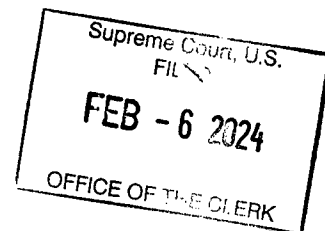


23-6709 ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES



Martin Akerman, Pro Se

— PETITIONER

(Your Name)

vs.

Posse Comitatus of the United States of America

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Martin Akeman, Pro Se, In Forma Pauperis

(Your Name)

2001 North Adams Street, Unit 440

(Address)

Arlington, Virginia, 22201

(City, State, Zip Code)

(202) 656 - 5601

(Phone Number)

## QUESTION(S) PRESENTED

Before Akerman can proceed with a habeas corpus petition under 28 U.S.C. § 2241 to the Supreme Court, he is required to exhaust all other available avenues for relief. This requirement ensures that petitioners seek relief through the most direct and appropriate channels before appealing to higher courts.

The escape hatch provision of § 2255 is particularly relevant to Akerman's case. It stipulates that a petitioner can only resort to a § 2241 petition if they fulfill two critical conditions: (1) the petitioner makes a credible claim of actual innocence, and (2) the petitioner has not had an unobstructed procedural opportunity to present this claim. The case of *Muth v. Fondren*, 676 F.3d 815 (9th Cir. 2012), further clarifies these requirements, emphasizing the necessity for petitioners to demonstrate both actual innocence and a lack of procedural opportunity in their initial or any subsequent appeals.

1. Does the Chief Data Officer of the National Guard, appointed under 44 U.S.C. § 3520, with standing under 28 U.S.C. § 2241(c)(1) and (c)(2), and detained by one or more federalized military officers of state national guard units without lawful authority to detain, have the right to challenge the legality of his detention and seek relief through a 28 U.S.C. § 2255 motion, especially in light of the due process violations outlined in 5 U.S.C. § 7513(b)(1) and the constitutional concerns raised by the Posse Comitatus Act?
2. Alternatively, do the obstructions face in timely and exhaustive habeas proceedings, entitle the petitioner to the certification required to challenge his detention, under color of the United States, having been placed in custody for an act done in pursuance of his congressionally delegated duties under 44 U.S.C. § 3520(e), under the escape hatch provision of § 2255?

## LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

<sup>X</sup>  
[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

The following parties to the proceeding are missing from the caption of the case within the meaning of Rule 14.1(b)(i):

- On January 10, 2024, the Nevada Attorney General did not respond to case 23-623, now set for conference of February 16, 2024, signaling a violation of Posse Comitatus by the United States of America against the petitioner.

The undersigned affirms that no party is a nongovernmental corporation, Rule 29.6.

## RELATED CASES

- The instant petition for writ of certiorari, from a 28 U.S. Code § 2255 motion attacking the alleged conviction, from the United States Court of Appeals for D.C., under Case No. 23-5229, is accompanied by a petition for writ of certiorari from a petition for writ of habeas corpus, filed under Case No. 23-5230, appealed from the U.S. District Court for D.C.
- In the Supreme Court of the United States: three related petitions for writ of certiorari are set for conference on February 16, 2024, Cases 23-623, 23M52, and 23M53.
- In the United States Court of Appeals for the District of Columbia: challenges against the designation of the petitioner as an Enemy Combatant, filed under Case No. 23-1268.

## RELATED CASES CONTINUED

- A petition for writ of habeas corpus was dismissed without consideration by the the United States Court of Appeals for the Fourth Circuit and an application for a stay of the mandate was denied by the Court on January 8, 2024, 23A489.

## COLLATERAL CASES PURSUANT TO RULE 14.1(B)(III)

- An emergency application to stay the mandate pending a petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit, under docket No. 23A489, was denied on January 8, 2024. This matter involves a petition for writ of habeas corpus. A petition for writ of certiorai is due March 29, 2024, under docket 23A536.
- The Supreme Court of Virginia is presently hearing an appeal under Case No. 230670. This leading case addresses a Breach of Legal Insurance, a matter connected to the aforementioned habeas proceedings. It consolidates related cases from the Arlington Circuit Court, the Virginia Court of Appeals, and the State Corporation Commission.
- Lastly, an appeal in the United States Court of Appeals for the Federal Circuit, under Case No. 23-2216, seeks to review the application of 50 U.S. Code § 3341(j)(8) to the Civil Service Reform Act (CSRA).

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1.

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

1.

**JURISDICTION**

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 2, 2024.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).



