Case No: _____

IN THE

Supreme Court of the United States

JOSEPH GALLEGOS

Petitioner, Pro-se

v.

UNITED STATES DEPARTMENT OF LABOR
ADMINISTRATIVE REVIEW BOARD, ET, AL

Respondents

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

APPENDICIES
A - S

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APPENDIX A — ORDER OF THE COURT OF APPEALS

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT **August 12, 2026**

Christopher M. Wolpert
Clerk of Court

JOSEPH GALLEGOS,

Petitioner,

v. No. 26-9556
(LABR No. 2025-TAX-00009)
UNITED STATES DEPARTMENT OF LABOR; A PLUS PERSONAL CARE PROVIDER,

Respondents.

(Department of Labor (except OSHA))

ORDER

Before **TYMKOVICH**, **MORITZ**, and **ROSSMAN**, Circuit Judges.

This petition for review is before us sua sponte to consider our jurisdiction. *See Hill v. Vanderbilt Cap. Advisors, LLC*, 702 F.3d 1220, 1223 (10th Cir. 2012) (this court has "an independent duty to examine [its] own jurisdiction").

Petitioner Joseph Gallegos petitions for review of four separate orders: (1) a December 17, 2025 order of an administrative law judge; (2) an April 17, 2026 order of the Department of Labor's Administrative Review Board ("ARB"); (3) an April 22, 2026 order of the ARB; and (4) an April 28, 2026 order of the ARB.

> Our authority to review agency action in cases like Mr. Gallegos's is derived from

49 U.S.C. § 42121(b)(4)(A). However, that statute limits our review to review of a

"final" agency order or action. *Id.* To determine if an agency action is final, "the core

question is whether the agency has completed its decisionmaking process." *Franklin v. Massachusetts*, 505 U.S. 788, 796-97 (1992).

Here, although an order indicating that the ARB was dismissing Mr. Gallegos's appeal was docketed and distributed to the parties, the ARB has since issued at least three orders (the April 22, 2026 order, the April 28, 2026 order, and the July 8, 2026 order) clarifying that it has not dismissed Mr. Gallegos's appeal and that it will address and decide the merits of Mr. Gallegos's appeal in due course. The ARB has not completed its decisionmaking process. There is no final agency action, decision, or order for us to review; consequently, we lack jurisdiction over this petition for review. We deny all pending motions as moot.

PETITION FOR REVIEW DISMISSED.

Entered for the Court

Per Curiam

FILED
United States Court of Appeals
Tenth Circuit

August 19, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JOSEPH GALLEGOS,

Petitioner,

v.

UNITED STATES DEPARTMENT OF LABOR, et al.,

Respondents.

No. 26-9556
(LABR No. 2025-TAX-00009)
(Department of Labor (except OSHA))

ORDER

Before **TYMKOVICH**, **MORITZ**, and **ROSSMAN**, Circuit Judges.

By order entered August 12, 2026, we concluded that the court lacked jurisdiction over this petition for review. (ECF No. 28.) Consequently, we dismissed it. This matter is now before us on petitioner Joseph Gallegos's *Motion for Reconsideration of Order Dismissing Petition for Review*. (ECF No. 30.)

Because the *Motion* "respectfully moves this Court under Fed. R. App. P. 40 to reconsider its August 12, 2026 Order dismissing this case for lack of jurisdiction," we construe it as a petition for panel rehearing under Federal Rule of Appellate Procedure 40.

We deny the as-construed petition.

Entered for the Court

Per Curiam

APPENDIX B — ORDER DISMISSING MATTER

(DECEMBER 17, 2025)

UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

San Francisco, CA

Issue Date: 17 December 2025

CASE NO.: 2025-TAX-00009

In the Matter of:

JOSEPH GALLEGOS,
Complainant,

v.

A PLUS PERSONAL CARE PROVIDER, LLC,
Respondent.

ORDER DISMISSING MATTER

This matter is set for hearing before the Tribunal on March 5, 2026. Pending before the Tribunal are numerous motions and filings. The pending motions and filings that require attention include the following filed by Complainant: (1) Motion to Address Concerns Raised During the Motion Hearing on September 5, 2025, and Request for Oral Argument on the Matters filed September 24, 2025; (2) Motion for Official Notice filed September 24, 2025; (3) Response to the Respondent's
Compliance Motion[1] filed on September 24, 2025; (4) Objection and Clarification on

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1 This filing requests disqualification of opposing counsel and the Tribunal. (Resp. to the Resp't
Compliance Mot. at 9, Sept. 24, 2025.)

Notice of Threat filed October 30, 2025; (5) Motion Informing Court of Rule 30(b)(6) Termination filed October 30, 2025; (6) Motion for Clarification and for a Finding that Further Discovery is Futile Due to Prejudice filed November 18, 2025; (7) Motion Objection to Respondent's Submission of Falsified Evidence and Request for Sanctions filed November 22, 2025; (8) Motion for Sanctions Against Respondent's Counsel for a Pattern of Misrepresentation; (9) Affidavit and Motion to Deny any Rule 56(d) Extension and to Declare that Further Discovery is Futile filed December 1, 2025; and (10) Motion for Protective Order filed December 6, 2025.[2] Respondent has filed the following motions and relevant pleadings: (1) Motion for Protective Order filed October 26, 2025; (2) Motion for Order Dismissing Case Because of the Willful Failure to Provide Discovery and for Abusive Conduct filed October 29, 2025; (3) Notice of Threat filed October 29, 2025; and (4) Request to Reply to Claimant's Objection & Response in Opposition to Respondent's Motion to Dismiss filed November 20, 2025. The Tribunal is again faced with hundreds of pages of motions and exhibits after another flurry of filings in this matter. Upon consideration of the factors set forth below, the Tribunal **DISMISSES** this matter.

I. Procedural Background

On January 14, 2025, the Occupational Safety and Health Administration ("OSHA") issued the Secretary's Findings on the complaint made by Complainant under both the Taxpayer First Act and the Affordable Care Act. (A Plus Personal Care Provider LLC, No. 301044881, at 1 (OSHA Jan. 14, 2025)). In his complaint filed with OSHA, Complainant "alleged Respondent forced [him] to resign [his] employment in retaliation for reporting claims of fraud within the company and violations of the IRS code, specifically regarding the company's false reporting of providing medical insurance as part of [his] employment contract." (*Id.*) OSHA found that both claims were timely and jurisdiction was proper.

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2 Complainant also recently filed a Motion for Summary Decision and Supplemental Motion for Summary Decision, but Respondent has not had an opportunity to respond to these motions.

(*Id.*) But because Complainant asked OSHA to terminate its investigation and issue a determination so he could come before the Office of Administrative Law Judges ("OALJ"), OSHA issued abbreviated findings that it "was unable to conclude [that] there was reasonable cause to believe that violation of the statute occurred" and dismissed the complaint. (*Id.*) Respondent then filed objections and requested a hearing before an administrative law judge. On February 4, 2025, the matter was docketed with OALJ.

This matter was assigned to the Tribunal on April 7, 2024. Several motions were pending at that time. To allow time to issue a Notice of Hearing and PreHearing Order and rule on the pending motions before any further preliminary motions were filed, the undersigned briefly stayed the case. (Order Staying Case, Apr. 9, 2025; Order Lifting Stay & Ruling on Pending Mots., Apr. 14, 2025.) One of the motions pending at the time was the Motion by Respondent to Limit the Number of Motions and Other Filings Filed by Complainant. The Tribunal denied that motion at the time, stating:

> Although Complainant has already filed several motions even before the entry of the Pre-Hearing Order, such a motion is premature. Restricting access of a party is a significant sanction that is not warranted in this matter currently. The parties, however, should be mindful to limit themselves to only filing motions that are necessary and relevant to the TFA and [ACA] claims pending before OALJ. The parties can litigate any other disputes elsewhere.

(Order Lifting Stay & Ruling on Pending Mots. at 3, Apr. 14, 2025.)

Complainant ignored the Tribunal's warning in the April 14, 2025, Order. His filings in the ensuing weeks included the following motions: (1) Motion for Sanctions against Respondent (April 18, 2025); (2) Motion to Strike Documents and Additional Facts (April 27, 2025); (3) Amended Motion to Strike Documents and Additional Facts (April 27, 2025); (4) Motion to Amend Complaint (May 1, 2025); (5) Motion to Exclude Documents and Seek Sanctions for Respondent's Egregious Actions Duering (sic) Litigation (May 8, 2025); 6) Motion to Withdraw Motion to Exclude Documents and Seek Sanctions and for Permission to Refile Redacted Motion (May 8, 2025); (7) Redacted Motion to Exclude Documents and Seek Sanctions for Respondent's Egregious Actions Duering (sic) Litigation (May 12,

2025); (8) Motion to Compel Opposing Counsel to Meet and Confer Regarding Joint Development of a Discovery Plan (May 16, 2025); (9) Motion Informing the Court Og (sic) Opposing Councel's (sic) Violation of Rule 4.3 of the Model Rules of Professional Conduct (May 23, 2025); and (10) Motion to Disqualify and Remove Opposing Counsel for Misconduct and Repeated Ethical Violations (May 27, 2025). In addition to these motions, Complainant filed numerous other pleadings. In these motions and pleadings, Complainant accused counsel for Respondent of misconduct, ethical violations, fabricating documents, and various other alleged misdeeds. The Tribunal denied the motions and provided Complainant a second warning regarding abusing the litigation process:

> In light of Complainant's pro se status, the undersigned will provide Complainant a final opportunity to comply before imposing a filing restriction in this matter. *A party's pro se status, however, is not an invitation to abuse the litigation process.* Accordingly, the undersigned **INSTRUCTS** Complainant that if he continues to file such excessive pleadings, the undersigned will enjoin Complainant from filing future motions or pleadings other than his pre-hearing filings or any responses to motions filed by Respondent unless he first obtains leave of the undersigned.

(Order Ruling on Pending Mots. at 3, May 28, 2025) (*emphasis added.)* The Tribunal also set a discovery schedule and a schedule for the submission of evidence because the parties were unable to agree to a schedule without the Tribunal's intervention. (Disc. & Evid. Submission Schedule, May 28, 2025.)

A few days later, another flurry of motions from Complainant began. The first motion was Complainant's Motion for Recusal of Administrative Law Judge Stewart Alford, which was docketed on June 2, 2025. In his Reply to Respondent's Objection to Motion for Recusal, Complainant also moved for a stay of the proceedings to allow an investigation into counsel for Respondent by the Office of Attorney Regulation Counsel in Colorado. (Reply to Resp't's Obj. to Mot. for Recusal and Req. for a Stay on Proceedings while Opposing Counsel is Under Investigation at 1-2, 10, June 16, 2025.) The Tribunal denied the motion in a substantive Order and did not stay the matter. (Order Den. Mot. to Recuse, June 17, 2025.) Next, Complainant filed the following: (1) Request for Leave to Issue and Serve Subpoena for Non-Party Witnesses (July 2, 2025); (2) Request for Leave to File Motion Asking the Court to Allow the Taking of Depositions Remotely (July 2, 2025); and (3)

Request for Leave to File a Motion for Reconsideration for the Motion to Recuse Judge Stewart Alford (July 7, 2025). The Tribunal's staff did not issue the subpoenas, and the Tribunal denied the other motions, including the request to reconsider recusal. (Order Den. Mot. to Recons., July 9, 2025; Order Den. Mot. for Remote Dep., July 9, 2025.)

The flood continued. In the intervening two weeks, Complainant filed the following motions: (1) Motion for Discovery Stipulation Extending the Deadlien (sic) for Fact Discovery (July 15, 2025); (2) Request for Leave to File Stipulation Request for Taking of Depositions (July 15, 2025); (3) Request for Leave to File Motion to Issue Subpoena(s) Duces Tecum (July 18, 2025); (4) Motion to Compel Production of Attorney-Client Communications Pursuant to the Crime Fraud Exception to Attorney-Client Privilege (July 21, 2025); (5) Request for Leave to File Motion to Compel Initial Disclosures (July 21, 2025); (6) Request for Leave to File Objections to In the Matter of Deposition Dates (July 21, 2025); (7) Permission to File Reply Brief on the Crime-Fraud Response (July 23, 2025); and (8) Motion to Expedite Proceedings (July 23, 2025).

The Tribunal then denied several motions, including Complainant's Motion to Compel Production of Attorney-Client Communications Pursuant to the Crime Fraud Exception to Attorney-Client Privilege. (Order Ruling on Pending Mots. Imposing Future Filing Limation on Complainant and Setting Matter for Mot. Hr'g at 6-8, July 25, 2025.) The Tribunal specifically explained in this Order how many of the motions Complainant filed were frivolous and designed only to harass opposing counsel and Respondent:

> The filings by Complainant related to the request for the undersigned to order Respondent to turn over all attorney-client communications for the undersigned's review are a prime example of the type of frivolous, inflammatory filings that Complainant has filed since this matter was assigned to the undersigned. Complainant continues to file motion after motion with little or nothing to do with adjudicating the underlying Taxpayer First Act and the Affordable Care Act whistleblower claims. He continues to file these motions despite the undersigned's prior denial of motions related to the same issues, and he has paid no heed to the undersigned's prior warnings regarding such filings.

(*Id.* at 7-8.) As the Tribunal explained, Complainant continued to seek the same relief repeatedly despite the Tribunal's prior rulings, alleging false conspiracies and allegations of misconduct by opposing counsel, the Tribunal, and even the court reporter when the Tribunal denied his requested relief.

The July 25, 2025, Order also imposed a limited, future filing restriction on Complainant after considering the relevant factors set forth by the United States Court of Appeals for the Tenth Circuit.[3] (*Id.* at 13-14.) The Tribunal found that:

> The undersigned warned Complainant on two prior occasions that if he continued to flood this tribunal with filings lacking in legal merit, the undersigned would impose a filing restriction. These warnings had no impact, and Complainant continued to file motions, often requesting the same relief multiple times in different ways after the undersigned denied the relief. He has continued to levy accusations of misconduct in his filings against both opposing counsel and the undersigned. These filings often mischaracterize the applicable legal authority and lack any basis in law or fact. Complainant's actions have brought this matter, as well as the hundreds of other cases pending before the undersigned, to a halt, as the undersigned must address a new stream of filings every week. As a result of Complainant's actions, the undersigned is unable to effectively and efficiently manage neither this case nor the rest of the undersigned's cases. Although Complainant is not represented in this matter, his pro se status is not an excuse to abuse the litigation process. Complainant's ongoing actions after being previously warned of the consequences leave the undersigned with no option other than to limit the filings Complainant can make in this matter.

(*Id.* at 13-14.) The Tribunal then reviewed filings for frivolity consistent with the July 25, 2025, Order and did not docket frivolous pleadings in an attempt to limit the filings from

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3 The Tribunal notes that unlike a U.S. District Court, the Tribunal has no ability to strike pleadings because once a pleading is filed in OALJ's eFile system and docketed in CTS, the Tribunal's staff cannot strike it from CTS like a U.S. District Court Judge can strike pleadings from the docket in PACER. This leaves administrative law judges at OALJ with fewer tools for managing abusive litigants than a U.S. District Court. OALJ also operates by e-filing only, allowing for a single abusive litigant to quickly take advantage of the OALJ's system to harass the opposing side with abusive filings that cannot be stricken from the record once docketed. The potential use of generative AI has only magnified this problem, as this case demonstrates.

Complainant. In addition, the Tribunal compelled the deposition of a corporate representative. (*Id.* at 2.)

The matter came before the Tribunal for a lengthy motion hearing regarding depositions on July 30, 2025. The Tribunal denied Respondent's request for sanctions but compelled Complainant's attendance at a deposition on a specific date. (Order Addressing Depositions, July 30, 2025.) The Tribunal warned Complainant that "The failure to comply with this Order and attend the deposition may result in the dismissal of this action or other appropriate sanctions." (*Id.* at 1.)

The Tribunal held a second motion hearing on September 5, 2025, to address three motions filed by Complainant that the Tribunal docketed and allowed. (Order Setting Mot. Hr'g, Sept. 2, 2025.) After another lengthy motion hearing, the Tribunal entered an Order addressing the oral rulings at hearing. (Order Addressing Mots., Sept. 9, 2025.) A few weeks later, the Tribunal also lifted the filing limitation set in place in the July 25, 2025, Order. (Order Lifting Filing Limitation, Sept. 30, 2025.) The Tribunal noted in the Order lifting the filing limitation that, "Since imposing the restriction, the Tribunal has had to reject a number of subsequent filings and motions while allowing countless others. In short, the restriction did little to impact the Complainant's course of conduct in this matter." (*Id.* at 1.) The Tribunal further explained that "Complainant's false allegations against the Tribunal, and the continued filing of frivolous motions such as these, is what led to the filing restriction in the first place." (*Id.* at 2.) The Tribunal then lifted the filing restriction, noting that screening Complainant's motions has not proved effective for its intended purpose of stemming Complainant's frivolous filings. (*Id.*) The Order, however, warned Complainant that:

> if Complainant continues to abuse the judicial process with his filings the Tribunal will consider dismissing this matter with prejudice. *See* 29 C.F.R. § 18.12(b)(10) (ALJs may "take any appropriate action authorized by the [Federal Rules of Civil procedure]" in exercising "all powers Complainant has filed numerous motions and pleadings alleging misconduct against counsel for Respondent requesting various relief, which the Tribunal has denied. necessary to conduct fair and impartial proceedings"); *Keller v. Pittsburgh Baptist Church*, ARB Case No. 20250008, 2025 WL 2400050, at *4 (DOL Admin. Rev. Bd. July 30, 2025) (ALJs possess an inherent power "to manage their own affairs so as to achieve the orderly and expeditious disposition of cases," which includes the power to "'appropriate[ly] sanction for conduct which abuses the judicial process,'" including outrightly dismissing a case.")

(*Id.* at 2-3.)

After being provided this warning regarding the potential of dismissal if Complainant continued to abuse the judicial process, Complainant proceeded to again inundate the Tribunal with motions and pleadings, a number of which are drafted with the assistance of generative AI (GenAI) tools to provide purported legal authority. Many of these pleadings make disparaging remarks about opposing counsel, the court reporter, the Tribunal, and rehash the same issues repeatedly – issues that are often irrelevant to the TFA and ACA. The use of AI-generated legal authority only adds to the problem. As the Tribunal pointed out in the September 30, 2025, Order Lifting Filing Limitation:

> like many of the prior motions filed by Complainant, [the motion] contains inaccurate legal citations, including quotations that either do not exist or do not contain the actual quoted language. (*See, e.g., Complainant's Mot. for Official Notice* at 2, Sept. 24, 2025) (citing a nonexistent subsection of 29 C.F.R. § 18.84 and quoting language that does not exist in Section 18.84.)) Complainant's brief also misrepresents the holding of *Nat'l Assoc. of Waterfront Employers v. Solis*, 665 F. Supp. 2d 10 (D.D.C. 2009).

(*Id.* at 1-2.)

Complainant continued to repeatedly address these issues regardless of how many times the Tribunal rules on them, irrespective of whether the Tribunal cites legal authority for the Tribunal's position, and despite the Tribunal's warnings to cease such repetitive, abusive filings.[4] The Tribunal now turns to the pending pleadings and the Tribunal's prior Orders.

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4 For example, the Tribunal has repeatedly held that neither party has demonstrated that this

Tribunal has the authority to issue third party subpoenas. (*See, e.g.*, Order Ruling on Pending Mots.

Imposing Future Filings Limitations on Complainant and Setting Matter for Mot. Hr'g at 10-11) ("However, the undersigned's subpoena power is not universal, as the Administrative Procedure Act and Section 18.56(a) make clear; it must come from the affiliated statue, law, or regulation. *Fagan v. Dep't of the Navy*, ARB Case No. 2023-0006, 2024 WL 1091871, at *5 (Feb. 28, 2024).") Yet, Complainant continues to file pleadings citing 29 C.F.R. § 18.56(a) without reference to *Fagan*. In motion after motion Complainant continues to rehash the same issue the Tribunal has ruled on; when the Tribunal denies a motion filed by Complainant, he alleges bias and collusion between

II. Analysis

Administrative law judges have the inherent authority to "manage the orderly and expeditious disposition of their cases. . . ." *Mitchell v. Warren Paving, Inc.*, ARB Case No. 2024-0047, 2025 WL 2651206, at *3 (DOL Admin. Rev. Bd. Aug. 7, 2025.); *see also* 29 C.F.R. § 18.12(b)(10) (administrative law judge's may "take appropriate action authorized by the [Federal Rules of Civil Procedure].") This authority includes the discretion to sanction a party for discovery abuses. *Dochterman v. Res. Realizations*, 56 F. App'x 455, 458 (10th Cir. 2003); *see also* *Mathews v. Labarge*, ARB Case No. 08-038, 2008 WL 5079140, at *2 (DOL Admin. Rev. Bd. Nov. 26, 2008) (affirming dismissal by ALJ for failing to comply with discovery orders); *Lear v. GFL Env'l.*, ARB Case No. 2024-0045, 2025 WL 1634434, at *5 (DOL Admin. Rev. Bd. May 19, 2025). In addition to discovery abuse, Rule 41(b) allows for the dismissal for failure to prosecute *or* the failure to comply with court orders. Fed. R. Civ. P. 41(b). Such dismissal under Rule 41(b) for failure to comply with a court order may be *sua sponte*; a motion from the opposing side is not required. *Kyte v. Colorado*, No. 23-1369, No. 23-1371, 24 WL 159929, at *1 (10th Cir. 2024) (affirming dismissal of action for violating filing restriction that required first obtaining leave of court because of prior frivolous filings); *Nitka v. Nelnet, Inc.*, 809 F. App'x 491, 494-5 (10th Cir. 2020); *Rogers v. Andrus Transp.* Servs., 502 F.3d 1147, 1151 (10th Cir. 2007). The Administrative Review Board has recognized an administrative law judge's ability to rely on Rule 41(b) to dismiss a case where the case satisfies the relevant factors. *See Terry v. Tenn. Valley Auth.*, ARB Case No. 03-024, 2004 WL 1475513, at * 2 (DOL Admin. Rev. Bd. June 25, 2004) (affirming dismissal for failure to comply with orders).

Because of the severe nature of dismissal as a sanction, administrative law judges, like district courts, should only utilize dismissal where a lesser sanction would not serve the ends of justice. *Dochterman*, 56 F. App'x 455 at 549. Dismissal with prejudice is appropriate only in the case of willfulness, bad faith, or where there is some fault on the party of the party

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the Tribunal, opposing counsel, and the court reporter, as well as false allegations of *ex parte* communications.

being sanctioned. *The Proctor & Gamble Co. v. Haugen*, 427 F.3d 727, 738 (10th Cir. 2005); *see also Keller v.*
Pittsburgh Baptist Church, ARB Case No. 2025-0008, 2025 WL 2400050, at *5 (DOL Admin. Rev. Bd. July 30, 2025) (the factor of culpability, willfulness, or bad faith "must be met prior to a case's dismissal with prejudice[.]"). "In many cases, a lesser sanction will deter the errant party from further misconduct. Because dismissal with prejudice defeats altogether a litigant's right to access to the courts, it should be used as a weapon of last, rather than first, resort." *Ehrenhaus v. Reynolds*, 965 F.2d 916, 920 (10th Cir. 1992) (internal citation and quotation omitted).

Prior to dismissing a case as a sanction, a court should consider five factors: (1) the degree of actual prejudice to opposing party; (2) the extent that the actions have interfered with the judicial process; (3) the culpability of litigant; (4) whether the litigant was provided a warning that dismissal was likely sanction for noncompliance; and (5) whether a sanction less severe than dismissal would be effective. *Gripe v. City of Enid, Okla.*, 312 F.3d 1184, 1189 (10th Cir. 2002); *Dochterman*, 56 F. App'x at 459; *Gross v. Gen. Motors LLC*, 441 F. App'x 562, 565 (10th Cir. 2011); *Richardson v. Safeway, Inc.*, 109 F. App'x 275, 278 (10th Cir.
2004); *see also Lear*, 2025 WL 1634434, at *6 (setting forth the same five factors for consideration).[5] The Tenth Circuit has applied this standard for dismissal for failure to comply with discovery orders, failure to comply with non-discovery court orders under Rule 41(b), and failure to prosecute under Rule 41(b). *Olsen*, 333 F.3d 1199, 1204 (10th Cir. 2003) (Rule 41(b)); *Gripe*, 312 F.3d at 1189 (discovery); *Rogers*, 502 F.3d at 1152 (Rule 41(b) dismissal for failure to prosecute).

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5 The Administrative Review Board has also set forth a non-exhaustive list of seven factors to consider prior to dismissal. *Keller*, 2025 WL 2400050, at *5 (surveying factors in each circuit under Rule 41(b) and for discovery abuse). These factors include: (1) the culpability of the non-compliant party; (2) whether the Tribunal warned the non-complainant party; (3) the ability of less drastic sanctions; (4) whether the party failed to comply an order; (5) whether the non-complainant party engaged in dilatory conduct; (6) whether there was prejudice to the opposing party; and (7) the interference with the judicial process. *Keller*, 2025 WL 2400050, at *5; *Rico v. Warren Paving, Inc.*, ARB No. 2024-0047, 2025 WL 2651206, at *3-4 (DOL Admin. Rev. Bd. Aug. 7, 2025).

Where the totality of these factors outweighs the judicial system's strong preference for resolving cases on the merits, dismissal as a sanction is appropriate. *Ehrenhaus*, 965 F.2d at 921; *Rogers*, 502 F.3d at 1152. The test is not a rigid one, and administrative law judges should consider these factors on the record. *Gripe*, 312 F.3d at 1189; *Ehrenhaus*, 965 F.2d at 921; *Gross*, 441 F. App'x at 565; *Lear*, 2025 WL 1634434, at *6.

Since this matter was docketed at OALJ in February, Complainant has engaged in a series of abusive filings that have disrupted not just the adjudication of this matter but also the hundreds of other cases on the Tribunal's dockets.[6] The sheer volume of frivolous filings from Complainant are well documented in this Order and the numerous other Orders previously entered by the Tribunal in this matter. The Tribunal first attempted a lesser sanction than dismissal by imposing a filing restriction, but this restriction did not slow the tide of filings and resulted in a strain on the Tribunal to screen the numerous filings before they could be docketed. In the Order lifting the filing restriction, the Tribunal warned Complainant that further abusive, excessive, frivolous filings would result in the dismissal of this matter, but Complainant paid no heed to this warning. Instead, Complainant began to abuse this process even more. The Tribunal will highlight just a few of the many examples of such filings after the Tribunal lifted the stay.

Complainant filed pleadings falsely accusing the Tribunal and opposing counsel of *ex parte* communications and "collusion."[7] (Resp. to the Resp't Compliance Mot. at 3, Sept. 24, 2025.) This same filing accuses the court reporter of similar fabricated unethical conduct. (*Id.* at 3-4, 8-9.) In the exhibits that Complainant attaches to this pleading, he insults Michelle Bayley of Bayley Reporting, Inc., stating: "As the designated court reporting agency for the Department of Labor, you may want to know what you're talking about before you start speaking. Although, I think we both know that you already do." (Resp. to the

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6 The Tribunal manages over five hundred cases with limited staff.

7 The Tribunal acknowledges that this motion was filed while the filing restriction was in place and was one of the motions pending at the time the Tribunal lifted the filing restriction. The Tribunal docketed this motion after ending the screening process.

Resp't Compliance Mot., EX 1 at 3.)

In a subsequent filing, Complainant alleges that the Tribunal, Bayley Reporting, and opposing counsel are conspiring to create a second case record. (Complainant's Mot. for Clarification & for a Finding that Further Discovery is Futile due to Prejudice at 9, Nov. 18, 2025.) This filing also continues to rehash the issue of third party subpoenas the Tribunal addressed in prior Orders. (*See* Order Ruling on Pending Mots. Imposing Future Filings Limitations on Complainant and Setting Matter for Mot. Hr'g, at 10-11.)

Complainant makes similar allegations in other filings. In his Objection to Respondent's Supplemental Motion to Compel Interrogatories, Complainant states: "This suggests the court has their hands involved in this direction provided, likely done during one of the ex parte communications made, that this court still denies engaging in, yet implies that counsel has this extraordinary mind ability to just know certain things when counsels struggle with calculating time and dates properly." (Objection to Respondent's Supplemental Motion to Compel Interrogatories at 5, Dec. 3, 2025.) And in an exhibit to one of his recent motions again requesting sanctions against opposing counsel, Complainant attaches an October 24, 2025, email he sent opposing counsel stating that he filed a complaint with the Supreme Court, stating to opposing counsel that "youre [sic] not getting off that easily." (Complainant's Mot. for Sanctions against Resp't's Counsel for a Pattern of Misrepresentation, EX 3, Nov. 26, 2025.)

Complainant filed a Motion informing the Court of Rule 30(b)(6) Termination in which he states:

> Ms. Levine is heavily into buying and re-selling real estate, more than likely using the stolen wages from her employees to do it. . . The Respondent need to hire someone who wouldn't ask too many questions and who wouldn't follow the rules. Given [opposing counsel's] track records during these proceedings, it was second nature to him to engage in unethical practices. . . If [opposing counsel] was so ready and willing to assist his client carry out criminal violations during litigation, it is near certain he as assisted his client do the same outside of litigation . .

(Mot. Informing Court of Rule 30(B)(6) Termination at 6, Oct. 30, 2025.) Complainant has made similar unsubstantiated ethical attacks against opposing counsel in filing after filing despite the Tribunal's prior warnings and Orders, including a warning that the Tribunal may dismiss this matter if he continues to abuse the judicial process with his filings. Despite the Tribunal's warnings, Complainant continues to levy serious, unsubstantiated charges of criminal conduct against an attorney trying to represent his client in this matter.

On October 30, 2025, Respondent filed a Notice of Threat. (Notice of Threat, Oct. 30, 2025.) The filing contained a copy of the October 29, 2025, email from Complainant to opposing counsel with the subject "Pinocchio Pitler." (*Id.*) Complainant states in the email to opposing counsel:

> Jsut [sic] remember, wven [sic] if I lose this whistblower [sic] case, you client is still fucked. She wont [sic] get awa [sic] with escaping accountability just like you wont [sic] either.
>
> Cute staged picture by the way.
>
> You really think Im [sic] not gonna provide the court the video?
>
> Youre [sic] starting to bust at the seams Robert. Id [sic] be more mindful if I were you.

(*Id.*) In response Complainant submitted his notice of a complaint to the Denver Auditor's Office (Obj. & Clarification on Notice of Threat, EX 1, Oct. 30, 2025.) In his response pleading Complainant warned opposing counsel to "be mindful of what might be in his closet and stop placing his lies and fabrications in mine." (Obj. & Clarification on Notice of Threat at 2.)

After the Tribunal had held a lengthy hearing to address the depositions, specifically a corporate representative and the scope of such testimony,
Complainant unilaterally terminated the deposition before it could begin over his demand that a laptop be placed directly in front of the deponent rather than having his image be shown on the Zoom camera. (Complainant's Mot. Informing Court of
Rule 30(B)(6) Termination at 3; Resp't Resp. to Claimant's Mot. Informing the Court of Rule 30(b)(6) Termination at 1, Nov. 25, 2025; Complainant's Obj. & Resp. in Opp'n to Resp't's Mot. to Dismiss EX 1; Levin Aff. at 2, Oct. 29, 2025; Figueroa Aff at 2, Oct. 29, 2025.) As a result, no deposition occurred despite the judicial resources devoted to a lengthy hearing, and numerous pleadings to address the depositions.

Complainant also included as deposition topics for the corporate representative for Respondent, Zhanna Levin, questions about her daughter, questions about her home, the color of the car she drives, and other abusive questions.[8] (Res't's Mot. for Protective Order, at 1-2, Oct. 26, 2025; Levin Aff. at 12.) According to Levin, the threats and harassment from Complainant occurring as part of this litigation are causing her to fear for her safety and her family's safety because Complainant knows her home address. (Levin Aff. at 1-2.) Complainant engaged in similar abusive, bullying conduct with Pike Reporting Company in October. (*See* Resp't's Mot. for Order Dismissing Claimant's Case because of the

Willful Failure to Provide Disc. & for Abusive Conduct ("Mot. to Dismiss"), Ex 2, Oct. 29, 2025.)

As for written discovery, Respondent served Complainant with

interrogatories on September 2, 2025. (Complainant's Obj. to Resp't's Supp. Mot. to Compel Interrog. Ex 4.) Complainant initially responded that he would not provide responses until Respondent received his "request for Documents . . . ." (*Id.* at 2.) Complainant objected under 29 C.F.R. § 18.60 in a series of emails with opposing counsel. (Complainant's Obj. to Resp't's Supp. Mot. to Compel Interrog. Ex 1.) Respondent then provided amended interrogatories in an attempt to resolve
Complainant's objections, removing some of the interrogatories. (Complainant's Obj. to Resp't's Supp. Mot. to Compel Interrog. Ex 2.) Complainant maintained his objections, and

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8 These questions, and other non-appropriate topics, necessitated Respondent's Motion for Protective Order.

he subsequently returned the interrogatories but did not provide any substantive answers. (*See* Resp't's Suppl. to Previous Mot. to Compel the Answering of Interrogs., EX A; Complainant's Resp. & Obj. to Mot. Compel Interrog., Ex 2., Nov. 29, 2025; Complainant's Obj. to Resp't's Supp. Mot. to Compel Interrog. Ex 3; Complainant's Mot. for Sanctions against Resp't's Counsel for a Pattern of Misrepresentation, EX 4.)[9]

Considering the relevant factors, dismissal is warranted in this case. As an initial matter, Complainant's conduct has prejudiced Respondent. Respondent has been forced to respond to Complainant's pleadings and allegations of unethical conduct, as well as spend resources defending against repeated false claims of *ex parte* communications with the Tribunal and collusion with the Tribunal. Complainant continues to make these allegations despite the Tribunal's prior rulings and despite prior warnings. In addition, these pleadings continue to raise other *resolved* issues over and over again despite the Tribunal's prior rulings. Complainant has also failed to respond to interrogatories, preventing Respondent from obtaining discovery.

Of the factors for consideration, one of the most significant that weighs in favor of dismissal is the extent to which Complainant's actions have interfered with the judicial process. The Tribunal has documented the interference with the judicial process in prior Orders. (*See, e.g.,* Order Ruling on Pending Mots. Imposing Future Filing Limation on Complainant and Setting Matter for Mot. Hr'g.) Complainant's actions have not only interfered with the ability to adjudicate this matter but have impacted the hundreds of other cases on the Tribunal's dockets because of the resources dedicated to address Complainant's excessive, frivolous, and abusive motions. Complainant has continued to interfere with this judicial process, in violation of the Tribunal's prior Orders warning Complainant against doing so. In addition, rather than litigate the claims at issue, Complainant has used this

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9 Complainant's Response and Objection to Motion to Compel Interrogatory, like many of the prior filings, contains large portions of what appears to be significant amounts of AI generated legal citations from various jurisdictions, including courts in Puerto Rico and New Jersey.

forum to attempt to intimidate, harass, and threaten witnesses for Respondent, as well as counsel for Respondent. In addition, Complainant has sent harassing emails to the court reporter, further abusing the judicial process. Many of Complainant's excessive, frivolous motions make disparaging remarks against opposing counsel, and he continues to make false claims of collusion against this Tribunal, opposing counsel, and the court reporter rather than litigate the claims at issue. Complainant's actions have prevented the adjudication of this matter and weight strongly in favor of dismissing this matter.

