

No. _____ (24-83)

In The
Supreme Court of the United States

MARTIN AKERMAN, PRO SE,

Appellant,

v.

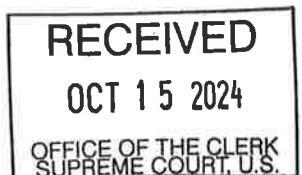
POSSE COMITATUS OF THE
UNITED STATES OF AMERICA,

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

**PETITION FOR REHEARING OF
DENIED PETITION FOR WRIT OF CERTIORARI
SUPREME COURT NO. 24-83**

MARTIN AKERMAN, Appellant, Pro Se
2001 North Adams Street, Unit 440
Arlington, VA 22201
(202) 656 - 5601



QUESTIONS PRESENTED

1. Whether the Supreme Court's denial of certiorari, without requiring a response from the opposing party in a petition for writ of habeas corpus, violates the Suspension Clause of the U.S. Constitution, by allowing the government to waive response and evade judicial scrutiny—especially where newly discovered evidence, pending in a related FOIA case (Supreme Court Case No. 24-339), could prove the petitioner's innocence and establish a wrongful detention, as established in *Schlup v. Delo*, 513 U.S. 298 (1995), and *Brady v. Maryland*, 373 U.S. 83 (1963).
2. 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?

TIMELINESS

This petition is timely, filed two days after a timely petition for writ of certiorari, from a 10 U.S.C. § 950g case of first impression. The petition was submitted under 42 U.S.C. § 2000dd(d) and was considered as a petition for writ of habeas corpus under 28 U.S.C. § 2241(e), but certiorari was denied on October 7, 2024.

PARTIES TO THE PROCEEDING

The appellant, Martin Akerman, a tenured federal employee and resident of the commonwealth of Virginia, 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.

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 Congress, 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 been denied habeas and replevin relief across both state and federal military and civilian courts, with responses waived and certiorari denied in all instances. See Supreme Court Cases 23-623 (Nevada), 23-6709 (D.C.), 23-6710 (D.C.), 23-7072 (Fourth Circuit), 23-1106 (Armed Forces), and 23-7127 (Federal Circuit).
 - a. Certiorari was denied without requiring a response in related legal representation cases across multiple federal jurisdictions, including 23-6709 (D.C.), 23-6710 (D.C.), 23-7072 (Fourth Circuit), 23-1106 (Armed Forces), and 23-7127 (Federal Circuit).
 - b. Certiorari was denied without requiring a response in the state Habeas Case 23-623, from the Supreme Court of Nevada.
2. Certiorari was denied without requiring a response in related Legal Representation Cases 23-6814 and 23-6815, from the Supreme Court of Virginia.
3. The evidence in Supreme Court Case No. 24-339 is pending a response from the respondents and has direct implications for the current habeas corpus petition.

4. The petitioner is actively seeking replevin of his federal tenure in the Merit Systems Protection Board, under case DC-1221-22-0445-S-1 (Garduno Under the Air Force), see Supreme Court Case 24A332 and Federal Circuit cases 2024-1915 and 2024-146.
5. The petitioner is actively seeking replevin of his federal tenure in the state of Nevada (Garduno Under the Nevada Air National Guard), under U.S. District Court for the District of Nevada case 2:24-cv-01734-RFB-DJA.
6. The petitioner is actively pursuing a disability retirement appeal in the Merit Systems Protection Board, under case DC-844E-24-0359-I-1.
7. The petitioner was denied workers' compensation relief in the Commonwealth of Virginia, under federal supremacy grounds, under Virginia Court of Appeals Docket 1234-24-4, and Federal Circuit cases 2024-1912 and 2024-1926.
8. Federal workers' compensation relief was denied, see Federal Circuit cases 2024-146 and 2024-1926.

