

**MARTIN AKERMAN v. DEPARTMENT OF THE ARMY**

**Docket # DC-0752-23-0457-I-1**

**Motion for Special Panel Under 5 C.F.R. Â§ 1201.39(a)**

**Summary Page**

**Case Title :** MARTIN AKERMAN v. DEPARTMENT OF THE ARMY

**Docket Number :** DC-0752-23-0457-I-1

**Pleading Title :** Motion for Special Panel Under 5 C.F.R. Â§ 1201.39(a)

**Filer's Name :** Martin Akerman

**Filer's Pleading Role :** Appellant

**Details about the supporting documentation**

#	Title/ Description	Mode of Delivery
1	Image in Support of Special Panel	Uploaded
2	Air Force USERRA	Uploaded
3	National Guard USERRA	Uploaded

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MARTIN AKERMAN v. DEPARTMENT OF THE ARMY

Docket # DC-0752-23-0457-I-1

Motion for Special Panel Under 5 C.F.R. Â§ 1201.39(a)

Online Interview

1. Would you like to enter the text online or upload a file containing the pleading?

Enter Online

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2. Please enter text of your pleading.

I, Martin Akerman, the appellant in the above-mentioned case, respectfully submit this Motion for Special Panel pursuant to 5 C.F.R. Â§ 1201.39(a). The complexities involved in this case, as evidenced by the accompanying image, necessitate the establishment of a special panel, as well as a request for the joinder of Case DC-3443-22-0639-I-1. I emphasize the need for a special panel consisting of esteemed entities, including the Privacy and Civil Liberties Oversight Board (PCLOB), the Supreme Court of Nevada, the Office of Special Counsel (OSC), the Merit Systems Protection Board (MSPB), the Office of Labor-Management and Employee Relations (LMER), the Office of Personnel Management (OPM), and the Department of Labor (DOL). This panel is necessary to address the complexities involved in this matter and the related USERRA violations pending review. The accompanying image visually represents the intricate framework of the forthcoming memorandums, highlighting the interconnected legal arguments and the need for expertise from various entities. This visual aid further emphasizes the indispensability of a special panel, comprising the PCLOB, the Supreme Court of Nevada, the OSC, the MSPB, the LMER, the OPM, and the DOL. Their collective knowledge and experience will ensure a comprehensive understanding and fair consideration of the complexities inherent in this case. In addition, the joinder of Case DC-3443-22-0639-I-1, which involves related USERRA violations currently being reviewed by the Board and the Fourth Circuit, is essential. Consolidating these cases will promote consistency, efficiency, and a unified examination of the underlying USERRA issues. I respectfully request this honorable court to exercise its discretion and order the establishment of a special panel, as depicted in the image, consisting of the PCLOB, the Supreme Court of Nevada, the OSC, the MSPB, the LMER, the OPM, and the DOL. This panel, along with the joinder of Case DC-3443-22-0639-I-1, will facilitate a comprehensive understanding, ensure a just resolution, and streamline the consideration of the related USERRA violations. Thank you for your attention to this matter. I am prepared to provide any additional information or clarification that the court may require.

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3. Does your pleading assert facts that you know from your personal knowledge?

Yes

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4. Do you declare, under penalty of perjury, that the facts stated in this pleading are true and correct?

