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	SUPPLEMENT TO THE PETITION FOR GRANT OF REVIEW Crim. App. Dkt. No. 20230303 USCA Dkt. No. 26-0002/AR

Eli M. Creighton
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060
(703) 693-0087
USCAAF Bar No. 38070

Kelsey Mowatt-Larssen
Major, Judge Advocate
Branch Chief
Defense Appellate Division
USCAAF Bar Number 38204

Kyle C. Sprague
Lieutenant Colonel, Judge Advocate
Deputy Chief
Defense Appellate Division
USCAAF Bar Number 36867

Frank E. Kostik, Jr.
Colonel, Judge Advocate
Chief
Defense Appellate Division
USCAAF Bar Number 35108

Jonathan F. Potter
Senior Appellate Counsel
Defense Appellate Division
USCAAF Bar Number 26450

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

Issue Presented

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

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 (2024). This Honorable Court has jurisdiction over this matter under Article 67(a)(3), UCMJ, 10 U.S.C. § 867 (a)(3) (2024).[1]

[1] Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), appellant respectfully requests this court consider the information provided in the Appendix.

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. (R. at 462-63; Charge Sheet).[2] On May 24, 2023, the military judge found appellant guilty, contrary to his pleas, of three specifications of domestic violence, in violation of Article 128b, UCMJ. (R. at 571; Charge Sheet).[3]

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 dishonorable discharge, and a fine of $35,000. (R. at 653-56).[4] On June 15, 2023,

[2] 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.

[3] The military judge acquitted appellant of one specification of domestic violence, in violation of Article 128b, UCMJ.

[4] The military judge ordered an additional 12 months of confinement if the fine is not paid. (R. at 656). The military judge also credited appellant with 521 days of confinement credit. (R. at 656).

the convening authority took no action on the findings, but disapproved the adjudged forfeitures. (Action).

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 (Army Ct. Crim. App. 28 Aug. 2025) (contained in App'x A). Appellant was notified of the Army Court's decision. In accordance with Rule 19 of this Court's Rules of Practice and Procedure, the undersigned appellate defense counsel, on behalf of appellant, file a Petition for Grant of Review contemporaneously herewith. The Judge Advocate General of the Army designated the undersigned military appellate defense counsel to represent appellant, who hereby enter their appearance and file a Supplement to the Petition for Grant of Review under Rule 21.

Statement of Facts

A. Larceny

Appellant was an Explosive Ordinance Disposal technician [EOD]. (R. at 320). Between 2014 and 2017, appellant was stationed at Joint Base Elmendorf-Richardson, Alaska [JBER]. (R. at 320).

Part of appellant's duties as an EOD technician was to respond to requests for assistance to dispose of unexploded ordnance both on and off JBER, from

either military members or private citizens. (R. 321-22). At times, these requests for assistance were made through back channels to avoid embarrassing the person who caused issues with the ordinance. (R. at 322-23). During one particular "discreet" mission, appellant retrieved undetonated C4 explosives, but did not dispose of them in accordance with Army and unit policy. (R. at 323). Instead, he kept the C4 and ultimately moved it to his personally owned storage container. (R. at 323). His intent was to use the C4 to blast away permafrost and rock when he built a cabin in the woods of Alaska. (R. at 328). This larceny was unconnected to any deployment or area where the United States was in conflict.

B. Charges and Plea

The government preferred charges on March 7, 2022. (Charge Sheet). The charges were received by the summary court-martial convening authority [SCMCA] the same day. (Charge Sheet).

Pertinently, the government charged appellant with larceny of the C4 from "on or about 25 August 2014 and on or about 14 August 2017." (Charge Sheet). However, during the plea colloquy with the military judge, appellant only spoke about the one "discreet" mission where he retrieved the C4. (R. at 315-29). As best as appellant could recall, the wrongful taking of the C4 occurred between February 2016 and December 2016. (R. at 328).

C. Parties' Briefings to the Army Court

At the Army Court, appellant raised the issue of whether the military judge erred when she did not secure appellant's affirmative waiver of the statute of limitations as to the larceny. (App. Br. at 4-7). Appellant argued the five-year statute of limitations under Article 43(b), UCMJ (10 U.S.C. § 843), meant he could not be prosecuted for larceny prior to March 7, 2017. (App. Br. at 6-7). As such, prosecution of the larceny that occurred between February and December 2016 was time-barred. (App. Br. at 6-7).

The government agreed the statute of limitations could have barred the prosecution of appellant's larceny in 2016. (Gov't. Br. at 7-8). However, the government argued 1) appellant was aware of the statute of limitations, 2) appellant waived the bar to prosecution, and 3) the military judge was under no duty to secure an affirmative waiver of the statute of limitations. (Gov't. Br. at 7-15).

On June 18, 2025, the Army Court heard oral argument as to, inter alia, the specified issue of: "Whether appellant's plea to Specification 1 of Charge I was improvident when the military judge failed to secure an affirmative waiver of the statute of limitations." (Notice of Hearing). After the hearing, the Army Court ordered supplemental briefing by the parties to address the issue of whether the

statute of limitations was tolled and therefore, whether it applied to appellant's larceny. (Order).

D. The Army Court's Decision That 2014-2017 Was a "Time of War"

The Army Court found that the United States was at "de facto" war "during the relevant period (2014 to 2017)." *Askins,* 2025 CCA LEXIS 420, at *7. 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." *Id.*

Citing no authorities, the Army Court then stated, "The President and Congress repeatedly acknowledged these hostilities through military appropriations, force deployments, executive orders, and casualty reporting." *Id.* at *7-8. The Army Court concluded its analysis by invoking President Biden's declaration of the end of hostilities in Afghanistan on 14 April 2021 and declaration of the end of the war in Afghanistan on 31 August 2021. *Id.* at *8.

