25-7100 ORIGINAL

No_____

Supreme Court of the United States

ANDREW DALE FARIS,

Petitioner,

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

ANDREW DALE FARIS

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(317) 986-9457 Petitioner, pro se

KELLY WINSHIP, Office of the General Counsel,

United States Merit Systems Protection Board,

Washington, DC, for respondent.

QUESTIONS PRESENTED

1. Whether the Due Process Clause permits a federal agency and the Merit Systems Protection Board to enforce a last-chance agreement as a jurisdiction-stripping waiver of statutory MSPB appeal rights where a preference-eligible veteran, proceeding pro se, executed the purported waiver before receiving any notice that MSPB appeal rights existed, and the agency first provided written notice of those rights only later in the removal decision letter.

2. Whether a court of appeals may enforce a last-chance agreement as a jurisdiction-stripping waiver of MSPB and judicial-review rights while invoking strict issue-preservation rules to refuse review of a pro se employee's constitutional objection that the waiver was uninformed, thereby leaving the employee with no forum for merits review of a covered removal.

3. Whether due process permits removal and enforcement of a jurisdiction-stripping waiver where the predicate AWOL charge is stated in a time increment that does not exist in the Postal Service's own time-conversion framework, and neither the MSPB nor the Federal Circuit made findings reconciling that discrepancy with the governing rules.

PARTIES TO THE PROCEEDING

Petitioner Andrew Dale Faris was the appellant in the United States Court of Appeals for the Federal Circuit and the appellant before the Merit Systems Protection Board.

Respondent Merit Systems Protection Board was the appellee in the court of appeals and issued the final administrative decision challenged in this petition.

RELATED PROCEEDINGS

United States Court of Appeals for the Federal Circuit, No. 24-2004 and No. 24-2005 (consolidated with 24-2004). Judgment entered September 11, 2025; rehearing denied December 8, 2025.

Merit Systems Protection Board, Docket Nos. CH-0353-20-0494-I-1 and CH-0752-20-0205-I-1. Final orders issued April 30, 2024 and April 26, 2024, respectively.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Regulations

Other Authorities

INTRODUCTION

This petition turns on a single, clean, documentary sequence: the Postal Service obtained a waiver of appeal rights from a preference-eligible veteran before it told him that Congress had given him the right to appeal to the MSPB. A November 19, 2019 last-chance agreement contained broad waiver language that did not identify what the MSPB, the right being surrendered, or provide any filing instructions. App. F, 19a. Later, in the February 3, 2020 decision letter removing petitioner, the agency gave written notice of his right to appeal to the MSPB within 30 days. There for reinstating the petitioner's rights if waived while also notifying the petitioner of those rights after waiver was signed unknowingly of those rights App. H, 25a.

The MSPB dismissed for lack of jurisdiction on the theory that petitioner had "knowingly and voluntarily" waived MSPB review, and thus refused to reach the merits. App. D, 11a; App. C, 6a–9a. The Federal Circuit affirmed and treated the core constitutional defect waiver as forfeited under a rigid preservation rule, insulating the waiver's validity from meaningful review. App. A, 1a; App. B, 5a. The result is a procedural "no-forum" trap: the MSPB says it lacks jurisdiction because of the waiver; the Federal Circuit refuses to review the waiver's validity because of preservation. Petitioner, a preference-eligible veteran with a property interest in continued employment, has received no merits forum at any level. See Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542, 546 (1985); Perry v. Merit Sys. Prot. Bd., 582 U.S. 420, 424–26 (2017).

That result cannot be reconciled with this Court's rule that waiver is "an intentional relinquishment or abandonment of a known right," and it invites agencies to defeat Congress's review scheme through timing and boilerplate: secure waiver first, disclose MSPB rights later, then invoke preservation to prevent any court from examining whether the waiver was knowing. See Johnson v. Zerbst, 304 U.S. 458, 464 (1938); App. F, 19a; App. H, 25a.

The case also presents a clean, fact-anchored illustration of the structural problem. The only alleged violation used to enforce the last-chance agreement and justify removal was a charge that petitioner was AWOL for "3.51 hours" on November 20, 2019—even though the Postal Services own time-conversion rules contain no .51 increment. App. J, 28a. Neither the MSPB nor the Federal Circuit explained how that charge can be reconciled with the governing rules, yet both allowed it to support a jurisdiction-stripping waiver that bars any merits review. App. A, 1a–5a; App. C, 6a.

Because the critical facts are documentary, undisputed, and dispositive, this case is an ideal vehicle to restore the basic principle that the Government may not extinguish statutory adjudication and judicial review through an uninformed waiver extracted from an unrepresented employee.