Yes

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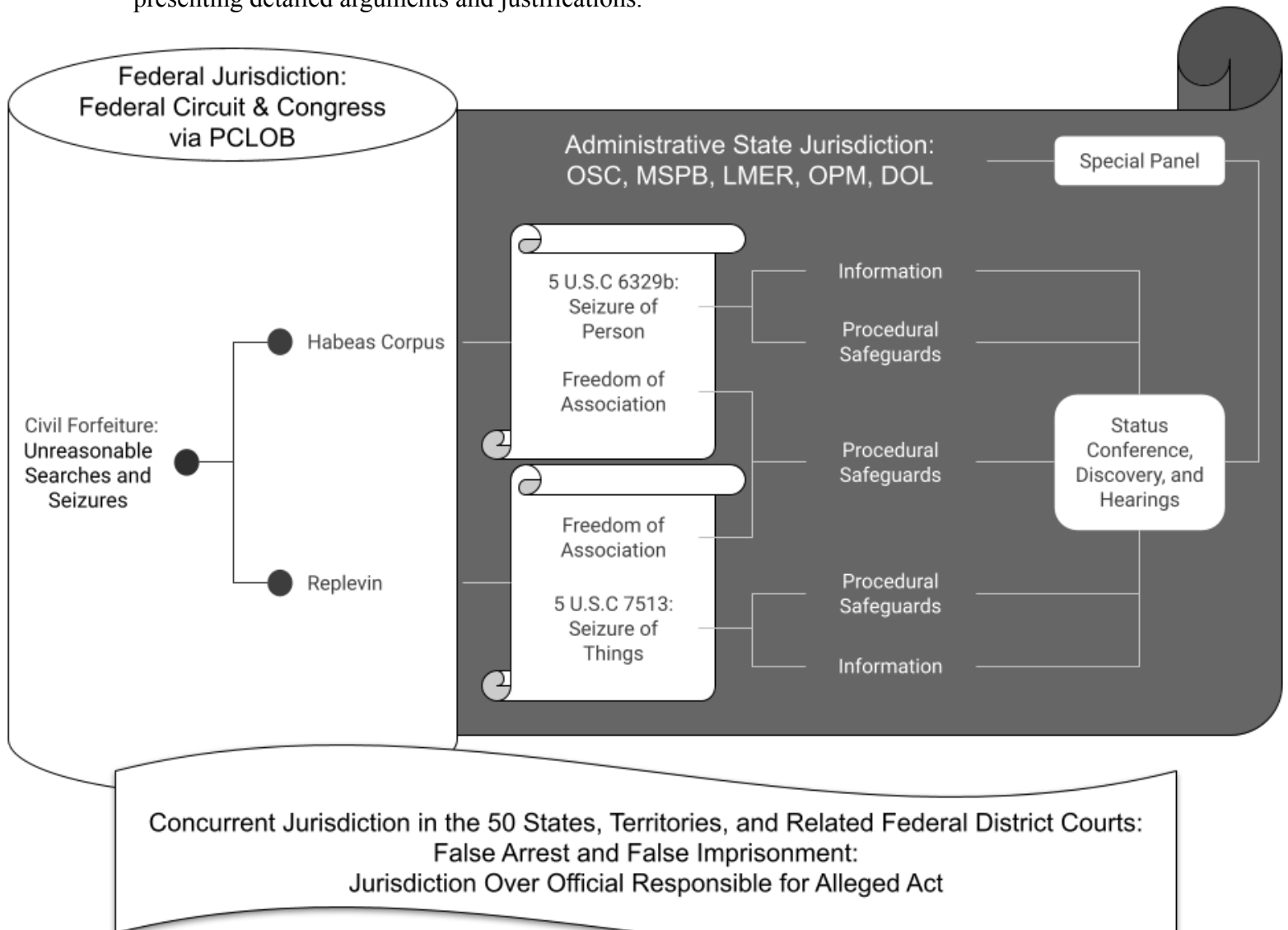
**IMAGE IN SUPPORT OF A SPECIAL PANEL FOR MORE FOCUSED AND  
SPECIALIZED CONSIDERATION, UNDER 5 C.F.R. § 1201.39(A)**

The image below provides a comprehensive visual representation of the forthcoming memorandums, illustrating the interconnected structure of the legal case. It aims to clarify the key elements and their relationships:

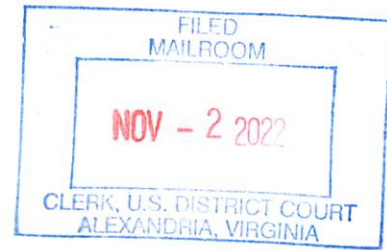
In the center of the image, we have the pivotal "Memorandum in Support of Motion for Special Panel, Status Conference, Discovery, and Hearings." This central memorandum establishes the foundation of the case, outlining its objectives, and setting the stage for subsequent arguments.

