IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, *Appellee*, v. **ANN R. MARIN PEREZ** Staff Sergeant (E-5) United States Air Force *Appellant*.	**REPLY BRIEF ON BEHALF OF APPELLANT** Crim. App. Dkt. No. ACM S32771 USCA Dkt. No. 25-0238/AF January 5, 2026

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

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Pursuant to *United States v. Marin Perez*, __ M.J__, No. 25-0238/AF, 2025 CAAF LEXIS 864 (C.A.A.F. Oct. 16, 2025), Staff Sergeant (SSgt) Ann Marin Perez, the Appellant, hereby replies to the Brief on Behalf of the United States, filed on December 29, 2025 [hereinafter U.S. Ans.].

ARGUMENT

The Air Force Court erred when it affirmed SSgt Marin Perez's conviction through exceptions and substitutions after finding that "the military judge erred in accepting [her] plea to the specification as drafted."

The Air Force Court of Criminal Appeals (Air Force Court) found the military judge erred in accepting SSgt Marin Perez's plea because there was a "substantial basis to question whether the value of the property was 'about $21,300.00' as charged." JA at 7. Value is an element, but even if it were not, a specific value was in the specification, meaning SSgt Marin Perez had to knowingly and voluntarily plead guilty to a value of "about $21,300.00." She never did, and she never provided another uncontested factual basis to affirm the plea on a different, capped value. As such, the Air Force Court erred in affirming her conviction by "exceptions and substitutions," something no appellate court has the authority to do under Article 66, Uniform Code of Military Justice (UCMJ). Furthermore, the Air Force Court could not make this plea provident by "narrow[ing] the scope" of the conviction or by affirming a lesser included offense. *See United States v. English*, 79 M.J. 116, 120 (C.A.A.F. 2019) (discussing how "a Court of Criminal Appeals (CCA) may narrow

the scope" of a conviction). Therefore, this Court should set aside the plea and authorize a rehearing.

I. Value is an element of larceny.

The Government places great weight on a confused understanding of what is and is not an element of larceny, in part due to misplaced reliance on dicta from a single case: *United States v. Jones*, 78 M.J. 37 (C.A.A.F. 2018). In *Jones*, a case about whether certain statements were properly admitted, this Court wrote in a footnote that "value is not an element of larceny." *Id*. at 41 n.3.[1] This dicta followed a recitation of the elements, one of which included: "That the property *was of a certain value, or of some value*." *Id*. (emphasis added). The passing reference to this element of larceny is nonbinding dicta that, at minimum, is inartful and at most, is incorrect as applied here.

Value *is* an element of larceny. The text of the statute requires proof "of value." 10 U.S.C. § 921(a). The President has enumerated the elements for larceny, which requires the Government to prove "that the property was of a certain value, or of some value." *MCM*, pt. IV, ¶ 64.b(1)(c) (2019 ed.); *see United States v. Brown*,

[1] *Jones* referenced the version of larceny printed in the 2012 Manual for Courts-Martial. *Manual for Courts-Martial*, *United States* [hereinafter *MCM*] (2012 ed.), pt. IV, ¶¶ 46.b.(1)(a)-(e). The Government cites the 2012 version, which has a different paragraph number from the applicable version of the *MCM* for this case (the 2019 edition). U.S. Ans. at 15 n.3, 40, 41. The elements for larceny applicable to this case are listed at *MCM*, pt. IV, ¶¶ 64.b.(1)(a)-(d) (2019 ed.).

84 M.J. 124, 127 (C.A.A.F. 2024) (quoting *United States v. Wilson*, 76 M.J. 4, 6 (C.A.A.F. 2017)) (giving deference to the President's narrowing construction of a statute when such narrowing does not contradict the express statutory language). And, while only persuasive, the model specification includes a blank space for a specific value to be inputted. *MCM*, pt. IV, ¶ 64.e.(1).

