

JORDAN L. GRANDE, Capt, USAF
Appellate Defense Counsel

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 3 March 2025.

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JORDAN L. GRANDE, Capt, USAF
Appellate Defense Counsel

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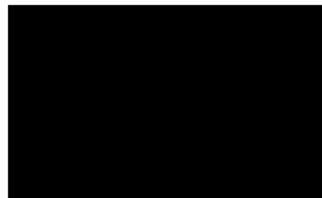
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Major (O-4)	)	Before Panel No. 1
FRANCISCO TORRES	)	
United States Air Force	)	No. ACM 40758
<i>Appellant.</i>	)	
	)	4 March 2025

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time (First) to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

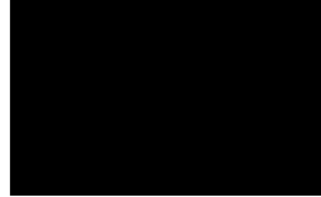


KATE E. LEE, Maj, USAF
Appellate Government Counsel



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Appellate Defense Division on 4 March 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

UNITED STATES	)	No. ACM 40758
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Francisco J. TORRES	)	
Major (O-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 1

On 3 March 2025, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant's assignments of error. The Government generally opposed the motion.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure.

Accordingly, it is by the court on this 5th day of March, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **14 May 2025**.

Each request for an enlargement of time will be considered on its merits. Appellant's counsel is advised that any subsequent motions for enlargement of time shall include, in addition to matters required under this court's Rules of Practice and Procedure, statements as to: (1) whether Appellant was advised of Appellant's right to a timely appeal, (2) whether Appellant was provided an update of the status of counsel's progress on Appellant's case, (3) whether Appellant was advised of the request for an enlargement of time, and (4) whether Appellant agrees with the request for an enlargement of time.



FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

UNITED STATES,	)	APPELLANT’S MOTION
<i>Appellee,</i>	)	FOR ENLARGEMENT
	)	OF TIME (SECOND)
v.	)	
	)	Before Panel No. 1
Major (O-4)	)	
FRANCISCO J. TORRES,	)	No. ACM 40758
United States Air Force,	)	
<i>Appellant.</i>	)	5 May 2025

Pursuant to Rule 23.3(m)(1) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **13 June 2025**.

Appellant's case was docketed with this Court on 14 January 2025. From the date of docketing to the present date, 111 days have elapsed. On the date requested, 150 days will have elapsed since docketing.

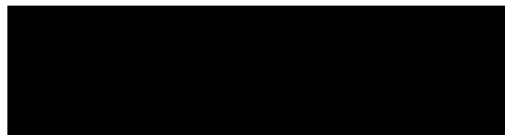
On 16 July 2024, Appellant was tried by a General Court-Martial composed of a military judge at Joint base McGuire-Dix-Lakehurst, New Jersey. R. at 20, 112. Appellant was convicted consistent with his pleas and pursuant to a plea agreement, of One Charge with One Specification of attempt to commit pandering, in violation of Article 80, Uniform Code of Military Justice (UCMJ); and One Charge with Three Specifications of conduct unbecoming an officer, in violation of Article 134, UCMJ. R. at 27, 85, 102; Appellate Ex. III. The military judge sentenced Appellant to be reprimanded, confined for a period of thirty days, and dismissed from the service. R. at 112.

The record of trial consists of one e-ROT with two volumes, four Prosecution Exhibits, one Court Exhibit, five Defense Exhibits, and five Appellate Exhibits; the transcript is 112 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of this case.

Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of his right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel



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[REDACTED]

JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel

[REDACTED]

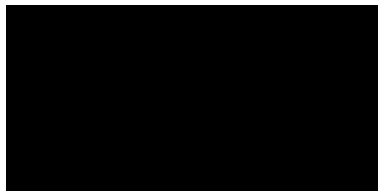
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
Major (O-4)	)	Before Panel No. 1
FRANCISCO J. TORRES,	)	No. ACM 40758
United States Air Force,	)	
<i>Appellant.</i>	)	7 May 2025
	)	

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



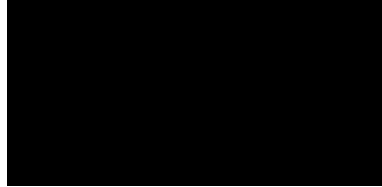
j, USAF

Appellate Government Counsel



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Appellate Defense Division on 7 May 2025.



JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee,

V.

Major (O-4)

FRANCISCO J. TORRES,

United States Air Force,

Appellant.

) APPELLANT'S MOTION

) **FOR ENLARGEMENT**

) OF TIME (THIRD)

)

) Before Panel No. 1

)

) No. ACM 40758

)

) 3 June 2025

**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES
AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(1) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **13 July 2025**.

Appellant's case was docketed with this Court on 14 January 2025. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed since docketing.

On 16 July 2024, Appellant was tried by a General Court-Martial composed of a military judge at Joint base McGuire-Dix-Lakehurst, New Jersey. R. at 20, 112. Appellant was convicted consistent with his pleas and pursuant to a plea agreement, of One Charge with One Specification of attempt to commit pandering, in violation of Article 80, Uniform Code of Military Justice (UCMJ); and One Charge with Three Specifications of conduct unbecoming an officer, in violation of Article 134, UCMJ. R. at 27, 85, 102; Appellate Ex. III. The military judge sentenced Appellant to be reprimanded, confined for a period of thirty days, and dismissed from the service. R. at 112.

The record of trial consists of one e-ROT with two volumes, four Prosecution Exhibits, one Court Exhibit, five Defense Exhibits, and five Appellate Exhibits; the transcript is 112 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of this case.

Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of his right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 3 June 2025.

[REDACTED]

JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel

[REDACTED]

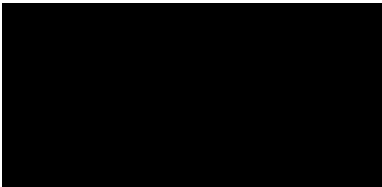
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
Major (O-4)	)	Before Panel No. 1
FRANCISCO J. TORRES,	)	No. ACM 40758
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	3 June 2025
	)	

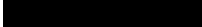
**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

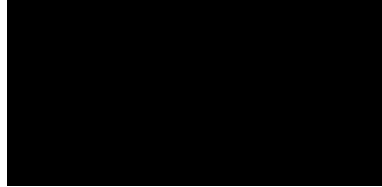

j, USAF
Appellate Government Counsel





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Appellate Defense Division on 3 June 2025.



JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee,

V.

Major (O-4)

FRANCISCO J. TORRES,

United States Air Force,

Appellant.

) APPELLANT'S MOTION

) **FOR ENLARGEMENT**

) OF TIME (FOURTH)

)

) Before Panel No. 1

)

) No. ACM 40758

)

) 6 July 2025

**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES
AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(1) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **12 August 2025**.

Appellant's case was docketed with this Court on 14 January 2025. From the date of docketing to the present date, 173 days have elapsed. On the date requested, 210 days will have elapsed since docketing.

On 16 July 2024, Appellant was tried by a General Court-Martial composed of a military judge at Joint base McGuire-Dix-Lakehurst, New Jersey. R. at 20, 112. Appellant was convicted consistent with his pleas and pursuant to a plea agreement, of One Charge with One Specification of attempt to commit pandering, in violation of Article 80, Uniform Code of Military Justice (UCMJ); and One Charge with Three Specifications of conduct unbecoming an officer, in violation of Article 134, UCMJ. R. at 27, 85, 102; Appellate Ex. III. The military judge sentenced Appellant to be reprimanded, confined for a period of thirty days, and dismissed from the service. R. at 112.

The record of trial consists of one e-ROT with two volumes, four Prosecution Exhibits, one Court Exhibit, five Defense Exhibits, and five Appellate Exhibits; the transcript is 112 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of this case.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information: Maj Grande is currently assigned 32 cases; 26 cases are pending before this Court (17 cases are pending AOE). Ten cases have priority over the present case:

1. *United States v. Hedgepeth*, ACM No. 40681– The record of trial consists of one ROT with four volumes, three Prosecution Exhibits, one Court Exhibit, three Defense Exhibits, and five Appellate Exhibits; the transcript is 115 pages long. Undersigned counsel is currently drafting the brief in this case and does not anticipate asking for an additional EOT in this case.
2. *United States v. Rockrich*, ACM No. 40666 – The record of trial consists of two Prosecution Exhibits, one Defense Exhibit, and sixteen Appellate Exhibits; the transcript is 96 pages long. Appellant is currently confined. Undersigned counsel has completed her review of the record in this case.
3. *United States v. Hilson*, ACM No. 24063 – The record of trial consists of one E-ROT with two volumes. It contains two Prosecution Exhibits, one Court Exhibit, eight Defense Exhibits, and four Appellate Exhibits. The transcript is 156 pages long. Undersigned counsel has completed her review of the record in this case.
4. *United States v. Fundis*, ACM No. 40689- The record of trial consists of six volumes, with eight Prosecution Exhibits, two Court Exhibits, eighteen Defense Exhibits, and

- eighteen Appellate Exhibits. The transcript is 377 pages long. Undersigned counsel has not yet completed her review of the record in this case.
5. *United States v. Reese*, ACM No. 24069 – The record of trial consists of one E-ROT containing two volumes, with twelve Prosecution Exhibits, four Court Exhibits, fourteen Defense Exhibits, and fifty-six Appellate Exhibits. The transcript is 1310 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of the record for this case.
 6. *United States v. Castillo*, ACM No. 40705- The record of trial consists of seven volumes, with five Prosecution Exhibits, one Court Exhibit, one Defense Exhibit, and thirty-four Appellate Exhibits. The transcript is 470 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of the record for this case.
 7. *United States v. Marcoux*, ACM No. 40708- The record of trial consists of twelve volumes, with twenty-nine Prosecution Exhibits, one Court Exhibit, seventeen Defense Exhibits, and eighty-three Appellate Exhibits. The transcript is 1345 pages long. Appellant is currently confined. Undersigned counsel has not yet completed her review of the record for this case.
 8. *United States v. Heilig*, ACM No. 40740 - The record of trial consists of one e-ROT with six volumes, three Prosecution Exhibits, eight Defense Exhibits, and six Appellate Exhibits; the transcript is 135 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of this case.
 9. *United States v. Cunningham*, ACM No. 40746 - The record of trial consists of ten volumes with twelve Prosecution Exhibits, one Court Exhibit, seven Defense Exhibits,

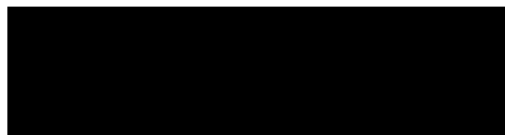
and eighty-five Appellate Exhibits. The transcript is 1,249 pages long. Appellant is currently confined. Undersigned counsel has not yet completed her review of the record for this case.

10. *United States v. See*, ACM No. S32805 - The record of trial consists of one e-ROT with two volumes, three Prosecution Exhibits, two Court Exhibits, six Defense Exhibits, and four Appellate Exhibits; the transcript is 341 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of this case.

Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of his right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel



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[REDACTED]

JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
Major (O-4)	)	Before Panel No. 1
FRANCISCO J. TORRES,	)	No. ACM 40758
United States Air Force,	)	
<i>Appellant.</i>	)	8 July 2025
	)	

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

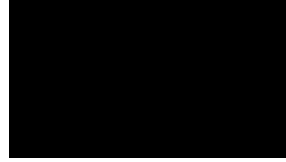
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

[Redacted Signature]

KATE E. LEE, Maj, USAF
Appellate Government Counsel
[Redacted Address Line 1]
[Redacted Address Line 2]
[Redacted Address Line 3]
[Redacted Address Line 4]

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Appellate Defense Division on 8 July 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



UNITED STATES,	)	APPELLANT’S MOTION
<i>Appellee,</i>	)	FOR ENLARGEMENT
	)	OF TIME (FIFTH)
v.	)	
	)	Before Panel No. 1
Major (O-4)	)	
FRANCISCO J. TORRES,	)	No. ACM 40758
United States Air Force,	)	
<i>Appellant.</i>	)	3 August 2025

Pursuant to Rule 23.3(m)(1), (4), and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **11 September 2025**.

Appellant's case was docketed with this Court on 14 January 2025. From the date of docketing to the present date, 201 days have elapsed. On the date requested, 240 days will have elapsed since docketing.

On 16 July 2024, Appellant was tried by a General Court-Martial composed of a military judge at Joint base McGuire-Dix-Lakehurst, New Jersey. R. at 20, 112. Appellant was convicted consistent with his pleas and pursuant to a plea agreement, of One Charge with One Specification of attempt to commit pandering, in violation of Article 80, Uniform Code of Military Justice (UCMJ); and One Charge with Three Specifications of conduct unbecoming an officer, in violation of Article 134, UCMJ. R. at 27, 85, 102; Appellate Ex. III. The military judge sentenced Appellant to be reprimanded, confined for a period of thirty days, and dismissed from the service. R. at 112.

The record of trial consists of one e-ROT with two volumes, four Prosecution Exhibits, one Court Exhibit, five Defense Exhibits, and five Appellate Exhibits; the transcript is 112 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of this case.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information: Maj Grande is currently assigned 31 cases; 23 cases are pending before this Court (18 cases are pending AOE). Seven cases have priority over the present case:

1. *United States v. Fundis*, ACM No. 40689- The record of trial consists of six volumes, with eight Prosecution Exhibits, two Court Exhibits, eighteen Defense Exhibits, and eighteen Appellate Exhibits. The transcript is 377 pages long. Undersigned counsel has completed her review of the record in this case. Civilian counsel will draft this AOE.
2. *United States v. Reese*, ACM No. 24069 – The record of trial consists of one E-ROT containing two volumes, with twelve Prosecution Exhibits, four Court Exhibits, fourteen Defense Exhibits, and fifty-six Appellate Exhibits. The transcript is 1310 pages long. Appellant is not currently confined. Undersigned counsel is currently reviewing the record for this case.
3. *United States v. Castillo*, ACM No. 40705- The record of trial consists of seven volumes, with five Prosecution Exhibits, one Court Exhibit, one Defense Exhibit, and thirty-four Appellate Exhibits. The transcript is 470 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of the record for this case.

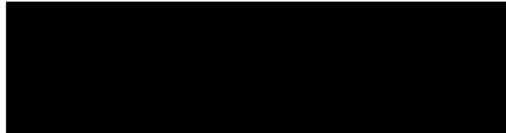
4. *United States v. Marcoux*, ACM No. 40708- The record of trial consists of twelve volumes, with twenty-nine Prosecution Exhibits, one Court Exhibit, seventeen Defense Exhibits, and eighty-three Appellate Exhibits. The transcript is 1345 pages long. Appellant is currently confined. Undersigned counsel has not yet completed her review of the record for this case.
5. *United States v. Heilig*, ACM No. 40740 - The record of trial consists of one e-ROT with six volumes, three Prosecution Exhibits, eight Defense Exhibits, and six Appellate Exhibits; the transcript is 135 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of this case.
6. *United States v. Cunningham*, ACM No. 40746 - The record of trial consists of ten volumes with twelve Prosecution Exhibits, one Court Exhibit, seven Defense Exhibits, and eighty-five Appellate Exhibits. The transcript is 1,249 pages long. Appellant is currently confined. Undersigned counsel has not yet completed her review of the record for this case.
7. *United States v. See*, ACM No. S32805 - The record of trial consists of one e-ROT with two volumes, three Prosecution Exhibits, two Court Exhibits, six Defense Exhibits, and four Appellate Exhibits; the transcript is 341 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of this case.

Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of his right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose

a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

A solid black rectangular redaction box covering the signature of the Appellate Defense Counsel.

JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel

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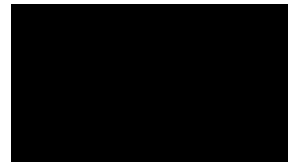
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
Major (O-4)	)	Before Panel No. 1
FRANCISCO J. TORRES,	)	No. ACM 40758
United States Air Force,	)	
<i>Appellant.</i>	)	5 August 2025
	)	

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

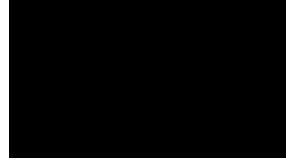


KATE E. LEE, Maj, USAF
Appellate Government Counsel



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Appellate Defense Division on 5 August 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



UNITED STATES,	)	APPELLANT’S MOTION
<i>Appellee,</i>	)	FOR ENLARGEMENT
	)	OF TIME (SIXTH)
v.	)	
	)	Before Panel No. 1
Major (O-4)	)	
FRANCISCO J. TORRES,	)	No. ACM 40758
United States Air Force,	)	
<i>Appellant.</i>	)	3 September 2025

Pursuant to Rule 23.3(m)(1), (4), and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **11 October 2025**.

Appellant's case was docketed with this Court on 14 January 2025. From the date of docketing to the present date, 232 days have elapsed. On the date requested, 270 days will have elapsed since docketing.

On 16 July 2024, Appellant was tried by a General Court-Martial composed of a military judge at Joint base McGuire-Dix-Lakehurst, New Jersey. R. at 20, 112. Appellant was convicted consistent with his pleas and pursuant to a plea agreement, of One Charge with One Specification of attempt to commit pandering, in violation of Article 80, Uniform Code of Military Justice (UCMJ); and One Charge with Three Specifications of conduct unbecoming an officer, in violation of Article 134, UCMJ. R. at 27, 85, 102; Appellate Ex. III. The military judge sentenced Appellant to be reprimanded, confined for a period of thirty days, and dismissed from the service. R. at 112.

The record of trial consists of one e-ROT with two volumes, four Prosecution Exhibits, one Court Exhibit, five Defense Exhibits, and five Appellate Exhibits; the transcript is 112 pages long. Appellant is not currently confined. Undersigned counsel has completed her review of this case.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information: Maj Grande is currently assigned 29 cases; 22 cases are pending before this Court (20 cases are pending AOE). Seven cases have priority over the present case:

1. *United States v. Fundis*, ACM No. 40689- The record of trial consists of six volumes, with eight Prosecution Exhibits, two Court Exhibits, eighteen Defense Exhibits, and eighteen Appellate Exhibits. The transcript is 377 pages long. Undersigned counsel has completed her review of the record in this case. Civilian counsel is drafting this AOE.
2. *United States v. Reese*, ACM No. 24069 – The record of trial consists of one E-ROT containing two volumes, with twelve Prosecution Exhibits, four Court Exhibits, fourteen Defense Exhibits, and fifty-six Appellate Exhibits. The transcript is 1310 pages long. Appellant is not currently confined. The AOE for this case is currently being reviewed and will be filed by 6 September 2025.
3. *United States v. Castillo*, ACM No. 40705- The record of trial consists of seven volumes, with five Prosecution Exhibits, one Court Exhibit, one Defense Exhibit, and thirty-four Appellate Exhibits. The transcript is 470 pages long. Appellant is not currently confined. Undersigned counsel is drafting the AOE in this case.
4. *United States v. Marcoux*, ACM No. 40708- The record of trial consists of twelve volumes, with twenty-nine Prosecution Exhibits, one Court Exhibit, seventeen Defense

Exhibits, and eighty-three Appellate Exhibits. The transcript is 1345 pages long. Appellant is currently confined. Undersigned counsel is currently reviewing the record in this case.

5. *United States v. Heilig*, ACM No. 40740 - The record of trial consists of one e-ROT with six volumes, three Prosecution Exhibits, eight Defense Exhibits, and six Appellate Exhibits; the transcript is 135 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of this case.
6. *United States v. Cunningham*, ACM No. 40746 - The record of trial consists of ten volumes with twelve Prosecution Exhibits, one Court Exhibit, seven Defense Exhibits, and eighty-five Appellate Exhibits. The transcript is 1,249 pages long. Appellant is currently confined. Undersigned counsel has not yet completed her review of the record for this case.
7. *United States v. See*, ACM No. S32805 - The record of trial consists of one e-ROT with two volumes, three Prosecution Exhibits, two Court Exhibits, six Defense Exhibits, and four Appellate Exhibits; the transcript is 341 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of this case.

Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of his right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

A large black rectangular redaction box covering the signature of the Appellate Defense Counsel.

JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel

A large black rectangular redaction box covering the contact information of the Appellate Defense Counsel.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 3 September 2025.

[REDACTED]

JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
Major (O-4)	)	Before Panel No. 1
FRANCISCO J. TORRES,	)	No. ACM 40758
United States Air Force,	)	
<i>Appellant.</i>	)	4 September 2025
	)	

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 4 September 2025.

[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee,

V.

Major (O-4)

FRANCISCO J. TORRES,

United States Air Force,

Appellant.

