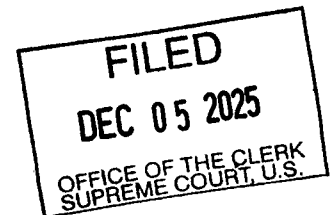


No. 26-5047



IN THE
SUPREME COURT OF THE UNITED STATES

Francis Yomi — PETITIONER
(Your Name)

vs.

Merit Systems Protection Board — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Francis Yomi
(Your Name)

1704-B # 101 LLANO STREET
(Address)

Santa Fe, New Mexico 87505
(City, State, Zip Code)

301-473-2019
(Phone Number)

QUESTIONS PRESENTED

5 U.S.C. § 2302(b)(8) stipulates that “the whistleblower’s disclosures are protected if s/he **reasonably believes** they evidence (1) “any violation of any law, rule, or regulation,” or (2) “gross mismanagement, a gross waste of funds, an abuse of authority.”

Question Presented No. 1

Did the lower courts (MSPB Regional Office, MSPB Appeal Office, and the U.S. Court of Appeals for the Federal Circuit) clearly err when they said that the test in Whistleblowing Complaint under Section 23(b)(8) is only **objective** in that a disinterested or reasonable observer with the same whistleblower's knowledge and experience should conclude that wrongdoing occurred from the part of the Agency in order for the Court to have jurisdiction over the Whistleblower Claim, whereas **the subjective test**, which means that the whistleblower must have had a reasonable belief that the disclosed information indicated wrongdoing, meaning s/he believed it in good faith, is in fact the only test, or at least is part of the test/s, as clearly stipulated in 5 U.S.C. § 2302(b)(8)?

Question Presented No. 2

Did the lower courts (MSPB Regional Office, MSPB Appeal Office, and the U.S. Court of Appeals for the Federal Circuit) clearly err when they never addressed Petitioner’s argument that Agency admitted by itself to liability regarding 5 U.S.C. § 2302(b)(8) when it said: “**The Agency does not contest Mr. Yomi’s beliefs.**”, and Petitioner said to those lower courts that the Agency confirmed that they have jurisdiction over his Complaint, and that it is now useless for the Court to determine whether or not a reasonable or disinterested observer with the same whistleblower or petitioner’s knowledge and experience would conclude that wrongdoing occurred from the part of the Agency?

Question presented No. 3:

Did the Federal Circuit err when it ruled that a disinterested observer would conclude that the management’s discretion can play a role in the selection, thus, would not believe that there was wrongdoing from the Agency that told Petitioner that his non-selection was based on the discretion of the management, whereas in fact that manager who said that, testified that she does not know if I was referred for that job, and was not involved in the selection, thus, lied on the

discretion, and said that that job was governed by 5 U.S.C. § 332 (Competitive Examination), and the facts show that management's discretion does not play any role there, contrary to jobs under 5 U.S.C. § 330 (Competitive Service) where it can play a role under 5 U.S.C. § 330.102?

Question presented No. 4:

Did the U.S. Court of Appeals for the Federal Circuit (Federal Circuit in short) clearly err when Petitioner appealed his non-selection to the upper manager by disclosing that he asked to an Official involved in the selection why he was not selected for a job, and the Official responded: "You were not selected because you were not selected", then the Federal Circuit ruled that there is no abuse of authority and no gross mismanagement because the Agency wasn't required to tell him the reason of his non-selection, whereas in fact it ended up by telling the reason, by saying Petitioner was not selected **because** he was not selected, which reason should now be considered (by the Court) to prove that gross mismanagement and/or abuse of authority occurred?

Question Presented No. 5:

Did the Federal Circuit clearly err when it failed or did not address, nor rule on Petitioner's claims regarding 5 U.S.C. § 2302(b)(9)(A)(i), and 5 U.S.C. § 2302(b)(12)?

Question Presented No. 6

Did the Federal Circuit clearly err when it said that the Agency did not retaliate against Petitioner because the employment contract stated that a failure of 3 examinations (exams) including make-up could lead to termination, and that Petitioner's termination letter stated that he failed 3 exams whereas this is not true, and whereas Petitioner did not fail 3 exams, nor more, and whereas for no given reason he wasn't allowed to retake the only exam he failed among several ones he took?

LIST OF PARTIES

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

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

Francis

YOMI

Vs.

Merit Systems Protection Board

RELATED CASES

- 1). This case had been filed at the Office of Special Counsel (OSC in 2016 or 2017),
- 2) at the MSPB Regional Office in Washington State, Case No: SF-1221-17-0580-W-1,
- 3) at the MSPB Appeal Office in Washington, D.C., Case No: SF-1221-17-0580-W-1,
- 4) at the U.S. Court of Appeals, for the Federal Circuit, Case No: 2024-1622, judgment entered in August 2025, then on September 8, 2025, then on October 10, 2025.

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APPENDIX A	The Federal Circuit's denial of my petition motion for reconsideration of my petition for rehearing.
APPENDIX B	The Federal Circuit's denial of my petition for rehearing.
APPENDIX C	The Federal Circuit's denial of my petition for review
APPENDIX D	MSPB Appeal Board affirming the dismissal of the case
APPENDIX E	MSPB Regional Office's dismissal of the case
APPENDIX F	Federal Circuit clerk's notice that Respondant failed to follow.

ATTACHMENTS

Attachment 1, Page 1 and 2: Email Petitioner sent to upper management (Ms. Cook) disclosing the wrongdoing of the some members of the management and appealing the non-selection

Attachment 1, page 3: Email Petitioner sent to Mr. Stewart (Deputy of Ms. Cook), appealing his non-selection.

Attachment 2: The Agency (the Navy)'s statement saying it does not contest my beliefs.

Attachment 3: Ms. Burgess's testimony saying that the PST job to which I was not selected fell under 5 USC 332 (thus, no management's discretion applies), and saying later that she did not know if I was referred, and was not involved in the selection, thus, lied on the discretion matter.

Attachment 4: The job announcement in which pages 3 and 4 show that the Agency's mission was to hire the best applicants, but not on the basis of discretion, nor on the basis of nothing.

Attachment 5: The Navy opened the same job still with 50 vacancies, just a few days later, thus, there was no management's discretion when I was previously not selected.

EXHIBITS proving the wrongful termination based on whistleblowing:

Exhibit 1: Employment contract showing at page 2 that it was the failure of 3 exams that could lead to termination, and petitioner did not fail 3 exams.

Exhibit 2: Petitioner's test score showing he passed the Written Contamination Exam

Exhibits 3 through 7: Petitioner's test scores provided by his Supervisor Ms. Harper, where she kept flip-flopping on them after evidence shows they are not the true test scores.

Exhibit 8: Ms. Cook said petitioner failed a quiz, an exam, and a practical exam, which gave 2 failed exams, but not three. Moreover, he did not fail the written exam.

Exhibit 9: Ms. Harper said that an employee can retake an exam three times. However, the Navy did not let me retake any exam.

Exhibit 10: The termination letter.

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Langer v. Dep't of Treasury, 265 F. 3d 1259, 1266, (Fed. Cir. 2001).	Pet. App. 7
Young, 961 F. 3d at 1328.	Pet. App. 9
Salerno v. Dep't of Interior, 123 M.S.P.R. 230, (2016).	Pet. App. 14
Francis v. Dep't of the Air Force, 120 M.S.P.R. 138 12 (2013).	Pet. App. 18

STATUTES AND RULES

***5 U.S.C. § 2302(b)(8)**, which stipulates that "the whistleblower's disclosures are protected if s/he reasonably believes they evidence (1) "any violation of any law, rule, or regulation," or (2) "gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety."

The lower courts clearly erred when they said a disinterested observer would conclude that management's discretion plays or can play a role in the hiring process, whereas in fact petitioner opposed it in his disclosures of wrongdoing, and provided by email the merit system principles link that supports the management's wrongdoing, and the Agency (the Navy) did not rebut it, thus, a disinterested observed with the same knowledge of facts as the petitioner would not conclude that the management's discretion plays a role, as the Agency and all lower courts have not proven that, whereas the petitioner proved that no discretion could be applied in jobs open to "All U.S. Citizens", thus, jobs open under Delegated Examining Authority, governed by 5 CFR 332, contrary to jobs open under Delegated Competitive Service, governed by 5 CFR 330-102 where discretion of the management can play a role on selections.

