

No. _____

(23A539)

IN THE
SUPREME COURT OF THE UNITED STATES

Martin Akerman, Pro Se

_____ — PETITIONER
(Your Name)

vs.

Merit Systems Protection Board _____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

Martin Akeman, Pro Se, In Forma Pauperis

(Your Name)

2001 North Adams Street, Unit 440
(Address)

Arlington, Virginia, 22201
(City, State, Zip Code)

(202) 656 - 5601

(Phone Number)

QUESTION(S) PRESENTED

1. Jurisdiction Over Habeas Corpus Decisions from the Federal Circuit: Does jurisdiction over habeas corpus decisions originating within the administrative state, particularly those adjudicated by the Federal Circuit, reside under federal authority pursuant to 28 U.S.C. § 1254(1), or state authority as per 28 U.S.C. § 1257(a)?
2. Implications of Respondent Designation in Habeas Corpus Cases: Given the stipulations of 28 U.S.C. § 2254 on the importance of correctly naming respondents in habeas corpus cases, what are the jurisdictional and procedural implications of designating only the Merit Systems Protection Board as the respondent in cases involving military contexts and issues of federal and judicial immunity?
3. Constitutional Mandate for Habeas Corpus Challenges: Is it incumbent upon a judicial body, under the Constitution, to permit challenges to “custody under or by the color of the authority of the United States, or committed for trial before some court thereof,” through habeas corpus petitions?
4. Spoliation in the Context of Interlocutory Appeal and the Brady Rule: Within the realm of federal administrative law, specifically concerning quasi-judicial bodies like the Merit Systems Protection Board, what are the legal implications of spoliation of evidence in relation to interlocutory appeals and the obligations of disclosure as mandated by the Brady rule?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

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

The following parties to the proceeding are missing from the caption of the case within the meaning of Rule 14.1(b)(i):

- Federalized Nevada Air National Guard, Brigadier General, Caesar Garduno;
- BILL POPPLER and MARK BERGLUND(Army);
- KEN MCNEILL (Department of Defense)

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

RELATED CASES

- The United States Court of Appeals for the Armed Forces reviewed a related Petition for Writ of Habeas Corpus and Appeal, under Article 70, UCMJ, which was denied and not allowed to proceed by the Judge Advocate General of the Air Force, on August 24, 2023. See 23A593
- In the United States Court of Appeals for the District of Columbia, a Petition for Writ of Habeas Corpus has been filed under Case No. 23-5230. This is the lead case, encompassing challenges under No. 23-1268, against the designation of the Petitioner as an Enemy Combatant, and No. 23-5229, contesting an alleged conviction. A related Freedom of Information Act Case, No. 23-cv-2574, is currently being heard in the District Court for the District of Columbia.
- Repondents in United States Supreme Court Case 23-623 did not respond, on a related petition from the Supreme Court of Nevada, due January 10, 2023.

RELATED CASES CONTINUED

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

- An emergency application to stay the mandate pending a petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit, under docket No. 23A489, was denied on January 8, 2024. This matter involves a petition for writ of habeas corpus. A petition for writ of certiorari is due March 29, 2024, under docket 23A536.
- The Supreme Court of Virginia is presently hearing an appeal under Case No. 230670. This leading case addresses a Breach of Legal Insurance, a matter connected to the aforementioned habeas proceedings. It consolidates related cases from the Arlington Circuit Court, the Virginia Court of Appeals, and the State Corporation Commission.
- Lastly, an appeal in the United States Court of Appeals for the Federal Circuit, under Case No. 23-2216, seeks to review the application of 50 U.S. Code § 3341(j)(8) to the Civil Service Reform Act (CSRA).

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1.

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

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

OPINIONS BELOW

☒ For cases from **federal courts**:

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☒ For cases from **state courts**:

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

MERIT SYSTEMS PROTECTION BOARD

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

1.

2.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 13, 2023.

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

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 20, 2023, and a copy of the order denying rehearing appears at Appendix D.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including March 29, 2024 (date) on December 15, 2023 (date) in Application No. 23 A 539.

