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 PROCEEDINGS** Misc. Dkt. No. 2025-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 proceedings to halt a the currently ongoing court-martial trial – at Joint Base Anacostia-Boling – that will subject her to public humiliation and degradation, violating her right to be treated with fairness and with respect for her privacy and dignity under Article 6b(a)(9), U.C.M.J. (2025). The detailed Military Judge for motions, Lt Col Lauren Torczynski, issued the rulings for which L.B. petitions this Court for relief. The rulings for which L.B. seeks issuance of a writ as the Military Judge clearly and indisputably erred in violating L.B.'s rights are 1) a ruling as to admissibility of evidence subject to the Military Rules for Evidence (hereinafter M.R.E.) 412 procedures issues dated 12 December 2025 (*412 Ruling*,

Attachment Y); 2) a ruling finding L.B.'s private and Protected Health Information[1] (hereinafter "PHI") was in the possession, custody, and control of military authorities and that such PHI was relevant (*PHI Ruling*, Attachment V); and 3) a ruling that L.B. lacked "standing"[2] to motion for a protective order to limit disclosure and dissemination of her private PHI (*Protective Order Ruling*, Attachment X). Moreover, writ should issue as the Military Judge clearly and indisputably failed to exercise her authority to accord and protect L.B.'s rights as is her clear legal duty. L.B. is clearly and indisputably entitled to issuance of a writ of mandamus demanding the Military Judge follow the law and fulfill her duty to make best efforts to accord L.B. her codified and constitutional rights. *See Cheney v. United States Dist. Court*, 542 U.S. 367, 381, 124 S. Ct. 2576, 2587 (2004). ("[T]he petitioner must satisfy the burden of showing that [his] right to issuance of the writ is clear and indisputable." (internal citations and quotations omitted)).

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[1] Protected Health Information is "*Protected health information* means individually identifiable health information:
(1) Except as provided in paragraph (2) of this definition, that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
(2) Protected health information excludes individually identifiable health information: (i) In education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; (ii) In records described at 20 U.S.C. 1232g(a)(4)(B)(iv); (iii) In employment records held by a covered entity in its role as employer; and (iv) Regarding a person who has been deceased for more than 50 years." 45 C.F.R. § 165.103 (2025). Health Information is defined as "*Health information* means any information, including genetic information, whether oral or recorded in any form or medium, that: (1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual."

[2] The Military Judge did not define standing in her ruling finding that L.B. lacked "standing." Standing

L.B. seeks an immediate stay of proceedings until 7 January 2026 to file a brief supplementing this Petition.

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 to Admit M.R.E. 412 Evidence (M.R.E. 412 Motion #1).[3] Attachment B. Specifically, the Defense sought to introduce evidence that [redacted]

[3] [redacted]

[redacted]

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

After the Article 39(a) session on 6 October 2025, the Defense Counsel requested a copy of the audio recording of L.B.'s testimony in preparation for filing a second Motion to Admit M.R.E. 412 Evidence (M.R.E. 412 Motion #2). The Defense filed M.R.E. 412 Motion #2 on 6 November 2025, alleging they received additional evidence and the filing was to [redacted]

The Government and L.B. both filed responses requesting the court deny Defense's M.R.E. 412 Motion #2. Attachment K, L.

A second Article 39(a) session was scheduled for 19 November 2025. After the Government and L.B.'s responses were filed, the Defense requested the production of L.B. to testify at the second Article 39(a) session, which was denied by the Government. The Defense also notified the court of its intent to file a third Motion to Admit M.R.E. 412 Evidence (M.R.E. 412 Motion #3). The Defense requested a continuance of the 19 November 2025 Article 39(a) session to file both a second Motion to Compel Production of L.B. to testify at the Article 39(a) hearing and M.R.E. 412 Motion #3. The continuance was granted at the Article 39(a) hearing and was rescheduled for 5 December 2025.

The Defense filed M.R.E. 412 Motion #3 on 18 November 2025. Attachment M. [redacted] *Id*. The Government and L.B. filed responses objecting to the admission of such evidence. Attachment N, O.

The Defense filed their Second Motion to Compel the Production of the victim at an Article 39(a) session on 2 December 2025. Attachment P. The Government and Victims' Counsel filed responses opposing the motion. Attachment Q, R. The Military Judge denied the Defense's Second Motion to Compel the Production of the victim at the next Article 39(a) session. Attachment S.

The second Article 39(a) session was held on 5 December 2025. The Government, Defense, and L.B., through her VC, presented oral arguments. The Government and Defense also presented additional documentary evidence for the military judge's consideration.

On 6 December 2025, the Defense filed a Motion to Compel Discovery, seeking production of L.B.'s medical records. Specifically, the Defense requested the court compel the Government to produce 1) L.B.'s medical records related to her 18 May 2023 bariatric surgery at Fort Belvoir, Virginia; and 2) any laboratory results, including but not limited to, complete blood count (CBC) to assess potential anemia, platelet count, international normalized ratio (INR) and partial thromboplastin time (PTT) results, and a full chemical panel. The records sought were from six months prior to October 2023 and six months after. Attachment T.

On 8 December 2025, the Government filed its response, opposing the motion. Attachment U. On 9 December 2025, the Military Judge filed her ruling, granting in part, the Defense's motion. Attachment V. On 11 December 2025, the Government obtained L.B.'s medical records and provided them to the Defense. VC requested a copy of those records. VC filed a Motion for Appropriate Relief on 11 December 2025, requesting a protective order for L.B.'s medical records. Attachment W. The Military Judge denied the VC's request stating the VC did not have "standing" to seek a protective order. Attachment X.

On 12 December 2025, the Military Judge provided her ruling on the Defense M.R.E. 412 Motions #1, 2, and 3, granting in part and denying in part. Attachment Y.

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 1) object to and enforce her rights involving reference to and potential admission of sexual conduct protected by the procedures of M.R.E. 412 and not otherwise admissible; 2) to demand reconsideration of the Military Judge's ruling to divulge irrelevant PHI without L.B.'s consent or opportunity to object; and 3) to seek protective orders of her PHI and an acknowledgement of her legal right to demand such orders. 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. VC is expeditiously filing this Petition for a Writ of Mandamus under Article 6b and Motion for Stay but does seek until 7 January 2026 to supplement the Petition with further briefing.

"Interim (interlocutory) appeals . . . do not divest the lower court or convening authority of the authority to continue the case unless the higher court issues a stay of the proceeding or unless a stay is required by operation of a Rule for Courts-Martial or by law. Appellants (or petitioners) are always free to ask the lower court or to petition the appellate court for a stay of the proceeding below, and of course the Government can refrain from continuing the prosecution pending resolution of the interim appeal." *United States v. Boudreaux*, 35 M.J. 291, 295 (C.A.A.F. 1992). "The business of military justice can proceed in an orderly manner. Any party who can demonstrate a potential injury has a remedy. It is titled a Motion for Stay of Proceedings." *Id.* at n.6.

In a concurring opinion in *Boudreaux*, Judge E. Sullivan, using a train and tunnel analogy to describe the jurisdictional hierarchy of military justice, stated

> At oral argument in this case and in other cases over the years, I have described a "tunnel of power" theory to illustrate how the UCMJ was wisely constructed by Congress to give jurisdiction to various authorities during a case's progress through the judicial system. If one with a visual sense looks at how Congress intricately constructed the UCMJ to empower various authorities to exercise jurisdiction or power during the judicial process, you can almost see a tunnel (the trial and appellate process) and a train (an accused's case). As the train enters the beginning of the tunnel, the military judge controls the train (appellant's case) as the train moves through this section at the beginning of the tunnel. In this court-martial section, the military judge, not any other authority, has control or power or jurisdiction over the train (the case). At a certain point the UCMJ provisions allow the train (the case) to move to the next section of the tunnel (the section controlled by the

> convening authority). In this section, only the convening authority has jurisdiction or power over the case.
> [. . .] There are provisions of law where an appellant can get off the train and go to another section of the tunnel and request that the train be moved to another section of the tunnel. For example, a petition under the All Writs Act (28 USC § 1651(a)) can, if successful, allow our Court to move the train right on up to our section of the tunnel.

Id. at 296-97 (Sullivan, E. concurring.)

Congress introduced another train into the scene when codifying victims' rights under Article 6b(a) in the Fiscal Year 2014 National Defense Authorization Act and then enacting the enforcement mechanisms at Article 6b(e)(3) in the Fiscal Year 2016 National Defense Authorization Act. PL 114-92 § 531 (2013). Congress now allows for L.B., as the victim of RPI's crimes, "to move the train right to [A.F.C.C.A.'s] section of the tunnel" to seek enforcement of her rights. *Boudreaux*, 35 M.J. at 297. With the codification of her rights under Article 6b and the provision to seek enforcement of those rights at the A.F.C.C.A., L.B. can only effectuate that right and procedure for enforcement under Article 6b(e) with a granting of a stay. *See Id.* ("A proper request for a stay or a petition under the All Writs Act accompanied by a responsive judicial act could have moved the train to another section of the tunnel.")

Denial of a stay of proceedings leaves L.B. as a train car abandoned without a track. L.B. would suffer irreversible harm without a stay as the trial would move forward and become a forum for her public humiliation and degradation as the RPI puts forth irrelevant and embarrassing information regarding L.B.'s [redacted]

[redacted] along with exposure of her private PHI without basis, thus a clear, irrevocable violation of her rights.

REASONS WHY WRIT SHOULD ISSUE

A. The Military Judge refused to accord and acknowledge L.B.'s rights, ruling certain evidence admissible despite M.R.E. 412, and in doing so used the clearly and indisputably incorrect legal standard.

Military Judges as members of the armed forces are bound to make best efforts to accord victims' rights as mandated by Congress in the 2014 NDAA. Congress mandated that regulations to effectuate Article 6b demanded "[m]echanisms for ensuring that members of the Armed Forces and civilian personnel of the Department of Defense and the Coast Guard make their best efforts to ensure that victims are notified of, and accorded, the rights specified in such section." 2014 NDAA § 1701(b)(2)(B). The Military Judge's ruling does not acknowledge L.B.'s statutory rights.

Federal District Courts unequivocally recognize "the Court has a statutory duty to protect an alleged crime victim's 'right to be treated with fairness and with respect for the victim's dignity and privacy'." *United States v. Maxwell*, 2021 U.S. Dist. LEXIS 240371, at *3 (S.D.N.Y. Dec. 15, 2021) (quoting 18 U.S.C. § 3771(a)(8)). DC District Court agrees, "[r]eflecting these concerns, federal law enumerates the rights of crime victims. They have the right, for example, to 'be reasonably protected from the accused', and to 'be treated with fairness and with respect for [their] dignity and privacy.'" The Court has an obligation to 'ensure that the crime victim is afforded [these] rights.'." *United States v. Dixon*, 355 F. Supp. 3d 1, 5

(D.D.C. 2019)(quoting 18 U.S.C. § 3771). Of note, if the Air Force was not prosecuting this case, the DC District Court would have jurisdiction in this case. In other words, the RPI could be prosecuted in a jurisdiction that recognizes the Court has a duty to L.B.

The Military Judge, moreover, employed the incorrect legal standard as reflected in her M.R.E. 412 ruling wherein she finds the evidence "otherwise admissible" as required in M.R.E. 412(b), "(b) *Exceptions*. In a proceeding, the following evidence is admissible, ***if otherwise admissible under these rules.***" The evidence is not otherwise admissible as it is hearsay and Defense offered no theory of admissibility. See Attachments B, J, and M.

B. Fort Belvoir Hospital [sic][4] is not a military authority; therefore, RPI needed to proffer for production of L.B.'s PHI identifying specific records and that each record was relevant, necessary, material, and admissible as such evidence was only produceable through a subpoena wherein L.B. had the opportunity to quash pursuant to R.C.M. 703(g)(3)(C)(ii).

Fort Belvoir Community Hospital is officially known as the Alexander T. Augusta Military Medical Center (ATAMMC) and is not a military authority as it is "part of the National Capital Region Network, a Defense Health Agency joint-service medical command based in Bethesda, MD." *About Us, Our History,* https://belvoirhospital.tricare.mil/About-Us/Our-History (last visited 15 Dec. 2025). The Defense Health Agency is a Defense Agency as defined in 10 U.S.C. § 1073c (2024). A Defense Agency is "an organizational entity of the Department of Defense--(A) that is established by the Secretary of Defense under section 191 of

[4] Fort Belvoir Community Hospital is now known as Alexander T. Augusta Military Medical Center.

this title [. . .] to perform a supply or service activity common to more than one military department (other than such an entity that is designated by the Secretary as a Department of Defense Field Activity); or (B) that is designated by the Secretary of Defense as a Defense Agency." 10 U.S.C. § 101(a)(11). This case is distinguishable from *H.V.Z.* because the Military Judge in that case ordered records from an Air Force medical group and not from a Defense Health Agency hospital; the C.A.A.F. even declared"[t]o be clear, nothing in this opinion should be construed as definitively holding that the 56 MDG is a military authority for the purposes of R.C.M. 701(a)(2)(A). Rather, we hold only that the military judge did not clearly and indisputably err in finding that the 56 MDG was a military authority in this instance." *H.V.Z. v. United States*, 85 M.J. 8, 14 (C.A.A.F. 2024).

The term "military authorities" has appeared in the instructions for military courts-martial for over 100 years, even before the modern U.C.M.J. The 1918 *A Manual for Courts-Martial* delineates between "civil authorities" and "military authorities" to discern jurisdiction to prosecute.

> 35. Procedure when military and civil jurisdiction concurrent.- Courts martial have exclusive jurisdiction to try persons subject to military law for all purely military crimes and offenses; [. . .] This is, however, not an inflexible rule and need not govern the action of the ***military authorities*** in the case of an accused person demanded by the ***civil authorities*** to answer for an offense which is primarily one against the civil community.

para 35 at 20 (1918) (located https://www.loc.gov/resource/llmlp.manual-1918/). The term "military authorities" is also prevalent and used in many Status of Forces Agreements and Defense Cooperation agreements between the United States and

North Atlantic Treaty Organization (hereinafter "NATO") member states. For example, "United States ***military authorities*** shall assure the appearance of the member of the force or of the civilian component before the Bulgarian authorities in any proceedings that may require the presence of such person." *Bulgaria, Defense: Cooperation; Agreement Between the Government of the United States of America and the Government of the Republic of Bulgaria on Defense Cooperation***,** 2006 U.S.T. LEXIS 138, *18, 2006 U.S.T. LEXIS 138 (2006). The NATO Agreement defines military authorities as "those authorities of a sending State who are empowered by its law to enforce the military law of that State with respect to members of its forces or civilian components." *Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces,* 1951 U.S.T. LEXIS 301, *3, 1951 U.S.T. LEXIS 301 (1951). A sensible reading of the term "military authorities" is that it means "military law enforcement and prosecution" and not the whole the Department of Defense [War].[5]

> Nevertheless, the Military Judge found
>
> > The statutory definition of "Military Departments" only includes the Army, Navy and Air Force. 10 U.S.C. 101(a)(8). The statutory definition of "Defense Agency" means "an organizational entity of the Department of Defense that is established by the Secretary of Defense … to perform a supply or service activity common to more than one military department or that is designated by the Secretary of Defense as a Defense Agency." Nothing in the definition of a Defense Agency excludes

[5] This would make a reading of R.C.M. 701 disclosure obligations consisted with Fed. R. Crim. Pro. 16 and the American Bar Association's Standards for Discovery that define "(h) Possession or control of the prosecution. Something is in the "possession or control of the prosecution" when it is in the possession of the prosecution, any law enforcement agency that has participated in investigating or prosecuting the case, any other individual or entity that has participated in investigating or prosecuting the case at the direction or request of or by agreement with the prosecution or any law enforcement agency in the case." *ABA Standards For Criminal Justice: Discovery*, § 11-1.1 Definitions (2020).

> it from the common definition of "military authorities" and nothing within the definition of "Military Department" makes the Army, Air Force, and Navy the only "military authorities" for purposes of R.C.M. 701. The Defense Health Agency is an authority, within the Department of Defense, which is the executive department responsible for providing military power on behalf of the nation. Indeed, if Defense Agencies were not "military authorities" such obviously military authorities as DFAS, DISA, and DLA would be outside the scope of "military authorities." These are clearly military authorities despite their status as Defense Agencies.

Attachment V at para 21. The Military Judge does not provide "the common definition of 'military authorities'" in her ruling. The Military Judge also does not cite the statutory definition of "military medical treatment facility" at 10 U.S.C. § 1073c(j)(3) stating, "(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 "fixed facility" is not empowered to enforce the law. *See* NATO Treaty, *supra.*

The Military Judge also clearly and indisputably errs as to the law when she identifies Defense Finance and Accounting Service (DFAS), Defense Information System Agency (DISA), and Defense Logistics Agency (DLA) as "military authorities" and equivalent to DHA. With her erroneous legal conclusion, all trial counsel have access – without compulsory process – and an obligation under R.C.M. 701 – to allow defense to inspect the entirety of DFAS, DISA, DHA, and DLA records upon request because something in those records *may be* relevant to defense

preparation.[6] Glaringly absent from the Military Judge's list of Defense Agencies is the Department of Defense Education Agency – DoDEA. This omission is possibly because the legal conclusion that defense counsel can inspect education records of all minor military dependents because a record *may be* relevant to defense preparation is facially ludicrous – clearly and indisputably erroneous. The Military Judge also omits the Defense Intelligence Agency (DIA)[7] from her list of agencies as saying DIA is a military authority would make prosecuting anyone in a court-martial impossible as trial counsel would have an obligation to search through highly classified information. The Military Judge's reasoning means defense counsel can inspect the email records, medical records, and financial records of the Military Judge, potential panel members, and the trial counsel as any evidence of bias would be "relevant to defense preparation." Certainly, this is not what was intended by R.C.M. 701, nor a reasonable conclusion as to what the "common definition of military authorities" entails.

C. The Military Judge clearly and indisputably erred when ruling L.B. did not have standing to seek a protective order from the court-martial over her private PHI as L.B. unquestionably is injured, the court-martial and military judge can redress the invasion of L.B.'s privacy with a protective order, and the Military Judge's ruling to produce L.B.'s PHI caused the invasion of privacy.

"[I]t is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is

[6] As a threshold issue all records of these Agencies are subject – at a minimum – to the Privacy Act preventing access by Air Force employees. 5 U.S.C. § 552a (2025).
[7] "DIA is a Department of Defense combat support agency." *Frequently Asked Questions,* https://www.dia.mil/About/FAQs/ (last visited 16 Dec 2025).

invaded." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803) (internal quotations and citations omitted).

When a right is established by law, there is also a legally justiciable interest established. *See generally Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Standing to pursue a judicial remedy for a violation of one's right is sine qua non to the very existence of a legal right and cannot be alienated from it. *See id.* In other words, there can be no such thing as a legal right if the holder of the right, or their legal representative, has no ability to motion a court of law or a tribunal to seek to remedy the right's violation.

The C.A.A.F. stated in *B.M.*, "[i]n accordance with these principles, this Court only addresses claims raised by parties who can show an injury in fact, causation, and redressability." 84 M.J. 314, 317 (C.A.A.F. 2024) (internal citations and quotations omitted). The standing doctrine for courts-martial – if there should even be one – should mirror the standards of the C.A.A.F. In *B.M.* the C.A.A.F. recognized B.M. had a statutory right to proceedings free from unreasonable delay, but she could not challenge an abatement order because she did not have "a judicially cognizable interest in the ultimate question of whether the government will or will not prosecute the accused." *Id.* at 319 (internal quotations omitted). The C.A.A.F. went on in *B.M.* to expressly adopt the Article III standing requirements as identified in *Lujan*. However, the Military Judge did not conduct this analysis when summarily denying L.B. a protective order over her private PHI. This

omission and determination that L.B. lacked standing to seek a protective order over her PHI is clear and indisputable error.

WHEREFORE, L.B. asks this Court to issue an immediate stay of proceedings and to issue a writ of mandamus declaring inadmissible all information, documents, and communications determined admissible by the Military Judge in her 12 December 2025 Ruling at Attachment Y; order the destruction of all of L.B.'s private PHI that was clearly and erroneously produced consistent with the Military Judge's clearly and indisputably legally erroneous ruling on 9 December 2025 at Attachment V; and to find that L.B. does have standing to seek a protective order in contravention to the Military Judge's 11 December 2025 email ruling clearly and erroneously finding otherwise. L.B. does seek until 7 January 2026 to supplement this Petition with further briefing.

Respectfully submitted this 16th day of December 2025,

[redacted]

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CERTIFICATE OF FILING AND SERVICE

I certify that on December 16, 2025, the foregoing was electronically filed with the Court and served on the following addresses:

[redacted]

DEVON A. R. WELLS, GS-14, DAF CIVILIAN
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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*	**MOTION TO FILE UNDER SEAL** Misc. Dkt. No. 2025-

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 Petition for Relief Pursuant to Article 6b with Motion to Stay Proceedings and its Attachments B-E , J-S, and Y of her Petition for Relief under Article 6b *in the form of a* Writ of Mandamus under seal. All the attachments were ordered sealed by the Military Judge Lieutenant Colonel Lauren Torczynski or must be sealed consistent with Mil. R. Evid. 412. L.B. seeks relief for violations of her rights to be treated with fairness and respect for her dignity and privacy borne out by a rulings find evidence relevant in violations of Mil. R. Evid. 412 procedures and standard. Due to the sensitive, private information contained in the matters she seeks to file 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 and Maj Eric Trudrung as RPI's counsel via DoD SAFE.

Respectfully submitted this 16th day of December 2025.

[redacted]

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CERTIFICATE OF FILING AND SERVICE

I certify that on December 16, 2025, the foregoing was electronically filed with the Court and served on the following addresses:

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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

In re LB	)	**Misc. Dkt. No. 2025-14**
Petitioner	)	
	)	
	)	
	)	
	)	**NOTICE OF**
Irvin BRYANT, JR.	)	**DOCKETING**
Technical Sergeant (E-6)	)	
U.S. Air Force	)	
Real Party in Interest	)	

On 16 December 2025, 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 16th day of December, 2025,

ORDERED:

The case is assigned Misc. Dkt. No. 2025-14 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

[redacted]

JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

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** and **MOTION TO STAY PROCEEDINGS** Misc. Dkt. No. 2025-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 proceedings to halt a the currently ongoing court-martial trial – at Joint Base Anacostia-Boling – that will subject her to public humiliation and degradation, violating her right to be treated with fairness and with respect for her privacy and dignity under Article 6b(a)(9), U.C.M.J. (2025). The detailed Military Judge for motions, Lt Col Lauren Torczynski, issued the rulings for which L.B. petitions this Court for relief. The rulings for which L.B. seeks issuance of a writ as the Military Judge clearly and indisputably erred in violating L.B.'s rights are 1) a ruling as to admissibility of evidence subject to the Military Rules for Evidence (hereinafter M.R.E.) 412 procedures issues dated 12 December 2025 (*412 Ruling*,

Attachment Y); 2) a ruling finding L.B.'s private and Protected Health Information[1] (hereinafter "PHI") was in the possession, custody, and control of military authorities and that such PHI was relevant (*PHI Ruling*, Attachment V); and 3) a ruling that L.B. lacked "standing"[2] to motion for a protective order to limit disclosure and dissemination of her private PHI (*Protective Order Ruling*, Attachment X). Moreover, writ should issue as the Military Judge clearly and indisputably failed to exercise her authority to accord and protect L.B.'s rights as is her clear legal duty. L.B. is clearly and indisputably entitled to issuance of a writ of mandamus demanding the Military Judge follow the law and fulfill her duty to make best efforts to accord L.B. her codified and constitutional rights. *See Cheney v. United States Dist. Court*, 542 U.S. 367, 381, 124 S. Ct. 2576, 2587 (2004). ("[T]he petitioner must satisfy the burden of showing that [his] right to issuance of the writ is clear and indisputable." (internal citations and quotations omitted)).

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[1] Protected Health Information is "*Protected health information* means individually identifiable health information:
(1) Except as provided in paragraph (2) of this definition, that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
(2) Protected health information excludes individually identifiable health information: (i) In education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; (ii) In records described at 20 U.S.C. 1232g(a)(4)(B)(iv); (iii) In employment records held by a covered entity in its role as employer; and (iv) Regarding a person who has been deceased for more than 50 years." 45 C.F.R. § 165.103 (2025). Health Information is defined as "*Health information* means any information, including genetic information, whether oral or recorded in any form or medium, that: (1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual."

