to dismiss the FDIC's PFR because of the FDIC's false oath and certificate of compliance and failure to provide evidence. The Board stated that it used its discretion to deny my motions to dismiss the FDIC's PFR and refused to comply with mandatory, nondiscretionary law, 5 CFR § 1201.116(b), in effect which held that "If the appellant challenges the agency's certification of compliance with the interim relief order, the Board will issue an order affording the agency the opportunity to submit evidence of its compliance."

The Board disregarded precedent decisions and made false statements which were unsupported by evidence to hold that removal for use of approved leave was justifiable and promoted the efficiency of the service, an issue which the AJ neglected to decide as required by law. The Board subtracted all

illegally included FMLA leave and subtracted some, but not all, leave days because the FDIC failed to warn me that they would remove me for use of approved leave, despite that it is inactionable based on precedent decisions.

The Board misstated facts and my arguments to decide that my arguments were meritless that termination must be reversed because it violated various laws, rules, and regulations, including due processes in the Fifth Amendment of the U.S. Constitution and the FMLA, Privacy Act, and 5 CFR § 339.303(b) for mishandling my medical and personal information and disseminating it to unauthorized persons without prior notice, my knowledge, and a release. The Board held that the AJ's decision must be reversed that my constitutional rights for due process rights were violated for the FDIC's failure to give me prior notice of all absences for removal, all evidence, and an opportunity to respond before removal because *ex parte* communications to deciding official, Frye, for termination were not new and material. The Board fabricated that the AJ identified *ex parte* communications, failed to identify any *ex parte* communications, and failed to indicate that FDIC attorney Scott Cooper filed a 10/6/2016 pleading to the record which noted that the FDIC and I concurred that Frye's deposition indicated that he did not consult with others for his removal decision.

For my affirmative defenses that termination must be reversed because it was based on my whistleblowing as described in the WPA and WPEA, the Board agreed with the AJ's decision that I made protected disclosures under 5 USC § 2320(b)(8) because I reasonably believed that supervisors and managers

abused authority by critically changing my reports without consulting me. Also, the Board noted that the AJ failed to specifically consider my grievances (filed from 5/26/2005 to March 2007), which the Board believed were viable as protected disclosures under the WPA, and my whistleblower lawsuit under 12 USC 1831j (which pended from 10/22/2007 to 2/27/2012) when she indicated that disclosures did not occur after 2005. Nonetheless, the Board decided to affirm the AJ's decision that my disclosures did not contribute to removal because they last occurred in 2005 about three or more years before removal processes, which is too long ago to prove my whistleblower and grievance retaliation defenses. Additionally, despite that the record evidences otherwise, the Board falsely indicated that termination participants did not even know of my disclosures, grievances, and whistleblower lawsuit; did not have disclosures implicating them as managers; had no motive to retaliate nor did I allege it; and had good reason to terminate me for use of approved leave.

Moreover, the Board rejected my arguments that terms of the WPEA enabled me to prove my whistleblower defenses and accepted FDIC arguments that the WPEA could not be applied for my grievances (filed 2005-2007) because WPEA became effective on 12/27/2012 after the grievances were filed. The Board falsely indicated that past Board decisions, such as *Day v. Department of Homeland Security*, 119 MSPR 589 (2013), did not support that WPEA was broadly retroactive and held that statutory provisions in WPEA were nonapplicable for my appeal. However, congressional notes and auxiliary legislation for WPEA

document that the WPEA must be applied retroactively for pending MSPB cases and provide compensation, which would include my MSPB case which pended 3/28/2012 to 4/29/2024 when WPEA became effective on 12/27/2012.

The Federal Circuit's 3/11/2026 Opinion, *Patrick v. FDIC*, Case # 1962 – I filed the appeal *pro se* because of the *Doe I* protective order. Judges Clevenger, Chen, and Reyna had jurisdiction pursuant to 5 USC § 7703(c) which requires that "the court shall review the record and hold unlawful and set aside any agency action, finding, or conclusion found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence."

The docket, however, indicates that the court made far departures from accepted and usual judicial proceeding and rules, including by not requiring the FDIC file an adequate Certified List and to give access to the whole MSPB record for me to develop briefs and appendices and for court review; sanctioned non-compliance of the law and abuse of discretion by the FDIC, MSPB and/or other courts; and made decisions which conflicted with precedent decisions and were unsupported by substantial evidence.

Judges ruled that all MSPB proceedings, five, which I asserted were erroneous and harmful had no merit and affirmed all five adverse decisions in the Final Order. Regarding MSPB proceedings, judges decided that my assertions of errors in MSPB proceedings were meritless if they were based on the 2/1/2008

Doe I protective order because the order was acceptable and my arguments were meritless that the AJ violated rules by not answering or providing reasons for my motions and complaints that (1) the FDIC illegally obstructed the MSPB case under 18 USC § 1505; (2) the FDIC argued that I had attorney restrictions at the MSPB; and (3) the FDIC argued that I had discovery and evidence restrictions for my affirmative defenses for whistleblowing and that the FDIC would not answer my discovery requests. Also, judges ruled that my arguments were meritless that (4) the AJ did not comply with rules because she did not provide required guidance or answer my inquiry as a *pro se* appellant for how to obtain first-ever access to about 13 documents, including the 11/6/2017 hearing recording and transcript, which were not on the electronic repository, in order to plead my case and that (5) the Board violated 5 CFR § 1201.116(b) which had a mandatory requirement that the Board issue an order to the FDIC affording the agency the opportunity to submit evidence of its compliance with interim relief.

