

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

UNITED STATES
Appellee

v.

Specialist (E-4)
MATTHEW W. MARTIN
United States Army
Appellant

SUPPLEMENT TO PETITION FOR
GRANT OF REVIEW

Crim. App. Dkt. No. 20250030

USCA Dkt. No. 26-0236/AR

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TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS
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Issues Presented

**I. WHETHER APPELLANT’S COURT-MARTIAL HAD
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IMPROPERLY IMPANELED.**

**II. WHETHER THE MILITARY JUDGE’S DENIAL OF
DEFENSE’S CHALLENGES FOR CAUSE AGAINST A
“VOTING BLOC” OF MEMBERS ASSIGNED TO THE SAME
UNIT, INCLUDING THE COMMANDER OF THE UNIT,
CONSTITUTED REVERSIBLE ERROR.**

Statement of Statutory Jurisdiction

The Army Court of Criminal Appeals (Army Court) had jurisdiction over this matter pursuant to Article 66, Uniform Code of Military Justice [hereinafter UCMJ], 10 U.S.C. § 866 (2023). This Honorable Court has jurisdiction over this matter under Article 67(a)(3), UCMJ, 10 U.S.C. § 867 (a)(3) (2023).¹

Statement of the Case

On January 23, 2025, a panel with officer and enlisted representation sitting as a general court-martial convicted Appellant, contrary to his pleas, of one charge and specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice [UCMJ], 10 U.S.C. § 928b (2023).² (R. at 644; Charge Sheet). On January 24, 2025, the court-martial sentenced appellant to be reprimanded, to be reduced to the grade of E-1, to perform hard labor without confinement for three months, and to receive a bad-conduct discharge. (R. at 702). On March 5, 2025, the convening authority approved the findings and sentence. (Action). On March 10, 2025, the military judge entered Judgment. (Judgment).

On November 14, 2025, Appellant filed his brief at the Army Court of Criminal Appeals (Army Court). The Government submitted its response on February 24, 2026. On March 4, 2026, the Army Court specified two issues and

¹ Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), Appellant respectfully requests this Court consider the information provided in Appendix B.

² Appellant was acquitted of two specifications of domestic violence. (R. at 644).

ordered briefing by the parties. The Government filed its brief as to the specified issues on March 12, 2026. Appellant filed his response brief on March 20, 2026.

In a split decision, the Army Court affirmed the findings and sentence on May 4, 2026. *United States v. Martin*, 2026 CCA LEXIS 220 (A. Ct. Crim. App., May 4, 2026) (App'x A). Appellant was notified of the Army Court's decision. In accordance with Rule 19 of this Court's Rules of Practice and Procedure, on July 1, 2026, the undersigned appellate defense counsel filed a Petition for Grant of Review, while seeking leave to file the Supplement to the Petition for Grant of Review separately. Additionally, Appellant filed one motion for extension of time. This court granted appellate defense counsel's motion, granting until July 23, 2026, to file the Supplement. The undersigned counsel hereby file the Supplement to the Petition for Grant of Review under Rule 21.

Reasons to Grant Review

This Court should grant review to address an important issue of first impression concerning the legal and jurisdictional boundaries of the newly randomized panel selection system – a structural reform enacted by Congress to ensure objective fairness in the constitution of courts-martial.

An interloper sat Appellant's court-martial and the Army Court found error. But the Army Court split as to whether the issue was jurisdictional. The majority held it was administrative and harmless; the dissent held it was jurisdictional and

should be dismissed. But the court agreed that, “This case presents us with an issue of first impression....” *Martin*, 2026 CCA LEXIS, at *1.

The error stemmed from improper paneling under Articles 25 and 29, UCMJ, and Rules for Courts-Martial (2024 ed.) (R.C.M.) 911 and 912A. Crucially in this context—just as the dissent pointed out—the UCMJ mandates strict adherence to the Presidentially prescribed rules. Failure to do so created the very question now in front of this Court – whether such failure is a jurisdictional issue.

Pursuant to this Court’s internal Rules 21(b)(5)(A) and 21(b)(5)(E), given both the novelty of the issue and the Army Court’s split decision, this Court should grant Appellant’s petition for review.

Issues Presented

I. WHETHER APPELLANT’S COURT-MARTIAL HAD JURISDICTION AFTER AN INTERLOPER WAS IMPROPERLY IMPANELED.

Statement of Facts Related to Assignment of Error

Appellant’s general court-martial was convened by Court-Martial Convening Order Number 1, dated January 10, 2024, which was superseded by Court-Martial Convening Order Number 9, dated October 23, 2024. (CMCO 1 and CMCO 9). Both Sergeant First Class (SFC) SJ and SFC JM were selected by the convening authority to serve as members on CMCO 9.

At an Article 39(a) session on December 16, 2024, in accordance with R.C.M. 911, panel members were randomized. (R. at 16; App. Ex. IV). After randomization, SFC SJ became panel member number 27 and SFC JM became panel member number 31. (App. Ex. IV). However, based on numerous excusals prior to the start of the court-martial, SFC SJ was renumbered as panel member 21 and SFC JM as panel member 24. (App. Ex. IV).

Voir dire for Appellant's court-martial began on the morning of January 21, 2025, with fourteen prospective members.³ (R. at 17). Multiple challenges for cause were granted in the morning session, leaving only four members still eligible, and the military judge ordered fourteen more members to be present for the afternoon session. This second group included SFC SJ and SFC JM. (R. at 177–78).

The afternoon session is where the confusion was cemented. Similar to the morning sessions, members were again seated in the panel box of the court room according to rank, not randomized number, with the highest ranked member in the center of the front row. (App. Ex. XVII). After group voir dire, the military judge

³ Appellant originally deferred forum selection at arraignment. The military judge failed to secure Appellant's ultimate election. The parties appeared to move forward under the assumption the court-martial should consist of at least one-third enlisted members, though R.C.M. 912A(d)(2) provides that if an accused does not make a timely selection, the members are impaneled in their precise randomized order after excusals, regardless of rank. Appellant raises this issue in Appendix B.

began individual voir dire. However, the military judge went in order of the panel box seating chart (going from left to right starting in the front row; CSM DP, MAJ RP, LTC AT, etc.), not the randomization order. (R. at 203).

