January 3, 2025

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,

Appellee,

v.

JAMES L. TAYLOR, JR.,
Staff Sergeant (E-5),
United States Air Force,

Appellant.

USCA Dkt. No. 24-0234/AF

Crim. App. Dkt. No. ACM 40371

BRIEF ON BEHALF OF APPELLANT

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Issue Presented

Article 2(d)(2), UCMJ, 10 U.S.C. § 802(d)(2), sets forth the authority to involuntarily order members of reserve components to active duty for trial by court-martial. Did the Air Force Court of Criminal Appeals err by using the absurdity doctrine to interpret this provision in a manner that conflicts with the plain and unambiguous meaning of the statutory language?

Statement of Statutory Jurisdiction

The Air Force Court of Criminal Appeals (AFCCA) reviewed this case pursuant to Article 66(d), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(d).[1] This Honorable Court has jurisdiction to review this case pursuant to Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3).

Relevant Authorities

In relevant part, 10 U.S.C. § 802(d) provides:

> (1) A member of a reserve component or the Space Force who is not on active duty and who is made the subject of proceedings under section 815 (article 15) or section 830 (article 30) with respect to an offense against this chapter may be ordered to active duty involuntarily for the purpose of—
>
> (A) a preliminary hearing under section 832 of this title (article 32);
>
> (B) trial by court-martial; or

[1] Unless otherwise noted, all references to the UCMJ, the Rules for Courts-Martial (R.C.M.), and the Military Rules of Evidence (Mil. R. Evid.) are to the versions in the *Manual for Courts-Martial, United States* (2019 ed.) (*MCM*).

(C) nonjudicial punishment under section 815 of this title (article 15).

(2) A member of a reserve component or the Space Force may not be ordered to active duty under paragraph (1) except with respect to an offense committed while the member was—

(A) on active duty; or

(B) on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

In relevant part, 10 U.S.C. § 802(a) provides:

The following persons are subject to this chapter: . . .

(3)

(A) While on inactive-duty training and during any of the periods specified in subparagraph (B)—

(i) members of a reserve component or the Space Force; and

(ii) members of the Army National Guard of the United States or the Air National Guard of the United States, but only when in Federal service.

(B) The periods referred to in subparagraph (A) are the following:

(i) Travel to and from the inactive-duty training site of the member, pursuant to orders or regulations.

(ii) Intervals between consecutive periods of inactive-duty training on the same day, pursuant to orders or regulations.

(iii) Intervals between inactive-duty training on consecutive days, pursuant to orders or regulations.

In relevant part, R.C.M. 201(b) provides, "[F]or a court-martial to have jurisdiction . . . (4) The accused must be a person subject to court-martial jurisdiction."

In relevant part, R.C.M. 204(b)(1) provides, "A member of a reserve component must be on active duty prior to arraignment at a general or special court-martial."

In relevant part, R.C.M. 907(b)(1) provides, "*Nonwaivable grounds*. A charge or specification shall be dismissed at any stage of the proceedings if the court-martial lacks jurisdiction to try the accused for the offense."

Statement of the Case

On June 29, 2022, at Davis-Monthan Air Force Base, Arizona, a military judge sitting as a general court-martial convicted Appellant, Staff Sergeant (SSgt) James L. Taylor, Jr., contrary to his pleas, of one charge and one specification of sexual assault and one specification of abusive sexual contact, in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920. JA at 001–02. The military judge sentenced SSgt Taylor to a reprimand, reduction to the grade of E-1, confinement for 19 months, and a dishonorable discharge. *Id.*

The convening authority took no action on the findings but disapproved the adjudged reprimand. JA at 002. The AFCCA reviewed this case, hearing oral argument on March 21, 2024. JA at 001. The AFCCA completed its review and issued an unpublished opinion affirming the findings and sentence on July 31, 2024. JA at 001, 049.

Statement of Facts

A. The charged offenses occurred early in the morning during an interval between an inactive-duty training period and the next scheduled period.

SSgt Taylor and A.G. were both reservists in the same unit. JA at 159. Along with others in his unit, SSgt Taylor completed inactive-duty training (IDT) periods on Saturday, December 7, 2019, the last of which ended at 1530 hours. JA at 083, 163–64. The unit held a holiday party that evening. JA at 163–64. After the unit party, but before the next IDT period was scheduled to begin at 0630 hours the following day, SSgt Taylor, A.G., and others went to TSgt V.A.'s home for another party. JA at 164–65. Eventually, TSgt V.A. suggested A.G. go to bed and took her to the spare bedroom. JA at 166–67.