* Also, in **5 U.S.C. § 2302(b)(8)**, it is said: The protected whistleblower disclosures need not to be accurate to be protected" so long as he whistleblower reasonably believed in his/her disclosure that the management was wrong:

http://www.dodea.edu/offices/counsel/upload/2302_ccertification.pdf

However, all lower courts meant that the disclosures should be accurate, thus, clearly erred on.

***"Protected activity under section 2302(b)(9)** requires the exercise of an appeal, complaint, or grievance right granted by law, rule, or regulation." But, the Federal Circuit failed to rule on it

***5 U.S.C. § 2302(b)(12)**: "To prove such a claim, the facts must demonstrate that (1) a personnel action was taken, (2) the taking of this action violated a civil service law, rule or regulation; and (3) the law, rule or regulation implements or directly concerns a merit system principle." However, the Federal Circuit failed to rule on it.

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

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

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A, B and C to the petition and is especially appearing at Appendix C
☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished. I don't know

The opinion of the United States ~~district~~ court appears at Appendix _____ to the petition and is MSPB and MSPB Appeal

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished. I do not know

E and D respectively

☐ For cases from **state courts**:

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

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

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

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

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 6, 2025, then on September 8, 2025, and on October 10, 2025

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Sept. 8, 2025 and 10/10/25 and a copy of the order denying rehearing appears at Appendix B and A respectively.

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

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

This Court has jurisdiction under 28 U.S.C. § 1295(a)(9).

☐ For cases from **state courts**:

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

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

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

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

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

***5 U.S.C. § 2302(b)(8)**, which stipulates that "the whistleblower's disclosures are protected if s/he reasonably believes they evidence (1) "any violation of any law, rule, or regulation," or (2) "gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety."

The lower courts clearly erred when they said a disinterested observer would conclude that management's discretion plays or can play a role in the hiring process, whereas in fact petitioner opposed it in his disclosures of wrongdoing, and provided the merit system principles link that support the management's wrongdoing, and **the Agency (the Navy) did not rebut it**, thus, a disinterested observer with the same knowledge of facts as the petitioner would not conclude that the management's discretion plays a role in selection, as the Agency and all lower courts have not proven that, whereas the petitioner proved that no discretion could be applied.

*** 5 U.S.C. § 2302(b)(8)**: "The protected whistleblower disclosures need not to be accurate to be protected." http://www.dodea.edu/offices/counsel/upload/2302_ccertification.pdf

However, all lower courts meant that the disclosures should be accurate, thus, clearly erred on.

"Protected activity under section 2302(b)(9) requires the exercise of an appeal, complaint, or grievance right granted by law, rule, or regulation." But, the Federal Circuit failed to rule on it.

***5 U.S.C. § 2302(b)(12)**: "To prove such a claim, the facts must demonstrate that (1) a personnel action was taken, (2) the taking of this action violated a civil service law, rule or regulation; and (3) the law, rule or regulation implements or directly concerns a merit system principle." However, the Federal Circuit failed to rule on it.

STATEMENT OF THE CASE

I was a Radiological Control Technician employee, also called Physical Science Technician (PST) , with the Department of the Navy (DON) in 2014, at GS-6 level. I have a Master's degree in Biotechnology, and a Post-Bachelor Certificate in Biochemical Regulatory Engineering, and a Graduate Certificate in Engineering Management, all earned from the University of Maryland Baltimore County (UMBC) in 2012, and 2014. While working for the DON in 2014, I was referred to the selecting official for the same PST position, but this time at GS-9 level, vacancy ID 1142303, which had 50 vacancies. I obtained or earned a top secret security clearance (red badge) by the Navy once hired, and before my non-selection for the PST job at GS-9, and obtaining a security clearance was part of the requirements for this PST job at GS-9. On August 19, 2014, the management (Ms. Parrish Heather who was an Administrative Officer for Code 105, which code includes PST employees); Ms. Burgess Rached who was a Human Resources Specialist, and Mr. Gerry John who was my second level supervisor) held a meeting with some PST employees, including me, but individually, regarding the PST job at GS-9 Vacancy ID 1142303. They told me to speak, then I let them know my qualifications that I mentioned here above, and I told them that I think that I deserve to be selected. Then, they told me that I was not selected, then they stopped talking for a long time. Then, I asked why, but none of the three members of the management responded; I asked again if I can know why, then Ms. Parrish Heather said I was not selected because I was not selected. A few seconds later, Ms. Burgess said I was not selected because it was a discretion of the management, or it was up to the discretion of the management. I then told them that I believe that the selection should be based on the qualifications and the merit of applicants as stipulated in the merit system principles (MSPs), but not on the discretion of the management, and none of them responded to it. I then asked to know

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what can I do to improve myself so that I can be selected next time if I apply for a PST job, but none of them responded. I then met with the Union of employees, and they told me to appeal my non-selection to Ms. Cook Susan, who was my third level supervisor, and was the selecting official for this PST job, which I did the next day on August 20, 2014 (see Attachment 1). Ms. Cook did not respond to it, but wrote the termination letter of my employment on August 28, 2014, which was 8 days later, stating that I failed to meet the academic requirements during the training. I was asked by her to resign, or to be immediately terminated. Then I asked what is the difference between both, and they explained to me. While I was thinking about which one I will choose, they brought in the Police to force me to choose and to kick me out of Ms. Cook's Office. I then suddenly chose to resign, and the Navy kept the termination letter without letting me go with it. It is joined here. However, my discharge was wrong, because the employment contract that I signed on July 7, 2014 stipulated that a PST employee might be terminated if s/he fails three (3) examinations (Exams), and stipulated that make-ups are permitted when failing an exam, as we were taking one exam each week after classes, to prepare us to be successful during the 6 month-national training in Virginia (called RCTQS). However, I took about 8 tests (Math trials, Quizzes, and Exams), and I successfully passed 7 of them, and failed only one Exam (the practical exam) on August 28, 2014, and Ms. Cook discharged me the same day, without letting me retaking that exam. So, my termination was intentionally wrong, based on my disclosures of wrongdoing regarding my non-selection. At the time, I did not know that I could file Complaints with the Equal Employment Opportunity Commission (EEOC), and the Merit System protection Board (MSPB), etc. I knew about those after my discharge. So, I filed the EEOC Complaint and the Whistleblowing and retaliation Complaint first with the Office of Special Counsel (OSC), which was denied, and I filed it with the MSPB.

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The MSPB Administrative Judge (AJ) Ribas at the MSPB Regional Office in Washington

State said the following at page 6 of her initial decision dated 8/23/2017, also seen in the Federal Circuit, Case: 24-1622 Document: 19 Page: 22 Filed: 10/23/2024: “a disinterested observer could reasonably conclude that some management discretion plays a role in the selection process among candidates who are the best qualified. However, even if a disinterested observer could potentially conclude that Burgess and Parrish did not recite the law accurately or completely, I find that it could amount at most to a misstatement of the law. A misstatement of the law does not equate to a violation of the law. The appellant argues that he should have been informed of the explicit reasons for his non-selection. But even if a disinterested observer could conclude that the statements of Burgess and Parrish amounted to not informing the appellant of the precise reasons of his non-selection, I find that s/he would not conclude there was a violation of a law, rule, or regulation. At most, one could conclude that the appellant was not fully or accurately informed of the reasons for his non-selection, but that in itself is not a violation of a law, rule, or regulation.” End quote. Then she also concluded that I did not show that Ms. Heather and Ms. Burgess’ statements evidenced an abuse of authority or gross mismanagement.

I appealed her decision to the **MSPB Appeal Board or Office** in Washington, D. C., where I believe that I proved that the MSPB AJ clearly erred, until the MSPB Appeal Judge herself admitted that the MSPB AJ erred (see Appendix D 5 & 6), when the AJ said that the management should have really committed wrongdoing in order for the MSPB to have jurisdiction, and concluded that the management did not commit wrongdoing, even though her analysis clearly showed that the management committed wrongdoing, especially when she said that the management failed to tell me the proper reason reasons of my non-selection, but the MSPB Appeal Judge briefly ruled that the management’s discretion can play a role in the hiring

process, and converted the **misstatement's** finding of the AJ **to be a disagreement** (from my part) with the management's statements, and concluded that a disagreement is not a violation or wrongdoing. However, the MSPB Appeal Judge also clearly erred. Coming back to the MSPB AJ's analysis, in fact, management's misstatement becomes wrongdoing when it rises to the level of a violation of the law, or rule, or regulation or to an abuse of authority, or to gross mismanagement, as found by Google, and this is exactly the case here. When Google is asked: "Can management's misstatement be considered wrongdoing in 5 USC 2302(b)(8)?", it says:

"Yes, a management's misstatement can be considered "wrongdoing" under **5 U.S.C. § 2302(b)(8)** if an employee reasonably believes it evidences one of the categories of misconduct defined in the statute, such as a **violation of a law, rule, or regulation, or gross mismanagement, a gross waste of funds, or an abuse of authority.**" End quote from Google.

