IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, Appellant v. **ISAC D. MENDOZA** Staff Sergeant (E-6) United States Army, Appellee	BRIEF ON BEHALF OF APPELLEE Crim. App. Dkt. No. 20210647 USCA Dkt. No. 25-0244/AR

Jessica A. Adler
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060
(703) 495-3762
USCAAF Bar No. 38047

Kelsey Mowatt-Larssen
Major, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
USCAAF Bar No. 38204

Jonathan F. Potter, Esq.
Senior Appellate Counsel
Defense Appellate Division
USCAAF BAR No. 26450

Frank E. Kostik, Jr.
Colonel, Judge Advocate
Chief
Defense Appellate Division
USCAAF Bar No. 35108

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

Certified Issues

I. WHETHER APPELLANT'S CONVICTION SHOULD BE REVERSED FOR A DUE PROCESS VIOLATION?

II. WHETHER THE ARMY COURT ERRED IN ITS APPLICATION OF THE LAW IN FINDING THAT THE CONVICTION WAS LEGALLY AND FACTUALLY SUFFICENT?

III. WHETHER THE ARMY COURT ERRED IN ITS APPLICATION OF THE LAW IN APPLYING A "MAINLY BUT ALONGSIDE OTHER EVIDENCE" FRAMEWORK TO FIND APPELLANT'S CONVICTION LEGALLY SUFFICENT?

Statement of Jurisdiction

The Army Court of Criminal Appeals [Army Court] had jurisdiction over this case pursuant to Article 66, Uniform Code of Military Justice [UCMJ], 10 U.S.C. § 866. This Court has jurisdiction over this case pursuant to Article 67(a)(2), UCMJ, 10 U.S.C. § 867(a)(2).

Statement of the Case

On December 8, 2021, a military judge sitting as a general court-martial found Appellee,[1] Staff Sergeant (SSG) Isac D. Mendoza, contrary to his plea, guilty of one specification of sexual assault, in violation of Article 120, UCMJ. (Statement of Trial Results [STR]). The military judge sentenced SSG Mendoza to reduction to the grade of E-1, confinement for thirty months, and a dishonorable discharge. (STR). On January 6, 2022, the convening authority elected to take no action on the findings but approved the sentence. (Action). The military judge entered judgment on January 12, 2022. (Judgment of the Court).

On May 8, 2023, the Army Court affirmed the finding and sentence. (JA 51). On October 7, 2024, this Court set aside the Army Court's decision and remanded the case for a new factual and legal sufficiency review. (JA 07). On June 27, 2025, the Army Court reaffirmed the findings and sentence. (JA 61). On

[1] In this certified case to the CAAF, SSG Mendoza is the Appellee, and the United States is the Appellant.

August 19, 2025, The Judge Advocate General of the United States Army certified three issues to this Court for review. (JA 03). This Court docketed the case on August 20, 2025. (JA 01).

Summary of Argument

Staff Sergeant Mendoza was denied due process. Due process does not permit convicting an accused of an offense with which he has not been charged or under a legal theory for which he has not been noticed. Staff Sergent Mendoza was charged with sexual assault without consent. The Government presented a case to prove that the alleged victim did not have the capacity to consent. The Government conceded as much before the Army Court.

The evidence in SSG Mendoza's case was legally insufficient to sustain a conviction for sexual assault without consent. Without consent requires the Government offer evidence of non-consent that establishes beyond a reasonable doubt that the purported victim did not consent—otherwise the rest of Article 120(b) is rendered meaningless. The Army Court used a flawed framework that encouraged it to tease out suppositions to support a conviction that is contrary to the Government's theory at trial. In this case, the Government introduced no evidence that the alleged victim did not consent at the time of the sexual act. Indeed, she had no memory of whether she did or did not consent to sex with SSG Mendoza.

