



# U.S. MERIT SYSTEMS PROTECTION BOARD

Office of Appeals Counsel

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**Director**

March 10, 2022

TO: Raymond A. Limon, Vice Chair and Acting Chairman  
Tristan L. Leavitt, Member

FROM: Susan Swafford, Director, Office of Appeals Counsel (OAC)

THROUGH:  3/10/22  
William Spencer, Acting Executive Director

SUBJECT: Recommended Approach for the Petition for Review Backlog

As of February 28, 2022, there were 3,643 petitions for review pending at Headquarters, and for 3,352 of those, career staff -- primarily in OAC -- have already drafted recommended decisions. It is up to the new Board to decide how to address the backlog, and there are many possibilities in that regard. The following is a proposed initial approach, subject to review and adjustment by the Board over time.

During Vice Chair and Acting Chairman Mark Robbins's tenure, when the backlog was beginning to grow, the legal offices determined it would be advisable to create a recommended plan to present to the new Board on how to best approach the backlog. Accordingly, over the last several years, MSPB's legal offices, including that of Acting Chairman Robbins when he was still here, collaborated to determine which cases were priorities from all of our perspectives, such as critical precedential decisions, a number of which involve allegations of whistleblower reprisal. Additionally, recognizing that new Board members would need to acclimate to the process of voting, we noted case categories that are typically easier to vote, like settlements and withdrawals.

As of March 10, 2022

Statutes, regulations, and court precedent have changed since some of the recommended decisions were drafted early in the lack of quorum period. OAC has been working to review and update those decisions to ensure they include the most up to date legal authority and are ready for voting by the Board members.

Further, OAC, the Office of General Counsel, and the Office of the Clerk of the Board have prepared the structure and processes needed to supply the Board members with a steady stream of cases to vote. Once you have approved the recommended approach to the backlog contained herein, the Board members will soon receive your initial case dockets.

Decision



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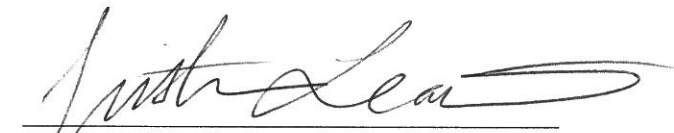
Approve

Raymond A. Limon, Vice Chair and Acting Chairman

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Disapprove

Raymond A. Limon, Vice Chair and Acting Chairman



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Approve

Tristan L. Leavitt, Member

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Disapprove

Tristan L. Leavitt, Member