IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

In Re B.M. *Appellant*	
UNITED STATES *Appellee*	**REPLY ON BEHALF OF APPELLANT**
Dominic R. BAILEY, Lieutenant Commander (O-4) U.S. Navy *Real Party in Interest*	NMCCA Dkt. No. 202300050 USCA Dkt No. 23-0233/NA 26 October 2023

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I.

CONTRARY TO APPELLEE AND THE REAL PARTY IN INTEREST'S ASSERTIONS, THE PLAIN LANGUAGE OF M.R.E. 513 MUST CONTROL. R.C.M. 703 DOES NOT APPLY TO "EVIDENCE OF A PATIENT'S RECORDS OR COMMUNICATIONS."

A. Standard of Review.

This Court must apply ordinary standards of appellate review for the following reasons.

(1) Consistent with this Court's precedent, ordinary standards of appellate review apply because this Court is exercising its jurisdiction under Article 67, UCMJ.

This Court has jurisdiction in this case under Article 67(a), UCMJ. *See* 10 U.S.C. § 867(a)(2) (2021) (this Court "shall review . . . all cases reviewed by a [CCA] which the [JAG] . . . orders sent to the [CAAF] for review). Contrary to RPI's assertion, this case is not a writ-appeal nor is this Court addressing "a certified issue on a writ petition."[1] The case that RPI refers to that was "derived from a petition for a writ of mandamus" was dismissed by this Court following its opinion in *MW v. United States*, 83 M.J. 361 (C.A.A.F. 2023).[2] Here, the Navy

[1] RPI Answer at 41.
[2] *See B.M. v. United States*, No. 23-0211/NA, 2023 CAAF LEXIS 583 (C.A.A.F. Aug. 15, 2023)

Judge Advocate General, consistent with Article 67(a), sent an opinion from the Navy-Marine Corps Court of Criminal Appeals for review with certified issues.

This Court applied ordinary standards of appellate review for the only case with the same procedural posture. *LRM v. Kastenberg*, 72 M.J. 364 (C.A.A.F. 2013). RPI only cites to the dissenting opinion and does not argue *Kastenberg*'s holding on the standard of review is unworkable or poorly reasoned. *See United States v. Quick*, 74 M.J. 332, 336 (C.A.A.F. 2015) (listing factors to consider when overturning precedent).

In short, the jurisdictional posture of this case and this Court's precedent in *Kastenberg* makes this issue dispositive. RPI's argument fails.

(2) Even if this Court agrees with RPI that this case "derived from" a petition for a writ of mandamus under Article 6b, UCMJ, this Court should still apply ordinary standards of appellate review.

Ordinary standards of review should apply consistent with the plain language and purpose of Article 6b, UCMJ for four reasons.

First, the plain language of Article 6b creates a statutory regime which eliminates the "extraordinary" aspects of extraordinary review altogether. Congress did not state that a writ of mandamus issued under Article 6b(e)(1), UCMJ is "extraordinary" relief. Additionally, the term "mandamus" simply means "[a] writ issued by a court to compel performance of a particular act by a lower court." *Mandamus*, Black's Law Dictionary (11th ed. 2019). As this Court has

said, "if the statute is clear and unambiguous, a court may not look beyond it but must give effect to its plain meaning." *United States v. Clark*, 62 M.J. 195, 198 (C.A.A.F. 2005) (internal quotation marks omitted) (citation omitted). And here, nothing in the plain meaning of the words "writ of mandamus" in Article 6b means incorporating the higher traditional mandamus standard.

Second, application of the traditional mandamus standard is unsuitable for Article 6b petitions for writs of mandamus. The traditional mandamus standard requires that a petitioner "show that (1) there is no other adequate means to attain relief; (2) the right to issuance of the writ is clear and indisputable; and (3) the issuance of the writ is appropriate under the circumstances." *Hasan v. Gross*, 71 M.J. 416, 418 (C.A.A.F. 2012) (*citing Cheney v. United States Dist. Court for D.C.*, 542 U.S. 367, 380–81, (2004)). In the context of Article 6b petitions, application of prongs (1) and (3) of the *Hassan* standard are satisfied by default. Because there is no other statutory mechanism to enforce a victim's Article 6b rights, prong (1) is always satisfied. For prong (3), Congress has clearly determined that a writ of mandamus is ordinary and appropriate if a petitioner demonstrates that one of their enumerated rights has been violated. Article 6b(e)(1) states that a "victim may petition the Court of Criminal Appeals for a writ of mandamus to require … the court-martial to comply with the section (article) or rule" and Article 6(b)(e)(3) states that such a petition "shall have priority in the

