

No. 23A _____

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

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

ON PETITION FOR WRIT OF CERTIORARI
TO THE U. S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPLICATION FILED FOR MORE TIME
TO FILE A PETITION FOR WRIT OF CERTIORARI
TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE
OF THE SUPREME COURT OF THE UNITED STATES,
AS CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT

MARTIN AKERMAN, PRO SE
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BOTTOM LINE UP FRONT (BLUF)

This application, in accordance with Supreme Court Rule 13.5, for a 60-day extension to file a petition for writ of certiorari is based on the jurisdiction of the Supreme Court under 28 U.S.C. § 1254(1), addressing the judgment issued by the United States Court of Appeals for the Fourth Circuit. The judgment in question was rendered on August 29, 2023, and the subsequent denial of rehearing was dated October 31, 2023. This application includes critical documents: the opinion and the order denying rehearing from the Fourth Circuit, which are attached as Appendix A and Appendix B, respectively. The need for an extension is grounded in the case's multifaceted nature, which involves multiple appeals, the significant role of an ongoing Freedom of Information Act case in the District of Columbia, the complexities arising from recent amendments to whistleblower protections, attached as Appendix C, and the unique challenges faced by the applicant, Martin Akerman. Mr. Akerman, who is representing himself pro se, suffering with Post-Traumatic Stress Disorder (PTSD), and in forma pauperis, requires additional time to adequately prepare and present his case. In compliance with procedural requirements, this application has been duly filed with the Clerk well in advance of the initial petition deadline of January 29, 2024.

PARTIES TO THE PROCEEDING

Applicant (appellant in the court of appeals) Martin Akerman, the tenured Chief Data Officer of the National Guard Bureau of the United States of America, appearing pro se, resides in the Commonwealth of Virginia, under the jurisdiction of the circuit allotment of Chief Justice Roberts.

Respondents LLOYD J. AUSTIN, III, Secretary of Department of Defense, and DEPARTMENT OF DEFENSE, are headquartered in the Pentagon, in the Commonwealth of Virginia, under the jurisdiction of the circuit allotment of Chief Justice Roberts.

Respondents CHRISTINE E. WORMUTH, Secretary of the Army, and DEPARTMENT OF THE ARMY, are headquartered in the Pentagon, in the Commonwealth of Virginia, under the jurisdiction of the circuit allotment of Chief Justice Roberts.

Respondents FRANK KENDALL, Secretary of the Air Force, and DEPARTMENT OF THE AIR FORCE, are headquartered in the Pentagon, in the Commonwealth of Virginia, under the jurisdiction of the circuit allotment of Chief Justice Roberts.

Respondent GENERAL DANIEL R. HOKANSON, Chief, on behalf of the National Guard Bureau, is headquartered in the Pentagon, in the Commonwealth of Virginia, under the jurisdiction of the circuit allotment of Chief Justice Roberts.

PARTIES TO THE PROCEEDING (CONTINUED)

Respondent DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY, is headquartered in Ft. Meade, Maryland, under the jurisdiction of the circuit allotment of Chief Justice Roberts.

Named respondent officers of the States of Arkansas, Arizona, and Nevada (\$ 1983 claim):

- Arkansas Army National Guard COL Brett Bassler is under the jurisdiction of the circuit allotment of Justice Kavanaugh.
- Arizona Army National Guard BRIGADIER GENERAL Joseph Baldwin is under the jurisdiction of the circuit allotment of Justice Kagan.
- Nevada Air National Guard Brig Gen Caesar Garduno is under the jurisdiction of the circuit allotment of Justice Kagan.

