

ARMY
IN THE UNITED STATES ~~AIR FORCE~~
COURT OF CRIMINAL APPEALS

Lieutenant Colonel (O-5)
Johnny Gonzalez
United States Army
Petitioner

**MOTION FOR A STAY IN THE
PROCEEDINGS**

v.

Colonel (O-6)
Javier Rivera-Rosario
United States Army
Respondent

Docket No. ARMY 20230618

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**

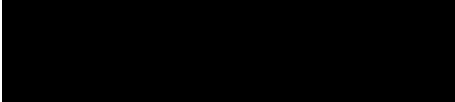
COME NOW the undersigned counsel pursuant to Rule 5 (b)(9) of this Honorable Court's Rules of Practice and Procedure, and respectfully move for a stay in the proceedings in United States v. Lieutenant Colonel Johnny Gonzalez until this Court decides Petitioner's Application for Extraordinary Relief in the Form of a Writ of Mandamus (hereinafter Writ-Appeal), which was filed by Petitioner on 6 December 2023.

A stay is appropriate because this case is beginning the morning of this pleading – 6 December 2023, the accused is being forced to proceed to trial with

two expert witnesses unavailable – an exculpatory DNA expert and forensic nurse who presently has COVID. Both witnesses are exculpatory, are expert witnesses, and are necessary to the defense presentation of the case. Due to the ongoing nature of this issue, civilian appellate counsel intends to file a motion requesting to supplement this motion with an additional brief.

The underlying issues involving the Military Judge erroneously denying a continuance request and forcing the defense to trial without two exculpatory expert witnesses.

WHEREFORE, the undersigned counsel respectfully request that the Court grant this motion.



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Panel No. 3

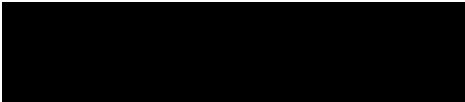
Granted.

Denied. 

Date. 06 December 2023

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to the Army Court of Criminal Appeals, the Government Appellate Division, and the Defense Appellate Division on 6 December 2023. I further certify that a copy of the foregoing was electronically served on government trial counsel and respondent on 6 December 2023.



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CAAF Bar No 34771

From: [USARMY Pentagon HQDA OTJAG Mailbox Clerk of Court eFiling](#)
To: [Scott Hockenberry](#); [USARMY Pentagon HQDA OTJAG Mailbox GAD ACCAservice](#); [USARMY Pentagon HQDA OTJAG Mailbox TJ Service](#); [USARMY Pentagon HQDA OTJAG Mailbox DAD ACCAservice](#)
Cc: [Daniel Conway](#); [Rivera-Rosario, Javier E \(Javi\) COL USARMY HQDA OTJAG \(USA\)](#); [Goodwin-Mathers, Shelley D CIV USARMY HQDA OTJAG \(USA\)](#); [Smith, Tyesha L COL USARMY HQDA OTJAG \(USA\)](#); [Vanscoy, Alexander Paul \(Alex\) CPT USARMY HQDA OTJAG \(USA\)](#); [Emmons, Timothy R MAJ USARMY HQDA OTJAG \(USA\)](#)
Subject: Gonzalez, Petition for Extraordinary Relief in the Nature of a Writ of Mandamus, (231206)
Date: Wednesday, December 6, 2023 3:24:00 PM
Attachments: [Gonzalez - 20230618 - Petition for Extraordinary Relief in the Nature of a Writ of Mandamus \(231206\).pdf](#)

Your pleading is in compliance with the Court's Rules of Practice and Procedure, and the pleading is accepted.

