IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,
Appellee,

v.

MICHAEL A. PORTILLOS
Staff Sergeant (E-5),
United States Air Force,
Appellant.

No. ACM 40305

BRIEF ON BEHALF OF APPELLANT

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*,	)	**BRIEF ON BEHALF OF APPELLANT**
v.	)	Before Panel No. 1
Staff Sergeant (E-5), **MICHAEL A. PORTILLOS,** United States Air Force, *Appellant*.	)	No. ACM 40305
	)	Filed on: 14 April 2023

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

Assignments of Error

I.

WHETHER THE VICTIM'S WRITTEN UNSWORN STATEMENT CONTAINED IMPERMISSIBLE CONTENT?

II.

WHETHER APPELLANT IS ENTITLED TO NEW POST TRIAL PROCESSING BECAUSE THE CONVENING AUTHORITY: 1) DECIDED ON ACTION NINE DAYS AFTER THE ANNOUNCEMENT OF SENTENCE AND BEFORE THE DEFENSE SUBMITTED MATTERS PURSUANT TO R.C.M. 1106; AND, 2) DECIDED ON ACTION AND DEFERMENT REQUESTS BEFORE APPELLANT'S FIVE DAYS TO REBUT THE VICTIM SUBMISSION OF MATTERS HAD EXPIRED?

Statement of the Case

On 28 September 2021 and 14 March 2022, Staff Sergeant (SSgt) Michael A. Portillos (Appellant) was tried by a general court-martial composed of a military judge alone at Aviano Air Base, Italy. Consistent with his pleas, the military judge found Appellant guilty of one charge and four specifications[1] of assault consummated by a battery upon a spouse, in violation of Article

[1] Charge II and its Specifications.

128, Uniform Code of Military Justice (UCMJ).[2] Record (R.) at 25, 80. Pursuant to a plea agreement,[3] the Government withdrew one charge and two specifications[4] of sexual assault, in violation of Article 120, UCMJ,[5] and one charge and one specification[6] of indecent viewing, in violation of Article 120c, UCMJ. R. at 80, 123-24. The plea agreement dictated prejudice would attach to the dismissals upon "completion of appellate review." App. Ex. II at 2, para 3(b). The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for 12 months, and a bad conduct discharge. R. at 123.

The convening authority took no action on the findings or sentence. Record of Trial (ROT) Vol. 1, Convening Authority Decision on Action – *United States v. Staff Sergeant Michael A. Portillos*, dated 23 March 2022 (Decision on Action). He granted Appellant's request to defer the reduction in grade until action and to waive automatic forfeitures. *Id*. He denied Appellant's request to defer automatic forfeitures until the entry of judgment, reasoning the request had been mooted by the simultaneous waiver of automatic forfeitures. *Id*. The military judge entered judgment accordingly. *See* ROT Vol. 1, *Entry of Judgment in the case of Staff Sergeant Michael A. Portillos*, dated 29 March 2022 (EOJ).

[2] Unless otherwise noted all references to the UCMJ and the Rules for Courts-Martial (R.C.M.) are to the *Manual for Courts-Martial, United States* (2019 ed.) (*2019 MCM*).
[3] Appellate Exhibit (App. Ex.) II.
[4] Charge I and its Specifications.
[5] As the charged timeframe of sexual assault allegations occurred in 2015, the punitive article codified in the *Manual for Courts-Martial, United States* (2012 ed.) (*2012 MCM*) applied to those specifications.
[6] Charge III and its Specification.

Statement of Facts

Appellant was convicted of four batteries committed against his spouse, EP, most of which happened in their home in Italy one night in October 2020. R. at 80; Prosecution Exhibit (Pros. Ex.) 1 at 2-4. The conduct was captured on video and admitted into evidence. Pros. Ex. 2.

The Victim's Unsworn Statement

At the conclusion of the Government's presentencing case, EP offered a written unsworn statement and also read that document orally into the record. R. at 102; Court Exhibit (Ct. Ex.) A. The unsigned unsworn statement is on the Air Force Trial Judiciary's document reserved for the formal pleadings of the parties:

DEPARTMENT OF THE AIR FORCE
UNITED STATES AIR FORCE TRIAL JUDICIARY

UNITED STATES	)	
	)	**VICTIM IMPACT STATEMENT**
v.	)	**OF E.P.**
	)	
SSGT MICHAEL PORTILLOS	)	
31st Aircraft Maintenance Squadron (USAFE)	)	
Aviano Air Base, Italy	)	**13 March 2022**

Ct. Ex. A at 1; *see also* Uniform Rules of Practice Before Air Force Courts-Martial at Appendix C. The defense counsel did not object to the document. R. at 101-02. Paragraph 2 discusses information about EP and Appellant before the charged events. Ct. Ex. A at 1, para. 2. Paragraph 10, in full, states, "I don't want any other women to have to endure the same pain I have. My hope is that he will not do this to anyone else again and that he can learn from this. That's why I believe he deserves the most amount of punishment." *Id*. at 2, para. 10. The military judge, *sua sponte*, said he would disregard the first sentence of that paragraph about other women feeling the same pain because that was not victim impact. R. at 102. The line was not redacted; he said he would

simply not consider that language. *Id*. The military judge did not say he would not consider the line "I believe he deserves the most amount of punishment." *Id*.

Post-trial submissions and requests

EP submitted her post-trial matters to the convening authority the same day of the court-martial, 14 March 2022. ROT Vol. 3, Victim Submission of Matters. This Defense submitted an unrelated request for various deferments and waiver of automatic forfeitures two days later. ROT Vol. 3, Request for Deferment of Rank Reduction and Automatic Forfeitures and Waiver of Automatic Forfeitures, dated 16 March 2022. This was not a request for clemency under R.C.M. 1106 and Article 60a, UCMJ. The Defense was not served the victim submission of matters until 21 March 2022, five days after it filed the deferment and waiver requests. ROT Vol. 3, Receipt for Victim Submission of Matters.