So, the facts show that the management chose to tell me the reason of my non-selection (whether or not it was required to tell me the reason), here, it chose to tell me, and the facts also show that Ms. Heather's statement that: "I was not selected because I was not selected" is a total and complete wrong reason of not selecting an employee or job applicant, thus, show that I was wrongfully and even intentionally not selected. Thus, the facts show that the management committed wrongdoing when it wrongfully did not select me. It is so clear! And the facts show that Ms. Heather and Ms. Burgess's statements violated the law, or rule, or regulation (as the MSP website listed how to proceed in the hiring process, and stated that the selection should be transparent, which means that the Agency should be able to tell the proper reason of not selecting an applicant, and/or for selecting an applicant, so that no one can conclude that the hiring process was improper; and the MSP also shows that the selection should be only based on the qualifications and merit of the applicant, and did not state that it can be based on the discretion of the management, nor that it can be that the Agency does not select a job applicant because it does not select him/her). The facts also show that Ms. Heather's statement evidenced gross

mismanagement, since saying to an employee who applied for a job within the same Agency, during a meeting organized, scheduled, and held by the management themselves, that s/he is not selected because s/he is not selected, is simply an insult to the employee, as this clearly proves the management's action or inaction which creates substantial risk of significant adverse impact on the agency's ability to accomplish its mission, **which mission here was to select the best qualified applicants, as clearly stipulated in the PST job announcement** (Attachment 4, p. 3). This proves that the MSPB Appeal Office and the Federal Circuit clearly erred when they said that the Navy was not required to tell me the reason of my non-selection. Anyway, even if for example we suppose that it was not required, which means that it was optional for it to tell me the reason, here, it has chosen to tell me the reason, and it came out that saying to me that: "You were not selected because you were not selected" is clearly evidence of violation of the law or rule or regulation, or ii is gross mismanagement. And/or, Ms. Heather's statement was an abuse of authority because it was an arbitrary or capricious exercise of power by a federal official (who is her), that adversely affects my rights (in that it was my rights to be told the proper reason of my non-selection when the Navy itself has chosen to tell me why I was not selected); or that resulted in advantaging preferred other persons (who were less qualified than me but were selected).

At the U.S. Court of Appeals for the Federal Circuit (in short: Federal Circuit), the Court basically resumed the entire petition to four things: **(1):** the test in my MSPB complaint is an objective test; **(2):** a disinterested observer would conclude that the management's discretion can play a role in the hiring process; **(3):** regarding Ms. Heather, which stated that I was not selected because I was not selected,(after I insisted on it, and asked the Federal Circuit to properly address it in terms of being a violation of law, or rule or regulation, or an evidence of gross

mismanagement and/or an abuse of authority), the Federal Circuit Judge/s addressed it by saying that the Navy was not required to tell me the reason of my non-selection, thus, concluded that there was no wrongdoing by Ms. Heather and Ms. Burgess because they were not required to tell me the reason of my non-selection; **(4):** the Federal Circuit finally said that I disagree with Ms. Heather and Ms. Burgess's statements, and that a disagreement does not rise to the level of gross mismanagement, nor to an abuse of authority. Then it concluded that I failed the objective test. However, the Federal Circuit clearly erred all the way through, **because: (1):** the test here is a subjective test, as clearly explained in section 5 USC 2302(b)(8) where it is said that the whistleblower must only show that s/he reasonably believes that the Agency committed wrongdoing (whether or not after investigation it comes out that the Agency did not commit wrongdoing, but as long as the whistleblower shows that s/he reasonably believed that the Agency committed wrongdoing), but not that the whistleblower must prove that the Agency's action has been proven to be wrongdoing, but it is not an objective test. **(2):** The Federal Circuit also erred because discretion of the management does not play any role in such a PST job open to All U.S. Citizens; which had 50 vacancies and the Navy had only finally selected 4 or 5 applicants at GS-9; **falling under the Competitive Examination, thus, under section 5 USC 332** (as stated by Ms. Burgess herself during the Equal Employment Opportunity Commission(EEOC)'s investigation, **where the selection is only based on qualification and the merit of the applicant, but never based in part or in whole on the management's discretion, and it is nowhere said in this below link that the management can use its discretion in selection:** <https://www.ecfr.gov/current/title-5/chapter-I/subchapter-B/part-332>; then reopened the very same PST job in Bremerton, WA, with still 50 vacancies, but just less than 2 weeks (on August 25, 2014) after my non-selection (Attachment 5), which proves that

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there was no discretion of the management when I was not selected on August 19, 2014. (3):

Even if we suppose for example that the Navy was not required to tell me the reason of my non-selection, it had chosen to tell me anyway, and the Court could not anymore dismiss the reasons the Navy said, and those reasons should be considered, as it came out that those reasons were wrong, and prove that my non-selection was wrong. Thus, I clearly and non-frivolously disclosed to Ms. Cook the wrongdoing from the management, whether the test in WPA is subjective or objective or both. **More importantly, Ms. Burgess said during the EEO Investigation (in 2015) that she was not involved in the selection** for this PST job Vacancy ID 1142303 (see Attachment 3, page 1), and said the following in Attachment 3, page 2, when asked this question: “Was the Complainant qualified for the GS-09 and referred for consideration to the selecting supervisor?

Response: I do not know, as I am not involved with this part of the process, and I was unable to gather the information from the Office of Civilian Human Resources Silverdale (OCHR-SIL).” End quote. Thus, she confirmed that she was intentionally wrong when she told me in August 2014 that my non-selection was based on the management’s discretion, which proves that I did disclose to Ms. Cook the wrongdoing committed by Ms. Heather and Ms. Burgess, and I passed the objective test here. (4):

The Federal Circuit finally clearly erred when it said that I am just in disagreement with Ms. Heather’s statement when she said to me that: “You were not selected because you were not selected”, and it concluded that that a disagreement is not gross mismanagement, nor an abuse of authority. In fact, this is not being in disagreement, but this is for me proving that Ms. Heather’s reason to my non-selection was extraordinarily wrong, outrageous, insulting to me, which equated my wrongful non-selection to the advantage of preferred other persons who were less qualified than me, or, to just make me not to be selected, adversely affecting my right to be told the proper reason of my non-selection when the Navy had chosen to tell the reason, and negatively affecting my rights to be non-selected based on qualifications and merit, but not based

on nothing, since the reason of my non-selection, which was that I was not selected because I was not selected means that I was not selected based on nothing. And this clearly proves that my non-selection was against the Navy's mission, which was to select the best qualified applicants, and my qualifications and merit show that I deserved to be among the 4 best applicants

The Federal Circuit clearly erred when regarding my retaliation claim that states that the Navy wrongfully and intentionally discharged me due to my disclosures of the management's wrongdoing, it (the Federal Circuit said that my termination letter said that I failed three (3) exams (see Appendix C3), whereas this is false, as my termination letter did not state that). My former Supervisor Ms. Harper testified during the EEO Investigation by saying that an employee can take an exam three times (thus, even after a second failure of the exam). However, I only failed one exam among the eight (8) tests that I took while working for the Navy in 2014, without even being given the required opportunity to retake that only exam I failed, which was the Practical Exam (as stipulated by the employment contract). My test scores are joined here.

But the Federal Circuit said that the termination letter said that I failed three exams, whereas this is false, as the termination letter did not say that, simply because the Navy (Ms. Cook who terminated me) knew that I did not fail 3 exams, nor more, and knew that she was retaliating against me because of my disclosures of the management's wrongdoing just 8 days before. Defendant or Respondent has never argued about my arguments and proofs of wrongful and intentional termination. Thus, I clearly proved the retaliation claim.

The Federal Circuit also erred when it failed to address my claims under **5 CFR 2302(b)(9)(A), and 5 CFR 2302(b)(12)**, where I proved that I deserve to win those. It also failed to address the fact that the Navy **pleaded liable** when it said **it does not contest my beliefs** (see Attachment 2).

