Appeal No. 24-CV-0404

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DISTRICT OF COLUMBIA
COURT OF APPEALS

JULIA WASHINGTON,
Appellant,

v.

D.C. DEPARTMENT OF FORENSIC SCIENCES

and

D.C. OFFICE OF EMPLOYEE APPEALS
Appellees.

On Appeal from the Superior Court of the District of Columbia
Civil Case No. 2024-CAB-000346
(The Honorable Alfred S. Irving, Jr.)

REPLY BRIEF OF APPELLANT

Ryan E. Griffin (DC Bar No. 1007078)*
Emily R. Postman (DC Bar No. 90025349)
James & Hoffman, P.C.
1629 K Street, NW, Suite 1050
Washington, DC 20006
(202) 496-0500
regriffin@jamhoff.com
erpostman@jamhoff.com

Counsel for Appellant

Dated: March 26, 2025

*Counsel for Oral Argument

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

SUMMARY OF ARGUMENT

Appellant Julia Washington demonstrated in her opening brief that the Superior Court erred in denying her Motion for Extension of Time to Petition for Review of Agency Decision and instead dismissing her petition as untimely. She showed that the deadline for petitioning for review set out in Agency Review Rule 1(b)(2) is susceptible to equitable tolling upon a showing of excusable neglect pursuant to DC Civil Rule 6(b)(1)(B), which is expressly incorporated into Agency Rule 1 via paragraph (*i*) of that rule. And she showed that she made the requisite showing of excusable neglect.

Appellee Department of Forensic Sciences (DFS) opposes this conclusion on three grounds. None has merit.

First, DFS argues that the "plain language" of Agency Rule 1(b)(2) precludes the Court from exercising its broad general authority under Civil Rule 6(b)(1)(B) to extend deadlines for excusable neglect in the context of petitions for review of agency decisions. According to DFS, this is because if the drafters of Agency Rule 1 had meant to allow tolling for excusable neglect, they would have said so explicitly in subparagraph (b)(2) itself rather than incorporating this flexibility by reference elsewhere in the rule. And because they did not, DFS reasons, the Court's general authority to extend deadlines under Civil Rule 6 must be "inconsistent with" the text of Agency Rule 1(b)(2).

But this is not a plain language argument at all—it is a concession that subparagraph 1(b)(2) does not itself speak to whether its deadline is extendable. In other words, DFS attempts to manufacture a conflict by asking the Court to interpret Agency Rule 1(b)(2)'s *silence* on the issue of excusable neglect in a way that is at odds with the *text* of Civil Rule 6(b)(1)(B) so that it can conclude that Rule 6(b)(1)(B) does not apply.

The Court should decline DFS's invitation. Instead, as Ms. Washington has already explained, it should find that Agency Rule 1(*i*) expressly incorporates Civil Rule 6(b)(1)(B) into Agency Rule 1 and that, in so doing, it definitively fills Agency Rule 1(b)(2)'s silence by expressly making the petition for review deadline susceptible to tolling for excusable neglect.

Second, DFS argues that Ms. Washington forfeited her right to any form of equitable tolling because her opening brief requested relief based on the excusable neglect standard codified in Civil Rule 6 rather than the higher common law standard that might apply in the absence of a more specific textual provision.

But DFS relies on a false dichotomy. Equitable tolling and excusable neglect are not separate doctrines. The former is simply the umbrella term for judicial discretion over a time limit that is amenable to flexibility, while the latter is merely one particular equitable standard that a rule-maker may prescribe for exercising that flexibility.

Critically, excusable neglect is the specific variety of equitable tolling that is relevant here because that is what Civil Rule 6 prescribes. DFS's arguments about the "extraordinary circumstances" showing that may be required for equitable tolling in other contexts are thus entirely beside the point.

Third, DFS argues that even if the Agency Rule 1(b)(2) deadline may be tolled upon a showing of excusable neglect, Ms. Washington has failed to make such a showing because, according to DFS, she has failed to explain her untimely filing.

But excusable neglect is, as DFS concedes, a low bar, requiring merely a showing of "good faith . . . and some reasonable basis for non-compliance." Appellee Br. at 25 (citation omitted). That bar is clearly met here. There is no suggestion of bad faith. And the record clearly establishes that Ms. Washington reasonably relied on her union-provided counsel to file her petition and quickly acted to file through other counsel after learning through her union that her union-provided counsel had not done so.

