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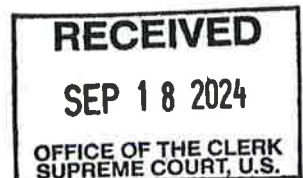
IN THE SUPREME COURT OF THE UNITED STATES

IN RE: [FEDERAL TENURE OF] MARTIN AKERMAN

APPLICATION TO EXTEND THE TIME TO FILE A PETITION FOR A WRIT OF
CERTIORARI

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE
OF THE SUPREME COURT OF THE UNITED STATES,
AND CIRCUIT JUSTICE FOR THE
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

MARTIN AKERMAN, PRO SE
2001 North Adams Street, Unit 440
Arlington, VA 22201
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(202) 656-5601



QUESTIONS TO BE PRESENTED

- Whether the Federal Circuit erred in dismissing a Timely Fifth Amendment Petition for a Property Hearing for lack of jurisdiction over mixed cases involving civil forfeiture actions by state military officers acting under federal directives, and whether such actions—executed by state officers from Arizona, Arkansas, and Nevada—violate constitutional protections under the Civil Service Reform Act.
- Whether the denial of a property hearing and review of pending Merit Systems Protection Board (MSPB) stay requests (DC-1221-22-0257-S-1, DC-0752-22-0376-S-1, and DC-0752-23-0457-S-1), which involve claims of whistleblower retaliation and disability discrimination, by the Federal Circuit violates the Fifth Amendment's guarantee of due process for tenured federal employees, and the First Amendment's right to petition the government for redress of grievances, as highlighted in related Supreme Court cases 24A147 and 24A155.
- Whether the Federal Circuit's refusal to assume jurisdiction over the civil forfeiture of the petitioner's federal employment tenure, despite the timely filing of the appeal on May 20, 2024, and the Merit Systems Protection Board's rush to issue final orders on May 29, 2024, constitutes a violation of due process under the Fifth Amendment and the right to petition under the First Amendment, as underscored by the issues presented in Supreme Court cases 24A147 and 24A155.
- Whether the clerk of the Federal Circuit has jurisdiction to abridge a petitioner's Article III standing and First Amendment rights through *sua sponte* orders.

PARTIES TO THE PROCEEDING

- Applicant is Martin Akerman, the tenured Chief Data Officer of the National Guard Bureau of the United States of America, appearing pro se;
- The Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Government Reform of the House of Representatives, are interested parties, per 44 U.S.C. § 3320(e), and must be included under the constitutionally separated powers of the legislative branch;
- The Governors or Adjutant Generals of Arizona, Arkansas, and Nevada, given their roles in overseeing National Guard units in their respective states, or the National Guard Bureau;
- The Clerk of the Federal Circuit, the Office of Special Counsel (OSC), and the MSPB, responding to important questions about due process, and the petitioner's right to both (1) be a protected federal whistleblower, and (2) petition the government for a redress of grievances;
- The Solicitor General of the United States, ensuring that the federal government's legal stance is adequately represented.

RELATED CASES IN THE SUPREME COURT

- **Habeas Corpus Case No. 24-83:** This case is a habeas corpus petition contesting the National Guard Bureau's actions related to the petitioner's unlawful detention.
- **Case No. 24A147:** This case is inextricably intertwined with Federal Circuit Case No. 2024-1915 (MSPB DC-1221-22-0257-W-1 & DC-1221-22-0257-S-1). Stay request DC-1221-22-0257-S-1 is in want of jurisdiction.
- **Case No. 24A155:** This case is inextricably intertwined with Federal Circuit Case 2024-1914 (MSPB DC-1221-22-0445-W-1).
- **FOIA Case No. 23A1097:** This Freedom of Information Act (FOIA) case involves the mistreatment of Martin Akerman throughout the whistleblower protection and retaliation process, including filings with the Office of Special Counsel (OSC), and subsequent involvement of the MSPB, EEOC, and other federal agencies.
- **Case No. 23-7072:** Certiorari was denied on April 22, 2024, with rehearing denied on June 10, 2024, dismissed by the Fourth Circuit, with prejudice, for lack of jurisdiction, as a sanction for attempting to transfer 84 WPEA claims, and mixed claims, exhausted under 5 U.S.C. § 7702, from the MSPB to the U.S. District Court for the District of Virginia.

