No. _____

In the

Supreme Court of the United States

CARLOS A. WILLIAMS,

Petitioner,

v.

LOUIS DEJOY, POSTMASTER GENERAL,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

CARLOS A. WILLIAMS
556 Acadia Trail
Roselle, IL 60172
(331) 575-8850
themajorplan@yahoo.com

Petitioner Pro Se

May 14, 2024

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTION PRESENTED

There are more than two million Americans who are federal employees. Both statutory and constitutional requirements protect the rights of these federal employees. The Civil Service Reform Act of 1978 (CSRA) provides the statutory procedural protections for this workforce. One agency born from the CSRA is the Merit Systems Protection Board (MSPB). It was created to protect the Merit System Principles as well as to provide for a workplace free of improper adverse personnel actions, more frequently referred to as Prohibited Personnel Practices (PPPs).

The Fifth Amendment's Due Process clause provides the constitutional provision for federal employees. The Due Process clause bestows a property interest in continual federal employment. In other words, an employee cannot be deprived of their property interest (their job) without the agency adhering to due process.

An adverse employment action done wrong is a Prohibited Personnel Practice, therefore it is imperative federal agency employers follow the statutory and constitutional provisions when issuing discipline to an employee. If the employee is not made fully aware of the possible paths that s/he may take regarding their complaint/appeal by the agency, EEO counselor, or administrative law judge, the employee's complaint/appeal could end up in the wrong jurisdiction.

The question presented is:

Whether a federal court lacks jurisdiction over a federal employee's complaint when the court has been

made aware by the employee he had not been apprised his complaint of discrimination and Prohibited Personnel Practices should have been designated a mixed-case appealable to the Merit System Protection Board.

PARTIES TO THE PROCEEDINGS

Petitioner, Carlos A. Williams, was the plaintiff in the district court proceedings and appellant in the court of appeals proceedings.

Respondent, Louis DeJoy, Postmaster General was the defendant in the district court proceedings and appellee in the court of appeals proceedings.

RELATED CASES

Carlos A. Williams v. Louis DeJoy, Postmaster General, No.17-cv-08613, U.S. District Court for the Northern District of Illinois, Eastern Division. Judgement entered July 21, 2022.

Carlos A. Williams v. Louis DeJoy, Postmaster General, No. 22-2472, U.S. Court of Appeals for the Seventh Circuit. Judgement entered February 14, 2024.

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Carlos A. Williams, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The Seventh Circuit's opinion is reported at *Williams v. DeJoy*, 88 F.4th 695 (7th Cir. 2023) and reproduced at App. 1-14.

The District Court opinion for *Williams v. Brennan*, No. 17 C 8613 (N.D. Ill. Oct. 16, 2019) in the Northern District of Illinois Eastern Division is reproduced at App. 15-49.

JURISDICTION

The court of appeals entered judgment on December 15, 2023 and denied a petition for rehearing and rehearing en banc on February 14, 2024 App. 78-79. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due

> process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. V

INTRODUCTION

The question presented in this case is of great importance because if the Final Judgement stands, the ruling will undermine substantive protections and Principles of the MSPB afforded to federal employees. The Seventh Circuit's affirmance of the lower Court's decision should be reversed and remanded to the MSPB. The Petitioner's appeal briefs presented questions of law, constitutional protections, and Supreme Court precedents the MSPB has authority to rule on. The following excerpt is taken from the MSPB website:

> "Sometimes MSPB must instruct agencies to cancel an adverse action entirely, even if the offense seems completely outrageous and the charges may appear true. If an agency's action violated an employee's constitutional rights, then MSPB is required to reverse it, no matter how offensive the underlying conduct.[13] If the agency failed to follow statutory or regulatory procedures, and this failure caused a different outcome, then MSPB is instructed by statute and the Federal Circuit to reverse the action.[14] The Board is also not permitted to sustain any action if the adverse action "decision

> was based on any prohibited personnel practice described in section 2302(b)" of title 5.[15]
>
> [13] *Ward v. U.S. Postal Service*, 634 F.3d 1274 (Fed. Cir. 2011); *Stone v. Federal Deposit Insurance Corporation*, 179 F.3d 1368 (Fed. Cir. 1999). *See, e.g., Thomas v. U.S. Postal Service*, 116 M.S.P.R. 453, ¶ 5 (2011) (sustaining the AJ's finding that the appellant inappropriately touched a female employee in her private areas but holding that if the action violated the employee's constitutional rights as explained in *Ward*, it would be necessary to reverse the agency's action and order the agency to restore the appellant until he is afforded a "new constitutionally correct removal procedure").
>
> [14] *Diaz v. Department of the Air Force*, 63 F.3d 1107, 1109 (Fed. Cir. 1995) (citing 5 U.S.C. § 7701(c)(2)(A)).
>
> [15] 5 U.S.C. § 7701(c)(2)."