SFC JM 31	MSG DH 26	SGM MK 23	CSM JK 44	1SG AL 35	SFC SJ 27	SFC JD 34
CSM DP 29	MAJ RP 41	LTC AT 21	LTC NC 22	LTC CT 28	CSM SC 25	CSM HC 24

Sergeant First Class JM was individually voir dired. (R. at 261–63).

However, the military judge ceased the individual voir dire process at SGM MK because they had reached eleven members total (combining the four remaining from the morning session). (R. at 275). He stopped because eleven members meant the parties could exercise their peremptory challenges and a full panel would still be constituted. Therefore, SFC SJ was never questioned by the parties, nor was he subject to challenges.

The next day, the four members from the previous morning and the seven members the military judge had identified from the previous afternoon were brought back together. (R. at 298). Though the military judge failed to account for the members who were present on the record, the group did not include SFC SJ, as the military judge had erroneously excused him the previous evening. (R. at 275).

Despite actually being the seventh-lowest number of the remaining members, SFC SJ did not sit as a member of Appellant's court-martial. Rather, SFC JM sat in his stead.

The military judge failed to announce the final members who had been impaneled and failed to announce the court-martial was assembled. (R. at 323).

Standard of Review

Questions of a trial court's jurisdiction are reviewed de novo. *United States v. King*, 83 M.J. 115, 120 (C.A.A.F. 2023) (citing *United States v. Begani*, 81 M.J. 273, 276 (C.A.A.F. 2021)).

Law

“‘[C]ourt members are, unless properly waived, an indispensable jurisdictional element of a general court-martial.’” *King*, 83 M.J. at 121 (quoting *United States v. Ryan*, 5 M.J. 97, 101 (C.M.A. 1978)).

“This Court's case law distinguishes between jurisdictional and administrative errors in the convening of a court-martial. Jurisdictional error occurs when a court-martial is not constituted in accordance with the UCMJ.” *United States v. Adams*, 66 M.J. 255, 258 (C.A.A.F. 2008) (citations omitted).

A convening authority still remains the detailing authority of members to a court-martial convening order and must do so in accordance with the UCMJ; however, Article 25(e)(4) specifically states, “When convening a court-martial, the

convening authority *shall* detail as members thereof members of the armed forces under such regulations as the President may prescribe for the randomized selection of qualified personnel, to the maximum extent practicable.” (Emphasis added).

To enforce this randomization procedure and statutory safeguard, the President prescribed R.C.M. 911, which requires the military judge to randomize the list of panel members prior to assembly of the court-martial. R.C.M. 911(a). After voir dire and the exercise of challenges against prospective members, the military judge “*shall* impanel the members based on the order assigned in R.C.M. 911(a).” R.C.M. 912A(a) (emphasis added); *see also* Article 29(b)(1)(A), UCMJ (the military judge “shall, after determination of challenges, impanel the court-martial”).

Argument

A. Whether an Interloper Post-2023 NDAA Creates Jurisdictional Error is a Novel Issue.

This case presents a question of first impression that has not yet been addressed by this Court or any other service Court of Criminal Appeals: What is the legal effect of a trial court’s failure to impanel members in the randomized order mandated by Article 25, UCMJ?

In the Fiscal Year 2023 National Defense Authorization Act (NDAA), Congress altered the military panel selection process. By amending Article 25, Congress mandated a “randomized selection of qualified personnel.” Article

25(e)(4), UCMJ. The President implemented this mandate through R.C.M. 911 and 912A, which directs that the military judge *shall* impanel members in strict randomized order.

This change was designed to address perceptions of command influence and ‘panel stacking’ by removing subjective discretion from the final impanelment process.⁴ As the Army Court dissent correctly pointed out, all the case law and authorities utilized by the majority to support its position “were written at a time when the convening authority not only chose the members, but also how many members would report at assembly, as well as the order in which they would be detailed, excused, and replaced.... Now, the convening authority’s responsibility and authority to select the panel mostly ends before assembly.” *Martin*, 2026 CCA LEXIS 220, at *15. But the statutes and the rules have shifted, precisely because Congress sought to curb the appearance of undue command influence.

If the service courts are permitted to treat a deviation from this randomized sequence as a mere administrative irregularity, the statutory directive risks being rendered superfluous. This Court’s intervention is necessary to define the legal

⁴ See Def. Advisory Comm. on Investigation, Prosecution, & Def. of Sexual Assault in the Armed Forces, *Report on Randomizing Member Selection for Courts-Martial* (Dec. 19, 2023) [DAC-IPAD Report]. One of the DAC-IPAD’s significant concerns was that many service members believed “commanders hand pick members to deliver desired court-martial results.” The committee recommended the randomization of panel selection ultimately adopted by Congress in the 2023 NDAA.

consequences of violating Article 25’s randomization requirements and to establish a clear standard of compliance for trial courts.

B. A Significant Judicial Disagreement in the Court Below Demonstrates the Need for Definitive Guidance.

The Army Court was sharply divided on this issue. While the majority relied on pre-amendment case law to classify the error as administrative, the dissent recognized that the 2023 statutory amendments fundamentally changed how court-martial panels are legally constituted.

As the dissent pointed out, the statutory framework governing panel selection has evolved. A member is no longer lawfully detailed to a panel simply because their name appears on the convening order; they must be reached and seated via the mandatory randomized sequence. The dissent observed, “[S]ubsequent changes to the pertinent statutes and regulations have shifted the boundary between administrative and jurisdictional error...the law itself dictates how members are impaneled...[and] is largely devoid of discretion.” *Martin*, 2026 CCA LEXIS 220, at *15–17.

Because the service courts are now faced with reconciling legacy case law with a newly randomized statutory framework, this Court’s guidance is needed to ensure uniform application of the new process.

C. Under the Amended Articles 25 and 29, Seating a Member Out of Sequence Constitutes a Structural Defect in the Court's Composition.

