

App. No. _____

IN THE
Supreme Court of the United States

JORGE F. ACEVEDO,
Petitioner,

v.

UNITED STATES,
Respondent.

**On Application for an Extension of Time
to File a Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Armed Forces**

**PETITIONER'S APPLICATION TO EXTEND TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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April 25, 2018

To the Honorable John G. Roberts, Jr., Chief Justice of the United States:

Petitioner Jorge F. Acevedo respectfully requests that the time to file a Petition for a Writ of Certiorari in this matter be extended for sixty (60) days to and including Friday, July 6, 2018. *See* S. Ct. R. 13.5; *see also id.* R. 30.1. The U.S. Court of Appeals for the Armed Forces issued an opinion in the petitioner’s case on February 6, 2018. *See* App. A, *infra*.

Absent an extension of time, the Petition in this case is due on Monday, May 7, 2018. Petitioner is filing this Application at least ten days before that date. *See* S. Ct. R. 13.5. This Court has jurisdiction over the Court of Appeals’ decision under 28 U.S.C. § 1259(3).

BACKGROUND

Petitioner’s case raises the same statutory and constitutional questions arising from the simultaneous service of active-duty military officers as judges on both the service-branch Courts of Criminal Appeals (CCAs) and the U.S. Court of Military Commission Review (CMCR) as those presented in *Ortiz v. United States*, 2017 U.S. LEXIS 4460 (U.S. Sep. 28, 2017) (No. 16-1423), *see* App. B, *infra*, granted and consolidated with *Dalmazzi v. United States*, No. 16-961 (U.S. filed Feb. 1, 2017), and *Cox v. United States*, No. 16-1017 (U.S. filed Feb. 21, 2017).

In particular, at the Court of Appeals, the petitioner raised an issue substantially similar to that raised in *Ortiz*. Petitioner’s court-martial conviction was affirmed by an Army CCA panel that included a judge who had been appointed to the CMCR as an “additional judge” under 10 U.S.C. § 950f(b)(3) no later than May 25,

2016, when President Obama signed their commissions. *See United States v. Dalmazzi*, 76 M.J. 1, 3 (C.A.A.F. 2016) (per curiam).

In *Ortiz*, where the petitioner sought review in the Court of Appeals on two issues: whether Judge Mitchell “is statutorily authorized to sit as one of the Air Force Court of Criminal Appeals judges on the panel that decided [his] case,” and whether Judge Mitchell’s “service on both the Air Force Court of Criminal Appeals and the United States Court of Military Commission Review violates the Appointments Clause given his status as a [principal] officer on the United States Court of Military Commission Review.” *United States v. Ortiz*, 75 M.J. 472, 472 (C.A.A.F. 2016) (mem.).

On Monday, April 17, 2017, the Court of Appeals issued its opinion in *Ortiz*. The court concluded that § 973(b) “does not by its terms terminate Colonel Mitchell’s position as an appellate military judge on the CCA, and . . . in any event, . . . saves Colonel Mitchell’s actions in [Ortiz’s] case.” The court also held “that Colonel Mitchell’s status as regards the CCA does not violate the Constitution’s Appointments Clause.” *Ortiz* petitioned this Court for a Writ of Certiorari on May 19, 2017.

On July 25 and 27, 2017, the Court of Appeals issued its judgements granting and affirming these petitioners’ convictions. On September 28, 2017, this Court granted Petitions for Writs of Certiorari in *Ortiz*, No. 16-1423, *Dalmazzi*, No. 16-961, and *Cox*, No. 16-1017. The petitioner is currently past the window for reconsideration by the Court of Appeals. *See* C.A.A.F. R. 31(a).

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a Petition for a Writ of Certiorari should be extended for sixty (60) days for two reasons:

1. The Army Defense Appellate Division has already aggregated a number of similarly situated cases in *Abdirahman v. United States*, No. 17-243 and *Cash v. United States*, No. 17-840. The Petitions for Writs of Certiorari were filed on July 31, 2017, and December 12, 2017, respectively. The Court of Appeals, however, subsequently affirmed the petitioner's case, which was not aggregated under the *Abdirahman* or *Cash* petitions because the decision of the Court of Appeals in the petitioner's case came too late to include it therein. The Defense Appellate Division has identified this case as falling into the same class, but is still working to identify others and to ensure they are included in this future petition in order to allow this Court to deal with such similarly situated cases as a group rather than individually.
2. This Court has made no decision on the *Abdirahman* or *Cash* petitions and has not yet issued its opinion in *Ortiz*. In order to best address this Court's concerns or questions, petitioner would benefit from the additional time to allow for decisions in *Ortiz*, *Abdirahman*, *Cash* to be issued.

CONCLUSION

For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended sixty (60) days, to and including Friday, July 6, 2018.

Respectfully submitted,



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