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**The Inspector
General
of the Air Force**

Report of Inquiry

Travis AFB 3 Apr 16 Retirement Ceremony

July 2016

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REPORT OF INQUIRY

CONCERNING

TRAVIS AFB 3 APR 16 RETIREMENT CEREMONY

PREPARED BY

MR. [REDACTED]

July 2016

I. INTRODUCTION

The Secretary of the Air Force (SECAF) tasked the Air Force Inspector General (SAF/IG) to conduct an inquiry into events that took place during the 3 Apr 16 retirement ceremony in honor of MSgt Charles Roberson at Travis AFB, CA.¹ The 23 Jun 16 SAF/IG tasking order specifically directs the Investigation Officer (IO)² to, "... conduct an inquiry into the facts and circumstances surrounding the event; the governing laws, regulations, and policies and how they were applied." (Ex 1, Ex 2)

During the flag folding portion of MSgt Roberson's retirement ceremony taking place in the 749th Aircraft Maintenance Squadron (749 AMXS), a retired service member in civilian clothes, Mr. Oscar Rodriguez, approached the stage and began a narration of the flag folding event. A uniformed non-commissioned officer (NCOs) approached Mr. Rodriguez, and asked him to return to his seat several times. When Mr. Rodriguez did not return to his seat, despite these repeated requests, and continued with his narration, with apparent intent not to comply with the NCO's requests, several NCOs then physically removed Mr. Rodriguez by escorting him from the auditorium and the building itself. The 60 Air Mobility Wing Security Forces Squadron (60 AMW/SFS) responded to the scene and questioned several personnel involved. After assessing the situation, 60 AMW/SFS officers advised Mr. Rodriguez to leave the installation. (Ex 13:13) This entire event is documented in a handheld video, posted online on or about the day of the ceremony. (Ex 6)

As a result of these events, Mr. Rodriguez secured the legal services of the First Liberty Institute of Plano TX. First Liberty Institute, on behalf of their client, sent a 20 Jun 16 certified letter to the Commander, 4th Air Force (4 AF), and Commander, 349th Air Mobility Wing (349 AMW) (Reserve), stating they intended to file a lawsuit against the Air Force if requested relief

¹ SECAF verbally tasked SAF/IG to conduct the Inquiry.

² SAF/IG assigned the case to Mr. [REDACTED] the Deputy Director, Air Force IG Complaint Resolution Directorate (SAF/IGQ), who holds an appointment letter dated 13 Oct 15. (Ex 2)

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was not granted. (Ex 3) As a result of the subsequent broad media coverage of this event, it also drew Congressional interest. Sen John McCain, Chairman of the Senate Committee on Armed Services, sent a 20 Jun 16 memorandum to SECDEF, requesting “immediate action to ensure a complete and independent investigation of this matter.” (Ex 4) Based on the broad media coverage and in the interest of understanding the facts of this matter, SECAF tasked SAF/IG to initiate this Inquiry, resulting in the 23 Jun 16 tasking memorandum. (Ex 1)

Ten witnesses were interviewed or contacted during this inquiry. Witness testimony was generally consistent, with some exceptions which will be addressed during the analysis.

- SMSgt (ret) Oscar Rodriguez – Former member, 749 AMXS, Travis AFB CA (Ex 26)
- MSgt (ret) Charles Roberson - Former member, 749 AMXS, Travis AFB CA (Ex 27)
- ██████████ 749 AMXS, Travis AFB CA (Ex 28)
- ██████████ 749 AMXS, Travis AFB CA (Ex 29)
- ██████████ 749 AMXS, Travis AFB CA (Ex 30)
- ██████████ 749 AMXS, Travis AFB CA (Ex 31)
- ██████████ 749 AMXS, Travis AFB CA (Ex 32)
- ██████████ 349 AMW, Travis AFB CA (Ex 33)
- ██████████ 749 AMXS, Travis AFB CA (Ex 34)

██████████ was contacted and scheduled for an interview on 6 Jun 16. ██████████ is one of the four NCOs who assisted in the removal of Mr. Rodriguez from the retirement ceremony and is the subject of an allegation of battery.³

II. SCOPE AND AUTHORITY

The Secretary of the Air Force has sole responsibility for the function of The Inspector General of the Air Force.⁴ When directed by the Secretary of the Air Force or the Chief of Staff of the Air Force, The Inspector General has the authority to inquire into and report on the discipline, efficiency, and economy of the Air Force and perform any other duties prescribed by the Secretary or the Chief of Staff.⁵ Pursuant to Air Force Instruction (AFI) 90-301, *Inspector General Complaints Resolution*, 27 Aug 15, paragraph 1.13.4, The Inspector General has oversight authority over all IG investigations conducted at the level of the Secretary of the Air Force. (Ex 18:19)

³ For clarification, the SFS ROI cites “battery” as the description of the offense on page 3, with UCMJ as the statutory basis. The ROI further states “Simple Battery, Art 128/UCMJ” as the matter investigated on page 13. (Ex 13:11,13) Several documents relevant to this case refer to the offense as “Assault,” including the 20 Jun 16 First Liberty Demand letter. (Ex 3) The matter of this offense rests with the respective 349 AMW command authority and advising Staff Judge Advocate office for final resolution.

⁴ Title 10, United States Code, Section 8014

⁵ These authorities are outlined in Title 10, United States Code, Section 8020

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Pursuant to AFI 90-301, paragraph 1.13.3.1, the Director, Senior Official Inquiries Directorate (SAF/IGS), is responsible for performing special investigations directed by the Secretary, the Chief of Staff, or The Inspector General and all investigations of senior officials. One of several missions of The Inspector General of the Air Force is to maintain a credible inspector general system by ensuring the existence of responsive complaint investigations characterized by objectivity, integrity, and impartiality. The Inspector General ensures the concerns of all complainants and subjects, along with the best interests of the Air Force, are addressed through objective fact-finding.

III. BACKGROUND

On 3 Apr 16, MSgt Charles Roberson held a retirement ceremony attended by Mr. Rodriguez, who intended to perform the narration for a flag folding ceremony as requested by the retiree. (Ex 27:2) Mr. Rodriguez is a retired SMSgt, who had performed this same narration at several previous retirement ceremonies, and attended MSgt Roberson's ceremony with intent to perform his unique flag folding narration at the request of MSgt Roberson. (Ex 26:3)

Mr. Rodriguez testified that he had performed a flag folding ceremony narration more than 100 times starting in 2001. (Ex 26:3) A 33-year veteran of the Air Force, Mr. Rodriguez retired in 2013 while assigned to the 349 AMXS, Travis AFB CA. One of Mr. Rodriguez's final duty assignments was that of Honor Guard, assigned to the 60 AMW. (Ex 26:2)

On 6 Mar 16, MSgt Roberson attended the retirement ceremony of a co-worker assigned to the 749 AMXS, [REDACTED] (Ex 27:2) It was during this ceremony, that MSgt Roberson first observed Mr. Rodriguez performing his unique flag folding narration. MSgt Roberson was so impressed with Mr. Rodriguez's performance, that he asked Mr. Rodriguez to perform the same narration at his ceremony the following month. According to MSgt Roberson, Mr. Rodriguez told MSgt Roberson that he would narrate the flag folding at his ceremony. (Ex 27:3)

The flag folding presentation was the last event scheduled during MSgt Roberson's 3 Apr 16 retirement ceremony. (Ex 5:12) After two squadron honor guard personnel unfolded the US Flag, Mr. Rodriguez stood and joined the flag folding formation. A member of the unit stood up beside Mr. Rodriguez and made several requests for Mr. Rodriguez to take his seat. Mr. Rodriguez did not take his seat, and he began his unique flag folding presentation narration. He was then quickly escorted to the rear exit of the auditorium and then out of the building by at least four unit-assigned NCOs. A video posted online documents these events is available at "<http://www.jqpublicblog.com/video-retired-smsgt-forcibly-removed-retirement-ceremony/>." (Ex 6) 60 AMW/SFS Personnel responded to the scene, and after questioning several witnesses, recommended Mr. Rodriguez depart the installation. (Ex 26:14-15)

Subsequently, Mr. Rodriguez, through his First Liberty Institute counsel, has alleged that he was assaulted by the AF members who escorted him out of the auditorium and that his First, Fourth and Fifth Amendment rights were violated by preventing him from performing his unique narration as part of the flag folding ceremony. More specifically, Mr. Rodriguez and his counsel have alleged Mr. Rodriguez's constitutional rights were violated by Lt [REDACTED] [REDACTED] 749 AMXS, and the four NCOs, because his flag folding narration included the word "God." (Ex 3:4)

The allegations of assault were investigated by the 60 AMW/SFS in the weeks following the ceremony, and documented in a report dated 13 May 16. (Ex 13) This report has been provided to the Commander, 349th Maintenance Group (349 MXG) for command action with legal assistance provided by 60 AMW/Staff Judge Advocate (SJA) and 349 AMW/SJA. This Inquiry does not address the criminal allegations of assault, but rather concentrates on the events leading up to the 3 Apr 16 retirement ceremony to determine whether Mr. Rodriguez was improperly prohibited from expressing his religious beliefs.

IV. CHRONOLOGY OF EVENTS

On 6 Mar 16, a retirement ceremony was held for [REDACTED] 749 AMXS. (Ex 13:28) Mr. Rodriguez performed the narration for the flag folding presentation during the retirement ceremony. MSgt Charles Roberson, also assigned to the 749 AMXS, attended this ceremony. (Ex 13:28) [REDACTED] was also in attendance at the ceremony. (Ex 34:2)

On 6 Mar 16, after the retirement ceremony, MSgt Roberson asked Mr. Rodriguez if he would perform his unique flag folding ceremony narration at his (MSgt Roberson's) own retirement ceremony the following month. According to MSgt Roberson, Mr. Rodriguez agreed to do so. (Ex 13:28)

On 6 Mar 16, after [REDACTED] retirement ceremony, [REDACTED] met with the senior members of his squadron staff and explained that Mr. Rodriguez was not welcome in the 749 AMXS nor would he be permitted to perform his unique script at future flag folding presentations in 749 AMXS retirement ceremonies. [REDACTED] explained that while a member of the 349 AMXS, SMSgt Rodriguez had been dismissed from the Travis Honor Guard Team as result [REDACTED] misconduct and he had repeatedly violated a verbal order not to participate in Honor Guard functions. (Ex 34:10) [REDACTED] spoke with MSgt Roberson after this discussion and informed MSgt Roberson that Mr. Rodriguez would not be permitted to conduct the flag folding presentation "because he was fired from the honor guard." (Ex 31:5)

During the week of 6 Mar 16, MSgt Roberson informed [REDACTED], one of two 749 AMXS retirement ceremony coordinators, that he had asked Mr. Rodriguez to narrate the flag folding at his ceremony. (Ex 13:28) [REDACTED] informed MSgt Roberson that Mr.