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

The Federal Circuit's opinion and judgment (September 11, 2025) are reproduced at App.1a. The order denying rehearing and rehearing en banc (December 8, 2025) is reproduced at App. B, 5a. The MSPB final orders (April 26, 2024 and April 30, 2024) are reproduced at App. C, 6a–9a. The MSPB initial decisions are reproduced beginning at App. D, 11a.14a.

JURISDICTION

The Federal Circuit entered judgment on September 11, 2025. App. 1a. The court denied rehearing on December 8, 2025. App. B, 5a. This Court has jurisdiction under 28 U.S.C. § 1254(1), and this petition is timely under 28 U.S.C. § 2101(c).

Under Supreme Court Rule 13.3, the time to file runs from the denial of rehearing. Ninety days from December 8, 2025 is March 8, 2026; because that date falls on a Sunday, Rule 30.1 extends the filing deadline to Monday, March 9, 2026. This petition is timely.

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

U.S. Constitution, Amendment V (Due Process Clause)

Provides that no person may be deprived of property without due process of law, requiring fair notice and a meaningful opportunity to be heard before the Government removes a protected federal job or cuts off access to the statutory review forum.

5 U.S.C. §§ 2108, 7511–7513, 7701, 7703;

28 U.S.C. §§ 1254(1), 1295(a)(9);

5 C.F.R. §§ 1201.3, 1201.21, 1201.41, 1201.113, 1201.114,

39 C.F.R. § 211.2 and related

Employee and Labor Relations Manual (ELM)

TACS Handbook F-21 (Time and Attendance Collection System)

(The pertinent portions of these provisions are reproduced in the appendix.)

STATEMENT OF THE CASE

Petitioner is a preference-eligible veteran and former Laborer Custodial for the United States Postal Service at the Indianapolis Processing and Distribution Center. On October 29, 2019 USPS issued a proposed removal notice App. E. 16a. for alleged attendance issues, then within 30 days later On November 19, 2019, the agency presented a last-chance agreement containing waiver language but not identifying the MSPB or explaining the right being surrendered; petitioner signed App. F, 19a. On February 3, 2020, USPS issued the decision letter removing petitioner and, provided written notice of his right to appeal to the MSPB within 30 days. App. H, 25a. (There for reinstating his rights if hypothetically waived knowingly.)

The MSPB dismissed for lack of jurisdiction on the ground that the LCA waived MSPB review. App. D, 11a; App. C, 6a. The Federal Circuit affirmed, relying on preservation doctrine to refuse review of the waiver's knowingness and voluntariness. App. A, 1a; App. B, 5a.

The removal proceeded on an alleged AWOL violation stated as "3.51 hours," (Decimal time) which under 39 CFR § 211.2 USPS regulation is inconsistent with USPS's time-conversion framework which is reproduced in the appendices. App. J, 28a. Neither the MSPB nor the Federal Circuit made findings reconciling that discrepancy with USPS's governing rules.

A. Factual Background

On November 19, 2019, the agency presented petitioner with a combined Last Chance Agreement and Notice of Removal. App. F, 19a. The document stated that petitioner "waives ... further appeal" but did not identify the MSPB, specify a filing deadline, or explain what statutory forum was being surrendered. Petitioner signed the agreement.

On December 2, 2019, USPS issued a second proposed removal based on an alleged November 20, 2019 AWOL incident. App. G, 22a. The agency invoked the LCA as the basis for removal.

On February 3, 2020, USPS issued its Letter of Decision—Removal. The decision letter notified petitioner in writing: App. H, 25a.

> As a preference eligible, you have the right to appeal this action to the Merit Systems Protection Board (MSPB). An appeal must be filed within 30 calendar days after the effective date of the action being appealed, or within 30 calendar days after the date of this decision, whichever is later.

The predicate charge for enforcing the LCA was stated as "3.51 hours" of AWOL on November 20, 2019. USPS's Time and Attendance Collection System (TACS) Handbook F-21 contains a time-conversion table showing standard increments: .25 (15 minutes), .50 (30 minutes), .75 (45 minutes), and 1.00 (60 minutes). The table does not contain a .51 increment. App. J, 28a.

B. MSPB Proceedings

Petitioner filed two appeals with the MSPB:

CH-0752-20-0205-I-1 (Removal Appeal): Challenged the February 2020 removal. The administrative judge found that the LCA constituted a knowing and voluntary waiver of MSPB jurisdiction and dismissed the appeal. App. D, 11a. The Board affirmed. App. C, 6a.

