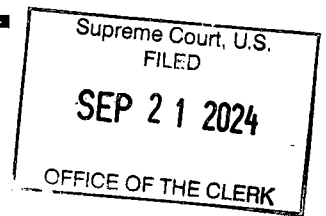


No. 24-339 (23A1097)

In The
Supreme Court of the United States



MARTIN AKERMAN,
CHIEF DATA OFFICER
OF THE NATIONAL GUARD BUREAU, PRO SE,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD, ET AL

Respondents.

PETITION FOR WRIT OF CERTIORARI

IN RE: U.S. Court of Appeals for D.C.
Freedom of Information Act Case No. 23-5309

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QUESTION PRESENTED

This case offers the Court a unique opportunity to examine the comprehensive mistreatment of a Department of Defense whistleblower, Martin Akerman, through each phase of the whistleblower protection and retaliation process. The Applicant's experience spans the entire lifecycle of a whistleblower report—from filing with the Office of Special Counsel (OSC), engaging in Alternative Dispute Resolution (ADR), and enduring retaliation under 50 U.S.C. § 3341(j), to the subsequent involvement of Congress, Office of Inspector General (OIG) investigations, and case handling by the Equal Employment Opportunity Commission (EEOC) and the Merit Systems Protection Board (MSPB).

- Does the whistleblower protection provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA), as codified in 38 U.S.C. § 4311(b), require the waiver of court fees for federal employees who engage in protected whistleblowing activities, aimed at protecting rights under USERRA's provisions?

PARTIES TO THE PROCEEDING

Applicant is Martin Akerman, the tenured Chief Data Officer of the National Guard Bureau of the United States of America, appearing pro se;

The Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Government Reform of the House of Representatives, are interested parties, per 44 U.S.C. § 3320(e), and will be included and served three copies of this petition, under the constitutionally separated powers of the legislative branch;

The respondents, five U.S. Government agencies to be served through the Solicitor General of the U.S., are the Merit Systems Protection Board, Office of Special Counsel, Equal Employment Opportunity Commission, Department of Defense Office of Inspector General, and the Department of Labor;

The U.S. Court of Appeals for the District of Columbia Circuit is a party, and will be served with three copies of this petition, as instructed, Appendix E.

PAST RELATED SUPREME COURT CASES

Granted USERRA..... case 23M44
Denied USERRA..... cases 23M52, 23M53
Habeas Corpus..... cases 23-1106, 23-7127, 23-6710
Habeas and Replevin..... cases 23-623, 23-7072
Past Requests for Recusal.....cases 23-6814, 23-6815

PENDING SUPREME COURT CASES

Pending Habeas Corpus.....case 24-83
Pending Replevin..... cases 24A147, 24A155, 24A278
Right to Appeal a Fee Without Paying a Fee.....24-5218

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JURISDICTIONAL STATEMENT

The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1), which grants the Supreme Court of the United States authority to review cases from the United States Courts of Appeals by writ of certiorari. This petition arises from the U.S. Court of Appeals for the District of Columbia Circuit's final decision in Case No. 23-5309, involving the interpretation and application of whistleblower protection laws under USERRA and related statutes, as well as broader constitutional and statutory questions of access to judicial relief for federal employees engaged in protected whistleblowing activities.

The case directly involves substantial federal questions, including whether USERRA's protections extend to the waiver of court fees for federal employees, such as the applicant, who report violations within the Department of Defense, vide Supreme Court granting USERRA fee waiver, allowing the petitioner to proceed as a veteran, from the Supreme Court of Nevada, 23M44.

OPINIONS BELOW

- The opinion of the U.S. Court of Appeals for the District of Columbia Circuit in case No. 23-5309 is unpublished and is included in Appendices A & B.
- The district court denied a fee waiver under USERRA, stating that the IFP statute does not explicitly provide for such a waiver for whistleblowers, despite the applicant's need. This decision is found in Appendix C.
- An extension to file the petition for a writ of certiorari was granted by the Chief Justice, moving the deadline from August 26, 2024, to September 25, 2024. This extension is documented in Appendix D.
- The U.S. Court of Appeals for the District of Columbia Circuit issued an order on July 2, 2024, requiring the applicant to file a motion to govern future proceedings by October 25, 2024. This order is found in Appendix E.

