IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, Appellee v. Thomas E. KRUSE Corporal (E-4) United States Marine Corps, Appellant	SUPPLEMENT TO PETITION FOR GRANT OF REVIEW Crim. App. Dkt. No. 202500370 USCA Dkt. No.

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

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Introduction

Article 24a's, UCMJ, grant of "exclusive authority" over a "reported offense" attaches to the underlying misconduct—not the charges and specifications later selected.[1] This exclusive authority manifests at the moment the Special Trial Counsel (STC) determines that a reported offense is a covered offense. Throughout the UCMJ an "offense" means punishable conduct, and Congress's deliberate choice of that term forecloses any interpretation that would permit a convening authority (i.e. commanding officer) to evade Special Trial Counsel's statutory jurisdiction.[2]

The lower court's interpretation renders "exclusive authority," "reported offense," and "covered offense" meaningless, conflicts with the statute's structure, and defeats Congress's intent to create an independent, binding prosecutorial regime. Even if the lower court was correct in interpreting these terms as mere surplusage, such a determination of Article 24a's validity is a question of law that should be settled by this Court.[3] This issue presents a case of first impression warranting this Court's review. The lower court's ruling will affect the disposition of STC cases

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[1] 10 U.S.C. § 824a (2024).

[2] 167 CONG. REC. S9106 (daily ed. Dec. 13, 2021) (statement of Sen. Reed); 167 CONG. REC. S9174-75 (daily ed. Dec. 15, 2021) (statement of Sen. Reed); STAFF OF H. COMM. ON ARMED SERVICES, 117TH CONG., NAT'L DEF. AUTHORIZATION ACT FOR FISCAL YEAR 2022 LEGIS. TEXT AND JOINT EXPLANATORY STATEMENT TO ACCOMPANY S. 1605 P. LAW 117-81, at 1002 (Comm. Print 2021) [hereinafter JES]; 10 U.S.C. § 824a (2024).

[3] C.A.A.F. R. 21(5)(A), (D).

worldwide and carries significant consequences for the military justice system. Counsel provides the flowchart below as a guide to help illustrate Appellant's argument:

Article 24a(c)(1)-(5) Structural Flow

STEP 1 — REPORTED OFFENSE

↓

STEP 2 — (c)(2)(A)
STC has EXCLUSIVE AUTHORITY to determine:

- Is the reported offense a "covered offense"?

↓

IF YES — OFFENSE IS COVERED

↓

STEP 3 — (c)(2)(B) EXPANSION AUTHORITY STC
may ALSO exercise authority over:

- Any offense related to the covered offense
- Any other offense alleged to have been committed by the same accused

↓

STEP 4 — (c)(3) EXCLUSIVE PROSECUTORIAL AUTHORITY STC
has EXCLUSIVE authority to:

- Withdraw or dismiss charges
- Refer charges to court-martial
- Enter plea agreements
- Determine rehearing impracticable
- BINDING EFFECT under (c)(4) if STC refers charges → Referral is BINDING on convening authority

↓

STEP 5 — (c)(5) LIMITED COMMAND BACKSTOP If STC declines to prefer or refer:

- Commander may exercise normal authority
- BUT may NOT refer charges for a covered offense under (c)(2)(A)
- Prohibition does NOT extend to (c)(2)(B) offenses unless independently determined to be covered

Issue Presented

Whether the lower court's ruling on the exclusive authority granted to the Special Trial Counsel under Article 24a, UCMJ, runs counter to the statute's plain meaning, the will of Congress, and creates an absurd result.

Statement of Jurisdiction

The Navy-Marine Corps Court of Criminal Appeals reviewed this case under Article 62(a)(1)(A), Uniform Code of Military Justice (UCMJ).[4] Corporal (Cpl) Kruse invokes this Court's jurisdiction under Article 67(a)(3), UCMJ.[5]

Statement of the Case

Pursuant to a plea agreement, the Convening Authority referred charges against Appellee to a special court-martial alleging violation of a lawful written order, drunken operation of a vehicle, aggravated assault, assault consummated by a battery, and drunk and disorderly conduct in violation of Articles 92, 113, 128, and 134, UCMJ.[6] On August 20, 2025, the military judge issued a ruling dismissing both specifications of Charge II (Article 128)—one specification alleging aggravated assault by strangulation and another alleging assault consummated by a battery.[7] The

[4] 10 U.S.C. § 862(a)(1)(A) (2024).
[5] 10 U.S.C. § 867(a)(3) (2024).
[6] 10 U.S.C. §§ 892, 913, 928, 934 (2024).
[7] R. at 28-33.

Government appealed on August 23, 2025.[8] On January 21, 2026 the lower court vacated the military judge's ruling.[9]

Statement of Facts

A. Charge II in this case arose from Appellee's wife alleging he assaulted her.

Appellee's wife made a report to the Criminal Investigation Division (CID), claiming that Appellee strangled her and pushed her down the stairs while he was drunk.[10] CID produced its report the following day.[11]

B. The Office of the Special Trial Counsel invoked its Article 24a authority over Appellee.

Once in receipt of CID's report, the OSTC invoked its Article 24a exclusive authority under Rule for Courts-Martial (R.C.M.) 303A.[12] The OSTC's letter to the convening authority stated that OSTC exercised its exclusive "authority over the following covered . . . offenses: . . . Article 128b, [UCMJ] Domestic Violence" after determining the report involved domestic violence.[13]

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[8] Gov't Written Notice of Appeal Under R.C.M. 908.
[9] *United States v. Kruse*, No. 202500370, 2026 CCA LEXIS 13, *10 (N-M. Ct. Crim. App. Jan. 21, 2026).
[10] App. Ex. V at 6.
[11] *Id*.
[12] MANUAL FOR COURTS-MARTIAL, UNITED STATES [hereinafter MCM], RULES FOR COURTS-MARTIAL 303A (2024) [hereinafter R.C.M.]; App. Ex. IX at 3.
[13] App. Ex. IX at 3.

C. The Office of the Special Trial Counsel deferred disposition to the convening authority under Article 24a(c)(5).

Nearly five months after invoking exclusive authority over the case, OSTC notified the convening authority that it had determined there was a lack of "sufficient admissible evidence to obtain and sustain" a conviction of Appellee.[14] "Accordingly" the STC "deferred all allegations of *covered offenses* against [Appellee] . . . and all other known and/or related offenses" to the convening authority for resolution.[15]

D. The Government charged Appellee under Article 128, UCMJ, for the same alleged offense that the Office of Special Trial Counsel found was a covered offense under Article 128b, UCMJ.

Four months after the OSTC deferred, the Government preferred charges at a general court-martial against Appellee under Articles 92, 128, and 134 of the UCMJ.[16] Charge II (Article 128, UCMJ) consists of two specifications arising from the CID's report of domestic violence as stated in Subheading F.[17] One specification alleges aggravated assault by strangulation and the other alleges assault consummated by a battery for Appellee pushing his wife down the stairs.[18] Both

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[14] App. Ex. IX at 5.
[15] *Id*. (emphasis added).
[16] Charge Sheet, Apr. 22, 2025. Later the Government preferred an Additional Charge of violating Article 113, UCMJ. Additional Charge Sheet, June 11, 2025.
[17] *Id*.
[18] *Id*.

specifications arose out of the same course of conduct Appellee's wife reported to CID and that OSTC found was a covered offense.[19]

E. Appellee signed a plea agreement with the convening authority that brought his case to a judge-alone special court-martial.

Appellee and the convening authority signed a plea agreement.[20] Under the agreement, the convening authority withdrew all charges and specifications from the general court-martial and preferred and referred the same charges and specifications to a special-court martial judge-alone trial.[21] Before arraignment, the military judge requested the Government to provide "a filing concerning the involvement of [the STC]."[22] The military judge asked trial counsel to address:

> 1) whether the alleged victim was the spouse of the Accused at the time of the offenses charged in Charge II [assault and battery] and Charge III [MPO violation];
>
> 2) whether a special trial counsel has determined that a reported offense at issue in this case is a covered offense under Rule for Court-Martial (R.C.M.) 303(A)(a);
>
> 3) whether a special trial counsel has exercised authority over any of the offenses charged pursuant to R.C.M. 303A(b) or R.C.M. 303A(c) as known and related offenses, and
>
> 4) whether a special trial counsel deferred any offense.[23]

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[19] *Id*. (referring the charges to a general court-martial); App. Ex. V at 5; App. Ex. IX at 3.
[20] *Id*. at 11.
[21] *Id*. at 8.
[22] R. at 6.
[23] App. Ex. IV at 1.

