No. _____

IN THE

Supreme Court of the United States

JONATHAN E. DOWLING,

Petitioner

v.

DEPARTMENT OF THE AIR FORCE,

Respondent

On Petition for Writ of Certiorari

To The United States Court of Appeals for the Federal Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Uniformed Services Employment and Reemployment Rights Act (USERRA) authorizes "[a] person adversely affected or aggrieved" by a Merit Systems Protection Board final order in a federal-sector USERRA proceeding to petition the Federal Circuit for review, using "the procedures set forth in section 7703 of title 5." 38 U.S.C. § 4324(d)(1). Section 7703(a)(1), by contrast, authorizes judicial review by an "employee or applicant for employment."

Whether eligibility to seek Federal Circuit review of an intervention denial included in a Merit Systems Protection Board final order adjudicating a federal-sector USERRA complaint is governed by 38 U.S.C. § 4324(d)(1) or by 5 U.S.C. § 7703(a)(1).

PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

Petitioner is Jonathan E. Dowling, who was the petitioner in the court of appeals. Respondent is the Department of the Air Force, which was the respondent in the court of appeals. Because petitioner is an individual, no corporate disclosure statement is required under Rule 29.6.

The following proceedings are directly related to this case under Rule 14.1(b)(iii):

Dowling v. Department of the Air Force, No. 2025-1703 (Fed. Cir.), judgment entered July 21, 2026; rehearing and rehearing en banc denied September 1, 2026.

Tucker v. Department of the Air Force, No. DE-4324-22-0298-I-1 (M.S.P.B.), initial decision April 13, 2023; final order March 17, 2025. Lieutenant Colonel James Tucker, U.S. Air Force, who transitioned to the Nebraska Air National Guard, was the complainant and did not seek judicial review.

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Introduction

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Pub. L. No. 103-353, 108 Stat. 3149 (codified as amended at 38 U.S.C. §§ 4301–4335), rests on Congress's constitutional powers to "raise and support Armies" and to "provide and maintain a Navy." *Torres v. Texas Department of Public Safety*, 597 U.S. 580, 584–85 (2022). USERRA encourages military service by minimizing the disadvantages of service to civilian employment and prohibits discrimination because of that service; Congress declared that the Federal Government should be a model employer. 38 U.S.C. § 4301(a)(1), (3), (b). This case presents a straightforward statutory error: the Federal Circuit dismissed a petition challenging a Merit Systems Protection Board (MSPB) final order in a federal-sector USERRA proceeding without considering USERRA's judicial-review provision.

Although the Federal Circuit recognized that the underlying MSPB proceeding arose under USERRA, it decided petitioner's right to challenge the denial of intervention under the Civil Service Reform Act (CSRA), which limits review to an "employee or applicant for employment." 5 U.S.C. § 7703(a)(1); App. 2a–3a, 5a–6a. Because petitioner was neither, the panel dismissed "for want of jurisdiction." App. 6a. The panel never construed 38 U.S.C. § 4324(d)(1), which expressly authorizes "[a] person adversely affected or aggrieved" by a final Board decision in a federal-sector USERRA proceeding to petition the Federal Circuit for judicial review. *Sheehan v. Department of the Navy*, 240 F.3d 1009, 1012 (Fed. Cir. 2001), expressly recognizes § 4324(d)(1) as a source of appellate jurisdiction for USERRA cases.

The error directly affects petitioner. After petitioner reported discrimination against servicemembers and testified in a USERRA proceeding, the administrative judge made an adverse credibility finding that undermines his pending retaliation claims arising from the same events. The Board denied his request to intervene to challenge that finding, and the Federal Circuit dismissed his petition without considering whether USERRA authorized review. App. 5a–6a, 9a–10a, 35a–39a. The Court should grant review, vacate the dismissal, and remand for application of 38 U.S.C. § 4324(d)(1) and consideration of any remaining threshold issues.

Opinions Below

The Federal Circuit's opinion (App. 1a–6a), the Board's final order (App. 7a–14a), the administrative judge's decision (App. 15a–34a), and the Board's order denying petitioner's initial request to intervene (App. 35a–39a) are unreported.

Jurisdiction

The court of appeals entered judgment on July 21, 2026. App. 1a–6a. It denied a timely petition for panel rehearing and rehearing en banc on September 1, 2026. App. 46a–47a. This petition is timely under Supreme Court Rule 13. The Court has jurisdiction under 28 U.S.C. § 1254(1).