The convening authority decided on action two days after the Defense was served the victim submission of matters, without waiting the required five days for the Defense to submit a rebuttal to the victim submission of matters. ROT Vol. 1, Decision on Action. In the decision on action, the convening authority indicated he considered "matters timely submitted by the Accused under R.C.M. 1106 and the Victim under R.C.M. 1106A." *Id*. at 2. This was also the ninth day after the 14 March 2022 court-martial, one day before the Defense's ten days to file a clemency request would expire.

The Defense was not served the Decision on Action until 25 April 2022, almost a full month after the entry of judgment and after the time to file a post-trial motion had long since closed. ROT Vol. 3, Receipt for Decision on Action.

Argument

I.

THE VICTIM'S WRITTEN UNSWORN STATEMENT CONTAINED IMPERMISSIBLE CONTENT.

Standard of Review

A military judge's interpretation of R.C.M. 1001A is a question of law this Court reviews *de novo*, while a military judge's decision to admit an unsworn statement is reviewed for an abuse of discretion. *United States v. Edwards*, 82 M.J. 239, 243 (C.A.A.F. 2022) (citations omitted).[7]

Law

A victim has a right to be reasonably heard at a sentencing hearing. Article 6b(a)(4)(B), UCMJ. The President has determined it is reasonable to offer an unsworn statement during the sentencing proceedings in a non-capital case. R.C.M. 1001(c)(2)(D)(ii). The unsworn statement can be oral, written, or both. R.C.M. 1001(c)(5)(A). It may only contain matters of victim impact or mitigation. R.C.M. 1001(c)(3). Victim impact includes any financial, social, psychological, or medical impact on the crime victim directly relating to or arising from the offense of which the accused has been found guilty. R.C.M. 1001(c)(2)(B). The statement may not include a recommendation of a specific sentence. R.C.M. 1001(c)(3).

This Court has held an affirmative non-objection to the consideration of a victim unsworn statement waives the issue for appeal. *United States v. Andersen*, 82 M.J. 543, 547 (A.F. Ct. Crim. App. 2022). Pursuant to Article 66(d), UCMJ, however, this Court maintains the "unique statutory responsibility" to affirm only such findings of guilty and so much of the sentence that is correct and should be approved and, thus, retains "authority to address errors raised for the first time on

[7] Although *Edwards* analyzed R.C.M. 1001A as codified in a prior version of the MCM, the current rule—R.C.M. 1001(c) (*2019 MCM*)—should be reviewed under the same standard.

appeal despite waiver of those errors at trial." *Id*. (citing *United States v. Hardy*, 77 M.J. 438, 442-43 (C.A.A.F. 2018)).

Analysis

A. This Court should not find waiver, or alternatively, pierce waiver to review the issue.

If this Court finds waiver under the circumstances, there are compelling reasons to pierce waiver. Erroneous victim unsworn statements have been the subject of repeated litigation at this Court and the Court of Appeals for the Armed Forces (CAAF) over the last number of years. To date, there are six cases the CAAF has reviewed or is in the process of reviewing on this topic; all came from the Air Force. *United States v. Cunningham*, __ M.J. __, 2022 CAAF LEXIS 888 (C.A.A.F. 13 Dec. 2022) (order granting review); *United States v. Harrington*, 82 M.J. 267 (order granting review); *Edwards*, *supra*; *United States v. Tyler*, 81 M.J. 108 (C.A.A.F. 2021); *United States v. Hamilton*, 78 M.J. 335 (C.A.A.F. 2019); *United States v. Barker*, 77 M.J. 377 (C.A.A.F. 2018). This Court has confronted the issue of unsworn victim statements in many more cases than that. *See*, *e.g.*, *Andersen*, *supra*; *United States v. Bailey*, No. ACM 39935, 2021 CCA LEXIS 380 (A.F. Ct. Crim. App. 30 Jul. 2021) (unpub. op.); *United States v. Berry*, No. ACM 40170, 2022 CCA LEXIS 716 (A.F. Ct. Crim. App. 15 Dec. 2022) (unpub. op.).

One of the purposes of appellate law, above and beyond resolving the case at bar, is to provide "guidance to the field." *United States v. Nieto*, 66 M.J. 146, 151 (C.A.A.F. 2008) (Baker, J., concurring in the result). To simply conclude this issue was waived by trial defense counsel's non-objection does not provide further guidance to the field about the scope and contours of proper victim unsworn statements. It would only provide guidance to defense counsel that they must make a timely objection or run the risk of waiving the issue for appellate review. Respectfully, that message is already out there. If trial defense counsel have not learned that lesson before now,

this case will not be the one that turns the tide. What this case *can* do is provide very clear and specific guidance to military judges and trial practitioners in Air Force courts-martial what to do and not to do with victim unsworn statements. That is what is needed at this moment in military appellate practice. Deciding substantive unsworn statement issues, one at a time, case by case, will develop useful data points for trial practitioners. For these reasons, if this Court concludes any issue with Court Exhibit A has been waived, it should pierce waiver and review the merits of the issue. And, regardless of whether Appellant is entitled to relief, this Court can provide necessary clear "guidance to the field."

B. The military judge erred.

The military judge made several errors with regards to Court Exhibit A. The first, and perhaps most glaring, error is the fact that the unsworn statement was presented on the Air Force Judiciary's pleading document. *See supra* at 3. This is error because the content of these words is neither victim impact nor mitigation, thus, it is prohibited. R.C.M. 1001(c)(3). But placing the unsworn statement on this type of document engenders several problems. It makes it look as if the Air Force Judiciary endorses the content. It also demonstrates the victim counsel's ownership of the document; certainly, EP herself would never possess such a document template on which she could author a statement of her own. The statement must be personal to the victim, and this at least raises the concern EP's counsel had a heavy influence on the document which depersonalizes it from EP herself. This Court would likely express reservation if an accused's unsworn was presented on the judiciary's pleading template, and even worse, if that went to members with an apparent seal of approval by the military judge of the contents therein. It is clear or obvious error to permit the document to be presented with this heading.

