20-91

No. 20-

ORIGINAL

In the

Supreme Court of the United States

Joseph H. Martin,
Petitioner,

V.

Department of Homeland Security,
Respondent,

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Weather the 4th amendment to the constitution of the United States protects speech in my personally rented hotel room; my home for the period of rental time.

Weather the United States Labor Management Relation Statute (5USC71) protects all Federal Bargaining Unit Employee Members speech during a Union meeting, including the speech of their Elected Union Officials.

Weather the 1st amendment to the constitution of the United States protects opinionated speech in my personally rented hotel room; my home for the period of rental time.

Weather the United States Federal Circuit Court of Appeals Violated its own long standing precedent setting case decisions that now requires this court to exercise its supervisory powers.

Weather the United States Federal Circuit Court of Appeals Violated this courts' long standing precedent setting case decisions that now requires this court to exercise its supervisory powers.

PARTIES TO THE PROCEEDINGS

Joseph H. Martin, Petitioner here, was the petitioner in the court of appeals.

Department of Homeland Security here, was the respondent in the court of appeals.

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Joseph H. Martin respectfully petitions for a writ of certiorari to review the decisions of the United States Court of appeals for the Federal Circuit in this case.

OPINIONS BELOW

The Federal Circuit's En Banc decision reported at Appendix 1a. The Federal Circuit's Panel decision reported at Appendix 3a. The Merit System Protection Board (MSPB) Administrative Judge final decision reported at Appendix 12a.

JURSIDICTION

The en Banc Federal Circuit Court of Appeals entered its Decision on June 12, 2020; Petition at Appendix 1a. This Courts Jurisdiction is invoked under 28 U.S.C 1254(1)

INTERDUCTION

In my case, the United States Federal Circuit Court of Appeals denied my petition for a Rehearing En Banc (1a), thereby the court violated both their long standing case precedent law, as well as case precedent setting law from this Court, with the courts' initial decision (3a) on my appeal from the Merit System Protection Board (MSPB) termination decision in my case (12a). Therefore, their actions beg for this court to exercise its supervisory authority.

The Questions presented are of extreme importance to all citizens of the United States and all Unions, especially the Federal sector Unions. Their decisions,

if not reversed, will deprive all United States Citizens of their 1st and 4th amendment protections while in their personal residence; in my case – my personally rented Hotel room, and will directly affect all Federal Employees rights to due process, as well as seriously erode all Unions' ability to hold confidential union meetings with their members, without Government interceptiong and/or intrusion, as well as advocate for their Bargaining Unit members. This Courts intervention is essential to restore constitutional and statutory rights that were eviscerated by the Federal Circuit Court of Appeals in their decision on my case and their subsequent denial of my petition for a Rehearding En Banc (1a) and (12a).

For these reasons, Certiorari should be granted.

A. STATEMENT

The Federal Circuit Court of Appeals Panel violated its own rules under rule 35 C when it denied my request for a Rehearing En Banc (1a), as the Panels' initial decision (3a) conflicted with Supreme Court Law and moreover, failed to maintain uniformity of previous Fedeal Circuit Court of Appeals decisions.

The Civil Service Reform Act (CSRA) of 1978 protects Federal Employees from illegally imposed administrative actions and allows Federal Employees the ability to appeal any adverse action to the Merit System Protection Board (MSPB), where the MSPB is required to uphold the CSRA and reverse any adverse action taken against a Federal Employee that is not in accordance with the CSRA, Federal or State Law. In my case, the MSPB Administrative Judge (AJ) did not follow the MSPB's own case law and deliberately deviated from the CSRA when the MSPB AJ upheld my termination from the US

Department of Homeland Security (DHS) (12a). Aside from "not" allowing illegally obtained evidence; which the MSPB AJ did in mu case, the MSPB AJ's decision must be based solely on the charge alleged within the Agency's Notice of Action, and the AJ cannot substitute what the AJ considers to be a better basis for a charge; which the MSPB AJ did in my case. Furthermore, the Federal Circuit Court of Appeals panel (The Panel), in their denial of my MSPB case decision appeal (3a), merely regurgitated the MSPB AJ's decision wordage (12a); including wordage that was "not" sustained by the MSPB AJ; concerning "providing sexual favors for Union Representation", and without conducting any level of case record analysis and review, thereby also violating their long standing Federal Circuit case law (3a) (see *O'Keefe V. U.S. Postal Service, United States Court of Appeals, Federal Circuit, 318 F. 3d 1310* (Fed. Cir. 2002), *Brook v. Corrado,* 999 F. 2d 523 (Fed.Cir. 1993) *Lachance v. Merit Sys. Prot. Bd.,* 147 F.3d 1367, 1371 (Fed.Cir.1998) *McIntire v.*