ARGUMENT

I. The Agency Review Rule 1(b)(2) deadline is subject to tolling for excusable neglect.

a. The plain text of Agency Review Rule 1 allows tolling for excusable neglect because it incorporates DC Civil Rule 6(b)(1), which expressly provides for such relief.

Agency Rule 1 establishes various filing deadlines including for petitioning for review of an agency order (subparagraph (b)(2)), for intervening in such a proceeding (subparagraph (e)(3)), and for seeking reconsideration (subparagraph (h)(1)). Paragraph (*i*) of Agency Rule 1 then incorporates certain Rules of Civil Procedure including Civil Rule 6, which governs "Computing and Extending Time." Subparagraph (b)(1)(B) of Civil Rule 6 in turn provides that "[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time. . . on motion made after the time has expired if the party failed to act because of excusable neglect."

Thus, when Agency Rule 1 is read as a whole, inclusive of both paragraph (*i*) and of Civil Rule 6 as incorporated therein, the plain text of Agency Rule 1 allows tolling of the paragraph 1(b)(2) petition deadline for excusable neglect. *See* Appellant Br. at 16–17.

DFS nonetheless argues that "[t]he plain text of Agency Rule 1(b)(2) precludes extensions for good cause or excusable neglect." Appellee Br. at 18. According to DFS, this is so for two reasons.

First, DFS argues that the language of the Agency Rule 1(b)(2) deadline is mandatory and thus not susceptible to tolling, as indicated by the use of the phrase "must be filed." *See* Appellee Br. at 13–14.

But the use of terms like "must" or "shall" is hardly dispositive. Nearly every procedural deadline, flexible or otherwise, is phrased in these terms, and there would be little point in having excusable neglect clauses like the one in Civil Rule 6(b)(2)(B) if rules that were subject to tolling merely contained suggestions as to when something should be filed. *See Nutraceutical Corp. v. Lambert*, 586 U.S. 188, 193 (2019) ("[T]he simple fact that a deadline is phrased in an unqualified manner does not necessarily establish that tolling is unavailable."); *see also Harrow v. Dep't of Def.*, 601 U.S. 480, 483–84 (2024) (noting that although most procedural deadlines "read as categorical commands," most are nonetheless susceptible to equitable tolling). Indeed, even the provision that DFS points to as a paradigm case of a rule that may be judicially extended—Agency Rule 1(e)(3)—provides that an intervention notice or motion "must" be filed within 30 days. *See* Appellee Br. at 16.

Second, DFS points to the fact that the intervention deadline in subparagraph (e)(3) may be extended for "good cause" and argues that the absence of a similar clause in Agency Rule 1(b)(2) evinces the drafters' intent to preclude tolling of the petition for review deadline for excusable neglect. *See* Appellee Br. at 14–15.

But this argument is not about the "plain text" of paragraph 1(b)(2) at all. It is about what paragraph 1(b)(2) *does not* say and about what intent, if any, the Court should infer from paragraph 1(b)(2)'s *silence* on the question of tolling.

Fortunately, the way to answer this question is straightforward—it simply requires reading Agency Rule 1 as a whole rather than reading its subparts in isolation from each other. *See* Appellant Br. at 14–15 (citing cases). Read in that way, paragraph (*i*), through its incorporation of Civil Rule 6, supplies the missing information and indicates clearly that paragraph 1(b)(2) may be tolled on a showing of excusable neglect.[1]

In sum, the plain text of Agency Review Rule 1, when read as a cohesive whole, allows tolling of the petition for review deadline for excusable neglect and, contrary to DFS's contentions, there is nothing in the text of paragraph 1(b)(2) to the contrary. Nor is Civil Rule 6(b) "inconsistent with" Agency Rule 1(b)(2), as explained below.[2]

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[1] Even looking at paragraphs 1(b)(2) and (e)(3) in isolation from the rest of Agency Rule 1, as DFS does, fails to support the inference that 1(b)(2) was meant to implicitly preclude tolling *for excusable neglect*. This is because paragraph (e)(3) also is silent as to excusable neglect, but instead merely allows for the possibility of tolling *for good cause*, which DFS acknowledges "is not strictly identical to 'excusable neglect'" but instead at best a "cousin[]" of it. *See* Appellee Br. at 16–17.

