

24-443

No. _____ (24A278, 24A332, 24-339, 24-83)

Supreme Court, U.S.
FILED

OCT 15 2024

OFFICE OF THE CLERK

In The
Supreme Court of the United States

MARTIN AKERMAN,
CHIEF DATA OFFICER
OF THE NATIONAL GUARD BUREAU, PRO SE,

Petitioner,

v.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Respondent.

PETITION FOR WRIT OF MANDAMUS

IN RE: FEDERAL TENURE OF MARTIN AKERMAN
CASE 2024-130

Martin Akerman, Pro Se
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RECEIVED

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

Whether the United States Court of Appeals for the Federal Circuit (Federal Circuit) erred by failing to recognize May 20, 2024, as the proper filing date for Petitioner's appeal, necessitating an order to back-date the filing and disregard subsequent Merit Systems Protection Board (MSPB) orders issued after May 20, 2024, thereby rendering the pending petitions for writ of certiorari 24A155 and 24A147 moot.

After correcting the filing date, whether the Federal Circuit must correct the caption in Case No. 2024-130 (24A278) to properly reflect the nature of the case, thereby rendering the pending petition for writ of certiorari 24A278 moot.

After correcting the filing date and case caption, whether the Federal Circuit must afford the Petitioner a property hearing, thereby rendering moot stay requests 24A332 (Supreme Court), 24-cv-1734 (Nevada), and DC-1221-22-0445-S-1 (MSPB), as well as petitions for writ of habeas corpus 24-83 (Supreme Court Federal Jurisdiction) and 2024-6166 (Ninth Circuit State Jurisdiction).

QUESTIONS PRESENTED (CONTINUED)

After tenure is returned and a stay is granted, whether the United States Court of Appeals for the Federal Circuit must consolidate and transfer the following related cases to an appropriate court, ensuring coordination with the Fourth Circuit, to address potential issues related to res judicata, see related Supreme Court dockets 23-7072, 23A489, and Fourth Circuit mandamus case 2024-1943:

- CSRA Mixed Case Appeal – MSPB – 2024-146
- Office of Special Counsel (OSC) WPEA – 2024-1914 (2024-133 & Supreme Court 24A155 and 23-7072)
- Office of Special Counsel (OSC) WPEA – 2024-1915 (2024-132 & Supreme Court 24A147 and 23-7072)
- CSRA Mixed Case Appeal – MSPB – 2024-1926
- Office of Special Counsel WPEA – 2024-1912
- Equal Employment Opportunity (OSC) – 2024-146

PARTIES TO THE PROCEEDING

Applicant is Martin Akerman, the tenured Chief Data Officer of the National Guard Bureau of the United States of America, appearing pro se;

Senator Tim Kaine of Virginia, the Governors and Attorneys General of Arizona, Arkansas, and Nevada, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Government Reform of the House of Representatives, are interested parties, per 10 U.S.C. § 12405 and 44 U.S.C. § 3320(e), and will be served three copies of this petition, under the constitutionally separated powers of the states and the legislative branch;

The U.S. Court of Appeals for the Federal Circuit is the party subject to mandamus in this case, and will be served with three copies of this petition.

The U.S. Courts of Appeals for the Fourth Circuit and the Ninth Circuit, and the U.S. District Court for the District of Nevada will receive a copy of the petition, to assist in deliberations related to jurisdiction and scope, and the proper transfer of consolidated cases.

PENDING SUPREME COURT CASES

Federal Habeas Corpus.....	24-83
Federal Circuit Replevin.....	24A155, 24A147, 24A278
Right to Appeal a Fee Without Paying a Fee.....	24-5218
Freedom of Information Act.....	24-339
Urgent Stay.....	24A332

FEDERAL CIRCUIT AFTER MAY 20, 2024

CSRA Mixed Case Appeal - MSPB.....	2024-146
Office of Special Counsel WPEA...	2024-1914 (2024-133)
Office of Special Counsel WPEA...	2024-1915 (2024-132)
CSRA Mixed Case Appeal - MSPB.....	2024-1926
Office of Special Counsel (OSC) WPEA.....	2024-1912
Equal Employment Opportunity.....	2024-146

AWAITING REMAND

50 U.S.C. § 3341(j)(8) - MSPB.....	2024-1913 (2023-2216)
Workers' Compensation - DOL.....	2024-146 (2023-2046)
MSPB Disability - OPM	DC-844E-24-0359-I-1
MSPB - OSC Whistleblower.....	DC-1221-22-0445-W-2
MSPB - OSC Whistleblower.....	DC-1221-22-0257-W-2

RELATED CASES IN OTHER COURTS

Ninth Circuit - State Habeas Corpus.....	2024-6166
District of Nevada - Stay and Replevin.....	24-cv-1734
MSPB Stay.....	DC-1221-22-0445-S-1
Fourth Circuit Mandamus - Res Judicata.....	2024-1943

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PETITION FOR WRIT OF MANDAMUS

The Federal Circuit's failure to docket the May 20, 2024 submission, instead recording the docketing date as May 29, 2024, has created significant procedural barriers. These barriers allowed subsequent Merit Systems Protection Board (MSPB) orders, issued on May 29, 2024, to improperly influence the jurisdictional framework of the case. Recognizing the May 20, 2024 filing date is essential to ensure that the legal and factual posture of the appeal reflects the situation as it was at the time of submission, unaffected by events that occurred after that date.

