

**In the United States Air Force Court of Criminal Appeals**

Rafael Verdejo Ruiz,

Petitioner,

v.

United States,

Respondent.

PETITION FOR WRIT OF ERROR CORAM NOBIS

QUESTIONS PRESENTED

1. Whether Petitioner's mandatory appellate review was constitutionally defective where his 2013 appeal (AFCCA Dkt. No. 37957) was decided by a panel that included Judge Laurence Soybel, whose appointment was later held unconstitutional under the Appointments Clause.
2. Whether the Court of Appeals for the Armed Forces exceeded its jurisdiction by granting the Government's untimely October 2013 motion, resulting in AFCCA's ultra vires reconsideration decision (AFCCA Dkt. No. 37957 (Recon)), despite its own precedent that such late requests are jurisdictionally barred.
3. Whether, after fifteen years of defective appellate litigation and civilian habeas dismissals for lack of jurisdiction, the only appropriate remedy is to vacate Petitioner's conviction and sentence, restore all rights, privileges, and property under Article 75(a), UCMJ, and decline to remand for new appellate proceedings or retrial.

## JURISDICTION

This Court has jurisdiction under the All Writs Act, 28 U.S.C. § 1651(a), which empowers military appellate courts to issue writs “in aid of” their jurisdiction. See *United States v. Denedo*, 556 U.S. 904, 911 (2009).

Coram nobis is available to correct errors “of the most fundamental character” in cases that are final but continue to carry collateral consequences. *Id.* at 917.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

1. Petitioner Rafael Verdejo Ruiz was convicted at a general court-martial on February 2011.
2. On direct appeal in 2013 (AFCCA Dkt. No. 37957), the Air Force Court of Criminal Appeals affirmed his conviction. The panel included Judge Laurence Soybel, whose appointment was later declared unconstitutional under the Appointments Clause. See *United States v. Janssen*, 73 M.J. 221 (C.A.A.F. 2014).
3. On 23 August 2013, Petitioner’s appellate defense counsel filed a motion to vacate the AFCCA decision on the basis of Judge Soybel’s unconstitutional appointment. AFCCA never ruled on this motion. (APPX A)
4. On 6 September 2013, Petitioner’s counsel timely filed a petition for grant of review at CAAF, within the statutory 60-day period under Article 67(b), UCMJ. (APPX B)
5. On 28 October 2013, the Government filed an *out-of-time motion* asking CAAF to treat Petitioner’s August 23 motion to vacate as a petition for reconsideration at AFCCA. (APPX C).

6. On 12 November 2013, CAAF improperly granted the Government's untimely motion. AFCCA then conducted a second round of appellate review (AFCCA Dkt. No. 37957 (Recon)), which was predicated solely on CAAF's ultra vires order. (APPX D)

7. In later cases, CAAF held that it lacks jurisdiction to grant reconsideration beyond the 60-day deadline. See *United States v. LaBella*, 75 M.J. 52, 54 (C.A.A.F. 2015) (untimely government petition barred).

8. In 2016, the military appellate courts themselves acknowledged that such untimely reconsideration could not lawfully be granted, confirming that the 2013–2014 proceedings in Petitioner's case were unlawful.

9. Petitioner subsequently sought habeas relief under 28 U.S.C. § 2241 in civilian courts. Both the district court and the court of appeals dismissed for lack of jurisdiction.

## ARGUMENT

### I. Petitioner's Appellate Review Was Constitutionally Defective

The Constitution requires that appellate panels be lawfully constituted. In *Janssen*, 73 M.J. at 225–26, CAAF held that Judge Soybel's appointment to AFCCA violated the Appointments Clause. Similarly, in *Nguyen v. United States*, 539 U.S. 69, 77–78 (2003), the Supreme Court invalidated judgments entered by improperly constituted appellate panels.

Because Petitioner's case (AFCCA Dkt. No. 37957) was reviewed by a panel that included Judge Soybel, the judgment is void.

## II. CAAF Acted Ultra Vires in Granting the Government's Untimely Motion

The statutory 60-day filing period in Article 67(b), UCMJ, is jurisdictional. Once expired, CAAF has no authority to grant reconsideration or remand.

Rodriguez, 67 M.J. at 116: statutory filing period is "jurisdictional and mandatory."

LaBella, 75 M.J. at 54: government's untimely petition barred.

Here, the Government's October 28, 2013 motion was filed after the statutory deadline.

CAAF's grant on November 12, 2013 was ultra vires. Consequently, AFCCA's reconsideration (Dkt. No. 37957 (Recon)) was also ultra vires and void.

## III. Military Appellate Review Exists Only by Congressional Mandate

Military appellate jurisdiction is strictly confined to that granted by Congress. *Clinton v. Goldsmith*, 526 U.S. 529, 534–35 (1999). Congress authorized a single, mandatory appellate review under Articles 66 and 67, UCMJ—not multiple "do-overs" decades later.

Petitioner's appellate review in 2013–2014 was defective. The premature execution of his dishonorable discharge rested on the false premise that appellate review was final.

(APPX E). Military courts lack authority to re-open appellate review after more than a decade of unlawful proceedings.

