

IN THE AIR FORCE COURT OF CRIMINAL APPEALS

In Re)	PETITION FOR EXTRAORDINARY
)	RELIEF IN THE NATURE OF A WRIT
Airman First Class (E-3))	OF ERROR CORAM
JOSE A. COSSIO, JR.,)	
)	
<i>Petitioner-Appellant,</i>)	AFCCA Misc. Dkt. No.
v.)	
)	
THE UNITED STATES)	
)	
)	
)	
<i>Respondent-Appellees</i>)	

TO THE JUDGES OF THE AFCCA

I.

WHETHER THE DISCIPLINARY DOCUMENTS USED IN PETITION’S COURT-MARTIAL WERE INVALID AFTER NEW EVIDENCE CAME TO LIGHT INDICATING (1) THE ARTICLE 15 FOR DISOBEYING AN ORDER WAS LEGALLY SUFFICIENT. (2) WHETHER HIS EPR SHOULD HAVE BEEN ADMITTED IN SENTENCING WHEN IT FAILED TO LIST HIS PREVIOUS DEPLOYMENTS AND MADE REFERENCES TO A NON-EXISTENT “REPRIMAND” FOR SEXUAL REFERENCES.

Previously, this court overruled the Supreme Court’s decision in *Van Buren* by falsely stating that Petitioner was still guilty of violating 18 U.S.C. 1030(a)(2). District Judge Leinenweber disagreed finding that Petitioner’s conviction under the CFAA was “subject to voiding”, *Cossio v. AFCCA*, Case No. 22 C 110, USDC NDIL, Eastern Division. *Exhibit A*, at 3-4. However, the District Court dismissed Petitioner’s mandamus and habeas claim reasoning that Petitioner was still guilty of larceny. The 7th Circuit also focused on Petitioner’s larceny charge, and while noting that the arguments concerning the CFAA charge were “not frivolous” and that wire fraud would probably been more appropriate than larceny, did not grant relief. The primary reason given by the 7th Circuit is that mandamus cannot issue against the Secretary of

Defense *in re* a discretionary duty found in 10 U.S.C. 1552 and that the alleged injury was procedural, not constitutional.

This court's prior rulings were equally infuriatingly idiotic. Even more so to continually rely on them despite being told that is wrong, and despite the fact that two separate hearing officers at Plaintiff's Article 32 hearing recommended dismissing that charge for the very same reason as stated in the Supreme Court's opinion in Van Buren. A quick summary of these prior cases shows nothing to be proud of:

1. Brady Issue: *United States v. Cossio*, ACM 36206 (A.F. Ct. Crim. App. 15 February 2008) (unpub. op.). This court ruled that T█ undisclosed prior convictions for writing bad checks was not relevant to the larceny charge, and to the "extent that it was relevant"¹ T█ testimony was already undermined by his admissions of repeated larcenies. In other words, T█ credibility was high enough to get a conviction based solely on his testimony against Cossio, but low enough to survive impeachment from undisclosed fraudulent check convictions. This reasoning is stupid beyond measure.
2. T█ Investigation: *United States vs. Cossio*, Misc. Dkt. No. 2014-14. As it turns out, T█ did not "admit...to repeated larcenies" as this court wrongly concluded. T█ testified that he only stole from W█ "one time." Cossio knew this to be false and miraculously after years of trying T█ was finally investigated for this larceny and lie. We have no earthly idea the outcome of this investigation because this court refused to release the investigative files via a DuBay hearing or halt the execution of Cossio's discharge.

¹ We assume this court meant that it was relevant to the threat charge and T█ "victim" impact statement which in fact, was the argument that was being made. This court purposely did not mention the threat charge or sentencing and focused instead on the larceny charge in order to obfuscate the actual importance of T█ testimony. It worked, this court would later mischaracterize its own opinion in *United States vs. Cossio*, Misc. Dkt. No. 2014-14. Contrary to the last two opinions, this court did not find the discovery violations to be "irrelevant". Rather this court ruled that "to the extent that the credibility of MHT was relevant it was already significantly undermined by his admission to repeated larcenies and fraud from another party" (emphasis added) *Id.* Therefore, this court did find T█ convictions to be relevant, just not exceptionally so to warrant intervention. The court ruled that T█ credibility was as low as it could go, but at the same time high enough to support Cossio's conviction. However, as we will see, this court's facts came from an empty universe. T█ never admitted to "repeated larcenies". He only admitted to one theft, which was the point in one of those petitions. In Cossio's subsequent filing with this court, the evidence showed T█ lied and there were in fact multiple thefts.

