Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, Applicant,

v.

MERIT SYSTEMS PROTECTION BOARD, et al., Respondents.

On Application for an Injunction Pending Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

APPLICATION FOR NUNC PRO TUNC RELIEF AND AN INJUNCTION PENDING CERTIORARI

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice
for the District of Columbia Circuit

From D.C. Circuit No. 26-5131
D.D.C. No. 1:23-cv-02574-RDM

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October 20, 2026

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RELIEF REQUESTED AND BASIS FOR THE APPLICATION

Applicant principally requests relief nunc pro tunc to April 18, 2026, restoring the lost opportunity to correct and complete the agency record before the available remedies are adjudicated. The requested sequence is record correction first, resolution of the pending reinstatement requests next, and the Office of Workers' Compensation Programs and any remaining Office of Personnel Management relief through reapplication on the corrected record. He seeks an injunction requiring preservation, production, and secure transmission of the notice-leave and disability-retirement records, including National Guard Bureau records, as the means of making that restoration effective. The D.C. Circuit denied reconsideration and an administrative injunction on October 19, 2026. Doc. 2199011; App. 40a-41a. The appeal from the District Court for the District of Columbia's preliminary-injunction denial, docket entry 98 (ECF 98), remains pending.

Changing a form does not produce the evidence behind it. That is the central issue here. The requested records identify the basis for notice leave, the employing agency and deciding official, the original and corrected disability-retirement submissions, and what the Office of Personnel Management and the Merit Systems Protection Board received. Applicant contends that materially false employer representations distorted those proceedings. The documents below identify the challenged representations and the evidence needed to test them.

Applicant seeks restoration of the April 18, 2026 procedural opportunity, nunc pro tunc to the extent legally available, or through reopening or remand. To implement that relief, he requests immediate preservation, a response within three business days, and production and transmission within seven business days. Alternatively, he requests preservation and a sworn report identifying custody, completeness, and prior transmission while the scope of relief is resolved. The application is served on the Solicitor General for the federal respondents and on counsel below, with copies to the courts below.

I. A CORRECTED FORM DID NOT RESOLVE THE DISPUTED RECORD.

A. The appointment and workers' compensation accounts conflict.

General Hokanson designated Applicant as National Guard Bureau Chief Data Officer on December 20, 2021, with Army and Air National Guard responsibilities. App. 1a. John Burgess's April 25, 2023 Army Benefits Center letter to the Office of Workers' Compensation Programs describes an Army subcommand as the employing organization, invokes agency code 3892, and attributes the suspension action to McNeil and Poppler. ECF 54-1 at 38-39; App. 2a-3a. Applicant disputes that account and identifies Garduno as deciding official. The personnel and delegation records would resolve the disputed agency and decision authority.

On February 5, 2026, Ronald Ryker of the Army Benefits Center told Applicant to take the matter to the Department of Labor. Ryker treated the submission as a second occupational-disease claim and explained that the electronic claims system had rejected it because a claim already existed and had been decided. Applicant disputed that account in a message to government counsel the same day: he was seeking to correct the record, not to duplicate a claim. The distinction matters. Rejecting a duplicate claim does not answer a request to correct the evidence on which the original claim was decided. The Army nevertheless directed him elsewhere. ECF 73-4 at 2-3; App. 11a-12a.

B. The record challenge preceded the injunction denial.

The supervisor's statement supporting the disability-retirement application, Standard Form 3112B, dated October 27, 2023, reports administrative leave, attributes the absence to clearance and access, and states that no accommodation was requested. Tab 30 at 60-61, filed as ECF 73-3 at 10-11; App. 4a-8a. The later National Guard Bureau memorandum substitutes notice leave under § 6329b. ECF 88-3 at 2; App. 9a-10a. That correction does not supply the underlying determination or complete transmission history.

