IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES Appellee v. Sergeant (E-5) **DAYTRON ABDULLAH** United States Army Appellant	BRIEF ON BEHALF OF APPELLANT Crim. App. Dkt. No. 20230223 USCA Dkt. No. 25-0070/AR

Jonathan F. Potter
Senior Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060
(931) 693-1140
USCAAF Bar No. 26450

Andrew W. Moore
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
USCAAF Bar No. 38069

Autumn R. Porter
Lieutenant Colonel, Judge Advocate
Deputy Chief
Defense Appellate Division
USCAAF Bar No. 37938

Philip M. Staten
Colonel, Judge Advocate
Chief
Defense Appellate Division
USCAAF Bar No. 33796

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

Issue Presented

WHETHER A RETIRED APPELLATE JUDGE AND AN APPELLATE JUDGE ON TERMINAL LEAVE IMPERMISSIBLY PARTICIPATED IN AN EN BANC DECISION OF THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS.

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. This Honorable Court has jurisdiction over this matter under Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3).

Statement of the Case

On April 20, 2023, a military judge sitting as a special court-martial convicted Appellant, in accordance with his pleas, of one specification of

desertion, one specification of absence without leave, one specification of disobeying a superior commissioned officer, and one specification of wrongfully using marijuana in violation of Articles 85, 86, 90, and 112a, UCMJ, 10 U.S.C. §§ 885, 886, 890, 912a, respectively. (JA012). The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for ninety days, and a bad-conduct discharge. (JA024).[1]

On July 13, 2023, the convening authority approved the findings and sentence. (JA028). On September 8, 2023, the military judge entered Judgment. (JA029).

On April 30, 2024, a panel of the Army Court affirmed the findings and only so much of the sentence that extended to ninety days of confinement. *United States v. Abdullah*, ARMY 20230223, 2024 CCA LEXIS 199 (Army Ct. Crim. App. Apr. 30, 2024) (JA059). The Government filed for *En Banc* Reconsideration, which the Army Court adopted over Appellant's objection. *United States v. Abdullah*, ARMY 20230223 (Army Ct. Crim. App. June 14, 2024) (Order) (JA002). The Army Court sitting "*en banc*" on November 5, 2024, in an Opinion of the Court on Reconsideration, affirmed the findings and sentence. *United States*

[1] The military judge awarded Appellant fifty-one days of pre-trial confinement credit against his term of confinement. (JA015).

v. Abdullah, ARMY 20230223, 2024 CCA LEXIS 479 (Army Ct. Crim. App. Nov. 5, 2024) (JA035).

On January 3, 2025, Appellant filed a timely petition. On May 30, 2025, this Court granted review.

Statement of Facts

The military judge sentenced Appellant on April 20, 2023. Eleven days later, Appellant submitted post-trial matters. (JA026). The Convening Authority's Action was not signed until July 13, 2023, and was not forwarded to the military judge until August 3, 2023. (JA028). On September 8, 2023, the military judge entered Judgment 130 days after defense counsel submitted post-trial matters. (JA029).

A three-judge panel analyzed the post-trial delay in Appellant's case using the four-factor test of *Barker v. Wingo*, 407 U.S. 514 (1972). *United States v. Abdullah*, ARMY 20230223, 2024 CCA LEXIS 199, at *6 (Army Ct. Crim. App. Apr. 30, 2024) (Mem. Op.) (JA057). After weighing the *Barker* factors and noting Appellant's "very strong sentencing case," as well as the absence of "identifiable individual victims," the panel determined that relief was warranted under *both* the Due Process Clause of the Fifth Amendment and Article 66(d)(1), UCMJ. *Id.* at

*11-12 (JA064-65). The panel set aside the bad-conduct discharge and the grade reduction. *Id.* at *12 (JA065).

In a separate opinion, Judge Morris found no Due Process violation but agreed with the majority "that the post-trial delay, specifically the unexplained 96 days the government took to forward the record from the trial counsel to the military judge, was excessive." *Id.* (JA065). Judge Morris believed the sentence was appropriate and that sentencing relief was not appropriate. *Id.* at 13 (JA066).

On June 14, 2024, the Army Court granted *en banc* review over Appellant's objection. *United States v. Abdullah*, ARMY 20230223 (Army Ct. Crim. App. June 14, 2024) (Order) (JA002).

Chief Judge Smawley was retired at the time the Army Court issued its opinion. Senior Judge Walker, who authored the majority opinion, was on terminal leave, also referred to in the regulation as transition leave, when the Army Court issued its *en banc* opinion. (JA034).