3. IAC / Grostefon Violation: *United States vs. Cossio*, Misc. Dkt. No. 2014-14: It is difficult to argue which of the petitions was more infuriating from a justice stand point. But there is no arguing that this court ignoring *Grostefon* was the most constitutionally tone deaf. In 2015 Cossio discovered that his government appointed appellate attorney failed to challenge his larceny conviction as Cossio repeatedly asked him to do. Cossio even had an email showing this, which this court ignored because it did not contain an affidavit of authenticity. An examination of prior filings in this court shows this court has dealt with this issue before and gave the opportunity for counsel to file a supplemental affidavit *instanter*. But this courtesy was not applied to Cossio who was proceeding *Pro Se* because this court was looking for any reason to deny, deny, and deny. To conclude its assault on the constitution, this court stupidly concluded that it did not have to follow *Grostefon* because it conducts a review of the record of trial. This is ridiculous, that type of review was available when *Grostefon* was decided. If this court's requirement to review the record cured IAC, then *Grostefon* should never have been decided the way it was. The CAAF ordered the government to show case but ultimately denied review.
4. *VAN BUREN ISSUE*: This court ignored the supreme court's opinion in Van Buren, and falsley declared that Petitioner was still guilty. Later when it was discovered that a former Prosecutor (T█████ P█████) and Defense attorney (A█████ O█████) are Judges in this appellate court and could have perhaps been on the original panel considering this issue, this court declined to give information to the contrary.

The refusal to apply *Van Buren* to this case is just a long line of legally deficient decisions from this court. The court continuing to hem and haw about its erroneous prior rulings in the face of *Van Buren* only makes it look more illegitimate than it already is.

The New Issue and Purpose of this Filing

While Petitioner's case was in the federal courts he filed a AFBCMR petition to correct his discharge under the *Van Buren* ruling and to revisit an earlier ruling on the Article 15, EPR, and non-existent reprimand he received which was referenced in his EPR, which was written by the senior rater and given to his supervisor to sign.

Petitioner had in-fact tried to appeal this ruling in the federal court back in 2011, but the federal courts ruled that he had to first make his case to this court, even though he was appealing a BCMR ruling. See: COSSIO v. AIR FORCE, No. 12-1662 (Fed. Cir. 2013). The AFBCMR

declined relief, falsely stating that Petitioner did not meet his burden to show that Van Buren applied to his case. This is false because Petitioner attached the District Court's order clearly stating it does apply. The AFBCMR did read this order, in fact they concentrate on the dismissal itself without providing analysis as to why it was dismissed and the findings included. The AFBCMR did not make a ruling on the previous issues or even mention them because they, like this damnable court, are incompetent mouth-breathers.

So the purpose of bringing this action isn't because you will do anything – you won't. The purpose is that I must exhaust my remedies concerning the ancillary paperwork before filing my second and last appeal of the recent AFBCMR ruling with a real big-boy court and not you junior-varsity retards. To that end I must be forced to go through the motions, I apologize for wasting your four hour lunch, so I will be brief merely stating my points:

STATEMENT OF FACTS

Plaintiff enlisted in the United States Air Force in July of 2000 for a period of four years. After Basic Training and Tech school Plaintiff was assigned to Air Force Special Operations Command, Hurlburt Field Florida (*Pl. Compl. App'x "A"*, DDForm 214, pgs. 65-68).

Additionally, Plaintiff was given Honorable Discharge orders that were never rescinded and were effective the day of Plaintiff's ETS (Estimated Time of Separation). (*Pl. Compl. App'x "H"*, DD Form 100, pgs. 278).

However, Plaintiff's pay was stopped. The finance department had him discharged and Plaintiff had to be paid with Treasury Checks (*Pl. Compl. App'x "I"*, Affidavit).

