IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, Cross-Appellee	)	ANSWER ON BEHALF OF CROSS-APPELLEE
v.	)	Crim.App. Dkt. No. 201200264
Stephen P. HOWELL, Staff Sergeant (E-6) U.S. Marine Corps, Cross-Appellant	)	USCA Dkt. No. 16-0367/MC

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FOR THE ARMED FORCES:

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Issue Presented

I.

WHETHER THE GOVERNMENT MAY INVOKE ARTICLE 66, UCMJ, AS THE JURISDICTIONAL BASIS FOR AN EXTRAORDINARY WRIT PURSUANT TO THE ALL WRITS ACT WHEN THE ISSUE IS NOT INCLUDED AS A BASIS FOR GOVERNMENT APPEAL UNDER ARTICLE 62, UCMJ?

Statement of Statutory Jurisdiction

This Court has jurisdiction pursuant to Article 67(a)(2), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 867(a)(2) (2012); *see LRM v. Kastenberg*, 72 M.J. 364, 367 (C.A.A.F. 2013); *United States v. Redding*, 11 M.J. 100, 102-05 (C.M.A. 1981). This Court permits both discretionary Government writ-appeals filed under C.A.A.F. R. 18(a)(4), 19(e), 27(b), 28, as well as mandatory review of certified cases involving service court extraordinary writ decisions filed under C.A.A.F. R. 18(a)(2), 19(b)(2), 22(b)(2). *See United States v. Caprio*, 12 M.J. 30, 32 (C.M.A. 1981) (holding that in addition to proper use of certification of extraordinary relief decisions under Article 67(b)(2), Government has ability to file writ-appeal petitions for discretionary review at this Court); *see, e.g.*, *Frage v. Moriarty*, 27 M.J. 341, 342 (C.M.A. 1988) (acting on a writ petition filed by Frage; a writ-appeal filed by the United States; and JAG certificate for review).

The Navy-Marine Corps Court of Criminal Appeals had jurisdiction pursuant to the All Writs Act, which provides that "all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a); *see United States v. Curtin*, 44 M.J. 439, 440 (C.A.A.F. 1996) (holding that the United States "may file a petition for extraordinary relief with the appropriate" Court of Criminal Appeals).

Statement of the Case

For the limited purposes of this Answer, the United States adopts Cross-Appellant's Statement of the Case.

Statement of Facts

For the limited purposes of this Answer, the United States adopts Cross-Appellant's Statement of Facts, except as follows.

The Government did not "with[o]ld approximately $23,000 of basic pay." (Cross-Appellant's Br. at 8). The United States does not necessarily dispute this alleged amount (which if filed in the appropriate court would be subject to a proper accounting). Rather, the United States disagrees with the assertion that the amount was "withheld." The core dispute before this Court is whether Cross-Appellant was, in fact, entitled to E-6 pay during the pendency of his rehearing in light of Article 75(a), UCMJ. If no entitlement exists, then nothing was "withheld."

In its formal legal opinion of November 13, 2014, the Defense Finance and Accounting Service (DFAS) did not "fail . . . to cite the relevant case law." (Cross-Appellant's Br. at 7.) DFAS cited precisely the correct case law for determining Cross-Appellant's pay entitlement pending rehearing. The lower court's failure to reconcile this case law with its conclusion that the Military Judge—in rejecting this case law and finding illegal pretrial punishment— did not, in fact, commit clear and indisputable error is at the heart of this appeal.

Summary of Argument

I.

The lower court, sitting *en banc*, unanimously and properly held that it had jurisdiction to entertain the United States' Writ Petition. This Court has already rejected Cross-Appellant's argument that the lower court's extraordinary writ jurisdiction may only be invoked by an accused and not by the United States.

Argument

I.

THE LOWER COURT'S CONCLUSION THAT IT HAD JURISDICTION TO ENTERTAIN THE UNITED STATES' WRIT PETITION WAS CORRECT BECAUSE THE ADJUDGED SENTENCE UPON REHEARING WAS WITHIN THE COURT'S EXISTING STATUTORY JURISDICTION UNDER ARTICLE 66, UCMJ. THUS, INVOCATION OF THE ALL WRITS ACT WAS "IN AID" OF ITS EXISTING STATUTORY JURISDICTION.