Second, paragraph 2 was error. The entirely of it describes EP's life before she was married to Appellant or before the charged events. This content that temporally precedes the offenses to which Appellant pleaded guilty cannot be "directly relating to or arising from the offense of which the accused has been found guilty." R.C.M. 1001(c)(2)(B). Moreover, paragraph 2 denotes no "impact" at all. It provides a description of E.P. and Appellant. Third, paragraph 10 closes with, "I believe he deserves the most amount of punishment." Ct. Ex. A. at 2. This is a specific recommendation on punishment, which is expressly prohibited. R.C.M. 1001(c)(3). These errors are clear or obvious.

The military judge, *sua sponte*, identified two separate lines in paragraphs 7 and 10, respectively, for further discussion. R. at 102. He said he would not consider the first sentence in paragraph 10, as the reasons EP participated in the court-martial were not victim impact. *Id*. He also characterized the first sentence in paragraph 7 so as to read it in conformity with the rule. *Id*. He did not mention any of these other errors or that he would not consider them; therefore, it is reasonable to conclude he *did* consider the erroneous components of the document. R.C.M 1002(g).

Military judges are presumed to know the law and to follow it absent clear evidence to the contrary. *United States v. Erickson*, 65 M.J. 221, 225 (C.A.A.F. 2007). But the military judge's clear or obvious errors overcome this presumption. Moreover, this military judge is the same one who this Court found erred in his analysis of the exact same rule on a prior occasion. *United States v. Cunningham*, No. ACM 40093, 2022 CCA LEXIS 527 (A.F. Ct. Crim. App. 9 Sep. 2022) (unpub. op.) *review granted by Cunningham*, 2022 CAAF LEXIS 888. There is clear evidence this military judge did not understand the contour and scope of R.C.M. 1001(c). There should be no presumption the military judge knew or understood R.C.M. 1001(c).

Prejudice assessments by an appellate court are much more difficult to apply in sentencing contexts than in findings. *Edwards*, 82 M.J. at 247. This in, in part, because there is a "broad spectrum of lawful punishments" that may be adjudged, as compared to the "binary" decision on guilt. *Id*. As the CAAF is currently conducting a prejudice analysis where this same military judge made an error with regards to the same Rule for Courts-Martial in a military judge alone setting, Appellant respectfully requests this Court conduct its prejudice analysis in this case in light of the CAAF's forthcoming decision in *Cunningham*.

WHEREFORE, Appellant respectfully requests this Honorable Court reassess Appellant's sentence.

II.

APPELLANT IS ENTITLED TO NEW POST TRIAL PROCESSING BECAUSE THE CONVENING AUTHORITY: 1) DECIDED ON ACTION NINE DAYS AFTER THE ANNOUNCEMENT OF SENTENCE AND BEFORE THE DEFENSE SUBMITTED MATTERS PURSUANT TO R.C.M. 1106; AND, 2) DECIDED ON ACTION AND DEFERMENT REQUESTS BEFORE APPELLANT'S FIVE DAYS TO REBUT THE VICTIM SUBMISSION OF MATTERS HAD EXPIRED.

Standard of Review

Proper completion of post-trial processing is a question of law this court reviews *de novo*. *United States v. Valentin-Andino*, __ M.J. __, 2023 CCA LEXIS 45, at *8 (A.F. Ct. Crim. App. 2023) (citations omitted). Because they are matters of law, this Court reviews interpretations of statutes and Rules for Courts-Martial *de novo*. *Id*. (citations omitted).

Law

After a sentence is announced in a court-martial, the accused may submit matters to the convening authority for consideration in exercise of the convening authority's powers under

R.C.M. 1109 or 1110. R.C.M. 1106(a). Such matters must be submitted within ten days after the sentence is announced. R.C.M. 1106(d)(1).

"In a case with a crime victim, after a sentence is announced in a court-martial any crime victim of an offense may submit matters to the convening authority for consideration in the exercise of the convening authority's powers under R.C.M. 1109 or 1110." *Valentin-Andino*, 2023 CCA LEXIS 45 at *8 (citing R.C.M. 1106A(a)). "The convening authority shall ensure any matters submitted by a crime victim under this subsection be provided to the accused as soon as practicable." *Id*. (citing R.C.M. 1106A(c)(3)). "If a crime victim submits matters under R.C.M. 1106A, 'the accused shall have five days from receipt of those matters to submit any matters in rebuttal.'" *Id*. at *8-9 (citing R.C.M. 1106(d)(3)). "Before taking or declining to take any action on the sentence [in clemency], the convening authority shall consider matters timely submitted under R.C.M. 1106 and 1106A, if any, by the accused and any crime victim." *Id*. at *9 (citing R.C.M. 1109(d)(3)(A)). "In making a clemency decision, a convening authority 'may not consider matters adverse to the accused without providing the accused an opportunity to respond.'" *Id.* (citing R.C.M. 1106A(c)(2)(B), Discussion).

"Post-trial conduct must consist of fair play, specifically giving the appellant notice and an opportunity to respond." *Id*. (citation omitted). "Serving victim clemency correspondence on the accused for comment before convening authority action protects an accused's due process rights under the Rules for Courts-Martial and preserves the actual and perceived fairness of the military justice system." *Id*. at *9-10 (citation omitted).