Trial counsel informed the military judge that: 1) the alleged victim was the spouse of Appellee, 2) OSTC did determine the offense was a covered offense, 3) OSTC did exercise authority over the covered offense, and 4) OSTC did defer the offense.[24] The military judge ordered trial counsel to address whether the court has jurisdiction over Charge II (Article 128) and Charge III (Article 92).[25] Trial counsel filed a motion to address this jurisdictional issue and trial defense counsel filed a motion to dismiss for lack of jurisdiction shortly after.[26]

F. The military judge found that the court-martial "lacks jurisdiction over Charge II and its specifications because they were not referred to this court by a competent authority."[27]

After arraigning Appellee, the military judge directed trial counsel and trial defense counsel to provide their positions on the record regarding the court's jurisdiction over Charge II.[28] The military judge granted trial defense counsel's motion in part to dismiss for lack of jurisdiction, dismissing Charge II (Article 128) and its specifications.[29] To Charge II (Article 128) the military judge ruled:

> Accordingly, the convening authority lacks the congressionally approved authority to refer Charge II and both its specifications, and is therefore not a competent referral authority for that charge. Pursuant to … [sic] R.C.M. 201, this Court then lacks jurisdiction over Charge II

[24] App. Ex. IV at 1-2.
[25] App. Ex. VIII at 1. Trial defense counsel's motion to dismiss Charge III was denied and is not at issue in this Court.
[26] App. Exs. VIII, XI.
[27] R. at 33.
[28] R. at 11.
[29] R. at 28-34.

and its specifications because they were not referred to this Court by a competent authority.[30]

G. The Government appealed the military judge's ruling dismissing Charge II (Article 128) and its specifications.

Shortly after the military judge's ruling, trial counsel filed a notice of appeal under R.C.M. 908, appealing the judge's ruling under Article 62, UCMJ.[31] Based on a corrected appeal, Appellee requested this Court to rule on the military judge's decision to "dismiss[] . . . Charge II and both of its Specifications."[32] On January 21, 2026 the Navy-Marine Corps Court of Criminal Appeals (NMCCA) ruled against the military judge, overturning his ruling.[33]

H. The Establishment of the Independent Review Commission on Sexual Assault paved the way for the introduction of the Special Trial Counsel into the National Defense Authorization Act of 2022 (NDAA).

The Secretary of Defense (SecDef) announced in February of 2021 the creation of a "90-day Independent Review Commission [(IRC)] on Sexual Assault in the Military."[34] The IRC consisted of a body of highly qualified experts with the

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[30] R. at 33.
[31] Gov't Written Notice of Appeal Under R.C.M. 908, at 2.
[32] *Id*.; Interlocutory Appeal by the U.S.; Interlocutory Appeal by the U.S., Errata-Corr.
[33] *Kruse*, 2026 CCA LEXIS at 13.
[34] DEPUTY SECDEF, MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP COMMANDERS OF THE COCOMS DEF AGENCY AND DOD FIELD ACTIVITY DIR.'S (Mar. 23, 2021) [hereinafter IRC Memo].

express purpose of "conducting 'an independent, impartial assessment' of the military's current treatment of sexual assault and sexual harassment."[35]

The IRC published its report in July of 2021 and made various recommendations.[36] The IRC recommended the "[c]reation of the Office of the Special Victim Prosecutor," who should be "independent from the chains of command of both the victim and the alleged offender in order to be seen as a neutral and detached decision-maker and be free from outside pressure."[37] The IRC determined that "Special Victim Prosecutor[s] should decide whether charges should be preferred in special victim cases."[38] And, when a special-victim crime is deferred, a "commander may take any action deemed appropriate, including referral to special or general court-martial, for crimes based on evidence in the case that are completely *unrelated to the special victim crimes in the case* (e.g., an unrelated simple assault or larceny not involving a special victim)."[39] The IRC also made recommendations as it relates to domestic violence stating that "[d]esignated independent judge advocates should replace commanders in deciding whether to charge a suspect with

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[35] *Id*.; INDEP. REV. COMM'N ON SEXUAL ASSAULT, REPORT, HARD TRUTHS AND THE DUTY TO CHANGE: RECOMMENDATIONS FROM THE IND. REV. COMM'N ON SEXUAL ASSAULT IN THE MIL. at 3 (Jul. 2, 2021) [hereinafter IRC Report].
[36] *See generally* IRC Report.
[37] *Id*. at app. B, 8-9.
[38] *Id*. at app. B, 14.
[39] *Id*. at app. B, 16 (emphasis added).

a crime (preferral), and whether that charge should be tried at court-martial (referral) in domestic violence cases."[40]

I. The Independent Review Commission's' influence on the House of Representatives.

Prior to the implementation of NDAA, the Subcommittee on Military Personnel of the Committee on the House Committee on Armed Services (HASC) had a hearing on the implementation of the "recommendations of the [IRC]."[41] During this hearing the Deputy SecDef gave a statement.[42] The Deputy SecDef stated that the DoD had "the 82 recommendations from the IRC," and that the SecDef "[was] moving forward with a general disposition toward accepting the recommendations" as it related to DoD's legislative proposal to Congress for NDAA.[43] Ms. Lynn Rosenthal, chair of the IRC, also gave a statement.[44] Ms. Rosenthal stated the committee's recommendations involved "shifting decisions about sexual assault and related criminal prosecutions to experienced special-victims prosecutors outside the chain of command," and that special victim prosecutors

[40] *Id.* at app. A, 2.
[41] *Recommendations of the Independent Review Commission on Sexual Assault in the Military: Hearing Before the Subcomm. on Mil. Pers. of the H. Comm. on Armed Servs.*, 117th Cong. 117-38 I (2021) [hereinafter IRC Hearing].
[42] *Id*. at 5-27.
[43] *Id.* at 7.
[44] *Id*. at 28-48.

would have jurisdiction over not only "sexual assault but also other crimes based on relationships and vulnerability of the victim—domestic abuse."[45]

These recommendations by the IRC were incorporated into H.R. 4350—the house passed version of NDAA, thus adding "Article 24a. Special trial counsel" to the UCMJ.[46]

J. The Independent Review Commission's influence on the Senate.

On December 13, 2021 Chairman Reed provided his comments on S.1605, the Senate's proposed and later passed NDAA, and its effect on military justice reform:

> Our bill creates special trial counsel, who are highly specialized, independent prosecutors outside the chain of command of the victims and the accused. *They will have exclusive, binding, and final decision-making authority over whether to prosecute these crimes.*
> *Under our bill, no commander will be able to overrule the binding decision of a special trial counsel to prosecute or not prosecute a case*. Similarly, our bill ensures that the special trial counsel have the *exclusive authority* to withdraw or dismiss charges or specifications, removing that power from commanders.[47]

On December 15, 2021, the Senate continued their session on the NDAA (S.1605).[48] During this session Chairman Reed provided additional comments on the bill:

> I want to especially note that this bill includes historic, sweeping reforms to the Uniform Code of Military Justice and how the military

[45] IRC Hearing at 34.
[46] 167 CONG. REC. H7265, H7283 (daily ed. Dec. 7, 2021).
[47] 167 CONG. REC. S9106 (daily ed. Dec. 13, 2021) (emphasis added) (statement of Sen. Reed); S. 1605, 117th Cong. (2021) (enacted).
[48] 167 CONG. REC. S9167 (daily ed. Dec. 15, 2021) (statement of Sen. Reed).

> investigates and prosecutes sexual assault and other offenses, including murder, manslaughter, kidnapping, and many other crimes. Just as my Senate colleagues, the President's *Independent Review Commission*, and survivors advocate groups have called for, this bill takes prosecutorial power away from the chain of command for these cases. *Our bill creates ''special trial counsel,'' highly specialized prosecutors who will have exclusive, binding, and final decision-making authority over whether to prosecute these offenses.* This is a sea change for the military justice system, and I am grateful to my colleagues in both Chambers and on both sides of the aisle for working together to achieve this historic reform for the well-being of our military women and men.[49]

At the end of his speech, the Senate proceeded to vote on the NDAA, where it passed 88-11.[50]

K. The Department of Defense's post-NDAA implementation of the Independent Review Commission's recommendations.

On September 21, 2022 representatives of the SecDef provided an update during a hearing before the Subcommittee of Military Personnel of the HASC on the implementation of the recommendations of the IRC.[51] The Under SecDef for Personnel and Readiness stated that the DoD was working to include the IRC's recommendations that were incorporated into NDAA and that "Secretary [of Defense] Austin . . . recommended that we implement all . . . recommendations."[52]

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[49] *Id*. at S9174-5 (emphasis added) (the Independent Review Commission referenced is the IRC created by SecDef Austin as discussed in subheading B).
[50] *Id*. at S9175.
[51] *Update on the Implementation of Recommendations of the Independent Review Commission on Sexual Assault in the Military and the Establishment of the Office of Special Trial Counsel*, *Hearing Before the Subcomm. on Mil. Pers. of the H. Comm. on Armed Servs.*, 117th Cong. 117-98 I (2021) [hereinafter IRC Update].
[52] *Id*. at 6, 9.

In addition to the Under SecDef's testimony, representatives from each branch of the military provided testimony and a prepared statement acknowledging the recommendations of the IRC and their commitment to their implementation.[53]

In compliance with NDAA, Sec. 539G, the DoD provided as an annex to their Fiscal Year (FY) 2022 *Annual Report on Sexual Assault in the Military* an update on the implementation of the IRC's recommendations.[54] Within these recommendations the DoD confirmed that it had "[d]esignated independent judge advocates . . . [to] replace commanders in deciding whether a charge should be tried by a court-martial and, if so, whether by a special or general court-martial (i.e., the referral decision) in *domestic violence cases*."[55] On December 21, 2023 the DoD provided additional guidance to the public on its implementation of the Office of the Special Trial Counsel (OSTC).[56] This guidance reaffirmed that "Secretary Austin" has "approve[d] all 82 recommendations of" the IRC while each service

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[53] *See generally id*.

