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No. _____ (23M44, 23A701, 23-6710)

In The
Supreme Court of the United States

MARTIN AKERMAN, PRO SE,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

TO THE HONORABLE JOHN G. ROBERTS, JR.,
CHIEF JUSTICE OF THE UNITED STATES AND
CIRCUIT JUSTICE FOR THE FEDERAL CIRCUIT

ON APPLICATION FOR A STAY OF THE MANDATE
PENDING ENFORCEMENT
OF SETTLEMENT AGREEMENT, INVESTIGATION,
AND CONSOLIDATED REVIEW OF RELATED CLAIMS

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

- Whether an appellate court's judgment may stand when extrinsic evidence reveals that the underlying administrative record was corrupted by the adjudicating agency's own spoliation of evidence.
- Whether the Merit Systems Protection Board (MSPB) exercises "considerable executive power," as that term is used in *Trump v. Wilcox*, 605 U.S. ____ (2025), or functions as a "quasi-judicial" body when it acts as counsel for the Department of Defense in federal court, and what level of deference its procedural findings are owed in light of such actions.
- Whether a federal district court, possessing evidence of agency misconduct and a breached settlement agreement, is the proper forum to order a global resolution, including a consolidated remand of related whistleblower claims to the MSPB for adjudication on a clean record.

PARTIES TO THE PROCEEDING

Petitioner is Martin Akerman, Chief Data Officer of the National Guard Bureau, who was the petitioner in the United States Court of Appeals for the Federal Circuit, appearing pro se (App D), vide 23M44.

Federal respondents under 50 U.S.C. § 3341(j)(8) were never required to make an appearance (App E).

The States of Arizona, Arkansas, and Nevada were blocked from being a party to these proceedings by the Clerk of the Supreme Court of the United States, on June 18, 2024 (App F).

Respondent Merit Systems Protection Board was the respondent in the United States Court of Appeals for the Federal Circuit, under 5 U.S.C. § 1204(i), (App G).

Status Update will be provided to the Clerk of the U.S. District Court for the District of Nevada and to the Equal Employment Opportunity Commission (App. H).

Status Update will be provided to the Office of Special Counsel (App. I)

Separate service on the Solicitor General of the United States is required, under 28 U.S.C. § 518 and Rule 29.

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OPINIONS BELOW

The nonprecedential decision of the United States Court of Appeals for the Federal Circuit (App. A, at 1-11) is not yet reported.

The order of the Federal Circuit denying a timely petition for panel rehearing (App. B, at 12-14) is unreported.

The order of the Federal Circuit denying the motion to recall the mandate (App. C, at 15-17) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 15, 2025.

A timely petition for rehearing was denied on May 5, 2025.

A timely motion to recall the mandate was denied on June 16, 2025.

This application is being filed within 90 days of the denial of rehearing.

The jurisdiction of this Court is invoked under 28 U.S.C. § 2101(f) and Supreme Court Rule 23.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First and Fifth Amendments to the United States Constitution, as well as the following statutory provisions:

- **U.S. Const. art. II, § 2, cl. 1:** "The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment."

- **U.S. Const. amend. I:** "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
- **U.S. Const. amend. V:** "No person shall be... deprived of life, liberty, or property, without due process of law...."
- **5 U.S.C. § 2302(b)(8) (Whistleblower Protection):**
This statute prohibits any employee with personnel authority from taking, failing to take, or threatening to take a personnel action against an employee for any disclosure of information which the employee reasonably believes evidences a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety.

- **5 U.S.C. § 7513 (Cause and procedure):** "(a)... an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service. (b) An employee against whom an action is proposed is entitled to—(1) at least 30 days' advance written notice... stating the specific reasons for the proposed action; (2) a reasonable time... to answer orally and in writing...; (3) be represented by an attorney...; and (4) a written decision and the specific reasons therefor...."
- **10 U.S.C. § 12406 (National Guard in Federal service; call):** "Whenever—(1) the United States... is invaded or is in danger of invasion...; (2) there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or (3) the President is unable with the regular forces to execute the laws of the United States; the President may call into Federal service members and units of the National Guard... to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States...."

- **18 U.S.C. § 1385 (Posse Comitatus Act):** "Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both."
- **50 U.S.C. § 3341(j)(8):** This statute establishes procedures for reviewing agency actions related to security clearances, including retaliatory actions.
- Additionally, **USERRA's whistleblower protection, found in 38 U.S.C. § 4311(b)**, prohibits employers from retaliating against anyone who takes action to assist in a USERRA investigation, or exercises any other right under the law. This protection extends to individuals regardless of whether they have served in the uniformed services, vide 23M44.

STATEMENT OF THE CASE

This case began not with a single adverse action, but with a broken promise. In the spring of 2021, while serving as a Supervisory Information Technology Specialist with the U.S. Air Force, I made protected disclosures regarding what I reasonably believed to be unauthorized personnel alignments and mismanagement. (see Appendix F; see also *Akerman v. Kerner, et al.*, No. 2:24-cv-01602-GMN-EJY (D. Nev.), ECF 67-1).

The response was a letter of admonishment, a classic form of reprisal. *Id.*

This prompted me to file a whistleblower complaint with the Office of Special Counsel (OSC) on June 16, 2021. *Id.*

Through an OSC-brokered Alternative Dispute Resolution (ADR) process, the parties reached a settlement on August 11, 2021. (*Id.* at 30, 42).

In exchange for dropping my claims, I accepted a transfer to a new position as Chief Data Officer of the National Guard Bureau (NGB), and the government agreed to remove negative records and ensure no further retaliatory input from certain officials. (Id. at 30).

The government breached this agreement almost immediately. Two days later, on August 13, 2021, my interim Top Secret security clearance was revoked without explanation. (Id.).

I promptly notified the OSC of this new retaliation on August 17, 2021. (Id.). This breach set the stage for all that followed.

After transferring to the NGB, I continued my work, including uncovering a wasteful double purchase of data capabilities that threatened to expose the underreporting of suicides across the National Guard. (Id. at 29).

The retaliation for this new disclosure was severe, and it took a constitutionally alarming form. Instead of using civilian procedures, the Department of Defense (DoD) deployed state National Guard officers, acting under federal command, to execute personnel actions against me, a civilian employee.

- On February 8, 2022, Brigadier General Joseph Baldwin of the Arizona Army National Guard, acting under federal orders, was instrumental in suspending my access to classified information. (Id. at 21).
- On February 14, 2022, Colonel Bret Bassler of the Arkansas Army National Guard physically detained me and seized my equipment. (Id. at 19; App. E, at 17).
- On April 24, 2022, Brigadier General Caesar Garduno of the Nevada Air National Guard finalized my indefinite suspension, denying me the due process rights guaranteed to federal employees under 5 U.S.C. § 7513. (Id. at 20; App. G, at 30).

This multi-state operation created a jurisdictional fog that has allowed the government to evade review.

When I appealed to the MSPB, my case was dismissed for failure to exhaust remedies before the OSC—a procedural impossibility, given that the OSC had closed its inquiry before the adverse actions were finalized. (App. A, at 7-8). The OSC itself later admitted in writing to a "harmful procedural error" that "compromised the OSC's ability to protect the Appellant as a whistleblower" and "prevented the Appellant from receiving proper redress." (App. G, at 56).

The Federal Circuit affirmed the MSPB's dismissal, perpetuating the jurisdictional catch-22. (App. A, at 8). Now, the only court to recognize this procedural morass is the U.S. District Court for the District of Nevada, which has stayed its own proceedings and contemplated a remand to the MSPB to correct these very deficiencies. (App. H, at 81-82). This application seeks a stay to allow that court to bring order to this chaos.

REASONS FOR GRANTING THE APPLICATION

A stay is warranted because this case presents substantial legal questions of exceptional national importance. The equities tip decisively in my favor, and the public interest in a lawful, accountable government demands this Court's intervention.

I. An Appellate Judgment Resting on a Corrupted Administrative Record Cannot Stand.

The Federal Circuit's judgment rests on the procedural findings of the MSPB. But that foundation is rotten. The administrative record is not merely incomplete; it has been actively corrupted by the very agency tasked with its impartial adjudication.

The OSC has admitted in writing to "harmful procedural error" that blocked my path to redress. (App. G, at 56).

More egregiously, the MSPB itself has allegedly deleted filings from the record and, in a profound dereliction of its quasi-judicial role, acted as counsel for the DoD in federal court proceedings. (App. I, at 89).

An appellate court's deference to an administrative agency is predicated on the assumption that the agency has acted in good faith and created a reliable record. Where, as here, there is extrinsic evidence of spoliation and procedural manipulation, that deference is unwarranted. To allow the Federal Circuit's judgment to stand would be to sanitize a corrupted process and reward agency misconduct. A stay is necessary to prevent the finality of a judgment built on such a compromised foundation.

II. The MSPB's Conduct Vindicates the Gravest
Concerns of Both the Majority and Dissent in
Trump v. Wilcox.

This case is a living embodiment of the constitutional anxieties surrounding independent agencies that this Court confronted in *Trump v. Wilcox*, 605 U.S. ____ (2025). The majority granted a stay in that case, reflecting its judgment that the MSPB exercises "considerable executive power" and that "the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty." *Id.* at 1.

My case demonstrates the peril of that executive power when it is untethered from due process and accountability. The MSPB, rather than acting as an impartial adjudicator, has functioned as an enforcement arm of the DoD, allegedly deleting evidence and acting as its lawyer. (App. I, at 89).

This is not the conduct of a neutral "quasi-judicial" body.

Justice Kagan's dissent in *Wilcox* warned against abandoning the ninety-year precedent of *Humphrey's Executor*, which undergirds the existence of independent agencies. She argued that the interest at stake is not the officer's personal interest, but "Congress's and, more broadly, the public's" interest in having expert bodies that operate with "a measure of independence from presidential control." *Wilcox*, 605 U.S. at ____ (Kagan, J., dissenting).

My case shows what happens when that independence collapses. The MSPB's actions have not served the public good; they have served to protect the executive from scrutiny.

When the MSPB abandons its quasi-judicial role to act as an advocate for the agency it is supposed to be overseeing, it forfeits any claim to deference. The question of whether the MSPB exercises "considerable executive power" is answered by its conduct here. It does. And in doing so, it has failed to provide the independent check on that power that is the entire justification for its existence.

III. A Federal District Court is the Only Forum
Capable of Providing a Global Resolution.

A stay is required to address this fundamental breakdown in the administrative state.

The procedural history of this case is a testament to the failure of the administrative system. I have been shuffled between the OSC, the DoD OIG, the MSPB, and multiple federal circuits, with no resolution. (App. D, at 19-24). The only court that has demonstrated a willingness to cut this Gordian knot is the U.S. District Court for the District of Nevada. That court is already in possession of evidence of the breached settlement agreement and the subsequent agency misconduct, and it has already contemplated a consolidated remand to the MSPB to correct the record. (App. H, at 81-82). It is the only forum positioned to grant global relief.

This is particularly true given the government's unprecedented use of 10 U.S.C. § 12406.

That statute is an emergency power, authorizing the President to federalize the National Guard to repel an "invasion" or suppress a "rebellion." 10 U.S.C. § 12406.

It is not a tool for managing civilian personnel. Using uniformed officers from three states to suspend a federal employee is a grotesque abuse of that authority and raises profound questions about the limits of executive power and the integrity of the federal-state relationship. The MSPB has shown no capacity or willingness to address this fundamental constitutional issue. A federal district court, however, is perfectly suited to do so.

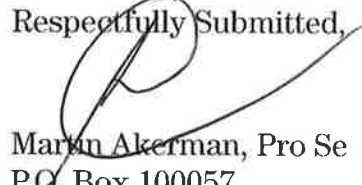
Granting this stay would also serve the vital interest of judicial economy.

As detailed in Appendix D, there are numerous pending petitions and appeals across multiple circuits, all stemming from this same nucleus of facts. Allowing the District of Nevada to proceed with a global resolution would render these duplicative actions moot, conserving the resources of both the judiciary and the parties.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Court stay the mandate of the United States Court of Appeals for the Federal Circuit. This stay is necessary to allow the U.S. District Court for the District of Nevada to adjudicate Applicant's motion to enforce the August 12, 2021, settlement agreement, and investigation, through OSC, and to consider a consolidated remand of all related whistleblower matters to the MSPB for a full and fair hearing on a complete and accurate record.

Respectfully Submitted,



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RULE 33.2 CERTIFICATION

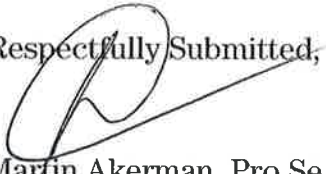
This motion complies with the Court's type-volume limitation as it contains 2,269 words, which is within the word limit for a motion to the Court.

An original and two copies were served on the Clerk in 8 ½ x 11 inch paper, stapled on the upper left-hand corner.

The text of this supplemental brief has been prepared in a proportionally spaced typeface using Google Docs in Century, 12 point font size.

Dated and respectfully submitted, this 18th day of June, 2025.

Respectfully Submitted,



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APPENDIX A

The opinion of the United States Court of Appeals for
the Federal Circuit was issued on April 15, 2025.

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NOTE: This disposition is nonprecedential.

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

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2024-1913

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

Decided: April 15, 2025

MARTIN AKERMAN, I, Arlington, VA, pro se.

DEANNA SCHABACKER, Office of the General Counsel,
United States Merit Systems Protection Board, Washing-
ton, DC, for respondent. Also represented by ALLISON JANE
BOYLE, KATHERINE MICHELLE SMITH.

Before PROST, REYNA, and TARANTO, *Circuit Judges*.
PER CURIAM.

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In 2021, Martin Akerman, then an employee of the Air Force, filed a complaint with the United States Office of Special Counsel (OSC), alleging that the Air Force took retaliatory actions against him in violation of whistleblower-protection laws, 5 U.S.C. § 2302(b)(8) and (b)(9). OSC terminated its inquiry without providing the requested relief. Mr. Akerman also pursued another potential route for relief—through the Department of Defense (Defense) Office of Inspector General (Defense OIG). When Defense OIG declined to open an investigation, he asked the Intelligence Community Office of the Inspector General (Intelligence OIG) to review the Defense OIG decision, but it declined. Mr. Akerman then appealed to the Merit Systems Protection Board (Board), but the Board-assigned administrative judge dismissed Mr. Akerman's appeal for lack of jurisdiction, Board Supplemental Appendix (S. Appx.) at 10–22, and the full Board affirmed the administrative judge's decision, which became the final decision of the Board, S. Appx. 1–3. We now affirm.

