

No. 24-930

In the
Supreme Court of the United States

ORIGINAL

ARTURO S. LOPEZ SR.,

Petitioner,

FILED

SEP 03 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

v.

FRANK KENDALL III,
SECRETARY OF THE AIR FORCE
MARY D. GARCIA, HUMAN RESOURCE SPECIALIST,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit**

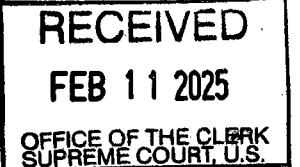
PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner Pro-Se respectfully presents his questions and respectfully requests that the U.S Supreme court intervene to help preserve the Rule of Law the 5th and 14th Amendments. The Right to due process and fairness. All People are equal before the Law in reference to violations of C.F.R's "Codified Federal Regulations". These Rules are considered legally binding just as any statute and are backed by our U.S Constitution. Published in the Federal Register and governed by the Administrative Procedure Act "APA" These C.F.R's are set in place to protect all Federal Employees from any unfair, non-impartial due process.

Any individual or Agency that violates any C.F.R must be held accountable to maintain a fair justice system for everyone. Agencies and courts should not be allowed to ignore and not follow what a C.F.R states. C.F.R. Violations impact all Federal employees bringing forth their case and unfairly prevent and deprive them from having the ability to receive his or her Civil Procedure rights to justice and the ability to defend themselves fairly without prejudice or bias in accordance with the C.F.R Regulations. An action denying the process that is due "would be unconstitutional". Process is due if rights are involved.

1. Pursuant to 29 C.F.R 1614.105 a(2) Does this C.F.R allow the petitioner or any Federal employee to file his or her complaint after they have clearly proven that they were unaware of the date and time the Discriminatory action had occurred against them, and after they have clearly asserted a defense of Estoppel.

2. Pursuant to 29 C.F.R. § 1614.106(e)(2) Does this C.F.R allow any agency to ignore and not follow this C.F.R by never conducting an impartial investigation that is required of them and then falsely state and mislead the petitioner and the courts to believe that an investigation had been requested within the 180 day period that was given to them?
3. Pursuant to 29 C.F.R 1614.106(e)(2). Does this C.F.R allow an agency not to follow this regulation and conduct their own private non-impartial IRD investigation long after their 180-day timeline expired? Without any written agreement between both parties as is required and pursuant to this C.F.R.?
4. Pursuant to 29 C.F.R 1614.106(e)(2) Are the Respondents allowed to enter and use as evidence an, inadmissible, inaccurate, Bias IRD investigation report against the petitioner if the petitioner had no participation and had no say and had no right for rebuttal of the IRD investigation and no written agreement was ever made by both parties to extend the time period as is required in this C.F.R. ?
5. Pursuant to 29 C.F.R. § 1614.105 (a)(2). Are the U.S District court and the Fifth Circuit court of appeals allowed to ignore and not follow this C.F.R. Regulation They contradict themselves and raise inconsistencies in their ruling that affects the petitioner and would affect any other Federal employee. These Courts contradict the Fifth Circuit Court's first decision and the relevant findings that were noted at Case No. 22-50411 Doc-00516732781 at 3 in their decision to reverse and remand the petitioner's case back to the U.S District Court for further proceedings. The Fifth Circuit referenced. *Pacheco v. Rice*, 966 F.2d 904, 905 (5th Cir.1992). "Relevant here the 45-day time limit is

extended when the claimant shows that he or she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, 29 C.F.R 1614.105(a)(2)". I the petitioner did not know that the discriminatory matter, action occurred, and I had also asserted a defense of estoppel which allowed the time to be extended. Can violation of this C.F.R be allowed ?

