NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

RYDER *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

No. 94–431. Argued April 18, 1995—Decided June 12, 1995

Petitioner, an enlisted member of the Coast Guard, was convicted by a court-martial of drug offenses, and the Coast Guard Court of Military Review affirmed. On rehearing, that court rejected petitioner's claim that its composition violated the Appointments Clause, U. S. Const., Art. II, §2, cl. 2, because two of the judges on petitioner's three-judge panel were civilians appointed by the General Counsel of the Department of Transportation. The Court of Military Appeals agreed with petitioner that the appointments violated the Clause under its previous decision in *United States* v. *Carpenter,* 37 M. J. 291, that appellate military judges are inferior officers who must be appointed by a President, a court of law, or a head of a department. The court nonetheless affirmed petitioner's conviction on the ground that the actions of the two civilian judges were valid *de facto,* citing *Buckley* v. *Valeo,* 424 U. S. 1 (1976) *(per curiam)*.

Held: The Court of Military Appeals erred in according *de facto* validity to the actions of the civilian judges of the Coast Guard Court of Military Review. Pp. 3–11.

(a) The *de facto* officer doctrine—which confers validity upon acts performed under the color of official title even though it is later discovered that the legality of the actor's appointment or election to office is deficient—cannot be invoked to authorize the actions of the judges in question. Those cases in which this Court relied upon the doctrine in deciding criminal defendants' challenges to the authority of a judge who participated in the proceedings leading to their conviction and sentence, see, *e.g., Ball* v. *United States,* 140 U. S. 118, are distinguishable here because, *inter alia,* petitioner's claim is that there has been a trespass upon the constitutional power of appointment, not

merely a misapplication of a statute providing for the assignment of already appointed judges. One who makes a timely challenge to the constitutionality of the appointment of an officer who adjudicates his case is entitled to a decision on the merits of the question and whatever relief may be appropriate if a violation indeed occurred. Cf. *Glidden Co.* v. *Zdanok,* 370 U. S. 530, 536. Any other rule would create a disincentive to raise Appointments Clause challenges with respect to questionable judicial appointments. *Buckley* v. *Valeo* and *Connor* v. *Williams,* 404 U. S. 549, which *Buckley* cited as authority, were civil cases that did not explicitly rely on the *de facto* officer doctrine in validating the past acts of public officials against constitutional challenges, and this Court is not inclined to extend those cases beyond their facts. Pp. 2–6.

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(b) The Court rejects the Government's several alternative defenses of the Court of Military Appeals' decision to give its *Carpenter* holding prospective application only. First, the argument that the latter court exercised remedial discretion pursuant to *Chevron Oil Co.* v. *Huson,* 404 U. S. 97, is unavailing because there is not the sort of grave disruption or inequity involved in awarding retrospective relief to this petitioner that would bring the *Chevron Oil* doctrine into play. Nor is it persuasively argued that qualified immunity, which specially protects public officials from damages liability for judgment calls made in a legally uncertain environment, should be extended to protect such officials from Appointments Clause attacks, which do not involve personal damages, but can only invalidate actions taken pursuant to defective title. Similarly, the practice of denying criminal defendants an exclusionary remedy from Fourth Amendment violations when those errors occur despite the government actors' good faith, *United States* v. *Leon,* 468 U. S. 897, does not require the affirmance of petitioner's conviction, since no collateral consequence arises from rectifying an Appointments Clause violation, see *id.,* at 907, and such rectification provides a suitable incentive to make challenges under the Clause, see *id.,* at 918–921. Finally, the Government's harmless-error argument need not be considered, since it was not raised below and there is no indication that the Court of Military Appeals determined that no harm occurred in this case. The related argument that any defect in the Court of Military Review proceedings was in effect cured by review in the Court of Military Appeals must be rejected because of the difference in function and authority between the two courts. Petitioner is therefore entitled to a hearing before a properly appointed panel of the Coast Guard Court of Military Review. Pp. 6–10.

39 M. J. 454, reversed and remanded.

REHNQUIST, C. J., delivered the opinion for a unanimous Court.