

26-5433

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

RUSSELL MORTON JR.,

Petitioner,

v.

DAVID P. STEINER,

Postmaster General, United States Postal Service,

Respondent.

PETITION FOR A WRIT TO CERTIORARI

Russell Morton Jr. (*Pro se*)

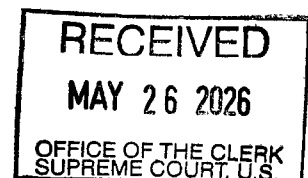
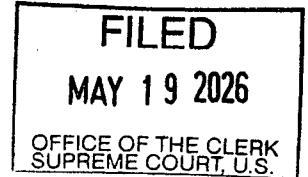
russtmortonjr@gmail.com

4508 Cathlow Circle

North Chesterfield, Virginia 23234

Telephone: (804)-349-6029

Counsel for Appellant



QUESTION PRESENTED

Whether a federal employee's claims may be dismissed with prejudice, without leave to amend, on the ground that certain restoration-related claims should have been pursued before the Merit Systems Protection Board (MSPB), where the employee alleged that agency officials failed to provide notice of MSPB restoration appeal rights and thereby prevented timely exhaustion of the administrative forum later deemed exclusive.

LIST OF PARTIES

Petitioner is Russell Morton, Jr. Respondent is David P. Steiner, Postmaster General of the United States Postal Service.

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Fourth Circuit, the order denying rehearing and rehearing en banc, and the district court's memorandum opinion and final order are reproduced in the appendix.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit entered judgment on March 17, 2026, and denied rehearing and rehearing en banc on May 15, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely under Supreme court Rule 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Due Process Clause of the Fifth Amendment and regulations governing restoration rights for injured federal employees, including 5 C.F.R. § 353.301(d).

STATEMENT OF THE CASE

Petitioner is a former employee of the United States Postal Service who suffered work-related injuries and alleges that he remained medically capable of sedentary work. After being placed in leave-without-pay status in 2016, Petitioner contends that the Postal Service did not provide meaningful notice of the MSPB restoration appeal rights, that the District Reasonable Accommodation Committee did not identify medically suitable work despite multiple opportunities, and that agency officials directed him to pursue Equal Employment Opportunity relief.

Petitioner further alleges that he received no meaningful communication through the EEO process until he initiated follow-up contact himself.

Had Petitioner received timely notice of the MSPB restoration appeal rights, he may have been able to obtain restoration to medically suitable employment with the Postal Service rather than remaining in leave-without-pay status and later seeking disability retirement.

The district court dismissed Petitioner's Third Amended Complaint with prejudice and without leave to amend, concluding that certain restoration-related claims should have been pursued before the MSPB. The United States Court of Appeals for the Fourth Circuit affirmed and later denied rehearing and rehearing en banc.

REASONS FOR GRANTING THE PETITION

This case presents an important and recurring question concerning administrative exhaustion, agency notice obligations, and the preclusive consequences of dismissing a federal employee's claims with prejudice.

1. Due process requires notice reasonably calculated to apprise interested parties of procedures necessary to protect their rights. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).
2. Dismissals based on forum or jurisdictional defects ordinarily should not operate as merits-preclusive adjudications. See *Hernandez v. Conriv Realty Assocs.*, 182 F .3d 121, 123-24 (2d Cir. 1999).
3. Pro se pleadings must be liberally constructed. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).
4. MSPB precedent confirms that partially recovered employees may challenge an agency's failure to make every effort to restore them to suitable work. See *Cornin v. U.S. Postal Service*, 2022 MSPB 13; *James C. Latham et al v. U.S. Postal Service*, 117 M.S.P.R. 400 (2012).
5. This issue recurs in federal employment cases involving overlapping remedial systems, including agency accommodation procedures, EEO processes, MSPB restoration jurisdiction, workers' compensation, and disability retirement.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Russell Morton Jr.

Russell Morton Jr.

Plaintiff, *Pro se*

4508 Cathlow Circle

North Chesterfield, Virginia 23234

Tel: (804)-349-6029

Email: russmortonjr@gmail.com

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