[2] The Military Judge did not define standing in her ruling finding that L.B. lacked "standing." Standing

L.B. seeks an immediate stay of proceedings until 7 January 2026 to file a brief supplementing this Petition.

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 to Admit M.R.E. 412 Evidence (M.R.E. 412 Motion #1).[3] Attachment B. Specifically, the Defense sought to introduce evidence that 1) L.B. and the Accused had consensual sex before and after the charged allegations; 2) L.B. and the Accused had consensual anal sex before and after the charged timeframe of Charge I, specification 1; 3) L.B. and the Accused had consensual sex almost every day when they were not separated; 4) L.B. and the Accused had consensual anal sex approximately once a month throughout their relationship and that both L.B. and the Accused were the initiators at various times; 5) L.B. and the Accused had consensual oral sex before and after the charged allegations, including that L.B. performed oral sex on the Accused and the Accused performed oral sex on L.B.; 6)

[3] The Government also filed a Motion to Admit MRE 412 Evidence, requesting the court grant their motion to admit noticed evidence that LB and the Accused engaged in consensual sexual activity throughout their relationship. Attachment C. Victims' Counsel did not object to admission of this proffered evidence, but requested the court to limit the facts to specific instances of sexual behavior with the Accused, permitted under MRE 412(b)(2), to what is minimally necessary to respect LB dignity and privacy. Attachment D. The Defense did not file a response to the Government's Motion. The military judge granted the Government's Motion, however, granted admission of evidence outside the scope of the Government's Motion, finding the Government noticed three separate items and subsequently permitting the Government to admit such items. Attachment E. Although this Petition does not include an assignment of error for this Ruling, it is discussed in this Petition to provide additional context to the miliary judge's ruling on the Defense's Motions to Admit MRE 412 evidence.

the Accused performed oral sex on L.B. almost every time they had sex and that L.B. demanded approximately 30 minutes of consensual foreplay, to include oral sex, before they would engage in vaginal sex; 7) on or about 29 September 2020, the day before L.B. gave birth, she begged the Accused to have sex with her; 8) on or about 1 January 2023, L.B. began having sex with the Accused while asleep; and 9) L.B. has a higher sex drive than the Accused and initiated sex more frequently than the Accused. *Id*.

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

After the Article 39(a) session on 6 October 2025, the Defense Counsel requested a copy of the audio recording of L.B.'s testimony in preparation for filing a second Motion to Admit M.R.E. 412 Evidence (M.R.E. 412 Motion #2). The Defense filed M.R.E. 412 Motion #2 on 6 November 2025, alleging they received additional evidence and the filing was to 1) provide additional evidence in support of the Defense burden on points within M.R.E. 412 Motion #1; and 2) provide evidence necessary to cross-examine L.B. under M.R.E. 608 regarding how the additional evidence contradicts her sworn testimony at the motions hearing. Attachment J.

The Government and L.B. both filed responses requesting the court deny Defense's M.R.E. 412 Motion #2. Attachment K, L.

A second Article 39(a) session was scheduled for 19 November 2025. After the Government and L.B.'s responses were filed, the Defense requested the production of L.B. to testify at the second Article 39(a) session, which was denied by the Government. The Defense also notified the court of its intent to file a third Motion to Admit M.R.E. 412 Evidence (M.R.E. 412 Motion #3). The Defense requested a continuance of the 19 November 2025 Article 39(a) session to file both a second Motion to Compel Production of L.B. to testify at the Article 39(a) hearing and M.R.E. 412 Motion #3. The continuance was granted at the Article 39(a) hearing and was rescheduled for 5 December 2025.

The Defense filed M.R.E. 412 Motion #3 on 18 November 2025. Attachment M. Specifically, the Defense sought to admit evidence that L.B. and the Accused's consensual sexual conduct included him ejaculating on L.B.'s body, face, and/or in her mouth as a common practice. *Id*. The Government and L.B. filed responses objecting to the admission of such evidence. Attachment N, O.

The Defense filed their Second Motion to Compel the Production of the victim at an Article 39(a) session on 2 December 2025. Attachment P. The Government and Victims' Counsel filed responses opposing the motion. Attachment Q, R. The Military Judge denied the Defense's Second Motion to Compel the Production of the victim at the next Article 39(a) session. Attachment S.

The second Article 39(a) session was held on 5 December 2025. The Government, Defense, and L.B., through her VC, presented oral arguments. The Government and Defense also presented additional documentary evidence for the military judge's consideration.

On 6 December 2025, the Defense filed a Motion to Compel Discovery, seeking production of L.B.'s medical records. Specifically, the Defense requested the court compel the Government to produce 1) L.B.'s medical records related to her 18 May 2023 bariatric surgery at Fort Belvoir, Virginia; and 2) any laboratory results, including but not limited to, complete blood count (CBC) to assess potential anemia, platelet count, international normalized ratio (INR) and partial thromboplastin time (PTT) results, and a full chemical panel. The records sought were from six months prior to October 2023 and six months after. Attachment T.

On 8 December 2025, the Government filed its response, opposing the motion. Attachment U. On 9 December 2025, the Military Judge filed her ruling, granting in part, the Defense's motion. Attachment V. On 11 December 2025, the Government obtained L.B.'s medical records and provided them to the Defense. VC requested a copy of those records. VC filed a Motion for Appropriate Relief on 11 December 2025, requesting a protective order for L.B.'s medical records. Attachment W. The Military Judge denied the VC's request stating the VC did not have "standing" to seek a protective order. Attachment X.

On 12 December 2025, the Military Judge provided her ruling on the Defense M.R.E. 412 Motions #1, 2, and 3, granting in part and denying in part. Attachment Y.

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 1) object to and enforce her rights involving reference to and potential admission of sexual conduct protected by the procedures of M.R.E. 412 and not otherwise admissible; 2) to demand reconsideration of the Military Judge's ruling to divulge irrelevant PHI without L.B.'s consent or opportunity to object; and 3) to seek protective orders of her PHI and an acknowledgement of her legal right to demand such orders. 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. VC is expeditiously filing this Petition for a Writ of Mandamus under Article 6b and Motion for Stay but does seek until 7 January 2026 to supplement the Petition with further briefing.

"Interim (interlocutory) appeals . . . do not divest the lower court or convening authority of the authority to continue the case unless the higher court issues a stay of the proceeding or unless a stay is required by operation of a Rule for Courts-Martial or by law. Appellants (or petitioners) are always free to ask the lower court or to petition the appellate court for a stay of the proceeding below, and of course the Government can refrain from continuing the prosecution pending resolution of the interim appeal." *United States v. Boudreaux*, 35 M.J. 291, 295 (C.A.A.F. 1992). "The business of military justice can proceed in an orderly manner. Any party who can demonstrate a potential injury has a remedy. It is titled a Motion for Stay of Proceedings." *Id.* at n.6.

In a concurring opinion in *Boudreaux*, Judge E. Sullivan, using a train and tunnel analogy to describe the jurisdictional hierarchy of military justice, stated

> At oral argument in this case and in other cases over the years, I have described a "tunnel of power" theory to illustrate how the UCMJ was wisely constructed by Congress to give jurisdiction to various authorities during a case's progress through the judicial system. If one with a visual sense looks at how Congress intricately constructed the UCMJ to empower various authorities to exercise jurisdiction or power during the judicial process, you can almost see a tunnel (the trial and appellate process) and a train (an accused's case). As the train enters the beginning of the tunnel, the military judge controls the train (appellant's case) as the train moves through this section at the beginning of the tunnel. In this court-martial section, the military judge, not any other authority, has control or power or jurisdiction over the train (the case). At a certain point the UCMJ provisions allow the train (the case) to move to the next section of the tunnel (the section controlled by the

> convening authority). In this section, only the convening authority has jurisdiction or power over the case.
> [. . .] There are provisions of law where an appellant can get off the train and go to another section of the tunnel and request that the train be moved to another section of the tunnel. For example, a petition under the All Writs Act (28 USC § 1651(a)) can, if successful, allow our Court to move the train right on up to our section of the tunnel.

Id. at 296-97 (Sullivan, E. concurring.)

Congress introduced another train into the scene when codifying victims' rights under Article 6b(a) in the Fiscal Year 2014 National Defense Authorization Act and then enacting the enforcement mechanisms at Article 6b(e)(3) in the Fiscal Year 2016 National Defense Authorization Act. PL 114-92 § 531 (2013). Congress now allows for L.B., as the victim of RPI's crimes, "to move the train right to [A.F.C.C.A.'s] section of the tunnel" to seek enforcement of her rights. *Boudreaux*, 35 M.J. at 297. With the codification of her rights under Article 6b and the provision to seek enforcement of those rights at the A.F.C.C.A., L.B. can only effectuate that right and procedure for enforcement under Article 6b(e) with a granting of a stay. *See Id.* ("A proper request for a stay or a petition under the All Writs Act accompanied by a responsive judicial act could have moved the train to another section of the tunnel.")

Denial of a stay of proceedings leaves L.B. as a train car abandoned without a track. L.B. would suffer irreversible harm without a stay as the trial would move forward and become a forum for her public humiliation and degradation as the RPI puts forth irrelevant and embarrassing information regarding L.B.'s sexual

demeanor and conduct along with exposure of her private PHI without basis, thus a clear, irrevocable violation of her rights.

REASONS WHY WRIT SHOULD ISSUE

A. The Military Judge refused to accord and acknowledge L.B.'s rights, ruling certain evidence admissible despite M.R.E. 412, and in doing so used the clearly and indisputably incorrect legal standard.

Military Judges as members of the armed forces are bound to make best efforts to accord victims' rights as mandated by Congress in the 2014 NDAA. Congress mandated that regulations to effectuate Article 6b demanded "[m]echanisms for ensuring that members of the Armed Forces and civilian personnel of the Department of Defense and the Coast Guard make their best efforts to ensure that victims are notified of, and accorded, the rights specified in such section." 2014 NDAA § 1701(b)(2)(B). The Military Judge's ruling does not acknowledge L.B.'s statutory rights.

Federal District Courts unequivocally recognize "the Court has a statutory duty to protect an alleged crime victim's 'right to be treated with fairness and with respect for the victim's dignity and privacy'." *United States v. Maxwell*, 2021 U.S. Dist. LEXIS 240371, at *3 (S.D.N.Y. Dec. 15, 2021) (quoting 18 U.S.C. § 3771(a)(8)). DC District Court agrees, "[r]eflecting these concerns, federal law enumerates the rights of crime victims. They have the right, for example, to 'be reasonably protected from the accused', and to 'be treated with fairness and with respect for [their] dignity and privacy.'" The Court has an obligation to 'ensure that the crime victim is afforded [these] rights.'." *United States v. Dixon*, 355 F. Supp. 3d 1, 5

(D.D.C. 2019)(quoting 18 U.S.C. § 3771). Of note, if the Air Force was not prosecuting this case, the DC District Court would have jurisdiction in this case. In other words, the RPI could be prosecuted in a jurisdiction that recognizes the Court has a duty to L.B.

The Military Judge, moreover, employed the incorrect legal standard as reflected in her M.R.E. 412 ruling wherein she finds the evidence "otherwise admissible" as required in M.R.E. 412(b), "(b) *Exceptions*. In a proceeding, the following evidence is admissible, ***if otherwise admissible under these rules.***" The evidence is not otherwise admissible as it is hearsay and Defense offered no theory of admissibility. See Attachments B, J, and M.

B. Fort Belvoir Hospital [sic][4] is not a military authority; therefore, RPI needed to proffer for production of L.B.'s PHI identifying specific records and that each record was relevant, necessary, material, and admissible as such evidence was only produceable through a subpoena wherein L.B. had the opportunity to quash pursuant to R.C.M. 703(g)(3)(C)(ii).

Fort Belvoir Community Hospital is officially known as the Alexander T. Augusta Military Medical Center (ATAMMC) and is not a military authority as it is "part of the National Capital Region Network, a Defense Health Agency joint-service medical command based in Bethesda, MD." *About Us, Our History,* https://belvoirhospital.tricare.mil/About-Us/Our-History (last visited 15 Dec. 2025). The Defense Health Agency is a Defense Agency as defined in 10 U.S.C. § 1073c (2024). A Defense Agency is "an organizational entity of the Department of Defense--(A) that is established by the Secretary of Defense under section 191 of

[4] Fort Belvoir Community Hospital is now known as Alexander T. Augusta Military Medical Center.

this title [. . .] to perform a supply or service activity common to more than one military department (other than such an entity that is designated by the Secretary as a Department of Defense Field Activity); or (B) that is designated by the Secretary of Defense as a Defense Agency." 10 U.S.C. § 101(a)(11). This case is distinguishable from *H.V.Z.* because the Military Judge in that case ordered records from an Air Force medical group and not from a Defense Health Agency hospital; the C.A.A.F. even declared"[t]o be clear, nothing in this opinion should be construed as definitively holding that the 56 MDG is a military authority for the purposes of R.C.M. 701(a)(2)(A). Rather, we hold only that the military judge did not clearly and indisputably err in finding that the 56 MDG was a military authority in this instance." *H.V.Z. v. United States*, 85 M.J. 8, 14 (C.A.A.F. 2024).

The term "military authorities" has appeared in the instructions for military courts-martial for over 100 years, even before the modern U.C.M.J. The 1918 *A Manual for Courts-Martial* delineates between "civil authorities" and "military authorities" to discern jurisdiction to prosecute.

> 35. Procedure when military and civil jurisdiction concurrent.- Courts martial have exclusive jurisdiction to try persons subject to military law for all purely military crimes and offenses; [. . .] This is, however, not an inflexible rule and need not govern the action of the ***military authorities*** in the case of an accused person demanded by the ***civil authorities*** to answer for an offense which is primarily one against the civil community.

para 35 at 20 (1918) (located https://www.loc.gov/resource/llmlp.manual-1918/). The term "military authorities" is also prevalent and used in many Status of Forces Agreements and Defense Cooperation agreements between the United States and

North Atlantic Treaty Organization (hereinafter "NATO") member states. For example, "United States ***military authorities*** shall assure the appearance of the member of the force or of the civilian component before the Bulgarian authorities in any proceedings that may require the presence of such person." *Bulgaria, Defense: Cooperation; Agreement Between the Government of the United States of America and the Government of the Republic of Bulgaria on Defense Cooperation***,** 2006 U.S.T. LEXIS 138, *18, 2006 U.S.T. LEXIS 138 (2006). The NATO Agreement defines military authorities as "those authorities of a sending State who are empowered by its law to enforce the military law of that State with respect to members of its forces or civilian components." *Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces,* 1951 U.S.T. LEXIS 301, *3, 1951 U.S.T. LEXIS 301 (1951). A sensible reading of the term "military authorities" is that it means "military law enforcement and prosecution" and not the whole the Department of Defense [War].[5]

> Nevertheless, the Military Judge found
>
> > The statutory definition of "Military Departments" only includes the Army, Navy and Air Force. 10 U.S.C. 101(a)(8). The statutory definition of "Defense Agency" means "an organizational entity of the Department of Defense that is established by the Secretary of Defense … to perform a supply or service activity common to more than one military department or that is designated by the Secretary of Defense as a Defense Agency." Nothing in the definition of a Defense Agency excludes

[5] This would make a reading of R.C.M. 701 disclosure obligations consisted with Fed. R. Crim. Pro. 16 and the American Bar Association's Standards for Discovery that define "(h) Possession or control of the prosecution. Something is in the "possession or control of the prosecution" when it is in the possession of the prosecution, any law enforcement agency that has participated in investigating or prosecuting the case, any other individual or entity that has participated in investigating or prosecuting the case at the direction or request of or by agreement with the prosecution or any law enforcement agency in the case." *ABA Standards For Criminal Justice: Discovery*, § 11-1.1 Definitions (2020).

> it from the common definition of "military authorities" and nothing within the definition of "Military Department" makes the Army, Air Force, and Navy the only "military authorities" for purposes of R.C.M. 701. The Defense Health Agency is an authority, within the Department of Defense, which is the executive department responsible for providing military power on behalf of the nation. Indeed, if Defense Agencies were not "military authorities" such obviously military authorities as DFAS, DISA, and DLA would be outside the scope of "military authorities." These are clearly military authorities despite their status as Defense Agencies.

Attachment V at para 21. The Military Judge does not provide "the common definition of 'military authorities'" in her ruling. The Military Judge also does not cite the statutory definition of "military medical treatment facility" at 10 U.S.C. § 1073c(j)(3) stating, "(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 "fixed facility" is not empowered to enforce the law. *See* NATO Treaty, *supra.*

The Military Judge also clearly and indisputably errs as to the law when she identifies Defense Finance and Accounting Service (DFAS), Defense Information System Agency (DISA), and Defense Logistics Agency (DLA) as "military authorities" and equivalent to DHA. With her erroneous legal conclusion, all trial counsel have access – without compulsory process – and an obligation under R.C.M. 701 – to allow defense to inspect the entirety of DFAS, DISA, DHA, and DLA records upon request because something in those records *may be* relevant to defense

preparation.[6] Glaringly absent from the Military Judge's list of Defense Agencies is the Department of Defense Education Agency – DoDEA. This omission is possibly because the legal conclusion that defense counsel can inspect education records of all minor military dependents because a record *may be* relevant to defense preparation is facially ludicrous – clearly and indisputably erroneous. The Military Judge also omits the Defense Intelligence Agency (DIA)[7] from her list of agencies as saying DIA is a military authority would make prosecuting anyone in a court-martial impossible as trial counsel would have an obligation to search through highly classified information. The Military Judge's reasoning means defense counsel can inspect the email records, medical records, and financial records of the Military Judge, potential panel members, and the trial counsel as any evidence of bias would be "relevant to defense preparation." Certainly, this is not what was intended by R.C.M. 701, nor a reasonable conclusion as to what the "common definition of military authorities" entails.

C. The Military Judge clearly and indisputably erred when ruling L.B. did not have standing to seek a protective order from the court-martial over her private PHI as L.B. unquestionably is injured, the court-martial and military judge can redress the invasion of L.B.'s privacy with a protective order, and the Military Judge's ruling to produce L.B.'s PHI caused the invasion of privacy.

"[I]t is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is

[6] As a threshold issue all records of these Agencies are subject – at a minimum – to the Privacy Act preventing access by Air Force employees. 5 U.S.C. § 552a (2025).
[7] "DIA is a Department of Defense combat support agency." *Frequently Asked Questions,* https://www.dia.mil/About/FAQs/ (last visited 16 Dec 2025).

invaded." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803) (internal quotations and citations omitted).

When a right is established by law, there is also a legally justiciable interest established. *See generally Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Standing to pursue a judicial remedy for a violation of one's right is sine qua non to the very existence of a legal right and cannot be alienated from it. *See id.* In other words, there can be no such thing as a legal right if the holder of the right, or their legal representative, has no ability to motion a court of law or a tribunal to seek to remedy the right's violation.

The C.A.A.F. stated in *B.M.*, "[i]n accordance with these principles, this Court only addresses claims raised by parties who can show an injury in fact, causation, and redressability." 84 M.J. 314, 317 (C.A.A.F. 2024) (internal citations and quotations omitted). The standing doctrine for courts-martial – if there should even be one – should mirror the standards of the C.A.A.F. In *B.M.* the C.A.A.F. recognized B.M. had a statutory right to proceedings free from unreasonable delay, but she could not challenge an abatement order because she did not have "a judicially cognizable interest in the ultimate question of whether the government will or will not prosecute the accused." *Id.* at 319 (internal quotations omitted). The C.A.A.F. went on in *B.M.* to expressly adopt the Article III standing requirements as identified in *Lujan*. However, the Military Judge did not conduct this analysis when summarily denying L.B. a protective order over her private PHI. This

omission and determination that L.B. lacked standing to seek a protective order over her PHI is clear and indisputable error.

WHEREFORE, L.B. asks this Court to issue an immediate stay of proceedings and to issue a writ of mandamus declaring inadmissible all information, documents, and communications determined admissible by the Military Judge in her 12 December 2025 Ruling at Attachment Y; order the destruction of all of L.B.'s private PHI that was clearly and erroneously produced consistent with the Military Judge's clearly and indisputably legally erroneous ruling on 9 December 2025 at Attachment V; and to find that L.B. does have standing to seek a protective order in contravention to the Military Judge's 11 December 2025 email ruling clearly and erroneously finding otherwise. L.B. does seek until 7 January 2026 to supplement this Petition with further briefing.

Respectfully submitted this 16th day of December 2025,

[redacted]

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CERTIFICATE OF FILING AND SERVICE

I certify that on December 16, 2025, the foregoing was electronically filed with the Court and served on the following addresses:

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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

In re LB	)	**Misc. Dkt. No. 2025-14**
Petitioner	)	
	)	
	)	
	)	
	)	**ORDER**
Irvin BRYANT, JR.	)	
Technical Sergeant (E-6)	)	
U.S. Air Force	)	
Real Party in Interest	)	**Special Panel**

Petitioner is the alleged victim in the ongoing general court-martial of Technical Sergeant Irvin Bryant (Real Party in Interest (RPI)) at Joint Base Anacostia-Bolling, Washington, D.C. On 16 December 2025, Petitioner filed with this court a motion to stay proceedings and a petition requesting relief in the nature of a writ of mandamus pursuant to Article 6b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 806b, in the above-styled case. Petitioner also moved to file her petition under seal. The petition was docketed on 16 December 2025.

Petitioner asks this court to stay the ongoing general court-martial proceedings because "[she] would suffer irreversible harm without a stay as the trial would move forward and become a forum for her public humiliation and degradation as the RPI puts forth irrelevant and embarrassing information regarding [her] sexual demeanor and conduct" as well as "exposure of her private [medical records] without basis, thus a clear, irrevocable violation of her rights." Petitioner seeks an "immediate stay of proceedings until 7 January 2026 to file a brief supplementing [her] Petition."

Petitioner seeks to: (1) vacate the military judge's ruling regarding the admissibility of evidence under Mil. R. Evid. 412, (2) vacate the military judge's ruling finding Petitioner's "private and Protected Health Information [PHI] was in the possession, custody, and control of military authorities and that such PHI was relevant," and (3) vacate the military judge's ruling that LB lacked standing to move for a "protective order to limit disclosure and dissemination of her private PHI."

Accordingly, it is by the court on this 17th day of December, 2025,

ORDERED:

Petitioner's motion to stay proceedings dated 16 December 2025 is **DENIED**.

Petitioner's motion to file under seal is **GRANTED.**

Petitioner may file a supplemental brief **not later than 7 January 2026**. No additional briefs will be filed unless so ordered by this court.

The court will decide Petitioner's petition for extraordinary relief in the nature of a writ of mandamus in due course.

[redacted]

JACOB B. HOEFERKAMP, Capt, USAF
Acting Clerk of the Court

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*	**MOTION FOR LEAVE TO SUPPLEMENT PLEADING AND ATTACH TO THE RECORD** Misc. Dkt. No. 2025-14

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(b),(n) moves to supplement the facts of her Petition for Relief under Article 6b *in the form of a* Writ of Mandamus filed on 16 December 2026 with the fact the Military Judge Lieutenant Colonel Lauren Torczynski continued the case indefinitely this morning, and a new trial date is not scheduled. L.B. seeks to attach to the record the email continuing the case that is attached hereto.

L.B. still seeks a stay of proceedings as there are multiple motions pending for which the Military Judge needs to rule to include a ruling on a fourth Motion to Admit M.R.E. 412 Evidence filed by Defense (RPI's counsel) and a Motion to Produce M.R.E. 513 Evidence filed by Defense (RPI's counsel).

Wherefore, L.B. respectfully requests this Court supplement the facts of her 16 December Petition and Attach to the record the email appended hereto.

Respectfully submitted this 17th day of December 2025.

[redacted]

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CERTIFICATE OF FILING AND SERVICE

I certify that on December 17, 2025, the foregoing was electronically filed with the Court and served on the following addresses:

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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

In re LB	)	**Misc. Dkt. No. 2025-14**
Petitioner	)	
	)	
	)	
	)	**ORDER**
Irvin BRYANT, JR.	)	
Technical Sergeant (E-6)	)	
U.S. Air Force	)	
Real Party in Interest	)	**Special Panel**

Petitioner is the alleged victim in the ongoing general court-martial of Technical Sergeant Irvin Bryant (Real Party in Interest (RPI)) at Joint Base Anacostia-Bolling, Washington, D.C. On 16 December 2025, Petitioner filed with this court a motion to stay proceedings and a petition requesting relief in the nature of a writ of mandamus pursuant to Article 6b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 806b, in the above-styled case. Petitioner also moved to file her petition under seal. The petition was docketed on 16 December 2025.