) APPELLANT'S MOTION

) **FOR ENLARGEMENT**

) OF TIME (SEVENTH)

)

) Before Panel No. 1

)

) No. ACM 40758

)

) 4 October 2025

**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES
AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(1), (4), and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **10 November 2025**.

Appellant's case was docketed with this Court on 14 January 2025. From the date of docketing to the present date, 263 days have elapsed. On the date requested, 300 days will have elapsed since docketing.

On 16 July 2024, Appellant was tried by a General Court-Martial composed of a military judge at Joint base McGuire-Dix-Lakehurst, New Jersey. R. at 20, 112. Appellant was convicted consistent with his pleas and pursuant to a plea agreement, of One Charge with One Specification of attempt to commit pandering, in violation of Article 80, Uniform Code of Military Justice (UCMJ); and One Charge with Three Specifications of conduct unbecoming an officer, in violation of Article 134, UCMJ. R. at 27, 85, 102; Appellate Ex. III. The military judge sentenced Appellant to be reprimanded, confined for a period of thirty days, and dismissed from the service. R. at 112.

The record of trial consists of one e-ROT with two volumes, four Prosecution Exhibits, one Court Exhibit, five Defense Exhibits, and five Appellate Exhibits; the transcript is 112 pages long. Appellant is not currently confined. Undersigned counsel has completed her review of this case.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information: Maj Grande is currently assigned 29 cases; 22 cases are pending before this Court (17 cases are pending AOE). Four cases have priority over the present case:

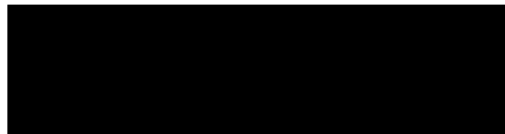
1. *United States v. Marcoux*, ACM No. 40708- The record of trial consists of twelve volumes, with twenty-nine Prosecution Exhibits, one Court Exhibit, seventeen Defense Exhibits, and eighty-three Appellate Exhibits. The transcript is 1345 pages long. Appellant is currently confined. Undersigned counsel is currently reviewing the record in this case.
2. *United States v. Heilig*, ACM No. 40740 - The record of trial consists of one e-ROT with six volumes, three Prosecution Exhibits, eight Defense Exhibits, and six Appellate Exhibits; the transcript is 135 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of this case.
3. *United States v. Cunningham*, ACM No. 40746 - The record of trial consists of ten volumes with twelve Prosecution Exhibits, one Court Exhibit, seven Defense Exhibits, and eighty-five Appellate Exhibits. The transcript is 1,249 pages long. Appellant is currently confined. Undersigned counsel has not yet completed her review of the record for this case.
4. *United States v. See*, ACM No. S32805 - The record of trial consists of one e-ROT with two volumes, three Prosecution Exhibits, two Court Exhibits, six Defense Exhibits, and

four Appellate Exhibits; the transcript is 341 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of this case.

Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of his right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

A large black rectangular redaction box covering the signature of the undersigned counsel.

JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel

A large black rectangular redaction box covering the contact information of the undersigned counsel.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 4 October 2025.

A large black rectangular redaction box covering the signature of the certifier.

JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel

A large black rectangular redaction box covering the contact information of the certifier.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 1
Major (O-4)	)	
FRANCISCO J. TORRES,	)	No. ACM 40758
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	6 October 2025
	)	

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 300 days in length. Appellant's nearly year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 8 months combined for the United States and this Court to perform their separate statutory responsibilities.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 6 October 2025.

[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee,

v.

Major (O-4)

FRANCISCO J. TORRES,

United States Air Force,

Appellant.

) **APPELLANT’S MOTION**

) **FOR ENLARGEMENT**

) **OF TIME (EIGHTH)**

)

) Before Panel No. 1

)

) No. ACM 40758

)

) 3 November 2025

**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES
AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(1), (4), and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **10 December 2025**.

Appellant’s case was docketed with this Court on 14 January 2025. From the date of docketing to the present date, 293 days have elapsed. On the date requested, 330 days will have elapsed since docketing.

On 16 July 2024, Appellant was tried by a General Court-Martial composed of a military judge at Joint base McGuire-Dix-Lakehurst, New Jersey. R. at 20, 112. Appellant was convicted consistent with his pleas and pursuant to a plea agreement, of One Charge with One Specification of attempt to commit pandering, in violation of Article 80, Uniform Code of Military Justice (UCMJ); and One Charge with Three Specifications of conduct unbecoming an officer, in violation of Article 134, UCMJ. R. at 27, 85, 102; Appellate Ex. III. The military judge sentenced Appellant to be reprimanded, confined for a period of thirty days, and dismissed from the service. R. at 112.

The record of trial consists of one e-ROT with two volumes, four Prosecution Exhibits, one Court Exhibit, five Defense Exhibits, and five Appellate Exhibits; the transcript is 112 pages long. Appellant is not currently confined. Undersigned counsel has completed her review of this case.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information: Maj Grande is currently assigned 29 cases; 22 cases are pending before this Court (17 cases are pending AOE). Six cases have priority over the present case:

1. *United States v. Castillo*, ACM No. 40705- The record of trial consists of seven volumes, with five Prosecution Exhibits, one Court Exhibit, one Defense Exhibit, and thirty-four Appellate Exhibits. The transcript is 470 pages long. Appellant is not currently confined. The Reply in this case is due 6 November 2025.
2. *United States v. Reese*, ACM No. 24069 – The record of trial consists of one E-ROT containing two volumes, with twelve Prosecution Exhibits, four Court Exhibits, fourteen Defense Exhibits, and fifty-six Appellate Exhibits. The transcript is 1310 pages long. Appellant is not currently confined. The Reply in this case is due 5 November 2025, unless this Court grants undersigned counsel's EOT, in which case it will be due 15 November 2025.
3. *United States v. Marcoux*, ACM No. 40708- The record of trial consists of twelve volumes, with twenty-nine Prosecution Exhibits, one Court Exhibit, seventeen Defense Exhibits, and eighty-three Appellate Exhibits. The transcript is 1345 pages long. Appellant is currently confined. Undersigned counsel is drafting the AOE in this case.
4. *United States v. Heilig*, ACM No. 40740 - The record of trial consists of one e-ROT with six volumes, three Prosecution Exhibits, eight Defense Exhibits, and six Appellate

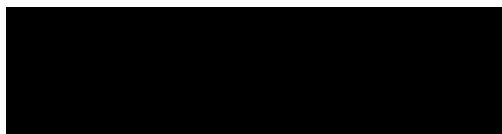
Exhibits; the transcript is 135 pages long. Appellant is not currently confined. Undersigned counsel has completed her review of this case.

5. *United States v. Cunningham*, ACM No. 40746 - The record of trial consists of ten volumes with twelve Prosecution Exhibits, one Court Exhibit, seven Defense Exhibits, and eighty-five Appellate Exhibits. The transcript is 1,249 pages long. Appellant is currently confined. Undersigned counsel has completed her review of the record for this case.
6. *United States v. See*, ACM No. S32805 - The record of trial consists of one e-ROT with two volumes, three Prosecution Exhibits, two Court Exhibits, six Defense Exhibits, and four Appellate Exhibits; the transcript is 341 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of this case.

Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of his right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

A solid black rectangular box used to redact the signature of the undersigned counsel.

JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 3 November 2025.

A large black rectangular redaction box covering the signature of the certifier.

JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel

A large black rectangular redaction box covering the contact information of the certifier.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Major (O-4)	)	
FRANCISCO J. TORRES,	)	No. ACM 40758
United States Air Force.	)	
<i>Appellant</i>	)	4 November 2025

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court’s Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant’s Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 330 days in length. Appellant’s nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 7 months combined for the United States and this Court to perform their separate statutory responsibilities.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

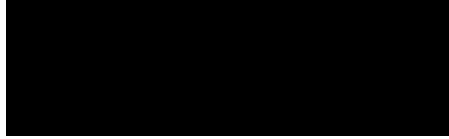
[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 4 November 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



On 16 July 2024, Appellant was tried by a General Court-Martial composed of a military judge at Joint base McGuire-Dix-Lakehurst, New Jersey. R. at 20, 112. Appellant was convicted consistent with his pleas and pursuant to a plea agreement, of One Charge with One Specification of attempt to commit pandering, in violation of Article 80, Uniform Code of Military Justice (UCMJ); and One Charge with Three Specifications of conduct unbecoming an officer, in violation of Article 134, UCMJ. R. at 27, 85, 102; Appellate Ex. III. The military judge sentenced Appellant to be reprimanded, confined for a period of thirty days, and dismissed from the service. R. at 112.

The record of trial consists of one e-ROT with two volumes, four Prosecution Exhibits, one Court Exhibit, five Defense Exhibits, and five Appellate Exhibits; the transcript is 112 pages long. Appellant is not currently confined. Undersigned counsel has completed her review of this case.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information: Maj Grande is currently assigned twenty-one cases; seventeen cases are pending before this Court (ten cases are pending AOE). Three cases have priority over the present case:

1. *United States v. Marcoux*, ACM No. 40708- The record of trial consists of twelve volumes, with twenty-nine Prosecution Exhibits, one Court Exhibit, seventeen Defense Exhibits, and eighty-three Appellate Exhibits. The transcript is 1345 pages long. Appellant is currently confined. Undersigned counsel is drafting the AOE in this case.
2. *United States v. Cunningham*, ACM No. 40746 - The record of trial consists of ten volumes with twelve Prosecution Exhibits, one Court Exhibit, seven Defense Exhibits, and eighty-five Appellate Exhibits. The transcript is 1,249 pages long. Appellant is currently confined. Undersigned counsel has completed her review of the record for this case.
3. *United States v. See*, ACM No. S32805 - The record of trial consists of one e-ROT with two volumes, three Prosecution Exhibits, two Court Exhibits, six Defense Exhibits, and four Appellate Exhibits; the transcript is 341 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of this case.

Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for

Appellant's case. Appellant was advised of his right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

A large black rectangular redaction box covering the signature of the undersigned counsel.

JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel

A large black rectangular redaction box covering the contact information of the undersigned counsel.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 1 December 2025.

A large black rectangular redaction box covering the signature of the certifier.

JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel

A large black rectangular redaction box covering the contact information of the certifier.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Major (O-4)	)	Before Panel No. 1
FRANCISCO J. TORRES,	)	
United States Air Force,	)	No. ACM 40758
<i>Appellant.</i>	)	
	)	3 December 2025
	)	

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court’s Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant’s Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 360 days in length. Appellant’s nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 6 months combined for the United States and this Court to perform their separate statutory responsibilities.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

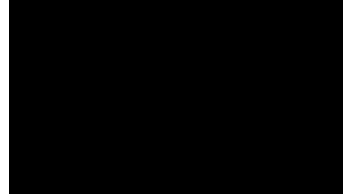


KATE E. LEE, Maj, USAF
Appellate Government Counsel



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 3 December 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



UNITED STATES,
Appellee,

v.

Major (O-4)
FRANCISCO J. TORRES,
United States Air Force,
Appellant.

) **APPELLANT’S MOTION**
) **FOR ENLARGEMENT**
) **OF TIME (TENTH)**
)
) Before Panel No. 1
)
) No. ACM 40758
)
) 5 January 2026

Pursuant to Rule 23.3(m)(1), (4), and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **8 February 2026**.

Appellant's case was docketed with this Court on 14 January 2025. From the date of docketing to the present date, 365 days have elapsed.¹ On the date requested, 390 days will have elapsed since docketing.

¹ The filing of this Motion is timely in accordance with Rule 23.3(m)(1) of this Court’s Rules of Practice and Procedure. In accordance with JT. CT. CRIM. APP. R. 15 and Rule 15 of this Court’s Rules of Practice and Procedure, the seventh calendar day before this AOE is due is calculated as 5 January 2026 because 2 January 2026 was a federal holiday on which this Court was closed, followed by a Saturday and Sunday. This Court clarified its calculation of time in accordance with JT. CT. CRIM. APP. R. 15 in its 12 February 2025 Order in *United States v. Vongphachanh*, No. ACM 40741. In accordance with JT. CT. CRIM. APP. R. 15, when the last day of a period of time to be computed ends on “a Saturday, Sunday, holiday, or day on which the Court is closed,” that period of time, “runs until the end of the next day that is not a Saturday, Sunday, holiday, or day on which the Court is closed.” The last day of the period of time to be computed in this case (the seventh day before this AOE is due) was a federal holiday and followed by a Saturday and a Sunday, and therefore, in accordance with JT. CT. CRIM. APP. R. 15 and Rule 15 of this Court’s Rules of Practice and Procedure, the end of that period runs until the next day this Court is not closed, which is 5 January 2026.

On 16 July 2024, Appellant was tried by a General Court-Martial composed of a military judge at Joint base McGuire-Dix-Lakehurst, New Jersey. R. at 20, 112. Appellant was convicted consistent with his pleas and pursuant to a plea agreement, of One Charge with One Specification of attempt to commit pandering, in violation of Article 80, Uniform Code of Military Justice (UCMJ); and One Charge with Three Specifications of conduct unbecoming an officer, in violation of Article 134, UCMJ. R. at 27, 85, 102; Appellate Ex. III. The military judge sentenced Appellant to be reprimanded, confined for a period of thirty days, and dismissed from the service. R. at 112.

The record of trial consists of one e-ROT with two volumes, four Prosecution Exhibits, one Court Exhibit, five Defense Exhibits, and five Appellate Exhibits; the transcript is 112 pages long. Appellant is not currently confined. Undersigned counsel has completed her review of this case, and does not anticipate requesting an additional EOT beyond this EOT request. Undersigned counsel anticipates filing a two-issue AOE in this case.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information: Maj Grande is currently assigned twenty-one cases; seventeen cases are pending before this Court (ten cases are pending AOE's). Two cases have priority over the present case:

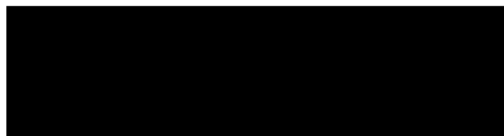
1. *United States v. Cunningham*, ACM No. 40746 - The record of trial consists of ten volumes with twelve Prosecution Exhibits, one Court Exhibit, seven Defense Exhibits, and eighty-five Appellate Exhibits. The transcript is 1,249 pages long. Appellant is currently confined. Undersigned counsel anticipates filing this AOE by early next week.

2. *United States v. See*, ACM No. S32805 - The record of trial consists of one e-ROT with two volumes, three Prosecution Exhibits, two Court Exhibits, six Defense Exhibits, and four Appellate Exhibits; the transcript is 341 pages long. Appellant is not currently confined. Undersigned counsel has completed her review of this case and anticipates a filing by the end of this week.

Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of his right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 5 January 2026.

[REDACTED]

JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Major (O-4)	)	
FRANCISCO J. TORRES,	)	No. ACM 40758
United States Air Force.	)	
<i>Appellant</i>	)	7 January 2026

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court’s Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant’s Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 390 days in length. Appellant’s over year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed more than two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 5 months combined for the United States and this Court to perform their separate statutory responsibilities.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

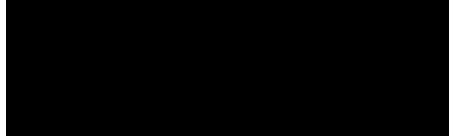
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VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

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[REDACTED]
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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 7 January 2026.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	BRIEF ON BEHALF OF
<i>Appellee,</i>	)	APPELLANT
	)	
v.	)	
	)	Before Panel 1
Major (O-4)	)	
FRANCISCO J. TORRES,	)	No. ACM 40758
United States Air Force,	)	
<i>Appellant.</i>	)	9 February 2026

TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Assignments of Error

I.

In accordance with *United States v. Grijalva*, 84 M.J. 433 (C.A.A.F. 2024), Major Torres’s guilty plea to the first specification under Article 133, UCMJ, was improvident because it was preempted and thus barred by Article 117a, UCMJ.

II.

Major Torres’s guilty plea to the first specification under Article 133, UCMJ, was improvident because the military judge abused his discretion by not resolving an issue of fact as to whether ST had a “reasonable expectation of privacy,” neglected to consider whether Major Torres’s conduct involved a liberty interest, and failed to establish how Major Torres’s conduct amounted to conduct unbecoming an officer.¹

III.

Major Torres’s guilty plea to the second specification under Article 133, UCMJ, was improvident because the military judge abused his discretion by neglecting to consider whether Major Torres’s conduct involved a liberty interest and failed to establish how it amounted to conduct unbecoming an officer.

¹ Issue II is being raised in the alternative to Issue I if this Court fails to grant Maj Torres’ requested relief on Issue I.

IV.

Major Torres's guilty plea to the third specification under Article 133, UCMJ, was improvident because the military judge abused his discretion by neglecting to consider whether Major Torres's conduct involved a liberty interest and failed to establish how it amounted to conduct unbecoming an officer.

Statement of the Case

On 16 July 2024, Major (Maj) Francisco Torres was tried by a General Court-Martial composed of a military judge at Joint Base McGuire-Dix-Lakehurst, New Jersey. R. at 20, 112. He was convicted consistent with his pleas and pursuant to a plea agreement, of one specification of attempt to commit pandering, in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880;² and three specifications of conduct unbecoming an officer, in violation of Article 133, UCMJ; 10 U.S.C. § 933. R. at 27, 85, 102; Entry of Judgment (EOJ) dated 16 Jul. 24; Appellate Ex. III. The military judge sentenced Maj Torres to be reprimanded, confined for a period of thirty days, and dismissed from the service. R. at 112.

The convening authority waived automatic forfeitures for the sooner of a period of one month, or release from confinement, or “expiration of term of service.” Convening Authority Decision on Action, dated 7 Aug. 24. Maj Torres's total pay and allowances were directed to be paid to his ex-wife, for the benefit of their mutual children. *Id.*

Statement of Facts

A. After his wife asked for a divorce, Major Torres made posts on Reddit soliciting sex with women.

Maj Torres was married to ST since 2009. After ST asked him for a divorce, Maj Torres made posts on Reddit, an online community website, seeking sex with women. Pros. Ex. 1 at 2,

² Unless otherwise indicated, all references to the UCMJ and Rules for Courts Martial (R.C.M.) are to the *Manual for Courts-Martial, United States* (2024 ed.).

Def. Ex. E at 4. He specifically posted in forums where members discussed adulterous sexual acts and purportedly sought out others to have sex with their spouses. *Id.* Maj Torres used a picture of his then-wife (ST)’s bare breasts as the profile picture for his account on this forum. *Id.* ST could not be identified from the picture, and there was nothing in the photograph that would have linked it to ST in any way. R. at 50–51. Maj Torres had consent to possess the photograph, but he did not have ST’s consent to use it on Reddit. *Id.* Maj Torres used the photograph to find sexual partners. R. at 52.

During the *Care*³ inquiry, when Maj Torres was asked whether ST had a “reasonable expectation of privacy” he stated that she did “[b]ecause the picture itself had been taken at that point years before with solely for the purposes of private use.” R. at 53. However, during her unsworn statement, ST claimed that the photograph had been taken for a “medical purpose.” In a memorandum attached to the Stipulation of Fact, the photograph of ST is described as having been “taken as a before picture of augmentation surgery.” Pros. Ex. 1 at 23. ST told the First Sergeant that she had never sent Maj Torres that photograph and she was not sure how it came into his possession. *Id.* The military judge never asked Maj Torres about this contradictory information, nor did Maj Torres ever explain the circumstances of the picture being taken.

When asked by the military judge, Maj Torres claimed his actions were wrongful “[b]ecause it used a picture without [ST’s] consent, because it involved her without her knowledge, and because the profile itself is based off of deceit.” R. at 54. In response to the military judge’s questions, Maj Torres stated he believed his actions “brought dishonor and/or disgrace upon [him] personally” because “it’s not something that I would openly share with anyone.” *Id.* In response to the question, “Do you believe that your actions reflected dishonesty, indecency, indecorum, or

³ See *United States v. Care*, 18 C.M.A. 535, 40 C.M.R. 247, 253 (C.M.A. 1969).

unfair dealing that was morally and unfitting and unworthy of being an officer?” Maj Torres simply agreed in the affirmative and the military judge did not ask him to explain his response. R. at 54–55. In response to the question of whether his actions were “serious misbehavior as opposed to just merely inappropriate or just in bad taste,” Maj Torres answered affirmatively and stated that this was “[b]ecause even at face value, it’s a shock to the senses.” R. at 55.

