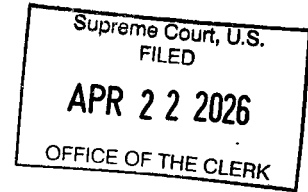


25-7588 ORIGINAL

SUPREME COURT OF THE UNITED STATES



AMANDA MOJDEH RAISZADEH,

Petitioner,

v.

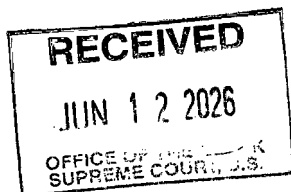
DEPARTMENT OF HOMELAND SECURITY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

Amanda Mojdeh Raiszadeh  
5973 Havener House Way  
Centreville, VA 20120  
(703) 798-6963

Petitioner Pro Se



## QUESTION PRESENTED

1. Whether the Administrative Judge improperly conflated a proposed management “Focus Group” that was repeatedly postponed and ultimately never occurred with separate “Draft Focus Group Meeting Notes” prepared by a union representative and circulated among clerical employees, then relied upon those notes as evidence supporting the agency’s justification for Petitioner’s termination despite record evidence establishing that the two were distinct and unrelated events. Appx. 1749, 1863, 1776–1779, 277–281, 339–344.
2. Whether the Administrative Judge improperly relied upon unsworn and unsigned Draft Focus Group Meeting Notes as evidence of widespread complaints against Petitioner where the record does not establish that management contemporaneously possessed or relied upon those notes when the termination decision was made, and where the notes first appeared in a Report of Investigation approximately one year after Petitioner’s termination. Appx. 1749, 1863, 1776–1779.
3. Whether Petitioner’s Fifth Amendment due process rights were violated where Petitioner received two “0” performance ratings allegedly based upon a management “Focus Group” intervention and mediation process that undisputedly never occurred because the meetings were repeatedly postponed and ultimately cancelled. Appx. 1489–1490, 339–344, 277–281.
4. Whether the Merit Systems Protection Board and the United States Court of Appeals for the Federal Circuit misapplied the Whistleblower Protection Act, 5 U.S.C. § 2302(b)(8), and the clear-and-convincing evidence standard under *Carr v. Social Security Administration*, 185 F.3d 1318 (Fed. Cir. 1999), and *Whitmore v. Department of Labor*, 680 F.3d 1353 (Fed. Cir. 2012), by affirming Petitioner’s termination despite substantial evidence that the agency’s justification relied upon contradictory, unreliable, and non-contemporaneous evidence following Petitioner’s

protected Office of Inspector General disclosure involving serious security violations and national-security concerns. Appx. 111–112, 1492, 274–276.

5. Whether the Administrative Judge’s reliance upon nonexistent events, unreliable hearsay evidence, and materially contradictory findings improperly influenced subsequent review by the Merit Systems Protection Board and the Federal Circuit, resulting in findings unsupported by substantial evidence under *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951), and post hoc rationalizations prohibited under *SEC v. Chenery Corp.*, 318 U.S. 80 (1943).

6. Whether Petitioner was denied meaningful due process under the Fifth Amendment where longtime counsel withdrew during critical appellate proceedings, oral argument was denied, and Petitioner was forced to proceed pro se in a complex federal whistleblower appeal involving national-security concerns after the Merit Systems Protection Board had already recognized Petitioner’s disclosure as protected whistleblowing activity in its December 9, 2015 remand order. Appx. D.

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Supreme Court Rule 29.6, Petitioner states that no corporate disclosure statement is applicable.

## **LIST OF PARTIES**

Petitioner: Amanda Mojdeh Raiszadeh

Respondent: Department of Homeland Security

Petitioner Amanda Mojdeh Raiszadeh was the Petitioner before the United States Court of Appeals for the Federal Circuit and the appellant before the Merit Systems Protection Board.

Respondent Department of Homeland Security was the respondent before the Federal Circuit and the agency before the Merit Systems Protection Board.