Beyond the plain text of the statute and its elements, this Court has repeatedly held that "[v]alue is an essential element of pleading and proof in the offense of larceny." *United States v. Thompson*, 27 C.M.R. 119, 121 (C.M.A. 1958) (citing *United States v. Steward*, 20 C.M.R. 247, 249 (C.M.A. 1955) (first citing *United States v. Peterson*, 10 C.M.R. 143 (C.M.A. 1953); and then citing *United States v. May*, 14 C.M.R. 121 (C.M.A. 1954))); *see United States v. Barton*, 60 M.J. 62, 65 (C.A.A.F. 2004) (characterizing value as "not a complex legal element"). "It is patent that only something of value can be the subject of larceny and the court-martial must find that the article or thing involved was of at least some value as a predicate for a conviction of larceny." *Peterson*, 10 C.M.R. 143 (cleaned up). Similarly, stealing a "thing of value of the United States," under 18 U.S.C. § 641, which has similar language as 10 U.S.C. § 921, also has "value [as] an element of the offense, and the government must prove that the property stolen had 'value.'" *United States v. Ligon*, 440 F.3d 1182, 1184 (9th Cir. 2006) (citing *United States v. Seaman*, 18 F.3d 649, 650 (9th Cir. 1994)); *Stevens v. United States*, 297 F.2d 664,

665 (10th Cir. 1961) (first citing *United States v. Wilson*, 284 F.2d 407 (4th Cir. 1960); and then citing *Cartwright v. United States*, 146 F.2d 133 (5th Cir. 1944)).

Value as an element for larceny cases operates in the same way as length of absence as an element in unauthorized absence cases does. Length of absence is an element of unauthorized absence. *MCM*, pt. IV, ¶ 10.b.(3)(c). Even though it also delineates severity of punishment, like value, this Court determined it is an element. *United States v. Pinero*, 60 M.J. 31, 34 (C.A.A.F. 2004); *United States v. Francis*, 15 M.J. 424, 427 (C.M.A. 1983) (citing *United States v. Lovell*, 22 C.M.R. 235 (1956)). Such an element indicates both punitive exposure and the "qualitative nature of the offense." *Pinero*, 60 M.J. at 34. And if the length of absence charged is wrong, "a servicemember cannot plead guilty to an offense he did not commit." *Id*. (first citing *United States v. Schwabauer*, 37 M.J. 338 (C.M.A. 1993); and then citing *United States v. Lewis*, 39 C.M.R. 287, 289 (C.M.A. 1969)).

The same goes for larceny. If the value is wrong, the qualitative nature of the offense is wrong, as is the offense overall. Just like the appellant in *Pinero* could not be guilty of a fifty-three-day unauthorized absence, *id*., SSgt Marin Perez cannot be guilty of a $21,300 larceny. *See United States v. Phillippe*, 63 M.J. 307, 311-12 (C.A.A.F. 2006) (finding there were "insufficient facts" to determine a second period of absence and therefore only affirming one period). Without value, it would be impossible to know whether the crime as charged occurred or an aggravating

factor exists. Proving that the property was "of a certain value, or of some value" is an element and is the fundamental underpinning of this case.

This Court's dicta in *Jones* should not be presumed to overrule sub silentio more than sixty years of precedent that value is an essential element of larceny. Nor should *Jones* be interpreted to eliminate Congress's and the President's mandates that larceny requires the wrongful taking of something "of value." 10 U.S.C. § 921(a); *MCM*, pt. IV, ¶ 64.b.(1)(c) (2019 ed.). The Government did not ask this Court to overrule *Thompson* and earlier cases, but rather relied on the dicta in *Jones* to suggest value is not an element where this Court's precedent and the plain text of the *MCM* dictates otherwise. U.S. Ans. at 40-41.

This spin on the elements is both novel and surprising because the Government conceded to the Air Force Court that "value" is an element: "the government fully agrees that 'value is an essential element of pleading and proof in the offense of larceny,' as stated in *Thompson*." U.S. Answer to Assignments of Error at 16, May 9, 2025 (first citing Br. on Behalf of Appellant at 6, Apr. 9, 2025; and then citing *MCM*, pt. IV ¶ 64.b.(1)(b)(3) (2019 ed.)); *see id*. at 12, 15 (conceding the elements of larceny includes proof of value). Between this Court and the Air Force Court, the Government elected to rewrite the elements to eliminate proving "the property was of a certain value, or of some value" to advance a position it forwent at the lower court. *Compare* U.S. Answer to Assignments of Error at 16,

May 9, 2025, *with* U.S. Ans. at 40-41. Far from SSgt Marin Perez inviting error, U.S. Ans. at 22-24,[2] the Government seemingly did just that (at least according to its own argument). As a result, the law of the case should apply. *See United States v. Ward*, 74 M.J. 225, 227 n.3 (C.A.A.F. 2015) (discussing the law of the case doctrine and when it should apply).

