

THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT,

Petitioner,

v.

No. 2024-1774

RONALD L. MOULTON,

and

MERIT SYSTEMS PROTECTION BOARD

Respondents.

PETITIONER'S MOTION FOR EXTENSION OF DEADLINE TO FILE PETITION FOR REHEARING

Pursuant to Rule 26(b) of the Rules of this Court, petitioner, the Director of the Office of Personnel Management, respectfully requests a 30-day extension of time, to and including December 23, 2025, within which to file a petition for rehearing or reharing en banc. Pursuant to Federal Circuit Rule 40, any such petition is currently due 45 days after the date of the panel's October 10, 2025 opinion, or on October 24, 2025. This is our first request for an extension of time for this purpose. Undersigned counsel has contacted counsel for Mr. Moulton and the Merit Systems Protection Board (MSPB). Neither Mr. Moulton nor the MSPB oppose this motion.

Good cause exists for this request for an extension of time, for several reasons.

First, the Department of Justice and the agency still are determining whether they will

request any further review of the panel’s opinion. This case involves complex legal issues regarding the scope of 5 U.S.C. §§ 8421 and 8467, which establishes the procedure for apportioning Federal annuitants’ basic and supplemental annuities. Grant of the requested extension would permit the decision about whether to seek a rehearing to be informed by the attorneys most affected by the decision.

Second, undersigned counsel has recently entered an appearance as principal counsel in this case because prior counsel, Kyle S. Beckrich, is on parental leave and will shortly depart the Department of Justice.

Finally, an extension of time is needed to allow undersigned counsel to receive required input from Department of Justice supervisory counsel as well as approval from the Solicitor General. A September 29, 2025 Department of Justice memorandum articulating contingency plans in the event of a lapse in appropriations states that “[c]ivilian litigation will be curtailed or postponed to the extent that this can be done without compromising to a significant degree the safety of human life or the protection of property.”¹ This memorandum further provides that “[i]f a court . . . orders a case to continue, the Government will comply with the court’s order, which would constitute express legal authorization for the activity to continue . . . [but,] the Department will limit its civil litigation staffing to the minimum level

¹ See U.S. DOJ FY 2026 Contingency Plan at 3, <https://www.justice.gov/jmd/media/1377216/dl?inline>.

needed to comply with the court's order and to protect life and property." *Id.*

Accordingly, even if undersigned counsel can receive special authorization to work on the response brief during a lapse in appropriations, skeletal staffing and more limited resources within the Department create additional burdens that necessitate additional time to consider further review of the Court's decision.

Further, the ability of undersigned counsel to receive special authorization to work on the response brief during a lapse in appropriations is not unlimited. The Department of Justice's grant of special authorization to work during a lapse in appropriations is needed in matters where a court-ordered stay or extension of a deadline is less feasible, such as in matters involving "emergencies involving the safety of human life," 31 U.S.C. § 1342, or matters where a stay or extension would create logistical difficulties, such as conflicting with previously-scheduled oral arguments. Here, we seek an extension of briefing deadline in an appeal from the Merit Systems Protection Board pertaining to a supplemental retirement annuity. An extension of the briefing deadline would not unduly prejudice the respondents or create undue logistical difficulties for the Court.

For these reasons, we respectfully request that the Court grant this motion for a 30-day extension of time, to and including December 24, 2025, to file a petition

for panel rehearing or rehearing *en banc*.

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General

PATRICIA M. MCCARTHY
Director

/s/ Elizabeth M. Hosford

Elizabeth M. Hosford
Assistant Director
Commercial Litigation Branch
Civil Division, Department of Justice
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 598-7394
E-mail: elizabeth.hosford@usdoj.gov

November 10, 2025

Counsel for Respondent

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27(d) of the Federal Rules of Appellate Procedure, I hereby certify that this motion complies with the Court's type-volume limitation rules. This motion was prepared in Garamond 14-point font and, according to the word-count calculated by Microsoft Word, contains a total of 724 words, excluding accompanying documents, which is within the 5,200-word limit.

/s/ Elizabeth M. Hosford

THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

DIRECTOR OF THE OFFICE OF)
PERSONNEL MANAGEMENT,)
Petitioner,)
v.)
RONALD L. MOULTON,)
and)
MERIT SYSTEMS PROTECTION)
BOARD)
Respondents.)

No. 2024-1774

DECLARATION OF ELIZABETH M. HOSFORD

I, Elizabeth M. Hosford, state and declare as follows:

- 1. I am an Assistant Director with the Commercial Litigation Branch of the Civil Division, United States Department of Justice, and am principally responsible for representing the United States in the above-captioned appeal. I submit this declaration, pursuant to Fed. Cir. R. 26(b)(5), in support of the motion for a 30-day extension of the time, through and including December 23, 2025, to file a petition for panel rehearing or rehearing en banc.
2. The Department of Justice and the agency still are determining whether they will request any further review of the panel's opinion. This case involves

complex legal issues regarding the scope of 5 U.S.C. §§ 8421 and 8467, which establishes the procedure for apportioning Federal annuitants' basic and supplemental annuities. Grant of the requested extension would permit the decision about whether to seek a rehearing to be informed by the attorneys most affected by the decision.

3. In addition, undersigned counsel has recently entered an appearance as principal counsel in this case because prior counsel, Kyle S. Beckrich, is on parental leave and will shortly depart the Department of Justice.
4. An extension of time is needed to allow undersigned counsel to receive required input from Department of Justice supervisory counsel as well as approval from the Solicitor General. A September 29, 2025 Department of Justice memorandum articulating contingency plans in the event of a lapse in appropriations states that “[c]ivilian litigation will be curtailed or postponed to the extent that this can be done without compromising to a significant degree the safety of human life or the protection of property.”² This memorandum further provides that “[i]f a court . . . orders a case to continue, the Government will comply with the court’s order, which would constitute express legal authorization for the activity to continue . . . [but,] the

² See U.S. DOJ FY 2026 Contingency Plan at 3, <https://www.justice.gov/jmd/media/1377216/dl?inline>.

Department will limit its civil litigation staffing to the minimum level needed to comply with the court's order and to protect life and property." *Id.*

Accordingly, even if undersigned counsel can receive special authorization to work on the response brief during a lapse in appropriations, skeletal staffing and more limited resources within the Department create additional burdens that necessitate additional time to consider further review of the Court's decision.

5. Further, the ability of undersigned counsel to receive special authorization to work on the response brief during a lapse in appropriations is not unlimited. The Department of Justice's grant of special authorization to work during a lapse in appropriations is needed in matters where a court-ordered stay or extension of a deadline is less feasible, such as in matters involving "emergencies involving the safety of human life," 31 U.S.C. § 1342, or matters where a stay or extension would create logistical difficulties, such as conflicting with previously-scheduled oral arguments. Here, we seek an extension of briefing deadline in an appeal from the Merit System Protection Board pertaining to a supplemental retirement annuity. An extension of the briefing deadline would not unduly prejudice the respondents or create undue logistical difficulties for the Court.
6. On November 6 and 7, 2025, counsel for the respondents Merit Systems

Protection Board and Ronald L. Moulton, respectively, represented that the motion is unopposed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: November 10, 2025

 /s/ Elizabeth M. Hosford
Elizabeth M. Hosford

EXHIBIT A