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REASONS FOR GRANTING THIS PETITION FOR WRIT OF CERTIORARI

I. The U.S. Court of Appeals for the Federal Circuit clearly erred when it did not grant my motion for default judgment whereas Respondent finally filed its Informal Brief almost a year after I filed mine, whereas it was ordered to file it just 40 days after mine.

In Doc. 1-1 dated of March 29, 2024, the Clerk of the Federal Circuit informed Respondent (the MSPB) that represents the Navy) to do its entry of appearance of its lawyer within 14 days, thus, by April 12, 2024. However, Respondent did it on June 12, 2024 (Doc. 12 at the Federal Circuit), which was untimely, but it did two (2) months later after the deadline of April 12, 2024, without explaining why it is being late of 2 months. This is the first proof that shows that default judgment should have been entered against it. Moreover, the Clerk said in Doc. 1-1 page 1 that Respondent needs to file the Certified List within 40 days of March 29, 2024, but even by August 13, 2024 that I filed the motion for default judgment against it, it had not done it, which was more than 40 days after March 29, 2024. In Doc. 15, the U.S. Court of Appeals for the Federal Circuit's Judges denied my motion for default judgment (Doc. 14) in which I said that after 96 days that I filed it, Respondent did not respond to my petition for review of the lower court's decision, or to my informal brief, whereas it had 30 days, or 40 days to file its response, or to file its own brief, and I asked the Federal Circuit to make me win the case by default judgment. However, the Federal Circuit Judge/s said in their denial of my motion for default judgment (seen in Doc. 15) that my informal brief did not comply with the content of Federal Circuit Form 11, and said that the rule requires me to file a motion to leave so that I can refile it, then the Judges immediately said that they now grant me the leave to file or refile the informal brief, and basically said that it now considers my petition for review of March 29, 2024 to be my refiled and corrected Informal Brief, and concluded that, by law, "Should leave of the court be

required to file a document[, as here], the deadline for any responsive document will be triggered by the court's order on the motion for leave[.]” Fed. Cir. R. 26(a)(2). Accordingly, IT IS ORDERED THAT: (1) The motion is granted only to the extent that ECF No. 1-2 is accepted as Mr. Yomi's informal opening brief with appendix. (2) The respondent's response brief is due no later than 40 days from the date of entry of this order." End quote. In fact, the Federal Circuit clearly erred because they failed to address the fact that after my informal brief of March 29, 2024, Respondent had 30 days to respond to it by law, or 40 days to file its own informal brief, but it did not do so. So, after more than 90 days of my informal brief of March 29, 2024, the Federal Judges came to decide on the case, and realized that Respondent did not even respond to my informal brief (my petition for review), and did not even file its own informal brief. Thus, the Federal Circuit Judges should have immediately granted me the motion for default judgment seen in Doc. 13. But they realized that from their stand point, my informal brief was not fully in compliance with Fed. Cir. Form 11, but they clearly erred when they told me to correct it, and to bring Respondent's clock to respond or to file its own informal brief to zero, since they instructed Respondent to respond within 40 days from their order of September 13, 2024 (Doc. 15), but they erred when they did not consider the fact that Respondent had never responded to my informal brief (Doc. 1-2) even after 96 days, and had not filed its own informal brief even after 96 days from March 29, 2024 that the Clerk of the Court filed or entered mine in its electronic system, as I mailed mine around March 24, 2024. Moreover, the Judges who previously said in Doc. 15 that they grant me the leave to refile the informal brief so that it can be in compliance with Fed. Cir. Form 11, immediately accepted my informal brief of March 29, 2024 as being the corrected informal brief, without me making any correction on it, which in fact shows or proves that my (proper) informal brief was filed on March 29, 2024; thus, I was totally right and correct

to say that Respondent did not respond to it even after 96 days, and that I am totally right and correct to say that the Federal Circuit's Judges clearly erred when they denied my proper motion for default judgment, since they finally considered (still in their denial of my motion for default judgment seen in Doc. 15) that my informal brief of March 29, 2024 is also the corrected informal brief that they previously wanted me to correct. Thus, it is clear that the Respondent did not respond to it even after 96 days, and that I deserve to win the case by default judgment. In fact, it should have been Respondent who should have responded to my petition for review or informal brief within 40 days as stated by the Clerk, or should have filed its own informal brief within 40 days, in which it should have for example said that there is an error in my petition for review or there is an issue regarding my informal brief, but not the Federal Circuit Judges. Thus, whether or not I even committed any error in my petition for review or my informal brief (in fact, there was no error committed anywhere), still, the Federal Circuit should have simply granted my motion for default judgment against Respondent, as Respondent failed to answer within 40 days. That's it! Thus, the Federal Circuit clearly erred, and I am asking the U.S. Supreme Court to reverse that ruling, and to make me win the case by default judgment.

II. The Federal Circuit erred all the way through regarding the Whistleblower Protection Act (WPA), and the issues presented in this petition are of exceptional importance, especially with the facts that all lower courts in this lawsuit, and even mostly in the country in a general, are clearly erring on the proper or appropriate test that should be applied on WPA, and most of the courts are even erring on the meaning of what is an objective test in WPA, and especially because the U.S. Supreme Court has apparently never defined or concluded what is the proper test (subjective test, or objective test, or both) in WPA that any Court that has jurisdiction on WPA claims should apply in order to determine whether

a Complainant of WPA has proven that the Court has jurisdiction over his/her claims.; and are of exceptional importance because it is practically "unprecedented", "never seen before", or "unheard of" that the lower courts make a Defendant or the Agency win the case when the Agency has itself pleaded guilty or liable, especially when the Navy here said that it does not contest my beliefs that I made non-frivolous disclosures to the upper management in which I reasonably believed that the management committed wrongdoing.

1) The Federal Circuit clearly by saying that the test is objective, whereas it is in fact subjective; or, if it is subjective and objective, the objective one is not in fact what all lower courts here mentioned, since the disinterested observer should also reasonably believe that wrongdoing occurred, but not that s/he should conclude that wrongdoing really occurred, as wrongly stated by all lower courts here. In my previous submissions at the MSPB Regional Office in Washington State (at page 4 of 11 of my Reply to the Navy's Response to my MSPB Complaint), and in my MSPB Appeal at the MSPB Appeal Office in Washington, D. C. (at page 6 of my MSPB Appeal or Petition for review), and even in Doc. 1-2, at the very beginning of page 37 of this case at the Federal Circuit, I said the following:

"the protected whistleblower disclosures need not to be accurate to be protected." I added by saying that in this following website

http://www.dodea.edu/offices/counsel/upload/2302_ccrtification.pdf, the followings are said about Protected Whistleblower Disclosures:

"-Generally protected when made by any person (except the wrongdoer).

-Need not to be accurate to be protected.

-Protected if the employee reasonably believes that it is true."

And I also said that: "From the internet, it is said the following on "How to File an OSC Complaint under The Whistleblower Protection Act, from the website

www.employmentlawgroup.com): "You don't need to show that your disclosure turned out to be correct, and you don't need to cite the specific law or rule that might have been broken. You just need to show that you reasonably believed there was some wrongdoing." End quote.

It also said that: "**Subjective:** The whistleblower's state of mind is considered. They must have had a reasonable belief that the disclosed information indicated wrongdoing, meaning they believed it in good faith. **Objective:** The belief must also be objectively reasonable. A reasonable person, with the whistleblower's knowledge and experience, **would have had the same belief** about the situation." However, all lower courts here said that the disinterested observer should conclude that wrongdoing really occurred, which in fact it is not what the objective test is. Thus, they all clearly erred. And here is what is said in Congress.gov relating to the WPA, including the WPEA of 2012, in a Congress publication of 12/30/2024:

"Content of Disclosures: The WPA generally protects employees from retaliation for disclosures of information that an employee reasonably believes evidences behavior falling into one of two categories: (1) a violation of any law, rule, or regulation or (2) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. With regard to the first category of disclosures—a violation of any law, rule, or regulation—an employee must have a reasonable belief that any law, rule, or regulation was violated. This requirement does not mean that a law, rule, or regulation must have *actually* been violated, nor does a whistleblower have to show definitive proof of a violation.

