

23-7072 ORIGINAL

(23A489, 23A536, 23A701)

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

MAR 22 2024

OFFICE OF THE CLERK

Martin Akerman, Pro Se

— PETITIONER

(Your Name)

vs.

General Daniel Hokanson, Et Al

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Martin Akeman, Pro Se, In Forma Pauperis

(Your Name)

2001 North Adams Street, Unit 440

(Address)

Arlington, Virginia, 22201

(City, State, Zip Code)

(202) 656 - 5601

(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

The instant case is not just a reflection of an individual's struggle for justice but also highlights broader concerns about due process, whistleblower protection, and the treatment of federal employees engaged in safeguarding data integrity, transparency, and accountability, within a national security framework. The petitioner's detention by officers from the State National Guards of Arizona, Arkansas, and Nevada, without due process, underscores a potentially grave departure from established legal norms and principles that the judiciary is sworn to uphold.

The Supreme Court emphasized its judicial duty, stating, "Our responsibility is to ensure that citizens are not deprived of fundamental rights by virtue of working for the government" in *Connick v. Myers*, 461 U.S. 138, 147 (1983). This principle was further reinforced in *Texas v. California*, where the Court declared its readiness to "reverse in the blink of an eye" to rectify any deviations from federal courts' "virtually unflagging" obligation to exercise their jurisdiction, 141 S. Ct. 1469, 1469 (2021).

These established principles prompt critical questions regarding the actions of the Fourth Circuit Court and the District Court:

1. Did the Fourth Circuit Court's consolidation of appeals and selective review exacerbate the case's complexity, undermining the principles of thorough judicial review and deviating from the federal judiciary's "virtually unflagging" obligation to thoroughly adjudicate cases within its jurisdiction?
2. Did the District Court's dismissal of key claims and oversight of crucial evidence, particularly from a pro se plaintiff against a non-appearing defendant, combined with the dismissal of the plaintiff's case with prejudice on jurisdictional grounds, undermine the Fourth Circuit's ability to conduct a thorough adjudication?

LIST OF PARTIES

- ☐ All parties appear in the caption of the case on the cover page.
- ☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Defendants comprise seventeen federal officers under Bivens and three state military officers from Nevada, Arizona, and Arkansas under 42 U.S.C. § 1983. The U.S. Merit Systems Protection Board and the U.S. Office of Special Counsel are also implicated as defendants for their dereliction of duties concerning whistleblower protection and dispute resolution.

The undersigned affirms that no party is a nongovernmental corporation, Rule 29.6.

RELATED CASES

- An application to stay the mandate pending a petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit, under docket No. 23A489, was denied on January 8, 2024, under application to extend time to file this petition, docket No. 23A536.
- In the United States Court of Appeals for the District of Columbia: a related Freedom of Information Act case is pending under case number 23-5309.
- An application to stay the mandate pending a petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit, under docket No. 23A701, was denied on March 4, 2024, returning case DC-3443-22-0639-I-1 to the Merit Systems Protection Board, where the case is now pending Petition for Review, under 50 U.S.C. § 3341(j)(8).

RELATED DECISIONS BELOW

U.S. Office of Special Counsel

- On August 17, 2021, the U.S. Office of Special Counsel (OSC) facilitated an Alternative Dispute Resolution (ADR) between the Department of the Air Force and the petitioner, which led to an agreement related to several verified retaliatory actions, including the refusal to comply with an existing agreement to repay his student loans. That same day, OSC witnessed the Department of the Air Force fabricate a Security Clearance matter to interfere with the petitioner's future employment, in violation of Presidential Policy Directive 19, backdated to August 12, 2021. The Air Force was forced to remedy the wrong, Appendix I.
- On August 21, 2021, The Department of the Air Force provided proof, to OSC and the petitioner, that a request was entered for \$172,500, requesting payments as agreed in ADR, Appendix H.

Department of Defense Office of Privacy, Civil Liberties, and Transparency

- On June 13, 2022, the Department of the Army sent inaccurate records to the State of Virginia, including fraudulent claims related to the petitioner's constructive dismissal, causing inaccurate medical information to be part of Virginia's state records during a period the petitioner was seeking health insurance coverage and unemployment benefits.
- Courts have frequently mandated that an individual must administratively appeal an agency's denial of their amendment request before initiating a lawsuit under subsection (g)(1)(A) of the Privacy Act. On July 6, 2022, the petitioner completed this administrative exhaustion, Appendix G.

The Equal Employment Opportunity Commission

- On June 21, 2022, the Equal Employment Opportunity Commission (EEOC) verified and communicated the petitioner's right to file a mixed claim suit, under the "federal-sector provision of the Age Discrimination in Employment Act of 1967 (ADEA), 88 Stat. 74, 29 U.S.C. § 633a(a)," *Babb v. Wilkie*, 140 S. Ct. 1168, 1171 (2020), for his 30-day notice of Constructive Dismissal on June 7, 2023, Appendix F.
- On October 17, 2022, the EEOC confirmed that MSPB mixed cases DC-0752-22-0376-S-1 and DC-0752-22-0376-I-1, related to the petitioner's illegal suspension, are properly exhausted and ripe for the District Court, Appendix E.