[2] DFS makes one further argument relating to paragraph (e)(3), asserting that because this paragraph includes a "good cause" exception, incorporating Civil Rule 6(b)(1) would render that clause "superfluous." *See* Appellee Br. at 14–15. But "[t]he canon against surplusage is not an absolute rule." *King v. Burwell*, 576 U.S.

b. Agency Review Rule 1(b)(2) and DC Civil Rule 6(b)(1) are not "inconsistent" with each other.

DFS's second attempt to avoid the application of Civil Rule 6(b)(1)(B)'s excusable neglect provision to the Agency Rule 1(b)(2) deadline is directed at the text of Agency Review Rule 1(*i*), which provides that Civil Rule 6 and other D.C. Superior Court Rules of Civil Procedure are incorporated into Agency Rule 1 "[e]xcept where inconsistent with . . . this rule." Appellee Br. at 18. According to DFS, Agency Rule 1(b)(2) and Civil Rule 6(b)(1) are inconsistent and, as such, the latter's excusable neglect provision does not apply to the former's deadline. *See id.* at 17–19.

The problem with DFS's argument, however, is that it is entirely dependent on DFS's erroneous contention that the plain text of Agency Rule 1(b)(2) (when improperly read in isolation) precludes tolling for excusable neglect. *See id.* at 18 ("[T]he plain text of Agency Rule 1(b)(2) precludes extensions for good cause or excusable neglect. Civil Rule 6(b)(1)'s good-cause and excusable-neglect provisions are thus 'inconsistent with' Agency Rule 1(b)(2) . . . .").

473, 491 (2015). To the contrary, "[r]edundancies are common in statutory drafting," *Barton v. Barr*, 590 U.S. 222, 239 (2020) (citation and quotation omitted), and "the possibility of some amount of surplusage is not enough to defeat the plain text of the provision." *Cares Cmty. Health v. Dep't of Health & Hum. Servs*., 346 F. Supp. 3d 121, 130 (D.D.C. 2018), aff'd, 944 F.3d 950 (D.C. Cir. 2019). And here, a minor redundancy in paragraph (e)(3) is preferable to reading a portion of paragraph (*i*)—the express incorporation of Civil Rule 6—out of the rule altogether.

In other words, the inconsistency that DFS purports to identify arises only if Agency Rule 1(b)(2)'s *silence* regarding excusable neglect is interpreted in a way that conflicts with the *express text* of Civil Rule 6(b)(1). Needless to say, the Court should decline DFS's invitation to create such a conflict where none exists on the face of the rule. *See Burns v. United States*, 501 U.S. 129, 136 (1991) ("An inference drawn from congressional silence certainly cannot be credited when it is contrary to all other textual and contextual evidence of congressional intent.").

Finally, DFS further confirms the absence of any true inconsistency between Agency Rule 1 and Civil Rule 6 by conceding not only that paragraphs (a), (c), and (d) of Civil Rule 6 are fully incorporated into Agency Rule 1, but that even paragraph (b)(1)'s excusable neglect provision likely applies to at least some Agency Rule 1 deadlines such as the paragraph (h)(1) deadline for seeking reconsideration. *See* Appellee Br. at 18–19.

In other words, DFS's argument boils down to a claim that when the drafters of Agency Rule 1(*i*) expressly stated that Civil Rule 6 applies "to proceedings under this rule," what they actually meant was that paragraphs 6(a), (c), and (d) always apply to all agency review proceedings, and that paragraph 6(b) applies to all of the deadlines in Agency Rule 1 except for the one particular deadline at issue

in this case. Again, the Court should reject this strained reading of paragraph 1(*i*)'s straightforward text.[3]

In sum, the plain text of Agency Rule 1(*i*) incorporates Civil Rule 6 in full, and DFS's efforts to conjure a conflict from the silence of one provision when read in isolation from the rest of the rule are unavailing. Nor can DFS articulate any persuasive policy argument for overcoming the straightforward text of Agency Rule 1, as explained below.

c. To the extent policy concerns are relevant to the interpretation of Agency Review Rule 1, they favor the availability of tolling for excusable neglect.

