IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

U N I T E D S T A T E S, Appellee	)	FINAL BRIEF ON BEHALF OF APPELLANT
v.	)	
	)	Crim. App. Dkt. No. 20100084
Private (E-1) **CASSANDRA M. RILEY,** United States Army, Appellant	)	USCA Dkt. No. 11-0675/AR

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Private (E-1) **Cassandra M. Riley,** United States Army, Appellant	)

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES:

Granted Issues

I. WHETHER APPELLANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HER DEFENSE COUNSEL FAILED TO INFORM HER THAT SHE WOULD HAVE TO REGISTER AS A SEX OFFENDER AFTER PLEADING GUILTY.

II. WHETHER, IN LIGHT OF *UNITED STATES V. MILLER*, 63 M.J. 452 (C.A.A.F. 2006), THERE IS A SUBSTANTIAL BASIS TO QUESTION APPELLANT'S GUILTY PLEA DUE TO THE MILITARY JUDGE'S FAILURE TO INQUIRE IF TRIAL DEFENSE COUNSEL INFORMED APPELLANT THAT THE OFFENSE TO WHICH SHE PLEADED GUILTY WOULD REQUIRE APPELLANT TO REGISTER AS A SEX OFFENDER.

Statement of Statutory Jurisdiction

The Army Court of Criminal Appeals (Army Court) had jurisdiction over this matter pursuant to Article 66, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866 (2006). This Honorable Court has jurisdiction over this matter under Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3) (2006).

Statement of the Case

On February 4, 2010, a military judge sitting as a general court martial tried Private Cassandra M. Riley (appellant) at Fort Hood, Texas. The military judge convicted Private (PVT) Riley, pursuant to her plea, of kidnapping a minor, in violation of Articles 134, UCMJ. A panel of officer members sentenced PVT Riley to total forfeitures, five years confinement, and a dishonorable discharge. The convening authority approved the adjudged sentence and credited appellant with 187 days of confinement against her sentence to confinement.

On July 7, 2011, the Army Court of Criminal Appeals (Army Court) summarily affirmed the findings of guilty and the sentence. (JA 8-9). On November 15, 2011, this Court granted PVT Riley's Petition for Grant of Review, set aside the Army Court's July 7, 2011 decision, and ordered the Army Court to obtain affidavits from defense counsel. (JA 6-7). On May 11, 2012, the Army Court again affirmed the findings and sentence. (JA 1-5). PVT Riley was subsequently notified of the Army Court's decision. On October 15, 2012, this Court granted appellant's petition for review.

Summary of Arguments

Private Riley received ineffective assistance of counsel when her defense counsel failed to advise her that after pleading guilty to kidnapping a minor she would have to register as a sex offender for life. Had PVT Riley known about this life-altering consequence of her conviction, she would not have agreed to the terms of her pretrial agreement. Instead, PVT Riley would have continued ongoing negotiations to increase her confinement exposure while pleading to kidnapping without the aggravating factor. This outcome is reasonably foreseeable as the government, military judge, and defense counsel did not, at any time, anticipate this crime to carry the lifelong requirement to register as a sex offender. The Army Court erroneously focused on its view solely on whether PVT Riley would have pled guilty if defense counsel competently advised her. It also failed to consider the recent Supreme Court case *Missouri v. Frye*, 132 S.Ct. 1399, 1409-10 (2012), which held that "*Hill* [*v. Lockhart*] does not . . . provide the sole means for demonstrating prejudice arising from the deficient performance of counsel during plea negotiations.".

The military judge abused his discretion when he accepted PVT Riley's plea without ensuring that PVT Riley was aware that a conviction for kidnapping a minor triggers sex offender registration requirements. Sex offender registration was a

major collateral consequence of PVT Riley's conviction; her lack of understanding regarding this matter was or reasonably should have been readily apparent to the military judge, and he nonetheless failed to correct PVT Riley's lack of understanding. The military judge's failure to ensure PVT Riley was aware of applicable sex offender registration requirements provides a substantial basis in law to question PVT Riley's plea.

Granted Issue I Presented

WHETHER APPELLANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HER DEFENSE COUNSEL FAILED TO INFORM HER THAT SHE WOULD HAVE TO REGISTER AS A SEX OFFENDER AFTER PLEADING GUILTY.

