

IN THE SUPREME COURT OF THE UNITED STATES

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No. 23A \_\_\_\_\_

MARTIN AKERMAN, PRO SE,  
APPLICANT

v.

GENERAL DANIEL HOKANSON,  
CHIEF OF THE NATIONAL GUARD BUREAU, ET AL

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MEMORANDUM AND APPENDICES IN SUPPORT OF  
URGENT APPLICATION TO RECALL AND STAY THE MANDATE OF THE UNITED  
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT PENDING THE  
FILING AND DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

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**VOLUME ONE: PURSUIT OF JUSTICE**

Volume One (Appendices A-E) of the "Memorandum and Appendices in Support of Urgent Application to Recall and Stay the Mandate of the United States Court of Appeals for the Fourth Circuit" sheds light on the multifaceted challenges faced by Martin Akerman, a Pro Se litigant, in his relentless pursuit of justice. This volume encompasses critical themes, including the Fourth Circuit's pivotal decision, the demand for record correction, consolidation of cases, motions for stay of mandate, and significant judgments entered in the Eastern District of Virginia (EDVA) and related appeals. Akerman's journey



highlights the intricate interplay of federal employment laws, procedural fairness, and the unique struggles encountered by self-represented litigants within the legal system.

> **Appendix A:** August 29, 2023 - Fourth Circuit's Decision: The United States Court of Appeals for the Fourth Circuit's decision is pivotal, as it notably omits addressing the stay of the mandate. This decision directly impacts Akerman's pursuit of justice and raises questions about the proper application of federal employment laws and procedural fairness, particularly for pro se litigants like him.

Appendix A encompasses critical documents related to Martin Akerman's legal challenges, specifically focusing on the order on appeal (Appendix A1) and his subsequent petition addressing overlooked issues, including spoliation (Appendix A2). Akerman, as a Pro Se litigant, contests decisions from lower courts and argues that the Court of Appeals overlooked pivotal legal and procedural matters.

> **Appendix B:** June 19, 2023 - Request for Correction of Records: Akerman's demand for the correction of records in the lower courts is crucial for the appeal process. This request underscores the challenges faced by pro se



litigants in accessing and correcting legal documentation, a fundamental aspect of procedural justice and equity.

Appendix B contains documents that showcase Martin Akerman's ongoing legal efforts as a Pro Se litigant. This section includes his detailed memoranda and legal submissions to the United States Court of Appeals for the Fourth Circuit and the United States District Court for the Eastern District of Virginia. These documents reflect Akerman's challenges and demands for corrections and clarity in his case records.

> **Appendix C:** January 17, 2023 - Consolidation Order from Court of Appeals: The consolidation of Akerman's cases by the Fourth Circuit is a key procedural step, reflecting the complexities and the interrelation of the issues he faces. This consolidation is relevant to the question of procedural violations and their impact on the judicial process.

The consolidation order dated January 17, 2023, by the Fourth Circuit Court marks a crucial procedural juncture in Martin Akerman's legal endeavors. This order consolidates an intertwined collateral order appeal under the collateral order doctrine and two final order appeals (Nos. 22-2066, 22-2147, and 22-2154). This strategic procedural move



reflects the complex and interrelated nature of the issues at hand. The consolidation underlines the significance of procedural violations and their overarching impact on Akerman's judicial process. As a Pro Se litigant, Akerman contends that these intertwined legal issues are critical to understanding and resolving his appeals. The consolidation by the Fourth Circuit signifies an acknowledgment of the interconnected aspects of his case and the necessity for a holistic judicial review.

- > **Appendix D:** November 15, 2022 - Motion for Stay of Mandate: Akerman's motion for a stay of the mandate after its rejection in the lower court emphasizes the ongoing procedural challenges he faces, particularly relevant to the questions about judicial fairness and the treatment of pro se litigants.
  
- > **Appendix E:** November 3 and 7, 2022 - Judgments Entered in EDVA and Related Appeals in 2022: Appendix E features documents related to significant judgments entered in the Eastern District of Virginia (EDVA) on November 3 and 7, 2022, and the subsequent appeals. The public availability of these judgments during the appellate phase is a substantial procedural irregularity, raising questions about procedural violations and their impact on fairness.





> **Appendix A:** August 29, 2023 - Fourth Circuit's Decision: The United States Court of Appeals for the Fourth Circuit's decision is pivotal, as it notably omits addressing the stay of the mandate. This decision directly impacts Akerman's pursuit of justice and raises questions about the proper application of federal employment laws and procedural fairness, particularly for pro se litigants like him.

Appendix A encompasses critical documents related to Martin Akerman's legal challenges, specifically focusing on the order on appeal (Appendix A1) and his subsequent petition addressing overlooked issues, including spoliation (Appendix A2). Akerman, as a Pro Se litigant, contests decisions from lower courts and argues that the Court of Appeals overlooked pivotal legal and procedural matters.

In this section, we embark on a comprehensive examination of Appendices A1 and A2, two documents that form the crux of Martin Akerman's legal challenge. These documents, integral to his pursuit of justice, provide a detailed account of his struggles against dismissals, denials, and the perceived inadequacies of the appellate process. Spanning a range of issues and constitutional rights, these appendices underscore the formidable challenges faced by self-represented litigants like Akerman and the persistent quest for fair treatment within the legal system.



**Appendix A1:** The Order on Appeal: In Appendix A1, the consolidated appeals (Nos. 22-2066, 22-2147, 22-2154) detail Akerman's challenges against the denial of various requests, including for counsel and permission to proceed in forma pauperis, along with the dismissal of his complaints. The U.S. Court of Appeals affirmed these decisions, but Akerman contends that the panel failed to fully address critical aspects of his case. He argues that the panel's decision overlooked vital procedural rights and substantive issues, adversely affecting his pursuit of justice, especially as a self-represented litigant.



**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 22-2066**

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MARTIN AKERMAN,

Plaintiff - Appellant,

v.

LLOYD J. AUSTIN, III, Secretary of Department of Defense; CHRISTINE E. WORMUTH, Secretary of the Army; FRANK KENDALL, Secretary of the Air Force; GENERAL DANIEL R. HOKANSON, Chief, National Guard Bureau; DEPARTMENT OF DEFENSE; DEPARTMENT OF THE ARMY; DEPARTMENT OF THE AIR FORCE; DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY,

Defendants - Appellees.

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**No. 22-2147**

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MARTIN AKERMAN,

Plaintiff - Appellant,

v.

LLOYD J. AUSTIN, III, Secretary of Department of Defense; CHRISTINE E. WORMUTH, Secretary of the Army; FRANK KENDALL, Secretary of the Air Force; GENERAL DANIEL R. HOKANSON, Chief, National Guard Bureau; DEPARTMENT OF DEFENSE; DEPARTMENT OF THE ARMY; DEPARTMENT OF THE AIR FORCE; DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY,

Defendants - Appellees.



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**No. 22-2154**

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MARTIN AKERMAN,

Plaintiff - Appellant,

v.

GENERAL DANIEL R. HOKANSON, General, Chief, National Guard Bureau; CHRISTINE E. WORMUTH, Secretary of the Department of the Army; FRANK KENDALL, Secretary of the Department of the Air Force; LLOYD J. AUSTIN, III, Secretary of the Department of Defense; PENTAGON; ANDREWS AFB; REMOTE,

Defendants - Appellees.

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Appeals from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:22-cv-00696-LMB-WEF; 1:22-cv-01258-LMB-WEF)

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Submitted: July 28, 2023

Decided: August 29, 2023

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Before RUSHING and HEYTENS, Circuit Judges, and KEENAN, Senior Circuit Judge.

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No. 22-2066, affirmed in part and dismissed in part; Nos. 22-2147, 22-2154, affirmed by unpublished per curiam opinion.

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Martin Akerman, Appellant Pro Se. Dennis Carl Barghaan, Jr., Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.





**PER CURIAM:**

In the first of these consolidated appeals, No. 22-2066, Martin Akerman seeks to appeal the magistrate judge's order granting Defendants' motion for an extension of time to reply to Akerman's amended complaint, and the district court's orders denying his requests for counsel, to proceed in forma pauperis, and for various other forms of relief. Defendants have moved to dismiss this appeal for lack of jurisdiction because it is interlocutory. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291, and certain interlocutory and collateral orders, 28 U.S.C. § 1292; Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). At the time of Akerman's appeal, the district court had not yet entered final judgment. Therefore, other than the order denying him leave to proceed in forma pauperis, the orders Akerman seeks to appeal were not final orders and, we conclude, were not appealable interlocutory or collateral orders. We therefore grant Defendants' motion in part and dismiss Akerman's appeal of those orders in No. 22-2066.

The order denying Akerman leave to proceed in forma pauperis is, however, an appealable interlocutory order, *Roberts v. U.S. Dist. Ct. for the N. Dist. Of Cal.*, 339 U.S. 844, 845 (1950), and therefore we have jurisdiction to review that denial. On appeal, we confine our review to the issues raised in the informal brief. *See* 4th Cir. R. 34(b). Because Akerman's informal brief does not challenge the basis for the district court's disposition, he has forfeited appellate review of the court's order. *See Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014) ("The informal brief is an important document; under Fourth Circuit rules, our review is limited to issues preserved in that brief."). We therefore affirm



the district court's order denying Akerman leave to proceed in forma pauperis in No. 22-2066.