Statutory Provisions Involved

38 U.S.C. § 4324(d)(1) provides:

> A person adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board under subsection (c) may petition the United States Court of Appeals for the Federal Circuit to review the final order or decision. Such petition and review shall be in accordance with the procedures set forth in section 7703 of title 5.

5 U.S.C. § 7703(a)(1) provides:

> Any employee or applicant for employment adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may obtain judicial review of the order or decision.

38 U.S.C. § 4311(b) provides:

> An employer may not discriminate in employment against or take any adverse employment action or other retaliatory action against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or (4) has exercised a right provided for in this chapter. The prohibition in this subsection shall apply with respect to a person regardless of whether that person has performed service in the uniformed services.

The text of 38 U.S.C. § 4324, 5 U.S.C. § 7703(b)(1)(A), 28 U.S.C. § 1295(a)(9), and 5 C.F.R. § 1201.114(i)(3) appears at App. 48a–49a. Pertinent portions of 10 U.S.C. § 1034 appear at App. 50a.

Statement of the Case

A. Congress established distinct adjudication and judicial-review rights for federal-sector USERRA proceedings under 38 U.S.C. § 4324.

The CSRA permits an "employee or applicant for employment adversely affected or aggrieved" by a Board final order to obtain judicial review. 5 U.S.C. § 7703(a)(1). Section 7703(b)(1) directs certain petitions for review to the Federal Circuit, which has exclusive jurisdiction under 28 U.S.C. § 1295(a)(9). Section 7703(c) requires the Federal Circuit to set aside agency actions, findings, or conclusions that are arbitrary, capricious, an abuse of discretion, or otherwise contrary to law; obtained

without following required procedures; or unsupported by substantial evidence.

USERRA established distinct enforcement and review rights for complaints against federal executive agencies. 38 U.S.C. § 4324(a)–(d). Subsection 4324(b) provides for presenting those complaints to the Board, § 4324(c) directs that the Board "shall adjudicate" them, and § 4324(d)(1) authorizes "[a] person adversely affected or aggrieved" by a final Board order or decision to petition the Federal Circuit, incorporating only "the procedures set forth in section 7703" of title 5. Congress expressly protected "any person" from retaliation for taking action to enforce USERRA protections or testifying or otherwise making a statement in connection with USERRA proceedings. 38 U.S.C. § 4311(b).

B. Petitioner reported discrimination based on military service, gave corroborated testimony, and alleged retaliatory actions.

In 2022, petitioner, a Navy judge advocate with the rank of Commander, served at U.S. Strategic Command. App. 2a, 16a–17a. He chaired a three-member interview panel for a civilian GS-13 attorney position. App. 17a; C.A. Appx033. The other panelists were Mark Barth, senior civilian advisor, and Dr. Karen Miller, command historian; Colonel Laura Calese, U.S. Army, the command's Staff Judge Advocate, was the selecting official. App. 2a, 16a–17a, 51a–52a.

On June 28, 2022, petitioner submitted a hiring memorandum that highlighted a panel discussion about preferences for applicants without military experience and concluded that such a preference would violate the cited hiring authorities, including USERRA. C.A. Appx033, 036, 038. He reported Barth's comments and

related actions to Calese by email on July 5. App. 51a–52a.

The Air Force approved an offer to J.P., a candidate petitioner and Miller ranked first; Barth preferred J.S., a candidate with no experience in the federal government or the military. C.A. Appx040, 042, 082. Lieutenant Colonel James Tucker, U.S. Air Force, the command's Deputy Staff Judge Advocate, also applied but was not selected. App. 2a–3a, 17a, 21a, 26a; C.A. Appx033–034, 040.

In August, Calese directed petitioner to share lessons learned from the GS-13 hiring panel with Tucker, who was expected to chair a later hiring panel for Barth's replacement. C.A. Appx062, 084. Petitioner warned Tucker about Barth's comments and recommended that Barth not serve on that panel. App. 2a–3a; C.A. Appx062, 084. Tucker filed his USERRA complaint on September 11, 2022. App. 3a, 15a, 17a.