A. Standard of review.

In reviewing whether the lower court properly analyzed its extraordinary writ jurisdiction, this Court reviews issues of jurisdiction and interpretation of statutes *de novo*. *LRM*, 72 M.J. at 367-69.

B. Courts of Criminal Appeals have jurisdiction to entertain writ petitions filed by the United States, and the Military Justice Act of 1983 did not limit that jurisdiction.

This Court, and by extension the lower court, has jurisdiction to issue all writs necessary or appropriate in aid of its existing statutory jurisdiction. 28 U.S.C. § 1651(a); *Clinton v. Goldsmith*, 526 U.S. 529, 534 (1999); *Denedo v. United States*, 66 M.J. 114, 119 (C.A.A.F. 2008); *Loving v. United States*, 62 M.J. 235, 239 (C.A.A.F. 2005). That jurisdiction "extends to the potential jurisdiction of the appellate court where an appeal is not then pending but may be later perfected." *FTC v. Dean Foods Co.*, 384 U.S. 597, 603-04 (1966); *see also Hasan v. Gross*, 71 M.J. 416, 419 (C.A.A.F. 2012) (finding subject-matter jurisdiction and granting writ petition despite no finding or sentence).

Sitting *en banc*, the lower court unanimously, and correctly, held that it had jurisdiction to entertain the United States' Writ Petition. (J.A. 3-4.) The Military Judge's ruling was not subject to interlocutory appeal under Article 62, nor was relief attainable on direct review under Articles 66 or 69. In the absence of action by this Court or the lower court, the Convening Authority would be required to

apply the sentencing credit when taking action on the findings and sentence. R.C.M. 1107(f)(4)(F). Such an action would deprive the United States of any ability to challenge a military judge's finding of an Article 13 violation, rendering the Military Judge's decision—no matter how unwarranted—legally unreviewable. Indeed, the Convening Authority's only means of remedy, if he disagrees with the Military Judge's ruling, would be via "the extraordinary writ process." *United States v. Suzuki*, 14 M.J. 491, 492 (C.M.A. 1983) (citing *Redding*, 11 M.J. 100 (C.M.A. 1981)); *see also United States v. Ruppel*, 49 M.J. 247, 254 (C.A.A.F. 1998) (analyzing sentence credit as a judicially-created remedy and stating that the "only means available for the Government to appeal the sentence credit would be via an extraordinary writ") (Effron, J., concurring in part and in the result).

In *Dettinger v. United States*, 7 M.J. 216 (C.M.A. 1979), this Court considered and rejected the argument that the Air Force Court of Military Review lacked jurisdiction over a writ of mandamus filed by the United States. *Id.* at 222. The *Dettinger* Court concluded that in the appropriate case, the United States could invoke the All Writs Act: "the Uniform Code discloses no legislative purpose to forbid the military appellate courts from considering an application for extraordinary relief from a trial judge's action only because the petitioner is the Government." *Id*. Additionally, the *Dettinger* Court noted that the right of the United States to seek extraordinary relief would be restricted only where the

UCMJ explicitly provided an internal statutory route of appeal to the Government for dismissal of charges. *Id*. ("When review by appeal is allowed, 'the need for the writs has vanished.'" (citations omitted)). Thus, *Dettinger* concluded, because Article 62 in 1979 did *not* permit interlocutory appeal of a dismissal of charges, it could be reviewed via an extraordinary writ sought by the United States.

In 1983, Congress amended Article 62 to provide for Government interlocutory appeals of certain rulings by the military judge. Military Justice Act of 1983, Pub. L. No. 98-209, § 10, 97 Stat. 1393 (1983). The purpose of this amendment was not, as Cross-Appellant would have it, to "limit the Government's right to interlocutory appeals" or to prevent it from obtaining extraordinary writs where "there is no nexus to Article 62." (Cross-Appellant's Br. at 15-16.) Rather, the purpose was to enhance and expedite the Government's ability to obtain relief from erroneous judicial rulings "under procedures similar to an appeal by the United States in a federal civilian prosecution." S. Rep. No. 98-53, at 6, 23-24 (1983). The Supreme Court has read 18 U.S.C. § 3731, the statute providing for Government appeals in federal civilian practice, "as expressing a desire 'to authorize appeals whenever constitutionally permissible. . . . [and] that Congress was determined to *avoid creating nonconstitutional bars* to the Government's right to appeal.'" *United States v. Lopez de Victoria*, 66 M.J. 67, 70 (C.A.A.F. 2008) (quoting *United States v. Wilson*, 420 U.S. 332, 338-39 (1975)) (emphasis added).

