

IN THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

UNITED STATES,)	
<i>Appellee,</i>)	FINAL BRIEF ON BEHALF OF
)	THE UNITED STATES
v.)	
)	
Airman First Class (E-3))	USCA Dkt. No. 12-6002/AF
DARREN N. HATHORNE,)	Crim. App. Misc. Dkt.
USAF,)	2011-02
<i>Appellant.</i>)	

FINAL BRIEF ON BEHALF OF THE UNITED STATES

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DARREN N. HATHORNE,)	Crim. App. Misc. Dkt.
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<i>Appellant.</i>)	

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

SPECIFIED ISSUE

WHETHER, IN LIGHT OF UNITED STATES V. LOPEZ DE VICTORIA, 66 M.J. 67 (C.A.A.F. 2008), THIS COURT HAS JURISDICTION OVER AN ARTICLE 62, UCMJ, APPEAL WHEN THE COURT-MARTIAL HAS ADJUDGED A SENTENCE THAT DID NOT INCLUDE A PUNITIVE DISCHARGE OR CONFINEMENT FOR ONE YEAR?

STATEMENT OF STATUTORY JURISDICTION

This case was reviewed by a judge advocate in accordance with Article 64(a) of the Uniform Code of Military Justice (UCMJ), who affirmed the findings and the sentence as correct. Notwithstanding United States v. Lopez De Victoria, this Court has no statutory jurisdiction under Article 67, UCMJ, to review this case. The United States respectfully maintains that the grant of review in this case was improvidently issued and should be dismissed.

STATEMENT OF THE CASE

On 9 March 2011, a single charge was preferred against Appellant alleging that he "did, at or near Alamogordo, New Mexico, between on or about 1 April 2010 and on or about 30 August 2010, wrongfully use cocaine" in violation of Article 112a, UCMJ. (JA at 12.) The charge was referred to special court-martial the same day. (JA at 13.) On 9 April 2011, Appellant filed a motion to dismiss the charge, or in the alternative, to suppress Appellant's confession and any derivative evidence. (JA at 49-122.) The prosecution responded to the motion to dismiss on the same day. (JA at 123-44.)

On 11 April 2011, trial began. (JA at 6.) Following a two-day motion hearing, the military judge granted the defense motion to dismiss the charge and specification with prejudice. (JA at 20-48.) Pursuant to R.C.M. 908(b)(2), the United States filed notice of its intent to appeal with the military judge on 15 April 2011. (JA at 3-4.)

On 28 July 2011, AFCCA heard oral argument, and on 4 October 2011, AFCCA granted the United States' Article 62 appeal and remanded the case back to trial. United States v. Hathorne, Misc. Dkt. 2011-02 (A.F. Ct. Crim. App. 4 October 2011) (unpub. op.) (JA at 164-74). On 19 October 2011, the defense petitioned this Court to review AFCCA's decision. On 24 October 2011, the military judge denied a defense motion to

continue or stay the trial proceedings. Nine days after they filed their petition with this Court and just days before trial was scheduled to resume, Appellant filed a motion with this Court to stay the trial on 28 October 2011. On 1 November 2011, this Court denied the stay.

The next day, 2 November 2011, trial resumed, Appellant pled not guilty at a judge-alone special court-martial, was convicted as charged, and received an adjudged sentence that required appellate review under Article 64(a), UCMJ: 7 days confinement, 30 days hard labor without confinement, 30 days restriction, and reduction to E-1. (JA at 1.)

After trial was completed and Appellant received his sub-jurisdictional sentence, Appellant filed a supplement to his petition for grant of review on 8 November 2011. In his supplement, Appellant twice suggested that the primary reason this Court should grant review was because Appellant was not satisfied with his appellate rights provided by Congress under Article 64, UCMJ. (Pet. Supp. Br. at 2, 10.)¹ On 14 November 2011, the United States filed its answer to the supplement to the petition for grant of review and asserted that this Court

1 "This Court should grant review of this Article 62 appeal because Appellant received a subjurisdictional [sic] punishment, and without granting review, Appellant will be unable to seek judicial redress for the *Kastigar* violation that occurred in this case, and AFCCA's erroneous interpretation of R.C.M. 704 will establish Air Force protocol for dealing with immunity issues." (Pet. Supp. Br. at 2.) Appellant made the identical "sub-jurisdictional" claim at page 10 of his supplement.

had no jurisdiction to review the case given that the present procedural posture of the case required review under Article 64(a) and not Article 67.