Petitioner testified in Tucker's November 4 deposition and at the December 19–20 MSPB hearing. C.A. ECF No. 18-2 at 36, 52, 109–111. The administrative judge summarized petitioner's testimony: "Dowling believed Barth expressed a preference for candidates without a history of uniform service." App. 20a.

In her November 3 deposition, admitted in lieu of hearing testimony, Miller corroborated petitioner's account. She testified that Barth seemed to place greater emphasis on applicants without military experience than she did, although she did not understand the discussion to exclude such applicants. App. 22a n.5, 55a–57a. Asked whether Barth emphasized selecting a civilian with no prior military experience, Miller answered, "He seemed to from my perspective." App. 57a.

Despite this corroboration, Calese testified in her November 3 deposition that

she believed petitioner had constructed an "untrue" narrative about Barth's preference for "a civilian with no military experience." C.A. Appx085. Petitioner alleges that Calese, acting through senior intermediaries, retaliated against him for his reporting and testimony. His retaliation claims under the Military Whistleblower Protection Act and the First Amendment are currently pending before the Board for Correction of Naval Records. App. 3a, 15a; C.A. Appx080, 087–088, 090, 099; C.A. ECF No. 18-2 at 12, 23–24, 36–39, 52, 121–124.

C. The administrative judge discredited petitioner's testimony, and the Board denied his requests to intervene under 5 C.F.R. § 1201.114(i)(3).

The administrative judge credited Barth's denial that he favored civilian candidates. App. 25a. Relying on Calese's testimony about petitioner's negative relationship with Barth, the judge found petitioner "primed to view Barth's actions with an unnecessarily harsh lens." *Id.* The judge also suggested bias based on petitioner's friendship with Tucker, even though petitioner ranked Tucker third, behind an applicant who was an Army reservist. *Id.*; C.A. Appx039. The judge concluded that "there was no credible direct evidence of uniformed service discrimination," finding that "[t]he only evidence suggesting that uniformed service was a negative factor was from Dowling about Barth." App. 25a. He rejected Tucker's USERRA claim and found that the agency would have selected J.P. even if military service had been a motivating factor in Barth's rankings. App. 25a–26a.

Petitioner moved to intervene, asserting that the administrative judge's credibility assessment impaired his retaliation complaints. App. 35a–38a. He

attached two exhibits but no affidavit. App. 37a n.3. The Board denied the motion because it was not made in a petition for review and, alternatively, because petitioner had not shown a direct effect from the decision. App. 37a–39a. It concluded that there was "no adverse finding impacting Mr. Dowling," called the claimed impairment "mere speculation," and described him as "merely a witness who is disappointed with the outcome." App. 37a–39a.

The Board's order stated that the administrative judge's initial decision had become final on May 18 and referred petitioner to "the notice of appeal rights contained within the final decision" for further review. App. 39a. Although the administrative judge expressly recognized jurisdiction over Tucker's USERRA complaint under 38 U.S.C. § 4324(b), App. 17a, the decision's appeal rights notice cited 5 U.S.C. § 7703(a)(1) as the basis for judicial review. App. 30a–31a.

Petitioner renewed his motion to intervene in a joint petition for Board review that he filed with Tucker, invoking the appropriate intervention regulation and submitting an affidavit with evidence. App. 5a, 9a–10a; C.A. Appx054–055, 078–110, 125–149. The Board's regulation permits "[a]ny person" to request permissive intervention in a petition for review and directs that the request be granted upon a showing that the person "will be affected directly by the outcome of the proceeding." 5 C.F.R. § 1201.114(i)(3).

The affidavit identified the complaints petitioner submitted to the Department of Defense Inspector General and to Commander, U.S. Strategic Command, with supporting documents. App. 58a–59a. The affidavit also documented an email

exchange in which Captain John French, U.S. Navy, Director of Logistics, identified August 2, 2022, as the date Barth said, "Lesson learned, don't hire reservists." App. 60a. Petitioner and Tucker sought remand for French's testimony, but the Board discounted the email as "unsworn, uncorroborated hearsay" and deemed the remark immaterial. App. 9a n.3.

The Board's final order denied Tucker's petition for review, affirmed the initial decision, and denied petitioner's renewed request to intervene. App. 7a–10a. The notice of appeal rights stated, "You may obtain review of this final decision. 5 U.S.C. § 7703(a)(1)." App. 10a.

