

No. 24M\_\_\_\_\_ (24A155 & 24A147)  
VIDE 23M44 & 24A507

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In The  
*Supreme Court of the United States*

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MARTIN AKERMAN, PRO SE,

*Petitioner,*

v.

MERIT SYSTEMS PROTECTION BOARD,

*Respondent(s).*

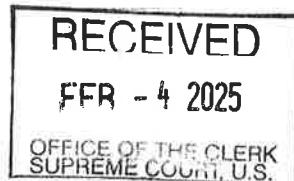
ON PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

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**PETITION FOR WRIT OF CERTIORARI  
UNDER RULE 12.4**

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MARTIN AKERMAN, *pro se,*  
*in forma pauperis*  
2001 North Adams Street, Unit 440  
Arlington, VA 22201  
(202) 656 - 5601



## **QUESTIONS PRESENTED**

Does the denial of collateral appeals for whistleblowers undermine statutory protections and judicial oversight, jeopardizing the administration of justice?

Should this Court clarify the availability of interlocutory appeals to protect whistleblowers facing ongoing retaliation, ensuring accountability both domestically and internationally?

Do procedural inconsistencies in U.S. courts compromise the credibility of the United States as a global leader in justice, eroding confidence in international systems that model themselves after U.S. principles?

Must tainted administrative rulings issued under confirmed corruption be vacated to ensure due process, or can they be preserved and reassigned without accountability for past errors?

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page. The United States and their leaders are represented by the Solicitor General.

## **RELATED CASES**

### Akerman v. Warden, Ninth Circuit Case No. 2024-6166

This state habeas corpus case raises issues of improper detention and retaliation, with implications for procedural protections under domestic and international law, see related Supreme Court FOIA suspension case 24A507, see also Akerman v. Kerner, District of Nevada, 24-cv-01602.

### In Re: Akerman: Fourth Circuit Case No. 2024-1943

Petition for mandamus to address procedural errors and issues of res judicata involving whistleblower claims. This case is currently pending en banc rehearing and raises significant questions about the interplay between administrative exhaustion and judicial remedies.

In Re: Federal Tenure of Martin Akerman,  
Fed Cir Case Nos. 2024-146 and 2025-107

These cases involve overlapping jurisdictional and procedural questions central to Petitioner's whistleblower claims, see also Supreme Court No. 23A539, see also Federal Circuit cases 2024-1912, 2024-1914 and 2024-1915.

Akerman v. Secretary-General of the United Nations,  
UNAT Case No. 2024-1965

The United Nations Appeals Tribunal clerk sua sponte rejected a motion for reconsideration of the administrative closure of Petitioner's case. This case underscores the global implications of whistleblower retaliation tied to U.S. and international frameworks.

United Nations Dispute Tribunal Case  
UNDT/NY/2024/046 (UNDT/NY/2018/008)

This case involves whistleblower disclosures concerning international funding and their intersection with U.S. domestic laws, including the Kemp-Kasten Amendment.

Denied Supreme Court Petition 24-443

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI *(Rule 12.4)*

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.

The opinion of the \_\_\_\_\_ 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.

2

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 5, 2024.

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: July 22, 2024, and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted to and including December 19, 2024 (date) on August 13, 2024 (date) in Application No. 24 A 147 & 155 (*see Rule 12.4*)

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 \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_ A \_\_\_\_\_.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### Supremacy Clause (U.S. Const. art. VI, cl. 2):

Treaties, once ratified, become the supreme law of the land, binding on U.S. courts. This case highlights the need to enforce international agreements on whistleblower protections in domestic forums.

### First Amendment's Petition Clause:

The right to petition the government for redress of grievances is central to whistleblower protections. Procedural obstructions in this case infringe upon that right, requiring intervention.

### Administrative Procedure Act (5 U.S.C. § 702):

Guarantees judicial review of administrative actions to ensure fairness and accountability. The denial of interlocutory appeals undermines this statutory safeguard.

Whistleblower Protection Act (5 U.S.C. § 2302):

Prohibits retaliation against federal employees for protected disclosures. The fragmentation and delays in adjudicating whistleblower claims in this case erode the effectiveness of these protections.

Due Process Clause (U.S. Const. amend. V):

Ensures impartial adjudication and protects against deprivation of rights without fair procedure. The tainted rulings and procedural irregularities in this case violate due process principles.

## **STATEMENT OF THE CASE**

In light of denied petition 24-443, petitioner Martin Akerman, appearing pro se, seeks review of administrative and judicial decisions that undermine whistleblower protections and procedural fairness.

These cases involve alleged retaliation and procedural deficiencies in multiple forums, including the Merit Systems Protection Board (MSPB), the Federal Circuit, and the United Nations Appeals Tribunal (UNAT). Central to the appeal is the impact of fragmented adjudication and procedural irregularities on the statutory and international safeguards intended to protect whistleblowers.

Petitioner brought multiple whistleblower retaliation claims before the MSPB, against the Department of Defense (DC-1221-22-0257-W-1 and Stay Request DC-1221-22-0257-S-1), and a charge alleging Office of Special Counsel (OSC) dereliction of duties in addressing whistleblower disclosures (DC-3443-22-0296-I-1, currently before the District of Nevada, 24-cv-01602).

Petitioner also moved for the recusal of Henry J. Kerner, on May 22, 2024, citing a conflict of interest due to his prior role as Special Counsel overseeing the OSC, which is central to the MSPB cases, see Appendix C.

On May 29, 2024, in response to petition for writ of replevin 2024-130 in the Federal Circuit (Supreme Court 23A539), the MSPB issued final decisions (see Federal Circuit 2024-1912, 2024-1914, and 2024-1915), and Administrative Judge Melissa Mehring reopened the instant joint cases in a manner that was later found to be retaliatory, ending in her removal from office.

#### Federal Circuit Interlocutory Review

The Federal Circuit denied interlocutory appeals in Case Nos. 2024-132 and 2024-133, asserting lack of jurisdiction over non-final MSPB orders. Petitioner challenged these denials, emphasizing the importance of interlocutory review to protect whistleblowers from ongoing harm during administrative delays, Appendix A.

### Related United Nations Case

Petitioner also pursued claims of retaliation within the United Nations system, alleging administrative and procedural barriers to adjudicating interconnected claims. In Case No. UNDT/NY/2024/046, the UNDT fragmented related retaliation claims, obstructing holistic adjudication and undermining whistleblower protections, dating back to 2018 (UNDT/NY/2018/008), as agreed by member states, Appendix D.

Under Article VI, Clause 2 of the U.S. Constitution, treaties, such as those governing U.N. whistleblower protections, have the force of federal law.

*"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding."*

### Legal Issues Presented

#### Fragmentation of Claims:

The severance of interconnected whistleblower retaliation claims across forums dilutes statutory and international protections, hindering comprehensive adjudication.

#### Procedural Obstructions:

Administrative and judicial actions have impeded Petitioner's access to justice, violating due process and whistleblower safeguards.

#### Conflict of Interest:

The involvement of Henry J. Kerner and UNAT Registrar Juliet E. Johnson raises concerns about impartiality and procedural integrity.

#### International and Domestic Implications:

The failure to address these issues threatens the credibility of U.S. and international justice systems as models of transparency and fairness.

## **REASONS FOR GRANTING THE WRIT**

The Supreme Court should grant this writ to address critical constitutional and statutory questions that bear on the administration of justice, the enforcement of whistleblower protections, and the integrity of domestic and international legal systems. These questions implicate constitutional provisions, such as the Supremacy Clause (U.S. Const. art. VI, cl. 2), the First Amendment's Petition Clause (U.S. Const. amend. I), and statutory frameworks governing administrative and judicial oversight.

Collateral appeals are essential in whistleblower cases to prevent ongoing harm and to uphold statutory protections under laws such as the Whistleblower Protection Act (5 U.S.C. § 2302) and the Administrative Procedure Act (5 U.S.C. § 702).

The denial of interlocutory review in this case conflicts with *McCarthy v. Madigan*, 503 U.S. 140, 146–47 (1992), which emphasizes the need for courts to ensure meaningful remedies in cases involving procedural injustice.

Here, the fragmented adjudication across forums diluted protections meant to ensure fairness and non-retaliation for whistleblowers, jeopardizing the administration of justice at both the administrative and judicial levels.

Interlocutory appeals are critical in whistleblower retaliation cases, where ongoing harm can irreparably undermine a petitioner's rights. The denial of such appeals in the Federal Circuit, as seen in *Weed v. Social Sec. Admin.*, 571 F.3d 1359, 1361 (Fed. Cir. 2009), raises concerns about procedural fairness.

This Court's guidance is required to clarify the application of 28 U.S.C. § 1295 and ensure that whistleblowers have access to interlocutory relief to address ongoing retaliation, especially when administrative remedies are insufficient or delayed.

The United States' legal framework serves as a model for international systems, but procedural inconsistencies, such as those highlighted in this case, undermine its credibility.

Treaties like the United Nations Charter and whistleblower protections outlined in ST/SGB/2017/2/Rev.1 are incorporated into U.S. law through the Supremacy Clause (U.S. Const. art. VI, cl. 2). The fragmentation and procedural barriers in this case, which mirror international failures, risk eroding global confidence in U.S. justice, as seen in *Missouri v. Holland*, 252 U.S. 416 (1920).

Administrative rulings tainted by corruption or conflicts of interest violate fundamental due process rights guaranteed under the Fifth Amendment (U.S. Const. amend. V) and the Administrative Procedure Act. In *Withrow v. Larkin*, 421 U.S. 35, 47 (1975), this Court underscored the importance of impartiality in administrative proceedings.

#### This Case is a Perfect Vehicle

This case is a quintessential vehicle for the Court to address pressing legal and constitutional questions involving whistleblower protections, procedural integrity, and international legal norms.

**PRAYER FOR RELIEF**

For the foregoing reasons, the Petitioner respectfully requests that this Court:

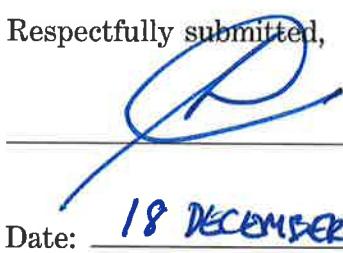
- A. Reverse and Remand the decisions of the Federal Circuit, the Merit Systems Protection Board, and related tribunals for further proceedings consistent with this Court's rulings.
- B. Clarify the Availability of Interlocutory Appeals for whistleblower claims to ensure timely and meaningful remedies, thereby protecting individuals from ongoing retaliation and safeguarding statutory rights under the Whistleblower Protection Act (5 U.S.C. § 2302).
- C. Vacate Tainted Administrative Rulings issued under conflicts of interest or procedural corruption, and mandate reassignment to impartial adjudicators.
- D. Affirm the Supremacy of Treaty Obligations under Article VI of the Constitution, ensuring enforcement of international whistleblower protections within U.S. legal frameworks.

E. Issue Additional Relief as the Court deems just and appropriate to address procedural barriers and ensure the fair adjudication of whistleblower claims across domestic and international forums.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



\_\_\_\_\_  
Date: 18 DECEMBER 2024

County/City of  
Commonwealth/State of

The foregoing instrument was acknowledged  
before me this 18th day of

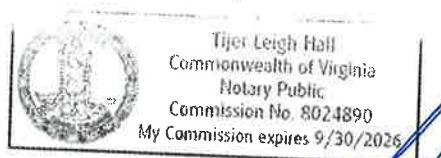
2024, by

Martin Akerman  
(name of person seeking acknowledgement)

Notary Public

My Commission Expires:

09/30/2026



In The  
*Supreme Court of the United States*

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MARTIN AKERMAN, PRO SE,

*Petitioner,*

v.