Moreover, an employee needs to disclose only what he or she reasonably believes is a potential—not necessarily completed—violation to be protected by the WPA. According to the Board, the potential wrongdoing must only be "real and immediate." The Board reasoned that requiring a violation of law, rule, or regulation to occur before the employee could make a protected disclosure under the WPA would force employees either to disclose imminent

violations without the WPA's protection or to wait for a violation to occur and risk being held responsible." End quote regarding the Congress. [https://www.congress.gov/crs-product/R48318#:~:text=History,The%20Whistleblower%20Protection%20Act%20of%201989%20\(WPA%20or%20the%20Act,retaliation%20for%20their%20whistleblowing%20activity](https://www.congress.gov/crs-product/R48318#:~:text=History,The%20Whistleblower%20Protection%20Act%20of%201989%20(WPA%20or%20the%20Act,retaliation%20for%20their%20whistleblowing%20activity).

We can all see here that the test is subjective, or that the test should be only subjective, as exactly defined by 5 U.S.C. § 2302(b)(8), which stipulates that "the whistleblower's disclosures are protected if s/he **reasonably believes** they evidence (1) "any violation of any law, rule, or regulation," or (2) "gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety." This simply means that even after investigation, if for example it is proven that the whistleblower's disclosures do not evidence wrongdoing by the Agency, they are still protected as long as the whistleblower shows that s/he reasonably believed that they evidenced wrongdoing at the time s/he was making his/her non-frivolous disclosures. Otherwise, the law would have simply been, that in order for the disclosures to be protected, the whistleblower's disclosures **must** evidence (1) "any violation of any law, rule, or regulation," or (2) "gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety", **which in fact is the definition of the objective test**, which the Federal Circuit, the MSPB Appeal Office, and the MSPB Regional Office have used here, but wrongfully, because they all said about the objective test that: "They (the Courts) asks "whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee would conclude that the actions of the government evidence wrongdoing as defined by the Whistleblower Protection Act." Young, 961 F.3d at 1328." With this reasoning or with this kind of test, it is clear that the whistleblower's disclosures **must absolutely evidence wrongdoing by the Agency**, in order for

the whistleblower's disclosures to be protected, **whereas in fact, this is not what 5 U.S.C. § 2302(b)(8) stipulates, as it stipulates that** the whistleblower's disclosures are protected if s/he reasonably believes they evidence wrongdoing by the Agency. This is key in this Petition for Writ of Certiorari, as it seems that apparently, the U.S. Supreme Court has never defined what is the correct test that should be applied in 5 U.S.C. § 2302(b)(8), and most or all lower Courts just apply the objective test, which makes most of the MSPB Complainants to lose their proper and justified cases, and which prevents past, current and future whistleblowers to bring cases of whistleblowing and retaliation, or to disclosure to their Agency what they believe to be wrongdoing, since the Courts would ask them to prove that the Agency really committed wrongdoing, and some of the whistleblowers may not have all the concrete proofs (including Agencies' documentation such as Agency's laws, rules, or regulations) to support their disclosures of wrongdoing. And that is exactly why 5 U.S.C. § 2302(b)(8) has defined it as being that the whistleblower **should reasonably believe** that the Agency committed wrongdoing, but not that the whistleblower **must prove** that the Agency committed wrongdoing. **Thus, the test is, and should be subjective.** Otherwise, some Courts (Judges) who do not want the whistleblower to win would always rule that the test is only objective, and would always say that a disinterested observer would not conclude that the Agency committed wrongdoing, even though those Courts have clearly demonstrated or proven in their analysis that the Agency committed wrongdoing, as the MSPB AJ Ribas has done in my case, where she demonstrated and proved that the Navy has committed wrongdoing, but just ruled that a disinterested would not conclude that it committed wrongdoing. In fact, the disinterested observer is the Judge, since there is no jury here (at any Courts) to whom to ask whether wrongdoing was committed. To be clear, for the test to be subjective and objective, the

objective test should have been defined as: "whether a reasonable observer with knowledge of the essential facts known to and readily ascertainable by the employee **would reasonably believe** that the actions of the government evidence wrongdoing.", but not "**would conclude**", nor "**would reasonably conclude**" that the actions of the government evidence wrongdoing", nor that the disclosures and the facts need to really evidence wrongdoing (as stated by the MSPB AJ Ribas). When the Court changes the expression "reasonably believe" to "conclude" or to "reasonably conclude", or to that the facts need to really prove wrongdoing, the Court is basically telling that the whistleblower's disclosures must accurately evidence wrongdoing, whereas this is not what 5 U.S.C. § 2302(b)(8) defines or stipulates, as it stipulates that the whistleblower should reasonably believe that his/her disclosures evidence wrongdoing. The expression "reasonably believe" cannot be changed to something else, as this totally changes what 5 U.S.C. § 2302(b)(8) stipulates.

2) The Federal Circuit clearly erred when it said: "Mr. Yomi's alleged disclosures do not evidence a violation of the Pendleton Act or merit system principles, nor do they clearly implicate an identifiable violation of any other law, rule, or regulation." In fact, my email of August 20, 2014 to Ms. Cook clearly proves that my disclosures to her evidenced a violation of the Pendleton Act or merit system principles, especially when I said in Attachment 1, at 1 that:

"M.s Heather said that I was not selected because I was not selected. Ms. Burgess said I was not selected because it was up to the discretion of the management. However, when I read from the government article, it is said that anyone may receive a civil appointment so long as he or she is the best or among the best (if there are many vacancies) qualified applicant(s) based on objective criteria. <http://www.mspb.gov/meritsystemsprinciples.htm>

I do not mean that I was among the highly qualified candidates, neither that I was not among them, but I just think that it should be clearly explained why an applicant has not been selected from an objective criteria point of view, rather than a management discretion point of view".

So, it is clear to everyone that my disclosures to Ms. Cook evidenced a violation of the Pendleton Act or merit system principles, and clearly implicated an identifiable violation of any other law, rule, or regulation, until I even provided the MSP link to Ms. Cook (<http://www.mspb.gov/meritsystemsprinciples.htm>) when I said the selection should be based on the qualifications and the merit of applicants, but not based on the discretion of the management, all of which support and prove the implication of an identifiable violation of any other law, rule, or regulation, since Ms. Heather and Ms. Burgess's statements violated the content of the MSP, and since my disclosures clearly explained how saying to a job applicant or employee that "he was not selected because he was not selected, and that it was not selected because it was up to the management's discretion" are not part of the merit system principles (MSP), nor the Pendleton Act (which are laws or rules or regulations that govern the selection process for such a PST job falling under Competition Examination as stated by Ms. Burgess during the EEO Investigation). When we google: "are the U.S. government merit system principles part of the law, or rule, or regulation? Here below is what Google says:

"The U.S. government's merit system principles are part of **law** because they are codified in **Title 5 of the United States Code, specifically § 2301**. While they are a matter of law, they also serve as a framework for rules and regulations that govern federal personnel management.

Law: The fundamental legal basis for the merit system principles is the Civil Service Reform Act of 1978, which is a federal law. These principles are outlined in 5 U.S.C. § 2301. **Rules and Regulations:** Agencies and the Office of Personnel Management (OPM) create regulations and rules, implement these legal principles and provide details on how to apply them in practice, as noted by the Merit Systems Protection Board (MSPB) and the U.S. Department of Labor.

Examples: These principles are designed to ensure that federal employment decisions are based on merit and to protect against political coercion, discrimination, and other abuses. Examples include recruiting based on relative ability and advancing employees based on their performance." End quote.

Thus, the MSP are part of the laws, or rules, or regulations that govern the hiring process for such a PST job (under Competitive Examination). And all lower Courts clearly erred on it, when

they all said my disclosures do not evidence a violation of the Pendleton Act or MSP, nor do they clearly implicate an identifiable violation of any other law, rule, or regulation.