The Merit Systems Protection Board

- The petitioner filed an Individual Right of Action and Whistleblower Stay appeal with the Merit Systems Protection Board (the Board or MSPB) on February 28, 2022 (DC-1221-22-0257-S-1), with the Department of Defense as Respondent ("agency that took the action"). The Army incorrectly claimed to be the only Agency in this case. The petitioner raised this concern to the Board on March 4, 2022, and requested that all parties be properly joinderd to ensure that the record and case (DC-1221-22-0257-W-1) can be considered as a whole. The petitioner reiterated this objection on March 14, 2022, and across 69 timely and substantiated claims of whistleblower retaliation, as were properly exhausted with OSC. These cases became ripe to accompany a mixed claim to District court, pursuant to 5 U.S.C. § 7702(e)(1)(B), on June 28, 2022 and September 30, 2022. Petitioner communicated this intent on July 10, 2022, on October 4, 2022, and on November 2, 2022. The initial decision by an Administrative Judge (AJ) of MSPB was issued on November 8, 2022.

RELATED DECISIONS BELOW (CONTINUED)

- DC-1221-22-0445-W-1 (March 14, 2022): MSPB Whistleblower claims, with the Department of the Air Force as Respondent, exhausted in OSC, up to March 11, 2022, exhausted under 5 U.S.C. § 7702(e)(1)(B), continued from DC-1221-22-0257-W-1. This case became ripe to accompany a mixed claim to District court, pursuant to 5 U.S.C. § 7702(e)(1)(B), on June 28, 2022, and September 29, 2022. Petitioner communicated this intent on July 10, 2022, and October 4, 2022. The initial decision by an Administrative Judge (AJ) of MSPB was issued on November 23, 2022.
- DC-1221-22-0459-W-1 (June 10, 2022): MSPB Whistleblower claims, exhausted in OSC, after March 11, 2022, exhausted under 5 U.S.C. § 7702(e)(1)(B), continued from DC-1221-22-0257-W-1. This case became ripe to accompany a mixed claim to District court, pursuant to 5 U.S.C. § 7702(e)(1)(B), on September 29, 2022. Petitioner communicated this intent on October 8, 2022. The initial decision by an Administrative Judge (AJ) of MSPB was issued on November 1, 2022.

COLLATERAL CASES PURSUANT TO RULE 14.1(B)(III)

- Related to Supreme Court Case No. 23-6710: Merit Systems Protection Board cases DC-0752-23-0457-I-1 and DC-844E-24-0359-I-1: These pending cases involve the petitioner's contestation against the Department of the Army regarding forced retirement, claims of false arrest and imprisonment, and a request for urgent intervention from the Office of Workers' Compensation Programs. It highlights the petitioner's efforts to address grievances related to employment and compensation through federal avenues. The Office of Personnel Management defaulted and the petitioner is awaiting a response from the Administrative Judge on the petitioner's right to disability retirement.

COLLATERAL CASES PURSUANT TO RULE 14.1(B)(III) (CONTINUED)

- Related to Merit Systems Protection Board cases DC-0752-23-0457-I-1 and DC-844E-24-0359-I-1: The petitioner awaits a decision from the Virginia Workers' Compensation Commission, Case No. VA02000039708, addressing a jurisdictional dispute over a workers' compensation claim against the National Guard Bureau. The claimant seeks state-level relief due to procedural challenges and unsatisfactory resolutions encountered with the Office of Workers' Compensation Programs (OWCP) and the Office of Personnel Management (OPM) regarding Disability Retirement.
- Related to Supreme Court Case No. 23-6710: In the United States Court of Appeals for the District of Columbia, Case No. 0:23-cvus-01268: a related challenge to an alleged designation of the petitioner as an enemy combatant, allegedly suspending habeas corpus under 28 U.S.C. § 2241(e), is awaiting status conference.
- Related to Supreme Court Case Nos. 23-6814 & 23-6815: These cases address a Breach of Legal Insurance, a matter connected to the pro se status of the applicant in all proceedings. Together, they consolidate related cases from the Arlington Circuit Court, the Virginia Court of Appeals, and the State Corporation Commission, on certiorari to the Supreme Court of Virginia.
- Related to Supreme Court Case No. 23-6710: Pending petition 23A593 from the United States Court of Appeals for the Armed Forces.
- Related to Supreme Court Case No. 23-6710: Pending petition 23A539 from the United States Court of Appeals for the Federal Circuit.

KEY PARTIES TO THIS PETITION

Service on the United States Government

In compliance with Rule 29.4(a), the Solicitor General of the United States, Room 5616, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530-0001, will be served given that the United States Government is a related party in the referenced proceedings.

Congress as Amici Curiae

Under the requirements of 44 U.S.C. § 3520(f), the petitioner is mandated to report to specific congressional committees, engaging the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives as statutory interested parties. This directive underscores a legislative intention to scrutinize and influence the National Guard Bureau's transparency and accountability, with Akerman's position as Chief Data Officer being central to this oversight.