The Army Court held that "appellant's misconduct occurring as early as August 2014 was not time-barred." *Id.* at *8.

Reasons to Grant Review

Were this Court to leave unaddressed the Army Court's decision as to what constitutes "de facto war," it would risk opening the door to arbitrary tolling of the statute of limitations for certain service-connected offenses such as larceny of government property. The Army Court relied on the Authorization for Use of Force from 2001 to justify its decision that the United States has been at "de facto war" for the relevant time periods of the charged offense. But the "9/11 AUMF was never intended to authorize war, all the time, everywhere, forever."[5] Yet because of the nebulous nature of what constitutes "de facto war," and the risk of trial courts and service appellate courts all coming to distinct answers, servicemembers who commit an act deemed to fall within the exception under Article 43(f), UCMJ, could in theory be prosecuted all the time, everywhere, and forever.

This Court and its sister civilian courts have historically required a high bar for determining whether we are at "de facto war," primarily because the United States has been in almost constant conflict since the end of World War II—the last time Congress formally declared war. Appellate courts have sparingly waded into the statute of limitation waters precisely because the analysis of what constitutes

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[5] Senator Rand Paul, *Press Release on Repeal of the 1991 and 2002 AUMFs,* Washington, D.C. (March 29, 2023), https://www.paul.senate.gov/dr-rand-paul-applauds-senate-repeal-of-1991-and-2002-aumfs-calls-for-repeal-of-2001-aumf/

"de facto war" is so murky. This incertitude is evidenced by the dearth of cases addressing "time of war," especially over the last several decades as the United States has wound down its political stabilization of Iraq (2011) and Afghanistan (2021), and turned its attention toward a global fight against non-state actors. But this leaves trial and service appellate courts without clear guidance as to whether our nation was, or remains, "at war" in these initial two and half decades of the 21st century.

Issue Presented

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

Standard of Review

This court reviews questions of law de novo. *United States v. Csiti,* 2025 CAAF LEXIS 349, at *13 (C.A.A.F. 2025) (citing *United States v. Harvey,* 85 M.J. 127, 129 (C.A.A.F. 2024)); *United States v. Inabinette,* 66 M.J. 320, 323 (C.A.A.F. 2008).

Law

Congress directed that generally 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." Article 43(b),

UCMJ. However, "when the United States is at war," if the charged offense deals with the "acquisition, care, handling, custody, control or disposition of any real or personal property of the United States," then the statute of limitations may be "suspended until three years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress." Article 43(f), UCMJ.

"A statute of limitations does not establish a defense to the merits of a charge; rather, it is a limitation on the power of a prosecutor to bring charges and on the power of a court to try a case." *Willenbring v. Neurauter,* 48 M.J. 157, 176 (C.A.A.F. 1998) (overturned on other grounds).

Argument

A. Historical Context

The Army Court erred in finding the United States was at "de facto" war from 2014-2017 and thus, incorrectly suspended the statute of limitations. The Army Court's subjective interpretation of "de facto war" was error and appellant's larceny in 2016 should have been time-barred from prosecution.

The United States has been in some version of hostile conflict nearly every year since its inception in 1775.[6] Whether it was encircling Cornwallis at Yorktown or destroying the ISIL caliphate in the Middle East, America's troops

[6] *America's Wars*. U.S. Dep't of Veterans Affairs. (July 16, 2025). https://department.va.gov/americas-wars/ (last visited September 30, 2025).

have almost ceaselessly taken up arms in defense of their nation. But that places our modern courts in a tenuous situation when attempting to define "time of war," or more specifically "de facto war."

Even the last formal declaration of war presents a tricky analysis when examined for the purposes of tolling the statute of limitations, as President Truman declared an end to hostilities against Germany in 1946, but Congress formally proclaimed the end of World War II in 1951. Based on the Army Court's recent decision, a situation such as this creates a five-year window in which trial counsel would be unsure (let alone an accused servicemember) as to when the statute of limitations would have been tolled. Would it have been suspended three years post-cessation of hostilities or the formal end of war? Yet at least World War II provided our armed services with a direct enemy, a state actor, and a Congressional declaration. However, America continuously finds itself in "conflicts" that may, or may not, amount to war.

For instance, the Korean War ended in an armistice agreement in 1953, but the Korean peninsula is still technically at war, and at various times throughout the last six decades, American troops have been killed by North Korea forces.[7] The United States still headquarters several major commands in South Korea, maintains

[7] *Armistice Negotiations*. United Nations Command. https://www.unc.mil/History/1951-1953-Armistice-Negotiations/ (last visited September 30, 2025).

a readiness force of approximately 28,500 troops in the country at all times, and engages in joint exercises with the South Korean military.[8] Engagements between North and South Korea are constantly in the media. Following these facts to their conclusion utilizing the logic of the Army Court, our nation is still at "de facto war" with North Korea, and the statute of limitations has been tolled since the United States' first bullet was fired at North Korean troops in 1950. It is not difficult to see the absurdity of results that may flow from the Army Court's subjective test and a lack of clear guidance from this Court.

B. Army Court's Decision and the Lack of Case Law

The Army Court relied heavily on only two cases to support their decision: *United States v. Swain,* 10 U.S.C.M.A. 37 (1958) and *United States v. Rivashchivas,* 74 M.J. 758 (Army Ct. Crim. App. 2015). Thus, the Army Court only had guidance from itself and a case from 67 years ago.