Statement of Facts

Private Riley navigated through her plea negotiations with the government and through her guilty plea with the military judge completely unaware that as a result of her kidnapping conviction she would have to endure a life-long stigma as a sex offender. (JA 18-19, 21-26, 28-29). Before PVT Riley pled guilty, her defense counsel, MAJ Jocelyn Stewart and CPT Travis Sommer, failed to advise her that a conviction for the offense of kidnapping a minor, unless committed by a parent or guardian, triggered mandatory sex offender notification and registration requirements under federal law, Department of Defense instructions, and Alabama state law. Defense counsel's failure was despite recently receiving instruction on the registration

requirement from the Army's Defense Counsel Assistant Program, highlighting the necessity of discussing the requirements with soldier-clients. (JA 21-26, 28-29).

When PVT Riley entered a pretrial agreement and pled guilty, she believed that in a worst case scenario, she would serve a sentence to confinement for eleven years as a result of her plea. (JA 47). While PVT Riley was apprehensive about confinement, she was also looking forward to eventually returning home to her family in Alabama and resuming a normal life. (JA 18). Far from the prospect of resuming a normal life, PVT Riley had no idea that she would have to register as a sex offender after serving her term of confinement. (JA 18-19).

During pretrial consultations, MAJ Stewart advised PVT Riley that without a cap on confinement, she faced a maximum punishment of life without eligibility for parole. (JA 24). However, MAJ Stewart also advised PVT Riley that without such a cap, "[she] did not see the facts of her case as legitimately exposing her to anywhere near life without parole . . . ." (JA 24-25).

Major Stewart also advised PVT Riley that the government's proposed cap of eleven years was greater than MAJ Stewart valued the government's case before a panel, but that the military judge could meet or exceed that sentence. (JA 24). Major Stewart further advised PVT Riley that her assessment that the

panel would be more lenient than the military judge was based on her experience with the III Corps panel. (JA 24).

If PVT Riley knew, following her conviction for kidnapping, she would have to take her place among the ranks of sex offenders, she would not have entered the pretrial agreement as written. (JA 19). Private Riley would have asked her defense counsel to do whatever she could during negotiations with the government to ensure that any guilty plea would not require sex offender registration. (JA 19). Private Riley would have been open to pleading guilty to another offense or an amended Specification of the Charge, provided she would not have to register as a sex offender. (JA 19). Private Riley knew that her conviction at a contested trial was likely. (JA 26). However, unless any deal removed the prospect of sex offender registration, PVT Riley would have made clear to the government that she would not plead guilty as charged and would have insisted on going to trial. (JA 19).

At court-martial, the defense counsel failed to state on the record, as military case law requires,[1] that they advised PVT Riley that she would have to register as a sex offender as a result of her conviction. The military judge also failed to

[1] *United States v. Miller*, 63 M.J. 452, 459 (C.A.A.F. 2006).

fulfill his obligation[2] to ask the defense counsel whether they advised PVT Riley of the applicable sex offender registration and reporting requirements resulting from a finding of guilty.

Standard of Review

Whether defense counsel provide effectiveness assistance of counsel is a mixed question of law and fact. *United States v. Rose*, 71 M.J. 138, 143 (C.A.A.F. 2012) (citations omitted). This Court reviews findings of fact under a clearly erroneous standard but questions of deficient performance and prejudice de novo. *Id.*

Law

"The Sixth Amendment guarantees a criminal accused, including military service members, the right to effective assistance of counsel." *United States v. Gooch*, 69 M.J. 353, 361 (C.A.A.F. 2011)(citing *United States v. Gilley*, 56 M.J. 113, 124 (C.A.A.F. 2001)); Article 27(b), UCMJ. Moreover, before deciding to plead guilty, an accused "is entitled to the effective assistance of competent counsel." *Padilla v. Kentucky*, 130 S.Ct. 1473, 1481 (2010)(internal quotations and citations omitted).