RELATED COLLATERAL PROCEEDINGS IN THIS COURT

- In the Supreme Court of the United States: a motion to proceed under USERRA, without payment of costs and on the papers, is scheduled for conference on December 8, 2023, under Docket No. 23M44, linked to application 23A355, from the Supreme Court of Nevada, under the jurisdiction of the circuit allotment of Justice Kagan;

OTHER RELATED COLLATERAL PROCEEDINGS

- In the United States District Court for the District of Columbia: a related Freedom of Information Act Case, No. 23-cv-2574, is currently being heard in the District Court for the District of Columbia.
- In the Supreme Court of Virginia: a petition for rehearing en banc, under Case No. 230670. This case addresses a Breach of Legal Insurance, a matter connected to the pro se status of the applicant in all proceedings. It consolidates related cases from the Arlington Circuit Court, the Virginia Court of Appeals, and the State Corporation Commission, in the Commonwealth of Virginia.
- In the United States Court of Appeals for the Federal Circuit, Case No. 23-2216: review of MSPB case DC-3443-22-0639-I-1, as exhausted with OSC, and the Inspectors General of the Department of Defense and the Intelligence Community, focusing on the application of Department of the Navy v. Egan, 484 U.S. 518 (1988), in light of new law, 50 U.S. Code § 3341(j)(8), of March 18, 2022, as it applies to whistleblower retaliation affecting security clearances, under 5 U.S.C. §§ 7513 and 2302(b)(8), Attached.

Description of Attachment and its Importance

The attached document, a section from PUBLIC LAW 117-103, focuses on amended whistleblower protections within the Intelligence Community as of March 15, 2022. This legislation significantly enhances protections for whistleblowers, particularly in intelligence and national security roles, by clarifying the scope of protected disclosures and the procedures for their handling. The relevance of this law to Case No. 23-2216 in the United States Court of Appeals for the Federal Circuit is profound, especially given the historical use of *Department of the Navy v. Egan* to limit whistleblower claims in the national security context. A copy of the relevant section from PUBLIC LAW 117-103 appears at Appendix C.

JURISDICTION ON CERTIORARI

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

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

The date on which the United States Court of Appeals decided my case was August 29, 2023, and a copy of the order denying collateral and final orders appears at Appendix B.

TO THE HONORABLE CHIEF JUSTICE ROBERTS

Pursuant to Supreme Court Rule 13.5, Petitioner Martin Akerman, Pro Se, respectfully requests a 60-day extension of time to file a petition for writ of certiorari, for the consolidated appeals referenced under lead case 22-2066, from the U.S. Court of Appeals for the Fourth Circuit, up to and including March 29, 2024.

This Application is timely because it has been filed more than ten days before January 29, 2024, the date accurately computed from the date a timely petition for rehearing was denied.

REASONS TO GRANT THE EXTENSION

The reasons to grant the 60-day extension for filing the petition for writ of certiorari in this case are multifaceted and compelling, particularly considering the legal and procedural complexities involved:

Multiple Appeals and Legal Complexity

The case involves not just a single legal issue, but multiple appeals including a collateral order appeal (22-2066) and two final order appeals (22-2147 and 22-2154).

Spoliation of Evidence and Importance of the FOIA Case in DC

The Freedom of Information Act (FOIA) Case, No. 23-cv-2574, being heard in the United States District Court for the District of Columbia, is critically linked to this petition. This case is pivotal for addressing potential spoliation of evidence issues. Spoliation of evidence refers to the destruction or alteration of evidence that is significant in litigation. In this context, the FOIA case may uncover essential documents or information that could influence the outcome of the appeals, especially regarding whistleblower claims and issues of security clearance. The outcomes and discoveries in this FOIA case could have direct implications for the arguments and evidence in the current petition, highlighting the necessity for additional time to integrate these developments into the certiorari petition effectively.

Amended Whistleblower Protections

The relevance of the recent amendments to whistleblower protections within the Intelligence Community, as detailed in PUBLIC LAW 117-103, adds significant complexity. Understanding how these amendments interact with existing precedents, especially in the context of Department of the Navy v. Egan, requires extensive legal research and analysis. A copy of the relevant section from PUBLIC LAW 117-103 appears at Appendix C.

Pro Se Representation

As the applicant, Martin Akerman, is representing himself pro se, and in forma pauperis, the additional time is necessary to ensure that he can adequately prepare his case. Pro se litigants typically require more time to navigate the complexities of the legal system, conduct legal research, and prepare documents, particularly in cases involving intricate legal issues.

Broad Implications

The case has potentially broad implications for whistleblower and Title VII protections in the national security context. Ensuring that these implications are thoroughly considered and argued requires careful preparation and should not be rushed.