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Rodriguez may not be able to attend the ceremony and that MSgt Roberson needed to speak with [REDACTED] 749 AMXS [REDACTED] on the matter. (Ex 13:28)

On or about 15 Mar 16, SMSgt [REDACTED] spoke with MSgt Roberson again, informing him that due to previous misconduct and removal from the Honor Guard, Mr. Rodriguez would not be permitted to perform at the retirement ceremony. (Ex 13:28) [REDACTED] testified he told MSgt Roberson, "... you did 26 good years in the military, if you invite Oscar Rodriguez to your retirement he will ruin it. Do not have Oscar come to your retirement. And that's quote, 'He will ruin your retirement.'" (Ex 30:5)

On or about 28 Mar 16, MSgt Roberson spoke with [REDACTED] who, after discussing with [REDACTED] the matter of Mr. Rodriguez performing in the retirement ceremony, recommended to MSgt Roberson that he not invite Mr. Rodriguez to the event. (Ex 13:28)

On or about 29 Mar 16, according to MSgt Roberson, he informed Mr. Rodriguez that his squadron leadership did not want Mr. Rodriguez to perform the flag folding ceremony during his retirement ceremony, however he also told Mr. Rodriguez that he still wanted Mr. Rodriguez to perform the flag folding ceremony. (Ex 13:28-29)

On 31 Mar 16, Mr. Rodriguez emailed [REDACTED] 349 AMW/CC, "requesting authorization to enter [the] 749th AMXS building for a flag folding presentation for a fellow reservist retirement. [REDACTED] has [barred] me [from] the building. This retirement takes place April 3." [REDACTED] did not intend to reply to the email. (Ex 13:37-38)

On or about 1 Apr 16, according to MSgt Roberson, he sent Mr. Rodriguez an invitation to the retirement ceremony and added him to the guest list. (Ex 13:29) According to MSgt Roberson, Mr. Rodriguez advised him, "that he had contacted IG HQ, the Wing Commander, General Johnson of the USAFR, and others." MSgt Roberson further stated he told Mr. Rodriguez, "they had conceded and understood he would be my guest at the ceremony, but they were adamant that he not do the speech." (Ex 13:29)

On or about 2 Apr 16, according to MSgt Roberson, he informed Mr. Rodriguez that squadron leadership consented to Mr. Rodriguez attending as a guest, but Mr. Rodriguez could not perform the flag folding ceremony. (Ex 13:29)

On the morning of 3 Apr 16, [REDACTED] discussed Mr. Rodriguez attending MSgt Roberson's retirement ceremony with MSgt Roberson, specifically telling MSgt Roberson that Mr. Rodriguez could attend but was not permitted to perform the flag folding presentation. (Ex 13:29, Ex 27:4-5, Ex 34:11-12)

On or about 3 Apr 16, according to MSgt Roberson, he informed Mr. Rodriguez that [REDACTED] told MSgt Roberson that Mr. Rodriguez was not permitted to perform the flag

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folding ceremony; that MSgt Roberson still hoped Mr. Rodriguez would perform the speech; and that MSgt Roberson left it up to Mr. Rodriguez to make the decision. (Ex 13:29)

On 3 Apr 16, approximately 1300 hours, MSgt Roberson met with [REDACTED] the ceremony presiding official, and practiced the retirement ceremony script to include the flag folding ceremony with music and the military members performing the flag folding narration. Mr. Rodriguez was not present at this practice event. (Ex 13:29, Ex 33:9-10)

On 3 Apr 16, at approximately 1500 hours, MSgt Roberson's retirement ceremony began with an invocation by [REDACTED] (Ex 13:30, Ex 33:12)

On 3 Apr 16, during the last event of MSgt Roberson's retirement ceremony, Mr. Rodriguez stood and began to narrate the flag folding presentation and was subsequently removed from the facility by members of the 749 AMXS. (Ex 13:30, Ex 33:13)

V. STANDARDS

Amendments to the U.S. Constitution:

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (Ex 15) (Emphasis added)

42 U.S. Code § 2000bb-1 - Free exercise of religion protected:

(a) In general

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Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) Exception. Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial relief

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(Pub. L. 103-141, § 3, Nov. 16, 1993, 107 Stat. 1488.) (Ex 16) (Emphasis added)

Department of Defense Instruction Number 1300.17, Accommodation of Religious Practices Within the Military Services, February 10, 2009, Incorporating Change 1, Effective January 22, 2014:

1. PURPOSE. This Instruction:

a. Reissues Reference (a) as a DoD Instruction in accordance with the authority in Reference (b).

b. Prescribes policy, procedures, and responsibilities for the accommodation of religious practices in the Military Services.

4. POLICY. The U.S. Constitution proscribes Congress from enacting any law prohibiting the free exercise of religion. It is DoD policy that:

a. **The Department of Defense places a high value on the rights of members of the Military Services to observe the tenets of their respective religions or to observe no religion at all.** It protects the civil liberties of its personnel and the public to the greatest extent possible, consistent with its military requirements, in accordance with DoD Instruction (DoDI) 1000.29 (Reference (c)).

b. In accordance with section 533(a)(1) of Public Law 112-239 (Reference (d)), as amended, unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Military Departments will accommodate individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs) of Service members in accordance with the policies and procedures in this instruction. This does not preclude disciplinary or administrative action for conduct by a Service member requesting religious accommodation that is proscribed by Chapter 47 of Title 10, United States Code (the Uniform Code of Military Justice), **including actions and speech that threaten good order and discipline.**

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c. **DoD has a compelling government interest in mission accomplishment**, including the elements of mission accomplishment such as military readiness, unit cohesion, **good order, discipline**, health, and safety, on both the individual and unit levels. An essential part of unit cohesion is establishing and maintaining uniform military grooming and appearance standards.

d. In so far as practicable, a Service member's expression of sincerely held beliefs (conscience, moral principles, or religious beliefs) may not be used as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment. (Ex 17) (Emphasis added)

AFI 1-1, Air Force Standards, 7 Aug 12, Incorporating Change 1, 12 Nov 14:

2.1. Overview. The Air Force has a very important national defense mission; and you, as a member of the Air Force, have serious responsibilities for carrying out that mission. You are responsible for following orders, performing specific daily tasks related to your duties, and living up to the high standards of the Air Force. **Maintaining good order and discipline is paramount for mission accomplishment....**

2.11. Free Exercise of Religion and Religious Accommodation. **Every Airman is free to practice the religion of their choice or subscribe to no religious belief at all.** You should confidently practice your own beliefs while respecting others whose viewpoints differ from your own. **Every Airman also has the right to individual expressions of sincerely held beliefs, to include conscience, moral principles or religious beliefs, unless those expressions would have an adverse impact on military readiness, unit cohesion, good order, discipline, health and safety, or mission accomplishment.**

2.11.1. Your right to practice your religious beliefs does not excuse you from complying with directives, instructions and lawful orders; however, you may request religious accommodation. Commanders and supervisors at all levels must fairly consider requests for religious accommodation. Airmen requesting accommodation will continue to comply with directives, instructions and lawful orders from which they are requesting accommodation unless and until the request is approved.

2.11.2. **If it is necessary to deny free exercise of religion or an accommodation request, the decision must be based on the facts presented, must directly relate to the compelling government interest of military readiness, unit cohesion, good order, discipline, health and safety, or mission accomplishment, and must be by the least restrictive means necessary to avoid the cited adverse impact.**

2.12. Balance of Free Exercise of Religion and Establishment Clause. Leaders at all levels must balance constitutional protections for their own free exercise of religion, including individual expressions of religious beliefs, and the constitutional prohibition against governmental establishment of religion. They must ensure their words and actions cannot reasonably be construed to be officially endorsing or disapproving of, or extending preferential treatment for any faith, belief, or absence of belief. (Ex 19) (Emphasis added)

AFI 1-2, Air Force Standards, 7 Aug 12

2. Commander Conduct.

2.1. Special authorities and responsibilities are inherent with command. In addition to leading people to accomplish an assigned mission, **commanders have the lawful authority and responsibility to promote and safeguard the morale, physical well-being, and the general welfare of persons under their command.**

3.2. Lead People. Effectively leading people is the art of command. Commanders must maintain effective communication processes and ensure unit members are well disciplined, trained and developed. At all times, commanders must lead by personal example and pay judicious attention to the welfare and morale of their subordinates. Commanders will enforce the Air Force cultural standards on conduct, performance, and discipline outlined in AFI 1-1, *Air Force Standards*. Further, **commanders will establish and maintain a healthy command climate which fosters good order and discipline**, teamwork, cohesion and trust. A healthy climate ensures members are treated with dignity, respect, and inclusion, and does not tolerate harassment, assault, or unlawful discrimination of any kind. (Ex 20) (Emphasis added)

AFI 34-1201, Protocol, 25 Jan 13:

2.15. Flag Folding Ceremony. This paragraph discusses folding the flag of the United States at ceremonies other than military funerals. According to *Title 4 United States Code*, there is no specific meaning assigned to the folds of the flag. Although there are flag folding ceremony options offered by various national interest groups, these are not official Air Force ceremonies. The Air Force developed a script that provides a historical perspective on the flag. There are no ceremonies in the Air Force requiring a script to be read when the flag is folded. **However, when a flag folding ceremony is desired and conducted by Air Force personnel at any location, on or off an installation, this script is the only one that may be used.** This includes printing in programs and/or any handouts. See [Attachment 4](#) for this script and a diagram depicting the proper method for folding the flag of the United States. (Ex 21:24,91) (Emphasis added)

AFI 36-3203, Service Retirements, 18 Sep 15:

6.1. Recognition of RegAF, AFR and ANG Members Being Retired.

6.1.1. Tradition. One of the oldest traditions of military service is to recognize members who are retiring from a career of long and honorable service. Military members should retire with a tangible expression of appreciation for their contributions to the Air Force and our mission. They should retire with the assurance that the AF continues to view them as members of the Air Force family in retirement.

6.1.2. Responsibility. Commanders must evaluate and recognize the contributions of their retiring members (T-3). Commanders will ensure a retirement ceremony is conducted for all retiring members unless the member specifically requests not to have a ceremony (T-3).

6.1.3. Ceremony. Commanders must offer all members a formal ceremony in keeping with the customs and traditions of the service (T-3). **The commander takes ultimate responsibility for conducting the retirement ceremony, meeting the basic intent of this military function. If the member prefers to have an informal retirement ceremony, commanders have leeway to conduct the ceremony as they see fit.** The member may wish to request a specific military member, retired military member or federal civilian employee as the presiding official. The member must notify their commander of their choice to officiate their retirement ceremony. A unit may conduct the ceremony as part of formal military formation, such as a retreat and parade, when conditions permit. Commanders and supervisors should encourage retirement ceremony attendance by unit personnel, relatives, friends, photographers, and local public relations representatives....

6.1.3.2. **Commanders will follow formal ceremony procedures unless the member prefers an informal ceremony (T-3)....** (Ex 23) (Emphasis added)

USAF Honor Guard Manual, *Base Honor Guard Program*, 23 Nov 15,

Foreword.

Ceremonial guardsmen are a picture-perfect example of individuals who are highly motivated, **maintain exceptionally high standards of conduct, both on and off-duty**, and exude enormous amounts of pride in all they do.

1.1. Basic Philosophy. The ceremonial guardsman is an **individual of good reputation having integrity, ethical conduct and exhibiting standards which merit respect; responsible for protecting and overseeing the maintenance of standards on and off duty.** (Ex 24) (Emphasis added)

The Military Commander and the Law, 2015

Free Speech, Demonstrations, Open Houses and Hate Groups

Air Force commanders have the inherent authority and responsibility to execute the mission, protect resources, and maintain good order and discipline. This authority and responsibility includes placing lawful restrictions upon certain demonstration and protest activities.

Commander Responsibilities

- **Commanders must preserve the service member's right of expression, consistent with good order, discipline and national security, to the maximum extent possible.** To properly balance these interests, commanders must exercise prudent judgment and consult with their staff judge advocates (SJA).

Workplace Religious Expression

- **Religious expression cannot be singled out for special restrictions** not applicable to nonreligious speech. Stated somewhat differently, expression cannot be restricted just because it involves religion. Any restriction would have to be based on generally

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applicable, content-neutral factors such as disruption to mission or adverse impact on good order and discipline. Religion-related restrictions would be appropriate if the expression could reasonably be regarded as suggesting Air Force endorsement of religion, superiors forcing subordinates to participate, listen, etc. (Ex 22) (Emphasis added)

VI. ANALYSIS.

Mr. Rodriguez stated in his 29 Jun 16 witness interview and 20 Jun 16 First Liberty Institute memorandum that his First, Fourth and Fifth Amendment rights were violated by not permitting him to complete his flag folding ceremony narration, and that members of the 749 AMXS committed assault and battery in physically removing him from the auditorium. (Ex 3:4, Ex 26:16) As previously stated, the alleged acts of assault have been investigated by 60 AMW/SFS and a Report of Investigation (ROI) is with the 349 MXG/CC. (Ex 13)

This analysis will concentrate primarily on Mr. Rodriguez’s allegations that his civil liberties were violated, specifically, if religion had any basis for the removal of Mr. Rodriguez from the ceremony. Beyond the basis of religion, this Inquiry will analyze several additional reasons Mr. Rodriguez may have been removed such as compliance with Air Force Protocol Instruction, not being a planned participant in the retirement ceremony, and finally the background and previous conduct of Mr. Rodriguez.

