NOT FOR PUBLICATION

FILED

OCT 28 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KUI MYLES,

Petitioner,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Respondent.

No. 25-2896

Agency No. SF-1221-22-0606-W-1
Merit Systems Protection Board

MEMORANDUM*

On Petition for Review of an Order of the
Merit Systems Protection Board

Submitted October 27, 2026**

Before: SILVERMAN, FORREST, and VANDYKE, Circuit Judges.

Kui Myles, proceeding pro se, petitions for review of the Merit Systems Protection Board's ("Board") ruling denying her request for corrective action under the Whistleblower Protection Act, 5 U.S.C. § 2302, for two personnel actions taken against her by her employer, the Department of Homeland Security.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We have jurisdiction under 5 U.S.C. § 7703(b)(1)(B). We set aside the Board's actions, findings, or conclusions if they are "(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence." 5 U.S.C. § 7703(c). We deny the petition.

Substantial evidence supports the Board's determination that the agency demonstrated by "clear and convincing evidence that it would have taken the same personnel actions in the absence of" the protected disclosures. 5 U.S.C. § 1221(e)(2); *Duggan v. Dep't of Defense*, 883 F.3d 842, 846-47 (9th Cir. 2018) (adopting the Federal Circuit's three-factor test, set out in *Carr v. Social Security Administration*, 185 F.3d 1318, 1323 (Fed. Cir. 1999), for determining whether the agency has carried this burden).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

PETITION DENIED.