No. _____

In the

Supreme Court of the United States

William David Jones,

Petitioner

v.

Defense Logistics Agency,

Defense Supply Center, Richmond,

Respondent

On Petition for a Writ of Certiorari to the

United States Court of Appeals for the 4th Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. The "record rule" is the foundation of APA litigation, and this Court has affirmed the lower courts must comply with the rule noting such cases as *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 US 402 (1971), *Florida Power & Light Co. v. Lorion*, 470 US 729 (1985) and most recently, *Loper Bright Enterprises v. Raimondo*, 603 US 369 (2024). Despite the number of cases heard before this Court over the years since Congress passed the APA in 1946, the Circuits remain hopelessly split by allowing agencies to supplement the AR. The DC Circuit most consistently follows the record rule followed by the 1st, 2nd, and 3rd Circuits, with the 4th, 5th, 7th, 8th, 9th, and 10th Circuits interpreting the rule inconsistently. The 6th Circuit shows the least consistency. The inconsistent application of the record rule creates anarchy for litigants. This case, should the Supreme Court hear it, will strengthen the record rule, the rights of private citizens, private and public organizations, and communities throughout this country.

The question is: did the reviewing court and 4th Circuit violate the APA's record rule and cause reversible harmful error to the petitioner by allowing and considering two ARs and additional documents not in the AR and not used in the agency's decision-making process?

2. Article II, Section 2 of the Constitution grants military commanders wide latitude to ensure safety and good order of their commands, but within the constraints of their jurisdiction and authority. If a person violates a law, rule, or policy where life, safety, or property were truly threatened, the commander may use publicly accessible, internal, agency debarment procedures to debar that person. In this case, the agency failed to produce its debarment process and procedures in the AR. The commander debarred the petitioner but affirmed in a sworn statement the petitioner did not violate any law—*and* affirmed she had no jurisdiction over the petitioner. The lower court allowed the debarment to stand after the agency supplemented the AR with an internal training memorandum, violating the record rule and DoDI 5200.08. The 4th Circuit affirmed. If the appeal were before a more conservative circuit, such as the DC Circuit, the decision would likely have been overturned.

The compound question is: (1) because the commander swore the petitioner violated no law and affirmed she had no authority or jurisdiction over the petitioner, did the commander exceed her jurisdiction and authority when she debarred the petitioner, and (2) did the lower courts violate the record rule by allowing the agency to supplement the AR with documents never used or seen in the agency's decision-making process which the reviewing court claimed justified the commander's debarment decision?

LIST OF PARTIES AND RELATED PROCEEDINGS

LIST OF PARTIES

The parties to the proceeding in the court whose judgment is sought to be reviewed are:

- William David Jones, *Petitioner*
- Defense Logistics Agency, *Respondent*

CORPORATE DISCLOSURE STATEMENT

A corporate disclosure statement is not required under Supreme Court Rules 14.1(b)(ii) and 29.6 because the Petitioner is an individual and the Respondent is a federal agency. The Respondent, DLA, has no stock ticker symbol.

LIST OF RELATED PROCEEDINGS

Pursuant to Rule 14.1(b)(iii), the following proceedings are directly related to this case:

- *William David Jones v. Department of Defense, Defense Logistics Agency, Defense Supply Center, Richmond*, No. 24-1166, U.S. Court of Appeals for the Fourth Circuit. Judgment entered 11 November 2025.
- *William David Jones v. Department of Defense, Defense Logistics Agency, Defense Supply Center, Richmond*, No. 3:21cv00288 (MHL), U.S. District Court for the Eastern District of Virginia, Richmond Division. Judgment entered 1 September 2023.

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TABLE OF AUTHORITIES

Cafeteria and Restaurant Workers Union v. McElroy, 367 US 886 (1961).....18, 19, 32, 33

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the 4th Circuit (Case No. 24-1166) is not yet reported but is available at https://law.justia.com/cases/federal/appellate-courts/ca4/24-1166/24-1166-2025-10-16.html. The order of the United States District Court for the Eastern District of Virginia (Case No. 3:21-cv-00288-MHL) granting summary judgment is not reported but is available at https://law.justia.com/cases/federal/district-courts/virginia/vaedce/3:2021cv00288/507823/51/.

JURISDICTION

The judgment of the Court of Appeals for the 4th Circuit was entered on 11 November 2025. The 4th Circuit denied timely petitions for rehearing and rehearing *en banc* on 23 December 2025 and issued the mandate on 31 December 2025. The petitioner invokes jurisdiction of this Court under 28 USC § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The 4th Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Amendment to the United States Constitution provides in relevant part: "No person shall be ... deprived of life, liberty, or property, without due process of law...."

The Sixth Amendment to the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against

him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

The Fourteenth Amendment to the United States Constitution provides in relevant part: "...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Administrative Procedure Act, 5 USC § 702—706, provides in relevant part a reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; ... [or] (D) without observance of procedure required by law."

STATUTES

5 USC § 552(a)(2)(B) and (C)

5 USC § 701—706

OTHER CONTROLLING AUTHORITIES

DoDI 1000.13

The relevant part of DoDI 1000.13, Enclosure 2 states:

> **7. RETRIEVAL AND REVOCATION.** In accordance with Reference (c), ID cards shall be retrieved by the sponsor or sponsoring organization when the ID card has expired, when it is damaged or compromised, or when the card holder is no longer affiliated with the DoD or no longer meets the eligibility requirements for the card.
>
> **a.** CACs shall be retrieved as part of the normal organizational or command-level check-out processes. The active status of the CAC shall also be terminated in special circumstances (e.g., absent without leave, unauthorized absence, missing in action) in accordance with organization or command-level security policies.
>
> **b.** The DoD sponsor or sponsoring organization is ultimately responsible for retrieving CACs from their personnel who are no longer supporting

their organization or activity. CAC retrieval will be documented and treated as personally identifiable information, in accordance with Volume 1 of DoD Manual 5200.01 and DoDI 5400.11 and receipted to a RAPIDS site for disposition in a timely manner.

DoDI 5200.08

The relevant parts of DoDI 5200.08 under Enclosure 1, Sections E1.1 and E1.2 state:

"The following commanders shall issue the necessary regulations for the protection and security of property or places under their command, according to references (a, c, and d):

E1.1.4. The commanders of installations or activities subject to the jurisdiction, the administration, or in the custody of the Defense Agencies, DoD Field Activities, and other DoD organizational entities, or their separate operating activities.

And

E1.2. Commanders shall prepare, clearly post, and enforce the security orders and regulations issued, and according to this Instruction and law, as appropriate, to ensure the proper safeguarding of personnel, facilities, and property from loss, destruction, espionage, terrorism, or sabotage."

