

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES**

**UNITED STATES,**

Appellee

v.

**Thomas E. KRUSE**  
Corporal (E-4)  
U.S. Marine Corps,

Appellant

**REPLY ON BEHALF  
OF APPELLANT**

Crim. App. Dkt. No. 202500370

USCA Dkt.

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

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## Reply<sup>1</sup>

### **A. The government’s answer mischaracterizes Appellant’s argument—Appellant’s brief gives separate meaning to “reported offense,” “covered offense,” and “exclusive authority” while the government’s brief disregards Article 24a’s sequential, one-directional structure.**

The government’s answer mischaracterizes Appellant’s supplement—Appellant does not treat “reported offense” and “covered offense” as the same, but as different terms with different functions within military justice.<sup>2</sup> In fact, the government wishes this Court to treat “covered offense” as a narrower subset of “reported offense,” thus collapsing the definition of these distinctive terms.<sup>3</sup> Appellant agrees that a “reported offense” is the “raw initial ‘information’ received from ‘any person.’”<sup>4</sup> Where Appellant and Appellee differ is the assignment of a “covered offense” designation to a “reported offense” within the framework of Article 24a, Uniform Code of Military Justice (UCMJ).<sup>5</sup>

When a “reported offense” meets the “covered offense” criteria—as determined by Special Trial Counsel (STC)—then the “exclusive authority” Congress granted is bestowed on the STC and a “reported offense” stays a “covered

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<sup>1</sup> For any arguments presented in the government’s Answer that are not directly addressed in this Reply, Appellant does not concede those arguments. Rather, he stands on the arguments already raised in his initial Supplement for the sake of judicial economy.

<sup>2</sup> Appellant’s Supplement at 27-29.

<sup>3</sup> Appellee’s Ans. at 15-19.

<sup>4</sup> Appellee’s Ans. at 12.

<sup>5</sup> 10 U.S.C. §824a (2024).

offense.”<sup>6</sup> This exclusive authority to characterize the offense attaches before preferral of charges, either during the initial report or investigative stage, as a means to determine who has authority over the offense. Appellee’s reading makes this exclusive authority illusory, superfluous, and meaningless.

**B. The government’s answer supports Appellant’s argument that this is a question of law that this Court should settle.<sup>7</sup>**

For the first time in military justice, Congress has granted charging authority to someone who is not a convening authority through Article 24a, UCMJ. The vast differences in the parties’ arguments on application of Article 24a to the procedural history of appellant’s case, which will be replicated in future cases, show that this Court should address this issue of first impression. This Court’s determination on where this authority starts and ends will provide much needed guidance on how commanding officers and the Office of the Special Trial Counsel should determine their authority in this new world of military justice.

**C. Forty Years of Rule for Courts-Martial precedent supports Appellant’s argument.**

The Government’s reliance on forty years of Rules for Courts-Martial (R.C.M.) precedent reinforces Appellant’s position. Those rules have always defined a “reported offense” as the underlying alleged misconduct received through initial

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<sup>6</sup> *Id.*; 10 U.S.C. § 801(17) (2024).

<sup>7</sup> Appellant’s Supplement at 15.

information—before any charging decision is made.<sup>8</sup> The modern framework codified in the current R.C.M. 301A and 303A maintains the longstanding principle that a “reported offense” is the underlying misconduct at the moment it is received and assessed—not the later charging label.<sup>9</sup> When the STC determines that reported misconduct is a “covered offense,” Article 24a, UCMJ, and its implementing rules vest exclusive authority in the STC, foreclosing the very type of post hoc command relabeling the Government attempts here. Appellant incorporates his argument under subsection B.5 (Appellant’s Supplement at 34-36) as a counterpoint to illustrate that Congress understood the forty years of precedent in the R.C.M.’s and implemented new rules to work harmoniously with Article 24a’s new structure.<sup>10</sup>

**D. The government’s interpretation disregards Article 24a’s sequential, one-directional structure.**

The Government argues that “covered offense” must be read strictly as a finite list of statutory violations and that Article 128 falls outside that list.<sup>11</sup> That argument mis-frames the statute. Article 24a does not begin with charging decisions—it begins

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<sup>8</sup> MANUAL FOR COURTS-MARTIAL, UNITED STATES [hereinafter MCM], RULES FOR COURTS-MARTIAL 301, 303 (2024) [hereinafter R.C.M.] (defining reported offenses as information from any source about suspected misconduct); MCM, R.C.M. 306 (2024) (disposition decisions flowing from that reported offense).

