Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

KLOECKNER *v.* SOLIS, SECRETARY OF LABOR

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 11–184. Argued October 2, 2012—Decided December 10, 2012

The Civil Service Reform Act of 1978 (CSRA) permits a federal employee subjected to a particularly serious personnel action such as a discharge or demotion to appeal her agency's decision to the Merit Systems Protection Board (MSPB or Board). Such an appeal may allege that the agency had insufficient cause for taking the action under the CSRA itself; but the appeal may also or instead charge the agency with discrimination prohibited by a federal statute. See 5 U. S. C. §7702(a)(1). When an employee alleges that a personnel action appealable to the MSPB was based on discrimination, her case is known as a "mixed case." See 29 CFR §1614.302. Mixed cases are governed by special procedures set out in the CSRA and regulations of the MSPB and Equal Employment Opportunity Commission (EEOC).

Under those procedures, an employee may initiate a mixed case by filing a discrimination complaint with the agency. If the agency decides against the employee, she may either appeal the agency's decision to the MSPB or sue the agency in district court. Alternatively, the employee can bypass the agency and bring her mixed case directly to the MSPB. If the MSPB upholds the personnel action, whether in the first instance or after the agency has done so, the employee is entitled to seek judicial review.

Section 7703(b)(1) of the CSRA provides that petitions for review of MSPB decisions "shall be filed in the . . . Federal Circuit," except as provided in §7703(b)(2). Section 7703(b)(2) instructs that "[c]ases of discrimination subject to the provisions of [§7702] shall be filed under [the enforcement provision of a listed antidiscrimination statute]." Those enforcement provisions all authorize suit in federal district court. The "cases of discrimination subject to the provisions of §7702" are those in which an employee "(A) has been affected by an action

Syllabus

which [she] may appeal to the [MSPB], and (B) alleges that a basis for the action was discrimination prohibited by" a listed federal statute; in other words, "mixed cases."

In 2005, while an employee of the Department of Labor (DOL or agency), petitioner Carolyn Kloeckner filed a complaint with the agency's civil rights office, alleging that DOL had engaged in unlawful sex and age discrimination by subjecting her to a hostile work environment. Following applicable EEOC regulations, DOL completed an internal investigation and report, and Kloeckner requested a hearing before an EEOC administrative judge. While the EEOC case was pending, Kloeckner was fired. Because Kloeckner believed that DOL's decision to fire her was based on unlawful discrimination, she now had a "mixed case." Kloeckner originally brought her mixed case directly to the MSPB. Concerned about duplicative discovery expenses between her EEOC and MSPB cases, she moved to amend her EEOC complaint to include her claim of discriminatory removal and asked the MSPB to dismiss her case without prejudice for four months to allow the EEOC process to go forward. Both motions were granted. In September 2006, the MSPB dismissed her appeal without prejudice to her right to refile by January 18, 2007. The EEOC case, however, continued until April 2007, when the EEOC judge terminated the proceeding as a sanction for Kloeckner's bad-faith discovery conduct and returned the case to DOL for a final decision. In October, DOL ruled against Kloeckner on all of her claims. Kloeckner appealed to the Board in November 2007. The Board dismissed Kloeckner's appeal as untimely, viewing it as an effort to reopen her old MSPB case months after the January 18 deadline.

Kloeckner then brought this action against DOL in Federal District Court, alleging unlawful discrimination. The court dismissed the complaint for lack of jurisdiction. It held that, because the MSPB dismissed Kloeckner's claims on procedural grounds, she should have sought review in the Federal Circuit under §7703(b)(1); in the court's view, the only discrimination cases that could go to district court pursuant to §7703(b)(2) were those the MSPB had decided on the merits. The Eighth Circuit affirmed.

Held: A federal employee who claims that an agency action appealable to the MSPB violates an antidiscrimination statute listed in §7702(a)(1) should seek judicial review in district court, not the Federal Circuit, regardless whether the MSPB decided her case on procedural grounds or on the merits. Pp. 7–14.

