APPENDIX A

26-1094

Darrell L. Whitman
P.O. Box 7185
McLean, VA 22106

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
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Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

April 06, 2026

Daffell L. Whitman
P.O. Box 7185
McLean, VA 22106

RE: 26-1094, In re: Whitman
Dist/Ag docket:

Dear Petitioner:

Enclosed please find an order issued today by the court.

Please contact this office if you have questions.

Sincerely,

Christopher M. Wolpert
Clerk of Couit

CMW/jm

FILED
United States Court of Appeals
Tenth Circuit

April 6, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: DR. DARRELL L. WHITMAN,

Petitioner.

No. 26-1094

ORDER

Before **TYMKOVICH, MORITZ,** and **FEDERICO,** Circuit Judges.

Dr. Daffell L. Whitman, proceeding pro se, petitions for a writ of mandamus directing federal officials to remedy alleged government wrongdoing.[1] We deny the petition.

Dr. Whitman contends there is a longstanding pattern of c01Tuption in the federal government, resulting in responsible officials not only ignoring whistleblowers' complaints, but also violating their statutory and constitutional rights. He details "an unfolding fifteen (15) year odyssey of ever-increasing retaliation and other prohibited personnel practices taken against [him] as he attempted to claim his rights," Pet. at 18, including the tennination of his federal employment in 2015, denials of his requests under the Freedom oflnfmmation Act (FOIA), and delays and obstructions in

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[1] Dr. Whitman identifies several other persons as real parties in interest, including private-sector whistleblowers, and requests relief on their behalf. Although Dr. Whitman states that he is an attorney, he has not established that any persons have retained him to represent them in this matter. We therefore construe the petition as being brought solely on Dr. Whitman's own behalf.

investigating his whistleblower complaints and allegations of misconduct. For relief, he requests that this court order various federal officials to stay the te1mination of his employment, comply with his FOIA requests, investigate his whistleblowing complaints, and investigate wrongdoing by and commence criminal prosecutions against responsible officials.

There are three conditions for a writ of mandamus. *See In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1187 (10th Cir. 2009). "First, because a writ is not a substitute for an appeal, the party seeking issuance of the writ must have no other adequate means to attain the relief he desires." *Id.* (internal quotation marks omitted). "Second, the petitioner must demonstrate that his right to the writ is clear and indisputable." *Id.* (internal quotation marks omitted). And third, "the issuing cou1t, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances." *Id.* (internal quotation marks omitted).

The Supreme Court, however, has cautioned that a writ of mandamus is not a substitute for ordinary remedies. *See, e.g., Bankers Life & Cas. Co. v. Holland,* 346 U.S. 379, 383.(1953) ("[I]t is established that the extraordinary writs cannot be used as substitutes for appeals, ... and whatever may be done without the writ may not be done with it."). Mandamus relief is not proper in lieu of, or in addition to, the established remedies for claims of violations of federal employment rights and protections, whistleblowing provisions, and the FOIA. To the extent Dr. Whitman believes those remedial schemes have fallen sho1t of protecting his rights, we cannot create a remedy through mandamus. *See Green v. Nottingham,* 90 F.3d 415, 417 (10th Cir. 1996) ("A

mandamus proceeding under [28 U.S.C.] section 1651, although characterized as an original proceeding, is not an independent grant of jurisdiction, but an aid of appellate jurisdiction."). Further, to the extent he requests we direct the Attorney General to investigate and commence criminal prosecutions, "the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case." *United States v. Nixon,* 418 U.S. 683,693 (1974). "Mandamus ... will not lie to direct the manner in which discretionary acts of governmental officials are to be perfonned nor to direct or influence the exercise of discretion in making such decisions." *Barr v. United States,* 478 F.2d 1152, 1155 (10th Cir. 1973).

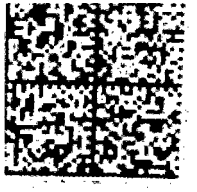
We deny the petition for a writ of mandamus (Dkt. No. 1). We grant Dr. Whitman's motion to proceed without prepayment of fees and costs (Dkt. No. 2).

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Per Curiam

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APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: DR. DARRELL L. WHITMAN, No. 26-1094

Petitioner.

MOTION FOR RECONSIDERATION

WHEREAS the United States Court of Appeals for the Tenth Circuit issued an Order on 06 April 2026 dismissing Petitioner's Writ of Mandamus without a hearing; and

WHEREAS the Court's Order dismissing Petitioner's Writ was not delivered to Petitioner until 16 April 2026, without notice of rights of appeal.

Petitioner requests the Court to exercise its discretion under FRCP Rule 27 and extend the time to file this Motion to 26 April 2026.