On 4 Apr 16, a John Q. Public (JQP) online article reported the removal of Mr. Rodriguez from MSgt Roberson’s retirement ceremony, citing unknown reasons why Mr. Rodriguez was removed from the retirement ceremony, mentioning only alleged “bad blood” between Mr. Rodriguez and the [REDACTED] [REDACTED] (Ex 6:2) The 4 Apr 16 JQP article contained an extensive Facebook comment from the presiding officer of the retirement ceremony, [REDACTED] who, although critical of the unit leadership for the actions taken during the ceremony, did not attribute any of the events to Mr. Rodriguez’s narration script which contained the word “God,” stating only that there were “personal issues” between Mr. Rodriguez and the 749 [REDACTED] (Ex 6:3-4)

On 8 Apr 16, Mr. Rodriguez sent an email to the 60 AMW/SFS investigating officer, [REDACTED] (Ex 13:25-27) Mr. Rodriguez alleged assault and battery during his 3 Apr 16 removal from the retirement ceremony, but he did not claim during this initial report that his civil liberties were violated based on of the religious content (“God”) of his narration. (Ex 13:25-27)

First Liberty Institute published a press release on their own website on 20 Jun 16 titled, “Attorneys Demand Justice for Air Force Veteran Kicked Off Military Base Over Speech Including the Word ‘God.’” (Ex 8) This press release was the first indication that Mr. Rodriguez believed he was removed from the retirement ceremony because his script contained the word “God.”

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Also on 20 Jun 16, First Liberty Institute sent the “demand letter” memorandum which stated Mr. Rodriguez’s complaint to the AF. (Ex 3) The basis of Mr. Rodriguez’s 20 Jun 16 allegation of civil liberty violations is that the script he was prevented from reciting mentions the word “God.” The First Liberty memorandum states:

Specifically, [REDACTED] did not want Mr. Rodriguez to participate as a speaker because, historically, Mr. Rodriguez’s flag-folding speeches make references to “God.” In other words, [REDACTED] did not want Mr. Rodriguez to engage in religious speech during the retirement ceremony. ...it is clear that members of the 749th AMXS violated Mr. Rodriguez’s rights under the First Amendment to the United States Constitution. Military officers and NCOs have no right to assault and drag away a private citizen simply because they do not want him to mention the word “God.” The fact that Mr. Rodriguez was going to mention the word “God,” at the behest of the retiring service member, is an insufficient basis to silence him, much less commit assault and battery against him, followed by forcibly dragging him away. (Ex 3:1, 4) (Emphasis added)

The *Washington Times* reported on 20 Jun 16 that Mr. Rodriguez was removed from the ceremony because “he was invited to give a speech referencing ‘God,’” citing First Liberty’s press release that same day as the source. (Ex 9)

The President of the Military Freedom Foundation, Mr. Michael L. “Mikey” Weinstein, released an OP-ED on 23 Jun 16, citing a contrary explanation for the events which transpired on 3 Apr 16. (Ex 10) Specifically, Mr. Weinstein cited Mr. Rodriguez’s background and use of the non-AFI approved script as the basis for Mr. Rodriguez’s removal, rather than on the fact that his script contained the word, “God.” It should be noted that some facts cited in Mr. Weinstein’s article are not supported by the evidence, such as Mr. Rodriguez being “banned” from the installation. This Inquiry found no evidence that Mr. Rodriguez had ever been banned from the installation, nor any evidence that Mr. Rodriguez is currently banned from any military installation. (Ex 10:3)

A 24 Jun 16 John Q. Public article noted that, although their initial 4 Apr 16 reporting of the events did not involve any religious implications, after seeking First Liberty Institute counsel, “his [Mr. Rodriguez’s] representatives studied the fact pattern, they quickly recognized the Air Forces’ vulnerability to a public relations scandal.” (Ex 12:2) The article further states, “Rodriguez’s lawyers astutely got big media interested in what would certainly be a hot-button element of the story, and the issue swiftly appeared in national outlets.” (Ex 12:2) The JQP article appears consistent with the known media releases prior to 20 Jun 16, as no sources or personnel involved appear to have reported the removal of Mr. Rodriguez as religious-based prior to 20 Jun 16. Several media sources began reporting the issue as a violation of religious freedom after the 20 Jun 16 press release. Consequently, Sen McCain also sent his memorandum requesting SECDEF’s immediate attention to the matter on 20 Jun 16, citing press reports as the source. (Ex 4, Ex 9, Ex 10, Ex 11)

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The following analysis will present documentary evidence and witness testimony to determine if Mr. Rodriguez's reference to the word "God," or any other religious references, were the basis of restricting him from participating in the retirement ceremony and his ultimate removal, thus violating his civil liberties. In the event the preponderance of evidence does not support the removal was based on religious references, this inquiry will analyze additional plausible reasons why Mr. Rodriguez was removed, and if his civil liberties were violated.

Removal Based on Reference to "God"

Mr. Rodriguez stated in his 29 Jun 16 interview that he has performed the flag folding presentation approximately 100 times or more since 2001. (Ex 26:3) He also stated that he has used two separate scripts during that time, the script found in AFI 34-1201, *Protocol*, 25 Jan 13, Attachment 4 (Ex 21:91), and one that he wrote himself using various sources and scripts previously used. (Ex 26:3-4, Ex 35) The word "God" does not appear in the AFI 34-1201 script; Mr. Rodriguez's script contains the word "God" six times, all in the last few lines. Although Mr. Rodriguez testified that he believed he was removed because his script contained the word "God," he offered no specific evidence or testimony to support that this was the reason he was removed – only that he was removed before he could recite his script, which did contain the word "God." (Ex 26:16) During his interview, Mr. Rodriguez referenced a previous supervisor who expressed concern that his script mentioned "God," but offered no specific reason that [REDACTED] did not want him to narrate his script. (Ex 26:5) Mr. Rodriguez further stated that he did not receive any guidance directly from [REDACTED] in performing at MSgt Roberson's retirement ceremony. Mr. Rodriguez did state that MSgt Roberson told him [REDACTED] had an issue with me doing this speech." (Ex 26:7) Neither Mr. Rodriguez nor his lawyer would "speculate" on the actual reason [REDACTED] did not want Mr. Rodriguez to perform the speech, "I cannot answer for [REDACTED] in, on whatever rationale he has in his head as to why he did this." (Ex 26:7, 9)

According to MSgt Roberson's testimony, he observed the flag folding presentation narration performed by Mr. Rodriguez at [REDACTED] 6 Mar 16 retirement ceremony. (Ex 27:2-3) This presentation so impressed MSgt Roberson that he asked Mr. Rodriguez to perform that same script at his own 3 Apr 16 retirement ceremony. Mr. Rodriguez confirmed that it was his own script that he performed at [REDACTED] retirement, not the AFI script. (Ex 27:3)

Although MSgt Roberson was not familiar with the AFI-approved script, or that Mr. Rodriguez was not using an AFI-approved script but rather one that he developed, he was asked if he believed the reason Mr. Rodriguez was not permitted to recite his narration was based on Mr. Rodriguez using the word "God" in his narration, or some other reason:

"To be honest, I don't know the reason but the only thing I can say is that there was mention of um, the script not being uh, approved any longer or something." (Ex 27:9)

Six additional members of the 749 AMXS were interviewed, all of whom attended the 3 Apr 16 ceremony and were involved in the planning and coordination discussions leading up to

(b)(6), (b)(7)(B)

the event. All of these witnesses testified that the religious content of Mr. Rodriguez's flag folding script was not discussed, nor was it ever a concern or issue. Some witnesses testified that they did not know Mr. Rodriguez's personalized script contained the word "God."

██████████, one of two 749 AMXS ██████████ POCs who are the primary retirement ceremony coordinators, testified:

IO: Okay. Do you recall, as he gave his version of the script, was it overly religious in nature? Did he mention the word God once or more than one time?

██████████: I know God was mentioned, but as far as being overly religious, Oscar Rodriguez is very passionate in how, his deflection [sic] and everything and how he delivers the speech. It's almost as if he's getting in front of an entire stadium to give the speech. I don't think that was the issue. **I don't even think God was the issue.** After the fact, like after we started talking to Roberson, the whole issue was him giving the speech he was giving. **It just wasn't the right speech.** It had to do with the fact that the AFI says you have to do this one, if you're going to have military members perform the flag fold and at no point during the planning process, did anything ever come up about the fact that God was an issue or anything else like that.... I know he said God in his speech during ██████████ but when we were telling Roberson like look, he can't give the speech. He can come but he can't get up and do his version of the speech during the flag fold. **Nobody ever told me it's because God, him saying God is an issue.** (Ex 28:6)

....

IO: So to kind of recap what you said before, of all of the reasons that you have heard that the squadron leadership, squadron NCO's talked to, talked to you, talked to MSgt Roberson about why they do not want or think it appropriate for Mr. Rodriguez to perform the narration, was it ever about God or religion?

██████████: **No. Not that it had ever been iterated to me or spoken to me.** (Ex 28:9) (Emphasis added)

The unit ██████████ testified:

IO: Okay. Do you know... also in these conversations with Mr. Rodriguez with respect to narrating the flag-folding script. And if you recall his specific script... first of all, do you recall that he used the word "God" in his script once or twice or more than one time?

██████████: Um, I, I'm sure he did. But we had a chaplain there, so I don't know why there's stuff all over social media saying that that's what we were against, because we had a chaplain there and everything, as well.

IO: So these conversations of the concerns of Mr. Rodriguez coming to do this flag-folding ceremony, was it ever characterized they were concerned because his tailored script contained the word "God" once or several times?

██████████: **No, that wasn't it at all.** That was... no... I mean, **I don't, I don't think it has anything to do with stating God.** I mean, we had a chaplain there and everything, so, I mean...

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(B)

IO: Okay. So bottom line, you don't see any, there was nothing in there about religion that was not in the deliberative process?

No, it has nothing to do with it. We had a chaplain there.... **Yeah, it has nothing to do with the religion, sir.** (Ex 29:7-8) (Emphasis added)

749 AMXS testified:

IO: Through all the conversations that occurred with other squadron members, the did it come up that there was a concern that Mr. Rodriguez's script was not the approved AFI approved script?

No, no. There was never one word mentioned about him saying the word God.... That was never, ever part of the problem.

IO: **Did it even come up as conversation that this word God is in there, it's overly religious, we're going to offend people?**

No. The only thing that came up was he was not, he was fired from the Honor Guard, and he is not to perform that ceremony. That's the only reason, besides him not being part of the ceremony script. (Ex 30:8) (Emphasis added)

The 749 AMXS testified:

IO2: Was there any concern that the script that he [Mr. Rodriguez] does use, not the AFI script, but the one that he uses includes references to God?

Absolutely not. That never even was mentioned.

IO: Was there ever any conversation about, you know, the script or the words that he [Mr. Rodriguez] uses in his ceremony was religious, either overly, somewhat, kind of, i.e. religious in nature somehow, that that was the concern?

No. It was never a concern. It was, the first we heard of that is when they announced it a couple weeks ago that now it's about him saying God and we're like where did that come? Because from because his initial complaint was the fact that he, the commander had something out for him. When this first hit the website, it doesn't like him so he didn't want him there and then what was it about a week, two weeks ago, when it came out again with the liberty, whoever those people are, um, **now it's about him because he was going to say God and that was never even, that was never even brought up.** (Ex 31: 7-8) (Emphasis added)

The former 749 AMXS, testified:

IO: A question on the content of Mr. Rodriguez's version of the script. Were you aware, have you heard it, such that it contains the word "God" several times?

Um, I honestly didn't know it at that point in time. Honestly, no one knew that, and I can tell you this right now. Uh, they were... **God was never the issue. We never had an issue with the word God. It was never a concern of any of us.** It was

(b)(6), (b)(7)(B)

never brought up in conversation between any person at any point in time, ever. **And never, it was never that, never.**

IO: And that's exactly my next question, then, and you've already answered that, but... which is, was, in all of these conversations about the concern of Mr. Rodriguez attending and performing in the ceremony, was the concern ever religious in nature? Was he going to say something that was overly-religious or was anybody concerned because his script used the word God in it?

