

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

UNITED STATES,

Appellee

v.

Steven G. FLORES  
Missile Technician Petty Officer  
First Class (E-6)  
U.S. Navy,

Appellant

REPLY ON BEHALF OF APPELLANT

USCA Dkt. No.

Crim. App. Dkt. No. 202300290

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF  
APPEALS FOR THE ARMED FORCES:

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## Argument

**The military judge abused her discretion by failing to suppress Appellant's statements to law enforcement after he had invoked his right to counsel in violation of the Sixth Amendment and M.R.E. 305(c)(3)**

## Discussion

With respect to whether harmless error occurred in this case, the government cannot prove the admission of Appellant's confession was harmless beyond a reasonable doubt.<sup>1</sup> When the government builds its case on a confession obtained in violation of the Sixth Amendment, the resulting conviction is inherently prejudiced.<sup>2</sup>

Here, Appellant's confession was not merely cumulative evidence; it was the evidentiary and rhetorical centerpiece of the government's case from start to finish. The government's strategic reliance on the confession is unmistakable; in its opening statement, trial counsel framed its entire case around the confession, promising the members they would hear guilt from "the accused himself in his own words."<sup>3</sup> During its case-in-chief, the video and interrogation transcript were introduced as substantive evidence to corroborate witnesses and fill evidentiary gaps.<sup>4</sup> In its closing argument, trial counsel repeatedly weaponized Appellant's

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<sup>1</sup> *Chapman v. California*, 386 U.S. 18, 24 (1967).

<sup>2</sup> *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991).

<sup>3</sup> JA at 453-54.

<sup>4</sup> JA at 565.

words to eliminate reasonable doubt, urging the members, “even he can’t explain that away,” and emphasizing, “these are the accused’s own words.”<sup>5</sup>

By arguing, “he’s completely naked. That’s according to him, not MF, not IF’s words,” trial counsel explicitly invited the members to convict based on the unlawfully obtained statements, using them to supplant weaker evidence and overcome juror skepticism.<sup>6</sup>

The government unjustifiably relied on an Army case, *United States v. Aguilar*, No. 07-0519/AR, 2008 CAAF LEXIS 1078 (C.A.A.F. Sept. 25, 2008), to claim that harmless error was established beyond a reasonable doubt. This unpublished case has no value as a precedent as it was summarily granted review and affirmed by this Court without any explanation and was a summary disposition by the Army Court of Criminal Appeals. The facts in *Aguilar* do not correspond to the facts in Appellant’s case and should be given no weight in assessing harmless error now.

Because the error was not harmless, the military judge’s ruling prejudiced Appellant.

### **Conclusion**

Accordingly, this Court should set aside the findings and sentence.

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<sup>5</sup> JA at 601, 603.

<sup>6</sup> JA at 603.

Respectfully submitted.

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I certify that a copy of the foregoing was delivered to the Court and delivered to the Director, Appellate Government Division (Code 46), at DACCode46@navy.mil and to the Deputy Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity (Code 40), at Joshua.D.Ricafrente.civ@us.navy.mil on April 7, 2026.

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