I

In 2021, Mr. Akerman was employed as a Supervisory Information Technology Specialist in the Chief Data Office of the Air Force. S. Appx. 43, 54. Starting in May 2021, Mr. Akerman told employees throughout the Air Force of his belief that certain officials were unlawfully reorganizing the staffing in the Chief Data Office. S. Appx. 38–39, 43. In July 2021, Mr. Akerman was selected to be the Chief Data Officer of the National Guard Bureau and was tentatively offered the job, conditional at least in part on his obtaining a top-secret security clearance. S. Appx. 37. Before his scheduled transfer into the new job, however, Defense informed Mr. Akerman and the Air Force of its intent to revoke his security clearance and access to confidential information. *See* S. Appx. 54, 59.

On August 26, 2021, Mr. Akerman filed a whistleblower complaint with OSC, alleging that Air Force

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officials took retaliatory actions against him in violation of 5 U.S.C. § 2302(b)(8) and (b)(9). S. Appx. 43, 53. On February 28, 2022, OSC sent a letter to Mr. Akerman stating that it had terminated its inquiries into his allegations against Air Force officials as well as retaliatory-action allegations he had made against National Guard Bureau officials (after August 26, 2021).¹ S. Appx. 43–44. The OSC letter also notified Mr. Akerman that he could appeal to the Board for corrective action, invoking the individual right of action (IRA) under 5 U.S.C. §§ 1214(a)(3) and 1221, and that including the OSC letter with such an appeal could “help show that you have exhausted OSC’s administrative procedures.” S. Appx. 43–44.

Mr. Akerman also sought whistleblower relief through two other routes, pursuant to Presidential Policy Directive 19, *Protecting Whistleblowers with Access to Classified Information* (PPD-19) (October 10, 2012), but he did not do so until the very end of February 2022 (either February 27 or 28), and OSC did not have before it any PPD-19 decision when it terminated its inquiry into the above-noted complaints. See S. Appx. 14, 57–58, 61; Informal Opening Brief at 8. In particular, Mr. Akerman filed a complaint with Defense, alleging that officials at the National Guard Bureau restricted his access to confidential information in reprisal for his protected disclosures. S. Appx. 58, 61. On May 19, 2022, Defense OIG declined to open an investigation into his reprisal complaints. S. Appx. 58–59.

¹ Before filing the OSC complaint relevant to this appeal, Mr. Akerman filed three other complaints with OSC (on June 16, July 1, and August 11, 2021), alleging that Air Force officials were retaliating against him. S. Appx. 39–41. After filing this August 26, 2021 complaint, Mr. Akerman also alleged that the National Guard Bureau, upon hearing of his OSC complaint, took retaliatory actions against him. S. Appx. 43–44.

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Mr. Akerman then submitted to Intelligence OIG a request for external review of Defense OIG's decision, pursuant to Section C of PPD-19 and 50 U.S.C. § 3236. S. Appx. 55–58. On September 8, 2022, Intelligence OIG denied Mr. Akerman's request. S. Appx. 58–59.

On September 12, 2022, Mr. Akerman appealed to the Board, explaining that “[t]he [Intelligence Community] has completed the review of the PPD-19 petition for review and there appears to be no further recourse,” and thus he was “[b]ringing back [the appeal] to MSPB under the” whistleblower statutes. S. Appx. 52. On September 14, 2022, the Board-assigned administrative judge ordered Mr. Akerman “to file evidence and argument to prove that the Board has jurisdiction over his appeal.” S. Appx. 45–48. Mr. Akerman responded, stating that his new appeal was an IRA appeal that was “a continuation of matters covered in” other IRA appeals he filed with the Board. S. Appx. 33–34.

On October 28, 2022, the administrative judge dismissed Mr. Akerman's appeal for lack of jurisdiction. S. Appx. 10–15. Mr. Akerman petitioned for review of that decision (the initial decision), stating that “[t]his appeal is a continuation of PPD-19 claims which were brought back to MSPB under authority granted to handle 2302(b)(8) claims.” S. Appx. 27–30. He also filed two motions for leave to file new evidence. See S. Appx. 2 n.3. On May 29, 2024, the Board denied the petition for review and affirmed the administrative judge's initial decision, which became the final decision of the Board. S. Appx. 1–3. Mr. Akerman timely appealed.

II

“We review de novo whether the Board has jurisdiction over an appeal.” *Smolinski v. Merit Systems Protection Board*, 23 F.4th 1345, 1350 (Fed. Cir. 2022) (citations omitted). “A petitioner bears the burden of establishing that the Board has jurisdiction by a preponderance of the

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evidence.” *McCarthy v. Merit Systems Protection Board*, 809 F.3d 1365, 1373 (Fed. Cir. 2016) (citing *Serrao v. Merit Systems Protection Board*, 95 F.2d 1569, 1573 (Fed. Cir. 1996) (citing 5 C.F.R. § 1201.56(a)(2))). We may set aside the Board’s decision only if it is “(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence.” 5 U.S.C. § 7703(c). We decide legal issues de novo and review Board findings of fact for substantial-evidence support. *McIntosh v. Department of Defense*, 53 F.4th 630, 638 (Fed. Cir. 2022). We see no basis for setting aside the Board’s decision.

A

Although Mr. Akerman filed his appeal in this court pursuant to 5 U.S.C. § 7703(b)(1), he argues that this is a “mixed case”—one involving certain discrimination claims presented to the Board in an otherwise-authorized appeal to the Board. Informal Opening Brief at 5; *see also* Petitioner’s Appendix (Appx.) at 23–28. Review of Board decisions in a mixed case is available only in district court because a mixed case falls within the exception to our review authority stated in § 7703(b)(1)(A) and (b)(2) (referring to 5 U.S.C. § 7702). *See Perry v. Merit Systems Protection Board*, 582 U.S. 420, 425–27, 432 (2017); *Ash v. Office of Personnel Management*, 25 F.4th 1009, 1011 (Fed. Cir. 2022). We conclude that this is not a mixed case, so we have jurisdiction to review the Board’s decision.

Mr. Akerman contends that the evidence he provided in response to the Board’s September 2022 order “shows discriminatory animus, and entitles [him] to mixed case considerations.” Informal Opening Brief at 5 (citing 29 C.F.R. § 1614.302(a)(2)); *see also* Informal Reply Brief at 6. He has attached to his brief in this court a copy of a notice of intent to file a civil action against Defense that he sent to the Equal Employment Opportunity Commission

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(EEOC) in June 2022, as well as the EEOC's letter acknowledging receipt of his notice. Appx. 23–34, 27. On July 7, 2024, Mr. Akerman also filed in this court a Statement Concerning Discrimination, pursuant to Federal Circuit Rule 15(c), indicating that he claimed he was discriminated against before the Board and that he did not wish to abandon his discrimination claims. ECF No. 13.

These assertions do not show that Mr. Akerman's appeal meets the preconditions to being a mixed case, which depends on the nature of the contentions made to the Board. See 5 U.S.C. §§ 7702(a)(1), 7703(b)(2). He has not established that he actually presented a claim of covered discrimination to the Board in connection with the challenged agency actions, i.e., the Defense OIG and Intelligence OIG decisions. See S. Appx. 27–61; see also *Akerman v. Merit Systems Protection Board*, No. 23-2216, 2023 WL 8637562, at *1 (Fed. Cir. Dec. 14, 2023) (in dismissing for lack of finality, concluding that Mr. Akerman did not present a claim of covered discrimination to the Board). He also has not established that either of the two OIG decisions at issue meet the mixed-case requirement that the challenged agency action be one that, if the employee's allegations were true, would be appealable to the Board. 5 U.S.C. § 7702(a)(1)(A); see *Ash*, 25 F.4th at 1011; *Perry*, 582 U.S. at 424–25; S. Appx. 12–13. In particular, the two OIG decisions are not appealable to the Board under 5 U.S.C. ch. 75 or other provisions granting the Board jurisdiction. See, e.g., 5 U.S.C. § 7512; 5 C.F.R. § 1201.3. And an IRA appeal is not a “mixed case”: Discrimination claims may not be raised in IRA appeals, as “the Board's review is limited to the merits of allegations of violations of” whistleblower protections. *Young v. Merit Systems Protection Board*, 961 F.3d 1323, 1327 (Fed. Cir. 2020); see 5 C.F.R. § 1209.2(c); 5 U.S.C. § 1221(e). Accordingly, review here is available under 5 U.S.C. § 7703(b)(1)(A), and we have jurisdiction under 28 U.S.C. § 1295(a)(9).

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B

In dismissing Mr. Akerman's challenge to the Intelligence OIG decision (declining to review the Defense OIG decision), the Board ruled that Mr. Akerman had not exhausted his remedies with OSC and, partly for that reason, had not established Board jurisdiction. S. Appx. 13–14; *see also* S. Appx. 3. We reject Mr. Akerman's challenge to that conclusion. We also reject his request for a default judgment and find no Board abuse of discretion on the discovery and evidentiary matters he identifies.

The Board's jurisdiction is limited to circumstances in which the party seeking relief "has the right to appeal directly . . . under any law, rule, or regulation." 5 U.S.C. § 1214(a)(3); *see also* 5 U.S.C. § 7701(a); 5 C.F.R. § 1201.3(a); *McCarthy*, 809 F.3d at 1373–74. Here, Mr. Akerman did not identify to the Board any law, rule, or regulation outside the IRA provisions, 5 U.S.C. §§ 1214, 1221, that might support Board review of the OIG decisions declining review of the information-access denials that threatened his eligibility for a tentatively offered position and for continued employment: Such decisions are simply "not among the listed bases" for a right of appeal to the Board. S. Appx. 46 (citing 5 C.F.R. § 1201.3); *see also* S. Appx. 12 (same); S. Appx. 37, 43–44. As for the IRA appeal rights, Mr. Akerman did invoke them before the Board, but the Board properly ruled that Mr. Akerman's "asserted IRA appeal . . . is premature." S. Appx. 14. Mr. Akerman had not met the IRA requirement of OSC exhaustion for his present challenge to the Defense OIG and Intelligence OIG decisions on Mr. Akerman's request for PPD-19 relief. *See* S. Appx. 14.

More specifically, in IRA appeals invoking whistleblowing protections, the Board has jurisdiction only if the employee exhausted his or her remedies with OSC before filing the IRA. 5 U.S.C. § 1214(a)(3); 5 C.F.R. § 1209.2(b)(1); *see Yunus v. Department of Veterans Affairs*,

Case: 24-1913 Document: 55 Page: 8 Filed: 04/15/2025

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AKERMAN v. MSPB

242 F.3d 1367, 1371 (Fed. Cir. 2001); *Young*, 961 F.3d at 1328. To do so, the employee must “articulate with reasonable clarity and precision [before the OSC] the basis for his request for corrective action under the [whistleblower protection laws]’ to allow OSC to effectively pursue an investigation.” *McCarthy*, 809 F.3d at 1374 (second alteration added) (citation omitted). Mr. Akerman does not dispute that, to meet the IRA exhaustion requirement, he needed to bring the decisions made by the Defense OIG and Intelligence OIG to the attention of OSC. Informal Opening Brief at 2, 8–10. Here, Mr. Akerman did not even seek PPD-19 relief from Defense OIG until the day before or of the OSC termination-of-inquiry letter, and neither the Defense OIG nor the Intelligence OIG decision even existed before the OSC letter was issued, let alone was the subject of that letter.² S. Appx. 43–44, 57, 61; Informal Opening Brief at 8. Nor did Mr. Akerman provide any evidence that required the Board to find that he later exhausted OSC processes for the present challenge. We conclude that the Board reasonably found that Mr. Akerman had not exhausted before OSC his claim relating to the agency actions involved in this appeal. See *Smolinski*, 23 F.4th at 1353.

Mr. Akerman now argues that the Board had jurisdiction because 50 U.S.C. § 3341(j)(8)’s prohibition of retaliatory revocation of security clearances and access determinations “creates a duty for MSPB to defend [him]” and because his claims are covered under the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994. Informal Opening Brief at 4–8 (citing 38 U.S.C. §§ 4301–4333). Those arguments are not

² The OSC closure letter concerned matters that are the subject of a separate IRA appeal, MSPB Docket No. DC-1221-22-0445-W-1. See S. Appx. 37–42.

Case: 24-1913 Document: 55 Page: 9 Filed: 04/15/2025

AKERMAN v. MSPB

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properly before this court here.³ Mr. Akerman did not raise either argument in his appeal to the administrative judge (which suffices for a determination of forfeiture), S. Appx. 50–61, in his jurisdictional response, S. Appx. 31–44, or in his petition to the Board for review, S. Appx. 27–30. See *Sistek v. Department of Veterans Affairs*, 955 F.3d 948, 953 n.1 (Fed. Cir. 2020) (holding that appellant’s “argument that the allegedly retaliatory investigation separately violates” a different statute is “forfeited for failure to present it to the Administrative Judge in the first instance” (citing *Bosley v. Merit Systems Protection Board*, 162 F.3d 665, 668 (Fed. Cir. 1998))); see also *id.* at 958 n.2; *Conant v. Office of Personnel Management*, 255 F.3d 1371, 1375 (Fed. Cir. 2001). We conclude that Mr. Akerman’s arguments about 50 U.S.C. § 3341(j)(8) and USERRA do not establish reversible error in the Board’s decision.

Nor is reversible error shown by Mr. Akerman’s arguments that he is entitled to default judgment because the agency never responded to the administrative judge’s jurisdictional order, that he is entitled to discovery and evidence, and that “[n]ew evidence, repeatedly rejected . . . , authoritatively shows retaliatory animus on the part of the agency.” Informal Opening Brief at 10–11. The jurisdictional order mandated only that Mr. Akerman respond,

³ Mr. Akerman presented these claims in two other IRA appeals, *Akerman v. Department of the Air Force*, MSPB Docket No. DC-1221-22-0445-W-1, and *Akerman v. Department of the Army*, MSPB Docket No. DC-1221-22-0257-W-1. In both cases, Mr. Akerman petitioned this court to review the Board’s decisions, and we dismissed the petitions for lack of final decisions. Order, *Akerman v. Merit Systems Protection Board*, No. 24-1914 (Fed. Cir. Oct. 23, 2024), ECF No. 24; Order, *Akerman v. Merit Systems Protection Board*, No. 24-1915 (Fed. Cir. Oct. 23, 2024), ECF No. 26.