MERIT SYSTEMS PROTECTION BOARD,

*Respondent(s).*

ON PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

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## **APPENDIX A**

These orders address the Federal Circuit's denial of interlocutory appeals filed by the Petitioner, citing a lack of jurisdiction over non-final orders issued by the MSPB. The orders detail procedural constraints and the court's reasoning for denying review of administrative rulings.

NOTE: This order is nonprecedential.

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

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**MARTIN AKERMAN,**  
*Petitioner*

v.

**DEPARTMENT OF THE AIR FORCE,**  
*Respondent*

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2024-133

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On Petition for Permission to Appeal from the Merit Systems Protection Board in No. DC-1221-22-0445-W-2.

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**ON PETITION AND MOTION**

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Before STOLL, CUNNINGHAM, and STARK, *Circuit Judges*.  
PER CURIAM.

**O R D E R**

Martin Akerman petitions for permission for interlocutory appeal from a May 31, 2024 Acknowledgement Order issued by an administrative judge of the Merit Systems Protection Board. Mr. Akerman also moves to hold the petition in abeyance, ECF No. 4, and objects to the caption, ECF No. 5. We deny the petition and the motions.

The May 31, 2024 order is the administrative judge's acknowledgement of the refiling of Mr. Akerman's appeal following dismissal subject to automatic reinstatement. In that order, the administrative judge denied a request for joinder of the National Guard and reiterated previous rulings as to the scope of the appeal and extent of permitted discovery. Mr. Akerman's petition here asks this court to reverse those aspects of the May 31, 2024 order.

In matters from the Board, this court's jurisdiction is generally limited to "an appeal from a *final order or final decision*," 28 U.S.C. § 1295(a)(9) (emphases added), and "an order is final only when it ends the litigation on the merits and leaves nothing for the [tribunal] to do but execute the judgment," *Weed v. Social Sec. Admin.*, 571 F.3d 1359, 1361 (Fed. Cir. 2009) (cleaned up). The May 31, 2024 order clearly does not resolve the merits of Mr. Akerman's appeal before the Board, which remains pending. And Mr. Akerman has not identified, and the court is not aware of, any basis for this court's immediate, interlocutory review of the administrative judge's order under the circumstances.

Accordingly,

IT IS ORDERED THAT:

The petition and all pending motions are denied.

FOR THE COURT



Jarrett B. Perlow  
Clerk of Court

July 5, 2024  
Date

NOTE: This order is nonprecedential.

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

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**MARTIN AKERMAN,**  
*Petitioner*

v.

**DEPARTMENT OF THE ARMY,**  
*Respondent*

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2024-132

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On Petition for Permission to Appeal from the Merit Systems Protection Board in No. DC-1221-22-0257-W-2.

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**ON PETITION AND MOTION**

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Before STOLL, CUNNINGHAM, and STARK, *Circuit Judges*.  
PER CURIAM.

**O R D E R**

Martin Akerman petitions for permission for interlocutory appeal from a May 31, 2024 Acknowledgement Order issued by an administrative judge of the Merit Systems Protection Board. Mr. Akerman also moves to hold the petition in abeyance, ECF No. 4, and objects to the caption, ECF No. 5. We deny the petition and the motions.

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In matters from the Board, this court's jurisdiction is generally limited to "an appeal from a *final order or final decision*," 28 U.S.C. § 1295(a)(9) (emphases added), and "an order is final only when it ends the litigation on the merits and leaves nothing for the [tribunal] to do but execute the judgment," *Weed v. Social Sec. Admin.*, 571 F.3d 1359, 1361 (Fed. Cir. 2009) (cleaned up). The May 31, 2024 order clearly does not resolve the merits of Mr. Akerman's appeal before the Board, which remains pending. And Mr. Akerman has not identified, and the court is not aware of, any basis for this court's immediate, interlocutory review of the administrative judge's order under the circumstances.

Accordingly,

IT IS ORDERED THAT:

The petition and all pending motions are denied.

FOR THE COURT



Jarrett B. Perlow  
Clerk of Court

July 5, 2024  
Date

In The  
*Supreme Court of the United States*

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MARTIN AKERMAN, PRO SE,

*Petitioner,*

v.

MERIT SYSTEMS PROTECTION BOARD,

*Respondent(s).*

ON PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

---

**APPENDIX B**

These documents contain the court's orders denying the Petitioner's motions for panel rehearing. The orders reaffirm prior decisions and note the court's jurisdictional limitations.

NOTE: This order is nonprecedential.

United States Court of Appeals  
for the Federal Circuit

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MARTIN AKERMAN,  
*Petitioner*

v.

DEPARTMENT OF THE AIR FORCE,  
*Respondent*

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2024-133

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On Petition for Permission to Appeal pursuant to 28  
U.S.C. Section 1292(b) from the Merit Systems Protection  
Board in No. DC-1221-22-0445-W-2.

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**ON PETITION FOR PANEL REHEARING**

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Before STOLL, CUNNINGHAM, and STARK, *Circuit  
Judges*.<sup>1</sup>

PER CURIAM.

**ORDER**

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<sup>1</sup> Circuit Judge Newman did not participate.

On July 5, 2024, Martin Akerman filed a petition for panel rehearing [ECF No. 11].

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

FOR THE COURT



July 22, 2024  
Date

Jarrett B. Perlow  
Clerk of Court

NOTE: This order is nonprecedential.

United States Court of Appeals  
for the Federal Circuit

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MARTIN AKERMAN,  
*Petitioner*

v.

DEPARTMENT OF THE ARMY,  
*Respondent*

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2024-132

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On Petition for Permission to Appeal pursuant to 28 U.S.C. Section 1292(b) from the Merit Systems Protection Board in No. DC-1221-22-0257-W-2.

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ON PETITION FOR PANEL REHEARING

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Before STOLL, CUNNINGHAM, and STARK, *Circuit Judges*.<sup>1</sup>  
PER CURIAM.

ORDER

On July 5, 2024, Martin Akerman filed a petition for panel rehearing [ECF No. 11].

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<sup>1</sup> Circuit Judge Newman did not participate.

**Upon** consideration thereof,

**IT IS ORDERED THAT:**

**The petition for panel rehearing is denied.**

**FOR THE COURT**



Jarrett B. Perlow  
Clerk of Court

July 22, 2024

Date

In The  
*Supreme Court of the United States*

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MARTIN AKERMAN, PRO SE,

*Petitioner,*

v.

MERIT SYSTEMS PROTECTION BOARD,

*Respondent(s).*

ON PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

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**APPENDIX C**

This motion requests the recusal of Henry J. Kerner from MSPB proceedings due to a conflict of interest stemming from his former role as Special Counsel. The document outlines procedural fairness concerns and highlights the involvement of the Office of Special Counsel in related cases.

MARTIN AKERMAN v. OFFICE OF SPECIAL COUNSEL

Docket # DC-3443-22-0296-I-1

Motion for Recusal of Mr. Henry J. Kerner in Pending MSPB

Summary Page

Case Title : MARTIN AKERMAN v. OFFICE OF SPECIAL COUNSEL

Docket Number : DC-3443-22-0296-I-1

Pleading Title : Motion for Recusal of Mr. Henry J. Kerner in Pending MSPB

Filer's Name : Martin Akerman

Filer's Pleading Role : Appellant

Details about the supporting documentation

#	Title / Description	Mode of Delivery

MARTIN AKERMAN v. OFFICE OF SPECIAL COUNSEL

Docket # DC-3443-22-0296-I-1

Motion for Recusal of Mr. Henry J. Kerner in Pending MSPB Cases

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MARTIN AKERMAN v. OFFICE OF SPECIAL COUNSEL

Docket # DC-3443-22-0296-I-1

Motion for Recusal of Mr. Henry J. Kerner in Pending MSPB

Online Interview

1. Enter a brief title for your pleading.

Motion for Recusal of Mr. Henry J. Kerner in Pending MSPB Cases

---

2. Does your pleading assert facts that you know from your personal knowledge?

Yes

---

3. Do you declare, under penalty of perjury, that the facts stated in this pleading are true and correct?

Yes

---

Chairman Cathy Harris  
Vice Chairman Raymond Limon  
Merit Systems Protection Board  
1615 M Street, NW  
Washington, D.C. 20419

May 22, 2024

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**Re: Motion for Recusal of Mr. Henry J. Kerner  
in Pending MSPB Cases relating to OSC**

---

Dear Chairman Harris and Vice Chairman Limon,

**Background and Request for Recusal**

I am Martin Akerman, the appellant, appearing pro se in multiple cases currently under review by the Merit Systems Protection Board (MSPB). These cases have profound implications for my career and future, involving significant decisions and allegations made by various federal entities, including the Department of the Army, Department of Defense, and the Office of Special Counsel.

On July 3, 2023, President Biden announced his intent to nominate Mr. Henry J. Kerner for a position as a Member of the MSPB. Mr. Kerner's nomination is currently pending before the Senate. Previously, Mr. Kerner served as the Special Counsel, a role in which he led the Office of Special Counsel (OSC).

Given his previous leadership position at the OSC and the direct involvement of OSC in one of my pending cases (Docket No. DC-3443-22-0296-I-1), there exists a potential conflict of interest that could affect the impartiality required in these administrative proceedings. Mr. Kerner's historical association with the OSC and his knowledge of its internal operations and priorities could influence decisions in cases where the OSC's actions and decisions are at issue.

Specific Cases Highlighting OSC Dereliction of Duties

I wish to highlight four of my pending cases that directly reflect and support claims of dereliction of duties by the OSC:

- Docket No. DC-1221-22-0257-W-1
- Docket No. DC-1221-22-0445-W-1
- Docket No. DC-1221-22-0459-W-1
- Docket No. DC-1221-22-0257-S-1 (Fifth Amendment Appeal Pending at U.S. Court of Appeals for the Federal Circuit)

These cases are critical as they involve evaluations of OSC's conduct and decisions, underscoring the necessity for an unbiased review by the MSPB.

**Standing to Make the Request**

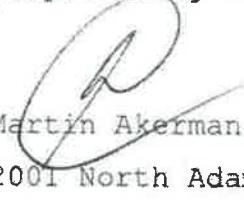
As the appellant directly affected by the outcomes of these proceedings, I have a vested interest in the integrity and impartiality of the MSPB's review process.

**Request for Recusal**

Therefore, in the interest of justice and to avoid any appearance of bias or conflict of interest, I respectfully request that Mr. Henry J. Kerner recuse himself from any involvement in my pending cases before the MSPB, particularly those listed above.

Thank you for your attention to this matter. I trust that the MSPB will carefully consider this motion and take appropriate measures to uphold the principles of fairness and impartial adjudication.

Respectfully submitted,

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

# Certificate of Service

e-Appeal has handled service of the assembled pleading to MSPB and the following Parties.

Name & Address	Documents	Method of Service
MSPB: Office of the Clerk of the Board	Motion for Recusal of Mr. Henry J. Kerner in Pending MSPB Cases	e-Appeal
Beckett, Amy	Motion for Recusal of Mr. Henry J. Kerner in Pending MSPB Cases	e-Appeal
Khaing, Hnin	Motion for Recusal of Mr. Henry J. Kerner in Pending MSPB Cases	e-Appeal

In The  
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MARTIN AKERMAN, PRO SE,

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ON PETITION FOR WRIT OF CERTIORARI TO THE  
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**APPENDIX D**

This document provides the United Nations' policies for safeguarding individuals reporting misconduct, including retaliation prevention, reporting channels, and procedural protections.