"[T]he same principle applies to Article 62, UCMJ, appeals." *Id; see United States v. Brooks*, 42 M.J. 484, 486 (C.A.A.F. 1995) ("Article 62 was intended by Congress to be interpreted and applied in the same manner as the [federal] Criminal Appeals Act, 18 U.S.C. § 3731".). In short, nothing in the legislative history of the 1983 Act indicates an intent to limit the United States' ability to invoke the All Writs Act in appropriate cases.

Thirteen years after Congress amended Article 62, this Court again confirmed that Courts of Criminal Appeals have jurisdiction to hear petitions for extraordinary relief filed by the United States. *United States v. Curtin*, 44 M.J. 439, 440 (C.A.A.F. 1996) (citing *Dettinger*, 7 M.J. at 216); *see United States v. Dowty*, 48 M.J. 102, 106-07 (C.A.A.F. 1998) (reaffirming "well established" procedure of filing petitions for extraordinary relief including those "filed by the Government with the Court of Criminal Appeal under the All Writs Act.").

In 2013, the Navy-Marine Corps Court of Criminal Appeals concluded it had the "authority under the All Writs Act to hear petitions of extraordinary relief on behalf of the Government for issues not subject to appeal . . . under Article 62." *United States v. Booker*, 72 M.J. 787, 796 (N-M. Ct. Crim. App. 2013) (internal quotation and citation omitted). Acknowledging that the All Writs Act limits issuance of writs to situations where "the requested writ is 'in aid of' the court's existing jurisdiction [and] is 'necessary or appropriate,'" the *Booker* court granted

the United States' petition for a writ of mandamus to direct the military judge to apply the proper maximum punishment calculation for an alleged violation of Article 120(b), 10 U.S.C. § 120(b) (2012). *Id*. at 791, 808 (quoting *Denedo v. United States*, 66 M.J. 114, 119 (C.A.A.F. 2008)).

Following the lower court's granting the United States' writ petition in *Booker*, the real party in interest, Petty Officer Schaleger, filed a writ-appeal with this Court attacking *inter alia* the jurisdiction of the lower court to hear the case. This Court denied that writ-appeal. *United States v. Schaleger*, 73 M.J. 92 (C.A.A.F. 2013) (summary disposition). Under normal circumstances, denials of petitions by this Court lack precedential authority; however, because jurisdiction involves a "court's power to hear a case," *United States v. Cotton*, 535 U.S. 625, 630 (2002), it stands to reason that this Court would have stepped in had it concluded that deviation from the *Dettinger-Curtin-Dowty* line of cases was necessary in *Schaleger*. *See United States v. Labella*, 75 M.J. 52 (C.A.A.F. 2015) ("[E]very federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review") (quoting *Bender v. Williamsport Area Sch. Dist*., 475 U.S. 534, 541 (1986) (internal quotation marks and citations omitted)).[1]

[1] Cross-Appellant claims, without citing any authority, that "*Booker* is no longer good law following this Court's holding in *Arness*." (Cross-Appellant's Br. at 20

Similar to the lower court in *Booker*, other service courts have held that they have jurisdiction to entertain writ petitions filed by the United States. *See United States v. Mahoney*, 36 M.J. 679, 684 (A.F.C.M.R. 1992) ("The authority of this Court to grant the government extraordinary relief from a ruling or action of a military judge is well established."); *United States v. Reinert*, No. 20071195, 2008 CCA LEXIS 526, *13-27 (A. Ct. Crim. App., Aug. 7, 2008) (analyzing extensively its jurisdiction and granting United States' writ petition concluding that military judge exceeded his authority by granting sentencing credit under Article 13).

Less than three years ago, in *LRM v. Kastenberg*, 72 M.J. 364, 368 (C.A.A.F. 2013), this Court affirmed the ability of victims to seek extraordinary relief before the Courts of Criminal Appeals, despite the lack of any statutory reference to victims within the UCMJ and despite the fact that the victim was a non-party to the court-martial. In *LRM*, the Air Force Judge Advocate General certified the issue of whether the Air Force Court of Criminal Appeals erred by holding that it lacked jurisdiction to entertain LRM's writ petition. *Id*. at 366. This Court agreed that the Air Force Court of Criminal Appeals "erred by holding that it lacked jurisdiction to hear LRM's petition for a writ of mandamus." *Id*. at 367; *see United States v. Denedo*, 556 U.S. 904, 911 (2009) ("[M]ilitary courts,

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n.73.). Cross-Appellant is mistaken. Nowhere within *Arness*—or within any other case—is there a suggestion that *Booker*'s holding with respect to its writ jurisdiction has been overruled.

like Article III tribunals, are empowered to issue extraordinary writs under the All Writs Act").