In both the present case and *Rivaschivas*, the Army Court utilized the factors to determine de facto war put forth by this Court's predecessor in *United States v. Bancroft,* 3 U.S.C.M.A 3 (1953). As such, the Army Court looked to several points to inform its decision:

> [1] the nature of the conflict; [2] the manner in which it is carried on; [3] the movement to and presence of large numbers of

[8] *South Korea: Background and U.S. Relations.* Longo et. al. (September 12, 2025). https://www.congress.gov/crs-product/IF10165 (last visited September 30, 2025).

> personnel on the battlefield; [4] the casualties involved; [5] the sacrifices required; [6] the drafting of recruits to maintain a large number of personnel in the military service; [7] national emergency legislation enacted and being enacted; [8] executive orders promulgated; and [9] the expenditure of large sums to maintain armed forces in the theater of operations.

Askins, 2025 CCA LEXIS 420, at *7 (quoting *Rivaschivas,* 74 M.J. at 761).

The Army Court devoted only one paragraph to its actual reasoning as to why the United States was at de facto war. It relied on the 9/11 AUMF and the "military appropriations, force deployments, executive orders, and casualty reporting." *Askins,* 2025 CCA LEXIS 420, at *8. And though it relied on these factors, the Army Court provided no factual support of its claims. There were no specifics as to what specific "military appropriations, force deployments, executive orders, and casualty reporting" the Army Court was referencing. As such, appellant is left flatfooted to cogently challenge the Army Court's analysis.

C. The Need for a Standard Test or Required Factors

Because there is no set test and no set amount of factors necessary to consider, the Army Court's reasoning was subjective and leaves open the possibility that a different court would approach the issue in an entirely distinct manner. For example, should another trial court or service appellate court decide that deaths attributable to hostile forces is the key component above all others, then

the Operation Freedom's Sentinel [OFS] (2014-2021; 77 deaths)[9] could hardly be considered a "war" as it compares to our operations in Vietnam (1964-1975; approximately 79,500 deaths). It becomes immediately apparent that a reasonable jurist could come to a substantially different opinion than the Army Court as to whether we are currently—or recently have been—engaged in de facto war.

In *Rivaschivas,* the Army Court noted the *Bancroft* factors were a "non-exhaustive list," but was silent as to how many factors must be considered or whether any single factor weighs more heavily than another. The Army Court again remained silent on this conundrum in its opinion for this case. As such, appellant is—like any similarly situated service members—left to the whims of the service courts as to what may or may not constitute de facto war.

Given this is an area of law that 1) lacks a substantial amount of precedent and 2) can lead different service courts to any number of distinct results, this Court is in a position to offer clarity and guidance to the field as to how trial and appellate courts should approach Article 43, UCMJ, and the tolling of the statute of limitations when it comes to time of war.

[9] *Casualty Status.* U.S. Dep't of Defense. (January 30, 2025). Appendix B.

Conclusion

The Army Court's finding that the United States was at "de facto war" and that the statute of limitations was tolled was error. Therefore, prosecution of appellant's larceny was time-barred and should be set aside.

Eli M. Creighton
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060
(703) 693-0087
USCAAF Bar No. 38070

Kelsey Mowatt-Larssen
Major, Judge Advocate
Branch Chief
Defense Appellate Division
USCAAF Bar Number 38204

Kyle C. Sprague
Lieutenant Colonel, Judge Advocate
Deputy Chief
Defense Appellate Division
USCAAF Bar Number 36867

Frank E. Kostik, Jr.
Colonel, Judge Advocate
Chief
Defense Appellate Division
USCAAF Bar Number 35108

Jonathan F. Potter
Senior Appellate Counsel
Defense Appellate Division
USCAAF Bar Number 26450

Certificate of Compliance with Rules 24(c) and 37

1. This Supplement to Appellant's Petition complies with the type-volume limitation of Rule 24(c) because it contains 3,038 words.

2. This Supplement to Appellant's Petition 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.

Eli M. Creighton
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060
(703) 693-0087
USCAAF Bar No. 38070

Appendix A: Army Court Decision

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
FLEMING, PENLAND, and COOPER
Appellate Military Judges

UNITED STATES, Appellee
v.
Staff Sergeant ZACKERY J. ASKINS
United States Army, Appellant

ARMY 20230303

Headquarters, U.S. Army Fires Center of Excellence and Fort Still
Tiffany D. Pond, Military Judge
Colonel John M. McCabe, Staff Judge Advocate

For Appellant: Major Robert W. Duffie, JA (argued); Colonel Phillip M. Staten, JA; Lieutenant Colonel Autumn R. Porter, JA; Major Tumentugs D. Armstrong, JA (on brief); Colonel Phillip M. Staten, JA, Lieutenant Colonel Autumn R. Porter, JA; Major Robert W. Rodriguez, JA; Captain Robert W. Duffie, JA (on reply brief); Colonel Philip M. Staten, JA; Jonathan F. Potter, Esquire; Major Robert W. Rodriguez, JA; Captain Eli M. Creighton, JA (on supplemental brief).

For Appellee: Captain Vy T. Nguyen, JA (argued); Colonel Richard E. Gorini, JA; Major Lisa Limb, JA; Captain Vy T. Nguyen, JA (on brief); Major Vy T. Nguyen, JA; Ms. Lauren Thompson (on supplemental brief).

28 August 2025

MEMORANDUM OPINION

This opinion is issued as an unpublished opinion and, as such, does not serve as precedent.