3) The Federal Circuit clearly erred when it said: "A disinterested observer would not reasonably conclude that the Navy was required to provide Mr. Yomi a reason for his non-selection in these circumstances or a hiring process entirely free from the discretion of management." In fact, I have already explained here above that "not being required" means "it is optional", and Ms. Heather and Ms. Burgess had chosen to provide me with the reasons of my non-selection, and those reasons must be now taken into consideration in this lawsuit or MSPB Complaint, and it came out that those reasons were totally wrong, false, improper, which I disclosed to Ms. Cook, especially with Ms. Heather who said that I was not selected because I was not selected, which is in fact a clear violation of the law, or rule, or regulation, and a pure invalid reason, wrong, improper, and insulting to my person (which insult clearly evidences gross mismanagement and/or abuse of authority); and Ms. Burgess's statement also evidenced violation of law, or rule, or regulation, since I proved that there is no discretion of the management when it comes to a U.S. non-managerial job open to All U.S. Citizens (thus, falling under Competitive Examination Rules on U.S. jobs, but not under Competitive Service Rules on U.S. jobs). I also said to the Federal Circuit that the lower Courts and Respondent have not never provided an authentic document, or the law or rule or regulation that shows or can authorize that the discretion of the management can play a role in the hiring process for such a PST job (a non-managerial job) open to All U.S. Citizens at GS less than GS-10, but the Federal Circuit did not provide, but just vaguely said, as the MSPB Regional Office and the MSPB Appeal Office that the management's discretion can play a role in the hiring process, which is in fact very improper for all these lower Courts.

4) Even if we suppose for example that the test is objective as stated by the Federal Circuit, still, it clearly erred when it said that I failed that test, by saying that a disinterested observer with knowledge of the essential facts known to and readily ascertainable by me, could reasonably conclude that these statements did not evidence violation of law or rule or regulation or gross mismanagement or abuse of authority. All lower courts erred on it, because the knowledge of the essential facts known to and readily ascertainable by me were that: the PST job was open to All U.S. Citizens; and had 50 vacancies; and was not a management position and was at GS levels that were less than GS-10 (as seen in that Job announcement), which means that that it was falling under the Competitive Examination (as stated by Ms. Burgess during the Equal Employment Opportunity Commission (EEOC) Investigation in 2015); and that the selection was based on qualifications and the merit of the applicants, but not that the Agency may not select an applicant just because it does not select him/her (as Ms. Heather said, when she said I was not selected because I was not selected); and that the merit system principles stipulate that the selection should be based on qualifications and the merit of the applicant, but do not suggest that the selection can be also based on the discretion of the management; and I had knowledge of what is said in the merit system principles, until I provided the link of it to Ms. Cook (the boss of the managers, who was also the selecting official for that PST job) in my email of August 20, 2014 to her. Those are the facts and evidences that I knew at the time of my disclosure to Ms. Cook on August 20, 2014, in addition of the fact that the Navy (via Ms. Burgess) said that my non-selection was based on the discretion of the management, **but she did not provide any proof, nor any evidence of that, and did not provide any law, or rule, or regulation, brief, she did not prove that** there is any law, or rule, or regulation that stipulates that the management can use discretion during the hiring process of such a PST job. **Then, I opposed**

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Ms. Burgess' statement that stated that my non-selection was based on the management's discretion, until I clearly stated so to Ms. Cook, by saying to her that the merit system principles state that the selection should be based on the qualifications and the merit of the applicant, but not based on the discretion of the management, until I provided her with the link about the website of the MSP, which was <http://www.mspb.gov/meritsystemsprinciples.htm> So, all of the above are the knowledge and evidence that the disinterested or reasonable observer is also supposed to know, and nothing else. **Thus, it is clear to everyone, including a disinterested or reasonable observer, that I proved that from my reasonable belief, and from a non-frivolous manner, the selection should be based on the qualifications and the merit of applicant, but the Navy has not proven that the selection can be based on nothing, or should be based the discretion of the management, and has zero evidence of its 2 statements (Ms. Heather and Ms. Burgess's statements respectively), since I opposed it, and the facts and evidence of my knowledge (at the time) show that the Navy did not rebut, brief, did not respond to my opposition** (when I said to Ms. Cook that the MSPs show that selection should be based to the qualifications and the merit, but not on the discretion of the management) in order for it (the Navy) to prove with authentic documents (such as the Agency's laws, or rule or regulations) that the selection in the Agency is based on nothing (as Ms. Heather said, when she said I was not selected because I was not selected), and to prove that the selection can be based on the management's discretion. Thus, those are my facts and knowledge (at the time of my disclosures) that are also supposed to be the facts, evidence and knowledge of what the disinterested or reasonable observer would have been aware of, which facts and knowledge clearly show that after my opposition to the management's statements, I even provided Ms. Cook with the MSP link to support my opposition that the management's discretion cannot play a role

in the hiring process. **Thus, all disinterested or reasonable observers with the same facts and knowledge as me would reasonably believe, and would even conclude that the selection should be based on the qualifications and the merit of applicants,** but not based on nothing, nor based on the discretion of the management; thus, would reasonably believe or conclude that my non-frivolous disclosures evidenced violation of law, or rule, or regulation, and/or gross mismanagement and/or abuse of authority by the Navy.

5) All lower Courts clearly erred when they never addressed my very solid argument that the Navy itself had said that: "The Agency does not contest Mr. Yomi's beliefs", thus, it admitted by itself to all claims I filed against it regarding 5 USC 2302(b)(8), and there was no need whatsoever for any Court to determine whether or not I successfully passed or proved the objective test, since the Navy admitted that it does not contest my beliefs. Thus, both parties admitted to my non-frivolous disclosures of what I reasonably believed evidenced wrongdoing. Thus, I deserved to win this case in all lower Courts, but I did not win because they all clearly erred when they did not address this very pertinent argument of admission of liability by the Navy itself. I am asking the U.S. Supreme Court to address it, by granting me first this petition, then by ruling that I won this entire case, **as the Navy clearly admitted to liability.**

6) All lower Courts clearly erred when they never addressed my very solid argument that the discretion of the management cannot play any role in my non-selection when the Navy finally selected only four (4) applicants at GS 9 for this PST job that had 50 vacancies in the same location in Bremerton, in Washington State where I was working for the Navy, then the Navy opened another PST job, at the very same GS levels, and at the very same location (in Bremerton, WA), still with 50 vacancies, just a few days after the selection and non-selection of

applicants for the PST job vacancy ID 1142303, which was open on August 25, 2014, Vacancy ID 1195686. Respondent also has never addressed it, simply because it knew that this was very powerful to prove that the discretion of the management did not in fact play any role in my non-selection for the PST job Vacancy ID 1142303, and proves that the Navy wrongfully didn't select me. Thus, I proved the objective test too, and I deserve to win this Whistleblowing Complaint.

7) Moreover and more importantly, Ms. Burgess said during the EEO Investigation (around May 2015) that she does not know if I was referred for this PST job Vacancy ID 1142303. Here is what the EEOC Report of Investigation (ROI) says at page 1036, which is also USAO_0001065: "Was the Complainant qualified for the GS-09 and referred for consideration to the selecting supervisor? **Response:** I do not know, as I am not involved with this part of the process, and I was unable to gather the information from the Office of Civilian Human Resources Silverdale (OCHR-SIL)." End quote. So, Ms. Burgess confirmed later that she does not know if I was referred to the selecting official for selection consideration, whereas on August 19, 2014, she said that I was not selected because of the management's discretion. Thus, her testimony of 2015 at the EEOC proves that she wrongfully and intentionally said to me on August 19, 2014 that my non-selection was based on the management's discretion, and clearly proves that she just said it in 2014 during the meeting that they (the management) scheduled and held with me regarding the outcome of my application for this job, just to try to alleviate the gross mismanagement and/or abuse of authority committed by Ms. Heather when Ms. Heather said I was not selected because I was not selected, as this was obvious to everyone, including to Ms. Burgess, that Ms. Heather's statement was outrageous, was wrong, was bad, was an insult to me right after I presented to them my very solid qualifications for that PST job at GS-9.

8) Even if we suppose for example that the management's discretion plays or can play a role in the hiring process as stated by each lower courts, still, they never addressed my very

pertinent argument that there is no discretion of the management (when not selecting me) for this PST job with 50 vacancies, in which the Navy finally selected only 4 or 5 applicants, then , just a few days later, the Navy launched another same PST job at GS 6 to 9, at the same location, opened from August 25, 2014 to September 2014; and that saying to an employee or job applicant (which is me) that he is not selected because of the discretion of the management, and only because of that discretion, is wrong, because, if it's not wrong, then, the management in any Federal employer out there could or can even select non-qualified or the least qualified job applicant/s, by taking bribery from the applicants, or based on discrimination, or based on any kind of relationship with the applicants, etc., then when an applicant asks or files a lawsuit against the employer relating to his/her non-selection, the employer can or could simply say and argue that it did not select him/her because of the discretion of the management, or because it was up to the discretion of the management, then it gets away with any wrongdoing, whereas in fact the employer would be wrong. This was just to prove that saying to me that I was not selected because it was up to management discretion, as being the only reason of my non-selection, is a wrongdoing committed by the Navy, as it can give this same answer to any court (regarding lawsuit against it), or to other applicants for any federal job out there under Competitive Examination who asks why s/he is not selected, which would be in fact a wrong answer, and proves of wrongful non-selection. However, all lower courts clearly erred when they never addressed these, despite my insistence on it.