[54] S. 1605, 117th Cong. § 539G (2021) (enacted) (Section 539G of the NDAA required a briefing to both House and Senate Armed Service Committees on the implementation of the recommendations from the IRC no later than 180 days after the date of the enactment of the Act.); DEP'T OF DEF., ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY: FISCAL YEAR 2022, Annex II (2023), https://www.sapr.mil/Portals/156/FY22_Annual_Report.pdf (last visited Feb. 19, 2026).

[55] *Id*., Annex 2 at 3 (emphasis added).

[56] DEP'T OF DEF., *Offices of the Special Trial Counsel Background Interview on Reforms to Improve Accountability in the Military Justice System* (Dec. 22, 2023), https://www.defense.gov/News/Transcripts/Transcript/Article/3627337/offices-of-the-special-trial-counsel-background-interview-on-reforms-to-improve/.

representative stated the importance that the OSTC have "independence" "free from any external influences or pressures."[57]

Summary of the Argument

Article 24a grants the STC exclusive authority to determine whether a reported offense is a covered offense. That authority attaches to the underlying misconduct reported—not the charges and specifications later selected by a convening authority. Once the STC determines the reported misconduct is a covered offense and exercises authority over it, the statute limits a convening authority's ability to refer that same conduct to court-martial. Allowing a convening authority to relabel the same conduct under a different punitive article would circumvent the statutory framework Congress enacted.

The plain language of Article 24a supports this conclusion. But if this Court determines the statute is ambiguous, the legislative history surrounding NDAA reforms confirms that Congress intended prosecutorial authority over covered offenses to rest exclusively with the STC. If the Court accepts the lower court's interpretation, it should still reverse because that reading produces an absurd result—allowing commanders to nullify the STC's exclusive authority through simple reclassification of the same misconduct.

[57] *Id*.

Reasons to Grant Review

The lower court's ruling ignores the plain language granting exclusive authority to the Special Trial Counsel in Article 24a, UCMJ, runs counter to Congressional intent, and creates an absurd result.

This Court should grant review of this case under Rule 21(b)(5)(A) and (D) of this Court's Rules of Practice and Procedure.[58] This case involves the statutory interpretation of Article 24a, UCMJ—the seminal provision in the UCMJ that grants OSTC the exclusive authority to determine if a reported offense is a covered offense and to refer those offenses to a court-martial outside of the scope of a commanding officer.[59] This question of law is a case of first impression that this Court should settle.[60]

The procedural history in this case presents an important dichotomy: (1) Does Article 24a(c)(2)(A)'s "exclusive authority" preclude a "separate government organization [from] determin[ing] that the conduct at issue is no longer a covered offense" as the military judge ruled; or (2) was the NMCCA correct in that "the CA [(convening authority)] regained authority to dispose of the [offense] . . . under Article 128" when OSTC determined the reported offense was a covered offense

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[58] C.A.A.F. R. 21(b)(5)(A), (D). This is both a case of first impression for this Court that involves the validity of specific terms within Article 24a, UCMJ.
[59] 10 U.S.C. § 824a(c) (2024).
[60] C.A.A.F. R. 21(b)(5)(A).

under Article 128b?[61] The introduction of the "special trial counsel" was both a "sea change" and a "historic, sweeping reform[] to the [UCMJ]."[62] This court should address this novel question of law to prevent future confusion and ensure consistent application of Article 24a.

The lower court's ruling erred in three ways. First, the lower court's interpretation of Article 24a ignores the plain language of Section (c)(2)(A) and renders specific language superfluous thereby making portions of Article 24a(c)(2)(A) meaningless.[63] This Court interprets statutes to give effect to all the words within the provision.[64] While the lower court recognized that statutes should have a "harmonious whole," the Supreme Court has recognized that "'identical words used in different parts of the same act are intended to have the same meaning.'"[65] To interpret Article 24a in the manner the lower court does would require this Court to ignore various terms under Article 24a(c)(2)(A). This Court

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[61] 10 U.S.C. § 824a(c)(2)(A) (2024); R. at 33; *Kruse*, 2026 LEXIS at *9-10; 10 U.S.C. § 824a(c)(5) (2024).
[62] 167 CONG. REC. S9174 (daily ed. Dec. 15, 2021) (statement of Sen. Reed).
[63] 10 U.S.C. § 824a(c)(2)(A) (2024); *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" (internal citations omitted)).
[64] *Gustafson v. Alloyd Co.*, 513 U.S. 561, 569 (1995) (statutes are "to be interpreted as a symmetrical and coherent regulatory scheme, one in which the operative words have a consistent meaning throughout").
[65] *Kruse*, 2026 LEXIS CCA *5 (quoting *United States v. Quick*, 74 M.J. 517, 520 (N-M. Ct. Crim. App. 2014); *Alloyd Co.*, 513 U.S. at 570.

would be required to interpret the word *offense* in more than one way, inconsistent with the Code as a whole.[66] Second, if this Court determines that Article 24a is ambiguous then the legislative history strongly supports that "no commander will be able to overrule the binding decision of a special trial counsel to prosecute *or not prosecute a case*."[67] Lastly, if this Court does side with the lower court, Section (c)(5) as interpreted by the lower court would lead to an absurd result that this Court must correct.[68]

A. Once the STC determines a reported offense is covered, the plain language of the statute forecloses command reclassification.

In interpreting statutory language, military courts "apply traditional canons of statutory construction."[69] "Statutory construction begins with a look at the plain language of a rule."[70] "[T]he plain language of a statute will control unless it leads to an absurd result."[71] The Court of Appeals for the Armed Forces (CAAF) has stated that the meaning of a statute "is determined by reference to the language itself, the

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[66] *See* 10 U.S.C. § 824a (2024); *Alloyd Co.*, 513 U.S. at 569.
[67] 167 CONG. REC. S9106 (daily ed. Dec. 13, 2021) (emphasis added) (statement of Sen. Reed). This Court should not consider legislative history unless it considers the statute's plain language ambiguous. *See Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 437 (2019) (explaining that consideration of the plain language alongside legislative history without first making a determination that the language is unclear is a "relic from a bygone era of statutory construction.").
[68] U*nited States v. Martinelli*, 62 M.J. 52, 81 n.24 (C.A.A.F. 2005).
[69] *United States v. King*, 71 M.J. 50, 52 (C.A.A.F. 2012).
[70] *United States v. Lewis*, 65 M.J. 85, 88 (C.A.A.F. 2007) (citing *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241-42 (1989)).
[71] *King*, 71 M.J. at 52 (citing *Lewis*, 65 M.J. at 88).

specific context in which that language is used, and the broader context of the statute as a whole."[72] To grasp the plain meaning of statutory language, CAAF has looked towards *Black's Law Dictionary* and lay dictionaries "when a word has an easily graspable definition outside of a legal context."[73] When looking at a statute in its entirety, "[t]he provisions of a text should [also] be interpreted in a way that renders them compatible, not contradictory."[74]

1. The plain language of the statute supports the military judge's interpretation of the law.

Article 24a states "[a] special trial counsel shall have *exclusive authority* to determine if a reported offense is a covered offense."[75] The STC "shall exercise authority" over any covered offense.[76] When "a special trial counsel exercises authority over an offense" and defers it back to the convening authority, the "convening authority *may not refer charges and specifications for a covered offense for trial by special or general court-martial*."[77] Thus once OSTC determines a reported offense is a covered offense, "the convening authority lacks the

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[72] *United States v. Schmidt*, 82 M.J. 68, 76 (C.A.A.F. 2022) (citing *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)).
[73] *Schmidt*, 82 M.J. at 75-76.
[74] ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS at 180 (2012); *see also Alloyd Co.*, 513 U.S. at 569 (statutes are "to be interpreted as a symmetrical and coherent regulatory scheme, one in which the operative words have a consistent meaning throughout.").
[75] 10 U.S.C. § 824a(c)(2)(A) (2024).
[76] 10 U.S.C. § 824a(c)(2)(A) 2024).
[77] 10 U.S.C. § 824a(c)(5) (2024).

congressionally approved authority to refer [that offense]" to a special or general court-martial.[78]

NMCCA wishes for this Court to ignore the exclusive authority granted to the STC in Article 24a, directly contradicting the plain language of the statute. This approach would let convening authorities bypass what Congress accomplished with Article 24a. Here, the crux of the issue is the definition of the word "exclusive." While a "covered offense" is defined under Article 1, UCMJ, exclusive is not.[79] Looking to *Black's Law Dictionary* and other authoritative lay dictionaries, we can see that the definition of *exclusive* supports the military judge's position:

Definition of "Exclusive"	
Black's Law Dictionary	**1** Limited to a particular person, group, entity, or thing <exclusive right>. **2** Unable to be true if something else is true <mutually exclusive>. **3** Whole; undivided <exclusive attention>.[80]
Merriam-Webster's Dictionary	**1 a:** excluding or having power to exclude **b:** limiting or limited to possession, control, or use by a single individual or group **2 a:** excluding others from participation **3**… [not applicable]

[78] R. at 33; *see also United States v. Henderson*, 59 M.J. 350, 353 (C.A.A.F. 2004) ("When a criminal action is tried before a court which does not have jurisdiction, the entire proceedings are a nullity.").
[79] *See* 10 U.S.C. § 801(17) (2024).
[80] THOMPSON REUTERS, ED., BLACK'S LAW DICTIONARY 711 (Bryan A. Garner ed., 11th ed. 2019).

