

No. 23A _____

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

BRIGADIER GENERAL CAESAR GARDUNO, ET AL,
RESPONDENTS

APPLICATION TO EXTEND THE TIME TO FILE A PETITION FOR A WRIT OF
CERTIORARI

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE
OF THE SUPREME COURT OF THE UNITED STATES,
AND CIRCUIT JUSTICE FOR THE
UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

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

BLUF (BOTTOM LINE UP FRONT)

Martin Akerman, a pro se applicant with PTSD and detained since February 14, 2022, under 5 U.S. Code § 6329b, seeks an 11-day extension to March 29, 2024, for his petition for writ of certiorari. This request aims to synchronize deadlines across various circuits and thoroughly address his unlawful detention and suspension under both 5 U.S. Code § 6329b and § 7513, highlighting significant constitutional issues around due process, individual rights, and national security. The extension is crucial for Akerman's detailed case preparation, particularly in light of the mandatory exhaustion of military court remedies before federal civilian courts can entertain habeas corpus petitions. Furthermore, the extension is warranted due to the extraordinary circumstances of his suspension, allegedly orchestrated by Brigadier General Caesar Garduno of the Nevada Air National Guard while under federal service, executed without adherence to statutory protections or legal procedures, complicating the legal landscape of the case.

QUESTION TO BE PRESENTED

- Should a civilian alleging to have been unlawfully and secretly tried, by a member of the national guard called into federal service under 10 U.S. Code § 12405, be granted the right to challenge their conviction and to petition for a writ of habeas corpus in U.S. federal military courts?

PARTIES TO THE PROCEEDING

Applicant is Martin Akerman, the tenured Chief Data Officer of the National Guard Bureau of the United States of America, appearing pro se;

Respondents are Nevada Air National Guard Brig Gen Caesar Garduno, and the Judge Advocate General of the Air Force.

ORDERS ON APPEAL

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.

On August 24, 2023, the Judge Advocate General of the Air Force mandated an Order denying access to the Court of Appeals for the Armed Forces and Legal Representation under Article 70, UCMJ, without docketing a case, Appendix C.

On 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, Appendix B.

On December 18, 2023, the United States Court of Appeals for the Armed Forces docketed and issued a final ORDER on USCA Dkt. No. 24-0060/AF, Appendix A.

RELATED PROCEEDINGS

1. In the Supreme Court of the United States: the petitioner was granted leave to proceed without payment of fees or court costs (as a Rule 40 veteran), under the whistleblower protection provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA), 23M44;
2. In the Supreme Court of the United States: a petition for writ of certiorari was filed from the Supreme Court of Nevada, 23-623;
3. In the Supreme Court of the United States: an application for an extension of time to file a petition for writ of certiorari was granted, until March 29, 2024, from the United States Court of Appeals for the Fourth Circuit, 23A536;
4. In the Supreme Court of the United States: an application for an extension of time to file a petition for writ of certiorari was granted, until March 29, 2024, from the United States Court of Appeals for the Federal Circuit, 23A539;
5. In the United States Court of Appeals for the District of Columbia: a 28 U.S. Code § 2255 motion attacking the alleged conviction in federal civilian court, under Case No. 23-5229.

RELATED PROCEEDINGS (CONTINUED)

6. In the United States Court of Appeals for the District of Columbia: the current and active petition for writ of habeas corpus is filed under Case No. 23-5230, having been exhausted in the Supreme Court of Nevada, the Fourth Circuit, the Federal Circuit, and U.S. military courts.
7. In the United States Court of Appeals for the District of Columbia: challenges against the designation of the petitioner as an Enemy Combatant, filed under Case No. 23-1268;

RELATED COLLATERAL PROCEEDINGS

- In the Supreme Court of the United States: a renewed application for a stay of the mandate, related to a collateral order and two final orders, pending a petition for writ of certiorari, is refiled and submitted to Justice Kagan, from the United States Court of Appeals for the Fourth Circuit, 23A489;
- In the United States Court of Appeals for the District of Columbia: a notice of appeal was filed on December 18, 2023, in a related Freedom of Information Act Case, No. 23-cv-2574 in the U.S. District Court for the District of Columbia, and is awaiting docketing.