STATEMENT OF THE CASE

Department of the Air Force

Akerman was first regarded as a whistleblower in the Department of the Air Force, after making reasonable disclosures related to violations of title VII, USERRA, and other documented disclosures recorded by the Office of Special Counsel, on or around June 10, 2020.

The OSC facilitated Alternative Dispute Resolution (ADR) starting on June 28, 2021 when they asked Martin Akerman if he was open to ADR, and he responded affirmatively. ADR under 5 C.F.R. 1800.2(d) resulted in agreement of a safe transfer to the National Guard Bureau, the removal of adverse personnel actions, and backdated student loan repayments, see related case DC-3443-22-0296-I-1, currently at EEOC on review, under 5 U.S.C. § 7702(b)(1).

In retaliation for the ADR through OSC, the Department of the Air Force initiated a retaliatory revocation of Akerman's security clearances and access determinations, by proxy through enlisted members of the U.S. Military, in violation of PPD-19 and the Posse Comitatus Act.

Intervention by the Office of Special Counsel (OSC)

OSC intervened and Akerman was allowed to retain his clearance, to the status verified by the National Guard Bureau on August 11, 2021.

National Guard Bureau (NGB)

Akerman transferred to NGB on September 12, 2021, and maintained regular contact with the Office of Special Counsel, documenting the non-payment of student loans and effect of the security clearance action in his new job.

Akerman was appointed as CDO of the National Guard Bureau under 44 U.S.C. § 3520 by the Chief of the National Guard Bureau, under authority as head of the Agency, under 10 U.S.C. § 10502, on December 20, 2021.

Dereliction of Duties by OSC

Akerman reported a double purchase of data capabilities, which he identified as both a waste of funds and an attempt to undermine modernization efforts aimed at increasing transparency, in a manner that threatened to expose the underreporting of suicides, by the Department of the Army, across both the Army and Air National Guards.

Shortly thereafter, on February 14, 2022, the Department of the Army leveraged federalized members of the state militaries of Arizona and Arkansas to detain Akerman, placing him immediately out of the office, under 5 U.S.C. § 6329b(b)(2), in a manner that both denied due process and barred jurisdiction by the judiciary on state sovereignty grounds and under the Egan precedent.

Dereliction of Duties by MSPB

MSPB IRA appeal DC-1221-22-0257-W-1 and stay request DC-1221-22-0257-S-1 were filed on February 28, 2022, against the Department of Defense as the overarching agency overseeing the Air Force, Army, National Guard, and Common Access Facility. The Board explained that all exhausted claims of retaliation needed to be filed under the same case. OSC explained that they lack jurisdiction over security clearance matters and instructed Akerman to file those complaints with the Office of the Inspector General of the Department of Defense.

Involvement of Congress and DoD OIG

Senator Tim Kaine of Virginia became involved and helped pass 50 U.S.C. 3341(j)(8), on March 15, 2022, and an investigation was started in Akerman's OIG case on March 30, 2022, see related Federal Circuit case 2024-1913.

On March 25, 2022, the Department of the Army provided evidence of discrimination, aimed at blocking the IRA appeal in the MSPB.

On April 11, 2022, a federalized member of the Nevada Air National Guard affirmed the detention and suspension of Akerman, without the authority to do so, in violation of precedent set by habeas corpus law, and without due process required under 5 U.S.C. § 7513, see mixed motive case DC-0752-22-0376-I-1 and stay request DC-0752-22-0376-S-1 pending in MSPB, see Federal Circuit Cases 2024-130 and 2024-146.

