IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,	)	
Appellee,	)	BRIEF ON BEHALF OF
	)	THE UNITED STATES
v.	)	(corrected copy)
	)	
	)	Crim. App. Dkt. No. 40371
Staff Sergeant (E-5)	)	
JAMES L. TAYLOR	)	USCA Dkt. No. 24-0234/AF
United States Air Force	)	
Appellant.	)	5 March 2025

BRIEF ON BEHALF OF THE UNITED STATES

HEATHER R. BEZOLD, Capt, USAF
Appellate Government Counsel
Government Trial and
Appellate Operations Division
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 37408

MARY ELLEN PAYNE
Associate Chief
Government Trial and
Appellate Operations Division
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 34088

JENNY A LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and
Appellate Operations Division
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 35837

MATTHEW D. TALCOTT, Col, USAF
Director
Government Trial and
Appellate Operations Division
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 33364

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v.	)	Crim. App. No. ACM 40371
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TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

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 under Article 66(d), UCMJ. This Court has jurisdiction over this matter under Article 67(a)(3), UCMJ[1].

RELEVANT AUTHORITIES

Article 2, UCMJ, states, in relevant part:

> (a) 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; and …
>
> (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.

[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).

Article 2(d), UCMJ, states, in relevant part:

> (d)(1) A member of a reserve component 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
>
> (C) nonjudicial punishment under section 815 of this title (article 15).
>
> (2) 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 . . .

R.C.M. 202(c)(1) states, in relevant part:

> *In general.* Court-martial jurisdiction attaches over person when action with a view to trial of that person is taken. Once court-martial jurisdiction over a person attaches, such jurisdiction shall continue for all purposes of trial, sentence, and punishment, notwithstanding the expiration of that person's term of service or other period in which that person was subject to the UCMJ or trial by court-martial.

R.C.M. 202(c)(2) states:

> *Procedure.* Actions by which court-martial jurisdiction attaches include: apprehension; imposition of restraint, such as restriction, arrest, or confinement; and preferral of charges.

R.C.M. 204(d) states:

> *Changes in type of service.* A member of a reserve component at the time disciplinary action is initiated, who

> is alleged to have committed an offense while subject to the UCMJ, is subject to court-martial jurisdiction without regard to any change between active and reserve service or within different categories of reserve service subsequent to commission of the offense. This subjection does not apply to a person whose military status was completely terminated after commission of an offense.

STATEMENT OF THE CASE

A military judge, sitting as a general court-martial, convicted Appellant, contrary to his please, of one charge consisting of one specification of sexual assault and one specification of abusive sexual contact in violation of Article 120, UCMJ. (JA at 001 - 002.) The military judge sentenced Appellant 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.) AFCCA reviewed Appellant's case and issued an unpublished opinion affirming the findings and sentence on 31 July 2024. (JA at 001- 049.)

STATEMENT OF THE FACTS

Appellant was scheduled to complete inactive-duty training periods on 7 December 2019 and 8 December 2019. (JA at 083, 163-164.) Appellant's second inactive-duty training period on 7 December 2019 ended at 1530 hours. (JA at 083, 163-164.) The sexual assault of A.G., the named victim, occurred in the early morning hours of 8 December 2019. (JA 160.) Appellant's next

inactive-duty training period was set to begin at 0630 on 8 December 2019. (JA at 056, 080, 083.) Appellant's final inactive-duty training period for that Unit Training Assembly weekend began at 1130 on 8 December 2019 and ended at 1530 on 8 December 2019. (JA at 083.) Appellant completed both periods of inactive-duty training on 8 December 2019. (JA at 118.)

On 1 August 2020, charges were preferred against Appellant while he was on inactive-duty training. (JA at 052.) Those charges were dismissed without prejudice to obtain approval from the Secretary of the Air Force to involuntarily recall Appellant to active duty. (Id.) The same charges were re-preferred on 19 October 2021, and Appellant was involuntarily ordered to active duty for preferral of charges by the General Court-Martial Convening Authority (GCMCA). (JA at 081, 145.) On 19 November 2021, Appellant was involuntarily ordered to active duty for referral of charges by the GCMCA. (JA at 082.) Appellant was involuntarily ordered to active duty for arraignment and a motions hearing scheduled for 21 and 22 March 2022. (JA at 050.) On 3 June 2021, the Secretary of the Air Force approved Appellant's involuntary recall to active duty to preserve the possibility of confinement or restriction on liberty as punishment if he were convicted. (JA at 051.) On 16 June 2022, and 28 June 2022, Appellant was involuntarily ordered to active duty, for his court-martial by the GCMCA, who cited to Article 2(d) in the order. (JA at 140, 141.)