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was May 4, 2023.
A copy of that decision appears at Appendix B.

☒ A timely petition for rehearing was thereafter denied on the following date: June 21, 2023, and a copy of the order denying rehearing appears at Appendix C.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including March 29, 2024 (date) on December 15, 2023 (date) in Application No. 23 A 539.

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

3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

Jurisdictional Question Over Habeas Corpus Decisions: This section addresses concerns akin to despotism in the jurisdictional handling of habeas corpus decisions from the Federal Circuit. It questions whether such decisions fall under federal jurisdiction as per 28 U.S.C. § 1254(1), or state jurisdiction as per 28 U.S.C. § 1257(a), especially in cases involving administrative bodies.

Constitutional Obligation for Habeas Corpus Challenges: Reflecting on Hamilton's warning, this part examines the constitutional mandate for judicial bodies to allow challenges to detentions under administrative authority through habeas corpus petitions, as per Article I, Section 9, Clause 2 of the U.S. Constitution.

Implications of Respondent Designation in Habeas Corpus Cases: In line with concerns about obscured justice, this segment explores the implications of designating entities like the Merit Systems Protection Board as respondents in habeas corpus cases, especially considering sovereign immunity and military contexts, First Amendment.

Spoliation and Disclosure in Federal Administrative Courts: This section delves into the issue of spoliation of evidence in federal administrative courts and its impact on interlocutory appeals and the obligations of disclosure under the Brady rule, highlighting the delicate balance between administrative procedures and fundamental rights to fair trial, Fifth and Sixth Amendments.

¹ Alexander Hamilton, Federalist 84

STATEMENT OF THE CASE

This case concerns critical legal and constitutional issues surrounding jurisdictional and procedural aspects of federal administrative law, particularly as they relate to habeas corpus, spoliation of evidence, interlocutory appeals, and the obligations of disclosure under the Brady rule.

The petitioner, Martin Akerman, previously filed a petition for writ of habeas corpus, which was dismissed erroneously as a petition for mere review of a Merit Systems Protection Board decision, rather than a petition for habeas corpus under 28 USC 2254. This misidentification not only deprived the petitioner of his rightful legal avenue to challenge alleged false imprisonment but also raised substantial concerns regarding the proper application of procedural safeguards in federal administrative law.

This case delves into profound legal and constitutional issues, particularly in the context of habeas corpus and the jurisdictional boundaries between federal and state courts, as delineated by the Constitution and federal statutes. Central to this case is the question of whether decisions regarding habeas corpus from the Federal Circuit fall under federal jurisdiction as per 28 U.S.C. § 1254(1), or under state jurisdiction according to 28 U.S.C. § 1257(a). This inquiry is especially pertinent in cases involving administrative bodies and raises broader constitutional concerns rooted in the principles of federalism as outlined in Article III and the Tenth Amendment of the U.S. Constitution.

A pivotal element of this case also revolves around the alleged illegal use of the National Guard by the federal government, which presents significant constitutional ramifications. The mobilization and utilization of the National Guard, traditionally a state militia, by federal authorities potentially infringe upon the delicate balance of power between state and federal governments. This issue not only touches upon the constitutional roles and limitations of federal and state authorities but also raises important questions about the rights of individuals under the jurisdiction of these entities, particularly in the context of habeas corpus.

STATEMENT OF THE CASE CONTINUED

The case further explores the constitutional mandate for judicial bodies to permit challenges to detentions under administrative authority through habeas corpus petitions, as per Article I, Section 9, Clause 2 of the U.S. Constitution. This is juxtaposed against the potential for sovereign immunity and military contexts to obscure justice, especially when specific entities like the Merit Systems Protection Board are designated as sole respondents in habeas corpus cases. The implications of such designations, in light of the First Amendment, the Fifth Amendment's due process clause, and the Sixth Amendment's fair trial guarantees, are profound.

Moreover, the case addresses the issue of spoliation of evidence in federal administrative courts and its impact on interlocutory appeals and the obligations of disclosure under the Brady rule. This aspect highlights the delicate balance between administrative procedures and the fundamental rights to a fair trial, an issue that is of paramount importance in the preservation of justice and the rule of law in administrative settings.