II. Specific value became an element because of the Government's charging scheme, making it a material fact that SSgt Marin Perez had to knowingly and voluntarily admit.

Where the Government specifies the property value by charging it in the specification, it is "bound to abide by" that particular value. *English*, 79 M.J. at 120. When the Government "narrow[s] the scope of the charged offense . . . it [is] required to prove *the facts as alleged*." *Id*. (first citing *United States v. Reese*, 76 M.J. 297,

[2] To be sure, the invited error doctrine does not apply to SSgt Marin Perez. At trial, Article 45(a), UCMJ, and Rule for Courts-Marial (R.C.M.) 910(h)(2) are explicitly designed to correct inconsistencies during a plea caused by an accused at any time. When that does not occur, the plea is improvident, not "invited error." *See United States v. Saul*, 86 M.J. 30, 2025 CAAF LEXIS 578, *15 (C.A.A.F. 2025) (setting aside the conviction based on an improvident plea because the appellant introduced inconsistencies that the military judge failed to resolve). On appeal, SSgt Marin Perez has taken only one position: her plea was improvident due to the conflict over value left unresolved at the trial level, so her conviction should be set aside. Br. on Behalf of Appellant at 5-11, Apr. 9, 2025. Consistent with her previous arguments, only a set aside remedies this error because there is no lesser included offense and "swap[ping]" values is inconsistent with *English*. Reply Br. on Behalf of Appellant at 6-8, May 13, 2025. She never asked for the error the Air Force Court made; instead, she specifically argued against the very problem this Court now reviews. *Id*.

300-01 (C.A.A.F. 2017); and then *United States v. Morton*, 69 M.J. 12, 16 (C.A.A.F. 2010)) (emphasis added).

The Government did not have to narrow the offense. *Id*.; *see MCM*, pt. IV, ¶ 64.b(1)(c) (2019 ed.) (requiring only proof of "some" value, not a specific value). But by the Government charging a specific value for the property, SSgt Marin Perez had to admit the fact alleged for her plea to be provident because she was required to provide an "adequate factual basis to support the plea." *United States v. Inabinette*, 66 M.J. 320, 321 (C.A.A.F. 2008).

This is particularly true because SSgt Marin Perez was agreeing to an aggravating fact that the Government would have otherwise been required to prove. "Any fact that, by law, increases the penalty for a crime is an 'element' that must be submitted to the jury and found beyond a reasonable doubt." *Alleyne v. United States*, 570 U.S. 99, 103 (2013) (citing *Apprendi v. New Jersey*, 530 U.S. 466, 483, n.10 (2000)); *see United States v. Castellano*, 72 M.J. 217, 221-22 (C.A.A.F. 2013) (citing *Apprendi*, 530 U.S. at 490) (discussing how aggravating factors designated by the President, even if not elements, "must be pleaded in the specification, instructed upon to the members, and determined by the trier of fact"). Even if value were not an "element," value would still have to be proven because it demarcates the punishment scheme. *MCM*, pt. IV, ¶¶ 64.d.(1)(a), (c). Since value "is a matter which must be determined by the court-martial," it became a matter that SSgt Marin

Perez had to knowingly and voluntarily admit consistent with the charge. *Thompson*, 27 C.M.R. at 121.

Value was critical to this case. Only the total value of the property determined what were the specific items of jewelry SSgt Marin Perez stole. The Government did not charge "six pieces of jewelry" or "two necklaces, three bracelets, and a pair of earrings," but rather implied that is what she stole through charging "about $21,300.00," the total combined value of those specific items. *Compare* JA at 18 (showing the specification only alleged "jewelry"), *with* JA at 25-30 (depicting six pieces of jewelry), *and* JA at 41-46 (appraising those six pieces to a total of $21,300.00). Without the specific value here, SSgt Marin Perez could have pleaded guilty to stealing one earring. *See* JA at 46 (showing the insurance appraisal for one earring would be over $1,000.00, the statutory punishment delineation).

The "identity of the stolen property" was tied to the "fluctuating description of its value" in this case, highlighting the flaw in the Government's argument about the significance and material nature of "value" as a fact or element here. *See* U.S. Ans. at 38 (arguing the "fluctuating description of value" has no influence on double jeopardy). Furthermore, if the jewelry was worth less or untethered from the insurance appraisal, SSgt Marin Perez could have bargained for a different plea agreement. *Cf.* U.S. Ans. at 34 (arguing the plea agreement limited the possible punishment and affected prejudice). This connection between elements may not

happen in every case, but here, it emphasizes how value *is* an element and even if it were not, it is still a material fact that is necessary to plead to the "core elements" of larceny—as the Government describes them. U.S. Ans. at 41.