Article 57(b), UCMJ, permits the convening authority to defer certain components of the sentence. R.C.M. 1103(b) contemplates an accused's request to the convening authority for deferment. The convening authority may waive automatic forfeitures for the benefit of a

dependent. Article 58b(b), UCMJ. Clemency is much different. It is a grant of "mercy" from the convening authority. *United States v. Guinn*, 81 M.J. 195, 203 (C.A.A.F. 2021) (quoting *United States v. Nerad*, 69 M.J. 138, 146 (C.A.A.F. 2010)). Article 60a, UCMJ, outlines the convening authority's limitations on post-trial actions for sentences. Clemency can take the form of disapproval, reduction, commutation, or suspension of a component of the sentence. Article 60a(b), UCMJ. In this case, the convening authority could have disapproved a reprimand and reduction to E-1. Article 60a(b)(2); *see also* R.C.M. 1109.

This Court provides relief for an abuse of the convening authority's discretion that materially prejudiced an appellant's substantial rights. *See United States v. Chisum*, 77 M.J. 176, 179 (C.A.A.F. 2018) (citing Article 59(a), UCMJ, 10 U.S.C. § 859(a)). An appellant claiming to have been denied a right to comment on post-trial matters has the burden of making a colorable showing of possible prejudice to be entitled to relief. *Valentin-Andino*, 2023 CCA LEXIS at * 12 (citing *United States v. Brown*, 54 M.J. 289, 292 (C.A.A.F. 2000)).

Analysis

For both of the concerns addressed below, the Defense could not have filed a post-trial motion because they were not served the convening authority's decision on action until after judgment had already been entered by the military judge. *Compare* ROT Vol. 3, Receipt for Decision on Action (25 April 2022) *with* ROT Vol. 1., EOJ (29 March 2022).

A. <u>The convening authority did not allow ten days after the announcement of the sentence for the Defense to submit a clemency request.</u>

The Defense is permitted ten days to submit matters before the convening authority's decision to exercise the powers authorized in Article 60a, UCMJ, and R.C.M. 1109. *See* R.C.M. 1106(d)(1). Here, the court-martial sentenced Appellant on 14 March 2022; the convening authority decided on action nine days later on 23 March 2022. *See* Decision on Action. Therefore,

the convening authority did not wait for the entire ten days to elapse, a clear error. Appellant was denied an opportunity to timely submit matters.

It appears the convening authority mistook the Defense's request for deferments and waiver of automatic forfeitures under R.C.M. 1103 as its R.C.M. 1106 submission because the convening authority wrote he considered "matters timely submitted by the Accused under R.C.M. 1106 and the Victim under R.C.M. 1106A." Decision on Action at 2. Yet, as of day nine, there was no R.C.M. 1106 submission. Deferment requests and clemency requests are certainly distinct. *See Valentin-Andino*, 2023 CCA LEXIS 45 at *15 (analyzing deferments and clemency separately). Also, deferments and waiver are governed by Articles 57(b) and 58b(b), UCMJ and informed by R.C.M. 1103 whereas clemency authority is governed by Article 60a, UCMJ, and informed by R.C.M. 1109.

The prejudice here is one of due process. "[T]he concepts of basic fairness and procedural due process" required the convening authority to wait until after ten days had elapsed before deciding on action. *Valentin-Andino*, 2023 CCA LEXIS 45 at *14. The law afforded Appellant ten days to request clemency and he was not afforded all ten days. The convening authority had the authority to act with respect to the reduction in grade or the reprimand; Appellant was denied an opportunity to even try. This is, at a minimum, some colorable showing of possible prejudice.

B. <u>The convening authority did not allow five days for the Defense to rebut the victim submission of matters.</u>

The convening authority also erred by deciding on action two days after the Defense received a copy of the victim submission of matters when the law entitled the Defense five days to respond. As a threshold consideration, it is unclear why a 14 March 2022 victim submission of matters was not served on the area defense counsel located on the same installation until 21 March 2022, and relatedly, how that complies with the regulatory requirement to "provide the matters to

the accused as soon as practicable." R.C.M. 1106A(c)(3)). That notwithstanding, the Defense receipted for the victim submission of matters on 21 March 2022 (*see* ROT Vol. 3) and the convening authority decided on action on 23 March 2022. *See* ROT Vol. 1, Decision on Action. The applicable rules afforded the Defense five days to present a rebuttal to the convening authority. R.C.M. 1106(d)(3). That did not happen. This error deprived Appellant of due process in post-trial processing. *Valentin-Andino*, 2023 CCA LEXIS at * 8-9. It also meant the convening authority was deprived of considering anything Appellant may have provided in his rebuttal which would have served as a basis to take action for Appellant's benefit with respect to the reduction in grade or reprimand.

"Some colorable showing of possible prejudice" is arguably the lowest prejudice burden an appellant could be required to meet. It requires an appellant "to demonstrate prejudice by stating what, if anything, would have been submitted to deny, counter, or explain the new matter." *United States v. Chatman*, 46 M.J. 321, 323 (C.A.A.F. 1997) (internal quotation marks and citation omitted). Here, the defense counsel would have been able to highlight to the convening authority the parts of the post-trial victim matters the military judge excluded from consideration. This would have been necessary because Court Exhibit A did not undergo redactions; the military judge simply said he would ignore the pertinent part of paragraphs 7 and 10.

The victim submission of matters to the convening authority included a copy of her written unsworn statement provided to the court-martial, without redaction. The reason why this is important is because that statement, as mentioned *supra*, had a variety of errors associated with it. It was on the Air Force Judiciary's pleading document, which makes it seem as if the judiciary itself endorsed the content as legitimate impact, rather than it merely being the words of the victim herself. In the same way it would be problematic for members to see an unsworn statement on a

document of the judiciary, so too here it was problematic for the convening authority—a non-lawyer—to see the document that way. The area defense counsel would have brought that to the convening authority's attention. Next, there were several portions of that document that were either not considered by the military judge or erroneously considered.[8] Yet, providing the full unredacted document from trial made it seem as if this was all proper for the consideration of a court-martial. It was not. Here too, the defense counsel's rebuttal would have been able to bring that to the convening authority's attention.

