ORIGINAL

No. 22-6195

23-7018

IN THE

SUPREME COURT OF THE UNITED STATES

Julian R. Ash— PETITIONER

vs.

DOT— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Julian R. Ash

---

402 E Timonium Rd

Lutherville, Md 21093

580-284-6202

PETITION FOR WRIT OF CERTIORARI

****

TO THE HONORABLE NEIL M. GORSUCH ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT AND CIRCUIT JUSTICE FOR THE TENTH CIRCUIT

****

QUESTIONS PRESENTED

1. In the Interest of Public Safety and Public Trust should the Title V Exemption extended to the Federal Aviation Administration from the Office of Personnel Management be considered Unconstitutional since reports of Waste, Fraud, and Abuse are Extreme, Well Documented, and Severely Dangerous to the Flying Public, Workforce, and Society?
2. Should OPM's Oversight of the FAA be considered Unconstitutional since the FAA has a History of Retaliating against Whistleblowers?
3. If the DOJ said Ash v DOT and Ash v OPM are Similar cases then why was Ash v DOT transferred to the Western District of Oklahoma and Ash v OPM transferred to the District Court of Maryland, and why didn't the DOJ request a Consolidation of Cases IAW FRCP 42?
4. If the Federal Court of Appeals for the Federal Circuit has Exclusive Jurisdiction of MSPB Final Decisions then why did Defendants request Ash v OPM to be transferred to the District Court of Maryland?
5. If the MSPB said Appellants' claims should be heard by the EEOC on 4/27/21, and the EEOC said Appellants' claims should be heard by the MSPB on 7/20/21, and Ash v DOT was filed in the District Court for the District of Columbia on 9/9/21, then how could the Defendants argue claims were not Exhausted without committing Perjury under 18 U.S.C. § 1621 or Violating Civil RICO under 18 U.S.C. § 1962(c) and (d)?

ORIGINAL

LIST OF PARTIES

Pete Buttigieg
Secretary of the U.S.
Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

*

Ash v DOT

Case No. 22-6195

Civil Action No. 5:22-cv-00371-R

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RELATED CASES

1. Ash v OPM 4th Circuit to Supreme Court Writ of Certiorari case # 23-1713 (Pending)
2. Ash v OPM 4th Circuit Court of Appeals case # 23-1992 Closed 11/21/23 (Pending)
3. Ash v Russell District Court of Maryland case # SAG-23-cv-02873 (Pending)
4. Ash v Rubin Et al, Circuit Court of Maryland case # C-03-CV-23-004234 (Pending)
5. Ash v Bredar Circuit Court of Maryland case # C-03-cv-24-000090 (Pending)

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TABLE OF AUTHORITIES CITED

CASES

Jicarilla Apache Nation v. Rio Arriba Cnty., 440 F.3d 1202, 1209 (10th Cir. 2006) (quotations omitted); see A.M., 830 F.3d at 1166-67.

Boddie v. Connecticut, 401 U.S. 371, 379 (1971).

Smith v. Cheyenne Ret. Invs. L.P., 904 F.3d 1159, 1164 (10th Cir. 2018)

Tippetts v. United States, 308 F.3d 1091, 1093-94 (10th Cir. 2002)

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986).

Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976).

Sharon M. v. DOT, EEOC Appeal No. 0120180192 (Sep. 25, 2019).

Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 2061, 2074 (Jun. 10, 2002).

49 Va. L. Rev. 506, 536 (1963).

National Metropolitan Bank v. Hitz, MacArth. & M. 198.

Sinclair v. Kleindienst, 711 F.2d 291, 293 (D.C. Cir. 1983).

Washington Metro. Area Transit Auth. v. Ragonese, 617 F.2d 828, 830 (D.C. Cir. 1980); see also Wise v. United States, 128 F. Supp. 3d 311, 317 (D.D.C. 2015) (quoting Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976)).

Furniture Brands Int'l, Inc. v. U.S. Int'l Trade Comm'n, 804 F. Supp. 2d 1, 4 (D.D.C. 2011) (quoting Washington Metro. Area Transit Auth. v. Ragonese, 617 F.2d 828, 830 (D.C. Cir. 1980)).

Marcum v. United States, 621 F.2d 142, 144–45 (5th Cir. 1980).

Atari, Inc. v. North American Philips Consumer Electronics Corp., 672 F.2d 607, 614 (7th Cir.), *cert. denied*, 459 U.S. 880 (1982); *Lydle v. United States*, 635 F.2d 763, 765 n. 1 (6th Cir. 1981); *Swanson v. Baker Indus., Inc.*, 615 F.2d 479, 483 (8th Cir. 1980); *Taylor v. Lombard*, 606 F.2d 371, 372 (2d Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); *Jack Kahn Music Co. v. Baldwin Piano & Organ Co.*, 604 F.2d 755, 758 (2d Cir. 1979); *John R. Thompson Co. v. United States*, 477 F.2d 164, 167 (7th Cir. 1973).

Maxwell v. Sumner, 673 F.2d 1031, 1036 (9th Cir.), *cert. denied*, 459 U.S. 976 (1982); *United States v. Texas Education Agency*, 647 F.2d 504, 506–07 (5th Cir. 1981), *cert. denied*, 454 U.S. 1143 (1982); *Constructora Maza, Inc. v. Banco de Ponce*, 616 F.2d 573, 576 (1st Cir. 1980); ***In re Sierra Trading Corp.*, 482 F.2d 333, 337 (10th Cir. 1973);** *Case v. Morrisette*, 475 F.2d 1300, 1306–07 (D.C. Cir. 1973).

STATUTES AND RULES

1. **Subpart E—Remedies and Enforcement § 1614.501 Remedies and relief.**

(5) (d) The agency has the burden of proving by a preponderance of the evidence that the complainant has failed to mitigate his or her damages.

2. EEOC Regulation 29 C.F.R. § 1614.108(f), when discrimination is found, the agency shall issue appropriate remedies and relief in accordance with subpart E of this part.

3. **20 CFR § 10.16 What criminal and civil penalties may be imposed in connection with a claim under the FECA?**

   A number of statutory provisions make it a crime to file a false or fraudulent claim or statement with the Government in connection with a claim under the FECA, or to wrongfully impede a FECA claim. Included among these provisions are 18 U.S.C. 287, 1001, 1920, and 1922. Furthermore, a civil action to recover benefits paid erroneously under the FECA may be maintained under the False Claims Act, 31 U.S.C. 3729-3733. Enforcement of such provisions that may apply to claims under the FECA is within the jurisdiction of the Department of Justice.

4. 5 U.S. Code § 2302 - Prohibited personnel practices

5. 28 U.S. Code § 1295 - Jurisdiction of the United States Court of Appeals for the Federal Circuit

   (9) of an appeal from a final order or final decision of the Merit Systems Protection Board, pursuant to sections 7703(b)(1) and 7703(d) of title 5;

6. Equal Access to Justice Act, 28 U.S.C. § 2412

7. Title 29 C.F.R.1614.110(b) provides that:

   The final decision shall consist of findings by the agency on the merits of each issue in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint and, when discrimination is found, appropriate remedies and relief in accordance with subpart E of this part.

8. 29 C.F.R. Section 1614.110(b).

   The agency's decision **must** be issued within 60 days of receiving notification that the complainant has requested an immediate final decision. The agency's decision must contain notice of the complainant's right to appeal to the EEOC, or to file a civil action in federal court.

9. 42 U.S.C. § 1983, popularly known as "Section 1983." Section 1983 establishes a cause of action for any person who has been deprived of rights secured by the United States Constitution or laws of the United States by a person acting under color of state law.

10. 42 U.S. Code § 2000e–2 - Unlawful employment practices

(b)EMPLOYMENT AGENCY PRACTICES
It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

11. Rule 38. Right to a Jury Trial; Demand

(a) RIGHT PRESERVED. The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate.

12. Rule 39. Trial by Jury or by the Court

(a) WHEN A DEMAND IS MADE. When a jury trial has been demanded under Rule 38, the action must be designated on the docket as a jury action.

13. Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings

NOTES OF ADVISORY COMMITTEE ON RULES—1985 AMENDMENT

Rule 52(a) has been amended (1) to avoid continued confusion and conflicts among the circuits as to the standard of appellate review of findings of fact by the court, (2) to eliminate the disparity between the standard of review as literally stated in Rule 52(a) and the practice of some courts of appeals, and (3) to promote nationwide uniformity. See Note, *Rule 52(a): Appellate Review of Findings of Fact Based on Documentary or Undisputed Evidence*, 49 Va. L. Rev. 506, 536 (1963).

Some courts of appeal have stated that when a trial court's findings do not rest on demeanor evidence and evaluation of a witness' credibility, there is no reason to defer to the trial court's findings and the appellate court more readily can find them to be clearly erroneous. See, e.g., *Marcum v. United States*, 621 F.2d 142, 144–45 (5th Cir. 1980). **Others go further, holding that appellate review may be had without application of the "clearly erroneous" test since the appellate court is in as good a position as the trial court to review a purely documentary record.** See, *e.g., Atari, Inc. v. North American Philips Consumer Electronics Corp.*, 672 F.2d 607, 614 (7th Cir.), *cert. denied*, 459 U.S. 880 (1982); *Lydle v. United States*, 635 F.2d 763, 765 n. 1 (6th Cir. 1981); *Swanson v. Baker Indus., Inc.*, 615 F.2d 479, 483 (8th Cir. 1980); *Taylor v. Lombard*, 606 F.2d 371, 372 (2d Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); *Jack Kahn Music Co. v. Baldwin Piano & Organ Co.*, 604 F.2d 755, 758 (2d Cir. 1979); *John R. Thompson Co. v. United States*, 477 F.2d 164, 167 (7th Cir. 1973).

A third group has adopted the view that the "clearly erroneous" rule applies in all nonjury cases even when findings are based solely on documentary evidence or on inferences from undisputed facts. See, *e.g., Maxwell v. Sumner*, 673 F.2d 1031, 1036 (9th Cir.), *cert. denied*, 459 U.S. 976 (1982); *United States v. Texas Education Agency*,

647 F.2d 504, 506–07 (5th Cir. 1981), *cert. denied*, 454 U.S. 1143 (1982); *Constructora Maza, Inc. v. Banco de Ponce*, 616 F.2d 573, 576 (1st Cir. 1980); ***In re Sierra Trading Corp.*, 482 F.2d 333, 337 (10th Cir. 1973);** *Case v. Morrisette*, 475 F.2d 1300, 1306–07 (D.C. Cir. 1973).

Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings | Federal Rules of Civil Procedure | US Law | LII / Legal Information Institute (cornell.edu)

14. When a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, its task is necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test. **Moreover, it is well established that, in passing on a motion to dismiss, whether on the ground of lack of jurisdiction over the subject matter or for failure to state a cause of action, the allegations of the complaint should be construed favorably to the pleader.**

Indeed, the United States Court of Appeals for the District of Columbia pointedly stated: "The rule that the allegations of the complaint must be construed liberally and most favorably to the pleader is so well recognized that no authority need be cited." Sinclair v. Kleindienst, 711 F.2d 291, 293 (D.C. Cir. 1983). Furthermore, in determining whether the complaint is sufficient, the court is limited to consideration of the four corners of the complaint. Shear, 606 F.2d at 1253; Caudle v. Thomason, 942 F. Supp. 635, 638 (D.D.C. 1996). **Moreover, it is also well established "that the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests."**

All that is required is that the complaint "provides enough factual information to make clear the substance of that claim." Caribbean Broad. Sys., 148 F.3d at 1086. "Plaintiffs . . .need only 'adduce a set of facts' supporting their legal claims in order to survive a motion to dismiss" under Rule 12(b)(6) . Wells v. United States, 851 F.2d 1471, 1473 (D.C. Cir. 1988). For more details and facts, the defendants must rely upon "the liberal opportunity for discovery and other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues." Conley, 355 U.S. at 47-48. Accord Seville Indus. Mach. Corp., 742 F.2d at 790. civrico.pdf (justice.gov) Pgs. 97 – 99.

15. **8. Civil RICO**

A plaintiff may bring a private civil action for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO). *See* 18 U.S.C. § 1964(c). The RICO statute prohibits four types of activities: (1) investing in, (2) acquiring, or (3**) conducting or participating in an enterprise with income derived from a pattern of racketeering activity or collection of an unlawful debt,** or (4**) conspiring to commit any of the first three types of activity. 18 U.S.C.**

§ 1962(a)–(d). RICO was "intended to combat organized crime, not to provide a federal cause of action and treble damages to every tort plaintiff." *Oscar v. Univ. Students Coop. Ass'n*, 965 F.2d 783, 786 (9th Cir. 1992), *abrogated on other grounds by Diaz v. Gates*, 420 F.3d 897 (9th Cir. 2005). However, the statute is to "be liberally construed to effectuate its remedial purposes." *Odom v. Microsoft Corp.*, 486 F.3d 541, 546 (9th Cir. 2007).

As to the element of causation, a plaintiff must prove that the defendant's unlawful conduct was the proximate cause of the plaintiff's injury. *Harmoni International Spice, Inc. v. Hume*, 914 F.3d 648, 651 (9th Cir. 2019)

RICO claims are most commonly brought under 18 U.S.C. § 1962(c) and (d), the conduct and conspiracy prongs of the statute.

18 U.S.C. § 1962(c)

To recover under § 1962(c), a plaintiff must prove (1) conduct, (2) of an enterprise, (3) through a pattern, (4) of racketeering activity (known as "predicate acts"), (5) causing injury to the plaintiff's "business or property" by the conduct constituting the violation. *See Living Designs, Inc. v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353, 361 (9th Cir. 2005).

Conduct: The conduct element of § 1962(c) requires that the defendant have some part in directing the affairs of the enterprise. Liability is not limited to those with primary responsibility for the enterprise's affairs, nor is a formal position within the enterprise required. **However, the defendant is not liable under § 1962(c) unless the defendant has participated in the operation or management of the enterprise itself.** *See Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993) (holding that accountants hired to perform audit of cooperative's records did not participate in "operation or management" of cooperative's affairs by failing to inform cooperative's board of directors that cooperative was arguably insolvent). **In determining whether the conduct element has been satisfied, relevant questions include whether the defendant "occupies a position in the chain of command," "knowingly implements [the enterprise's] decisions," or is "indispensable to achieving the enterprise's goal."** *Walter v. Drayson*, 538 F.3d 1244, 1248-49 (9th Cir. 2008) (holding that attorney's performance of services for alleged associated-in-fact enterprise was not sufficient to satisfy § 1962(c)'s conduct element)

Civil RICO | Model Jury Instructions (uscourts.gov)

OPINIONS BELOW

1. Appellate Case: 22-6195 Document: 010110970808 Date Filed: 12/19/2023 Page: 1

RE: 22-6195, Ash v. Buttigieg, et al Dist/Ag docket: 5:22-CV-00371-R

Dear Clerk: Pursuant to Federal Rule of Appellate Procedure 41, the Tenth Circuit's mandate in the above-referenced appeal issued today. **The court's September 27, 2023 judgment takes effect this date. With the issuance of this letter, jurisdiction is transferred back to the lower court.**

2. Appellate Case: 22-6195 Document: 010110927432 Date Filed: 09/27/2023 Page: 1

Footnote *: After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. **This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.**

3. Appellate Case: 22-6195 Document: 010110927432 Date Filed: 09/27/2023 Page: 7

Footnote 5: Ash references additional regulatory and statutory provisions in his brief, as well as other legal authorities, but none are accompanied by adequately developed legal arguments relevant to the district court's disposition. **We have not expressly discussed each and every issue and statement contained in Ash's brief, but we have considered them and conclude they are insufficiently developed for purposes of invoking appellate review.** See Nixon, 784 F.3d at 1369; Garrett, 425 F.3d at 841.

4. Case 5:22-cv-00371-R Document 37 Filed 10/24/22 Page 2 of 18

Footnote 1: **Because Mr. Ash is a pro se litigant, the Court affords his materials a liberal construction, but it does not act as his advocate.** See United States v. Pinson, 584 F.3d 972, 975 (10th Cir. 2009).

