

# SUPREME COURT OF THE UNITED STATES

No. 92-1482

ERIC J. WEISS, PETITIONER v. UNITED STATES

ERNESTO HERNANDEZ, PETITIONER v.  
UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
MILITARY APPEALS  
[January 19, 1994]

JUSTICE GINSBURG, concurring.

The care the Court has taken to analyze petitioners' claims demonstrates once again that men and women in the Armed Forces do not leave constitutional safeguards and judicial protection behind when they enter military service. Today's decision upholds a system of military justice notably more sensitive to due process concerns than the one prevailing through most of our country's history, when military justice was done without any requirement that legally-trained officers preside or even participate as judges. Nevertheless, there has been no peremptory rejection of petitioners' pleas. Instead, the close inspection reflected in the Court's opinion confirms:

``[I]t is the function of the courts to make sure, in cases properly coming before them, that the men and women constituting our Armed Forces are treated as honored members of society whose rights do not turn on the charity of a military commander. . . . A member of the Armed Forces is entitled to equal justice under law not as conceived by the generosity of a commander but as written in the Constitution . . . ." *Winters v. United States*, 89 S. Ct. 57, 59-60, 21 L. Ed. 2d 80, 81-82 (1968) (Douglas, J., opinion in chambers).

See also *Frontiero v. Richardson*, 411 U. S. 677 (1973); *Harmon v. Brucker*, 355 U. S. 579 (1958); *Crawford v. Cushman*, 531 F. 2d 1114 (CA2 1976).