## IV. Civilian Courts Cannot Provide Relief

Petitioner sought habeas relief under 28 U.S.C. § 2241, but both the district court and the civilian court of appeals dismissed for lack of jurisdiction.

As the Supreme Court explained in *Denedo*, 556 U.S. at 916, *coram nobis* exists precisely to address such fundamental defects in military convictions when no other remedy exists.

## V. Continuing Collateral Consequences Justify Coram Nobis

Although Petitioner's sentence is scheduled to end on January 4, 2026, collateral consequences remain severe:

- Dishonorable discharge: executed prematurely on assumption of finality (APPX E); stigmatizing and career-ending.
- Loss of veteran status: despite 10 years and 4 months of honorable service, Petitioner cannot claim "veteran" status or related benefits.
- Loss of benefits: while certain education benefits remain, other critical VA benefits (healthcare, disability, retirement) are denied.
- Civil disabilities: firearms restrictions, civic disqualification, and reputational harm.

These consequences are ongoing, concrete, and sufficient to satisfy the Denedo standard.

These two appeals do not serve to justify the legality of the trial, conviction, or sentence.

## VI. The Only Proper Remedy is Full Vacatur Without Retrial or Remand

Article 75(a), UCMJ, mandates that when a court-martial conviction is set aside and no rehearing is ordered, "all rights, privileges, and property affected by the executed part of the sentence shall be restored."

This Court should follow the principle in *Ball v. United States*, 163 U.S. 662, 672 (1896), that when a judgment is void, "the judgment must be arrested without the award of a new trial."

Given that more than 15 years have passed in defective litigation, fairness and institutional integrity demand finality. See *Burks v. United States*, 437 U.S. 1, 11 (1978).

The public nor Petitioner would ever perceive an appeal conducted at this point to be fair.

## ANTICIPATED GOVERNMENT REPLY AND REBUTTAL

A. Harmless Error: Structural error from an unconstitutional panel is never harmless.

Nguyen, 539 U.S. at 77–78; Janssen, 73 M.J. at 225.

B. Waiver/Forfeiture: Petitioner timely filed a motion to vacate on August 23, 2013, and a petition for review on September 6, 2013. Claims were preserved. Delay was caused by the Government's late filing and CAAF's improper grant.

C. Finality: A judgment entered by an unconstitutional panel and through ultra vires orders cannot be final. Rodriguez, 67 M.J. at 116; LaBella, 75 M.J. at 54.

D. Alternative Remedies: Civilian courts dismissed habeas petitions for lack of jurisdiction. Only this Court can provide relief. Denedo, 556 U.S. at 916.

E. Remand/Rehearing: Military appellate review is a congressional mandate, not a renewable process. Goldsmith, 526 U.S. at 534–35. A rehearing now would undermine finality. Ball, 163 U.S. at 672; Burks, 437 U.S. at 11.

## PRAYER FOR RELIEF

WHEREFORE, Petitioner Rafael Verdejo Ruiz respectfully requests that this Court:

1. Grant this petition for writ of error coram nobis;
2. Vacate Petitioner's conviction and sentence in their entirety;
3. Order the restoration of all rights, privileges, and property of which Petitioner has been deprived by virtue of the court-martial conviction, pursuant to Article 75(a), UCMJ;
4. Decline to order a retrial or new appellate review, as fifteen years of defective proceedings have already undermined the integrity of the judicial process; and
5. All time served in confinement should be considered active duty for the purpose of

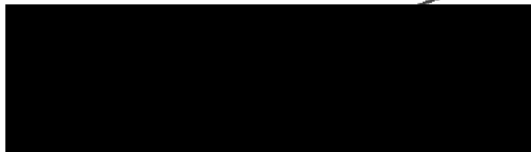
restoration, to include corrective action of his prematurely-executed dishonorable discharge.

Petitioner does not request a retrial.

CERTIFICATE OF SERVICE

Petitioner RAFAEL VERDEJO RUIZ hereby declares under penalty of perjury that the above and foregoing is true. 28 USC §1746.

18 November 2025



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

In re Rafael Verdejo Ruiz	)	Misc. Dkt. No. 2025-15
Technical Sergeant (E-6)	)	
U.S. Air Force	)	
<i>Petitioner</i>	)	
	)	
	)	
	)	
	)	<b>NOTICE OF</b>
	)	<b>DOCKETING</b>
	)	
	)	

On 15 December 2025, the court received a petition, *pro se*, for extraordinary relief in the nature of a Writ of Error Coram Nobis in the above-styled case.

Accordingly, it is by the court on this 17th day of December, 2025,

**ORDERED:**

The case is assigned Misc. Dkt. No. 2025-15 and referred to a Special Panel for review. The Special Panel in this matter shall be constituted as follows:

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge  
GRUEN, PATRICIA A., Colonel, Senior Appellate Military Judge  
PERCLE, DAYLE P., Lieutenant Colonel, Appellate Military Judge

No briefs in response to this petition will be filed unless ordered by the court. *See* JT. CT. CRIM. APP. R. 19(g)(1).



FOR THE COURT



JACOB B. HOEFERKAMP, Capt, USAF  
Chief Commissioner