5. Case 5:22-cv-00371-R Document 37 Filed 10/24/22 Page 10 of 18

Item #7: **Accordingly, the Court finds that Plaintiff has not exhausted his administrative remedies under the VEOA and dismisses his VEOA claims with prejudice for lack of jurisdiction.** Furthermore, even if he had exhausted his administrative remedies, Plaintiff has failed to state a claim pursuant to Fed. R. Civ. P. 12(b)(6).

6. Case 5:22-cv-00371-R Document 37 Filed 10/24/22 Page 6 of 18

Footnote 3: The Court notes that Plaintiff attached a Department of Labor (DOL) "Notice of Decision" in a response to a prior motion to dismiss before the United States District Court for the District of Columbia (Doc. No. 17) in which the DOL found that Plaintiff's allegation of seeing "someone drive through one of the gates at the Aeronautical Center with a license plate inscribed, 'TX KKK'" did not occur. (Doc. No. 17-1, at 29). **This Court, however, has not been provided an explanation as to (1) whether Mr. Ash is referring to the same event in the Complaint, and, if so, (2) how Mr. Ash was discriminated against by the FAA as a result of this alleged incident.**

Footnote 4: Defendants argue that Plaintiff is preempted from stating a claim under § 1985(3) because his employment discrimination claims must proceed via Title VII. (See Doc. No. 29, at 8). **The Court does not address the merits of this argument as Plaintiff's § 1985(3) claim is barred for failure to plead a waiver of sovereign immunity.**

JURISDICTION

Petition For Review: Ash v DOT case #22-6195, 10th Circuit Rehearing Denied 12/11/23.

Petition For Review: Ash v DOT case #22-6195, 10th Circuit Order & Judgement 9/27/23.

Petition For Review: U.S. District Court for the Western District of Oklahoma,

Ash v DOT Case# 5:22-cv-00371-R, Dismissed 10/24/22.

Petition For Review: Ash v DOT, EEOC Case# 2019-28552-FAA-05, Dismissed 7/20/21.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, **and to petition the Government for a redress of grievances.**

First Amendment | Browse | Constitution Annotated | Congress.gov | Library of Congress

Sixth Amendment

Amdt6.2.7 Reason for Delay and Right to a Speedy Trial . . . do much to determine the outcome of the balancing test **Where the government causes delay on purpose to gain a trial advantage, a long delay will generally amount to a constitutional violation.** Where the

government bears no blame for a long delay—not even in the more neutral sense of negligence or crowded dockets—a constitutional violation likely does not exist absent a showing of specific.

Footnotes:

. . . lack of showing of specific prejudice, where defendant did not know of charges against him and therefore could not be blamed for not demanding a speedy trial). Brillon, 556 U.S. at 94 (A defendants deliberate attempt to disrupt proceedings should be weighted heavily against the defendant); id. (**Delays caused by defense counsel are properly attributed to the defendant, even where counsel is assigned**. . .

Reason for Delay and Right to a Speedy Trial | Constitution Annotated | Congress.gov | Library of Congress

Seventh Amendment:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.
The Seventh Amendment grants a right to a jury trial in Suits at common law, which the Supreme Court has long interpreted as limited to rights and remedies peculiarly legal in their nature, and such as it was proper to assert in courts of law and by the appropriate modes and proceedings of courts of law.[1] The drafters of the Seventh Amendment used the term common law to clarify that the Amendment does not provide a right to a jury in civil suits involving the types of equitable rights and remedies that courts enforced at the time of the **Amendment's framing.**[2]

Two unanimous decisions, in which the Supreme Court held that civil juries were required, illustrate the Court's treatment of this distinction. In the first suit, a landlord sought to recover, based on District of Columbia statutes, possession of real property from a tenant allegedly behind on rent. The Court reasoned that whether a close equivalent to [the statute in question] existed in England in 1791 [was] irrelevant for Seventh Amendment purposes.[3] Instead, the Court stated that its Seventh Amendment precedents require[d] trial by jury in actions unheard of at common law, provided that the action involves rights and remedies of the sort traditionally enforced in an action at law, rather than in an action at equity or admiralty.[4] **The statutory cause of action, the Court found, had several analogs in the common law, all of which involved a right to trial by jury.**[5]

In a second case, the plaintiff sought damages for alleged racial discrimination in the rental of housing in violation of federal law, arguing that the Seventh Amendment was inapplicable to new causes of action Congress created. The Court disagreed: **The Seventh Amendment does apply to actions enforcing statutory rights, and requires a jury trial upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law.**[6]

Seventh Amendment | Browse | Constitution Annotated | Congress.gov | Library of Congress

Footnotes

_1Shields v. Thomas, 59 U.S. (18 How.) 253, 262 (1856).
_2Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 447 (1830); Barton v. Barbour, 104 U.S. 126, 133 (1881). Formerly, the Amendment did not apply to cases where recovery of money damages was incidental to equitable relief even though damages might have been recovered in an action at law. Clark v. Wooster, 119 U.S. 322, 325 (1886); Pease v. Rathbun-Jones Eng'g Co., 243 U.S. 273. 279 (1917). ***But see*** **Dairy Queen v. Wood, 369 U.S. 469 (1962) (legal claims must be tried before equitable ones).**

Identifying Civil Cases Requiring a Jury Trial | Constitution Annotated | Congress.gov | Library of Congress

(a) **Where both legal and equitable issues are presented in a single case, any legal issues for which 'a trial by jury is timely and properly demanded must be submitted to a jury.** Beacon Theatres, Inc., v. Westover, 359 U. S. 500. Pp. 470-473 (b) **Insofar as the complaint in this case requests a money judgment, it presents a claim which is unquestionably legal.** Pp. 473-477.

U.S. Reports: Dairy Queen, Inc., v. Wood, U.S. District Judge, et al., 369 U.S. 469 (1962). (loc.gov)

Fourteenth Amendment

Section 1
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

Section 4
The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Fourteenth Amendment | Browse | Constitution Annotated | Congress.gov | Library of Congress

EQUITY OF PAY: 29 C.F.R. Section 1614.409

RACE: 42 U.S.C. $$ 2000e to 2000e-17, 29 CFR Part 1601

DISABLED VETERAN: 42 U.S.C. $$ 12112 to 12117, 29 U.S.C. 791

SEX: 42 U.S.C. $$ 2000e to 2000e-17, 29 CFR Part 1604, 29 U.S.C 206 (d)

AGE: 29 C.F.R. Section § 1614.201, 29 C.F.R. 29 § 1625.9, 29 U.S.C.621, 634

Conspiracy Against Rights, 18 U.S.C. § 241

Deprivation of Rights Under Color of Law, 18 U.S.C. § 242

OBSTRUCTION OF JUSTICE 18 USC Ch. 73 Section:

1512. Tampering with a witness, victim, or an informant.

1513.Retaliating against a witness, victim, or an informant.

1514.Civil action to restrain harassment of a victim or witness.

1514A.Civil action to protect against retaliation in fraud cases.

Perjury 18 U.S.C. § 1621 knowingly and intentionally lie about a material issue

RICO 18 U.S.C. § 1962(a)–(c)-(d) Racketeer Influenced and Corrupt Organizations Act

Equal Access to Justice Act, 28 U.S.C. § 2412

Federal Question Statute (28 U.S.C. § 1331)

Adverse Actions Under 5 U.S.C. Chapter 75

Declaratory Judgment Act, 28 U.S.C. § 2201

Mandamus Act as codified at 28 U.S.C. § 1361

Judicial Review. 5 U.S.C. § 702 $ 2301, & $ 2302

The Administrative Procedures Act ("APA") 5 U.S.C. §§ 555(b) and 706(l)

In reviewing the non-discrimination claims the Court is limited to a review of the administrative record and must affirm the MSPB decision unless it is: "(1) **arbitrary, capricious**, an **abuse of discretion**, or **otherwise not in accordance with law**; (2) **obtained without procedures required by law, rule, or regulation having been followed**; or (3) **unsupported by substantial evidence** ...." Makky v. Chertoff, 489 F. Supp. 2d 421, 428-29 (D.N.J. 2007), aff'd, 541 F.3d 205 (3d Cir. 2008); 5 U.S.C. § 7703(c).