Fed. Emergency Mgmt. Agency, 55 M.S.P.R. 578, 583 n. 4 (1992), *Riley v. Dep't of the Army,* 53 M.S.P.R. 683, 688 (1992), *Shaw v. Dep't of the Air Force,* 80 M.S.P.R. 98, 106-07 (1998) *and U.S. Supreme Court. Katz V. United States, 389 U.S. 347 and Douglas vs Veterans Administration et al,* 5 MSPB 313 (1981). The Panel also failed to properly address my constitutional violation of my First (1st) and Fourth (4th) amendment protections claim, by improperly stating in their initial decision (3a), that the conversations recorded by the Government Investigators, through the utilization of a Bargaining Unit Employee as an "cooperating witness", occurred in a "hotel room" when in fact, as I presented in my Petition for Rehearding En Banc (3a), the Government recorded conversations I had with this "cooperating witness", as the Union President, was in fact with this Bargaining Unit member during a Union Meeting in my personally rented hotel room; which the record reflects the Government had several days prior knowledge that this Union meeting was to

be held. Therefore, the Panels' decision violated long standing Supreme Court Law (3a). (See. *Katz V. United States, 389 U.S. 347. U.S. Supreme Court)*

Further, the Panel's decision (3a) also errored in applying the protections afforded Federal Bargaining Unit employees under the Federal Labor Relations Statute (The Statute) at 5 USC §7114(b)(6), by stating that the Statute only protects Union Members and not elected Union Officials, which I was during the illegally intercepted and recorded video surveillance by the Government investigators and their cooperator, which was used as evidence to support my termination of employment with DHS.

B. FACTUAL AND PROCEDURAL BACK GROUND.

I was Honorably discharged from the U.S. Army in June of 1993. I began my employment with the U.S. Immigration and Naturalization Service in that same month. The U.S. Immigration and Naturalization service was later merged into U.S.

Customs and Border Protection under the U.S. Department of Homeland Security. During my time as a Federal Employee I served in many capacities within the Federal Unions of both Agencies. In my termination case, I was Charged with three charges: Charge 1 was Conduct Unbecoming a Customs and Border Protection Officer; of which only one specification was upheld, Charge 2 was Lack Of Candor, again of which only one specification was upheld, and Charge 3 was Failure to Follow a Non-Disclosure Warning, also where only one specification was upheld. The decision by the Federal CircuitCourt of Appeals Panel (3a), as well as their denial of my request for a Rehearing an En Banc (1a), were entirely in error as I presented, and the record holds, more than a substantial level of evidence to support outright vacation of my case in its entirety. Further, the Federal Circuit Panel's decision in my casce was in direct conflict with their own and this Supreme Court of the United States past precedent case decisions; Horizontal stare decisi, and involves

issues that are of extreme importance to all Federal Government Employees and in fact, all citizens of the United States.

In my judgement regarding Charge 2 of Lack of Candor, the Federal Circuit Panel's decision is contrary to the following U.S. Supreme Court, Court of Appeals for the Federal Circuit and MSPB precedent cases under: *O'Keefe V. U.S. Postal Service, United States Court of Appeals, Federal Circuit, 318 F. 3d 1310* (Fed. Cir. 2002), *Brook v. Corrado,* 999 F. 2d 523 (Fed.Cir. 1993) *Lachance v. Merit Sys. Prot. Bd.,* 147 F.3d 1367, 1371 (Fed.Cir.1998) *McIntire v. Fed. Emergency Mgmt. Agency,* 55 M.S.P.R. 578, 583 n. 4 (1992), *Riley v. Dep't of the Army,* 53 M.S.P.R. 683, 688 (1992), *Shaw v. Dep't of the Air Force,* 80 M.S.P.R. 98, 106-07 (1998) *and Katz V. United States, U.S. Supreme Court 389 U.S. 347 and Douglas vs Veterans Administration et al,* 5 MSPB 313 (1981).