DAFMAN 1-101

STATEMENT OF THE CASE

1. The APA requires the use of a single administrative record (AR) to prove, as a matter of law, it is entitled to summary judgment. The APA's record rule forbids introducing additional documents outside the AR, but the reviewing court welcomed additional documents and based its decision on documents not in the AR, violating the "record rule."

Americans depend on the rule of law to govern our country. Congress has spent 250 years writing, rewriting, adjusting, and in some cases rescinding laws based on the idea of government of the people, by the people, and for the people. Americans look to the courts when an agency imposes a questionable or illegal decision.

Congress created 5 USC §§ 701—706, the Administrative Procedures Act, forbidding government agencies from instituting instructions, directives, or decisions potentially violating other federal statutes or the Constitution itself. Should a person, group, community, or state be aggrieved by an agency action, that entity could attempt to resolve the grievance. Barring success, the aggrieved may file a complaint in a federal district court. The courts have adjudicated many APA cases benefiting society. Generally, the litigation starts with agency providing the complete AR, with both parties agreeing the AR encompasses the facts from which all legal inferences derive. Neither the agency nor the aggrieved may add to the AR—the record rule.

In this case, the district court allowed the agency to admit additional documents outside the AR—though the district court wrote in its memorandum (ECF 51) it followed the limited the scope of review strictly using the agency's AR.[1] While the district court referenced the AR from ECF 26, it violated the record rule by liberally referring to *ECFs 42-1*, *42-2*, and *42-3*. The agency never referred these exhibits in the agency's decision-making process. The reviewing court's decision memorandum in ECF 51 contradicts the claim the agency and the reviewing court arrived at the agency's decision strictly from the AR.

The petitioner argued (1) the agency did not use the documents added in ECFs 42-1, 42-2, or 42-3 in its original decision and (2) the district court violated the scope and limitations of the record rule.

The reviewing court stated it "rigidly applied the record rule," but reviewing the court's decision in ECF 51 contradicts its claim.

Petitioner appealed, expecting the 4th Circuit to uphold the record rule and overturn the reviewing court's decision. The 4th Circuit upheld the decision, allowed the agency's additional evidence, and cited "no reversible error." The petitioner argued

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[1] The district court wrote in its final decision: "In an APA suit challenging agency action, review is limited to the administrative record and 'resolution . . . does not require fact finding on behalf of [the] court." *Hyatt v. U.S. Pat. & Trademark Off.*, 146 F. Supp. 3d 771, 780 (E.D. Va. 2015) (quoting *Nw. Motorcycle Ass'n v. U.S. Dep't Agric.*, 18 F.3d 1468, 1472 (9th Cir. 1994)). Therefore, "the ordinary summary judgment standard under Rule 56(c) [of the Federal Rules of Civil Procedure] does not apply. In other words, the presence or absence of a genuine dispute of material fact is not in issue, as the facts are all set forth in the administrative record." *Hyatt*, 149 F. Supp. At 780. In an APA agency review case, "summary judgment 'serves as the mechanism for deciding, as a matter of law, whether the agency action is supported by the administrative record and otherwise consistent with the APA.'" (Quoting *Sierra Club v. Mainella*, 459 F.Supp.2d 76, 90 (D.D.C. 2006)).

violating the record rule unfairly advantaged the agency by allowing documents not cited in the agency's decision-making process, striking the heart of APA litigation.

The 4th Circuit deviated from cases where it remanded due to violations of the record rule (see, for example, *Casa De Maryland v. DHS*, 924 F.3d 684 (4th Cir. 2019), and *National Veterans Legal Services Program v. US Department of Defense*, 990 F.3d 834 (4th Cir. 2021)).

2. This petition arises from the lower courts violating the record rule. The lower courts allowed reversible errors regarding the admission of documents outside the AR. By allowing this harmful, reversible error, the 4th Circuit contradicts APA cases the Supreme Court settled, notably *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971), setting up the petitioner's appeal to this Court.

Consistent application of law is something every litigant expects from our court system. By the record rule, agencies must include all relevant documents and file the AR in one submission. The APA then limits all legal review to the contents of the AR and forbids any other evidence except in rare circumstances. When the courts fail to comply with this rule, the aggrieved has the right to appeal.

The district court made reversible errors the 4th Circuit should have remanded.

Reversible error is key. Some errors are harmless—they do not affect the outcome of the case. Harmful errors do affect litigation. This Court has decided precedential

cases where reversible, harmful errors regarding the record rule occurred such as *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985), *Citizens to Preserve Overton Park, Inc. v. Volpe,* 401 U.S. 402, 420 (1971), and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003). The 4th Circuit reversed harmful errors in cases such as *Casa De Maryland* and *National Veterans Legal Services Program.*

The 4th Circuit reviewed *Casa v. Maryland* and concluded the decision from the district court regarding DACA was partly correct and partly wrong. Because the 4th Circuit examined the entire AR, and nothing else, the 4th Circuit applied the record rule correctly, reversing in part, and consistently met Congress's intent under the APA.

Similarly, in *National Veterans Legal Services Program,* the 4th Circuit correctly decided the district court's decision did not constitute a final, appealable order, and reversed the error strictly on the AR—no other documents.

Yet the Circuits do not always remand reversible errors. In some cases, the Supreme Court has reviewed APA cases and overturned reversible errors. Important examples include *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985), *Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 420 (1971),* and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

In *Florida Power & Light Co. v. Lorion*, 470 U.S. 729 (1985), the Supreme Court did not find that the record rule was violated but rather affirmed. This Court ruled when

reviewing agency actions, the lower courts must limit review to the existing administrative record, not create a new record.

In *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971), the Supreme Court determined the lower courts erred when they allowed the agency to admit litigation affidavits outside the AR. The lower courts admitted documents violating the record rule. Reversing the error from the lower courts, this Court held lower courts must review only the records the agency used to make its decision.

In *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), the U.S. Supreme Court ruled that the lower court violated due process by relying on evidence of dissimilar, out-of-state conduct, which functioned as a "record rule" violation regarding the scope of admissible, relevant evidence for punitive damages. The Court found the $145 million award unconstitutionally excessive, punishing State Farm for nationwide policies rather than the specific, limited harm to the plaintiffs.

In the present case, the 4th Circuit affirmed the district court's decision, but the reviewing court allowed the agency to add documents not in the AR. *Citizens to Preserve Overton Park* forbids this kind of discretion. The lower courts disregarded the record rule, introducing harmful, reversible error.

