

No. 24-6592

ORIGINAL

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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

LAWRENCE E. MATTISON; Petitioner

vs.

U. S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT

On Petition For Writ Of Certiorari To
U. S. Court of Appeals for the Federal Circuit

Petition for Writ of Certiorari

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QUESTION(S) PRESENTED

Federal Law 28 U.S.C. §1631 requires a transferring court to present non-erroneous or non-arbitrary facts justify transfer prior to transfer. The Civil Service Reform Act 5 U.S.C. §7703(a) makes clear the U.S. Court of Appeals for the Federal Circuit has exclusive jurisdiction over ANY Merit System Protection Board orders. The U. S. Court of Appeals for the Federal Circuit arbitrarily and erroneously transferred case 2024-1982 to the Federal District Court without first determining whether the facts under Petitioner's circumstances justify transfer. The Federal Circuit refused en banc hearing.

The Questions are:

1. Whether the U. S. Court of Appeals for the Federal Circuit is required to vacate a transfer order if transfer violated 28 U.S.C. §1631.
2. Whether an erroneous transfer from a U.S. Appellate court to a lower court falls within the preview of the "Collateral orders Doctrine".
3. Whether a transfer that fails to comply with provisions of 28 U.S.C. §1631 is void, and if so
4. Whether the Federal Circuit is required to Order the case returned.

LIST OF PARTIES

1. Petitioner is Lawrence E. Mattison is a Virginia resident at 2143 Newton Rd. Hampton, Virginia 23663. Ph (757) 703-5914. I represented pro se to the Court of Appeals for the Federal Circuit.
2. The U. S. Court of Appeals for the Federal Circuit at 717 Madison Place, N.W. Washington, DC 20439 Ph (202) 275-8000

RELATED CASES

3. Mattison v. Secretary of Veterans Affairs. U.S. Sup ct. No. 21-5850 (4th Cir 20-1173) (Title VII (42 U.S.C. §1981)) judgment March 5, 2021

TABLE OF CONTENTS

QUESTIONS PRESENTED	i,
PARTIES	ii
TABLE OF AUTHORITIES	iii
STATUTES AND RULES & OTHERS	iv
OPINIONS BELOW.....	1
JURISDICTION	1
STATUTORY PROVISIONS INVOLVED	2, 3
STATEMENT OF THE CASE	2-11
A. Petitioner’s Procedural Posture Presented on Panel Hearing under Petitioner’s circumstances	3
B. Whether the U. S. Court of Appeals for the Federal Circuit is required to vacate a transfer order if transfer violated 28 U.S.C. §1631....	5
C. Whether an erroneous transfer from a U.S. Appellate court to a lower court falls within the preview of the “Collateral orders Doctrine”	7

D. Question 3-4 incorporated here, whether a transfer that fails to comply with provisions of 28 U.S.C. §1631 is void, and if so whether the Federal Circuit is required to Order the case returned	9
REASONS FOR GRANTING THE WRIT	11
CONCLUSION	11
INDEX TO APPENDICIES	12
APPENDIX A The January 27, 2025 ORDER of the U. S. Court of Appeals for the Federal Circuit Denial of a Panel Rehearing/ Rehearing En Banc at	A
APPENDIX B The December 11, 2024 TRANSFER ORDER by the U.S. Court of Appeals for the Federal Circuit over Petitioner’s objection at.....	B
APPENDIX C The August 26, 2024 ORDER by the U.S. Court of appeals for the Federal Circuit questioning jurisdiction at	C

TABLE OF AUTHORITIES CITED

<u>CASES</u>	<u>PAGES</u>
Coopers & Lybrand v. Livesay, 437 U.S. 463, 468 (1978).....	7
Galloway Farms, Inc. v. United States, 834 F.2d 998, 1000 (Fed. Cir. 1987).....	10
Harris v. Securities and Exchange Commission, 972 F.3d 1307 (Fed Cir 2020)	6,
Lauro Lines S.R.L. v. Chasser, 490 U.S. 495, 498 (1989)	7
Perry v. Merit Systems Protection Board, 582 U.S. 420, 137 S.Ct. 1975 (S. Ct. 2017)	6
Punch v. Bridenstine, 945 F. 3d 322 (Fed Cir 2019).....	7, 9
Williams v. Department of The Army, 715 F.2d 1485 (Fed Cir 1983).....	6, 9

STATUTES AND RULES

28 U.S.C. §1631..... 2, 9-11

OTHER

“Collateral Orders Doctrine” 7-9

**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI
TO THE U. S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

Petitioner ask that a Writ of Certiorari issue to the U. S. Court of Appeals for the Federal Circuit to review Federal Circuit obligations under 28 U.S.C. §1631.