D. The administrative judge, the Board, the Federal Circuit, and government counsel framed judicial review under 5 U.S.C. § 7703.

Petitioner sought Federal Circuit review of the Board's denial of intervention. C.A. ECF No. 1; App. 40a. In an order concerning jurisdiction, the court described Tucker's underlying USERRA complaint and petitioner's challenge to the intervention denial. App. 40a–41a. The court of appeals questioned petitioner's Article III standing and whether Congress had afforded him a right to review, citing § 7703(a)(1) with a "See, e.g." signal. The court stayed proceedings and ordered the parties to address whether the petition should be dismissed. App. 41a–42a.

Petitioner's brief defended his Article III standing based on the credibility finding's impact on his retaliation claims, but he conceded that he was not a covered "employee" under § 7703(a)(1). C.A. ECF No. 18-1 at 2–6. Government counsel argued petitioner lacked Article III standing and a right to judicial review under 5

U.S.C. § 7703(a)(1) because he was neither an employee nor an applicant for employment. C.A. ECF No. 20 at 5, 8–9.

Following those submissions, the court of appeals concluded that the "better course" was to have the parties address the constitutional and judicial review issues in their merits briefs. App. 43a–44a. Petitioner's opening brief again addressed jurisdiction under § 7703, and government counsel again argued that petitioner lacked Article III standing and a statutory right to review under § 7703(a)(1). C.A. ECF Nos. 23 at 1, 29 at 11–12. In reply, petitioner invoked *Lindahl v. Office of Personnel Management*, 470 U.S. 768 (1985), *Reid v. Department of Commerce*, 793 F.2d 277 (Fed. Cir. 1986), and 5 C.F.R. § 1201.114(i)(3), arguing that § 7703(a)(1) was not the exclusive source for judicial review. C.A. ECF No. 30 at 15–16.

The panel dismissed the petition. App. 5a–6a. Although the panel acknowledged that Tucker's MSPB complaint arose under USERRA, App. 3a, it resolved the petition under the CSRA. It held that "a petitioner seeking review of a final Board decision must show that Congress has afforded him a right to judicial review," read § 7703(a)(1) to confer that right only on an "employee or applicant for employment," and concluded that because petitioner was neither, "we lack jurisdiction." App. 5a–6a. The opinion declined to reach Article III standing. App. 5a n.3.

Petitioner expressly invoked § 4324(d)(1) in his petition for panel rehearing and rehearing en banc. C.A. ECF No. 40 at 4–10. The Federal Circuit denied rehearing without opinion on September 1, 2026. App. 46a–47a.

Reasons for Granting the Petition

The petition warrants review for three reasons. First, the Federal Circuit dismissed a federal-sector USERRA appeal under 5 U.S.C. § 7703(a)(1) without construing 38 U.S.C. § 4324(d)(1), which its precedential decision recognizes as a source of jurisdiction. Second, applying the CSRA's judicial-review provision threatens to displace USERRA's broader eligibility language, a risk illustrated by the repeated omission of § 4324(d)(1) throughout this proceeding. Third, the Federal Circuit passed upon the statutory-right question, permitting a narrow correction without deciding issues properly reserved for remand.

I. The Federal Circuit recognized that the underlying MSPB proceeding arose under USERRA but dismissed under 5 U.S.C. § 7703(a)(1).

The panel identified the nature of the MSPB proceeding: Tucker alleged that the Air Force's hiring process violated USERRA, and the opinion identified the governing substantive protection in 38 U.S.C. § 4311(a). App. 2a–3a. Yet when the panel reached petitioner's request for judicial review of the denial of intervention, it applied only 5 U.S.C. § 7703(a)(1). Concluding that petitioner was neither an "employee" nor an "applicant for employment," it dismissed "for want of jurisdiction." App. 5a–6a. The court never analyzed the judicial-review provision Congress prescribed for final Board decisions in federal-sector USERRA cases.

That provision is § 4324(d)(1). Its first sentence authorizes "[a] person adversely affected or aggrieved by a final order or decision of the [Board] under subsection (c)" to petition the Federal Circuit. Its second sentence directs that "[s]uch petition and

review shall be in accordance with the procedures set forth in section 7703." Congress thus separately specified who may petition and which court hears the petition, while borrowing the procedures of § 7703. The CSRA's employee-or-applicant limitation in § 7703(a)(1) is not a procedure that § 4324(d)(1) imports.