For decisions in the Final Order, judges disregarded precedent decisions and ruled that removal for use of approved FMLA and other leave is justifiable because it is lawful to remove staff for unexcused absences with no foreseeable end, which does not reflect facts and evidence in the record for my case. Judges ruled that removal for approved leave promotes the efficiency of the service, and, even though I made protected disclosures, there was no nexus or evidence in the record that it contributed to the removal despite that MSPB records do evidence it.

Despite that I did not receive notice of all dates of approved leave for removal, all evidence, and an opportunity to respond before removal, judges affirmed that my Fifth Amendment due process rights were not violated because *ex parte* communications to the deciding official for removal were not new and material. Judges were unmoved that there was no evidence of *ex parte* communications and that the Board made factual inaccuracies and ruled that the Board used correct facts and the legal framework for its decision.

For interim relief matters, before the 3/11/2026 opinion, the court denied my motion to stay the case to file a MSPB Petition for Enforcement due to FDIC's noncompliance of interim relief for over seven years or ever, which was causing hardship to me, because the FDIC simply disagreed [ECF No. 50]. For the opinion, although there is no evidence in the MSPB record of the FDIC's compliance with interim relief and Board Members refused to comply with mandatory, nondiscretionary law under 5 CFR 1201.116(b) to "issue an order affording the agency the opportunity to submit evidence of compliance" after I challenged the FDIC's compliance as false, judges ruled that the Board did not abuse discretion when it denied my motions to dismiss the FDIC's PFR for noncompliance because the Board supported its decision that the FDIC complied with interim relief using substantial evidence.

Furthermore, judges indicated that, although I notified and identified to the court in advance that requirements for comments for my briefs would be premature due to lack of material, judges decided to waive my legal

arguments for being undeveloped and would not address them because they had uncommunicated expectations that my arguments would be fully developed without the record as a whole. Judges accurately noted that the hearing transcript was created but was inaccessible on the docket, which was the general situation, and inaccurately noted that the hearing recording was available on the electronic MSPB repository although it was not for me and the MSPB wrote that it was not. Judges ruled that my arguments regarding denied motions to dismiss the FDIC's PFR for noncompliance with interim relief were developed, arguments about due processes had limited development, and arguments about three issues – termination for approved leave, termination for approved leave to promote the efficiency of the service, and whistleblowing were wholly undeveloped. However, judges did not address any or all of my legal arguments whether they were developed, of limited development, or wholly undeveloped.

The docket evidences that the decision to waive undeveloped arguments for lack of materials was far departure of accepted and usual proceedings and rules of appellate procedure. On 6/18/2024, the court directed the FDIC to forward the Certified List of underlying MSPB records to be filed to the docket no later than 40 days from the date of notice. Pursuant to Federal Rules of Appellate Procedure Rule (FRAP) 17(b) and Federal Circuit Rules (FCR) 17(b)(2) and (d)(1), it is the FDIC's responsibility to file an adequate Certified List and to

allow me inspection, access, or copies of any and all records on the List such as the hearing recording and transcript in order for me to plead my appeal.

I promptly notified the FDIC, court, and MSPB that the Certified List, which listed about 300 records, is inadequate because material recordkeeping deficiencies and errors of the MSPB flowed to the List. I notified them that, without notice to me, MSPB officials had removed some original records from the case's electronic repository docket which left records inaccessible to me, and many records were misnumbered; unnumbered; and with inaccurate dates, titles, and content. The total number of records on the List did not match the total number on the MSPB electronic repository, and I never had or did not have current access to about 13 specified MSPB record on the repository, including the 11/6/2017 hearing recording and transcript. I notified the court that the court's website and rules of appellate procedures indicated that crucial records for preparing a brief and appendix included the hearing transcript, and the Certified List itself noted that the hearing transcript had no record number and was located in a folder in an unspecified location. [ECF No. 9]

The docket evidences that FDIC never responded to my direct communications about the List; made blanket responses to the court that no errors or deficiencies existed; and, in noncompliance with appellate rules, did not provide inspection, access, and copies for the approximately 13 documents

that I notified were inaccessible to me, including the hearing recording and transcripts, and never provided them in a court exhibit or appendix.

Also, the docket reflects that the MSPB wrote me that the Certified List contained records which were not accessible to me on the electronic repository, such as the hearing recording and transcript; however, with a Privacy Act request, the MSPB would provide the records. The docket evidences that the MSPB later wrote to me to apologize for not providing the records and gave an inventory of unprovided records, including the hearing recording and transcript which were not available for any of my briefs and appendices.

Additionally, the docket evidences that after I served the court with notice of my father's death on 1/16/2025 by mail, the Clerk of the Court, Jarret Perlow, responded by issuing a 1/29/2025 nonprecedential order which was delivered and served to me as a paper filer by U.S. mail on about 2/4/2025 [ECF No. 28].

The order stated:

"[My] request for a time extension until 8/8/2025 to file an opening brief while I engage in Privacy Act appeal processes with the MSPB to gain access and copies of **all** case documents, review them all for completeness and accuracy; and request correction and amendment of any inaccuracies and incompleteness is **denied** because the FDIC disagrees".... "She may include in her brief arguments concerning a failure to provide materials and/or of deficiencies in the certified list. The "opening brief is due no later than 60 days from the date of entry of this order (or by Sunday, 3/30/2025). The court will neither consider nor respond to any further requests regarding the date of filing of the opening brief. Failure to file the opening brief by this deadline shall result in dismissal of this matter for failure to prosecute."