FLEMING, Senior Judge:

While stationed in Alaska, appellant stole Army explosive materials (i.e., multiple blocks of charge demolition (C-4)).[1] When appellant received reassignment

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[1] We note multiple scrivener's errors in the Statement of Trial Results that warrant

(continued . . .)

orders to Oklahoma, he arranged to transport the C-4 blocks and blasting caps from Alaska through the Port of Seattle, Washington to Oklahoma. Now on appeal, appellant argues his plea of guilty to stealing the C-4 blocks was improvident due to a statute of limitations prohibition and his offense of transporting the C-4 blocks and blasting caps was improperly charged by the government. We disagree with both his assertions.[2]

BACKGROUND

A military judge, sitting as a general court-martial, convicted appellant, pursuant to his pleas, of one specification of forgery, two specifications of false official statement, two specifications of sale of military property, four specifications of larceny of military property, one of which being explosives, and one specification of a federally assimilated crime for the improper transportation of explosives, in violation of Articles 105, 107, 108, 121, and 134 Uniform Code of Military Justice, 10 U.S.C. §§ 905, 907, 908, 921, and 934 [UCMJ]. For these offenses, appellant was sentenced to confinement for ninety-six months and a fine of $35,000. The same military judge also convicted appellant, contrary to his pleas, of three specifications of domestic violence, in violation of Article 128b, UCMJ. For these

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(. . . continued)
correction. Specification 2 of Charge I erroneously states appellant did "between on or about 1 December 2018 and on or about 31 December 2019, wrongfully appropriate multiple night vision devices, image intensifiers, sights, heads-up display units, and other optics, of a value of more than $1,000, military property, the property of the United States." We correct that language to read appellant did "between on or about 15 January 2019 and on or about 11 December 2019, steal multiple night vision devices, thermal weapon sights, and other optics, military property, of a value of more than $1,000, property of the United States."

Specification 3 of Charge I is corrected to substitute the phrase "the property of the United States" with "military property of the Untied States."

Specification 4 of Charge I is corrected to read "of a value of more than $1,000, military property of the United States."

[2] Appellant raised three assignments of error – two of which we will discuss but provide no relief. We have also given full and fair consideration to the matters personally raised by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and determine they merit neither discussion nor relief. We have, however, as discussed later, determined Specifications 1 and 2 of Charge V encompass the same unit of prosecution and, consistent with this court's opinion in *United States v. Malone*, 85 M.J. 573 (Army Ct. Crim. App. 2025), will provide relief in our decretal paragraph.

offenses, appellant was sentenced to an additional six months of confinement. The military judge also adjudged a dishonorable discharge, total forfeitures of all pay and allowances, and reduction to the grade of E-1.

Appellant stole the C-4 blocks while serving as a senior explosive ordinance disposal (EOD) technician at Joint Base Elmendorf-Richardson (JBER), Alaska. As a senior technician, appellant was responsible for leading teams on missions to safeguard, collect, and dispose of explosive materials. During these missions, appellant often had "unfettered access to the sometimes hundreds of available explosives [meant to be utilized] on that mission." The government ultimately charged appellant with stealing multiple blocks of C-4 "between on or about 25 August 2014 and 14 August 2017." However, during his guilty plea colloquy with the military judge, appellant stated he could provide only "a very rough approximation" as to when he stole the C-4 blocks and "it would have been between February of 2016 and December of 2016."

Around February 2018, appellant moved from JBER to Fort Sill, Oklahoma. As part of his permanent change in station, appellant arranged for the transportation of the stolen C-4 blocks from Alaska to his new home, passing through the Port of Seattle. Based on this, the government charged appellant with an assimilated federal offense for violating 18 U.S.C. § 842, for knowingly transporting, or causing to be transported, explosive materials (C-4 and blasting caps) without a license or permit.

Charges were subsequently preferred against appellant for these and other offenses. The charges were received by appellant's battalion commander, the summary court-martial convening authority, on 7 March 2022, approximately five years and three months from the latest date (December 2016) appellant told the military judge the C-4 blocks could have been stolen.

Following referral, defense filed a motion to dismiss the larceny offense regarding the C-4 blocks based on an alleged failure by the government to state an offense. In his written motion, appellant acknowledged the typical five-year statute of limitations period did not apply to his larceny of the C-4 blocks, citing Article 43, UCMJ, and *United States v. Rivaschivas*, 74 M.J. 758 (Army Court Crim. App. 2015). As such, appellant contended he could be prosecuted for misconduct dating back to 2011, at Fort Carson, Colorado, his duty station prior to JBER.[3] Because of

[3] In his motion, appellant asserted he had, "continuing exposure for criminal liability for *any* future allegations of larceny committed as early as 2011 . . . . *See*, UCMJ, art. 43 (placing a toll on statutes of limitation during a time of war); *United States v. Rivaschivas*, 74 M.J. 758 (Army Ct. Crim. App. 2015) (finding the Iraq and Afghanistan conflicts constitute a 'time of war' under Article 43 of the UCMJ)."

(continued . . .)

this, appellant's defense counsel asserted the charge was deficient as the date range charged was overly broad and did not provide sufficient notice of the misconduct for which appellant was accused or protect him against Double Jeopardy. The military judge denied the defense motion finding:

> The date range of on or about 25 August 2014 to 14 August 2017 is broad but not so broad that it fails to provide constitutional protections . . . . Tellingly, the Government did not charge the entire five-year period during which the Accused was stationed at JBER from 17 March 2014 to 12 March 2019. Rather, the Government narrowed the scope to track with the dates reflected by the evidence.

Ultimately, appellant agreed to plead guilty to the larceny and transporting the C-4 blocks. During the providence inquiry, the military judge discussed a "waive all waivable motions" clause with appellant that was included in his plea agreement, however, the military judge did not specifically discuss a statute of limitations defense.