Court of Criminal Appeals." In practice, courts then evaluate prong (2) using ordinary standards of appellate review. *See, e.g., In re A.J.W.*, 80 M.J. 737, 742–43 (N-M. Ct. Crim. App. 2021) (using abuse of discretion standard to evaluate prong (2) and not analyzing prongs (1) or (3)); *see also A.M. v. United States*, No. 201700158, 2017 CCA LEXIS 506, at *9 (N-M. Ct. Crim. App. July 31, 2017) (stating the extraordinary mandamus standard of review applied, but then reviewing *de novo* whether the victim's statutory right was violated).

Third, applying ordinary standards of review makes sense here and does not lead to absurd results given that writs filed by an accused should be extraordinary given their recourse to appeal those decisions in the ordinary course of appellate review. *See United States v. Lewis*, 78 M.J. 447, 456 (C.A.A.F. 2019). Petitioners under Article 6b have no other similar recourse. In this regard, Article 6b petitions are analogous to Government interlocutory appeals filed under Article 62, UCMJ. Congress has given each their own statutory jurisdiction for appellate courts to intervene in a pending court-martial. In both instances, neither the Government nor Petitioners have any other recourse for redress. And appellate courts employ ordinary standards of appellate review to resolve matters under Article 62, UCMJ.

See, *e.g.*, *United States v. Pyron*, 83 M.J. 59, 61 (C.A.A.F. 2023) (holding the military judge abused his discretion by excluding evidence).

Fourth, applying ordinary standards of review to such petitions is consistent with federal case law interpreting functionally identical language in the pre-2015 Crime Victims' Rights Act. *See, e.g., United States v. Rigas (In re W.R. Huff Asset Mgmt. Co.)*, 409 F.3d 555, 562 (2nd Cir. 2005); *Kenna v. United States Dist. Court,* 435 F. 3d 1011, 1017 (9th Cir. 2006); *In Re Walsh*, 229 F. App'x 58, 60–61 (3rd Cir. 2007) (unpublished); *In re Stewart*, 552 F.3d 1285, 1289 (8th Cir. 2008); *but see also United States v. Monzel*, 641 F.3d 528, 533 (D.C. Cir. 2011).

Accordingly, this Court should apply ordinary standards of appellate review.

B. Per *Kastenberg* and Article 6b, Appellant has standing.

As an initial matter, MAJ B.M.'s standing in this case is well-established by statute, regulation, this Court's precedent, and the facts of this case.

(1) Congress granted MAJ B.M. standing through Article 6b(e)(1).

Article 6b(e)(1), UCMJ grants victims the statutory right to challenge a court-martial ruling on appeal that violates her rights under M.R.E. 513. *See* 10 U.S.C. § 806b(e)(1) and 806b(e)(4)(D) (2021). Since Congress, through statute, established a victim's standing to challenge a court-martial ruling to protect her psychotherapist privilege—this Court must find standing.

(2) Regardless, *Kastenberg*'s holding that a victim has standing on appeal to contest and protect a privilege is binding. MAJ B.M. suffered an injury of fact.

A victim's "position as a nonparty to the courts-martial . . . does not preclude standing" because there is "long-standing precedent that a holder of a privilege has a right to contest and protect the privilege." *LRM v. Kastenberg*, 72 M.J. 364, 368 (C.A.A.F. 2013). The RPI does not contest this holding, and it conclusively establishes standing in this case. And either way, MAJ B.M. did suffer an injury of fact that satisfies the standing requirements.

(3) MAJ B.M. suffered injury when the Military Judge ordered her psychotherapist records under R.C.M. 703, and not Mil. R. Evid. 513(e), and when the Military Judge reviewed her privileged communications without following Mil. R. Evid. 513(e)(3).

