

No. 23 - _____

In The
Supreme Court of the United States

MARTIN AKERMAN, PRO SE,
Petitioner,

v.

NEVADA, et al,
Respondent(s).

**On Petition for Writ of Certiorari
to the Supreme Court of the State of Nevada (Case No. 86458)**

**APPLICATION FILED WITH THE HONORABLE SCOTT S. HARRIS
FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR WRIT OF CERTIORARI**

The Honorable Elena Kagan, Associate Justice
of the Supreme Court of the United States,
Circuit Justice for the Ninth Circuit;

The Honorable John G. Roberts, Jr., Chief Justice
of the Supreme Court of the United States,
Circuit Justice for the District of Columbia;
Circuit Justice for the Federal Circuit;
and Circuit Justice for the Fourth Circuit

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

October 15, 2023

MARTIN AKERMAN, THE PETITIONER, PRO SE

The Petitioner is the tenured Chief Data Officer of the National Guard Bureau of the United States of America, see Attachment A.

NO FEES DUE AT THIS TIME

As per the Supreme Court letter on October 12, 2023, and in accordance with Rule 39, the pro per petitioner will seek leave to file the forthcoming petition for a writ of certiorari, without prepayment of costs, by asserting rights under 20 CFR 1002.19, by way of a signed affidavit, to include all elements as outlined under 20 CFR 1002.23(a)(3) - (5), where "No fees or court costs may be charged...", 20 CFR 1002.310. Fees are not due to the Supreme Court of the United States at this time, *see* Attachment B.

BOTTOM LINE UP FRONT (BLUF)

Pursuant to Supreme Court Rule 13.5, Petitioner Martin Akerman, Pro Se, respectfully requests a 24-day extension of the time to file a petition for a writ of certiorari, up to and including November 22, 2023. Absent an extension, a petition for certiorari would be due on October 30, 2023. This Application is timely because it has been filed more than ten days before the date on which the petition is otherwise due, S. Ct. R. 13.5.

The petition for writ of habeas corpus and replevin to which the remittitur applies primarily centers around the actions of Brigadier General Garduno of the Nevada Air National Guard. Significant concerns arise over whether General Garduno was operating under the authority of the Governor of Nevada, the Department of the Air Force, or possibly under misleading directions from civilian members of the Department of Defense during a period of my Civil Forfeiture and False Imprisonment. This Court has jurisdiction under 28 U.S. Code § 1257.

The Nevada Supreme Court, recognizing the significance and complexity of the matters involved, has granted an NRAP 41(b) extension of 120 days, staying remittitur, and allowing the Petitioner until November 29, 2023, for the filing of a petition for a writ of certiorari with this Court, see Attachment C.

ORDER ON APPEAL

The Nevada Supreme Court issued a dispositional order on a Petition for Writ of Habeas Corpus and Replevin on June 2, 2023. The Petitioner then requested specification in remittitur on June 28, 2023, which raised federal questions, as detailed in Attachment D1.

Subsequently, the Nevada Supreme Court denied the motion for specification in its order on July 12, 2023, which is the original dispositional order. This order is provided in Attachment D2.

A petition for en banc reconsideration of the July 12, 2023 order was filed on July 20, 2023, as shown in Attachment D3.

The Nevada Supreme Court issued a denial for the en banc rehearing on August 1, 2023, in direct response to the July 12, 2023 dispositional order. This denial is documented in Attachment D4.

RELATIONSHIP OF THIS PETITION TO OTHER CIRCUITS

It's imperative to highlight that this petition for writ of certiorari carries significant implications for cases currently before the Circuit, District, and Military Courts under the esteemed purview of the Honorable Chief Justice Roberts:

United States Court of Appeals for the DC Circuit case # 23-rev-01268, evaluating a presumptive decision by the U.S. Department of Defense or another related U.S. agency to classify the Petitioner as an enemy combatant. This case is related to unassigned cases on appeal from the

District of Columbia District Court Case #: 1:23-cv-02597, related to a motion to vacate or correct an unlawful sentence, and District of Columbia District Court Case #: 1:23-cv-02575, focusing on a Habeas Corpus petition.

U.S. Court of Appeals for the Federal Circuit Case #: 0:23-ag-02046, which pertains to a review of a Habeas Corpus petition in the administrative state.

U.S. Court of Appeals for the Fourth Circuit Case #: 0:22-cv.us-02066, lead case consolidating 0:22-cv.us-02147 and 0:22-cv.us-02154.

RULE 21 STATEMENT OF PURPOSE

The questions to be presented before the Court touch upon pivotal foundations of our constitutional architecture and the very essence of the rights and procedures available to American citizens. The balance of powers between state and federal entities lies at the heart of our federalist system, and any alleged misuse of state resources by the federal government—particularly involving an entity as crucial as the National Guard—demands the gravest consideration. Furthermore, the unique jurisdictional stipulations surrounding the Nevada National Guard, if left unchecked, might create unprecedented legal gaps, potentially resulting in serious constitutional violations without redress. Lastly, the very essence of habeas corpus—a bedrock of our justice system—requires unambiguous, consistent application. If state entities are indeed deemed inappropriate respondents, or if the crucial imperative of habeas corpus remedies is diluted, the implications are vast and deeply concerning. Given the monumental constitutional, jurisdictional, and procedural implications presented, this Court's intervention through certiorari is not only appropriate but essential to preserve and clarify these tenets of our legal system.

**TO: THE HONORABLE ELENA KAGAN,
ASSOCIATE JUSTICE OF THE UNITED STATES
AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT**

Familiar with the foundations of our Republic, we find ourselves revisiting principles that resonated deeply with our forebears. Alexander Hamilton, a visionary of his time, astutely noted in Federalist 84 the liberties the Constitution sought to shield. Hamilton acknowledged the paramountcy of the writ of habeas corpus and the prohibition of ex-post-facto laws, opining they might offer even stronger safeguards to liberty than other elements of our Constitution. Drawing from Blackstone, Hamilton portrayed the peril of unchecked authority that might deny life or property without due process, and more insidiously, the use of secretive imprisonments, which operate as more covert and hence more menacing tools of oppression.