The principle of adverse inference is entrenched in the legal system. When a party fails to produce relevant evidence, especially after notice and duty to do so, the court may infer that the evidence was unfavorable to that party. Movant has previously identified case records as crucial for the case's fair adjudication. The current absence of case DC-0752-23-0457-S-1 is suggestive of potential evidence spoliation. Without these records, the Movant faces an undeniable and unfair disadvantage. To ensure that justice is served, it is pivotal that an adverse inference be made to counterbalance the harm caused by the missing records.

A copy of the order denying injunction appears at Appendix E.

A copy of the order denying adverse inference appears at Appendix F.

REASONS FOR GRANTING THE PETITION

This petition for writ of certiorari, grounded in the principles articulated by Hamilton and enshrined in the Constitution, raises crucial questions about the balance of power, individual rights, and procedural justice. It underscores the potential for despotism in the procedural handling of habeas corpus petitions and calls into question the actions of military officials in their exercise of civilian legal standards. The case's significance is further highlighted by its potential conflict with state and federal law, as well as existing legal precedents. Addressing these concerns, particularly the petitioner's rights under First and Fourth Amendment protections, is not only urgent but paramount to maintaining the constitutional balance of liberty and authority.

This petition thus presents an essential opportunity for judicial scrutiny and redress, reinforcing the indispensable role of habeas corpus in safeguarding individual freedoms against arbitrary government actions. The issues raised herein, from jurisdictional ambiguities to the spoliation of evidence in administrative courts, resonate with fundamental principles of justice and due process. They implore a reexamination of the balance between administrative authority and individual rights, particularly in contexts involving military and governmental entities.

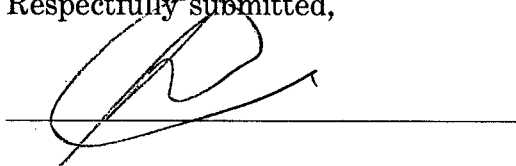
By granting this petition, the Supreme Court has the opportunity to address and clarify these significant legal questions, thus contributing to the development and refinement of federal administrative law. This case not only affects the petitioner but also has broad implications for the interpretation and application of constitutional rights and administrative procedures nationwide. The Court's guidance is imperative in navigating the complexities of these issues and in ensuring that justice is not just a theoretical ideal but a practical reality in our legal system.

7.

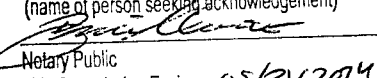
CONCLUSION

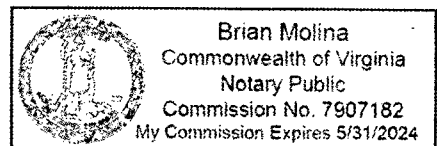
The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: JANUARY 16, 2024

County/City of Arlington
Commonwealth/State of Virginia
The foregoing instrument was acknowledged
before me this 16 day of Jan
2024, by
Martin Akerman
(name of person seeking acknowledgement)

Notary Public
My Commission Expires: 05/31/2024



APPENDIX A

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2023-2046

Petition for review of the Merit Systems Protection Board in Nos. DC-0752-23-0457-I-1 and DC-0752-23-0457-S-1.

ON MOTION

PER CURIAM.

O R D E R

After consideration of the parties' responses to this court's order directing them to show cause whether Martin

Akerman's petition for review should be dismissed for lack of jurisdiction, we dismiss.*

The court received Mr. Akerman's petition for review identifying two Merit Systems Protection Board docket numbers—DC-0752-23-0457-I-1 and DC-0752-23-0457-S-1—and specifically requesting review of a "Third Order" entered May 22, 2023. ECF No. 1-2 at 1. Attached to that petition is a May 22, 2023, decision from the administrative judge in DC-0752-23-0457-I-1 entitled "Third Order," which denies Mr. Akerman's motion for "Certification of Interlocutory Appeal" to the Board.