These actions are also not the result of negligence on the part of Complainant. Complainant's actions were willful and designed to intimidate opposing counsel Respondent. Not only were his actions intentional, but he continued to engage in the conduct after being warned that dismissal was a likely sanction for noncompliance. The Tribunal's warnings had no impact on Complainant's actions. In fact, the warnings apparently only intensified Complainant's threats and abusive conduct.

Finally, no lesser sanction would be effective. The Tribunal attempted to impose a filing restriction to no avail. During this litigation, Complainant has demonstrated a pattern of abusive conduct and refusal to comply with the Tribunal's Orders. Complainant has used this proceeding to harass Respondent and opposing counsel and has intentionally abused the judicial process, prejudicing Respondent. He also harassed the court reporter. He has used this forum to falsely accuse the Tribunal and opposing counsel of engaging in *ex parte* communications in this matter. From the early days of this litigation Complainant has intentionally prevented the inexpensive and efficient adjudication of this matter, despite the Tribunal's warnings. Considering the relevant factors, the Tribunal finds that dismissal is warranted in this matter. The Tribunal **DISMISSES** this matter.

III. Conclusion

The Tribunal **DISMISSES** this matter. The Tribunal **VACATES** the March 5, 2026, hearing and all associated deadlines.

SO ORDERED.

/s/ STEWART F. ALFORD

Administrative Law Judge

APPENDIX C — ORDER OF DISMISSAL (ARB-APRIL 17, 2026)

U.S. Department of Labor Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

IN THE MATTER OF:

JOSEPH GALLEGOS,

COMPLAINANT,

v.

A PLUS PERSONAL CARE PROVIDER, LLC,

RESPONDENT.

ARB CASE NO. 2026-0015

ALJ CASE NO. 2025-TAX-00009
ALJ STEWART F. ALFORD

DATE: April 17, 2026

Before BURRELL and KIKO, Administrative Appeals Judges

ORDER OF DISMISSAL

This case arises under the employee protection provisions of the Taxpayer First Act (TFA) and its implementing regulations.[1] On December 19, 2025, Complainant Joseph Gallegos filed a Petition for Review with the Administrative Review Board (ARB or Board) seeking review of an Order Dismissing Matter issued by Administrative Law Judge (ALJ) Stewart F. Alford. On January 15, 2026, the Board issued a Notice and Order (Briefing Order) accepting this matter for review.

On April 15, 2026, Complainant filed a Motion for Voluntary Withdrawal of

Complaint and Dismissal with Prejudice (Withdrawal Motion). In the Withdrawal Motion, Complainant stated that he "has determined that further pursuit of this administrative claim is futile and would result in an unnecessary expenditure of resources for both Complainant and the Board. Accordingly, Complainant seeks to voluntarily withdraw the complaint and have this matter dismissed with prejudice."[2] Complainant also included a certification that the Withdrawal Motion

"is not based upon, and is not a part of, any settlement agreement between

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1 26 U.S.C. § 7623(d); 29 C.F.R. Part 1989 (2025).

2 Withdrawal Motion at 1-2.

Complainant and Respondent."[10] In addition to requesting that the Board grant his voluntary withdrawal and dismiss the case with prejudice, Complainant requested that the board find "that the complaint was not brought in bad faith and close the case."[11][12]

The TFA regulations provide that, "[i]f the case is on review with the ARB, a party may withdraw a petition for review of an ALJ's decision at any time before that decision becomes final by filing a written withdrawal with the ARB."[5] The regulations further provide that "[i]f the ARB approves a request to withdraw a

petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's decision will become the final order of the Secretary."[13]

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10 Id. at 4.

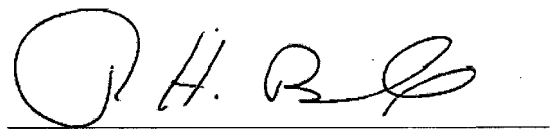
11 Id.

12 C.F.R. § 1989.111(c).

13 Id.

After reviewing the Withdrawal Motion and the other materials filed in this case, we have determined to grant Complainant's request to withdraw his petition for review. We need not and do not address his request that the Board find that his complaint was not brought in bad faith. Accordingly, we **GRANT** Complainant's Withdrawal Motion and **DISMISS** the appeal.

SO ORDERED.



THOMAS H. BURRELL
Administrative Appeals Judge

APPENDIX D — ORDER (ARB APRIL 22, 2026)

U.S. Department of Labor Administrative Review Board 200
Constitution Ave. NW
Washington, DC 20210-0001

IN THE MATTER OF:

JOSEPH GALLEGOS,

COMPLAINANT,

v.

A PLUS PERSONAL CARE PROVIDER, LLC,

RESPONDENT.

ARB CASE NO. 2026-0015

ALJ CASE NO. 2025-TAX-00009
ALJ STEWART F. ALFORD

DATE: April 22, 2026

Before BURRELL and KIKO, Administrative Appeals Judges

ORDER

This case arises under the employee protection provisions of the Taxpayer First Act and its implementing regulations.[1] On December 17, 2025, a United States Department of Labor Administrative Law Judge (ALJ) issued an order (ALJ Order) dismissing the complaint of Complainant Joseph Gallegos for abuse of the judicial process. Complainant filed a Petition for Review with the Administrative Review Board (ARB or Board), seeking review of the ALJ Order.

Since initiating this appeal, Complainant has filed several motions and other filings with the Board, some of which the Board has already addressed in previous orders. Currently, the briefing in this matter is stayed pending the Board's resolution of issues dealing with Complainant's use of artificial intelligence in his submissions to the Board.

On April 15, 2026, Complainant filed a Motion for Voluntary Withdrawal of Complaint and Dismissal with Prejudice (Motion for Voluntary Withdrawal),

[1] 26 U.S.C. § 7623(d); 29 C.F.R. Part 1989 (2025).

stating that he "has determined that further pursuit of this administrative claim is futile and would result in an unnecessary expenditure of resources for both Complainant and the Board. Accordingly, Complainant seeks to voluntarily withdraw the complaint and have this matter dismissed with prejudice."

Upon receipt of the Motion for Voluntary Withdrawal, the Board began drafting an Order of Dismissal. However, before the Board issued the draft Order of Dismissal, Complainant filed a Motion to Withdraw Withdrawal on April 17, 2026. In the Motion to Withdraw Withdrawal, Complainant stated that he had changed his mind and no longer wished to withdraw his appeal.

Consequently, the Board elected not to issue the draft Order of Dismissal on April 17, 2026. However, due to an inadvertent technical issue with transmitting orders and the confusion created by the timing of Complainant's back-to-back motions, the Office of Administrative Law Judges (OALJ) uploaded a copy of

the draft Order of Dismissal to its Case Tracking System (CTS) on April 17, 2026, which inadvertently delivered a copy of the draft Order of Dismissal to the parties via the Electronic Filing and Service (EFS) System.

Having apparently received a copy of the draft Order of Dismissal, Complainant filed a Motion for Reconsideration and to Reinstate Petition for Review (Motion for Reconsideration) on April 20, 2026, asking for the Board to reinstate his appeal. Complainant then filed a Motion to Vacate Order Purportedly Issued by the Administrative Review Board Through the Office of Administrative Law Judges Portal; Request for Determination on Proper Jurisdiction and Authority; and Request for Immediate Investigation of Procedural Irregularities (Motion to Vacate) on April 21, 2026, and a "Brief Regardign the ALJ's Cont Rol of the ARB Docket in Case ARB-2026-0015" [sic] (Brief Regarding ALJ's Control) on April 22, 2026. Both filings likewise address the distribution of the draft Order of Dismissal, ask the Board to vacate the draft Dismissal Order, ask the Board to investigate the issuance thereof, and ask for other relief and action by the Board.

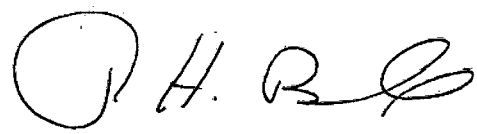
The Board did not issue or serve the draft Order of Dismissal and has not yet dismissed this appeal. Complainant asked to withdraw his request to withdraw his appeal before the Board dismissed the case. Although OALJ inadvertently distributed a draft Order of Dismissal, that draft was not final and is void. Accordingly, we **GRANT** Complainant's Motion to Withdraw Withdrawal and clarify that this appeal has not been dismissed. The draft Order of Dismissal will be removed from the OALJ docket.

Accordingly, we also **DENY** Motion for Reconsideration and Motion to Vacate. Because we have not dismissed this appeal, both Motions are moot and the Board does not intend to take any further action on Complainant's Motion for Reconsideration, Motion to Vacate, or Brief Regarding ALJ's Control.

In addition, we note that Complainant accused the ARB and the ALJ of several serious improprieties regarding the handling of this appeal and the distribution of the draft Order of Dismissal in his Motion to Withdraw Withdrawal, Motion for Reconsideration, Motion to Vacate, and Brief Regarding ALJ's Control. Complainant's allegations are meritless and are rejected.

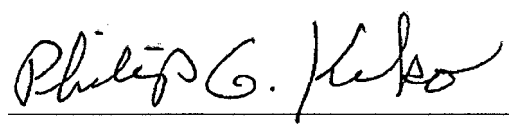
We will address the outstanding issues in this appeal in due course.

SO ORDERED.



THOMAS H. BURRELL

Administrative Appeals Judge



PHILIP G. KIKO
Administrative Appeals Judge

APPENDIX E— ORDER (ARB- APRIL 28, 2026)

U.S. Department of Labor Administrative Review Board 200
Constitution Ave. NW
Washington, DC 20210-0001

IN THE MATTER OF:

JOSEPH GALLEGOS, **ARB CASE NO. 2026-0015**

COMPLAINANT, **ALJ CASE NO. 2025-TAX-00009**
ALJ STEWART F. ALFORD

v.

DATE:

A PLUS PERSONAL CARE PROVIDER, LLC,

RESPONDENT.

Before BURRELL and KIKO, Administrative Appeals Judges

ORDER

This case arises under the employee protection provisions of the Taxpayer First Act and its implementing regulations.[1] On December 17, 2025, a United States Department of Labor Administrative Law Judge (ALJ) issued an order (ALJ Order) dismissing the complaint of Complainant Joseph Gallegos for abuse process. Complainant filed a Petition for Review with the Administrative Review Board (ARB or Board), seeking review of the ALJ Order.

Since initiating this appeal, Complainant has submitted over 30 filings with the Board, some of which the Board has already addressed in previous orders. Currently, the briefing in this matter is stayed pending the Board's resolution of issues dealing with Complainant's use of artificial intelligence in his submissions to the Board.

On April 15, 2026, Complainant filed a Motion for Voluntary Withdrawal of Complaint and Dismissal with Prejudice (Motion for Voluntary Withdrawal),

[1] 26 U.S.C. § 7623(d); 29 C.F.R. Part 1989 (2025).

stating that he "determined that further pursuit of this administrative claim is futile and would result in an unnecessary expenditure of resources for both Complainant and the Board. Accordingly, Complainant seeks to voluntarily withdraw the complaint and have this matter dismissed with prejudice." However, on April 17, 2026, Complainant filed a Motion to Withdraw Withdrawal. In the Motion to Withdraw Withdrawal, Complainant stated that he had changed his mind and no longer wished to withdraw his appeal.

Due to an inadvertent technical issue with transmitting orders and the confusion created by the timing of Complainant's back-to-back motions, the Office of Administrative Law Judges (OALJ) uploaded a copy of a draft ARB Order of Dismissal to its Case Tracking System (CTS) on April 17, 2026, which inadvertently delivered it to the parties via the Electronic Filing and Service (EFS) System.

On April 22, 2026, the Board issued an order clarifying the posture of this appeal based on these events. We explained that the Board did not issue or serve the draft Order of Dismissal and has not yet dismissed this appeal. Although OALJ inadvertently distributed a draft Order of Dismissal, that draft was not final and is void.

Subsequently, Complainant has filed several documents with the Board. The Board has received Complainant's filings including his motions filed on April 23, 2026, and April 25, 2026.[14] The Board will proceed to address the outstanding issues in this appeal in due course.

SO ORDERED.

THOMAS H. BURRELL
Administrative Appeals Judge

PHILIP G. KIKO

14 Complainant has made several allegations about the accuracy of the Board's April 22 Order. We emphasize that nothing in the April 22, 2026 Order was false or otherwise inappropriate.

APPENDIX F — ORDER (ARB-JULY 8, 2026)

U.S. Department of Labor Administrative Review Board 200
Constitution Ave. NW
Washington, DC 20210-0001

IN THE MATTER OF:

JOSEPH GALLEGOS,

COMPLAINANT,

v.

A PLUS PERSONAL CARE PROVIDER, LLC,

RESPONDENT.

ARB CASE NO. 2026-0015

ALJ CASE NO. 2025-TAX-00009
ALJ STEWART F. ALFORD

DATE: July 8, 2026

Before BURRELL and KIKO, Administrative Appeals Judges

ORDER

This case arises under the employee protection provisions of the Taxpayer First Act and its implementing regulations.[1] On December 17, 2025, a United States Department of Labor Administrative Law Judge (ALJ) issued an order (ALJ Order) dismissing the complaint of Complainant Joseph Gallegos for abuse of process. Complainant filed a Petition for Review with the Administrative Review Board (ARB or Board), seeking review of the ALJ Order.

Since initiating this appeal, Complainant has submitted over 30 filings with the Board, some of which the Board has already addressed in previous orders. Currently, the briefing in this matter is stayed pending the Board's resolution of issues dealing with Complainant's use of artificial intelligence in his submissions to the Board.

On June 25, 2026, Complainant filed a motion with the Board, stating that on June 22, 2026, Complainant had filed a "Protective Petition for Review" with the

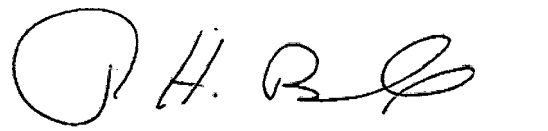
[1] 26 U.S.C. § 7623(d); 29 C.F.R. Part 1989 (2025).

Tenth Circuit Court of Appeals. In the motion, Complainant repeatedly indicated that he was uncertain as to whether the Board has issued a final decision in his case.[15] The only relief sought by Complainant's motion is for the Board to issue "an order acknowledging receipt of the court-stamped copy of the Protective Petition for Review."[3]

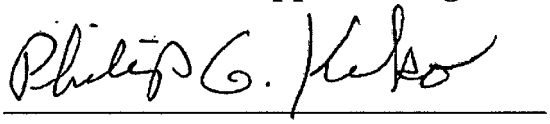
In response to Complainant's previous motions, the Board has twice stated in unambiguous terms that the Board has **NOT** dismissed this case or otherwise issued a final decision.[16] We take this opportunity to restate what we made clear in both the Order dated April 22, 2026, and the Order dated April 28, 2026: The Board has **NOT** dismissed this case or otherwise issued a final decision.

Since the relief Complainant has requested is not warranted, Complainant's motion is **DENIED**.[17] The Board will proceed to address the outstanding issues in this appeal in due course.

SO ORDERED.



THOMAS H. BURRELL
Administrative Appeals Judge



15 E.g., Motion at 2 ("This protective filing became necessary due to a series of ambiguous and contradictory orders issued by the Board, which have created substantial uncertainty as to the true status and finality of the proceedings below.") [3]

Id. at 1.

16 April 22, 2026 Order at 2; April 28, 2026 Order at 2.

17 Complainant points to 29 C.F.R. § 101.14 as legal authority for why the Board should grant his motion. This provision is a regulation relating to the National Labor Relations Board and is inapplicable to this case. Under the applicable Taxpayer First Act regulations, a copy of a file-stamped complaint must only be provided to the Board if a Complainant, pursuant to the Act's "kickout" provision, brings an action in the appropriate district court. *See* 26 U.S.C. § 7623(d)(2)(A)(ii); 29 C.F.R. § 1989.114 (permitting complainants to "kick out" their case to district court if the Department of Labor has not issued a final decision within 180 days).

APPENDIX G — REQUEST FOR LEAVE TO FILE SUPPLEMENTAL BRIEF ON JURISTICTION

IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOSEPH GALLEGOS,	)
Petitioner,	)
	)
v.	) No. [INSERT TENTH CIRCUIT CASE NUMBER]
	)
U.S. DEPARTMENT OF LABOR,	) ARB No. 2026-0015
ADMINISTRATIVE REVIEW BOARD,	) ALJ Case No. 2025-TAX-00009
Respondent.	)

MOTION FOR LEAVE TO FILE AMENDED MEMORANDUM BRIEF

Petitioner Joseph Gallegos, proceeding pro se, respectfully moves this Court pursuant to Fed. R. App. P. 27 and Tenth Circuit Local Rule 27.3 for leave to file the attached Amended Memorandum Brief in support of his Petition for Review.

STATEMENT OF REASONS

1. On June 24, 2026, Petitioner filed his Rule 27.3(B) Memorandum Brief addressing the Administrative Review Board's (ARB) lack of jurisdiction. The brief argued that the ARB dismissed the underlying case on April 17, 2026, thereby divesting itself of jurisdiction to issue further orders.
2. On July 8, 2026, fourteen days *after* Petitioner filed his opening brief, the ARB issued an "Order Denying Reconsideration." This new order is directly relevant to the jurisdictional issues before this Court, as it further demonstrates the ARB's continued assertion of jurisdiction after dismissing the case. This post-filing development could not have been included in the original brief.

3. The proposed Amended Memorandum Brief (attached as **Exhibit A**) incorporates the ARB's July 8 Order and adds three new arguments drawn from Petitioner's Objection filed with the ARB on July 9, 2026: (a) the logical impossibility of the ARB granting a motion to undo a withdrawal it claims never happened; (b) the jurisdictional error of the Office of Administrative Law Judges (OALJ) accepting a "draft" order as a final filing; and (c) the distinction between correcting a procedural error and improperly denying that an error occurred.
4. A letter of supplemental authority pursuant to Fed. R. App. P. 28(j) is insufficient. Rule 28(j) is limited to citing "pertinent and significant authorities" that have come to a party's attention after briefing. The proposed amendments do not merely add new case law; they incorporate a new factual development (the ARB's July 8 Order) and add new legal arguments.
5. The Tenth Circuit has held that Rule 28(j) is limited to advising the court of "new authorities" and cannot be used "to introduce any sort of new issue after briefing is complete." *Niemi v. Lasshofer*, 728 F.3d 1252, 1262 (10th Cir. 2013). Because the amended memorandum brief contains new arguments and factual developments—not merely new case citations—a formal motion for leave is required.
6. Amending the brief serves the interests of justice and judicial economy. A single, comprehensive amended brief will be more coherent and efficient for the Court to review than an original brief supplemented by subsequent filings. An amended brief avoids any potential inconsistency and provides the Court with one complete document outlining Petitioner's jurisdictional arguments.

7. Respondent will not be prejudiced. As of the date of this motion, Respondent has not yet filed a responsive brief. Granting leave to amend will not delay the proceedings or prejudice Respondent's ability to fully address the arguments. This is a pro se matter, and courts traditionally grant pro se litigants leniency in procedural matters. The Tenth Circuit has historically granted motions for leave to file supplemental briefs, including after oral argument. *See, e.g., Bd. of Educ. v. Nat'l Gay Task Force*, 469 U.S. 1203 (1985) (noting Tenth Circuit granted motion for leave to file supplemental brief after argument); *Sutton v. United Air Lines, Inc.*, 526 U.S. 1109 (1999) (same). The present circumstances—where a post-filing development directly affects the Court's jurisdiction—are even more compelling.

RELIEF REQUESTED

WHEREFORE, Petitioner respectfully requests that the Court grant this motion and accept the attached Amended Memorandum Brief (Exhibit A) for filing, and further order that it shall supersede and replace the Rule 27.3(B) Memorandum Brief filed on June 24, 2026.

Dated: July 9, 2026

Respectfully submitted,

/s/ Joseph Gallegos Joseph Gallegos, Pro Se 1409 S. Bellaire Street Denver, CO 80222 (303) 808-1891 Josiahghee18@gmail.com

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A). This motion contains approximately 900 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f). This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6).

/s/ Joseph Gallegos Joseph Gallegos, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2026, I electronically filed the foregoing Motion for Leave to File Amended Memorandum Brief with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Joseph Gallegos Joseph Gallegos, Pro Se

EXHIBIT A (Amended Memorandum Brief)

APPENDIX H- SUPPLEMENTAL MEMORANDUM ON JURISTICTION

United States Court of Appeals

for the

TENTH CIRCUIT

JOSEPH GALLEGOS

Petitioner,

v.

ADMINISTRATIVE REVIEW BOARD, et al.
UNITED STATES DEPARTMENT OF LABOR

SECRETARY OF LABOR
(in their official capacity)
UNITED STATES DEPARTMENT OF LABOR

A PLUS PERSONAL CARE PROVIDER LLC

Respondents.

Case No: 26-9556

JURISDICTIONAL STATEMENT

This supplemental brief addresses the threshold question of whether a "final order" from the Administrative Review Board ("ARB" or "Board") is a prerequisite for this Court to exercise jurisdiction. The relevant whistleblower statutes—26 U.S.C. § 7623(d) and 29 U.S.C. § 218c—contemplate judicial

review following a "final decision" or "final order." No valid final order exists in this case. An Administrative Law Judge ("ALJ") issued a dismissal order on April 16, 2026, but that order is void *ab initio* because the ALJ lacked jurisdiction while the case was under ARB review. The Board acknowledges it has not dismissed the case but has refused to vacate the void dismissal order and has taken no action on the merits since May 1, 2026. The Board then granted a nullified motion to rescind withdrawal—filed on the same day as the Order of Dismissal was served, but after the ALJ had already dismissed the case—creating the appearance that the case was never dismissed at all and denied the Motion for Reconsideration alleging the ALJ was controlling the docket while under review. The Case Status Details reflect the April 17, 2026, Order as the final agency decision with the denial of the motion for reconsideration the last filing reflected.

For the reasons set forth below, jurisdiction is nevertheless proper under the Administrative Procedure Act ("APA"), the futility doctrine, and the fundamental principle that an agency cannot benefit from its own misconduct.

ARGUMENT

I. A Void Order Cannot Serve as the Statutory "Final Order."

An order issued by a tribunal without jurisdiction is a legal nullity. *United States v. Bigford*, 365 F.3d 859, 866 (10th Cir. 2004) ("judgments rendered by a court lacking jurisdiction are void"). The ALJ's April 16, 2026 dismissal order was issued while the case was under active review by the ARB, divesting the

ALJ of jurisdiction. 29 C.F.R. § 24.110(b). The order is therefore void *ab initio*. A legal nullity cannot satisfy the statutory prerequisite of a "final order" necessary to trigger this Court's review. To hold otherwise would validate a jurisdictionally defective act and create an absurd result where an unlawful order is given legal effect.

II. The Board's Refusal to Vacate the Void Order Is a Reviewable "Final Agency Action."

The Board's decision not to vacate the void order is itself a discrete, reviewable agency action. This Court has held that a final agency action is one that "mark[s] the consummation of the agency's decision making process" and is one by which "'rights or obligations have been determined, or from which legal consequences will flow.'" *Colorado Farm Bureau Fed'n v. United States Forest Serv.*, 220 F.3d 1171, 1173 (10th Cir. 2000) (citations omitted). The Board's refusal to act marks the consummation of its decision on whether to correct the jurisdictional defect. That refusal determines Petitioner's rights—his case remains effectively dismissed by a void order—and legal consequences flow directly from it, as he is barred from pursuing his claims on the merits. This refusal is therefore a final, reviewable agency action.

III. The Futility Doctrine Excuses the Final Order Requirement.

Where an administrative process is so broken that it is "clearly useless," requiring adherence to its procedural prerequisites would be a meaningless formality. *McGraw v. Prudential Ins. Co. of Am.*, 137 F.3d 1253, 1264 (10th

Cir. 1998). The Board's misconduct has created a circular trap: its refusal to act prevents a final order from ever being issued, and the absence of a final order would, under the Board's logic, bar judicial review. The futility doctrine exists precisely to break such deadlocks by excusing the final order requirement when the agency's own actions have rendered the administrative process a sham. Even assuming arguendo that the ALJ's order was a draft accidentally issued, the futility of the administrative process is further demonstrated by the fact that the ALJ should never have possessed a draft dismissal order while the case was under ARB review. Under 29 C.F.R. § 24.110(b), once a petition for review is filed with the ARB and accepted, the ALJ's decision is inoperative unless and until the ARB issues an order adopting it. The ALJ does not review the Board's decisions, and the Board does not send draft orders to the ALJ for issuance. The ALJ possessing a draft dismissal order while the case was under ARB review reveals either unauthorized delegation of the Board's authority to a subordinate tribunal that had lost jurisdiction, or unauthorized access by the ALJ to the Board's internal workings. Either scenario demonstrates a breakdown in the separation of adjudicatory functions within the DOL that renders the process fundamentally unfair.

IV. The Statutory Kick-Out Provisions Confirm Congress Intended a Remedy for Inaction.

Both 26 U.S.C. § 7623(d) and 29 U.S.C. § 218c contain "kick-out" provisions allowing a claimant to file a *de novo* action in district court if the Secretary fails

to issue a final decision within a statutory timeframe. These provisions demonstrate a clear congressional intent that the *absence* of a final decision should trigger judicial review, not bar it. While these provisions direct claimants to district court, they underscore the principle that agency inaction should not leave a whistleblower without a judicial remedy. The APA's provisions for circuit court review of agency inaction provide a parallel path for holding the agency accountable when, as here, the issue is not merely delay but systemic misconduct on the administrative record.

V. The Board Cannot Benefit From Its Own Misconduct.

It is a fundamental principle of administrative law that an agency cannot benefit from its own misconduct. The Board created the current jurisdictional void by refusing to vacate the ALJ's unlawful order and by ceasing all action on the case. It cannot now use the resulting absence of a "final order" as a shield to deprive this Court of jurisdiction. To permit this would allow the Board to "insulate itself from judicial review" through its own procedural malfeasance, a result this Court has rejected. *Olenhouse*, 42 F.3d at 1573 n.22.

VI. The Board's Refusal to Act Is Arbitrary and Capricious and Independently Reviewable.

The Board's refusal to vacate the void order, compounded by its factually impossible explanation for the order's issuance, constitutes arbitrary and capricious agency action under 5 U.S.C. § 706(2)(A). This Court may set aside agency action where the agency has "offered an explanation for its decision that

runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view." *WildEarth Guardians v. National Park Serv.*, 703 F.3d 1178, 1184 (10th Cir. 2013). This claim is reviewable under the APA independent of whether a formal "final order" has been issued on the merits of the underlying whistleblower complaint.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court find that it has jurisdiction to hear this petition.

Dated: July 4, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), the undersigned hereby certifies that this petition complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A). This petition contains 1329 words, including the parts of the brief exempted by Fed. R. App. P. 32(f). This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

s/ Joseph Gallegos

APPENDIX I – SECRETARY'S MEMORANDUM BRIEF RESPONSE

THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JOSEPH GALLEGOS, Petitioner, v. (LABR No. 2025-TAX-00009) OSHA)) UNITED STATES DEPARTMENT OF LABOR, et al., Respondents.	No. 26-9556 (Department of Labor (except

SECRETARY OF LABOR'S MEMORANDUM BRIEF IN RESPONSE

The Acting Secretary of Labor ("Secretary"), through undersigned counsel, submits this Response pursuant to this Court's July 7, 2026 order, in which the

Court provided that Respondents may file responses pursuant to the guidelines of

Local Rule 27.3(B) "addressing the jurisdictional issue raised by the court's June

23, 2026 order and any jurisdictional arguments raised by Mr. Gallegos in [ECF

No. 10]." (ECF No. 11).[18]

[18] The Secretary is unaware of any prior or related appeals.

For the reasons explained below, Respondent United States Department of Labor ("Department") respectfully requests that this Court dismiss this matter pursuant to 10th Cir. R. 27.3(B).

INTRODUCTION

This matter arises out of Petitioner Joseph Gallegos's ("Petitioner") claims under the whistleblower provisions of the Taxpayer First Act, 26 U.S.C. § 7623(d) ("TFA"), and the whistleblower provisions of the Affordable Care Act, 29 U.S.C. § 218c ("ACA"). Petitioner has filed a petition requesting that this court review the

Department of Labor's handling of those claims.

Generally speaking, this Court would have jurisdiction to review a final agency order issued by the Department of Labor pursuant to those statutes. However, there has been no such action in this matter. To the contrary, the Department of Labor's Administrative Review Board ("ARB") has repeatedly explained that no such final order has issued, and that further proceedings are pending. Therefore, under the applicable statutory frameworks, which require final agency action as a jurisdictional prerequisite prior to review by the United States

Courts of Appeals, this matter must be dismissed.

STANDARD OF REVIEW

Federal courts have limited subject matter jurisdiction, and the burden of proof rests with the party asserting jurisdiction. Becker v. Ute Indian Tribe of the Uintah & Ouray Rsrv., 770 F.3d 944, 946–47 (10th Cir. 2014). Where jurisdiction is not established, dismissal must follow. Id. at 949.

BACKGROUND

I. Statutory and Regulatory Framework Establishing Relevant Procedures Under the Whistleblower Provisions of the Taxpayer First Act and the Affordable Care Act.

A. The Taxpayer First Act

The whistleblower provisions of the TFA, 26 U.S.C. § 7623(d), provide in pertinent part that a person who alleges certain acts of prohibited reprisal may file a complaint with the Secretary of Labor. 26 U.S.C. § 7623(d)(2)(A). The statute further provides that complaints filed with the Secretary of Labor "shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code." 26 U.S.C. § 7623(d)(2)(B). In turn, 49 U.S.C. § 42121(b) requires the Secretary to implement a procedure under which it investigates complaints, provides hearings, and issues final orders that are subject to judicial review. Id.

The Secretary delegated responsibility for receiving and investigating whistleblower complaints under the TFA to the Occupational Safety and Health Administration ("OSHA"). See Sec'y's Order No. 8-2020, Delegation of

Authority and Assignment of Responsibility to the Assistant Secretary for Occupational

Safety and Health, 85 Fed. Reg. 58,393 (Sept. 18, 2020); see also Sec'y's Order No. 7-2025, Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health, 90 Fed. Reg. 27,878 (June 30, 2025) (current delegation, identical in all relevant respects). OSHA then enacted implementing regulations. See Procedures for the Handling of Retaliation Complaints Under the Taxpayer First Act (TFA), 88 Fed. Reg. 15,271 (Mar. 13, 2023).

Under these procedures, OSHA conducts an investigation and makes findings as to whether reasonable cause exists to believe a violation has occurred. See 49 U.S.C. § 42121(b)(2)(A); 29 C.F.R. §§ 1989.104(e), 105. Either the employer or the complainant then has 30 days to object to these findings and request a hearing before a Department Administrative Law Judge ("ALJ"). 49 U.S.C. § 42121(b)(2)(A); 29 C.F.R. § 1989.106(a); see also 29 C.F.R.

§§ 1989.107, 109 (delegating responsibility for conducting hearings and issuing initial decisions to the Office of Administrative Law Judges).

The ALJ's decision is appealable to the ARB, which issues the final decision of the Secretary, subject to the Secretary's discretionary review. See 49 U.S.C.

§ 42121(b)(3)(A); 29 C.F.R. § 1989.110; Sec'y's Order No. 01-2020. 85 Fed. Reg. 13,186, 13,186–88 (Mar. 6, 2020). When the ARB issues its decision, "[t]he ARB's decision will be served upon all parties and the Chief Administrative Law Judge."

29 C.F.R. § 1989.110(c).

Section 42121(b) provides federal courts with jurisdiction to review the orders of the Secretary under specific circumstances. It provides that "[a]ny person adversely affected or aggrieved by an order under paragraph (3) may obtain review of the order in the [appropriate] United States Court of Appeals[.]." 49 U.S.C.

§ 42121(b)(4)(A). An "order under paragraph (3)" is a "final order" of the Secretary. 49 U.S.C. § 42121(b)(3). Section 42121 further directs federal courts of appeals to review the Secretary's final determination in accordance with the judicial review provisions of the Administrative Procedure Act ("APA"). See 49 U.S.C. § 42121(b)(4)(A). The Department's implementing regulations reflect this statutory framework, specifying that the final agency action preceding circuit court review must be either an order from the ARB or a decision issued by the Secretary upon his or her discretionary review of the ARB. 29 C.F.R. § 1989.112(a).

B. The ACA

The whistleblower provisions of the ACA provide for a procedure similar to the above provisions of the TFA. Under the ACA, a person who

alleges certain prohibited acts of reprisal "may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of Title 15." 29 U.S.C. § 218c(b)(1). In turn, 15 U.S.C. § 2087(b) provides procedures for the filing, investigation, and adjudication of complaints, and most pertinently, provides that unless a complainant has exercised certain conditional rights to file an action in district court, jurisdiction for review in the circuit courts is for review of a "final order" issued by the Secretary. 15 U.S.C.
§ 2087(b)(5)(A). As under the TFA, under the ACA, "[r]eview shall conform to [the APA]." Id. The ACA's implementing regulations also reflect this framework, and specify that a "final order" must precede circuit court review. 29 C.F.R. §
1984.112(a).

C. ARB Regulations

In furtherance of carrying out its duties under these (and other) statutes and regulations, the ARB has promulgated regulations. These regulations provide that

"[t]he ARB has authority to act as the authorized representative of the Secretary of
Labor in review or on appeal of decisions and recommendations as provided in Secretary's Order 01–2020 (or any successor to that order)." 29 C.F.R. § 26.1(b).

They also provide that "[t]he ARB shall act as fully and finally as the Secretary of

Labor concerning such matters, except as provided in Secretary's Order 01–2020

(or any successor to that order)." Id.

II. Key Procedural Background

As this Response is limited in scope, the Department herein provides only a limited overview of procedural background.

1. Petitioner filed a whistleblower complaint with the OSHA alleging Respondent A Plus Personal Care Provider, LLC "forced [him] to resign [his] employment in retaliation for reporting claims of fraud within the company and violations of the IRS code, specifically regarding the company's false reporting of providing medical insurance as part of [his] employment contract." Order

Dismissing Matter, Gallegos v. A Plus Pers. Care Provider, LLC, ALJ Case No. 2025-TAX-00009, slip op. at 2 (ALJ Dec. 17, 2025) ("ALJ Dismissal Order," attached as Ex. A).

