

No. _____

IN THE
Supreme Court of the United States

JONEL H. GUIHAMA,
Petitioner,

v.

UNITED STATES,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Armed Forces**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether courts must consider the circumstances under which a confession was obtained—including extensive psychological pressure and coercive interrogation tactics—when determining if that confession is adequately corroborated under Mil. R. Evid. 304(c), in an analysis separate from and independent of the *Miranda*, 384 U.S. 436 (1966) voluntariness determination; and whether the rule provides constitutionally adequate safeguards against false confessions when courts permit corroboration to rest solely on innocent background facts that would exist regardless of whether any crime occurred, particularly where alleged victims deny any memory of abuse and the only independent evidence consists of routine family interactions?

PARTIES TO THE PROCEEDING

All parties to this proceeding appear in the caption on the cover page of this petition.

CORPORATE DISCLOSURE STATEMENT

No nongovernmental corporations are parties to this proceeding.

RELATED PROCEEDINGS

The following is a list of all proceedings related to this case within the meaning of Rule 14.1(b)(iii):

- *United States v. Guihama*, No. 23-0085 (C.A.A.F.), decided August 14, 2024.
- *United States v. Guihama*, No. ACM 40039 (A.F. Ct. Crim. App.), decided November 18, 2022.

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INTRODUCTION

After nine hours of grueling Federal Bureau of Investigation (FBI) interrogation across four different locations, MSgt Jonel Guihama confessed to sexually abusing his niece and nephew—crimes that both alleged victims deny ever occurred.

The Court of Appeals for the Armed Forces (CAAF) committed two fundamental errors in upholding MSgt Guihama's conviction. First, it failed to consider the circumstances of his confession—including the lengthy, psychologically coercive interrogation—as part of its analysis of whether the confession was trustworthy under Mil. R. Evid. 304(c). Second, it found the confession was adequately corroborated based solely on innocent background facts that would exist regardless of whether any crime occurred: that MSgt Guihama had young child relatives, occasionally visited his wife's family, and watched movies with the children.

This case exposes how the CAAF's interpretation of Mil. R. Evid. 304(c) has stripped the rule of its essential function as a safeguard against false confessions. Without clarification that trial courts must (1) consider the circumstances of a confession in their corroboration analysis and (2) require truly independent evidence specifically supporting the criminal acts—rather than just confirming innocent background facts—Mil. R. Evid. 304(c) provides only illusory protection, particularly given the documented phenomenon of false confessions in modern interrogations.

PETITION FOR A WRIT OF CERTIORARI

MSgt Jonel Guihama, United States Air Force, respectfully petitions for a writ of certiorari to review the decision of the CAAF.

OPINIONS BELOW

The August 14, 2024, opinion of the CAAF is reported at __M.J.__, 2024 WL 3839825 and reproduced at pages 1a-25a of the Appendix. The November 18, 2022, decision of the Air Force Court of Criminal Appeals (AFCCA) is unreported. It is available at 2022 WL 17078714 (A.F. Ct. Crim. App.) and reproduced at pages 26a-137a of the Appendix.

JURISDICTION

The CAAF issued its decision on August 14, 2024. On November 6, 2024, the Chief Justice extended the time in which to file a petition for certiorari to January 11, 2025. This Court has jurisdiction under 28 U.S.C. § 1259.

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

Mil. R. Evid. 304(c) provides:

(1) An admission or a confession of the accused may be considered as evidence against the accused on the question of guilt or innocence only if independent evidence, either direct or circumstantial, has been admitted into evidence that would tend to establish the trustworthiness of the admission or confession.

(2) Other uncorroborated confessions or admissions of the accused that would themselves require corroboration may not be used to supply this

independent evidence. If the independent evidence raises an inference of the truth of the admission or confession, then it may be considered as evidence against the accused. Not every element or fact contained in the confession or admission must be independently proven for the confession or admission to be admitted into evidence in its entirety.

(3) Corroboration is not required for a statement made by the accused before the court by which the accused is being tried, for statements made prior to or contemporaneously with the act, or for statements offered under a rule of evidence other than that pertaining to the admissibility of admissions or confessions.

(4) *Quantum of Evidence Needed.* The independent evidence necessary to establish corroboration need not be sufficient of itself to establish beyond a reasonable doubt the truth of facts stated in the admission or confession. The independent evidence need raise only an inference of the truth of the admission or confession. The amount and type of evidence introduced as corroboration is a factor to be considered by the trier of fact in determining the weight, if any, to be given to the admission or confession.