	4 a: SINGLE, SOLE *exclusive* jurisdiction **b:** WHOLE, UNDIVIDED[81]
Oxford English Dictionary	**1** restricted or limited to the person, group, or area concerned[82]

The plain language of the statute is clear.[83] The STC is the sole authority who can determine if a reported offense is a covered offense. This exclusive authority is "undivided," meaning that only the STC can determine if a reported offense is a covered offense.[84] Once the STC determines a reported offense is a covered offense, only the STC can decide whether that reported offense is not covered.[85] Here, the STC concluded that the reported offense met the probable cause threshold for a covered offense and never changed that opinion.[86]

Congress used the term "exclusive authority" twice in Article 24a. This term was used first in granting exclusive authority to determine whether a reported offense is a covered offense in Article 24a(c)(2)(A).[87] Then in Article 24a(c)(3), it was used to grant the STC exclusive authority to refer certain charges to special or

[81] *Exclusive*, MERRIAM-WEBSTER.COM DICTIONARY, https://www.merriam-webster.com/dictionary/exclusive (last visited Oct. 23, 2025).
[82] *Exclusive*, OXFORD ENGLISH DICTIONARY ONLINE, https://www.oed.com/dictionary/exclusive_adj, (last visited Nov. 3, 2025).
[83] 10 U.S.C. § 824a(c)(2)(A) (2024).
[84] THOMPSON REUTERS at 711; *Exclusive,* OXFORD ENGLISH DICTIONARY ONLINE.
[85] 10 U.S.C. § 824a (2024).
[86] App. Ex. IV at 5.
[87] 10 U.S.C. § 824a(c)(2)(A) (2024).

general courts-martial, among other things.[88] This term should be read to be "compatible, not contradictory" in each of these subparagraphs.[89]

By contrast, when Congress did not intend to grant the STC exclusive authority, it used different language. For example, under Article 24a(c)(2)(B) Congress granted the STC the ability to exercise *discretional authority*, not *exclusive authority*, involving known and related offenses involving an accused.[90] Congress did not grant exclusive authority of known and related offenses to OSTC as it wanted convening authorities to keep their jurisdictional authority for non-covered offenses over which the OSTC does not *exercise* authority.

However, Congress did provide exclusive authority to the STC when it disposes of offenses over which it has exercised discretional authority.[91] For known and related offenses, OSTC's authority becomes exclusive when it decides to withdraw and dismiss charges, refer charges to special and general courts-martial, enter into plea agreements with the accused, and determine if a rehearing is

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[88] 10 U.S.C. § 824a(c)(3) (2024).
[89] SCALIA & GARNER at 180; *see Russello v. United States*, 464 U.S. 16, 23 (1983) ("[Where] Congress includes particular language . . . it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (quoting *United States* v. *Wong Kim Bo*, 472 F.2d 720, 722 (CA5 1972)); *see also Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.") (citations omitted).
[90] 10 U.S.C. § 824a(c)(2)(B) (2024).
[91] 10 U.S.C. § 824a(c)(3) (2024).

impractical.[92] This use of exclusive authority language was intentional as it allows the OSTC to be able to charge all misconduct of an accused instead of having separate trials by both the STC and trial counsel. Having two trials would inherently go against military justice's nature and purpose "to promote efficiency and effectiveness."[93] Once OSTC decided to charge an accused, Congress wanted OSTC to have exclusive authority and jurisdiction of all offenses within OSTC's charging scheme.[94]

When reviewing Article 24a in its entirety, it is clear that where Congress bestowed "exclusive authority" to the STC it was meant for that authority to be solely placed in the STC and no one else, to include the convening authority.[95]

2. The lower court does not apply the correct definition of "offense" to Article 24a(c)(5).[96]

Unlike other parts of the UCMJ, Congress picked the term "reported offense"—not "preferred charge," "draft specification," or "article label." This is because the exclusive authority of STC's attach to the underlying conduct of the crime rather than just the Article placed on a charge sheet. While "covered offense" is defined in the UCMJ, the term "offense" and "reported offense" are not.[97] Even

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[92] *Id*.
[93] MCM, Preamble, ¶ 3.
[94] *Id*.
[95] 10 U.S.C. § 824a (2024).
[96] 10 U.S.C. § 824a(c)(5) (2024).
[97] *See* 10 U.S.C. § 801 (2024).

so, this use of vocabulary was intentional by Congress. To help us interpret the meaning of the term "offense," as used in the UCMJ, we can look toward its harmonious use throughout the Code.[98] While the term "offense" is used 301 times within the UCMJ, its use is used harmoniously to refer to the underlying conduct of the criminal act that occurs. As an example Subchapter X (Arts. 77–134) uses the term "offense" repeatedly in two major ways:

1. As the underlying criminal conduct itself, and[99]

2. As a predicate term.[100]

Examples include:

- Art. 80 – Attempt "to commit an offense"[101]
- Art. 81 – Conspiracy "to commit an offense"[102]
- Art. 82 – Soliciting commission of offenses
- Art. 87b – Offenses against correctional custody and restriction
- Art. 95 – Offenses by sentinel or lookout
- Art. 105a – False or unauthorized pass offenses
- Art. 112 – Drunkenness and other incapacitation offenses

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[98] *Quick*, 74 M.J. at 520 (internal citations omitted).
[99] *E.g.*, 10 U.S.C. §§ 885, 889, 890, 895 ("if the offense is committed in time of war"); 887b ("Offenses against correctional custody and restriction"), 10 U.S.C. § 995 ("Offenses by sentinel or lookout"), 10 U.S.C. § 931b (2024) (referencing obstruction relating to an offense under the chapter).
[100] *E.g.*, 10 U.S.C. §§ 877 ("an offense punishable by this chapter"), 878 ("an offense punishable by this chapter"), 880 ("an offense under this chapter"), 881 ("an offense under this chapter"), 882 ("an offense under this chapter"), 934 (2024) ("offenses not capital," especially when referencing Assimilative Crimes Act under 18 U.S.C. § 13).
[101] 10 U.S.C. § 880(a) (2024).
[102] 10 U.S.C. § 881(a) (2024).

- Art. 134 – "All disorders and neglects… and crimes and offenses not capital…"[103]

Here, consistent throughout the UCMJ the term "offense" refers to the underlying conduct of the criminal act that occurs. *Black's Law Dictionary* defines offense as a "violation of the law; a *crime*" and this Court's holdings on multiplicity, double jeopardy, and unreasonable multiplication of charges confirms that an "offense" refers to the underlying criminal conduct.[104]

In adopting the *Blockburger* framework, this Court evaluated whether two charges constitute the "same offense" by examining the elements and the conduct at issue, not the article number selected by the trial counsel.[105] Likewise, in assessing unreasonable multiplication of charges, this Court asked whether the Government exaggerated an accused's criminality by fragmenting a single act or transaction into multiple "offenses."[106] Against this settled backdrop, Article 24a's reference to a "reported offense" must likewise denote the underlying criminal conduct reported—not the later charge and specification chosen by the trial counsel on behalf of a convening authority.

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[103] 10 U.S.C. § 934 (2024).
[104] THOMPSON REUTERS, ED., BLACK'S LAW DICTIONARY 1300 (Bryan A. Garner ed., 11th ed. 2019) (emphasis added).
[105] *United States v. Teters*, 37 M.J. 370, 376-78 (C.M.A. 1993).
[106] *United States v. Quiroz*, 55 M.J. 334, 337–39 (C.A.A.F. 2001).

Article 24a does not grant the STC exclusive authority over "charges" or "specifications." It grants exclusive authority to determine whether a "reported offense" is a "covered offense." Congress's deliberate use of "offense"—while elsewhere referring to "charges and specifications"—reflects an intentional distinction.[107] Reading "offense" to mean merely the charge as labelled on the charge sheet would collapse that distinction, render key statutory language superfluous, and permit circumvention of Congress's express reallocation of prosecutorial authority. The statute's text, structure, and consistent usage compel the opposite conclusion: the STC's authority attaches to the underlying conduct once reported and determined to be a covered offense by the STC—not to the charging form later chosen by command.

The lower court's interpretation was incomplete when it stated that "[n]either the UCMJ nor the R.C.M. say that the OSTC's determination that a reported offense is a covered offense means that the underlying misconduct may only be charged or treated as a covered offense."[108] This interpretation renders Article 24a(c)(2)(A)

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[107] 10 U.S.C. § 824a (the term "charges and specifications" is used nine times throughout this section of the Code and does not have the same meaning as "offense."); *e.g.*, 10 U.S.C. §§ 810(a)(2) ("prompt forwarding of the charges and specifications"), 819(b), (c) ("charges and specifications"), 822(b)(2) ("charges and specifications"), 823(b)(2) ("charges and specifications"), 824(b)(2) ("charges and specifications"), 830 (2024) ("Art. 30. Charges and specifications") (the term "charges and specifications" is used 48 times within the Code).