### 3.

#### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

*"To bereave a man of life or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole nation; but confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore A MORE DANGEROUS ENGINE of arbitrary government."*<sup>1</sup>

**Suspension Clause and Habeas Corpus Rights:** The Constitution's Suspension Clause (U.S. Const. art. I, §9, cl. 2) guarantees that "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." This provision underpins the escape hatch narrative by ensuring that the right to challenge unlawful detention through habeas corpus is preserved, except under extreme circumstances. Akerman's reliance on this clause underscores the fundamental nature of the right to seek relief from unlawful detention, aligning with the principle that confinement without due process is a potent instrument of arbitrary government.

**Due Process Rights and Brady Rule Violations:** The Fifth and Fourteenth Amendments to the U.S. Constitution guarantee the right to due process of law, a cornerstone of which is the right to a fair trial. The Brady Rule, derived from *Brady v. Maryland*, 373 U.S. 83 (1963), embodies this principle by requiring the disclosure of all materially favorable evidence to the accused. Akerman's case, alleging Brady violations, directly implicates these constitutional protections, arguing that the suppression of evidence deprived him of the ability to effectively challenge his detention, thereby violating his due process rights.

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<sup>1</sup> Alexander Hamilton, Federalist 84

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED (CONTINUED)**

**Access to Judicial Review:** The right to access judicial review mechanisms is an extension of the due process rights guaranteed by the Constitution. Akerman's difficulties in updating legal proceedings to reflect changes in custody or administrative decisions highlight challenges in accessing effective judicial review. This issue speaks to the broader constitutional commitment to ensuring that individuals have the means to challenge actions that affect their liberty and rights, as guaranteed by the First Amendment.

**Jurisdiction Over Habeas Corpus Petitions:** The question of the U.S. District Court for the District of Columbia's jurisdiction over habeas corpus petitions arising from military or federal administrative actions involves complex constitutional considerations. This jurisdictional issue touches upon the separation of powers and the federal-state balance, fundamental to ensuring that individuals like Akerman can challenge their detention in an appropriate forum.

**Procedural Rights in Habeas Corpus Proceedings:** The procedural aspects of habeas corpus proceedings, including the right to have the case caption accurately reflect the current custodian, are rooted in the constitutional guarantee of due process. These procedural rights are essential for the integrity of the habeas corpus review process, ensuring that petitions are meaningfully considered and adjudicated.

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED (CONTINUED)**

**Military Involvement in Civilian Affairs and the Posse Comitatus Act:** The issues raised by Akerman regarding the Posse Comitatus Act (18 U.S.C. § 1385) and the constitutional concerns about military involvement in civilian life reflect deep constitutional principles. These include the separation of military and civilian jurisdictions and the checks and balances designed to prevent the misuse of military power in civilian affairs. Akerman's appeal, in highlighting these concerns, invokes the constitutional imperatives of liberty, the rule of law, and the safeguarding of individual rights against the encroachment of excessive military or federal authority.

**STATEMENT OF THE CASE**

Akerman, the Chief Data Officer of the National Guard, appointed under 44 U.S.C. § 3520, finds himself ensnared in a legal battle that transcends conventional boundaries of military and civilian jurisprudence. His detention by federalized military officers, purportedly acting without lawful authority, raises significant constitutional questions, notably concerning due process rights and the separation of military and civilian spheres of influence.

Central to Akerman's challenge is the invocation of the escape hatch provision of § 2255, which allows for a habeas corpus petition under 28 U.S.C. § 2241 under stringent conditions, notably the requirement for a credible claim of actual innocence and the lack of an unobstructed procedural shot to present such a claim. The nuances of this provision are illuminated by the precedent set in *Muth v. Fondren*, which underscores the necessity for petitioners to demonstrate both elements convincingly.

The narrative is further complicated by the Nevada Attorney General's lack of response to case 23-623, set for conference, which Akerman interprets as a violation of the Posse Comitatus Act by the United States—a statute traditionally safeguarding against the use of military force in civilian law enforcement, thus underscoring the gravity of his allegations and the constitutional stakes at play.

Akerman's legal odyssey is punctuated by multiple petitions for writ of certiorari, spanning various jurisdictions and courts, each echoing the underlying themes of due process violations, specifically Brady Rule violations, and the overarching right to a fair trial and hearing. These petitions collectively seek to address the alleged suppression of evidence favorable to his case, a cornerstone of his argument for the unlawful nature of his detention and the violation of his constitutional rights.

**STATEMENT OF THE CASE (CONTINUED)**

The foundational principle that the writ of habeas corpus serves as a bulwark against unlawful detention, enshrined in the Suspension Clause, is central to Akerman's argument. This clause embodies the essence of the constitutional protection against arbitrary government actions, especially confinement without due process.

At the heart of Akerman's case is the assertion that his due process rights, guaranteed under the Fifth and Fourteenth Amendments, were infringed upon by the alleged suppression of exculpatory evidence, as mandated by the Brady Rule.