The court never issued an order which expressed an expectation that all issues be fully developed and never made the FDIC comply with procedural rules to provide an accurate Certified List and to give access to all documents.

After the order due date of 3/30/2025 in ECF No. 28, pursuant to FRAP 26(c), I mailed an opening brief and appendix on 3/31/2025, which the court filed to the docket on 4/7/2025 with no indication that it was untimely. FRAP 26(c) holds:

"When a party **may or must act** within a specified time after being served, and the paper is not served electronically on the party or delivered to the party on the date stated in the proof of service, 3 days are added after the period would otherwise expire under Rule 26(a)."

My opening brief and appendix (and my reply brief and petition for rehearing) indicated that requirements for arguments and comments would be premature and harmful to me because I did not have access to numerous records, including the crucial hearing recording and transcript for the record as a whole for a preponderance of evidence; numerous errors existed in the Certified List; the MSPB Privacy Act appeal was still pending; pursuant to FRAP 10(b)(2), if a party intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the party should include in the record all relevant evidence to that finding or conclusion; I could not verify record locations and tab numbers and placed question marks by them in briefs and appendices; and without all records, I would comments as much as possible for interim relief and due processes.

Moreover, judges indicated that my reply brief was rejected as untimely because I was granted a time extension but failed to timely file it because I incorrectly relied on FRAP 26(c) to extend filing time; however, the court rejects use of FRAP 26(c) under FCR 26(a)(5) and Federal Rules for Civil Procedure, Rule 6(a), and case law at the U.S. Court of Appeals for the Sixth Circuit are irrelevant and do not apply to my situation for computing and extended time to file. To the contrary, as described above, the court did not reject my opening brief as untimely when I filed it past the due date using an extension of time based on FRAP 26(c).

Also, the docket indicates that the court issued denials for a time extension for my reply brief. On 1/14/2026 [ECF No. 62], I motioned for reconsideration of Clerk Prelow's 1/7/2026 nonprecedential order [ECF No. 61] that my *pro se* reply brief must be due on or before 2/5/2026 with no further extension because I asserted that an extension to 2/27/2026 was needed because the FDIC had stated in the past that the 2/1/2008 district court protective order restricted use of an attorney; the MSPB case was large and listed about 300 documents; and there were eleven legal issues. On 1/20/2026 [ECF No. 63], the court issued a nonprecedential order which denied reconsideration for a time extension.

NOTICE TO OPPOSING COUNSEL – Department of Justice attorney Thomas Adair, acting on behalf of the FDIC, was notified of my intent to file this application. To date, no objection has been received.

CONCLUSION - For these reasons, I respectfully request that this application is granted to file a petition for a writ of certiorari by 12/18/2026.

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script that reads "Kimberly A. Patrick".

9/28/2026

Ms. Kimberly A. Patrick, Pro Se Applicant

Enclosure: Appendix

Under 28 USC § 1746, I declare under the penalty of perjury that appendix documents are true and correct.

WORD COUNT

Rule 22 guides applications to individual Justices and notes that applications must be prepared using Rule 33.2. Rule 33.2 has a 40-page limit and exclusions in Rule 33.1(d) apply. Words are limited to 9,000 with certain exclusions.

This application has 37 pages, and excluding the cover and verbatim quotations, words in this application total 8, 798.

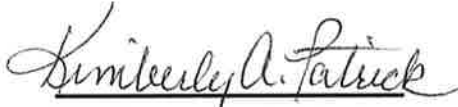
CERTIFICATE OF SERVICE

Pursuant to 28 USC § 1746, I declare under the penalty of perjury that this statement is true and correct and that I served a copy of the foregoing filing on 9/28/2026 by U.S. mail to:

The Solicitor General of the United States, D. John Sauer
Room 5616
Department of Justice
950 Pennsylvania Avenue, N. W.
Washington, DC 20530-0001

Thomas J. Adair,
acting on behalf of the FDIC
Department of Justice
P.O. BOX 480
Ben Franklin Station
Washington, DC 20044

9/28/2026
Date


Kimberly A. Patrick

APPENDIX

Re: Patrick's Application to Extend Time to file a Petition for a Writ of Certiorari, *Patrick v. FDIC*, Case # 2024-1962, U.S. Court of Appeals for the Federal Circuit

1. Nonprecedential 3/11/2026 Opinion, *Patrick v. FDIC*, Case # 2024-1962, U.S. Court of Appeals for the Federal Circuit
2. Nonprecedential 7/21/2026 Order denying Patrick's petition for panel rehearing, Case # 2024-1962, U.S. Court of Appeals for the Federal Circuit
3. 3/21/2012 FDIC emergency motion to enforce attorney restrictions for Patrick (excerpts)
4. 10/20/2016 email from FDIC attorney Scott Cooper to Patrick that the FDIC had attorney restrictions for Patrick
5. FDIC attorney Scott Cooper filed a 12/16/2016 MSPB pleading which stated that the FDIC had attorney restrictions for Patrick
6. 10/25/2004 e-mail from FDIC NY Regional Director Doreen Eberley to Patrick which indicated that the FDIC Office of Inspector General's (OIG) audit findings noted that regulatory examination reports described Bank Secrecy Act (BSA) violations, but they were systemically missing from the violations page in *all* FDIC regions and were called "phantom violations".
7. Patrick's virtually empty work cubicle after management ordered her on 4/4/2005 to purge all working files in her cubicle and work laptop cubicle in noncompliance with laws, rules, and regulations (clear version also attached)
8. Removal of Bank Secrecy Act (BSA) Subject Matter designation and prohibition to be trained and to conduct BSA and other examinations