To paraphrase, the MSPB says if an agency violates an employee's constitutional rights by not following statutory or regulatory procedures, the MSPB is required to reverse. The Petitioner has shown his constitutional rights were violated in his appellate briefs and petition for rehearing, Appellate Dkts. 22, 42, and 51. However, he was not afforded the protections of the MSPB because he never was

informed of his MSPB rights. Instead, the Petitioner's Prohibited Personnel Practice claims, which violated his due process and contained matters of law were allowed to be determined by a jury. A jury is meant to adjudicate matters of fact, not matters of law and thus runs afoul of the judicial system as explained in the Petitioner's Appeal briefs and Petition for Rehearing. The Seventh Circuit denied the Petitioner's Petition for Rehearing, whereas ordinary practice entails a request to the Respondent to respond. In Petitioner's case, there was no response ordered deviating from the Seventh Circuit's ordinary practice.

Employee claims/complaints that allege both a Title VII discrimination/retaliation claim and a PPP are properly designated as a mixed case. It is the agency's, EEO Counselor's, Administrative Law Judge's, his lawyers' and the Courts' responsibility to inform the employee of the right to pursue adjudication of a mixed case through the MSPB. In the MSPB jurisdiction, an employee "only" has to show that the agency violated one of the Merit System Principles. The employee does not have to tie it to a discriminatory Title VII reason. This is why mixed-cases of discrimination and employment double jeopardy are absent from the Seventh Circuit and other circuits (and why conflicting caselaw is nonexistent). A successful federal court adjudication of a mixed case is two-fold, not just proving the PPP was done. The employee must prove it was done for discriminatory reasons. That is why mixed cases are pursued through the MSPB. The District Court and every officer of the court practicing or defending federal employment law should readily know this, yet at no point was the Petitioner ever informed his case

was a mixed case and he had a right to pursue the jurisdiction of the MSPB.

The Seventh Circuit knew or should have known the lower Court lacked jurisdiction and the final judgment should have been reversed. The Petitioner should have been made aware his severe adverse actions (PPPs) could have been appealed to the MSPB before being brought before the federal district court. The Agency's failure to inform the Petitioner he had a mixed case with a right to file with the MSPB violated the Petitioner's constitutional, procedural, statutory and due process rights. The Petitioner stated in his Reply Brief, Dkt.42 Pgs.16-17: "in Williams' case as a federal employee, his due process rights are inherent in his job as a civil servant (postal worker) according to the 14th amendment and the US Supreme Court interpretation of *Cleveland Board of Education v. Loudermill Parma Board of Education v. Donnelly Loudermill v. Cleveland Board of Education*, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985)."

STATEMENT OF THE CASE

Competitive Service employees are covered by the CSRA and the majority of United States Postal Service (USPS) employees, as is the Petitioner, are hired through the competitive service. If a Career Competitive Service Postal Service employee is issued a discipline (in the form of an adverse action done wrong, i.e. a Prohibited Personnel Practice), the employee can file a complaint through their union if under a collective bargaining agreement, through the EEOC, or through the MSPB. If the finding is in favor of the Postal Service, the employee has a right to file

an appeal. The employee should then be informed of all appeal rights.

However, in the Petitioner's case, he was not made aware of his right to pursue the route of the MSPB by the Agency or any officer of the Court. Recently the Petitioner discovered on his own in doing research for this Petition, on April 25, 2024, he was subjected to several Prohibited Personnel Practices as described herein which fall under the jurisdiction/venue of the Merit System Protection Board Court. Petitioner then promptly and respectfully motioned the District Court to vacate its final judgement under Federal Rule of Civil Procedures 12 (b)(1), (2), (3), (4), and (5) and 60 (b)(6) on May 1, 2024. As of noon today, May 14, 2024, Petitioner awaits response from the Respondent and District Court.