Related Proceedings

The applicant is involved in related collateral proceedings in various courts, including the Supreme Court of Virginia and the United States District Court for the District of Columbia. Managing and coordinating the legal strategies across these multiple proceedings add to the complexity and time required to prepare the petition adequately.

Ensuring a Fair and Just Process

Given the significant legal, procedural, and policy implications of this case, it is crucial that the applicant is afforded sufficient time to prepare a comprehensive and well-argued petition. This ensures a fair and just process, allowing the Supreme Court to make an informed decision on the matters at hand.

Timely Filing within the Rules

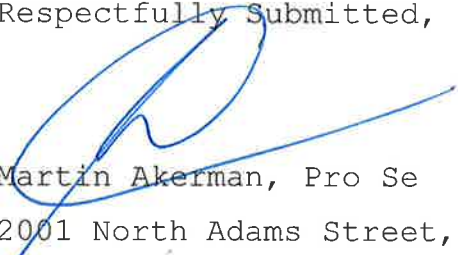
The application for extension is filed in accordance with Supreme Court Rule 13.5, and well within the timeframe required, as it is filed more than ten days before the original deadline of January 29, 2024. This demonstrates the applicant's diligence and respect for court procedures.

Conclusion

In light of these reasons, granting a 60-day extension until March 29, 2024, for the filing of the petition for writ of certiorari would be both reasonable and necessary to ensure that the case is presented to the Supreme Court in the most comprehensive and well-prepared manner possible.

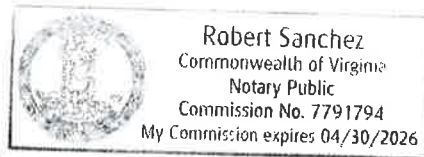
The above statements are truthful and accurate. Signed and dated under oath, under penalty of perjury, this 7th day of December, 2023.

Respectfully Submitted,



Martin Akerman, Pro Se
2001 North Adams Street, Unit 440
Arlington, VA 22201
Phone: (202) 656 - 5601

County/City of Arlington
Commonwealth/State of Virginia
The foregoing instrument was acknowledged
before me this 7 day of Dec
2023 by
Martin Akerman
(name of person seeking acknowledgment)
Robert Sanchez
Notary Public
My Commission Expires: 30 April 2024



No. 23A _____

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MARTIN AKERMAN, PRO SE,
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GENERAL DANIEL HOKANSON,
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APPENDIX A

A timely petition for rehearing was denied by the United States Court of Appeals for the Fourth Circuit on October 31, 2023.

FILED: October 31, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-2066 (L)
(1:22-cv-00696-LMB-WEF)

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

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

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

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

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

ORDER

The court denies the petition for rehearing and rehearing en banc and all other pending motions. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Rushing, Judge Heytens, and
Senior Judge Keenan.

For the Court

/s/ Nwamaka Anowi, Clerk

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v.

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APPENDIX B

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

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-2066

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.

No. 22-2147

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.

No. 22-2154

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.

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)

Submitted: July 28, 2023

Decided: August 29, 2023

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

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

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

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*

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

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

APPENDIX C

A section from PUBLIC LAW 117-103, focuses on amended whistleblower protections within the Intelligence Community as of March 15, 2022. This legislation significantly enhances protections for whistleblowers, particularly in intelligence and national security roles, by clarifying the scope of protected disclosures and the procedures for their handling. The relevance of this law to Case No. 23-2216 in the United States Court of Appeals for the Federal Circuit is profound, especially given the historical use of Department of the Navy v. Egan to limit whistleblower claims in the national security context.

SEC. 417. DESIGNATION OF SENATOR ROY BLUNT GEOSPATIAL LEARNING CENTER. Missouri.

(a) **DESIGNATION.**—The Geospatial Learning Center in the Next NGA West facility in St. Louis, Missouri, shall after the date of the enactment of this Act be known and designated as the “Senator Roy Blunt Geospatial Learning Center”.

(b) **REFERENCES.**—Any reference in any law, regulation, map, document, paper, or other record of the United States to the Geospatial Learning Center in the Next NGA West facility referred to in subsection (a) shall be deemed to be a reference to the “Senator Roy Blunt Geospatial Learning Center”.

TITLE V—MATTERS RELATING TO OVERSIGHT

SEC. 501. HARMONIZATION OF WHISTLEBLOWER PROTECTIONS.