In the remaining two consolidated appeals, Nos. 22-2147 and 22-2154, Akerman appeals the district court's denial of relief on his amended complaint, and the court's dismissal of his complaint filed in a subsequent civil action the day after the dismissal of the prior complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's final orders in Nos. 22-2147 and 22-2154. We deny all of Akerman's pending motions in each of these consolidated appeals. 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.

*No. 22-2066, AFFIRMED IN PART,  
DISMISSED IN PART;  
Nos. 22-2147, 22-2154, AFFIRMED*



**Appendix A2:** Petition for Rehearing and Addressing Spoliation:

Appendix A2 presents Akerman's petition for rehearing and rehearing en banc. He asserts that the Appeals Court panel neglected to consider substantial issues, including spoliation, default judgment, joinder of parties, class certification, and the right to a jury trial. Akerman argues that these omissions represent a violation of his constitutional rights and a barrier to fair legal proceedings. He emphasizes the unique challenges faced by Pro Se litigants and calls for a comprehensive reevaluation of his case, highlighting the need for fair treatment and proper acknowledgment of Pro Se litigants' rights within the legal system.



**CASE NO. 22-2066(L),  
NO. 22-2147, AND NO. 22-2154**

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**IN THE**  
*United States Court of Appeals*  
**FOR THE FOURTH CIRCUIT**

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MARTIN AKERMAN, PRO SE,  
*Plaintiff - Appellant,*

V.

LLOYD J. AUSTIN, III, Secretary of Department of Defense;  
CHRISTINE E. WORMUTH, Secretary of the Army; FRANK  
KENDALL, Secretary of the Air Force; GENERAL DANIEL R.  
HOKANSON, Chief, National Guard Bureau; DEPARTMENT OF  
DEFENSE; DEPARTMENT OF THE ARMY; DEPARTMENT OF  
THE AIR FORCE; DEFENSE COUNTERINTELLIGENCE AND  
SECURITY AGENCY; MERIT SYSTEMS PROTECTION BOARD;  
OFFICE OF SPECIAL COUNSEL,  
*Defendants - Appellees*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
AT ALEXANDRIA

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**PETITION FOR REHEARING AND  
REHEARING EN BANC**

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Martin Akerman, Pro Se  
2001 North Adams Street, Unit 440, Arlington, VA 22201  
202-656-5601 | makerman.dod@gmail.com

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**Appellant, Pro Se**





**CASE NO. 22-2066(L),  
 NO. 22-2147, AND NO. 22-2154  
 (1:22-cv-00696-LMB-WEF) AND (1:22-cv-01258-LMB-WEF)**

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**TABLE OF CONTENTS**

	Page
<b>TABLE OF AUTHORITIES.....</b>	<b>iv</b>
<b>STATEMENT REQUIRED BY FRAP 35(b).....</b>	<b>1</b>
<b>BACKGROUND.....</b>	<b>3</b>
Need for Comprehensive Review and Consideration of Consolidated Cases in Light of Pro Se Litigant's Challenges.....	5
Streamlining the Appeal.....	6
Update on the Status of Urgent Mandamus and Injunction.....	6
<b>LIMITED SCOPE OF APPEALS REVIEWED BY THE PANEL.....</b>	<b>7</b>
1. The Magistrate judge's order granting Defendant's motion for an extension of time to reply to [Appellant's] amended complaint.....	7
2. The District Court's Orders denying [Appellant's] request[s] for counsel.....	8
3. The District Court's Orders denying [Appellant's] request[s] to proceed in forma pauperis.....	9
<b>MISSING APPEALS WITHIN THE APPEALS CONSIDERED.....</b>	<b>10</b>
1.1. Denial of Default Judgment (Document 13, page 6 of 38).....	10
1.2. Denial of Joinder of Parties and Class Certification (Document 13, page 9 of 38).....	12
1.3. Denial of 3-Judge Panel (Document 13, page 6 of 38).....	14
1.4. Denial of Right to Object to Magistrate Jurisdiction (Document 13, page 6 of 38).....	15



1.5. Denial of Urgent Mandamus  
and Injunction  
(Document 13, page 6 of 38)..... 16

1.6. Denial of Bifurcation  
of Urgent Claims  
(Document 13, page 5 of 38)..... 16

1.7. Itemized Res Ipsa Loquitur Proof  
of Likely Success on the Merits  
(Document 13, page 5 of 21)..... 17

1.8. Itemized Res Ipsa Loquitur Proof  
of Spoliation of Evidence:  
(Document 13, page 5 of 38)..... 18

2/3.1. Denial of Title VII Considerations:  
(Document 13, page 20 of 38)..... 19

**EQUITABLE TESTS NOT APPLIED.....19**

    Preliminary Injunction Balancing Test..... 20

    Collateral Order Doctrine Consideration..... 20

    Interference with Access to Justice.....21

**APPEALS OVERLOOKED IN THE ORDER..... 21**

    The [Appellant was deprived]  
    of a Fair and Impartial Trial  
    and [was] juridically disarmed,  
    in violation of [the Appellant’s] Constitutional Rights.....21

        4. Pro Se Considerations (page 7 of 38)..... 22

        5. Right to a Jury Trial (page 8 of 38).....22

        6. Right to Accurate Information for Trial (page 9 of 38)..... 22

        7. Right to Access to E-Filing (page 8 of 38)..... 22

        8. Right to a Public Hearing (page 11 of 38)..... 22

        9. Right to Reasonable Accommodations (page 11 of 38)..... 22

**APPELLEE RESPONSE..... 22**

    Update on Related Case in the U.S. Court of Appeals  
    for the Federal Circuit..... 23

**FINAL ORDERS NOT CONSIDERED..... 23**

    Merits of Both EDVA Cases..... 23

    MSPB Cases.....24



**CASE NO. 22-2066(L),  
 NO. 22-2147, AND NO. 22-2154  
 (1:22-cv-00696-LMB-WEF) AND (1:22-cv-01258-LMB-WEF)**

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**DISCUSSION..... 24**

A. The decision disregards procedural safeguards against cruel and unusual punishment, as codified in the U.S. Code..... 24

B. The decision disregards a litigant’s right to motion to amend a complaint, join parties, and seek class certification.....25

C. The decision disregards a litigant’s right to request a 3-judge panel and right to demand a jury trial.....26

D. The decision creates an intra-circuit split by implicitly overruling prior decisions of this Court that allow for a balancing test to define an appealable order....26

E. The decision creates an intra-circuit split by implicitly overruling prior decisions of this Court related to the treatment of pro se and in forma pauperis litigants.....27

F. The decision creates an intra-circuit split by implicitly overruling prior decisions of this Court related to Title VII..... 28

G. The decision is in conflict with the long-standing position of the Equal Employment Opportunity Commission..... 28

**CONCLUSION.....29**

**CERTIFICATE OF COMPLIANCE..... 30**



**TABLE OF AUTHORITIES**

	Page(s)
<b>Statutes</b>	
5 U.S. Code § 6329b.....	3, 24
5 U.S. Code § 7513.....	4, 24
28 U.S. Code § 351(a).....	6
28 U.S. Code § 1253.....	6, 14
28 U.S. Code § 1254(1).....	6
28 U.S. Code § 1254(2).....	6
28 U.S. Code § 1292(a)(1).....	6
28 U.S. Code § 1361.....	6, 24
28 U.S. Code § 2254.....	7
28 U.S. Code § 2284.....	14
42 U.S. Code § 1988.....	9, 17

**Rules**

FRAP 35(b).....	1
FRAP 35(b)(1)(A).....	1





**STATEMENT REQUIRED BY FRAP 35(b)**

This case is of exceptional importance for current and future federal sector employees (and jobseekers) bringing disparate impact discrimination claims under the Age Discrimination in Employment Act of 1967 (ADEA). FRAP35(b)(1)(B). This case is of exceptional importance for current and future federal sector employees (and jobseekers) bringing mixed cases from the Merit Systems Protection Board (MSPB). FRAP35(b)(1)(B). This case is of exceptional importance for current and future litigants seeking urgent remedies, unbridged access to the legal system, particularly for pro se parties facing a disability. FRAP35(b)(1)(B). This case is of significant importance to all current and future civil servants seeking shelter from retaliation after being regarded as a whistleblower. FRAP35(b)(1)(B). Rehearing en banc also is “necessary to secure and maintain the uniformity” of the law governing this Circuit, in that the the panel’s interpretation of the collateral order doctrine, the application of 4th Cir R. 34(b), and the decision to affirm Defendant’s motion to dismiss and deny all pending motions, ignores binding Supreme Court precedent and effectively overrules several precedents established in panel decisions of this Court. FRAP 35(b)(1)(A).



A panel of this Court (Circuit Judges Rushing and Heytens, and Senior Circuit Judge Keenan) decided that the magistrate judge's order, the denial of counsel, and decision to deny in forma pauperis are the only enumerated appeals before the Court. As a result, the panel further decided that all other appeals before the Court were not appealable and dispensed them without seeking clarification or granting oral argument.