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INTRODUCTION AND BASIS FOR REHEARING

This petition for rehearing is filed on the grounds that the Supreme Court's practice of allowing an opposing party to waive response in a petition for writ of habeas corpus is in direct conflict with the Suspension Clause of the United States Constitution. Habeas corpus proceedings inherently require the opposing party to respond and justify the legality of the petitioner's detention. By not mandating a response, the Court undermines the fundamental protections guaranteed by the Suspension Clause, which prohibits the suspension of habeas corpus rights except in cases of rebellion or invasion. U.S. Const. art. I, § 9, cl. 2.

The petitioner argues that the denial of certiorari without a required response conflicts with established principles of law and procedural fairness. As recognized in *Flynn v. United States*, 75 S. Ct. 285, 286 (1955), substantial issues must be fully considered before any dismissal. The failure to do so constitutes a procedural and constitutional error that warrants rehearing.

I. CONFLICT
WITH THE SUSPENSION CLAUSE

The Suspension Clause protects individuals from unlawful detention by ensuring that habeas corpus rights are not suspended except in extraordinary circumstances, such as rebellion or invasion. U.S. Const. art. I, § 9, cl. 2. In habeas corpus cases, the government is required to respond to justify the petitioner's detention. The Court's practice of allowing the government to waive its response in habeas cases violates this constitutional mandate.

As emphasized in *Flynn v. United States*, 75 S. Ct. 285, 286 (1955), a petition for rehearing must demonstrate that substantial issues have been overlooked or misunderstood. The failure to require a government response in this case violates the core purpose of habeas corpus, preventing a full evaluation of the legality of the petitioner's detention. Additionally, by not mandating a response, the Court implicitly allows for the suspension of habeas corpus rights without meeting the stringent conditions outlined in the Suspension Clause. See *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 101 (1807).

II. NATIONAL SECURITY
AS A PRETEXT FOR DETENTION

While national security concerns are important, they cannot serve as a blanket justification for suspending habeas corpus rights. The Court's failure to require a response in this case allows the government to evade judicial scrutiny, undermining the protections guaranteed by the Suspension Clause. This section highlights the necessity for careful judicial oversight when national security is invoked to deny habeas corpus, ensuring that such claims are properly reviewed and not misused as a pretext for unconstitutional actions.

In *Richmond v. Arizona*, 434 U.S. 1323, 1325 (1977) (Rehnquist, J., as Circuit Justice), the Court underscored that habeas corpus rights should not be denied based on vague or generalized national security concerns unless new and compelling reasons are provided. The petitioner contends that by allowing the government to waive response, the Court has enabled the government to avoid justifying the legality of detention. This raises the risk that national security concerns could be misused to suspend fundamental rights without proper cause. See *Ex parte Milligan*, 71 U.S. (4 Wall.) 2, 125 (1866) (noting that even in times of war, constitutional safeguards must be upheld).

III. FAILURE TO CONSIDER
A TIMELY PETITION FOR
WRIT OF HABEAS CORPUS

A timely petition for writ of habeas corpus must be fully considered by the Court, which includes requiring a response from the opposing party. This section argues that by not treating the petition as a proper and timely habeas corpus filing, the Court violated its own procedural rules and denied the petitioner a fair opportunity for review.

Supreme Court Rule 20.4(a) explicitly provides that the Court or a Justice may order the respondent to file a response to a petition for writ of habeas corpus. In *United States v. Hessman*, 493 F.3d 977, 981 (8th Cir. 2007), the Court emphasized the importance of procedural rules in ensuring the integrity of judicial review in habeas cases. By allowing the respondent to waive the requirement to respond, the Court not only failed to provide a meaningful review but also disregarded the procedural safeguards governing habeas petitions.

The petitioner asserts that this failure constitutes a procedural and constitutional deficiency, which warrants a rehearing to correct the errors in this case. See *Flynn v. United States*, 75 S. Ct. 285, 286 (1955).

Moreover, *Richmond v. Arizona*, 434 U.S. 1323 (1977), demonstrates that unless compelling new reasons are presented, the Court must carefully reconsider its denial of habeas corpus relief.