Statement of Facts

At the time of the alleged incident, JW, the alleged victim, was a Specialist (SPC) in the Army and was attending a party with others from her unit. (JA 177-78). JW was married at the time of this alleged incident. (JA 121). Several people saw JW outside the barracks that evening and talked with her.

Sergeant (SGT) Price testified he was in front of the barracks with a group of soldiers, kicking a beach ball around, when he saw JW. (JA 157). Sergeant Price saw JW ask to kick the ball and join in. (JA 158). She moved normally and kicked the ball back and forth with them. (JA 162-63). She even ran around while kicking the ball without tripping or falling. (JA 163).

Specialist Levasseur saw JW and SSG Mendoza with their arms around each other. (JA 179-80). They were leaning towards each other with their faces close. (JA 193). JW and SSG Mendoza were sharing a bottle of alcohol and both appeared intoxicated, according to SPC Levasseur. (JA 193).

Specialist Levasseur found JW's behavior inappropriate for a married woman and he knew she was intoxicated. (JA 179-80, 186). Around 1:45 a.m., he told JW she needed to call her spouse and escorted her to her room on the second floor. (JA 181, 186). Two minutes after going into her room, JW came back out and rejoined the group in the dayroom. (JA 115).

In the dayroom, JW flirted with, rubbed, and touched members of the group, including SPC Cohea. (JA 142, 150-51). JW was normally introverted and kept to herself. (JA 142). That evening, she was outgoing and flirtatious. (JA 142, 148).

JW also flirted with SSG Mendoza. (JA 151). Sergeant Price saw SSG Mendoza sitting shoulder to shoulder with JW—JW was whispering into and kissing and licking SSG Mendoza's ear. (JA 164-65). Private First Class Law also saw JW leaning into and whispering into SSG Mendoza's ear. (JA 170, 172).

JW claimed not to remember hours of drinking, socializing, kicking around the beach ball, and sitting next to SSG Mendoza with her arms around his waist, kissing his ear, and sharing a bottle of alcohol. (JA 113-14). JW also did not remember flirting with SSG Mendoza or speaking with others in the dayroom. (JA 114). JW did not remember touching SSG Mendoza and talking to him. (JA 115).

Around 2:00 a.m., JW left the dayroom and went to SSG Mendoza's room. (JA 116). As the closed-circuit television (CCTV) footage showed, JW waited for SSG Mendoza for almost forty-five seconds and then went back to the dayroom to retrieve him. (JA 277). In the hallway, she touched SSG Mendoza's arm and smiled at him. (JA 116-17).

When they reached SSG Mendoza's door, he reached down and touched JW's groin outside her pants. (JA 275, 281). JW turned to him and smiled. (JA 281). Then JW and SSG Mendoza entered his room. (JA 273).

Once inside SSG Mendoza's room, the two had sex and JW performed oral sex on SSG Mendoza and she also mounted him at least two times and confirmed everything was "okay". (JA 224-26). JW does not remember smiling at SSG Mendoza after he touched her, nor does she remember kissing SSG Mendoza, performing oral sex on SSG Mendoza, taking her clothes off, or having sex with him. (JA 117).

Prior to SSG Mendoza's interview, Special Agent (SA) Dereck Williams reviewed some, but not all, of the CCTV footage from July 11-12. (JA 232). Based on this limited review, SA Dereck Williams investigated the case as if it were an incapable of consent case and suggested throughout the interview that JW was "overly intoxicated," "incoherent," and "not in the right mental state." (JA 227, 232). Special Agent Dereck Williams ultimately told SSG Mendoza that JW was "incapable of consenting." (JA 227). Special Agent Dereck Williams then typed that conclusion into SSG Mendoza's written statement. (JA 227).

Expert Testimony

At trial, Dr. Wetherill, a forensic psychologist, testified how a person experiencing an alcohol-induced blackout will try to fill memory gaps based on what they typically might do. (JA 260-61). Often, when they learn from others how they behaved, they find that behavior inconsistent with the version of the event they have pieced together. (JA 261).

