IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES Appellee v. Staff Sergeant (E–6) **ZACKERY J. ASKINS** United States Army Appellant	BRIEF ON BEHALF OF APPELLANT Crim. App. Dkt. No. 20230303 USCA Dkt. No. 26-0002/AR

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

Granted Issue

WHETHER THE ARMY COURT ERRED WHEN IT HELD THAT THE UNITED STATES WAS IN A "TIME OF WAR" FROM 2014–2017 AND THE STATUTE OF LIMITATIONS WAS TOLLED.

Specified Issue

WHETHER APPELLANT WAIVED OR FORFEITED APPLICATION OF THE STATUTE OF LIMITATIONS TO HIS LARCENY CONVICTION IN SPECIFICATION 1 OF CHARGE I. IF FORFEITED, DOES APPELLANT MEET HIS BURDEN OF PROOF UNDER PLAIN ERROR REVIEW?

Statement of Statutory Jurisdiction

The Army Court of Criminal Appeals (Army Court) had jurisdiction over this matter pursuant to Article 66, Uniform Code of Military Justice [hereinafter UCMJ], 10 U.S.C. § 866 (2018). This Honorable Court has jurisdiction over this matter under Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3) (2018).

Statement of the Case

On May 23, 2023, a military judge sitting as a general court-martial convicted Appellant, pursuant to his pleas, of one specification of larceny and three specifications of wrongful appropriation; one specification of an assimilated federal offense; two specifications of selling military property; two specifications of false official statement; and one specification of forgery, in violation of Articles 121, 134, 108, 107, and 105, UCMJ, 10 U.S.C. § § 921, 934, 908, 907, 905. (JA 19–20).[1]

On May 25, 2023, the military judge sentenced Appellant to a total of 102 months of confinement, reduction to E–1, forfeiture of all pay and allowances, a

[1] The government withdrew and dismissed one specification of wrongful appropriation, one specification of animal abuse, one specification of attempted sale of military property, four specifications of willfully disobeying a superior commissioned officer, and two specifications of failure to obey a general order or regulation, in violation of Articles 121, 134, 80, 90, and 92, UCMJ.

dishonorable discharge, and a fine of $35,000. (JA 21–24).[2] On June 15, 2023, the convening authority took no action on the findings, but disapproved the adjudged forfeitures. (JA 33).

On August 28, 2025, the Army Court found Specifications 1 and 2 of Charge V (domestic violence) were multiplicious and consolidated the two specifications. The Army Court affirmed the other findings and the sentence. *United States v. Askins*, ARMY 20230303, 2025 CCA LEXIS 420 (A. Ct. Crim. App., Aug. 28, 2025) (JA 2–12). On February 4, 2026, this Court granted Appellant's petition for grant of review of the first issue, specified the second issue, and ordered briefing under Rule 25. (JA 1).

Summary of Argument

The Army Court erred when it held the United States was in a "time of war" from the "relevant period" of 2014–2017. This was an erroneous application of an extraordinary statutory exception to nullify the government's requirement to bring an accused to trial within five years. The government secured—and the Army Court incorrectly affirmed—a conviction on charges brought after the five-year statute of limitations had expired.

[2] The military judge ordered an additional 12 months of confinement if the fine is not paid. (JA 24). The military judge also credited appellant with 521 days of confinement credit. (JA 25).

This was a clear error of law. A "time of war" for the purposes of Article 43(f) is not a permanent condition tied to an aging Authorization for the Use of Military Force (AUMF). It is a temporary, fact-dependent state of intense national conflict that burdens the government's ability to conduct timely investigations. The suspension is a tool of necessity, not a tool of convenience.

During the period of the alleged offense, 2014–2017, the factual predicate for this extraordinary suspension did not exist. To permit the suspension under these circumstances—which did not amount to the United States being in a "time of war"—is to detach the statute from its legislative purpose and create a rule where the five-year statute of limitations is effectively eliminated.

The government was not facing the type of wartime exigency that would prevent it from prosecuting a larceny case, and it should not receive the benefit of a wartime suspension. Indeed, every branch of the Armed Forces prosecuted larcenies and frauds from 2014–2017, evincing the government's continued ability to timely prosecute these types of offenses.