3. An agency employee or former employee does not set aside his Constitutional rights because he is or was employed by a federal agency. The agency investigated the petitioner during and after he was

employed at the agency, convened a threat assessment team after the petitioner was no longer employed, and an agency *criminal* investigation specialist (not a federal police criminal investigator) recommended permanent debarment. The agency cannot claim the debarment was an administrative action as averred. Since this was a criminal investigation under DAFMAN 1-101, the controlling authority, the petitioner had Constitutional safeguards. Violating these safeguards, the agency (1) never charged the petitioner with any crime, (2) never informed the petitioner of the investigation, (3) failed to advise him of his rights, and (4) refused to allow the petitioner to add or view evidence.

Agencies have the authority to investigate employees if evidence exists the employee has engaged in some kind of misconduct. Agencies have regulations governing investigations; those regulations legally define the rights of all parties. In a formal investigation where the agency is headed by an Air Force Flag Officer, DAFMAN 1-101 is the controlling authority. DAFMAN 1-101 regulates formal investigations and states the agency must inform the employee / former employee of any criminal accusations if the agency believes the employee / former employee engaged in misconduct. A former employee is not obligated to participate, but it would be strange if the former employee did nothing to clear his name.

Notably, the AR includes pages of evidence the agency claimed the petitioner wrote and posted on "social media." An agency employee attempted to obtain a protective

order against the petitioner using this contrived evidence in a Virginia District Court in September / October 2018. The Virginia District Court Judge skeptically viewed the alleged social media evidence and dismissed the case, boldly penning on the dismissal "NO ACTS OF FORCE OR VIOLENCE AGAINST PETITIONER." The Virginia District Court correctly weighed the evidence. The employee appealed to a Virginia Circuit Court but dismissed her case.

The petitioner informed the agency of the decisions from the Virginia State Courts, but the agency ramped up its case, alleging the petitioner was a "dangerous, unpredictable, and increasingly violent person." The AR contains no evidence in the AR showing the petitioner was ever "dangerous, unpredictable, or increasingly violent." The AR contains the records from the Virginia Courts showing just the opposite. But the agency raged on, painting the petitioner as an unstable, intractable, and perverse person. The agency finally accused the petitioner of threatening DLA employees in a document published in February 2019. The agency's allegations opens a door to a relevant Supreme Court case.

This Court decided *Counterman v. Colorado* 600, US 66 (2023) in 2023. *Counterman* imposed directives government at any level must comply with if it accuses a person as a threat; *Counterman* boiled down to a First Amendment case. The agency claims the petitioner wrote "veiled threats" on social media and sent threatening text messages, and e-mails directed at an agency employee. But the agency's evidence contains no provenance or traceability to either the petitioner or the agency

employee—the alleged social media posts show no URL (website), and the agency employee made no claim the petitioner posted anything on her social media, a fact the employee affirms under oath in a civil trial held in Chesterfield County, Virginia, in October 2021. The agency does not provide evidence the petitioner wrote any e-mail or text message threatening any DLA employee. The accusations lack specificity and credibility. But, the 4th Circuit stood by the agency's assessment and the decision from the lower court without using *Counterman* as its proper comparative paradigm.

Background

On 3 May 2021, petitioner filed a *pro se* complaint in the United States District Court for the Eastern District of Virginia (Case No. 3:21-cv-00288-MHL). The following paragraphs summarize the components of the complaint.

1. The Constitution empowers military commanders with great responsibilities and extensive, but not plenary, authority, including debarring persons. This Court has settled and in some situations overturned debarment cases.

Article II, Section 2 of the Constitution empowers military commanders wide latitude over their commands regarding the safety, good order, and discipline of the installation. If an individual commits a criminal on the installation, a clear nexus exists between cause and effect. No one would object to a commander's decision to debar that individual from the installation. Military commanders have the expressed right to debar persons deemed dangerous or violent.

History has provided this Court such cases as *United States v. Apel,* 571 US 359 (2014) and *United States v. Albertini,* 472 US 675 (1985) where military commanders properly debarred individuals for crimes committed on or against their installations. We see in *Apel* and *Albertini* cause and effect leading to debarment. The commanders at each installation understood their role in protecting the safety and welfare of the installation plus the property entrusted to them. They published and followed safety regulations. This Court, upon review of the records, agreed the military commanders acted properly.

By law and regulation, military commanders must author and publicly post rules ensuring citizens understand and comply with base operating procedures. DoDI 5200.08 borrows wording from 5 USC 552 to ensure the public understands the authority of the commander. In *Apel* and *Albertini*, the commanders complied with 5 USC 552 and DoDI 5200.08 and had legal cause to act. Reviewing the facts from these cases shows the commanders acted properly and within their legal limits; it also provides a framework for the present case.

If a military commander debars a citizen, the accused must merit debarment, and the AR must document the events, times, and circumstances leading to the debarment. There must be a violation of law the citizen knew about. We see cause leading to effect in *Apel* and *Albertini.* We do not see the same in the present case.

2. In contrast to *Apel* and *Albertini*, the DSCR commander did not accuse the petitioner of violating a law, rule, regulation, statute, or instruction, a fact the DSCR

commander affirmed in a dispositive, sworn statement in the AR the district court acknowledged in ECF 51. The commander also affirms in a sworn statement she had no command authority or jurisdiction over the petitioner, a fact in the AR.

The commander's statements are part of the AR. The lower courts upheld the agency actions under APA review despite these dispositive admissions. The agency's foundation for debarring the petitioner do not rise to the same level as what we see in *Apel* or *Albertini*.

The AR has no document disclosing any crime against a person or property, no dates or circumstances alleging the same, or any cause leading to a debarment. The AR reveals no agency procedures or due process afforded to the petitioner.

The AR and ECF 51 (the district court decision) reveal contradictory reasons the military commander debarred the petitioner.

The district court writes the DSCR commander debarred the petitioner because "[petitioner] was no longer employed at the agency and therefore needed no access" and "[petitioner] violated the good order and discipline of this command."

"No longer employed [at DSCR] with no need for access" is <u>not</u> a crime. "Violating the good order and discipline" is a "catch-all phrase" justifying anything not specifically covered by the <u>UCMJ</u>, which the petitioner, a civilian, is not subject to. "Violating the good order and discipline" could be nothing more than failing to jaywalk or cover a sneeze properly in these post-COVID days. Neither reason

specifies a violation of the safety or welfare of the persons or property under the jurisdiction of the DSCR commander. For a commander to debar a person, there must be tangible evidence the person committed a crime and poses a true threat. *Counterman* affirms this idea.

Compared to the documented violations of law we see in *Apel* and *Albertini*, "no longer needed access" and "violated the good order and discipline" do not rise to debarment.

