

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

United States
Appellee

v.

Juan I. CAMPOS
Sergeant (E-5)
U.S. Marine Corps
Appellant

BRIEF OF AMICI CURIAE
UNITED STATES NAVY
VICTIMS' LEGAL COUNSEL
PROGRAM AND MARINE CORPS
VICTIMS' LEGAL COUNSEL
ORGANIZATION IN SUPPORT OF
APPELLEE BRIEF

Crim. App. Dkt. No. 202200246

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**Brief of the U.S. Navy Victims' Legal Counsel Program and
U.S. Marine Corps Victims' Legal Counsel Organization
in Support of Appellee**

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**INTEREST OF AMICI CURIAE AND RELEVANCE OF MATTERS
ASSERTED IN BRIEF**

Amici United States Navy Victims' Legal Counsel Program and United States Marine Corps Victims' Legal Counsel Organization provide eligible crime victims with a dedicated attorney to protect victims' rights and interests throughout the military justice process. Victims' Legal Counsel help victims understand the military's investigative and legal processes. Through their legal counsel and exclusive focus on the victims' interests, Victims' Legal Counsel empower victims to make an informed decision about participating in the military's administrative and military justice processes. When victims choose to participate in the military justice process, Victims' Legal Counsel represent victims at courts-martial, and when necessary, on appeal, enforcing their rights under Article 6b, Uniform Code of Military Justice (U.C.M.J.).

Appellant asks this Court for its interpretation of the scope of the term "victim impact" under Rule for Courts-Martial (R.C.M.) 1001(c). This issue will have broad-reaching impacts for the statutory rights of all clients serviced by the Amici in trial courts, the respective Service Courts of Criminal Appeals, and this Court. Currently, Amici's respective Service Courts of Criminal Appeals allow victims to discuss "the true impact of the charged offenses" in an unsworn victim impact statement. *United States v. Valdez*, No. 202300141, 2024 CCA LEXIS 393 (N.M. Ct. Crim. App. Sept. 26, 2024) (citing *United States v. Nourse*, 55 M.J. 229,

231 (C.A.A.F. 2001). As such, Amici have an interest in the outcome of this Court's opinion.

The matters asserted in this brief are relevant to the disposition of this case. The scope of a victim's right to be heard in an unsworn victim impact statement has not been formally decided. When the scope of a victim's right to be heard is uncertain, the military justice system risks retraumatizing the very victims that Amici serves. Katirai Negar, *Retraumatized in Court*, 62 Ariz. L. Rev. 81, 93 (2020) (describing how a greater percentage of victims report re-traumatization by "court procedures and outcomes" and "not feeling heard" throughout the court process). Denying victims the opportunity to be fully heard on victim impact at sentencing through an unsworn victim impact statement would negatively impact victims across all branches of service, chilling victim participation and further sowing victim distrust in the military justice system.

ISSUE PRESENTED

Amici addresses the following issue:

I. DID THE MILITARY JUDGE ABUSE HIS DISCRETION BY ADMITTING AND CONSIDERING, OVER DEFENSE OBJECTION, ALLEGATIONS OF ADDITIONAL MISCONDUCT IN THE UNSWORN VICTIM IMPACT STATEMENT?

SUMMARY OF ARGUMENT

A victim's complete narrative of an offender's continuous course of misconduct provides essential context to the military judge under R.C.M. 1001(c)(3). The issue Amici addresses is the impact that an overly restrictive interpretation of "victim impact" in an unsworn victim impact statement would have on victims that Amici serves and represents. Domestic violence and intimate partner violence are not isolated criminal acts; they often involve the same offender harming the same victim through a continuous course of repeated or similar misconduct. A victim impact statement includes any financial, social, psychological, or medical harms a victim experiences that relates to or arises from the offender's continuous course of misconduct under R.C.M. 1001(c)(3). The Government's decision to charge some, but not all of the misconduct, does not erase the impact of that uncharged conduct to the victim. They remain a victim to all of the misconduct at the hands of the perpetrator, regardless of the final wording in a plea agreement. Restricting "victim impact" to just the charged misconduct impairs a judge's ability to understand the true impact that a victim is experiencing after an offender's crime. Diluting the victim's right to be fully heard under Article 6b would undermine the military justice system's ability to restore a victim's power and control. More importantly, it would almost certainly deter victims from

participating in the very court process that could provide them the justice they “need and deserve” in their recovery after trauma. S. Rep. No. 113-44 (2013).

