

No. 23-6710

In The
Supreme Court of the United States

MARTIN AKERMAN, PRO SE,

Applicant,

v.

KIRAN AHUJA, DIRECTOR, U.S. OPM, ET AL

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE
U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT
CASE 23-5230

RULE 44.2 PETITION FOR REHEARING

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

MAY 1, 2024

Pursuant to Supreme Court Rule 44.2, Petitioner Martin Akerman, pro se and in forma pauperis, respectfully petitions this Court for a rehearing of its discretionary denial rendered on April 15, 2024. This petition is founded on significant legal questions overlooked in the original judgment, specifically related to the non-appearance of government defendants in this and related habeas corpus cases, reflecting a broader pattern of neglect that impacts the constitutional rights of the petitioner under Article 1, Section 9, Clause 2 of the U.S. Constitution, and as grounds therefor, respectfully submits the following:

I. TIMELINESS OF THE PETITION

This petition is filed within the requisite 25-day period following the entry of judgment on April 15, 2024, adhering strictly to the timelines stipulated by Supreme Court Rules 44.2 and 44.6. Following guidance received via a letter from the Clerk of the Court dated April 24, 2024, this petition is timely filed under the specifications for non-merits judgment rehearings.

II. GROUNDS FOR REHEARING

This petition respectfully submits that the Court's judgment warrants rehearing due to intervening circumstances of a substantial or controlling effect that were not considered at the time of the original decision, as well as significant constitutional concerns that have been overlooked. These grounds are detailed as follows:

Intervening Circumstances:

1. As observed in related cases, notably case Nos. 23-623, 23-1106, and 23-7127, there is a conspicuous absence of government defendants' responses, as outlined in Rule 44.3.
2. This pattern of non-engagement raises serious constitutional issues, especially in habeas corpus proceedings—a fundamental legal remedy whose principles date back to the Magna Carta. This pattern reflects a broader systemic issue within judicial proceedings, particularly in cases of habeas corpus, which are intended to serve as vital safeguards against unlawful detention.

3. The failure to engage with the merits in these cases, including the instant case denied on April 15, 2024, is exacerbated by the discretionary nature of the judicial tools available, such as certiorari, where the Court may decline to consider the merits altogether. This procedural barrier, coupled with a lack of response from government entities, poses a significant challenge to the effective enforcement of constitutional rights. This neglect is symptomatic of what Chief Justice Marshall once criticized as a "persistent culture of treason to the constitution" (*Cohens v. Virginia*, 1821). This phrase, echoed in recent jurisprudence (see *Texas v. California*, 141 S. Ct. 1469, 1470 [2021]), highlights the ongoing tension between judicial action and constitutional fidelity.

Constitutional Concerns:

- A. The absence of a response or consideration of the merits in a habeas corpus case directly undermines the protections guaranteed by the Suspension Clause of the Constitution (Article 1, Section 9, Clause 2).

B. This judicial oversight is further magnified by the discretionary nature of the tools employed by this Court, which can opt not to engage with the substantive merits of a case involving fundamental constitutional rights. The Suspension Clause, designed as a critical safeguard, ensures that the right to challenge unlawful detentions is not unduly suspended. Yet, in this case and others, the absence of government engagement and the Court's discretion not to delve into the merits have resulted in a failure to adequately address or uphold these vital constitutional protections.

III. CERTIFICATION OF GOOD FAITH

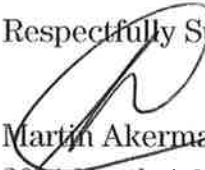
Pursuant to Supreme Court Rule 44.2, I, Martin Akerman, hereby certify that this petition for rehearing is presented in good faith and not for purposes of delay. This certification is grounded in the genuine need to address the substantial constitutional questions and procedural irregularities that have gone unaddressed in the initial proceedings.

Additionally, a supplemental brief, submitted on April 4, 2024, but not yet recorded in the official docket, is critical for the comprehensive presentation of my case. The absence of this brief on the official docket severely hampers my ability to reference these arguments effectively in my petition for rehearing. For the Court's convenience, I have attached a copy of the Rule 15.8 supplemental brief to this application, ensuring that the Court has direct access to the arguments and evidence it contains.

