

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

In re L.B.
Petitioner

TSGT IRVIN BRYANT, JR.
11th Mission Support Group
Real Party in Interest

**PETITION UNDER ARTICLE 6b
FOR RELIEF *in the form of a WRIT*
OF MANDAMUS (REDACTED)**
and

MOTION TO STAY ORDER

Misc. Dkt. No. 2026-XX

**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR
FORCE COURT OF CRIMINAL APPEALS**

COMES NOW L.B. by and through her undersigned Victims' Counsel (VC), and pursuant to Air Force Court of Criminal Appeals (A.F.C.C.A.) Rules of Practice and Procedure Rule 19, to Petition for Relief Under Article 6b in the case in interest *United States v. TSgt Irvin Bryant, Jr.* A.F. CT. CRIM. APP. R. 19. L.B. moves for an immediate stay of efforts to have third parties answer interrogatories. L.B. also seeks to join this case with *In re L.B.*, Misc. Dkt. 2025-14.

L.B. seeks an immediate stay of the orders issued on 27 January 2026 by Lt Col Lauren Torczynski until this Honorable Court makes its ruling on the issues.

UNDERLYING FACTS

On 9 July 2025, three charges were referred in *United States v. TSgt Irvin Bryant Jr.*, alleging misconduct against L.B. Attachment A.

On 15 September 2025, the Defense filed, among other motions, a Motion for Appropriate Relief: Compel Discovery Under M.R.E. 513 & *Mellette* Records.

Attachment B. The Government and L.B., through counsel responded to Defense's

motion, opposing production of any protected medical information. Attachment C, D.

The Defense also requested production of L.B. to testify at the Article 39(a), Uniform Code of Military Justice (UCMJ), session in consideration of the motion. Attachment B, ¶ 24. The Government denied the production request, which was followed by a Defense Motion to Compel Production of L.B. at the hearing. Attachment E. Over the Government and L.B.'s objections, the Military Judge granted the Defense's Motion to Compel. Attachments F-H. L.B. subsequently testified on 6 October 2025. The Military Judge denied the Defense's motion. Attachment I.

On 6 December 2025, the Defense filed a Motion to Compel Discovery, seeking production of L.B.'s medical records. Attachment J. On 8 December 2025, the Government filed its response, opposing the motion. Attachment K. On 9 December 2025, the Military Judge filed her ruling, granting in part, the Defense's motion. Attachment L. On 11 December 2025, the Government obtained L.B.'s medical records and provided them to the Defense.¹ Victims' Counsel requested a copy of those records. L.B., through Victims' Counsel, filed a Motion for Appropriate Relief on 11 December 2025, requesting a protective order for L.B.'s medical records. Attachment M. The Military Judge denied L.B.'s request stating L.B. did not have "standing" to seek a protective order.² Attachment N.

¹ It is unclear the compulsory process employed to obtain these records as no judicial subpoena was issued as required under HIPAA's Privacy Rule at 45 C.F.R. § 164.512.

² A petition for writ of mandamus on this issue has previously been filed. These motions are provided to provide context as to how the Defense inadvertently obtained further information that allegedly

On the eve of trial, Defense notified the court of their intent to ask for reconsideration of the Motion for Appropriate Relief: Compel Discovery Under M.R.E. 513 & *Mellette* Records. Attachment O.

On 15 December 2025, Judge Brunson requested a written filing on the motion for reconsideration and detailed Judge Torczynski to address the additional motions. That evening, Defense Counsel filed their Motion for Reconsideration and to Compel Discovery under M.R.E. 513. Attachment P. The Government and L.B., through counsel, filed their responses, opposing the motion. Attachment Q, R. On 16 December 2025, an Article 39(a) session was held to hear oral arguments on the motion and responses. On 17 December 2026, Judge Torczynski issued her ruling, denying in part, and granting in part, the Defense's motion. Attachment S. She also ordered the parties "to formulate and agree upon **interrogatories** to include in a Court order for each relevant treatment facility." *Id.* (emphasis added).

On 19 December 2025, L.B., through counsel, filed a motion for Objection to Erroneous Deposition and Disclosure of Records Under M.R.E. 513. Attachment T. The Defense filed a response on 5 January 2026. Attachment U. The Government did not respond. On 8 January 2026, Judge Torczynski denied the motion. Attachment V.

On 9 January 2026, L.B., through counsel, filed a Motion for Reconsideration of Victims' Counsel Objection to Erroneous Deposition & Disclosure of Records

prompted their Motion for Reconsideration, which may have been avoided had the Military Judge considered and granted the Victims' Counsel's Motion for Appropriate Relief: Protective Order, rather than finding L.B. did not have standing to request a protective order.

Under M.R.E. 513. Attachment W. On 16 January 2026, the Defense filed their response, opposing the motion. Attachment X. On 26 January 2026, Judge Torczynski denied the motion. Attachment Y. Judge Torczynski also provided her orders for four different medical treatment facilities to answer interrogatories. Attachments Z-CC.

The Defense Health Agency is the custodian of L.B.'s MHS-GENESIS electronic health record. The Privacy Impact Assessment for MHS-GENESIS clearly provides that DHA is the custodian of the MHS-GENESIS Electronic Health Record. *Privacy Impact Assessment*, <https://www.health.mil/Reference-Center/Forms/2024/10/08/MHS-GENESIS-Electronic-Health-Record> (last visited Feb 3, 2026). MHS Genesis contains records as “[t]he information collected in [MHS Genesis] is for the diagnosis and treatment of medical conditions and is not considered a public information collection per DoDM 8910.01, V2, Encl 3, paragraph 8b(5).” *Id.* DHA is a Defense Agency defined in 10 U.S.C. §§ 191-192. “The DHA is established as a Defense Agency, in accordance with Sections 191 and 192 of [Title 10], under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), through the ASD(HA).” *Defense Health Agency*, Dep’t of Def. Dir. 5136.13 (Sep. 12, 2023). Military medical treatment facilities are locations that provide medical care, they are not the custodian of the electronic health record. 10 U.S.C. § 1073c(g)(3) (The term “military medical treatment facility” means— (A) any fixed facility of the Department of Defense that is outside of a deployed environment and used primarily for health care; and (B) any

other location used for purposes of providing health care services as designated by the Secretary of Defense.).

A STAY IS APPROPRIATE

Article 6b(e)(1) states “[i]f the victim of an offense under this chapter believes that a court-martial ruling violates the rights of the victim afforded by a section (article) or rule specified in paragraph (4), the victim may petition the Court of Criminal Appeals for a writ of mandamus. . .” L.B. seeks an immediate, emergent stay to protect her right to potential disclosure of privileged communications to an unknown third party who is to answer questions about L.B.’s Protected Health Information (hereinafter “PHI”). *Health Information*, 45 C.F.R. § 160.103 (2025); *Protected Health Information*, 45 C.F.R. § 160.103 (2025). L.B.’s right to be treated with respect for her privacy and dignity under Article 6b(a)(9), and her Constitutional right to be free from unreasonable Governmental searches and seizures should be acknowledged and afforded.

There is no Rule for Court-Martial effectuating the right of crime victims to seek redress in the Courts of Criminal Appeals under Article 6b, UCMJ; nevertheless, R.C.M. 908 provides guidance on processing interlocutory appeals by the United States. L.B. contends her seeking redress from this Court is similar. L.B. believes the rulings violated her Article 6b, UCMJ rights, and, if executed, injury will be irreparable without a stay. Victims’ Counsel is expeditiously filing this Petition for a Writ of Mandamus under Article 6b and Motion for Stay any effort to complete the questions regarding L.B.’s PHI.

REASONS WHY WRIT SHOULD ISSUE

I. The Military Judge clearly and indisputably erred when she found the requested PHI was relevant.

Regardless of whether the PHI is discoverable under R.C.M. 701, or if it falls under R.C.M. 703, the Military Judge clearly and indisputably erred when she found L.B.'s mental health diagnoses and treatment plans "relevant to the preparation of the defense." Attachment Y, ¶ 10; *See also* Attachment S, ¶ 50. "Evidence is relevant if: (a) it has a tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Mil. R. Evid 401. However, in the "Essential Findings of Fact" in the Ruling on Defense Motion for Reconsideration and to Compel Discovery Under M.R.E. 513, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Attachment S, ¶ 12. [REDACTED]

[REDACTED]

[REDACTED]

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Nevertheless, L.B. contends this is an issue of production guided by R.C.M. 703 as the necessity for compulsory process proves the documents sought are not in the possession, custody, or control of military authorities. Under that standard in R.C.M. 703, L.B. would move to quash any compulsory process as unreasonable and oppressive. *See United States v. Nixon*, 418 U.S. 683, 94 S. Ct. 3090 (1974).

II. The Military Judge clearly and indisputably erred when she ordered the disclosure of mental health diagnoses and treatment without first having established an exception under MRE 513(d), as required under MRE 513(e)(4).

- a. Because 513(e) applies to all mental health records or communications, except when the modifier “protected” is employed, M.R.E. 513(e)(4) necessarily requires that all mental health records meet an exception under M.R.E. 513(d) prior to disclosure or production.

The *Mellette* Court held that the language of M.R.E. 513(a) “communication made between the patient and a psychotherapist” does not apply to records “that do not memorialize actual communications between the patient and the psychotherapist.” 82 M.J. 374, 378-79 (C.A.A.F. 2022). In *H.V.Z.*, C.A.A.F. observed that “[a]s the Court held in *Mellette*, even if the patient's medical records are *not* privileged under M.R.E. 513(a), the production or admission of those records is still “subject to the procedural requirements of M.R.E. 513(e).” *H.V.Z. v. United States*, 85 M.J. 8, 17 (C.A.A.F. 2024) (quoting *Mellette*, 82 M.J. at 378, at 381). Importantly, the *Mellette* ruling made no distinction in which subsections of M.R.E. 513(e) may or may not apply to privileged or to unprivileged mental health records. *See* 82 M.J. at 378, at 379.

In its *H.V.Z.* ruling, however, C.A.A.F established dispositive emphasis on the employment of the word “protected” in M.R.E. 513(e)(3) in distinguishing which procedural requirements under 513(e) apply to all mental health records, including

diagnoses and treatment records, that may not otherwise be privileged. 85 M.J. 8, at 18-19. The operative text from *H.V.Z.* is as follows:

The procedures in M.R.E. 513(e)(1) and M.R.E. 513(e)(2) apply to *all* instances in which a party seeks the production or admission of a patient's mental health records or communications, while the stricter procedures in M.R.E. 513(e)(3) only apply when the moving party seeks production or admission of mental health records that are protected from disclosure by the psychotherapist-patient privilege in M.R.E. 513(a). *Compare* M.R.E. 513(e)(1) ("In any case in which the production or admission of records or communications of a patient other than the accused is in dispute"), *and* M.R.E. 513(e)(2) ("Before ordering the production or admission of evidence of a patient's records or communication"), *with* M.R.E. 513(e)(3) (addressing "the production or admissibility of *protected* records or communications") (emphasis added). In this case, because the accused only sought production of *H.V.Z.*'s nonprivileged mental health records, only the procedures in M.R.E. 513(e)(1) and M.R.E. 513(e)(2) applied.

Id. (emphasis in the original).

H.V.Z. firmly established that the specific language of M.R.E. 513(e)(3) alone, not some judicially contrived policy preference as to the scope of the psychotherapist-patient privilege, was determinative. *Id.* *C.A.A.F.* established that the dispositive term was the modifier "protected", which narrowed the scope of M.R.E. 513(e)(3) to only privileged communications in contrast with the provisions of M.R.E. 513(e)(1) and M.R.E. 513(e)(2), which otherwise use very similar language to M.R.E. 513(e)(3) but without the term "protected". *Id.*

What *H.V.Z.* did not address, however, was how to interpret the procedural requirements of M.R.E. 513(e)(4). That issue was not before the *H.V.Z.* Court, because it did not need to go any further than to establish that the victim in that case did indeed have a right to be heard on the production of mental health

diagnoses and treatment records (hereinafter “*Mellette* records”) under M.R.E. 513(e)(2). In the case at bar, L.B. received an opportunity to be heard through counsel on the issue of the production and disclosure of her mental health records; however, on 8 January 2026 the Military Judge concluded, without explanation, that “M.R.E. 513(e)(4) does not apply to these records.” Attachment V, ¶ 26.

This case is not about the right to be heard on issues of production or disclosure of mental health records. This case is about the Military Judge clearly and erroneously erring in rejecting the interpretive framework established by *H.V.Z.* and disregarding the plain text of M.R.E. 513(e)(4) establishing its applicability to the disclosure and production of *Mellette* records. As explained below, *Mellette* records are clearly a subset of the “records or communications” captured within the scope of M.R.E. 513(e)(4).

C.A.A.F. has meticulously focused on the use and placement of each word in M.R.E. 513 while disavowing any consideration of the overall effect that such an approach may have on the scope of the privilege itself. *See Mellette*, 82 M.J. 374, at 380-81. Thus, we are constrained to ride this train of textual interpretation to its logical terminus. Looking closely at each word, the key portions of M.R.E. 513(e) are as follows:

(1) In any case in which the production or admission of records or communications of a patient other than the accused is a matter in dispute, a party may seek an interlocutory ruling by the military judge.

...

(2) Before ordering the production or admission of evidence of a patient’s records or communication, the

military judge must conduct a hearing, which shall be closed.

...

(3) The military judge may examine the evidence or a proffer thereof in camera, if such examination is necessary to rule on the production or admissibility of protected records or communications.

...

(4) Any production or disclosure permitted by the military judge under this rule must be narrowly tailored to only the specific records or communications, or portions of such records or communications, that meet the requirements for one of the enumerated exceptions to the privilege under subdivision (d) of this Rule and are included in the stated purpose for which the records or communications are sought under subdivision (e)(1)(A) of this Rule.

(Emphasis added).

In *H.V.Z.*, C.A.A.F. established that M.R.E. 513(e)(1) and M.R.E. 513(e)(2) apply to all mental health records, including *Mellette* records. 85 M.J. 8, at 15. This is solely because they referred to “records or communications” without the modifier “protected” as used in M.R.E. 513(e)(3). *Id.* That is quite literally the only textual distinction that can be drawn from the verbiage used in the first three subsections of M.R.E. 513(e) as shown above. M.R.E. 513(e)(4) employs the same “records or communications” language as subdivisions (1) and (2). The President could have easily added the word “protected” to any of the three instances of the phrase “records or communications” found in M.R.E. 513(e)(4) but chose not to. Similarly, the President could have chosen to characterize M.R.E. 513(e)(4) as pertaining only to “a confidential communication, including records of such communications” as used in M.R.E. 513(a). But this is not the case. Therefore, if we are to take every

word, phrase, and provision at its textual face value without regard to policy preferences on the scope of the privilege, as C.A.A.F. has done in *Mellette* and *H.V.Z.*, then without inserting or deleting any words, M.R.E. 513(e)(4) must necessarily also apply to all mental health records—including *Mellette* records.

M.R.E. 513(e)(4) states *three times* that it applies to “records or communications”, which *H.V.Z.* unequivocally has interpreted to include *Mellette* records. 85 M.J. 8, at 15. In fact, *H.V.Z.* goes as far as to declare that if M.R.E. 513(a) used the same “records or communications” language as M.R.E. 513(e)(1) and M.R.E. 513(e)(2), then the psychotherapist-patient privilege “would have included all patient mental health records.” *H.V.Z.*, 85 M.J. 8, at 16-17. Consider the full citation below:

The President's use of the broad phrase "records or communications" in these subsections of the rule stands in stark contrast to narrower language that defines the scope of the psychotherapist-patient privilege in M.R.E. 513(a).

Indeed, this Court's decision in *Mellette* narrowly construing the psychotherapist-patient privilege turned primarily on M.R.E. 513(a)'s protection only of "confidential communications" between a patient and a psychotherapist. 82 M.J. at 378. The Court specifically noted that the President elected not to use broader language in M.R.E. 513(a)—like the broader language in M.R.E. 513(e)(1) and M.R.E. 513(e)(2)—that would have included all patient mental health records within the psychotherapist-patient privilege. *Id.*

Id. Thus, the phrase “records or communications” in M.R.E. 513(e)(4) can mean nothing less than “all patient mental health records”.