Meanwhile, on 6 December 2011, a judge advocate properly completed appellate review of Appellant's case and concluded the findings and sentence were correct in law and fact as provided by Article 64(a), UCMJ. (Appendix A.) On 19 December 2011, the Commander of the 49th Wing at Holloman Air Force Base, New Mexico, took action approving Appellant's administrative discharge from the Air Force for drug abuse with a general discharge. (Appendix B.) On 21 December 2011, administrative separation orders were prepared directing Appellant's separation with a discharge effective date of 27 December 2011 and indicating that a DD Form 214 was issued. (Appendix C.) Appellant's DD Form 214 was issued discharging him from the United States Air Force effective 27 December 2011. (Appendix D.)

On 4 January 2012, this Court granted review of Appellant's assigned immunity issue and specified the jurisdictional issue that is the subject of this brief.

STATEMENT OF FACTS

Additional facts are noted in the argument below.

SUMMARY OF ARGUMENT

Given its current procedural posture, this case can no longer be considered an interlocutory appeal under Article 62, UCMJ, so United States v. Lopez de Victoria is inapposite. Appellant's court-martial is final and conclusive under Article 76, UCMJ², and R.C.M. 1209(a)(2). This Court has no jurisdiction to review Appellant's case under Article 67, UCMJ; Congress provided Appellant appropriate and mandatory appellate review under Article 64(a), UCMJ, which has been completed and is final and conclusive. If Appellant is dissatisfied with his appellate review rights provided by Congress in Article 64, he should seek legislative change, not unwarranted and unauthorized judicial intervention.

ARGUMENT

**THIS HONORABLE COURT DOES NOT HAVE JURISDICTION
TO REVIEW APPELLANT'S CASE.**

Standard of Review

The question of whether this Court has jurisdiction to review Appellant's case is a question of law that is reviewed de novo. United States v. Daly, 69 M.J. 485, 486 (C.A.A.F. 2011).

² Article 76 provides: "The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this chapter, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies of the United States. . . ."

Law and Analysis

"Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute. . . ." Daly, 69 M.J. at 486 (citing Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994)). "[T]he burden of establishing" that a Court has jurisdiction over a case "rests upon the party asserting jurisdiction." Kokkonen, id. When Congress exercised its power to govern and regulate the armed forces by establishing this Court, it confined this Court's jurisdiction to the review of specified sentences imposed by courts-martial. Clinton v. Goldsmith, 526 U.S. 529, 533-34 (1999).

The gist of Appellant's faulty jurisdiction argument is that this Court "retains" continuing jurisdiction over his case simply because at one time the procedural posture of Appellant's case was in the realm of a government appeal taken pursuant to Article 62. (App. Br. at 5.) The United States Supreme Court expressly rejected Appellant's argument in Clinton v. Goldsmith, where the Court noted without ambiguity:

[T]he CAAF is not given authority, by the All Writs Act or otherwise, to oversee all matters arguably related to military justice, or to act as plenary administrator even of criminal judgments it has affirmed. Simply stated, there is no source of continuing jurisdiction for the CAAF over all actions administering sentences that the CAAF at one time had the power to review.

Clinton v. Goldsmith, 526 U.S. at 536.

This Court's jurisdiction is not permanent or continuing as desired and requested by Appellant. Appellant's completed court-martial with its sub-jurisdictional sentence and completed Article 64(a) review effectively extinguished any possible review by this Court under Article 67. As Appellant's case is now final under Article 76, UCMJ, and R.C.M. 1209(a)(2), further review under Article 67 is not authorized, and accordingly, review in this case was improvidently granted.

Lopez de Victoria is inapposite. As this Court noted in that case, procedural posture is the linchpin for determining jurisdiction in Appellant's case: "The Article 62, UCMJ, posture of the present case is one in which a finding or sentence 'could have been' imposed, and was in fact imposed." Lopez de Victoria, 66 M.J. at 71. While the United States recognizes that this Court has jurisdiction to review interlocutory appeals from a Court of Criminal Appeals in an appropriate case as provided in Lopez de Victoria, that authority is by no means permanent or continuing. Lopez de Victoria only stands for the proposition that Article 67 review over government appeals under Article 62 exists only while the case is truly in an interlocutory appeal posture, which Appellant's case most certainly is not.