According to a Declaration from a Human Resources Specialist, Chief Judge Smawley relinquished command of United States Army Legal Services Agency on July 22, 2024. (JA034). He retired on October 31, 2024. (JA034). His terminal

leave started on September 1, 2024. (JA034). He was in a period of uncharged transition absence from August 13, 2024 to August 31, 2024. (JA034).

Senior Judge Walker, the author of the *en banc* opinion, started her terminal leave on October 10, 2024. (JA034). Her uncharged transition absence was from September 20, 2024 to October 9, 2024. (JA034).

Senior Judge Walker's opinion reversed the original opinion and affirmed the findings and sentence. *United States v. Abdullah*, ___ M.J.___, 2024 CCA LEXIS 479, at *2 (Army Ct. Crim. App. Nov. 5, 2024) (JA035). The votes of the eight-judge court was five to two with one judge—Judge Morris—concurring in part, dissenting in part, and writing separately. *Id.* at *35 (JA046). Judges Arguelles and Penland wrote separate dissenting opinions, with Judge Arguelles also joining in Judge Penland's dissent. *Id.* at *36-57 (JA046-57).

While Judge Morris agreed with the majority that the 163-days of post-trial delay did not violate the Due Process Clause or Article 66(d)(2), UCMJ, she nonetheless specifically found the delay was excessive under the first prong of *Barker* and accordingly it weighed in favor of the Appellant. *Id.* at *35 (JA046). Judge Morris further wrote, "By deciding that 163 days to process a record with a 100-page transcript that lacked any complex legal issues or errors and, [sic] minimal exhibits was not excessive, the majority has rendered this court's opinion

that some cases should take significantly less time, meaningless." *Id.* at *35-36 (JA046).

In a footnote in the majority opinion, the Army Court said that Chief Judge Smawley acted on the case prior to his leaving the court, and Senior Judge Walker acted on the case prior to her retirement. *Id.* at *1 n.1 (JA035). In memoranda issued by the Army Court's Clerk, Colonel Tiffany Pond was identified as the Chief Judge of the Army Court. Memorandum for Chief Judge, Senior Judges, and Associate Judges, Subject: USACCA Panel Composition (July 22, 2024) (JA030); Memorandum for Chief Judge, Senior Judges, and Associate Judges, Subject: USACCA Panel Composition (Sept. 30, 2024) (JA032). Senior Judge Walker is now employed by this Court, and was so employed at the time the Army Court issued its opinion.

In other words, both Chief Judge Smawley and Senior Judge Walker left the Army Court and, in Chief Judge Smawley's circumstance, was retired prior to the *en banc* opinion being published on November 5, 2024. Senior Judge Walker was on terminal leave at the time the Army Court issued its opinion.

Granted Issue

WHETHER A RETIRED APPELLATE JUDGE AND AN APPELLATE JUDGE ON TERMINAL LEAVE IMPERMISSIBLY PARTICIPATED IN AN EN BANC DECISION OF THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS.

Summary of the Argument

The *en banc* decision in this case should be vacated and remanded because two of the judges were no longer in regular active service—as that term is defined in the Joint Rules for Appellate Procedure for Courts of Criminal Appeals [JRAP]—at the time the Army Court published its decision. In other words, two of the judges that decided this case were no longer judges. When the Army Court allowed a retired judge and a judge on terminal leave—both thereby without power to participate in the *en banc* proceedings because they had completed all their operational requirements— to participate in deciding Appellant's case, and indeed author the opinion, it unlawfully conducted its *en banc* review.

The Army Court unlawfully conducted its *en banc* review because, 1) Chief Judge Smawley was retired at the time the opinion was issued, and thus not in regular active service at the time of the opinion's publication and accordingly without power to participate in the *en banc* determination; 2) Senior Judge Walker, the majority opinion's author, was on terminal leave and thus also unable to participate because she had completed her operational requirements and was no longer a member of the court.

Even if both had just provided their votes, it would be impossible to carve out their influence on the majority's decision making. In any event, removing their votes may have resulted in a divided vote as to whether the Army Court would

have granted *en banc* review, let alone what the Army Court considers an appropriate remedy for excessive delay.

This Court should find that "terminal leave" prohibits criminal courts of appeals judges from further participation in decisions of the courts. This standard will protect the integrity of the service's criminal courts of appeals and provide the uniformity that the Uniform Rules of Appellate Practice demand.