Critically, the text of M.R.E. 513(e)(4) starts with the phrase: “Any production or disclosure permitted by the military judge under this rule...”. The

term “this rule” can only mean M.R.E. 513 as a whole, since a reference to any subdivision would require a more specific citation. M.R.E. 513(e)(4) twice refers to specific subdivisions elsewhere within its text, therefore, when M.R.E. 513(e)(4) refers to “this rule,” without more specificity, it can only be understood as a citation to Rule 513 in its entirety. Any other interpretation would require the insertion of text that is not there. Additionally, the modifier “Any” that begins subdivision (e)(4) is not qualified or limited by other terms. Thus, the plain language of M.R.E. 513(e)(4) expresses exactly what it says, and it applies to any disclosure or production, of whatever kind or nature, without restriction, that a military judge might permit under M.R.E. 513.

This interpretation is reinforced by both *Mellette* and *H.V.Z.* when they established that M.R.E. 513(e) applies to both the disclosure and production of privileged communications as well as the disclosure and production of *Mellette* records. *H.V.Z.* 513. 85 M.J. 8, at 17. This is also consistent with the broad language used in the title of subdivision (e): “*Procedure to Determine Admissibility of Patient Records or Communications*”. (Emphasis added). Indeed, if the pertinent provision of the *H.V.Z.* ruling stands for anything, it is that a military judge is not permitted to order the disclosure or production of even *Mellette* records unless it is done under the provisions of M.R.E. 513(e). 85 M.J. 8, at 15. Since M.R.E. 513(e)(1) and M.R.E. 513(e)(2) are subdivisions of M.R.E. 513, the inclusion of the broad language in subdivision (e)(4) that “Any production or disclosure permitted by the military judge

under this rule” must necessarily apply to *Mellette* records produced or disclosed under those subdivisions.

Therefore, by the clear terms of M.R.E. 513(e)(4), *whenever* a military judge permits disclosure or production of *any* mental health records under M.R.E. 513, including *Mellette* records, such disclosure must be limited to those records or communications that satisfy an exception under subdivision (d) and must be included within the stated purpose required by subdivision (e)(1)(A). Instead of applying the plain language of M.R.E. 513(e)(4) to L.B.’s mental health diagnosis and treatment records, however, the Military Judge in this case summarily disregarded the applicability of M.R.E. 513(e)(4) to *Mellette* records. This is clearly and indisputably erroneous under the meaning *H.V.Z.* has given to the term “records or communications” which appears three times in M.R.E. 513(e)(4) and in the title of subdivision (e) as noted above.

- b. To hold that M.R.E. 513(e)(4) excludes *Mellette* records would render the provisions of M.R.E. 513(e)(1) and M.R.E. 513(e)(2) largely superfluous as applied to *Mellette* records.

Rejecting M.R.E. 513(e)(4)’s applicability to *Mellette* records renders the provisions of subdivisions (e)(1) and (e)(2) superfluous, because victims already have avenues for challenging nonprivileged discovery under R.C.M. 701(g)(2) and procedural protections allowing them to challenge subpoenas to produce personal or confidential information under R.C.M. 703(g)(3)(C)(ii). Additionally, victims already have a constitutional basis for standing to be heard on the disclosure of private

mental health records, because victims have an Article 6b, U.C.M.J. right to privacy and because the constitutional elements of standing are “irreducible”. *B.M. v. United States*, 84 M.J. 314, 317 (C.A.A.F. 2024) and *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Thus, when a victim can show harm, causation, and redressability, he or she has a constitutional basis for seeking a judicial remedy.

Additionally, military judges are already authorized to hold closed hearings under R.C.M. 806(b)(4), and, perhaps more crucially, if the only things being sought are *Mellette* records, then there is likely no need for closed hearings anyway. This is because a discussion of hypothetical diagnoses and treatments the Defense intends to go fishing for does not constitute any actual disclosure of private or confidential material. Under a regime in which M.R.E. 513(e)(4) does not apply to *Mellette* records, a Defense counsel only needs to proffer a theory of relevance and identify where the evidence might be found to be able to get an order compelling production. Indeed, the history of motions practice since *Mellette* has been that Defense has routinely used theories and then proffers to use the awesome power of the courts to breach psychotherapist-patient confidentiality in producing *Mellette* records. Such theories and proffers do not typically involve the disclosure or discussion of confidential material that necessitates a closed hearing.

Therefore, if *Mellette* records are subject to the procedures of M.R.E. 513(e)(1) and M.R.E. 513(e)(2) *without* being offered any benefit under M.R.E. 513(e)(4), then victims will be left in substantially the same position as they are without these procedures to seek judicial remedy from harm to their privacy rights. The

procedures of subdivisions (e)(1) and (e)(2), under that regime, amount to a patronizing and superfluous horse and pony show if the key provision in subdivision (e)(4) is not applied to all patients' mental health "records or communications." Thus, if there is another fair interpretation that avoids the surplusage and redundancy of the provisions of M.R.E. 513(e), then it is imperative to embrace that alternative.

Thankfully, the interpretation that avoids surplusage and redundancy is also the one that best comports with the plain language of M.R.E. 513(e)(4). Under the correct interpretation, each term can be given expression that contributes to the overall function of M.R.E. 513(e) within the greater context of the privilege. This function is to ensure that military judges narrowly tailor *any* disclosure or production of *any* mental health record or communication under M.R.E. 513 to the exceptions of subdivision (d) and to the purpose for which the evidence is sought.

Disclosures under M.R.E. 513(e) are materially distinct from the disclosures of communications contemplated under M.R.E. 513(a). Under the law as it exists today, a patient does not have the legal authority to refuse to disclose or prevent others from disclosing *Mellette* records due to the narrower language of M.R.E. 513(a). However, the broader scope of M.R.E. 513(e) operates independently of the privileged communication language under subdivision (a), and, as *H.V.Z.* established, covers a much broader scope of mental health records. *See* 85 M.J. 8, at 16-17.

The differences between the provisions M.R.E. 513(e) and M.R.E. 513(a) are significant. M.R.E. 513(e)(1) broadly allows *any* party to seek an interlocutory ruling “[i]n any case in which the production or admission of records or communications of a patient other than the accused is a matter in dispute...”. Importantly, M.R.E. 513(e) does not require that a patient or therapist invoke a privilege or even that the patient be the one that seeks an interlocutory ruling from the judge. Indeed, there is nothing in the text of M.R.E. 513(e) that requires a patient’s involvement in the proceedings whatsoever. M.R.E. 513(e)(1) and M.R.E. 513(e)(2) establish requirements for notice to a patient and that a patient has a right to be heard on the matter, but these provisions also allow proceedings to move forward without the patient if needed. Thus, proceedings under M.R.E. 513(e) can be initiated, held, and concluded without any involvement from the patient or their psychotherapist. This is in bright contrast with the language of M.R.E. 513(a), in conjunction with subdivision (c), that *requires* the patient or psychotherapist to be the one to invoke the privilege of protecting the disclosure of confidential communications.

Therefore, the unique framework of M.R.E. 513(e) operates to restrict the disclosure and production of a wider range of mental health records than does M.R.E. 513(a) and in fundamentally different ways. The correct interpretation of M.R.E. 513(e)(4), then, is not constrained by the language employed in M.R.E. 513(a) pertaining only to privileged communications. Rather, M.R.E. 513(e)(4) exists to identify when military judges can disclose or produce “Any” mental health

“records or communications” of a patient after completing the steps required by subdivisions (e)(1), (e)(2), and (e)(3).

When a party seeks the production or disclosure of *Mellette* records, for example, the purpose of such admission or disclosure must be stated in a motion with sufficient notice and opportunity to be heard in a closed hearing. Then, M.R.E. 513(e)(4) operates as a check valve restricting what the military judge can do with “Any” mental health “records or communications” that the military judge may permit to be produced or disclosed. M.R.E. 513(e)(4) therefore allows the M.R.E. 513(e)(2) hearing required to be a meaningful exercise in determining whether and to what degree *Mellette* records fit within an enumerated exception and within the stated purpose for which they are being sought – not merely a perfunctory hearing on whether Defense can come up with theories on relevance and proffers on where to go fishing.

This is the only interpretation that gives independent meaning to the words “Any” and “records or communications” as they appear in M.R.E. 513(e)(4), and it is the only interpretation which does not require the additional word “protected” to be grafted in – notwithstanding the President’s own choice of words. It is also the only interpretation that is consistent with the broader scope of M.R.E. 513(e) that instructs military judges on when production or disclosure of “records or communications” is proper when sought by any party and regardless of whether a patient or psychotherapist has invoked the privilege.

- c. The common law principles forming the basis for a psychotherapist-patient privilege are centered on the need for preserving the confidentiality of the treatment relationship – which can only be done through applying M.R.E. 513(e)(4) to *Mellette* records.

Admittedly, applying M.R.E. 513(e)(4) to *Mellette* records may not comport with a policy preference for a permeable mental health privilege that routinely allows exploitation of arguably the *most* sensitive and stigmatizing information contained within mental health records – diagnoses and treatments. However, as stated in *Mellette*, “[i]t is worth emphasizing that this conclusion is not based on our views on the proper scope of the patient-psychotherapist privilege”. 82 M.J. 374, at 380. Thus, judicial policy preferences should not be a factor in the analysis. Additionally, privileges should be strictly construed *after* balancing the public interest against the need for probative evidence. *Trammel v. United States*, 445 U.S. 40, 50 (1980).

In declaring that the patient-psychotherapist privilege articulated under M.R.E. 513(a) only pertains to confidential communications, and not to mental health “records or communications” more broadly, *Mellette* relied on *Trammel*’s directive that privileges be strictly construed. 82 M.J. 374, at 380. In *Trammel*, the U.S. Supreme Court addressed the application of the *Hawkins* privilege, which allowed an accused to prevent a spouse from testifying adversely in criminal proceedings. *Trammel v. United States*, 100 S. Ct. 906, 912-14 (1980) (citing *Hawkins v United States*, 358 U.S. 74 (1958)). The *Trammel* Court found that

“reason and experience” justified the narrowing of the *Hawkins* privilege such that the witness-spouse alone should hold the privilege to decide whether to testify against her accused spouse. *Id.*, at 914. Such a narrowing, the Supreme Court reasoned, tended to reinforce the spousal relationship, if anything, in allowing each spouse to freely decide whether to testify rather than allowing spouses to force the other not to testify against their will. *Id.*

M.R.E. 501(a)(5) allows for privileges in the military to be guided by principles of common law as recognized in the United States federal court system. The Supreme Court has identified that the psychotherapist privilege is “...rooted in the imperative need for confidence and trust” and that “barriers to full disclosure would impair diagnosis and treatment.” *Id.* at 13 and *Jaffee v. Redmond*, 116 S. Ct. 1923, 1928-29 (1996). The Supreme Court has emphasized that

Because of the sensitive nature of the problems for which individuals consult psychotherapists, disclosure of confidential communications made during counseling sessions may cause embarrassment or disgrace. For this reason, the mere possibility of disclosure may impede development of the confidential relationship necessary for successful treatment.

Jaffee, 116 S. Ct. 1923, at 1928. Thus, it is the relationship of trust between patient and psychotherapist that drives the need for the privilege. The Supreme Court has further observed that

a psychiatrist's ability to help her patients “is completely dependent upon [the patients'] willingness and ability to talk freely. This makes it difficult if not impossible for [a psychiatrist] to function without being able to assure . . . patients of confidentiality and, indeed, privileged communication. Where there may be exceptions to this general rule . . .

., there is wide agreement that confidentiality is a *sine qua non* for successful psychiatric treatment."

Id. (internal citation omitted).

Since *Mellette*, however, there has been virtually no consideration for preserving the psychotherapist-patient relationship that forms the very root of the privilege. Applying the above principles of common law established by the U.S. Supreme Court, as permitted by M.R.E. 501(a)(5), the plain text of M.R.E. 513(e)(4) can and should be given its full meaning in restricting the disclosure and production of "Any" mental health "records or communications". This Honorable Court can use its common sense and knowledge of the world to appreciate that, when it comes to patient confidentiality, there is no significant difference between forcing mental health providers to disgorge patient communications or the extremely personal and often stigmatizing diagnosis and treatment information derived from those communications.

M.R.E. 513 jurisprudence after *Mellette* has been a watershed of court-ordered invasions of mental health records to dissect and expose extremely sensitive mental health diagnoses and treatments. Military courts have cited the need for strict construction of the privilege while ignoring the main point of *Trammel* – which was to more coherently protect privileged relationships while balancing the needs of justice with the harm to the privilege holders. *See* 100 S. Ct. 906, at 912-14.

Since *Mellette*, M.R.E. 513 litigation has proliferated, and yet we are no closer to settling the law on what a psychotherapist-patient privilege in the military really

means. Military judges wrestle constantly with discovery motions seeking to disclose *Mellette* records that do not come close to meeting any enumerated exception under M.R.E. 513(d) and whose relevance is frequently theoretical and tied to speculative “credibility” issues. What is far worse is that victims are now strongly incentivized to avoid or delay establishing life-saving relationships with mental health providers because of the high likelihood that a military court will routinely order the disclosure victims’ extremely personal diagnosis and treatment records – information ripped from their therapists’ internal record systems by judicial fiat.

If this Honorable Court is inclined to add the word “protected” before all three instances of the phrase “records or communications” appearing in subdivision (4), and to disregard the universally inclusive modifier “Any” that subdivision (4) begins with, *and* to disregard the principles undergirding the privilege, as articulated by the U.S. Supreme Court, then that would certainly be an iron thumb on the scale favoring a policy of an eviscerated and inchoate privilege. The effect of such a course would be to send the message to crime victims that, in the military, if you elect to report crime then your private mental health diagnoses and treatments will be subject to routine disclosure and public scrutiny without any meaningful protection. This would impose a profound cost on participation in the military justice system that sabotages the very therapist-patient relationships that the privilege was established under common law to protect.

[REDACTED]

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[REDACTED]

[REDACTED]

III. The Military Judge clearly and indisputably erred when devising extra-jurisdictional compulsory process purporting to order medical treatment facilities—fixed buildings—to answer interrogatories without adhering to the requirements and limitations of a deposition.

Citation to a concurring opinion solely written by Chief Judge Kevin Ohlson of C.A.A.F. in *B.M.* does not provide authority to devise an “interrogatory system” to search L.B.’s PHI. 84 M.J. 314, 323. Dicta in concurring opinions by a singular C.A.A.F. judge provides no authority and has zero weight in the military justice system. The military justice system is forged in statute and executive order.

- a. Under the U.C.M.J. interrogatories are written depositions bound by Article 49 and R.C.M. 702.

What the Military Judge has ordered is tantamount to a written deposition. “A deposition is the out-of-court testimony of a witness under oath in response to questions by the parties, which is reduced to writing or recorded on videotape or audiotape or similar material. A deposition taken on oral examination is an oral deposition, and **a deposition taken on written interrogatories is a written deposition**. Written interrogatories are questions, prepared by the prosecution, defense, or both, which are reduced to writing before submission to a witness whose testimony is to be taken by deposition. The answers, reduced to writing and properly sworn to, constitute the deposition testimony of the witness.” R.C.M. 702(a), Discussion (emphasis added). In fact, the thirteen times the word “interrogatories” is ever used in the 2024 Manual for Courts-Martial is in reference

to written depositions, including in the index, where the word “interrogatories” reads “*See Deposition*” next to it to find information on what interrogatories are. *See generally*, M.C.M. (2024). There is no other authorized conduit under the Rules for Courts-Martial to order a third party to answer written interrogatories. Just because the parties did not request a deposition, it does not mean what the Military Judge has ordered is not a deposition.

Rather, a deposition, whether written or oral, is a tool meant to, in the interest of justice, preserve testimony for use at trial. R.C.M. 702(a)(a). To effectuate the Military Judge’s Order, the court must usher the Defense to identify who is the competent witness to answer said interrogatories. The convening authority then must appoint a deposition officer, who will arrange the witness’s presence for the written deposition. *Id.* at 702(d)(3)(A). It is then the deposition officer’s duty to “arrange for the presence of any witness whose deposition is to be taken in accordance with the procedures and production of witnesses and evidence under R.C.M. 703” (i.e., a subpoena or commander’s authority). *Id.* at 702(e)(2). The Military Judge has no authority to compel the presence of a third party to answer written interrogatories.⁵

The Military Judge also erroneously uses the written deposition to manufacture allegedly discoverable documents. The Military Judge states in her ruling that the interrogatories do not amount to a written deposition but are to

⁵ L.B. maintains her electronic health record in the MHS Genesis system is not in the possession, custody, or control of military authorities as DHA is not a law enforcement authority participating in the case. The military judge has authority to compel third parties to personally appear before trial to testify or to produce documents under R.C.M. 703.