The specific value charged also distinguishes this case from *Jones*. The appellant in *Jones* was charged with two larcenies: one for property of a value greater than $500.00 and one for property that was less than $500.00. 78 M.J. at 39. At the time, $500.00 was the statutory delineation for punishment. *See MCM*, pt. IV, ¶¶ 46.e.(1)(a), (c) (2012 ed.). The Government did not charge a specific value. *Jones*, 78 M.J. at 39. Thus, it did not have to prove one. *English*, 79 M.J. at 120. The dicta in *Jones* about value not being an element can be logically read to mean just that: because there was no *specific* value charged, the Government did not have to prove the property was "of a certain value," but just "some value."

Value is an element of larceny. But, even if it were not, the specific value charged in this case was a material fact which had to be pleaded to. Either way, this Court should set aside the conviction because no appellate court can save this plea from being improvident.

III. Value cannot be narrowed where there is a conflicting factual predicate. Therefore, the plea must be set aside.

Had this case gone to trial, the Government needed to prove the specific value. If the Government failed to prove the specific value, but proved "some value," a finding of guilt would only be possible through exceptions and substitutions at the

trial level. R.C.M. 918. Alternatively, the offense could have been narrowed on appeal during the legal and factual sufficiency analyses. *English*, 79 M.J. at 120. But due to the nature and circumstances of SSgt Marin Perez's guilty plea, these two options are not available here.

First, because this was a guilty plea, exceptions and substitutions were not a possible solution once an inconsistency arose. Once there was a substantial conflict over a material fact or element of the offense, it was the military judge's responsibility to reconcile that conflict. Article 45(a), UCMJ, 10 U.S.C. § 845; R.C.M. 910(h)(2). The military judge failed to do so. On appeal, rectifying this error through exceptions and substitutions would be improper because doing so exceeds statutory authority. *United States v. Lubasky*, 68 M.J. 260, 264-65 (C.A.A.F. 2010).

Second, narrowing the scope of culpability is similarly unavailable in this case. SSgt Marin Perez had to knowingly and voluntarily plead guilty to the crime as charged and she needed to know how the law related to the facts through the definition of value. *See United States v. Care*, 40 C.M.R. 247, 251 (C.M.A. 1969) ("[A guilty plea] cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts."). She never did.

An appellate court cannot "narrow" an offense, either via *English* or a lesser included offense analysis, where the accused was not advised of the elements and their definitions to give the factual predicate. Here, SSgt Marin Perez attempted to

plead guilty to a larceny valued at $21,300.00. When the value of the property became conflicted, the Air Force Court correctly found that the military judge erred in accepting the plea to the specification as drafted. But rather than setting aside the plea, the Air Force Court hunted for the factual predicate to affirm a "narrower" offense. The only unconflicted fact on value is that the property was "over $1,000.00." But the Air Force Court's "narrowing" of the offense to "over $1,000.00" broadened the specification on its face and changed its qualitative nature.

The Government does not meaningfully contest that the only uncontradicted value in the record is a nebulous "over $1,000.00," but rather claims that there is no evidence the property was *over* $21,300.00. U.S. Ans. at 28, 42. Consequently, the Government asserts, the value is implicitly capped and the Air Force Court did not broaden the specification to something generic. *Id*. at 28. But the Air Force Court did not affirm the conviction with any such limitation on the value. As swapping specific force to general force in *English* broadened the specification, here, swapping the specific value for some more generic value changed the nature of the offense to something SSgt Marin Perez was not advised upon. *English*, 79 M.J. at 120. Moreover, a cap is impossible because the value of the property to date is unknown. There is no way to narrow the charged offense without determining facts that SSgt Marin Perez did not admit.

Pinero provides a helpful comparison on this point. In *Pinero*, this Court determined that it was error for the military judge to accept the plea where the factual basis on the record only supported a nine-day absence, rather than the fifty-three-day period as charged. 60 M.J. at 35. "The failure of the military judge to conclusively establish the date on which [the appellant] was under military control . . . leaves the inception date for any additional authorized absence period unresolved." *Id*. Therefore, this Court determined that "the current state of the record [did] not support a conviction for an absence extending beyond November 1." *Id*. On remand for another issue and sentencing, only this nine-day absence was affirmed. *United States v. Pinero*, No. NMCCA 200101373, 2005 CCA LEXIS 8, at *4 (N-M. Ct. Crim. App. Jan. 14, 2005).

