IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,
Appellee,

v.

JAMAL X. WASHINGTON
First Lieutenant (O-2),
United States Air Force,
Appellant.

USCA Dkt. No. 24-0044/AF

Crim. App. Dkt. No. ACM 39761

Filed: June 27, 2025

REPLY BRIEF ON BEHALF OF APPELLANT

ROBERT FELDMEIER
Civilian Appellate Defense Counsel
THE LAW OFFICES OF
ROBERT FELDMEIER
2920 Forestville Road
Suite 100-1076
Raleigh, North Carolina 27616
(336) 416-2479
robert.a.feldmeier@gmail.com
CAAF Bar No. 35622

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 W. Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-2807
trevor.ward.1@us.af.mil
USCAAF Bar Number 37924

Counsel for Appellant

INDEX

TABLE OF AUTHORITIES

STATE COURT CASES

RULES AND OTHER AUTHORITIES

Comes now Appellant, First Lieutenant (1st Lt) Jamal X. Washington, in reply to Appellee's Brief and respectfully submits the following:

1. The *res gestæ* of the incident is not sexual predisposition evidence as defined by Mil. R. Evid. 412.

The government incorrectly labels the *res gestæ* of the allegation as "sexual predisposition evidence." Gov Br. at 27. "The term 'sexual predisposition' refers to a victim's mode of dress, speech, or lifestyle that **does not directly refer to sexual activities or thoughts** but that may have a sexual connotation for the fact finder." Mil. R. Evid. 412(d) (emphasis added). Therefore, the testimony that the military judge struck, which dealt with sexual acts surrounding the charged incident, was not sexual predisposition evidence.

The government misrelies on dicta in *United States v. Grant*, 49 M.J. 295, 297 (C.A.A.F. 1998), for the proposition that Mil. R. Evid. 412's definition of sexual predisposition does not apply. Gov. Br. at 27. *Grant* is inapposite to this case because the version of Mil. R. Evid. 412 in effect in 1998 did not contain definitions for the terms "sexual behavior" or "sexual predisposition." Mil. R. Evid. 412 (1995 ed.). Further, *Grant* deals with the proposed testimony of a noncommissioned officer (NCO) who did not witness any sexual act. *Grant*, 49 M.J. at 297. Instead, the testimony would have concerned the NCO's perception of the sexual orientation of the victim. *Id*. Moreover, the NCO's proposed testimony was, consistent with the current rule, "sexual predisposition testimony" because it

did not "directly refer to sexual activities or thoughts." *Grant* therefore does not support the government's argument that, contrary to the text of the rule, physical acts are "sexual predisposition" evidence.

2. Mil. R. Evid. 412 does not define "other sexual behavior" as "uncharged sexual acts."

The government incorrectly conflates "other sexual behavior" with "uncharged sexual acts" and argues that Mil. R. Evid. 412 applies to the *res gestae* of the offense. Gov. Br. at 22. "'Other sexual behavior' is "any sexual behavior not encompassed by the alleged offense." Mil. R. Evid. 412(d). In the absence of any specific statutory definition, this court applies the ordinary meaning of the word or phrase. *United States v. Schloff*, 74 M.J. 312, 313-14 (C.A.A.F. 2015). The term "encompassed by" is not further defined in the *Manual for Courts-Martial* [MCM] (2016 ed.). *See* Mil. R. Evid. 412(d). This Court therefore looks to normal usage to define the term.

In normal usage, the term "encompass" means "to surround" and to "broadly include." *Encompass*, MERRIAM WEBSTER DICTIONARY (Online ed.); *Encompass*, OXFORD ENGLISH DICTIONARY (Online ed.). Acts that are "encompassed by" the charged incident are therefore not merely the charged acts, but also those "surrounding" and "broadly included." This means the *res gestae* of the incident are any acts or behaviors "broadly included" or "surrounding" the charge. This

Court should therefore find the government's construction is not supported by the normal meaning of the term "encompassed by." *Contra* Gov. Br. at 22.

Assuming, *arguendo,* that the meaning of "encompassed by" were unclear, this Court should still find that 1st Lt Washington's construction prevails, both under the rule of lenity and the canon of constitutional avoidance. Where the meaning of an enactment is unclear, the ambiguity should be resolved in favor of the criminal defendant. *Rewis v. United States*, 401 U.S. 808, 812 (1971). Here, if the government is correct that the term "encompassed by" is unclear, the dispute should be resolved in favor of 1st Lt Washington and his ability to present a defense.