Case: 24-1913 Document: 55 Page: 10 Filed: 04/15/2025

10

AKERMAN v. MSPB

which is consistent with the burden that he bears in establishing jurisdiction. S. Appx. 48 (“order[ing] the appellant to file evidence and argument” but providing that “[t]he agency *may* respond to the jurisdictional show cause order” (emphasis added)); *McCarthy*, 809 F.3d at 1373. Mr. Akerman has not shown that the Board erred and “caused substantial harm or prejudice” in exercising its discretion on the procedural matters relevant to discovery and evidentiary issues. *Becker v. Office of Personnel Management*, 853 F.3d 1311, 1315 (Fed. Cir. 2017) (quoting *Curtin v. Office of Personnel Management*, 846 F.2d 1373, 1379 (Fed. Cir. 1988)). We see no abuse of discretion in connection with evidence and discovery or in connection with the Board’s denial of his motions to file new evidence.

III

We have considered Mr. Akerman’s remaining arguments and find them unpersuasive. We therefore affirm the Board’s dismissal of the appeal.⁴

The parties shall bear their own costs.

AFFIRMED

⁴ On March 13, 2025, Mr. Akerman asked us to reconsider our prior denial of a request to allow him to present oral argument before this court, renewed his request for involvement of an amicus (seemingly a request for us to appoint an amicus to argue his position), and filed a memorandum in lieu of oral argument. ECF No. 53. We deny the request for oral argument and amicus involvement but allow the filing of the memorandum.

APPENDIX B

The order of the Court of Appeals denying panel
rehearing was issued on May 5, 2025.

Case: 24-1913 Document: 59 Page: 1 Filed: 05/05/2025

NOTE: This order is nonprecedential.

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

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2024-1913

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

ON PETITION FOR PANEL REHEARING

Before PROST, REYNA, and TARANTO, *Circuit Judges*.
PER CURIAM.

ORDER

On April 17, 2025, Martin Akerman filed a motion for reconsideration which the court construed as a petition for panel rehearing [ECF No. 58].

Upon consideration thereof,

IT IS ORDERED THAT:

Case: 24-1913 Document: 59 Page: 2 Filed: 05/05/2025

2

AKERMAN v. MSPB

The petition for panel rehearing is denied.

FOR THE COURT



May 5, 2025
Date

Jarrett B. Perlow
Clerk of Court

APPENDIX C

The order of the Court of Appeals denying a stay of the
mandate was issued on June 16, 2025.

Case: 24-1913 Document: 62 Page: 1 Filed: 06/16/2025

NOTE: This order is nonprecedential.

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

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2024-1913

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

ON MOTION

Before PROST, REYNA, and TARANTO, *Circuit Judges*.
PER CURIAM.

ORDER

On June 12, 2025, Martin Akerman filed a motion to recall the mandate, vacate the opinion and judgment, and to transfer [ECF No. 61].

Upon consideration thereof,

IT IS ORDERED THAT:

Case: 24-1913 Document: 62 Page: 2 Filed: 06/16/2025

2

AKERMAN v. MSPB

The motion is denied.

FOR THE COURT



June 16, 2025
Date

Jarrett B. Perlow
Clerk of Court

APPENDIX D

This appendix contains correspondence with the Clerk of the Supreme Court of the United States from June 2025 regarding several petitions for a writ of certiorari filed by the petitioner. The letters from the Clerk's office return the petitions for failure to comply with Court rules and provide a 60-day period to resubmit them in the correct format.

Martin Akerman
P.O. Box 100057
Arlington, VA 22210
makerman.dod@gmail.com
(202) 656-5601

June 3, 2025

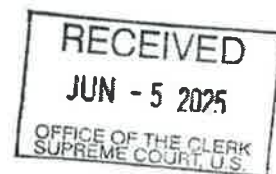
Ms. Gina Nesbitt
Deputy Clerk Supreme Court of the United States
Washington, DC 20543-0001

Dear Ms. Nesbitt,

Thank you for your assistance in helping to resolve my filing issues. Your guidance on separating cases by circuit under Rule 12.4 and granting an additional 60 days to refile, including the resubmission of 24M63 (CAFC 2024-132 and 2024-133) and Supreme Court case 24A278 (2024-130) with related Federal Circuit cases, is greatly appreciated.

This new 60-day period allows the U.S. District Court for the District of Nevada and the U.S. Court of Appeals for the Ninth Circuit to assume jurisdiction and remand the case to the Office of Special Counsel (OSC) and Merit Systems Protection Board (MSPB) for remedies dating back to August 12, 2021, and February 28, 2022.

Additionally, the MSPB's authority under 5 C.F.R. § 1201.118 to reopen appeals in extraordinary circumstances, such as new evidence or legal error, is relevant and is directly tied to interlocutory FOIA appeal 23-5309 in the D.C. Circuit.



ATTACHMENTS

I am attaching all pending cases in the Federal Circuit for this consolidation. All are timely filed as discussed.

I will submit a corrected and consolidated petition for Federal Circuit cases (2024-130, 2024-132, 2024-133, 2024-146, 2024-1912, 2024-1913, 2024-1914, 2024-1915, 2024-1926, 2025-107), Fourth Circuit (24-1943, 25-1000), and Ninth Circuit habeas corpus petition (24-6166) within the new 60-day deadline, if the Merit Systems Protection Board and Ninth Circuit are unable to help me bring the case to a just resolution.

Sincerely,



Martin Akerman
P.O. Box 100057
Arlington, VA 22210
makerman.dod@gmail.com
(202) 656-5601

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

June 10, 2025

Martin Akerman
P.O. Box 100057
Arlington, VA 22210

RE: Akerman v. MSPB; USCA Fed. Cir. Nos. 2024-1912,
2024-1913, 1914, 1915, 1926

Dear Mr. Akerman:

The above-entitled petition for writ of certiorari was postmarked and received March 14, 2025. The papers are returned for the following reason(s):

If you are seeking review of these judgments in a single petition, you must clearly invoke Rule 12.4.

No motion for leave to proceed in forma pauperis, signed by the petitioner or by counsel, is attached. Rules 33.2 and 39. The motion must be signed.

No notarized affidavit or declaration of indigency is attached. Rule 39. You may use the enclosed form.

The petition fails to comply with the content requirements of Rule 14. A guide for in forma pauperis petitioners and a copy of the Rules of this Court are enclosed. The guide includes a form petition that may be used.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

June 10, 2025

Martin Akerman
P.O. Box 100057
Arlington, VA 22210

RE: Akerman v. Merit Systems Protection Board
USCA Fed. No. 2024-130
No: 24A278

Dear Mr. Akerman:

The above-entitled petition for writ of certiorari was originally postmarked February 6, 2025 and received again on June 5, 2025. The papers are returned for the following reason(s):

They are returned for failure to reflect the changes requested in prior correspondence.

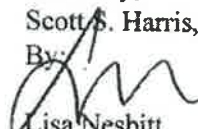
Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

When making the required corrections to a petition, no change to the substance of the petition may be made.

Sincerely,
Scott S. Harris, Clerk

By:



Lisa Nesbitt
(202) 479-3015

Enclosures

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

June 10, 2025

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

RE: Akerman v. Army (24A147)
Akerman v. Air Force (24A155)
No: 24M63

Dear Mr. Akerman:

The above-entitled petition for writ of certiorari was originally postmarked December 18, 2024 and received again on February 4, 2025. The papers are returned for the following reason(s):

No motion for leave to proceed in forma pauperis, signed by the petitioner or by counsel, is attached. Rules 33.2 and 39. The motion must be signed.

The notarized affidavit or declaration of indigency does not comply with Rule 39. You may use the enclosed form.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

When making the required corrections to a petition, no change to the substance of the petition may be made.

Sincerely,
Scott S. Harris, Clerk

By:



Lisa Nesbitt
(202) 479-3015

Enclosures

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

June 10, 2025

Martin Akerman
P.O. Box 100057
Arlington, VA 22210

RE: USCA9 24-6166; VASC 240922; USCA4 24-1943; USCA4 25-1000
USCA Fed Cir. 2025-107; USCA DC 23-5309
No: 24A278

Dear Mr. Akerman:

The above-entitled petition for writ of certiorari was originally received March 17, 2025 and received again on June 3, 2025. The papers are returned for the following reason(s):

They are returned for failure to reflect the changes requested in prior correspondence.

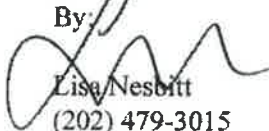
Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

When making the required corrections to a petition, no change to the substance of the petition may be made.

Sincerely,
Scott S. Harris, Clerk

By:



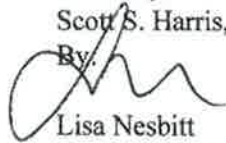
Lisa Nesbitt
(202) 479-3015

Enclosures

When making the required corrections to a petition, no change to the substance of the petition may be made.

Sincerely,
Scott S. Harris, Clerk

By:

A handwritten signature in black ink, appearing to read 'Lisa Nesbitt', is written over the 'By:' text.

Lisa Nesbitt
(202) 479-3015

Enclosures

APPENDIX E

This appendix contains the petitioner's application to the Supreme Court to extend the time to file a petition for a writ of certiorari, postmarked November 22, 2024, and related court correspondence. A letter from the Supreme Court Clerk, dated November 26, 2024, returns the application, stating it was filed out-of-time.

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

November 26, 2024

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

RE: Akerman v. Merit Systems Protection Board/USCA Fed No. 24-1913
Extension of Time Request

Dear Mr. Akerman:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was postmarked November 22, 2024 and received November 26, 2024. The application is returned for the following reason(s):

The application is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was July 25, 2024. Therefore the application for an extension of time was due on or before October 23, 2024. Rules 13.1, 30.1 and 30.2. When the time to file a petition for a writ of certiorari in a civil case has expired (including any habeas action), the Court no longer has the power to review the petition or to consider an application for an extension of time to file the petition.

Please be advised the letter issued by the United States Court of Appeals for the Federal Circuit dated on November 21st, 2024 may not be construed as an order denying reconsideration in this Court.

Additionally, please be advised only a United States court of appeals may certify a question or proposition of law on which it seeks instruction for the proper decision of a case. Rule 19.1.

Sincerely,
Scott S. Harris, Clerk
By:

Susan Frimpong
(202) 479-3039

Enclosures

No. 24A_____ (23A701)

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

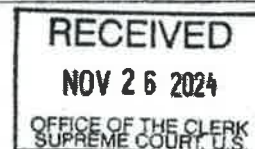
v.

MSPB,
RESPONDENT

APPLICATION TO EXTEND THE TIME TO FILE
A CERTIFIED PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE JOHN G. ROBERTS, JR.,
CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES,
AND CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

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



QUESTIONS TO BE PRESENTED

- Whether the Federal Circuit erred in designating the Merit Systems Protection Board (MSPB) as the sole respondent under 5 U.S.C. § 7703(a), excluding the Department of Defense (DoD) despite its dual statutory role as the employing agency responsible for the personnel actions under review and the investigative authority under 50 U.S.C. § 3341(j)(8).
- Whether 50 U.S.C. § 3341(j)(8) imposes a statutory duty on DoD to harmonize its investigative and administrative actions with the whistleblower protections mandated by 5 U.S.C. § 2302(b)(8).

ORDERS BELOW

Attachment A: Federal Circuit Order (July 3, 2024): The Federal Circuit designated MSPB as the sole respondent, rejecting the Applicant's motion to include DoD as a respondent under 5 U.S.C. § 7703(a)

Attachment B: Federal Circuit Letter (November 21, 2024): The court declined reconsideration and refused to take further action on motions to recaption and clarify jurisdictional issues raised in ECF Nos. 18-1 and 35

No. 24A _____ (23A701)

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

MSPB,
RESPONDENT

APPLICATION TO EXTEND THE TIME TO FILE
A CERTIFIED PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE JOHN G. ROBERTS, JR.,
CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES,
AND CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Pursuant to Supreme Court Rule 13.5, I, Martin Akerman, respectfully request a 20-day extension of time to file a certified petition for a writ of certiorari in the above-captioned case, extending the current deadline from January 20, 2025, to February 9, 2025. This application is timely, being submitted more than ten days prior to the original due date, in accordance with S. Ct. R. 13.5.

1. Complexity of Legal and Statutory Issues:

The questions presented implicate unresolved statutory conflicts between 50 U.S.C. § 3341(j)(8) and 5 U.S.C. § 2302(b)(8). The Federal Circuit's decisions left significant procedural and substantive questions unanswered, including the role of DoD as both the employing and investigative agency. These issues are essential to ensuring fair and consistent adjudication of federal whistleblower and security clearance claims.

2. Federal Circuit's Implicit Certification:

The Federal Circuit's November 21, 2024, letter reflects an implicit certification of the unresolved jurisdictional and statutory questions for potential Supreme Court review under 28 U.S.C. § 1254(2). The exclusion of DoD as a respondent precludes comprehensive review of its compliance with statutory obligations under 50 U.S.C. § 3341(j)(8).

3. Impact of Supreme Court Precedent:

In a related matter, this Honorable Court denied Applicant's Application No. 23A701 on March 4, 2024, which sought a stay related to procedural and jurisdictional issues stemming from MSPB and DoD's actions. However, the Supreme Court's subsequent decision in *Loper Bright Enterprises v. Raimondo* (603 U.S. ____ (2024)) mandates independent judicial interpretation of statutory ambiguities. This precedent directly affects the Federal Circuit's handling of the interplay between whistleblower protections and security clearance adjudication.

4. Pro Se Challenges and Preparation Needs:

As a disabled pro se litigant, I require additional time to prepare a thorough and compliant petition that addresses the complex legal and procedural issues. This extension will ensure that the petition adheres to Supreme Court rules and effectively presents the certified questions.

