

23-6814
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

FEB 19 2024

OFFICE OF THE CLERK

Martin Akerman, Pro Se

— PETITIONER

(Your Name)

vs.

Court of Appeals of Virginia, et al

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF VIRGINIA

(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)

RECEIVED

FEB 22 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- Did the Arlington Circuit Court's handling of spoliation allegations and procedural violations, including denial of access to court records, violate the plaintiff's right to due process under the Fifth and Fourteenth Amendments?
- Did the Court of Appeals of Virginia err in its treatment of the collateral order appeal, specifically regarding the plaintiff's right to immediate review of orders affecting the fairness and integrity of the judicial process?
- Did the Supreme Court of Virginia err in dismissing the appeal as premature, thereby denying the plaintiff an opportunity for redress concerning alleged judicial mismanagement and procedural irregularities?

LIST OF PARTIES

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

[X] 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 case involves five reciprocal insurance companies (private corporations) operating in the State of Virginia, including Scottsdale Insurance, Nationwide Insurance, FEDS Protection, Starwind Insurance, and the Public Employees Purchasing Group, that did not make a timely appearance in the trial court.
- The case also involves the Arlington Circuit Court and the Court of Appeals of Virginia

RELATED CASES

- In the Supreme Court of Virginia, a related proceeding regarding a statutory review of the State Corporation Commission's (SCC) alleged introduction of fraudulent evidence, No. 230684 (rehearing denied).

The Instant Case Involves Breach of Legal Insurance Coverage for the Following Related Cases:

1. In the Supreme Court of the United States: six multi-jurisdictional and related petitions for writ of certiorari addressing exhaustion for a justiciable 28 U.S. Code § 2241 petition for writ of habeas corpus, in the U.S. Supreme Court, under Case Nos. 23-623, 23M52, 23M53, 23A536, 23-6709, and 23-6710.
2. In the United States Court of Appeals for the District of Columbia, Case No. 0:23-cv-us-01268: a related challenge to an alleged designation of the petitioner as an enemy combatant, allegedly suspending habeas corpus under 28 U.S. Code § 2241(e), is awaiting status conference.

INTERRELATED COLATERAL PROCEEDINGS

The following proceedings, requiring exhaustion in different federal appellate jurisdictions, are meeting for the first time in the U.S. Supreme Court. As it relates to case 23A536 below, the U.S. District Court for the Eastern District of Virginia found itself unable to fully review the case, citing separation of powers issues related to an alleged security clearance revocation, invoking national security immunities, and impacting the consideration of claims under Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act, and the Whistleblower Protection Act, among other. Interpreted under obsolete law, and in spite of defendants not making an appearance, the case was dismissed, barred by a missapplication of facts to the law, citing a required assessment of the Department of Defense's security clearance decision, deeming the case unreviewable.

3. In the Supreme Court of the United States: A related application to stay the mandate, Case No. 23A701, is pending renewed consideration before the Honorable Justice Gorsuch, raising pivotal legal questions in the wake of Congress enacting Public Law 117-103 on March 15, 2022, a legislative response aimed at curbing the misuse of security clearance decisions as tools for tyranny and retaliation. Specifically, in situations where Congress has provided explicit alternative directives, as was anticipated in *Department of the Navy v. Egan*, whether it is within the bounds of Chevron deference for the Merit Systems Protection Board (MSPB) to disregard its statutory obligations and duties, and destroy evidence without due appellate consideration or adverse inference.

INTERRELATED COLATERAL PROCEEDINGS (CONTINUED)

4. In the Supreme Court of the United States, Case No. 23A536 (Related to stay request 23A489) is awaiting petition for writ of certiorari. This case involves both a 28 U.S. Code § 2241 petition for writ of habeas corpus in want of jurisdiction and the interpretation and application of principles established in the landmark Egan decision, as modified by Public Law 117-103, as discussed in case 23A701. Claims of false imprisonment, indefinite suspension, and constructive discharge were dismissed, as evaluating their discriminatory basis were thought to necessitate a review of national security decision's merits.
5. In the United States Court of Appeals for the District of Columbia, Case No. 0:23-cv-us-05309: a related Freedom of Information Act case is awaiting status conference and response to briefs filed.