Motion For a Finding of Not Guilty

At the close of the Government's case, the Defense moved for a Not Guilty Finding, arguing that the Government had failed to provide enough evidence to sustain a conviction for lack of consent. (JA 266). The Government could not give a clear response, ultimately falling back on "the statutory definition of consent regarding a competent [sic] person has certainly been established in this case." (JA 268). The military judge denied the motion. (JA 269).

Closing Arguments

The Government's theme and theory was JW's intoxication. The Government emphasized that, because of alcohol, JW "could not consent." (JA 270-71). The Government argued "every eyewitness confirmed that [JW] . . . met the definition of an incompetent person." (JA 272).

In support of that theory, the Government focused on evidence of JW's alleged inability to consent. The Government advanced JW's personal belief that she would not have had sex while on her period. (JA 270-71). The Government argued SSG Mendoza was aware JW was incapable of consenting. (JA 272). The Government also argued that every eyewitness confirmed that JW met the definition of an incompetent person. (JA 272). The Government pointed to the CCTV footage and stated, by the time JW was entering SSG Mendoza's room at 2:08 a.m., she was "completely out of it." (JA 273).

Certified Issue I

I. WHETHER APPELLANT'S CONVICTION SHOULD BE REVERSED FOR A DUE PROCESS VIOLATION?

Standard of Review

This Court reviews whether there was a denial of due process *de novo*. *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011).

Law

Due process "does not permit convicting an accused of an offense with which he has not been charged." *United States v. Tunstall,* 72 M.J. 191, 192 (C.A.A.F. 2013). The due process principle of fair notice "mandates that an accused has a right to know what offense and under what legal theory he will be tried and convicted." *United States v. Riggins*, 75 M.J. 78, 83 (C.A.A.F. 2016).

Argument

A. SSG Mendoza Was Denied Due Process

When the evidence at trial deviates from what is alleged in the indictment, a "constructive amendment" may occur. *United States v. Hawkins,* 934 F.3d 1251, 1260 (11th Cir. 2019); *see also Riggins*, 75 M.J. at 83-84. The Government cannot proceed under one charging theory and then prove another theory because doing so violates due process, stripping away an accused's "right to know what offense and under what legal theory he will be tried and convicted." *Riggins*, 75 M.J. at 83-84

(government proving a set of facts that a victim had the legal inability to consent was not the same as proving the victim did not consent).

Consistent with this Court's opinion in *Mendoza*, "the military judge may have convicted [SSG Mendoza] of sexual assault on the theory that JW was incapable of consenting without the Government proving that [SSG Mendoza] should have known that she was incapable. *Mendoza*, 85 M.J. at 220. Because of this "serious due process concern," this Court found that subsection (b)(2)(A) of Article 120 and subsection (b)(3)(A) of Article 120, establish separate theories of liability. *Id*.

It is impossible to know, as the Government recognized before the Army Court, if the military judge convicted SSG Mendoza of subsection (b)(2)(A) of Article 120, that is a sexual act upon JW, who was capable of consenting, but did not consent. This is in fact the charge which SSG Mendoza was noticed. Or did the fact-finder convict SSG Mendoza of subsection (b)(3)(A) of Article 120, a separate offense, which criminalizes the performance of a sexual act upon a victim who is incapable of consenting to the sexual act due to impairment when the victim's condition is known or reasonably should have been known by the accused. Therefore, whether the military judge convicted SSG Mendoza because JW was intoxicated and incapable of consenting remains unresolved.

B. The Government Conceded a Due Process Violation Before the Army Court.

The Government contends before this Court there was no violation of SSG Mendoza's due process right to fair notice. (Brief on Behalf of Appellant, p.11-13). But before the Army Court, the Government conceded there was a due process error. (Brief on Behalf of Appellee on Remand, p. 20-21). The Government argued before the Army Court "the risk of error amounted to a misunderstanding of the law, analogous to an instructional error," [and thus the Army Court] should set aside the findings without prejudice and authorize a rehearing in accordance with its opinion." (Brief on Behalf of Appellee on Remand, p. 22).

