

No. 23A _____

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

MERIT SYSTEMS PROTECTION BOARD, ET AL,
RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI
TO THE U. S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT

APPLICATION FILED FOR MORE TIME
TO FILE A PETITION FOR WRIT OF CERTIORARI
TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE
OF THE SUPREME COURT OF THE UNITED STATES,
AS CIRCUIT JUSTICE FOR THE FEDERAL CIRCUIT

MARTIN AKERMAN, PRO SE
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BOTTOM LINE UP FRONT (BLUF)

Pursuant to Supreme Court Rule 13.5, Petitioner Martin Akerman, Pro Se, respectfully requests a 40-day extension of time to file a petition for writ of certiorari.

Akerman was detained on February 14, 2022, under the provisions of 5 U.S. Code § 6329b. A subsequent suspension on April 24, 2022, under 5 U.S. Code § 7513, was executed without proper legal procedures and was allegedly approved by a high-ranking officer of the Nevada National Guard, Brigadier General Caesar Garduno.

The petitioner's continued detention since February 14, 2022, without being charged with a crime, represents a serious constitutional issue, including the suspension of due process under 5 U.S. Code § 7513(b)(1), its distinction from 5 U.S. Code § 7532, and the suspension of habeas corpus for aliens labeled as enemy combatants, a critical balance between individual rights and national security, 28 U.S. Code § 2241(e).

The Jurisdictional Question, informed by 28 U.S.C. § 2254, underscores procedural fairness issues, particularly the necessity of properly identifying respondents in habeas cases.

On April 25, 2023, the applicant learned new information indicating that it was not General Garduno who confirmed the unlawful detention, giving rise to the filing of Habeas case DC-0752-23-0457-S-1 with the Merit Systems Protection Board.

PARTIES TO THE PROCEEDING

Applicant (appellant in the court of appeals) Martin Akerman, the tenured Chief Data Officer of the National Guard Bureau of the United States of America, appearing pro se, resides in the Commonwealth of Virginia.

All parties do not appear in the caption of the case on the cover page. Missing respondents include:

- BILL POPPLER (Army);
- KEN MCNEILL (Department of Defense);
- MARK BERGLUND (Army);
- Nevada Air National Guard BRIG GEN CAESAR GARDUNO is under the jurisdiction of the Supreme Court of Nevada or the Court of Appeals of the Armed Forces, under 10 U.S. Code § 12405 (Air Force).

RELATED PROCEEDINGS

In the Supreme Court of the United States: a motion to proceed under USERRA, without payment of costs and on the papers, is scheduled for conference on December 8, 2023, under Docket No. 23M44, linked to application 23A355, from the Supreme Court of Nevada, under the jurisdiction of the circuit allotment of Justice Kagan;

A petition for rehearing en banc was denied in the Fourth Circuit on October 31, 2023, related in part to a Petition for Writ of Habeas Corpus filed on June 18, 2023, under 28 U.S.C. § 2241 or 28 U.S.C. § 2253(c), with demand for replevin and correction of records.

A request to affirm exhaustion of military remedy was filed in the Court of Appeals for the Armed Forces on December 5, 2023, appearing at Appendix D.

A writ of habeas corpus petition under 28 U.S.C. § 2254 is currently on appeal in the Court of Appeals for the District of Columbia Circuit, under case number 23-5230, together with case 23-1268 (challenging a presumptive designation as an enemy combatant), and case 23-5229 (attacking a presumptive illegal federal sentence under 28 U.S.C. § 2255).

RELATED COLLATERAL PROCEEDINGS

- In the United States District Court for the District of Columbia: a related Freedom of Information Act Case, No. 23-cv-2574, is currently being heard in the District Court for the District of Columbia.
- In the Supreme Court of Virginia: a petition for rehearing en banc, under Case No. 230670. This case addresses a Breach of Legal Insurance, a matter connected to the pro se status of the applicant in all proceedings. It consolidates related cases from the Arlington Circuit Court, the Virginia Court of Appeals, and the State Corporation Commission, in the Commonwealth of Virginia.
- In the United States Court of Appeals for the Federal Circuit, Case No. 23-2216: review of MSPB case DC-3443-22-0639-I-1, as exhausted with OSC, and the Inspectors General of the Department of Defense and the Intelligence Community, focusing on the application of Department of the Navy v. Egan, 484 U.S. 518 (1988), in light of new law, 50 U.S. Code § 3341(j)(8), of March 18, 2022, as it applies to whistleblower retaliation affecting security clearances, under 5 U.S.C. §§ 7513 and 2302(b)(8).