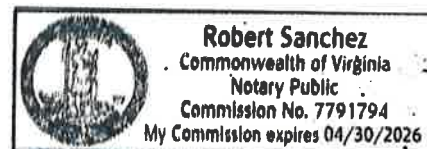
IV. CONCLUSION

Given the serious constitutional and procedural issues raised, which directly affect the integrity of judicial review in habeas corpus proceedings, this petition seeks a rehearing to ensure that these critical matters are not overlooked. Moreover, in recognition of the interconnected legal and procedural concerns across the related cases Nos. 23-623, 23-1106, and 23-7127, it is respectfully requested that this Court consider a joint rehearing of these cases together with the instant case. Doing so would provide a comprehensive review that ensures uniformity and fairness in addressing these significant constitutional issues. For the reasons stated, and in the interest of justice and adherence to constitutional principles, this Court is respectfully requested to grant a rehearing of its April 15, 2024, judgment alongside the aforementioned related cases.

Respectfully Submitted Under Oath,


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

County/City of Arlington
 Commonwealth/State of Virginia
 The foregoing instrument was acknowledged
 before me this 1 day of May
2024 by Martin Akerman
 (name of person seeking acknowledgement)
Robert Sanchez
 Notary Public
 My Commission Expires: 30 April 2026



No. 23-6710

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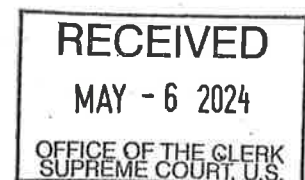
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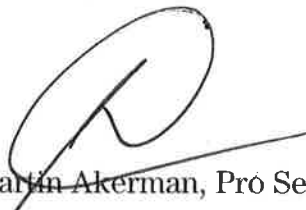
PROOF OF SERVICE

I, Martin Akerman, hereby certify that on May 1, 2024,
one original and ten copies of the RULE 44.2
PETITION FOR REHEARING were served on the
Clerk of the Supreme Court in person.



Additionally, copies of the Supplemental Brief were served on the Solicitor General of the United States, via mail, at the Office of the Solicitor General, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001, in compliance with Supreme Court Rule 29.4.

This service was completed in accordance with the Supreme Court's rules and procedures for service of documents.



Martin Akerman, Pro Se
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RULE 33.2 CERTIFICATION

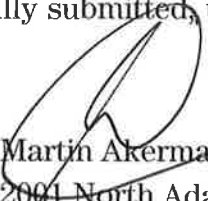
This petition for rehearing complies with the format requirements of Supreme Court Rule 33.2 for documents presented on 8 1/2- by 11-inch paper. The document is stapled or bound at the upper left-hand corner.

This petition for rehearing complies with the type-volume limitation of Supreme Court Rule 33.2(b) as it contains 712 words, which is within the 3000 word limit for a petition for rehearing.

The text of this petition has been prepared in a proportionally spaced typeface using Google Docs in Century, 12 point font size.

The original of this document is signed by the party proceeding pro se, under oath. Copies are produced on the same type of paper and are legible.

Dated and respectfully submitted, this 1st day of May, 2024.



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No. 23-6710

In The
Supreme Court of the United States

MARTIN AKERMAN, PRO SE,

Applicant,

v.

KIRAN AHUJA, DIRECTOR, U.S. OPM, ET AL

Respondent.

Attachment: Missing Rule 15.8 Supplemental Brief

This brief, submitted on April 4, 2024, but not yet recorded in the official docket, is critical for the comprehensive presentation of my case. The absence of this brief on the official docket severely hampers my ability to reference these arguments effectively in my petition for rehearing.

Martin Akerman v. Office of Personnel Management
Docket # DC-844E-24-0359-I-1
Courtesy Notice of Supplemental Brief Submission to the
Online Interview

1. Enter a brief title for your pleading.

Courtesy Notice of Supplemental Brief Submission to the Supreme Court, Related Case

2. Please enter text of your pleading.

Dear Administrative Judge Harrell,

I hope this notice finds you well. I am writing to courteously inform you of a recent development related to my ongoing case before the Merit Systems Protection Board (MSPB), referenced above.

On April 4, 2024, I submitted a Supplemental Brief to the United States Supreme Court under case number 23-6710. This submission is directly related to the issues at hand in my appeal currently pending before the MSPB, specifically concerning the non-compliance by the Office of Personnel Management (OPM) with the Board's orders.

The Supplemental Brief to the Supreme Court underscores significant concerns regarding the OPM's adherence to procedural norms and due process, which are central to the claims and arguments in my MSPB appeal. The brief elaborates on the implications of OPM's non-compliance and the necessity for judicial scrutiny and due process to uphold the fundamental rights at stake.