OPINIONS BELOW

- A. On January 27, 2025 the U. S. Court of Appeals for the Federal Circuit DENIED Petitioner’s Petition For Panel Rehearing/ Rehearing En Banc, unpublished order at Appendix A;
- B. On December 11, 2024 the U.S. Court of Appeals for the Federal Circuit TRANSFERRED case 24-1982 to the Eastern District of Virginia over Petitioner’s objection at Appendix B;
- C. On August 25, 2024 the U.S. Court of appeals for the Federal Circuit’s Order questioning jurisdiction at Appendix C

JURISDICTION

- 1. On January 27, 2025, the U. S. Court of Appeals for the Federal Circuit refused petitioner’s timely filed Petition for Panel Rehearing/ Rehearing en banc, and that ORDER appears at Appendix A
- 2. 28 U.S.C. §1254(2) (a) grants this court Jurisdiction to review the decision of the U. S. Court of Appeals for the Federal Circuit to determine whether transfer was consistent with 28 U.S.C. §1631.
- 3. This court has jurisdiction under the “Collateral Orders Doctrine” because this Writ involves claims of right separable from, and collateral to, rights asserted on Rehearing/en banc as it relates to transfers not in compliance with 28 U.S.C. §1631.

STATUTORY PROVISION

4. 28 U.S.C. §1631 - Transfer to cure want of jurisdiction

Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court (or, for cases within the jurisdiction of the United States Tax Court, to that court) in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

STATEMENT OF THE CASE

INTRODUCTION

Petitioner was a covered Federal employee seeking appeal of a covered adverse action by the Department of Veterans Affairs. Petitioner chose the Merit Systems Protection Board (“MSPB”) for review. Petitioner’s case made its way to the U.S. Court of Appeals for the Federal Circuit, this court questioned its own jurisdiction. After petitioner objected to transfer, the Federal circuit transferred Petitioner’s case to the Eastern District of Virginia federal court presumably under 28 U.S.C. §1631. Petitioner then sought panel hearing/hearing en banc, asking this transferring court to acknowledge their own precedent which made it clear transfer of Petitioners’ case was abstract and erroneous. This petition for writ of certiorari

seeks to answer the question whether the U.S. Court of appeals for the Federal Circuit has an obligation to vacate and order a case returned from a lower court if that case was erroneously transferred in the abstract without compliance with 28 U.S.C. §1631 and/or whether an erroneous transfers fall within the preview of the “Collateral orders Doctrine”.

A. **Petitioner’s Procedural Posture Presented on Panel Hearing under Petitioner’s circumstances**

Procedural Posture No.

1. On December 28, 2015 @ Cert. List Doc. 6, pg. 3 Tab 12, e-pgs. 27-29 the DVA proposed Mattison’s (petitioner) removal from Federal service.
2. On February 10, 2016 @ Cert. List Doc 6, pg. 3 Tab 12, e-pgs. 11-12 Mattison was effectively removed.
3. On February 11, 2016 @ Cert. List Doc. 6 Pg. 3, tab 1 Mattison submitted an Initial Appeal to the MSPB. That case was assigned to an Administrative Judge (“AJ”). That case was stayed, Mattison appealed that Stay order in a Petition for Review.
4. On August 18, 2016 @ Cert. List Doc. 6, Pg. 5, tab 2 Mattison requested and was granted extension to re-file his MSPB appeal.
5. On November 25, 2016 @ Cert. List Doc. 6 pg. 6, tab 1 Mattison refilled his Appeal on the Removal action to the AJ creating MSPB case DC-0752-16-0350-I-3 (“I-3”). Cert list Id @ tab 14 Mattison submitted his Affirmative defenses (“Aff. def. I”). Id. @ tab 36 Mattison submitted his Pre-hearing submission (“Pre-hearing I”). On March 6, 2017 Id @ tab

59 the AJ decided the “I-3” appeal **without a hearing on the Merits** of the removal action.