C. The lower court had jurisdiction to entertain the requested Writ because it was "in aid" of its statutory jurisdiction.

In the context of military justice, "'in aid" includes cases in which a petitioner seeks 'to modify an action that was taken within the subject matter jurisdiction of the military justice system.'" *LRM*, 72 M.J. at 368 (C.A.A.F. 2013) (quoting *Denedo*, 66 M.J. at 120). To establish jurisdiction for purposes of whether the disputed issue is "in aid" of this Court's (or the lower court's) jurisdiction, the harm need only have "potential to directly affect the findings and sentence." *Id.* at 368 (quoting *Ctr. for Constitutional Rights v. United States (CCR)*, 72 M.J. 126, 129 (C.A.A.F. 2013)).

Cross-Appellant's adjudged sentence at his rehearing was clearly within the lower court's statutory jurisdiction under Article 66(b)(1). He does not argue otherwise. This case directly affects the findings and sentence because the Convening Authority must—when taking action on the sentence—apply the quantum of sentencing credit directed by a military judge. *See* R.C.M. 1107(f)(4)(F) (requiring convening authority, upon action, to apply sentencing credit to the adjudged sentence); *Suzuk*i, 14 M.J. at 493. The sentencing credit becomes part of the adjudged sentence that must be applied to, and approved, by a convening authority in his or her action. The Court of Criminal Appeals then has

an affirmative statutory duty to review the sentence *as approved by the convening authority* pursuant to Article 66(c). Thus, the requested Writ was in "aid of" the lower court's statutory jurisdiction. *See Denedo*, 556 U.S. at 917 (stating that "[t]he military justice system relies upon courts that must take all appropriate means, consistent with their statutory jurisdiction, to ensure the neutrality and integrity of their judgments.").

Cross-Appellant does not contest that his adjudged sentence was within the lower court's statutory jurisdiction under Article 66. Instead, he argues that this statutory jurisdiction may only be "invoked by the accused, not the Government," and that the United States may not "force [Cross-Appellant] to loan his Article 66 appellate rights . . . aiding in his own prosecution." (Cross-Appellant's Br. at 11).

Cross-Appellant's argument that Article 66 exists solely for an accused to invoke should be rejected. First, the argument is inconsistent with the plain text of Article 66 because it is the Judge Advocate General who refers cases to the Court of Criminal Appeals provided the sentence, "as approved by the convening authority[,]" meets statutory jurisdictional prerequisites. Article 66(b)(1), UCMJ; *see Dettinger*, 7 M.J. at 219 (stating that each service appellate court "is the creation of the Judge Advocate General of that service"). Once a case is referred to the court of criminal appeals, the scope of statutory jurisdiction defines the jurisdictional authority of the court to "act only with the respect to the findings and

sentence as approved by the convening authority." Article 66(c), UCMJ. Nowhere in the statute is there any suggestion that the court's jurisdiction may only be invoked by an accused. Just because Article 66 sets out an accused's direct appeal rights does not mean that the statute can *only* be invoked by an accused. Indeed, taken to its logical conclusion, Cross-Appellant's argument would preclude a court of criminal appeals from setting aside a findings and sentence unless "invoked" by an accused. Regardless of action or argument by an accused, a court of criminal appeals has an affirmative statutory obligation to "affirm only such findings of guilty and the sentence or such part of the sentence, *as it finds* correct in law and fact and determines, on the basis of the entire record, should be approved." Article 66(c), UCMJ (emphasis added).

Second, Cross-Appellant's argument is inconsistent with the plain text of the All Writs Act, Congressional intent, and decisions by other courts. Nothing in the text of the All Writs Act limits a court to issuing a writ when requested by a criminal defendant, but not when requested by the United States. Cross-Appellant's argument would similarly restrict this Court's authority to issue a writ to only those circumstances in which a writ is requested by an accused. Congress could have written the statute in that manner, but it clearly chose not to, and Cross-Appellant presents no case for why, and under what authority, this Court should rewrite the statute by judicial action.