To have standing, there must be "an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant's behavior, and likely to be redressed by a favorable ruling." *DOC v. New York*, 139 S. Ct. 2551, 2565 (2019)

Here, MAJ B.M. suffered a particularized injury that is traceable to the Military Judge's actions and may be redressed by this Court. First, the Military Judge violated the procedural protections in place under M.R.E. 513(e) afforded to MAJ B.M. when she ordered the production of evidence of a patient's records or communications under R.C.M. 703. Second, the Military Judge violated MAJ B.M.'s psychotherapist privilege when she reviewed her privileged

communications without requiring the RPI to satisfy the requirements in Mil. R. Evid. 513(e)(3). In short, MAJ B.M.'s right to "prevent any other person from disclosing a confidential communication" was violated when the treatment facility disclosed her confidential communications to the Military Judge outside of the procedural protections under M.R.E. 513 for such production.

Any argument that only the military judge reviewed MAJ B.M.'s privileged psychotherapist records in camera fails. "Even in camera review of sexual-assault-counselor records intrudes upon the victim's privacy and harms the vital confidentiality between the victim and counselor." *In re Hope Coalition*, 977 N.W.2d 651, 661-62 (Minn. July 13, 2022). Unauthorized review, even in camera, is exactly the type of injury Article 6b, UCMJ, was promulgated to resolve.

C. MAJ B.M. never requested, or consented to, an in camera review of her privileged communications and continuously asserted her M.R.E. 513 privilege.

MAJ B.M. affirmatively asserted her M.R.E. 513 privilege throughout the litigation at court-martial and never consented to, or requested, an in camera review of her privileged communications. [redacted]

[redacted]

When the Military Judge informed the parties that the treatment facility provided privileged communications and that she would send redacted copies to the Defense, MAJ B.M. clearly asserts her privilege.[6] [redacted]

[redacted]

[3] J.A. at 191
[4] *Id*.
[5] J.A. at 191
[6] J.A. at 99-101
[7] J.A. at 102-105
[8] J.A. at 103-105
[9] J.A. at 108-122

RPI's argument that MAJ B.M. requested, or consented to, the in camera review of her privileged communications is unsupported and inaccurate. MAJ B.M. continuously objected to the production of her medical records and asserted her M.R.E. 513 privilege at every turn. The NMCCA acknowledged MAJ B.M.'s continuing objections to any review of her psychotherapist records. After recognizing that the Judge inadvertently received privileged material, the court stated: "The military judge continued reviewing the privileged materials, and in doing so, may have violated the procedures set forth in Mil. R. Evid. 513(e)(2) . . ."[10] According to this Court's decision in *Mellette,* "M.R.E. 513(e) establishes a procedure to determine the admissibility of patient records or communications." 81 M.J. at 379. Moreover, "[t]o the extent that these documents existed—and were otherwise admissible under the Military Rules of Evidence and the Rules for Courts-Martial—they should have been produced or admitted subject to the procedural requirements of M.R.E. 513(e)." *Id*. at 381.

D. The Government's "substance, not form," argument asks this Court to ignore the plain language of Mil. R. Evid. 513(e)(2).

The Government acknowledges, at first, that the plain language of a rule is the first step to an interpretation of the military rule of evidence. (Appellee Brief at 9, Sept. 25, 2023). But their primary "substance, over form" argument directly

[10] J.A. at 009.

conflicts with the plain language of Mil. R. Evid. 513(e)(2). (Appellee Brief at 9-16.) Indeed, the Government neither acknowledges nor addresses the disparate language between Mil. R. Evid. 513(e)(2) (as defined by Mil. R. Evid 513(b)(5)) and Mil. R. Evid. 513(a). The distinction between paragraph (a) and (e)(2) controls the analysis in this case.

The Government further errs in their analysis of *Mellette* and *Beauge* by asserting they contain conflicting language. (Appellee Brief at 17.) First, the *Beauge* Court's analysis only dealt with privileged material and, therefore, was naturally limited to whether an enumerated exception applied to privileged material. *Beauge*, 82 M.J. at 161 (neither party disputed the material at issue was privileged). Thus, the Government's use of *Beauge's* opinion is inapt to this case—which deals with commingled privileged and non-privileged material and the scope of M.R.E. 513(e) to non-privileged material. The *Beauge* Court never held Mil. R. Evid. 513(e) is *limited* to privileged information, as the Government incorrectly argues, since that information was not before the Court.