<sup>9</sup> MCM, R.C.M. 301A, 303A.

<sup>10</sup> *See also* Appellant’s Supplement at 34-36 (discussing the President’s contemporaneous implementation of Article 24a authority in the R.C.M.’s).

<sup>11</sup> Appellee Ans. at 15-20.

with a “reported offense.”<sup>12</sup> As Appellant explained, and the R.C.M.’s have long required, a “reported offense” is the underlying misconduct as it is initially received, not how it is later charged. The statute then assigns the STC exclusive authority to determine whether that reported misconduct is a covered offense.<sup>13</sup> The government’s interpretation improperly allows it to reverse this process and the STC’s determination—reverting a covered offense back to a mere reported offense. A proper reading of the statute is represented in the chart provided by Appellant in his Supplement on page 2.<sup>14</sup>

**E. The government’s reading violates the canon against surplusage and collapses distinct statutory terms.**

If a convening authority may simply relabel the same misconduct under a different punitive article, then, as explained below, “exclusive authority” and “reported offense” have no distinguishable meaning under Article 24a—contrary to the statute’s plain language.

Article 24a employs multiple distinct terms—“reported offense,” “covered offense,” “related offenses,” and “other offenses”—each of which carries independent meaning within the statutory scheme.<sup>15</sup> “Covered offense” is defined

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<sup>12</sup> Appellant’s Supplement at 2 (The proper sequential structure is illustrated in the chart on Appellant’s Supplement.).

<sup>13</sup> 10 U.S.C. § 824a(c)(2)(A) (2024).

<sup>14</sup> Appellant’s Supplement at 2 (Article 24a(c)(1)-(5) Structural Flow).

<sup>15</sup> 10 U.S.C. § 824a(c)(2)(A), (B) (2024).

under Article 1(17), UCMJ while Appellant defines reported offense as “the underlying criminal conduct reported” in his Supplement.<sup>16</sup> Related and known offenses are defined under Article 24a(c)(2)(B)—“related offenses” are “any offense that the special trial counsel determines to be related to the covered offense” while known offenses are “any other offense alleged to have been committed by a person alleged to have committed the covered offense.”<sup>17</sup> These distinct terms create a structure with a deliberate framework: the STC first evaluates reported misconduct, then determines whether it falls within the category of covered offenses, and may thereafter exercise authority over related or known offenses as the statute defines them.

The government’s interpretation collapses these distinct categories into a single inquiry that the final charging decision governs. Under that view, the classification of an offense depends not on the STC’s determination once a reported offense is deferred, but on how trial counsel elects to draft the charge sheet. That reading eliminates the functional distinction between “reported offense” and “covered offense,” and renders the statutory structure, including the exercise of “exclusive authority,” superfluous.<sup>18</sup> In fact, the government collapses the definition

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<sup>16</sup> 10 U.S.C. § 801(17) (defining covered offense); Appellant defines reported offense in Appellant’s Supplement at 24.

<sup>17</sup> 10 U.S.C. § 824a(c)(2)(B) (2024).

<sup>18</sup> *Loughrin v. United States*, 573 U.S. 351, 358 (2014) (“And here, as just stated, overriding that presumption would render §1344’s second clause superfluous.”)

of “covered offense” under “reported offense,” asking this court to read “covered offense” as a smaller subset of “reported offense.”<sup>19</sup>

This Court has repeatedly emphasized that statutory terms must be given independent effect and that courts should avoid constructions that render language meaningless or redundant.<sup>20</sup> Appellant’s interpretation honors that principle by preserving the statute’s sequential framework and giving effect to each term as written. The government’s interpretation does not.

**F. *United States v. McPherson* undermines—rather than supports—the government’s position.**

The government’s reliance on *United States v. McPherson* is misplaced.<sup>21</sup> Properly understood, *McPherson* reinforces Appellant’s position. In that case, this Court emphasized that when statutory language is clear, courts must apply the text as written.<sup>22</sup> The *McPherson* Court further cautioned that Congress—not the courts

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Loughrin’s view thus runs afoul of the ‘cardinal principle’ of interpretation that courts ‘must give effect, if possible, to every clause and word of a statute.’” (internal citations omitted)).

<sup>19</sup> Appellee’s Ans. at 15-19.

<sup>20</sup> *United States v. Sager*, 76 M.J. 158, 161-62 (C.A.A.F. 2017) (“[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.” (internal citations omitted)).

