

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,

Appellee

v.

Brian J. SUMPTER
Aviation Structural Mechanic First
Class (E-6)
U.S. Navy,

Appellant

BRIEF ON BEHALF OF APPELLANT

USCA Dkt. No. 26-0179/NA

Crim. App. Dkt. No. 202400329

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF
APPEALS FOR THE ARMED FORCES:

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Issue Presented

Whether this Court should overturn its decision in *United States v. Rodriguez*, 67 M.J. 110 (C.A.A.F. 2009), considering the Supreme Court’s decision in *Harrow v. Dept. of Defense*, 601 U.S. 480 (2024), and hold the sixty-day deadline to appeal a Court of Criminal Appeals decision is not jurisdictional.

Statement of Statutory Jurisdiction

The lower court had jurisdiction under Article 66(b)(1)(A), UCMJ.¹

Appellant invokes this Court’s jurisdiction under Article 67(a)(3), UCMJ.²

Statement of the Case

A general court-martial with enlisted members convicted Appellant, contrary to his pleas, of violating Article 120, UCMJ (sexual assault).³ The members sentenced Appellant to seven years confinement, a reduction to the rank of E-1, and a dishonorable discharge.⁴ Appellant requested the convening authority defer any automatic forfeitures of his pay and suspend the reduction until the end of his obligated service to allow for his family to receive the full amount of any deferred forfeitures of his E-6 pay.⁵ The convening authority approved the request to defer automatic forfeitures and adjudged reduction until Entry of Judgement and took no

¹ 10 U.S.C. § 866 (b)(1)(A) (2024).

² 10 U.S.C. § 867 (a)(3) (2024).

³ J.A. 009.

⁴ *Id.*

⁵ *Id.*

action on the findings or sentence.⁶ The lower court affirmed the findings and sentence.⁷ Appellant then petitioned this Court for review, which this Court granted for the issue presented.

Relevant Authority

Article 67, UCMJ, provides:

(b) The accused may petition the Court of Appeals for the Armed Forces for review of a decision of a Court of Criminal Appeals within 60 days from the earlier of—

(1) the date on which the accused is notified of the decision of the Court of Criminal Appeals; or

(2) the date on which a copy of the decision of the Court of Criminal Appeals, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.⁸

Statement of Facts

The lower court promulgated its opinion in this case on February 12, 2026.⁹ Accordingly, per Article 67(b)(2), Appellant could petition this Court for review within sixty days; day sixty was April 13, 2026. On April 14, 2026, undersigned

⁶ J.A. 006.

⁷ *United States v. Sumpter*, No. 202400329, slip op. (N-M. Ct. Crim. App. Feb. 6, 2026).

⁸ 10 U.S.C. § 867 (b)(1)-(2) (2024).

⁹ J.A. 20-22.

counsel discovered that the filing date had been missed and immediately began researching options. By only a matter of days, due to the miscommunication between his undersigned civilian counsel and his Navy appellate counsel, Appellant, through counsel, filed his petition on April 16, 2026. The petition was filed because undersigned counsel’s research, as addressed below, suggested that the issue should not be treated as a jurisdictional matter.

Summary of Argument

This Court must overturn *United States v. Rodriguez* and rule that the 60-day appeal deadline in Article 67(b), UCMJ is not jurisdictional. The Supreme Court’s recent unanimous decision in *Harrow v. Dept. of Defense* fundamentally shifted the legal landscape, establishing a strict “clear-statement” requirement for jurisdictional time bars. Article 67(b) entirely lacks this mandatory language, rendering its 60-day window a mere procedural rule. Furthermore, *Harrow* explicitly restricted *Bowles v. Russell*—the foundational precedent for *Rodriguez*—to Article III courts. Because military tribunals operate under Article I, *Bowles* is unequivocally inapplicable.¹⁰ To align with binding Supreme Court precedent, this Court must decisively abandon *Rodriguez*. In doing so, this Court should return to its pre-*Bowles* good cause standard for accepting untimely petitions.

¹⁰ 10 U.S.C. § 941 (2024) (“The [Court of Appeals for the Armed Forces] is established under article I of the constitution. The court is located for administrative purposes only in the Department of Defense.”).

Argument

This Court should overturn its decision in *United States v. Rodriguez*, 67 M.J. 110 (C.A.A.F. 2009), in light of *Harrow v. Dept. of Defense*, 601 U.S. 480 (2024) and hold the sixty-day deadline to appeal a Court of Criminal Appeals decision is not jurisdictional.

