

No. 24 - 83

Supreme Court, U.S.

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OFFICE OF THE CLERK

In The
Supreme Court of the United States

MARTIN AKERMAN, PRO SE,

Appellant,

v.

POSSE COMITATUS OF THE
UNITED STATES OF AMERICA,

Respondent.

From a 10 U.S.C. § 950g Case of First Impression
in the United States Court of Appeals
for the District of Columbia Circuit

USCA DC No. 23-1268

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the detention of a tenured civilian federal employee under the elusive jurisdiction of the National Guard of Nevada, with false charges and without regard to statutory safeguards, constitute a violation of the Due Process Clause of the Fifth Amendment pursuant to 42 U.S.C. § 2000dd(d), especially when the employee is detained based on activities protected under the Uniformed Services Employment and Reemployment Rights Act (USERRA)?
2. In cases involving the military detention of civilian federal employees, what are the boundaries of habeas corpus protections under 28 U.S.C. § 2241, and does the denial of these protections to a non-combatant civilian by military authorities amount to an unlawful suspension or wrongful denial of habeas corpus rights?
3. Does the dismissal of a USERRA whistleblower's legal challenge to an "enemy combatant" designation, on jurisdictional grounds by the United States Court of Appeals for the D.C. Circuit—which holds exclusive jurisdiction over enemy combatant status determinations—violate the statutory protections afforded under USERRA for engaging in protected activities.

TIMELINESS

This resubmission contains a concise statement of the case, Rule 14.1(g), and is submitted to the Supreme Court of the United States in corrected form within 60 days of the date of the May 29, 2024 (Rule 14.5), as outlined in the July 9, 2024, letter from the Clerk of the Court.

Additionally, this resubmission contains a transcription/reproduction of all related orders in the appendix (Rule 33.1), including the Department of Defense (Rule 14.1(i)) and the District of Columbia (Rule 14.1(i)(111), as outlined in the July 2, 2024, letter from the Clerk of the Court.

RELATED PENDING QUESTION

4. Does Federal Circuit Local Rule 22's exclusion of habeas corpus provisions, required under 28 U.S.C. § 2255 for challenging adverse actions and emergency suspensions under 5 U.S.C. § 7513 and 5 U.S.C. § 6329b, violate the Suspension Clause—Article I, Section 9, Clause 2—of the U.S. Constitution by denying federally employed individuals, like Mr. Akerman, the right to judicial review of administrative detentions alleged to be conducted under the pretext of national security?

Akerman petitioned the U.S. Court of Appeals for the Federal Circuit for a writ of error coram nobis in habeas case 2023-2046, DENIED on July 18, 2024.

This petition is related to active case 2024-1926, citing new evidence provided by the OPM (Appendix H).

PARTIES TO THE PROCEEDING

The appellant's case emerges, highlighting a modern challenge to an ancient right. The dismissal of the appellant's habeas corpus challenge across multiple state and federal courts, for lack of jurisdiction, and the dismissal of the instant original jurisdiction challenge under 28 U.S.C. § 2241(e) and 42 U.S.C. § 2000dd, raises profound questions about the application and reach of this venerable legal remedy in contemporary times.

The appellant, Martin Akerman, a tenured federal employee, has actively engaged in protected activities under the Uniformed Services Employment and Reemployment Rights Act (USERRA) by participating in an investigation concerning the wellbeing of military members. This engagement was part of his responsibilities as the Chief Data Officer of the National Guard Bureau of the United States, a position he holds, with tenure, under the authority of 44 U.S.C. § 3520. The petitioner has habeas standing under 28 U.S.C. § 2241(c)(1) and 28 U.S.C. § 2241(c)(2).

The respondent, Posse Comitatus of the United States of America, is embodied in this case by Nevada Air National Guard Brigadier General Caesar Garduno. Upon his federalization, General Garduno became subject to the laws and regulations of the Department of the Air Force, which mandate adherence to the principles and statutes that govern the use of military authority in civilian matters.

