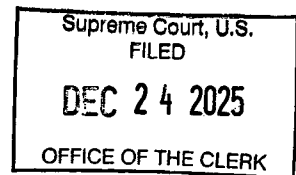


No. 26-65



IN THE
SUPREME COURT OF THE UNITED STATES

PHILLIP SPYROPOULOS,

Petitioner,

v.

SOCIAL SECURITY ADMINISTRATION,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case arises from the removal of a federal attorney after making allegedly protected disclosures. These included an ALJ's violations of the Constitution and federal laws—including discriminating against claimants with substance abuse and criminal histories, minorities, and other classes. Petitioner was explicitly directed to disregard governing laws and regulations while writing disability decisions. After escalating, he was directed to cease making disclosures.

Petitioner also disclosed a supervisor's widespread harassment allegedly resulting in employee harm—including a paralegal's emergency room admission—prompting Petitioner to take a leadership role in organizing an office-wide response via a formal complaint to the regional office signed by all the office's attorney advisors and supervising attorneys. He alleges that he was subsequently subjected to dozens of retaliatory actions culminating in his removal following a forensic search of his emails back 15 years—pretexted by the discovery of four PII violations.

The Merit Systems Protection Board (MSPB) rejected Petitioner's claims that these were protected disclosures under the Whistleblower Protection Act. The United States Court of Appeals for the Federal Circuit affirmed, concluding that Petitioner failed to identify any "law, rule, or regulation" allegedly violated, also upholding removal based on four "personally identifiable information" violations and for sharing public, regulatory information with an attorney.

He further alleges First and Fifth Amendment violations, the failure to apply any Douglas factors, and no independent assessment by the Deciding Official. Because the Federal Circuit exercises exclusive jurisdiction over MSPB appeals, its rulings govern federal employees nationwide.

The questions presented are:

1. Whether a federal employee makes a protected disclosure under the Whistleblower Protection Act, 5 U.S.C.

§ 2302(b)(8), when he reports alleged ethics, constitutional, statutory, and regulatory violations arising from adjudicative practices that he contends discriminate against claimants based on criminal history, work history, substance-abuse history, or protected class status.

2. Whether the United States Court of Appeals for the Federal Circuit errs by affirming the rejection of a whistleblower claim on the ground that the employee "did not identify any law, rule, or regulation" allegedly violated, where the record is clear that the employee did explicitly and repeatedly allege violations of federal statutes, constitutional protections, agency ethics obligations, and binding adjudicative standards throughout the record.

3. Whether a federal attorney may be charged with "misuse of position" wholly for sharing with another attorney publicly available statutory and regulatory information concerning a well-known legal framework—specifically, the standard multi-step disability evaluation process and the relative importance of one of its components—where the information shared is neither confidential nor proprietary, and whether this violates the First Amendment.

4. Whether disclosures concerning directives to federal attorneys to disregard binding adjudicative guidance in order to predetermine outcomes in individual cases constitute protected whistleblowing under the Whistleblower Protection Act.

5. Whether the Fifth Amendment's Due Process Clause and federal civil-service protections are violated when an agency removes a federal employee non-progressively for a first offense without applying any or most of the Douglas factors—including by explicitly failing to consider comparator discipline, penalty guidelines, work history, and substantial mitigating factors—and where the MSPB and the reviewing court uphold the removal despite uncontroverted evidence that similarly situated employees

were not removed for comparable or more egregious misconduct.

6. Whether the MSPB and the United States Court of Appeals for the Federal Circuit commit reversible legal error by upholding a federal employee's removal based on findings that proposing and deciding officials exercised independent judgment and applied the Douglas factors, while failing to consider or address sworn deposition testimony in the record that materially bears on whether the deciding (and proposing) officials independently assessed the evidence or applied any Douglas factors at all.

7. Whether due process and the Whistleblower Protection Act are violated when an agency sustains a lack-of-candor charge based on an employee's denial that he transmitted PII, where the employee preserved the information as whistleblower evidence to prevent retaliation and destruction of evidence, where he reasonably understood the information to be protected whistleblower evidence rather than prohibited PII, and where the MSPB and the Federal Circuit expressly declined to address this legal justification.

LIST OF PARTIES

Petitioner is Phillip Spyropoulos.

Respondent is the Social Security Administration.

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DECISIONS BELOW

The decision of the United States Court of Appeals for the Federal Circuit affirming Petitioner's removal is unpublished and nonprecedential. It is reprinted in the Appendix at App. A1–A13.