In Federalist 84, Hamilton remarked on the vital nature of liberties that the Constitution was crafted to protect:

"The establishment of the writ of habeas corpus, the prohibition of ex-post-facto laws... are perhaps greater securities to liberty and republicanism than any it contains. The creation of crimes after the commission of the fact, or, in other words, the subjecting of men to punishment for things which, when they were done, were breaches of no law, and the practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny."

Emphasizing habeas corpus as a cornerstone of legal protection, this case is not merely about today's disputants, but it holds a mirror to the principles that undergird our nation. It reminds us of our perennial duty to guard against infringements on liberty, be they glaring or concealed.

**TO: THE HONORABLE JOHN G. ROBERTS, JR.,
CHIEF JUSTICE OF THE UNITED STATES,
AND CIRCUIT JUSTICE FOR THE DISTRICT OF COLUMBIA;
CIRCUIT JUSTICE FOR THE FEDERAL CIRCUIT;
AND CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT**

Central to this case are the very principles that gave birth to our Republic. These principles bring to the forefront Alexander Hamilton's poignant words in Federalist 84, where he cautioned against the perils of unwarranted detention:

"To bereave a man of life, or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole nation; but confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore A MORE DANGEROUS ENGINE of arbitrary government."

This case stands as a sentinel in today's times, questioning and seeking correction for potential misapplications of military authority. If unchecked, these missteps skirt perilously close to the oppressions Hamilton and his peers vehemently fought against. The essence of this case transcends the immediate participants, touching upon the bedrock principles upon which our illustrious nation stands. We must perpetually guard against encroachments of despotism and potential misdirection of our armed forces, particularly when such actions are subtle, serving as "A MORE DANGEROUS ENGINE of arbitrary government." Attachment E embodies a petition from the Fourth Circuit, made pro se, illuminating inaccuracies and destruction of evidence in lower court records, threatening the sanctity of our legal framework, dated June 18, 2023. (235 years after Federalist 84)

CONCLUSION

Battling PTSD and related challenges, the Petitioner seeks more time for thorough preparation before this Court. The Nevada Supreme Court has already recognized this need, granting an NRAP 41(b) 120-day extension and effectively staying the remittitur. Hence, there seems to be consensus of parties on the need for an extension.

The Petitioner, therefore, requests this Court's permission to extend the deadline to November 22, 2023, for filing a petition for a writ of certiorari. The application, including Attachments A-E, has been submitted in the prescribed format.

STATEMENT OF ETHICAL AI USE

The Petitioner utilized artificial intelligence in drafting this document, ensuring ethical and transparent use. It functioned as a supportive tool, given the Petitioner's PTSD-related challenges, and not as a replacement for legal expertise. The use upheld the standards and integrity of the legal process.

The above statements are truthful and accurate. Signed and dated October 15, 2023.

Respectfully Submitted,



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

823607112

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTIN AKERMAN,
Petitioner,
vs.
NEVADA NATIONAL GUARD,
Respondent.

No. 86458

FILED

AUG 01 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING EN BANC RECONSIDERATION

Having considered the petition on file herein, we have concluded that en banc reconsideration is not warranted. NRAP 40A. Accordingly, we

ORDER the petition DENIED.¹

Stiglich, C.J.
Stiglich

Cadish, J.
Cadish

Pickering, J.
Pickering

Herndon, J.
Herndon

Lee, J.
Lee

Parraguirre, J.
Parraguirre

Bell, J.
Bell

¹In light of this order, no action will be taken on petitioners July 13, 2023, motion.

cc: Martin Akerman
Nevada National Guard

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTIN AKERMAN,
Petitioner,
vs.
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Respondent.

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FILED

JUL 12 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

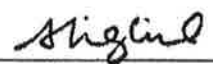
BY  DEPUTY CLERK

ORDER DENYING MOTION

Appellant has filed a pro se "Request for Specification in Remittitur." Appellant requests that the remittitur resolve whether a general was acting under the authority of another person, persons or entity. He also asks that the remittitur provide a rationale for the court's decision "not to hear" his petition for writ of habeas corpus and replevin.

The motion is denied. However, should appellant wish to seek en banc reconsideration of this court's dispositional order, he shall have 14 days from the date of this order to file and serve any petition for en banc reconsideration. See NRAP 40A. If no petition for en banc reconsideration is filed within that time, the clerk shall issue the remittitur.

It is so ORDERED.

 C.J.

cc: Martin Akerman
Nevada National Guard

In The
Supreme Court of the United States

MARTIN AKERMAN, PRO SE,
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v.

NEVADA, et al,
Respondent(s).

ATTACHMENTS

Attachment A

"The Petitioner is the tenured Chief Data Officer of the National Guard Bureau of the United States of America, see Attachment A."

- LETTERS OF RECOMMENDATION
- CONSTRUCTIVE TERMINATION 06/18/2022
- COMMUNICATION
W/ VIRGINIA SENATOR TIM KAINE 02/17/2022
- APPOINTMENT LETTER - 12/20/2021
CHIEF DATA OFFICER OF THE NATIONAL GUARD
W/ ASSIGNED MODERNIZATION DUTIES

Attachment B

"As per the Supreme Court letter on October 12, 2023, and in accordance with Rule 39, the pro per petitioner will seek leave to file the forthcoming petition for a writ of certiorari, without prepayment of costs, by asserting rights under 20 CFR 1002.19, by way of a signed affidavit, to include all elements as outlined under 20 CFR 1002.23(a)(3) - (5), where "No fees or court costs may be charged...", 20 CFR 1002.310. Fees are not due to the Supreme Court of the United States at this time, see Attachment B."

Attachment C

"The Nevada Supreme Court, recognizing the significance and complexity of the matters involved, has granted an NRAP 41(b) extension of 120 days, staying remittitur, and allowing the Petitioner until November 29, 2023, for the filing of a petition for a writ of certiorari with this Court, see Attachment C."

Attachment D1

"The Nevada Supreme Court issued a dispositional order on a Petition for Writ of Habeas Corpus and Replevin on June 2, 2023. The Petitioner then requested specification in remittitur on June 28, 2023, which raised federal questions, as detailed in Attachment D1."