[108] *Kruse*, 2026 LEXIS CCA at *10.

superfluous and replaces the definition of "offense" with "charged misconduct." Only an STC has "exclusive authority to determine a reported offense is a covered offense."[109]

Appellee allegedly strangled his wife and pushed her down the stairs.[110] Acting on that report to law enforcement, STC utilized its *exclusive authority* to determine that the *reported offense* involving Appellee strangling and pushing his wife down the stairs was a *covered offense* under "Article 128b, Domestic Violence."[111] Since the STC asserted exclusive authority, the circumstances of the reported offense have not changed—Charge II is still a covered "offense" even when the trial counsel's "charges and specifications" are not.

The convening authority preferred and referred charges of the *reported offense* under Article 128; however, "[t]here is no rule or statute that permits having a separate governmental organization determine that the conduct at issue is no longer a covered offense, or that such an organization can sidestep the statutory and rules construct through clever charging decisions."[112]

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[109] 10 U.S.C. § 824a(c)(2)(A) (2024).
[110] App. Ex. V at 6.
[111] App. Ex. IX at 3.
[112] R. at 33; *see also generally* MCM, R.C.M., 10 U.S.C. §§ 801–946 (2024) (there exists no rule to support the Government's position that it could prefer and refer a covered offense).

Once the OSTC determined the reported offense was a covered offense under Article 128b, the convening authority did not have the authority to treat the reported offense as an Article 128, non-covered offense.[113] Accordingly, the convening authority was not allowed to refer the reported offense to trial by special or general court-martial—even after the STC deferred the covered offense.[114]

3. Only Appellee's reading preserves Article 24a's structure.

This Court eschews interpreting statutes in a piecemeal fashion. Instead, the clarity of statutory language is assessed by referencing "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." [115] Courts must give effect to every word and avoid constructions that render statutory language meaningless.[116] Applied here, Appellant's interpretation resolves this question.

First, subsection (c)(2)(A) grants the STC "exclusive authority to determine if a reported offense is a covered offense." That language is categorical. "Exclusive" means undivided. "Reported offense" refers to the underlying conduct. Nothing in

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[113] 10 U.S.C. § 824a(c)(2)(A) (2024).
[114] 10 U.S.C. § 824a(c)(5) (2024).
[115] *United States v. Valentin-Andino*, 85 M.J. 361, 364 (C.A.A.F. 2025) ("The inquiry ceases if the statutory language is unambiguous and *the statutory scheme is coherent and consistent*.") (internal citations omitted) (emphasis added).
[116] *TRW Inc.*, 534 U.S. at 31; *Corley v. United States*, 556 U.S. 303, 304 (2009) ("A statute should be construed [to give effect] to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." (internal citations omitted)).

the text suggests that this determination may be undone by relabeling the same misconduct under a different punitive article.

Second, subsection (c)(5) permits a convening authority to take limited action after declination—but expressly prohibits referral of "a covered offense." That limitation has operative force only if the STC's classification controls. If a convening authority may simply redefine the same conduct as non-covered, then the "exclusive authority to determine if a reported offense is a covered offense" becomes surplusage.[117] As "offense" refers to the underlying criminal conduct, and not the charges on a charge sheet, the lower court's ruling would render the exclusive authority granted to the STC meaningless and would go against this Court's ruling that interpretations should not be adopted that nullify express prohibitions.[118]

Third, subsection (c)(2)(B) demonstrates Article 24a's precision. It allows the STC to exercise authority over related and other offenses—but did not label that authority "exclusive." Congress used "exclusive" selectively. That choice must be respected. Reading (c)(2)(A) as merely superfluous collapses Congress's deliberate distinction between exclusive and non-exclusive authority. Here "[w]hen the words of a statute are unambiguous, then, this first canon [, the plain meaning of the

[117] *TRW Inc.*, 534 U.S. at 31; 10 U.S.C. § 824a(c)(2)(A), (c)(5) (2024).
[118] *Schmidt*, 82 M.J. at 76.

statute,] is also the last: judicial inquiry is complete."[119] Section (c)(2)(A) is unambiguous and this Court should not need to inquire further.

The NMCCA's construction makes three critical terms inoperative: "exclusive," "reported offense," and "covered offense." Appellant's reading gives each term independent meaning and harmonizes (c)(2)(A), (c)(2)(B), and (c)(5). Only one interpretation preserves the statute's structure: once the STC determines a reported offense is covered, the convening authority may not reclassify that same conduct to evade the exclusive authority Congress assigned.

B. If this Court finds ambiguity in Article 24a's plain language, legislative history supports Appellant's interpretation.[120]

If this Court finds the plain language behind Article 24a is ambiguous, the legislative history of NDAA's enactment and creation of the STC supports Appellant's interpretation of the statute.[121] In that event, traditional tools of statutory construction—including legislative history—confirm that Congress intended the STC's authority over covered offenses to be exclusive, binding, and not subject to command reclassification.

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[119] *Valentin-Andino*, 85 M.J. at 366 (internal citations omitted).

[120] This Court should not consider legislative history unless it considers the statute's plain language ambiguous. *See Food Mktg. Inst*, 588 U.S. at 437 (explaining that consideration of the plain language alongside legislative history without first making a determination that the language is unclear is a "relic from a bygone era of statutory construction").

[121] JES at 1002; 167 CONG. REC. S9106 (daily ed. Dec. 13, 2021) (statement of Sen. Reed); 167 CONG. REC. S9174-75 (daily ed. Dec. 15, 2021) (statement of Sen. Reed).

1. The National Defense Authorization Act of 2022 created the Special Trial Counsel and provided them with "exclusive authority" "to determine if a reported offense is a special victim offense."[122]

On December 27, 2021 NDAA became law, incorporating the Military Justice Reform Act (MJRA) and introducing the role of the "Special Trial Counsel" to military justice.[123] NDAA, Section 531 introduced Article 24a stating a "special trial counsel *shall* have *exclusive authority* to determine if a reported offense is a covered offense and *shall* exercise authority over any such offense in accordance with this chapter."[124] Regarding deferral to a convening authority, Article 24a goes on to state that if a "special trial counsel exercises authority over an offense and elects not to prefer charges and specifications for such offense . . . a . . . convening authority may exercise any of the authorities under this chapter with respect to such offense, *except* that such commander or convening authority may not *refer* charges and specifications *for a covered offense for trial by special or general court-martial*."[125]

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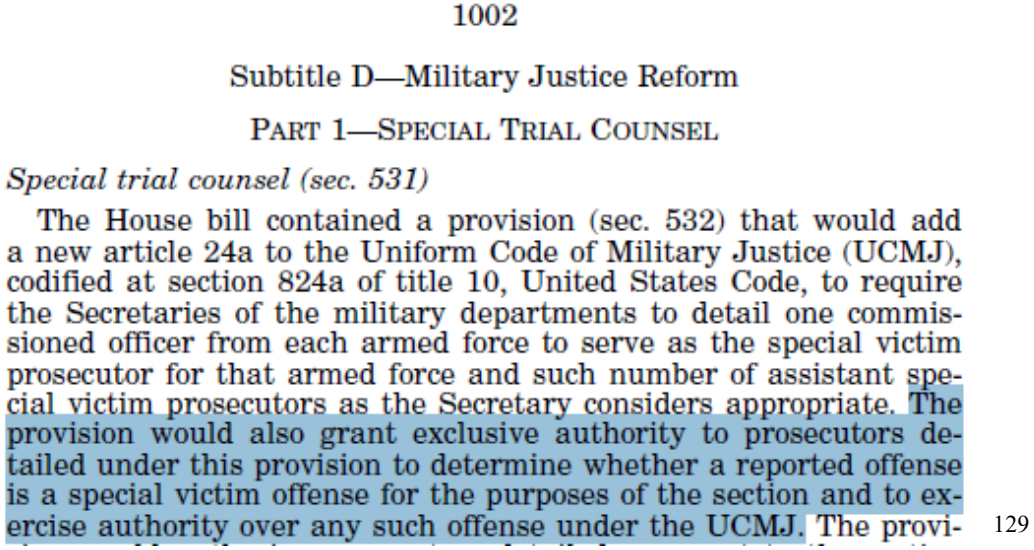
[122] National Defense Authorization Act for Fiscal Year 2022, S. 1605, 117th Cong. § 531 (2021) (enacted) (this bill became National Defense Authorization Act for Fiscal Year 2022*,* 10 U.S.C. §§ 801-946a (2022)).
[123] *Id.*, Subtitle D (2021).
[124] *Id*. § 531; 10 U.S.C. §824a(c)(2)(A) (2024) (emphasis added).
[125] 10 U.S.C. §824a(c)(5) (2024) (emphasis added). A convening authority can still initiate a summary court-martial, non-judicial punishment, administrative separation, and other administrative remedies. JUDGE ADVOC. GEN. OF NAVY, JAG INSTRUCTION 5800.7G CH-2, MANUAL OF THE JUDGE ADVOC. GEN. Ch. I (Dec. 1, 2023) (discussing administrative and judicial remedies reserved for convening authorities).

