

No. _____

(23A355)

IN THE
SUPREME COURT OF THE UNITED STATES

Martin Akerman, Pro Se

_____ — PETITIONER

(Your Name)

vs.
Nevada National Guard

_____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF NEVADA

(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. Jurisdictional Question: Whether the Nevada Supreme Court made an error in naming the Nevada National Guard as the sole respondent in a habeas corpus petition, depriving the Petitioner of a means of contesting the lawfulness of his restraint and securing his release.
2. Constitutional Rights and Military Jurisdiction: Whether Brigadier General Garduno's actions violated the petitioner's constitutional rights to due process, under civilian legal standards.
3. Detention and Due Process under Federal Law: Whether the petitioner's detention and the inability to challenge the foundational facts of the alleged criminal proceedings, contravene the due process guarantees of the constitution of the United States, especially in light of the statutory protections codified by Congress.

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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):

- Nevada Air National Guard, Brigadier General, Caesar Garduno
- State of Nevada, Adjutant General, Ondra L. Berry
- State of Nevada Attorney General

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

RELATED CASES

- The United States Court of Appeals for the Armed Forces reviewed a related Petition for Writ of Habeas Corpus and Appeal, under Article 70, UCMJ, which was denied and not allowed to proceed by the Judge Advocate General of the Air Force, on August 24, 2023. (Appendix C)
- 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.
- A separate Petition for Writ of Habeas Corpus has been lodged in the United States Court of Appeals for the Federal Circuit, bearing Case No. 23-2046.

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

- An appeal is ongoing in the United States Court of Appeals for the Fourth Circuit, under Case No. 22-2066. This is a significant case under the Collateral Order Doctrine, integrating two final orders from the Eastern District of Virginia (EDVA), specifically Case Nos. 22-cv-696 and 22-cv-1258.
- 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 _____ 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 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 _____ 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.

2.

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 June 2, 2023.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date:
July 12, 2023, and a copy of the order denying rehearing
appears at Appendix B.

☒ An extension of time to file the petition for a writ of certiorari was granted
to and including November 23, 2023 (date) on October 24, 2023 (date) in
Application No. 23-355 (Appendix D) 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, where the United States Court of Appeals for the Armed Forces reviewed a related Petition for Writ of Habeas Corpus and Appeal, under Article 70, UCMJ, which was denied and not allowed to proceed by the Judge Advocate General of the Air Force, on August 24, 2023. (Appendix C)

The jurisdiction of this court may be invoked under 28 U.S. Code § 1251.

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

Jurisdictional Question: This element addresses the potential for despotism in the procedural handling of habeas corpus petitions. The specific concern is the appropriateness of naming the Nevada National Guard as the sole respondent, given the military context and the potential for sovereign immunity, which could obscure the petitioner's ability to challenge their detention.

Constitutional Rights and Military Jurisdiction: Hamilton's fear of tyranny is echoed in the potential violation of constitutional rights to due process under civilian legal standards. The case questions whether Brigadier General Garduno's actions infringed upon these rights, as protected under Article I, Section 9, Clause 2 of the U.S. Constitution. (habeas corpus)

Detention and Due Process under Federal Law: Reflecting Hamilton's concern about the dangers of secret detentions, this section examines the petitioner's confinement under 5 U.S. Code § 6329b and suspension 5 U.S. Code § 7513. It highlights the crucial role of due process, 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).

¹ Alexander Hamilton, Federalist 84

STATEMENT OF THE CASE

The habeas corpus petition, urgently filed, stands out among ongoing legal actions due to its focus on the immediate effects on the petitioner's liberty and tenured federal employment, a recognized property interest. It challenges the conditions of detention and potential career jeopardy, seeking prompt relief distinct from gradual appellate procedures in other courts. This contrasts with the appeals in the United States Court of Appeals for the Fourth Circuit (Case No. 22-2066) and related cases, which do not directly address these immediate concerns of liberty and property rights, as delineated in *Hensley v. Municipal Ct.*, 411 U.S. 351 (1973), and *Jones v. Cunningham*, 371 U.S. 236 (1963).

The Jurisdictional Question, informed by 28 U.S.C. § 2254, underscores procedural fairness issues, particularly the necessity of properly identifying respondents in habeas cases. The exclusive naming of the Nevada National Guard, without including other responsible state entities like the attorney general, raises concerns about the petitioner's ability to effectively challenge their detention, especially given the military context and potential for sovereign immunity. This situation also touches upon the First Amendment's guarantee of the right to petition the government for a redress of grievances. In this context, the petitioner's ability to seek redress through habeas corpus is a fundamental aspect of this constitutional right, emphasizing the importance of correctly identifying all relevant parties in the case.