The court directed the parties to show cause because while 28 U.S.C. § 1295(a)(9) provides the court with jurisdiction over "an appeal from a final order or final decision of the Merit Systems Protection Board," the administrative judge's denial of Mr. Akerman's third request for an interlocutory appeal to the Board does not "end[] the litigation on the merits and leave[] nothing for the [tribunal] to do but execute the judgment," *Weed v. Soc. Sec. Admin.*, 571 F.3d 1359, 1361 (Fed. Cir. 2009) (cleaned up). Thus, it is not a "final" order or decision that can be immediately appealed to this court. Mr. Akerman asserts that the order is nonetheless appealable under *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949), but *Cohen's* collateral order doctrine is for only a "small class of collateral rulings that," among other things, "resolve important questions separate from the merits," *Kaplan v. Conyers*, 733 F.3d 1148, 1154 (Fed. Cir. 2013) (cleaned up). Here, the interlocutory order is not such an order; rather,

* Mr. Akerman appears to seek reconsideration of the court's July 31, 2023, order denying his request to consolidate this case with Appeal No. 2023-2216 (concerning Board No. DC-3443-22-0639-I-1), but that request is denied as moot given this dismissal. Mr. Akerman's request to modify the caption is also denied.

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Mr. Akerman appears to simply want expedited review of the “underlying . . . issues,” ECF No. 20 at 2, which is insufficient.

Moreover, we note that in DC-0752-23-0457-I-1, the administrative judge has since issued an initial decision, but Mr. Akerman’s petition here does not challenge that initial decision, and, in any event, that decision remains non-final because Mr. Akerman filed a timely petition for review with the Board, such that our review of that decision is premature. *See* 5 C.F.R. § 1201.113(a); *Weed*, 571 F.3d at 1361–63. Lastly, we note that Mr. Akerman’s submissions here have not reasonably identified any decision, final or otherwise, in DC-0752-23-0457-S-1 for this court to review. We therefore dismiss.

Accordingly,

IT IS ORDERED THAT:

- (1) The petition for review is dismissed.
- (2) Each side shall bear its own costs.
- (3) All pending motions are denied.

FOR THE COURT

October 13, 2023

Date

/s/ Jarrett B. Perlow

Jarrett B. Perlow

Clerk of Court

APPENDIX B

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE**

MARTIN AKERMAN,
Appellant,

DOCKET NUMBER
DC-0752-23-0457-S-1

v.

DEPARTMENT OF THE ARMY,
Agency.

DATE: May 4, 2023

Martin Akerman, Arlington, Virginia, pro se.

Eugene R. Ingrao, Sr., Esquire, Arlington, Virginia, for the agency.

BEFORE
Joshua Henline
Administrative Judge

ORDER DISMISSING STAY REQUEST

On May 3, 2023, the appellant filed an appeal alleging his June 18, 2022 retirement was involuntary or that he was constructively discharged on the same date. *See* Initial Appeal File (IAF), Tab 1. In a pleading filed in the instant appeal on May 4, 2023, the appellant sought a stay of his constructive removal or involuntary retirement.¹ Stay Appeal File (SAF), Tab 1. For the following reasons, the appellant's stay request is DISMISSED.

¹ It was unclear if the appellant was seeking to stay his constructive discharge/involuntary retirement or to stay the case processing in the initial appeal. Nevertheless, as the appellant is *pro se*, this stay request was docketed.

ANALYSIS AND FINDINGS

In his initial appeal, the appellant stated in the narrative portion of his appeal form that “The Agency refuses to respond to OPM and has lied to OPM LMER and DOL-OWCP as it relates to my constructive dismissal.” IAF, Tab 1. He also alleged he was “constructively forced into retirement;” “has been under false arrest and false imprisonment since 14 February 2022;” “the [a]gency refuses to respond to OPM since November 2022;” “the [a]gency initially blamed an officer of the Nevada Air National Guard, [but] now appears to be blaming the Army National Guard;” “he is disabled and on Medicaid without income;” and he requested an “urgent intervention by way of the Office of Workmans Compensation Programs.” *Id.* at 4.