2. Subsequently, Petitioner asked OSHA to terminate its investigation and issue a determination. Id.

3. On January 14, 2025, OSHA issued abbreviated findings that "the Agency was unable to conclude [that] there was reasonable cause to believe that violation of the statute occurred" and dismissed the complaint. Id.

4. Petitioner then requested a hearing with the Department of Labor's Office of Administrative Law Judges (OALJ), and on February 4, 2025, the matter was docketed with the OALJ under docket number 2025-TAX-00009. Id. at 3.

5. On December 17, 2025, the ALJ dismissed docket number 2025TAX-00009. The ALJ stated that the dismissal was a sanction warranted by, among other findings, Petitioner's abuse of the judicial process, harassment, false accusations of misconduct against the OALJ and opposing counsel, refusal to comply with ALJ orders, and threats. Id. at 17.

6. Petitioner petitioned the ARB for review of the ALJ's order of dismissal. Gallegos v. A Plus Pers. Care Provider, LLC, ARB Case No. 2026-0015 (Dec. 17, 2025) ("ARB Petition," attached as Ex. B).[19]

7. On April 15, 2026, Petitioner moved the ARB for "voluntary withdrawal of [the] complaint and dismissal with prejudice." Gallegos v. A Plus Pers. Care Provider, LLC, ARB Case No. 2026-0015 (April 15, 2026) ("Motion for Withdrawal," attached as Ex. C).

8. On April 17, 2026, Petitioner filed a "Motion to Withdraw Withdrawal" with the ARB. Motion to Withdraw Motion for Withdrawal, Gallegos

v. A Plus Pers. Care Provider, LLC, ARB Case No. 2026-0015 (April 17, 2026) ("Motion to Withdraw Withdrawal," attached as Ex. D).

[19] Exhibit B omits the voluminous exhibits attached to the ARB petition.

9. Also on April 17, 2026, a document entitled "Order of Dismissal" was transmitted to the parties, via electronic service. ("Erroneous Order Document," attached as Ex. E).

10. On April 20, 2026, Petitioner filed a "Motion for Reconsideration and to Reinstate Petition for Review" seeking to "vacate and set aside as void" the

April 17 Erroneous Order Document and reinstate his Petition for Review. ("Motion for Reconsideration," attached as Ex. F).

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11. On April 22, 2026, the ARB issued an order explaining that, in sum, through a series of technical and clerical errors, the OALJ – and not the ARB, which was reviewing the OALJ's decision – had "inadvertently delivered a copy of the draft Order of Dismissal to the parties via the Electronic Filing and Service (EFS) system." Gallegos v. A Plus Pers. Care Provider, LLC, ARB Case No.

2026-0015, slip op. at 2 (April 22, 2026) ("April 22 ARB Order" attached as Ex. G).

In the same April 22 ARB Order, the ARB corrected this error, stating,

> The [Administrative Review] Board did not issue or serve the draft Order of Dismissal and has not yet dismissed this appeal. Complainant asked to withdraw his request to withdraw his appeal

> before the Board dismissed the case. Although OALJ inadvertently
> distributed a draft Order of Dismissal, that draft was not final and is void. Accordingly, we GRANT Complainant's Motion to Withdraw Withdrawal and clarify that this appeal has not been dismissed. The draft Order of Dismissal will be removed from the OALJ docket.

Id.

13. On April 28, 2026, the ARB, noting that Petitioner had "filed several documents with the Board" since the ARB's April 22 Order and reiterated that although a draft Order of Dismissal had been inadvertently distributed, "that draft was not final and is void." Gallegos v. A Plus Pers. Care Provider, LLC, ARB Case No. 2026-0015, slip op. at 2 (April 28, 2026) ("April 28 ARB Order" attached as Ex. H). The ARB further stated, "The Board will proceed to address the outstanding issues in this appeal in due course." Id.

14. On July 8, 2026, the ARB issued an order stating:

> Since initiating this appeal, Complainant has submitted over 30 filings with the Board, some of which the Board has already addressed in previous orders. Currently, the briefing in this matter is stayed pending the Board's resolution of issues dealing with Complainant's use of artificial intelligence in his submissions to the Board.

Gallegos v. A Plus Pers. Care Provider, LLC, ARB Case No. 2026-0015 (July 8,

2026), slip op. at 1 ("July 8 ARB Order" attached as Ex. I).

15. The July 8, 2026 ARB order further reiterated:

> In response to Complainant's previous motions, the Board has twice stated in unambiguous terms that the Board has NOT dismissed this case or otherwise issued a final decision. We take this opportunity to restate what we made clear in both the Order dated April 22, 2026, and the Order dated April 28, 2026: The Board has NOT dismissed this case or otherwise issued a final decision.

Id. at 2. (emphasis in original).

16. As indicated in the petition for review received by the Tenth Circuit on June 22, 2026, see ECF No. 1-1, Petitioner now seeks circuit court review of the

December 17, 2025, ALJ Order of Dismissal; the April 17, 2026, Erroneous Order Document; and the April 22 and 28, 2026, Orders of the ARB. (ECF No. 1-1).

17. On June 23, 2026, this Court issued an order raising questions about whether the agency had "completed its decision making process." (ECF No. 4.)

The court granted Petitioner the ability to "file a memorandum brief setting forth any basis in law or fact for the court to conclude that it has jurisdiction to entertain this petition for review." Id.

18. On July 6, 2026, Petitioner filed a document entitled "Motion For Leave to File Amended Petition for Review," making various arguments in support of his position that this Court has jurisdiction to review his claims. (ECF No. 10.)

19. On July 7, 2026, this Court issued an order construing Petitioner's motion as a response to the Court's June 23, 2026 order concerning jurisdiction. (ECF No. 11). The Court allowed the Department to respond to Petitioner's motion and providing that such a response brief may address "the jurisdictional issue raised by the Court's June 23, 2026 order and any jurisdictional arguments raised by Mr. Gallegos in the Motion." (ECF No. 11.)

ARGUMENT

I. There Has Been No Final Agency Action, and So this Court Lacks Jurisdiction Under the TFA and the ACA Whistleblower Provisions.

The whistleblower provisions of both the ACA and the TFA limit circuit court review to "final" agency actions in accordance with the APA. See supra Background, § I; 15 U.S.C. § 2087(b)(5)(A) (ACA); 26 U.S.C. § 7623(d)(2)(B) (TFA, incorporating 49 U.S.C. § 42121(b)); 49 U.S.C. § 42121(b)(4)(A), (b)(3). The APA does not permit review of "[a] preliminary, procedural, or intermediate agency action or ruling" that is "not directly reviewable" until there is a final agency action. 5 U.S.C. § 704.

For purposes of the APA, agency action is "final" only when two conditions are satisfied: first, the action must be the "consummation" of the agency's decision-making process and not tentative or interlocutory; and second, the agency decision must determine rights or obligations, or create legal consequences that flow from the decision. Bennett v. Spear, 520 U.S. 154, 177–78 (1997); Kobach v. U.S. Election Assistance Comm'n, 772 F.3d 1183,

1189 (10th Cir. 2014) (same); Franklin v. Massachusetts, 505 U.S. 788, 796–97 (1992) ("The core question [in determining finality] is whether the agency has completed its decisionmaking process.").

Here, there has been no final agency action, so Petitioner cannot meet his burden of proof to show that this Court has jurisdiction to review his petition. By the agency's own regulations and words, the agency has not consummated its decisionmaking process. The December 17, 2025, ALJ Order of Dismissal did not do so because the Petitioner appealed that decision to the ARB. See 29 C.F.R. § 1984.112 ("The decision of the ALJ will become the final order of the Secretary unless a petition for review is timely filed with the ARB and the ARB accepts the petition for review."); 29 C.F.R. § 1989.112 (same).

Where an ALJ order has been appealed, final agency action must take the form of either an order from the ARB or a decision issued by the Secretary upon discretionary review of the ARB. See 29 C.F.R. § 1984.112; 29 C.F.R. § 1989.112; 85 Fed. Reg. at 13,186–88. And no such final order has issued. The technical and clerical error resulting in the transmission of an erroneous April 17, 2026 document entitled "Order of Dismissal" (Ex. E) is not a final agency action because it was not (despite appearances to the contrary) an order from the ARB. The ARB has explained that although a document was transmitted through an electronic filing system of the Department of Labor, that document was not issued by the ARB (but rather, inadvertently, by staff at OALJ). See

April 22 ARB Order (Ex. G); April 28 ARB Order (Ex. H); July 8 ARB Order (Ex. I). Because the document was not in fact an order of the ARB, it could not have been a "final order" of the Secretary under the applicable regulations.

Petitioner does not appear to dispute these facts or the legal consequence that the Erroneous Order Document cannot be a final order. See ECF No. 10-3 at 32 ("A void order cannot service as the statutory 'final order'."). Moreover, Petitioner filed a timely Motion for Reconsideration on April 20, resulting in the ARB's subsequent order on April 22, which clarified that the case had not been dismissed. Under these circumstances, even if the Erroneous Order Document had been issued by the ARB itself, the filing of the timely motion for reconsideration

"effectively renders the agency's initial decision non-final[.]" Johnson v. U.S. Dep't of Lab., 814 F. App'x 490, 493 (11th Cir. 2020).

By contrast, Petitioner does argue that the subsequent April 22 and April 28 ARB Orders are somehow final agency action, because, he alleges, the Board refused to "vacate" the erroneous April 17, 2026 order and thus, allegedly, "constructively" "dismissed" his case. ECF No. 10 at 33-34. This is plainly contradicted by the text of the orders themselves, which show that the ARB explained what had occurred, stated the erroneous order was "void," and that the case had not been dismissed. April 22 ARB Order (Ex. G); April 28 ARB Order (Ex. H); July 8 ARB Order (Ex. I). By their own terms, these

orders are clear that they are not the consummation of the decisionmaking process.

In sum, there has been no final agency action. Because proceedings before the Secretary have not been concluded and no final agency decision has been made, this court has no basis for jurisdiction. See, e.g., Ukiah Valley Med. Ctr. v.

F.T.C., 911 F.2d 261, 264 (9th Cir. 1990) (holding that issuance of FTC complaint was not final agency action because the complaint was "[s]till pending before the ALJ").

II. Petitioner's Arguments that the Court Should Proceed Notwithstanding the Absence of a Final Agency Action Are Unavailing.

Petitioner argues that notwithstanding the absence of a final agency order, this court should proceed. The court must reject these arguments. "As a court of limited subject matter jurisdiction, [this Court] review[s] administrative agency decisions only as provided by acts of Congress." Tsegay v. Ashcroft, 386 F.3d 1347, 1353 (10th Cir. 2004). Congress has provided for jurisdiction for this Court to review orders under the TFA and ACA under the limited circumstances of a "final order" of the Secretary in accordance with the APA. See supra. Petitioner's arguments fail to address this statutory limitation or overcome the principle that under the APA federal courts may not review if there is not a final agency order. McKeen v. U.S. Forest Serv., 615 F.3d 1244,

1253 (10th Cir. 2010) ("Pursuant to the APA, we have jurisdiction to review only final agency actions.") (internal quotation omitted).

Petitioner argues that it would be "futile" for the ARB to continue to adjudicate his case, relying on Tinker Air Force Base v. FLRA, 321 F.3d 1242 (10th Cir. 2002), Urban by Urban v. Jefferson County School District R-1, 89 F.3d

720 (10th Cir. 1996), and McGraw v. Prudential Insurance Co. of America, 137 F.3d 1253 (10th Cir. 1998). Petition, ECF No. 1-1 at 5, 34–35; Mot. for Leave to Amend, ECF No. 10-1 at 3, 10-3 at 35–37. These cases, however, are inapposite because they address the exhaustion doctrine within specific and distinct statutory contexts, and do not address the requirement of a final agency action to review. See Darby v. Cisneros, 509 U.S. 137, 144 (1993) (explaining that exhaustion and final agency action are "conceptually distinct"). At issue at this moment is whether there is final agency action as required by the statute, and not whether Petitioner has exhausted his remedies on a particular argument. In any case, as a factual matter, Petitioner has not demonstrated that it would be futile for him to await the ARB's decision. The Board expressly ruled that it "will proceed to address the outstanding issues in this appeal in due course." April 28 ARB Order at 2.

Likewise, the record does not reflect that the ARB has acted with unreasonable delay. Petitioner petitioned the ARB for review of the OALJ's order on December 17, 2025, and in the interim, made copious filings that the

ARB has stated it intends to address. See July 8 ARB Order. It is not unreasonable that the ARB has yet to issue a final decision under such circumstances. Furthermore, even if Petitioner's allegations of delay were valid, Congress provided a specific procedure for complainants to pursue where the Secretary has not issued a final order within certain time periods. In such circumstances, under both the TFA and the ACA, the complainant can bring a de novo action in federal district court for review of his whistleblower claim. See 26 U.S.C. § 7623(d)(2)(A)(ii) (providing jurisdiction for district court kickout under TFA 180 days after filing of complaint); 15 U.S.C. § 2087(b)(4) (providing for kickout after 210 days, incorporated into the ACA by 29 U.S.C. § 218c(b)(1)). Petitioner cannot, contrary to the plain text of the statutes, instead seek review in circuit court as a result of any delay.

Finally, Petitioner makes various other arguments in his petition and in his motion for leave to amend, alleging various deficiencies in the OALJ's handling of his complaint and the ARB process. Petition ¶¶ 9–40; Mot. Leave to Amend, ECF No. 10-3 at 35–43. But even if these allegations were true, none of them would affect the fact that this Court does not have jurisdiction. To the extent Petitioner wishes to address these alleged deficiencies, he must await a final order of the ARB pursuant to the Department's implementing regulations. If he is still dissatisfied after that final order, he can file a new petition with this Court. But at this time there is no final order to review, and therefore this Court has no jurisdiction to allow this appeal to proceed.

CONCLUSION

For the foregoing reasons, the Department respectfully requests that Petitioner's Motion for Leave to Amend be denied as futile and this matter be dismissed for lack of jurisdiction.

Dated: August 7, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2026, I electronically filed the foregoing Response and Exhibits with the Clerk of the Court for the United States Court of

Appeals for the Tenth Circuit by using the appellate CM/ECF Electronic Filing System. Participants in the case registered CM/ECF users, and service will be accomplished by the CM/ECF system.

/s/ Lindsey Rothfeder
LINDSEY ROTHFEDER
Senior Attorney

APPENDIX J — MOTION TO HOLD RULING IN ABEYANCE PENDING DOCKETING PF REPLY BRIEF

United States Court of Appeals

for the

TENTH CIRCUIT

JOSEPH GALLEGOS *Petitioner,*	)	
v.	)	
ADMINISTRATIVE REVIEW BOARD, et al. UNITED STATES DEPARTMENT OF LABOR	)	Case No: 26-9556
SECRETARY OF LABOR (in their official capacity) UNITED STATES DEPARTMENT OF LABOR	)	
A PLUS PERSONAL CARE PROVIDER LLC *Respondents.*	)	

EMERGENCY MOTION TO HOLD RULING IN ABEYANCE PENDING DOCKETING OF PETITIONER'S REPLY BRIEF

Petitioner, **Joseph Gallegos,** respectfully moves this Court for an emergency order holding its ruling on the Secretary of Labor's Motion to Dismiss in

abeyance until Petitioner's timely-filed Reply Brief, mailed via USPS on August 9, 2026, is received and docketed by the Clerk. Petitioner cannot e-file and must rely on the U.S. Postal Service. Because the panel may rule before the brief arrives, this motion serves to alert the Court to the dispositive jurisdictional arguments contained within that brief.

This motion is based on a single, inescapable syllogism: on April 22, 2026, the Administrative Review Board ("ARB") denied Petitioner's motion for reconsideration of its April 17, 2026, order as "moot." A motion can only be "moot" if the underlying order is final. Therefore, the ARB's own action proves the April 17 order was final and that this Court has jurisdiction.

THE INESCAPABLE SYLLOGISM

The jurisdictional question turns on a simple, three-part syllogism that the Secretary of Labor ("the Secretary") cannot escape. The syllogism is dispositive because under Tenth Circuit and Supreme Court precedent, this Court may not defer to an agency's post-hoc characterization of its own order when that characterization is contradicted by the agency's own behavior. Mootness presupposes finality.

The Secretary cannot argue that "moot" meant "premature" — a motion for reconsideration is never premature when it is filed after an order has been signed, served, and docketed. Prematurity applies when a motion is filed before an order exists. Here, the order existed; it was signed by Board members, docketed, and served on the parties. The only basis for denying reconsideration

as "moot" is that the order was already final and the Board had nothing left to decide.

Premise 2: On April 22, 2026, the ARB denied Petitioner's motion for reconsideration as "moot."

Conclusion: By its own action, the ARB treated the April 17 order as final.

Legal Consequence: This Court is not bound by the agency's post-hoc "draft" characterization. The agency's behavior controls the finality inquiry.

THE COURT'S OBLIGATION TO APPLY THE CORRECT LEGAL STANDARD

The Secretary asks this Court to defer to the ARB's label. But binding precedent forbids such deference where the agency's actions contradict its words.

- **U.S. Army Corps of Eng'rs v. Hawkes Co.**, 136 S. Ct. 1807, 1815 (2016) (adopting a "pragmatic" and "flexible" approach to finality).
- **Southern Utah Wilderness Alliance v. Norton**, 301 F.3d 1217, 1230 (10th Cir. 2002), *rev'd on other grounds*, 542 U.S. 55 (2004) ("The BLM seems to confuse the principle that…courts must give deference to the BLM's interpretation…with the statutory standard making the…obligation mandatory."). The agency's characterization does not control.
- **Impact Energy Resources, LLC v. Salazar**, 693 F.3d 1239, 1245-46 (10th Cir. 2012) (per curiam) (holding an agency memo was a final order despite the agency's contrary claims); *id.* at 1256 (Seymour, J.,

concurring) ("Though the agency has not dressed its decision with the conventional procedural accoutrements of finality, its own behavior thus belies the claim that its interpretation is not final.").

- **General Motors Corp. v. FERC**, 607 F.2d 330, 344 (10th Cir. 1979) (Seth, J., dissenting) ("The principle of finality in administrative law is not...governed by the administrative agency's characterization of its action, but rather by a realistic assessment of the nature and effect of the order.") (Although authored in dissent, this principle has been adopted by subsequent Tenth Circuit panels).

If the panel defers to the ARB's "draft" label over the ARB's "mootness" action, it commits legal error by applying the wrong standard of review.

ARGUMENT FOR HOLDING RULING IN ABEYANCE

This Court has authority to grant a stay or hold a ruling in abeyance. 10th Cir. R. 8.1; *Spain v. Podrebarac*, 68 F.3d 1246, 1247 (10th Cir. 1995). The applicant must show: (1) a likelihood of success on the merits (or that the issues are "so serious, substantial, difficult and doubtful, as to make them ripe for litigation"); (2) irreparable harm if the stay is not granted; (3) absence of harm to the opposing party; and (4) no harm to the public interest. *McClendon v. City of Albuquerque*, 79 F.3d 1014, 1020 (10th Cir. 1996). Petitioner meets this standard.

Although Rule 8.1 by its terms governs stays pending appeal, the four-factor test provides the appropriate standard for this Court's exercise of its inherent

authority to manage its own docket and withhold a decision pending completion of briefing. See *David P. Arrow v. Dow*, 636 F.2d 287, 290 (10th Cir. 1981) ("hold the case in abeyance for a reasonable time").

A. Likelihood of Success on the Merits (or a Serious Legal Question)

Petitioner has demonstrated a substantial likelihood of success on the merits of the jurisdictional question for three reasons.

First, the syllogism is dispositive. The ARB's denial of reconsideration as "moot" is an admission of finality. This Court is not permitted to defer to the agency's contrary label. *Impact Energy*, 693 F.3d at 1245-46.

Second, the April 17 order was signed by Board members, served on the parties, and docketed. The ARB has never issued an order vacating it.

Third, jurisdiction locked at the moment the petition for review was filed. The Supreme Court has been clear: "if jurisdiction exists at the time an action is commenced, such jurisdiction may not be divested by subsequent events." *Freeport-McMoRan Inc. v. K N Energy, Inc.*, 498 U.S. 426, 428 (1991). The ARB's subsequent April 22 order could not divest this Court of jurisdiction that had already attached. *Cf. Benmar Transp. & Leasing Corp. v. ICC*, 582 F.2d 246, 249 (2d Cir. 1978) (once petition is filed, agency "has no authority to conduct further proceedings without the court's approval").

B. Irreparable Harm

If the Court dismisses this case before receiving the mailed reply brief, Petitioner will be irreparably harmed by being denied the opportunity to have his dispositive jurisdictional arguments fully considered by the panel.

C. No Harm to Opposing Party

Holding the ruling for a few days pending the arrival of a mailed brief imposes no cognizable harm on the Secretary.

D. Public Interest

The public interest weighs heavily in favor of holding the ruling. The procedural posture of this case is backwards: the Petitioner is fighting *for* judicial review, while the agency is fighting *against* the finality of its own order. When an agency fights to keep its own case out of court, a court should inquire why. In the Tenth Circuit, where the Practitioner's Guide shows agency decisions are affirmed 98.3% of the time, the ARB's desperate attempt to avoid even a 1.7% chance of reversal signals that its record cannot withstand judicial scrutiny. The public interest requires this Court to resolve the jurisdictional question on a complete record, including Petitioner's reply brief.

CONCLUSION

The syllogism is inescapable. The ARB denied reconsideration as moot. Mootness presupposes finality. The April 17 order was final. This Court has jurisdiction. For the foregoing reasons, Petitioner respectfully requests that this Court hold its ruling in abeyance until Petitioner's reply brief is docketed and reviewed.

Dated: August 10, 2026

Respectfully submitted,

/s/ Joseph Gallegos 1409 S. Bellaire Street Denver, Colorado 80222 (303) 808-1891 Josiahghee18@gmail.com

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains approximately 1,352 words, including the parts of the brief exempted by Fed. R. App. P. 27(d)(2)(B). This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Joseph Gallegos 1409 S. Bellaire Street Denver, Colorado 80222 (303) 808-1891 Josiahghee18@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of August 2026, I filed the foregoing EMERGENCY MOTION with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by hand-delivery. All participants in the case except for Petitioner are registered CM/ECF users and will be served by the appellate CM/ECF system.

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APPENDIX K — REPLY BRIEF TO SDECRETARY'S OPPOSITION

United States Court of Appeals

for the

TENTH CIRCUIT

JOSEPH GALLEGOS *Petitioner,*	)	
v.	)	
ADMINISTRATIVE REVIEW BOARD, et al. UNITED STATES DEPARTMENT OF LABOR	)	Case No: 26-9556
SECRETARY OF LABOR (in their official capacity) UNITED STATES DEPARTMENT OF LABOR	)	
A PLUS PERSONAL CARE PROVIDER LLC *Respondents.*	)	

PETITIONER'S REPLY TO THE SECRETARY'S OPPOSITION TO JURISDICTION

I. INTRODUCTION

1. The Secretary's Response to the Brief on Jurisdiction rests on two deeply flawed premises: first, that the agency need not vigorously defend its position because it assumes this Court will afford it absolute deference; and second, that by simply ignoring glaring procedural defects, the Court might overlook them as well. The Response is remarkable not for what it says, but for what it studiously ignores.
2. Of the eighteen distinct jurisdictional arguments raised in Petitioner's Memorandum Brief (Sections A through R), the Secretary completely ignores fourteen. This wholesale failure to engage shows that the agency has no coherent answer to the core of Petitioner's jurisdictional claims. Furthermore, the Secretary does not—and cannot—explain the chronological impossibility of the Board's official timeline, offer any independent evidence to support the theory of an "inadvertent error," or dispute any of the material facts supported by the record. The agency's comfort in reflexive judicial deference is abundantly clear. However, Petitioner will attempt to show once more, juristiction rests in this Court.

II. THE SECRETARY'S RESPONSE IS BUILT ON A FALSE PREMISE

A. The Secretary Mischaracterizes Petitioner's Argument as a Concession

3. The Secretary repeatedly claims Petitioner "concedes" the April 17 Order cannot be a final order. (Resp. at 13). This is false. Petitioner's argument, rooted in Tenth Circuit precedent, is that the order is "null but final" for

jurisdictional purposes. See Eddleman v. U.S. Dep't of Labor, 923 F.2d 782, 785 n.3 (10th Cir. 1991) (an order that is a "nullity" can still be a "final order" triggering the time for appeal), overruled in part on other grounds by Steel Co. v. Citizens for a Better Env't, 523 U.S. 83 (1998). The Secretary ignores Eddleman entirely. The April 17 Order, even if procedurally defective, was final because it terminated the proceedings and was entered on the official docket.

B. The Secretary Cites Non-Binding Authority from the Eleventh Circuit

4. The Secretary's timeliness argument relies exclusively on an unpublished, non-binding Eleventh Circuit case, Johnson v. U.S. Dep't of Lab., 814 F. App'x 490 (11th Cir. 2020). (Resp. at 15). But the Supreme Court's decision in Stone v. INS, 514 U.S. 386 (1995), is the controlling precedent. Stone holds that a timely motion for reconsideration only tolls the appeal clock; it does not render the underlying order non-final. The Tenth Circuit follows Stone. See *Nahatchevska v. Ashcroft,* 317 F.3d 1226, 1228 (10th Cir. 2003). The Board's April 22 Order was not a grant of reconsideration; it was an attempt to retroactively nullify a final order.

C. The Secretary's Response Ignored the Majority of Petitioner's Jurisdictional Arguments

5. The Secretary's Response is an exercise in strategic omission. Of the eighteen distinct jurisdictional arguments Petitioner raised in his

Supplemental Brief (Sections A through R), the Secretary has completely ignored fourteen.

6. Section	Argument	Secretary's Response
A	**April 17 Order made Dec. 17 ALJ Order final.**	**Partially Addressed**
B	**ARB has taken four contradictory positions.**	**IGNORED**
C	**Finality cannot be retroactively negated.**	**Partially Addressed**
C-1	**Chronological impossibility of Board's story.**	**IGNORED**
D	**Structural breakdown under *Tinker*.**	**Partially Addressed**
E	**EFS docket is clear evidence of finality.**	**IGNORED**
F	**Unlawfully withheld acknowledgment (66 days).**	**IGNORED**
G	**AI resurrection is pretextual post-hoc rationalization.**	**IGNORED**
G	**Board chose denial over correction.**	**IGNORED**

6. Section	Argument	Secretary's Response
H	Kickout to district court improperly invoked.	IGNORED
I	16-day silence suggests acceptance.	IGNORED
J	*Stewart v. Donges* divested jurisdiction.	IGNORED
K	Post-hoc denials are a cover-up/deadline trap.	IGNORED
L	Timeliness arguments under *Stone* and *Johnson*.	Partially Addressed
M	"Null but Final" doctrine under *Eddleman*.	IGNORED
N	AI resurrection as evidence of bad faith.	IGNORED
O	ALJ controlled the final outcome by default.	IGNORED
P	July 8 Order contradicts bad faith inaction.	IGNORED
Q	Statutory bar to district court kickout.	IGNORED

6. Section	Argument	Secretary's Response
R	The manufactured "no-exit" procedural enclosure.	IGNORED

7. The Secretary of Labor asks this Court to treat a signed, docketed, and served "ORDER OF DISMISSAL" as an "inadvertent draft" to defeat this Court's jurisdiction. This position is contradicted by the official record, governing regulations, and controlling precedent. The Secretary's theory relies on a post-hoc rationalization unsupported by any documentary evidence and is factually incoherent when measured against the undisputed timeline of events. The April 17, 2026, Order was final when issued, and this Petition was timely filed. This Court has jurisdiction.

III. ARGUMENT

I. THE APRIL 17, 2026, ORDER WAS A FINAL, APPEALABLE ORDER.

8. The April 17, 2026, Order bears every hallmark of a final agency action. It was titled **"ORDER OF DISMISSAL,"** signed **"SO ORDERED"** by Administrative Review Board Judges Kiko and Burrell, entered on the official Electronic Filing System (EFS) docket, served on all parties, and contained operative legal conclusions disposing of the case. The April 22, 2026 Order was docketed and recorded as the formal denial of reconsideration. This was done so Petitioner would miss the 60-day deadline for judicial review, believing the case was still ongoing.

9. Official agency records are entitled to a presumption of regularity. *See Bar MK Ranches v. Yeutter*, 994 F.2d 735, 740 (10th Cir. 1993) ("The court assumes the agency properly designated the Administrative Record absent clear evidence to the contrary."). The Secretary asks this Court to disregard the official docket entry and treat the order as a non-final draft. Yet, the Secretary has produced no "clear evidence to the contrary"—no system logs showing a "draft" status, no staff affidavits explaining the alleged clerical error, and no contemporaneous record of the supposed mistake. A signed, docketed, and served order is presumed final, and the Secretary's unsupported assertions are insufficient to overcome that presumption.

A. THE ALJ HAD NO JURISDICTION AFTER THE BOARD ACCEPTED THE CASE FOR REVIEW.

10. The Secretary's "draft" theory is not only factually unsupported but jurisdictionally impossible. Under the Department of Labor's own regulations, an ALJ is divested of authority over a case the moment the Administrative Review Board (ARB) accepts it for review.

11. If a case is accepted for review, **the decision of the ALJ will be inoperative** unless and until the ARB issues an order adopting the decision... 29 C.F.R. § 1989.110(b). Once the ARB accepted this case, the ALJ's decision became "inoperative," and his jurisdiction terminated by operation of law. The ALJ, therefore, could not lawfully possess a "draft" for a case that was no longer before him nor had any authority to possess.

12. The official record confirms that the ALJ processed several documents through the Office of Administrative Law Judges (OALJ) portal *after* the ARB had already accepted the case for review. This action, which § 1989.110(b) makes jurisdictionally impossible, demonstrates that the agency's internal processes failed to adhere to the mandatory divestiture of authority required by its own regulations. An ALJ cannot draft or issue orders in a case over which he has no authority.

B. THE 'DRAFT' THEORY IS FACTUALLY INCOHERENT.

13. *If* April 17 Were a Draft	**What the Record Shows**
Would be marked "DRAFT"	Titled **"ORDER OF DISMISSAL"**
Would be unsigned	**"SO ORDERED"** with both Kiko and Burrell's signature
Would not be docketed	**Entered on official EFS docket**
Would contain placeholder language	Contains **operative legal conclusions** and considerations
Would be corrected immediately	**4 day gap** before making the excuse the order was a draft
Would be internal only	**Served on all parties**

14. The Secretary has offered no system logs showing a "draft" status. No affidavit from OALJ staff. No explanation for why a "draft" was signed, docketed, and served. No explanation for the 4 day delay. The facts do not align with the Secretary's theory. These facts refute it.

C. THE SECRETARY'S OWN EXHIBITS BETRAY ITS THEORY

15. The Secretary's Response incorporates as exhibits the exact same issued Orders and filed documents previously submitted by Petitioner. Far from substantiating the Secretary's unpersuasive "draft order" theory, these records actively refute it.

16. The Secretary's own documentation corroborates the precise procedural timeline Petitioner presented to this Court. By attaching these exhibits, the Secretary has inadvertently adopted the Board's flawed, contradictory reasoning—reasoning that the objective administrative record proves to be a factual and chronological impossibility.

V. THE APRIL 17, 2026, ORDER OF DISMISSAL IS THE FINAL, OPERATIVE AGENCY ACTION

17. The Secretary's narrative effectively ignores the April 17, 2026, Order of Dismissal, treating it as if it does not exist. This court similarly did the same thing upon the initial filing of the petition, when issuing their order that only mentioned the April 22 and 28 orders. However, this April 17 Order is a matter of administrative record, and its legal implications cannot simply be swept aside. By issuing the April 17 Order, the Administrative Review Board (ARB) executed a final agency action. Upon that dismissal, the ARB was immediately divested of jurisdiction over the merits of the case, rendering all subsequent orders inherently null and void.

18. Once the April 17 dismissal was effectuated, the ARB retained only the narrow authority to adjudicate a timely Motion for Reconsideration. The April 22, 2026, Order drastically exceeded that limited scope. While the agency deceptively characterized the April 22 Order in the e-filing system as a simple ruling on a motion for reconsideration, the substance of the Order demonstrates otherwise. It was an improper attempt to retroactively rewrite the procedural history. Crucially, the April 17 Order remains active and visible on the Office of Administrative Law Judges (OALJ) portal, and the Board has taken no formal action to vacate it. It stands as the final word of the agency.

19. Finally, while this Court has previously expressed preliminary concern regarding a "possible fatal defect," it did not specify the nature of that defect nor identify which order prompted the concern. Respectfully, any jurisdictional analysis by this Court must be anchored entirely to the April 17, 2026, Order of Dismissal. Because that Order constitutes the final agency action, the ARB lost all authority to issue subsequent merits decisions. As a matter of law, the April 17 Order finalized the agency proceedings, and nothing the Board did unlawfully thereafter can strip this Court of its jurisdiction to review the dismissal.

VI. THE BACKWARDS PROCEDURAL POSTURE WARRANTS JUDICIAL INQUIRY

20. This Court has never encountered a case where a petitioner fought to establish dismissal and finality while the administrative agency fought equally hard to defeat it. That is because it is not supposed to happen. In every ordinary administrative appeal, the petitioner seeks judicial review and the agency resists it. Here, the parties have swapped their natural positions. Petitioner is the one insisting that review is proper and timely; the ARB—the adjudicator below—is the party arguing that this Court lacks power to review its actions.

21. This inverted posture is not merely unusual; it is a signal. When an agency that normally defends its decisions suddenly argues that its own orders are not final, a court should inquire why. The Seventh Circuit confronted this same risk of agency manipulation of jurisdiction in Doctors Nursing & Rehabilitation Center v. Sebelius, 613 F.3d 672, 678 (7th Cir. 2010), where it warned: "Under the Secretary's proposed rule, any agency could strip jurisdiction from federal courts, seemingly at any stage of the proceeding, for any reason. If the agency became concerned that a Court of Appeals—or even the Supreme Court—might issue a decision adverse to its interests, it could reopen its proceedings and yank the case out of the courts… This would allow the agency to manipulate federal jurisdiction to frustrate litigants… and prevent or at least postpone into perpetuity unfavorable precedent."

22. For the 12-month period ending December 31, 2024, the reversal rate for administrative appeals in the Tenth Circuit was a mere 1.7%. See Tenth Circuit, Practitioner's Guide, at 3 (Dec. 31, 2024). A court that defers to agencies 98.3% of the time is the least likely forum in the nation to disturb an agency decision. Yet the ARB—the agency itself—is fighting desperately to keep this case out of this Court. If the Tenth Circuit reverses so rarely, why does the ARB fear review here? Because even a 1.7% chance of reversal is too much when the agency's official record reveals the types of injustice Petitioner has been subjected to—a record that the agency now asks this Court to disbelieve. The ARB's attempt to yank this case out of federal court suggests it fears exactly what Doctors Nursing warned against: an independent judicial determination that the agency got it wrong.

