

No. 24-514 (24-443, 24A430, 24-83, 24-339)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

In The
Supreme Court of the United States

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

Petitioner,

v.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Respondent.

PETITION FOR WRIT OF MANDAMUS

IN RE: MARTIN AKERMAN
CASE 2023-1268

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

QUESTIONS PRESENTED

Whether the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) acted appropriately in bifurcating the petitioner's timely joint submissions (Nos. 24-83, 23-6709, 23-6710, and 24-339), which challenge his military detention under 10 U.S.C. § 950g, thereby affecting his access to judicial review under 28 U.S.C. § 2241(e) following the exhaustion of all other habeas relief options.

Whether the D.C. Circuit's decision to designate case No. 2023-1268 (corresponding to Supreme Court docket 24-83) as private and its approach in describing the petitioner's claims to the Supreme Court clerk during the docketing of Nos. 24-83 and 24A430 may have unintentionally restricted the petitioner's right to fair and transparent consideration of his habeas relief request.

Whether collaborative actions between the D.C. Circuit and the Federal Circuit may adversely affect a detained whistleblower's ability to fully access judicial procedures, as evidenced in docket Nos. 24-83, 24-443 and the request for recusal in FOIA docket No. 24-339.

PARTIES TO THE PROCEEDING

Petitioner: Martin Akerman, a tenured federal employee, resident of Virginia, and whistleblower detained under contested circumstances involving military authority. Mr. Akerman was appointed as Chief Data Officer (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 per 10 U.S.C. § 10502, on December 20, 2021.

Respondent: Posse Comitatus of the United States of America, represented by Nevada Air National Guard Brigadier General Caesar Garduno in his federalized capacity, operating under the Department of the Air Force's jurisdiction and regulations governing military involvement in civilian matters.

Respondent: The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), are represented by the Solicitor General of the United States, in their role concerning judicial review, access, and procedural administration of habeas relief under federal law.

AMICUS CURIAE

Statutory Amicus: The Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives, by statute, receive annual compliance reports from the Chief Data Officer of the National Guard Bureau under 44 U.S.C. § 3520(e).

Interested Party: 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. In June 2022, he formally requested information regarding Mr. Akerman's detention but received a misleading response aimed at obscuring the true nature of his detention, see related Federal Circuit cases 2024-1926 and 2024-1912, and Supreme Court case 23-6710.

CASES JOINTLY FILED IN THE D.C. CIRCUIT

Federal Habeas Corpus.....	23-6709
Administrative State Habeas Corpus.....	23-6710
Freedom of Information Act.....	24-339

ADMINISTRATIVE EXHAUSTION

Federal Habeas Corpus (CA4).....	23-7072
Urgent Stay.....	24A332

EXHAUSTION OF HABEAS CORPUS RELIEF

State Military Jurisdiction of Nevada (Nevada)...	23-623
State Jurisdiction of Virginia.....	23-6814
Federal Military Jurisdiction (CAAF).....	23-1106
Administrative State Habeas Corpus (CAFC).....	23-7127

RELATED SUPREME COURT CASES

Related Mandamus to the Federal Circuit.....	24-443
Supreme Court Application to Suspend Illegal Military Detention.....	24A430
<u>THIS CASE</u> : Federal Habeas Corpus.....	24-83
Freedom of Information Act.....	24-339

PENDING STATE HABEAS CORPUS

Nevada State Habeas Corpus (CA9).....	2024-6166
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RELATED CASES IN LOWER COURTS

District of Nevada - Stay and Replevin.....	24-cv-1734
Federal Circuit Mandamus.....	2025-107
Federal Circuit.....	2024-1912, 2024-1913, and 2024-1926
Fourth Circuit Mandamus - Res Judicata.....	2024-1943
Ninth Circuit Mandamus.....	2024-6641

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PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully seeks a writ of mandamus compelling the United States Court of Appeals for the District of Columbia Circuit to take specific actions regarding his case, based on the following exceptional circumstances and the clear need for judicial intervention to protect the rights and processes involved.

The petitioner's filing challenges his detention under 28 U.S.C. § 2241 and 10 U.S.C. § 950g and requires prompt and accurate docketing to ensure access to the court's full review. Despite petitioner's timely submission, the DC Circuit did not docket the petition, creating a significant barrier to petitioner's ability to seek judicial relief. Furthermore, by making case 2023-1268 private, the DC Circuit has restricted public and court transparency, which has led to an incomplete representation of petitioner's claims in subsequent Supreme Court proceedings.