The charged conduct took place in the early morning hours of December 8, 2019, after SSgt Taylor remained at TSgt V.A.'s home

because he recognized that he was too drunk to drive. JA at 164, 171–72. A.G. testified that it occurred at approximately 0400 hours on December 8, 2019. JA at 160. After the incident, A.G. left TSgt V.A.'s home. JA at 174. A.G. then called TSgt V.A. and told her what happened. JA at 161–62.

SSgt Taylor spoke with TSgt V.A., who told him to leave, which he did. JA at 168, 175–76. He then called MSgt B.S., another member of the unit, and told him what had happened. JA at 176–77. SSgt Taylor was scheduled for another IDT period beginning at 0630 on Sunday, December 8, 2019, but the unit's leadership permitted him to stay home and ensured others stayed there with him. JA at 056, 080, 083.

B. Staff Sergeant Taylor challenged the jurisdiction of the court-martial prior to trial.

Before trial, the General Court-Martial Convening Authority (GCMCA) sought approval from the Secretary of the Air Force (SECAF) to recall SSgt Taylor to active duty. JA at 051. In a memorandum dated June 3, 2021, the acting SECAF approved any recall the GCMCA may order "to preserve the possibility of confinement or restriction on liberty as a punishment option," pursuant to Article 2(d)(5), UCMJ, 10 U.S.C. § 802(d)(5). *Id.* After receiving this approval, the GCMCA signed a series

of memoranda stating SSgt Taylor was involuntarily recalled to active duty for various periods corresponding with scheduled UCMJ proceedings, including arraignment and trial. JA at 050, 081–82, 140–41. Each of these memoranda cited "Title 10, 802(d)" as authority. JA at 050, 081–82, 140–41.

The Defense filed a motion to dismiss for lack of jurisdiction. JA at 052–75.[2] The motion focused largely on personal jurisdiction at the time of the alleged offense, but during argument, the Defense also argued the court lacked personal jurisdiction for arraignment and trial because SSgt Taylor was not properly ordered to active duty. JA at 072–74, 142–43. The government opposed this motion. JA at 084–93. The military judge found there was UCMJ jurisdiction over SSgt Taylor both at the time of the alleged offenses and for trial. JA at 136–39.

C. The Air Force Court applied the absurdity doctrine to conclude the General Court-Martial Convening Authority had the authority to involuntarily order Staff Sergeant Taylor to active duty for trial.

The AFCCA affirmed the findings and the sentence. JA at 049. In so doing, it considered SSgt Taylor's argument that the GCMCA lacked

[2] This motion includes both the motion to dismiss for speedy trial violation and the motion to dismiss for lack of jurisdiction.

the authority to involuntarily order him to active duty for trial by court-martial because Article 2(d)(2), UCMJ, 10 U.S.C. § 802(d)(2), did not allow involuntary orders to active duty for trial of offenses committed between IDT periods on consecutive days. JA at 019–22. The court concluded that although the language of the article supports this argument "in isolation," this interpretation would be "absurd" and "not what Congress intended." JA at 020–21. Thus, the court held that the GCMCA had the authority to involuntarily order SSgt Taylor to active duty and the court-martial had jurisdiction over SSgt Taylor. JA at 022–23.

Summary of the Argument

In reaching its holding that the court-martial had jurisdiction over SSgt Taylor, the AFCCA interpreted Article 2(d)(2), UCMJ, 10 U.S.C. § 802(d)(2), in a way that conflicts with the plain and unambiguous meaning of the statutory text. The plain language of the statute does not authorize the involuntary order of members of reserve components to active duty for trial by court-martial except with regard to offenses committed on active duty or on IDT. The charged offenses here occurred in the interval between scheduled periods of IDT on consecutive days;

thus, there was no legal authority to involuntarily recall, arraign, and try SSgt Taylor.

