

OCT 29 2024

No. 24AY30 (24-83)

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

POSSE COMITATUS OF THE UNITED STATES,
RESPONDENTS

APPLICATION TO SUSPEND DENIAL OF CERTIORARI

DIRECTED TO THE HONORABLE JOHN G. ROBERTS, JR.,
CHIEF JUSTICE OF THE UNITED STATES,
AND ASSOCIATE JUSTICE FOR THE DC CIRCUIT,
FOURTH CIRCUIT, FEDERAL CIRCUIT,
AND COURT OF APPEALS FOR THE ARMED FORCES

IN THE EVENT OF RECUSAL:

DIRECTED TO THE HONORABLE BRETT KAVANAUGH,
ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE
2001 North Adams Street, Unit 440
Arlington, VA 22201
makerman.dod@gmail.com
(202) 656-5601

RECEIVED

OCT 31 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION PRESENTED

Are state military officers from Arizona, Nevada, and Arkansas allowed to be federalized to detain the tenured Chief Data Officer of an Agency, under a pretext of national security, and in a manner that is not able to be reviewed by the judiciary?

PARTIES TO THE CASE

Martin Akerman serves as the tenured Chief Data Officer of a federal agency and is proceeding pro se in this case. As a federal employee, his role involves ensuring compliance with statutory requirements on data management, transparency, and reporting as mandated under 44 U.S.C. § 3520. Petitioner's duties are critical to the proper oversight and accountability of agency activities, including those impacting national security, transparency, and the lawful use of authority within and outside federal agencies. This application addresses the use of federalized state military officers from Arizona, Nevada, and Arkansas to detain him under the pretext of national security, with judicial review precluded, raising fundamental questions under the Posse Comitatus Act, the Suspension Clause, and due process principles.

Posse Comitatus of the United States includes the state military officers from Arizona, Nevada, and Arkansas acting under federalized authority. Their actions involve the detention of a federal agency official in a context that bypasses standard judicial oversight, challenging the boundaries of federal and state military powers and raising questions about accountability under federal law, represented by Elizabeth B. Prelogar, Solicitor General of the United States.

OTHER PARTIES IMPLICATED

Attorney General of Arkansas, Tim Griffin;

Attorney General of Arizona, Kris Mayes; and

Attorney General of Nevada, Aaron D. Ford

These state Attorneys General are served because the state military officers acting under federal authority come from their respective jurisdictions. The actions taken by these officers under the alleged federalization directly involve state resources and oversight, implicating both state and federal legal standards. Each Attorney General has an interest in the lawful application of state military resources and maintaining a balance between state and federal powers.

Senator Gary Peters, Chair, and Senator Rand Paul, Ranking Member, Committee on Homeland Security and Governmental Affairs

As leaders of the Senate Committee on Homeland Security and Governmental Affairs, Senators Peters and Paul receive annual reports from Chief Data Officers under 44 U.S.C. § 3520 regarding agency compliance. This Committee is responsible for federal oversight concerning homeland security and transparency, making the case relevant to its jurisdiction and its interest in lawful oversight of federalized military actions affecting agency officials.

Representative James Comer, Chair, and Representative Jamie Raskin, Ranking Member, Committee on Oversight and Government Reform

As leaders of the House Committee on Oversight and Government Reform, Representatives Comer and Raskin are similarly vested with oversight responsibilities for federal agencies, including compliance with data transparency requirements and the lawful conduct of federal employees. Their role is critical for ensuring federal accountability and addressing overreach or misuse of authority within federal agencies.

Senator Tim Kaine

Senator Kaine has been involved in related proceedings in the Federal Circuit (Case No. 2024-1913) concerning oversight of security clearances and federal employment matters under 50 U.S.C. § 3341(j)(8). His connection to these issues underlines the national security and employment rights implications of the case, especially in the context of detentions affecting federal officers.

APPLICATION TO SUSPEND DENIAL OF CERTIORARI

Pursuant to Rule 22 of the Rules of the Supreme Court of the United States, Applicant, Martin Akerman, respectfully submits this Application to suspend the denial of certiorari in Akerman v. National Guard Bureau, No. 24-83, pending further review and determination on critical constitutional questions raised in this case.

Waiver of Response in Related FOIA Case:

In a related FOIA appeal, Akerman v. Merit Systems Protection Board, No. 24-0339, the Solicitor General waived the right to respond on October 25, 2024, unless specifically requested by the Court. This waiver signifies the government's acknowledgment of potentially related legal issues warranting the Court's attention in cases involving national security claims and access to judicial review, Attachment A.

Timeliness

Under Rule 22, applications for suspension are permissible during the pendency of petitions for rehearing, allowing the Applicant to seek a temporary suspension while awaiting the Court's final determination. Additionally, the pending petition for a stay (No. 24A332) filed on September 30, 2024, which is set for conference on November 8, 2024, further underscores the timely nature of this request for relief.

This application is timely filed following the Court's denial of certiorari in Akerman v. National Guard Bureau, No. 24-83, on October 7, 2024, and the subsequent filing of a Petition for Rehearing on October 9, 2024.

In accordance with Rule 30.2, the application is filed promptly to avoid any lapse in judicial oversight, particularly given the serious implications of national security and judicial review at issue.