Radiating from the central memorandum, distinct branches depict the Subsidiary Memorandums. These memorandums focus on "Procedural Safeguards under 5 U.S.C. 6329b" and "Procedural Safeguards under 5 U.S.C. 7513." They meticulously explore the procedural safeguards provided by these statutes, emphasizing their significance in safeguarding individual rights and ensuring a fair legal process.

Extending further from the Subsidiary Memorandums, additional branches lead to the Sub-Subsidiary Memorandums. These memorandums delve deeper into the specific issues raised in their respective parent Subsidiary Memorandums. They substantiate the demand for a special panel, status conference, discovery, and related hearings within their designated topics, presenting detailed arguments and justifications.



**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**



MARTIN AKERMAN, Pro Se,  
Plaintiff,

Civil Action No. 1:22cv696

vs.

JURY TRIAL  
GRAND JURY REQUESTED

Lloyd J. Austin III, SECRETARY OF  
DEPARTMENT OF DEFENSE, et. al.,  
Defendants.

Date: 30 October 2022



**PRO SE PLAINTIFF'S ROSEBORO OBJECTION: INJURY BY FELLOW EMPLOYEE**

**Ghostwriting Certificate - LOCAL RULE 83.1(M) CERTIFICATION**

I, Martin Akerman, the Pro Se Plaintiff, declare under penalty of perjury that no attorney has prepared, or assisted in the preparation of this ROSEBORO OBJECTION.

1. The Pro Se Plaintiff has been subjected to a persistent culture of harassment perpetrated by proxy through active duty Military Personnel.
2. On 26 May 2021, I replied to SAF/AA regarding the Memorandum for Record of the 25 May meeting. I disclosed the following: - Col McDaniel mentioned that he and Ms. Vidrine had a call with HR Monday and she requested that Col McDaniel create a Written Admonishment - I asserted that I was performing duties in accordance with those outlined in my PD - SAF/AA confirmed that PDs should be made up to date and current, with accurate job descriptions and reviewed at least annually - SAF/AA advised me of

my right to have the action reviewed and to file grievance, making additional point to highlight AFI on personal remedy.

3. On 29 May 2021, I wrote an email to my Mentors in the Air Force expressing concern for Col McDaniel and Ms. Vidrine asked him to violate 10 USC 1034.
4. On 1 July 2021, I reported another PPP to OSC via email: Col Vasquez threatened to issue me another reprimand because I asked for a written version of the UMD that Ms. Vidrine mentioned on the morning call, and because I relayed messages from Callie and AA to Nicholas about his Loan Repayment.
5. On 11 August 2021, I reported a PPP to OSC via email: Col Kehoe entered information into my Performance Plan without my permission.
6. Similarly, TSgt Santa and Lt Col Sullivan were placed in a position to perpetrate actions that lead to the violation of PPD-19, particularly as witnessed and documented by OSC on 17 August 2022.

### **Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this motion: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

#### **A. Certificate of Service**

The undersigned hereby certifies that a true copy of the foregoing

#### **PRO SE PLAINTIFF'S ROSEBORO OBJECTION: INJURY BY FELLOW EMPLOYEE**

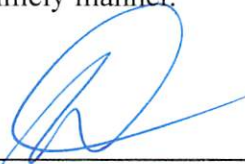
was mailed to the Clerk of the Court and Defendant's Counsel on the

30 st/nd/rd/th day of October, 2022 \*\*\*

and electronic service is expected to be provided to all Defendants, as listed and/or amended, and/or their respective Counsel, in a timely manner.