## TABLE OF CONTENTS

Corporate Disclosure Statement.....	1
Question Presented .....	2
List of Parties .....	4
Table of Contents .....	5
Table of Authorities .....	6
Jurisdiction .....	7
Opinions Below .....	8
Introduction.....	9
Statement of the Case .....	11
Statement of Facts .....	15
Reasons for Granting the Petition .....	18
I. Fundamental Misapplication of Law(Carr / Whitmore).....	21
II. Structural Factual Error: “Focus Group” vs. Draft Notes .....	23
III. Retaliatory Timeline and Absence of Contemporaneous Evidence.....	25
IV. Failure to Properly Consider Comparator <sup>[SEP]</sup> Evidence Under Carr Factor Three.....	27
V. National Importance of Federal Whistleblower Protections .....	29
Conclusion .....	31
Certificate of Service .....	32
Appendix Index .....	33

## TABLE OF AUTHORITIES

Carr v. SSA, 185 F.3d 1318 (Fed. Cir. 1999)

Whitmore v. Dep't of Labor, 680 F.3d 1353 (Fed. Cir. 2012)

SEC, Chenery Corp. v. SEC, 318 U.S. 80 (1943)

Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951)

Borninkhof v. Department of Justice, 5 M.S.P.R. 77 (1981)

Reeves v. Sanderson Plumbing Prods. 530 U.S. 133 (2000)

### Federal Statutes

5 U.S.C. § 1221

5 U.S.C. § 2302(b)(8)

5 U.S.C. § 7703

## OPINIONS BELOW

Appx. A — Order Denying Petition for Panel Rehearing and Rehearing En Banc, United States Court of Appeals for the Federal Circuit (Jan. 29, 2026).

Appx. B — Opinion, United States Court of Appeals for the Federal Circuit (Nov. 7, 2025).

Appx. C — Final Order, Merit Systems Protection Board (July 20, 2023).

Appx. D — Initial Decision on Remand, Merit Systems Protection Board, Atlanta Regional Office (Nov. 23, 2016).

Appx. E — Merit Systems Protection Board Decision and Remand Order (Dec. 9, 2015).

Appx. F — Initial Decision, Merit Systems Protection Board, Atlanta Regional Office (Jan. 27, 2015).

## **JURISDICTION**

This Court has jurisdiction under 28 U.S.C. § 1254(1). The United States Court of Appeals for the Federal Circuit entered judgment on November 7, 2025. Petitioner timely filed a petition for panel rehearing and rehearing en banc, which was denied on January 29, 2026. This petition is timely under Rule 13 of the Rules of this Court.

## INTRODUCTION

This case arises from Petitioner's disclosure of what she reasonably believed to be a serious security vulnerability involving naturalization certificates within a Department of Homeland Security office that had previously experienced a highly publicized corruption scandal involving the unlawful handling of such certificates.

When Petitioner assumed her supervisory position, she inherited responsibility for employees who had been the subject of repeated workplace concerns and management attention. Despite those challenges, the record reflects that management repeatedly expanded Petitioner's responsibilities, assigned her additional duties beyond her original position, and entrusted her with increasing operational authority. Prior to the events at issue, the record further reflected management support for Petitioner's supervisory efforts. Appx. 111-112; Appx. 1492.

Against that backdrop, Petitioner became concerned about the security and accountability of sensitive naturalization materials after discovering that a government safe containing such materials had been left unsecured on multiple occasions. On a subsequent occasion, Petitioner discovered numerous naturalization certificates that appeared to be unaccounted for, raising concerns regarding the security, accountability, and integrity of those materials. Given the office's prior history involving certificate-related misconduct, Petitioner believed those concerns required immediate attention and reporting.

Petitioner reported those concerns through management channels and ultimately to the Office of Inspector General. The Merit Systems Protection Board subsequently determined that Petitioner's disclosure constituted protected whistleblowing activity under the Whistleblower Protection Act. Appx. E.

Prior to management's awareness of the disclosure, the record reflected documented management support, expanding supervisory responsibilities, and the absence of counseling, written warnings, or formal performance deficiencies. Appx. 111-112; Appx. 1492. After management became aware of the disclosure, however, the record reflects a rapid progression toward termination. Appx. 274-276.

The central issue in this case is therefore not whether Petitioner engaged in protected activity. That issue was resolved in Petitioner's favor by the Merit Systems Protection Board's December 9, 2015 remand decision. Appx. E. The sole remaining question was whether the Department of Homeland Security established by clear and convincing evidence that it would have terminated Petitioner absent the protected disclosure.