The final decision of the MSPB denying Petitioner's petition for review and sustaining in part the agency's action was issued on April 17, 2024. It is nonprecedential and is reprinted in the Appendix at App. A14–A37.

JURISDICTION

The judgment of the United States Court of Appeals for the Federal Circuit was entered on September 25, 2025. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Due Process Clause of the Fifth Amendment to the United States Constitution—which provides in relevant part that no person shall be “deprived of life, liberty, or property, without due process of law.”

This case further implicates the First Amendment to the United States Constitution, as Petitioner was disciplined based on professional legal communications with another attorney involving publicly available legal information that did not contravene his work duties and responsibilities.

This case also involves the Whistleblower Protection Act, 5 U.S.C. § 2302(b)(8), which prohibits an agency from taking or failing to take, or threatening to take or fail to take, a personnel action because of any disclosure of information by an employee or applicant for employment that the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation, or evidences gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

This case further involves provisions of the Civil Service Reform Act of 1978 governing adverse actions against federal employees, including 5 U.S.C. §§ 7511–7513, which require that removals be taken only for cause and be effected in accordance with principles of reasoned decision-making and procedural fairness.

Judicial review of final decisions of the Merit Systems Protection Board is governed by 5 U.S.C. § 7703.

In addition, this case implicates the Standards of Ethical Conduct for Employees of the Executive Branch, including 5 C.F.R. § 2635.702, which addresses misuse of position.

STATEMENT OF THE CASE

Petitioner was a career federal attorney who served the Social Security Administration ("SSA") for approximately eighteen years as an attorney advisor with numerous commendations and without prior discipline. His duties included helping Administrative Law Judges adjudicate disability claims pursuant to governing statutes, regulations, and Social Security Rulings.

A. Petitioner's Disclosures and Protected Activity

During his tenure, Petitioner made disclosures concerning alleged misconduct in the adjudication of disability claims. He asserted that certain adjudicative practices violated ethics obligations, constitutional protections, federal statutes, and SSA regulations, and that those practices discriminated against claimants with criminal histories, poor work histories, or substance-abuse histories, and discriminated against and had an adverse impact on members of constitutionally protected classes. Petitioner further alleged that he was directed in individual cases to disregard binding adjudicative standards in order to predetermine outcomes, and that he was instructed to cease raising these concerns to upper management.

Petitioner also made disclosures regarding sustained harassment by a supervisory official against multiple employees. That conduct allegedly resulted in employee harm, including the uncontested fact of a paralegal's hospitalization, and prompted office-wide complaints to the regional office, which Petitioner took a leadership role in organizing. Petitioner contended that these disclosures and organizing efforts constituted protected activity under the Whistleblower Protection Act, 5 U.S.C. § 2302(b)(8).

B. Alleged Retaliation and Disciplinary Charges

Following these disclosures, Petitioner alleged that he was subjected to dozens of retaliatory actions. The actions he identified included a forensic search of his work emails

spanning approximately fifteen years, heightened scrutiny of minor workplace matters, the misapplication of rules to target him, denial of leave in connection with a family tragedy, surreptitiously changing his timesheet, screaming at him, disability and religious discrimination, making him carry heavy files and walk farther after left leg hardware implantation, and the issuance of absence-without-leave charges for two-minute tardiness or for not leaving a callback telephone when calling in late.

The agency subsequently proposed Petitioner's removal based on multiple charges, including misuse of position, misuse of government property, lack of candor, and alleged violations involving personally identifiable information ("PII"). The misuse of position charge was premised wholly on Petitioner's sharing with another attorney publicly available statutory and regulatory information and forms concerning the standard multi-step disability evaluation process and noting the relative importance of Step 3.5.

C. Proceedings Before the MSPB

Petitioner appealed his removal to the MSPB. He asserted, among other things, that the disciplinary action constituted unlawful retaliation for protected whistleblowing disclosures; that the agency failed to apply the required penalty factors set forth in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981); that comparator discipline, penalty guidelines, work history, and substantial mitigating factors were explicitly not considered; and that the proposing and deciding officials failed to independently assess the evidence supporting removal.

The administrative judge sustained the removal. Petitioner sought review by the full Board. Due to a lack of quorum, review was delayed for seven years. On April 17, 2024, the MSPB issued a final decision denying the petition for review and sustaining the removal in substantial part. The Board concluded that Petitioner had not established protected disclosures within the meaning of the

Whistleblower Protection Act, upheld the disciplinary charges, and determined that the agency's penalty determination was reasonable.

D. Decision of the Court of Appeals

Petitioner sought review in the United States Court of Appeals for the Federal Circuit, which has jurisdiction over appeals from the MSPB. The Federal Circuit affirmed in an unpublished, nonprecedential *per curiam* opinion.