Further, Appellant did not waive the issue but merely forfeited it by failing to raise the prosecutorial bar. The Rules for Court-Martial assume forfeiture, not waiver, in this situation. The error was plain and obvious because the military judge received a charge sheet that, on its face, contained misconduct that occurred more than five years prior to receipt of the charges by the Summary Court-Martial

Convening Authority (SCMCA). As R.C.M. 907 mandates, the military judge "shall" bring to an accused's attention that a charge could be barred by the statute of limitations and secure an affirmative waiver of the issue. A "waive all waivable motions" provision does not absolve the military judge of her duty mandated by the rule. No such discussion occurred, and no waiver was secured at Appellant's court-martial.

Statement of Facts

A. Appellant Was Charged With Larceny of Government Property Which Had Occurred Over Five Years Before the Receipt of Charges by the Summary Court-Martial Convening Authority

Appellant was an Explosive Ordnance Disposal technician [EOD]. (JA 74). Between 2014 and 2017, Appellant was stationed at Joint Base Elmendorf-Richardson, Alaska [JBER]. (JA 74). While at JBER, Appellant stole C-4 explosives that were property of the military. (JA 74).

The government charged Appellant with larceny of the C-4 from "on or about 25 August 2014 and on or about 14 August 2017." (JA 13). The charging language did not include "on divers occasions." The government preferred the charges on March 7, 2022, which were received by the SCMCA the same day. (JA 13–18).

Appellant pled guilty to larceny of the C-4. Appellant signed a stipulation of fact (JA 96–102) and a plea agreement on April 14, 2023 (JA 121–23), both of

which acknowledged the larceny occurred sometime between 2014 and 2017. Neither document indicated Appellant stole the C-4 on multiple occasions or that it was a continuing offense.

During his plea colloquy with the military judge, Appellant testified about only a single EOD mission during which he stole C-4. This larceny occurred sometime between February 2016 and December 2016—more than five years prior to the receipt of charges by the SCMCA. (JA 81–82).

The plea agreement contained a "waive all waivable motions" provision, but it did not specifically address the statute of limitations. (JA 123). Even though December 2016 was over five years prior to March 2022, at no point during the guilty plea colloquy did the military judge: 1) raise the statute of limitations issue, 2) place on the record whether Appellant was aware of the prosecutorial bar, or 3) secure Appellant's affirmative waiver of the statute of limitations. She did not provide a factual or legal determination as to whether the United States was in a time of war.

B. The Army Court Found the United States Was In a "Time of War" and Prosecution of Appellant's Misconduct Was Therefore Not Time Barred Pursuant to Article 43(f), UCMJ.

The Army Court found that the United States was at "de facto" war "during the relevant period (2014 to 2017)." (JA 2–12). The Army Court stated that, "At all relevant times, the United States remained engaged in multiple armed conflicts,

including combat and counterterrorism operations in Afghanistan, Iraq, and Syria under the 2001 and 2002 Authorizations for Use of Military Force." (JA 6).

The Army Court further found, "The President and Congress repeatedly acknowledged these hostilities through military appropriations, force deployments, executive orders, and casualty reporting." (JA 7). It did not provide citations to the facts it used in this determination. The Army Court concluded its analysis by invoking President Biden's declaration of the end of hostilities in Afghanistan on April 14, 2021, and declaration of the "end of the war in Afghanistan" on August 31, 2021. (JA 7).

The Army Court concluded that "appellant's misconduct occurring as early as August 2014 was not time-barred" pursuant to the suspension under Article 43(f). (JA 7).

Specified Issue

WHETHER APPELLANT WAIVED OR FORFEITED APPLICATION OF THE STATUTE OF LIMITATIONS TO HIS LARCENY CONVICTION IN SPECIFICATION 1 OF CHARGE I. IF FORFEITED, DOES APPELLANT MEET HIS BURDEN OF PROOF UNDER PLAIN ERROR REVIEW?

The statute of limitations had run and the military judge failed to secure Appellant's express waiver. The issue was forfeited, not waived. Plain error occurred when Appellant's time-barred misconduct was improperly placed before the court-martial.