RELIEF REQUESTED

For the foregoing reasons, I respectfully request:

- A. A 20-day extension of the deadline to file a certified petition for a writ of certiorari, extending the deadline to February 9, 2025; and
- B. Consideration of the certified questions as presented above for Supreme Court review.

County/City of Arlington Respectfully Submitted,
Commonwealth/State of Virginia
The foregoing instrument was acknowledged
before me this 20th day of November
Martin Akerman Martin Akerman, Pro Se
(name of person seeking acknowledgement) 2001 North Adams Street, Unit 440
Arlington, VA 22201
Notary Public My Commission Expires: 09/30/2026 (202) 656 - 5601



No. 24A _____ (23A701)

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

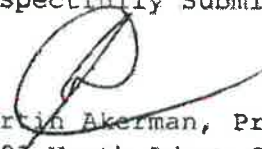
MSPB,
RESPONDENT

PROOF OF SERVICE

I, Martin Akerman, hereby certify that on November 22, 2024, I delivered an original and three copies of the attached application to extend the time to file a petition for a writ of certiorari, along with all exhibits and accompanying documents, to the clerk of the Supreme Court, and a copy to the Solicitor General of the United States by mailing a true and correct copy via United States Postal Service, first-class mail, postage prepaid, addressed as follows:

Solicitor General of the United States
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001


Respectfully Submitted,


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

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No. 24A_____ (23A701)

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

MSPB,
RESPONDENT

ATTACHMENT A: FEDERAL CIRCUIT ORDER (JULY 3, 2024)

The United States Court of Appeals for the Federal Circuit issued its order on July 3, 2024, designating the Merit Systems Protection Board (MSPB) as the sole respondent in the case. The court rejected Applicant's motion to include the Department of Defense (DoD) as a respondent, holding that MSPB alone was the proper party under 5 U.S.C. § 7703(a).

This order excluded DoD despite its dual statutory role as (1) the employing agency responsible for the personnel actions under review, and (2) the investigative authority under 50 U.S.C. § 3341(j)(8).

Case: 24-1913 Document: 39 Page: 1 Filed: 11/21/2024



JARRETT B. PERLOW
CLERK OF COURT

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**
717 MADISON PLACE, N.W.
WASHINGTON, D.C. 20439

CLERK'S OFFICE
202-275-8000

November 21, 2024

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

Re: Appeal No. 2024-1913, Akerman v. MSPB

Dear Mr. Akerman,

This is in reference to your submission received by the court on November 14, 2024, which has been docketed as ECF No. 35.

Your motion purports to seek reconsideration of this court's July 3, 2024 order, which named the Merit Systems Protection Board as the respondent in this case. The court has already considered and rejected your prior request to reconsider the recaptioning issue, ECF No. 18-1. The rules do not contemplate further motions for reconsideration of that issue. The court therefore will take no further action on any additional requests of this nature.

Sincerely,



Jarrett B. Perlow
Clerk of Court

JP/hw

No. 24A (23A701)

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

MSPB,
RESPONDENT

ATTACHMENT B: FEDERAL CIRCUIT LETTER (NOVEMBER 21, 2024)

The United States Court of Appeals for the Federal Circuit issued a letter on November 21, 2024, declining reconsideration of its July 3, 2024, order, which designated the Merit Systems Protection Board (MSPB) as the sole respondent. The court rejected Applicant's motions for recaptioning and jurisdictional clarification as raised in ECF Nos. 18-1 and 35, stating that no further action would be taken on these issues.

The letter effectively upheld the exclusion of the Department of Defense (DoD) as a respondent, leaving unresolved the statutory and procedural questions.

Case: 24-1913 Document: 18-1 Page: 1 Filed: 07/25/2024

NOTE: This order is nonprecedential.

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

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2024-1913

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

ON MOTION

PER CURIAM.

ORDER

Martin Akerman moves for reconsideration of this court's July 3, 2024 order that reformed the caption and denied his request to waive the filing fee. He also submits briefing, ECF Nos. 4 and 6; an incomplete motion for leave to proceed *in forma pauperis* (IFP), ECF No. 16; and resubmits his USERRA notification form, ECF No. 15. The Merit Systems Protection Board moves for an extension of time to file its response brief, ECF No. 17.

Case: 24-1913 Document: 18-1 Page: 2 Filed: 07/25/2024

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AKERMAN v. MSPB

Mr. Akerman has shown no basis to reconsider this court's July 3, 2024 order. By statute, 38 U.S.C. § 4323(h), "[n]o fees or court costs may be charged or taxed against any person claiming rights" under USERRA. Mr. Akerman has not shown, in his motion or his newly submitted form, that he claimed rights under USERRA in this case. Regarding the proper respondent, under 5 U.S.C. § 7703(a)(2), the Board is designated as the respondent when the Board's decision concerns the procedure or jurisdiction of the Board. The court's order noted that the Board is the proper respondent here because Mr. Akerman's appeal was dismissed for lack of jurisdiction. Mr. Akerman has also shown no error in that conclusion.

Finally, the court notes that Mr. Akerman's IFP motion is submitted on Federal Circuit Form 6 but is incomplete and lacks clarity as to whether he has a spouse with pay or wages sufficient to pay the fee. The court therefore denies the IFP motion without prejudice to a corrected motion submitted on a completed Form 6 including clarification as to pay or wages from a spouse, if any.

Accordingly,

IT IS ORDERED THAT:

(1) ECF No. 4 is accepted as Mr. Akerman's informal opening brief and appendix, and ECF No. 6 is accepted as continuation pages to Mr. Akerman's informal opening brief. The requirement to file paper copies of the informal opening brief is waived, and no further continuation pages for the opening brief will be accepted.

(2) The Board's motion for an extension of time is granted to the extent that its response brief is due no later than 40 days from the date of entry of this order.

(3) The motion for leave to proceed *in forma pauperis* is denied without prejudice to submission of a corrected motion for leave to proceed *in forma pauperis* as described

Case: 24-1913 Document: 18-1 Page: 3 Filed: 07/25/2024

AKERMAN v. MSPB

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in this order within 21 days from the date of entry of this order.

(4) The motion for reconsideration is granted only to the extent that, within 21 days from the date of entry of this order, Mr. Akerman may submit evidence of a USERRA claim in proceeding No. DC-3443-22-0639-I-1. The motion is otherwise denied. Failure to file such evidence, or a completed motion for leave to proceed *in forma pauperis*, or to pay the filing fee within 21 days from the date of entry of this order will result in dismissal for failure to prosecute. See Fed. Cir. R. 52(d).

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

July 25, 2024
Date

Encl: Federal Circuit Form 6

No. 24A_____ (23A701)

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

MSPB,
RESPONDENT

ATTACHMENT C: MOTION TO CERTIFY QUESTION (NOVEMBER 14, 2024)

The motion seeking certification for Supreme Court review of unresolved procedural and jurisdictional questions argued that excluding the Department of Defense (DoD) as a respondent precludes full adjudication of the statutory obligations and procedural duties imposed by 50 U.S.C. § 3341(j)(8). The motion contended that DoD's failure to participate in the underlying MSPB proceedings constituted procedural default, barring substantive participation in the appeal under 5 U.S.C. § 1221(e)(2). The motion raised concerns about MSPB acting as both the adjudicative body and respondent, potentially compromising the impartiality of appellate review.

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2024-1913

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Martin Akerman, pro se

Appellant,

v.

MSPB,

Appellee.

**MOTION TO CERTIFY DECISION
TO RETAIN MSPB AS RESPONDENT**

On May 29, 2024, the Merit Systems Protection Board (MSPB) issued its Final Order in Docket Number DC-3443-22-0639-I-1, dismissing the appeal for lack of jurisdiction, without a response from DoD. Subsequently, on July 25, 2024, the Appellant filed an Informal Brief using pro se forms, naming MSPB as respondent (ECF 19). On September 3, 2024, MSPB submitted its Combined Response Brief (ECF 26), totaling 4,255 words.

Appellant then requested amicus curiae involvement (ECF 27) and submitted a reply on October 4, 2024 (ECF 29). On November 13, 2024, the Clerk directed MSPB to file an updated response (ECF 30), resulting in an updated Combined Response Brief totaling 3,878 words (ECF 32), requiring a reply from appellant (ECF 31).

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PROCEDURAL BACKGROUND

On June 30, 2024, Appellant filed an Objection to Caption (Case No. 2024-1913, ECF No. 10-1) pursuant to Federal Circuit Rule 12(b), requesting clarification of the official caption. The objection referenced the recent Supreme Court decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024), decided on June 28, 2024, which fundamentally altered the judicial review of agency interpretations by overruling Chevron deference. The decision requires the Federal Circuit to independently interpret statutes rather than deferring to agency interpretations in cases of statutory ambiguity.

The objection emphasized that, while the case was originally framed against the MSPB under Public Law 117-103 (March 15, 2022), and statutes including 50 U.S.C. § 3341(j)(8) and 5 U.S.C. § 2302(b)(8), the Supreme Court's ruling justified retaining the Department of Defense (DoD) as the respondent. The objection argued that retaining DoD as the respondent allows the Court to either (1) resolve the merits promptly on due process grounds, or (2) interpret congressional intent and evaluate the impact of Public Law 117-103 on *Dep't of the Navy v. Egan*, 484 U.S. 518 (1988).

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ARGUMENT

Under 5 U.S.C. § 7703(a), the employing agency is required to be a respondent in appeals arising from MSPB decisions. In this case, the DoD administered the personnel actions under review, including whistleblower disclosures and alleged violations under 5 U.S.C. § 2302(b)(8) and 50 U.S.C. § 3341(j)(8). Removing DoD as a respondent would hinder the Court's ability to provide complete adjudication of the claims and violate statutory mandates (*Dep't of the Navy v. Egan*, 484 U.S. 518, 530 (1988)). Certification of this issue will confirm the indispensability of the DoD's participation.

Review of MSPB's Authority to Respond on Behalf of the DoD

MSPB, as a quasi-judicial body, is tasked with adjudication, not advocacy. Allowing MSPB to respond on behalf of the DoD raises significant concerns about the separation of roles between adjudicative bodies and parties to a dispute (*Withrow v. Larkin*, 421 U.S. 35, 46-47 (1975)). Certification of this issue is critical to ensuring that MSPB's role in these proceedings does not compromise its neutrality or the fairness of the appellate process.

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Certification on DoD's Ability to Respond After Defaulting

The DoD failed to appear in the underlying MSPB proceedings, constituting a procedural default under 5 U.S.C. § 1221(e)(2). Courts have consistently held that a party's default limits its ability to substantively participate in later stages of litigation (*Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993)). Allowing DoD to respond at this stage would prejudice the Appellant and undermine the principles of procedural fairness. Certification is necessary to determine whether the DoD's procedural default precludes it from substantive participation in this appeal.

Judicial Efficiency and Public Interest

Retaining DoD as a respondent and resolving the procedural questions surrounding its role are essential to promoting judicial efficiency and public confidence. Comprehensive resolution of the claims requires the participation of all indispensable parties, as well as adherence to procedural safeguards ensuring fairness for pro se litigants.

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CONCLUSION

For the reasons outlined above, Appellant respectfully requests that the Court:

- A. Certify its decision to retain MSPB as a respondent.
- B. Review the propriety of MSPB responding on behalf of the Department of Defense.
- C. Certify whether the Department of Defense, having defaulted in MSPB proceedings, may substantively respond in this appeal.

These certifications are vital to maintaining procedural integrity and ensuring a fair and thorough adjudication of the issues presented.

Respectfully Submitted,



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

APPENDIX F

This appendix contains a letter from the Clerk of the Supreme Court of the United States, dated June 18, 2024, returning the petitioner's motion for leave to file a bill of complaint. The letter explains that the Court's original jurisdiction does not typically extend to a lawsuit initiated by an individual against a state.

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

June 18, 2024

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

RE: Akerman v. Arizona
Motion for Leave to File a Bill of Complaint

Dear Mr. Akerman:

Your motion for leave to file a bill of complaint booklets were hand delivered and received again on June 18, 2024 and are hereby returned for the following reason(s):

They are returned for the reasons previously stated in the June 12, 2024 correspondence.

The original jurisdiction of this Court does not extend to a suit by an individual against a State. The original jurisdiction of this Court generally extends only to cases or controversies between two or more states or between the United States and one or more states. See 28 U.S.C. 1251 and Rule 17 of the Rules of this Court. The Eleventh Amendment amends the language of the Constitution and holds that the Judicial Power of the United States does not extend to any suit commenced or prosecuted against a state by a citizen of another state. The Supreme Court has subsequently held numerous times that states cannot be sued without their consent and that the Eleventh amendment bars suits brought against a state by citizens of that state. *Hans v. Louisiana*, 134 U.S. 1 (1890).

Your booklets and money order in the amount of \$300.00 are herewith returned.

Sincerely,
Scott S. Harris, Clerk
By:

Susan Frimpong
(202) 479-3039

Enclosures

APPENDIX G

This appendix contains various legal documents filed by the petitioner in May 2023, including a motion to the Merit Systems Protection Board (MSPB) to submit additional evidence and allow the Office of Special Counsel to intervene. Also included are a related letter from the Office of Special Counsel correcting a file number , a motion for an emergency writ of replevin filed in the Supreme Court of Nevada , and an order from an MSPB administrative judge denying the petitioner's request for interim relief.