B. Maj Torres told KH that his wife wanted Maj Torres and KH to have sex, but that was untrue.

One of the women that Maj Torres engaged with using this same Reddit profile was KH. R. at 57. The two began a sexual relationship. *Id.* Maj Torres told KH that he had a wife, and that his wife approved of the relationship. *Id.* In truth, ST did not know about the relationship with KH. *Id.* Maj Torres “provid[ed] [KH] false information” when he “pos[ed] as [his] then spouse through the profile and engag[ed] in conversation with her such that she believed she was having a conversation with both [Maj Torres] and [ST].” *Id.* When asked by the military judge why his actions were “wrongful,” Maj Torres stated, “I knew I didn’t have a legal justification nor an excuse to deceive [KH] into maintaining the relationship.” R. at 58. He explained that his actions, done in a “private” capacity rather than as part of his official duties, “brought dishonor or disgrace upon [him] personally . . . “[b]ecause [he] lied.” R. at 58-59. This was followed by the below exchange:

Military Judge: Do you believe that your actions reflected dishonesty, unfair dealing, indecency or indecorum that was morally unfitting and unworthy of being an officer?

Maj Torres: Yes, sir.

Military Judge: Do you agree that your actions were a serious misbehavior as opposed to merely just inappropriate or just in bad taste?

Maj Torres: Yes, sir.

Military Judge: So I think I asked you this on the last specification that we talked

about. Why were your actions serious misbehavior as opposed to something that was just, like, in bad taste?

Maj Torres: Because of the deceit associated with my posing as my then spouse to the degree that [KH] thought she was interacting with her.

C. Maj Torres made a post on Reddit for the sole purpose of having fantastical conversations with other users.

Maj Torres used his Reddit account to create a post on Reddit “offering a room to somebody in exchange for sexual favors.” R. at 62. His intent in offering the room was “solely to engage in the conversation on the topic” and “to fantasize about the nature of it” by having conversations with individuals on the Reddit forum. R. at 63. The military judge did not ask any additional questions about Maj Torres’s response, nor did he engage in any inquiry regarding Maj Torres’s First Amendment⁴ rights. R. at 63-64. Maj Torres next told the military judge that this conduct brought dishonor and disgrace upon him personally because “it’s a shock to the senses” and seriously compromised his standing as an officer because “it’s immoral.” R. at 64. He explained that his actions “were serious misbehavior” because “the very nature of the topic is illegal.” *Id.*

Argument

I.

In accordance with *United States v. Grijalva*, 84 M.J. 433 (C.A.A.F. 2024), Major Torres’s guilty plea to the first specification under Article 133, UCMJ, was improvident because it was preempted and thus barred by Article 117a, UCMJ.

Standard of Review

Whether Articles 80 through 132, UCMJ, UCMJ, 10 U.S.C. §§ 880–932, preempt a specification presents a question of law, which this Court reviews *de novo*. *United States v.*

⁴ U.S. CONST. AMEND. I.

Grijalva, 84 M.J. 433, 435 (C.A.A.F. 2024) (citing *United States v. Avery*, 79 M.J. 363, 366 (C.A.A.F. 2020)).

Law and Analysis

The preemption doctrine, in general, bars the government from using Articles 133 and Article 134, UCMJ, 10 U.S.C. § 934, “to charge conduct covered by Articles 80 through 132, UCMJ.” *Id.* at 434. It serves “to prevent the government from eliminating elements from offenses under the UCMJ in order to ease its evidentiary burden at trial.” *Avery*, 79 M.J. at 366 (cleaned up) (quoting *United States v. Wheeler*, 77 M.J. 289, 293 (C.A.A.F. 2018); additional citation omitted); *see also Grijalva*, 84 M.J. at 439. Specifically, the primary purpose of the preemption doctrine is to prevent the Government from attempting to eliminate “an important element—such as the requisite intent” required to prove a particular crime. *See United States v. Gleason*, 78 M.J. 473, 477 (C.A.A.F. 2019) (Ryan, J., dissenting) (citations omitted). Maj Torres did not waive preemption by virtue of the plea agreement. *United States v. Jones*, 66 M.J. 704, 706 (A.F. Ct. Crim. App. 2008) (holding that a claim of preemption constitutes a question of the trial court’s subject matter jurisdiction and cannot be waived by either a plea or failure to object). A preemption claim arises only when “(1) Congress intended to limit prosecution for a particular area of misconduct to offenses defined in specific articles of the Code, and (2) the offense charged is composed of a residuum of elements of a specific offense.” *United States v. Curry*, 35 M.J. 359, 360–61 (C.M.A. 1992) (cleaned up) (quoting *United States v. McGuinness*, 35 M.J. 151–52 (CMA 1992)). The preemption doctrine barred the Government from receiving the benefit of a lower burden of proof because (1) Congress intended for Maj Torres’s conduct to fall under Article 117a, and (2) this Article 133 offense is a residuum of elements of Article 117a.

Historically, the preemption doctrine applied to Article 134, Clause 2 offenses. *See United States v. Hill*, No. ACM 38848, 2016 CCA LEXIS 291, at *4 (A.F. Ct. Crim. App. May 9, 2016) (citing *United States v. Robbins*, 52 M.J. 159, 160 (C.A.A.F. 1999)) (Implicit to the preemption doctrine is the understanding that “if Congress has occupied the field for a given type of misconduct, then an allegation under Article 134, Clause 2, fails to state an offense.”). However, in the most recent case in which the Court of Appeals for the Armed Forces (CAAF) addressed the preemption doctrine, the Court stated that the preemption doctrine applies to *both* Articles 133 and 134, UCMJ. *Grijalva*, 84 M.J. at 434. While the Court had in the past stated that preemption does not apply in Article 133 cases, the *Grijalva* Court expressly stated that preemption applies in Article 133 cases. *Compare Grijalva*, 83 M.J. at 434 with *United States v. Taylor*, 23 M.J. 314, 318 (C.M.A. 1987). That law is binding precedent. *See United States v. Allbery*, 44 M.J. 226, 228 (C.A.A.F. 1996) (holding that if there is binding superior case law, the lower court is “bound either to follow [the superior case] or to distinguish it.”)

In *Grijalva*, the CAAF determined that the Government could not charge misconduct that “closely tracks the wording of Article 117a(a), UCMJ” under Article 134, UCMJ, because (1) Congress intended for Article 117a, UCMJ, to “cover[] the entire field” for the nonconsensual broadcasting of intimate images; and (2) the offense charged was composed of a “residuum of elements” of Article 117a. 84 M.J. at 435, 439. As Judge Hardy stated in his concurrence,

Appellant engaged in exactly the type of conduct—broadcasting intimate visual images of another person without that person’s consent—that congress made criminal under Article 117a, UCMJ. But Congress only criminalized that conduct if it ‘had a reasonably direct and palpable connection to a military mission or military environment.’ Article 117a(a)(4), UCMJ. Fearing it could not prove that element, the Government dropped the direct-and-palpable connection element and charged the remaining elements as a novel Article 134 offense to ease its evidentiary burden at trial—exactly what the preemption doctrine is intended to prevent.

Grijalva, 84 M.J. at 444 (Hardy, J., concurring). This parallels Maj Torres’s case. But here, the Government chose to charge the conduct under Article 133, UCMJ, rather than under Article 134, UCMJ. As the *Grijalva* opinion points out, the preemption doctrine also applies to Article 133, UCMJ, cases, and what the Government did in this case is exactly what the preemption doctrine was designed to prevent. *See id.* at 434.

Here, the Government, knowing that it could not prove the final element of Article 117a, UCMJ—that the conduct “had a reasonably direct and palpable connection to a military mission or military environment”—chose to sidestep that element by charging the wrongful broadcast of an intimate image of his wife as an Article 133, UCMJ, offense. In so doing, it received the benefit of no longer having to prove the connection to military mission or environment element that it would have otherwise been required to prove. There was no “palpable connection” to a military mission or environment here—ST was a civilian and there was no evidence that the post containing her image reached any military members.

When describing the conduct in the *Care* inquiry, Maj Torres stated that his actions were done in his “personal capacity.” R. at 54. His only explanation for how his actions “seriously compromise[d] [his] standing as an officer” was a hypothetical scenario where, should his conduct become known, “it would cause someone to question their trust and confidence in [him].” *Id.* Based on these facts, the Government could not have proven a military connection in this case. Moreover, the Government likely could not have established, based on the record alone, the first element of Article 117a, UCMJ—that the person in the image “is identifiable from the intimate visual image . . . or from information displayed in connection with the . . . image.” Article 117a(a)(1)(B). During the *Care* inquiry, Maj Torres stated that “The picture was in such a way that [ST] could not herself be identified from the picture itself.” R. at 50. The military judge asked Maj Torres twice more

whether ST could be independently identified from the photograph, and he again stated that she could not. R. at 51. The military judge, rather than resolving this issue, continued with the *Care* inquiry.

The Article 133, UCMJ, allegation in this case cast aside—and thus captured a mere subset of—the Article 117a, UCMJ, offense. Gone was the requirement that there needs to be a “direct and palpable” military connection. Also gone was the requirement that the image meet the legal definition of an “intimate visual image.” The Article 133, UCMJ, allegation in this case took all the required elements of proof under Article 117a, UCMJ, and collapsed them into only two required elements under Article 133, UCMJ. This is precisely what the preemption doctrine was intended to prevent, and it bars the Government from charging Maj Torres under Article 133, UCMJ, in lieu of Article 117a, UCMJ.

Therefore, this Court should set aside Maj Torres’s conviction for the first specification under Article 133, UCMJ.

II.

Major Torres’s guilty plea to the first specification under Article 133, UCMJ, was improvident because the military judge abused his discretion by not resolving an issue of fact as to whether ST had a “reasonable expectation of privacy,” neglected to consider whether Major Torres’s conduct involved a liberty interest, and failed to establish how Major Torres’s conduct amounted to conduct unbecoming an officer.

If the Court declines to grant relief on Issue I, Maj Torres argues that the military judge abused his discretion in accepting Maj Torres’s plea of guilty to the first specification under Article 133, UCMJ, charge for three reasons: (1) he failed to resolve an issue of fact regarding whether ST had a “reasonable expectation of privacy” and whether the photograph used was an “intimate visual image;” (2) failed to consider whether Maj Torres’s conduct amounted to a constitutionally

protected liberty interest warranting heightened scrutiny—which it did; and (3) the record leaves substantial doubt as to whether Maj Torres’s conduct amounted to conduct unbecoming an officer.

Law and Analysis

“The providence of a plea is based not only on the accused’s understanding and recitation of the factual history of the crime, but also on an understanding of how the law relates to those facts.” *United States v. Medina*, 66 M.J. 21, 26 (C.A.A.F. 2008) (citing *Care*, 40 C.M.R. at 250–51). This Court examines “the totality of the circumstances of the providence inquiry, including the stipulation of fact, as well as the relationship between the accused’s responses to leading questions and the full range of the accused’s responses during the plea inquiry.” *United States v. Nance*, 67 M.J. 362, 366 (C.A.A.F. 2009) (citing *United States v. Sweet*, 42 M.J. 183, 185 (C.A.A.F. 1995)). It is a “fundamental requirement” of *Care* and Rule for Courts-Martial (R.C.M.) 910 to have a dialogue between the military judge and the accused where the military judge “poses questions about the nature of the offense and the accused provides answers that describe his understanding of the criminality of his or her conduct.” *United States v. Hartman*, 69 M.J. 467, 469 (C.A.A.F. 2011).

A military judge abuses his discretion if a ruling is based on an erroneous view of the law or if the military judge fails to obtain an adequate factual basis for the plea; however, the factual basis is an area the military judge is afforded significant deference. *United States v. Simpson*, 77 M.J. 279, 282 (C.A.A.F. 2018) (quoting *Nance*, 67 M.J. at 365; additional citations omitted). Regardless of whether Maj Torres was willing to admit guilt to the Article 133, UCMJ, offenses, his willingness to admit guilt in and of itself was not enough to find him guilty. *United States v. Haller*, No. 202100069, 2022 CCA LEXIS 50, at *4 (N-M Ct. Crim. App. Jan. 24, 2022) (“An accused may express his willingness to admit guilt to an offense, but that alone is not sufficient to

establish the providence of a plea of guilty as it only reflects his subjective belief that his conduct as alleged was criminal.”)

A. The military judge failed to resolve an issue of fact regarding whether ST had a “reasonable expectation of privacy” and whether ST could be identified from the photograph.

Much of the trouble with the *Care* inquiry for the first specification under Article 133, UCMJ, in this case is a result of the Government’s attempt to circumvent the elemental requirements of Art 117a, UCMJ, by charging this conduct as Article 133, UCMJ. A charge of violation of Article 117a, UCMJ, requires that the accused “knows or reasonably should have known that the intimate visual image . . . was made under circumstances in which the person depicted . . . retained a reasonable expectation of privacy regarding any broadcast or distribution.” Article 117a(a)(1)(C)(2), UCMJ. The military judge acknowledged this requirement when he asked Maj Torres, “At the time you broadcasted the profile, did [ST] have a reasonable expectation of privacy in that picture of her bare breasts that was included with the profile?” R. at 53. The military judge accepted Maj Torres’s conclusory response that ST had a reasonable expectation of privacy because “the picture itself had been taken at that point years before with solely for the purposes of private use.” *Id.* He failed to inquire into the actual circumstances of when and why the picture was taken.

Moreover, Maj Torres’s statement was contradicted by a memorandum attached to the Stipulation of Fact in which the First Sergeant stated ST “confirmed the pictures were of her chest taken as a before picture of augmentation surgery,” that she did not send the picture to Maj Torres, and that she did not know how he came into possession of the picture. Pros. Ex. 1 at 23. Again, during ST’s impact statement she claimed the picture was taken for “medical purposes.” Court Ex.

A at 1. During the *Care* inquiry, the military judge failed to reconcile these competing factual bases for the plea.

All these things cannot be true. Once Maj Torres provided matters inconsistent with the plea, the military judge was required to “either resolve the apparent inconsistency or reject the plea.” *United States v. Saul*, 86 M.J. 30, 33 (C.A.A.F. 2025) (quoting *United States v. Garcia*, 44 M.J. 496, 498); *see also* Article 45(a), UCMJ. If the picture was used as a “before picture of augmentation surgery” and ST never sent it to Maj Torres, it is possible the picture was posted on a publicly available website related to breast augmentation. This would be problematic because (1) it generally contradicts the facts as stated in the *Care* inquiry, which is impermissible under *Garcia*; and (2) a publicly available photograph would not meet the definition of “intimate visual image,” nor would ST have a “reasonable expectation of privacy” in accordance with the definition that the military judge explained to Maj Torres. R. at 53. Furthermore, these facts would make it even less likely that his conduct was “serious misbehavior as opposed to just inappropriate or something that was in poor taste,” or at the very least, those facts should have been considered before the military judge accepted Maj Torres’s guilty plea. R. at 55.

B. The military judge failed to consider whether Maj Torres’s conduct amounted to a constitutionally protected liberty interest warranting heightened scrutiny.

“When a charge against a servicemember may implicate both criminal and constitutionally protected conduct, the distinction between what is permitted and what is prohibited constitutes a matter of crucial significance.” *United States v. Byunggu Kim*, 83 M.J. 235, 238 (C.A.A.F. 2023) (quoting *United States v. Hartman*, 60 M.J. 467, 468 (C.A.A.F. 2011)). In situations where a charge may implicate both criminal and constitutionally protected behavior, the military judge must conduct a “heightened” inquiry, “explaining the distinction between constitutionally protected behavior and criminal conduct and ensuring the accused understands the differences.”

United States v. Van Velson, No. ACM 40401, 2024 CCA LEXIS 283, at *6–7 (A.F. Ct. Crim. App. July 12, 2024) (citing *United States v. Moon*, 73 M.J. 382, 389 (C.A.A.F. 2014) (“Without a proper explanation and understanding of the constitutional implications of the charge, [a]ppellant’s admissions in his stipulation and during the colloquy . . . do not satisfy *Hartman*.”)).

Here, during his *Care* inquiry on this specification, Maj Torres testified consistent with the Stipulation of Fact (Pros. Ex. 1) that he posted the picture of ST as his profile picture on Reddit. R. at 50-51. Despite this clear implication of the First Amendment, the military judge asked no additional questions about Maj Torres’s intent, nor whether there had in fact been any exchange of a room for sex, and he did not engage in the heightened inquiry required under *Hartman*.

In *United States v. Forney*, a case where the accused was charged with a violation of Article 133, UCMJ, for possession of virtual child pornography, the CAAF held that military members are not excluded from the protection granted by the First Amendment, “but the different character of the military community and of the military mission requires a different application of those protections.” 67 M.J. 271 (C.A.A.F. 2009) (quoting *Parker v. Levy*, 417 U.S. 733, 758 (1974)). Speech that is protected in the civilian population is “constitutionally unprotected” where it “undermine[s] the effectiveness of response to a command.” *Id.* at 759 (citing *United States v. Gray*, 42 C.M.R. 255 (C.M.A. 1970)). Maj Torres’s case presents fundamental considerations of the First Amendment’s reach and limits within the military.

It is undeniable that Maj Torres’s speech in this case was private. R. at 63–64. When an alleged violation of Article 133, UCMJ, is based on an officer’s private speech, the test is whether the officer’s speech poses a “clear and present danger” that the speech will, “in dishonoring or disgracing the officer personally, seriously compromise[] the person’s standing as an officer.” *United States v. Hartwig*, 39 M.J. 125, 128 (C.A.A.F. 1994) (alteration in original) (citing Part IV,

Para. 59c(2), *Manual for Courts-Martial* (1984)); *see also United States v. Wilcox*, 66 M.J. 442 (“[D]angerous speech is that speech that ‘interferes with or prevents the orderly accomplishment of the mission or presents a clear danger to loyalty, discipline, mission, or morale of the troops.’”) (quoting *United States v. Brown*, 45 M.J. 389, 395 (C.A.A.F. 1996)). There was no such inquiry into whether this standard was met or even considered in Maj Torres’s case. Quite simply, Maj Torres had a free speech interest in his private posts. As such, the military judge should have given heightened scrutiny during the *Care* inquiry to distinguish protected conduct from conduct that may be criminalized. The military judge failed to do so and thus abused his discretion.

C. Even if the military judge established that ST had a “reasonable expectation of privacy” in a photograph taken for a non-private purpose *and* established that the photograph was an “intimate visual image” *and* determined that his conduct was not protected under the First Amendment, the record leaves substantial doubt as to whether Maj Torres’s conduct amounted to conduct unbecoming an officer.

Even if this Court finds that the military judge sufficiently established that ST had a reasonable expectation of privacy in the photograph and that the photograph was legally an “intimate visual image,” the military judge abused his discretion in accepting Maj Torres’s guilty plea as to the first specification of conduct unbecoming, as the record raises substantial doubt that such conduct amounted to “conduct unbecoming an officer.”

Military courts have repeatedly emphasized that “not every delict or misstep warrants punishment under Article 133[, UCMJ]. In general, it must be so disgraceful as to render an officer unfit for service.” *United States v. Livingston*, 78 M.J. 619, 624 (C.G. Ct. Crim. App. 2018) (quoting *United States v. Guaglione*, 27 M.J. 268, 271 (C.M.A. 1988)). Due to its breadth and seeming vagueness, Article 133, UCMJ, “survives constitutional challenges not only because of the unique needs of the military” but because the “customs and usages of the services narrow its breadth and provide it context and meaning.” *Livingston*, 78 M.J. at 623 (citing *Parker*, 417 U.S. at 746–47);

see also Manual for Courts-Martial, Pt. IV, ¶ 59.c.(2). To prove an Article 133, UCMJ, violation, the Government must either (1) rely on the underlying conduct also constituting a specific offense or (2) the evidence must support that the accused’s conduct—“standing alone and independent of whether it constituted a specific offense”—was unbecoming. *Livingston*, 78 M.J. at 626. “[C]onduct unbecoming an officer rationally entails a higher level of dishonor or discredit than simple prejudice to good order and discipline.” *United States v. Conliffe*, 67 M.J. 127, 134 (C.A.A.F. 2009) (quoting *United States v. Cherukuri*, 53 M.J. 68, 71 (C.A.A.F. 2000)). Before an officer can be convicted of conduct unbecoming an officer, due process requires “fair notice” that an act is forbidden and subject to criminal sanction. *United States v. Amazaki*, 67 M.J. 666 (Army Ct. Crim. App. 2009).

For the first Specification, either (A) the military judge relied on the underlying conduct that constituted a specific offense (Article 117a, UCMJ)—in which case the specification was either preempted or legally insufficient as to the elements of that charge—or (B) the evidence that Maj Torres’s conduct was unbecoming independent of whether it amounted to a specific offense was legally insufficient. *Schweitzer*, 68 M.J. at 137 (“[T]he appropriate standard for assessing criminality under Article 133 is whether the conduct or act charged is dishonorable and compromising . . . notwithstanding whether or not the act otherwise amounts to a crime.”) (quoting *United States v. Giordano*, 35 C.M.R. 135, 140 (C.M.A. 1964)).