Standard of Review

"'This Court reviews de novo whether an accused has waived an issue.'" *United States v. Malone,* __M.J.__, 2026 CAAF LEXIS 62, at *7 (C.A.A.F. 2026) (quoting *United States v. Harborth*, 85 M.J. 469, 475 (C.A.A.F. 2025)).

Forfeiture, on the other hand, is reviewed for plain error. *United States v. Batres,* __M.J.__, 2025 CAAF LEXIS 755, at *6 (C.A.A.F. 2025) (citing *United States v. Davis*, 76 M.J. 224, 229 (C.A.A.F. 2017); Rule for Courts-Martial [R.C.M.] 905(e)). "To prevail on a nonconstitutional forfeited issue, an appellant must demonstrate that there was error, that the error was plain or obvious, and that the error was materially prejudicial to the appellant." *Id.* (citing *Davis*, 76 M.J. at 229).

Law

Rule for Courts-Martial 907(b)(2)(B) specifically indicates the statute of limitations under Article 43(b) as a reason for dismissal. The rule further requires, "if it appears that the accused is unaware of the right to assert the statute of limitations in bar of trial, the military judge *shall* inform the accused of this right." (Emphasis added). This rule has not differed, in principle, since the earliest editions of the M.C.M.

It is "'well established in military jurisprudence that whenever it appears that the statute of limitations has run against an offense,' that fact will be brought to the

attention of the accused by the court." *United States v. Salter,* 20 M.J. 116, 117 (C.M.A. 1985) (quoting *United States v. Rodgers,* 8 C.M.A. 226, 228 (C.M.R. 1957)). Absent such an affirmative acknowledgement and waiver, if an appellant fails to raise the prosecutorial bar, R.C.M. 905(e) presumes forfeiture.[3]

Further, the military judge—not the accused—has the duty to place the acknowledgement and waiver on the record. "The military judge has an affirmative obligation to advise an accused of the right to assert the statute of limitations, and must determine that any waiver of the statute of limitations bar is both knowing and voluntary." *See e.g.*, *United States v. Thompson,* 59 M.J. 432, 439–40 (C.A.A.F. 2004) (holding it was materially prejudicial when the military judge did not secure an affirmative waiver from the appellant of the statute of limitations and erroneously instructed the panel on time-barred period of alleged misconduct).[4]

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[3] Appellant was tried under the rules promulgated by the 2019 edition of the Manual for Courts-Martial. As such, the amendment to R.C.M. 905(e)—the presumption of forfeiture rather than the finding of waiver—applies.

[4] *See also United States v. Rollins,* 61 M.J. 338, 342–43 (C.A.A.F. 2005) (holding it was error that the military judge did not secure an affirmative waiver of the statute of limitations and set aside the affected findings); *United States v. Moore,* 32 M.J. 170, 173 (C.A.A.F. 1991) (affirming the lower court's decision to set aside a specification affected by the statute of limitations because the CCA properly relied on "long-established precedents in military jurisprudence, the court deduced that the military judge had a duty, sua sponte, to determine if the accused's waiver of his right to dismissal of the affected portion of the specification was knowing and voluntary."); *Salter,* 20 M.J. at 117 ("We further held that we would not

The discussion to R.C.M. 907 also notes, "where the date of an offense is in dispute, a finding by the court-martial that the offense occurred at an earlier time may affect a determination as to the running of the statute of limitations." Given that the military judge could only have ascertained the time of the larceny after she took Appellant's testimony, Appellant's failure to raise the statutory bar prior to trial did not extinguish the issue.

Argument

A. Rule for Courts-Martial 907 Requires the Military Judge to Secure an Express Waiver of the Statute of Limitations. She Did Not Do So.

While an accused may waive the statute of limitations bar, per R.C.M. 907, this can only be done after the military judge places on the record that the accused is both 1) aware of the prosecutorial bar and 2) the accused expressly waives the issue.