Unauthorized absence is unique in that it operates as charging "on divers occasions" by only charging a single period of absence; multiple absences may be found over one timeframe. *Pinero*, 60 M.J. at 34 (citing *Francis*, 15 M.J. at 429). The practical effect of this is that an appellate court can strike, or "narrow," periods of time that were not proven without expanding the specification in any way. *E.g.*, *id*. at 35; *Phillippe*, 63 M.J. at 311-12. This is possible when there is no factual conflict over a specific length of absence, an "essential element." *Francis*, 15 M.J. at 429 (citing *Lovell*, 22 C.M.R. 235). Value in larceny operates similarly to the length of absence element in authorized absence. If there was an uncontested factual

predicate in the record over value that was captured in the charged offense that did not broaden it, the larceny could be narrowed to that value. But that did not happen in SSgt Marin Perez's case.

In contrast to *Pinero*, here, there is no factual basis to support the element of value because the value remains contested and unknown on this record. The lack of clarity surrounding the actual value of the property is why it is impossible to narrow the specification in this case and why the Air Force Court erred. To narrow the specification to any lower value would require a finding that SSgt Marin Perez knew and understood the meaning of "value" in her case. *See, e.g.*, *Barton*, 60 M.J. at 65 (highlighting how the appellant understood he only had to steal over $100.00 worth of property, the charged value and element in his case). But no one in this case understood what was required to prove value in this case, especially not SSgt Marin Perez.

Unlike in *Barton*, where this Court said "property of a value more than $100 . . . . is not a complex element," what was charged here made the element of value complex. *Id*. The value at issue was not some value over $1,000.00, but a specific value of "about $21,300.00." Unlike in *Barton* where there was no conflict between "over $100.00" being an element versus an aggravating fact, here, there was. SSgt Marin Perez did not factually commit the charged larceny as the appellant in *Pinero* did not commit the charged unauthorized absence. But in *Pinero*, there was

definitive maximum number of days that lowered the quantitative and qualitative severity of the offense, regardless of the maximum and minimum punishments. *See English*, 79 M.J. at 120 (permitting the scope of the offense to be narrowed). Conversely, here, the record does not provide a non-conflicting maximum value.[3] If there had been more facts in the record about the value of the property, the specification may have been narrowed to a range, like in *Pinero* and as the Government suggests. *See* U.S. Ans. at 43 (requesting remand for a range to be affirmed).

Additionally, if the definition of value had been defined for SSgt Marin Perez, then a basis to infer a capped value would exist in the record that was grounded in SSgt Marin Perez understanding how value can be determined. *See Barton*, 60 M.J. at 65 (demonstrating how the appellant understood the element of value for larceny where it was inferred from his understanding of the conspiracy to commit the same larceny). But here, the lack of understanding about value makes it impossible to

[3] The only concrete value other than $21,300.00 that was over $1,000.00 that SSgt Marin Perez provided was $1,650.00 based on the pawn shop receipts. JA at 78-79. But this value is conflicted too. There are three items on the receipts that SSgt Marin Perez did not plead guilty to stealing, lowering the total sell value of stolen items from what SSgt Marin Perez understood ($1,650.00, the total from the combined receipts) to some lesser unknown value. *See* JA at 32 (showing one item on the $850.00 receipt that she did not admit to taking, the "bracelet rope"); JA at 36 (showing two items on the $250.00 receipt that she did not admit to taking, the necklaces). Because the sell prices of the items are not specified, it is impossible to know the total value. Thus, even the value of $1,650.00 conflicts with other facts in the record.

narrow the specification to something SSgt Marin Perez (1) understood and (2) provided the factual predicate for (3) in a nonconflicting manner that (4) does not otherwise broaden the scope of the offense. The only solutions in such a case are to affirm a lesser included offense or set aside the plea. *Morton*, 69 M.J. at 16. But there is no lesser included offense to affirm here.

The Government's argument about affirming a lesser included offense is unpersuasive for two main reasons. U.S. Ans. at 40-44. First, this argument relies on the assumption the Air Force Court did something it said it did not do: affirm a lesser included offense when it stated it affirmed by "exceptions and substitutions" pursuant to *English*. JA at 7. The Air Force did not affirm a lesser included offense, and this Court should not infer otherwise when the lower court did not discuss any aspect of a lesser included offense analysis.