IV. FAILURE TO ADDRESS
DEFERRED CONSIDERATION

In this case, the petitioner's ability to present new evidence through the FOIA proceedings represents precisely such a compelling reason. This Court has consistently held that the discovery of new, particularly exculpatory, evidence can serve as grounds for habeas relief, as demonstrated in *Schlup v. Delo*, 513 U.S. 298, 324 (1995). The petitioner's case rests on such principles, as newly discovered evidence may directly impact the legality of his detention.

On July 19, 2024, the petitioner moved the Court to defer consideration of the matter, citing the need for exculpatory evidence. Specifically, the petitioner has filed a Freedom of Information Act (FOIA) request, and the related case, No. 24-339, is currently pending before this Court. This case involves records and communications that are critical to establishing the petitioner's innocence. Given that these materials are still awaiting a response from the respondents, it is essential for the Court to take these developments into consideration when reviewing the petition for rehearing.

The resolution of this FOIA case could significantly impact the outcome of the habeas corpus petition, as it involves potentially exculpatory information that may prove the petitioner's innocence.

V. SUBSTANTIAL NEW EVIDENCE

The Court has long recognized that substantial new evidence, particularly when it relates to constitutional violations, demands judicial scrutiny. As such, the petitioner urges this Court to grant a rehearing to consider the implications of the pending FOIA case and to ensure that justice is not compromised by procedural oversights.

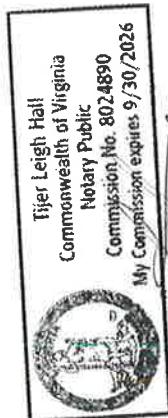
However, in the instant case, the Court proceeded without addressing the motion to defer consideration, which explicitly highlighted the pending FOIA case. This omission has resulted in a procedural deficiency, as critical evidence that could directly impact the petitioner's detention remains outstanding. The petitioner contends that this oversight risks a final determination without the benefit of all pertinent information, in direct contravention of established legal precedent.

In *Flynn v. United States*, 75 S. Ct. 285, 286 (1955), the Court acknowledged that when a petition for rehearing is based on substantial matters, such as newly discovered evidence, there may be grounds for exercising the Court's authority to reconsider the petition before finalizing the denial. In this case, the pending FOIA request offers substantial grounds for reconsideration, as the petitioner has made a *prima facie* showing of the potential for new evidence to emerge.

CONCLUSION

Given the unresolved issues, the Court's failure to address the motion for deferred consideration, and the potential for exculpatory evidence, immediate judicial consideration of the FOIA case is not only warranted but necessary to prevent a miscarriage of justice.

This petition for rehearing brings forth significant constitutional and procedural concerns, including violations of the Suspension Clause and the failure to consider crucial exculpatory evidence. The petitioner respectfully requests that the Court grant a rehearing to address these substantial issues and ensure adherence to constitutional guarantees.



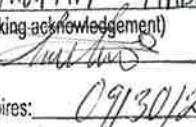
Respectfully Submitted Under Oath,


Martin Akerman, Pro Se
2001 North Adams Street, Unit 440

Arlington, VA 22201

County/City of Arlington
Commonwealth/State of VA

The foregoing instrument was acknowledged
before me this 9th day of October
2024 by Martin Akerman
(name of person seeking acknowledgement)


Notary Public
My Commission Expires: 09/30/2026

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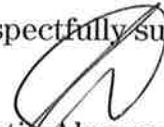
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RULE 33.1 CERTIFICATE OF COMPLIANCE

Pursuant to Supreme Court Rule 33.1(h), I, Martin Akerman, certify that the attached PETITION FOR REHEARING contains 1,215 words. Excluding the parts of the petition that are exempt by Supreme Court Rule 33.1 (d). I declare under penalty of perjury that the foregoing is true and correct. Dated October 9, 2024.

Respectfully submitted,


Martin Akerman, Pro Se
2001 North Adams Street, 440
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In The
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v.