On the May 4, 2023, the appellant filed his stay request wherein he averred, in part, that he requested a stay to “ensure that all pertinent issues are examined thoroughly and that the administrative process is properly conducted while also acknowledging the significance of the right to counsel in a criminal matter and the importance of administrative decisions.” SAF, Tab 1 at 4.

Under 5 U.S.C. § 1221(c), an appellant may request a stay of the personnel action that he alleges is based on whistleblowing. Such a stay request may be filed at any time after the appellant becomes eligible to file an appeal with the Board under 5 C.F.R. § 1209.5, but no later than the time limit set for the close of discovery in the appeal. 5 C.F.R. § 1209.8(a). The request may be filed prior to, simultaneous with, or after the filing of an appeal. *Id.* The appellant’s stay request was filed after he filed his initial appeal. SAF, Tab 1.

The appellant has not alleged in his initial appeal or in his stay request that his constructive discharge or involuntary retirement was based on whistleblowing. Accordingly, he is not eligible to file a stay request. *See* 5 U.S.C. § 1221(c). Even if he were eligible to file such a request, the Board’s regulations require that such a request be accompanied by certain information. 5 C.F.R. § 1209.9. In his stay request, the appellant referenced that she would

like to provide evidence of her whistleblowing and protected activity but the regulations are clear that the stay request must include, *inter alia*, the following:

- (4) A chronology of facts, including a description of the appellant's disclosure and the action that the agency has taken or intends to take;
- (6) Evidence and/or argument showing that:
 - (ii) The action complained of was based on whistleblowing or other protected activity as defined in § 1209.4(b) of this part; and
 - (iii) There is a substantial likelihood that the appellant will prevail on the merits of the appeal;
- (7) Evidence and/or argument addressing how long the stay should remain in effect; and

Id. The appellant failed to provide this information with his stay request.

It is incumbent on the appellant to provide the information required by the regulations so that the Board can determine whether there is a substantial likelihood that he will prevail on the merits of his appeal. As the appellant failed to provide the required information with his stay request, the stay request must be dismissed.^{2 3}

² Because the appellant's alleged constructive removal was effective on June 18, 2022, see IAF, Tab 1 at 3, a request for stay of his constructive removal may be moot. See *Horner v. Merit Systems Protection Board*, 815 F.2d. 668, 670-71 (Fed. Cir. 1987). An issue must be "live" at the time the case is decided, not merely when the appeal is filed. See *Occhipinti v. Department of Justice*, 61 M.S.P.R. 504 (1994). The question of mootness must also be a consideration in determining whether a stay request should be granted. A stay does not reverse, annul, undo, or suspend what has already been done. See BLACK'S LAW DICTIONARY 1413 (6th Ed. 1990).

³ The appellant is free, however, to refile the stay request in compliance with the Board's regulations. If so, the agency has five business days after the service of the stay request to file a response. 5 C.F.R. § 1209.9(c).

The parties are advised that this decision only involves the appellant's stay request and not his constructive removal/involuntary retirement. A party seeking review of this order must move for certification of an interlocutory appeal under 5 C.F.R. §§ 1201.91-.93.

For these reasons, the appellant's stay request is **DISMISSED**.

FOR THE BOARD:

_____/S/_____
Joshua Henline
Administrative Judge

APPENDIX C



U.S. MERIT SYSTEMS PROTECTION BOARD

Office of the Clerk of the Board

1615 M Street, N.W.
Washington, D.C. 20419-0002

Phone: 202-653-7200; Fax: 202-653-7130; E-Mail: mspb@mspb.gov

June 21, 2023

Notice to:

Martin Akerman
2001 North Adams Street
Unit 440
Arlington, VA 22201

Re: Martin Akerman v. Department of the Army
MSPB Docket Number: DC-0752-23-0457-S-1

On June 20, 2023, you electronically filed a pleading with this office in the above-referenced docket number using the option for "Request for Extension of Time to File PFR" in e-Appeal Online. An administrative judge issued an Order Dismissing Stay Request in this matter on May 4, 2023, and this docket number is therefore closed. Please be advised that the Board's regulations do not provide for the filing of a petition for review when an administrative judge denies a request for a stay under 5 C.F.R. § 1209. Therefore, the Board will take no further action concerning your June 20, 2023 submission titled "Request for Extension of Time to File PFR" relating to MSPB Docket No. DC-0752-23-0457-S-1. However, this in no way impacts your ability to continue to pursue the claims currently pending before the administrative judge in MSPB Docket No. DC-0752-23-0457-I-1 or your ability to file a petition for review in that matter after the administrative judge issues an initial decision.