No, no, it was never about the word God or anything of that nature. The only concern was, was that, the fact that we wanted to do it according to the AFI, and that's, that was, was, you know, the issue. And then, and then, you know, so that was the concern of ours, was that the fact that we wanted it to be done according to what the regulations say. **But it was never about God or anything of that nature.** That was never discussed. (Ex 32:8) (Emphasis added)

testified that he did differentiate between the two scripts that Mr. Rodriguez used by the specific content. Specifically, he recognized that Mr. Rodriguez's personalized script did have a religious connotation that the AFI-approved script did not. 749 AMXS, testified:

... technically his version isn't the, the official version used in the AFI, I did mention, I said, and I think, and I used the word I think, I think he uses religion in it. Okay? So it was a very placid, very commonsensical well, if you were to ask me, well, why do you think his version isn't official, my response would be well, historically, the one that he uses has a religious connotation to it....

IO: So let me ask you just a couple of very clarifying questions, then, on that theme. So, in these discussions leading up to MSgt Roberson's retirement ceremony and, you know, trying to make a determination on whether or not Mr. Rodriguez would be permitted or not to read his script, was the discussion ever about no, **we don't want Mr. Rodriguez to read his script because he says God and because it's overly religious?**

Absolutely not. That, those words were never uttered from my mouth, they were never spoken by anybody around me or in any conversation that I had with anybody, and, and nor did I give any indication or underlying connotation that had anything to do with that.

IO: And did, at any time in these discussions, did any members of your unit, as you were trying to make this determination, express concern that either they were offended or they knew that people were offended in Mr. Rodriguez's use of his script because it used the word God or was overly religious?

Uh, no sir. **No, sir. Absolutely not.** (Ex 34:16-17) (Emphasis added)

Although referenced Mr. Rodriguez's own script as having mentioned religion, the preponderance of the evidence suggests he did this as a means of differentiating between the two scripts -- the AFI version and Mr. Rodriguez's. The evidence does not support

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that [REDACTED] used this religious reference as the basis for not permitting Mr. Rodriguez to recite his version of the script, or his eventual removal.

[REDACTED] was the presiding official for MSgt Roberson's retirement ceremony, as they had known each other in the 349 AMW for approximately 10 years. (Ex 33:2) Although [REDACTED] coordinated with MSgt Roberson on his role as presiding official for the ceremony, he had little to no contact with any other members of the 749 AMXS leading up to the 3 Apr 16 ceremony. [REDACTED] testified that he did not know Mr. Rodriguez, and had no direct conversations with [REDACTED] prior to the ceremony other than a brief discussion about three weeks prior obtaining the 749 [REDACTED] approval to preside over the ceremony. (Ex 33:3, 16) [REDACTED] testified that he did not discuss Mr. Rodriguez with [REDACTED] as it was not apparent at that time that he knew MSgt Roberson wanted Mr. Rodriguez in his ceremony. (Ex 33:16)

[REDACTED] testified that all his knowledge of the issues concerning Mr. Rodriguez came from his conversations with MSgt Roberson, as he planned and coordinated on his retirement ceremony. (Ex 33:2) Initially, [REDACTED] believed Mr. Rodriguez was banned from the 749 AMXS facility in an attempt to prevent him from attending the retirement ceremony, as this is what MSgt Roberson communicated to [REDACTED]. As the conversation evolved, MSgt Roberson informed [REDACTED] that Mr. Rodriguez was not banned from the facility, but MSgt Roberson was told by unit members that Mr. Rodriguez could not perform in the ceremony. According to [REDACTED], the only reason MSgt Roberson ever gave him for this direction was that there were "personal issues" between [REDACTED] and Mr. Rodriguez. (Ex 33:4-5)

[REDACTED] further testified that he was not aware of any conversations prior to MSgt Roberson's retirement ceremony where there was concern that Mr. Rodriguez's flag folding narration contained religious themes or the word "God." As previously referenced, after the retirement ceremony, [REDACTED] posted a Facebook entry that was included in the 4 Apr 16 JQP article that was critical of how the 749 AMXS leadership handled the situation of Mr. Rodriguez attempting to recite his narration. [REDACTED] did not raise reference to religion or that the word "God" was a concern or reason for Mr. Rodriguez's removal. Similarly, [REDACTED] submitted a statement to the 60 AMW/SFS during their investigation, and his two and a half page statement does not mention religion or the word "God" as a concern. (Ex 13:33-35)

During his 14 Jul 16 interview, [REDACTED] initially cited a "personal issue" between [REDACTED] and Mr. Rodriguez as the reason Mr. Rodriguez was not permitted to conduct his flag folding narration. (Ex 33:5) When asked why he believed [REDACTED] did not want Mr. Rodriguez to participate in the ceremony, [REDACTED] testified, "... that [REDACTED] had a serious personal issue with Mr. Rodriguez." (Ex 33:12) When asked if he believed the reason Mr. Rodriguez was not permitted to narrate or was eventually removed from the ceremony was because Mr. Rodriguez's script was religious, he stated the fact that "the religious references that Mr. Rodriguez uses was a ... primary reason for banning him from doing it ... Again, that's pure speculation." (Ex 33:12) When asked why he believed that, he testified that he could only

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assume that since the AFI-approved script did not contain the word “God,” and Mr. Rodriguez’s personalized script did, and Mr. Rodriguez was not permitted to recite it, then that must be the reason. (Ex 33:15) [REDACTED] reiterated that this was his own belief, and that he heard no discussions prior to the ceremony regarding Mr. Rodriguez’s script containing the word “God.” (Ex 33:8)

Most witnesses recalled that an invocation was given at the beginning of the ceremony, and that it was, as expected, religious in content mentioning words similar to “God” and more specifically, closed in “Jesus’ name.” No witnesses testified that they were offended, or knew of any attendees that were offended by the religious nature of the invocation. [REDACTED] testified that MSgt Roberson made a specific request to tailor the invocation in his retirement ceremony to his specific religious preference:

IO: Do you recall, a different aspect of the ceremony, do you recall was there an invocation in MSgt Roberson’s ceremony?

[REDACTED] Yes, sir.

IO: Do you remember any bits or pieces of it?

[REDACTED] I do remember a bit. It was prior, a day or two prior to the retirement, Sgt Roberson was in my office and he told me that he asked the pastor to use the word in the name of Jesus at the end. He requested that. I want the pastor to say in the name of Jesus at the end of his prayer. And I was, like, that’s fine, Chuck, that’s your request, that is fine. And nobody had a problem with that....

IO: Do you remember anybody during or after the ceremony that was upset because there was an invocation and it may have used God or Jesus’s name?

[REDACTED] No, definitely not. (Ex 30:12)

MSgt Roberson testified to his specific religious accommodation request:

IO: Okay. Do you recall any phraseology or specific words in the chaplain’s words, you know, I know we all tend to think they’re a bit generic, but I’m sure he used phrases with respect to God or even with respect to Jesus. Do you recall?

MSgt Roberson: You know, I haven’t even gone back and, and watched the video um, in its entirety. That was uh, that was one of the, the requests that I did put in to have uh, I believe it, it was [REDACTED] um close, close the prayer, the invocation, in Jesus’ name.

IO: Okay. Do you know or could you tell if anyone objected to the invocation, you know, obviously being by a chaplain of a religious nature?

MSgt Roberson: Not that I saw. (Ex 27:8)

The fact that MSgt Roberson made a specific request to add personal religious content to the invocation for his ceremony, and that request was specifically accommodated without concern or issue, illustrates that the unit did not intend to repress or restrict any religious views or language during the ceremony. This specific example supports that the unit reviewed and approved a specific religious accommodation request consistent with DoDI 1300.17,

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Accommodation of Religious Practices Within the Military Services, paragraph 4.b, and AFI 1-1, *Air Force Standards*, paragraph 2.11. (Ex 17, Ex 19:18-19)

The preponderance of evidence indicated that Mr. Rodriguez’s use of the word “God” or any other religious content, was not a consideration in either permitting or restricting Mr. Rodriguez in performing the flag folding narration. Consistent, credible witness testimony indicated that Mr. Rodriguez’s use of the word “God” was not discussed or considered prior to the 3 Apr 16 ceremony with respect to prohibiting Mr. Rodriguez from conducting the flag folding narration. Only Mr. Rodriguez and ██████ believed the retirement ceremony events were based on Mr. Rodriguez script containing the word “God,” but neither could offer direct evidence supporting their belief. ██████ testified that it was his belief, because that was the difference between Mr. Rodriguez’s script and the AFI script, and therefore that must be the reason. It is significant to note that although the word “God” which appears several times in Mr. Rodriguez’s script is a difference when compared to the AFI script, the two scripts differ significantly in both subject matter and many other words beyond the word “God.” And, of course, the official script is the only approved script if the retiree uses Air Force personnel. Any other script, with or without religious content, is not permitted as part of any official flag folding ceremony incorporated into any official Air Force retirement ceremony which is performed using Air Force personnel.

Therefore, the preponderance of evidence indicated that Mr. Rodriguez’s use of the word “God” in his personalized script was not the reason he was restricted from participation in the retirement ceremony or removed from the auditorium once he attempted to recite his unauthorized personalized flag folding script.

Removal Based on Mr. Rodriguez not using the AFI-Approved Script

As previously cited, AFI 34-1201, *Protocol*, contains an approved script for the flag folding ceremony. (Ex 21:91) As Mr. Rodriguez testified, he developed his own version of the script starting about 2001, which he also testified is the version MSgt Roberson saw him perform at the 6 Mar 16 retirement ceremony ██████ (Ex 26:3) Some witnesses testified they were aware that Mr. Rodriguez script was not the AFI-approved script – some witnesses knew this before ██████ 6 Mar 16 ceremony, others learned this through the discussions which occurred between this event and MSgt Roberson’s 3 Apr 16 ceremony. A video of then-SMSgt Rodriguez performing his personalized script can be viewed at: <https://www.youtube.com/watch?v=0qQOHNqRxU>. According to several witnesses, this event was MSgt Rodriguez’s own 2013 retirement ceremony. (Ex 34:6)

Mr. Rodriguez testified he believed the official AF script was approved “somewhere around 2005, 2006.” The current version of AFI 34-1201 is dated 24 Jan 13. The previous version of AFI 34-1201 is dated 4 Oct 06, incorporating Change 1, 1 Jun 09. The specific guidance contained in both versions of AFI 34-1201 reads:

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There are no ceremonies in the Air Force requiring a script to be read when the flag is folded. However, when a flag folding ceremony is desired and conducted by Air Force personnel at any location, on or off an installation, this script is the only one that may be used... See Attachment 4 for this script.... (Ex 21:24)

The script referred to as Attachment 4 referred in this excerpt is also the same in both versions of AFI 34-1201. Some witnesses believed that Mr. Rodriguez was violating the Protocol regulation by reciting his personalized script during the ceremony while uniformed AF personnel were participating with the actual flag-folding. ██████████ testified:

██████████ And then it became, throughout that month prior to his [MSgt Roberson] ceremony, I know ██████████ had talked to him [MSgt Roberson]. I think, I know ██████████ had talked to him. I'm not sure of anybody specifically who else had talked to him about the issue. I think even at one point some of the leadership, did but I wasn't there for it so I couldn't say for sure.... But they basically told him [MSgt Roberson] like, look, you can't have him [Mr. Rodriguez] do the speech. **He [Mr. Rodriguez] doesn't do the right speech.** (Emphasis added)

IO: When you say he doesn't do the right speech. What do you mean by that?

██████████ We learned after the ██████████ incident that, we've started doing some research. I learned that there was a speech specifically for flag folding and it turned out that the one we have, per the AF, I think it's in a Guide to Protocol that talks about how there are other interest groups and speeches out there, but **if you're going to have military members doing the actual speech**, then they need to do, **then the speech that the AFI provides is the one we have to do**, and ██████████ had that speech so we had planned on having ██████████ version of the speech be played for Roberson and Roberson was aware of that. (Ex 28:5) (emphasis added)

....

IO: ... So going back to the flag folding script. You sound like you're familiar with, because you've had the discussions now about the original AFI approved script and it sounds like the squadron was very familiar with the fact that Mr. Rodriguez narration was not that approved script. Is that correct?