Exhaustion of EEOC Remedies and Continuation to
District Court, Under 5 U.S.C. § 7702(e)(1)(B)

Based on the illegal use of members of the military, and the taint and bias presented by the introduction of DOPMA/ROPMA into civilian federal tenure decisions, Akerman initiated a civil action, under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 633a(a), on July 7, 2022.

IRA Cases DC-1221-22-0257-W-1, it's progeny (DC-1221-22-0445-W-1), and DC-1221-22-0459-W-1, were meant to join the district court case, under 5 U.S.C. § 7702(e)(1)(B).

The discrimination elements of mixed motive case DC-0752-22-0376-I-1 were also meant to join the district court case, after the initial MSPB decision was exhausted through EEOC, as confirmed on October 17, 2022.

MSPB sabotaged the transfer leading to sanctions against the pro se petitioner in the Fourth Circuit.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment, Petition Clause: The right to petition the government for redress of grievances is central to Akerman's case, as it involves his ability to challenge retaliatory actions taken against him for whistleblowing under federal law.

First Amendment, Free Speech Clause: Protects Akerman's disclosures about underreporting of suicides and other misconduct, raising questions of retaliation for whistleblowing activities protected under USERRA and the Whistleblower Protection Act.

Fifth Amendment, Due Process Clause: The revocation of Akerman's security clearance and his detention without proper legal procedures implicates the Due Process Clause, which protects against deprivation of rights without adequate legal safeguards.

38 U.S.C. § 4311(b) (USERRA): USERRA prohibits retaliation against federal employees engaged in protected activities.

The core legal issue before the Court is whether USERRA's whistleblower protection provisions require the waiver of court fees for federal employees engaged in protected whistleblowing activities. The district court denied Akerman's request for a fee waiver, asserting that USERRA does not explicitly cover such fee waivers, despite the applicant's pro se status and the significant public interest in ensuring whistleblower protections.

This petition for writ of certiorari seeks to address the broader implications of the denial, focusing on the procedural and statutory inconsistencies in the application of USERRA's protections.

Akerman's experiences highlight systemic gaps in the protection of whistleblowers and the inconsistent handling of retaliation claims by federal agencies.

REASONS FOR GRANTING THE PETITION

This case presents the Court, Congress, and the public with a unique and critical opportunity to examine the comprehensive mistreatment of a Department of Defense whistleblower through each phase of the whistleblower protection and retaliation process. Martin Akerman, the applicant, has experienced every step of the whistleblower lifecycle, from the initial report to the Office of Special Counsel (OSC), through Alternative Dispute Resolution (ADR), and ultimately retaliation under 50 U.S.C. § 3341(j). The applicant's case further involved congressional intervention, multiple investigations by the Office of Inspector General (OIG), and legal proceedings before both the Equal Employment Opportunity Commission (EEOC) and the Merit Systems Protection Board (MSPB).

The Court should grant certiorari to address the pivotal question of whether the whistleblower protection provisions under the Uniformed Services Employment and Reemployment Rights Act (USERRA), codified at 38 U.S.C. § 4311(b), require the waiver of relevant court fees for federal employees engaged in protected whistleblowing activities.

CONCLUSION

For the reasons stated above, the applicant respectfully requests that the Court grant this petition for a writ of certiorari. This case presents significant federal questions regarding the interpretation and application of whistleblower protection laws under USERRA and the fundamental right of federal employees to access the courts without prohibitive financial barriers. Clarification from this Court is essential to ensure consistent and fair application of the statutory protections intended by Congress, and to safeguard the critical role of whistleblowers in upholding transparency and accountability within the federal government.

County/City of Arlington Respectfully Submitted Under Oath,
 Commonwealth/State of VA
 The foregoing instrument was acknowledged
 before me this 24 day of September
2021, by Martin Akerman, Martin Akerman, Pro Se
 (name of person seeking acknowledgement) 2001 North Adams Street, 440
Arlington, VA 22201
 Notary Public
 My Commission Expires: 09/30/2026