Securing such an express waiver of the statute of limitations is not a novel requirement. This Court has specifically held that when it comes to statutes of limitations, R.C.M. 907 requires both conditions to be met in order for there to be waiver. *See Thompson,* 59 M.J. at 439–40; *Rollins,* 61 M.J. at 342–43; *Moore,* 32 M.J. at 173; and *Salter,* 20 M.J. at 117. Given this long line of precedent, no

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impose upon an accused a waiver of the right to plead the statute of limitations in bar of trial when the record does not disclose that he was aware of that right.").

special justification supports this Court straining to find waiver rather than forfeiture for this significant protection.

Forfeiture is further supported by the fact that of all the waivable grounds listed in the Rules for Courts-Martial, only the statute of limitations bar under R.C.M. 907(b)(2)(B) requires the military judge to specifically place the acknowledgement and waiver on the record. No other waivable grounds contain such a requirement before they are waived.

Notwithstanding Appellant's apparent acknowledgement that the statute of limitations was tolled in his pre-trial motion to dismiss, nor the plea agreement's "waive all waivable motions" provision, the Army Court implicitly rejected both notions as grounds for a finding of waiver. So should this Court.

First, while Appellant's pre-trial motion referenced *United States v. RivasChivas* for the proposition that the statute of limitations may have been tolled, that case interpreted "time of war" as it applied in 2007. 74 M.J. 758, 761–62 (A. Ct. Crim. App., Jul. 24, 2015). *RivasChivas* did not address the relevant time period in Appellant's case. (JA 111–13). The reference to *RivasChivas* indicated Appellant's misguided understanding of case law, but it is not dispositive of Appellant's knowing waiver. Moreover, even if the reference to *RivasChivas* might indicate Appellant's misapprehension of the "time of war" status in his case,

it cannot excuse the military judge's clearly erroneous failure to inquire into—much less resolve—the issue as a matter of law.

Second, the Army Court disagreed with the reasoning that the "waive all waivable motions" provision covered the statute of limitations. (JA 5). It implicitly acknowledged forfeiture when it found the military judge failed to secure Appellant's acknowledgement and express waiver of the statute of limitations, then analyzed for plain error. (JA 4–7). So, too, should this Court.

B. The Military Judge's Plainly Erroneous Implicit Finding That the Statute of Limitations Was Tolled Prejudiced Appellant.

If a charge that was time-barred was improperly before a court-martial, this Court has held it is both plain error and prejudicial. In *United States v. Adams,* this Court found it was prejudicial error because the military judge did not address the statute of limitations with the appellant. 81 M.J. 475, 481 (C.A.A.F. 2021). "We have no doubt that Appellant would have raised this issue as a defense at court-martial if he were properly advised of the issue by the military judge, as required by Rules for Courts-Martial (R.C.M.) 907(b)(2)(B). As such, the error in this case was clear and prejudiced Appellant's defense." *Id.*

The error was plain because the military judge received a charge sheet that, on its face, contained time periods of alleged misconduct for which the statute of

limitations had run.[5] Though she had a sua sponte duty to ensure Appellant was aware the statute of limitations had run, she failed to do so. This was prejudicial error just as in *Adams*.

Further, the military judge failed to make any findings of fact that the United States was in a time of war, nor did she make conclusions of law that the statute of limitations was suspended pursuant to Article 43(f). Even if the military judge believed the United States was in a time of war, she was still required to place that ruling on the record. Without such findings or conclusions, the military judge is afforded no deference. *See* R.C.M. 905(d); Article 59(a), UCMJ; *United States v. Finch,* 79 M.J. 389 (C.A.A.F. 2020).[6]

Forfeiture, not waiver, occurred when Appellant failed to raise the statute of limitations bar to prosecution. There was error, it was plain and obvious, and Appellant was prejudiced as a time-barred charge was improperly before the court-martial.

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[5] While this error was plain and obvious, Appellant has not raised the issue of ineffective assistance of counsel.

[6] "When the standard of review is abuse of discretion, and we do not have the benefit of the military judge's analysis of the facts before him, we cannot grant the great deference we generally accord to a trial judge's factual findings because we have no factual findings to review. Nor do we have the benefit of the military judge's legal reasoning in determining whether he abused his discretion…." *Finch,* 79 M.J. at 397 (quoting *United States v. Benton,* 54 M.J. 717, 725 (A. Ct. Crim. App. 2001)).