JURISDICTION ON CERTIORARI

This case is brought before this Court under 28 U. S. C. § 1257(a) or 28 U.S.C. § 1254(1), depending on the Court's decision on jurisdiction over decisions made within what is often termed the administrative state of the United States. Naming only the Merit Systems Protection Board as the respondent conflicts with both state and federal regulations, particularly 28 U.S.C. § 2254, which underscores the importance of correctly naming respondents in habeas corpus cases. This oversight could hinder the petitioner's fight against their detention, especially considering the military context, and issues of federal and judicial immunity. It's unconstitutional for a judicial body to issue orders leading to imprisonment that cannot be challenged by habeas corpus.

A timely petition for rehearing was denied by the United States Court of Appeals for the Federal Circuit on November 20, 2023, and a copy of the order denying rehearing appears at Appendix A.

The date on which the United States Court of Appeals decided my case was October 13, 2023, and a copy of the order denying collateral and final orders appears at Appendix B.

SPOILIATION AND DENIAL OF INJUNCTION

The principle of adverse inference is entrenched in the legal system. When a party fails to produce relevant evidence, especially after notice and duty to do so, the court may infer that the evidence was unfavorable to that party. Movant has previously identified case records as crucial for the case's fair adjudication. The current absence of case DC-0752-23-0457-S-1 is suggestive of potential evidence spoliation. Without these records, the Movant faces an undeniable and unfair disadvantage. To ensure that justice is served, it is pivotal that an adverse inference be made to counterbalance the harm caused by the missing records.

A copy of the order denying injunction appears at Appendix C1.

A copy of the order denying adverse inference appears at Appendix C2.

TO THE HONORABLE CHIEF JUSTICE ROBERTS

Pursuant to Supreme Court Rule 13.5, Petitioner Martin Akerman, Pro Se, respectfully requests a 40-day extension of time to file a petition for writ of certiorari, for the consolidated appeals referenced under lead case 22-2066, from the U.S. Court of Appeals for the Fourth Circuit, up to and including March 29, 2024.

This Application is timely because it has been filed more than ten days before February 18, 2024, the date accurately computed from the date a timely petition for rehearing was denied.

REASONS TO GRANT THE EXTENSION

The reasons to grant the 40-day extension for filing the petition for writ of certiorari in this case are multifaceted and compelling, particularly considering the legal and procedural complexities involved:

Spoliation of Evidence and Importance of the FOIA Case in DC

The Freedom of Information Act (FOIA) Case, No. 23-cv-2574, being heard in the United States District Court for the District of Columbia, is critically linked to this petition. This case is pivotal for addressing potential spoliation of evidence issues. Spoliation of evidence refers to the destruction or alteration

of evidence that is significant in litigation. In this context, the FOIA case may uncover essential documents or information that could influence the outcome of the appeals, especially regarding whistleblower claims and issues of security clearance. The outcomes and discoveries in this FOIA case could have direct implications for the arguments and evidence in the current petition, highlighting the necessity for additional time to integrate these developments into the certiorari petition effectively.

Pro Se Representation

As the applicant, Martin Akerman, is representing himself pro se, battling Post-Traumatic Stress Disorder (PTSD), and in forma pauperis, the additional time is necessary to ensure that he can adequately prepare his case. Pro se litigants typically require more time to navigate the complexities of the legal system, conduct legal research, and prepare documents, particularly in cases involving intricate legal issues.

Broad Implications

The case has potentially broad implications for whistleblower and Title VII protections in the national security context. Ensuring that these implications are thoroughly considered and argued requires careful preparation and should not be rushed.

Related Proceedings

The applicant is involved in related collateral proceedings in various courts, including the Supreme Court of Virginia and the United States District Court for the District of Columbia. Managing and coordinating the legal strategies across these multiple proceedings add to the complexity and time required to prepare the petition adequately.