The court concluded that Petitioner failed to identify any "law, rule, or regulation" allegedly violated for purposes of whistleblower protection and upheld the Board's determination that his disclosures were not protected. The court further sustained the disciplinary charges, including misuse of position, and affirmed the removal on the ground that the agency and the Board properly applied the Douglas factors and that the proposing and deciding officials exercised independent judgment.

In reaching those conclusions, neither the MSPB nor the Federal Circuit addressed sworn deposition testimony in the record materially bearing on whether the deciding and proposing official independently reviewed the evidence or applied any Douglas factors at all, or whether the proposing and deciding officials merely ratified a removal decision directed by higher-level management.

Because the Federal Circuit exercises exclusive jurisdiction over subject MSPB appeals, its approach to the scope of protected disclosures, the application of Douglas, and the standards governing independent agency judgment governs federal employees nationwide.

REASONS FOR GRANTING THE WRIT

- I. **The Federal Circuit's restrictive approach to protected disclosures under the Whistleblower Protection Act warrants this Court's review because it governs federal employees nationwide.**

This case presents important and recurring questions concerning the scope of protected whistleblowing under the Whistleblower Protection Act ("WPA"), 5 U.S.C. § 2302(b)(8). Petitioner alleged disclosures regarding adjudicative misconduct in federal disability decisionmaking, including alleged violations of ethics obligations, constitutional protections, federal statutes, agency regulations, and binding adjudicative standards, as well as directives to disregard governing rules in individual cases to predetermine outcomes. Petitioner also alleged disclosures concerning sustained supervisory harassment that resulted in employee harm and prompted office-wide complaints to agency leadership.

The Merit Systems Protection Board rejected Petitioner's whistleblower claims, and the United States Court of Appeals for the Federal Circuit affirmed, concluding that Petitioner "did not identify any law, rule, or regulation" allegedly violated. That conclusion presents a significant legal question: whether an employee who alleges constitutional violations, statutory violations, ethics violations, and violations of binding adjudicative standards has nonetheless failed, as a matter of law, to identify a "law, rule, or regulation" for purposes of the WPA. See 5 U.S.C. § 2302(b)(8); *Carr v. Soc. Sec. Admin.*, 185 F.3d 1318 (Fed. Cir. 1999).

Petitioner's disclosures included instances that he alleged were unusually explicit and probative of adjudicative misconduct. In one such instance, Petitioner alleged that an administrative law judge directed him, in writing, to issue an adverse disability determination against a black claimant

with a criminal history in contravention of Social Security Ruling 83-21, notwithstanding Petitioner's repeated objections. According to the written exchange identified in the record, the administrative law judge (ALJ) acknowledged the governing standard but nonetheless instructed Petitioner to proceed, writing: "You're probably right. I took a shot only because this claimant stated on the record that the reason he is depressed is because of his criminal record. Well, just for the fun of it, let's leave it in and see what happens. If it gets remanded we'll just do it another way."

Petitioner disclosed this and similar misconduct as evidence of violations of binding adjudicative standards and discriminatory decisionmaking. The decisions below, however, treated such allegations as mere disagreement with adjudicative judgment and concluded that Petitioner had failed to identify any "law, rule, or regulation" allegedly violated—an approach that sharply narrows the scope of protected whistleblowing under the Whistleblower Protection Act.

Because the Federal Circuit exercises exclusive jurisdiction over appeals from the MSPB, its interpretation of what qualifies as a protected disclosure effectively defines the reach of federal whistleblower protections nationwide. See 5 U.S.C. § 7703(b)(1); *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 431–32 (2017). This Court's review is warranted to ensure that the WPA is not construed in a manner that deters disclosures of serious wrongdoing in federal programs affecting the public.

II. The Decisions Below Leave Unresolved an Important Question of Federal Law Concerning a Whistleblower's Right to Preserve Evidence, Including Evidence Containing PII, and the Proper Treatment of "Lack of Candor" Charges Arising from Protected Whistleblowing Activity.

The PII violation and lack of candor charges further underscore the need for this Court's review, as they were directly related to his preservation of whistleblower evidence concerning an ALJ's ongoing pattern of discriminatory decisions.

Thus this case presents an important and recurring question concerning the interaction between whistleblower protections and agency information-handling rules.

Petitioner was charged with lack of candor based on statements he made during a Weingarten meeting, during which a supervisor—who Petitioner accused of retaliation and attempting to suppress his disclosures—asked whether Petitioner had emailed himself materials containing PII.