SUMMARY OF THE ARGUMENT

The Air Force Court did not err in applying the absurdity doctrine to resolve the ambiguity in Article 2, UCMJ. To fully explain why consideration of the absurdity doctrine is necessary for resolving the ambiguity in Article 2, an explanation of how personal jurisdiction over members of the Air Force Reserves (reservists) at the time of trial is established is required. This is because if personal jurisdiction at the time of trial is established over reservists – particularly Appellant – without ordering the reservist to active duty, any failure to follow Article 2(d) does not create an issue of personal jurisdiction, and Appellant waived, or at least forfeited, the issue.

As explained in more detail below, personal jurisdiction was established over Appellant through attachment of jurisdiction at the time of preferral. Because personal jurisdiction existed over Appellant independent of the ability to involuntarily order him to active duty, the issue of whether his order to active duty for trial was within the authority of the General Court-Martial Convening Authority (GCMCA) is not an issue of jurisdiction but an issue of procedure and policy.

Non-jurisdictional issues are forfeited if not raised at trial. R.C.M. 905(e). When an issue is forfeited, this Court applies a plain error standard of review. Under plain error review, the interpretation of the statute becomes paramount to

determining whether an error occurred. Because the language of Article 2(d) is ambiguous, as explained in the analysis below, this Court must interpret the statute. The only interpretation of Article 2 that does not cause an absurd result is if Article 2(a)(3)(A) uses the word "and" to mean "which includes". AFCCA's conclusion that it would be absurd for Article 2(d)(2) to not include the periods from Article 2, subparagraph (B) reflects the same concern for absurdity and the ultimate conclusion that that "and" in Article 2(a)(3)(A) must mean "which includes". Therefore, AFCCA did not err.

ARGUMENT

I.

THE APPLICATION OF ARTICLE 2(D) TO APPELLANT IS A NON-JURISDICTIONAL ISSUE THAT HE WAIVED. EVEN IF HE MERELY FORFEITED THE ISSUE, THERE WAS NO ERROR BECAUSE THE ABSURDITY DOCTRINE DEMONSTRATES THE ONLY VIABLE INTERPRETATION OF ARTICLE 2(D) IS THAT APPELLANT COULD BE, AND WAS, PROPERLY RECALLED TO ACTIVE DUTY.

Standard of Review

This Court reviews questions of statutory interpretation de novo. United States v. Caldwell, 75 M.J. 267, 280 (C.A.A.F. 2016). Jurisdiction is a legal question which this Court reviews de novo. United States v. Harmon, 63 M.J. 98, 101 (C.A.A.F. 2006).

Where an issue is forfeited, this Court applies the plain error standard of review. United States v. Campos, 67 M.J. 330, 332 (C.A.A.F. 2009).

Law and Analysis

A. Article 2(d) is not a jurisdictional provision, but a procedural means of assuring an accused's presence at trial. It does not create jurisdiction.

Appellant frames this case as one of personal jurisdiction at the time of court-martial, but it is not. (App. Br. at 8-9.) A review of the history of Article 2, UCMJ reveals that Article 2(d) is not a jurisdictional provision, but rather an optional means of assuring the accused's presence at trial. In 1984, before Article 2(d) was added to the UCMJ, this Court's predecessor decided United States v. Caputo, 18 M.J. 259 (C.M.A. 1984). Caputo, a reservist, committed his crimes while he was on his annual tour. Id. at 261. Although Caputo was temporarily held in civilian custody while on active duty, the military did not take any action with a view toward trial until after Caputo completed his annual tour. Id. The Court stated that if military authorities had apprehended Caputo while he was on his annual tour, jurisdiction would have existed, because paragraph 11d of the then-existing Manual for Courts-Martial "seem[ed] to contemplate that court-martial jurisdiction, once having attached, continues even if an accused is released from active duty." Id. at 263. But the Court noted that paragraph 11a of the Manual for Courts-Martial proclaimed that court-martial jurisdiction ceases on termination of a person's status as being subject to the code and is not revived by

return to such a status. Id. Since jurisdiction did not attach to Caputo before he was released from his annual tour, the military had no jurisdiction to court-martial him. Id.