A court-martial is a creature of statute and must be constituted in strict compliance with statutory procedures to possess jurisdictional authority. *United States v. Johnson*, 23 U.S.C.M.A. 104, 105, 48 C.M.R. 665 (1974). For the court-martial to retain its legitimacy and effectiveness, “it must appear affirmatively and unequivocally that the court was legally constituted; that it had jurisdiction; [and] that all the statutory regulations governing its proceedings had been complied with[.]” *Id.* at 105.

The majority below concluded that because SFC JM’s name appeared on the convening order, his impanelment was merely an administrative error. Under the amended Article 25, however, the convening order represents merely the initial pool of qualified personnel. The actual, lawful panel can *only* be constituted by translating that pool through the mandatory randomization mechanisms of Article 25 and R.C.M. 912A.

By skipping SFC SJ and seating SFC JM out of order, the trial court created a panel that did not conform to the selection sequence mandated by statute. Seating an out-of-sequence member under the new statutory scheme is not a minor clerical error; it is a structural deviation that results in an improperly constituted panel and a court-martial that lacks jurisdiction.

D. The Harmlessness Analysis Below Relies on *Post Hoc* Speculation and Undermines the Integrity of the Randomization Safeguard.

The Government argued that Appellant suffered no prejudice because SFC SJ “would have been excused for cause anyway” based on his initial group voir dire responses. The majority ultimately agreed. *Martin*, 2026 CCA LEXIS 220, at *12. But this analysis is speculative and introduces an unworkable standard for appellate review.

The record is clear: neither party individually challenged SFC SJ because the military judge erred in the accounting of member randomization placements. The defense exercised its sole peremptory challenge on a different panel member in order to address other bias concerns (discussed in Assignment of Error II). To speculate on appeal how the parties or the military judge *might* have handled a member had the proper procedures been followed is improper.

The error in this case is structural. The safeguard of randomization is designed to guarantee a neutral, objective selection process. If a trial court can bypass randomized members, fail to comply with R.C.M. 911 and 912A, and have the error excused on appeal through speculation about potential challenges, the objective framework mandated by Congress is undermined. This Court should grant review to clarify that a substantial, unexcused deviation from the randomized sequence cannot be deemed harmless based on *post hoc* assumptions.

As the dissent clearly stated, “The court-martial was not impaneled under the rules prescribed by the President, which means it was not constituted in accordance with the UCMJ, and thus the trial court lacked jurisdiction.” *Martin*, 2026 CCA LEXIS 220, at *17–18. This Court should grant Appellant’s petition in order to resolve the question of whether a violation of the new randomization rules—and subsequently a statutory violation of the UCMJ—is jurisdictional.

II. WHETHER THE MILITARY JUDGE’S DENIAL OF DEFENSE’S CHALLENGES FOR CAUSE AGAINST A “VOTING BLOC” OF MEMBERS ASSIGNED TO THE SAME UNIT, INCLUDING THE COMMANDER OF THE UNIT, CONSTITUTED REVERSIBLE ERROR.

Statement of Facts Related to Assignment of Error

Appellant adopts the facts provided in Assignment of Error I.

A. First Set of Prospective Panel Members.

During the initial morning session of group voir dire, it was elicited that four prospective members were a part of the same direct chain of command. (R. at 53-54). Based, *inter alia*, on this information, individual voir dire was conducted into the specific relationships between prospective members.

During individual voir dire, prospective member, Major KQ, noted that he was senior rated by Colonel RT (3d Brigade Commander) and rated by Lieutenant Colonel RO (squadron commander). (R. at 73). Defense moved to excuse Major

KQ for implied bias as two other prospective members comprised his direct rating chain. Defense argued:

I think that people on the outside looking in, if they heard that a major who's [sic] senior rater and rater were on the panel, that they would have a hard time believing that that made [sic] there [sic] is not going to be influenced by the views of Colonel RT in this case and Lieutenant Colonel RO.

(R. at 83).

The military judge ultimately granted the challenge, but chastised defense counsel for asking Major KQ a hypothetical about his ability to cast an unbiased vote even though his rater and senior rater might be on the panel, "I'm never going to let you ask another member that question. You're basically telling a field grade officer that he can't make up his mind and hold his ground. That's basically what you're saying; right? You don't need to respond." (R. at 83).

Defense counsel then sought clarification as to whether they could ever ask follow-up questions about a prospective member's rating chain. The military judge responded, "I'm asking the questions. I will ask the questions. No, you cannot. You forfeited it." (R. at 84).

Due to challenges for cause from both parties, only four members remained. (R. at 161).

B. Second Set of Prospective Panel Members.

Similarly to the morning session, three more prospective members were a part of the same chain of command. Lieutenant Colonel NC was the battalion commander who rated Command Sergeant Major HC and who was the commander of Warrant Officer TG. (R. at 251, 301).

C. 3d Brigade Members Comprised Nearly Half of the Venire.

Eleven members were present for a second round of group voir dire conducted the morning of January 22. (R. at 297). Of the eleven, five were in the 3d Brigade chain of command, including the brigade commander himself.

Colonel RT was the 3d Brigade commander, which meant he was the rater, senior rater, or commander of four other members. (R. at 89, 96, 240, 273, 303-04, 312, 314). Lieutenants Colonel RO and CT were two of Colonel RT's battalion commanders. (R. at 89, 240, 303-04). Sergeant Major KM was the brigade operations sergeant major. (R. at 273, 312). Sergeant First Class AA was a platoon sergeant in one of Colonel RT's companies. (R. at 314).

D. Multiple Challenges for Cause Against the Brigade Commander Given the 3d Brigade "Voting Bloc."

Defense counsel had first challenged Colonel RT during the initial morning voir dire session on January 21. (R. at 101). Defense argued implied bias:

There are...members on the panel still who would be his subordinates in this case, and I think that somebody outside looking in, or my client, for example, might look at that and say he's going to have an undue

influence on those members. And they may not acknowledge that, but he is going to have an undue influence.

(R. at 101). The defense also argued the liberal grant mandate applied in this situation. Though the military judge had just previously granted defense's challenge of Major KQ for implied bias based on rating chain issues, the military judge inappositely denied the motion to strike Colonel RT. (R. at 101).