LOWER COURT ORDERS/OPINIONS

Attachment D2

"Subsequently, the Nevada Supreme Court denied the motion for specification in its order on July 12, 2023, which is the original dispositional order. This order is provided in Attachment D2."

- **07/12/2023 ORDER DENYING MOTION (ORDER ON APPEAL)**
- **06/16/2023 ORDER DENYING REHEARING**
- **06/05/2023 PETITION FOR RECONSIDERATION**
- **06/02/2023 ORDER DENYING PETITION
FOR WRIT OF HABEAS CORPUS
AND REPLEVIN**

Attachment D3

"A petition for en banc reconsideration of the July 12, 2023 order was filed on July 20, 2023, as shown in Attachment D3."

Attachment D4

"The Nevada Supreme Court issued a denial for the en banc rehearing on August 1, 2023, in direct response to the July 12, 2023 dispositional order. This denial is documented in Attachment D4."

Attachment E

"This case stands as a sentinel in today's times, questioning and seeking correction for potential misapplications of military authority. If unchecked, these missteps skirt perilously close to the oppressions Hamilton and his peers vehemently fought against. The essence of this case transcends the immediate participants, touching upon the bedrock principles upon which our illustrious nation stands. We must perpetually guard against encroachments of despotism and potential misdirection of our armed forces, particularly when such actions are subtle, serving as "A MORE DANGEROUS ENGINE of arbitrary government." Attachment E embodies a petition from the Fourth Circuit, made pro se, illuminating inaccuracies and destruction of evidence in lower court records, threatening the sanctity of our legal framework, dated June 18, 2023. (235 years after Federalist 84)"

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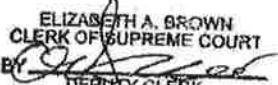
IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTIN AKERMAN,
Petitioner,
vs.
NEVADA NATIONAL GUARD,
Respondent.

No. 86458

FILED


JUN 16 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.


_____, C.J.
Stiglich


_____, J.
Cadish


_____, J.
Herndon

cc: Martin Akerman
Nevada National Guard

FILED

JUN 05 2023

IN THE SUPREME COURT OF THE STATE OF NEVADA

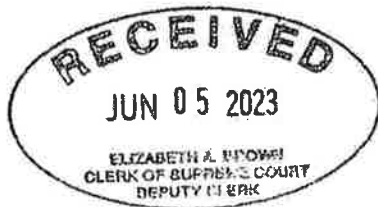
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Michelle Miller*
DEPUTY CLERK

Martin Akerman, Pro Se.)	Case No. 86458
Petitioner, Pro Per)	June 3, 2023
)	
v.)	
)	
Gen. Ondra L. Berry,)	Video Participation
Adjutant General of the Nevada National Guard,)	Requested
et. al.,)	
Respondents.)	
)	

PETITION FOR RECONSIDERATION

Pursuant to Rule 40(c)(2)(A) and (B) of the Nevada Rules of Appellate Procedure, and under the authority of SFR Invs. Pool I v. U.S. Bank, 138 Nev. Adv. Op. 22, 5 (Nev. 2022), Petitioner, Martin Akerman, respectfully requests this Honorable Court to reconsider its decision of June 2, 2023 (Doc. No. 23-17398), in light of the following:

1. **MISUNDERSTOOD FACTS:** The record includes allegations of severe constitutional violations by an officer of the Nevada Air National Guard, encompassing such activities as acting in lieu of a trial court, affirming civil forfeiture, and sustaining a false arrest for over a year. Ordinarily, such matters would fall under the purview of a district court. However, this scenario diverges due to the specific jurisdictional stipulations surrounding the Nevada National Guard, an area over which district courts do not have jurisdiction.



23-17538

- a. On page 23 of document 23-13409, it is articulated in Ground 1 that General Garduno, a General Officer of the Nevada Air National Guard acting as a trial court, violated constitutional standards by failing to apply the test established in *Rippo v. Baker*, 137 S. Ct. 905, 907 (2017), which mandates the assessment of whether the risk of bias was, objectively speaking, 'too high to be constitutionally tolerable' under the alleged circumstances.
- b. As presented in Ground 4 on page 26, the memorandum cites the case of *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975), where the United States Supreme Court ruled that while an on-the-scene assessment of probable cause by a policeman is legally sufficient for an arrest and brief administrative detention, the Fourth Amendment to the U.S. Constitution mandates a judicial determination of probable cause as a prerequisite for an extended restraint of liberty following an arrest, emphasizing the constitutional necessity for the independent judgment of a neutral and detached magistrate in these matters. As reflected on page 30, *Lehman v. Lycoming County Children's Services Agency*, 458 U.S. 502 (1982) underscores the potency of the writ of habeas corpus to sidestep *res judicata*. This dynamic has profound implications for federalism, necessitating that the writ's use be restricted to its essential function of safeguarding individual freedom and offering relief from illegal detention.
- c. As delineated in pages 28-29, the petitioner has shown good cause for requested discovery. It has been convincingly argued that the discovery was not available during the direct appeal, and should this discovery be granted, it holds the potential to reveal that the petitioner's detention was, in fact, unlawful (*Williams v. Schriro*, D.Ariz.2006, 423 F.Supp.2d 994; *Beuke v. Houk*, C.A.6 (Ohio) 2008, 537 F.3d 618; *Lnu v. Obama*, D.D.C.2009, 656 F.Supp.2d 187; *Edwards v. Superintendent, Southport C.F.*, E.D.N.Y.2013, 991 F.Supp.2d 348).

2. **JURISDICTIONAL CONSIDERATIONS:** The Nevada Constitution, in Article 6, Section 1, assigns this Supreme Court appellate jurisdiction in all cases. The statutory law of Nevada reflects this Constitutional jurisdictional provision. Both NRS 412.288, discussing the imposition and enforcement of disciplinary punishment without court-martial, and NRS 412.296, detailing the appeal process to superior authority, do not confer jurisdictional authority over such matters to the district courts. Instead, they are distinctly under the authority of this Supreme Court.

