

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

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| UNITED STATES |) | GOVERNMENT RESPONSE TO |
| |) | DEFENSE MOTION FOR |
| |) | APPROPRIATE RELIEF: |
| |) | CHANGE OF PLACE OF TRIAL |
| MSgt JEFFERY K. ANDERSEN |) | |
| (PACAF) |) | |
| Joint Base Elmendorf-Richardson, Alaska |) | 29 September 2021 |

MOTION

COMES NOW the United States, by and through counsel, and respectfully requests this Honorable Court DENY the Defense Motion to exclude change the place of trial.

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 normal courtroom is undergoing a renovation and will be unavailable for trial. Due to the high rates of COVID currently in Alaska, the Government has elected to hold this trial in a larger room located within the JBER Education Center, rather than the much smaller United States Army Courtroom that is also located on JBER.

FACTS

1. The Government concurs with the facts stated in paras 1-5 of the defense motion.
2. On 17 September 2021, Joint Base Elmendorf-Richardson declared a Public Health Emergency due to the increase in COVID infection rates within Alaska.

BURDEN

3. The burden of persuasion rests on the moving party, in this case the Defense. R.C.M. 905(c)(2). The burden as to any factual issue necessary to resolve this motion is by a preponderance of the evidence. R.C.M. 905(c)(1).

LAW

4. 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. R.C.M. 906(b)(11). A change of the place of trial may be necessary when there exists in

the place where the court-martial is pending so great a prejudice against the accused that the accused cannot obtain a fair and impartial trial there. R.C.M. 906(b)(11) Discussion.

5. The Military Judge is required to “ensure that the dignity and decorum of the proceedings are maintained.” R.C.M. 801(a)(2). The Rules for Courts-Martial clearly acknowledge that operational realities are permitted to influence the physical location of a Court-Martial. *See* R.C.M. 806(a) Discussion “Military exigencies may occasionally make attendance at courts-martial difficult or impracticable, as, for example, when a court-martial is conducted on a ship at sea or in a unit in a combat zone.”

ARGUMENT

6. The fact that a room is used for more than one purpose does not introduce so great a prejudice against the accused that the accused cannot obtain a fair and impartial trial. The government has prosecuted two General Courts-Martial in the past year, both of which took place in converted event space to have sufficient room for social distancing. The photo of the large classroom located on page five of the defense motion does not accurately reflect how the room will be configured for this court-martial. The tables and chairs will be moved into the traditional layout of a courtroom. Stanchions, tablecloths, a podium, and other traditional courtroom trappings will be added to present an appropriate appearance and help convey the serious nature of this proceeding.

7. Additionally, preventing the spread of COVID-19 is no less an operational consideration to a court-martial than being forward deployed or on board a ship. To prevent an outbreak of COVID among the participants of this trial, every additional mitigation measure that can reasonably be enacted should be. Holding this court-martial in the JBER Education Center will enable all personnel and spectators to remain at least six feet from each other for the entirety of the proceedings. Using the Army courtroom would not.

RELIEF REQUESTED

8. The Government requests that the Court deny the change of venue request for the reasons set forth above. The Government does not request an Article 39a session for this motion.

Respectfully submitted,

EILIF R. VANDERKOLK, Capt, USAF
Trial Counsel

I certify that I have served a true copy (via e-filing and e-mail) of the above to the Military Judge and Defense Counsel on 29 Sep 2021.

EILIF R. VANDERKOLK, Capt, USAF
Trial Counsel