(5) *Procedure.* The military judge alone is to determine when adequate evidence of corroboration has been received. Corroborating evidence must be introduced before the admission or confession is introduced unless the military judge allows submission of such evidence subject to later corroboration.

STATEMENT OF THE CASE

A. Background

MSgt Jonel Guihama faced a general court-martial before a military judge alone at Joint Base Lewis-McChord in Washington in October 2019 and November 2020 for allegations relating to child pornography and sexual abuse of a child. CAAF.JA 63. The key evidence against him on the sexual abuse charges was a confession obtained after nine hours of FBI interrogation, during which he initially denied any abuse dozens of times before eventually agreeing to a confession. CAAF.JA 122.

Both alleged child victims—his nephew and niece—testified in pretrial motions and denied any memory of sexual abuse, maintaining those denials throughout their trial testimony. CAAF.JA 151, 159. Despite this, the judge admitted the confession and convicted MSgt Guihama of aggravated sexual contact with a child and aggravated sexual abuse of a child in violation of Article 120, UCMJ, 10 U.S.C. § 920 (2008 *MCM*). CAAF.JA 63. He was also convicted of multiple child pornography offenses under Article 134, UCMJ, 10 U.S.C. § 934 (2012 *MCM*). CAAF.JA 63.

Consistent with his pleas, MSgt Guihama was found not guilty of two specifications of sexual abuse of a child under Article 120b, UCMJ, 10 U.S.C. § 920b (2012 *MCM*). CAAF.JA 63. The military judge sentenced him to reduction to the lowest enlisted grade (E-1), total forfeitures of all pay and allowances, 10 years of confinement, and a dishonorable discharge. CAAF.JA 65. The convening authority subsequently approved the sentence in its entirety without modification. CAAF.JA 72. The

admission of the confession was particularly problematic given that the only purported corroboration consisted of innocent background facts that would have existed whether abuse occurred or not—such as the existence of family visits and opportunities for contact with the children.

B. The Confession Was Not Adequately Corroborated.

The CAAF's analysis of MSgt Guihama's confession reveals a fundamental inconsistency in its corroboration jurisprudence. First, the CAAF affirmatively declined to consider any evidence about the length, location, or method of the interrogation in determining if the confession was trustworthy. Pet. App. Ex. at 15a.

Next, while the court correctly recognized that certain pieces of purportedly corroborating evidence—such as the victims' lack of memory and MSgt Guihama's emotional reaction during questioning—were insufficient because they were "susceptible to multiple interpretations," it then paradoxically accepted other evidence that suffers from the same logical flaw. Pet. App. at 18a. The court found adequate corroboration in circumstances like family visits, movie-watching routines, and leave records. Yet, these pieces of evidence are equally susceptible to innocent interpretations as they merely establish normal familial interactions that would exist whether abuse occurred or not. Pet. App. at 23a-24a.

This analytical disconnect is particularly troubling given that MSgt Guihama's confession emerged only after nine hours of intensive FBI interrogation, during which he initially denied any

wrongdoing 27 times. CAAF.JA 122. The court's attempt to distinguish between evidence that merely confirms innocent background facts and evidence that actually corroborates criminal conduct breaks down under scrutiny, highlighting a concerning gap in Mil. R. Evid. 304(c)'s protective framework against false confessions.

1. The Interrogation

In early 2018, the FBI began investigating MSgt Guihama after linking his IP address to a Kik messenger chat room where child pornography links were shared in April-May 2017. CAAF.JA 74-76. The FBI had taken over another user's account and traced shared Dropbox links to MSgt Guihama's Washington State residence. CAAF.JA 74-48. Despite 15 months of surveillance, they obtained no additional evidence of criminal activity on the part of MSgt Guihama. CAAF.JA 81, 353-55.

On September 5, 2018, at approximately 6:00 a.m., thirteen armed FBI, Air Force Office of Special Investigations (AFOSI), and Task Force agents in tactical gear raided MSgt Guihama's home, forcing entry as he and his wife were waking up. CAAF.JA 84-86, 383. MSgt Guihama initially grabbed a shotgun but surrendered immediately upon realizing they were law enforcement. CAAF.JA 86.