The crux of this case revolves around General Garduno's role as the Deciding Official in the detention of Mr. Akerman under 5 U.S.C. § 6329b(b)(2) and his subsequent suspension without due process, which contravenes statutory protections codified by congress in 5 U.S.C. § 7513. These actions raise critical legal questions regarding the potential misuse of military authority in a civilian federal employment context, and "punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States," 42 U.S.C. § 2000dd(d).

This situation is juxtaposed against the foundational legal principles articulated in the Magna Carta, which declares, "nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land," as was further elaborated in related Supreme Court case 23-1106.

In accordance with Rule 29.4(a), the Solicitor General of the United States will be duly served, reflecting the direct involvement of the United States Government in the ongoing proceedings.

The involvement of the Committee on Homeland Security and Governmental Affairs and the Committee on Oversight and Government Reform, as mandated by 44 U.S.C. § 3520(f), is essential to ensure that the legislative perspective and related relevant matters are integrated into the Court's deliberation, Rule 37.1.

RELATED PROCEEDINGS

1. The petitioner has a replevin appeal, before the U.S. Court of Appeals for the Federal Circuit, 2024-130, see also 2024-1912, 2024-1913, 2024-1914, and 2024-1915 on final orders from MSPB, awaiting consolidation, and transitioning administrative cases to civil litigation under 5 U.S.C. § 7702(e)(1)(B).
2. The petitioner is actively pursuing a disability retirement appeal in the Merit Systems Protection Board, under case DC-844E-24-0359-I-1.
3. The petitioner has an Application to extend the time to file a pending petition for writ of certiorari to the U.S. Court of Appeals for the D.C. Circuit, on a FOIA appeal, 23A1097.
4. The petitioner has been denied habeas and replevin relief across state and federal military and civilian courts, with certiorari denied in all instances, see Supreme Court cases 23-623 (Nevada), 23-6709 (DC), 23-6710 (DC), 23-7072 (CA4), 23-1106 (Armed Forces), 23-7127 (Federal Circuit).
5. An appeal is currently before the Court of Appeals of Virginia, under cases numbers 2122-23-4 and 1259-23-4. These appeals address a breach of contract and bad faith against reciprocal insurance companies. These companies are contractually obligated to provide legal representation in administrative and related judicial proceedings.

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PETITION FOR WRIT OF CERTIORARI

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and 10 U.S.C. § 950g(e). This petition seeks review of the final judgment of the United States Court of Appeals for the District of Columbia Circuit, which has exclusive jurisdiction over cases involving enemy combatant status determinations pursuant to 42 U.S.C. § 2000dd.

District and Appellate courts have denied the appellant's habeas corpus petitions and subsequent requests for rehearing, failing to address substantive due process and habeas corpus claims. This case presents significant constitutional questions regarding the detention of a civilian federal employee under military authority, the scope of habeas corpus protections under 28 U.S.C. § 2241, and the suspension of habeas corpus under 28 U.S.C. § 2241(e).

OPINIONS BELOW

The opinion of the United States Court of Appeals for the D.C. Circuit, in their exclusive role in reviewing enemy combatant status determinations, as afforded under 42 U.S.C. § 2000dd, appears at Appendix A to the petition and is unpublished.

The order denying rehearing by the U.S. Court of Appeals for the D.C. Circuit appears at Appendix B to the petition and is unpublished.

The order denying rehearing en banc by the U.S. Court of Appeals for the D.C. Circuit appears at Appendix C to the petition and is unpublished.

The opinion of the United States Court of Appeals for the Armed Forces appears at Appendix D to the petition and is unpublished.

The opinion of the Air Force Court of Criminal Appeals appears at Appendix E to the petition and is unpublished.

The opinion of the Supreme Court of Nevada appears at Appendix F to the petition and is unpublished.

