

No. 24A332
(24A147, 24A155, 24A278)

Supreme Court, U.S.
FILED
SEP 30 2024
OFFICE OF THE CLERK

In The
Supreme Court of the United States

MARTIN AKERMAN,
CHIEF DATA OFFICER
OF THE NATIONAL GUARD BUREAU, PRO SE,

Petitioner,

v.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Respondents.

MOTION FOR PRELIMINARY INJUNCTION OR STAY

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

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QUESTIONS PRESENTED

- **Injunction:** Whether the Clerk of the United States Court of Appeals for the Federal Circuit has unlawfully abridged the petitioner's First Amendment right to petition and his Article III due process rights by twice-improperly recharacterizing a petition for writ of error coram nobis as a request for panel rehearing, thereby justifying the issuance of a preliminary injunction to halt further mischaracterizations and ensure proper judicial review.
- **Stay:** Whether the Federal Circuit's failure to address unresolved stay requests, which are critical to protecting the petitioner's federal tenure and whistleblower retaliation claims under the Civil Service Reform Act, and its issuance of sua sponte orders that dismissed filings without proper consideration, warrants a stay of further actions pending substantive review of petitioner's claims.

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);

Respondents are the United States Court of Appeals for the Federal Circuit and the Merit Systems Protection Board, as represented by the Solicitor General of the United States.

RELATED SUPREME COURT CASES

Habeas Corpus..... case 24-83
Replevin (Stay)..... cases 24A147, 24A155, 24A278
Freedom of Information Act..... case 24-339

RELATED FEDERAL CIRCUIT CASES

Whistleblower Appeal (Includes Stay)... case 2024-1915
Mandamus to MSPB (Includes Stay).....case 2024-146
Mixed Case Appeal (Includes Stay)..... case 2024-1926

MSPB STAY CASES

IN WANT OF JURISDICTION

MSPB DC-1221-22-0257-S-1 (Filed February 28, 2022)

Associated with Fed Cir 2024-1915, and 2024-130, and
Supreme Court cases 24A147, 24A155, and 24A278

MSPB DC-0752-22-0376-S-1 (Filed April 26, 2022)

Associated with Fed Cir 2024-146

MSPB DC-0752-23-0457-S-1 (Filed May 4, 2023)

Associated with Fed Cir 2024-1926, and EEOC Case
2024004814 (from MSPB DC-3443-22-0296-I-1)

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INTRODUCTION

Petitioner, Martin Akerman, as the tenured Chief Data Officer of the National Guard Bureau, respectfully submits this Motion for Preliminary Injunction or Stay to address ongoing procedural violations in the United States Court of Appeals for the Federal Circuit. The court has unlawfully abridged Petitioner's rights by improperly recharacterizing his petition for writ of error coram nobis as a request for panel rehearing, as documented in Appendix B, and dismissing filings without proper review. Additionally, the court's refusal to take action on Petitioner's recent submissions, detailed in Appendix A, highlights the failure to adjudicate critical stay requests regarding Petitioner's federal tenure and whistleblower retaliation claims. These procedural failures have caused irreparable harm and necessitate immediate intervention by this Court.

JURISDICTION AND STANDARD OF REVIEW

This Court has jurisdiction under 28 U.S.C. § 2101(f), which allows for stays of enforcement of judgments pending review by the Supreme Court. Additionally, under the All Writs Act, 28 U.S.C. § 1651(a), this Court has authority to issue writs necessary to preserve its jurisdiction or to ensure the proper administration of justice in lower courts.

The standard for granting a preliminary injunction or stay requires showing:

1. A reasonable probability of success on the merits of the case;
2. A likelihood of irreparable harm absent the relief sought;
3. That the balance of equities tips in favor of the moving party; and
4. That granting relief is in the public interest (*Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008); *Hollingsworth v. Perry*, 558 U.S. 183 (2010)).

ARGUMENT

This Court must determine whether there is a likelihood of success on the merits and whether the harm to Petitioner outweighs any potential harm to Respondents, considering the impact on public interests such as judicial accountability and the protection of federal employment rights.

I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

A. The Federal Circuit's Mischaracterization of the Petition Violates Petitioner's Constitutional Rights

The Federal Circuit's recharacterization of Petitioner's petition for writ of error coram nobis as a request for panel rehearing infringes upon his First Amendment right to petition the government for redress of grievances and his due process rights under Article III of the Constitution. The right to access the courts is a fundamental aspect of due process (*Boddie v. Connecticut*, 401 U.S. 371, 377 (1971)).