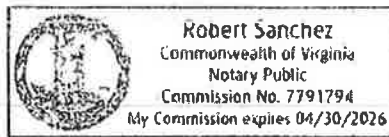
3. **HABEAS CORPUS:** It is within the purview of this Court to invoke the principles of Habeas Corpus, to allow the Petitioner to be heard for the first time on these pressing issues. As outlined on page 31, the writ of habeas corpus must be construed to provide a swift and imperative remedy in cases of unlawful restraint or confinement, and if trial courts do not act within a reasonable timeframe, the writ loses its efficacy (*Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978)). Further, the state is not a suitable respondent in a habeas corpus proceeding due to sovereign immunity from federal court lawsuits, the necessity for the respondent to be the state officer with custody of the petitioner, and the potential for confusion in service and notice as stipulated in *Bridges v. Chambers*, C.A.7 (111.) 2005, 425 F.3d 1048. In cases where a habeas petition challenges confinement by the Department of Homeland Security (DHS) during pending deportation proceedings, respondents directly controlling DHS facilities or with immediate physical control over the petitioner are required to be named (*Excellent v. Ashcroft*, S.D.N.Y.2005, 359 F.Supp.2d 333).

Therefore, in line with NRAP 40(c)(2)(A) and (B), Petitioner respectfully requests the Court to reconsider its initial decision. By doing so, the Court would not only uphold the Nevada Constitution and statutory laws, but also reinforce the fundamental principles of justice, fairness, and the inherent right of habeas corpus that are the bedrock of our revered legal system.

CLOSING CERTIFICATION

I certify to the best of my knowledge, information, and belief that this motion: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; and (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

County/City of Arlington
Commonwealth/State of Virginia
The foregoing instrument was acknowledged
before me this 3 day of June,
2023 by
Martin Akerman
(name of person seeking acknowledgment)
Notary Public [Signature]
My Commission Expires: 30 April 2026



Respectfully Submitted,



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

CERTIFICATE OF SERVICE BY MAIL

I, Martin Akerman, hereby certify, pursuant to N.R.C.P. 5(b), that on this 3rd day of the month of June of the year 2023, I mailed a true and correct copy of the foregoing PETITION FOR RECONSIDERATION addressed to Gen. Ondra L. Berry, STATE OF NEVADA OFFICE OF THE MILITARY, 2460 FAIRVIEW DRIVE, Carson City NV 89701 and the Nevada Attorney General, Heroes' Memorial Building, Capitol Complex, Carson City, Nevada 89710

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTIN AKERMAN,
Petitioner,
vs.
NEVADA NATIONAL GUARD,
Respondent.

No. 86458

FILED

JUN 02 2023

ORDER DENYING PETITION

ELIZABETH BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

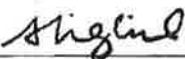
This pro se original petition for a writ asserts purported claims for false imprisonment, among other things, and seeks declaratory and other relief. Having considered the petition, we are not convinced that our extraordinary and discretionary intervention is warranted. See NRS 34.170; NRS 34.330; *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 228, 88 P.3d 840, 841, 844 (2004) (explaining that writ relief is proper only when there is not a plain, speedy, and adequate remedy at law and the petitioner bears the burden to demonstrate that extraordinary relief is warranted).

Even assuming the relief sought here could be properly obtained through a writ petition, any application for such relief should be directed to and resolved by the district court in the first instance so that the factual and legal issues can be fully developed, providing an adequate record to review.¹ See *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) (recognizing that an appellate court is not the appropriate forum to resolve questions of fact and noting that

¹This includes a postconviction petition for a writ of habeas corpus, to the extent petitioner has styled his petition as such. See NRAP 22 (“An application for an original writ of habeas corpus should be made to the appropriate district court.”).

when there are factual issues presented, appellate courts will not exercise their discretion to entertain a petition for extraordinary relief even if “important public interests are involved”); *State v. Cty. of Douglas*, 90 Nev. 272, 276-77, 524 P.2d 1271, 1274 (1974) (noting that “this court prefers that such an application [for writ relief] be addressed to the discretion of the appropriate district court” in the first instance), *abrogated on other grounds by Att’y Gen. v. Gypsum Res.*, 129 Nev. 23, 33-34, 294 P.3d 404, 410-11 (2013); *see also Walker v. Second Judicial Dist. Court*, 136 Nev. 678, 684, 476 P.3d 1194, 1199 (2020) (noting that this court typically will not entertain petitions for extraordinary relief that implicate factual disputes). Accordingly, we

ORDER the petition DENIED.²


_____, C.J.
Stiglich


_____, J.
Cadish


_____, J.
Herndon

cc: Martin Akerman
Nevada National Guard

²Petitioner’s “motion for an emergency writ of replevin” and “motion to certify the order for interlocutory appeal and rebuttal to allegations of frivolous and me” are denied as moot.

Attachment D3

"A petition for en banc reconsideration of the July 12, 2023 order was filed on July 20, 2023, as shown in Attachment D3."

Case No. 86458

Pro Per Petition for Writ of Habeas Corpus (Post-Conviction) and Replevin

In the Supreme Court of Nevada

Martin Akerman, Pro Se, |
Petitioner, Pro Per |
v. |
Brig. Gen. Cesar Garduno, |
Gen. Ondra L. Berry, |
Nevada National Guard, |
et. al., |
Respondents. |

FILED

JUL 20 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *Elizabeth A. Brown*
DEPUTY CLERK

EXTRAORDINARY AND DISCRETIONARY INTERVENTION
Superior Authority Under NRS 412.296

PETITION FOR EN BANC RECONSIDERATION

No attorney has made an appearance¹

¹ NRAP 26.1: I certify that the use of Artificial Intelligence and the GMU Scalia Law Library in the preparation of this petition for en banc reconsideration was limited to the gathering of legal information, formatting assistance, and language generation. The legal arguments, content, and decision-making process were entirely performed by myself, the petitioner, in a pro se capacity. No attorney has provided assistance or advice in the preparation of this document.

REC-118
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

23-23178

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PETITION FOR EN BANC RECONSIDERATION

Pursuant to NRAP 40A, Pro Per Appellant, Martin Akerman, Pro Se, respectfully petitions the Court for en banc reconsideration. The Panel issued its Dispositional Order in this appeal on June 2, 2023², the Panel denied rehearing on June 16, 2023, and the Panel denied specification in remittitur on July 12, 2023.