Petitioner submits that DHS failed to satisfy that burden. Instead, the agency's justification relied upon a management "Focus Group" process that never occurred, disputed Draft Focus Group Meeting Notes not shown to have been contemporaneously relied upon by management when the termination decision was made, and factual findings that Petitioner consistently challenged throughout the proceedings.

This case presents important questions concerning the protection of federal whistleblowers who report perceived security failures, the proper application of the clear-and-convincing evidentiary standard under *Carr v. Social Security Administration* and *Whitmore v. Department of Labor*, and whether an agency may satisfy that burden through reliance upon evidence tied to events that never occurred or materials not shown to have been relied upon at the time of the challenged personnel action

## STATEMENT OF THE CASE

This case ultimately turns on a single question left unresolved after the Merit Systems Protection Board's December 9, 2015 remand decision. In that decision, the Board determined that Petitioner engaged in protected whistleblowing activity under the Whistleblower Protection Act and further found evidence supporting management's constructive knowledge of the disclosure. Appx. E.

Accordingly, the central issue in the proceedings that followed was not whether Petitioner engaged in protected activity. That issue had already been resolved in Petitioner's favor. The sole remaining question was whether the Department of Homeland Security could establish by clear and convincing evidence that it would have terminated Petitioner absent the protected disclosure. See *Carr v. Social Security Administration*, 185 F.3d 1318 (Fed. Cir. 1999); *Whitmore v. Department of Labor*, 680 F.3d 1353 (Fed. Cir. 2012).

Petitioner submits that DHS failed to satisfy that burden. Instead, the Administrative Judge relied upon a nonexistent management "Focus Group," conflated that cancelled process with separate union-generated Draft Focus Group Meeting Notes, relied upon evidence not shown to have been contemporaneously possessed or relied upon by management when the termination decision was made, and discounted substantial evidence undermining the agency's justification. Those errors became central to the clear-and-convincing analysis and ultimately affected the decisions of both the Merit Systems Protection Board and the Federal Circuit.

This case arises from a whistleblower retaliation claim brought by Petitioner, a former employee of the Department of Homeland Security ("DHS"), following her protected disclosure to the Office of Inspector General ("OIG").

Petitioner Amanda Mojdeh Raiszadeh was employed by DHS as a Supervisory CIS Assistant beginning in March 2007 and was converted to supervisory status in April 2007. Appx. 33

From March 2007 through November 9, 2007, the record reflects sustained management confidence in Petitioner, including increased duties and operational authority, assignment of additional unit responsibilities, and the absence of documented disciplinary actions, counseling, or performance warnings. Appx. 283–287

On November 9, 2007, management issued a memorandum confirming operational support for Petitioner's unit. Appx. 111–112; Appx. 1492

On November 21, 2007, Petitioner reported to the Office of Inspector General ("OIG") a security breach involving unsecured naturalization certificates, including approximately 300 certificates that were reportedly unaccounted for. The disclosure implicated the integrity of federal immigration operations and national-security safeguards and constituted protected whistleblowing activity under the Whistleblower Protection Act. Appx. 1770–1771

On November 26, 2007, management became aware of OIG involvement. Appx. 1680.

On November 28, 2007, the termination process was initiated. Appx. 274–276

The record identifies no intervening performance-related event between management's documented support of Petitioner and the initiation of removal proceedings. The chronology is significant because it reflects a rapid transition from documented management support to termination immediately following Petitioner's protected disclosure to the Office of Inspector General.

The agency later justified its actions in part on alleged performance deficiencies, including claims relating to a "Focus Group" intervention and negative performance ratings. However, the record reflects that the alleged Focus Group either did not occur or was materially

mischaracterized, as the meetings were repeatedly postponed and ultimately cancelled. Appx. 277–281

Petitioner nevertheless received two “0” performance ratings allegedly associated with that process.

In addition, the Administrative Judge relied upon “Draft Focus Group Meeting Notes” that were subject to restricted circulation. Emails contained in the record reflect that the Draft Notes were circulated only among clerical unit employees and were not broadly disseminated to management officials during the relevant period. Appx. 62–67

The documentary record further reflects uncertainty regarding whether management officials contemporaneously possessed or relied upon the Draft Notes when the termination decision was made. The Draft Notes first appear in a later Report of Investigation following Petitioner’s removal, raising substantial questions concerning their contemporaneous use, reliability, and evidentiary weight. Appx. 1776–1779.