Akerman's challenges in updating legal proceedings to accurately reflect changes in custodial authority underscore the significance of access to effective judicial review, a right implied by the due process protections and essential for the integrity of judicial processes.

The complexities of jurisdictional authority over habeas corpus petitions, particularly those arising from military or federal administrative actions, touch upon separation of powers and the balance between federal and state authorities. This issue, along with procedural rights in habeas corpus proceedings, highlights the critical nature of due process guarantees in the adjudication of such petitions.

Akerman's invocation of the Posse Comitatus Act frames his appeal within the broader constitutional concerns about the appropriate roles and boundaries of military and civilian authorities, emphasizing the principles of federalism, checks and balances, and the protection of civil liberties against undue military or federal power.

**REASONS FOR GRANTING THE PETITION**

In alignment with Rule 10, this petition encapsulates issues of profound national importance, meriting the Supreme Court's discretionary jurisdiction. The questions presented herein are not only pivotal to the petitioner but also hold broad implications for the safeguarding of constitutional rights within the complex interplay of military and civilian jurisdictions across the nation. The lower court's decision, by dismissing the petitioner's habeas corpus claim without adequately addressing the constitutional and procedural violations alleged, may stand in stark contrast to other appellate courts' interpretations of similar legal principles, particularly regarding the Brady Rule and the application of the Posse Comitatus Act. This discrepancy underscores the necessity for the Supreme Court's intervention to resolve conflicts and ensure a uniform application of the law.

Moreover, the issues at hand transcend the petitioner's individual circumstances, touching upon the fundamental rights of all Americans and the integrity of our system of justice. The potential misapplication of civilian legal standards by military officials, coupled with jurisdictional ambiguities over habeas corpus petitions, presents a unique opportunity for the Court to clarify the law in a manner that aligns with constitutional protections and the principles of due process and fair trial. The decision of the lower court, if left unaddressed, risks setting a precedent that could undermine the procedural rights and liberties of individuals, especially those navigating the complexities of military and federal administrative proceedings.

Thus, granting this petition will not only rectify the errors present in the petitioner's case but will also serve a crucial role in defining the contours of constitutional rights and procedural justice for similarly situated individuals nationwide. The Supreme Court's review is imperative to reaffirm the balance between individual liberties and governmental authority, a principle that lies at the heart of our democratic society and legal system.

**REASONS FOR GRANTING THE PETITION (CONTINUED)**

**Jurisdictional Ambiguities and Federal-Military Balance:** The petition underscores a critical area of law that has yet to be conclusively addressed: the jurisdiction of the U.S. District Court for the District of Columbia over habeas corpus petitions stemming from military or federal administrative actions. This presents a novel question of law that impacts the fundamental balance between federal authority and military jurisdiction, necessitating Supreme Court guidance to ensure consistency and fairness in legal proceedings.

**Procedural Integrity of Habeas Corpus Proceedings:** The procedural issues highlighted, including the failure to update case captions to accurately reflect custodial changes, speak to the heart of the justice system's functioning. These issues raise significant concerns about the adherence to procedural due process and the integrity of judicial review, which are indispensable for the effective administration of justice.

**Brady Rule Violations and Due Process:** The lower courts' handling of the petitioner's claims, especially the alleged failure to disclose evidence favorable to the defense, directly challenges the principles established in *Brady v. Maryland*. This situation highlights a potential misinterpretation of the law and underscores a gap in the procedural protections afforded to individuals, particularly within the intersection of federal and military jurisdictions.

**Posse Comitatus Act and Civil Liberties:** The unresolved legal questions surrounding the Posse Comitatus Act's application underscore a matter of profound constitutional and national significance. The act's interpretation affects the delineation of military and civilian legal authority, with direct implications for the preservation of civil liberties and the prevention of military overreach.

### REASONS FOR GRANTING THE PETITION (CONTINUED)

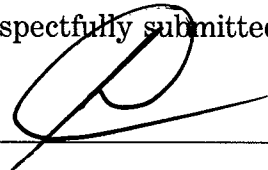
**Nationwide Implications for Constitutional Rights:** The conflict between the lower court's decision and fundamental constitutional principles—such as due process, fair trial, and effective judicial review—presents legal questions with wide-reaching implications. The petitioner's challenges in contesting his detention and the procedural barriers encountered highlight the necessity for a Supreme Court intervention to ensure the uniform application of essential legal standards.

### CONCLUSION

The Court may wish to consider granting this petition under the escape hatch provision of 28 USC §2255, under 28 USC §2241.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: FEBRUARY 5, 2024

County/City of Arlington  
 Commonwealth/State of Virginia  
 The foregoing instrument was acknowledged  
 before me this 5 day of Feb  
2024 by Martin Algerman  
 (name of person seeking acknowledgment)  
 Notary Public [Signature]  
 My Commission Expires: 30 April  
2026