CH-0353-20-0494-I-1 (Collateral Attack): Raised challenges to the LCA's validity and enforceability, supported by evidence of agency bad faith and material breach. The administrative judge would not consider on the grounds of "adjudicative efficiency," reasoning that such challenges belonged in the removal appeal. App. D, 14a.

Petitioner attempted multiple times to supplement the record in the removal case after the initial decision was issued but before the final order with breach and bad-faith evidence that met (5 C.F.R. § 1201.115). But the MSPB Clerk's Office rejected all of the filings App. N.33a.

The Board's final orders in both cases declined to address:

Whether the waiver was knowing and voluntary given the sequence of notices (waiver before MSPB-rights disclosure);

Whether the agencies later grant of appeal rights in the decision letter superseded or nullified the waiver;

Whether the "3.51 hours" charge was cognizable under USPS's own time-conversion rules.

C. Federal Circuit Proceedings

Petitioner appealed both MSPB dismissals to the Federal Circuit; the appeals were consolidated. On September 11, 2025, the court affirmed.

The court held that petitioner had forfeited arguments challenging the waiver's validity because he had not adequately raised them before the MSPB. App. A, 1a. The court did not address the February 2020 decision letter's grant of appeal rights

On the "3.51 hours" issue, the court stated that petitioner had not preserved the argument by framing it as a challenge to the time calculation's legal sufficiency under USPS rules, instead of a jurisdictional

Petitioner filed a timely petition for rehearing and rehearing en banc, which the court denied on December 8, 2025. App. B, 5a.

REASONS FOR GRANTING THE WRIT

This petition presents three interrelated questions about the enforceability of a jurisdiction-stripping waiver obtained from a pro se, preference-eligible veteran before he was told the right being waived existed along with the Consequences of waiving that right, The questions satisfy Rule 10 criteria: they involve misapplication of this Court's precedent on knowing waiver, they implicate the structural integrity of Congress's civil-service review scheme, and they leave a recurring category of litigants—unrepresented employees without any forum for merits review.

I. The Decision below Conflicts with This Court's Rule That Waiver Requires a "Known Right" and Invites Agencies to Defeat Congress's Review Scheme through Timing and Boilerplate

This Court has long held that waiver is the "intentional relinquishment or abandonment of a known right." Johnson v. Zerbst, 304 U.S. 458, 464 (1938). The documents here show the opposite sequence: the agency obtained waiver language on November 19, 2019 (App. F, 20a) and only later, on February 3, 2020, provided written notice that an MSPB appeal right existed (App. H, 25a). or it reinstated that right.

A. An Uninformed Waiver Cannot Be "Knowing and Voluntary"

The federal civil-service framework presupposes that employees will receive meaningful procedures before being deprived of a protected job interest. See Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542, 546 (1985). The Civil Service Reform Act guarantees preference-eligible veterans the right to appeal adverse actions to the MSPB. 5 U.S.C. §§ 7513, 7701. Agencies may not extinguish that right through a waiver unless the employee knows the right exists and understands the consequences of surrendering it.

The November 19, 2019 last-chance agreement stated that petitioner "waives ... further appeal" but did not identify the MSPB, specify a filing deadline, or explain what statutory forum was being waived. App. F, 19a. then in the February 3, 2020 decision letter months after the waiver was executed, the USPS inform petitioner in writing that he had a right to appeal to the MSPB within 30 days. There for reinstating the petitioner's rights while also notifying the petitioner of those rights App. H, 25a.

That sequence is fatal to a finding of knowing waiver. Petitioner could not "knowingly" relinquish a right he had never been explained that he had, The decision below effectively converts Zerbst into a presumption that waiver language is self-executing even when the right waived was undisclosed at the time of execution.

B. The Agency's Later Grant of Appeal Rights Undermines Waiver Enforceability

The February 2020 decision letter is not a mere procedural formality. By providing written MSPB appeal-rights notice in the decision letter, the agency signaled that petitioner's statutory appeal rights had not been extinguished. App. H, 26a. Neither the MSPB nor the Federal Circuit explained how an earlier waiver of an undisclosed right could override the agency's subsequent written grant of that right in the removal decision itself. App. A, 1a–5a; App. C, 6a–11a.

The Federal Circuit's case law requires that last-chance agreements be knowing and voluntary to be enforceable. See Buchanan v. Dep't of Energy, 247 F.3d 1333, 1338 (Fed. Cir. 2001); Gibson v. Dep't of Veterans Affs., 160 F.3d 722, 725 (Fed. Cir. 1998). The decision below departed from that standard by treating waiver language as jurisdiction-stripping regardless of whether the employee understood what was being waived. That departure warrants this Court's review.