(a) **PROHIBITED PERSONNEL PRACTICES IN THE INTELLIGENCE COMMUNITY.**—

(1) **THREATS RELATING TO PERSONNEL ACTIONS.**—

(A) **AGENCY EMPLOYEES.**—Section 1104(b) of the National Security Act of 1947 (50 U.S.C. 3234(b)) is amended, in the matter preceding paragraph (1)—

(i) by striking “Any employee of an agency” and inserting “Any employee of a covered intelligence community element or an agency”; and

(ii) by inserting “, or threaten to take or fail to take,” after “take or fail to take”.

(B) **CONTRACTOR EMPLOYEES.**—Section 1104(c)(1) of such Act (50 U.S.C. 3234(c)(1)) is amended, in the matter preceding subparagraph (A), by inserting “, or threaten to take or fail to take,” after “take or fail to take”.

(2) **PROTECTION FOR CONTRACTOR EMPLOYEES AGAINST REPRISAL FROM AGENCY EMPLOYEES.**—Section 1104(c)(1) of such Act (50 U.S.C. 3234(c)(1)), as amended by paragraph (1)(B) of this subsection, is further amended, in the matter preceding subparagraph (A), by inserting “of an agency or” after “Any employee”.

(3) **ENFORCEMENT.**—Subsection (d) of section 1104 of such Act (50 U.S.C. 3234) is amended to read as follows:

“(d) **ENFORCEMENT.**—The President shall provide for the enforcement of this section consistent, to the fullest extent possible, with the policies and procedures used to adjudicate alleged violations of section 2302(b)(8) of title 5, United States Code.”. President.

(b) **RETALIATORY REVOCATION OF SECURITY CLEARANCES AND ACCESS DETERMINATIONS.**—

(1) **ENFORCEMENT.**—Section 3001(j) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 3341(j)) is amended—

(A) by redesignating paragraph (8) as paragraph (9); and

(B) by inserting after paragraph (7) the following:

“(8) **ENFORCEMENT.**—Except as otherwise provided in this subsection, the President shall provide for the enforcement of this section consistent, to the fullest extent possible, with President.

the policies and procedures used to adjudicate alleged violations of section 2302(b)(8) of title 5, United States Code.”

(2) TOLLING OF DEADLINE FOR APPEAL OF PROHIBITED REPRISAL.—Section 3001(j)(4) of such Act (50 U.S.C. 3341(j)(4)) is amended—

(A) in subparagraph (A), by inserting “(except as provided by subparagraph (D))” after “within 90 days”; and

(B) by adding at the end the following new subparagraph:

“(D) TOLLING.—The time requirement established by subparagraph (A) for an employee or former employee to appeal the decision of an agency may be tolled if the employee or former employee presents substantial credible evidence showing why the employee or former employee did not timely initiate the appeal and why the enforcement of the time requirement would be unfair, such as evidence showing that the employee or former employee—

“(i) did not receive notice of the decision; or

“(ii) could not timely initiate the appeal because of factors beyond the control of the employee or former employee.”

(c) CORRECTION OF DEFINITION OF AGENCY.—Section 3001(a)(1)(B) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 3341(a)(1)(B)) is amended by striking “and” and inserting “or”.

(d) ESTABLISHING CONSISTENCY WITH RESPECT TO PROTECTIONS FOR DISCLOSURES OF MISMANAGEMENT.—

(1) SECURITY CLEARANCE AND ACCESS DETERMINATIONS.—Section 3001(j)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 3341(j)(1)) is amended—

(A) in subparagraph (A)(ii), by striking “gross mismanagement” and inserting “mismanagement”; and

(B) in subparagraph (B)(ii), by striking “gross mismanagement” and inserting “mismanagement”.

(2) PERSONNEL ACTIONS AGAINST CONTRACTOR EMPLOYEES.—Section 1104(c)(1)(B) of the National Security Act of 1947 (50 U.S.C. 3234(c)(1)(B)) is amended by striking “gross mismanagement” and inserting “mismanagement”.