When an appellant makes this low showing of prejudice, the appellate court will give the "benefit of the doubt and [] 'will not speculate on what the convening authority might have done' if defense counsel had been given an opportunity to comment." *Chatman*, 46 M.J. at 323-24 (quoting *United States v. Jones*, 44 M.J. 242, 244 (C.A.A.F. 1996)). Remand is appropriate.

WHEREFORE, Appellant respectfully requests this Honorable Court remand to the Chief Trial Judge, Air Force Trial Judiciary, to resolve a substantial issue with the post-trial processing.

Respectfully submitted,

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[8] *See* R.C.M. 1106A(c)(2) (prohibiting consideration of matters that "relate to the character of the accused unless such matters were admitted at trial.")

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 the Appellate Government Division on 14 April 2023.

Respectfully submitted,

DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

15 May 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' ANSWER TO ASSIGNMENTS OF ERROR
v.	)	No. ACM 40305
Staff Sergeant (E-5) MICHAEL A. PORTILLOS, USAF, *Appellant.*	)	Panel No. 1

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

ISSUES PRESENTED

I.

WHETHER THE VICTIM'S WRITTEN UNSWORN STATEMENT CONTAINED IMPERMISSIBLE CONTENT?

II.

WHETHER APPELLANT IS ENTITLED TO NEW POST TRIAL PROCESSING BECAUSE THE CONVENING AUTHORITY: 1) DECIDED ON ACTION NINE DAYS AFTER THE ANNOUNCEMENT OF SENTENCE AND BEFORE THE DEFENSE SUBMITTED MATTERS PURSUANT TO R.C.M. 1106; AND, 2) DECIDED ON ACTION AND DEFERMENT REQUESTS BEFORE APPELLANT'S FIVE DAYS TO REBUT THE VICTIM SUBMISSION OF MATTERS HAD EXPIRED?

STATEMENT OF THE CASE

On 14 March 2022, at Aviano Air Base, Italy, consistent with (Appellant) Staff Sergeant Michael A. Portillos's plea, a general court-martial comprised of a military judge alone convicted Appellant of one charge and four specifications of assault consummated by a battery upon his spouse, in violation of Article 128, UCMJ, 10 U.S.C. § 928 (Charge II, Specifications 1, 2, 3, and 4). (*See* EOJ, dated 29 March 2022, ROT, Vol. 1.) After the military judge accepted Appellant's plea and in accordance with Appellant's plea agreement with the convening authority, the

Government withdrew and dismissed with prejudice one charge and two specifications of sexual assault, alleged violations of Article 120, UCMJ, 10 U.S.C. § 920 (Charge I, Specifications 1 and 2); and one charge and one specification of indecent viewing, an alleged violation of Article 120c, UCMJ, 10 U.S.C. § 920c (Charge III and its Specification). (*See* id.; *see also* R. at 80, 123-24.)

The military judge sentenced Appellant to a bad conduct discharge, a reduction to the grade of E-1, and a reprimand. (*See* EOJ; *see also* R. at 123.) Appellant was also sentenced to confinement for a period of 12 months for each of the four specifications under Charge II. (Id.) Per the plea agreement, the sentences to confinement were to run concurrently. (Id.)

On 16 March 2022, Appellant requested deferment of his reduction in grade until action, which the convening authority granted on 23 March 2022. (*See* Convening Authority Decision on Action, dated 23 March 2022, ROT, Vol. 1.) Appellant also requested deferment of all automatic forfeitures until the entry of judgment, which the convening authority denied because the convening authority instead waived automatic forfeitures (for a period of six months, or release from confinement, or expiration of term of service, whichever was sooner) to maximize Appellant's benefits to Mrs. EP, Appellant's spouse, and Appellant's dependent child. (Id.)

The convening authority took no action on the findings or the sentence. (Id.) The military judge entered judgment on 29 March 2022. (*See* EOJ.)

STATEMENT OF FACTS

Facts necessary for the disposition of this matter are set forth below.

ARGUMENT

I.

APPELLANT WAIVED ANY ISSUE CONCERNING THE VICTIM'S UNSWORN STATEMENT, AND APPELLANT WAS NOT PREJUDICED BY THE UNSWORN STATEMENT'S CONTENTS.

Additional Facts

After the conclusion of the Government's sentencing case, EP's counsel informed the military judge that her "client will be providing her statement through a reading of her written unsworn statement." (R. at 98.) EP's written statement was a two-page document, dated 13 March 2022. (Id.; *see also* Court Ex. A.) Prior to EP's verbal rendition and the written unsworn statement's admission into evidence, the victims' counsel provided trial defense counsel with a copy of EP's statement. (R. at 97-98.) Before EP read her statement to the military judge, the military judge asked trial defense counsel whether they objected to the statement. (Id. at 97.) Defense counsel responded, "No objection, Your Honor." (Id. at 98.)

EP read her unsworn statement to the military judge. (R. at 98-101.) EP discussed her history with Appellant, his abuse, and the negative impact it had on EP and their daughter. (Id.) EP's final statement to the military judge was as follows:

> I don't want any other women to have to endure the same pain I have. My hope is that he will not do this to anyone else again and that he can learn from this. That's why I believe he deserves the most amount of punishment.

(R. at 101.)

After EP read her unsworn statement, victims' counsel moved to admit the written form of the statement as Court Exhibit A. (R. at 102.) The military judge again asked trial defense counsel, "Any objection to Court Exhibit A?" (Id.) Defense counsel again responded, "No objection, Your Honor." (Id.)

Sua sponte, the military judge then ruled that he was "not going to consider … the first sentence of paragraph 10 [of the statement] which states, 'I don't want any other women to have to endure the same pain that I have' because [he found] that that gets a little attenuated from victim impact." (R. at 102.) Neither trial counsel nor defense counsel objected to the judge's ruling. (Id.)