Second, the Government's argument is at war with itself. It relies on the premise that value is not an element. U.S. Ans. at 40-42. But if value is not an element, no element changes between a larceny of $21,300.00 and a larceny of over $1,000. For a lesser included offense to exist, the lesser included offense must be a subset of the elements of the greater offense. *United States v. Medina*, 66 M.J. 21, 25 (C.A.A.F. 2008). An identical offense would not be a subset of the same offense, an argument upon which the Government does not engage.

Ignoring this logical inconsistency, it appears the Government is arguing a lesser included offense exists because every amount under $21,300.00, from $1,000.00 to $21,299.00, is necessarily included in proving $21,300.00. Regardless that this argument on its face acknowledges value is an element or fact that must be proven or admitted, the Government confuses the issues in this case. Sufficiency—as in whether the Government proved some value over $1,000.00 in trying to prove $21,300.00—is not the issue. Rather, providence is the correct analysis. *United States v. Faircloth*, 45 M.J. 172, 174 (C.A.A.F. 1996). Whether SSgt Marin Perez knowingly and voluntarily pleaded guilty by understanding how the law relates to the facts in a way the Air Force Court could affirm is the crux of this case.

Here, affirming a lower value or a range as a lesser included offense, as the Government suggests, does not work because the factual predicate for affirming a value is unknown. *See* U.S. Ans. at 43 (requesting remand for a range to be affirmed if error occurred). The Air Force Court appeared to recognize as much by affirming a broad, nebulous value that SSgt Marin Perez ostensibly admitted to. JA at 7. But a more specific value, like "over $1,000.00 but under $21,300.00," still fails for the same reasons as "narrowing" fails: SSgt Marin Perez did not know what she was pleading guilty to. She walked out of her court-martial and into confinement with the understanding she stole $21,300.00 worth of jewelry. That was how she was advised. *See* JA at 75-76, 84-85 (covering the elements and the value of the

property). But she did not steal property of that value. *See* JA at 50 (showing the value of the property was at least doubled for an insurance appraisal). And she was never advised on how value could be determined. *See MCM*, pt. IV, ¶ 64.c.(1)(g)(iii) (defining the value of the property as the legitimate market value); *see also* Dep't of the Army, Pam. 27-9, Legal Services, Military Judges' Benchbook ch. 7, § 7-16 (July 29, 2025)[4] (providing instructions for determining value consistent with the *MCM*). The value of the property is conflicting on the record, and SSgt Marin Perez was induced to plead guilty under a misunderstanding of the offense.

As this Court has recognized, "there may be subtle pressures inherent to the military environment that may influence the manner in which servicemembers exercise (and waive) their rights." *Pinero*, 60 M.J. at 33. The erroneously charged value of the property infected this whole proceeding, from the decision to plead guilty, to negotiating the plea, to the military judge's failure to reconcile the conflict over the value. SSgt Marin Perez waived her rights believing she committed a more severe crime than she did because value dictates more than punitive exposure but the "*qualitative* nature of the offense." *Id*. at 34 (emphasis added). And there is no factual basis in the record for value that is without conflict that "narrows" the offense, as in *English*, or that is a lesser included offense.

[4] Available at https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN44424-PAM_27-9-000-WEB-1.pdf.

A rehearing is not a windfall, as the Government contends, but a re-do of this entire proceeding that was flawed from the start. U.S. Ans. at 3, 16, 43. The only solution in this case is to set aside the findings and the sentence and authorize a hearing. Otherwise, the Government receives a windfall for its failure to charge this case properly in the first place and for inducing a plea on a crime that SSgt Marin Perez did not understand or knowingly plead guilty to.

IV. All the lower court opinions cited by the Government show that the Air Force Court exceeded its statutory authority here.