Granted Issue

WHETHER THE ARMY COURT ERRED WHEN IT HELD THAT THE UNITED STATES WAS IN A "TIME OF WAR" FROM 2014–2017 AND THE STATUTE OF LIMITATIONS WAS TOLLED.

The United States was not in a "time of war" from 2014–2017. The Army Court erred when it held the prosecution of Appellant's misconduct was not barred by the statute of limitations pursuant to Article 43(f).

Just as its civilian counterpart, the Wartime Suspension of Limitations Act (WSLA),[7] Article 43(f) is an extraordinary exception to the rule. And "it is clear from both the text and the legislative history that the 'at war' provision of the [statute] was intended to capture any authorized military engagement that might compromise or impede the government's ability to investigate allegations of fraud."[8] No such impediments existed from 2014–2017 and the government should not be afforded such a windfall provided by the Army Court's incorrect holding.

Standard of Review

This Court reviews a Court of Criminal Appeals' [CCA] interpretation of a UCMJ Article de novo "because that is a question of law." *United States v. Csiti,* 85 M.J. 414, 420 (C.A.A.F. 2025) (citing *United States v. Harvey,* 85 M.J. 127,

[7] 18 U.S.C. § 3287

[8] *United States v. Prosperi,* 573 F. Supp. 2d. 436, 449 (D. Mass. Aug. 29, 2008).

129 (C.A.A.F. 2024)). This Court then reviews the lower court's application of the Article for an abuse of discretion. *Id.*

Law

The statute of limitations for crimes punishable under the UCMJ is found in Article 43. Specifically, Article 43(b)(1) provides:

> Except as otherwise provided in this section (article), a person charged with an offense is not liable to be tried by court-martial if the offense was committed more than five years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

However, under Article 43(f)(2):

> When the United States is at war, the running of any statute of limitations applicable to any offense under this chapter committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States is suspended until three years after the termination of hostilities as proclaimed by the President or by joint resolution of Congress.

Argument

The Army Court's finding that the United States was in a "time of war" from 2014–2017 was erroneous. Thus, its holding that Appellant's prosecution for larceny of government property was not barred by the statute of limitations was error.

A. The Army Court Erred by Applying the Article 43(f) Suspension, As the United States Was Not In a "Time of War" Contemplated by the *Bancroft* Test.

1. The Suspension of a Statute of Limitations is an Extraordinary Remedy Reserved for Periods of True National Exigency.

Statutes of limitations are a vital safeguard in our system of justice. They "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Order of R.R. Telegraphers v. Ry. Express Agency, Inc.*, 321 U.S. 342, 348–49 (1944). They provide finality and repose, ensuring that individuals are not perpetually exposed to the threat of prosecution. *United States v. Marion,* 404 U.S. 307, 322 (1971).

Article 43(f) provides an exception to this rule, but it is an exception that must be narrowly construed. Its purpose, like that of the WSLA, is to relieve the government of the burden of conducting complex investigations when it is engaged in an all-consuming war. The suspension is not a mere convenience; it is a necessity born from the diversion of national resources and attention to the existential demands of war. *United States v. Bancroft* requires a functional, fact-based inquiry to determine if such a state of war exists. 3 C.M.A. 3 (C.M.R. 1953). The Army Court erred not in failing to apply the *Bancroft* test, but in applying it to a set of facts that no longer supported a finding of "war."

2. The Facts on the Ground During 2014-2017 Do Not Meet the *Bancroft* Standard for a "Time of War."

The Army Court cannot simply rely on the continued existence of an AUMF and several unsupported and highly attenuated factors. It must show that the *facts on the ground* during the relevant period created the type of exigency that justified suspending the statute of limitations. A comparison of the *Bancroft* factors, as applied during the peak war years of 2009–2011 to that of the 2014–2017 period, reveals a conflict so transformed that it can no longer be considered a "time of war" for the purpose of suspending statutes of limitation.