The intervals between IDT periods were not added to Article 2(d)(2) as a basis for involuntary orders to active duty when Congress recently expanded UCMJ jurisdiction to include them in Article 2(a)(3). Nevertheless, the AFCCA invoked congressional intent and the absurdity doctrine to interpret this statute to include those periods, finding the GCMCA had the authority to involuntarily recall SSgt Taylor to active duty for trial by court-martial.

The AFCCA erred in reaching this holding. Its conclusion that Article 2(d)(2) encompasses the additional periods specified in Article 2(a)(3)(B) goes against the plain meaning of the text and disregards the explicit distinction between being on IDT and the specified periods. Further, the plain language of the statute does not result in absurdity because a rational Congress could have intended those results. The AFCCA's reliance on perceived congressional intent is also erroneous because the analysis ends with the plain and unambiguous meaning.

Because this statute plainly prohibited involuntarily ordering SSgt Taylor to active duty for UCMJ proceedings, the orders purporting to do

so were without authority or effect. SSgt Taylor was therefore not on active duty prior to arraignment as required, and the court-martial lacked jurisdiction over him at the time of arraignment and trial. As a result of this lack of jurisdiction, this Court should set aside the findings and the sentence.

Argument

The Air Force Court of Criminal Appeals erred by misusing the absurdity doctrine to interpret Article 2(d)(2), Uniform Code of Military Justice, 10 U.S.C. § 802(d)(2), in a manner that conflicts with the plain and unambiguous meaning of the statute, incorrectly finding that the convening authority had the authority to involuntarily order Staff Seargeant Taylor to active duty for trial by court-martial.

Standard of Review

This Court reviews questions of statutory interpretation de novo. *United States v. Caldwell*, 75 M.J. 276, 280 (C.A.A.F. 2016). "Jurisdiction 'is a legal question which [this Court] review[s] de novo.'" *United States v. Harmon*, 63 M.J. 98, 101 (C.A.A.F. 2006) (quoting *United States v. Henderson*, 59 M.J. 350, 352 (C.A.A.F. 2004)).

Law and Analysis

A person must be subject to court-martial jurisdiction to be tried by

a court-martial. R.C.M. 201(b)(4). Court-martial jurisdiction includes jurisdiction over the person at the time of trial as well as the person being subject to the UCMJ at the time of the offense. *United States v. Oliver*, 57 M.J. 170, 172 (C.A.A.F. 2002); *United States v. Hale*, 78 M.J. 268, 271 (C.A.A.F. 2019). For a member of a reserve component, being subject to court-martial jurisdiction at the time of trial means being on active duty prior to arraignment. *Oliver*, 57 M.J. at 172 (quoting R.C.M. 204(b)(1)). A reservist could voluntarily accept orders to active duty prior to arraignment, but Article 2(d), UCMJ, governs when a reservist can be involuntarily ordered to active duty for UCMJ proceedings. 10 U.S.C. § 802(d). Under Article 2(d)(2), a reservist cannot be involuntarily ordered to active duty for UCMJ proceedings except with respect to offenses committed while that member was on active duty or on IDT. 10 U.S.C. § 802(d)(2).

Since neither condition is satisfied here, SSgt Taylor could not be involuntarily ordered to active duty for UCMJ proceedings. He was not on active duty before arraignment because the orders purporting to involuntarily recall him were invalid, and the court-martial therefore lacked jurisdiction at the time of trial.

A. Under the plain meaning of the controlling statute, Staff Sergeant Taylor may not be involuntarily ordered to active duty for UCMJ proceedings with respect to the charged offenses because those offenses did not occur while he was on active duty or on inactive-duty training.

When interpreting a statutory text, the first step "is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *United States v. Morita*, 74 M.J. 116, 120 (C.A.A.F. 2015) (quoting *Robinson v. Shell Oil Company*, 519 U.S. 337, 340 (1997)). The "inquiry must cease if the statutory language is unambiguous." *Id.* (quoting *Robinson*, 519 U.S. at 340).

The statute at issue states that a member of a reserve component who is subject to certain proceedings under the UCMJ may be involuntarily ordered to active duty for the purpose of a preliminary hearing under Article 32 and trial by court-martial. 10 U.S.C. § 802(d)(1). However, Article 2(d)(2) limits the circumstances under which involuntary orders to active duty are permitted:

> A member of a reserve component may not be ordered to active duty under paragraph (1) except with respect to an offense committed while the member was—
> (A) on active duty; or
> (B) on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air

> National Guard of the United States only when in Federal service.

