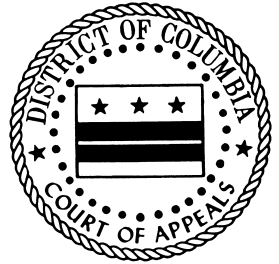


DISTRICT OF COLUMBIA COURT OF APPEALS



Clerk of the Court  
Received 04/06/2026 04:17 PM  
Filed 04/06/2026 04:17 PM

TYREE BENSON, ::  
 ::  
 Appellant, ::  
 ::  
 v. ::  
 ::  
 UNITED STATES, ::  
 ::  
 Appellee, ::  
 ::  
 and ::  
 ::  
 DISTRICT OF COLUMBIA, ::  
 ::  
 Intervenor-Appellee. ::

Appeal No. 23-CF-514

**Decided: March 5, 2026**

APPELLANT’S MOTION TO STRIKE UNITED STATES’ RESPONSE TO THE DISTRICT OF COLUMBIA’S PETITION FOR REHEARING EN BANC

Appellant Tyree Benson, through counsel, respectfully moves to strike the United States’ response to the District of Columbia’s petition for rehearing en banc. The “response” is actually a petition for rehearing en banc and therefore is untimely under D.C. App. R. 40(d)(1). In the alternative, if this Court excuses the untimeliness of the United States’ request for rehearing en banc, it should afford appellant an opportunity to respond to the United States’ pleading, which was filed on the same day that appellant’s response to the District’s petition was due, and makes arguments that the District did not make in its petition.

In support of this motion, undersigned counsel states:

1. On March 6, 2026, one day after the division issued its opinion in this case, the District of Columbia moved to suspend the precedential status of the opinion

pending resolution of its forthcoming petition for rehearing en banc. The District stated that it intended to file a petition for rehearing no later than 14 days after the opinion was issued, pursuant to D.C. App. R. 40(d)(1).

2. On March 18, 2026, the District filed its petition for rehearing en banc and also moved for expedited consideration of its petition. The United States did not file a petition for rehearing or rehearing en banc within the 14-day period set forth in D.C. App. R. 40(d)(1). Nor did it move for an extension of time within which to file any such petition.

3. On March 23, 2026, this Court ordered appellant to file a response to the District's petition by April 6, 2026. It also invited the United States to file a response to the District's petition by April 6, 2026. Although the Court denied the District's motions to suspend the precedential status of the opinion and to expedite consideration of its petition, it stated that any motion for extension of time to file a response to the petition would be granted "only in extraordinary circumstances."

4. On March 25, 2026, two amici curiae filed briefs in support of the District's petition for rehearing en banc. These briefs were filed 7 days after the District filed its petition, in compliance with D.C. App. R. 29(b)(5).

5. On April 6, 2026, just moments before undersigned counsel was about to file appellant's opposition to the District's petition for rehearing en banc, the United States filed a response arguing that rehearing en banc "is necessary to 'maintain uniformity' of the Court's decisions and to resolve 'a question of exceptional importance.'" U.S. Resp. at 1. Because this "response" is effectively a petition for rehearing en banc, it should be treated as such and stricken as untimely.

6. In the alternative, if this Court does not strike the United States' response, it should afford appellant an opportunity to respond to it, as the United States makes arguments in support of rehearing en banc that the District did not make in its petition (and that the United States did not make to the division).

7. Ordinarily, when a party files a petition for rehearing en banc and this Court orders a response, this Court affords the opposing party 14 days to file a response. However, undersigned counsel has long-planned leave scheduled from April 9 to April 19, 2026, and will be unable to prepare a response to the United States' pleading within 14 days of its filing. Accordingly, if the Court does not strike the United States' response, undersigned counsel respectfully requests permission to file a response within 14 days of her return, by May 6, 2026.

8. For the foregoing reasons, appellant respectfully requests that this motion be granted.

Respectfully submitted,

/s/ Alice Wang  
Jaclyn S. Frankfurt (Bar No. 415 252)  
Alice Wang (Bar No. 495 098)

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has been served electronically by the Court's e-filing system upon Chrisellen Kolb, Esq., Office of the United States Attorney; and Marcella Coburn, Esq., and Caroline Van Zile, Esq., Office of the Attorney General for the District of Columbia, this 6th day of April, 2026.

/s/ Alice Wang  
Alice Wang