[REDACTED]

[REDACTED] 11. However, “[t]he Analysis of R.C.M. 702(a) [in the 2000 M.C.M.] notes that federal courts have consistently construed the rule’s counterpart, Federal Rule of Criminal Procedure 15(a), as a device used to preserve future testimony and not as a discovery vehicle.” *United States v. Cabrera-Frattini*, 65 M.J. 950, 952-53 (N-M Ct. Crim. App. 2008). There is also no authority under the military justice system that permits a Military Judge to order a third party to create documents for purposes of discovery. R.C.M. 701(a)(2) is titled “(2) *Documents, tangible objects, reports.*” And it goes onto say, “(A) After service of charges, upon request of the defense, the Government shall permit the defense to inspect any books, papers, documents, data, photographs, tangible objects, buildings, or places, or copies of portions of these items, if the item is within the possession, custody, or control of military authorities and--(i) the item is relevant to defense preparation.” The plain language of R.C.M. 701(a)(2) allows for inspection of documents that **actually exist** and which are relevant to the defense’s preparation. It is the Defense’s burden to proffer relevance of already existing documents, tangible objects, and reports as is clear in the plain language of R.C.M. 701(a)(2). “The military judge may, *consistent with this rule*, specify the time, place, and manner of making discovery and may prescribe such terms and conditions as are just.” R.C.M. 701(g)(1) (emphasis added). There is no basis in the rule that allows the RPI’s Counsel to request that documents be manufactured and it is inconsistent with the rule for the Military Judge to order such action.

- b. Military Judges perform duties consistent with enumerated authorities, assuming authority not specifically delegated is a usurpation of judicial authority.

Issuance of the court orders demanding unknown third-parties search through L.B.'s PHI is a form of judicial gymnastics that treats L.B. unfairly and without regard for her rights to privacy and due process. "To the extent that [military judges] perform judicial duties such as authorizing searches and reviewing pretrial confinement, their authority is not inherent but is either delegated or granted by executive order. See Mil.R.Evid 315(d)(2), Manual, supra (military judge may authorize searches if authorized by regulations of Secretary of Defense or Secretary concerned); RCM 305(g) (military judge may release from confinement); RCM 305(i)(2) and RCM 305(j) (military judge may review propriety of pretrial confinement)." *United States v. Weiss*, 36 M.J. 224, 228 (C.A.A.F. 1992)(plurality opinion); *aff'd Weiss v. United States*, 510 U.S. 163, 114 S. Ct. 752 (1994). The Military Judge's approach to having an unknown third-party searching through L.B.'s private and protected medical information may be novel, but its novelty is what makes it a judicial usurpation.

WHEREFORE, L.B. asks this Court to issue an immediate stay of the orders and to issue a writ of mandamus vacating the Military Judge's extra-jurisdictional orders attempting to require fixed facilities to search L.B.'s PHI without the required procedures under M.R.E. 513 and by Article 6b.

Respectfully submitted this 3rd day of February 2026,

[REDACTED]

DEVON A. R. WELLS, GS-14, DAF CIVILIAN
Counsel for L.B.
Chief, Appellate and Outreach, Victims' Counsel
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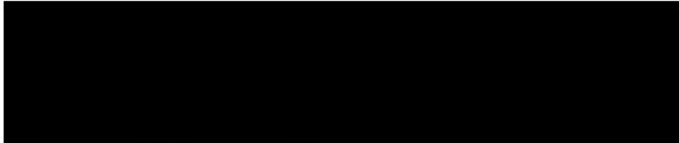
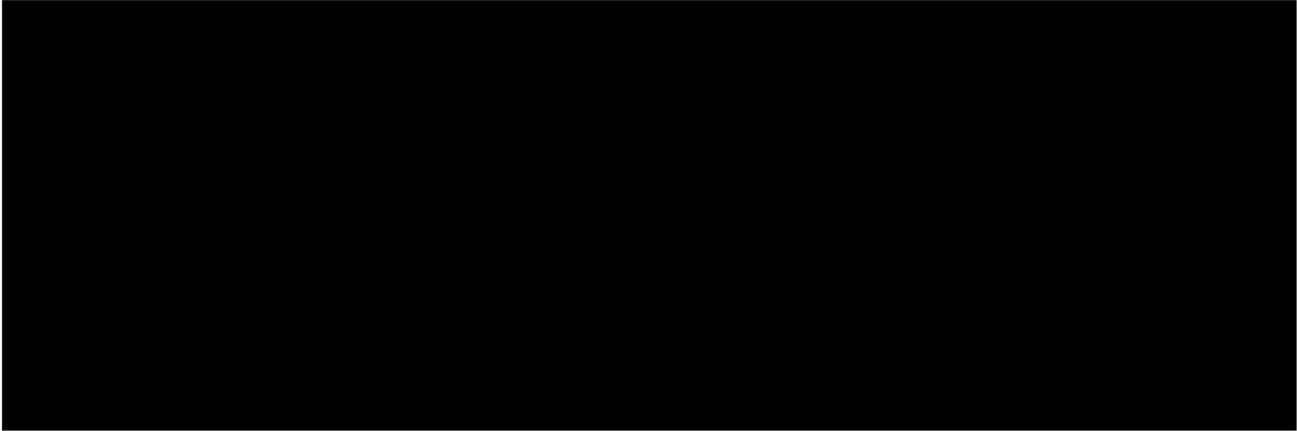
[REDACTED]

ALICIA M. FERGUSON, Captain, Judge Advocate
Counsel for L.B.
Victims' Counsel
Military Justice and Discipline Directorate
Department of the Air Force

[REDACTED]
Ohio 101021

CERTIFICATE OF FILING AND SERVICE

I certify that on February 3, 2026, the foregoing was electronically filed with the Court and served on the following addresses:



DEVON A. R. WELLS, GS-14, DAF CIVILIAN
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In re L.B. Writ Attachments Cited

Portions of the Record of Trial

A. Charge Sheet

B. Defense Motion for Appropriate Relief: Compel Discovery Under M.R.E. 513 & *Mellette* Records, dated 15 September 2025

C. Government Response to Defense Motion for Appropriate Relief: Compel Discovery Under M.R.E. 513 & *Mellette* Records, dated 25 September 2025

D. VC Response to Defense Motion for Appropriate Relief: Compel Discovery Under M.R.E. 513 & *Mellette* Records, 26 September 2025

E. Defense Motion to Compel Production of Witness for Article 39(a) Session, dated 22 September 2025

F. Government Response to Defense Motion to Compel Production of Witness for Article 39(a) Session, dated 25 September 2025

G. Victims' Counsel Response to Defense Motion to Compel Production of Witness for Article 39(a) Session, dated 26 September 2025

H. Ruling on Defense Motion to Compel Production of Witness for Article 39(a) Session, dated 2 October 2025

I. Ruling on Defense Motion for Appropriate Relief: Compel Discovery Under M.R.E. 513 & *Mellette* Records, dated 8 October 2025

J. Defense Motion to Compel Discovery, dated 6 December 2025

K. Government Response to Defense Motion to Compel Discovery, dated 8 December 2025

L. Ruling - Defense Motion to Compel Discovery, dated 9 December 2025

M. Victims' Counsel Motion for Appropriate Relief: Protective Order, dated 11 December 2025

N. Ruling - Victims' Counsel Motion for Appropriate Relief: Protective Order, dated 12 December 2025 (via email)

O. Email Notification from Defense Counsel, dated 14 December 2025

P. Defense Motion for Reconsideration and to Compel Discovery under M.R.E. 513, dated 15 December 2025

Q. Government Response to Defense Motion for Reconsideration and to Compel Discovery under M.R.E. 513, dated 16 December 2025

R. Victims' Counsel Response to Defense Motion for Reconsideration and to Compel Discovery under M.R.E. 513, dated 15 December 2025

S. Ruling on Defense Motion for Reconsideration and to Compel Discovery under M.R.E. 513, dated 17 December 2025

T. Victims' Counsel Objection to Erroneous Deposition and Disclosure of Records Under M.R.E. 513, dated 19 December 2025

U. Defense Response to Victims' Counsel Objection to Erroneous Deposition and Disclosure of Records Under M.R.E. 513, dated 5 January 2026

V. Ruling on Victims' Counsel Objection to Erroneous Deposition and Disclosure of Records Under M.R.E. 513, dated 8 January 2026

W. Victim's Counsel Motion for Reconsideration of VC Objection to Erroneous Deposition & Disclosure of Records Under M.R.E. 513, dated 9 January 2026

X. Defense Response to Victim's Counsel Motion for Reconsideration of VC
Objection to Erroneous Deposition & Disclosure of Records Under M.R.E. 513, dated
16 January 2026

Y. Ruling on Victim's Counsel Motion for Reconsideration of VC Objection to
Erroneous Deposition & Disclosure of Records Under M.R.E. 513, dated 27 January
2026

Z. Order: Interrogatories (20th Medical Group), dated 27 January 2026

AA. Order: Interrogatories (316th Medical Group), dated 27 January 2026

BB. Order: Interrogatories (Fort Belvoir Community Hospital), dated 27 January
2026

CC. Order: Interrogatories (Walter Reed Medical Center), dated 27 January 2026

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

In re LB <i>Petitioner</i>	)	Misc. Dkt. No. 2026-03
)	
)	
)	
)	
)	
)	
Irvin BRYANT, JR. Technical Sergeant (E-6) U.S. Air Force <i>Real Party in Interest</i>	)	NOTICE OF DOCKETING

On 3 February 2026, the court received a petition for extraordinary relief under Article 6b, UCMJ, 10 U.S.C. § 806b, in the nature of a Writ of Mandamus and Motion to Stay Proceedings in the above-styled case. On this same date, Petitioner filed a Motion to File Under Seal, pending ruling by the court.

Accordingly, it is by the court on this 5th day of February, 2026,

ORDERED:

The case is assigned Misc. Dkt. No. 2026-03 and referred to a Special Panel for review. The Special Panel in this matter shall be constituted as follows:

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge
KEARLEY, CYNTHIA T., Colonel, Appellate Military Judge
PERCLE, DAYLE P., Lieutenant Colonel, Appellate Military Judge

No briefs in response to this petition will be filed unless ordered by the court. *See* JT. CT. CRIM. APP. R. 19(g)(1).



FOR THE COURT



JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

In re LB	)	Misc. Dkt. No. 2026-03
<i>Petitioner</i>)	
)	
v.)	
	)	ORDER
Irvin BRYANT, Jr.)	
Technical Sergeant (E-6))	
U.S. Air Force)	
<i>Real Party in Interest</i>	)	Special Panel

A petition for extraordinary relief in the nature of a writ of mandamus in the above-styled case, with numerous attachments, was filed with this court on 3 February 2026. Petitioner is the alleged victim in the ongoing general court-martial of Technical Sergeant Irvin Bryant, Jr. (Real Party in Interest) at Joint Base Anacostia-Bolling, Washington, D.C. Petitioner seeks relief with respect to orders the military judge issued on 27 January 2026 directing two Air Force medical groups and two military medical treatment facilities to respond to interrogatories regarding the existence of certain “records of [Petitioner’s] medical or mental health diagnoses, prescriptions, and/or treatment.” The orders require a written response to trial counsel no later than 17 February 2026.

Petitioner requests an immediate stay of the orders and a writ of mandamus vacating the orders on the grounds that: (1) the requested information is not material to the preparation of the defense; (2) the military judge did not find an exception to non-disclosure of mental health records and communications under Mil. R. Evid. 513(d), as required by Mil. R. Evid. 514(e)(4); and (3) the interrogatories are an extra-judicial compulsory process that do not comport with the requirements for a deposition under Rule for Courts-Martial 702.

Petitioner “also seeks to join this case with *In re L.B.*, Misc. Dkt. 2025-14,” another pending mandamus petition that Petitioner previously filed in relation to the same court-martial.

Accordingly, it is by the court on this 6th day of February, 2026,

ORDERED:

Petitioner’s motion to stay proceedings dated 3 February 2026 is **DENIED**.

Petitioner's request to join this petition to *In re LB*, Misc. Dkt. No. 2025-14, is **DENIED**.

The United States and the Real Party in Interest are each granted leave to file an answer to the petition **not later than 27 February 2026**. Petitioner may then file a reply brief within seven days of 26 February 2026, or seven days from the date of the last answer filed should both answers be filed before 26 February 2026.

At this time, the court is not ordering or inviting the military judge whose orders are the subject of the petition to respond. No additional briefs will be filed unless so ordered by the court.



FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

In re L.B.
Petitioner

MOTION TO FILE UNDER SEAL

TSGT IRVIN BRYANT, JR.
11th Mission Support Group
Real Party in Interest

Misc. Dkt. No. 2026-XX

**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR
FORCE COURT OF CRIMINAL APPEALS**

L.B. through her undersigned counsel pursuant to A.F. CT. CRIM. APP. R. 23.3(o) moves to file the portions of her Petition for Relief Pursuant to Article 6b with Motion to Stay Order and Attachments B-D, I, and P-Y under seal. The information contained in the brief is all contained in filings sealed by the Military Judge Lieutenant Colonel Lauren Torczynski or must be sealed consistent with Mil. R. Evid. 513. L.B. seeks relief for violations of her rights to be treated with fairness and respect for her dignity and privacy borne out by rulings demanding unknown third parties search L.B's privileged and protected medical information to answer written depositions. Due to the sensitive, private information contained in the Petition and its attachments, she seeks to file the unredacted Petition and certain attachments under seal consistent with the sealing by the Military Judge and sealing required by rule.

The materials L.B. seeks to seal were served on this Court, Maj Eric Trudrung, Maj Heather Bruha, and Mr. Dwight Sullivan as RPI's counsel, and Capt Heather Bezold as counsel for the United States via DoD SAFE.

Respectfully submitted this 3rd day of February 2026.

[REDACTED]

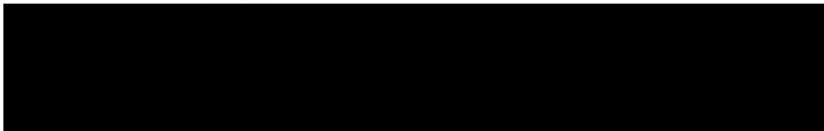
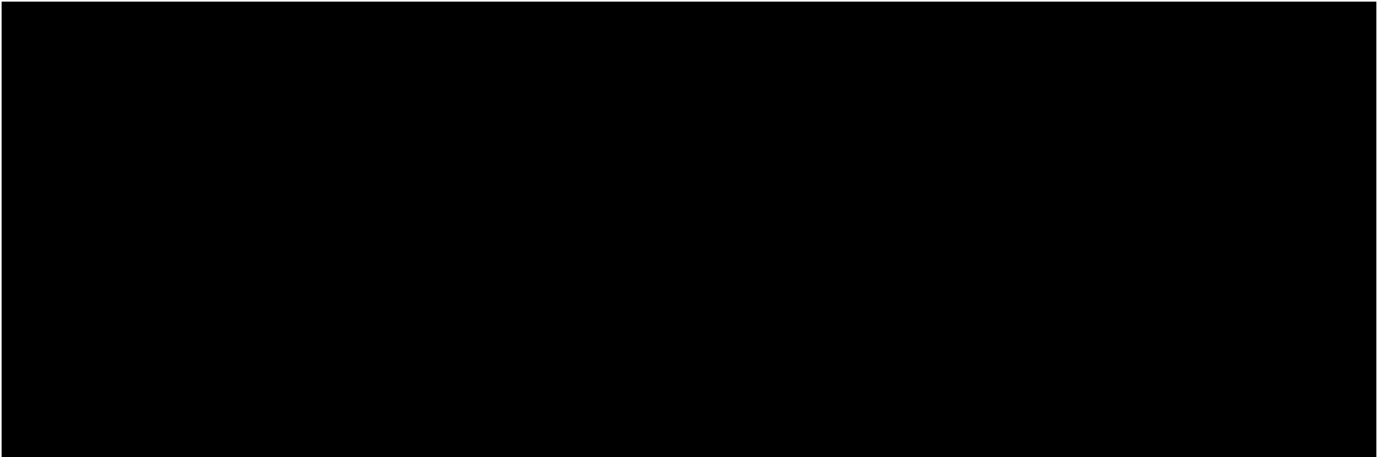
DEVON A. R. WELLS, GS-14, DAF CIVILIAN
Counsel for L.B.
Chief, Appellate and Outreach, Victims' Counsel
Military Justice and Discipline Directorate
Department of the Air Force
240-636-2001

[REDACTED]

New York 4453205
C.A.A.F. Bar Number 37640

CERTIFICATE OF FILING AND SERVICE

I certify that on February 3, 2026, the foregoing was electronically filed with the Court and served on the following addresses:



DEVON A. R. WELLS, GS-14, DAF CIVILIAN
Counsel for L.B.
Chief, Appellate and Outreach, Victims' Counsel
Military Justice and Discipline Directorate
Department of the Air Force
240-636-2001
[Redacted]
New York 4453205
C.A.A.F. Bar Number 37640

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

In re LB,	)	REAL PARTY IN INTEREST'S
	)	ANSWER TO PETITION FOR
	)	EXTRAORDINARY RELIEF IN THE
<i>Petitioner,</i>	)	NATURE OF A WRIT OF MANDAMUS
	)	(REDACTED)
)	
	)	Before a Special Panel
Technical Sergeant (E-6))	
Irvin Bryant, Jr.,	)	Misc. Dkt. No. 2026-03
United States Air Force,)	
<i>Real Party in Interest.</i>	)	18 February 2026

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

COMES NOW Real Party in Interest Technical Sergeant (TSgt) Irvin Bryant, Jr., United States Air Force, by and through his undersigned counsel, and pursuant to this Court's order of 6 February 2026, files this answer to the Petition for Extraordinary Relief in the Nature of a Writ of Mandamus (Petition).