In God I Trust

The appellant is a 100% Disabled Gulf War Veteran and former Human Resources Specialist who worked in the FAA's Office of Aviation Careers from November 2014 to November 2018. The Office of Aviation Careers is responsible for hiring all Air Traffic Controllers, Technical Operations Personnel, and Airline Safety Inspectors for every aspect of the National Airspace System.

The appellant complained of Woeful Mismanagement within the Office of Aviation Careers that led to a Hostile Working Environment and Internal Staffing Shuffles creating Significant Shortages that greatly affected Office Stability and Public Safety.

If the Office of Aviation Careers couldn't hire enough people or keep the right people for it's own success then you couldn't expect the Office of Aviation Careers to fill the Vital Staffing needs of Airline Safety Inspectors or Air Traffic Controllers.

After a failed attempt to seek resolutions on Friday 11/16/18 with third level supervisor (HR Director Nicole Gage) about Prohibited Personnel Practices the appellant submitted his Involuntary Resignation by email on Saturday 11/17/18. On Monday 11/19/18 former first level supervisor James Anderson advised the appellant to file for Disability based on appellant's medical problems that caused infrequent absences.

The appellant submits to the court a prima facie case of Discrimination and Retaliation committed by the named defendants for complaints and disclosures of Whistleblower Violations in connection with a FECA Claim.

The appellant is alleging a Conspiracy to Cover Whistleblower Violations by the named defendants based on the preponderance of indisputable facts, and evidence submitted and by the efforts to Conceal a FECA Felony, in which the lower Courts and Defense Counsel should be deemed Negligent, Complicit, and Scandalous.

STATEMENT OF THE CASE

A Final Agency Decision for DOT Complaint No. 2019-28552-FAA-05 was issued on 7/20/21 by the FAA's DOCR. The agency absolved itself of all reported and verified allegations of Discrimination, Retaliation, Waste, Fraud, and Abuse.

The Office of Accountability took extreme measures to Avoid Acknowledgment of Whistleblower Violations that were exposed in the agency's own Report of Investigation.

For ex. ROI Pg 422 of 663 HR Director states, none of my allegations were supported.

However, ROI Pg 642 of 663 states: No Investigation was conducted? All allegations were dismissed based on TIMELINESS?

However, ROI Pg 72 of 663 states **TIMELINESS: N/A.**

Finally, Pg 2 of the Final Agency Decision, U.S. Supreme Court states: Reprisal Cases shall not be time barred, Conspiracy?

1. The Court Overlooked the Defendants Argument to have a Similar, case Ash v OPM be Heard First, (Pg. 13 of this Document).
2. Case 1:22-cv-00649-GLR Document 35 Filed 12/15/22 Page 3 of 3 The MSPB AJ Chizomo Ihekere Dismissed All Claims on 4/27/21 by stating my case Could be Heard by the EEOC. (MSPB000709 – 731, Notice of Appeal Rights Pg. 22)
3. Appellate Case: 22-6195 Document: 010110790182 Date Filed: 12/28/2022 Page: 20 Ms. Angela Williams from the FAA's DOCR' Dismissed All Claims on 7/20/21 by Claiming my case Should be Heard by the MSPB. (Par. 2 Sent #2) **Exhaustion**!
4. The FAA's Final Agency Decision was Issued roughly 3 Weeks Late in order to Intentionally Cause Delays. (see IG Complaint Appendix E).
5. Case 5:22-cv-00371-R Document 34 Filed 10/12/22 Page 9 of 10 Appellate Case: 22-6195 Document: 010110790182 Date Filed: 12/28/2022 Page: 326

The Demand for Trial by Jury was Clearly Stated and Intentionally Ignored.

ARGUMENT #1

FAILURE TO RECOGNIZE CONSTITUTIONAL RIGHT TO TRIAL BY JURY

There is but one element in this contention,—the right of a jury trial. In passing upon it we do not think it necessary to follow the details of counsel's elaborate argument.
In *Smoot* v. *Rittenhouse* [27 Wash. L. Rep. 741] the validity of the rule was sustained, as well as the power of the court to make it. If it were true that the rule deprived the plaintiff in error of the *right* of trial by jury, we should pronounce it void without reference to cases.
But it does not do so. It prescribes the means of making an issue. The issue made as prescribed, the right of trial by jury accrues. **The purpose of the rule is to preserve the court from frivolous defenses, and to defeat attempts to use formal pleading as means to delay the recovery of just demands.**

As early as 1879 the supreme court of the District recited the history of the rule, and explained its purpose. **'It is a rule,' the court said, 'to prevent vexatious delays in the maturing of a judgment where there is no defense. . . .** Now, what does the rule mean, this being its office? It is couched in very plain language**. It says the defendant shall set out his *grounds* of defense, and swear to them.** It does not mean a defense in all its details of incident and fact, but the foundation of the defense. That is all. **Those grounds ought not to be vague and indefinite. They should have significance and meaning, and should express the idea of defense upon the ground to which they are addressed. It was never contemplated that this rule required a party to follow his case through all the lights and shadows of the evidence in it. That would be to hold it essential that he should try his case in his plea.' *National Metropolitan Bank* v. *Hitz*, MacArth. & M. 198.**

Supreme Court | US Law | LII / Legal Information Institute (cornell.edu)

1. Appellate Case: 22-6195 Document: 010110773142 Date Filed: 11/22/2022 Page: 2

   U.S. District Court Western District of Oklahoma[LIVE] (Oklahoma City) CIVIL DOCKET FOR CASE #: 5:22-cv-00371-R Ash v. Buttigieg et al Assigned to: Judge David L. Russell Case in other court: District of Columbia, 1:21-cv-02468 Cause: 42:2000e Job Discrimination (Employment) Date Filed: 05/05/2022 Date Terminated: 10/24/2022 **Jury Demand: None** Nature of Suit: 442 Civil Rights: Jobs Jurisdiction: U.S. Government Defendant

2. Appellate Case: 22-6195 Document: 010110790182 Date Filed: 12/28/2022 Page: 326 Case 5:22-cv-00371-R Document 34 Filed 10/12/22 Page 9 of 10

   I ask the court to forgive the inadvertent mistakes of a pro se litigant who was deprived of earned wages, cheated out of earned benefits, and unable to hire a reputable law firm, if government officials weren't drunk with power we wouldn't need Title VII laws. Please

recognize that procedural violations by the government are intentional, reckless, abusive, and harmful. **If judgement is not granted then plaintiff demands trial by jury as soon as possible.**

ARGUMENT #2

FAILURE TO RECOGNIZE TIMELINESS AND TAKE APPROPRIATE ACTION

The U.S. Supreme Court has held that a complainant alleging a hostile work environment will not be time barred if all acts constituting the claim are part of the same unlawful practice and at least one act falls within the filing period.

See Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 2061, 2074 (Jun. 10, 2002).

1. Case 5:22-cv-00371-R Document 17 Filed 03/11/22 Page 19 of 35

Claim 1: Negligence, Failure to take Appropriate Action

Element 1: EEOC Regulation 29 C.F.R. § 1614.108(f), when discrimination is found, the agency shall issue appropriate remedies and relief in accordance with subpart E of this part.

Element 2: The FAA's Final Agency Decision dated 7/20/21 dismissed all allegations based on Timeliness.

Exhibit 1: ROI dated 1/21/21, if initial EEO contact was beyond 45 days please explain,

Timeliness N/A.

2. Case 5:22-cv-00371-R Document 13 Filed 02/11/22 Page 9 of 23

DOT dismissed Plaintiff's EEO claims either for failure to state any viable incidents that had occurred within 45 days of contacting an EEO counselor or for failing to state a viable EEO claim. Id. at 13.

3. Perjury 18 U.S.C. § 1621 knowingly and intentionally lie about a material issue

a. Since the ROI Clearly states that Timeliness was Not Applicable then the Court should recognize the DOT's Intent to Cover and Conceal Whistleblower Violations.