Congress made several changes to the UCMJ in response to Caputo and for the purposes of "subjecting members of the reserve components in the Federal status to the same disciplinary standards as their regular-component counterparts. (H.R. Rep. No. 99-718 at 225 (1986)). The amendments to Article 2(a)(3) and Article 2(d) in the National Defense Authorization Act for Fiscal Year 1987 were intended to "permit the call or order to active duty of a member of a reserve component for the purposes of disciplinary action; and correct the lapse of jurisdiction over an offense committed by a reservist during a period of duty that ends before the offense is discovered." (H.R. Rep. No. 99-718 at 226, 227).

Regarding involuntarily ordering reservists to active duty, to be allowed under the newly amended Article 2(d), the House of Representatives' Committee on Armed Services observed:

> Presently, no statutory authority exists to call or order reservists to active duty solely for disciplinary purposes, even when they are otherwise amenable to the jurisdiction of the UCMJ. Such authority is necessary for timely disposition of offenses, to ensure morale and discipline within a command. Because a call to order to active duty should not always be necessary – disciplinary action might await the next regularly scheduled drill or period of active duty – the service Secretaries would be required to prescribe necessary implementing regulations.

Id. at 227.

The House Committee on Armed Services also specifically addressed Caputo:

> The amendments would, further, bridge the jurisdictional gap identified in [Caputo]. In that case, the United States Court of Military Appeals held that jurisdiction over offenses committed by a reservist during a period of duty was permanently lost in the absence of some affirmative action to preserve jurisdiction taken during that period of duty. Because reservists normally serve only for periods of a few hours or days at a time, offenses are often not discovered until after the end of a duty period. Even if an offense were discovered during a drill period, the action necessary to preserve jurisdiction may not be possible prior to the end of the drill. To have a reservist's accountability for an offense to turn on circumstances so fortuitous would detract from discipline and morale in reserve-component units.

Id.

In response to the amendments to Article 3, UCMJ, the President also added R.C.M. 204(d) to clarify that if a reservist commits an offense while in an active duty or inactive-duty training status, that reservist remains subject to court-martial jurisdiction without regard to any change "within different categories of reserve service subsequent to the commission of the offense."

The takeaway from Caputo and the 1987 NDAA amendments is that when a reservist commits an offense while he is subject to the code, the military does not lose jurisdiction over the reservist when they move into an inactive status. He remains *subject to* court-martial jurisdiction. The next issue is when court-martial

jurisdiction *attaches*. In accordance with R.C.M. 202(c), court-marital jurisdiction attaches when the government takes any action with a view toward trial (such as arrest or preferral of charges) while the reservist is in a status where they are subject to the code. That jurisdiction continues through the trial even if there is an expiration of a period where the servicemember was subject to the code, *see* R.C.M. 202(c) – such as coming off active duty or an inactive training period.

If court-martial jurisdiction has already attached to a reservist, then Article 2(d) is not necessary to gain jurisdiction. As the House Armed Services Committed recognized, the military might already have jurisdiction over the reservist, but no way to involuntarily recall them for trial. (H.R. Rep. No. 99-718 at 228). Article 2(d) was instituted to rectify such a situation. Yet, Article 2(d) might not even be necessary to ensure a reservist's presence at trial, since the reservist might be court-martialed on his annual tour.[2] Id. This is reinforced by the fact that Article 2(d) uses the word "may," and thus the ability to involuntarily order Appellant to active duty for the purpose of court-martial is permissive – not

[2] Although the House report suggested that a reservist might be court-martialed during inactive duty training, the President foreclosed that possibility in R.C.M. 204(b)(1) by requiring the member to be on active duty. This requirement "is based upon the practical problems associated with conducting a court-martial only during periods of scheduled inactive-duty training . . ." Drafters' Analysis, Manual for Courts-Martial, United States A21-13 (2016 ed.) (MCM).

mandatory. In sum, Article 2(d) is neither jurisdictional nor a requirement for a reservist to be court-martialed.

Personal jurisdiction attached when charges were preferred on 1 August 2020 and continued until the date of the court-martial.