10 U.S.C. § 802(d)(2) (2018).[3] The meaning of this section is plain and unambiguous: a reservist may not be involuntarily ordered to active duty for UCMJ proceedings, including trial by court-martial, unless the proceedings concern an offense committed while the reservist was on active duty or on IDT.[4]

The two conditions allowing involuntary orders to active duty are also plain and unambiguous. "Active duty is an all-or-nothing condition." *Morita*, 74 M.J. at 120 (quoting *Duncan v. Usher*, 23 M.J. 29, 34 (C.M.A. 1986)). Here, there is no allegation or evidence that SSgt Taylor committed the charged offenses while on active duty. The second condition, which is for "an offense committed while the member

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[3] A 2023 amendment to Article 2(d)(2), UCMJ, added the words "or the Space Force" after "[a] member of a reserve component." National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, § 1722(f)(1)(B), 137 Stat. 136, 671 (2023). While not in effect at the time of SSgt Taylor's trial, this amendment would not have changed the meaning of Article 2(d)(2), UCMJ, with regard to his case.

[4] The clause in Article 2(d)(2)(B) referring to "members of the Army National Guard of the United States or the Air National Guard of the United States" simply imposes an additional limitation on ordering national guardsmen to active duty and does not apply to SSgt Taylor. *See* 10 U.S.C. § 802(d)(2)(B).

was . . . on inactive-duty training," refers to specific, narrow periods of time. 10 U.S.C. § 802(d)(2)(B). Inactive-duty training "is not a tour but a block of time." *Hale*, 78 M.J. at 272 (quoting *United States v. Hale*, 77 M.J. 598, 604 (A.F. Ct. Crim. App. 2018)). Inactive-duty training specifically refers to "a designated 'four-hour period of training, duty or instruction.'" *Id.* (quoting *Hale*, 77 M.J. at 604). Based on this clear definition, this Court held in *Hale* that "no authority existed at the time of the offenses to extend military status to Appellant while engaged in IDTs beyond the designated four-hour blocks of IDT time."[5] *Id.*

In statutory interpretation, the "inquiry must cease if the *statutory language* is unambiguous." *Morita*, 74 M.J. at 120 (emphasis added). The AFCCA acknowledged the plain meaning of the statute "in isolation," but it nevertheless found ambiguity in this text based on "the broader context of the statute as a whole." JA at 020 (quoting *Robinson*, 519 U.S. at 314). That court reasoned that "[t]he purpose of Article 2(d)(2) is to effectuate UCMJ jurisdiction by empowering [GCMCAs] to involuntarily recall members to active duty for trial by court-martial." JA at 020–21. Article

[5] The charged misconduct in *Hale* preceded the amendment to Article 2(a)(3). 77 M.J. at 275–76 (Ohlson, J., concurring in part and dissenting in part).

2(d)(2) does empower GCMCAs to involuntarily subject a member to court-martial jurisdiction at the time of trial under the limited circumstances provided. But this does not mean GCMCAs have that authority in all circumstances.

The AFCCA's analysis proceeded well beyond the statutory language to find ambiguity. Noting that Congress recently expanded UCMJ jurisdiction under Article 2(a)(3), UCMJ, the court concluded that "leaving the ability to effectuate that jurisdiction" limited to "only those situations for which there was jurisdiction before Congress's amendment . . . results in ambiguity."[6] JA at 021. This reasoning merely describes what the AFCCA seemingly views as an unintended result from the plain meaning of Article 2(d)(2). It does not make the text itself ambiguous. Finding this text ambiguous based on a court's belief that Congress

[6] The AFCCA's reasoning is also flawed because the ability to effectuate jurisdiction is not left to "only those situations for which there was jurisdiction before Congress's amendment." JA at 021. Before the change, there was no jurisdiction at all in the intervals between periods of IDT. *Hale*, 78 M.J. at 272. The statutory change extended UCMJ jurisdiction over those intervals, and the plain meaning of Article 2(d)(2) only prohibits *involuntary* orders to active duty for UCMJ proceedings except those concerning offenses committed on active duty or on IDT. 10 U.S.C. § 802(d)(2) (emphasis added).

intended a different result runs afoul of this Court's precedent. *Morita*, 74 M.J. at 120.