Additionally, the case caption in Case No. 2024-130 is incorrect. It fails to reflect the demand for a property hearing and misidentifies the appropriate respondent in the subsequent appeals, such as Supreme Court Dockets 24A155, 24A147, and 24A278. Correcting the caption is necessary to align the case with the ongoing Supreme Court proceedings and to avoid procedural confusion and potential prejudice.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to issue writs of mandamus under 28 U.S.C. § 1651(a), the All Writs Act, which authorizes the Supreme Court and all courts established by Congress to issue writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. The Supreme Court has original jurisdiction in this matter pursuant to 28 U.S.C. § 1251, as the highest judicial authority vested with the power to review decisions of the United States Courts of Appeals.

Orders on Appeal

On August 28, 2024, the U.S. Court of Appeals for the Federal Circuit issued a Sua Sponte order, denying a petition for writ of error (Appendix A).

On September 27, 2024, the court issued a letter stating that no further filings would receive a response in this case. (Appendix B and 24A278).

On October 4, 2024, the Clerk of the Supreme Court refused to update the case caption. (Appendix C)

Standard for Issuance of a Writ of Mandamus

A writ of mandamus is an extraordinary remedy, granted only in exceptional circumstances. The Supreme Court has established three requirements for mandamus relief:

1. Petitioner must demonstrate that there is no other adequate way to achieve the desired relief (Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 35 (1980)).
2. Petitioner must show that his right to the relief sought is "clear and indisputable" (Cheney v. United States Dist. Court for D.C., 542 U.S. 367, 381 (2004); Mallard v. United States Dist. Court for the S. Dist. of Iowa, 490 U.S. 296 (1989)).
3. The Court must be satisfied that issuing the writ is appropriate given the circumstances of the case (Kerr v. United States Dist. Court, 426 U.S. 394, 403 (1976)).

RELIEF SOUGHT

Petitioner seeks the following relief from this Court:

A. Recognition of May 20, 2024,
as the Correct Filing Date

Direct the United States Court of Appeals for the Federal Circuit to recognize May 20, 2024, as the correct filing date for Case No. 2024-130, disregarding the subsequent Merit Systems Protection Board (MSPB) orders issued on May 29, 2024, and restoring the proper jurisdictional posture of the case. This correction is necessary to ensure that the case is adjudicated based on the legal and factual circumstances at the time of the original filing.

B. Correction of the Case Caption
in Case No. 2024-130

Order the Federal Circuit to correct the case caption in Case No. 2024-130 to accurately reflect the nature of the appeal, the relief sought, and the proper respondent(s).

The current caption misidentifies the scope of the case and the parties involved, particularly in relation to subsequent appeals pending before the Supreme Court (Dockets 24A155, 24A147, and 24A278). Correcting the caption is essential to avoid procedural confusion and ensure alignment with ongoing Supreme Court proceedings.

C. Provision of a Property Hearing

After the correct filing date and case caption are recognized, Petitioner seeks an order compelling the Federal Circuit to hold a property hearing. The absence of this hearing has caused undue delays and unnecessary litigation in related appeals, habeas corpus petitions, and stay requests. A property hearing would resolve the pending stay requests before the Supreme Court (Docket 24A332), District of Nevada (Docket 24-cv-1734), and MSPB (Docket DC-1221-22-0445-S-1), as well as the habeas corpus petitions pending before the Supreme Court (Docket 24-83) and the Ninth Circuit (Docket 2024-6166).

D. Consolidation and Transfer of Related Cases

After tenure is returned and a stay is granted, direct the Federal Circuit to consolidate and transfer the following related cases to an appropriate court with jurisdiction over discrimination and mandamus claims against federal officials and federalized state military officers from Arizona, Nevada, and Arkansas:

- CSRA Mixed Case Appeal – MSPB – 2024-146
- Office of Special Counsel (OSC) WPEA – 2024-1914
(2024-133 & Supreme Court Docket 24A155)
- Office of Special Counsel (OSC) WPEA – 2024-1915
(2024-132 & Supreme Court Docket 24A147)
- CSRA Mixed Case Appeal – MSPB – 2024-1926
- Office of Special Counsel WPEA – 2024-1912
- Equal Employment Opportunity (OSC) – 2024-146

Ensure coordination with the Fourth Circuit to address potential res judicata issues stemming from prior dismissals with prejudice in the Eastern District of Virginia in November 2022, and ensure proper handling of consolidated cases, as referenced in related Supreme Court dockets 23-7072, 23A489, and Fourth Circuit Mandamus Case 2024-1943.