If the latter, it was the military judge’s duty to establish *how* Maj Torres’s conduct was unbecoming independent of whether it amounted to a violation of Article 117a, UCMJ. *See, e.g. Hartman*, 69 M.J. 467; *see also Medina* 66 M.J. at 26. The military judge never asked questions sufficient to articulate an independent service custom or standard of conduct as his basis for finding Maj Torres’s acts unbecoming. “The gravamen of the [Article 133, UCMJ] offense is that the

officer's conduct disgraces him personally or brings dishonor to the military profession such as to affect his fitness to command the obedience of his subordinates so as to successfully complete the military mission.” *United States v. Gonzalez*, __ M.J. __, No. 25-0032, 2025 CAAF LEXIS 761, at *6 (C.A.A.F. Sep. 15, 2025) (alteration in original) (quoting *United States v. Lofton*, 69 M.J. 386, 388 (C.A.A.F. 2011)).

As the military judge correctly explained to Maj Torres, “conduct unbecoming an officer” when it is behavior in an “unofficial or private capacity” is conduct that “seriously compromises the person’s standing as an officer.” R. at 49. For each of the Article 133, UCMJ, offenses, the military judge asked Maj Torres to explain how his actions “brought dishonor and/or disgrace upon [him] personally[.]” R. at 54, 59, 64. Maj Torres gave short, conclusory responses each time he was asked. For the first specification, Maj Torres stated, “Because it’s not something I would openly share with anyone.” R. at 54. For each specification, the military judge also asked whether Maj Torres’s “actions reflected dishonestly, indecency, indecorum, or unfair dealing that was morally and unfitting and unworthy of being an officer[.]” R. at 54, 59, 64. In each case, Maj Torres simply responded, “Yes” and the military judge asked no follow up questions. *Id.* Specific to the first specification, when asked why his actions were “serious misbehavior,” Maj Torres responded, “Because even at face value, it’s a shock to the senses.” R. at 55.

This very limited inquiry does not satisfy the requirements of *Care*. 40 C.M.R. at 253. This Court has held that “it is not sufficient merely to obtain the accused’s consent to the defined elements.” *United States v. Ingram*, No. ACM S32781, 2025 CCA LEXIS 354, at *7 (A.F. Ct. Crim. App. July 31, 2025). To establish the providency of the plea, the military judge was required to “question [Maj Torres] ‘about what he did or did not do, and what he intended.’” *Id.* (alteration in original) (citing *Care*, 40 C.M.R. at 253).

Despite reading Maj Torres the correct definition for what constituted “conduct unbecoming” the military judge failed to elicit facts sufficient to satisfy the definition. Where the CAAF has stated that “conduct unbecoming” does not constitute “every delict or misstep,” the military judge did not sufficiently establish that any of Maj Torres’s conduct rose to the level of “conduct unbecoming.” *Livingston*, 78 M.J. at 624 (quoting *Guaglione*, 27 M.J. at 271). This is especially so given that Maj Torres did not act in his official capacity. Because there was no military connection, the conduct had to “seriously compromise” his standing as an officer. R. at 49. It was the military judge’s responsibility to elicit the factual predicate for this element, and he failed to do so. Recognizing that a military judge is entitled to much deference when it comes to accepting guilty pleas, he must nevertheless elicit facts from which he can determine the factual basis for the plea, and “mere conclusions of law recited by an accused are insufficient to provide a factual basis for a guilty plea.” R.C.M. 910(e). Maj Torres’s conclusory responses that were never followed-up on and his one-word affirmations of the military judge’s questions were insufficient to establish that his conduct amounted to “conduct unbecoming.”

In sum, the military judge abused his discretion throughout Maj Torres’s *Care* inquiry. The military judge failed to resolve issues of fact regarding the photograph of ST, failed to recognize Maj Torres’s First Amendment interest in his private speech, and ultimately found private conduct amounted to conduct unbecoming an officer, despite substantial doubt to the contrary. As such, Maj Torres’s guilty plea to the first specification under Article 133, UCMJ, is improvident.

Therefore, this Court should set aside Maj Torres’s conviction for the first specification under Article 133, UCMJ.

III.

Major Torres’s guilty plea to the second specification under Article 133, UCMJ, was improvident because the military judge abused his discretion by

neglecting to consider whether Major Torres's conduct involved a liberty interest and failed to establish how it amounted to conduct unbecoming an officer.

Law and Analysis

A. The military judge failed to consider whether Maj Torres's conduct amounted to a constitutionally protected liberty interest warranting heightened scrutiny.

The same law that is discussed in Section B of Issue II above is applicable for the second specification under Article 133, UCMJ, and is not repeated herein. During his *Care* inquiry for the second specification, Maj Torres testified consistent with the Stipulation of Fact (Pros. Ex. 1) that he told KH that ST approved of their relationship when, in fact, she was not aware of their relationship. R. at 57. He explained that what the Government charged in this case was his private communications to KH- in the form of conversations and Reddit posts. R. at 57-58. Despite this clear implication of the First Amendment, the military judge did not engage in the heightened inquiry required under *Hartman*.

There was no inquiry into whether Maj Torres's private speech met the "dangerous speech" test discussed in *Wilcox*. 66 M.J. 442. Maj Torres had a free speech interest in his private conversations with KH. As such, the military judge should have given heightened scrutiny during the *Care* inquiry to distinguish protected conduct from that conduct which may be criminalized. The military judge failed to do so and thus abused his discretion.

B. Even if the military judge established that Maj Torres's conduct was not protected conduct under the First Amendment, the record leaves substantial doubt as to whether it amounted to conduct unbecoming an officer.

The same law that is discussed in Section C of Issue II above is applicable for the second specification under Article 133, UCMJ, and is not repeated herein. Even if this Court finds that the military judge sufficiently established that Maj Torres's private conversations with KH were not protected by the First Amendment, the military judge abused his discretion in accepting

Maj Torres's guilty plea, because the record raises substantial doubt that such conduct amounted to "conduct unbecoming an officer." For the specification about providing false information to KH, Maj Torres told the military judge that this conduct amounted to "conduct unbecoming" because "it brings to question, again, confidence and trust in me." R. at 59. The military judge asked no follow-up questions to this response. *Id.* Where the CAAF has stated that "conduct unbecoming" does not constitute "every delict or misstep," the military judge did not sufficiently establish that this conduct rose to the level of "conduct unbecoming." *Livingston*, 78 M.J. at 624 (quoting *Guaglione*, 27 M.J. at 271). Maj Torres was in the middle of a divorce. Pros. Ex. 1 at 2. KH knew that he was married. R. at 57. This is not a situation where Maj Torres's conduct clearly amounts to conduct that would "seriously compromise" his standing as an officer. R. at 49. The military judge was required to elicit more from Maj Torres than "mere conclusions of law recited by [the] accused," which were "insufficient to provide a factual basis for a guilty plea." R.C.M. 910(e).

The military judge abused his direction throughout the *Care* inquiry for this specification. The military judge failed to recognize Maj Torres's First Amendment interest in his private speech, and ultimately found private conduct amounted to conduct unbecoming an officer, despite substantial doubt to the contrary. As such, his guilty plea to the second specification under Article 133, UCMJ, is improvident.

This Court should set aside Maj Torres's conviction for the second specification under Article 133, UCMJ.

IV.

Major Torres's guilty plea to the third specification under Article 133, UCMJ, was improvident because the military judge abused his discretion by neglecting to consider whether Major Torres's conduct involved a liberty interest and failed to establish how it amounted to conduct unbecoming an officer.

Law and Analysis

A. The military judge failed to consider whether Maj Torres's conduct amounted to a constitutionally protected liberty interest warranting heightened scrutiny.

The same law that is discussed in Section B of Issue II above is applicable for the third specification under Article 133, UCMJ, and is not repeated herein. Here, during his *Care* inquiry on the third specification, Maj Torres testified consistent with the Stipulation of Fact (Pros. Ex. 1) that he created posts on Reddit offering his room in exchange for "sexual accounts with women." R. at 62. He explained that what the Government charged in this case was a crime of thought because his "intent in offering the room" was "[s]olely to engage in the topic of the conversation" and "[j]ust to fantasize about the nature of it." R. at 63. This could not have been a clearer implication of Maj Torres's First Amendment rights. The military judge repeated those responses back to Maj Torres and Maj Torres stated again that his intent was to fantasize about the topic "[b]y having conversations with individuals on the topic[.]" R. at 63.

Despite this clear implication of the First Amendment, the military judge asked no additional questions about Maj Torres's intent, nor whether there had in fact been any exchange of a room for sex, and he did not engage in the heightened inquiry required under *Hartman*. There was no inquiry into whether Maj Torres private speech met the "dangerous speech" test discussed in *Wilcox*. 66 M.J. 442. Maj Torres had a free speech interest in his private posts about his fantasy. As such, the military judge should have given heightened scrutiny during the *Care* inquiry to

distinguish protected conduct from that conduct which may be criminalized. The military judge failed to do so and thus abused his discretion.

B. Even if the military judge established that Maj Torres's conduct was not protected conduct under the First Amendment, the record leaves substantial doubt as to whether it amounted to conduct unbecoming an officer.

The same law that is discussed in Section C of Issue II above is applicable for the third specification under Article 133, UCMJ, and is not repeated herein. Even if this Court finds that the military judge sufficiently established that Maj Torres's private fantastical posts were not protected by the First Amendment, the military judge abused his discretion in accepting Maj Torres's guilty plea, as the record raises substantial doubt that such conduct amounted to "conduct unbecoming an officer." For the specification about his private posts about his fantasies, Maj Torres had the following exchange with the military judge:

Military Judge: Do you believe that your actions in a personal capacity of wrongfully offering a room for a person to use in exchange for sexual conduct brought dishonor and/or disgrace upon you personally?

Accused: Yes, sir.

Military Judge: And why is that?

Accused: Because it's a shock to the senses again, Your Honor.

Military Judge: Do you believe that your actions seriously compromise your standing as a commissioned officer?

Maj Torres: Yes, sir.

Military Judge: Why?

Maj Torres: Because it's immoral.

Military Judge: Do you believe that your actions reflected indecency or indecorum that was morally unfitting and unworthy of being an officer?

Maj Torres: Yes, sir.

Military Judge: And you've heard me ask this question twice in other specifications, but do you agree that your actions were serious misbehavior as opposed to just merely inappropriate or just in poor taste?

Maj Torres: Yes, sir.

Military Judge: And why do you say that?

Maj Torres: Because the very nature of the topic is illegal.

R. at 64. The military judge asked no follow-up questions to Maj Torres's last response.

Where the CAAF has stated that "conduct unbecoming" does not constitute "every delict or misstep," the military judge did not sufficiently establish that this conduct rose to the level of "conduct unbecoming." *Livingston*, 78 M.J. at 624 (quoting *Guaglione*, 27 M.J. at 271). Maj Torres explained that he made the posts "solely to engage in the topic of the conversation" and to "fantasize about the nature of it." R. at 63. The military judge was required to elicit more from Maj Torres than "mere conclusions of law recited by [the] accused," which are "insufficient to provide a factual basis for a guilty plea." R.C.M. 910(e). Yet he accepted Maj Torres's bare recitations of the legal definitions associated with Article 133, UCMJ, as sufficient to find him guilty. This was an abuse of discretion because *Care* and R.C.M. 910 require more. The military judge must "pose[] questions about the nature of the offense and the accused provides answers that describe his understanding of the criminality of his or her conduct." *United States v. Hartman*, 69 M.J. 467, 469 (C.A.A.F. 2011).

The military judge abused his direction throughout the *Care* inquiry for the third specification under Article 133, UCMJ. The military judge failed to recognize Maj Torres's First Amendment interest in his private speech, and ultimately found private conduct amounted to conduct unbecoming an officer, despite substantial doubt to the contrary. As such, his guilty plea to the third specification under Article 133, UCMJ, is improvident.

This Court should set aside Maj Torres's conviction for the third specification under Article 133, UCMJ.

Respectfully submitted,

A large black rectangular redaction box covering the signature of Jordan L. Grande.

JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 9 February 2026.

Respectfully submitted,

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JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, <i>Appellee,</i>	)	UNITED STATES' MOTION
	)	TO EXAMINE SEALED
	)	MATERIALS
v.	)	
	)	Before Panel No. 1
Major (O-4)	)	
FRANCISCO J. TORRES,	)	No. ACM 40758
United States Air Force	)	
<i>Appellant.</i>	)	27 February 2026

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

COMES NOW, the United States, by and through counsel, and moves this Honorable Court pursuant to Rules 3.1(c)(2) and 23(f) of this Court's Rules of Practice and Procedure, to examine sealed materials in the record of trial. Specifically, undersigned counsel seeks to examine two sealed attachments to the Stipulation of Fact (Prosecution Exhibit 1). This includes:

- Attachment 12 to Prosecution Exhibit 1, "Facebook messages between [ST] and [KH], dated 3 Jan 23, 46 pages"
- Attachment 13 to Prosecution Exhibit 1, "Posts from Reddit Account cuckwif3life, dated 23 Nov 22, 3 pages"

Examination is reasonably necessary in accordance with Rule for Court-Martial 1103(b)(3)(B)(i) for the undersigned counsel's proper fulfillment responsibilities in drafting an Answer to Assignment of Errors because the Stipulation of Fact attachments contain crucial evidence used at the court-martial to supplement the guilty plea providency inquiry. Examining these attachments to the Stipulation of Fact is necessary for the undersigned counsel to properly

analyze all of the evidence presented to the military judge at trial and to formulate responsive arguments supporting the Government's position.

Specifically, the Brief on Behalf of Appellant filed on 9 February 2026 with this Court alleges Appellant's guilty pleas were improvident with regard to three specifications of *Conduct Unbecoming an Officer* in violation of Article 133, Uniform Code of Military Justice (UCMJ). Important underlying facts regarding these specifications are enclosed in the sealed attachments to the Stipulation of Fact at Prosecution Exhibit 1. These sealed attachments – Appellant's Reddit profile and the messages between two victims regarding Appellant's actions – constitute a large amount of evidence that form the basis of the specifications Appellant now contends were improvidently-pled to.

Additionally, Appellant argued in his brief that the Article 133, UCMJ, *Conduct Unbecoming an Officer* specification was preempted by Article 117a, UCMJ, *Wrongful Broadcast or Distribution of Visual Image*. Attachment 12 to Prosecution Exhibit 1 contains Appellant's Reddit profile. This profile constitutes the underlying conduct that formed the Article 133, UCMJ *Conduct Unbecoming an Officer* specification he now contends was preempted by Article 117a, UCMJ *Wrongful Broadcast*. Namely, Attachment 12 to Prosecution Exhibit 1 shows exactly how he committed the crime.

For these reasons, the United States respectfully requests that this Honorable Court grant undersigned counsel the ability to examine the aforementioned sealed exhibits.

[REDACTED]
ALLISON R. GISH, Maj, USAF
Appellate Government Counsel
[REDACTED]



MARY ELLEN PAYNE
Associate Chief
Government Trial and Appellate Operations Division



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force
Appellate Defense Division on 27 February 2026.

[REDACTED]

ALLISON R. GISH, Maj, USAF
Appellate Government Counsel

[REDACTED]

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

UNITED STATES	)	No. ACM 40758
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Francisco J. TORRES	)	
Major (O-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 1

On 27 February 2026, Government appellate counsel submitted a Motion to Examine Sealed Materials. Specifically, Government appellate counsel requests they be permitted to examine the following materials sealed by the military judge: Prosecution Exhibit 1, Attachments 12 and 13. The items were reviewed by trial counsel and trial defense counsel at trial.

Appellate counsel may examine sealed materials released to counsel at trial “upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities.” R.C.M. 1113(b)(3)(B)(i).

The court has considered the Government’s motion and this court’s Rules of Practice and Procedure. The court finds Government appellate counsel has made a colorable showing that review of the sealed materials is necessary to fulfill counsel’s responsibilities.

Accordingly, it is by the court on this 10th day of March 2026,

ORDERED:

Government appellate counsel’s Motion to Examine Sealed Materials is **GRANTED**.

Appellate government counsel may view **Prosecution Exhibit 1, Attachments 12 and 13**.

To view the sealed materials, counsel will coordinate with the court.

It is further ordered:

No counsel will photocopy, photograph, or otherwise reproduce this material and will not disclose or make available its contents to any other individual without this court's prior written authorization.



FOR THE COURT



AGNIESZKA M. GAERTNER, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,
Appellee,

v.

Major (O-4)
FRANCISCO J. TORRES,
United States Air Force
Appellant.

UNITED STATES ANSWER TO
ASSIGNMENTS OF ERROR

Before Panel No. 1

No. ACM 40758

11 March 2026

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,
Appellee,

v.

Major (O-4)
FRANCISCO J. TORRES,
United States Air Force
Appellant.

UNITED STATES' ANSWER
TO ASSIGNMENTS OF ERROR

Before Panel No. 1

No. ACM 40758

11 March 2026

TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

ASSIGNMENTS OF ERROR

I.

WHETHER IN ACCORDANCE WITH UNITED STATES V. GRIJALVA, 84 M.J. 433 (C.A.A.F. 2024), APPELLANT'S GUILTY PLEA TO THE FIRST SPECIFICATION UNDER ARTICLE 133, UCMJ, WAS IMPROVIDENT BECAUSE IT WAS PREEMPTED AND THUS BARRED BY ARTICLE 117A, UCMJ.

II.

WHETHER APPELLANT'S GUILTY PLEA TO THE FIRST SPECIFICATION UNDER ARTICLE 133, UCMJ, WAS IMPROVIDENT BECAUSE THE MILITARY JUDGE ABUSED HIS DISCRETION BY NOT RESOLVING AN ISSUE OF FACT AS TO WHETHER ST HAD A "REASONABLE EXPECTATION OF PRIVACY," NEGLECTED TO CONSIDER WHETHER APPELLANT'S CONDUCT INVOLVED A LIBERTY INTEREST, AND FAILED TO ESTABLISH HOW APPELLANT'S CONDUCT AMOUNTED TO CONDUCT UNBECOMING AN OFFICER.

III.

WHETHER APPELLANT'S GUILTY PLEA TO THE SECOND SPECIFICATION UNDER ARTICLE 133, UCMJ, WAS IMPROVIDENT BECAUSE THE MILITARY JUDGE ABUSED HIS DISCRETION BY NEGLECTING TO CONSIDER WHETHER APPELLANT'S CONDUCT INVOLVED A LIBERTY INTEREST AND FAILED TO ESTABLISH HOW IT AMOUNTED TO CONDUCT UNBECOMING AN OFFICER.

IV.

WHETHER APPELLANT'S GUILTY PLEA TO THE THIRD SPECIFICATION UNDER ARTICLE 133, UCMJ, WAS IMPROVIDENT BECAUSE THE MILITARY JUDGE ABUSED HIS DISCRETION BY NEGLECTING TO CONSIDER APPELLANT'S CONDUCT INVOLVED A LIBERTY INTEREST AND FAILED TO ESTABLISH HOW IT AMOUNTED TO CONDUCT UNBECOMING AN OFFICER.

INTRODUCTION

Appellant posted a bare breasted photo of his wife without her consent publicly online while he pretended to be his wife so he could lure sexual partners for himself in a “cuckqueen” forum. (Pros. Ex. 1) He also deceived a woman into a sexual relationship by pretending to be his wife to fulfill this alleged cuckqueen scenario. (Id.) Later he posted his own house online as an advertisement to get renters who would live in his house but instead of paying rent they would pay him with “free use” sexual conduct whenever he wanted. (Id.) Finally, he went to a hotel to have sex with a prostitute, only to discover the prostitute was an undercover police agent. (Id.)

Appellant subsequently pled guilty to reduce his punitive exposure from 66.5 years of confinement to just 30 days when the convening authority agreed with withdraw and dismiss the more severe charges involving sexual abuse of a child and domestic violence. (App. Ex. III) Now on appeal Appellant alleges the first Article 133 *Conduct Unbecoming an Officer* specification was preempted, an allegation in direct contrast to the highest military court's

holding that “Article 133, UCMJ is not subject to preemption by other punitive articles.” United States v. Taylor, 23 M.J 314, 318 (C.M.A. 1987). Also, appellant fails to carry his burden to demonstrate a substantial basis in fact or law as to why this Court should find his guilty pleas improvident. His criminal behavior was not constitutionally protected. Accordingly, his convictions should be upheld.