TWO RELATED URGENT ADMINISTRATIVE CASES

6. In the Merit Systems Protection Board, Case No. DC-0752-23-0457-I-1 (Related to Petitions 23-6710 and 23M52): This administrative case is pertinent given the background of Akerman's efforts to access benefits through the Office of Workers' Compensation Programs (OWCP) and the Office of Personnel Management (OPM) disability retirement processes, which continue to be significantly hindered by substantial interference from the National Guard Bureau (NGB). This situation is further exacerbated by the Department of the Army's act of obstruction on June 13, 2022, when it sent false information to the Virginia unemployment commission, thereby interfering with Akerman's state right to unemployment benefits following his constructive dismissal. These actions underscore a pattern of agency obstruction and cruel and unusual punishment against Akerman.
7. In the Virginia Workers Compensation Commission, Case No. JCN: VA02000039708, Martin Akerman v. National Guard Bureau: This case was initiated amidst Akerman's ongoing struggle to navigate the complexities of the federal compensation system, particularly highlighted by his attempts to secure benefits through the Office of Workers' Compensation Programs (OWCP) and the Office of Personnel Management (OPM) disability retirement processes. The filing directly addresses the interference and obstruction tactics employed by the National Guard Bureau (NGB) and the Department of the Army, particularly their efforts to leverage federal supremacy arguments to invalidate Akerman's state-level claim.

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2...
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	6...
CONCLUSION.....	8...

INDEX TO APPENDICES

APPENDIX A	Dismissal ORDER from the Supreme Court of Virginia
APPENDIX B	ORDER Denying Rehearing from the Supreme Court of Virginia
APPENDIX C	ORDER Denying Stay or Deferral of Mandate from the Supreme Court of Virginia
APPENDIX D	July 21, 2023, ORDER of the Arlington Circuit Court
APPENDIX E	July 20, 2023 Appeal under the Collateral Order Doctrine
APPENDIX F	July 6, 2023 ORDER and July 7, 2023 Plaintiff Motions

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Cohen v. Beneficial Industrial Loan Corp. 337 U.S. 541 (1949).....	3, 5, 6
Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc. 467 U.S. 837 (1984).....	3, 4

STATUTES AND RULES

28 U.S.C. § 1257(a).....	2
--------------------------	---

OTHER

Fifth Amendment to the United States Constitution.....	3, 5, 7, 8
Fourteenth Amendment to the United States Constitution.....	3, 4, 5, 8
The Federalist No. 84 (Alexander Hamilton).....	3

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 _____ 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 _____ 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 ______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 ARLINGTON CIRCUIT COURT court appears at Appendix D to the petition and is

☐ reported at _____; or,

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

☒ is unpublished. and not available to be appealed.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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 November 21, 2023.
A copy of that decision appears at Appendix ____ A ____.

☒ A timely petition for rehearing was thereafter denied on the following date:
January 29, 2024, and a copy of the order denying rehearing
appears at Appendix ____ B ____.

☐ 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).

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."*¹

The constitutional issues at play involve the Fifth and Fourteenth Amendments of the United States Constitution, particularly the due process clause, which guarantees individuals the right to fair procedures. The statutory issues involve interpretation and application of Virginia's procedural laws, rules governing appeals, and contract law principles, especially as they relate to insurance policies and the duty of good faith and fair dealing.

The Cohen collateral order doctrine emerges as a vital judicial mechanism, allowing for the immediate appeal of orders that, while not terminating litigation, decisively affect separable rights. This doctrine is indispensable for preventing irreparable harm and safeguarding the judicial process's integrity against arbitrary governmental actions. Yet, the refusal to apply this doctrine in the context of Virginia's procedural landscape has deprived the petitioner of an essential recourse, infringing upon his due process rights.

This case exemplifies the delicate balance that must be maintained between respecting administrative authority and upholding individual rights to due process and fair treatment under the law. The issues presented call for a reevaluation of the boundaries of Chevron deference and a reaffirmation of the judiciary's role in protecting constitutional rights against administrative overreach. It underscores the necessity for a jurisprudence that is alert to the dynamics of power and the preservation of liberty, ensuring that the mechanisms of government do not become "more dangerous engines of arbitrary government," as forewarned by the framers of our Constitution.

¹ Alexander Hamilton, Federalist 84

STATEMENT OF THE CASE

In June 2021, Martin Akerman procured a Federal Employee Professional Liability insurance policy, ostensibly designed to provide legal defense and coverage against professional liabilities, including administrative and criminal proceedings. This insurance policy was intended to mitigate the financial and professional risks associated with legal actions arising from Akerman's employment.

However, in the face of legal challenges, including a proposed indefinite suspension and disciplinary actions, Akerman's reliance on his insurance for coverage and legal representation was met with significant resistance from the insurers. The insurers' denial of Akerman's claims, without providing a timely and adequate explanation or denial letter, constitutes the core of the dispute. This denial was perceived by Akerman as not only a breach of the contractual obligations stipulated in the insurance policy but also indicative of bad faith on the part of the insurers.