By mischaracterizing the nature of Petitioner's filing, the Federal Circuit effectively denied him a meaningful opportunity to have his claims heard and adjudicated on their merits.

The writ of error coram nobis is a well-established legal mechanism allowing a court to correct its original judgment upon discovery of a fundamental error not apparent in the records (*United States v. Morgan*, 346 U.S. 502, 507 (1954)). The Federal Circuit's failure to recognize and properly consider Petitioner's petition undermines the proper administration of justice and deprives him of a critical remedy.

B. The Failure to Address Pending Stay Requests Violates Statutory and Procedural Rights

Petitioner has multiple pending stay requests related to his federal employment and whistleblower retaliation claims under the Civil Service Reform Act (CSRA), 5 U.S.C. §§ 1201–1222, and the Whistleblower Protection Act, 5 U.S.C. § 2302(b)(8).

The Federal Circuit's refusal to address these stay requests leaves Petitioner's rights unprotected and exposes him to ongoing harm.

The CSRA provides federal employees with protections against prohibited personnel practices, including retaliation for whistleblowing activities. By not adjudicating the stay requests, the court is failing to uphold the statutory protections designed to preserve federal employees' rights and to maintain the integrity of the federal workforce.

C. The Court's Sua Sponte Dismissals Without Proper Consideration Are Procedurally Improper

The Federal Circuit has issued sua sponte orders dismissing Petitioner's filings without providing adequate notice or opportunity to be heard, as required by due process (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

These dismissals, including the refusal to act on submissions detailed in Appendix A and the mischaracterization in Appendix B, demonstrate a pattern of procedural irregularities that prejudice Petitioner's ability to seek redress.

The court's actions violate fundamental principles of fairness and undermine confidence in the judicial process. Proper procedural safeguards are essential to ensure that justice is administered equitably and that parties are not deprived of their rights without due consideration.

II. PETITIONER WILL SUFFER

IRREPARABLE HARM ABSENT RELIEF

Without immediate intervention, Petitioner faces imminent and irreparable harm:

Loss of Employment Rights: Petitioner's federal tenure as Chief Data Officer is at risk due to unresolved stay requests. The potential loss of employment cannot be adequately remedied through monetary damages alone (*Samson v. Murray*, 415 U.S. 61, 90 (1974)).

Continued Whistleblower Retaliation: Failure to address his claims leaves Petitioner vulnerable to ongoing retaliation, contrary to the protections afforded under the CSRA and the Whistleblower Protection Act.

Denial of Access to Judicial Remedies: The mischaracterization and dismissal of his filings effectively bar Petitioner from accessing the courts, causing harm that is irreparable because it infringes upon constitutional rights (*Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

III. THE BALANCE OF EQUITIES

FAVORS GRANTING RELIEF

The equities tip decidedly in Petitioner's favor:

Minimal Burden on Respondents: Granting the injunction or stay imposes little to no harm on the Respondents. It merely requires the Federal Circuit to properly consider and adjudicate Petitioner's filings according to established legal procedures.

Significant Harm to Petitioner: Denial of relief would result in substantial harm to Petitioner, including potential loss of employment, continued violation of statutory rights, and deprivation of constitutional protections.

Courts have recognized that preserving a party's rights pending judicial review is a critical consideration when balancing equities (*Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008)).

IV. GRANTING RELIEF
IS IN THE PUBLIC INTEREST

Issuing the requested injunction or stay serves the public interest by:

Upholding the Rule of Law: Ensuring that courts adhere to proper procedures reinforces the integrity of the judicial system and maintains public confidence in legal institutions.

Protecting Whistleblowers: Encouraging the protection of federal employees who expose wrongdoing promotes transparency and accountability within government agencies.

Safeguarding Constitutional Rights: Affirming individuals' rights to due process and access to the courts aligns with foundational constitutional principles and democratic values.

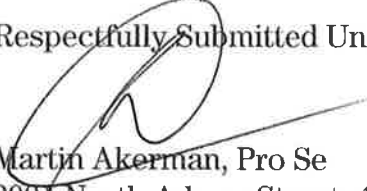
The public has a strong interest in the fair and just administration of laws, particularly those designed to protect employees and prevent governmental abuse (Schneider v. Smith, 390 U.S. 17, 26 (1968)).