What followed was a nine-hour interrogation sequence that began with a two-hour field interview conducted in a police vehicle outside his home. CAAF.JA 86, 116-117, 224-239.

During the grueling nine-hour process, spanning four different custodial locations, MSgt Guihama was subjected to increasingly manipulative and

coercive tactics by FBI agents. CAAF.JA 122, 240-242. In the first interview alone, he adamantly denied inappropriate contact with minors 27 times, yet the agents persisted. CAAF.JA 240-42. While detained in a police vehicle as agents raided his home and seized his property, they began their psychological manipulation by claiming that 95% of child pornography viewers also physically abuse children, insisting this was "just the way they're wired." CAAF.JA 240-42. The agent methodically worked to break down MSgt Guihama's resistance, describing a supposed "evolution" from viewing images to physical abuse, and suggesting his emotional responses were evidence of guilt rather than distress at the accusations. CAAF.JA 120.

The interrogation tactics became increasingly aggressive as the agent made it unambiguously clear that the questioning would not end until MSgt Guihama confessed, a tactic the agent conceded at trial. CAAF.JA 132. The agent repeatedly told MSgt Guihama they were "stuck" and couldn't "move forward" without an admission, effectively holding MSgt Guihama's freedom hostage to a confession. CAAF.JA 262. In a particularly disturbing attempt to normalize child abuse, the agent even referenced historical figures, claiming "Plato and Aristotle slept with eight-year-old boys all the time" and suggesting the victims "usually enjoyed it." CAAF.JA 271. At trial, the agent's testimony revealed the predatory nature of the interrogation, admitting the interview's sole purpose from the outset was to obtain evidence of sexual abuse, despite having no prior evidence or known victims—essentially a fishing expedition

designed to produce a confession at any cost. CAAF.JA 51, 132.

2. The Confession

After hours of sustained questioning, MSgt Guihama eventually confessed to touching his nephew, describing it as "just like as if [he] was watching a movie." CAAF.JA 127-31, 188, 285. After further pressure and assertions that "it never happens just once," MSgt Guihama also confessed to touching his niece on one occasion. CAAF.JA 278-279, 282.

When MSgt Guihama finally broke down after nine hours of psychological pressure, he provided a story that strategically incorporated real-life elements he knew couldn't be disputed—describing abuse that allegedly occurred while the children were asleep. CAAF.JA 127-131, 188, 279, 282, 285. The FBI's relentless questioning had effectively forced him to choose potential victims from the limited pool of children he had access to—his niece and nephew.

The profound untrustworthiness of this confession is evidenced by multiple factors: the psychologically coercive circumstances under which it was obtained, the dozens of consistent prior denials, the agent's admitted intent to continue questioning until extracting a confession, and the complete lack of meaningful corroboration. This confession bears all the hallmarks of a false confession produced by psychologically manipulative interrogation tactics designed to wear down resistance rather than uncover truth.

3. The Corroboration

At trial, the Defense moved to suppress MSgt Guihama's confession of child sexual abuse, arguing that his statements about touching his nephew and niece lacked adequate corroboration under Mil. R. Evid. 304(c). CAAF.JA 409. The military judge denied the motion, finding sufficient corroboration based on several factors: the alleged victims lived in Missouri during the broad timeframe charged; MSgt Guihama had a niece and nephew; the children had watched movies with him and fallen asleep (though specific dates and locations were unknown); MSgt Guihama's leave and travel records showed he had taken leave in areas that could have included his wife's family's location; and the alleged victims had no memory of the alleged touching. CAAF.JA 618-19.

The Government charged MSgt Guihama with offenses against his nephew and niece during two alternative timeframes: between January 28, 2011, and June 27, 2012, or between June 28, 2012, and August 27, 2013. He was ultimately convicted of acts during the first timeframe but acquitted of the same conduct charged during the second timeframe. CAAF.JA 63-64.

B. The AFCCA Decision

On November 18, 2022, the AFCCA affirmed MSgt Guihama's convictions for child pornography offenses and sexual abuse of his nephew and niece. Pet. App. at 137a. The central issue the AFCCA reviewed was whether MSgt Guihama's confession to sexually abusing the children was sufficiently corroborated under Mil. R. Evid. 304(c). While the AFCCA acknowledged that the FBI's interrogation

techniques in this case, “could produce unreliable admissions,” the court did not consider the circumstances of the confession in its corroboration analysis. Pet. App. Ex. at 124a.