On February 27, 2022, Akerman reached out to Senator Tim Kaine to address perceived gaps in whistleblower protections—a move that underscores the legislative branch's commitment to ensuring robust protections, especially for individuals in national security roles. This engagement with Congress highlights the broader role of the legislature in safeguarding the rights of federal employees.

In response, Congress enacted Public Law 117-103 (50 U.S.C. § 3341(j)(8)) on March 15, 2022, which specifically addresses the scope of review available to the Merit Systems Protection Board, reflecting the case's relevance and its ties to established legal precedents, such as *Dep't of the Navy v. Egan*.

The investigation by the Office of the Inspector General of the Department of Defense, into violations of 50 U.S.C. § 3341(j)(8), began on March 30, 2022.

KEY PARTIES TO THIS PETITION (CONTINUED)

In light of Akerman's statutory obligations and the subsequent legislative interactions, the Chairmen and Ranking Members of the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform will be served as statutory amici curiae.

Service on the Governors and Attorneys General of Related States

Considering the unique aspects of this case, particularly its intersection with state military actions, the petitioner has complied with the procedural steps outlined in Supreme Court Rule 17, indicating a readiness for the Court to potentially exercise its original jurisdiction. The record, as reflected in Appendix J, demonstrates the Court's acknowledgment of the petitioner's request for Rule 17 and 18 consideration, suggesting a recognition of the case's exceptional nature and the potential applicability of the Court's original jurisdiction.

In compliance with Rule 17's stipulations, the petitioner has ensured that service was appropriately executed on the Governors and the Attorneys General of Arizona, Arkansas, and Nevada, aligning with the procedural prerequisites for invoking the Court's original jurisdiction. This proactive adherence to the Rule underscores the seriousness with which the petitioner is pursuing this matter and highlights the case's suitability for the Supreme Court's unique and direct intervention, should the Court deem it appropriate to address the substantial constitutional questions presented through a bill of complaint.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B & C to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 29, 2023.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 31, 2023, and a copy of the order denying rehearing appears at Appendix D_____.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including March 29, 2024 (date) on December 15, 2023 (date) in Application No. 23 A536.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

The Court may wish to exercise original jurisdiction, 28 U.S.C. § 1251(b)(3), and consider this petition as a Motion for Leave to File a Bill of Complaint, or as a direct appeal, as outlined in Appendix J.

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

*"To bereave a man of life or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole nation; but confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore A MORE DANGEROUS ENGINE of arbitrary government."*¹

- **Article III, Section 2 of the U.S. Constitution:** This section establishes the judicial power of the federal courts to "Cases" and "Controversies," thereby setting the foundational requirement for standing and the scope of judicial review.
- **Res Ipsa Loquitur:** As explained in *Sweeney v. Erving*, 228 U.S. 233 (1913), this legal doctrine allows for an inference of negligence to be drawn from the mere occurrence of certain types of events, providing a means for plaintiffs, especially pro se litigants, to establish a prima facie case in the absence of direct evidence of negligence.
- **Pro Se Litigant Standards:** *Haines v. Kerner*, 404 U.S. 519 (1972), establishes that pleadings from pro se litigants are to be held to less stringent standards, acknowledging the challenges faced by individuals who represent themselves.
- **First Amendment's Petition Clause:** Ensures individuals' rights to petition the government for redress of grievances, extending protection to public employees from retaliation for lawful petitioning.
- **First Amendment's Speech Clause:** Supports the principle that public interest is served when employees and citizens can speak out against wrongdoing without fear of reprisal, thereby promoting transparency and accountability within institutions.

¹ Alexander Hamilton, Federalist 84

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED (CONTINUED)

- **Second Amendment:** While traditionally safeguarding the right to keep and bear arms, it is contextually invoked here to emphasize the right of individuals, including pro se litigants, to be "armed" with their papers and documents in legal actions, particularly while defending against unreasonable searches and seizures, underscoring the principle of access to necessary resources and information for self-defense.
- **Third Amendment:** This amendment stands as a historical response to past abuses and underscores the importance of maintaining a clear boundary between military and civilian life, ensuring that citizens are free from unwanted military intrusion in their personal spaces. While the Third Amendment has rarely been at the center of Supreme Court litigation, the case of *Engblom v. Carey*, 677 F.2d 957 (1982) is a notable instance where Third Amendment rights were examined. In this case, the courts addressed the quartering of National Guard members, acknowledging the applicability of the Third Amendment to the states through the Fourteenth Amendment and affirming the protection against a broad range of interests that are secured by "existing rules or understandings," quoting *Perry v. Sindermann*, 408 U.S. 593, 601 (1972)
- **Fourth Amendment:** Guarantees the right to be secure against unreasonable searches and seizures, protecting persons, houses, papers, and effects.
- **5 U.S. Code § 7702(e)(1)(B):** Emphasizes that complainants should have access to a judicial forum if their claims remain undecided within the "administrative machinery," as highlighted in *Ikossi v. Dep't of Navy*, which underscores the necessity of judicial recourse in cases of administrative delay (516 F.3d 1037 (2008)).

