No. 21-7064

IN THE

SUPREME COURT OF THE UNITED STATES

LARRY SQUIRES

— PETITIONER

vs.

MERIT SYSTEMS PROTECTION BOARD (MSPB);

UNITED STATES DEPARTMENT OF NAVY (Agency)

— RESPONDENT(S)

MOTION TO EXTEND TIME TO FILE PETITION FOR WRIT OF CERTIORI

I, Larry Squires, proceeding *pro se*, respectfully submit motion to extend the time (45 days) to file a revised Petition for Writ of Certiorari consistent with Rule 33.1, as directed by March 28, 2022, Order of this Court.

Basis for Jurisdiction and Judgement to Be Reviewed

On November 6, 2020 the Federal Court of Appels, Fourth Circuit issued order that bifurcated review and adjudication of my mixed-case MSPB "Appeal of Constructive

Removal" – dismissing appeal of constructive removal while remanding claims of discrimination. (Appendix A) On December 14, 2021, the Fourth Circuit denied my Petition for Rehearing En Banc. (Appendix B)

I seek extraordinary relief from this Court to resolve the bifurcation of my case before proceeding on remand back to the U.S District Court. The MSPB, U.S. District Court and the Fourth Circuit failed to consider the totality of the circumstances demonstrating involuntariness in my "Appeal of Constructive Removal". The MSPB plainly failed to acknowledge that I even submitted an "Appeal of Constructive Removal", ruling instead on a fictitious 'appeal of reassignment'. Next, the U.S. District Court dismissed my "Appeal of Constructive Removal" without considering underlying discrimination (e.g. involuntary accommodation by reassignment which I had declined), while simultaneously dismissing my claims of discrimination. The Fourth Circuit, then, upheld dismissal of my "Appeal of Constructive Removal", yet still remanded the "portion" of my appeal of constructive removal that raised claims of discrimination.... seemingly barring remedy for losses resulting from my constructive removal even if I later succeed in proving my claims of discrimination (e.g. an impermissible involuntary accommodation by reassignment which I had previously declined on multiple occasions).

In short, I only filed one action: "Appeal of Constructive Removal" based on underlying discrimination. (See *Garcia v. Department of Homeland Security*, 437 F.3d 1322, 1341 (Fed. Cir. 2006) (en banc) (discrimination issues may be considered in

determining jurisdiction in mixed constructive adverse action cases insofar as they illuminate involuntariness; emphasizing an objective standard one that is based on ***the totality of the circumstances***) The judgements of the courts strip the underlying claims of discrimination from my "Appeal of Constructive Removal", seemingly leaving me without proper remedy for the discrimination that caused my departure.

While the MSPB judgement was plainly erroneous in that it failed to even acknowledge or provide notice of any standard of review under my "Appeal of Constructive Removal", the judgements of the U.S. District Court and Fourth Circuit are inconsistent with the precedent established by thus Court under *Lentz v. Merit Sys. Prot Bd.*, 876 F.3d 1380, 1384 (Fed. Cir. 2017) (remedied an improper bifurcation of claims that precluded consideration of the totality of evidence in determining the question of voluntariness). Further, the judgements for which I seek extraordinary review are inconsistent with precedent established under Garcia (2006), as well as published opinion of the Fourth Circuit in *Wirtes v City of Newport News*, No. 19-1780 (4th Circuit, 2021) (holding that it is "inappropriate for the City to force [an employee] to choose between retiring or accepting reassignment to a position he did not want when a reasonable accommodation would have allowed him to maintain his desired position .... which must be assumed to be true under summary judgement").

In seeking review of these judgements, I note that these inconsistencies are all together contrary to this Court's requirement to provide an integrated scheme of

review in order to ensure fundamental fairness, equal protection and due process for CSRA employees seeking review of mixed-case MSPB claims. See *Perry v. Merit Sys. Prot. Bd.*, 137 S. Ct 1975, 1979 (2017) (the proper review forum when the MSPB dismisses a "mixed-case" involving claims of discrimination is District Court to serve "[the] objective of creating an integrated scheme of review [which] would be seriously undermined" by "parallel litigation regarding the same agency action.").

Reasons Why an Extension of Time is Justified

On January 11, 2022, this Court docketed my timely Petition for Writ of Certiorari with Petition for Leave to Proceed *In Forma Pauperis*. (Docket #1)

On March 28, 2022, this Court entered Order denying my Petition for Leave to Proceed *In Forma Pauperis* and instructed me to re-submit Petition for Writ of Certiorari consistent with Rule 33.1. (Docket #6)

First, upon timely submission of my initial petitions, I had good reason to believe that I would be granted Leave to Proceed *In Forma Pauperis*. As demonstrated on my Petition for Leave to Proceed *In Forma Pauperis*, my current household expenditures exceed my household income. These are not frivolous household expenditures, they are expenditures necessary for the health, safety and comfort of my family, including 3 young children. The poverty level in my area is approximately $29,420 annually, and my annuity is $28,800. My wife's self-employment yields approximately $30,000 annually, and, as anticipated in my petition, thus far has been marginally less of late.

Our rental housing, alone, is $26,660. Other fundamental household expenses, such utilities, food, transportation, and medical expenses, are approximately $36,000 (and rising daily, weekly, monthly, e.g. recent and future medical/dental approaching $8,000 during the next 6 months). There is a demonstrable need in my petition to proceed in forma pauperis. Moreover, I had good reason to believe that the Fourth Circuit's order granting leave to proceed in forma pauperis evidenced the current and ongoing need for waiver of fees and costs associated with justice in the foregoing matter.

In consideration thereof, I have good reason to believe that I have demonstrated that I am unable to afford docketing fees, much less the inordinate amount of money necessary to obtain professional production approximately fifty (50) copies of my writ of certiorari in accordance with the wearingly burdensome requirements of Rule 33.1.

Second, as I am now required to overcome the burden of producing docketing fees for my writ of certiorari, and personally producing fifty (50) copies of the document, I believe it is reasonable to allow for additional time in order to revise my prior timely submission of petition for writ of certiorari in order for this *pro* se petitioner to conform to the painstaking requirements of Rule 33.1.

THEREFORE, in the interest of justice, I respectfully motion this Court to extend the time forty-five (45) days in order to allow for a re-submission of petition for writ of certiorari.

I, Larry Squires, do hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on:

April 12, 2022

(Signature) Larry Squires