Furthermore, it is more than just a numbers game. The participation of disqualified judges undermines the integrity of the Army Court's judicial process and demands that this case be returned to the Army Court for consideration by only qualified judges.

Accordingly, this Court should vacate the decision and remand the case to the Army Court.

Standard of Review

Questions of law are reviewed de novo. *United States v. Mays*, 83 M.J. 277, 279 (C.A.A.F. 2023).

Law

A. En Banc Review in Courts of Criminal Appeals.

Congress has mandated that the service Courts of Criminal Appeals have uniform rules. "The Judge Advocates General shall prescribe uniform rules of procedure for Courts of Criminal Appeals." Article 66(h), UCMJ, 10 U.S.C. § 866

(2022). Per the uniform rule, "A majority of judges who are in regular active service, as defined in Rule 7 or Service Court rules, and not disqualified may, *sua sponte* or in response to a suggestion, order that an appeal or any other proceeding be considered or reconsidered by the Court *en banc*." Joint Rules for Appellate Procedure for Courts of Criminal Appeals Rule [JT. CT. CRIM. APP. R.] 27(a) (JA069). "When sitting *en banc*, a majority of the judges in regular active service with the [Army Court] shall constitute a quorum." JT. CT. CRIM. APP. R. 7(a) (JA067). A judge is in "regular active service" when the judge is assigned to a service court and is:

> (1) in the active component of the armed forces; (2) in the reserve component of the armed forces and serving on active duty with the Court for a period of more than 30 consecutive days; or (3) a civilian judge who is a full-time employee of the agency from which appointed . . . [or] when a reserve component military judge who does not meet the above criteria is duly assigned to a matter.

JT. CT. CRIM. APP. R. 7(c) (JA068).

B. En Banc Review in Courts of Appeals for the Federal Circuits When Decisions are Published After Judges Leave.

In *United States v. American-Foreign S.S. Corp.*, the Supreme Court vacated a Second Circuit decision after it determined "a circuit judge who has retired [was not] eligible under [28 U.S.C. § 46(c)] to participate in the decision of a case on rehearing *en banc*." 363 U.S. 685, 685-86 (1960) ("The sole issue presented is whether a circuit judge who has retired is eligible under this statute to participate in

the decision of a case on rehearing *en banc*. We have concluded that he is not. . . . [Accordingly the] judgment must be set aside."). The judge who joined in the majority opinion of the *en banc* court retired almost five months before the Second Circuit issued its opinion. *Id.* at 686. At the time, 28 U.S.C. § 46 read, in part,

> Cases and controversies shall be heard and determined by a court or division of not more than three judges, unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit who are in active service. A court in banc shall consist of all active circuit judges of the circuit.

28 U.S.C. § 46(c) (1948). The Court said that "[a]n 'active' judge is a judge who has not retired 'from regular active service' [and that a] case or controversy is 'determined' when it is decided." *American-Foreign S.S. Corp.*, 363 U.S. at 688 (citing 28 U. S. C. § 371(b) (1954)). The Court found that "under existing legislation a retired circuit judge is without power to participate in an *en banc* Court of Appeals determination." *Id.* at 691.

"The principal utility of determinations by the courts of appeals *en banc* is to enable the court to maintain its integrity as an institution by making it possible for a majority of its judges always to control and thereby to secure uniformity and continuity in its decisions." *Id.* at 689-90 (citation omitted).

"[A] case or controversy is 'determined' when it is decided." *Yovino v. Rizo*, 586 U.S. 181, 185 (2019) (per curiam) (citing *Am.-Foreign S.S. Corp*, 363 U.S. at 688). Where a circuit judge is neither in active service (e.g., due to being

deceased) nor in senior status, the judge is "without power to participate in the *en banc* court's decision at the time was rendered." *Id.* A circuit court errs when it counts a deceased judge as a member of the majority; "federal judges are appointed for life, not for eternity." *Id.* at 186.

In *Yovino*, Judge Reinhardt, the circuit judge who authored the majority opinion, died eleven days prior to the decision's publication. *Id.* at 182. Because the Ninth Circuit "deemed [the deceased judge's] opinion to be a majority opinion, . . . it [would constitute] a precedent that all future . . . panels must follow." *Id.* at 183. In vacating the Ninth Circuit's opinion, the Supreme Court noted,

> Without [the deceased judge's] vote, the opinion attributed to him would have been approved by only 5 of the 10 members of the en banc panel who were still living when the decision was filed. Although the other five living judges concurred in the judgment, they did so for different reasons. The upshot is that [his] vote made a difference.

