

No. 23 -1713

IN THE
SUPREME COURT OF THE UNITED STATES

Julian R. Ash— PETITIONER

vs.

OPM— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
FORTH CIRCUIT COURT OF APPEALS
PETITION FOR WRIT OF CERTIORARI

Julian R. Ash

402 E Timonium Rd

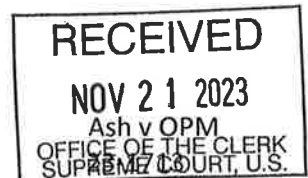
Lutherville, Md 21093

580-284-6202

APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE PETITION FOR WRIT OF
CERTIORARI

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE UNITED
STATES AND CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT

NOW COMES Petitioner Pro se, Julian R. Ash, pursuant to Supreme Court Rule 13.5, and respectfully requests a sixty-day extension of time for filing a petition for a writ of certiorari to the Supreme Court, such extension to include January 15, 2024. This application is submitted at least ten (10) days prior to the scheduled filing date for the petition, which is November 27, 2023. In support of this application, petitioner shows the following:



Pursuant to Supreme Court Rules 13.5, 22, and 30, Petitioner respectfully request a 60-day extension of time, up to and including January 15, 2024, to file a petition for a writ of certiorari to the Supreme Court of the United States to Review the Court of Appeals for the Fourth Circuit's Decision In re: Ash v OPM. As of Wednesday November 15, 2023 Cockle Legal Printing Service informed me that they could not meet my expectations and have begun refunding my \$2500 down payment.

1. This case presents a substantial and important question of federal law:

2. 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.

CLEAR ERROR ISSUE #1

1. Case 1:22-cv-00649-JKB Document 91 Filed 09/27/23 Page 1 of 1
 - a. 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
2. Case 1:22-cv-00649-JKB Document 90 Filed 09/25/23 Page 1 of 1
 - a. This case has been opened on appeal
 - b. No. 23-1992 (1:22-cv-00649-GLR)
3. 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
4. Case 1:22-cv-00649-JKB Document 88 Filed 05/15/23 Page 1 of 1
 - a. Plaintiff's Notice of Appeal filed in the 4th Circuit on 9/22/23.

5. Why was the 4th Circuit Forced to Respond to the Notice of Appeal by Suspending the Process, because the Appeal was an Illegal Attempt to Dispose of a Complex Case (Ash v OPM) without a Decision.
6. Can a Judge be Removed from a case (Ash v OPM) without Explanation or Reason.
7. What is the Legal Reason for the Removal of Judge George L. Russell III from Ash v OPM case #JKB-22-cv-649, formerly Ash v OPM case #GLR-22-cv-649.

CLEAR ERROR ISSUE #2

1. Case 1:22-cv-00649-GLR Document 32 Filed 12/01/22 Page 1 of 6
 - a. DEFENDANT’S RESPONSE TO MOTION FOR DEFAULT AND MOTION FOR A MORE DEFINITE STATEMENT
 - b. CONCLUSION: **In order to avoid further confusion, or delay, Defendant will file a response to whatever Plaintiff files, within 14 days of that filing.** (Par.1, Sent.3)
2. Case 1:22-cv-00649-JKB Document 100 Filed 11/06/23 Page 1 of 12
Defendants Response to the Court Ordered Status Report Neglects to Address
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.
[46 CFR § 502.67 - Motion for more definite statement. | Electronic Code of Federal Regulations \(e-CFR\) | US Law | LII / Legal Information Institute \(cornell.edu\)](#)
3. 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.
4. Case 1:22-cv-00649-GLR Document 43 Filed 01/02/23 Page 2 of 5

- a. **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.**
5. If on 1/2/23 Defendants Complained that the Motion for a More Definitive Statement filed 12/1/22 had not been ruled on, then as of 11/6/23 it's too Scandalous to Ignore.

CLEAR ERROR ISSUE #5

1. USCA4 Appeal: 23-1713 Doc: 10 Filed: 08/28/2023 Pg: 2 of 2
 - a. **Mandamus may not be used as a substitute for appeal or, in this case, a rehearing petition. See In re Lockheed Martin Corp., 503 F.3d 351, 353 (4th Cir. 2007).**

Ash does not satisfy the standard for mandamus relief.

Accordingly, we deny the petition for writ of mandamus. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.
PETITION DENIED

- b. IV. PETITION FOR WRIT OF MANDAMUS GRANTED

Because Lockheed is entitled to a jury trial, the district court erred by striking Lockheed's jury demand. We therefore grant Lockheed's petition for the issuance of a writ of mandamus and we direct the district court on remand to try the case before a jury.

In re Lockheed Martin Corp., 503 F.3d 351 | Casetext Search + Citor

2. Why didn't the 4th Circuit Court of Appeals Remand the case back to the District Court of Maryland if the case Cited above was Remanded on the Same Issue of Trial by Jury.

LIST OF PARTIES

The Office of Personnel Management *
1900 E Street, N.W. Rm 2H31
Washington, D. C. 20415-3551

&

Merit Systems Protection Board * Ash v OPM
1100 Commerce St., Room 620
Dallas, Tx 75242-9979 Case No. 23-1332

& CIVIL ACTION #1:22-cv-00649-GLR

Federal Aviation Administration *
Office of Chief Counsel
800 Independence Ave S.W.
Washington, DC 20591

&

U.S. Department of Labor Office of *
Worker's Compensation Programs
P.O. Box 8300 District 16 Dal
London, Ky 40742-8300

RELATED CASES

1. Ash v DOT 10th Circuit Court of Appeals case # 22-6195 Dismissed 9/28/23, Appellant
has until 12/4/23 to submit Rehearing
2. Ash v Russell District Court of Maryland case # SAG-23-cv-02873
3. Ash v Rubin Et al, Circuit Court of Maryland case # C-03-CV-23-004234

JURISDICTION

Administrative Procedure Act

The Administrative Procedure Act (APA) is a federal [act](#) that governs the procedures of [administrative law](#). The APA is codified in [5 U.S.C. §§ 551–559](#).