Furthermore, the agency's debarment must be considered arbitrary and capricious considering the DSCR commander debarred the petitioner before the agency completed its administrative commander-directed investigation (CDI).

3. Though the agency's AR does not specify the controlling authority or guidance the agency followed, the DSCR commander is an Air Force Flag Officer; DAFMAN 1-101 is the controlling authority for CDIs. The agency denied the petitioner Constitutional safeguards embodied in DAFMAN 1-101 and poisoned the water by claiming it performed a purely administrative investigation by admitting it appointed a second, *criminal* investigation specialist.

All Americans have the expectation of enjoying equal protection under the law. If an agency accuses an employee of violating a law, rule, statute, or regulation, the agency must use the controlling, legal authority to guide its investigation.

DAFMAN 1-101 provides the framework this agency must use, starting with the actions the commander must comply with to initiate an investigation, whether administrative or criminal. The manual includes Constitutional safeguards the agency must observe.

The agency must initiate an investigation by providing fully framed allegations to the accused—a 6th Amendment Constitutional right. The DSCR commander never provided the petitioner with any allegations. The agency, instead, directed the petitioner to telework for 46 calendar days, violating law and regulation. DLA knew the petitioner did not have internet services at his home. OPM's guidance regarding telework is that telework is voluntary, and no agency may order an employee to telework. DLA violated DLAI 7212, OPM's guidance, and the Telework Enhancement Act of 2010.

The AR shows the agency cleared the petitioner in late October 2018, but the agency reversed course, added new allegations, and reopened the closed investigation in mid-November 2018 after dsicharging the petitioner. By changing its decision from a prior, closed investigation, the agency violated the Double Jeopardy Clause of the 5th Amendment.

The agency claimed the investigation never took on a criminal element, but the AR shows the agency appointed a criminal investigation specialist who, along with other officials (including the CDI investigator), recommended debarring the petitioner months before the agency completed the CDI. Effect preceded cause.

The agency refused to provide the petitioner with the results of the investigation, though closure with the suspect is an absolute requirement under DAFMAN 1-101.

Constitutional safeguards exist to ensure accurate, fair, impartial, and legal investigations. This agency failed to observe the Constitutional safeguards in DAFMAN 1-101, leading to the APA appeal.

4. The agency determined matters of law not in accordance with Supreme Court precedent and contradicted by facts in the AR. The reviewing court vacillated, acknowledging the agency violated the petitioner's Constitutional rights, but the reviewing court and the 4th Circuit agreed with the agency's decision.

The petitioner's purpose in this petition is not to complain about the decisions the lower courts made, but to point out inconsistencies and grievances caused by the failure of the agency and courts to comply with the record rule. As one example of inconsistency, the DSCR commander claimed she debarred the petitioner because "he had no need to access the DSCR," but the debarment letter claims the petitioner "threatened agency employees," without dates, times, circumstances, or evidence. The DSCR commander provides altogether different reasons why she debarred the petitioner in a sworn statement in the AR. Contradictory, arbitrary reasons to take an action against a person should grab the courts' attention. In the present case, they did not.

This Court must recognize the agency and the lower courts have violated the record rule. The district court allowed DLA to supplement the AR using documents from

ECFs 42-1, 42-2, and 42-3; the agency introduced the AR in ECF 26. When an agency or reviewing court adds to the record, the AR no longer has meaning consistent with APA review, and the plaintiff stands no chance of a fair trial.

Citizens to Preserve Overton Park lends the best comparison of violating the record rule to the present case. In *Citizens to Preserve Overton Park,* the lower courts allowed the defendant to supplement the record with documents not connected to the agency's decisions. The plaintiffs objected because the added documents were not used in the agency's originating decision-making process. The reviewing court allowed the supplemental documents without considering their impact. The plaintiffs appealed to the 6th Circuit, and the 6th Circuit, known for its liberal stance on the record rule, issued an opinion contradicting the foundation of APA litigation. The plaintiffs appealed to this Court, and this Court issued a strong opinion addressing the use of affidavits at odds with documents in the AR.

This Court opined the following in that case, and this quote applies presently:

> Plainly, there is "law to apply," and thus the exemption for action "committed to agency discretion" is inapplicable. But the existence of judicial review is only the start: the standard for review must also be determined. For that, we must look to § 706 of the Administrative Procedure Act, 5 U.S.C. § 706 (1964 ed., Supp. V), which provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found" not to meet six separate standards. In all cases, agency action must be set aside if the action was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or if the action failed to meet statutory, procedural, or constitutional requirements.[2]

[2] Please see https://supreme.justia.com/cases/federal/us/401/402/, page 401, US 413-414.

Similar to *Citizens to Preserve Overton Park*, the district court in the present case affirmed its decision (ECF 51) using problematic evidence. The district court did not identify the problems or indicate if the agency corrected them. As with *Citizens to Preserve Overton Park*, evidence encumbered by "issues" cannot justify a decision, and the petitioner rightly expected the reviewing court to ensure a proper standard of review. That did not happen.

Similar to *Citizens*, the agency and the district court produced fruit from a poisoned tree. By (1) using tainted evidence, (2) admitting in the AR the petitioner never violated any rule, law, statute, or instruction, (3) violating the petitioner's Constitutional safeguards, and (4) failing to include the agency's debarment procedures in the AR, this Court must view the agency's decision as an abuse of agency discretion and authority.

The 4th Circuit denied remand despite the petitioner pointing out facts similar to *Citizens to Preserve Overton Park*. As the 6th Circuit did in *Citizens*, the 4th Circuit cultivated the fruit of the poisoned tree by failing to comply with the record rule. This Court intervened with *Citizens*, and the petitioner in this case asks the same.

5. The reviewing court explained the importance, universal parameters, and limits of the AR in APA litigation in its memorandum of support, but the reviewing court used evidence outside of the AR, presenting a self-contradiction; the 4th Circuit affirmed the decision, showing inconsistency with other APA litigation decided in the 4th Circuit. The 4th Circuit, generally known to follow the record rule, failed to do so,

showing a split within itself and more conservative circuits. Had this appeal been before the more conservative DC or 2nd Circuits, the outcome of the petitioner's appeal would have differed.

In APA complaints, the plaintiffs depend on the courts applying one simple rule: the AR is the only source of documents. Litigants from the past depended on the 4th Circuit to ensure the record rule stood intact. Recent examples include *Casa De Maryland* from 2019 and *National Veterans Legal Services* from 2021. The 4th Circuit in both cases did not allow additional documents not originally found in the AR. In the present case, the 4th Circuit greatly relaxed its posture.