Petitioner's efforts to seek redress before this Court through dockets 24-83 and 24A430 were further impacted, as limited public access to the original claims has caused administrative challenges, undermining the fundamental rights associated with habeas relief.

This petition seeks to address and rectify the DC Circuit's procedural handling of petitioner's case to ensure that his rights to a fair, transparent, and accessible judicial review are preserved. The issuance of a writ of mandamus would direct the DC Circuit to fulfill its judicial responsibilities in properly docketing the petition and restoring public access to case 2023-1268, thus upholding petitioner's First Amendment right to petition for redress of grievances and protecting his access to due process as afforded by habeas corpus.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to issue writs of mandamus under 28 U.S.C. § 1651(a), the All Writs Act, which authorizes the Supreme Court and all courts established by Congress to issue writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

This Court has original jurisdiction in this matter pursuant to 28 U.S.C. § 1251, as the highest judicial authority vested with the power to review decisions of the United States Courts of Appeals.

10 U.S.C. § 950g(e) also provides that the Supreme Court may review by writ of certiorari the final judgment of the United States Court of Appeals for the District of Columbia Circuit under this section, pursuant to 28 U.S.C. § 1254.

This Court has the authority to order comprehensive judicial review of the petitioner's detention, under 28 U.S.C. § 2241(e).

Orders on Appeal

On November 1, 2024, the U.S. Court of Appeals for the D.C. Circuit issued an order, denying a motion to recall the mandate (Appendix A).

On November 1, 2024, The Chief Justice denied application (24A430) to suspend the effect of the denial of the petition for a writ of certiorari (24-83).

On October 30, 2024, The Supreme Court DISTRIBUTED for conference of 11/15/2024, petitioner's petition for rehearing of case 24-83.

Standard for Issuance of a Writ of Mandamus

A writ of mandamus is an extraordinary remedy, granted only in exceptional circumstances. The Supreme Court has established three requirements for mandamus relief:

1. Petitioner must demonstrate that there is no other adequate way to achieve the desired relief (Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 35 (1980)).

2. Petitioner must show that his right to the relief sought is "clear and indisputable" (Cheney v. United States Dist. Court for D.C., 542 U.S. 367, 381 (2004); Mallard v. United States Dist. Court for the S. Dist. of Iowa, 490 U.S. 296 (1989)).
3. The Court must be satisfied that issuing the writ is appropriate given the circumstances of the case (Kerr v. United States Dist. Court, 426 U.S. 394, 403 (1976)).

RELIEF SOUGHT

Petitioner seeks the following relief from this Court:

A. Issuance of a Writ of Mandamus

Direct the D.C. Circuit to correct procedural errors in the docketing of Mr. Akerman's cases, specifically to consolidate or appropriately manage bifurcated cases (Nos. 24-83, 23-6709, 23-6710, and 24-339), and order the D.C. Circuit to docket Case No. 2023-1268 transparently, removing any "private" designation that impedes the fair and open review of Mr. Akerman's habeas corpus claims.

B. Restoration of Habeas Corpus Protections

Enforce the petitioner's right to habeas corpus review under 28 U.S.C. § 2241(e), ensuring that Mr. Akerman's claims receive a transparent and thorough evaluation in light of his unlawful detention under military authority, as per the Suspension Clause.

C. Declaratory Relief

Declare that the petitioner's due process and First Amendment rights have been violated by the improper designation of "security risk" to circumvent habeas corpus protections and deny access to justice.

D. Protection Against Military Overreach

Prohibit further use of federalized state military officers under the guise of national security for the detention or restriction of Mr. Akerman without due process, upholding the prohibitions established by the Posse Comitatus Act.

E. Recognition of Whistleblower Protections

Affirm Mr. Akerman's rights under the Whistleblower Protection Act (WPA), Whistleblower Protection Enhancement Act (WPEA), and Uniformed Services Employment and Reemployment Rights Act (USERRA) to prevent further retaliation for his protected disclosures concerning the welfare of military members.