On 17 December 2025, this court denied Petitioner's motion to stay the proceedings and granted Petitioner's motion to file under seal. On the same day, Petitioner filed anew a "Motion for Leave to Supplement Pleading and Attach to the Record," moving this court for leave to file an attachment to her 16 December 2025 petition. The attachment is an email from the military judge, dated 17 December 2025, continuing the court-martial to a later date to be determined.

Accordingly, it is by the court on this 18th day of December, 2025,

ORDERED:

Petitioner's "Motion for Leave to Supplement Pleading and Attach the Record" are **GRANTED**. Petitioner may still file a supplemental brief **not later than 7 January 2026**. No additional briefs will be filed unless so ordered by this court.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

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*	**MOTION TO FILE UNDER SEAL** Misc. Dkt. No. 2025-2014

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 Supplemental Brief to her Petition for Relief Pursuant to Article 6b with Motion to Stay Proceedings 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. 412. 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 finding evidence relevant in violation of Mil. R. Evid. 412 procedures and standard. Due to the sensitive, private information contained in the Supplemental Brief she seeks to file the unredacted brief under seal consistent with the sealing by the Military Judge and sealing required by rule, and sealed by this Court.

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

Respectfully submitted this 7th day of January 2026.

[redacted]

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CERTIFICATE OF FILING AND SERVICE

I certify that on January 7, 2026, the foregoing was electronically filed

with the Court and served on the following addresses:

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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*	**SUPPLEMENTAL BRIEF** Misc. Dkt. No. 2025-14

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

COMES NOW L.B., by and through the undersigned Victims' Counsel, and pursuant to Air Force Court of Criminal Appeals (A.F.C.C.A.) Rules of Practice and Procedure Rule 19, Petition for Extraordinary Relief in the case in interest *United States v. TSgt Irvin Bryant, Jr.*

L.B. submits this supplemental brief pursuant to Orders of this Court dated 17 December 2025.

PROCEDURAL STATEMENT OF THE CASE

On 16 December 2025 L.B. submitted her Petition Under Article 6b for Relief to this Honorable Court. L.B. moved for an immediate stay of proceedings, which was subsequently denied on 17 December 2025; however this Honorable Court permitted the filing of a supplemental brief by 7 January 2026.

Subsequent to the filing of the petition on 16 December 2025, the Government filed a motion for a protective order on 17 December 2025 (Supplemental Attachment

AA). This motion is similar to the one filed by L.B. on 11 December 2025, pertaining to the protection of L.B.'s medical records. (*MFAR*, Petition Attachment W). The Government's motion, however, did not request the destruction of surplus medical records provided that are outside the scope of the Military Judge's 9 December 2025 ruling. (*Id.*). On 18 December 2025, the Military Judge granted the Government's 17 December motion to limit disclosure and copying of the medical records, but there was no provision to destroy surplus records (Supplemental Attachment BB).

Additionally, the Defense filed a Motion for Reconsideration and to Compel Discovery Under M.R.E. 513 on 15 December 2025 which the Military Judge granted in part on 17 December 2025. On 19 December 2025 L.B. filed an objection to the Military Judge's 17 December ruling. RPI's counsel responded to the Objection on 6 January 2026. The Military Judge indicated she intended to make a ruling forthwith. As these motions and pending ruling are not subject of this Petition, they are not provided.

SUPPLEMENTAL BACKGROUND FACTS

L.B. adopts the facts in the Petition filed on 16 December 2025. Since then, and beyond the arguments and findings raised in the additional filings noted above, there are no new substantial facts pertaining to the issues raised in L.B.'s petition.

STATEMENT OF THE ISSUES

L.B. petitioned this Honorable Court for relief from the rulings issued by detailed Military Judge for motions, Lt Col Lauren Torczynski. The rulings for which L.B. seeks issuance of a writ as the Military Judge clearly and indisputably erred in violating L.B.'s rights are 1) a ruling as to admissibility of evidence subject to the

Military Rules for Evidence (hereinafter M.R.E.) 412 procedures issues dated 12 December 2025 (*412 Ruling*, Petition Y); 2) a ruling finding L.B.'s private and Protected Health Information (hereinafter "PHI") was in the possession, custody, and control of military authorities and that such PHI was relevant (*PHI Ruling*, Petition Attachment V); and 3) a ruling that L.B. lacked "standing" to file a motion for a protective order to limit disclosure and dissemination of her private PHI (*Protective Order Ruling*, Petition Attachment X). Moreover, a writ should issue as the Military Judge clearly and indisputably failed to exercise her authority to accord and protect L.B.'s rights as is her clear legal duty. L.B. is clearly and indisputably entitled to issuance of a writ of mandamus demanding the Military Judge follow the law and fulfill her duty to make best efforts to accord L.B. her codified and constitutional rights. *See Cheney v. United States Dist. Court*, 542 U.S. 367, 381, 124 S. Ct. 2576, 2587 (2004). ("[T]he petitioner must satisfy the burden of showing that [his] right to issuance of the writ is clear and indisputable." (internal citations and quotations omitted)).

STANDARD OF REVIEW

L.B. must show, "that: (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.*; *See also Hasan v. Gross*, 71 M.J. 416, 418 (C.A.A.F. 2012) (citing *Cheney v. United State Dist. Court*, 542 U.S. 367, 380–81 (2004)).

If the Court finds L.B.'s Petition appropriate under Article 6b(e), she must seek issuance of a writ of mandamus as Article 6b requires this mode of relief. The

issuance of a writ by this Court is the statutorily prescribed method for enforcement of victims' rights. As a result, issuance of a writ under Article 6b(e) is always an appropriate act of this Court. "We agree that the text of Article 6b(e)(1), (2), and (3)(A), UCMJ, grants jurisdiction to the CCAs. . ." *M.W. v. United States*, 83 M.J. 361, 365 (C.A.A.F. 2023). In short, the only *Cheney* criteria necessary to satisfy is that L.B.'s right to an issuance of the writ is clear and indisputable.

The Military Judge not only clearly and indisputably erred in misapplying the law, but she has a clear legal duty to afford L.B. her statutory rights. The Fiscal Year 2014 National Defense Authorization Act creates the duty of Military Judges, as members of the Armed Forces, to accord Article 6b right to victims.

> (2) Mechanisms for Affording Rights.—The recommendations and regulations required by paragraph (1) shall include the following: [. . .] (B) Mechanisms for ensuring that members of the Armed Forces [. . .] make their best efforts to ensure that victims are notified of, and accorded, the rights specified in such section [. . .] (E) Disciplinary sanctions for members of the Armed Forces [. . .] who willfully or wantonly fail to comply with requirements relating to such rights.

National Defense Authorization Act for Fiscal Year 2014, § 1701(b)(2)(B),(E), 113 P.L. 66 (2013).

Writ should issue as the Military Judge owes a duty to L.B. to make "best efforts to ensure that [L.B. is] accorded" her Article 6b rights which the Military Judge has not done.[1] "The traditional use of the writ in aid of appellate jurisdiction

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[1] The Federal Crime Victims' Rights Act, codified at 18 U.S.C. § 3771, creates a duty for courts. "In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a)." As courts-martial are not standing courts – but are either a military judge member of the armed forces or a panel of members of the armed forces – Congress creating a duty for the people who make up a court-martial, and not "courts", makes sense.

both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or ***to compel it to exercise its authority when it is its duty to do so***." *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26, 63 S. Ct. 938, 941 (1943).

SUPPLEMENTAL ARGUMENT

I.

The Military Judge refused to accord and acknowledge L.B.'s rights, ruling certain evidence admissible despite M.R.E. 412, and in doing so used a clearly and indisputably incorrect legal standard.

[redacted]

[redacted]

[2] No subpoena was served on L.B. to effectuate the Military Judge's ruling to compel victim testimony at an Article 39(a) session.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

II.

The Military Judge clearly and indisputably erred when ruling L.B. did not have standing to seek a protective order from the court-martial over her private PHI, because the injury to L.B.'s privacy interests can be redressed by the Military Judge.

a. The actual harm caused by the Military Judge's 18 December 2025 ruling to L.B.'s Article 6b, U.C.M.J. privacy rights can be remedied by the Military Judge, therefore L.B. has standing to be heard on the issue.

On 9 December 2025, the Military Judge granted the Defense motion to compel discovery to the extent of requiring production of L.B.'s bariatric surgery and associated laboratory tests within six months prior to October 2023. Petition Attachment V.

On 11 December 2025, counsel for L.B. was informed that significantly more medical records were acquired and disclosed beyond the limitations set forth in the 9 December ruling, and on the same day L.B. submitted a motion for a protective order. (*MFAR,* Petition Attachment W). L.B.'s motion sought to limit disclosure of her medical records and to require the parties to destroy surplus medical records provided that fall outside the scope of the Military Judge's 9 December ruling.

The next day, on 12 December 2025, the Military Judge issued an email ruling that summarily rejected L.B.'s standing to seek to protect her own privacy rights under Article 6b, U.C.M.J. On 17 December 2025, the day after the writ petition was filed in this Honorable Court, the Government filed its own motion for a protective order that sought to limit disclosure but did not request that the surplus records be destroyed. (Attachment AA). That motion was granted by the Military Judge on 18

December 2025 (Attachment BB).

When a right is established by law, there is also a legally justiciable interest established. *See generally Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Standing to pursue a judicial remedy for a violation of one's right is *sine qua non* to the very existence of a legal right and cannot be alienated from it. *See id.* In other words, there can be no such thing as a legal right if the holder of the right, or their legal representative, has no ability to petition a court of law to remedy the right's violation.

"[C.A.A.F.] follows the principles of standing that apply to Article III courts." *B.M. v. United States*, 84 M.J. 314, 317 (C.A.A.F. 2024) (internal citation omitted). C.A.A.F. goes on to state in *B.M.*, "[i]n accordance with these principles, this Court [C.A.A.F.] only addresses claims raised by parties who can show an injury in fact, causation, and redressability." *Id.* (internal citations and quotations omitted). C.A.A.F. acknowledged in *B.M.* that B.M. had a statutory right to proceedings free from unreasonable delay but could not challenge an abatement order because she did not have a "a judicially cognizable interest in the ultimate question of whether the government will or will not prosecute the accused." *Id.* at 319 (internal quotations omitted).

In this case, L.B. is not seeking to assert an interest in the prosecution of the case but to assert and defend her judicially cognizable Article 6b rights before the court best situated to protect those rights.

In 2004, the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, was passed, permitting victims in federal court to seek enforcement of their rights. Article 6b,

U.C.M.J., is based upon the CVRA and was enacted to extend victims' rights to victims of offenses under the UCMJ. Like the CVRA, Article 6b provides certain rights to victims, including the right to be protected from the accused (Article 6b(a)(1), U.C.M.J.) and the right to be treated with fairness and with respect for their dignity and privacy (Article 6b(a)(9), U.C.M.J.).

To establish standing for judicial remedy of an injury to one's rights, the Supreme Court in *Lujan* has stated that,

> the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, [citations omitted]; and (b) 'actual or imminent, not 'conjectural' or 'hypothetical,' [citation omitted]. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be 'fairly trace[able] to the challenged action of the defendant, and not . . . the result [of[the independent action of some third part not before the court. [Citation omitted]. Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." [Citation omitted]. "

Id. The *Lujan* Court further articulated that the injury element can be established solely by the invasion of a right created by statute. *Id.* at 578, 2145. C.A.A.F. adopted this language and standard in *B.M. See B.M.,* 84 M.J. at 317.

Victims are explicitly granted the ability to move for relief or otherwise object to post-preferral subpoenas for their personal or confidential information. R.C.M. 703(g)(3)(C)(ii). Further, the military judge has wide latitude to regulate discovery and can, at any time, 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).

In this case, L.B. is an individual described in Article 6b, U.C.M.J., and therefore has a right to be reasonably protected from the accused and the right to be

treated with fairness and respect for her dignity and privacy. The violation of these rights is an injury-in-fact that is concrete and particularized in the form of unwarranted disclosure of L.B.'s private medical records. The harm also consists of an abrogation of her statutory right to the representation of personally detailed counsel under 10 U.S.C. § 1044e.

L.B.'s strong privacy interest is evidenced by her swift action to protect her own personal medical records through a same-day motion submitted to the Military Judge. The Government motion, on the other hand, was filed six days later, and only after a petition was filed for extraordinary relief in this Honorable Court. The Military Judge found it expedient to protect L.B.'s privacy only after the Government got around to filling a protective order that did not fully address the issue. The harm to L.B., therefore, includes an incomplete, delayed, and conflicted representation of L.B.'s rights by the Government.

The second element of standing under *Lujan* is a causal connection between the injury and the conduct complained of. In this case, the conduct complained of is the Military Judge's denial of L.B.'s right to advocate for her own rights in court, which was a direct cause of the harm mentioned above. But for the Military Judge's ruling that L.B. has no standing, L.B. would have been able to make a full and timely defense of her own statutory rights. L.B. is entitled to move for relief regarding a subpoena for her personal or confidential information according to the plain language of the rule. While in this instance, the Government managed to proceed without a subpoena to obtain the records, there should have been one issued. Ruling that L.B. lacks standing to challenge the improper disclosure of records which should have

required a subpoena for her confidential records suggests a troubling result where the parties can bypass R.C.M. 703(g)(3)(C) due process by improperly obtaining victim records.

The third constitutional element for standing is that a favorable court decision will likely redress the injury. While the offensive disclosure has already been made, the Military Judge still retains the ability to direct the parties to destroy surplus medical records outside the scope of the 9 December 2025 ruling. Additionally, as there are other evidentiary issues still pending that implicate L.B.'s privacy, it is highly likely that she will need to be heard on those issues as well before and during trial. Thus, a ruling by this Honorable Court will allow L.B.'s detailed victims' counsel to fully represent her interests to advocate against further improper disclosures and to protect her privacy rights.

Standing is a constitutional principle that cannot be reduced further than the three elements articulated in *Lujan*. Accordingly, any interpretation of Article 6b, U.C.M.J., that seeks to invalidate L.B.'s standing to be heard on matters impacting her privacy rights must be disregarded as unconstitutional.

b. Denial of an opportunity to be heard conflicts with the clear language and intent of Article 6b, U.C.M.J. and renders most of its enumerated rights inaccessible.

The Air Force Court of Criminal Appeals has ruled that victims do not have a statutory right to be heard under Article 6b, U.C.M.J. other than under Article 6b, U.C.M.J.(a)(4), however "…absence of a specific statutory right to be heard does not mean that a military judge is *prohibited* from considering a victim's effort to exercise Article 6b, UCMJ, rights." *In re VM*, No. 2023-04, 2023 CCA LEXIS 290, at *7 (A.F.

Ct. Crim. App. July 11, 2023)(unpublished). This holding is a contradictory paradox that must be reconciled with the plain language of the statute and the constitutional principles of standing.

In *VM*, the victim filed an objection to the accused's motion for a continuance, but the trial judge declined to consider it for lack of standing. The *VM* court indicated that the military judge erred in concluding that he was prohibited from considering a victim's effort to exercise her Article 6(b), UCMJ, rights—even though it agreed with the military judge that she lacked standing under Article 6b, UCMJ. One must wonder what the exercise of a legal right looks like without standing to present facts and argument before a court? Perhaps just as puzzling is how a military judge is to consider such an effort absent standing?

The *VM* Court apparently viewed the grant of an opportunity to be heard under Article 6b(a)(4) at specified types of hearings as indicative that those were the *only* times a crime victim could be heard. This is, supposedly, because all the other rights under Article 6b failed to also use the words "right to reasonably be heard". In other words, the argument appears to suggest that Congress's intent was to provide crime victims a house with nine rooms but a key that opens only one of them. The other rooms, presumably, are to remain closed and vacant until the government decides to open them for the victim's benefit and only at a time of the government's choosing. Victims have to ask the government when they can use the kitchen, the laundry room, or the bathroom and hope the government has the time and inclination to stop what it's doing, come over to the house, and unlock doors each time the rooms are needed. This interpretation is contrary to the plain language and clear intent of Article 6b(a),

U.C.M.J., and it is jurisprudentially untenable.

The plain language of Article 6b(a)(4), UCMJ, uniquely gives crime victims a *forum-specific* right to be reasonably heard in specific types of proceedings without regard to what issues may arise at those proceedings. The plain language of the other Article 6b, U.C.M.J.(a) provisions under subparagraphs (1)-(3), and (5)-(9), U.C.M.J., however, establishes substantive and procedural rights—regardless of the forum or type of proceeding in which those rights may arise. In other words, the distinctive nature of the forum right in Article 6b(a)(4) is fundamentally different than the nature of the other rights under Article 6b(a) and uniquely requires "right to be heard" language as part of the structure of that particular right.

The plain language of Article 6b(a)(4) conveys that the right consists of two constituent parts: 1. A victim has an inherent right to be reasonably heard, 2. at any of the following: a public pretrial confinement hearing, a sentencing hearing, or a public proceeding on clemency and parole board. Unlike the other rights under Article 6b, U.C.M.J.(a), without the "right to be heard" language, the 6b(a)(4) right is incomplete. Thus, the inclusion of the phrase "right to be heard" could not be surplusage, regardless of whether it is employed elsewhere in Article 6b. Additionally, there is no text within Article 6b(a)(4) that operates to restrict or limit a victim's right to be heard in any other context or for the vindication of any other right. It simply provides the "indefeasible" right to be heard in those three specific forums. *See Kenna v. United States Dist. Court*, 435 F.3d 1011, 1016-17 (9th Cir. 2006) (Describing victims' right to be heard at sentencing under the C.V.R.A. where the 9th Circuit found "[v]ictims now have an indefeasible right to speak. . . ").

The rights granted to victims under Article 6(a)(1)-(3), and (5)-(9), U.C.M.J., on the other hand, are tied to specific substantive and procedural rights that could arise at any point during an investigation or prosecution under the U.C.M.J. Unlike Article 6b(a)(4), the rights under subsections (1)-(3) and (5)-(9) are complete without the necessity of referring to a victim's right to be heard. By classifying these provisions as "rights," the statute inherently established a justiciable harm when any such right is violated. *See Lujan,* 504 U.S. 555, 560-61. Accordingly, adding the "right to be reasonably heard" language, though essential to the structure of the Article 6b(a)(4) right, would be superfluous language if added to subsections (1)-(3) or (5)-(9).

To illustrate the importance of the distinction, under Article 6b(a)(2), U.C.M.J., a victim has a right to timely notice regarding specific litigation events throughout the course of a court-martial. For the sake of argument, consider that there are two options for interpreting the provision. The first interpretation requires surplusage language granting a right to be reasonably heard before a victim could directly petition a trial court for relief from any violations. Under this analysis, if the Government were not providing adequate notice, this illogical reasoning requires the victim to ask the offending agents of the Government, if they please, to advocate on the victim's behalf to seek the trial court's intervention—contrary to the interests of the Government.

Alternatively, though not much less absurd, the victim could routinely invoke Article 6b(e)(1) and petition the Air Force Court of Criminal Appeals to force the trial court to act on behalf of the victim every time a military judge rules that a victim does not have standing on the issue of their own rights, only with the additional onerous

burden of the clear and indisputable error standard. See generally *H.V.Z. supra.* This would lead to an unnecessary multiplicity of writs and an upending of the entire judicial economy where victims are forced to start with the Appellate Court for relief that should have been resolved at the trial court level.

The alternative interpretation of Article 6b, U.C.M.J., on the other hand, acknowledges that clearly defined substantive and procedural rights do not require the same "right to be reasonably heard" language as do forum rights. Under this analysis, the interpretive canon disfavoring surplusage is brought to square with the plain language of Article 6b(a), U.C.M.J., constitutional principles of standing, and the clear intent of Congress to allow crime victims the ability to challenge all Article 6b rights violations at the trial court level.

c. Detailed victim's counsel must represent victims.

It may be contended that, in some situations, a victim's rights are protected "well enough" by trial counsel. However, "Congress determined that military victims, as defined, should be afforded a right to counsel different from others within the military justice system, at every proceeding." *United States v. Deremer supra* 553); TJAG certificate filed *United States v. Deremer*, No. 25-0158/MC, 2025 CAAF LEXIS 350 (C.A.A.F. May 5, 2025). Victims' counsel "represent" the victim's interests instead of the government's. See 10 U.S.C. § 1044e(c) ('The relationship between a Special Victims' Counsel and a victim in the provision of legal advice and assistance shall be the relationship between an attorney and client.'). Although the interests of victims and the Government often align, we note that this is not always the case." *United States v. Harrington*, 83 M.J. 408, 419 (C.A.A.F. 2023).

L.B. likewise has a Victims' Counsel who has been specifically designated by statute to act as her legal counsel. However, the Military Judge did not allow L.B.'s Victims' Counsel the opportunity to advocate for her privacy rights, and instead improperly waited until counsel for the Government got around to taking an interest in L.B.'s privacy rights.

This decision by the Military Judge to cede responsibility to the Government for representing L.B.'s Article 6b rights cuts against C.A.A.F.'s ruling in *Harrington* and improperly places L.B.'s rights in the hands of government counsel, who have no attorney-client relationship with her or duty to act in her interests, and who clearly have a different level of interest in protecting L.B.'s privacy.

Accordingly, by denying L.B.'s Victims' Counsel the ability to object or be heard regarding violations of L.B.'s rights under Article 6b, U.C.M.J., the Military Judge directly undermined both L.B.'s rights and the Victims' Counsel program as set forth in federal statute and military service regulations. **Ironically, the Military Judge granting the Government's motion to protect L.B's medical records is a concession of L.B.'s vested legal interests – standing – in this matter**.

Regardless of the Military Judge's ultimate ruling on the protection of the medical records in dispute, L.B. was entitled to meaningful advocacy from her statutorily designated counsel when her Article 6b, U.C.M.J. rights were violated by the Military Judge. Here, the actions of the Military Judge effectively ignored the intent of Congress, the Department of [Defense], and the Department of the Air Force, which specifically designated counsel to support and represent victims such as L.B. To deny a Victims' Counsel the ability to advocate for their client at a court-martial

regarding an issue directly implicating the client's rights not only violates those rights, but reimagines the role of Victims' Counsel as passive advisors instead of statutorily required legal representatives.

III.

Defense Health Agency is not a military authority as contemplated in R.C.M. 701.

As outlined in the Petition, since DHA is not a law enforcement entity, is not a military service, and is not involved in the prosecution of RPI, L.B.'s electronic health record is not in the possession, custody, or control of military authorities.

REASON WHY WRIT SHOULD ISSUE

Wherefore, L.B. respectfully requests issuance of a writ declaring inadmissible all information, documents, and communications determined admissible by the Military Judge in her 12 December 2025 Ruling, to find that L.B. does have standing to seek protective orders for her private information pursuant to her rights under Article 6b, U.C.M.J., and the Military Judge's conclusion that DHA is a military authority is clear and indisputable error.

Respectfully Submitted this 7th day of January, 2026,

[redacted]

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CERTIFICATE OF FILING AND SERVICE

I certify that on January 7, 2026, the foregoing was electronically filed with the Court and served on the following addresses:

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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*	**SUPPLEMENTAL BRIEF** Misc. Dkt. No. 2025-14

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

COMES NOW L.B., by and through the undersigned Victims' Counsel, and pursuant to Air Force Court of Criminal Appeals (A.F.C.C.A.) Rules of Practice and Procedure Rule 19, Petition for Extraordinary Relief in the case in interest *United States v. TSgt Irvin Bryant, Jr.*

L.B. submits this supplemental brief pursuant to Orders of this Court dated 17 December 2025.

PROCEDURAL STATEMENT OF THE CASE

On 16 December 2025 L.B. submitted her Petition Under Article 6b for Relief to this Honorable Court. L.B. moved for an immediate stay of proceedings, which was subsequently denied on 17 December 2025; however this Honorable Court permitted the filing of a supplemental brief by 7 January 2026.

