

RESPONSE TO INFORMAL BRIEF & MOTION FOR REMAND

IN THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Case No. 25-1375

Sherman S. Startz, Jr., Petitioner

v.

Department of the Army, Respondent

I. Refuting Respondent's Argument Regarding the DOD OIG Investigation

The Respondent argues that there is "no record evidence" of action by the DOD OIG in relation to my hotline report. This assertion is misleading. I filed a formal complaint to the DOD OIG and have the serial number as proof. The lack of evidence in the record is not due to neglect, but due to my lack of legal knowledge about FOIA and procedural access limitations to obtain federal agency records as a pro se appellant.

II. Justification for Motion for Remand - New Material Evidence

Legal Basis for Remand:

- Morgan v. Department of Energy, 424 F.3d 1271 (Fed. Cir. 2005): New, material evidence unavailable despite reasonable diligence justifies remand.
- 5 U.S.C. § 7703(c): The Court may remand if evidence was not available and the decision is unsupported by substantial evidence.
- Erickson v. Pardus, 551 U.S. 89 (2007) and Haines v. Kerner, 404 U.S. 519 (1972): Pro se litigants must receive liberal construction; failure to navigate FOIA should not bar meritorious claims.

Materiality of the DOD OIG Report:

The DOD OIG investigation directly addresses the contractor fraud and Army mismanagement I disclosed. It likely contains independent verification of my claims that were dismissed by MSPB as "unsupported by evidence." The report's existence and investigative findings could substantially impact the outcome of this case.

### III. Reasonable Diligence and Pro Se Limitation

As a pro se litigant, I did not understand that I needed to file a FOIA request to access my own report, nor that I could motion for a subpoena for such evidence. Upon realizing this, I have acted with diligence and am seeking the report through FOIA now. I am not attempting to introduce new arguments, but rather obtain existing evidence that was unavailable due to lack of legal counsel and procedural access.

### IV. Respondent's Discovery Obstruction

The Army was ordered to comply with discovery but provided incomplete responses, and I had no legal guidance to understand I could file a renewed motion to compel. The withheld evidence, including project files and contractor billing, supports my claims and underscores the need for full evidentiary review through remand.

### V. Due Process and Government Control of Evidence

Brady v. Maryland, 373 U.S. 83 (1963): Government withholding material evidence violates due process.

The Army's refusal to disclose or assist in obtaining the DOD OIG report-a government-controlled document-denied me a fair opportunity to present my case. The DOJ, now representing the Respondent, should not benefit from withholding this crucial evidence.

## VI. Relief Requested

In light of:

- My pro se status and reasonable actions;
- The existence of material evidence now being pursued in good faith;
- The government's control of the report and my lack of prior access;

I respectfully request the Court to:

1. Grant a limited remand to the MSPB to allow consideration of the DOD OIG report once obtained;
2. Allow a reasonable period for FOIA completion or compel Respondent to assist in acquisition.

## Conclusion

Justice requires that all relevant evidence be considered, especially when it was unavailable due to lack of legal knowledge and agency control. Denying remand would uphold a decision based on incomplete facts and procedural disadvantage, undermining the integrity of the whistleblower protection framework.

Respectfully submitted,

Sherman S. Startz, Jr.

(Pro Se)

Date: [Insert Filing Date]