**B.**

**Signature of Pro Se Plaintiff:**



\*\*\*

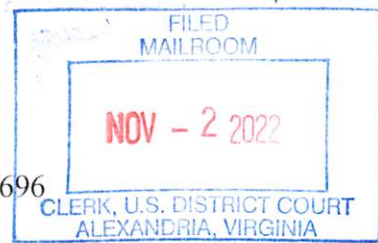
Martin Akerman, 2001 North Adams Street Unit 440

Arlington, VA 22201, 202-656-5601

makerman.dod@gmail.com



**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**



MARTIN AKERMAN, Pro Se,

Plaintiff,

vs.

Lloyd J. Austin III, SECRETARY OF  
DEPARTMENT OF DEFENSE, et. al.,

Defendants.

Civil Action No. 1:22cv696

JURY TRIAL  
GRAND JURY REQUESTED

Date: 30 October 2022

▶ **SCANNED** ◀

OCT 30 2022

**PRO SE PLAINTIFF'S ROSEBORO OBJECTION: INJURY BY FOREIGN STATE**

**MILITIA**

**Ghostwriting Certificate - LOCAL RULE 83.1(M) CERTIFICATION**

I, Martin Akerman, the Pro Se Plaintiff, declare under penalty of perjury that no attorney has prepared, or assisted in the preparation of this ROSEBORO OBJECTION.

1. In Federal employment, a Decision-Maker must have power to decide. THIS WAS NOT FOLLOWED (The decision will be valid if it has “the knowledge and approval of an official with termination authority.” This power to terminate is derived from the power to appoint. The reply cannot be an empty formality in which the employee speaks and no one with the power to affect the outcome listens. An agency decision where the deciding official lacks the power to cancel or mitigate the action is unconstitutional. The deciding official must be able to invoke his or her discretion as to whether the proposed penalty is

warranted. Officials – no matter how pure their own motives – have the responsibility to ensure that the action has not been corrupted by someone else in the process who has a prohibited motive.) This misapplication of law is harmful to the Plaintiff. *Vandewall v. Department of Transportation*, 55 M.S.P.R. 561, 564 (1992), *Lange v. Department of Justice*, 119 M.S.P.R. 625, para 23 (2013), and *Buelna v. Department of Homeland Security*, 122 M.S.P.R. 262 para 27-28 (2014).

2. The Agency is guilty of “federalizing” members of the State National Guard and placing them in a situation where their livelihood is threatened and they are forced to break federal employment laws.
3. Members of State National Guard components do not have the power to appoint the Plaintiff nor to suspend the Plaintiff.
4. The proposing official on the Indefinite Suspension action is a Department of the Air Force Senior Executive working for the National Guard Bureau. The Air Force and/or the National Guard Bureau should be joindered in this case. The deciding official on the Indefinite Suspension action is a General Officer of the Nevada Air National Guard “federalized” and working for the National Guard Bureau. The State of Nevada, the Air Force, and/or the Department of Defense should be joindered in this case. As it relates to the decision to sustain the charges of the indefinite suspension, the initial decision is based on an erroneous interpretation of statute or regulation or the erroneous application of the law to the facts of the case. (The deciding official, a Nevada Air National Guard Officer, does not have the termination authority needed to decide on the proposed suspension of a Tenured Department of the Army Civilian in the National Guard Bureau.)