28 November 2017

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## Secretary-General's bulletin

### **Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations**

The Secretary-General, for the purpose of ensuring that the Organization functions in an open, transparent and fair manner, with the objective of enhancing protection for individuals who report misconduct or cooperate with duly authorized audits or investigations, and in accordance with paragraph 161 (d) of General Assembly resolution 60/1, paragraph 6 of Assembly resolution 70/255 and paragraph 44 of Assembly resolution 71/263, promulgates the following:

#### **Section 1** **General**

1.1 It is the duty of staff members to report any breach of the Organization's regulations and rules to the officials whose responsibility it is to take appropriate action. An individual who makes such a report in good faith has the right to be protected against retaliation.

1.2 It is also the duty of staff members to cooperate with duly authorized audits and investigations. An individual who cooperates in good faith with an audit or investigation has the right to be protected against retaliation.

1.3 Retaliation against individuals who have reported misconduct or who have cooperated with audits or investigations violates the fundamental obligation of all staff members to uphold the highest standards of efficiency, competence and integrity and to discharge their functions and regulate their conduct with the best interests of the Organization in view.

1.4 Retaliation means any direct or indirect detrimental action that adversely affects the employment or working conditions of an individual, where such action has been recommended, threatened or taken for the purpose of punishing, intimidating or injuring an individual because that individual engaged in an activity protected by the present policy as set out in section 2 below ("protected activity").

#### **Section 2** **Protected activity**

2.1 Protection against retaliation applies to any staff member (regardless of the type of appointment or its duration), intern, United Nations volunteer, individual contractor or consultant who:

(a) Reports the failure of one or more staff members to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, the Financial Regulations and Rules, or the Standards of Conduct of the International Civil Service, including any request or instruction from any staff member to violate the above-mentioned regulations, rules or standards, or reports wrongdoing by any person that, if established, would be manifestly harmful to the interests, operations, or governance of the Organization. In order to receive protection, the report should be made as soon as possible and not later than six years after the individual becomes aware of the misconduct. The individual must make the report in good faith and must submit information or evidence to support a reasonable belief that misconduct has occurred; or

(b) Cooperates in good faith with a duly authorized investigation or audit.

2.2 The present bulletin is without prejudice to the legitimate application of regulations, rules and administrative procedures, including those governing evaluation of performance, non-extension or termination of appointment. However, the burden of proof shall rest with the Administration to demonstrate by clear and convincing evidence that it would have taken the same action absent the protected activity referred to in section 2.1 above or that the alleged retaliatory action was not taken for the purpose of punishing, intimidating or injuring the individual who engaged in the protected activity.

2.3 The transmission or dissemination of unsubstantiated rumours is not a protected activity. Making a report or providing information that is intentionally false or misleading constitutes misconduct and may result in disciplinary or other appropriate action.

### **Section 3**

#### **Reporting misconduct through established internal mechanisms**

Except as provided in section 4 below, reports of misconduct should be made through the established internal mechanisms: to the Office of Internal Oversight Services (OIOS), the Assistant Secretary-General for Human Resources Management, the head of department or office concerned or the focal point appointed to receive reports of sexual exploitation and abuse. It is the duty of the Administration to protect the confidentiality of the individual's identity and all communications through those channels to the maximum extent possible.

### **Section 4**

#### **Reporting misconduct through external mechanisms**

Notwithstanding staff regulation 1.2 (i), protection against retaliation will be extended to an individual who reports misconduct to an entity or individual outside of the established internal mechanisms, where the criteria set out in subparagraphs (a), (b) and (c) below are satisfied:

(a) Such reporting is necessary to avoid:

- (i) A significant threat to public health and safety; or
- (ii) Substantive damage to the Organization's operations; or
- (iii) Violations of national or international law; and

(b) The use of internal mechanisms is not possible because:

- (i) At the time the report is made, the individual has grounds to believe that he/she will be subjected to retaliation by the person(s) he/she should report to pursuant to the established internal mechanism; or

- (ii) It is likely that evidence relating to the misconduct will be concealed or destroyed if the individual reports to the person(s) he/she should report to pursuant to the established internal mechanisms; or
- (iii) The individual has previously reported the same information through the established internal mechanisms, and the Organization has failed to inform the individual in writing of the status of the matter within six months of such a report; and
- (c) The individual does not accept payment or any other benefit from any party for such report.

## **Section 5**

### **Prevention action**

5.1 OIOS will inform the Ethics Office of any report of wrongdoing received that OIOS identifies as posing a retaliation risk. OIOS will provide this information to the Ethics Office only upon the consent of the individual who made the report.

5.2 When informed by OIOS of an individual who is at risk of retaliation, the Ethics Office will consult with the individual on appropriate retaliation prevention action. With the individual's consent, such action may include engagement by the Ethics Office with the individual's senior management to ensure monitoring of the individual's workplace situation with a view to preventing any retaliatory action against the individual as a consequence of his or her engaging in a protected activity.

## **Section 6**

### **Reporting retaliation to the Ethics Office**

6.1 Individuals who believe that retaliatory action has been taken against them because they have engaged in a protected activity may submit a request for protection against retaliation to the Ethics Office in person, by regular mail, by email or through the Ethics Office helpline. They should forward all information and documentation available to them to support their complaint to the Ethics Office as soon as possible.

6.2 Requests for protection against retaliation must be submitted to the Ethics Office no later than six months after the date on which the individual knew, or in the opinion of the Ethics Office should have known, that the alleged retaliatory action was taken.

## **Section 7**

### **Preliminary review by the Ethics Office**

7.1 Upon receipt of a complaint of retaliation or threat of retaliation, the Ethics Office will conduct a preliminary review of the complaint to determine whether (a) the complainant engaged in a protected activity; and (b) there is a *prima facie* case that the protected activity was a contributing factor in causing the alleged retaliation or threat of retaliation.

7.2 The Ethics Office shall maintain the confidentiality of all communications received from complainants who request protection against retaliation, and from all relevant third parties. Complainants may authorize the Ethics Office to contact any office or staff member to obtain additional information and records related to their request for protection. However, the Ethics Office may be required to cooperate with requests for information from United Nations oversight bodies or from the United Nations Dispute Tribunal or the United Nations Appeals Tribunal in the course of their official functions.

7.3 All offices and staff members shall cooperate with the Ethics Office and provide access to all records and documents requested by the Ethics Office, except for medical records that are not available without the express consent of the staff member concerned and OIOS records that are subject to confidentiality requirements.

7.4 The Ethics Office will seek to complete its preliminary review within 30 days of receiving all information requested concerning a complaint of retaliation submitted.

7.5 If the Ethics Office determines that there is no *prima facie* case of retaliation or threat of retaliation, it shall so notify the complainant in writing. Should the Ethics Office determine in such cases that there is an interpersonal problem within a particular office, it may additionally advise the complainant of the mandate of the Office of the Ombudsman or of the existence of other informal mechanisms of conflict resolution in the Organization.

7.6 If the Ethics Office determines that there is no *prima facie* case of retaliation or threat of retaliation but considers there to be a managerial problem relating to a particular department or office, it will advise the head of department or office concerned and, if it considers it appropriate, the Secretary-General.

7.7 If the Director of the Ethics Office is of the opinion that there is an actual or potential conflict of interest in his or her reviewing a request for protection against retaliation, he or she shall decide on whether to refer the request to an alternative reviewing body, including the alternate Chair of the Ethics Panel of the United Nations.<sup>1</sup>

## **Section 8**

### **Ethics Office action if a *prima facie* case exists**

8.1 If the Ethics Office considers that there is a credible case of retaliation or threat of retaliation, it will refer the matter in writing to OIOS for investigation and will immediately notify in writing the complainant that the matter has been so referred. The Ethics Office will also undertake such action if it is recommended in accordance with section 9 below. OIOS will seek to complete its investigation and submit its report to the Ethics Office within 120 days.

8.2 Where, in the opinion of the Ethics Office, there may be a conflict of interest in OIOS conducting the investigation as referred to in section 8.1 above, the Ethics Office may recommend to the Secretary-General that the complaint be referred to an alternative investigating mechanism.

8.3 Pending completion of the investigation, the Ethics Office may recommend that the Secretary-General take appropriate measures to safeguard the interests of the complainant, including, but not limited to, temporary suspension of the implementation of the action reported as retaliatory; with the consent of the complainant, temporary reassignment of the complainant and/or change of reporting lines; or, for staff members, placement of the complainant on special leave with full pay. For individual contractors or consultants, such interim measures shall not include reinstatement or extension of an engagement beyond its original date of completion.

8.4 Upon receipt of the investigation report, the Ethics Office will conduct an independent review of the findings of the report and supporting documents to determine whether the report and the supporting documents show, by clear and convincing evidence, that the Administration would have taken the alleged retaliatory

<sup>1</sup> Pursuant to ST/SGB/2007/11/Amend.1, the Ethics Panel of the United Nations consists of the heads of the Ethics Offices of the separately administered organs and programmes of the United Nations and the Ethics Office of the United Nations Secretariat.

action absent the complainant's protected activity or that the alleged retaliatory action was not made for the purpose of punishing, intimidating or injuring the complainant. If, in the view of the Ethics Office, this standard of proof is not met, the Ethics Office will consider that retaliation has occurred. If the standard of proof is met, the Ethics Office will consider that retaliation has not occurred. In all cases, the Ethics Office will inform the complainant in writing of its determination and make its recommendations to the head of department or office concerned and to the Under-Secretary-General for Management. Those recommendations may include that the matter be referred to the Assistant Secretary-General for Human Resources Management for possible disciplinary procedures or other action that may be warranted as a result of the determination.

8.5 If the Ethics Office considers that there has been retaliation against a complainant, it may, after taking into account any recommendations made by OIOS or other concerned office(s) and after consultation with the complainant, recommend to the head of department or office concerned appropriate measures aimed at correcting negative consequences suffered as a result of the retaliatory action and protecting the complainant from any further retaliation, including, but not limited to: the rescission of the retaliatory decision, including reinstatement, or, if requested by the complainant, transfer to another office and/or function and/or change of reporting lines. For individual contractors or consultants, such measures shall not include reinstatement or extension of an engagement beyond its original date of completion.

8.6 Subject to all relevant due process rights, including rights under chapter X of the Staff Rules, recommended measures may also include transfer of the person who allegedly engaged in retaliation.

8.7 The head of department or office concerned shall provide a written decision to the complainant and the Ethics Office on the recommendations of the Ethics Office within 30 days. Subject to section 8.7 below, the decision must respect the confidentiality rights of the person who allegedly engaged in retaliation in relation to any ongoing disciplinary process.

8.8 Should the Ethics Office not be satisfied with the response from the head of department or office concerned, it can make a recommendation to the Secretary-General. The Secretary-General will provide a written decision on the recommendations of the Ethics Office to the complainant, the Ethics Office and the department or office concerned within 30 days.

8.9 Complainants will be informed on a confidential basis of any disciplinary sanctions imposed for the retaliatory action.

## **Section 9**

### **Review of Ethics Office determinations**

9.1 If, following a determination by the Ethics Office under section 7.5 or 7.6 above that there is no *prima facie* case of retaliation or threat of retaliation, the complainant wishes to have the matter reviewed further, he or she may, within 30 days of notification of the determination, refer the matter, in writing, to the alternate Chair of the Ethics Panel of the United Nations.