POSSE COMITATUS OF THE
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Respondent.

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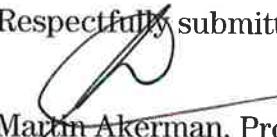
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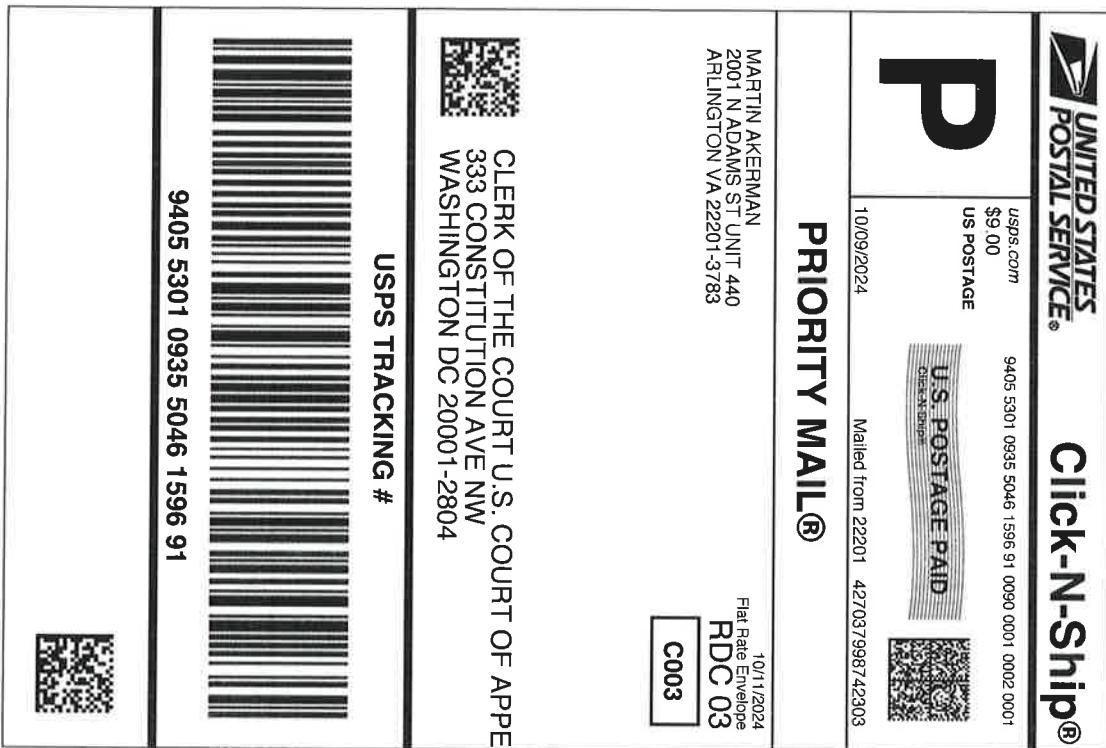