The Government now argues that "while the counsel conflated two legal theories in argument, there was proper evidence to support the conviction under Article 120(b)(2)(A), UCMJ." (Brief on Behalf of Appellant, p.13). The Government got it right before the Army Court.[2] This Court already found the Government's approach in this case undercut important protections afforded to an accused. "But what the government cannot do is charge one offense under one

[2] While the Army Court was not bound by the Government's concession (*see United States v. Budka*, 74 M.J. 220 (C.A.A.F. 2015)), the Government's concession before the Army Court is telling, especially given the Government argued that SSG Mendoza's due process right was violated in what was akin to an instructional error. (Brief on Behalf of Appellee on Remand, p. 22).

factual theory and then argue a different offense and a different factual theory at trial. Doing so robs the defendant of his constitutional right to know what offense and under what legal theory he will be tried and convicted." *Mendoza*, 85 M.J. at 220 (quoting *Riggins*, 75 M.J. at 83). The Court noted "[t]he military judge may have convicted [SSG Mendoza] of sexual assault on the theory that JW was incapable of consenting without the Government proving that [SSG Mendoza] knew or should have known that she was incapable." *Id*. Staff Sergeant Mendoza did not have fair notice, as the Government previously conceded. (Brief on Behalf of Appellee on Remand, p. 21-22; *Mendoza*, 85 M.J at 221).

C. Remedy

The appropriate remedy is reversal of SSG Mendoza's conviction. "The fact of the matter is the Government charged SSG Mendoza with the wrong offense and proceeded to trial with evidence that supported a different uncharged offense." *Mendoza,* 85 M.J. at 233 (Sparks, J., concurring in part and dissenting in part and in the Judgement). The Government agreed before the Army Court this was the appropriate remedy. As this Court has already recognized, the "Government's approach [at trial] --- which conflated two different and inconsistent theories of criminal liability --- raise[d] significant due process concerns." *Mendoza*, 85 M.J. at 215. Based on this, the Government before the Army Court recommended setting aside the findings and ordering a rehearing. Based on the due process

violation, and considering the Government's earlier (and appropriate) concession, this Court should set aside the findings without prejudice and authorizing a rehearing. (Brief on Behalf of Appellee on Remand, p. 22-23).

Certified Issue II

II. WHETHER THE ARMY COURT ERRED IN ITS APPLICATION OF THE LAW IN FINDING THAT THE CONVICTION WAS LEGALLY AND FACTUALLY SUFFICENT?

Standard of Review

This Court reviews whether the Army Court erred in applying the law *de novo*. *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002). The question squarely before this Court is whether the Army Court applied the standard this Court outlined in *Mendoza* when affirming SSG Mendoza's conviction of a "without consent" theory. *Mendoza*, 85 M.J. at 215.

Law and Argument

"The test for legal sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt*."* *United States v. King,* 78 M.J. 218, 221 (C.A.A.F. 2019*)* (quoting *United States v. Gutierrez*, 73 M.J. 172, 175 (C.A.A.F. 2014)).

The test for factual sufficiency is "whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, the members of the [CCA] are themselves convinced of the accused's guilt beyond a reasonable doubt." *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). This Court does not have the authority to review for factual sufficiency, but it does have the authority to review whether the Army Court applied correct legal principles when it conducted its factual sufficiency review. *United States v. Thompson*, 83 M.J. 1, 3 (C.A.A.F. 2022).

As this Court held in its earlier opinion in this case, subsection (b)(2)(A) criminalizes the performance of a sexual act upon a victim who is capable of consenting but does not consent. *Mendoza*, 25 M.J. 220. Thus, while intoxication may be relevant to consent, "without consent" may not be proven by "establishing that the victim was too intoxicated to consent." *Id.* at 222. This Court held subsection (b)(2)(A) and subsection (b)(3)(A) created separate theories of liability. *Id.* at 220.