Standard of Review

This Court reviews statutory interpretation de novo.¹¹

Discussion

A. The sixty-day filing deadline in Article 67(b), UCMJ is not jurisdictional and is subject to equitable tolling.

1. Article, 67, UCMJ, is devoid of a clear statement indicating jurisdictional consequences.

In its unanimous decision, the Supreme Court in *Harrow v. Dept. of Defense* held sixty-day filing deadlines will be treated as jurisdictional “only if Congress *clearly states* that it is.”¹² In *Harrow*, the Supreme Court recognized that most filing deadlines are “not jurisdictional” even if the statute states the petitioner “shall file in this court.”¹³ The Supreme Court treated such language as “categorical commands,” not jurisdictional bars.¹⁴ The Supreme Court explained, “what matters instead is whether a time bar speaks to a court’s authority to hear a

¹¹ *United States v. Schloff*, 74 M.J. 312, 313 (C.A.A.F. 2015).

¹² *Harrow v. Dept. of Defense*, 601 U.S. 480, 484 (2024) (citations omitted) (emphasis added).

¹³ *Id.* at 482-83.

¹⁴ *Id.*

case.”¹⁵ Moreover, the Supreme Court held that time-bar provisions are “presumptively subject to equitable tolling.”¹⁶ Whether equitable tolling applies is determined based on the facts of the case in issue.¹⁷

In *Harrow*, the statute in question stated the petition “shall be filed” in the United States Court of Appeals for the Federal Circuit “within 60 days.”¹⁸ The Supreme Court recognized that the statute had a time-bar provision.¹⁹ But the Court found “The time limit was just a time limit, nothing more” because Congress did not include a clear-statement indicating jurisdictional consequences for filing past the deadline.²⁰

The Supreme Court explained their “clear-statement test” is a “high bar” to meet.²¹ “As to all other time bars, we now demand a clear statement.”²² For a procedural rule to surmount this “high bar,” “traditional tools of statutory construction must plainly show that Congress imbued [the rule] with jurisdictional consequences.”²³ Consequently, statutes outlining time-limits for filing petitions

¹⁵ *Id.* at 485.

¹⁶ *Id.* at 489-90 (quoting *Boechler v. Commissioner*, 596 U. S. 199, 209 (2022))

¹⁷ *Id.* at 490.

¹⁸ *Harrow*, 601 U.S. at 485.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 489 (“And as we have shown, the time limit Harrow missed when he filed that appeal does not satisfy our clear-statement test.”).

²² *Id.*

²³ *Id.* at 484.

will not be treated as jurisdictional unless Congress includes a provision mentioning jurisdiction is tied to the time-limit in the statute.²⁴

Roughly a year after its *Harrow* decision, the Supreme Court in *Riley v. Bondi* again reiterated that statutory deadlines are not jurisdictional unless Congress “‘clearly states’ that the provision has jurisdictional consequences.”²⁵ The Sixth and D.C. Circuit Courts of Appeals also followed the *Harrow* precedent.²⁶

Additionally, two years after this Court’s *Rodriguez* decision, the Supreme Court in *Henderson v. Shinseki*, an 8-0 decision, clarified that “*Bowles* did not hold categorically that *every deadline* for seeking judicial review in civil litigation is jurisdictional” adding:

Because the consequences that attach to the [jurisdictional] label may be so [drastic], we have tried in recent cases to [bring some discipline] to the use of this term. *We have urged that a rule should not be referred to as [jurisdictional] unless it governs a court’s adjudicatory capacity, that is, its subject-matter or personal jurisdiction. Other rules, even if*

²⁴ *Id.* at 485-86.

²⁵ *Riley v. Bondi*, 606 U.S. 259, 275 (2025), *see Id.* (citing *Harrow*, 601 U.S. at 484).

²⁶ *See Oquendo v. Commissioner*, 148 F.4th 820, 830 (6th Cir. 2025) (citing *Harrow*, 601 U.S. at 484, “To delineate between jurisdictional and nonjurisdictional rules, the Supreme Court has fashioned a ‘clear statement’ rule by which it ‘will treat a procedural requirement as jurisdictional only if Congress ‘clearly states’ that it is.’”); *see also Nelson v. SEC*, 138 F.4th 514, 522 (D.C. Cir. 2025) (“Under the Supreme Court’s decision in *Harrow*, we consider if the statute ‘mention[s]’ appellate court ‘jurisdiction, whether generally or over untimely claims.’”).

*important and mandatory, we have said, should not be given the jurisdictional brand.*²⁷

Here, Article 67 is nearly identical to the statute in *Harrow* and does not govern this Court’s adjudicatory capacity. Article 67(b) clearly states, “The accused may petition the [CAAF] for review of a decision of a [CCA] within 60 days from the earlier of.”²⁸ This provision describes how a litigant can obtain judicial review of a court of criminal appeal’s decision. Like *Harrow*, nothing in Article 67 mentions this Court’s jurisdiction.²⁹ Thus, Article 67 does not govern this Court’s adjudicatory capacity.³⁰

Furthermore, *Harrow* vindicated the *Rodriguez* dissents. “Congress framed Article 67 as a requirement to review cases, not as a limitation on review.”³¹ Both dissents highlighted Article 67’s lack of jurisdictional language and legislative history to argue the sixty-day limit is non-jurisdictional—which *Harrow* supports.³² “[The CAAF] should be last, not first, to close the courtroom door to

²⁷ *Henderson v. Shinseki*, 562 U.S. 428, 435-36 (2011) (citations omitted) (emphasis added).