Petitioner brought suit by way of his attorney, John Goldman, against the Agency on November 29, 2017 (District Court, Dkt.1) on the basis of discrimination/retaliation citing he was: 1. Issued an Emergency Placement and wrongfully terminated in 2013, 2) Wrongfully terminated again in 2014, and 3) The Agency failed and refused to pay him the back-pay he was entitled to from both the May 29, 2013-June 27, 2013 Emergency Placement as well as for the subsequent September 26, 2013-June 9, 2014 removal that was issued on July 11, 2013 regarding the same allegation which put him in "Employment Double Jeopardy." The Petitioner's paid retained attorneys of Goldman & Ehrlich, along with AUSA Flannery, went through rigorous months of shared discovery under the Seventh Circuit's MIDPP.

The Petitioner is unable to provide any rationale to the Supreme Court as to how Petitioner's Counsels and all officers of the Court did not deduce Petitioner's case should have been initially designated as a mixed case assigned to the MSPB. By the time discovery was completed, Petitioner's and Respondent's counsel should have identified 5 Prohibited Personnel Practices committed against the Petitioner and should have reported them to the District Court. Petitioner's retained attorney never informed his client of these PPP violations or his MSPB rights. Instead, Petitioner's attorney, AUSA Flannery, and the District Court identified and acknowledged 3 adverse actions (i.e. PPPs) were committed against the Petitioner: 1. The 2013 emergency placement, 2. The 2013 removal, and 3. The 2014 removal. App.33

In contrast, even though the Petitioner went into great detail in his Petition for Rehearing, Appellate Dkt. 51, regarding all 5 of his PPP adverse actions and the District Court acknowledged 3 adverse actions, the panel opinion admittedly only "touches" 2 of the 3 adverse actions stating, "This appeal touches on just two of Petitioner's quarrels with USPS. Each pertains to a firing: one in 2013 and one in 2014." App.3. The Seventh Circuit wholly ignores these were Prohibited Personnel Practices, reduces these PPP/severe adverse actions to "quarrels," and completely disregards the 2013 emergency placement. By not addressing the emergency placement, the Appellate Court eliminates the employment double jeopardy PPP. The panel opinion does not use the phrase "adverse action" at all. App.1-14.

After the District Court granted Petitioner's retained attorney leave to withdraw (District Dkt. 92) Petitioner applied for a Court appointed attorney and sought leave to proceed in forma pauperis (District Dkt. 97). The Court recruited attorney Deane Brown for the Petitioner. On October 19, 2021 attorney Brown was granted leave to withdraw, District Court Dkt. 121. After being forced to proceed Pro Se, Petitioner uncovered additional adverse actions and brought them to the District Court's and U.S. Attorney's attention immediately while still under the Seventh Circuit's MIDPP. At that point the Petitioner's new found adverse actions should have been additionally recognized by the District Court as PPPs presenting a second opportunity for his case to be moved to the proper venue, the MSPB court.

On April 25, 2024 the Petitioner discovered what his attorneys Jon Goldman and Sam Sedaei should have deduced years ago as described above: the Agency committed multiple Prohibited Personnel Practices with no fewer than one entailing a Constitutional prohibition, i.e. employment double jeopardy:

In *United States v. Halper*, 490 U.S. 435, 109 S.Ct. 1892, 104 L.Ed 487 (1989) the Supreme Court held that a state penalty violates the Double Jeopardy Clause that a civil as well as a criminal sanction constitutes punishment when the sanction as applied to the individual case services the goals of punishment.

The Court noted: " …the court intimates that a civil sanction may constitute punishment under some circumstances. As noted above, the Court

distinguished between Double Jeopardy Clause's prohibition against 'attempting a second time to punish. criminally" and its prohibition against "merely punishing twice." (citation omitted) The omission of the qualifying adverb "criminally" from the formulation of the prohibition against double punishment suggests albeit indirectly, that "punishment" indeed may arise from either criminal or civil proceedings. (citation omitted) *id.* at 443. Followed: *United States of America v. Guy Jerome Usery*, 59 F.3d 568 at 572, (6th Cir. 1995).