For similar reasons, should this Court find that there is any ambiguity in the term "encompassed by," this Court should hold that the doctrine of constitutional avoidance requires resolution in 1st Lt Washington's favor. Under the doctrine of constitutional avoidance, where plausible alternative interpretations exist, courts should choose the interpretation that does not raise constitutional doubts. *Clark v. Martinez*, 543 U.S. 371, 381 (2005). Here, the government's proposed interpretation would make contemporaneous sexual acts–which may demonstrate consent—as "other sexual behavior." Gov. Br. at 29. This alone raises serious constitutional problems; under this interpretation, Mil. R. Evid. 412 would create a presumption against the admissibility of constitutionally required evidence.

Making matters worse, the government then insists that the only way in which an accused may attempt to admit such evidence is to testify in a Mil. R. Evid. 412 hearing. In other words, according to the government, an accused may only present evidence of consent if he waives his right to remain silent. Such an interpretation violates every notion of due process. This Court should reject this interpretation to avoid these monstrous constitutional issues.

3. Fed. R. Evid. 412 illuminates Mil. R. Evid. 412.

The government incorrectly argues that Fed. R. Evid. 412 jurisprudence from the Article III courts is uninstructive because of slight variations between the federal rule and Mil. R. Evid. 412. Gov. Br. at 30. "[Mil. R. Evid.] 412 is modeled after Federal Rule of Evidence 412…." *United States v. Banker*, 60 M.J. 216, 219 (C.A.A.F. 2004). Therefore, it is simply incorrect that Fed. R. Evid. 412 jurisprudence is not persuasive authority in interpreting Mil. R. Evid. 412.

Although the government is correct that Fed. R. Evid. 412 does not, in the text of the rule, contain definitions of "other sexual behavior" or "sexual predisposition," those terms are defined in the Notes of the Advisory Committee on Rules to Fed. R. Evid. 412. The advisory committed defines these terms in a nearly identical manner to Mil. R. Evid. 412(d). "[A]lthough not binding, advisory committee notes are highly persuasive." *Black Card LLC v. Visa USA Inc.*, Case No. 15-CV-27-SWS, 2020 U.S. Dist. LEXIS 255484, at *8 (D. Wyo. Dec. 2,

2020); *see In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1188 (10th Cir. 2009) (using an advisory committee note to understand the purpose of amendments to a rule). Advisory committee notes are "a useful guide in ascertaining the meaning of the rules." *Tome v. United States,* 513 U.S. 150, 167 (1995) (internal citations omitted). Article III jurisprudence construing the terms "other sexual behavior" and "sexual predisposition" is therefore illuminative of the meaning of these terms in Mil. R. Evid. 412 because the rule as a whole, and these terms in particular, derive from the federal counterpart.

The government, after asking this court to disregard caselaw originating in the nearly identical text of Fed. R. Evid. 412, instead asks this court to rely on an unreported[1] intermediate Iowa court's construction of Iowa Rule of Evidence 5.412. Gov. Br. at 31 (citing *State v. Tovar*, No. 14-1244, 2015 Iowa App. LEXIS 684, at *5 (Iowa Ct. App. 2015)). This court should not accept the government's invitation because Iowa Rule of Evidence 5.412 is dissimilar to Mil. R. Evid. 412. In *Tovar*, the Court of Appeals of Iowa noted that Iowa Rule 5.412(d) defines the term "'past sexual behavior'" as "sexual behavior other than the sexual behavior with respect to which sexual abuse is alleged." *Tovar*, 2015 Iowa App. LEXIS

[1] This opinion appears reported in name only in the Northwest Reporter. LEXIS NEXIS, "871 N.W.2d 127", 30 results (June 27, 2025) (showing a list of unpublished cases presumably reported in name only). The opinion is not reported. *See generally Tovar*, 2015 Iowa App. LEXIS 684.

684, at *6. The term "past sexual behavior" is therefore not the same as Mil. R. Evid. 412's "other sexual behavior." Iowa Rule 5.412(d) explicitly limits "past sexual behavior" to the charged misconduct. Mil. R. Evid. 412 does not contain this narrowing text and instead utilizes the broader term "encompassed by." Therefore, *Tovar* is not instructive because it discusses Iowa Rule 5.412(d), a dissimilar rule.