MARTIN AKERMAN v. DEPARTMENT OF DEFENSE

Docket # DC-3443-22-0639-I-1

Motion for leave to file additional evidence and OSC as intervenor

Summary Page

Case Title : MARTIN AKERMAN v. DEPARTMENT OF DEFENSE

Docket Number : DC-3443-22-0639-I-1

Pleading Title : Motion for leave to file additional evidence and OSC as intervenor

Filer's Name : Martin Akerman

Filer's Pleading Role : Appellant

Details about the supporting documentation

N/A

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MARTIN AKERMAN v. DEPARTMENT OF DEFENSE

Docket # DC-3443-22-0639-I-1

Motion for leave to file additional evidence and OSC as intervenor

Online Interview

1. Would you like to enter the text online or upload a file containing the pleading?

Enter Online

2. Please enter text of your pleading.

Pursuant to 5 C.F.R. Â§ 1201.114(a)(5),(k), and (i)(2). I consent to the OSC intervention and file the attached new evidence with the Board with motion for leave, proving that that the evidence or argument was not readily available before the record closed. (i) Under 5 U.S.C. 1212(c), the Special Counsel may intervene as a matter of right, except as provided in paragraph

(i)(2)(ii) of this section. The notice of intervention is timely filed if it is filed with the Clerk of the Board within 45 days of the date the petition for review was filed. If the Special Counsel requests additional time for filing a brief on intervention, the Board may, in its discretion, grant the request. A party may file a response to the Special Counsel's brief within 15 days of the date of service. The Special Counsel must serve the notice of intervention and the brief on all parties. (ii) The Special Counsel may not intervene in an action brought by an individual under 5 U.S.C. 1221, or in an appeal brought by an individual under 5 U.S.C. 7701, without the consent of that individual. The Special Counsel must present evidence that the individual has consented to the intervention at the time the motion to intervene is filed. I kindly ask for an update on the status of the current pending motion for leave to file the previous evidence. As stated in case DC-0752-23-0457-I-1, circumstances in this case include the harmful procedural error by the Office of Special Counsel (OSC), as admitted in their letter dated May 3, 2023. This error not only compromised the OSC's ability to protect the Appellant as a whistleblower but also prevented the Appellant from receiving proper redress at the administrative level. The upload feature is broken on e-Appeal, adding link to pacer document here:

https://assets2.pacermonitor.com/filings/Martin_Akerman_v_Lloyd_Austin_III/Martin_Akerman_v_Lloyd_Austin_III_04cae-22-02147_0032.3.pdf

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

Yes

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

Yes

Certificate Of Service

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

Following is the list of the Parties in the case:

Name & Address	Documents	Method of Service
MSPB: Office of the Clerk of the Board	Motion for leave to file additional evidence and OSC as intervenor	e-Appeal / e-Mail
William R. Kraus Agency Representative	Motion for leave to file additional evidence and OSC as intervenor	e-Appeal / e-Mail

USCA4 Appeal: 22-2147 Doc: 32-3 Filed: 05/08/2023 Pg: 1 of 18



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

May 3, 2023

Sent via electronic mail
Martin Akerman
2001 North Adams Street
#440
Arlington VA 22201
Makerman.dod@gmail.com

Re: OSC File No. MA-22-000917

Dear Mr. Akerman:

This letter is to inform you that an error was made in the OSC file number included in the Closure and IRA letters that you received on May 20, 2022. Please take note that the accurate number for you file is MA-22-000917.

Sincerely,

A handwritten signature in cursive script that reads "Maureen Taylor".

Maureen Taylor
Attorney
Investigation and Prosecution Division

USCA4 Appeal: 22-2147 Doc: 32-3 Filed: 05/08/2023 Pg: 2 of 18

A: 7700153.72

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA MAY 05 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY M. BLACK 5/10/23
DEPUTY CLERK

Martin Akerman, Pro Se,)
Petitioner, Pro Per)
)
v.)
)
Gen. Ondra L. Berry,)
Adjutant General of the Nevada National Guard,)
et. al.,)
Respondents.)

Case No. 8645

86458

Video Participation
Requested

MOTION FOR AN EMERGENCY WRIT OF REPLEVIN

1. The Petitioner respectfully requests that the court grant declaratory relief in the form of a judgment declaring that his personal property was wrongfully subject to civil forfeiture without due process, in violation of his Eighth Amendment rights. Additionally, the Petitioner requests a judgment declaring that his detention and imprisonment were unlawful on the grounds of false arrest, false imprisonment, and procedural and constitutional rights violations. Furthermore, the Petitioner's property rights to his tenured position included procedural safeguards, which were allegedly violated in order to justify the civil forfeiture. New evidence has emerged suggesting that the Nevada Air National Guard Officer may have been framed for the illegal treatment of the Petitioner, casting doubt on the legitimacy of both the civil forfeiture and the detention. The court must consider both the motion for the emergency writ of replevin and the habeas corpus petition in tandem to determine the appropriate relief for the Petitioner.

2. Issue: Whether the writ of replevin and the petition for writ of habeas corpus are inextricably intertwined in the context of the Petitioner's case and whether the civil forfeiture associated with the writ of replevin constitutes an Eighth Amendment violation.



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5 Total Pages

App. 57

23-14295

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AI 7759153.7.3

3. Rule: A writ of replevin is a legal remedy to recover personal property that has been wrongfully taken or withheld, whereas a writ of habeas corpus is a legal remedy to challenge the legality of one's detention or imprisonment. The two remedies, while distinct, can become intertwined when the subject matter of the replevin claim is directly related to the grounds of the habeas corpus petition. Additionally, civil forfeiture can violate the Eighth Amendment's prohibition against excessive fines if the forfeiture is grossly disproportional to the gravity of the offense (*Austin v. United States*, 509 U.S. 602, 622 (1993)).

4. Application: In the present case, the Petitioner seeks a writ of replevin to recover his property, which was allegedly subject to civil forfeiture without due process, under 5 U.S.C. 7513. Simultaneously, the Petitioner has filed a petition for writ of habeas corpus, challenging the legality of his detention and imprisonment based on false arrest, false imprisonment, and violation of his procedural and constitutional rights.

5. In this context, the writ of replevin and the petition for writ of habeas corpus are inextricably intertwined because the Petitioner's claims of due process violations in both remedies stem from the same set of circumstances. The wrongful seizure of his property and his unlawful detention are both alleged to have resulted from the same actions taken by the Respondents. Therefore, the success of the Petitioner's writ of replevin may depend on the outcome of his habeas corpus petition, as a finding that his detention was unlawful could impact the validity of the associated civil forfeiture.

6. Furthermore, the Petitioner contends that the civil forfeiture of his property constitutes an Eighth Amendment violation, as the forfeiture is grossly disproportional to the gravity of the [undisclosed and untried] offense. Citing *Austin v. United States*, the Petitioner asserts that the excessive fines clause applies to the civil forfeiture in his case (509 U.S. at 622).

11/28/23 15:37:4

7. Conclusion: The Petitioner's motion for an emergency writ of replevin and his petition for writ of habeas corpus are inextricably intertwined because they both involve claims of due process violations arising from the same set of circumstances. The success of one remedy may have a direct impact on the other, making it essential for the court to consider both claims in tandem when determining the appropriate relief for the Petitioner. Additionally, the civil forfeiture in question may violate the Eighth Amendment's prohibition against excessive fines, further supporting the need for judicial review.

8. Remedy: If the court finds that the Petitioner's rights were violated, the appropriate declaratory relief would include the following:

- a. A declaration that the civil forfeiture of the Petitioner's personal property was unlawful and in violation of his Eighth Amendment rights, as well as any applicable statutory or procedural requirements.
- b. A declaration that the Petitioner's detention and imprisonment were unlawful on the grounds of false arrest, false imprisonment, and procedural and constitutional rights violations.

9. This declaratory relief would provide the Petitioner with an official recognition of the violations of his rights and could serve as a basis for further actions to remedy the situation, such as seeking the return of his property or pursuing damages for the violations. By granting declaratory relief, the court would address the inextricable link between the wrongful civil forfeiture and the unlawful detention, ensuring that the Petitioner's constitutional rights are protected.

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New Evidence Attached

10. The court may find that General Garduno, the Nevada Air National Guard Officer, was framed for the illegal confinement of the Petitioner, based on new signed testimony received from the Department of the Army. The evidence shows that one William Poppler may have put General Garduno's name in place of his own, to commit these atrocities upon the Plaintiff.

11. If the court finds that the Nevada Air National Guard Officer was indeed framed, and that William Poppler was the true perpetrator of the illegal actions against the Petitioner, this new evidence could have a significant impact on both the declaratory relief sought, and the habeas corpus petition, in Nevada. These additional allegations warrant discovery to establish facts and reduce the daylight between controversies.

CLOSING CERTIFICATION

I certify to the best of my knowledge, information, and belief that this motion: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; and (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

Respectfully Submitted,

Signature of Pro Per Petitioner: 

Martin Akerman

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

USCA4 Appeal: 22-2147 Doc: 32-3 Filed: 05/08/2023 Pg: 6 of 18

40 7780153 7-6

CERTIFICATE OF SERVICE BY MAIL

I, Martin Akerman, hereby certify, pursuant to N.R.C.P. 5(b), that on this 2nd day of the month of May of the year 2023, I mailed a true and correct copy of the foregoing MOTION FOR AN EMERGENCY WRIT OF REPLEVIN addressed to:

Federal Copies:

United States Attorney for the Eastern
District of Virginia
2100 Jamieson Avenue
Alexandria VA 22314

United States Court of Appeals
4th Circuit Clerk
1100 East Main Street, Suite 501
Richmond VA 23219

General Counsel
National Guard Bureau
1636 Defense Pentagon, STE 1E169
Washington DC 20301

Respondent Official:

Gen. Ondra L. Berry
STATE OF NEVADA OFFICE OF THE MILITARY
2460 FAIRVIEW DRIVE
Carson City NV 89701

Nevada Attorney General
Heroes' Memorial Building
Capitol Complex
Carson City, Nevada 89710

Signature of Pro Per Petitioner:

Martin Akerman

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



USCA4 Appeal: 22-2147 Doc: 32-3 Filed: 05/08/2023 Pg: 7 of 18

USCA4 Appeal: 22-2066 Doc: 44-3 Filed: 05/08/2023 PRINTED FROM ECOMP - makerman@gmail.com - 04/25/2023



DEPUTY CHIEF OF STAFF, G1
CIVILIAN HUMAN RESOURCES AGENCY (CHRA)
CONSOLIDATED SERVICES DIVISION
ARMY BENEFITS CENTER - CIVILIAN

FORT RILEY, KS 66442-5004
EMCHW6D5AACSDABC

April 25, 2023

SUBJECT: Agency Challenge Letter

Claim # 550313053
DOI 4/05/2022

Office of Workers' Compensation Programs
PO BOX 8300
London, KY 40742-8300

Dear Claims Examiner,

The Army Benefits Center-Civilian, Injury Compensation Center of Excellence (ABC-C, ICCoE) is responding to claimant challenges for claimant Martian Akerman. This challenge letter is to address the Employing Agency Status being a sub command under Dept. of Army. There have been numerous challenges from the claimant stating that they are not with Dept. of Army but are under Dept. of Defense. When in fact National Guard Bureau Joint Staff is composed of Army & Air National Guard Personal, as well as Navy & Marine Corps Force. To a certain aspect Dept. of Army, Navy, Air Force, Marines are all under Dept. of Defense, however the claimant was apart of a sub command under Dept. of Army while in employed with National Guard Bureau (Title V) under command code 3892. In which the Army Benefits Center - Civilian has benefits guidance for OWCP.

The Position Description that was provided to Dept. of Labor states that the command code for the employing agency is: GB US Army National Guard Bureau (ARGB) this document has also been provided to Dept. of Labor. The position description also listed the supervisor for the claimant as Kenneth McNeil/ Chief Information Director for National Guard Joint Staff - J6, who is also an employee of Dept. of Army.

The Employing Agency has also provided SF-50s which states in Block 14 that the claimant was employed with National Guard Bureau Joint Staff, NGB - J6, C4 Systems & CIO Directorate in Arlington VA as IT Specialist GS 15 Step 10. In which the claimant was Suspended Indefinite with effective date of 4/24/2022. When the claimant resign from their position on 6/6/2022 they were also employed with National Guard Bureau Joint Staff.

Additional documentation has also been provided to Dept. of Labor:

- ❖ National Guard Bureau dated 14 February 2022 the proposed INDEFINITE SUSPENSION MEMO, where it is listed that claimant refused to sign.
- ❖ The Deputy Director of NGB Marin Rudy who signed the CA-2 Form on 01 DEC 2022 is also an employee of Dept. of Army.

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USCA4 Appeal: 22-2066 Doc: 44-3 Filed: 05/08/2023 PRINTED FROM ECOMP - makermar@gmail.com - 04/25/2023



DEPUTY CHIEF OF STAFF, G1
CIVILIAN HUMAN RESOURCES AGENCY (CHRA)
CONSOLIDATED SERVICES DIVISION
ARMY BENEFITS CENTER - CIVILIAN

FORT RILEY, KS 66442-5004
EMCHW6DSAACSDA8C

- ❖ The claimant has provided MSPB Appeal Form to Dept. of Labor on 05 DEC 2022 in which in Block 5 is listed Dept. of Army Joint Activities. The claimant also listed in the appeal that "Mr. McNeil as their Senior Leader".
 - The claimant also provided email traffic from COL. Basler & William Poppler(Army National Guard Labor -Management/Employee Relations Specialist/LMER) on April 18, 2022 concerning speaking with Human Recourse person & it was told to the claimant from their National Guard Bureau LMER that all of their benefits is conducted by the Army Benefits Center - Civilian.
 - The claimant email address while they were an employee of the Employing Agency was martin.akerman.civ@army.mil.
 - The claimant has provided Dept. of Labor their Time & Attendance Report on 12/06/2022 which has their UIC as W39LAA which is assign to Dept. of Army, Army National Guard.

The claimant received and unfavorable Information for Security Determination under Dept. of Army Form 5248-R on 8 February 2022 & failure to meet condition of employment under AR 600-20, Army Command Policy which was sign by Mr. McNeil & Mr. Poppler on 11 April 2022 placing the claimant in an indefinite suspension without pay or duty status effective 24 April 2022 until the claimant obtain/regain an active Top Secret Clearance or until the Agency is warranted up to & including removal from Federal service, however the claimant resign from their federal position with the Army National Guard Bureau effective June 6, 2022 every document that has been provided from the Employing Agency is all from Dept. of Army, Army National Guard Burea(Title V), Agency Code - 3892 which is all correct information for this claimant.

If you have any questions concerning this request, please contact ABCC at 1-866-792-7620 Option #1. Monday through Thursday 8:00 am until 4:00 pm CST.
Email: john.a.burgess40.civ@army.mil

Sincerely,

//SIGNED//
John A. Burgess
Injury Compensation Program Admin.