(a) Two sections of the CSRA, read naturally, direct employees like Kloeckner to district court. Begin with § 7703, which governs judicial review of MSPB rulings. Section 7703(b)(1) provides that petitions to review the Board's final decisions should be filed in the Federal Cir-

Syllabus

cuit—"[e]xcept as provided in paragraph (2) of this subsection." Section 7703(b)(2) then provides that "[c]ases of discrimination subject to the provisions of [§7702]" "shall be filed under" the enforcement provision of a listed antidiscrimination statute. Each of the referenced enforcement provisions authorizes an action in federal district court. Thus, "[c]ases of discrimination subject to the provisions of [§7702]" shall be filed in district court. Turn next to §7702, which provides that the cases "subject to [its] provisions" are cases in which a federal employee "has been affected by an action which [she] may appeal to the [MSPB]," and "alleges that a basis for the action was discrimination prohibited by" a listed federal statute. The "cases of discrimination subject to" §7702 are therefore mixed cases. Putting §7703 and §7702 together, mixed cases shall be filed in district court. That is where Kloeckner's case should have been, and indeed was, filed. Regardless whether the MSPB dismissed her claim on the merits or threw it out as untimely, she brought the kind of case that the CSRA routes to district court. Pp. 7–8.

(b) The Government's alternative view—that the CSRA directs the MSPB's merits decisions to district court, while channeling its procedural rulings to the Federal Circuit—is not supported by the statute. According to the Government, that bifurcated scheme, though not specifically prescribed in the CSRA, lies hidden in the statute's timing requirements. But the Government cannot explain why Congress would have constructed such an obscure path to such a simple result. And taking the Government's analysis one step at a time makes it no more plausible. Pp. 8–13.

639 F. 3d 834, reversed and remanded.

KAGAN, J., delivered the opinion for a unanimous Court.

SUPREME COURT OF THE UNITED STATES

No. 11–184

CAROLYN M. KLOECKNER, PETITIONER *v.* HILDA L. SOLIS, SECRETARY OF LABOR

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[December 10, 2012]

JUSTICE KAGAN delivered the opinion of the Court.

A federal employee subjected to an adverse personnel action such as a discharge or demotion may appeal her agency's decision to the Merit Systems Protection Board (MSPB or Board). See 5 U. S. C. §§7512, 7701. In that challenge, the employee may claim, among other things, that the agency discriminated against her in violation of a federal statute. See §7702(a)(1). The question presented in this case arises when the MSPB dismisses an appeal alleging discrimination not on the merits, but on procedural grounds. Should an employee seeking judicial review then file a petition in the Court of Appeals for the Federal Circuit, or instead bring a suit in district court under the applicable antidiscrimination law? We hold she should go to district court.

I

A

The Civil Service Reform Act of 1978 (CSRA), 5 U. S. C. §1101 *et seq.*, establishes a framework for evaluating personnel actions taken against federal employees. That statutory framework provides graduated procedural pro-

tections depending on an action's severity. If (but only if) the action is particularly serious—involving, for example, a removal from employment or a reduction in grade or pay—the affected employee has a right to appeal the agency's decision to the MSPB, an independent adjudicator of federal employment disputes.[1] See §§1204, 7512, 7701. Such an appeal may merely allege that the agency had insufficient cause for taking the action under the CSRA; but the appeal may also or instead charge the agency with discrimination prohibited by another federal statute, such as Title VII of the Civil Rights Act of 1964, 42 U. S. C. §2000e *et seq.,* or the Age Discrimination in Employment Act of 1967, 29 U. S. C. §621 *et seq.* See 5 U. S. C. §7702(a)(1). When an employee complains of a personnel action serious enough to appeal to the MSPB *and* alleges that the action was based on discrimination, she is said (by pertinent regulation) to have brought a "mixed case." See 29 CFR §1614.302 (2012). The CSRA and regulations of the MSPB and Equal Employment Opportunity Commission (EEOC) set out special procedures to govern such a case—different from those used when the employee either challenges a serious personnel action under the CSRA alone or attacks a less serious action as discriminatory. See 5 U. S. C. §§7702, 7703(b)(2) (2006 ed. and Supp. V); 5 CFR pt. 1201, subpt. E (2012); 29 CFR pt. 1614, subpt. C.

A federal employee bringing a mixed case may proceed in a variety of ways. She may first file a discrimination complaint with the agency itself, much as an employee challenging a personnel practice not appealable to the MSPB could do. See 5 CFR §1201.154(a); 29 CFR

---

[1] The actions entitling an employee to appeal a case to the MSPB include "(1) a removal; (2) a suspension for more than 14 days; (3) a reduction in grade; (4) a reduction in pay; and (5) a furlough." 5 U. S. C. §7512.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.