STATEMENT OF THE CASE

Appellant pled guilty and was convicted of one charge and one specification of attempted patronization of a prostitute in violation of Article 80, UCMJ¹ and one charge and three specifications of conduct unbecoming an officer in violation of Article 133, UCMJ. (*Entry of Judgment*, 16 July 2024, Record of Trial (ROT) Vol. 1) The three specifications relevant to this brief were:

Specification 1: [Appellant] did, within the continental United States, between on or about 1 September 2022 and on or about 31 January 2023, wrongfully broadcast a profile on the internet using pictures of S.T., including a picture of her bare breasts, without her knowledge or consent, to create the appearance that S.T. was seeking sexual partners for [Appellant], and that said conduct was unbecoming an officer.

Specification 2: [Appellant] did, within the continental United States, between on or about 15 September 2022 and on or about 3 January 2023, wrongfully provide false information to K.H. as part of his efforts to engage in sexual conduct with her, and that said conduct was unbecoming an officer.

Specification 3: [Appellant] did, within the continental United States, between on or about 1 December 2022 and on or about 31 January 2023, wrongfully offer a room for a person to use in exchange for sexual conduct, and that said conduct was unbecoming an officer.

¹ All references to punitive articles, Rules for Courts-Martial, and Military Rules of Evidence are to the 2019 edition Manual for Court-Martial, unless otherwise noted.

Appellant offered and entered into a plea agreement, agreeing to plead guilty to the aforementioned offenses, in exchange for the convening authority's withdrawal and dismissal of three specifications of sexual abuse of a child in violation of Article 120b, UCMJ and one specification of domestic violence against a family member under the age of 16 years in violation of Article 128(b), UCMJ. (App. Ex. III; *Charge Sheet*, ROT Vol. 1) Also pursuant to his plea agreement, Appellant signed a Stipulation of Fact, agreeing to the underlying facts of his crimes. (Pros. Ex. 1) Appellant's plea agreement reduced his punitive exposure from a maximum term of 798 months of confinement (66.5 years) to 13 years of confinement. (App. Ex. III) Appellant agreed to a dismissal as a minimum required sentence. (Id.) Appellant was sentenced to a reprimand, a dismissal, and 30 days of confinement. (R. at 112.) Appellant's sentencing was segmented and all confinement ran concurrently. (Id.) Regarding confinement time, he received 30 days for the first specification of the *Conduct Unbecoming an Officer* and 2 days confinement for all other specifications. (Id.) After considering post-trial submissions, the convening authority took no action on Appellant's case. (*Convening Authority Decision on Action*, ROT, Vol. 1)

STATEMENT OF FACTS

Reddit Cuckqueen Posts

Appellant solicited sex online by creating and broadcasting a public Reddit profile posing as his wife², using his wife's photos without her knowledge for over three months. (Pros. Ex. 1) Specifically, Appellant admitted during the Care inquiry,³ "I used a picture of her exposed

² At the time of the charged conduct, Appellant was married to ST. (R. at 52) ST is referred to as Appellant's wife throughout this brief.

³ United States v. Care, 18 C.M.A 535 (C.M.A. 1969)

breasts for the profile picture on the account.” (R at 50) Appellant’s profile picture for the Reddit profile was a photo of his wife’s bare breasts, showing her shirtless standing with her hands on her hips, displaying her stomach, breasts, chest, neck, and chin. (Pros. Ex. 1) Appellant’s wife, ST, did not give Appellant permission to post the photo publicly. (Id.) Underneath the photo of his wife’s exposed breasts, the profile contained the phrase, “Happy wife living the cuck life” followed by a kissing face emoji. (Id.) Appellant used the Reddit name “cuckwif3life” for this profile. (Id.)

While posing as his wife in a public forum, Appellant pretended she was seeking sexual partners for him. (Id.) He sought sexual partners by posting to various message boards such as, “r/CuckqueanCommunity,” “r/cuckqueencommunity,” and “r/cuckquean.” (Id.) These online forums “contained messages, pictures, and videos of women seeking to have sex with the spouses of others or for others to have sex with their spouses, with their knowledge. These communities were composed of men and women who either engaged in or were interested in discussing adulterous sexual acts.” (Id.) Appellant made various posts on his “cuckwif3life” profile including “Cake on my birthday!” “NOT LOOKING FOR MEN!!” and “Hubby is going to enjoy his Cake on my birthday!!!” (Id.) These posts garnered at least 106 “arrows up”⁴ and 17 comments.⁵ (Id.)

⁴ In online vernacular, “arrows up” or “thumbs up” or “liking” a post generally “communicates the user’s approval” Bland v. Roberts, 730 F. 3d 367, 385, 394 (4th Cir. 2013).

⁵ The “Comments” section of Appellant’s “cuckwif3life” profile included comments by other users and replies by Appellant. (Pros. Ex. 1, Attachment 13) While comments were not specifically attributed to users, the cluster of comments near one another in single-spaced formatting generally indicate that one Reddit user commented, “Such a great picture!” replying to Appellant’s profile picture of his wife’s exposed breasts. (Id.) Another user replied, “Room is booked! Figuring out flights.” (Id.) One of Appellant’s replies indicated “I think you’d like my hubby,” followed by a face with peeking eye emoji. (Id.)

Appellant's wife did not know about this profile nor give him permission to use her photos or assign her photos or her name to this sex-seeking Reddit profile. (Id., Court Ex. A) Appellant agreed in the Stipulation of Fact that in these online forums, he "specifically pretended to be [ST], making statements about his sexual prowess, sexual acts, and soliciting sex with other women for [Appellant.] (Pros. Ex. 1)

Cuckqueen Meet-Up

After posing as his wife on the "cuckqueen" Reddit pages, Appellant received a response to his solicitation for sex from a woman named KH. (Id.) Appellant moved the conversation from Reddit to a messaging app called "kik." (Id.) Appellant gave KH two phone numbers, claiming one was his and one was his wife's; however, both phone numbers went to Appellant. (Id.) Appellant agreed he "revealed personal information about himself, [his wife], and their family, including pictures of both of them and their children to convince [KH] that [his wife] knew about and consented to the proposed sexual relationship." (Id.) Posing as his wife, Appellant proposed a location for Appellant and KH to meet to have sex and requested KH send videos of the sexual acts to whom KH believed to be Appellant's wife. (Id.)

For approximately three months, Appellant engaged in a sexual relationship with KH while he pretended to be his wife by texting KH as both himself and as his wife. (Id.) In November of 2022, Appellant requested KH comfort him by having sex with him because he alleged he was mourning the loss of his wife and kids from a car accident, which did not occur. (Id.) Appellant then asked KH to move in with him because "the on demand sex is appealing." (Id.) After Appellant asked KH to move in with him, she and her roommates searched online to see if he was who he claimed to be, ultimately discovering a social media post by Appellant's wife, ST, demonstrating that she was alive. (Id. at Attachment 12) Upon learning Appellant's

wife was not dead, KH contacted Appellant's wife and learned that she did not create the "cuckwif3life" Reddit profile or know that Appellant was pretending to be ST or that Appellant was having sex with KH. (Id.) When KH told ST that Appellant posted a photo of her bare breasts as his Reddit profile picture, ST replied that she was "shaking." (Id.) After KH messaged with the real ST, KH called Appellant's First Sergeant to report his misconduct, kicking off this investigation. (Pros. Ex. 1, Attachment 7)

Sex for Rent

Appellant had another Reddit account relevant to this case where his username was "u/MilMan86." (Id.) Under that name, he created three posts with a room in his house available to rent, provided the renter pay him in sex instead of money, stating "Free Room for Freeuse Woman in DC/Maryland/Virginia area." (Id.) The posts included a photograph of Appellant's house in Maryland with the address visible. (Id.) Appellant was actually stationed in New Jersey, at Joint Base McGuire-Dix-Lakehurst. (R. at 36) Appellant created and broadcasted the posts to rent his house in Reddit forums called, "r/1950sHouseholdWives," "r/freeuseclub," and "r/freeuse." (Id.) The "free use" aspect of Appellant's posts meant instead of money as rent, Appellant would receive sexual acts from his tenant, whenever he wanted. (Id.) The Air Force became aware of Appellant's post soliciting sex for rent when an anonymous tip was sent to the Air Force Office of Special Investigations (OSI), showing Appellant's post to Reddit with his house and address, along with hyperlinks to Appellant's FaceBook and details about his purchase of the home in the photo at that specific address. (Pros. Ex. 1 Attachment 10)

Attempt to Patronize a Prostitute

About a year later, Appellant went to visit his children who were living in Arizona with ST. (Id.) While on that visit, Appellant searched online for people willing to have sex in

exchange for money, so he could have sex with a prostitute. (Id.) He responded to an ad online and contacted someone he thought was a prostitute, but was actually an undercover detective. (Id.) He offered to pay \$75 for “FS’ [full service].” (Id.) He met the undercover detective in the agreed-upon hotel room and was arrested. (Id.)

ARGUMENT

I.

APPELLANT WAIVED HIS FIRST ISSUE; NOT, THE FIRST SPECIFICATION UNDER ARTICLE 133, UCMJ WAS NOT PREEMPTED BECAUSE ARTICLE 133 DOES NOT PREEMPT OTHER OFFENSES AND BECAUSE APPELLANT DID MORE THAN JUST BROADCAST A SINGLE PHOTO, HE CREATED AN ENTIRE FAKE PUBLIC PROFILE POSING AS HIS WIFE, TO SOLICIT SEX PARTNERS FOR HIMSELF.

Standard of Review

“Whether an offense is preempted depends on statutory interpretation, which is a question of law” courts review de novo. United States v. Wheeler, 77 M.J. 289, 291 (C.A.A.F. 2018) (citations omitted).

Whether an appellant waived an issue is a question of law reviewed de novo. United States v. Rosenthal, 62 M.J. 261, 262 (C.A.A.F. 2005). Waiver is an intentional relinquishment of a known right. United States v. Gladue, 67 M.J. 311, 313 (C.A.A.F. 2009) (citations omitted). Waiver extinguishes any relief on appeal. Id.

Law and Analysis

“Article 133, UCMJ is not subject to preemption by other punitive articles.” Taylor, 23 M.J at 318. Article 133 “includes misconduct that approximates, but may not meet every element of, another enumerated offense.” Manual for Courts-Martial (MCM), United States pt. IV, ¶. 90.c.(2). Courts view a specific offense incorporated within an Article 133 offense as a

lesser-included offense of the latter offense. United States v. Palagar, 56 M.J. 294, 296 (C.A.A.F. 2002).

The preemption doctrine prohibits application of Article 134 to conduct covered by Articles 80 through 132. MCM pt IV, ¶ 91.c.(5)(a); *see also* United States v. Gleason, 78 M.J. 473 (C.A.A.F. 2019); United States v. Wheeler, 77 M.J. 289 (C.A.A.F. 2018); United States v. Anderson, 68 M.J. 387 (C.A.A.F. 2010); United States v. Curry, 35 M.J. 360 (C.M.A. 1992).

a. Preemption does not apply to Article 133, UCMJ offenses.

The Manual for Courts-Martial provides examples of Article 133 offenses that are exactly the same as other enumerated UCMJ offenses. MCM pt. IV, ¶ 91.c.(3). Specifically, instances of Article 133 violations include “knowingly making a false official statement; dishonorable failure to pay a debt...being drunk and disorderly in a public place.” (Id.) Additionally, the lesser included offense of an Article 133 offense can be the underlying specific offense incorporated into the Article 133 violation. Palagar, 56 M.J. at 296. Therefore, preemption cannot apply to Article 133 offenses since the charged offense and the lesser included offense can both include violations of other punitive articles, so long as they are also conduct unbecoming an officer.

Historically, the preemption doctrine applied to Article 134, UCMJ offenses and not to Article 133, UCMJ offenses. Taylor, 23 M.J. 318, Gleason, 78 M.J. 473, Wheeler, 77 M.J. 289; Anderson, 68 M.J. 387, Curry, 35 M.J. 360.⁶

⁶ A lone dissent from 1979 mentions Article 133 in dicta regarding the preemption doctrine but that dissent contains no analysis on extending the preemption doctrine to Article 133 nor has that dissent been elaborated on or substantively followed by other cases. United States v. Kick, 7 M.J. 82 (C.M.A. 1979) (Perry, J., dissenting).

This history of preemption not applying to Article 133 offenses goes back to 1896 when Winthrop explained that conduct unbecoming an officer:

embraces offences made punishable by *any other Article*, provided such offences be characterized in their commission by circumstances so dishonorable or disgraceful as to bring them within the definition of ‘conduct unbecoming an officer and a gentleman.’ Thus while the conduct involved in some of the more strictly military offences, such as desertion or mutiny, could scarcely properly become chargeable under this Article, there are many other offences punishable in the code, such as the making of false musters, certificates or returns, together with embezzlement and other offences...which, under certain circumstances, would very properly be presented under both Articles — [Article 133] and the specific Article in which the act is described or named.

Winthrop, William, Military Law and Precedents, 2d ed. 1920 Reprint at 719 (emphasis in original).

In 2024, the Court of Appeals for the Armed Forces (CAAF), wrote in dicta that the “‘preemption doctrine’ generally prohibits using Articles 133 and 134, *Uniform Code of Military Justice* (UCMJ), 10 U.S.C. §§ 933, 934 (2018) to charge conduct covered by Articles 80 through 132, UCMJ, 10 U.S.C. §§ 880-932 (2018).” United States v. Grijalva, 84 M.J. 433 (C.A.A.F. 2024). It is clear that CAAF’s mention of preemption applying to Article 133 was dicta and likely even a scrivener’s error. No other military majority opinion has ever held preemption applies to Article 133, and the Grijalva court did not purport to conduct a stare decisis analysis overturning its own precedent. (*Id.*) See also Taylor, 23 M.J. 318 (holding that Article 133 is not subject to preemption). (*Id.*) Indeed, Grijalva itself was about preemption applying to an Article 134 offense and did not analyze Article 133 offenses anywhere else in the opinion. (*Id.*) Furthermore, at the end of the sentence mentioning Article 133, CAAF cited United States v. Avery, which only applied the preemption doctrine to Article 134 offenses, in line with all prior military precedent. 79 M.J. 363, 366 (C.A.A.F. 2020).

Because Grijalva contained no analysis applying preemption to Article 133 offenses, extending the holding of Grijalva to overrule Taylor and apply preemption to Article 133 offenses would constitute overruling by implication. Overruling by implication is disfavored. United States v. Pack, 65 M.J. 381, 384 (C.A.A.F. 2007) (citing Eberhart v. United States, 546 U.S. 12, 19-20 (2005)). Namely, “[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.” Rodriguez de Quijas v. Shearson/American Express Inc., 490 U.S. 477, 484 (1989). Since Grijalva’s and Avery’s analyses control regarding applying the preemption doctrine to Article 134 offenses, the dicta in Grijalva should not control regarding the unprecedented expansion of the preemption doctrine to Article 133 offenses.

Similar to how overruling by implication is disfavored, allowing *sub silentio* matters to create controlling precedent is also disfavored. United States v. King, 83 M.J. 115, 126 (C.A.A.F. 2023) (Maggs, J., concurring) (finding no precedential value from waiver opinions when the prior opinions did not analyze the rationale behind why the Courts treated a failure to object as either waiver or forfeiture) (citing Bryan A. Garner et al., *The Law of Judicial Precedent* 229 (2016 ed.) (explaining that “a court won’t normally accept as binding precedent a point that was passed by in silence”)). Grijalva’s passing reference to Article 133 should not control. Applying that reference here would improperly extend the preemption doctrine *sub silentio*, since the Grijalva opinion did not conduct any analysis or discussion of the sole, lurking Article 133 reference. Webster v. Fall, 266 U.S. 507, 511 (1925) (“Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.”)

b. Appellant waived the issue of preemption.

Assuming arguendo this Court departs from the MCM and precedent to make Article 133 offenses subject to preemption, Appellant waived the issue of preemption. He expressly waived this issue at trial by stating through counsel that he waived any “preclusion-type issue related issue to Spec 1 of Charge IV” and by waiving all waivable motions in his plea agreement. (R. at 72-73, App. Exh III) “An accused may intentionally relinquish a waivable objection in a plea agreement by including a provision waiving all waivable motions. United States v. Day, 83 M.J. 53, 56 (C.A.A.F. 2022). The United States contends that preemption is a waivable matter because it does not affect jurisdiction. United States v. Marschalek, No. ACM S32766, 2026 CCA LEXIS 6, at *22 (A.F. Ct. Crim. Appeals 16 Jan. 2026) (unpub. op.) (Morgan, J., dissenting) (explaining the steady erosion of preemption as an unwaivable claim).

Robbins is the seminal military case on whether preemption is a jurisdictional issue for assimilated state crimes under Article 134, clause 3. 52 M.J. 159, 160 (C.A.A.F. 1999). Robbins held that an Article 134, clause 3 assimilated state crime was improperly assimilated and therefore lacked subject matter jurisdiction. (Id.) Later, this Court misinterpreted Robbins in Jones by finding preemption writ large was a nonwaivable issue of subject matter jurisdiction when an appellant pled guilty, no matter what clause of Article 134 was used. See United States v. Jones, 66 M.J. 704, 706 (A.F. Ct. Crim. App. 2008). Jones was an inaccurate expansion of Robbins because Robbins was cabined to an Article 134 clause 3 state-assimilated crime. See Robbins, 52 M.J. at 160. Robbins was a case-specific determination because a non-military and non-federal offense was charged in a court-martial; it was not intended to apply to all Article 134 and here, Article 133 offenses.

Intervening events support overturning Jones. See Marschalek, 2026 CCA LEXIS at *22 (unpub. op.) (Morgan, J., dissenting) (citing United States v. Cotton for the proposition that “a defective indictment does not deprive a court of jurisdiction,” 535 U.S. 625, 630 (2002)). The Supreme Court’s holding that indictment omissions do not deprive a court of jurisdiction should carry weight here. See Cotton, 535 U.S. at 630. Preemption is akin to failure to state an offense, similar to a defective indictment in federal court. Additionally, failure to state an offense is a waivable issue under Rule for Court-Martial (R.C.M.) 907(b)(2)(E). Importantly, CAAF decided Robbins, discussed *supra*, three years prior to the Supreme Court’s decision in Cotton. Once CAAF had the benefit of the guidance from the Supreme Court in Cotton, CAAF clarified that “where defects in a specification are raised for the first time on appeal, dismissal of the affected charges or specifications will depend on whether there is plain error.” United States v. Humphries, 71 M.J. 209, 213 (C.A.A.F. 2012) (citing Cotton, 535 U.S. at 631-32). Given CAAF’s clarification that plain error applies to analyzing charging defects after Jones, this Court should re-evaluate Jones and find preemption is a waivable issue.

c. Appellant’s creation and broadcast of a fake Reddit profile posing as his wife, soliciting sex for himself, was not preempted by Article 117a, and his plea was provident.

Even if this issue was not waived, because there was no objection at trial, this issue is analyzed under a plain error standard. (R. at 48-56, 72-73) United States v. Davis, 79 M.J. 329, 331 (C.A.A.F. 2020). Appellant fails to carry his burden to show that the specification was preempted or that the provident guilty plea amounted to plain or obvious error that prejudiced his substantial rights. See Gladue, 67 M.J. at 313 (explaining appellant must prove three things to demonstrate plain error (1) there is error, (2) the error was plain or obvious, and (3) the error resulted in material prejudice to appellant’s substantial rights).

An offense listed in Articles 80 through 132, UCMJ, will only preempt an Article 134 offense if "(1) Congress intended to limit prosecution for . . . a particular area of misconduct to offenses defined in [those] specific articles of the Code, and (2) the offense charged is composed of a residuum of elements of a specific offense." Curry, 35 M.J. at 360-61.

For the first prong of the test, Congress did not intend to limit the prosecution for this misconduct. In fact, it is the opposite: Congress intended to hold officers to a different standard and the President authorized using Article 133 as punishment for the same crime as an offense enumerated under Articles 80-132, UCMJ. MCM pt. IV, ¶ 91.c.(4) explains

Relation to Other Punitive Articles: conduct unbecoming an officer. Thus, a commissioned officer who steals property violates both this article and Article 121. Whenever the offense charged is the same as a specific offense set forth in this Manual, the elements of proof are the same as those set forth in the paragraph that treat that specific offense, with the additional requirement that the act or omission constitutes conduct unbecoming an officer.

