Ohio Northern University Law Review

Volume 36 | Issue 2 Article 8

United States v. Denedo129 S. Ct. 2213 (2009)

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I. INTRODUCTION

In *United States v. Denedo*,[1] the Supreme Court held that Article I courts have jurisdiction to entertain *coram nobis* petitions to consider allegations that an earlier judgment of conviction was flawed in a fundamental respect.[2] Despite statutory limitations on petitions after final judgment has been executed, which would invalidate the appeal, the Supreme Court reasoned that "the long-recognized authority of a court to protect the integrity of its earlier judgments impels the conclusion that the finality rule is not so inflexible that it trumps each and every competing consideration."[3] The Supreme Court affirmed the decision of the Court of Appeals for the Armed Forces ("CAAF") that the Navy-Marine Corps Court of Criminal Appeals ("NMCCA") had appropriate jurisdiction under the All Writs Act[4] to hear the writ for *coram nobis* error.[5]

II. STATEMENT OF FACTUAL AND PROCEDURAL HISTORY

In 1984, Jacob Denedo immigrated from Nigeria to the United States.[6] Originally a student, he enlisted in the United States Navy in 1989 and the following year became a lawful permanent resident of the United States.[7] He reenlisted in the Navy twice, and he achieved a rate of specialist 2nd class.[8] In 1998, Denedo was charged with conspiracy, larceny, and forgery in violation of Articles 18, 121, and 123 of the Uniform Code of Military Justice ("UCMJ") for his role in an attempt to defraud a community college of more than $28,000.[9] He made a plea bargain to plead guilty to reduced charges based on advice of military and civilian counsel.[10] The convening authority referred Denedo's case to a special court-martial, which was unable to impose a sentence of confinement for greater than six months.[11] Denedo's civilian legal counsel assured him that conviction by a special court-martial would be a federal misdemeanor and, therefore, protect him from any potential danger of deportation.[12]

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[1] 129 S. Ct. 2213 (2009).
[2] *Id.* at 2224.
[3] *Id.* at 2223.
[4] 28 U.S.C. § 1651 (2010).
[5] *Denedo*, 129 S. Ct. at 2222; 10 U.S.C. § 866(a) (2010).
[6] *Id.* at 2218.
[7] *Id.*; *see also* Brief for the Respondent at 1, United States v. Denedo, 129 S. Ct. 2213 (2009) (No. 08-267).
[8] Brief for the Respondent, *supra* note 7, at 1; *see also* Emily Bazelon and Judith Resnick, *There's a New Lawyer in Town*, SLATE, Feb. 9, 2009, http://www.slate.com/id/2210637/. The proper term for enlisted personnel in the Navy is rate, not rank. The U.S. Navy, *Rate Insignia of Navy Enlisted Personnel*, http://www.navy.mil/navy data/navy_legacy_hr.asp?id=260 (last updated June 28, 2009).
[9] *Denedo*, 129 S. Ct. at 2218; Brief for the Petitioner at 5, United States v. Denedo, 129 S. Ct. 2213 (2009) (No. 08-267); *Denedo*, 129 S. Ct. at 2218.
[10] *Denedo*, 129 S. Ct. at 2218.
[11] *Id.*
[12] Brief for the Respondent, *supra* note 7, at 1.

Denedo's guilty plea was accepted by the special court-martial, after a determination that the plea was "both knowing and voluntary."[13] He was convicted of conspiracy and larceny and was sentenced to three months of confinement, a bad-conduct discharge from the Navy, and reduction to the lowest enlisted pay grade.[14] Denedo appealed on the grounds that his conviction was unduly severe.[15] The NMCCA affirmed the sentence, and Denedo did not seek appellate review of the decision.[16] On May 30, 2000, he was discharged from the United States Navy.[17]

In 2002, Denedo applied for naturalization, but his application was denied "without prejudice on the ground that his conviction reflected a lack of good moral character during the statutorily-prescribed period."[18] His application was denied again in 2003 when he reapplied for naturalization.[19] In 2006, removal proceedings were initiated against Denedo by the Department of Homeland Security, based on his conviction by the special court-martial.[20]

In a petition for a writ of *coram nobis*, Denedo challenged his conviction to avoid deportation.[21] Similar to *habeas corpus*, the writ of *coram nobis* allows "a court to vacate the petitioner's conviction upon a showing that such conviction was unlawful."[22] In his petition, filed with the NMCCA, Denedo maintained that his earlier conviction must be voided "because his guilty plea was the result of ineffective assistance of counsel."[23] He had informed his civilian attorney that "'his primary concern and objective'" was to avoid deportation and separation from his family.[24] Denedo's attorney, an alcoholic who was not sober during the special court-martial, had assured him that "'if he agreed to plead guilty at a special court-martial he would avoid any risk of deportation.'"[26] The attorney not only incorrectly informed Denedo that he could not be deported, but he also failed to advise him that 1996 amendments to the Immigration and Nationality Act ("INA") had altered the requirements of an "aggravated felony[,] . . . and reduc[ed] the minimum amount of loss in fraud cases [. . .] from '$200,000' to '$10,000.'"[28] This amendment caused Denedo's conviction to be treated as an "aggravated felony" under the INA, because the larceny he pled guilty to was $28,000, well in excess of the new $10,000 minimum.[29] The United States Government claimed that, under the authority of the All Writs Act, the NMCCA could set aside its decision by the issuance of a writ of *coram nobis*.[30]