It is my judgement that the Federal Circuit Court of Appeals and the MSPB AJ [the Board] abused their discretion under Charge 1, Conduct Unbecoming a Customs and Border Protection Officer (CBPO). The conversation that was video recorded and used as evidence to sustain Charge 1 took place in my *personally rented hotel room*, my home for the evening, and therefore any activity within my home, as long as it is not criminal in nature; and the record show in my case there was "zero" criminal behavior on *my part* throughout my entire Hotel room stay on July 8, 2015, is fully protected by my U.S. Constitutional Rights under the First (1st) and Fourth (4th) Amendments to the U.S. Constitution, as I had a reasonable expectation of privacy and am free to voice my personal opinion on any matter. Neither the Federal Circuit nor the MSPB A.J. addressed the issues properly because both referred to the conversation as taking place in a hotel room; implying someone else's room or even implying in a public area of the Hotel, which *was not* the case at

all. Further, the Agency investigator in charge; Department of Homeland Security (DHS) Office of Inspector General (OIG) Senior Special Agent (SSA) Sara Arrasmith, admitted under oath during the MSPB hearing that the Agency did not have a legal authority to be present in my personally rented Hotel room and that they *did not* have a legally executed search warrant. Further, the record reflects that SSA Arrasmith, and her cooperating witness, both knew "days prior" that the meeting being held in my personally rented hotel room was a Union Meeting, protected under the Fedeal Labor and Management Relations Statute (5USC71). I also presented these same arguments of a violation of my First and Fourth Amendment Rights and violation of 5USC71 on the record during my Oral Reply to my proposed termination on March 28, 2017, and both the Federal Circuit and the MSPB AJ errored in not fully reviewing the record and applying these legal precedents I provided (See . *Katz V. United States, 389 U.S. 347 U.S. Supreme Court).*

Under Charge 2, Lack of Candor, and based on my judgment, the Federal Circuit was required to answer these closely related and precedent-setting questions of exceptional importance: The MSPB AJ abused his discretion and the Federal Circuit errored by modifying the scope of the sustained Specification, as written, in both the Notice of Proposed Removal and the Removal Action. Only [the charge] and specifications set out in the Notice and Decision may be used to justify punishment because due process requires that an employee be given notice of the charges against him in *sufficient detail* to allow the employee to make a fully informed reply. The evidence is clear that the specification under Charge 2, that was sustained by the MSPB AJ and upheld by the Federal Circuit, was a modified Specification and was not described fully or accurately, as written in the Notice and Decision Letters removing me. S*ee O'Keefe V. U.S. Postal Service, United States Court of Appeals, Federal Circuit, 318 F. 3d 1310* (Fed. Cir. 2002)*Brook v. Corrado,* 999 F.2d 523, 526-27

(Fed.Cir. 1993); *Lachance v. Merit Sys. Prot. Bd.,* 147 F.35 1367, 1371 (Fed.Cir.1998). The Board's review of the agency's decision is likewise limited solely to the grounds invoked by the agency. *McIntire v. Fed. Emergency Mgmt. Agency,* 55 M.S.P.R. 578, 583 n. 4 (1992) (stating that the Board *will not* consider allegations of misconduct related to the charges "because they were not specified in the agency's proposal notice"); *Riley v. Dep't of the Army,* 53 M.S.P.R. 683, 688 (1992) (finding that the administrative judge erred by sustaining a charge that was not specified by the agency). In my case, the Proposal Notice and Decision differed greatly in substance ("Should vs Must"), which alone is a reversible error. More importantly and relative to my case, is that the Board may not substitute what it considers to be a better basis for removal than what was identified by the Agency and the Panel errored in Affirming this "modified" Specification. See *Shaw v. Dep't of the Air Force,* 80 M.S.P.R. 98, 106-07 (1998) ("The Board cannot adjudicate an adverse action on

the basis of a charge that could have been brought but was not. Rather, the Board is required to adjudicate an appeal solely on the grounds invoked by the agency, and it may not substitute what it considers to be a more appropriate charge."; *Riley,* 53 M.S.P.R. at 688; *Gottlieb v. Veterans Admin.,* 39 M.S.P.R. 606, 609-10 (1989) (reversing a judge's adjudication that the agency proved a charge on different grounds than those stated in the charge itself). By accusing me of specific misdeeds that were not specifically identified and within the full scope of the Notice of Proposed Removal and Removal Decision, the MSPB AJ [The Board] exceeded the scope of his authority and the Federal Circuit Affirmation of the Board's decision was in error, by their not following both their own precedent setting case law, in sustaining Charge 2. Further, the MSPB AJ and Federal Circuit failed to properly and fully apply the evidence presented by the Agency in considering the *on the record* document evidence and testimony provided during the Agency case and