LAW AND DISCUSSION

A. Statute of Limitations

Article 43(b)(1), UCMJ, 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.

This five-year limitation period applies to most offenses unless an exception is clearly applicable. *See* Article 43(b)(2). However, under certain, enumerated

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(emphasis added) (citations cleaned up). The genesis of the defense motion centered on the government's inability to identify a particular C-4 block from another C-4 block. Although C-4 blocks have a lot number, they do not receive an individualized identifier. The C-4 blocks appellant stole came from the same lot (i.e., they all had the exact same lot number). According to Army records, the C-4 blocks appellant stole belonged to a lot which was divided and sent to either Alaska or Fort Carson, Colorado. Appellant claimed his conviction for the JBER thefts would not protect him from subsequent prosecution of any thefts that may have occurred in Colorado while he had been stationed there.

exceptions, the statute of limitations may be tolled. Pursuant to Article 43(f), UCMJ:

> 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 a joint resolution of Congress.

This provision reflects Congress's intent to preserve the government's ability to prosecute offenses committed during wartime that directly implicate the security or readiness of the armed forces. *See United States v. Swain*, 10 U.S.C.M.A. 37, 40-41, 27 C.M.R. 111, 115 (1958) (regarding the tolling of the statute of limitations, "Congress meant what it said clearly in the statute."). There is no dispute that C-4 is an "explosive" and the "real or personal property of the United States." Rule for Courts-Martial [R.C.M.] 103(11) (2019 ed.) (defining explosive); *Manual for Courts-Martial*, pt. IV, ¶ 64.c.(1)(h) ("Military property is all property, real or personal, owned, held, or used by one of the armed forces of the United States.").

The critical question thus becomes whether the United States was in a "time of war" during the relevant period (2014 to 2017). Courts conduct a multi-factored analysis to determine "whether the country is engaged in a *de facto* war . . . ." absent a formal declaration of war. *Rivaschivas*, 74 M.J. at 761.[4] In conducting this analysis, courts consider:

> (1) the nature of the conflict; (2) the manner in which it is carried on; (3) the movement to and presence of large numbers of personnel on the battlefield; (4) the casualties involved; (5) the sacrifices required; (6) the drafting of recruits to maintain a large number of personnel in the military service; (7) national emergency legislation enacted and being enacted; (8) executive orders promulgated; and (9) the expenditure of large sums to maintain armed forces in the theater of operations.

Id. (internal citation omitted).

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

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[4] This standard is also recognized in R.C.M. 103(21): "'time of war' means a period of war declared by Congress, or the factual determination by the President that the existence of hostilities warrants a finding that a 'time of war' exists . . . .".

(AUMF).[5] The President and Congress repeatedly acknowledged these hostilities through military appropriations, force deployments, executive orders, and casualty reporting. Furthermore, it was not until 14 April 2021 that the President declared the ending of hostilities in Afghanistan[6] and 31 August 2021 that the President declared the end of the war in Afghanistan.[7] Thus, considering the factors in *Rivaschivas* and recognizing the plain language of Article 43(f), UCMJ,[8] the court concludes the United States was in a "time of war" within the meaning of Article 43(f) during the period in question.

Accordingly, the statute of limitations applicable to appellant's offenses involving the larceny of C-4 was tolled until three years after the termination of hostilities. Therefore, prosecution of the appellant's misconduct occurring as early as August 2014 was not time-barred.

B. 18 U.S.C. § 842 Offense

For the first time on appeal, appellant alleges he was prosecuted under the incorrect assimilated statute as his actions fell under an exception to the crime.

18 U.S.C. § 842 makes it unlawful for a person, other than "a licensee or permittee" to knowingly "transport, ship, cause to be transported, or receive any explosive materials." § 842(a)(3), (A). The prohibition does not apply, however, to "aspects of the transportation of explosive materials via railroad, water, highway, or air that pertain to safety . . . and are regulated by the Department of Transportation .

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[5] Pub. L. 107-40, 115 Stat. 224 (2001); Pub. L. 107-243, 116 Stat. 1498 (2002).

[6] President Joseph R. Biden, Jr., *Remarks by President Biden on the Way Forward in Afghanistan*, THE WHITE HOUSE (April 14, 2021, 2:29 PM), https://bidenwhitehouse.archives.gov/briefing-room/speeches-remarks/2021/04/14/remarks-by-president-biden-on-the-way-forward-in-afghanistan/.

[7] President Joseph R. Biden Jr., *Remarks by President Biden on the End of the War in Afghanistan*, THE WHITE HOUSE (31 August 2021, 3:28 PM), https://bidenwhitehouse.archives.gov/briefing-room/speeches-remarks/2021/08/31/remarks-by-president-biden-on-the-end-of-the-war-in-afghanistan/.

[8] Article 43(f), UCMJ, makes clear "the termination of hostilities as proclaimed by the President" is the relevant point where the statute of limitations ceases tolling after being suspended during a time of war. Here, President Biden's declaration that hostilities had ended further supports the conclusion that a time of war existed prior to his announcement.

. . ." 18 U.S.C. § 845(a)(1). These regulations include the "labeling, packaging, mode of transportation, placarding and shipping papers," i.e., "the physical requirements or manner in which hazardous materials must be transported by one who has a license." *United States v. Petrykievicz*, 809 F.Supp. 794, 797 (W.D. Wash. 1992).[9] In other words, *how* explosives must be shipped, rather than *who* (a licensee) may ship them. *Id.*; *see also American Cylinder Mfrs. Committee v. Department of Transportation*, 578 F.2d 24, 27, n.2 (2d Cir. 1978).