The Government, contending that "the NMCCA had no authority to conduct postconviction proceedings," filed a motion to dismiss for want of jurisdiction.[31] The NMCCA

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[13] *Denedo*, 129 S. Ct. at 2218.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] Brief for the Respondent, *supra* note 7, at 1-2.

[19] *Id.* at 2.

[20] *Denedo*, 129 S. Ct. at 2218.

[21] *Id.*

[22] David Wolitz, *The Stigma of Conviction: Coram Nobis, Civil Disabilities, and the Right to Clear One's Name*, 2009 BYU L. REV. 1277, 1279 (2009) ((citing United States v. Kwan, 407 F.3d 1005, 1009-10 (9th Cir. 2005) (quoting Estate of McKinney v. United States, 71 F.3d 779, 781 (9th Cir. 1995))).

[23] *Denedo*, 129 S. Ct. at 2218.

[24] *Id.* (quoting Denedo v. United States, 66 M.J. 114, 118 (C.A.A.F. 2008)).

[26] *Id.* (quoting *Denedo*, 66 M.J. at 118).

[28] Denedo v. United States, 66 M.J. 114, 118; Brief for the Respondent, *supra* note 7, at 2 (citing 8 U.S.C. § 1101(a)(43)(M) (2009)).

[29] *Id.* at 2 n.1.

[30] *Denedo*, 129 S. Ct. at 2218-19 (citing 28 U.S.C. § 1651(a)).

[31] *Id.* at 2219.

denied both the Government's motion to dismiss and Denedo's petition for a writ of *coram nobis*.[32] Denedo appealed, and the CAAF, in a 3-2 decision, affirmed in part and reversed in part.[33] Agreeing with the NMCCA, the CAAF affirmed that standing military courts have jurisdiction to conduct "collateral review under the All Writs Act."[34] The corut noted that military courts have jurisdiction because "when a petitioner seeks collateral relief to modify an action that was taken within the subject matter jurisdiction of the military justice system . . . a writ that is necessary or appropriate may be issued under the All Writs Act 'in aid of' the court's existing jurisdiction."[35]

The CAAF further determined that a writ of *coram nobis* would be issued justifiably in the instance of "a nondefaulted, ineffective-assistance claim that was yet to receive a full and fair review 'within the military justice system.'"[36] Denedo's ineffective-assistance claim was found to have met "the threshold criteria for *coram nobis* review."[37] The CAAF remanded to the NMCCA to determine "whether the merits of [respondent's] petition [could] be resolved on the basis of the written submissions, or whether a factfinding hearing [would be] required."[38]

Judge Stucky dissented, concluding that Denedo's ineffective-assistance claim lacked merit.[39] Judge Ryan also dissented, arguing that the majority misapplied *Clinton v. Goldsmith*[41] and concluding that the UCMJ does not confer jurisdiction upon military tribunals to conduct "post-finality collateral review."[42] The Supreme Court granted certiorari.[43]

III. DECISION AND RATIONALE

A. Majority Opinion of the Court

In the majority opinion, written by Justice Kennedy,[44] the central issue that the Court addressed was whether "an Article I military appellate court has jurisdiction to entertain a petition for a writ of error *coram nobis* to challenge its earlier, and final, decision affirming a criminal conviction."[45] Prior to taking up that matter, the Court first determined its own jurisdiction and ability to hear the appeal.[46]

The Court noted that jurisdiction to hear this appeal is granted under the authority of 28 U.S.C. § 1259(4), which allows the Supreme Court to review cases in which the CAAF grants

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[32] *Id.*
[33] *Id.*
[34] *Id.* (quoting *Denedo*, 66 M.J. at 119).
[35] *Denedo*, 129 S. Ct. at 2219 (quoting *Denedo*, 66 M.J. at 120 (citing 28 U.S.C. § 1651(a))).
[36] *Id.* (quoting *Denedo*, 66 M.J. at 125).
[37] *Id.* (quoting *Denedo*, 66 M.J. at 126).
[38] *Id.* (quoting *Denedo*, 66 M.J. at 130).
[39] *Id.* (citing *Denedo*, 66 M.J. at 131).
[41] 526 U.S. 529 (1999).
[42] *Denedo*, 129 S. Ct. at 2219 (citing *Denedo*, 66 M.J. at 136).
[43] *Id.*
[44] *Id.* at 2217 (Justice Kennedy was joined in the majority by Justices Souter, Ginsburg, Stevens, and Breyer).
[45] *Id.* at 2218.
[46] *Id.* at 2219.