Petitioner argued throughout the proceedings that the Administrative Judge improperly conflated the cancelled management “Focus Group” process with the separate union-generated “Draft Focus Group Meeting Notes,” and then relied upon those materials as evidence of widespread complaints against Petitioner despite the absence of contemporaneous management reliance. Petitioner sought corrective action before the Merit Systems Protection Board (“MSPB”) under the Individual Right of Action provisions of the Whistleblower Protection Act.

On December 9, 2015, the Merit Systems Protection Board issued a remand order recognizing Petitioner’s disclosure as protected whistleblower activity and finding evidence of constructive knowledge by agency management. (Appx. E).

Following further proceedings, the Administrative Judge denied relief, and the MSPB issued a final order on July 20, 2023, affirming that decision. (Appx. C).

Petitioner timely appealed to the United States Court of Appeals for the Federal Circuit, which affirmed the MSPB's decision.

In May 2024, the Clerk's Office notified Petitioner that counsel had filed noncompliant submissions and that the case was subject to dismissal. Following that notice, counsel withdrew from representation. Petitioner attempted to secure substitute counsel but was unable to do so despite contacting numerous attorneys, and the proceedings continued without oral argument while Petitioner proceeded pro se.

## STATEMENT OF FACTS

This case arises from a rapid and unexplained shift from documented management support to termination within days of Petitioner's protected disclosure to the Office of Inspector General ("OIG"). The record contains no intervening performance deficiencies and reflects reliance on evidence not contemporaneously available to decision-makers.

The underlying disclosure involved a serious security breach concerning unsecured naturalization certificates, including approximately 300 certificates reportedly unaccounted for, implicating governmental integrity, federal immigration operations, and national-security interests.

### **1. No Performance Complaints Prior to Protected Activity**

The record reflects no documented counseling, performance improvement plan, disciplinary warnings, or formal performance deficiencies prior to Petitioner's protected disclosure.

Supervisor Susan Dibbins testified that Petitioner received no counseling and no formal performance intervention during the relevant period. Appx. 1696; Appx. 1709–1711.

Prior to the disclosure, management assigned Petitioner increased duties and operational responsibilities and documented support for her supervisory efforts. Appx. 111–112; Appx. 1492; Appx. 283–287.

### **2. Focus Group and Draft Notes**

#### **(A) Focus Group**

A proposed management "Focus Group" was intended as a response to concerns within the clerical unit. The Focus Group was repeatedly postponed and ultimately never occurred. Appx. 1489–1490; Appx. 277–281; Appx. 339–344.

Petitioner did not participate in any completed Focus Group, no mediation occurred, and no findings or recommendations were ever generated from such a process.

**(B) Draft Focus Group Notes**

Separate "Draft Focus Group Meeting Notes" were prepared by union representative Michael Knowles and circulated among clerical employees. Appx. 1749; Appx. 1863.

The record does not establish that management contemporaneously possessed or relied upon those Draft Notes when the termination decision was made. The only version produced by the agency appears in a later Report of Investigation prepared after Petitioner's termination. Appx. 1776-1779.

Petitioner consistently maintained that the Administrative Judge improperly conflated the nonexistent management Focus Group with the separate union-generated Draft Notes and then relied upon that conflation as evidence supporting the agency's justification for removal.

**3. Two Zero Performance Ratings**

Petitioner received two "0" performance ratings despite the absence of prior counseling, written warnings, performance improvement measures, or documented performance deficiencies. Appx. 1696; Appx. 1709-1711; Appx. 283-287.

Those ratings were tied to the alleged need for a Focus Group intervention even though the Focus Group was repeatedly postponed and ultimately never occurred. Appx. 1489-1490; Appx. 277-281; Appx. 339-344.

**4. October 2007 Emails**

Emails dated October 11-15, 2007 reflect that the Draft Focus Group Notes were prepared and circulated within the clerical unit. Appx. 1749; Appx. 1863. The October 15, 2007 email reflects that the Draft Notes were intended for circulation among clerical employees.

