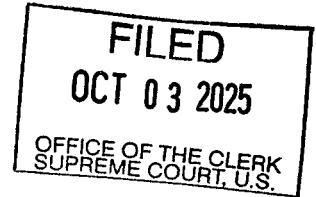


25-6072

No. \_\_\_\_\_

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES



William Douglas Marcum — PETITIONER  
(Your Name)

vs.

Merit Systems Protection Board — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Federal Court of Appeals Federal Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

William Douglas Marcum  
(Your Name)

2552 E. Hidden Creek Street  
(Address)

Nampa, ID 83687  
(City, State, Zip Code)

(520) 425-7987  
(Phone Number)

**QUESTION(S) PRESENTED**

1. Whether the Fifth Amendment's Due Process Clause is violated when the Merit Systems Protection Board relies on perjured testimony, denies discovery, and excludes exculpatory evidence in dismissing an employee's appeal for lack of jurisdiction.
2. Whether a federal court may treat the use of perjury, suppression of discovery, and refusal to consider newly discovered evidence of government witness misconduct as "harmless error" in reviewing an MSPB decision.
3. Whether under 5 C.F.R. § 715.202, an employee retains the right to rescind a resignation before its effective date, and whether an agency may lawfully refuse rescission absent a valid, articulated reason.

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<ul style="list-style-type: none"><li>• Board of Regents v. Roth, 408 U.S. 564 (1972)</li><li>• Brady v. Maryland, 373 U.S. 83 (1963)</li><li>• Bronston v. United States, 409 U.S. 352 (1973)</li><li>• Burlington Northern &amp; Santa Fe Ry. Co. v. White, 548 U.S. 53 (2006)</li><li>• Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985)</li><li>• Cruz v. Dep't of Navy, 934 F.2d 1240 (Fed. Cir. 1991)</li><li>• Garcia v. Dep't of Homeland Sec., 437 F.3d 1322 (Fed. Cir. 2006) (en banc)</li><li>• Mooney v. Holohan, 294 U.S. 103 (1935)</li><li>• Napue v. Illinois, 360 U.S. 264 (1959)</li><li>• Stone v. FDIC, 179 F.3d 1368 (Fed. Cir. 1999)</li><li>• Superintendent v. Hill, 472 U.S. 445 (1985)</li><li>• United States v. Mandujano, 425 U.S. 564 (1976)</li></ul>	-

## STATUTES AND RULES

- U.S. Const. amend. V
- Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a)
- 5 U.S.C. § 7512
- 5 U.S.C. § 7513(d)
- 5 U.S.C. § 7701(a)
- 5 U.S.C. § 7701(c)(1)(B)
- 5 U.S.C. § 7703(c)

## OTHER

Regulations  
5 C.F.R. § 715.202

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 06/04/2025.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 07/08/2025, and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

U.S. Const. amend. V provides in relevant part:

"No person shall ... be deprived of life, liberty, or property, without due process of law."

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a) provides:

"It shall be an unlawful employment practice for an employer to discriminate against any of his employees ... because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter."

5 U.S.C. § 7512 provides that "adverse actions" include removals, suspensions for more than 14 days, reductions in grade or pay, and furloughs of 30 days or less.

5 U.S.C. § 7513(d) provides:

"An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701."

5 U.S.C. § 7701(a) provides:

"An employee ... may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule, or regulation."

5 U.S.C. § 7701(c)(1)(B) provides:

"The decision of the agency shall be sustained ... only if the agency's decision is supported by a preponderance of the evidence."

5 U.S.C. § 7703(c) provides:

"In any case filed in the United States Court of Appeals for the Federal Circuit, the court shall review the record and hold unlawful and set aside any agency action, findings, or conclusions found to be—

- (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 C.F.R. § 715.202 provides:

"An agency may permit an employee to withdraw a resignation at any time before its effective date. An agency may decline a request to withdraw a resignation if it has a valid reason and must explain that reason to the employee."

## STATEMENT OF THE CASE

Petitioner William Marcum was a career employee of the Department of Justice, Federal Bureau of Prisons. In June 2020, during the COVID-19 pandemic, agency officials threatened him with termination based on a retaliatory and false investigation initiated after his protected Equal Employment Opportunity (EEO) activity, in violation of 42 U.S.C. § 2000e-3(a). Petitioner believed the agency was attempting to force his resignation, place him in unsafe conditions, and prevent his transfer to the United States Marshals Service, where he had already been selected in the hiring process as a Deputy United States Marshal.

After receiving the EEO report on June 16, 2020, Petitioner was advised that the agency was intent on removing him. Under this pressure, on June 17, 2020, Petitioner submitted a letter of resignation providing two weeks' notice. The agency later claimed it never received that letter. Petitioner corrected the effective date in a revised of that same letter on June 24, 2020, but on the morning of June 25, 2020, he sought to rescind his resignation before it became effective in order to fight against the actions of the Agency. The agency refused.

Petitioner appealed to the Merit Systems Protection Board (MSPB), asserting his resignation was involuntary because it was coerced and because the agency denied him union representation during critical meetings with management and human resources. He also presented evidence of his rescission attempt. At hearing, however, the agency's Human Resources Manager, Jason Ludwick, committed perjury by falsely testifying that Petitioner never attempted rescission. This testimony directly contradicted agency documents in the EEO investigation report, in which Ludwick explained the reasons the rescission would not be accepted—an admission that a rescission was in fact attempted.

During the MSPB hearing, Petitioner also argued that the agency had failed to provide discovery, in violation of applicable rules of evidence and procedure. He was presented for the first time with evidence he had never previously seen and was not aware of, and was told by the agency that he "could have looked the Agencies discovery up" himself. The denial of discovery and the introduction of undisclosed evidence further deprived Petitioner of a fair opportunity to respond.