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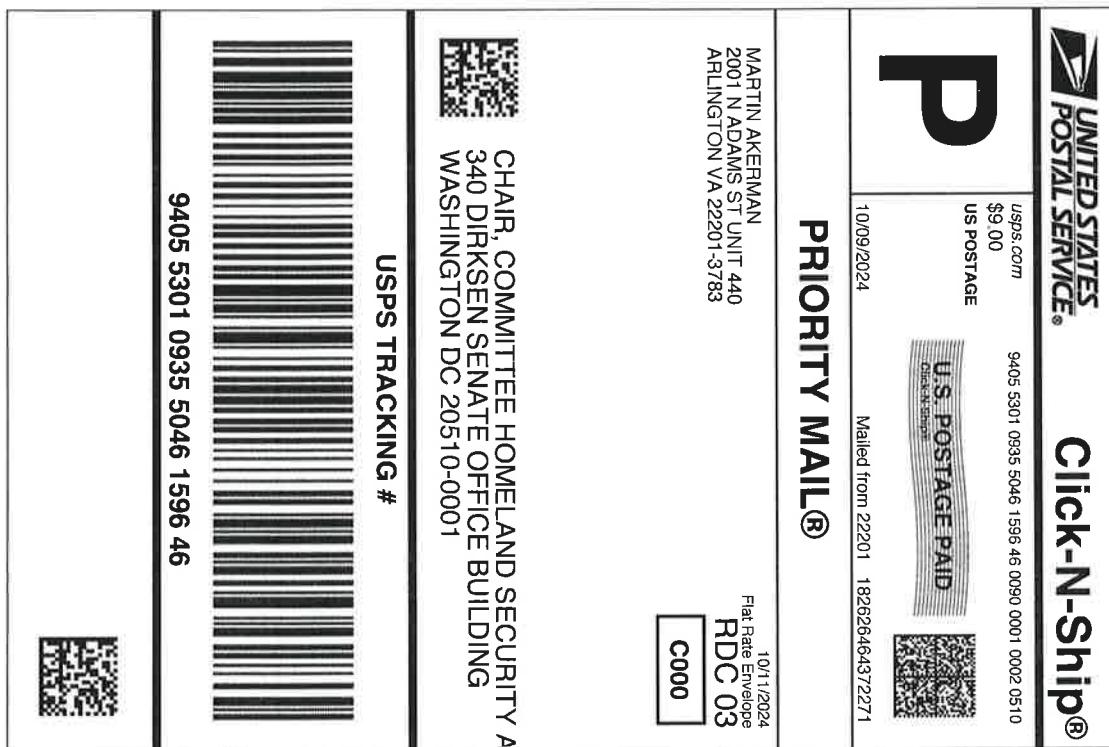
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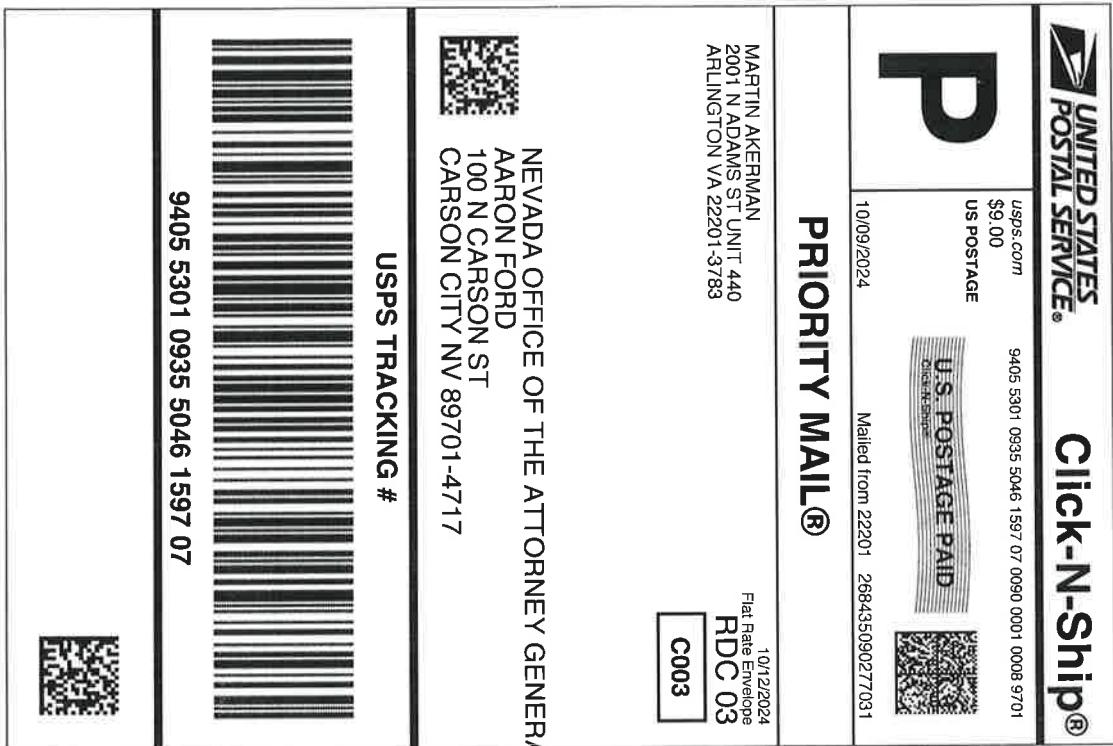
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2001 N ADAMS ST UNIT 440
ARLINGTON VA 22201-3783