23. The agency is entitled to no deference from this Court. Indeed, it is only by stripping away the shield of reflexive deference that the agency's procedural machinations are fully exposed, demonstrating exactly why such deference is entirely unwarranted in this matter.

VII. CONCLUSION

24. The undisputed record shows that the April 17, 2026, Order of Dismissal was a final, appealable order. The Secretary's contrary theory is an unsupported, post-hoc rationalization that is factually and jurisdictionally impossible. The Petition for Review was timely filed from that final order.

Accordingly, this Court has jurisdiction, and Petitioner respectfully requests that the Court deny the Secretary's opposition.

Respectfully submitted this 8th day of August 2026.

Joseph Gallegos / ***1409 S Bellaire Street Denver, Colorado 80222 / 303 808 1891 josiahgee18@gmail.com***

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains approximately 1, 879 words, including the parts of the brief exempted by Fed. R. App. P. 27(d)(2)(B). This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of August 2026, I filed the foregoing REPLY BRIEF ON JURISTICTION with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by USPS. All participants in the case

except for Petitioner are registered CM/ECF users and will be served by the appellate CM/ECF system.

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APPENDIX L— MOTION FOR RECONSIDERATION

United States Court of Appeals

for the

TENTH CIRCUIT

JOSEPH GALLEGOS

Petitioner,

v.

ADMINISTRATIVE REVIEW BOARD, et al.
UNITED STATES DEPARTMENT OF LABOR

SECRETARY OF LABOR
(in their official capacity)
UNITED STATES DEPARTMENT OF LABOR

A PLUS PERSONAL CARE PROVIDER LLC

Respondents.

Case No: 26-9556

PETITIONER'S MOTION FOR RECONSIDERATION OF ORDER DISMISSING PETITION FOR REVIEW

1. Petitioner Joseph Gallegos, proceeding pro se, respectfully moves this Court under Fed. R. App. P. 40 to reconsider its August 12, 2026 Order dismissing this case for lack of jurisdiction. The Court's dismissal was based on a manifest error of law and fact, and was entered after a series of procedural irregularities that deprived Petitioner of a ruling on the merits

of his seven fully briefed jurisdictional arguments. Reconsideration is warranted because a final, appealable order existed at the time the Petition for Review was filed, and the agency's subsequent attempts to retroactively void that order were legal nullities issued without jurisdiction.

STATEMENT OF FACTS

8. This is an appeal from a whistleblower retaliation case under the Taxpayer First Act (TFA), 26 U.S.C. § 7623(d), and the Affordable Care Act (ACA), 29 U.S.C. § 218c.

9. On December 17, 2025, Administrative Law Judge (ALJ) Stewart F. Alford issued an Order Dismissing Matter, dismissing Petitioner's whistleblower complaint for abuse of the judicial process. (ARB Case No. 2026-0015; ALJ Case No. 2025-TAX-00009).

   The facts stated in the December 17, 2025 Order were fabricated by ALJ Alford, who manufactured false findings of "abuse of the judicial process" to terminate the complaint without reaching the merits and in retaliation for Petitioner raising misconduct allegations on record throughout the proceedings.

3. On December 19, 2025, Petitioner timely filed a Petition for Review with the Administrative Review Board (ARB or Board).

4. On December 23, 2025, Petitioner received email notification that the Board had accepted the Petition for Review. (The Board's subsequent

April 17, 2026 Order incorrectly states the acceptance date as January 15, 2026 — January 15 was actually the date the Board issued its briefing schedule. The Petition filed on December 19, 2025 was removed from the docket after metadata evidence was provided to the Board of the ALJ accessing a service sheet on December 24, 2025, one day after he lost juristiction. This was done to shield the ALJ from record tampering by giving the appearance that the petition was filed later than December 19, 2025)

5. Under 29 C.F.R. § 1989.110(b), the Board's acceptance of review rendered the ALJ's decision "inoperative" and terminated the ALJ's jurisdiction over the matter.
6. Between February and March 2026, Petitioner filed eight (8) motions with the Board, none of which were ever ruled upon.
7. On March 5, 2026, the ARB issued an Order to Show Cause staying the briefing schedule pending resolution of issues related to Petitioner's use of artificial intelligence. Petitioner responded with two briefs.
8. Respondent's new counsel, Alan Thompson of Coan, Payton & Payne LLC, replaced prior counsel Robert Pitler. The EFS notification for the ARB's July 8, 2026 order was sent to former counsel Robert Pitler, who was no longer on the case.
9. The FOIA-produced record was deficient: it was delayed three months in violation of FOIA's 20-day deadline, numerous files were corrupt and On

April 15, 2026, Petitioner filed a Motion for Voluntary Withdrawal of Complaint and Dismissal with Prejudice with the Board.

9. On April 17, 2026, at 1:41 PM, Petitioner filed a Motion to Withdraw Withdrawal, changing his mind and no longer wishing to withdraw his appeal.

10. On April 16, 2026, a document entitled "Order of Dismissal" was issued and served on the parties via electronic service on April 17, 2026. The order was signed by Administrative Appeals Judges Thomas H. Burrell and Philip G. Kiko and stated: "we GRANT Complainant's Withdrawal Motion and DISMISS the appeal. SO ORDERED." The order was transmitted through the Office of Administrative Law Judges (OALJ) Electronic Filing System (EFS) portal — not the ARB's portal. EFS metadata shows OALJ received the order on April 16, 2026 at 12:00 AM — approximately 13 hours before Petitioner filed his Motion to Withdraw Withdrawal on April 17 at 1:41 PM.

11. Petitioner's Motion to Withdraw Withdrawal was not accepted by the EFS system as a filing until April 20, 2026 at 12:40 PM — three days after the Order of Dismissal was already served.

12. On April 20, 2026, Petitioner filed a Motion for Reconsideration with the ARB alleging that the ALJ was improperly controlling the Board's docket through the OALJ's online portal. This realization occurred because the order of dismissal was issued through the OALJ, together with the

similarities in decision making from the ALJ while under review. For four days between April 17 and April 22, no one — not the Board, not the Secretary, not opposing counsel — claimed the April 17 Order was an error or a draft.

13. On April 21, 2026, Petitioner filed a Motion to Vacate the April 17 order, documenting that the order was issued through the OALJ portal, not the ARB portal, and that the ARB EFS portal contained no record of the ARB issuing the order.

14. On April 22, 2026 — two days after Petitioner alleged ALJ misconduct — the ARB issued an order claiming, for the first time, that the April 17 order was an "inadvertent" draft. The April 22 Order states: "The Board did not issue or serve the draft Order of Dismissal and has not yet dismissed this appeal." The order also states: "that draft was not final and is void." The order further states: "The draft Order of Dismissal will be removed from the OALJ docket." The April 22 Order denied Petitioner's Motion for Reconsideration and Motion to Vacate as "moot," stating: "Because we have not dismissed this appeal, both Motions are moot."

15. The Board then granted Petitioner's Motion to Withdraw Withdrawal, which was nullified because it was filed after the case had been dismissed.

16. The April 22 Order's explanation is factually impossible. It claims the Board "elected not to issue the draft Order of Dismissal" because

Petitioner filed a Motion to Withdraw Withdrawal on April 17. But the order was received by OALJ on April 16 at 12:00 AM — 13 hours BEFORE Petitioner's motion was filed — and Petitioner's motion was not accepted by EFS until April 20 — three days AFTER the order was served.

17. On April 28, 2026, the ARB issued yet another order repeating the same explanation as the April 22 order — that the April 17 order was "not final and is void."

18. On April 30, 2026, Petitioner filed a Fourth Motion for Clarification asking who would be responsible for certifying the unofficial record for review by the Court of Appeals, noting that the Board had omitted the Affordable Care Act from the case, and questioning what statutory authority permitted the ALJ to participate in the Board's review process.

19. On June 22, 2026, Petitioner filed a Protective Petition for Review with this Court, seeking review of the ARB's April 17 Order of Dismissal after the EFS System reflected that this order was the final agency decision and the fact the board had not touched the case since May 1, 2025. Petitioner raised all of the procedural irregularities and agency misconduct described above. The Court did not address any of these arguments in its dismissal order.

20. On June 23, 2026, this Court issued an Order to Show Cause regarding jurisdiction, after being presented with the April 17, 22 and 28th issued Orders.

21. Petitioner filed two jurisdictional briefs with this Court presenting seven distinct legal arguments for why jurisdiction was proper.

22. On July 8, 2026, the ARB issued yet another order stating: "The Board has NOT dismissed this case or otherwise issued a final decision." The ARB also stayed briefing pending resolution of issues concerning Petitioner's use of artificial intelligence — the same pretextual issue first raised in the March 5 Order to Show Cause. Petitioner will NOT engage with or respond to this or any other ARB order because the case was dismissed on April 17, 2026.

23. On August 7, 2026, the Secretary of Labor filed a Memorandum Brief in Response opposing jurisdiction. The Secretary's brief cited 49 U.S.C. § 42121 — a statute applicable to aviation whistleblowers — as the governing statute. Petitioner's case arises under 26 U.S.C. § 7623(d) and 29 U.S.C. § 218(c).

24. On August 9, 2026, Petitioner mailed his Reply Brief to the Secretary's opposition via USPS. On the same day, Petitioner hand-delivered to the Tenth Circuit Clerk's Office: (1) an Emergency Motion to Hold Ruling in Abeyance, (2) a Rule 28(j) Letter of Supplemental Authority, and (3) a copy of the Reply Brief.

25. On August 11, 2026, the Clerk stamped all three documents as "RECEIVED" with timestamps of 8:30 a.m., 8:37 a.m., and 8:38 a.m. On each document, the green "RECEIVED" stamp appears to have been applied twice, with the second stamp placed directly over the first, concealing the original receipt date from the record. All three documents were consolidated into a single docket entry (Dkt. 27).

26. On August 12, 2026, the day after these filings were stamped as received, this Court issued its Order dismissing the petition for lack of jurisdiction. The Order stated: "it appears that the ARB has not yet issued a final order." The Court dismissed without reviewing Petitioner's Reply Brief, which was buried within the consolidated docket entry and not separately docketed. The Court's order did not address any of Petitioner's seven jurisdictional arguments.

ARGUMENT

A. The April 17 Order Was a Final Agency Action

31. Under the Supreme Court's finality test, an agency action is final if it marks the "consummation" of the agency's decision-making process and is one by which "rights or obligations have been determined, or from which legal consequences will flow." *U.S. Army Corps of Engineers v. Hawkes Co.*, 578 U.S. 590, 597 (2016). The April 17 Order met both prongs: it was signed by Board members Burrell and Kiko, stated "we GRANT Complainant's Withdrawal Motion and DISMISS the appeal,"

bore "SO ORDERED," was transmitted via the EFS system to all parties, and dismissed the appeal. Under 29 C.F.R. § 1989.111(c), the Board's dismissal of the appeal made the ALJ's December 17, 2025 order the final order of the Secretary by operation of law. Legal consequences flowed immediately. *Sackett v. EPA*, 566 U.S. 120, 127 (2012) (the mere possibility of future agency reconsideration does not suffice to make an otherwise final agency action nonfinal). The Tenth Circuit has held that an agency's own behavior controls the finality inquiry, not the agency's label. *Impact Energy Resources, LLC v. Salazar*, 693 F.3d 1239, 1245-46 (10th Cir. 2012).

B. Mootness Presupposes Finality

32. The ARB's April 22 Order denied Petitioner's Motion for Reconsideration as "moot." But a motion can only be "moot" if the underlying order is final — there is nothing to reconsider if the order was never issued. The ARB cannot have it both ways: either the April 17 order was final (and the motion was properly denied as moot), or it was not final (and there was nothing to deny as moot). The Supreme Court has held that a final order's "finality is not affected by the subsequent filing of a motion to reconsider." *Stone v. INS*, 514 U.S. 386, 405 (1995). See also *Nahatchevska v. Ashcroft*, 317 F.3d 1226, 1228 (10th Cir. 2003); *Dela Cruz v. Mukasey*, 532 F.3d 946, 948 (9th Cir. 2008).

C. The Petition Was Timely as a Matter of Law

33. Petitioner filed his Petition for Review on June 22, 2026. Under Tenth Circuit precedent, a timely motion for reconsideration tolls the judicial review period as a matter of law. *Reppy v. Department of the Interior*, 874 F.2d 728, 732 (10th Cir. 1989). Petitioner's April 20 Motion for Reconsideration tolled the 60-day clock. The 60th day from the ARB's April 22 denial fell on a weekend, making the June 22 filing timely. No equitable tolling is needed.

D. Jurisdiction Vested in This Court and Cannot Be Divested

34. Once Petitioner filed his Petition for Review on June 22, 2026, jurisdiction vested in this Court. The Supreme Court has held that "if jurisdiction exists at the time an action is commenced, such jurisdiction may not be divested by subsequent events." *Freeport-McMoRan Inc. v. K N Energy, Inc.*, 498 U.S. 426, 428 (1991). The ARB's subsequent orders — issued after Petitioner alleged ALJ misconduct — cannot retroactively divest this Court of jurisdiction. The Seventh Circuit has warned that allowing an agency to unilaterally reopen proceedings "would allow the agency to manipulate federal jurisdiction to frustrate litigants… and prevent or at least postpone into perpetuity unfavorable precedent." *Doctors Nursing & Rehabilitation Center v. Sebelius*, 613 F.3d 672, 678 (7th Cir. 2010).

E. The OALJ Had No Authority to Possess or Transmit Any Order

35. The Secretary's theory that OALJ staff "inadvertently" transmitted a "draft" order is defeated at its foundation. Once the ARB accepted review on December 23, 2025, the ALJ's jurisdiction terminated by operation of law under 29 C.F.R. § 1989.110(b). The ALJ could not draft, possess, or transmit any order — final or draft — in a case over which he had no jurisdiction. The OALJ had no more authority to possess a draft order in this case than any other person off the street.

36. The Secretary's admission that OALJ staff transmitted the order through the EFS system strengthens Petitioner's theory that the ALJ was improperly controlling the docket. The April 22 ARB Order itself states: "The draft Order of Dismissal will be removed from the OALJ docket" — confirming the document was on the OALJ's docket, not the ARB's docket. This admission proves the OALJ was still maintaining and controlling the docket for a case that was no longer within its jurisdiction.

37. The theory is further defeated by the fact that the April 17 Order bears the signatures of ARB Board Members Burrell and Kiko — not an ALJ — which independently proves the ARB, not the OALJ, issued the order. And EFS metadata shows OALJ received the order on April 16 at 12:00 AM, 13 hours before Petitioner filed his Motion to Withdraw Withdrawal. The ARB's explanation that it "elected not to issue" the order because of Petitioner's April 17 motion is factually impossible — the order was already in OALJ's possession before the motion was filed.

F. The "Null but Final" Doctrine Applies

38. Even if the April 17 order were procedurally defective, it is not an "absolute nullity" and remains a final order subject to judicial review. The Supreme Court has held that judgments rendered by courts of limited jurisdiction "are not absolute nullities" — they are erroneous and may be reversed on appeal, but they are not void ab initio. *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371, 378-79 (1940). The ARB's April 17 order — signed by Board members, docketed, and served on all parties — cannot be retroactively stripped of its finality by the agency's post-hoc characterization of its own order as a "draft." Under *Chicot County*, whether the order is voidable or void, it is not an "absolute nullity" and retains its binding effect unless overturned on direct review. Petitioner need not show the order was valid, only that it was final. A signed order, transmitted to the parties, dismissing the appeal is final, regardless of whether it was also void or voidable.

G. The Presumption of Regularity Works Against the Secretary

39. The Secretary cannot invoke the presumption of regularity to support the theory that a signed order was a mere "draft." Under *Bar MK Ranches v. Yeutter*, 994 F.2d 735, 740 (10th Cir. 1993), the presumption attaches to official acts — including the issuance of orders bearing the signatures of agency officials. The presumption cuts in Petitioner's favor: a signed, transmitted order is presumed regular and final. The Secretary has

produced no system logs, no staff affidavits, and no contemporaneous record of the supposed "inadvertent" error. A signed, docketed, and served order is presumed final.

H. The Court Must Exercise Independent Judgment Post-Loper Bright

40. The Secretary asks this Court to defer to the ARB's self-serving characterization of its own order. After *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2262 (2024), courts must exercise independent judgment when interpreting legal instruments and statutes. The court, not the agency, determines whether an order is final for purposes of judicial review.

I. The Secretary Ignored 14 of 18 Arguments

41. The Secretary's brief responded to only 4 of Petitioner's 18 jurisdictional arguments, ignoring the remaining 14. This selective engagement demonstrates the fundamental weakness of the government's position. The Court's dismissal order addressed none of them.

J. The Clerk's Procedural Irregularities Prejudiced Petitioner

(a) **Consolidation:** Three separate filings were consolidated into a single docket entry (Dkt. 27), obscuring their individual significance and burying the Reply Brief.

(b) **Double Stamp:** The documents bear a green "RECEIVED" stamp that was applied twice, with the second stamp concealing the original receipt date from the record.

(c) **Post-Receipt Dismissal:** The Court dismissed the petition the day after these filings were stamped as received, as the Clerk did not file it until the next day, without reviewing the Reply Brief or Letter of Supplemental Authority.

K. Petitioner Will Not Engage with Further ARB Proceedings

42. Petitioner will NOT engage with or respond to any further ARB orders because the case was dismissed on April 17, 2026. The ARB's subsequent orders — April 22, April 28, and July 8 — were issued without jurisdiction after the case was dismissed. To participate in these unauthorized proceedings would legitimize the ARB's conduct and waive Petitioner's position that jurisdiction vested in this Court on June 22, 2026. This Court is Petitioner's only forum for meaningful review. See *Doctors Nursing & Rehabilitation Center v. Sebelius*, 613 F.3d 672, 678 (7th Cir. 2010).

M. Judicial Review Must Reach the ALJ's Fabricated December 17 Order Because the ARB Is Shielding the ALJ from Scrutiny

44. This Court's jurisdictional review cannot be separated from the underlying merits of the case: the ALJ's December 17, 2025 Order was fabricated. ALJ Alford manufactured false findings of "abuse of the judicial process" to terminate Petitioner's whistleblower complaint without ever reaching the merits. The ARB's subsequent actions—the failure to rule on eight pending motions, the pretextual stay of briefing

over AI concerns, and the issuance of three contradictory orders after April 17—are all part of a concerted effort to shield the ALJ's fabricated order from judicial review.

45. The ARB's dismissal of Petitioner's appeal on April 17 made the ALJ's fabricated order the final order of the Secretary by operation of law under 29 C.F.R. § 1989.111(c). That is the final, reviewable order before this Court. The ARB's frantic, post-hoc attempts to "un-dismiss" the case were designed to prevent this Court from reviewing the fabrication.

46. If this Court denies jurisdiction, the ALJ's fabricated order will never be reviewed by any court. The ARB will not correct its own errors — doing so would require the Board to rule in Petitioner's favor, which it has refused to do from the outset. The Board's April 17 dismissal of Petitioner's appeal — making the ALJ's December 17 order final by operation of law — was the last act the ARB took with jurisdiction. Everything the ARB did after that date was designed to prevent this Court from reviewing the ALJ's fabrication.

47. Petitioner acknowledges that the April 17 ARB dismissal of his appeal — triggered by his own withdrawal motion — was the mechanism by which the ALJ's December 17 fabricated order became the final order of the Secretary under 29 C.F.R. § 1989.111(c). This was, in retrospect, the only pathway by which the ALJ's fabricated order could become reviewable by a court. The ARB's own regulation provides that when the Board

dismisses a petition for review, 'the decision of the administrative law judge will be the final order of the Secretary.' 29 C.F.R. § 1989.111(c). No other procedural mechanism in the ARB's regulations would have made the ALJ's December 17 order the final order of the Secretary. If the ARB had ruled on the merits of Petitioner's appeal, the ARB — not the ALJ — would have issued the final order, and the ALJ's fabricated order would never have become the final, reviewable order of the Secretary.

48. This is precisely why the ARB is fighting so hard to 'un-dismiss' the case. If the ARB succeeds in reopening the proceedings, it will issue its own decision on the merits — one that does not incorporate the ALJ's fabricated order as the final order of the Secretary. The ALJ's December 17 fabrication would be buried forever, shielded from judicial review by the very agency that enabled the fabrication in the first place. Petitioner may never get another opportunity to have the December 17 order reviewed by a court. The April 17 dismissal — whatever Petitioner's intent in filing the withdrawal motion — was the procedural event that made judicial review of the ALJ's fabrication possible. If this Court sends the case back to the ARB, that opportunity will be lost forever.

49. Even if the April 17 order were procedurally defective — having been issued through the OALJ portal under the ALJ's unlawful control after the ALJ lost jurisdiction on December 23, 2025 — it is not an "absolute nullity" and remains a final, reviewable order. The Supreme Court has

held that judgments of limited-jurisdiction tribunals "are not absolute nullities" — they may be reversed on appeal, but they are not void ab initio. *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371, 378-79 (1940). The April 17 order is void under *McDonald v. Mabee*, 243 U.S. 90, 91 (1917), which distinguished between orders that are "voidable" and those that are "void" — because the ALJ unlawfully controlled its issuance after losing jurisdiction on December 23, 2025. But under *Chicot County*, even a void order is not an "absolute nullity" — it retains its binding effect and is a final, reviewable order unless overturned on direct review. The December 17, 2025 order, by contrast, was issued while the ALJ still had jurisdiction (before the ARB accepted review on December 23, 2025), and is therefore not void on jurisdictional grounds. Because the April 17 order — void but final — dismissed the appeal, the December 17 order became the final order of the Secretary by operation of law under 29 C.F.R. § 1989.111(c). This Court has jurisdiction to review the April 17 order under *Chicot County*, and through it, the December 17 order that became the final order of the Secretary by operation of law.

N. The Message This Court Would Send by Allowing an Agency to Determine the Scope of Its Own Judicial Review

50. This Court's jurisdictional review implicates fundamental principles of administrative law, judicial oversight, and the separation of powers. If

this Court allows the Administrative Review Board to retroactively declare its own signed, docketed, and served final order a non-final "draft"—and thereby escape judicial review—it would send a dangerous message to every agency and litigant within this Circuit. The negative impacts on public faith in the judiciary and the rule of law would be profound.

a) **It Would Green-Light Agency Manipulation of Jurisdiction.** To accept the ARB's post-hoc characterization of its own final order would be to create a blueprint for any agency to evade judicial review. As the Seventh Circuit has warned, allowing an agency to unilaterally reopen proceedings after a petition for review has been filed "would allow the agency to manipulate federal jurisdiction to frustrate litigants… and prevent or at least postpone into perpetuity unfavorable precedent." *Doctors Nursing & Rehabilitation Center v. Sebelius*, 613 F.3d 672, 678 (7th Cir. 2010). If this Court ratifies the ARB's conduct, every agency facing a potentially unfavorable appeal could simply issue contradictory orders claiming its final decision was a "draft" or a "clerical error," thereby mooting the petition and trapping the litigant in an endless cycle of administrative proceedings with no judicial recourse.

b) **It Would Undermine Public Faith in the Judicial System.** The rule of law requires that agencies, like all other litigants, be bound by their own final orders. If an agency can issue a final order, then retroactively

declare it a "draft" only *after* a petitioner alleges misconduct, and the court accepts that self-serving characterization without scrutiny, the public will rightly perceive that agencies are above the law and that courts will not hold them accountable. This would foster the impression that judicial review is not a check on agency power, but a rubber stamp for agency convenience.

c) **It Would Violate This Court's Own Binding Precedent.** This Court is bound by Supreme Court and its own precedent establishing that jurisdiction, once vested, cannot be unilaterally divested by the lower tribunal. The Supreme Court has held that "if jurisdiction exists at the time an action is commenced, such jurisdiction may not be divested by subsequent events." *Freeport-McMoRan Inc. v. K N Energy, Inc.*, 498 U.S. 426, 428 (1991). The Court has also been clear that an order's "finality is not affected by the subsequent filing of a motion to reconsider." *Stone v. INS*, 514 U.S. 386, 405 (1995). And this Court has recognized that "the filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the [lower tribunal] of its control over those aspects of the case involved in the appeal." *Stewart v. Donges*, 915 F.2d 572, 576 (10th Cir. 1990). The ARB's contradictory orders of April 22, April 28, and July 8 are precisely the kind of "subsequent events" that cannot divest

this Court of the jurisdiction that attached when Petitioner filed his petition to review the final April 17 order.

d) **It Would Erode the Separation of Powers.** Under our constitutional system, it is the role of the judiciary—not the executive agency being reviewed—to determine whether an order is final and whether jurisdiction exists. The ARB's assertion that its own signed, docketed, and served order was a non-final "draft" is a legal conclusion, not a finding of fact. After *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2262 (2024), courts must exercise their "independent judgment" when interpreting legal instruments and statutes. Deferring to the ARB's self-serving, post-hoc characterization of its own final order would be an abdication of that judicial duty.

e) **It Would Deny Pro Se Litigants Meaningful Access to the Courts.** The practical effect of this Court's dismissal is to trap a pro se litigant, without the resources of the federal government, in an administrative forum that has already demonstrated it will not correct its own procedural errors and has actively worked to shield its own fabricated record from review. This outcome is antithetical to the fundamental principles of due process. As Justice Frankfurter recognized, "the right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." *Joint Anti-Fascist Refugee Committee v.*

McGrath, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring). To allow the ARB to indefinitely delay a final, reviewable order through a series of contradictory and factually impossible explanations is to deny Petitioner his right to be heard in a meaningful forum

O. This Court's Dismissal Creates a Circuit Split Warranting Supreme Court Review

52. If this Court declines to reconsider its dismissal, Petitioner's next avenue of relief is to petition the Supreme Court of the United States for a writ of certiorari. The dismissal creates a direct circuit split on a question of profound national importance: whether an administrative agency can unilaterally retroactively declare its own signed, docketed, and served final order a non-final "draft" in order to divest a federal court of appeals of jurisdiction after a petition for review has been filed.

53. The Seventh Circuit has squarely held that "the agency may not divest the federal courts of jurisdiction by unilaterally reopening its administrative proceedings." Doctors Nursing & Rehabilitation Center v. Sebelius, 613 F.3d 672, 678 (7th Cir. 2010). The Second Circuit has similarly held that "[o]nce a petition to review has been filed in court, the [administrative agency] has no authority to conduct further proceedings without the court's approval." Benmar Transport & Leasing Corp. v. Interstate Commerce Commission, 582 F.2d 246, 249 (2d Cir. 1978). The Supreme Court has likewise held that "if jurisdiction exists at the time an action is

commenced, such jurisdiction may not be divested by subsequent events." Freeport-McMoRan Inc. v. K N Energy, Inc., 498 U.S. 426, 428 (1991).

54. This Court's dismissal—allowing the ARB's post-hoc characterization of its own final order to defeat jurisdiction—conflicts with each of these authorities. The question presented is simple, recurring, and cert-worthy: Can an agency avoid judicial review of its own final order by retroactively labeling it a "draft" after a petitioner alleges misconduct?

55. Supreme Court Rule 10 identifies "a conflict between . . . courts of appeals" as a primary reason for granting certiorari. The conflict here is not theoretical. Every whistleblower, every Social Security claimant, every environmental petitioner, and every regulated party that appears before a federal administrative agency faces the same risk: that the agency can unilaterally strip them of their right to judicial review by recharacterizing its own final actions. Scholars have estimated that seventy percent of the Supreme Court's plenary docket is devoted to addressing legal issues on which lower courts have differed. See Visciotti v. Martel, 862 F.3d 749, 761 (9th Cir. 2016) (discussing the centrality of circuit conflicts to Supreme Court review).

56. Petitioner respectfully notifies this Court that if it declines to reconsider its dismissal, Petitioner intends to seek Supreme Court review on this basis. The circuit split is real, the question is important, and the stakes for

administrative law and judicial oversight are too high to allow the conflict to persist unresolved.

CONCLUSION

57. For the foregoing reasons, the Court's August 12, 2026 Order of Dismissal was based on manifest errors of law and fact. A final agency order existed at the time of filing, the ARB lacked the authority to rescind it, the integrity of the underlying administrative record is seriously compromised, and Petitioner's appeal was properly before this Court. The ALJ's December 17, 2025 order was fabricated, and the ARB's April 17 dismissal made it the final order of the Secretary by operation of law. This Court must not allow the ARB to shield the ALJ's fabrication from judicial review. Petitioner respectfully requests that the Court grant this Motion for Reconsideration, vacate its Order of Dismissal, and reinstate the Petition for Review.

Respectfully submitted,

/s/ Joseph Gallegos Joseph Gallegos, Pro Se 1409 S. Bellaire Street Denver, CO 80222 (303) 808-1891 josiahgee18@gmail.com

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains approximately 5, 218 words, including the parts of the motion exempted by Fed. R. App. P. 32(f). This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and

the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Joseph Gallegos Joseph Gallegos

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of August, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by USPS Mail. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Joseph Gallegos Joseph Gallegos

APPENDIX M — SUMMARY OF ALJ PROCEDURAL VIOLATIONS AND OPPOSING COUNSEL'S MISREPRESENTATIONS

A. The ALJ's Escalating Restrictions and Adoption of Opposing Counsel's Misrepresentations

From the outset, the ALJ's conduct was shaped by opposing counsel's misrepresentations. Attorney Robert Pitler made at least 127 specific misrepresentations to the tribunal across three phases of the litigation, including denying the existence of 32 exhibits Petitioner had submitted to support allegations of document falsification, mischaracterizing Petitioner's exercise of his statutory right to proceed to a *de novo* hearing as obstruction, and repeatedly misstating the applicable law. Pitler requested filing restrictions against Petitioner at least four times, including during Petitioner's recusal motion—where Petitioner was raising legitimate concerns about the ALJ's impartiality.

The ALJ escalated restrictions through a series of orders. On April 14, 2025, the ALJ issued a first warning about relevancy in filings—before the parties had any meaningful opportunity to engage in the process. On May 28, 2025, the ALJ issued a second warning about excessive filings. In July 2025, the ALJ imposed asymmetric filing restrictions on Petitioner—prohibiting him from filing motions without prior leave while allowing the employer to file freely—based on five discovery-related motions Petitioner had filed at a time when the parties had no discovery plan in place. On September 30, 2025, the ALJ threatened to dismiss the case if Petitioner continued to file motions the ALJ characterized as frivolous. These escalating restrictions effectively silenced Petitioner while the employer retained unrestricted access to the tribunal.

The ALJ adopted opposing counsel's characterizations without independently reviewing the evidence. When Petitioner submitted 32 exhibits supporting his allegations of document falsification and discovery sabotage, the ALJ described the filings as "frivolous" without

reviewing the exhibits. The ALJ refused to permit amendments to the complaint, suppressed evidence of discovery sabotage and witness tampering, and rejected at least nine of Petitioner's motions through the clerk without a ruling. The ALJ refused to rule on Petitioner's fully briefed Motion for Summary Decision, which presented undisputed evidence of whistleblower retaliation. Instead, on December 17, 2025, the ALJ issued an 18-page order dismissing Petitioner's complaint with prejudice as a sanction. (App. B). Rather than weigh evidence or hold an evidentiary hearing, the ALJ adopted the employer's one-sided narrative from its October 29, 2025 motion to dismiss, manufacturing a pretextual record to justify imposing the ultimate sanction of dismissal without ever reaching the merits of the case.

The ALJ's adoption of counsel's narrative is evidenced by his own order. On page 10, the ALJ states: "The sheer volume of frivolous filings from Complainant are well documented in this Order and the numerous other Orders previously entered by the Tribunal in this matter." Yet the order fails to cite a single document, email, or transcript excerpt to support this characterization—because the ALJ never reviewed the 32 exhibits Petitioner submitted. The ALJ's dismissal order was predicated on a factual and procedural narrative shaped by counsel's pervasive misrepresentations, not by an independent evaluation of the record.

B. ALJ Stewart F. Alford's Procedural Violations

1. Asymmetric Filing Restrictions. The ALJ imposed filing restrictions on Petitioner, a pro se litigant, prohibiting him from filing motions without prior leave while allowing the employer's counsel to file freely. The ALJ imposed these restrictions on July 25, 2025, based on five discovery-related motions Petitioner filed at a time when the parties had no discovery plan in place. The restrictions were imposed without an evidentiary hearing and without evaluating the merits of Petitioner's motions. The ALJ later lifted the restrictions on

September 30, 2025, admitting they had been ineffective, but simultaneously threatened to dismiss the case if Petitioner continued filing motions the ALJ characterized as frivolous.

2. Refusal to Rule on Pending Motions. The ALJ refused to rule on at least nine of Petitioner's motions, rejecting them through the clerk without a ruling. These included motions addressing discovery sabotage, witness tampering, document falsification, and the ALJ's own bias. The ALJ also refused to rule on Petitioner's fully briefed Motion for Summary Decision, which presented undisputed evidence of whistleblower retaliation.

3. Suppression of Evidence. The ALJ suppressed evidence of discovery sabotage and witness tampering. When Petitioner submitted 32 exhibits supporting his allegations of document falsification, the ALJ described the filings as "frivolous" without reviewing the exhibits. The ALJ never held an evidentiary hearing to weigh the competing evidence.

4. Refusal to Permit Amendments. The ALJ refused to permit Petitioner to amend his complaint, preventing him from correcting procedural deficiencies or adding claims.

5. Adoption of Opposing Counsel's Narrative. The ALJ's December 17, 2025 dismissal order was predicated on a factual and procedural narrative shaped by opposing counsel's misrepresentations, not by an independent evaluation of the record. The ALJ adopted the employer's one-sided narrative from its October 29, 2025 motion to dismiss without holding an evidentiary hearing. The ALJ characterized Petitioner's filings as "frivolous" and "abusive" without reviewing the 32 exhibits Petitioner submitted or addressing the substance of the allegations.

6. Pretextual Dismissal. The ALJ's 18-page dismissal order was based on manufactured findings of "abusive and harassing behavior" that were never raised by opposing counsel at any point in the proceedings. The ALJ stated on page 10 of the order: "The sheer volume of frivolous filings from Complainant are well documented in this Order and the numerous other Orders previously entered by the Tribunal in this matter." Yet the order fails to cite a single

document, email, or transcript excerpt to support this characterization. Opposing counsel never filed a motion for sanctions or a motion for a protective order based on any alleged harassment. The dismissal was a *sua sponte* fabrication designed to shield the employer from liability.

7. Denial of Due Process. The ALJ denied Petitioner due process by: (a) imposing asymmetric restrictions that silenced Petitioner while the employer had unrestricted access to the tribunal; (b) refusing to rule on Petitioner's Motion for Summary Decision which presented undisputed evidence; (c) suppressing evidence of discovery sabotage and document falsification; (d) dismissing the case without an evidentiary hearing; and (e) manufacturing a pretextual record to justify the ultimate sanction of dismissal without ever reaching the merits.