Mellette, on the other hand, did deal with both privileged and non-privileged material. *See Mellette*, 82 M.J. at 379. The *Mellette* language that non-privileged is still subject to the procedural requirements of Mil. R. Evid. 513(e) is apt, controlling, and entirely consistent with the plain language of Mil. R. Evid. 513(e)(2).

(1) *Mellette* recognized Mil. R. Evid. 513(e)(2) is broader than Mil. R. Evid. 513(a) and includes more than just privileged information.

The *Mellette* Court recognized the distinct difference between Mil. R. Evid. 513(a) and Mil. R. Evid. 513(e)(2) when it rejected the Government's argument that the definition in Mil. R. Evid. 513(b)(5) expanded the privilege itself in Mil. R. Evid. 513(a). 82 M.J. at 379. Now, having lost that argument in *Mellette*, the Government attempts to use this Court's rejection to somehow limit the plain language in Mil. R. Evid. 513(e)(2). This Court should reject the Government's argument again. As this Court recognized in *Mellette*, Mil. R. Evid. 513(e)(2) is broader and includes more than the privilege as defined in Mil. R. Evid. 513(a).

II.

MAJ BM AND APPELLEE AGREE: *J.M. v. PAYTON-O'BRIEN* IS POORLY REASONED AND ITS ANALYSIS MUST BE REJECTED BY THIS COURT.

MAJ B.M. concurs with the Government's analysis in its brief on the second Certified issue.[11]

A. This case is justiciable since the Military Judge relied directly on the NMCCA's opinion in *Payton-O'Brien* to abate the proceedings.

This Court, established under Article I of the Constitution, generally will not issue an "advisory opinion" as a prudential matter. *United States v. Chisholm*, 59 M.J. 151, 152 (C.A.A.F. 2003) (internal citation omitted). An advisory opinion

[11] Appellee's Answer at 41-55.

does not involve a justiciable case or controversy, defined as a "concrete dispute between adverse parties." *Id*.

The second certified issue has a concrete dispute: the validity of the Military Judge's abatement order based on the NMCCA's published opinion in *Payton-O'Brien*. If this Court finds *Payton-O'Brien* poorly reasoned, as MAJ B.M. and the Government argue, the Military Judge's abatement order must be lifted, and the court-martial will proceed. However, if this Court follows *Payton-O'Brien*, the Military Judge's abatement order can stand. The certified question places that concrete dispute directly before this Court and as identified above, the parties are adverse as to this issue.

B. RPI's argument that the Military Judge can abate proceedings based on R.C.M. 703(e)(2), raised for the first time to this Court, is waived.

"Waiver is different from forfeiture. Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the intentional relinquishment or abandonment of a known right." *United States v. Gladue*, 67 M.J. 311, 313 (C.A.A.F. 2009). While there are no 'magic words' dictating when a party has sufficiently raised an error to preserve it for appeal, of critical importance is the specificity with which counsel makes the basis for his position known to the military judge." *United States v. Rich*, 79 M.J. 472, 475 (C.A.A.F. 2020) (citation omitted). "[T]he law does not require the moving party to present every argument in support of an objection, but does require argument sufficient to make the

military judge aware of the specific ground for objection, if the specific ground was not apparent from the context." *United States v. Payne*, 73 M.J. 19, 23 (C.A.A.F. 2014) (internal quotation marks omitted) (citation omitted). "[A] particularized objection is necessary so that the government has the opportunity to present relevant evidence that might be reviewed on appeal." *United States v. Perkins*, 78 M.J. 381, 389-90 (C.A.A.F. 2019).

For example, in *Perkins*, appellant argued for the first time before this Court that evidence must be suppressed because the commander "simply rubber-stamped" law enforcement's assertion that probable cause existed to support a command authorization for search and seizure. *Perkins*, 78 M.J. at 389. This Court found appellant waived that argument because "Appellant did not raise his rubber-stamping argument at trial when he argued that there was no probable cause for the search authorization." *Id*. at 390. This Court found waiver and did not address the rubber-stamping argument on the merits even though appellant did argue the search authorization, among other things, "was lacking in probable cause." *Id*.