USCA4 Appeal: 22-2147 Doc: 32-3 Filed: 05/08/2023 Pg: 9 of 18

AL 77801537 1c

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



9207780153000070
Clerk's Office
Supreme Court of Nevada
201 South Carson Street, Suite 201
Carson City, NV 89701

USPS CERTIFIED MAIL



9214 8901 4298 0482 5602 08

9207780153000070



See Important Information Enclosed



USCA4 Appeal: 22-2147 Doc: 32-3 Filed: 05/08/2023 Pg: 10 of 18

Martin Akerman
2001 North Adams Street, Unit 440
Arlington, VA 22201
makerman.dod@gmail.com
202-656-5601

May 5, 2023

Veterans Employment and Training Service (VETS)
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Subject: Request for Assistance in Case Involving Alleged Violations of USERRA Rights of
General Garduno, Nevada Air National Guard

Dear Sir/Madam,

I am writing to request the assistance of the Veterans Employment and Training Service (VETS) in a matter concerning the rights of General Garduno, a General Officer of the Nevada Air National Guard, under the Uniformed Services Employment and Reemployment Rights Act (USERRA). I believe that General Garduno's rights under USERRA have been violated, and that new evidence has emerged which may significantly impact his case.

General Garduno was implicated in actions that resulted in the civil forfeiture of personal property and the detention of a tenured individual. These allegations led to a case against General Garduno before the Supreme Court of Nevada. However, new evidence has come to light suggesting that General Garduno may have been wrongfully accused. This new evidence indicates another individual, William Poppler, as the likely perpetrator of these actions.

The new information casts significant doubt on the legitimacy of the actions attributed to General Garduno. I am attaching the signed testimony from the Department of the Army that contains these new allegations, as well as a copy of the case before the Supreme Court of Nevada.

I am seeking the assistance of VETS to review this new evidence and to advocate on behalf of General Garduno. I am requesting a judgment that declares the actions taken against General Garduno as based on false accusations, thereby violating his rights under USERRA.

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I appreciate the important role that VETS plays in protecting the rights of service members and veterans, and I believe that your assistance in this matter will be invaluable in ensuring that General Garduno's rights are upheld. I am ready and willing to provide any further information or documentation that you may require.

Thank you for your time and consideration. I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to be 'Martin Akerman', written over the word 'Sincerely,'.

Martin Akerman

Attachments: Department of the Army Testimony, Case before the Supreme Court of Nevada

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

MARTIN AKERMAN,
Appellant,

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

v.

DEPARTMENT OF THE ARMY,
Agency.

DATE: May 4, 2023

**ORDER DENYING INTERIM RELIEF, NOTICE TO THE APPELLANT
AND THE AGENCY, AND CLOSE OF RECORD ORDER**

On May 4, 2023, the appellant requested interim relief until “resolution of all controversies.”¹ Appeal File (AF), Tab 13. Under 5 U.S.C. § 7701(b)(2)(A), an appellant may be provided interim relief if he is the prevailing party. To establish he was a prevailing party, the appellant must show the Board issued a decision in his favor. *See Kwartler v. Department of Veterans Affairs*, 108 M.S.P.R. 330, ¶ 13 (2008). Here, the appellant is not a prevailing party as he just initiated this appeal on May 3, 2023, and I have not issued an initial decision in his favor. Accordingly, the appellant’s request for interim relief is **DENIED**.

¹ The appellant also stated, “The Pro Se Petitioner expects a status conference and discovery in order to uncover the truth behind their false arrest and imprisonment and to establish liability for the harm they have suffered.” AF, Tab 13 at 3. However, I will only schedule a status conference and authorize discovery if I determine the appellant has made a nonfrivolous allegation of Board jurisdiction. To the extent the appellant’s statement can be interpreted as request for a status conference and to initiate discovery, his requests are **DENIED**.

Notice to the AppellantConstructive Discharge Claim

The appellant has clarified that he is not pursuing an involuntary retirement/constructive discharge claim in this appeal because he elected to pursue this claim in another forum. AF, Tab 13 at 3. To the extent that it can be interpreted that the appellant raised an involuntary retirement/constructive discharge claim, I find the appellant has withdrawn it. *See id.* **As such, I will not consider or adjudicate a claim of an involuntary retirement/constructive discharge, including whether the appellant has established Board jurisdiction for that claim. Moreover, he will be unable to present or raise (i.e., file a new appeal or to reinstate the claim in this appeal) such a claim to the Board in the future because his decision is an act of finality.**

Board Jurisdiction

The appellant has the burden of establishing the Board's jurisdiction by a preponderance of the evidence. 5 C.F.R. § 1201.56(b)(2)(i). An appellant is entitled to a jurisdictional hearing only where he makes a nonfrivolous allegation the Board has jurisdiction over his appeal. *See Yusuf v. U.S. Postal Service*, 112 M.S.P.R. 465, ¶ 15 (2009); *Liu v. Department of Agriculture*, 106 M.S.P.R. 178, ¶ 8 (2007). Nonfrivolous allegations of Board jurisdiction are allegations of fact that, if proven, could establish the Board has jurisdiction over the appeal; mere *pro forma* allegations are insufficient to satisfy this nonfrivolous standard. *See Lara v. Department of Homeland Security*, 101 M.S.P.R. 190, ¶ 7 (2006); *Ferdon v. U.S. Postal Service*, 60 M.S.P.R. 325, 329 (1994). If the appellant meets his initial burden to make a nonfrivolous allegation of Board jurisdiction, he will then have the additional burden of proving, by a preponderance of the evidence, the merits of his appeal.

The Board's jurisdiction is limited to those matters over which it has been given jurisdiction by law, rule or regulation. *Maddox v. Merit Systems Protection Board*, 759 F.2d 9, 10 (Fed. Cir. 1985). Thus, it follows that the Board does not

have jurisdiction over all matters alleged to be unfair or incorrect. *Roberts v. Department of the Army*, 168 F.3d 22, 24 (Fed. Cir. 1999). Appealable adverse actions within the Board's jurisdiction include: a removal; a suspension for more than 14 days; a reduction in grade; a reduction in pay; and a furlough of 30 days or less. See 5 U.S.C. § 7512(1)-(5). The Board also has jurisdiction over matters as set forth in 5 C.F.R. § 1201.3. It is well settled that in the absence of an otherwise appealable action, the Board has no jurisdiction to consider an appellant's claim that an agency committed a harmful procedural error or some other type of prohibited personnel practice. See *Penna v. U.S. Postal Service*, 118 M.S.P.R. 355, ¶ 13 (2012) (absent an otherwise appealable action, the Board has no jurisdiction to consider claims of discrimination, retaliation, harmful error, prohibited personnel practices, or an agency's failure to comply with regulations or Executive Orders).

As is relevant here, there is no law, rule, or regulation that provides an individual with a right to appeal a claim of a false arrest or imprisonment or the appellant's broad claim that "The Agency's repeated shifting of blame for the false arrest and imprisonment interfered with the Pro Se Petitioner's property interest in their position, their entitlement to disability retirement, by denying them a fair and impartial hearing that could have established liability for the harm they suffered." AF, Tab 13 at 3. Thus, it appears the Board lacks jurisdiction over the appellant's claims. *Meeker v. Merit Systems Protection Board*, 319 F.3d 1368 (Fed. Cir. 2003) (The Board does not have general jurisdiction to entertain any statutory challenge and that its jurisdiction is "strictly confined to those matters over which it has been given jurisdiction by statute, rule, or regulation").

Disability Retirement

To raise a disability retirement claim, it is a threshold issue that the Office of Personnel Management (OPM) must have issued the appellant a final reconsideration decision letter. See *DeGrant v. Office of Personnel Management*, 107 M.S.P.R. 414 (2007) (the Board generally lacks jurisdiction to hear an appeal

of a retirement matter when OPM has not issued a reconsideration decision on the matter). Because the appellant did not nonfrivolously allege in his response to the Order to Clarify Claim that OPM issued such a decision, nor did he attach the letter to his response as directed, it appears that to the extent that the appellant raised a disability retirement claim, the Board lacks jurisdiction.²

Nevertheless, in an appeal from OPM's denial of a disability retirement application, an appellant must prove by preponderant evidence that he is entitled to disability retirement benefits. 5 C.F.R. § 1201.56(b)(2)(ii). Preponderant evidence is the degree of relevant evidence that a reasonable person, considering the record as a whole, would need to find that a disputed fact is more likely true than untrue. 5 C.F.R. § 1201.4(q). In other words, an appellant must show that it is more likely than not that he was disabled, as the retirement law uses that term.

To qualify for disability retirement benefits under the Federal Employees Retirement System (FERS), an appellant must meet the following requirements: (1) completed 18 months of civilian service creditable under FERS; (2) while employed in a position subject to FERS, the appellant became disabled because of a medical condition, resulting in a deficiency in performance, conduct, or attendance, or if there is no such deficiency, the disabling medical condition is incompatible with either useful and efficient service or remaining in the position; (3) the disabling medical condition is expected to continue for at least one year from the date the appellant filed his application for disability retirement; (4) it would be unreasonable for the agency to accommodate the appellant's disabling

² In a prior order, I ordered the appellant to clarify his claims, but he failed to clearly articulate whether he was challenging OPM's denial of his request for a disability retirement annuity. See AF, Tab 12. The order required the appellant to briefly clarify his claim – in two to three sentences – and provided him with examples of how he could clearly convey to me whether he was pursuing a disability retirement claim in this appeal. *Id.* Instead, his verbose response failed to clearly convey whether he was pursuing such a claim (i.e., he is protecting his property interest in his entitlement to disability retirement). See AF, Tab 13.

medical condition in his current position; and (5) he has not declined a reasonable offer of reassignment to a vacant, funded position at his same grade or pay level.

“Accommodation” means an adjustment made to an appellant’s job or work environment that enables him to perform the duties of his position. Reasonable accommodation may include modifying the worksite; adjusting the work schedule; restructuring the job; obtaining or modifying equipment or devices; providing interpreters, readers, or personal assistants; and retraining the appellant. Thus, while his reassignment to a vacant, funded position may constitute an accommodation that precludes disability retirement, his ability to perform a set of ungraded, unclassified duties, which do not amount to an official position, does not disqualify the appellant from receiving disability retirement. In addition, except in cases involving mental incompetence, his application must have been filed while the appellant was still employed or within one year of his separation. The laws and regulations where these criteria are set forth are found at 5 U.S.C. § 8451 and 5 C.F.R. §§ 844.102, 844.103(a), and 844.201. The appellant should read these laws and regulations.

Order to the Appellant

The appellant has the burden of proving that this appeal is within the Board’s jurisdiction. Therefore, I **ORDER** him to file **no later than June 8, 2023**, evidence and/or argument to establish Board jurisdiction. Only if he does so, will he be given the opportunity to prove by preponderant evidence that the Board has jurisdiction over this appeal. Absent good cause, **the appellant is advised that if he submits a filing in regard to his allegations or Board jurisdiction before June 8, 2023, I will consider it his response to this Notice – and he will not be provided further opportunity to respond to this Notice or to raise a nonfrivolous allegation of Board jurisdiction.**

Notice to the Agency

The agency may file a response to the appellant’s submission **within 10 days of his submission or no later than June 20, 2023, whichever is earlier.**

Because OPM is the proper party in a denial of disability retirement claim, the agency is not required to respond to any allegation related to the a purported denial of disability retirement.³

Close of Record

Unless I notify the parties to the contrary, **the record on jurisdiction and timeliness will close on June 20, 2023, or when the agency files its response – whichever is earlier. If, however, the appellant fails to timely respond to this Notice and the above Order to the Appellant, the record will close on these issues on June 8, 2023.** I will not accept evidence or argument on this issue filed after the close of record unless a party shows it is new and material evidence that was unavailable before the record closed. Any rebuttal under this rule must be received within **5 days** of the other party's filing.

FOR THE BOARD:

_____/S/
Joshua Henline
Administrative Judge

³ If I determine during case processing that the appellant actually raised a disability retirement claim in this appeal, I will docket a separate retirement appeal with OPM as the responding agency.

USCA4 Appeal: 22-2147 Doc: 32-3 Filed: 05/08/2023 Pg: 18 of 18

CERTIFICATE OF SERVICE

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

Appellant

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

Agency Representative

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

May 4, 2023
(Date)

/s/
**Joshua Henline
Administrative Judge**

APPENDIX H

This appendix contains a letter from the U.S. Equal Employment Opportunity Commission dated February 27, 2023, closing the petitioner's case because the matter was still pending before the Merit Systems Protection Board and the appeal was therefore premature. It also includes a Freedom of Information Act (FOIA) appeal the petitioner sent to the Department of Defense Office of Inspector General on June 16, 2023.



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

Martin Akerman
2001 North Adams Street
440
Arlington, VA 22201

Re: Akerman v. Department of Defense
EEOC Petition No. 2023001380
Agency Case No. DC-3443-22-0639-I-1

RECEIVED MSPB
JUN 18 2024
10 16 AM '24

Dear Mr. Akerman:

This letter is in reference to correspondence which the Office of Federal Operations recently received petitioning for review of an October 28, 2022, initial decision by a Merit Systems Protection Board (MSPB) Administrative Judge (AJ). However, you have provided the Commission with documentation indicating that you chose to seek review with the Board and that the matter is still pending before the MSPB. As this matter is currently before the MSPB, Petitioner can only seek review once a final decision has been issued by the Board. Accordingly, the petition listed under the above referenced docket number is being closed because it is premature. You may, however, file a new appeal when the Board has issued a final decision in this case.

FOR THE COMMISSION:

A handwritten signature in cursive script that reads "Carlton M. Hadden".