9. 12/21/2007 letter to Supervisor Barry Gonzalez from Patrick's doctor, Dr. AP, that "(Patient) receives treatment... I anticipate recovery no earlier than one year from now (or 12/21/2008)."
10. 6/16/2008 letter to FDIC staff from Patrick's doctor, Dr. AG, that Patrick "is suffering from stress, which developed at the work site, which has given rise to litigation...She is unable to work for at least six months..."
11. 8/15/2008 letter from Patrick's health care provider, BR, to Barry Gonzalez requesting that Patrick remain in Leave without Pay status during treatment
12. Manager James Watkins' 10/15/2008 proposal to remove Patrick for approved leave
13. Manager Daniel Frye's 1/9/2009 decision letter to remove Patrick for approved leave and to notify her that she could litigate under 12 USC 1831j due to her whistleblower suit and allegations
14. The 10/6/2016 FDIC pleading in the MSPB record noting that the FDIC and Patrick agreed that Daniel Frye's deposition indicated that he did not consult with others for his termination decision
15. The service on 10/25/2007 to FDIC Chairman and Chairman of the Board Sheila Bair of the 10/22/2007 whistleblower disclosure and retaliation lawsuit, *Jane Doe v. FDIC (Doe I)*, Docket # 1:07-CV-09435, SDNY
16. FDIC Standard Form-50 approving job removal on 1/16/2009 for Patrick by the 5-member FDIC Board including FDIC Chairman Sheila Bair and Vice Chairman Martin J. Gruenberg
17. FDIC Standard Forms and letters approving all Family and Medical Leave (FMLA) and other absences for Patrick
18. FDIC W-2 tax statements from 2018 to 2025 to Patrick which indicated that the FDIC never provided interim relief for seven years or ever

EXHIBIT 1

**Nonprecedential 3/11/2026 Opinion, *Patrick v. FDIC*,
Case # 2024-1962, U.S. Court of Appeals for the
Federal Circuit**

NOTE: This disposition is nonprecedential.

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

KIMBERLY PATRICK,
Petitioner

v.

FEDERAL DEPOSIT INSURANCE CORPORATION,
Respondent

2024-1962

Petition for review of the Merit Systems Protection
Board in No. NY-0752-12-0130-I-6.

Decided: March 11, 2026

KIMBERLY PATRICK, Parlin, NJ, pro se.

THOMAS J. ADAIR, Commercial Litigation Branch, Civil
Division, United States Department of Justice, Washing-
ton, DC, for respondent. Also represented by TARA K.
HOGAN, PATRICIA M. MCCARTHY, BRETT SHUMATE.

Before REYNA, CLEVINGER, and CHEN, *Circuit Judges*.
PER CURIAM.

Kimberly Patrick appeals the final decision of the Merit Systems Protection Board ("Board") sustaining her removal from her position with the Federal Deposit Insurance Corporation ("FDIC") on the charge of excessive absences.¹ *Patrick v. Federal Deposit Insurance Corporation*, No. NY-0752-12-0130-I-6, 2024 WL 1885525 (M.S.P.B. Apr. 29, 2024) ("*Final Order*"). For the reasons stated below, we affirm the Board's decision.

I

Ms. Patrick was a Grade-12 Examiner at the FDIC from 1998 until her removal in 2008. Her duties included "participat[ing] in, and sometimes direct[ing], the examination of banks in order to determine their financial condition, evaluate their management, and ascertain their compliance with applicable laws and regulations." *Final Order* at *1. The relationship between Ms. Patrick and the FDIC first grew strained in 2002. Among other issues, between 2002 and 2007 Ms. Patrick expressed disagreement with various FDIC procedures and policies, disclosed potential wrongdoing, challenged management orders, alleged retaliation and filed a civil action against the FDIC in 2007. See *Doe v. FDIC*, No. 07-CV-9435 BSJ RLE, 2012 WL 642117, at *1 (S.D.N.Y. Feb. 27, 2012), *aff'd*, 545 Fed.

¹ Failure to report for duty for an extended period of time constitutes excessive absences which is recognized as a lawful ground for removal. See *Kelley v. Dep't of Veterans Affairs*, 73 F. App'x 438, 439 (Fed. Cir. 2003) ("Prolonged absence with no foreseeable end can provide just cause for removal because it constitutes a burden that no reasonable employer can efficiently endure.").

Appx. 6 (2d Cir. 2013) (unpublished) (“*Doe I*”);² *see also* *Final Order* at *1.

After these various issues between Ms. Patrick and the FDIC began, she started experiencing medical issues. Ms. Patrick was placed on leave under the Family and Medical Leave Act (“FMLA”) from December 12, 2007, through March 5, 2008, after providing the FDIC with a note from her physician indicating that she needed rest. While Ms. Patrick was on FMLA leave, she requested the FDIC to place her on leave without pay (“LWOP”) status for one year. At the close of Ms. Patrick’s FMLA period, she was approved for LWOP status through June 21, 2008. Leading up to the expiration of her LWOP status, she provided the FDIC with updated medical information indicating that her treatment was ongoing and she could not return to work for at least another six months. In response, the FDIC began investigating the likelihood that Ms. Patrick would ever return to her position and solicited an opinion from an occupational health consultant at the U.S. Department of Health and Human Services on the matter. The consultant informed the FDIC that after review of the circumstances he had no reason to presume she would ever be able to return to her position at the FDIC.