Assignments of Error as Presented by Petitioner

I.

[REDACTED]

II.

[REDACTED]

III.

The Military Judge clearly and indisputably erred when devising extra-jurisdictional compulsory process purporting to order medical treatment facilities—fixed buildings—to answer interrogatories without adhering to the requirements and limitations of a deposition.

Decisional Questions Presented

1.

[REDACTED]

2.

Does Military Rule of Evidence 513(e)(4)'s provision that the production of records under Military Rule of Evidence 513 must be narrowly tailored to only those that fall within an exception to the psychotherapist-patient privilege clearly and indisputably apply to the production of non-privileged mental health records?

3.

Did the military judge clearly and indisputably err by issuing interrogatories to certain military medical care organizations as a discovery method, as recommended by the Chief Judge of the Court of Appeals for the Armed Forces?

Summary of Argument

[REDACTED]

The Petition's second argument—concerning Military Rule of Evidence 513(e)(4)'s applicability to non-privileged mental health records—similarly relies on a legally erroneous analysis that conflicts with controlling Court of Appeals for the Armed Forces (CAAF) case law. A plain language analysis of Military Rule of Evidence 513(e)(4) indicates that it does not apply to the production of non-privileged mental health records. The only military appellate decision to

address the issue—a published Army Court of Criminal Appeals (Army Court) opinion—reaches that conclusion. The contrary position—unsupported by any case law—is not clear and indisputable. Thus, mandamus relief is unavailable.

As to the Petition’s third argument, the military judge acted well within her Rule for Courts-Martial (R.C.M.) 701(g) authority over the discovery process when she ordered four military medical care organizations to respond to interrogatories concerning Petitioner’s mental health records. The procedures the military judge adopted followed a suggestion that the Chief Judge of the CAAF offered in a concurring opinion. There is no negative case law concerning that suggestion. It is not clear and indisputable that the military judge erred by following the Chief Judge’s suggestion. On the contrary, she did not err at all.

Statement of the Case

The Real Party in Interest is charged with three specifications of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920, and three specifications of domestic violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b. Charge Sheet, Pet. under Article 6b for Relief in the form of a Writ of Mandamus, Feb. 3, 2026 [hereinafter Pet.] at Attach. A (PDF 36–40).¹ A special trial counsel referred the charges and specifications to a general court-martial on 13 December 2024. *Id.*, Block V (PDF 37, 40).

On 3 February 2026, Petitioner filed a mandamus Petition and motion for a stay before this Court. Pet. at Certificate of Filing and Service (PDF 31); Notice of Docketing, *In re LB*, Misc. Dkt. No. 2026-03 (A.F. Ct. Crim. App. Feb. 5, 2026). The following day, this Court denied

¹ The Petition itself is unpaginated and its voluminous attachments are not Bates stamped or otherwise sequentially numbered. To help identify the particular page that is being cited, when citing the Petition’s attachments, this answer provides the page number of the PDF on which the cited source appears in the sealed version of the filing.

Petitioner’s motion for a stay. *In re LB*, Misc. Dkt. No. 2026-03 (A.F. Ct. Crim. App. Feb. 6, 2026) (order). This Court also granted the Real Party in Interest and the United States leave to file an answer to the Petition no later than 27 February 2026. *Id.* Petitioner previously filed another petition for mandamus relief that is currently pending before this Court. *See In re LB*, Misc. Dkt. No. 2025-14 (A.F. Ct. Crim. App. Dec. 16, 2025) (notice of docketing); *In re LB*, Misc. Dkt. No. 2025-14 (A.F. Ct. Crim. App. Dec. 18, 2025) (order); *In re LB*, Misc. Dkt. No. 2025-14 (A.F. Ct. Crim. App. Jan. 13, 2026) (order).

Member selection in the Real Party in Interest’s general court-martial is scheduled to begin on Friday, 20 March 2026, with opening statements scheduled for Monday, 23 March 2026.

Statement of Facts

TSgt Bryant is charged with three specifications of sexual assault in violation of Article 120, UCMJ, and three specifications of domestic violence in violation of Article 128b, UCMJ. Charge Sheet, Pet. at Attach. A (PDF 36–40). His wife, Petitioner, is the alleged victim of each of those offenses. *Id.* The time span of the alleged offenses ranges from on or about 1 June 2020 to on or about 24 October 2023. *Id.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

² See *B.M. v. United States*, 84 M.J. 314, 323 (C.A.A.F. 2024) (Ohlson, C.J., concurring).

³ *H.V.Z. v. United States*, 85 M.J. 8 (C.A.A.F. 2024).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] On that same day, the military judge issued the four interrogatories to military medical care organizations. Order, Interrogs., Jan. 27, 2026, Pet. at Attachs. Z-CC (PDF 522-33).

Standard of Review

“[A] mandamus petition will only be granted where a petitioner demonstrates a clear and indisputable right to relief.” *H.V.Z.*, 85 M.J. at 11–12. That standard applies to petitions for extraordinary relief filed under Article 6b(e), UCMJ. *Id.* at 12–13. Thus, to obtain relief, Petitioner must show: “(1) there is no other adequate means to attain relief; (2) the right to issuance of the writ is clear and indisputable; and (3) the issuance of the writ is appropriate under the circumstances.” *Id.* at 12 (quoting *Hasan v. Gross*, 71 M.J. 416, 418 (C.A.A.F. 2012)).

Issue I

Decisional Question Presented 1

[REDACTED]

On direct review, a military appellate court reviews “a military judge’s discovery rulings . . . for an abuse of discretion.” *United States v. Stellato*, 74 M.J. 473, 480 (C.A.A.F. 2015). A trial court has “broad discretion in determining relevancy for discovery purposes.” *Survivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 635 (9th Cir. 2005). And, as the Supreme Court has observed, “Where a matter is committed to discretion, it cannot be said that a litigant’s right to a particular result is clear and indisputable.” *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 36 (1980) (per curiam) (internal quotation marks omitted). Thus, mandamus may not be used “to second-guess trial judges in situations where they have not exceeded their ‘prescribed jurisdiction’ or failed to exercise their required authority.” *In re United States Dep’t of Defense*, 848 F.2d 232, 238 (D.C. Cir. 1988). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. As the Army Court recently noted, “relevance for the purposes of discovery” must not be conflated with “relevance for admissibility at trial.” *United States v. Ruhrup*, No. ARMY 20230282, 2026 CCA LEXIS 58, at *11 n.10 (A. Ct. Crim. App. Jan. 15, 2026). Relevance for discovery purposes is broader than for admissibility purposes. *See United States v. Roberts*, 59 M.J. 323, 325–26 (C.A.A.F. 2004) (holding “the military judge improperly limited the scope of discovery when he apparently focused on admissibility”). For the former, the Government has an obligation to disclose an item that is “relevant to defense preparation” regardless of its admissibility. R.C.M. 701(a)(2)(A)(i), *Manual for Courts-Martial, United States (MCM)* (2024 ed.); *United States v. Webb*, 66 M.J. 89, 92 (C.A.A.F. 2008) (“[A]n accused’s right to discovery is not limited to evidence that would be known to be admissible at trial. It includes materials that would assist the defense in formulating a defense strategy.”). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The President has also expressly provided that a trial counsel shall disclose to the defense the existence of evidence that reasonably tends to “[a]dversely affect the credibility of any prosecution witness or evidence.” R.C.M. 701(a)(6)(D). [REDACTED]

[REDACTED]

[REDACTED]

Issue II

Decisional Question Presented 2

Military Rule of Evidence 513(e)(4)’s provision that the production of records under Military Rule of Evidence 513 must be narrowly tailored to only those that fall within an exception to the psychotherapist-patient privilege does not clearly and indisputably apply to the production of non-privileged mental health records.

Military Rule of Evidence 513(e)(4) deals with “production or disclosure permitted by the military judge under this rule,” which is the “Psychotherapist-patient privilege” rule. Section (e)(4) provides:

Any production or disclosure permitted by the military judge under this rule must be narrowly tailored to only the specific records or communications, or portions of such records or communications, that meet the requirements for one of the enumerated *exceptions to the privilege* under subdivision (d) of this Rule and are included in the stated purpose for which the records or communications are sought under subdivision (e)(1)(A) of this Rule.

MIL. R. EVID. 513(e)(4), MCM (2024 ed.) (emphasis added).

That text’s plain meaning establishes that the section deals with production or disclosure of otherwise-privileged records or communications that fall within a Military Rule of Evidence 513(d) exception to the privilege. Just as non-hearsay is not analyzed under the Military Rule of Evidence 803 or 804 exceptions, nonprivileged records or communications are not analyzed

under the Military Rule of Evidence 513(d) exceptions. Nonprivileged records or communications, therefore, do not fall within Military Rule of Evidence 513(e)(4)'s scope.

That is the holding of the only military appellate decision considering the issue. In *R.C. v. Hynes*, 85 M.J. 678 (A. Ct. Crim. App. 2025), the Army Court considered the production regime for nonprivileged mental health records. The Army Court “reject[ed] any assertion . . . that the military judge was required to follow the procedures in Mil. R. Evid. 513(e)(4).” *Id.* at 685 n.13. The court explained that that section is “inapplicable as we are not dealing with the release of information under an enumerated exception. The military judge was only seeking to release information which CAAF had already determined merited no privilege (i.e., *Mellette* records).” *Id.* The Army Court concluded, “Stated more simply – there is no need to apply procedures involving an enumerated exception when no privilege existed for the information in the first place.” *Id.* [REDACTED]

[REDACTED]

[REDACTED]

Military Rule of Evidence 513(e)(4)'s history supports the Army Court's textual analysis. The section was added to the Military Rules of Evidence by Executive Order 13696 of June 17, 2015, 80 Fed. Reg. 35783, 35820 (June 22, 2015). That revision followed enactment of section 537 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, 128 Stat. 3292, 3369 (2014), titled, “Modification of Rule 513 of the Military Rules of Evidence, Relating to the Privilege Against Disclosure of Communications Between Psychotherapists and Patients.” It required the modification of Military Rule of Evidence 513 as follows:

- (1) To include communications with other licensed mental health professionals within the communications *covered by the privilege*.

(2) To strike the current *exception to the privilege* contained in subparagraph (d)(8) of Rule 513 [the constitutionally required exception].

(3) To require a party seeking production or admission of *records or communications protected by the privilege*—

(A) to show a specific factual basis demonstrating a reasonable likelihood that the records or communications would yield evidence admissible under *an exception to the privilege*;

(B) to demonstrate by a preponderance of the evidence that the requested information meets *one of the enumerated exceptions to the privilege*;

(C) to show that the information sought is not merely cumulative of other information available; and

(D) to show that the party made reasonable efforts to obtain the same or substantially similar information through *non-privileged sources*.

(4) To authorize the military judge to conduct a review in camera of records or communications only when—

(A) the moving party has met its burden as established pursuant to paragraph (3); and

(B) an examination of the information is necessary to rule on the production or admissibility of *protected records or communications*.

(5) To require that any production or disclosure permitted by the military judge be narrowly tailored to only the specific records or communications, or portions of such records or communications, that meet the requirements for one of the *enumerated exceptions to the privilege* and are included in the stated purpose for which the such records or communications are sought.

Id. (emphasis added). That statutory provision demonstrates that Military Rule of Evidence 513(e)(4) was designed to protect *privileged* records or communications. That conclusion is consistent with the section’s text, which deals with “exceptions to the privilege.”

[REDACTED]

[REDACTED] “The office of mandamus is not to establish a right, but to enforce a clear and complete right already established.” *Wean v. Holder*, 47 M.J. 540, 542 (A. Ct. Crim. App. 1997) (quoting Major Thomas M. Rankin, *The All Writs Act and the Military Justice System*, 53 MIL. L. REV. 103, 105-06 (1971)). There is no clearly established right to have Military Rule of Evidence 513(e)(4) applied to nonprivileged records.

Instead of relying on any case holding that Military Rule of Evidence 513(e)(4) applies to non-privileged mental health records, the Petition offers a lengthy analysis relying on incorrect interpretations of the law. For example, the Petition offers what it characterizes as a crucial point: “if the only things being sought are *Mellette* records, then there is likely no need for closed hearings anyway.” Pet. (PDF 17). The CAAF disagrees. *H.V.Z.*, 85 M.J. at 16. The Petition errs again when it states that *Jaffee v. Redmond*, 518 U.S. 1 (1996), applies to court-martial practice through Military Rule of Evidence 501(a)(5). Pet. (PDF 23). The CAAF has expressly rejected *Jaffee*’s applicability to courts-martial. *United States v. Rodriguez*, 54 M.J. 156, 161 (C.A.A.F. 2000) (two-judge opinion) (“In the absence of a constitutional or statutory requirement to the contrary, the decision as to whether, when, and to what degree *Jaffee* should apply in the military rests with the President, not this Court.”); *accord id.* at 161–62 (Sullivan, J., concurring); *United States v. Paaluhi*, 54 M.J. 181, 183 (C.A.A.F. 2000) (applying *Rodriguez*); *United States v. Berkiett*, 54 M.J. 360 (C.A.A.F. 2000) (mem.) (same); *United States v. Farrell-Francis*, 54 M.J. 364 (C.A.A.F. 2000) (mem.) (same). Thus, the Petition’s assertion that mandamus relief is necessitated by “the common law principles of the psychotherapist-patient privilege,” Pet. (PDF 25–26), is without merit.

Arguments predicated on legal errors do not and cannot demonstrate that Petitioner has a clear and indisputable right to relief.

Issue III

Decisional Question Presented 3

The military judge did not clearly and indisputably err by issuing interrogatories to certain military medical care organizations as a discovery method, as recommended by the Chief Judge of the CAAF.

“Discovery in military practice is open, broad, liberal and generous.” *United States v. Guthrie*, 53 M.J. 103, 105 (C.A.A.F. 2000). A military judge overseeing discovery is imbued with substantial discretion to achieve that openness, breadth, liberality, and generosity. R.C.M. 701(g)(1) provides that “[t]he military judge may, consistent with this rule, specify the time, place, and *manner* of making discovery and may *prescribe such terms and conditions* as are just.” R.C.M. 701(g)(1) (emphasis added). R.C.M. 701(g)(2) authorizes a military judge, upon a sufficient showing, to “order that the discovery or inspection be denied, restricted, or deferred, or *make such other order as is appropriate*.” R.C.M. 701(g)(2) (emphasis added). Consistent with those broad grants of authority, “[d]iscovery matters are within the sound discretion of the trial judge.” *United States v. Trimper*, 26 M.J. 534, 537 (A.F.C.M.R. 1988). Upon direct review, “[a]n appellate court reviews a military judge’s decision on a request for discovery for abuse of discretion.” *Roberts*, 59 M.J. at 326.