United States v. Roberts and *United States v. Morrow* both support SSgt Marin Perez's position that the Air Force Court exceeded its authority by broadening the offense. No. ARMY 20130609, 2020 CCA LEXIS 177 (A. Ct. Crim. App. May 27, 2020); No. ACM 39634, 2020 CCA LEXIS 361 (A.F. Ct. Crim. App. Oct. 1, 2020). In both cases, the CCAs declined to broaden the scope of the offense to make the convictions legally and factually sufficient. *Roberts*, No. ARMY 20130609, 2020 CCA LEXIS 177, at *3; *Morrow*, No. ACM 39634, 2020 CCA LEXIS 361, at *34-36. As the Air Force Court in *Morrow* declined to substitute a specific building for an entire Air Force Base, here, it should have declined to substitute the specific value of "about $21,300.00" for "over $1,000.00" for the same reasons. *Morrow*, No. ACM 39634, 2020 CCA LEXIS 361, at *36. Both substitutions make a particular fact possible (i.e., $21,300.00 and an exact building on the installation), while also broadening the scope to support a different fact in the record (i.e., any value over

$1,000.00 and any area on the installation). This kind of substitution is not permissible under *English*, which the Air Force Court recognized in *Morrow*, but not here. *Id*. The Air Force Court exceeded its authority by substituting "over $21,300.00" for "over $1,000.00."

United States v. Murphy and *United States v. Brown* show that narrowing, as described in *English*, means striking facts in a specification (or shortening their ranges) to limit the offense's scope. No. ARMY 20230517, 2025 CCA LEXIS 339 (A. Ct. Crim. App. July 22, 2025); No. ARMY 20160139, 2019 CCA LEXIS 514, (A. Ct. Crim. App. Dec. 23, 2019). In both cases, the CCA eliminated unproven factual matters charged in the specification without broadening the offense. *Murphy*, No. ARMY 20230517, 2025 CCA LEXIS 339, at *18-19; *Brown*, No. ARMY 20160139, 2019 CCA LEXIS 514, at *3-5. Eliminating portions of a specification in this manner is consistent with the cases this Court cited in *English*, both of which the Government cited. U.S. Ans. at 18 (first citing *United States v. Rodriguez*, 66 M.J. 201, 203 (C.A.A.F. 2008); and then citing *United States v. Piolunek*, 74 M.J. 107, 112 (C.A.A.F. 2015)). Yet the Government claims *English* is not so tailored in that it permits substitutions for other facts after striking or narrowing occurs. U.S. Ans. at 25. But it is.

The Government provided no precedent, other than *United States v. Hale* and *United States v. Haygood*, showing substituting facts is permissible. U.S. Ans. at 25-

26 (citing 77 M.J. 598, 607 (A.F. Ct. Crim. App. 2018), *aff'd*, 78 M.J. 268 (C.A.A.F. 2019)); *id*. at 22, (citing No. ARMY 20210530, 2022 CCA LEXIS 585, at *4-5 (A. Ct. Crim. App. Oct. 7, 2022). But *Hale* predates *English* and found its authority to use "substitutions" from R.C.M. 918, thereby contradicting *Lubasky*. Br. on Behalf of Appellant at 28-29, Nov. 21, 2025. Additionally, *Hale* was about narrowing the charged date range by two days to conform with the court-martial's jurisdiction, apparently correcting a scrivener's error that occurred while amending the charge sheet following initial disposition of charges. *Hale*, 77 M.J. at 606-07.

Similarly, *Haygood* was also about correcting scrivener's errors, as was *United States v. Taylor*. U.S. Ans. at 21 (citing No. ACM S32574, 2019 CCA LEXIS 345, at *2-4 (A.F. Ct. Crim. App. Aug. 29, 2019)). The Government describes both cases as examples of "substituting" consistent with *English* and that *Haygood* permits an offense to be broadened from the specific to the general, but neither case stands these propositions. U.S. Ans. at 21-22, 28-29. Both cases were about correcting scrivener's errors from amended charge sheets that the appellants intended to plead guilty to. *Haygood*, No. ARMY 20210530, 2022 CCA LEXIS 585, at *3-5 (correcting a missing amendment about the name of the stolen lasers, from "MAWL-CI" to "MAWL-XI"); *Taylor*, No. ACM S32574, 2019 CCA LEXIS 345, at *2-4 (correcting the fictional date of "31 September"). In both *Care* inquires, the appellants admitted every fact constituting the crime except for the fact associated

with the scrivener's error. For both cases, fixing the scrivener's error to be consistent with the pleas had no impact on the pleas nor was either correction a "substitution" that made any meaningful difference to the case. This is especially true in *Haygood* where the specification was not broadened to "*general* language," as the Government contends, but to reference the previously amended, correct, specific name of the stolen property referenced earlier in the same specification. *Haygood*, No. ARMY 20210530, 2022 CCA LEXIS 585, at *5.