6. Can the Petitioner lawfully be denied Injunctive relief in the way of compensatory damages, after he repeatedly requested Injunctive Relief through the Magistrate Judge to intervene by having the Respondents remove their inadmissible, inaccurate, Non- Impartial Investigation report from this case. The failure of the lower courts to never intervene and have the respondents remove their inaccurate, inadmissible, Bias investigation report after the Plaintiff repeatedly requested that they remove their report has intentionally caused the petitioner to suffer his right to a fair and impartial due process and has caused a negative financial impact on his case ?

PARTIES TO THE PROCEEDINGS

Petitioner

- Arturo S. Lopez Sr.

Respondents

- Frank Kendall III, Secretary of the Air Force
- Mary D. Garcia Human Resource Specialist

LIST OF PROCEEDINGS

Direct Proceedings Below

U.S. Court of Appeals for the Fifth Circuit
No. 23-50844

*Arturo S. Lopez Sr., Plaintiff-Appellant v.
Frank Kendall III, Secretary of the Air Force;
Mary D. Garcia, Human Resource Specialist;
Defendants-Appellees*

Final Judgment: June 14, 2024

Rehearing Denial: June 24, 2024

U.S. District Court, W.D. Texas (San Antonio)

No. 21-cv-00646

*Arturo S. Lopez Sr. Pro- Se Petitioner, v. Frank
Kendall III, Secretary of the Air Force Mary D.
Garcia Human Resource Specialist Respondent(s)*

Final Judgment: November 7, 2023

Initial Appeal

U.S. Court of Appeals for the Fifth Circuit
No. 22-50411

*Arturo S. Lopez Sr., Plaintiff-Appellant v.
Frank Kendall III, Secretary of the Air Force;
Mary D. Garcia, Human Resource Specialist;*

Final Judgment: March 9, 2023

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	iv
LIST OF PROCEEDINGS	v
TABLE OF AUTHORITIES	ix
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTNG THE PETITION	4
CONCLUSION	6

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS**OPINIONS AND ORDERS**

Opinion, U.S. Court of Appeals for the Fifth Circuit, No. 23-50844 (June 14, 2024)	1a
Judgment, U.S. Court of Appeals for the Fifth Circuit (June 14, 2024)	7a
Opinion, U.S. Court of Appeals for the Fifth Circuit, No. 22-50411 (March 9, 2023).....	9a
Judgment, U.S. Court of Appeals for the Fifth Circuit (March 9, 2023).....	14a
Order Accepting Report and Recommendation of the Magistrate Judge, U.S. District Court for the Western District of Texas (November 7, 2023).....	16a
Report and Recommendation of the Magistrate Judge, U.S. District Court for the Western District of Texas (October 4, 2023)	20a
Order Accepting Report and Recommendation of the Magistrate Judge, U.S. District Court for the Western District of Texas (April 21, 2022)	33a
Report and Recommendation of the Magistrate Judge, U.S. District Court for the Western District of Texas (March 11, 2022).....	41a

TABLE OF CONTENTS – Continued

	Page
REHEARING ORDER	
Order Denying Petition for Rehearing, U.S. Court of Appeals for the Fifth Circuit (July 11, 2024).....	48a
OTHER DOCUMENTS	
Petition for Rehearing, U.S. Court of Appeals for the Fifth Circuit (June 24, 2024)	49a

TABLE OF AUTHORITIES

	Page
CASES	
<i>Pacheco v. Rice</i> , 966 F.2d 904 (5th Cir.1992)	ii
CONSTITUTIONAL PROVISIONS	
U.S. Const. amend. XIV.....	i, 3
REGULATIONS	
29 C.F.R. 1614.105(a)(2)	i, ii
29 C.F.R. 1614.106(e)(2)	ii, iii, 2, 4



OPINIONS BELOW

The U.S. Court of Appeals for the Fifth Circuit issued its opinion in Case No. 23-50844 on June 14, 2024. (App1a). The final order of the Western District of Texas was entered on November 7, 2023. (App.19a).



JURISDICTION

The Fifth Circuit entered its opinion in Case No. 23-50844 on June 14, 2024. (App.1a). A timely filed Petition for Rehearing was denied on July 11, 2024. (App.48a). The Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254.