4. The military judge erred when he failed to strike C.P.'s testimony on the same basis on which he struck 1st Lt Washington's.

The military judge erred when he failed to strike C.P.'s testimony for the same reason as he struck 1st Lt Washington's. "Courts-martial must not only be fair but must appear fair to effectively further the cause of good order and discipline in the armed forces." *United States v. Berry*, 34 M.J. 83, 88 (C.A.A.F. 1992). As the dissenting judge below noted,

> "There were different . . . standards between the parties. On the issue of CP's sexuality, CTC (and in some respects, SVC) was driving the proverbial train, as much as the civilian defense counsel. In reality, both civilian defense counsel and CTC were playing a game of chicken with the rules, but only the Defense was held to account . . . the Government was not."

JA at 76 (*United States v. Washington*, No. ACM 39761, 2021 CCA LEXIS 379, at *148 (A.F. Ct. Crim. App. July 30, 2025) (Meginley, J., dissenting) (hereinafter *Washington I*)).

Here, the military judge attached the incorrect label of "sexual predisposition evidence" to any evidence, including physical acts, which implicated C.P.'s sexuality but demanded only that the Defense comply with his expansive view. C.P's statement "I'm not into that or anything like that" is not "ambiguous" The government's argument that it does not concern his sexuality strains credulity. *Contra* Gov. Br. at 33. Moreover, even if the statement were somehow uncertain in its assertion of heterosexuality, it would not matter. The military judge excluded "any evidence elicited that **implicates** [C.P.'s] sexual orientation." JA 303 (emphasis added). C.P.'s statement claiming not to be into "anything like that" is a statement claiming not to like same-sex intimate activity. It was squarely within the same extremely broad criteria with which the military judge excluded 1st Lt Washington's testimony. The military judge therefore ruled in a partisan manner, infecting the entire proceedings with actual and apparent unfairness.

The government argues that 1st Lt Washington forfeited the error by failing to object to C.P.'s assertions of heterosexuality at the time of his testimony. Gov. Br. 33-34. An appellant forfeits an error when he fails to object to a ruling in a timely manner. *United States v. Gladue*, 67 M.J. 311, 313 (C.A.A.F. 2009). 1st Lt Washington could not request that the military judge apply his novel expansion of Mil. R. Evid. 412 to C.P.'s testimony at the time of the testimony because the Defense could not have prior notice that the military judge would rule in variance

with the text of Mil. R. Evid. 412. Therefore, 1st Lt Washington requested application of the military judge's ruling at the correct time, the time of the ruling, and did not forfeit the issue.

1st Lt Washington, at the re-hearing, again objected to the admission of C.P's testimony. Gov. Br. at 33 n.4. The fact that C.P.'s testimony was admitted at the initial hearing has no bearing on admissibility at rehearing. *United States v. Sills*, 61 M.J. 771, 775 (A.F. Ct. Crim. App. 2005). Further, the Defense had standing to object to the admission of Mil. R. Evid. 412 evidence which violates that rule. *United States v. Carista,* 76 M.J. 511, 516 (A. Ct. Crim. App. 2017). "By its plain text, Mil. R. Evid. 412 applies equally to the government as it does to an accused." *United States v. Olson*, ARMY 20190267, 2021 CCA LEXIS 160, at *15 (A. Ct. Crim. App. Apr. 1, 2021).

This Court has both the initial proceeding and the rehearing before it because the re-hearing was a continuation of the previous court-martial. A court-martial rehearing is a continuation of the original proceedings. *Reid v. Covert*, 351 U.S. 487, 491 (1956). Even if the government's forfeiture argument were correct following the initial hearing, it is not correct now because 1st Lt Washington objected at rehearing. This Court should find that 1st Lt Washington preserved the error.

5. 1st Lt Washington submitted to cross-examination, in open court, about the charged incident.