Rehearing en banc is warranted because the panel decision:

(A) disregards procedural safeguards against cruel and unusual punishment, as codified in the U.S. Code;

(B) disregards a litigant's right to motion to amend a complaint, joinder parties, and seek class certification.

(C) disregards a litigant's right to request a 3-judge panel and right to demand a jury trial;

(D) creates an intra-circuit split by implicitly overruling prior decisions of this Circuit Court of Appeals that allow for a balancing test to define an appealable order;

(E) creates an intra-circuit split by implicitly overruling prior decisions of this Circuit Court related to the treatment of pro se and in forma pauperis litigants;



(F) creates an intra-circuit split by implicitly overruling prior decisions of this Circuit Court related to Title VII;

(G) it is in conflict with the long-standing position of the Equal Employment Opportunity Commission, the U.S. agency charged by statute with interpreting and enforcing the various federal anti-discrimination statutes.

The opportunity to positively impact the federal workforce and protect individuals that protect the United States from corruption establishes the exceptional importance of this case and reinforces the need for rehearing en banc to remand the case to a Grand Jury.

### **BACKGROUND**

The Appellant is not an attorney.

The Appellant is the tenured GS-15 Chief Data Officer of the National Guard Bureau, as appointed by the Chief of the National Guard Bureau on December 20, 2021.

The Appellant was escorted out of the office without any equipment, on February 14, 2022, under 5 U.S. Code § 6329b.

The Appellant was denied application for workers' compensation, Equal Employment Opportunity counseling, Intervention by the Office of Special Counsel, and Sick Leave.



The Appellant was placed on suspension, without adequate due process, on April 24, 2022, under 5 U.S. Code § 7513.

The suspension was affirmed by a Federalized General Officer of the Nevada Air National Guard, General Garduno.

The Appellant was asked to return any outstanding work products and identification cards on May 9, 2022.

The Appellant was made to accumulate debt for the payment of health insurance from April 24, 2022 until June 18, 2022.

One or more of the Appellees interfered with Appellant's right to Workmans' compensation, Medical Leave, and Unemployment Compensation, between April and June, 2022.

The Appellant was constructively discharged on June 18, 2022.

One or more of the Appellees interfered with Appellant's attempt to seek gainful employment with the Sovereign People of the Navajo Nation, between July and November, 2022.

The Appellant is a U.S. citizen with permanent residence in Virginia, disabled with Post Traumatic Stress Disorder.

One or more of the Appellees continue to interfere with Appellant's right to disability retirement, currently before the MSPB





in case DC-0752-23-0457-I-1, and before the U.S. Court of Appeals for the Federal Circuit in case 23-2046 (DC-0752-23-0457-S-1).

**Need for Comprehensive Review  
and Consideration of Consolidated Cases  
in Light of Pro Se Litigant's Challenges**

I extend my gratitude to the Appellate panel for their patience and diligent attention to this case. Navigating these proceedings as a pro se litigant has been challenging, and I am acutely aware of the potential complexities my status might introduce for the Court. I apologize for any unintended oversights or procedural missteps that may have arisen due to my inexperience.

After studying the ORDER closely, it appears that the primary focus might have been solely on my initial Informal Opening Brief for case 22-2066, as listed in Document 13 on the docket from October 26, 2022. (hereafter, "Operative Brief")

I wish to underscore the subsequent ORDER from January 17, 2023, which explicitly consolidated Case Nos. 22-2066, 22-2147, and No. 22-2154. Given this progression, it is my sincere hope that the panel will take into account all relevant documents and occurrences leading up to July 28, 2023 — a date mentioned as "submitted" on the



second page of the UNPUBLISHED OPINION, giving rise to this Petition for Rehearing and Rehearing *En Banc*.

My primary goal is to guarantee a holistic understanding and evaluation of my appeal. I am confident that, even within the possibly limited scope reviewed, the merits of the case strongly advocate for a remand, see Documents 11-1 and 14.

### **Streamlining the Appeal**

“Appeal Jurisdiction 1” in the operative brief covers the Pro Se Appellant’s request for urgent mandamus, under 28 U.S. Code § 1361, appealed under 28 U.S. Code § 1292(a)(1), citing irreparable harm.

“Appeal Jurisdiction 2” in the operative brief covers several appeals the Pro Se Appellant made to this Court under the Court’s authority to review an Eastern District of Virginia’s court proceeding, under the Collateral Order Doctrine, citing 28 U.S. Code § 1253, 28 U.S. Code § 1254(1), 28 U.S. Code § 1254(2), or 28 U.S. Code § 351(a).

### **Update on the Status of Urgent Mandamus and Injunction**

The request for urgent mandamus and injunction, which was filed in June 2021, has evolved and is now being pursued as a petition for writ of habeas corpus and replevin in the U.S. District Court for the



District of Columbia, under Case #: 1:23-cv-02575. This petition is categorized under the Nature of Suit as 530 Prisoner Petitions - Habeas Corpus - General and filed under the Cause 28:2254, Petition for Writ of Habeas Corpus (State), see Documents 18 and 39.

Although Habeas rules appear to allow facts to be reviewed in different forums simultaneously, Appellant wishes to reduce the burden on the Appellate courts by allowing these urgent claims to continue in the Habeas Courts of the District of Columbia and the U.S. Court of Appeals for the Federal Circuit, (Case 23-2046 (MSPB DC-0752-23-0457-S-1)) for urgent relief, leaving more patient remedies to be tried in the Fourth Circuit.

**LIMITED SCOPE OF APPEALS**

**REVIEWED BY THE PANEL**

- 1. The Magistrate judge's order  
granting Defendant's motion  
for an extension of time to reply  
to [Appellant's] amended complaint**

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Importance: The decision to grant extensions, while seemingly procedural, has the potential to affect the pace and nature of the



litigation. The fundamental principle behind such decisions should be the promotion of justice while balancing the rights and responsibilities of all parties involved.

**Specific Impact:** By granting the Defendant an extension, the court made a decision that has the potential to prolong the proceedings. While such decisions can be based on valid reasons, they can also be perceived as disadvantageous, especially if one party feels they are ready to proceed and that any delay might harm their interests.

## **2. The District Court's Orders**

**denying [Appellant's] request[s]**

**for counsel**

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**Importance:** Access to legal representation is a cornerstone of the U.S. justice system. Especially in complex matters, representation can significantly influence the outcome of the litigation. The right to request counsel, particularly for indigent litigants, is enshrined to ensure fairness and equity.

**Specific Impact:** By denying the Appellant's request for counsel, the court potentially placed the Appellant at a disadvantage, especially if they are not adept at representing themselves. This decision can





impact the quality of presentation of the Appellant's case, and by extension, the eventual outcome of the litigation

**Entitlement to Legal Representation:** In light of the substantial merit presented by this inconsistency, and given the pivotal role of 42 U.S. Code § 1988 in the vindication of civil rights, a grant of mandamus and injunction should logically be accompanied by an entitlement to legal representation. Such representation ensures that the rights and arguments central to the case are adequately and robustly presented, further enhancing the chances of a favorable outcome.

### **3. The District Court's Orders**

**denying [Appellant's] request[s]**

**to proceed in forma pauperis**

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**Importance:** The provision to proceed in forma pauperis (IFP) is meant to ensure that indigent litigants have access to the judicial process. Denying or granting such a request can have direct financial implications on a litigant and might influence their decision to continue litigation.



**Specific Impact:** If the Appellant's request to proceed IFP was denied without adequate justification, it might be seen as a barrier to justice, especially if the Appellant is genuinely unable to bear the costs of litigation. This decision could either deter the Appellant from pursuing the case further or impose a financial strain on them.

**MISSING APPEALS WITHIN**  
**THE APPEALS CONSIDERED**

While the panel credited several appeals in its order, there were notable omissions in their consideration. These missed appeals represent significant procedural stages and rights pivotal to the course and outcome of this case. They are as follows:

**1.1. Denial of Default Judgment**

**(Document 13, page 6 of 38)**

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**Importance:** A default judgment serves as a critical procedural safeguard in the legal system. When one party neglects or decides not to defend their stance, the opposing party, having diligently pursued their claims, is often granted a default judgment in their favor. This provision ensures the fair and just administration of cases and incentivizes timely and adequate participation in legal processes.



**Specific Impact:** In the present case, the panel overlooked or deliberately chose not to grant a default judgment, despite clear indications of one party's failure to defend or make an appearance. Such oversight not only neglects this foundational aspect of procedural law but also places undue disadvantage on the party seeking justice, especially when compounded by the concurrent withholding or spoliation of vital records, such as the administrative (MSPB) record on appeal.

**Consequences:** Ignoring the right to a default judgment undermines the integrity of the legal process. When parties perceive that their diligent efforts may not receive the procedural protections they are entitled to, it can diminish their trust in the judicial system. Furthermore, when one party can evade consequences despite non-participation or non-compliance, it emboldens future negligent behavior and may adversely influence the course of justice.



