



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for March 27, 2026

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BOARD DECISIONS

Appellants: Megan Jackler and Brandon Jaroch

Agency: Department of Justice

Intervenor: Office of Personnel Management

Decision Number: [2026 MSPB 3](#)

Docket Number: CF-0752-26-0069-I-1

Article II of the U.S. Constitution

Statutory Removal Procedures

Inferior Officers

Appellants Jackler and Jaroch were both permanently employed as Assistant Chief Immigration Judges in the agency's Executive Office for Immigration Review. On February 14, 2025, the agency summarily terminated their employment. Both appellants filed appeals with the Board, claiming that they qualified as "employees" under 5 U.S.C. § 7511 and, thus, the Board could review whether the agency failed to comply with the requirements of 5 U.S.C. § 7513(b). The agency and the Office of Personnel Management, as intervener, argued that the appellants were "inferior officers" that the Attorney General could remove at will under Article II of the Constitution, i.e., without the procedural protections afforded under section 7513(b).

In initial decisions, the administrative judge held that the Board lacks the authority to invalidate statutory provisions, such as 5 U.S.C. § 7513, and he declined to address the constitutional arguments. He reversed the appellants' removals because the agency failed to provide them with the procedural protections required by 5 U.S.C. § 7513(b). Following a petition for review, the Board consolidated the appeals and issued this precedential decision finding that Article II prevents the Board's grant of jurisdiction under 5 U.S.C. § 7513(d) from being applied to immigration judges. Therefore, the Board vacated the initial decisions and dismissed the appeals for lack of jurisdiction.

Holding: The Board has authority to consider as-applied constitutional challenges to its jurisdiction.

1. The Board has the authority to consider whether the Constitution deprives the Board of jurisdiction over an appeal.
2. Although the Board generally lacks authority to adjudicate the constitutionality of statutes, it has the authority to adjudicate an "as-applied" challenge, i.e., whether the Constitution prevents the application of a statute, such as 5 U.S.C. § 7513, to an appellant.
3. Because the agency did not contend that Article II of the Constitution invalidated 5 U.S.C. § 7513, but rather argued only that the removal protection provisions cannot be constitutionally applied to the appellants because of their specific positions and duties, the agency's constitutional challenge was an as-applied which can be considered by the Board.

Holding: The Constitution abrogates the application of 5 U.S.C. § 7513 to inferior officers such as the appellants, and the Board therefore lacks jurisdiction over their appeals.

1. The relevant inquiry into whether the President's Article II removal authority precludes application of 5 U.S.C. § 7513 is (1) whether an appellant qualifies as an inferior officer under the Constitution, and, if so, (2) whether he or she has limited duties and no policymaking or administrative authority. If the second question is answered in the affirmative, then their statutory removal restrictions are permissible, and the Board retains jurisdiction to review the removal actions. If the inferior officers, however, have more than limited duties, or some level of policymaking or administrative authority, then the Constitution precludes the application of section 7513 to them, and the Board lacks jurisdiction to review the actions.
2. The Board found that appellants Jackler and Jaroch were inferior

officers under the Constitution because (1) their positions were continuing and permanent; (2) they conducted proceedings for deciding the inadmissibility or deportability of an alien, which involves administering oaths, receiving evidence, interrogating, examining, and cross-examining witnesses, issuing subpoenas, and sanctioning by civil money penalty any action in contempt of their proper exercise of authority; and (3) they issued decisions as to whether an alien is removable from the United States. The Board concluded that these duties are similar to those duties and powers of Securities and Exchange Commission administrative law judges and Tax Court special trial judges, whom the Supreme Court found were inferior officers in *Lucia v. Securities and Exchange Commission*, 585 U.S. 237 (2018), and *Freytag v. Commissioner*, 501 U.S. 868 (1991), respectively.

3. The Board found that the appellants exercised significant duties, including policymaking and administrative authority because (1) they were charged with making decisions regarding admissibility or deportability of an alien; (2) they exercised independent judgment and discretion, and could take any action consistent with their authorities that is necessary for the disposition of the cases before them, such as holding hearings and exercising adjudicatory authority over their cases; and (3) although their decisions were subject to review by the Board of Immigration Appeals and the Attorney General, and only those entities are empowered to issue binding, precedential immigration decisions, their decisions could still become the final decisions of the United States, if not appealed.
4. The Board further found that the appellants exercised significant policymaking authority because their decisions can have a major impact on a significant area of the nation's domestic and foreign policy; thus, immigration judges wield vast administrative authority in an area of significant consequence.
5. The Board distinguished the appellants' positions from those considered in *United States v. Arthrex*, 594 U.S. 1 (2023), wherein the Supreme Court allowed administrative patent judges (APJs) to retain for-cause removal protections as inferior officers provided that all of their decisions are subject to review by the Director of the U.S. Patent and Trademark Office. The Board reasoned that the limited and conditional review of immigration judge decisions make the appellants' positions distinguishable from the APJs in *Arthrex*.
6. Because the appellants were inferior officers who exercised significant duties, including policymaking and administrative authority, the Board concluded that 5 U.S.C. § 7513 cannot be constitutionally applied to them, and their appeals must be dismissed for lack of jurisdiction.
7. An agency cannot deprive the Board of jurisdiction over an adverse

action simply by invoking Article II authority. An employee is entitled to come before the Board for a determination of whether section 7513 protections apply.

COURT DECISIONS

NONPRECEDENTIAL:

Sutula v. Merit Systems Protection Board, [No. 2024-1818](#) (Fed. Cir. Mar. 24, 2026) (MSPB Docket No. DC-315H-22-0299-I-1). The court reversed the Board's decision dismissing the petitioner's appeal of his separation for lack of jurisdiction. In dismissing the appeal, the Board reasoned that the petitioner was appointed from a certificate of eligibles, and therefore he was a probationary competitive service appointee with less than 1 year of service who could not appeal his termination. The court disagreed, finding that the Board improperly weighed the evidence at the nonfrivolous allegation stage. The court concluded that, if true, the petitioner's allegation that he was not hired from a certificate would establish that he was not probationary at the time of his termination, and therefore he was entitled to appeal his separation to the Board. The court remanded for a jurisdictional hearing on the appellant's nonfrivolous allegations.

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