The companion agency certification, Standard Form 3112D, dated October 31, 2023, brings the distinction into focus. The supervisor marked attendance unacceptable and cited leave and suspension. Four days later, the agency certified that performance was fully successful and that no medical restrictions prevented performance of critical duties or attendance at work. It also checked that the medical information did not document a disabling condition. Tab 30 at 64-65; App. 4a-8a. These entries address different questions: absence imposed through personnel action is not itself a medical inability to work. The form expressly instructs the agency to resolve discrepancies with the supervisor's statement. The complete, corrected record is needed to reconcile those accounts before reinstatement and benefit claims are resolved.

The Office of Personnel Management denied reconsideration on February 21, 2024. Applicant promptly appealed: Tab 1 bears February 27 Eastern-time and February 28 Greenwich Mean Time receipt markings. Its argument at printed pages 14-15 invokes the notice-leave determination and statutory records. App. 13a-14a. The challenge to inaccurate submissions was contemporaneous with Office of Personnel Management's denial and preceded the 2026 injunction ruling.

II. PROTECTION WAS SOUGHT BELOW AND DENIED.

A. ECF 98 denied production and preliminary relief.

The requested production and transmission were expressly presented below. D.D.C. ECF 67-1 proposed an order directing National Guard Bureau, through the Army and Air Force, to produce the § 6329b(f) record, transmit the corrected supervisor's statement and supporting record to the Office of Personnel Management, and place the record in Merit Systems Protection Board No. DC-844E-24-0359-I-1. App. 15a-16a.

Judge Moss denied the preliminary injunction on April 18, 2026. ECF 98 found parts of the request outside the operative complaint and an insufficient showing of imminent irreparable harm. It credited the correction from administrative leave to notice leave and its transmission to the Office of Personnel Management and the Merit Systems Protection Board, including Applicant's own upload. It also recognized the pleaded dispute over the deciding-official identification. ECF 98 at 5-9; App. 19a-31a. Applicant challenges the denial on the ground that delivery of a corrected label does not establish production of the contemporaneous determination, supporting materials, or complete transmission history.

B. Appellate relief was denied; the ECF 98 appeal remains.

ECF 102 denied subsequent emergency relief on April 20, explaining that merely staying an order denying affirmative relief would accomplish nothing. App. 32a-35a. Applicant then sought appellate preservation against alteration, destruction, suppression, replacement, and further non-transmittal. Doc. 2170137, filed pp. 2-5; App. 36a-37a. The D.C. Circuit denied an injunction on August 4, 2026, and denied reconsideration and an administrative injunction on October 19, 2026. App. 38a-39a; App. 40a-41a.

The October 19 order also denied the remaining requests, including expansion through ECF 102, and deferred counsel and amicus requests. This application concerns the denial of preliminary injunctive and record-production relief under ECF 98. Exhibit J reproduces ECF 102 to document the emergency relief sought and denied below. ECF 102 is included as procedural history, not as an additional order presented for review in this application.

III. DOIRON ROUTED RELIEF HERE; ALLEGED FRAUD REMAINS UNRESOLVED.

A. The prior Supreme Court chain led to this district-court case.

The April 25, 2023 Office of Workers' Compensation Programs letter preceded the Doiron chain: D.D.C. No. 1:23-cv-02575 → D.C. Circuit No. 23-5230 → Supreme Court No. 23-6710. On February 2, 2024, the D.C. Circuit dismissed the appeal and denied mandamus: "To the extent appellant seeks relief related to appeal No. 23-5309, he must do so in that case." Doc. 2038689 at 1-2; App. 44a. No. 23-5309 arose from D.D.C. No. 1:23-cv-02574, the same case that produced ECF 98 and this interlocutory appeal.

The Doiron petition was filed February 6, 2024, before Office of Personnel Management's February 21 denial and the February 27-28 Merit Systems Protection Board appeal. Certiorari was denied April 15, 2024; rehearing, filed May 2 and distributed May 7, was denied May 28, 2024. App. 45a. Rehearing challenged the absence of merits adjudication and government response. App. 46a-47a. No. 23-5309 ended in an October 6, 2025 judgment rejecting, among other requests, transfer to the Ninth Circuit. App. 48a-50a.