An appellant claiming ineffective assistance of counsel must overcome a "strong presumption that [her] counsel's conduct

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[2] JA 65-66, Dep't of Army, Pam. 27-9, Legal Services: Military Judges' Benchbook (Benchbook), para. 2-2-8 (January 1, 2010).

falls within the wide range of reasonable professional assistance." *United States v. Denedo*, 66 M.J. 114, 127 (C.A.A.F. 2008), *aff'd*, 556 U.S. 904 (2009). In assessing the effectiveness of counsel, military appellate courts apply the Supreme Court's two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *Denedo*, 66 M.J. at 127; *Miller*, 63 M.J. at 455-56.

First, the appellant must show that counsel's performance was deficient, such that she was "not functioning as the counsel guaranteed the defendant by the Sixth Amendment." *Denedo*, 66 M.J. at 127; *Miller*, 63 M.J. at 455. In satisfying this burden, the "defendant must show that counsel's representation fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 688. Appellant must establish that the acts indentified by her "were outside the wide range of professional competent assistance." *Burger v. Kemp*, 483 U.S. 776, 795 (1987)(quoting *Strickland*, 466 U.S. at 690). That is, counsel's performance was unreasonable "under prevailing professional norms . . . considering all the circumstances." *Strickland*, 466 U.S. at 688.

Second, the appellant must show that her counsel's deficient performance prejudiced her, which means that the error was so serious that it deprived the appellant of a fair trial. *Denedo*, 66 M.J. at 127; *Miller*, 63 M.J. at 455-56.

One way to satisfy the prejudice requirement in a guilty plea case is for the appellant to "show specifically that 'there is a reasonable probability that, but for counsel's errors, [s]he would not have pleaded guilty and would have insisted on going to trial.'" *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *Denedo*, 66 M.J. at 128 (citing *United States v. Alves*, 53 M.J. 286, 289 (C.A.A.F. 2000)); *cf. United States v. Vargaspuentes*, 70 M.J. 501 (Army Ct. Crim. App. 2011)(assuming defense counsel did not advise the accused that his application for citizenship would be in jeopardy after he pled guilty, the accused failed to demonstrate that he would not have pled guilty and would have insisted on going to trial).

The Supreme Court recently reiterated, however, that the *Hill* standard is not the *only* way to show prejudice in a guilty plea context. *Frye*, 132 S.Ct. at 1409-10. The focus of this inquiry is not on the outcome of a potential trial, but rather on "whether counsel's deficient performance affected the outcome of the plea process." *Id.*; *see also Denedo*, 66 M.J. at 129 (quoting *Hill*, 474 U.S. at 59).

In *Frye*, the Supreme Court decided a case involving a defense counsel who failed to advise his client of plea offers and, as a result, those offers lapsed. *Frye*, 132 S.Ct. at 1404. Frye claimed he would have accepted an earlier offer if he had known about it. *Id.* at 1410. The Court held that if the

prosecution and trial court would have accepted the complained of plea offer, then Frye established prejudice under *Strickland*. *Id.*

In the same term, the Supreme Court also decided *Lafler v. Cooper*, 132 S.Ct. 1376 (2012), emphasizing the importance of pretrial negotiations. In *Lafler*, the Court found that a defendant has the right to effective assistance of counsel in considering whether to accept a plea bargain. *Id.* at 1387.

Finally, this Court recently held, post-*Lafler* and *Frye*, in *United States v. Rose*, that prejudice exists where the appellant would not have pled guilty if he had to register as a sex offender. 71 M.J. at 138.

Argument

Private Riley's defense counsel were ineffective because they failed to advise her that as a result of pleading guilty to kidnapping a minor, she would have to register as a sex offender for life. (JA 21, 28) But for the defense counsel's omitted advice, there is a reasonable probability that PVT Riley would not have agreed to the pretrial agreement as written and continued ongoing negotiations to increase her confinement exposure or elect trial by military judge alone. It is also reasonable that PVT Riley and the government would have come to an acceptable agreement. In the unlikely scenario that no agreement could be made to avoid sex offender registration for

life, PVT Riley would have pleaded not guilty. Therefore, PVT Riley was denied a fair trial, and her guilty plea is unreliable.