relief.[47] Jurisdiction was established in this case because the CAAF granted relief to Denedo in his prior appeal in the military justice system.[48] Denedo maintained that the Court lacked jurisdiction, stating that the CAAF did not grant relief, but merely remanded to the NMCCA.[49] The Court rejected this argument, noting that a benefit was conferred upon Denedo by the CAAF remanding to the NMCCA to determine whether to grant the writ of *coram nobis*.[50] The Court ruled that it had jurisdiction to review decisions granting any relief, not just those providing "complete relief," and thus had the authority to determine whether the CAAF correctly ruled that the NMCCA had appropriate jurisdiction to entertain the petition for a writ of *coram nobis*.[51]

The Court looked to the ancient remedy of *coram nobis* and determined that, though it was traditionally used "to correct errors of fact," the writ's application had been broadened through modern interpretation to include more than just technical errors.[53] In *United States v. Morgan*,[54] the Court decided that "a writ of *coram nobis* can issue to redress a fundamental error . . . as opposed to mere technical errors."[55] The Court also limited the applicability of writs of *coram nobis* to "extraordinary" cases and instances in which there are no alternative remedies available.[56]

The majority opinion further explored the basis of *coram nobis* authority. The right to grant a writ of *coram nobis* is conferred by the All Writs Act.[57] The Act allows for "all courts established by Act of Congress [to] issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."[58] The question the Act raises, however, is whether military courts have appropriate jurisdiction to hear a petition for *coram nobis*.[59] Citing *Bowles v. Russell*,[60] the Court explained that Congress determines federal courts' subject-matter jurisdiction.[61] This rule is applied with "added force"[62] to military courts, which owe their existence to Congress's authority to enact legislation pursuant to Article I, Section 8[63] of the Constitution.[64] Military courts will have more limited jurisdiction in some instances.[65] The majority used the example of *Clinton v. Goldsmith*,[66] in which the Court held that the UCMJ does not authorize military courts to review executive action, and that the Air

[47] The statute reads: "Decisions of the United States Court of Appeals for the Armed Forces may be reviewed by the Supreme Court by writ of certiorari in the following cases: . . . in which the Court of Appeals for the Armed Forces granted relief." 28 U.S.C. § 1259(4) (2010); *Denedo*, 129 S. Ct at 2219.

[48] *Denedo*, 129 S. Ct. at 2219.

[49] *Id.*

[50] *Id.* at 2219-20.

[51] *Id.* at 2220.

[53] *Id.*

[54] 346 U.S. 502 (1954).

[55] *Denedo*, 129 S. Ct. at 2220 (citing *Morgan*, 346 U.S. at 513).

[56] *Id.* (citing *Morgan*, 346 U.S. at 510-11).

[57] 28 U.S.C. § 1651(a).

[58] *Id.*

[59] *Denedo*, 129 S. Ct. at 2221.

[60] 551 U.S. 205 (2007).

[61] *Denedo*, 129 S. Ct. at 2221 (citing *Bowles*, 551 U.S. at 212).

[62] *Id.* (citing *Goldsmith*, 526 U.S. at 533-34).

[63] U.S. CONST. art. I, § 8, cl. 9 (stating that "[t]he Congress shall have Power to . . . constitute Tribunals inferior to the Supreme Court").

[64] *Denedo*, 129 S. Ct. at 2221 (citing *Goldsmith*, 526 U.S. at 533-34).

[65] *See id.* at 2221.

[66] 526 U.S. 529 (1999).

Force Court of Criminal Appeals and CAAF lacked jurisdiction over the case.[67] The Court concluded that the power to issue relief depends upon, rather than enlarges, a court's jurisdiction.[68] In *Goldsmith*, the CAAF could not expand jurisdiction to executive action, whereas, in the case at bar, jurisdiction was already available under the All Writs Act to hear petitions relating to the conviction.[69]