Jurisdiction attached to Appellant when the Government took action with a view toward trial: preferral. "Jurisdiction over the person depends on the person's status as a "person subject to the Code" both at the time of the offense and at the time of trial." United States v. Ali, 71 M.J. 256, 265 (C.A.A.F. 2012) (internal citation omitted). Court-martial jurisdiction attaches over a person when action with a view to trial of that person is taken. R.C.M. 202(c)(1); United States v. Harmon, 63 M.J. 98, 101 (C.A.A.F. 2006). Once court-martial jurisdiction attaches, such jurisdiction shall continue for all purposes of trial, sentence, and punishment notwithstanding the expiration of that person's term of service or other period in which that person was subject to the UCMJ or trial by court-martial. R.C.M. 202(c)(1); United States v. Self, 13 M.J. 132, 136 n. 7 (C.M.A. 1982). R.C.M. 202(c)(2) has a non-exhaustive list of actions that attach jurisdiction which includes preferral of charges.

Charges were preferred against Appellant on 1 August 2020 while he was on inactive-duty training. (JA at 052.) Although the convening authority dismissed the charges without prejudice to obtain Secretary of the Air Force approval to order Appellant to active duty and retain the possibility of confinement, the re-preferred

charges were the same as the charges preferred on 1 August 2020. (Id.) Preferral caused personal jurisdiction to attach and continue for all purposes of trial, sentencing, and punishment regardless of whether Appellant came off inactive-duty training. R.C.M. 202(c). Therefore, court-martial jurisdiction over Appellant attached on 1 August 2020 when the government took action with a view to trial while he was in a period of inactive duty training and therefore subject to the UCMJ. *See* Air Force Instruction 51-201, *Administration of Military Justice,* para. 4.14.2.1 (18 Jan 2019) ("Once jurisdiction attaches in accordance with R.C.M. 202(c), a Reserve member may be held on active duty pending disposition of offenses or may be released to reserve status and recalled as necessary for preferral and referral of charges, preliminary hearing, trial by general or special court-martial, and adjudged confinement or other restriction on liberty.")

In sum, since court-martial jurisdiction had already attached to Appellant at preferral, Article 2(d) was not necessary to gain jurisdiction over Appellant for trial. So when the convening authority invoked Article 2(d) to recall Appellant to active duty for his court-martial, it was merely a procedural action.

B. Appellant waived, or at least forfeited, the issue of the procedural application of Article 2(d) to him.

Since the convening authority chose to recall Appellant to active duty for his court-martial under Article 2(d), this Court may analyze whether the recall complied with Article 2(d). While jurisdictional issues cannot be waived or

forfeited, non-jurisdictional issues are forfeited if not raised at the time of trial. United States v. Rich, 79 M.J. 472, 475 (C.A.A.F. 2020). Where an issue is forfeited, this Court applies the plain error standard of review. United States v. Campos, 67 M.J. 330, 332 (C.A.A.F. 2009).

First, this Court should find Appellant waived this non-jurisdictional issue at trial. Appellant never complained about the GCMCA's authority to recall him to active duty. He only complained that the recall had not be effectuated by an AF Form 938. (JA at 143.) In fact, Appellant effectively conceded that the convening authority *did* have the authority to recall Appellant. In contending that the convening authority's recall order needed to be executed by a Form 938, trial defense counsel stated, "there's supposed to be something that actually puts him on status, otherwise its' a recall for — *certainly it's the authority to do so*, but it hasn't actually been enacted by the Air Force yet." (JA at 143.) By conceding that the convening authority had authority to recall him for trial, Appellant intentionally abandoned his right to challenge his recall on those grounds. And he deprived the government of the ability to take alternate actions to bring Appellant to trial, such as using Appellant's Fiscal Year 2022 annual tour to court-martial him.[3] This

[3] In his motion to dismiss for speedy trial and lack of jurisdiction, Appellant mentioned that the government had initially planned to use Appellant's annual tour for Fiscal Year 2021 to conduct his court-martial. (JA at 056.) Of note, Article 2(d)(5) only requires Secretary approval to adjudge confinement when a

Court should treat Appellant's actions as waiver of this issue and not review it further.