The Panel's Opinion, its decision to deny rehearing, and its decision to deny specification or discovery, threatens Nevada precedent, statute, and public policy, and threatens federalism, setting an unconstitutional precedent, with impact beyond the litigants involved. In particular, it (1) defies well-settled precedent concerning the federalization of members of the Nevada State National Guard, and the authority and responsibility retained by the Governor, inevitably leading to confusion and ambiguity in the law, and (2) undermines habeas rights and public policy stated in NRS 412, essentially forming an unwarranted and judicially-created exception to Nevada's Code of Military Justice, NRS 412.196 to 412.584, inclusive, particularly NRS 412.286 to 412.302 (the "Nonjudicial Punishment Statute").

² Akerman v. Nev. Nat'l, No. 86458, 2023 Nev. Unpub. LEXIS 376 (June 2, 2023)

EN BANC RECONSIDERATION STANDARDS

En banc reconsideration is appropriate “when (1) reconsideration by the full court is necessary to secure or maintain uniformity of decisions of the Supreme Court or Court of Appeals, or (2) the proceeding involves a substantial precedential, constitutional or public policy issue.” NRAP 40A(a). A petition “to secure and maintain uniformity of the decisions ... shall demonstrate that the panel’s decision is contrary to prior, published opinions of the Supreme Court or Court of Appeals and shall include specific citations to those cases.” NRAP 40A(c). And a petition “based on grounds that the proceeding involves a substantial precedential, constitutional or public policy issue, ... shall concisely set forth the issue, shall specify the nature of the issue, and shall demonstrate the impact of the panel’s decision beyond the litigants involved.” Id.

BACKGROUND

Akerman filed a pro se petition against [a General Officer of] the Nevada National Guard, asserting claims of false imprisonment, among other things, and seeking declaratory relief. The court, however, denied the petition, stating that they do not see the need for their extraordinary and discretionary intervention as described in NRS 34.170 and NRS 34.330. The

court points out that writ relief is only proper when there is not a plain, speedy, and adequate remedy at law and it is the petitioner's responsibility to demonstrate that extraordinary relief is warranted.

The court acknowledges that even if the relief Akerman seeks could be properly obtained through a writ petition, such a request should be addressed and resolved by the district court initially. This approach would enable the full development of factual and legal issues, resulting in an adequate record for review. The court reinforces that appellate courts are not the appropriate platform to resolve questions of fact.

The court denied Petitioner Akerman's "motion for an emergency writ of replevin" and "motion to certify the order for interlocutory appeal and rebuttal to allegations of frivolous and me" as moot. The court's stance is that applications for extraordinary relief should be made to the appropriate district court first, especially in cases that involve factual disputes.³

³ The record includes allegations of severe constitutional violations by General Garduno of the Nevada Air National Guard, encompassing such activities as acting in lieu of a trial court, affirming civil forfeiture, and sustaining a false arrest for over a year. Ordinarily, such matters would fall under the purview of a district court. However, this scenario diverges due to the specific jurisdictional stipulations surrounding the Nevada National Guard, an area over which district courts do not have jurisdiction.

ARGUMENT

I.

THE PANEL'S OPINION DISREGARDS WELL-SETTLED PRINCIPLES OF MILITARY LAW

Respectfully, the Court should reconsider the Panel's Opinion because it contradicts precedent and creates substantial precedential confusion concerning the organization and discipline of the Militia, the distinction between local and general legislation, habeas corpus procedures, important legal principles, and nonjudicial punishment appeal procedures. See NRAP 40A(a) (en banc reconsideration is appropriate when it (1) is necessary to maintain uniformity of decisions or (2) involves a substantial precedential issue).

A. In Conflict with Precedent, the Panel's Opinion does Not Adhere to the Nevada Constitution's Mandate on Military Law

The Panel's decision is inconsistent with the Nevada Constitution, Article 12, Section 1, which mandates the organization and discipline of the State's Militia. This oversight can potentially distort the interpretation and application of the legislative framework underpinning the Militia and Volunteer Corps.

B. The Panel's Opinion Neglects the Distinction Between Local and General Legislation Established in Precedent

The Panel's Opinion conflicts with the precedent set in *Masto v. Gypsum Res., LLC*, 129 Nev. 23. The decision neglects the necessary distinction between local and general legislation, particularly in the context of enumerated categories. This oversight may lead to substantial confusion in future cases.

C. In Disregard of Precedent, the Panel's Opinion Misinterprets Habeas Corpus Procedures

The Panel's Opinion, inconsistent with *Johnson v. State*, 2022 Nev. Unpub. LEXIS 34, and Nev. Rev. Stat. Ann. § 34.170, suggests that habeas corpus matters should be directed to and resolved by the district court in the first instance. This approach overlooks the principles governing extraordinary relief under conditions of urgency or strong necessity and may contribute to inconsistent decisions in the future.

Furthermore, it fails to recognize that in cases of unlawful restraint or confinement, the writ of habeas corpus must be construed to provide a swift and imperative remedy as outlined in *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978). Also, the Panel's opinion seems to forget that the state is not a suitable respondent in a habeas corpus proceeding due to sovereign immunity from federal court lawsuits, the necessity for the respondent to be

the state officer with custody of the petitioner, and the potential for confusion in service and notice as stipulated in *Bridges v. Chambers*, C.A.7 (111.) 2005, 425 F.3d 1048.

**D. The Panel's Opinion Ignores the Need
for Clarification of Important Legal
Principles**

The Panel's Opinion neglects the need for clarification of important legal principles, contrary to *Lowe Enters. Residential Ptnrs., L.P. v. Eighth Judicial Dist. Court*, 118 Nev. 92. By dismissing the petition, the Panel disregards the opportunity to provide clarity on significant legal matters related to habeas corpus petitions and military law.

**E. The Panel's Opinion Inadequately
Considers Nonjudicial Punishment
Appeal Procedures**

In conflict with NRS 412.296, the Panel's Opinion may have overlooked the procedures for appeals in cases of nonjudicial punishment. The stipulations of this law concerning the process, time, and conditions for appeal, as well as the roles of superior authorities and the State Judge Advocate, may have significant relevance to the case at hand. Failure to consider these points can lead to divergent and confusing decisions in the future.