The government maintains that, while 1st Lt Washington's testimony implicating C.P.'s "sexual preferences may have been admissible," it "was not subject to cross-examination." Gov. Br. at 35. This statement ignores that "after the military judge told the members to disregard Appellant's testimony that his interactions with C.P. before the alleged assault were consensual, Appellant became subject to cross-examination, and in fact, subjected himself to a cross-examination." *Washington I*, JA at 75 (Meginley, J., dissenting). Had the military judge not incorrectly struck the testimony, 1st Lt Washington would have been subject to cross-examination about the same matters on which he testified on direct. 1st Lt Washington did not refuse to be cross-examined in open court. Therefore, the military judge erred.

6. The Defense did not invite the error. 1st Lt Washington's attempt to testify about the *res gestæ* of the offense is neither unprecedented nor unique.

The government claims that this case presents this court with "unique circumstances." It does not. *Contra* Gov. Br. at 44. 1st Lt Washington is not, by far, the first accused to testify about the *res gestæ* of a charged sexual offense. There is a plethora of caselaw dealing with his right to do so. Conversely, there is a total lack of Mil. R. Evid. 412 or Fed. R. Evid 412 caselaw applying the rule the military judge did in this case. This is because the rule fashioned by the military

judge violates Mil. R. Evid. 412. No court, besides those reviewing this case below, has ever held otherwise. The lack of a single citation in the government's brief to any military or federal case applying the rule fashioned in this case to the *res gestæ* belies this point.

The Defense did not invite the military judge's error "by failing to follow the military judge's directed protocol." *Contra* Gov. Br. at 46. The doctrine of invited error prevents an appellant from benefiting from errors he creates. "[A] party may not complain on appeal of errors that he himself invited or provoked the district court to commit." *Cassotto v. Donahoe*, 600 F. App'x 4, 6 (2d. Cir. 2015) (citation modified). 1st Lt Washington did not concede the propriety of the military judge's Mil. R. Evid. 412 rulings. Instead, he consistently maintained that his testimony was not within the scope of Mil. R. Evid. 412.

Defense counsel did not represent to the military judge his agreement with the legal reasoning that the military judge applied in his Mil. R. Evid. 412 ruling. Instead, he noted his objection multiple times. The military judge's "directed protocol" was based upon the military judge's incorrect Mil. R. Evid. 412 ruling. The military judge therefore originated the error, not 1st Lt Washington.

Assuming, *arguendo,* that despite the absence of any supporting caselaw, the military judge was correct that the *res gestæ* "is always and routinely addressed" within the confines of a Mil. R. Evid. 412 hearing, Gov. Br. at 18 (citing JA at

303), the military judge still erred when he required 1st Lt Washington to testify in a closed Mil. R. Evid. 412 hearing. The government fails to identify how its lack of precise knowledge of 1st Lt Washington's potential answers justified the military judge's "directed protocol." To satisfy Mil. R. Evid. 412, trial counsel merely had to proffer the areas about which he wished to examine and explain the relevance of those areas. *United States v. Sanchez*, 44 M.J. 174, 177-78 (C.A.A.F. 1996). Trial counsel could easily have done this because 1st Lt Washington had already testified on direct and established the relevance and admissibility of the *res gestæ*.

Trial counsel here was in the same position as every other trial counsel who cross-examines an accused who maintains silence until trial. The government identifies no precedent requiring trial counsel to know the precise answers to his questions in order to satisfy Mil. or Fed. R. Evid. 412. Were there any, any trial counsel cross-examining a previously silent witness would be stymied in a sexual case because he would not know exactly how the witness would answer. No such precedent exists because trial counsel need only establish the relevance and admissibility of the subjects of questioning he wishes to pursue in order to satisfy Mil. R. Evid. 412.

1st Lt Washington's direct testimony established the relevancy and admissibility of cross-examination into the same areas. Assuming, *arguendo*, that

Mil. R. Evid. 412 even applies to *res gestæ* evidence, trial counsel could have easily proffered that he wished to cross-examine 1st Lt Washington on the same areas in which he testified on direct. The military judge therefore erred when he ordered 1st Lt Washington to testify in a closed Mil. R. Evid. 412 hearing because the military judge erroneously believed that trial counsel must first know in advance appellant's verbatim answer to cross-examination.

7. None of the state Rule 412 cases on which the government relies permit striking of an accused's merits testimony because he refuses to testify in a preliminary hearing.