Appellant shipped C-4 blocks and blasting caps during his permanent change of station, utilizing some combination of public roads, railways, and shipping lanes. While these modes of transportation generally fall under the regulatory purview of the Department of Transportation (DOT), appellant circumvented inspection processes and failed to obtain the required licenses for transporting explosive materials. *See Petrykievciz*, 809 F. Supp. at 796. As "[t]he aspect regulated by the Department of Transportation is *how* items may be transported once the transporter obtains a license . . . ., the 18 U.S.C. § 845 exclusion does not apply . . . ." *Id.* at 797 (emphasis in original).[10]

Furthermore, the exception contained in Section 845(a)(1) is intended to preclude the application of criminal provisions to lawful and regulated transportation activities, not to protect individuals who exploit weaknesses in the regulatory system to engage in unlawful conduct. 18 U.S.C. § 845. Appellant's acts, which included knowingly transporting explosives without proper permitting or licensure, falls outside the scope of lawful transportation activities contemplated by the exception. *See United States v. Scharstein*, 531 F. Supp. 460, 466 (E.D. Ky. 1982). Appellant's conduct constitutes a violation of 18 U.S.C. § 842 and the statutory exception cannot be invoked to shield such unlawful behavior. It was not an abuse of discretion for the military judge to accept his plea.

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[9] While federal cases are not binding precedent for our court, and we review the interpretation of statutes de novo, we find them to be highly persuasive. *United States v. Vargas*, 74 M.J. 1, 5 (C.A.A.F. 2014). Assimilated federal statutes are regularly charged under Article 134, UCMJ, and military courts routinely look to federal precedent for guidance in interpreting such statutes. *See, e.g., United States v. Pierce*, 70 M.J. 289 (C.A.A.F. 2018).

[10] We further note our superior court has, on at least one prior occasion, encountered 18 U.S.C. § 842. *See United States v. Disney*, 62 M.J. 46 (C.A.A.F. 2005). The court affirmed the constitutionality of Section 842, finding appellant's act of possessing stolen explosive materials (a criminal act under the statute), knowing that the materials had previously been shipped through interstate commerce, was sufficient to pass constitutional muster. *Id.* at 46, 49-51.

C. Specifications 1 and 2 of Charge V

"The Court may affirm only such findings of guilty, and the sentence of such part or amount of the sentence, as the Court finds correct in law and fact." UCMJ, art. 66(d)(1). Absent evidence of affirmative error, the failure to raise a claim of multiplicity at trial results in forfeiture, which we review for plain error.[11] *United States v. Davis*, 79 M.J. 329, 331 (C.A.A.F. 2020); *United States v. Heryford*, 52 M.J. 265, 266 (C.A.A.F. 2000). Under plain error review, the appellant must establish: "(1) there was error, (2) the error was plain or obvious, and (3) the error materially prejudiced a substantial right of the accused." *United States v. Malone*, 85 M.J. 573, 581 (Army Ct. Crim. App. 2025) (quoting *United States v. Jones*, 78 M.J. 37, 44-45 (C.A.A.F. 2018)). We review whether an issue is forfeited or waived de novo. *Davis*, 79 M.J. at 331.

In the present case, there is no evidence of affirmative waiver as appellant contested his guilt at trial. As there is no waiver, we will review for plain error.

Multiplicity, as a constitutional doctrine under the Double Jeopardy Clause, "prohibits multiple punishments for the same offense," *United States v. Forrester*, 76 M.J. 479, 484-85 (C.A.A.F. 2017) (quoting U.S. Const. amend. V) (alteration omitted). *United States v. Coleman*, 79 M.J. 100, 102 (C.A.A.F. 2019). Whether an appellant has been charged with multiple violations of the same statute, predicated on the same criminal conduct, often hinges on the allowable unit of prosecution, determined based on the *actus reus* of the defendant. *Forrester*, 76 M.J. at 485. This principle is reflected in our opinion in *Malone*, where we found multiple specifications of domestic violence, arising from a single, continuous transaction, were multiplicious. 85 M.J. at 583-85; *see also Heryford*, 52 M.J. at 266.

To assess whether appellant's convictions are multiplicious, we must determine whether the specifications are based on separate and distinct acts. *Malone*, 85 M.J. at 583. Under this analysis, individual assaults "united in time, circumstance, and impulse" should not be parsed into separate charges. *United States v. Rushing*, 11 M.J. 95, 98 (C.M.A. 1981).

Additional facts are necessary to analyze the multiplicity issue in appellant's case. In September 2021, appellant's wife told appellant she wanted a separation, and a heated argument ensued. Appellant slammed her into a dog kennel and began to strangle her. Once appellant let go, she grabbed her belongings and stated she

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[11] Forfeiture occurs when a party fails to timely assert a right, distinguishing it from waiver, which is the intentional relinquishment of a known right. *United States v. Gladue*, 67 M.J. 311. 313 (C.A.A.F. 2009). This distinction is critical because while waived issues are not subject to appellate review, forfeited issues may still be reviewed under the plain error standard. *Id.*

was going to appellant's unit to report the assault. In response, and as she headed to the door with her keys, appellant wrapped his hands around her neck again and slammed her head into a breaker box. Appellant then placed her in a bear hug until she could not breathe. She went limp and dropped onto the floor. Ultimately, she gained the ability to leave the home and reported appellant's assaults to his unit.

Appellant was charged with strangling his wife around her neck with his hands in Specification 1 of Charge V. He was also charged with slamming her body into a dog kennel and banging her head against a breaker box in Specification 2 of Charge V. Appellant slammed his wife into a dog kennel and began to strangle her. Appellant let go and as his wife was attempting to leave, he wrapped his hands around her neck and slammed her head into a breaker box. As these charges were united in both time and location, and sprung from the same impulse, they will be merged to reflect the single, ongoing nature of the attack. *See Malone*, 85 M.J. at 573.