II.
THE PANEL'S OPINION IGNORES CONSTITUTIONAL PROVISIONS
ON THE USE OF STATE NATIONAL GUARD OFFICERS
BY THE FEDERAL GOVERNMENT

The Panel's Opinion, on reflection, appears to fall short of adequately considering a substantial precedential, constitutional, and public policy issue; specifically, the illegal use of the State National Guard by the Federal government. This critical issue extends beyond the direct litigants involved and bears far-reaching implications for the intricate balance of powers between the federal and state governments.

**A. The Panel's Opinion Overlooks
Foundational Constitutional Principles**

As clearly demonstrated in the historical discourse surrounding the framing of the Constitution, the Federal government is not designed to act upon and through the States. Instead, both state and federal governments are meant to exercise concurrent authority over the people, as elucidated in *Printz v. United States*, 521 U.S. 898, 919-22, 117 S. Ct. 2365, 2377-78 (1997). The Panel's opinion, in this regard, overlooks this essential balance of powers principle.

**B. Ignoring Constitutional Safeguards of
Liberty and Property**

The Constitution's structure inherently safeguards liberty by maintaining a balance of power between the States and the Federal

Government. This balance reduces the risk of tyranny and abuse, protecting citizens' rights. Moreover, Congress codified procedural safeguards that were violated in this case, namely 5 USC § 6329b, and 5 USC § 7513. However, the Panel's opinion seems to ignore these constitutional protections, thus raising substantial constitutional issues.

**C. The Panel's Opinion Fails to Consider
the Illegitimate Use of State Resources
by the Federal Government**

The decision disregards the precedential significance of *Printz v. United States*, where the Court noted that the Federal Government's power would be "augmented immeasurably if it were able to impress into its service--and at no cost to itself--the police officers of the 50 States." The Panel's decision, by not adequately considering this issue, fails to address the potential misuse of state resources, like the State National Guard, by the Federal Government.

Furthermore, it neglects to consider the allegations, as presented in the record, of General Garduno, a General Officer of the Nevada Air National Guard, overstepping his authority by acting as a trial court, violating constitutional standards by failing to apply the test established in *Rippo v. Baker*, 137 S. Ct. 905, 907 (2017). The petitioner has convincingly argued that if the requested discovery were granted, it would reveal that the petitioner's detention was, in fact, unlawful (*Williams v. Schriro*, D.Ariz.2006, 423 F.Supp.2d 994; *Beuke v. Houk*, C.A.6 (Ohio) 2008, 537 F.3d

618; *Lnu v. Obama*, D.D.C.2009, 656 F.Supp.2d 187; *Edwards v. Superintendent, Southport C.F.*, E.D.N.Y.2013, 991 F.Supp.2d 348).

**D. Constitutional Implications Extend
Beyond Immediate Litigants**

The Panel's opinion neglects to assess the full implications of this issue on the complex federal-state dynamic and its impact on other states beyond Nevada. By not addressing the unauthorized use of the State's National Guard by the Federal government, the decision fails to consider its potential to destabilize the carefully balanced structure of governance that our Constitution envisioned.

CONCLUSION

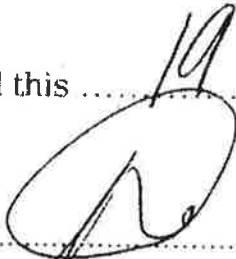
In summary, the Panel's decision overlooks military law principles and constitutional guidelines on State National Guard usage. This conflict with precedent creates significant legal confusion, warranting immediate reconsideration. It's suggested that a judge advocate under NRS 412.296 assess the case, ensuring a thorough review process. Such measures maintain legal uniformity, protect constitutional powers, prevent resource misuse, and uphold public policy and constitutional values. The Petition for En Banc Reconsideration exposes vital legal dilemmas affecting constitutional rights and federalism, especially in National Guard cases. Pro Per Petitioner respectfully asks the Court to grant En Banc Reconsideration for clarity on these significant issues.

Form 16. Certificate of Compliance Pursuant to Rule 40A

1. I hereby certify that this petition for en banc reconsideration complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Google Docs in 14pt. Century font.

2. I further certify that this petition complies with the page or type-volume limitations of NRAP 40A because it is proportionally spaced, has a typeface of 14 points or more, and does not exceed 10 pages.

Dated this 19 day of July, 2023



.....
(Signature of Petitioner)

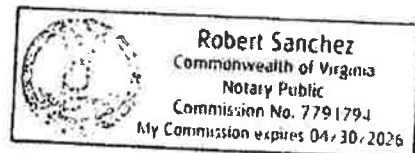
2001 NORTH ADAMS STREET #440, ARLINGTON, VA 22201

.....
(Address)

202-656-5801

.....
(Telephone Number)

County/City of Arlington
Commonwealth/State of Virginia
The foregoing instrument was acknowledged
before me this 19 day of July,
2023 by
Robert Sanchez
(name of person seeking acknowledgment)
Robert Sanchez
Notary Public
My Commission Expires: 30 April 2026 12



Attachment D4

"The Nevada Supreme Court issued a denial for the en banc rehearing on August 1, 2023, in direct response to the July 12, 2023 dispositional order. This denial is documented in Attachment D4."

Attachment E

"This case stands as a sentinel in today's times, questioning and seeking correction for potential misapplications of military authority. If unchecked, these missteps skirt perilously close to the oppressions Hamilton and his peers vehemently fought against. The essence of this case transcends the immediate participants, touching upon the bedrock principles upon which our illustrious nation stands. We must perpetually guard against encroachments of despotism and potential misdirection of our armed forces, particularly when such actions are subtle, serving as "A MORE DANGEROUS ENGINE of arbitrary government." Attachment E embodies a petition from the Fourth Circuit, made pro se, illuminating inaccuracies and destruction of evidence in lower court records, threatening the sanctity of our legal framework, dated June 18, 2023. (235 years after Federalist 84)"

June 18, 2023

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 22-2066(L)(1:22-cv-00696-LMB-WEF), No. 22-2147(1:22-cv-00696-LMB-WEF),
No. 22-2154(1:22-cv-01258-LMB-WEF)

MARTIN AKERMAN, PRO SE Plaintiff - Appellant

v.