ARGUMENT

A. The financial, social, psychological, and medical impacts of domestic violence and intimate partner violence on victims are ongoing. Any uncharged misconduct that perpetuates or exacerbates these effects constitutes “victim impact” under R.C.M. 1001(c)(3).

When a servicemember commits a continuous course of misconduct against a single victim, each instance of harm the offender causes constitutes victim impact directly related to a single act of harm under the plain language of R.C.M.

1001(c)(3). R.C.M. 1001(c)(3) defines victim impact as any impact that “directly relat[es] to or aris[es] from the offense[s] of which an accused has been found guilty.” R.C.M. 1001(c)(2)(B). But domestic violence and intimate partner violence are not isolated criminal acts. Office for Victims of Crime (OVC), *Intimate Partner Violence*, <https://ovc.ojp.gov/topics/intimate-partner-violence> (last visited Oct. 24, 2024); Kristina Korobov, *Dynamics of Domestic Violence*, <https://dvcc.delaware.gov/background-purpose/dynamics-domestic-abuse/> (last visited Oct. 23, 2024). Rather, domestic violence and intimate partner violence involve an offender using a series of power and control tactics against a victim over time, aimed at causing continuous worry and uncertainty in the victim’s life.

Michael Wessels & Kathleen Kostelny, *The Psychosocial Impacts of Intimate Partner Violence against Women in LMIC Contexts: Towards a Holistic Approach*,

Int'l J. Env't Rsch. & Pub. Health,

<https://pmc.ncbi.nlm.nih.gov/articles/PMC9653845/> (2022) (last visited Oct. 23, 2024). The Government could charge the entirety of the offender's "campaign of terror." *Id.* The Government is more likely, however, to charge some of the acts of violence, but not others. The Government's exercise of discretion in charging an offender does not change the fact that a victim has suffered financial, psychosocial and medical harm arising from the continuous course of the offender's acts. *Id.* So, when a victim has the opportunity to be heard on the "financial, social, psychological, or medical impact," at sentencing, the impact from a single act of harm necessarily includes all of the violence that the offender has perpetuated against the victim, regardless of whether it is charged. R.C.M. 1001(c)(2)(B).

To illustrate, consider an individual that is the victim of a brutal strangulation. The victim may opt not to report this criminal act for a variety of reasons, most likely due to fear of retaliation by the offender. Balbir Gurm & Jennifer Marchbank, *Why Survivors Don't Report*, in MAKING SENSE OF A GLOBAL PANDEMIC: RELATIONSHIP VIOLENCE & WORKING TOGETHER TOWARDS A VIOLENCE FREE SOCIETY (Marchbank et. al. eds., 2020), <https://kpu.pressbooks.pub/nevr/chapter/why-do-survivors-not-report-to-police/> (last visited Oct. 23, 2024). Then, a few days later, the same offender strangles the same victim again. This time, the victim reports that incident of strangulation to

authorities. Then, days later, the offender punches the victim in the face. The Government ultimately decides to charge the offender with one specification of strangulation but decides not to charge the offender with assault for punching the victim.

The victim has suffered harm from all three criminal acts. Importantly, all three acts were perpetrated by the same offender, against the same victim, and were a continuing course of conduct. Even if the second strangulation incident is the only misconduct charged, the offender's later punch is still a social, psychological, and medical harm "directly related to" and a crucial component of the offender's "campaign of terror" against the victim. The medical impact of the strangulation incident may be limited to arrhythmia and brain injury. But the offender's next punch may now mean the victim suffers a broken bone or new bruising. That new bruising creates detrimental social impacts for the victim because a victim whose injuries were once hidden may now be deterred from going out in public or socializing within their community, fearing that the offender's control over them will now be public. The victim's decision to isolate out of fear creates negative financial consequences, as isolation could lead to the victim losing income temporarily or even permanently losing their job from missing work. That loss of income and the loss of what little financial independence the victim's work may have created from the offender now psychologically devastates the victim.

To exclude the full set of harm that a victim experiences at the hands of an offender's continuous course of conduct defies R.C.M. 1001(c); all of these harms are victim impact under the plain language of R.C.M. 1001(c)(3) because these harms "directly relat[e] to or aris[e] from the offense[s] of which the accused has been found guilty." R.C.M. 1001(c)(2)(B).