During the January 22 morning session, after it was discovered that four members were in the direct rating chain or chain of command of Colonel RT, defense—for a second time—moved to strike him.

It's almost like there's a voting block [sic] of 3d Brigade people at this point.... You could find that there's just too many of them together, and they could almost kind of form a clique, and I think we want to avoid that in panel selection.

(R. at 307-08). The military judge again denied defense's challenge. (R. at 308).

The defense used their sole peremptory challenge on Colonel RT. (R. at 316).

Standard of Review

A. Implied Bias

This Court reviews a “military judge’s implied bias analysis under a standard of review ‘that is less deferential than abuse of discretion, but more deferential than de novo review.’” *United States v. Urieta*, 85 M.J. 352, 357 (C.A.A.F. 2025) (quoting *United States v. Peters*, 74 M.J. 31, 33-34 (C.A.A.F. 2015)). There is a “sliding standard of appellate review for implied bias challenges

that falls somewhere on a spectrum between de novo and abuse of discretion based on the specific facts of the case.” *Id.* (quoting *United States v. Keago*, 84 M.J. 367, 373 (C.A.A.F. 2024)).

B. Liberal Grant Mandate

“Military judges must err on the side of granting defense challenges for cause.” *Urieta*, 85 M.J. at 357 (quoting *Keago*, 84 M.J. at 372). The liberal grant mandate is “intended to address ‘certain unique elements in the military justice system including limited peremptory rights and the manner of appointment of court-martial members that presents perils that are not encountered elsewhere.’” *Id.* (quoting *Keago*, 84 M.J. at 372). If an implied bias challenge is a “close question, the challenge should be granted.” *Id.*

Law

Rule for Courts-Martial 912(f)(1)(N) states that a member *shall* be excused for cause “in the interest of having the court-martial free from substantial doubt as to legality, fairness, and impartiality.” (emphasis added).

“As a matter of due process, an accused has a constitutional right, as well as a regulatory right, to a fair and impartial panel.” *United States v. Wiesen*, 56 M.J. 172, 174 (C.A.A.F. 2001) (citing *United States v. Mack*, 41 M.J. 51, 54 (C.M.A. 1994)). “Indeed, ‘impartial court-members are a *sine qua non* for a fair court-martial.’” *Id.* (quoting *United States v. Modesto*, 43 M.J. 315, 318 (C.A.A.F.

1995)). “That is not to say that an accused has a right to the panel of his choice, just to a fair and impartial panel.” *Id.*

Argument

The military judge abused his discretion by twice denying Appellant’s motion to excuse Colonel RT for cause. Colonel RT was the commander of the voting bloc; he was *the* issue that caused the appearance of bias throughout the rest of the members. It is not whether he would in fact assert his command authority over the members, but whether there is an appearance of impropriety at having the commander of half the potential panel sitting as the president.

This is error and the Army Court failed to address the issue, therefore allowing this abuse of discretion to go unchecked. While Appellant acknowledges the defense used its peremptory on Colonel RT and did not explicitly state its reason why, *Wiesen* is still relevant. This Court was concerned about the perception of allowing such a situation to occur and this Court agreed that having the commander and so many of his subordinates on the panel created “the wrong atmosphere.” 56 M.J at 176. In that context, “there is simply too high a risk that the public will perceive that the accused received something less than a jury of ten equal members, although something more than a jury of one.” *Id.*

While the area of implied bias is settled, an injustice occurred in Appellant’s case that went unacknowledged and unchecked by the Army Court. The military

judge abused his discretion when he denied Appellant's multiple challenges for cause based on the numerous members from the same chain of command. This created a voting bloc, just as it did in *Wiesen*. Any member of the public looking at the voir dire of Appellant's case would have reservations and serious concerns about the fairness of the process.

Conclusion

This Court should grant Appellant's petition in order to address the novelty of the issue, reconcile the split decision of the Army Court, and provide guidance to the field as to whether a violation of the Presidentially prescribed rules for randomization and the subsequent seating of an interloper in violation of the UCMJ creates a jurisdictional issue.



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Appendix A: Army Court Decision

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
MORRIS, JUETTEN, and MURDOUGH
Appellate Military Judges

UNITED STATES, Appellee
v.
Specialist MATTHEW W. MARTIN
United States Army, Appellant

ARMY 20250030

Headquarters, Fort Campbell
John R. Maloney, Military Judge (arraignment)
Frederic P. Gallun, Military Judge (motions and trial)
Lieutenant Colonel John C. Olson Jr., Special Trial Counsel

For Appellant: Colonel Frank E. Kostik, Jr., JA; Lieutenant Colonel Kyle C. Sprague, JA; Major Kelsey Mowatt-Larssen, JA; Captain Eli M. Creighton, JA (on brief and on brief in response to specified issue).

For Appellee: Colonel Richard E. Gorini, JA; Major Stephen L. Harmel, JA; Major Elizabeth F. Vieyra, JA (on brief); Colonel Richard E. Gorini, JA; Major Stephen L. Harmel, JA (on brief in response to specified issue).

4 May 2026

MEMORANDUM OPINION

This opinion is issued as an unpublished opinion and, as such, does not serve as precedent.

JUETTEN, Judge:

This case presents us with an issue of first impression: what is the significance of a military judge not impaneling the correct members under Rule for Courts-Martial, *Manual for Courts-Martial, United States* (2024 ed.) [R.C.M.] 912A, according to the random numbers assigned pursuant to R.C.M. 911(a)?

An enlisted panel, sitting as a general court-martial, convicted appellant, contrary to his pleas, of a single specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice, 10 U.S.C. § 928b [UCMJ]. The panel sentenced appellant to a bad-conduct discharge, to perform hard labor without confinement for three months, to be reprimanded, and to be reduced to the grade of E-1.

The panel that tried, convicted, and sentenced appellant consisted of eight members.¹ The eighth impaneled member, Sergeant First Class (SFC) JM, had a higher random number than SFC SJ, who was present at assembly of the court, was not excused, and yet nonetheless did not sit as a member of appellant's court-martial, while SFC JM did.