CONCLUSION

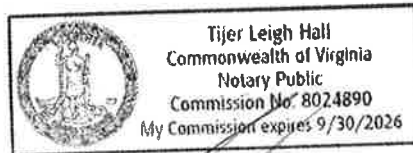
For the foregoing reasons, Petitioner respectfully requests that this Court:

- A. Issue a Preliminary Injunction halting further sua sponte actions by the United States Court of Appeals for the Federal Circuit regarding Petitioner's filings until proper substantive review is conducted;
- B. Issue a Stay of further actions pending resolution of Petitioner's stay requests, which are critical to protecting his federal tenure and whistleblower retaliation claims under the Civil Service Reform Act; and
- C. Grant any other relief that this Court deems just and proper.

Respectfully Submitted Under Oath,



Martin Akerman, Pro Se
2001 North Adams Street, 440
Arlington, VA 22201




County/City of Arlington
Commonwealth/State of VA
The foregoing instrument was acknowledged
before me this 27 day of September
2024 by Martin Akerman
(name of person seeking acknowledgement)

Notary Public Tijer Leigh Hall
My Commission Expires: 09/30/2026

APPENDIX

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:

2

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



**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

717 MADISON PLACE, N.W.
WASHINGTON, D.C. 20439

JARRETT B. PERLOW
CLERK OF COURT

CLERK'S OFFICE
202-275-8000

September 27, 2024

Martin Akerman, I
2001 North Adams Street
Unit 440
Arlington, VA 22201

Re: Appeal No. 2024-130, In Re Martin Akerman

Dear Mr. Akerman:

This letter responds to your submission received on September 16, 2024, and docketed as ECF No. 35 in connection with your petition, No. 2024-130.

On August 21, 2024, the court denied-in-part and dismissed-in-part your petition. On September 12, 2024, the court denied panel rehearing of that decision.

No mandate will issue in this matter, and the matter is now closed at this court. Therefore, no action will be taken on the submitted document, and the court will neither file nor respond to further requests for action in this closed case.

Sincerely,



Jarrett B. Perlow
Clerk of Court

JP/ks

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

September 16, 2024

In Re:

[Federal Tenure of] Martin Akerman,
Chief Data Officer of the National Guard Bureau

PETITION FOR WRIT OF ERROR AND/OR TO RECALL THE MANDATE

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INTRODUCTION

Petitioner, Martin Akerman, pro se, respectfully submits this petition for a writ of error coram nobis to correct fundamental errors in the proceedings that led to the dismissal of case 2024-230. The petitioner requests the Court to address the sua sponte filing error where the Court treated what should have been a petition for writ of error as a request for a panel rehearing, leading to a denial of substantive review that abridged the petitioner's right to petition under the First Amendment and negatively affected his Article III standing on the merits.

Additionally, petitioner asks the Court to allow the respondent with replevin jurisdiction over the appellant to raise a defense, and requests the Federal Circuit to either remedy the stay request gap or transfer the case to a court with replevin jurisdiction over the matters involved.

FACTUAL AND PROCEDURAL BACKGROUND

Case Posture on May 20, 2024

On May 20, 2024, Petitioner filed a timely appeal focusing on the protection of his property rights under the Civil Service Reform Act (CSRA) and challenging the procedural irregularities that had occurred up to that point. Subsequently, the Merit Systems Protection Board (MSPB) issued final orders on May 29, 2024, which were not in existence at the time of the May 20 filing. These final orders have created jurisdictional complexities that must be addressed.

Urgency in the matter is marked by a delay exceeding two years, significantly surpassing the 18-month threshold identified in *United States v. \$8,850* as warranting closer judicial examination. This comparison underscores a more pronounced deviation from due process norms, given that Mr. Akerman's delay occurred without substantial progress or the initiation of a formal hearing.

MSPB Abridging Right to Petition and Article III Standing

On May 29, 2024, the MSPB issued a series of final orders that did not exist on May 20, 2024. The timing of these final orders further raises questions about the MSPB's attempts to discredit or descope Petitioner's claims and should not undermine this Court's jurisdiction over the issues presented as of May 20, 2024.

Dispositive ORDER on August 21, 2024

This motion under review was filed in light of the Order issued by this Court on August 21, 2024 (ECF No. 28), which acknowledged the complexities of the jurisdictional issues and the excessive delays in resolving the matters at hand. The excessive delays in case DC-0752-22-0376-I-1 and the related appeals, as highlighted in the Motion for Stay Pending Appeal (ECF No. 22, filed July 8, 2024), and the Motion for Leave to File Complaint and Request for Injunction (ECF No. 26, filed August 5, 2024), have resulted in ongoing and irreparable harm to the Petitioner.