CASES RELATED TO SUPREME COURT CASE 23-7072

- **U.S. District Court for the District of Nevada (Case No. 2:24-cv-01602-GMN-EJY)**: because Plaintiff seeks to proceed *in forma pauperis*, this Complaint is currently being screened under 28 U.S.C. § 1915, see Attachment B.
- **MSPB Case No. DC-0752-22-0376-I-1**: This pending mixed case should have been transferred to the Eastern District of Virginia, as confirmed by EEOC. MSPB retained jurisdiction, resulting in sanctions in the Fourth Circuit. It also includes a pending stay request (DC-0752-22-0376-S-1), Attachment D.
- **Federal Circuit Case Nos. 2024-1912, 2024-1914, and 2024-1915 (May 29, 2024)**: The petitioner's 84 WPEA claims, originating from pending MSPB cases DC-1221-22-0257-W-1 (including DC-1221-22-0257-S-1), DC-1221-22-0459-W-1, and DC-1221-22-0445-W-1, where final orders were issued by the MSPB on May 29, 2024, nine days after the petitioner's instant appeal was filed, failing to address key due process violations related to the protection of the petitioner's federal employment tenure, and MSPB's retained jurisdiction that resulted in sanctions in the Fourth Circuit.

PENDING RELATED CASES

- **Federal Circuit Case No. 2024-1913:** This case raises critical issues surrounding the Department of Defense's handling of whistleblower protections under 5 U.S.C. § 2302(b)(8), due process violations, and retaliatory actions concerning security clearance determinations. The petitioner requests the court to invite amicus briefs to provide insights in light of recent shifts in administrative law, such as the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, and the passage of 50 U.S.C. § 3341(j)(8), which affected agency deference standards, and the judiciary's jurisdiction.
- **EEOC Case No. 2024004814:** This case arises from a final order in MSPB Case No. DC-3443-22-0296-I-1 (Martin Akerman v. Office of Special Counsel) and involves claims of dereliction of duties, retaliation under the Whistleblower Protection Enhancement Act (WPEA), and discrimination.

- **Federal Circuit Case No. 2024-1926:** This case is an appeal of MSPB Case No. DC-0752-23-0457-I-1, which relates to retaliatory actions tied to the petitioner's disability retirement application. The case also involves MSPB Case No. DC-0752-23-0457-S-1, a pending stay request, where the MSPB's handling of retaliation claims contributed to the petitioner's prolonged detention by state officers acting under the color of federal authority, see Supreme Court Case Nos. 23-623, 23-1106, 23-7127 and 23-6710.
- **MSPB Case No. DC-844E-24-0359-I-1:** This pending case involves the petitioner's application for disability retirement and is intertwined with broader claims of whistleblower retaliation, discrimination, and denial of due process. Evidence provided by the Office of Personnel Management (OPM) in this case shows *res ipsa loquitur* violations, particularly regarding the illegal detention of the petitioner. The OPM's evidence supports claims that the petitioner was unlawfully placed on leave without proper procedural protections, highlighting serious due process and statutory violations. This case is closely connected to Federal Circuit Case Nos. 2024-1926 and 2024-1912, which involve related retaliation claims, and also include MSPB Case No. DC-0752-23-0457-I-1 and associated stay request DC-0752-23-0457-S-1.

ORDERS ON APPEAL

This case presents novel legal issues related to the retaliation against a Department of Defense whistleblower and jurisdictional challenges involving the Merit Systems Protection Board (MSPB) and various federal courts.

- **Order Denying Panel Rehearing (September 12, 2024):** This *sua sponte* order interpreted and denied a petition for panel rehearing, regarding the August 21, 2024 decision, reaffirming the court's lack of jurisdiction over the petitioner's mixed case claims and civil forfeiture actions executed by state military officers, Attachment A.
- **Order Captioning State Military Officers of Nevada and Arkansas (September 4, 2024):** This order in Nevada Case No. 2:24-cv-01602-GMN-EJY implies jurisdiction over Brig Gen Garduno (Nevada) and COL Basler (Arkansas), Attachment B.
- **Order Dismissing Petition for Writ of Mandamus (August 21, 2024):** This order dismissed in part and denied in part the petition for a writ of mandamus, citing the Federal Circuit's lack of jurisdiction over mixed cases involving civil forfeiture actions under 28 U.S.C. § 1295 and 5 U.S.C. § 7702, despite acknowledged procedural delays and due process violations by the MSPB, Attachment C.