B. The Rule 60 attempt ended without a fraud adjudication.

Applicant also attempted to bring the alleged record fraud back before the Doiron court. His Rule 60 motion alleged that the Army falsely identified the deciding official and sought reinstatement and referral for consolidation with No. 23-cv-2574. The docket records that motion as ECF 12, filed March 18, 2026. On May 28, 2026, Judge Cooper denied reinstatement as beyond the habeas action's scope and dismissal grounds; a second minute order denied leave to file and directed that no further submissions be accepted. The alleged fraud remained undecided. ECF 17 at 2-3; courtesy motion at ECF 83-3 at 5-6 in No. 23-cv-2574; App. 51a-52a.

The Merit Systems Protection Board's certified index links these proceedings: Tab 1 is the initial appeal; Tab 19 is the April 4, 2024 notice concerning No. 23-6710; and Tab 26 is the May 22, 2024 National Guard Bureau-joinder request. The transmittal reports Board review pending August 13, 2026. Federal Circuit No. 2026-2029, Doc. 18 at 1-4, 6-8; App. 53a-54a.

IV. THE COURT SHOULD RESTORE THE APRIL OPPORTUNITY FOR REVIEW.

A. The All Writs Act protects prospective review.

Applicant invokes 28 U.S.C. §§ 1254(1) and 1651(a), and Rules 22 and 23. He seeks protection pending a certiorari petition directed to the D.C. Circuit's refusal of interim relief. Because merits review remains pending below, the application invokes the Court's prospective jurisdiction, subject to Rule 11's demanding standard to the extent certiorari before judgment is required. The existing No. 26M29 proceeding supplies related context; this application rests on the D.C. Circuit proceedings identified here.

The All Writs Act supplies authority to protect jurisdiction before review is complete. In FTC v. Dean Foods Co., 384 U.S. 597, 603-605 (1966), the Court recognized power to prevent action that would defeat effective appellate relief, including within a court's potential jurisdiction. Section 1254(1) permits certiorari before or after judgment. Applicant invokes that protective authority over the pending ECF 98 appeal: a later decision must remain capable of addressing the actual agency record.

An affirmative injunction requires more than a stay of a denial. The requested relief must aid this Court's jurisdiction and concern legal rights that are indisputably clear. Turner Broadcasting System, Inc. v. FCC, 507 U.S. 1301, 1303 (1993) (Rehnquist, C.J., in chambers). Applicant seeks to preserve effective review of the denied production injunction. The alternative preservation request tracks the relief sought in the appellate motion; the production component is grounded in the request presented to the district court.

B. Mandatory records duties support immediate protection.

Section 6329b(f)(1) identifies records of the basis for leave, alternatives, duration, salary, and resulting action. Applicant relies on the underlying records-access claims and preservation authority for judicial relief; subsection (f)(2) specifies governmental access and is not a general private discovery right. A sworn inventory and secure transmission would establish what exists and what the Office of Personnel Management and the Merit Systems Protection Board received, while allowing specified objections to withholding and leaving the merits of disability retirement undecided.

Congress made the agency's maintenance of notice-leave records mandatory: § 6329b(f)(1) directs an agency to keep the prescribed record. Applicant submits that this duty supplies a clear foundation for preserving existing records while the Court determines the scope of production. The National Guard Bureau correction identifies notice leave under § 6329b; preserving the contemporaneous basis and transmission history would protect the evidence needed to test that correction. App. 9a-10a. The application seeks enforcement of an existing records duty through relief in aid of review.

The asserted injury is the loss of a meaningful opportunity to have the complete record considered before adjudication. The April record window has closed, while Applicant reports that the requested transmission remains absent from the Merit Systems Protection Board docket. App. 17a-18a; accompanying declaration. Applicant contends that a later merits ruling cannot supply that lost opportunity without restorative relief. Immediate preservation and a sworn inventory would protect review with limited custodial burden; secure production and reopening would address the underlying injury. These circumstances warrant prompt protection while any objections to production are resolved.

ECF 98 declined conditional National Guard Bureau joinder. Applicant requests relief against respondents and custodians within the Court's lawful authority, direct notice to the National Guard Bureau, and an expedited response identifying custody and any objection to mandatory production. Preservation should remain in place while those questions are resolved.

