

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

UNITED STATES,
Appellee,

v.

KENNETH P. ARMOUR II,
Senior Airman (E-4),
United States Air Force,
Appellant.

Crim. App. Misc. Dkt. No. 2025-10

USCA Dkt. No. 26-0116/AF

**REPLY TO UNITED STATES' RESPONSE TO THE SUPPLEMENT TO
THE PETITION FOR GRANT OF REVIEW**

JOHN M. FREDERICKS, Capt, USAF
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770
John.Fredericks.2@us.af.mil
U.S.C.A.A.F. Bar No. 37723

Counsel for Appellant

Filed on February 20, 2026

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Appellant, pursuant to Rule 21(c)(1) of this Court's Rules of Practice and Procedure, files this Reply to the United States' Response to the Supplement to the Petition for Grant of Review, dated February 17, 2026. In addition to the arguments in Appellant's Supplement to the Petition for Grant of Review, dated February 2, 2026, Appellant submits the following.

The Government's opposition to Appellant's supplement demonstrates that this is an important case that warrants this Court's review. The Government argues that Appellant retained no reasonable expectation of privacy in his off-base residence while he was deployed overseas. This Court should grant review to address that issue in conjunction with the issue raised by Appellant's Supplement.

I. Appellant Has Standing to Challenge a Search of His Home

The Government's assertion that deployed servicemembers have no standing to challenge a search of their residence is an untenable position that conflicts with the facts and the law. The Government unsuccessfully attempts to distinguish the only on-point, controlling case on this issue—*United States v. Salazar*, 44 M.J. 464 (C.A.A.F. 1996)—“perhaps because [it] knows it is an impossible [task].” Gov't Resp. to Suppl. to Pet. for Grant of Review at 12.

The Government argues that *Salazar* does not establish standing for military members to challenge searches of their residence while they are on military orders to temporarily reside elsewhere. Gov't Resp. to Suppl. to Pet. for Grant of Review at 16-17. The Government cites to a single line in *Salazar* for support: “[I]n some cases, military orders might well provide the circumstances that defeat an expectation of privacy in a particular place.” *Salazar*, 44 M.J. at 467 n.3. “Such is not the case here.” *Id.* The Government's single line comes from a footnote and ignores the paragraph of the opinion in which it resides:

PFC Salazar did not voluntarily vacate the premises at 2301 Tyler. In fact, he was ordered to temporarily live in the barracks by CPT Duke. . . . The written order . . . makes clear the fact that a temporary move was envisioned. This move was no different in kind from a vacation *or a temporary deployment*. The written order implicitly states that PFC Salazar was to live in the barracks approximately 2 to 4 weeks; this is a time period much shorter than an actual deployment. Moreover, it would be illogical if the existence of a servicemember's expectation of privacy in his or her private residence depended solely on military orders.

Salazar, 44 M.J. at 467 (emphasis added).

The *Salazar* court continues by providing factors of PFC Salazar's unique familial relationship that showed he retained an expectation of privacy in his home while he was ordered away:

Moreover, PFC Salazar's intent to return home is clear, not only from the content of CPT Duke's orders, but through the continued and exclusive use of the hall closet and retention of use of the bedroom for storage of various personal items. At no time did either he or his wife express any intent to live separate and apart. The temporary departure of PFC Salazar because of military orders does not convert the marital home into an abandoned guest house or a former residence. Additionally, it is clear from the record that PFC Salazar continued to use these areas of the house for this purpose without objection.

Id. (citations omitted).

Here, the military judge made findings of fact that establish Appellant's standing. Appellant's command gave him written orders to go on a temporary deployment. Appellate Ex. IX at 2, ¶ 8; Appellate Ex. XVIII at 2, ¶ 11. Prior to deploying, Appellant resided at 4 Beard Drive, Dalzell, South Carolina. Appellate Ex. IX at 2-4, ¶¶ 11, 24; Appellate Ex. XVIII at 3, ¶ 14; *see* Appellate Ex. X at 8, ¶¶ 31-32. Appellant's intent to return home was clear: the deployment was temporary, he continually and exclusively used a single bedroom of 4 Beard Drive during his residence and deployment, neither he nor BB expressed an intent to live separate and apart, and Appellant's continued use was without BB's objection. Appellate Ex. IX

at 4, ¶¶ 21, 24 (“law enforcement conducted a search of the South Carolina Department of Motor Vehicle database and verified that *both* [BB] and [Appellant] were residents of 4 Beard Drive”) (“while SCSO and AFOSI searched [BB]’s residence [on 28 January 2022], they identified USPS packages with the [Appellant]’s name . . . on them.”); Appellate Ex. XVIII at 4-5, ¶¶ 25, 28; *see* Appellate Ex. IV at 30, Attach. 7, ¶ 2-6 (“[Law enforcement] conducted a search of [BB] and [Appellant]’s *shared* residence”); Appellate Ex. IV at 32, Attach. 7, ¶ 2-17 (“On 11 Feb 22 . . . a review of DPS for records identifiable to [Appellant] . . . disclosed [Appellant] resided at 4 Beard Dr”); Appellate Ex. IV at 39, Attach. 1, ¶ 2-46 (AFOSI summary of BB interview describing their roommate situation); Appellate Ex. IV at 85, Attach. 7, ¶ 3.e. (search of 4 Beard Drive revealed Appellant still received packages at the address); Appellate Ex. XVI at 88, Attach. 8, ¶ 16.r.; Tr. 26-27, 75 (Inv. Fleming on direct examination: “So, while we were searching the house, there was a bedroom that had all of [Appellant]’s belongings in it. *And it was deemed that he did live there.* Everything had his name, and he had physical paperwork and mailing stuff with his name and address on there.” (emphasis added)); Mot. to Attach, Oct. 23, 2025 (AFOSI interview of BB where BB states Appellant lived with BB at 4 Beard Drive from 2020 to at least 9 February 2024) (mot. denied).