LLOYD J. AUSTIN, III, Secretary of Department of Defense; CHRISTINE E. WORMUTH, Secretary of the Army; FRANK KENDALL, Secretary of the Air Force; GENERAL DANIEL R. HOKANSON, Chief, National Guard Bureau; DEPARTMENT OF DEFENSE; DEPARTMENT OF THE ARMY; DEPARTMENT OF THE AIR FORCE; DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY; MERIT SYSTEMS PROTECTION BOARD; OFFICE OF SPECIAL COUNSEL Defendants - Appellees

**PETITION FOR WRIT OF HABEAS CORPUS,
UNDER 28 U.S.C. § 2241, OR UNDER 28 U.S.C. § 2253(c),
WITH DEMAND FOR REPLEVIN AND CORRECTION OF RECORDS**

The Petitioner, Martin Akerman (hereinafter "Appellant" or "Petitioner"), appearing pro se, is seeking relief under a writ of habeas corpus and replevin. The case pertains to civil forfeiture of the Petitioner's tenured career, and related procedural safeguards, as codified by Congress.¹

¹ The Appellant argues that the placement on Notice Leave on February 14, 2022, until April 24, 2022, was illegal and in violation of the procedural safeguards outlined in 5 U.S.C. 7513 and 5 U.S.C. 6329b.

This Petition seeks the Court's intervention following a series of legal proceedings and administrative actions. The Petitioner alleges false imprisonment by an officer of the Nevada Air National Guard, in need of Discovery, and subsequent misconduct by administrative agencies. The Petitioner argues that the false arrest and subsequent false imprisonment he continues to endure entitle him to Petition this Court for the "Great Writ of Habeas Corpus."² Additionally, the Petitioner is seeking correction of misinformation in the lower court dockets as described herein.³ (Exhibit A)

BACKGROUND

1. On March 7, 2022, the Petitioner sought a stay of the illegal civil forfeiture and false arrest with the Merit Systems Protection Board, as evidenced by the Office of Special Counsel, on February 14, 2022. (see MSPB LEXIS 809 (Exhibit A) and Exhibit B)
2. On November 4, 2022, the Petitioner sought relief in the Fourth Circuit for a writ of mandamus and injunction related to alleged false imprisonment by an officer of the Nevada Air National Guard.
3. The Petitioner pursued a Petition for Writ of Habeas Corpus in the Supreme Court of Nevada on April 24, 2023, a year after the alleged illegal indefinite suspension.

² William Howard Taft, *The Writ of Habeas Corpus* (Yale Univ. Press 1919)

³ The sole administrative case attached to the District Court decision is *Akerman v. Dep't of the Army*, 2022 MSPB LEXIS 809 (M.S.P.B. March 7, 2022), (as established in *Akerman v. Austin*, No. 1:22-cv-696 (LMB/WEF)), 2022 U.S. Dist. LEXIS 200993 (E.D. Va. Nov. 3, 2022). However, a closer look at MSPB LEXIS 809 reveals many more cases linked to the aforementioned District Court decision.

4. Following a response by the Department of the Army suggesting the officer in question did not make the decision, the Petitioner discovered a clerical error made by the Office of Special Counsel that prevented him from securing legal representation, both reported to this Honorable Fourth Circuit in the May 8, 2023, motion requesting the Court to provide 120 days for the Office of Special Counsel to conduct an exhaustive administrative investigation. The motion also requested relief from the judgment entered on November 3, 2022, pursuant to Rule 60, with the case remanded for limited purpose.

DEVELOPMENTS SINCE THE MAY 8 MOTION

5. The Office of Special Counsel and the Merit System Protections Board declined to form a special panel to conduct the requested investigation. (Exhibit C)
6. On June 17, 2023, following the Nevada Supreme Court's directive, the Petitioner filed a Petition for Writ of Habeas Corpus in the Air Force Court of Criminal Appeals, for want of Special Courts-Martial appellate jurisdiction, under 10 U.S.C. § 819. (Exhibit D)
7. On June 18, 2023, the Petitioner received a returned filing from the Federal Court of Appeals for the Federal Circuit, indicating a refusal to assert jurisdiction over the Merit Systems Protection Board and the Office of Special Counsel's decision not to address the Petitioner's claims. (Exhibit E)

JURISDICTION AND CLAIMS

8. Given the gravity of the allegations against Federal Employee Bill Poppler, who is alleged to have deliberately framed both General Garduno and the Appellant, committed fraud, and denied due process, this matter falls squarely within federal jurisdiction. The

repercussions of these alleged actions, leading to the Appellant's Unpaid Suspension from April 24, 2022, fundamentally touch upon federal employment law and, more broadly, constitutional rights and protections.

9. The alleged violation of procedural safeguards, as per 5 U.S.C. 7513 and 5 U.S.C. 6329b, in connection with the placement of the Appellant on Notice Leave from February 14, 2022, to April 24, 2022, denotes a disregard for federally prescribed procedures. This further necessitates the federal appellate court's intervention to rectify the alleged procedural non-compliance.
10. Furthermore, the accusations of civil forfeiture, false arrest, constructive discharge, and false imprisonment, if substantiated, demonstrate substantial breaches of the Appellant's constitutional rights under the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments. Such constitutional matters inherently fall under federal jurisdiction, and this Court is positioned to ensure these rights are upheld and protected. Therefore, the United States Court of Appeals for the Fourth Circuit has jurisdiction to adjudicate upon these matters and, if found valid, provide the requisite legal remedy.
11. Finally, the demand for replevin and correction of record pertains to a federally related matter and is based on federal law, specifically falling under the purview of federal courts. Hence, the Fourth Circuit, as the appellate court in this instance, can exercise jurisdiction over this demand. The alleged discrepancies in the legal records of the case available on Lexis+ and Westlaw, involving the District Court decision, potentially corrupt the integrity of the case and mislead judicial proceedings. As such, it is within the jurisdiction of this Court to rectify these discrepancies to ensure a fair trial.

