IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, *Appellee*, v. Staff Sergeant (E-6) MICHAEL J. GUINN, United States Army, *Appellant*.	REPLY BRIEF ON BEHALF OF APPELLANT USCA Dkt. No. 19-0384/AR Crim. App. Dkt. No. 20170500

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

ISSUE PRESENTED

WHETHER THE ARMY COURT CONDUCTED A VALID ARTICLE 66 REVIEW WHEN IT FAILED TO CONSIDER APPELLANT'S FIRST AND FIFTH AMENDMENT CLAIMS EVEN WHILE ENTERTAINING HIS EIGHTH AMENDMENT CLAIMS.

LAW AND ARGUMENT

1. The government ignores the Eastern District of Virginia's confirmation that it is the wrong forum to hear appellant's claims.

The government maintains military courts are the wrong forum for appellant's claims. (Gov't Br. 21). But that is the exact opposite position the government took before a U.S. district court judge in the Eastern District of Virginia, where the court found the government's argument persuasive. Rejecting the Army Criminal Court of Appeals' (Army Court) pronouncement that the

district court was "better suited to evaluate and provide relief for his constitutional claims," the district court dismissed appellant's petition for writ of habeas corpus as appellant's military appeals have not yet been exhausted.[1] *Guinn v. McCarthy*, 2020 U.S. Dist. LEXIS 1222703, *6–7. The district court ruled that it:

> cannot accept the Army Court of Criminal Appeals' statement that a federal court would be better suited to hear Petitioner's case as means of circumventing the well-established rules of exhaustion, particularly where Petitioner has successfully obtained review by the Court of Appeals for the Armed Forces and his case there is still pending.

Id. at 7. In spite of the its argument before the district court and the district court's ultimate decision, the government here claims Article III courts are the proper forum for appellant's claims. This court should reject the government's double dealing in this case.

2. The government ignores the Army Court's responsibility to determine whether appellant's sentence is appropriate.

The government argues the service courts should have the discretion to punt on constitutional claims because someday some Article III court may be able to adjudicate the claim. But "possible or eventual review by Article III Courts" is not "an adequate remedy at law." *Loving v. United States*, 62 M.J. 235, 248 (C.A.A.F. 2005). Despite the Army Court's and the government's views to the contrary,

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[1] The Court premised its decision on several bases.

appellant has *never* asked for injunctive relief. And he does not do so now. He asks only for sentence relief[2], a remedy which military courts are uniquely situated to provide.

While service courts have discretion as to how they resolve issues of sentence appropriateness, resolve them they must. "Article 66(c) requires that the members of the Courts of Criminal Appeals independently determine . . . the sentence appropriateness of each case they affirm." *United States v. Baier*, 60 M.J. 382, 385. And while the government argues military courts "lack the ability to respond to each and every manner of prisoner complaints," (Gov't Br. 21), sister service courts have accomplished the task. *See, e.g. United States v. Green*, 2007 CCA LEXIS 475, at 6-12 (A.F. Ct. Crim. App. Oct. 12, 2007); *United States v. Felicies*, 2005 CCA LEXIS 124, at *36-41 (N-M. Ct. Crim. App. Apr. 27, 2005).

Simply put, the Army Court does not have the discretion to punt on issues where its statutory mandate requires review. This court should not countenance the Army Court's abdication of its Article 66(c), UCMJ mandate.

3. Denying appellant sentence relief would create an absurd result.

The government suggests a parade of horribles should this court grant appellant's request for sentence relief. (Gov't Br. 29). But the perverse result

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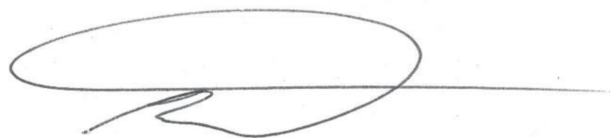
[2] Appellant sought sentence reduction in both suits in federal court. *Guinn v. McCarthy*, 2020 U.S. Dist. LEXIS 122703, at 2–3.

would be turning appellant's first appeal of right into a pointless paper drill by allowing the Army court to punt on issues of constitutional import. Congress vested servicemembers with the right to mandatory, plenary appellate review. If it can still be assumed that the military courts will vindicate servicemembers constitutional rights through this review[3] this right cannot be rendered meaningless.

[3] *Schlesinger v. Councilman*, 420 U.S. 738, 758 (1975).

CONCLUSION

WHEREFORE, SSG Guinn respectfully requests this Honorable Court set aside the lower court's opinion and remand this case to the Army Court for proper review under Article 66(c), UCMJ.



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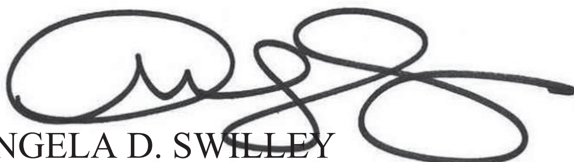

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of *United States v. Ayala*, Crim. App. Dkt. No. 2017500, USCA Dkt. No. 19-0384/AR was electronically filed with the Court and the Government Appellate Division on September 1, 2020.

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