C. Restore the sequence: correction, reinstatement, reapplication.

On April 16, 2026, the Merit Systems Protection Board reopened the record for the limited purpose of receiving the Social Security Administration decision and two medical-provider notes, permitted the Office of Personnel Management to respond, and set April 27, 2026 as the closing date. Tab 79 at 1-2; App. 17a-18a. Thus, when ECF 98 denied relief on April 18, that limited window remained open. As of October 20, 2026, Office of Personnel Management has not sua sponte recalled or rescinded its February 21, 2024 reconsideration denial. Applicant seeks restoration of the opportunity to supply and correct the record before adjudication so that the pending reinstatement requests and subsequent benefit applications can be evaluated in their proper sequence.

Federal Employees Retirement System regulations provide for review of an initial decision, 5 C.F.R. §§ 844.104 and 841.306, and require the Office of Personnel Management to review the submitted documentation and issue written findings and conclusions, § 844.203(c)(1). Section 844.203(c)(2) expressly permits rescission of an erroneous approval because of fraud, factual misstatement, or additional documentation; it does not itself compel recall of a denial. The Office of Personnel Management can also rescind a denial under the Federal Employees Retirement System during Board proceedings: Coggins v. OPM, No. DC-844E-18-0734-I-1, at 2-3 (M.S.P.B. Dec. 19, 2023) (nonprecedential), records precisely that action and a new adjudication. App. 42a-43a. The Board dismissed the appeal from the rescinded denial; a new decision became the subject of a separate appeal. The order is cited for that procedural example, not as binding precedent. Those authorities identify a means of correction. Reopening the existing retirement denial is not the ultimate objective. Applicant seeks an accurate record for the pending reinstatement requests, followed by a new workers' compensation application and, if necessary, a new disability-retirement application under the applicable procedures.

Applicant requests relief nunc pro tunc to April 18, 2026, to the extent legally available, and alternatively an order preserving the records and restoring that procedural opportunity through appropriate reopening or remand. Nunc pro tunc cannot create an order or jurisdiction that did not exist. Roman Catholic Archdiocese of San Juan v. Acevedo Feliciano, 589 U.S. 57, 64-65 (2020). The requested relief would restore the lost opportunity to correct the record, obtain a decision on reinstatement, and reapply for benefits. It would not treat an injunction as having been entered when none was. Expiration of the April window should not defeat that request for effective relief; Applicant does not premise it on a categorical loss of the Office of Personnel Management's authority to rescind.

The order of relief matters. Applicant seeks correction of the employing-agency, position, deciding-official, and notice-leave records first, so that the pending requests for reinstatement to the Chief Data Officer position and the separately requested Air Force reinstatement can be decided on accurate facts. Either reinstatement could materially change the need for disability retirement. Applicant would then pursue Office of Workers' Compensation Programs relief through reapplication on the corrected record and any remaining Office of Personnel Management relief through reapplication. The effect of reinstatement on existing claims and the availability of those applications would be determined under the governing procedures. This application seeks to restore and protect that sequence; it does not ask the Court to presume that reinstatement or benefit eligibility has already been established.

D. Related applications confirm the consequences of the record dispute.

The Federal Circuit proceeding is associated with No. 26M29. The September 25, 2026 Clerk letter concerning "Akerman v. MSPB, et al." required an injunction request below and explained that a Rule 33.2 application needs no separate veterans motion. App. 55a-56a. This application supplies the subsequent D.C. Circuit denials.

The Army's disputed representations concerning the employing agency, Applicant's position, and the deciding official also bear directly on Applicant's pending Supreme Court application arising from the Nevada replevin proceedings (related No. 26M28). Applicant contends that those representations were false and that resolution of those facts is dispositive there.

The accompanying declaration confirms the continuing absence of docketed transmission and the Office of Personnel Management rescission. Restoring the April opportunity would permit correction of the record before the pending reinstatement requests and subsequent benefit applications are resolved.