Ensuring a Fair and Just Process

Given the significant legal, procedural, and policy implications of this case, it is crucial that the applicant is afforded sufficient time to prepare a comprehensive and well-argued petition. This ensures a fair and just process, allowing the Supreme Court to make an informed decision on the matters at hand.

Timely Filing within the Rules

The application for extension is filed in accordance with Supreme Court Rule 13.5, and well within the timeframe required, as it is filed more than ten days before the original deadline of February 18, 2024. This demonstrates the applicant's diligence and respect for court procedures.

CONCLUSION AND URGENT REQUEST FOR CONSIDERATION

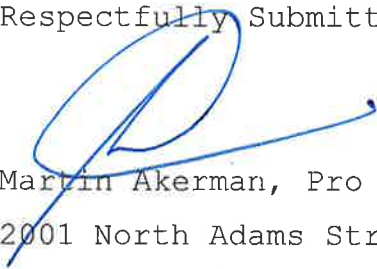
In conclusion, the unique circumstances surrounding this case, combined with the legal and procedural complexities, substantiate the necessity for a 40-day extension in filing the petition for writ of certiorari. The petitioner, Martin Akerman, Pro Se, has diligently pursued his legal rights and remedies despite facing considerable challenges, including his disability and pro se status, the intricate web of legal proceedings, and the significant implications of the case for jurisprudence relating to national security, due process, and whistleblower protections.

The interconnected nature of the FOIA case and the potential for uncovering critical evidence further underscore the urgency and importance of granting this extension. The need to integrate new information that may emerge from this case is essential for the comprehensive and fair presentation of the petitioner's arguments before this Honorable Court.

Moreover, this case presents an opportunity for the Supreme Court to address key legal questions that have broad implications beyond the immediate parties involved. The issues at stake are not only central to the petitioner's circumstances but also resonate with broader constitutional principles and the safeguarding of individual rights in the context of national security and administrative procedures.

Therefore, the petitioner respectfully requests that this Honorable Court consider this application for a 40-day extension with the utmost urgency and grant the extension, thereby enabling a thorough and just consideration of the matters at hand. This would not only serve the interests of justice in this particular case but also contribute to the ongoing discourse in key areas of constitutional and administrative law.

Respectfully Submitted,


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

Sworn under Oath

County/City of Arlington
Commonwealth/State of VA
The foregoing instrument was acknowledged
before me this 5th day of December
2023, by _____
(name of person seeking acknowledgment)
[Signature]
Notary Public
My Commission Expires: 09/30/2026



[Signature]

No. 23A _____

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
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v.

MERIT SYSTEMS PROTECTION BOARD, ET AL,
RESPONDENT(S)

APPENDIX A

A timely petition for rehearing was denied by the United States Court of Appeals for the Federal Circuit on November 20, 2023.

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2023-2046

Petition for review of the Merit Systems Protection Board in Nos. DC-0752-23-0457-I-1, DC-0752-23-0457-S-1.

**ON PETITION FOR PANEL REHEARING AND
REHEARING EN BANC**

PER CURIAM.¹

O R D E R

On October 13, 2023, Martin Akerman filed a combined petition for panel rehearing and rehearing en banc [ECF No. 34]. The petition was referred to the panel that heard

¹ Circuit Judge Newman did not participate.

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the appeal, and thereafter the petition was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

November 20, 2023

Date

No. 23A _____

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

MERIT SYSTEMS PROTECTION BOARD, ET AL,
RESPONDENT(S)

APPENDIX B

The date on which the United States Court of Appeals
decided my case was October 13, 2023.

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2023-2046

Petition for review of the Merit Systems Protection Board in Nos. DC-0752-23-0457-I-1 and DC-0752-23-0457-S-1.

ON MOTION

PER CURIAM.

ORDER

After consideration of the parties' responses to this court's order directing them to show cause whether Martin

Akerman's petition for review should be dismissed for lack of jurisdiction, we dismiss.*

The court received Mr. Akerman's petition for review identifying two Merit Systems Protection Board docket numbers—DC-0752-23-0457-I-1 and DC-0752-23-0457-S-1—and specifically requesting review of a "Third Order" entered May 22, 2023. ECF No. 1-2 at 1. Attached to that petition is a May 22, 2023, decision from the administrative judge in DC-0752-23-0457-I-1 entitled "Third Order," which denies Mr. Akerman's motion for "Certification of Interlocutory Appeal" to the Board.