The procedural posture of Lopez de Victoria is completely distinguishable from Appellant's case and demands the opposite result. In Lopez de Victoria, the appellant was convicted of several significant crimes and sentenced to a dishonorable discharge and four years of confinement among other punishments. In a post-trial Article 39(a) session, the military judge dismissed some child abuse specifications on statute of limitations grounds and ordered further sentencing proceedings on the remaining specification. Rather than complete the sentencing proceedings as directed by the military judge, the government instead appealed the military judge's dismissal under Article 62, the Court of Criminal Appeals (CCA) reversed the military judge, and the CCA returned the case to the convening authority to continue the post-trial processing. The convening authority then approved the punitive discharge, reduction, and confinement. This Court then granted the appellant's petition to review the CCA's Article 62 decision and concluded it had jurisdiction to review the government appeal given the procedural posture of the case. Lopez de Victoria, 66 M.J. at 68, 71.

In stark contrast, the present procedural posture of Appellant's case no longer presents any outstanding ruling of the military judge left to consider nor a trial posture that can in anyway be considered as "interlocutory." After the CCA

granted the government appeal and ordered the case back to trial, this Court denied Appellant's request to stay the trial, Appellant was convicted and received a sub-jurisdictional sentence, and Appellant's adjudged and approved findings and sentence were forwarded for mandatory review under Article 64(a). Finally, Appellant was properly administratively discharged in accordance with Air Force Instruction 36-3208 following completion of his applicable appellate review under Article 64(a).

The United States respectfully asserts that Article 62 and R.C.M. 908 do not envision or provide this Court of limited and specified jurisdiction with the authority to conduct what would be in this case a post-trial and post-appellate review of an interlocutory appeal. The interlocutory appeal is completed, and Appellant's conviction and sentence are final under Articles 64(a) and 76. R.C.M. 909(c)(3) specifically grants this Court or the United States Supreme Court the authority to stay the trial proceedings below while an Article 62 appeal decision from a CCA is under review. However, this Court appropriately declined to issue a stay in Appellant's case. Although this Court did not articulate in its order its reasoning for denying the stay of trial proceedings, the United States surmises that this Court did so to prevent undue delay in the trial proceedings while still preserving Appellant's right to raise

his immunity claim during the ordinary course of the applicable appellate review process provided by Congress. As it turned out due to Appellant's adjudged sentence, that process is governed solely by Article 64(a). R.C.M. 908(c)(3) is unequivocal here:

If the decision of the Court of Criminal Appeals permits it, the court-martial may proceed as to the affected charges and specifications pending further review by the Court of Appeals for the Armed Forces or the Supreme Court, unless either court orders the proceedings stayed. **Unless the case is reviewed by the Court of Appeals for the Armed Forces, it shall be returned to the military judge or the convening authority for appropriate action in accordance with the decision of the Court of Criminal Appeals.**

(Emphasis added.)

The Air Force Court of Criminal Appeals issued an order reversing the military judge's dismissal of the case and ordered the case back to trial. Neither this Court nor the Supreme Court interceded with an order staying resumption of the trial. Under R.C.M. 908(c)(3) and AFCCA's order, Appellant's court-martial properly resumed and concluded with a guilty finding and a sentence from the military judge. As a result of the incredibly modest sentence imposed by the military judge (7 days confinement and no punitive discharge among other lesser punishments) and approved by the convening authority, Appellant is not entitled to appellate review under Article 66 or Article 67. Appellate review of Appellant's case was mandated by Article 64(a), and under Article 76 and R.C.M. 1209(a)(2) his

case is final and conclusive. Appellant is entitled to no further appellate review as set forth by Congress in the UCMJ. Under the law, this Court lacks jurisdiction to review Appellant's case.