A. Defense Counsels' Performance Was Deficient Because They Failed To Advise PVT Riley That Her Guilty Plea Would Require Sex Offender Registration for Life

In *Miller*, this Court held that the defense counsel's failure to inform his client that he would have to register as a sex offender as a result of pleading guilty did not, by itself, rise to the level of ineffective assistance of counsel. 63 M.J. at 458. However, this Court recognized that such information would be helpful to an accused in understanding the consequences of his guilty plea, and created a prospective rule that defense counsel must advise their clients of certain sex offender registration requirements. *Id.* at 458-59. This rule's importance is maximized in the instant case because PVT Riley faces sex offender registration for life.

In fashioning the prospective rule, this Court stated that defense counsel "should inform an accused prior to trial as to any charged offense listed on the DoD Instr. 1325.7 Enclosure 27: Listing of Offenses Requiring Sex Offender Registration" and "state on the record of the court-martial that counsel has complied with this advice requirement." *Id.* However, this Court noted that a counsel's failure to so advise "is not per se

ineffective," but rather "one circumstance this Court will carefully consider in evaluating allegations of ineffective assistance of counsel." *Id.*

The defense counsels' performance was deficient here because they failed to advise PVT Riley that she would have to register as a sex offender for life as a consequence of her plea. Most disturbing is the defense counsels' failure to advise PVT Riley of her registration requirement in light of constant reminders to counsel of the importance to familiarize themselves with sex offender registration requirements. These reminders did not occur years or months before or after PVT Riley's trial. Rather, they occurred *during* her negotiations.

On August 6, 2009, the government charged PVT Riley with kidnapping a minor. (JA 16). On or about September 15, 2009, the Regional Defense Counsel of PVT Riley's defense attorneys sent them an updated Post Trial & Appellate Rights form and Advice Concerning Possible Requirements to Register as a Sex Offender memorandum. (JA 21-22, 28). A month later, from October 28-30, 2009, at a defense counsel continuing legal education conference, PVT Riley's defense counsel were again reminded to read the previous updated memorandum and to engage the leadership should they have any questions. (JA 21-22). On or about December 4, 2009, both defense counsel *again* received an e-mail attachment from their Regional Defense Counsel

entitled "DCAP Sends 3-31 - Sex Offender Registration Advice (1 December 2009). (JA 21-22, 28). Despite these constant reminders to be aware of and comply with their obligation to advise clients of sex offender registration requirements, to include kidnapping a minor, defense counsel remained irresponsibly in the dark. On February 2, 2010, PVT Riley's offer to plead guilty was accepted by the convening authority and the trial held on February 4, 2010. (JA 10, 46-47). At no point did PVT Riley's defense counsel inform her of a registration requirement. It is clear that throughout the three-month process, defense counsel had not only multiple opportunities to educate themselves but were essentially spoon fed the appropriate information and guidance. Although *Lafler* deals with deficient performance when a defense counsel gives an incorrect legal rule, this case falls within the same principle that defense counsel must reasonably know how their advice, or lack thereof, affects their client's plea.

The defense counsel failed to fulfill their minimal obligation under *Miller*, to inform PVT Riley that she was pleading guilty to an offense that triggered mandatory sex offender registration and notification requirements under Dep't of Def. Instr. 1325.7, Administration of Military Correctional Facilities and Clemency and Parole Authority (DoD Instr. 1325.7), para. 6.18.6 (July 17, 2001) and 42 U.S.C. § 16911

(2006). In light of *Miller* and *Rose*, the defense counsel's failure to alert PVT Riley to the lifelong sex offender registration requirements that her conviction triggered was far "outside the wide range of professional competent assistance." *Kemp*, 483 U.S. at 795 (quoting *Strickland*, 466 U.S. at 693).

This Court in *Miller* established the prevailing professional norm expected of defense counsel from then forward; the Army's Defense Counsel Assistance Program provided numerous reminders and futher education to counsel in order to ensure they complied with the prevailing professional norm - which they ignored.

B. The Defense Counsel's Deficient Performance Prejudiced PVT Riley

It is highly probable that the government and PVT Riley would have agreed to a pretrial agreement that would have removed the sex offender registration requirement. First, the government and defense attorneys did not recognize that kidnapping a minor qualified as a sex offense, let alone the requirement to register for life. The offense of kidnapping under Article 134, UCMJ, does not provide an aggravating factor when the victim is a minor. The maximum confinement under all kidnappings, both of adults and minors, is life without the eligibility for parole. This is unlike the numerous sex offenses under Article 120, UCMJ. Thus, the *only* collateral

consequence of including the minor victim in the specification is the requirement of lifelong registration—an effect the government, defense counsel, and the military judge did not know existed.