Standard of Review

When an appellant merely fails to object to the admission of evidence at trial, the issue is forfeited absent plain error. *See* United States v. Andersen, 82 M.J. 543, 546-547 (A.F. Ct. Crim. App. 2022). However, when an appellant affirmatively states that he has no objection to the admission of evidence, the issue is waived and his right to complain on appeal is extinguished. Id. (citing United States v. David, 79 M.J. 329, 331 (C.A.A.F. 2020); United States v. Ahern, 76 M.J. 194, 198 (C.A.A.F. 2017)).

Law

In accordance with Article 66(d), UCMJ, 10 U.S.C. § 866(d), this Court has a statutory responsibility to affirm only such findings of guilty and so much of the sentence that is correct and "should be approved." Andersen, 82 M.J. at 547 (quoting Article 66(d), UCMJ). Accordingly, this Court retains the authority to address errors raised for the first time on appeal despite waiver of those errors at trial. Id. (citing United States v. Hardy, 77 M.J. 438, 442-43 (C.A.A.F. 2018)). If this Court pierces waiver, however, it still tests for prejudice. *See* Andersen, 82 M.J. at 547 ("Even if we were to conclude Appellant had forfeited, rather than waived, this issue, we would conclude any error was harmless under the facts presented here.").

"Article 6b is not a blanket authorization for a victim to state to the sentencing authority whatever he or she might desire." United States v. Roblero, No. ACM 38874, 2017 CCA LEXIS 168, at *18-19 (A.F. Ct. Crim. App. 17 Feb. 2017) (unpub. op.). "'The right to be reasonably heard at … a sentencing hearing' does not transform the sentencing hearing into an open forum to express statements that are not otherwise permissible under R.C.M. 1001." Id. Accordingly, a victim impact statement "may not include a recommendation of a specific sentence." R.C.M. 1001(c)(3); *see also* United States v. Ohrt, 28 M.J. 301, 303 (C.M.A. 1989).

Analysis

Appellant twice waived the issue he now raises on appeal. Not only did Appellant's trial defense counsel affirmatively state he had no objection *prior to* EP's verbal unsworn statement, (*see* R. at 98), but defense counsel also stated that he had no objection *after* her verbal statement, and prior to the admission of the (identical) written version of her statement, (*see* R. at 102). He also failed to object after the judge's *sua sponte* ruling. Having unequivocally waived this issue multiple times, this Court should deny this allegation of error. *See* Andersen, 82 M.J. at 547 ("trial defense counsel did not merely fail to object at trial, they made the deliberate choice not to do so and thereby affirmatively waived the matter by stating they had no objection" to the statement).

To attempt an end-run around his trial defense counsel's multiple affirmative waivers, Appellant urges this Court to review this issue pursuant to Article 66(d), UCMJ, to "address errors raised for the first time on appeal despite waiver of those error at trial." (App. Br. at 5-6 (quoting Andersen, 82 M.J. at 547).) Although this Court has previously ruled that it has the power to pierce waiver under Article 66, Appellant provides insufficient reasons why it is appropriate here.

Appellant first urges this Court to pierce waiver because "[e]rroneous victim unsworn statements have been the subject of repeated litigation at this Court and … [CAAF] over the last number of years." (App. Br. at 6.) Second, Appellant claims that overlooking waiver is important because, to reach the merits of this issue, it "would provide guidance to defense counsel that they must make a timely objection or run the risk of waiving the issue for appellate review." (Id.) Appellant is wrong on both counts. While it is true victim unsworn statements have been the subject of appellate litigation as of late, this is because victim unsworn statements are relatively new in military justice practice, not because of factual scenarios like the one here. Accordingly, piercing waiver is inappropriate in this case.

Further, this Court need not pierce waiver in this case to inform "defense counsel that they must" object or "run the risk of waiving the issue for appellate review"—Appellant's own (multiple) cited cases all stand for that exact proposition. (Id.) Yet another appellate case, especially one with facts like these (*i.e.*, two affirmative waivers), is not going to help send trial defense counsel an already crystal-clear message. On the contrary, it is important for this Court to enforce waiver to send a message to litigants that they must address potential errors *at trial*—where those issues can be addressed and remedied immediately—rather than granting windfall relief to appellants on appeal (thus disincentivizing litigants from raising such issues at trial).

If this Court nevertheless elects to pierce waiver and finds error here, Appellant suffered no prejudice regarding the material in paragraphs 2 or 10 of Court Exhibit A.[1] Appellant incorrectly asserts that paragraph 2 contained prejudicial material, yet that paragraph merely contained background information concerning EP and her relationship with Appellant, which appropriately placed EP's victim impact into context for the sentencing authority. (*See* Court Ex. A.) The information in paragraph 10 of EP's statement was also not prejudicial. Similar to the material admitted in Andersen, the material in paragraph 10 was "largely inconsequential in the context of the [statement] as a whole" and trial counsel "did not seek to capitalize on … [EP's sentencing wishes] during the Government's sentencing argument[.]" 82 M.J. at 547. Further, the military judge was not swayed by EP's comments about Appellant deserving "the most amount of punishment" given that he adjudged the minimum amount of confinement allowable in the plea agreement for each specification under Charge II. (*Compare* R. at 123, *with* App. Ex. II.)

[1] Appellant's complaint regarding the unsworn statement's heading lacks merit, especially given that this was a military judge alone trial. *See, e.g.*, United States v. Erickson, 65 M.J. 221, 225 (C.A.A.F. 2007) (military judges are presumed to know the law and to follow it absent clear evidence to the contrary).

In addition, other than asking this Court to hold off on its prejudice determination until CAAF resolves an unrelated case, *see* United States v. Cunningham, No. ACM 40093, 2022 CCA LEXIS 527 (A.F. Ct. Crim. App. Sept. 9, 2022), *rev. granted*, 2022 CAAF LEXIS 888 (C.A.A.F. 13 Dec. 2022), Appellant makes no effort to meet his requisite burden to demonstrate prejudice. (*See* App. Br. at 9.) Having failed to even attempt to demonstrate prejudice here, this Court must deny Appellant's request for relief. *See, e.g.*, United States v. Halpin, 71 M.J. 477, 480 (C.A.A.F. 2013) (discussing an appellant's wholesale failure to meet the required prejudice burden).

