

UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

EV ) NMCCA NO. 201600057  
Petitioner )  
 ) PETITION FOR EXTRAORDINARY  
v. ) RELIEF IN THE NATURE OF A WRIT  
 ) OF MANDAMUS AND APPLICATION FOR  
E.H. Robinson, Jr. ) STAY OF PROCEEDINGS  
LtCol, USMC )  
Military Judge )  
Respondent ) ORDER  
 )  
and )  
 )  
David A. Martinez )  
Sgt, USMC )  
Real Party in Interest )

Upon consideration of the combined Petition for Extraordinary Relief in the Nature of a Writ of *Mandamus* and Application for Stay of Proceedings, properly filed on 25 February 2016,<sup>1</sup> we find the right to an issuance of a writ is not "clear and indisputable," *Cheney v. United States Dist. Court for D.C.*, 542 U.S. 367, 380-81 (2004), following the guidance in *United States v. Klemick*, 65 M.J. 576 (N.M.Ct.Crim.App. 2006) (specifying guidelines for *in camera* review) and MILITARY RULE OF EVIDENCE 513(d)(5) (establishing an exception to the privilege when the communication contemplates the future commission of a fraud or crime).<sup>2</sup>

It is, by the Court, this 25th day of February 2016,

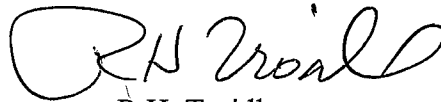
<sup>1</sup> The pleading was delivered to the Court via e-mail on 19 February 2016. On 22 February 2016 Petitioner's counsel was informed that the case would not be docketed until service on the Appellate Government Division of the Office of the Judge Advocate General was completed in accordance with the Court's Rules of Practice and Procedure. The absence of certain enclosures in the pleading was also noted to counsel. On 25 February 2016, the Court received a Certificate of Service and was notified that the missing enclosures had been placed in the mail. The case was docketed on 25 February 2016.

<sup>2</sup> However, we caution military judges against applying case law establishing the constitutionally required standard as envisioned in MIL. R. EVID. 412 directly to MIL. R. EVID. 513. MIL. R. EVID. 412 permits *the admission of evidence* the exclusion of which would violate the constitutional rights of the accused. In contrast, when determining whether *in camera* review or disclosure of privileged materials is constitutionally required under MIL. R. EVID. 513, the military judge should determine whether *infringement of the privilege* is required to guarantee "a meaningful opportunity to present a complete defense." *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006).

**ORDERED:**

That the combined Petition for Extraordinary Relief in the Nature of a Writ of *Mandamus* and Application for Stay of Proceedings is denied.

For the Court



R.H. Troidl  
Clerk of Court  
25 Feb 2016



Copy to:  
Maj Evans  
LtCol Robinson  
Capt Squires  
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