Had the 4th Circuit continued its rigid application of the record rule, the 4th Circuit should have remanded because—

> "the APA establishes a basic presumption of judicial review for one suffering legal wrong because of agency action." *Department of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 17 (2020). While the APA does exempt from judicial review agency actions committed to agency discretion by law under 5 USC § 701(a)(2), the Supreme Court has interpreted that exception "quite narrowly...confining it to those rare administrative decisions traditionally left to agency discretion." *Regents*, 591 U.S. at 17 [Emphasis added].

The narrow exception to reviewability applies when "there is no law to apply," *Westchester v. U.S. Department of Housing and Urban Development*, 778 F.3d 412, 419 (2d Cir. 2015), or where there are no "judicially manageable standards for judging an agency's exercise of discretion," *Salazar v. King*, 822 F.3d 61, 76 (2d Cir. 2016). The agency cannot argue the Court has no jurisdiction to review its actions

because the agency's actions fall within the constraint of reviewability. Although "Agency regulations and guidance can provide a court with law to apply," as can an agency's "general policy by which its exercise of discretion will be governed," *Id.* (internal quotations omitted), this case presents an exception—the agency failed to include its own internal regulations and guidance, if they exist, in the AR (ECF 26). Supplementing the AR with exhibits in ECFs 42-1, 42-2, and 42-3 violated the sanctity of record rule. The agency made no motion to supplement the AR; instead, the reviewing court allowed the agency to introduce documents, and those documents have no traceability to the agency's decision-making process. Such action constitutes fraud by the court, a serious, prejudicial, and reversible error.

Borrowing from *Salazar*, an agency's actions accompanied by its stated reasons for those actions tied to a regulation "provide guidance to the court in judging whether the agency was arbitrary and capricious." (*Salazar* at 81.) Without a standard for comparison available in the AR, the agency's decision must be treated as arbitrary.

6. The APA requires the agency to introduce a single AR free from defects. The AR must include the agency's process and procedures, the unencumbered evidence used, the controlling authorities, and how the agency ensured observance of Constitutional safeguards.

If an agency's AR has procedures and internal regulations it used to make a decision, the agency should be able to cite them instantly in an APA challenge. If it does not or cannot, the reviewing court must declare the agency decision defective as a matter

of law. *Salazar* and *Citizens to Preserve Overton Park* provide a strong foundation upon which to base this statement.

Paraphrasing from *Salazar*, if the agency had judicially manageable standards, the AR would show those standards and how the agency complied with them. If the agency failed to disclose its internal regulations and procedures in the AR, the reviewing court must remand the matter to the agency for further clarification or deny the agency's action as inconsistent with law.

From the district court decision in the present case, ECF 51, page 12, we read—

> On November 29, 2018, Brigadier General Linda Hurry, Commander for DLA Aviation, signed the barment letter and debarred Mr. Jones from the DSCR installation, effective immediately and until further notice... The barment letter did not list any statute, law, or regulation that Mr. Jones had violated, nor did it reference any specifics, dates, events, or people involved. (AR at 888.)

We can immediately see inconsistencies leading to major legal consequences, but the reviewing court failed to take note of *Apel*, *Albertini*, *Salazar* and *Citizens*. The reviewing court noted the agency's debarment letter was void of facts, leaving the petitioner to guess. "Guessing" does not produce or preserve facts; it leads to speculation. Speculation is dangerous, and the Court's crucible should remove—not add to—speculation.

The defendant points to the authority of a commander to remove a person based on *Cafeteria and Restaurant Workers Union v. McElroy,* 367 US 886 (1961),an older, but often quoted case where the courts defer to the authority given military commanders

under Article II, Section 2 of the Constitution. But even in *Cafeteria Workers*, we see a real cause and effect similar to *United States v. Apel,* and *United States v. Albertini.*

In reviewing *Cafeteria Workers*, *Apel*, and *Albertini*, we see the nexus between cause (recorded violations of law) and effect (debarment followed by appeal, reversal of decisions, and final word by this Court).

With respect to *Cafeteria Workers*, the commander at the Navy Gun Factory barred Rachel Brawner for lying on her application—she committed perjury. Perjury is a crime under 18 USC 1621. Cause and effect were established, but the dissenting Justices opined their objections regarding lack of due process. This Court upheld the barment because the courts generally do not intrude into military decisions unless the petitioner can show a violation of his or her Constitutional rights occurred or failure of the agency to follow established procedure. This present case has both components.

The reviewing court claimed the agency "followed its procedures," but the AR contains no agency procedures. To combat this vacuum, the agency supplemented the AR. The reviewing court allowed this egregious violation of the record rule and allowed the creation of a new record. From ECF 51—

> DLA, along with applying the policy outlined in DoDI 5200.08, follows additional protocols for debarment procedures. Memorandum for Director, DLA Installation Support, DLA Policy on Authority of DLA Police to Detain and Bar Civilians from Installation, July 10, 2013. (ECF No. 42-3, at 67.) In particular, DLA policy provides that a debarment may be initiated "for any criminal offense or disorder that adversely affects good order and discipline." (ECF No. 42-3, at 75.) DLA

> policy further states that "[t]he recommendation to bar an individual should be based on the totality of the circumstances . . . along with all supporting documentation, and a letter appropriate to the action recommended will be coordinated with the servicing Office of Counsel." (ECF No. 42-3, at 75.) If the recommendation and supporting documentation is found to be legally sufficient, the installation commander will then approve or disapprove the bar letter and return the action to the DLA police. (ECF No. 42-3, at 75.)[3] [Emphasis added]

The reviewing court does not refer to documents in the *AR*; instead, the reviewing court liberally refers to *ECF 42-3*. The AR has no debarment procedures, so the agency "introduces them" in ECF 42-3.

ECF 42-3 introduces a memorandum the *court*—not the agency—claims are its debarment procedures. This memorandum is interdepartmental correspondence between two agency officials, not a signed instruction or order from a field commander. DoDI 5200.08 requires commanders to author signed internal safety regulations (including debarment procedures). Though the district court correctly claims DoDI 5200.08 is the applicable reference, it incorrectly claims the agency satisfied DoDI 5200.08 by suggesting it is the DSCR's debarment procedures. Furthermore, DoDI 5200.08 states it cannot be used as a substitute for an agency's safety regulations—including debarments.

The memorandum does not comply with DoDI 5200.08 and is not a DSCR safety regulation or order signed by the DSCR commander. The interdepartmental memorandum carries no legal weight under DoDI 5200.08.

[3] See page 33, decision from the district court, ECF 51.

