



March 29, 2017

Via Postal Service and E-mail

Major General Mark A. Brown
Vice Commander, Air Education and Training Command
1 F Street, Suite 1
Joint Base San Antonio-Randolph, TX 78148

Subj: Colonel Michael A. Madrid, USAF

Dear Major General Brown:

Colonel (Col) Michael A. Madrid, USAF, retained First Liberty Institute to represent him in this matter. Please direct all correspondence related to this matter to First Liberty Institute at the contact information provided below.

This letter constitutes our request that you rescind the Letter of Admonishment (LOA) and the Unfavorable Information File (UIF) that were placed in Col Madrid's service record.

As you are undoubtedly aware, Col Madrid has devoted more than two decades to military service; first as a Naval aviator, and now as an Air Force doctor. And Col Madrid's service has been exemplary, as evidenced by the Meritorious Service Award, with three oak leaf clusters in lieu of fourth award, he recently received as the result of his "singularly distinctive accomplishments" and performance while assigned to Joint Base San Antonio-Randolph.

Factual Background

The Command Directed Investigation

In 2014, Col Hans V. Ritschard, Commander, 90th Medical Group, F.E. Warren AFB, initiated a Command Directed Investigation (CDI) into allegations of unprofessional conduct by Col Madrid. Specifically, the CDI investigated whether Col Madrid made "derogatory or demeaning comments about homosexuality."

During the CDI, Col Madrid categorically denied making derogatory or demeaning comments about homosexuality. Col Madrid stated he is a devout Christian with sincerely held religious beliefs, and that his treatment of others does not change based on their religious belief, or lack of belief, or their sexual orientation. Multiple witness statements included in the CDI deny observing or hearing Col Madrid make derogatory or demeaning comments about homosexuality. Multiple witness statements also make reference to Col Madrid's religious beliefs as a possible basis for the allegations in the CDI.

Nevertheless, even the witness statements that indicate Col Madrid held a negative view of homosexuality were based on speculation and conjecture about Col Madrid's religious beliefs, *not* observed behavior. For example, one witness stated "Col Madrid made reference to the Bible and his view that marriage should be between a man and a woman . . . I *felt* it was inappropriate for Col Madrid to make religious references in regards to . . . sexual orientation." [Emphasis added]

In April 2016, the CDI was completed and the investigator concluded that the allegations against Col Madrid were *unsubstantiated*. In accordance with Section 1.4 of the USAF CDI Guide, this means the preponderance of the evidence demonstrated that Col Madrid *did not* make derogatory or demeaning comments about homosexuality. After the CDI was unsubstantiated, the matter was closed.

Major General McCoy's Letter of Admonishment

Despite the unsubstantiated allegations, on June 29, 2016—more than 2 years after the CDI was closed—Major General (Maj Gen) John E. McCoy, who was then the acting AETC Vice Commander, issued a LOA to Col Madrid based on the very same allegations the CDI unsubstantiated. In the LOA, Maj Gen McCoy alleged that Col Madrid made a false official statement to the investigating officer when he denied the allegations in the unsubstantiated CDI. In other words, Maj Gen McCoy accused Col Madrid of lying to the investigator, even though the investigator determined that a preponderance of the evidence showed Col Madrid to be telling the truth. Specifically, Maj Gen McCoy alleged that Col Madrid “breached integrity by giving the impression that [he] had not made those comments.” As a result, Maj Gen McCoy's LOA resulted in a UIF being placed in Col Madrid's record—a potentially career-ending action.

Legal Discrepancies with the LOA and UIF

The LOA and UIF are flawed for numerous reasons. They violate federal law, Department of Defense, Air Force regulations, and they deprive Col Madrid of due process. These adverse and potentially career-ending punishments should be rescinded and removed from Col Madrid's service record.

First, Col Ritschard did not follow prescribed Air Force procedure. Section 2.3.3 of the USAF CDI Guide states “Commanders should inform the installation Equal Opportunity (EO) office upon receipt of any allegations of discrimination *EO has the right of first refusal to investigate.*” To date, there is no indication that Col Ritschard either informed the installation EO office or gave the EO right of first refusal to investigate upon receipt of the allegations against Col Madrid.

Second, Col Madrid has been denied adequate access to the CDI. Paragraph 7.4.3 of the USAF CDI Guide states “the commander should provide defense counsel access to a CDI.” After numerous requests, Col Madrid was finally provided a copy of the CDI report. The CDI report, however, was so heavily redacted that Col Madrid still does not know the Investigating Officer's (IO) findings, conclusions, and recommendations. All we know is that the IO unsubstantiated the allegations. Without the opportunity to review the CDI report in its entirety, it is practically impossible to rebut the LOA.

Third, Maj Gen McCoy's LOA deprives Col Madrid of due process because it purports to overrule the unsubstantiated CDI. In other words, more than 2 years after the CDI cleared Col Madrid of the allegations, Maj Gen McCoy, who was apparently dissatisfied with the CDI, took matters into his own hands and issued the LOA based upon his own opinions. Maj Gen McCoy took adverse action against Col Madrid based on an entirely new allegation, but without introduction new evidence or conducting a new investigation. Thus, Col Madrid never received the benefit of an independent, impartial investigation into Maj Gen McCoy's new allegations. As

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stated above, Col Madrid has not yet had the opportunity to review the *original* CDI in its entirety, let alone defend against Maj Gen McCoy's entirely new allegations. Paragraph 4.1.3 of AFI 36-2907 provides that the legal standard of proof when taking adverse administrative action against an Airman is by a "preponderance of the evidence." Moreover, Paragraph 4.1.3 states, "if such proof is lacking, the administrative action is susceptible of being found legally unsupported." Here, Maj Gen McCoy has failed to meet the legal standard under AFI 36-2907. He provided no evidence that Col Madrid made false official statements. Indeed, Maj Gen McCoy's LOA belies his own conclusion in that he accused Col Madrid of "giving the impression that [he] had not made those comments." Giving an impression is not the appropriate legal standard for making a false official statement.

Finally, federal law and DOD regulations protect Col Madrid's right to free exercise of his religious beliefs. The IO was correct to unsubstantiate the allegations against Col Madrid. Nevertheless, the investigation should never have occurred in the first place. The U.S. Constitution, the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb-1, and Department of Defense Directive (DODD) 1300.17 protect service members' rights of religious expression, including Col Madrid's right to express his sincerely held religious beliefs. The LOA and UIF are therefore wholly inconsistent with the DOD and the Air Force's commitment to religious freedom.

Conclusion

For the foregoing reasons, we respectfully request you rescind the LOA, and remove the LOA and UIF from Col Madrid's service record. Should you deny this request, we are prepared to take the necessary legal action to vindicate Col Madrid. I am willing to meet in person to discuss this matter, if you desire. I may be reached via e-mail at [REDACTED]

Sincerely,



Michael Berry
Senior Counsel & Director of Military Affairs