Applying the plain meaning of the statute here, there is no allegation or evidence that SSgt Taylor committed any offenses while on IDT. The conduct at issue occurred in the early morning hours of 8 December 2019, at approximately 0400 hours by A.G.'s account. JA at 160, 164, 171–72. This time was in the interval between periods when SSgt Taylor was on IDT the previous day, ending at 1530 hours, and was scheduled for IDT the following day, starting at 0630 hours. JA at 083, 163–65. Thus, the charged misconduct occurred outside the designated blocks of time for IDT, meaning SSgt Taylor was not on IDT at the time of the offenses. Under the plain and unambiguous meaning of Article 2(d)(2), neither of the circumstances allowing involuntary orders to active duty are present, so SSgt Taylor "may not be ordered to active duty under paragraph (1)" of Article 2(d). 10 U.S.C. § 802(d)(2).

B. Incorporating Article 2(a)(3) into the analysis confirms that a member is not on inactive-duty training during the intervals between inactive-duty training periods on consecutive days.

Article 2(a)(3)(B), UCMJ, specifies that members of a reserve component are subject to the UCMJ (1) when traveling to and from an

IDT training site, (2) during intervals between consecutive periods of IDT on the same day, and (3) during intervals between IDT on consecutive days, all of which must be pursuant to orders or regulations. 10 U.S.C. § 802(a)(3)(B). Congress amended Article 2(a)(3) by adding these periods, a change which took effect on 1 January 2019, but it did not add equivalent language to Article 2(d). National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, §§ 5102, 5542(a), 130 Stat. 2000, 2894–95, 2967 (2016); *see also Hale*, 78 M.J. at 275–76 (Ohlson, J., concurring in part and dissenting in part) (describing the changes to Article 2(a)(3)). Article 2(a)(3) clearly distinguishes between these additional periods and periods when a member is on IDT, stating that members of a reserve component are subject to the UCMJ "[w]hile on inactive-duty training and during any of the periods specified in subparagraph (B)." 10 U.S.C. § 802(a)(3)(A). This distinction plainly and unambiguously indicates that being on IDT and the periods specified in Article 2(a)(3)(B) are two different statuses.

The distinction between being on IDT and being in one of the specified periods persists when interpreting Article 2(d)(2), UCMJ, because of the presumption of consistent usage. *See* Antonin Scalia &

Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170–73 (2012). This canon of statutory interpretation means that "[a] word or phrase is presumed to bear the same meaning throughout a text." *Id.* at 170. Thus, the meaning of "on inactive-duty training" is the same when that phrase is used in two different subsections of the same UCMJ article. Since Article 2(a)(3) plainly distinguishes between being on IDT and being in the periods specified in Article 2(a)(3)(B), the specified periods cannot be included within the meaning of being on IDT in Article 2(d)(2). This bolsters the conclusion that the charged offenses did not occur while SSgt Taylor was on IDT, meaning he may not be involuntarily ordered to active duty for UCMJ proceedings. 10 U.S.C. § 802(d)(2).

Despite this distinction in the statutory text, the AFCCA "interpret[ed] Article 2(d)(2)(B) to include all periods specified in Article 2(a)(3)(B)." JA at 022. This is an interpretive error because it changes the plain meaning of the text in a way that is inconsistent with the rest of the statute. The distinction between being on IDT and the periods specified in Article 2(a)(3)(B) persists throughout Article 2. This means that the periods specified in Article 2(a)(3)(B) do not satisfy the requirements for involuntary orders to active duty under Article 2(d)(2).

The AFCCA acknowledged that Congress did not amend Article 2(d) when it expanded jurisdiction under Article 2(a)(3). JA at 010, 021. Nevertheless, the AFCCA concluded that an interpretation of Article 2(d)(2) prohibiting involuntary orders to active duty for proceedings relating to offenses committed in the periods over which Congress expanded jurisdiction was not what Congress intended. JA at 021. However, consideration of congressional intent is inappropriate because the statutory language is plain and unambiguous, meaning further interpretation must cease. *Morita*, 74 M.J. at 120.