The above is also cited in Petitioner's Appeal Brief and Petition for Rehearing, Appeals Dkt. 22, Pg.14 and Dkt. 51, Pgs. 2, 10-11. The Appellant was never informed of his MSPB rights by any of the following: the EEOC of the United States Postal Service, administrative law judges, the District Court, the U.S. Attorney representing the Agency, the Seventh Circuit Court of Appeals, Petitioner's retained prior counsels, nor his court assigned pro bono attorney. All of the aforementioned possessed supreme legal knowledge that Petitioner's case involved the Merit System protected principles of Prohibited Personnel Practices falling under 5 U.S.C. § 2302.

Double jeopardy is a Constitutional prohibition recognized in both civil and criminal cases as cited by *United States v. Halper* noted above and was not challenged by the Postal Service or Appellate Panel. The U.S. Attorney stated in her Appellee Response Brief (Appellate Dkt. 31) there were not any cases in the Seventh Circuit District Court that had any conclusions/rulings regarding employment double

jeopardy. The MSPB has caselaw precedents addressing employment double jeopardy (see Petitioner's Appellate Brief Dkt. 22, Pgs. 12-23) and therefore would have been the proper jurisdiction. Had the lower Courts moved this case to its proper venue, the MSPB under a matter of law would have held that Petitioner was placed in employment double jeopardy. Petitioner now understands why all involved officers of the Court wanted this case to remain in their jurisdiction rather than be transferred to the MSPB court; the proper jurisdiction that can and has ruled on employment double jeopardy.

Petitioner was placed in the following PPPs:

> PPP #1. Double punishment (2 punishments for the same alleged incident): Emergency Placement on May 29, 2013 and placed in a non-work, no-pay status for almost 30 days. Petitioner initiated an EEO for the May 29, 2013 Emergency Placement. Management/ Labor Relations unilaterally returned Petitioner to work on June 27, 2013. Petitioner was allowed to work on the same assignment until July 11, 2013 when the same management officials who signed the Emergency Placement issued Petitioner a Notice of Removal for the same allegation. Petitioner then initiated an EEO for the July 11, 2013 Notice of Removal. Appellate Briefs Dkt. 22, Pgs. 12-23; Dkt. 42, Pgs.1-5,7; Dkt.51, Pgs.3-10, 13-14.

On November 1, 2021 the Petitioner submitted a Pro Se motion to the District Court, Dkt. 124 Motion to Dismiss. The District Court intervened and did not require the U.S. Attorney to respond to the Petitioner's dispositive Motion to Dismiss, instead recategorized/renamed it as a Motion for Re-Instatement, and then used its discretion to respond for opposing counsel by denying said motion. In the Petitioner's Motion in Limine submission (District Court Dkt. 133), Petitioner specifically asked the Court to rule for his return-to-work status quo ante because he provided the District Court and the Agency with irrefragable evidence and caselaw proving that under a matter of law the discipline issued to him for being AWOL as of June 6, 2014 was defective in nature i.e. a PPP because Petitioner's postmaster provided him a signed letter instructing him to report to duty on June 9, 2014 more on this in PPP #3.

Further evidence the Court knew Petitioner's claims were in the wrong Court were demonstrated when he made a Pro Se layman attempt in Petitioner's Motion in Limine number six, District Court Dkt. 133, to describe what he knew was an adverse action done wrong i.e. double jeopardy, a PPP. The Court would then again use its power over the Petitioner to convince him that his claim only existed in the Title VII arena where the District Court has jurisdiction and where the double jeopardy had to be tied to a discrimination claim. In her order she wrote:

"Williams seeks to admit this evidence to show that the incident constituted an adverse employment action and violated his right to due process under the Fourteenth Amendment. However, the Court

already addressed and rejected Petitioner's argument that this alleged double jeopardy could support Petitioner's discrimination and retaliation claims. See Doc. 62 at 17–22 (entering judgment in favor of USPS on Petitioner's discrimination and retaliation claims related to the 2013 emergency replacement and notice of removal and rejecting argument that the alleged double jeopardy demonstrates pretext). Williams asserts that at summary judgment, the Court "acknowledged that Double Jeopardy did occur, but ruled it moot because it was settled at arbitration." Doc. 133 at 9. This is inaccurate; the Court did not make any finding regarding whether USPS subjected Petitioner to double jeopardy in 2013. The Court merely noted that "on its face," the 2013 notice of removal "appears to violate this prohibition on double jeopardy," Doc. 62 at 21–22, and went on to say that "the parties [did] not present the Court with sufficient facts surrounding the decision to bring Petitioner back to work prior to issuing him a notice of removal. Any issues unrelated to his discrimination claims that Petitioner had surrounding [the 2013] notice of removal were settled in the pre-arbitration settlement and are not properly before the Court here," id. at 22 n.11." App.60-61.