The Government cannot prove the absence of consent under Article 120(b)(2)(A), UCMJ, by merely establishing that the victim was too intoxicated to consent. *Mendoza*, 85 M.J. at 222. While the Government can offer evidence of an alleged victim's intoxication to prove the absence of consent, the defense can offer the same evidence as reasonable doubt as to consent. *Id.* The standard from

the Army Court's decision in *Roe*, "mainly but alongside other evidence" and the controlling standard from this Court's opinion in *Mendoza*, by which the Government cannot prove the absence of consent by merely establishing that the victim was too intoxicated to consent, are incompatible. As this Court already found in this case, sexual assault without consent is a separate theory of liability from a charge of sexual assault upon a person incapable of consenting. *Mendoza,* 85 M.J. at 220. A charge of sexual assault without consent alleges criminal conduct "upon a victim who is capable of consenting but does not consent." *Id.* But sexual assault upon a person incapable of consenting is criminal conduct "upon a victim who is incapable of consenting to the sexual act due to impairment by any drug, intoxicant, or other similar substance when the victim's condition is known or reasonably should be known by the accused." *Id*., at 220-221.

This Court stated that in "without consent" cases, evidence of a victim's level of intoxication may be relevant and admissible, 85 M.J. 213 at 222, but it is improper to use this evidence "as proof of [a victim's] inability to consent and therefore proof of absence of consent" in these cases. *Id.* In other words, what "the Government cannot do is prove the absence of consent under Article 120(b)(2)(A), UCMJ, by merely establishing that the victim was too intoxicated to consent." *Id.*

It follows that it is likewise error to affirm a conviction for lack of consent based "mainly" on evidence submitted to prove an inability to consent. The Army Court's standard lacks the necessary rigor to support a conviction beyond a reasonable doubt, and encourages appellate courts to do just what the Army Court did here: tease out after-the-fact suppositions, such as the purported victim's claim she would not have sex with a tampon in if she was in control of her faculties, to somehow establish that she did not consent to sexual intercourse. This is particularly troubling given her demeanor in the video before she and SSG Mendoza had intercourse, in which she smiled when he touched her groin. And the victim never engaged in any conduct that indicated either during the act or immediately after that she was not consenting to the sexual conduct. *United States v. Casillas*, __ M.J. __, 2025 CAAF LEXIS at *14

This case is distinguishable from cases where the Government presented additional evidence beyond intoxication to prove non-consent. In *Casillas*, the accused was similarly charged under Article 120(b)(2)(A), UCMJ, but in that case the alleged victim testified she woke up to Casillas' penis in her vagina, she did nothing to reciprocate his actions, she did not want him to be penetrating her, and she did not consent to it. 2025 CAAF LEXIS 692, at *14. Because of testimony that the victim was awake and aware of what was happening to her, the evidence supported the rational conclusion that she had the capacity to consent, but did not

consent to the sexual act. *Id*. Here, the facts do not support that JW did not consent to a sexual act as needed to prove Article 120(b)(2)(A), UCMJ. Indeed, JW could not testify she did not consent.

This Court's earlier opinion in this case instructed the Army Court to explain "how or why the evidence of [the victim's] intoxication factored into" [Army Court's] analysis. *Mendoza*, 85 M.J. at 215. The Army Court erred in its application of the law in finding the conviction was legally and factually sufficient. The multiple eyewitness accounts and CCTV footage of JW's flirtatious and physically intimate conduct toward SSG Mendoza throughout the night and in the moments leading up to sex is compelling evidence of consent or of SSG Mendoza's mistaken belief of consent. The way JW acted, along with her estimated blood-alcohol content, "provides more basis for reasonable doubt than it does circumstantial evidence that she did not consent." *Mendoza*, 85 M.J. 232, (Sparks, J., concurring in part and dissenting in part and in the judgement). Additionally, the *only* evidence about consent comes from SSG Mendoza. When the two went to his room, JW kissed SSG Mendoza, who kissed her back. (JA 224). Staff Sergeant Mendoza asked, "is this okay" and she responded, "show me what you've got." (JA 292). They undressed and JW voluntarily performed oral sex on SSG Mendoza. (JA 292). During intercourse, JW was on top of SSG Mendoza at least twice. (JA 225, 227). These events make sense and are

