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SUPREME COURT, U.S.

No. 23-7127
(23A539 & 23-1106)

MARTIN AKERMAN, PRO SE,

Petitioner,

v.

POSSE COMITATUS OF THE
UNITED STATES OF AMERICA,

Respondent.

On Petition For a Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit

PETITION FOR REHEARING

MARTIN AKERMAN, PRO SE
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MAY 29, 2024

QUESTIONS PRESENTED

- In light of newly discovered evidence that Martin Akerman was detained under the color of U.S. authority, under 5 U.S.C. § 6329b(b)(2), and misrepresented as being on "administrative leave," how should this information impact the procedural and jurisdictional determinations that previously led to the dismissal of his habeas corpus petition?
- Which court holds jurisdiction to address the misrepresentation of Martin Akerman's detention status as administrative leave—Merits Systems Protection Board (MSPB), as it is the instant case on certiorari to the Federal Circuit, or the Air Force Court of Criminal Appeals (23-1106), on certiorari to the Court of Appeals for the Armed Forces (CAAF), considering the implications for his statutory and constitutional protections?
- What are the implications of this misrepresentation for the enforcement of habeas corpus protections and broader constitutional rights, particularly concerning due process and transparency in the treatment of a tenured federal employee?

PARTIES TO THE PROCEEDING

The petitioner, Martin Akerman, challenges a modern denial of a foundational legal right. The United States Court of Appeals for the Federal Circuit dismissed Mr. Akerman's habeas corpus request for lack of jurisdiction, prompting serious questions about the contemporary application and scope of this ancient legal safeguard.

Petitioner: Martin Akerman, a tenured federal employee, has engaged in activities protected under the Uniformed Services Employment and Reemployment Rights Act (USERRA) through his participation in an investigation into the wellbeing of military personnel. These activities align with his duties as the Chief Data Officer of the National Guard Bureau, a role he holds under the statutory authority of 44 U.S.C. § 3520. Mr. Akerman asserts his right to habeas corpus under 28 U.S.C. § 2241(c)(1) and § 2241(c)(2), challenging his detention and the conditions of his suspension from federal employment, which lack due process.

Respondent: Posse Comitatus of the United States of America, represented in this case by Brigadier General Caesar Garduno of the Nevada Air National Guard. Upon federalization, General Garduno was obliged to comply with Department of the Air Force regulations, which govern the use of military power in civil matters. His role as the Deciding Official in the detention of Mr. Akerman under 5 U.S.C. § 6329b(b)(2) and the subsequent procedural actions contravene the due process guarantees prescribed by 5 U.S.C. § 7513.

As mandated by Rule 29.4(a), the Solicitor General of the United States will be duly served, reflecting the involvement of the U.S. Government in these proceedings.

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APPENDICES

Appendix A: Documentation from the Office of Personnel Management, on May 27, 2024, in the Merit Systems Protection Board, case DC-844E-24-0359-I-1, that led to the discovery of new evidence regarding the illegal detention, under the guise of “administrative leave”. This evidence is crucial for establishing the context and timeline of the misrepresentations made.

STATEMENT OF THE CASE

This petition introduces newly discovered evidence indicating that the petitioner was not merely on administrative leave as previously stated by the agency but was, in fact, detained by state officers acting under federal directives. This evidence, unavailable during the original proceedings due to its recent uncovering through a related involuntary disability retirement case (MSPB Docket No. DC-844E-24-0359-I-1), directly challenges the jurisdictional findings and procedural handling of the petitioner's case, Appendix A.

REASONS FOR GRANTING THE PETITION

Jurisdictional and Procedural Errors:

The new evidence reveals a misrepresentation by the agency regarding the petitioner's detention status, which was crucial to the jurisdictional decisions previously made. The evidence suggests a violation of procedural rights under 5 U.S.C. § 7513, and the Fifth Amendment, which mandates transparency and accuracy in depicting a tenured federal employee's status.

Government Accountability and Response:

The lack of a substantive response from the government in the earlier proceedings highlights a significant oversight. This new evidence demands a reevaluation of governmental accountability and the due process rights of the petitioner.

Impact on Constitutional Rights:

The misrepresentation of the petitioner's status has broad implications for the enforcement of habeas corpus protections. This situation exemplifies the potential erosion of foundational constitutional guarantees, necessitating urgent judicial intervention.

Need for Expedited Review

Together with Case 23-1106:

Given the gravity of the legal and constitutional issues presented, and the intertwined nature of this petition with Case 23-1106, there is a pressing need for expedited review. Consolidating these cases in a single conference would facilitate a more coherent and informed consideration of the shared legal principles and jurisdictional questions at stake. This approach is not only practical but essential to addressing the significant rights involved in a timely manner, ensuring that justice is not delayed for the petitioner.

CONCLUSION

For all the foregoing reasons, and in the interest of justice and proper application of constitutional principles, this Court is urged to grant the petition for a rehearing. Such a review is vital not only to correct the record and address the procedural and jurisdictional errors but also to consider the profound constitutional implications of the petitioner's unlawful detention. By addressing this petition alongside Case 23-1106, the Court can provide a comprehensive resolution that reflects the full scope of related legal issues, thereby reinforcing the integrity of judicial oversight in cases involving fundamental civil liberties.

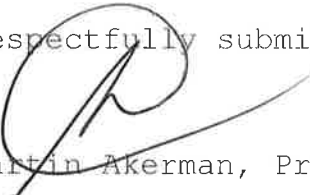
CERTIFICATE OF COMPLIANCE

I, Martin Akerman, as the pro se applicant in this case, hereby certify that the attached Petition for Rehearing is presented in good faith and not for purposes of delay. I affirm that the facts and legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.