Because of this discrepancy, we specified two questions to the parties: first, whether SFC JM was properly impaneled or was he an interloper in the place of SFC SJ; and second, if SFC JM was an interloper, did the trial court have jurisdiction over appellant's case. For the reasons set forth below, we find administrative error but no prejudice, that the trial court had jurisdiction, and we affirm the findings of guilt and corresponding sentence.²

BACKGROUND

The convening order that convened appellant's court-martial detailed a total of 110 members. Prior to assembly, at arraignment, the military judge used a random number generator to assign numbers to all 110 members (a process colloquially referred to as "randomization").³ The military judge directed the first fourteen members who had not been previously excused by the convening authority,⁴ i.e., the fourteen members with the lowest randomly assigned number, to be present at the initial session for which members were required.⁵

¹ See UCMJ art. 29(b)(2)(B) (directing the military judge to impanel eight members for a non-capital general court-martial).

² Though we lack the authority to correct it, we note that Block 32 of the Statement of Trial Results, whether "the accused [has] been convicted of a misdemeanor crime of domestic violence" is incorrectly marked "Yes" and should instead be marked "No." See *United States v. Williams*, 85 M.J. 121 (C.A.A.F. 2024).

³ See R.C.M. 911(a).

⁴ Numerous detailed members were excused prior to assembly of the court. See generally R.C.M. 505(c)(1) (permitting a convening authority or designee to excuse members prior to assembly without showing cause). These excusals were not challenged by appellant.

⁵ See R.C.M. 911(b) ("The military judge shall determine, after accounting for any excusals by the convening authority or designee, how many members detailed by the convening authority must be present at the initial session for which members are required.").

At initial assembly of the court, the first fourteen members were seated according to their ranks, beginning with the highest ranked member in the center of the front row (the row closest to the well of the courtroom).⁶ The figure below shows each member’s respective rank,⁷ initials, and the number assigned to each member via randomization.⁸

SFC DH 1	MSG DR 16	SGM DH 11	SGM JB 20	MSG MR 7	SFC AA 4	SSG CV 14
CPT GC 10	MAJ KQ 18	LTC RO 13	COL RT 15	LTC CB 8	CPT AS 2	WO1 TG 17

Following group voir dire, the military judge began individual voir dire of each member, followed immediately by asking the parties if they wished to challenge that member for cause.⁹ However, the military judge did not follow the randomization order. Instead, he followed the order of the seating chart, beginning with the bottom row and proceeding from left to right. In other words, the first person subject to individual voir dire and challenges for cause was CPT GC, followed by MAJ KQ, then LTC RO, and so on.

⁶ See R.C.M. 911 discussion.

⁷ We utilize the rank abbreviations common in our service throughout this opinion, that is: colonel (COL), lieutenant colonel (LTC), major (MAJ), captain (CPT), warrant officer one (WO1), command sergeant major (CSM), sergeant major (SGM), first sergeant (1SG), master sergeant (MSG), sergeant first class (SFC), and staff sergeant (SSG).

⁸ The numbers in this chart are not consecutive because, as noted above, *supra* footnote 4, numerous members subject to randomization had been excused by the convening authority before assembly.

⁹ The military judge was apparently attempting to follow a procedure described in the Military Judges’ Benchbook as “rolling challenges.” Dep’t of Army Pam. 27-9: Military Judges’ Benchbook, para. 2-5-3 note (29 Jul. 2025). “For ‘rolling challenges,’ judges: (1) call the members for individual voir dire *in the order of their randomly assigned number*, (2) invite challenges for cause immediately following the individual voir dire of each member, and (3) invite preemptory [*sic*] challenges only after a sufficient number of members have survived challenges for cause such that the exercise of preemptory challenges could not possibly cause a loss of quorum.” *Id.* (emphasis added). When followed correctly, “rolling challenges” are an acceptable way to efficiently conduct individual voir dire and challenges for cause. The incorrect sequence led to the error in this case.

This process continued until the last member, SSG CV, was questioned and then successfully challenged for cause. At the end of the round, ten of the fourteen members had been successfully challenged and excused, reducing the number below the eight needed to establish quorum. The four remaining members were: SFC AA (#4), LTC RO (#13), COL RT (#15), and WO1 TG (#17).

The military judge then called for the next fourteen members, in accordance with randomization, who had not yet been excused. A second round of voir dire began later that same afternoon with the new members assembled and seated accordingly:

SFC JM 31	MSG DH 26	SGM MK 23	CSM JK 44	1SG AL 35	SFC SJ 27	SFC JD 34
CSM DP 29	MAJ RP 41	LTC AT 21	LTC NC 22	LTC CT 28	CSM SC 25	CSM HC 24

After group voir dire, the military judge conducted individual voir dire and heard challenges in the same fashion as he had with the first group, beginning with CSM DP, who was successfully challenged and excused. Next, the parties questioned MAJ RP, who was not challenged, then LTC AT, who was successfully challenged and excused. Following the questioning of LTC NC and LTC CT, neither of whom were excused, the military judge stated, “Counsel, I think we’re at seven [members not excused]. We’re going to go until we hit ten, unless trial counsel tells me they’re going to waive their peremptory [challenge].”¹⁰ After trial counsel requested an eleventh member be identified,¹¹ questioning and challenges continued with CSM SC until the court reached SGM MK; the only additional member successfully challenged being CSM SC.

¹⁰ The military judge went from left-to-right according to the seating chart, not in the order of the members’ randomly assigned numbers (and thus seemingly skipping over lower-numbered members).

¹¹ Trial counsel requested an additional member to ensure the panel maintained a one-third enlisted quorum, assuming the appellant had requested a panel with at least one third enlisted members under R.C.M. 903(a)(1)(A)(i). The appellant had deferred forum selection at the initial arraignment and never made a forum election on the record, either orally or in writing. *See* R.C.M. 903(b) (describing the form of the election). When an accused does not make a timely election for an enlisted panel, the members are impaneled solely according to their random number order, regardless of rank. R.C.M. 912A(d)(2). Though that is ultimately what happened in this case, the military judge and trial counsel’s misplaced emphasis on ensuring an enlisted quorum could, with a different random number sequence, have resulted in additional members being improperly excused and members with higher numbers being improperly impaneled.