The government cannot use state caselaw to trump this Court's conclusive holding that an accused need not submit to cross-examination in a Mil. R. Evid. 412 hearing. *Sanchez*, 44 M.J. at 177-78. Evidence pending admission under Mil. R. Evid. 412 "**is not tested** by direct and cross-examination, and all balancing under the Constitution or under the Rules of Evidence must be tilted in the proponent's favor." *Id*. (emphasis added). The government's brief ignores this Court's holding in *Sanchez* and relies on a series of non-binding state cases to excuse the military judge's non-compliance with *Sanchez*. Gov. Br. 41-44. None of the cases the government cites permit striking merits testimony. Instead, they stand for the unremarkable proposition that if an accused testifies at an evidentiary hearing, he must submit to cross-examination within the same hearing.

In *United States v. Baskin*, an accused submitted testimony in an evidence suppression hearing. After submitting this testimony, he then refused to submit to cross-examination in the evidence suppression hearing. 424 F.3d 1, 3 (1st Cir. 2005). The district court suppressed the appellant's suppression hearing testimony. The Second Circuit held that the remedy was appropriate because the appellant chose to testify at the suppression hearing. *Id.*

Unlike *Baskin,* in which the appellant chose to partially testify at a suppression hearing, *id.,* here, 1st Lt Washington did not testify at the Mil. R. Evid. 412 hearing. This was because he was not the proponent of the government's evidence and was under no obligation to assist the government in meeting its burden. Further, unlike *Baskin*, in which the *Baskin* trial court only struck the suppression hearing testimony and did not prohibit testimony on the merits, here the military judge invented a requirement for 1st Lt Washington to submit to cross-examination at a closed hearing. Then, as a result of his refusal to submit to such testimony, the military judge struck not the hearing testimony, as in *Baskin,* but instead struck 1st Lt Washington's direct examination testimony. *Baskin* does not stand for the proposition that an accused's failure to help the government meet its burden in an evidentiary hearing permits the striking of an accused's merits testimony. To the extent it is relevant at all, *Baskin* stands for the opposite proposition.

For similar reasons, *State v. Brantley*, DOCKET NO. A-5558-17T3, 2020 N.J. Super. Unpub. Lexis 86 (N.J. Super Ct. App. Div. Jan. 14, 2020), *State v. Mende*, 304 Ore. 18 (Or. Sup. Ct. 1987), and *State v. Lea,* 146 Ore. App. 473 (Or. Ct. App. 1997), are unpersuasive. *Contra* Gov. Br. at 42-43. In those cases, the appellant testified on direct at an evidentiary hearing and refused to submit to cross-examination *at the same hearing*. *Id.* These cases do not authorize a trial judge to strike a defendant's merits testimony because of refusal to testify at an evidentiary hearing. The *Lea* Court specifically noted that "a criminal defendant who elects to testify in a [hearing] waives the privilege against self-incrimination **as to those matters covered on direct examination**." *Lea,* 146 Ore. App. at 483 (emphasis added). At the Mil. R. Evid. 412 hearing here, no matters were covered because there was no direct examination in the Mil. R. Evid. 412 hearing. 1st Lt Washington was therefore not obligated to submit to cross-examination at that same Mil. R. Evid. 412 hearing.

United States v. Rodger, CR 109-040, 2010 U.S. Dist. Lexis 65850 (S.D. Ga. Apr. 16, 2010), similarly does not support the government's position. *Contra* Gov. Br. at 41. In *Rodger*, an accused refused to submit to cross-examination on the merits. *Id.* The *Rodger* defendant was therefore unlike 1st Lt Washington, who did submit to cross-examination in open court and on the merits. *Rodger* does not require an accused who testifies on the merits to submit to cross-examination

away from the finder of fact to help the government admit its evidence. This Court should therefore find *Rodger* to be inapposite.

8. 1st Lt Washington had a constitutional right to present alternate theories of defense and had a right to present evidence of consent.