PETITIONER respectfully moves the Court to reconsider and vacate its Order dismissing Petitioner's Writ of Mandamus, recognizing its misconstruction of Petitioner's Writ, and conduct a judicial review of federal agency actions failing to perform clear, unambiguous and statutorily mandated ministerial duties as directed by the federal Administrative Procedures Act (APA), set forth in **5 U.S. Code, Chapter 7**, in accordance with Petitioner's **Legal Support for Petitioners Requested Findings and Orders** (Writ, p. 23).

Court's Misconstruction of Petitioner's Writ

In its Order of 06 April 2026, the Court summarized the background to the filing of Writ offered by Petitioner, wrongly concluding the Writ was asking the Court, "remedies for claims

of violations of federal employment rights and protections, whistleblowing provisions, and the FOIA," which the Court found to be inappropriate to the legal purpose of a Writ (**Order**: pp. 1-2).

In fact, a full reading of the Writ offers no support for this claim. Rather, it reveals Petitioner asking the Court for Orders to "compel" federal officials to perform clear and unambiguous statutorily mandated duties (**Writ,** p. 3 - **Jurisdiction of the Court**; pp. 21-22- Reasons for Honoring Mandamus; and p. 23 – **Legal Support**, specifically citing **5 U.S. Code, Chapter 7**). Thus, Petitioner's Writ was filed as proper form for obtaining judicial review of such agency actions as a matter of right authorized by the Administrative Procedures Act (**APA**), in **5 U.S. Code, §702**, which provides:

> A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided that any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

and **5 U.S. Code, §703**, which provides:

> The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or *writs of prohibitory or mandatory injunction* [emphasis added] or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

Thus, the Court errored in its finding Petitioner's Writ was seeking to improperly substitute a Writ for an appeal, and the Court's finding dismissing petitioner's Writ must be vacated as a matter of law.

Re: Petitioner's requests for Court Findings and Orders.

The sections of **5 U.S. Code, Chapter 7** that apply to the Courts judicial review of Petitioner's Writ, include:

5 U.S. Code, §704, Actions reviewable:

> Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

5 U.S. Code, §705, Relief pending review:

> When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

And **5 U.S. Code, §706,** Scope of judicial review:

> To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—**(1)** compel agency action unlawfully withheld or unreasonably delayed; and **(2)** hold unlawful and set aside agency action, findings, and conclusions found to be— **(A)** arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; **(B)** contrary to constitutional right, power, privilege, or immunity; **(C)** in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; **(D)** without observance of procedure required by law; **(E)** unsupported by substantial evidence in a

> case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or **(F)** unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.
> In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

Petitioner's Writ includes five **(5)** Appendices which provide the evidentiary base perfecting Petitioner's allegations of administrative misconduct and violations of federal criminal law by multiple federal responsible management officials who are subjects of this Writ. That evidentiary base is composed of documents and witness statements offering clear and convincing evidence and evidence beyond reasonable doubt substantiating Petitioner's allegations, which offers the Court a starting point for its judicial review. As the evidentiary base is extensive, the individual documents are identified but not reproduced in full but will be reproduced in full upon the request of the Court.

Petitioner's Writ requests the Court to Order the Secretary of Labor grant petitioner interim relief from petitioner's removal from his employment as an investigator working in the agency's Whistleblower Protection Program. Petitioner identified that request as urgent, based on: 1) the deterioration of Petitioner's chronic health conditions (see attached, **Enclosure 01**), 2) Petitioner's current inability to access medical consultation and treatment arising from Petitioner's lack of health insurance and income (see, Petitioner's In Forma Pauperis filing); and 3) agency wrongdoing ignoring Petitioner's repeated requests for a stay of his removal that was contrary to the agency's stated policy (see, attached, **Enclosure 02**). Petitioner's request to the Court for this Order is based on **5 U.S. Code, §705,** Relief pending review, which provides:

> On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

Petitioner looks forward to working with the Court to achieve the important purposes of **5 U.S. Code, Chapter 7**, pledging Petitioner's full cooperation and support for those purposes.

Respectfully submitted this 25th day of April 2026 by:

Darrell Whitman

Darrall L. Whitman, Petitioner

Enclosures

01. Dr. Louise Nurre's diagnosis of Petitioner's chronic medical conditions.
02. OSC Policy Statement re Stay Requests

26-1094

Darrell L. Whitman
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McLean, VA 22106

FILED
United States Court of Appeals
Tenth Circuit

April 28, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: DR DARRELL L. WHITMAN,

Petitioner.

No. 26-1094

ORDER

Before **TYMKOVICH, MORITZ,** and **FEDERICO,** Circuit Judges.

Dr. Darrell L. Whitman has filed a combined motion for extension of time and petition for rehearing of the court's denial of his petition for a writ of mandamus (Dkt. No. 6). To the extent an extension of time may be necessary, we grant leave to file the petition for rehearing. We deny the request for rehearing.

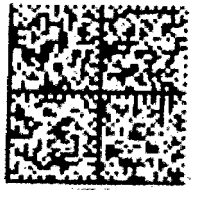
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