

NOV 18 2024

24A507

No. _____ (24-339, 24A430, 24A278, 24-514)

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

NOV 20 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION PRESENTED

Does the whistleblower protection provision of the Uniformed Services Employment and Reemployment Rights Act (USERRA), codified at 38 U.S.C. § 4311(b), require the waiver of court fees for federal employees engaged in protected whistleblowing activities, ensuring access to judicial review without financial barriers?

Does the denial of access to information under the Freedom of Information Act (FOIA) constitute a violation of a whistleblower's right to transparency, accountability, and due process, particularly when the information requested is essential to the petitioner's defense and the public interest?

Should the Second Amendment be interpreted to encompass access to information and the tools necessary to defend against disinformation and abuses of power, particularly when these actions are used to suppress whistleblower rights and obscure illegal detentions under the pretext of national security?

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 U.S. Office of Special Counsel, the Department of Defense, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and the U.S. Department of Labor. Their actions involve the unlawful withholding of information related to the detention and suspension of Akerman in a context that bypasses standard judicial oversight, 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. Merit Systems Protection Board, et. al., No. 24-339, pending further review and determination on critical constitutional questions raised in this case.

Waiver of Response in Related Habeas Case:

In a related Habeas appeal, Akerman v. National Guard Bureau, No. 24-83, the Solicitor General waived the right to respond on August 6, 2024, unless specifically requested by the Court.

Timeliness

In accordance with Rule 30.2, the application is filed promptly (the same day as the denial of petition for writ of certiorari 24-339) to avoid any lapse in judicial oversight, particularly given the serious implications of national security and judicial review at issue.

Related Applications in The Supreme Court

- On November 8, 2024, The Chief Justice granted a second extension in related case 24A278, extending the time to and including February 9, 2025.
- On November 12, 2024, The Court denied stay request 24A332.
- On November 13, 2024, The Court distributed 24A430 for the conference of 12/6/2024.
- A related application addressing the effects of the Rule 39.8 designation in case 24-5218 is pending a case number.

Procedural History

1. **Denial of Certiorari:** On November 18, 2024, the Supreme Court denied the Applicant's petition for certiorari in Akerman v. National Guard Bureau, No. 24-83, without addressing the petitioner's right to accurate information in defense of self and property, citing the Freedom of Information Act.
2. **Petition for Rehearing:** On November 18, 2024, the Supreme Court denied the Applicant's petition for rehearing in Akerman v. National Guard Bureau, No. 24-83, without addressing critical issues concerning federal and state military authority under the Posse Comitatus Act.

3. **Motion to Transfer Case:** On November 14, 2024, the petitioner filed a critical related motion in the U.S. Court of Appeals for the District of Columbia Circuit, as instructed on October 10, 2024, Attachment A.

Relevant Historical Context

- A. The principles of transparency, accountability, and oversight are critical to the effective functioning of government institutions. Laws like the Freedom of Information Act (FOIA) and the establishment of Offices of Inspector General (OIGs), alongside the development of audit and ethics frameworks, reflect a commitment to these principles. These mechanisms align with COSO's three lines of defense, the role of the Chief Data Officer (CDO) under 44 U.S.C. § 3520, and the statutory framework for emergency suspensions under 5 U.S.C. § 7513(b)(1) and 5 U.S.C. § 6329b(b)(2).
- B. The Freedom of Information Act (FOIA), enacted in 1966, established a cornerstone for government transparency. By granting the public the right to access federal records, FOIA empowers citizens to hold government agencies accountable. This transparency fosters trust and ensures that government operations remain subject to public scrutiny.

C. The creation of Offices of Inspector General (OIGs) in 1978 further institutionalized oversight. Tasked with auditing, investigating, and promoting efficiency, OIGs serve as an independent check on federal agencies. Their work often intersects with FOIA requests, providing critical information to the public and ensuring agencies comply with ethical standards.

D. Together, FOIA and OIGs exemplify the importance of transparency and accountability in governance. These mechanisms ensure that government actions are conducted in the public interest and subject to oversight, preventing abuse and inefficiency.

Diving a Little Deeper

E. The Pendleton Civil Service Reform Act of 1883 marked a turning point in American governance. In response to the rampant corruption of the patronage system, it introduced competitive examinations for federal jobs, ensuring that positions were awarded based on merit rather than political loyalty. The Act sought to dismantle the "spoils system," which had plagued government operations by prioritizing partisanship over competency.

- F. Over time, the principles of the Pendleton Act were expanded and codified. The Civil Service Reform Act of 1978 solidified the merit-based framework, establishing the Merit Systems Protection Board (MSPB) and the Office of Special Counsel (OSC) to safeguard these principles. These institutions became critical in protecting federal employees from undue influence and ensuring the impartiality of government operations.
- G. The Committee of Sponsoring Organizations of the Treadway Commission (COSO) developed the "three lines of defense" framework to enhance organizational accountability. This model emphasizes the roles of management, internal oversight, and independent audit functions in mitigating risks and ensuring compliance. In the federal government, this framework is mirrored in the division of responsibilities between agency leadership (first line), OIGs and ethics bodies (second line), and independent auditors and external oversight bodies (third line). Each line of defense plays a critical role in identifying, managing, and addressing risks, ensuring that government agencies operate ethically and effectively.
- H. The Foundations for Evidence-Based Policymaking Act of 2018 established the role of the Chief Data Officer (CDO) under 44 U.S.C. § 3520.
- I. The petitioner is a tenured Chief Data Officer.