**1.2. Denial of Joinder of Parties  
and Class Certification**

**(Document 13, page 9 of 38)**

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**Importance:** Joinder of parties and class certification play a pivotal role in ensuring effective and comprehensive litigation. The ability to join parties can simplify complex legal proceedings by avoiding duplicative lawsuits and ensuring that related claims are adjudicated in a unified manner. Class certification, on the other hand, provides a means for similarly aggrieved parties to come together and seek collective redress, amplifying their voice and potentially leading to more equitable results.

**Specific Impact:** The court's decision not to grant the joinder of parties or allow for class certification has distinct ramifications for the appellant. By disallowing these procedural mechanisms, the court has effectively isolated the appellant's claims from potentially similar grievances, potentially reducing the strength and scope of the evidence presented. This limitation can diminish the chances of a favorable outcome and, more critically, prevent the appellant from





leveraging collective strength to challenge systemic issues or widespread injustices.

Consequences: When courts decline to recognize or grant joinders and class certifications without due consideration, they risk not only impeding the rights of the individual claimants but also potentially overlooking broader patterns of injustice or misconduct. This can perpetuate systemic issues and may discourage potential litigants from seeking redress, knowing they might face litigation alone rather than with the combined strength of similarly affected parties.

The ability to join parties and seek class certification is not merely procedural but can significantly influence the outcome and fairness of litigation.

By not recognizing the importance of such procedural rights, the court may have inadvertently undermined the appellant's ability to fully present their case and seek collective relief.



### **1.3. Denial of 3-Judge Panel**

**(Document 13, page 6 of 38)**

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Importance: 28 U.S. Code § 2284 establishes the criteria and procedure for convening a district court of three judges. This mechanism ensures an enhanced level of scrutiny, especially in matters of significant constitutional import, such as challenges to the constitutionality of apportionment. The provision underscores the importance of diverse judicial perspectives in determining matters of grave constitutional or legislative importance.

Specific Impact: In this instance, the appellant sought the convening of a 3-judge panel to guarantee a fair and impartial trial. By doing so, the appellant recognized the need for a multiplicity of judicial views in a case that might bear constitutional implications. The denial of this request not only limits the range of judicial interpretation available but also restricts the appellant's right to a more thorough review mechanism. Moreover, under 28 U.S. Code § 1253, the decision to grant or deny such a panel is not within the purview of a Magistrate judge. Hence, there is a procedural irregularity in the denial.



**Consequences:** Denying the request for a 3-judge panel without due consideration potentially undermines the foundational principles of the justice system, namely fairness, impartiality, and the rigorous examination of constitutional matters. It also raises concerns about whether the case received the level of judicial scrutiny it warranted, given its potential implications. Such denials can erode trust in the justice system, particularly when litigants believe their concerns are not adequately addressed by the designated judicial mechanism.

#### **1.4. Denial of Right to Object**

##### **to Magistrate Jurisdiction**

**(Document 13, page 6 of 38)**

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**Importance:** The U.S. legal system rests on principles of due process, which include having matters heard by an appropriate jurisdiction. The jurisdiction of a magistrate judge, as designed, is consensual and contingent on parties' agreement.

**Specific Impact:** The Appellant's right to object to a magistrate judge's jurisdiction is integral to ensuring a fair trial. By obstructing this right, particularly due to the Defendants' absence, the system inadvertently forced the Appellant into a trial before an unconsented



jurisdiction. This acts contrary to the foundational principles of due process and might compromise the fairness and impartiality of the proceedings.

### **1.5. Denial of Urgent Mandamus**

#### **and Injunction**

**(Document 13, page 6 of 38)**

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**Importance:** Mandamus and injunctions are crucial legal tools, especially when there's imminent or ongoing harm. The Collateral Order Doctrine provides a pathway for immediate appellate review of certain orders that otherwise might not be immediately appealable.

**Specific Impact:** In this context, the Appellant's urgency is evident. By not giving due consideration to the plea within the framework of the Collateral Order Doctrine, the court potentially exposed the Appellant to continuous harm. A prompt intervention, as sought by the Appellant, might have mitigated this harm.

### **1.6. Denial of Bifurcation**

#### **of Urgent Claims**

**(Document 13, page 5 of 38)**

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**Importance:** Bifurcation, as a procedural tool, facilitates the effective and efficient administration of justice. By segregating claims based on their nature and urgency, it ensures that time-sensitive matters receive immediate attention.

**Specific Impact:** The court's decision against bifurcation possibly resulted in avoidable delays, further exacerbating the Appellant's predicament. Given the urgent nature of some claims, this delay might have translated into compounded harm, rendering some damages irreparable.

**1.7. Itemized *Res Ipsa Loquitur* Proof**

**of Likely Success on the Merits**

**(Document 13, page 5 of 21)**

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**Importance:** 42 U.S. Code § 1988 is instrumental in ensuring the vindication and protection of civil rights within the United States. Ensuring that charges, accusations, and claims align with the precise wording of associated standards, rules, or regulations is central to the accurate enforcement and protection of these rights.

**Specific Impact:** The inconsistency between the job's stipulation to "obtain and maintain" and the charge's wording of "attain and/or



"maintain" is not a minor deviation. Instead, it signifies a potential misinterpretation or misrepresentation of the original requirement. Such discrepancies can severely impact the outcome of a case, particularly when the charge hinges on precise terminology. This inconsistency, when highlighted, bolsters the likelihood of success on the merits by showcasing potential procedural or substantive oversights.

**1.8. Itemized *Res Ipsa Loquitur* Proof**

**of Spoliation of Evidence:**

**(Document 13, page 5 of 38)**

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**Importance:** Preserving evidence is essential for ensuring a fair trial. By acknowledging spoliation, courts recognize the potential damage to the integrity of the litigation process when evidence goes missing or is intentionally destroyed.

**Specific Impact:** The court's seeming oversight of the Appellant's spoliation claims might have compromised the Appellant's ability to present a comprehensive case, thereby hindering the trial process and affecting its outcome.



**2/3.1. Denial of Title VII Considerations:****(Document 13, page 20 of 38)**

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Importance: Title VII provisions ensure protections against discrimination and promote equal access to the judicial system. When courts recognize these rights, they are upholding the principles of justice and equality that the Civil Rights Act of 1964 was founded upon.

Specific Impact: By not addressing the Appellant's Title VII considerations, the court might have failed to ensure that the Appellant has an equal and fair opportunity to seek justice, especially if they are disadvantaged economically. This could result in a perception of the justice system being inaccessible to some based on financial constraints.

**EQUITABLE TESTS NOT APPLIED**

Underpinning the United States judicial system is the principle of equity, wherein courts weigh competing interests and adjust the scales of justice to ensure fairness and prevent injustice. In the Appellant's case, it appears the panel did not apply several equitable considerations crucial to ensuring the fairness of the proceedings.



### **Preliminary Injunction Balancing Test**

For granting preliminary injunctions, courts usually engage in a four-factor balancing test: (1) likelihood of success on the merits; (2) irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in the favor of the movant; and (4) an injunction is in the public interest.

It seems the panel's order did not explicitly address these factors, potentially depriving the Appellant of a vital avenue to prevent ongoing harm. A thorough examination and application of this test, especially given the urgency and severity of Appellant's claims, would have been in keeping with established jurisprudence and ensured a more equitable process.

### **Collateral Order Doctrine Consideration**

The Collateral Order Doctrine serves as an exception to the final judgment rule, allowing for the appeal of certain orders that do not terminate the litigation. The criteria for this doctrine are: (1) the order must conclusively determine the disputed question; (2) resolve an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from a final judgment.





Given the gravity of the Appellant's claims and the potential irreversible implications if left unaddressed, a comprehensive consideration of the collateral order doctrine would have been apt.

### **Interference with Access to Justice**

By not addressing the numerous rights and procedural considerations outlined by the Appellant, the order runs the risk of setting a precedent that could deter individuals from seeking justice, particularly when faced with seemingly insurmountable procedural hurdles.

### **APPEALS OVERLOOKED IN THE ORDER**

**The [Appellant was deprived]**

**of a Fair and Impartial Trial**

**and [was] juridically disarmed,**

**in violation of [the Appellant's] Constitutional Rights.**

With respect to the panel's deliberations, there are several pivotal aspects delineated in the operative brief of October 26, 2023, (Document 13) that appear to not have been given due consideration by the panel:



- 4. Pro Se Considerations (page 7 of 38)**
- 5. Right to a Jury Trial (page 8 of 38)**
- 6. Right to Accurate Information for Trial (page 9 of 38)**
- 7. Right to Access to E-Filing (page 8 of 38)**
- 8. Right to a Public Hearing (page 11 of 38)**
- 9. Right to Reasonable Accommodations (page 11 of 38)**

### **APPELLEE RESPONSE**

Appellee's counsel is expected to respond to my allegation that they did not make an appearance on the trial docket, that the motion was missing a Roseboro Notice, and that I am entitled to a DEFAULT JUDGMENT.

In summarizing the appeal before the Court, Appellees' appellate counsel rightfully points out that the operative brief also includes the denial of access to electronic devices in the courthouse and video conferencing technology for all hearings, see Document 20, page 4 of 21.