Even if Appellant did not waive the issue of whether his involuntary order to active duty complied with the procedural rules of Article 2(d)(2), he forfeited it by failing to raise the issue at trial. Contrary to Appellant's claim, his trial defense counsel did not raise the issue of the procedural requirements of Article 2(d). (App. Br. at 5). The motion trial defense counsel filed argued that there was not personal jurisdiction over Appellant at the time of his offense. (JA at 072.) Trial defense counsel argued that the Form 40A, which documented Appellant's IDT days, was not compliant with the AFI because it lacked signatures and dates and therefore the Government failed to establish that personal jurisdiction existed at the time of the offense. (JA at 072-074.) Additionally, trial defense counsel argued that because Appellant did not perform military duties on the second day, he was not subject to jurisdiction for intervals between consecutive days of inactive-duty training at the time of his offense. (Id.) Nowhere in their written filings did trial defense counsel assert that Appellant was not properly ordered to active duty in compliance with Article 2(d), UCMJ.

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servicemember is involuntarily ordered to active duty for court-martial under Article 2(d)(1). The requirement does not purport to apply if a servicemember is court-martialed during his annual tour. Even if Secretary approval had been required to secure confinement for Appellant's court-martial during his annual tour, there is no indication that the government could not have received it.

Even when arguing the motion to dismiss, trial defense counsel did not argue the order to active duty failed to comply with Article 2(d), UCMJ. The military judge gave trial defense counsel wide latitude to assert that Article 2(d), UCMJ, was not complied with, (JA at 142.), but trial defense counsel kept their concerns narrowly tailored to the administrative execution of the order. (JA at 142.) This Court should not expand an intentionally narrow administrative argument about the order to include the authority to issue the order in the first place. (App. Br. at 5). Because Appellant forfeited the issue as to whether there was authority to involuntarily order him to active duty, this Court reviews for plain error.

1. There was not plain error because the phrase "inactive duty" in Article 2(d) must now include the intervals between those duty days or be absurd.

Under the plain error standard of review, an appellant "bears the burden of establishing: (1) there is error; (2) the error is clear or obvious; and (3) the error materially prejudiced a substantial right." United States v. Robinson, 77 M.J. 294, 299 (C.A.A.F. 2018). To determine whether there was error, this Court must interpret Article 2. This Court should find that Article 2(d) is ambiguous as to whether it is meant to allow involuntary recall to active duty of reservists who committed offenses in the interval between two consecutive IDT periods. Since the statute is ambiguous, the convening authority did not plainly err in using Article 2(d) to recall Appellant to active duty for his court-martial.

2. Article 2(a)(3)(A), UCMJ is facially ambiguous because the "and" could have different meanings.

The "and" in Article 2(a)(3)(A) is ambiguous. "As in all statutory construction cases, we begin with the language of the statute." United States v. McDonald, 78 M.J. 376, 379 (C.A.A.F. 2019) (quoting Barnhart v. Sigmon Coal Co., 534 U.S. 438, 450, (2002)). Such "inquiry must cease if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'" Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997) (quoting United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 240, (1989)) (additional citation omitted). "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." Id. at 341 (citations omitted). When we see a "facial ambiguity . . . we must interpret it in light of the broader context of the rule." United States v. Beauge, 82 M.J. 157, 162 (C.A.A.F. 2022) (citation omitted). Whether statutory language is ambiguous "'is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.'" United States v. Schmidt, 82 M.J. 68, 76 (C.A.A.F. 2022)(Ohlson, C.J., with whom Erdmann, S.J., joined, concurring in the judgment) (quoting Robinson v. Shell Oil Co., 519 U.S. 337, 341 (1997)).

Article 2(a)(3)(A) is facially ambiguous because "and" as used in the statute could have two meanings – it could mean "which includes" or "in addition to."

When Article 2 is read as a whole, the phrase "while on inactive-duty training *and* during any of the periods specified in subparagraph (B)" must be read as "While on inactive-duty training *which includes* during any of the periods specified in subparagraph (B)." Interpreting "and" as creating a separate category of jurisdiction, as Appellant would have this Court do, produces patently absurd results. Conversely, interpreting "and" as "which includes" not only avoids such absurd results but also aligns with Congress's clearly stated purpose of the creation of Article 2(d), with the fundamental principles of statutory interpretation against ineffectiveness, the fundamental principle of validity, and the predicate act canon.

i. *The history Article 2(d) reveals the meaning of "and" as "which includes".*

While Congress' 1986 amendment of the UCMJ expanded jurisdiction to times when reservists were on inactive-duty training, this created an unfortunate jurisdictional puzzle. United States v. Hale, 78 M.J. 268, 275 (C.A.A.F. 2019) (J. Ohlson concurring in part). Inactive-duty training is not a tour but a block of time – a designated four-hour period of training, duty, or instruction. Id. (internal citation omitted). Because of this, members of the reserve were able to evade criminal jurisdiction by committing offenses beyond the four-hour block of time such as when they were on a lunch break or after work between consecutive days of training. Hale,78 M.J. at 273.

