

No. _____

(23A593)

IN THE
SUPREME COURT OF THE UNITED STATES

Martin Akerman, Pro Se

_____ — PETITIONER
(Your Name)

vs.

United States of America
_____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE ARMED FORCES

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Martin Akeman, Pro Se, In Forma Pauperis

(Your Name)

2001 North Adams Street, Unit 440

(Address)

Arlington, Virginia, 22201

(City, State, Zip Code)

(202) 656 - 5601

(Phone Number)

QUESTION(S) PRESENTED

1. **Specificity in Military Habeas Corpus Respondent Designation:** Does 28 U.S.C. § 2242 necessitate the specific naming of the individual custodian, such as a Federalized General of the Nevada National Guard, rather than a general designation of the United States, in military-related habeas corpus cases involving civilians?
2. **Legal Compliance in Military Judicial Roles:** In assigning a Federalized General Officer of the National Guard Bureau to a judicial role, as in this case, is there a violation of 10 USC 12406 and federal employment laws, thereby infringing on due process and constituting cruel and unusual punishment under the Eighth Amendment?
3. **Civilian Legal Redress in Military Jurisdiction:** How does the exclusion of civilians from military court jurisdiction, when tried by a Federalized General Officer under 10 USC 12405, affect their habeas corpus rights, especially amid alleged military interference in civilian legal channels?
4. **Challenging Barriers to Civilian Access in Military Court Redress:** Should the assumption that civilians are barred from redress in military courts be reevaluated in light of constitutional due process and equal protection, considering the potential of strict scrutiny to override traditional military immunities in such cases?

LIST OF PARTIES

- ☐ All parties appear in the caption of the case on the cover page.
- ☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

The following parties to the proceeding are missing from the caption of the case within the meaning of Rule 14.1(b)(i):

- Federalized Nevada Air National Guard, Brigadier General, Caesar Garduno

The undersigned affirms that no party is a nongovernmental corporation, Rule 29.6.

RELATED CASES

- The United States Court of Appeals for the Federal Circuit denied a Petition for Rehearing En Banc, on an appeal of a petition for writ of habeas corpus that was denied in the Administrative State jurisdiction of the Merit Systems Protection Board, on November 20, 2023. See 23A539
- In the United States Court of Appeals for the District of Columbia, a Petition for Writ of Habeas Corpus has been filed under Case No. 23-5230. This is the lead case, encompassing challenges under No. 23-1268, against the designation of the Petitioner as an Enemy Combatant, and No. 23-5229, contesting an alleged conviction. A related Freedom of Information Act Case, No. 23-cv-2574, is currently being heard in the District Court for the District of Columbia.
- Respondents in United States Supreme Court Case 23-623 did not respond, on a related petition from the Supreme Court of Nevada, due January 10, 2023.

RELATED CASES CONTINUED

COLLATERAL CASES PURSUANT TO RULE 14.1(B)(III)

- An emergency application to stay the mandate pending a petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit, under docket No. 23A489, was denied on January 8, 2024. This matter involves a petition for writ of habeas corpus. A petition for writ of certiorari is due March 29, 2024, under docket 23A536.
- The Supreme Court of Virginia is presently hearing an appeal under Case No. 230670. This leading case addresses a Breach of Legal Insurance, a matter connected to the aforementioned habeas proceedings. It consolidates related cases from the Arlington Circuit Court, the Virginia Court of Appeals, and the State Corporation Commission.
- Lastly, an appeal in the United States Court of Appeals for the Federal Circuit, under Case No. 23-2216, seeks to review the application of 50 U.S. Code § 3341(j)(8) to the Civil Service Reform Act (CSRA).

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1.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
☒] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

1.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

☒ The jurisdiction of this court is potentially invoked under 28 U.S. Code § 1259(2)

3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

*"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."*¹

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. The Petitioner filed a petition for writ of habeas corpus in the military jurisdiction of the Nevada Air National Guard, *vide* Case 23-623. The Petitioner filed and exhausted a petition for writ of habeas corpus in the federal military jurisdiction of the Department of the Air Force. Neither jurisdiction has allowed the naming of the custodian, Nevada Air National Guard Brigadier General Caesar Garduno. A member of a state militia is at all times expected to be accountable to the Governor of their respective state.

On or about March 30, 2022, General Garduno disregarded procedural safeguards codified by Congress, under 5 U.S.C. §§ 6329b and 7513, placing the petitioner "in custody under or by color of the authority of the United States," 28 U.S. Code § 2241.

Constitutional Precision in Military Habeas Corpus Designation (28 U.S.C. § 2242): This inquiry seeks to interpret 28 U.S.C. § 2242 in the light of the Constitution's commitment to procedural due process (Fifth Amendment). It questions whether the specific naming of the custodian, such as a Federalized General of a State National Guard, is a constitutional necessity to safeguard liberty effectively, thereby respecting the separation of powers between military authority and judicial oversight.

¹ Alexander Hamilton, Federalist 84

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED (CONTINUED)

Constitutionality of Military Roles in Judicial Capacities (10 USC 12406): The examination of a Federalized General Officer's role within the judicial sphere engages with the principles enshrined in the Eighth Amendment and the due process clause of the Fifth Amendment. It underscores the constitutional imperative to maintain clear boundaries between military and civilian authorities, a cornerstone of the separation of powers doctrine, ensuring that military assignments do not infringe upon civilian judicial prerogatives.