██████████ Some of us had started becoming more familiar with it, yes. (Ex 28:7)

██████████, 749 AMXS ██████████ testified:

IO: So was this a question whether or not a civilian, you know, Mr. Rodriguez, being a retired military member, therefore a civilian, was the question whether or not a civilian could perform the flag-folding narration? Or was it the specific script, meaning Mr. Rodriguez had his own script, a tailored script which is not the AFI script? Was it both those or was one of them the concern?

██████████ For me, I just wanted to make sure it was, they had the right script that was mentioned.... but **when I was reviewing, um, the Honor Guard AFI and the Protocol AFI, it stated in there that when the two, when it's military members performing, there was just that one script that can only be stated.**

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(B)

IO: And you knew that... you were aware that Mr. Rodriguez's script was not that AFI script, is that correct?

██████████ When I read... when I heard it at ██████████ uh, ██████████
██████████ uh, ceremony, I recognized that that wasn't the right script. (Ex 29:5)

...

IO: It sounds like you're familiar enough to know that, through the conversations, that one of the concerns from the squadron was that Mr. Rodriguez's narration was not that AFI-approved script?

██████████ That was my main concern, that it wasn't, um, I think it was a little bit, like, **if his script matched what was an AFI or not was my, was one of my concerns.** (Ex 29:9) (Emphasis added)

██████████ 749 AMXS ██████████ testified:

██████████ We did, we did go back and research as I said because at one point we said well, maybe we just don't do the flag folding anymore if it's going to be a problem so we went into the AFI and researched to try to find out what are we allowed, what's allowed, what's the process, you know, what are we supposed to be doing. I think that was uh, based on ██████████ was like check the regs and make sure what we're doing is correct. Um, so we researched it and it does say in there that if you're, you know, um, **if you have a military member performing the flag folding ceremony you have to use the official script**, because when the conversation about maybe we should just not have the flag folding part, that would eliminate any issues, you know, a lot of us were like, no, we want to make sure if we can have it we can have it. ... I mean the book says, you know we go, in maintenance we're AFI driven, we're reg, you know, we're regulation driven on everything so we, we researched it. ...

IO: Okay, so was it known or were you familiar with or maybe other members of the unit or even ██████████ **was it known that the script that Mr. Rodriguez had historically used was not the AFI approved script?**

██████████ Yes, it's, that was known.

IO: Okay, and was that one of the concerns then, it sounds like that you were having this discussion and led to your research?

██████████ That was a concern, that was, what is allowed, what are we required to do and **we know that he [Mr. Rodriguez] doesn't follow [AFI] script.** (Ex 31:8-9) (Emphasis added)

██████████ 749 AMXS ██████████ at the time of the ceremony testified:

██████████ By the AFI. You know, I guess the main thing for that is the fact that, **if there were three civilians doing this off the base, that would, would be fine.** They can do whatever that they want. But as soon as you involve two members of the Air Force [in the flag folding ceremony], which is my members from my squadron, and you're recording that, and if somebody starts to say anything that they want to? Then, to me, that automatically means you must do the AFI. **Because if someone is videoing that, and they**

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start saying things, extreme statements or whatever they want to say, that's going to go on YouTube, and you're going to see my Air Force members, you know, on there, holding the flag next to someone who's saying this, and they're going to involve everyone. So the way that I read that basically means that you have to have everyone, either it's all civilians off the base or it's all military org, and how you need to actually do it. **As soon as you involve Air Force personnel, that's when it becomes an issue.** (Ex 32:8) (Emphasis added)

██████████ testified as to the relevance of Mr. Rodriguez not using the AFI-approved script:

IO: You mentioned that there was a discussion about his script, okay? And there was a discussion about there was some knowledge with some of your members in the unit about was he using an appropriate script, meaning there was an approved AFI script, correct?

██████████ ... I said, and you get the, the discussion, I mean, it all started with the, the, the sequence of events and, and specifically, I did not want him because of the past disciplinary action and the repeated insubordination. And then we talked about, you know, the retirement, and then ██████████ had talked about using his script, and that's when, you know, things tend to drift, and so for me to bring him back is, as I said, as long as your script complies with governing AFI, you know, as, as a Commander should do.... When I mentioned that, quote, technically his script isn't the, you know, Air Force's, uh, official script, you know, what I mean it is technically, it's not the official script. **Had nothing to do with religion or God. He could talk about, you know, um, I don't want to be coy and, and come across as this is a joke, but it was as simple as technically, his version isn't the official version as defined by the AFI.** (Ex 34:15) (Emphasis added)

The evidence indicated that several of the 749 AMXS members were aware that Mr. Rodriguez did not use the AFI-approved flag folding script. The members' testimony varied in the significance of this issue in determining if Mr. Rodriguez would be permitted to perform the ceremony, in that some members believed that his failure to use the AFI-approved script was the primary issue when determining if Mr. Rodriguez could perform the narration or not. Other members, including ██████████ acknowledged that while Mr. Rodriguez's script was not the AFI-approved version and was a consideration, there were other more compelling reasons for not permitting Mr. Rodriguez to participate in the flag folding ceremony.

It is significant to note the Commander's overall responsibility in the conduct of retirement ceremonies. AFI 36-3203, *Service Retirements*, states the following with respect to Commander's responsibilities:

"The commander takes ultimate responsibility for conducting the retirement ceremony, meeting the basic intent of this military function. If the member prefers to have an informal retirement ceremony, commanders have leeway to conduct the ceremony as they see fit." (Ex 23:49)

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[REDACTED] was familiar with this AFI requirement, and referenced it during his testimony as authority to make decisions regarding the conduct of MSgt Roberson's retirement ceremony:

IO: Okay. And from your understanding is your authority to do that basically comes from the AFI that, as a Commander, you have complete and ultimate responsibility for the conduct of the ceremony?

[REDACTED] Uh, sir, yes, sir, there's a, uh, so I, two AFIs that I mentioned in this conversation, you know, I think it's the -3203, you know, it's that, you know, there's formal and an informal. And he did a formal in the unit. The formal, it says **the Commander is ultimately responsible for the conduct of a retirement ceremony**. And, and that right there, that one statement, **I translate into I'm ultimately responsible**, so I do have a say in, in how formal retirements are conducted. And even in informal retirement, the AFI says that the Commander has discretion to run the, an informal retirement, quote, "as they see fit," end-quote. So even if it were an informal retirement ... I took that as, um, I can, I have a say. And I, I believe I articulated my reasoning based on a, a very fair and balanced judgment and the past history, as we have talked about. ... I think we've all seen the, the protocol AFI, and Air Force members participated in the flag-folding ceremony, and the AFI is clear on what's to be used. **So, you know, the AFI guidance is my, my basis for the decision, you know, for, for allowing me to even have that decision as to why I didn't want him performing.** (Ex 33:19) (Emphasis added)

[REDACTED] was aware Mr. Rodriguez used a non-AFI approved script, and was also aware that AFI 36-3203 held him as the 749 [REDACTED] responsible for the overall conduct of the ceremony. Although the following analysis will show that this was not [REDACTED] primary concern, it was a concern in that one or more AFIs would be violated if he allowed Mr. Rodriguez to perform his personalized script during the flag folding portion of the retirement ceremony.

As an interim solution, members of the 749 AMXS discussed alternate possibilities to conduct MSgt Roberson's retirement ceremony. Because of the concerns with both Mr. Rodriguez personally being involved, and that his script was not IAW the AFI, the unit planned the flag folding presentation as part of the retirement ceremony as per MSgt Roberson's desire, but with [REDACTED] performing the AFI-approved narration from a recorded CD. This recorded version of the script is what the members of the 749 AMXS expected during the ceremony, indeed, it was everyone's understanding based on the ceremony's rehearsal – adding to the surprise when Mr. Rodriguez stood up during the ceremony to narrate in person. (Ex 28:9, Ex 32:5, Ex 34:11)

An additional suggestion was made by [REDACTED] who advised MSgt Roberson that he could hold his retirement ceremony off of the installation in a non-official setting (at a local museum), where MSgt Roberson could conduct the ceremony however he wanted. (Ex 12:28) If MSgt Roberson would consent to an off-base ceremony, not using the military personnel to conduct the flag folding presentation, he would not be in violation of the AFI and Mr. Rodriguez would be able to participate. However, after several discussions over the next few weeks, MSgt Roberson confirmed with squadron personnel that he informed Mr. Rodriguez he was not to

perform the flag folding ceremony, therefore the event remained scheduled to take place within the 749 AMXS.

Witness testimony supports that these alternatives were considered as possible solutions to accommodate Mr. Rodriguez performing a non-AFI-approved flag folding script within MSgt Roberson's retirement ceremony and meet MSgt Roberson's desire to have a flag folding presentation. Witness testimony does not support that these alternatives were examined because members of the 749 AMXS were concerned that Mr. Rodriguez's script contained the word "God."

While this Inquiry was in progress, Secretary of the Air Force Public Affairs (SAF/PA), released a statement that appeared in the 22 Jun 16 edition of Air Force Times:

"Air Force personnel may use a flag folding ceremony script that is religious for retirement ceremonies.... Since retirement ceremonies are personal in nature, the script preference for a flag folding ceremony is at the discretion of the individual being honored and represents the member's views, not those of the Air Force. The Air Force places the highest value of the rights of its personnel in matters of religion and facilitates the free exercise of religion by its members." (Ex 36)

This press release, although consistent with a Nov 05 Secretary of the Air Force General Counsel Guidance (SAF/GC) Document, "*Flag Folding at Retirement Ceremonies*," (Ex 25), at first blush, would seem to be at odds with current AFI guidance, specifically AFI 34-1201, *Protocol*, paragraph 2.15, which states:

"Although there are flag folding ceremony options offered by various national interest groups, these are not official Air Force ceremonies. The Air Force developed a script that provides a historical perspective on the flag. There are no ceremonies in the Air Force requiring a script to be read when the flag is folded. However, when a flag folding ceremony is desired and conducted by Air Force personnel at any location, on or off an installation, this script is the only one that may be used." (Ex 21:24)

In fact, the SAF/GC guidance is complementary to the existing Air Force guidance. The AFI only governs flag folding ceremonies that are conducted using Air Force personnel during the official portion of any official military ceremony. The 2005 SAF/GC's opinion expressly concedes that the nature of the flag folding ceremony presents the

"...potential for the appearance of official endorsement of religion ... because of the unique aspect of the flag as a symbol of our country, because there is a military ceremony attendant to the folding, or because of its relatively recent inclusion in such ceremonies. (Ex 36)

And then, SAF/GC states these concerns

"...should readily be eliminated by placing the flag folding ceremony during the personal portion of the retirement program and using volunteers (other than the honor guard participating in the official part of the ceremony) to conduct the ceremony, together with

a ‘disclaimer’ making clear that the use of a narrative with religious references is being conducted at the request of the departing member, the participants are volunteers, and it is not an official component of the proceedings.” (Ex 36)

The SAF/GC opinion then provides the specific language to be used in meeting the disclaimer requirement.

“At the personal request of [name], people [or friends] who have volunteered to assist will present a narrative folding of the flag. This narrative represents the personal view of [name], and not those of the United States Government.” (Ex 36)

It is significant to note that although SAF/PA and SAF/GC have released guidance that a member has complete discretion with religious content contained in a flag folding ceremony, this guidance was not released publically or distributed internally to the AF as guidance prior to this Inquiry. Therefore, although the AF intends to incorporate and publish this additional guidance after the conclusion of this Inquiry, the 25 Jan 13 version of AFI 34-1201 was, and is, the current AF guidance until a revised version is published. As such, the 25 Jan 13 version of AFI 34-1201 was the published guidance used by 749 AMXS personnel to make decisions, which as stated above, expressly prohibits personalized scripts for use in a retirement ceremony flag folding when AF personnel are conducting the ceremony, as was the case in MSgt Roberson’s ceremony.