Plaintiff contends that while the military had jurisdiction to try him, the Air Force did not follow proper protocol in extending his enlistment and should have been Honorably Discharged the same day as his charges were preferred (*Pl. Compl.* ¶ 20, 122, *Id.*).

Plaintiff's first two Enlisted Performance Reports ("EPR's"), given annually, were exemplary (*Pl. Compl. App'x "H"*, EPRs, pgs. 262-267).

Additionally Plaintiff received the Good Conduct Medal, Nation Defense Service Medal, Global War on Terrorism Medal, Afghanistan Liberation Medal, Achievement Medal, and other decorations (*Pl. Compl. App'x "A"*, DD Form 214, pgs. 65-68).

Plaintiff's two previous EPR's reflected that Plaintiff volunteered to deploy numerous times (*Pl. Compl. App'x "H"*, EPRs, pgs. 262-267). The final EPR, which is the matter being contested, did not state that Plaintiff was deployed (*Pl. Compl. App'x "A"*, EPRs, pgs. 81-82).

In July 2003 Plaintiff returned from his third deployment and found that Senior Airman M█████ H█████ T█████ ("T█████" or "MHT") stole approximately \$800 dollars from his Girlfriend, Airman C█████ E█████ W█████ ("█████"), a friend of Plaintiff (*Pl. Compl. App'x "B"*, Polygraph, Affidavit pgs. 87-96).

W█████ asked Plaintiff to keep T█████ under surveillance and to provide her with T█████ cell phone records, which Plaintiff did (*Pl. Compl. App'x "B"*, Polygraph, Affidavit pgs. 87-96).

Around this time T■■■■ made a complaint that there was a threat left on his cell phone profile. The Plaintiff was later acquitted of this threat charge (*Pl. Compl. App'x "P"*).

Additionally T■■■■ claimed that Plaintiff threatened him after a concert. Plaintiff had taken both T■■■■ and W■■■■ to a nightclub in August of 2003, after driving them back to base, T■■■■ claims in a conversation that Plaintiff threatened to "put him in a coma". T■■■■ testimony was the only evidence that lead to Plaintiff's conviction of this charge (*Pl. Compl. App'x "I", Charges*).

This threat charge and the sentencing exhibits against Plaintiff is the subject of this complaint. Plaintiff concedes the validity of the larceny charge, not respective of his jurisdictional claims or the charge of "exceeding authorized access" *Id.*

Plaintiff would discover that W■■■■ had additional monies stolen from her by T■■■■ The Military was informed numerous times, but failed to investigate these claims for years (*Pl. Compl. App'x "C", IG Complaint pgs. 124-140*). Major T■■■■ P■■■■ responded to an IG Complaint discouraging any investigation into T■■■■ misconduct as "BALD ALLEGATIONS" (*Pl. Compl. App'x "C", IG Complaint pgs. 114-123*). He later testified that the allegations had merit (*Pl. Compl. App'x "D", ROT pgs. 190-200*).

The additional charges against Plaintiff stemmed from T■■■■ mid-month pay which was diverted by Plaintiff into a Children's Charity (*Pl. Compl. App'x "D", pgs. 248-255*).

T█ received testimonial immunity from Prosecution which did not bar him from being prosecuted by W█ or Plaintiff's statements (*Pl. Compl. App'x "D"*, ROT 363-369).

At Plaintiff's trial the Military Prosecutor presented a *Motion in Limine* to limit the questioning of T█ theft (*Pl. Compl. App'x "D"*, pgs. 201-212).

W█ testified that T█ stole money from her but was honest about the theft when confronted. When asked in redirect if he was dishonest about the theft, W█ stated "not that I can remember" (*Pl. Compl. App'x "D"* pgs. 153-156). The Military Prosecutor would use these statements to vouch for T█ credibility several times, in all three phases of Plaintiff's trial (*Pl. Compl. App'x "D"*, pgs. 159-172).

The Military Judge granted the *Motion in Limine* in part, but with reservations if T█ testimony changed (*Pl. Compl. App'x "D"* pgs. 159-170).

Plaintiff was found guilty of Military larceny, exceeding authorized access of a government computer, and communicating a threat to put T█ in a coma (*Pl. Compl. App'x "I"*).