At the time the parties signed the pretrial agreement, the government did not view sex offender registration as a viable bargaining tool. Likewise, PVT Riley's negotiating ability was unknowingly limited without her knowledge of the sex offender registration requirement. If either side knew of the registration requirement, both sides would reasonably have negotiated to either increase her confinement exposure or elect trial by military judge alone in exchange for removing the "minor" language from the specification. It is clear that the parties would have reached an agreement on this matter because the government would have assumed a superior bargaining position and PVT Riley did not want to register as a sex offender.

Second, it is evident from the record that the government wanted PVT Riley to enter a guilty plea. The government did not require PVT Riley to elect trial by military judge alone as part of the agreement. This is an uncommon occurrence in a guilty plea where trial by military judge is a huge benefit for the government. Without question, assembling an officer panel for PVT Riley's guilty plea was an extra burden for the government. The government's concession of this term in the pretrial

agreement shows its great desire to ensure PVT Riley plead guilty. Had PVT Riley known of the lifelong registration requirement, it is reasonable to expect that the government would have been more than amenable to removing the "minor" language in exchange for PVT Riley's electing trial by military judge alone.

Third, in the unlikely scenario that the parties could not reach agreement, PVT Riley could reasonably have rejected the government's deal on the grounds that lifelong sex offender registration was an unpalatable consequence of pleading guilty to a non-sexual offense. The government would be hard pressed to sell sex offender registration to PVT Riley where her offense had no obvious or intuitive hallmark of a sex offense. The Army Court dismisses this contention as unreasonable, focusing on the fact that there was overwhelming evidence of the accused's guilt. This ignores PVT Riley's constitutional right to have the government prove the case against her regardless of the apparent quality or quantity of the evidence.

Fourth, if PVT Riley was actually aware of this significant consequence of her guilty plea, she could reasonably have recalibrated her assessment of the benefits of pleading guilty and concluded that the remote risk of receiving a sentence to confinement for eleven years was not worth both giving up her constitutional rights and being branded a sex offender for life.

The Army Court relies on trial defense counsel's assertion that PVT Riley was focused on limiting confinement. This ignores the fact that PVT Riley did not know she needed to focus on sex offender registration. To hold her responsible for not worrying about sex offender registration when she did not know it was a consequence is absurd.

The defense counsel's failure to provide PVT Riley competent pretrial advice concerning sex offender registration deprived PVT Riley of her Sixth Amendment right to effective assistance of counsel and prejudiced her in the course of plea negotiations, a time which "is almost always the critical point for a defendant." *Frye*, 132 S.Ct. at 1407.

Therefore, PVT Riley respectfully requests this Honorable Court to reverse the Army Court's decision and dismiss the findings and sentence in this case or, in the alternative, strike the specification language relating to a minor.

Granted Issue II Presented

WHETHER, IN LIGHT OF *UNITED STATES V. MILLER*, 63 M.J. 452 (C.A.A.F. 2006), THERE IS A SUBSTANTIAL BASIS TO QUESTION APPELLANT'S GUILTY PLEA DUE TO THE MILITARY JUDGE'S FAILURE TO INQUIRE IF TRIAL DEFENSE COUNSEL INFORMED APPELLANT THAT THE OFFENSE TO WHICH SHE PLED GUILTY WOULD REQUIRE APPELLANT TO REGISTER AS A SEX OFFENDER.

Statement of Facts

The second assignment of error incorporates by reference the statement of facts for the second assignment of error.

Standard of Review

A military judge's acceptance of an accused's guilty plea is reviewed for an abuse of discretion. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008).

Law

A guilty plea will be set aside if the record of trial shows a substantial basis in law and fact for questioning the plea. *Inabinette*, 66 M.J. at 322. "[I]f it appears that [an accused] has entered a plea improvidently or through lack of understanding of its meaning and effect," the military judge shall not accept the plea. Article 45, UCMJ.