Sua Sponte Order on August 28, 2024:

On August 28, 2024, this Court issued an order (ECF No. 31) in which it sua sponte interpreted a filing by the petitioner as a request for panel rehearing, despite the petitioner's clear intention to file a petition for writ of error (ECF No. 32). This error in interpretation deprived the petitioner of the opportunity to properly raise legal and factual issues that, if reviewed under the correct legal standard, would have materially affected the outcome of the case.

ERRORS ON REVIEW

Jurisdictional Issues:

The case involves replevin jurisdiction due to the involvement of state military officers from Arizona, Arkansas, and Nevada in civil forfeiture actions initiated under federal direction. The MSPB's delays and jurisdictional confusion, including the issuance of final orders after the filing of an appeal, further complicated the petitioner's ability to secure judicial relief. The petitioner has made stay requests related to MSPB Case No. DC-0752-22-0376-I-1 and related appeals (ECF Nos. 22 and 26), which remain unresolved.

Mischaracterization of Filing:

The Court mischaracterized the petitioner's August 27, 2024, filing (ECF No. 32) as a request for panel rehearing instead of a petition for writ of error. This sua sponte decision failed to acknowledge the petitioner's clear intention to challenge fundamental procedural and jurisdictional errors that occurred during the proceedings. Specifically, petitioner's filing was aimed at correcting the wrongful dismissal of claims involving civil forfeiture actions by state military officers acting under federal directives, which were critical to petitioner's federal tenure and property rights under the Civil Service Reform Act (CSRA).

The mischaracterization of the filing led to a denial of substantive review of these key issues, including the MSPB's failure to address replevin jurisdiction and due process violations. The petitioner's arguments about delays exceeding two years, without a formal hearing or substantive progress, were ignored, exacerbating the harm caused by the unresolved stay requests and further violations of petitioner's First Amendment right to petition the Court for redress of grievances.

Doctrine of Res Judicata:

Additionally, the doctrine of *res judicata* is relevant in this case, specifically concerning the pending proceedings in the U.S. District Court for the District of Nevada (Case No. 2:24-cv-01602-GMN-EJY), requiring *de novo* review, ECF 24-2.

Jurisdiction over Arkansas in Nevada

An Order Captioning State Military Officers of Nevada and Arkansas (September 4, 2024), highlights 42 U.S.C. § 1983 jurisdiction over Brigadier General Garduno (Nevada) and Colonel Basler (Arkansas) is attached, see also ECF 24-1; see also *Akerman v. Department of Defense*, No. 1:22-cv-696 (LMB/WEF), 2022 U.S. Dist. LEXIS 200993, 2022 WL 16700832, at *6 (E.D. Va. Nov. 3, 2022) (The District Court granted a motion to dismiss the employee's claims, including a claim related the agency's failure to repay his student loans, finding that it did not have jurisdiction over the matter under either the Civil Service Reform Act or the Whistleblower Protection Act and that it could not adjudicate the employee's hostile work environment claim because it was the subject of a pending Individual Right of Action appeal before the Board).

LEGAL BASIS FOR RELIEF

A writ of error coram nobis is an extraordinary remedy reserved for correcting fundamental errors that would have prevented the entry of judgment if known at the time of decision. Petitioner respectfully asserts that such errors occurred in this case due to the following:

Sua Sponte Misinterpretation:

The Court's sua sponte treatment of petitioner's filing as a request for panel rehearing rather than a petition for writ of error resulted in a denial of due process and deprived the petitioner of substantive legal review. This error impacted the petitioner's ability to raise defenses related to civil forfeiture and property rights, as well as defenses under 5 U.S.C. §§ 7513 and 7532. This deprived the petitioner of a meaningful opportunity to be heard.

Replevin Jurisdiction:

The failure to address the proper jurisdictional issues related to civil forfeiture actions executed by state military officers under federal directives further compounded the error. The respondent with replevin jurisdiction was denied the opportunity to raise defenses, and the petitioner was unable to fully litigate these issues under the appropriate jurisdiction.