For the second prong of the test, the Article 133 offense charged here is not composed of a residuum of elements of an Article 117a offense. The crux of Article 117a focuses on an accused wrongfully broadcasting *a visual image* without the victim's knowledge, causing harm to the victim and to the military mission. MCM pt. IV, ¶ 55a.b.(1)-(6) (emphasis added) Here, Appellant was charged and pled guilty to wrongfully broadcasting not just one intimate visual image without the victim's consent, but he created and broadcasted an entire Reddit profile using his wife's intimate image, impersonating his wife to solicit sex for him in "cuckqueen" communities. (Pros. Ex. 1, R. at 49-53) While this broadcasted profile included a photograph of his wife's bare breasts, the profile also included the phrase, "Happy wife living the cuck life" followed by a kissing face emoji as well as invitations for others to contact her so she could be a "cuckqueen," meaning she could facilitate others having sex with her husband. (Id.) Appellant's

creation of this entire profile with the username “cuckwif3life” constituted more conduct than an Article 117a wrongful broadcast of a single intimate image and did more damage to ST than broadcasting a single photo. ST explained,

[N]othing could have prepared me for the shock of seeing my own body displayed for strangers, or for reading the meticulously crafted words of a fabricated version of myself. I will never forget the moment I became aware of this unwanted version of me. I was shaking, overwhelmed, unsure of how to process the details. A picture meant for medical purposes was stolen and shared widely, but it wasn’t just an image—it was a fabricated story, a false version of me that does not reflect who I am.

(Court Exhibit A) Because Appellant was charged with and pled guilty to creating and broadcasting an entire fake profile pretending to be his wife while finding sexual partners for himself, there is no issue with a residuum of elements of an Article 117a to this distinct and broader Article 133 offense. (Pros. Ex. 1, R. at 49-53)

Since the Article 133 offense was not preempted by Article 117a, no error, let alone any plain or obvious error, occurred. Further, there was no material prejudice to Appellant’s substantial rights for him to be convicted of a properly drafted offense under the UCMJ to which he pled guilty. This Court should deny this assignment of error.

II.

THE MILITARY JUDGE DID NOT ERR WHEN HE ACCEPTED APPELLANT’S GUILTY PLEA TO THE FIRST SPECIFICATION UNDER ARTICLE 133, UCMJ.

Standard of Review

This Court reviews a military judge’s decision to accept a guilty plea providency for abuse of discretion and reviews questions of law arising from the guilty plea de novo. United States v. Inabinette, 66 M.J. 320, 322 (C.A.A.F. 2008).

Law & Analysis

Military judges are afforded broad discretion in the decision to accept a guilty plea because the facts are undeveloped in those cases. Inabinette, 66 M.J. at 322. A substantial basis test applies in reviewing a military judge's decision to accept a guilty plea: whether "the record as a whole show[s] a substantial basis in law and fact for questioning the guilty plea." United States v. Prater, 32 M.J. 433, 436 (C.M.A. 1991). The appellant bears the burden of establishing that the military judge abused that discretion — that the record shows a substantial basis in law or fact to question the plea. United States v. Finch, 73 M.J. 144, 148 (C.A.A.F. 2014).

Conduct Unbecoming an Officer

There are certain moral attributes common to the ideal officer and the perfect gentleman, a lack of which is indicated by acts of dishonesty or unfair dealing, of indecency or indecorum.

United States v. Giordano, 15 C.M.A. 163, 168 (C.M.A. 1964).

While the act charged will more usually have been committed in a military capacity, or have grown out of some military status or relation, it is by no means essential that this should have been its history. It may equally well have originated in some private transaction of the party (as a member of civil society, or as a man of business), which, while impeaching his personal honor, has involved such notoriety or publicity, or led to such just complaint to superior military authority, as to have seriously compromised his character and position as an officer of the Army and brought scandal or reproach upon the service.

Winthrop, at page 1023.

Liberty Interest

The First Amendment to the Constitution states that, "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. While servicemembers are not wholesale

excluded from First Amendment protections, there are crucial differences in its application to servicemembers:

the different character of the military community and of the military mission requires a different application of those protections. The fundamental necessity for obedience, and the consequent necessity for imposition of discipline, may render permissible within the military that which would be constitutionally impermissible outside it.

Parker v. Levy, 417 U.S. 733, 758 (1974).

If criminal and constitutionally-protected conduct overlap, the military judge should conduct a heightened Care inquiry. United States v. Hartman, 69 M.J. 467, 468 (C.A.A.F. 2011); United States v. Care, 18 C.M.A. 535 (C.M.A. 1969). However, if no constitutional issue exists, then no substantial basis in law or fact exists to overturn the plea solely because a military judge does not conduct a heightened plea inquiry. *See* United States v. Phillips, 74 M.J. 20, 22 (C.A.A.F. 2015). A plea is provident so long as the appellant was convinced of, and described, all the facts necessary to establish he is guilty of the crime. United States v. Murphy, 74 M.J. 302, 308 (C.A.A.F. 2015).

a. ST had a reasonable expectation of privacy in the intimate visual image, even though that is not required under Article 133.

Appellant took a photo his wife had of her bare breasts before a breast augmentation surgery and posted it to a public Reddit forum without her knowledge. (Pros. Ex. 1) Appellant now argues his wife did not have a reasonable expectation of privacy in the photo, alleging that “it is possible the picture was posted on a publicly available website related to breast augmentation.” (App. Br. at 12) This accusation is pure speculation and does not meet the standard of creating a substantial basis to undermine the Care inquiry. On the contrary, the record clearly shows ST did have a reasonable expectation of privacy in the photo. (R at 52-53) Appellant was advised by the military judge about what reasonable expectation of privacy meant, then Appellant told the military judge ST had a reasonable expectation of privacy in the picture “[b]ecause the picture itself had been

taken at that point years before with solely for the purposes of private use.” (R. at 53) Appellant admitted the photo was solely for private use and why it was solely for private use: because it had been taken years prior to the charged conduct. (Id.) Additionally, the Stipulation of Fact Appellant signed explains the photo was “taken as a before picture of augmentation surgery.” (Pros. Ex. 1) A medical photo showing nude breasts that was meant for private use demonstrates ST had a reasonable expectation of privacy in the photo. Yet by creating the Reddit profile with this photo of his wife’s breasts, Appellant’s actions made the photo public, specifically, “visible to other Reddit users who interacted with me on the website.” (Id.) The military judge was not required to pursue the exact circumstances of how or when the photo was taken; Appellant explaining it was taken years prior, it was for private use, and agreeing in the Stipulation of Fact that the photo was a “before picture” prior to augmentation surgery demonstrated Appellant knew ST had a reasonable expectation of privacy in the photo.

Additionally, while the military judge asked questions to explore the full nature and circumstances of Appellant’s actions that constituted conduct unbecoming an officer, there was no requirement that Appellant’s Article 133 plea prove the fourth element of an Article 117a offense beyond a reasonable doubt. Namely, the fourth element of an Article 117a offense requires “[t]hat the accused knew or reasonably should have known that the intimate visual image . . . was made under circumstances in which the person depicted retained a reasonable expectation of privacy regarding any broadcast or distribution.” MCM, pt IV, ¶ 55a.b.(4). The military judge did not ask Appellant about every element of an Article 117a offense since this was an Article 133 offense. Instead, the military judge asked questions about ST’s reasonable expectation of privacy in the photo to ascertain the full circumstances of Appellant’s unbecoming conduct with his “cuckwif3life” profile. (R. at 53-55) This full colloquy did not amount to an abuse of discretion.

b. The military judge did not error in bypassing inquiry on whether Appellant's public actions constituted a protected liberty interest warranting heightened scrutiny.

At the outset, Appellant has not specifically described the alleged liberty interest he claims on appeal. Appellant asserts he testified “that he posted the picture of ST as his profile picture on Reddit” and that testimony constituted a “clear implication of the First Amendment.” (App. Br. at 13) This carved-out portion of Appellant’s conduct only addresses a small portion of his entire conduct. Specifically, that alleged liberty interest only addresses the analogous Article 117a violation portion of Appellant’s conduct. That carved-out portion of this specification disregards that Appellant created a “cuckwif3life” profile, pretended to be his wife in a public forum for three months, and solicited sex outside of his marriage on the profile, all actions that go beyond a speech liberty interest of posting a single photo to Reddit. (Pros. Ex. 1) Appellant’s carved-out assertion trying to narrow his conduct fails to allege a specific liberty interest. Accurately defining the alleged liberty interest that encompasses all of Appellant’s conduct is crucial to this Court’s analysis. *See United States v. Rocha*, 84 M.J. 346, 352 (C.A.A.F. 2024) (remanding a case to determine whether a specific constitutionally protected liberty interest existed). The burden of defining that liberty interest rests with Appellant since he alleges the military judge abused his discretion in accepting Appellant’s guilty plea. *See Finch*, 73 M.J. at 148.

Nonetheless, Appellant asserts his criminal conduct constituted a constitutionally protected liberty interest; however, his public speech and online broadcasting actions do not equate to protected speech contemplated by military precedent. In *United States v. Timsuren*, this Court explained that if an Appellant’s admissions make clear his conduct is not constitutionally protected, then no *Hartman* inquiry is required. 72 M.J. 823 (A.F. Ct. Crim. App. 2 October 2013). Specifically, in *Timsuren*, “appellant’s own admissions demonstrate[d] that his conduct . . . was not

private and consensual; therefore, we hold that the military judge was not required to conduct the Hartman inquiry.” Id. at 827.

The military judge was not required to conduct a Hartman inquiry because Appellant’s conduct was public and not consensual. *See United States v. Whitaker*, 72 M.J. 292, 293 (C.A.A.F. 2013) (refusing to extend Hartman to a guilty plea for nonconsensual sodomy because the nonconsensual nature “does not implicate constitutional protections or even arguably constitute permissible behavior.”) Appellant alleges it is “undeniable” that his speech in this case was private. (App. Br. at 13) This is objectively false and counter to the Stipulation of Fact Appellant signed and his statement during the Care inquiry that “I used a picture of [ST’s] exposed breasts for the profile picture on the account. . . [t]his picture was visible to other Reddit users who interacted with me on the website.” (R at 50; Pros. Ex. 1) Appellant created a public profile on Reddit, available to anyone who clicked on the forum. (Pros. Ex. 1) He could not restrict or monitor who saw his public profile, instead, he broadcasted it to the world on the “online community website. . . a forum style website that allows users to create threads of messages, pictures, and videos that others can see, comment on, and otherwise interact with.” (Id.) Appellant did not have a protected liberty interest in using his wife’s exposed breasts without her permission to seek sexual partners for himself while pretending to be his wife, on a public forum. This was public and not consensual conduct, not requiring a Hartman inquiry. This was also soliciting adultery in an open and notorious manner – another crime under the UCMJ – rather than constitutionally protected speech.

Speech may be restricted to prevent “the substantive evils that Congress has a right to prevent.” *United States v. Hartwig*, 39 M.J. 125, 128 (C.A.A.F. 1994) (citing *Schenck v. United States*, 249 U.S. 47, 52 (1919)). “In a military context, those ‘substantive evils’ are violations of the Uniform Code of Military Justice.” *Hartwig*, 39 M.J. at 128. Appellant’s conduct was not

protected speech when he sought adulterous partners to violate *Extramarital sexual conduct*, Article 134, UCMJ. MCM pt. IV, ¶ 99. While impersonating his wife for three months online, Appellant indiscriminately solicited women for sex outside of his marriage — an evil Congress sought to prevent. (Pros. Ex. 1)

Appellant sought sex partners outside of his marriage in a public forum while extramarital sexual conduct is punishable in the UCMJ. As CAAF explained in Marcum, “servicemembers, as a general matter, do not share the same autonomy as civilians” due to the need for military mission accomplishment. United States v. Marcum, 60 M.J. 198, 206 (C.A.A.F. 2004). Appellant’s public solicitation for extramarital sexual conduct, or adultery, is contrary to the need for the military to accomplish the mission. Additionally, Appellant was also seeking these sexual partners through a deceitful manner while posting a bare breasted medical photo of his wife without her knowledge, analogous — but not preempted, as discussed *supra* — to *Wrongful Broadcast of a Visual Image* in violation of Article 117a. Appellant has no liberty interest in criminal behavior.

Appellant’s misconduct presented a “clear and present danger” in “dishonoring or disgracing the officer personally, [it would] seriously compromise[] the person’s standing as an officer,” See Hartwig, 39 M.J. at 128. Appellant’s misconduct presented a clear and present danger in dishonoring and disgracing him because he posed as his wife online without her consent, he used a private photo of her bare breasts, and he openly and notoriously sought sex partners in a “cuckqueen” forum with the intent to commit extramarital sexual conduct – another offense under the UCMJ. (Pros. Ex. 1) Appellant’s conduct disgraced him, he admitted it was “not something that I would openly share with anyone,” and his conduct compromised his standing as an officer “[b]ecause it would cause someone to question their trust and confidence in [him].” (R. at 54)

Appellant's conduct does not occupy a constitutional gray area similar to Hartman. See 69 M.J. at 468. When "Appellant's behavior . . . occupies a constitutional gray area similar to that at issue in Hartman . . . the plea colloquy should have established why possibly constitutionally protected material could still be service discrediting in the military context." United States v. Kim, 83 M.J. 235, 238 n.1 (C.A.A.F. 2023). In Hartman, just as in Marcum and Stirewalt, military members faced prosecution for sodomy after the Supreme Court found a liberty interest in private sexual behavior. Lawrence v. Texas, 539 U.S. 558 (2003); Hartman, 69 M.J. at 468; United States v. Marcum, 60 M.J. 198 (C.A.A.F. 2004); United States v. Stirewalt, 60 M.J. 297, 304 (C.A.A.F. 2004). Appellant's behavior did not occupy a constitutional gray area because unlike private consensual sexual behavior between two adults, here, Appellant's behavior was public, nonconsensual to ST, and implicated soliciting extramarital sexual conduct. Since his conduct was criminal, no liberty interest existed to require the military judge conduct a heightened Care inquiry. Therefore, Appellant fails to carry his burden to show a substantial basis in the record to question the guilty plea.

c. The record does not leave substantial doubt as to Appellant's misconduct amounting to conduct unbecoming an officer.

A military judge is afforded significant deference in eliciting the factual basis for a guilty plea. United States v. Nance, 67 M.J. 362, 365 (C.A.A.F. 2009). Affording the military judge significant deference in this case, he did not abuse his discretion because the gravamen of Appellant's conduct disgraced him personally, thereby constituting an offense under Article 133. See United States v. Gonzalez, 86 M.J. 165 (C.A.A.F. 2025) (holding the gravamen of an Article 133 offense includes when an officer's conduct disgraces him personally). *Conduct Unbecoming an Officer* includes private actions that, "in dishonoring or disgracing the officer personally, seriously compromises the person's standing as an officer." MCM, pt. IV, ¶ 90.c.(2). Appellant

admitted his conduct disgraced him personally “[b]ecause it’s not something that I would openly share with anyone,” and his actions seriously compromised his standing as an officer “[b]ecause it would cause someone to question their trust and confidence in me.” (R. at 54) The military judge did not act arbitrarily by taking Appellant at his word when Appellant explained why he was disgraced personally by his own conduct in luring women to have sex with him by posing as his wife in a cuckqueen forum and why his standing as an officer was compromised.

Military officers are held to a higher standard than enlisted and civilian personnel. Gonzalez, 86 M.J. at 169. In Gonzalez, C.A.A.F. upheld a conviction for *Conduct Unbecoming an Officer* for a single kiss in a bar between appellant and a junior enlisted member. Id. at 169-73. Here, Appellant’s conduct was significantly greater than a single kiss. He publicly broadcasted his wife’s nude photo for three months, claiming to be her, while claiming she was seeking sexual partners for him. (Pros. Ex. 1)

The military judge asked Appellant about his conduct, eliciting the “why” regarding why Appellant believed his conduct disgraced him, reduced his standing as an officer, why his conduct was wrongful, and why his actions were serious misbehavior. (R. at 53-55) This is significantly more questioning than asking an accused’s consent to the defined elements. (R. at 48-53) See Care, 40 C.M.R. at 253. Here, the military judge not only explained the elements to Appellant, but the military judge did so in conjunction with eliciting Appellant’s detailed explanations of his guilt in Appellant’s own words. (R. at 48-55) For example, Appellant explained why his actions were wrongful “[b]ecause it used a picture without her consent, because it involved her without her knowledge, and because the profile itself is based off deceit.” (R. at 54) The deceit Appellant admitted aligns to the “offense of conduct unbecoming an officer . . . includ[ing] actions which are ‘indicated by acts of dishonesty, unfair dealing, indecency, indecorum . . .’” MCM, pt. IV, ¶ 90.c.(2).

It was not arbitrary or capricious for the military judge to believe Appellant when Appellant explained why his conduct was wrongful, disgraced him, and reduced his standing as an officer. (R. at 48-55) Taking the record as a whole, there is no substantial basis in law or fact to question the guilty plea. Prater, 32 M.J. at 436. Accordingly, this Court should uphold Appellant's conviction for the first specification of *Conduct Unbecoming an Officer* and deny this assignment of error.

III.

THE MILITARY JUDGE DID NOT ERR WHEN HE ACCEPTED APPELLANT'S GUILTY PLEA TO THE SECOND SPECIFICATION UNDER ARTICLE 133, UCMJ.

Additional Facts

In September of 2022, during the first month when Appellant had the “cuckwif3life” Reddit profile broadcasted online claiming to be his wife, a female responded to the profile. (Pros. Ex. 1) KH contacted whom she believed to be ST, but was actually Appellant. (Id.) For the entirety of their relationship, Appellant messaged KH as both himself and pretending to be ST. (Id.) As Appellant agreed in the Stipulation of Fact, Appellant “revealed personal information about himself, [his wife], and their family, including photos of both of them and their children to convince [KH] that [his wife] knew about and consented to the proposed sexual relationship between [Appellant] and [KH]. (Id.) Specifically, when Appellant initially was messaging with KH while pretending to be his wife, he provided multiple photos of ST and Appellant together, as well as photos of them with their kids to “prove” to KH that ST was who she was claiming to be, though it was actually Appellant. (Id.)

Posing as his wife, Appellant proposed a hotel in Alexandria, Virginia, for him and KH to meet to have sex. (Id.) While still pretending to be his wife, Appellant requested KH send videos and photos of the sexual acts. (Id.) KH obliged and sent a photo to whom she believed to be was

Appellant's wife, while she was having sex with Appellant. (Id.) KH had a sexual relationship with Appellant from October until December of 2022 and Appellant texted her everyday to "plan [their] next sexual encounter. (Id.) Throughout that time, Appellant continued contacting KH while pretending to be his wife, pretending his wife not only knew about the sexual relationship, but endorsed it. (Id.) Towards the end of November 2022, Appellant told KH that his family died in a car accident and he needed KH to have sex with him to help him grieve. (Id.) KH obliged. (Id.) Later, when KH discovered Appellant's wife was not dead, Appellant again pretended to be his wife and messaged KH claiming KH could "feel free to fuck with him [Appellant] all you want." (Id.)

KH provided a statement to OSI. (Pros. Ex. 1, Attachment 11) Significantly, KH ended her statement by explaining, "[i]f I had known from the beginning that I had never spoken to ST or that the photo used on the Reddit account cuckwif3life were used without her consent, I would have never agreed to engage with said sexual encounters with [Appellant]." (Id.)

Standard of Review

This Court reviews a military judge's acceptance of a guilty plea for abuse of discretion. United States v. Riley, 72 M.J. 115, 119 (C.A.A.F. 2013). The substantial basis test is applied to determine whether a military judge abused his discretion. Inabinette, 66 M.J. at 322.

Law and Analysis

a. Appellant has no liberty interest in adultery or soliciting adultery.

Appellant pled guilty to conduct unbecoming an officer for wrongfully providing false information to KH as part of his efforts to engage in sexual conduct with her for about three and a half months. (App. Ex. III; *Charge Sheet*, ROT Vol. 1) Appellant asserts his public Reddit post to KH and his private messages to her were constitutionally protected, warranting a Hartman inquiry. (App. Br. at 18) This is incorrect because Appellant had no liberty interest in

purely criminal activity: using his communications to KH to facilitate extramarital sexual conduct, by lying and pretending to be his wife so he could lure KH into having sex with him.

(Pros. Ex. 1)

Constitutionally protected conduct for civilians can still be criminal conduct for military members. *See Parker v. Levy*, 417 U.S. at 743, (The Supreme Court "has long recognized that the military is, by necessity, a specialized society separate from civilian society.") Private speech, under certain circumstances, can constitute a violation of Article 133. *United States v. Guaglione*, 27 MJ 268, 272 (C.M.A. 1988); *see also United States v. Norvell*, 26 M.J. 477, 481 (C.M.A. 1988) (finding an officer guilty of Article 133 for a private conversation explaining to another military member how to conceal the use of marijuana during a urinalysis).