Acknowledging an apparent conflict between the current AF position as compared to the current guidance published in the *Protocol* AFI, AF/PA published a second release on 15 Jul 16:

“The Air Force acknowledges the AFI does not reflect the current policy. The AFI is being revised to clarify the policy. In 2005, AFI 34-1201 was revised. This revision addressed official ceremonies, in which Air Force Honor Guard participated, and states there is only one official Air Force flag folding script. During the same time period, military legal advisors issued guidance distinguishing informal retirement ceremonies, where the retiring member may request an unofficial flag folding narration. Since then, Federal law and DoD policy have, consistent with that guidance, reinforced a service member's right to religious expression. We acknowledge that the Air Force Instruction should have incorporated the supplemental guidance. This instruction will soon be revised to clarify the policy.” (Ex 38)

It is noteworthy that, despite being unaware of the SAF/GC additional guidance, it was made clear to MSgt Roberson that he was free to have a personal flag folding ceremony (whether or not it included religious aspects), but only if he chose to take his ceremony off base, using no Air Force personnel. This alternative was rejected by MSgt Roberson. The new guidance being crafted will clarify that an unofficial flag folding ceremony may be held, even one which incorporates religion, if done in accordance with the SAF/GC guidance.

Removal Based on MSgt Roberson’s Representations that Mr. Rodriguez was not Participating in the Flag Folding Ceremony

Beyond the use of a non-AFI approved script, testimonial evidence also showed that members of the unit were concerned that Mr. Rodriguez was not in the formal retirement script

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to perform the flag folding narration in [redacted] retirement ceremony, nor was he in the script to perform the same narration in MSgt Roberson's retirement ceremony. (Ex 30:8-9, 11; Ex 31:14-15) Some members believed that because Mr. Rodriguez was not listed as a participant in the formal retirement script, any action by Mr. Rodriguez to participate in the ceremony would be an unwelcome disruption of the ceremony. [redacted] testified:

IO: Did it even come up as conversation that this word God is in there, it's overly religious, we're going to offend people?

[redacted] No. The only thing that came up was he was not, he was fired from the Honor Guard [redacted] and he is not to perform that ceremony. That's the only reason, **besides him not being part of the ceremony script.**

IO: Okay, that's an important point. I'll rephrase that. **So if Mr. Rodriguez was going to be in the script to come to the ceremony**, and even if he was going to read the approved AFI, approved script, which doesn't include the word God, and is the approved script, **would he have been permitted to perform the narration?**

[redacted] Yes.

IO: Yes, because he was in accordance with the AFI?

[redacted] One, he would be in accordance with the AFI, and two, if **Sgt Roberson would have ever said he wanted him part of the script there was nothing we could do. But Chuck Roberson never told us that Oscar Rodriguez is still doing the script.**

IO: Okay, so from your understanding it isn't so much Mr. Rodriguez specifically or personally, it's just a matter of he was never a part of the approved formal script regardless of what he was going to say or not, therefore, it was inappropriate to allow him to perform during the ceremony?

[redacted] That is correct. (Ex 30:8-9) (Emphasis added)

...

IO: ... It's my understanding that the [redacted] is kind of responsible for these kind of retirement ceremonies, and specifically [redacted] reviews all the scripts at the retirement ceremonies. Is that your understanding?

[redacted] Yes.

IO: So in order for Mr. Rodriguez, then, to have been allowed to participate in this ceremony, he would have been included on the script and [redacted] would have had to review that script and approve him being part of the ceremony then, correct?

[redacted] That is correct. (Ex 30:11)

To emphasize, [redacted] understood that although MSgt Roberson initially desired to include Mr. Rodriguez in his ceremony narrating the flag folding presentation [redacted] as well as [redacted] all believed, based on representations made by MSgt Roberson, that MSgt Roberson had clearly communicated to Mr. Rodriguez that he could not participate, by direction of [redacted] As such, leading up to the ceremony, Mr. Rodriguez did not appear on the retirement script and was not considered a participant in the

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retirement ceremony. (Ex 5) Mr. Rodriguez did appear listed on the seating chart as a guest – but not as a participant in the ceremony. (Ex 5:18)

From [REDACTED] perspective, the main issue with Mr. Rodriguez performing in MSgt Roberson's ceremony was that Mr. Rodriguez was not in the formal retirement script and, therefore, not part of the retirement ceremony. Although [REDACTED] was familiar with the concern over the non-AFI approved script and Mr. Rodriguez's previous conduct, his main concern was that Mr. Rodriguez was not in MSgt Roberson's retirement ceremony script and, therefore, was not and could not participate. In fact, not being in the formal script is the primary reason [REDACTED] believed Mr. Rodriguez was removed from the ceremony:

IO: Bottom line, why do you think Mr. Rodriguez was removed from the ceremony? And I'll give you some options here. Do you think it was because of the potential religious nature of his script? Do you think it was because he was probably going to read a non-authorized script or a script that was not in accordance with the AFI, or do you believe it was more in the interest of good order and discipline for the unit itself?

[REDACTED] **The only reason Oscar was removed was because he was not part of the script and he was not allowed to be doing that.**

IO: Okay.

[REDACTED] Now, if I'm having a retirement ceremony and a five-year-old kid gets up and starts interrupting the ceremony and he's not part of the ceremony, the young man is going to be removed. If a 50 something year old man who is not part of the script gets up and disrupts the retirement ceremony, they're going to be removed. They are not allowed to do it. **You know, they're disrupting a service, a ceremony. They are disrespecting the retirement member.** (Ex 30:13) (Emphasis added)

[REDACTED] testified similarly, that as Mr. Rodriguez was not in the retirement script, he was not going to be part of the retirement ceremony:

IO: So what do you suppose the reason was at that point that they escorted him out the back door?

[REDACTED] Because he [Mr. Rodriguez] was now injected himself into a ceremony. We have to maintain order and discipline in that auditorium of 80 plus people. You know, that's what the military's about is maintaining order and discipline and, and then that was pretty much what it was. He was told he was not going to participate. **He's trying to inject himself into the ceremony and participate and he was removed from the ceremony** ... I'm thinking if, if I got up in the middle of my wing commander's change of command ceremony I would be removed, you know.

IO: Do you know if he would have attempted, and this is Mr. Rodriguez, attempted to narrate the flag folding ceremony with the authorized AFI script, do you know would he still have been removed?

[REDACTED] **He would have been removed because he was not part of the ceremony.**

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IO: Okay. How about even if his own modified script did not include the words God, would he have been removed?

██████████ **He would have been removed because he was not part of the ceremony.** (EX 31:14-15) (Emphasis added)

██████████ also believed Mr. Rodriguez was removed as he was interrupting a planned ceremony, that Mr. Rodriguez was not scheduled to be part of:

IO: ... [B]ottom line, why do you think Mr. Rodriguez was removed?

██████████ ... and at first, I didn't even know what was going on or who this person was when he first stood up. And then I noticed, from everyone's reaction, that this is him ... And so, the concern was the fact that I, that I saw ██████████ walk up, you know, behind him, and gesture please sit down, and that he was non-responsive. And then he went in front and face-to-face to Mr. Oscar Rodriguez. And he was, you know, with a thousand-yard stare, really concerned in the fact of what was he going to do, he was non-responsive. And it was approximately 18 to 20 seconds of Mr. Oscar Rodriguez just standing there and not doing anything. My concern was, what is he going to do? We understand of why he was doing it, but is he going to, you know, in terms of active shooter, really concerned. You know, this is a non-responsive person. **According to what we know, he is not all, he is unwanted or unwelcome there, according to MSgt Roberson and according to what he had told us numerous times before the event, numerous times.** And so, because of that, we thought he is, you know, there for other reasons to disrupt the, uh, retirement ceremony.... I believe, the main reason why he was moved was the fact that he was unwelcomed, according to MSgt Roberson, and he was non-responsive. And with all of our training, with the green dot training, with everything else that we have, especially with active shooter, which we just had a few months prior to that, um, you know, it, it was a concern of ours....**And so we thought he was a disruption to the ceremony, to good order and discipline, and, uh, that was my concern** and that is our concern, I believe, as a squadron, of what, you know, why that happened. (Ex 32:12-13) (Emphasis added)

Thus far in this analysis three distinct reasons have been presented by the witnesses for Mr. Rodriguez not being permitted to narrate the flag folding ceremony:

1. The word "God" in Mr. Rodriguez's script – not supported by witness testimony.
2. Mr. Rodriguez's script not IAW AFI 34-1201 – supported by some witnesses.
3. Mr. Rodriguez not part of official retirement script – supported by some witnesses.

Finally then, this Inquiry will analyze a possible final reason for Mr. Rodriguez not being permitted to narrate the flag folding ceremony -- that of his previous misconduct and its relationship to performing Honor Guard activities or Honor Guard-related activities.

Removal Based on Previous Misconduct

As Mr. Rodriguez retired out of the 349 AMXS, most witnesses from the 749 AMXS were not familiar with Mr. Rodriguez or his background until he appeared at ██████████ retirement ceremony, which then led to the discussion with ██████████ after the ceremony.

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(b)(6), (b)(7)(B)

(Ex 34:10) Although some witnesses did have first-hand knowledge of Mr. Rodriguez's background [REDACTED] had the most first-hand knowledge. When [REDACTED] took command of the 349 AMXS in Apr 2010, then-SMSgt Rodriguez was assigned to his unit [REDACTED]. [REDACTED] testified he really did not know much about then-SMSgt Rodriguez until an issue came up regarding SMSgt Rodriguez [REDACTED]

At the time of these events, SMSgt Rodriguez, although a member of the 60 AMW Honor Guard Team, was still assigned to the 349 AMXS. Based on the [REDACTED] [REDACTED] discussed the future role of SMSgt Rodriguez with the Honor Guard NCOIC and eventually removed SMSgt Rodriguez from the Honor Guard:

[REDACTED] I had made a decision at that time, based on the [REDACTED] and, ... what was coming down, to remove Sgt Rodriguez from the Honor Guard duties. And we, we specifically had a conversation about it, and I had told him that my intent, because I held Honor Guard duties with high regard, given the nature of what they do, that someone [REDACTED] [REDACTED] wasn't in line with what I thought Honor Guard duties would entail. And he did display kind of, he was upset about it, I'll just say that. And, uh, he had asked me to, to be fair, because he thought he was being treated unfairly, to at least discuss this decision or my intent with the Honor Guard NCOIC at the time... I had a discussion with the Honor Guard NCOIC, kind of briefly, without extreme detail, discussed the sequence, uh, the events that had transpired, and he agreed. And so, I then informed Sgt Rodriguez that I had conversation with the Honor Guard NCOIC and that he was not to, he was basically removed from those additional duties and that he was not to participate directly or indirectly in the Honor Guard ceremony. (Ex 34:5-6)

In addition to the removal from the Honor Guard Team, [REDACTED] gave SMSgt Rodriguez a verbal order, "he wasn't to participate directly or indirectly in any kind of Honor Guard-type duties, to include the flag-folding ceremony." (Ex 34:6) [REDACTED] further testified that SMSgt Rodriguez did not "own up" to committing any misconduct, and SMSgt Rodriguez felt he should still be on the Honor Guard Team. (Ex 34:6)

In Sep 2013, SMSgt Rodriguez retired from the USAF Reserves and asked [REDACTED] to be the presiding officer at his retirement ceremony. (Ex 34:6) [REDACTED] testified that he reminded SMSgt Rodriguez of his verbal order that SMSgt Rodriguez was not permitted to participate, directly or indirectly, in the flag-folding ceremony or other Honor Guard type duties. (Ex 34:6-7) During his retirement, SMSgt Rodriguez did perform the flag-folding ceremony, in direct violation of [REDACTED] order:

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So then his retirement came, and, and, you know, it went okay. Uh, I mean it was, it was, excuse me, a retirement ceremony. I presided at his request. You know, and it was a normal retirement up until he participated directly doing his, his narrative. And so, it was frustrating, and I, I took it as a kind of a slap in the face. (Ex 34:7)

A video of SMSgt Rodriguez performing the flag folding narration can be seen on YouTube, "Flag fold ceremony USAF mentions God," published 25 Sep 13. [REDACTED] testified that this was one of two examples he was aware of when SMSgt Rodriguez violated his verbal order not to perform the flag-folding ceremony. (Ex 34:9) It is apparent from watching this video and listening to the words spoken, that SMSgt Rodriguez performed his personalized version of the flag folding script, not the AFI-approved version.