The Federal Circuit has previously recognized § 4324(d)(1) as a source of appellate jurisdiction. In *Sheehan v. Department of the Navy*, 240 F.3d 1009, 1012 (Fed. Cir. 2001), a federal-sector USERRA nonselection case, the court stated that it had "jurisdiction of the appeal pursuant to § 4324(d)(1)." Although *Sheehan* did not address an unsuccessful intervenor, it confirms that § 4324(d)(1) is a distinct source of review in federal-sector USERRA litigation.

Subsections (a)–(c) establish the procedures for presenting and adjudicating federal-sector USERRA complaints. Subsection (d)(1), by contrast, authorizes judicial review by "[a] person adversely affected or aggrieved" by the Board's final decision, without expressly limiting review to the person who filed the complaint. Reading § 7703(a)(1)'s narrower employee-or-applicant limitation into that provision would deprive Congress's eligibility language of independent effect.

This Court has declined to convert statute-specific review language into an original-party limitation. In *FDA v. R.J. Reynolds Vapor Co.*, 606 U.S. 226, 233–39 (2025), this Court held that Congress's authorization of judicial review by "any person adversely affected" extended beyond the original applicant and rejected the government's attempt to confine review to that applicant. In *Nuclear Regulatory Commission v. Texas*, 605 U.S. 665, 675–80 (2025), the Court distinguished judicial

review of an agency's underlying merits decision from review of a denial of intervention, emphasizing that the Hobbs Act's "party aggrieved" is narrower than the Administrative Procedure Act's "person … aggrieved." Here, § 4324(d)(1) says "[a] person adversely affected or aggrieved," and petitioner sought intervention and now seeks review of its denial—not direct review of Tucker's nonselection.

The final Board order resolved Tucker's USERRA complaint and denied petitioner's renewed intervention request. App. 7a–10a; *see* App. 40a (Federal Circuit describing the petition as seeking review of the intervention denial). Petitioner's asserted injury from the adverse credibility determination explains why he sought intervention. He does not ask this Court to evaluate that determination but seeks to preserve his opportunity to challenge it before the Federal Circuit if the remaining constitutional, statutory, and regulatory requirements are satisfied.

Lindahl v. Office of Personnel Management, 470 U.S. 768, 792–93 (1985), confirms the distinction between a statutory right to judicial review and subject-matter jurisdiction. The Court explained that § 7703(a)(1) creates a right of review for employees and applicants for employment but "is not addressed to subject-matter jurisdiction at all," and that this class-based right does not foreclose other actions for review within the Federal Circuit's jurisdiction. *Id.* at 793. Applying *Lindahl*, *Reid v. Department of Commerce*, 793 F.2d 277, 280–81 (Fed. Cir. 1986), explained that the statute or regulation underlying an asserted right to review must be examined to determine whether the litigant may invoke judicial review. Here, that statute is 38 U.S.C. § 4324(d)(1), which the panel never considered.

II. Applying the CSRA's judicial-review provision displaces USERRA's broader provision for "a person adversely affected or aggrieved."

The panel treated § 7703(a)(1)'s employee-or-applicant limitation as dispositive of the petition for review of a final Board decision. App. 5a–6a. Applied to federal-sector USERRA proceedings, that reading threatens to foreclose review for anyone outside the CSRA class, despite Congress's separate authorization for "[a] person adversely affected or aggrieved" under § 4324(d)(1). The issue is not whether every such person necessarily qualifies, but which statute supplies the eligibility standard. Congress placed this category of review exclusively in the Federal Circuit, so no circuit split can arise. This Court is the only forum that can correct a mistaken interpretation by that court, and the panel's nonprecedential designation does not eliminate the importance of identifying the governing statute.

The recurring omission illustrates the problem. The initial decision's appeal-rights notice cited § 7703(a)(1), App. 30a–31a, and the Board directed petitioner to that notice when it denied his first intervention request and cited § 7703(a)(1) again in its final order, App. 10a, 39a. The court's briefing order and the government's two submissions followed the same framing, as did petitioner until rehearing. App. 41a–42a; C.A. ECF Nos. 18-1 at 2–6, 20 at 8–9, 29 at 11–12, 40 at 4–10.