On August 6, 2008, the FDIC sent Ms. Patrick a letter informing her that her prolonged absence was adversely affecting the agency’s New York City Field Office and could no longer be tolerated. The letter stated that if Ms. Patrick did not report for duty on August 18, 2008, the FDIC may commence nondisciplinary adverse action to remove her from the agency. Ms. Patrick replied to the letter stating, among other things, that she did not anticipate returning

² Ms. Patrick is named pseudonymously in all proceedings before the district court. However, because Ms. Patrick cites to such proceedings in her publicly filed brief, we will cite them as well.

to work on August 18, 2008, and could not provide the FDIC with a return date. On October 6, 2008, Ms. Patrick's supervisor recommended action be initiated to remove her from her position and her removal was proposed on October 15th of that same year.

The FDIC proposed Ms. Patrick's removal with one charge of "excessive absences resulting in [her] inability to perform [her] duties on a regular basis" and sixteen accompanying specifications ("Specifications"). *Final Order* at *1 (citation modified). The Specifications charged that Ms. Patrick was absent from duty for the partial pay period covering March 5, 2008, through March 14, 2008 as well as each full pay period from March 17, 2008 through October 3, 2008, totaling in 1,224 of granted LWOP hours. Ms. Patrick responded alleging, in part, that the FDIC was retaliating against her due to her reporting of corruption and illegal activity. On January 9, 2009, a decision was issued sustaining the FDIC's charge and removing Ms. Patrick's from her position effective January 16, 2009. The decision also informed Ms. Patrick that she had the right to challenge her removal through various channels, including through an appeal to the Board and through a civil action under 12 U.S.C. § 1831j.

In January of 2011, while *Doe I* remained pending, Ms. Patrick filed another civil action against the FDIC in the Southern District of New York. *Doe v. FDIC*, No. 11 CIV. 307 BSJ RLE, 2012 WL 612461, at *1 (S.D.N.Y. Feb. 27, 2012) ("*Doe II*"). Although Ms. Patrick was informed by the FDIC that she may file such a civil action, the agency moved to have the case dismissed. Both *Doe I* and *Doe II* were eventually dismissed for lack of jurisdiction. See *Doe I* at *4; *Doe II* at *6.

Then, for the first time, Mrs. Patrick filed an appeal with the Board on March 22, 2012, and shortly thereafter appealed the dismissal of *Doe I* to the United States Court of Appeals for the Second Circuit. See *Doe v. FDIC*, 545 F.

PATRICK v. FDIC

5

App'x 6, 9 (2d Cir. 2013). The FDIC moved to have Ms. Patrick's appeal with the Board dismissed without prejudice due to the ongoing civil action and a certain protective order entered into by the parties during *Doe I* ("Protective Order") which remained in effect. Over Ms. Patrick's objection, the Board dismissed her appeal without prejudice due to the ongoing civil action. Ms. Patrick's appeal with the Board was re-filed and dismissed without prejudice four more times between 2012 and 2017 due to the existence of the Protective Order and ongoing civil proceedings.³ Ms. Patrick thereafter refiled her appeal to the Board.

II

A

Over nine years after the effective date of Ms. Patrick's removal from the FDIC, the administrative judge ("AJ") issued an initial decision on the merits of her appeal on October 24, 2018 ("Initial Decision"). *Patrick v. FDIC*, No. NY-0752-12-0130-I-6, 2018 WL 5389398 (M.S.P.B. Oct. 24, 2018) ("*Initial Decision*"). The AJ sustained the FDIC's removal charge and denied Ms. Patrick's whistleblower defense, but ultimately reversed Ms. Patrick's removal based on the finding of a due process violation, ordering the FDIC to reinstate Ms. Patrick to her position and provide her with back pay. *Id.*

The AJ generally sustained Specifications 1 through 16 and the FDIC's charge of excessive absences.⁴ *Id.* She

³ The Second Circuit affirmed the district court's dismissal of *Doe I* in 2013. *Doe v. FDIC*, 545 F. App'x 6, 9 (2d Cir. 2013).

⁴ Because a charge of excessive absences based on approved leave may not include leave under the FMLA, the AJ found that the FDIC improperly included one day of FMLA leave in Specification 1, but otherwise sustained the

made this finding after determining that Ms. Patrick's situation fell within the exception to the general rule that an agency cannot take adverse action against an employee based on the use of approved leave time. *Id.*; see *Savage v. Dep't of the Army*, 122 M.S.P.R. 612, 630 (M.S.P.B. 2015); *Fox v. Dep't of the Army*, 120 M.S.P.R. 529, 549 (M.S.P.B. 2014).

The AJ rejected Ms. Patrick's whistleblower retaliation defense because, while Ms. Patrick had made protected disclosures under 5 U.S.C. § 2302(b)(8), the record did not support a finding that such protected disclosures contributed to her removal. *Id.*

Next, the AJ considered whether the FDIC violated Ms. Patrick's due process rights. *Id.* Ms. Patrick argued that the deciding official based his determination on absences not included in the Specifications, in contravention of her due process rights. The AJ found that while Ms. Patrick's proposed removal was based on her absences from March 5, 2008, through October 3, 2008, the dates covered by the Specifications, the deciding official based his decision on Ms. Patrick's absences from October 23, 2007 through January 9, 2009. *Id.* As such, the AJ found that the deciding official considered absences before March 5, 2008, and after October 3, 2008, which were not cited in the Specifications. *Id.* The AJ assessed whether, under this court's precedent in *Stone v. FDIC*, 179 F.3d 1368 (Fed. Cir. 1999), Ms. Patrick's due process rights were violated for having "notice of only certain charges or portions of the evidence and the deciding official[s] consider[ation of] new and material evidence." *Id.* (citing *Stone*, 179 F.3d at 1376). In determining that Ms. Patrick's due process rights were violated, the AJ

remainder of the Specification. See *Initial Decision* (citing *McCauley v. Dep't of the Interior*, 116 M.S.P.R. 484, 489-90 (M.S.P.B. 2011)).