CONCLUSION

Applicant requests relief nunc pro tunc to April 18, 2026, to the extent lawful, or equivalent reopening or remand, restoring the opportunity to correct and complete the agency record. Relief should preserve the sequence of record correction, resolution of pending reinstatement requests, and the Office of Workers' Compensation Programs and any remaining Office of Personnel Management reapplication on the corrected record. An injunction should preserve, produce, and transmit the statutory notice-leave records and the complete disability-retirement submissions within seven business days. Alternatively, preservation and a sworn custody-and-transmission report should issue while restorative relief is resolved. If relief is conditioned on timely filing for certiorari, Applicant requests that this application be considered together with the related proceedings in Nos. 26M28 and 26M29.

Respectfully submitted,

Martin Akerman, Applicant pro se
October 20, 2026

DECLARATION REGARDING CURRENT RECORD STATUS

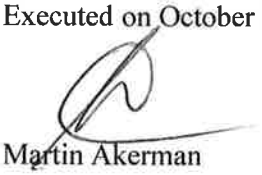
I, Martin Akerman, declare under penalty of perjury as follows:

1. As of October 20, 2026, the current docket in Merit Systems Protection Board No. DC-844E-24-0359-I-1 still does not show that the requested § 6329b notice-leave records and disability-retirement records submitted on the Standard Form 3112 series have been transmitted.

2. As of October 20, 2026, Office of Personnel Management has not sua sponte recalled or rescinded its February 21, 2024 reconsideration decision denying my disability-retirement application.

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

Executed on October 20, 2026.

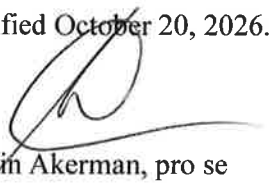


Martin Akerman

CERTIFICATE OF COMPLIANCE AND TRANSCRIPTION

Prepared under Rules 22.2 and 33.2(a), this appendix uses legible, indented transcriptions of identified source text. Source pages are specified, redactions preserved, and editorial descriptions bracketed. Omissions are marked by asterisks following the convention in Rule 26.5 for joint appendices. Typography and line wrapping are normalized. These are Applicant-prepared transcriptions of the selected passages, not new certifications by the issuing courts or agencies.

Certified October 20, 2026.



Martin Akerman, pro se

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IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, Applicant,

v.

MERIT SYSTEMS PROTECTION BOARD, et al., Respondents.

CERTIFICATE OF FILING AND SERVICE

I, Martin Akerman, declare under 28 U.S.C. § 1746 that on October 20, 2026, I deposited with the United States Postal Service, postage prepaid, the original and TWO copies of the accompanying Application for Nunc Pro Tunc Relief and an Injunction Pending Certiorari, including its appendix, addressed to the Clerk, Supreme Court of the United States, 1 First Street, N.E., Washington, DC 20543. The original and two copies constitute the three Court sets required by Rule 22.2. The Court mailing uses USPS Priority Mail, tracking number 9405 5301 0935 5613 7146 74, on the attached label dated October 20, 2026.

At or before filing, I served one complete paper copy of the application and appendix by USPS, postage prepaid, on the Solicitor General for the federal respondents. I also served Robert J. Morris II by USPS, postage prepaid, and mailed copies to the Clerks of the D.C. Circuit and the District Court listed below. The mailing method was at least as expeditious as the method used to submit the application to the Court.

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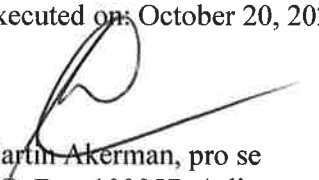
Clerk of Court
United States Court of Appeals for the D.C. Circuit
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Washington, DC 20001

Clerk of Court
United States District Court for the District of Columbia
Re: No. 1:23-cv-02574
333 Constitution Avenue, N.W.
Washington, DC 20001

An electronic copy was also transmitted at or reasonably contemporaneously with filing to the Solicitor General and Mr. Morris at the email addresses above. All parties required to be served under Rule 29 have been served.

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

Executed on: October 20, 2026



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Additional material from this filing is available in the Clerk's Office.