Even if we were to find a break in time and impulse between the dog kennel and breaker assaults sufficient to create two "successive impulses . . . separately given," the specifications remain multiplicious as appellant strangled the victim in both instances. *Blockburger v. United States*, 284 U.S. 299, 302 (1932). While a single conviction for potentially multiple criminal acts does not violate our general verdict jurisprudence, it creates an issue here as either strangulation that the military judge could have found appellant guilty of was multiplicious with another action—either slamming the victim into the dog kennel or into the breaker box—as they occurred contemporaneously with the other and arouse from the same impulse. *See United States v. Rodriguez*, 66 M.J. 201, 204-05 (C.A.A.F. 2008).

Given the remedy of dismissing the multiplicious specifications, we must determine whether our "broad discretion" allows us to reassess appellant's sentence instead of ordering a rehearing. *United States v. Winckelmann*, 73 M.J. 11, 12 (C.A.A.F. 2013). Based on our experience as judges on this court, and with the aid of a confinement sentence segmented by the military judge in which appellant was sentenced for the same amount of time for all three domestic violence specifications, to be served concurrently, we are confident merging two specifications into one would not impact his sentence.

CONCLUSION

Upon consideration of the entire record, Specifications 1 and 2 of Charge V are merged into a consolidated specification, numbered as Specification 1 of Charge V, to read as follows:

> In that [appellant], U.S. Army did, at or near Medicine Park, Oklahoma, on or about 15 September 2021, assault his spouse . . . , by strangling

her around her neck with his hands, and did commit a violent offense against his spouse . . . to wit: slamming her body into a dog kennel and banging her head against a breaker box.

The finding of guilty to Specification 1 of Charge V, as consolidated, and Charge V is AFFIRMED. The finding of guilty to Specification 2 of Charge V is SET ASIDE and that specification is DISMISSED. The remaining findings of guilty are AFFIRMED. Reassessing the sentence, the segmented sentence to confinement for Specification 1 of Charge V is AFFIRMED, and the total sentence to a dishonorable discharge, 102 months of confinement, a fine of $35,000.00 and reduction to the grade of E-1 is AFFIRMED.

Judge COOPER concurs.

Senior Judge PENLAND, concurring in the result in part and dissenting in part.

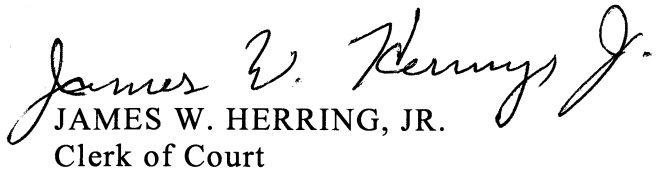
I concur with the majority's ultimate decision to deny relief in response to appellant's assigned errors about Article 43, Uniform Code of Military Justice, 10 U.S.C. § 843 [UCMJ], and 18 U.S.C. § 845(a)(1). But rather than substantively addressing those matters, we should find waiver by operation of appellant's guilty pleas to the associated specifications. *United States v. Broce*, 488 U.S. 563, 573-74 (1989) ("Relinquishment derives not from any inquiry into a defendant's subjective understanding of the range of potential defenses, but from the admissions necessarily made upon entry of a voluntary plea of guilty."). Separately, appellant also affirmatively waived the assigned errors by waiving motions in his plea agreement.

I respectfully dissent from my friends' treatment of Specifications 1 and 2 of Charge V, and would affirm both convictions. For the reasons I discussed in *United States v. Malone*, 85 M.J. 573, 591-92 (Army Ct. Crim. App. 2025) (Penland, J., dissenting), we should recognize the affirmative waiver conveyed by defense counsel's statements on 3 August 2022: "Your Honor, all motions have already been made. The defense has no further motions." and on 23 May 2023, "Your Honor, the defense has no additional pretrial motions."[12] [13]

[12] A multiplicity complaint was not among the defense motions.

[13] In my view these declarations also affirmatively extinguished appellant's assigned complaints about Article 43, UCMJ, and 18 U.S.C. § 845(a)(1).

FOR THE COURT:



JAMES W. HERRING, JR.
Clerk of Court

Appendix B: Dep't of Defense – Casualty Status Report

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.

Appendix C: Matters Submitted Pursuant to *United States v. Grostefon*

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), the appellant, through appellate defense counsel, personally requests that this court consider the following matters:

I. WHETHER THE ARMY COURT ERRED IN HOLDING APPELLANT WAS CORRECTLY PROSECUTED UNDER THE ASSIMILATED OFFENSE OF 18 U.S.C. § 842 WHEN THERE WAS A CLEAR EXCEPTION TO THE LAW

II. WHETHER ARMY CRIMINAL INVESTIGATORS HAD DIRECT OR APPARENT AUTHORITY TO SEARCH APPELLANT'S HOME IN DECEMBER 2021 AND JANUARY 2022, AND AS A RESULT, WHETHER ANY EVIDENCE COLLECTED WAS FRUIT OF THE POISONOUS TREE

III. WHETHER APPELLANT'S INABILITY TO SEEK, HIRE, AND CONSULT COUNSEL OF HIS CHOOSING WHILE HOUSED IN PRE-TRIAL CONFINEMENT CONSTITUTED ILLEGAL PRE-TRIAL PUNISHMENT