Applying the three-part test from *United States v. Whiteeyes*, 82 M.J. 168 (C.A.A.F. 2022), the AFCCA analyzed whether the proffered evidence was truly “independent” evidence and whether it sufficiently corroborated the confession. Pet. App. at 87a-94a.

The court found adequate corroboration through several pieces of independent evidence: (1) MSgt Guihama had access to the victims during the timeframe in question; (2) his leave records showed opportunities for the abuse; (3) the circumstances (watching movies and falling asleep in the living room) matched witness accounts; and (4) travel vouchers confirmed his deployment return dates aligned with his general timeline of events. Pet App. at 87a-90a.

While the court acknowledged the inconsistencies in MSgt Guihama's recollection of dates and locations, it found these understandable given the passage of time and did not undermine the confession's reliability, citing *United States v. McElhaney*, 50 M.J. 819, 832 (A.F. Ct. Crim. App. 1999) (evidence need not be completely consistent to still be sufficiently reliable). Pet. App. at 90a.

Notably, the court determined that the victims' lack of memory of the abuse was consistent with MSgt Guihama's description of touching them while they slept, rather than evidence undermining his confession, distinguishing this case from *United*

States v. Seay, 60 M.J. 73 (C.A.A.F. 2004). Pet. App. at 91a.

C. The CAAF Decision

On August 14, 2024, the CAAF issued its opinion in *United States v. Guihama*, addressing the critical issue of confession corroboration requirements in military courts under Mil. R. Evid. 304(c). Pet. App. at 1a.

The CAAF first affirmatively refused to consider the specific circumstances of MSgt Guihama's interrogation with respect to the level of evidence needed to corroborate it, writing, "because [MSgt Guihama] conceded that his confession was voluntary and because the granted issue only deals with corroboration, we have no reason to address the length, location, or method of the interrogation." Pet. App. at 15a.

The CAAF then identified two significant errors in the AFCCA's analysis while applying the three-part test established in *Whiteeyes*, 82 M.J. at 174. Pet. App. at 16a. First, it found the AFCCA had incorrectly concluded that MSgt Guihama's emotional reaction during questioning—appearing about to cry, trembling mouth, and red/watery eyes—raised an inference of truth about his confession. Pet. App. at 18a-19a. Citing *United States v. Clark*, 69 M.J. 438, 445 n.1 (C.A.A.F. 2011), the CAAF explained that "subtle physical demeanor is not admissible as relevant to an accused's consciousness of guilt, because it is equally susceptible to other inferences." Pet. App. at 18a. The court noted that MSgt Guihama's reaction could have simply indicated his realization of the gravity of his situation or been triggered by being falsely

accused of such serious crimes. Pet. App. Ex. at 18a-19a.

Second, the CAAF found that the AFCCA had erroneously agreed with the military judge that the victims' lack of memory of the assaults helped corroborate MSgt Guihama's confession. Pet. App. at 19a-21a. The CAAF found this logic fundamentally flawed, as the victims would have no memory whether the events occurred while sleeping (as MSgt Guihama claimed) or never happened at all. Pet. App. at 20a. The court distinguished this case from *Seay*, 60 M.J. 73, where the absence of a murder and theft victim's wallet helped corroborate a confession because adults typically carry wallets, making the absence probative. *Id.* In contrast, the CAAF noted that sexual assault of a sleeping child is, "thankfully, a rare occurrence," making the absence of memory non-probative. Pet. App. at 20a-21a.

Despite these errors, the CAAF affirmed the conviction because it found that other independent evidence sufficiently corroborated MSgt Guihama's confession. Pet. App. at 21a. Notably, however, the CAAF's reasoning about what constituted sufficient corroboration appears to conflict with its earlier analysis about evidence that could have innocent explanations, and therefore did not corroborate the confession. For example, while the court rejected MSgt Guihama's emotional reaction and the victims' lack of memory as corroborative because they could have innocent explanations, it accepted other evidence that similarly could have innocent explanations. For instance, the court found corroborative value in evidence that MSgt Guihama visited his family during the relevant timeframe, watched movies with the children, and had leave

opportunities matching potential offense dates, which is all conduct that would be equally consistent with innocent family interactions. Pet. App. at 23a-24a. The court did not address why these potential innocent explanations did not defeat corroborative value in the same way that innocent explanations undermined the probative value of MSgt Guihama's emotional reaction and the alleged victims' lack of memory.