A rare point of agreement between the parties is that the Court need not look to policy considerations in interpreting Agency Rule 1 if it finds that the text alone is sufficient to resolve the instant dispute. *See* Appellant Br. at 17; Appellee Br. at 19. To the extent the Court does look beyond the text, however, Ms. Washington showed in her opening brief that permitting the petition for review deadline to be tolled for excusable neglect would be consistent with three broader policy objectives including, most importantly, preserving the judiciary's broad and

[3] It is further worth noting that the drafters of the rule were perfectly capable of excluding specific portions of the Civil Rules when they wished to do so. For example, Agency Rule 1(*i*) expressly incorporates Civil Rules 5, 5-I and 5-III, but not 5-II, 5.1, 5.1-I, or 5.2, and incorporates Rule 6 but not Rule 6-I. If the drafters wished to incorporate Rule 6(a), (c), and (d) only, while excluding 6(b), they were certainly capable of saying so.

longstanding equitable authority to extend deadlines where justice so requires, subject to limited exceptions. *See* Appellant Br. at 17–20 (discussing pertinent provisions of the DC Civil Rules, analogous provisions of the Federal Rules of Civil Procedure, and key Supreme Court jurisprudence).

DFS concedes that Civil Rule 6(b)(1) "broadly authorizes extensions of most civil procedure deadlines" and thus reflects a "policy that favors lenient extensions during litigation . . . ." *See* Appellee Br. at 20–21. But it tries to carve the Agency Rule 1 deadline out from this policy by arguing that a petition for review, as an "appeal" of agency action, is more akin to the limited exceptions to Civil Rule 6(b)(1)'s "lenient" extension policy enumerated in Civil Rule 6(b)(2). *See id*.

But DFS's "policy" argument, such as it is, runs headlong into a textual interpretation problem. Agency Rule 1 is not included on the list of deadlines for which extensions are unavailable under Civil Rule 6(b)(2), nor is there an open-ended catchall provision that might allow the list to be expanded to additional deadlines that are not explicitly mentioned, regardless of how similar they might be.

Where a provision "explicitly enumerates certain exceptions to a general [rule], additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." *Andrus v. Glover Construction Co.*, 446 U.S. 608, 616–17 (1980) (citation omitted). That is the case here—the Agency Rule 1(b)(2)

deadline cannot be understood as an implicit addition to Civil Rule 6(b)(2)'s list of deadlines expressly exempted from tolling.

DFS's additional policy arguments center on the notion that the public interest in finality should trump the well-established judicial preference for resolution of disputes on the merits in this case because, according to DFS, Ms. Washington already "had her day in court" when she appeared before the Office of Employee Appeals (OEA). *See* Appellee Br. at 22.

But administrative proceedings are hardly the same as having one's "day in court." *See Coit Indep. Joint Venture v. Fed. Sav. & Loan Ins. Corp*., 489 U.S. 561, 587 (1989) (noting that delays in an administrative process "while the statute of limitations runs" has the effect of "denying a litigant its day in court" regardless of the sufficiency of the administrative process). Nor can the judicial interest in reaching the merits be satisfied by the preceding administrative process since the merits task for the Court—reviewing the legal sufficiency of the agency's action—is entirely distinct.[4]

[4] DFS also postulates that various harms might potentially arise from an extension of the Agency Rule 1(b)(2) deadline such as "serious and cascading effects on an agency's budget and operations, as well as on the rights of retained employees." *See* Appellee Br. at 23. But these concerns are purely speculative, unmoored to either statute, record fact, or precedent, and thus hardly provide a compelling counterweight to the clear text of the rule.

In sum, Civil Rule 6(b)(1) reflects a clear policy favoring the availability of tolling, and the limited list of exceptions in Civil Rule 6(b)(2) have no bearing on this policy as it relates to agency review proceedings. In any event, any assessment of policy cannot overcome Agency Rule 1's clear textual directive incorporating all of Civil Rule 6 including paragraph (b)(1). Finally, nothing in DFS's analysis of the doctrine of equitable tolling alters this conclusion, as explained below.

d. DFS's digression regarding equitable tolling for extraordinary circumstances has no bearing on the pertinent issue of whether Agency Review Rule 1(b)(2) is extendable for excusable neglect.

The principle legal issue in this appeal is whether the Agency Rule 1(b)(2) deadline may be extended based on excusable neglect pursuant to Civil Rule 6(b)(1) as incorporated into Agency Rule 1 via paragraph 1(*i*). *See* Appellant Br. at 1. As explained above, the answer is a resounding yes.