## **5. Post-Termination Evidence**

The Draft Focus Group Notes first appear in a December 2008 Report of Investigation, approximately one year after Petitioner's termination. Appx. 1776–1779.

## **6. Timeline of Events**

November 9, 2007 — Management issued a memorandum documenting support for Petitioner's unit. Appx. 111–112; Appx. 1492.

November 21, 2007 — Petitioner reported a security breach involving naturalization certificates to the Office of Inspector General. Appx. 1770–1771.

November 26, 2007 — Management became aware of OIG involvement. Appx. 1680.

November 28, 2007 — Termination proceedings were initiated. Appx. 274–276.

The record identifies no intervening performance-related event between management's documented support of Petitioner and the initiation of removal proceedings.

On December 9, 2015, the Merit Systems Protection Board recognized Petitioner's disclosure as protected whistleblowing activity and found evidence supporting management's constructive knowledge of that disclosure. Appx. E.

Following remand proceedings, the Administrative Judge denied corrective action. The Merit Systems Protection Board affirmed, and the United States Court of Appeals for the Federal Circuit affirmed. This petition follows.

## **REASONS FOR GRANTING THE PETITION**

### **THIS CASE PRESENTS IMPORTANT QUESTIONS CONCERNING FEDERAL WHISTLEBLOWER PROTECTIONS AND NATIONAL SECURITY**

This case presents important questions concerning the proper application of the Whistleblower Protection Act, the clear-and-convincing evidentiary standard established in *Carr v. Social Security Administration* and *Whitmore v. Department of Labor*, and the use of non-contemporaneous evidence in federal whistleblower proceedings.

Petitioner disclosed a serious security breach within the Department of Homeland Security involving unsecured naturalization certificates and approximately 300 certificates reported missing or unaccounted for. The Merit Systems Protection Board subsequently determined that Petitioner engaged in protected whistleblowing activity and recognized evidence supporting management's constructive knowledge of that disclosure.

The central issue in this case is not whether Petitioner engaged in protected activity. The Board resolved that issue in Petitioner's favor in its December 9, 2015 remand order. The question is whether the Department of Homeland Security established by clear and convincing evidence that it would have terminated Petitioner absent her protected disclosure. Petitioner submits that it did not.

Permitting an agency to satisfy the clear-and-convincing evidentiary burden through materials not shown to have been relied upon at the time of the adverse action conflicts with *Carr v. Social Security Administration*, *Whitmore v. Department of Labor*, *Universal Camera Corp. v. NLRB*, and *SEC v. Cheney Corp.* It also substantially weakens the protections Congress intended to provide federal employees who report misconduct, security failures, and threats to governmental integrity.

This Court's review is warranted because the decision below allows a whistleblower retaliation claim to be defeated through reliance on a nonexistent event, disputed hearsay evidence, and post hoc justifications developed after the challenged personnel action. The resulting decision raises important questions concerning the evidentiary standards governing federal whistleblower cases and the protections available to employees who report matters affecting national security and public trust.

Petitioner was not merely involved in an ordinary workplace dispute. This case arose after Petitioner reported serious security failures involving naturalization certificates and unsecured government property within a federal immigration office. The record reflects that a government safe containing sensitive naturalization materials was left unsecured on multiple occasions, creating a potential national-security vulnerability involving approximately 300 naturalization certificates that were reportedly unaccounted for. Rather than addressing the disclosure, the agency rapidly shifted from documented management support of Petitioner to termination within days after management became aware of the protected disclosure to the Office of Inspector General.

This case ultimately turns on a fundamental error that infected the proceedings following the Board's December 9, 2015 remand order. The Board had already determined that Petitioner engaged in protected whistleblowing activity and that agency management had constructive knowledge of the disclosure. The proceedings that followed therefore focused on whether the agency could prove by clear and convincing evidence that it would have taken the same action absent the disclosure. Petitioner submits that the agency failed to satisfy that burden.

Petitioner has consistently maintained that the Administrative Judge improperly conflated two entirely different matters: a proposed management Focus Group that was repeatedly postponed

and ultimately never occurred, and separate Draft Focus Group Notes prepared by a union representative. The Focus Group never took place. Yet the decisions below repeatedly blurred the distinction between the nonexistent Focus Group and the Draft Notes.