6. On March 10, 2017 @ Cert. List Doc 6, pg.6, tab 3 Mattison filed his Petition for Review to the full MSPB (“MSPB”)
7. On March 12, 2019 case 4:2019-cv-00018 (“cv-18”) was opened. It closed on the Merits in District court February 10, 2020 on the only issue presented ...ie discrimination. “cv-18” ran its course to the U.S. Sup Ct. (case 21-5850) and closed Jan 10, 2022. “cv18” is an Eastern District of Virginia (“E. D. Va.”) appeal of an EEOC case of discrimination claims only under 29 CFR §1614.310(h). The EEOC dismissed because Mattison chose the path of the MSPB first. Mattison then filed other cases as acknowledged on Form-11/continuation and ALL cases ran their course and closed in the year 2022. (emphasis)
8. On March 13, 2023 @ Cert. List Doc. 6, pg. 10, year(s) after “cv-18” closed, the MSPB **REMANDED “I-3”** creating MSPB case DC-0752-16-0350-B-1 (“B-1”). Re-setting Mattison’s appeal back to the AJ for a Hearing on the Merits of the Agency Removal charges.
9. On March 28, 2023 @ Cert. List Doc. 6, pg. 10, tab 8 Mattison filed “Aff. Def. II”.
On May 19, 2023 @ Id. tab 33 Mattison filed “Pre-hearing II”.
On May 31, 2023 @ Cert. List Doc. 6, pg. 11, tabs 46/46-1 the AJ held a Zoom hearing on the DVA removal charges.
9. On July 6, 2023 @ Cert. List doc. 6, pg. 12, tab 69 the AJ filed Initial decision II.

11. On July 12, 2023 @ Cert List Doc. 6, pg. 13, tab 1 Mattison filed his Petition for Review to the MSPB.
12. On June 14, 2024 @ Cert. List Doc. 6, pg. 13, tab 13 the MSPB issued its final decision.
13. On June 18, 2024 Mattison noted his Appeal to the U. S. Court of Appeals for the Federal Circuit @ case 24-1982, ECF No. 1. With form-10 abandoning any current or future discrimination claims.

Neither Petitioner nor counsel for the DVA questioned Federal Circuit jurisdiction. Both Petitioner and Counsel for the DVA acknowledged discrimination case 4:2019-cv-00018 (“cv-18”) closed and that No non-discrimination claims were presented in “cv-18”. (emphasis) Federal Circuit precedent made clear their obligation to create a procedural posture based on the circumstances of each case as a requirement prior to transfer. See Punch 945 F. 3d @ 325-27; See Williams 715 F.2d @ 1487-88. Federal Circuit precedent also holds that case(s) filed after choosing the MSPB as a first option and while the full MSPB review is pending are null and void. see Punch @ 325-28 Therefore, had the Federal Circuit applied their own precedent and compliance with 28 U.S.C. §1631, by creating a procedural posture it would realized the requirements of 28 U.S.C.§1631 were not met and transfer was erroneous.

B. Whether the U. S. Court of Appeals for the Federal Circuit is required to vacate a transfer order if transfer violated 28 U.S.C. §1631.