Appellant's claim of jurisdiction is not based in law, but is squarely cast in equity. Appellant mistakenly but insightfully exposes the real basis of his claim: "If the government was able to subvert this Court's jurisdiction through subsequent proceedings, it would create an unfair system," (App. Br. at 5), and "This Court's jurisdiction should be construed in a manner that is fair for either party." (App. Br. at 6.) Appellant is mistaken for two reasons. First, the United States "subverted" nothing here. AFCCA ordered the case back to trial after the government appeal, R.C.M. 908 permitted resumption of trial, and this Court denied Appellant's request to stay the trial. Second, as the Supreme Court reminded us in Clinton v. Goldsmith, "We have already seen that the CAAF's independent statutory jurisdiction is narrowly circumscribed. To be more specific, the CAAF is accorded jurisdiction by statute. . . ." Id. at 535. Appellant's call for jurisdiction via his perception of equitable versus legal considerations is unsound and without support in the law.

Appellant cites to inapplicable cases to support his equitable theory, many of which actually support the United

States' position and some that have nothing to do with the issue specified by the Court. Most notably, his reliance upon United States v. Boudreaux, is confused and misplaced. Appellant broadly proclaims that "Under United States v. Bourdeux [sic], this Court's jurisdiction cannot be diminished by a lower court or convening authority." (App. Br. at 2.) Boudreaux actually supports the government's view where this Court correctly noted "The primary question is whether the appeal is from a *final judgment* below or whether it is an *interim appeal*. If it is a final appeal, jurisdiction *vis-à-vis* the appeal lies with the appropriate appellate body." Boudreaux, 35 M.J. at 294; emphasis in original. Moreover, this Court noted that "Within the meaning of Article 67(a)(1) and (3), 'final' means the conviction and sentence are both affirmed. . . .Once a 'final' decision is before this Court for consideration, then the lower courts are divested of legal authority to take any action which would have the effect of diminishing the jurisdiction of this Court." Appellant neglects to provide the full context of Boudreaux where the Court aptly continued the analysis: "Second-interim (interlocutory) appeals, on the other hand, do not divest the lower court or convening authority of the authority to continue the case unless the higher court issues a stay of the proceedings or unless a stay is required by operation of a Rule for Courts-Martial or by law. See RCM

908(b); Art. 62." Boudreaux, 35 M.J. at 295.

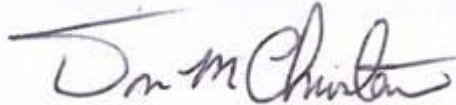
As a result, when the full context of Boudreaux is applied, the United States position must prevail. The present posture of this case is no longer an interlocutory appeal; it is a final court-martial conviction that has already been reviewed and approved as required by Article 64(a) and is final under Article 76. Therefore, this case is not a "final" decision that may properly be reviewed this Court, as the United States has noted above. Finally, the interlocutory appeal of this case was properly returned to trial and resulted in a completed and "final" judgment that is beyond the jurisdiction of this Court.

CONCLUSION

WHEREFORE, the United States respectfully requests this Honorable Court dismiss the improvidently granted review of Appellant's petition.



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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically delivered to the Court and to the Appellate Defense Division on 5 March 2012.



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APPENDIX A

Summarized

RECORD OF TRIAL
(and accompanying papers)

of

Hathorne, Darren N.

(Name: Last, First, Middle Initial)

[REDACTED]

(Social Security Number)

Airman First Class

(Rank)

849th Aircraft Maintenance

Squadron (ACC)

(Unit/Command Name)

United States Air Force

(Branch of Service)

Holloman Air Force

Base

(Station or Ship)

By

SPECIAL COURT-MARTIAL

Convened by Commander

(Title of Convening Authority)

Headquarters 49th Wing (ACC)

(Unit/Command of Convening Authority)

Tried at

Holloman AFB, NM

11-13 April 2011
and 2 November 2011

- VOLUME 1: Chronology through Pretrial Allied Papers
- VOLUME 2: Proceedings of the Article 39 (a) Session pages 1-150
- VOLUME 3: Proceedings of the Article 39 (a) Session pages 151-300
- VOLUME 4: Proceedings of the Article 39 (a) Session pages 301-450
- VOLUME 5: Proceedings of the Article 39 (a) Session pages 451-609.1
- VOLUME 6: Appellate Exhibits
- VOLUME 7: Post Trial Documents, Transcript pages 610-620, Prosecution Exhibits, Defense Exhibits, Appellate Exhibits XVII-XVI Exhibits Offered But Not Admitted

HEADQUARTERS TWELFTH AIR FORCE

(I) I conclude that:

- (A) The court had jurisdiction over the accused and the offense(s).
- (B) The charge(s) and specifications(s) state an offense(s).
- (C) The sentence was within the limits prescribed as a matter of law.