The reviewing court makes critical comparative errors. The agency does not refer to this internal memorandum in the agency's decision-making process nor is it part of the AR, similar to *Citizens to Preserve Overton Park*. The agency "slips in" documents not present in the agency's decision-making process, and the reviewing court allows this breach of fidelity. The reviewing court claimed the memorandum is DLA's debarment procedures, but DLA never mentions the memorandum and it is not in the AR (ECF 26). Disappointingly, the reviewing court empowered this internal memorandum with authority not granted by law. The memorandum is not signed by a commander, nor is it an agency-wide instruction, rule, or statute. It does not refer to any standing federal law or statute as its progenitor. It fails to conform to DoDI 5200.08 under APA review.

But, were this memorandum empowered with legal status, the agency failed to follow its language. The memorandum states a debarment may be initiated for *a criminal offense or disorder and must be discharged by DLA Police*. The agency never alleged a criminal offense or disorder, affirmed in ECF 51.

7. The district court's decision refers to cases adjudicated before *Loper Bright Enterprises v. Raimondo, 603 US 369 (2024)* and relies heavily on *Chevron USA Inc. v. Natural Resources Defense Council, Inc.*, 467 US 837 (1984). The district court writes in ECF 51—

> Courts generally afford substantial deference to an agency's interpretation of both a statute it administers and its own implementing regulations. See, e.g., *Ohio Valley Env't Coal.*, 556 F.3d at 192. However, the court owes no such deference to an agency's

> interpretation of its own regulation when "instead of using its expertise and experience to formulate a regulation, it has elected merely to paraphrase the statutory language." *Gonzales v. Oregon*, 546 U.S. 243, 257 (2006); see also *Fogo de Chao (Holdings) Inc. v. U.S. Dep't of Homeland Sec.*, 769 F.3d 1127, 1136 (D.C. Cir. 2014), remanded, 211 F. Supp. 3d 31 (D.C. Cir. 2016) (when an agency's regulation "parrots, rather than interprets, the key statutory language," the court obliges the agency language no deference). Where "the underlying regulation does little more than restate the terms of the statute itself," the agency has not supplemented Congress's text and thereby has not provided agency interpretation to which a court might defer. *Id.* at 1135 (citation omitted). [Emphasis added]

The reviewing court makes a self-defeating impeachment with its own words. The AR contains no statute DLA has interpreted. Borrowing again from *Salazar*, the reviewing court did not confirm (1) what underlying, internal regulation(s) or statute the agency it applied, (2) how it applied any internal regulation(s) or statute, and (3) how the agency interpreted any statute or agency implementing regulations. The reviewing court is a crucible, not a factory; without the AR listing the statutes or internal regulations the agency used, we cannot determine how the agency made its decision. The reviewing court generated its own "*de novo*" review after the agency augmented the AR by adding the exhibits in ECFs 42-1, 42-2, and 42-3, once again evoking *Citizens*.

The purpose of an APA review is to ensure the agency has procedures the agency followed. The reviewing court demands the agency submit the complete AR showing how the agency arrived at a decision. In this case, the agency failed to produce its internal regulations and decision-making process in the AR (ECF 26). *Salazar*,

Citizens, *Apel*, *Albertini*, and *Loper Bright* stand defiantly against the agency and the lower courts.

The reviewing court has violated the foundation of APA litigation. The 4th Circuit failed to remand and overturn defying its charter under APA litigation to uphold the record rule. The 4th Circuit failed to do what the DC and 2nd Circuits most certainly would have. This schism within the Circuit Courts will only add anarchy to future APA litigation unless this Court strengthens and demands all the Circuit Courts to abide by a single record rule.

REASONS FOR GRANTING THE PETITION

1. The 4th Circuit's decision contradicts this Court's foundational precedent limiting judicial review to the administrative record.

From ECF 51, we read—

> When reviewing final agency action, this Court's review is circumscribed under 5 U.S.C.§ 702. "Section 10 of the APA establishes that, as a general rule, 'agency action, findings, and conclusions' will be set aside only when they are 'found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.' *Ohio Valley Env't. Coal v. Aracoma Coal Co.*, 556 F.3d 177, 192 (4th Cir. 2009) (quoting 5 U.S.C. § 706(2)(A)).

This Court has repeatedly held when the lower courts review agency action under the APA, its review must be strictly limited to the administrative record. In *Citizens*, this Court established that review must be based on—

> The full administrative record that was before the [agency] at the time [it] made [its] decision." The purpose of this "record rule" is to prevent courts from engaging in impermissible *de novo* review and substituting their own judgment for that of the agency.

This Court reinforced this principle in *Florida Power & Light Co. v. Lorion,* explaining if an agency's record is inadequate or it fails to explain the basis for its action, "the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation." The lower courts cannot cure a deficient record by allowing an agency to introduce specious evidence. In APA litigation, the universe of facts is limited to the agency's AR. The reviewing court violated this provision in its decision to allow the agency to add documents ECF 42. At the 4th Circuit, the petitioner argued the agency and the reviewing court violated APA review; petitioner quoted from ECF 51 the review would be limited to the documents in the AR, but was not. Petitioner argued the reviewing court failed to comply with cases such as *Citizens, Florida Power and Light,* and *Salazar* plus the reviewing court's own word, acting in bad faith.

The reviewing court, having twice denied motions for summary judgment, did not remand to the agency. Instead, the court allowed the agency to supplement the administrative record with evidence not used by the agency in its original decision directly contradicting this Court's findings in *Citizens, Florida Power and Light,* and *Salazar.* Though the reviewing court opined its role was not to conduct fact-finding, the reviewing court used this evidence introduced without the benefit of a court order and granted summary judgment, contradicting the scope expected in APA litigation.

The 4th Circuit, as gatekeeper and higher-level reviewer, should have seen these contradictions and remanded the case to the reviewing court. It did not. Instead, the 4th Circuit's affirmation blessed the district court's improper procedures. The 4th Circuit transformed the limited, narrow focus demanded by APA review into unbridled fact-finding where the reviewing court justified the DLA's actions retroactively with evidence never before seen and not considered during the agency's actual decision-making process. The reviewing court erred, but the 4th Circuit promoted this error relative to *Florida Power & Light* and *Citizens.* This fundamental error warrants this Court's review to restore the clear boundary between judicial review and agency adjudication. In times past, this Court may have sided with the lower courts, but times have changed.