4. Fourteenth Amendment
   Section 1
   All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or**

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ARGUMENT #3

OBSTRUCTION OF JUSTICE

Discriminatory intent can be proved directly or circumstantially. See SECSYS, LLC v. Vigil, 666 F.3d 678, 686 (10th Cir. 2012) (opinion of Gorsuch, J., with Brorby, J., and Murphy, J., concurring in the result). Direct proof is showing that "a distinction between groups of persons appears on the face of a state law or action." Id. at 685. Circumstantial proof is showing that the plaintiff was treated differently from similarly situated persons who are "alike in all relevant respects." Requena v. Roberts, 893 F.3d 1195, 1210 (10th Cir. 2018) (quotations omitted). As the Supreme Court said in Washington v. Davis, **"an invidious discriminatory purpose may often be inferred from the totality of the relevant facts."** 426 U.S. at 242.

Footnote 12: "**The paradigmatic 'class of one' case, . . . sensibly conceived, is one in which a public official, with no conceivable basis for his action other than spite or some other improper motive (improper because unrelated to his public duties), comes down hard on a hapless private citizen."** Jicarilla Apache Nation v. Rio Arriba Cnty., 440 F.3d 1202, 1209 (10th Cir. 2006) (quotations omitted); see A.M., 830 F.3d at 1166-67.

10TH Circuit Decision Pattern 2.pdf

II. Intentional Infliction of Emotional Distress

The Federal Employees' Compensation Act is a workers' compensation plan for federal government employees. 20 C.F.R. § 10.0. It provides that "[t]he United States shall pay compensation . . . for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty. . . ." 5 U.S.C. § 8102(a). If a claim is covered by the FECA, the court is without jurisdiction to consider its merits. *Swafford v. United States,* 998 F.2d 837, 839 (10th Cir. 1993) (citing *Cobia v. United States,* 384 F.2d 711, 712 (10th Cir. 1967)). The Secretary's determination that the FECA applies forecloses an FTCA claim, 5 U.S.C. § 8116(c); *see also Southwest Marine, Inc. v. Gizoni,* 502 U.S. 81, 90, 112 S.Ct. 486, 116 L.Ed.2d 405 (1991) **("[T]he courts have no jurisdiction over FTCA claims where the Secretary of Labor determines that FECA applies."); *Lockheed Aircraft Corp. v. United States,* 460 U.S. 190, 193-94, 103 S.Ct. 1033, 74 L.Ed.2d 911 (1983) (noting FECA's exclusive-liability provision guarantees employees "the right to receive immediate, fixed benefits, regardless of fault and without need for litigation, but in return they lose the right to sue the Government.").** If the FECA applies, the FTCA claim must be dismissed even if benefits are not actually awarded by the Secretary. *Farley,* 162 F.3d at 616.

The Secretary must determine, as an initial matter, whether a claim falls within the purview of the FECA. *Id.* When a claim is presented to the court without having first been submitted to the Secretary for a ruling on FECA coverage, the court must permit the Secretary to evaluate the claim if there is a substantial question that FECA coverage exists. *Farley,* 162 F.3d

at 616. "A substantial question regarding [FECA] coverage exists unless it is certain the Secretary would not find coverage." *Id.* at 615-16.

Tippetts v. U.S., 308 F.3d 1091 | Casetext Search + Citator

1. Case 5:22-cv-00371-R Document 17 Filed 03/11/22 Page 19 of 35

Claim 2: Failure To Investigate and Failure to take Appropriate Action

Element 3: HR Director's email to EEOC dated 12/11/19 states: HR Director wasn't willing to discuss Plaintiff's concerns on 11/16/18.

Claims: **Allegations were investigated immediately and determined all allegations were Plaintiff's own feelings and not shared by staff.**

Claims: Agency wasn't given opportunity to address Plaintiff's concerns.

Element 4: ROI response dated 1/21/21: **HR Director did not seek ADR because she felt it would further agitate Plaintiff.**

Exhibit 2: ROI dated 1/21/21, requested list item# 20: **no report of investigation.**

1. Perjury 18 U.S.C. § 1621 knowingly and intentionally lie about a material issue
   a. If the ROI states that No Report of Investigation was done and the HR Director claims an Investigation was done Immediately then the Courts and the Agency Can't Deny Perjury!
2. **Subpart E—Remedies and Enforcement § 1614.501 Remedies and relief.**

   (5) (d) **The agency has the burden of proving by a preponderance of the evidence that the complainant has failed to mitigate his or her damages.**
3. Where is the Proof of an Investigation before the ROI on 1/21/21?
4. Where is the Preponderance of Evidence required to Contradict the Appellant's Claims?
5. Does Ignoring Perjury constitute Violations of Civil RICO?

ARGUMENT #4

ILLEGAL TRANSFER & VENUE SHOPPING

40. Venue -- United States As Defendant
Little Tucker Act suits, brought against the United States pursuant to 28 U.S.C. § 1346(a)(2), **must be filed in the jurisdiction where the plaintiff resides.** See 28 U.S.C. § 1402. In the case of a corporation, its residence is the state of its incorporation. See Suttle v. Reich Bros. Const. Co., 333 U.S. 163, 166 (1948). **Federal Tort Claims Act suits are to be brought in the judicial district in which the plaintiff resides, or wherein the act or omission complained of occurred.** See 28 U.S.C. § 1402(b). Public Vessels Act suits brought against the United States must be filed in the district in which the vessel is located as of the date suit is filed. If the vessel is located outside the territorial waters of the United States, suit may be brought in the judicial district in which the plaintiff resides or in which the cause of action arose. See 46 U.S.C. § 782. [cited in USAM 4-2.200]

Justice Manual | 40. Venue -- United States As Defendant | United States Department of Justice

41. Venue -- Government Officers And Agencies As Defendants
Section 1391(e) of Title 28 is a venue statute and confers no jurisdiction upon the court. See Andrus v. Charlestone Stone Products Co., Inc., 436 U.S. 604, 608 n.6 (1978). **A suit for money damages to be paid by an individual who is or was a federal employee "is not encompassed by the venue provisions of § 1391(e)."** Stafford v. Briggs, 444 U.S. 527, 542 (1980); see also Micklus v. Carlson, 632 F.2d 227, 240-41 (3d Cir. 1980). **This section may not be used to obtain venue over a former employee, where the federal employment had terminated as of the date suit was filed or the individual was joined as a defendant.** See Sutain v. Shapiro and Lieberman, 678 F.2d 115, 117 (9th Cir. 1982).

For purposes of 28 U.S.C. § 1391(e)(1), the residence of federal officers is that place where the officers perform their official duties. See Reuben H. Donnelley Corp. v. F.T.C., 580 F.2d 264, 266 n.3 (7th Cir. 1978). **The presence of an agency regional office within a judicial district does not make the agency a resident of the district for venue purposes.** Id. at 267. Only one of the plaintiffs need reside in the district for venue to be proper under 28 U.S.C. § 1391(e)(3). Exxon Corp. v. F.T.C., 588 F.2d 895, 899 (3d Cir. 1978).

The power of the court to transfer is limited to those districts or divisions where the case "might have been brought." 28 U.S.C. § 1404(a); American Standard, 487 F. Supp. at 261, and authorities cited. **Thus, a transfer would be denied where some defendants would not be subject to jurisdiction or where the venue would be improper in the transferee forum as to any defendant.** See Hoffman v. Blaski, 363 U.S. 335, 344 (1960); In re Fine Paper Antitrust Litigation, 685 F.2d 810, 819 (3d Cir. 1982), cert. denied, 459 U.S. 1156 (1983); Security State Bank v. Baty, 439 F.2d 910, 912 (10th Cir. 1971); Lamont v. Haig, 590 F.2d 1124, 1131 n.45 (D.C. Cir. 1978).

Justice Manual | 41. Venue -- Government Officers And Agencies As Defendants | United States Department of Justice

ARGUMENT #5

CLEAR ERROR FOR FAILURE TO RECOGNIZE A SIMILAR CASE

1. Appellate Case: 22-6195 Document: 010110790182 Date Filed: 12/28/2022 Page: 238 (Par. 1)

   Case 5:22-cv-00371-R Document 19 Filed 03/24/22 Page 18 of 24

   "[I]t is well-established in the D.C. Circuit that '[w]here two cases between the same parties on the same cause of action are commenced in two different Federal courts, the one which is commenced first is to be allowed to proceed to its conclusion first.'" Furniture Brands Int'l, Inc. v. U.S. Int'l Trade Comm'n, 804 F. Supp. 2d 1, 4 (D.D.C. 2011) (quoting Washington Metro. Area Transit Auth. v. Ragonese, 617 F.2d 828, 830 (D.C. Cir. 1980)).