The prosecution sentencing exhibits presented to the Military Judge in consideration for Plaintiff's possible retention after confinement were (1) two Letters of Reprimand (2) a "referral EPR" (the 2003 EPR), and; (3) an Article 15 imposed against Plaintiff. (*Pl. Compl. App'x "A"*, 69-85).

The first LOR dated 5 November 2003 purported that Plaintiff made inappropriate references regarding Airman R■■■■, a male Airman. A picture of Airman R■■■■ with the caption "Airman R■■■■ loves to lube his guns" was left on the Squadron's shared drive. Plaintiff's EPR would later state that Plaintiff "sexually harassed Airmen". Plaintiff had a recent conversation with R■■■■ on Facebook that he did not feel sexually harassed and took the picture as a joke. (*Pl. Compl. App'x "I"*).

A second LOR dated 17 February 2004 purported that Plaintiff disobeyed a direct order from SSgt. G■■■■ to work past his shift, and that Plaintiff absented himself without notice. In rebuttal SrA K■■■■ G■■■■ a subordinate to SSgt. G■■■■, wrote that Plaintiff told G■■■■ about a test Plaintiff had to take. This was also referenced by an email from Plaintiff to G■■■■. Plaintiff did return back to duty after taking his test - roughly four hours after his shift. (*Pl. Compl. App'x "D"*, pgs. 78-79).

The email would later contain MSgt. B■■■■ comments directing Plaintiff's superior to gather any negative documentation against Plaintiff to "expedite" his separation from the Air Force (*Pl. Compl. App'x "I"*).

Several memoranda were authored by Airman W■■■■ that were ultimately used against Plaintiff and formed the basis of Plaintiff's Article 15. One of these statements purported that the Plaintiff took classes and a retest only to be with W■■■■ The other statement purported that W■■■■ watched Plaintiff run away and speed off in his car after she called her First Sergeant to let him know Plaintiff violated his no-contact order (*Pl. Compl. App'x "I"*). This event occurred at the Education Office, which has no windows in the corridors (*Pl. Compl. App'x "B"*, pgs. 97-101).

The Military Judge considered the sentencing exhibits and gave Plaintiff a Bad-Conduct discharge which was finally executed in December 2008 (*Pl. Compl. App'x "A"*, DD Form 214, pgs. 65-68).

During confinement Plaintiff applied to the Return-to-Duty program which gives selected convicted Airman a "second chance" by rescinding their punitive discharge. After considering the same sentencing exhibits, the Air Force denied Plaintiff's petition to enter the program. (*Pl. Compl. App'x "I"*).

After confinement Plaintiff gathered information to challenge the validity of the punitive documents. Plaintiff, through subterfuge, gathered additional information about T█ theft from W█ (*Pl. Compl. App'x "D"*, pgs. 178-183).

For his efforts, Plaintiff was awarded a second Court-Martial. The Military Judge dismissed the charges and the Court of Appeals for the Armed Forces affirmed a reversal from the Air Force Court of Criminal Appeals (*Pl. Compl. App'x "G"*, pgs. 252-255). At a rehearing, Plaintiff pleaded Guilty to conduct prejudicial to good order and discipline. He was sentenced to time served and no punitive discharge *Id.*

The Prosecution introduced the same sentencing exhibits in Plaintiff's second Court-Martial that were used in the first Court-Martial *Id.* However, new evidence casting doubt on the validity of the Article 15 was presented (*Pl. Compl. App'x "B"*, pgs. 86-105).

The new evidence consisted of (1) an affidavit from Defense Counsel that W■■■■ stated she had the same no-contact order prohibiting her from "contacting" Plaintiff. This was verified through W■■■■ first Sergeant. (2) A lie detector test that Plaintiff took indicating truthfulness that he did not intentionally violate the no-contact order, threaten Airman T■■■■, and violate SSgt. G■■■■ orders and (3) affidavits and declarations that T■■■■ stole even more money and that W■■■■ statements in her memorandums were false (*Pl. Compl. App'x "B"*, pgs. 86-105).

All these exhibits refuting the Article 15 were admitted at Plaintiff's second Court-Martial and without objection *Id.*

After Plaintiff's rehearing, his appellate counsel (assigned to his first Court-Martial) filed a Writ of Prohibition to prevent the execution of Plaintiff's Bad-Conduct Discharge while the Military Courts considered Plaintiff's Brady v. Maryland claim (*Pl. Compl. App'x "G"*).