IV. WHETHER APPELLANT IS ENTITLED TO THE SAME PAROLE AND GOOD TIME CREDIT AS DUE FEDERAL PRISONERS WHEN HE WAS TRANSFERRED TO THE BUREAU OF FEDERAL PRISONS AND THE ARMY'S DENIAL OF THIS CREDIT IS A VIOLATION OF ARTICLE 58, UCMJ

V. WHETHER THE ARMY'S WITHHOLDING OF APPELLANT'S MEDICATION AND REFUSAL TO PROVIDE HIS MEDICAL RECORDS TO THE FEDERAL FACILITY CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AMENDMENT

VI. WHETHER THE FINE IMPOSED BY THE MILITARY JUDGE WAS AGAINST PUBLIC POLICY WHEN APPELLANT HAS NO INCOME AND WOULD BE ESSENTIALLY IN DEBTOR'S PRISON IF HE CANNOT PAY THE FINE

Appendix D: Appellant's Affidavit

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	AFFIDAVIT IN SUPPORT OF PETITION Crim. App. Dkt. No. 20230303 USCA Dkt. No. _____/AR

Appellant asserts and swears the following is true in fact, to the best of his recollection and recall, and asks this Honorable Court to give appellant's affirmances consideration and due weight:

1. On September 16, 2021, I was placed in pre-trial confinement at the Comanche County Detention Center [CCDC]. I was denied, on multiple occasions, the ability to speak with defense counsel in order to address my case and the conditions I was living in while at the jail. For months, I was denied the ability to hire counsel of my choosing and only allowed to speak to a legal assistance attorney at Fort Sill—not a defense attorney. I was, therefore, unable to fully and properly assert my rights to counsel, speedy trial, and to address conditions that amounted to pre-trial punishment.

2. In 2019, I had allowed Army criminal investigators to search my residence. No evidence of criminality was discovered. When I was being held at

CCDC, my ex-wife, Ms. Jessica Askins, moved out of our shared residence. She relinquished any control or custody of not only the residence, but of the property therein. However, Army criminal investigators received her consent to search the premises in December 2021/January 2022. This was in direct contravention to the Fourth Amendment. She did not have actual, nor constructive, rights to allow CID agents to search the home. Any evidence found from CID's search of my home should therefore be considered "fruit of the poisonous tree." Because of the illegal search, a rehearing should be authorized to properly address these issues.

3. I signed a plea agreement and I understand this may be construed as knowingly giving up some of my rights. But this requires context. When I was finally able to hire civilian defense counsel and meet with them in October 2022, they provided me with a "deal" they had "worked out," but this deal required I plead guilty to offenses I did not commit (i.e. domestic violence). I refused to sign the deal and my counsel requested that I receive an R.C.M. 706 evaluation. I do not believe my sanity was in question, but merely that because I refused to admit fault for something I did not do, my counsel were placed in a position to have to attempt renegotiation and they were not pleased with my refusal.

4. I remained at CCDC until May 2023. At this time, I again met with my counsel who presented another deal. This new deal again required me to plead to crimes I did not commit and to agree to a stipulation of fact that was not true.

However, I had been in CCDC for 521 days and had been cut off from my medications since October 2022. This denial of my medication destroyed my pancreas and I was in dire health. I agreed to sign in the hopes that I could be moved quickly from CCDC into a facility with better care. Therefore, I signed the plea agreement.

5. I did not raise any Fourth Amendment issues. It was a requirement in the plea deal to "waive all waivable motions." Though I explained the CID search issues to my defense counsel, they told me to accept the deal and to "make things up" to fill in the gaps of the stipulation. I was, therefore, denied the ability to raise the Fourth Amendment and illegal searches as a defense.

6. At no point did I commit domestic violence against my ex-wife. I told my defense counsel on multiple occasions that I had proof via text messages which had date and time stamps that would exonerate me, as I was not at the location my ex-wife said I was. My defense counsel did not investigate this and did not retrieve the evidence, though the evidence could have easily been located on my cell phone. As such, I was left without the ability to properly defend my case at trial.

7. After my court-martial, I was transferred to the Joint Regional Confinement Facility at Fort Leavenworth [JRCF]. I continued to remain in poor health, as I was unable to recover from the months without medication at CCDC. In January 2024, it was apparent that the JRCF did not have the medical

capabilities to ensure my physical health. I was transferred to the United States Medical Center for Federal Prisoners in Springfield, Missouri [MCFP]. The JRCF did not provide my medical records to the MCFP and I was again placed in a situation without proper medication. My health continued to suffer and decline. I was transferred back to the JRCF and remain without proper medical attention.

8. Based on my transfer to the custody of the Bureau of Prisons, I am entitled to have received the same credit for parole and good time credit authorized to federal prisoners pursuant to Article 58, Uniform Code of Military Justice, 10 U.S.C. § 858 (*see King v. Federal Bureau of Prisons,* 406 F. Supp. 36 (E.D. III. 1976)). This credit has been denied to me by the JRCF and is therefore a violation of Article 58.

9. During the appellate process, I spoke to my initial assigned appellate counsel once and was told that we would appeal the entirety of the domestic violence charges because I did not commit those offenses. However, only one specification was addressed as an assignment of error. Though I had told my appellate counsel about the domestic violence charges, no issues were raised under *United States v. Grostefon.*

[Signature Page Follows]

Under penalty of perjury, I hereby swear and affirm that the foregoing is true to the best of my recollection and ability.

Signature of Affiant

Zachery Asking
Affiant printed name

Sept 27, 2025
Date of signing

Ft Leavenworth MWJCRF, Ks
Location of signing

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. 26-0002/AR, was electronically filed with the Court and the Government Appellate Division on October 22, 2025.

Eli M. Creighton
Captain, Judge Advocate
Appellate Counsel
Defense Appellate Division