Prior to the NDAA's passage Chairman Jack Reed and the Ranking Members in both the HASC and Senate Committee on Armed Services (SASC) published a joint explanatory statement (JES).[126] The JES was given to both chambers of Congress and provided "explanatory material" for NDAA as agreed upon by both committees.[127] The JES discussed the MJRA and the new role and authority granted to the "Special Trial Counsel."[128] The JES reiterates the Section 531 language that grants *exclusive authority* to the STC to determine whether a reported offense is a covered offense:



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Subtitle D—Military Justice Reform

PART 1—SPECIAL TRIAL COUNSEL

Special trial counsel (sec. 531)

The House bill contained a provision (sec. 532) that would add a new article 24a to the Uniform Code of Military Justice (UCMJ), codified at section 824a of title 10, United States Code, to require the Secretaries of the military departments to detail one commissioned officer from each armed force to serve as the special victim prosecutor for that armed force and such number of assistant special victim prosecutors as the Secretary considers appropriate. The provision would also grant exclusive authority to prosecutors detailed under this provision to determine whether a reported offense is a special victim offense for the purposes of the section and to exercise authority over any such offense under the UCMJ. The provi- [129]

[126] JES at III.
[127] *Id.* The JES included explanation of the agreed upon and negotiated terms. *Id*. It was engrossed, becoming law. *Id.*
[128] JES, Subtitle D, Part 1 (starting at 1002).
[129] JES at 1002 (the highlighted text discusses this exclusive authority).

The JES also reaffirms that convening authorities may exercise authorities granted under the UCMJ, "notwithstanding the *exclusive authority* granted to prosecutors detailed under" Section 531:

> of the Government, enter into plea agreements, and determine if an ordered rehearing is impracticable. Finally, the provision would authorize a convening authority to exercise any of the authorities granted to convening authorities under the UCMJ, notwithstanding the exclusive authority granted to prosecutors detailed under the section, in the event such prosecutors decline to exercise authority granted to them under the section.[130]

The Joint Explanatory Statement accompanying NDAA reiterates that Article 24a grants the STC exclusive authority to determine whether a reported offense is a covered offense and to exercise authority over such offenses.[131] Nothing in the JES suggests Congress intended commanders to retain reclassification authority. To the contrary, the JES reflects the negotiated understanding that prosecutorial authority over covered offenses was removed from the chain of command.[132]

2. The IRC proposed replacing commanders in charging decisions.

The IRC recommended creation of independent "special victim prosecutors" who would be "outside the chain of command" and who would decide whether charges should be preferred and referred in sexual assault and domestic violence

[130] JES at 1002 (the highlighted text discusses this limitation on convening authorities).
[131] JES at 1002.
[132] *Id*.

cases.[133] The IRC explicitly recommended replacing commanders in these prosecutorial decisions.[134] The IRC stated when a special-victim crime is deferred, a "commander may take any action deemed appropriate, including referral to special or general court-martial, for crimes based on evidence in the case that are completely *unrelated to the special victim crimes in the case* (e.g., an unrelated simple assault or larceny not involving a special victim)."[135] The lower court's ruling in Appellant's case goes completely counter to this statement, allowing convening authorities to refer special victim crimes under a non-covered article, even though the underlying criminal conduct was determined to be a covered offense.[136]

3. Congress adopted the IRC framework through committee action.

The HASC Subcommittee on Military Personnel held hearings on implementation of the IRC recommendations prior to enactment of NDAA. Deputy SecDef testified that the Department was moving forward with legislation incorporating the full "82 recommendations from the [IRC]."[137] Both chambers

[133] IRC Report at 7, 18-19; *Id*. at App. B, 7-24.
[134] *Id*.
[135] *Id*. at app. B, 16 (emphasis added).
[136] R. at 31 ("The charged victim in each specification is Ms. R. K. Ms. R.K. was the spouse of the accused at the time of the offenses.").
[137] IRC Hearing at I.

incorporated the reform into NDAA.[138] The creation of Article 24a reflects that committee-driven adoption of the IRC's independent-prosecutor model.

4. Senate leadership described the authority as exclusive and binding.

During Senate debate on S.1605, SASC Chairman Reed explained that "the bill creates special trial counsel who . . . will have exclusive, binding, and final decision-making authority over whether to prosecute these offenses. Under our bill, *no commander will be able to overrule the binding decision of a special trial counsel to prosecute or not prosecute a case*."[139] Chairman Reed, the chair of SASC, characterized the reform as a "sea change" in military justice.[140] That description forecloses the interpretation adopted by the NMCCA. A commander cannot retain the ability to relabel the same misconduct as non-covered while the STC's decision remains "exclusive, binding, and *final*."[141]

5. The Department of Defense's contemporaneous implementation confirms Congresses meaning.

Even if ambiguity existed, the DoD's contemporaneous and consistent implementation of Article 24a confirms that Congress intended the STC authority to

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[138] 167 CONG. REC. H7265, H7283 (daily ed. Dec. 7, 2021); 167 CONG. REC. S9106 (daily ed. Dec. 13, 2021) (statement of Sen. Reed); 167 CONG. REC. S9174-75 (daily ed. Dec. 15, 2021) (statement of Sen. Reed).
[139] 167 Cong. Rec. S9106 (daily ed. Dec. 13, 2021) (statement of Sen. Reed).
[140] 167 CONG. REC. S9174-75 (daily ed. Dec. 15, 2021) (statement of Sen. Reed).
[141] 167 CONG. REC. S9106 (daily ed. Dec. 13, 2021) (emphasis added) (statement of Sen. Reed).

be exclusive over covered offenses.[142] This principle carries particular force in military justice, where Congress delegates rulemaking authority to the President under Article 36, UCMJ.[143]

Following enactment of NDAA, the President implemented Article 24a through Executive Order 14062.[144] That Executive Order incorporated Article 24a into the MCM and led to promulgation of R.C.M. 303A in the 2023 MCM.[145] R.C.M. 303A states unequivocally that a STC "has the exclusive authority to determine whether a reported offense is a covered offense."[146] The rule does not suggest that a convening authority may later revisit or relabel that determination. This rule is also supported by R.C.M. 301, which states a "special trial counsel shall have authority to determine whether a reported offense is a covered, known, or related offense."[147] The ability to determine known and related offenses is important because it concedes that the STC's authority over known and related offenses is different than its exclusive authority over covered offenses. R.C.M. 306 also supports this conclusion as a "convening authority may not dispose of a covered offense at a general or special

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[142] *Skidmore v. Swift & Co*., 323 U.S. 134, 140 (1944) (agency interpretations are entitled to weight according to their "power to persuade"). Counsel does not argue agency deference as *Chevron* deference was overturned in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).
[143] 10 U.S.C. § 836 (2024).
[144] 87 Fed. Reg. 4,763 (Jan. 31, 2022).
[145] MCM, R.C.M. 303A.
[146] *Id*.
[147] MCM, R.C.M. 301.

court-martial" while R.C.M. 306A provides exclusivity in initial disposition as a STC "has authority over . . . [the] offense."[148] R.C.M. 306A allows a commanding officer to take action on deferred offense, but only within "R.C.M. 306," which limits this action to only uncovered offenses.[149] The President's implementation thus reflects an understanding that exclusivity attaches to the reported offense itself. This implementation also respects the differences in the meaning between "offense" and "charges and specifications" that the NMCCA blurs in its ruling.

The DoD's formal reporting to Congress confirms the same understanding.[150] In the Fiscal Year 2022 Annual Report on Sexual Assault in the Military—submitted pursuant to § 539G of the NDAA—DoD explained that independent judge advocates would replace commanders in charging and referral decisions for covered offenses.[151] That report did not describe STC authority as temporary or subject to command override by charging under a different punitive article. Rather, it described a structural transfer of "prosecutorial decisions" to the STC.[152]

Where an agency charged with implementing a statute adopts a contemporaneous and consistent interpretation, courts give that construction

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[148] MCM, R.C.M. 306(c)(4) (discussion), 306A(a).
[149] *Id*.
[150] IRC Update; DEP'T OF DEF., ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY, 5, 7, 18, 24; *Id*. at Annex 2.
[151] DEP'T OF DEF., ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY: FISCAL YEAR 2022, 5, 7, 18, 24.
[152] *Id*. at 4, 5, 7, 12, 18, 24.

persuasive weight.[153] The Department's implementation confirms that Article 24a was understood as reallocating prosecutorial authority—not preserving command reclassification authority.

If Article 24a is deemed ambiguous, this history resolves the question. Congress intended to vest exclusive, binding prosecutorial authority in the STC—not to permit command circumvention through relabeling of the same reported misconduct.

C. Affirming NMCCA's holding would lead to absurd, unworkable results and would work directly against the intent of Congress.