The Court continued to state that a petition for a writ of *coram nobis* is a "belated extension of the original proceeding during which the error allegedly transpired."[70] Therefore, the Court determined that the NMCCA must have had jurisdiction over Denedo's original conviction to issue the writ of *coram nobis*.[71] The Court also addressed a court's limitations in applying a writ of *coram nobis* to alter previous judgments.[72] The All Writs Act does not provide courts with jurisdiction, but rather it provides courts with the ability to use their jurisdiction to grant petition.[73] Therefore, the Court did not question whether the NMCCA had jurisdiction because the petition for a writ of *coram nobis* was a "step" in the appellate process and the NMCCA had earlier jurisdiction over Denedo's appeal, which logically leads to maintained jurisdiction.[74] The Court pointed out that the NMCCA is limited to acting "only with respect to the findings and sentence as approved by the convening authority," which does not impede the NMCCA's ability to consider Denedo's petition for a writ of *coram nobis*.[75] The Court stated that "[a]n alleged error in the original judgment predicated on ineffective-assistance-of-counsel challenges the validity of a conviction, . . . so respondent's Sixth Amendment claim is 'with respect to' the special court-martial's 'findings of guilty.'"[76] The CAAF obtains jurisdiction from the NMCCA's jurisdiction to hear Denedo's petition for a writ of *coram nobis*.[77] Therefore, the CAAF is limited to hearing "'matters of law'" connected to "'the findings and sentence as approved by the Court of Criminal Appeals.'"[78] The Court declared that Denedo's Sixth Amendment[79] claim presented a "'matter of law'" regarding his conviction by the special court-martial and that the CAAF had subject-matter jurisdiction to review the petition.[80]

Citing Article 76 of the UCMJ,[81] the United States Government argued that the type of review Denedo sought was "'affirmatively prohibited.'"[82] The Court summarily rejected this argument, stating that the Government erroneously merged the "'jurisdictional question with the merits'" of Denedo's petition for writ of *coram nobis*.[83] The common-law rule respecting the

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[67] *Denedo*, 129 S. Ct. at 2221 (citing *Goldsmith*, 526 U.S. at 535).
[68] *Id.* (citing *Goldsmith*, 526 U.S. at 536-37).
[69] *Goldsmith*, 526 U.S. at 535.
[70] *Denedo*, 129 S. Ct. at 2221.
[71] *Id.* at 2222.
[72] *Id.*
[73] *Id.* (citing *Goldsmith*, 526 U.S. at 534-35).
[74] *Id.* (citing *Morgan*, 346 U.S. at 505).
[75] *Denedo*, 129 S. Ct. at 2222 (quoting 10 U.S.C. § 866(c)).
[76] *Id.* at 2222-23 (quoting 10 U.S.C. § 866(c)).
[77] *Id.* at 2223.
[78] *Id.* at 2223 (quoting 10 U.S.C. § 867(c)).
[79] U.S. CONST. amend. VI (stating that "[i]n all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defense").
[80] *Denedo*, 129 S. Ct. at 2223.
[81] 10 U.S.C. § 876 (2010).
[82] *Denedo*, 129 S. Ct. at 2223 (quoting Brief for United States at 18, United States v. Denedo, 129 S. Ct. 2213 (2009) (No. 08-267).
[83] *Id.*

finality of judgments by the courts is codified in Article 76, but that rule does not jurisdictionally bar the NMCCA from reviewing the final judgment.[84] The Court recognized that the judgment of a court is not to be "lightly cast aside" and extraordinary writs are to be issued in limited cases, but the Court also stated that it is the duty of the Court not to be inflexible to the possible necessity to alter a court's final judgment.[85]

The Court next dismissed the Government's argument that "*coram nobis* permits a court 'to correct its *own* errors, not . . . those of an inferior court.'"[86] Denedo's petition did not confer jurisdiction to the court; nor did the Government's argument undermine it.[87] The Government's argument did not speak to the NMCCA's jurisdiction regarding the petition for writ of *coram nobis*; rather, it spoke to the scope of the writ.[88]

Finally, the Supreme Court held that "Article I military courts have jurisdiction to entertain *coram nobis* petitions to consider allegations that an earlier judgment of conviction was flawed in a fundamental respect."[89] Moreover, it is "the responsibility of military courts to reexamine judgments in rare cases where a fundamental flaw is alleged and other judicial processes for correction are unavailable are consistent with the powers Congress has granted those courts under Article I and with the system Congress has designed."[90] The Court did not judge the merits of Denedo's petition for a writ of *coram nobis*, but left that to the NMCCA on remand.[91] The Court held that the military courts have the required subject-matter jurisdiction to hear Denedo's petition for writ.[92] The judgment of the CAAF was affirmed and remanded for further proceedings.[93]

B. Opinion Concurring in Part and Dissenting in Part by Chief Justice Roberts

Chief Justice Roberts wrote an opinion concurring in part and dissenting in part, in which he was joined by Justices Scalia, Thomas, and Alito.[94] In the opinion, the Chief Justice concurred with the majority that the Supreme Court has jurisdiction to review the appeal from the NMCCA, but dissented from the majority's holding that military courts have jurisdiction to issue writs of *coram nobis*.[95] Chief Justice Roberts noted that the majority's basis for the military courts' jurisdiction to hear *coram nobis* petitions came from a footnote in *United States v. Morgan*.[96] There are two important things to discern about the footnote. First, it "has nothing to do with jurisdiction," but rather addresses "choice of remedy"; and second, it is applicable not to Article I courts, as was at issue in this case, but to Article III courts, which are distinctly

