

**IN THE UNITED STATES COURT APPEALS  
FOR THE ARMED FORCES**

UNITED STATES,	)	APPELLANT'S MOTION TO ISSUE
Appellee	)	MANDATE
	)	
v.	)	
	)	Crim. App. No. 200800393
Lawrence G. Hutchins III,	)	
Appellant	)	USCA Dkt No. 12-0408/MC
	)	
	)	

**TO THE JUDGES OF THE UNITED STATES COURT OF  
APPEALS FOR THE ARMED FORCES**

COMES NOW Appellant, pursuant to Rules 30 and 43A of this Court's Rules of Practice and Procedure, and respectfully moves this Court to issue the mandate in this case forthwith.

Rule 43A states in relevant part that:

The timely filing of a petition for reconsideration shall stay the mandate until disposition of the petition, unless otherwise ordered by the Court. If the petition is denied, the mandate shall issue 7 days after entry of the order denying the petition, **unless the time is shortened or enlarged by order. In any case, the Court may order the mandate to issue forthwith.**

C.A.A.F. R. 43A (emphasis added). This Court issued its opinion in this case on June 26, 2013, setting aside the findings and sentence. However, the Government filed a petition for reconsideration on July 8, 2013, thereby staying the issuance of the mandate.

In Appellant's response to the Government's Petition, which is concurrently filed with this motion, Appellant notes that the

Government's Petition for Reconsideration does not comply with Rules 31 and 32, in that it does not offer any new arguments, or identify how this Court may have misapprehended or overlooked the facts or the law.

Further, it is apparent that the Petition was not drafted with the expectation that this Court would actually grant reconsideration. It is unlikely, for example, that one intent on convincing the Honorable Judges of this Court to reconsider their judgment would at the same time assert, "having asked the wrong question, the majority reaches the wrong answer[.]" Or worse, indicate that a Judge had constructed "an unwieldy, uncited, six-part, fact-intensive apparatus to justify arriving at the wrong answer." (Appellee's Pet. for Recons. at 2, 16.)

Regardless of the Government's intent, this Court should note that any consideration of the Petition compromises Appellant's very real liberty interest. Appellant has been continuously confined since May 11, 2006, absent an approximate eight-month period of freedom from June 2010 through February 2011. As noted in Judge Ryan's concurring opinion, apparent unlawful command influence from the Secretary of the Navy has compromised the clemency and parole process in Appellant's case. *See United States v. Hutchins*, -- M.J. ---, 2013 CCA LEXIS 642, at \*27-30 (C.A.A.F. 2013) (Ryan, J. concurring). Since Secretary Mabus' November 2009 comments, Appellant has been

unable to receive a favorable vote for meaningful clemency<sup>1</sup> and has had at least one favorable vote for immediate parole overruled by the Assistant Secretary of the Navy (Manpower and Reserve Affairs). In accordance with this Court's opinion of June 26, 2013, Appellant will be released from confinement when the mandate issues. He will then be able to live, once again, with his wife and two children, who have faithfully visited him every weekend at the Miramar Brig.

Given Appellant's substantial liberty interest, and considering the Government's curious and meritless Petition, Appellant requests that this Court issue the mandate forthwith. C.A.A.F. R. 43A. This Court's consideration of the Government's Petition for Reconsideration should not serve to extend the period of time Appellant serves in confinement. Alternatively, Appellant, who has requested this Court to summarily deny the Petition for Reconsideration, requests this Court issue the mandate concurrently with a denial order for the Petition.

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<sup>1</sup> In 2011, Appellant received clemency in the form of confinement credit for his eight months of freedom.

**Conclusion**

WHEREFORE, pursuant to Rules 30 and 43A, Appellant respectfully requests that this Court issue the mandate forthwith, or in the alternative, issue the mandate concurrently with a denial of the Government's Petition for Reconsideration.

/S/

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**Certificate of Filing and Service**

I certify that the foregoing was electronically delivered to this Court, and that a copy was electronically delivered to Major David N. Roberts, U.S. Marine Corps, Appellate Government Counsel, and to Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity, on July 9, 2013.

/s/

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