After neither party challenged SGM MK for cause, the military judge stopped individual voir dire, announcing: “So we’re at 11 [members not excused]. I think that’s a good place to stop . . . [so] I’ll go back and excuse and advise the remainder” Command Sergeant Major JK, 1SG AL, SFC SJ, and SFC JD were never subject to individual voir dire, and the military judge did not invite challenges for cause of these four members.

The following day, the four members remaining from the first round of voir dire, as well as the seven from the second round *who had been questioned* and not excused, returned to the courtroom. Command Sergeant Major JK, 1SG AL, SFC SJ, and SFC JD were not among the returning members.

Following additional group and individual voir dire (limited to whether any potential relationships existed between the members), the government used its peremptory challenge to excuse LTC NC (#22). The defense subsequently used its peremptory challenge against COL RT (#15).¹²

Following the exercise of peremptory challenges, the remaining members *physically present*, based on their randomized order, were:

SFC AA	4
LTC RO	13
WO1 TG	17
SGM MK	23
CSM HC	24
MSG DH	26
LTC CT	28
SFC JM	31
MAJ RP	41

The military judge then (incorrectly) described MAJ RP (#41) as “of the remaining nine. . . the highest number, meaning the last person in that [randomization] list” and excused him. He then impaneled the eight remaining, physically-present members.

However, the remaining members *who had not been excused* pursuant to a challenge (in other words, including the four members from the second voir dire

¹² We pause to note that, on appeal, appellant challenged whether the military judge erred in denying appellant’s challenge for cause of COL RT. Appellant’s use of his peremptory challenge on COL RT “preclude[s] further consideration of the challenge of that excused member upon later review.” R.C.M. 912(f)(4).

group who had been neither questioned nor challenged), in randomization order, actually consisted of:

SFC AA	4
LTC RO	13
WO1 TG	17
SGM MK	23
CSM HC	24
MSG DH	26
<i>SFC SJ</i>	27
LTC CT	28
SFC JM	31
SFC JD	34
1SG AL	35
MAJ RP	41
CSM JK	44

Significantly, *SFC SJ* (#27), who was not excused pursuant to a challenge, did not sit as a member, despite possessing the seventh-lowest randomized number. Sergeant First Class JM (#31) sat as the eighth member instead.

LAW AND DISCUSSION

Whether a trial court has jurisdiction is a question of law we review de novo. *United States v. King*, 83 M.J. 115, 120 (C.A.A.F. 2023).

This Court’s case law distinguishes between jurisdictional and administrative errors in the convening of a court-martial. Jurisdictional error occurs when a court-martial is not constituted in accordance with the UCMJ. Jurisdiction depends upon a properly convened court, composed of qualified members chosen by a proper convening authority, and with the charges properly referred.¹³

United States v. Adams, 66 M.J. 255, 258 (C.A.A.F. 2008) (first citing *United States v. Colon*, 6 M.J. 73, 74 (C.M.A. 1978); and then citing UCMJ art. 25, R.C.M. 201(b), 503, 504, and 505). The inclusion of interlopers, or “members who are barred from participating by operation of law, [or] who are never detailed by the convening authority” results in jurisdictional error. *King*, 83 M.J. at 122. However, “the process of excusing [detailed] primary members and adding substitute members

¹³ Appellant has not contested the qualifications or selection of the panel members. See UCMJ art. 25.

involves an administrative, not a jurisdictional matter.” *United States v. Mack*, 58 M.J. 413 (C.A.A.F. 2003).

In this case, the government concedes that the military judge erred by overlooking SFC SJ and impaneling SFC JM. However, it contends that this error was administrative, not jurisdictional. We agree.

While the randomization and numerical impaneling of members under RCM 911 and RCM 912A add a novel element to this case, it is still a case of a properly detailed panel member being erroneously omitted, or skipped, at impanelment – for which circumstance our superior court and this court have provided clear guidance on resolving this type of administrative error.

We have previously found administrative error when an assembled member was erroneously released by the military judge without having been challenged, either for cause or peremptorily. *United States v. Latimer*, 30 M.J. 554, 562-63 (A.C.M.R. 1990) (noting “it is generally agreed that noncompliance with Article 29(a), UCMJ, is not jurisdictional error . . .” (citation omitted)). Moreover, our superior court has continued to treat “as an administrative error the government’s failure to place on the record the reason that existed for excusing a panel member.” *King*, 83 M.J. at 122. Based on these principles alone, we would find the error in this case to be administrative, and not jurisdictional.

We find additional support in the rationale of our superior court in *United States v. Colon*, 6 M.J. 73 (C.M.A. 1978). There, the military judge proceeded to trial with only six of the ten detailed panel members after the other four failed to report at the required time. *Id.* at 74. In determining the error was non-jurisdictional, the court noted “no statutory conflict” existed where the court-martial met “the required quorum for that particular type of court-martial.” *Id.* While the Rules for Courts-Martial were amended in light of *Colon*, our superior court has continued to make clear that jurisdiction is tied to, and limited by, statutory authorities, *e.g.* *United States v. Sargent*, 47 M.J. 367, 368 (C.A.A.F. 1997) (“RCM 805 was drafted in light of . . . *Colon*. Neither its wording nor its regulatory history impart to it jurisdictional significance.”), not those “rules prescribed by the President” pursuant to Article 29(b), UCMJ.¹⁴

¹⁴ In other words, while Article 29(b), UCMJ, authorizes the President to prescribe additional rules regarding impanelment, the President’s doing so does not make those additions statutory requirements, rather regulatory requirements promulgated via a statutory authority. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (“In the framework of our Constitution, the President’s power to see that

(continued. . .)

Appellant's court-martial met the statutory requirements of court-martial jurisdiction: the offenses for which appellant was tried were properly before a general court-martial, *see* UCMJ art. 18, the court-martial was convened by an appropriate authority, *see* UCMJ art. 22, the members were appropriately detailed, *see* UCMJ art. 25, and quorum was maintained throughout the court-martial, *see* UCMJ art. 29. And while appellant now challenges the appropriateness of SFC JM serving in lieu of SFC SJ, the court-martial was "composed in accordance with these rules with respect to *number and qualifications* of its personnel." *See* R.C.M. 201(b)¹⁵ (emphasis added). Therefore, we find, much like the *Colon* and *Sargent* courts, that SFC SJ's exclusion constitutes an administrative, non-jurisdictional error, for which we must test for prejudice.