II.

APPELLANT WAS NOT PREJUDICED WHEN THE CONVENING AUTHORITY ISSUED HIS DECISION ON ACTION BEFORE APPELLANT'S TIME TO SUBMIT CLEMENCY HAD RUN AND ONLY TWO DAYS AFTER APPELLANT HAD BEEN PROVIDED THE VICTIM'S SUBMISSION OF MATTERS.

Additional Facts

On the day he was tried and sentenced, 14 March 2022, the 31st Fighter Wing Staff Judge Advocate (SJA) notified Appellant of his right to submit matters to the convening authority. (ROT, Vol. 3, Submission of Matters to the Convening Authority, dated 14 March 2022.) Paragraph 4 of that memorandum informed Appellant that "[a]ny submissions you wish to submit are due on 24 March 2022." (Id.) Paragraph 5 notified Appellant that in "addition to the submissions described above, [Appellant] may submit an application … to defer any forfeitures of pay or allowances, reduction in grade, or service of a sentence to confinement" and request waiver of "any forfeitures of pay and allowances under Article 58b, UCMJ" for the benefit of his dependents. (Id. at 2.)

The same day, EP provided the SJA with her Submission of Matters, which included as its only attachment the same victim impact statement, dated 13 March 2022, that she "read into the court record and for the military judge to consider at [Appellant's] sentencing." (ROT, Vol. 3, EP

Submission of Matters, dated 14 March 2022.)

Two days later, on 16 March 2022, a military justice paralegal served the Statement of Trial Results on Appellant's trial defense counsel, who acknowledged receipt the same day. (ROT, Vol. 3.) Also on 16 March 2022 Appellant requested deferment of his reduction in grade until action, as well as deferment and waiver of all automatic forfeitures. (*See* Convening Authority Decision on Action, dated 23 March 2022, ROT, Vol. 1.) Appellant did not submit a separate clemency request.

The same military justice paralegal served EP's Submission of Matters on Appellant's trial defense counsel on 21 March 2022. (ROT, Vol. 3.) The convening authority issued his Decision on Action two days later, on 23 March 2022. (*See* Convening Authority Decision on Action.) On 25 April 2022, the military justice paralegal served Appellant's trial defense counsel with the Convening Authority's Decision on Action, dated 23 March 2022. (*See* ROT Vol. 3.) Appellant did not submit any matters in clemency or in rebuttal between 21 March 2022 and 25 April 2022.

Standard of Review

The standard of review for determining whether post-trial processing was properly completed is *de novo*. *See* United States v. Sheffield, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citing United States v. Kho, 54 M.J. 63, 65 (C.A.A.F. 2000)).

Law

"After a sentence is announced in a court-martial, the accused may submit matters to the convening authority for consideration in the exercise of the convening authority's powers under R.C.M. 1109 or 1110." R.C.M. 1106(a). "After a trial by general or special court-martial, the accused may submit matters under this rule within ten days after the sentence is announced." R.C.M. 1106(d)(1).

"In a case with a crime victim, after a sentence is announced in a court-martial any crime victim to an offense may submit matters to the convening authority for consideration in the exercise of the convening authority's powers under R.C.M. 1109 or 1110." R.C.M. 1106A(a). "The convening authority shall ensure any matters submitted by a crime victim under this subsection be provided to the accused as soon as practicable." R.C.M. 1106A(c)(3). If a crime victim indeed submits matters under R.C.M. 1106A, then "the accused shall have five days from receipt of those matters to submit any matters in rebuttal." R.C.M. 1106(d)(3).

"Before taking or declining to take any action on the sentence [in clemency], the convening authority shall consider matters timely submitted under R.C.M. 1106 and 1106A, if any, by the accused and any crime victim." R.C.M. 1109(d)(3)(A). In making a clemency decision, a convening authority "may not consider matters adverse to the accused without providing the accused an opportunity to respond." R.C.M. 1106A(c)(2)(B), Discussion. The convening authority may also consider "additional matters," including evidence introduced at the court-martial, appellate exhibits, the record or transcription of the proceedings, the personnel records of the accused, and any other such matters the convening authority deems appropriate. *See* United States v. Valentin-Andino, 83 M.J. ___, 2023 CCA LEXIS 45, at *9 (A.F. Ct. Crim. App. 30 Jan. 2023) (quoting R.C.M. 1109(d)(3)(B)).

"Serving victim clemency correspondence on the accused for comment before convening authority action protects an accused's due process rights under the Rules for Courts-Martial and preserves the actual and perceived fairness of the military justice system." Id. at *9-10 (quoting United States v. Bartlett, 64 M.J. 651, 649 (A. Ct. Crim. App. 2007)).

"An appellant claiming to have been denied a right to comment on post-trial matters 'has the burden of making a colorable showing of possible prejudice' to be entitled to relief." Valentin-

Andino, 2023 CCA LEXIS 45, at *12 (quoting United States v. Brown, 54 M.J. 289, 292 (C.A.A.F. 2000)). Regarding matters in rebuttal, an appellant must demonstrate "prejudice by stating what, if anything, would have been submitted to deny, counter, or explain the new matter." Id. (quoting United States v. Chatman, 46 M.J. 321, 323 (C.A.A.F. 1997)). If an appellant makes "some colorable showing of possible prejudice" then the Court will "give that appellant the benefit of the doubt" and "will not speculate on what the convening authority might have done if defense counsel had been given an opportunity to comment." Id. (cleaned up).

Analysis

At the outset, Appellant is correct that (1) the convening authority did not allow ten days after the announcement of the sentence for trial defense counsel to submit clemency, and (2) the convening authority did not allow for the full five days for Appellant to rebut the victim's submission of matters. Appellant, however, is incorrect that he suffered any prejudice.