DFS acknowledges that this is what Ms. Washington is arguing. *See* Appellee Br. at 26, 29. And it further concedes that excusable neglect is a relatively low bar requiring "only [a] show[ing] [of] 'good faith . . . and some reasonable basis for non-compliance.'" *See id.* at 25 (quoting *Admasu v. 7-11 Food Store*, 108 A.3d 357, 361–62 (D.C. 2015)). DFS nevertheless devotes multiple pages of its brief to arguing that the doctrine of equitable tolling is a completely separate doctrine "miles apart" from the question of excusable neglect;

that the extension of a deadline under the doctrine of equitable tolling requires a showing of "extraordinary circumstances"; and that Ms. Washington has neither argued for nor met this higher bar. *See id.* at 25–30.

This tangent is both irrelevant and misguided. Again, the issue here is whether Agency Rule 1(b)(2) is susceptible to tolling on a showing of excusable neglect pursuant to Civil Rule 6(b)(1), not whether Agency Rule 1(b)(2) can be tolled in extraordinary circumstances under some separate body of law.

Nor is equitable tolling really a separate doctrine at all. Instead, it is simply the overarching framework for assessing whether a statutory or rule-based deadline "leaves room for [] flexibility." *See Nutraceutical Corp.*, 586 U.S. at 192. Excusable neglect is merely one equitable standard for exercising such flexibility, not a separate doctrine. *See Pioneer Inv. Servs. Co. v. Brunswick Assocs.*, 507 U.S. 380, 395 (1993) ("Because Congress has provided no other guideposts for determining what sorts of neglect will be considered 'excusable,' we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission.").[5]

[5] Notably, a key component of DFS's argument for attempting to disaggregate equitable tolling from excusable neglect—that equitable tolling supposedly only applies in the context of statutes of limitations as opposed to other types of deadlines—is simply wrong. *See, e.g.*, *Nutraceutical Corp.*, 586 U.S. at 192 (considering whether the Federal Rule of Civil Procedure 23(f) deadline for appealing from a grant or denial of class certification was susceptible to equitable tolling).

e. Even if DFS were correct about equitable tolling and excusable neglect being district doctrines, its argument for the unavailability of equitable tolling would still be incorrect.

DFS argues that equitable tolling, as a freestanding doctrine, is not available to Ms. Washington with respect to Agency Rule 1(b)(2) over the timely objection of the opposing party. *See* Appellee Br. at 30–43. According to DFS, this is because Agency Rule 1(b)(2) "has historically been construed as 'mandatory and jurisdictional,'" *see id.* at 30–34; because equitable tolling is not presumptively available with respect to Agency Rule 1(b)(2), *see id.* at 34–40; and because "the language and policy underlying Agency Rule 1(b)(2) confirm the drafters' intent to preclude equitable tolling over the timely objection of opposing parties," *see id.* at 41–43.

DFS's argument is flawed in multiple respects. The most critical flaw, however, arises from the final point because, as DFS concedes, "the availability of [equitable tolling] is 'fundamentally a question of [the drafter's] intent.'" *See id.* at 41 (citing *Lozano v. Alvarez*, 572 U.S. 1, 10 (2014)).

Here, the drafters' intent is perfectly clear from the text of Agency Rule 1. They intended for deadlines in agency review proceedings to be extendable for excusable neglect and indicated this by expressly incorporating Civil Rule 6—all of it—into Agency Rule 1 via paragraph 1(*i*). *See supra* at 4. And since there is nothing in Civil Rule 6 to suggest an intention to make such relief conditional on

the non-objection of the opposing party, DFS's argument collapses under its own weight.

Nor are the remaining tenets of DFS's position any more availing.

The fact that Agency Rule 1(b)(2) was historically construed as jurisdictional is irrelevant because, as DFS concedes, this construction has been decisively rejected. *See* Appellee Br. at 31 ("This Court now recognizes that these deadlines are not jurisdictional . . . .").

Equally irrelevant is DFS's assertion that "the equitable-tolling presumption can apply *only* to statutes of limitations," as opposed to "court-created rules or any other deadline not historically subject to tolling under the common law . . . ." *See id.* at 34. In the first place, there is simply no need to employ such interpretive presumptions where, as here, the text of the rule is clear. *Robinson v. Shell Oil Co*., 519 U.S. 337, 340 (1997) ("Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. Our inquiry must cease if the statutory language is unambiguous and "the statutory scheme is coherent and consistent").