The Army Court cited to continued "combat and counterterrorism operations in Afghanistan, Iraq, and Syria," but this is misguided. The U.S. ended its combat mission in Afghanistan in December 2014.[9] The Commander in Chief's declaration in December 2014 was not mere rhetoric; it was a formal recognition of a change in legal and operational status. The transition from "Operation Enduring Freedom" (combat) to "Operation Freedom's Sentinel" (advise and assist) is instructive. A mission to train foreign forces is fundamentally different from a war in which our nation's own forces are the primary combatants. Such a mission does

[9] The United States formally withdrew its combat forces from Iraq in December 2011. *The Iraq War*. The George W. Bush Presidential Library. https://www.georgewbushlibrary.gov/research/topic-guides/the-iraq-war (last visited February 23, 2026).

not require mass amounts of personnel, equipment, or funds to support it. More importantly, changing the posture from combat to police actions did not change the military justice posture. In fact, the military justice mission has continued as designed through the entire United States' involvement in both Iraq and Afghanistan.

The Army Court also cited to "force deployments," but again, this is misleading, and undermines rather than supports a "time of war" finding. In 2011, the military had approximately 100,000 troops in Afghanistan, but reduced to fewer than 10,000 in 2017.[10] The reduction was not a simple numerical change; it reflected a de-escalation to limited stabilization efforts. A force of this size, while still in harm's way, did not consume the national attention or resources in a manner that would preclude a timely larceny investigation.

Indeed, the Army Court's invocation of "casualty reporting"—without any citations to what it relied on—is neither a clear nor sufficient indicator of a "time of war." United States' combat operations and casualty rates were significantly lower during this period than compared with the "surge" in 2009–2011 or the

[10] *U.S. Completes Troop-level Drawdown in Afghanistan, Iraq.* U.S. Dep't of War. https://www.war.gov/News/News-Stories/Article/Article/2473884/us-completes-troop-level-drawdown-in-afghanistan-iraq/ (last visited February 23, 2026).

invasion of Iraq in 2003.[11] While any loss of life is tragic, the overall magnitude of casualties did not resemble the "war" that existed during this Court's holdings on the Korean conflict (*Bancroft*; 33,739 deaths of American personnel)[12] or the Vietnam war (*United States v. Anderson,* 17 C.M.A. 588 (C.M.R. 1968); 47,434 deaths of American personnel).[13]

B. An Interpretation Divorced from Purpose Leads to an Absurd Result, Rendering the Statute of Limitations a Nullity.

1. Article 43(f) Protects the Government When the United States Must Focus its Resources on the Prosecution of War, Not the Prosecution of Frauds and Larcenies.

To affirm the Army Court's decision would be to endorse an interpretation of Article 43(f) that is completely divorced from its purpose. It would allow the government to claim the extraordinary benefit of a "wartime" suspension during a period when it faced no corresponding "wartime" burden that would have prevented a timely investigation.

This reading of the statute would mean that as long as any number of troops remain deployed under an AUMF—even from decades prior—the statute of

[11] Operation Freedom's Sentinel began on December 31, 2014. A total of 1,833 deaths attributable to hostilities occurred in Afghanistan from 2001–2014. A total of 77 deaths are attributable to hostilities post-2014. (Appendix A).
[12] Defense Casualty Analysis System (as of February 17, 2026). https://dcas.dmdc.osd.mil/dcas/app/conflictCasualties/korea/koreaSum
[13] Defense Casualty Analysis System (as of February 17, 2026) https://dcas.dmdc.osd.mil/dcas/app/conflictCasualties/vietnam/vietnamSum

limitations for larcenies and frauds against the government are perpetually suspended for the several million members of the armed forces. This would effectively erase the default five-year limitation period that Congress prescribed in Article 43(b). Such an outcome—where a sensible exception swallows the rule entirely—cannot be what Congress intended, and demands a spurious construction of the term "war." The statute of limitations would become a dead letter, and service members would be exposed to the threat of stale prosecutions indefinitely.

Even if this Court were to agree with the Army Court that several of the *Bancroft* factors were met, it does not free the lower court's holding from error. The thrust of Article 43(f) is to protect our nation when it is on full war footing – when whole-of-government efforts cannot be diverted to discover, investigate and prosecute frauds and larcenies while trying to prosecute war.