One method military judges have utilized for discovery purposes is an interrogatory. For example, while considering an unlawful command influence issue, “[i]n order to discern the [Commandant of the Marine Corps’] intent behind some statements he made during the Heritage Brief, the military judge ordered that interrogatories be prepared and served on the Commandant.” *United States v. Jiles*, No. NMCCA 201200062, 2014 CCA LEXIS 151, at *5 (N-M. Ct. Crim. App. Mar. 6, 2014). In another case involving an unlawful command influence claim, then-Lieutenant General Peter Pace responded to pretrial interrogatories. *United States v.*

McAlister, No. NMCM 9901173, 2000 CCA LEXIS 214, at *10 (N-M. Ct. Crim. App. Sep. 29, 2000). Choosing to conduct discovery through interrogatories falls within a military judge’s presidentially prescribed authority to specify the “manner” of discovery. R.C.M. 701(g)(1). The military judge’s interrogatory orders also fall within her presidentially prescribed authority to “make such other orders as is appropriate.” R.C.M. 701(g)(2). Either R.C.M. 701(g)(1) or R.C.M. 701(g)(2) alone is sufficient to empower the military judge to issue the orders she did; together, they provide ample authority for a military judge to conduct certain discovery via interrogatories.

In his *B.M. v. United States*, 84 M.J. 314 (C.A.A.F. 2024), concurring opinion, Chief Judge Ohlson addressed “how military judges, going forward, might address the challenges that arise when a victim’s mental health records are at issue.” *Id.* at 321 (Ohlson, C.J., concurring). One of several alternate approaches Chief Judge Ohlson suggested was “for the military judge to pose interrogatories to the psychotherapist that are narrowly tailored to elicit information about the victim’s diagnoses, medications, and treatments.” *Id.* at 323 (Ohlson, C.J., concurring). That approach is designed to avoid the inadvertent disclosure of privileged records intermingled with non-privileged records, as occurred in *B.M.* *Id.* at 317. It is thus an approach designed to protect alleged victims’ privacy interests while also protecting an accused’s right to a fair trial. There does not appear to be any negative case law concerning that suggestion in the almost two years since Chief Judge Ohlson offered it.

Chief Judge Ohlson’s recommended approach is fully consistent with military judges’ presidentially prescribed authority to specify the manner of discovery and issue such discovery orders as are appropriate. R.C.M. 701(g)(1), (2). It is certainly not clear and indisputable that the

suggestion of the Chief Judge of the CAAF was erroneous. Accordingly, mandamus relief is unavailable as to orders of a military judge applying that suggestion.

Conclusion

For the foregoing reasons, this Court should deny the Petition.

Respectfully submitted,



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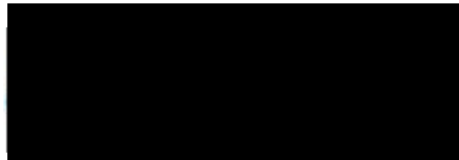
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Counsel for Real Party in Interest

CERTIFICATE OF FILING AND SERVICE

I certify that the foregoing redacted answer was filed with the Court via email and served on the Air Force Government Trial and Appellate Operations Division and Petitioner's counsel via email on 18 February 2026.

Respectfully submitted,

A solid black rectangular redaction box covering the signature of Dwight H. Sullivan.

Dwight H. Sullivan
Senior Counsel
Air Force Appellate Defense Division

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

In re LB,	)	REAL PARTY IN INTEREST’S
	)	MOTION TO FILE ANSWER UNDER
<i>Petitioner,</i>	)	SEAL
)	
)	
	)	Before a Special Panel
Technical Sergeant (E-6))	
Irvin Bryant, Jr.,	)	Misc. Dkt. No. 2026-03
United States Air Force,)	
<i>Real Party in Interest.</i>	)	18 February 2026

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

COMES NOW the Real Party in Interest, Technical Sergeant Irvin Bryant, Jr., by and through his undersigned counsel, and moves pursuant to Rule 23.3(o) of this Honorable Court’s Rules of Practice and Procedure to file his answer to the petition for extraordinary relief in the nature of a writ of mandamus under seal.

The petition and the answer deal with matters that arose during a hearing pursuant to Military Rule of Evidence 513. Rule 513(e)(6) requires that when a hearing is held under that rule, “[t]he motion, related papers, and the record of the hearing must be sealed.” MIL. R. EVID. 513(e)(6), *Manual for Courts-Martial, United States* (2024 ed.). The Court of Appeals for the Armed Forces has held that Rule 513(e)(1) and (2)’s procedures apply to requests for production of non-privileged mental health records. *H.V.Z. v. United States*, 85 M.J. 8, 15–16 (C.A.A.F. 2024). Because Rule 513(e)(6) concerns hearings conducted under Rule 513(e)(2), under *H.V.Z.*, that subsection applies to hearings concerning production of non-privileged mental health records as well.

In keeping with Rule 513(e)(6), it is appropriate to file under seal the Real Party in Interest’s answer, which discusses the Military Rule of Evidence 513(e)(2) hearing and related

papers. A redacted version of the Real Party in Interest's answer is being filed electronically contemporaneously with this motion.

WHEREFORE, this Honorable Court should grant this motion.

Respectfully submitted,



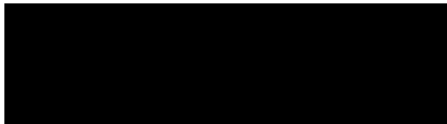
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CERTIFICATE OF FILING AND SERVICE

I certify that the foregoing was sent via electronic mail to the Court and served on the Government Trial and Appellate Operations Division and Petitioner's counsel on 18 February 2026.

Respectfully submitted,



Dwight H. Sullivan
Air Force Appellate Defense Division

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

In re LB,	)	UNITED STATES' ANSWER TO
<i>Petitioner</i>	)	PETITION FOR WRIT OF
	)	MANDAMUS
)	
Technical Sergeant (E-6)	)	Before Special Panel
Irvin Bryant, Jr.,	)	Misc. Dkt. No. 2026-03
United States Air Force,)	
<i>Real Party in Interest.</i>	)	27 February 2026
)	

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

Pursuant to Rule 19(f) of this Honorable Court’s Rules of Practice and Procedure (Rules), the United States hereby submits its Answer to the above-styled Petition for Writ of Mandamus (herein “petition”) filed by Petitioner on 3 February 2026. In her petition, Petitioner “seeks relief from orders the military judge issued on 27 January 2026 directing two Air Force medical groups and two military medical treatment facilities to respond to interrogatories regarding the existence of certain ‘records of [Petitioner’s] medical or mental health diagnoses, prescriptions, and/or treatment.’” (See AFCCA Order, 6 February 2026.)

ISSUES

I.

[WHETHER] THE MILITARY JUDGE CLEARLY AND INDISPUTABLY ERRED WHEN SHE FOUND THE REQUESTED [PERSONAL HEALTH INFORMATION] PHI WAS RELEVANT.

II.

WHETHER THE MILITARY JUDGE CLEARLY AND INDISPUTABLY ERRED WHEN SHE ORDERED THE DISCLOSURE OF MENTAL HEALTH DIAGNOSES AND TREATMENT WITHOUT FIRST HAVING ESTABLISHED AN EXCEPTION UNDER MRE 513(d), AS REQUIRED UNDER MRE 513(e)(4).

III.

[WHETHER] THE MILITARY JUDGE CLEARLY AND INDISPUTABLY ERRED WHEN DEVISING EXTRA-JUDICIAL COMPULSORY PROCESS PURPORTING TO ORDER MEDICAL TREATMENT FACILITIES – FIXED BUILDINGS – TO ANSWER INTERROGATORIES WITHOUT ADHERING TO THE REQUIREMENTS AND LIMITATIONS OF A DEPOSITION.

STATEMENT OF THE CASE

The Real Party in Interest (herein “Accused”) is charged with three charges and five specifications. (Pet. Atch. A.) Charge I, Specification 1, in violation of Article 120, UCMJ, alleges the Accused penetrating Petitioner’s anus with his penis without her consent between on or about 1 January 2021 and on or about 28 February 2021. Charge I, Specification 2, in violation of Article 120, UCMJ, alleges the Accused penetrated Petitioner’s vulva with his penis without her consent between on or about 1 June 2020 and on or about 31 July 2020. Charge II involves three specifications of domestic violence in violation of Article 128b, UCMJ. The Additional Charge, also in violation of Article 120, UCMJ, alleges the Accused penetrated Petitioner’s mouth with his penis without her consent between on or about 1 October 2020 and on or about 31 October 2020. (Id.)

On 15 September 2025, the defense moved to compel discovery under Mil. R. Evid. 513 and specifically requested the production of “non-privileged (Mellette)¹ mental health records in the possession of the Government” (Pet. Atch. B.) The Government objected to the request, stating the request was overly broad and vague, the defense had failed to establish the need or relevancy of the evidence if it existed, and that the defense had failed to describe the existence of any documentary evidence in existence at any medical clinic, care facility, or hospital that would

¹ United States v. Mellette, 82 M.J. 374, 375 (C.A.A.F. 2022).

be relevant and non-privileged. (Pet. Atch. C at 6.) Petitioner, through counsel, also opposed the motion. (Pet. Atch. D.)

After a motion hearing on 6 October 2025, the military judge denied the defense motion. Based on Petitioner’s testimony that she had not sought treatment from any on-base provider, the military judge held, “there do not appear to be any applicable records in existence,” and that “the Government has no obligation to search with DHA [Defense Health Agency] or any MTF [Military Treatment Facility] to confirm that no records exist.” (Pet. Atch. I at 7.)

On 15 December 2025, the defense asked the military judge to reconsider the ruling based on new evidence that the records sought by the defense did exist. (Pet. Atch. P.) Both the Government and Petitioner opposed the motion. (Pet. Atchs. Q, R.) After another motion hearing, the military judge denied in part and granted in part the reconsideration motion. (Pet. Atch. S.) The military judge denied the defense access to any privileged materials. (Id. at 8.) However, as to Mellette records, the military judge stated that “discovery has revealed that [Petitioner] has in fact received mental health treatment from on-base providers, apparently at Shaw AFB, SC and WRAMC [Walter Reed Army Medical Center], but potentially also from providers at the 316 MDG or the Ft. Belvoir, VA MTFs.” (Id. at 10.)

The military judge noted that she had previously found that the “common definition of ‘military authorities’ encompasses MTFs and thus, records kept by an MTF are subject to R.C.M. 701.” (Id.) The military judge found the records were relevant and ordered the parties to “formulate and agree upon interrogatories to include in a Court order for each relevant treatment facility” (Id.)

In response to this ruling, Petitioner moved the military judge to vacate the ruling, which Petitioner claimed ordered “a deposition” and granted “disclosure of [Petitioner’s] privileged

records to a yet-to-be-determined person.” (Pet. Atch. T.) The defense responded and asked the military judge to deny Petitioner’s objection. (Pet. Atch U.) The Government did not respond to Petitioner’s objection.

The military judge denied the request. (Pet. Atch V.) The military judge held, “The Court finds that the interrogatories previously ordered to be prepared and submitted do not amount to a written deposition, as contemplated by R.C.M. 702,” adding that neither party had required a deposition, the court had not ordered a deposition, and that witness testimony was not sought through the interrogatories. (Id. at 5.) The military judge further stated, “Instead, the Court has ordered interrogatories as suggested by Judge Ohlson to both effectuate discovery of non-privileged materials and protect the privacy interests of [Petitioner] by avoiding the possibility of inadvertent disclosure of protected records.” (Id.) The military judge further found that Mil. R. Evid. 513(e)(4) does not apply to the records in question because she had previously found the Mellette records were not privileged. (Id.)

Petitioner then moved for reconsideration of this ruling. (Pet. Atch. W.) The defense opposed the motion. (Pet. Atch. X.) The Government did not respond to the motion.

The military judge denied the motion. (Pet. Atch Y.) The military judge found the additional facts and argument by Petitioner “do not change the original analysis and findings of the Court with respect to the Mellette records,” adding that the court “previously found and stands by its finding, that the records are within the control of military authorities for purposes of R.C.M. 701, and that they are relevant to the preparation of the defense.” (Id. at 2.) The military judge also reiterated her analysis and finding that the interrogatories did not amount to a deposition. (Id. at 3.)

STATEMENT OF FACTS

Facts necessary to the disposition of this case are discussed in the specific issues below.

ARGUMENT

Standard of Review

The All Writs Act authorizes “all courts established by an Act of Congress [to] issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a) (LexisNexis, Lexis Advance through Public Law 117-214, approved 19 October 2022). This Court is among the courts authorized under the All Writs Act to issue “all writs necessary and appropriate in aid of their respective jurisdictions.” 28 U.S.C. § 1651(a); *see also* L.R.M. v. Kastenber, 72 M.J. 364, 367 (C.A.A.F. 2013).

“The writ of mandamus is a drastic and extraordinary remedy reserved for really extraordinary cases.” EV v. United States, 75 M.J. 331, 332 (C.A.A.F. 2016) (citations and quotations omitted). To justify the issuance of a writ, a military judge’s decision “must amount to more than even ‘gross error’; it must amount ‘to a judicial usurpation of power.’” Labella, 15 M.J. at 229 (*quoting* DiStefano, 464 F.2d at 850).

Under this standard, Petitioner must satisfy three conditions before a writ of mandamus may be issued. Hasan v. Gross, 71 M.J. 416, 418 (C.A.A.F. 2012) (citing Cheney v. United States Dist. Court, 542 U.S. 367, 380-81 (2004)). Specifically: (1) Petitioner “must have no other adequate means to attain the relief [she] desires”; (2) Petitioner “must satisfy the burden of showing that [her] right to issuance of the writ is clear and indisputable”; and (3) “even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.” Cheney, 542 U.S. at 380-81 (citations, quotations, and alterations omitted).

I.

THE MILITARY JUDGE DID NOT CLEARLY AND INDISPUTABLY ERR WHEN RULING THAT THE DOCUMENTS IN QUESTION WERE RELEVANT AND NECESSARY.

Law and Analysis

The Government objected to the defense's request for the records in question by arguing that the defense had failed to demonstrate the records were relevant and necessary pursuant to Mil. R. Evid. 703. The Government further does not agree with the military judge's ruling on the relevancy of the documents. However, the Government does not believe that the military judge clearly and indisputably erred in ruling that the evidence was relevant and necessary. Accordingly, Petitioner has failed to meet her heavy burden to warrant a writ, and this Court should deny her petition.

II.

THE MILITARY JUDGE DID NOT CLEARLY AND INDISPUTABLY ERR WHEN SHE ORDERED THE DISCLOSURE OF NON-PRIVILEGED MENTAL HEALTH DIAGNOSES AND TREATMENT WITHOUT FIRST HAVING ESTABLISHED AN EXCEPTION UNDER MRE 513(d).

Law

Relevant portions of Mil R. Evid. 513(e) state as follows:

(e) *Procedure to Determine Admissibility of Patient Records or Communications.*

- (1) In any case in which the production or admission of records or communications of a patient other than the accused is a matter in dispute, a party may seek an interlocutory ruling by the military judge
- (2) Before ordering the production or admission of evidence of a patient's records or communication, the military judge must conduct a hearing, which shall be closed

(3) The military judge may examine the evidence or a proffer thereof in camera, if such examination is necessary to rule on the production or admissibility of protected records or communications

(4) Any production or disclosure permitted by the military judge under this rule must be narrowly tailored to only the specific records or communications, or portions of such records or communications, that meet the requirements for one of the enumerated exceptions to the privilege under subdivision (d) of this Rule and are included in the stated purpose for which the records or communications are sought under subdivision (e)(1)(A) of this Rule.

Our superior Court in H.V.Z. v. United States, 85 M.J. 8 (C.A.A.F. 2024) provided a brief synopsis of requirements related to mental health records of a patient other than an accused:

When a party seeks an interlocutory ruling from a military judge that places the production or admission of mental health records of a patient other than the accused in dispute, the President has promulgated specific procedures in M.R.E. 513(e) to protect the patient's privacy interests. The procedures in M.R.E. 513(e)(1) and M.R.E. 513(e)(2) apply to all instances in which a party seeks the production or admission of a patient's mental health records or communications, while the stricter procedures in M.R.E. 513(e)(3) only apply when the moving party seeks production or admission of mental health records that are protected from disclosure by the psychotherapist-patient privilege in M.R.E. 513(a). Compare M.R.E. 513(e)(1) ("In any case in which the production or admission of records or communications of a patient other than the accused is in dispute"), and M.R.E. 513(e)(2) ("Before ordering the production or admission of evidence of a patient's records or communication"), with M.R.E. 513(e)(3) (addressing "the production or admissibility of *protected* records or communications") (emphasis added)

Id. at 15. CAAF then noted that in HVZ, "only the procedures in M.R.E. 513(e)(1) and M.R.E. 513(e)(2) applied" because "the accused only sought production of H.V.Z.'s nonprivileged mental health records." Id.