STATEMENT OF THE CASE

Background

Akerman was regarded as a whistleblower since May 29, 2021, see Supreme Court Case 23M44. For his entire tenure in the Department of Defense, Akerman held a pay grade of GS-15². At a within-grade pay step of 10, Akerman was also without promotion potential, over 40 years of age.

Akerman is a hispanic, jewish, male, prceived as having a mental disability.

Department of the Air Force and the Defense Counterintelligence and Security Agency

Akerman was selected to be the first Chief Data Officer of the National Guard Bureau on July 29, 2021, with a requirement to “obtain and maintain” a Top Secret Clearance.

On August 11, 2021, the National Guard Bureau completed the new hire request, verifying adjudication underway for a Top Secret clearance, without any additional action pending, an action required prior to transferring the petitioner from the Air Force to the National Guard Bureau.

On August 17, 2021, the U.S. Office of Special Counsel (OSC) facilitated an Alternative Dispute Resolution (ADR) between the Department of the Air Force and the petitioner, which led to an agreement related to several verified retaliatory actions, including the refusal to comply with an existing agreement to repay his student loans, Appendix H.

² Prior to the passage of Public Law 117-286 on December 27, 2022, all GS-15 civilian employees in the Department of Defense held a comparable rank to an O-6 Colonel (Navy Captain). GS-15 civilians paid above a certain rate are now comparable to an O-7 Brigadier General.

STATEMENT OF THE CASE (CONTINUED)

On August 17, 2021, the U.S. Office of Special Counsel (OSC) facilitated an Alternative Dispute Resolution (ADR) between the Department of the Air Force and the petitioner, which led to an agreement related to several verified retaliatory actions, including the refusal to comply with an existing agreement to repay his student loans. That same day, OSC witnessed the Department of the Air Force fabricate a Security Clearance matter to interfere with the petitioner's future employment, in violation of Presidential Policy Directive 19 (50 U.S.C. § 3341(j)(8)), backdated to August 12, 2021. The Air Force was forced to remedy the wrong, Appendix I.

National Guard Bureau, the Department of the Army, and Posse Comitatus of the States of Arizona, Arkansas, and Nevada

From September 12, 2021, until June 6, 2022, the petitioner worked as the Chief Data Officer for the National Guard Bureau. The National Guard Bureau, an agency with distinct representation in the Joint Chiefs of Staff, is not the Army National Guard and not the Air National Guard.

After the petitioner raised concerns related to the underreporting of suicides, related to data systems under his purview, the National Guard Bureau placed the petitioner immediately out of the office for "failure to attain and/or maintain" a condition of employment, on February 14, 2022, under 5 U.S.C. §§ 7513 and 6329b, implicating a Brigadier General of the Arizona Army National Guard and a Colonel of the Arkansas National Guard.

In *Douglas v. Veterans Administration*, the MSPB set forth twelve factors to be considered in determining the appropriate penalty for the subject employee. See 5 M.S.P.B. 313, 331-32 (1981) On April 6, 2022, an Officer of the Nevada Air National Guard completed the petitioner's Douglas Factors, affirming the decisions proposed and executed, on February 14, 2022.

STATEMENT OF THE CASE (CONTINUED)

Eastern District of Virginia case 22-cv-696

The threshold claims giving rise to this legal action on July 21, 2022, are the effort to collect the money due from the breach of agreement related to OSC ADR, a Constructive Discharge under 29 U.S.C. § 633a(a), the exhausted DC-1221-22-0257-W-1 and DC-1221-22-0445-W-1 whistleblower claims under 5 U.S.C. § 7702(e)(1)(B), and the two *res ipsa loquitur* privacy claims.

On September 1, 2022, the petitioner motioned to allow for 30 days prior to the filing of an amended complaint to include exhausted whistleblower claims and one additional mixed case pending at MSPB, citing a settlement agreement proposed by the MSPB on August 24, 2022, ECF 15.

On September 6, 2022, the district court denied the petitioner's motion, allowing the plaintiff to file a motion for leave to amend once responses are received from the defendants and MSPB, ECF 17.

On September 30 2022, a Magistrate Judge ordered that the defendants are to respond to the amended complaint by October 17, 2022, overruling the order from the judge on September 6, 2022, ECF 24. The defendants did not make an appearance on the docket and petitioner objected, *ex parte*, to Magistrate jurisdiction.³

³ Prior to the change in the local rules, on January 18, 2023, government attorneys were required to make an appearance on the docket prior to filing motions on behalf of government defendants.

STATEMENT OF THE CASE (CONTINUED)

On October 1, 2022, the petitioner submitted a motion for leave to file an amended complaint, citing the agency's rejection of the settlement, confirming that whistleblower claims under DC-1221-22-0257-S-1 and DC-1221-22-0257-W-1 were now properly exhausted, with a request to joinder seventeen (17) named federal officers under Bivens and three (3) senior military officers of the States of Nevada, Arizona, and Arkansas, under 42 U.S.C. § 1983, citing work-related health complications, a request for ADA accommodations and for court-appointed counsel, renewing an in forma pauperis application, ECF 25.