corroborated by JW's conduct toward SSG Mendoza in public—SGT Price saw SSG Mendoza sitting at the table shoulder to shoulder, with JW both whispering into and kissing and licking his ear. (JA 120, 121). Staff Sergeant Mendoza's account finds support in the CCTV footage.

At trial, the Government argued that despite JW having no memory of how she acted during the sex, because she had a tampon in, she would not have agreed to have sex on her period. (JA 270-271). JW's mere belief as to what she would or would not do in ordinary circumstances cannot be the determining factor for a sexual assault conviction, especially in light of the evidence showing JW was interested in sexual activity with SSG Mendoza throughout the night and minutes before the offense. Would JW ordinarily flirt, nibble on SSG Mendoza's ear, or go back into a room to drag SSG Mendoza away? Perhaps no, but she did so that night.

The Army Court misapplied the facts to find non-consent, particularly when relying on SSG Mendoza's statement that he had sex with the victim while she was extremely intoxicated. *Mendoza*, 2025 CCA LEXIS 294 at *7. This evidence goes directly to the theory of intoxication, not consent, and the Army Court erred when it viewed this evidence as other evidence of non-consent as set forth in *Mendoza*. JW's alcohol consumption and SSG Mendoza's acknowledgement of that fact, without more, does not establish non-consent. *Id.,* at *5. Further, the Army Court

recitation of what it called "non-alcohol evidence that the victim did not consent" do no relate to whether JW expressed some form of "no" or whether she expressed a desire not to participate in the sexual act when it occurred. *Mendoza,* 2025 CCA LEXIS 294 at *6. The "facts" the Army Court cited are either beliefs (such as the victim's belief she did not consent because she had a tampon in) or facts that do not establish non-consent. Nothing offered evidence of non-consent or a desire to not participate in the sexual act when it occurred.

Certified Issue III

III. WHETHER THE ARMY COURT ERRED IN ITS APPLICATION OF THE LAW IN APPLYING A "MAINLY BUT ALONGSIDE OTHER EVIDENCE" FRAMEWORK TO FIND APPELLANT'S CONVICTION LEGALLY SUFFICENT?

Law and Argument

The Army Court's application of "mainly but alongside other evidence" from *Roe* runs counter to this Court's opinion in *Mendoza* and the Army Court erred in finding the conviction legally sufficient. *See United States v. Roe,* ARMY 20200144, 2022 CCA LEXIS 248, *11, (Army Ct. Crim. App. Apr. 27, 2022)

The Army Court's *Roe* framework is an outlier among the service courts. The other services have not employed a "mainly alongside other evidence" framework. The Air Force Court of Criminal Appeals (Air Force Court), employing its Article 66 authority and not some additional framework, has

reversed convictions, finding the evidence legally and factually insufficient. For example, the victim in *United States v. Hennessy* repeatedly spurned Hennessy's advances all day, declined Hennessy's suggestion they go back to one of their rooms together, and awoke to unwanted sexual penetration and pretended to be sleeping to get Hennessy to stop. 2024 CCA LEXIS 503, *5-6, (Air Force Ct. Crim. App. 2024). Still, the Air Force Court found the case factually insufficient. *See also United States v. Moore*, 2024 CCA LEXIS 485, *4 (Air Force Ct. Crim. App., 2024) (finding evidence insufficient even though the purported victim awoke to being digitally penetrated); *United States v. Serjak*, 2024 CCA LEXIS 524, *48-49 (Air Force Ct. Crim. App., 2024) (finding evidence insufficient even though the purported victim and the accused did not flirt, she testified she did not want to have sex with the accused, and remembered her interactions with the accused before she fell asleep).