   Because Plaintiff first filed a lawsuit about the denial of his disability retirement due to discrimination in another court, that case (now pending in the District of Maryland) should be permitted to proceed to its conclusion first. Doing so would conserve judicial resources and promote "the orderly administration of justice." Washington Metro. Area Transit Auth. v. Ragonese, 617 F.2d 828, 830 (D.C. Cir. 1980); see also Wise v. United States, 128 F. Supp. 3d 311, 317 (D.D.C. 2015) **("As the Supreme Court has observed, 'though no precise rule has evolved, the general principle is to avoid duplicative litigation" between federal district courts.'"** (quoting Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976)).

2. If Defendants were so concerned about the Orderly Administration of Justice why didn't they request a Consolidation of cases IAW FRCP 42?

3. Why did the 10th Circuit Court of Appeals Decide Ash v DOT before the Full Adjudication of Ash v OPM?

4. How can the 10th Circuit Court of Appeals claim **Res judicata, and Collateral Estoppel** without proper Jurisdiction to do so?

5. If Ash v DOT and Ash v OPM are Similar cases then why was Ash v DOT transferred to the Western District of Oklahoma and Ash v OPM transferred to the District Court of

Maryland?

ARGUMENT #6

SIMILAR EEOC CASE & PATTERN OF PRACTICE

In September 2019, the EEOC Office of Federal Operations reversed an agency finding of no discrimination. Complainant filed an EEO complaint alleging that the U.S. Department of Transportation discriminated against her on the bases of race (African-American) and color (Black), when on November 11, 2016, she was subjected to harassment by a coworker. Complainant indicated that the coworker who also was the president of the local union sent her an email with the subject line "Asshole" and stated the following: **If [Complainant] wasn't such a N** who would run an[d] yell racism tomorrow. At work. I would love to answer her with this...Those people are pieces of shit and hopefully they try that with me so I can gun them down." The Agency found no discrimination.** The appellate decision found that Complainant was subjected to harassment when she received the email from the coworker. The decision then determined that the Agency erred finding that it took prompt action. The decision noted that the Agency took six months to engage in an internal investigation and issue the coworker a proposed 30-day suspension. The Agency failed to inform the Commission what, if any, final disciplinary action was issued against the coworker. Accordingly, the decision held that the Agency failed to take prompt action to meet its affirmative defense. As such, the decision concluded that Complainant had been subjected to harassment based on her race and color. **The decision remanded the matter to the Agency for a determination on Complainant's entitlement to compensatory damages, for training and reconsideration of discipline for the co-worker, for training for management focusing on addressing harassment, and for consideration of disciplinary action against the management officials who failed to respond to Complainant's claims of harassment in a prompt manner.** *Sharon M. v. DOT*, EEOC Appeal No. 0120180192 (Sep. 25, 2019).

Significant EEOC Race/Color Cases(Covering Private and Federal Sectors) | U.S. Equal Employment Opportunity Commission

1. Case 5:22-cv-00371-R Document 17 Filed 03/11/22 Page 20 of 35

   Exhibit #5, former first level supervisor James Anderson claims the need to invoke

   Second Amendment Rights because of plaintiff's built up anger over **false allegations**.

   (Count# 4 Plaintiff's response dated March 11, 2022). ECF/Doc# 17-1 Pg. 19 of 134.

2. In Sharon M. v. DOT, EEOC Appeal No. 0120180192 (Sep. 25, 2019) the case was

   Remanded back to the Agency, if Exhibit #5 demonstrates a Threat was made towards

the appellant why was Ash v DOT Dismissed and not Remanded?

ARGUMENT #7

FAILURE TO RECOGNIZE EXHAUSTION OF CLAIMS

In *Carr*, the Supreme Court resolved the split by considering not only the extent of the adversarial nature of the ALJ proceeding but also the nature of the claim asserted. It would make no sense, the Court held, to require a claimant to raise an Appointments Clause challenge at the ALJ hearing for two reasons. First, ALJs do not have any special "expertise" in resolving this type of structural constitutional claim. And second, because ALJs do not have any power to remedy defects in their own appointments, it would be "futile" to raise the issue with them. **Based on these two features, "taken together" with the inquisitorial features of the ALJ hearing, the Court held that no exhaustion requirement should be imposed.**

SCOTUS Rules on Structural Constitutional Claims | Jones Day

On appeal, a district court's grant of summary judgment is reviewed de novo. Higgins v. E.I. DuPont de Nemours & Co., 863 F.2d 1162, 1167 (4th Cir. 1988). In discussing the standard for granting summary judgment, **the United States Supreme Court has held that the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case,** and on which that party will bear the burden of proof at trial. In such a situation, there can be no "genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986).

AGE DISCRIMINATION COMPLAINTS

It is incumbent upon federal agency personnel responsible for processing discrimination complaints to inform complainants or potential complainants of the following procedures available to them in pursuing an age discrimination complaint.

A. Election of Administrative Process

An aggrieved person may file an administrative age discrimination complaint with the agency pursuant to 29 C.F.R. Part 1614. If the aggrieved person elects to file an administrative complaint, s/he must exhaust administrative remedies before s/he may file a civil action in U.S. District Court. **Exhaustion of administrative remedies occurs when the agency takes final action or 180 days after filing the complaint if no final action is taken.** See 29 C.F.R. § 1614.201; see also Chapter 9, Sections II and III of this Management Directive.

EQUAL PAY ACT COMPLAINTS

An aggrieved individual does not have to file an administrative complaint before filing a lawsuit under the Equal Pay Act (EPA). If an aggrieved individual nonetheless wants to file an administrative complaint, it will be processed like Title VII complaints under Part 1614. Complainants in EPA cases should be notified of the statute of limitations (two years or, if a willful violation is alleged, three years), which applies even if the individual files an administrative complaint, and of the right to file directly in a court of competent jurisdiction without first providing notice to the Commission or exhausting administrative remedies.

Chapter 4 PROCEDURES FOR RELATED PROCESSES | U.S. Equal Employment Opportunity Commission (eeoc.gov)

1. Case 5:22-cv-00371-R Document 17 Filed 03/11/22 Page 17 of 35

   The FAA's Final Agency Decision was issued 3 weeks late on 7/20/21!

2. Appellate Case: 22-6195 Document: 010110790182 Date Filed: 12/28/2022 Page: 2

   Date Filed # Page Docket Text 09/09/2021
   1. COMPLAINT against PETE BUTTIGIEG, DOCR–EEOC, EMPLOYMENY AND LABOR LAW DIVISION, AGC–100, FEDERAL AVIATION ADMINISTRATION, OFFICE OF PERSONNEL MANAGEMENT (Filing fee $ 402, receipt number 200606) filed by JULIAN R. ASH. (Attachment: # 1 Civil Cover Sheet)(eg) Modified on 9/30/2021 to add receipt information (eg). [Transferred from District of Columbia on 5/5/2022.]
   (Entered: 09/24/2021)

3. Perjury 18 U.S.C. § 1621 knowingly and intentionally lie about a material issue

   a. The FAA's Final Agency Decision was Issued on 7/20/21 and Ash v DOT was filed on 9/9/21 which Clearly demonstrates Claims were Exhausted!

4. **The Appellant was Never allowed the opportunity for Discovery!**

ARGUMENT #8

FAILURE TO TAKE ACTION OR ENFORCE LAWS & AGENCY POLICY

1. Appellate Case: 22-6195 Document: 010110773142 Date Filed: 11/22/2022 Page: 14

   Footnote 3: The Court notes that Plaintiff attached a Department of Labor (DOL) "Notice of Decision" in a response to a prior motion to dismiss before the United States District Court for the District of Columbia (Doc. No. 17) in which the DOL found that Plaintiff's allegation of seeing "someone drive through one of the gates at the Aeronautical Center with a license plate inscribed, 'TX KKK'" did not occur. (Doc. No. 17-1, at 29). This Court, however, has not been provided an explanation as to (1) whether Mr. Ash is referring to the same event in the Complaint, and, if so, (2) how Mr. Ash was discriminated against by the FAA as a result of this alleged incident.

a. 24. Subversive Activity. **In accordance with 5 U.S.C. §§ 7311-7313, an employee must not advocate or become a member of any organization which advocates the overthrow of the constitutional form of Government of the United States, or which seeks by force or violence to deny other persons their rights under the Constitution of the United States.**

b. 26. Canvassing, Soliciting or Selling. Employees must not engage in private activities for personal or non-personal financial gain or any other unauthorized purpose while on Government owned or leased property, nor may Government time, personnel or equipment be used for these purposes.