On October 3, 2022, additional whistleblower claims for MSPB case DC-22-0445-W-1 were exhausted and a motion for leave to file an amended complaint was filed, ECF 26.

On October 8, 2022, remaining whistleblower claims for MSPB cases DC-22-0459-W-1 were exhausted and a motion for leave to file an amended complaint was filed, ECF 36.

On October 11, 2022, the hearing scheduled for the motion for leave to file an amended complaint was cancelled, ECF 32.

On October 17, 2022, after being denied a hearing and after receiving the additional right to sue from the EEOC, petitioner filed an amended complaint and provided the court with a copy of the informal opening brief for U.S. Court of Appeals for the Fourth Circuit case 22-2066, combined by the clerk as ECF45.

Eastern District of Virginia case 22-cv-1258

On November 4, 2022, after Eastern District of Virginia case 22-cv-696 was dismissed with prejudice, the petitioner docketed a new case to retain the exhausted administrative claims before EEOC and MSPB, on any claims not considered, see Appendix C.

STATEMENT OF THE CASE (CONTINUED)

On November 7, 2022, an ORDER was issued, dismissing the civil action with prejudice as duplicative of Akerman v. Austin, No. 22-cv-696, and directing the Clerk not to copy the requested documents and to return the \$200.00 copy request fee to Mr. Akerman. The order also prohibited Mr. Akerman from filing any new complaint raising the same issues addressed in the memorandum opinion issued on November 3, 2022, in Akerman v. Austin, No. 22-cv-696, see Appendix B.

U.S. Court of Appeals for the Fourth Circuit case 22-2066

Interlocutory Appeal

On October 26, 2022, Martin Akerman filed an Informal Opening Brief and a Disclosure Statement, documented as ECF [1001254963] and ECF [1001254951], respectively.

On November 3, 2022, Martin Akerman submitted Supplemental Informal Opening Briefs, recorded as ECF [1001260747] and ECF [1001260735], and an Amended Document referencing earlier entries, labeled as ECF [1001260617].

On November 4, 2022, another Supplemental Informal Opening Brief was filed by Martin Akerman, captured as ECF [1001260941], along with a Motion for stay pending appeal, noted as ECF [1001261131].

On November 9, 2022, a notice that no brief would be filed and a Motion to dismiss the appeal was filed by the defendants, after making an appearance, noted as ECF [1001263824].

On November 13 and 16, 2022, Responses and Replies by Martin Akerman to the motion to dismiss the appeal were filed, indicated as ECF [1001264540], ECF [1001264539], ECF [1001266599], and ECF [1001266598].

On November 20, 2022, a Supplemental Brief by Martin Akerman was filed, indicated as ECF [1001268934].

STATEMENT OF THE CASE (CONTINUED)

On November 28, 2022, a Document referencing an Ex Parte Activity at MSPB - Request for Attorney by Martin Akerman was submitted, noted as ECF [1001272382] in case 22-2066.

On January 17, 2023, an ORDER was filed consolidating cases 22-2147, 22-2154 with 22-2066, documented as ECF [1001299824].

U.S. Court of Appeals for the Fourth Circuit case 22-2147

Final Order Appeal

On November 15, 2022, the petitioner filed a motion for stay in the Fourth Circuit, subsequently denied in the Supreme Court, in application 23A489.

On November 18, 2022, Martin Akerman filed an Informal Opening Brief, documented as ECF [1001268725].

On November 30, 2022, a notice was filed by the defendants stating that no brief will be filed, documented as ECF [1001274905] in case 22-2147. This notice was filed after making an appearance, without an accompanying motion to dismiss.

On December 1, 2022, Martin Akerman submitted a Document referencing urgent claims, along with attachments, and filed a Reply, recorded as ECF [1001275728] and ECF [1001275727], respectively.

On January 17, 2023, Martin Akerman filed a Letter and attachments, documented as ECF [1001299837].

On January 17, 2023, an ORDER consolidating case 22-2147 and 22-2154 with 22-2066 was filed, indicated as ECF [1001299824].

STATEMENT OF THE CASE (CONTINUED)

U.S. Court of Appeals for the Fourth Circuit case 22-2154

Final Order Appeal

On November 20, 2022, Martin Akerman filed an Informal Opening Brief, documented as ECF [1001268933], and subsequently filed a Corrected Informal Opening Brief on the same day, noted as ECF [1001268938].

On November 30, 2022, a notice was filed by Andrews AFB, Lloyd J. Austin, III, Daniel R. Hokanson, Frank Kendall, Pentagon, Remote, and Christine Wormuth stating that no brief will be filed, documented as ECF [1001274911] in case 22-2154. This notice was submitted after making an appearance but without an accompanying motion to dismiss.

On December 3, 2022, Martin Akerman filed a Reply to motions and for other reliefs, along with attachments, captured as ECF [1001276605] in case 22-2154.

On January 17, 2023, an ORDER was filed consolidating case 22-2147 and 22-2154 with 22-2066, indicated as ECF [1001299824] for the consolidated cases.