8. Post-Jurisdictional Docket Control. After the ARB accepted review on December 23, 2025, the ALJ's jurisdiction terminated by operation of law under 29 C.F.R. § 1989.110(b). Yet EFS metadata proves that the ARB's April 17, 2026 Order of Dismissal was transmitted through the OALJ's portal, not the ARB's. The ARB's April 22 order confirms this, stating: "The draft Order of Dismissal will be removed from the *OALJ docket.*" This is prima facie evidence that the ALJ was improperly controlling the ARB's docket after he lost jurisdiction.

C. Additional Evidence of Agency Bad Faith

1. The Pretextual AI Investigation. The ARB's decision to stay all proceedings based on a pretextual investigation into Petitioner's use of artificial intelligence—while refusing to rule on eight pending motions detailing the ALJ's misconduct—is further evidence of bad faith. The AI issue was a red herring designed to obstruct the appeal.

2. OSHA's Pattern of Misconduct and Concealment. The bad faith began at the investigative stage. OSHA provided false legal instructions, attempted a pretextual administrative closure, made material misrepresentations to induce Petitioner into the ECP

program, and concealed its interagency coordination with EBSA. The OSHA Case Diary Log proves that on the same day the agency claimed it lacked jurisdiction, it was actively soliciting a second position statement from the employer. The ALJ suppressed all of this evidence.

3. Document Substitution and an Unofficial Parallel Record. The agency attempted to create a separate, fabricated record, first through a court reporter, Bayley Reporting, and then in-house. A FOIA-produced record was delayed three months in violation of 5 U.S.C. § 552(a)(6)(A)(i) and contained numerous corrupt files. Screenshots of the OALJ EFS dashboard show that entries are not in sequential order, indicating that entries were manually reordered, inserted, or removed after their initial submission, breaking the docket's chronological integrity.

4. The ALJ's Adoption of Opposing Counsel's Misrepresentations. The ALJ's bad faith is further demonstrated by his wholesale adoption of opposing counsel's false narrative. Attorney Pitler made at least 127 specific misrepresentations to the tribunal, including denying the existence of 32 exhibits that he had personally received, misstating the applicable law, and mischaracterizing Petitioner's procedural rights as obstruction. Pitler requested filing restrictions against Petitioner at least four times. The ALJ imposed those very restrictions without reviewing the evidence Petitioner submitted, and ultimately dismissed the case based on the same distorted narrative—without ever holding an evidentiary hearing to weigh the competing evidence. The ALJ's refusal to independently evaluate the record, combined with his adoption of counsel's misrepresentations, demonstrates that the dismissal was not the product of neutral adjudication but of a predetermined outcome shaped by the employer's counsel.

D. Attorney Robert Pitler's Misrepresentations to the Tribunal

Attorney Robert L. Pitler, counsel for respondent A Plus Personal Care Provider, LLC, made at least 127 specific misrepresentations to the tribunal across three phases of the litigation. The following is a representative summary organized by category:

1. Denial of Evidence (Phase 1: May 23-27, 2025). Pitler stated to the tribunal: "He has not supplied any evidence of alleged forgeries." This was a blatant falsehood — Petitioner had submitted 32 exhibits detailing the alleged forgeries, which Pitler had personally received. Pitler repeated this mischaracterization across multiple filings, framing the 32 exhibits as "unsupported statements of how he feels about certain documents."

2. Mischaracterization of Procedural Rights (Phase 2: June 4-July 21, 2025). Pitler stated: "Claimant would not allow the investigation to be completed and directed the Regional Office to terminate its investigation." This mischaracterized Petitioner's exercise of his statutory right to proceed to a *de novo* hearing as obstruction. The ALJ's own July 25, 2025 Order acknowledged that "Complainant asked OSHA to terminate its investigation and issue a determination so he could come before the Office of Administrative Law Judges."

3. Misstatement of Law (Phase 2). Pitler cited "Standard Number 1953.13" and "1955.13" as the authority governing disqualification of ALJs. These provisions govern "Changes in State Programs" under the OSH Act — they have nothing to do with ALJ disqualification. The correct regulation is 29 C.F.R. § 18.16.

4. Misrepresentation of Procedural History (Phase 1). Pitler stated: "Claimant asked that the claim be dismissed. After the claim was dismissed, Claimant's request, he filed the instant case appeal with this Honorable Court. He dismissed the claim and cannot now appeal his own dismissal." This conflated the termination of an OSHA investigation with a dismissal of the underlying cause of action — a material misrepresentation of procedural history.

5. False Statements About Conferral Efforts (Phase 1). Pitler stated: "at no time did the Claimant open any discussions as to discovery, suggested meeting times, provide a

convenient method of communication or otherwise." This was directly contradicted by Petitioner's exhibits, which included emails and text messages showing he repeatedly attempted to initiate discovery discussions beginning May 13, 2025.

6. False Statement About Phone Number (Phase 1). Pitler stated: "The Phone number listed by Claimant does not work." This was contradicted by Pitler's own filing, which admitted his office successfully contacted Petitioner via text message and received a return call.

7. Repeated Requests for Filing Restrictions (Phases 1-3). Pitler requested filing restrictions against Petitioner at least four times, including during Petitioner's recusal motion — where Petitioner was raising legitimate concerns about the ALJ's impartiality. The ALJ imposed those very restrictions on July 25, 2025.

8. Misrepresentation of Record (Phase 3: October 26-December 4, 2025). Pitler continued to deny the existence of evidence, mischaracterize Petitioner's conduct, and make unsupported accusations about Petitioner's motives throughout the final phase of litigation, including 51 additional misrepresentations catalogued in the detailed record.

E. The ALJ's Order Is a Self-Justifying Closed Loop: The Record Itself Is the Instrument of the Fraud

The ALJ's December 17 dismissal order appears, at first reading, to be a measured and well-reasoned sanction order. It cites the *Ehrenhaus* factors, documents prior warnings, references the volume of filings, and quotes Petitioner's own emails. On its face, it reads like a legitimate exercise of an ALJ's inherent authority to manage his docket. But that apparent reasonableness is itself the product of the fraud. The order appears legitimate only because the ALJ suppressed the very evidence that would expose the corrupted process that produced it. None of the key evidence—the 32 exhibits supporting allegations of document falsification and discovery sabotage, the FOIA-produced OSHA Case Diary Log, the evidence of

concealed EBSA coordination, the EFS metadata showing the ALJ's post-jurisdictional control of the ARB's docket—appears in the record the ALJ created. The order is a self-justifying closed loop: it appears reasonable because the ALJ excluded all evidence that would show it was not. The record itself is the instrument of the fraud. This is precisely why the *Overton Park* bad faith exception exists. If judicial review is limited to a record controlled by a biased adjudicator, and that adjudicator can exclude any evidence of his own bias, then the record will always confirm the adjudicator's version of events. If the bad faith exception does not apply in a case like this, the courts are powerless to detect the kind of systemic corruption documented here.

F. Cumulative Effect

The cumulative effect of the ALJ's procedural violations and opposing counsel's misrepresentations was to create a self-justifying closed loop: the ALJ suppressed the evidence that would have exposed the corrupted process, adopted the employer's false narrative without independent review, and dismissed the case without ever reaching the merits. The record the ALJ created appears reasonable only because the ALJ excluded all evidence that would show it was not. None of the key evidence — the 32 exhibits, the FOIA-produced OSHA Case Diary Log, the evidence of concealed EBSA coordination, the EFS metadata showing the ALJ's post-jurisdictional control — appears in the record the ALJ created.

A complete catalog of all 127 misrepresentations, with citations to the specific filings, contradicting evidence, and applicable ethical rules violated, is available in the separately filed document: "Comprehensive Analysis of Misrepresentations by Attorney Robert Pitler and Procedural Violations by ALJ Stewart Alford in OALJ 2025 TAX 00009" (Sept. 29, 2026). <div style=\"page-break-after: always;\">

APPENDIX N – STATUTORY AND REGULATORY PROVISIONS INVOLVED

U.S. Constitution, amend. V No person shall be… deprived of life, liberty, or property, without due process of law…

5 U.S.C. § 552(a)(6)(A)(i) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall… determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination…

5 U.S.C. § 553(b) General notice of proposed rulemaking shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law.

5 U.S.C. § 706. Scope of review to the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall— (1) compel agency action unlawfully withheld or unreasonably delayed; and (2) 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…

29 U.S.C. § 660(c)(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate.

29 C.F.R. § 1984.108(b) At the Secretary's discretion, the Secretary may refer a complaint under the ACA to the Department of Health and Human Services or another appropriate Federal agency for investigation and resolution.

29 C.F.R. § 1989.109(c) The administrative law judge may not remand a case to OSHA to conduct a new investigation.

29 C.F.R. § 1989.110(b) Upon the acceptance of a timely petition for review, the Board will notify the parties of the briefing schedule. The Board will also notify the Chief Administrative Law Judge of its decision to accept the petition.

29 C.F.R. § 1989.111(c) If a complainant withdraws his or her appeal with the Board, the administrative law judge's decision will become the final order of the Secretary.

APPENDIX N - STATUTORY AND REGULATORY PROVISIONS INVOLVED

Contains the full text of all nine statutes and regulations cited in the petition: 5 U.S.C. §§ 552(a)(6)(A)(i), 553(b), 706; 29 U.S.C. § 660(c)(2); U.S. Const. amend. V; 29 C.F.R. §§ 1984.108(b), 1989.109(c), 1989.110(b), and 1989.111(c).

APPENDIX O – THE ALJ'S MOTIVE IN GRANTING THE APRIL 17 ORDER: CIRCUMSTANTIAL EVIDENCE OF AN EAGER EXIT

A. The April 17 Order Was Issued with Unprecedented Speed

Throughout the entire ARB review process, no order was issued as quickly as the April 17, 2026 Order of Dismissal. Petitioner filed his Motion for Voluntary Withdrawal on April 15, 2026. The Order of Dismissal—signed by two ARB judges, marked "SO ORDERED," and transmitted to all parties—was dated April 17, 2026. That is approximately two days.

By comparison, every other order in the ARB review took significantly longer:

ARB Action	Triggering Filing	Date of Order	Elapsed Time
Notice and Order (accepting review)	Petition for Review (Dec. 19, 2025)	January 15, 2026	~27 days
Order to Show Cause (AI issues)	Various filings (Jan.–Feb. 2026)	March 5, 2026	~49 days from Jan. 15 order
Order of Dismissal	Motion for Voluntary Withdrawal (Apr. 15, 2026)	April 17, 2026	~2 days
Order denying reconsideration	Motion for Reconsideration (Apr. 20, 2026)	April 22, 2026	~2 days
Order denying motion re Tenth Circuit filing	Motion (June 25, 2026)	July 8, 2026	~13 days

The April 17 Order of Dismissal stands out. The ARB had taken 27 days to issue its initial Notice and Order, 49 days to issue the Order to Show Cause, and 13 days to respond to a simple motion for acknowledgment of a Tenth Circuit filing. Yet the Board acted on the

withdrawal motion in approximately two days. No other order in the proceeding was issued with comparable urgency.

The April 22 Order, which was issued in response to Petitioner's April 20 Motion for Reconsideration, was also issued quickly—approximately two days—but that order was reactive, issued only after Petitioner alleged ALJ misconduct. The April 17 Order, by contrast, was issued sua sponte in response to a routine withdrawal motion. The speed itself is circumstantial evidence of eagerness.

B. EFS Metadata Proves the Order Was in OALJ's Possession Before the Motion to Withdraw Withdrawal Was Filed

The OALJ eService notification, dated April 17, 2026 at 8:10 PM, states:

"A document of type Filing was received at the Office of the Administrative Law Judges on **16-Apr-26 12:00 AM** and has been accepted as a filing."

Petitioner filed his Motion to Withdraw Withdrawal on April 17, 2026 at 1:41 PM—approximately 13 hours after OALJ had already received the Order of Dismissal. The EFS system did not accept Petitioner's Motion to Withdraw Withdrawal until April 20, 2026 at 12:40 PM. The Order of Dismissal was transmitted through the OALJ portal, not the ARB portal. The assigned judge listed on the eService notification is "Alford, Stewart," and the assigned office is "SF - SAN FRANCISCO."

This metadata establishes three facts:

10. The Order of Dismissal was in OALJ's possession on April 16, a day before Petitioner sought to rescind his withdrawal.
11. The order was transmitted through OALJ's system, not the ARB's.
12. The ALJ's office had access to and control over a document that should have been handled exclusively by the ARB.

C. The ALJ's Continued Control of the Docket After Jurisdiction Transferred to the ARB

Once the ARB accepted Petitioner's Petition for Review on December 23, 2025, the ALJ's jurisdiction terminated by operation of law. 29 C.F.R. § 1989.110(b). Yet the EFS metadata shows that OALJ—not the ARB—received, processed, and served the Order of Dismissal. The ARB's own April 22 Order confirms this, stating: "The draft Order of Dismissal will be removed from the **OALJ docket**" (emphasis added).

The fact that the Order of Dismissal appeared on the OALJ docket—not the ARB docket—is prima facie evidence that the ALJ was still controlling the ARB's docket long after he lost jurisdiction. The ARB's April 22 Order also states that "OALJ uploaded a copy of the draft Order of Dismissal to its Case Tracking System (CTS)," confirming that OALJ had independent access to and control over what purported to be a Board order.

D. The ALJ's Limited Experience with Taxpayer First Act Cases

ALJ Stewart F. Alford was appointed as a Department of Labor Administrative Law Judge on September 12, 2018. A review of the official OALJ Taxpayer First Act (TAX) caselist on the Department of Labor website reveals that Alford has adjudicated only three TAX cases during his tenure:

13. **Wathey v. Trufitness dba Trufusion Scottsdale**, 2023-TAX-00001 – Decision and Order (ALJ July 19, 2024) (Alford). This appears to be a decision on the merits.
14. **Andrade v. Scinomix, Inc.**, 2024-TAX-00012 – Order Approving Settlement and Dismissing Case (ALJ Nov. 4, 2024) (Alford). This was a settlement approval, not an adjudicated dismissal.
15. **Gallegos v. A Plus Personal Care Provider, LLC**, 2025-TAX-00009 – Order Dismissing Matter (sanction) (ALJ Dec. 17, 2025) (Alford). This is the underlying case.

Of these three cases, Gallegos is the only one in which Alford dismissed a complaint as a sanction. The other two were either a decision on the merits or a settlement approval. Alford's limited experience with TAX cases—only two prior cases in approximately eight years—provides context for the inferences drawn below.

E. Circumstantial Inference: The ALJ Was Eager to Grant the Withdrawal

The circumstantial evidence supports a reasonable inference that the ALJ was eager to grant the withdrawal and close the case. The evidence is as follows:

1. **Speed.** The April 17 Order of Dismissal was issued approximately two days after the withdrawal motion was filed. No other order in the proceeding was issued that quickly. The ARB took 27 days to accept the petition for review, 49 days to issue the Order to Show Cause, and 13 days to respond to a simple motion. The two-day turnaround on the withdrawal suggests urgency.
2. **OALJ transmission.** The order was transmitted through the OALJ portal, not the ARB portal. The eService notification lists the assigned judge as "Alford, Stewart" and the assigned office as "San Francisco." This suggests the ALJ's office was involved in the processing and transmission of the order, which should have been handled exclusively by the ARB.
3. **Pre-dating.** EFS metadata shows OALJ received the order on April 16—before Petitioner filed his Motion to Withdraw Withdrawal on April 17. This means the order was already in OALJ's possession before anyone knew Petitioner would seek to rescind his withdrawal. The speed of issuance and the pre-dating of the OALJ receipt together suggest that the order was being rushed.
4. **The ALJ's motive.** The ALJ had dismissed Petitioner's complaint with prejudice as a sanction on December 17, 2025, in an 18-page order that adopted opposing counsel's narrative without independently reviewing the evidence. Petitioner had alleged that

the ALJ engaged in procedural misconduct, imposed asymmetric filing restrictions, suppressed evidence, and refused to rule on motions. If the ARB granted the withdrawal, the ALJ's December 17 order would become the final order of the Secretary of Labor—and the ALJ's conduct would never be independently reviewed by the ARB or any court.

5. **The ALJ's incentive to close the case.** Under 29 C.F.R. § 1989.111(c), "If the ARB approves a request to withdraw a petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's decision will become the final order of the Secretary." Once the ALJ's decision becomes the final order of the Secretary, the only avenue for review is a petition to the court of appeals under 29 U.S.C. § 660(c). The ALJ had every incentive to see the withdrawal granted quickly: it would end the ARB review, prevent the ARB from independently examining the ALJ's conduct, and make the ALJ's dismissal order the final, reviewable order.

F. The Probable Miscalculation: The ALJ Did Not Anticipate That Granting the Withdrawal Would Make His Order Reviewable

A reasonable inference from the circumstantial evidence is that the ALJ did not understand the legal consequences of granting the withdrawal. Under 29 C.F.R. § 1989.111(c), when the ARB approves a withdrawal, "the ALJ's decision will become the final order of the Secretary." Once the ALJ's decision becomes the final order of the Secretary, it is subject to judicial review in the appropriate court of appeals under 29 U.S.C. § 660(c)(2), which provides that "[a]ny person adversely affected or aggrieved by an order of the Secretary may obtain a review of the order in the United States court of appeals."

In other words, granting the withdrawal did not simply end the case—it transformed the ALJ's December 17 dismissal order into the final, reviewable order of the Secretary of Labor,

subject to review by a federal court of appeals. This is precisely the outcome the ALJ should have wanted to avoid if his goal was to shield his order from judicial scrutiny.

If the ALJ understood that granting the withdrawal would make his December 17 order the final, reviewable order of the Secretary, he would have had every reason to oppose or delay the withdrawal—not to facilitate its rapid grant. The fact that the order was issued with unprecedented speed through the ALJ's own portal suggests that the ALJ believed he was closing the case and putting the matter behind him. He appears to have miscalculated: by helping to rush the withdrawal, he inadvertently opened the door to the very judicial review he was trying to avoid.

The ARB's subsequent frantic efforts to "un-finalize" the April 17 order—issuing three contradictory orders on April 22, April 28, and July 8, each claiming the order was an "inadvertent draft"—are consistent with this inference. The ARB realized, after Petitioner filed a Motion for Reconsideration alleging ALJ misconduct, that the April 17 order had made the ALJ's December 17 order final and reviewable. The ARB's haste to retroactively declare the order a "draft" was an attempt to undo the legal consequences of the withdrawal before a federal court could review the ALJ's conduct.

G. The ARB's Failed Attempt to Remove the Order from the OALJ Docket

The April 22 Order stated that "the draft Order of Dismissal will be removed from the OALJ docket." Despite this directive, **the Order of Dismissal was never removed from the OALJ docket. It remains on the docket to this day.** This fact is significant for three reasons:

First, it confirms that the ARB did not have actual control over the OALJ docket. The ALJ's office—not the ARB—maintained control of the docket throughout the proceeding, even after jurisdiction had transferred to the ARB. The ARB's April 22 Order was directed to OALJ, requesting that OALJ remove the order from its own docket. The fact that OALJ did not comply with this directive—or was never required to comply—demonstrates that the

ALJ's control of the docket was not merely a procedural irregularity but a structural problem: the ARB could not manage its own docket because the ALJ's office retained physical control of the EFS system and the docket entries.

Second, the continued presence of the Order of Dismissal on the OALJ docket undermines the ARB's characterization of the order as an "inadvertent draft." If the order were truly a draft—an internal document never intended for service—it would have been removed from the docket as the April 22 Order directed. The fact that it was not removed is consistent with the reality that the order was served, signed, and entered on the docket as a final action. The ARB's inability to remove it further confirms that the order was not a draft but a final, served order that the ARB retroactively attempted to characterize as a draft.

Third, the EFS system's metadata—which records when documents are received, accepted, and served—provides an independent record that cannot be retroactively altered. The eService notification dated April 17, 2026 at 8:10 PM confirms that the order was received, accepted, and served, regardless of any subsequent removal attempt from the docket. The order's continued presence on the OALJ docket provides tangible, verifiable evidence that the ALJ's office processed and entered a final order after it had lost jurisdiction—a fact that the ARB's after-the-fact characterization as a "draft" cannot erase.

H. Conclusion

The circumstantial evidence supports the following chain of inference:

1. The ALJ was controlling the ARB's docket after he lost jurisdiction, as evidenced by the transmission of the April 17 order through the OALJ portal.
2. The April 17 order was issued with unprecedented speed—approximately two days—compared to every other order in the proceeding.
3. The order was in OALJ's possession before Petitioner sought to rescind his withdrawal, suggesting the ALJ was eager to close the case.

4. The ALJ had every incentive to see the withdrawal granted: it would end the ARB review and prevent independent examination of his conduct.
5. The ALJ likely did not understand that granting the withdrawal would make his December 17 order the final, reviewable order of the Secretary—if he had, he would not have facilitated its rapid grant.
6. The ARB's subsequent efforts to retroactively declare the order a "draft" and remove it from the OALJ docket are consistent with a belated recognition that the withdrawal had inadvertently opened the ALJ's order to judicial review—and the ARB's failure to actually remove the order from the OALJ docket confirms that the ALJ retained control of the docket throughout.

This evidence, taken together, supports the inference that the ALJ's primary purpose in controlling the docket was to close the case before the ARB or any court could examine his conduct. The ALJ's eagerness to grant the withdrawal—and the speed with which the order was issued—backfired: it made his December 17 order the final, reviewable order of the Secretary, subjecting the ALJ's conduct to the very judicial scrutiny he was trying to avoid.

APPENDIX P – THE SEPARATE RECORD INFERENCE, ORIGIN OF HARASSMENT AND THE FILING RESTRICTION

A. The Core Inference

The record in this case supports a strong inference that a separate, one-sided record was being created for the court reporter throughout the proceedings before Administrative Law Judge Stewart F. Alford. This inference arises from a simple, verifiable fact: **the ALJ and opposing counsel included the DOL's official court reporter, Bayley Reporting, Inc., on their certificates of service without any order from the ALJ instructing the parties to do so.** The Complainant was never instructed to include the court reporter on his filings, and no order of service was issued directing any party to serve the court reporter separately from the official EFS system.

No rule of the Office of Administrative Law Judges (OALJ), no provision of the Code of Federal Regulations, and no order issued by the ALJ required or authorized the separate service of Bayley Reporting. As the court reporter herself confirmed in the only email exchange between the Complainant and Bayley Reporting, the EFS system is the official record and there was no need for anyone to send additional documents to the court reporter. (See Ex. 71, Email with Bayley Reporting.) The inclusion of Bayley Reporting on certificates of service — by the ALJ and by counsel, but never by the Complainant — was not required by any rule or order. It was a voluntary, unilateral practice engaged in by both the ALJ and opposing counsel, but not by the Complainant. The purpose of this practice was to create a separate, curated record that would replace the EFS system record — which repeatedly raised jurisdiction issues because it preserved the Complainant's filings challenging the tribunal's jurisdiction and exposing procedural violations. When the Complainant exposed this practice by inquiring directly with the court reporter, the ALJ treated the exposure as a threat and used it as a pretextual basis for the threat to dismiss the case.

B. The Filing-by-Filing Evidence

An examination of the certificates of service on all filings in this case reveals a stark and revealing pattern:

1. Opposing Counsel's Filings — Bayley Reporting Included on Every Filing

Every single filing by Attorney Robert L. Pitler included Bayley Reporting, Inc. on the certificate of service. This includes:

- Response to Motion to Disqualify (May 27, 2025) — Bayley Reporting listed
- Supplement to Response to Motion to Compel (May 27, 2025) — Bayley Reporting listed
- Objection to Motion for Recusal (June 13, 2025) — Bayley Reporting listed
- Objection to Remote Deposition (July 3, 2025) — Bayley Reporting listed
- Response to Reconsideration (July 9, 2025) — Bayley Reporting listed
- Response to Various Filings (July 16, 2025) — Bayley Reporting listed
- Proposed Deposition Date (July 17, 2025) — Bayley Reporting listed

(See Ex. 40, Respondent's Service Sheets.)

2. Complainant's Filings — Bayley Reporting Included on No Filing

Not a single filing by the Complainant included Bayley Reporting. This includes:

- Motion for Recusal (June 4, 2025) — only Pitler listed
- Reply to Objection (June 15, 2025) — only Pitler listed
- Request for Subpoenas (July 2, 2025) — only Pitler listed
- Request for Remote Depositions (July 2, 2025) — only Pitler listed
- Request for Reconsideration (July 7, 2025) — only Pitler listed
- Discovery Stipulation (July 14, 2025) — only Pitler listed
- Subpoena Duces Tecum (July 18, 2025) — only Pitler listed
- Response to Deposition Dates (July 18, 2025) — only Pitler listed

3. The ALJ's Orders — Inconsistent Inclusion Demonstrating Deliberate Choice

The ALJ's own orders were inconsistent in their inclusion of Bayley Reporting:

- **May 28, 2025 Order** — Bayley Reporting **NOT** on the service sheet
- **July 25, 2025 Order (imposing the filing restriction)** — Bayley Reporting **IS** on the service sheet
- **September 30, 2025 Order (lifting the filing restriction)** — Bayley Reporting **IS** on the service sheet (and was later removed)

If inclusion of the court reporter were a uniform requirement for all parties, the ALJ's own orders would consistently include or exclude the reporter. The inconsistency demonstrates that the ALJ made case-by-case choices about what entered the court reporter's record. Notably, the July 25 order that was served to the court reporter was the order **imposing the filing restriction** — not an order scheduling a hearing or deposition. The September 30 order lifting the filing restriction was also not scheduling a hearing. The selective inclusion cannot be explained by whether an order related to a scheduled hearing or deposition.

C. The September 30, 2025 Order and Post-Dismissal Alteration of the Service Sheet

The September 30, 2025 Order Lifting Filing Limitation is significant for multiple reasons:

7. **The order included Bayley Reporting on its service sheet when first issued.** The Complainant downloaded all orders at the time they were issued and has copies of the original order that included Bayley Reporting. (See Ex. 39, ALJ Service Sheets.)
8. **The order was the vehicle for the ALJ's denial of ex parte communications.** In this order, the ALJ stated that "no ex parte communications have occurred, and there is no reasonable basis for Complainant's allegations" of collusion between the Tribunal and counsel for Respondent. However, the ALJ did not address the specific evidence supporting the allegation — namely, the selective inclusion of the court reporter on Pitler's filings and certain court orders while excluding the Complainant's filings, and the EFS metadata showing post-dismissal access to service sheets. The

ALJ's blanket denial without addressing the specific evidence mirrors the pattern of dismissing allegations without substantive evaluation that pervades this case. (See Comprehensive Analysis of Misrepresentations by Attorney Robert Pitler and Procedural Violations by ALJ Stewart Alford in OALJ 2025 TAX 00009, Part VI.C, Items 7 and 11.)

9. **The order contained an unsupported claim that the Complainant harassed the court reporter.** The ALJ alleged that the Complainant engaged in harassment of the court reporter, presenting this as a basis for the dismissal threat. However, the ALJ provided no evidence — no affidavits, no emails, no testimony, no documentation of any kind — to support this allegation. This mirrors Pitler's own unsupported claim (Misrepresentation #60) that the Complainant "was rude, abrasive and harassed employees of Pike Reporting," which was also made without any supporting evidence. (See Comprehensive Analysis, Part VI.C, Item 9; Part VII, Item BBB.)

10. **The September 30 service sheet was accessed on December 24, 2025 — seven days after the case was dismissed on December 17, 2025.** The EFS metadata for the September 30, 2025 service sheet reflects the following:

Field	Value
Description	Gallegos_v_A_Plus_Personal_Care_2025TAX00009_(SEP_30_2025)_193411_ORDER_SS
File Name	Gallegos_v_A_Plus_Personal_Care_2025TAX00009_(SEP_30_2025)_193411_ORDER_SS.PDF
eFile Number	489008
Issued On	09/30/2025 - 00:00 EST

Field	Value
Served On	09/30/2025 - 00:00 EST
Accessed On	12/24/2025 - 14:02 EST
Notified On	10/01/2025 - 01:53 EST

During that post-dismissal access on December 24, 2025, Bayley Reporting was **removed** from the service sheet. This is not mere system access or routine logging; it is an affirmative modification of the service record after dismissal, removing the court reporter from a document that had previously included the court reporter. This action requires explanation and supports an inference of deliberate record management rather than inadvertent oversight. (See Comprehensive Analysis, Part VIII.)

5. **The order lifted the filing restriction as ineffective** but replaced it with a threat of dismissal with prejudice, citing *Keller v. Pittsburgh Baptist Church*, ARB Case No. 2025-0008, 2025 WL 2400050 (DOL Admin. Rev. Bd. July 30, 2025). This order was issued the day before the government shutdown, which prevented the court from ruling on Pitler's motion for protective order — the motion Pitler subsequently used to justify his deliberate non-cooperation at the deposition, engineering its termination to shield his client from testimony. The order's threat of dismissal, combined with the government shutdown, created a procedural environment in which Pitler could obstruct discovery while the ALJ's threat of dismissal hung over the Complainant's head. (See Comprehensive Analysis, Part VI.C, Item 10.)

D. The Email with Bayley Reporting — The Only Communication Between the Complainant and the Court Reporter

The only email exchange between the Complainant and Bayley Reporting occurred between August 14 and August 21, 2025. The ALJ cited this email in the December 17, 2025 Order Dismissing Matter as evidence that the Complainant "insulted" the court reporter, quoting a

single statement extracted from the end of the exchange. (See Ex. 10, Email with Bayley Reporting; Ex. 71, Email with Bayley Reporting.) The full email exchange reveals the following:

1. The Complainant Initiated Contact to Order Transcripts and Investigate the Separate Record Concern

On August 14, 2025, the Complainant emailed Bayley Reporting to submit a transcript order form and asked: "Are you able to answer any questions regarding about building a record?" The Complainant initiated this contact because he was the only party not sending documents to Bayley Reporting in addition to e-filing, and he sought answers about why the ALJ and counsel were separately serving the court reporter.

2. The Court Reporter Invited the Questions

On August 19, 2025, Michelle Bayley of Bayley Reporting, Inc. responded with an attached quote and asked: "What questions do you have regarding the record?"

3. The Court Reporter Confirmed the EFS System Is the Official Record

The Complainant asked: "How can I find out which filings have already been added to the record and which ones still need to be added?"

The court reporter responded: "Are you able to log into the eFile system? It's the DOL eFiling system."

The Complainant confirmed: "Yes, I am."

The court reporter then confirmed: "You should be able to see what was filed through that system. You can always email the judge's office for clarification."

This exchange confirms that the EFS system is the official record. The court reporter herself directed the Complainant to the EFS system to see what was filed — not to any separate record maintained by the court reporter.

4. The Court Reporter Confirmed There Is No Need to Send Filings to the Court Reporter

The Complainant then asked: "Oh OK. So there is no need to send anything to the court reporter?".

The court reporter responded unequivocally: "No. I don't need anything from you."

This confirmation directly undermines the practice of separately serving the court reporter. If the EFS system is the official record and the court reporter needs nothing from the parties, there was no legitimate reason for the ALJ and counsel to be sending additional filings to the court reporter beyond what was already in the EFS system.

5. The Court Reporter Could Not Explain Why She Was on the Service Sheet

The Complainant then asked the critical question: "What would be the reason someone would send a court reporter filings when they have already been filed with the court?"

The court reporter responded: "We are on the service sheet. That is why."

The Complainant pointed out: "You're not on my service sheet. If there is no need to send you filings, why would you be on the service sheet?"

The court reporter offered an explanation that did not address the question: "Because we are the court reporting firm covering the hearing and conference calls."

The Complainant responded: "Filed documents are not a 'hearing' or a 'conference call.' It's giving the appearance of developing a separate record. And with your provided response, it's not combating this appearance."

The court reporter's explanation — that Bayley Reporting covers "the hearing and conference calls" — does not explain why filed documents (motions, responses, objections, orders) were being sent to the court reporter. Filed documents are not hearings or conference calls. The court reporter could not explain the basis for her inclusion on the service sheet for filed documents.

6. The Court Reporter Deflected to the Judge's Office Rather Than Answering

The court reporter responded: "Could you please reach out to the judge's office for guidance? I don't want to mislead you. I think it's best."

When the Complainant asked what he should inquire about, the court reporter stated: "I think I'm confused by your questions. I think it's best to ask the judge's office for clarification on all of your concerns. I probably should have said that in the beginning. I wish I could help you further."

The court reporter's deflection is significant. She admitted she was "confused" by the questions, acknowledged she "probably should have said that in the beginning," and wished she "could help further" — but could not explain why she was on the service sheet for filed documents. Rather than providing an explanation, she redirected all questions to the judge's office.

7. The Quoted Statement Was Not an Insult

The Complainant's final email stated:

"As the designated court reporting agency for the Department of Labor, you may want to know what you're talking about before you start speaking. Although, I think we both know that you already do. Have a nice day."

The ALJ characterized this statement as an "insult" to the court reporter and used it as evidence of "harassment." (Order Dismissing Matter at 12, Lines 320-324 (Dec. 17, 2025).)

However, the full context of the email exchange reveals the opposite:

The statement "I think we both know that you already do" was not an insult. The Complainant was insinuating that the court reporter **did** know what she was talking about — that the court reporter understood the implications of the selective service practice and was aware that the EFS system was the official record, making the separate service unnecessary and suspicious. As the Department of Labor's designated court reporter, she should have a clear understanding of the rules and procedure. The phrase "you may want to know what

you're talking about before you start speaking" was a critique of the court reporter's inability to explain her own inclusion on the service sheet — not harassment.

The ALJ's extraction of this single statement from a 17-message email exchange — without including the preceding context in which the court reporter confirmed the EFS system is the official record, confirmed she needed nothing from the Complainant, could not explain why she was on the service sheet, and deflected all questions to the judge's office — is a selective and misleading representation of the exchange.

8. The "Harassment" Allegation Was First Raised by the ALJ, Not the Court Reporter

The allegations about the Complainant "bullying" or "harassing" the court reporter were not complaints from the court reporter. They were assertions made by the ALJ in the December 17, 2025 Order Dismissing Matter — the same order that dismissed the case as a sanction. No complaint from the court reporter was ever filed. No affidavit from the court reporter was ever submitted. The ALJ provided no evidence of any kind to support the harassment allegation. (See Comprehensive Analysis, Part VI.D, Item 16; Part VII, Item BBB.)

E. The Origin of the "Harassment" Narrative — From Employer's Retaliatory Characterization to ALJ's Adoption

The "harassment" narrative that the ALJ used as a basis for dismissing this case did not originate with the court reporter or with any conduct during the administrative proceedings. It originated with the employer's retaliatory characterization of the Complainant's protected activity — and the ALJ's adoption of that narrative represents the culmination of a false chain that runs from the employer, through opposing counsel, to the ALJ's dismissal order.