STATEMENT OF THE CASE

Department of the Air Force

Akerman was first regarded as a whistleblower in the Department of the Air Force, after making reasonable disclosures related to violations of title VII, USERRA, and other documented disclosures recorded by the Office of Special Counsel, on or around June 10, 2020.

The OSC facilitated Alternative Dispute Resolution (ADR) starting on June 28, 2021 when they asked Martin Akerman if he was open to ADR, and he responded affirmatively. ADR under 5 C.F.R. 1800.2(d) resulted in agreement of a safe transfer to the National Guard Bureau, the removal of adverse personnel actions, and backdated student loan repayments, see related case DC-3443-22-0296-I-1, currently at EEOC on review, under 5 U.S.C. § 7702(b)(1).

In retaliation for the ADR through OSC, the Department of the Air Force initiated a retaliatory revocation of Akerman's security clearances and access determinations, by proxy through enlisted members of the U.S. Military, in violation of PPD-19 and the Posse Comitatus Act.

Intervention by the Office of Special Counsel (OSC)

OSC intervened and Akerman was allowed to retain his clearance, to the status verified by the National Guard Bureau on August 11, 2021.

National Guard Bureau (NGB)

Akerman transferred to NGB on September 12, 2021, and maintained regular contact with the Office of Special Counsel, documenting the non-payment of student loans and effect of the security clearance action in his new job.

Akerman was appointed as CDO of the National Guard Bureau under 44 U.S.C. § 3520 by the Chief of the National Guard Bureau, under authority as head of the Agency, under 10 U.S.C. § 10502, on December 20, 2021.

Arizona, Arkansas, and Nevada

Shortly thereafter, on February 14, 2022, the Department of the Army leveraged federalized members of the state militaries of Arizona and Arkansas to detain Akerman, placing him immediately out of the office, under 5 U.S.C. § 6329b(b)(2), in a manner that both denied due process and barred jurisdiction by the judiciary on state sovereignty grounds and under the Egan precedent.

On June 18, 2024, the Supreme Court held that “the original jurisdiction of this Court does not extend to a suit by an individual against a State,” Appendix E.

Dereliction of Duties by MSPB and OSC

MSPB IRA appeal DC-1221-22-0257-W-1 and stay request DC-1221-22-0257-S-1 were filed on February 28, 2022, against the Department of Defense as the overarching agency overseeing the Air Force, Army, National Guard, and Common Access Facility. The Board explained that all exhausted claims of retaliation needed to be filed under the same case.

OSC explained that they lack jurisdiction over security clearance matters and instructed Akerman to file those complaints with the Office of the Inspector General of the Department of Defense.

Involvement of Congress and DoD OIG

Senator Tim Kaine of Virginia became involved and helped pass 50 U.S.C. 3341(j)(8), on March 15, 2022, and an investigation was started in Akerman's OIG case on March 30, 2022, see related Federal Circuit case 2024-1913.

On March 25, 2022, the Department of the Army provided evidence of discrimination, aimed at blocking the IRA appeal in the MSPB.

On April 11, 2022, a federalized member of the Nevada Air National Guard affirmed the detention and suspension of Akerman, without the authority to do so, in violation of precedent set by habeas corpus law, and without due process required under 5 U.S.C. § 7513, see mixed motive case DC-0752-22-0376-I-1 and stay request DC-0752-22-0376-S-1 pending in MSPB.

Exhaustion of EEOC Remedies and Continuation to
District Court, Under 5 U.S.C. § 7702(e)(1)(B)

Based on the illegal use of members of the military, and the taint and bias presented by the introduction of DOPMA/ROPMA into civilian federal tenure decisions, Akerman initiated a civil action, under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 633a(a), on July 7, 2022.

IRA Cases DC-1221-22-0257-W-1, it's progeny (DC-1221-22-0445-W-1), and DC-1221-22-0459-W-1, were meant to join the district court case, under 5 U.S.C. § 7702(e)(1)(B).

The discrimination elements of mixed motive case DC-0752-22-0376-I-1 were also meant to join the district court case, after the initial MSPB decision was exhausted through EEOC, as confirmed on October 17, 2022.

MSPB sabotaged the transfer, leading to sanctions against the pro se petitioner in the Fourth Circuit, see related Supreme Court dockets 23-7072 (Appendix E), 23A489, and Fourth Circuit Case 2024-1943.