ARGUMENT

This case echoes the Supreme Court's mandates in *Connick v. Myers* and *Texas v. California*, reinforcing the judiciary's imperative to vigilantly protect fundamental rights, especially for government employees challenging institutional misdeeds. These precedents accentuate the courts' responsibility to meticulously scrutinize cases entwining complex constitutional and employment issues, ensuring that individual rights are not subsumed by governmental interests. Akerman's situation, thereby, becomes a litmus test for the judiciary's commitment to upholding the constitutional and statutory protections designed to preserve liberty, transparency, and accountability within the federal framework.

Did the Fourth Circuit Court's consolidation of appeals and selective review exacerbate the case's complexity, undermining the principles of thorough judicial review and deviating from the federal judiciary's "virtually unflagging" obligation to thoroughly adjudicate cases within its jurisdiction?

Application of the Motion to Dismiss by the Appellees
from the Interlocutory Appeal (22-2066)
to All Three Cases (22-2066, 22-2147, and 22-2154):

The provision for consolidation in Rule 3(b)(2) ensures that the court can group together appeals to streamline the appellate process, potentially reducing redundancy and ensuring that similar cases are treated consistently. However, this consolidation must be handled with care to ensure that each case's unique aspects are not overlooked and that each appellant's rights to a thorough review and fair adjudication are maintained.

When the court applied a single motion to dismiss, originally pertinent only to the interlocutory appeal, across all three consolidated cases, it likely oversimplified and potentially misunderstood the unique legal and factual contexts of each individual case. Such a blanket application could result in a failure to recognize and address distinct claims or procedural nuances inherent to each case, thereby compromising the fairness and thoroughness of the judicial process.

While the Fourth Circuit Court's consolidation of appeals aimed to enhance judicial efficiency, the application of a single motion to dismiss from one appeal across all three consolidated cases raises substantial concerns regarding the fairness and thoroughness of the judicial review process. This approach, by potentially neglecting the unique factual and legal nuances of each case, may not only undermine the court's obligation to deliver individualized justice but also risks eroding the appellants' right to a comprehensive examination of their distinct claims and arguments.

Partial Consideration of Only One Informal Appeal Brief:

The court's focus solely on the informal appeal brief from the interlocutory appeal, while disregarding supplemental briefs, responses to the motion to dismiss, and appeal briefs related to the other two consolidated final order appeals, undermines the holistic examination of the case. This approach neglected essential arguments, evidence, and legal theories presented in the supplementary materials, which are crucial for an informed and balanced judicial decision.

The directives of Rule 28 (Briefs), Rule 30 (Appendix to the Briefs), and Rule 31 (Serving and Filing Briefs), ensure that the court has a full record and comprehensive briefing before making a decision. This oversight might lead to an incomplete understanding of the case, undermining the appellate court's role in providing a detailed review as outlined in Rule 34 (Oral Argument) and potentially impacting the judgment's fairness and accuracy.

The Fourth Circuit Court's selective engagement with only the informal appeal brief from the interlocutory appeal, while omitting consideration of additional substantive materials from the consolidated cases, significantly detracts from the thoroughness required in judicial review. This methodological oversight not only contravenes the comprehensive review intended by Rules 28, 30, and 31 but also jeopardizes the fairness and depth of the appellate examination, essential for just adjudication. Such an approach risks a superficial understanding of the complexities involved, potentially leading to a decision that does not fully reflect the multifaceted nature of the consolidated appeals. Ensuring justice and maintaining the integrity of the appellate process necessitate a meticulous and inclusive consideration of all relevant documents and arguments, reaffirming the court's dedication to thorough and equitable legal scrutiny.

Did the District Court's dismissal of key claims and oversight of crucial evidence, particularly from a pro se plaintiff against a non-appearing defendant, combined with the dismissal of the plaintiff's case with prejudice on jurisdictional grounds, undermine the Fourth Circuit's ability to conduct a thorough adjudication?

Dismissal of Key Claims:

The District Court's dismissal of key claims, particularly without comprehensive consideration of all relevant EEOC and MSPB proceedings, may have impaired the Fourth Circuit's capacity for a thorough adjudication, essential for delivering justice in alignment with the principles established by *Twombly* and *Iqbal* for "factual enhancements."

Integration of EEOC and MSPB Proceedings: The EEOC confirmed the petitioner's right to file a mixed claim suit (Appendix F) and verified exhaustion of MSPB mixed cases DC-0752-22-0376-S-1 and DC-0752-22-0376-I-1 (Appendix E). *Babb v. Wilkie*, 140 S. Ct. 1168, 206 L.Ed.2d 432 (2020), elucidates the non-discriminatory standard under the ADEA, reinforcing the importance of considering all aspects of discrimination in the petitioner's claims. The District Court's oversight in not incorporating docket numbers DC-0752-22-0376-S-1, DC-0752-22-0376-I-1, DC-1221-22-0257-S-1, DC-1221-22-0445-W-1, and DC-1221-22-0459-W-1 into its review could hinder the Fourth Circuit's ability to provide a complete factual context, as required under the "factual enhancement" standard set forth by *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

Citing Legal Precedents: In *Clark v. Brown*, 536 F. Supp. 3d 56 (E.D. Va. 2021), the court highlighted that when the MSPB fails to issue a decision within 120 days, under 5 U.S.C. § 7702(e)(1)(B), the complainant is entitled to seek judicial review in federal court. This underscores the necessity for the District Court to consider all MSPB-related claims, ensuring that the appellate court has a comprehensive record for review.

