

**United States Navy - Marine Corps
Court of Criminal Appeals**

**In Re
Benjamin M. WHANG
Information Systems Technician
(Submarine) Second Class (E-5)
U.S. Navy
Petitioner**

**UNITED STATES
Respondent**

NMCCA NO. 201900273

Panel 3

**PETITION FOR
EXTRAORDINARY RELIEF
IN THE NATURE OF A
WRIT OF MANDAMUS**

ORDER

Denying Petition

On 4 October 2019, the Petitioner filed the Petition for Extraordinary Relief in the Nature of a Writ of Mandamus and Application for a Stay of Proceedings. In accordance with Navy-Marine Corps Court of Criminal Appeals Rule of Appellate Procedure 19(f), the Court declined to authorize the Respondent to file a response to the Petition.

On 16 July 2019, Captain Warren A. Record, JAGC, USN, a circuit military judge, issued an investigative subpoena to Toccoa Falls College, an educational institution in which Petitioner was a former student. The subpoena directed the college to produce Petitioner's conduct records and accompanying documents.

On 18 July 2019, a charge and two specifications, each alleging sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920 (2012), were preferred against the Petitioner. To date, no charges or specifications have been referred to a court-martial for trial.

On 24 September 2019, Petitioner moved the military judge to quash the subpoena. On 25 September 2019, the military judge denied the motion without conducting a hearing.

The Petition seeks to have this Court quash the investigative subpoena or, in the alternative, to order the military judge to conduct a hearing pursuant to Rule for Courts-Martial 309 to reconsider Petitioner's motion. In addition, the Petition seeks to have this Court stay all proceedings in his case.

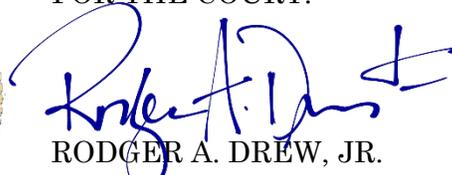
Having considered the Petition, it is, by this Court, this 29th day of October 2019,

ORDERED:

1. That the Application for a Stay of Proceedings is **DENIED**.
2. That the Petition for a Writ of Mandamus is **DENIED**, without prejudice to raise any and all issues contained in the Petition should this Court acquire jurisdiction over a timely appeal of a court-martial conviction filed pursuant to Article 66(b), UCMJ, 10 U.S.C. § 866(b) (2019).



FOR THE COURT:


RODGER A. DREW, JR.
Clerk of Court

Copy to:

NMCCA (51.3)

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45 (LCDR Larson)

TDC (LT Martinez)

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