GROUNDNS FOR SUSPENSION

The mechanisms discussed—FOIA, OIGs, COSO's framework, the CDO role, and emergency suspension statutes—are interconnected components of a broader accountability framework. Together, they ensure that federal agencies operate transparently and ethically while maintaining the flexibility needed to address emerging threats.

Transparency mechanisms like FOIA and OIGs complement national security provisions by ensuring that emergency actions are subject to oversight. Similarly, the role of the CDO enhances the government's ability to manage and use data responsibly, further supporting accountability.

In the modern era, the Second Amendment's relevance extends beyond physical arms to the defense against disinformation and cyber threats. The proliferation of digital platforms has created new vulnerabilities, where information can be weaponized to undermine democratic institutions.

Courts and legislatures must grapple with these challenges, balancing the protection of individual rights with the need to safeguard national security. The Second Amendment's principles of self-defense and resistance to tyranny provide a framework for addressing these issues in the context of modern governance.

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.

The continued protection of the right to petition is essential for maintaining public trust in democratic institutions.

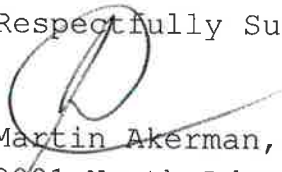
Public Interest and Judicial Economy

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 *Martin Akerman v. Merit Systems Protection Board, et al.*, No. 24-339, pending the outcome of the pending transfer to the Ninth Circuit, in the D.C. Circuit, and the outcome of application (No. 24A430), on December 6, 2024.

Respectfully Submitted,


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

CERTIFICATE OF COMPLIANCE

I hereby certify that this 13-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

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

POSSE COMITATUS OF THE UNITED STATES,
RESPONDENTS

ATTACHMENT A

This document, issued by the Clerk of the D.C. Circuit, places the case (No. 23-5309) in abeyance pending the Supreme Court's resolution of the related petition for writ of certiorari (No. 24-339). The court ordered the petitioner, Martin Akerman, to file a motion to govern future proceedings within 30 days of the Supreme Court's disposition of the petition.

On November 14, 2024, the petitioner filed a Motion to Transfer the case to the Ninth Circuit, under 28 U.S.C. § 1631. The motion argues for procedural consolidation with a related case in the District of Nevada (No. 2:24-cv-01602-GMN-EJY). The transfer is justified to ensure consistent adjudication of overlapping legal issues, including federal whistleblower protections, misuse of state military officers, and constitutional questions.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-5309**September Term, 2024****1:23-cv-02574-UNA****Filed On: October 10, 2024** [2079305]

Martin Akerman,

Appellant

v.

Merit Systems Protection Board, et al.,

Appellees

ORDER

Upon consideration of appellant's response to the court's July 2, 2024 order, and the letter from the Supreme Court noting that a petition for writ of certiorari, No. 24-339, has been filed, it is

ORDERED that this case remain in abeyance pending further order of the court. Appellant is directed to file a motion to govern future proceedings in this case within 30 days of the Supreme Court's disposition of the petition for writ of certiorari. Failure by appellant to comply with this order may result in dismissal of the appeal for lack of prosecution. See D.C. Cir. Rule 38.

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Catherine J. Lavender

Deputy Clerk

No. 23-5309

In The
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MARTIN AKERMAN, PRO SE,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD, ET AL.,

Respondents.

BEFORE: Rao, Walker, and Garcia, Circuit Judges

**RESPONSE TO ORDER
DATED 10 OCTOBER 2024, AND
MOTION TO TRANSFER CASE
TO THE NINTH CIRCUIT**

MARTIN AKERMAN, *pro se*,
2001 North Adams Street, Unit 440
Arlington, VA 22201
(202) 656 - 5601

Pursuant to 28 U.S.C. § 1631 and the Uniformed Services Employment and Reemployment Rights Act (USERRA), Appellant, Martin Akerman, respectfully moves this Court to transfer this case to the United States Court of Appeals for the Ninth Circuit. Appellant asserts that this transfer will allow for consolidated review alongside *Akerman v. Garduno, et al.* (Case No. 2:24-cv-01602-GMN-EJY) pending in the District of Nevada, ensuring consistency, efficiency, and effective resolution of related legal issues.

ARGUMENT

Legal Basis for Transfer

Under 28 U.S.C. § 1631, a case may be transferred if it is in the interest of justice. The Ninth Circuit has jurisdiction over appeals from the District of Nevada, where related litigation involving the same parties and issues is currently pending. Transfer to the Ninth Circuit will consolidate these related matters and avoid conflicting rulings.