   ER-4.1 Standards of Conduct (faa.gov)

ARGUMENT #9

CONFLICT OF PREVIOUS 10th CIRCUIT DECISION

Tenth Circuit Allows Discrimination Claim to Proceed Despite No EEOC Charge August 31, 2018

Plaintiffs who want to file lawsuits alleging discrimination under federal civil rights laws such as Title VII must first file an administrative charge with the Equal Employment Opportunity Commission before proceeding to court. **Earlier this month, however, the Tenth Circuit Court of Appeals reversed its own precedent, allowing a discrimination suit to survive a motion to dismiss despite evidence that a proper EEOC charge was never filed.**

In *Lincoln v. BNSF Railway Co.*, two employees filed suit under the ADA, alleging failure to accommodate their disabilities. Both plaintiffs filed EEOC charges, but those charges did not appear to address older and subsequent events that formed the basis of their lawsuit. **The**

defendant moved to dismiss the claim, noting lack of federal court jurisdiction given the plaintiffs' failure to exhaust their administrative remedies. The district court dismissed the suit, but the Tenth Circuit reversed this decision, remanding the case for additional proceedings.

In its decision, the Tenth Circuit panel confirmed that the ADA requires that plaintiffs file an EEOC charge as a prerequisite for filing suit. **However, the court held that this failure does not deprive federal courts of jurisdiction over the claim. It only acts as an affirmative defense that can be raised by the defendant later in litigation.** The Tenth Circuit panel overturned a 40-year old precedent, relying on a 1982 U.S. Supreme Court decision as the basis for its claim of jurisdiction. It rejected the defendant's position that that case only dealt with the timeliness of the EEOC charge filing.

Federal courts have taken varying positions on this issue. **Although this decision does not excuse the plaintiffs for failing to file timely EEOC charges, it means that this issue cannot be considered by the court until after discovery.** This may result in increased costs to employers faced with federal discrimination claims without EEOC charges. It may also give the plaintiffs an opportunity to try to identify legal arguments as to why they met the administrative filing requirement.

Tenth Circuit Allows Discrimination Claim to Proceed Despite No EEOC Charge | Parker Poe

1. Why was Ash v DOT treated differently from the 10th Circuit Case above?

ARGUMENT #10

VIOLATION OF DUE PROCESS AND EQUAL PROTECTION OF LAW

Due Process considerations are procedural protections that stem from the Fifth Amendment to the Constitution.
Due Process is a guarantee of a fair legal process when the government seeks to deprive an individual of life, liberty, or property.
The "root requirement" of the Due Process Clause is that "an individual be given an opportunity for a hearing before he is deprived of any significant property interest." Boddie v. Connecticut, 401 U.S. 371, 379 (1971). **Tenure gives a property right in employment.** Pg. 40 of 60

ADVERSE ACTIONS UNDER 5 U.S.C. CHAPTER 75: AN OVERVIEW (opm.gov)

The Final Agency Decision was issued three weeks late.

The agency's decision **must** be issued within 60 days of receiving notification that the complainant has requested an immediate final decision. The agency's decision must contain notice of the complainant's right to appeal to the EEOC, or to file a civil action in federal court. 29 C.F.R. Section 1614.110(b).

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on compensation or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII, ADEA, ADA or the Equal Pay Act.

Facts About Equal Pay and Compensation Discrimination | U.S. Equal Employment Opportunity Commission (eeoc.gov)

1. Case 1:22-cv-00649-GLR Document 57-1 Filed 03/10/23 Page 1 of 1

List of Exhibits include:

a. Exhibit# 525: email from OPM IG to appellant dated 1/5/23.

b. Exhibit# 526: email to MSPB IG from appellant dated 12/26/22.

c. Exhibits# 529, 530, & 531: appellants annuity statements from OPM dated 1/17/23, 1/22/23, & 1/12/23 respectively.

d. Defendants can't deny Retaliation based on the fact that my regular retirement payments would not have been started if not for the OPM IG Complaint.

2. Case 5:22-cv-00371-R Document 19 Filed 03/24/22 Page 18 of 24

On 3/24/22 Response to Summary Judgement from Ash v DOT, Defense states:
Because Plaintiff first filed a lawsuit about the denial of his disability retirement due to discrimination in another court, that case (now pending in the District of Maryland) should be permitted to proceed to its conclusion first. Doing so would conserve judicial resources and promote "the orderly administration of justice."

3. Case 1:22-cv-00649-GLR Document 29 Filed 10/21/22 Page 3 of 6

On 3/17/22, upon Defendants request the Federal Court of Appeals for the Federal Circuit Transferred Ash v OPM to the District Court of Maryland, and on 3/28/22 (Exhibit #17 Doc#24-1) Defendants sent an email to the Petitioner requesting to send the case back to the Court of Appeals for the Federal Circuit after seeing the Evidence in the Motion for

Summary Judgement in Ash v DOT on 3/11/22.

4. 28 U.S. Code § 1295 - Jurisdiction of the United States Court of Appeals for the Federal Circuit

(a)The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—

(9) of an appeal from a final order or final decision of the Merit Systems Protection Board, pursuant to sections 7703(b)(1) and 7703(d) of title 5;

About Federal Courts | United States Courts (uscourts.gov)

5. Case 1:22-cv-00649-GLR Document 22 Filed 08/04/22 Page 4 of 6

Item #20. **Notwithstanding Mr. Ash's position, it is not possible for counsel to respond to the Complaint at this point as the administrative record has not yet been provided.**

6. Case 1:22-cv-00649-GLR Document 42 Filed 12/27/22 Page 1 of 18

a. Footnote 13: **In fact, counsel will be filing a motion shortly detailing the continued difficulty faced in securing a transcript of the hearing held by the MSPB Administrative Judge ("AJ"), which is part of the record, and should also be filed with the Court in this matter.**

7. Case 1:22-cv-00649-GLR Document 43 Filed 01/02/23 Page 3 of 5

Item #9. **On December 1, 2022, Defendant filed a Response to Plaintiff's Motion for Default, and Motion for a More Definite Statement (ECF 32).** Defendant's motion asks that the Court order Plaintiff to file an Amended Complaint that complies with FRCP 8 and 10 and the Court's Order (at ECF 27), or file a single document he wishes to have treated as his Complaint within 14 days, after which, **in order to avoid further confusion, Defendant would file a response to whatever Plaintiff files, within 14 days of that filing. The Court has not yet ruled on the Motion for a More Definite Statement.**

8. Case 1:22-cv-00649-JKB Document 98 Filed 11/01/23 Page 1 of 19

   a. Exhibit #1011 Demonstrates that Doc #32 filed 12/1/22 was in Fact Filed 40 days after Plaintiff's Amended Complaint Doc #28 filed 10/21/22.

9. 46 CFR § 502.67 **Motion for more definite statement.**

The motion must be filed within 15 days of the pleading and must point out the defects

complained of and the details desired.