In 2017, Article 2 was again amended to expand jurisdiction over reservists and address this jurisdictional puzzle. Hale, 78 M.J. at 275 (J. Ohlson concurring in part). Reservists were then subject to the code "[w]hile on inactive-duty training and during any of the periods specified in subparagraph (B)." Article 2(a)(3)(A), UCMJ. Article 2, subparagraph (B) specifies that the periods referenced in Article 2(a)(3)(A) are travel to and from inactive-duty training, intervals between consecutive periods of inactive-duty training on the same day, and intervals between inactive-duty training on consecutive days.

In explaining the 1986 amendments, Congress stated that "A reservist would no longer be able to evade accountability for a breach of discipline merely by refusing orders." (H.R. Rep. No. 99-718 at 226). Despite closing the jurisdictional loophole, tellingly, Congress did not amend Article 2(d)(2) in 2017 when it expanded subject matter jurisdiction over reservists to include periods beyond the four-hour blocks of inactive-duty training There was no need. Interpreting the "and" to be "which includes" results in a consistent application of Congress's intent to close the loophole. Similarly, it explains why Congress felt no need to also amend Article 2(d). The inclusive "and" in Article 2(a)(3)(A) accomplished that amendment by the reference.

ii. ***Interpreting "and" as "which includes" avoids the absurd result of Congress expanding court-martial jurisdiction, but only allowing for very limited means for effectuating that new jurisdiction.***

Interpreting Article 2(a)(3)(A) to create a separate category of jurisdiction over reservists results in courts-martial being unable to effectuate their jurisdiction and allows members of the reserves to "evade accountability by for a breach of discipline by merely refusing orders." (H.R. Rep. No. 99-718 at 226).

Congress established the ability to involuntarily recall a reservist to active duty with the purpose of preventing reservists from evading jurisdiction by refusing to accept orders. (H.R. Rep. No. 99-718 at 226). If "and" does not mean "which includes" then there is no way for the court-martial to effectuate its jurisdiction and the expanded subject matter jurisdiction of Article 2(a)(3)(A) is meaningless.

"[T]o construe statutes so as to avoid results glaringly absurd, has long been a judicial function. Where the language is susceptible of a construction which preserves the usefulness of the section, the judicial duty rests upon [the] Court to give expression to the intendment of the law." Armstrong Paint & Varnish Works v. Nu-Enamel Corp., 305 U.S. 315, 332-333 (1938) (footnotes omitted). This Court must construe "and" to mean "which includes" for the usefulness, coherence, and effectiveness of Article 2.

If the term "on inactive duty-training" in Article 2(d)(2) does not include the periods specified in Article 2, subparagraph (B) then it becomes challenging for the military to effectuate the jurisdiction that Congress newly granted over reservists, like Appellant, who committed their misconduct between consecutive IDT periods. The military would be confined to court-martialing these reservists only on their annual tours, which might not be a long enough period to prosecute a complex case.[4] And if a reservist has already completed his annual tour before committing the misconduct in question, the military would have to wait until the next year's annual tour, creating an unfortunate delay. This reading of Article 2 would subject a reservist who committed premeditated murder between consecutive IDT periods to different procedural rules for recall than a reservist

[4] Appellant's interpretation assumes that Article 2(d) is the only way to place a reservist on active duty for court-martial for offenses committed in the periods described in Article 2(a)(3)(B). This ignores the reality that a reservist could be court-martialed during his annual tour. Even if a reservist were to attempt to evade performing his annual tour, the Air Force has other mechanisms to order the reservist to active duty for this purpose. *See* Department of the Air Force Manual 36-2136*,* *Reserve Personnel Participation,* para. 1.5 ("**Involuntary Order to Active Duty**. Reservists who have not fulfilled their military service obligation and/or participation requirements in accordance with 10 USC § 651, Members: Required Service, and 10 USC § 10147, may be ordered to active duty in accordance with 10 USC § 10147 and 10 USC § 10148 . . .") and para. 5.10 ("**Ordering a Reservist to AT**. The reservist is encouraged to volunteer for AT; however, pursuant to 10 U.S.C. § 12301(b), AT may be ordered involuntarily by a commander.") This limited independent authority to recall reservists to an annual tour further demonstrates that Article 2(d) is not jurisdictional. But because this authority *is* so limited, it supports that Congress did not intend for it to be the sole mechanism to use for court-martialing reservists who commit crimes between consecutive IDT periods.