[REDACTED] testified that the next time he saw retired SMSgt Rodriguez was during [REDACTED] 6 Mar 16 retirement ceremony, when, unexpectedly, Mr. Rodriguez performed the flag-folding narration using his own script, not the AFI-approved version. (Ex 34:9) Immediately after the ceremony, [REDACTED] had a discussion with three of his SNCOs who were in attendance and may not have known Mr. Rodriguez or been familiar with [REDACTED] order:

[S]o immediately following [REDACTED] retirement, uh, on March, I had pulled my, uh, the three that were available. I had my traditional Reserves Superintendent [REDACTED] he's an Air Reserve Technician, but he was in MIL status at the time, my [REDACTED] I pulled them into one of the [REDACTED] office, and I had discussed about Mr. Rodriguez. And I gave them a, a synopsis of the past [REDACTED] repeated insubordination, and kind of a general overview of what had happened with Mr. Rodriguez and why I had removed him from performing Honor Guard duties or, or having direct or indirect involvement. ... **I did not want him participating directly or indirectly in these retirement ceremonies for those reasons, you know, the past [REDACTED] and the repeated insubordination.** (Ex 34:10) (Emphasis added)

The 6 Mar 16 retirement ceremony is where MSgt Roberson saw Mr. Rodriguez perform the flag folding narration for the first time and asked Mr. Rodriguez if he would perform similarly for his Apr 16 retirement ceremony. On 1 Apr 16, [REDACTED] became aware that MSgt Roberson had asked Mr. Rodriguez to perform at his retirement ceremony. (Ex 34:10) [REDACTED] convened another meeting, this time with his [REDACTED] POCs, as known as his "retirement planners," [REDACTED] and [REDACTED] reiterated his earlier guidance that Mr. Rodriguez not perform Honor Guard duties at ceremonies based on Mr. Rodriguez's prior misconduct and "repeated insubordination." [REDACTED] based his authority to prohibit Mr. Rodriguez's participation on AFI 36-3203, paragraph 6.1.3.:

[REDACTED] [C]ommanders are responsible for formal retirement ceremonies. And the commander is given discretion on informal ceremonies. So I feel, given the [REDACTED] [REDACTED] and the repeated insubordination that he, he did, under my command in the C-5s [349 AMXS] didn't speak well for somebody representing, you know, Honor Guard and

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being part of a, a, what I cherish as the flag-folding ceremony. So **I believe the AFI gave me discretion to say I, I do not want this person performing, directly or indirectly, in the ceremony.** And I made it clear, after the, you know, after I talked to my folks in the March retirement, that Mr. Rodriguez can attend as a silent, you know, member of the audience, but to be a part of that flag-folding ceremony, **given his past [REDACTED] repeated insubordination and, quite honestly, you know, failure to kind of accept the responsibility for what he did, as integral, and I thought it would demean what Honor Guard stood for.** So I stood by my decision under the gui-, uh, under the, uh, auspices that, you know, the AFI says specifically that, you know, commanders are ultimately responsible for formal and have, uh, discretion as, quote-unquote, they see fit, for the informal. (Ex 34:9) (Emphasis added)

....

IO: Again, one more time in your own words, why did you not want Mr. Rodriguez to perform the flag-folding ceremony with the Honor Guard?

[REDACTED] I, sir, **I did not want Mr. Rodriguez performing these duties in flag-folding ceremony, or Honor Guard related, were because of his [REDACTED] and repeated insubordination.** That is why.... It had nothing to do with script. It had nothing, it certainly had nothing to do with the word God. (Ex 34:18-19) (Emphasis added)

Beyond the specific command authorities with regard to retirement ceremonies cited in AFI 36-3203, *Service Retirements*, command authority is also defined in AFI 1-1, *Air Force Standards*, and AFI 1-2, *Commander's Responsibilities*, with respect to "good order and discipline." (Ex 23:49, Ex 19:12, Ex 20:3) As such, [REDACTED] authority to maintain good order and discipline applied to decision making in the overall conduct of MSgt Roberson's retirement ceremony. [REDACTED] had determined based on Mr. Rodriguez's [REDACTED] misconduct while in a military status, which resulted in [REDACTED] as well as Mr. Rodriguez "repeated insubordination," that Mr. Rodriguez performing an Honor Guard function during a formal retirement ceremony would be contrary to good order and discipline, as well as contrary to the standards that an Honor Guard function requires. (Ex 24:7-8, Ex 34:9, 18-20)

Regarding the facts of Mr. Rodriguez's previous conduct, several witnesses testified and submitted statements alluding to several derogatory incidents in Mr. Rodriguez's past that did not reflect positively on Mr. Rodriguez's character. With some exceptions, most witnesses stated that they did not have first-hand knowledge of these incidents and acknowledged the accounts as hearsay. These incidents are not included in this report as they cannot be verified as factual. They are referenced, however, to illustrate the regard with which many 749 AMXS members held Mr. Rodriguez when discussing whether it was appropriate for him to perform a flag folding presentation during a formal retirement ceremony. (Ex 29:11; Ex 30:14-15, Ex 32:3, Ex 34:7)

Although [REDACTED] was aware that Mr. Rodriguez's script was not the AFI-approved script, the preponderance of evidence indicated his primary reason for prohibiting him

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from participating in the ceremony was Mr. Rodriguez past misconduct, to include defying [REDACTED] verbal order while still on military status. The preponderance of the evidence does not support a finding that [REDACTED] based his decision to not allow Mr. Rodriguez to participate in the retirement ceremony on the basis that his script contained the word "God."

[REDACTED] Ordered the Removal of Mr. Rodriguez

First Liberty Institute's 20 Jun 16 memorandum stated that either [REDACTED] ordered the removal and subsequent assault and battery of Mr. Rodriguez, or the four NCOs took the action of their own initiative. The memorandum also stated that if the NCOs acted on their own, [REDACTED] as [REDACTED] should have taken action to prevent the assault and battery. (Ex 3:2)

Witness testimony did not support that [REDACTED] gave any guidance or direct orders to remove Mr. Rodriguez if he attempted to participate in the 3 Apr 16 retirement ceremony. [REDACTED] all credibly testified that [REDACTED] gave no guidance or issued any orders to remove Mr. Rodriguez from the retirement ceremony. (Ex 28:8, Ex 29:10, Ex 30:9, Ex 31:11) Likewise, the same witnesses all testified that [REDACTED] directed his staff to instruct MSgt Roberson communicate to Mr. Rodriguez that Mr. Rodriguez was not to participate in the retirement ceremony. Once several members of [REDACTED] staff confirmed that MSgt Roberson had communicated as directed, [REDACTED] and his staff were confident that Mr. Rodriguez would not be participating in the ceremony, and no contingency plans, to include removal, were made if he did attempt to join the ceremony. Finally, [REDACTED] credibly testified that he issued no guidance or orders to remove Mr. Rodriguez, as he did not anticipate Mr. Rodriguez participating in the ceremony. (Ex 34:29)

[REDACTED] testified:

IO: Okay. So from my original question there, before the retirement ceremony, through all these conversations, you don't recall any of the squadron members stating if Mr. Rodriguez shows up and if he attempts to narrate this flag-folding ceremony, he will be removed from the ceremony or the auditorium? You never heard anybody say that?

[REDACTED] No, not those words, no, sir. (Ex 29:10)

[REDACTED] testified:

IO: Was it ever discussed if Mr. Rodriguez does attempt to do the narration as he had previously what was going to happen, what was going to take place? Did [REDACTED] have a plan or did he give you a direction?

[REDACTED] There was no plan. There was no direction prior to that.... There was no order given to remove Oscar if he showed up and did it. There was no order ever given.

IO: Is that because from your perspective or [REDACTED] perspective, it had been made abundantly clear that he was not to be there?

██████████ He was not to perform the ceremony. That is correct. (Ex 30:9)
██████████ testified:

IO: So did you ever hear, again, these planning meetings or discussions coming up to the ceremony, ██████████ ever state anything with regard to, if he does attempt to participate in the ceremony, we will have him removed or we will remove him?

██████████ No. No, it was just the matter. That was never really discussed. I don't think it was ever even thought of. (Ex 32:11)

██████████ testified:

IO: Were there any thoughts at that time of having Mr. Rodriguez removed from that ceremony? Or asking him to leave?

Lt ██████████ Absolutely not ... No, sir (Ex 34:4)

....
IO: Okay. And then, the only other two points I want to make in these conversations with your staff leading up to the actual ceremony was that, one, you had never directed that Mr. Rodriguez would be removed from the ceremony if he did show up, correct?

██████████ Correct. (Ex 34:29)

As the preponderance of the evidence did not support ██████████ ordered the removal of Mr. Rodriguez, the NCOs who did escort him from the auditorium appeared to have acted of their own initiative. Witness testimony supports that the NCOs did act on their own, based on a combination of the reasons previously presented. The predominate reason being:

Mr. Rodriguez was not a scripted member of the ceremony and was, therefore, removed as one who was unexpectedly interrupting a formal ceremony. Independent of any guidance or orders given by ██████████, some unit members discussed the possibility that Mr. Rodriguez would be removed or "escorted" if he did attempt to participate.

██████████ testified:

IO: Okay. In these, the meetings, the various meetings between ██████████ and the other members and Senior NCO's of the unit, as you're discussing the possibility of Mr. Rodriguez attending and/or performing in the ceremony, obviously the preference was he could attend but he couldn't participate, if he had participated, was there any discussion about what they would do? I.E., did ██████████ gave any guidance of, if he attempts to narrate the flag folding ceremony do X, do Y. Was there any specific guidance?

██████████ No. But I had heard at one point that ██████████ had mentioned if he tries to do anything, we will, I will escort him out.

IO: And that was ██████████?

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██████████ is my ██████████ for ██████████ and because I was still so new at this, he was going to attempt to help out as well but he was aware that Oscar Rodriguez could potentially be a problem. He was kind of concerned that something could happen but we, we didn't plan as far as do we think he's going to go that far. We thought the possibility would be there because we had made Roberson, made it clear to Roberson just from what I had talked to him and then the different conversations that he had had with um, ██████████ and the others that he would not be allowed to participate um, but I had heard ██████████ say like if he tries to perform anything, he will be escorted out. (Ex 28:8)

██████████ testified:

IO: So do you know at any time during, you know, again these conversations leading up to, you know, contingency planning, articulating to MSgt Roberson, you know, he could attend but not participate in the ceremony, was it ever said that if he attempted to participate in this ceremony he would be removed?

██████████ Uh, I believe so. I think that was said, he would be removed.

IO: Who would have said that? Was that a group think or what that specifically...

██████████ That was a group think.

IO: Did ██████████ ever state that?

██████████ No. It was not, no.

IO: He didn't give that as guidance?

██████████ No, he did not. (Ex 31:11)

Reason Mr. Rodriguez was Removed

As the final question, witnesses were asked what they believed was the reason Mr. Rodriguez was removed – the fact that his script referenced God, the fact that he used a non AFI-approved script, to maintain good order and discipline, or some other reason. The IO asked each witness the following question:

“Of everything we've talked about today, you know, your understanding the history of the events, the history of Mr. Rodriguez himself, the events of the previous retirement ceremonies, the relationship between ██████████ previously SMSgt Rodriguez now Mr. Rodriguez, so bottom line in your opinion understanding all of that, why do you think he was removed? Do you think it was because of the religious content of Mr. Rodriguez's script? Do you believe it was because he was going to read a non-authorized script? Or do you believe it was in the interest of good order and discipline?”