The summary from the Appellees also rightfully points out that the Appellant sought and was denied relief in the lower court prior to filing appeal under the Collateral Order Doctrine, see Document 20, page 5 of 21.



**Update on Related Case in the U.S. Court of Appeals  
for the Federal Circuit**

The case, initially recognized as PPD-19, DC-3443-22-0639-I-1, whose exhaustion was communicated to the Fourth Circuit on February 27, 2023, has since progressed and was filed with the Federal Circuit Court under Case No. 0:23-ag-02216 on July 31, 2023. This sequence of events is noteworthy and bears implications for the current proceedings before this Court, see Document 37.

**FINAL ORDERS NOT CONSIDERED**

**Merits of Both EDVA Cases**

None of the grounds for appeal considered by the panel appear to account for the final ORDER of DISMISSAL WITH PREJUDICE of the trial court, rendered on November 3, 2022, and subsequent DISMISSAL WITH PREJUDICE in case 1:22-cv-01258 on November 7, 2022. The Panel's decision AFFIRMING the judgment, in appeal dockets 22-2147 and 22-2154, as briefed, is premature. On 18 November 2022, the Pro Se Appellant filed a Motion for Indigency on case 22-2154 related to the Operative Complaint and the actual Merits of the Case as afforded under 28 U.S.C. § 1631.



### **MSPB Cases**

Cases pending in MSPB, as a result of spoliation, are in want of jurisdiction under 28 U.S. Code § 1631:

- a. Mixed Case DC-0752-22-0376-S-1 / DC-0752-22-0376-I-1
- b. OSC Case DC-1221-22-0257-S-1 / DC-1221-22-0257-W-1
- c. OSC Case DC-1221-22-0459-W-1
- d. MSPB Case DC-3443-22-0296-I-1

### **DISCUSSION**

**A. The decision disregards procedural safeguards  
against cruel and unusual punishment,  
as codified in the U.S. Code**

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The U.S. Code, particularly 5 §§ 6329b and 7513, clearly dictate the prevention of cruel and unusual punishment. In the current case proceedings, certain actions, including abrupt removal from the office without equipment and denial of various legal and welfare entitlements, tantamount to punitive measures without a clear substantiated cause.

The protection of tenured employees mirrors the safeguarding of property rights, emblematic of the value we place on long-term





commitment and professional freedom. Earned through years of dedication and rigorous evaluation, tenure signifies trust, ensuring professionals can operate without fear of arbitrary termination, thereby promoting innovation, candid discourse, and excellence. In the context of the U.S. Code, particularly 5 §§ 6329b and 7513, abruptly removing tenured employees without just cause or stripping them of their rights is akin to cruel and unusual punishment. Such actions not only erode the sanctity of tenure but also undermine the principles of justice and due process essential to the fabric of our democratic society.

The lack of clear judicial scrutiny in this matter undercuts these vital protections.

**B. The decision disregards a litigant's right  
to motion to amend a complaint,  
join parties, and seek class certification**

---

As a foundational principle in the U.S. justice system, litigants possess the inherent right to refine, expand, or modify their complaints, particularly when new information or additional aggrieved/responsible parties become apparent.



The court's dismissal of such motions curtails the procedural rights of litigants, potentially depriving them of a full and fair hearing.

**C. The decision disregards a litigant's right**

**to request a 3-judge panel**

**and right to demand a jury trial**

---

The U.S. justice system assures litigants the right to a jury trial and, in specific cases, the evaluation by a 3-judge panel. This ensures diversified judicial perspectives and aligns with the Sixth Amendment's guarantee of an impartial jury.

The panel's oversight of these requests deprives the appellant of these constitutionally enshrined rights.

**D. The decision creates an intra-circuit split**

**by implicitly overruling prior decisions of this Court**

**that allow for a balancing test to define an appealable order**

---

Consistency in judicial decisions is paramount for trust and predictability within any legal system. Past decisions within this Circuit have employed a balancing test to determine the merit of an appealable order.



The current panel's departure from this established methodology creates inconsistency and undermines the circuit's jurisprudential cohesion.

**E. The decision creates an intra-circuit split**

**by implicitly overruling prior decisions of this Court**

**related to the treatment**

**of pro se and in forma pauperis litigants**

---

This Circuit, in past rulings, has acknowledged the challenges faced by pro se litigants, ensuring they are not disadvantaged by their self-represented status. Similarly, recognizing the financial constraints of in forma pauperis litigants, the Circuit has historically provided them particular considerations.

The current panel's apparent disregard for these considerations stands in contrast to these precedents.



**F. The decision creates an intra-circuit split  
by implicitly overruling prior decisions of this Court  
related to Title VII**

---

Title VII protections form the cornerstone of employment discrimination law. Past decisions within this Circuit have steadfastly upheld and interpreted these provisions to ensure workplace fairness.

The panel's current interpretation seems to diverge from established precedents, endangering the rights of many under the purview of Title VII.

**G. The decision is in conflict with the long-standing position  
of the Equal Employment Opportunity Commission**

---

The EEOC, with its longstanding authority and expertise, has consistently championed the rights of aggrieved employees, providing clear interpretations of anti-discrimination statutes.

The panel's decision, which appears to stand in contrast to the EEOC's established position, risks undermining the very protections the agency seeks to uphold.





**CONCLUSION**

For the aforementioned reasons and the substantial implications this case holds for the federal workforce, the rights of pro se litigants, and the integrity of the judicial system, Appellant Martin Akerman respectfully requests that this Honorable Court grant a rehearing en banc. Only through a comprehensive en banc review can the Court rectify the critical errors made in the panel decision and ensure that justice is served both for the Appellant and the countless individuals in the federal sector who may face similar circumstances in the future. The principles of justice, fairness, and the core values that underpin the United States judiciary system demand such a review. Appellant further requests that, upon granting rehearing, the case be remanded to a Grand Jury for further proceedings consistent with the protections and rights enshrined in our legal system.

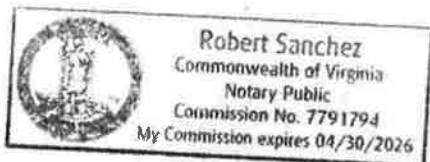
**The undersigned respectfully requests oral argument.**

County/City of Arlington  
 Commonwealth/State of Virginia  
 The foregoing instrument was acknowledged  
 before me this 30 day of Sept  
2023 by Martin Akerman  
 (name of person seeking acknowledgement)  
 Notary Public  
 My Commission Expires: 30 April 2026

Respectfully submitted,



Martin Akerman, Pro Se  
 2001 North Adams Street, Unit 440,  
 Arlington, VA 22201  
 202-656-5601  
 makerman.dod@gmail.com





**CERTIFICATE OF COMPLIANCE**

1. This petition complies with type-volume limitation of Fed. R.

App. P. 32(a)(7)(B) because:

The word count of this petition is 4,534.

2. This petition complies with the typeface requirements of Fed.

R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P.

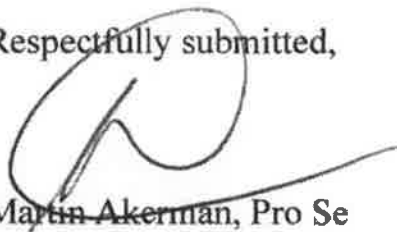
32(a)(6) because:

This petition has been prepared in a proportionally spaced

typeface using Google Docs, Times New Roman, 14 point.

September 30, 2023

Respectfully submitted,



Martin Akerman, Pro Se  
2001 North Adams Street, Unit 440,  
Arlington, VA 22201  
202-656-5601  
makerman.dod@gmail.com



> **Appendix B:** June 19, 2023 - Request for Correction of Records: Akerman's demand for the correction of records in the lower courts is crucial for the appeal process. This request underscores the challenges faced by pro se litigants in accessing and correcting legal documentation, a fundamental aspect of procedural justice and equity.

Appendix B contains documents that showcase Martin Akerman's ongoing legal efforts as a Pro Se litigant. This section includes his detailed memoranda and legal submissions to the United States Court of Appeals for the Fourth Circuit and the United States District Court for the Eastern District of Virginia. These documents reflect Akerman's challenges and demands for corrections and clarity in his case records.

Within this section, we embark on a critical exploration of Appendices B1 to B4, a sequence of documents that shed light on the formidable challenges Martin Akerman faces in his quest for legal accuracy and equitable representation. These documents, spanning from June to July 2023, provide a compelling narrative of his relentless pursuit of justice amid persistent inaccuracies and procedural hurdles.



the “routine use” exception to the Privacy Act, 5 U.S.C. § 552a(b)(3), and therefore cannot support a Privacy Act claim. “For a disclosure to qualify as a ‘routine use,’ it must be compatible with the purpose for which the agency collected the personal information, see 5 U.S.C. § 552a(a)(7), and be in accordance with a routine use the agency has published in the Federal Register, see 5 U.S.C. § 552a(e)(4)(D).” Fattahi v. ATF, 328 F.3d 176, 178 (4th Cir. 2003). As defendants correctly argue, disclosing records in response to an unemployment compensation agency’s request about the nature of plaintiff’s employment is a routine use that satisfies the publication requirement and is compatible with the purpose for which the information was collected. See [Dkt. No. 47] at 26-28; see also Doe v. U.S. Dep’t of Just., 660 F. Supp. 2d 31, 47-48 (D.D.C. 2009) (holding that the disclosure of termination letters to a state unemployment commission qualifies as a routine use under the Privacy Act).