Id. The Court was not aware of "any rule or decision of the Ninth Circuit that renders judges' votes and opinions immutable at some point in time prior to their public release[, and] it is generally understood that a judge may change his or her position up to the very moment when a decision is released." *Id.* at 184.

The Court found the Ninth Circuit's actions in *Yovino* were unlawful because 10 U.S.C. § 46(d) defined a "quorum" as "[a] majority of the number of judges authorized to constitute a court or panel thereof," and the Court was "aware of no cases in which a court of appeals panel has purported to issue a binding

decision that was joined at the time of release by less than a quorum of the judges who were alive at that time." *Id.* at 186.

In a similar case, the Fourth Circuit found it had erred in permitting a senior judge to sit on an *en banc* hearing after Congress removed that authority. *Uzzell v. Friday*, 625 F.2d 1117 (4th Cir. 1980), *cert. denied*, 446 U.S. 951 (1980). The court maintained what it deemed to be the steadfast remedy by striking its previous judgment and ordering re-argument. *See id.* (citing *Am.-Foreign S.S. Corp*, 363 U.S. 685) ("We think it significant that when American-Foreign Steamship was remanded, the Second Circuit reconsidered the case *en banc*, and this is the procedure we too have followed."). In crafting its remedy, the Fourth Circuit noted the participation of the senior judge was of "great significance" because the *en banc* court split 4-3 with the senior judge voting in the majority. *Id.* at 1119.

C. Terminal Leave.

Army Regulation [AR] 600-8-10: Personnel-General: Leaves and Passes, dated June 3, 2020, governs leave in the Army. Per that regulation, an uncharged transition absence may only be entered into after the soldier completes "all transition processing, including unit and installation clearance," before entering a transition absence. AR 600-8-10, Ch. 5-13f.(2) (JA072).

A Soldier enters into terminal leave only after the soldier "completes all operational requirements, out-processing requirements, and transition processing in

preparation for separation from active duty. AR 600-8-10, Ch. 4-9b (JA071). Additionally, before signing out and departing on terminal leave, "Soldiers must have their retirement, separation, or release orders in their possession and have completed all administrative processing. . . . AR 600-8-10, Ch. 4-9f (JA071).

The other services of course do not address the actual circumstance here, but the other services do not contemplate officers being engaged in duties while on terminal leave. Both the Air Force and Navy define "terminal leave" as leave taken in conjunction with retirement or separation from active duty. *See* Department of the Air Force Instruction [DAFI] 36-3003, Military Leave Program, para. 3.2.5 (JA073); Naval Military Personnel Manual [MILPERSMAN] 1050-010, Leave Policy, Table 1-1 b. (7) (JA074). Similar to the Army, the Marine Corps stipulates that "[t]erminal leave is not granted until all separation requirements both administrative and medical are complete. Terminal leave runs continuously from the first day of leave until the date of EAS or transfer to the Retired List/FMCR." Marine Corps Order [MCO]1900.16, Marine Corps Separation and Retirement Manual, para. 1010. 2. (JA075). The Coast Guard does not expressly define terminal leave, but, (as is true with the Air Force), prohibits "all parts of the executive and judicial branches . . . for all non-federal employer representational activities while on terminal leave." Federal Ethics Rules and

Federal Civil Service Rules for Transitioning Coast Guard Non-Flag Officers (JA076).

D. Participation of a Disqualified Judge.

In *United States v. Witt*, 75 M.J. 380, 383-84 (C.A.A.F. 2016) (*Witt II*), three Air Force judges who should have been recused sat on the Air Force *en banc* court. This Court looked to *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988) to determine whether Witt was prejudiced by the recused judges' participation. 75 M.J. at 384. Per *Liljeberg,* "[a]ny justice, judge, or magistrate judge of the United States," could be evaluated for harmlessness by examining three factors: "the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process." 486 U.S. at 864.

This Court found that Witt was prejudiced by the recused judges' participation. This Court determined that the third *Liljeberg* factor determinative.

> First, public confidence in the military judicial process is undermined where judges act in cases from which they are recused. This is true, whether the judge's role is significant or minimal. . . [A] military judge is recused or he is not. A military judge who acts inconsistently with a recusal, no matter how minimally, may leave a wider audience to wonder whether the military judge lacks the same rigor when applying the law.