Coordination with Pending Nevada Litigation

Appellant's case in the District of Nevada involves overlapping issues, including alleged violations of federal employment statutes, improper involvement of state military officers, and constitutional protections. The District of Nevada has extended Appellant's deadline to file an amended complaint to November 22, 2024 (Attached). Transferring this appeal ensures procedural alignment and facilitates a comprehensive review of all claims.

Judicial Economy

Consolidation of appeals avoids duplicative proceedings, reduces litigation costs, and ensures judicial efficiency. This Court's October 10, 2024, order places this case in abeyance pending the Supreme Court's disposition of Case No. 24-339. A transfer to the Ninth Circuit provides a unified forum for addressing the interplay between ongoing Supreme Court proceedings and related federal litigation.

Appellant's Procedural Obligations

The D.C. Circuit's order of October 10, 2024, requires Appellant to file a motion to govern future proceedings within 30 days of the Supreme Court's disposition of the certiorari petition. Transfer to the Ninth Circuit supports compliance by centralizing all litigation efforts in the jurisdiction overseeing the related District of Nevada proceedings.

Interest of Justice

The factual allegations and claims presented involve federal whistleblower protections, constitutional violations, and misuse of state military officers in federal employment matters. The Ninth Circuit is well-positioned to handle these complex issues in the broader context of Appellant's pending case in Nevada.

4

CONCLUSION

For the reasons stated, Appellant respectfully requests that this Court transfer this appeal to the United States Court of Appeals for the Ninth Circuit for consideration alongside related matters pending in the District of Nevada.

AFFIRMATION

The foregoing document complies with the type-volume limitations set forth in FRAP 27(d)(2). I affirm under penalty of perjury that the statements made herein are true and correct. Signed and dated November 14, 2024.

Respectfully Submitted,



MARTIN AKERMAN, pro se,
2001 North Adams Street, Unit 440
Arlington, VA 22201

No. 23-5309

In The
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MARTIN AKERMAN, PRO SE,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD, ET AL.,

Respondents.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 2024, I submitted the attached RESPONSE TO ORDER DATED 10 OCTOBER 2024, AND MOTION TO TRANSFER CASE TO THE NINTH CIRCUIT through the court's ECF system, with electronic service to all parties.

Respectfully Submitted,


MARTIN AKERMAN

No. 23-5309

In The
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MARTIN AKERMAN, PRO SE,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD, ET AL.,

Respondents.

ATTACHMENT: 2:24-cv-01602-GMN-EJY

The attached Order from the United States District Court for the District of Nevada (Case No. 2:24-cv-01602-GMN-EJY) reflects an extension of the deadline for Appellant to file an amended complaint to November 22, 2024. This extension follows the adoption of a Report and Recommendation on November 7, 2024. The District Court's directive underscores the relevance of consolidating this appeal with related proceedings in the Ninth Circuit.

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 MARTIN AKERMAN,
5 Plaintiff,

Case No. 2:24-cv-01602-GMN-EJY

6 v.

ORDER

7 CAESAR GARDUNO, BRETT BASLER, et
8 al.,
9 Defendants.

10 On October 8, 2024, the Court entered an Order and Report and Recommendation, which the
11 District Judge adopted in full on November 7, 2024. ECF Nos. 17, 27. The October 8th Order
12 provided Plaintiff through and including November 8, 2024 to file an amended complaint. No
13 amended complaint was filed on November 8th; nor has any amended complaint been filed as of the
14 date of this Order. However, because the Court's adoption of the Report and Recommendation was
15 issued on November 7, 2024, the undersigned *sua sponte* extends the date by which Plaintiff must
16 file an amended complaint. Plaintiff is advised that if no amended complaint is filed **on or before**
17 **November 22, 2024**, the Court will recommend dismissal of this action in its entirety.

18 IT IS SO ORDERED this 12th day of November, 2024.

19
20 
21 ELAYNA J. YOUCHAK
22 UNITED STATES MAGISTRATE JUDGE
23
24
25
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27
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IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
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v.

POSSE COMITATUS OF THE UNITED STATES,
RESPONDENTS

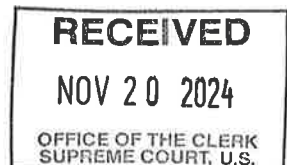
PROOF OF SERVICE

It is hereby certified that on November 18, 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 November 18, 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 Oversight and Government Reform
Representative James Comer
2410 Rayburn House Office Building
Washington, DC 20515

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

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

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'M. Akerman', written over the typed name.

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



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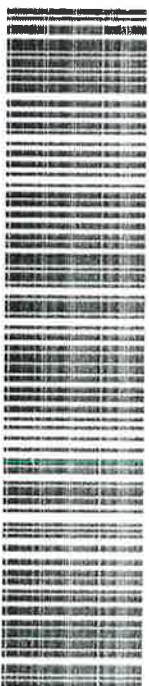
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