The actions of Brigadier General Garduno, especially concerning the alleged illegal use of the State National Guard by the Federal Government, invoke critical constitutional considerations. This aspect of the case seems overlooked in the Panel's Opinion, failing to consider the foundational balance of power principles and constitutional safeguards of liberty and property, as established in *Printz v. United States*, 521 U.S. 898 (1997), and addressed in *Rippo v. Baker*, 137 S. Ct. 905 (2017).

STATEMENT OF THE CASE CONTINUED

General Garduno's actions, in confining the petitioner without adequate due process or procedural safeguards and overstepping his authority, are at odds with the separation of powers doctrine. The petitioner's ongoing false arrest since February 14, 2022, without a crime charge, intensifies the constitutional violation, necessitating a judicial determination of probable cause as per *Gerstein v. Pugh*, 420 U.S. 103 (1975), and *Lambert v. McFarland*, 612 F. Supp. 1252 (N.D. Ga. 1985). This emphasizes the need for adherence to Fourth Amendment protections and the urgency of redressing the harm caused to the petitioner.

REASONS FOR GRANTING THE PETITION

This petition for habeas corpus, 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, therefore, presents an essential opportunity for judicial scrutiny and redress, reinforcing the indispensable role of habeas corpus in safeguarding individual freedoms against arbitrary government actions.

I. THE DECISIONS BELOW CONFLICT WITH STATE AND FEDERAL LAW

The Nevada Supreme Court's decision to name the Nevada National Guard as the sole respondent conflicts with state and federal law, particularly 28 U.S.C. § 2254, which emphasizes the importance of correctly identifying respondents in habeas cases. This misstep potentially obstructs the petitioner's ability to contest their detention, given the military context and sovereign immunity issues.

II. THE DECISIONS BELOW CONFLICT WITH THIS COURT'S PRECEDENT

The decision conflicts with this Court's precedent in cases like *Printz v. United States* and *Rippo v. Baker*, which underscore the importance of maintaining a balance of powers and upholding constitutional safeguards of liberty and property.

III. THE QUESTIONS PRESENTED ARE EXCEPTIONALLY IMPORTANT

The petition presents critical questions regarding the violation of constitutional rights under civilian legal standards by military officials and the suspension of habeas

corpus for individuals labeled as enemy combatants. These issues bear significant implications for individual rights and national security.

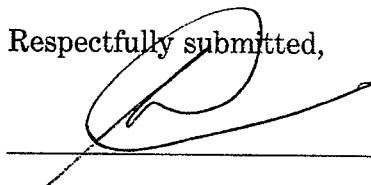
IV. THIS CASE IS AN IDEAL VEHICLE

This case provides an ideal vehicle to address these significant legal issues due to the clear demonstration of constitutional violations, including the lack of due process in the petitioner's confinement and the necessity of a judicial determination of probable cause, as mandated by *Gerstein v. Pugh* and *Lambert v. McFarland*. It is a compelling example of the urgent need for adherence to Fourth Amendment protections.

CONCLUSION

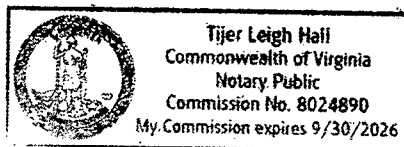
The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: NOVEMBER 14, 2023

County/City of Arlington
 Commonwealth/State of VA
 The foregoing instrument was acknowledged
 before me this 14th day of November
2023, by Martin Akerman
 (name of person seeking acknowledgement)
 Notary Public
 My Commission Expires: 09/30/2026



Appendix A

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 A. GOWAN
CLERK OF SUPREME COURT
J. J. GOWAN
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

Stiglich, C.J.
Stiglich

Cadish, J.
Cadish

Herndon, 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.

Appendix B

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 86458

FILED

JUL 12 2023

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

Shiglin, C.J.

cc: Martin Akerman
Nevada National Guard

Appendix C



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

Appendix D

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 24, 2023

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

Re: Martin Akerman
v. Nevada National Guard
Application No. 23A355 -

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 case has been presented to Justice Kagan, who on October 24, 2023, extended the time to and including November 23, 2023.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by


Angela Jimenez
Case Analyst