The error was compounded by the absence of evidence that management contemporaneously possessed or relied upon the Draft Notes when the termination decision was made. The Agency produced no version of the Draft Notes other than the copy contained in a later Report of Investigation prepared after Petitioner's removal. Nevertheless, the Draft Notes became significant support for the agency's justification. Petitioner submits that this conflation of a nonexistent Focus Group with later-produced Draft Notes, together with reliance upon evidence not shown to have been used at the time of the adverse action, forms the central legal error underlying the decisions below.

The decision below conflicts with this Court's principles requiring meaningful evidentiary review, rational administrative decision-making, and proper application of heightened evidentiary burdens in whistleblower retaliation cases. Review is warranted to ensure that federal agencies satisfy the clear-and-convincing evidentiary burden with reliable, contemporaneous, and properly supported evidence and that the protections Congress enacted for federal whistleblowers remain meaningful in practice.

**THE FEDERAL CIRCUIT MISAPPLIED THE CLEAR-AND-CONVINCING  
EVIDENTIARY STANDARD UNDER CARR AND WHITMORE**

The court below improperly affirmed the agency's burden under the clear-and-convincing standard despite substantial contradictions within the administrative record.

Once the MSPB recognized Petitioner's disclosure as protected whistleblowing activity and found a contributing factor, DHS bore the burden of proving by clear and convincing evidence that it would have taken the same personnel action absent the disclosure. Petitioner submits that the agency failed to satisfy that burden.

Under Carr v. Social Security Administration and Whitmore v. Department of Labor, an agency must establish by clear and convincing evidence that it would have taken the same personnel action absent the protected disclosure. The evidence here did not meet that demanding standard.

Before the protected disclosure, the record reflected management support for Petitioner's supervisory efforts, including the assignment of additional duties and support for her management of difficult subordinate employees. Appx. 111-112; Appx. 1492. The record further reflected that subordinate clerical employees—not Petitioner—were being warned regarding misconduct and insubordination issues.

Yet within days after management learned of Petitioner's disclosure to the Office of Inspector General, the agency initiated termination proceedings. Appx. 274-276. The timing was extraordinarily close and highly probative. The administrative record further contains testimony establishing that Petitioner had not received counseling, written warnings, or formal performance interventions before the disclosure. Appx. 1696; Appx. 1709-1711.

Instead of weighing these contradictions against the agency's burden, the lower tribunals effectively accepted the agency's explanation while minimizing evidence detracting from the

agency's narrative. That approach conflicts with *Universal Camera Corp. v. NLRB*, which requires consideration of the record as a whole, including evidence that undermines the agency's conclusions.

The agency's own contemporaneous records further undermined its claim that Petitioner's removal was inevitable. On October 17, 2007, Mitch Berkenkemper, Chief of Labor and Employee Relations and management advisor on disciplinary matters, documented management support for Petitioner and expressed concern that subordinate employees were attempting to undermine her authority. Appx. 1751; Appx. 1863. On November 9, 2007, management again documented support for Petitioner and addressed misconduct and insubordination within the clerical unit. Appx. 111-112; Appx. 1492. These contemporaneous records are difficult to reconcile with the agency's later assertion that Petitioner's performance deficiencies were so severe that termination was unavoidable.

Accordingly, the record does not contain the clear and convincing evidence required by *Carr* and *Whitmore* to establish that DHS would have taken the same action absent Petitioner's protected disclosure.

## **II. THE DECISION BELOW IMPROPERLY RELIED UPON A NONEXISTENT “FOCUS GROUP” WHILE CONFLATING IT WITH UNSWORN UNION NOTES**

A central structural error infected the proceedings below. The proceedings repeatedly blurred the distinction between a management Focus Group that never occurred and separate union-generated Draft Focus Group Notes that surfaced later through a 2008 investigative file. That conflation became central to the agency’s justification for termination and materially affected the subsequent administrative and judicial review of Petitioner’s claims.

The record repeatedly distinguished between:

1. A proposed management “Focus Group” or mediation session that was repeatedly postponed and ultimately never held; and
2. Separate “Draft Focus Group Meeting Notes” created by a union representative for clerical employees.