In response to these challenges, Akerman initiated a series of legal actions:

1. **State Corporation Commission (SCC) Complaint:** Akerman filed a complaint with the SCC on April 26, 2023, seeking a review of the insurers' refusal to provide coverage. The complaint aimed to address the insurers' alleged introduction of fraudulent evidence and their premature closure of his complaint without issuing a cognizable, appealable order. However, on May 15, 2023, the SCC closed the complaint without such an order, prompting Akerman to seek further legal recourse.
2. **Appeal to the Supreme Court of Virginia:** Following the SCC's decision, Akerman appealed to the Supreme Court of Virginia (case number 230684) to challenge the SCC's actions. His appeal raised critical questions regarding the due process rights under the Fourteenth Amendment to the United States Constitution and the statutory responsibilities of state commissions and courts to adhere to constitutional standards.

STATEMENT OF THE CASE (CONTINUED)

3. **Filing in Arlington Circuit Court:** To preserve the substance of his claims of breach of contract and bad faith, Akerman filed a case in the Arlington Circuit Court (case number 23CL2240). This action was taken to ensure a comprehensive judicial review of the disputes between him and the insurers, beyond the procedural and jurisdictional limitations encountered in the SCC proceedings.
4. **Collateral Order Appeal and Supreme Court Appeals:** Following a default in the SCC and the initiation of a complaint in the Arlington Circuit Court, various procedural and spoliation issues arose. The plaintiff alleges procedural violations, including discrepancies in service processes and denial of access to court records, which he argues impeded his right to a fair trial and due process. Mr. Akerman's appeals to the Court of Appeals of Virginia and the Supreme Court of Virginia focused on these procedural and evidentiary concerns. He asserts that the courts' handling of his appeals further violated his rights by denying timely and effective review of critical interlocutory orders, Appendix E.

REASONS FOR GRANTING THE PETITION

This case presents critical questions regarding the due process rights under the Fifth and Fourteenth Amendments, specifically as they relate to procedural irregularities, spoliation of evidence, and the appellate jurisdiction over collateral orders. The petitioner contends that the refusal to apply the Cohen collateral order doctrine, unchecked administrative and judicial deference, and constitutional gaps in procedural and substantive law have led to a denial of justice and fairness.

A. Resolution of Important Constitutional Questions

The refusal in Virginia to apply the Cohen collateral order doctrine has deprived the petitioner of a mechanism to address immediate and irreparable procedural injustices, thereby infringing upon his due process rights. The Supreme Court's clarification on this doctrine's applicability is essential to protect litigants' rights to a fair trial and access to justice.

B. Clarification of Legal Standards for Spoliation and Procedural Violations

The petitioner's case has highlighted the need for clear legal standards regarding spoliation of evidence and procedural obligations of courts. This Court's guidance is necessary to ensure fair and consistent application across jurisdictions, safeguarding the integrity of judicial processes.

C. Ensuring Uniformity in the Law

Divergent interpretations and applications of procedural and evidentiary laws by the lower courts have underscored the need for this Court's intervention to ensure uniformity and predictability in the law, especially concerning procedural rights and the integrity of judicial proceedings.

REASONS FOR GRANTING THE PETITION (CONTINUED)

D. Correcting Judicial Errors

The appellate courts' handling of this case, including the premature dismissal of appeals, represents serious judicial errors that have broader implications for the principles governing appellate review. This Court's review is warranted to correct these errors and restore faith in the appellate process.

E. Addressing Issues of Broad Legal and Public Importance

The procedural and administrative issues raised in this case touch upon fundamental rights and have significant implications for the legal system's ability to deliver justice. The Supreme Court's engagement with these issues is crucial for the protection of individual rights and the maintenance of public confidence in the judiciary.

F. Precedential Value

The petitioner's case challenges existing precedents and raises questions of law not yet addressed by this Court. Granting certiorari would allow the Court to set or refine legal doctrines, particularly in the evolving landscape of administrative law and procedural justice.

G. Promoting Judicial Efficiency and Integrity

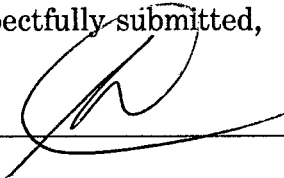
By addressing the issues raised in this petition, the Supreme Court can promote judicial efficiency and integrity. This case offers an opportunity to reinforce the importance of adherence to procedural standards and evidentiary rules, ensuring fairness and accountability in judicial proceedings.

For the reasons stated, the petitioner respectfully requests that this Court grant a writ of certiorari to review the decisions below. The issues presented are of critical importance to the legal system and the protection of constitutional rights. This Court's intervention is necessary to ensure justice and fairness in this case and to provide guidance that will benefit the judiciary and litigants across the nation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: February 14, 2024

County/City of Arlington
Commonwealth/State of Virginia
The foregoing instrument was acknowledged
before me this 14 day of Feb.
2024 by Robert Sanchez
(name of person seeking acknowledgment)
Notary Public Robert Sanchez
My Commission Expires: 30 April 2026