9.2 The alternate Chair of the Ethics Panel will seek comments from the complainant and the Administration on the request for review and undertake his or her own independent review of the matter, which shall include review of the action previously taken by the Ethics Office and a determination of any additional action required, including whether referral for investigation is warranted under section 8.1 above. The alternate Chair of the Ethics Panel, following the completion of his or her review, will submit his or her recommendations to the Ethics Office. The Ethics Office

will implement the recommendations of the alternate Chair of the Ethics Panel, including any recommendation to refer the matter to OIOS for investigation pursuant to section 8.1 above.

9.3 If the alternate Chair of the Ethics Panel is of the opinion that there is an actual or potential conflict of interest in his or her reviewing the matter, he or she shall decide on an alternative reviewing body, including possible referral of the matter to another member of the Ethics Panel.

### **Section 10**

#### **Review of administrative decisions under chapter XI of the Staff Rules**

10.1 The action, or non-action, of the Administration on a recommendation from the Ethics Office under section 8 above will constitute a contestable administrative decision under chapter XI of the Staff Rules if it has direct legal consequences affecting the terms and conditions of appointment of the complainant, and may be contested within the deadlines specified under those Rules.

10.2 Staff members are reminded that they may seek to challenge any administrative decision that they consider to be retaliatory under chapter XI of the Staff Rules. Such recourse must comply with the deadlines specified under those Rules.

10.3 Recommendations of the Ethics Office and the alternate Chair of the Ethics Panel under the present bulletin do not constitute administrative decisions and are not subject to challenge under chapter XI of the Staff Rules.

### **Section 11**

#### **Prohibition of retaliation against outside parties**

If established, any retaliatory measures against a contractor or its employees, agents or representatives or any other individual engaged in any dealings with the United Nations because such person has reported misconduct may lead to disciplinary or other appropriate action.

### **Section 12**

#### **Annual review of implementation of the present policy**

On an annual basis, the Secretary-General shall review and assess the terms and implementation of the present policy.

### **Section 13**

#### **Entry into force**

13.1 The present bulletin shall enter into force on its date of issuance.

13.2 Secretary-General's bulletin ST/SGB/2017/2, entitled "Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations" is hereby superseded.

13.3 The provisions of the present bulletin shall prevail over any inconsistent provisions contained in other administrative issuances currently in force.

*(Signed) António Guterres*  
Secretary-General



**Additional Pleadings  
in the Interest of Whistleblower Protections and  
Procedural Safeguards for Whistleblower Protections**

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Applicant Martin Akerman, former P-5 Chief of Transparency and Enterprise Risk Management at the United Nations Population Fund, having been the victim of whistleblower retaliation, and for the purpose of ensuring that the United Nations continues to function in an open, transparent and fair manner, with the objective of enhancing protection for individuals who report misconduct or cooperate with duly authorized audits or investigations, and in accordance with paragraph 161 (d) of General Assembly resolution 60/1, paragraph 6 of Assembly resolution 70/255 and paragraph 44 of Assembly resolution 71/263, pleads as follows:

1. The Organization must adhere to Sections 1.1 and 1.2 of ST/SGB/2017/2/Rev.1, which obligate it to protect whistleblowers from retaliation. The fragmentation of this case without a procedural link to the prior retaliation case (UNDT/NY/2018/008) undermines these safeguards.

**Request:** Consolidate this case with the prior retaliation case or order proceedings that ensure holistic adjudication.

2. The Respondent's actions represent a continued pattern of retaliation, which is explicitly prohibited under Sections 1.3 and 1.4 of ST/SGB/2017/2/Rev.1.

**Request:** Recognize this case as the first instance of retaliation post-settlement within the UN system, necessitating a robust judicial approach to close procedural loopholes.

**Violation of Good Faith under Settlement Agreements**

3. Retaliation post-settlement violates the principle of good faith, a cornerstone of any settlement agreement, as enshrined in Article 19 of the UNDT Rules of Procedure.

**Request:** Issue an order requiring the Respondent to demonstrate by clear and convincing evidence that no retaliatory actions were taken post-settlement.

4. Fragmenting claims diminishes the UN's ability to provide adequate protections to whistleblowers, setting a dangerous precedent.

**Request:** Address the procedural harm caused by severing this case from the prior retaliation matter, ensuring no whistleblower is denied the procedural protections of consolidated adjudication.

Organizational Accountability and Transparency

5. Failure to uphold whistleblower protections undermines trust in the UN's internal justice system and organizational accountability.

**Request:** Order an independent review of the Organization's adherence to whistleblower protection policies in cases involving post-settlement retaliation.

6. This case highlights a gap in current UN jurisprudence, as the Appeals Tribunal has not previously addressed retaliation following a settlement agreement.

**Request:** Recommend that the Appeals Tribunal convene a wider discussion on this issue, emphasizing the need for additional procedural safeguards.

Preventing Irreparable Harm to Whistleblower Protections

7. Allowing retaliation post-settlement without judicial scrutiny risks irreparable harm to whistleblower protections and encourages impunity for retaliatory actions.

**Request:** Grant interim measures to preserve the Appellant's rights and prevent further harm to the integrity of whistleblower protections.

Strengthening Future Jurisprudence

Precedential Consideration

8. This case provides an opportunity to establish a robust legal precedent ensuring that whistleblower protections are not circumvented through retaliatory practices following settlements.

**Request:** Issue a judgment or advisory opinion reaffirming the UN's commitment to protecting whistleblowers from all forms of retaliation, including post-settlement actions.

Holistic Adjudication of Interconnected Claims

9. Article 19 of the UNDT Rules of Procedure supports the necessity for holistic adjudication. Fragmenting interconnected claims contradicts this principle.

**Request:** Reinstate procedural links between the current case and prior retaliation matters to ensure fair and comprehensive adjudication.

**Clarity on the Role of Whistleblower Policies**

Burden-Shifting Framework in Whistleblower Cases

10. Sections 2.2 and 8.5 of ST/SGB/2017/2/Rev.1 require the Organization to prove non-retaliatory motives with clear and convincing evidence.

**Request:** Establish guidelines to clarify the role of whistleblower policies in cases of post-settlement retaliation.

In The  
*Supreme Court of the United States*

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MARTIN AKERMAN, PRO SE,

*Petitioner,*

v.

MERIT SYSTEMS PROTECTION BOARD,

*Respondent(s).*

ON PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

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**APPENDIX E**

This motion highlights the procedural violations and conflict of interest involving the Registrar of the UN Appeals Tribunal. It discusses barriers to holistic adjudication of retaliation claims and the impact on whistleblower protections.



# UNITED NATIONS APPEALS TRIBUNAL

## TRIBUNAL D'APPEL DES NATIONS UNIES

### MOTION FOR RECUSAL

**Note:** Article 23 of UNAT's Rules permits a party to make a reasoned request for the recusal of a judge on the grounds of conflict of interest to the President or to the Appeals Tribunal, which, after seeking comments from the judge for whom recusal is requested, shall decide on the request and shall inform the party of the decision in writing. Under Article 22(1) of UNAT's Rules, the term "conflict of interest" means any factor that may impair or reasonably give the appearance of impairing the ability of a judge to independently and impartially adjudicate a case assigned to him or her.

#### I. UNAT Case Number

UNAT Case No.:	2024-1965
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#### II. Applicant

##### A. If Applicant is a person:

Full name (first, middle, last):	Martin Akerman
Index No., if applicable:	728088
Employment status:	Former
Organization/Department/ Office/Section:	United Nations Population Fund Multipartner Trust Funds
Representative, if applicable (attach authorization):	Self-represented
Address for service of documents (preferably an e-mail address):	makerman@gmail.com
Phone number of Applicant or representative, where represented:	202-656-5601

### III. Grounds for motion

Identify the judge(s) whose recusal you request. In accordance with Article 22 of UNAT's Rules, set forth the reason(s) you assert there is a conflict of interest. This Section must not exceed five pages. Please number all paragraphs.

The Applicant, Martin Akerman, respectfully moves for the recusal of the Registrar, Ms. Juliet E. Johnson, pursuant to Article 23 of the UNAT Rules of Procedure, on the grounds of a conflict of interest under Article 22(1). The Registrar's actions demonstrate factors that impair, or give the reasonable appearance of impairing, her ability to independently and impartially administer Case No. 2024-1965. These actions have compounded ongoing procedural violations, undermined whistleblower protections, and perpetuated retaliation against the Applicant, contrary to established UN principles and standards.

#### Background

##### Administrative Closure of Case No. 2024-1965

On December 11, 2024, the Registrar, Ms. Juliet E. Johnson, administratively closed Case No. 2024-1965, citing the President of the Appeals Tribunal's determination under Article 8(5) of the UNAT Rules of Procedure. The closure email (Annex 1) claimed that the case was not receivable due to the absence of an appealable UNDT order or judgment.

##### Registrar's Follow-Up Communication

On December 12, 2024, the Registrar issued a follow-up letter (Annex 2), clarifying that the closure decision was her own and not directed by the President. This directly contradicted the initial justification provided in her earlier communication.

##### Objection by the Applicant

On December 13, 2024, the Applicant, Martin Akerman, formally objected to the administrative closure, raising procedural concerns about due process violations under Article 31(1) of the UNAT Rules. In his motion (Annex 3), the Applicant highlighted the obstruction of filing access, requested reconsideration of the closure decision, and sought clarification regarding the Registrar's authority to act unilaterally.

##### Registrar's Procedural Obstructions

Subsequent to the closure, the Registrar restricted access to the filing system, preventing the Applicant from submitting further motions or pleadings. Despite the Applicant's attempts to address the procedural barriers, the Registry reaffirmed the inadmissibility of the case, further hindering his access to justice (Annex 4).

### **Issues on Appeal**

#### Motions Filed by the Applicant

The Applicant filed multiple motions during the course of proceedings:

- November 13, 2024: First Motion for Interim Measures (Annex 5).
- November 24, 2024: Second Motion for Interim Measures, accompanied by a Motion for Additional Pleadings on November 25, 2024 (Annex 6).

Despite the Registry acknowledging receipt of these filings and transmitting the Respondent's comments on December 6, 2024, none of the motions were adjudicated. Instead, the Registrar preemptively deemed the case non-receivable, bypassing judicial oversight and leaving the Applicant's substantive and procedural arguments unresolved.

#### Fragmentation of Claims

The Applicant's interlocutory appeal challenged the UNDT's severance of interconnected retaliation claims in Case No. UNDT/NY/2024/046 and Case No. UNDT/NY/2018/008. These claims highlighted a pattern of retaliation following whistleblower activities, with protections guaranteed under Section 1.1 of ST/SGB/2017/2/Rev.1.

By administratively dismissing the appeal without judicial review, the Registrar perpetuated this fragmentation, obstructing the Applicant's ability to present their case comprehensively and undermining critical whistleblower protections.

#### Precedential Irregularities and Judicial Oversight

Established UNAT jurisprudence, including Gehr v. Secretary-General, Judgment No. 2013-UNAT-313, confirms that determinations on receivability are judicial matters requiring adjudication by a judge. The Registrar's unilateral actions in declaring the case non-receivable represent a stark departure from this precedent, raising serious concerns about procedural fairness and the integrity of the Tribunal (Annex 8).