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[84] *Id.*
[85] *Id.*
[86] *Id.* at 2223-24 (quoting Brief for United States, *supra* note 82, at 36).
[87] *Denedo*, 129 S. Ct. at 2224.
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] *Id.*
[92] *Denedo*, 129 S. Ct. at 2224.
[93] *Id.*
[94] *Id.* (Roberts, C.J., concurring and dissenting).
[95] *Id.* at 2225.
[96] *Id.* at 2226; *Morgan*, 346 U.S. at 506 n.4 (1954) (stating that "[s]uch a motion is a step in the criminal case and not, like habeas corpus where relief is sough in a separate case and record, the beginning of a separate civil proceeding").

different.[97] Chief Justice Roberts quoted *Reid v. Covert*,[98] stating that "[l]egal doctrines 'must be placed in their historical setting. They cannot be wrenched from it and mechanically transplanted into an alien, unrelated context without suffering mutilation or distortion.'"[99] Article III courts have broad jurisdiction and authority to alter prior judgments, but Article I courts do not.[100] The dissent further stated that military courts are "the last place courts should go about finding 'extensions' of jurisdiction beyond that conferred by statute."[101] Chief Justice Roberts asserted that, "[s]ince the UCMJ grants military courts no postconviction jurisdiction, conferring on them perpetual authority to entertain *coram nobis* petitions plainly contravenes [the] basic principle"[102] that the CAAF has no "'*continuing* jurisdiction'"[103] over sentences it was once able to review.[104]

The dissent also discussed the limited appellate review powers in the military justice system. Chief Justice Roberts noted that military courts have limited purposes, and some a limited existence,[105] and it was not until the UCMJ was developed that there became military courts of appeals.[106] Before such creation occurred, members of the military took appeals to Article III courts for limited review.[107] Article III courts addressed only whether a conviction was void for fundamental defect;[108] otherwise, they held to "'the general rule that the acts of a court martial, within the scope of its jurisdiction and duty, cannot be controlled or reviewed in the civil courts.'"[109] While the UCMJ created military appellate courts, Congress did not provide them with broad authority; rather, Congress statutorily limited their jurisdiction.[110] Chief Justice Roberts noted that the Courts of Criminal Appeals review only cases referred by the judge advocate general, who also refers only cases in which sentences have been imposed.[111] The CAAF can review CCA cases, but the CAAF also has limited review, and is only able to act "'with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the [CCA].'"[112] Thus, the dissent argued that there is only one avenue under the UCMJ for reconsideration of a final court-martial conviction: a petition for a new trial under Article 73.[113] The dissent pointed out that Article 73[114] allows for a

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[97] *Denedo*, 129 S. Ct. at 2226-27 (quoting *Morgan*, 346 U.S. at 505).

[98] 354 U.S. 1, 50 (1957).

[99] *Denedo*, 129 S. Ct. at 2227 (quoting *Reid*, 354 U.S. at 50).

[100] *Id.*

[101] *Id.*

[102] *Id.* ((Roberts, C.J., concurring and dissenting) (quoting *Goldsmith* 526 U.S. at 536)).

[103] *Id.* at 2227 (quoting *Goldsmith*, 526 U.S. at 536) (emphasis included).

[104] *Denedo*, 129 S. Ct. at 2227 (quoting *Goldsmith*, 526 U.S. at 536).

[105] *Id.* at 2225 (Chief Justice Roberts noted that court-martials are enacted for a particular case, and once a judgment is reached and sentence imposed the court-martial is dissolved.).

[106] *Id.*

[107] *Id.*

[108] *Id.*; *see* Schlesinger v. Councilman, 420 U.S. 738, 747 (1975).

[109] *Denedo*, 129 S. Ct. at 2225 (quoting Smith v. Whitney, 116 U.S. 167, 177 (1886)).

[110] *Id.* (Roberts, C.J., concurring and dissenting).

[111] *Id.*

[112] *Id.* (quoting 10 U.S.C. § 867(c)).

[113] *Id.*

[114] Article 73 states:

> At any time within two years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before . . . the

petition to be brought, but it must be brought within two years of judgment after the convening authority's approval of the sentence.[115] In addition, once a conviction is final, only the judge advocate general may act on an Article 73 petition.[116]