Pursuant to Supreme Court Rule 33.2, I hereby certify that the attached Petition for Rehearing has been prepared in compliance with the formatting requirements set forth in 8½- by 11-inch paper format. The document has been printed on opaque, unglazed, white paper and is stapled at the upper left-hand corner. Ten (10) copies have been provided to the Court, per in forma pauperis rules.

This certificate also confirms that the Petition for Rehearing adheres to the word limit specified under the applicable rules. The word count for the Petition for Rehearing is 394 words, which is less than the 3,000-word limit set for such submissions.

County/City of Arlington
Commonwealth/State of VIRGINIA
The foregoing instrument was acknowledged
before me this 29 day of MAY,
2024, by
MARTIN AKERMAN
(name of person seeking acknowledgement)
[Signature]
Notary Public
My Commission Expires: June 30, 2025

Respectfully submitted under oath,

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

SHANICE RENEE WILLIAMS
NOTARY PUBLIC
REGISTRATION # 7576665
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
JUNE 30, 2025

Appendix A:

Documentation from the Office of Personnel Management, on May 27, 2024, in the Merit Systems Protection Board, case DC-844E-24-0359-I-1, that led to the discovery of new evidence regarding the illegal detention, under the guise of "administrative leave". This evidence is crucial for establishing the context and timeline of the misrepresentations made.

6. Identify any critical element(s) of the position which employee does not perform successfully or at all. Explain the deficiencies you observed. Attach supporting documentation such as notice to the employee that performance is less than fully successful or physician's recommendation regarding medical restrictions.

Section C - Information About Employee's Attendance

1. Has employee stopped coming to work?
 No Yes, how long is absence expected to continue (if known)? Employee resigned effective 6 Jun 2022

2. Is employee's attendance unacceptable for continuing in current position?
 No Yes, attendance stopped or became unacceptable on (mm/yyyy): 14 Feb 2022, and suspended on 24 Apr 2022

3. Explain the impact of employee's absence on your work operations.
Beginning with the time of his placement on administrative leave for failure to attain or maintain a TOP SECRET/Special Sensitive clearance and access to classified information and systems, Mr Akerman's most essential duties had to be assigned as an additional duty to another employee, the NGB Chief Technology Officer (CTO), in order to ensure that the NGB data program was implemented and managed at a minimal capability level. Although the designated employee performed admirably as acting Chief Data Officer (CDO), a single person could not fully fill both demanding roles, and therefore both roles were negatively impacted until we were able to hire a new CDO. In the five months he served as CDO prior to being placed in administrative leave status, Mr. Akerman booked 12 hours of annual leave with no indication this was for medical reasons (time and attendance report attached).

4. How many hours of leave has employee used for apparent medical reasons since date in item C2? (Attach copies of medical information on which you based your decision to approve leave, leave records, records of contact with or notices to employee. Include as much information as possible about specific reasons for leave use.)

Enter Leave Hours Used	Annual	Sick	LWOP
	0	0	0

Section D - Information About Employee's Conduct

1. Is employee's conduct unsatisfactory?
 No, go to Section E. Yes, conduct became unsatisfactory on (mm/yyyy):

2. Describe how conduct is unsatisfactory (attach supporting documentation, such as notice to employee of proposed adverse action).

Section E - Accommodation and Reassignment
(Consult with agency Coordinator for Employment of the Handicapped)

1. What efforts have been made to accommodate the employee in current position?
No accommodations were made because no accommodations were ever requested by Mr. Akerman.

2. Has employee been reassigned to a new permanent position? (If yes, to what position and when?)
 No Yes, to _____ on (mm/yyyy):

3. Has employee been reassigned to "light duty" or a temporary position?
 No, go to Section F. Yes

4. Describe the reason for temporary nature of assignment and length of time the employee is expected to occupy the position.

Section F - Supervisor's Certification

1. How long have you supervised the employee? 5 months	2d. Supervisor's office mailing address 1636 Defense Pentagon Rm 1D157 Washington, DC 20301-0001
2. I certify that all statements made on this Supervisor's Statement are true to the best of my knowledge and belief.	2e. Supervisor's daytime telephone number (including area code) (703) 695-6847
2a. Supervisor's signature MCNEILL, KENNETH H. CHR ISTOPHER.1042118423 Digitally signed by MCNEILL, KENNETH CHRISTOPHER.1042118423 Date: 2023.10.27 11:51:47 -0400	2c. Date (mm/dd/yyyy)
2b. Supervisor's name (type or print legibly) Kenneth C. McNeill	2f. Email address kenneth.c.mcneill.civ@army.mil

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v.

POSSE COMITATUS OF THE
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PROOF OF SERVICE

It is hereby certified that on May 29, 2024, an original and ten copies of the PETITION FOR REHEARING were delivered to the Supreme Court of the United States by priority mail. Additionally, a true and correct copy was served on May 29, 2024, to the Solicitor General of the United States, 950 PENNSYLVANIA AVE NW RM 5616, WASHINGTON, DC 20530-0009, by priority mail.


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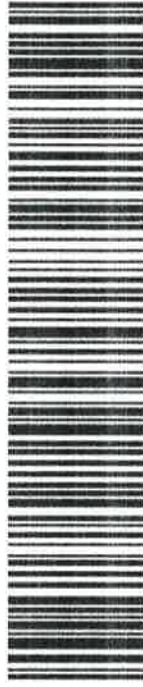
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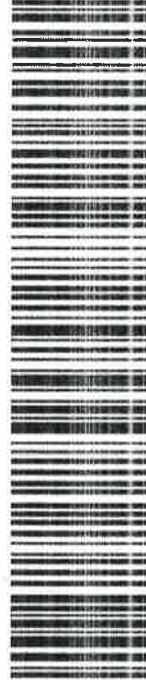
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