RELATED COLLATERAL PROCEEDINGS (CONTINUED)

- 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: pending petition for rehearing en banc on 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).

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v.

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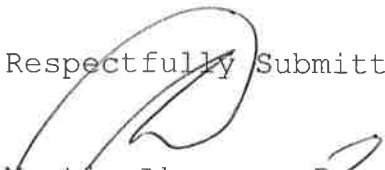
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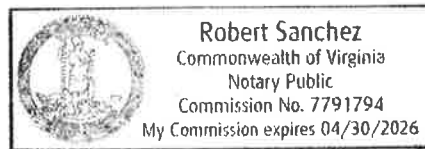
Pursuant to Supreme Court Rule 13.5, I, Martin Akerman, appearing Pro Se, respectfully request an 11-day extension of time to file a petition for a writ of certiorari, seeking a deadline of March 29, 2024, to allow for harmonization of cases arriving from different circuits. Without this extension, the petition would be due on March 18, 2024. This Application is timely, being submitted more than ten days prior to the original due date, in accordance with S. Ct. R. 13.5.

Given the complex nature and significance of the legal issues involved in this case, including the rights of civilians in military judicial proceedings and the application of whistleblower protections, an extension of time is both reasonable and necessary. Harmonizing deadlines across multiple circuits, as requested by the applicant, will enable a more thorough and cohesive presentation before the Supreme Court. This extension not only aids the applicant in preparing a comprehensive petition but also supports the Court by providing a consolidated view of the case's progression through various jurisdictions. Recognizing the applicant's pro se status, this extension aligns with principles of fairness and due process, facilitating a more informed and equitable decision by the Court. Therefore, it is respectfully requested that the Court grants the 11-day extension for filing the petition for a writ of certiorari, setting the new deadline to March 29, 2024, in the interest of justice.

Respectfully Submitted,


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

County/City of Arlington
 Commonwealth/State of Virginia
 The foregoing instrument was acknowledged before me this 19 day of Dec 2023 by Martin Akerman (name of person seeking acknowledgment)
 Notary Public Julie E. [Signature]
 My Commission Expires: 30 April 2024



B

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v.

BRIGADIER GENERAL CAESAR GARDUNO, ET AL,
RESPONDENTS

ATTACHMENTS IN SUPPORT OF APPLICATION

ATTACHMENT A - December 18, 2023, final ORDER, on Dkt. No. 24-0060/AF, in the United States Court of Appeals for the Armed Forces.

ATTACHMENT B - December 4, 2023, letter from The Supreme Court of the U.S. clarifying 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.

ATTACHMENT C - August 24, 2023, letter from the Judge Advocate General of the Air Force, denying access to the Court of Appeals for the Armed Forces and Legal Representation under Article 70, UCMJ, without docketing a case.

ATTACHMENT A - December 18, 2023, final ORDER, on Dkt. No. 24-0060/AF, in the United States Court of Appeals for the Armed Forces.

**United States Court of Appeals
for the Armed Forces
Washington, D.C.**

In re
Martin
Akerman,

USCA Dkt. No. 24-0060/AF

Petitioner

DOCKET NOTICE
and
ORDER

Notice is hereby given that a request for formal acknowledgment from this Court regarding the exhaustion of all available military remedies was filed on December 11, 2023, and placed on the docket this 18th day of December 2023. Petitioner has not presented any basis to believe that he was ever charged with any offense under the Uniform Code of Military Justice. On consideration thereof, it is, by the Court, this 18th day of December, 2023,

ORDERED:

That said request is hereby dismissed for lack of jurisdiction; and

That no further filings will be accepted or docketed by this Court in this matter.

For the Court,

/s/ Malcolm H. Squires, Jr.
Clerk of the Court

cc: The Judge Advocate General of the Air Force
Petitioner (Pro Se)

ATTACHMENT B - December 4, 2023, letter from The Supreme Court of the U.S. clarifying 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.

