# UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Sherman Startz,  
Petitioner-Appellant,

v.  
Department of the Army,  
Respondent-Appellee.

No. 25-1375

(MSPB Docket No. SF-1221-23-0258-W-1)

## REPLY IN SUPPORT OF MOTION TO SUPPLEMENT THE RECORD OR, IN THE ALTERNATIVE, FOR REMAND

(Pursuant to Federal Circuit Rule 27 and FRAP 27(a)(4))

Petitioner submits this reply in further support of the motion to supplement the record or, in the alternative, for remand. The government’s opposition, filed May 16, 2025, fails to address or rebut the substantial evidence of cross-agency misconduct, record suppression, and procedural irregularity that renders the current MSPB record materially incomplete.

Since the filing of that opposition, additional evidence has been received under the Freedom of Information Act (FOIA) that further supports the necessity of remand and supplementation. Specifically:

1. Department of Defense OIG Final FOIA Response (DODOIG-2025-000963, dated May 21, 2025) confirms that DOD OIG and the DoD Hotline conducted searches and located records responsive to Complaint #20230213-083550, and that such records include inter-agency deliberations and sensitive law enforcement content withheld under Exemptions (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E). This confirms the existence of material records demonstrating institutional knowledge and investigative activity directly tied to the whistleblower disclosure at issue in this appeal.

2. OSC FOIA Correspondence (dated May 20, 2025) indicates that responsive records remain unprocessed and in a "Simple" track status despite significant delay. The communication threatens administrative closure if the requester does not respond, despite the legal requirement to process the request without undue delay. This pattern is consistent with a broader strategy of obstructing record development and avoiding FOIA-triggered disclosure during the pendency of this litigation.

These newly obtained records are not duplicative or speculative—they are agency admissions that relevant evidence exists and is being withheld or delayed under pretext. This contradicts the government’s assertion that the record before the MSPB was complete, and supports petitioner’s contention that the adjudication was tainted by material omission.

Accordingly, Petitioner respectfully renews his request that the Court grant the motion to supplement the record or remand the case to the Merit Systems Protection Board to consider the suppressed and newly located evidence.

Exhibits Attached:

- Exhibit H: DOD OIG FOIA Final Response – Case No. DODOIG-2025-000963 (May 21, 2025)

- Exhibit I: OSC Correspondence re: FOIA-2025-186 (May 20, 2025)

Respectfully submitted,

Sherman Startz  
Petitioner-Appellant  
907-231-9270

Dated: May 22, 2025

EXHIBT H

EXHIBT I