Mandamus Needed to Correct Filing Errors

On September 12, 2024, the Federal Circuit issued an order denying the petitioner's writ of error, failing to recognize May 20, 2024, as the correct filing date. This order allowed the Merit Systems Protection Board's (MSPB) post-filing orders from May 29, 2024, to influence the case improperly. The decision created procedural obstacles, limiting the petitioner's ability to proceed with a timely appeal and leading to unnecessary delays, Appendix A.

On September 27, 2024, the Federal Circuit's Clerk issued a letter stating that no further filings would be accepted in Case No. 2024-130, effectively closing the case. This procedural decision left the petitioner with no recourse to correct the errors surrounding the filing date or pursue necessary relief. The letter reinforced the court's refusal to entertain further motions or filings, cutting off the petitioner's access to judicial remedies, Appendix B.

On October 4, 2024, the Supreme Court Clerk refused to correct the case caption, which misrepresented the nature of the petitioner's appeal, Appendix C.

REASONS TO GRANT MANDAMUS

1. No Other Adequate Means to Attain Relief

Petitioner has no other adequate remedy to compel the Federal Circuit to recognize the May 20, 2024, filing date or correct the caption in Case No. 2024-130. The Federal Circuit's failure to recognize the proper filing date has created jurisdictional conflicts, particularly given the Merit Systems Protection Board (MSPB) orders issued on May 29, 2024, the same date the case was incorrectly docketed. These post-filing orders further complicated the legal posture of the case, allowing new facts and issues to improperly influence the appellate review process.

Without intervention by this Court, the Federal Circuit will continue to rely on the incorrect May 29, 2024, docketing date, which compromises Petitioner's rights under the Civil Service Reform Act (CSRA), Whistleblower Protection Enhancement Act (WPEA), and other federal laws.

2. Clear and Indisputable Right to Relief

Petitioner has a clear and indisputable right to have the appeal reviewed as of the May 20, 2024 submission date, unaffected by the Merit Systems Protection Board's (MSPB) issuance of final orders after that date. The case was notarized and sent on May 20, 2024, and it was only due to an administrative error that the docketing date was recorded as May 29, 2024.

Under *United States v. Morgan*, 346 U.S. 502 (1954), the Court held that jurisdiction and procedural actions must be determined based on the status of the case at the time of filing. The May 20, 2024 date is essential to establishing the correct jurisdictional basis for Petitioner's claims, and the May 29, 2024 MSPB orders should not impact the review of the appeal.

Additionally, the caption in Case No. 2024-130 must be corrected to reflect its consolidated nature with related Supreme Court dockets 24A278, 24A147, and 24A155, involving overlapping questions of federal employment law, constitutional rights, whistleblower protections, and discrimination claims.

3. Mandamus is Appropriate

Under the Circumstances

Mandamus is appropriate in this case due to the Federal Circuit's failure to recognize the correct May 20, 2024 filing date and its reliance on May 29, 2024 post-filing orders from the MSPB. The administrative errors and jurisdictional confusion resulting from the incorrect docketing date have caused substantial harm to Petitioner's legal rights, and without this Court's intervention, these issues will persist.

These cases involve critical time extensions granted by The Chief Justice, with a new deadline of December 19, 2024, for the filing of consolidated petitions for writ of certiorari.

Further, the improper caption in Case No. 2024-130 has introduced confusion into the related Supreme Court dockets (24A155, 24A147, 24A278), and without correction, this may compromise the consideration of forthcoming consolidated petitions for writs of certiorari.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the petition for a writ of mandamus or prohibition and direct the United States Court of Appeals for the Federal Circuit to:

- A. Recognize May 20, 2024, as the correct filing date for Case No. 2024-130, disregarding the subsequent Merit Systems Protection Board (MSPB) orders issued on or after May 29, 2024;
- B. Correct the case caption in Case No. 2024-130 to reflect the nature of the case, thereby rendering the pending Supreme Court petitions for writ of certiorari in 24A155, 24A147, and 24A278 moot;
- C. Afford Petitioner a property hearing, thereby rendering moot the stay requests pending before the Supreme Court, District of Nevada, and Merit Systems Protection Board, as well as the petitions for writ of habeas corpus in the Supreme Court and Ninth Circuit;

D. Consolidate and transfer the related cases to an appropriate court with jurisdiction over discrimination and mandamus claims, ensuring coordination with the Fourth Circuit to address any potential res judicata issues.

Such relief is necessary to remedy the procedural errors that have occurred, restore Petitioner's constitutional and statutory rights, and ensure proper adjudication of Petitioner's claims.

Respectfully Submitted Under Oath,

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County/City of Arlington
Commonwealth/State of Virginia
The foregoing instrument was acknowledged
before me this 25 day of October,
2021 by Martin Akerman
(name of person seeking acknowledgement)
Notary Public
My Commission Expires: 09/30/2026