As Petitioner highlights in her petition, CAAF did not specifically address Mil. R. Evid. 513(e)(4) in its HVZ opinion. In doing so, as Petitioner further acknowledges, CAAF also did not specifically hold Mil. R. Evid. 513(e)(4) applied to non-privileged records.

However, our sister Court recently determined in a published opinion that it did not. In R.C. v. Hynes, 85 M.J. 678 (A. Ct. Crim. App. 2025), the Army Court of Criminal Appeals (ACCA) stated as follows:

we reject any assertion by [the alleged victim] that the military judge was required to follow the procedures in Mil. R. Evid. 513 (e)(4) (outlining procedures for the release of mental health information pursuant to a military judge determining an enumerated exception exists). Military Rule of Evidence 513(e)(4) is inapplicable as we are not dealing with the release of information under an enumerated exception. The military judge was only seeking to release information which CAAF had already determined merited no privilege (i.e., Mellette records). Stated more simply - there is no need to apply procedures involving an enumerated exception when no privilege existed for the information in the first place.

R.C., 85 M.J. at 685, n. 13.

Analysis

To start, Petitioner does not contest the military judge's ruling that the contested records are not privileged. Thus, the only issue before this Court is whether the military judge clearly and indisputably erred by finding Mil. R. Evid. 513(e)(4) did not apply to non-privileged records. Based on the current state of the law, that answer is no.

Here, as Petitioner openly acknowledges, CAAF has not specifically ruled on the issue. Indeed, the only definitive ruling by CAAF regarding non-privileged material is that Mil. R. Evid. 513(e)(1) and (e)(2) do apply and that Mil. R. Evid. 513(e)(3) does not. However, a sister Court, in a published decision, ruled prior to the military judge's holding in this case that Mil. R. Evid. 513(e)(4) specifically did not apply because "there is no need to apply procedures involving an enumerated exception when no privilege existed for the information in the first place." R.C., 85 M.J. at 685, n. 13.

In her petition, Petitioner does not mention ACCA’s decision or attempt to dispute its holding. Instead, Petitioner makes various arguments as to why Mil. R. Evid. 513(e)(4) should apply to non-privileged records. But, in a best-case scenario for her claim, Petitioner’s arguments highlight this is an unsettled principle of law before our superior Court and certainly one open to interpretation by a military judge.

Here, considering the lack of precedent from CAAF on this issue, Petitioner has failed to show the military judge clearly and indisputably erred in ruling Mil. R. Evid. 513(e)(4) did not apply to non-privileged records, especially considering the military judge’s ruling is backed by a published ACCA opinion definitively holding that same.² Accordingly, this Court should deny her petition.

III.

THE MILITARY JUDGE DID NOT CLEARLY AND INDISPUTABLY ERR WHEN SHE ORDERED MEDICAL TREATMENT FACILITIES TO ANSWER INTERROGATORIES.

Law and Analysis

In a concurring opinion in B.M. v. United States, 84 M.J. 314 (C.A.A.F. 2024), Chief Judge Ohlson wrote “separately to express my thoughts on how military judges, going forward, might address the challenges that arise when a victim's mental health records are at issue.” Id. at 321. Chief Judge Ohlson noted that he was not convinced that the approach of “order[ing] a mental health facility to produce responsive medical records” was “optimal.” Id. at 322. Instead, Chief Judge Ohlson offered alternative approaches – one of which involved a military judge “pos[ing] interrogatories to the psychotherapist that are narrowly tailored to

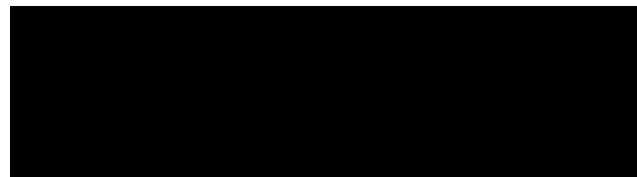
² The Government recognizes the military judge did not cite to R.C. v. Hynes in her ruling. However, the lack of citation does not change the fact that ACCA agrees with her ultimate ruling that non-privileged records are not subject to Mil. R. Evid. 513(e)(4).

elicit information only about the victim's diagnoses, medications, and treatments.” Id. at 323. Chief Judge Ohlson added, “military judges should not hesitate to place the responsibility on the victim, the accused, and the government to take the initiative in finalizing a stipulation of fact or, in the alternative, drafting the order or the interrogatories that are designed to obtain the necessary information from the psychotherapist.” Id.

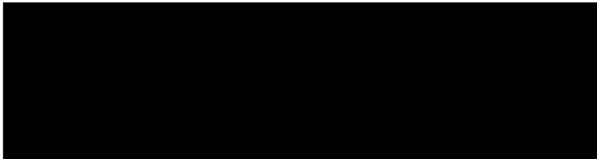
Here, the military judge, citing Chief Judge Ohlson, followed the Chief Judge’s recommendations and ordered interrogatories designed to elicit information about Petitioner’s diagnoses, medications, and treatments. While Petitioner attempts to downplay Chief Judge Ohlson’s recommendations by labeling them “[d]icta in concurring opinions by a singular CAAF judge” that “provides no authority and has zero weight,” the fact remains that the military judge in this case followed the recommendations of the current Chief Judge of our superior Court in ordering the interrogatories in this case. By doing so, the military judge did not clearly and indisputably err in making her ruling, and Petitioner has failed to meet her burden to warrant relief.

CONCLUSION


WHEREFORE, the United States respectfully requests this Honorable Court to deny Petitioner’s petition.



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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, trial counsel, appellate counsel, and the Air Force Appellate Defense Division on 27 February 2026.



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

In re L.B.
Petitioner

PETITIONER'S REPLY TO R.P.I.
AND UNITED STATES' ANSWERS

TSGT IRVIN BRYANT, JR.
11th Mission Support Group
Real Party in Interest

Misc. Dkt. No. 2026-03

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR
FORCE COURT OF CRIMINAL APPEALS

COMES NOW L.B. by and through her undersigned Victims' Counsel (VC), to reply to the answers filed by the United States and the Real Party in Interest consistent with the Order of the Court in the above-captioned case dated February 6, 2026.

ARGUMENT

I

The Military Judge clearly and indisputably erred when she found the requested Protected Health Information was relevant.

L.B. agrees with the R.P.I. that evidence does not need to be admissible at trial to be discoverable evidence under R.C.M. 701¹. However, evidence must still be **relevant** to be discoverable. The R.P.I. conflates admissibility and relevancy. The

¹ Petitioner contends that the protected health information sought is production under R.C.M. 703, as the necessity for compulsory process proves the documents sought are not in the possession, custody, or control of military authorities. Under R.C.M. 703, L.B. would move to quash any compulsory process as unreasonable and oppressive. *See United States v. Nixon*, 418 U.S. 683, 94 S. Ct. 3090 (1974).

R.P.I. argues that L.B. mistakenly relies on the definition of relevance under M.R.E. 401, without offering an alternative definition of relevance for discovery. In fact, the R.P.I. relies on the M.R.E. 401 definition of “relevance” in his motion to compel discovery and again in his motion for reconsideration. *See Attachment B to Petitioner’s Brief*, ¶ 11; *Attachment P to Petitioner’s Brief*, ¶ 15. Relevancy is the threshold issue for both discovery and admissibility arguments². What distinguishes discovery from admissibility is—so long as such evidence is in the possession, custody, or control of military authorities—defense can inspect any evidence it has specifically proffered as relevant its preparation. The R.P.I.’s argument suggests the Military Judge should accredit any speculative argument defense counsel makes for relevancy when deciding what is discoverable, thus swallowing the rule whole and requiring the Government to hunt down and provide any materials the defense counsel so desires. “A request for information under R.C.M. 701(a)(2) must be specific enough that the trial counsel, through the exercise of due diligence, knows where to look (or where to provide the defense access).” *United States v. Hogans*, No. ACM 22091, 2025 CCA LEXIS 19, at *8 (A.F. Ct. Crim. App. Jan. 22, 2025), quoting *United States v. Shorts*, 76 M.J. 523, 535 (A. Ct. Crim. App. 2017); aff’d *United States v. Hogans*, No. 25-0119/AF, 2025 LX 455610 (C.A.A.F. Oct. 1, 2025).

² Relevancy is also a threshold issue in arguments seeking the production of evidence. *See* R.C.M. 703(e)(1).

This Petition seeks redress from the contradictions in the Military Judge's ruling and the omission from the ruling that by a preponderance of the evidence the Military Judge found evidence of L.B.'s diagnoses or treatment plans even exist. The Military Judge indicates a notable uncertainty in what *actually exists* and fails to hold the R.P.I. to his burden on the motion. This is all at the expense of the L.B.'s constitutional and statutory rights to privacy. See U.S. Const. Amend. IV; see also Article 6b(a)(9), U.C.M.J.

II

The Military Judge clearly and indisputably erred when she ordered the disclosure of mental health diagnoses and treatment without first having established an exception under M.R.E. 513(d), as required by M.R.E. 513(e)(4).

To get to his desired conclusion, the R.P.I.'s analysis impermissibly ignores the entire first clause of M.R.E. 513(e)(4), which unambiguously identifies the scope of (e)(4). The first clause of (e)(4) states, "**Any** production or disclosure permitted by the military judge under this rule". The provisions of second clause then establish the requirements imposed for whenever such a disclosure is permitted. There is no way to give subdivision (e)(4) the meaning the R.P.I. suggests without adding terms that are not there or without abandoning the meaning C.A.A.F. gave to the plain language of M.R.E. 513 in its *H.V.Z.* ruling. See 85 M.J. 8, at 16-17.

If *H.V.Z.* is to be followed, then there are two subsets of evidence to which M.R.E. 513 applies: 1) “*Mellette* records”³ that are subject to certain provisions of M.R.E. 513(e), and 2) privileged records that are implicated any time the terms “privileged” or “protected” are used in identifying evidence subject to disclosure or production. *United States v. Mellette*, 82 M.J. 374 (C.A.A.F. 2022); *See also H.V.Z.*.
a. M.R.E. 513(e)(4) applies to **any** production or disclosure of patient records.

The *H.V.Z.* Court concluded that the procedures of M.R.E. 513(e)(1) and (e)(2) applied to *Mellette* records solely because those subdivisions referred to the “production or admission of records or communications of a patient” without any further modification. *See id.* The language in M.R.E. 513(e)(3), however, added the modifier “protected” immediately in front of the term “records or communications” in identifying the evidence governed by subdivision (e)(3). As a result of this modification, C.A.A.F. determined that (e)(3) pertains only to privileged records and not to *Mellette* records. *Id.*

In stark contrast, subdivision (e)(4) identifies the evidence it governs as “**Any** production or disclosure permitted by the military judge under this rule”. According to the C.A.A.F.’s *H.V.Z.* ruling, M.R.E. 513(e)(1) and (e)(2) clearly applies to both *Mellette* records and privileged records. *Id.* Because disclosure of even *Mellette* records is impermissible without satisfying the requirements of subdivisions (e)(1)

³ L.B. adopts the term “*Mellette* records” to reference private—albeit possibly non-privileged—health information that may be contained in medical records that consists of diagnoses, treatments, and prescriptions of a patient.

and (e)(2), the broad inclusive language of (e)(4) necessarily encompasses both types of patient records or communications.

The restrictions articulated in the second clause of (e)(4) do not operate to limit the entire scope of (e)(4) but rather to identify the subset of evidence that can be disclosed or produced from within the larger pool of patient records or communications captured by the first clause. Uniquely, the language of M.R.E. 513(e)(4) operates as a funnel that initially encompasses “*Any*” patient records a military judge might disclose or produce under M.R.E. 513 at the broad end, and at the narrow end permitting the disclosure or production of only those records that meet an exception under subdivision (d) and that fall within the stated purpose under subdivision (e)(1)(A).

Next, the R.P.I. compares the application of subdivision (e)(4) to *Mellette* records with analyzing non-hearsay under hearsay exception rules, however this is inapposite because under *H.V.Z. C.A.A.F.* clearly established that the use of certain words necessarily results in the applicability of M.R.E. 513 to *Mellette* records. *Id.* Those words are, “records or communications” which, when not qualified by the word “protected”, unequivocally include all patient mental health records. *Id.*

The procedures in M.R.E. 513(e)(1) and M.R.E. 513(e)(2) apply to *all* instances in which a party seeks the production or admission of a patient’s mental health records or communications, while the stricter procedures in M.R.E. 513(e)(3) only apply when the moving party seeks production or admission of mental health records that are protected from disclosure by the psychotherapist-patient privilege in M.R.E. 513(a). *Compare* M.R.E. 513(e)(1) (“In any case in which the production or admission of records or communications of a patient other than the accused is in dispute . . .”), *and* M.R.E. 513(e)(2) (“Before ordering the production or admission of evidence of a patient’s records or

communication . . ."), with M.R.E. 513(e)(3) (addressing "the production or admissibility of *protected* records or communications") (emphasis added). In this case, because the accused only sought production of H.V.Z.'s nonprivileged mental health records, only the procedures in M.R.E. 513(e)(1) and M.R.E. 513(e)(2) applied.

Id. (emphasis in the original). As established *supra*, the R.P.I. incorrectly attempts to reverse the orientation of the funnel and only allow into subdivision (e)(4) records that are already protected by the privilege, contrary to the clear inclusive language of the rule.

Both the R.P.I. and the Government cite to a footnote in an Army Court of Criminal Appeals case and suggest that the discussion in said footnote constitutes the holding of that court. *R.C. v. Hynes*, 85 M.J. 678, 685 n.13 (A. Ct. Crim. App. 2025). Even if included in the actual written opinion, the footnote would be dicta, because the discussion was not necessary to reach that court's decision. *See id.* The *R.C.* court found that Executive Order 14,130 did not make the psychotherapist-patient privilege apply to *Mellette* records. *Id.* At 683. That court also found that the military judge did not err in following M.R.E. 513 subdivisions (e)(1) and (e)(2) by reviewing privileged mental health records and sorting out which parts would constitute *Mellette* records for disclosure without an in camera review under subdivision (e)(3). *Id.* at 684. M.R.E. 513(e)(4) was not referenced or cited to once in the body of the opinion, and the *R.C.* court did not go any further than the *H.V.Z.* Court did in establishing that subdivision (e)(3) only applies to records or communications that are "protected". *See Id.*

Furthermore, the Army Court of Criminal Appeals' footnote discussion was erroneous because the premise of its reasoning was that "C.A.A.F. had already determined [*Mellette* records] merited no privilege." *R.C. v. Hynes*, 85 M.J. 678, 685 n.13 (A. Ct. Crim. App. 2025). C.A.A.F., however, explicitly stated the opposite in its *Mellette* ruling: "It is worth emphasizing that this conclusion is not based on our views on the proper scope of the patient-psychotherapist privilege". 82 M.J. 374, at 380. C.A.A.F. articulated in *Mellette* that it took no position on which records "merited" the privilege. *Id.* The ruling of *Mellette* and that of *H.V.Z.* was strictly based on the text of M.R.E. 513. *Id.* Based on the meaning C.A.A.F. has given to the operative words at issue, M.R.E. 513(e)(4), like subdivisions (e)(2) and (e)(3), necessarily must "apply to *all* instances in which a party seeks the production or admission of a patient's mental health records or communications". *See* 85 M.J. 8, at 18-19. (Emphasis in the original).

Compared to the footnote in *R.C.*, the dissenting opinion in *Mellette*, authored by Judge Maggs and joined by Judge Sparks, is far more persuasive in putting M.R.E. 513(e)(4) into its proper context. Their reasoning underscores the necessity of giving subdivision (e)(4) its plain meaning without adding text that is not there or ignoring the entire first clause. The essence of Judge Maggs and Judge Sparks' rationale is that treatment and diagnoses kept by psychotherapists for the purpose of mental health treatment cannot be segregated and pierced without compromising the integrity of the privilege itself. *See Mellette*, 82 M.J. 374, 385. (Maggs, G., dissenting).