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

December 4, 2023

Martin Akerman
2001 North Adams Street
Unit 440
Arlington, VA 22201


RE: Akerman v. General Cesar Garduno, et al. / App. for Extension to File
Counsel Denial Letter from Armed Forces

Dear Mr. Akerman:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled matter was postmarked November 27, 2023 and received November 29, 2023. The application is returned for the following reason(s):

You are informed that the letter dated August 24, 2023 from the Department of the Air Force Office of the Judge Advocate General Military Justice and Discipline Directorate cannot be construed as an order in which you can file an extension of time for nor as an in order in which you can file a petition for writ of certiorari.

Pursuant to Rule 13, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, must be entered by a state court of last resort or a United States Court of Appeals (including the United States Court of Appeals for the Armed Forces). It does not appear that you have a pending case number or matter before the United States Court of Appeals for the Armed Forces at this time, nor does it appear that the United States Court of Appeals for the Armed Forces has issued a judgement in which you may seek review of.

Sincerely,
Scott S. Harris, Clerk
By: 

Angela Jimenez
(202) 479-3392

Enclosures

ATTACHMENT C - August 24, 2023, letter from the Judge Advocate General of the Air Force, denying access to the Court of Appeals for the Armed Forces and Legal Representation under Article 70, UCMJ, without docketing a case.



**DEPARTMENT OF THE AIR FORCE
OFFICE OF THE JUDGE ADVOCATE GENERAL
MILITARY JUSTICE AND DISCIPLINE DIRECTORATE**

24 August 2023

Colonel Willie J. Babor
Deputy Director, Military Justice and Discipline
1500 West Perimeter Road, Suite 1330
Joint Base Andrews Naval Air Facility Washington, Maryland 20762

Mr. Martin Akerman
2001 North Adams Street, Unit 440
Arlington, VA 22201

Dear Mr. Akerman

The Judge Advocate General asked me to respond to your letter, dated 28 June 2023, in which you requested the appointment of military appellate defense counsel under Article 70, Uniform Code of Military Justice (UCMJ).

In accordance with Article 70, UCMJ, military appellate defense counsel are appointed to cases before a service Court of Criminal Appeals, such as the Air Force Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court of the United States. The right to military appellate defense counsel is limited to members subject to the UCMJ with cases before these three courts.

Although your legal issue relates to your time with the Air National Guard, it appears that you are a civilian who is not subject to the UCMJ. Additionally, your legal issue does not appear to be the result of a court-martial. Finally, it does not appear as though you have a case pending before any of the three appellate courts referenced above. As such, your request is denied.

This constitutes final action on your request.

Sincerely

A handwritten signature in black ink, appearing to be "WJ Babor", is written over a horizontal line.

**WILLIE J. BABOR, Colonel, USAF
Deputy Director**

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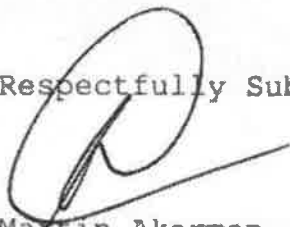
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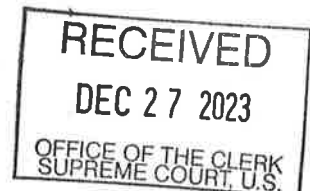
PROOF OF SERVICE

It is hereby certified that on December 19, 2023, three copies of the APPLICATION TO EXTEND THE TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI were delivered to the Supreme Court of the United States by first-class mail. Additionally, copies were served on December 19, 2023, to Respondents:

- Solicitor General of the United States,
950 PENNSYLVANIA AVE NW RM 5616
WASHINGTON, DC 20530-0009
- The Judge Advocate General of the Air Force,
1420 Air Force Pentagon
Washington, DC 20330-1420-1420

Respectfully Submitted,


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Washington, DC 20330-1420-1420

Respectfully Submitted,


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