Moreover, the assertion that the principles of equitable tolling can only be applied to statutes of limitations is wholly unsupported by the case law. Indeed, courts have applied the principles of equitable tolling to a variety of deadlines,

including applications for judicial review of agency decisions. *See Bowen v. City of New York*, 476 U.S. 467, 462 (1986) ("Equitable tolling of 60–day requirement for seeking judicial review of decision of Secretary of Health and Human Services denying social security disability or supplemental security income benefits is consistent with Congress' intent. . . . "); *Boechler, P.C. v. Comm'r of Internal Revenue*, 596 U.S. 199, 199 (2022) (deadline to file a petition for review of an IRS determination in court subject to equitable tolling); *Torres v. Barnhart*, 417 F.3d 276, 279 (2d Cir. 2005) (equitable tolling appropriate where claimant missed deadline to bring final agency decision on social security benefits to district court for review within the 60 days specified).

In any event, DFS's artificial cabining of the equitable tolling presumption is at odds with *Boechler*, which states without limitation that "nonjurisdictional limitations periods are presumptively subject to equitable tolling." *See Boechler* at 201 (internal citations omitted). It is also at odds with *Nutraceutical*, which conducts an inquiry into whether the Federal Rule of Civil Procedure 23(f) deadline for appealing from a grant or denial of class certification was susceptible to equitable tolling by asking whether this non-statutory, non-statute of limitations deadline "show[s] a clear intent to preclude tolling." *See Nutraceutical*, 586 U.S. at 192. Although *Nutraceutical* does not explicitly reference a presumption, the framing of its inquiry as searching for evidence of the drafters' contrary intent

strongly suggests that the Supreme Court understood the presumption in favor of tolling to apply.[6]

* * *

In sum, the plain text of Agency Rule 1 unequivocally supports the applicability of excusable neglect relief under Civil Rule 6 to the Agency Rule 1(b)(2) deadline, and none of DFS's arguments are persuasively to the contrary. Further, Ms. Washington amply demonstrated the excusable neglect required, as explained below.

II. Ms. Washington established excusable neglect.

The excusable neglect analysis is guided by the four so-called *Pioneer* factors. Ms. Washington showed that all four factors weigh in her favor because there is no record evidence of prejudice to DFS; no risk of negative impact on the litigation; no indication of bad faith on Ms. Washington's part; and because her reason for delay—reliance on her prior counsel—was eminently reasonable (though ultimately misplaced). *See* Appellant Br. at 33–35.

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[6] DFS also attempts to rely on *In re Na.H*, 65 A.3d 111, 116 (D.C. 2013), in its anti-presumption argument for the proposition that "a deadline to appeal a magistrate judge determination to the Family Court is *not* subject to tolling if timely invoked." *See* Appellee Br. at 38. But this Court has expressly declined to apply *In re Na.H*'s mandatory claims-processing holding in the context of Agency Rule 1, holding instead that "the possibility of equitable tolling as allowed in *Mathis*" must remain open under Agency Review Rule 1. *See Brewer v. D.C. Off. of Emp. Appeals*, 163 A.3d 799, 803–04 (D.C. 2017) (quoting *Mathis v. D.C. Hous. Auth.*, 124 A.3d 1089 (D.C. 2015).

Ms. Washington further demonstrated that the Superior Court's conclusion to the contrary is based on legal error in its application of three of the four *Pioneer* factors. *See* Appellant Br. at 38–42. As to the length of delay and the potential impact on judicial proceedings, she showed that the Superior Court misconstrued the standard by focusing solely on the absolute length of the delay, in a vacuum, rather than the impacts the delay would have caused, which it acknowledged were negligible. *Id.* at 39–40. As to the 'reason for delay' factor, Ms. Washington showed that the Court largely disregarded the reason established in the record—her reliance on her former counsel—in favor of myopically questioning why her former attorney failed to instead of whether her reliance on her former attorney was reasonable. *See id.* at 40–41. Finally, as to the 'good faith' factor, the Superior Court correctly recognized that there was no evidence of bad faith, and in fact credited Ms. Washington for her efforts to swiftly secure new counsel, yet nevertheless concluded that this factor was merely "neutral." *Id.* at 41.