This apparent tension in the court's analysis raises questions about the consistency of its approach to evaluating corroborative evidence under Mil. R. Evid. 304(c). As the court noted, citing *Smith v. United States*, 348 U.S. 147, 156 (1954), "corroborative evidence does not have to prove the offense beyond a reasonable doubt, or even by a preponderance." Pet. App. at 22a. However, the court's different treatment of evidence susceptible to innocent explanations leaves uncertainty about how military judges should evaluate such evidence in future cases.

The court's analysis was informed by Congress's 2015 direction to the President to modify Mil. R. Evid. 304(c) to align with federal practice, as codified in the National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, § 545, 129 Stat. 726, 820 (2015). Under federal practice, independent evidence must "fortify the truth of the confession, without independently establishing the crime charged." *Wong Sun v. United States*, 371 U.S. 471, 489 (1963).

REASONS FOR GRANTING THE PETITION

A. MIL. R. EVID. 304(c) DOES NOT PROVIDE ADEQUATE SAFEGUARDS AGAINST FALSE CONFESSIONS.

This Court's intervention is necessary to clarify that the circumstances under which a confession is obtained must inform the corroboration analysis under Mil. R. Evid. 304(c)—an inquiry distinct from whether the confession was “voluntary” under *Miranda v. Arizona*, 384 U.S. 436 (1966).

The CAAF's current interpretation permits courts to find adequate corroboration in routine family interactions that would exist regardless of criminal conduct, while ignoring red flags that should demand heightened scrutiny of the confession's reliability. The corroboration requirement exists precisely to protect against false confessions that, even if technically voluntary under *Miranda*, may be the product of psychological coercion rather than actual guilt. The CAAF's failure to consider these circumstances in its corroboration analysis effectively strips Mil. R. Evid. 304(c) of its essential protective function.

In addition, even though the AFCCA acknowledged that the FBI's interrogation techniques used on MSgt Guihama, “could produce unreliable admissions,” the CAAF deemed the confession sufficiently corroborated based solely on evidence of normal family life. Pet. App. Ex. at 124a. This disconnect between the known risks of false confessions and the minimal corroboration required threatens to reduce Mil. R. Evid. 304(c)'s safeguards to a mere formality, particularly in cases involving

allegations of familial abuse where innocent facts can be recast as evidence of guilt.

The CAAF's interpretation of the corroboration requirement and explicit disregard of the circumstances of the confession in determining its trustworthiness effectively nullifies Mil. R. Evid. 304(c)'s protective purpose, as demonstrated in this case where basic facts about family visits and the existence of child relatives were deemed sufficient to corroborate a confession obtained through extensive interrogation, despite both alleged victims denying any abuse occurred.

As we discuss why the corroborating evidence relied upon in this case fell far short of establishing an "inference of the truth of the confession," Mil. R. Evid. 304(c), it is important to bear in mind that there are many other pieces of independent evidence that *could* have been presented to corroborate a confession in a case involving crime victims with no memory.

Meaningful corroboration in such a case could include: physical evidence such as bedding, clothing, or other items described in the confession that contain forensic evidence; DNA; behavioral and psychological evidence showing sudden behavioral changes in the children consistent with trauma; changes in their relationship with the abuser; testimony from individuals who observed suspicious behavior matching specific details from the confession; digital and documentary evidence such as messages, emails, or diary entries from the time period referencing the events; and/or photos or videos showing the specific circumstances described (such as sleeping arrangements or locations).

Other evidence such as travel and location records confirming very specific details from the confession beyond just general opportunity on unknown dates in unknown places, and the presence of distinctive details that only the perpetrator would know, such as a description of specific rooms, furniture arrangements, or other environmental details from the time period that could be independently verified could also form the basis for adequate corroboration.

In addition, knowledge of unique physical characteristics or identifying marks that would only be known through the described contact would likely be highly corroborative. None of this type of independent corroborative evidence was presented in MSgt Guihama's case.