This Court should not read any additional breadth into Article 2(d)(2) based on perceived legislative intent or history. *See M.W. v. United States*, 83 M.J. 361, 365 (C.A.A.F. 2023) (rejecting perceived congressional intent when determining that a statutory provision addressing how the Court proceeds in certain cases does not grant the Court jurisdiction to review any class of cases). When a statutory text has a plain meaning, consulting legislative history is both unnecessary and disfavored. *See, e.g., Lamie v. United States Tr.*, 540 U.S. 526, 536 (2004) ("We should prefer the plain meaning since that approach respects the words of Congress. In this manner we avoid the pitfalls that plague too

quick a turn to the more controversial realm of legislative history."). Moreover, the inclusion in Article 2(a)(3), UCMJ, of specified periods beyond when a member is on IDT clearly demonstrates that Congress is aware of both this distinction and how to address it. Yet Congress has not added any language expanding Article 2(d)(2) to include these periods.

C. The conclusion that a reservist cannot be involuntarily ordered to active duty for trial of offenses committed between inactive-duty training periods is not absurd because a rational Congress could have intended that result.

The statutory text plainly subjects members of the reserve components to the UCMJ during the periods specified in Article 2(a)(3)(B), UCMJ, but does not allow them to be involuntarily ordered to active duty for UCMJ proceedings related to offenses committed during those periods. "A party's argument that the court should reject 'a literal reading' of a statute 'because it produces absurd results' fails if 'Congress *could rationally have* made such a' reading the law." *United States v. McPherson*, 81 M.J. 372, 380 (C.A.A.F. 2021) (quoting *Int'l Primate Prot. League v. Administrators of Tulane Educ. Fund*, 500 U.S. 72, 84–85 (1991)). Contrary to the AFFCA's conclusion, JA at 021, the plain

meaning of Article 2(d)(2) is not an absurd result because Congress could rationally have made that meaning the law.

The AFCCA concluded that no rational Congress could have expanded jurisdiction to new offenses while not allowing involuntary orders to active duty for trial of those offenses without the reservist's consent. JA at 021. The court invoked its perception of "Congress's clear intent to close previous jurisdictional loopholes" to reach the conclusion that this outcome is not rational. *Id.* This circular reasoning erroneously concludes that Congress could not have intended the result because Congress did not intend the result. But such reasoning is contrary to this Court's holding that "the question for absurdity purposes is not whether [Congress] in fact intended [the result] . . . but instead whether Congress could have done so." *McPherson*, 81 M.J. at 380 (cleaned up).

A rational Congress could have authorized jurisdiction over offenses committed in the intervals between IDT periods while also prohibiting involuntary orders to active duty for UCMJ proceedings related to such offenses. It could rationally have done so to limit UCMJ proceedings regarding these offenses to cases in which the member voluntarily accepts orders to active duty. In fact, this possibility cannot

be considered absurd because Congress previously required members of the reserve components to consent to orders that would subject them to UCMJ jurisdiction. *Willenbring v. Neurauter*, 48 M.J. 152, 168 (C.A.A.F. 1998), *overruled on other grounds by United States v. Mangahas*, 77 M.J. 220 (C.A.A.F. 2018). Congress changed this provision in 1986 and created subsection (d) of Article 2, UCMJ, allowing involuntary orders to active duty to dispose of court-martial charges for offenses committed while the member was on active duty or on IDT. *Id.* But, the fact that Congress previously required a reservist's consent indicates that it could rationally do so.

In *McPherson*, this Court held that Congress rationally could have enacted a five-year statute of limitations for certain offenses because it had previously done so. 81 M.J. at 380–81. Thus, such an interpretation was not inherently absurd. *Id.* at 381. Similarly, Congress could have required a reservist's consent for orders to active duty for UCMJ proceedings because it previously required consent for orders that would subject a reservist to UCMJ jurisdiction. Considering this history, the interpretation that involuntary orders to active duty are prohibited for

UCMJ proceedings regarding offenses committed in an interval between IDTs is not inherently absurd.

The absence of inherent absurdity also undercuts the AFFCA's conclusion that the plain language interpretation advanced by SSgt Taylor "would 'shock general . . . common sense.'" JA at 021–22 (alteration in original) (quoting *McPherson*, 81 M.J. at 380). In *McPherson*, this Court rejected the argument that plain language reducing the statute of limitations for certain offenses against children produced an absurd result because it is "shocking to morals and common sense." 81 M.J. at 380. This Court reached that conclusion because the plain meaning of the statute was not inherently absurd. *Id.* at 380–81. The same is true here when considering whether the plain meaning of the statutory language itself would shock general common sense. Since a rational Congress could have intended the plain meaning of the statutory text, the result is not inherently absurd and should not be viewed as shocking to general common sense.