This Court should reject statutory interpretations that produce absurd results or defeat the structure Congress enacted.[154] NMCCA's interpretation of Article 24 does both—and, more critically, it collapses the "exclusive authority" Congress vested in the STC. Article 24a reallocates prosecutorial power over covered offenses. The statute grants the STC "exclusive authority to determine if a reported

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[153] *Swift & Co*., 323 U.S. at 140; *see also United States v. American Trucking Ass'ns*, 310 U.S. 534, 549 (1940) ("'[C]ontemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new'" "are entitled to great weight.").

[154] *King*, 71 M.J. at 52 (citing *Lewis*, 65 M.J. at 88); *King v. Burwell*, 576 U.S. 473, 475 (2015) ("Here, the statutory scheme compels the Court to reject petitioners' interpretation because it would destabilize the individual insurance market in any State with a Federal Ex-change, and likely create the very 'death spirals' that Congress designed the Act to avoid." "'We cannot interpret federal statutes to negate their own stated purposes.'" (internal citations omitted)).

offense is a covered offense."[155] That exclusivity is the cornerstone of the reform. It is not advisory. It is not temporary. It is structural.

Under NMCCA's interpretation; however, that exclusivity can be overcome through relabeling. If NMCCA's position is correct, once the STC determines that reported misconduct constitutes a covered offense and later declines to prosecute, a convening authority could simply reclassify the same conduct under a different punitive article and refer it to court-martial. The STC's exclusive determination would remain nominally intact—but its practical effect would be erased. That reading transforms "exclusive authority" into temporary authority. As a non-exhaustive list, it would allow:

- **Article 120 — Rape / Sexual Assault**, recharged as:
    - Article 128 — Assault consummated by a battery
    - Article 134 — Disorderly conduct
    - Article 80 — Attempted assault

Absurdity: Congress created an extensive, offense-specific regime for sexual assault. Under NMCCA's reading, the same sexual penetration could be charged as "battery," thereby avoiding STC authority. This defeats the entire IRC reform.

[155] 10 U.S.C. § 824a(c)(2)(A) (2024).

- **Article 120b — Sexual Abuse of a Child**, recharged as:

  - Article 128 — Assault
  - Article 134 — Indecent conduct
  - Article 134 — Child endangerment

Absurdity: Congress carved out child-sex offenses for independent prosecution. Under NMCCA's ruling, a commander could relabel the same misconduct and regain charging authority. That nullifies the reform's most sensitive category.

- **Article 128b — Domestic Violence**, recharged as:

- Article 128 — Aggravated assault
- Article 128 — Assault consummated by battery
- Article 92 — Violation of lawful order

Absurdity: This is Appellant's case. Congress singled out domestic violence. If the same strangulation can be charged as an Article 128 offense to avoid OSTC authority, then Article 128b's inclusion in the list of covered offenses is meaningless.[156]

- **Article 120c — Sexual Misconduct / Indecent Viewing**, recharged as:

  - Article 134 — Indecent conduct
  - Article 92 — Order violation

Absurdity: The specificity Congress imposed becomes optional.

- **Article 122a — Stalking**, recharged as:

  - Article 134 — Disorderly conduct.

[156] 10 U.S.C. § 801(17) (2024).

- Article 92 — Protective order violation.

Absurdity: Congress designated stalking as a covered offense because of its victim-centered nature. Reclassification nullifies that protection.

In each instance, the STC would have exercised "exclusive authority" over the reported offense—only for the convening authority to override that determination through subsequent action. That construction does not merely create tension within the statute; it defeats it.

It is without a doubt that Congress wanted STC's to handle special victim crimes; the lower court's ruling defeats that purpose. Congress specifically required qualifications for STC's under Article 24a(b) to deal with these sensitive crimes—a qualification that is not required when a convening authority refers a covered offense under non-covered charges and specifications.[157]

Article 24a(c)(5) prohibits a convening authority from referring "a covered offense" after STC declination. The lower court's reading renders that limitation illusory. If the same underlying misconduct may be relabeled at will, then the prohibition is inoperative. Congress's reassignment of authority becomes optional. Statutes are not drafted to be circumvented by clever charging decisions. Congress wanted qualified and detailed prosecutors focused on "special victim offense[s]" to

[157] 10 U.S.C. § 824a(b) (2024).

decide if a reported offense was a covered offense.[158] Congress also wanted STC's to be the ultimate decision-makers on if a covered offense should proceed towards court-martial or be "deferred" to convening authorities for alternative disciplinary actions that did not involve a special or general court-martial.[159] Congress intended OSTC to be an independent organization free from the influence of the convening authority. This can clearly be seen in NDAA, where section 532 inserts 10 U.S.C. § 1044f into the Code, requiring the senior STC to "be a judge advocate… in a grade no lower than O-7" and to "report directly to the Secretary concerned, *without intervening authority*."[160] Congress set up OSTC to be a separate, independent body with exclusive authority over covered offenses. An interpretation that permits a convening authority to accomplish indirectly what it cannot do directly nullifies the exclusivity and independence Congress enacted.

Because the lower court's construction would allow a convening authority to overcome the STC's exclusive authority through reclassification of the same reported misconduct, it produces an absurd and structurally destructive result. This Court should reject it.

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[158] JES at 1002.
[159] 10 U.S.C. § 824a(c)(5) (2024).
[160] S. 1605, 117th Cong., § 532 (2021) (enacted).

Conclusion

Appellant respectfully requests this Court grant the Petition for Review and reverse the lower court's ruling.

Respectfully submitted.

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Appendix

A. *United States v. Kruse*, No. 202500370, 2026 LEXIS 13 (N-M. Ct. Crim. App. Jan. 21, 2026).

Certificate of Compliance with Rule 21(b)

This brief complies with the type-volume limitations of Rule 21 because it does not exceed 9,000 words, and complies with the typeface and style requirements of Rule 37. The brief contains 8,328 words. Undersigned counsel used Times New Roman, 14-point type with one-inch margins on all four sides.

Certificate of Filing and Service

I certify that the foregoing was filed electronically with this Court, and that copies were electronically delivered to Deputy Director, Appellate Government Division, and to Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity, on March 19, 2026.

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United States Navy–Marine Corps Court of Criminal Appeals

Before
GROSS, HARRELL, and de GROOT
Appellate Military Judges

UNITED STATES
Appellant

v.

Thomas E. KRUSE
Lance Corporal (E-3), U.S. Marine Corps
Appellee

No. 202500370

Decided: 21 January 2026

Appeal by the United States Pursuant to Article 62, Uniform Code of Military Justice

Military Judge:
Todd J. Gaston

Before a general court-martial convened at Marine Corps Air Station Miramar, California.

For Appellant:
Lieutenant Commander Philip J. Corrigan, JAGC, USN (argued)
Lieutenant K. Matthew Parker, JAGC, USN (on brief)

For Appellee:
Major Theodore Massey, USMC

Senior Judge GROSS delivered the opinion of the Court, in which Senior Judge HARRELL and Judge de GROOT joined.

PUBLISHED OPINION OF THE COURT

GROSS, Senior Judge:

This Government appeal under Article 62(a)(1)(A), Uniform Code of Military Justice (UCMJ),[1] presents the question of whether a convening authority (CA) may refer charges for assault and aggravated assault after the Office of Special Trial Counsel (OSTC) has deferred disposition of domestic violence allegations for the same underlying misconduct. Because we find that the plain language of Article 24a, UCMJ,[2] and the Rules for Courts-Martial (R.C.M.) that govern the referral authority of CAs and the OSTC do not preclude such a referral, we grant the Government's appeal.

I. BACKGROUND

On 26 September 2024, law enforcement responded to a report of a domestic disturbance at Appellee's residence. Appellee's spouse, R.K., said Appellee had strangled her several times that night and had also thrown her down the stairs. Appellee also allegedly drove while drunk and engaged in drunk and disorderly conduct. The next day, the OSTC notified Appellee's commanding officer that the OSTC was "exercising authority over . . . [a]ll covered offenses and lesser included offenses alleged in [the law enforcement notification to [the OSTC]: Article 128b, Domestic Violence."[3] On 2 October 2024, Appellee's commanding officer issued a military protective order (MPO) to Appellee, prohibiting him from having any contact with R.K. Appellee was subsequently accused of violating the MPO on 12 January 2025.[4]

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[1] 10 U.S.C. § 862(a)(1)(A).

[2] 10 U.S.C. § 824a.

[3] App. Ex. IX at 3.

[4] App. Ex. IX at 7-10, 12-14.

On 20 February 2025, the OSTC sent Appellee's commanding officer a "notice of initial disposition of covered offenses" which stated "the available evidence does not meet the [OSTC's] charging standard . . . ."[5] The notice continued, "Accordingly I have deferred all allegations of covered offenses . . . and all other known and/or related offenses to you for resolution."[6]

Appellee's commanding officer subsequently directed a preliminary hearing under Article 32, UCMJ,[7] and forwarded the charges and specifications to the CA—Commanding General, 3rd Marine Aircraft Wing—for disposition. The CA ultimately referred the following charges to a general court-martial: one specification of violation of Article 92, violation of a lawful order; one specification of violation of Article 113, drunken operation of a motor vehicle; two specifications of violation of Article 128, aggravated assault and assault consummated by a battery; and one specification of violation of Article 134, drunk and disorderly conduct. The charge and specifications under Article 128 were for the same misconduct that was subject to OSTC's review and deferral, and the charge and specification under Article 92 was for violation of the MPO.