In *United States v. Baldwin*, by contrast, the CAAF found adequate corroboration in a familial sexual abuse case where the evidence corroborating his immediate confession to law enforcement included: (1) on April 24, appellant's wife saw appellant in the child-victim's bedroom beside her bed; (2) appellant gave his wife "a strange look that she had never seen before"; (3) appellant left the bedroom and went into the living room, where his wife found him crying on the floor and talking about his own history of being molested as a child; and (4) two days after this incident, appellant sought professional counseling with the base chaplain, who referred him to a therapist. 54 M.J. 464, 465 (C.A.A.F. 2001).

Without clarification that truly independent corroboration requires evidence that specifically supports the criminal acts themselves, rather than

just the innocent circumstances in which they allegedly occurred, Mil. R. Evid. 304(c)—and, by extension, its analogous counterpart in the Federal Rules—fails to serve its essential function as a safeguard against false confessions.

The key distinction is that truly corroborative evidence should confirm distinctive aspects of the confession beyond facts that would be known to anyone with normal family access to the alleged victims. The evidence must tend to show the confession itself is reliable, not just that the basic circumstances made the crime *possible*. This is particularly critical in cases where the underlying confession comes about after grueling or lengthy interrogations, heightening the risk of a false confession. This clarification of the standard of corroboration would better serve the protective purpose of Mil. R. Evid. 304(c) while still recognizing the unique challenges of prosecuting cases where victims may have no memory of the events.

While federal courts have historically set a low bar for corroboration, the CAAF's decision goes beyond even this permissive standard, exposing a dangerous gap in the protection against false confessions—one that requires this Court's immediate attention.

The CAAF's internally inconsistent analysis demonstrates the extent of this problem. The CAAF correctly recognized that evidence equally consistent with innocence cannot corroborate a confession, rejecting both the defendant's emotional reaction during questioning and the victims' lack of memory because they were "susceptible to multiple interpretations." Pet. App. at 18a. In doing so, the

court distinguished *Seay*, 60 M.J. 73, noting that evidence of a murder victim found without their wallet differs significantly from children having no memory of abuse, because adults typically possess wallets, and their absence could corroborate a confession to theft, whereas the absence of memory would exist whether abuse had occurred, or not.

Yet the court failed to apply this same logical framework to the remaining evidence. While citing *Smith v. United States* for the proposition that corroborative evidence need not prove the offense beyond a reasonable doubt or even by a preponderance of the evidence, the court accepted as corroboration a set of innocent facts that suffer from precisely the same flaw it identified regarding the victims' lack of memory: the existence of nieces and nephews, routine family visits, and normal activities like watching movies would all exist whether abuse occurred or not. This is not the kind of evidence that "supports the essential facts admitted sufficiently to justify a jury inference of their truth" as required by *United States v. Abu Ali*, 528 F.3d 210, 235 (4th Cir. 2008).

This logical disconnect is particularly troubling given how the confession was obtained. After nine hours of psychological manipulation across four locations, with FBI agents explicitly stating they would not stop questioning until they obtained a confession, MSgt Guihama was effectively forced to construct a narrative using the only details available to him—his actual family relationships and normal interactions. Pet. App. at 23a-24a. The CAAF's decision then allowed these same innocent details to "corroborate" the coerced confession, creating a dangerous cycle where the pressure to confess leads

suspects to incorporate verifiable but innocent details, which courts then use to authenticate the coerced confession. The CAAF's refusal to consider the circumstances of the confession as part of its corroboration analysis further exacerbated the potential a false confession was utilized to secure a conviction in this case, entirely eviscerating the purpose of Mil. R. Evid. 304(c).

While Congress directed that Mil. R. Evid. 304(c) should conform to federal civilian court standards, this cannot mean abandoning meaningful corroboration requirements altogether. The CAAF acknowledged that independent evidence must do more than merely meet the low relevancy threshold under Mil. R. Evid. 401, yet its analysis effectively eliminates any meaningful distinction between relevance and corroboration. As the Supreme Court noted in *Wong Sun*, extrinsic proof must "fortify the truth of the confession." 371 U.S. 471. Confirming only innocent background details that would exist regardless of guilt does not meet this standard.

As discussed above, when considering what evidence could meaningfully corroborate a confession to child sexual abuse under Mil. R. Evid. 304(c), even in cases where victims have no memory of the events, several categories of evidence emerge that could provide the necessary corroboration without relying solely on victim testimony.