I believe it is pertinent for the MSPB to be aware of these interrelated proceedings as they may bear relevance to the considerations and determinations in my ongoing appeal. Please consider this letter as a courtesy notice, intended to ensure transparency and keep the Board informed of all related legal developments.

I have attached a copy of the Supplemental Brief submitted to the Supreme Court for your reference.

Thank you for your attention to this matter. Should you require any additional information or documentation, please do not hesitate to contact me.

Respectfully submitted,

3. Does your pleading assert facts that you know from your personal knowledge?

Yes

4. Do you declare, under penalty of perjury, that the facts stated in this pleading are true and correct?

Yes

No. 23-6710

In The
Supreme Court of the United States

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ON PETITION FOR WRIT OF CERTIORARI
TO THE
U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT
CASE 23-5230

SUPPLEMENTAL BRIEF FOR PETITIONER
UNDER SUPREME COURT RULE 15.8

Martin Akerman, Pro Se
In Forma Pauperis
2001 North Adams Street, Unit 440
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(202) 656 - 5601

APRIL 4, 2024

Pursuant to Supreme Court Rule 15.8, Petitioner Martin Akerman respectfully submits this supplemental brief to highlight significant developments and interrelated issues that have arisen since the last filing and are crucial for the Court's comprehensive evaluation of this petition for a writ of certiorari.

STATEMENT OF NEW MATTER

Waiver of Response by the U.S. Government and Its Implications on the Principles of Habeas Corpus

The respondent's waiver of the right to respond, as recorded in the docket entries, is concerning, particularly in the context of a habeas corpus petition. Habeas corpus is a fundamental right central to the American legal system's commitment to ensuring that no individual is deprived of liberty without due process of law. The respondent's non-participation does not diminish the Court's obligation to scrutinize the petitioner's claims, especially in a context where liberty interests are at stake.

This Court has consistently emphasized the importance of habeas corpus, recognizing it as a critical instrument for safeguarding individual freedom against arbitrary and lawless state action (see *Boumediene v. Bush*, 553 U.S. 723, 2008). The government's waiver should not be construed as an absence of dispute over the petitioner's liberty, but rather as an additional factor underscoring the need for judicial vigilance.

Non-Compliance by OPM
in the MSPB Disability Retirement Case

The failure of the Office of Personnel Management to respond to the MSPB's order in case DC-844E-24-0359-I-1 raises substantial concerns about the agency's respect for procedural norms and due process. This Court has long held that procedural due process is a fundamental right embedded in the Constitution, ensuring that parties are given an opportunity to be heard at a meaningful time and in a meaningful manner (see *Mathews v. Eldridge*, 424 U.S. 319, 1976).

The OPM's inaction not only reflects a disregard for the MSPB's authority but also impacts the petitioner's ability to achieve a fair adjudication of his claims. This behavior is indicative of a broader pattern of disregard for procedural rights, which this Court should consider when assessing the petitioner's overarching claims of unfair treatment.

An ORDER from the MSPB Administrative Judge is attached to this supplemental brief to evidence the non-compliance by OPM with the MSPB's directives

Interrelated Nature of Cases 23-7127 and 23-7072
with the Instant Case

The substantive connections between this case and Dockets 23-7127 and 23-7072 suggest that a consolidated or coordinated approach would enhance the Court's understanding of the issues presented. The related cases involve overlapping factual scenarios and legal questions, particularly concerning the petitioner's rights and the government's obligations under federal law.

Consolidating these cases or considering them in tandem would allow the Court to address common legal issues more efficiently and cohesively, potentially yielding a more coherent and principled body of jurisprudence. This approach would align with the Court's practice of ensuring that related cases are considered in a manner that promotes judicial economy and consistency in legal standards (see related procedural rules and case law).

Identification of the Proper Respondent

Under Habeas Rules


The petitioner submits that Kiran Ahuja, in her official capacity as Director of the U.S. Office of Personnel Management (OPM), is the proper respondent in this habeas corpus action. In compliance with Supreme Court Rule 29.4, the Solicitor General of the United States was also served, as this rule mandates service upon the Solicitor General when the United States, its departments, agencies, officers, or employees are parties to the case.

Under the established principles of habeas corpus jurisprudence, the respondent in a habeas action should be the individual who has custody over the petitioner (*Rumsfeld v. Padilla*, 542 U.S. 426, 2004).