Cross-Appellant cites *United States v. Arness*, 74 M.J. 441 (C.A.A.F. 2015), for the proposition that a court of criminal appeals may not invoke Article 66 jurisdiction to review "cases or collateral matters that have no statutory basis." (Cross-Appellant's Br. at 11-12). The holding in *Arness* is of no assistance to his argument. In *Arness*, this Court interpreted Article 69(d), UCMJ, and concluded that the Air Force Court of Criminal Appeals was without jurisdiction to entertain Arness's Writ Petition because the Air Force Judge Advocate General had taken no action under Article 69(d) to "trigger" the Air Force CCA's Article 66 appellate jurisdiction. There was no dispute that Arness's approved sentence did not meet the Article 66 jurisdictional prerequisite. This Court held that the Air Force Court erred when it relied on potential jurisdiction in the absence of any referral to the court by the Air Force JAG. *Arness*, 74 M.J. at 443.

Unlike *Arness*, Cross-Appellant's adjudged sentence clearly brought it within the lower court's Article 66 statutory jurisdiction. Cross-Appellant does not argue otherwise. In fact, Cross-Appellant concedes that the proper jurisdictional basis to establish subject-matter jurisdiction is whether the alleged harm has "the potential to directly affect the findings and sentence." (Cross-Appellant's Br. at 13) (quoting *Ctr. for Constitutional Rights*, 72 M.J. at 129). The United States agrees. *LRM*, 72 M.J. at 368; *see Hasan v. Gross*, 71 M.J. 416, 419 (C.A.A.F.

2012) (granting writ-appeal and ordering removal of military judge and vacating military judge's order that Hasan be forcibly shaved).

In his next argument, Cross-Appellant seems to concede that the lower court had subject-matter jurisdiction, but argues instead that the United States Writ Petition was not "in aid" of the lower court's statutory jurisdiction because the pretrial punishment credit that the Military Judge ordered did not "affect the findings and sentence." (Cross-Appellant's Br. at 13). To propound his argument, Cross-Appellant cites to *dicta* from *United States v. Adcock*, 65 M.J. 18 (C.A.A.F. 2007). In *Adcock*, this Court granted an additional 157 days of confinement credit because the conditions surrounding Adcock's pretrial confinement violated applicable Air Force regulations in that she was co-mingled with other convicted prisoners in civilian jail. In granting sentencing credit under R.C.M. 305(k), this Court observed that it did not need to set aside the lower court decision but could instead grant relief in its decretal paragraph. *Adcock*, 65 M.J. at 26.

Unlike *Adcock*, the Convening Authority has not yet approved the findings and sentence. This case directly affects the findings and sentence because the Convening Authority must—when taking action on the sentence—apply the quantum of sentencing credit directed by a military judge. *See* R.C.M. 1107(f)(4)(F) (requiring convening authority, upon action, to apply sentencing credit to the adjudged sentence). As this Court held long ago, a convening

authority has no power to disregard a military judge's sentencing-credit ruling. *See Suzuki*, 14 M.J. at 493 (stating that if "the convening authority believes the military judge has exceeded his authority, he should seek an extraordinary writ") (citations omitted). The sentencing credit becomes part of the adjudged sentence that must be applied to, and approved, by a convening authority in his or her action. This action "directly affect[s]" the sentence as approved by the convening authority and then comes under mandatory review by the lower court pursuant to Article 66(c). *Ctr. for Constitutional Rights*, 72 M.J. at 129. Thus, the requested Writ was in "aid of" the lower court's statutory jurisdiction.

Cross-Appellant next argues that even if courts of criminal appeals have extraordinary writ jurisdiction to entertain writs filed by the United States, if the subject-matter of the writ has "no nexus to Article 62, UCMJ," there is no "avenue to the All Writs Act." (Cross-Appellant's Br. at 14-16). Cross-Appellant's jurisdictional "Article 62-nexus-requirement" has no basis in law and should be rejected as inconsistent with this Court's precedent.[2]