Subsequent to the filing of the petition on 16 December 2025, the Government filed a motion for a protective order on 17 December 2025 (Supplemental Attachment

AA). This motion is similar to the one filed by L.B. on 11 December 2025, pertaining to the protection of L.B.'s medical records. (*MFAR*, Petition Attachment W). The Government's motion, however, did not request the destruction of surplus medical records provided that are outside the scope of the Military Judge's 9 December 2025 ruling. (*Id.*). On 18 December 2025, the Military Judge granted the Government's 17 December motion to limit disclosure and copying of the medical records, but there was no provision to destroy surplus records (Supplemental Attachment BB).

Additionally, the Defense filed a Motion for Reconsideration and to Compel Discovery Under M.R.E. 513 on 15 December 2025 which the Military Judge granted in part on 17 December 2025. On 19 December 2025 L.B. filed an objection to the Military Judge's 17 December ruling. RPI's counsel responded to the Objection on 6 January 2026. The Military Judge indicated she intended to make a ruling forthwith. As these motions and pending ruling are not subject of this Petition, they are not provided.

SUPPLEMENTAL BACKGROUND FACTS

L.B. adopts the facts in the Petition filed on 16 December 2025. Since then, and beyond the arguments and findings raised in the additional filings noted above, there are no new substantial facts pertaining to the issues raised in L.B.'s petition.

STATEMENT OF THE ISSUES

L.B. petitioned this Honorable Court for relief from the rulings issued by detailed Military Judge for motions, Lt Col Lauren Torczynski. The rulings for which L.B. seeks issuance of a writ as the Military Judge clearly and indisputably erred in violating L.B.'s rights are 1) a ruling as to admissibility of evidence subject to the

Military Rules for Evidence (hereinafter M.R.E.) 412 procedures issues dated 12 December 2025 (*412 Ruling*, Petition Y); 2) a ruling finding L.B.'s private and Protected Health Information (hereinafter "PHI") was in the possession, custody, and control of military authorities and that such PHI was relevant (*PHI Ruling*, Petition Attachment V); and 3) a ruling that L.B. lacked "standing" to file a motion for a protective order to limit disclosure and dissemination of her private PHI (*Protective Order Ruling*, Petition Attachment X). Moreover, a writ should issue as the Military Judge clearly and indisputably failed to exercise her authority to accord and protect L.B.'s rights as is her clear legal duty. L.B. is clearly and indisputably entitled to issuance of a writ of mandamus demanding the Military Judge follow the law and fulfill her duty to make best efforts to accord L.B. her codified and constitutional rights. *See Cheney v. United States Dist. Court*, 542 U.S. 367, 381, 124 S. Ct. 2576, 2587 (2004). ("[T]he petitioner must satisfy the burden of showing that [his] right to issuance of the writ is clear and indisputable." (internal citations and quotations omitted)).

STANDARD OF REVIEW

L.B. must show, "that: (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.*; *See also Hasan v. Gross*, 71 M.J. 416, 418 (C.A.A.F. 2012) (citing *Cheney v. United State Dist. Court*, 542 U.S. 367, 380–81 (2004)).

If the Court finds L.B.'s Petition appropriate under Article 6b(e), she must seek issuance of a writ of mandamus as Article 6b requires this mode of relief. The

issuance of a writ by this Court is the statutorily prescribed method for enforcement of victims' rights. As a result, issuance of a writ under Article 6b(e) is always an appropriate act of this Court. "We agree that the text of Article 6b(e)(1), (2), and (3)(A), UCMJ, grants jurisdiction to the CCAs. . ." *M.W. v. United States*, 83 M.J. 361, 365 (C.A.A.F. 2023). In short, the only *Cheney* criteria necessary to satisfy is that L.B.'s right to an issuance of the writ is clear and indisputable.

The Military Judge not only clearly and indisputably erred in misapplying the law, but she has a clear legal duty to afford L.B. her statutory rights. The Fiscal Year 2014 National Defense Authorization Act creates the duty of Military Judges, as members of the Armed Forces, to accord Article 6b right to victims.

> (2) Mechanisms for Affording Rights.—The recommendations and regulations required by paragraph (1) shall include the following: [. . .] (B) Mechanisms for ensuring that members of the Armed Forces [. . .] make their best efforts to ensure that victims are notified of, and accorded, the rights specified in such section [. . .] (E) Disciplinary sanctions for members of the Armed Forces [. . .] who willfully or wantonly fail to comply with requirements relating to such rights.

National Defense Authorization Act for Fiscal Year 2014, § 1701(b)(2)(B),(E), 113 P.L. 66 (2013).

Writ should issue as the Military Judge owes a duty to L.B. to make "best efforts to ensure that [L.B. is] accorded" her Article 6b rights which the Military Judge has not done.[1] "The traditional use of the writ in aid of appellate jurisdiction

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[1] The Federal Crime Victims' Rights Act, codified at 18 U.S.C. § 3771, creates a duty for courts. "In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a)." As courts-martial are not standing courts – but are either a military judge member of the armed forces or a panel of members of the armed forces – Congress creating a duty for the people who make up a court-martial, and not "courts", makes sense.

both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or ***to compel it to exercise its authority when it is its duty to do so***." *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26, 63 S. Ct. 938, 941 (1943).

SUPPLEMENTAL ARGUMENT

I.

The Military Judge refused to accord and acknowledge L.B.'s rights, ruling certain evidence admissible despite M.R.E. 412, and in doing so used a clearly and indisputably incorrect legal standard.

The Military Judge clearly and indisputably erred in finding the proffered M.R.E. 412 evidence is admissible under one or more of the enumerated exceptions to the rule. The evidence is not relevant or material. The Military Judge did not employ the correct legal standard required by M.R.E. 412(c)(3) when weighing the probative value against the unfair prejudice of admitting evidence of other sexual behavior to show consent. The Military Judge also employed the incorrect legal standard as reflected in her M.R.E. 412 ruling wherein she finds the evidence "otherwise admissible" as required by M.R.E. 412(b), which states, "(b) Exceptions: In a proceeding, the following evidence is admissible, if otherwise admissible under these rules." The evidence is not otherwise admissible as it is either hearsay or impermissible character evidence and RPI's counsel offered no theory of admissibility.

a. L.B. and the Accused had consensual anal sex before and after the charged timeframe of Charge I, Specification 1.

i. *The Defense's proffer was insufficient.*

The first issue with this evidence is that the defense's proffer was insufficient.

Proffered evidence cannot be based upon "speculation and conjecture." *United States v. Roberts*, 69 M.J. 23, 18 (C.A.A.F.). The Mirriam-Webster Dictionary definition of conjecture is an "inference formed without proof or sufficient evidence" or, in more simple terms, without actual knowledge. *Conjecture*, MIRRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/conjecture (last visited January 7, 2026). Therefore, a proffer cannot be based on a witness who does not remember the fact the proffer is based on. While it is not within a trial judge's discretion to determine whether M.R.E. 412 evidence at issue during an Article 39(a) hearing is true, the question of whether the evidence is relevant depends on it actually existing. *United States v. Leonhardt*, 76 M.J. 821, 827 (C.A.A.F. 2017).

The noticed evidence at issue before the Court was that L.B. and the Accused had engaged in consensual anal sex before *and after* the charged timeframe of Charge I, Specification 1. At the Article 39(a) hearing L.B. was compelled by the Military Judge to testify and was called by the Defense as their witness[2]. Defense Counsel asked L.B. "have you ever engaged in anal sex after [28 February 2021]?" L.B. responded, "No." Defense Counsel then asked, "And I'm sorry to press you on this, or do you think it's possible you don't remember? Or are you saying, you know it's a no?" L.B. responded, "I don't recall." After some more back and forth between L.B. and Defense Counsel on this issue, L.B. ultimately concluded "I would say no because I don't recall after February 28th, 2021. No, I don't. Okay." Petition Attachment J. In other words, Defense was the proponent of the evidence at the Article 39(a) session

[2] No subpoena was served on L.B. to effectuate the Military Judge's ruling to compel victim testimony at an Article 39(a) session.

that identified the absence of evidence of their own assertions. There is no evidence before the Court to support a finding of fact that L.B. and the Accused engaged in consensual anal sex after February 28th, 2021, yet the Military Judge concluded this was a sufficient proffer. The Military Judge clearly and indisputably erred by finding that this was a sufficient proffer even though the only evidence in support of this claim is "speculation and conjecture." If this standard were to be applied in future cases, there would be nothing stopping the Accused from circulating rumors about the victim for their own benefit at trial or, for example, attempting to admit evidence that a victim is rumored to be a "slut" or "promiscuous" with no further information, under the guise that it is constitutionally required evidence. The Military Judge's ruling overbears the President's intent, "Rule 412 is intended to shield victims of sexual assaults from the often embarrassing and degrading cross-examination and evidence presentations common to prosecutions of such offenses." *Appendix 22*, Analysis of Mil. R. Evid. 412, 1984 Manual for Courts-Martial (1984). Even if this Court finds that the proffer was sufficient, the evidence is not relevant, material, or admissible.

ii. The evidence is not relevant and material.

The Military Judge also clearly and indisputably erred when she determined this evidence is admissible under M.R.E. 412(b)(2) and (3). To admit generally excluded evidence of a victim's other sexual behavior or sexual predisposition under M.R.E. 412(b)(2), the accused must show that the evidence is "relevant for a purpose under [M.R.E. 412(b)(2)] and that the probative value of such evidence outweighs the danger of unfair prejudice to the victim's privacy." M.R.E. 412(c)(3). Whether L.B. and the Accused engaged in consensual anal sex before and after the charged

timeframe in Charge I, Specification 1, is not relevant to whether L.B. consented to the sexual acts in Charge I, Specification 1.

"Relevant" evidence is evidence that has any tendency to make a fact of consequence in determining the action more or less probable than it would be without the evidence. M.R.E. 401. Materiality of evidence emerges from a fact-specific inquiry of "the importance of the issue for which the evidence was offered in relation to the other issues in this case; the extent to which the issue is in dispute; and the nature of the other evidence in the case pertaining to that issue." *United States v. Ellerbrock*, 70 M.J. 314, 318 (C.A.A.F. 2011) (quoting *United States v. Banker*, 60 M.J. 216, 222 (C.A.A.F. 2004)).

There is no specific timeframe of when these sexual acts occurred before or after the sexual assault. M.R.E. 412(b)(2) requires that the evidence sought to be admitted by the defense be "evidence of specific instances of a victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the accused to prove consent . . ." Generalities about L.B.'s and Accused's sexual acts do not meet the requirements of the M.R.E. 412(b)(2) exception. Defense failed to make any factual connection to drive their claim that the consensual anal sex between L.B. and the Accused was substantially similar to the allegations against the Accused, such that the alleged other sexual acts would reasonably indicate consent or mistake of fact as to consent of the charged offenses. In other words, the Defense offers no details as to the alleged sexual relationship between L.B. and the Accused. Absent such detail, it would be impossible to assess relevancy under the Defense's offered theories.

As to whether the evidence is admissible under M.R.E. 413(b)(3), engaging in

consensual anal sex after the charged timeframe is not relevant to whether the Accused reasonably believed L.B. consented to the sexual acts in Charge I, Specification 1. It is not a logical conclusion that because L.B. consented to anal sex in the future that the Accused was mistaken as to having consent in the past. If the consensual sexual acts had not yet occurred at the time of the sexual assault, there can be no reasonable mistake of fact as to consent based in those other consensual sexual acts.

iii. The Military Judge employed the incorrect balancing test.

Further, the military judge failed to employ the balancing test required under M.R.E. 412(c)(3) when determining admissibility of this evidence for the M.R.E. 412(b)(2) exception to show consent. This balancing test enumerated in M.R.E. 412 reflects the purpose of the rule, which is that M.R.E. 412 is a rule of exclusion, requiring the evidence to have a higher probative value than generally admissible evidence that is analyzed under an M.R.E. 403 balancing test.

Here, the Military Judge determined that the probative value of this evidence is not substantially outweighed by the unfair prejudice. This is clear and indisputable error. Rather, the Military Judge employed the M.R.E. 403 standard and not the standard as articulated in M.R.E. 412(c)(3).

b. <u>L.B. and the Accused had consensual oral sex before and after the charged allegations. This includes L.B. performing oral sex on the Accused, and the Accused performing oral sex on L.B.</u>

The military judge clearly and indisputably erred when she determined this evidence is admissible under M.R.E. 412(b)(2) and (3). This evidence is not relevant

for the same reasons as described above concerning evidence that L.B. and the Accused engaged in consensual anal sex. It is also more so irrelevant that the Accused performed consensual oral sex on L.B., as that sexual act is not the basis for any of the charged offenses. Again, the military judge failed to employ the correct balancing test required under M.R.E. 412(c)(3) when determining admissibility of this evidence for the M.R.E. 412(b)(2) exception to show consent.

c. <u>At times the Accused would have to decline sex, due to L.B. wanting to have sex two or three times a day.</u>

i. The evidence is not relevant, material, and is unfairly prejudicial.

The military judge clearly and indisputably erred when she determined this evidence is admissible under M.R.E. 412(b)(2) and (3). This evidence is not relevant for the same reasons as described above concerning evidence that L.B. and the Accused engaged in consensual anal and oral sex. Vague impressions of the victim's sexual drive and how it might compare to the accused's has no bearing on the issue of consent and runs the risk of causing the fact finder to rely on ingrained personal bias about promiscuous behavior rather than the actual evidence. Preventing this risk is the entire purpose of the rule. Here again, the military judge failed to employ the correct balancing test required under M.R.E. 412(c)(3) when determining admissibility of this evidence for the M.R.E. 412(b)(2) exception to show consent.

ii. The evidence is not "otherwise admissible."

The Military Judge clearly and indisputably erred in admitting this evidence, as the evidence is not otherwise admissible under the entirety of the Military Rules of Evidence. L.B.'s testimony at the Article 39(a) hearing did not support this assertion.

Logically, the Defense's reliance on L.B. testifying to this evidence at trial fails and requires another method of admissibility. The Defense failed to offer any other theory of admissibility, and the Military Judge did not identify how this evidence would otherwise be admissible. Even if the Accused waives his right to remain silent and testifies, the evidence is not admissible as it is hearsay.

Hearsay statements are statements "(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted." M.R.E. 801(c)(1-2). The Military Judge's explanation for finding this evidence relevant is that it "tends to show L.B.'s sexual interest in the Accused and explains the sexual relationship and dynamic of the two of them." Petition Y, ¶ 45. This can only be relevant for this purpose if the statements that L.B. wanted to have sex two or three times a day are offered for the truth of the matter asserted.

Further, the evidence is not admissible even if testified to by the Accused, as the evidence is impermissible character evidence. Should the Defense cross-examine L.B. on this evidence, the Defense is not permitted to introduce extrinsic evidence to contradict her.

"The use of extrinsic evidence is highly circumscribed." *In Re Y.B.*, 83 M.J. 501, 505 (C.G. Ct. Crim. App. 2022) (citing M.R.E. 608, 609, 513). The rules on the use of extrinsic evidence to impeach depend on the method of impeachment: character for untruthfulness; prior inconsistent statements; bias, prejudice, or motive to misrepresent; or impeachment by contradiction. *Id.* Impeachment by contradiction is a common law doctrine recognized by military courts. *Banker*, 15 M.J. 207, 210

(C.M.A. 1983); *United States v. Montgomery,* 56 M.J. 660; 668 (A. Ct. Crim. App. 2001). "This line of attack involves showing the tribunal the contrary of a witness' asserted fact so as to raise an inference of a general defective trustworthiness." *Banker*, 15 M.J. at 210.

The general rule is that if a witness's asserted fact is collateral, then extrinsic evidence to contradict it is inadmissible. *Id*. A matter is "collateral," if "the fact could not be shown in evidence for a purpose independent of the contradiction." *United States v. Langhorne*, 77 M.J. 547, 555 (A.F. Ct. Crim. App. 2017) (quoting *United States v. Harris*, 542 F.2d. 1283, 1306-07 (7th Cir. 1976)). Here, it is collateral fact whether the Accused ever turned down having sex with L.B. and L.B.'s frequency of requests to have sex. The narrowed exception to the rule, that "a witness who makes a collateral assertion *on direct examination* may be contradicted by extrinsic evidence," also does not apply in this case. *Banker*, 15 M.J. at 210 (emphasis added). To impeach L.B. with this evidence would require extrinsic evidence, and L.B.'s denial of this fact on cross-examination does not open the door for the Defense to do so.

d. L.B. would tell the Accused words to the effect of, "you're the best," "your dick drives me crazy," and "I'm addicted to your dick."

The Military Judge clearly and indisputably erred when she determined this evidence is admissible under M.R.E. 412(b)(2) and (3). This is inadmissible hearsay for the same reasons as discussed above. Again, the Military Judge states the evidence is relevant "to the context of the relationship between L.B. and the Accused." Petition Attachment Y, ¶ 46. The proposition stands only if the statements are being offered for the truth of the matter asserted. There are no hearsay exceptions that

apply to this evidence. Therefore, the evidence is not "otherwise admissible" under the Military Rules of Evidence.

e. On 10 November 2019, L.B. sent two photos of her cleavage in a bra to the Accused with the accompanying text, "I got something for you when you get back."

The Military Judge clearly and indisputably erred when she determined this evidence is admissible under M.R.E. 412(b)(3). This is inadmissible hearsay for the same reasons as discussed above. Again, the Military Judge states the evidence is relevant "to the ongoing sexual dynamic between L.B. and the Accused" and "to show L.B.'s sexual interest in the Accused." Attachment Y, ¶ 47.a. The proposition stands only if the statements are being offered for the truth of the matter asserted. There are no hearsay exceptions that apply to this evidence. Therefore, the evidence is not "otherwise admissible" under the Military Rules of Evidence.

The evidence is also not admissible, because such extrinsic evidence may not be admitted to impeach L.B. Clearly, evidence of L.B.'s sexual interest in the Accused on 10 November 2019, **approximately seven months before the timeframe of the earliest sexual assault**, fits squarely into the definition of a collateral fact, as discussed above. *See supra* Section I, para (c)(ii). The narrowed exception to the rule, that "a witness who makes a collateral assertion *on direct examination* may be contradicted by extrinsic evidence," does not apply in this case. *Banker*, 15 M.J. at 210 (emphasis added). This evidence is also not admissible to impeach L.B.'s testimony that she "rarely or never initiated sexual activity and implied she had little sexual interest in the Accused or much less interest in sexual activity than the Accused." Petition Y, ¶ 47.b. Not only does it not actually contradict a collateral fact, it would be

impermissible extrinsic evidence for that purpose. The Defense does not get to illicit responses out of L.B. on cross-examination that they ultimately disagree with and then present extrinsic evidence to "contradict" her. This would be an impermissible use of impeachment by contradict that is not permissible by the common law doctrine.

f. On 23 November 2019, L.B. sent the Accused a photo of herself with her cleavage exposed.

The military judge clearly and erroneously erred when she determined this evidence is admissible under M.R.E. 412(b)(3). The Military Judge found the evidence was not relevant to show consent, which undermines the relevancy and materiality for a reasonable mistake of fact defense. A victim sending a photo of her cleavage to the accused approximately seven months before the first charged sexual assault offense is not relevant to a reasonable mistake of fact defense.

This evidence is also not admissible to impeach L.B.'s testimony that she "rarely or never initiated sexual activity and implied she had little sexual interest in the Accused or much less interest in sexual activity than the Accused." Petition Attachment Y, ¶ 47.b. Not only does it not actually contradict a collateral fact, it would be impermissible extrinsic evidence for that purpose. The Defense's disagreement with L.B.'s opinion of her own sex drive does not therefore cause a contradiction to exist. And such disagreement elicited by the Defense's own questions on cross-examination does not permit them to parade every flirtatious text or photo into the courtroom. This is the type of distraction from and confusion of the issues at trial that M.R.E. 412(c)(3) and M.R.E. 403, if correctly applied, prevent from happening in the military justice process.

g. On 21 January 2020, L.B. sent close-up photos of her nipple to the Accused. The Accused responded with an emoji of a tongue.

i. The evidence is not relevant, material, and is unfairly prejudicial.

The Military Judge clearly and indisputably erred when she determined this evidence is admissible under M.R.E. 412(b)(3). Again, the Military Judge found the evidence was not relevant to show consent, which undermines the relevancy and materiality for a reasonable mistake of fact as to consent defense. The Military Judge ignored the additional context of the photo and the Accused's response that were provided by the Victims' Counsel Response to the Defense' s Second Motion to Admit M.R.E. 412 evidence, which clearly shows that this evidence as presented by Defense was intended to mislead the members, causing such admission of evidence to fail under M.R.E. 403's balancing test.

h. Text Messages Between L.B. and the Accused from on or about 22 June 2020 and on or about 11 September 2021.

The military judge clearly and erroneously erred when she determined this evidence is admissible under M.R.E. 412(b)(2) and (3). This is inadmissible hearsay for the same reasons as discussed above. Again, the Military Judge states the evidence is relevant "to the ongoing sexual dynamic of L.B. and the Accused" and "to show L.B.'s sexual interest in the Accused." Petition Attachment Y, ¶ 47. The proposition stands only if the statements are being offered for the truth of the matter asserted. There are no hearsay exceptions that apply to this evidence. Therefore, the evidence is not "otherwise admissible" under the Military Rules of Evidence.

This evidence is also not admissible to impeach L.B.'s testimony that she

"rarely or never initiated sexual activity and implied she had little sexual interest in the Accused or much less interest in sexual activity than the Accused." Petition Attachment Y, ¶ 47. Not only does it not actually contradict a collateral fact, it would be impermissible extrinsic evidence for that purpose. The Defense's disagreement with L.B.'s opinion of her own sex drive does not therefore cause a contradiction to exist. And such disagreement elicited by the Defense's own questions on cross-examination does not permit them to parade every flirtatious text or photo into the courtroom. This is the type of distraction from and confusion of the issues at trial that M.R.E. 412(c)(3) and M.R.E. 403, if correctly applied, prevent from happening in the military justice process.

The admission of this evidence of L.B.'s sexual behaviors with the Accused is a complete deterrence from the President's intent in prescribing MRE 412, failing to protect victims from the false narrative that wives don't say "no" to having sex with their husbands. The Military Judge's ruling granting admission of this evidence under the guise of unspecified constitutional rights of the Accused is a miscarriage of justice in that it does not treat the victim with fairness and respect for her dignity and privacy. "The accused does not have an unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence." *Taylor v. Illinois,* 484 U.S. 400, 410 (1988). What the Military Judge's ruling permits is unfettered impeachment, which the Accused does not have a constitutional right to do. See *United States v. Aldridge*, 413 F.3d 829, 834 (8th Cir. 2005)("Generally, if other avenues for impeachment exist, there is no Confrontation Clause issue from the exclusion of particular impeachment evidence.").

II.

The Military Judge clearly and indisputably erred when ruling L.B. did not have standing to seek a protective order from the court-martial over her private PHI, because the injury to L.B.'s privacy interests can be redressed by the Military Judge.

a. The actual harm caused by the Military Judge's 18 December 2025 ruling to L.B.'s Article 6b, U.C.M.J. privacy rights can be remedied by the Military Judge, therefore L.B. has standing to be heard on the issue.

On 9 December 2025, the Military Judge granted the Defense motion to compel discovery to the extent of requiring production of L.B.'s bariatric surgery and associated laboratory tests within six months prior to October 2023. Petition Attachment V.

On 11 December 2025, counsel for L.B. was informed that significantly more medical records were acquired and disclosed beyond the limitations set forth in the 9 December ruling, and on the same day L.B. submitted a motion for a protective order. (*MFAR,* Petition Attachment W). L.B.'s motion sought to limit disclosure of her medical records and to require the parties to destroy surplus medical records provided that fall outside the scope of the Military Judge's 9 December ruling.

The next day, on 12 December 2025, the Military Judge issued an email ruling that summarily rejected L.B.'s standing to seek to protect her own privacy rights under Article 6b, U.C.M.J. On 17 December 2025, the day after the writ petition was filed in this Honorable Court, the Government filed its own motion for a protective order that sought to limit disclosure but did not request that the surplus records be destroyed. (Attachment AA). That motion was granted by the Military Judge on 18

December 2025 (Attachment BB).

When a right is established by law, there is also a legally justiciable interest established. *See generally Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Standing to pursue a judicial remedy for a violation of one's right is *sine qua non* to the very existence of a legal right and cannot be alienated from it. *See id.* In other words, there can be no such thing as a legal right if the holder of the right, or their legal representative, has no ability to petition a court of law to remedy the right's violation.