²⁸ 10 U.S.C. § 867 (b) (2024).

²⁹ *Harrow*, 601 U.S. at 485-86 (citations omitted) (emphasis added).

³⁰ *Henderson*, 562 U.S. at 435.

³¹ *Rodriguez*, 67 M.J. at 117 (C.A.A.F. 2009) (Effron, C.J., dissenting)

³² *See Id.* at 117-26 (Effron, C.J., and Baker, J., dissenting).

members of the armed forces.”³³ Thus, the *Rodriguez* dissents reflect the current Supreme Court precedent.

Accordingly, this Court should treat the time-limit proscribed in Article 67 as “just a time limit, nothing more.”³⁴ Therefore, the sixty-day limit is nonjurisdictional.

2. Article 67, UCMJ, is subject to equitable tolling. This Court should grant untimely petitions upon a showing of good cause because the sixty-day limit is nonjurisdictional.

This Court should return to its pre-*Bowles* caselaw regarding untimely filings once *Rodriguez* is overturned.³⁵ Prior to *Rodriguez* “[T]his Court has consistently permitted appellants to file petitions for grant of review out of time for good cause shown.”³⁶ The appellant has the burden to establish good cause.³⁷ For untimely filings, “good cause” does not have a “precise definition.”³⁸ “Rather, good cause represents a discretionary judgment on the part of this Court that an

³³ *United States v. Rodriguez*, 67 M.J. 110, 120 (C.A.A.F. 2009) (Baker, J., dissenting) (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 655 (1952) (Jackson, J., concurring)).

³⁴ *Id.* at 485.

³⁵ *United States v. Rodriguez*, 67 M.J. 110, 116 (C.A.A.F. 2009) (“To the extent that *Tamez* and earlier cases of this court are inconsistent with this holding, they are overruled.”).

³⁶ *United States v. Tamez*, 63 M.J. 201, 202 (C.A.A.F. 2006).

³⁷ *Id.* at 203.

³⁸ *Id.*

appellant can ‘establish some reasonable basis justifying his relief from the default’ and ‘should assign some meritorious issue.’”³⁹

This Court has also recognized that the good cause requirement is “distinct” from the good cause needed for a petition for grant of review.⁴⁰ In *Tamez*, this Court found good cause for a variety of reasons, one of which was the fact that the error *was not* attributed personally to the appellant.⁴¹ Therefore, this Court should return to its pre-*Bowles* good cause requirement.

B. Bowles v. Russell, 551 U.S. 205 (2007) does not apply to Article I courts; Harrow effectively overrules United States v. Rodriguez.

This Court’s 3-2 decision in *United States v. Rodriguez* concluded that the sixty-day deadline in Article 67(b) was jurisdictional “in light of” *Bowles v. Russell*.⁴² But the Supreme Court in *Harrow* reexamined *Bowles* and limited its application. “[W]e have since taken care to delineate both where *Bowles* applies and where it does not.”⁴³ *Bowles* applies to statutory deadlines “to appeal from one *Article III* court to another.”⁴⁴ And the Supreme Court recognized that *Bowles* predates their “current approach to such matters.”⁴⁵ Now, in order to find that a

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *United States v. Rodriguez*, 67 M.J. 110, 111 (C.A.A.F. 2009).

⁴³ *Harrow*, 601 U.S. at 489.

⁴⁴ *Id.* (emphasis added).

⁴⁵ *Id.* at 488-89.

statute creates a jurisdictional bar, the Supreme Court “now demand[s] a clear statement.”⁴⁶

Accordingly, *Bowles* does not apply to the military because military courts are derived from Article I; military courts can no longer rely on *Bowles* to conclude that the statutory period within which an appellant may file a petition for grant of review is jurisdictional. Therefore, this Court’s should overturn its decision in *Rodriguez*.

Conclusion

For these reasons, this Court should find the sixty-day deadline in Article 67(b) is not jurisdictional and overturn *Rodriguez*.

Respectfully submitted.

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⁴⁶ *Id.* at 489.

Certificate of Compliance

This brief complies with the type-volume limitations of Rule 24(b) because:

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Certificate of Filing and Service

I certify that a copy of the foregoing was delivered to this Court and delivered to the Director, Appellate Government Division (Code 46), DACCode46@navy.mil and to the Deputy Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity (Code 40) at Joshua.D.Ricafrente.civ.@us.navy.mil on July 15, 2026.

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