10. USCA4 Appeal: 23-1332 Doc: 27 Filed: 07/06/2023 Pg: 1 of 1

TEMPORARY STAY OF MANDATE _____ Under Fed. R. App. P. 41(b), the filing of a timely petition for rehearing or rehearing en banc stays the mandate until the court has ruled on the petition. In accordance with Rule 41(b), **the mandate is stayed pending further order of this court.** /s/Patricia S. Connor, Clerk

11. Case 1:22-cv-00649-JKB Document 89 Filed 09/22/23 Page 1 of 1

    a. APPEAL TRANSMITTAL SHEET (non-death penalty)

    b. Deputy Clerk: Stephanie Savoy

12. USCA4 Appeal: 23-1992 Doc: 1 Filed: **09/25/2023** Pg: 1 of 1

    a. No. 23-1992 (1:22-cv-00649-GLR)

    b. This case has been opened on appeal.

    c. Date notice of appeal filed in originating court: **05/15/2023**

13. USCA4 Appeal: 23-1992 Doc: 6 Filed: 09/27/2023 Pg: 1 of 1

TO: All parties Review of the district court docket discloses that the district court is considering a motion under Fed. R. Civ. P. 50(b)(for judgment), 52(b)(to amend or make additional findings), 59(to alter or amend judgment or for new trial), or 60 (to vacate) filed within 28 days of entry of judgment. Under Fed. R. App. P. 4(a)(4), a notice of appeal filed after entry of judgment but before disposition of such a motion becomes effective upon entry of an order disposing of the last such motion. **Accordingly, proceedings in this appeal are hereby suspended pending disposition of the motion.** If a party wishes to appeal the district court's disposition of the motion, a notice of appeal or amended notice of appeal must be filed within the time prescribed for appeal, measured from entry of the order disposing of the last such motion. Jeffrey S. Neal, Deputy Clerk 804-916-2702

14. Case 1:22-cv-00649-JKB Document 103-1 Filed 11/14/23 Page 5 of 8

Between item # 90 & 91 below it demonstrates that Judge Russell was in fact Removed

Without Any Explanation Whatsoever from Ash v OPM because of Judicial Misconduct.

90	*Filed & Entered:*	09/25/2023	USCA Case Number
	Filed & Entered:	09/27/2023	Case Assigned/Reassigned
91	*Filed:*	09/27/2023	Appeal Remark
	Entered:	09/28/2023	

ARGUMENT #11

1. **ArtIII.S2.C1.6.4.4 Actual or Imminent Injury**
Footnotes:. . . that would result in a substantial contingent liability of billions of dollars on the state). 518 U.S. 343, 351 (1996). See id. Id. **A litigant that seeks damages for an asserted risk of future harm has not demonstrated a concrete harm sufficient for Article III standing unless the exposure to the risk of future harm itself causes a separate concrete harm.** TransUnion LLC v. Ramirez, No. 20-297, slip. . .

2. Alaska Airlines cooperates with DOJ in Boeing 737 MAX blowout probe | Reuters

Reuters March 9, 2024 6:33 PM EST Updated 16 hours ago

Alaska Airlines said on Saturday it is cooperating with the U.S. Department of Justice after a criminal investigation was opened into the Boeing 737 MAX blowout on its flight in January.

The investigation would inform the DOJ's review of whether Boeing complied with an earlier settlement that resolved a federal investigation following two fatal 737 MAX crashes in 2018 and 2019, the report added.

3. According to OSC File No. DI-19-2964 Appendix F last Par. Pg. 6, the Airline Safety

Inspectors were Unqualified.

4. Case 1:22-cv-00649-GLR Document 41-1 Filed 12/21/22 Page 4 of 6

Exhibit #403: FAA Top Policy Issues/ U.S. DOT October 2016

A. Congress provided personnel flexibilities in response to FAA's position that the inflexibility of federal personnel systems constrained the agency's ability to be responsive to the airline industry's needs and to increase productivity in the air traffic control operations.

B. The FAA initiated human resource management reform in three broad areas: compensation, workforce management, and labor employee relations, some of which required exemption from Title 5.

C. The continuance of the interchange agreement, which is periodically reviewed by OPM and the FAA, has been contingent upon the FAA maintaining a merit-based HR system.

D. OPM's last onsite review of the FAA's personnel management system in May 2009 stated that the FAA continued to function as a "merit system"; and complied with , , veterans' preference laws.

E. OPM also found that the FAA effectively used its human capital accountability program to hold managers accountable for their HR decisions.

F. The current DOT interchange agreement, relative to the FAA, expires December 2017.

G. There has not been a comprehensive external evaluation of human resources practices since 2009.

H. Ash v DOT Case# 5:22-22cv-00371-R ECF/Doc# 17 Pg. 27 of 35 Filed 3/11/22

Exhibit 25: 2.2.1 Foundation for Success: Back to Basics and Office of Human Resources Transformation Problem:

Based on feedback received through FAA senior leadership, it was evident the Lines of Business (LOBs) and Staff Offices (SOs) were not satisfied with the level of service they were receiving from Human Resources (HR).

FAA-Review-and-Reform-PL-115-254-Sec.-511-FINAL.pdf 11/9/18 Pg. 19

I. Ash v DOT Case# 5:22-22cv-00371-R ECF/Doc# 17 Pg. 27 of 35 Filed 3/11/22

Exhibit 26: Initiative: 2.3. Office of NextGen (ANG) 2.3.2 Foundation for Success: NextGen Initiative (NAS Lifecycle Integration) Problem:

To effectively transform the National Airspace System (NAS) through NextGen activities, FAA identified several deficiencies. **FAA lacked: 1) an enterprise-level perspective which increased difficulty in introducing changes into the NAS; 2) sufficient presence of an oversight body with the expertise and authority to assess enterprise-level requirements and recommend programmatic changes consistent with NextGen portfolio management; 3) a shared sense of urgency/priority for NextGen improvements.**

FAA-Review-and-Reform-PL-115-254-Sec.-511-FINAL.pdf 11/9/18 Pg. 23

U.S. Sen. Roger Wicker, R-Miss., chairman of the Senate Committee on Commerce, Science, and Transportation, today released the Committee's investigation report on the Federal Aviation Administration (FAA). This investigation began in April of 2019, weeks after the second of two tragic crashes of Boeing 737 MAX aircraft, when Committee staff began receiving information from whistleblowers disclosing numerous concerns related to aviation safety.

The FAA continues to retaliate against whistleblowers instead of welcoming their disclosures in the interest of safety. December 18, 2020

Wicker Releases Committee's FAA Investigation Report - U.S. Senate Committee on...

Feinstein to FAA: Passenger Safety Oversight Remains Ineffective

Washington—Senator Dianne Feinstein (D-Calif.) today called on the Federal Aviation Administration to improve its safety oversight, noting a recent inspector general report that found problems with 92 percent of safety cases sampled involving American Airlines.
"It is clear from the Inspector General's report that the FAA has failed to meet regulatory requirements meant to ensure the safety of passengers and aircraft. Specifically, this most recent report found that in 171 out of 185 (92 percent) of cases they reviewed, FAA inspectors failed to push for a thorough analysis of problems and accepted incorrect root cause analyses from American Airlines," Senator Feinstein wrote in a letter to FAA Administrator Steve Dickson.
Feinstein continued, **"I ask both American Airlines and the FAA take active steps to ensure all airline operations are safe."** Nov 08 2021

Feinstein to FAA: Passenger Safety Oversight Remains Ineffective - Press Releases - United States Senator for California (senate.gov)

REASONS FOR GRANTING THE WRIT

1. The lower courts have erred based on the fact that the Presiding Officer was removed for allowing a Rule 12e Violation in Ash v OPM and since OPM is also a codefendant in Ash v DOT.
2. The lower courts have expressed conflicting views on the issue of Dismissal and Summary Judgement based on the DOJ's argument item #14 Pg. viii and Argument #9 Pg. 17.

3. The issues raised in Ash v DOT and Ash v OPM is of National Significance based on Argument #11 Pg.22.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

Dated: March 11, 2024

Respectfully Submitted,

Julian R. Ash
Plaintiff, pro se
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Lutherville, Md 21093
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INDEX TO APPENDICES

APPENDIX A 10th Circuit Court of Appeals Mandate Issuance Letter 12/19/23

APPENDIX B 10th Circuit Court of Appeals Rehearing Denied 12/11/23

APPENDIX C 10th Circuit Court of Appeals Unpublished Judgement 9/27/23

APPENDIX D EEOC Case# 2019-28552-FAA-05, Dismissed 7/20/21

APPENDIX E Appellant's DOT IG Complaint dated 7/19/21 for late Final Decision

APPENDIX F OSC File No. DI-19-2962 Presidential Brief Dated 9/23/19