F. Provision for Congressional Oversight
and Compliance Reporting

Ensure that the National Guard Bureau and other relevant agencies comply with 44 U.S.C. § 3520(e) by providing full disclosure and accurate reporting to Congress, specifically to the Committee on Homeland Security and Governmental Affairs and the Committee on Oversight and Government Reform, as well as Senator Tim Kaine of Virginia, who has oversight interest in the matter.

G. Costs and Fees

Grant any reasonable costs and fees associated with this petition as allowed under applicable statutes, in light of the petitioner's status as a pro se litigant and as a USERRA whistleblower.

STATEMENT OF THE CASE

National Guard Bureau (NGB)

The petitioner, Martin Akerman, is the Chief Data Officer (CDO) of the National Guard Bureau (NGB) under 44 U.S.C. § 3520, appointed by the Chief of the National Guard Bureau under 10 U.S.C. § 10502 on December 20, 2021. In his capacity as CDO, Mr. Akerman has actively engaged in activities protected under multiple statutes, including the Whistleblower Protection Act (WPA), the Whistleblower Protection Enhancement Act (WPEA), and the Uniformed Services Employment and Reemployment Rights Act's (USERRA) whistleblower protection provisions. Specifically, he has participated in investigations concerning the welfare of military members.

Arizona, Arkansas, and Nevada

Shortly after his appointment, on February 14, 2022, the Department of the Army used federalized members of the state militaries of Arizona and Arkansas to detain Mr. Akerman, placing him immediately on notice leave under 5 U.S.C. § 6329b(b)(2) and 5 U.S.C. § 7513(b)(1). This detention circumvented due process and obstructed judicial review by invoking state sovereignty and the Egan precedent, which limited the judiciary's oversight of military actions.

Dereliction of Duties by MSPB

Akerman filed a Merit Systems Protection Board (MSPB) Individual Right of Action (IRA) appeal (DC-1221-22-0257-W-1) and a stay request (DC-1221-22-0257-S-1) on February 28, 2022, against the Department of Defense, which oversees relevant agencies, including the Air Force, Army, National Guard, and Common Access Facility.

Involvement of Congress and DoD OIG

The Office of Special Counsel (OSC) stated it lacked jurisdiction over security clearance issues, redirecting Mr. Akerman to file those complaints with the Department of Defense's Office of the Inspector General (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 pending mandamus in the Fourth Circuit (2024-1943 - res judicata) and Ninth Circuit (2024-6641 - petition for review).

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

Following these events, Mr. Akerman filed a civil action under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 633a(a), on July 7, 2022, based on violations involving the improper use of military personnel in civilian employment decisions. The IRA cases (DC-1221-22-0257-W-1, DC-1221-22-0445-W-1, and DC-1221-22-0459-W-1) were designated to join this district court case per 5 U.S.C. § 7702(e)(1)(B), alongside elements of the mixed-motive case DC-0752-22-0376-I-1, which had also completed MSPB and EEOC review as of October 17, 2022. Despite these steps, MSPB obstructed the transfer, resulting in sanctions against Mr. Akerman in the Fourth Circuit (see related Supreme Court Dockets 23-7072 and 23A489, and Fourth Circuit Case No. 2024-1943).

Additionally, the lack of comprehensive administrative review due to MSPB's and OSC's limited scope over security clearance matters, combined with delays across agencies, has blocked Mr. Akerman's access to justice.

Mandamus Needed to Correct Filing Errors

The petitioner now seeks a writ of mandamus to address procedural errors and counter the misuse of federalized state military officers. These officers were allegedly deployed under national security pretexts to unlawfully detain and restrict Mr. Akerman. By applying a "security risk" label, the military bypassed legal limits on detention and evaded habeas corpus protections guaranteed under the Suspension Clause. This labeling has improperly justified military intervention in civilian judicial matters, violating the Posse Comitatus Act.

A mandamus order is essential to correct these compounded issues, address judicial oversights, and uphold Mr. Akerman's rights. Specifically, this Court's guidance for the D.C. Circuit to accurately docket Mr. Akerman's petition and ensure transparency in Case No. 2023-1268 would help dismantle administrative barriers and protect his First Amendment right to seek redress, as well as his due process rights under the Suspension Clause.