The Administrative Judge credited Ludwick's testimony, denied discovery, and refused to consider exculpatory emails confirming Petitioner had been cleared in multiple areas of the underlying investigation. The AJ dismissed the appeal for lack of jurisdiction, finding the resignation voluntary.

After the hearing, newly discovered evidence revealed that Special Investigative Agent Mendez, from the same office and timeframe, had been convicted of criminal felony perjury in Federal Court (Tucson, Arizona), for making false statements and perjuring himself in a similar EEO case. This directly undermined the credibility of agency witnesses, yet both the MSPB and the Federal Circuit refused to consider it, dismissing the issue as immaterial and "harmless."

As a result, Petitioner was denied a fair hearing and meaningful opportunity to prove his resignation was coerced and rescinded. Both the MSPB and the Federal Circuit permitted reliance on perjured testimony, exclusion of exculpatory evidence, and suppression of newly discovered perjury convictions—contrary to the Due Process Clause of the Fifth Amendment.

## **Addendum – Background of Retaliation and Harassment**

The Petitioner was a whistleblower who reported criminal activity and policy violations by a coworker to agency executives and investigators. That coworker, a close friend of Petitioner's immediate supervisor, was never disciplined. Instead, Petitioner became the target. His supervisor, in concert with agency leadership, began a sustained campaign of harassment, creating a hostile work environment that ultimately drove Petitioner to file an Equal Employment Opportunity (EEO) complaint. That EEO case was settled in 2024.

As part of this campaign, Petitioner's supervisor was later discovered to have created a second, secret set of performance evaluations covering 2016 through 2019. These untruthful records reflected lower quarterly and annual ratings than those Petitioner actually earned, undermining his ability to promote or transfer within the agency. This falsification directly blocked his career advancement and was a key factor leading to his 2019 EEO filing.

Rather than protecting Petitioner's rights under federal law, the agency retaliated multiple times. False investigations were launched, Petitioner's credibility was attacked, and he endured nearly a year of escalating hostility designed to punish him for exercising his protected rights. More than a dozen separate acts of harassment and retaliation followed—including threats to his safety, violations of EEO protections, being forced to sit in a corner for months then being forced to work in a metal garage outside of the complex, denial of representation, and deliberate efforts to isolate him in the workplace.

The purpose of this retaliation was plain: to deter Petitioner from pursuing his EEO claim and to protect the individuals engaged in misconduct. Agency officials not only undermined his career within the Bureau of Prisons but also jeopardized his lifelong dream of becoming a Deputy United States Marshal. Petitioner had already been selected in the hiring process, but these retaliatory actions threatened to derail his appointment, his reputation, and his future in federal law enforcement.

What should have been a career defined by public service was instead marked by fear, humiliation, and the constant threat of removal. The agency's actions struck at the core of federal employee protections—weaponizing the very processes designed to protect whistleblowers and EEO complainants, and leaving Petitioner with no refuge from a hostile and retaliatory workplace.

## REASONS FOR GRANTING THE PETITION

### I. The Decision Below Conflicts with Fundamental Due Process Principles

This case presents a clear violation of the Fifth Amendment's Due Process Clause. The MSPB and the Federal Circuit allowed the agency to prevail based on perjured testimony, denied Petitioner meaningful discovery, and refused to consider exculpatory and newly discovered evidence of government misconduct. It is well settled that government reliance on perjured testimony violates due process. *Mooney v. Holohan*, 294 U.S. 103, 112 (1935); *Napue v. Illinois*, 360 U.S. 264, 269 (1959). Similarly, the suppression or refusal to consider exculpatory evidence undermines the integrity of proceedings. See *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Yet here, both the MSPB and the Federal Circuit disregarded these principles and excused the violations as "harmless."

### II. The Federal Circuit's Approach Undermines the Integrity of MSPB Proceedings

The MSPB is the sole forum for federal employees to challenge adverse employment actions. If agency witnesses may commit perjury without consequence, if discovery may be withheld, and if exculpatory or newly discovered evidence of perjury is ignored, then federal employees are deprived of any meaningful forum. The Federal Circuit's decision effectively insulates perjury and discovery abuses from judicial review, undermining the statutory guarantees of fair process in 5 U.S.C. §§ 7513, 7701, and 7703.

### III. The Case Raises Questions of National Significance for Federal Employment Law

This case implicates not only Petitioner but the rights of more than two million federal employees. The ability of agencies to coerce resignations, deny rescission requests, and then prevail through false testimony erodes confidence in the fairness of civil service protections. The decision below signals to agencies that procedural violations, perjury, and suppression of evidence may be excused so long as a reviewing court labels them "harmless error." Such an approach invites abuse and is incompatible with constitutional due process.

### IV. The Questions Presented Are Recurring and Require This Court's Intervention

Federal employees regularly raise claims of coerced resignation and involuntariness before the MSPB. See, e.g., *Cruz v. Dep't of Navy*, 934 F.2d 1240 (Fed. Cir. 1991); *Garcia v. Dep't of Homeland Sec.*, 437 F.3d 1322 (Fed. Cir. 2006). Yet the courts below have permitted jurisdictional determinations to rest on testimony later shown to be false and have refused to consider new evidence of perjury. This Court's intervention is necessary to resolve whether due process permits such practices and to ensure that employees facing coerced resignations are afforded a fair opportunity to contest them.

### Conclusion

This case presents a fundamental question: whether the government may deprive a federal employee of statutory and constitutional rights by relying on perjured testimony, suppressing discovery, and excluding exculpatory evidence, and whether courts may excuse such violations as "harmless error." Because the decision below erodes basic due process protections and

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

*William Douglas Marcum*

William Douglas Marcum

Date: 10/02/2025