Fixing these types of scrivener's errors do not provide support that "substitutions" are lawful in guilty pleas where there is an actual conflict over an element. Instead, they reveal the impact of Article 45(c), UCMJ. 10 U.S.C. § 845(c). In *Haygood* and *Taylor*, these inconsistencies should have prompted discussion from the military judge, consistent with Article 45(a), UCMJ, and R.C.M. 910. But neither did, and the inconsistencies remained on appeal. Article 45(c), UCMJ, dictates that failure to comply with Article 45(a), UCMJ, is harmless error if there is no material prejudice to the substantial rights of the accused. In *Haygood* and *Taylor*, the inconsistencies driven by these scrivener's errors did not impact the providence of the pleas; they were harmless. But here, there is much more than a scrivener's error.

Here, there is a plethora of evidence causing a conflict over the value of the property. The material prejudice to the substantial rights of SSgt Marin Perez is the material conflict over an element or material fact, which did not exist in *Haygood* or

Taylor. *Taylor* and *Haygood* used "substitutions" to correct inconsistencies between the charge sheet and the *Care*. In contrast, here, a real conflict over a critical fact came from SSgt Marin Perez herself, it affected an element or material fact, it was never reconciled, it cast substantial doubt on her understanding of the offense, and it affected the severity of the offense. Thus, the Government has no support for its argument that substitutions "routinely" happen at the appellate level in a manner consistent with what occurred here.

Finally, this case is about providence, not sufficiency of the evidence. Many of the cases the Government cites are litigated cases. U.S. Ans. at 20-22, 25. Narrowing a specification to what was proven in the record, so long as the specification is not expanded to encompass a theory not presented to the factfinder, is much easier in a litigated case where the record is not limited. But in a guilty plea, the entire focus is on what an appellant provides, meaning the world of facts is much smaller. *See United States v. Jordan*, 57 M.J. 236, 238-39 (C.A.A.F. 2002) (acknowledging the accused may choose to limit the nature of information that would otherwise be disclosed if the case was litigated). If, as here, an appellant does not provide the factual predicate to affirm the offense, it does not matter if the Air Force Court thinks the jewelry is "substantially more than $1,000.00," based on its evaluation of the record. SSgt Marin Perez never agreed to that fact in any way that was unconflicted. After all, "[c]ommon sense, however useful as it is in approaching

a variety of legal issues, is not a substitute for the requirement that the record must contain the factual basis for a guilty plea." *Barton*, 60 M.J. at 67 n.3 (C.A.A.F. 2004) (Erdmann, J., dissenting). This is so because Article 45, UCMJ, and *Care* require the appellant to provide a factual basis for the plea and, if a conflict arises, the military judge must reconcile it or reject the plea. With all these cases it cites, the Government has provided no support to show the Air Force Court acted within its authority under such circumstances.

CONCLUSION

The Air Force Court erred by employing "exceptions and substitutions" in a way that expanded an essential element of larceny (value) from "about $21,300" to any amount "over $1,000.00," convinced that under "any scenario" in SSgt Marin Perez's guilty plea, the value of the stolen jewelry was "substantially in excess of $1,000.00." *See* JA at 7 (detailing the Air Force Court's decision and analysis). But every facet of this analysis is incorrect, from the attempt to narrow the specification to the factual underpinning. As the Government noted, "Critically, this Court must not lose sight of that fact that this is a guilty plea case." U.S. Ans. at 39. The focus is not on sufficiency, but whether SSgt Marin Perez "knowingly and voluntarily admit[ted] to all elements of a formal criminal charge." *Pinero*, 60 M.J. at 33. Here, she did not and could not where the value of the property remains unknown, unadvised, and contested to date. A substantial conflict between the plea and SSgt

Marin Perez's statements and other evidence persists, providing a basis to set the plea aside. *United States v. Hines*, 73 M.J. 119, 124 (C.A.A.F. 2014). This Court should do so and authorize a rehearing because there is no way to find her plea provident through narrowing the specification or by affirming a lesser included offense.

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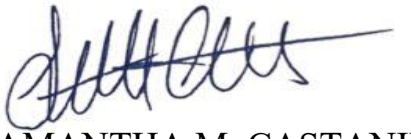

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I certify that an electronic copy of the foregoing was electronically sent to the Court and served on the Air Force Government Trial and Appellate Operations Division at AF.JAJG.AFLOA.Filng.Workflow@us.af.mil on January 5, 2026.

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