1. The Employer First Invoked "Harassment" to Characterize Protected Activity

On August 9, 2024, four days before the Complainant's termination, the employer's manager responded to the Complainant's legitimate inquiry about health insurance coverage — a term and condition of employment — by stating: "YOU must stop harassing us. We will not reply

to any other irrelevant emails EXCEPT scheduling a supervisory visit." (Exhibit N, Document_2.pdf.) The Complainant's inquiry about whether the employer was providing health insurance as required by the Affordable Care Act was protected activity under both the ACA and the Taxpayer First Act. The employer characterized this protected activity as "harassment" and labeled it "irrelevant." (See OSHA Wrongdoing Analysis, Category AA.)

2. The Employer Invoked the Complainant's Criminal Background to Justify Termination

On August 23, 2024, ten days after the termination, the case manager provided at least five different reasons for the discharge, including:

- "Criminal charges that came up on your background check for fraud" (reason #3)
- "The women that worked in the office…began to feel uncomfortable" (reason #4)

(See OSHA Wrongdoing Analysis, Category G.) The employer invoked the Complainant's criminal background — including a harassment charge — as a post hoc justification for termination. This was one of at least five shifting explanations the employer provided, which the OSHA Whistleblower Investigations Manual identifies as a textbook indicator of pretext. The employer's invocation of a prior harassment charge on the Complainant's criminal background as a reason for discharge was not coincidental: it provided the employer with a convenient narrative to characterize the Complainant as someone with a propensity for "harassment," masking the true retaliatory motive for the discharge.

3. Opposing Counsel Adopted and Weaponized the "Harassment" Narrative

Attorney Robert Pitler adopted the employer's "harassment" characterization and extended it to the administrative proceedings:

- **Misrepresentation #60**: Pitler claimed the Complainant "was rude, abrasive and harassed employees of Pike Reporting" — without providing any supporting evidence (no affidavit, no email, no testimony). (See Comprehensive Analysis, Part VI.C, Item 9; Part VII, Item BBB.)

- **Misrepresentation #75**: Pitler stated "His conduct we believe is because of his previous legal involvements..." — directly referencing the Complainant's criminal history in an ad hominem attack intended to prejudice the tribunal. The Comprehensive Analysis identified this as "a classic ad hominem fallacy" violating Colorado RPC 3.4(e) (alluding to irrelevant matter) and Colorado RPC 8.4(d) (conduct prejudicial to the administration of justice). (See Comprehensive Analysis, Part V, Misrepresentation #75.)

Pitler's invocation of the Complainant's "previous legal involvements" mirrors the employer's invocation of the criminal background check — both used the Complainant's criminal history as a tool to paint him as a harasser, rather than addressing the merits of his whistleblower retaliation claim.

4. The ALJ Adopted the "Harassment" Narrative Without Evidence

The ALJ then adopted the same "harassment" narrative, applying it to the Complainant's legitimate interactions with court staff:

- **September 30, 2025 Order**: The ALJ alleged that the Complainant engaged in harassment of the court reporter, presenting this as a basis for the dismissal threat. No evidence was provided — no affidavits, no emails, no testimony, no documentation of any kind. (See Comprehensive Analysis, Part VI.D, Item 16; Part VII, Item BBB.)
- **December 17, 2025 Order Dismissing Matter**: The ALJ cited the Complainant's email exchange with the court reporter as evidence of "harassment" and "insult," quoting a single statement extracted from 17 messages while omitting the context in which the court reporter confirmed the EFS system is the official record, confirmed she needed nothing from the Complainant, could not explain why she was on the service sheet, and deflected all questions to the judge's office. (See Section D above.)

5. The False Chain: Employer → Counsel → ALJ

The "harassment" narrative follows a clear chain:

11. **Employer** (August 9, 2024): Characterized the Complainant's protected activity (inquiring about health insurance) as "harassment" — four days before terminating him.
12. **Employer** (August 23, 2024): Invoked the Complainant's criminal background — including a harassment charge — as a post hoc justification for discharge, alongside four other shifting explanations.
13. **Counsel** (throughout 2025): Adopted the employer's "harassment" characterization and extended it to the administrative proceedings, claiming the Complainant "harassed" court reporting employees and invoking his "previous legal involvements" — all without supporting evidence.
14. **ALJ** (September 30 and December 17, 2025): Adopted the "harassment" narrative without requiring any evidence, applying it to the Complainant's legitimate inquiries about the separate record concern, and using it as a basis for dismissal.

The ALJ's adoption of the "harassment" narrative — traceable directly to the employer's retaliatory characterization of protected activity — demonstrates the same pattern of accepting counsel's narrative without independent evaluation that pervades this case. The ALJ did not independently evaluate whether the Complainant's communications constituted harassment; he simply adopted the characterization that originated with the employer and was amplified by counsel. This is particularly significant because the ALJ's harassment allegation was deployed as a basis for dismissal — meaning the false narrative that began with the employer's retaliation was ultimately used to deny the Complainant his day in court on the merits of his whistleblower retaliation claim.

F. The Employer's Actions Constitute Federal Statutory Violations

The employer's conduct — discharging the Complainant in reprisal for protected activity, labeling that activity as "harassment," invoking the Complainant's criminal background as a post hoc justification, and providing at least five shifting explanations for the discharge — appears to violate two federal statutes. The shifting explanations are also strong evidence of pretext under well-established precedent.

1. Taxpayer First Act — 26 U.S.C. § 7623(d)(1)

The Taxpayer First Act's anti-retaliation provision states:

"No employer, or any officer, employee, contractor, subcontractor, or agent of such employer, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment (including through an act in the ordinary course of such employee's duties) in reprisal for any lawful act done by the employee."

26 U.S.C. § 7623(d)(1); see also 29 C.F.R. § 1989.102(a) (implementing regulation using identical language).

The record supports the following sequence:

- On August 9, 2024, the Complainant inquired about health insurance coverage — a term and condition of employment. The employer's manager responded: "YOU must stop harassing us. We will not reply to any other irrelevant emails EXCEPT scheduling a supervisory visit." (See OSHA Wrongdoing Analysis, Category AA.) The Complainant's inquiry was protected activity under the TFA because it related to potential underpayment of taxes or violations of internal revenue laws, including the employer's reporting obligations under the ACA.
- On August 12, 2024, the Complainant submitted a written complaint about the employer's conduct.

- On August 13, 2024 — one day after the written complaint — the Complainant was terminated.
- On August 23, 2024, the case manager provided at least five different reasons for the discharge, including: "Criminal charges that came up on your background check for fraud," "The women that worked in the office…began to feel uncomfortable," and others. (See OSHA Wrongdoing Analysis, Category G.)

The statute prohibits employers from discharging, harassing, or discriminating against an employee "in reprisal for any lawful act." The employer's termination of the Complainant one day after his written complaint, following the manager's characterization of his protected inquiry as "harassment," satisfies the elements of a prima facie violation of 26 U.S.C. § 7623(d)(1): (1) the Complainant engaged in protected activity, (2) the employer knew of the protected activity, (3) the employer discharged the Complainant, and (4) the protected activity was a contributing factor in the discharge.

Source: 26 U.S.C. § 7623(d); 29 C.F.R. § 1989.102(a); Whistleblowers.gov — TFA Desk Aid.

2. Affordable Care Act — 29 U.S.C. § 218c

Section 1558 of the Affordable Care Act, codified at 29 U.S.C. § 218c, prohibits employers from discharging or retaliating against employees for engaging in protected activity, including:

"[P]roviding, causing to be provided, or is about to provide or cause to be provided to the employer, the federal government, or the attorney general of a state information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of, any provision of this title."

29 U.S.C. § 218c(a)(2).

The Complainant's inquiry about whether the employer was providing health insurance as required by the ACA — including the employer's reporting obligations on IRS Form 1095-C — constitutes protected activity under this provision. The employer falsely reported on IRS Form 1095-C that health insurance was offered when it was not. The Complainant's inquiry about this discrepancy was protected activity, and the employer's discharge of the Complainant one day after his written complaint was retaliatory.

Source: 29 U.S.C. § 218c; ACA Desk Aid; Federal Register — Procedures for ACA Retaliation Complaints.

3. The Employer's Shifting Explanations Constitute Textbook Evidence of Pretext

The employer provided at least five different and inconsistent reasons for the Complainant's discharge:

15. "Difficult to work with"
16. "Unable to have a face-to-face visit"
17. "Criminal charges that came up on your background check for fraud"
18. "The women that worked in the office began to feel uncomfortable"
19. The Complainant "wanted to switch agencies"

(See OSHA Wrongdoing Analysis, Category G.)

Federal courts have long recognized that an employer's shifting or inconsistent explanations for an adverse employment action constitute evidence of pretext — that the stated reasons are false and the real motive is unlawful.

The Tenth Circuit has directly addressed this principle. In *Green v. New Mexico Department of Corrections*, 420 F.3d 1189 (10th Cir. 2005), the court held that when a defendant "changed its explanation for the adverse employment action" — initially citing budgetary constraints and later citing problems with staff — this constituted evidence of pretext. Green v. New Mexico Dept.

The Indiana Supreme Court has similarly held that untruthfulness in an employer's proffered reasons may be demonstrated through evidence showing "(1) that the proffered reason had no basis in fact, (2) that the proffered reason did not actually motivate the adverse employment action, or (3) that the proffered reason was insufficient to motivate the adverse employment action." *Filter Specialists, Inc. v. Brooks*, 906 N.E.2d 835 (Ind. 2009). Filter Specialists, Inc. v. Brooks

The EEOC's Enforcement Guidance on Retaliation similarly recognizes that "if the employer changes its stated reason for the challenged adverse action over time or in different settings… pretext may be inferred." EEOC Enforcement Guidance on Retaliation

The Tenth Circuit's district courts have reiterated this principle. In *Bell v. Judge Memorial Catholic High School*, the court held that "one can reasonably infer pretext from an employer's shifting or inconsistent explanations for the challenged employment decision." Bell v. Judge Memorial Catholic High School. Similarly, in *Vallejos v. Orbital ATK*, the court explained that pretext may be shown where an employer's "explanation was so weak, implausible, inconsistent, or incoherent that a reasonable fact finder could conclude that it was not an honestly held belief but rather was subterfuge for discrimination." Vallejos v. Orbital ATK.

The employer's five shifting explanations — each inconsistent with the others — satisfy each of the recognized methods of demonstrating pretext: (1) the "difficult to work with" characterization had no basis in fact, as the Complainant had no prior disciplinary issues; (2) the criminal background reason did not actually motivate the discharge, as the employer had hired the Complainant knowing his background; (3) the explanations were insufficient to motivate the discharge, given the temporal proximity to the protected activity.

4. The "Harassment" Narrative as a Retaliatory Weapon

The chain of the "harassment" narrative is significant:

- The employer **first** labeled the Complainant's protected activity as "harassment" on August 9, 2024 — four days before termination.
- The employer **then** invoked the Complainant's criminal background — including a harassment charge — as a post hoc justification on August 23, 2024.
- Opposing counsel **adopted** the same narrative, invoking the Complainant's "previous legal involvements" (Misrepresentation #75) and claiming the Complainant "harassed employees of Pike Reporting" (Misrepresentation #60) — all without supporting evidence.
- The ALJ **adopted** the same narrative, using "harassment" as a basis for dismissal.

The characterization of protected activity as "harassment" does not strip it of statutory protection. Courts have recognized that an employer's false labeling of whistleblowing activity as "harassment" is itself evidence of retaliatory motive. In *Moore v. California Institute of Technology Jet Propulsion Laboratory*, 275 F.3d 838 (9th Cir. 2002), the court identified as evidence of discrimination a supervisor's statement that the employee was "not a team player because he had caused an ethics investigation" — a false characterization of protected activity. Moore v. California Institute of Technology

The same principle applies here: the employer's characterization of the Complainant's protected inquiry about health insurance as "harassment" — and its subsequent invocation of a prior harassment charge on his criminal background — were not legitimate justifications for discharge but evidence of the retaliatory motive that actually drove the termination.

The employer's use of the Complainant's criminal background as one of five shifting explanations is particularly significant. The employer had hired the Complainant knowing his background, and only invoked the criminal background as a reason for discharge after the protected activity occurred. This temporal sequence — protected activity, then invocation of

criminal background — supports the inference that the criminal background was a pretextual cover for retaliation, not the true reason for the discharge.

5. The ALJ's Contradictory Statements on the Filing Restriction

The ALJ's handling of the filing restriction reveals a fundamental contradiction that further demonstrates the pretextual nature of the dismissal. During the July 30, 2025, motion hearing, the Complainant sought clarification regarding the scope and mechanics of the ALJ's filing restriction. The ALJ explicitly represented on the record:

"I am just reigning in… the filings that come in. Although, you know, if you feel that certain motions need to be filed, you can file them. And then I am just going to take a review of them first to see whether they need to be docketed."

(Ex. 19, Transcript of July 30, 2025 Hearing.)

The ALJ thus assured the Complainant that he could continue to file motions — the only limitation being that the ALJ would review them for frivolity before they were docketed. The Complainant relied on this representation and continued to file motions addressing legitimate issues including attorney misconduct, discovery obstruction, document falsification, and the separate record concern.

Yet in the September 30, 2025 Order Lifting Filing Limitation — the same order that included Bayley Reporting on its service sheet and was later altered post-dismissal on December 24, 2025 — the ALJ stated: "Since imposing the restriction, the Tribunal has had to reject a number of subsequent filings and motions while allowing countless others. In short, the restriction did little to impact the Complainant's course of conduct in this matter." (Ex. 38, September 30, 2025 Order at 1.) The ALJ then lifted the filing restriction, noting that "screening Complainant's motions has not proved effective for its intended purpose of stemming Complainant's frivolous filings." (Id. at 2.)

The contradiction is inescapable: the ALJ told the Complainant that he could continue to file, and then criticized him for doing exactly what the ALJ said he was permitted to do. The ALJ's own words on the record — "if you feel that certain motions need to be filed, you can file them" — authorized the very conduct that the ALJ later cited as evidence of abusive filing behavior warranting dismissal. This is not a case where a litigant defied a clear court order; this is a case where the ALJ gave the Complainant permission to file, then weaponized that permission as a basis for punishment.

This contradiction is consistent with the broader pattern in this case: the ALJ characterized the Complainant's legitimate legal activity — filing motions addressing attorney misconduct, raising concerns about a separate record, and inquiring about the authority of court staff — as "harassment" and "abuse of the judicial process," using the same label the employer had applied to the Complainant's protected activity. The ALJ's contradictory statements on the filing restriction demonstrate that the "frivolous filings" narrative, like the "harassment" narrative, was not a genuine assessment of the Complainant's conduct but a pretextual justification for dismissal.

6. The False Narrative Ultimately Denied the Complainant a Hearing on the Merits

The significance of the employer's statutory violations extends beyond the underlying discharge. The "harassment" narrative that originated with the employer's retaliatory characterization of protected activity was then adopted by opposing counsel and ultimately by the ALJ — becoming the basis for the dismissal of the Complainant's case. The same false characterization that began as the employer's retaliation ended up denying the Complainant his day in court on the merits of his whistleblower retaliation claim. The ALJ's adoption of this narrative — traceable directly to the employer's unlawful conduct — demonstrates how the employer's statutory violation propagated through the administrative proceedings and ultimately infected the adjudication itself. The ALJ's contradictory statements on the filing

restriction — telling the Complainant he could file, then punishing him for filing — further demonstrate that the dismissal was not a good-faith response to abusive litigation conduct, but the culmination of a false narrative that originated with the employer's unlawful retaliation.

G. The ALJ's Other "Harassment" Allegations Regarding Court Staff

The ALJ's allegation that the Complainant "harassed the court reporter and court clerk" appears to reference two additional communications:

20. An email to the court clerk asking: "Good afternoon. Would you mind pointing me to which statute gives a court clerk authority to rule on motions and to reject properly submitted motions? I seem to have missed it." (See Ex. 16, Email to Court Clerk.) This is a legitimate legal inquiry about the authority of a court clerk to reject filings — an issue directly relevant to the nine motions rejected by the court clerk during the filing restriction period.

21. An email exchange with the court reporter regarding filings:

    - Court Reporter: "The filings have been entered onto the record."
    - Complainant: "And which record would that be?"
    - Court Reporter: "The filings have been accepted for filing."

    (See Ex. 17, Email Regarding Filings.)

The Complainant's question "And which record would that be?" goes to the heart of the separate record concern — the Complainant was asking whether the filings were being entered onto the official EFS record or onto the separate court reporter's record. The court reporter's response — "The filings have been accepted for filing" — did not answer the question of which record the filings were being entered onto, leaving the ambiguity unresolved.

These communications do not constitute "harassment." They are legitimate inquiries by a pro se litigant about the procedural integrity of the record and the authority of court staff to take actions affecting his case. The ALJ's characterization of these inquiries as "harassment" mirrors Pitler's pattern of characterizing legitimate legal filings and inquiries as "frivolous, baseless and vexatious" without addressing their substance. (See Comprehensive Analysis, Part IV, Theme K.)

H. The Effect of the Selective Service Practice

The selective inclusion of Bayley Reporting on Pitler's filings and certain ALJ orders — while excluding the Complainant's motions — created a court reporter's record that told a one-sided story:

- **All of Pitler's filings** — his responses characterizing the Complainant's motions as "frivolous, baseless and vexatious," his requests for filing restrictions, his misrepresentations of the record
- **The ALJ's July 25 order** — the order imposing the filing restriction
- **The ALJ's September 30 order** — the order lifting the filing restriction and threatening dismissal

The court reporter's record would contain **none** of the following:

- The Complainant's 32 exhibits documenting alleged document falsification
- The allegations of document falsification and attorney misconduct
- The evidence of altered emails
- The CDPHE survey findings
- The sworn affidavit
- The Motion for Summary Judgment and its supporting documents
- The printout of the record from the EFS system

- Any of the Complainant's motions raising concerns about the ALJ's and counsel's conduct

The court reporter's record would show a one-sided narrative: a pro se litigator filing "frivolous" motions (as described by opposing counsel and adopted by the ALJ) and a court imposing restrictions — with no evidence that the motions had any merit, because the motions themselves and their supporting exhibits were never provided to the court reporter. (See Comprehensive Analysis, Part VIII.B.)

I. Post-Allegation Changes in the Service Practice

After the Complainant raised the allegation of a separate record being created, the following changes occurred:

22. **The ALJ stopped including Bayley Reporting on service sheets.** However, the ALJ's attempt to retroactively remove Bayley Reporting from previously issued service sheets — evidenced by the December 24, 2025 access to the September 30 service sheet — confirms that the ALJ recognized the implication of the selective service practice and attempted to alter the record after the fact.
23. **Counsel continued to include Bayley Reporting on their service sheets.** Even after the allegations were made, Pitler did not stop including the court reporter on his certificates of service, suggesting that the practice was intentional and not the result of a misunderstanding about service requirements.
24. **The ALJ's December 17, 2025 Order Dismissing Matter** attempted to give the appearance that Bayley Reporting was not included on the service sheet. The service sheet attached to the Order Dismissing Matter did not include Bayley Reporting. However, the individually filed service sheet for the same Order Dismissing Matter **did** include Bayley Reporting. (See Appendix A, ¶¶ 149-150.)

J. The September 5, 2025 Motion Hearing — The ALJ's Misrepresentation of Subpoena Authority and Blocking of Relevant Discovery

The September 5, 2025 motion hearing provides further evidence of the ALJ's bias against the Complainant and his pattern of coordinating with opposing counsel to the Complainant's disadvantage. During this hearing, the ALJ misrepresented the legal basis for denying the Complainant's subpoena requests, agreed with opposing counsel's incorrect legal authority without verification, and blocked the Complainant from obtaining relevant discovery — all of which contributed to the Complainant's realization that the case was being decided against him not on the merits but through the ALJ's and counsel's conduct.

1. The ALJ's Claim of No Subpoena Authority Under the TFA and ACA

During the September 5, 2025 motion hearing, the ALJ claimed that recent ARB authority interfered with his ability to issue subpoenas in this case. The ALJ stated on the record: "I have subpoena power specifically under either the Tax Act or the Affordable Care Act. I will issue it, but I think you'll find that we do not get a deal talk. There is some recent ARB authority on these issues in some of the other contexts, addressing the issue of subpoena power of ALJs in the context of whistleblower cases."

The ALJ then asserted that "subpoena power must be specifically written into the statute," and that the TFA and ACA do not contain such specific grants. He acknowledged: "Off the top of my head, I don't know whether the Affordable Care Act has it. I don't recall about the Tax Act off the top of my head." (Transcript of September 5, 2025 Motion Hearing.)

2. The ALJ Could Not Identify the Case He Was Citing

When asked for the name of the ARB case he was referencing, the ALJ was unable to provide it:

Complainant: "In the ARB case, what's the name of the case?"

ALJ: "Oh, let me… If you don't, I'll find it. It's like a 20… I think it's a 2024 case."

Complainant: "Is it a federal case or is it in your court?"

ALJ: "It's the… it's the ARB. If you search ARB subpoena power, you should get it pretty quickly."

(Transcript of September 5, 2025 Motion Hearing.)

The ALJ — the presiding judicial officer in the case — could not name the case he was citing as authority for denying the Complainant's subpoena requests. He could not provide a citation, a case name, or any identifying information beyond "it's a 2024 case" and a suggestion to "search ARB subpoena power." This is not how a tribunal cites controlling authority. An ALJ who is genuinely applying case law should be able to identify the case by name and citation. The ALJ's inability to do so strongly suggests he had not actually read the case and was relying on a general impression or, worse, fabricating the existence of authority to justify denying the Complainant's subpoenas.

3. Pitler's Citation to the Federal Rules of Civil Procedure — and the ALJ's Agreement

During the same exchange, opposing counsel Robert Pitler pressed the ALJ for specifics about the procedural authority for issuing subpoenas, asking: *"Who's the procedure that will authorize you to issue subpoenas?"* (Transcript of September 5, 2025 Motion Hearing, Recording 3.) The ALJ responded: *"Go read the ARB case. They address this exact issue."* Pitler then agreed with the ALJ's response: *"You are correct. Our rule is specifically provided and they address that exact issue."* (Recording 3.) Pitler's reference to "our rule" — meaning the Federal Rules of Civil Procedure — and the ALJ's immediate agreement without explanation demonstrates a coordinated exchange between counsel and the ALJ on a legal question that should have been evaluated independently by the tribunal.

The ALJ stated that Pitler was "correct" but said he "needed to view the case law." (Transcript of September 5, 2025 Motion Hearing.) The ALJ did not explain how the Federal Rules of Civil Procedure — which govern proceedings in federal district courts, not

administrative proceedings before the DOL — could grant subpoena authority to an ALJ in a whistleblower case. He simply agreed with counsel's representation.

This exchange is significant for two reasons. First, Pitler — not the Complainant — was the one pressing the ALJ for specifics about the procedural authority for subpoenas. Pitler initiated the line of inquiry, and the ALJ responded directly to counsel's question, suggesting a level of engagement and coordination between the ALJ and counsel that is inconsistent with the ALJ's role as an impartial adjudicator. Second, Pitler's agreement with the ALJ — *"You are correct. Our rule is specifically provided"* — and the ALJ's acceptance of Pitler's citation to the Federal Rules of Civil Procedure without independent verification demonstrates the same pattern of deference to counsel that pervades this proceeding.

4. The Complainant Found the Case — and It Does Not Mention the Federal Rules of Civil Procedure

The Complainant took the ALJ's advice and searched for the ARB case on subpoena power. He found it: *Fagan v. Department of the Navy*, ARB No. 2023-0006, ALJ No. 2021-CER-00001 (ARB Feb. 28, 2024). In *Fagan*, the ARB held that the APA does not automatically confer subpoena authority, that Congress grants subpoena power to the Secretary of Labor on a statute-by-statute basis, and that neither CERCLA nor the SDWA provides ALJs with the authority to issue third-party subpoenas. DOL ARB February 2024 Case List.

The *Fagan* decision discusses the Administrative Procedure Act (5 U.S.C. §§ 554, 555(d), 556(c)), the OALJ Rules of Practice and Procedure (29 C.F.R. § 18.56(a)(1)), the text and legislative history of CERCLA and SDWA, the ARB's prior decision in *Childers v. Carolina Power & Light Co.* (ARB Dec. 29, 2000), and *Bobreski v. U.S. Environmental Protection Agency*, 284 F. Supp. 2d 67 (D.D.C. 2003). The decision also addresses due process, the remedial purpose of whistleblower statutes, and the availability of alternative discovery methods.

The *Fagan* decision does **not** mention the Federal Rules of Civil Procedure. Not once. The Federal Rules of Civil Procedure do not appear anywhere in the case — not in the analysis, not in the citations, not in the statutory framework discussion, not in the table of authorities. The case addresses exclusively the APA, the specific whistleblower statutes at issue, and DOL regulations.

This is how the Complainant knew the ALJ was not being truthful about the authority. The ALJ agreed with Pitler's citation to the Federal Rules of Civil Procedure as a basis for subpoena authority, but the very case the ALJ was citing as authority — *Fagan* — does not mention the Federal Rules of Civil Procedure at all. The ALJ was either:

25. **Fabricating authority** — claiming a case said something it does not say, in order to deny the Complainant's subpoenas while appearing to agree with counsel; or
26. **Agreeing with counsel without reading the case** — deferring to Pitler's representation about the Federal Rules of Civil Procedure without verifying whether the ARB case actually discussed them, which demonstrates that the ALJ was not independently evaluating the law but was instead adopting counsel's position.

Either possibility is consistent with the broader pattern in this case: the ALJ repeatedly deferred to counsel's representations without independent evaluation, whether it was counsel's characterization of the Complainant's motions as "frivolous" (Section E), counsel's unsupported "harassment" allegations (Section E.3), or counsel's legal authority for subpoena power. The ALJ's willingness to agree with counsel's incorrect citation — without having read the case he was supposedly relying on — is the same pattern of deference to counsel that pervades this proceeding.

5. The ALJ Blocked the Complainant from Obtaining Training Documents

During the same September 5, 2025 hearing, the ALJ blocked the Complainant from obtaining documents related to employee training. The Complainant had listed "new hire

training and verification" as a deposition topic. Pitler objected, claiming there was "no formal documentation relating to employee training, employee operation" and invoking trade secret protection. (Transcript of September 5, 2025 Motion Hearing.)

The ALJ signaled that training-related questions would face objections for irrelevance, telling the Complainant he was "likely to get objections if you go too far afield with this because it's irrelevance of those questions." (Transcript of September 5, 2025 Motion Hearing.) This effectively blocked the Complainant from pursuing training-related discovery.

Training documents were relevant to the Complainant's case for multiple reasons:

27. **Establishing the employer's actual practices**: Training documents would reveal what the employer's actual policies and procedures were — including whether the employer had a whistleblower policy, how it handled complaints, and what standards it applied to employee conduct.
28. **Testing the employer's shifting explanations**: The employer provided at least five different reasons for the Complainant's discharge (Section F.3). Training records could have shown whether the employer's claimed reasons — such as being "difficult to work with" — were consistent with the training the Complainant received or the standards the employer actually applied.
29. **Demonstrating pretext**: If the employer's training materials documented policies or practices that the employer violated in terminating the Complainant, those materials would be evidence of pretext.

The ALJ's blocking of training documents is consistent with his broader pattern of limiting the Complainant's access to evidence while allowing counsel to shield the employer from scrutiny — the same pattern demonstrated by the ALJ's denial of subpoena authority, his filing restriction, and his characterization of the Complainant's motions as "frivolous."

6. The Complainant's Realization

It was at this hearing — September 5, 2025 — that the Complainant realized he was going to lose the case, not because of the merits of his whistleblower retaliation claim, but because of the ALJ's and Pitler's conduct. The combination of:

- The ALJ denying subpoena authority based on a case he could not name
- The ALJ agreeing with Pitler's incorrect citation to the Federal Rules of Civil Procedure
- The ALJ blocking relevant training documents
- The ALJ's pattern of admitting Pitler to the virtual hearing room before the Complainant (Section K.1, below)

all signaled to the Complainant that the proceedings were not being conducted in good faith. The ALJ was not providing a fair and impartial forum for adjudicating the Complainant's whistleblower retaliation claim — he was systematically denying the Complainant access to tools (subpoenas), evidence (training documents), and a fair hearing, while deferring to opposing counsel at every turn.

This realization is significant because it places the Complainant's subsequent conduct — including his inquiries about the separate record, his motions addressing attorney misconduct, and his email to the court reporter — in context. The Complainant was not engaging in "harassment" or filing "frivolous" motions; he was responding in good faith to a proceeding that was being conducted in bad faith by the tribunal and opposing counsel.

7. The Complainant's Demeanor Throughout the Hearing

The transcript of the September 5, 2025 motion hearing — preserved across three recordings — reveals the Complainant's demeanor throughout the proceeding. Far from the "harassing" or "abusive" litigator described in the ALJ's December 17, 2025 Order Dismissing Matter, the Complainant was consistently cooperative, measured, and willing to compromise. His demeanor at every stage of the hearing contradicts the ALJ's characterization and supports

the inference that the "harassment" narrative was a pretextual justification for dismissal, not a genuine assessment of the Complainant's conduct.

(a) Cooperative and measured throughout — not combative or disruptive.

Across all three recordings, the Complainant was consistently polite and respectful to the tribunal. When the ALJ asked which issue to take up first, the Complainant responded: *"It doesn't matter, either one."* (Transcript of September 5, 2025 Motion Hearing, Recording 1.) He did not argue, interrupt, or act disruptively at any point during the hearing. He engaged with each issue as the ALJ presented it, answered questions directly, and addressed the tribunal respectfully throughout.

(b) Resigned acceptance of being pro se.

When the ALJ asked if the Complainant had obtained counsel and the Complainant said no, the ALJ asked if he would continue representing himself. The Complainant responded: *"I don't have any other choice."* (Recording 1.) This was not a defiant statement — it was a statement of fact delivered plainly, showing acceptance of a difficult circumstance. The Complainant did not complain about his inability to obtain counsel or blame the tribunal for the imbalance. He simply acknowledged the reality and moved forward.

(c) A striking moment of frustration and powerlessness.

In the second recording, when the ALJ asked whether the Complainant still wanted to continue the deposition, the Complainant responded: *"It doesn't matter what I want to do, you tell me what's going to happen, and I'll stick with that."* (Recording 2.) This is the most revealing statement in the entire hearing. It shows that the Complainant had already recognized the ALJ was going to rule as he saw fit regardless of the Complainant's position. It reflects a sense of resignation that the process was not going to be fair — yet the Complainant was still cooperating. He was not refusing to participate or walking out of the

hearing. He was continuing to engage with a tribunal he had already concluded was not acting in good faith.

(d) Willing to compromise — not pursuing every request.

In the second recording, the Complainant voluntarily withdrew discovery requests: *"I actually don't need any other documents from them"* and *"I don't need anything else from the responder."* (Recording 2.) The ALJ confirmed: *"You don't need anything else from the responder?"* and the Complainant confirmed: *"No, I don't need anything else from the responder. I'm not going to get it anyway, so we can move on to the next motion."* (Recording 2.) This demonstrates that the Complainant was making strategic decisions, not simply filing every possible motion or pursuing every available request. The Complainant's voluntary withdrawal of discovery requests directly undercuts any narrative that he was being abusive or harassing — a litigator who is "harassing" the opposing party does not voluntarily withdraw requests.

(e) Following up on Pitler's exchange with the ALJ — and doing the research himself.

It was opposing counsel Robert Pitler — not the Complainant — who pressed the ALJ for specifics about the procedural authority for issuing subpoenas. Pitler asked: *"Who's the procedure that will authorize you to issue subpoenas?"* and, after the ALJ responded, Pitler agreed: *"You are correct. Our rule is specifically provided and they address that exact issue."* (Recording 3.) The Complainant then followed up on this exchange by asking the ALJ for the case name: *"In the ARB case, what's the name of the case?"* (Recording 3.) When the ALJ could only say "it's a 2024 case" and told the Complainant to search for it himself, the Complainant responded: *"If you don't, I'll find it."* The Complainant then did exactly that — researching the case himself, finding it — *Fagan v. Department of the Navy*, ARB No. 2023-0006 (ARB Feb. 28, 2024) — and confirming that it does not mention the Federal Rules of Civil Procedure, contrary to what the ALJ and Pitler represented. (See

Section J.4 above.) When the ALJ explained the limits on his subpoena authority, the Complainant responded: *"That's really interesting. I will look that up. I will enjoy that."* (Recording 3.) This shows intellectual engagement and good-faith diligence — not hostility or disruption.

The fact that Pitler was the one pressing the ALJ for specifics is itself significant. Pitler — as opposing counsel representing the Respondent — was actively engaging with the ALJ on the legal question of subpoena authority, pressing the ALJ for the procedural basis, and then agreeing with the ALJ's response. This is not the role of an advocate; it is the role of a collaborator. An advocate representing the Respondent would not press the ALJ to articulate authority for denying subpoenas that the Respondent presumably did not want issued. Pitler's engagement in this exchange — pressing the ALJ, then agreeing with the ALJ's answer — further supports the inference of coordination between the ALJ and counsel.

(f) A clear progression from cooperation to recognition.

The three recordings show a clear progression in the Complainant's demeanor:

- **First recording**: Cooperative, trying to work within the system. The Complainant explained his claims clearly and concisely: *"The company reported on Form 1095-C to have offered me health insurance for the year 2023. When they did not offer health insurance. And in my complaint, I alleged suspected tax fraud because of that filing."* (Recording 1.) This was direct, factual, and coherent — not rambling or confused.
- **Second recording**: More subdued. The Complainant voluntarily withdrew discovery requests and expressed that the ALJ would decide regardless of his input: *"It doesn't matter what I want to do, you tell me what's going to happen, and I'll stick with that."* (Recording 2.)
- **Third recording**: Still respectful but following up on Pitler's exchange with the ALJ. The Complainant asked the ALJ for the name of the case Pitler had pressed him on,

challenged the ALJ's authority claims, and showed intellectual engagement: *"That's really interesting. I will look that up. I will enjoy that."* (Recording 3.) Notably, it was Pitler — not the Complainant — who initiated the pressing for specifics about subpoena authority, and the Complainant followed up on Pitler's exchange.

This progression — from cooperation, to resignation, to pressing for accountability — is not the progression of a harasser. It is the progression of a pro se litigant who began the hearing in good faith, gradually recognized that the tribunal was not acting impartially, and continued to engage respectfully despite that recognition.

(g) The significance of the Complainant's demeanor for the "harassment" narrative.

The Complainant's demeanor throughout the September 5, 2025 hearing directly contradicts the ALJ's characterization of him as a "harassing" litigator whose conduct warranted dismissal:

30. The Complainant was **cooperative and respectful** at all times — not combative, abusive, or disruptive.
31. The Complainant **voluntarily withdrew discovery requests** — a litigator who is "harassing" the opposing party does not voluntarily withdraw requests.
32. The Complainant **followed up on Pitler's pressing of the ALJ** for the name of the ARB case on subpoena authority — and then did the research himself, finding that the case does not support what the ALJ and Pitler represented. This is good-faith diligence, not harassment.
33. The Complainant's statement — *"It doesn't matter what I want to do, you tell me what's going to happen, and I'll stick with that"* — shows that he had already recognized the ALJ's bias during the hearing itself, not in hindsight. The Complainant continued to participate despite this recognition.