Gap in Stay Requests:

Petitioner also highlights a critical gap in the Court's handling of stay requests filed in relation to whistleblower retaliation claims. These stay requests, which are central to the protection of petitioner's federal tenure and employment rights, were left unresolved, creating procedural gaps that have caused ongoing harm.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- A. Recall the Mandate and Correct the Mischaracterization:** Recall the mandate and correct the sua sponte misinterpretation of Petitioner's filing (ECF No. 32) as a request for panel rehearing. Treat the filing as a petition for writ of error, and reopen case 2024-230 for substantive review, ensuring a proper review of the procedural and jurisdictional errors that occurred.
- B. Address Jurisdictional Issues and Transfer if Necessary:** Allow the respondent with replevin jurisdiction to raise defenses and determine if the case should remain within the jurisdiction of the Federal Circuit or be transferred to a district court with replevin jurisdiction, such as the U.S. District Court for the District of Nevada, where civil forfeiture actions related to state military officers in Arizona, Arkansas, and Nevada are already being litigated.
- C. Address the Doctrine of Res Judicata:** Examine the potential bar of res judicata and assess whether the ongoing proceedings in the U.S. District Court for the District of Nevada (Case No. 2:24-cv-01602-GMN-EJY) impact this case.

- D. Address the Consolidation of Cases:** Consider the consolidation of cases involving 42 U.S.C. § 1983 jurisdiction over Brigadier General Garduno (Nevada) and Colonel Basler (Arkansas), allowing all related claims to be resolved in a unified forum, thereby conserving judicial resources.
- E. Resolve Stay Requests:** Remedy the gap in stay requests that were filed in relation to whistleblower retaliation claims, ensuring that Petitioner's federal tenure and employment rights are adequately protected. The stay requests should be resolved as they are crucial to preserving the status quo while litigation progresses.
- F. Roll Back the Appeal Date to May 20, 2024:** Officially recognize the May 20, 2024 appeal date, ensuring that Petitioner's claims are reviewed as they stood at that time, before the issuance of final orders by the MSPB on May 29, 2024, which further complicated jurisdictional matters.
- G. Grant Any Further Relief:** Provide any other relief this Court deems just and proper to correct the significant procedural and substantive errors that have undermined Petitioner's ability to defend his federal tenure and property rights under the Civil Service Reform Act (CSRA) and other relevant statutes.

Certification and Closing

Pursuant to Rule 32(g)(1) of the Federal Rules of Appellate Procedure, I hereby certify that the text of the electronic version of the foregoing motion is identical to the paper copies, has been scanned by Google Drive and found to be virus-free, and that the textual portion of the motion, exclusive of any supporting affidavits and the certificates of service and compliance, but including headings, footnotes, and quotations, contains **1,545** words as determined by the word counting feature of Google Docs, and therefore complies with Rule 27(d)(2)(A).

Signature: _____

A handwritten signature in black ink, appearing to be 'M. Akerman', written over a horizontal line.

Martin Akerman / Pro Se

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RULE 33.2 CERTIFICATION

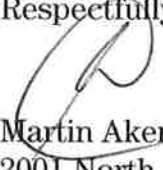
This motion complies with the Court's type-volume limitation as it contains 1,717 words, which is within the word limit for a motion to the Court.

10 copies were served on the Clerk in 8 ½ x 11 inch paper, stapled on the upper left-hand corner.

The text of this supplemental brief has been prepared in a proportionally spaced typeface using Google Docs in Century, 12 point font size.

Dated and respectfully submitted, this 27th day of September, 2024.

Respectfully Submitted,



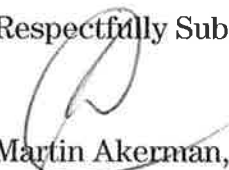
Martin Akerman, Pro Se
2001 North Adams Street, 440
Arlington, VA 22201

PROOF OF SERVICE

I, Martin Akerman, Chief Data Officer of the National Guard Bureau, Petitioner in this case, hereby certify that on this 27th day of September, 2024, I served a true and correct copy of the Motion for Preliminary Injunction or Stay upon the following party by priority mail, as required by Supreme Court Rule 29:

Solicitor General of the United States
Office of the Solicitor General
Room 5616
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
Email: SupremeCtBriefs@usdoj.gov
(Attorney for Respondents: United States Court of Appeals for the Federal Circuit and Merit Systems Protection Board)

Respectfully Submitted,



Martin Akerman, Pro Se
2001 North Adams Street, 440
Arlington, VA 22201

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