(2) A response has been made to any allegation(s) of error made in writing by the accused.

Article 64(a), UCMJ, has been complied with. The findings and sentence are

Personal Data - Privacy Act (5 U.S.C. 552a)

JUDGE ADVOCATE

DATE
Front Cover

Joseph Bono 6 Dec 11

DNA Processing Required. 10 U.S.C. § 1565

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 49TH WING (ACC)
HOLLOMAN AIR FORCE BASE, NEW MEXICO 88330-8277

Special Court-Martial Order
No. 2

22 November 2011

AIRMAN FIRST CLASS DARREN N. HATHORNE, [REDACTED], United States Air Force, 849th Aircraft Maintenance Squadron was arraigned at Holloman Air Force Base, New Mexico, on the following offense at a court-martial convened by this headquarters.

CHARGE: Article 112a. Plea: NG. Finding: G.

Specification: Did, at or near Alamogordo, New Mexico, between on or about 1 April 2010 and on or about 30 August 2010, wrongfully use cocaine. Plea: NG. Finding: G.

SENTENCE

Sentence adjudged by military judge on 2 November 2011: Confinement for 7 days, hard labor without confinement for 30 days, restricted to the limits of Holloman Air Force Base, New Mexico for 30 days, and reduction to airman basic.

HEADQUARTERS TWELFTH AIR FORCE

- (1) I conclude that:
- (A) The court had jurisdiction over the accused and the offense(s).
 - (B) The charge(s) and specifications(s) state an offense(s).
 - (C) The sentence was within the limits prescribed as a matter of law.
- (2) A response has been made to any allegation(s) of error made in writing by the accused.
- Article 64(a), UCMJ, has been complied with. The findings and sentence are correct in law and fact.

Joseph Benson
JUDGE ADVOCATE

C1, USAFR 6 Dec 11
DATE

APPENDIX B



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 49TH WING (ACC)
HOLLOMAN AIR FORCE BASE, NEW MEXICO

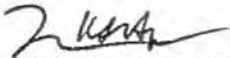
DEC 19 2011

MEMORANDUM FOR 849 AMXS/CC

FROM: 49 WG/CC

SUBJECT: AFI 36-3208 Administrative Discharge Action – AB Darren N. Hathorne,
██████████, 849th Aircraft Maintenance Squadron

The recommendation for discharge of AB Darren N. Hathorne, 849th Aircraft Maintenance Squadron, Holloman AFB, NM is approved. I direct AB Hathorne be discharged from the United States Air Force for Drug Abuse at the earliest possible date. The authority for this action is AFPD 36-32, and AFI 36-3208, paragraph 5.54. I direct an Under Honorable Conditions (General) discharge, without the opportunity for Probation and Rehabilitation.


KEVIN A. HUYCK
Colonel, USAF
Commander

Attachment:
Case File

cc:
49 FSS/DPMAS

APPENDIX C

REQUEST AND AUTHORIZATION FOR SEPARATION

This contains information which must be protected IAW AF1 33-332 and DoD Regulation 5400.00; Privacy Act of 1974 as Amended Applies, and it is for Official Use Only (FOUO). It must be protected or Privacy Act information removed prior to further disclosure.