Conclusion

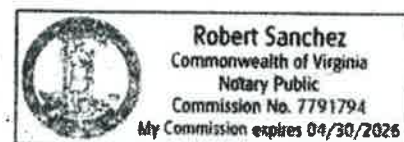
In light of the foregoing, the petitioner urges the Court to take these developments into account when deliberating on the current petition for a writ of certiorari. The waiver of response by the U.S. Government, the non-compliance by the OPM in the MSPB case, and the interconnections with related Supreme Court dockets are critical factors that underscore the importance of the issues at stake and the need for careful judicial review.

Respectfully Submitted Under Oath,


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

County/City of Arlington
Commonwealth State of Virginia
The foregoing instrument was acknowledged
before me this 4 day of Apr
2024, by Martin Akerman
(name of person seeking acknowledgment)

Notary Public
My Commission Expires: 30 Apr 2026



RULE 33.2 CERTIFICATION


This supplemental brief complies with the format requirements of Supreme Court Rule 33.2 for documents presented on 8 1/2- by 11-inch paper. The document is stapled or bound at the upper left-hand corner.

This supplemental brief complies with the type-volume limitation of Supreme Court Rule 33.2(b) as it contains 675 words, which is within the 3000 word limit for a supplemental brief.

The text of this supplemental brief has been prepared in a proportionally spaced typeface using Google Docs in Century, 12 point font size.

The original of this document is signed by the party proceeding pro se, under oath. Copies are produced on the same type of paper and are legible.

Dated and respectfully submitted, this 4th day of April, 2024.



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No. 23-6710

In The
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MARTIN AKERMAN, PRO SE,

Applicant,

v.

KIRAN AHUJA, DIRECTOR, U.S. OPM, ET AL

Respondent.

Attachment: Merit Systems Protection Board (MSPB)
March 25, 2024, Order on Non-Compliance
by the Office of Personnel Management (OPM)

This document is the second order issued by the Merit Systems Protection Board (MSPB) directed to the Office of Personnel Management (OPM) regarding its failure to respond to the appellant, Martin Akerman's, appeal as required by the Board's acknowledgment order. This order highlights the agency's lack of compliance and discusses the potential implications and sanctions under 5 C.F.R. § 1201.43 due to this failure.

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE**

MARTIN AKERMAN,
Appellant,

DOCKET NUMBER
DC-844E-24-0359-I-1

v.

OFFICE OF PERSONNEL
MANAGEMENT,
Agency.

DATE: March 25, 2024

SECOND ORDER TO RESPOND

As of this date, the Agency has not submitted its response to the appellant's Appeal as required by the Board's Acknowledgment Order. Initial Appeal File (IAF), Tab 2 at 7. Therefore, I ORDER the Agency to file its response **no later than seven (7) calendar days from the date of this order**. As discussed below, failure to comply with the terms of this order may result in the imposition of sanctions at 5 C.F.R. § 1201.43.

The appellant has filed recent motions regarding the agency's failure to timely submit its response and file. See IAF, Tabs 13 and 15. Having reviewed these submissions, I note the appellant may be requesting sanctions against the agency based upon its untimeliness. See *id.* The imposition of sanctions upon a party for failure to follow orders is a matter within an administrative judge's sound discretion and can be exercised when necessary to serve the ends of justice. See 5 C.F.R. § 1201.43(a); *Vires v. Department of the Navy*, 38 M.S.P.R. 569, 572 (1988). Sanctions should be imposed only when a party has failed to exercise the basic due diligence expected of it in complying with any order, or has exhibited negligence or bad faith in its efforts to comply. See *Rooney v.*

Department of Agriculture, 26 M.S.P.R. 142 (1985); *Logan v. Department of the Navy*, 29 M.S.P.R. 573, *aff'd* 809 F.2d 789 (Fed. Cir. 1986). Here, I find the agency's failure to comply with my Acknowledgment Order regarding the submission of the agency response and file – a singular instance of noncompliance with a Board order – does not warrant the imposition of sanctions, and the appellant's motions are DENIED. Nevertheless, the agency is advised that I may consider exercising my authority to impose sanctions in the event that it fails to follow future orders, including this one. See 5 C.F.R. § 1201.43.

Lindsay Young Harrell

FOR THE BOARD:

Lindsay Young Harrell
Administrative Judge

**Additional material
from this filing is
available in the
Clerk's Office.**