Petitioner responded in the negative because he did not consider the preserved materials to constitute PII as they had been retained solely as whistleblower evidence necessary to document alleged misconduct and prevent spoliation by the very officials implicated in the disclosures.

In Petitioner's understanding, the statutory mandate to preserve whistleblower evidence—and to protect such evidence from destruction or retaliation—superseded internal agency policies governing routine handling of PII, particularly where the evidence was preserved solely for whistleblowing purposes.

That context is critical. The questioning occurred in a hostile environment, involving supervisors who, according to Petitioner, were themselves implicated in the alleged retaliation and who had directed him to cease making disclosures.

Under those circumstances preserving the evidence, and the manner of evidence collection, was itself part of protecting the whistleblower function and guarding against further retaliation.

Whether an employee may be charged with lack of candor for statements made in that setting—where the underlying

conduct involves the preservation of whistleblower evidence and where disclosure to management posed a risk of further retaliation—presents an important legal question concerning the interaction between whistleblower protections and agency enforcement mechanisms.

Treating such preservation activity as a predicate for PII violation and lack-of-candor discipline raises a serious legal issue: whether an agency may penalize a whistleblower for safeguarding evidence of alleged wrongdoing—particularly where disclosure of that preservation to hostile management would itself increase the risk of retaliation—and whether internal PII policies may be enforced in a manner that effectively nullifies statutory whistleblower protections.

Notably, the United States Court of Appeals for the Federal Circuit expressly declined to reach this argument in his case, yet upheld discipline premised on Petitioner's responses during a compelled labor-relations interview. The court stated that it "need not address" Petitioner's contention that his conduct was protected by whistleblower principles.

By upholding removal without resolving that question, the decisions below leave unresolved a recurring and consequential issue for federal employees nationwide: whether whistleblower-driven evidence preservation can itself become the basis for discipline, including lack-of-candor charges, without any examination of the statutory protections that Congress enacted to encourage disclosures of wrongdoing.

Review is warranted to clarify that whistleblower protections cannot be circumvented through the use of lack-of-candor charges predicated on evidence-preservation conduct undertaken in good faith to document protected disclosures

III. The decisions below permit removal premised on "misuse of position" based on the sharing of nonconfidential, publicly available legal information, presenting an important and recurring question for federal attorneys and other federal employees.

The Federal Circuit upheld disciplinary charges for "misuse of position" that, according to Petitioner, rested in whole on his sharing with another attorney publicly available statutory and regulatory information concerning a well-known legal framework—specifically, the multi-step disability evaluation process. That holding presents a straightforward and consequential legal question: whether "misuse of position" may be predicated on the communication of nonconfidential, widely available legal information that is neither proprietary nor protected and that helps both other attorneys and the general public understand the disability adjudicatory process. See 5 C.F.R. § 2635.702.

If sustained, that rationale risks converting routine discussion of public law and sharing non-proprietary legal expertise as a professional courtesy between attorneys into a basis for discipline and removal, particularly for federal attorneys.

That approach also raises serious First Amendment and public-policy concerns, because it risks chilling the dissemination of publicly available legal information, impairing the public's access to the law, and permitting government agencies to police ordinary discussion of legal standards that are meant to be transparent and publicly understood. This is particularly the case for government lawyers, who have a greater duty to educate the public and other legal professionals regarding their areas of expertise.

Review is warranted to clarify the limits of "misuse of position" and to prevent erosion of the federal workforce's

ability to engage in ordinary professional discourse concerning public legal frameworks.

IV. The decisions below approve removal without meaningful enforcement of the Civil Service Reform Act's reasoned decisionmaking requirements, including compliance with the Douglas factors and comparator proportionality.

This case also presents substantial due process and civil-service questions concerning the integrity of removal decisionmaking under the Civil Service Reform Act. Removal decisions must reflect reasoned consideration of penalty factors, including the Douglas factors, *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), and must account for proportionality, including comparator discipline where relevant. See *Service v. Dulles*, 354 U.S. 363, 388-89 (1957).

Petitioner alleges that either all or most Douglas factors were not applied, that the Agency admitted it did not consider penalty guidelines, work history, substantial mitigating factors and comparator discipline, and that when comparator evidence was finally produced at hearing it showed that similarly situated employees in the relevant region were not removed for comparable or more egregious conduct.

The Court of Appeals did not address or weigh sworn deposition testimony from the deciding official establishing that she did not apply any Douglas factors and did not understand all, or most, of the elements of the charges at the time she issued the removal decision. The failure to consider this testimony was especially consequential given the deciding official's own deposition testimony that she did not read or review any of the documentary evidence underlying the charges and merely signed the removal proposal as presented to her. The court likewise failed to consider the proposing official's sworn deposition testimony bearing on her lack of independent assessment.