The opinion of Nevada Air National Guard Brigadier General Caesar Garduno appears at Appendix G to the petition, contradicts Appendix H, and is unpublished.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- **Posse Comitatus Act (18 U.S.C. § 1385):** This Act prohibits the use of the U.S. Army and Air Force to execute domestic laws unless expressly authorized by the Constitution or an act of Congress.
- **28 U.S.C. § 2241 - Power to Grant Writ of Habeas Corpus:** This statute grants federal courts the power to issue writs of habeas corpus, a fundamental legal mechanism through which individuals can challenge the legality of their detention or imprisonment. Section 2241 outlines the circumstances under which the writ can be applied, including for those in custody under the authority of the United States, for acts done or omitted in pursuance of an Act of Congress, or for those claiming rights violations under the Constitution, laws, or treaties of the United States.
- **U.S. Constitution, Article I, Section 9, Clause 2 (The Suspension Clause):** This clause of the U.S. Constitution states, "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 clause is a critical component of the Constitution, ensuring that the right to challenge unlawful detention through a writ of habeas corpus is preserved, a fundamental safeguard against arbitrary imprisonment.

- **First Amendment's Petition Clause:** This clause ensures an individual's right to petition the government for a redress of grievances, offering protections for public employees from retaliation for lawful petitioning.
- **28 U.S.C. § 1651 (The All Writs Act):** This statute empowers the Supreme Court and all courts established by Act of Congress to issue all writs necessary or appropriate in aid of their respective jurisdictions, consistent with legal traditions and principles.
- **First Amendment's Speech Clause:** This clause protects the freedom of speech, allowing individuals, including public employees, to express themselves without undue government restriction. It is especially pertinent for whistleblowers, ensuring they can speak out on matters of public concern, contributing to transparency and accountability within the government.
- **42 U.S. Code § 2000dd: Prohibition on Cruel, Inhuman, or Degrading Treatment or Punishment:** This statute embodies the prohibition against "cruel, inhuman, or degrading treatment or punishment," as defined by the United States' obligations under international agreements, specifically the United Nations Convention Against Torture. This definition is directly incorporated and prohibited under the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution.

STATEMENT OF THE CASE

Martin Akerman, the appellant, a tenured federal employee and appointed Chief Data Officer of the National Guard Bureau (44 U.S.C. § 3520), is challenging his military detention without charges or a trial, as decided by Brigadier General Caesar Garduno of the Nevada Air National Guard. This detention and the subsequent denial of habeas corpus rights raise significant constitutional concerns under the Due Process Clause of the Fifth Amendment and habeas corpus protections outlined in 28 U.S.C. § 2241.

Akerman blew the whistle on the Army's blocking of systems designed to support the Chief of the National Guard Bureau's efforts to report and prevent the alarming rate of suicides among guardsmen across the 50 states, territories, and the District of Columbia, historically underreported by the Army.

Akerman argues that his detention, based on his status and activities, constitutes a misapplication of military authority over a civilian, which is legally unprecedented and constitutionally dubious. The Army forced General Garduno, a general officer of the Nevada Air National Guard, to detain the civilian Akerman, under military authority without formal charges—actions purportedly justified by 5 U.S.C. 6329b(b)(2) and enacted without due process as required by 5 U.S.C. 7513.

Akerman is protected by his tenure and under the whistleblower protection provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA), where he engaged in protected activities concerning the wellbeing of military members.

New evidence relevant to this appeal has been provided by Ken McNeill to the Office of Personnel Management (OPM) on October 27, 2023, as part of a Disability Retirement case, and was subsequently furnished to the Petitioner on May 27, 2024, as part of the active appeal of the OPM decision before the Merit Systems Protection Board, case No. DC-844E-24-0359-I-1, Appendix H.

This evidence authoritatively confirms that the agency lied about the petitioner's status as being on administrative leave (5 U.S.C. § 6329a), significantly downplaying the extent of the constitutional violations encountered by the petitioner.