It was discovered that T■■■■ had additional criminal conduct that was not disclosed; this consisted of three Okaloosa County convictions for worthless checks. Defense Counsel submitted a discovery request for all of T■■■■ criminal records in Plaintiff's first trial (*Pl. Compl. App'x "D"*, pgs. 147-150).

In response, the Air Force stated that the additional criminal records were "searching for a needle in a haystack" and cited Florida State case law that stated nolo contendere pleas were inadmissible. Additionally the Air Force claimed that Plaintiff did not present this new evidence within 20 days of discovery (*Pl. Compl. App'x "G"*).

In rebuttal, Appellate Counsel stated that Florida law concerning admissibility of *nolo contendere* pleas was inapplicable to Military Courts-Martial, and that T [REDACTED] county criminal records were well within the prosecution's control. Plaintiff called the Okaloosa County Clerk's office and found that Military investigators routinely frequent their records department. Additionally Plaintiff submitted a copy of the background check the Military investigators did on Plaintiff, which included an Okaloosa County background check. Second, although the new evidence was submitted slightly after the 20-day window, this was a result of Plaintiff's Appellate Counsel attending Squadron Officer School (*Pl. Compl. App'x "G", Id.*)

The AFCCA ruled that it did not have to consider whether the prosecution was ever aware of the *nolo contendere* plea because; (1) the petitioner's guilt was overwhelming; (2) even assuming that SrA MHT's credibility was relevant, the petitioner's trial strategy focused more on minimizing his culpability rather than attacking SrA MHT's credibility and SrA MHT's credibility was already undermined by his admission to repeated larcenies by fraud; and (3) it was highly unlikely that the trier-of-fact, the military judge, would have found SrA MHT's *nolo contendere* pleas significant in evaluating the evidence. *United States v. Cossio*, ACM 36206, unpub. op. at 2 (A.F. Ct. Crim. App. 15 Feb 2008).

In September of 2007 Plaintiff acquired, through subterfuge, MySpace messages from W [REDACTED] and T [REDACTED] which indicated that both knowingly made false statements (*Pl. Compl. App'x "D"*, pgs. 178-183). After several tries Plaintiff was successful in having them investigated by the Military (*Pl. Compl. App'x "C"*, pgs. 142-143).

Plaintiff's Appellate Counsel stated that the Air Force had agreed not to execute Plaintiff's discharge until the Military investigation was completed (*Pl. Compl.*

App'x "F", pg. 158). Nonetheless, Plaintiff received a letter from the AFSOC General of his impending discharge the same day Plaintiff's Appellate Counsel left Active Duty (*Pl. Compl. App'x "I"*).

Although Plaintiff was discharged in December of 2008, the Supreme Court decided *US v. Denedo*, 556 U.S. 904 (2009) which allowed discharged service members to file a *Writ of Error Coram Vobis* in the Military Courts *Id.*

After the Military Investigation into T [REDACTED] alleged false statements was completed, Plaintiff filed a Freedom of Information Act to retrieve those results. (*Pl. Compl. App'x "C"*, pgs. 142-143).

The FOIA request was denied, a Judge's order was required to unseal them. (*Pl. Compl. App'x "C"*, pgs. 142-143).

Plaintiff petitioned the AFCCA for an evidently hearing in order to release the sealed records and reconsideration of the *Brady v. Maryland* issue because the "probability" of a different result had shifted in Plaintiff's favor (*Pl. Compl. App'x "G"*, pgs. 252-255).

The AFCCA denied the request and stated six reasons for the denial;

- (1) The petitioner's allegations of perjury and unlawful command influence could have been made when the petitioner filed his 14 November 2007 writ of coram vobis with the AFCCA and failed to articulate a valid reason for not raising these allegations in his earlier coram vobis petition. *United States v. Bejacmar*, 217 Fed. Appx. 919, 922-23 (11th Cir. 2007).
- (2) The AFCCA previously addressed the merits of the petitioner's *Brady* violation allegation, and decline Plaintiff's invitation to reevaluate the issue.