The court directed the parties to show cause because while 28 U.S.C. § 1295(a)(9) provides the court with jurisdiction over "an appeal from a final order or final decision of the Merit Systems Protection Board," the administrative judge's denial of Mr. Akerman's third request for an interlocutory appeal to the Board does not "end[] the litigation on the merits and leave[] nothing for the [tribunal] to do but execute the judgment," *Weed v. Soc. Sec. Admin.*, 571 F.3d 1359, 1361 (Fed. Cir. 2009) (cleaned up). Thus, it is not a "final" order or decision that can be immediately appealed to this court. Mr. Akerman asserts that the order is nonetheless appealable under *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949), but *Cohen's* collateral order doctrine is for only a "small class of collateral rulings that," among other things, "resolve important questions separate from the merits," *Kaplan v. Conyers*, 733 F.3d 1148, 1154 (Fed. Cir. 2013) (cleaned up). Here, the interlocutory order is not such an order; rather,

* Mr. Akerman appears to seek reconsideration of the court's July 31, 2023, order denying his request to consolidate this case with Appeal No. 2023-2216 (concerning Board No. DC-3443-22-0639-I-1), but that request is denied as moot given this dismissal. Mr. Akerman's request to modify the caption is also denied.

AKERMAN v. MSPB

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Mr. Akerman appears to simply want expedited review of the “underlying . . . issues,” ECF No. 20 at 2, which is insufficient.

Moreover, we note that in DC-0752-23-0457-I-1, the administrative judge has since issued an initial decision, but Mr. Akerman’s petition here does not challenge that initial decision, and, in any event, that decision remains non-final because Mr. Akerman filed a timely petition for review with the Board, such that our review of that decision is premature. *See* 5 C.F.R. § 1201.113(a); *Weed*, 571 F.3d at 1361–63. Lastly, we note that Mr. Akerman’s submissions here have not reasonably identified any decision, final or otherwise, in DC-0752-23-0457-S-1 for this court to review. We therefore dismiss.

Accordingly,

IT IS ORDERED THAT:

- (1) The petition for review is dismissed.
- (2) Each side shall bear its own costs.
- (3) All pending motions are denied.

FOR THE COURT

October 13, 2023

Date

/s/ Jarrett B. Perlow
Jarrett B. Perlow
Clerk of Court

No. 23A _____

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

MERIT SYSTEMS PROTECTION BOARD, ET AL,
RESPONDENT(S)

APPENDIX C1

A copy of the order denying injunction.

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2023-2046

Petition for review of the Merit Systems Protection Board in Nos. DC-0752-23-0457-I-1 and DC-0752-23-0457-S-1.

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2023-2216

Petition for review of the Merit Systems Protection Board in No. DC-3443-22-0639-I-1.

ON MOTION

PER CURIAM.

O R D E R

Martin Akerman filed multiple motions to enjoin the Merit Systems Protection Board from transitioning to an e-Appeal Online system on October 2, 2023, because “[t]he MSPB’s transition poses a substantial risk to the integrity of records,” Appeal No. 2023-2046, ECF No. 26 at 2. Given the limited time to consider the motion, a one-judge decision was issued, which denied the motions. Mr. Akerman now moves for reconsideration of that decision.

Upon consideration thereof,

IT IS ORDERED THAT:

The motions are denied.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

October 13, 2023
Date

No. 23A _____

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

MERIT SYSTEMS PROTECTION BOARD, ET AL,
RESPONDENT(S)

APPENDIX C2

A copy of the order denying adverse inference.

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2023-2046

Petition for review of the Merit Systems Protection Board in Nos. DC-0752-23-0457-I-1, DC-0752-23-0457-S-1.

ON MOTION

PER CURIAM.

ORDER

On November 3, 2023, Martin Akerman moved the court for adverse inference [ECF No. 35].

Upon consideration thereof,

IT IS ORDERED THAT:

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AKERMAN v. MSPB

The motion is denied.