"Administrative errors . . . are not necessarily fatal to jurisdiction, and may be tested for prejudice" *Adams*, 66 M.J. at 259. An unobjected to "administrative error committed by the Government . . . is reviewed for plain error." *King*, 83 M.J. at 123. Under our plain error standard of review, appellant "bears the burden of establishing: (1) there is error; (2) the error is clear or obvious; and (3) the error materially prejudiced a substantial right." *United States v. Robinson*, 77 M.J. 294, 299 (C.A.A.F. 2018).

Here, we find no prejudice. Contrary to appellant's assertion, SFC JM was not an interloper.¹⁶ SFC JM met Article 25, UCMJ, qualification requirements; was properly detailed to the court-martial pursuant to the convening order; was subject to and included in the randomization of members; was subject to voir dire and challenges from both parties; and was on the final panel composition without any objection from appellant. Appellant "is not entitled to a specific panel. *King*, 83 MJ at 123-124 (citing *United States v. Easton*, 71 M.J. 168, 176 (C.A.A.F. 2012))(noting

(. . . continued)

the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process . . . [a]nd the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute.").

¹⁵ The RCM 201(b) discussion cites to RCM 501-504 to define "number and qualifications" of personnel, none of which refer to randomization. Notably, the discussion omits RCM 505, which addresses how members are excused. Thus by implication a "qualified" member for purposes of jurisdiction does not have to be a "properly randomized" member nor does it require adherence to the RCM 505 excusal and replacement procedures.

¹⁶ An interloper is one "who was not detailed at all to the court-martial on which he sat." *King*, 83 M.J. 123 (quoting *United States v. Gebhart*, 34 M.J. 189, 192 (C.M.A. 1992).

that military accused do not have the right to have their cases tried by a particular court). As the properly detailed members who ultimately heard the case were subject to randomization, the structural safeguards were sufficiently met. The appellant's right to an impartial panel was not impacted by the military judge's error with the randomization order of members.

CONCLUSION

The finding of guilty and the sentence are AFFIRMED.

Senior Judge MORRIS concurs.

MURDOUGH, Judge, dissenting;

I rely upon many of the same authorities as the majority, but I reach a different conclusion. I would hold that the improper, *de facto* excusal of SFC SJ and the concomitant impanelment of SFC JM constituted structural error that deprived the trial court of jurisdiction.

"[C]ourt members are, unless properly waived, an indispensable jurisdictional element of a general court-martial." *United States v. King*, 83 M.J. 115, 121 (C.A.A.F. 2023) (quoting *United States v. Ryan*, 5 M.J. 97, 101 (C.M.A.1978)). "Jurisdictional error occurs when a court-martial is not constituted in accordance with the UCMJ." *United States v. Adams*, 66 M.J. 255, 258 (C.A.A.F. 2008) (citation omitted). "A court-martial composed of members who are barred from participating by operation of law . . . is improperly constituted and the findings must be set aside as invalid." *Id.*

Article 29(b) of the UCMJ directs the military judge of a general court-martial to impanel members "Under rules prescribed by the President."¹⁷ One such rule is R.C.M. 912A(a), which directs: "After challenges for cause and peremptory challenges are exercised, the military judge. . . *shall impanel* the members based on

¹⁷ Additionally, Article 25(e)(4) currently states, "When convening a court-martial, the convening authority shall detail as members thereof members of the armed forces under such regulations as the president may prescribe for the randomized selection of qualified personnel, to the maximum extent practicable." This amendment to Article 25 took effect after the arraignment in appellant's court-martial. But Article 29, as was in effect both at the time of the court-martial and today, also refers to impanelment, so to the extent the majority looks only to Article 25 to identify any shifts in the statutory foundation of courts-martial jurisdiction, I respectfully disagree.

the order assigned in R.C.M. 911(a)” (emphasis added). Another presidentially-prescribed rule is R.C.M. 505(c)(2)(A), which provides four means by which a member may be excused after assembly: (1) by the convening authority for good cause shown on the record; (2) by the military judge for good cause shown on the record; (3) as a result of challenge under R.C.M. 912; or (4) by the military judge when the number of members is in excess of the number of members required for impanelment.

No party asserts that SFC SJ was excused by the convening authority or military judge for good cause shown on the record. It is indisputable that SFC SJ was not challenged, either for cause or peremptorily—the military judge did not even offer the parties a chance.¹⁸ Finally, his assigned number was lower than both LTC CT and SFC JM; he could not have been properly excused as an excess member. The majority does not dispute these facts. And nobody disputes that the members were not correctly impaneled according to their assigned numbers under R.C.M. 912A. Even appellee acknowledges that not only was the impanelment of SFC JM error, the error was plain and obvious.

However, the majority treats this as administrative, and therefore forfeitable, error. I respectfully disagree. Military jurisprudence traditionally treated the situation where the “wrong” members sat the panel as administrative error, so long as all members who heard the case had at one point been selected pursuant to Article 25. *See, e.g., United States v. Mack*, 58 M.J. 413, 417 (C.A.A.F. 2003) (“the process of excusing primary members and adding the substitute members involves an administrative, not a jurisdictional matter.”); *King*, 83 M.J. at 123. But the authorities defining “interlopers” as those persons who are “not detailed at all to the court-martial,” rather than a situation where one detailed member errantly sits the case vice another detailed member, were written at a time when the convening authority not only chose the members, but also how many members would report at

¹⁸ I also have significant concerns about the military judge seeking to pre-commit a party from exercising its peremptory challenge, for no apparent reason except to save time. The military judge, when he announced his plan to prematurely cut off individual voir dire, stated: “We’re going to go until we hit ten, unless trial counsel tells me they’re going to waive their peremptory [challenge].” I believe this attempt to discourage a party from using a peremptory challenge also amounted to error, though it was ultimately harmless because, in the end, both sides exercised a peremptory challenge.

assembly, as well as the order in which they would be detailed, excused, and replaced.¹⁹ *E.g. King*, 83 M.J. at 124. Now, the convening authority's responsibility and authority to select the panel mostly ends before assembly.²⁰ In other words, I believe subsequent changes to the pertinent statutes and regulations have shifted the boundary between administrative and jurisdictional error.