Appellant's overall attempt at showing prejudice here is merely to re-emphasize the convening authority's alleged error: "The law afforded Appellant ten days to request clemency and he was not afforded all ten days." (App. Br. at 12.) This is not how one meets his prejudice burden. *See, e.g.*, Brown, 54 M.J. at 292 ("an accused who seeks appellate relief from … a post-trial processing error has the burden of making a colorable showing of possible prejudice."). Appellant's failure to meet his prejudice burden is fatal to this second allegation of error.

With respect to clemency specifically, other than his request for deferment of rank reduction and automatic forfeitures and waiver of automatic forfeitures (dated 16 March 2022), which was, in part, granted, Appellant never submitted a request for clemency (on the tenth day or within the month that he was waiting on service of the convening authority's decision). Since Appellant did not *know* the convening authority had already decided on action as of the ninth day,

nothing prevented Appellant from submitting additional matters to the convening authority on or before the tenth day after adjudgment of the sentence. The fact that Appellant submitted nothing further under R.C.M. 1106 should indicate to this Court that Appellant never had any interest in doing so. Moreover, Appellant does not demonstrate here on appeal what exactly he would have submitted or what he would have requested given that this was a plea agreement case where he received the minimum allowable amount of confinement.

Regarding the victim's submission of matters, Appellant similarly fails to demonstrate any colorable showing of possible prejudice. EP's submission consisted entirely of her identical unsworn statement, which was read and entered into evidence at trial. Though Appellant did not receive the full five days to rebut the victim's submission (which he had heard during trial), and Appellant hypothesizes that he would have "been able to highlight to the convening authority the parts of the post-trial matters the military excluded from consideration," Appellant did not rebut the victim's statement—either within two days or within five days. This is an important consideration here because Appellant was ostensibly unaware that the convening authority even made the decision on action (until 25 April 2022, when Appellant was served that memorandum). Since Appellant was unaware of the convening authority's decision, he could have attempted to submit a rebuttal to EP's unsworn statement within the time allotted by the rules. But, like his hypothetical clemency submission, Appellant did not. This demonstrates that he would not have submitted anything else even if the convening authority's decision complied with the rules.

At bottom, Appellant was not prejudiced by the post-trial processing errors here. Nevertheless, if this Court does find that Appellant was prejudiced, then the appropriate remedy is simply to remand the case for new post-trial processing. *See* Valentin-Andino, 2023 CCA LEXIS 45, at *14.

CONCLUSION

WHEREFORE, this Court should affirm the findings and sentence.

THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel, Government Trial and Appellate Operations Division
United States Air Force

MARY ELLEN PAYNE
Associate Chief, Government Trial and Appellate Operations Division
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 15 May 2023 via electronic filing.

THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel, Government Trial and Appellate Operations Division
United States Air Force

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40305 (f rev)**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF**
Michael A. PORTILLOS	)	**DOCKETING**
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	

The record of trial in the above-styled case was returned to this court on 4 January 2024 by the Military Appellate Records Branch (JAJM) for re-docketing with the court.

Accordingly, it is by the court on this 4th day of January, 2024,

ORDERED:

That the Record of Trial in the above styled matter is referred to Panel 1.

FOR THE COURT

TANICA S. BAGMON
Appellate Court Paralegal

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Panel No. 1
Staff Sergeant (E-5) **MICHAEL A. PORTILLOS,** United States Air Force, *Appellant.*	)	No. ACM 40305 (f rev) 26 February 2024

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

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court's Rules of Practice and Procedure, Staff Sergeant (SSgt) Michael A. Portillos, Appellant, hereby moves for an enlargement of time (EOT) to file his assignment of errors. SSgt Portillos requests an enlargement for a period of 60 days, which will end on **3 May 2024**. The record of trial was docketed with this Court on 4 January 2024. From the date of docketing to the present date, 53 days have elapsed. On the date requested, 120 days will have elapsed.

Undersigned counsel is optimistic that this will be the only enlargement of time necessary, she has reviewed the record of trial on further review and requests this enlargement of time to ensure she can fully research potential issues presented on further review and advise SSgt Portillos. Through no fault of SSgt Portillos, undersigned counsel has been working on other assigned matters.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 26 February 2024.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

27 February 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) MICHAEL A. PORTILLOS, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40305 (f rev) Panel No. 1

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 27 February 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MERITS BRIEF**
v.	)	
	)	Before Panel No. 1
Staff Sergeant (E-5) **MICHAEL A. PORTILLOS,** United States Air Force, *Appellant.*	)	No. ACM 40305 (f rev)
	)	22 March 2024

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

Submission of the Case Without Specific Assignments of Error

The undersigned appellate defense counsel attests she has, on behalf of Staff Sergeant Michael A. Portillos, Appellant, carefully examined the record of trial in this case. Appellant submits this case to this Court on its merits with no specific assignments of error at this stage of appellate review. Appellant specifically preserves and maintains the assignments of error raised in his initial brief to this Court, dated 14 April 2023. This Court acknowledged, but did not address, Appellant's assignments of error in its 1 August 2023 order.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Government Trial and Appellate Operations Division on 22 March 2024.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40305 (f rev)**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF PANEL**
Michael A. PORTILLOS	)	**CHANGE**
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	

It is by the court on this 12th day of April 2024,

ORDERED:

That the record of trial in the above-styled matter is withdrawn from Panel 1 and referred to a Special Panel for appellate review. The Special Panel in this matter shall be constituted as follows:

ANNEXSTAD, WILLIAM J., Colonel, Senior Appellate Military Judge
GRUEN, PATRICIA A., Colonel, Appellate Military Judge
KEARLEY, CYNTHIA T., Colonel, Appellate Military Judge

FOR THE COURT

FLEMING E. KEEFE, Capt, USAF
Deputy Clerk of the Court