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The U.S. Constitution grants congress the power to delegate the details of laws to other government entities. The C.F.R is a set of legally binding Rules of Regulations that are published annually by the office of the Federal Register. Governed by the Administrative Procedure Act "APA".



STATEMENT OF THE CASE

The Petitioner brings this case to the U.S. Supreme Court with respect to the Rule of Law, the right to due process and Federal C.F.R Regulations. This case presents many inconsistencies because of an invalid, inaccurate, non-impartial IRD "Investigation Resolution Division Report" that was never removed by the Respondents and was never addressed by the lower Courts as being an invalid, inaccurate, inadmissible, non-impartial report.

The Petitioner repeatedly raised this issue at the District Court Level and at the United States Fifth Circuit Court of Appeals and was misapprehended and never addressed. *See App.49a, Case No. 23-50844, Petition for Panel Rehearing.* The Respondents IRD report contained various errors including dates entered and typographical errors which were also found and noted — by the Fifth Circuit. *See App.9a-13a, Case No. 2250411 Doc 00516732781.* The Fifth Circuit also noted the only relevant document attached to the pleading is a memorandum sent by the Air Force informing him that he could file a federal suit because an investigation into his Equal Employment Opportunity (EEO) complaint had not been completed within 180 days. *See Case No. 22-50411 Doc. 00516732781 at App.9a-13a.* This was a clear indication to the courts that yes indeed there were no prior 45-day timeline issues preventing me from filing my EEO Complaint at the U.S District Court. This was a false argument by the Respondents. The Fifth Circuit's First finding aligns with 29 C.F.R 1614.106(e)(2). The C.F.R that was violated by the Respondents.

I, respectfully ask the U.S. Supreme Court to set the legal standard that all C.F.R. Regulations are to be followed by all Federal Agencies. The Rule of Law and the right to due process will be preserved for all Federal employees. I respectfully ask the U.S. Supreme Court to grant the petitioner's Writ for Certiorari in the interest of justice and to protect the right to due process.



REASONS FOR GRANTNG THE PETITION

- 1) To prevent and stop Federal Employers from any intentional abuse of authority, prejudice, and bias deprivations of Federal Employees rights to due process. C.F.R. Regulations must be followed for fair transparency to all Federal employees and Federal Employers.
- 2) To set the legal standard if the Agency's EEO Counselor letter of acceptance and the Agency's Wing Commander letter of Right to file discrimination complaint are in fact valid documents of approval for all Federal employee's to file their EEO Complaint.
- 3) To set legal standards if these documents are valid when issued and the decisions made by these deciding officials is their decision protected under Estoppel. 29 C.F.R 1614.105(a)(2).
- 4) To set the legal standards for timeline issues that are raised by third party counsel that were never involved in the decision process of the Agency's deciding officials to accept the Federal Employees EEO Complaint. Can a third-party counsel that was not involved 2nd guess the deciding official's clear decision to accept a Federal employees EEO Complaint? *See Case No. 23-50844 Doc. 39 at App.1a-6a.* A defense of Estoppel was established.
- 5) To set legal standards if a federal agency has the authority to conduct its own non-impartial EEO IRD Investigation after their 180-day time expired, violating 29 C.F.R 1614.106(e)(2) and then be allowed to use this same non-impartial EEO IRD Investiga-

tion report against the petitioner when the petitioner had no-participation and no opportunity to rebuttal any inaccurate material it contained.

For all the reasons stated here and for all the C.F.R Regulations that have been repeatedly violated, which clearly violate the Right to Due process for any Federal Employee. Genuine material evidence has been misapprehended by the lower courts pursuant to C.F.R Regulations that have been noted and how they applied to the Petitioner and were not followed. For These reasons I respectfully ask that the U.S. Supreme Court grant the Petitioners Writ.



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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December 18, 2024