This case presents an ideal vehicle to clarify that Mil. R. Evid. 304(c)'s requirement for independent evidence that "would tend to establish the trustworthiness" of a confession must include an analysis of the circumstances under which the confession arose and demands more than just

confirmation of innocent background facts. Without such clarification, the rule provides only illusory protection against false confessions, particularly in family contexts wherein normal, innocent interactions can be reframed as "corroboration." The stakes are especially high given the documented phenomenon of false confessions and the increasingly sophisticated psychological tactics employed in modern interrogations.

This Court should grant review to establish circumstances of a confession must be considered by a court in determining if adequate corroboration exists and that truly independent corroboration requires evidence that specifically supports the criminal acts themselves, not just the innocent circumstances in which they allegedly occurred.

The current plausible interpretations of the corroboration requirement, which allow trial courts to wholly ignore coercive interrogation techniques in determining the trustworthiness of a confession, effectively nullifies Mil. R. Evid. 304(c)'s protective purpose, warranting this Court's intervention to restore meaningful safeguards against false confessions.

B. THE CAAF ERRED IN FINDING PETITIONER'S CONFESSION TRUSTWORTHY.

Even if this Court declines to address the broader doctrinal problems in the CAAF's corroboration analysis, it should still grant review because the CAAF erred in finding MSgt Guihama's confession adequately corroborated under Mil. R. Evid. 304(c). The purportedly corroborative evidence in this case establishes nothing more than that MSgt Guihama had a normal familial relationship with his niece

and nephew—a fact that provides no meaningful indication that his confession was trustworthy, particularly given the grueling and coercive interrogation tactics that were employed to secure the confession in this case.

The only independent evidence the CAAF found sufficient was that: (1) MSgt Guihama had a niece and nephew around the ages he mentioned; (2) he visited his wife's family during the relevant timeframe; (3) he watched movies with the children; and (4) his leave records showed he had opportunities to visit. Pet. App. Ex. at 23a-24a. But this evidence merely confirms the undisputed background facts about MSgt Guihama's family relationships that he would have known regardless of whether his confession was true or false.

As this Court held in *Wong Sun*, 371 U.S. at 489, corroborative evidence must "fortify the truth of the confession"—not simply establish the confessor's familiarity with basic facts about the alleged victims.

The CAAF's own precedent in *Whiteeyes*, 82 M.J. at 174, requires that corroborative evidence "raise an inference of the truth of the admission or confession." Yet nothing about an uncle visiting family, watching movies with children, or having military leave raises any inference that sexual abuse occurred. These circumstances are so common in family relationships that they cannot logically distinguish between true and false confessions. If such evidence were sufficient, the corroboration requirement would be meaningless in family abuse cases—precisely the category of cases where false confessions may be particularly concerning due to

the intense pressure suspects face during questioning about alleged crimes against children.

Moreover, the CAAF's analysis ignored a crucial fact: MSgt Guihama's initial confession came about only after he repeatedly denied any wrongdoing and underwent a polygraph examination, after which agents told him he was "clearly responding to some questions regarding sexual contact with a minor." CAAF.JA 262. This context raises serious concerns about the reliability of the confession, yet the CAAF found it adequately corroborated by evidence that would exist for any service member who occasionally visited family. This cannot be what Congress intended when it directed that Mil. R. Evid. 304(c) align with federal practice requiring meaningful corroboration of confessions.

While the CAAF may have correctly determined that the confession was "voluntary" under *Miranda* standards, the circumstances under which it was obtained should have factored heavily into the analysis of what constitutes adequate corroboration. Pet. App. at 4a, 15a-16a; 384 U.S. 436. The confession emerged only after nine hours of interrogation across four different locations, during which agents employed concerning psychological tactics—including claims that "95% of child pornography viewers also physically abuse children," references to respected historical figures to normalize child abuse, and explicit statements that questioning would not end until MSgt Guihama confessed. CAAF.JA 240-242. Such intense psychological pressure, combined with the agent's admission that they had no evidence of abuse but were determined to obtain a confession, demanded a

more compelling level of corroboration than mere evidence of routine family interactions.

This Court should grant review to correct the CAAF's misapplication of the corroboration requirement and clarify that evidence of routine family interactions cannot, standing alone, adequately corroborate a confession to familial abuse especially considering the facts and circumstances surrounding how the confession came about. Without such correction, Mil. R. Evid. 304(c)'s protection against unreliable confessions will be effectively eliminated.

CONCLUSION

This Court should grant the petition for certiorari.

Respectfully submitted,
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