Today, while the convening authority retains the ability to select the venire from which the panel will eventually be drawn, the military judge decides how many members report to take the oath. R.C.M. 911(b). And the law itself dictates how members are impaneled, i.e. the process by which excused members are replaced by other, not excused members—regardless of whether the excusals occur before or after assembly. R.C.M. 911(a); R.C.M. 912A(a). I believe this change in the law is significant, because it changed the structure of courts-martial and how they are constituted. Once upon a time, “the intent of the convening authority” received significant deference in deciding how substitute members were detailed as replacements vice excused members. *Adams*, 66 M.J. at 258; *accord Mack*, 58 M.J. at 416 (citation omitted). Now the convening authority has no say in that process.

Instead, if the accused does not outright waive trial by members, the law establishes the process and sequence by which the members are assembled and ultimately impaneled, and it is largely devoid of discretion. The military judge *must* randomize the entire list of detailed members, however many. The members present at assembly *must* be those with the lowest assigned number who have not been previously excused, in whatever quantity the military judge directs. Then, following

¹⁹ Prior to 27 December 2023, the convening authority decided how many members were detailed to a court-martial; if the number was no fewer than the minimum necessary to maintain the appropriate quorum, then there was no upper limit to the number of members. *See* Rule for Courts-Martial, *Manual for Courts-Martial, United States* (2019 ed.) [R.C.M. (2019)] 503(a)(1)(B). All detailed members who had not been excused prior to assembly would report for assembly and take the members' oath. After assembly, if the exercise of challenges caused the number of members to drop below that necessary to maintain the appropriate quorum, the convening authority would detail new members to replace those who had been excused—again deciding not only the members, but how many would report for duty. *See* R.C.M. (2019) 505(c)(2)(B). The military judge did not assign random numbers to the members until after challenges for cause were complete. *See* R.C.M. (2019) 912(f).

²⁰ Convening authorities retain limited ability to excuse members post-assembly for good cause and may still add new members post-assembly when excusals have exhausted the entire venire detailed by the applicable convening order(s). *See* R.C.M. 505(c)(2)(A)(i); 505(c)(2)(B).

any excusals resulting from a challenge, the military judge *must* impanel members in order of the previous randomization.²¹ Any deviance from this procedure infects the structure of the court-martial to the same degree as a never-detailed interloper, because it produces a panel that is not constituted in accordance with the R.C.M. and by extension the UCMJ.

At the time of impanelment, SFC SJ had not been properly excused under R.C.M. 505(c)(2)(A), and thus legally remained a member of appellant's court-martial panel. Correspondingly, SFC JM should have been excused as excess, yet he was erroneously impaneled. And it is irrelevant that SFC JM, whom neither party challenged, was by every indication an impartial, qualified panel member. The panel that tried, convicted, and sentenced appellant included a person who by operation of law should not have sat as a member. *See Adams*, 66 M.J. at 258.

The court-martial was not impaneled under the rules prescribed by the President, which means it was not constituted in accordance with the UCMJ, and thus the trial court lacked jurisdiction. *Id.* This error cannot be waived or forfeited, notwithstanding appellant's acquiescence to the trial judge's erroneous process. R.C.M. 907(b)(1).

I would set aside the findings and sentence and dismiss the charges and specifications for lack of jurisdiction.

FOR THE COURT:


JAMES W. HERRING, JR.
Clerk of Court

²¹ With the sole exception that, if an enlisted accused requests a panel of at least one-third enlisted members, the military judge first uses the randomized list to identify the necessary number of enlisted members to fulfill that requirement, before impaneling the remainder according to the overall sequence. R.C.M. 912A(d)(1).

Appendix B: Matters Submitted Pursuant to *United States v. Grostefon*

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), the appellant, through appellate defense counsel, personally requests that this court consider the following matters:

I. WHETHER THE FINDINGS ARE LEGALLY SUFFICIENT WHEN THE ALLEGED VICTIM TESTIFIED THAT APPELLANT “DID NOT REALIZE WHAT HE WAS DOING,” THEREFORE NEGATING THE INTENTIONAL AND KNOWING ELEMENTS, AS WELL AS THE RECKLESSNESS ELEMENT, IN MERELY ATTEMPTING TO RETRIVE APPELLANT’S OWN PROPERTY THAT THE ALLEGED VICTIM HAD WRONGFULLY TAKEN FROM HIM.

II. WHETHER APPELLANT WAS IMPROPERLY PUNISHED WHEN HIS UNIT DID NOT HAVE HIM BEGIN HIS HARD LABOR UNTIL SEVERAL WEEKS AFTER THE ANNOUNCEMENT OF THE SENTENCE IN VIOLATION OF R.C.M. 1101.

III. WHETHER THE COURT-MARTIAL RETAINED JURISDICTION WHEN THE PARTIES FAILED TO ABIDE BY R.C.M. 912A AND DID NOT IMPANEL MEMBERS IN EXACT ORDER OF RANDOMIZATION, BUT INSTEAD ASSUMED THAT THE PANEL MUST INCLUDE ONE-THIRD ENLISTED MEMBERS, THOUGH APPELLANT NEVER MADE THE ELECTION TO HAVE ENLISTED REPRESENTATION.

Certificate of Compliance with Rules 24(c) and 37

1. This Supplement to the Petition complies with the type-volume limitation of Rule 24(c) because it contains 4,156 words.
2. This Supplement to the Petition complies with the typeface and type style requirements of Rule 37 because it has been prepared in Times New Roman font, using 14-point type with one-inch margins.



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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of United States v. Martin, Crim. App. Dkt. No. 20250030, USCA Dkt. No. 26-0236/AR was electronically filed with the Court and Government Appellate Division on July 20, 2026.

A handwritten signature in cursive script, reading "Melinda J. Johnson".

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