The Petitioner's Petition for Rehearing Dkt. 51 was also not replied to by the Respondent. Instead, the Court, as did the lower Court, used its discretion to intervene and responded for the Agency by denying Petitioner's Petition for Rehearing without explanation, deviating from the Seventh Circuit's ordinary practice of requesting a response from the Respondent. Petitioner now understands he was asking the Courts to rule on Prohibited Personnel

Practices. The Petitioner has expressed to the lower Courts his belief of extreme bias for the Respondent, specifically by not ordering the Respondent to respond to his District Court Motion to Dismiss, Dkt. 124 which contained matters/questions of law regarding the PPPs the Postal Service issued to him, not requiring a response rooted in law to his dispositive Motions in Limine, Dkt.133 again containing matters of law and caselaw regarding the PPPs issued to him, his Seventh Circuit Petition for Rehearing Appellate Dkt. 51 also containing the same matters of law for the same PPPs, nor his recently submitted Rule 60(b) Motion to Vacate, District Court Dkt. 193.

Lastly, within PPP#1, on October 16, 2019 the District Court cited a MSPB case and states:

"Williams correctly points out that "an agency cannot impose a disciplinary or adverse action more than once for the same misconduct." *Cooper v. Dep't of Veterans Affairs*, 2012 M.S.P.B. 23, ¶ 5. Although USPS' issuance of a notice of removal, on its face, appears to violate this prohibition on double jeopardy, the Court only considers the honesty of USPS' stated reason for his termination, not its validity or reasonableness. *Seymour-Reed v. Forest Pres. Dist. of DuPage Cty.*, 752 F. App'x 331, 335 (7th Cir. 2018)." App. 42.

Given that the District Court used MSPB caselaw in her Opinion and Order, the Petitioner in his Appeal brief (Dkt. 22, Pg.17, Point 2) countered the District Court's MSPB caselaw with additional MSPB caselaw to support his employment double jeopardy claim. Petitioner stated,

"*MSPB's long established precedent holds that disciplining an employee more than once for the same misconduct is impermissible.* Then Petitioner cited,

"The MSPB has stated: '…. the Board has long held that an agency cannot impose a disciplinary or adverse action more than once for the same misconduct,'" *Cooper v. Department of Veterans Affairs*, 2012 MSPB 23 (2012). JA 201-202. When the Agency imposed its second disciplinary action or adverse action on July 11, 2013 for the same alleged misconduct it placed the Petitioner in an emergency placement on May 29, 2013, the Agency was in clear violation of *Cooper v. Department of Veterans Affairs*, 2012 MSPB 23 (2012). JA 201-202. The Board, in Cooper, cites several of its previous decisions, including *Gartner v. Department of the Army*, supra, (JA 181-189) and *Adamek v. U.S. Postal Service*, 13 M.S.P.R. 224, 226 (1982). JA 207-210. In *Cooper*, supra at 2012 MSPB at ¶5, the Board stated:

> The Board has analogized the rule to the prohibition against double punishment for the same crime in the criminal context, i.e., the prohibition against double jeopardy. The Board has stated that, although the constitutional prohibition against double jeopardy applies only to, defendants in criminal cases, and not to petitioners in administrative proceedings before the Board, an agency cannot impose a disciplinary or adverse action more than once for the same misconduct."

Furthermore, the Petitioner's Attorney submitted to the Seventh Circuit Appellant Briefs (Appellate Dkts. 22 and 42) containing Supreme Court caselaw and Constitutional prohibitions against double punishment that neither the U.S. Attorney nor the Appellate Court challenged. Instead of the Court defending the lower Court's use of Cooper to dispose of the Petitioner's double jeopardy claim, the Court misapprehended new caselaw to aid disposing of the Petitioner's double jeopardy claim, citing *Matthews v. Milwaukee Area Local Postal Workers Union*, 495 F.3d 438, 439–40 (7th Cir. 2007). App.7. See Petitioner's argument to the Court's use of Matthew's in relation to the Petitioner, Petition for Rehearing, Appellate Dkt. 51, Pgs. 5-10.

