

**DEPARTMENT OF THE AIR FORCE
UNITED STATES AIR FORCE TRIAL JUDICIARY**

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| UNITED STATES |) | |
| |) | |
| v. |) | DEFENSE MOTION FOR |
| |) | APROPRIATE RELIEF: |
| |) | CHANGE OF PLACE OF TRIAL |
| |) | |
| MSgt Jeffery K. Andersen |) | |
| (PACAF) |) | |
| Joint Base Elmendorf-Richardson, |) | 22 September 2021 |
| Alaska |) | |

MOTION

COMES NOW the Accused, MSgt Jeffery K. Andersen, by and through counsel, and respectfully moves this Honorable Court to direct the Government to change the place of trial to the United States Army courtroom located on Joint Base Elmendorf-Richardson (JBER), Alaska.

SUMMARY

On 21 May 2021, one charge and thirteen specifications in violation of Article 93, Uniform Code of Military Justice (UCMJ), one charge and one specification in violation of Article 132, UCMJ, and one charge and one specification in violation of Article 92, UCMJ, were referred against MSgt Andersen. The Government’s traditional courtroom is currently unavailable due to construction, and the Government’s solution is to hold the court-martial in a classroom at the JBER education center. The defense requests appropriate relief by requesting the court-martial take place in the United States Army courtroom located on JBER.

FACTS

1. On 24 February 2021, 3 MXS/CC initiated a Commander Directed Investigation (CDI) into allegations of assault, communicating threats, dereliction of duty, and cruelty and maltreatment against MSgt Andersen. On 26 March 2021, the CDI report of investigation was completed.
2. On 20 May 2021, 3 MXS/CC preferred charges against MSgt Andersen, and the charges were referred to a Special Court-Martial by 673 ABW/CC on 21 May 2021.
3. On 8 September 2021, the Government informed the defense that due to construction, the Air Force courtroom was unavailable. The Government also informed the defense that the current plan was to hold the court-martial at the JBER education center in a classroom, and provided pictures for the defense to review. *Attachments 1 and 2.*
4. On 16 September 2021, the defense requested that the Government look into holding the

court-martial at another location that accurately reflected the seriousness of court-martial proceedings.

5. On 20 September 2021, the Government informed the defense that local civilian courtrooms were closed due to COVID 19. The government further stated they do not consent to using the other courtroom on base, the one used by the United States Army, because the education center is better able to accommodate social distancing. They did confirm the Army courtroom is available the week of 4-8 October.

BURDEN

6. The burden of proof for any factual issue, the resolution of which is necessary to decide this motion, is a preponderance of the evidence. As the moving party, the defense bears the burden of persuasion under R.C.M. 905(c).

LAW

R.C.M. 906(b)(11)

7. “The place of trial may be changed when necessary to prevent prejudice to the rights of the accused or for the convenience of the Government if the rights of the accused are not prejudiced thereby.” Rules for Court-Martial (R.C.M.) 906(b)(11). The analysis of R.C.M. 906(b)(11) goes on to state “[w]hen necessary to change the place of trial, the choice of places which the court-martial will be transferred will be left to the convening authority, as long as the choice is not inconsistent with the ruling of the military judge.”

R.C.M. 801(a)(2)

8. “The military judge is the presiding officer in a court-martial. The military judge shall... [e]nsure that the dignity and decorum of the proceedings are maintained[.]” R.C.M. 8019(a)(2). The discussion provides further guidance, explaining “[c]ourts-martial should be conducted in an atmosphere which is conducive to calm and detached deliberation and determination of the issues presented and which reflects the seriousness of the proceedings.”

9. “Courts-martial are, and have always been, judicial proceedings. *They should be conducted as such.* We believe that, except in unusual circumstances, they should be convened with the members, counsel, law officer, and accused appearing in dress suitable to the occasion. One need hark back only briefly in military history to recall the assembly of a general court-martial with its participants clothed in their finest raiment and armed -- perhaps symbolically -- with dress swords. The use of fatigue uniforms detracts from the dignity of the court, and, while time marches on and the sword has largely disappeared, we dare suggest that some attention to tradition will add much to the awe and respect which should surround every court-martial as a part of the military judicial system.” *United States v. Scoles*, 33 C.M.R. 226, 230 (U.S. C.M.A. 1963)(emphasis added).

ANALYSIS

10. The defense acknowledges that due to the unique operational environments facing the United States Armed Forces, a court-martial may not always have the same look and feel of a standard judicial proceeding. The defense also notes that a courtroom used by the United States Army is located on the same installation as the Government's intended location in a classroom located at the JBER education center. Although the United States Army courtroom is not large, the essential elements of a courtroom are included. COVID 19 mitigation measures already require masks due to the close proximity of court members, and this would not change regardless of the court-martial venue proposed in this case. A courtroom that regularly holds courts-martial for the United States Army should also meet the needs of the United States Air Force.

11. The defense believes holding the court-martial within an actual courtroom will help the court members reflect on "the seriousness of the proceedings" as they listen to the facts and evidence in the court-martial against MSgt Andersen. MSgt Andersen is facing serious charges that could permanently impact his life. A courtroom is different from other rooms located on a military installation and reflects the seriousness of the proceedings. A classroom may be appropriate when that is the only alternative, but convenience and accessibility should not overrule "the awe and respect which should surround every court-martial as part of the military judicial system." *United States v. Scoles*, 33 C.M.R. 226, 230 (U.S. C.M.A. 1963). Particularly when a courtroom is available on the same installation where this court has been scheduled to occur.

RELIEF REQUESTED

12. The defense requests that the Court change the venue of the court-martial to the Army courtroom located on JBER for the reasons set forth above. The defense does not request an Article 39a session for this motion.

KEVIN D. MALLOY, Capt, USAF
Defense Counsel

2 Attachments:

1. 3 Pictures of the JBER Education Center Classroom
2. 3 Pictures of the JBER Army Courtroom

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of this Defense Motion for Appropriate Relief on the Military Judge and Trial Counsel on 22 September 2021, via email and e-Filing.

KEVIN D. MALLOY, Capt, USAF
Defense Counsel