Finally, plaintiff seeks to recover damages under the Privacy Act. To recover monetary damages under the Privacy Act, a plaintiff “must show that the violation was ‘intentional or willful.’” Hogan v. England, 159 F. App’x 534, 537 (4th Cir. 2005) (quoting 5 U.S.C. § 552a(g)(4)). Under the “intentional or willful” standard, “the violation must have been committed ‘without grounds for believing it to be lawful, or by flagrantly disregarding others’ rights under the Act.” Id. (quoting Scrimgeour v. Internal Revenue, 149 F.3d 318, 326 (4th Cir. 1998)). The Amended Complaint lacks any facts supporting the conclusory allegation that the Department of Defense’s disclosure was “willful.” Am. Compl. [Dkt. No. 6] at 8.

In sum, because the Amended Complaint fails to state a plausible claim for relief under the Privacy Act, Claims 9a and 9b will be dismissed.

#### IV. PLAINTIFF'S REQUESTS FOR LEAVE TO AMEND

Given that all of the claims in the Amended Complaint will be dismissed, the Court must consider whether to grant plaintiff leave to file yet another amended complaint. See [Dkt. Nos. 25, 26, 27, 36]. Although “leave to amend should generally be granted in light of ‘this Circuit’s policy to liberally allow amendment,’” a court “may deny leave to amend ‘when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile.’” Abdul-Mumit v. Alexandria Hyundai, LLC, 896 F.3d 278, 293 (4th Cir. 2018) (first quoting Galustian v. Peter, 591 F.3d 724, 729 (4th Cir. 2010), and then quoting Johnson v. Oroweat Foods Co., 785 F.2d 503, 509 (4th Cir. 1986)). Plaintiff’s excessive filings in this civil action, which include numerous repeated attempts to amend his complaint both before and after defendants filed their Motion to Dismiss, provide important context for determining whether dismissal should be granted with leave to amend.

After filing the operative Amended Complaint, on September 1, 2022, plaintiff sought leave to further amend the complaint based on anticipated future developments in his MSPB proceedings. [Dkt. No. 15]. Because the request was premature, the Court denied it without prejudice “to allow plaintiff to file a motion for leave to amend once he has received responses” from the MSPB and the Department of Defense. [Dkt. No. 17].

Despite that decision, plaintiff proceeded to file several duplicative motions for relief, requesting, for example, a court-appointed attorney, waiver of future court costs, and appointment of a special plurality of chancellors to adjudicate his civil action. See [Dkt. Nos. 18, 20, 21, 37, 38, 41]. Plaintiff also objected multiple times to defendants’ request for an extension of time to file a responsive pleading and the Court’s decision granting that request. Because all of plaintiff’s requests for relief were meritless and duplicative, each was denied, and plaintiff



was warned against filing frivolous, repetitive motions for relief. See [Dkt. Nos. 28, 39, 40, 42]. Plaintiff has appealed several of these interlocutory orders to the Fourth Circuit.

In the meantime, plaintiff also filed three successive motions for leave to file an amended complaint dated October 1, October 3, and October 8, 2022, all of which remain pending before the Court [Dkt. Nos. 25, 26, 36], and a Motion for Leave to Update Initial Cover Sheet, Update Case Name [Dkt. No. 27]. The proposed amended complaints do not allege any additional facts that support the eighteen claims presented in the operative Amended Complaint and are even more barren of factual allegations. In fact, it appears that plaintiff seeks to amend his complaint to add approximately 90 new claims to this civil action. As defendants point out, none of these claims contain any factual allegations and are simply pleaded only as phrases or citations to statutes, such as “Administrative Procedures Act,” “FOIA and HIPPA [sic].” [Dkt. No. 36-1] at 4. Around 80 of the claims are WPA claims stemming from an Individual Right of Action appeal challenging a litany of workplace interactions and decisions during plaintiff’s employment within the Department of Defense, such as that he was “handed . . . a letter of reprimand,” “called . . . to have a verbal counseling session,” experienced a “significant change in duties,” and witnessed “harmful procedural error” and “conspiracy to commit fraud.” Id. at 5-13.

Plaintiff’s long list of vague employment actions and amorphous violations of the law do not plead any rational, plausible claims for relief. See Bing v. Brivo Sys., LLC, 959 F.3d 605, 618 (4th Cir. 2020) (observing that “liberal construction” of a pro se pleading “does not mean overlooking the pleading requirements under the Federal Rules of Civil Procedure”). “District judges are not mind readers,” and “[e]ven in the case of pro se litigants, they cannot be expected to construct full blown claims from sentence fragments[.]” Beaudett v. City of Hampton, 775

F.2d 1274, 1278 (4th Cir. 1985); cf. Folkes v. Nelsen, 34 F.4th 258, 272 (4th Cir. 2022) (holding that the district court committed reversible error in “look[ing] beyond the claim presented” in a pro se habeas petition).<sup>3</sup> As further indication of the fanciful nature of plaintiff’s proposed amendments, he has added extravagant and nonsensical remedies, including a “name clearing hearing,” federal employee health benefits “for life for plaintiff and family,” and punitive damages for “human rights before robots: the total estimated cost of 2 loyal wingmen (\$20 million each) and 2 autonomous tanks (\$6 million each) for a total of \$52 million.” [Dkt. No. 36-1] at 15. For these reasons, plaintiff’s pending motions for leave to amend [Dkt. Nos. 25, 26, 27, 36] will be denied.

On October 17, 2022, plaintiff demanded that the Clerk’s office file an amended complaint, even though the Court had not granted him leave to amend. [Dkt. No. 45]. This proposed amended complaint suffers from the same deficiencies as his previous attempts to amend and fails to allege any facts in support of his claims. Moreover, in this version, plaintiff’s claims challenging his indefinite suspension and violations of the Privacy Act have ballooned without any factual support, becoming claims for “false imprisonment,” “cruel and unusual punishment,” and “depriv[ation] . . . of his property right to his tenured position without [d]ue [p]rocess.” Id. at 4-5. The document then rambles on about the Second Amendment, “information as a weapon,” and “the militia’s first cousin, the jury.” Id. at 10-16. No plausible claim for relief can be discerned in this filing. Further, even though plaintiff has already been warned twice that filing “unnecessary, frivolous, and repetitive motions” for relief may result in sanctions, including dismissal of his complaint, [Dkt. Nos. 40, 42], this proposed amended

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<sup>3</sup> As defendants point out, even if the Court could discern the nature of plaintiff’s new claims, they would likely be futile and would not survive a motion to dismiss. [Dkt. No. 57] at 10-14.

complaint includes duplicative requests for relief that have already been denied. See [Dkt. No. 45] at 18-19 (requesting relief denied in prior orders [Dkt. Nos. 28, 39, 40, 42]).

Since October 19, 2022, plaintiff has filed 31 additional pleadings, titled “Roseboro Amended Complaints” and “Roseboro Notices,” with accompanying “Roseboro Briefs” that appear to be intended to serve as “clarifying briefs . . . as they relate to the scope of the Amended Complaint. [Dkt. No. 55]; see [Dkt. Nos. 58-85, 87-89]. Plaintiff’s most recent attempt to amend his complaint has inundated the Court with an indecipherable stack of documents consisting of 1,472 pages, which appear to include the entirety of the dockets, correspondence, and other records from his MSPB proceedings.<sup>4</sup>

Even though plaintiff is proceeding pro se, it is not this Court’s duty to sift through the mass of his “Roseboro” filings to determine whether he has alleged a cognizable claim for relief or whether he has cured the deficiencies that defendants’ Motion to Dismiss identified in the Amended Complaint. See Carmel v. CSH & C, 32 F. Supp. 3d 434, 436 (W.D.N.Y. 2014) (“[A] pro se litigant cannot simply dump a stack of exhibits on the court and expect the court to sift through them to determine if some nugget is buried somewhere in that mountain of papers, waiting to be unearthed and refined into a cognizable claim.”). Moreover, plaintiff’s excessive filing in this civil action has abused the time and resources of this Court as well as the Clerk’s office, which has had to expend several hours scanning and docketing plaintiff’s filings.<sup>5</sup>

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<sup>4</sup> For instance, plaintiff’s “Roseboro Responsive Material Accompanying Roseboro Amended Complaint and Roseboro Briefs 1-7” includes 311 pages of documents from several of his pending administrative proceedings before the MSPB, among other materials. [Dkt. No. 59]. Plaintiff’s “Omnibus to Simplify Pleadings and Hearings” contains 207 pages of documents from another MSPB proceeding, along with other emails and documentation. [Dkt. No. 73].