Here, like *Perkins*, RPI argues for the first time before this Court that the Military Judge's abatement order, and the remedy in *Payton O-Brien*, are supported by R.C.M. 703(e)(2). RPI never made that argument at trial or to the NMCCA. RPI never asserted MAJ B.M.'s mental health records were of such

central importance to an issue that they are essential to a fair trial and that there was no adequate substitute for her records. *See* R.C.M. 703(e)(2). Indeed, nowhere in his Motion to Compel Production of MAJ B.M.'s mental health records does RPI cite to R.C.M. 703(e)(2).[12] Similarly, neither *Payton O'Brien*, nor the Military Judge in her reliance on *Payton O'Brien*, cite to R.C.M. 703(e)(2) as a basis for abating the trial.[13] Accordingly, none of the parties or MAJ B.M. had the opportunity to present evidence at trial or argue on the issues RPI raises now: (1) whether MAJ B.M.'s mental health records are of such central importance to an issue that they are essential to a fair trial, (2) that there is no adequate substitute for her records, and (3) that no other relief was appropriate other than an abatement of the proceedings.

Because RPI failed to make R.C.M. 703(e)(2) a specific ground for abatement of the trial, RPI waived this argument, and this Court should "not address this argument on the merits." *Perkins*, 78 M.J. at 390.

C. Regardless, R.C.M. 703(e)(2) does not give a military judge the authority to abate proceedings based on privileged material.

R.C.M. 701(f) identifies information not subject to disclosure in discovery: "Nothing in this rule shall be construed to require the disclosure of information protected from disclosure by the Military Rules of Evidence." In turn, R.C.M.

[12] J.A. at 44-55.
[13] J.A. at 127

703(a) states that while the parties "and the court-martial shall have equal opportunity to obtain witnesses and evidence," production is "subject to the limitations set forth in R.C.M. 701, including the benefit of compulsory process." R.C.M. 703(e)(2) states: "a party is not entitled to the production of evidence which is destroyed, lost, or otherwise not subject to compulsory process." If such evidence is "of such central importance to an issue that it is essential to a fair trial, and there is no adequate substitute for such evidence," a military judge may abate the proceedings as a remedy. R.C.M. 703(e)(2).

Even if Appellant did not waive or forfeit the application of R.C.M. 703(e)(2), the rule does not apply for four reasons.

(1) R.C.M. 701(f) protects privileged material from the application of R.C.M. 703(e)(2).

By its plain language, R.C.M. 701(f) does not require disclosure of information that is protected under the Military Rules of Evidence, including privileged communications under M.R.E. 513. Similarly, R.C.M. 703 states that production of evidence—"including the benefit of compulsory process"—under R.C.M. 703 is subject to the limitations of R.C.M. 701. *See* R.C.M. 703(a). Thus, read together, neither R.C.M. 701 nor R.C.M. 703 applies to privileged communications protected under M.R.E. 513.

Accordingly, the parties and the court-martial's ability to obtain MAJ B.M.'s privileged communications fall within the framework of M.R.E. 513—not R.C.M.

701 or 703. RPI identifies no court or case that has held a military judge may abate proceedings based on the non-disclosure of *privileged material* under R.C.M. 703(e)(2). Indeed, the very case the Military Judge relied on, *Payton-O'Brien*, found R.C.M. 701(f) and R.C.M. 703(e)(2) made the discovery rules inapplicable to privileged material. *Payton-O'Brien* even advised practitioners to "avoid citing to rules for discovery . . . as grounds to pierce the psychotherapist privilege." *J.M. v. Payton-O'Brien*, 76 M.J. 782, 788 n.25 (N-M. Ct. Crim. App. June 28, 2017).

(2) As a rule of remedy, R.C.M. 703(e)(2) does not apply where there is no violation of R.C.M. 703.

This Court has previously explained that "[i]f a continuance or other relief cannot produce the missing evidence, the remaining remedy *for a violation* of R.C.M. 703(f)(2) is abatement of the proceedings." *United States v. Simmermacher* 74 M.J. 196, 201 (C.A.A.F. 2015) (emphasis added) (citing to R.C.M. 703(f)(2), Manual for Courts-Martial (MCM) (2012 ed.)). This Court noted that "abatement of the proceedings is the remedy *only if* there has been a violation of R.C.M. 703(f)(2), which requires that all three criteria of the rule have been satisfied." *Id*. at 201 n.5 (emphasis added).