Very respectfully,

Office of the U.S. Army Clerk of Court
9275 Gunston Road, Bldg. 1450
Fort Belvoir, VA 22060-5546

From: Scott Hockenberry <hockenberry@militaryattorney.com>
Sent: Wednesday, December 6, 2023 3:21 PM
To: USARMY Pentagon HQDA OTJAG Mailbox Clerk of Court eFiling <usarmy.pentagon.hqda-otjag.mbx.clerk-of-court-efiling@army.mil>; USARMY Pentagon HQDA OTJAG Mailbox GAD ACCAservice <usarmy.pentagon.hqda-otjag.mbx.gad-accaservice@army.mil>; USARMY Pentagon HQDA OTJAG Mailbox TJ Service <usarmy.pentagon.hqda-otjag.mbx.tj-service@army.mil>; USARMY Pentagon HQDA OTJAG Mailbox DAD ACCAservice <usarmy.pentagon.hqda-otjag.mbx.dad-accaservice@army.mil>
Cc: Daniel Conway <conway@militaryattorney.com>; Rivera-Rosario, Javier E (Javi) COL USARMY HQDA OTJAG (USA) <javier.e.riverarosario.mil@army.mil>; Goodwin-Mathers, Shelley D CIV USARMY HQDA OTJAG (USA) <shelley.d.goodwin-mathers.civ@army.mil>; Smith, Tyesha L COL USARMY HQDA OTJAG (USA) <tyesha.l.smith5.mil@army.mil>; Vanscoy, Alexander Paul (Alex) CPT USARMY HQDA OTJAG (USA) <alexander.p.vanscoy.mil@army.mil>; Emmons, Timothy R MAJ USARMY HQDA OTJAG (USA) <timothy.r.emmons2.mil@army.mil>
Subject: [Non-DoD Source] RE: **REJECTED**RE: Gonzalez, Petition for Extraordinary Relief in the Nature of a Writ of Mandamus, (231206)

I hereby certify the following document was transmitted on the date/time of this message:

Gonzalez – 20230618 – Petition for Extraordinary Relief in the Nature of a Writ of Mandamus (231130)

1 attachment was served.

Respectfully,
Scott Hockenberry
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From: Scott Hockenberry

Sent: Wednesday, December 6, 2023 3:20 PM

To: USARMY Pentagon HQDA OTJAG Mailbox Clerk of Court eFiling <usarmy.pentagon.hqda-otjag.mbx.clerk-of-court-efiling@army.mil>; USARMY Pentagon HQDA OTJAG Mailbox GAD ACCAservice <usarmy.pentagon.hqda-otjag.mbx.gad-accaservice@army.mil>; USARMY Pentagon HQDA OTJAG Mailbox TJ Service <usarmy.pentagon.hqda-otjag.mbx.tj-service@army.mil>; USARMY Pentagon HQDA OTJAG Mailbox DAD ACCAservice <usarmy.pentagon.hqda-otjag.mbx.dad-accaservice@army.mil>

Cc: Daniel Conway <conway@militaryattorney.com>; Rivera-Rosario, Javier E (Javi) COL USARMY HQDA OTJAG (USA) <javier.e.riverarosario.mil@army.mil>; Goodwin-Mathers, Shelley D CIV USARMY HQDA OTJAG (USA) <shelley.d.goodwin-mathers.civ@army.mil>; Smith, Tyesha L COL USARMY HQDA OTJAG (USA) <tyesha.l.smith5.mil@army.mil>; Vanscoy, Alexander Paul (Alex) CPT USARMY HQDA OTJAG (USA) <alexander.p.vanscoy.mil@army.mil>; Emmons, Timothy R MAJ USARMY HQDA OTJAG (USA) <timothy.r.emmons2.mil@army.mil>

Subject: RE: **REJECTED**RE: Gonzalez, Petition for Extraordinary Relief in the Nature of a Writ of Mandamus, (231206)

I hereby certify the following document was transmitted on the date/time of this message:

Gonzalez – 20230618 – Motion to Withdraw Petition for Extraordinary Relief in the Nature of a Writ of Mandamus (231130)

1 attachment was served.