The government incorrectly argues that the military judge did not violate 1st Lt Washington's constitutional right to present one theory of defense (consent) because he was able to present parts of another theory of defense (that the alleged touching never occurred). *Contra* Gov. Br. at 49. "[T]he Constitution guarantees criminal defendants a meaningful opportunity to present a **complete** defense." *United States v. Bess*, 75 M.J. 70, 74 (C.A.A.F. 2016) (quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)) (citation modified) (emphasis added). "[I]t is well-established that defense counsel are free to present alternative—and even conflicting—theories of defense." *United States v. Clemmons*, ARMY 20180581, 2020 CCA LEXIS 479, at *8 (A. Ct. Crim. App. Dec. 18, 2020) (citing *Mathews v. United States*, 485 U.S. 58, 64 (1988)); *United States v. Viola*, 26 M.J. 822, 828 (A.C.M.R. 1988). Exclusion of evidence under Mil. R. Evid. 412 is constitutional only where the excluded evidence does "not advance **any** valid theory of defense." *United States v. Taylor*, ARMY 20160744, 2018 CCA LEXIS 499, at *22 (A. Ct. Crim. App. Oct. 16, 2018) (emphasis added). Here, 1st Lt Washington had the right to present evidence of consent because consent is a valid theory of defense. Presentation of parts of a different theory, non-occurrence, does not cure the

constitutional harm. This is because 1st Lt Washington had the right to present a "**complete** defense" which included consent. *Bess*, 75 M.J. at 74. A bits-and-pieces defense (especially when only sanctioned by trial counsel) does not satisfy this requirement. This Court should therefore find that the error here not harmless.

Even were there no constitutional right to present alternative, valid theories of defense, the government ignores the manner in which the military judge's ruling damaged 1st Lt Washington's credibility as to all theories of defense, including non-occurrence. As the dissenting judge in *Washington I* noted,

> I firmly believe the instruction compromised Appellant's right to a fair trial, as I believed it impacted his credibility before the members. Members were already assessing his credibility [because] "An accused who exercises his right to testify takes his credibility with him to the stand. . . ." *United States v. Piren*, 74 M.J. 24, 28 (C.A.A.F. 2015). In this case, by striking Appellant's testimony, Appellant's credibility was assailed not by CTC or his counsel, but by the military judge's ruling, and Appellant was denied the opportunity to present the facts leading up to the allegation. . . . [The] CTC took advantage of the situation in his closing, telling members Appellant "100 percent lacks credibility, and he came into this courtroom and raised his right hand and lied to you" and "your job is to evaluate the credibility of the witnesses, and this man [Appellant] came in here and lied to you;" and, "[Appellant] touched JA, and he touched CP, and you know it. Because in their credible accounts, you see the truth of this case."

Washington I, JA at 75 (Meginley, J., dissenting).

The government maintains that trial counsel harmlessly argued that the panel should not find 1st Lt Washington's testimony "credible – based on the **totality of evidence introduced on the merits**." Gov. Br. at 52 (emphasis added). The

military judge permitted 1st Lt Washington only to issue a denial that the charged act occurred. He did not permit the panel to consider the surrounding circumstances of the denial. Shorn of supporting detail, 1st Lt Washington's simple denial, with no added facts, must have seemed unbelievable. Trial counsel exploited this fact to denounce 1st Washington as a liar. This denunciation extended to 1st LT Washington's testimony generally and infected both of the remaining specifications because 1st Lt Washington testified in his own defense about both. This Court should therefore find that the error was not harmless and that it must set aside and dismiss the findings for both remaining specifications.

WHEREFORE, 1st Lt Washington respectfully requests that this Honorable Court grant him the relief outlined above.

Respectfully submitted,

ROBERT FELDMEIER
Civilian Appellate Defense Counsel
THE LAW OFFICES OF
ROBERT FELDMEIER
2920 Forestville Road
Suite 100-1076
Raleigh, North Carolina 27616
(336) 416-2479
robert.a.feldmeier@gmail.com
USCAAF Bar No. 35622

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 W. Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-2807
trevor.ward.1@us.af.mil
USCAAF Bar Number 37924

Certificate of Compliance with Rules 24(b) and 37

This Reply Brief complies with the type-volume limitation of Rule 24(b) because this brief contains 4,112 words. This brief also complies with the typeface and type style requirements of Rule 37.

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 W. Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-2807
trevor.ward.1@us.af.mil
USCAAF Bar Number 37924

Certificate of Filing and Service

I certify that an electronic copy of the forgoing was electronically sent to the Court and served on the Government Trial and Appellate Operations Division, at af.jajg.afloa.filing.workflow@us.af.mil, on June 27, 2025.

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 W. Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-2807
trevor.ward.1@us.af.mil
USCAAF Bar Number 37924