75 M.J. at 384 (quoting *United States v. Roach*, 69 M.J. 17, 20-21 (C.A.A.F. 2010)).

Argument

By allowing Senior Judge Walker, a judge on terminal leave and at a new job, to participate in the *en banc* determination, the Army Court "deemed [Senior Judge Walker's] opinion to be a majority opinion, which means that it constitutes a precedent that all future [Army Court] panels must follow." *See Yovino*, 586 U.S. at 183. Without Senior Judge Walker and Chief Judge Smawley's votes, the majority opinion would have been joined in full by only three of the six judges of the *en banc* court who were still in regular active service on the date the decision was filed, calling into question whether the opinion was truly supported by a majority of the court when Judge Morris disagreed as to whether the delay was excessive under the first prong of *Barker*. Both Chief Judge Smawley and Senior Judge Walker's participation undeniably "made a difference" or was of "great significance" in the outcome. *See Yovino*, 586 U.S. at 183; *Uzzell*, 625 F.2d at 1119.

Senior Judge Walker was the majority opinion's author and held a senior judge position; her influence cannot be untethered from the result here where the Chief Judge also joined. And there remains a question as to what the Army Court actually decided *en banc* and what it considers excessive delay—thereby calling into question the "uniformity and continuity in its decisions"—the appellant has

suffered material prejudice to his substantial rights. *See Am.-Foreign S.S. Corp*, 363 U.S. at 689-90.

And it's more than a matter of mere numbers. Chief Judge Smawley was clearly disqualified. He was retired when the Army Court issued its opinion. His participation and that of Judge Walker risk undermining the public's confidence in the judicial process." *Witt*, 75 M.J. at 384, quoting *Liljeberg*, 486 U.S. at 864.

A. Senior Judge Walker and Chief Judge Smawley were not in regular active service when the Army Court issued its decision.

Only members of the Army Court who are in regular active service may be counted towards a quorum when sitting in panel or *en banc*. JT. CT. CRIM. APP. R. 7(a) (JA067). A judge is in regular active service when assigned to a service court and meets the criteria listed above in JT. CT. CRIM. APP. R. 7(c) (JA068). At the time of publication, Senior Judge Walker and Chief Judge Smawley were not assigned to any service court. Chief Judge Smawley was retired. At the time the opinion was published, Senior Judge Walker was on terminal leave, indicating that she was no longer involved in the active component of the armed forces. Both Panel Composition Memorandums demonstrate that neither judge was part of the Army Court when the opinion was published; in fact, Chief Judge Smawley

departed from the court at least 106 days before the decision, while Senior Judge Walker left at least thirty-six days prior and was employed by this Court. [2]

B. A case or controversy is determined when it is decided; neither Senior Judge Walker nor Chief Judge Smawley had the authority to participate in the Army Court's en banc decision at the time of its publication.

Unlike Article III appellate courts and this Court, service court judges cannot take senior status. *See* 28 U.S.C. § 46 (1996); Art. 142(e), UCMJ. The Army Court's opinion states Senior Judge Walker and Chief Judge Smawley took final action on this case prior to the former's retirement and prior to the latter's departure from the Army Court. *Abdullah*, 2024 CCA LEXIS 479, at *1 n.1 (JA035). But the notion that "the votes and opinions in the *en banc* case were inalterably fixed [at that time and] prior to the date on which the decision was 'filed,' entered on the docket, and released to the public . . . is inconsistent with well-established judicial practice, federal statutory law, and judicial precedent." *See Yovino*, 586 U.S. at 184. Moreover, because "a judge may change his or her position up to the very moment when a decision is released," nothing "renders judges' votes and opinions immutable at some point in time prior to their public release." *Id.* Accordingly, because neither judge in this case was in regular active

[2] The practice of law outside the Judge Advocate Corps during a period of transition leave requires prior approval. The Judge Advocate General has delegated the authority to approve such requests to the Chief, Talent Management Office. Judge Advocate Legal Services [JALS] Publication 1-1, paragraph 9-8(b) (JA077).

service at the date of publication, neither judge had the authority to participate in the Army Court's *en banc* determination.

Indeed, if a judge on the Army Court had changed his or her vote, or had requested further deliberations, Judge Smawley could not have participated—he was retired—nor could Judge Walker have been compelled to return because she had completed all her operational duties. They were disqualified because they were no longer in "regular active service" as that term is contemplated by the JRAP.

C. The Army Court inappropriately counted Senior Judge Walker and Chief Judge Smawley's votes; less than a quorum of the remaining six judges may have joined in the Army Court's decision.