"[C.A.A.F.] follows the principles of standing that apply to Article III courts." *B.M. v. United States*, 84 M.J. 314, 317 (C.A.A.F. 2024) (internal citation omitted). C.A.A.F. goes on to state in *B.M.*, "[i]n accordance with these principles, this Court [C.A.A.F.] only addresses claims raised by parties who can show an injury in fact, causation, and redressability." *Id.* (internal citations and quotations omitted). C.A.A.F. acknowledged in *B.M.* that B.M. had a statutory right to proceedings free from unreasonable delay but could not challenge an abatement order because she did not have a "a judicially cognizable interest in the ultimate question of whether the government will or will not prosecute the accused." *Id.* at 319 (internal quotations omitted).

In this case, L.B. is not seeking to assert an interest in the prosecution of the case but to assert and defend her judicially cognizable Article 6b rights before the court best situated to protect those rights.

In 2004, the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, was passed, permitting victims in federal court to seek enforcement of their rights. Article 6b,

U.C.M.J., is based upon the CVRA and was enacted to extend victims' rights to victims of offenses under the UCMJ. Like the CVRA, Article 6b provides certain rights to victims, including the right to be protected from the accused (Article 6b(a)(1), U.C.M.J.) and the right to be treated with fairness and with respect for their dignity and privacy (Article 6b(a)(9), U.C.M.J.).

To establish standing for judicial remedy of an injury to one's rights, the Supreme Court in *Lujan* has stated that,

> the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, [citations omitted]; and (b) 'actual or imminent, not 'conjectural' or 'hypothetical,' [citation omitted]. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be 'fairly trace[able] to the challenged action of the defendant, and not . . . the result [of[the independent action of some third part not before the court. [Citation omitted]. Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." [Citation omitted]. "

Id. The *Lujan* Court further articulated that the injury element can be established solely by the invasion of a right created by statute. *Id.* at 578, 2145. C.A.A.F. adopted this language and standard in *B.M. See B.M.,* 84 M.J. at 317.

Victims are explicitly granted the ability to move for relief or otherwise object to post-preferral subpoenas for their personal or confidential information. R.C.M. 703(g)(3)(C)(ii). Further, the military judge has wide latitude to regulate discovery and can, at any time, 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).

In this case, L.B. is an individual described in Article 6b, U.C.M.J., and therefore has a right to be reasonably protected from the accused and the right to be

treated with fairness and respect for her dignity and privacy. The violation of these rights is an injury-in-fact that is concrete and particularized in the form of unwarranted disclosure of L.B.'s private medical records. The harm also consists of an abrogation of her statutory right to the representation of personally detailed counsel under 10 U.S.C. § 1044e.

L.B.'s strong privacy interest is evidenced by her swift action to protect her own personal medical records through a same-day motion submitted to the Military Judge. The Government motion, on the other hand, was filed six days later, and only after a petition was filed for extraordinary relief in this Honorable Court. The Military Judge found it expedient to protect L.B.'s privacy only after the Government got around to filling a protective order that did not fully address the issue. The harm to L.B., therefore, includes an incomplete, delayed, and conflicted representation of L.B.'s rights by the Government.

The second element of standing under *Lujan* is a causal connection between the injury and the conduct complained of. In this case, the conduct complained of is the Military Judge's denial of L.B.'s right to advocate for her own rights in court, which was a direct cause of the harm mentioned above. But for the Military Judge's ruling that L.B. has no standing, L.B. would have been able to make a full and timely defense of her own statutory rights. L.B. is entitled to move for relief regarding a subpoena for her personal or confidential information according to the plain language of the rule. While in this instance, the Government managed to proceed without a subpoena to obtain the records, there should have been one issued. Ruling that L.B. lacks standing to challenge the improper disclosure of records which should have

required a subpoena for her confidential records suggests a troubling result where the parties can bypass R.C.M. 703(g)(3)(C) due process by improperly obtaining victim records.

The third constitutional element for standing is that a favorable court decision will likely redress the injury. While the offensive disclosure has already been made, the Military Judge still retains the ability to direct the parties to destroy surplus medical records outside the scope of the 9 December 2025 ruling. Additionally, as there are other evidentiary issues still pending that implicate L.B.'s privacy, it is highly likely that she will need to be heard on those issues as well before and during trial. Thus, a ruling by this Honorable Court will allow L.B.'s detailed victims' counsel to fully represent her interests to advocate against further improper disclosures and to protect her privacy rights.

Standing is a constitutional principle that cannot be reduced further than the three elements articulated in *Lujan*. Accordingly, any interpretation of Article 6b, U.C.M.J., that seeks to invalidate L.B.'s standing to be heard on matters impacting her privacy rights must be disregarded as unconstitutional.

b. Denial of an opportunity to be heard conflicts with the clear language and intent of Article 6b, U.C.M.J. and renders most of its enumerated rights inaccessible.

The Air Force Court of Criminal Appeals has ruled that victims do not have a statutory right to be heard under Article 6b, U.C.M.J. other than under Article 6b, U.C.M.J.(a)(4), however "…absence of a specific statutory right to be heard does not mean that a military judge is *prohibited* from considering a victim's effort to exercise Article 6b, UCMJ, rights." *In re VM*, No. 2023-04, 2023 CCA LEXIS 290, at *7 (A.F.

Ct. Crim. App. July 11, 2023)(unpublished). This holding is a contradictory paradox that must be reconciled with the plain language of the statute and the constitutional principles of standing.

In *VM*, the victim filed an objection to the accused's motion for a continuance, but the trial judge declined to consider it for lack of standing. The *VM* court indicated that the military judge erred in concluding that he was prohibited from considering a victim's effort to exercise her Article 6(b), UCMJ, rights—even though it agreed with the military judge that she lacked standing under Article 6b, UCMJ. One must wonder what the exercise of a legal right looks like without standing to present facts and argument before a court? Perhaps just as puzzling is how a military judge is to consider such an effort absent standing?

The *VM* Court apparently viewed the grant of an opportunity to be heard under Article 6b(a)(4) at specified types of hearings as indicative that those were the *only* times a crime victim could be heard. This is, supposedly, because all the other rights under Article 6b failed to also use the words "right to reasonably be heard". In other words, the argument appears to suggest that Congress's intent was to provide crime victims a house with nine rooms but a key that opens only one of them. The other rooms, presumably, are to remain closed and vacant until the government decides to open them for the victim's benefit and only at a time of the government's choosing. Victims have to ask the government when they can use the kitchen, the laundry room, or the bathroom and hope the government has the time and inclination to stop what it's doing, come over to the house, and unlock doors each time the rooms are needed. This interpretation is contrary to the plain language and clear intent of Article 6b(a),

U.C.M.J., and it is jurisprudentially untenable.

The plain language of Article 6b(a)(4), UCMJ, uniquely gives crime victims a *forum-specific* right to be reasonably heard in specific types of proceedings without regard to what issues may arise at those proceedings. The plain language of the other Article 6b, U.C.M.J.(a) provisions under subparagraphs (1)-(3), and (5)-(9), U.C.M.J., however, establishes substantive and procedural rights—regardless of the forum or type of proceeding in which those rights may arise. In other words, the distinctive nature of the forum right in Article 6b(a)(4) is fundamentally different than the nature of the other rights under Article 6b(a) and uniquely requires "right to be heard" language as part of the structure of that particular right.

The plain language of Article 6b(a)(4) conveys that the right consists of two constituent parts: 1. A victim has an inherent right to be reasonably heard, 2. at any of the following: a public pretrial confinement hearing, a sentencing hearing, or a public proceeding on clemency and parole board. Unlike the other rights under Article 6b, U.C.M.J.(a), without the "right to be heard" language, the 6b(a)(4) right is incomplete. Thus, the inclusion of the phrase "right to be heard" could not be surplusage, regardless of whether it is employed elsewhere in Article 6b. Additionally, there is no text within Article 6b(a)(4) that operates to restrict or limit a victim's right to be heard in any other context or for the vindication of any other right. It simply provides the "indefeasible" right to be heard in those three specific forums. *See Kenna v. United States Dist. Court*, 435 F.3d 1011, 1016-17 (9th Cir. 2006) (Describing victims' right to be heard at sentencing under the C.V.R.A. where the 9th Circuit found "[v]ictims now have an indefeasible right to speak. . . ").

The rights granted to victims under Article 6(a)(1)-(3), and (5)-(9), U.C.M.J., on the other hand, are tied to specific substantive and procedural rights that could arise at any point during an investigation or prosecution under the U.C.M.J. Unlike Article 6b(a)(4), the rights under subsections (1)-(3) and (5)-(9) are complete without the necessity of referring to a victim's right to be heard. By classifying these provisions as "rights," the statute inherently established a justiciable harm when any such right is violated. *See Lujan,* 504 U.S. 555, 560-61. Accordingly, adding the "right to be reasonably heard" language, though essential to the structure of the Article 6b(a)(4) right, would be superfluous language if added to subsections (1)-(3) or (5)-(9).

To illustrate the importance of the distinction, under Article 6b(a)(2), U.C.M.J., a victim has a right to timely notice regarding specific litigation events throughout the course of a court-martial. For the sake of argument, consider that there are two options for interpreting the provision. The first interpretation requires surplusage language granting a right to be reasonably heard before a victim could directly petition a trial court for relief from any violations. Under this analysis, if the Government were not providing adequate notice, this illogical reasoning requires the victim to ask the offending agents of the Government, if they please, to advocate on the victim's behalf to seek the trial court's intervention—contrary to the interests of the Government.

Alternatively, though not much less absurd, the victim could routinely invoke Article 6b(e)(1) and petition the Air Force Court of Criminal Appeals to force the trial court to act on behalf of the victim every time a military judge rules that a victim does not have standing on the issue of their own rights, only with the additional onerous

burden of the clear and indisputable error standard. See generally *H.V.Z. supra.* This would lead to an unnecessary multiplicity of writs and an upending of the entire judicial economy where victims are forced to start with the Appellate Court for relief that should have been resolved at the trial court level.

The alternative interpretation of Article 6b, U.C.M.J., on the other hand, acknowledges that clearly defined substantive and procedural rights do not require the same "right to be reasonably heard" language as do forum rights. Under this analysis, the interpretive canon disfavoring surplusage is brought to square with the plain language of Article 6b(a), U.C.M.J., constitutional principles of standing, and the clear intent of Congress to allow crime victims the ability to challenge all Article 6b rights violations at the trial court level.

c. Detailed victim's counsel must represent victims.

It may be contended that, in some situations, a victim's rights are protected "well enough" by trial counsel. However, "Congress determined that military victims, as defined, should be afforded a right to counsel different from others within the military justice system, at every proceeding." *United States v. Deremer supra* 553); TJAG certificate filed *United States v. Deremer*, No. 25-0158/MC, 2025 CAAF LEXIS 350 (C.A.A.F. May 5, 2025). Victims' counsel "represent" the victim's interests instead of the government's. See 10 U.S.C. § 1044e(c) ('The relationship between a Special Victims' Counsel and a victim in the provision of legal advice and assistance shall be the relationship between an attorney and client.'). Although the interests of victims and the Government often align, we note that this is not always the case." *United States v. Harrington*, 83 M.J. 408, 419 (C.A.A.F. 2023).

L.B. likewise has a Victims' Counsel who has been specifically designated by statute to act as her legal counsel. However, the Military Judge did not allow L.B.'s Victims' Counsel the opportunity to advocate for her privacy rights, and instead improperly waited until counsel for the Government got around to taking an interest in L.B.'s privacy rights.

This decision by the Military Judge to cede responsibility to the Government for representing L.B.'s Article 6b rights cuts against C.A.A.F.'s ruling in *Harrington* and improperly places L.B.'s rights in the hands of government counsel, who have no attorney-client relationship with her or duty to act in her interests, and who clearly have a different level of interest in protecting L.B.'s privacy.

Accordingly, by denying L.B.'s Victims' Counsel the ability to object or be heard regarding violations of L.B.'s rights under Article 6b, U.C.M.J., the Military Judge directly undermined both L.B.'s rights and the Victims' Counsel program as set forth in federal statute and military service regulations. **Ironically, the Military Judge granting the Government's motion to protect L.B's medical records is a concession of L.B.'s vested legal interests – standing – in this matter**.

Regardless of the Military Judge's ultimate ruling on the protection of the medical records in dispute, L.B. was entitled to meaningful advocacy from her statutorily designated counsel when her Article 6b, U.C.M.J. rights were violated by the Military Judge. Here, the actions of the Military Judge effectively ignored the intent of Congress, the Department of [Defense], and the Department of the Air Force, which specifically designated counsel to support and represent victims such as L.B. To deny a Victims' Counsel the ability to advocate for their client at a court-martial

regarding an issue directly implicating the client's rights not only violates those rights, but reimagines the role of Victims' Counsel as passive advisors instead of statutorily required legal representatives.

III.

Defense Health Agency is not a military authority as contemplated in R.C.M. 701.

As outlined in the Petition, since DHA is not a law enforcement entity, is not a military service, and is not involved in the prosecution of RPI, L.B.'s electronic health record is not in the possession, custody, or control of military authorities.

REASON WHY WRIT SHOULD ISSUE

Wherefore, L.B. respectfully requests issuance of a writ declaring inadmissible all information, documents, and communications determined admissible by the Military Judge in her 12 December 2025 Ruling, to find that L.B. does have standing to seek protective orders for her private information pursuant to her rights under Article 6b, U.C.M.J., and the Military Judge's conclusion that DHA is a military authority is clear and indisputable error.

Respectfully Submitted this 7th day of January, 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
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240-636-2001
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C.A.A.F. Bar Number 37640

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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
[redacted]
Ohio 101021

CERTIFICATE OF FILING AND SERVICE

I certify that on January 7, 2026, the foregoing was electronically filed with the Court and served on the following addresses:

[redacted]l;

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
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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. 2025-14**
Petitioner	)	
	)	
	)	
	)	**ORDER**
Irvin BRYANT, Jr.	)	
Technical Sergeant (E-6)	)	
U.S. Air Force	)	
Real Party in Interest	)	**Special Panel**

A petition for extraordinary relief in the nature of a writ of mandamus in the above-styled case was docketed with this court on 16 December 2025. Petitioner is the alleged victim in the ongoing general court-martial of Technical Sergeant Irvin Bryant, Jr. (Real Party in Interest (RPI)) at Joint Base Anacostia-Bolling, Washington, D.C.

Initially, Petitioner filed with this court a motion to stay proceedings and a petition requesting relief in the nature of a writ of mandamus pursuant to Article 6b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 806b, in the above-styled case. Petitioner also moved to file her petition under seal. Petitioner requested we stay the "ongoing" proceedings and issue a writ to: (I) vacate the military judge's ruling regarding the admissibility of evidence under Mil. R. Evid. 412 because "the military judge refused to accord and acknowledge [Petitioner's] rights, ruling certain evidence admissible despite [Mil. R. Evid.] 412 and in doing so used a clearly and indisputably incorrect legal standard;" (II) vacate the military judge's ruling that Petitioner lacked standing to "seek a protective order from the court-martial over her private PHI[*] because the injury to [Petitioner's] privacy interests can be redressed by the military judge," and: (III) vacate the military judge's ruling finding Petitioner's "private and [PHI] was in the possession, custody, and control of military authorities and that such PHI was relevant," because Petitioner claims the "Defense Health Agency is not a military authority as contemplated in [Rule for Courts-Martial] 701."

On 17 December 2025, this court denied Petitioner's motion to stay the proceedings and granted Petitioner's motion to file under seal. On the same day, Petitioner filed anew a "Motion for Leave to Supplement Pleading and Attach to the Record," moving this court for leave to file an attachment to her 16 December 2025 petition. The attachment is an email from the military

[*] PHI stands for Protected Health Information.

judge, dated 17 December 2025, continuing the court-martial to a later date to be determined. On 18 December this court granted Petitioner's "Motion for Leave to Supplement Pleading and Attach the Record."

On 7 January 2026, Petitioner filed her supplemental brief for the Petition. Petitioner also moved to file her supplemental brief to the petition under seal.

Accordingly, it is by the court on this 13th day of January, 2026,

ORDERED:

Petitioner's motion to file her supplemental brief, dated 7 January 2026, under seal is **GRANTED**.

It is further ordered:

The United States and Real Party in Interest are each granted leave to file an answer to Issues I and II of the petition **not later than 9 February 2026**. Petitioner may then file a reply brief within seven days of 9 February 2026, or seven days from the date of the last answer filed should both answers be filed before 9 February 2026.

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

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

In re LB, *Petitioner*,	)	**REAL PARTY IN INTEREST'S MOTION TO FILE UNDER SEAL**
	)	Before a Special Panel
Technical Sergeant (E-6) **Irvin Bryant, Jr.**, United States Air Force, *Real Party in Interest.*	)	Misc. Dkt. No. 2025-14
	)	23 January 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 a consent motion to attach documents under seal.

The motion seeks to attach two appellate exhibits providing, respectively, the Government's and the Petitioner's responses to the Real Party in Interest's first motion to admit evidence under Military Rule of Evidence 412. Military Rule of Evidence 412 provides that motions, related papers, and the record of the hearing to consider the admissibility of evidence under that rule "must be sealed in accordance with [Rule for Courts-Martial] 1113 and remain under seal unless the military judge, the Judge Advocate General, or an appellate court orders otherwise." MIL. R. EVID. 412(c)(2), *Manual for Courts-Martial, United States* (2024 ed.). In keeping with that rule, it is appropriate to file under seal the Government's and Petitioner's responses to the Real Party in Interest's first motion to admit evidence under Military Rule of Evidence 412.

A redacted version of the Real Party in Interest's motion to attach documents is being filed contemporaneously with this motion.

WHEREFORE, this Honorable Court should grant this motion.

Respectfully submitted,

Dwight H. Sullivan
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770

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 23 January 2026.

Respectfully submitted,

Dwight H. Sullivan
Air Force Appellate Defense Division

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

In re LB,	)	**REAL PARTY IN INTEREST'S CONSENT MOTION TO ATTACH DOCUMENTS (REDACTED)**
Petitioner,	)	
	)	
	)	Before a Special Panel
Technical Sergeant (E-6)	)	
Irvin Bryant, Jr.,	)	Misc. Dkt. No. 2025-14
United States Air Force,	)	
Real Party in Interest.	)	23 January 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(b) of this Honorable Court's Rules of Practice and Procedure to attach documents. Counsel for Petitioner and the Government have authorized us to state that they consent to this motion.

The Real Party in Interest seeks to attach two filings from the court-martial record of trial that are relevant to this Court's consideration of Issue I:

1. Appellate Exhibit XIII, Government Response to Defense Motion to Admit M.R.E. 412 Evidence of Victim's Sexual Behavior #1, Sep. 25, 2025.

2. Appellate Exhibit XVII, Victim's Counsel's Response to Defense Motion to Admit Evidence under M.R.E. 412, Sep. 26, 2025.

Both documents are part of the record of trial. Rule for Courts-Martial 1112(b)(5), *Manual for Courts-Martial, United States* (2024 ed.). Petitioner provided this Court with her responses and the Government's responses to the Real Party in Interest's second and third motions to admit evidence under Military Rule of Evidence (M.R.E.) 412, as well as her response to the Government's motion to admit evidence under M.R.E. 412. Petition,

GRANTED
2 FEB 2026

Attachments D, K, L, N, O. But Petitioner did not provide this Court with either her or the Government's response to the Real Party in Interest's first motion to admit evidence under M.R.E. 412.

Rule 19(b)(2)(C) of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals provides that a petition for extraordinary relief shall contain, at a minimum, "any parts of the record that may be essential to understand the matters set forth in the petition." Petitioner's and the Government's responses to the Real Party in Interest's first motion to admit evidence under M.R.E. 412 are essential for this Court's determination of what challenges to the admissibility of that evidence have been properly preserved.

WHEREFORE, this Honorable Court should grant this motion.

Respectfully submitted,

[redacted]

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Maryland Attorney ID No. 8612010505

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 23 January 2026.

Respectfully submitted,

[redacted]

Dwight H. Sullivan
Air Force Appellate Defense Division

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

In re LB, *Petitioner*,	)	**REAL PARTY IN INTEREST'S MOTION TO FILE UNDER SEAL**
Technical Sergeant (E-6) **Irvin Bryant, Jr.**, United States Air Force, *Real Party in Interest.*	)	Before a Special Panel Misc. Dkt. No. 2025-14 23 January 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 a consent motion to attach documents under seal.

The motion seeks to attach two appellate exhibits providing, respectively, the Government's and the Petitioner's responses to the Real Party in Interest's first motion to admit evidence under Military Rule of Evidence 412. Military Rule of Evidence 412 provides that motions, related papers, and the record of the hearing to consider the admissibility of evidence under that rule "must be sealed in accordance with [Rule for Courts-Martial] 1113 and remain under seal unless the military judge, the Judge Advocate General, or an appellate court orders otherwise." MIL. R. EVID. 412(c)(2), *Manual for Courts-Martial, United States* (2024 ed.). In keeping with that rule, it is appropriate to file under seal the Government's and Petitioner's responses to the Real Party in Interest's first motion to admit evidence under Military Rule of Evidence 412.

A redacted version of the Real Party in Interest's motion to attach documents is being filed contemporaneously with this motion.

WHEREFORE, this Honorable Court should grant this motion.

GRANTED
2 FEB 2026

Respectfully submitted,

[redacted]

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Office: (240) 612-4770
[redacted]

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 23 January 2026.

Respectfully submitted,

[redacted]

Dwight H. Sullivan
Air Force Appellate Defense Division

6 February 2026

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

In re LB,
Petitioner,

Technical Sergeant (E-6)
Irvin Bryant, Jr.
United States Air Force
Real Party in Interest

Misc. Dkt. No. 2025-14

Before a Special Panel

REAL PARTY IN INTEREST'S ANSWER TO PETITIONER FOR EXTRAORDINARY RELIEF IN THE NATURE OF A WRIT OF MANDAMUS
[REDACTED]

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Counsel for Real Party in Interest

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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 NATURE OF A WRIT OF MANDAMUS**
Petitioner,	)	
	)	Before a Special Panel
Technical Sergeant (E-6) **Irvin Bryant, Jr.**, United States Air Force,	)	Misc. Dkt. No. 2025-14
Real Party in Interest.	)	9 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 on 13 January 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.

The Military Judge clearly and indisputably erred when ruling L.B. did not have standing to seek a protective order from the court-martial over her private PHI, because the injury to L.B.'s privacy interests can be redressed by the Military Judge.

Decisional Questions Presented

1.

[redacted]

2.

May Petitioner obtain mandamus relief on a basis not included in her Petition?

3.

[redacted]

4.

Does Petitioner have a clear and indisputable right to relief where the military judge declined to consider a non-party's motion for a protective order absent any statute or rule allowing a non-party to move for such relief at the court-martial trial level?

Summary of Argument

TSgt Bryant is facing trial by general court-martial for alleged sexual assault and domestic violence against his wife, Petitioner. [redacted] Petitioner cannot obtain mandamus relief based on an evidentiary objection she never made below.

[redacted]

[redacted]

Additionally, Petitioner's supplemental brief impermissibly sought to expand the grounds on which the mandamus Petition had objected to the Mil. R. Evid. 412 evidence. Petitioner defaulted those grounds by failing to timely raise them in her Petition. But even if those grounds were properly before this Court, they would be without merit. [redacted]

None of Petitioner's challenges to the military judge's rulings would have been meritorious under the normal appellate abuse of discretion standard. They fall woefully short of satisfying the clear and indisputable right to relief standard that applies to Petitioner's request for mandamus relief.

Petitioner also seeks mandamus relief because the military judge declined to consider her request for a protective order concerning certain non-mental-health medical records the Government provided to the defense in response to an order from the military judge compelling production. As a court of specialized and limited jurisdiction, a general court-martial has only those powers bestowed upon it by statute or presidential authorization pursuant to a congressional delegation. Petitioner points to no statute, *Manual for Courts-Martial* provision, or case law according a non-party the right to seek such a protective order from a court-martial trial judge. Because there is none. Potential statutorily provided avenues of relief exist for Petitioner's

claim, but they are outside the military justice system. It is not the courts' role to create an avenue within the military justice system where neither Congress nor the President has done so. And mandamus may not be used to establish a right rather than enforce an already clearly established right. Mandamus relief is unavailable to Petitioner.

Statement of the Case

TSgt Bryant 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, Dec. 16, 2025 [hereinafter Pet.] at Attach. A (PDF 22–27).[1] A special trial counsel referred the charges and specifications to a general court-martial on 13 December 2024. *Id.*, Block V (PDF 23, 26).