(e) PROTECTED DISCLOSURES TO SUPERVISORS.—

(1) PERSONNEL ACTIONS.—

(A) DISCLOSURES BY AGENCY EMPLOYEES TO SUPERVISORS.—Section 1104(b) of the National Security Act of 1947 (50 U.S.C. 3234(b)), as amended by subsection (a)(1)(A), is further amended, in the matter preceding paragraph (1), by inserting “a supervisor in the employee’s direct chain of command, or a supervisor of the employing agency with responsibility for the subject matter of the disclosure, up to and including” before “the head of the employing agency”.

(B) DISCLOSURES BY CONTRACTOR EMPLOYEES TO SUPERVISORS.—Section 1104(c)(1) of such Act (50 U.S.C. 3234(c)(1)), as amended by subsection (a), is further amended, in the matter preceding subparagraph (A), by inserting “a supervisor in the contractor employee’s direct chain of command, or a supervisor of the contracting agency with responsibility for the subject matter of the disclosure,

up to and including” before “the head of the contracting agency”.

(2) SECURITY CLEARANCE AND ACCESS DETERMINATIONS.—Section 3001(j)(1)(A) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 3341(j)(1)(A)) is amended, in the matter preceding clause (i), by inserting “a supervisor in the employee’s direct chain of command, or a supervisor of the employing agency with responsibility for the subject matter of the disclosure, up to and including” before “the head of the employing agency”.

(f) ESTABLISHING PARITY FOR PROTECTED DISCLOSURES.—Section 1104 of the National Security Act of 1947 (50 U.S.C. 3234) is further amended—

(1) in subsection (b), as amended by subsections (a)(1)(A) and (e)(1)(A)—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and moving such subparagraphs, as so redesignated, 2 ems to the right;

(B) in the matter preceding subparagraph (A), as redesignated and moved by subparagraph (A) of this paragraph, by striking “for a lawful disclosure” and inserting the following: “for—

“(1) any lawful disclosure”; and

(C) by adding at the end the following:

“(2) any lawful disclosure that complies with—

“(A) subsections (a)(1), (d), and (g) of section 8H of the Inspector General Act of 1978 (5 U.S.C. App.);

“(B) subparagraphs (A), (D), and (H) of section 17(d)(5) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 3517(d)(5)); or

“(C) subparagraphs (A), (D), and (I) of section 103H(k)(5); or

“(3) if the actions do not result in the employee unlawfully disclosing information specifically required by Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs, any lawful disclosure in conjunction with—

“(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;

“(B) testimony for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A); or

“(C) cooperation with or disclosing information to the Inspector General of an agency, in accordance with applicable provisions of law in connection with an audit, inspection, or investigation conducted by the Inspector General.”; and

(2) in subsection (c)(1), as amended by subsections (a), (d)(2), and (e)(1)(B)—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and moving such clauses, as so redesignated, 2 ems to the right;

(B) in the matter preceding clause (i), as redesignated and moved by subparagraph (A) of this paragraph, by striking “for a lawful disclosure” and inserting the following: “for—

“(A) any lawful disclosure”; and

(C) by adding at the end the following:

“(B) any lawful disclosure that complies with—

“(i) subsections (a)(1), (d), and (g) of section 8H of the Inspector General Act of 1978 (5 U.S.C. App.);

“(ii) subparagraphs (A), (D), and (H) of section 17(d)(5) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 3517(d)(5)); or

“(iii) subparagraphs (A), (D), and (I) of section 103H(k)(5); or

“(C) if the actions do not result in the contractor employee unlawfully disclosing information specifically required by Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs, any lawful disclosure in conjunction with—

“(i) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;

“(ii) testimony for or otherwise lawfully assisting any individual in the exercise of any right referred to in clause (i); or

“(iii) cooperation with or disclosing information to the Inspector General of an agency, in accordance with applicable provisions of law in connection with an audit, inspection, or investigation conducted by the Inspector General.”.

(g) CLARIFICATION RELATING TO PROTECTED DISCLOSURES.—Section 1104 of the National Security Act of 1947 (50 U.S.C. 3234) is further amended—

(1) by redesignating subsections (d) and (e) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (c) the following:

“(d) RULE OF CONSTRUCTION.—Consistent with the protection of intelligence sources and methods, nothing in subsection (b) or (c) shall be construed to authorize—

“(1) the withholding of information from Congress; or

“(2) the taking of any personnel action against an employee who lawfully discloses information to Congress.