PATRICK v. FDIC

7

found the additional absences to constitute new and material information. *Id.*

Ms. Patrick's removal was thus reversed and the FDIC was ordered to reinstate Ms. Patrick to her position and provide her with back pay. *Id.* The AJ additionally provided interim relief in the event either party petitioned for review of the Initial Decision. *Id.*

B

The FDIC and Ms. Patrick both petitioned the Board for review of the Initial Decision. *Final Order*, at *1. Ms. Patrick also moved to dismiss the FDIC's petition for its failure to comply with the AJ's interim relief order. *Id.* On April 29, 2024, The Board issued a Final Order denying Ms. Patrick's motion to dismiss and petition for review, granting the FDIC's petition for review, and reversing the Initial Decision ("Final Order"). *Id.*

The Board first denied Ms. Patrick's motion to dismiss. *Id.* at *1-2. "Ordinarily, when an appellant challenges the agency's certification of compliance with an interim relief order, the Board will issue an order affording the agency the opportunity to submit evidence of compliance." *Id.* at *2 (citing 5 C.F.R. § 1201.116(b) (2012)). However, the Board found it "unnecessary to issue such an order" in this case because Ms. Patrick had already submitted copies of correspondence with the FDIC into evidence that demonstrated the agency's compliance.⁵ *Id.*

⁵ In the correspondences, the agency ordered Ms. Patrick to return to duty and described how the process of her reinstatement would be handled, including that a standard form 50 documenting the cancellation of her removal from the FDIC was available via the agency's secure email system upon her return to duty. *Final Order* at *2.

The Board then reversed the AJ's due process determination, finding the additional absences did not constitute new and material information. *Id.* at *2-3. The Board considered and weighed the three *Stone* factors to determine whether such additional absences constitute new and material information such that Ms. Patrick's due process rights were violated. *Id.* at *3 (quoting *Stone*, 179 F.3d at 1376-77). The factors are: (1) "whether the *ex parte* communication merely introduces 'cumulative' information or new information"; (2) "whether the employee knew of the error and had a chance to respond to it"; and (3) "whether the *ex parte* communications were of the type likely to result in undue pressure upon the deciding official to rule in a particular manner." *Stone*, 179 F.3d at 1377; *Final Order*, at *3.

In considering the *Stone* factors the Board made the following findings of fact. Regarding the earlier absences which pre-date those in the Specification, the Board found such information was not "new" because (1) both the notice of proposed removal and the decision letter "described [Ms. Patrick's] absences from the time they began in 2007" before turning to a consideration of the absences actually charged, and (2) Ms. Patrick herself "addressed her absences beginning in 2007 in her reply" to the notice of proposed removal. *Id.* Regarding the later absences which occurred after those charged in the Specification, the Board found the deciding official's brief reference in the decision letter to Ms. Patrick having not returned to work "to date" may have been "such that [Ms. Patrick] did not have an opportunity to address those absences." *Id.* However, the Board found that such the additional absences were not material to the deciding official's determination as there was "no suggestion" that the additional absences "w[ere] likely to result in undue pressure upon him to rule in a particular manner." *Id.* Finding the additional absences not charged in the Specifications to be neither new nor

PATRICK v. FDIC

9

material, the Board reversed the AJ's finding of a due process violation. *Id.*

The Board then determined that the FDIC had proved its charge of excessive absences. *Final Order* at *4-5. Regarding Ms. Patrick's whistleblower defense, the Board agreed with the AJ that Ms. Patrick made protected disclosures, but failed to prove her disclosures were a contributing factor in her removal. *Id.* at *5-6. The Board additionally considered Ms. Patrick's argument on appeal that various grievances she had filed or attempted to file were protected disclosures the AJ did not specifically consider, but the Board ultimately found that even if such grievances were protected activity, Ms. Patrick failed to establish a nexus between such grievances and her removal. *Id.* at *6-7.

Having determined removal to be a reasonable penalty, the Board reversed the AJ's finding of a due process violation and sustained the FDIC's removal of Ms. Patrick from her position. *Id.* at *1, *8.

Ms. Patrick timely appealed to this court. We have jurisdiction to review the Board's decision under 5 U.S.C. § 7703(b)(1)(A) and 28 U.S.C. § 1295(a)(9).

III

We may set aside the Board's decision only if it is "(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence." 5 U.S.C. § 7703(c). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938) (citation modified).

IV

Ms. Patrick alleges five errors in the Board's Final Order and five errors in the underlying proceedings. Having carefully considered the arguments properly before us, we conclude that none undermine the Board's Final Order.

A

Ms. Patrick alleges the following as errors in the Board's Final Order: (1) denial of her motion to dismiss the FDIC's petition for failure to comply with the interim relief order; (2) finding the FDIC proved its charge of excessive absences; (3) finding no due process violation; (4) rejecting her defenses of whistleblowing and retaliation for grievance activity; and (5) determining removal to be a reasonable penalty.