1. TYPE OF SEPARATION:									
<input checked="" type="checkbox"/> DISCHARGE <input type="checkbox"/> ENTRY LEVEL SEPARATION <input type="checkbox"/> RELEASE FROM VOID ENLISTMENT <input type="checkbox"/> RELEASE FROM EAD/REVERTS TO ANG <input type="checkbox"/> RELEASE FROM ACTIVE DUTY/TRANSFERS TO RESAF <input type="checkbox"/> RELEASE FROM EAD/REVERTS TO RESAF <input type="checkbox"/> DISMISSAL									
2. AUTHORITY: <input type="checkbox"/> BY DIRECTION OF THE PRESIDENT <input type="checkbox"/> RESIGNATION ACCEPTED BY THE PRESIDENT									
3 a. NAME (Last, First, MI) HATHORNE, DARREN N			3 b. GRADE AB		3 c. SSAN [REDACTED]		4. PLACE OF ENTRY ON ACTIVE DUTY OR ENLISTMENT HOUSTON TX		
5. HOME OF RECORD STAFFORD TX				6. FUTURE MAILING ADDRESS [REDACTED]				7. UNDER 2 YEARS SERVICE <input type="checkbox"/> (E-4 Only)	
8. PAFSC 2W151	9. RESERVE AF GRADE		10. MIL SVC OBLIGATION DATE NO		11. AERONAUTICAL RATING			12. FLYING STATUS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
13. EFFECTIVE DATE 27 DEC 2011	14. CHARACTER OF SERVICE						15. CERTIFICATE ISSUED		
	<input type="checkbox"/> HONORABLE		<input type="checkbox"/> UNDER OTHER THAN HONORABLE CONDITIONS		<input type="checkbox"/> DD FORM 256 AF				
	<input checked="" type="checkbox"/> GENERAL (Under Honorable Conditions)		<input type="checkbox"/> BAD CONDUCT DISCHARGE		<input checked="" type="checkbox"/> DD FORM 214				
	<input type="checkbox"/> UNCHARACTERIZED		<input type="checkbox"/> DISHONORABLE DISCHARGE						
16. RELIEVED FROM ASSIGNMENT (Unit, Major Command, Address and Servicing MPF) ACC 849 AIRCRAFT MAINT SQ FFKLW1 HOLLOMAN NM 883300000						17. WILL PROCEED TO			
						<input type="checkbox"/> PLACE OF ENTRY ON ACTIVE DUTY OR ENLISTMENT			
						<input checked="" type="checkbox"/> HOME OF RECORD			
						<input type="checkbox"/> HOME OF SELECTION			
18. TRAVEL BY PRIVATE CONVEYANCE (TPC) <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, WITH 0 DAYS TRAVEL TIME PERMITTED.									
19. MEMBER QUALIFIES FOR FULL TRAVEL/TRANSPORTATION ENTITLEMENT UNDER THE JFTR, PARA U5125 <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO									
20. ASSIGNED TO (Check if Applicable)									
a. ARPC DENVER, CO <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			b. REVERTS TO CONTROL OF ANG (Name of State)			c. TYPE OF POSITION:			
						<input type="checkbox"/> MOBILIZATION AUGMENTEE			
						<input type="checkbox"/> REINFORCEMENT DESIGNEE			
						<input type="checkbox"/> UNIT			
d. UNIT OF ASSIGNMENT AND MPF			e. TRAINING/PAY CATEGORY		f. RESERVE SECTION CODE		g. FUNCTIONAL ACCT CODE		
			h. AUTHORIZED GRADE		i. AUTHORIZED AFSC		j. POSITION CONTROL NO.		
21a. ELIGIBLE FOR (PER 10 U.S.C. 1174)			b. ENTITLED TO SEVERANCE/SEPARATION PAY			c. CHAPTER 61, 10 U.S.C.			
<input type="checkbox"/> SEPARATION PAY			SERVICE FOR PAY IS:			DISABILITY			
<input type="checkbox"/> READJUSTMENT PAY			YEARS	MONTHS	DAYS	<input type="checkbox"/> NOT ENTITLED TO BENEFITS			
CREDITABLE ACTIVE FEDERAL SERVICE						<input type="checkbox"/> NOT APPLICABLE			
YEARS	MONTHS	DAYS							
22. DEPENDENTS									
23. REMARKS									
01. SEPARATION PROGRAM DESIGNATOR (SPD) CODE IS JKK.									
02. REENLISTMENT ELIGIBILITY (RE) CODE IS 2B.									
24. DATE 21 DEC 2011		25. ORDERS ISSUING/APPROVING OFFICIAL (Name, Grade, Title, DSN Phone) SOUCY, KEVIN, SSG, USAF, SEPERATIONS TECH				26. SIGNATURE // SIGNED //			
27. EXPENSES CHARGEABLE TO: [REDACTED] (*INSERT M, D, H, I, T, G, OR Y)									
NONTEMPORARY STORAGE CHARGABLE TO: [REDACTED]									
CIC: 4 5 248 0080 525725 TAC: F28E SDN: PB58812001MP0H									
28. DESIGNATION AND LOCATION OF HEADQUARTERS DEPARTMENT OF THE AIR FORCE AFPC RANDOLPH AFB TX 78150-0000					29. AUTHORITY AFI 36-3208	30. SPECIAL ORDER NO. AF-026286		31. DATE 21 DEC 2011	
					32. TDN FOR THE COMMANDER				
33. DISTRIBUTION AA					34. SIGNATURE ELEMENT OF ORDERS AUTHENTICATING OFFICIAL //signed// MICHEAL T. AMOS, MSGT, USAF SUPT SEPARATIONS SECTION, TFSC-SA				