B. Narrowing the scope of victim impact dilutes the victim's right to be heard and treated with fairness throughout the justice process under Article 6b.

Article 6b provides a panoply of rights to victims in military jurisdictions. *E.V. v. United States*, 75 M.J. 331, 334 (C.A.A.F. 2016) (describing the "substantive victims' rights" provisions of Article 6b); 10 U.S.C. § 806b (2021). One of these rights is the "right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense under this chapter." Article 6b(9), UCMJ. Article 6b also provides victims "the right to be reasonably heard at any of the following," including "a sentencing hearing relating to the offense." Article 6b(4), UCMJ. Article 6b now functions as the military's mechanism for restoring a victim's "sense of power and control" and preventing victims from suffering "secondary harm" at the hands of the military justice system. *Degenhardt*, 405 F.Supp. 2d at 1348; S. Rep. No. 113-44 (2013).

Victim impact statements are a victim's sole opportunity to capture the harms they experienced from acts of violence. *United States v. Nourse*, 55 M.J. 229, 230 (C.A.A.F. 2001). *See also Valdez* at *10; *United States v. Goldsmith*, No.

ACM 40148, 2023 CCA LEXIS 8 at *20-*21 (A.F. Ct. Crim. App. Jan. 11, 2023) (describing how a court could not identify any “valid argument for preventing a victim from explaining the same [how an accused’s offenses have impacted a particular victim] in his or her own words”). In *Nourse*, this Court discussed how the offender engaged in a “continuing scheme to steal,” committing “the same crime upon the same victim in the same place several times prior to the charged offenses.” *Nourse*, 55 M.J. at 232. Though this Court affirmed the appellate court’s admission of evidence under R.C.M. 1001(b)(4), this Court identified that the appellant’s continuous course of conduct “show[ed] the full impact of the appellant’s crimes upon the victim...putting the appellant’s offenses into context.” *Id.*; *See also United States v. Terlep*, 57 M.J. 344, 350 (C.A.A.F. 2002) (discussing how plea agreements “do[] not change the facts as to what happened to the victim” and do not prohibit victims “from giving her complete version of the truth, as she saw it, to the factfinder at the sentence hearing”).

Restricting the scope of victim impact in *Campos* erodes the victim’s right to be heard and voice the impact of the offender’s crimes. This erosion of Article 6b will quell the voices of victims Amici serve to the detriment of victims’ rights in the military justice system.

C. Since Congress made military sentencing judge alone, this Court should interpret R.C.M. 1001(c) to allow military judges to exercise unfettered discretion to fully consider victim impact in the same way that federal judges consider victim impact at federal sentencing.

For offenses occurring after December 27, 2023, Congress mandated judge-alone sentencing in military courts, instead of members, within established sentencing parameters. National Defense Authorization Act for Fiscal Year 2022, S. 1605, 117th Cong. § 539E (2021); Articles 53(b) and 56, UCMJ; 10 U.S.C. §§ 853, 856 (2021). This brings military courts in line with federal courts and much of their sentencing procedures. The rules regarding a judge’s discretion to hear victim impact statements and allow victim participation should be interpreted similarly. *See* Article 36, UCMJ (President shall apply principles of law and rules of evidence recognized in criminal federal courts).

Federal judges have wide discretion at sentencing. *United States v. Tucker*, 404 U.S. 443, 446 (1972). A sentencing court’s discretion is “largely unlimited either as to the kind of information he may consider, or the source from which it may come.” *United States v. Chen I. Chung*, 738 Fed. Appx. 702, 704-705 (2d Cir. 2017); *United States v. Carmona*, 873 F.2d 569, 574 (2d Cir. 1989). A judge may exercise “unlimited” discretion at sentencing without running afoul of the Sixth Amendment or the Due Process clause. *Alleyne v. United States*, 570 U.S. 99, 116-17 (2013); *United States v. Eberhard*, 525 F.3d 175, 1778 (2d Cir. 2008).