Carlton M. Hadden, Director
Office of Federal Operations

2

2023001380

CERTIFICATE OF MAILING

I certify that on the date below this letter was provided to the following recipients via the means identified for each recipient:

Martin Akerman
2001 North Adams Street
440
Arlington, VA 22201
Via U.S. Mail

Jennifer Everling
Acting Clerk of the Board
Merit Systems Protection Board
1615 M Street, NW
Washington, DC 20419
Via U.S. Mail

Pamela R. Sullivan, Deputy Director, Director
Office of Equal Employment Opportunity Programs
Washington Headquarters Services
Via FedSEP

February 27, 2023
Date


Compliance and Control Division

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
OFFICE OF FEDERAL OPERATIONS
P.O. BOX 77960
WASHINGTON, DC 20013

OFFICIAL BUSINESS



Case: 23-2046 Document: 5-5 Page: 2 Filed: 06/24/2023

(23 of 40)

Martin Akerman
2001 North Adams Street, Unit 440
Arlington, VA 22201
makerman.dod@gmail.com
(202) 656-5601

June 16, 2023

Department of Defense
Office of Inspector General
ATTN: FOIA Appellate Authority
Suite 10B24
4800 Mark Center Drive
Alexandria, VA 22350-1500

**Subject: Freedom of Information Act (FOIA) Appeal - Request for Review of Adverse
Determination**

FOIA Appeal Reference: DODOIG-2023-000628-A

FOIA Request Reference: DODOIG-2023-000628

Date of Adverse Determination: June 16, 2023

Dear FOIA Appellate Authority,

I am writing to appeal the adverse determination received in response to my Freedom of Information Act (FOIA) request dated March 13, 2023. The request was assigned the case number DODOIG-2023-000628 and pertains to the Department of Defense Office of Inspector General (DoD OIG), Complaint 20220301-076207.

1 of 3

Case: 23-2046 Document: 5-5 Page: 3 Filed: 06/24/2023

(25 of 40)

8055822 13

I am writing to appeal the adverse determination made regarding my FOIA request, as communicated to Senator Kaine (VA), for the following cases:

Case Number: 20220301-076207-CASE-01

Case Number: 20220301-076207-CASE-02

Case Number: 20220301-076207-CASE-03

Case Number: 20220301-076207-CASE-04

I respectfully disagree with the decision to withhold certain records and believe that the release of these records is crucial due to their significance and importance. The reasons for my appeal are as follows:

- A. National Interest: The requested records are of substantial public interest and importance as they pertain to investigations conducted by the DoD OIG Administrative Investigations Component. These investigations involve whistleblower reprisal allegations, investigations of senior officials, and matters related to the Defense Hotline Directorates. Access to these records is essential to understanding and evaluating the integrity, effectiveness, and accountability of the Department of Defense.
- B. Transparency and Accountability: The release of the requested records is necessary to ensure transparency and accountability within the Department of Defense. By examining the investigations conducted and actions taken, the public can have confidence in the integrity of the processes and decisions made by the DoD OIG. This information is vital in maintaining public trust and confidence in the government.
- C. Whistleblower Protection: The records being withheld may contain information related to whistleblower reprisal investigations. Protecting whistleblowers and ensuring their rights are upheld is of utmost importance. The release of these records would enable a better understanding of the actions taken in response to whistleblower complaints and provide insights into the effectiveness of existing whistleblower protection mechanisms.

Case: 23-2046 Document: 5-5 Page: 4 Filed: 06/24/2023

(27 of 40)

805923 14

In addition to the aforementioned reasons, I would like to include the following facts relevant to the importance of my FOIA request:


1. On August 11, 2021, NGB Security (OIS-A) completed a CPAC new hire request indicating that the subject required a Top Secret clearance for the position. This information highlights the significance of the security-related issues investigated in the cases.
2. On August 18, 2021, the subject signed an Acknowledgement of Receipt (AOR) for the Statement of Reasons (SOR) dated August 12, 2021. This indicates that the subject was directly involved in the case and further emphasizes the relevance of the requested records.

Based on the importance of the requested records and the reasons stated above, I kindly request a thorough review of the adverse determination and reconsideration of the decision to withhold certain information. It is my belief that the release of these records will serve the public interest and contribute to transparency, accountability, and the effective functioning of the Department of Defense.

I appreciate your attention to this appeal and look forward to a favorable resolution, granting access to the requested records within the statutory timeframe. If you require any further information or clarification, please do not hesitate to contact me at (202) 656-5601 or makerman.dod@gmail.com.

Thank you for your time and consideration

Very respectfully,


Martin Akerman

CC: Virginia Senator Tim Kaine

3 of 3

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
Las Vegas

MARTIN AKERMAN,

Case No. 2:24-cv-01602-GMN-EJY

Plaintiff,

v.

CAESAR GARDUNO,
HENRY DELLINGER,
BRETT BASLER,
HENRY J. KERNER,
AND JANE/JOHN DOES 1-100,

JURY DEMANDED

Defendants.

**SAMPLE ORDER GRANTING PLAINTIFF'S MOTION TO CONFIRM TIMELINESS
OF APPEALS, FOR LIMITED REMAND TO MSPB,
AND FOR STAY OF PROCEEDINGS**

This matter comes before the Court on Plaintiff Martin Akerman's Motion to Confirm Timeliness of Appeals, for Limited Remand to the Merit Systems Protection Board (MSPB), and for Stay of Proceedings (ECF No. [Insert ECF Number]). Having reviewed the motion, supporting documents, and applicable law, the Court finds good cause to grant the requested relief. Accordingly, IT IS HEREBY ORDERED:

1. Confirmation of Timeliness: The Court confirms that the appeals brought via Supplement 76 (ECF No. 76) in MSPB Docket Nos. DC-1221-25-0259-W-1, DC-1221-22-0257-W-2, DC-1221-22-0445-W-2, and DC-3443-24-0599-1-1 are timely under 5 U.S.C. § 7702(e)(1)(B), as more than 120 days have passed since the initial filings without judicially reviewable MSPB decisions.

1 OF 2

2. Limited Remand to MSPB: The above-referenced MSPB cases are remanded to the Merit Systems Protection Board for the limited purpose of:

- a. Correcting procedural deficiencies, including joining necessary parties (e.g., National Guard Bureau, Administrative Office of the U.S. Courts, Social Security Administration).
- b. Issuing a ruling on the stay request in Docket No. DC-1221-22-0445-S-1, pursuant to 5 C.F.R. § 1209.10(b) and 5 U.S.C. § 1221(c)(2).
- c. Facilitating an investigation or settlement through the Office of Special Counsel regarding the settlement agreement referenced in ECF No. 7.
- d. The MSPB shall complete these actions and provide a status report to this Court within sixty (60) days of this Order, unless extended by further order.

3. Stay of Proceedings: All proceedings in this case are STAYED pending the MSPB's completion of the corrective actions outlined above or until further order of the Court. Plaintiff and Defendants shall file a joint status report within ten (10) days of the MSPB's status conferences scheduled for May 30, 2025, or upon completion of the MSPB's actions, whichever occurs first.

IT IS SO ORDERED.

United States District Judge

APPENDIX I

This appendix contains a Complaint of Prohibited Personnel Practice submitted by the petitioner to the U.S. Office of Special Counsel (OSC), which was received on June 17, 2025. The complaint is identified as a continuation of previous OSC cases and is related to matters pending in federal court. Also included is correspondence from February 2022 regarding the petitioner's intent to file claims with the Merit Systems Protection Board and a letter from the office of Senator Tim Kaine dated March 30, 2022, relaying the status of an inquiry with the Department of Defense Office of Inspector General.



COMPLAINT OF PROHIBITED PERSONNEL PRACTICE OR OTHER PROHIBITED ACTIVITY

For instructions or questions, call the Case Review Division at (202) 804-7000.

* Denotes Required Fields

IMPORTANT INFORMATION ABOUT FILING A PPP COMPLAINT

REQUIRED COMPLAINT FORM

Complaints alleging a prohibited personnel practice or a prohibited activity must be submitted using the Online Filing Portal or emailing OSC Form 14 to our office. Information not submitted on or accompanied by this form may be returned by OSC to the filer. The complaint will be considered filed on the date on which OSC receives the completed form. 5 C.F.R. § 1800.1, as amended.

NO OSC JURISDICTION

OSC cannot take any action on complaints filed by employees of –

- the FBI, CIA, DIA, NSA, National Geospatial-Intelligence Agency, ODNI, National Reconnaissance Office or other intelligence agencies excluded from coverage by the President;
- the Government Accountability Office;
- the Postal Rate Commission; and
- the uniformed services of the United States (i.e., uniformed military employees). OSC does have jurisdiction over civilian employees of the armed forces.

LIMITED OSC JURISDICTION

For employees of some federal agencies or entities, OSC's jurisdiction is limited to certain types of complaints, as follows –

- FAA employees only for allegations of retaliation for whistleblowing under 5 U.S.C. § 2302(b)(8) and most allegations of retaliation for engaging in protected activities under 5 U.S.C. § 2302(b)(9).
- Employees of government corporations listed at 31 U.S.C. § 9101 only for allegations of retaliation for whistleblowing under 5 U.S.C. § 2302(b)(8) and most allegations of retaliation for engaging in protected activities under 5 U.S.C. § 2302 (b)(9).
- U.S. Postal Service employees only for allegations of nepotism.
- TSA employees only for allegations of discrimination under § 2302(b)(1), retaliation for whistleblowing under 5 U.S.C. § 2302(b)(8), and most allegations of retaliation for engaging in protected activities under 5 U.S.C. § 2302(b)(9).

ELECTION OF REMEDIES

You may choose only one of three possible methods to pursue your prohibited personnel practice complaint: (a) a complaint to OSC; (b) an appeal to the Merit Systems Protection Board (MSPB) (if the action is appealable under law or regulation); or (c) a grievance under a collective bargaining agreement. If you have already filed an appeal about your prohibited



COMPLAINT OF PROHIBITED PERSONNEL PRACTICE OR OTHER PROHIBITED ACTIVITY

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* Denotes Required Fields

personnel practice allegations with the MSPB, or a grievance about those allegations under the collective bargaining agreement (if the action is grievable under the agreement), OSC may lack jurisdiction over your complaint. 5 U.S.C. § 7121(g).

COMPLAINTS INVOLVING DISCRIMINATION

- **Race, Color, Religion, Sex, National Origin, Age, and Disability (or Handicapping Condition):** OSC is authorized to investigate discrimination based upon race, color, religion, sex, national origin, age, or disability (or handicapping condition), as well as retaliation related to EEO activity. 5 U.S.C. § 2302(b)(1). However, OSC generally defers such allegations to agency procedures established under regulations issued by the Equal Employment Opportunity Commission (EEOC). 5 C.F.R. § 1810.1. If you wish to report allegations of discrimination based on these bases, you should contact your agency's EEO office immediately. There are specific time limits for filing such complaints. Filing a complaint with OSC will not relieve you of the obligation to file a complaint with the agency's EEO office within the time prescribed by EEOC regulations (at 29 C.F.R. Part 1614).
- **Marital Status and Political Affiliation:** OSC is authorized to investigate discrimination based on marital status or political affiliation. 5 U.S.C. § 2302(b)(1).
- **Sexual Orientation and Gender Identity:** OSC is authorized to investigate discrimination based on sexual orientation and gender identity. 5 U.S.C. §§ 2302(b)(1) and (b)(10). EEOC also may have jurisdiction over complaints of discrimination on these bases.

COMPLAINTS INVOLVING VETERANS' RIGHTS

By law, all complaints alleging denial of veterans' preference requirements or USERRA must be filed with the Veterans Employment and Training Service (VETS) at the Department of Labor (DOL). 38 U.S.C. § 4301, *et seq.*, and 5 U.S.C. § 3330a(a).

CONTACT INFORMATION

Title: Mr.

First Name:* Martin

Last Name:* Akerman

Middle Initial:

International Address?: No

Address:*



**COMPLAINT OF PROHIBITED PERSONNEL PRACTICE OR OTHER
PROHIBITED ACTIVITY**

For instructions or questions, call the Case Review Division at (202) 804-7000.

* Denotes Required Fields

5631 5th Street North
Arlington, VA 22205

Cell Phone Number:

Office Phone Number:

Email Address:* makerman.dod@gmail.com

Home Phone Number:

Ext.

Preferred means of contact:

Email: Yes

Home phone: No

Cell phone: No

Office phone: No

REPRESENTATIVE INFORMATION

Do you have representation?* No

Information about representative, if
applicable.

First Name:*

Last Name:*

Middle Initial:

International Address?:

Address:*

Office Phone Number:

Cell Phone Number:

Email Address:*

Ext.

Home Phone Number:

EMPLOYMENT INFORMATION

Name of Department/Agency about which you are filing this complaint.

Department:* Defense/Air Force

Agency:* Hq Usaf And Support Elements

Agency subcomponent: SAF/AA

Street Address: 1670 Air Force Pentagon

City: Washington

State: DC

Zip Code: 20330

OSC Online Filing Portal

COMPLAINT OF PROHIBITED PERSONNEL PRACTICE

Date Received by OSC : 6/17/2025

OMB No. 3255-0005

Expires 03/31/2023

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COMPLAINT OF PROHIBITED PERSONNEL PRACTICE OR OTHER PROHIBITED ACTIVITY

For instructions or questions, call the Case Review Division at (202) 804-7000.

* Denotes Required Fields

Employment Status:* Former Federal Employee

Title	Series	Grade
Chief Data Officer, National Guard Bureau	GS-2210	GS-15

Please provide your dates of employment in this position.

see attached

Are you covered by a collective bargaining agreement? Yes

Employment Service Type	Employment Service Subtype	If Other (specify)
Competitive Service	Career or career-conditional appointment	
Other	Other	OWCP FECA 16429740
Other	Other	MSPB Disability Retirement DC-844E-24-0359-I-1

DETAILS OF YOUR COMPLAINT

Use this section to identify the type of Prohibited Personnel Practice (PPP) that you are alleging. You can enter more than one PPP, but you **MUST** choose one option. A customized series of questions will appear following your selection that you should use to provide detailed information about your complaint. You can return to this part at any time prior to submitting your complaint if you would like to add or remove allegations.

PPPs ALLEGED

Allegation	Other
OSC also has jurisdiction over certain other activities prohibited by statute. If none of the categories of wrongdoing above apply to your circumstances,	<p>This is a continuation of OSC File No. MA-22-000917 (Closed May 20, 2022 and corrected May 3, 2023) and MA-21-001602 (Closed February 28, 2022).</p> <p>This is a mixed case involving discrimination currently before the District of Nevada (2:24-cv-01602-GMN-EJY).</p> <p>This is an effort to fully exhaust administrative remedies as</p>



COMPLAINT OF PROHIBITED PERSONNEL PRACTICE OR OTHER PROHIBITED ACTIVITY

For instructions or questions, call the Case Review Division at (202) 804-7000.