[redacted] On 16 December 2025, Petitioner filed a Petition seeking a writ of mandamus pursuant to Article 6b(e), UCMJ, 10 U.S.C. § 806b(e), combined with a motion to stay proceedings. Pet. (PDF 1–17). Petitioner also moved for leave to file a supplement to the Petition with further briefing by 7 January 2026. *Id.* (PDF 17). On 17 December 2025, this Court denied Petitioner's request to stay proceedings while permitting her to file a supplemental brief not later than 7 January 2026. *In re LB*, Misc. Dkt. No. 2025-14 (A.F. Ct. Crim. App. Dec. 17, 2025) (order). Also on 17 December 2025, the

[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.

military judge continued TSgt Bryant's general court-martial to a date to be determined. Pet'r's Mot. for Leave to Suppl. Pleading and Attach to the R., Dec. 17, 2025, *granted by In re LB*, Misc. Dkt. No. 2025-14 (A.F. Ct. Crim. App. Dec. 18, 2025) (order).

On 7 January 2026, Petitioner filed a supplemental brief. That brief sought relief on three bases: (I) a challenge to certain Mil. R. Evid. 412 rulings by the military judge; (II) a challenge to the military judge's ruling that Petitioner did not have standing to seek a protective order concerning certain medical records; and (III) a challenge to the military judge's ruling that Petitioner's health care records maintained by the Defense Health Agency were in the possession, custody, and control of military authorities. Pet'r's Suppl. Br., Jan. 7, 2026. On 13 January 2026, this Court granted the Real Party in Interest and the United States leave to file an answer to Issues I and II raised by Petitioner not later than 9 February 2026 while also granting Petitioner leave to file a reply brief.

Statement of Facts

A. Facts concerning Issue I of Petitioner's Supplemental Brief

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 22–27). His wife, Petitioner, is the alleged victim of each of those offenses. *Id.* One of the sexual assault specifications alleged that TSgt Bryant penetrated Petitioner's anus with his penis without her consent between on or about 1 January and 28 February 2021. Charge I, Specification 1, *id.* (PDF 22). A second specification alleged that TSgt Bryant penetrated Petitioner's vulva with his penis without her consent between on or about 1 June and 31 July 2020. Charge I, Specification 2, *id.* (PDF 22). The third specification alleged that TSgt Bryant penetrated Petitioner's mouth with his penis without her consent between on or

about 1 and 31 October 2020. Additional Charge, Specification, *id.* (PDF 25). [redacted]

[redacted]

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2 [redacted]

[redacted]

[redacted]

[redacted]

3 [redacted]

[redacted]

[redacted]

[redacted]

B. Facts concerning Issue II of Petitioner's Supplemental Brief

Two specifications allege that TSgt Bryant committed domestic violence against Petitioner on or about 24 October 2023 by: (1) grabbing her arms with his hands and pushing her into a nightstand; and (2) pushing her head against a wall. Charge II, Specifications 1, 2, Charge Sheet, Pet. at Attach. A (PDF 22). A third specification alleges that on or about 1 to 30 November 2022, TSgt Bryant grabbed Petitioner's arms and threw her down on a bed. Charge II, Specification 3, *id.* (PDF 24).

On 6 December 2025, TSgt Bryant's defense counsel filed a motion to compel discovery. Defense Mot. to Compel Disc., Dec. 6, 2025, Pet. at Attach. T (PDF 317–47). That motion sought: [redacted] The prosecution opposed the motion. Government Resp. to Defense Mot. to Compel Disc., Dec. 8, 2025, Pet. at Attach. U (PDF 349–85).

[redacted]

The military judge granted in part and denied in part the defense's motion to compel discovery. Ruling on Defense Mot. to Compel Disc., Dec. 9, 2025, Pet. at Attach. V (PDF 387–91). The military judge ordered the Government to provide the defense with records relating to [redacted] *Id.* at 5, ¶¶ 23, 24 (PDF 391).

Two days after the military judge's ruling on the defense's motion to compel, Petitioner's counsel emailed to the military judge, copying counsel for the parties, a motion for a protective order. Victims' Counsel Mot. for Appropriate Relief: Protective Order, Dec. 11, 2025, Pet. at Attach. W (PDF 393–95). In that motion, Petitioner's counsel averred that the prosecution had provided the defense with medical records in response to the military judge's 9 December 2025 ruling and included among them were records outside the date range prescribed by that ruling, "along with other private and confidential medical history not related to [redacted]." *Id.* at 1, ¶ 4 (PDF 393). That motion requested this relief:

> [A] protective order to prohibit both parties, including their appointed experts, from disclosing any information from L.B.'s medical records that were released on 11 December 2025. If either party or their appointed experts, in the execution of this order, finds evidence that the party deems relevant and necessary to a specification in this case and that evidence otherwise falls within the protection of the order, the party shall present the evidence to the military judge for *en camera* [sic] review. . . . L.B. also requests that this Honorable Court order Defense Counsel and Government Counsel, and their appointed experts, immediately destroy all copies of L.B.'s medical records that were provided on 11 December 2025, physical and electronic, that fall outside this Court's ruling. L.B. requests the remainder of her medical records be destroyed immediately after the adjournment of this trial.

Id. at 2–3, ¶ 11 (PDF 394–95).

The following day, the military judge responded to Petitioner's counsel, "The Court will not consider this filing, as you do not have standing under Article 6b as to this issue." Email from Military Judge to Pet'r's Counsel, Dec. 12, 2025, Pet. at Attach. X (PDF 397). [redacted]

[redacted]

On 17 December 2025—the day after Petitioner filed her Article 6b(e) Petition with this Court—the prosecution filed with the military judge a motion for a protective order as to Petitioner's medical records. Mot. for Appropriate Relief: Protective Order; Medical Records, Dec. 17, 2025, Pet'r's Suppl. Br. at Attach. AA. That motion requested the following relief:

> [T]he Honorable Court execute a protective order prohibit[ing] all parties, including their appointed experts, from disclosing any information from L.B.'s medical records that were released on 11 December 2025. The Government further requests that this Honorable Court order Trial and Defense Counsel, and their appointed experts, immediately destroy all copies of L.B.'s medical records that were provided on 11 December 2025, upon completion of any appellate review of this trial.

Id. at 2, ¶ 6.

TSgt Bryant's counsel responded by email that they objected to the prosecution's request as written but did not object to the proposed protective order generally or to an order to destroy documents after completion of appellate review. Ruling on Defense Mot. to Compel Disc, Dec. 18, 2025, Pet'r's Suppl. Br. at Attach. BB.

The military judge granted the prosecution's motion for a protective order on 18 December 2025. *Id.* The military judge issued a protective order providing:

> 7. Trial Counsel and Defense Counsel will each maintain one (1) copy of L.B.'s medical records for their respective trial teams and may provide one (1) copy to each of their confidential experts in the fields of forensic psychology (Dr. [JS] and Dr. [PS]), pathology (Dr. [DF]), and the Sexual Assault Nurse Examiner (SANE, Ms. [AC]). Victims Counsel may be provided with one (1) copy of the records.
>
> 8. No party will make additional copies of the records without express permission from the Court.
>
> 9. All personally identifiable information contained within the records will be protected in accordance with applicable laws and regulations.

> 10. All records or notes derived from such evidence shall be secured when not being used.
>
> 11. The foregoing protective order will remain in effect for the duration of the processing of this case, including trial, post-trial, and any appellate process until the case is final, at which time the Government shall ensure that all records or notes pertaining to the records shall be destroyed and not used for any purpose other than those necessary for the record of trial.

Id. at 34, ¶¶ 7–11.

Standard of Review

"[A] mandamus petition will only be granted where a petitioner demonstrates a clear and indisputable right to relief." *H.V.Z. v. United States*, 85 M.J. 8, 11–12 (C.A.A.F. 2024). 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)).

Analysis

Issue I

Decisional Question Presented 1

[redacted]

[redacted]

[redacted] *See In re KK*, 84 M.J. 664, 667 (A.F. Ct. Crim. App. 2023) ("A military judge's decision warranting reversal via a writ of mandamus 'must amount to more than even gross error; it must amount to a judicial usurpation of power . . . or be characteristic of an erroneous practice which is likely to recur.'" (ellipsis in original) (quoting *United States v. Labella*, 15 M.J. 228, 229 (C.M.A. 1983) (per curiam))).

[redacted]

[redacted][4]

[redacted] *See United States v. Lemoine*, 34 M.J. 1120, 1121 (A.F.C.M.R. 1992)[6] (Petitioner "has not exhausted his alternative remedies as he must before a court may consider his petition for mandamus."); *Heckler v. Ringer*, 466 U.S. 602, 616 (1984) ("The common-law writ of mandamus, as codified in 28 U.S.C. § 1361, is intended to provide a remedy for a plaintiff only if he has exhausted all other avenues of relief . . . .").

Decisional Question Presented 2

Petitioner may not obtain mandamus relief on a basis not included in her Petition.

Rule 19 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals (JT. CT. CRIM. APP. R.) applies to, *inter alia*, petitions for extraordinary relief filed pursuant to Article 6b, UCMJ. A mandamus petition must be filed "no later than 20 days after the petitioner learns of the action complained of." JT. CT. CRIM. APP. R. 19(b)(1). The petition "shall contain . . . [r]easons for granting the relief requested." JT. CT. CRIM. APP. R. 19(b)(2)(E). [redacted]

[6] LEXIS misidentifies *Lemoine* as a decision by the Navy-Marine Corps Court of Military Review. It is actually a decision of this Court's under its previous name, the Air Force Court of Military Review. *See* National Defense Authorization Act for Fiscal Year 1995, Pub. L. No. 103-337, § 924, 108 Stat. 2663, 2831 (1994) ("Renaming of the United States Court of Military Appeals and the Courts of Military Review").

[redacted]

On 16 December 2025, Petitioner's counsel filed a timely Petition under Article 6b. Pet. at Certificate of Filing and Service (PDF 18). [redacted] This Court allowed Petitioner to "file a supplemental brief." *In re LB*, Misc. Dkt. No. 2025-14 (A.F. Ct. Crim. App. Dec. 18, 2025) (order).

Petitioner's counsel filed that supplemental brief on 7 January 2026—twenty-six days after the military judge sent Petitioner's counsel a copy of her ruling and thus beyond JT. CT. CRIM. APP. R. 19(b)(1)'s twenty-day deadline for seeking mandamus relief. Pet'r's Suppl. Br., Jan. 7, 2026. [redacted] To allow Petitioner to add new bases for a mandamus challenge in her supplemental brief would essentially permit her to file a new mandamus petition beyond JT. CT. CRIM. APP. R. 19(b)(1)'s

twenty-day limit. [redacted]

Decisional Question Presented 3

[redacted] During the ordinary course of review, a military judge's Mil. R. Evid. 412 rulings are reviewed for an abuse of discretion. *United States v. Ellerbrock*, 70 M.J. 314, 317 (C.A.A.F. 2011). An abuse of discretion occurs when a military judge's findings of fact are clearly erroneous or the military judge's decision is influenced by an erroneous view of the law. *United States v. Freeman*, 65 M.J. 451, 453 (C.A.A.F. 2008). The abuse of discretion standard of review recognizes that a judge has a range of choices and will not be reversed so long as the decision remains within that range. *United States v. Gore*, 60 M.J. 178, 187 (C.A.A.F. 2004). [redacted] *United States v. Mahoney*, 24 M.J. 911, 914 (A.F.C.M.R. 1992); *see Lemoine*, 34 M.J. at 1121 ("mandamus is not available to compel either a judicial or executive officer to exercise discretion in such a way as to reach a particular result"); *see also*

H.V.Z., 85 M.J. at 12 (referring to the mandamus "heightened standard"). 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).

"Military judges are presumed to know the law and to follow it absent clear evidence to the contrary." *United States v. Rodriguez*, 60 M.J. 87, 90 (C.A.A.F. 2004). [redacted] *Rodriguez*, 60 M.J. at 90. [redacted] *See St. Jean*, 83 M.J. at 113. [redacted]

[redacted]

A. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

In defending the ruling below, the Real Party in Interest as the prevailing party is not limited to the bases on which the military judge relied. Rather, the prevailing party may "assert in a reviewing court any ground in support of his judgment, whether or not that ground was relied upon or even considered by the trial court." *Dandridge v. Williams*, 397 U.S. 471, 475 n.6 (1970); *see also United States v. Lincoln*, 42 M.J. 315, 320 (C.A.A.F. 1995) (citing and following *Dandridge* in an Article 62 appeal context).

[redacted]

[redacted]

[redacted]

TSgt Bryant has a Sixth Amendment right to confront his accuser. *Pitts v. Mississippi*, 223 L. Ed. 2d 151, 155 (2025) (per curiam). "M.R.E. 412 cannot limit the introduction of evidence that is required to be admitted by the Constitution." *United States v. Gaddis*, 70 M.J. 248, 250 (C.A.A.F. 2011); *see also Crawford v. Washington*, 541 U.S. 36, 54 (2004) ("[T]he 'right . . . to be confronted with the witnesses against him,' Amdt. 6, is most naturally read as a reference to the right of confrontation at common law, admitting only those exceptions established at the time of the founding."). [redacted]

[redacted] "The relevance standard is a low threshold." *United States v. Guihama*, 85 M.J. 48, 55 (C.A.A.F. 2024) (quoting *United States v. White*, 69 M.J. 236, 239 (C.A.A.F. 2010)). [redacted] Moreover, upon ordinary review, a "military judge's determination that evidence is relevant will not be overturned unless there is a clear abuse of discretion." *United States v. Schlamer*, 52 M.J. 80, 96 (C.A.A.F. 1999). "[*A*]*ctual* relevance determinations (those not concerned with preliminary factfinding) usually are committed to the broad discretion of the trial court, and receive little, if any, review." 2 STEVEN A. CHILDRESS & MARTHA S. DAVIS, FEDERAL STANDARDS OF REVIEW § 11.08 (3d ed. 1999) (footnotes omitted). Because "mandamus is not available to compel [a judge] to exercise discretion in such a way as to reach a particular result," *Lemoine*, 34 M.J. at 1121, a military judge's ruling that evidence is relevant may not be reviewed via mandamus.

[redacted]

[redacted]

Moreover, as the Utah Supreme Court has suggested, evidence of a consensual sex act between an accused and alleged victim is relevant where a nonconsensual incident of the same type is alleged if the consensual act rebuts the possible presumption by some finders of fact that the alleged victim would not consensually engage in the charged form of sexual behavior. *See State v. Richardson*, 308 P.3d 526 (Utah 2013) (dealing with anal sex during menstruation). [redacted] Mil. R. Evid. 401(a).

[redacted]

[redacted]

Rodriguez, 60 M.J. at 90. [redacted]

B. [redacted]

1. [redacted]

[redacted] *Guihama*, 85 M.J. at 55. [redacted]

2. [redacted]

[redacted]

See St. Jean, 83 M.J. at 113. [redacted]

[redacted]

C. [redacted]

[redacted]

[redacted]

1. [redacted]

[redacted]

[redacted]

2. [redacted]

[redacted] *Rodriguez*, 60 M.J. at 90. [redacted]

3. [redacted]

[redacted] "[a] statement offered as evidence of the bare fact that it was said, rather than for its truth, is not hearsay." *United States v. Rodriguez-Lopez*, 565 F.3d 312, 314 (6th Cir. 2009). [redacted]

[redacted]

4. [redacted]

[redacted] Mil. R. Evid. 404(a)(2)(B) provides that "[s]ubject to the limitations in Mil. R. Evid. 412, the accused may offer evidence of an alleged victim's pertinent trait." [redacted]

5. [redacted]

D. [redacted]

[redacted] "A statement offered as evidence of the bare fact that it was said, rather than for its truth, is not hearsay." *Rodriguez-Lopez*, 565 F.3d at 314.

[redacted]

E. [redacted]

[redacted]

[redacted]

1. [redacted]

[redacted]

[redacted]

With trifling exceptions, such as some photographs of writings, "a photograph isn't hearsay because it makes no 'assertion.'" *United States v. Lizarraga-Tirado*, 789 F.3d 1107, 1109 (9th Cir. 2015); *see also* Mil. R. Evid. 801(a) ("'Statement' means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion."). Thus, "[t]he admission of photographic evidence is largely a matter of discretion for the trial judge." *United States v. May*, 622 F.2d 1000, 1007 (9th Cir. 1980). [redacted] "[a] statement offered as evidence of the bare fact that it was said, rather than for its truth, is not hearsay." *Rodriguez-Lopez*, 565 F.3d at 314. [redacted]

2. [redacted]

[redacted]

F. [redacted]

[redacted]

1. [redacted]

[redacted]

[redacted] *See United States v. Tin Yat Chin*, 371 F.3d 31 (2d Cir. 2004) ("alternative interpretations of its meaning . . . go to the *weight* of the evidence—

not to its *admissibility*").

Moreover, the Supreme Court has emphasized that deference is heightened when appellate courts review trial courts' rulings applying Federal Rule of Evidence 403. *Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379, 384 (2008). The Court explained that district courts are "accorded a wide discretion in determining the admissibility of evidence under the Federal Rules. Assessing the probative value of [the proffered evidence], and weighing any factors counseling against admissibility is a matter first for the district court's sound judgment under Rules 401 and 403." *Id.* (alterations in original) (quoting *United States v. Abel*, 469 U.S. 45, 54 (1984)). The Court continued, "This is particularly true with respect to Rule 403 since it requires an 'on-the-spot balancing of probative value and prejudice, potentially to exclude as unduly prejudicial some evidence that already has been found to be factually relevant.'" *Id.* (quoting 1 CHILDRESS & DAVIS, § 4.02). "Under this deferential standard, courts of appeals uphold Rule 403 rulings unless the district court has abused its discretion." *Id.* The same reasoning applies to military judges applying Mil. R. Evid. 403.

"[T]he abuse of discretion standard of review recognizes that a judge has a range of choices and will not be reversed so long as the decision remains

within that range." *Gore*, 60 M.J. at 187. [redacted]

H. [redacted]

[redacted]

[redacted]

[redacted]

1. [redacted]

[redacted] *Lizarraga-Tirado*, 789 F.3d at 1109. [redacted]

[redacted] *Rodriguez-Lopez*, 565 F.3d at 314.

2. [redacted]

[redacted]

Conclusion of Decisional Question Presented 3

[redacted]

Issue II

Decisional Question Presented 4

Petitioner has no clear and indisputable right to relief where the military judge declined to consider a non-party's motion for a protective order absent any statute or rule allowing a non-party to move for such relief at the court-martial trial level.

A. Courts-martial have only so much authority as a statute or *MCM* provision bestows on them.

A court-martial is an Article I tribunal "of special and limited jurisdiction. It is called into existence for a special purpose and to perform a particular duty." *Runkle v. United States,* 122 U.S. 543, 555 (1887). "[C]ourts-martial in general, being creatures of Congress created under the Article I power to regulate the armed forces, must exercise their jurisdiction in strict compliance with authorizing statutes." *Ctr. for Constitutional Rights v. United States*, 72 M.J. 126, 128 (C.A.A.F. 2013). Thus, a court-martial has only such power as Congress and the President, acting pursuant to a delegation of Congress's constitutional authority to make rules for the government and regulation of the armed forces, provide to it. *See* U.S. CONST. art. I, § 8, cl. 14; UCMJ art. 36, 10 U.S.C. § 836. Neither Congress nor the President has empowered courts-martial to entertain motions for protective orders from non-parties. Accordingly, no such power exists. It is certainly not clear and indisputable that a court-martial has such authority absent any

statute or *MCM* provision bestowing it. Petitioner therefore has not clearly and indisputably demonstrated that she satisfied the redressability prong of the three-part standing test. *See B.M. v. United States*, 84 M.J. 314, 317 (C.A.A.F. 2024). Mandamus relief is unavailable.

B. No statute or MCM provision authorizes a military judge to rule on a motion for protective order concerning non-mental-health medical records filed by a non-party.

Contrary to Petitioner's argument, Congress has not expressed a "clear intent" to "allow crime victims the ability to challenge all Article 6b rights violations at the trial court level." Pet'r's Suppl. Br. at 25. When Congress originally enacted Article 6b, it directed the Secretary of Defense to: (1) "recommend to the President changes to the Manual for Courts-Martial to implement that provision"; and (2) "prescribe such regulations as [the] Secretary considers appropriate to implement such section." National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2014, Pub. L. No. 113-66, § 1701(b)(2), 127 Stat. 672, 953 (2013). Congress directed that those recommendations and regulations include "[m]echanisms for the enforcement of such rights, including mechanisms for application for such rights and for consideration and disposition of applications for such rights." *Id.*, § 1701(b)(2), 127 Stat. at 953. One year later, Congress added an enforcement mechanism to Article 6b, UCMJ, permitting alleged victims to challenge rulings under Mil. R. Evid. 412 or 513 by petitioning the applicable Court of Criminal Appeals for a writ of mandamus. Carl Levin and Howard P. "Buck" McKeon NDAA for FY 2015, Pub. L. No. 113-291, § 535, 128 Stat. 3292, 3368 (2014). The following year, Congress expanded the scope of issues an alleged victim (or, post-conviction, victim) could raise to a Court of Criminal Appeals on an Article 6b petition for writ of mandamus. NDAA for FY 2016, Pub. L. No. 114-93, § 531, 129 Stat. 726, 814 (2015). Two NDAA cycles later, Congress amended Article 30a, UCMJ, to add "matters under subsection (c) or (e) of section 806b of this title (article 6b)" to the

list of matters that a military judge may review pre-referral in accordance with regulations prescribed by the President. NDAA for FY 2018, Pub. L. No. 115-91, § 531(b), 131 Stat. 1283, 1384 (2017). In 2023, the President revised Rule for Courts-Martial (R.C.M.) 309 to provide that a military judge's authority to consider pre-referral matters referred by an appellate court "includes matters referred by a Court of Criminal Appeals under subsection (e) of Article 6b" and to authorize a military judge to make pre-referral designations of individuals to assume the rights of an alleged victim in accordance with Article 6b(c). Exec. Order No. 14103 of July 28, 2023, 88 Fed. Reg. 50535, 50545–46 (Aug. 2, 2023) (codified at R.C.M. 309(b)(4), (5), *MCM* (2024 ed.)).

That history demonstrates that Congress has had a long-term interest in Article 6b, UCMJ, enforcement mechanisms and has never chosen to provide blanket enforcement authority to trial-level military judges. Neither has any President. And while trial-level judges have been accorded some limited enforcement powers, that authority does not include receiving non-parties' motions for protective orders of the kind Petitioner sought from the military judge. Congress clearly knows how to empower a military judge to provide such relief if that is what it intends. And yet it has not.

As this Court observed in a published opinion, Article 6b's "enforcement mechanism" provision (Article 6b(e)) "does not contemplate a petitioner first raising the matter to [the] trial court." *In re KK*, 84 M.J. at 668. That is in marked contrast to the approach Congress took in the Article III victims' rights context, where alleged violations of the Crime Victims' Rights Act (CVRA) "shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred." 18 U.S.C. § 3771. As the CAAF observed concerning another disparity between the

CVRA and Article 6b, "[T]hat Congress included such language in the CVRA—but omitted it from Article 6b, UCMJ—only underscores our duty to refrain from reading a provision into Article 6b, UCMJ, when Congress has left it out." *H.V.Z.*, 85 M.J. at 12.

Tellingly, Petitioner points to no statute, *MCM* provision, or case law providing her with a right to seek a protective order from the military judge concerning documents the government provided to the defense in discovery. *See* Pet'r's Suppl. Br. at 16–27. The authorities Petitioner does cite further confirm that there is no clear and indisputable right for her to move for a protective order from the military judge presiding over the general court-martial trying TSgt Bryant's case—a case to which Petitioner is not a party. *See* R.C.M. 103(20). Petitioner observes that "[v]ictims are explicitly granted the ability to move for relief or otherwise object to post-preferral subpoenas for their personal or confidential information," citing R.C.M. 703(g)(3)(C)(ii). Pet'r's Suppl. Br. at 19. But that merely emphasizes that the President has chosen to provide alleged victims with an opportunity to move for relief from the court-martial in some contexts but has not done so for protective orders concerning non-mental-health medical records. *Expressio unius est exclusio alterius*. Petitioner also points to R.C.M. 701(g)(2) as providing military judges with "wide latitude to regulate discovery." Pet'r's Suppl. Br. at 19. R.C.M. 701(a) makes clear that Rule 701 concerns the prosecution and the defense while R.C.M. 701(g)(2) itself refers to a "motion by a party" to review materials *in camera*. Nothing in R.C.M. 701(g)(2) indicates presidential authorization for a military judge to receive a motion for a protective order from a non-party.