The ALJ's characterization of the Complainant as a "harassing" litigator is not supported by the hearing transcript. The transcript shows a pro se litigant who was cooperative, willing to compromise, intellectually engaged, and respectful — and who recognized, during the hearing itself, that the proceedings were not being conducted in good faith. This demeanor evidence further supports the inference that the "harassment" narrative — traceable from the employer's retaliatory characterization through counsel's adoption to the ALJ's dismissal order (Section E) — was a pretextual justification for denying the Complainant his day in court, not a genuine assessment of his conduct.

K. Legal Standards Violated

The selective service practice and the resulting one-sided record violate the following legal standards:

1. **5 U.S.C. § 557(d) (Ex Parte Communications):** The selective inclusion of the court reporter on only one party's filings and certain ALJ orders — while the Complainant was never instructed to do so — could not have occurred by coincidence. Both the ALJ and opposing counsel independently began serving the court reporter on their certificates of service without any order directing them to do so. For both the ALJ and counsel to adopt the same unauthorized practice — one that the court reporter herself confirmed was unnecessary — strongly supports an inference that the ALJ and counsel coordinated or discussed the inclusion of the court reporter at some point during the proceedings. No such discussion was disclosed to the Complainant. No notice was given. No opportunity to participate was provided. This undisclosed coordination between the ALJ and opposing counsel regarding a procedural matter affecting the record constitutes a prohibited ex parte communication under 5 U.S.C. § 557(d), which prohibits any interested person outside the agency from making, and any ALJ from receiving, "an ex parte communication relevant to the merits of the

proceeding" without disclosure to all parties. See *Professional Air Traffic Controllers Organization v. Federal Labor Relations Authority*, 685 F.2d 547 (D.C. Cir. 1982) (broadly interpreting "interested person" under § 557(d) and noting that even procedural inquiries can be improper if they are "subtle efforts to influence the outcome"). The procedural arrangement for creating a separate record — determining which filings would and would not be served on the court reporter — was relevant to the merits because it determined what would and would not appear in the record available to the court reporter and, potentially, to a reviewing court.

This inference of undisclosed coordination is further supported by the ALJ's handling of the motion hearings conducted via Microsoft Teams. During both motion hearings, the Complainant was the last party to be admitted into the virtual meeting. At the second motion hearing, the Complainant waited approximately 30 minutes in the Teams lobby before being admitted. When the Complainant was finally permitted to enter the meeting, opposing counsel Robert Pitler was already present — meaning that the ALJ and opposing counsel had been meeting together in the virtual hearing room for a substantial period of time before the Complainant was allowed to join. This pattern — repeated at both motion hearings — provided the ALJ and counsel with a window of time in which they could communicate without the Complainant's knowledge or participation. The Complainant has no transcript or recording of what occurred during the period he was excluded from the meeting, because he was not present. The fact that the ALJ controlled admission to the virtual hearing room and consistently admitted opposing counsel before the Complainant — including a 30-minute delay at one hearing — supports the inference that the ALJ and counsel had a practice of communicating before the Complainant was permitted to join the proceedings, and that the coordination regarding the court reporter's inclusion on service sheets may have occurred during one or more of these pre-hearing periods when the Complainant was excluded.

2. **5 U.S.C. § 556(e) (Whole Record):** The "whole record" standard requires that an agency's decision be based on the entire record, including evidence contrary to the agency's position. The creation of a separate, one-sided record for the court reporter — containing only opposing counsel's filings and the ALJ's restrictive orders, but none of the Complainant's motions or exhibits — violated this standard. See *Stainback v. Secretary of the Navy*, 520 F. Supp. 2d 181 (D.D.C. 2007) (the "whole" administrative record "consists of all documents and materials directly or indirectly considered by agency decision-makers and includes evidence contrary to the agency's position"); see also *Portland Audubon Society v. Endangered Species Committee*, 984 F.2d 1534 (9th Cir. 1993) (an incomplete record must be viewed as a "fictional account of the actual decision-making process").

The purpose of creating this separate record was to replace the EFS system record — which repeatedly raised jurisdiction issues because it contained the Complainant's motions challenging the tribunal's jurisdiction and exposing procedural violations. The EFS system, as the official record, preserved all of the Complainant's filings, including those that raised jurisdictional challenges, exposed attorney misconduct, and documented discovery obstruction. By creating a separate, curated record for the court reporter that excluded the Complainant's filings entirely, the ALJ ensured that the court reporter's version of the case told a sanitized, one-sided story — free of the jurisdictional issues and procedural challenges that the EFS system record contained.

The court reporter herself confirmed there was no legitimate reason for the separate service. When the Complainant asked "Oh OK. So there is no need to send anything to the court reporter?", the court reporter responded unequivocally: "No. I don't need anything from you." (See Ex. 71, Email with Bayley Reporting.) There is no other explanation for why the court reporter would have received additional filings — she said so herself. The only

explanation is that the ALJ and counsel were deliberately building a separate record to circumvent the EFS system's preservation of the Complainant's jurisdictional challenges. When the Complainant discovered this practice and raised it directly with the court reporter — thereby exposing the separate record — the ALJ treated this exposure as a threat to the separate record scheme. The Complainant's interference with that record by exposing it contributed directly to the ALJ's threat to dismiss the case. The ALJ characterized the Complainant's legitimate inquiry as "harassment" of the court reporter, using it as a pretextual basis for the dismissal threat — all because the Complainant had uncovered the practice of maintaining a separate, one-sided record.

10. **5 U.S.C. § 554(b) and Due Process (Impartial Adjudication):** The ALJ's selective inclusion of the court reporter on his own orders — including the order imposing the filing restriction and the order lifting it — while excluding the reporter from other orders (such as the May 28 order) demonstrates that the ALJ made deliberate choices about what entered the court reporter's record, undermining the appearance of impartiality. Section 554(b) of the Administrative Procedure Act provides that hearings shall be conducted by an ALJ who presides over the receipt of evidence. The Due Process Clause, as applied through the APA, requires that administrative adjudicators both be and appear impartial. An ALJ who deliberately curates a one-sided record for the court reporter — including only certain of his own orders and opposing counsel's filings while excluding the Complainant's — has compromised the appearance of impartiality required by due process.

11. **29 C.F.R. § 18.14 (Ex Parte Communications) (formerly 29 C.F.R. § 18.38):** This regulation provides: "The parties, their representatives, or other interested persons must not engage in ex parte communications on the merits of a case with the judge." The ALJ and opposing counsel both adopted the unauthorized practice of serving the

court reporter on their certificates of service — a practice the Complainant was never instructed to follow and the court reporter confirmed was unnecessary. The simultaneous adoption of this same unauthorized practice by both the ALJ and counsel supports a strong inference that they communicated about the arrangement at some point during the proceedings. Such communication, if it occurred, was not disclosed to the Complainant and violated the prohibition on ex parte communications between the ALJ and a party on any matter affecting the proceeding. This inference is further supported by the ALJ's pattern of admitting opposing counsel to the virtual hearing room before the Complainant at both motion hearings conducted via Microsoft Teams — including a 30-minute delay at the second hearing during which Pitler was already present in the meeting. These pre-hearing periods, during which the ALJ and counsel were together in the virtual meeting room without the Complainant, provided opportunities for undisclosed communication in violation of both 29 C.F.R. § 18.14 and 5 U.S.C. § 557(d).

L. The Inference

The facts set forth above support the following inferences:

1. **The selective service of Bayley Reporting was deliberate, not inadvertent.** The ALJ's inconsistent inclusion of the court reporter on his own orders — the May 28 order excluding Bayley, but the July 25 and September 30 orders including Bayley — demonstrates deliberate case-by-case choices, not a uniform practice. Counsel's consistent inclusion of the court reporter on every single filing, while the Complainant never included the court reporter, further demonstrates that this was a deliberate practice, not a random occurrence.
2. **The practice was not authorized by any rule or order.** The court reporter herself confirmed that the EFS system is the official record and there was no need for anyone

to send additional documents to the court reporter. No order was ever issued directing the parties to serve the court reporter separately. The practice was unauthorized and unnecessary.

3. **The practice created a one-sided record designed to replace the EFS system record.** The court reporter's record contained only opposing counsel's filings and the ALJ's restrictive orders, but none of the Complainant's motions, exhibits, or supporting documents. The purpose was to create a sanitized record free of the jurisdictional issues and procedural challenges that the EFS system record repeatedly raised. This one-sided record would, if transmitted to a reviewing court, tell a fundamentally incomplete and misleading story — a "fictional account of the actual decision-making process." See *Portland Audubon Society v. Endangered Species Committee*, 984 F.2d 1534 (9th Cir. 1993).

4. **The ALJ attempted to conceal the practice after the fact.** The EFS metadata showing post-dismissal access to the September 30 service sheet on December 24, 2025 — during which Bayley Reporting was removed from the service sheet — demonstrates that the ALJ (or someone in the ALJ's office) recognized the implication of the selective service practice and attempted to alter the record to remove evidence of it.

5. **The ALJ's "harassment" allegation was pretextual.** The ALJ's claim that the Complainant "harassed" the court reporter — made without any supporting evidence and relying on a single email exchange in which the Complainant asked legitimate questions about the separate record concern — was deployed as a basis for dismissal. The characterization of these inquiries as "harassment" mirrors the pattern of labeling legitimate legal filings as "frivolous" without addressing their substance.

6. **The combination of these facts creates a strong inference of a separate record and ex parte coordination.** The selective service practice, the unauthorized nature of the practice, the one-sided content of the court reporter's record, the post-dismissal attempt to alter the service sheets, and the pretextual "harassment" allegation all combine to support the inference that the ALJ and opposing counsel were maintaining a separate, one-sided record for the court reporter — a record that excluded the Complainant's evidence and motions while including only the narrative favorable to the Respondent and the ALJ's restrictive orders. The purpose of this separate record was to replace the EFS system record, which repeatedly raised jurisdiction issues because it preserved the Complainant's filings challenging the tribunal's jurisdiction and exposing procedural violations. The court reporter herself confirmed there was no legitimate reason to receive additional filings — "No. I don't need anything from you" — meaning the only explanation for the separate service was to create a sanitized record free of the Complainant's jurisdictional challenges. When the Complainant exposed this practice by inquiring directly with the court reporter, the ALJ treated this exposure as a threat to the separate record scheme, characterizing it as "harassment" and using it as a pretextual basis for the threat to dismiss the case. The simultaneous adoption of this same unauthorized practice by both the ALJ and counsel — without any order directing it and without notice to the Complainant — further supports the inference that the ALJ and counsel coordinated on this arrangement ex parte, in violation of 5 U.S.C. § 557(d) and 29 C.F.R. § 18.14. This inference is further strengthened by the ALJ's pattern of admitting opposing counsel to the virtual hearing room before the Complainant at both motion hearings — including a 30-minute delay at the second hearing — which provided the ALJ and

counsel with recurring opportunities to communicate without the Complainant's knowledge or participation.

7. **The September 5, 2025 hearing confirms the ALJ's pattern of bias and deference to counsel.** The ALJ's inability to name the ARB case he cited as authority for denying subpoenas, his agreement with Pitler's incorrect citation to the Federal Rules of Civil Procedure (which the actual ARB case — *Fagan v. Department of the Navy*, ARB No. 2023-0006 (ARB Feb. 28, 2024) — does not mention), and his blocking of relevant training documents demonstrate that the ALJ was not independently evaluating the law or the evidence but was instead systematically denying the Complainant access to tools, evidence, and a fair hearing while deferring to opposing counsel at every turn. This pattern — denying subpoenas, blocking discovery, misrepresenting authority, and admitting counsel to the virtual hearing room before the Complainant — confirms that the separate record practice was part of a broader scheme to ensure the Complainant would lose, not on the merits, but through the ALJ's and counsel's conduct.

8. **The Complainant's demeanor contradicts the "harassment" narrative.** The transcript of the September 5, 2025 hearing shows the Complainant was cooperative, respectful, and willing to compromise throughout — voluntarily withdrawing discovery requests and engaging in good faith despite recognizing the ALJ's bias during the hearing itself (*"It doesn't matter what I want to do, you tell me what's going to happen, and I'll stick with that"*). A litigator who is "harassing" the opposing party does not voluntarily withdraw requests. The Complainant's demeanor directly contradicts the ALJ's characterization and confirms that the "harassment" narrative was a pretextual justification for dismissal, not a genuine assessment of his conduct. Notably, it was Pitler — not the Complainant — who pressed the ALJ for specifics

about subpoena authority, and Pitler who agreed with the ALJ's response (*"You are correct. Our rule is specifically provided"*). The Complainant's role was limited to following up on Pitler's exchange by asking for the case name and then doing the research himself — conduct that demonstrates diligence and good faith, not harassment.

M. Conclusion

The facts set forth in this Appendix are drawn from the record of OALJ Case No. 2025-TAX-00009 and ARB Case No. 2026-0015, including the certificates of service on all filings (Ex. 39 and Ex. 40), the EFS system metadata (Ex. 52), the email with Bayley Reporting (Ex. 10 and Ex. 71), the September 30, 2025 Order Lifting Filing Limitation (Ex. 38), the December 17, 2025 Order Dismissing Matter (Ex. 1), the transcript of the September 5, 2025 Motion Hearing (preserved across three recordings), and the Comprehensive Analysis of Misrepresentations by Attorney Robert Pitler and Procedural Violations by ALJ Stewart Alford in OALJ 2025 TAX 00009 (filed September 29, 2026). The inference of a separate record is not based on speculation but on documented, verifiable facts in the record of this case. The Complainant's demeanor throughout the September 5, 2025 hearing — cooperative, respectful, and willing to compromise — further confirms that the "harassment" narrative used as a basis for dismissal was a pretextual justification, not a genuine assessment of his conduct.

APPENDIX Q – DECLARATION OF JOSEPH GALLEGOS

DECLARATION OF JOSEPH GALLEGOS

This Declaration is submitted in support of Petitioner's Petition for a Writ of Certiorari to the Supreme Court of the United States, for which it is offered to establish the factual record underlying Petitioner's claims, including the procedural history, the agency's pattern of misconduct, and the jurisdictional basis for judicial review.

I, Joseph Gallegos, declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the following statements are true and correct to the best of my personal knowledge, except as to matters stated upon information and belief, which I believe to be true:

I. IDENTITY AND PRO SE STATUS

9. I am Joseph Gallegos, the Petitioner in the above-captioned matter. My address is 1409 S. Bellaire Street, Denver, CO 80222. My telephone number is (303) 808-1891 and my email address is josiahgee18@gmail.com.
10. I am appearing pro se in this proceeding and have appeared pro se at every stage of the underlying administrative proceedings before the Occupational Safety and Health Administration (OSHA), the Office of Administrative Law Judges (OALJ), and the Administrative Review Board (ARB).
11. I have personal knowledge of the facts set forth in this Declaration, as I was the complainant at every stage of these proceedings and was personally involved in all of the events described herein.

II. PROTECTED ACTIVITY AND TERMINATION

4. I was employed by A Plus Personal Care Provider Services LLC ("A Plus Personal Care") in Denver, Colorado. My employer provided home-care services through the Colorado Medicaid Self-Directed program. My mother was a client of A Plus Personal Care, and I served as her paid caregiver through the agency.

5. In June 2024, I asked my employer whether they offered health insurance. My employer told me directly that it did not offer health insurance. I later discovered that A Plus Personal Care had nevertheless filed an IRS Form 1095-C with the Internal Revenue Service falsely reporting that it had offered me health insurance coverage for the year 2023. Form 1095-C is an ACA-required form used to report health insurance offers to the IRS.

6. Between August 9 and August 12, 2024, I reported to my supervisor and manager, Felix Baraclav, that A Plus Personal Care had filed a fraudulent IRS Form 1095-C falsely representing that it had offered me health insurance when it had not. I submitted a formal written complaint to the employer on August 12, 2024. This report constitutes protected activity under the Taxpayer First Act (TFA), 26 U.S.C. § 7623(d)(1)(A), which protects employees who report conduct they reasonably believe constitutes a violation of internal revenue laws or tax fraud to "a person with supervisory authority over the employee." It also constitutes protected activity under the Affordable Care Act (ACA) whistleblower provision, 29 U.S.C. § 218c, which protects employees who report violations of Title I of the ACA, including employer shared responsibility provisions and associated reporting requirements under 26 U.S.C. § 6056.

7. On August 13, 2024 — one day after I submitted my written complaint — A Plus Personal Care terminated my employment. The employer's case manager informed me of the discharge on August 13, 2024. The employer did not merely terminate me

as an employee; it also discharged my mother as a client of the agency. As I stated on the record at the September 5, 2025 motion hearing before ALJ Alford: "My mother was discharged, which ended my employment." The discharge of my mother as a client was the mechanism by which the employer ended my employment, because my role as her paid caregiver depended on her continued enrollment as a client of A Plus Personal Care. This fact is significant because it demonstrates the retaliatory nature of the termination — the employer did not simply end my employment; it terminated the care arrangement for my mother in direct response to my protected activity.

8. The employer provided at least five different and shifting explanations for my termination:

    a. That I was "difficult to work with";

    b. That the agency was "unable to have a face to face visit";

    c. That "criminal charges came up on your background check for fraud";

    d. That "the women that worked in the office began to feel uncomfortable";

    e. That I wanted to switch my mother to a different agency.

    The employer also characterized my discharge as a "resignation" to OSHA, contradicting the multiple other reasons given to me directly. This pattern of shifting explanations is evidence of pretext.

9. The Colorado Department of Public Health and Environment (CDPHE) investigated the discharge and cited A Plus Personal Care for "deficient practice related to the discharge process" because it failed to provide the required 30-day notice. CDPHE's findings confirmed that the discharge was procedurally improper.

10. The temporal proximity between my protected activity on August 12, 2024, and my termination on August 13, 2024 — one day — establishes a prima facie causal nexus.

The case manager was aware of my complaint details, establishing the employer's knowledge of my protected activity.

11. My employer's false reporting on IRS Form 1095-C could constitute violations of internal revenue laws, including 26 U.S.C. § 7206 (fraudulent statements) and 26 U.S.C. § 6721 (failure to file correct information returns), as well as violations of Title I of the ACA. My belief that reporting false information to the IRS constitutes a violation of internal revenue laws was objectively reasonable.

11a. As a result of my termination, I suffered concrete and ongoing harms. I lost all wages from my position as my mother's paid caregiver through the Colorado Medicaid Self-Directed program. The loss of this income was my sole source of earned income at the time of my termination. I was unable to continue serving as my mother's paid caregiver, which deprived her of familiar, dedicated in-home care and forced me to seek alternative care arrangements for her. I also suffered emotional distress from being terminated one day after reporting what I reasonably believed to be fraudulent conduct by my employer. I was further harmed by the loss of my livelihood and the attendant financial instability, which was compounded by the employer's failure to provide the 30-day notice required by Colorado regulations. The retaliation also chilled my exercise of my statutory rights by demonstrating that reporting fraud to a supervisor would result in immediate termination of both my employment and my mother's care arrangement.

11b. The harms I suffered were directly caused by the employer's retaliatory discharge. The one-day temporal proximity between my protected activity and my termination leaves no doubt about the causal connection. The employer's shifting explanations — five different reasons plus a characterization of the discharge as a "resignation" to OSHA — further demonstrate that the stated reasons were pretextual and that the true reason for my termination was retaliation for my protected activity.

11c. Two witnesses were identified as having direct knowledge of the events surrounding my termination and the fraudulent Form 1095-C: (1) Zahra Levin, the manager for the intake and discharge process, who was responsible for the process by which my mother was discharged as a client and my employment was terminated; and (2) Denise Figueroa, the health insurance benefits supervisor, who was responsible for the health insurance benefits program that was the subject of the fraudulent Form 1095-C. Both witnesses were identified for deposition during the OALJ proceedings, and both would have been called to testify at the March 5, 2026 evidentiary hearing that was vacated by the ALJ's dismissal.

III. OSHA INVESTIGATION

12. On November 6, 2024, I filed a whistleblower retaliation complaint with OSHA under the Taxpayer First Act (TFA), 26 U.S.C. § 7623(d), and the Affordable Care Act (ACA), 29 U.S.C. § 1558, against my former employer, A Plus Personal Care Provider, LLC, arising from my termination after I reported that my employer had filed a fraudulent IRS Form 1095-C.
13. During my initial interview with the OSHA investigator, I was erroneously instructed that I was required to name the specific statute that my employer violated. This legal standard is contradicted by OSHA's own Desk Aid for Retaliation under the TFA and ACA, which I later obtained. I did not know at the time that this instruction was legally incorrect. The false legal instruction I received during the OSHA interview is confirmed by an audio recording that I subsequently obtained through a Freedom of Information Act (FOIA) request. This audio recording documents the investigator's erroneous instruction in the investigator's own words.
14. OSHA attempted to administratively close my complaint under Directive 23-01 (CPL 02), using the mixed nature of my allegations as a pretext to dismiss the entire case.

This was done in violation of the OSHA Whistleblower Investigations Manual (CPL 02-03-003), which requires OSHA to separate claims and investigate those within its jurisdiction.

15. After I resisted the improper closure, OSHA supervisor Shawn Vollrath induced me into the Expedited Case Processing (ECP) program. Supervisor Vollrath materially misrepresented to me that participating in the ECP program would bypass agency findings and proceed directly to a *de novo* hearing before an ALJ. Based on this representation, I agreed to enter the ECP program.

16. Instead of proceeding to a *de novo* hearing as represented, OSHA issued a merits dismissal of my complaint. I subsequently obtained records through Freedom of Information Act (FOIA) requests, including the OSHA Case Diary Log, which revealed that OSHA's stated basis for dismissal — that it lacked jurisdiction — was pretextual. The Case Diary Log shows that on the exact day Supervisor Vollrath claimed OSHA lacked jurisdiction, the agency requested a second position statement from the employer.

17. Additional FOIA records revealed that OSHA concealed its coordination with the Employee Benefits Security Administration (EBSA), in violation of 29 C.F.R. § 1984.108(b).

18. After I proved that OSHA had erred by dismissing my Affordable Care Act (ACA) claim, OSHA responded by stripping the ACA statute from my complaint before transferring the case to the OALJ. This act ensured that the ALJ would have no jurisdiction to hear the ACA claim.

19. OSHA issued its findings on January 14, 2025, dismissing both my TFA and ACA claims. The case was docketed with the OALJ on February 4, 2025.

IV. ALJ STEWART F. ALFORD'S CONDUCT

20. The matter was assigned to ALJ Stewart F. Alford. From the outset of proceedings before the ALJ, I observed that opposing counsel, Attorney Robert Pitler, made numerous misrepresentations to the tribunal. I have personally identified at least 127 specific misrepresentations by Attorney Pitler across three phases of the litigation.

21. On April 14, 2025, ALJ Alford issued a first warning about relevancy in filings. This warning was issued before the parties had any meaningful opportunity to engage in the process.

22. On May 28, 2025, ALJ Alford issued a second warning about excessive filings. The ALJ also set a discovery schedule on this date because the parties had been unable to agree to a schedule without the ALJ's intervention.

23. In July 2025, ALJ Alford imposed asymmetric filing restrictions on me, prohibiting me from filing motions without prior leave of the tribunal while allowing the employer to file freely. These restrictions were imposed based on five discovery-related motions I had filed at a time when no discovery plan was in place. I did not have a discovery plan because the ALJ himself had not issued one until May 28, 2025.

24. On September 30, 2025, ALJ Alford threatened to dismiss the case if I continued to file motions that the ALJ characterized as frivolous.

25. Attorney Pitler requested filing restrictions against me at least four times, including during my recusal motion, in which I was raising legitimate concerns about the ALJ's impartiality.

26. I submitted 32 exhibits to the ALJ in support of my allegations of document falsification and discovery sabotage. The ALJ described these filings as "frivolous"

without reviewing the exhibits. The ALJ never held an evidentiary hearing to weigh the competing evidence.

27. The ALJ refused to permit amendments to my complaint, including the amendment to re-add the ACA claim that OSHA had improperly stripped from the complaint.
28. The ALJ suppressed evidence of discovery sabotage and witness tampering that I submitted to the tribunal.
29. The ALJ rejected at least nine of my motions through the clerk without a ruling, including my fully briefed Motion for Summary Decision, which presented undisputed evidence of whistleblower retaliation.

29a. On September 5, 2025, ALJ Alford held a motion hearing at the San Francisco District Office. I appeared pro se by telephone. Attorney Robert Pitler appeared for Respondent. At this hearing, the ALJ addressed the scope of deposition topics and pending discovery disputes. During the hearing, I stated on the record: "My mother was discharged, which ended my employment." The ALJ confirmed the two deposition witnesses identified by Respondent: (1) Zahra Levin, identified as the manager for the intake and discharge process, and (2) Denise Figueroa, identified as the health insurance benefits supervisor. Both witnesses were directly relevant to my retaliation claim: Ms. Levin was responsible for the intake and discharge process that resulted in the termination of my employment and my mother's discharge as a client, and Ms. Figueroa was the supervisor responsible for health insurance benefits — the subject of the fraudulent Form 1095-C that formed the basis of my protected activity.

29b. On July 21, 2025, I filed a Motion to Compel Production of Attorney-Client Communications Pursuant to the Crime-Fraud Exception to Attorney-Client Privilege. I sought this relief because I had evidence that opposing counsel, Attorney Robert Pitler, had engaged in conduct that placed his communications with his client outside the protection of

the attorney-client privilege. The ALJ denied this motion on July 25, 2025, along with other pending motions, without addressing the merits of the crime-fraud exception argument.

29c. The ALJ's December 17, 2025 dismissal order states that the matter was set for hearing on March 5, 2026. The ALJ vacated this hearing date as part of the dismissal. The dismissal thus deprived me of the opportunity to present my case at a scheduled evidentiary hearing on the merits — a hearing that had been set on the tribunal's calendar.

29d. During the September 5, 2025 hearing, the ALJ also addressed the issue of subpoena power. The ALJ acknowledged that his subpoena power was not universal and was specific to certain case categories, noting recent ARB authority holding that subpoena power must be specifically written into the governing statute. The ALJ expressed uncertainty about whether the Taxpayer First Act or the Affordable Care Act conferred subpoena authority in this context. This exchange is part of the hearing record.

30. On December 17, 2025, ALJ Alford issued an 18-page Order Dismissing Matter, dismissing my complaint with prejudice as a sanction. (App. B). The order adopted the employer's one-sided narrative from its October 29, 2025 motion to dismiss. The ALJ did not hold an evidentiary hearing, did not weigh the competing evidence, and did not reach the merits of my retaliation claims.

31. On page 10 of the December 17 dismissal order, the ALJ states: "The sheer volume of frivolous filings from Complainant are well documented in this Order and the numerous other Orders previously entered by the Tribunal in this matter." I have personally reviewed the order and confirm that the order does not cite a single document, email, or transcript excerpt to support this characterization. The order fails to reference the 32 exhibits I submitted because the ALJ never reviewed them.

V. PETITION FOR REVIEW WITH THE ARB

32. On December 19, 2025, I timely filed a Petition for Review with the Administrative Review Board (ARB).

33. On December 23, 2025, the ARB accepted the case for review, divesting ALJ Alford of jurisdiction by operation of law under 29 C.F.R. § 1989.110(b). The ARB assigned the case ARB Case No. 2026-0015.

34. Between February and March 2026, I filed eight motions with the ARB regarding procedural irregularities and the deficient record. The ARB never ruled on any of these eight motions.

35. On March 5, 2026, the ARB issued an Order to Show Cause regarding my use of artificial intelligence in my submissions. I responded on March 15, 2026. The ARB stayed all briefing pending resolution of the AI issue while simultaneously refusing to rule on my eight pending motions regarding the ALJ's misconduct. I believe the AI issue was a pretext designed to obstruct the appeal.

VI. THE APRIL 17, 2026 ORDER OF DISMISSAL

36. On April 15, 2026, having concluded that the ARB was unwilling to correct the ALJ's errors and that further administrative proceedings would be futile, I filed a Motion for Voluntary Withdrawal. I filed this motion because I believed the administrative process had broken down and that further proceedings would be futile.

37. On April 17, 2026, a signed, two-page "Order of Dismissal" was transmitted to the parties through the Department of Labor's Electronic Filing System (EFS). (App. C). I personally received this order via the EFS system.

38. The April 17 order was signed by two ARB judges — Thomas H. Burrell and Philip G. Kiko — and was marked "SO ORDERED." The order stated: "we GRANT

Complainant's Withdrawal Motion and DISMISS the appeal." The order contained no language suggesting it was a draft, interim, or non-final order.

39. The April 17 order was served on all parties through the EFS system. I received an eService notification confirming receipt.

40. The official OALJ EFS docket for this case contains a field titled "Date of Final Decision." In that field, the date entered is "4/17/2026." I personally observed this entry on the EFS dashboard. As of the date of this Declaration, the entry has not been changed.

41. EFS metadata shows that the April 17 order was transmitted through the Office of Administrative Law Judges (OALJ) portal, not the ARB's portal. The eService notification I received confirms that OALJ had received the order on April 16, 2026 — one full day before the order was served on the parties and one full day before I filed my Motion to Withdraw Withdrawal on April 17, 2026.

42. The fact that the April 17 order was transmitted through the OALJ portal rather than the ARB portal is significant because the ALJ's jurisdiction terminated on December 23, 2025, when the ARB accepted the case for review. The OALJ had no authority to transmit ARB orders. This is evidence that ALJ Alford was improperly controlling the ARB's docket after losing jurisdiction.

VII. MOTION TO WITHDRAW WITHDRAWAL

43. On April 17, 2026 — the same day the OALJ transmitted the dismissal order — I filed a Motion to Withdraw my Withdrawal, seeking to rescind my prior request to withdraw. I filed this motion because I had become aware that the same procedural irregularities that plagued the OALJ proceedings were continuing at the ARB level.

44. I want to be clear: my Motion to Withdraw Withdrawal was not a change of mind prompted by the dismissal order. I did not know that the dismissal order existed at the time I filed my motion to withdraw the withdrawal. My motion was filed simultaneously, before I had any knowledge of the April 17 order.

45. My Motion to Withdraw Withdrawal was not accepted by the EFS system until April 20, 2026 — three days after the dismissal order had already been served on the parties.

VIII. THE ARB'S APRIL 22, 2026 ORDER

46. On April 20, 2026, after the weekend, I filed a Motion for Reconsideration, alleging that the OALJ transmission was evidence that ALJ Alford, who no longer had jurisdiction, was improperly controlling the ARB's docket.

47. For four days — from April 17 to April 22, 2026 — no one claimed the April 17 order was an error or a draft. Not the ARB, not the Secretary of Labor, and not opposing counsel.

48. On April 22, 2026 — two days after I alleged ALJ misconduct — the ARB issued an order claiming for the first time that the April 17 dismissal was an "inadvertent draft" that was "not final and is void." (App. D).

49. The ARB's April 22 order also stated: "The draft Order of Dismissal will be removed from the OALJ docket." (App. D) (emphasis added). This statement confirms that the order was on the OALJ docket — meaning the ALJ's office had control of it — and that the ARB was directing the OALJ to remove it.

50. The ARB's April 22 order denied my Motion for Reconsideration as "moot." A motion can only be moot if the underlying order is final. The ARB's own act of denying my motion as "moot" is an admission that the April 17 order was final.

51. The order was never actually removed from the OALJ docket. As of the date of this Declaration, the April 17 order remains on the OALJ EFS docket, and the "Date of Final Decision" field continues to read "4/17/2026."

IX. THE ARB'S EXPLANATION IS CHRONOLOGICALLY IMPOSSIBLE

52. The ARB's explanation for the OALJ transmission was that it had prepared a draft dismissal order, but before it could be issued, I filed my Motion to Withdraw Withdrawal on April 17, so the ARB "elected not to issue" the draft.

53. This explanation is factually impossible for two reasons:

a. First, EFS metadata shows that the order was already in the OALJ's possession on April 16, 2026 at 12:00 AM — a full day before I filed my Motion to Withdraw Withdrawal on April 17, 2026. The order could not have been "elected not to be issued" on April 17 if it was already in the OALJ's system on April 16.

b. Second, my Motion to Withdraw Withdrawal was not accepted by the EFS system until April 20, 2026 — three days after the dismissal order was served. The ARB could not have based its decision not to issue the order on a motion that had not yet been filed or accepted.

X. SUBSEQUENT ARB ORDERS

54. On April 28, 2026, the ARB issued another order, again stating that the Board had not dismissed the case or issued a final decision. (App. E).

55. On July 8, 2026, the ARB issued yet another order, for the fourth time denying the finality of the April 17 order. The July 8 order stated: "The Board has not issued a final decision in this matter." (App. F). The July 8 order also suggested that I could "kick out" my case to federal district court under 26 U.S.C. § 7623(d)(2)(A)(ii).

56. Each of these subsequent orders was issued after the ARB had already issued a final order on April 17, 2026. Under *Stewart v. Donges*, 915 F.2d 572, 576 (10th Cir. 1990), once a notice of appeal is filed, the lower tribunal is divested of jurisdiction, and any subsequent proceedings are a nullity. The ARB's subsequent orders were issued without jurisdiction.

XI. EFS DOCKET IRREGULARITIES

57. I have personally observed irregularities in the OALJ EFS docket for this case. Screenshots of the OALJ EFS dashboard that I took on or about August 21, 2026 show that entries are not in sequential order, indicating that entries were manually reordered, inserted, or removed after their initial submission, breaking the docket's chronological integrity.

58. The agency attempted to create a separate, fabricated record, first through a court reporter, Bayley Reporting, and then in-house. A FOIA-produced record was delayed three months in violation of 5 U.S.C. § 552(a)(6)(A)(i) and contained numerous corrupt files.

59. I have personally observed that the OALJ EFS docket contains entries with inconsistent timestamps and that certain filings appear to have been reordered relative to their original submission dates.

XII. FILING WITH THE TENTH CIRCUIT

60. On June 22, 2026, I filed a timely Protective Petition for Review with the United States Court of Appeals for the Tenth Circuit, arguing that the April 17 order was final and the ARB's subsequent orders were void. I filed on the last day of the 60-day

statutory period, as calculated from the ARB's April 22, 2026 denial of my motion for reconsideration.

61. The Secretary of Labor filed an opposition, arguing the April 17 order was a non-final draft.

62. On August 12, 2026, the Tenth Circuit issued a one-page, unpublished order dismissing my petition for lack of jurisdiction. The order stated, without analysis, "it appears that the ARB has not yet issued a final order." The court did not address the factual impossibility of the ARB's explanation, the evidence of ALJ misconduct, or any of my seven fully briefed jurisdictional arguments.