The management Focus Group never occurred. Appx. 1489–1490. Emails within the record documented repeated postponements and cancellations. Appx. 339–344; Appx. 277–281.

Those Draft Focus Group Meeting Notes were unsworn, unsigned, internally circulated among clerical employees only, and were not shown to have been contemporaneously relied upon by management during the relevant period. Appx. 1749; Appx. 1863. The record further reflects that those notes surfaced later through a 2008 EEO investigative file, after Petitioner’s termination. Appx. 1776–1779.

Despite these serious reliability concerns, the Draft Notes became a foundational justification for performance criticisms and “zero” ratings. The resulting evidentiary framework permitted non-contemporaneous hearsay to substitute for reliable managerial documentation.

That result conflicts with the evidentiary reliability principles discussed in *Borninkhof v. Department of Justice* and the prohibition against post hoc administrative rationalizations recognized in *SEC v. Chenery Corp.*

The record further demonstrates that the proposed Focus Group was repeatedly postponed and ultimately cancelled. Appx. 1489–1490; Appx. 277–281; Appx. 339–344. Petitioner never participated in a completed Focus Group, no mediation occurred, and no findings or recommendations were ever generated from such a process. Nevertheless, the Administrative Judge relied upon the alleged need for a Focus Group while simultaneously treating separate Draft Focus Group Notes prepared by a union representative as evidence supporting the agency's position. The Draft Notes were circulated among clerical employees, were not shown to have been contemporaneously relied upon by management, and first appeared in a later Report of Investigation following Petitioner's termination. Appx. 1749; Appx. 1863; Appx. 1776–1779. The distinction between the nonexistent Focus Group and the separate Draft Focus Group Notes was critical. The Focus Group never occurred and generated no findings, recommendations, or evidence. Yet the Administrative Judge relied upon separate Draft Notes as though they reflected the results of that process. By conflating those two matters, the decisions below treated a cancelled management process as evidence supporting the agency's justification for removal. That factual error materially affected the clear-and-convincing analysis required under *Carr and Whitmore*.

### III. THE RECORD DEMONSTRATES A CLASSIC RETALIATORY TIMELINE

This case presents an unusually concentrated retaliatory timeline.

The chronology is undisputed:

- November 9, 2007 — management support memorandum.
- November 21, 2007 — protected disclosure to the Office of Inspector General.
- November 26, 2007 — management awareness of the disclosure.
- November 28, 2007 — initiation of termination proceedings.

The record identifies no intervening performance-related event between management's documented support of Petitioner and the initiation of removal proceedings.

The MSPB itself previously recognized Petitioner's OIG disclosure as protected whistleblowing activity and further acknowledged evidence supporting constructive knowledge by management officials.

The chronology is highly significant:

- OIG disclosure: November 21, 2007
- Management awareness: approximately November 26, 2007
- Termination initiation: November 28, 2007

That sequence reflected an abrupt reversal from documented management support to termination within approximately seven days.

This Court has repeatedly recognized that suspicious timing may constitute compelling evidence of retaliatory motive, particularly where intervening documentation is weak or inconsistent. Yet the decision below minimized the timing evidence while simultaneously crediting retrospective justifications that were disputed, non-contemporaneous, or structurally unreliable.

The record contains no intervening counseling, written warnings, performance improvement plan, disciplinary action, or documented performance event between management's documented support of Petitioner and the initiation of termination proceedings. Appx. 111-112; Appx. 1492; Appx. 1696; Appx. 1709-1711. The absence of contemporaneous performance documentation is particularly significant because the agency later relied upon two zero performance ratings that were issued despite the absence of prior counseling and were tied to a Focus Group process that never occurred. Appx. 1489-1490; Appx. 277-281; Appx. 339-344.

The compressed sequence of events, combined with the absence of intervening performance documentation, substantially undermines the agency's claim that Petitioner's removal was unrelated to her protected disclosure. The timing evidence should have weighed heavily against a finding that DHS established its case by clear and convincing evidence.

#### **IV. THE LOWER TRIBUNALS FAILED TO PROPERLY CONSIDER COMPARATOR EVIDENCE UNDER CARR FACTOR THREE**

Comparator evidence is a critical component of the Carr analysis because it helps determine whether similarly situated employees were treated differently. Evidence that other employees received training, counseling, or opportunities for correction while Petitioner did not undermines the agency's claim that termination was inevitable regardless of the protected disclosure.