### **Ground 1. Violation of Whistleblower Protections Post-Settlement**

1.1. The United Nations guarantees protections for whistleblowers, including safeguards against retaliation, under Section 1.1 of ST/SGB/2017/2/Rev.1, the UNDT Rules, and related jurisprudence. These protections extend beyond settlement agreements and are essential for ensuring that whistleblowers can safely report misconduct without fear of reprisal.

1.2. The Registrar's administrative closure of the Applicant's case interfered with these protections by denying the Applicant access to procedural safeguards. The Registrar effectively obstructed the Applicant's right to challenge retaliation stemming from their protected whistleblower activities.

1.3. The fragmentation of the Applicant's claims between UNDT/NY/2024/046 and UNDT/NY/2018/008—and the subsequent denial of a link between these cases—directly undermines the Applicant's ability to present the case as a whole. The UNDT's severance of interconnected claims perpetuates the retaliation and dilutes the protections granted under whistleblower frameworks.

**Ground 2. Fragmentation of Claims  
Contravenes the Right to Fair Adjudication**

2.1. The Applicant's interlocutory appeal sought to address the improper severance of claims in UNDT/NY/2024/046, which were materially linked to the whistleblower case UNDT/NY/2018/008. These claims highlight a pattern of retaliation following a settlement agreement, which the UN whistleblower protection framework expressly prohibits.

2.2. The Registrar's administrative closure of the Applicant's case preemptively dismissed these arguments without judicial review. This action contradicts the UN's commitment to addressing whistleblower retaliation holistically and creates an appearance of bias by shielding procedural irregularities from scrutiny.

2.3. Established UN precedents, including Gehr v. Secretary-General, Judgment No. 2013-UNAT-313, affirm that procedural decisions impacting receivability are judicial matters, not administrative ones. The Registrar's actions exceed her administrative authority and undermine the Applicant's right to have their claims considered in their entirety.

**Ground 3. Procedural Irregularities Constitute Retaliation and Bias**

3.1. The Registrar's decision to restrict access to the filing system prevented the Applicant from submitting motions for reconsideration or additional pleadings. This procedural obstruction not only violates Article 31(1) of the UNAT Rules but also constitutes an act of retaliation against the Applicant for asserting whistleblower protections.

3.2. By administratively closing the case and rejecting motions without judicial oversight, the Registrar assumed a quasi-judicial role, contrary to Article 2(1) of the UNDT Statute and related rules. This undermines judicial independence and impartiality, creating a reasonable appearance of bias.

**Ground 4. UN Standards Mandate Continued Protections and Comprehensive Review**

4.1. The UN's whistleblower protection framework, as outlined in ST/SGB/2017/2/Rev.1, emphasizes the importance of comprehensive protections for individuals reporting misconduct, including safeguards against post-settlement retaliation. The Applicant's claims of retaliation, as well as procedural fragmentation, fall squarely within these protections.

4.2. The denial of a link between UNDT/NY/2024/046 and UNDT/NY/2018/008 undermines the integrity of the whistleblower protection framework and erodes confidence in the UN's commitment to transparency and accountability.

4.3. UNAT jurisprudence, including Schifferling v. Secretary-General, Order No. 551 (2024), highlights the importance of addressing procedural fairness in interlocutory appeals to ensure access to justice and uphold whistleblower protections.

**Request for Relief**

The Applicant respectfully requests the following relief:

5.1. The recusal of the Registrar, Ms. Juliet E. Johnson, from any further involvement in Case No. 2024-1965.

5.2. The reopening of the filing system to enable the Applicant to submit motions for reconsideration, additional pleadings, and related filings, ensuring compliance with Articles 7 and 31 of the UNAT Rules.

5.3. A judicial review of the procedural fragmentation of the Applicant's claims to ensure they are considered as a whole, in line with the protections guaranteed under ST/SGB/2017/2/Rev.1.

5.4. A referral for an ethics investigation into the Registrar's conduct under ST/SGB/2017/2/Rev.1, to determine whether her actions violated the UN's whistleblower protection framework and principles of impartiality.

THE UNITED NATIONS APPEALS TRIBUNAL

Motion for Recusal

**IV. Annexes**

**Note:** Add rows if needed. If translated documents are annexed, provide the name and qualifications of the translator. Please draw up a correct and complete index below, which succinctly describes each annexed document and sets out the pages of the Annex at which it can be found. Please also number each page of all documents filed consecutively at its foot.

Annex No.	Date (dd/mm/yyyy)	Description	Page Number
1	11/12/2024	Email from Registrar Juliet E. Johnson administratively closing Case No. 2024-1965 and citing inadmissibility.	1-2 see 178
2	12/12/2024	Follow-up letter from Registrar clarifying that the closure decision was her own, not directed by the President.	3
3	13/12/2024	Applicant's objection to the case closure, citing procedural irregularities and requesting reconsideration.	4-27
4	13/12/2024	Registrar's response rejecting the motion for reconsideration and reaffirming inadmissibility.	28
5	12-13/11/2024	First Motion for Interim Measures filed by the Applicant.	30, 154, and 159
6	24-25/11/2024	Second Motion for Interim Measures and Motion for Additional Pleadings, emphasizing whistleblower protections.	173 and 199
7	6/11/2024	UNDT severance of retaliation claims and procedural rules under ST/SGB/2017/2/Rev.1.	see pages 13 & 14, 34, 38, 42, 162, 163, and 202
8	2013	Gehr v. Secretary-General, Judgment No. 2013-UNAT-313, establishing receivability as a judicial matter.	216-222

## THE UNITED NATIONS APPEALS TRIBUNAL.

## Motion for Recusal

## **V. Signature and certification**

I certify, to the best of my knowledge, that the information provided in this Motion is true and complete; that all annexes are true copies of the original documents; and that all translations have been translated by qualified translators.

Signature of Applicant or representative,  
where represented

Date

MARTIN ACKERMAN, SELF-REPRESENTED

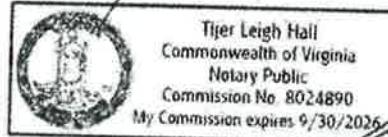
**Full name of Applicant or representative,  
where represented**

County/City of Virginia  
 Commonwealth/State of Virginia

The foregoing instrument was acknowledged  
 before me this 15th day of December  
2021 by Martin A Kerns

(name of person seeking acknowledgement)  
Stamps

Notary Public  
 My Commission Expires: 09/30/2026



MARTIN AKERMAN v. DEPARTMENT OF THE ARMY

Docket # DC-1221-22-0257-W-1

Motion for Recusal of Mr. Henry J. Kerner in Pending MSPB

Summary Page

Case Title : MARTIN AKERMAN v. DEPARTMENT OF THE ARMY

Docket Number : DC-1221-22-0257-W-1

Pleading Title : Motion for Recusal of Mr. Henry J. Kerner in Pending MSPB

Filer's Name : Martin Akerman

Filer's Pleading Role : Appellant

Details about the supporting documentation

#	Title / Description	Mode of Delivery
1	20240520125920202_akerman rehear 23-	Uploaded

MARTIN AKERMAN v. DEPARTMENT OF THE ARMY

Docket # DC-1221-22-0257-W-1

Motion for Recusal of Mr. Henry J. Kerner in Pending MSPB Cases

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For the MSPB appeal with docket number DC-1221-22-0257-W-1, the agency filed a jurisdictional response on May 16, 2022.	
Likewise, for the MSPB appeal with docket number DC-0752-22-0376-I-1, the agency filed a response on May 17, 2022.	34
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MARTIN AKERMAN v. DEPARTMENT OF THE ARMY

Docket # DC-1221-22-0257-W-1

Motion for Recusal of Mr. Henry J. Kerner in Pending MSPB

Online Interview

1. Enter a brief title for your pleading.

Motion for Recusal of Mr. Henry J. Kerner in Pending MSPB Cases

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2. Does your pleading assert facts that you know from your personal knowledge?

Yes

---

3. Do you declare, under penalty of perjury, that the facts stated in this pleading are true and correct?

Yes

---

Chairman Cathy Harris  
Vice Chairman Raymond Limon  
Merit Systems Protection Board  
1615 M Street, NW  
Washington, D.C. 20419

May 22, 2024

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**Re: Motion for Recusal of Mr. Henry J. Kerner  
in Pending MSPB Cases relating to OSC**

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Dear Chairman Harris and Vice Chairman Limon,

**Background and Request for Recusal**

I am Martin Akerman, the appellant, appearing pro se in multiple cases currently under review by the Merit Systems Protection Board (MSPB). These cases have profound implications for my career and future, involving significant decisions and allegations made by various federal entities, including the Department of the Army, Department of Defense, and the Office of Special Counsel.

On July 3, 2023, President Biden announced his intent to nominate Mr. Henry J. Kerner for a position as a Member of the MSPB. Mr. Kerner's nomination is currently pending before the Senate. Previously, Mr. Kerner served as the Special Counsel, a role in which he led the Office of Special Counsel (OSC).

Given his previous leadership position at the OSC and the direct involvement of OSC in one of my pending cases (Docket No. DC-3443-22-0296-I-1), there exists a potential conflict of interest that could affect the impartiality required in these administrative proceedings. Mr. Kerner's historical association with the OSC and his knowledge of its internal operations and priorities could influence decisions in cases where the OSC's actions and decisions are at issue.

Specific Cases Highlighting OSC Dereliction of Duties

I wish to highlight four of my pending cases that directly reflect and support claims of dereliction of duties by the OSC:

- Docket No. DC-1221-22-0257-W-1
- Docket No. DC-1221-22-0445-W-1
- Docket No. DC-1221-22-0459-W-1
- Docket No. DC-1221-22-0257-S-1 (Fifth Amendment Appeal Pending at U.S. Court of Appeals for the Federal Circuit)

These cases are critical as they involve evaluations of OSC's conduct and decisions, underscoring the necessity for an unbiased review by the MSPB.

**Standing to Make the Request**

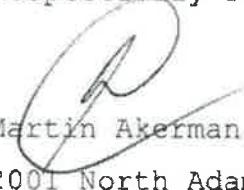
As the appellant directly affected by the outcomes of these proceedings, I have a vested interest in the integrity and impartiality of the MSPB's review process.

**Request for Recusal**

Therefore, in the interest of justice and to avoid any appearance of bias or conflict of interest, I respectfully request that Mr. Henry J. Kerner recuse himself from any involvement in my pending cases before the MSPB, particularly those listed above.

Thank you for your attention to this matter. I trust that the MSPB will carefully consider this motion and take appropriate measures to uphold the principles of fairness and impartial adjudication.

Respectfully submitted,

  
Martin Akerman, Pro Se

2001 North Adams Street, Unit 440  
Arlington, VA 22201  
(202) 656-5601

No. 23-7072  
(23A489 & 23A536)

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IN THE SUPREME COURT OF THE UNITED STATES

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

v.

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

---

PETITION FOR REHEARING

---

MARTIN AKERMAN, PRO SE  
2001 North Adams Street, Unit 440  
Arlington, VA 22201  
makerman.dod@gmail.com  
(202) 656-5601

MAY 15, 2024

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#### QUESTIONS PRESENTED

This case, interwoven with critical constitutional issues and procedural anomalies, merits the Court's reconsideration to rectify the significant judicial oversights and ensure fair adjudication. Drawing inspiration from Alexander Hamilton in Federalist No. 78 and the esteemed Montesquieu, it is imperative to highlight the judiciary's role as the guardian of liberty, distinct and insulated from other governmental powers, to maintain its integrity and the public's trust.