63. On August 13, 2026, I filed a timely Motion for Reconsideration with the Tenth Circuit.

64. On August 19, 2026, the Tenth Circuit denied my Motion for Reconsideration. (App. A).

XIII. WITHDRAWAL WAS NOT VOLUNTARY

65. The government may argue that I cannot seek review of a dismissal I voluntarily requested. I want to clarify that my withdrawal was not voluntary. It was a constructive dismissal compelled by the agency's pattern of procedural misconduct and the futility of any further administrative process.

66. I filed the withdrawal motion on April 15, 2026, unaware that ALJ Alford still controlled the ARB's docket. My simultaneous April 17 Motion to Withdraw Withdrawal, filed before I knew of the dismissal order, confirms my intent to litigate.

67. The ARB's assumption that I changed my mind after seeing the dismissal order is factually incorrect. My Motion to Withdraw Withdrawal was filed before I had any knowledge of the April 17 order.

XIV. FUTILITY OF FURTHER ADMINISTRATIVE PROCEEDINGS

68. Further administrative proceedings were futile for several reasons:

a. OSHA coerced me into the ECP program by materially misrepresenting its purpose.

b. After I proved that OSHA erred by dismissing my ACA claim, OSHA stripped the ACA statute from the complaint before transferring the case.

c. Under 29 C.F.R. § 1989.109(c), no ALJ may remand a case to OSHA for a proper investigation. This regulatory barrier made it impossible to cure the defective investigation or the stripped ACA claim. The case could not be sent back to OSHA, the ALJ could not adjudicate a claim that OSHA removed, and the ARB itself refused to rule on eight pending motions.

69. The structural barriers made further administrative proceedings futile. No further administrative remedy was available to me.

XV. SUMMARY

70. The April 17, 2026 Order of Dismissal was a signed, docketed, and served order issued by two ARB judges. It was recorded as the "Date of Final Decision" on the agency's own official docket. It contained no language suggesting it was a draft.

71. The ARB's subsequent claim that the order was an "inadvertent draft" was not made until April 22, 2026 — five days after the order was served and only two days after I alleged ALJ misconduct. The ARB's explanation is contradicted by EFS metadata showing the order was in the OALJ's possession on April 16, 2026, one day before I filed my Motion to Withdraw Withdrawal.

72. ALJ Stewart F. Alford improperly controlled the ARB's docket after losing jurisdiction on December 23, 2025. The April 17 order was transmitted through the

OALJ portal, not the ARB portal. The ARB's April 22 order confirmed this by directing that the order "will be removed from the OALJ docket."

73. The ALJ's December 17, 2025 dismissal order was predicated on a factual and procedural narrative shaped by opposing counsel's pervasive misrepresentations, not by an independent evaluation of the record. The ALJ never reviewed the 32 exhibits I submitted, never held an evidentiary hearing, and never reached the merits of my retaliation claims.

74. The OSHA investigation was corrupted from the outset by false legal instructions, a pretextual administrative closure, material misrepresentations about the ECP program, concealment of interagency coordination with EBSA, and the stripping of the ACA claim from the complaint after I proved OSHA had erred.

75. All of the foregoing facts are within my personal knowledge or are based on records I personally obtained through FOIA requests or observed on the EFS system, and I believe them to be true and correct.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed on October 8, 2026, at Denver, Colorado.

/s/ Joseph Gallegos

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APPENDIX R –OSHA'S EXPEDITED CASE PROCESSING PROGRAM (ECPP): FACTUAL CONTEXT FOR BAD FAITH SHOWING

Factual Background

The following facts, drawn from the administrative record and FOIA-obtained documents, establish the factual predicate for the legal arguments in this Appendix. These facts were previously set forth in the Statement of the Case and the body of the Petition and are consolidated here for completeness.

Coercion into the ECPP Program. OSHA Supervisor Shawn Vollrath induced Petitioner to opt into the Expedited Case Processing Program (ECPP) by inaccurately representing that doing so would allow Petitioner to bypass adverse agency findings and proceed directly to a de novo evidentiary hearing. Relying on this official representation, Petitioner agreed, only to have OSHA immediately issue a merits-based dismissal.

The OSHA Case Diary Log Contradicts the Agency's Rationale. FOIA-obtained records, including the official OSHA Case Diary Log, demonstrate that the agency's stated rationale for dismissal was unmoored from its actual conduct: on the exact day Supervisor Vollrath represented that OSHA lacked jurisdiction to proceed, the agency was actively requesting a second substantive position statement from the employer. This contemporaneous documentary evidence proves OSHA's jurisdictional claim was pretextual.

Concealed EBSA Coordination. Further FOIA disclosures revealed that OSHA failed to disclose its active coordination with the Employee Benefits Security Administration (EBSA), violating its affirmative duty of disclosure under 29

C.F.R. § 1984.108(b). This interagency coordination was material to Petitioner's case and was deliberately concealed.

Stripping of the ACA Claim. After Petitioner successfully demonstrated that OSHA had fundamentally erred in dismissing his Affordable Care Act (ACA) claim, the agency responded by surgically excising the ACA statute from the charging document immediately prior to transferring the case file. This deliberate administrative action structurally precluded the presiding Administrative Law Judge (ALJ) from exercising jurisdiction over the ACA claim.

OSHA's False Legal Instructions. During the initial investigative interview, the OSHA investigator erroneously instructed Petitioner that statutory protection strictly required him to identify the specific statute violated by the employer—a legal standard directly contravening OSHA's own Desk Aid for Retaliation, as confirmed by an audio recording subsequently obtained via FOIA.

Pretextual Administrative Closure. OSHA attempted to administratively close the complaint pursuant to Directive 23-01 (CPL 02), utilizing the mixed nature of the allegations as a mechanism to dismiss the matter in its entirety, violating the mandatory procedures outlined in the Whistleblower Investigations Manual (CPL 02-03-003), which imposes a non-discretionary duty to bifurcate claims and diligently investigate those falling within its statutory jurisdiction.

Suppression of Evidence by the ALJ. The ALJ suppressed all of the above evidence—keeping it off the official administrative record. None of the key evidence (the FOIA-produced OSHA Case Diary Log, the evidence of concealed EBSA coordination, or the proof of ACA claim stripping) appears in the record

the ALJ created. This suppression created a self-justifying closed loop: the ALJ's dismissal order appears reasonable only because he excluded the very evidence that would expose the unfair process that produced it.

Factual Context for the Bad Faith Showing Under Overton Park

The following discussion provides factual context for the bad faith showing under Overton Park and the structural futility of further administrative proceedings. These points are not presented as independent claims for relief but as supporting facts demonstrating the agency's pattern of misconduct that bears directly on the jurisdictional question.

A. OSHA Abdicated Its Non-Discretionary Duty to Investigate (Factual Context).

The whistleblower statutes require the Secretary to "cause such investigation to be made." 29 U.S.C. § 660(a). This is a mandatory, non-discretionary duty. Connecticut Dep't of Envtl. Prot. v. OSHA, 356 F.3d 226, 234 (2d Cir. 2004). An agency cannot simply opt out of this duty by creating a program to terminate investigations early. See Rhode Island Dep't of Envtl. Mgmt. v. United States, 304 F.3d 31, 53 (1st Cir. 2002) (holding Secretary of Labor has a mandatory duty to investigate).

OSHA publicly presented the ECPP as a benefit to complainants. The DOL's own news release described the program as one that "allows a complainant covered by certain statutes to ask... OSHA to cease its investigation and issue findings" so they can "more quickly pursue their claims." DOL News Release (Aug. 16, 2016). But the DOL Office of Inspector General revealed that the program was actually created to solve OSHA's own backlog crisis—not to help complainants. The OIG audit found that in Region IX, "96 percent" of sampled investigations "did not

meet all essential elements" and "88 percent of cases exceeded statutory timeframes for investigations by an average of 634 days," with caseloads spiking to 87 complaints per investigator in FY 2015. DOL OIG, Audit of Region IX Whistleblower Protection Program, Report No. 02-21-001-10-105 (2021). The public framing as a complainant benefit masked the program's true purpose: to address OSHA's own systemic failures by terminating investigations before completion, depriving complainants of the full factual record Congress required OSHA to develop.

The program is framed as voluntary, but Petitioner was coerced into participating by OSHA Supervisor Shawn Vollrath, who misrepresented that opting in would allow Petitioner to bypass adverse findings and proceed directly to a de novo hearing. Coercion vitiated any consent, making the termination of the investigation unlawful. An agency's failure to perform a non-discretionary duty is reviewable under 5 U.S.C. § 706(1).

B. The ECPP Is a Substantive Rule Unlawfully Implemented Without Notice-and-Comment. (Factual Context).

The ECPP is a substantive rule that was unlawfully implemented without the required notice-and-comment rulemaking process under 5 U.S.C. § 553. A rule is substantive if it affects individual rights and obligations. American Hospital Ass'n v. Bowen, 834 F.2d 1037, 1045 (D.C. Cir. 1987). The ECPP materially alters the procedural framework of whistleblower cases by terminating the investigation before completion and channeling cases to an ALJ with an underdeveloped record. This is not a procedural or interpretive rule; it is a substantive rule that was implemented without the process Congress required.

C. The Terminated Investigation Produced a Constitutionally Deficient Record. (Factual Context).

The Ninth Circuit has held that an investigation that is "essentially nonexistent" violates due process. Armstrong v. Reynolds, No. 20-15256, 2022 WL 1967158, at 2 (9th Cir. June 6, 2022). An investigation that is deliberately terminated early, based on a record the OIG has found to be 96% deficient, is "essentially nonexistent." The statutory scheme does not contemplate dismissal of a complaint without a completed investigation. See Dimauro v. Springfield Terminal Railway Co., 187 F. Supp. 3d 205, 214 (D. Me. 2016).

D. 29 C.F.R. § 1989.109(c) Prohibits Remand to OSHA, Rendering the Defective Investigation Incurable. (Factual Context).

Under 29 C.F.R. § 1989.109(c), no ALJ may remand a case to OSHA for a proper investigation. This regulatory barrier makes it impossible to cure the defective investigation. The administrative process is structurally futile: the defective investigation produced a deficient record, and no regulatory mechanism exists to send the case back to OSHA for a proper investigation.

E. OSHA's Stripping of the ACA Claim Was Arbitrary and Capricious. (Factual Context).

After Petitioner proved OSHA's dismissal of his ACA claim was erroneous, OSHA was required to investigate the claim. Instead, OSHA stripped the claim from the complaint before transfer. This action, which ensured the claim could never be adjudicated, was arbitrary and capricious under 5 U.S.C. § 706(2)(A).

F. The ECPP Deprived Petitioner of Due Process. (Factual Context).

The combination of a mandatory statutory duty to investigate, a deliberately terminated investigation, a structurally deficient record, and a regulatory prohibition on remand deprives complainants of the due process guaranteed under the Fifth Amendment. U.S. Const. amend.

V. The administrative process cannot serve its intended function when the investigative stage —the foundation of the entire proceeding— is deliberately short-circuited by the very agency charged with conducting it.

The OIG's finding that 96% of Region IX investigations did not meet essential elements, combined with 29 C.F.R. § 1989.109(c)'s prohibition on remand, establishes structural futility: the defective investigation cannot be cured within the administrative process, and the complainant is channeled to an ALJ with an underdeveloped record that the ALJ cannot send back to OSHA. This is the precise scenario in which judicial review is necessary to prevent the agency from insulating its own failures from review.

APPENDIX S– STATUTORY AND REGULATORY PROVISIONS INVOLVED

The following statutory, regulatory, and constitutional provisions are reproduced verbatim below for the Court's convenience. Each provision is followed by its full citation and a brief explanation of its relevance to this petition. The provisions are organized as follows: general APA and judicial review statutes (provisions 1–5, 11–13), the two governing whistleblower statutes and their incorporated procedural frameworks (provisions 6–7, 14–15), constitutional provisions (provisions 8–10), and implementing regulations (provisions 16–18).

The two statutes that govern Petitioner's case are 26 U.S.C. § 7623(d) (Taxpayer First Act) and 29 U.S.C. § 218c (Affordable Care Act), set out verbatim below at provisions 14 and 15. The judicial review pathways for these statutes are established by the provisions they incorporate by reference: 49 U.S.C. § 42121(b) (incorporated by the Taxpayer First Act at provision 6) and 15 U.S.C. § 2087(b) (incorporated by the Affordable Care Act at provision 7). Both provide for review in the United States Court of Appeals within 60 days of the Secretary's final order.

1. 5 U.S.C. § 702 – Administrative Procedure Act: Right of Review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and

their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

Source: Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94–574, § 1, Oct. 21, 1976, 90 Stat. 2721. **Available at** 5 U.S. Code § 702 - Right of review.

Relevance: Section 702 establishes Petitioner's statutory right to judicial review of agency action and waives sovereign immunity as a bar to judicial review of federal administrative action otherwise subject to judicial review.

2. 5 U.S.C. § 704 – Administrative Procedure Act: Actions Reviewable Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

Source: **Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392. Available at** 5 USC 704: Actions reviewable.

Relevance: Section 704 establishes that final agency action is subject to judicial review and, critically, that an "agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for . . . any form of

Source: **Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393. Available at** 5 U.S.C. § 706: Scope of review.

Relevance: Section 706 mandates that the reviewing court "shall decide all relevant questions of law" and "interpret constitutional and statutory provisions"—not defer to the agency's self-serving characterization of its own orders. *After Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024)*, this provision requires courts to exercise their independent judgment in determining whether an agency has acted within its statutory authority.

Subsections (2)(B) and (2)(C) authorize this Court to hold unlawful and set aside agency action that is contrary to constitutional right or in excess of statutory jurisdiction.

4. 5 U.S.C. § 552(a)(6)(A)(i) – Freedom of Information Act (FOIA) 20-Day Deadline

Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of—

(I) such determination and the reasons therefor;

(II) the right of such person to seek assistance from the FOIA Public Liaison of the agency; and

(III) in the case of an adverse determination—

(IV) the right of such person to appeal to the head of the agency, within a period determined by the head of the agency that is not less than 90 days after the date of such adverse determination; and

(V) the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services.

Source: 5 U.S.C. § 552(a)(6)(A)(i), Freedom of Information Act, as amended.

Relevance: This provision establishes the statutory deadline within which an agency must respond to FOIA requests, relevant to Petitioner's efforts to obtain agency records demonstrating the deficient and fabricated administrative record.

5. 5 U.S.C. § 553(b) – Administrative Procedure Act: Notice-and-Comment Rulemaking

General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

- (1) a statement of the time, place, and nature of public rule making proceedings;
- (2) reference to the legal authority under which the rule is proposed; and
- (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved; and
- (4) the Internet address of a summary of not more than 100 words in length of the proposed rule, in plain language, that shall be posted on the Internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501 note) (commonly known as regulations.gov).

Source: 5 U.S.C. § 553(b), Administrative Procedure Act.

Relevance: This provision establishes the notice-and-comment requirements that OSHA failed to satisfy when it implemented its Expedited Case Processing Program (ECPP) as a substantive rule without complying with the required procedural safeguards.

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6. 49 U.S.C. § 42121(b) – Procedures for the Handling of Retaliation Complaints (Incorporated by 26 U.S.C. § 7623(d)(2)(B)(i))

This provision is incorporated by reference into the Taxpayer First Act at 26 U.S.C. § 7623(d)(2)(B)(i), which provides: "An action under subparagraph (A)(i) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code."

(b) Department of Labor and Federal Aviation Administration Complaint Procedure.—

(1) Filing and notification.—

A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 90 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint and the Administrator of the Federal Aviation Administration of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2) Investigation; preliminary order.—

(A) In general.—

Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person named in the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary of Labor concludes that there is a reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If

a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B) Requirements.—

(i) Required showing by complainant.—

The Secretary of Labor shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) Showing by employer.—

Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) Criteria for determination by secretary.—

The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) Prohibition.—

Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3) Final order.—

(A) Deadline for issuance; settlement agreements.—

Not later than 120 days after the date of conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(B) Remedy.— If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person who committed such violation to—

- take affirmative action to abate the violation;
- reinstate the complainant to his or her former position together with the compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and
- provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing the complaint upon which the order was issued.

(C) Frivolous complaints.—

If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney's fee not exceeding $1,000.

(4) Review.—

(A) Appeal to court of appeals.—

Any person adversely affected or aggrieved by an order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary of Labor. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) Limitation on collateral attack.—

An order of the Secretary of Labor with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(5) Enforcement of order.— Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary of Labor and the Administrator of the Federal Aviation Administration shall consult with each other to determine the most appropriate action to be taken, in which—

- the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order, for which, in actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, injunctive relief and compensatory damages; and
- the Administrator of the Federal Aviation Administration may assess a civil penalty pursuant to section 46301.

(6) Enforcement of order by parties.—

(A) Commencement of action.—

A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) Attorney fees.—

The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(c) Mandamus.—

Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

Source: Pub. L. 106–181, title V, § 519(a), Apr. 5, 2000, 114 Stat. 145; amended Pub. L. 116–260, div. V, title I, § 118, Dec. 27, 2020, 134 Stat. 2337; Pub. L. 118–63, title III, § 370, May 16, 2024, 138 Stat. 1139. ***Available at*** *49 U.S. Code § 42121 - Protection of employees providing air safety information;* ***see also*** *CRS Compilation of Federal Whistleblower Protection Statutes.*

Relevance: Section 42121(b) is the procedural framework incorporated by reference into the Taxpayer First Act at 26 U.S.C. § 7623(d)(2)(B)(i). Subsection (b)(2) establishes the investigation and preliminary order procedures before the Secretary of Labor. Subsection (b)(3) establishes the final order procedures and remedies. Critically, subsection (b)(4)(A) establishes the right to judicial review in the United States Court of Appeals for the circuit in which the violation allegedly occurred or in which the complainant resided, with a 60-day filing deadline from the date of the issuance of the final order of the Secretary of Labor, and provides that "Review shall conform to chapter 7 of title 5, United States Code"—incorporating the APA's scope of review under 5 U.S.C. § 706. This is the statutory basis for

this Court's jurisdiction over the ARB's final order in Petitioner's whistleblower case under the Taxpayer First Act. Subsection (c) provides that any nondiscretionary duty imposed by this section is enforceable by mandamus under 28 U.S.C. § 1361.

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7. 15 U.S.C. § 2087(b) – Whistleblower Protection: Complaint Procedure and Judicial Review (Incorporated by 29 U.S.C. § 218c(b)(1))

This provision is incorporated by reference into the Affordable Care Act at 29 U.S.C. § 218c(b)(1), which provides: "An employee who believes that he or she has been discharged or otherwise discriminated against by any employer in violation of this section may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15."

(b) Complaint procedure

(1) Filing and notification

A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2) Investigation; preliminary order

(A) Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the complainant and the person named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a

representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B)(i) The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of

subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3) Final order

(A) Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation— (i) to take affirmative action to abate the violation; (ii) to reinstate the complainant to his or her former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and (iii) to provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys' fee, not exceeding $1,000, to be paid by the complainant.

(4) De novo review in district court if Secretary delays

If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States with jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. The proceedings shall be governed by the same legal burdens of proof specified in paragraph (2)(B). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

(A) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(B) the amount of back pay, with interest; and

(C) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(5) Appeal to court of appeals

(A) Unless the complainant brings an action under paragraph (4), any person adversely affected or aggrieved by a final order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(6) Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(c) Mandamus

Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

Source: Pub. L. 92–573, § 40, as added Pub. L. 110–314, title II, § 219(a), Aug. 14, 2008, 122 Stat. 3062. ***Available at*** *15 U.S.C. § 2087 (2024) - Whistleblower protection; see also Survey of Federal Whistleblower and Anti-Retaliation Laws (CRS Report R43045).*

Relevance: Section 2087(b) is the procedural framework incorporated by reference into the Affordable Care Act at 29 U.S.C. § 218c(b)(1). Subsection (b)(1) establishes the 180-day filing deadline with the Secretary of Labor. Subsection (b)(2) establishes the investigation, preliminary order, and hearing procedures. Subsection (b)(3) establishes the final order procedures and remedies. Subsection (b)(4) provides the "kickout" provision allowing de novo review in federal district court if the Secretary has not issued a final decision within 210 days. Critically, subsection (b)(5)(A) establishes the right to judicial review in the United States Court of Appeals for the circuit in which the violation allegedly occurred or in which the complainant resided, with a 60-day filing deadline from the date of the issuance of the final order of the Secretary, and provides that "Review shall conform to chapter 7 of title

5"—incorporating the APA's scope of review under 5 U.S.C. § 706. This is the statutory basis for this Court's jurisdiction over the ARB's final order in Petitioner's whistleblower case under the Affordable Care Act. Subsection (c) provides that any nondiscretionary duty imposed by this section is enforceable by mandamus under 28 U.S.C. § 1361.

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8. U.S. Constitution, Article III, § 1 – Judicial Power

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Source: U.S. Constitution, Article III, § 1. Available at U.S. Constitution - Article III.

Relevance: Article III, Section 1 vests the judicial power of the United States in the courts. This provision establishes the constitutional foundation for the separation of powers principle that it is the role of the judiciary—not the executive agency being reviewed—to determine whether an order is final and whether jurisdiction exists.

9. U.S. Constitution, Article III, § 2 – Judicial Power Extent The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Source: U.S. Constitution, Article III, § 2. Available at U.S. Constitution - Article III.

Relevance: Article III, Section 2 extends the judicial power to "all Cases, in Law and Equity, arising under this Constitution, [and] the Laws of the United States." This provision establishes the constitutional basis for judicial review of agency actions arising under federal statutes, including the Taxpayer First Act, the Affordable Care Act, and the Administrative Procedure Act. The separation of powers doctrine flowing from Article III requires that the judiciary—not the executive branch—determine questions of law, including whether an agency order is final and reviewable.

10. U.S. Constitution, Amendment V – Due Process Clause No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Source: U.S. Constitution, Amendment V. Available at Fifth Amendment.

Relevance: The Due Process Clause of the Fifth Amendment provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." This provision guarantees Petitioner the right to a meaningful opportunity to be heard before being condemned to suffer grievous loss, including the right to judicial review of final agency action. As Justice Frankfurter recognized, "the right to be heard before being condemned to

suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." *Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 161–62 (1951) (Frankfurter, J., concurring).*

11. 5 U.S.C. § 556(b) – Administrative Procedure Act: Presiding Employee; Impartiality

There shall preside at the taking of evidence—

(2) the agency;

(3) one or more members of the body which comprises the agency; or

(4) one or more administrative law judges appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

Source: Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 386; Pub. L. 95–251, § 2(a)(1), Mar. 27, 1978, 92 Stat. 183. **Available at** 5 U.S. Code § 556 - Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision.

Relevance: Section 556(b) mandates that "[t]he functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner." This provision was violated when the ALJ suppressed material evidence, adopted opposing counsel's misrepresentations without independent review, imposed escalating filing restrictions on Petitioner while allowing the employer to

file freely, and never held an evidentiary hearing. The ALJ's conduct was not impartial, and Petitioner's right to an impartial adjudication under this statute was denied.

12. 28 U.S.C. § 1254 – Courts of Appeals; Certiorari; Certified Questions Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(5) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(6) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

Source: June 25, 1948, ch. 646, 62 Stat. 928; Pub. L. 100–352, § 2(a), (b), June 27, 1988, 102 Stat. 662. Available at *28 U.S. Code § 1254 - Courts of appeals; certiorari; certified questions.*

Relevance: Section 1254(1) establishes the Supreme Court's authority to review decisions of the courts of appeals by writ of certiorari granted upon the petition of any party. This is the statutory basis for Petitioner's petition for a writ of certiorari seeking review of the Tenth Circuit's dismissal of his petition for review.

13. 28 U.S.C. § 2101(f) – Supreme Court; Stay Pending Certiorari In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his

application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

Source: June 25, 1948, ch. 646, 62 Stat. 961; May 24, 1949, ch. 139, § 106, 63 Stat. 104.

Available at *28 U.S. Code § 2101 - Supreme Court; time for appeal or certiorari; docketing; stay.*

Relevance: Section 2101(f) authorizes a stay of the execution and enforcement of a final judgment or decree subject to review by the Supreme Court on writ of certiorari. Petitioner invokes this provision in his request for a stay of the ARB's April 17, 2026 Order of Dismissal—and the consequent finality of the ALJ's December 17, 2025 order—pending disposition of his petition for a writ of certiorari.

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14. 26 U.S.C. § 7623(d) – Civil Action to Protect Against Retaliation (Taxpayer First Act)

(1) Anti-retaliation whistleblower protection for employees.

No employer, or any officer, employee, contractor, subcontractor, or agent of such employer, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment (including through an act in the ordinary course of such employee's duties) in reprisal for any lawful act done by the employee—

(D) to provide information, cause information to be provided, or otherwise assist in an investigation regarding underpayment of tax or any conduct which the employee reasonably believes constitutes a violation of the internal revenue laws or any provision of Federal law relating to tax fraud, when the information or assistance is provided to the Internal Revenue Service, the Secretary of the Treasury, the Treasury Inspector General for Tax Administration, the Comptroller General of the United

States, the Department of Justice, the United States Congress, a person with supervisory authority over the employee, or any other person working for the employer who has the authority to investigate, discover, or terminate misconduct, or

(E) to testify, participate in, or otherwise assist in any administrative or judicial action taken by the Internal Revenue Service relating to an alleged underpayment of tax or any violation of the internal revenue laws or any provision of Federal law relating to tax fraud.

(2) Enforcement action.

(F) In general. A person who alleges discharge or other reprisal by any person in violation of paragraph (1) may seek relief under paragraph (3) by—

(ii) filing a complaint with the Secretary of Labor, or

(iii) if the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for *de novo* review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(B) Procedure.—

(i) In general. An action under subparagraph (A)(i) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

(ii) Exception. Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

(iii) Burdens of proof. An action brought under subparagraph (A)(ii) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code, except that in applying such section—

(VI) "behavior described in paragraph (1)" shall be substituted for "behavior described in paragraphs (1) through (4) of subsection (a)" each place it appears in paragraph (2)(B) thereof, and

(VII) "a violation of paragraph (1)" shall be substituted for "a violation of subsection (a)" each place it appears.

(iv) Statute of limitations. A complaint under subparagraph (A)(i) shall be filed not later than 180 days after the date on which the violation occurs.

(v) Jury trial. A party to an action brought under subparagraph (A)(ii) shall be entitled to trial by jury.

(3) Remedies.

(G) In general. An employee prevailing in any action under paragraph (2)(A) shall be entitled to all relief necessary to make the employee whole.

(H) Compensatory damages. Relief for any action under subparagraph (A) shall include—

(iv) reinstatement with the same seniority status that the employee would have had, but for the reprisal,

(v) the sum of 200 percent of the amount of back pay and 100 percent of all lost benefits, with interest, and

(vi) compensation for any special damages sustained as a result of the reprisal, including litigation costs, expert witness fees, and reasonable attorney fees.

(4) Rights retained by employee. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.

(5) Nonenforceability of certain agreements.

(A) Waiver of rights and remedies. The rights and remedies provided for in this subsection may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

(B) Predispute arbitration agreements. No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this subsection.

Source: 26 U.S.C. § 7623(d), as added by the Taxpayer First Act, Pub. L. 116–25, title I, § 1405(b), July 1, 2019, 133 Stat. 998. Available at Taxpayer First Act (TFA); *see also* 26 U.S.C. § 7623: Expenses of detection of underpayments and fraud, etc..

Relevance: Section 7623(d) is one of the two statutes that govern Petitioner's case. It is the Taxpayer First Act's anti-retaliation whistleblower protection provision, which prohibits employers from discharging, demoting, suspending, or discriminating against employees who provide information regarding tax fraud or underpayment. Subsection (d)(2)(A)(i) provides that complaints may be filed with the Secretary of Labor. Subsection (d)(2)(B)(i) provides that such complaints "shall be governed under the rules and procedures set forth in section 42121(b) of title 49"—which at 49 U.S.C. § 42121(b)(4)(A) establishes the right to judicial review in the United States Court of Appeals within 60 days of the Secretary's final order. Subsection (d)(2)(B)(iii) modifies the burdens of proof from the incorporated 49 U.S.C. § 42121(b) framework, substituting "behavior described in paragraph (1)" for "behavior described in paragraphs (1) through (4) of subsection (a)" to adapt the AIR21 procedures to the TFA context. Subsection (d)(2)(A)(ii) provides the alternative "kickout" provision allowing *de novo* review in district court if the Secretary fails to issue a final decision within 180 days. Subsection (d)(4) provides that nothing in the section diminishes rights under any other Federal or State law, including 29 U.S.C. § 218c (Affordable Care Act). Subsection (d)(5) provides that the rights and remedies under this subsection may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration

agreement, and that no predispute arbitration agreement requiring arbitration of disputes under this subsection shall be valid or enforceable.

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15. 29 U.S.C. § 218c – Protections for Employees (Affordable Care Act, § 1558)

(a) Prohibition

No employer shall discharge or in any manner discriminate against any employee with respect to his or her compensation, terms, conditions, or other privileges of employment because the employee (or an individual acting at the request of the employee) has—

(7) received a credit under section 36B of title 26 or a subsidy under section 18071 of title 42;

(8) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of, any provision of this title (or an amendment made by this title);

(9) testified or is about to testify in a proceeding concerning such violation;

(10) assisted or participated, or is about to assist or participate, in such a proceeding; or

(11) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this title (or amendment), or any order, rule, regulation, standard, or ban under this title (or amendment).

(b) Complaint procedure

(1) In general

An employee who believes that he or she has been discharged or otherwise discriminated against by any employer in violation of this section may seek relief in accordance with the

procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15.

(2) No limitation on rights

Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

Source: Pub. L. 111–148, title I, § 1558, Mar. 23, 2010, 124 Stat. 261. Available at *29 U.S.C. § 218c (2024) - Protections for employees;* ***see also*** *29 USC 218c: Protections for employees.*

Relevance: Section 218c is the second of the two statutes that govern Petitioner's case. It is the Affordable Care Act's anti-retaliation whistleblower protection provision, codified at Section 18C of the Fair Labor Standards Act. Subsection (a) establishes the prohibition against employer retaliation for employees who receive ACA credits or subsidies, report violations, testify, assist in proceedings, or object to unlawful activities. Subsection (b)(1) incorporates by reference the complaint procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in 15 U.S.C. § 2087(b), which at § 2087(b)(5)(A) establishes the right to judicial review in the United States Court of Appeals within 60 days of the Secretary's final order. Subsection (b)(2) provides that the rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment, and that nothing in the section diminishes rights under any other Federal or State law—including 26 U.S.C. § 7623(d) (Taxpayer First Act).

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16. 29 C.F.R. § 1984.108(b) – Role of Federal Agencies (EBSA Coordination)

The IRS, HHS, and EBSA, if interested in a proceeding, may participate as amicus curiae at any time in the proceeding, at those agencies' discretion. At the request of the interested

federal agency, copies of all documents in a case must be sent to the federal agency, whether or not the agency is participating in the proceeding.

Source: 29 C.F.R. § 1984.108(b). Available at 29 CFR 1984.108 – Role of Federal agencies.

Relevance: This regulation establishes the role of federal agencies, including EBSA, in whistleblower proceedings under the Affordable Care Act and their right to receive copies of all documents in a case. This provision is relevant to Petitioner's argument that OSHA concealed its coordination with EBSA during the investigation.

17. 29 C.F.R. § 1989.109(c) – ALJ Cannot Review or Remand OSHA's Determination to Dismiss Neither OSHA's determination to dismiss a complaint without completing an investigation pursuant to § 1989.104(e) nor OSHA's determination to proceed with an investigation is subject to review by the ALJ, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the ALJ will hear the case on the merits or dispose of the matter without a hearing if the facts and circumstances warrant.

Source: 29 C.F.R. § 1989.109(c). Available at 29 CFR 1989.109 – Decisions and orders of the administrative law judge.

Relevance: This regulation prohibits remand to OSHA for completion of an investigation or additional findings, rendering the defective investigation incurable. This provision supports Petitioner's argument that the constitutionally deficient record produced by OSHA's terminated investigation cannot be cured through remand.

18. 29 C.F.R. § 1989.110(b) – ARB Acceptance of Review; ALJ's Decision Becomes Final if No Review If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the ALJ will become the final order of the Secretary unless the ARB, within 30 days of the filing of the petition, issues an order notifying the parties that the case

has been accepted for review. If a case is accepted for review, the decision of the ALJ will be inoperative unless and until the ARB issues an order adopting the decision, except that any order of reinstatement will be effective while review is conducted by the ARB, unless the ARB grants a motion by the respondent to stay that order based on exceptional circumstances. The ARB will specify the terms under which any briefs are to be filed. The ARB will review the factual determinations of the ALJ under the substantial evidence standard. If a timely petition for review is not filed, or the ARB denies review, the decision of the ALJ will become the final order of the Secretary. If a timely petition for review is not filed, the resulting final order is not subject to judicial review.

Source: **29 C.F.R. § 1989.110(b). Available at** 29 CFR 1989.110 – Decisions and orders of the Administrative Review Board.

Relevance: This regulation establishes the process by which the ARB accepts review of ALJ decisions and the circumstances under which an ALJ's decision becomes the final order of the Secretary. This provision is relevant to determining the finality of the ARB's orders and the point at which judicial review becomes available.

Consolidated Source List

No.	Provision	Source
1	**5 U.S.C. § 702**	5 U.S. Code § 702
2	**5 U.S.C. § 704**	5 U.S. Code § 704
3	**5 U.S.C. § 706**	5 U.S. Code § 706
4	5 U.S.C. § 552(a)(6)(A)(i)	5 U.S.C. § 552, Freedom of Information Act
5	5 U.S.C. § 553(b)	5 U.S.C. § 553, Administrative Procedure Act

No.	Provision	Source
6	**49 U.S.C. § 42121(b)**	49 U.S. Code § 42121; CRS Report R46979
7	**15 U.S.C. § 2087(b)**	15 U.S.C. § 2087 (2024); CRS Report R43045
8	**U.S. Const. art. III, § 1**	U.S. Constitution - Article III
9	**U.S. Const. art. III, § 2**	U.S. Constitution - Article III
10	**U.S. Const. amend. V**	Fifth Amendment
11	**5 U.S.C. § 556(b)**	5 U.S. Code § 556
12	**28 U.S.C. § 1254**	28 U.S. Code § 1254
13	**28 U.S.C. § 2101(f)**	28 U.S. Code § 2101
14	**26 U.S.C. § 7623(d)**	Taxpayer First Act (TFA); 26 U.S.C. § 7623
15	**29 U.S.C. § 218c**	29 U.S.C. § 218c (2024); 29 U.S.C. § 218c
16	**29 C.F.R. § 1984.108(b)**	29 CFR 1984.108
17	**29 C.F.R. § 1989.109(c)**	29 CFR 1989.109
18	**29 C.F.R. § 1989.110(b)**	29 CFR 1989.110