MSPB Hearing, as there is no evidence whatsoever in this entire case; Preponderance or Substantial, that supports the Specification that I "implied" that female employees should or must *"provide [me] sexual favors in exchange for Union Representation"*. Further, the lack of specificity in the Notice and Decision as to the full details of the actual questions directed toward me, and my actual full responses thereto, indicates that the Agency attempted to use a General Charge under a Charge and Specification format, neither of which were supported by the evidence at all, by either Preponderance or Substantial standards. In fact, there is evidence provided by one undercover cooperating employee, Mrs. Cynthia DeMara, that she knew my use of "Brash language" and comments, as described by the AJ and with which I was not charged, were in fact "Jokes" and "Joking", which was and remains common workplace banter at the location we both were assigned to, as was also testified to by the Deciding Official, Hector Mancha, during the MSPB

Hearing. Likewise, the MSPB AJ did not apply the same review standard here, as he did in not sustaining the two other specifications under Charge 1 which had the exact same language concerning *"providing sexual favors in exchange for Union Representation"*, which leads me to believe that the AJ deviated from the Specification under Charge 2 deliberately, and the Federal Circuit errored in affirming the decision, without conducting a full review of the case evidence.

3) It is my judgement that the MSPB AJ did not apply all the facts and evidence, and/or failed to properly apply the facts and evidence, and the Federal Circuit errored in upholding the Specification under Charge 3. The undisputed facts within the hearing evidence are clear and was admitted to, under oath, during the MSPB Hearing by the DHS Senior Special Agent in charge of my case investigation; Sara Arrasmith, that Mr. James Y. Tong; was involved in and had full knowledge of the

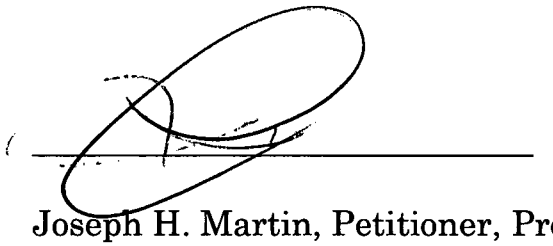
Investigation by DHS, and coordinated the schedules of Cynthia Demara and Zeidy Loyoza for the illegal surveillance conducted in my personally rented Hotel room. Thus, just as the other Specifications under Charge 3; concerning Mr. DiBene and Mr. Perez were not upheld by the MSPB AJ, neither should the Specification concerning Jimmy Tong be upheld, as the MSPB AJ and the Federal Circuit both errored by not applying the evidence and law equally to all the Specifications under Charge 3 (See *Douglas vs Veterans Administration et al*, 5 MSPB 313 (1981).

REASONS FOR GRANTING THE PETITION

In summation, I would like to add the fact that the record evidence is clear, from the date of the illegal surveillance in my personal Hotel room on July 8, 2015 and up until I received my Notice of proposed removal in February 2017, the Respondent never lost trust in me as I performed the full range of duties of my position as a CBPO Prosecutions Officer, where I took oath affirmations, signed sworn affidavits and

presented and testified in criminal cases on behalf of the Government [Agency], within the District of Arizona (See *Douglas vs Veterans Administration et al*, 5 MSPB 313 (1981). Further, it is also my judgement that the Supreme Court should grant this petition because, in addition to the aforementioned issues, this case presents several questions of exceptional importance regarding the Constitutional over-reach by investigative entities, Federal Agency Managers and "undercover" Bargaining Unit Employees, as well as several serious harmful errors, due process violations and abuse of authority by the MSPB AJ, affirmed by the Federal Circuit Court of Appeals. These questions of have resulted in a severe, exceptional and direct impact; and is now highly important to every Federal employee within the U.S. Government; numbering in the hundreds of thousands (See. *Katz V. United States, 389 U.S. 347 U.S. Supreme Court)*

DATED this 7h day of July 2020.



Joseph H. Martin, Petitioner, Pro Se

Attachment (1a)

Court of Appeals for The Federal Circuit Decision Denying a Rehearing En Banc under Case Number 2019-1578 (Joseph H. Martin v Department of Homeland Security), Dated June 12, 2020.

Attachment (3a)

Court of Appeals for The Federal Circuit Decision under Case Number 2019-1578 (Joseph H. Martin v Department of Homeland Security), Dated April 20, 2020.

Attachment (12a)

Final Decision of the Merit System Protection Board (MSPB) Administrative Law Judge (AJ) upholding my termination from the Department of Homeland Security (DHS), under Case Number 2019-1578 (Joseph H. Martin v Department of Homeland Security), Dated November 28, 2018.