

23-892

No. \_\_\_\_\_

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In the  
Supreme Court of the United States

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JASON ANTOINE BROCK,  
*Petitioner,*

v.

PETER BUTTIGIEG, U.S. Secretary of  
Transportation, *et al.,*  
*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

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Jason Antoine Brock, *Pro Se*  
432 Cedarview Drive  
Nashville, TN 37211-6654  
615-775-5811  
flighttek@gmail.com

## QUESTIONS PRESENTED

- I. Whether 5 U.S.C. § 7703(b)(2) is fair in allowing 30-days for judicial review in comparison to 60-day rule within 5 U.S.C. § 7703(b)(1)(A) and 5 U.S.C. § 7703(b)(1)(B).
- II. Whether guidance to the EEOC's Office of Federal Operations is proper in comparison to language within 5 U.S.C. § 7702(b)(1).
- III. Whether the Federal Circuit was consistent with 28 U.S.C. § 1631 in judicial review when claim of discrimination asserted and not abandoned.

## LIST OF PARTIES

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: U.S. Merit Systems Protection Board, Atlanta Regional Office Peachtree Summit, 401 W Peachtree St NW # 1050, Atlanta, GA 30308.

## RELATED CASES

*Brock v. Department of Transportation*, No. AT-0752-20-0542-M-1. U.S. Merit Systems Protection Board, Judgment entered August 31, 2022.

*Brock v. DOT Federal Aviation Administration*, No. 2021003451. U.S. Equal Employment Opportunity Commission Office of Federal Operations, Judgment entered June 21, 2022.

*Brock v. Merit Systems Protection Board*, No. 2021-1000. U.S. Court of Appeals for the Federal Circuit, Judgment entered December 14, 2021.

*Brock v. DOT Federal Aviation Administration*, No. 490-2021-00064X. U.S. Equal Employment Opportunity Commission, Judgment entered March 15, 2021.

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## **STATUTORY PROVISIONS INVOLVED**

5 U.S.C. § 7702  
5 U.S.C. § 7702(a)(3)(A)  
5 U.S.C. § 7702(b)(2)  
5 U.S.C. § 7703(b)(1)(A)  
5 U.S.C. § 7703(b)(1)(B)  
28 U.S.C. § 1631

## **OPINION BELOW**

The judgment of the United States Court of Appeals for the Federal Circuit is unreported, per curiam, and without opinion, but available at Appendix A. The judgment of the United States Merit Systems Protection Board is reported at 2022 MSPB LEXIS 3305, in opinion, and available at Appendix B.

## **JURISDICTION**

On September 19, 2023, the United States Court of Appeals for the Federal Circuit affirmed the decision of the United States Merit Systems Protection Board. This Court has jurisdiction pursuant to 28 USC § 1254(1). Petitioner having timely filed petition for writ of certiorari within ninety days of September 19, 2023.

## **STATEMENT OF THE CASE**

The petitioner sought judicial review of MSPB decision given on August 31, 2022, *Brock v. Department of Transportation*, (Appendix B). Petitioner asserted discrimination and never wished

to abandon claims (Appendix B, 45a-48a). Under rules set out within MSPB Notice of Appeal Rights section (Appendix B, 55a-60a): choice one given for filing a judicial review of claims in general within 60-days before the Federal Circuit (Appendix B, 56a-57a); choice two given for filing a judicial or EEOC review of discrimination claims within 30-days before an U.S. District Court or the EEOC's Office of Federal Operations (Appendix B, 57a-58a); and choice three given for filing a judicial review of whistleblower reprisal claims within 60-days before the Federal Circuit or any court of appeals (Appendix B, 59a-60a).

### **REASON FOR GRANTING THE WRIT**

The petitioner understands prioritizing discrimination claims but prescribing 30-days in filing an appeal to eradicate the most systematic practice in our society is ingenuine, burdensome, and unfair. The petitioner wishes extension to 60-day filing for judicial review of claims involving discrimination because such claims have the least amount of time to appeal; and because such claims are not on par with the other claim filings. The MSPB Notice of Appeal Rights language is confusing within choice two because of it initially stating "judicial or EEOC review", but in ending language became the EEOC's Office of Federal Operations (Appendix B, 45a). The guidance obfuscating in reference to the "Commission" within 5 U.S.C. § 7702(b)(1) because petitioner comprehended it to be the EEOC rather than the EEOC's OFO; and because 5 U.S.C. § 7702(a)(3)(A) states, "Equal Employment Opportunity Commission"; and because 5 U.S.C. §



7702(b)(1) states, “petition the Commission to consider the decision”; and because no mention of the OFO throughout 5 U.S.C. § 7702. Therefore, petitioner without cure because notice forced an abandonment of discrimination claims by forum swapping. The Federal Circuit consistently used 28 U.S.C. § 1631 for curing of discrimination claims that were asserted and not abandoned as seen within *Reddick v. United States Postal Service* (Appendix F, 78a); and *Jones v. Merit Systems Protection Board* (Appendix G, 80a). The petitioner wishes cure in hearing before an U.S. District Court or an EEOC Administrative Judge. The MSPB notice and Federal Circuit decision has substantially impacted government agency practices, policies, and operations.

### CONCLUSION

The petitioner humbly states that this petition for writ of certiorari should be granted.

Respectfully Submitted,

/s/ \_\_\_\_\_  
Jason A. Brock, *Pro Se*

December 15, 2023