The dissent next pointed to the text of UCMJ Article 76,[117] which states that "final court-martial judgments are 'binding upon all departments, courts, agencies, and officers of the United States, *subject only* to action upon a petition for a new trial [under Article 73],' or to action by the appropriate Secretary or the President."[118] Chief Justice Roberts noted that while review is still available in Article III courts, Article I courts' jurisdiction is limited by Article 76.[119] Extraordinary writs, such as *coram nobis*, are to be issued by federal courts only when necessary, and the CAAF is limited by the All Writs Act to issuing writs in support of its jurisdiction, not enlarging jurisdiction.[120] Because military courts of appeals, such as the CAAF, do not have jurisdiction over court-martial judgments that have become final, they do not have jurisdiction for a "postconviction extraordinary writ."[121] Chief Justice Roberts thus drew the conclusion that, since a writ of *coram nobis* "by its nature seeks postconviction review," the writ exceeds the military courts' scope of appellate jurisdiction.[122]

Chief Justice Roberts also elucidated the Government's argument that *coram nobis* is not necessary to the court-martial system, and he supported it by noting that a court-martial is a court that is formed for a particular purpose or case and then disbanded once a decision in the matter is reached.[123] Therefore, "[b]ecause the court-martial that issues the conviction no longer exists once the conviction is final, there is no court to which a postconviction petition for *coram nobis* could be directed."[124] Court-martials are not meant to be standing courts in the military justice system, but rather an expedient means of obtaining justice.[125] The CCA and CAAF cannot be called to act as substitutes for the court-martial in determining a petition for writ of *coram nobis* because they "are not equipped to handle the kind of factfinding necessary to resolve claims that might be brought on *coram nobis*."[126] Chief Justice Roberts referenced *United States v. DuBay*,[127] and the procedures in that case, which would become necessary to handle a *coram*

> Court of Appeals for the Armed Forces, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

10 U.S.C. § 873 (2010).

[115] *Denedo*, 129 S. Ct. at 2225.

[116] *Id.* at 2228 (citing 10 U.S.C. § 873).

[117] Article 76 states:

> The appellate review of records of trial . . . and all dismissals and discharges carried into execution under sentences by courts-martial. . . are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in section 873 . . . and the authority of the President.

10 U.S.C. § 876 (2010).

[118] *Denedo*, 129 S. Ct. at 2226 (quoting 10 U.S.C. § 876) (emphasis in original)).

[119] *Id.* at 2226 n.1.

[120] *Id.*

[121] *Id.*

[122] *Id.*; *see Goldsmith*, 526 U.S. at 535.

[123] *Denedo*, 129 S. Ct. at 2228-29.

[124] *Id.* at 2229.

[125] *Id.*

[126] *Id.*

[127] 17 U.S.C.M.A. 147 (1967).

nobis claim.[128] A new authority would bring the case before a new court-martial, and persons unfamiliar with the case would have to conduct "an evidentiary out-of-court hearing on the merits of the petitioner's claim.[129] Such a system, Chief Justice Robers noted, would be an inefficient use of the military's resources.[130]

The dissent further asserted that the Court's majority opinion should not have dismissed without consideration the Government's "'necessary or appropriate'" argument because the argument, though not relevant to the issue at hand, is still applicable to all *coram nobis* cases.[131] The military justice system has evolved over time "to more closely resemble the civilian system[,]" but it is still a distinct entity with differing scope of authority and jurisdiction.[132] Chief Justice Roberts opined that the majority did not respect deference to the rule that military courts cannot revisit a final conviction; rather, the majority created "an exception that swallows it."[133] Chief Justice Roberts believed that the military courts should be held to the statutory restraints that govern them and thus dissented from the majority opinion.[134]

IV. ANALYSIS

A. Introduction

United States v. Denedo is significant for military courts as it expands Article I military courts' jurisdiction to hear writs of *coram nobis* after a conviction has been finalized.[135] However, the expansion undermines the statutory restraints that limit military courts' postconviction jurisdiction.[136] The expansion also causes former servicemembers who have severed ties with the military to be subject to appellate review and military jurisdiction, rather than limiting military jurisdiction to servicemembers still active in or connected to the armed forces. This analysis will explore the jurisdictional expansion and why it is not appropriate for Article I courts, and was not appropriate in this case.

B. Discussion

As Chief Justice Roberts declared in his dissent, "[l]egal doctrines 'must be placed in their historical setting. They cannot be wrenched from it and mechanically transplanted into an alien, unrelated context without suffering mutilation or distortion.'"[137] The majority did just that, though, with the assertion that Article I courts have the authority to hear petitions for writs of *coram nobis*.[138] There are certain instances in which an Article I court may have authority, such as a court-martial sentence that has not been executed or is appealed within two years of

[128] *Denedo*, 129 S. Ct. at 2229.
[129] *Id.* (quoting United States v. DuBay, 17 U.S.M.C.A. 147, 149 (1967)).
[130] *Id.*
[131] *Id.*
[132] *Id.* at 2229-30 (quoting Weiss v. United States, 510 U.S. 163, 174 (1994)).
[133] *Denedo*, 129 S. Ct. at 2230.
[134] *Id.*
[135] *See id.* at 2224.
[136] *Id.* at 2230 (Roberts, C.J., concurring in part and dissenting in part).
[137] *Id.* at 2227 (quoting *Reid*, 354 U.S. at 50 (Frankfurter, J., concurring)).
[138] *Denedo*, 129 S. Ct. at 2218 (majority opinion).

