IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

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<tr><td>UNITED STATES

Appellee</td><td>REPLY BRIEF ON BEHALF OF APPELLANT</td></tr>
<tr><td>v.</td><td>Docket No. ARMY 20220274</td></tr>
<tr><td>Staff Sergeant (E-6)
DANIEL J. VALDEZ,
United States Army,

Appellant</td><td>Tried at Fort Irwin, California, on 15 February and 17-20 May 2022, before a special court-martial appointed by the Commander, National Training Center and Fort Irwin, Colonel Larry A. Babin and Colonel Matthew S. Fitzgerald, military judges, presiding.</td></tr>
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TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Assignments of Error

I. WHETHER THE MILITARY JUDGE ERRED WHEN HE DENIED THE DEFENSE CHALLENGE FOR CAUSE AGAINST A MEMBER WHO HAD AN INELASTIC PREDISPOSITION ABOUT MANDATORY PUNISHMENT

Argument

A. [REDACTED] Was Actually Biased

"No. No, you're not going to change my mind." (R. at 191). [REDACTED] words are not "taken out of context." (Gov't Br. 17). There is no other fair characterization of "you're not going to change my mind" than an inelastic

predisposition towards punishment. [REDACTED] answer is "troublesome" no matter the situation because it represents actual bias. (Gov't Br. 17).

The government argues that [REDACTED] inelastic view towards sentencing does not matter because he could fairly consider the "facts when determining the guilt or innocence of appellant." (Gov't Br. 16). This is not appellant's argument, nor is this an accurate statement of the law. The Court of Appeals for the Armed Forces [CAAF] has made clear that "the accused is entitled to have his case heard by members who are not predisposed or committed to a particular punishment, or who do not possess an inelastic attitude toward the punitive outcome." *United States v. Martinez,* 67 M.J. 59, 61 (C.A.A.F. 2008) (citing Rule for Courts-Martial 912 Discussion). Whether a panel member can fairly consider the facts as it relates to guilt or innocence is separate and distinct from his inelastic views on sentencing. If a member holds such a predisposition—regardless of their views on guilt or innocence—they must be excused. *Id.* at 61.

The government also argues that it is defense counsel's fault for not providing a range of possible punishments to [REDACTED]. But it is not incumbent on defense counsel to rehabilitate a biased member. The CAAF has stated it is ultimately the role of the military judge to ask questions and provide guidance to prospective panel members, and it is error if the military judge leaves the bias as an

"uncorrected misunderstanding." *United States v. Urieta,* ___M.J.___, 2025 CAAF LEXIS 226, at *17 (C.A.A.F. 24 Mar. 2025).

After hearing that [REDACTED] would not change his mind about punishment, the military judge asked no follow-up questions and provided no guidance on the law or prospective punishments to [REDACTED]. Instead, he blamed defense for not attempting rehabilitation of a member who was biased against their client. (R. at 192, 208). This was error and warrants setting aside the findings and sentence.

B. [REDACTED] Was Impliedly Biased

The government argues that it is acceptable that a biased member with an inelastic predisposition towards punishment sat on the panel because appellant ultimately chose sentencing by the military judge. (Gov't Br. 18). This argument is a red herring, it is geared towards prejudice (which is not required), and it is not an accurate statement of the law. A court-martial's bifurcation does not allow for a second round of voir dire before sentencing. "The interests of justice are best served by addressing potential member issues at the outset of judicial proceedings." *United States v. Peters,* 74 M.J. 31, 34 (C.A.A.F. 2015).

[REDACTED] did display an understanding of extenuation and mitigation. (R. at 205). However, if appellant had chosen sentencing by members, another unsavory situation would have arisen. Appellant would have been tasked with the

impossible—how much extenuation and mitigation evidence would have been necessary to satisfy [REDACTED]?

There appeared to be an immense amount of extenuation and mitigation evidence surrounding the young soldier whose brother was murdered and whose mother was being threatened, but that soldier was still punished. (R. at 188-89). This argument is not an attempt to "smear" [REDACTED] (Gov't Br. 19), but rather to show the impossibility of appellant's situation.[1] Knowing [REDACTED] believed someone found guilty of AWOL has to be punished would give a reasonable member of the public significant questions about the fairness of appellant's panel. *United States v. Keago,* 84 M.J. 367, 375 (C.A.A.F. 2024).

C. The Military Judge Erred by Not Applying the Liberal Grant Mandate

This case is a close call.[2] (Gov't Br. 11 n.4). [REDACTED] did not disavow his belief that "some" punishment had to be imposed. [REDACTED] was not provided instructions or disabused of this notion by either the trial counsel or the military judge. Just as in *Keago,* error occurred because once the bias was evinced, "the military judge never asked any clarifying questions or offered any corrections

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[1] "The test for implied bias, however, is not whether the panel member is subjectively a person of good character. Rather, we are concerned with how the public would perceive the fairness of trial . . . ." *Peters,* 74 M.J. at 36.

[2] The audio of the military judge's ruling is at approximately 2:35:24 during the Article 39(a) session on 18 May 2022.

about these issues that might have filled the gaps left by trial and defense counsel." 84 M.J. at 374. maintained his belief that nothing would change his mind.

The military judge correctly cited the tests for actual and implied bias, but his findings of fact were clearly erroneous. He relied heavily on two affirmative answers to leading questions in group voir dire to find that had elasticity as to sentencing. "A potential panel member's predictable answers to leading questions are not enough to rebut the possibility of bias." *Keago,* 84 M.J. at 374. Despite hearing the direct quote "No, you're not going to change my mind," the military judge believed had an open mind.

Given clear statements as to his inelastic predisposition, the military judge's lack of instruction or follow-up, and the military judge's misunderstanding of the facts, it was error to not apply the liberal grant mandate and excuse .

II. WHETHER APPELLANT IS ENTITLED TO RELIEF FOR 952 DAYS OF POST-TRIAL DELAY

Appellant concurs with the government's concession that appellant's sentence should be set aside. However, appropriate relief in this case should reflect the egregious nature of the government's negligence. As such, the court should also set aside the findings and dismiss the charges.

Appellant was sentenced to 30 days of hard labor and reduction by one rank. (R. at 683). He has long since served this sentence. "Because appellant has served his full term of confinement, reduction of the confinement would afford him no meaningful relief. Given the length of time that has passed since appellant's conviction, we can have no confidence that disapproving the reduction in rank . . . would serve any useful purposes." *United States v. Roberts,* 2020 CCA LEXIS 177, at *7 (Army Ct. Crim. App. 27 May 2020).

Just as in *Roberts,* the only "meaningful and proportionate relief available under the circumstances" of this case is to dismiss the charges and their specifications.

Conclusion

Appellant respectfully requests this court set aside the findings and sentence and dismiss the charges and their specifications with prejudice.

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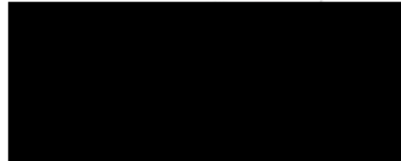

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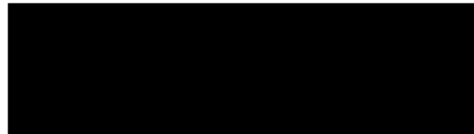

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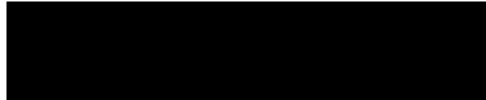
CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically filed with the Army Court and Government Appellate Division on May 5, 2025.



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