Ms. Patrick's opening brief to this court presented a developed argument with regard to her first allegation of error and a more limited but sufficient argument with regard to her third allegation of error. Appellant's Br. 18-19. With regard to her second, fourth and fifth allegations of error, Ms. Patrick stated that due to "lack of materials" any "comment" on those alleged errors would be "premature" in her opening brief, leaving those arguments as identified but wholly undeveloped. *Id.* The court twice granted Ms. Patrick's request for an extension of time in which to file her reply brief, expecting possible development of the undeveloped arguments. In the end, Ms. Patrick failed to file a timely reply brief,⁶ consequently leaving three of her

⁶ The court ordered Ms. Patrick to file her reply brief on or before February 5, 2026. Her reply brief was served by mail on February 9, 2026. The court received and filed her reply brief on February 13, 2026. Ms. Patrick relies on Federal Rule of Appellate Procedure 26(c) to establish timely filing of her reply brief. In some circumstances Rule

arguments identified but wholly undeveloped. Undeveloped arguments may be deemed waived, and thus not addressed by the court. *See CardSoft v. Verifone, Inc.*, 769 F.3d 1114, 1119 (Fed. Cir. 2014) (“Arguments that are not appropriately developed in a party’s briefing may be deemed waived.”).

Removing the waived arguments, Ms. Patrick alleges error with the Final Order in the Board’s (1) denial of her motion to dismiss the FDIC’s petition for failure to comply with the interim relief order, and (2) finding of no due process violation. We reject both arguments.

First, Ms. Patrick urges that the Board abused its discretion by refusing to order the FDIC to submit evidence showing compliance with the AJ’s interim relief order. We disagree.

If an appellant challenges an agency’s certification of compliance with an interim relief order “the Board will issue an order affording the agency the opportunity to submit evidence of its compliance.” 5 C.F.R. § 1201.116(b) (2012). However, even if an agency does not provide evidence of compliance, the Board has discretion in deciding whether to dismiss the petition for review. *Id.* § 1201.116(e) (2012); *see also Hoofman v. Dep’t of the Army*, 526 F. App’x 982, 985 (Fed. Cir. 2013) (explaining “the relevant regulation provides [the Board] discretion to dismiss or not dismiss.”). Here, the Board determined that

26(c) provides additional days for computation of time, however such rule does not apply to deadlines set by court order. *See Fed. Cir. R. 26(a)(5)*; *see also Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1016 (6th Cir. 2005) (holding Rule 6(a) “does not apply to situations where the court has established a specific calendar day as a deadline”). Ms. Patrick’s reliance on Federal Rule of Appellate Procedure 26(c) is thus misplaced.

it was “unnecessary” to issue an order requiring the agency to submit evidence of compliance because: (1) the FDIC was, in part, “question[ing] the propriety of the interim relief order”; (2) the FDIC “certified under oath that the agency ha[d] fully complied” with the interim relief order; and (3) Ms. Patrick “ha[d] herself submitted evidence demonstrating that the agency [was] in compliance with the administrative judge’s interim relief order.” *Final Order* at *2 (citing 5 C.F.R. § 1201.116(b) (2012)).

Moreover, the Board’s finding that the FDIC complied is supported by substantial evidence. Based on the evidence provided by Ms. Patrick, the Board found that the FDIC had complied with the interim relief order. *Final Order* at *2. This constitutes substantial evidence and as such we will not disturb the finding. If the Board had, as Ms. Patrick urges it was required to, issued an order for the FDIC to submit evidence of compliance, any evidence the FDIC chose to provide would have been cumulative of the evidence already provided by Ms. Patrick. Therefore, a showing that prejudice flows from the Board’s failure to issue such an order has also not been made. For these reasons, Ms. Patrick fails to show abuse of discretion in the Board’s failure to order the FDIC submit evidence of compliance in this case.

Second, Ms. Patrick has not alleged error in the Board’s due process analysis by failing to challenge the Board’s factual findings on newness and materiality. Due process requires that, before a federal employee can be lawfully removed from her position, she must be given notice both of the charges against her and the agency’s evidence as well as an opportunity to respond. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546, (1985). In *Stone* this Court determined “*ex parte* communications that introduce new and material information to the deciding official will violate the due process guarantee of notice” and set forth three, nonexclusive, factors to be considered when determining whether information is, in fact, “new and material”

for such purposes. 179 F.3d at 1377. “In considering whether information is ‘new and material’ such that it violates due process, we consider the facts and circumstances of each case, and the test is an objective one.” *Rueter v. Dept. of Com.*, 63 F.4th 1357, 1365 (Fed. Cir. 2023) (citing *Stone*, 179 F.3d at 1377). The Board objectively considered the *Stone* factors and determined the additional absences were neither new nor material. *Final Order* at *3 (quoting *Stone*, 179 F.3d at 1377). Ms. Patrick does not challenge any of the Board’s factual findings, including that Ms. Patrick herself referenced the earlier absences in her reply to the notice of proposed removal or that no evidence indicated that any of those absences not noted in the Specifications influenced the deciding official. The Board applied the correct legal framework, and Ms. Patrick has failed to show error in the Board’s due process analysis.