who committed premeditated murder in the middle of an IDT period. The reservist who committed his murder between IDT periods could only be court-martialed during a two-week annual tour, while the military would have no time restraints court-martialing the reservist who committed his murder during his IDT period. It is absurd to think that Congress intended such a result. Now that the military has been given jurisdiction over both, there is no rational reason to differentiate between the two reservists and subject them to different rules for recall. It is also absurd to believe that Congress went to the trouble of amending Article 2 to expand jurisdiction over reservists, but simultaneously intended to provide only a very limited means of exercising that jurisdiction. Such an understanding of the amendment to Article 2 would render it inefficient and essentially ineffective.

Appellant claims that because Congress used to require a reservist to voluntarily submit to jurisdiction to be court-martialed it is rational that Congress now requires such voluntary submission. This argument ignores the operational reality that drove Congress to remove that requirement that still exists today. Both Congress and this Court noted that reservists have become more integrated and essential to regular military operations. Congress stated in the 1987 House Report that the amendments needed to be made "to reflect the reality of the total force concept by subjecting members of reserve components in Federal status to the same disciplinary standards as their regular force counter-parts." (H.R. Rep. No.

99-718 at 226). This total force reality still exists today. It is against all common sense that Congress would intentionally remove the requirement that jurisdiction be subject to consent, maintain that posture for 57 years, expand jurisdiction to capture another gap in jurisdiction, but then implicitly limit that jurisdiction to more than half-century removed standard. That absurdity is increased by the fact that Congress would've only imposed that long forgotten requirement to their newly expanded jurisdiction rather than reservists as a whole.

Even assuming the intention was for the military to have to wait for the reservist's next active duty tour, absurdity still arises. If a court-martial lasts longer than the accused's annual tour, and Article 2(d)(2) means the member who committed an offense during the periods specified in Article 2(a)(3)(B) cannot be involuntarily recalled to allow the court-martial to continue until it is complete, then the court-martial would be paused until he returned for his next annual tour. Requiring the military to not only wait to prosecute reservists but potentially split a single court-martial among periods of active duty is directly contrary to Congress's stated purpose for creating the ability to involuntarily recall reservists. "Such authority is necessary for timely disposition of offenses, to ensure morale and discipline within command." (H.R. Rep. No. 99-718 at 227). This is absurd.

These glaring absurdities should lead this this Court to exercise its longstanding judicial function and construe the statute to avoid the result that would render jurisdiction inoperative and ineffective. Armstrong Paint & Varnish

Works v. Nu-Enamel Corp., 305 U.S. 315, 332-333 (1938). By interpreting the ambiguous "and" as "which includes" is the only interpretation that preserves the usefulness of the section. Id. Therefore, this court should adopt this interpretation of the word "and". Because the only viable interpretation of "and" is "which includes" there was no error in ordering Appellant to active duty. Therefore, this Court should find Appellant has failed to establish plain error and deny his assignment of error.

CONCLUSION

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's claims and affirm the findings and sentence in this case.

HEATHER R. BEZOLD, Capt, USAF
Appellate Government Counsel
Government Trial and
Appellate Operations Division
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 37408

MARY ELLEN PAYNE
Associate Chief
Government Trial and
Appellate Operations Division
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 34088

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and
Appellate Operations Division
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 35837

MATTHEW D. TALCOTT, Col, USAF
Director
Government Trial and
Appellate Operations Division
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 33364

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was transmitted by electronic means to the Court and the Appellate Defense Division on 5 March 2025

HEATHER R. BEZOLD, Capt, USAF
Appellate Government Counsel
Government Trial and
Appellate Operations Division
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 37408

CERTIFICATE OF COMPLIANCE WITH RULE 24(d)

This brief complies with the type-volume limitation of Rule 24(c) because:

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/s/ Heather R. Bezold, Capt, USAF

Attorney for the United States (Appellee)

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