

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES,
Petitioner

v.

**MOTION FOR LEAVE TO FILE
AND MOTION TO FILE
SUPPLEMENTAL CITATIONS OF
AUTHORITY**

Colonel (O-6)
PRITCHARD, CHARLES L.
Military Judge
United States Army,
Respondent

Docket No. ARMY MISC 20220001

Lieutenant Colonel (O-5)
DIAL, ANDREW J.
United States Army,
Real Party in Interest

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES
ARMY COURT OF CRIMINAL APPEALS

COMES NOW, pursuant to Rules 23.4 and 25.5 of this court's Rules of Appellate Procedure, the Real Party in Interest (RPI), through undersigned counsel, moves for leave to file the following supplemental citations of authority in support of the RPI's opposition to the government's petition for extraordinary relief in the nature of a writ of prohibition.

1. *United States v. Alderman*, 22 U.S.C.M.A. 298 (1973). This case discusses the applicability of provisions of the Sixth Amendment and Supreme Court precedent to military courts. Furthermore, the case discusses the similarities between military and civilian courts in their primary role of determining guilt of criminal conduct. This is applicable to the RPI's argument that the military judge

was bound by the precedent of *Ramos v. Louisiana* and that the role of a panel and jury in a trial or court-martial is the same.

2. *Burns v. Wilson*, 346 U.S. 137 (1953). This case discusses the applicability of the constitutional guarantee of due process to military prisoners as a safeguard against a system that is “bent on fixing guilt by dispensing with rudimentary fairness.” *Id.* at 143. This is relevant to the determination of whether unanimous guilty verdicts, as a fundamental part of due process, are applicable to the military.

3. *United States v. Albaaj*, 65 M.J. 167 (CAAF 2007). This case emphasizes that “the Supreme Court has noted that a touchstone of a fair trial is an impartial trier of fact.” *Id.* at 168. This is relevant to the RPI’s contention that the Supreme Court’s declaration in *Ramos* that unanimity is a required component of an impartial trier of fact is applicable to military courts-martial.

4. *United States v. Mack*, 41 M.J. 51 (CMA 1994). This case shows the heavy reliance by military courts on Supreme Court case law that is vested in the right to an impartial factfinder as enunciated in the Sixth Amendment. This is relevant because the RPI argues that by defining “impartial jury” as a unanimous jury, the Supreme Court in *Ramos* also defined an “impartial factfinder” as it is applicable to the military courts-martial.

5. *Georgia v. McCollum*, 505 U.S. 42 (1992). This case is in the line of cases following the Supreme Court's decision in *Batson*. This case establishes that denying a person participation in jury service on account of his race unconstitutionally discriminates against the excluded juror. This case was used by military courts in *United States v. Witham*, 47 M.J. 297 (CAAF 1997), cited by the government, to establish that gender discrimination on the part of the defense counsel during a peremptory challenge was prohibited. Furthermore, the case stands for the proposition that the differences between the military justice system and the civilian justice system "do not necessarily dictate that constitutional decisions on civilian criminal justice be found *per se* inapplicable to the military justice system." *Id.* at 301.

6. *United States v. Miller*, 58 M.J. 266 (CAAF 2003). This case established that "while counsel may request specific instructions, the military judge has substantial discretion in deciding on the instructions to give and whether the requested instruction is appropriate. This discretion must be exercised in light of correct principles of law as applied to the facts and circumstances of the case." *Id.* at 270.

PANEL 3

MOTION FOR LEAVE TO FILE:

GRANTED: ☐ _____

DENIED: _____

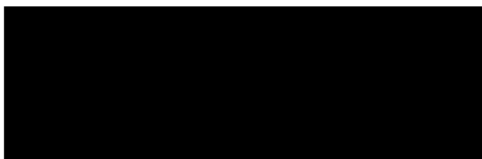
DATE: 13 APR 2022

MOTION TO FILE
SUPPLEMENTAL CITATIONS
OF AUTHORITY:


GRANTED: ☐ _____

DENIED: _____

DATE: 13 APR 2022



JULIA M. FARINAS
Major, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division



LAUREN M. TEEL
Captain, Judge Advocate
Branch Chief
Defense Appellate Division

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army Court and Government Appellate Division on April 12, 2022.



MELINDA J. JOHNSON
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