The lower tribunals improperly discounted comparator evidence relevant under Carr factor three. The record reflected that other probationary employees allegedly experiencing workplace deficiencies were provided training, assistance, or opportunities for correction rather than immediate termination. Petitioner, however, was denied comparable support despite the absence of prior counseling, formal warnings, or performance-improvement measures.

This disparate treatment became especially significant given the timing of the protected disclosure and the agency's sudden escalation toward removal. Rather than meaningfully analyzing the comparator evidence, the decisions below minimized or dismissed it without adequate explanation, contrary to the balancing framework required under Carr and Whitmore.

The record reflects that Katuska Tapia, a probationary supervisor operating within the same management structure, allegedly experienced writing and communication deficiencies but received training and assistance rather than termination. Petitioner, also a probationary supervisor, was not afforded comparable opportunities despite the absence of prior counseling, written warnings, or performance-improvement measures.

The record further reflects that Henry Barber engaged in conduct involving serious accusations and rumors concerning Petitioner yet was not disciplined. These comparators were directly relevant under Carr factor three because they demonstrated more favorable treatment of employees who had not engaged in protected whistleblowing activity.

The failure to properly analyze this comparator evidence further undermines the conclusion that DHS established by clear and convincing evidence that it would have taken the same action absent Petitioner's protected disclosure.

**V. THIS CASE PRESENTS IMPORTANT QUESTIONS CONCERNING  
WHISTLEBLOWER PROTECTIONS INVOLVING NATIONAL SECURITY**

This case extends beyond an ordinary personnel dispute. Federal whistleblower protections serve a critical function in ensuring that employees may report security-related concerns without fear of retaliation. If agencies may satisfy the clear-and-convincing standard through post hoc rationalizations, non-contemporaneous evidence, or evidence not relied upon at the time of the adverse action, the protections Congress enacted become substantially weakened.

Petitioner's disclosure involved alleged failures relating to naturalization certificates and unsecured government property within a DHS immigration office. Such allegations implicate the integrity of federal immigration operations and public confidence in national-security safeguards. The record reflects that approximately 300 naturalization certificates were reportedly unaccounted for and that sensitive government materials were left unsecured.

Whistleblower statutes exist to encourage federal employees to report perceived governmental failures without fear of retaliation. The Merit Systems Protection Board previously determined that Petitioner engaged in protected whistleblowing activity and further recognized evidence supporting management's constructive knowledge of the disclosure.

Despite those findings, the agency ultimately prevailed through reliance upon a Focus Group process that never occurred, Draft Focus Group Notes of disputed reliability, performance criticisms unsupported by contemporaneous counseling or warnings, and evidence not shown to have been relied upon at the time of the termination decision.

If employees may be terminated shortly after reporting serious security concerns—and agencies may later justify such actions through disputed hearsay, retrospective explanations, or non-contemporaneous evidence—the protections Congress intended become substantially weakened.

Employees who observe security failures or governmental misconduct may reasonably conclude that reporting such concerns places their careers at risk.

This case therefore presents important questions concerning the proper application of Carr v. Social Security Administration, Whitmore v. Department of Labor, Universal Camera Corp. v. NLRB, and SEC v. Chenery Corp. The decision below raises broader concerns regarding the reliability of evidence used in federal whistleblower proceedings and the degree of protection afforded to employees who report matters affecting governmental operations, national security, and public trust.

Review by this Court is warranted to ensure that the heightened protections established by Congress for federal whistleblowers remain meaningful and that agencies satisfy the clear-and-convincing evidentiary burden with reliable, contemporaneous, and properly supported evidence.

## CONCLUSION

This case presents important questions concerning the proper application of the Whistleblower Protection Act, the clear-and-convincing evidentiary standard established in Carr and Whitmore, and the use of non-contemporaneous evidence in federal whistleblower proceedings. Review by this Court is warranted to ensure that federal agencies may not satisfy that burden through post hoc rationalizations, evidentiary conflation, or evidence not shown to have been relied upon at the time of the challenged personnel action. For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Amanda Mojdeh Raiszadeh

Pro Se

Date: \_\_\_\_\_