- Should the Supreme Court review the lower court's efforts to shield the federal government from scrutiny for the misuse of state military officers in violation of the Posse Comitatus Act, echoing Alexander Hamilton's concerns about the judiciary's role as a safeguard against the encroachment of the executive branch?
- How should the Court consider the implications of the omission of page 16 during the Clerk's scan of the petition for writ of certiorari in 23-7072, which contained critical arguments challenging the Eastern District of Virginia's sanction of dismissal for lack of jurisdiction, despite the presence of an EEOC right to sue in District Court?
- In light of the United States District Court for the Eastern District of Virginia's refusal to file a Federal Rule of Civil Procedure 60(a) motion to correct procedural discrepancies (modern-day petition for writ of error coram nobis), should the Court intervene to ensure fairness in judicial processes?

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## APPENDICES

Appendix A: Documentation of the absence of a formal judgment entry in the Eastern District of Virginia's docket, highlighting procedural irregularities that obstruct traditional appellate review.

Appendix B: The original page 16 of the petition for writ of certiorari, which contains critical arguments regarding the inappropriate dismissal of my case for lack of jurisdiction, despite the established right to sue provided by the EEOC.

Appendix C: Record of the denied Federal Rule of Civil Procedure 60(a) motion, exemplifying the refusal to correct acknowledged judicial errors, thereby necessitating an intervention similar to a writ of error coram nobis.

Appendix D: National Guard Bureau's Response to Senator Kaine: Features the National Guard Bureau's communication to Senator Tim Kaine, confirming Brigadier General Garduno, of the Nevada Air National Guard, as the deciding official, and referencing jurisdictional responses related to Merit Systems Protection Board proceedings linked to the Supreme Court cases 23A489, 23A536, and 23A701.

#### **GROUNDS FOR GRANTING THE PETITION**

This petition rests on the judiciary's indispensable role as the guardian of constitutional boundaries and personal liberties against potential encroachments by the other branches of government. The integrity of judicial proceedings and the fair application of the law to all parties, particularly in cases involving government actions, are paramount. The matters raised herein concern:

##### **Judicial Independence and Accountability:**

The alleged misuse of state military officers in roles potentially violating the Posse Comitatus Act, and the lower courts' efforts to shield these actions from scrutiny, touch directly on the separation of powers. This situation echoes Hamilton's concerns about the judiciary's ability to act as a bulwark against the overreach of the executive branch, underscoring the necessity for this Court to reassert its role in maintaining the delicate balance of power envisioned by the framers of our Constitution.

##### **Procedural Integrity and Oversight:**

The omission of page 16 during the Clerk's scan of the petition for writ of certiorari in 23-7072, which contained pivotal legal arguments, represents a significant procedural fault that has impeded the fair consideration of my case. This oversight highlights the "natural feebleness" of the judiciary that Hamilton warned about, necessitating vigilant oversight by this Court to prevent individual oppression that may arise from such procedural lapses.

Corrective Action for Judicial Errors:

The refusal by the Eastern District of Virginia to file a Federal Rule of Civil Procedure 60(a) motion to correct known discrepancies illustrates a resistance to self-correction within the judiciary, potentially leading to unjust results. This refusal not only affects the individual case but also sets a concerning precedent that undermines the judiciary's role as the citadel of public justice and security.

Access to Timely Judicial Review  
for Exhausted Administrative Cases:

Further compounding the issues already presented, the lower courts' decisions have essentially invalidated the statutory right to bring Merit Systems Protection Board (MSPB) matters to district courts. This has a chilling effect on the rights of federal employees to seek redress in a timely and effective manner. The cases listed in the ongoing MSPB proceedings, including DC-0752-22-0376-I-1, DC-1221-22-0445-W-1, DC-1221-22-0459-W-1, and DC-1221-22-0257-W-1, demonstrate substantial administrative delays and a failure of the "administrative machinery" to resolve grievances efficiently, *Ikossi v. Dep't of Navy*, 516 F.3d 1037 (2008). Such barriers directly contradict the intent of 5 U.S. Code § 7702(e)(1)(B), which was designed to ensure that federal employees could escalate MSPB disputes to the judicial system when administrative remedies are insufficient or exhausted.

**CONCLUSION**

It is in the spirit of Hamilton's vision of a robust, fair, and independent judiciary that I request this Court to reconsider its earlier decisions in light of the significant constitutional and procedural issues presented.

**CERTIFICATE OF COMPLIANCE**

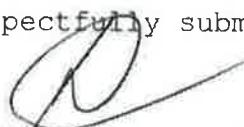
I, Martin Akerman, as the pro se applicant in this case, hereby certify that the attached Petition for Rehearing is presented in good faith and not for purposes of delay. I affirm that the facts and legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.

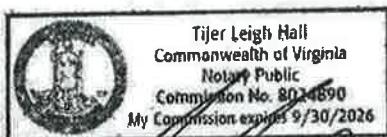
Pursuant to Supreme Court Rule 33.2, I hereby certify that the attached Petition for Rehearing has been prepared in compliance with the formatting requirements set forth in 8½- by 11-inch paper format. The document has been printed on opaque, unglazed, white paper and is stapled at the upper left-hand corner. Ten (10) copies have been provided to the Court, per in forma pauperis rules.

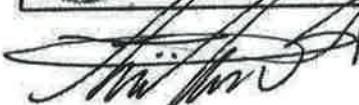
This certificate also confirms that the Petition for Rehearing adheres to the word limit specified under the applicable rules. The word count for the Petition for Rehearing is 450 words, which is less than the 3,000-word limit set for such submissions.

County/City of Arlington  
Commonwealth/State of VA  
The foregoing instrument was acknowledged  
before me this 15 day of May  
2024 by Martin Akerman  
(name of person making acknowledgement)  
Notary Public  
My Commission Expires: 07/30/2027

Respectfully submitted under oath,

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



  
3 OF 3

## **Appendix A:**

Documentation of the absence of a formal judgment entry in the Eastern District of Virginia's docket, highlighting procedural irregularities that obstruct traditional appellate review.

**U.S. District Court  
Eastern District of Virginia – (Alexandria)  
CIVIL DOCKET FOR CASE #: 1:22-cv-01258-LMB-WEF**

Akerman v. Hokanson et al  
Assigned to: District Judge Leonie M. Brinkema  
Referred to: Magistrate Judge William E. Fitzpatrick  
Case in other court: 4th Circuit, 22-02154  
Cause: 28:1331 Federal Question

Date Filed: 11/04/2022  
Date Terminated: 11/07/2022  
Jury Demand: Plaintiff  
Nature of Suit: 890 Other Statutory Actions  
Jurisdiction: Federal Question

**Plaintiff****Martin Akerman**

represented by **Martin Akerman**  
2001 North Adam Street  
Unit 440  
Arlington, VA 22201  
202-656-5601  
Email: [makerman.dod@gmail.com](mailto:makerman.dod@gmail.com)  
PRO SE

**Defendant****Daniel R. Hokanson***General, Chief, National Guard Bureau***Defendant****Christine E. Wormuth***Secretary of the Department of the Army***Defendant****Frank Kendall***Secretary of the Department of the Air Force***Defendant****Lloyd J. Austin, III***Secretary of the Department of Defense***Defendant****Pentagon****Defendant****Andrews AFB****Defendant****Remote**

Date Filed	#	Docket Text
11/04/2022	1	COMPLAINT against Andrews AFB, Lloyd J. Austin, III, Daniel R. Hokanson, Frank Kendall, Pentagon, Remote, Christine E. Wormuth ( Filing fee \$ 402, receipt number 14683097529.), filed by Martin Akerman. (Attachments: # 1 Civil Cover Sheet, # 2 Attachment 1, # 3 Attachment 2, # 4 Attachment 3, # 5 Attachment 4, # 6 Attachment 5)(dvanm, ) (Entered: 11/07/2022)
11/04/2022	2	MOTION for Pro Se E-Noticing by Martin Akerman. (dvanm) (Entered: 11/07/2022)

11/07/2022	<u>3</u>	Filing fee: \$402.00, receipt number 14683097529. (dvanm) (Entered: 11/07/2022)
11/07/2022	<u>4</u>	ORDER granting <u>2</u> Motion for Pro Se E-Noticing. Signed by District Judge Leonie M. Brinkema on 11/7/2022. (dvanm) (Entered: 11/07/2022)
11/07/2022	<u>5</u>	ORDERED that this civil action be and is DISMISSED WITH PREJUDICE as duplicative of Akerman v. Austin, No. 1:22-cv-696; and it is further ORDERED that the Clerk not copy the requested documents and return to Mr. Akerman the \$200.00 copy request fee. For the purpose of maintaining a record, plaintiff's Copy Request Form will be retained by the Clerk's office; and it is further ORDERED that Mr. Akerman is prohibited from filing any new complaint that raises the same issues that were addressed and dismissed in the memorandum opinion issued on November 3, 2022, in Akerman v. Austin, No. 1:22-cv-696 [Dkt. No. 97]. Signed by District Judge Leonie M. Brinkema on 11/7/2022. (dvanm) (Entered: 11/07/2022)
11/07/2022	<u>6</u>	NOTICE OF APPEAL filed by Martin Akerman. Filing fee \$ 505 Receipt # 14683097532. (Attachments: # <u>1</u> Receipt) (nlop) (Entered: 11/09/2022)
11/09/2022	<u>7</u>	Transmission of Notice of Appeal to US Court of Appeals re <u>6</u> Notice of Appeal (All case opening forms, plus the transcript guidelines, may be obtained from the Fourth Circuit's website at <a href="http://www.ca4.uscourts.gov">www.ca4.uscourts.gov</a> ). (nlop) (Entered: 11/09/2022)
11/10/2022	<u>8</u>	USCA Case Number 22-2154 4th Circuit, Case Manager Cathy Poulsen for <u>6</u> Notice of Appeal filed by Martin Akerman. (Dest) (Entered: 11/10/2022)
11/10/2022	<u>9</u>	Letter from the 4th Circuit requesting the transmittal of record re <u>6</u> Notice of Appeal. (Dest) (Entered: 11/10/2022)
11/10/2022		Assembled INITIAL Electronic Record Transmitted to 4CCA re <u>6</u> Notice of Appeal. (Dest) (Entered: 11/10/2022)
07/18/2023	<u>10</u>	MOTION for Certification of Record, filed by Martin Akerman. (Attachments: # <u>1</u> Attachment-1, # <u>2</u> Attachment-2, # <u>3</u> Attachment-3, # <u>4</u> Attachment-4) (Dest) (Entered: 07/19/2023)
07/24/2023	<u>11</u>	ORDERED that the Motion for Certification of Record [Dkt. No 10] be and is DENIED (see Order for further details). Signed by District Judge Leonie M. Brinkema on 7/24/2023. (Sbro) (Entered: 07/24/2023)
10/31/2023	<u>12</u>	ORDER of USCA as to <u>6</u> Notice of Appeal filed by Martin Akerman. 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. (swil) (Entered: 10/31/2023)
11/09/2023	<u>13</u>	USCA Mandate re <u>6</u> Notice of Appeal. The judgment of this court, entered August 29, 2023, takes effect today. This constitutes the formal mandate of this court issued pursuant to Rule41(a) of the Federal Rules of Appellate Procedure. (Sbro) (Entered: 11/09/2023)

## **Appendix B:**

The original page 16 of the petition for writ of certiorari, which contains critical arguments regarding the inappropriate dismissal of my case for lack of jurisdiction, despite the established right to sue provided by the EEOC.