* Denotes Required Fields

<p>please tell us the basis of your complaint below. OSC will determine whether we have jurisdiction over your complaint. You will have an opportunity to attach supporting documentation before you submit your form.</p>	<p>confirmed by the U.S. Court of Appeals for the Federal Circuit on June 16, 2025.</p> <p>A motion was filed by the pro se Plaintiff in the District of Nevada (2:24-cv-01602-GMN-EJY) to allow OSC to fully investigate and remedy damages under Alternative Dispute Resolution (attached).</p> <p>On February 25, 2022, OSC advised me to file a PPD-19 complaint with DOD OIG.</p> <p>The PPD-19 complaint, filed February 27/28, 2022, prompted a Department of Defense Office of Inspector General (DOD OIG) investigation initiated on March 30, 2022, alleging retaliation tied to 50 U.S.C. § 3341(j)(8) (prohibiting retaliatory clearance actions) and 5 U.S.C. § 2302(b)(8) (protecting whistleblower disclosures).</p> <p>DOD OIG completed investigation on May 19, 2022, under 5 U.S.C. § 2302(b)(8) (through 50 U.S.C. § 3341(j)(8)), and the Intelligence Community Inspector General (IC IG) declined to review on September 8, 2022.</p> <p>On September 12, 2022, the case was brought to MSPB (DC-3443-22-0639-I-1), where DOD did not make an appearance but the MSPB determined they do not have jurisdiction to review "In the instant case, the appellant stated he filed his OSC complaint on August 26, 2021 and was notified that OSC terminated its investigation on February 28, 2022. AF, Tab 1 at 4. Further, the appellant indicated on his Board appeal form that he received notice of the agency action on September 9, 2022. Id. at 3. Because the appellant's OSC complaint and closure letter predated the complained of agency action, I find the appellant has not exhausted his administrative remedies with OSC regarding the action at issue in this appeal. ". On December 14, 2023, the U.S. Court of Appeals (Case 23-2216) confirmed "This court does not yet have authority to decide this case. Although this court has jurisdiction to review final decisions of the Board, see 28 U.S.C. § 1295(a)(9); 5 U.S.C. § 7703(b)(1)(A), Mr. Akerman's timely</p>
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COMPLAINT OF PROHIBITED PERSONNEL PRACTICE OR OTHER PROHIBITED ACTIVITY

For instructions or questions, call the Case Review Division at (202) 804-7000.

* Denotes Required Fields

	<p>filed petition at the Board renders the initial decision non-final for purposes of our review. See § 7701(e)(1)(A); 5 C.F.R. § 1201.113(a) ("The initial decision will not become the Board's final decision if within the time limit for filing . . . any party files a petition for review . . .").</p> <p>The Federal Circuit (in case 24-1913) affirmed that the case needs to come back to OSC.</p> <p>Notably, MSPB represented DOD (an executive agency) in both of the Federal Circuit proceedings.</p> <p>Additionally, MSPB Deleted filings and did not require DOD to make an appearance in MSPB case DC-3443-22-0639-I-1.</p>
--	--

PPP SUBJECTS

Agency official(s) responsible for the PPP(s) alleged:

First Name	Last Name	Title	Chain of Command	Allegation
------------	-----------	-------	------------------	------------

PERSONNEL ACTIONS

What personnel action(s) do you believe was taken, not taken, or threatened as part of the prohibited personnel practice(s) alleged?

Personnel Actions
Other

REQUESTED OSC ACTION

What action would you like OSC to take?

Consolidate OSC cases (so the cases can be considered "as a whole") and investigate the claims as they were when OSC bifurcated protections on February 25, 2022.

Return the case to ADR (with leave from the District of Nevada)

Investigate widespread corruption and deep-rooted whistleblower retaliation across Federal



COMPLAINT OF PROHIBITED PERSONNEL PRACTICE OR OTHER PROHIBITED ACTIVITY

For instructions or questions, call the Case Review Division at (202) 804-7000.

* Denotes Required Fields

agencies, including MSPB (coordinate with the District of Nevada, Federal Circuit case 25-1314, and D.C. Circuit cases 23-5309 and 25-5037).

WHERE ELSE DID YOU REPORT THIS MATTER?

I have also reported this information to:

Other Report Type	Action Taken Date
Lawsuit filed in Federal Court	5/5/2025
Reported Matter to member of Congress	2/17/2022

ATTACHMENTS

Please note that the space available for attachments is limited. Therefore, DO NOT attach every document and email that may be relevant to your claim. You will have an opportunity to make additional submissions at a later date. We recommend limiting attachments to official forms and correspondence that document the action(s) at issue in your disclosure if these documents are relevant to your allegations.

I have attached the following documents to my filing:

File Name
Stay Denied.pdf
Akerman_v_Kerner_nvdce-24-01602_0074.6.pdf
Rehearing Denied.pdf
Order.pdf

CONSENT

OSC asks everyone who files a complaint alleging a possible prohibited personnel practice or other prohibited activity to select one of three Consent Statements shown below. Please: (a) select and check one of the Consent Statements below; and (b) keep a copy for your own records.*

If you initially select a Consent Statement that restricts OSC's use of information, you



COMPLAINT OF PROHIBITED PERSONNEL PRACTICE OR OTHER PROHIBITED ACTIVITY

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may later select a less restrictive Consent Statement. If your selection of Consent Statement 2 or 3 prevents OSC from being able to conduct an investigation, an OSC representative will contact you, explain the circumstances, and provide you with an opportunity to select a less restrictive Consent Statement.

You should be aware that the Privacy Act and other applicable federal laws allow information in OSC case files to be used or disclosed for certain purposes, regardless of which Consent Statement you sign. Information about certain circumstances under which OSC can use or disclose information under the Privacy Act appears in the Form Submission part of this form.

Consent Statement 1

I consent to OSC's communication with the agency involved in my complaint. I agree to allow OSC to disclose my identity and information about my complaint if OSC decides that such disclosure is needed to investigate my complaint (for example, to request information from the agency or seek a possible resolution).

Yes

Consent Statement 2

I consent to OSC's communication with the agency involved in my complaint, but I do not agree to allow OSC to disclose my identity to that agency. I agree to allow OSC to disclose only information about my complaint, without disclosing my name or other identifying information, if OSC decides that such disclosure is needed to investigate my complaint (for example, to request information from the agency, or seek a possible resolution). I understand that in some circumstances, OSC could not maintain my anonymity while communicating with the agency involved about a specific personnel action. In such cases, I understand that my request for confidentiality may prevent OSC from taking further action on the complaint.

No

Consent Statement 3

I do not consent to OSC's communication with the agency involved in my complaint. I understand that if OSC decides that it cannot investigate my complaint without communicating with that agency, my lack of consent will probably prevent OSC from taking further action on the complaint.

No

CERTIFICATION



**COMPLAINT OF PROHIBITED PERSONNEL PRACTICE OR OTHER
PROHIBITED ACTIVITY**

For instructions or questions, call the Case Review Division at (202) 804-7000.

* Denotes Required Fields

I certify that all of the statements made in this complaint are true, complete, and correct to the best of my knowledge and belief. I understand that a false statement or concealment of a material fact is a criminal offense punishable by a fine, imprisonment, or both. 18 U.S.C. § 1001.*

Yes

BURDEN: The burden for this collection of information (including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the form) is estimated to be an average of one hour to submit a disclosure of information alleging agency wrongdoing, one hour and fifteen minutes to submit a complaint alleging a prohibited personnel practice or other prohibited activity, or 30 minutes to submit a complaint alleging prohibited political activity. Please send any comments about this burden estimate, and suggestions for reducing the burden, to the U.S. Office of Special Counsel, General Counsel's Office, 1730 M Street, NW, Suite 218, Washington, DC 20036-4505.

This complaint of Prohibited Personnel Practice(s) was received by OSC on:
6/17/2025

**PLEASE KEEP A COPY OF YOUR COMPLAINT, ANY SUPPORTING
DOCUMENTATION, AND ANY ADDITIONAL ALLEGATIONS THAT YOU SEND
TO OSC NOW OR AT ANY TIME WHILE YOUR COMPLAINT IS PENDING.
REPRODUCTION CHARGES UNDER THE FREEDOM OF INFORMATION ACT
MAY APPLY TO ANY REQUEST YOU MAKE FOR COPIES OF MATERIALS THAT
YOU PROVIDED TO OSC.**

Case 2:24-cv-01602-GMN-EJY Document 74-6 Filed 05/05/25 Page 5 of 13
Case: 23-2216 Document: 8-2 Page: 12 Filed: 08/08/2023

28 February 2022

Dear Merit System Protection Board Members,

I am filing this document to inform you of the 3 separate but related claims that I will be sending with or without the support of the OSC in the coming days. I kindly ask you to take any actions you can to protect me from getting unjustly placed on Suspension without pay illegally, for being a whistleblower.

Claim 1 (Attached) is not being sent to you for action other than to ensure that I remain on a paid status while the DOD OIG investigates retaliatory actions against me that contributed to the revocation of my security clearances and access determinations. OSC has informed me that despite following my case for months, protecting me from actions that have to do with security clearances falls outside of their purview. I want you to have a copy for informational purposes.

Claim 2: I will be filing an appeal with the MSPB against OSC for dragging their feet and not protecting me and for not helping me reach a resolution after almost a year abuses by DoD, fake ADR, withholding information, and being denied due process after making protected disclosures and being retaliated against as a whistleblower.

Claim 3: My OSC case for whistleblower protection (MA-21-001602) will be coming to you soon. OSC will be informing me whether or not they will be bringing my case/s to MSPB on my behalf soon.

Martin Akerman <makerman.dod@gmail.com>
to Emily, Kaitia, Casework

Fri, Feb 25, 11:11 AM (3 days ago) ☆ ↩ ⋮

Hi Emily,

I need a little more clarification. MSPB requires that before I file a whistleblower complaint, that it goes through your office and be there for 120 Days without an ISA or that you issue an ISA. Does this mean that all complaints I filed with you since the second (MA-21-001602) qualify for MSPB whistleblower appeal as of today or only MA-21-001602 does? Are you going to file on my behalf or am I doing it myself?

Also, thank you for the clarification on the need to submit the PPD-16 parts directly to DOD OIG.

Thank you.

V/r,
Martin
enc.

Thank you for your time and consideration.

Very respectfully,
Martin Akerman 202-656-5601



TIM KAINE
VIRGINIA

COMMITTEE ON
ARMED SERVICES

COMMITTEE ON
FOREIGN RELATIONS

COMMITTEE ON
THE BUDGET

COMMITTEE ON
HEALTH, EDUCATION, LABOR,
AND PENSIONS

United States Senate
WASHINGTON, DC 20510-4807

WASHINGTON OFFICE
WASHINGTON, DC 20515-4807
(202) 394-4804

March 30, 2022

Mr. Martin Akerman
2001 N Adams St Unit 440
Arlington, VA 22201-3783

Dear Mr. Akerman:

I have received the following emailed correspondence from Department of Defense in response to my inquiry on your behalf.

Your inquiry on behalf of Mr. Martin Akerman was referred to the DoD Office of Inspector General. Mr. Akerman filed a complaint with the Defense Hotline on February 27, 2022. It was referred to our Office of Whistleblower Reprisal Investigations (WRI) and our Office of Investigations of Senior Officials on March 1, 2022. Both cases remain open. Mr. Akerman alleged the revocation of his security clearance, "looming" indefinite suspension, and other Prohibited Personnel Practices (PPP) actions were taken in reprisal after reporting violations of 5 U.S.C. 5501, Unauthorized access; prohibition on use of funds to management officials.

Mr. Akerman's indefinite suspension action and other PPP actions are currently under review at the U.S. Office of Special Counsel (OSC). WRI is currently evaluating Mr. Akerman's security clearance revocation allegation under the provisions of Presidential Policy Directive 19, "Protecting Whistleblowers with Access to Classified Information, October 10, 2012," as implemented in the DoD by Directive-type Memorandum 13-008, "DoD Implementation of Presidential Policy Directive 19," July 8, 2013 (Incorporating Change 4, July 19, 2017). Chief, Legislative Affairs

*Chief, Legislative Affairs
Office of Legislative Affairs and Communications
DoD Office of Inspector General*

You will continue to be updated as soon as new information becomes available to my office. If you have any questions about the status of your letter please contact my Military Coordinator, Janet Lomax, by phone at 757-518-1674.

Again, thank you for writing.

Sincerely,



Tim Kaine

PROOF OF SERVICE

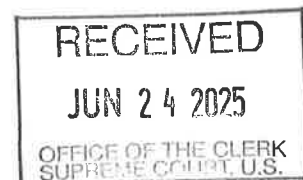
I, Martin Akerman, certify that on June 18, 2025, pursuant to Rule 29 of the Rules of the Supreme Court of the United States and 28 U.S.C. § 518, I caused the original and two copies of the Application for Stay and supporting papers to be sent via Priority Mail to the following:

Hon. Scott S. Harris, Clerk
Supreme Court of the United States
1 First Street NE
Washington, DC 20543-0001
USPS Tracking No.: 9405 5301 0935 5169 1248 73

Solicitor General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW, Room 5616
Washington, DC 20530-0009
USPS Tracking No.: 9405 5301 0935 5169 1248 59

General Counsel, Merit Systems Protection Board
1615 M Street NW
Washington, DC 20419-0004
USPS Tracking No.: 9405 5301 0935 5169 1248 66

General Counsel, Office of Special Counsel
1730 M Street NW, Suite 218
Washington, DC 20036
USPS Tracking No.: 9405 5301 0935 5169 1248 80



I further certify that on this same date, a courtesy status update (not constituting formal service) was provided through ECF to:

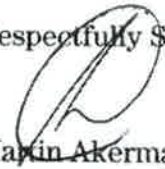
Clerk of the U.S. District Court
District of Nevada
333 Las Vegas Blvd South
Las Vegas, NV 89101

and mailed via First-Class Mail to:

Equal Employment Opportunity Commission (EEOC)
131 M Street NE
Washington, DC 20507

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully Submitted,



Martin Akerman, Pro Se
P.O. Box 100057
Arlington, VA 22210
Tel: 202-656-5601
Email: makerman.dod@gmail.com