In 1984, this Court decided a landmark case, *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.* Agencies had authority to interpret statutes, ambiguous or not, but only within the limits of the AR. In the decades since, this Court chipped away at *Chevron,* finally overturning *Chevron* altogether with its decision in *Loper Bright Enterprises v. Raimondo.* With *Loper Bright,* this Court empowered the lower courts with the authority to examine how agencies interpreted questions of law in APA litigation. Cases appeared where agencies misinterpreted federal statutes or supplemented the AR; those cases advanced through this Court, with this Court refining case law introduced after *Chevron. Loper Bright* was the final case this Court used to overturn *Chevron.* Now, courts must examine the AR to determine matters of law. Quoting from *Loper Bright,*

> "As relevant here, the APA specifies that courts, not agencies, will decide "*all* relevant questions of law" arising on review of agency action, 5 U. S. C. §706 (*emphasis* added)—even those involving ambiguous laws. It prescribes no deferential standard for courts to employ in answering those legal questions, despite mandating deferential judicial review of agency policymaking and fact-finding. See §§706(2)(A), (E). And by directing courts to "interpret constitutional and statutory provisions" without differentiating between the two, §706, it makes clear that agency interpretations of statutes—like agency interpretations of the Constitution—are not entitled to deference."

Loper Bright fundamentally altered APA litigation. Agencies cannot arbitrarily interpret how or if a statute applies to an employee (or former employee). And by 5 USC §706, agency decisions may not violate a citizen's fundamental, Constitutional rights.

The petitioner has accused the agency of violating those rights. The agency claimed the petitioner violated the "good order and discipline" of the agency, but the agency never informed or charged the petitioner with a crime—a fundamental 6th Amendment right. The record shows the agency cleared the petitioner in October 2018, but reversed its findings, violating the Double Jeopardy Clause of the 5th Amendment.

The reviewing court's duty is to ensure the agency's process do not violate Constitutional rights in APA cases. The reviewing court must carefully review agency decisions with the APA precedents established by this Court's decisions in *Florida Power & Light* and *Citizens*. In the present case, the reviewing court betrayed the petitioner's faith—an easy situation for the 4th Circuit to reverse.

The 4th Circuit failed in this case, despite applying the record rule to other past appeals. Petitioner respectfully asks this Court to step in and correct these reversible errors, as they open doors for agencies to take administrative actions against citizens without due process. This Court provided effective recourse under the APA to persons aggrieved by agency actions under *Loper Bright, Florida Power & Light,* and *Citizens.* Petitioner asks this Court to do the same in this case.

2. The Federal Circuits Are Intractably Divided on the Scope of Exceptions to the Record Rule.

Under what circumstances should a reviewing court allow and consider evidence outside the AR? This question has spawned one of the most persistent and consequential splits in modern federal law. Though Congress has left 5 USC §706 virtually unchanged since 1946, the district and appellate courts grapple with agency decisions as if there were no universal standard. The Circuit Courts have adopted fundamentally different frameworks leading to non-uniform, distinct, disparate, and contradictory outcomes in APA cases based solely on geography.

On one side of the split, circuits like the DC Circuit and the 1st Circuit rigorously apply this Court's precedent, permitting extra-record evidence only in extraordinary circumstances, such as to show agency bad faith or to explain highly technical terms. See, e.g., *James Madison Ltd. v. Ludwig*, 82 F.3d 1085, 1095 (D.C. Cir. 1996). These courts recognize that allowing broader exceptions would invite the very *de novo* review this Court forbids.

On the other side of this split, a growing number of circuits, including the 4th, have adopted a more permissive approach. These courts have permitted broad exceptions allowing extra-record evidence to determine "whether the agency considered all of the relevant factors or fully explicated its course of conduct or grounds of decision." See, e.g., *Lands Council v. Powell*, 395 F.3d 1019, 1030 (9th Cir. 2005) (listing eight exceptions). This standard effectively authorizes mini-trials on the merits of agency decisions, with courts taking on the role of fact-finder—a role the APA designates and reserves for the agency. If an agency makes a decision or takes a legal action against a person, group, or property unsupported by a guiding legal framework or steps beyond its jurisdictional or authoritative boundary, the plaintiff has a right to seek correction by a reviewing court. The reviewing court should quickly have the full AR from the agency to decide all matters of law. If the reviewing court finds a discrepancy, remand to the agency. If the reviewing court errs by admitting evidence not contained in the AR, the APA demands Circuit Courts to overturn the decision or remand for further processing. Congress ensured the APA addressed agency decisions strictly in line within the narrow scope of the AR. Congress wrote the APA to ensure agency decisions were made strictly by the facts in the AR. The AR is the universe of fact, but the lower courts have often failed to meet Congress's intent.

In contrast to the more conservative DC and 1st Circuits, litigation from the 9th Circuit appears to show very liberal interpretation if not total invalidation of the record rule by allowing documents not in the AR. This disarray among the circuit courts is untenable. It undermines the uniform application of federal law and creates

profound uncertainty for petitioners aggrieved by agency decisions. In the past, agencies interpreted matters of law, but *Loper Bright* changed the landscape profoundly. Agencies no longer have the authority to make isolated legal decisions.

In this case, the DSCR commander admits she had no legal jurisdiction or authority over the petitioner. Though the Constitution provides military commanders a great deal of power over their commands, that jurisdiction and authority are not plenary. When an agency terminates an employee, that is a final action severing the agency relationship and jurisdiction (See relevant parts under DoDI 1000.13). The commander at the DSCR candidly admitted she did not have jurisdiction or authority over the petitioner, and that statement alone should have been sufficient for the reviewing court to decide—as a matter of law—the administrative actions ordered were beyond the scope of her Constitutional authority. Neither the reviewing court nor the 4th Circuit considered this dispositive sworn statement.

Litigants have an expectation of one universal standard, but that expectation is shattered. From the APA cases across the Circuits, litigants challenging agency action in one Circuit face different application of rules in others. Because the Circuits apply diverse interpretation to federal law and this Court's precedent, this Court must intervene and enforce a single, unified standard. The present case exemplifies this conclusion, since the 4th Circuit's decision not to remand firmly places it on the permissive side of this deep and acknowledged split.

3. The case presents important questions of Constitutional law regarding due process for federal employees, the limits of jurisdiction and authority of a federal agency, and the limits of jurisdiction and authority of a military commander.

This case presents a stark example of an agency acting *ultra vires* without procedural safeguards to inflict permanent harm on an honorably discharged veteran. This petition raises urgent and far-reaching questions about the Constitutional and statutory limits on agency power and the limit of authority a military commander has over persons not under the commander's authority or jurisdiction.

The DSCR commander initiated the administrative process and admitted, *under oath*, she had no command authority over the organization the petitioner worked for or the petitioner himself. An action taken by an official who lacks authority or jurisdiction over an organization or individual is, by definition, void *ab initio*. The lower courts' failure to recognize and treat this admission as dispositive raises a critical question related to the record rule: Can an agency's administrative action depriving an individual of liberty and property interests be valid when it originates from an illegitimate assertion of authority?