Oversight of Crucial Evidence:

The District Court's oversight of crucial evidence, especially considering the legal standards applied to pro se litigants and the doctrine of res ipsa loquitur, potentially compromised the depth and fairness of the judicial review. This oversight is particularly significant in light of the procedural and substantive complexities of the petitioner's case.

Application of Res Ipsa Loquitur and Pro Se Litigant Standards: The principles of res ipsa loquitur, as outlined in *Sweeney v. Erving*, 228 U.S. 233 (1913), and the adjusted standards for pro se litigants from *Haines v. Kerner*, 404 U.S. 519 (1972), underscore the need for courts to consider evidence and inferences that may not be explicitly stated but are implied by the circumstances, especially for self-represented individuals.

Key Events and Evidence: The OSC's involvement in an ADR process that highlighted retaliatory actions by the Department of the Air Force, and the subsequent fabrication of a security clearance issue, are critical pieces of evidence that underscore the retaliatory context of the petitioner's claims. The National Guard Bureau's actions, particularly the abrupt cessation of the petitioner's employment under dubious circumstances, further amplify concerns of retaliatory motives, necessitating a thorough judicial examination.

Privacy Act and Administrative Exhaustion: The petitioner's efforts to correct inaccurate records under the Privacy Act, culminating in the administrative exhaustion on July 6, 2022 (Appendix G), represent significant procedural steps that should inform the judicial review process, ensuring that all relevant administrative actions and their outcomes are considered. The requirement for the petitioner to "obtain and maintain" a Top Secret Clearance, as set forth upon his selection as the Chief Data Officer of the National Guard Bureau, contrasts sharply with the National Guard Bureau's later rationale for his dismissal due to "failure to attain and/or maintain" such clearance. The oversight of "factual enhancements" under the *Twombly* and *Iqbal* standard hindered the Fourth Circuit's ability to conduct an informed and comprehensive adjudication.

Non-Appearing Defendant Counsel:

The absence of the government defendants in the District Court's proceedings significantly impacts both the procedural dynamics and the substantive rights of the parties involved, particularly affecting the pro se plaintiff's ability to navigate and respond within the judicial process.

Impact on District Court Proceedings: The defendants' failure to appear disrupted the normal course of litigation, affecting the pro se plaintiff's procedural strategy, especially concerning objections to magistrate jurisdiction. The magistrate judge's extension of time to the unrepresented defendants, contrary to a prior judge's order, illustrates how the absence of one party can lead to procedural irregularities and potential imbalances in the administration of justice.

Implications for the Fourth Circuit's Review: The defendants' non-appearance and the subsequent procedural decisions could raise significant issues for the Fourth Circuit's review, particularly regarding the adherence to due process and the equitable treatment of parties. The appellate court may need to consider whether the procedural anomalies influenced the case's outcome or affected the fairness of the proceedings.

Rule 73 and Magistrate Jurisdiction: Under Rule 73, consent is a foundational element for a magistrate judge's authority to conduct civil actions. The absence of the defendants complicates the consent process, as their non-participation might impede the clear establishment of consent or objection to magistrate jurisdiction, potentially challenging the legitimacy of any decisions made under such circumstances.

Appellant's Claim for Default Judgment: The modification of local rules concerning appearance requirements and the government counsel's non-compliance may bolster the appellant's claim for default judgment. The Fourth Circuit may need to assess the interplay between the defendants' absence, local rule modifications, and the procedural fairness extended to the pro se plaintiff, especially in the context of seeking a default judgment.

Dismissal with Prejudice on Jurisdictional Grounds:

A thorough examination of the jurisdictional reasons provided by the District Court for the dismissal is crucial. The specific jurisdictional grounds must be scrutinized to determine whether the court properly interpreted and applied relevant legal standards and statutes. If the dismissal was based on a perceived lack of subject-matter jurisdiction, for instance, understanding the rationale behind this perception is key, especially given the petitioner's reliance on federal statutes like 5 U.S.C. § 7702(e)(1)(B) for jurisdictional grounding.

Impact of Dismissal with Prejudice: Dismissal with prejudice is a definitive conclusion to the case at the district court level, barring the petitioner from re-filing the same claims in the same court. This can significantly limit the petitioner's ability to seek redress, especially if new information or developments relevant to the case emerge. The finality of such a dismissal emphasizes the need for precision in the court's jurisdictional analysis and decision-making.

Implications for the Fourth Circuit's Review: The Fourth Circuit's scope of review may be influenced by the dismissal with prejudice on jurisdictional grounds. The appellate court will need to assess whether the District Court correctly identified and applied the jurisdictional standards. If the Fourth Circuit finds that the District Court erred in its jurisdictional assessment, it could lead to a remand for further proceedings, altering the trajectory of the case.