9) All lower courts clearly erred when none of them has ever proven with, or provided, a law, or rule, or regulation that stipulates that the management's disclosure can play, or plays a role in the hiring process for such a PTS job that falls under Competitive Examination, despite my insistence on it, to support their finding that a disinterested

observer would conclude that the management's discretion plays, or can play a role in the hiring process. None of them has provided any evidence of it, and I always opposed their finding by saying that the lower court/s failed to prove that management's discretion can play a role in such a job under the Competitive Examination. Now that this case goes to the U.S. Supreme Court, I searched and found indisputable evidences or proofs that show that for this PST job under Competitive Examination, there is no discretion of the management in the hiring process, but that the discretion of the management may come into play in jobs that fall under Competitive Service. In fact, as each lower court has never provided, or failed to provide any proof of their finding that a disinterested observer would conclude that the management's discretion plays or can play a role in the hiring process despite my insistence on it (as I always opposed this vague finding while filing each appeal regarding this case), I searched for it, and found out that the discretion of the management can play a role for Federal jobs under Competitive Services, but not under Competitive Examination such as the PST job mentioned in this MSPB Complaint. The truth is that I do not have to find it out, as I have already proven and provided the MSP link whose the content clearly shows that there is no discretion of the management on selection for such a PST job that falls under Competitive Examination. But I found it out anyway. So, Ms. Burgess was asked during the EEO Investigation the following question, and she answered as follow: **"Claim a2: On August 19, 2014, he was not selected for a position as a Physical Science Technician, GS-1311-09, Vacancy ID Number 1142303.** What regulation or policy governs the recruitment of applicants under Delegated Examining Authority? Provide the regulatory reference. **Response:** 5 CFR 332-RECRUITMENT AND SELECTION THROUGH COMPETITIVE EXAMINATION https://www.opm.gov/policy-data-oversight/hiring-authorities/competitive-hiring/deo_handbook.Pdf End quote. And this can also

be seen in: <https://www.ecfr.gov/current/title-5/chapter-I/subchapter-B/part-332> However, the entire content of this 5 USC 332 does not anywhere that the management's discretion plays, or can play a role in the hiring or the selection process. This is very important to know, as this clearly proves and confirms that a disinterested observer could not conclude that the management's discretion can play a role in the hiring process for this PST job that the selection was made through the Competitive Examination (under 5 USC 332), but could conclude that discretion does not play any role, and that the management committed wrongdoing when Ms. Burgess said that I was not selected because of the discretion of the management. Thus, even with the objective test on whistleblowing, I did pass it very well, and I deserve to win this entire MSPB Complaint, since I also proved in my previous submissions that my termination was wrong and even intentionally wrong, in retaliation of my disclosures to Ms. Cook who terminated me on August 28, 2014, just eight (8) days after my email disclosing management's wrongdoing to her. However, it is rather federal jobs where the selection is made through the Competitive Services (such as for a management's job open to only employees currently work for the Agency), thus, which jobs fall under 5 U.S.C. § 330, that the management's discretion can play a role in the selection. We can all see it in <https://www.ecfr.gov/current/title-5/chapter-I/subchapter-B/part-330> especially under 5 U.S.C. § 330.102. However, Ms. Burgess testified that the PST job was falling under the Competitive Examination (5 USC 332), but not under this Competitive Service (5 USC 330). See ROI at p. 1035, or USAO_001064. In fact, the 90 days in service she said in that page does not apply to me (for jobs under Competitive Examination) but applies to jobs under 5 USC 330. And there is nowhere in 5 CFR 332 where it's said that the management's discretion can play a role in selection. Thus, the lower courts erred.

10) The Federal Circuit finally clearly erred when it said that I am just in disagreement with Ms. Heather's statement when she said to me that: "You were not selected because you were not selected", and it concluded that that a disagreement is not gross mismanagement, nor an abuse of authority, because this is not being in disagreement, but this is for me proving that Ms. Heather's reason to my non-selection was extraordinarily wrong, which equated my wrongful non-selection to the advantage of preferred other persons who were less qualified than me, or, to just make me not to be selected, adversely affecting my right to be told the proper reason of my non-selection, and negatively affecting my rights to be non-selected based on qualifications and merit, but not based on nothing, since saying that: I was that I was not selected because I was not selected means that I was not selected based on nothing, whereas it should be based on qualifications and merit; and this clearly proves that my non-selection was against the mission of the Navy, **which mission here was to select the best qualified applicants, as clearly stipulated in the PST job announcement.** Anyway, even if we suppose for example that the Navy was not required, which means that it was optional for it to tell me the reason, here, it has chosen to tell me the reason, and it came out that saying to me that: "You were not selected because you were not selected" is clearly evidence of violation of the law or rule or regulation, or is gross mismanagement. **Ms. Heather's statement was also an abuse of authority** because it was an arbitrary or capricious exercise of power by a federal official (who is her), that adversely affected my rights (as stated here above), which shows that it is now considered that the Navy wrongfully did not select me, reason why it gave me a very wrong reason of my non-selection, when it said I was not selected because I was not selected; or that resulted in advantaging other preferred persons (who were less qualified than me but were selected). And my qualifications show that I was among the 4 best applicants, and I even had at that time a top-secret security

clearance (red badge in the Navy), which security clearance was required for that job. Thus, I proved that Ms. Heather's statement evidenced gross mismanagement, and/or abuse of authority.

11) The Federal Circuit also clearly erred when it failed to address 5 CFR 2302(b)(9)(A)(i) that I appealed. As I said in Doc. 31-1, page 10, at the Federal Circuit, "the Navy violated Rule 5 U.S.C. § 2302(b)(9)(A)(i). It is clear that the OSC Judge clearly erred, as I said in my initial MSPB Complaint seen at the end of page 61 of Doc. 19, when I said: "Moreover, at the beginning of the second page (specifically the three first lines) of Ms. Oshilaja's preliminary determination letter, it is said the following. "Protected activity under section 2302(b)(9) requires the exercise of an appeal, complaint, or grievance right granted by law, rule, or regulation." I added by saying: From this statement, it is clear that my emails to Ms. Cook and Mr. Stewart fall under the exercise of an appeal, complaint, or grievance, since I was appealing, or complaining, or making grievance to Ms. Cook about my wrongful non-selection, in the goal to resolve it, but she rather retaliated against me and discharged me." End quote. And the MSPB AJ Ribas also confirmed it, when she said at the end of page 2 of her decision that: "The appellant had second thoughts about this course of action, and instead, he sent an email to Cook on August 20, 2014, that relayed the meeting described above." In fact, Ms. Cook never responded to my email of August 20, 2014, but eight (8) days later, on August 28, 2014, she wrote the letter of termination and terminated me, which was wrong from her part of falling to take action of my appeal regarding my non-selection, but just to retaliate against me for my disclosures of wrongdoing.

12) The Federal Circuit also clearly erred when it failed to address, or did not address 5 CFR 2302(b)(12) that I appealed. The Navy also violated Rule 5 U.S.C. § 2302(b)(12). As the OSC Judge stated: "To prove such a claim, the facts must demonstrate that (1) a personnel action

was taken, (2) the taking of this action violated a civil service law, rule or regulation; and (3) the law, rule or regulation implements or directly concerns a merit system principle.” Here, the facts demonstrate that: (1) the Navy did not select me for the PST job vacancy ID 1142303; (2) the action of non-selecting me violated a civil service law, or rule or regulation, especially because the job announcement for that PST job Vacancy ID 1142303 stated that the Navy must select the best qualified applicants, and even explained how the selection of those best applicants will be done; (3) the law, rule or regulation implements or directly concerns a merit system principle, as I clearly said and explained in my email to Ms. Cook, especially when I said that the merit system principles stipulate that the Agency must select the best qualified applicants, but not selecting applicants based on the discretion of the management, nor based on nothing, or, nor based on wrong criteria, as Ms. Heather said I was not selected because I was not selected, until I provided (to Ms. Cook in that email of August 20, 2014) the merit system principles link to support my disclosures of wrongdoing. Thus, I proved this claim. However, the Federal Circuit did not address it, and clearly erred.