Whether the private speech itself is criminal controls. In *Wilcox*, CAAF found “no authority supporting criminal penalties for unpopular and distasteful views made in private between two individuals that fall short of proposing criminal activity.” *United States v. Wilcox*, 66 M.J. 442, 443 (C.A.A.F. 2008). The crucial difference is that CAAF did not uphold a conviction for private conversations that *fall short* of proposing criminal activity and here, Appellant’s private messages to KH *did* propose engaging in criminal activity. Appellant gained KH’s consent for sexual activity on multiple occasions by impersonating his wife and orchestrating a scheme to solicit KH into committing adultery with him. (Pros. Ex. 1) Appellant even convinced KH to send a photo of herself and Appellant having sex because KH believed Appellant’s wife was asking for the photo. (Id.) Appellant provided KH false information “[b]y posing as my then spouse through the profile and engaging in conversation with her such that she believed she was having a conversation with both myself and my spouse.” (R. at 57) By

impersonating his wife in a fraudulent manner, Appellant achieved his goal of committing adultery.

Soliciting adultery is a crime under the UCMJ. Before committing adultery with KH, Appellant already committed the crime of soliciting adultery. Namely, his communication to KH that was all based on falsehoods constituted solicitation because soliciting the commission of offenses requires two elements: (1) that the accused solicited or advised a certain person to commit a certain UCMJ offense and (2) that the accused did so with the intent that the offense actually be committed. *See MCM* pt IV, ¶ 6(b) Article 82 (10 U.S.C. 882).

While telling a lie in a private capacity is not inherently a criminal act, here Appellant admitted his actions were serious misbehavior as opposed to something that was in bad taste because “of the deceit associated with [his] posing as [his] then spouse to the degree that [KH] thought she was interacting with her.” (R. at 59) Appellant’s deceit and dishonesty were to further his adulterous relationship while his wife did not know about KH or Appellant’s fake profile online seeking sex on her behalf. (Pros. Ex. 1, Attachment 11) Additionally, KH would not have engaged in extramarital sexual conduct with him had she known the truth — that he was messaging her from two numbers and pretending to be his wife, but his wife had no idea this “cuckqueen” relationship was occurring. (Pros. Ex. 1, Attachment 12.) Appellant had no liberty interest in publicly and privately representing himself as his wife as to engage in extramarital sexual conduct on multiple occasions. Because Appellant had no liberty interest, no Hartman inquiry was required. *See Timsuren*, 72 M.J. 82.

b. The military judge did not abuse his discretion in finding the conduct unbecoming.

The “appropriate standard for assessing criminality under Article 133 is whether the conduct or act charged is dishonorable and compromising” Giordano, 15 C.M.A. at 168. When

the military judge asked Appellant why Appellant agreed that his actions in his “personal capacity of wrongfully providing false information to KH as part of [his] efforts to engage in sexual conduct with her brought dishonor and/or disgrace upon [him] personally,” Appellant explained it was [b]ecause I lied and . . . Because I lied.” (R. at 58) He further explained during the Care inquiry that his actions seriously compromised his standing as an officer because it brought “to question again, confidence and trust in me.” (R. at 59) These lies Appellant told questioned Appellant’s standing as an officer because others could not trust him or have confidence in him, meeting the standard of dishonorable and compromising conduct.

Instances of Article 133 violations involve “committing or attempting to commit a crime involving moral turpitude.” MCM, pt. IV ¶ 91.c.(3). And the MCM specifically identifies “acts of dishonesty” and “unfair dealing” as indicating a lack of the “moral attributes common to the ideal officer.” Id. at pt. IV ¶ 91.c.(2). Appellant admitted he provided false information to KH “[b]y posing as my then spouse through the profile and engaging in conversation with [KH] such that she believed she was having a conversation with both myself and my spouse.” (R. at 57) His intent in providing that false information was “[u]ltimately to maintain the sexual relationship.” (R. at 58) Here, Appellant’s acts of deceit and dishonesty to further an adulterous relationship clearly rise to the level of conduct unbecoming an officer as his actions “impeached his personal honor,” and “seriously compromised his character and position as an officer.” United States v. Howe, 37 C.M.R. 429, 438 (C.M.A. 1967) (citing Winthrop at page 1023). Appellant’s admissions regarding his dishonest behavior to solicit adultery with KH did not create a substantial basis to question the guilty plea; accordingly, the plea should be upheld as provident.

IV.

THE MILITARY JUDGE DID NOT ERR WHEN HE ACCEPTED APPELLANT'S GUILTY PLEA TO THE THIRD SPECIFICATION UNDER ARTICLE 133, UCMJ.

Standard of Review

This Court reviews a military judge's acceptance of a guilty plea for abuse of discretion.

Prater, 32 M.J. at 436.

Law and Analysis

a. No liberty interest in public solicitation of prostitution.

Appellant's public post soliciting a tenant to pay him rent with "free use" sex on demand was not constitutionally protected speech. There is no constitutionally protected speech interest in public solicitation for prostitution. *See United States v. Miller*, 44 M.J. 549 (A.F. Ct. Crim. App. 7 May 1996) (rev'd on other grounds, 47 M.J. 352 (1997)) (upholding conviction for soliciting another to commit prostitution). Appellant posted in "free use" public forums regarding a room he wanted to rent in his home. (Pros. Ex. 1) Specifically, Appellant posted a photograph of his house and address in three "free use" forums. (Id.) Rather than accept money for rent, Appellant wanted sexual conduct, specifically, Appellant "was looking to rent a room to a woman, not for money, but instead in exchange for sexual acts whenever [Appellant] wanted." (Id.) When asked what he did to wrongfully offer a room for a person to use in exchange for sexual conduct, Appellant explained, "I created a post on Reddit doing exactly that, just offering a room to somebody in exchange for sexual favors." (R. at 62.) Any person reading Appellant's post would perceive him to be soliciting prostitution, because the term "act of prostitution" means "a sexual act or sexual contact . . . on account of which anything of value is given to, or received by, any person." MCM part IV, ¶ 63.d(1). Appellant's public posts sought to receive

sexual acts in lieu of rent, thereby soliciting his tenant to commit prostitution by accepting his “free use” offer.

The military judge asked why Appellant’s actions were serious misbehavior as opposed to merely inappropriate or in poor taste, Appellant replied “[b]ecause the very nature of the topic is illegal.” (R. at 62) Appellant’s admission in his own words at trial acknowledged the illegality of his conduct. (Id.) Appellant cannot now successfully claim on appeal he has a constitutionally protected liberty interest in illegal conduct.

Appellant now argues on appeal that he had a clear First Amendment liberty interest despite his admission at trial that he knew his conduct was illegal. (Id.) He changes his position on appeal, now claiming his intent behind the solicitation of prostitution should negate the fact that his crime was completed and his crime was not a specific intent crime. Namely, at trial Appellant told the military judge during the Care inquiry that his intent in offering the room for sex online was “[s]olely to engage in the topic of the conversation.” (R. at 63) But that attempt to downplay his misconduct and mitigate his punitive exposure during trial does not absolve Appellant from criminal liability.

Appellant’s claim he only wanted to engage in the topic of conversation was downplaying his misconduct, as evidenced by the Stipulation of Fact. The military judge had already viewed the Stipulation of Fact with attachments including messages between Appellant and KH as well as messages between KH and ST (Appellant’s wife). (Pros. Ex. 1, Attachments 8, 12) The messages show how KH discovered that ST was alive and that ST had not been messaging KH. (Id.) Specifically, when Appellant asked KH to move in with him so he could have sex “whenever he wanted,” KH’s roommates investigated Appellant online and discovered ST’s current FaceBook, demonstrating she had not died. (Id.) In addition to offering his home

to KH for sex “whenever he wanted,” Appellant also posted his home on Reddit as a “free use” rental for sex on demand. (Id.) The military judge had this knowledge from the Stipulation of Fact to demonstrate how Appellant’s comment about fantasies was downplaying his actions to mitigate his punitive exposure.

But Appellant’s subjective intentions do not govern the outcome here, because his conduct was not constitutionally protected regardless. No one viewing Appellant’s posts would think he was merely engaging in fantasy, so his conduct – which on its face advertised for criminal activity – still posed a clear and present danger of seriously compromising his standing as an officer. Perhaps Appellant would have a better argument if his posts appeared to be unserious on their face. But as they existed, they provide no substantial basis to question the providency of Appellant’s plea.

Finally, Appellant made these posts in public online. While Appellant asserts on appeal that he had a “free speech interest in his private posts,” nothing about his posts to Reddit were private since they were visible to the public on Reddit. (Pros. Ex. 1; App. Br. at 20) Appellant’s crime was committed when he made the public Reddit post seeking to solicit someone for prostitution in his home.

b. The military judge did not err, and there was no substantial doubt Appellant’s conduct was unbecoming an officer.

Regarding a military judge’s efforts to establish the factual basis for a guilty plea, courts “afford military judges significant deference on this point and we grant them substantial leeway in conducting providence inquiries.” United States v. Moratalla, 82 M.J. 1, 3 (C.A.A.F. 2021). Affording the military judge significant deference, here, he did not abuse his discretion in finding the plea provident because soliciting prostitution is conduct unbecoming an officer as the conduct also constitutes underlying UCMJ offenses.

Appellant's public posts presented a clear and present danger of disgracing and dishonoring Appellant personally and thereby bringing "dishonor or disrepute upon the military profession he represents." Parker v. Levy, 417 U.S. at 754; Norvell, 26 M.J. at 480. It is evident Appellant's public post soliciting a woman to pay rent in his home by providing sex for him whenever he pleased ("free use") brought dishonor and disrepute upon the Air Force given the tip someone sent to OSI. (Pros. Ex. 1 Attachment 10) Namely, a person who saw Appellant's posts felt so compelled to report Appellant that they took the time to seek out how to report him, drafted an explanation of Appellant's misconduct, and submitted the narrative to OSI's tip line with substantiation. (Id.) That person explained, "[Appellant] of Anacostia-Bolling is posting under the Reddit username MilMan86 trying to illicit 'sex for rent' from young women/girls he finds online. He is making various posts on different NSFW⁷ reddit pages advertising 'Free Room for Freeuse Woman,' offering a room in exchange for sexual favors.. . He posted a photo of his new house with the house number showing and general area, making it very easy to determine the address and look up the real estate info." (Id.) The narrative tip included two hyperlinks to Appellant's Reddit and his FaceBook along with photos as substantiation. (Id.) The photos included Appellant's original post as "MilMan86" soliciting a "Freeuse Woman" with 6 comments on it in the "r/1950sHouseholdWives" forum. (Id.) The "MilMan86" identifies Appellant as a "military man" without much leap of the imagination. Another photo showed a conversation between Appellant and someone responding to Appellant's post. (Id.) This photo showed Appellant confirming he does have a free room so long as the person is okay with "free use in exchange for the room," meaning sexual conduct whenever Appellant wanted

⁷ NSFW stands for "not safe for work." Merriam Webster, <https://www.merriam-webster.com/dictionary/NSFW>.

as rent. (Id.) This is exactly the type of personal conduct Colonel Winthrop foretold as constituting an Article 133 violation, leading to a “complaint to superior military authority, as to have seriously compromised his character and position as an officer of the Army and brought scandal or reproach upon the service.” Winthrop, at page 1023.

In addition to the evidence in the Stipulation of Fact, the military judge elicited evidence from Appellant further demonstrating how the plea was provident. Appellant explained he “created a post on Reddit . . . just offering a room to somebody in exchange for sexual favors.” (R. at 62) Between the evidence in the Stipulation of Fact regarding the OSI tip and the Care inquiry, the military judge did not act arbitrarily in accepting Appellant’s guilty plea. Appellant’s conduct in posting his home as a place for free rent so long as the female renter had sex with him on demand clearly falls below the conduct expected of military officers and instead constitutes acts of indecency and indecorum, hallmark traits of conduct unbecoming an officer. *See Giordano*, 15 U.S.C.M.A. at 168. Because Appellant’s conduct was unbecoming an officer, there is no substantial basis in the record to question the guilty plea and his conviction should be upheld.

c. Appellant’s sentence should be affirmed without a rehearing.

Should this Court find Appellant’s pleas to Specifications 2 or 3 of the *Conduct Unbecoming an Officer* Charge improvident, no sentence rehearing or reduction in overall sentence is necessary, and this Court should affirm the lower court’s sentence. *See* Article 66(f)(2)(a). Courts of Criminal Appeals (CCAs) have broad discretion first to decide whether to reassess a sentence, and then to arrive at a reassessed sentence. United States v. Winckelmann, 73 M.J. 11, 15 (C.A.A.F. 2013). Winckelmann analyzed four factors CCAs use to determine whether to reassess a sentence: (1) “[d]ramatic changes in the penalty landscape and exposure;”

(2) whether the appellant was sentenced by court members or a military judge; (3) "[w]hether the nature of the remaining offenses capture the gravamen of criminal conduct included within the original offenses and . . . whether significant or aggravating circumstances addressed at the court-martial remain admissible and relevant to the remaining offenses;" and (4) "[w]hether the remaining offenses are of the type that judges of the [CCAs] should have the experience and familiarity with to reliably determine what sentence would have been imposed at trial." *Id.* at 15-16.

Regarding the first factor concerning punitive exposure, Appellant had segmented sentencing. (R. at 112) He received 2 days of confinement for each of these specifications that ran concurrently with all other specifications to which he pled guilty. (*Id.*) In accordance with his plea offer and agreement, Appellant agreed to a dismissal as a minimum term of the agreement. (App. Ex. III) Appellant received 30 days confinement for the first specification and 2 days confinement for each of the other specifications he pled to. (R. at 112) This factor weighs in favor of affirming the same sentence since Appellant's punitive exposure would have remained the same even if he was not convicted of this specification. *See United States v. Ching*, No. ACM 40590, 2025 CCA LEXIS 87 at *19 (A.F. Ct. Crim. App. 7 Mar. 2025) (affirming sentence of the lower court when segmented sentencing with concurrent confinement did not dramatically change the penalty landscape or exposure). Regarding the second factor, Appellant was sentenced by a military judge.

Regarding the third factor, the gravamen of Appellant's conduct remains with the other charges and specifications. Specifically, Appellant was arrested when he tried to patronize a prostitute but actually he was actually messaging and meeting with an undercover police agent. (Pros. Ex. 1) Additionally, Appellant's use of his wife's photo and creation of the fake Reddit

profile claiming to be his wife soliciting adulterous sex partners for him was captured in the first specification of the conduct unbecoming charge, not the specification discussed here. Regarding the fourth factor, judges of this Court have familiarity and experience with the remaining offenses to reliably determine the sentence imposed as trial, especially since this case involved a plea agreement that capped the maximum punitive exposure much lower than the original charged exposure.

Even if this Court set aside the conviction and sentence for either of these specifications, Appellant's overall sentence would not have changed given the totality of circumstances. In applying the Winckelman factors, this Court should reassess the sentence and affirm the sentence, because the concurrent nature of his 2 days of confinement for these specifications do not change Appellant's overall sentence of 30 days confinement for other offenses.

CONCLUSION

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's claims and affirm the findings and sentence in this case.

[REDACTED]
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Appellate Government Counsel

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force
Appellate Defense Division on 11 March 2026.

[REDACTED]

ALLISON R. GISH, Maj, USAF
Appellate Government Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S
<i>Appellee,</i>	)	REPLY BRIEF
	)	
v.	)	
	)	Before Panel 1
Major (O-4)	)	
FRANCISCO J. TORRES,	)	No. ACM 40746
United States Air Force,	)	
<i>Appellant.</i>	)	18 March 2026

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 18(d) of this Honorable Court’s Rules of Practice and Procedure, Major (Maj) Francisco J. Torres replies to the United States’ Answer filed on 12 March 2026. Maj Torres primarily rests on the arguments contained in his initial brief, filed on 9 February 2026, and submits the following additional arguments for the issues identified below.

I. This Court should reject the Government’s invitation to disregard CAAF precedent.

This Court should decline the Government’s invitation to disregard our superior court’s reasoning that the preemption doctrine applies to Article 133, Uniform Code of Military Justice (UCMJ), and dismiss it as mere “dicta.” *Contrast* Gov. Ans. at 10, with *Grijalva* 84 M.J. 433, 434 (C.A.A.F. 2024) (“The ‘preemption doctrine’ generally prohibits using Articles 133 and 134, [UCMJ] . . . to charge conduct covered by Articles 80 through 132, UCMJ. . .”). While the Government goes so far as to ask this Court to assume that the Court of Appeals for the Armed Forces (CAAF) made a “scrivener’s error,” in the opening line of its opinion, this Court should instead invoke the principle of Occam’s razor— the simplest explanation is often the correct one.¹

¹ See *United States v. Solomon*, 2022 CCA LEXIS 492, at *91 (A.F. Ct. Crim. App. Aug. 19, 2022) (reasoning that Occam’s razor is a “reasonable and rational inference[.]”).

Id. While *Grijalva* dealt with a preemption issue under Article 134 rather than Article 133, the opening line of the opinion is not a “lurking reference” to Article 133, UMCJ. Gov. Ans. at 11. Rather, it plainly states that preemption applies to both Article 133 and 134, UCMJ offenses. *Grijalva*, 84 M.J. at 434.

The CAAF’s reasoning as to why the Government could not charge an offense under Article 117a, UCMJ, as an offense under Article 134, UCMJ, is not unclear and further supports that the preemption doctrine applies equally to Articles 133 and 134, UCMJ. *Cf.* Gov. Ans. at 11 with *Grijalva*, 433 M.J. at 435-36 (discussing the origin and purpose of the preemption doctrine). The preemption doctrine is not a mere technicality; it is a critical safeguard to ensure the Government cannot sidestep the specific elements of an offense defined by Congress by prosecuting the same conduct under a more general article. In his concurrence, Judge Hardy articulated what the *Grijalva* Court was concerned about and what the preemption doctrine was intended to prevent—the Government easing its evidentiary burden at trial by “dropp[ing] the direct-and-palpable connection element and charg[ing] the remaining elements as a novel Article 134 offense to ease its evidentiary burden at trial[.]” *Grijalva*, 84 M.J. at 440 (Hardy, J., concurring).

The preemption doctrine is rooted in the history of the military justice system and is not a new restriction. *Id.* at 440. It was first recognized in *United States v. Norris*, 8 C.M.R. 36 (1953), where the Court of Military Appeals (CMA) stated, “We cannot grant to the services unlimited authority to eliminate vital elements from . . . offenses expressly defined by Congress and permit the remaining elements to be punished as an offense under Article 134.” *Id.* at 39. The preemption doctrine served to limit the “otherwise broad scope” of Article 134, UCMJ, limiting its application to offenses “not specifically mentioned in this chapter.” *Grijalva*, 84 M.J. at 400 (Hardy, J.,

concurring). The core “rationale of preemption is that, if Congress has covered a particular kind of misconduct in specific punitive articles of the [UCMJ], it does not intend for such misconduct to be prosecuted under the general provisions of Article 133 or 134.” *United States v. Reichenbach*, 29 M.J. 128, 136-37 (C.M.A. 1989); *see also United States v. Eppes*, No. ACM 38881, 2017 CCA LEXIS 152, at *32-33 (A.F. Ct. Crim. App. Feb. 21, 2017), *aff’d*, 77 M.J. 339 (C.A.A.F. 2018).

While the Government urges this Court to rely on *United States v. Taylor*, 23 M.J. 314 (C.M.A. 1987) and the subsequent cases that have cited it, that approach ignores the foundational principles established in *Norris*. Gov. Ans. at 9-11. This Court should reject that path and instead reaffirm the preemption doctrine’s original purpose by applying the reasoning first identified in *Norris* and later articulated in *Grijalva*. Several service courts of criminal appeal have relied on *Taylor*’s statement. *See, e.g., United States v. Nelson*, 80 M.J. 748, 756 (N-M. Ct. Crim. App. 2021); *United States v. Contreras*, 2009 CCA LEXIS 507 (A.F. Ct. Crim. App. 2009); *United States v. Cook*, 2001 CCA LEXIS 19 at *14 (A.F. Ct. Crim. App. 2001). Additionally, the CAAF recently cited *Taylor* for the proposition that there is no preemption for Article 133. *See United States v. Gonzalez*, 86 M.J. 165, 172 (C.A.A.F. 2025).

However, reliance on this line of authority is misplaced, as it is built upon a flawed foundation. The purported rule from *Taylor* cited by the Government is nothing more than a conclusory one-liner, offered without citation to any authority or analysis of the preemption doctrine’s origins, like that which the *Grijalva* Court conducted. *See Taylor*, 23 M.J. at 318; Gov. Ans. at 3. The Government made no attempt to reconcile the single statement it identifies in *Taylor* with the clear holding in *Norris* or the rationale later articulated in *Reichenbach*. The subsequent cases, including *Gonzalez*, have merely repeated the conclusion from *Taylor* without independently analyzing the foundational principles of preemption. *See Gonzalez*, 86 M.J. at 172.

Following *Taylor* would effectively allow the Government to do precisely what *Norris* forbids and exactly as it did in Maj Torres' case: circumvent the specific elements of a charged offense by resorting to a general article.