Respectfully,
Scott Hockenberry
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From: USARMY Pentagon HQDA OTJAG Mailbox Clerk of Court eFiling <usarmy.pentagon.hqda-otjag.mbx.clerk-of-court-efiling@army.mil>

Sent: Wednesday, December 6, 2023 2:33 PM

To: Scott Hockenberry <hockenberry@militaryattorney.com>; USARMY Pentagon HQDA OTJAG Mailbox GAD ACCAservice <usarmy.pentagon.hqda-otjag.mbx.gad-accaservice@army.mil>; USARMY Pentagon HQDA OTJAG Mailbox TJ Service <usarmy.pentagon.hqda-otjag.mbx.tj-service@army.mil>; USARMY Pentagon HQDA OTJAG Mailbox DAD ACCAservice <usarmy.pentagon.hqda-otjag.mbx.dad-accaservice@army.mil>

Cc: Daniel Conway <conway@militaryattorney.com>; Rivera-Rosario, Javier E (Javi) COL USARMY HQDA OTJAG (USA) <javier.e.riverarosario.mil@army.mil>; Goodwin-Mathers, Shelley D CIV USARMY HQDA OTJAG (USA) <shelley.d.goodwin-mathers.civ@army.mil>; Smith, Tyesha L COL USARMY HQDA OTJAG (USA) <tyesha.l.smith5.mil@army.mil>; Vanscoy, Alexander Paul (Alex) CPT USARMY HQDA OTJAG (USA) <alexander.p.vanscoy.mil@army.mil>; Emmons, Timothy R MAJ USARMY HQDA OTJAG (USA) <timothy.r.emmons2.mil@army.mil>

Subject: **REJECTED**RE: Gonzalez, Petition for Extraordinary Relief in the Nature of a Writ of Mandamus, (231206)

Your filing is rejected. Please file a Motion to Withdraw your Petition for Extraordinary Relief. Then you may refile your Petition, but please do not title it Amended (due to it being withdrawn).

Very respectfully,

Office of the U.S. Army Clerk of Court
9275 Gunston Road, Bldg. 1450
Fort Belvoir, VA 22060-5546

From: Scott Hockenberry <hockenberry@militaryattorney.com>

Sent: Wednesday, December 6, 2023 2:02 PM

To: USARMY Pentagon HQDA OTJAG Mailbox Clerk of Court eFiling <usarmy.pentagon.hqda-otjag.mbx.clerk-of-court-efiling@army.mil>; USARMY Pentagon HQDA OTJAG Mailbox GAD ACCAservice <usarmy.pentagon.hqda-otjag.mbx.gad-accaservice@army.mil>; USARMY Pentagon HQDA OTJAG Mailbox TJ Service <usarmy.pentagon.hqda-otjag.mbx.tj-service@army.mil>; USARMY Pentagon HQDA OTJAG Mailbox DAD ACCAservice <usarmy.pentagon.hqda-otjag.mbx.dad-accaservice@army.mil>

Cc: Daniel Conway <conway@militaryattorney.com>; Rivera-Rosario, Javier E (Javi) COL USARMY HQDA OTJAG (USA) <javier.e.riverarosario.mil@army.mil>; Goodwin-Mathers, Shelley D CIV USARMY HQDA OTJAG (USA) <shelley.d.goodwin-mathers.civ@army.mil>; Smith, Tyesha L COL USARMY HQDA OTJAG (USA) <tyesha.l.smith5.mil@army.mil>; Vanscoy, Alexander Paul (Alex) CPT USARMY HQDA OTJAG (USA) <alexander.p.vanscoy.mil@army.mil>; Emmons, Timothy R MAJ USARMY HQDA OTJAG (USA) <timothy.r.emmons2.mil@army.mil>

Subject: [Non-DoD Source] RE: Gonzalez, Petition for Extraordinary Relief in the Nature of a Writ of Mandamus, (231206)

I hereby certify the following document was transmitted on the date/time of this message:

Gonzalez – 20230618 – Amended Petition for Extraordinary Relief in the Nature of a Writ of Mandamus (231130)

1 attachment was served.