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[2] Cross-Appellant argues that *Clinton v. Goldsmith*, 526 U.S. 529 (1999) and *Arness* "implicitly held that service courts may only hear Government petitions involving collateral matters related to Article 62." (Cross-Appellant's Br. at 20). He is mistaken. Both *Arness* and *Goldsmith* stand for the unremarkable proposition that if the writ is not within a military appellate court's jurisdiction the All Writs Act is unavailable as an independent source of jurisdiction. In *Arness* there was no extraordinary writ jurisdiction because the adjudged sentence did not meet the required statutory trigger under Article 66 and the JAG had not sent the

The United States and Cross-Appellant agree that an Article 62 appeal is not possible in this case. But that fact does not foreclose writ jurisdiction. In fact, Article 62 is not, as Cross-Appellant would have it, a statute that deals with the lower's court's jurisdiction. Article 62 is a mechanism whereby the United States may seek interlocutory appeals, obviating the need to seek an extraordinary writ. It is precisely why extraordinary relief was a necessary jurisdictional basis for the lower court to have entertained this Writ. Thus, the United States may, and did, properly seek extraordinary relief because the basis for its Writ Petition fell *outside* the authorized grounds of appeal in Article 62.

Applying the statute upon which Article 62 is based, 18 U.S.C. § 3731, federal courts routinely allow writ petitions by the United States in situations in which an interlocutory appeal is not possible. For example, the Second and Third Circuits have permitted the United States to obtain writs of mandamus when a proposed criminal jury instruction clearly violated the law and risked prejudicing the prosecution by having jeopardy already attached, and when the United States

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case to the Air Force Court of Criminal Appeals as required under Article 69(d), UCMJ. *Arness*, 74 M.J. at 443. Similarly *Goldsmith* dealt with the executive decision to drop Goldsmith from the rolls, an action outside this Court's statutory authority. *See Denedo*, 556 U.S. at 912 (explaining *Goldsmith* and holding that military appellate courts have *coram nobis* jurisdiction notwithstanding Article 76, UCMJ).

had no other avenue of appeal. *United States v. Pabon-Cruz*, 391 F.3d 86, 91-92 (2d Cir. 2004); *United States v. Wexler*, 31 F.3d 117, 121 (3d Cir. 1994).[3]

The Fifth and Tenth Circuits have also authorized the United States to use the All Writs Act to appeal a trial judge's discovery order as well as an order to proceed to trial with an impermissible jury instruction. *In re: United States*, 397 F.3d 274 (5th Cir. 2005); *see also United States v. Jarman*, 687 F.3d 269, 270 (5th Cir. 2012) (stating that if a trial judge were to order the United States to violate the Adam Walsh Act by giving child pornography to the defense, such an order "might well be amenable to mandamus relief."); *In re: United States*, 578 F.3d 1195 (10th Cir. 2009) (granting United States mandamus petition to prevent district court from instructing jury that defendant "may not be deprived of his *Second Amendment* right to bear arms under 18 U.S.C.§ 922(g)(9), if he can show by a preponderance of the evidence that he does not pose a prospective risk of violence").

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[3] "Thus the writ has been invoked where unwarranted judicial action threatened 'to embarrass the executive arm of the Government in conducting foreign relations,' *Ex parte Peru*, 318 U.S. 578, 588 (1943), where it was the only means of forestalling intrusion by the federal judiciary on a delicate area of federal-state relations, *Maryland v. Soper*, 270 U.S. 9 (1926), where it was necessary to confine a lower court to the terms of an appellate tribunal's mandate, *United States v. United States District Court*, 334 U.S. 258 (1948), and where a district judge displayed a persistent disregard of the Rules of Civil Procedure promulgated by [the Supreme] Court, *La Buy v. Howes Leather Co*., 352 U.S. 249 (1957); *see McCullough v. Cosgrave*, 309 U.S. 634 (1940); *Los Angeles Brush Mfg. Corp. v. James*, 272 U.S. 701, 706, 707 (1927) (dictum)." *Will v. United States*, 389 U.S. 90 95-96 (1967).

Conclusion

The lower court clearly had subject-matter jurisdiction to entertain the United States' Writ Petition. The requested writ directly "affect[ed] the findings and sentence." *LRM*, 72 M.J. at 368. Because the Convening Authority would be legally and appropriately required to credit the judge-ordered sentencing credit "with respect to the findings and sentence as approved by the convening authority," Article 66(c), UCMJ, the requested writ was "in aid" of the lower court's statutory jurisdiction.

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I certify that the foregoing was delivered to the Court and a copy was served on opposing counsel on March 10, 2016.

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