B

Ms. Patrick additionally alleges the following as errors generally in her proceedings before the agency: (1) the AJ’s failure to rule on her allegation that the FDIC illegally obstructed proceedings under 18 U.S.C. § 1505; (2) the AJ’s failure to rule on her inability to seek assistance of counsel; (3) the AJ’s denial of Ms. Patrick’s motion to compel discovery; (4) violation of 5 C.F.R. § 1201.53 by the AJ and the Board in denying access by Ms. Patrick to the transcript and/or recording of the November 6, 2017 hearing before the AJ; and (5) the Board’s failure to order the FDIC submit evidence of compliance with the interim relief order. These arguments lack merit.

First, Ms. Patrick is incorrect that the AJ’s failure to rule on her allegations of illegal obstruction by the FDIC under 18 U.S.C. § 1505 was erroneous. Neither the AJ nor the Board have authority to adjudicate alleged violations of a criminal statute, and Ms. Patrick fails to even allege as much. See 5 U.S.C. § 1204 (defining the Board’s statutory authority); see also *King v. Merit Systems Protection*

Bd., 52 F.3d 345 (Fed. Cir. 1995) (“The MSPB has no jurisdiction over criminal cases.”).

Second, Ms. Patrick argues that certain restrictions of the Protective Order frustrated her ability to be represented by counsel and led the Board to be in violation of 5 C.F.R. § 1201.3(a), which provides that a party before the Board “may be represented in any matter related to the appeal.” Ms. Patrick, through counsel in *Doe I*, consented to the Protective Order, even if she later sought to modify it or now regrets that decision. To the extent that her ability to obtain counsel or freely prosecute her case before the Board was constrained by the terms of the Protective Order, those consequences result from Ms. Patrick’s consent to the Protective Order and its terms, and not from any action taken by the Board. Ms. Patrick’s 5 C.F.R. § 1201.3(a) argument lacks merit.

Third, we need not determine whether the AJ’s failure to compel discovery was an abuse of discretion because no showing of prejudice has been made. *See Curtin v. Office of Pers. Mgmt.*, 846 F.3d 1373, 1378 (Fed. Cir. 1988) (“If an abuse of discretion did occur with respect to the discovery and evidentiary rulings...[Appellant] must prove that the error caused substantial harm or prejudice to his rights which could have affected the outcome of the case.”). Ms. Patrick’s contention regarding her request to compel discovery centers on her inability to obtain certain bank examination documents due to the Protective Order to which she consented. While she contends that such evidence was relevant to her whistleblower defense, the AJ and Board determined that Ms. Patrick’s defense failed because she failed to show a nexus between her protected activity and removal. *See Final Order* at *5-7. Because Ms. Patrick provides no information in her opening brief regarding how such bank examination documents would have assisted her in presenting a nexus argument, no showing of prejudice has been made and consequently the argument lacks merit.

Ms. Patrick's fourth argument alleges a violation by the AJ and the Board of 5 C.F.R. § 1201.53(c), which provides that "[c]opies of recordings or existing transcripts will be provided upon request to parties free of charge." The regulation further provides that when written transcripts are desired, but not preexisting "[a]ny party may request that the court reporter prepare a full or partial transcript, at the requesting party's expense." *Id.* § 1201.53(b). Ms. Patrick alleges that the AJ and the Board had access to at least the recording of the November 6, 2017, hearing before the AJ⁷, and that the AJ and the Board made use of the recording in their decisions. Ms. Patrick alleges that the AJ and the Board did not assist her in gaining access to the recording, and thus negatively impacted her pleadings to the AJ and the Board. Ms. Patrick's argument depends on a legal obligation of the Board to provide a party with either a hearing written transcript or recording. The cited regulation provides such an obligation, but only upon a request being made by a party. Ms. Patrick does not allege that she made such a request while her case was pending before the Board. For that reason, she cannot allege error by the Board under the cited regulation.

Lastly, Ms. Patrick's fifth argument was discussed in Section IV.A *infra* alongside her related and overlapping argument that the Board erred in denying her motion to dismiss. For the reasons set forth above, this argument is rejected.

⁷ The record before this court shows that a recording of the hearing exists and is deposited in the docket of the case. The record also shows that a hearing transcript was created but is not generally accessible on the docket.

CONCLUSION

Having carefully reviewed Ms. Patrick's arguments we conclude that none undermine the Board's final decision. For the reasons stated above, we affirm.

AFFIRMED

COSTS

No costs.

EXHIBIT 2

**Nonprecedential 7/21/2026 Order denying Patrick's
petition for panel rehearing, Case # 2024-1962, U.S.
Court of Appeals for the Federal Circuit**

NOTE: This order is nonprecedential.

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

KIMBERLY PATRICK,
Petitioner

v.

FEDERAL DEPOSIT INSURANCE CORPORATION,
Respondent

2024-1962

Petition for review of the Merit Systems Protection
Board in No. NY-0752-12-0130-I-6.

**ON MOTION AND ON PETITION FOR PANEL
REHEARING**

Before REYNA CLEVINGER, and CHEN, *Circuit Judges*.
PER CURIAM

O R D E R

On June 25, 2026, Kimberly Patrick filed a petition for
panel rehearing [ECF No. 70]

Subsequently, on July 6, 2026, Ms. Patrick moved for
the court to correct docketing errors [ECF No. 71].

Upon consideration thereof,

IT IS ORDERED THAT:

2

PATRICK v. FDIC

- (1) The motion to correct docketing errors is denied.¹
- (2) The petition for panel rehearing is denied.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

July 21, 2026
Date

¹ The filing date for the petition for panel rehearing was updated to June 25, 2026 and the petition contains a total of 621 pages, including the 16-page addendum added by the court.

**Additional material
from this filing is
available in the
Clerk's Office.**