The purpose behind the enactment of Article 43(f) was to provide the government the ability, in the exceptional and rare circumstances of war, to suspend the requirement to investigate and bring certain crimes to trial because the military might is concentrated on mass movements of personnel and equipment, drafting civilians into service, militarizing the economy, fighting battles where not just a few Soldiers die, but they do so by the thousands. The article was meant to be employed during times of war that necessitate a whole-government effort, such

as when our Nation fought the Nazis in Europe or drafted millions military-age-males to fight in the jungles of Vietnam.

The article's purpose was never to provide the government a safety net should it fail to timely investigate and try frauds and larcenies in times that do not meet these extraordinary circumstances.

2. The Government Has Not Been Impeded From Prosecuting Frauds and Larcenies at Any Point Since the Korean War.

There is good reason this is a unique issue—the government has not relied on the Article 43(f) suspension since the Korean War to prosecute a larceny case because it simply has not been impeded in prosecuting these kinds of cases.[14]

A cursory review of appellate case law from the last twelve years amply demonstrates the government's enduring capacity to investigate and prosecute larceny of government property offenses.[15]

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[14] *United States v. Swain*, 10 C.M.A. 37 (C.M.R. 1958) is the only other case Appellant found that involves larceny and the statute of limitations suspension since the codification of Article 43(f).

[15] *See e.g.*, *United States v. Jones,* 78 M.J. 37 (C.A.A.F. 2018) (Soldier stole tools from a base in Afghanistan in April 2014 and his court-martial occurred in 2016); *United States v. Ravenscraft,* 2019 CCA LEXIS 305 (N.-M.C. Ct. Crim. App., Jul. 25, 2019) (Seaman stole and resold rifle scopes in 2014, the government had such time and resources they were able to execute a search warrant of the appellant's home); *United States v. Hoard*, 2018 CCA LEXIS 49 (A.F. Ct. Crim. App, Jan. 31, 2018) (Airman stole optics and gun sights in 2016); *United States v. Peterkin*, 2018 CCA LEXIS 208 (A. Ct. Crim. App, Apr. 27, 2018) (Soldier committed larceny of BAH in 2014); *United States v. Hart*, 2018 CCA LEXIS 393 (A.F. Ct. Crim. App., Aug. 17, 2018) (Airman stole medications from a military facility in 2016).

Even the Gulf War—which had 600,000 troops deployed to the Middle East (or more than six times the amount ever deployed to Afghanistan at its zenith)—did not stop the military justice system from continuing to function as it was designed.[16] *See United States v. Ayala,* 43 M.J. 296 (C.A.A.F. 1995) (tolling of the statute of limitations unnecessary to prosecute larceny of C-4 during Desert Storm).

The Army Court's decision rests on a fundamental misapplication of the facts to the law. Though it referenced several *Bancroft* factors, the Army Court provided no citations or factual support for the majority of the factors it relied on. Thus, the Army Court's legal conclusion as to "time of war" is error. Indeed, should the decision be affirmed, it would excuse the government's failure to act by applying an extraordinary wartime measure to a period when no corresponding wartime burden existed.

[16] *Desert Storm: A Look Back*. Dep't of War. https://www.war.gov/News/Feature-Stories/story/Article/1728715/desert-storm-a-look-back/ (last visited February 23, 2026).

Conclusion

The United States was not in a time of war during the relevant time period of 2014–2017. The statute of limitations was not suspended and had run. This Court should find the prosecution of Specification 1 of Charge I was time-barred and set aside the affected findings and sentence.

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Appendix A: U.S. Department of Defense – Casualty Status

U.S. Department of Defense

IMMEDIATE RELEASE

CASUALTY STATUS

as of 10 a.m. EST Jan. 30, 2025

OPERATION IRAQI FREEDOM U.S. CASUALTY STATUS[1]					
	Total Deaths	Hostile Deaths	Non-Hostile	Pending	WIA
OIF U.S. Military Casualties	4,419	3,482	937	0	31,993
OIF U.S. DOD Civilian Casualties	13	9	4	0	
Totals	**4,432**	**3,491**	**941**	**0**	**31,993**

[1] OPERATION IRAQI FREEDOM includes casualties that occurred between March 19, 2003, and Aug. 31, 2010, in the Arabian Sea, Bahrain, Gulf of Aden, Gulf of Oman, Iraq, Kuwait, Oman, Persian Gulf, Qatar, Red Sea, Saudi Arabia and the United Arab Emirates. Casualties in these countries before March 19, 2003, were considered Operation Enduring Freedom. Personnel injured in OIF who die after Sept. 1, 2010, will be included in OIF statistics.