Much like a nonverbatim summary or recollection, a diagnosis or treatment also may provide some evidence of what a patient confidentially told the psychotherapist or what the psychotherapist confidentially told the patient for the purpose of treating the patient's mental condition. As a U.S. district court explained in *Stark v. Hartt Transportation Systems, Inc.*, "[a] person's mental health diagnoses and the nature of his or her treatment inherently reveal something of the private, sensitive concerns that led him or her to seek treatment and necessarily reflect, at least in part, his or her confidential communications to the psychotherapist." 937 F. Supp. 2d 88, 91 (D. Me. 2013); see also *H.V. v. Kitchen*, 75 M.J. at 719 (citing and following *Stark*). Or as another U.S. district court explained in *United States v. White*, "[a] party armed with knowledge of a patient's diagnosis will be able to make an educated guess about the substance [**33] of the communications that gave rise to the diagnosis." Criminal Action No. 2:12-cr-00221, 2013 U.S. Dist. LEXIS 49426, at *23, 2013 WL 1404877, at *7 (S.D.W.Va. Apr. 5, 2013), *rev'd sub nom. Kinder v. White*, 609 F. App'x 126, 131 (4th Cir. 2015) (agreeing with the trial court that the records of a diagnosis were privileged but overruling its determination that an exception to the privilege applied). In other words, disclosing a diagnosis or a treatment may reveal what the patient said to the psychotherapist or what the psychotherapist said to the patient for the purpose of facilitating treatment of the patient's mental condition.

Id. (emphasis in the original).

This rationale tracks human experience and clearly articulates why limiting the disclosure of *Mellette* records to those that qualify under an exception under subdivision (d) is so vital to the confidential therapeutic relationships that M.R.E. 513 is designed to protect. It also provides a more complete analytical framework behind the President's decision to make the restrictions of M.R.E. 513(e)(4) apply to "**Any** production or disclosure permitted by the military judge" within the broader scope of M.R.E. 513.

Additionally, Judge Maggs and Judge Sparks presciently anticipated a critical failure in that *Mellette* records "...would not be 'reasonably segregable from

records of communications between [the victim] and her mental health providers’.” *Id.* at 386. As the *R.C.* case shows, even the mechanical process of separating diagnoses and treatment information from other patient records is highly problematic. The military judge in *R.C.* twice attempted to direct the custodian of the records to only disclose *Mellette* records and both times received material that was still considered privileged. 85 M.J. 678, at 680. The judge was ultimately left in the difficult position of determining what was privileged among the mental health records submitted and having to sua sponte seal privileged material against further disclosure. *Id.*

Even when *Mellette* records can be separated out mechanically, Judge Maggs and Judge Sparks point out that there is no way to effectively determine when they may or may not actually constitute a memorialization of a therapist-patient communication. 82 M.J. 374, at 386. The impossibility of such a task provides the clearest reason why the President made no such distinction when drafting M.R.E. 513(e)(4) to apply to “Any production or disclosure permitted by the military judge” under M.R.E. 513, and to then funnel disclosure and production of such evidence down to only that evidence which meets an exception under subdivision (d).

Regarding his reference to the 2014 N.D.A.A. and the corresponding Executive Order, the R.P.I. relies upon selective logic and misappropriated legislative intent to supersede the clear text of M.R.E. 513(e)(4). The legislative history argument is essentially the same as the R.P.I.’s flawed assertion that, because subdivision (e)(4) restricts disclosures to exceptions under subdivision (d),

that (e)(4) in its entirety can only apply to privileged evidence notwithstanding its inclusive language to the contrary. Thus, the R.P.I.'s citation to additional instances of the term "privilege" in non-applicable subsections of Sec. 537 of the 2014 N.D.A.A., does not fill the logical hole created by the broadly inclusive language of the first clause of subdivision (e)(4). This is particularly true because the language of the relevant portion of Sec. 537 of the 2014 N.D.A.A. is consistent with the language of (e)(4) as it exists today.

Furthermore, the 2014 N.D.A.A. clearly operated to strengthen the patient-psychotherapist privilege by expanding its scope to other licensed mental health professionals, eliminating the constitutional exception, and increasing the requirements for those seeking production or disclosure of patients "records or communications". 113 P.L. 291; 2014 Enacted H.R. 3979; 113 Enacted H.R. 3979; 128 Stat. 3292. Thus, it is absurd to suggest that Congress had a simultaneously contradictory intent to weaken the privilege by introducing a loophole through which patient confidentiality could be routinely violated. Congressional intent, therefore, to the extent that it can be ascertained and to the extent that it bears on the issue, more clearly supports the inclusive language of subdivision (e)(4) to provide patients with a more complete privilege.

Unlike the R.P.I., however, C.A.A.F. declined to engage in the exercise of extracting intent from legislative history. Instead, the *Mellette* Court ruled that the psychotherapist-client privilege does not apply to medications and diagnoses entirely because of the President's word choice in crafting M.R.E.513(a). See 82 M.J.

374, at 380. Again, C.A.A.F. expressed that it took no position on what the proper scope of the privilege should be. *Id.* If the President wanted subdivision (e)(4) to apply only to the production or disclosure of “protected records or communications”, then the President could have easily drafted (e)(4) to accomplish this by employing words similar to those used in subdivision (e)(3).

For example, a hypothetical version of (e)(4) that comports with the R.P.I.’s interpretation and with the framework established under *Mellette* and *H.V.Z.* could use language such as “**Any** production or disclosure of *protected records or communications* permitted by the military judge under this rule...”. To conform to the textually rigorous standard set forth in *Mellette* and *H.V.Z.*, however, 513(e)(4) must be interpreted as it is currently written. The requirements under (e)(4), by its plain terms, must be applied broadly to “**Any** production or disclosure permitted by the military judge under this rule” – Military Rule of Evidence 513.

b. For equal protection under the law for L.B., the common law privilege referenced in *Jaffee* must apply at courts-martial.

Finally, the R.P.I.’s citation to *United States v. Rodriguez*, 54 M.J. 156, 161 (C.A.A.F. 2000) for the proposition that *Jaffee v. Redmond*, 518 U.S. 1 (1996) does not apply to courts-martial is misplaced. *Rodriguez* was decided on September 25, 2000. The *Rodriguez* Court relied on the pre-M.R.E. 513 language of the 1998 Manual for Courts-Martial to determine whether *Jaffee* could create a new privilege in the military. 54 M.J. 156, 157 (C.A.A.F. 2000). M.R.E. 501(d) specifically precluded the acknowledgement of a privilege based on the professional services of a medical officer or physician. *Id.* at 160. On *that* basis, the *Rodriguez* Court held that

Jaffee could not be used to create a new patient-psychotherapist privilege prior to the President's promulgation of M.R.E. 513. *Id.*

In the case at bar, L.B. is not trying to create a new privilege by citing to common law but rather uses *Jaffee* to identify the foundational common law principles of the patient-therapist privilege. Contrary to the R.P.I.'s argument, nowhere in the *Rodriguez* opinion does it suggest that the Supreme Court's ruling in *Jaffee* cannot be used to better understand the underlying common law principles driving the need for a complete patient-psychotherapist privilege. In fact, the *Rodriguez* Court cited to *Jaffee* in a similar way when it stated that "the President established Mil. R. Evid. 513 as a separate rule from Mil. R. Evid. 501(d), creating a limited psychotherapist privilege, 'based on the social benefit of confidential counseling recognized by *Jaffee*.' 64 Fed. Reg. 55122 (Drafters' Analysis of Mil. R. Evid. 513)." *Id.*

As *Rodriguez* shows, *Jaffee* cannot be used to contradict express terms of the Military Rules of Evidence, but it can be used to better understand why the President established M.R.E. 513 in the first place. *Id.* M.R.E. 501(a)(5) also expressly allows for reliance upon federal common law principles in the exercise of privileges so long as those principles are consistent with the Uniform Code of Military Justice, the Military Rules of Evidence, and the Manual for Courts-Martial. The common law principles laid out in *Jaffee* were a driving force behind the President's promulgation of M.R.E. 513 and should therefore be considered as part of the context of the privilege as it exists today.

For the foregoing reasons, the military judge clearly and indisputably erred because she failed to acknowledge, as did the military judge in *H.V.Z.*, those provisions of M.R.E. 513(e) that require the inclusion of all patient records or communications.

III

The Military Judge clearly and indisputably erred when devising extra-jurisdictional compulsory process purporting to order medical treatment facilities—fixed buildings—to answer interrogatories without adhering to the requirements and limitations of a deposition.

C.A.A.F. has observed that there are “hierarchical sources of rights” in the military justice system, including the Constitution, federal statutes, Executive Orders, Department of Defense Directives, service directives, and federal common law. *United States v. Lopez*, 35 M.J. 35, 39 (CMA 1992). “Normal rules of statutory construction provide that the highest source authority will be paramount, unless a lower source creates rules that are constitutional and provide greater rights for the individual.” *Id.* In *United States v. Czeschin*, C.A.A.F. explains this hierarchy. “We noted that the President has express authority under Article 36(a), UCMJ, 10 USC § 836(a), to promulgate the rules of procedure and evidence set forth in Parts II and III of the Manual for Courts-Martial.” 56 M.J. 346, 348-49 (C.A.A.F. 2002). The Rules for Courts-Martial are Part II of the Manual, and the President has promulgated rules for interrogatories at R.C.M. 702.

a. A concurring opinion does not provide the Military Judge authority to order third parties to create discoverable materials.

Both the Government and the R.P.I. argue the Military Judge's adherence to Judge Kevin Ohlson's concurring opinion in *B.M. v. United States* renders her ruling not clearly and indisputably erroneous. 84 M.J. 314 (C.A.A.F. 2024).

However, a concurring, advisory opinion from a C.A.A.F. judge musing guidance to address the "challenges that arise when a victim's mental health records are at issue" is not law, but dicta. *Id.* At 321 (Ohlson, C.J., concurring). "[D]icta involves the consideration of 'abstract and hypothetical situations not before [the court].'"

United States v. Flanner, 85 M.J. 163, 174 (C.A.A.F. 2024) (quoting *Bohannon v. Doe*, 527 F. App'x 283, 300 (5th Cir. 2013) (quoting *Connecticut v. Doehr*, 501 U.S. 1, 30, 111 S. Ct. 2105, 115 L. Ed. 2d 1 (1991) (Rehnquist, C.J., concurring))). The Supreme Court has explained:

It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought *not to control the judgment* in a subsequent suit when the very point is presented for decision.

Cohens v. Virginia, 19 U.S. 264, 399, 5 L. Ed. 257 (1821) (emphasis added). Here, it was twice brought to the Military Judge's attention the law on interrogatories was R.C.M. 702 and Article 49, but she chose to ignore that and rely on dicta in a concurrence. *See Attachments T, V, W, and Y to Petitioner's Brief.*

Further, although the Military Judge cites Judge Ohlson's concurring opinion in her Ruling, she does not actually follow Judge Ohlson's recommendation. Judge

Ohlson’s parenthetical recommended to “pose interrogatories to the⁴ psychotherapist,” but here, the Military Judge has ordered four military treatment facilities—not specific witnesses—to answer interrogatories. *Id.* (Ohlson, C.J., concurring). Judge Ohlson’s concurring opinion considers and identifies the appropriate witness with personal knowledge to answer interrogatories—as a substitute to testimony—which the Military Judge did not do here. Judge Ohlson also does not provide what legal authority he was considering when drafting his recommendations. This poses the question: Is Judge Ohlson referring to interrogatories in the context of R.C.M. 702? In fact, Judge Ohlson’s reference to interrogatories makes sense only if he was calling for a written deposition as provided for in R.C.M. 702.

b. R.C.M. 701(g) does not provide the Military Judge authority to order third parties to create discoverable materials.

It must be emphasized again in this Reply that “[t]he military judge may, *consistent with [R.C.M. 701], specify the time, place, and manner of making discovery and may prescribe such terms and conditions as are just.*” R.C.M. 701(g)(1) (emphasis added). The R.P.I. heavily relies on the word “manner” as a basis for the Military Judge’s authority to order third parties to create discoverable materials without addressing how such order is consistent with the entirety of

⁴ As Merriam-Webster’s online dictionary highlights “the” is the “definite article.” An article “used as a function word to indicate that a following noun or noun equivalent is definite or has been previously specified by context or by circumstance.” *The*, Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/the> (last visited Mar. 5, 2026).

R.C.M. 701. The Government's obligations consist of permitting the defense to "inspect any books, papers, documents, data, photographs, tangible objects, buildings, or places, or copies of portions of these items, if the item is within the possession, custody, or control of military authorities and— (i) the item is relevant to defense preparation." R.C.M. 701(a)(2)(A)(i). Nowhere in R.C.M. 701 does it permit the defense to request the creation of discovery, nor does it require the Government to create discoverable materials. R.C.M. 701 does not even in plain language entitle the defense to *copies* of books, papers, documents, etc. Thus, it is consistent with the rule for the military judge to specify the manner the defense can *inspect* the evidence, and nothing more. The Military Judge cannot direct the inspection of evidence that does not exist.

Further, R.C.M. 701 is a rule governing the Government and Defense's obligations, **not third parties**⁵. Thus, the Military Judge cannot stand on the foundation of R.C.M. 701(g) for authority to order third parties to act, especially civilians and entities not subject to the jurisdictional provisions of Article 2 of the UCMJ. To find a military judge's authority over third parties, one must look to R.C.M. 703⁶.

⁵ "For given its natural meaning, the power granted Congress "To make Rules" to regulate "the land and naval Forces" would seem to restrict court-martial jurisdiction to persons who are actually members or part of the armed forces." *United States ex rel. Toth v. Quarles*, 350 U.S. 11, 15, 76 S. Ct. 1, 4 (1955). Simply put, courts-martial, and by extension Military Judges, do not have authority over third-parties as the Military Judge has no authority to enforce extra-jurisdictional orders purportedly demanding something of third parties. Military Judges do not have statutory judicial authority over third parties, nor do they have inherent command authority over third parties – R.C.M. 701(g) does not confer such authority.

⁶ Under R.C.M. 703, the military judge has the authority to subpoena third parties to testify and to produce certain evidence that already exists.

c. Unpublished case law does not provide the Military Judge authority to order third parties to create discoverable materials.

But for the internet, R.P.I. would not have a single citation to a single case referencing the use of interrogatories in the military justice system. However, they do, which leads them to cite to two unpublished United States Navy-Marine Corps Court of Criminal Appeals opinions. Not only are these cases not binding precedent, the R.P.I.'s reliance on such cases is misplaced.

The first case the R.P.I. mistakenly relies on is *United States v. Jiles*. No. NMCCA 201200062, 2014 CCA LEXIS 151 (N-M Ct. Crim. App. Mar. 6, 2014). In that case, appellant raised an issue of unlawful command influence (UCI) over his case by the Commandant of the Marine Corps., referring to statements the Commandant made during the "Heritage Brief." *Id.* at 3. "In order to discern the Commandant's intent behind some statements he made during the Heritage Brief, the military judge ordered that interrogatories be prepared and served on the Commandant." *Id.* At no point does the case imply that the ordered interrogatories were under the authority of R.C.M. 701(g).

Similarly, in the second case the R.P.I. mistakenly relies on, interrogatories were served on a **witness**, not a fixed facility. *United States v. McAlister*, NMCM 99 01173, 2000 CCA LEXIS 214, 10 (N-M Ct. Crim. App. Sep. 29, 2000). Again, the interrogatories were meant to inquire into an individual's personal knowledge regarding UCI. *Id.* Also noteworthy, the military judge denied appellant's motion to compel the appearance of Lieutenant General Peter Pace as a witness, finding such

live testimony unnecessary due to the written interrogatories' existence. The unpublished opinion also provides no mention that the interrogatories were ordered by the military judge.

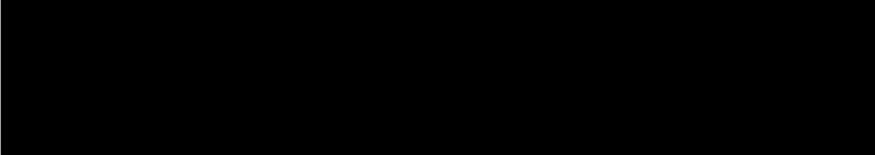
The cases above are also distinguishable from the case before this Court. Here, the Military Judge has not ordered an individual to answer the interrogatories, but medical groups and facilities. No one with personal knowledge of L.B.'s mental health diagnoses and treatment plans were ordered to answer the interrogatories, thus inviting the interrogatories to be answered by an incompetent witness⁷. Further, in *Jiles* and *McAlister*, the interrogatories served as an alternative form of evidence for the military judges to consider when ruling on motions rather than producing two generals for live testimony. Here, the Military Judge's orders were to effectuate a ruling that granted the R.P.I.'s motion to compel discovery of L.B.'s privileged and confidential medical information.

CONCLUSION

When the military judge has no legal authority to order something, then the standard for a petition for writ of mandamus is clearly met. As the Military Judge invented authority to order fixed facilities to answer questionnaires about L.B. private health information, ignored M.R.E. 513(e)(4), and unreasonably underwrote a Government search through L.B.'s private PHI, writ should issue.