CLOSING AND PRAYER FOR RELIEF

- A. The Petitioner, Martin Akerman (hereinafter "Appellant" or "Petitioner"), appearing pro se, respectfully submits this Petition seeking relief under a writ of habeas corpus and replevin under 28 U.S.C. § 2241. The issues at hand pertain to alleged civil forfeiture of the Petitioner's tenured career and associated procedural safeguards, as codified by Congress.
- B. This Petition invites the Court's intervention following a series of legal proceedings and administrative actions. Notably, the Petitioner alleges false imprisonment by an officer of the Nevada Air National Guard, the need for discovery in the case, and subsequent misconduct by administrative agencies. As a result of these allegations and their profound impact on the Petitioner's personal and professional life, the Petitioner asserts that his ongoing ordeal entitles him to petition this Court for the "Great Writ of Habeas Corpus."
- C. Furthermore, the Petitioner is seeking correction of misinformation in the lower court dockets. An examination of the Lexis+ database reveals numerous discrepancies between the associated administrative cases attached to the District Court decision in *Akerman v. Austin*, No. 1:22-cv-696 (LMB/WEF), 2022 U.S. Dist. LEXIS 200993 (E.D. Va. Nov. 3, 2022). MSPB LEXIS 809, for example, includes multiple cases linked to the aforementioned District Court decision, leading to misinformation and confusion, thereby jeopardizing the integrity of the records and potential misleading of the Grand Jury.
- D. In light of the facts outlined above, the Petitioner respectfully requests that this Court grant the relief sought, including appointing appellate counsel due to the case's complexity, relief from the judgment dated November 3, 2022, an order for replevin, and correction of the record to rectify the misinformation present. In so doing, the Court will

provide a much-needed resolution to the Petitioner's ongoing hardship and assist in restoring justice to this complicated and highly consequential case.

ALL CASES

The Appellant has 3 merged cases before the Fourth Circuit (No. 22-2066(L)(1:22-cv-00696-LMB-WEF), No. 22-2147(1:22-cv-00696-LMB-WEF), and No. 22-2154(1:22-cv-01258-LMB-WEF)) and certifies that on June 18, 2023, he has one related Petition for Writ of Habeas Corpus, pending acceptance in the Air Force Court of Criminal Appeals, under 10 U.S.C. § 819.

The Appellant has one PPD-19 case in MSPB, as described in case 22-2066, Document 37. The Appellant is awaiting Army response, status conference, discovery, and hearing on USERRA case DC-0752-23-0457-I-1, related to the retaliatory blocking of Appellant's Workman's Compensation and Disability Retirement claims before OWCP and OPM, respectively.

CERTIFICATE OF SERVICE

I, Martin Akerman, certify that I have this day served the foregoing motion on all parties through the Court's Electronic Case Filing system. I further certify that I have sent the same documents by Priority Mail, to the Merit Systems Protection Board and the Office of Special Counsel.






Respectfully Submitted:







Martin Akerman, Pro Se

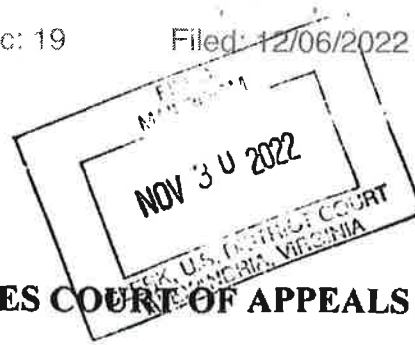
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Arlington, VA 22201

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		MERIT SYSTEMS PROTECTION BOARD GENERAL COUNSEL 1615 M ST NW WASHINGTON DC 20419-0004	
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E

UP

November 29, 2022

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 22-2147 (1:22-cv-00696-LMB-WEF)

MARTIN AKERMAN, PRO SE Plaintiff - Appellant

v.

LLOYD J. AUSTIN, III, Secretary of Department of Defense; CHRISTINE E. WORMUTH, Secretary of the Army; FRANK KENDALL, Secretary of the Air Force; GENERAL DANIEL R. HOKANSON, Chief, National Guard Bureau; DEPARTMENT OF DEFENSE; DEPARTMENT OF THE ARMY; DEPARTMENT OF THE AIR FORCE; DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY; MERIT SYSTEMS PROTECTION BOARD; OFFICE OF SPECIAL COUNSEL Defendants - Appellees

**IN RE MARTIN AKERMAN, PRO SE: PETITION FOR
RECONCILIATION OF THE TRIAL DOCKET**

RECEIVED

2022 DEC -5 PM 2:59

COURT OF APPEALS
FOURTH CIRCUIT

40

I. Relief Sought

1. The Pro Se Appellant hereby humbly petitions this Honorable Court to grant leave to the District Court to reconcile/repair Docket 1:22-cv-00696-LMB-WEF and/or for a writ of mandamus directed at the trial if repair is not undertaken on its own volition (FRAP Rule 21), particularly Amended Notice of Appeal Number 105.

II. Issues Presented

1. FRCP Rule 60: Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice.
2. A similar request was served with copy to all parties including the trial-court judge on 17 October 2022.¹ and in the Fourth Circuit on 23 October 2022²
3. Pro Se Appellant Sent a Notice of Appeal that is overdue and sent a letter to the District Court.³

¹ See Trial Court Docket Document Number 45 as intertwined with Operative Complaint - Particularly page 11 of 42.

² See USCA 22-2066 Docket Document Number 13 - Particularly page 19 of 38.

³ See also LETTER filed under DOCUMENT Number 9 in this Docket

III. Reasons for Granting Leave and/or Writ

4. FRCP Rule 60: After an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.
5. The Defendants and the Court are offered exclusive electronic filing capability which provides a significant unfair advantage to the Well-Regulated Militia against a Private Citizen. Under the prison mailbox rule, a notice of appeal is timely—regardless of when it was received by the court—so long as it was deposited in the prison mail system on or before the filing deadline, and (A) it is accompanied by (i) a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or (ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or (B) the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4(c)(1)(A)(i).⁴

Because the Pro Se Plaintiff was denied the ability to file documents electronically, he is at the mercy of the Clerk. The Clerk has displayed a repeated pattern of dishonest behavior as will be presented in this

⁴Quintana v. Trani, No. 19-1195, at *4-5 (10th Cir. July 14, 2020)