<sup>5</sup> While this Memorandum Opinion was being finalized, the Court received seven more pleadings from plaintiff as recently as November 2, 2022, which is further evidence of his excessive filing in this civil action. See [Dkt. Nos. 90-96]. These filings include additional attempts to amend

## V. CONCLUSION

For the foregoing reasons, defendants Motion to Dismiss [Dkt. No. 46] will be GRANTED under Fed. R. Civ. P. 12(b)(1) as to the claims for unlawful indefinite suspension and constructive discharge (Issue 1 and Claims 2b, 2c, 4b, 4c, 5a, and 7a) and the WPA claims for failure to repay his student loans (Claims 2a and 4a), hostile work environment (Claims 3a and 3b), and systemic discrimination (Claim 3c), and under Fed. R. Civ. P. 12(b)(6) as to the student loan repayment claim under the ADEA (Claim 5b), the hostile work environment claims under the ADEA, Title VII, and the Rehabilitation Act (Claims 6a and 8a), the systemic discrimination claims under the ADEA and the Rehabilitation Act (Claims 6b and 8b), and the Privacy Act claims (Claims 9a and 9b); plaintiff's motions [Dkt. Nos. 25, 26, 27, 36, 55, 91] will be DENIED; and this civil action will be dismissed with prejudice by an accompanying order.<sup>6</sup>

Entered this 3<sup>rd</sup> day of November, 2022.

Alexandria, Virginia

  
1s/  
Leonie M. Brinkema  
United States District Judge

his complaint by way of a "Roseboro Baseline Amended Complaint" [Dkt. No. 90] and "Roseboro Objection[s]" [Dkt. Nos. 92-96].

Plaintiff also filed another meritless motion, entitled "Closing Roseboro Motion: Motion to Reconcile Civil Docket and Grant Judgment by Default" ("Motion for Default Judgment"), in which he repeats his complaint that defendants did not timely respond to the Amended Complaint because they filed their Motion to Dismiss after the Clerk's office was closed, and seeks a default judgment based on defendants' alleged failure to timely respond. [Dkt. No. 91]. In addition, plaintiff requests "\$150,000 interim relief to allow [him] to retain counsel" and "the appointment of a [g]rand [j]ury" to investigate his case. *Id.* As explained above, defendants' Motion to Dismiss was timely filed and therefore they are not in default. As there is no basis for any of the frivolous relief requested in the Motion for Default Judgment [Dkt. No. 91], the motion will be denied.

<sup>6</sup> Normally, a dismissal based on a finding under Fed. R. Civ. P. 12(b)(1) that the Court lacks subject matter jurisdiction would be without prejudice because the Court lacks the authority to adjudicate that over which it has no jurisdiction. In this case, plaintiff's track record of not respecting the Court's decisions and filing repetitive, abusive pleadings justifies a dismissal of this entire action with prejudice, to make clear that he cannot refile any of the claims discussed in this opinion.

**Appendix E2:** November 4, 2022 - Appeal Transmittal Sheet:

Document E2, an appeal transmittal sheet filed on November 4, 2022, marks the formal notification of an appeal to the Fourth Circuit Court of Appeals. This transmittal signifies the appeal's filing in response to the EDVA's dismissal of Akerman's case, highlighting the continuation of his legal challenge.



**APPEAL TRANSMITTAL SHEET (non-death penalty)**

<b>Transmittal to 4CCA of notice of appeal filed: <u>11/04/22</u></b>  <input type="checkbox"/> First NOA in Case <input checked="" type="checkbox"/> Subsequent NOA-same party <input type="checkbox"/> Subsequent NOA-new party <input type="checkbox"/> Subsequent NOA-cross appeal <input type="checkbox"/> Paper ROA <input type="checkbox"/> Paper Supp. Vols: _____ Other: _____	<b>District:</b> EDVA  <b>Division:</b> Alexandria  <b>Caption:</b>	<b>District Case No.:</b> 1:22-cv-696  <b>4CCA No(s). for any prior NOA:</b> 22-2066  <b>4CCA Case Manager:</b> Cathy Poulsen
<b>Exceptional Circumstances:</b> <input type="checkbox"/> Bail <input type="checkbox"/> Interlocutory <input type="checkbox"/> Recalcitrant Witness <input type="checkbox"/> Other _____		
<b>Confinement-Criminal Case:</b> <input type="checkbox"/> Death row-use DP Transmittal <input type="checkbox"/> Recalcitrant witness <input type="checkbox"/> In custody <input type="checkbox"/> On bond <input type="checkbox"/> On probation <b>Defendant Address-Criminal Case:</b>	<b>Fee Status:</b> <input type="checkbox"/> No fee required (USA appeal) <input checked="" type="checkbox"/> Appeal fees paid in full <input type="checkbox"/> Fee not paid  <b>Criminal Cases:</b> <input type="checkbox"/> District court granted & did not revoke CJA status (continues on appeal) <input type="checkbox"/> District court granted CJA & later revoked status (must pay fee or apply to 4CCA) <input type="checkbox"/> District court never granted CJA status (must pay fee or apply to 4CCA)  <b>Civil, Habeas &amp; 2255 Cases:</b> <input type="checkbox"/> Court granted & did not revoke IFP status (continues on appeal) <input type="checkbox"/> Court granted IFP & later revoked status (must pay fee or apply to 4CCA) <input checked="" type="checkbox"/> Court never granted IFP status (must pay fee or apply to 4CCA)	
<b>District Judge:</b>  Leonie M. Brinkema	<b>PLRA Cases:</b> <input type="checkbox"/> Proceeded PLRA in district court, no 3-strike determination (must apply to 4CCA) <input type="checkbox"/> Proceeded PLRA in district court, determined to be 3-striker (must apply to 4CCA)	
<b>Court Reporter (list all):</b>   Coordinator: Judith Lanham	<b>Sealed Status (check all that apply):</b> <input checked="" type="checkbox"/> Portions of record under seal <input type="checkbox"/> Entire record under seal <input type="checkbox"/> Party names under seal <input type="checkbox"/> Docket under seal	
<b>Record Status for Pro Se Appeals (check any applicable):</b> <input checked="" type="checkbox"/> Assembled electronic record available upon request <input type="checkbox"/> Additional sealed record available upon request <input type="checkbox"/> Paper record or supplement available upon request <input checked="" type="checkbox"/> No in-court hearings held <input type="checkbox"/> In-court hearings held – all transcript on file <input type="checkbox"/> In-court hearings held – all transcript not on file <input type="checkbox"/> Other: _____	<b>Record Status for Counseled Appeals (check any applicable):</b> <input type="checkbox"/> Assembled electronic record available upon request <input type="checkbox"/> Additional sealed record available upon request <input type="checkbox"/> Paper record or supplement available upon request <input type="checkbox"/> No in-court hearings held <input type="checkbox"/> In-court hearings held – all transcript on file <input type="checkbox"/> In-court hearings held – all transcript not on file <input type="checkbox"/> Other: _____	

Deputy Clerk: Niambi Neblett    Phone: 703-299-2174    Date: 11/04/22





**Appendix E3:** Appeal Opening in the Fourth Circuit: Document E3, filed on November 8, 2022, opens Akerman's case on appeal in the Fourth Circuit. This document signifies the appellate court's acknowledgement of Akerman's appeal against the EDVA's decision.



FILED: November 8, 2022

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 22-2147  
(1:22-cv-00696-LMB-WEF)

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MARTIN AKERMAN

Plaintiff - Appellant

v.

LLOYD J. AUSTIN, III, Secretary of Department of Defense; CHRISTINE E. WORMUTH, Secretary of the Army; FRANK KENDALL, Secretary of the Air Force; GENERAL DANIEL R. HOKANSON, Chief, National Guard Bureau; DEPARTMENT OF DEFENSE; DEPARTMENT OF THE ARMY; DEPARTMENT OF THE AIR FORCE; DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY

Defendants - Appellees

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This case has been opened on appeal.

Originating Court	United States District Court for the Eastern District of Virginia at Alexandria
Originating Case Number	1:22-cv-00696-LMB-WEF
Date notice of appeal filed in originating court:	11/04/2022 11/07/2022
Appellant(s)	Martin Akerman
Appellate Case Number	22-2147
Case Manager	Cathy Poulsen 804-916-2702



**Appendix E4:** November 7, 2022 - Order Dismissing Duplicative

Case: Document E4, dated November 7, 2022, includes an order from the EDVA dismissing a new complaint filed by Akerman as duplicative and frivolous. This order reflects the court's stance on the redundancy of Akerman's claims, which were similar to those dismissed in a previous case.



IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

MARTIN AKERMAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	1:22-cv-1258 (LMB/WEF)
DANIEL R. HOKANSON, GENERAL AND	)	
CHIEF OF THE NATIONAL GUARD	)	
BUREAU, <u>et al.</u> ,	)	
	)	
Defendants.	)	

ORDER

On Friday, November 4, 2022, pro se plaintiff Martin Akerman (“plaintiff” or “Akerman”) presented a new Complaint to the Clerk’s office which essentially repeats employment-related claims that were dismissed with prejudice on November 3, 2022, in Akerman v. Austin, No. 1:22-cv-696, and for which plaintiff has already noticed an appeal. [Dkt. No. 1]. The Complaint and its attachments indicate that they repeat issues raised in the dismissed civil action by stating that plaintiff “[r]efiled claims in Document 90 from case 1:22-cv-00696” and requests “[n]ecessary [f]iles from case 1:22-cv-696” for this civil action. [Dkt. Nos. 1-4, 1-5]. The only material differences between the new Complaint and the dismissed complaint are that plaintiff has dropped the Privacy Act claims and is asserting claims against only the four defendant officers named in the dismissed complaint and not the four agency defendants.<sup>1</sup> Because the Complaint asserts claims that have been dismissed with prejudice, it will be dismissed as duplicative and frivolous.