OPERATION NEW DAWN U.S. CASUALTY STATUS [2]					
	Total Deaths	Hostile Deaths	Non-Hostile	Pending	WIA
OND U.S. Military Casualties	74	38	36	0	298
OND U.S. DOD Civilian Casualties	0	0	0	0	
Totals	**74**	**38**	**36**	**0**	**298**

[2] OPERATION NEW DAWN includes casualties that occurred between Sept. 1, 2010, and Dec. 31, 2011, in the Arabian Sea, Bahrain, Gulf of Aden, Gulf of Oman, Iraq, Kuwait, Oman, Persian Gulf, Qatar, Red Sea, Saudi Arabia and the United Arab Emirates. Personnel injured in OND who die after Dec. 31, 2011, will be included in OND statistics.

OPERATION ENDURING FREEDOM U.S. CASUALTY STATUS [3, 4]					
OEF U.S. Military Casualties	Total Deaths	Hostile Deaths	Non-Hostile	Pending	WIA
Afghanistan Only 3	2,219	1,833	385	1	20,093
Other Locations 4	131	12	119	0	56
OEF U.S. DOD Civilian Casualties	4	2	2	0	
Worldwide Total	**2,354**	**1,847**	**506**	**1**	**20,149**

[3] OPERATION ENDURING FREEDOM (Afghanistan only) includes casualties that occurred between Oct. 7, 2001, and Dec. 31, 2014, in Afghanistan only.

[4] OPERATION ENDURING FREEDOM (other locations) includes casualties that occurred between Oct. 7, 2001, and Dec. 31, 2014, in Guantanamo Bay (Cuba), Djibouti, Eritrea, Ethiopia, Jordan, Kenya, Kyrgyzstan, Pakistan, Philippines, Seychelles, Sudan, Tajikistan, Turkey, Uzbekistan and Yemen. Wounded in action cases in this category include those without a casualty country listed.

U.S. Department of Defense

IMMEDIATE RELEASE

CASUALTY STATUS

as of 10 a.m. EST Jan. 30, 2025

OPERATION INHERENT RESOLVE U.S. CASUALTY STATUS [5]					
	Total Deaths	Hostile Deaths	Non-Hostile	Pending	WIA
OIR U.S. Military Casualties	118	23	95	0	496
OIR U.S. DOD Civilian Casualties	2	0	2	0	
Totals	**120**	**23**	**97**	**0**	**496**

[5] OPERATION INHERENT RESOLVE includes casualties that occurred in Bahrain, Cyprus, Egypt, Iraq, Israel, Jordan, Kuwait, Lebanon, Qatar, Saudi Arabia, Syria, Turkey, the United Arab Emirates, the Mediterranean Sea east of 25° longitude, the Persian Gulf and the Red Sea.

OPERATION FREEDOM'S SENTINEL U.S. CASUALTY STATUS [6]					
	Total Deaths	Hostile Deaths	Non-Hostile	Pending	WIA
OFS U.S. Military Casualties	109	77	32	0	620
OFS U.S. DOD Civilian Casualties	2	2	0	0	
Totals	**111**	**79**	**32**	**0**	**620**

[6] OPERATION FREEDOM'S SENTINEL includes casualties that occurred in Afghanistan after Dec. 31, 2014.

Certificate of Compliance with Rules 24(c) and 37

1. This Brief on Behalf of Appellant complies with the type-volume limitation of Rule 24(c) because it contains 5,686 words.

2. This Brief on Behalf of Appellant complies with the typeface and type style requirements of Rule 37 because it has been prepared in Times New Roman font, using 14-point type with one-inch margins.

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of United States v. Askins, Crim. App. Dkt. No. 20230303, USCA Dkt. No. 26-002/AR was electronically filed with the Court and Government Appellate Division on February 25, 2026.

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