The Crime Victims' Rights Act, 18 USC § 3771, (hereinafter "CVRA") forces defendants to be confronted by victims and the victims' "suffering." *Kenna v. United States Dist. Court*, 435 F.3d 1011, 10173 (9th Cir. 2006). Article 6b rights mirror a federal victims' right to confront a defendant under the CVRA. 18 U.S.C. § 3771 (a)(4)(8) (2023). This confrontation during victim allocution at federal sentencing becomes the forum for defendants to "confront the human toll of their crimes." *Id.*; *United States v. Degenhardt*, 405 F.Supp. 2d 1341, 1348 (D. Utah 2005). A victim's right to be reasonably heard at sentencing under Article 6b is "tantamount to victim allocution at [federal] sentencing." *United States v. Hamilton*, 77 M.J. 579, 584 (A.F. Ct. Crim. App. 2017). The Federal Rules of Criminal Procedure Rule 32(i)(4)(B) represents the CVRA's "reasonable right to be heard [at sentencing]" stating, "[B]efore imposing sentence, the court must address any victim of the crime who is present at sentencing and must permit the victim to be reasonably heard. Further, the 2008 Notes of the Federal Rules Drafters state,

Subdivision (i)(4) has also been amended to incorporate the statutory language of the [CVRA], which provides that victims have the right 'to be reasonably heard' in judicial proceedings regarding sentencing. See 18 U.S.C. § 3771(a)(4). The amended rule provides the judge must speak to any victim present in the courtroom at sentencing. Absent unusual circumstances, any victim who is present should be allowed a reasonable opportunity to speak directly to the judge.

In 2015, following the federal scheme, R.C.M. 1001A was added to the 2015 Manual for Courts-Martial enforcing a victim's Article 6b right to be heard at sentencing. The Federal Register noted in the amendment,

R.C.M. 1001A was added to implement Article 6b(a)(4)(B), UCMJ, as created by Section 1701 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013, concerning the right of a victim to be reasonably heard at a sentencing hearing relating to the offense. It is consistent with the principles of law and federal practice prescribed in 18 U.S.C. 3771(a)(4) and Federal Rule of Criminal Procedure 32(i)(4)(B), which requires the court to 'address any victim of the crime who is present at sentencing' and 'permit the victim to be reasonably heard.' See 10 U.S.C. 836(a).

Federal Register: Manual for Courts-Martial; Publication of Supplementary Materials, 80 Fed. Reg. 130, 39087 (Jul. 8, 2015).

When Congress passed Article 6b into law, “the ability of a victim to make an unsworn statement at a sentencing proceeding . . . brought sentencing proceedings in the military justice system more in line with United States district courts.” *United States v. Rollins*, No. 20170039, 2018 CCA LEXIS 372 at *24 (N.M. Ct. Crim. App. Jul. 30, 2018). Now with judge alone sentencing, the procedures and rights related to victims in military courts are substantially like those in federal courts. This Court should interpret the scope of victim impact with that framework in mind and allow military judges the same discretion federal judges receive at sentencing. Interpreting victim impact narrowly would run afoul of Article 36 and would be inconsistent with a victim's right to be reasonably heard

in Article 6b(4). *See* Article 36, UCMJ (no rule can be contrary to or inconsistent with a UCMJ statute).

1. The scope of R.C.M. 1001(c) should be broad because military judges are presumed to know the law and apply it correctly.

At sentencing, “a military judge is presumed to know the law and apply it correctly absent clear evidence to the contrary.” *United States v. Erickson*, 65 M.J. 221, 225 (C.A.A.F. 2007); *United States v. Mason*, 45 M.J. 483, 484 (C.A.A.F. 1997). This proposition is why the Honorable Karla N. Smith, Chair of DAC-IPAD has stated:

“The victim gets up, says this affected me in this way and my life is never going to be the same, et cetera, et cetera, and he should go to jail forever. And they’ve said their piece. And the judge says thank you very much and that’s that...**[E]verybody knows the judge is going to make a determination based on what the person did, what the guidelines are, et cetera, et cetera, and the victim got to say what the victim wanted to say...**”

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD), Public Meeting Transcript, 119, February 21, 2023 (emphasis added).