IN THE SUPREME COURT OF THE UNITED STATES

IN RE: [FEDERAL TENURE OF] MARTIN AKERMAN

APPLICATION TO EXTEND THE TIME TO FILE A PETITION FOR A WRIT OF
CERTIORARI

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE
OF THE SUPREME COURT OF THE UNITED STATES,
AND CIRCUIT JUSTICE FOR THE
UNITED STATES COURT OF APPEALS FOR FEDERAL CIRCUIT

Pursuant to Supreme Court Rule 13.5, I, Martin Akerman, appearing pro se, respectfully request an 8-day extension of time to file a petition for a writ of certiorari, seeking a new deadline of December 19, 2024. Without this extension, the petition would be due on December 11, 2024. This application is timely, being submitted more than ten days prior to the original due date, in accordance with S. Ct. R. 13.5.

Reasons to Grant the Extension:

Consolidation of Consideration with Forthcoming Petitions

This case must be consolidated with forthcoming petitions for writ of certiorari in cases 24A147 and 24A155. Both involve critical overlapping jurisdictional issues, including the May 29, 2024 final orders issued by the Merit Systems Protection Board (MSPB), which failed to address key due process violations related to the protection of my federal employment tenure. These cases raise significant concerns about the MSPB's retained jurisdiction and resulting sanctions imposed by the Fourth Circuit.

The extension is consistent with extensions granted in related cases 24A147 and 24A155, which also extend the time to file to December 19, 2024.

Disability of PTSD, Pro Se Status, and Complexity of the Case

Due to my disability of PTSD and my status as a pro se litigant, additional time is required to address the intricate legal issues involved in this case. The legal complexities surrounding whistleblower protections, retaliatory security clearance actions, and procedural due process violations under the Fifth Amendment further necessitate an extension to secure adequate legal representation and prepare a thorough petition.

Jurisdiction in U.S. District Court for the District of Nevada

Additionally, time is needed for jurisdiction to attach in the U.S. District Court for the District of Nevada (Case No. 2:24-cv-01602-GMN-EJY), where proceedings are underway regarding related whistleblower and civil forfeiture issues. The outcome of this case is expected to provide essential context for my writ of certiorari.

Attachment B, an Order Captioning State Military Officers of Nevada and Arkansas (September 4, 2024), highlights 42 U.S.C. § 1983 jurisdiction over Brig Gen Garduno (Nevada) and COL Basler (Arkansas). If this jurisdiction is not barred by a technicality related to *res judicata* stemming from the Fourth Circuit sanctions, which resulted from MSPB's dereliction of duties, all pending cases could be properly transferred to allow all parties to focus on one case and preserve judicial resources.

Final Decisions in Related MSPB and Federal Circuit Cases

This extension would also allow for a final decision in related pending cases, including MSPB Case No. DC-0752-22-0376-I-1, a mixed case involving my whistleblower claims. The MSPB has improperly retained jurisdiction, leading to sanctions in the Fourth Circuit, and has denied stay requests in DC-0752-22-0376-S-1 and related cases.

Moreover, pending cases in the Federal Circuit, including Nos. 2024-1912, 2024-1914, and 2024-1915, involve 84 Whistleblower Protection Enhancement Act (WPEA) claims originating from MSPB cases DC-1221-22-0257-W-1 (including DC-1221-22-0257-S-1), DC-1221-22-0459-W-1, and DC-1221-22-0445-W-1. Final orders were issued by the MSPB on May 29, 2024, just nine days after my instant appeal was filed, without addressing the due process violations related to the protection of my federal employment tenure.

DC-844E-24-0359-I-1 Became Ripe for Transfer

180 Days from February 28, 2024

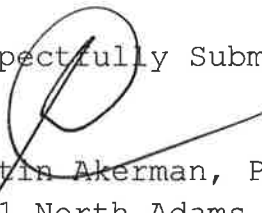
Final decisions may also be issued in pending cases, including MSPB Case No. DC-844E-24-0359-I-1, which involves the petitioner's application for disability retirement and is intertwined with broader claims of whistleblower retaliation, discrimination, and denial of due process. Evidence provided by the Office of Personnel Management (OPM) in this case shows res ipsa loquitur violations, particularly regarding the illegal detention of the petitioner. The evidence also highlights violations of 5 U.S.C. § 6329b, the Administrative Leave Act, as the petitioner was unlawfully placed on leave without proper procedural protections, raising serious due process concerns.

Additionally, Federal Circuit Case No. 2024-1926, which is an appeal of MSPB Case No. DC-0752-23-0457-I-1, involves retaliatory actions tied to the petitioner's disability retirement application. The MSPB's handling of retaliation claims, particularly those tied to the petitioner's prolonged detention by state officers acting under the color of federal authority, is central to the legal challenges in this case, as well as the related stay request DC-0752-23-0457-S-1.