**Challenges Faced by the Pro Se Plaintiff:**

The District Court's handling of the pro se plaintiff's case, particularly its response to the plaintiff's attempt to present a comprehensive set of relevant case files, underscores the unique challenges faced by individuals representing themselves in legal proceedings. The court's decision to sanction the petitioner with dismissal with prejudice, rather than considering the submitted materials as "factual enhancements," raises concerns about the fairness and accessibility of the judicial process for pro se litigants.

**Pro Se Plaintiff's Good Faith Effort:** The plaintiff's action of printing and submitting all relevant case files, covering exhaustively the claims from MSPB and EEOC proceedings, was a good faith effort to ensure that the court had a full understanding of the case. This initiative was crucial for the court to consider the "factual enhancements" that could provide a more comprehensive context for the plaintiff's claims.

**Roseboro v. Garrison and Fair Notice:** The precedent set in *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), emphasizes the necessity for courts to provide pro se litigants with clear and fair notice of procedural requirements, especially when facing dispositive motions. This principle aims to safeguard the procedural rights of self-represented individuals, ensuring they are adequately informed to respond to legal challenges.

**Eastern District of Virginia Local Rule 7(K):** Local Rule 7(K) reflects the principles articulated in *Roseboro*, imposing a duty on counsel to provide pro se parties with warnings that clarify the potential consequences of dispositive motions and outline the steps needed to respond effectively. This rule is integral to ensuring that pro se litigants have a fair opportunity to engage with and respond to legal arguments made against them. The court's decision to sanction the petitioner with dismissal with prejudice, particularly in the context of the plaintiff's proactive efforts to present a thorough account of the claims, raises questions about accessibility for pro se litigants.



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Office of Federal Operations**  
**P. O. Box 77960**  
**Washington, D.C. 20013**

June 21, 2022

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

**Re: June 7, 2022- Notice of Intent to Sue**

**Dear Martin Akerman:**

The purpose of this letter is to acknowledge that the U.S. Equal Employment Opportunity Commission (EEOC) has received your documentation regarding a notice of intent to file a civil action against the Department of Defense pursuant to Section 15(d) of the Age Discrimination in Employment Act (ADEA) of 1967, as amended, 29 U.S.C Section 633a. For your reference, a copy of your documentation is attached hereto.

This is a form acknowledgment and does not address either the merits of the allegations forming the basis of the notice or the sufficiency of the notice. If you have not filed a formal administrative equal employment opportunity (EEO) complaint, you must provide a notice of intent to sue to the EEOC within one hundred and eighty days after the alleged unlawful practice occurred. Please be aware, however, that your notice must comply with EEOC Management Directive 110, Chapter 4, Section IV. B., which states that the notice of intent to sue should be dated and must contain the following information:

- (1) statement of intent to file a civil action under Section 15(d) of the ADEA;
- (2) name, address, and telephone number of the employee or applicant;
- (3) name, address, and telephone number of the complainant's designated representative, if any;
- (4) name and location of the federal agency or installation where the alleged discriminatory action occurred;
- (5) date on which the alleged discriminatory action occurred;
- (6) statement of the nature of the alleged discriminatory action(s); and
- (7) signature of the complainant or the complainant's representative.

Martin Akerman  
Page Two

If you have already filed a formal EEO administrative complaint based, at least in part on age, you must exhaust the administrative process before pursuing a civil action in a U. S. district court.

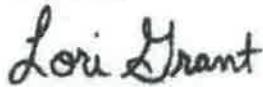
We are forwarding a copy of your notice, and by copy of this response we are providing notice to the Department of Defense of your intent. The Equal Employment Opportunity Commission Directive (EEO-MD-110), Chapter 4, Section IV, requires that within thirty days of receipt of this notice, the agency must review the allegation(s) of age discrimination and conduct an inquiry sufficient to determine whether there is evidence that unlawful age discrimination has occurred. The method of the inquiry is a matter for determination by the particular agency and may vary depending on the scope and complexity of the allegation(s).

In order to resolve age discrimination claims informally and preclude the necessity for litigation, the EEOC expects that the agency's inquiries under EEO-MD-110 will begin immediately and be completed promptly. Agency inquiries based on a notice of intent to sue should begin immediately and be completed promptly. Prompt inquiries are necessary so that a claimant's right to seek redress is not jeopardized by the expiration of a limitations period for filing a civil action. Agencies should implement case tracking systems to ensure the prompt processing of these matters.

The agency is encouraged to make good faith efforts to resolve the matter and must implement the appropriate make-whole relief under 29 C.F.R. Part 1614, Subpart E, where unlawful age discrimination is found. Please be aware that you may file a civil action under the ADEA at any time after thirty days from the date of filing a compliant notice of intent to sue with EEOC regardless of whether your agency has conducted any inquiry into your allegation.

If you have questions regarding the above information, please call the EEOC's Contact Center (Monday through Friday) at 1-800-669-4000 or contact the EEOC's Office of Federal Operations at [ofo.eeoc@eeoc.gov](mailto:ofo.eeoc@eeoc.gov).

Sincerely,



Lori Grant, Director  
Agency Oversight Division  
Office of Federal Operations  
Federal Sector Programs

Martin Akerman  
Page Three

cc: Charmane Johnson  
Department of Defense  
Office of Diversity Management and Equal Opportunity  
4000 Defense Pentagon Rm 5D641  
Washington, DC 20301

Via email: [charmane.s.johnson.civ@mail.mil](mailto:charmane.s.johnson.civ@mail.mil)

Maritza Sayle-Walker  
Department of the Air Force  
AIQ  
1500 W. Perimeter Rd Suite 4500  
JB Andrews, Maryland 20762

Via email: [maritza.sayle\\_walker.12@us.af.mil](mailto:maritza.sayle_walker.12@us.af.mil)

Seema Salter  
Department of the Army  
US Army Equity and Inclusion Agency  
5825 21st Street Building 214  
Fort Belvoir, Virginia 22060

Via email: [seema.e.salter.civ@army.mil](mailto:seema.e.salter.civ@army.mil)

Paul Kurle  
National Guard Bureau  
NGB-DEI  
111 S. George Mason Drive  
Arlington, Virginia 22204

Via email: [paul.d.kurle.civ@army.mil](mailto:paul.d.kurle.civ@army.mil)

Carey Williams  
Defense Counterintelligence and Security Agency  
Diversity & Equal Opportunity  
27130 Telegraph Road  
Quantico, Virginia 22134

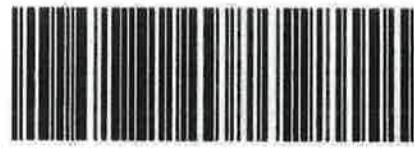
Via email: [carey.j.williams2.civ@mail.mil](mailto:carey.j.williams2.civ@mail.mil)

Return Mail Processing Center  
8551 East Anderson Dr #108  
Scottsdale, AZ 85255

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USPS CERTIFIED MAIL

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0008403298000011  
Equal Employment Opportunity Commission  
Notice of Intent to Sue  
PO BOX 77960  
Washington, DC 20013

**See Important Information Enclosed**

7 June 2022

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

## NOTICE OF INTENT TO SUE

1. I intend to file a civil action under Section 15(d) of the Age Discrimination in Employment Act of 1967, as amended. Ref. 29 CFR § 1614.201
2. Martin Akerman  
 2001 North Adams Street, Unit 440  
 Arlington, VA 22201  
 202-656-5601
3. Pro Se
4. Department of Defense (including Department of the Air Force, Department of the Army, National Guard Bureau, and Office of the Under Secretary for Intelligence - DCSA)  
 Pentagon, Washington, DC
5. 19 May 2022 - 2 June 2022
6. Statement of the nature of the alleged discriminatory action (Termination):
  - a. There exists in the Department of Defense a taint and bias against individuals who are 40 years of age or older that stems from the cultural adoption of DOPMA.
  - b. I was constructively discharged from my tenured Federal GS-15, Step 10 position.
  - c. The agency took impermissible discriminatory actions, violated my right to due process and lied about my ability to obtain and maintain a security clearance, resulting in working conditions that are so intolerable that any reasonable person would feel compelled to resign.

7. Signed:



Martin Akerman

County/City of Arlington  
 Commonwealth/State of Virginia  
 The foregoing instrument was acknowledged  
 before me this 7 day of June  
2022, by  
Martin Akerman  
 (name of person seeking acknowledgement)  
Joe Williams  
 Notary Public  
 My Commission Expires: 07-31-2023



Return Mail Processing Center  
8551 East Anderson Dr #108  
Scottsdale, AZ 85255

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USPS CERTIFIED MAIL



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0006394734000011

General Daniel R. Hokanson  
Chief, National Guard Bureau  
111 S. George Mason Drive  
Arlington, VA 22204-1373



## See Important Information Enclosed

6 June 2022

Martin Akerman  
 2001 North Adams Street, Unit 440  
 Arlington, VA 22201  
 202-656-5601

General Daniel R. Hokanson  
 Chief, National Guard Bureau  
 11 S. George Mason Drive  
 Arlington, VA 22204-1373

## Letter of Resignation

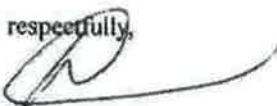
General Hokanson,

I hereby resign from my position as Chief Data Officer of the National Guard Bureau.<sup>123</sup>

The agency took impermissible discriminatory actions, violated my right to due process and lied about my ability to obtain and maintain a security clearance, placing me on Notice Leave (5 U.S. Code § 6329b) and in an indefinite unpaid suspension status, resulting in working conditions that are so intolerable that any reasonable person would feel compelled to resign.

I elect to incur a debt to FEHB only until the end of this current pay period, 18 June 2022.

Very respectfully,

  
 Martin Akerman

makerman.dod@gmail.com

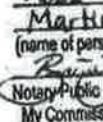
CC: Dr. Clark Cully, Acting Chief Data Officer, Department of Defense  
 Honorable Christine Wormuth, Secretary of the Army  
 Honorable Frank Kendall, Secretary of the Air Force  
 Maj. Gen. Janson Boyles, Mississippi, Chairman, NGAUS  
 Governor Asa Hutchinson, Arkansas, Chairman, National Governors Association  
 Senator Tim Kaine, State of Virginia

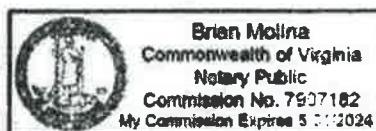
<sup>124</sup> 44 U.S. Code § 3520

<sup>125</sup> 10 U.S. Code § 10501 - The National Guard Bureau is a joint activity of the Department of Defense.

<sup>126</sup> The National Guard Bureau is the channel of communications on all matters pertaining to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States between (1) the Department of the Army and Department of the Air Force, and (2) the several States.

County/City of Arlington  
 Commonwealth/State of Virginia  
 The foregoing instrument was acknowledged  
 before me this 5 day of June,  
2022, by  
Martin Akerman  
 (name of person seeking acknowledgement)

  
 Brian Molina  
 Notary Public  
 My Commission Expires: 05/31/2024





Privacy Act Release  
General Casing

Provisions of the Privacy Act of 1974 (Title 5, Section 552A of the United States Code) require congressional offices to obtain written permission from an individual before a federal agency can release any specific information to the Senator. Please complete the following Privacy Release Authorization and return it to our office as directed below. Family members, friends or other interested parties generally may not authorize the release of information on your behalf.