DFS tries to defeat Ms. Washington's showings by arguing that she has not established the reason for her delayed filing and that, in the absence of such a showing, she cannot prevail regardless of how strongly the other *Pioneer* factors

weigh in her favor. *See* Appellee Br. at 45–50. But DFS is wrong as to both the law and the facts.[7]

Starting with the law, the 'reason for delay' factor is not a threshold question under the *Pioneer* analysis, as DFS suggests. *See id.* at 45. Indeed, this is the precise position taken in the *Pioneer* dissent. *See Pioneer*, 507 U.S. at 395 n.14 ("The dissent would permit judges to take account of the full range of equitable considerations only if they have first made a threshold determination that the movant is 'sufficiently blameless' in the delay."). But as the majority explained, the determination of "what sorts of neglect will be considered 'excusable' . . . is at

[7] DFS fails to address any of the other three *Pioneer* factors directly. Instead, the only mention of any of the other factors is a single sentence asserting that "there are many ways the District *could* be prejudiced" by such an extension. Appellee Br. at 50 (emphasis added). But there is no evidence that the District actually would be prejudiced in any way.

Beyond that, DFS's claim of prejudice simply strains credulity. To the extent the D.C. Government actually faces any fiscal or budgetary prejudice based on the length of time that a RIF challenge remains pending, the major cause of that harm is that the OEA process that took two full years (from Ms. Washington's October 2021 separation through September 2023, when the OEA decision became final, *see* Appellant Br. at 4), not the extension of barely two months that Ms. Washington seeks. Not only that, but counsel for DFS in this appeal requested and received extensions from this Court totaling 145 days from the original October 11, 2024, deadline—nearly five full months—to file DFS's reply brief. In other words, DFS has itself chosen to extend this case by nearly twice as long as Ms. Washington's requested extension would have done, making it difficult to believe that either DFS or the D.C. Government more broadly faces any serious prejudice from Ms. Washington's request.

bottom an equitable one, taking account of *all* relevant circumstances surrounding the party's omission." *Id.* at 395 (emphasis added).

Turning to the facts, the record clearly establishes why Ms. Washington's petition for review was delayed. She had union-provided counsel who represented her through the multiyear OEA process and who the union authorized to submit a petition for review. As any reasonable person in her shoes would have done, Ms. Washington relied on this attorney to file her petition for review and proceeded on the assumption that it was timely filed until the general counsel of her union notified her that this was not the case. *See* Appellant Br. at 34–35.

That these facts were supplied through a declaration from the union's general counsel rather than a declaration from Ms. Washington is of no moment, as DFS suggests. *See* Appellee Br. at 46. They are sufficient to meet what DFS itself concedes is the modest "reasonable basis" bar for establishing excusable neglect. *See supra* at 3.

CONCLUSION

For the foregoing reasons, the Superior Court's dismissal of Ms. Washington's Petition for Review should be reversed and the case should be remanded for consideration of her Petition on the merits.

Dated: March 26, 2025

Respectfully submitted,

/s/ Ryan E. Griffin

Ryan E. Griffin (DC Bar No. 1007078)
Emily R. Postman (DC Bar No. 90025349)
James & Hoffman, P.C.
1629 K Street, NW, Suite 1050
Washington, DC 20006
(202) 496-0500
regriffin@jamhoff.com
erpostman@jamhoff.com

Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2025, a copy of the foregoing Reply Brief of Appellant was electronically filed and served via the Court's Appellate E-Filing System on the following:

Lasheka Brown, Esq.
DC Bar No. 489370
General Counsel
D.C. Office of Employee Appeals
955 L'Enfant Plaza, SW, Suite 2500
Washington, DC 20024
lasheka.brown@dc.gov

Counsel for Appellee OEA

Holly M. Johnson, Esq.
Senior Assistant Attorney General
400 6th Street, NW, Suite 8100
Washington, DC 20001
holly.johnson@dc.gov

Counsel for Appellee DFS

/s/ Ryan E. Griffin
Ryan E. Griffin
DC Bar No. 1007078
James & Hoffman, P.C.
1629 K Street, NW, Suite 1050
Washington, DC 20006
(202) 496-0500
regriffin@jamhoff.com

Counsel for Appellant