conviction, falling under the jurisdiction of courts such as the CCA and CAAF.[139] While in *Denedo*, the military courts at one point had jurisdiction over the case, six years passed between the finalization of Denedo's conviction and his petition for a writ of *coram nobis*.[140] Jurisdiction is not self-perpetuating, but must be granted; everlasting jurisdiction has not been granted to Article I courts.[141]

Article I courts are a statutory creation, and they only have the scope of authority granted to them.[142] As stated in *Clinton v. Goldsmith*: "The CAAF is created by Congress. Congress has limited the CAAF's jurisdiction to reviewing only the 'findings and sentence as approved by the [court-martial's] convening authority and as affirmed or set aside as incorrect in law by the Court of Criminal Appeals.' Hence, the CAAF's jurisdiction is 'narrowly circumscribed.'"[143] Military jurisdiction extends only to current military servicemembers, as well as "retired servicemembers who receive military pay or hospital care from an armed force; specified members of reserve units; enemy combatants; and *other individuals with connections to military operations or benefits*."[144] Jacob Denedo does not fall into any of these categories, having terminated relations with the United States Navy following his discharge in May 2000; thus, he cannot be under the jurisdiction of Article I courts.

The UCMJ statutorily limits the scope of military courts' appellate review more significantly than civilian courts.[145] Articles 73 and 76 of the UCMJ laid a foundation, the former requiring petition for a new trial within two years of final conviction,[146] and the latter asserting that sentences that have been carried out are "final and conclusive" and "subject only to action upon a petition for a new trial."[147] Though the majority opinion decided that the authority of a court to uphold a judgment should not be "so inflexible that it trumps each and every competing consideration," the statutes should not be arbitrarily expanded to allow greater authority and discretion where none is truly necessary.[148]

Cases such as this one, where an issue similar to Denedo's arises six to eight years after conviction, are more likely to be the exception, not the rule. The cause for the writ of *coram nobis* was a result of Denedo's attorney's inappropriate actions, not a matter of Denedo's misconduct as dealt with in his court-martial or appeal.[149] Review by the CAAF is supposed to be limited to issues previously addressed in trial,[150] and ineffective assistance of counsel was not at issue during Denedo's earlier court-martial.[151] As a result, appellate review by military courts is inappropriate; his cause would have been better served by a new trial addressing the issue.

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[139] *See id.* at 2225 (Roberts, C.J., concurring in part and dissenting in part); 10 U.S.C. § 873 (2010).

[140] *Denedo*, 129 S. Ct. at 2218 (majority opinion).

[141] *See* Tyesha E. Lowery, *The More Things Change, the More They Stay the Same: Has the Scope of Military Appellate Courts' Jurisdiction Really Changed Since* Clinton v. Goldsmith*?*, 2009 ARMY LAWYER 49, 49 (citing Clinton v. Goldsmith, 526 U.S. 529, 535 (2009)).

[142] *Id.*

[143] *Id.* at 51 (quoting *Goldsmith*, 526 U.S. at 534).

[144] ANNA C. HENNING, CONGRESSIONAL RESEARCH SERVICE, SUPREME COURT APPELLATE JURISDICTION OVER MILITARY COURT CASES 1-2 (Mar. 5, 2009), *available at* http://www.fas.org/sgp/crs/misc/RL34697.pdf (citing 10 U.S.C. § 802(a) (2010)) (emphasis added)).

[145] *See Denedo*, 129 S. Ct. at 2221 (citing *Goldsmith*, 526 U.S. at 533-34).

[146] 10 U.S.C. § 873.

[147] *Id.* § 876.

[148] *See Denedo*, 129 S. Ct. at 2223.

[149] *See id.* at 2218.

[150] 10 U.S.C. § 867(c).

[151] *See Denedo*, 129 S. Ct. at 2218-19.

Despite the majority's argument that the All Writs Act provides to the NMCCA and CAAF jurisdiction over extraordinary petitions,[152] the majority failed to acknowledge the limitations also included in the statute. Specifically, courts "established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions," but if a court no longer has jurisdiction over a case, that court cannot issue a writ.[153] The majority asserted that a petition for writ of *coram nobis* is a step in procedural review, which is correct to a certain degree.[154] The petition would be the next logical step in an appellate process where there is a continuous procedural path, from start to finish, of standing courts and jurisdictional authority. However, as Chief Justice Roberts stated, courts-martial are not standing courts; they serve a particular purpose and dissolve with execution of the sentence.[155] This process eliminates the convening authority's jurisdiction over the case, and Article 73 eliminated the CAAF and NMCCA's authority by the two year statutory limitation for appeal on finalized cases.[156] As the Court stated in *Goldsmith*, "there is no source of continuing jurisdiction for the CAAF over all actions administering sentences that the CAAF at one time had the power to review."[158] The only remaining recourse would be a petition for a new trial on the merits of the case.[159]