<sup>21</sup> *United States v. McPherson*, 81 M.J. 372, 378-79 (C.A.A.F. 2021).

<sup>22</sup> *Id.* at 378 (discussing that the government’s argument conflicts with the plain language of the “2016 version of Article 43(b)(2)(B), UCMJ”).

through judicial interpretation—must address perceived gaps or inefficiencies in a statutory scheme.<sup>23</sup>

That principle controls here. Article 24a grants the STC exclusive authority to determine whether a reported offense is a covered offense. The government asks this Court to effectively rewrite that provision by allowing convening authorities to circumvent the STC’s determination through post hoc relabeling of the same underlying misconduct under a different punitive article.<sup>24</sup> But as *McPherson* makes clear, this Court may not depart from the statute’s plain language to accommodate such a result.<sup>25</sup>

In *McPherson*, the appellant was convicted at a general court-martial of multiple offenses, including six specifications of indecent acts with a child under Article 134, UCMJ.<sup>26</sup> The alleged acts occurred in 2004, but were not preferred until thirteen years later.<sup>27</sup> The Army Court of Criminal Appeals (ACCA) held that the

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<sup>23</sup> *Id.* (“As the Supreme Court has explained, an ‘unintentional drafting gap’ is insufficient to warrant judicial correction; correction is the province of Congress in cases where an admittedly ‘anomalous’ result ‘may seem odd, but . . . is not absurd.’”) (internal citations omitted).

<sup>24</sup> Appellee Ans. at 11-18.

<sup>25</sup> *McPherson*, 81 M.J. at 374 (As in *McPherson*, “[t]o accept the Government’s argument, we would have to ‘find justification for wrenching from the words of a statute a meaning which literally they [do] not bear in order to escape consequences thought to be absurd or to entail great hardship.’ This we cannot do.” (internal citations omitted)).

<sup>26</sup> *Id.* at 375.

<sup>27</sup> *Id.*

five-year statute of limitations under the 2016 version of Article 43, UCMJ applied in Appellant’s case and dismissed the charges.<sup>28</sup> The government appealed to CAAF, who held that courts must apply the plain meaning of the statute, even if it produces undesirable outcomes.<sup>29</sup> Here CAAF upheld the ACCA’s ruling.<sup>30</sup>

Similarly, the government’s answer seeks to improperly add language to Article 24a: “This Court should hold that ‘reports *of* offenses’ and ‘reported offenses’ are [the same definition].”<sup>31</sup> Like *McPherson*, the government wants to add “of” to make their definition for “reported offenses” work. But “Congress included no such language” in Article 24a.<sup>32</sup> The government continues this word-adding argument, analogizing “‘reported offenses’ or ‘reports *of a* covered offense” to have the same meaning.<sup>33</sup> Here, the government attempts to decouple “reported offenses” into “reports” and “offenses” to make their argument that a “[c]overed offense” is a smaller subset of “reported offenses” work.<sup>34</sup> But, as in *McPherson*, “[t]o accept the Government’s argument, we would have to ‘find justification for wrenching from the words of a statute a meaning which literally they [do] not bear

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 379-80.

<sup>30</sup> *Id.*

<sup>31</sup> Appellee Ans. at 15 (Appellant does not restate the definition for judicial economy).

<sup>32</sup> *McPherson*, 81 M.J. at 386 (internal citations omitted).

<sup>33</sup> Appellee Ans. at 18.

<sup>34</sup> Appellee. Ans. at 15-18.

in order to escape consequences thought to be absurd or to entail great hardship.”<sup>35</sup>

This is something this Court “cannot do.”<sup>36</sup>

The government contests that Appellant’s reading of Article 24a would add “*only*” to “a covered offense” under Article 24a(c)(2)(A).<sup>37</sup> Appellant never makes this argument nor encourages this Court to adopt this reasoning. This is because the STC has the ability to not only determine that something is a “covered offense” under Article 24a(c)(2)(A), but also the ability to “exercise authority over any offense that the special trial counsel determines to be *related*” under Article 24a(c)(2)(B) “*KNOWN AND RELATED OFFENSES.*”<sup>38</sup> Here, the STC has exclusive authority over:

1) covered offenses, *and*

2) related and known offenses when the STC exercises authority over them.<sup>39</sup>

Adding the word “only” would conflict with the exclusive authority for when the STC exercises authority over related and known offenses. Congress was very specific in its wording under Article 24a(c)(2)(A) and intentional with this nuance.