The respondent in this case, represented by Posse Comitatus of the United States of America, embodies the misuse of military power in civilian matters—a critical issue given the clear boundaries set by the Posse Comitatus Act (18 U.S.C. § 1385). This law restricts military involvement in civilian law enforcement except as expressly authorized by the Constitution or Congress.

Akerman's detention and the roles assigned to military personnel in this context are argued to contravene these legal boundaries, presenting a case of first impression that questions the application of military authority over civilians.

This appeal follows a series of judicial rejections at lower levels, including the United States Court of Appeals for the D.C. Circuit, which denied Akerman's initial habeas corpus petition and subsequent rehearings. The appellate court, tasked with exclusive jurisdiction over enemy combatant status determinations under 42 U.S.C. § 2000dd, concluded its review without addressing substantive due process and habeas corpus claims, leading to this appeal.

The Supreme Court's review is now sought on several grounds: the violation of due process rights under the Fifth Amendment, the improper application of military authority over a civilian federal employee, the denial of statutory protections afforded under USERRA, and the overarching need to clarify the scope of habeas corpus protections for civilians detained as enemy combatants or other unknown status that is able suspend a person's constitutional right to the great writ of Habeas Corpus.

REASONS FOR GRANTING THE PETITION

This appeal merits consideration by the Supreme Court for several compelling reasons, primarily concerning fundamental questions of constitutional law, due process, and the appropriate application of military authority in civilian contexts:

1. Due Process Rights Clarification:

The Supreme Court is requested to clarify the boundaries between civilian law and military authority, focusing on the application of the Due Process Clause of the Fifth Amendment (U.S. Const. amend. V) in cases where a civilian federal employee is detained by military authority without formal charges or a trial.

2. Interpretation of the Posse Comitatus Act:

This involves assessing the legal limits set by the Posse Comitatus Act (18 U.S.C. § 1385) to determine the extent to which military entities can engage in civilian law enforcement, ensuring that military authority is applied appropriately within civilian jurisdictions.

3. Habeas Corpus Protections:

The case highlights the need to reaffirm the role of habeas corpus as a safeguard against unlawful detention (28 U.S.C. § 2241), emphasizing the need for a reevaluation of these protections for citizens, especially non-combatant civilians detained under military authority without a meaningful opportunity to contest their enemy combatant status (Hamdi v. Rumsfeld, 542 U.S. 507 (2004); Boumediene v. Bush, 553 U.S. 723 (2008)).

4. Protection Against Cruel, Inhuman, or Degrading Treatment:

The implications of 42 U.S. Code § 2000dd are examined in the context of national and international standards against cruel, inhuman, or degrading treatment. This discussion includes how such standards apply to the appellant's detention conditions, urging the Court to ensure that constitutional protections (under the Fifth, Eighth, and Fourteenth Amendments) are upheld.

5. Gap in Appellate Review:

The absence of comprehensive judicial oversight in the review of decisions affecting the petitioner, treated as an enemy combatant, or other similar status, affects the overall integrity and fairness of legal proceedings, involving significant constitutional questions.

6. Adequacy of Legal Remedies:

Highlighting the absence of legislative provisions for comprehensive post-CSRT judicial review incorporating new evidence, this point stresses the need for the Supreme Court's intervention as the only adequate remedy available to address the procedural and substantive legal deficiencies presented in the appellant's case.

CONCLUSION

For the foregoing reasons, Martin Akerman respectfully requests that this Court grant the petition for a writ of certiorari. Alternatively, the Court may wish to consider this cert petition as a ripe Petition for Writ of Habeas Corpus in the Supreme Court.

County/City of Arlington Commonwealth/Sate of Virginia Respectfully Submitted Under Oath,
The foregoing instrument was acknowledged
before me this 10 day of July
2024 by MARTIN AKERMAN Martin Akerman, Pro Se
(name of person seeking acknowledgement) 2001 North Adams Street, Unit 440
July 10, 2024 Arlington, VA 22201
Notary Public
My Commission Expires: 30 April 2026