⁷ "A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." M.R.E. 602.

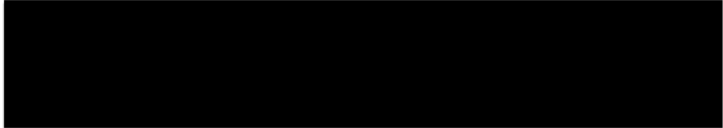
Respectfully submitted this 6th day of March 2026,



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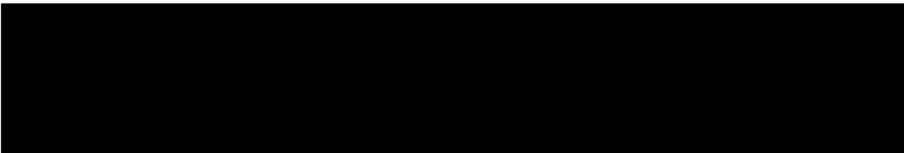
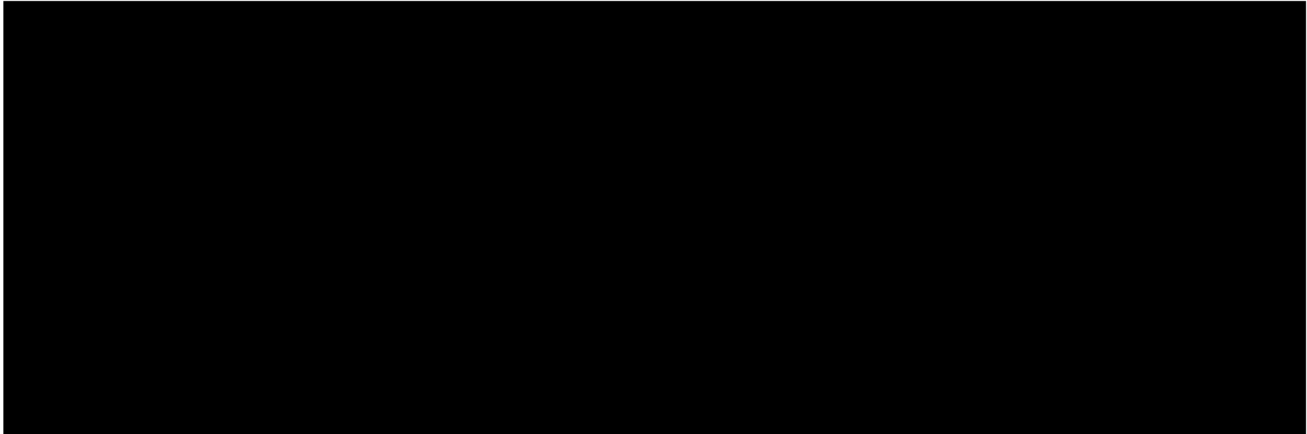
ALICIA M. FERGUSON, Captain, Judge Advocate
Counsel for L.B.
Victims' Counsel
Military Justice and Discipline Directorate
Department of the Air Force



Ohio 101021

CERTIFICATE OF FILING AND SERVICE

I certify that on March 6, 2026, the foregoing was electronically filed
with the Court and served on the following addresses:



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C.A.A.F. Bar Number 37640

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

In re LB)	Misc. Dkt. No. 2026-03
<i>Petitioner</i>)	
)	
)	
)	
Irvin BRYANT, JR.	)	NOTICE OF PANEL
Technical Sergeant (E-6)	)	CHANGE
U.S. Air Force)	
<i>Real Party in Interest</i>)	

It is by the court on this 13th day of March, 2026,

ORDERED:

The record of trial in the above-styled matter is withdrawn from Special Panel and referred to another Special Panel for appellate review.

The Special Panel in this matter shall be constituted as follows:

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge

KEARLEY, CYNTHIA T., Colonel, Appellate Military Judge

KUBLER, JOSEPH J., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.



FOR THE COURT

[Redacted signature block]

AGNIESZKA M. GAERTNER, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

In re LB,	)	REAL PARTY IN INTEREST’S
	)	MOTION FOR LEAVE TO FILE AND
	)	MOTION TO DISMISS PETITION AS
<i>Petitioner,</i>	)	MOOT
)	
	)	Before a Special Panel
Technical Sergeant (E-6))	
Irvin Bryant, Jr.,	)	Misc. Dkt. No. 2026-03
United States Air Force,)	
<i>Real Party in Interest.</i>	)	6 March 2026

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

COMES NOW Real Party in Interest Technical Sergeant (TSgt) Irvin Bryant, Jr., United States Air Force, by and through his undersigned counsel, and, pursuant to Rule 23.3 of this Court’s rules, moves for leave to file this motion and moves to dismiss the Petition as moot.

The Petition arises from a general court-martial scheduled to be tried in the National Capital Region in March 2026. On 27 January 2026, the military judge directed interrogatories to four military medical care organizations: the 20th Medical Group, the 316th Medical Group, the Fort Belvoir Community Hospital, and the Walter Reed Medical Center. Order: Interrog., Jan. 27, 2026, Pet. at 183-195¹ (Attachs. Z–CC). Each of the interrogatories includes a threshold question asking whether records of Petitioner’s medical or mental health diagnoses, prescriptions, and/or treatment exist within her military medical records. *Id.* at 184, 187, 190, 194. The interrogatories then pose eight requests for information. *Id.* The military judge ordered

¹ The Petition itself is unpaginated and its voluminous attachments are not Bates stamped or otherwise sequentially numbered. To help identify the particular page that is being cited, when citing the Petition’s attachments, this motion provides the page number of the PDF on which the cited source appears.

that the responses to the interrogatories be provided to the trial counsel no later than noon on 17 February 2026. *Id.* She subsequently granted additional time to comply.

On 3 February 2026, Petitioner filed a petition for writ of mandamus raising three challenges to those interrogatory orders. *Id.* at 1, 6, 10, 26. First, the Petition argues that the information sought by the interrogatories is irrelevant. *Id.* at 6-9. Second, the Petition argues that the interrogatories require the production or disclosure of mental health information in violation of Military Rule of Evidence 513(e)(4). *Id.* at 10-26. Third, the Petition objects to the military judge’s use of interrogatories as a discovery vehicle. *Id.* at 26-29. For the reasons set out in the Real Party in Interest’s answer filed on 18 February 2026, each of those challenges is without merit. But there is a threshold reason why this Court should deny or dismiss the petition: it is now moot.

The trial counsel has now received and turned over to the defense the interrogatory responses from each of the four military medical care organizations to whom they were addressed. Thus, resolving the Petition’s three challenges to the interrogatories would have no practical consequences. The mandamus Petition is, therefore, moot. *See, e.g., Boston Bit Labs v. Baker*, 11 F.4th 3, 6 (1st Cir. 2021) (“Time and events have overtaken this case, making it (in law-speak) ‘moot.’”); *Citizen Ctr. v. Gessler*, 770 F.3d 900, 909 (10th Cir. 2014) (“A case is prudentially moot if circumstances have changed since the beginning of litigation that forestall any occasion for meaningful relief” (citation modified)); *United States v. Glover*, 377 F. App’x 20, 21 (D.C. Cir. 2010) (“Because the circumstance underlying the merits of their appeal . . . have been overtaken by events, the court dismisses the appeal as moot.”).

Where, as here, a mandamus petition has become moot, the appropriate remedy is to deny or dismiss it. *See, e.g., Moorehead v. Commanding Officer, USS Vulcan*, 26 M.J. 38 (C.M.A.

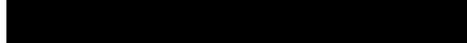
1988) (mem.) (denying mandamus petition as moot); *Thomas v. Cook*, 23 M.J. 258 (C.M.A. 1986) (mem.) (same); *Bergeron v. United States*, 9 M.J. 17 (C.M.A. 1980) (mem.) (same); *Hyre v. Brady*, 3 M.J. 57 (C.M.A. 1977) (mem.) (dismissing petition for writ of habeas corpus, mandamus, and other appropriate relief as moot); *In re Landry*, Misc. Dkt. No. 2025-12, 2025 CCA LEXIS 505, at *2 (A.F. Ct. Crim. App. Nov. 13, 2025) (denying mandamus petition as moot); *Lull v. Brobst*, Misc. Dkt. No. 2018-04, 2018 CCA LEXIS 559, at *12 (A.F. Ct. Crim. App. Dec. 6, 2018) (same).

This Court should, therefore, dismiss the Petition as moot.

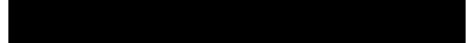
Respectfully submitted,



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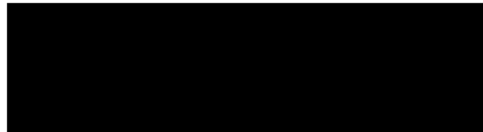
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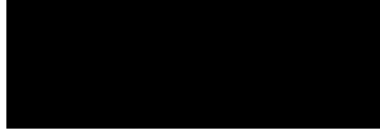


Counsel for Real Party in Interest

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were emailed to the Court, the Air Force Government Trial and Appellate Operations Division, and Petitioner's counsel on 6 March 2026.

Respectfully submitted,



Dwight H. Sullivan
Air Force Appellate Defense Division

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

In re LB

Petitioner

PETITIONER'S OBJECTION TO REAL
PARTY IN INTEREST'S MOTION TO
DISMISS

TSGT IRVIN BRYANT, JR.

11th Mission Support Group

Real Party in Interest

Misc. Dkt. No. 2026-03

COMES NOW S.D. by and through her undersigned Victims' Counsel (VC), to object to Real Party in Interest TSgt Irvin Bryant's Motion to Dismiss.

SUPPLEMENTAL FACTS

Since this Court denied L.B.'s Motion to Stay the Military Judge's extra-jurisdictional order to third parties demanding an unreasonable search of L.B.'s private, protected health information, an unreasonable Government search of L.B.'s medical records took place. L.B. does not seek leave to supplement the record with the questionnaires¹ provided in response to the Military Judge's ruling as adding more protected health information to *this* appellate record is a disservice to L.B. and a violation of her rights. Nevertheless, the questionnaires are consistent with the facts proffered by L.B. that the medical records already disclosed to the United

¹ As both the United States and the RPI agree that these questionnaires presented to third parties are not written depositions – which is what an interrogatory is – L.B. will refer to the forms presented to the third parties as “questionnaires”. The questionnaires are also not sworn, thus cannot be interrogatories. “. . . [A] deposition taken on written interrogatories is a written deposition. Written interrogatories are questions, prepared by the prosecution, defense, or both, which are reduced to writing before submission to a witness whose testimony is to be taken by deposition. *Discussion*, R.C.M. 702 (2024 M.C.M.). It is unclear from all pleadings what statute or Rule of Court-Martial applies to questionnaires created in this case.

States and RPI are the totality of the records, and the Military Judge’s ruling perpetuates harm on L.B. by demanding even more people invade L.B.’s private and protected health information.

ARGUMENT

Since the Military Judge’s ruling still harms L.B. by violating her Constitutional and statutory rights, and this Court can remedy the harm materially altering the situation, L.B.’s petition is not moot.

In *United States v. Napoleon*, the Court of the Appeals of the Armed Forces succinctly stated the mootness doctrine as applies to military justice. “The question whether an issue is moot is a question of law that we review *de novo*. An issue is moot if resolving it 'would not result in 'a material alteration of the situation for the accused or for the Government.’” 46 M.J. 279, 281 (C.A.A.F. 1997) (*quoting United States v. Clay*, 10 M.J. 269 (C.M.A. 1981).) Deciding L.B.’s petition to enforce her rights under Article 6b would “materially alter” her situation.

Article 6b(e)(1) states “[i]f the victim of an offense under this chapter believes that a . . . court-martial ruling violates the rights of the victim afforded by a section (article) . . . the victim may petition the Court of Criminal Appeals for a writ of mandamus to require the . . . court-martial to comply with the section (article) or rule.” Article 6b(e)(1), U.C.M.J. (2025). L.B. seeks a writ of mandamus vacating the Military Judge’s ruling and finding that she has jurisdiction to order third parties to search L.B.’s private, protected health information to answer questionnaires and that those questionnaires are turned over to L.B.’s abuser. L.B. believes the ruling violates her Constitutional right to be free from unreasonable

Government searches; and the ruling defies her statutory rights to be treated with fairness and to respect her privacy and dignity. See U.S. Const. Amend. IV; see also Article 6b(a)(9), U.C.M.J. (2025). L.B. seeks a writ of mandamus vacating the ruling and demanding the Military Judge order the United States and RPI destroy all questionnaires received responding to the Military Judge’s unlawful order. Also L.B. seeks a writ of mandamus prohibiting the questionnaires’ inclusion as an appellate exhibit². Simply put, the court-martial in interest is still ongoing, so this Court can order the court-martial—the Military Judge—to comply with Article 6b.

Furthermore, the United States or RPI can still seek further questionnaires. And, a harm that is susceptible to being repeated is not moot for purposes of seeking a judicial remedy. See *Richmond Newspapers v. Virginia*, 448 U.S. 555, 563 (1980) (“This Court has frequently recognized, however, that its jurisdiction is not necessarily defeated by the practical termination of a contest which is short-lived by nature.”).

RELIEF SOUGHT

Wherefore, L.B. respectfully requests this Court deny RPI Bryant’s motion to dismiss L.B.’s writ-petition to ensure the court-martial complies with Article 6b.

² As there is no mechanism or system that informs crime victims that appellate counsel will be unsealing and examining their often privileged and private information, inclusion in an appellate record violates L.B.’s rights to be treated with fairness and respect for her dignity and privacy.

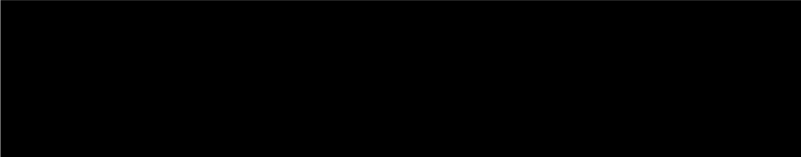
RESPECTFULLY SUBMITTED this 10th day of March, 2026.



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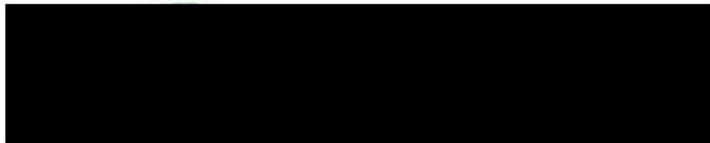
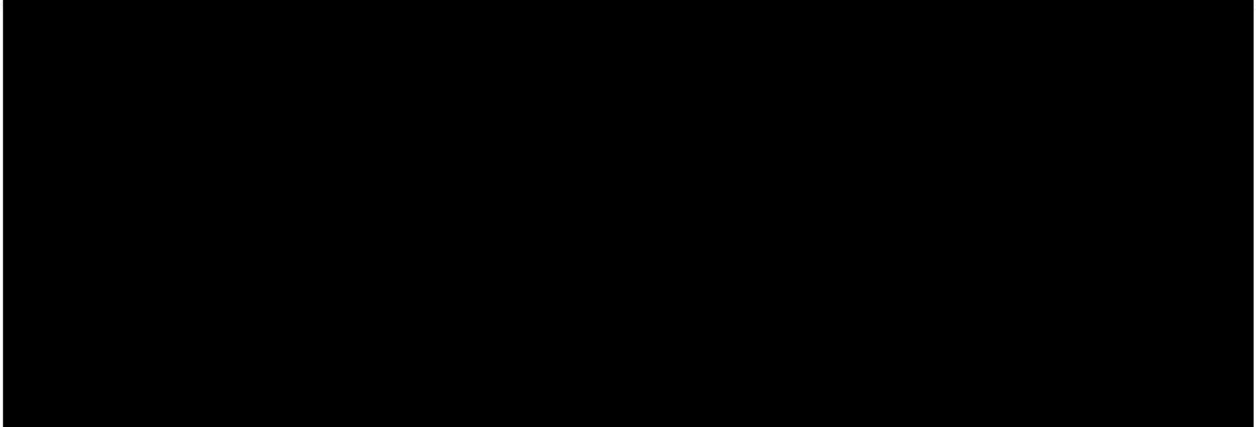
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Department of the Air Force



Ohio 101021

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I certify that on the 10th day of March, 2026 the foregoing was electronically filed with the Court and served on the following addresses:



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