Petitioner's failure to point to any statute or *MCM* provision allowing an alleged victim to seek a protective order from a military judge as to non-mental-health medical records is fatal to Petitioner's request for mandamus relief. "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)). Congress and the President have carefully provided alleged victims (and, post-conviction, victims) certain rights to be heard at or seek relief from a court-martial. UCMJ, art. 6b(a)(4)(A), (B), (C); R.C.M. 309(b)(4), (5); R.C.M. 703(g)(3)(C)(ii); Mil. R. Evid. 412(c)(2); Mil. R. Evid. 513(e)(2); Mil. R. Evid. 514(e)(2). It is not the judiciary's role to add to that list. Here, Petitioner seeks to create a right rather than enforce one. Mandamus is not available to do so.

C. Other potential remedies exist.

Finally, denial of the Petition would not leave Petitioner bereft of potential remedies. Congress' and the President's choices not to allow an alleged victim to file a motion asking a general court-martial judge to issue a protective order concerning non-mental-health medical records does not foreclose other potential avenues of relief. For example, Petitioner could seek declaratory and injunctive relief from a United States district court. *See, e.g.*, 28 U.S.C. §§ 2201, 2202; 5 U.S.C. § 702. Those statute-based avenues for relief highlight the absence of legal authority for the enforcement mechanism Petitioner asks this Court to create.

Conclusion

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

Respectfully submitted,

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Counsel for Real Party in Interest

CERTIFICATE OF FILING AND SERVICE

I certify that the foregoing redacted answer was emailed to the Court, the Air Force Government Trial and Appellate Operations Division, and Petitioner's counsel on 6 February 2026.

Respectfully submitted,

[redacted]
Dwight H. Sullivan
Air Force Appellate Defense Division

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

In re LB, *Petitioner*	)	**UNITED STATES' ANSWER TO PETITION FOR WRIT OF MANDAMUS**
Technical Sergeant (E-6) **Irvin Bryant, Jr.**, United States Air Force, *Real Party in Interest*.	)	Before Special Panel Misc. Dkt. No. 2025-14 9 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 16 December 2025. In her petition, Petitioner seeks a writ of mandamus vacating the trial court's decision regarding the admissibility of evidence under Mil. R. Evid. 412, arguing that the "military judge refused to accord and acknowledge [Petitioner's] rights, ruling certain evidence admissible despite [Mil. R. Evid.] 412 and in doing so used a clearly and indisputably incorrect legal standard." (*See* Pet. at 10.) Petitioner also asks this Court to vacate the trial court's ruling that Petitioner lacked standing to seek a protective order by the court over her protected health information (PHI). (Id. at 15.)

ISSUES[1]

I.

[WHETHER] THE MILITARY JUDGE REFUSED TO ACCORD AND ACKNOWLEDGE [PETITIONER'S] RIGHTS, RULING CERTAIN EVIDENCE ADMISSIBLE

[1] In her petition, Petitioner did not specifically present her issues. However, the issues above are crafted based on language used by Petitioner in her petition and numbered according to this Court's 7 January 2026 Order inviting answers to Petitioner's petition.

DESPITE [MIL. R. EVID.] 412, AND IN DOING SO USED A CLEARLY AND INDISPUTABLY INCORRECT LEGAL STANDARD.

II.

[WHETHER] THE MILITARY JUDGE CLEARLY AND INDISPUTABLY ERRED WHEN RULING [PETITIONER] DID NOT HAVE STANDING TO SEEK A PROTECTIVE ORDER FROM THE COURT-MARTIAL OVER HER PRIVATE PHI AS [PETITIONER] UNQUESTIONABLY IS INJURED, THE COURT-MARTIAL AND MILITARY JUDGE CAN REDRESS THE INVASION OF [PETITIONER'S] PRIVACY WITH A PROTECTIVE ORDER, AND THE MILITARY JUDGE'S RULING TO PRODUCE [PETITIONER'S] PHI CAUSED THE INVASION OF PRIVACY.

STATEMENT OF THE CASE

The Real Party in Interest (herein "Accused") is charged with three charges and five specifications. (Pet. App. 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.)

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On 16 December 2025, Petitioner filed her Petition Under Article 6b for Relief in the form of a Writ of Mandamus. (Pet.) Petitioner requested this Court issue a writ to: (I) vacate the military judge's ruling regarding the admissibility of evidence under Mil. R. Evid. 412 because "the military judge refused to accord and acknowledge [Petitioner's] rights, ruling certain evidence admissible despite [Mil. R. Evid.] 412 and in doing so used a clearly and indisputably incorrect legal standard;" (II) vacate the military judge's ruling that Petitioner lacked standing to "seek a protective order from the court-martial over her private PHI because the injury to [Petitioner's] privacy interests can be redressed by the military judge," and: (III) vacate the military judge's ruling finding Petitioner's "private and [PHI] was in the possession, custody, and control of military authorities and that such PHI was relevant," because Petitioner claims the "Defense Health Agency is not a military authority as contemplated in [Rule for Courts-Martial] 701." (*See* AFCCA Order, dated 7 January 2026, citing Pet.)

Petitioner also moved to stay the trial proceedings, which this Court subsequently denied. (Id.) Following this denial, the military judge continued the court-martial to a later date. (*See* AFCCA Order.)

On 7 January 2026, Petitioner moved to file a supplemental brief to her petition, which this Court granted. (Id.) The same day, this Court granted leave to the Government and the Accused to file an answer brief to Issues I and II of Petitioner's petition by 9 February 2026. (Id.)

STATEMENT OF FACTS

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

[redacted]

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. Kastenberg, 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.

PETITIONER HAS FAILED TO MEET HER HEAVY BURDEN TO WARRANT RELIEF AND THIS COURT SHOULD DENY HER PETITION.

Law

Mil. R. Evid. 412 is a rule of exclusion. United States v. Banker, 60 M.J. 216, 221 (C.A.A.F. 2004). The intent behind Mil. R. Evid. 412 is to "shield victims of sexual assaults from the often embarrassing and degrading cross-examination and evidence presentations common to prosecutions of [sexual offense prosecutions]." United States v. Gaddis, 70 M.J. 248, 252 (C.A.A.F. 2011) (*quoting* Manual for Courts-Martial, United States, Analysis of the Military Rules of Evidence app. 22 at A22-35 (2008 ed.)). Although Mil. R. Evid. 412 exists to protect the dignity and privacy of victims, Mil. R. Evid. 412 also serves to "preserv[e] the constitutional rights of the accused to present a defense." Banker, 60 M.J. at 219; *see also* Gaddis, 70 M.J. at 253.

To effectuate its purpose, Mil. R. Evid. 412 bars any evidence offered to prove other sexual behavior of a victim, or the sexual predisposition of a victim, unless such evidence falls within one of three delineated exceptions. Mil. R. Evid. 412(b). Exception (A) allows for evidence of sexual behavior by the victim "offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence." Mil. R. Evid. 412(b)(1)(A). Exception (B) allows for "evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution." Mil. R. Evid. 412(b)(1)(B). Exception (C) provides for admission of "evidence the exclusion of which would violate the constitutional rights of the accused." Mil. R. Evid. 412(b)(1)(C).

Ellerbrock provides the test for whether evidence should be admitted under the constitutional exception. United States v. Ellerbrock, 70 M.J. 314, 318 (C.A.A.F.

2011). "Generally, evidence must be admitted within the ambit of M.R.E. 412(b)(1)(C) when the evidence is relevant, material, and the probative value of the evidence outweighs the dangers of unfair prejudice." Id. Put another way, the appellant has the burden to demonstrate that the evidence is relevant, material, and vital to his defense. United States v. Erikson, 76 M.J. 231, 235 (C.A.A.F. 2017) (quoting United States v. Smith, 68 M.J. 445, 448 (C.A.A.F. 2010)).

"Relevant evidence is any evidence that has 'any tendency to make the existence of any fact . . . more probable or less probable than it would be without the evidence.'" Ellerbrock, 70 M.J. at 318 (quoting Mil. R. Evid. 401). Materiality "is a multi-factor test looking at 'the importance of the issue for which the evidence was offered in relation to the other issues in this case; the extent to which the issue is in dispute; and the nature of the other evidence in the case pertaining to th[at] issue.'" Id. (quoting Banker, 60 M.J. at 222).

If the evidence is determined to be relevant and material, "it must be admitted when the accused can show that the evidence is more probative than the dangers of unfair prejudice." Id. at 319 (citing Mil. R. Evid. 412(c)(3)). "Those dangers include concerns about 'harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant.'" Id. (quoting Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986)).

Analysis

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II.

THE MILITARY JUDGE'S SUBSEQUENT GRANTING OF A PROTECTIVE ORDER FOR PETITIONER'S RECORDS MOOTS THE MAJORITY OF THIS ISSUE AS A PROTECTIVE ORDER FOR HER MEDICAL RECORDS, WHICH WAS THE SUBJECT OF HER ORIGINAL MOTION, IS NOW IN PLACE; PETITIONER DOES NOT HAVE STANDING TO BE HEARD AT THE TRIAL LEVEL ON THE REMAINDER OF THIS ISSUE.

Additional Facts

On 6 December 2025, the defense moved to compel discovery of Petitioner's medical records related to a May 2023 bariatric surgery at Fort Belvoir, Virginia, and laboratory results from six months prior to October 2023 and six months after. (Pet. App. T.) The Government opposed the motion. (Pet. App. U.)

On 9 December 2025, the military judge granted the motion with regard to the bariatric surgery, but denied the motion with regard to the laboratory results. (Pet. App. V.)

On 11 December 2025, Petitioner, through counsel, sought a protective order from the trial court "to prohibit Government and Defense Counsel from disclosing information [sic] LB's medical records and to destroy all copies immediately proceeding this trial." (Pet. App. W at 1.) Petitioner also alleged that her victim counsel's "review of the records reveal that medical records were obtained outside the date ranges permitted by this Court, along with other private and confidential medical history not related to [Petitioner's] bariatric surgery." (Id.) Petitioner asked

that the trial court "order Defense Counsel and Government Counsel, and their appointed experts, immediately destroy all copies of [Petitioner's] medical records that were provided on 11 December 2025, physical and electronic, that fall outside this Court's ruling." (Id. at 2-3.)

On 12 December 2025, the military judge informed counsel that the court "will not consider this filing, as you do not have standing under Article 6b as to this issue." (Pet. App. X.)

On 17 December 2025, the Government filed a motion requesting the court "execute a protective order to prohibit Government and Defense Counsel from disclosing [Petitioner's] medical records and to destroy all copies immediately proceeding the trial." (Pet. Supp. Br. App. AA.) On 18 December 2025, the military judge granted the motion. (Pet. Supp. Br. App. BB.)

Law and Analysis

To start, the military judge's granting of a protective order regarding Petitioner's medical records moots the majority of Petitioner's issue. In her motion, Petitioner sought a protective order from the trial court "to prohibit Government and Defense Counsel from disclosing information [sic] LB's medical records and to destroy all copies immediately proceeding this trial." (*See* Pet. App. W.) The Government's later protective order motion asked for the same protective order – even using the same language. (*See* Pet. Supp. Br. App. AA.) The fact that the protective order came as a result of the Government's motion versus the Petitioner's motion is irrelevant because the end result is exactly what Petitioner requested – a protective order for her medical records. Since she now has that order, Petitioner's issue is moot with regard to the medical records related to her May 2023 bariatric surgery. *See* B.M. v. United States, 84 M.J. 314, 317 (C.A.A.F. 2024) ("this Court does not answer questions that are not ripe for decision or that have become moot.")

As to the alleged "surplus records," the military judge correctly determined that Petitioner did not have standing, at trial, to be heard on this issue. This Court previously addressed the subject of a victim's standing to be heard at the trial level in In re HK, 2021 CCA LEXIS 535, at *9 (A.F. Ct. Crim. App. 13 Sep. 2021) (unpub. op.). Though that case dealt with a victim's standing regarding an accused's continuance, this Court's analysis in that case is pertinent here. In In re HK, this Court determined that Article 6b "includes no provision requiring a victim be granted the opportunity to be heard at the trial level regarding his or her right to proceedings from unreasonable delay." Id., at *9.

The same holds true with regards to motions for protective orders. Within this issue, Petitioner specifically points to two rights within the Crime Victims' Rights Act (CVRA) – "the right to be protected from the accused (Article 6b(a)(1), UCMJ), and the right to be treated with fairness and with respect for their dignity and privacy (Article 6b(a)(9), UCMJ)." (Pet. Supp. at 19.) However, despite Petitioner's arguments, the plain meaning of Article 6b does not grant a victim the right to be heard at the trial level on this issue. While Article 6b grants nine specific rights to victims, only one of those rights grants victims the right to be reasonably heard. 10 U.S.C. 806b(a)(4). That provision only extends to hearings related to an accused's sentencing and pre- and post-trial confinement. Id.; *see also* In re HK, at *7. The right to be heard does not extend to being heard by a military judge at trial on any other matter.

In In re HK, this Court specifically considered the arguments related to the CVRA and congressional intent, but decided that the Court's role was "to apply Article 6b, UCMJ, as Congress enacted it, and that article includes no provision requiring a victim be granted the opportunity to be heard at the trial level regarding his or her right to proceedings free from

unreasonable delay." Id. The same holds true for a victim's right to be protected from the accused and right to be treated with fairness and with respect to their dignity and privacy. Indeed, the provisions granting these rights do not state that a victim has the right to be heard at the trial level. *See* 10 U.S.C. 806(a)(1), (9).

Instead of addressing the plain language of Article 6b, Petitioner turns to our superior Court's decision in B.M. v. United States, 84 M.J. 314 (C.A.A.F. 2024). There, our superior Court held that, "as a prudential matter, this Court follows the principles of standing that apply to Article III courts," and that the Court can only address "claims raised by parties who can show 'an injury in fact, causation, and redressability.'" United States v. Wuterich, 67 M.J. 63, 69 (C.A.A.F. 2008).

However, that case dealt with whether a victim had standing at an appellate court to raise an issue, not whether a victim had the right to reasonably be heard *at the trial level*. Further, in that case, our superior Court held that the victim in that case did not have standing before CAAF to challenge an abatement order. Notably, one of the rights the victim in that case alleged had been violated was the right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense. B.M., 84 M.J. at 319. However, our superior Court held that this right, "while important, [did] not provide the name victim standing to challenge the military judge's abatement order. Id.

Still, B.M. has limited applicability here because that case did not resolve or discuss whether a victim had standing to be heard *at the trial level* about alleged violations of Article 6b(1) and Article 6b(1)(9).

A case that did more squarely addresses this issue, however, is In re HVZ, including both this Court's opinion, In re HVZ, Misc. Dkt. No. 2023-03, 2023 CCA LEXIS 292 (A.F.

Ct. Crim. App. July 14, 2023), as well as our superior Court's opinion overturning that opinion, In re HVZ, 85 M.J. 8 (C.A.A.F. 2024). In that case, a military judge refused to consider a victim's response to a defense discovery motion for the victim's mental health records because, relying on In re HK, the victim lacked standing before the court-martial. In re HVZ, at *11-12.

This Court held that while "Article 6b(e), UCMJ, provides a victim the right to petition this court for a writ of mandamus if he or she believes a ruling by the trial court violates rights protected by Article 6b, UCMJ, . . . Article 6b, UCMJ, does not *create* the right to be heard *by the trial court* on any and all matters affecting those rights, other than during presentencing proceedings in accordance with Article 6b(a)(4)(B), UCMJ." Id. at *12. (emphasis in original.)

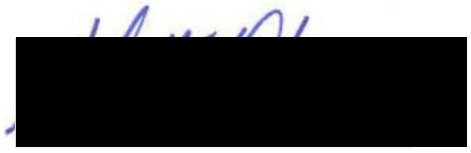
CAAF overturned this Court's opinion by finding the victim should have been heard under the rules of Mil. R. Evid 513. In re HVZ, 85 M.J. at 10. The majority opinion did not address or analyze whether the victim should have also been heard pursuant to Article 6b. The dissenting opinion, however, did. There, Judge Maggs stated, "I agree with the AFCCA's reasoning that H.V.Z. has not shown that Article 6b, UCMJ, established a clear and indisputable right to be heard at trial on the production motion," adding, "the language of Article 6b, UCMJ, does not expressly provide this right and no precedent has addressed the issue." Id. at 19.

In all, considering these opinions, the plain language of Article 6b, and the fact that "no precedent has addressed the issue" of whether a victim has the right to be heard under either Article 6b(a)(1) or Article 6b(a)(9) over alleged wrongs in the overproduction of medical records, the military judge's finding that Petitioner lacked standing on this matter was

not clear and indisputable error. Accordingly, Petitioner has failed to meet her heavy burden to obtain a writ, and this Court should deny her petition.

CONCLUSION

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



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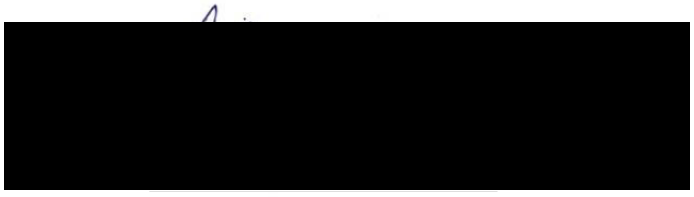

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CERTIFICATE OF FILING AND SERVICE

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 9 February 2026.

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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*	**PETITIONER'S REPLY TO RPI AND UNITED STATES' ANSWERS** Misc. Dkt. No. 2025-14

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 to the petition for extraordinary relief in the nature of a writ of mandamus.

L.B. submits this reply pursuant to Orders of this Court dated 7 January 2026.[1]

[1] To the extent RPI implies untimeliness in L.B.'s seeking relief from this Court, L.B. highlights this court's Order issued on 17 December 2025 providing that "Petitioner may file a supplemental brief not later than 7 January 2026. No additional briefs will be filed unless so ordered by this court." *Blacks's Law Dictionary* defines "supplemental" as "[t]hat which is added to a thing or act to complete it." *Supplemental* (6th Ed.).

ISSUES PRESENTED

(I) WHETHER THIS COURT SHOULD VACATE THE MILITARY JUDGE'S RULING REGARDING THE ADMISSIBILITY OF EVIDENCE UNDERMIL. R. EVID. 412 BECAUSE "THE MILITARY JUDGE REFUSED TO ACCORD AND ACKNOWLEDGE [PETITIONER'S] RIGHTS, RULING CERTAIN EVIDENCE ADMISSIBLE DESPITE [MIL. R. EVID.] 412 AND IN DOING SO USED A CLEARLY AND INDISPUTABLY INCORRECT LEGAL STANDARD;"

(II) WHETHER TO VACATE THE MILITARY JUDGE'S RULING THAT PETITIONER LACKED STANDING TO "SEEK A PROTECTIVE ORDER FROM THE COURT-MARTIAL OVER HER PRIVATE PHI[*] BECAUSE THE INJURY TO [PETITIONER'S] PRIVACY INTERESTS CAN BE REDRESSED BY THE MILITARY JUDGE

ARGUMENT

I

The Military Judge clearly and indisputably erred when she found M.R.E. 412 evidence otherwise admissible, thus applying the incorrect legal standard.

As a threshold, it was and remains RPI's burden – through counsel – to meet the standards of MRE 412 to admit evidence. RPI's motions for which there is a ruling were titled as "Motions to ***Admit Evidence***", and the military judge ruled to admit incompetent, degrading information well short of any standard to be *evidence*. The Military Judge's ruling forgets the burden to admit evidence and, in doing so, commits clear and indisputable error. It is not L.B.'s – or the United States' – burden to prove a negative to pre-admit evidence at a court-martial. The RPI argues in his Answer some novel theory of waiver[2] when RPI fails to proffer and

[2] RPI's reliance on *United States v. Corbett* is misplaced. RPI Answer, at 17. That court stated "[s]ince [Petitioner and the prosecution] failed to raise the hearsay objection . . ., this objection was

prove evidence is "otherwise admissible" yet the Military Judge rules to admit evidence that is clearly not. Military Judges are presumed to know the law, and when they clearly do not, as is reflected in the Military Judge's 412 ruling in this case, a writ should issue. L.B. offers the explanation below, and as the Coast Guard Court of Criminal Appeals held in *United States v. Fink*, "[t]o sum up, Appellant asks: can an interlocutory appeal under Article 6b(e)(4) be used to review a military judge's downstream evidentiary rulings based on evidentiary rules beyond those listed in Article 6b(e)(4)? We answer: yes—as long as that 'downstream' ruling admits evidence of a crime victim's 'other sexual behavior' that he or she believes violates her rights under Mil. R. Evid. 412." 86 M.J. 527 (C.G. Ct. Crim. App. 2025). In short, L.B. can highlight the Military Judge ignored both the deficiencies in proof of RPI's offered materials and the "otherwise admissibility" standards in her M.R.E. 412 ruling, thus requiring relief for L.B. as authorized under Article 6b(e)(4).

a. Certain evidence is hearsay, and is not "otherwise admissible."

The RPI argues that the text messages (and other statements by L.B.) are not hearsay, although RPI's trial defense counsel did not provide any argument as to why they are not hearsay in their motion to admit the text messages – a motion

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waived." *United States v. Corbett*, 29 M.J. 253, 255 (C.M.A. 1989). However, the *Corbett* court was analyzing a lack of objection during a witness's testimony **at trial**. In this case, RPI's waiver argument rests on what was not brought up in motions' arguments made in a closed pre-trial hearing, **not at trial**. It would set a dangerous precedent to hold that an objection is not timely and is therefore waived if it was not raised in pretrial motions arguments. A victim has a right to petition to the Court of Criminal Appeals on "a court-martial ruling that violates the right of the victim afforded by a section (article) or rule specified in paragraph (4)." Article 6b(e)(1), UCMJ. The heart of the matter in this case is that the Military Judge is presumed to know the law, but here, states the evidence is admissible, when it is not "otherwise admissible." She incorrectly applied M.R.E. 412 by failing to demand a showing that the evidence proffered by RPI is "otherwise admissible."

where they bear the burden to show the evidence is "otherwise admissible under the rules." In his Answer, the RPI asserts that any statements being offered are for the "mere fact that Petitioner made those statements," and "not for the truth of the matter asserted" to present a mistake of fact defense. RPI's Answer at 34; *See also id.,* at 36, 43. However, the Military Judge's ruling also permits certain statements as evidence of consent under M.R.E. 412(b)(2), *Attachment Y to Petitioner Brief*, ¶ 46, 47(a), 47(d), 47(e), 47(i). If the statements are not offered for the truth to show L.B.'s sexual interest in the RPI, then the evidence cannot be evidence of consent, because the mere fact that the statements were said do not show consent. Consent is a "freely given agreement to the conduct at issue." Article 120(g)(7)(A) (2024). Mere statements, without its underlying alleged truth offered with it, cannot possibly be evidence of such an agreement. Similarly, no reasonable mistake of fact defense can be drawn from mere statements if the alleged truth of the statements are stripped away from the words.

b. <u>The evidence is improper impeachment evidence, and is therefore not "otherwise admissible."</u>

"Broadly, there are four methods of impeachment: character for untruthfulness; prior inconsistent statements[3]; bias, prejudice, or motive to misrepresent; or impeachment by contradiction." *In Re Y.B.*, 83 M.J. 501, 505-06 (C.G. Ct. Crim. App. 2022) (citing *United States v. Banker*, 15 M.J. 207, 210 (C.M.A. 1983)).

[3] Whether the evidence is evidence of prior inconsistent statements is not ripe, as L.B. has not yet testified at trial.

i. Character for Untruthfulness, Bias, Prejudice, and Motive to Misrepresent

Extrinsic evidence to prove a character for untruthfulness is, with a limited exception, prohibited. M.R.E. 608(b) ("Except for a criminal conviction under [M.R.E.] 609, extrinsic evidence is not admissible to prove specific instances of a witness' conduct in order to attack or support the witness' character for truthfulness."). On the other hand, extrinsic evidence is permitted to show bias, prejudice, or motive to misrepresent. M.R.E. 608(c). Here, the RPI provided no showing or argument of how the evidence would show a bias, a prejudice towards the RPI, or any motives to mispresent. Yet, in her ruling, the Military Judge held certain evidence can be "used to explore L.B.'s potential bias." *Attachment Y, Petitioner's Brief*, ¶ 36, 37, 40. There is no explanation as to how other instances of consensual sex between L.B. and the RPI shows L.B.'s bias and whether that bias is favorable or unfavorable for the RPI.