Evaluating the Procedural Context: The procedural context leading to the dismissal, including the petitioner's attempts to amend the complaint and exhaust administrative remedies, should be considered in evaluating the appropriateness of the dismissal. The appellate court may examine whether the District Court provided sufficient opportunity for the petitioner to address any curable jurisdictional issues.

Exhaustion of Whistleblower Claims: The petitioner's methodical approach to exhausting whistleblower claims, as seen with cases DC-1221-22-0257-S-1, DC-1221-22-0257-W-1, DC-22-0445-W-1, and DC-22-0459-W-1, demonstrates adherence to the procedural requirements necessary to bring these claims to the federal court. Exhausting administrative remedies is a critical step in ensuring that the claims are ripe for judicial review, allowing the petitioner to leverage all available legal avenues.

Motions for Leave to Amend the Complaint: The petitioner's multiple motions for leave to file an amended complaint reflect an attempt to update the court with the latest developments in their case, particularly the exhaustion of claims and the receipt of the right to sue. These motions are indicative of the petitioner's intent to present the most comprehensive and current case possible.

Cancellation of the Scheduled Hearing: The cancellation of the hearing scheduled for October 11, 2022, regarding the petitioner's motion for leave to file an amended complaint, represents a pivotal moment in the case's trajectory, potentially influencing the petitioner's ability to present arguments and the court's subsequent decisions.

Requests for Legal and Procedural Accommodations: Requests for joinder, ADA accommodations, court-appointed counsel, and in forma pauperis status indicate the petitioner's awareness of the legal and procedural tools available to bolster their case. These requests also highlight the complexities faced by pro se litigants in managing and presenting their legal arguments effectively.

Filing of the Amended Complaint: The filing of the amended complaint on October 17, 2022, despite the absence of a court order granting leave to amend, shows the petitioner's proactive stance in advocating for their case. Providing the court with a copy of the informal opening brief for the Fourth Circuit underscores the petitioner's attempt to ensure that all pertinent information and arguments are before the court for consideration.

REASONS FOR GRANTING THE PETITION

The Supreme Court's pronouncement in *Texas v. California* serves as a resounding affirmation of the judiciary's accountability and underscores the Court's vigilance in ensuring that federal courts fulfill their "virtually unflagging" obligation to exercise jurisdiction, as highlighted in the Court's statement about its readiness to "reverse in the blink of an eye" to correct any deviations from this fundamental duty. The case before us illustrates a critical juncture where the Fourth Circuit Court's handling of consolidated appeals and the District Court's procedural decisions raise significant concerns, warranting a thorough examination under Rule 10 of the Supreme Court's rules. These concerns not only question the adherence to established judicial procedures but also the courts' commitment to ensuring due process and the fair treatment of litigants, particularly those representing themselves.

Consolidation of Appeals and Selective Review: The Fourth Circuit's approach to consolidating appeals and applying a single motion to dismiss across multiple cases may have oversimplified complex legal and factual issues, potentially undermining the appellate court's duty to provide a thorough and individualized review. This approach risks contravening the Supreme Court's directive for meticulous judicial scrutiny, as articulated in cases like *Texas v. California*, emphasizing the judiciary's responsibility to uphold its "virtually unflagging" obligation to exercise jurisdiction.

Dismissal of Key Claims and Oversight of Crucial Evidence: The District Court's dismissal of key claims without fully integrating pertinent EEOC and MSPB proceedings, coupled with an oversight of critical evidence, potentially impaired the appellate court's ability to conduct a comprehensive review. Such a scenario aligns with Rule 10's emphasis on granting certiorari when lower courts have potentially deviated from the accepted course of judicial proceedings.

Pro Se Litigant Considerations and Cancellation of Hearing: The petitioner's challenges as a pro se litigant and the cancellation of a scheduled hearing further accentuate the necessity for the Supreme Court's intervention. Ensuring that pro se

litigants receive fair and understandable notice of procedural requirements is paramount, aligning with the Court's longstanding commitment to safeguarding litigants' rights and ensuring access to justice.

Jurisdictional Concerns and Dismissal with Prejudice: The jurisdictional grounds for the case's dismissal with prejudice merit close scrutiny to ensure that the petitioner's right to seek redress has not been unjustly curtailed. This examination is crucial for maintaining the integrity of the judicial process and ensuring that dismissals are grounded in a meticulous analysis of jurisdictional prerequisites.

This case not only underscores critical issues of due process and whistleblower protection but also intersects with the unique aspects of state and federal jurisdiction.

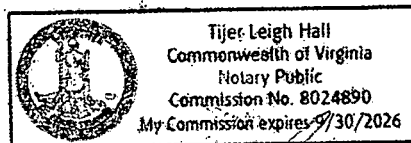
CONCLUSION

In light of the significant implications involving State militaries, the Court may wish to consider this petition as a motion for leave to file a bill of complaint, Appendix J.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: MARCH 20, 2024



County/City of Arlington
Commonwealth/State of VA
The foregoing instrument was acknowledged
before me this 20 day of March
 2024 by Martin Akerman
(name of person seeking acknowledgement)
 Martin Akerman
Notary Public
My Commission Expires: 09/30/2026