This Court should not find these to be the "very limited circumstances" in which the absurdity doctrine applies because the plain meaning of the statute is not inconceivable. *McPherson*, 81 M.J. at 380–

81. If the prohibition on involuntarily ordering members of the reserve components to active duty under these circumstances is an error, then it is for Congress, not the courts, to fix it. *E.g., Logan v. United States*, 552 U.S. 23, 35 n.6 (2007) ("enlargement of a statute by a court, so that what was omitted, presumably by inadvertence, may be included within its scope transcends the judicial function" (cleaned up) (quoting *Iselin v. United States*, 270 U.S. 245, 251 (1926))); *Lamie*, 540 U.S. at 542 ("It is beyond [the Court's] province to rescue Congress from its drafting errors, and to provide for what [the Court] might think . . . is the preferred result." (quoting *United States v. Granderson*, 511 U.S. 39, 68 (1994) (Kennedy, J., concurring))); *McPherson*, 81 M.J. at 378 ("an 'unintentional drafting gap' is insufficient to warrant judicial correction; correction is the province of Congress in cases where an admittedly 'anomalous' result 'may seem odd, but . . . is not absurd'" (alterations in original) (quoting *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 565–66 (2005))).

As the law stands, the plain meaning of Article 2(d)(2), UCMJ, is that SSgt Taylor may not be involuntarily ordered to active duty for UCMJ proceedings because there is no allegation or evidence that he

committed the charged offenses while he was on active duty or on IDT. The AFCCA's opinion to the contrary allows perceived legislative intent to prevail over the statute's plain meaning when the results of the plain meaning are not inherently absurd. The Supreme Court and this Court have rejected that method of statutory interpretation. *McPherson*, 81 M.J. at 382 (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998)). The AFCCA's holding is therefore erroneous and should be reversed by this Court.

D. The General Court-Martial Convening Authority could not involuntarily order Staff Sergeant Taylor to active duty, so the court-martial lacked jurisdiction over him for arraignment and trial.

Because the charged offenses occurred in an interval between IDT periods on consecutive days, Article 2(d)(2) did not allow any official to involuntarily order SSgt Taylor to active duty for UCMJ proceedings concerning those offenses. As the proceedings progressed, the GCMCA signed a series of memoranda purporting to direct that SSgt Taylor was involuntarily recalled to active duty for various periods corresponding with the UCMJ proceedings, including arraignment and trial. JA at 050, 081–82, 140–41. Each of these memoranda cited "Title 10, 802(d)," an

apparent reference to Article 2(d), UCMJ, 10 U.S.C. § 802(d), as the authority for these recalls. JA at 050, 081–82, 140–41.

The irony is that the cited statutory provision did not give the GCMCA the authority that he claimed to involuntarily order SSgt Taylor to active duty. This is because the text of Article 2(d)(2), UCMJ, limits that authority to offenses committed while the member was on active duty or on IDT, which SSgt Taylor was not. The cited statutory authority prevents the GCMCA from involuntarily ordering SSgt Taylor to active duty, and there is no authority superior to the statute that authorizes such orders. Therefore, the GCMCA did not have authority to involuntarily order SSgt Taylor to active duty for trial with respect to the charged offenses.

The approval from the SECAF does not convey additional authority or overcome the limitations in the statute. On June 3, 2021, the Acting SECAF signed a memorandum purporting to approve any recall of SSgt Taylor to active duty that the GCMCA might order. JA at 051. The stated purpose of this approval was "to preserve the possibility of confinement or restriction on liberty as a punishment option" pursuant to Article 2(d)(5), UCMJ, 10 U.S.C. § 802(d)(5). JA at 051. But this approval does

not change the scope of offenses for which the GCMCA can involuntarily order a member to active duty under Article 2(d)(2), UCMJ. The SECAF's authority, like that of the GCMCA, is subordinate to statutory authority, and the SECAF cannot lawfully authorize a subordinate officer's action that is prohibited by statute. *See United States v. Romano*, 46 M.J. 269, 274 (C.A.A.F. 1997) (stating that rights granted by a lower source of authority may not conflict with a higher source). Therefore, the SECAF's approval is of no consequence with respect to the GCMCA's lack of authority to involuntarily order SSgt Taylor to active duty under Article 2(d), UCMJ.