Federal Circuit precedent makes clear certain requirements must be met before a transferee, in this case the transferring court, can justify 28 U.S.C. §1631

First, In *Perry v. Merit Systems Protection Board*, 582 U.S. 420, 137 S.Ct. 1975 (2017) the U.S. Supreme court settled the question on exclusivity of the CSRA: “ In the CSRA, Congress created the Merit Systems Protection Board (MSPB or Board) to review certain serious personnel actions against federal employees. If an employee asserts rights under the CSRA only, MSPB decisions, all agree, are subject to judicial review exclusively in the Federal Circuit, 5 U.S.C. § 7703(b)(1). ” *Id.* @ 137 S. Ct. @ 1979. In *Perry* the MSPB dismissed *Perry*’s CSRA claims acknowledging that he voluntarily separated from federal service, at that point the MSPB was not required to address *Perry*’s discrimination type claims. *Perry* did not contain a MSPB Remand Order. (emphasis)

Second, In *Harris v. Securities and Exchange Commission*, 972 F.3d 1307 (Fed Cir 2020). In *Harris* the Federal Circuit allowed the form-10’s abandonment of race claims presented to the MSPB to authorize jurisdiction in the federal circuit. After abandonment *Harris*’s procedural posture placed her CSRA claims under Federal circuit jurisdiction. *Harris* did not contain a MSPB Remand Order. (emphasis)

Third, In *Williams v. Department of The Army*, 715 F.2d 1485 (Fed Cir 1983) the Federal circuit made clear its obligation to examine petitioner’s appeal to the MSPB and determine what was disclosed. *Id.* @ 1487-88, *Williams* procedural posture did not contain a MSPB Remand Order. (emphasis)

Fourth, In *Punch v. Bridenstine*, 945 F. 3d 322 (Fed Cir 2019) In *Punch* the Fed Cir properly used its obligation to examine the procedural posture. See *Punch* @ 325-27; See *Williams* @ 1487-88. *Punch* did not contain a MSPB remand Order. (emphasis) Because Petitioner Mattison did abandon any present or future discrimination claims as required for Federal Circuit jurisdiction the Federal Circuit's reasoning for transfer is arbitrary, mistaken and inconsistent with requirements of 28 U.S.C. §1631.

Federal Circuit Precedent makes clear that a review of the record to determine the elements of a §1631 transfer are justified. See *Punch* @ 325-27; See *Williams* @ 1487-88

C. **Whether an erroneous transfer from a U.S. Appellate court to a Lower court falls within the preview of the “Collateral orders Doctrine”.**

In order for a transfer order to satisfy the “collateral Order doctrine” a Transfer order must satisfy at least three conditions: “it must conclusively determine the disputed question”; it must resolve an important issue completely separate from the merits of the action; and it must be effectively unreviewable on appeal from a final judgment.” *Lauro Lines S.R.L. v. Chasser*, 490 U.S. 495, 498 (1989) (citing *Richardson-Merrell Inc. v. Koller*, 474 U.S. 424, 431 (1985), quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978) (internal quotation marks omitted)).

1. “....conclusively determining the disputed question....”

The dispute is a jurisdictional question. Panel hearing/en banc hearing was denied. Federal Circuit Order at Appendix A failed en banc review on this question. Federal Circuit Order at Appendix B was authored in the ‘Abstract’ and does not

conclusively determine the jurisdictional question. In fact Appendix B failed to mention the lower court case number in question which was a 2019 case which ran its course to this court in 2022 (S. Ct case 21-5850), long before MSPB remand. Federal Circuit Order at Appendix C is unlawfully burden shifting and ambiguous. Appendix C never alleged cases were pending in two courts at the same time. Creating a procedural posture would have cured this tactic and its the Federal circuit's responsibility being that the Federal circuit panel questioned jurisdiction.

2. "...it must resolve an important issue completely separate from the merits of the action...."

The issue completely separate is Federal Circuit jurisdiction over MSPB Orders. Neither Petitioner nor counsel for the DVA questioned the jurisdiction of the Federal Circuit. What 's evident is the order at Appendix A "followed suite" with an erroneous transfer order at Appendix B. By failing to produce a procedural posture the transfer actions at Appendices A, B & C did not resolve the jurisdictional question raised by the Federal Circuit itself.

3. "...it must be effectively unreviewable on appeal from a final judgment....."