Conclusion:

For the reasons outlined above, I respectfully request that this Honorable Court grant my application for an 8-day extension to file a petition for a writ of certiorari, extending the deadline to December 19, 2024, to fully exhaust and incorporate the outcomes of all pending cases into the broader argument concerning the petitioner's due process, whistleblower protections, and federal employment tenure. This extension is crucial for allowing adequate time to prepare a comprehensive petition that fully addresses the significant constitutional and jurisdictional issues presented in this case.

Respectfully Submitted,



Martin Akerman, Pro Se
2001 North Adams Street, Unit 440
Arlington, VA 22201
(202) 656 - 5601

IN THE SUPREME COURT OF THE UNITED STATES

IN RE: [FEDERAL TENURE OF] MARTIN AKERMAN

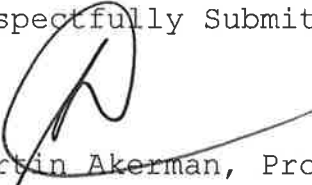
FEDERAL CIRCUIT CASE NO. 2024-130

PROOF OF SERVICE






It is hereby certified that on September 14, 2024 three copies of the APPLICATION TO EXTEND THE TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI were delivered to the Supreme Court of the United States by priority mail. Additionally, copies were served on September 14, 2024, by priority mail, to Respondent:

- Solicitor General of the United States,
950 PENNSYLVANIA AVE NW RM 5616
WASHINGTON, DC 20530-0009






Respectfully Submitted,



Martin Akerman, Pro Se
2001 North Adams Street, Unit 440
Arlington, VA 22201
(202) 656 - 5601

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IN THE SUPREME COURT OF THE UNITED STATES

IN RE: [FEDERAL TENURE OF] MARTIN AKERMAN

FEDERAL CIRCUIT CASE NO. 2024-130

ATTACHMENTS IN SUPPORT OF APPLICATION

- **Attachment A:** Sua Sponte Petition for Panel Rehearing (August 28, 2024) and Order Denying Panel Rehearing (September 12, 2024)
- **Attachment B:** Order Captioning State Military Officers of Nevada and Arkansas (September 4, 2024)
- **Attachment C:** Order Dismissing Petition for Writ of Mandamus (August 21, 2024)
- **Attachment D:** Order confirming that MSPB mixed case DC-0752-22-0376-I-1 should have been transferred to the Eastern District of Virginia (October 17, 2022)

ATTACHMENT A: These orders represent a *sua sponte* petition and denied petition for panel rehearing regarding the August 21, 2024 decision, reaffirming the court's lack of jurisdiction over the petitioner's mixed case claims involving whistleblower retaliation, USERRA whistleblower retaliation, disability retirement, discrimination, and civil forfeiture actions executed by state military officers under federal directives.

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

IN RE: MARTIN AKERMAN
Petitioner

2024-130

On Petition for Writ of Mandamus to the Merit Systems Protection Board in No. DC-1221-22-0257-S-1.

SUA SPONTE

Before LOURIE, CUNNINGHAM, and STARK, *Circuit Judges*.

PER CURIAM.

O R D E R

On August 27, 2024, Martin Akerman filed (1) a motion to correct case caption, set date of timely appeal from May 29, 2024, to May 20, 2024, and for leave to transfer cases to district court [ECF No. 29] and (2) an appendix [ECF No. 30].

IT IS ORDERED THAT:

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IN RE AKERMAN

The motion and appendix are construed as a petition for panel rehearing. The petition for rehearing will be considered in due course.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

August 28, 2024
Date

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

In Re MARTIN AKERMAN,
Petitioner

2024-130

On Petition for Writ of Mandamus to the Merit Systems Protection Board in No. DC-1221-22-0257-S-1.

ON PETITION AND MOTION

Before LOURIE, CUNNINGHAM, and STARK, *Circuit Judges*.
PER CURIAM.

O R D E R

Martin Akerman petitions for panel rehearing of the court's August 21, 2024 order dismissing in part and denying in part Mr. Akerman's petition for a writ of mandamus. ECF No. 32. Mr. Akerman also moves for a stay. ECF No. 33.

Mr. Akerman has shown no persuasive basis for such relief.