13) Regarding the retaliation claim, the Federal Circuit also clearly erred when it said that my termination letter says that I failed three (3) examinations or exams (which was the number of exams that leads to a termination as per the Agency’s employment contract), whereas in fact, the termination did not say that I failed three exams (See Exhibit 10), and whereas in fact I did not fail three exams, nor more. The employment contract I signed with the Navy clearly stated the following as being the reason the it may terminate a PST employee for performance: **“The failure of three topical written, practical, or oral exams (including makeup examinations).”** End quote. (See Exhibit 1, at p. 2). By the way, a quiz is not an exam, even though both are tests. This contract clearly stated that it is the failure of three (3) exams

(without including any quiz) that could lead to a termination. Of course, as quizzes are the preparation for an exam, but are not themselves an exam. My former supervisor showed my test scores in several pages of Doc. 19. She changed it several times as evidence of wrongful termination was being proven. See it in Exhibit 3, at 1; Exh. 4, at 1; then later in Exh. 5, at 1, and finally the fourth one in Exh. 6, at 1. In this Exhibit 6, when we see a score of 79%/97%, this means that I first scored 79%, then, I retook it (without falling in the first place), and scored 97%, and so on, for 82%/94%, and for 59%/87%. So, first of all, we can all see that Ms. Harper showed my test scores on January 29, 2015, and did not mention my test score on Quiz 3 (Q3) make-up (see page 143 of Doc. 19), then she said that I did not retake that Quiz 3, and wrote at page 143: "Q3: 59% (failure)". But she lied, because I was able to get my test score for that Quiz 3 make-up through the Freedom of information Act, and Exhibit 5, at 2 shows that I did retake it, and scored 87%. That is why Ms. Harper did not say anymore that I failed it, when she re-provided my test scores in June 2015, as seen indicated with the arrow at page 144 of Doc. 19, where she did not write anymore "(failure)" next to Q3, meaning that I passed Q3. Thus, which proves in fact, I did not fail any Quiz. So, **my test scores showed that I successfully passed all my exams (excepted the Q and O sections of the contamination practical exam** that I failed on August 28, 2014 as seen at page 104 of Doc. 19 (indicated with big arrows), which clearly shows that the Q section and the O section are both the sections of just one practical exam, but are not two different exams, as clearly stated by Ms. Cook at the beginning of Exhibit 8, at 1, when she said: "**Mr. Yomi failed an exam, a quiz, and a practical exam.** He scored less than 80%." End quote. However, the Navy wrongfully said later after Ms. Cook's testimony that the Q and the O sections of that practical exam were in fact two exams, whereas this is not true, and it is just one practical exam done the same day as seen on page 104 of Doc. 19. The Navy tried to

make it to be 2 practical exams, so to claim that I also failed the written exam, thus, to say that I failed 3 exams. However, Ms. Cook's testimony is unchangeable, when she said I failed one practical exam (but not two), and Exhibit 2, at 1 shows that I passed the Written exam. We (the PST employees) were not taking two exams the same day, but just one exam at the time in a given day, and page 104 shows at the bottom of it, indicated with the arrow, the date of 8/28/2014 for both Q and O sections of the practical exam. And I was discharged about 2 hours later on that August 28, 2014, **without being given the opportunity to retake it, despite the employment contract that required it**, as seen on page 77 of Doc. 19, when it is said: **"including make up"**, and as testified by Ms. Harper, when she was asked the following at the beginning of Exhibit 9, at 1: "How many times can a student retake exams and quizzes to pass? Response: Depends on the exams. For production workers, **75% is passing, but they must retake the exam to score 80% or above. An employee can retake an exam no more than three times.**" End quote. In fact, 75% was the passing score, but the Navy also informally wanted its PSTs to have a great score at the national training in Virginia, brief, to successfully pass the national training, and wanted its PSTs to score above 80%, even though the passing score nationally was 75%. That is why Ms. Harper said that 75% was passing, and she was right and correct, which means that even if a PST receives a test score of between 75% and 80%, s/he has successfully and officially passed it, but s/he should informally retake it to score above 80%, in order for the Navy in Bremerton, Washington State, to be sure and confident that its PSTs would be successful at the expensive national training. Thus, 75% was the passing score, and this was also the passing score at the training school in Virginia, as stated by a co-worker Mr. Adams, seen at page 935 of the EEOC ROI, which is Exhibit 9, at 3. The Navy said later during its EEO motion for summary judgment (but after Ms. Harper's testimony during the EEOC

Investigation), that 75% was the passing score for Quizzes, but that the passing score for Exams was above 80%. However, Doc. 19, at page 140 clearly showed that it is written on **my Written Exam that I successfully passed it with 76.9% (Exhibit. 2, at 1).** and no one in the world can beat that, can change it to be a failing score, when it was written that it was a passing score.

Thus, the Navy is wrong to say after my termination, that I failed it, whereas when I was working, it was clearly written that I passed it. Thus, this proves that the Navy (via Ms. Cook) was intentionally wrong when it did not let me retake the Written Exam that it said I failed with 76.9% (even though I did successfully pass it, as seen in Exhibit 2, at 1), and when it did not let me retake the practical exam that it said I failed on August 28, 2014, and wrongfully terminated me just a few hours later. Nonetheless, I also expressed concerns about the fact that my copy for the Contamination Worker Written Exam was not well graded, and that it needed to be re-graded so that I can have more than 80%, as I deserved it, as Ms. Harper confirmed it, when she said that the instructor: **"Mr. Barrett did not perform an entire review of the exam however."** (see **Exh. 9, at 2**). In fact, he did not know everything, and it was to Ms. Harper to find another instruction to re-grade the part I had concerns with, but she never provided one anymore. **If my written exam copy was fully re-graded as I requested, I would have gotten a score of above 80%. Thus, it is simply another proof of a very wrongful discharge. The Navy has never disputed that, simply because it is true.** So, it is clear that this case should not be sent back to the lower court, which is the MSPB Regional and/or the MSPB Appeal Court, or to the Federal Circuit, for the lower court to rule on whether my discharge was wrong and retaliatory, as I proved that it was.

CONCLUSION

The petition for a writ of certiorari should be granted. I proved that, whether the test is subjective or objective or both, I successfully passed the subjective and objective tests of whistleblowing; and I proved that the lower courts (the MSPB Board, the Federal Circuit) failed to address the fact that the Navy pleaded liable or guilty when it said that it does not contest my beliefs, and I should have won the case without any need to apply the objective test. I proved that a reasonable observer with the same knowledge of the facts and evidence as me, would conclude that the Agency violated the law, or rule or regulation, and/or committed gross mismanagement and/or abuse of authority when, after I asked why io was not selected for the PST job at GS-9, Ms. Parrish Heather said I was not selected because I was not selected; and regarding Ms. Burgess's statement that I was not selected because of the management's discretion, I proved that a reasonable observer would conclude that the Agency violated the law, or rule, or regulation, especially because I said to the Agency (Ms. Cook) that the MSP and the job announcement stipulate that the selection should be based on the qualifications and merit, but not based on the discretion, and the Agency has never rebutted it, which shows to me and to the disinterested observer that it has zero evidence that the discretion can play a role after my opposition to it. I even proved that Ms. Burgess did not tell truth about the management's discretion on selection, as she said a few months later in 2015 that she did not know whether or not I was referred, and said she was not involved in the selection. I also proved that the Federal Circuit clearly erred when it did not address my claims under 5 USC 2302(b)(9)(A)(i) and 2302(b)(12), and I proved that I deserve to win those 2 claims. I finally proved that my termination was wrong and retaliatory, since even Ms. Cook said that I failed a written exam, a practical exam, and a Quiz, but in fact a Quiz is not an Exam, and I did pass the Written Exam the Agency wrongfully said after my termination that I failed (as failing 3 exams should lead to termination as per the employment contract), and the employment contract and Ms. Harper's statement show that it was required for an employee to retake a failing exam, but the Agency wrongfully and intentionally did not let me retake the only (practical) exam I failed. I am asking the U.S. Supreme Court to also order that I won the entire case, and to order that the parties can now do discovery regarding the relief or remedies of this entire MSPB Complaint, which might start even 3 months after its ruling on my victory of this case, which would be appreciated.

Respectfully Submitted,
 Francis YOMI

On December 8, 2025