Congress was also very specific in its wording under Article 24a(c)(2)(B)—that provision allows the STC to exercise authority over reported offenses that

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<sup>35</sup> *McPherson*, 81 M.J. at 374 (internal citations omitted).

<sup>36</sup> *Id.*

<sup>37</sup> Appellee Ans. at 22.

<sup>38</sup> 10 U.S.C. § 824a(c)(2)(B) (2024) (emphasis added).

<sup>39</sup> 10 U.S.C. § 824a(C)(2)(A), (C)(3) (2024).

include known and related charges that are not “covered offenses.” This is not exclusive. A convening authority may also exercise authority over known and related offenses—once deferred. However, in Appellant’s case, the STC determined only that the reported offense included a covered offense, “Article 128b, [UCMJ] Domestic Violence.”<sup>40</sup> Thus, since the STC determined the reported offense was a covered offense the convening authority “may not refer charges and specifications” “for trial by special or general court-martial.”<sup>41</sup>

Accordingly, rather than supporting the Government’s argument, *McPherson* confirm that Article 24a must be applied as written—giving full effect to the STC’s exclusive authority once it attaches to the reported offense.

**G. The government mischaracterizes Appellee’s use of *Blockberger* and *Teters*.**

The government incorrectly states that Appellant relies on the *Blockberger* and *Teters* test “to argue a lesser included offense is the ‘same offense’ as the greater offense.”<sup>42</sup> This statement is incorrect—Appellant uses these two cases to show “throughout the UCMJ the term ‘offense’ refers to the underlying conduct of the criminal act that occurs.”<sup>43</sup> The government’s narrow view misunderstands

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<sup>40</sup> App. Ex. IX at 3.

<sup>41</sup> 10 U.S.C. § 824a(c)(5) (2024).

<sup>42</sup> Appellee Ans. at 22 n.6 (internal citations omitted).

<sup>43</sup> Appellant’s Supplement at 24.

Appellant’s argument that exclusive authority attaches to the reported offense—not the charging decisions that can include a lesser included offense.

**H. The government’s legislative history provides context to Article 1(17), UCMJ, but has no bearing on Article 24a outside defining “covered offense.”<sup>44</sup>**

The government’s reliance on legislative history does not undermine Appellant’s position—it reinforces it. The materials the government cites speak only to Congress’s decision to define the scope of “covered offenses” as a limited, enumerated category; they do not address, much less alter, how authority attaches once a “reported offense” is classified.<sup>45</sup> As Appellant explained, Article 24a answers that separate question. Article 24a vests the Special Trial Counsel with exclusive authority to determine whether a reported offense is a covered offense—a determination that attaches at the level of the underlying misconduct, not the eventual charging scheme.<sup>46</sup> Thus, the government’s legislative history at most provides context for what qualifies as a covered offense; it does nothing to support the government’s attempt to reassign authority after the STC has already made a binding determination.

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<sup>44</sup> 10 U.S.C. §§ 1(17), 824a (2024).

<sup>45</sup> Appellee Ans. at 23-26.

<sup>46</sup> 10 U.S.C. § 824a(c)(2)(A) (2024).

**I. Article 24a’s text and structure confirm Appellant’s interpretation.**

For these reasons, the government’s arguments rest on a fundamental misreading of Article 24a and the framework it establishes. The statute’s text, structure, and the very history of the R.C.M. the government invokes all confirm that exclusive authority attaches to the reported misconduct once the STC classifies it, not the government’s later charging decisions once a covered offense is deferred back to a commanding officer.

Accepting the Government’s position would permit precisely what Congress sought to eliminate—command-driven reclassification of the same conduct to evade the STC’s exclusive authority—and would render that authority meaningless. This Court should reject that interpretation, grant review, and restore the statute’s plain and intended operation.

**Conclusion**

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

Respectfully submitted.

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**Certificate of Compliance with Rule 21(b)**

This brief complies with the type-volume limitations of Rule 21 because it does not exceed 4,500 words, and complies with the typeface and style requirements of Rule 37. The brief contains 2,997 words. Undersigned counsel used Times New Roman, 14-point type with one-inch margins on all four sides.

**Certificate of Filing and Service**

I certify that the foregoing was filed electronically with this Court, and that copies were electronically delivered to Deputy Director, Appellate Government Division, and to Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity, on April 14, 2026.

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