5. The Colonel that took prohibited discriminatory actions and documented the Memorandum for Record related to the Merged Notices on 14 February 2022 and the decision to place the Plaintiff on Notice Leave is an Officer of the State of Arkansas Army National Guard "federalized" and working for the National Guard Bureau. The State of Arkansas and/or the Department of Defense should be joindered in this case.
6. The commander on the alleged Suspension of Access action, is a General Officer of the Arizona Army National Guard "federalized" and working for the Army National Guard, through alleged delegated signature authority to Mr. Mark Berglund of the Army National Guard. Additionally, The State of Arizona may need to be joindered in this case.
7. Members of the National Guard called into Federal service are, from the time when they are required to respond to the call, subject to the laws and regulations governing the Army or the Air Force, as the case may be, except those applicable only to members of the Regular Army or Regular Air Force, as the case may be.
8. Additionally, "federalized" members of the National Guard were forced to break anti-discrimination laws by documented proxy.
9. On 25 March 2022, the Plaintiff received evidence that the agency took impermissible discriminatory actions "but for" perceived mental impairment : "FEB 2, 2022: Mr. McNeill and senior leaders made preliminary decision to suspend subject's clearance based on information contained in the SOR regarding subject's mental health issues and concern for National Security." (Tab 27 at 8)
10. 8 February 2022 - Same person that took the impermissible discriminatory action conspired with Security office to suspend my access after an extension was granted by

the DOD CAF. Access suspension is additionally falsified - the Plaintiff verified that the Plaintiff still has an active SECRET clearance on 31 May 2022.

11. 14 February 2022 - Same person that took the impermissible discriminatory action on 8 February 2022 was the recommending official for the Indefinite Suspension.
12. 14 February 2022 - Same person that took the impermissible discriminatory action placed the Plaintiff on Notice Leave and out of the office involuntarily.
13. 18 Feb - 14 March 2022 - Same person that took the impermissible discriminatory action held ex parte communications with the deciding official.
14. 14 March 2022 - Someone that held ex parte communications with both the person that took the impermissible discriminatory action and the deciding official misinformed OPM LMER when they requested my files.

- a. "Can you give me what you have available and then we can play cleanup when Ms. Deppe returns?"

15. A CONSTRUCTIVE DISCHARGE OCCURS WHEN AN EMPLOYEE RESIGNS FROM HIS/HER EMPLOYMENT BECAUSE (S)HE IS BEING SUBJECTED TO UNLAWFUL EMPLOYMENT PRACTICES. IF THE RESIGNATION IS DIRECTLY RELATED TO THE RESPONDENT'S UNLAWFUL EMPLOYMENT PRACTICES, IT IS A FORESEEABLE CONSEQUENCE OF THOSE PRACTICES AND CONSTITUTES A CONSTRUCTIVE DISCHARGE. COMMISSION DECISION NO. 72-2062, CCH EEOC DECISIONS (1973) ¶ 6366. **RESPONDENT IS RESPONSIBLE FOR A CONSTRUCTIVE DISCHARGE IN THE SAME MANNER THAT IT IS RESPONSIBLE FOR THE OUTRIGHT DISCRIMINATORY DISCHARGE OF A CHARGING PARTY.**<sup>1</sup>

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<sup>1</sup> EEOC 612.9(a) - Constructive Discharge

### **Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this motion: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

#### **A. Certificate of Service**

The undersigned hereby certifies that a true copy of the foregoing

**PRO SE PLAINTIFF'S ROSEBORO OBJECTION: INJURY BY FOREIGN STATE  
MILITIA**

was mailed to the Clerk of the Court and Defendant's Counsel on the

30 st/nd/rd/th day of October, 2022 \*\*\*

and electronic service is expected to be provided to all Defendants, as listed and/or amended, and/or their respective Counsel, in a timely manner.

**B. Signature of Pro Se Plaintiff:**  \*\*\*

Martin Akerman, 2001 North Adams Street Unit 440

Arlington, VA 22201, 202-656-5601

makerman.dod@gmail.com

## **Certificate Of Service**

e-Appeal has handled service of the assembled pleading to MSPB and all of the Parties.

Following is the list of the Parties in the case:

Name & Address	Documents	Method of Service
MSPB: Washington Regional Office	Motion for Special Panel Under 5 C.F.R. Â§ 1201.39(a)	e-Appeal / e-Mail
Jenny Lin Naylor Agency Representative	Motion for Special Panel Under 5 C.F.R. Â§ 1201.39(a)	e-Appeal / e-Mail