FOR THE COURT



November 13, 2023
Date

Jarrett B. Perlow
Clerk of Court

No. 23A _____

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

MERIT SYSTEMS PROTECTION BOARD, ET AL,
RESPONDENT(S)

APPENDIX D

A request to affirm exhaustion of military remedy was filed in the Court of Appeals for the Armed Forces on December 5, 2023.

December 5, 2023

Clerk of the Court
United States Court of Appeals for the Armed Forces
450 E Street, NW
Washington, DC 20442-0001

Re: Confirmation of Exhaustion of Military Remedies -
In Re: Akerman, Chief Data Officer, National Guard Bureau

Dear Clerk of the Court,

I am writing to request formal acknowledgment from the United States Court of Appeals for the Armed Forces regarding the exhaustion of all available military remedies in my case.

- June 18, 2023: Application for Appeal as a civilian tried under the UCMJ in the U.S. Air Force Court of Criminal Appeals.
- June 27, 2023: Denial from the U.S. Air Force Court of Criminal Appeals.
- June 28, 2023: FAX to the Judge Advocate General in the Pentagon, requesting access to Military Appeal and Legal Representation under the UCMJ.
- August 24, 2023: Order denying access to the Court of Appeals for the Armed Forces and Legal Representation under Article 70, UCMJ.
- November 6, 2023: The Supreme Court stated that their rules do not allow for extending time to file a writ of habeas corpus.
- December 4, 2023: The Supreme Court clarified that Rule 13 requires a petition for a writ of certiorari to review judgments from courts of last resort or U.S. Courts of Appeals. They noted the absence of a relevant case number or judgment from the United States Court of Appeals for the Armed Forces in your matter, necessary for a writ of certiorari.

In alignment with *Gusik v. Schilder*, 340 U.S. 128 (1950), federal civilian courts typically require the exhaustion of military court remedies before entertaining habeas corpus

petitions from military prisoners. My actions as outlined above demonstrate my exhaustive pursuit of all remedies within the military justice system.

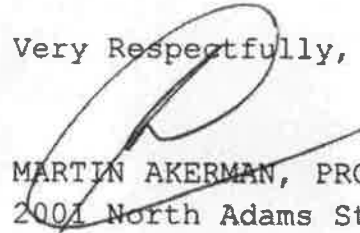
Additionally, I have pursued remedies in civilian courts:

1. In the U.S. Court of Appeals for the Federal Circuit (Case No. 23-2046).
2. In the U.S. Court of Appeals for the Fourth Circuit (Case No. 22-2066).
3. In the U.S. Court of Appeals for the District of Columbia (Case No. 23-5230).

In my pursuit of all available legal remedies, I now seek formal recognition from your court that these efforts have satisfied the requirement for exhaustion of military remedies. This step is crucial to proceed under 28 U.S.C. § 2241 to the U.S. Supreme Court. The attached correspondence from the Supreme Court, notably the December 4, 2023, letter and my November 27, 2023, filing, highlight the challenges of navigating military and civilian legal systems. These documents demonstrate my compliance with procedural requirements and my effort to establish a unified approach for my habeas corpus petition.

Thank you for your attention to this matter.

Very Respectfully,



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Arlington, VA 22201
makerman.dod@gmail.com
(202) 656-5601

2 Attachments:

- December 4, 2023, Letter: Clerk of the Supreme Court
- November 27, 2023, Filing: Supreme Court to Align Due Dates

No. 23A _____

IN THE SUPREME COURT OF THE UNITED STATES


MARTIN AKERMAN, PRO SE,
APPLICANT

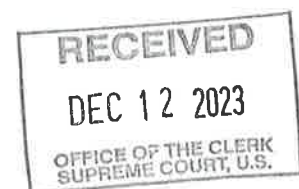
v.

MERIT SYSTEMS PROTECTION BOARD, ET AL,
RESPONDENT(S)

PROOF OF SERVICE

It is hereby certified that on December 8, 2023, three copies of the APPLICATION FILED FOR MORE TIME were delivered to the Supreme Court of the United States by Priority Mail. Additionally, copies were served on December 8, 2023, to the respondents by first-class mail, to the Solicitor General of the United States, 950 PENNSYLVANIA AVE NW RM 5616, WASHINGTON, DC 20530-0009


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