The Federal Circuit's denial on Panel hearing/en banc hearing @ Appendix A erroneously evoked this third condition, erroneously determining the disputed question on jurisdiction is final (that the Eastern District of Virginia Court has jurisdiction to overrule and/or ignore MSPB orders.) Petitioner contend it is here at Appendix A that the Federal circuit has the authority to Vacate erroneous transfer

Orders and ORDER the inferior court to return case 2024-1982 back to the Federal circuit. It is here where §1631 is not settled (emphasis)

D. Question 3-4 are incorporated here. Whether a transfer that fails to comply with provisions of 28 U.S.C. §1631 is void, and if so whether the Federal Circuit is required to Order the case returned.

The Federal Circuit's transfer of case 2024-1982 is not consistent with 28 U.S.C. §1631. The Federal Circuit failed to present enough Law or fact consistent with §1631 justifying transfer, therefore arbitrary and erroneous. §1631 states in relevant part:

28 U.S. Code § 1631 - Transfer to cure want of jurisdiction

Whenever a civil action is filed.....including a petition for review of administrative action.....and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such courtin which the action or appeal could have been brought at the time it was filed or noticed.....

28 U.S.C. §1631

1. §1631 requires the Federal Circuit to “...find there is a want of jurisdiction....

The Federal has defined “how” to find a want of jurisdiction in Williams and Punch by acknowledging the need for the Federal circuit to construct a full procedural posture because the Federal circuit questioned jurisdiction. See Williams @ 1487-88; see Punch @ 945 F. 3d 322 (Fed Cir 2019). In Punch the Federal Circuit created and or acknowledged a very detailed procedural posture where Punch had a case

pending in the Fed. Cir and the district Court at the same time but Punch refused to abandon either discrimination or civil service claims, justifying “bifurcation”. Id @ 325-27

2. §1631 requires the Federal Circuit to determine whether the Administrative claims could have been brought to the District Court Again, Both Petitioner and counsel for the DVA explained that no civil service claims were presented to the Federal District Court because the procedural posture above shows ALL civil service claims were pending in the MSPB on Petitioner for review. Also, NO district court cases were filed after MSPB Remand. The full MSPB remanded to the AJ for reasons specific to Civil service claims. The Federal Circuit questioned its own jurisdiction to hear a case opinioned by the Full MSPB @ Appendix C. Petitioner sought Panel hearing/en banc hearing to determine whether transfer was compliant with §1631. The Panel denied review @ Appendix A

3. §1631 Only allows transfer “in the interest of justice”
The Federal Circuit has construed the phrase “in the interest of justice” to mean that the transferred claim is nonfrivolous and capable of being decided on the merits. Galloway Farms, Inc. v. United States, 834 F.2d 998, 1000 (Fed. Cir. 1987).

The Federal Circuit failed here because an abstract and erroneous transfer should not justify an “in the interest of justice” criteria. To transfer in the ‘Abstract’ is absurd, its assuming abstract and erroneous facts and wasting judicial time and resources. The Federal Circuit had Petitioner’s Pre-Remand case to review for “mixed cases” or “Bifurcation” and Petitioner’s Post-remand case to review for the same. Petitioner contends justice is not served by the Federal Circuit attempting to induce a Lower court into deciding/overruling/challenging/ignoring the merits of a

MSPB Remanded case, a remand or final order or following suit with an erroneous transfer by assuming jurisdiction over petitioner's case....as the District courts lack such authority under Petitioner's circumstances.

REASONS FOR GRANTING THE WRIT

There is an unsettled question of Law concerning transfer of cases from a Federal Appellate Court to a lower district court (inferior court) under 28 U.S.C. §1631 related to MSPB orders. Where transfer was erroneous and abstract, where the Federal Circuit had opportunity for review. This case presents a significant legal question with national importance because there is only one U.S. Court of Appeals for the Federal Circuit affecting many persons and there is conflict in their application of 28 U.S.C. §1631. The Federal Circuit used two separate procedures for transfer: one 'abstract' and erroneous as here and the other a factual procedural posture based on each petitioner's circumstances consistent with §1631, the Federal Circuit is not correcting this on their own. NOW, Petitioner is asking the U.S. Supreme Court to intervene and provide a definitive ruling because there must be one procedure for transfer and it must satisfy the provisions of 28 U.S.C. §1631 for ALL cases. (emphasis)

CONCLUSION

I submit this Petition on February 13, 2025

Sign


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