The question of jurisdiction also extends to whether the military appellate courts had jurisdiction over Denedo at the time of his appeal in 2006. As stated above, military jurisdiction is generally extended to only those who have maintained some semblance of a relationship with the armed forces.[160] The Court has determined that a former serviceman, who no longer retained any ties to the military, was not subject to Article I jurisdiction.[161]

In *Fisher v. Commander*,[162] a military prisoner was temporarily delivered to state custody to serve a criminal sentence and later returned to the military, which did not sever his status as a military prisoner nor sever his ties with the military.[163] In the case at bar, however, Denedo was discharged from the Navy on May 30, 2000, six years before deportation proceedings began and the petition for writ of *coram nobis* was filed.[164] His confinement had only been set at three months,[165] whereas in *Fisher* the accused was sentenced to seven years confinement by the military and sixteen years confinement by the state of California.[166] Fisher's connection to the military would be much more difficult to sever, since he split his sentences between California and Fort Lewis, Washington, and was delivered back to the military from temporary custody.[167] Denedo, comparatively, would be much less likely to be found with lingering ties to the United

[152] *Id.* at 2221.
[153] 28 U.S.C. § 1651.
[154] *Denedo*, 129 S. Ct. at 2221-22 (citing *Morgan*, 346 U.S. at 505).
[155] *Id.* at 2225 (Roberts, C.J., concurring in part, dissenting in part).
[156] *See* 10 U.S.C. § 873.
[158] 526 U.S. at 536.
[159] *See Denedo*, 129 S. Ct. at 2221-22 (majority opinion).
[160] *See* Henning, *supra* note 142, at 1-2 (citing 10 U.S.C. § 802(a); Toth v. Quarles, 350 U.S. 11, 14-15 (1955)).
[161] *See* Fisher v. Commander, 56 M.J. 691, 694-95 (2001).
[162] 56 M.J. 691 (2001).
[163] *Id.* at 692, 694-95.
[164] *Denedo*, 129 S. Ct. at 2218.
[165] *Id.*
[166] *Fisher*, 56 M.J. at 692.
[167] *Id.*

States Navy. In the six years that passed between his confinement and the deportation proceedings, he was not in military custody, nor was he a member of the armed forces.[168]

Military jurisdiction over a former serviceman, who has had little or no contact with the military since parting ways, seems to be very tenuous. As noted in the dissent, prior to the advent of military appellate courts and the UCMJ, servicemen seeking appeal took their cases to Article III courts.[169] Those courts offer a forum for servicemen, or former servicemen, to seek appeal on a conviction that is not limited quite as extensively as the military courts.[170] In addition, taking a case to civilian courts may provide an "alternative avenue for Supreme Court review."[171] This process appears to be much more appropriate than a continued presence in Article I courts.

Within the military justice system, Article I courts enjoy relatively broad discretion in dealing with servicemen.[172] Jurisdiction is limited in several ways through the UCMJ, and finalized court-martial sentences often cannot be appealed once they have gone through the military appellate courts and a certain period of time has elapsed.[173] Petitions for extraordinary writs are allowable in certain circumstances in which there is no other remedy available, and only in cases in which a court has maintained jurisdiction.[174] Here, the Article I court's jurisdiction lapsed by the time Denedo filed his petition, and it was not appropriate for it to regain such jurisdictional authority over a petition for writ of *coram nobis*.

V. CONCLUSION

The overly broad jurisdictional discretion that the Court afforded to the military justice system is an unnecessary expansion to Article I courts. The UCMJ was created to allow limited military review of courts-martial, and the Supreme Court's decision has opened the courts to a more extensive number of appeals and petitions for extraordinary writs. The Article III courts, with more extensive jurisdiction and resources, would be a much more appropriate venue for a petition on a new issue at trial than reconvening a court-martial and starting anew within the military justice system.

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[168] *See Denedo*, 129 S. Ct. at 2218.

[169] *Denedo*, 129 S. Ct. at 2225 (Roberts, C.J., concurring in part, dissenting in part).

[170] *See id.* at 2224.

[171] JENNIFER K. ELSEA, CONGRESSIONAL RESEARCH SERVICE, MEMORANDUM, SUPREME COURT REVIEW OF DECISIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES UNDER WRITS OF CERTIORARI 3 (February 27, 2006), *available at* http://www.jaa.org/other/CRS_Memo.pdf.

[172] *See* ELSEA, *supra* note 164, at 2-3.

[173] *See* 10 U.S.C. § 873.

[174] *See* 28 U.S.C. § 1651.