Because SSgt Taylor could not be involuntarily ordered to active duty for UCMJ proceedings with respect to the charged offenses, the GCMCA's memoranda purporting to involuntarily recall him to active duty could not validly do so. SSgt Taylor was therefore not on active duty prior to arraignment at the general court-martial as required by the Rules for Courts-Martial. R.C.M. 204(b)(1) ("A member of a reserve component must be on active duty prior to arraignment at a general or special court-martial."); *see also Oliver*, 57 M.J. at 172 (stating that members of the reserve components who are on active duty before

arraignment are subject to court-martial jurisdiction). Indeed, since the GCMCA's memoranda were the only evidence purporting to show SSgt Taylor's duty status at the time of trial, there is no evidence indicating he was in any military duty status for arraignment or trial.

Without SSgt Taylor being in the required duty status at the time of trial, the court-martial lacked personal jurisdiction to try him. *See Oliver*, 57 M.J. at 172. "When challenged, the government must prove jurisdiction by a preponderance of evidence." *Hale*, 78 M.J. at 270 (citing *Morita*, 74 at 121). The Government cannot meet its burden of proving jurisdiction at the time of arraignment and trial because the controlling statute does not allow SSgt Taylor to be involuntarily ordered to active duty for UCMJ proceedings regarding the charged offenses.

E. Since the court-martial lacked jurisdiction over Staff Sergeant Taylor, and the Government cannot meet its burden to prove otherwise, this Court should set aside the findings and sentence for a lack of jurisdiction.

Nothing prevents this Court from addressing the lack of jurisdiction at arraignment and trial. The jurisdictional defect is not waived because it cannot be waived. R.C.M. 907(b)(1) ("*Nonwaivable grounds*. A charge or specification shall be dismissed at any stage of the proceedings if the

court-martial lacks jurisdiction to try the accused for the offense."). Moreover, SSgt Taylor contested the jurisdiction of the court-martial before arraignment and argued that he had not been properly ordered to active duty. JA at 052–075, 142–44. SSgt Taylor appeared for subsequent proceedings only after the military judge denied his motion to dismiss for lack of jurisdiction. JA at 136–39, 145–46. He never consented to being ordered to active duty. Additionally, jurisdictional errors are not tested for prejudice. *United States v. King*, 83 M.J. 115, 122 (C.A.A.F. 2023) (contrasting jurisdictional errors with administrative errors).

"Without jurisdiction the court cannot proceed at all in any cause." *United States v. Luke*, 69 M.J. 309, 323 (C.A.A.F. 2011) (Stucky, J., concurring in part and dissenting in part) (quoting *Ex parte McCardle*, 74 U.S. (7 Wall) 506, 514 (1868)). "A jurisdictional defect goes to the underlying authority of a court to hear a case. Thus, a jurisdictional error impacts the validity of the entire trial and mandates reversal." *United States v. Alexander*, 61 M.J. 266, 269 (C.A.A.F. 2005) (citing *United States v. Perkinson*, 16 M.J. 400, 402 (C.M.A. 1983)). It was a jurisdictional error to proceed with a general court-martial when SSgt Taylor was not on active duty and could not be involuntarily ordered to

active duty for trial on the charged offenses, so the findings and sentence of the court-martial are invalid and must be set aside.

Conclusion

The plain meaning of Article 2(d)(2), UCMJ, is that members of the reserve components cannot be involuntarily ordered to active duty for UCMJ proceedings concerning offenses committed when the member was not on active duty or on IDT. SSgt Taylor was charged with committing offenses in an interval between periods of IDT on consecutive days, meaning he was not on active duty or on IDT. He was nevertheless involuntarily ordered to active duty for arraignment and trial. These orders violated the statute and were therefore without authority, meaning SSgt Taylor was not on active duty prior to arraignment as required. Thus, the court-martial lacked personal jurisdiction over him at arraignment and trial. Because of this lack of jurisdiction, SSgt Taylor requests that this Court set aside the findings and the sentence.

Respectfully Submitted,

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