

**United States Court of Appeals
for the Armed Forces
Washington, D.C.**

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|----------------|---|------------------------------|
| UNITED STATES, |) | USCA Dkt. No. 13-0186/MC |
| |) | Crim.App. No. 201200145 |
| Appellee |) | |
| |) | |
| v. |) | <u>ORDER GRANTING REVIEW</u> |
| |) | |
| |) | |
| Joseph B. |) | |
| SALYER, |) | |
| Appellant |) | |

On consideration of the petition for grant of review of the decision of the United States Navy-Marine Corps Court of Criminal Appeals, it is, by the Court, this 17th day of January, 2013,

ORDERED:

That said petition is hereby granted on the following issue:

UNDER UNITED STATES v. LEWIS, 63 M.J. 405 (C.A.A.F. 2006), A CASE IS DISMISSED WITH PREJUDICE WHEN UNLAWFUL COMMAND INFLUENCE RESULTS IN THE RECUSAL OF A MILITARY JUDGE. HERE, THE MILITARY JUDGE RECUSED HIMSELF BECAUSE HE FOUND THAT THE GOVERNMENT'S ACTIONS MADE IT IMPOSSIBLE FOR HIM TO REMAIN ON THE CASE. THE GOVERNMENT COMPLAINED TO HIS SUPERVISOR ABOUT A RULING, ACCESSED HIS SERVICE RECORD WITHOUT PERMISSION, AND WITH THIS INFORMATION, MOVED FOR HIS RECUSAL. SHOULD THIS CASE BE DISMISSED WITH PREJUDICE?

Briefs will be filed under Rule 25.

For the Court,

/s/ William A. DeCicco
Clerk of the Court

cc: The Judge Advocate General of the Navy
Appellate Defense Counsel (DZIENGOWSKI)
Appellate Government Counsel (KELLER, Esq.)