This omission was particularly material in light of the Agency's admission that it did not consider comparator discipline at all, and the subsequent production—only after the Agency had rested its case at the MSPB hearing—of comparator evidence demonstrating that Petitioner's removal was the only removal imposed in SSA Region II, despite the existence of more egregious misconduct by other employees. By sustaining the removal without addressing sworn evidence that directly bears on legally required elements of independent judgment, Douglas compliance, and proportionality, the decisions below effectively reduced those statutory safeguards to formal recitations divorced from the evidentiary record.

The MSPB has long recognized that material inconsistencies between sworn statements—including conflicts between deposition testimony and later hearing testimony—must be acknowledged and reconciled as part of a reasoned credibility analysis. *See, e.g., Hill v. Dep't of the Air Force*, 39 M.S.P.R. 529, 533–34 (1989). Where such discrepancies bear directly on legally required elements of decisionmaking, a tribunal's failure to address them is not a credibility determination, but a failure to consider the record as a whole. *See SEC v. Chenery Corp.*, 318 U.S. 80 (1943).

Moreover, in *Hillen*, the MSPB found upon remand that where, as here, officials' deposition testimony conflicted with later hearing testimony, a party's earlier sworn statements were "entitled to more probative weight than her proffered testimony" because they were "closer in time to the events that formed the basis of the charges." *Hillen v. Dep't of the Army*, 66 M.S.P.R. 68, 73 (1994).

This Court has made clear that agency action is arbitrary where the decisionmaker "entirely failed to consider an important aspect of the problem." *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983).

Moreover, a reviewing court likewise may not uphold agency action based on assumptions or rationales that do not appear in the agency's reasoning. *Chenery Corp.*

Nonetheless, the MSPB and the Federal Circuit upheld Petitioner's removal. Given the Federal Circuit's exclusive jurisdiction, the decisions below risk establishing a regime in which Douglas compliance and comparator proportionality are treated as optional and largely formalistic, thereby weakening merit-system protections for federal employees nationwide.

V. This case presents a reviewable legal error: the failure to consider record evidence bearing directly on whether the proposing and deciding officials exercised independent judgment or merely ratified a predetermined removal.

Finally, this case presents a distinct and reviewable error of law: whether removal may be upheld on findings that proposing and deciding officials exercised independent judgment and applied the Douglas factors, where the tribunals failed to address sworn record evidence by deciding officials bearing directly on whether those legally required factors were considered at all.

Petitioner presented sworn deposition testimony from both the proposing and deciding officials that materially conflicted with their later hearing testimony regarding (1) whether the deciding official independently reviewed the underlying evidence and (2) whether any Douglas analysis was actually performed.

Petitioner does not ask this Court to reweigh credibility or resolve disputed facts. Rather, the claim is legal: that the MSPB and the Federal Circuit upheld removal on legal conclusions—*independent judgment and Douglas compliance*—without acknowledging or addressing record evidence that directly undermined those conclusions. A tribunal's failure to consider evidence that goes to legally

required elements of decisionmaking is not a credibility determination; it is a failure to apply governing standards to the record as a whole. See *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951).

Where removal depends on legally required elements of reasoned decisionmaking, a tribunal's failure to consider record evidence bearing on those elements is not a credibility determination; it is a failure to apply governing standards to the whole record. Review is warranted to ensure that civil-service protections are not reduced to rote formalities that survive judicial review even where sworn record evidence directly undermines the factual premises upon which those protections are said to rest.

VI. This case satisfies this Court's certiorari criteria because it presents important federal questions with nationwide consequences, and no other court can correct the Federal Circuit's exclusive-jurisdiction errors.

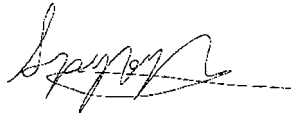
The Federal Circuit's exclusive jurisdiction over appeals from the MSPB gives its decisions exceptional national impact and renders this Court's review uniquely important. The questions presented concern the scope of statutory whistleblower protections, the permissible bases for "misuse of position" discipline involving public legal information and First Amendment professional and legal speech freedoms, and the enforcement of the Civil Service Reform Act's reasoned decisionmaking safeguards, including Douglas compliance and independent judgment by proposing and deciding officials.

Those questions recur, affect the federal workforce nationwide, and warrant this Court's review.

CONCLUSION

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

Respectfully submitted,



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