

**IN THE UNITED STATES ARMY
COURT OF CRIMINAL APPEALS**

JOHNNY GONZALEZ,
Lieutenant Colonel (0-5),
United States Army,
Petitioner

**PETITION FOR
EXTRAORDINARY RELIEF IN
THE NATURE OF A WRIT OF
MANDAMUS**

Docket No. ARMY MISC 20230618

v.

JAVIAR RIVERA-ROSARIO,
Colonel (0-6),
United States Army,
Respondent

Tried at Fort Sam Houston, Texas,
on 5-6 December 2023, before a
general court-martial appointed by
the Commander, U.S. Army South,
Colonel Javier Rivera-Rosario,
Military Judge, presiding.

and

UNITED STATES
Real Party in Interest

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

HISTORY OF THE CASE

Petitioner is currently facing trial at Fort Sam Houston, Texas. As of the time of this filing, petitioner's case is mid-trial and ongoing.

STATEMENT OF FACTS

On 5 December 2023, the petitioner's trial defense counsel submitted a motion for a continuance upon learning that a previously approved expert in forensic nursing had tested positive for COVID and would be in quarantine potentially through Thursday, 7 December 2023 – and possibly Friday, 8

December 2023 – depending on resolution of a fever in accordance with CDC guidelines.

The military judge denied the continuance, found that the Army currently does not have a COVID policy, ordered the case to proceed without the nurse, and ruled that he would address the issue of her COVID on Thursday, 7 December 2023.

Issue

WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION IN DENYING A DEFENSE MOTION FOR A CONTINUANCE WHERE THE CONTINUANCE WAS NECESSARY TO SECURE THE PRESENCE OF AN EXCULPATORY FORENSIC NURSE WHO HAS COVID.

Specific Relief Sought

Petitioner seeks a writ of mandamus directing a continuance necessary to secure the presence of the expert forensic nurse.

Request for Stay

A stay of the ongoing proceedings is requested.

Reasons Relief Should be Granted

In the absence of the requested relief, petitioner will be forced to go to trial without an approved expert with exculpatory evidence to give. This expert has already been approved and assigned – so the relevance of this expert seems uncontested. Petitioner is indisputably entitled to the presence of the already-

approved expert and should not be penalized due to limitations caused by her health situation – which is completely outside the control of the parties.

Jurisdiction

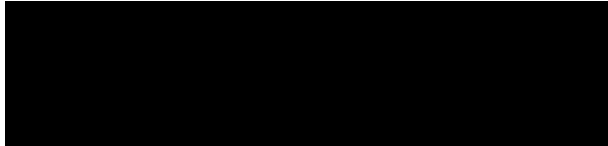
This Court has jurisdiction to entertain extraordinary writs, including writs of mandamus, pursuant to the All Writs Act, 28 U.S.C. Section §1651(a), and Rule 2(b) of this court’s Rules of Practice and Procedure. *See also Howell v. United States*, 75 M.J. 386, 390 (C.A.A.F. 2016) (Courts of Criminal Appeals have jurisdiction over writs that “ha[ve] the potential to directly affect the findings and sentence.”)

Request for Appellate Counsel

Petitioner respectfully requests the appointment of appellate counsel to work with the undersigned counsel in representing petitioner before this court.

Conclusion

WHEREFORE, petitioner respectfully requests that this Court grant his petition for extraordinary relief.



DANIEL CONWAY
Civilian Appellate Defense Counsel
Daniel Conway and Associates
20079 Stone Oak Parkway,
Suite 1005-506
San Antonio, TX 78258
Tel. 210-934-8265 (UCMJ)
Fax. 603-529-3455
conway@militaryattorney.com

Certificate of Service

I certify that a copy of the foregoing was sent via electronic submission to the Army Court of Criminal Appeals and the Government Appellate Division on 6 December 2023.



SCOTT HOCKENBERRY
Assistant Civilian Appellate Defense
Counsel
Daniel Conway and Associates
12235 Arabian Place,
Woodbridge, VA, 22192
Tel. 586-930-8359
Fax. 603-529-3455
hockenberry@militaryattorney.com