(3) Assuming, arguendo, that the petitioner was erroneously convicted, he fails to explain how the consequences of his conviction persist. Put simply, the petitioner has failed to show any lingering civil disabilities or any ongoing legal disabilities resulting from his conviction. See Lewis v. United States, 902 F.2d 576, 577 (7th Cir. 1990); United States v. Sepulveda, 763 F. Supp. 352, 354 (N.D. Ill. 1991).

(4) Assuming, arguendo, that the petitioner has met all of the coram nobis threshold requirements; he is still not entitled to relief. A *Dubay* hearing would not be warranted because the petitioner's claims of perjury and unlawful command influence are speculative, conclusory, and unsubstantiated.

(5) Additionally, even if the petitioner's claim of perjury were substantiated (that is, SrA MHT committed perjury by denying that he stole money from his own girlfriend), evidence of the petitioner's guilt was overwhelming without SrA MHT's testimony and evidence of SrA MHT's perjury would not have provided the petitioner with a defense to his crimes. Finally, SrA MHT's *nolo contendere* pleas to four unrelated bad check cases were of marginal relevancy, if any, and the admission of his pleas at trial would not have resulted in a favorable result for the petitioner.

Plaintiff filed a motion for reconsideration and an appeal to the Court of Appeals for the Armed Forces (CAAF) stating that;

(1) It would have been premature to present any allegations of perjury and unlawful command influence before the investigation was completed. Furthermore, by the AFCCA's own actions, they would have denied such allegations as "speculative, conclusory, and unsubstantiated".

(2) Plaintiff's previous *Brady* violation claim warranted reconsideration.

(3) The Military Judge's bench book, the UCMJ, case law, and common sense dictates that Punitive Discharges case a civil and legal disability (i.e. loss of Military, VA, and employment benefits).

(4) The AFCCA cannot determine that Plaintiff's claims were "speculative, conclusory, and unsubstantiated" without releasing the Investigative Report.

(5) Plaintiff's conviction for Communicating a Threat under Article 134 was not a result of "overwhelming evidence" and that T■■■■ credibility was also relied upon during sentencing.

The Motion for Reconsideration and grant of review were denied (*Pl.*

Compl. App'x I).

On 13 August 2011 Plaintiff was placed on Administrative leave from his job at Comcast Cable and later terminated on 22 September 2011. A "background check²" revealed that Plaintiff had a Military Conviction and formed the basis of Plaintiff's termination (*Pl. Compl. App'x "A"* pgs. 62-64). Plaintiff was specifically asked if he had a Bad-Conduct Discharge³ by the Company Investigator. (*Pl. Compl. App'x "A"* pgs. 62-64).

Cossio was later fired from his job at Cook County when a State Judge made a false complaint that Cossio called him in order to have an excuse to report his court-martial convictions to the County where he worked. The County knew of the convictions when they hired him but made up a different excuse to fire him. *Jose Cossio, Jr. v. John Tourtelot*, No. 19-3000 (7th Cir. 2020)

Conclusion

² This was not a criminal background check *per se*, it appears that Comcast found the Plaintiff's Military Court opinions online. This check was conducted when Plaintiff applied for a higher position.

WHEREFORE, Petitioner respectfully requests this court (1) declare the Article 15, EPR, and "Reprimand" void.

[REDACTED]

JOSE A. COSSIO JR.
Petitioner, Pro Se

[REDACTED]
[REDACTED]

Appellees' Addresses, Telephone and Facsimile Numbers

AFLOA/JAJG

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

In re Jose A. Cossio, Jr. <i>Petitioner</i>))))))))	Misc. Dkt. No. 2025-11 NOTICE OF DOCKETING
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On 23 September 2025, the court received a Petition for Extraordinary Relief in the Nature of a Writ of Error Coram Nobis filed, *pro se*, in the above-styled case.

Accordingly, it is by the court on this 26th day of September, 2025,

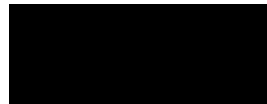
ORDERED:

The case is assigned Misc. Dkt. No. 2025-11 and referred to Panel 2 for review.

No briefs in response to this petition will be filed unless ordered by the court. *See* JT. CT. CRIM. APP. R. 19(g).



FOR THE COURT



TANICA S. BAGMON
Appellate Court Paralegal