PPP #2. Sadly, the Petitioner laid his wife to rest after a three-year battle with breast Cancer. Five days later Petitioner would attend an arbitration at the Glen Ellyn Post Office where Labor Relations negotiated and entered into a settlement on June 4, 2014 with the National Association of Letter Carriers (NALC) that would pay the Petitioner 50% of his missed pay (a PPP) for the time period of September 26, 2013-June 9, 2014. The settlement was devoid/absent the time for which Petitioner was Emergency Placed during the May 29, 2013 – June 27, 2013 time period (another PPP). Petitioner initiated an EEO for this 50% pay reduction and for management reducing his removal to a 7-day suspension. Appellate Dkt. 42, Pgs.22-23; Dkt. 51, Pgs.11-12.

In the Court's Order on Motions in Limine for Petitioner's Motion in Limine 7 she writes:

> "Willliams asks the Court to admit his signed backpay paperwork and Jayne Duewirth's deposition testimony regarding the paperwork to demonstrate that USPS has refused to pay him the backpay it owes him despite having the signed paperwork. However, the Court already considered and rejected Petitioner's argument that USPS' failure to pay him backpay amounts to an adverse employment action or can form the basis for his discrimination claims. *See* Doc. 62 at 16 n.9." App.61

Once again, the District Court used its powers to not recognize PPP #2 as such and just like in PPP #1 above ignored this Prohibited Personnel Practice so it could remain in the District Court's purview under the umbrella of Title VII necessitating an association with a discrimination claim.

PPP #3. Management would issue the Petitioner a Notice of Removal for the charge of being AWOL beginning June 6, 2014 as outlined in the July 14, 2014 Notice of Removal. Petitioner initiated an EEO for this July 14, 2014 Notice of Removal. The Petitioner provided the Court irrefragable evidence that issuance of the July 14, 2014 Notice of Removal was defective because the removal cited Petitioner was AWOL beginning June 6, 2014 for which the Petitioner was granted approved leave via a signed letter from his postmaster. See Appellate Briefs Dkt. 22, Pgs. 23-33; Dkt.42, Pgs. 13-16; Dkt. 51, Pgs.14-21.

Under *Nazelrod v. MSPB*: "The government has the burden of proof before removing an employee. The

government must prove by facts and evidence that: (1) the charged misconduct occurred exactly as outlined in the charging document, (2) there is a nexus between what the employee did and disciplining the employee to promote the efficiency of the service, and (3) the particular penalty is reasonable. See *Nazelrod v. MSPB*, 43 F.3d 663 at 666 (Fed Cir. 1994); *Pope v. U.S. Postal Serv.*, 114 F.3d 1144, 1147 (Fed. Cir. 1997); see also *Hale v. Dep't of Transp.*, 772 F.2d 882, 885 (Fed. Cir. 1985)." Dkt. 22, Pgs. 26-27

Also see *King v. Nazelrod* Petitioner's Appellate Brief Dkt.22, Pgs.32-33: "On July 14, 2014 the Appellant received another Notice of Removal this time for being "AWOL" due to his not returning to work on June 6, 2014. The burden of proof never shifts from the Agency and under *Nazelrod v. MSPB*, 43 F.3d 663 at 666 (Fed Cir. 1994) the Agency must prove every aspect of their charging document. The Agency cannot prove that the Appellant was AWOL starting June 6, 2014 as the charging document states. Therefore, the charging document is defective and the discipline should be rescinded. The Appellant should be made whole with full relief."

Neither the Respondent nor the lower Courts provided a response to this caselaw when it was presented to them. The absence of a response from the Respondent and the lower Courts is tantamount to the Respondent and lower Courts agreeing with the Petitioner that he in fact was not AWOL. The District Court's rulings on the Petitioner's Motion in Limine to Exclude 1, 5, and 6 also is evidence the District Court knew this was a Prohibited Personnel Practice, App.68-69, 71-72. The District Court did not provide

any caselaw when denying Petitioner's Motion in Limine and opposing counsel did not provide any caselaw to counter the Petitioner's evidence or caselaw only saying it was "the heart of what this case is about," District Court Dkt. 134. Again, the explanation as to why the District Court ignored this PPP reverts back to the same reason posed in PPP #1 and #2, keeping it as only a Title VII discrimination claim to remain in District Court.