“[I]t would be illogical if the existence of a servicemember’s expectation of privacy in his or her private residence depended solely on military orders. The issuance of orders would then be the predicate event to every search.” *Salazar*, 44 M.J. at 467 (internal footnote omitted). This Court should reject the Government’s request to “create a policy whereby the existence of standing turns upon the command’s wishes, rather than the servicemember’s legitimate privacy expectations.” *Id.* Appellant’s expectation of privacy in his own residence at the time of the search is clear. Thus, this Court should “hold that [Appellant] continued to maintain a reasonable expectation of privacy with regard to the residence.” *Id.*

II. Inv Fleming’s Affidavit Contained Recklessly False Information

The Government’s assertion that “the search warrant did not contain ‘false information’” is contrary to the military judge’s findings on the issue. The Government’s arguments that Inv Fleming’s use of the word “associated” absolves her of recklessly false statement, Gov’t Resp. to Suppl. to Pet. for Grant of Review at 4, 6, 17, was already rejected by the military judge *twice*. Appellate Exs. IX, XX. This was quite clear in the military judge’s first ruling:

The Court finds based on Investigator Fleming’s motions hearing testimony that she did not, in her 11 January 2022 Spectrum/Charter affidavit, and 26 January 2022 affidavit for the search of 4 Beard Drive, *intentionally* disregard the truth or intentionally omit otherwise material information. *The Court does find however that she recklessly disregarded the truth with respect to the assertion that the uploads of suspect CSAM were “from” or “via” the residential IP address 71.76.6.249.*

Appellate Ex. IX at 17, ¶ 79 (emphasis added).

The military judge went further, finding that:

[O]n eight separate occasions, affidavits submitted in connection with this case expressly or impliedly assert that 14 CSAM files were uploaded on nine separate occasions utilizing IP address 71.76.6.249 But it is certainly not the information contained in the NCMEC report, and it was not the information then known, or which reasonably should have been known, to the several OSI affiants involved in this case.

Id. at 18, ¶ 82.

“In short, the affidavits assert a far stronger connection between the Accused and the upload of CSAM than what in fact existed at that time.” *Id.* at 16, ¶ 74. The military judge held the same months later: “It remains true that on seven separate occasions, law enforcement asserted false information, made with reckless disregard[] for the truth, concerning the actual nexus between the upload of child pornography and the residence shared by the Accused.” Appellate Ex. XX at 4, ¶ 12. Inv Fleming recklessly disregarded the truth in her affidavit in support of a warrant to search Appellant’s home, rendering the search unlawful and its fruits inadmissible. Appellant has standing to challenge that unlawful search, and subsequent searches that used the fruits of that unlawful search. *See* Supp. to the Pet. for Grant of Review, Feb. 2, 2026.

CONCLUSION

Here, Appellant properly raised an alternative ground for relief under *Dan-dridge v. Williams* on an issue predicated on complete and unambiguous findings of fact required for a conclusion of law: Appellant had a reasonable expectation of privacy in his own residence,¹ Appellant had standing to challenge an unlawful search of that residence, and the Government relied on the fruits of that unlawful search in violation of the independent source doctrine. 397 U.S. 471, 475 n.6 (1970); *see* Supp. to the Pet. for Grant of Review, Feb. 2, 2026. The AFCCA failed to determine whether the military judge’s ruling was otherwise “correct in law and [] appropriate,” which was legal error. *Cf., United States v. Guinn*, 81 M.J. 195, 204 (C.A.A.F. 2021). Appellant’s alternative grounds for relief clearly demanded the military judge’s ruling be affirmed; therefore, this Court should reverse the AFCCA and, piercing that court’s decision to directly review the trial-level ruling, affirm the military judge’s ruling. *United States v. Shields*, 83 M.J. 226, 230 (C.A.A.F. 2023).

¹ Appellant concurs with the Government’s position that he lacks standing to challenge the search of his internet subscriber information; however, the Government still utilized the fruits of the unlawful search of his home in the March 2025 search affidavit in violation of the independent source doctrine. *See* Gov’t Resp. to Suppl. to Pet. for Grant of Review at 12-15, Pt. A.1. Therefore, the military judge’s ruling must be affirmed.

Appellant requests that this Court grant review and affirm the military judge's ruling suppressing the fruits of the March 2025 search.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John M. Fredericks', with a long horizontal flourish extending to the right.

JOHN M. FREDERICKS, Capt, USAF
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770
John.Fredericks.2@us.af.mil
U.S.C.A.A.F. Bar No. 37723

Counsel for Appellant

CERTIFICATE OF FILING AND SERVICE

I certify that I electronically filed a copy of the foregoing with the Clerk of Court on February 20, 2026, and that a copy was also electronically served on the Air Force Government Trial and Appellate Operations Division at af.jajg.afloa.filng.workflow@us.af.mil on the same date.



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Counsel for Appellant

CERTIFICATE OF COMPLIANCE
WITH C.A.A.F. R. 21(b) & 37

This reply complies with the type-volume limitation of C.A.A.F. R. 21(b) because it contains 1,769 words.

This reply complies with the typeface and type-style requirements of C.A.A.F. R. 37 because it has been prepared in a proportional typeface using Microsoft Word with Times New Roman 14-point typeface.



JOHN M. FREDERICKS, Capt, USAF
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