Accordingly,

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IN RE AKERMAN

IT IS ORDERED THAT:

ECF Nos. 32 and 33 are denied.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

September 12, 2024
Date

ATTACHMENT B: This order, from the U.S. District Court for the District of Nevada (Case No. 2:24-cv-01602-GMN-EJY), highlights 42 U.S.C. § 1983 jurisdiction over Brig Gen Garduno (Nevada) and COL Basler (Arkansas). The order underscores their involvement in the petitioner's claims of wrongful detention under the color of federal authority, central to the jurisdictional and procedural challenges presented.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARTIN AKERMAN,
Plaintiff,

v.

CAESAR GARDUNO, BRETT BASLER, et
al.,
Defendants.

Case No. 2:24-cv-01602-GMN-EJY

ORDER

Before the Court are Plaintiff's Motions for Pro Se Litigant to File Electronically and Request for 60-Day Extension to Retain Counsel. ECF Nos. 4, 5.

Under Local Rule IC 2-1(b), a "pro se litigant may request the court's authorization to register as a filer in a specific case." The Court finds Plaintiff's request to file electronically is moot because he filed the required Consent for Electronic Service of Documents. See ECF No. 6. With respect to Plaintiff's Motion seeking a 60-day Extension to Retain Counsel (ECF No. 5), the Court advises Plaintiff that he may retain counsel at any time during the proceedings. Plaintiff does not need permission of the Court to do so. The Court advises that because Plaintiff seeks to proceed *in forma pauperis*, his Complaint will be screened under 28 U.S.C. § 1915.

Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's Motions for Pro Se Litigant to File Electronically (ECF No. 4) and 60-day Extension to Retain Counsel (ECF No. 5) are DENIED as moot.

Dated this 4th day of September, 2024.


ELAYNA J. YOUCHAK
UNITED STATES MAGISTRATE JUDGE

ATTACHMENT C: This order dismissed the petition for writ of mandamus, citing the Federal Circuit's lack of jurisdiction over mixed cases involving civil forfeiture actions under 28 U.S.C. § 1295 and 5 U.S.C. § 7702. The dismissal occurred despite the acknowledged due process violations by the MSPB and the failure to address the whistleblower retaliation and disability claims at issue.

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

In Re MARTIN AKERMAN,
Petitioner

2024-130

On Petition for Writ of Mandamus to the Merit Systems Protection Board in No. DC-1221-22-0257-S-1.

ON PETITION AND MOTION

Before LOURIE, CUNNINGHAM, and STARK, *Circuit Judges*.
PER CURIAM.

ORDER

Martin Akerman petitions this court for a writ of mandamus relating to alleged delays and violations of due process rights by the Merit Systems Protection Board. The Board opposes. Mr. Akerman separately objects to the caption and moves for various relief, including to proceed *in forma pauperis*, to strike certain documents as erroneously filed, and a stay pursuant to Rule 18 of the Federal Rules of Appellate Procedure, ECF No. 22.

The All Writs Act provides that federal courts “may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and

principles of law.” 28 U.S.C. § 1651(a). Mandamus is an extraordinary remedy available only where the petitioner shows: (1) a clear and indisputable right to relief; (2) no adequate alternative avenue for relief; and (3) that mandamus is appropriate under the circumstances. *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 81 (2004).

As an initial matter, to the extent Mr. Akerman seeks relief related to *Akerman v. Department of the Army*, No. DC-0752-22-0376-I-1, he has not shown this court has jurisdiction to grant such relief. Mr. Akerman characterizes that matter as a “mixed case” appeal. Because this court lacks jurisdiction over “[c]ases of discrimination subject to the provisions of [5 U.S.C. §] 7702,” § 7703(b)(2), we would not have authority under the All Writs Act to issue a writ of mandamus “in aid of” our prospective jurisdiction. See *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 437 (2017); *Diggs v. Dep’t of Hous. & Urb. Dev.*, 670 F.3d 1353, 1357 (Fed. Cir. 2011) (holding that the affirmative defense of retaliation for prior equal employment opportunity activity “falls outside [of the court’s] jurisdictional reach”).¹

As to the other matters identified in Mr. Akerman’s filings, it appears the Board has issued an initial or final decision in all but one of those matters, and Mr. Akerman has not shown why ordinary review processes before the Board or before this court are inadequate to raise any of his challenges to those decisions.² As to the only identified matter

¹ We reach the same conclusion as to Mr. Akerman’s assertions regarding unidentified “civil forfeiture” actions in Arizona, Arkansas, and Nevada, which would clearly be outside of this court’s limited jurisdiction. See 28 U.S.C. § 1295.