The evidence is also inadmissible impeachment evidence to attack L.B.'s character for truthfulness.

> Under Rule 608(b), the theory of logical relevance is this: If the witness has been willing to commit untruthful and deceitful acts in the past, the witness may be willing to lie on the witness stand. Of course, the doctrine is limited to acts that reflect adversely on the witness's truthfulness, such as lying on a job or loan application.
>
> Counsel, under Rule 608(b), is ordinarily restricted to cross-examination. On cross-examination, counsel may inquire whether the witness committed the act. Counsel, however, must "accept" or "take" the answer in the sense that extrinsic evidence may not be used to contradict the answer. Thus, if Witness #1, the witness to be impeached, denies committing the deceitful act, counsel cannot call Witness #2 to testify that he or she was an eyewitness to Witness #l's act. This

> restriction is a remnant of the broader, common law collateral fact rule. The collateral fact rule announced that the impeaching counsel is limited to intrinsic impeachment when the impeaching fact relates only to the witness's credibility. An untruthful act may reflect adversely on the witness's credibility. The counter argument runs that when the act has no relevance to the merits of the case, it would be an undue expenditure of time, and potentially confusing to the fact finder, to allow the impeaching counsel to present extrinsic evidence. By banning the use of "extrinsic evidence," the first sentence of Rule 608(b) codifies this application of the collateral fact rule.

David A. Schlueter, Stephen A. Salzburg, Lee D. Schinasi & Edward J. Imwinkelried*, Military Evidentiary Foundations* § 5-7 (Matthew Bender & Co. 2021) (internal citations omitted). RPI's theory of admissibility is flawed, because it is premised on a belief that Petitioner lied during her testimony at the Article 39(a) session. The text messages and shared photographs the RPI offers as "contradictory" evidence to L.B.'s testimony to at the Article 39(a) session is a far cry from showing L.B. lied at the Article 39(a) session. Not only will there be hearsay issues with any of L.B.'s statements from the Article 39(a) session, but the Military Judge failed to "specif[y] evidence that may be offered and areas with respect to which the victim may be examined or cross-examined," as she did not articulate how the evidence is permitted to be used. See M.R.E. 412(c)(2). By failing to articulate the theory of admissibility, the Military Judge ignored the fundamental mechanics of impeaching a witness on cross-examination and thus clearly and indisputably erred when finding such evidence admissible to "rebut any claim that L.B. did not have sexual interest in the [RPI]." *Attachment Y, Petitioner's Brief*, ¶ 36,37, 40; See also ¶ 45, 47.

ii. Impeachment by Contradiction

As evidenced in the RPI's motions, the intended purpose of the proffered evidence is to attack the Petitioner's credibility. "In addition to protecting the victim from humiliating and embarrassing questions, M.R.E. 412 is also designed to preclude introduction of evidence as to the victim's reputation for chastity or evidence of specific sexual acts, unless those acts… are constitutionally required to be admitted." *United States v. Sanchez*, 44 M.J. 174, 178 (C.A.A.F. 1996) (internal quotations omitted). Offering evidence of a victim's other sexual behavior simply to cast doubt on her credibility is impermissible. *See id.* at 176-7 (concurring with that specific finding of the Air Force Court of Military Review). "The general rule is that if a witness's asserted fact is 'collateral,' then extrinsic evidence to contradict it is inadmissible." *In Re Y.B.*, 83 MJ at 506 (citing *Banker*, 15 M.J. at 210).

> A matter is "collateral" if "the fact could not be shown in evidence for any purpose independent of the contradiction." *United States v. Langhorne*, 77 M.J. 547, 555 (A.F. Ct. Crim. App. 2017) (quoting *United States v. Harris*, 542 F.2d 1283, 1306-07 (7th Cir. 1976)). *See also, United States v. Cobia*, 53 M.J. 305, 310 (C.A.A.F. 2000); *United States v. Kamra*, No. 21-1615, 2022 U.S. App. LEXIS 27669, 2022 WL 4998978, at *4 (3d Cir. Oct. 4, 2022); *United States v. Beauchamp*, 986 F.2d 1, 4 (1st Cir. 1993) ("A matter is considered collateral if 'the matter itself is not relevant in the litigation to establish a fact of consequence, i.e., not relevant for a purpose other than mere contradiction of the in-court testimony of the witness.'"); *Head v. Halliburton Oilwell Cementing Co.*, 370 F.2d 545, 546 (5th Cir. 1966) ("The test for determining what is a collateral matter was laid down over one hundred years ago . . . . Professor Wigmore phrases it thusly: 'Could the fact as to which error is predicated have been shown in evidence for any purpose independently of the contradiction?'") (quoting *John Henry Wigmore, Wigmore on Evidence* § 1003 (3rd ed.)).

Id.

II

L.B. has both constitutional and statutory standing to seek a protective order from a military trial court for violations of her Article 6b, UCMJ, rights.

Article 6b appears in Subchapter I of Title 10's Chapter 47, that subchapter is titled "General Provisions." In other words, victims' rights are a general provision of the UCMJ. Victims' rights are as fundamental to the military justice system as Article 2 and 3's jurisdiction provisions and Article 6's demand for judge advocates. Article 6b – as a general provision – means victims rights are a cornerstone to the system to be afforded throughout all the military justice process.

a. When military judges violate victims' rights under Article 6b, UCMJ, the constitutional principles of standing authorize victims to seek redress at the trial court level.

The argument that the constitutional principles of standing should be disregarded in favor of speculation about the absence of surplus text in the Manual for Courts-Martial or Article 6b ignores context. When Congress enacted Article 6b, UCMJ, the statute established enumerated rights, including the right to be reasonably protected from the accused and the right to be treated with respect for the dignity and privacy of the crime victim. National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2014, Pub. L. No. 113-66, § 1701(b)(2), 127 Stat. 672, 953 (2013). The establishment of statutory rights also establishes a vested interest to which constitutional principles of standing apply. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992), *see also B.M. v. United States*, 84 M.J. 314, 317 (C.A.A.F. 2024).

At the time of the enactment of the 2014 NDAA, Congress also directed the Secretary of Defense to recommend changes to the Manual for Courts-Martial that would include "[m]echanisms for ensuring that victims are notified of, and accorded, the rights specified… [m]echanisms for ensuring that members of the Armed Forces and civilian personnel of the Department of Defense and the Coast Guard make their best efforts to ensure that victims are notified of, and accorded, the rights specified…" and "[m]echanisms for the enforcement of such rights, including mechanisms for application for such rights and for such consideration and disposition of applications for such rights." Pub. L. No. 113-66, § 1701(b)(2), 127 Stat. 672, 953 (2013).

Congress was abundantly clear that victims should have the rights enumerated under Article 6b, UCMJ and that those rights should be accorded and enforced throughout the military and by all military and Departmental civilian personnel. *Id.* The Answer filed by the RPI lists three examples of subsequent Congressional expansions of authority such as providing for a military judge taking up Article 6b matters at the pre-referral stage. *RPI's Answer* at 45-46. Counsel for the RPI argue that these enhancements prove that Congress knows how to enact enforcement measures for Article 6b and yet has "never chosen to provide blanket enforcement authority to trial-level military judges. Neither has any President." *Id.* at 46.

That statement is true, but only because Article 6b has never required it. Why would Congress or the President add surplusage text when a statutory right,

by its very nature, establishes a judicially cognizable interest? *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992), *and see* ***B.M. v. United States***, 84 M.J. 314, 317 (C.A.A.F. 2024). The surplusage of any such blanket enforcement mechanism in Article 6b is underscored by the fact that the constitutional principles of standing pre-dated Article 6b by many decades. *See Id*. It is not unreasonable, then, to attribute to both the President and Congress the knowledge that whenever a right is established by statute, a person has a constitutional right to seek judicial remedy for its violation at the trial court level.

Victims are only authorized to pursue writs of mandamus under Article 6b(e) *after* "a court-martial ruling violates the rights of the victim". Article 6b(e). This begs the question of how such a prerequisite court-martial ruling comes about, if not by the request or motion of the victim whose rights are at risk of being violated? To impose an insurmountable barrier to victim's appellate relief by foreclosing victims' standing at a trial court contradicts the mandate for comprehensive enforcement under the 2014 NDAA.

The RPI points to language in *In re KK* indicating that Article 6b does not include a provision for crime victims to seek relief in a trial court. 84 M.J. 664, 669 (A.F. Ct. Crim. App. 2023). This commentary, however, is nonbinding dicta as it appears in the Court's analysis of what standard of review to use for writs of mandamus – not whether the victim in that case had standing to be heard at the trial level. *Id.* If anything, the *KK* Court impliedly endorsed the victim's standing to argue the issue at the trial court by squarely addressing the merits of her

arguments raised to the trial court. *See id.* Ultimately, *KK* was a decision based entirely on that Court's finding that victims have no right to have their schedules, and that of their victims' counsel, accommodated in the scheduling of a trial date. *Id.* Without a valid interest at stake, that Court employed the constitutional principles of standing to conclude that there was no remedy under the law that could be provided. *Id.*

The RPI cites to *HVZ* as authority for his position, but again the portion cited only pertains to the legal standard of appellate review. *HVZ*, 85 M.J. 8, at 15, *RPI's Answer* at 47. The *HVZ* Court expressly declined to address any other argument regarding the victim's standing in that case, because it found that M.R.E. 513 was adequate in providing standing for the issue at bar. *Id.* Any language in that decision that could be construed as addressing standing beyond the scope of M.R.E. 513 is nonbinding dicta.

The Government's counter argument to L.B.'s petition, however, relied more on language expressed in this Honorable Court's prior *HVZ* opinion, stating that Article 6b does not create a right to be heard on all matters impacting Article 6b rights. *In re HVZ*, No. 2023-03, 2023 CCA LEXIS 292, at 12 (A.F. Ct. Crim. App. July 14, 2023)(unpub. op.). This reference is like the one the Government cites to in *In re HK*, that Article 6b contains "no provision requiring a victim be granted the opportunity to be heard at the trial level regarding his or her right to proceedings free from unreasonable delay." *In re HK*, No. 2021-07, 2021 CCA LEXIS 535, at 7

(A.F. Ct. Crim. App. Sep. 13, 2021)(unpub. op.). Both statements are correct, but that is not the end of the analysis.

In *HVZ*, this Honorable Court also said, "On the other hand, Article 6b, UCMJ, does not remove a victim's right to be heard where that right exists in other provisions of law independent of Article 6b, UCMJ." No. 2023-03, 2023 CCA LEXIS 292, at 12. This Honorable Court stated something similar in *VM*, that, "[i]mportantly, absence of a specific statutory right to be heard does not mean that a military judge is prohibited from considering a victim's effort to exercise Article 6b, UCMJ, rights. To the extent the military judge in this case believed otherwise based on the unpublished order *In re HK*, he was mistaken." *In re VM*, No. 2023-04, 2023 CCA LEXIS 290, at 8 (A.F. Ct. Crim. App. July 11, 2023)(unpub. op.).

It is also important to consider that a grant of standing based solely on constitutional principles is not without precedent in the military justice system. *See ABC, Inc. v. Powell*, 47 M.J. 363, 365 (C.A.A.F. 1997). In *ABC*, C.A.A.F. relied on US Supreme Court precedent and constitutional principles to establish that members of the press have standing as interested parties to seek relief for violations of their right to an open proceeding. *Id*. In that case, the C.A.A.F. cited to no statute or rule in establishing that the press has a right to be heard on the issue of closed proceedings. *Id*. Instead, the C.A.A.F. fully considered and granted the petition filed by members of the press, who were not named parties to the case, on the basis that their constitutional right was being violated. *Id*.

In this case, L.B. is similarly situated to the press in *ABC, Inc.* as a limited party with a vested interest in protecting her rights from being violated by a Military Judge's ruling. On 12 December 2025 the Military Judge ruled that L.B. had no standing to request a protective order to limit disclosure and to require destruction of surplus medical records. *Attachment X to Petition*. L.B. filed her writ petition on 16 December 2025. On 17 December 2025 the Government filed its version of a motion for a protective order requesting only limitations on disclosure, which the Military Judge granted on 18 December. *Attachment AA, BB to Supplemental Brief*. The Military Judge demonstrated that she clearly had proper authority and jurisdiction to issue a protective order on the medical records at issue, but she impermissibly withheld her review of the issue until a party other than the victim raised it.

The Military Judge ruled that the only valid motion of the two filed was the one filed by the party with the least interest in the outcome

b. Requiring crime victims to seek relief from U.S. district courts for Article 6b, UCMJ, violations would seriously degrade the principles of comity, fairness, and judicial efficiency.

L.B. concedes that despite the fact that Rules for Court-Martial ". . . are intended to provide for the just determination of ***every proceeding relating to trial by court-martial*** [and] shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay," the President has not prescribed rules for procedures to recognize victims' rights at courts-martial. R.C.M. 102. Thus, the RPI suggests that L.B.'s only option is to

seek injunctive relief from a U.S. District Court to protect her rights under the UCMJ. *RPI Answer* at 48. This suggestion is neither respectful of L.B.'s privacy right in expanding the number of personnel handling her private and protected medical records, nor is it consistent with the principle of judicial efficiency and fairness established in paragraph 4 of the preamble to the Manual for Courts-Martial. (2024 edition).

Paragraph 4 of the Preamble to the Manual for Courts-Martial states that the military justice system "recognizes and protects the rights of both the victims of alleged offenses and those accused of offenses." (2024 edition). It then lists many revisions throughout the evolution of the military justice system, including that "Congress added a victims' rights article to the UCMJ" and states that "[t]hese and many other improvements have been vital to maintaining a fair, just, and efficient military justice system." *Id* Requiring crime victims to go outside the military justice system to raise Article 6b violations is also in violation of the express enforcement mandates of the 2014 NDAA, as discussed supra.

Another problem with the suggestion that victim can only look to U.S. district courts for interlocutory relief is the risk of conflicting jurisdictions. Civil courts are not authorized to collaterally attack rulings of military judges, which are final and are protected by *res judicata*. *See Carter v. Roberts*, 177 U.S. 496, 498 (1900); *Grafton v. United States*, 206 U.S. 333, 345-46 (1907); *Schlesinger v. Councilman*, 420 U.S. 738, 746 (1975), and 10 U.S.C.S. § 876.

Such a requirement for crime victims is also at odds with the establishment of a fully integrated court-martial system. *See generally Ortiz v. United States,* 585 U.S. 427, 431-32 (2018). More critically, even if U.S. district courts are authorized to intervene in interlocutory matters of courts-martial, the principles of comity and judicial economy strongly discourage such intervention. Consider a case in the Maryland District Court, where a party to a court-martial asked the District Court to quash a subpoena issued by a military judge. *Alli v. United States*, Civil Action No. ELH-16-00606, 2016 U.S. Dist. LEXIS 44975, at 19-20 (D. Md. Apr. 1, 2016).

The District Court in *Alli* held that, even if the District Court had jurisdiction, it would be improper to exercise it prior to the petitioner first exhausting all remedies in the military justice system. Its cited rationale is as follows:

> More recently, the Fourth Circuit explained in *Hennis v. Hemlick*, 666 F.3d 270, 271 (4th Cir. 2012), *cert. denied*, ___ U.S. ___, 132 S. Ct. 2419, 182 L. Ed. 2d 1051 (2012): "[P]rinciples of comity, respect for the expertise of military judges, and judicial economy weigh against federal court intervention in pending court-martial proceedings and in favor of requiring exhaustion of all available remedies within the military justice system before a federal court's collateral review."

Id. There is good reason for U.S. district courts to avoid intervening in military courts-martial..

c. <u>When an injury still exists or is still susceptible to recurrence, an issue is not moot.</u>

The Government presents a novel concept of partial mootness and suggests that it is of some import that the Military Judge granted the Government's motion

that was filed quickly after L.B. filed her writ petition to this Honorable Court. *Gov't Answer* at 18. Assuming, *arguendo*, that such a concept as partial mootness exists and could be dispositive here, there are two problems with the Government's argument. First, the citation to *B.M.* is inapplicable to this case because the Court's mootness ruling in *B.M.* was based on the finding that no right was being violated. 84 M.J. 314, at 320. The second problem is that 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, 100 S. Ct. 2814, 2820 (1980).

The C.A.A.F. in *B.M.* held that the victim's psychotherapist-patient privilege was preserved by the procedures employed by the military judge in that case, and therefore the remedy she sought – to return her privileged material to a privileged status – was moot because the privileged material had always been treated as privileged. 84 M.J. 314, at 320. That Court did not establish anything close to what the Government appears to be suggesting here: that mootness attaches to an issue if the Government can react quickly enough to the filing of an appellate writ petition and secure a trial court order partially addressing the problem before the appellate court has a chance to review the case. *Gov't Answer* at 18.

The United States Supreme Court has stated that, "[t]his 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." *Richmond Newspapers v. Virginia*, 448 U.S. 555, 563 (1980). In that case, the Supreme Court acknowledged that the short duration of criminal trials means that important

issues may evade review, and so when future similar harm is reasonably foreseeable, appellate relief may be appropriate even when the case is over. *Id.*

In the case at bar, the Military Judge's issuance of a protective order establishes the existence of concrete harm to L.B.'s privacy requiring court protection. The Government's quick response motion following L.B. filing her writ petition does not, however, render moot the issue of L.B. being denied standing at the trial court level to protect her own privacy.

Additionally, as the Government concedes, there remains the harm associated with the erroneous disclosure of medical records and L.B.'s outstanding request that the same should be destroyed. The Government did not request the destruction of these records, nor was that issue addressed by the Military Judge's protective order. Had the Military Judge honored L.B.'s constitutional standing to seek remedy for harm to her rights, the Judge would have had to take up the request for the destruction of those medical records. As it stands now, however, L.B. continues to suffer injury to her privacy right and is being denied standing to address that with the trial court. Therefore, the Military Judge's ruling that L.B. had no standing is not moot and should be vacated as clearly and indisputably in error.

CONCLUSION

The Military Judge clearly and indisputably erred in finding evidence otherwise admissible and refusing to acknowledge L.B.'S standing to protect her statutory right to respect for her privacy by seeking a protective order.

WHEREFORE, L.B. seeks an issuance of a writ of mandamus to enforce her rights to be treated with fairness and respect for her privacy as provided in Article 6b(a)(9).

Respectfully submitted this 17th day of February 2026,

[redacted]

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CERTIFICATE OF FILING AND SERVICE

I certify that on February 17, 2026, the foregoing was electronically filed with the Court and served on the following addresses:

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

In re LB,	)	**REAL PARTY IN INTEREST'S MOTION TO FILE ANSWER UNDER SEAL**
Petitioner,	)	
	)	
	)	Before a Special Panel
Technical Sergeant (E-6)	)	
Irvin Bryant, Jr.,	)	Misc. Dkt. No. 2025-14
United States Air Force,	)	
Real Party in Interest.	)	6 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 first issue raised by Petitioner's Supplemental Brief concerns Military Rule of Evidence 412. Military Rule of Evidence 412 provides that motions, related papers, and the record of the hearing to consider the admissibility of evidence under that rule "must be sealed in accordance with [Rule for Courts-Martial] 1113 and remain under seal unless the military judge, the Judge Advocate General, or an appellate court orders otherwise." MIL. R. EVID. 412(c)(2), *Manual for Courts-Martial, United States* (2024 ed.). In keeping with that rule, it is appropriate to file under seal the Real Party in Interest's answer, which discusses Military Rule of Evidence 412 motions and rulings in depth. A sealed filing is also appropriate because the second issue raised by Petitioner's Supplemental Brief involves her medical records.

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

GRANTED
20 FEB 2026

WHEREFORE, this Honorable Court should grant this motion.

Respectfully submitted,

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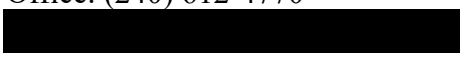

CERTIFICATE OF FILING AND SERVICE

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 6 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	)	**REAL PARTY IN INTEREST'S**
Petitioner	)	**MOTION TO ATTACH**
	)	
	)	
	)	Before a Special Panel
Technical Sergeant (E-6)	)	
IRVIN BRYANT, JR.	)	Misc. Dkt. No. 2025-14
United States Air Force	)	
Real Party in Interest	)	6 February 2026

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

Pursuant to Rule 23.3(b) of this Honorable Court's Rules of Practice and Procedure, Real Party in Interest, by and through his undersigned counsel, hereby moves to attach the following document: Email from Lt Col Lauren M. Torczynski to Maj Eric Trudrung, Lt Col Ryan D. Brunson, copied to Maj Heather M. Bruha, Maj Heather N. Stallings, Capt Erin C. Carnick, Capt Alicia M. Ferguson, Angela R. Parson, Subject: US v. Bryant – RULING – Defense MRE 412 Motions, Dec. 12, 2025. This document is relevant and necessary to Real Party in Interest's Answer to Petition for Extraordinary Relief in the Nature of a Writ of Mandamus, submitted contemporaneously with this motion.

Rule 19(b)(2)(J) of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals provides that a petition for extraordinary relief shall contain, at a minimum, "any parts of the record that may be essential to understand the matters set forth in the petition." In *United States v. Jessie*, 79 M.J. 437, 445 (C.A.A.F. 2020),

GRANTED
20 FEB 2026

the Court of Appeals for the Armed Forces continued the practice of allowing consideration of matters outside the record to resolve issues reasonably raised by materials in the record but not fully resolvable by those materials.[1] The appended document is anticipated to become a part of the record of trial under Rule for Courts-Martial 1112(b)(4), *Manual for Courts-Martial, United States* (2024 ed.); however, the document is also independently relevant and necessary to this Court's consideration of the Article 6b(e) mandamus petition. The appended document establishes the time and date on which the Petitioner was notified of the military judge's ruling on the defense's Mil. R. Evid. 412 motions—the source of Petitioner's first Assignment of Error in her Petition for Extraordinary Relief in the Nature of a Writ of Mandamus. The time and date of that notice to Petitioner—which no document presently before the Court establishes—is necessary to determine the timeliness of some challenges raised by Petitioner's Supplemental Brief. Without the appended document, this Court cannot consider all the relevant circumstances and determine whether some challenges raised by Assignment of Error I in Petitioner's Supplemental Brief are properly before this Court.

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[1] *Jessie*, which has been superseded by statute, does not apply to this case. *See United States v. Giles*, No. ACM 40482, 2024 CCA LEXIS 544, at *27 n.5 (A.F. Ct. Crim. App. Dec. 23, 2024), *petition denied*, 85 M.J. 447 (C.A.A.F. 2025); *see also United States v. Banks*, No. ACM 24057, 2025 CCA LEXIS 578, at *7 n.5 (A.F. Ct. Crim. App. Dec. 18, 2025). Nevertheless, its reasoning that matters of record may make materials from outside the record relevant to an appellate court's decision remains sound.

WHEREFORE, the Real Party in Interest respectfully requests that this Honorable Court grant this motion.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on Petitioner's counsel and the Air Force Government Trial and Appellate Operations Division on 6 February 2026.

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9 February 2026

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

In re LB, *Petitioner*	)	**MOTION TO FILE UNITED STATES' ANSWER TO PETITION FOR WRIT OF MANDAMUS UNDER SEAL**
Technical Sergeant (E-6) **Irvin Bryant, Jr.**, United States Air Force, *Real Party in Interest*.	)	Before Special Panel Misc. Dkt. No. 2025-14

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

Pursuant to Rules 13.2(b) and 23.3(o) of the United States Air Force Court of Criminal Appeals Rules of Practice and Procedure, the United States requests to file under seal its Answer to Petitioner's Petition for Writ of Mandamus. The Answer is in response to Petitioner's petition, which was also filed under seal, and contains information related to Mil. R. Evid. 412 matters.

WHEREFORE, the United States respectfully requests this Court grant this motion to file under seal its Answer to Petitioner's Petition for Writ of Mandamus.

GRANTED
20 FEB 2026

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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 9 February 2026 via electronic filing.

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