Jennifer Everling
Acting Clerk of the Board

/s/

Dinh Chung
Case Management Specialist

CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent as indicated this day to each of the following:

Appellant

Electronic Mail Martin Akerman
2001 North Adams Street
Unit 440
Arlington, VA 22201

Agency Representative

Electronic Mail Eugene R. Ingrao, Sr.
Department of the Army
Attorney- Advisor
Office of the Chief Counsel, NGB
111 S. George Mason Drive
AHS-2/Room 3TI-308
Arlington, VA 22204

June 21, 2023

(Date)

/s/

Dinh Chung
Case Management Specialist



Martin Akerman <makerman.dod@gmail.com>

Rejecting Pleading - Martin Akerman v. Department of the Army DC-0752-23-0457-S-1

1 message


Rejected Submissions <Rejected.Submissions@mspb.gov>

Wed, Jun 21, 2023 at 11:56 AM

To: "makerman.dod@gmail.com" <makerman.dod@gmail.com>

You are receiving this email from the Office of the Clerk of the Board, U.S. Merit Systems Protection Board, in accordance with our notice rejecting your additional submission. As a courtesy to you, a copy of your rejected additional submission is attached to this email.

Please do not respond to this email. This is not a monitored email account and the Clerk's office will not respond to any inquiries sent to this email address. If you have questions about the Board's procedures, please call the Clerk's office at (202) 653-7200 or send an email to mspb@mspb.gov.

 **DOCSPROD-#2042189-v1-Akerman__Martin__-DC230457S1_-Request_for_Extension_of_Time_
to_File_PFR.PDF**
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APPENDIX D

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2023-2046

Petition for review of the Merit Systems Protection Board in Nos. DC-0752-23-0457-I-1, DC-0752-23-0457-S-1.

**ON PETITION FOR PANEL REHEARING AND
REHEARING EN BANC**

PER CURIAM.¹

O R D E R

On October 13, 2023, Martin Akerman filed a combined petition for panel rehearing and rehearing en banc [ECF No. 34]. The petition was referred to the panel that heard

¹ Circuit Judge Newman did not participate.

the appeal, and thereafter the petition was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

November 20, 2023

Date

APPENDIX E

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2023-2046

Petition for review of the Merit Systems Protection Board in Nos. DC-0752-23-0457-I-1 and DC-0752-23-0457-S-1.

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2023-2216

Petition for review of the Merit Systems Protection Board in No. DC-3443-22-0639-I-1.

ON MOTION

PER CURIAM.

ORDER

Martin Akerman filed multiple motions to enjoin the Merit Systems Protection Board from transitioning to an e-Appeal Online system on October 2, 2023, because “[t]he MSPB’s transition poses a substantial risk to the integrity of records,” Appeal No. 2023-2046, ECF No. 26 at 2. Given the limited time to consider the motion, a one-judge decision was issued, which denied the motions. Mr. Akerman now moves for reconsideration of that decision.

Upon consideration thereof,

IT IS ORDERED THAT:

The motions are denied.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

October 13, 2023

Date

APPENDIX F

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2023-2046

Petition for review of the Merit Systems Protection
Board in Nos. DC-0752-23-0457-I-1, DC-0752-23-0457-S-1.

ON MOTION

PER CURIAM.

O R D E R

On November 3, 2023, Martin Akerman moved the
court for adverse inference [ECF No. 35].

Upon consideration thereof,

IT IS ORDERED THAT:

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AKERMAN v. MSPB

The motion is denied.

FOR THE COURT



November 13, 2023

Date

Jarrett B. Perlow
Clerk of Court