**Constituent Information**

---

**Name:** Mr. Martin Akerman      **Address:** 2007 North Adams Street 448 Arlington, VA 22201

**Preferred Name:**  
Martin

**Date of Birth:**  
[REDACTED]

**Email Address:** [REDACTED]      **Phone Number:** [REDACTED]      **Social Security Number:** [REDACTED]

**Case Details**

---

**Do you currently have an open case for the matter described above with another U. S. Senator or Representative?**  
No

**Federal Agency Involved:** US Department of Defense, Office of Special Counsel      **Account/Claim Number:** MA-21-1602

**Date of Birth:** [REDACTED]      **Your Place of Birth:** [REDACTED]

**Tell us about your case**

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**Briefly describe your situation.**

My name is Martin Akerman and I am the Chief Data Officer of the National Guard. I was the Director of Data Strategy at the Department of the Air Force in my previous role. The job of a good CDO is to increase organizational transparency, improve efficiencies and position data for information superiority. This has huge National Security implications in the case of CDO's in the Department of Defense. I am a leading CDO in the Department of Defense, the only one directly representing the 54 States and Territories. The Department of Defense is currently utilizing Prohibited Personnel Practices to push me out. These include falsifying documentation and leveraging a seemingly untouchable Security Clearance process to disqualify me from my position. The OSC appears powerless against the Department of Defense and I am kindly requesting for you to help me get a status on my OSC case including 9 PPPs dating back to the Air Force and through the National Guard. I am also kindly asking you to help me navigate a solution with the Department of Defense through OSC. Our country cannot afford to take our brightest digital talent and destroy them professionally for doing their job exceptionally well. This incentive to maintain

status quo and disincentive to innovate, if left unmitigated, will be the single reason we will not be able to outpace our adversaries and inevitably lose.

I hereby authorize the office of U.S. Senator Tim Kaine to intercede on my behalf, and review all relevant documentation that Senator Kaine or his staff deems necessary in connection with my request for assistance. I further understand that the Senator's office cannot request an application be granted, and expedite requests are reviewed on a case-by-case basis by the agency. The information I have provided is true and accurate to the best of my knowledge and belief. The assistance I have requested from Senator Kaine is in no way an attempt to violate any federal, state or local law.

Signature: 

Date: Feb, 17, 2022

Please return this form via mail, Email or fax to:

Senator Tim Kaine  
ATTN: Constituent Services  
231 Russell Senate Office Building  
Washington, DC 20510  
fax: (202) 228-6363  
Email: [Kaine\\_Casework@kaine.senate.gov](mailto:Kaine_Casework@kaine.senate.gov)



**NATIONAL GUARD BUREAU**  
1600 DEFENSE PENTAGON  
WASHINGTON DC 20301-1036

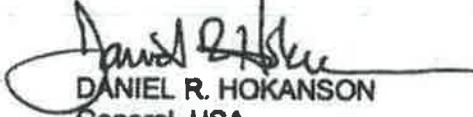
**DEC 20 2021**

**MEMORANDUM FOR ALL NATIONAL GUARD PERSONNEL**

**Subject: Appointment of a National Guard Bureau Chief Data Officer and Creating Competitive Advantage by positioning Data as a Strategic Asset**

**Reference: National Guard Strategic Data Management Framework, 08 June 2021**

1. In accordance with the reference, I hereby designate Mr. Martin Akerman as the National Guard Bureau (NGB) Chief Data Officer (CDO).
2. The NGB CDO will lead the utilization and governance of data across the National Guard.
3. The NGB CDO, in coordination with the Army National Guard and the Air National Guard, will lead the National Guard's Implementation Plan of the Department of Defense Data Strategy. See the attached "Supporting Department of Defense Data 'Decrees'" for more information.
4. The point of contact is Mr. Martin Akerman; NGB-J6; 703-807-7125.



DANIEL R. HOKANSON  
General, USA  
Chief, National Guard Bureau

**Attachment:**  
As stated

ATTACHMENT

SUPPORTING DEPARTMENT OF DEFENSE DATA 'DECREES'

1. The Department of Defense (DoD) released a memorandum, on 05 May 2021, outlining the importance of data management in establishing information superiority and enabling better decision-making. The National Guard plays a key role in the globally integrated and partnered Joint Force, designed and able to out-think, out-maneuver, and out-fight any adversary under conditions of disruptive change.

2. National Guard Bureau is adopting the five DoD Data 'Decrees' as outlined in the DoD memorandum by:

a. Maximizing data sharing and rights for data use: all DoD data is an enterprise resource.

b. Publishing data assets in the DoD federated data catalog along with common interface specifications.

c. Using automated data interfaces that are externally accessible and machine-readable; ensure interfaces use industry-standard, non-proprietary, preferably open-source, technologies, protocols, and payloads.

d. Storing data in a manner that is platform and environment-agnostic, uncoupled from hardware or software dependencies.

e. Implementing best practices for secure authentication, access management, encryption, monitoring, and protection of data at rest, in transit, and in use.

3. The Joint Force will rapidly integrate, evaluate, and interpret data with artificial intelligence, machine language, and big data analytics. The National Guard Bureau Chief Data Officer will ensure the necessary data assets and expert resources are ready and empowered to help the National Guard achieve Joint All-Domain Operations, Senior Leader Decision Support and Executive Analytics while positioning our data to be visible, accessible, understandable, linked, trusted, interoperable, and secure (VAULTIS).

4. The National Guard will leverage better and faster human and machine-aided decision making to accelerate its response to changes in the operational environment (in collaboration with allies and partners), while adopting a rapid, iterative, and modular approach to capability development that will reduce costs, technology obsolescence, and acquisition risk.

## **Appendix C:**

Record of the denied Federal Rule of Civil Procedure 60(a) motion, exemplifying the refusal to correct acknowledged judicial errors, thereby necessitating an intervention similar to a writ of error coram nobis.

~~FILED~~  
UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

20 NOV 17 P 12:07

MARTIN AKERMAN, Pro Se, ) Civil Action Nos. 1:22-cv-0696\*  
Plaintiff, ) 1:22-cv-1258  
vs.  
General Daniel Hokanson, et. al. ) Date: November 17, 2023  
Defendants. )

**MOTION TO VACATE JUDGMENT:**  
**DUE TO SPOILATION OF EVIDENCE,**  
**UNFAIR DISMISSAL WITH PREJUDICE TO THE PRO SE LITIGANT,**  
**AND IRREPARABLE HARM**

I, Martin Akerman, a resident of the Commonwealth and State of Virginia, Pro Se, respectfully submit this motion to vacate the judgment in the above-captioned matter. This motion is based on the spoliation of critical evidence, the unfairness of dismissal with prejudice against a pro se litigant, and the irreparable harm caused by incorrect internet records.

As a former tenured Federal employee, I experienced impermissible discriminatory actions by the agency (Title VII), violating my right to due process (under 5 U.S. Code §§ 6329b and 7513), and affecting my security clearance (in violation of 50 U.S. Code § 3341(j)(8)), which together with violations of whistleblower protections (5 U.S. Code § 2302), and false imprisonment under the color of the United States (28 U.S. Code §§ 2241 and 2254), led to intolerable working conditions, and my resignation as Chief Data Officer of the National Guard.

7 Pages

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

MARTIN AKERMAN, Pro Se.

Plaintiff,

vs.

General Daniel Hokanson, et. al.

Defendants.

1:22 NOV 17 P 12:47  
Civil Action Nos. 1:22-cv-0696  
1:22-cv-1258 \*

Date: November 17, 2023

**MOTION TO VACATE JUDGMENT:**

**DUE TO SPOILATION OF EVIDENCE,**

**UNFAIR DISMISSAL WITH PREJUDICE TO THE PRO SE LITIGANT,**

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7 Pages

**D. Certificate of Service**

The undersigned hereby certifies that a true copy of the foregoing **MOTION TO VACATE JUDGMENT**

was mailed, on this

17 ~~st/nd/rd/th~~ day of November, 2023 \*\*\*

to the United States Attorney for the Eastern District of Virginia and the Attorney General of the United States as required.

E.

**Signature of Pro Se Plaintiff:**



Martin Akerman, 2001 North Adams Street Unit 440

Arlington, VA 22201

**COMMONWEALTH OF VIRGINIA COUNTY OF ARLINGTON**

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS

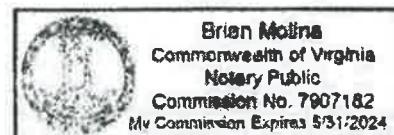
17 ~~st/nd/rd/th~~ day of November, 2023 \*\*\*

BY: MARTIN AKERMAN.

SIGNATURE OF NOTARY OFFICER: 

NOTARY REGISTRATION NUMBER: 7907182

MY COMMISSION EXPIRES: 05/31/2024



## **Appendix D:**

National Guard Bureau's Response to Senator Kaine: Features the National Guard Bureau's communication to Senator Tim Kaine, confirming Brigadier General Garduno, of the Nevada Air National Guard, as the deciding official, and referencing jurisdictional responses related to Merit Systems Protection Board proceedings linked to the Supreme Court cases 23A489, 23A536, and 23A701.



**NATIONAL GUARD BUREAU**  
111 SOUTH GEORGE MASON DRIVE, AH2  
ARLINGTON VA 22204-1373

May 20, 2022

Office of Legislative Liaison

The Honorable Tim Kaine  
United States Senate  
Attn: Janet Lomax  
222 Central Park Avenue, Suite 120  
Virginia Beach, VA 23462

Dear Senator Kaine:

This is in response to your inquiry on behalf of Mr. Martin Akerman regarding his request to obtain an explanation for the agency's decision to indefinitely suspend him from his IT Specialist position with the National Guard Bureau (NGB).

The National Guard Bureau Office of the General Counsel (NGB-GC) received Mr. Akerman's inquiry and provided the following information. By memorandum dated February 14, 2022, Mr. Akerman's immediate supervisor proposed to suspend Mr. Akerman indefinitely from his IT Specialist position based on his failure to attain and/or maintain a condition of employment—a Top Secret /Special Sensitive Information clearance and the suspension of his access to classified information and systems. Mr. Akerman was provided with documentation in support of the proposed action, including an initial decision by the Department of Defense Consolidated Adjudications Facility revoking Mr. Akerman's eligibility for access to classified information and assignment to duties that have been designated national security sensitive, and deny his eligibility for access to Sensitive Compartmented Information.

In an April 11, 2022, memorandum to Mr. Akerman, the Deciding Official, Brigadier General Caesar Garduno, determined the charge of failure to attain and/or maintain the conditions of employment was supported by a preponderance of evidence and Mr. Akerman's indefinite suspension from employment promoted the efficiency of the service.

The agency action to indefinitely suspend Mr. Akerman from the IT Specialist position and other matters are currently subjects of appeals to the U.S. Merit Systems Protection Board (MSPB). For the MSPB appeal with docket number DC-1221-22-0257-W-1, the agency filed a jurisdictional response on May 16, 2022. Likewise, for the MSPB appeal with docket number DC-0752-22-0376-I-1, the agency filed a response on May 17, 2022.

We trust you find this information useful.

Respectfully,

*Donna Warren*

Donna Warren  
Chief, Congressional Inquiries  
National Guard Bureau  
Office of Legislative Liaison

Enclosure

# Certificate of Service

e-Appeal has handled service of the assembled pleading to MSPB and the following Parties.

Name & Address	Documents	Method of Service
MSPB: Office of the Clerk of the Board	Motion for Recusal of Mr. Henry J. Kerner in Pending MSPB Cases	e-Appeal
Pinacho, Gonzalo	Motion for Recusal of Mr. Henry J. Kerner in Pending MSPB Cases	e-Appeal