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

LACHANCE, ACTING DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT *v.* ERICKSON ET AL.

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

No. 96–1395. Argued December 2, 1997– Decided January 21, 1998*

Respondents, federal employees subject to adverse actions by their agencies, each made false statements to agency investigators with respect to the misconduct with which they were charged. In each case, the agency additionally charged the false statement as a ground for adverse action, and the action taken against the employee was based in part on the added charge. The Merit Systems Protection Board (Board) upheld that portion of each penalty that was based on the underlying charge, but overturned the false statement portion, ruling, *inter alia,* that the claimed statement could not be considered in setting the appropriate punishment. In separate appeals, the Federal Circuit agreed with the Board that no penalty could be based on a false denial of the underlying claim.

Held: Neither the Fifth Amendment's Due Process Clause nor the Civil Service Reform Act, 5 U. S. C. §1101 *et seq.*, precludes a federal agency from sanctioning an employee for making false statements to the agency regarding his alleged employment-related misconduct. It is impossible to square the result reached below with the holding in, *e.g., Bryson* v. *United States*, 396 U. S. 64, 72, that a citizen may decline to answer a Government question, or answer it honestly, but cannot with impunity knowingly and willfully answer it with a falsehood. There is no hint of a right to falsely deny charged conduct in §7513(a), which authorizes an agency to impose the sort of penalties

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* Together with *LaChance, Acting Director, Office of Personnel Management* v. *McManus et al.*, also on certiorari to the same court.

involved here "for such cause as will promote the efficiency of the service," and then accords the employee four carefully delineated procedural rights– advance written notice of the charges, a reasonable time to answer, legal representation, and a specific written decision. Nor can such a right be found in due process, the core of which is the right to notice and a meaningful opportunity to be heard. Even assuming that respondents had a protected property interest in their employment, this Court rejects, both on the basis of precedent and principle, the Federal Circuit's view that a "meaningful opportunity to be heard" includes a right to make false statements with respect to the charged conduct. It is well established that a criminal defendant's right to testify does not include the right to commit perjury, *e.g., Nix* v. *Whiteside*, 475 U. S. 157, 173, and that punishment may constitutionally be imposed, *e.g., United States* v. *Wong*, 431 U. S. 174, 178, or enhanced, *e.g., United States* v. *Dunnigan*, 507 U. S. 87, 97, because of perjury or the filing of a false affidavit required by statute, *e.g., Dennis* v. *United States*, 384 U. S. 855. The fact that respondents were not under oath is irrelevant, since they were not charged with perjury, but with making false statements during an agency investigation, a charge that does not require sworn statements. Moreover, any claim that employees not allowed to make false statements might be coerced into admitting misconduct, whether they believe that they are guilty or not, in order to avoid the more severe penalty of removal for falsification is entirely frivolous. *United States* v. *Grayson*, 438 U. S. 41, 55. If answering an agency's investigatory question could expose an employee to a criminal prosecution, he may exercise his Fifth Amendment right to remain silent. See, *e.g., Hale* v. *Henkel*, 201 U. S. 43, 67. An agency, in ascertaining the truth or falsity of the charge, might take that failure to respond into consideration, see *Baxter* v. *Palmigiano*, 425 U. S. 308, 318, but there is nothing inherently irrational about such an investigative posture, see *Konigsberg* v. *State Bar of Cal.*, 366 U. S. 36. Pp. 2–5.

89 F. 3d 1575 (first judgment), and 92 F. 3d 1208 (second judgment), reversed.

REHNQUIST, C. J., delivered the opinion for a unanimous Court.