When a judge assigned to a service court leaves the court due to retirement, permanent change of station, or other reason, the judge is no longer in regular active service on that court. This would be analogous to a federal circuit judge dying under the current version of 28 U.S.C. § 46; a military appellate judge may no longer participate in cases or controversies after leaving the court. Echoing the Court in *Yovino*, "[military appellate judges] are appointed for [an appropriate minimum period], not for eternity." *Id.* at 186; *see also* Article 66(a)(1), UCMJ; 10 U.S.C. 866(a)(1). Without the votes of the judges who left regular active service prior to the opinion's publication, the Army Court may not have had a quorum joining in its binding decision: only three judges joined fully in the majority

opinion, while one concurred in part and dissented in part, and the remaining two dissented. Much like the concurring judges in *Yovino*, here, Judge Morris concurred with the majority in part, apparently doing so for a different reason. (JA046). *See Rizo v. Yovino*, 887 F.3d 453 (9th Cir. 2018). Accordingly, because the majority opinion may not have been endorsed by a majority of the Army Court *en banc* panel in regular active service, there may have been no quorum.

D. Chief Judge Smawley's participation and Senior Judge Walker's influence during her participation in the en banc proceedings as both the author of the majority opinion and in her capacity as a senior judge cannot be uncoupled from the unfavorable result for Appellant.

Both Chief Judge Smawley and Senior Judge Walker's participation undeniably "made a difference" or was of "great significance" in the outcome here; it would be inappropriately speculative to assume the result would have been the same in their absence. Did one or both judges participate in internal deliberations and circulation of the opinions following their leaving the Army Court when they no longer had the power to participate? And Senior Judge Walker participated as both the author of the majority Army Court's precedential opinion and as a senior judge. In other words, the participation of both judges—not just their votes—made a difference.

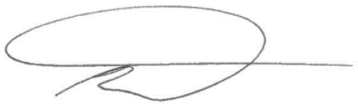
E. Chief Judge Smawley's and Senior Judge Walker's participation undermines the public's confidence in the judicial process.

More is at stake than just a vote count. Chief Judge Smawley was clearly disqualified. He was retired when the Army Court issued its opinion and thus clearly disqualified. Judge Walker was on terminal leave. An outsider looking in at the process would question why a judge, indeed the Chief Judge, would be allowed to participate in Appellant's case. Was he brought in to just provide his vote? As this Court observed in *Witt*, disqualified judges' participation in the reconsideration process undermined the public's confidence in the judicial process. *Witt*, 75 M.J. at 384.

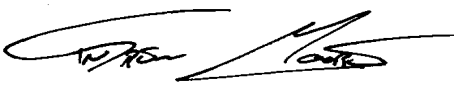
The same is true of Judge's Walker's participation. The same observer would wonder why a judge on terminal leave would still be authoring opinions in a case. Both judges' participation undercuts the public's faith in the military justice process and the military justice system.

Conclusion

For the foregoing reasons, Appellant respectfully requests this Court vacate the Army Court's *en banc* decision and remand.

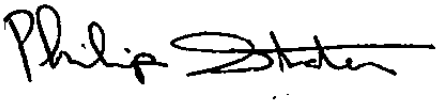


Jonathan F. Potter
Senior Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060
(703) 693-0658
USCAAF Bar No. 26450



Andrew W. Moore
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
USCAAF Bar No. 38069

Autumn R. Porter
Lieutenant Colonel, Judge Advocate
Deputy Chief
Defense Appellate Division
USCAAF Bar No. 37938



Philip M. Staten
Colonel, Judge Advocate
Chief
Defense Appellate Division
USCAAF Bar No. 33796

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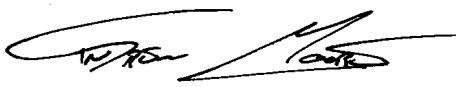

Andrew W. Moore
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060
(703) 693-0658
USCAAF Bar No. 38069

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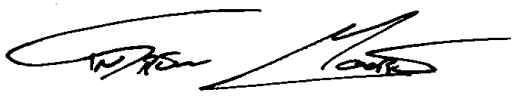
I certify that a copy of the foregoing in the case of *United States v. Abdullah*, Crim App. Dkt. No. 20230223, USCA Dkt. 25-0070/AR was electronically filed with the Court and Government Appellate Division on June 20, 2025.



Andrew W. Moore
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060
(703) 693-0658
USCAAF Bar No. 38069