Return to the example of the victim whose offender has brutally strangled them on two separate occasions and then punched them in the face. If, at sentencing, the victim describes the brain injury, broken bone, and social isolation that the victim experienced because of the convicted offender’s course of conduct, the victim has complied with R.C.M. 1001(c)(3). If, however, the victim describes

the impact of domestic violence the victim has experienced over their lifetime, perpetrated by many different individuals, the victim's impact statement has gone beyond the limits of a broad reading of R.C.M. 1001(c)(3). The judge would then know to disregard the extraneous victim impact to avoid prejudicing the convicted offender. The judge can do so without limiting the victim's right to be heard on victim impact.

“More attenuated impacts of the crime” fully capture a victim's suffering. Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD), *Report on Victim Impact Statements at Courts-Martial, Presentencing Proceedings*, March 2023. A broad reading of R.C.M. 1001(c)(2)(B) better aligns with federal courts' interpretation of what is required for a victim to be fully heard under the law. If, however, R.C.M. 1001(c)(2)(B) is read narrowly and restrictively, the military judge is denied the opportunity to consider the full impact a crime victim has suffered at the hands of their perpetrator. Therefore, interpreting the plain language of R.C.M. 1001(c)(2)(B) to be broad, rather than overly restrictive, allows victims to more effectively confront convicted perpetrators of sexual violence and speak to the sum total of the suffering they have experienced that directly relates to or arises from the perpetrator's continuous course of violence.

D. The introductory language of R.C.M. 1001(b)(4) does not change the scope of victim impact evidence permitted by the rule. The scope of victim impact allowed to be presented under R.C.M. 1001(c) is the same as that allowed under R.C.M. 1001(b)(4).

Appellant’s brief raises – for the first time – a creative argument that the umbrella term “aggravating circumstance” at the beginning of R.C.M. 1001(b)(4) changes the meaning of victim impact as described in the next sentence, thereby distinguishing R.C.M. 1001(b)(4) from R.C.M. 1001(c).

As used in R.C.M. 1001(b)(4), “aggravating circumstance” is an umbrella term that includes at least three types of evidence: (1) victim impact, (2) mission impact, and (3) evidence of a hate or bias motive. Each type of evidence represents a circumstance that may or may not be present in a given case. A case involving a Sailor reporting for duty drunk may involve evidence of mission impact, but probably not of victim impact or a hate or bias motive. The circumstances of an off-duty domestic violence incident would be different and would almost certainly include victim impact, but possibly not mission impact.

To illustrate the point further, the Court in *Nourse* and *Mullens* did not focus on the umbrella term “circumstance,” but rather the sub-category of victim impact. In *Nourse*, the court wrote, “evidence of a continuous course of conduct was admissible to show the full *impact* of appellant's crimes *upon the [victim].*” *United States v. Nourse*, 55 M.J. 229 (C.A.A.F. 2001) (emphasis added). Likewise,

Mullens also focused on “the true *impact* of the charged offenses *on the [victims]*.” *United States v. Mullens*, 29 M.J. 398, 400 (C.M.A. 1990) (emphasis added).

Rule for Courts-Martial 1001(c) overlaps with R.C.M. 1001(b)(4) like the circles of a Venn Diagram. Both victims and trial counsel may address victim impact when that circumstance is present, but only trial counsel may address mission impact. Conversely, victims may also address matters in mitigation, while trial counsel may not.

Rules for Courts-Martial 1001(b)(4) and 1001(c) also differ in terms of *how* victim impact may be presented, but not in terms of *what* impacts may be demonstrated. *See United States v. Hamilton*, 78 M.J. 335 (C.A.A.F 2019). Both *Hamilton* and *Barker* clarify that trial counsel cannot offer a victim impact statement on behalf of a victim. *United States v. Barker*, 77 M.J. 377, 383 (C.A.A.F. 2018). Neither addresses the content of an impact statement.

While the forms and methods of introduction are different, case law and common sense suggest that victim impact statements and government evidence of victim impact offered in aggravation have an identical scope.

CONCLUSION

Amici address an important issue, whether the military judge abused his discretion by admitting and considering, over defense objection, allegations of additional misconduct in the unsworn victim impact statement. Amici submit that a

restrictive view of “victim impact” will undermine the victim’s right to be fully heard under Article 6b. More significantly, denying victims the ability to describe fully describe the “true impact of the charged offense” risks at best, retraumatizing the very victims that the military justice system serves. At worst, restricting victims’ ability to fully participate at sentencing by curbing what constitutes victim impact will chill victim participation and perpetuate distrust in the military justice system.

Respectfully submitted,



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