[Administrative Procedure Act | Wex | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

28 U.S. Code § 1331 - Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

[28 U.S. Code § 1331 - Federal question | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

28 U.S. Code § 1361 - Action to compel an officer of the United States to perform his duty

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

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 \(uscourts.gov\)](https://www.uscourts.gov/civil-rico-model-jury-instructions)

PREPARATION OF APPELLATE BRIEFS

This standard requires that for appeals handled by USAOs, an AUSA or Special AUSA be responsible for preparing the appellate brief, and that he or she be familiar with all pertinent facts, law, and arguments. **The appellate brief is the central focus of an appeal.** Delegating its preparation to agency counsel, a paralegal, or a law student, without adequate guidance and supervision, may jeopardize the quality of the brief. **Without appropriate guidance and supervision, delegation also shifts the initial burden of accuracy to someone who may not be licensed to practice law, who has not taken the government attorney's oath, who will not be able to argue the appeal, and who cannot sign the brief as required by Federal Rule of Appellate Procedure 32(d).** This standard does not prohibit all use of agency counsel, paralegals, or law students, but in making judgments about the proper use of agency counsel, paralegals, and law students, the office must consider the competence and experience of the individuals involved, as well as the importance of the case. **Any part of a brief that has been drafted by someone who is not an AUSA should be identified for the AUSA supervising appellate matters, another appellate AUSA, or an AUSA with significant appellate experience who will review the brief (the "brief reviewer"), even though the AUSA or Special AUSA who will be signing the brief is fully responsible for the draft that is submitted to the brief reviewer.**

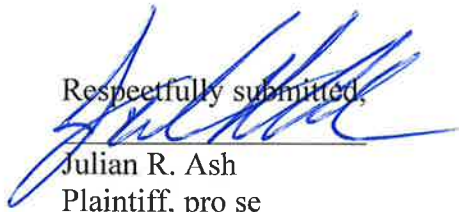
[Justice Manual | 2. Appellate Standards for U.S. Attorneys' Offices | United States Department of Justice](#)

CONCLUSION

1. A Motion for Intervention Doc #102 was filed in the District Court of Maryland Based on Judicial Misconduct and Malfeasance (No Response from the Court since 11/8/23).
2. Plaintiff intends to Pursue a Recall of the Mandate based on the Removal of the Presiding Officer Judge George L. Russell III on 9/27/23.
3. Since the Mandate was Stayed on 7/6/23 Sanctions are Warranted IAW FRCP 11 because the Dismissal for Summary Judgement on 3/28/23 Violates 42 U.S.C. § 1983.
4. In the Interest of Justice Petitioner Prays that an Extension (Until January 15, 2024) of Time to file the Writ of Certiorari be Granted.

Dated: November 17, 2023

Respectfully submitted,



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Plaintiff, pro se
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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1713

In re: JULIAN R. ASH,

Petitioner.

On Petition for Writ of Mandamus to the United States District Court for the District of Maryland, at Baltimore. (1:22-cv-00649-GLR)

Submitted: August 24, 2023

Decided: August 28, 2023

Before QUATTLEBAUM and HEYTENS, Circuit Judges, and MOTZ, Senior Circuit Judge.

Petition denied by unpublished per curiam opinion.

Julian R. Ash, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Julian R. Ash petitions for a writ of mandamus, raising several challenges to the underlying district court proceedings. We conclude that Ash is not entitled to mandamus relief.

Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. *Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 380 (2004); *In re Murphy-Brown, LLC*, 907 F.3d 788, 795 (4th Cir. 2018). Further, mandamus relief is available only when the petitioner has a clear right to the relief sought and “has no other adequate means to attain the relief [he] desires.” *Murphy-Brown*, 907 F.3d at 795 (alteration and internal quotation marks omitted). Mandamus may not be used as a substitute for appeal or, in this case, a rehearing petition. *See In re Lockheed Martin Corp.*, 503 F.3d 351, 353 (4th Cir. 2007).

Ash does not satisfy the standard for mandamus relief. Accordingly, we deny the petition for writ of mandamus. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DENIED

FILED: August 28, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1713
(1:22-cv-00649-GLR)

In re: JULIAN R. ASH

Petitioner

J U D G M E N T

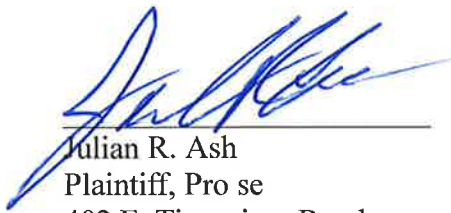
In accordance with the decision of this court, the petition for writ of mandamus is denied.

/s/ PATRICIA S. CONNOR, CLERK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November 2023 a copy of the Petitioner's **APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE PETITION FOR WRIT OF CERTIORARI** was mailed by first class postage prepaid to the Office of Assistant United States Attorney Ariana W. Arnold 36 S. Charles Street, Fourth Floor Baltimore, Md 21201.

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