C. If Left Uncorrected, the Decision Below Invites Agencies to Use Timing to Defeat Statutory Review

The rule endorsed below creates a roadmap for agencies: secure waiver language before disclosing MSPB rights, then invoke the waiver as jurisdiction-stripping. That approach undermines Congress's integrated civil-service review structure a concern this Court has treated as important. Perry v. Merit Sys. Prot. Bd., 582 U.S. 420, 424–26 (2017).

Last-chance agreements are widely used in the federal civil service. If agencies may obtain waivers before providing MSPB-rights notice, the statutory review path becomes optional in practice. That result cannot be reconciled with the CSRA's text, structure, or purpose.

II. The Decision Below Allows Preservation Doctrine to Insulate the Validity of a Jurisdiction-Stripping Waiver from Any Appellate Review, Creating a "No-Forum" Trap for Pro Se Employees

Subject-matter jurisdiction is not a technicality. Courts have an independent obligation to ensure it exists, and parties cannot create it by consent or lose it by omission. Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 376–77 (1994). The decision below nonetheless allows a rigid issue-preservation rule to foreclose review of a constitutional defect in a waiver that the MSPB treated as jurisdiction-stripping.

A. The Waiver-Before-Notice Defect Is Apparent from the Record Itself

The critical facts are not in dispute. The proposed-removal notice (App. E, 16a), the last-chance agreement (App. F, 19a), and the decision letter (App. H, 25a) are all part of the administrative file and reproduced in the appendices. Those documents show on their face that the waiver predated any MSPB-rights notice.

Petitioner raised the significance of the February 2020 decision letter's appeal-rights notice in both MSPB proceedings and in the Federal Circuit. The Federal Circuit declined to reach the issue, holding that it was forfeited for lack of adequate preservation. App. A, 5a. That use of preservation doctrine effectively makes the waiver unreviewable: the MSPB refused to reach the merits because the waiver was supposedly jurisdiction-stripping, and the Federal Circuit refused to review the waiver's validity because of preservation.

B. That Result Creates a Procedural Catch-22 for Pro Se Litigants

This Court has instructed that pro se filings are to be construed liberally. Haines v. Kerner, 404 U.S. 519, 520–21 (1972). The decision below does the opposite: it uses strict preservation rules to insulate a jurisdiction-stripping waiver from review,

even though the constitutional defect (waiver before notice) is apparent from the documents themselves.

The net result is a closed loop that forecloses merits review at every turn:

The MSPB dismissed the removal appeal for lack of jurisdiction on the theory that the LCA waived review, without addressing the February 2020 letter granting appeal rights. App. C, 6a–11a.

The MSPB dismissed the collateral attack on the LCA's validity on the ground of "adjudicative efficiency," reasoning that such challenges belonged in the removal appeal. App. D, 15a.

The Federal Circuit refused to review the waiver's validity on preservation grounds. App. A, 5a.

That is precisely the kind of jurisdictional "limbo" this Court warned about in Perry—except here it is not shuttling between forums, but exclusion from all forums. Perry, 582 U.S. at 427–30.

C. The Issue Is Not Waived; It Is Documentary

This is not a case where petitioner failed to raise an issue or seek to develop a factual record. The issue is a pure question of law controlled by documents in the administrative file: Can a waiver executed before MSPB-rights notice satisfy Zerbst's "known right" standard? That question was raised, and it should have been addressed on the merits.

Using preservation doctrine to foreclose review of that question effectively converts a jurisdictional dismissal into an unreviewable final judgment. That result cannot be reconciled with this Court's treatment of subject-matter jurisdiction as a threshold issue that courts must address even in the absence of party invocation.

III. The Decision Below Permits Removal Based on a Charge That Is Facially Inconsistent with the Agency's Own Governing Rules, Without Findings or Explanation

Due process requires reasoned decision making in administrative adjudication. Agencies must "examine the relevant data and articulate a satisfactory explanation for [their] action including a rational connection between the facts found and the choice made." Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

A. The Agency Charged "3.51 Hours AWOL" Using a Non-Existent Time Increment

The predicate violation used to enforce the LCA and justify removal was a charge that petitioner was AWOL for "3.51 hours" on November 20, 2019. App. J, 55a. USPS's Time and Attendance Collection System (TACS) Handbook F-21 contains a time-conversion table that defines valid time increments. App. J, 55a.

That table shows:

Decimal	Minutes
.25	15 minutes
.50	30 minutes
.75	45 minutes
1.00	60 minutes

Table 1: USPS TACS time-conversion increments

The table does not contain a .51 increment. App. J, 55a. Petitioner contends that the charge of "3.51 hours AWOL" is therefore not cognizable under the agency's own time-conversion framework.