PPP #4. Petitioner provided the lower Courts and Respondent with evidence of a fourth Prohibited Personnel Practice committed against him by the Agency when the Agency moved to separate him from employment (i.e. "the roles") on September 2, 2014. Petitioner initiated another EEO for this September 2, 2014 Separation Letter. The September 2, 2014 notification letter, Form 6075, backdated Petitioner's separation from employment to August 18, 2014 and was signed by Labor Relations Specialist/Manager Angela Davenport on August 25, 2014. She issued the separation of employment to Petitioner despite his timely filing an appeal with the Agency. Form 6075 expressly states that Labor Relations check the "yes box" if the employee has ANY appeals in process. Even though Petitioner had an appeal in process, Davenport checked the "no box," indicating that Petitioner did not have any appeals in process. The July 14, 2014 Notice of Removal for the charge of AWOL beginning June 6, 2014 was appealed by Petitioner on July 18, 2014 through the Agency's EEOC department. Therefore, the Agency was knowledgeable that Petitioner filed an appeal with the EEOC regarding the July 14, 2014 Notice of Removal. See Appellate Briefs Dkt. 22, Pgs.

23-25, Dkt. 42, Pgs. 15-16, and the May 20, 2022 Trial Transcript Pgs. 550-556 District Court Dkt. 169.

PPP #5. Petitioner was unable to collect a death benefit of $10,000 for the August 25, 2015 death of his 12-year-old son because the Agency erroneously removed Petitioner from the roles. At the time of this filing, the Agency has not: (a) Paid Petitioner the back-pay for the entire time period he lost for PPPs #1 and #2 (for which he filed EEO's), See District Court's ruling on Petitioner's Motion in Limine number 7, App. 61-62; (b) Returned Petitioner back to the roles for being erroneously and improperly separated for not filing a grievance (but Petitioner did file an EEO). Appellate Brief 51, Pgs. 11-12. The lower Courts did not respond/reply nor did they order the Respondent to respond/reply to the Petitioner's claim of being erroneously and improperly separated from the roles by the Agency- another Prohibited Personnel Practice committed against Petitioner, Appellate Brief Dkt. 22, Pgs. 24-25 citing the May 20, 2022 Trial Transcript Pgs. 550-556 District Court Dkt. 169.

All officers of the Court knew Petitioner's claims were Prohibited Personnel Practices falling under the jurisdiction of the MSPB, but chose to keep Petitioner in the dark about his MSPB rights and to keep the Petitioner's case in the District Court. The lower Court's and the Respondent's failure to request and/or order this case moved to the MSPB jurisdiction is clearly not a mistake and the Petitioner has most certainly demonstrated he was unequivocally unaware of his right to pursue his PPP claims in the MSPB court. The Petitioner has shown there was a

failure to inform Petitioner of his Merit System Protection rights.

REASONS FOR GRANTING CERT

This case provides an excellent vehicle for the Supreme Court to halt District Courts from future erroneous designations of MSPB mixed cases to Title VII District Court Jurisdictions. The legal question at stake is extremely important for two reasons. The first significant reason is the rights and protections of millions of federal workers are at stake. In the case of competitive service hired Postal employees, as in the case of the Petitioner, their employment is not just a "job." It is their career. Once an individual is hired, they view their employment as long-term. Tests are taken and they must achieve various milestones in order to "move up the ladder." Retirement benefits and job security are often identified as perks of being a life-long career federal employee. A significant part of that job security relies on the Merit Principles established by the Merit Systems Protection Board. Federal agencies must adhere to these Principles and if they do not, they need to be held accountable, as in this case the Petitioner brings forth. The second reason of exceptional importance is the Seventh Circuit has already begun citing this case to support their orders and opinions, making it very conceivable that other circuits may soon be citing it as caselaw. If the Supreme Court does not vacate the District Circuit's final judgement the Seventh Circuit and potentially other circuits will continue to promulgate the Petitioner's case erroneously.

The Petitioner has shown extraordinary circumstances in his Rule 60(b) motion, District Docket 193. Once he became aware of the jurisdictional and statute violations that were overlooked by the lower Courts he took action. The Petitioner has been saying his adverse actions were done wrong for many years as his Pro Se motions attest. Petitioner now knows he needed to call them Prohibited Personnel Practices.

CONCLUSION

For these reasons, this petition for certiorari should be granted.

Respectfully submitted,

CARLOS A. WILLIAMS
MAY 14, 2024
556 Acadia Trail
Roselle, IL 60172
(331) 575-8850
themajorplan@yahoo.com

Petitioner Pro Se