When an appellant relies on collateral consequences of her court-martial to challenge the providence of her guilty plea, she must demonstrate that the collateral consequences are

"major" and that "appellant's misunderstanding of the collateral consequences: (a) results foreseeably and almost inexorably from the language of a pretrial agreement; (b) is induced by the trial judge's comments during the providence inquiry; or (c) is made readily apparent to the judge, who nonetheless fails to correct the misunderstanding." *Miller*, 63 M.J. at 457 (citing *United States v. Bedania*, 12 M.J. 373 (C.M.A. 1982)); *United States v. Williams*, 53 M.J. 293, 296 (C.A.A.F. 2000).

Argument

A substantial basis in law exists to question PVT Riley's guilty plea. Sex offender registration was a "major" collateral consequence of PVT Riley's plea, and her lack of understanding regarding this matter was or reasonably should have been readily apparent to the military judge, but he nonetheless failed to correct the misunderstanding.

It is hard to imagine a collateral consequence that qualifies as "major" if sex offender registration for life does not. Four principal reasons qualify sex offender registration as a major consequence. First, PVT Riley will have to endure the societal stigma of being a sex offender for the rest of her life. Second, PVT Riley would not have pled guilty and would have insisted on going to trial unless the government removed the prospect of sex offender registration. Third, *Miller* implicitly elevated sex offender registration as a "major"

collateral consequence. Unlike for other less significant consequences (e.g. an administrative discharge, loss of a license or security clearance, removal from a military program, failure to obtain promotion, etc.), *Miller* created a rule that obligated defense counsel to state during the providence inquiry that they informed PVT Riley that, upon conviction, she would have to register as a sex offender under applicable state and federal law. 42 U.S.C. § 16911 (2006); DoD Instr. 1325.7; *Miller*, 63 M.J. at 459. Fourth, the government's case against PVT Riley was worth nowhere near her cap of eleven years of confinement.

Private Riley's lack of understanding of sex offender registration requirements was or reasonably should have been readily apparent to the military judge. No lay person, including PVT Riley, could reasonably be expected to understand that a conviction for kidnapping, which is in no way sexual, triggers sex offender registration requirements. Inexcusable as it is, even PVT Riley's defense counsel were unaware of this requirement. (JA 21-26, 28-29). Private Riley's lack of understanding should also have been readily apparent to the military judge when her defense counsel failed to state on the record that they advised PVT Riley that she would have to register as a sex offender.

To be clear, the military courts have not expressly required military judges to determine whether an accused is aware of sex offender registration requirements resulting from a guilty plea. However, *Miller* and *Padilla* compel the conclusion that an accused must at least be aware of federal sex offender registration requirements for her plea to be knowing, voluntary, and provident under Article 45, UCMJ.

Despite PVT Riley's readily apparent lack of understanding regarding the major consequence of sex offender registration, the military judge nonetheless failed to correct her understanding. When the defense counsel failed to confirm that she complied with *Miller*, the military judge had an affirmative obligation to ask the defense counsel if she informed PVT Riley regarding the applicable sex offender registration requirements. Benchbook, para. 2-2-8 (stating that military judges must ask this question before entering findings that a plea is knowing and voluntary). The military judge's failure to inquire caused PVT Riley to proceed with her guilty plea without any inkling that she would have to register as a sex offender for life. Therefore, the military judge's failure to inquire provides a substantial basis in law to question PVT Riley's plea.

Conclusion

WHEREFORE, appellant respectfully requests this Honorable Court to reverse the Army Court's decision and dismiss the findings and sentence in this case or, in the alternative, strike the specification language relating to a minor.

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CERTIFICATE OF COMPLIANCE WITH RULE 24(d)

1. This brief complies with the type-volume limitation of Rule 24(c) because this brief contains 4,561 words.

2. This brief complies with the typeface and type style requirements of Rule 37 because this brief has been prepared in a monospaced typeface (12-point, Courier New font) using Microsoft Word, Version 2007 with no more than ten and a half inch characters per inch.

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of *United States v. Riley*, Crim.App.Dkt.No. 20100084, USCA Dkt. No. 11-0675/AR, was electronically filed with both the Court and Government Appellate Division on November 29, 2012.

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