² Indeed, the court has already received five petitions for review from Mr. Akerman for appeals listed in his

IN RE AKERMAN

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pending before the Board, filed on February 28, 2024, *Akerman v. Office of Personnel Management*, No. DC-844E-24-0359-I-1, Mr. Akerman has shown nothing of the sort of unreasonable delay courts have required in granting mandamus relief. *See Groves v. McDonough*, 34 F.4th 1074, 1080 (Fed. Cir. 2022); *see* 5 U.S.C. § 706(1); *Telecomms. Rsch. & Action Ctr. v. FCC*, 750 F.2d 70 (D.C. Cir. 1984).

Accordingly,

IT IS ORDERED THAT:

(1) The petition for a writ of mandamus is dismissed-in-part and denied-in-part.

(2) The motion for leave to proceed *in forma pauperis*, is granted.

(3) The motion to delete ECF Nos. 6–8 is granted to the extent that those entries will be stricken from the docket.

(4) All remaining motions are denied.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

August 21, 2024
Date

petition, docketed here as Appeal Nos. 2024-1912, 2024-1913, 2024-1914, 2024-1915, and 2024-1926.

ATTACHMENT D: This order from the EEOC, dated October 17, 2022, sent to the MSPB, and filed in the Fourth Circuit on October 24, 2022, shows that pending mixed case DC-0752-22-0376-I-1 should have been transferred to the Eastern District of Virginia. However, the MSPB improperly retained jurisdiction, leading to sanctions in the Fourth Circuit. The stay request (DC-0752-22-0376-S-1) remains unresolved, further exacerbating the procedural and due process violations the petitioner faces, including whistleblower retaliation, discrimination, and improper detention.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

Martin Akerman a/k/a
Chad T.,¹
Petitioner,

v.

Christine Wormuth,
Secretary,
Department of the Army,
Agency.

Petition No. 2022005058

MSPB No. DC-0752-22-0376-I-1

▶ S^r

OCT 20 2022

ORDER OF DISMISSAL

On June 21, 2022, Petitioner filed Civil Action No. 1:22cv696 in the United States District Court for the Eastern District of Virginia, Alexandria Division. A review of the of the complaint filed in the civil action reflects that the claims raised in the civil action are the same as those raised in the Initial Decision issued by the Merit Systems Protection Board (MSPB) which is raised the instant EEO petition for review.

EEOC Regulation 29 C.F.R. § 1614.409 provides:

Filing a civil action under § 1614.407 or § 1614.408 shall terminate Commission processing of the appeal. A Commission decision on an appeal issued after a Petitioner files suit in district court will not be enforceable by the Commission. If private suit is filed subsequent to the filing of an appeal and prior to a final Commission decision, the complainant should notify the Commission in writing.

Accordingly, the Commission will dismiss a pending petition under these circumstances to prevent a petitioner from simultaneously pursuing both administrative and judicial remedies on the same matters, wasting resources, and creating the potential for inconsistent or conflicting decisions, and in order to grant due deference to the authority of the federal district court. See, e.g., Wayne C. v. Dep't of Vet. Aff., EEOC Appeal No. 2020002855 (Oct. 6, 2020); Bart L. v.

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

Dep't of Agric., EEOC Appeal Nos. 2020000098, 2020000100 (Mar. 10, 2021); Von E. v. Dep't of the Treasury, EEOC Appeal No. 2020004947 (Feb. 17, 2022).

Following a review of Civil Action No. 1:22cv696, the Commission has determined that the above-referenced civil action raises the same claims as the EEO petition currently on appeal. Accordingly, EEOC Petition No. 2022005058 must be, and is, DISMISSED.

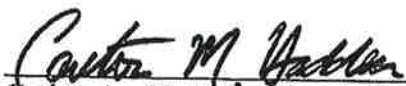
PETITIONER'S RIGHT TO FILE A CIVIL ACTION (W0610)

This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court, based on the decision of the Merit Systems Protection Board, **within thirty (30) calendar days** of the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work.

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Petitioner's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

October 17, 2022

Date

CERTIFICATE OF MAILING

For timeliness purposes, the Commission will presume that this decision was received within five (5) calendar days after it was made available to the parties. I certify that on the date below this decision was provided to the following recipients via the means identified for each recipient:

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Department of the Army
Director, EEO Compliance and Complaints Review, (EEOCCR)
Via FedSEP

October 17, 2022

Date


Compliance and Control Division