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<sup>1</sup> Although plaintiff appears to assert two new claims for violations of the Administrative Leave Act and “at-will employment doctrine (Virginia)”, the Complaint does not contain any factual allegations in support of these claims. [Dkt. No. 1] at 3. The Complaint states “see attached” for

Mr. Akerman has also tendered a money order for \$200.00 and a Copy Request Form, in which he requests that the Clerk make copies of approximately 1,000 pages of documents filed in over two dozen docket entries in Akerman v. Austin, No. 1:22-cv-696, and then “add . . . [the] files in new case docket.” Copy Request Form; see [Dkt. No. 1-5] (listing files requested from his prior civil action). This is an unreasonable request and a waste of both Clerk’s office resources and Mr. Akerman’s money, because plaintiff wants a clerk to copy documents and refile them in a civil action that is frivolous and duplicative. For these reasons, it is hereby

ORDERED that this civil action be and is DISMISSED WITH PREJUDICE as duplicative of Akerman v. Austin, No. 1:22-cv-696; and it is further

ORDERED that the Clerk not copy the requested documents and return to Mr. Akerman the \$200.00 copy request fee. For the purpose of maintaining a record, plaintiff’s Copy Request Form will be retained by the Clerk’s office; and it is further

ORDERED that Mr. Akerman is prohibited from filing any new complaint that raises the same issues that were addressed and dismissed in the memorandum opinion issued on November 3, 2022, in Akerman v. Austin, No. 1:22-cv-696 [Dkt. No. 97].

To appeal this decision, plaintiff must file a written notice of appeal with the Clerk of the Court within sixty (60) days of the date of entry of this Order. A notice of appeal is a short

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the facts of his case, id. at 4-5, and those attachments reference documents filed in Akerman v. Austin, No. 1:22-cv-696. See [Dkt. No. 1-5] (referencing previously filed “Roseboro briefs”). The Court declines to search for any factual allegations in the over 1,000 pages of documents filed in his prior civil action, finding it an improper request. See Carmel v. CSH & C, 32 F. Supp. 3d 434, 436 (W.D.N.Y. 2014) (“[A] pro se litigant cannot simply dump a stack of exhibits on the court and expect the court to sift through them to determine if some nugget is buried somewhere in that mountain of papers, waiting to be unearthed and refined into a cognizable claim.”); Bing v. Brivo Sys., LLC, 959 F.3d 605, 618 (4th Cir. 2020) (observing that “liberal construction” of a pro se pleading “does not mean overlooking the pleading requirements under the Federal Rules of Civil Procedure”).



statement indicating a desire to appeal, including the date of the order plaintiff wants to appeal. Plaintiff need not explain the grounds for appeal until so directed by the court of appeals. Failure to file a timely notice of appeal waives plaintiff's right to appeal this decision.

The Clerk is directed to close this civil action, to not accept any other filings in this civil action other than a notice of appeal, and to forward copies of this Order to Martin Akerman, pro se, and to Assistant United States Attorney Dennis C. Barghaan, Jr.

Entered this 7<sup>th</sup> day of November, 2022.

Alexandria, Virginia

*/s/ LMB*  
\_\_\_\_\_  
Leonie M. Brinkema  
United States District Judge



**Appendix E5:** November 7, 2022 - Appeal Transmittal for Duplicative Case: Document E5, an appeal transmittal sheet filed on November 7, 2022, indicates Akerman's appeal of the EDVA's decision to dismiss his duplicative case. This document marks another step in Akerman's pursuit of appellate relief.



**APPEAL TRANSMITTAL SHEET (non-death penalty)**

<b>Transmittal to 4CCA of notice of appeal filed:</b> <u>11/07/22</u>  <input checked="" type="checkbox"/> First NOA in Case <input type="checkbox"/> Subsequent NOA-same party <input type="checkbox"/> Subsequent NOA-new party <input type="checkbox"/> Subsequent NOA-cross appeal <input type="checkbox"/> Paper ROA <input type="checkbox"/> Paper Supp. Vols: _____ Other: _____	<b>District:</b> EDVA  <b>Division:</b> Alexandria  <b>Caption:</b> Akerman v. Hokanson et al	<b>District Case No.:</b> 1:22-cv-01258-LMB-WEF  <b>4CCA No(s). for any prior NOA:</b>  <b>4CCA Case Manager:</b>
<b>Exceptional Circumstances:</b> <input type="checkbox"/> Bail <input type="checkbox"/> Interlocutory <input type="checkbox"/> Recalcitrant Witness <input type="checkbox"/> Other _____		
<b>Confinement-Criminal Case:</b> <input type="checkbox"/> Death row-use DP Transmittal <input type="checkbox"/> Recalcitrant witness <input type="checkbox"/> In custody <input type="checkbox"/> On bond <input type="checkbox"/> On probation <b>Defendant Address-Criminal Case:</b>	<b>Fee Status:</b> <input type="checkbox"/> No fee required (USA appeal) <input checked="" type="checkbox"/> Appeal fees paid in full <input type="checkbox"/> Fee not paid  <b>Criminal Cases:</b> <input type="checkbox"/> District court granted & did not revoke CJA status (continues on appeal) <input type="checkbox"/> District court granted CJA & later revoked status (must pay fee or apply to 4CCA) <input type="checkbox"/> District court never granted CJA status (must pay fee or apply to 4CCA)  <b>Civil, Habeas &amp; 2255 Cases:</b> <input type="checkbox"/> Court granted & did not revoke IFP status (continues on appeal) <input type="checkbox"/> Court granted IFP & later revoked status (must pay fee or apply to 4CCA) <input checked="" type="checkbox"/> Court never granted IFP status (must pay fee or apply to 4CCA)	
<b>District Judge:</b>  William E. Fitzpatrick	<b>PLRA Cases:</b> <input type="checkbox"/> Proceeded PLRA in district court, no 3-strike determination (must apply to 4CCA) <input type="checkbox"/> Proceeded PLRA in district court, determined to be 3-striker (must apply to 4CCA)	
<b>Court Reporter (list all):</b>   Coordinator: Judith Lanham	<b>Sealed Status (check all that apply):</b> <input type="checkbox"/> Portions of record under seal <input type="checkbox"/> Entire record under seal <input type="checkbox"/> Party names under seal <input type="checkbox"/> Docket under seal	
<b>Record Status for Pro Se Appeals (check any applicable):</b> <input type="checkbox"/> Assembled electronic record available upon request <input type="checkbox"/> Additional sealed record available upon request <input type="checkbox"/> Paper record or supplement available upon request <input type="checkbox"/> No in-court hearings held <input type="checkbox"/> In-court hearings held – all transcript on file <input type="checkbox"/> In-court hearings held – all transcript not on file <input type="checkbox"/> Other: _____	<b>Record Status for Counseled Appeals (check any applicable):</b> <input checked="" type="checkbox"/> Assembled electronic record available upon request <input type="checkbox"/> Additional sealed record available upon request <input type="checkbox"/> Paper record or supplement available upon request <input checked="" type="checkbox"/> No in-court hearings held <input type="checkbox"/> In-court hearings held – all transcript on file <input type="checkbox"/> In-court hearings held – all transcript not on file <input type="checkbox"/> Other: _____	

Deputy Clerk: Nery Lopez    Phone: (703)299-2101    Date: 11/09/22



**Appendix E6:** Appeal Opening for Duplicative Case in the Fourth Circuit: Document E6, filed on November 10, 2022, opens the appeal in the Fourth Circuit for Akerman's duplicative case. This filing demonstrates Akerman's continued efforts to challenge the EDVA's rulings at the appellate level.





FILED: November 10, 2022

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 22-2154  
(1:22-cv-01258-LMB-WEF)

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MARTIN AKERMAN

Plaintiff - Appellant

v.

GENERAL DANIEL R. HOKANSON, General, Chief, National Guard Bureau; CHRISTINE E. WORMUTH, Secretary of the Department of the Army; FRANK KENDALL, Secretary of the Department of the Air Force; LLOYD J. AUSTIN, III, Secretary of the Department of Defense; PENTAGON; ANDREWS AFB; REMOTE

Defendants - Appellees

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This case has been opened on appeal.

Originating Court	United States District Court for the Eastern District of Virginia at Alexandria
Originating Case Number	1:22-cv-01258-LMB-WEF
Date notice of appeal filed in originating court:	11/07/2022
Appellant(s)	Martin Akerman
Appellate Case Number	22-2154
Case Manager	Cathy Poulsen 804-916-2702