Respectfully,
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From: USARMY Pentagon HQDA OTJAG Mailbox Clerk of Court eFiling <usarmy.pentagon.hqda-otjag.mbx.clerk-of-court-efiling@army.mil>

Sent: Wednesday, December 6, 2023 11:24 AM

To: Scott Hockenberry <hockenberry@militaryattorney.com>; USARMY Pentagon HQDA OTJAG Mailbox GAD ACCAservice <usarmy.pentagon.hqda-otjag.mbx.gad-accaservice@army.mil>; USARMY Pentagon HQDA OTJAG Mailbox TJ Service <usarmy.pentagon.hqda-otjag.mbx.tj-service@army.mil>; USARMY Pentagon HQDA OTJAG Mailbox DAD ACCAservice <usarmy.pentagon.hqda-otjag.mbx.dad-accaservice@army.mil>

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Subject: RE: Gonzalez, Petition for Extraordinary Relief in the Nature of a Writ of Mandamus, (231206)

Your pleading is in compliance with the Court's Rules of Practice and Procedure, and the pleading is accepted. Please note for future filings, in accordance with Rule 13.2(e) each filing with the court must be submitted in a separate email.

Very respectfully,

Office of the U.S. Army Clerk of Court
9275 Gunston Road, Bldg. 1450
Fort Belvoir, VA 22060-5546

From: Scott Hockenberry <hockenberry@militaryattorney.com>
Sent: Wednesday, December 6, 2023 11:06 AM
To: USARMY Pentagon HQDA OTJAG Mailbox Clerk of Court eFiling <usarmy.pentagon.hqda-otjag.mbx.clerk-of-court-efiling@army.mil>; USARMY Pentagon HQDA OTJAG Mailbox GAD ACCAservice <usarmy.pentagon.hqda-otjag.mbx.gad-accaservice@army.mil>; USARMY Pentagon HQDA OTJAG Mailbox TJ Service <usarmy.pentagon.hqda-otjag.mbx.tj-service@army.mil>; USARMY Pentagon HQDA OTJAG Mailbox DAD ACCAservice <usarmy.pentagon.hqda-otjag.mbx.dad-accaservice@army.mil>
Cc: Daniel Conway <conway@militaryattorney.com>
Subject: [Non-DoD Source] FW: Gonzalez, Petition for Extraordinary Relief in the Nature of a Writ of Mandamus, (231206)

Clerk of Court:

I am forwarding the below message and the attachments regarding a just-filed petition. I believe the clerk was inadvertently left off the original email distro. This is being filed mid-trial so I apologize for the oversight. I'm copying the appellate divisions as well.

Please acknowledge receipt at your convenience.

Respectfully,
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From: Daniel Conway <conway@militaryattorney.com>
Sent: Wednesday, December 6, 2023 10:51 AM
To: usarmy.pentagon.hqda-otjag.mbx.gad-accaservice@army.mil; usarmy.pentagon.hqda-otjag.mbx.tj-service@army.mil; usarmy.pentagon.hqda-otjag.mbx.dad-accaservice@army.mil
Cc: Scott Hockenberry <hockenberry@militaryattorney.com>; Whitlock, Andrew A III CPT USARMY ASA (USA) <andrew.a.whitlock.mil@army.mil>; Harman, Andrew J CPT USARMY MEDICAL COE (USA) <andrew.j.harman.mil@army.mil>; Brunson, Claudia D CPT USARMY ARNORTH (USA) <claudia.d.brunson.mil@army.mil>; Rivera-Rosario, Javier E (Javi) COL USARMY HQDA OTJAG (USA) <javier.e.riverarosario.mil@army.mil>
Subject: Gonzalez, Petition for Extraordinary Relief in the Nature of a Writ of Mandamus, (231206)

I certify the following documents were transmitted on the date and time of this message:
Gonzalez, Petition for Extraordinary Relief in the Nature of a Writ of Mandamus, (231206)

Gonzalez, Motion for Stay in Proceedings, (231206)

Respectfully,

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