In *United States v. Grafton*, the Navy-Marine Corps Court of Criminal Appeals (Navy-Marine Corps Court) set aside one of Grafton's convictions for sexual assault. The Navy-Marine Corps Court observed that "*Mendoza* was clear: charging 'without consent' under Article (b)(2)(A) is only applicable where the Government's theory is that the victim is a person capable of consenting who did not consent." 2025 CCA LEXIS 375 (Navy-Marine Corps. Ct. of Crim. App., 2025). The court found the military judge erred in instructing the members that it

could convict Grafton of "without consent" because a sleeping or unconscious person could not consent. But Grafton was charged in the alternative: incapacitated and without consent, and the panel found him guilty of both offenses. The Navy-Marine Corps Court affirmed the incapacitation offense consistent with the panel's finding. In other words, the other service courts have correctly applied this Court's opinion in *Mendoza*, making the Army Court an outlier.

In the remand opinion the Army Court used its unique *Roe* framework to affirm despite the Government's evidence and argument at trial that SSG Mendoza was guilty based upon a theory of incapable of consent. 2025 CCA LEXIS 294, *5. But that begs a question: How would a military judge instruct a panel to consider the Government's theory of the case in tandem with the charge? Based on the *Roe* framework, would the instruction advise the panel "that the government could attempt to carry its burden of proving sexual assault without consent by presenting mainly but alongside other evidence, the fact of the extreme intoxication at the time of the sexual act"? *Id.,* at *4 (citing *Roe*, 2022 CCA LEXIS 248, at *11). And how would the military judge explain "mainly alongside other evidence." Would that suffice to be evidence beyond a reasonable doubt?

The Army Court erred in its application of the law when finding the conviction legally and factually sufficient.

Conclusion

WHEREFORE, Appellee requests this Court find there was a due process violation which requires reversal of SSG Mendoza's conviction, that the Army Court erred in the application of its factual and legal sufficiency review, and that the Army Court's *Roe* framework is an inappropriate standard to apply to this case. As such, this Court should set aside the findings and sentence.

Jessica A. Adler
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060
(703) 495-3762
USCAAF Bar No. 38047

Kelsey Mowatt Larssen
Major, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
USCAAF Bar No. 38204

Jonathan F. Potter, Esq.
Senior Appellate Counsel
Defense Appellate Division
USCAAF Bar No. 26450

Frank E. Kostik, Jr.
Colonel, Judge Advocate
Chief
Defense Appellate Division
USCAAF Bar No. 35108

Certificate of Compliance with Rules 24(c) and 37

1. This Brief on Behalf of Appellee complies with the type-volume limitation of Rule 24(c) because it contains 5213 words.

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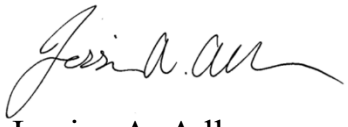
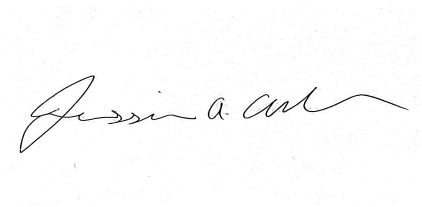


Jessica A. Adler
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060
(703) 495-3762
USCAAF Bar No. 38047

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of United States v. Mendoza, Crim. App. Dkt. No. 20210647, USCA Dkt. No. 25-0244/AR was electronically filed with the Court and Government Appellate Division on October 29, 2025.



JESSICA A. ADLER
Captain, Judge Advocate
Defense Appellate Counsel
Defense Appellate Division
9275 Gunston Road
Fort Belvoir, VA 22060
(703) 695-9859
USCAAF Bar No. 38047