REQUEST AND AUTHORIZATION FOR SEPARATION (Continued)

This contains information which must be protected IAW AFI 33-332 and DoD Regulation 5400.00; Privacy Act of 1974 as Amended Applies, and it is for Official Use Only (FOUO). It must be protected or Privacy Act information removed prior to further disclosure.

NAME (Last, First, MI): HATHORNE, DARREN N

35. CONTINUATION OF DEPENDENTS AND REMARKS

23. CONTINUED

03. IAW ATTACHMENT 11 OF AFI 36-2102, BASE-LEVEL RELOCATION PROCEDURES, AMENDMENTS WILL NOT BE PUBLISHED FOR THE FOLLOWING ITEMS: - INACCURATE FIRST, MIDDLE NAMES, OR INITIALS- AFSC SKILL LEVEL- INFORMATION IN BLOCKS 20B, C, E, F, G, H, I, AND J- INACCURATE FUTURE MAILING ADDRESS- AERONAUTICAL RATINGS AND FLYING STATUS- TRAVEL FOR TPC. IF YOUR SEPARATION ORDER REQUIRES AN AMENDMENT FOR ANY ITEM NOT LISTED ABOVE, PLEASE EMAIL DPS.SEPRELOC@RANDOLPH.AF.MIL PRIOR TO YOUR DATE OF SEPARATION (DOS).

04. SEPARATING MEMBERS MUST FINAL OUT-PROCESS THROUGH SERVICING CSS/MPS ONE DUTY DAY PRIOR TO DEPARTURE.

05. IF RESIDING IN BASE HOUSING, MEMBER MUST CLEAR THROUGH SERVICING BASE HOUSING OFFICE PRIOR TO DEPARTING THE LOCAL AREA.

06. IF YOU HAVE NOT COMPLETED THE CONGRESSIONALLY MANDATED DD FORM 2648, PRESEPARATION COUNSELING CHECKLIST, YOU ARE IN VIOLATION OF PUBLIC LAW 101-510. IMMEDIATELY CONTACT THE LOCAL AIRMAN AND FAMILY READINESS CENTER TO SCHEDULE AN APPOINTMENT. YOU ARE NOT ABLE TO FINAL OUT-PROCESS WITHOUT COMPLETING THIS REQUIREMENT.

APPENDIX D

CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

This Report Contains Information Subject to the Privacy Act of 1974, As Amended.