Each witness testified as follows:

Mr. Roberson: To be honest I don't know the reason but the only thing I can say is that there was mention of um, the script not being uh, approved any longer or something, anyway, when I first started my retirement preparation, you know, I, I told them point blank, you know, this is what I'd like. (Ex 27:9) (Emphasis added)

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██████████ Good order, well, for me, good order and discipline. (Ex 28:9)

██████████ The only reason Oscar was removed was **because he was not part of the script** and he was not allowed to be doing that. ... You know, **they're disrupting a service, a ceremony. They are disrespecting the retirement member.** (Ex 30:13) (Emphasis added)

██████████ From, for me, my opinion, **I think it's more of because of what he did to the military as far as, you know, later on I found more in, information of what he was doing, um, as far as, you know, his retirement ceremony, what he was doing**

██████████ I think it's more of, when you fold a flag and when you're, you know, pretty much representing the flag and the members that are folding the flag, you're supposed to be the, you know, a good image of the military integrity and all that, and I guess, based from his history, um, the ██████████ that he's received in the past, being removed from the Honor Guard, um, you know, trying to ██████████ that, I think it's more of that part of it. (Ex 29:13) (Emphasis added)

██████████ **I believe he was removed because in the interest of good order and discipline** he's interjecting himself into a retirement ceremony that he was not part of and, and it had nothing to do with what he was going to say as far as religious content um, because the several ones he did before he used the word God and nobody had an issue with it, but the fact that he's interjecting himself into a ceremony that he's not part of. (Ex 31:15) (Emphasis added)

██████████ I believe, the main reason why he was removed was the fact that he was unwelcomed, according to MSgt Roberson, and he was non-responsive. And with all of our training, with the green dot training, with everything else that we have, especially with active shooter, which we just had a few months prior to that, um, you know, it, it was a concern of ours. It was a concern of mine, personally, just being there at that, at that, at that situation. What was he going to do? **And so we thought he was a disruption to the ceremony, to good order and discipline**, and, uh, that was my concern and that is our concern, I believe, as a squadron, of what, you know, why that happened. (Ex 32:12-13) (Emphasis added)

██████████ **Because the orders of the commander were not followed** and that is uh, from, from, from my perspective. Again, you know, the way I look at it is uh, Mr. Rodriguez's rendition has religious references in it, in it. It's not the AFI approved script because the AFI approved script removed all religious references out of it, **so the religious references are the reasons why Mr. Rodriguez couldn't do it.** (Ex 33:14) (Emphasis added)

██████████ **It's good order and discipline.** And, and I believe in, in, well, you know, I, I covered this in my verbiage earlier. I believe that it was in interest of good order and discipline based on, you know, what we were told by [MSgt] Roberson, based on Mr. Rodriguez's, unwillingness to, uh, comply with polite requests, his thousand-yard stare, I think it was in, not only in the interest of good order and discipline, but I would argue, based on the, you know, how we were misled that they had a, uh, they were concerned for the safety of the people there. That's just my opinion. I'm, I don't know what the individual members are thinking. But, you know, if safety is also included in good order and discipline, then absolutely. It had nothing to do with the narrative. ...because my fundamental reason for hi-, not wanting him to participate we've talked about. **The past**

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██████████ and insubordination. So, it, the script had nothing to do with it.
(Ex 34:20) (Emphasis added)

The preponderance of evidence supported that Mr. Rodriguez was not restricted from performing his narration or removed from the facility while attempting to perform his narration specifically based on religious themes or words such as "God." Witness testimony indicates the actual reasons varied among using a non-AFI approved script, not being a planned participant of the ceremony/not on the retirement script, and previous misconduct. Other than ██████████ who speculated that Mr. Rodriguez was removed because his script contained "God," no witnesses stated that Mr. Rodriguez's removal had anything to do with religion or the specific words of Mr. Rodriguez's script, other than it was not the AFI-approved script.

Based on the evidence, the most predominate reason as to why Mr. Rodriguez was removed was in the interest of good order and discipline. As previously presented, commanders are charged with preserving good order and discipline, specifically noted in AFI 1-2 as an extension of command responsibilities established by 10 USC Section 8583, and indirectly in AFI 1-1, where all members are charged with maintaining good order and discipline.

Other factors led to the members of the 749 AMXS removing Mr. Rodriguez from the ceremony. Witness testimony was consistent that MSgt Roberson confirmed with members of the 749 AMXS that Mr. Rodriguez was not to perform at the ceremony. Testimony was also consistent that members believed that, given MSgt Roberson told Mr. Rodriguez he was not to participate, Mr. Rodriguez would attend as part of the audience. Several members watched for Mr. Rodriguez to arrive at the ceremony, and testimony is consistent that as the ceremony began, no one saw Mr. Rodriguez arrive. Several witnesses testified that Mr. Rodriguez apparently entered the auditorium from the rear during the invocation, while the attendees' heads were bowed, thus they did not see him enter. Many witnesses did not know Mr. Rodriguez was in the room until he stood up to participate in the flag folding.

Related to the knowledge that MSgt Roberson apparently told Mr. Rodriguez he was not to perform the flag folding presentation was the inconsistent communication among the unit members, MSgt Roberson, and Mr. Rodriguez. Although MSgt Roberson gave indications that he told Mr. Rodriguez not to perform at the ceremony, the testimonies and statements of MSgt. Roberson and Mr. Rodriguez are less definitive in what MSgt Roberson actually told Mr. Rodriguez. To illustrate, according to their testimonies ██████████ and ██████████ became frustrated with MSgt. Roberson as his versions of what he remembered as conversations with unit members and Mr. Rodriguez varied from conversation to conversation. (Ex 31:16, Ex 34:18)

In that many attendees did not know who Mr. Rodriguez was, many did not know he was not anticipated to be part of the ceremony and assumed that when he did stand up, he was part of the ceremony. Those who were familiar with Mr. Rodriguez and knew he was not part of the ceremony testified as to being actually shocked or surprised to see him appear, as they did not

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see him arrive earlier with the other guests. This surprise is apparent from the video of the ceremony. In the interest of preserving MSgt Roberson's ceremony, knowing that MSgt Roberson told the squadron members that Mr. Rodriguez was not to perform, and consistent with witness testimony, the four NCOs appeared to act in the moment, and immediately escorted Mr. Rodriguez from the auditorium to end the disruption to MSgt Roberson's ceremony. Several witnesses referenced recent active shooter training in being presented with a situation where they were not sure as to what was about to happen and were concerned about the safety and security of the attendees present. (Ex 28:11, Ex 31:14, Ex 32:12)

Although Mr. Rodriguez testified he was not physically harmed while being escorted out of the auditorium, he has alleged assault and battery against the NCOs who removed him. (Ex 26:12-13) It is left for 349 AMW command to determine any charges and/or disciplinary actions with respect to these allegations.

Violation of Mr. Rodriguez's Constitutional Rights

As discussed above, although Mr. Rodriguez was not permitted to perform his unofficial flag folding narration, the preponderance of evidence demonstrated that this action was not based on any specific words or religious inferences in Mr. Rodriguez's script, nor motivated by hostility toward religion generally. Therefore, Mr. Rodriguez's First Amendment rights with respect to his freedom to express his religious views by narrating the flag folding script he wrote was not violated. As such, the First Amendment freedom of religion, DODI 1300.17, *Accommodation of Religious Practices within the Military Services*, 42 U.S. Code § 2000bb-1 - Free exercise of religion protected, and AFI 1-1, *Air Force Standards*, were not violated with respect to Mr. Rodriguez's religious freedom.

The government has the authority, consistent with the First Amendment, to properly regulate speech at certain times, in certain places, and in a certain manner. On a military installation, to maintain good order and discipline, the commander also has the authority to preserve dedicated military facilities for activities consistent with their intended function. According to *The Military Law and the Commander*, "Air Force Commanders have the authority and responsibility to execute the mission, protect resources, and maintain good order and discipline. This authority and responsibility includes placing lawful restrictions upon certain demonstrations and protest activities. ..." (Ex 22:242)

In that the retirement ceremony was held on a military installation, within the facility over which [REDACTED] had authority as commander, and as previously determined, was charged with "ultimate responsibility for conducting the retirement ceremony," the AFI indicated [REDACTED] had the authority to determine which portions of MSgt Roberson's retirement ceremony would be permitted. (Ex 23:49)

Although Mr. Rodriguez is a civilian, not subject to a military commander's direct command authority, he is not free to exercise his right of freedom of speech whenever, wherever,

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or however, he chooses, in contravention of substantial military interests. Just as a member of society is not protected by the First Amendment if he or she chooses to yell “fire” in a crowded theatre, there are limits to when a civilian may exercise his First Amendment rights within a military facility during an official military ceremony. In this case [REDACTED] did not select between viewpoints (religious or otherwise), but through deliberate consideration, determined that Mr. Rodriguez’s [REDACTED] his repeated insubordination, and his removal from Honor Guard activities precluded his participation in the ceremony [REDACTED] [REDACTED] had determined that Mr. Rodriguez’s conduct, while on active duty, was not consistent with military decorum and customs. Therefore, the intent was not to suppress any particular message or idea, but to preserve the dignity of a military tradition while furthering the substantial governmental interest of complying with military protocol, decorum, customs, and regulations.

Witness testimony has shown that [REDACTED] neither ordered the removal of Mr. Rodriguez during the 3 Apr 16 ceremony, nor established a pre-determined plan to remove him if he did participate in the ceremony. As such, having been briefed on Mr. Rodriguez’s background, combined with the belief that he was not part of the planned ceremony and that he did not intend to follow an AFI-approved script, the four NCOs appeared to have acted on their own initiative in removing Mr. Rodriguez from the ceremony. As such, the preponderance of the evidence indicated their motive was not religion-based and they likewise did not impinge on Mr. Rodriguez’s First Amendment rights. (Ex 19:12)

With respect to Mr. Rodriguez’s allegations that his Fourth and Fifth Amendment rights were violated, these issues are closely related with the alleged assault when Mr. Rodriguez was removed him from the building. As discussed above, 60 AMW/SFS and the command chain are investigating and addressing any allegations of assault, therefore this Inquiry does not address these issues.⁶

With respect to the allegations of assault and battery against the four 749 AMXS NCOs, the 60 AMW/SFS ROI is with the appropriate level of command to make final adjudication of those allegations. This Report of Inquiry will be provided to command as additional background for consideration in determining command actions.

⁶ The 20 Jun 16 First Liberty Institute memorandum also references several additional laws that were allegedly violated: 42 U.S.C. § 1985, 42 U.S.C. § 1986, 42 U.S.C. § 2000bb, 28 U.S.C. Pt.VI Ch.171 and 28 U.S.C. § 1346(b). 42 USC 1985 and 1986 are related to the assault/battery which is currently pending command determination and action; 42 USC § 2000bb was determined not to have been violated as evidence indicated no religious freedoms were restricted; and lastly, although the evidence indicated no religious freedoms were violated, 28 U.S.C. Pt.VI Ch.171 and 28 U.S.C. § 1346(b) may be addressed in litigation as required.

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V. CONCLUSION.

In conclusion, the preponderance of evidence did not support that Mr. Rodriguez was prohibited from narrating the flag folding ceremony or subsequently removed from the retirement ceremony because his personalized flag folding script contained the word "God." Therefore, the preponderance of the evidence supported that Air Force personnel did not violate his freedom to express his religious beliefs. Although Mr. Rodriguez was removed from the ceremony, the preponderance of the evidence did not support that he was removed based on guidance or orders from [REDACTED]. Rather, the 749 AMXS members who removed him acted with reasons to maintain good order and discipline, not by motivation to restrict Mr. Rodriguez's constitutional rights of freedom of speech or religion. With respect to the assault and battery allegations made against the four NCOs assigned to the 749 AMXS, the 60 AMW/SFS ROI is with the appropriate level of 349 AMW command to determine appropriate actions.

[REDACTED]
DAFC, USAF

Investigating Officer

I have reviewed this Report of Inquiry and the accompanying legal review and I concur with their findings.


ANTHONY J. ROCK
Lieutenant General, USAF
The Inspector General

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LIST OF EXHIBITS

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SECAF Inquiry Tasking Memo 23 Jun 16 1

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John Q Public, “Retired SMSgt Forcibly Removed from Retirement Ceremony,” 4 Apr 16 6

Daily Republic, “Travis Security Investigates Retirement Ceremony Incident,” 15 Apr 16 7

First Liberty Press Release, “Attorneys Demand Justice for Air Force Veteran Kicked Of Military Base Over Speech Including the Word “God,” 20 Jun 16 8

Washington Times, “Air Force Vet Dragged from Flag-Folding Ceremony for Speech Referencing ‘God’” 20 Jun 16 9

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