Background and Procedural History

- 1. Denial of Certiorari:** On October 7, 2024, the Supreme Court denied the Applicant's petition for certiorari in *Akerman v. National Guard Bureau*, No. 24-83, without addressing critical issues concerning federal and state military authority under the Posse Comitatus Act and the constitutional implications of federalizing state officers.
- 2. Petition for Rehearing:** On October 9, 2024, Applicant filed a Petition for Rehearing, asserting that this Court should reconsider due to unresolved questions of judicial oversight, federal authority, and due process related to the federalization of state military personnel and their powers over federal employees.
- 3. Related Proceedings:** On September 30, 2024, Applicant filed a petition for a stay (No. 24A332), which remains pending before the Court and is scheduled for the November 8, 2024, conference. This stay petition highlights the need to temporarily suspend the impact of the denial while awaiting final determination on these constitutional issues.

GROUNDS FOR SUSPENSION

Urgency and Irreparable Harm

The denial of certiorari, if left unsuspended, would irreparably harm Applicant by denying judicial oversight of actions undertaken by federalized state military officers under the guise of national security. These actions, undertaken without recourse to judicial review, violate Applicant's constitutional rights, especially given his role as the Chief Data Officer. Without intervention, Applicant is left without adequate protection from misuse of federal and state authority, leading to substantial due process concerns.

Likelihood of Success on the Merits

The Petition for Rehearing and the pending petition for a stay demonstrate a likelihood of success, as they raise fundamental questions about the reach of federal authority under the Posse Comitatus Act and the necessity of judicial review over the federalization of state military personnel. These issues bear on federalism principles and individual rights to fair judicial process under the Suspension Clause.

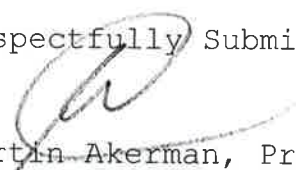
Public Interest and Judicial Economy

Suspending the denial of certiorari is in the public interest, as this case raises pressing constitutional questions about federalization, military authority, and judicial review, impacting not only Applicant but also the legal framework governing state and federal power. Judicial economy favors a suspension to prevent piecemeal litigation and to enable the Court to address these critical issues comprehensively.

CONCLUSION

For the reasons outlined, Applicant respectfully requests that Chief Justice John G. Roberts, Jr., or, in the event of his recusal, Justice Brett Kavanaugh, grant this application to suspend the denial of certiorari in *Akerman v. National Guard Bureau*, No. 24-83, pending the outcome of the Petition for Rehearing and the forthcoming conference on the petition for a stay (No. 24A332) on November 8, 2024.

Respectfully Submitted,


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

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APPLICANT

v.

POSSE COMITATUS OF THE UNITED STATES,
RESPONDENTS

ATTACHMENT A

In a related FOIA appeal, *Akerman v. Merit Systems Protection Board*, No. 24-0339, the Solicitor General waived the right to respond on October 25, 2024, unless specifically requested by the Court. This waiver signifies the government's acknowledgment of potentially related legal issues warranting the Court's attention in cases involving national security claims and access to judicial review.

IN THE SUPREME COURT OF THE UNITED STATES

AKERMAN, MARTIN
Petitioner

vs.

No: 24-0339

MERIT SYSTEMS PROTECTION BOARD, ET AL.

WAIVER

The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the Court.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

October 25, 2024


cc:

MARTIN AKERMAN
2001 NORTH ADAMS STREET
UNIT 440
ARLINGTON, VA 22201

CERTIFICATE OF COMPLIANCE

I hereby certify that this 11-page document complies with the format requirements of Rules 22, 23, and 33.2 of the Supreme Court Rules. The text of this document, including any appendix thereto, appears double spaced, except for indented quotations, which are single spaced, on opaque, unglazed, white 8.5- by 11-inch paper. The document is stapled at the upper left-hand corner. The original of this document is signed by the party proceeding pro se.

Respectfully Submitted,



Martin Akerman, Pro Se
2001 North Adams Street, Unit 440
Arlington, VA 22201
(202) 656 - 560

IN THE SUPREME COURT OF THE UNITED STATES

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RESPONDENTS

PROOF OF SERVICE

It is hereby certified that on October 29, 2024 an original and three copies of the APPLICATION TO SUSPEND DENIAL OF CERTIORARI were delivered to the Supreme Court of the United States by priority mail. Additionally, copies were served on October 29, 2024, by priority mail, to:

Elizabeth B. Prelogar
Solicitor General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Attorney General of Arkansas
Tim Griffin
Office of the Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201

Attorney General of Arizona
Kris Mayes
Office of the Attorney General
2005 North Central Avenue
Phoenix, AZ 85004

Attorney General of Nevada
Aaron D. Ford
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

Chair, Committee on Homeland Security and Governmental
Affairs
Senator Gary Peters
340 Dirksen Senate Office Building
Washington, DC 20510

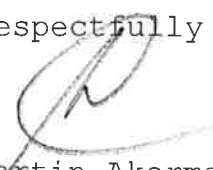
Ranking Member, Committee on Homeland Security and
Governmental Affairs
Senator Rand Paul
167 Russell Senate Office Building
Washington, DC 20510

Chair, Committee on Oversight and Government Reform
Representative James Comer
2410 Rayburn House Office Building
Washington, DC 20515

Ranking Member, Committee on Oversight and Government
Reform
Representative Jamie Raskin
2242 Rayburn House Office Building
Washington, DC 20515

Senator Tim Kaine (Virginia)
231 Russell Senate Office Building
Washington, DC 20510

Respectfully Submitted,



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