“(e) DISCLOSURES.—A disclosure shall not be excluded from this section because—

“(1) the disclosure was made to an individual, including a supervisor, who participated in an activity that the employee reasonably believed to be covered under subsection (b)(1)(B) or the contractor employee reasonably believed to be covered under subsection (c)(1)(A)(ii);

“(2) the disclosure revealed information that had been previously disclosed;

“(3) the disclosure was not made in writing;

“(4) the disclosure was made while the employee was off duty;

“(5) of the amount of time which has passed since the occurrence of the events described in the disclosure; or

“(6) the disclosure was made during the normal course of duties of an employee or contractor employee.”.

(h) CORRECTION RELATING TO NORMAL COURSE DISCLOSURES.—Section 3001(j)(3) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 3341(j)(3)) is amended—

(1) by striking “DISCLOSURES.—” and all that follows through “because—” and inserting “DISCLOSURES.—A disclosure shall not be excluded from paragraph (1) because—”;

(2) by striking subparagraph (B);

(3) by redesignating clauses (i) through (v) as subparagraphs (A) through (E), respectively, and moving such subparagraphs, as so redesignated, 2 ems to the left;

(4) in subparagraph (D), as so redesignated, by striking “or” at the end;

(5) in subparagraph (E), as redesignated by paragraph (3), by striking the period at the end and inserting “; or”; and

(6) by adding at the end the following:

“(F) the disclosure was made during the normal course of duties of an employee.”.

(i) CLARIFICATION RELATING TO RULE OF CONSTRUCTION.—Section 3001(j)(2) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 3341(j)(2)) is amended by inserting “or clearance action” after “personnel action”.

(j) CLARIFICATION RELATING TO PROHIBITED PRACTICES.—Section 3001(j)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 3341(j)(1)), as amended by this section, is further amended by striking “over” and inserting “to take, direct others to take, recommend, or approve”.

(k) TECHNICAL CORRECTION.—Section 3001(j)(1)(C)(i) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 3341(j)(1)(C)(i)) is amended by striking “(h)” and inserting “(g)”.

(l) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Inspector General of the Intelligence Community shall submit to the congressional intelligence committees a report assessing the extent to which protections provided under Presidential Policy Directive 19 (relating to protecting whistleblowers with access to classified information) have been codified in statutes.

Assessment.

SEC. 502. AUTHORITIES REGARDING WHISTLEBLOWER COMPLAINTS AND INFORMATION OF URGENT CONCERN RECEIVED BY INSPECTORS GENERAL OF THE INTELLIGENCE COMMUNITY.

(a) AUTHORITY OF INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY TO DETERMINE MATTERS OF URGENT CONCERN.—Section 103H(k)(5)(G) of the National Security Act of 1947 (50 U.S.C. 3033(k)(5)(G)) is amended—

(1) by redesignating clauses (i), (ii), and (iii) as subclauses (I), (II), and (III), respectively;

(2) in the matter preceding subclause (I), as redesignated by paragraph (1), by inserting “(i)” before “In this”; and

(3) by adding at the end the following new clause:

“(i) Within the executive branch, the Inspector General shall have sole authority to determine whether any complaint or information reported to the Inspector General is a matter of urgent concern under this paragraph.”.

(b) AUTHORITY OF INSPECTORS GENERAL TO DETERMINE MATTERS OF URGENT CONCERN.—Subsection (h) of section 8H of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

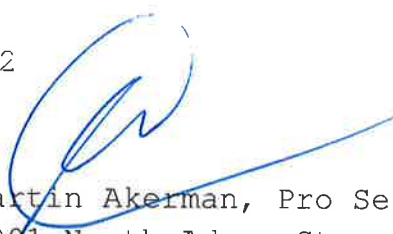
GENERAL DANIEL HOKANSON,
CHIEF OF THE NATIONAL GUARD BUREAU, ET AL

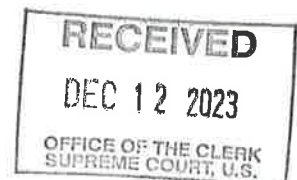
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