To: OFFICE OF THE VIRGINIA ATTORNEY GENERAL
JASON S MIYARES
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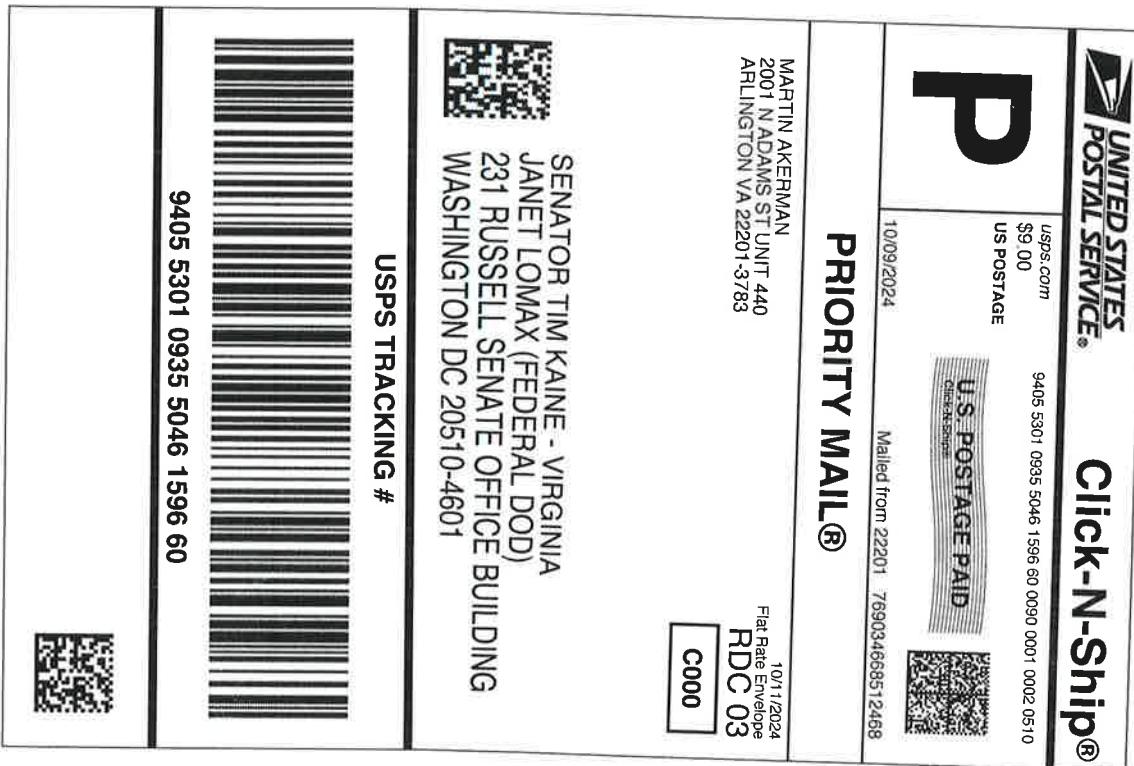
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2001 N ADAMS ST UNIT 440
ARLINGTON VA 22201-3783

To:

SENATOR TIM KAINE - VIRGINIA
JANET LOMAX (FEDERAL DOD)
231 RUSSELL SENATE OFFICE BUILDING
WASHINGTON DC 20510-4601

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