B. Neither the MSPB Nor the Federal Circuit Made Findings on This Issue

The MSPB's sole reference to the issue was a footnote stating that the difference between "3.41" and "3.51" was a "typographical error" that was "harmless." App. C, 10a n.3. But that characterization assumes both figures are valid—when in fact neither .41 nor .51 appears in the USPS time-conversion table. App. J, 55a.

The Federal Circuit stated that the argument was "unpreserved" but did not address the legal question: whether a removal charge stated in a non-existent time increment can satisfy the "cause" requirement under 5 U.S.C. § 7513(a). App. A, 6a.

This is not a challenge to a factual dispute about how much time petitioner was absent. It is a challenge to the legal sufficiency of the charge under the agency's governing rules. Agencies are bound to follow their own regulations. American Mining Congress v. EPA, 824 F.2d 1177, 1181 (D.C. Cir. 1987).

C. This Defect Goes to the Enforceability of the Waiver

If the predicate charge is legally insufficient under USPS's own rules, the LCA should not have been enforced as a jurisdiction-stripping waiver. Due process

requires that removal be based on valid charges supported by the governing regulatory framework. Loudermill, 470 U.S. at 542, 546. Petitioner has never received a merits forum to challenge the sufficiency of the charge because the waiver was enforced as jurisdiction-stripping.

This case presents a clean vehicle for the Court to clarify that agencies may not remove preference-eligible veterans based on charges that are facially inconsistent with the agencies' own regulations, and that courts may not insulate such charges from review through rigid preservation rules.

IV. The Decision below Leaves Preference-Eligible Veterans Without a Merits Forum on Recurring Civil-Service Issues

The issues presented recur frequently in federal employment law. Last-chance agreements are a standard tool in federal adverse actions. If agencies may obtain waivers before disclosing MSPB rights, and if courts may refuse to review waiver validity on preservation grounds, the integrated civil-service review structure Congress established becomes optional for a substantial category of employees—particularly unrepresented litigants.

A. Preference-Eligible Veterans Receive Statutory Protections That the Decision Below Undermines

Congress provided enhanced procedural protections for preference-eligible veterans in adverse actions. 5 U.S.C. §§ 2108, 7511–7513. Those protections include the right to MSPB review and judicial review of MSPB decisions. 5 U.S.C. §§ 7701, 7703.

Preference-eligible veterans are frequent subjects of last-chance agreements because they enjoy those enhanced protections in the first place. The rule endorsed below, that waiver language is enforceable even when obtained before MSPB-rights notice disproportionately impacts that statutorily favored group.

Petitioner, a preference-eligible veteran, has never received merits review of his removal or of the enforceability of the LCA. The MSPB dismissed for lack of jurisdiction; the Federal Circuit affirmed on preservation grounds. That outcome cannot be reconciled with Congress's intent to provide veterans with meaningful procedural safeguards.

B. The Problem Is Systemic and Acute for Unrepresented Employees

This Court has recognized that pro se litigants face unique challenges and has instructed courts to construe their filings liberally. Haines, 404 U.S. at 520–21. The

decision below does the opposite: it uses strict preservation rules to foreclose review of a constitutional defect that is apparent from the documents themselves.

Unrepresented employees are unlikely to understand the nuances of preservation doctrine or to frame arguments in the precise way courts later demand. If preservation doctrine can be used to insulate jurisdiction-stripping waivers from review, pro se employees will routinely be left without any forum—precisely the outcome Congress sought to avoid in creating the CSRA's integrated review structure. Perry, 582 U.S. at 424–26.

The November 19, 2019 last-chance agreement cannot be read as a blanket, prospective waiver of all MSPB or judicial-review rights for later adverse actions. By its terms, it settles "pending or future appeals and/or grievances ... regarding the Notice of Proposed Removal, dated October 29, 2019" and all matters "that occurred prior to the execution of this Settlement Agreement," and provides only that Mr. Faris "waives his right to an oral hearing or further appeal on the matters raised." Those phrases confine the waiver to pre-existing disputes about the first proposed removal, not to future, independent actions. The agreement then converts that proposed removal to a "14-Day Last Chance Suspension," sets forward-looking attendance terms, and warns that violations "will result in removal," but it does not state that any later removal will be unreviewable in any forum. To the contrary, it preserves the "usual channels" for "future discipline" and other "new and independent matters," which is exactly what a later removal based on an alleged November 20, 2019 AWOL incident is. Read as a whole, the document settles past claims; it does not clearly and unequivocally waive statutory review of a future removal based on later conduct.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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