1. NAME (Last, First, Middle) HATHORNE DARREN NICHOLAS		2. DEPARTMENT, COMPONENT AND BRANCH AIR FORCE--REGAF		3. SOCIAL SECURITY NUMBER [REDACTED]		
4a. GRADE, RATE OR RANK AB	b. PAY GRADE E1	5. DATE OF BIRTH (YYYYMMDD) [REDACTED]	6. RESERVE OBLIGATION TERMINATION DATE (YYYYMMDD) N/A			
7a. PLACE OF ENTRY INTO ACTIVE DUTY HOUSTON TX		b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known) FORT BEND TX				
8a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND 849 AIRCRAFT MAINT SQ (ACC)			b. STATION WHERE SEPARATED RANDOLPH AFB TX			
9. COMMAND TO WHICH TRANSFERRED N/A				10. SGLI COVERAGE <input type="checkbox"/> NONE AMOUNT: \$400,000		
11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.) 2W151, AIRCRAFT ARMAMENT SYS JOURNEYMAN, 2 YEARS AND 7 MONTHS		12. RECORD OF SERVICE		YEAR(S)	MONTHS(S)	DAY(S)
		a. DATE ENTERED AD THIS PERIOD		2009	MAR	17
		b. SEPARATION DATE THIS PERIOD		2011	DEC	27
		c. NET ACTIVE SERVICE THIS PERIOD		02	09	11
		d. TOTAL PRIOR ACTIVE SERVICE		00	00	00
		e. TOTAL PRIOR INACTIVE SERVICE		00	03	24
		f. FOREIGN SERVICE		00	00	00
		g. SEA SERVICE		00	00	00
		h. INITIAL ENTRY TRAINING		2009	MAR	22
		i. EFFECTIVE DATE OF PAY GRADE		2011	NOV	16
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) Meritorious Unit Award, National Defense Service Medal, Global War on Terrorism Service Medal, AF Training Ribbon.			14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed) (61B), JUL 2009; BASIC MILITARY TRAINING, MAY 2009.			
15a. COMMISSIONED THROUGH SERVICE ACADEMY <input type="checkbox"/> YES <input checked="" type="checkbox"/> X <input type="checkbox"/> NO						
b. COMMISSIONED THROUGH ROTC SCHOLARSHIP (10 USC Sec. 2107b) <input type="checkbox"/> YES <input checked="" type="checkbox"/> X <input type="checkbox"/> NO						
c. ENLISTED UNDER LOAN REPAYMENT PROGRAM (10 USC Chap. 109) (If yes, years of commitment: _____) <input type="checkbox"/> YES <input checked="" type="checkbox"/> X <input type="checkbox"/> NO						
16. DAYS ACCRUED LEAVE PAID 0	17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION				YES	NO
18. REMARKS Member has not completed first full term of service. Copy 3 to DVA Data Processing Center, Austin TX 78772 and copy 5 to Lockheed Martin Information Technology, U.S. Department of Labor, Federal Claims Control Center, P.O. Box 785070, Orlando, FL 32878-5070. -----NOTHING FOLLOWS-----						
The information contained herein is subject to computer matching within the Department of Defense or with any other affected Federal or non-Federal agency for verification purposes and to determine eligibility for, and/or continued compliance with, the requirements of a Federal benefit program.						
19a. MAILING ADDRESS AFTER SEPARATION (Include ZIP Code) [REDACTED]			b. NEAREST RELATIVE (Name and address - include ZIP Code) NO NAME PROVIDED [REDACTED]			
20. MEMBER REQUESTS COPY 6 BE SENT TO (Specify state/locality) TX OFFICE OF VETERANS AFFAIRS <input checked="" type="checkbox"/> X <input type="checkbox"/> YES <input type="checkbox"/> NO						
a. MEMBER REQUESTS COPY 3 BE SENT TO THE CENTRAL OFFICE OF THE DEPARTMENT OF VETERANS AFFAIRS (WASHINGTON, DC) <input type="checkbox"/> YES <input checked="" type="checkbox"/> X <input type="checkbox"/> NO						
21.a. MEMBER SIGNATURE MEMBER NOT AVAILABLE TO SIGN	b. DATE (YYYYMMDD) N/A	22.a. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title, signature) CAC/PKI SIGNED BY TREVINO.KIMBERLY.DAWN. [REDACTED] CONTRACTOR, USAF, Separation Documentation Technician Jan 3 2012 6:52:41:000PM CAC Serial Number: 31BC8F IssuerCN: DOD CA-23			b. DATE (YYYYMMDD) 20120103	

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)

23. TYPE OF SEPARATION DISCHARGED	24. CHARACTER OF SERVICE (Include upgrades) UNDER HONORABLE CONDITIONS - (GENERAL)	
25. SEPARATION AUTHORITY AFI 36-3208	26. SEPARATION CODE JKK	27. REENTRY CODE 2B
28. NARRATIVE REASON FOR SEPARATION MISCONDUCT (DRUG ABUSE)		
29. DATES OF TIME LOST DURING THIS PERIOD (YYYYMMDD) NONE		30. MEMBER REQUESTS COPY 4 (Initials) N/A