

**IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS**

UNITED STATES

Appellee

**MOTION TO VIEW SEALED  
MATERIALS**

v.

Docket No. ARMY 20230029

Sergeant (E-5)

**MICHAEL V. SMITH,**

United States Army,

Appellant

Tried at Fort Huachuca, Arizona, on  
30 March, 25 May 2022, and 17-20  
January 2023, before a general court-  
martial appointed by the Commander,  
Headquarters, U.S. Army Intelligence  
Center of Excellence & Fort  
Huachuca, Lieutenant Colonel  
Michael E. Korte, Military Judge,  
presiding.

TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES ARMY COURT OF CRIMINAL APPEALS

COMES NOW the undersigned appellate defense counsel, pursuant to Rules 6.9(a) and 23 of this court's Rules of Appellate Procedure and moves to photocopy and view sealed materials contained in the record of *United States v. Michael Smith*. The undersigned appellate civilian defense counsel seeks to examine the following portions of the record reviewed in pre-trial hearings and subsequently sealed pursuant to Military Rule of Evidence (Mil. R. Evid.) 412 and Rule for Court-Martial 1113:

1. Appellate Exhibits: V to V-D, VII, X, and XXI.
2. Audio and Transcript: Closed sessions from 25 May 2022; pages 1-21.

This is not a request to review material protected under Mil. R. Evid. 513.

The undersigned appellate defense counsel, Major [REDACTED] (Branch Chief, Defense Appellate Division), Lieutenant Colonel [REDACTED] (Deputy Chief, Defense Appellate Division), and Colonel [REDACTED] (Chief, Defense Appellate Division) seek to examine all materials and related trial transcripts mentioned above and sealed by the military judge in this case.

In the present case, review of the materials sealed pursuant to Mil. R. Evid. 412 is consistent with appellate civilian defense counsel's obligations under Army Reg. 27-26, Legal Services: Rules of Professional Conduct for Lawyers (28 June 2018) and is reasonably necessary to allow counsel to evaluate the material to adequately advise appellant.

WHEREFORE, appellate defense counsel respectfully requests this court grant the instant motion.


PANEL NO. 3


MOTION TO VIEW SEALED  
MATERIAL

GRANTED:                      to viewing only.

DENIED:                      As to photocopying.

DATE: 18 August 2023

  
TUMENTUGS D. ARMSTRONG  
Captain, Judge Advocate  
Appellate Defense Counsel  
Defense Appellate Division

  
MITCHELL D. HERNIAK  
Major, Judge Advocate  
Branch Chief  
Defense Appellate Division

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was electronically submitted to Army  
Court and Government Appellate Division on August 17, 2023.



**MICHELLE L.W. SURRATT**  
**Paralegal Specialist**  
**Defense Appellate Division**

