

Jackler v. DOJ

2026-06-17 | Court of Appeals for the Federal Circuit

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Combined Opinion

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Opinion 1

Case: 26-1575 Document: 109 Page: 1 Filed: 06/17/2026

United States Court of Appeals
for the Federal Circuit

MEGAN JACKLER, BRANDON JAROCH,
Petitioners

v.

DEPARTMENT OF JUSTICE, DIRECTOR OF THE
OFFICE OF PERSONNEL MANAGEMENT,
Respondents

2026-1575

Petition for review of the Merit Systems Protection
Board in Nos. CF-0752-26-0069-I-1, DA-0752-25-0328-I-1,
DA-0752-25-0330-I-1.

ON PETITION FOR HEARING EN BANC

NATHANIEL AVI GIDEON ZELINSKY, Washington Litigation Group, Washington, DC, filed a petition for hearing en banc for petitioners. Also represented by ROSA BAUM, MARY LYLE DOHRMANN, SYDNEY FOSTER, JAMES PEARCE; ROBERT PETER ERBE, Law Office of Robert P. Erbe, PLLC, Tucson, AZ.

DANIEL J. AGUILAR, Appellate Staff, Civil Division, United States Department of Justice, Washington, DC, filed a response to the petition for respondents. Also represented by BRETT SHUMATE.

Case: 26-1575 Document: 109 Page: 2 Filed: 06/17/2026

2

JACKLER v. DOJ

Before MOORE, Chief Judge, LOURIE, DYK, PROST, REYNA, TARANTO, CHEN, HUGHES, STOLL, CUNNINGHAM, and STARK, Circuit Judges. 1

PER CURIAM.

ORDER

Megan Jackler and Brandon Jaroch (collectively, “petitioners”) filed a petition for initial hearing en banc. A response to the petition was invited by the court and filed by the government. The court also accepted amicus briefs filed by American Federation of Government Employees, American Federation of State, County and Municipal Employees, International Federation of Professional and Technical Engineers, National Federation of Federal Employees, International Association of Machinists and Aerospace Workers, American Federation of Labor and Congress of Industrial Organizations; Justice Connection;

Senators Chris Van Hollen, Angela Alsobrooks, Tim Kaine, Andy Kim, Gary Peters, Mark Warner; Whistleblower Aid; and Merit Systems Protection Board Professional Association.

The petition and response were referred to the circuit judges in regular active service. A poll was requested and taken, and the court decided that the petition for review warrants en banc consideration.

Accordingly,

IT IS ORDERED THAT:

(1) The petition for hearing en banc is granted.

1 Circuit Judge Newman did not participate.

Case: 26-1575 Document: 109 Page: 3 Filed: 06/17/2026

JACKLER v. DOJ

3

(2) The parties are requested to file new briefs. 2
Petitioners' en banc opening brief is due on July 14, 2026. The government's en banc response is due within 45 days of petitioners' en banc opening brief, and petitioners' reply brief within 30 days of the response brief. The joint appendix is due within 7 days of the reply brief. The court requires 30 paper copies of all briefs and appendices provided by the filer within 5 business days from the date of electronic filing of the document. The parties' briefs must comply with Fed. Cir. R. 32(b)(1). No extensions will be granted.

(3) Any briefs of amici curiae may be filed without

consent and leave of the court. 3 Any amicus brief supporting petitioners' position or supporting neither position must be filed within 14 days after service of petitioners' en banc opening brief. Any amicus brief supporting the government's position must be filed within 14 days after service of the government's response brief. Amicus briefs must comply with Fed. Cir. R. 29(b). Any motion requesting leave to file an amicus brief that remains pending at the time this order issues is denied as moot.

2 We appreciate that petitioners have already filed an opening brief in this case. See ECF Nos. 64, 92. This order, in requesting new briefing, expresses no view as to the substantive adequacy of that brief.

3 We also appreciate that certain briefs of amici curiae have already been filed in support of petitioners' opening brief. See, e.g., ECF No. 65. These briefs will not be considered. Amici will have an opportunity to file new briefs in accordance with the procedures set forth above.

Case: 26-1575 Document: 109 Page: 4 Filed: 06/17/2026

4

JACKLER v. DOJ

(4) Oral argument will be held at a time and date to be announced later.

FOR THE COURT

June 17, 2026

Date