Prior to arraignment, Appellee and the CA entered into a plea agreement wherein Appellee agreed to plead guilty to violating the MPO, drunken operation of a motor vehicle, and drunk and disorderly conduct. The CA in turn agreed to refer all charges to a special court-martial and to withdraw and dismiss the charge and specifications under Article 128 without prejudice, to ripen into prejudice upon completion of appellate review.

Prior to arraignment, the military judge sua sponte ordered the Government to respond to four discrete inquiries: (1) whether R.K. was the spouse of Appellee at the time of the offenses charged under Articles 92 and 128; (2) whether a special trial counsel (STC) had determined that a reported offense at issue in the case was a covered offense under R.C.M. 303A; (3) whether a STC had exercised authority over any of the charged offenses pursuant to R.C.M. 303A(b) or (c) as known and related offenses; and (4) whether the STC had deferred any offense.[8] The Government responded as follows: (1) that R.K. was the spouse of Appellee at all relevant times for the charged offenses; (2) that the OSTC had determined that a covered offense–Article 128b, UCMJ, domestic violence was at issue in the case; (3) that the OSTC had asserted authority over "all covered offenses and lesser included offenses"; and (4) that

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[5] App. Ex. IX at 5.

[6] App. Ex. IX at 5.

[7] 10 U.S.C. § 832.

[8] R. at 6.

the OSTC had deferred all allegations of covered offenses and all other known or related offenses to the CA for resolution.[9]

The military judge then directed the parties to file briefs "on the referral and jurisdictional issue."[10] The Government argued that the CA was not precluded from referring the specifications under Article 92 and 128. The Defense moved to dismiss the charges and specifications, arguing that the court-martial lacked jurisdiction for those offenses because the CA was not authorized to refer the charges.

The military judge heard argument on the Defense motion and issued an oral ruling that is the subject of this appeal. Regarding the charged violations of Article 128, the military judge found that:

> the OSTC determined that [the reported offenses] that involved the accused battering and strangling Ms. R.K. were covered offenses. . . . The OSTC's ultimate deferral of the covered offense back to the commander or convening authority does not then change the OSTC's determination that the reported conduct . . . is a covered offense. That conduct remains a covered offense even after deferral by the OSTC.[11]

Further, the military judge stated, "There is no rule or statute that permits having a separate governmental organization determine that the conduct at issue is no longer a covered offense or that such an organization can sidestep the statutory and rules construct through clever charging decisions."[12]

With respect to the charged violation of the MPO, the military judge said that:

> the OSTC has not determined that the conduct that forms the [basis of that charge] is a covered offense. This is also consistent with the Court's analysis of that offense. There is no indication whatsoever that the conduct at issue in [the Specification] includes the gravamen of [a covered] offense.[13]

The military judge then denied the Defense motion to dismiss the charge and specification for violating a lawful order, but granted the Defense motion

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[9] App. Ex. IV at 1-2.

[10] R. at 6.

[11] R. at 32.

[12] R. at 33.

[13] R. at 34.

with respect to the assault and aggravated assault specifications. The Government timely appealed.

II. DISCUSSION

The Military Judge erred in dismissing the specifications for aggravated assault and assault consummated by a battery.

1. Law

We review issues of statutory interpretation and jurisdiction de novo.[14] "It is a general rule of statutory construction that if a statute is clear and unambiguous—that is, susceptible to only one interpretation—we use its plain meaning and apply it as written."[15] In reviewing a statute, we review the statute as a whole, and sections of a statute should be construed in connection with one another as "a harmonious whole" manifesting "one general purpose and intent."[16]

Article 24a, UCMJ, sets forth the duties and authorities of the OSTC. The statute grants the OSTC "exclusive authority to determine if a reported offense is a covered offense and shall exercise authority over any such offense . . . ."[17] The statute also gives the OSTC discretionary authority "over any offense that the special trial counsel determines to be related to the covered offense and any other offense alleged to have been committed by a person alleged to have committed the covered offense."[18] Finally, the statute says:

> If a special trial counsel exercises authority over an offense and elects not to prefer charges and specifications for such offense . . . a commander or convening authority may exercise any of the authorities of such commander or convening authority under this chapter with respect to such offense, except that such com-

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[14] *United States v. Badders*, 82 M.J. 299, 302 (C.A.A.F. 2022) (quoting *United States v. Jacobsen*, 77 M.J. 81, 84 (C.A.A.F. 2017)).

[15] *United States v. Tyler*, 81 M.J. 108, 113 (C.A.A.F. 2021) (citing *United States v. Kohlbek*, 78 M.J. 326, 331 (C.A.A.F. 2019); *United States v. Clark*, 62 M.J. 195, 198 (C.A.A.F. 2005)).

[16] *United States v. Quick*, 74 M.J. 517, 520 (N-M. Ct. Crim. App. 2014) (quoting Norman J. Singer, *Statutes and Statutory Construction* § 46:05 at 154 (6th ed. 2000)).

[17] 10 U.S.C. § 824a(c)(2)(A).

[18] 10 U.S.C. § 824a(c)(2)(B).

> mander or convening authority may not refer charges and specifications for a covered offense for trial by special or general court-martial.[19]

The term "covered offense" is statutorily defined in Article 1(17), UCMJ, as including an offense under 12 specific articles of the UCMJ, two offenses under Article 134, UCMJ, along with conspiracies, solicitations, and attempts to commit the specified offenses.[20] While Article 128b is a covered offense, Article 128 is not. Article 1 does not include as "covered offenses" lesser included offenses of any covered offense. Nor does Article 1 state that a covered offense includes all conduct that the OSTC determines meets the elements of a covered offense.

The Rules for Courts-Martial track the language of the UCMJ. Rule for Courts-Martial 303A states that the OSTC has "the exclusive authority to determine if a reported offense is a covered offense."[21] Rule for Courts-Martial 306A then provides that once the OSTC "has exercised authority over an offense, only a special trial counsel may dispose of that offense, unless a special trial counsel defers the offense."[22]

Once the OSTC has deferred an offense, R.C.M. 306 says that "each commander has discretion to dispose of offenses by members of that command in accordance with this rule."[23] This authority includes disposition of offenses in accordance with R.C.M. 401, 404, and 407. Both R.C.M. 404 and 407 state that a convening authority may refer charges to court-martial "except for covered offenses and other charges for which a special trial counsel has exercised authority and has not deferred."[24]

2. Analysis

The issue in this case centers around the legal import of the OSTC's determination that a reported offense is a covered offense. Appellee argues, and the military judge held, that once the OSTC determines that a reported offense is a covered offense, then only the OSTC has authority to refer charges and specifications arising from the alleged misconduct that formed the basis for the reported offense.

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[19] 10 U.S.C. § 824a(c)(5).

[20] 10 U.S.C. § 801(17).

[21] R.C.M. 303A(a).

[22] R.C.M. 306A(a).

[23] R.C.M. 306(a).

[24] R.C.M. 404(4); R.C.M. 407(4), (6).

The Government, in turn, argues that once the OSTC defers action on the reported offense, the commander or CA is only limited in that he may not refer charges and specifications for one of the listed covered offenses to special or general court-martial. Thus, the Government argues, a convening authority would be precluded from charging a servicemember with domestic violence if the OSTC declined to refer such a charge but would not be precluded from using the same factual basis for charging the same accused with assault consummated by a battery and aggravated assault of his spouse.

Neither party claims that there is ambiguity in the statute or the Rules for Courts-Martial, and we agree.[25] The language that Congress and the President used to define the authorities of the OSTC and the CA in a case such as this is clear. Either Congress or the President could have limited the ability of convening authorities to refer charges for any offense based on the underlying misconduct of a reported offense that was deemed a covered offense. Neither did. Instead, the only limitation on a convening authority's power to refer a charge to court-martial after deferral by the OSTC is a prohibition on referring charges and specifications for a "covered offense" as defined in Article 1(17).

Neither the UCMJ nor the Rules for Courts-Martial say that the OSTC's determination that a reported offense is a covered offense means that the underlying misconduct may only be charged or treated as a covered offense. There are many circumstances in which a reported offense could be charged as either a covered offense or a non-covered offense. Appellee's case provides one such instance.

The plain language of the statute is clear. Following the OSTC's deferral, the CA "may exercise *any* of the authorities of such a commander or convening authority with respect to such offense, *except* that such commander or convening authority may not refer charges and specifications for a *covered offense* for trial by special or general court-martial."[26] Once the OSTC deferred the covered offenses of domestic violence under Article 128b, the CA regained authority to dispose of the remaining uncovered offenses—including those under Article 128—by referral to a special court-martial, as he did here.

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[25] Oral Argument Audio at 16:21 (December 18, 2025).

[26] 10 U.S.C. § 824a(c)(5) (emphases added).

III. Conclusion

After careful consideration of the record, briefs, and argument of appellate counsel, the military judge's ruling is **REVERSED**. The case is returned to the Judge Advocate General for remand to the military judge for further proceedings consistent with this opinion.

FOR THE COURT:

MARK K. JAMISON
Clerk of Court