The agency's actions were characterized by a wholesale disregard for procedural safeguards and fundamental due process. The commanding officer at the DSCR made statements under oath claiming she debarred the petitioner for violating the good order and discipline of her command, but when asked <u>how</u> the petitioner

violated the good order and discipline at the DSCR, the commander replied "because [the petitioner] no longer worked at the [DSCR] and no longer needed access." These are not violations of law, statute, or regulation, nor are they violations of good order or discipline. The commander's stated reasons under oath to take this allegedly administrative action are arbitrary and capricious.

The district court wrote in its decision "[the petitioner] did not violate any law, statute, regulation, instruction, or policy, and the agency provided no dates, persons, or circumstances alleging any violation." If the petitioner violated no law, the questions stand unanswered why the agency debarred the petitioner and why the district court affirmed the debarment. The petitioner did not merit the permanent, destructive badge of infamy in contrast to *Apel* and *Albertini*. Dispositive records reveal the commander at the DSCR could not answer what agency regulation or instruction authorized the debarment. The commander admitted the agency had not charged the petitioner with any violation of law. To debar a person who has not violated a law is acting *ultra vires*.

The AR shows the agency cleared the petitioner of all accusations but then altered and continued the investigation *after* he was no longer employed at the agency. If, as the agency claims, the investigation was purely administrative in nature, the agency is on record for appointing a second, criminal investigation specialist, contradicting any "purely administrative" claim the agency raises.

From *Loper Bright*, we read:

> "Courts exercising independent judgment in determining the meaning of statutory provisions, consistent with the APA, may—as they have from the start—seek aid from the interpretations of those responsible for implementing particular statutes. See *Skidmore v. Swift & Co.*, 323 U. S. 134 at 140. And when the best reading of a statute is that it delegates discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits."

This quote from *Loper Bright* sends a powerful message regarding agency interpretation of statutes subject to Constitutional limits. If an agency's decision violates a Constitutional right, violates a federal law, or fails to comply with a controlling authority, the reviewing court must set aside that decision. We see this in the present case.

But, the government cites *Cafeteria and Restaurant Workers Union v. McElroy*, to uphold the debarment. That comparison is not valid. Rachel Brawner allegedly lied on the application for a security clearance. After the lie surfaced, the commander at the Naval Gun Factory revoked her clearance, preventing her from working at the command. Lying on an application is perjury, and perjury has consequences.

The petitioner in this present case did not lie on an application and never violated a law, rule, regulation, statute, or instruction. The DSCR commander affirmed this fact, and also affirmed she had no command authority or jurisdiction over the petitioner. The government cannot rely on *Cafeteria Workers* in its defense.

We can make important comparisons from *United States v. Apel* and *United Sates v. Albertini* to the present case. Apel regularly protested war and knew the commander

at Vandenberg AFB, California, had placed restrictions where persons could protest, and Apel violated those restrictions. After crossing "the green line" and throwing blood on the Vandenberg commander's signpost, the commander debarred Apel, but not permanently. Subsequent base commanders cited violations of 18 USC § 1382. After one such occurrence, the district court convicted Apel; Apel appealed arguing 18 USC § 1382 did not permit the Air Force to restrict the use of the highway easement crossing Vandenberg Air Force Base. The 9th Circuit overturned Apel's conviction, but the United States appealed to the Supreme Court. This Court vacated and remanded the decision from the 9th Circuit.

Similar to Apel, Albertini destroyed government property and the base commander at Hickam debarred him. Years after being debarred, Albertini violated the order by protesting nuclear weapons in an "open house event." Albertini claimed the government violated his rights under the 1st Amendment. The 9th Circuit overturned the conviction on 1st Amendment arguments. The government petitioned this Court, and the Supreme Court stated the government had a right to secure its facilities and did not violate Albertini's rights.

We see inconsistent opinions from the 4th and 9th Circuits. Apel committed crimes against persons and property, and the commander at Vandenberg Air Force Base had published regulations Apel repeatedly violated. Likewise for Albertini at Hickam. The petitioner in this case did not violate a law nor was ever charged with a crime. The DSCR commander had no published regulations. Comparing the facts

the petitioner presented to the 4th Circuit with *Apel* and *Albertini* to the 9th Circuit reveals inconsistent opinions, exemplifying the schism among the Circuits. The 4th Circuit, knowing the petitioner never violated a law, claimed the district court made no reversible error, and allowed the debarment to stand. The decisions from the 9th Circuit reversing the convictions from the reviewing federal district court while the 4th Circuit affirmed debarment with no violation of law reveal major inconsistencies.

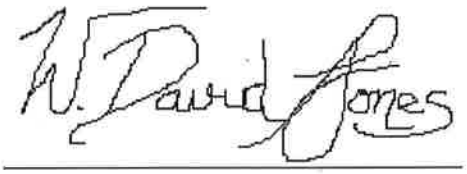
The violations the petitioner has addressed in this writ for certiorari are not merely procedural missteps; they represent a fundamental breakdown of the rule of law within the administrative state. The questions of whether an agency can accuse a former employee of wrongdoing *in vacuo*, act without jurisdiction, and impose severe sanctions without notice, a meaningful opportunity to be heard, or established procedures are of profound national importance.

Should this Court review the facts and agree with the petitioner, its decision will ensure agencies understand the limits of their jurisdiction and authority, and the lower courts will understand the APA requires agencies to ensure decisions are consistent with the Constitutional rights of all citizens. Agencies must act within their authority and according to law, not by *fiat*. The lower courts will benefit from this Court's consideration of this case, as it will reinforce this Court's decisions from the various APA cases petitioner cited.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted by:



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Date: 16 March 2026

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

March 25, 2026

William David Jones
18065 Lunde Lane
Rockville, VA 23146

RE: Jones v. Department of Defense Defense Logistics Agency Defense Supply Center, Richmond
USCA 4 No. 24-1166

Dear Mr. Jones:

The above-entitled petition for writ of certiorari was postmarked March 19, 2026 and received March 25, 2026. The papers are returned for the following reason(s):

The petition fails to comply with the content requirements of Rule 14, in that the petition does not contain:

A list of all parties to the proceeding in the court whose judgment is sought to be reviewed, along with their stock ticker symbols, if any. Rule 14.1(b).

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

When making the required corrections to a petition, no change to the substance of the petition may be made.

Sincerely,
Scott S. Harris, Clerk
By:
Katie Heidrick
(202) 479-3038

Enclosures

RECEIVED
MAY - 7 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.