

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

In re RR)	Misc. Dkt. No. 2024-02
<i>Petitioner</i>)	
)	
)	
)	ORDER
)	
Brock T. ANDERSON)	
Airman First Class (E-3))	
U.S. Air Force)	
<i>Real Party in Interest</i>)	Special Panel

On 14 March 2024, this court received a petition for extraordinary relief pursuant to Article 6b, UCMJ, 10 U.S.C. § 806b, in the nature of a writ of mandamus, in the above-styled case. Specifically, Petitioner requests we vacate the trial judge’s abatement ruling of 23 February 2024, disqualify the military judge, disqualify the trial counsel “who examined [RR’s] privileged records,” and seal all patient records reviewed to date. Along with the petition, Petitioner filed a Motion to File Attachments to the Petition for Relief under Article 6b, UCMJ, Under Seal. The court docketed the petition on 15 March 2024.

On 21 March 2024, the Government responded to Petitioner’s Motion to File Attachments Under Seal and stated the Government did not oppose this motion but requested the court order Petitioner to serve said attachments on the Government. The attachments provided by Petitioner to the court appeared to be materials that may have been filed during the trial proceedings. “To enable our review of the petition and to verify what materials were marked by the military judge and entered into the record at trial,” we issued an order on 28 March 2024 denying the motion and ordering “the preparation of a verbatim transcript of all trial proceedings and inclusion of all appellate exhibits,”¹ to be provided to the court not later than 1 May 2024. This court also granted leave for the Government and the Real Party in Interest each to file an answer to the petition for a writ of mandamus not later than 20 days after the certified record of trial is served on the court.²

¹ In that order, we noted that pursuant to Mil. R. Evid. 513(e)(6) (*Manual for Courts-Martial, United States* (2024 ed.)) any portions of the transcript relating to Mil. R. Evid. 513 hearings, and any appellate exhibits involving Mil. R. Evid. 513 pleadings and rulings entered into the record of trial, must be sealed.

² See JT. CT. CRIM. APP. R. 19(f)(1).

On 9 April 2024, the Real Party in Interest moved for leave to file a motion to dismiss, citing the recently published case *In re B.M. v. United States and Bailey*, No. 23-0233, __ M.J. __, 2024 CAAF LEXIS 201 (C.A.A.F. 3 Apr. 2024). On 19 April 2024, Petitioner moved for leave to file out of time opposition to the Real Party in Interest’s motion to dismiss. This same day, Petitioner filed a Motion to Attach email communications in support of its opposition. Both motions were unopposed, and the court granted Petitioner’s motions.

In his motion, the Real Party in Interest asserts the United States Court of Appeals for the Armed Forces (CAAF) in *In re B.M.* held “[a] named victim lacks standing to challenge the abatement order of a trial court before” our court and the CAAF. Additionally, he asserts we should conclude, as the CAAF did in *In re B.M.*, that “the rest of the victim’s requests for relief [are] either not ripe for decision or moot”

At this time, Petitioner and the Real Party in Interest agree that during the court-martial of the Real Party in Interest, the trial judge conducted an in-camera review of RR’s medical records. The trial judge offered RR, through her counsel, the opportunity to waive or not waive her privilege over a portion of her mental health records. Due to RR’s decision not to waive, the trial judge abated proceedings.

We agree with the Real Party in Interest that *In re B.M.* is controlling. Out of judicial economy, we choose to rule on the motion to dismiss although this court has not received the certified record of trial to date. Specifically, we find (1) Petitioner does not have standing in this court to challenge the abatement, *see In re B.M.*, 2024 CAAF LEXIS 201, at *11, and (2) due to the abatement, the remaining issues in the petition are not ripe. *See id.* at *14.

Accordingly, it is by the court on this 7th day of May, 2024,

ORDERED:

The Real Party in Interest’s Motion for Leave to File Motion to Dismiss is **GRANTED**.

The Real Party in Interest’s Motion to Dismiss is **GRANTED**. This order does not preclude further filings should the abatement be lifted.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court