Here, neither RPI nor the Military Judge assert that a violation of R.C.M. 703 has occurred. And, as noted above, RPI did not allege or argue at trial, and the Military Judge never found, that the three criteria under R.C.M. 703(f)(2) were

satisfied. Therefore, in keeping with this Court's precedent, R.C.M. 703(f)(2)—as a rule of remedy—cannot apply where there is no violation of R.C.M. 703.

(3) Privileged psychotherapist communications are "subject to compulsory process" under the framework of M.R.E. 513(e)(3) and, thus, R.C.M. 703(e)(2) cannot apply.

On its face, R.C.M. 703(e)(2) applies to evidence that "is destroyed, lost, or not otherwise subject to compulsory process." But privileged psychotherapist communications are "subject to compulsory process" pursuant to M.R.E. 513(e). If a moving party can establish the four factors within M.R.E. 513(e)(3)(A)-(D), then a military judge can order the production of a patient's records or communications that are privileged. Privileged material is always subject to the compulsion "process" identified in M.R.E. 513(e).

RPI reads R.C.M. 703(e)(2) too broadly. The Rule could have stated evidence "not subject to compulsion" or "not subject to discovery." It did not. The Rule only covers evidence not subject to a *compulsory process*. And here there is one—M.R.E. 513(e). Similarly, RPI's reliance on *Warda* is misplaced, as discussed further below.[14] This Court, in *Warda*, noted that the records in that case were arguably "subject to compulsory process" because of procedures within 8 U.S.C. § 1367(b) and the exceptions therein for permissive disclosure. *United States v. Warda*, No. 22-0282, 2023 CAAF LEXIS 687, at *17-18 n.11 (C.A.A.F.

[14] RPI Answer at 24.

Sept. 29, 2023). So too here. RPI, without any supporting citation in conflict with M.R.E. 513(d)-(e), infers that the invocation of a privilege means that evidence is not subject to compulsory process.[15] That argument fails.

RPI also conflates the unavailability of a witness with "destroyed, lost, or otherwise not subject to compulsory process" evidence.[16] But R.C.M. 703(e)(2) only governs the "production of evidence," as its subject title indicates, and not witnesses. There is an entirely separate Rule for the unavailability of witness. R.C.M. 703(b)(3). And though the subject title of R.C.M. 703(e)(2) uses the word "unavailable," the operative text of the Rule limits its scope to "destroyed, lost, or otherwise not subject to compulsory process." RPI's inapt citations and erroneous inferences on such a crucial issue reveal the weakness in his argument and it should be rejected.

(4) *Warda* is inapposite to our case since it only considered non-privileged material.

In *Warda*, this Court found unavailable "immigration records" were of such central importance to require abatement under R.C.M. 703(e)(2). *Warda*, 2023 CAAF LEXIS 687, at *29. But no party in *Warda* claimed the "immigration records" were privileged under an evidentiary rule. Instead, all parties "agreed" the documents were "relevant and necessary" under R.C.M. 703 and were not

[15] RPI Answer at 22.
[16] RPI Answer at 22-23 n.92.

subject to compulsory process pursuant to USCIS's interpretation of a federal statute. *Warda*, 2023 CAAF LEXIS 687, at *17-18 n.11.

Our case is easily distinguishable. First, MAJ B.M. never conceded any privileged material was "relevant or necessary" or, in any event, even subject to R.C.M. 703. Second, MAJ B.M.'s privileged material is subject to compulsory process under M.R.E. 513—but must satisfy that Rule before any privileged material will be produced. Third, RPI in our case never requested an abatement of proceedings under R.C.M. 703(e)(2) like the accused in *Warda* did based on the non-production of the immigration records.

Most importantly, however, the evidence at issue in our case is undisputedly privileged material protected by M.R.E. 513(a), unlike the records in *Warda*. This Court's holding and analysis in *Warda* is inapplicable.

Conclusion

MAJ B.M. asks this Court to reverse the NMCCA's opinion below, order her mental health records returned to a privileged and protected status, and disqualify the military judge from this case.

Respectfully submitted,

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Certificate of Compliance with Rule 24(d)

This reply complies with the type-volume limitation of Rule 24(c). This reply contains less than 7,000 words and complies with the typeface and type style requirements of Rule 37.

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Certificate of Filing and Service

I certify that on October 26, 2023, I electronically filed with the Court and served to counsel for RPI; Appellee, United States Navy and Marine Corps Appellate Government Division; and both counsel for amici curiae.

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