The Board's appeal-rights notices cannot determine the judicial-review provision Congress prescribed. In *Perry v. Merit Systems Protection Board*, the Board directed a self-represented petitioner to seek review in the Federal Circuit, but this Court held that the governing statute directed review to district court. 582

U.S. 420, 428, 437 (2017). The Court emphasized that judicial-review provisions should facilitate, rather than "stymie," resolution of claims. *Id.* at 423. Here, the Board repeatedly cited § 7703(a)(1) without identifying § 4324(d)(1), an omission that persisted through the Federal Circuit's dismissal. The governing statute—not the Board's identification of a review provision—must control.

III. The statutory question was presented below, and a narrow remand would preserve the respective roles of the Federal Circuit and the Board.

Whether Congress afforded petitioner a right to judicial review was raised and decided below. The Federal Circuit requested briefing on that issue, and the parties addressed § 7703(a)(1) in response to the statutory framing of the Board's notices and the court's order. App. 10a, 30a–31a, 39a, 40a–44a; C.A. ECF Nos. 20 at 8–9, 29 at 11–12. Before judgment, petitioner argued that § 7703(a)(1) was not the exclusive source of judicial review, citing *Lindahl*, *Reid*, and the Board's intervention regulation, 5 C.F.R. § 1201.114(i)(3). C.A. ECF No. 30 at 15–16.

Petitioner first expressly invoked § 4324(d)(1) in his petition for rehearing, which the court denied without opinion. C.A. ECF No. 40 at 4–10; App. 46a–47a. Although petitioner did not expressly invoke § 4324(d)(1) until rehearing, the question whether Congress afforded petitioner a right to review was "passed upon below" when the panel held that § 7703(a)(1) foreclosed review. *United States v. Williams*, 504 U.S. 36, 41 (1992); App. 5a–6a. Section 4324(d)(1) supplies a legal argument addressing that same question, not a new claim. This Court has held that parties may advance new legal arguments in support of a claim properly presented

below, *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992), and that courts retain independent authority to identify and apply the governing law rather than confining themselves to the parties' legal theories, *Kamen v. Kemper Financial Services, Inc.*, 500 U.S. 90, 99 (1991).

A narrow remand would permit the Federal Circuit to address three remaining threshold questions in the first instance: statutory aggrievement, Article III standing, and the intervention regulation's direct-effect requirement. *See Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

First, the Federal Circuit can assess statutory aggrievement under the zone-of-interests approach explained in *FDA v. R.J. Reynolds Vapor Co.*, 606 U.S. 226, 232–36 (2025), which construed "adversely affected" language to encompass persons with interests at least arguably protected by the relevant statute. USERRA expressly protects "any person" who acts to enforce its protections or testifies in a USERRA proceeding, regardless of prior uniformed service. 38 U.S.C. § 4311(b)(1)–(2). Petitioner reported discrimination based on military service and testified in Tucker's proceeding, thus arguably falling within USERRA's zone of interests.

Second, the Federal Circuit can determine whether the credibility finding's alleged impairment of petitioner's separate retaliation claims, including those under the First Amendment, establishes Article III standing, including redressability. Petitioner maintains that the finding undermines his related retaliation claims. App. 25a, 35a–38a, 53a–57a.

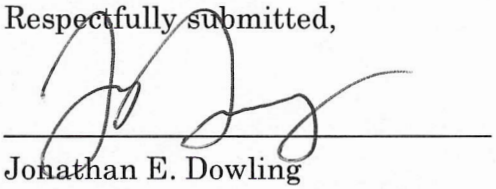
Third, the Federal Circuit can determine whether petitioner was directly

affected by the outcome of the MSPB proceeding within the meaning of the Board's intervention regulation, 5 C.F.R. § 1201.114(i)(3). The Board rejected petitioner's claimed injury as speculative. App. 37a–39a.

Conclusion

The Court should grant the petition, vacate the Federal Circuit's dismissal, and remand for application of 38 U.S.C. § 4324(d)(1). The Federal Circuit can then consider statutory aggrievement, Article III standing, and reviewability of the intervention denial. If those thresholds are satisfied, it can address petitioner's challenge to the adverse credibility determination.

Respectfully submitted,



Jonathan E. Dowling
Member of the Bar of this Court
Petitioner, Pro Se
November 16, 2026