Civilian Rights within Military Jurisdiction (10 USC 12405): The issue of civilian trials under military jurisdiction calls for a constitutional analysis under the due process and equal protection clauses of the Fifth and Fourteenth Amendments. This question serves as a litmus test for the separation of powers, examining whether the military's authority encroaches upon the civilian judiciary's role in protecting individual rights, and ensuring that such trials do not undermine the fundamental principles of justice.

Reassessing Civilian Access to Military Courts: The question of civilian access to military courts transcends conventional boundaries, probing deep into the constitutional bedrock. It beckons the Court to embark on a nuanced examination of the separation of powers, a foundational principle intricately woven into our Republic's fabric. This inquiry is not only a test of the Fifth and Fourteenth Amendments' due process and equal protection clauses but also engages the First Amendment's guarantee of the right to petition the government for a redress of grievances.

STATEMENT OF THE CASE

This case unfolds against a backdrop of profound constitutional significance, echoing the dire warnings against arbitrary government power encapsulated by Alexander Hamilton during the founding of our republic. It presents a narrative where the principles of justice and the rule of law are tested within the complex interplay of military and civilian jurisdictions.

The Petitioner, entangled in the web of military justice, has traversed the procedural pathways of the Nevada Air National Guard and the Department of the Air Force, seeking relief through habeas corpus petitions. Central to this legal odyssey is the figure of Brigadier General Caesar Garduno of the Nevada Air National Guard, a custodian whose naming has been conspicuously absent in both jurisdictions. This omission is not merely procedural but strikes at the heart of the constitutional guarantees of due process and the accountability of state militia members to their respective Governors.

This case probes critical constitutional issues, including the necessity under the Fifth Amendment's due process clause for specific custodian naming in military habeas corpus cases, particularly when involving a Federalized General of a State National Guard. It challenges the Court to define the constitutional boundaries between military and civilian jurisdictions, testing the separation of powers doctrine. Furthermore, the case examines the constitutionality of trying civilians under military jurisdiction, scrutinizing it under the due process and equal protection clauses of the Fifth and Fourteenth Amendments. This inquiry assesses the extent of military authority over civilians and its impact on justice principles. Lastly, the case questions the traditional exclusion of civilians from military courts, engaging constitutional amendments to explore the separation of powers, a vital principle in our constitutional system.

REASONS FOR GRANTING THE PETITION

This petition for writ of certiorari, grounded in the principles articulated by Hamilton and enshrined in the Constitution, raises crucial questions about the balance of power, individual rights, and procedural justice. It underscores the potential for despotism in the procedural handling of habeas corpus petitions and calls into question the actions of military officials in their exercise of civilian legal standards. The case's significance is further highlighted by its potential conflict with state and federal law, as well as existing legal precedents. Addressing these concerns, particularly the petitioner's rights under First and Fourth Amendment protections, is not only urgent but paramount to maintaining the constitutional balance of liberty and authority.

This petition offers a vital chance for the Court's scrutiny and resolution, reinforcing the critical role of habeas corpus as a bulwark against arbitrary government actions. It highlights the issues that are deeply rooted in the principles of justice and due process. This case necessitates a thorough reexamination of the delicate equilibrium between state and federal powers and demands careful consideration of the balance between military and civilian jurisdictions in providing redress. Such an examination is indispensable to ensure that individual freedoms are protected within our constitutional framework.

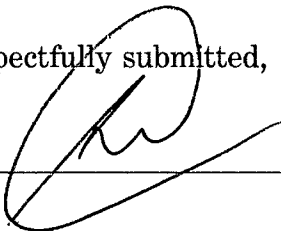
By granting this petition, the Supreme Court has the opportunity to address and clarify pivotal constitutional issues that are central to the American legal system. The case at hand presents an intricate tapestry of military and civilian legal intersections, where the principles of due process, equal protection, and the right to petition for redress of grievances are at stake. The Court's intervention is critical to untangle these complexities, particularly in light of the unique challenges posed by the federalization of state National Guards.

The adjudication of this case will have profound implications for the constitutional doctrine of separation of powers. It will not only delineate the jurisdictional boundaries between state and federal authorities but also between military and civilian judicial systems. This clarification is essential to safeguard the rights of individuals, especially those who find themselves at the intersection of these varied legal jurisdictions.

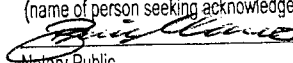
CONCLUSION

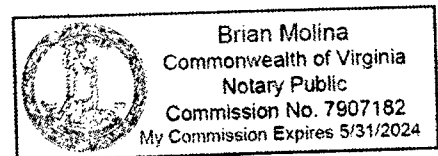
The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: JANUARY 16, 2024

County/City of Arlington
 Commonwealth/State of Virginia
 The foregoing instrument was acknowledged
 before me this 16 day of Jan,
2024, by
Martin Akerman
 (name of person seeking acknowledgement)

 Notary Public
 My Commission Expires 05/31/2024



APPENDIX A

**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)