Impact of Fragmented Judicial Review and Bifurcation

The D.C. Circuit's bifurcation of Mr. Akerman's filings (Nos. 24-83, 23-6709, 23-6710, and 24-339) has fragmented his ability to contest his military detention under 10 U.S.C. § 950g, obstructing comprehensive judicial review under 28 U.S.C. § 2241(e) and limiting the exhaustion of habeas corpus options. This piecemeal approach, akin to the caution raised in *United States v. Morgan*, 346 U.S. 502 (1954), where the Court emphasized the importance of thorough and non-fragmented administrative review, jeopardizes the transparent and equitable assessment of Mr. Akerman's claims. Furthermore, the D.C. Circuit's decision to designate Case No. 2023-1268 (Supreme Court docket 24-83) as private, along with their presentation of Mr. Akerman's claims to the Supreme Court Clerk, may have inadvertently restricted his right to a transparent and equitable habeas corpus consideration, compounding the procedural barriers Morgan warned against by limiting the petitioner's access to a full and complete judicial review.

Congressional and Oversight Interests

Mr. Akerman's cases underscore the critical role of legislative oversight. As a statutory amicus under 44 U.S.C. § 3520(e), Congress holds a vested interest in ensuring federal agencies' compliance with whistleblower protections. Additionally, Senator Tim Kaine, who inquired about Mr. Akerman's detention, received a response alleged to misrepresent the facts of his detention. These Congressional interests highlight the need for transparency, compliance, and protection for federal employees who report misconduct within the military and related federal entities.

REASONS TO GRANT MANDAMUS

1. No Other Adequate Means to Attain Relief

The petitioner has pursued all available administrative and legal remedies to address the improper docketing, restricted access, and procedural obstacles imposed on his case. Despite engaging with the Office of Special Counsel, the Merit Systems Protection Board, the Department of Defense, and various courts, petitioner has been unable to secure a fair, transparent, and timely judicial review of his claims. The DC Circuit's decision to restrict case 2023-1268 and the improper docketing of petitioner's habeas corpus petition under 10 U.S.C. § 950g have left him without a path to adequately redress his grievances. Mandamus is thus the only viable remedy to ensure that petitioner's rights to due process and transparency are fully respected.

2. Clear and Indisputable Right to Relief

Petitioner's right to have his habeas corpus petition properly docketed and to have his case proceed with public transparency is clear and indisputable. His claims implicate fundamental rights to due process and access to the judiciary, especially where habeas corpus is concerned. Moreover, as a whistleblower, petitioner has a statutory entitlement to protections from retaliatory actions that have systematically obstructed his judicial recourse. The DC Circuit's failure to afford transparency and accurate docketing undermines these protections and constitutes a breach of petitioner's right to petition for redress of grievances under the First Amendment and his right to habeas corpus.

3. Mandamus is AppropriateUnder the Circumstances

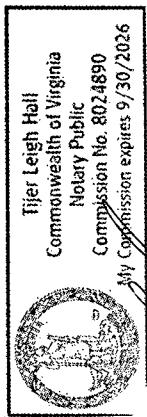
The circumstances in petitioner's case are extraordinary, involving multiple layers of administrative error, jurisdictional barriers, and procedural denials across federal entities. His claims of whistleblower retaliation, constructive discharge, and improper detention are of substantial public interest, particularly as they concern transparency in governmental actions and protection of whistleblowers under federal law. The issuance of mandamus is necessary to correct the DC Circuit's errors and to prevent further administrative obstacles that infringe upon petitioner's rights. Granting this writ would set a crucial precedent affirming that no procedural barrier should unduly interfere with an individual's access to the judiciary, especially when fundamental rights such as habeas corpus and First Amendment protections are at stake.

CONCLUSION

For these reasons, the petitioner respectfully requests that this Court issue a writ of mandamus directing the United States Court of Appeals for the District of Columbia Circuit to properly docket his petition challenging detention under 10 U.S.C. § 950g, restore public access to case 2023-1268, and take measures to ensure accurate representation in related Supreme Court filings. Petitioner further requests any additional relief that this Court finds just and necessary to safeguard his rights to judicial review, transparency, and due process.

Respectfully Submitted Under Oath,

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



County/City of Arlington
Commonwealth/State of VA
The foregoing instrument was acknowledged
before me this 15th day of November
2004 by Martin Akerman
(name of person seeking acknowledgement)
Notary Public
My Commission Expires: 09/30/2026