In *Grijalva*, the CAAF engaged with the substance and the history of the preemption doctrine, effectively reaffirming the foundational rule of *Norris* and recognizing that allowing the Government to prosecute under a general article for conduct specifically defined in Articles 88 through 132, UCMJ, would violate the principles of the preemption doctrine. *Grijalva*, 433 M.J. at 435-36. By applying the historically-grounded reasoning of *Norris* and *Grijalva* and the principles behind the preemption doctrine, this Court should find that this Specification under Article 133, UCMJ, was preempted.

II. The Government cannot avoid preemption by arguing illusory differences between Article 117a, UCMJ, and Charge IV, Specification 1.

The Government next claims that Charge IV, Specification I is not preempted because it charges different conduct than an Article 117a, UCMJ, charge (despite arguing later in its Answer that the crime Maj Torres *actually* committed was adultery or solicitation of adultery). Gov. Ans. at 13-15, 25-28. This argument fails because any differences between Article 117a, UCMJ, and the Government's creative charging scheme here are illusory, especially when considering that the definitions the Military Judge read to Maj Torres implicated 117a, UCMJ. At the outset, the Government, without explanation, apparently disagrees with the CAAF's holding that Congress intended for Article 117a, UCMJ, to "cover[] the entire field" for the nonconsensual broadcasting of intimate images," and thus, again, invites this Court to disregard clear precedent from our superior court. *Contrast Grijalva*, 84 M.J. at 439, *with* Gov. Ans. at 14 ("For the first prong of the test, Congress did not intend to limit the prosecution for this misconduct"). The Government next asks this Court to find a substantive difference between a charge of "wrongful broadcasting of an

intimate visual image” under Article 117a, UCMJ, and this Specification because it claims Maj Torres pled guilty not just to the broadcast of one image, but to “create[ing] and broadcast[ing] an entire Reddit profile. . . .” Gov. Ans. at 14.

It is telling that the entirety of the guilty plea inquiry as to this Specification involved questions about the photograph. R. at 48-56. Maj Torres’s explanation for why he was guilty of this offense concerned the posting of the photograph on his Reddit profile. R. at 50. The Military Judge asked questions about whether ST could be identified from the photograph, implicating the definition of “intimate visual image” from Article 117a, UCMJ. R. at 51-52. The Military Judge next explained to Maj Torres the definition of “reasonable expectation of privacy,” and asked him questions about the photograph, again implicating the same definition under the same Article. R. at 53. When “restating” what actions were charged, the Military Judge asked:

Do you believe that your actions in a personal capacity — and I know it’s repetitive but I will sort of restate it — broadcasting a profile on the Internet, using pictures of [ST], including a picture of her bare breasts without her knowledge or consent to create the appearance that she is seeking sexual partners for you, do you believe those actions brought dishonor and/or disgrace upon you personally?

R. at 54. The focus of the guilty plea inquiry was on the broadcast of the profile photograph of ST’s bare breasts, not on “an entire Reddit profile.” Gov. Ans. at 14. And to the extent the Government wanted the Military Judge to inquire into something different, the prosecutor did not believe that any further inquiry was required. R. at 55-56. Just like the specification at issue in *Grijalva*, there is no actual difference between what the Government charged here and a charge under Article 117a, UCMJ. *See Grijalva*, 84 M.J. at 437 (“[W]e cannot accept the Government’s arguments because each of the two apparent differences between Article 117a(a), UCMJ, and Specification 2 is illusory.”) Therefore, this Specification was preempted by Article 117a, UCMJ.

III. The Government’s mere disagreement with this Court’s decision in *Marschalek* is not a reason for this Court to disregard its own precedent.

Similar to its arguments asking this Court to disregard CAAF precedent, the Government asks this Court to also disregard its own recent decision in *Marschalek* that an appellant cannot waive preemption by virtue of a plea agreement. Gov. Ans. at 12 (“The United States contends that preemption is a waivable matter because it does not affect jurisdiction.”); *United States v. Marschalek*, No. ACM S32766, 2026 CCA LEXIS 6, at *9 (A.F. Ct. Crim. App. 16 Jan. 2026) (“We do not agree that Appellant waived the issue of preemption and we find no cause to reevaluate our holding in *Jones* at this time.”).² For this proposition, the Government cites the dissent in *Marschalek*, despite the clear statement of this Court in *Marshalek* that an appellant’s guilty plea neither forfeits nor waives preemption and that a claim of preemption “presents a question of subject-matter jurisdiction of the trial court and cannot be waived by either a plea of guilty or a failure to object.” *Marshalek*, 2026 CCA LEXIS 6, at *7 (citing *United States v. Jones*, 66 M.J. 704, 706 (A.F. Ct. Crim. App. 2008)). For the reasons this Court articulated in *Marshalek*, Maj Torres has not waived preemption.

The Government next asks this Court to review whether the plea to Article 133, UCMJ, was preempted under the wrong standard of review. The Government claims that “[e]ven if this issue was not waived, because there was no objection, this issue is analyzed under a plain error standard.” Government Answer at 13. The correct standard of review for issues of preemption is de novo. *Marshalek*, 2026 CCA LEXIS 6, at *4 (citing *United States v. Wheeler*, 77 M.J. 289, 291 (C.A.A.F. 2018)) (“Whether an offense is preempted depends on statutory interpretation, which is a question of law we review de novo.”).

² The Government’s Motion for Reconsideration was granted. *Order, United States v. Marschalek*, No. ACM S32766 (18 Mar. 2026).

IV. The Military Judge was required to resolve inconsistent factual assertions in Maj Torres's *Care* inquiry, regardless of the merit of those assertions.

In the military justice system, for an accused to plead guilty there must be more than bare assertions and a recitation of the elements. “To prevent the acceptance of improvident pleas, [the CAAF] has long placed a duty on the military judge to establish, on the record, the factual bases that establish that ‘the acts or omissions of the accused constitute the offense or offenses to which he is pleading guilty.’” *United States v. Nance*, 67 M.J. 362, 365 (C.A.A.F. 2009) (quoting *United States v. Care*, 40 C.M.R. 247, 253 (C.M.A. 1969) (establishing the requirement for an on the record “*Care*” inquiry in guilty plea cases)). Crucially, “[i]f the military judge fails to establish there is an adequate basis in law and fact to support the accused’s plea during the *Care* inquiry, the plea will be improvident.” *Id.* (citations omitted).

The Government now claims that Maj Torres’s *Care* statements “downplay[ed] his actions. Gov. Ans. at 31. It goes on to say that the military judge could have ignored these statements because there was evidence in the stipulation of fact to show countervailing evidence. Gov. Ans. at 30-31. This, however, does not resolve the discrepancy. Regardless of whether Maj Torres’ responses to the Military Judge during the *Care* inquiry were self-serving, the statements were still inconsistent factual assertions that the Military Judge was required to resolve. *See United States v. Ingram*, No. ACM S32781, 2025 CCA LEXIS 354, at *12 (A.F. Ct. Crim. App. Jul. 31, 2025) (“Whatever a trier of fact may have made of that self-serving explanation had this case been fully litigated at trial, during the *Care* inquiry, a military judge is required to take an appellant’s inconsistent factual assertions at face value and resolve them.”)

The Government is also misguided in urging this Court to evaluate the plausibility or merit of Maj Torres’ inconsistent statements. As the CAAF held in *United States v. Bullman*, “In deciding whether a plea is rendered improvident by statements inconsistent with the plea, the sole

question is whether the statement was inconsistent, not whether it was credible or plausible.” 56 M.J. 377, 381 (C.A.A.F. 2002) (citing *United States v. Phillips*, 74 M.J. 20, 21-22 (C.A.A.F. 2015)). Maj Torres unequivocally stated that his “intent in offering the room” was “[s]olely to engage in the topic of the conversation” and “[j]ust to fantasize about the nature of it.” R. at 63. The Military Judge was not free to disregard those statements, and the Government’s argument to the contrary conflicts with binding precedent.

V. The Military Judge failed to conduct the *Hartman*³ inquiry required because of the potential to criminalize “constitutionally protected conduct.”

The way the Government chose to charge this case implicated complex areas of the law, such as preemption and First Amendment issues. Rather than engage with these areas of the law, resolve conflicts in the facts, and ensure the providency of the plea, the parties and Military Judge turned a blind eye and rushed through the *Care* inquiry. In *Hartman*, this Court was troubled by the fact that the military judge failed to ask the appellant whether he understood the relationship between certain sections of the colloquy and the distinction between constitutionally protected behavior and criminal conduct. *United States v. Byunggu Kim*, 83 M.J. 235, 238 (C.A.A.F. 2023) (citing *Hartman*, 69 M.J. 467). The Government contends that Maj Torres “has no liberty interest in criminal behavior” and that his “misconduct” presented a “clear and present danger” because he had the intent to commit adultery. Gov. Ans. at 21.⁴ But the Government cites the wrong legal

³ *United States v. Hartman*, 69 M.J. 467 (C.A.A.F. 2011).

⁴ To prove that Maj Torres committed a violation of Article 134, extramarital sexual conduct, the Government would have had to prove that the extramarital conduct was either “directly prejudicial to good order and discipline or service discrediting or both.” Article 134c.(1), UCMJ. During the charged timeframe, Maj Torres and ST were pending *legal dissolution* at the desire of ST. Def. Ex. E. at 4. It is unlikely that the Government could have ever proven a violation of Article 134, *extramarital sexual conduct*, in this case. Yet the Government, who controls the charge sheet, never charged Maj Torres with a crime of adultery or of soliciting adultery, and instead chose to

test. The framework for assessing free speech in the military is settled under the *Wilcox* framework and no part of it calls for the dangerous speech test. *Grijalva*, 433 M.J. at 436 (citing *United States v. Wilcox*, 66 M.J. 442, 443-44, 446-47 (C.A.A.F. 2008)). Yet, the Government urges this Court to use the dangerous speech test in Maj Torres’ case for an Article 133, UCMJ charge. Gov. Ans. at 21-22. This Court should reject the Government’s urging.

In *Brandenburg v. Ohio*, 395 U.S. 444 (1969), the Supreme Court abrogated the clear and present danger test in favor of the current approach: speech is unprotected as incitement only if it is “directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” *Brandenburg*, 395 U.S. at 447; see *United States v. Smith*, 85 M.J. 283, 289-90 (C.A.A.F. 2024) (“Although the Supreme Court has never officially overruled the dangerous speech test . . . that test has effectively been abrogated.”).⁵ Noting this development—and the “substantial criticism” of the dangerous speech test—the CAAF declined to use it in *Smith*. 85 M.J. at 289-90. Despite this backdrop, the Government advocates for the dangerous speech test yet again. Gov. Ans. at 21-22. The Government’s affinity for this test is unsurprising because the test allows for the regulation of all speech which encompasses “the substantive evils Congress has a right to prevent.” Gov. Ans. at 20 (citing *United States v. Hartwig*, 39 M.J. 125, 128 (C.A.A.F. 1994)). Under this test, so long as a crime exists in the UCMJ, it cannot violate the First Amendment. Gov. Ans. at 20-21. But this is the exact reason the dangerous speech test is unworkable: it has no limiting criteria. *United States v. Miselis*, 972 F.3d 518, 532-33 (4th Cir. 2020), *cert denied*, 141

craft an Article 133 offense, targeting specifically Maj Torres’s speech, and implicating his First Amendment right.

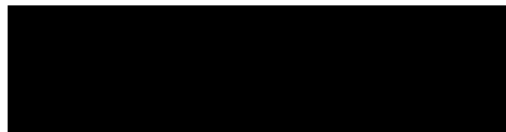
⁵ The Government wholly ignores *Smith* in its Answer, failing even to bring this binding precedent to this Court’s attention.

S. Ct. 2756 (2021); *see Gitlow v. New York*, 268 U.S. 652, 673 (1925) (Holmes, J., dissenting) (arguing that the dangerous speech test makes “every idea” unprotected).

This is the central problem with the dangerous speech test: “every idea” can be restricted. The dangerous speech test allows the Government to prosecute any speech it dislikes. But, “[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989). The issue of the application of the dangerous speech test has been resolved by our superior court. The Government’s urging to ignore binding precedent—without even citing to it—is inappropriate.

Ultimately, all that the Military Judge was required to do in this case under *Hartman* was to engage in a heightened inquiry with Maj Torres to ensure he understood the distinction between constitutionally protected behavior and criminal conduct. The Military Judge’s failure to do so renders Maj Torres’s plea improvident. Therefore, this Court should set aside Maj Torres’s conviction for the Charge and its specifications under Article 133, UCMJ.

Respectfully submitted,

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JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 18 March 2026.

Respectfully submitted,

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JORDAN L. GRANDE, Maj, USAF
Appellate Defense Counsel

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' OUT OF TIME
<i>Appellee,</i>	)	MOTION FOR AN
	)	ENLARGEMENT OF
v.	)	TIME (FIRST)
	)	
	)	Before Panel No. 1
Major (O-4)	)	
FRANCISCO J. TORRES,	)	No. ACM 40758
United States Air Force,	)	
<i>Appellant.</i>	)	30 July 2026

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rules 23.3(m)(5) and 24.3(a), the United States respectfully requests a 14-day out of time enlargement of time to respond in the above-mentioned case. This is the United States' first request for an enlargement of time. The Court issued a Show Cause Order (Order) on 15 July 2026, and the United States' response to the Order was due on 29 July 2026. If the enlargement of time is granted the United States' response will be due 13 August 2026.

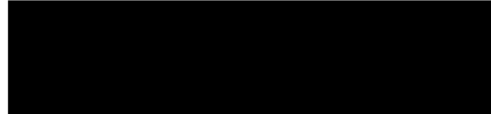
This motion is being filed out of time because due to administrative oversight, this case was not added to the JAJG suspense tracker, and at the time the order was issued, the originally-assigned attorney had made a Permanent Change of Station (PCS) move. Also, JAJG's associate chief was out of the office doing Reserve duty at the time the order was issued, further eroding JAJG's safeguards for timely filings. JAJG will have to assign the case to new counsel. JAJG is losing three active-duty attorneys to the PCS season (in addition to originally assigned counsel, who was the director of operations) and is only receiving two replacements. Both of JAJG's new accessions will be leaving on 10 August 2026 to attend Squadron Officer School. This leaves only three active-duty attorneys available to work on briefs. JAJG currently has twelve AFCCA

AOE briefs pending answer briefs. Additional time will be needed for the newly-assigned attorney to research the issue raised in the order and provide a responsive brief.

WHEREFORE, the United States respectfully requests this Court grant the United States' motion.



BRITTANY M. SPEIRS, Maj, USAFR
Appellate Government Counsel



MARY ELLEN PAYNE
Associate Chief
Government Trial and Appellate Operations



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Appellate
Defense Division on 30 July 2026.



BRITTANY SPEIRS, Maj, USAFR
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' ANSWER TO
<i>Appellee</i>	)	SHOW CAUSE
	)	
v.	)	Before Panel No. 1
	)	
Major (O-4)	)	No. ACM 40758
FRANCISCO J. TORRES, USAF	)	
<i>Appellant</i>	)	7 August 2026

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

On 15 July 2026, this Court noted that the convening authority did not address Appellant's 18 July 2024 submission of matters in his convening authority decision on action memo (CADAM), dated 7 August 2024. (*Show Cause Order*, dated 15 July 2026.) In his submission, Appellant requested the convening authority commute his entire confinement sentence or reduce it by ten days. (*Major Francisco Torres – Submission of Matters*, dated 18 July 2026.) This Court also noted that in the CADAM, the convening authority specifically addressed Appellant's 16 July 2024 deferral of confinement request and the convening authority's denial. (*Show Cause Order*, dated 15 July 2026.) Finding no further evidence that the convening authority was aware of or advised by the Staff Judge Advocate (SJA) on Appellant's clemency matters in the record of trial (ROT), on 15 July 2026 this Court *sua sponte* directed the following:

Not later than **29 July 2026**, counsel for the Government shall **SHOW GOOD CAUSE** as to why this court should not remand the record back to the trial judiciary to correct the record of trial consistent with this order.

(*Id.*)

On 4 August 2026, this Court stamp granted the Government’s motion for an enlargement of time out of time until 13 August 2026 to respond to the show cause order. (*Granted - United States’ Out of Time Motion for an Enlargement of Time*, dated 30 July 2026.)

Standard of Review

Proper completion of post-trial processing is a question of law subject to de novo review. United States v. Sheffield, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 22 Jul. 2004).

Law and Argument

The convening authority considered Appellant’s submission of matters from 18 July 2024, and the CADAM properly reflected that consideration. Therefore, no remand is necessary.

Deferral of confinement and forfeitures and waiver of automatic forfeitures are controlled by R.C.M. 1103. “The action of the authority acting on the deferment request shall be in writing” and a copy is provided to the accused and military judge. R.C.M. 1103(d)(2). For waivers resulting from operation of law, the “convening authority may waive and direct payment of any such forfeitures when they become effective.” R.C.M. 1103(h)(1). The decision on deferral or waiver under R.C.M. 1103, even if previously granted or denied, is captured in the CADAM. Department of the Air Force Instruction (DAFI) 51-201, *Administration of Justice*, para. 20.25.5.3, 20.32.1.3, 20.32.2.2.

In contrast, an accused is permitted to submit matters to the convening authority pursuant to R.C.M. 1106. An accused may submit such matters within ten days after announcement of the sentence. R.C.M. 1106(d)(1). When deciding whether to take post-trial action in a court-martial, the convening authority “shall consider matters timely submitted under R.C.M. 1106 . . . by the accused.” R.C.M. 1109(d)(3)(A). “In determining whether to take action, or to decline taking action under this rule, the convening authority shall consult with the [SJA].” R.C.M. 1109(d)(2).

The consultation with the SJA does not need to be in writing. DAFI 51-201, para. 20.21, 20.22. Under R.C.M. 1109(g)(1), if the convening authority decides to take no action, the SJA informs the military judge of this decision. If the convening authority does take action, “such action shall be in writing and shall include a written statement explaining the action.” R.C.M. 1109(g)(2). DAFI 51-201, para. 20.25.2 simplifies this by requiring the convening authority’s decision be in writing in the CADAM regardless of whether action was taken. The written decision must “[s]tate whether the convening authority consulted with the SJA and considered any matters submitted by the accused.” DAFI 51-201, para. 20.25.5.5.

A template CADAM is available to base legal offices through the Military Justice Law and Policy Division (JAJM). *Convening Authority Decision on Action Memo (CADAM) Template (Jan 2024)*.¹ The template breaks down the convening authority’s decisions on deferrals or waivers under R.C.M. 1103 into paragraphs 4 and 5 respectively. *Id.* The template further places a convening authority’s consultation with the SJA and consideration of matters submitted by an accused under R.C.M. 1106 in paragraph 8. *Id.*

Following the template, the convening authority in Appellant’s case properly and separately documented his decisions:

- (1) Paragraph 3 covered Appellant’s request for a deferral of confinement from 16 July 2024 and the convening authority’s denial on the same day;
- (2) Paragraph 4 provided the convening authority’s *sua sponte* decision to waive automatic forfeitures for the benefit of Appellant’s dependents; and

¹ Available at:
[https://usaf.dps.mil/w:/r/teams/AFJAJMMilitaryJusticeLawandPolicy/_layouts/15/Doc.aspx?sourcedoc=%7B9C893AAB-E565-496C-B8AC-91D811975F89%7D&file=Convening%20Authority%20Decision%20on%20Action%20Memo%20\(CADAM\)%20Template%20\(Jan%202024\).docx&action=default&mobileredirect=true](https://usaf.dps.mil/w:/r/teams/AFJAJMMilitaryJusticeLawandPolicy/_layouts/15/Doc.aspx?sourcedoc=%7B9C893AAB-E565-496C-B8AC-91D811975F89%7D&file=Convening%20Authority%20Decision%20on%20Action%20Memo%20(CADAM)%20Template%20(Jan%202024).docx&action=default&mobileredirect=true)

(3) Paragraph 8 stated:

1. “Prior to coming to this decision, [the convening authority] consulted with [the SJA];”
2. The convening authority’s knowledge that Appellant “did timely submit matters for my consideration under R.C.M. 1106” and that Appellant “did provide rebuttal matters in a timely manner” after the victim submitted matters; and that
3. The convening authority “considered those matters before deciding to take action.”

(CADAM, dated 7 August 2024.)

Paragraph 8 was accurate because Appellant submitted matters to the convening authority asking him to commute or reduce his confinement on 18 July 2024, only two days into the ten-day window to submit matters under R.C.M. 1106. (*Major Francisco Torres – Submission of Matters*, dated 18 July 2024). Appellant also provided rebuttal to the victim’s post-trial submitted matters on 1 August 2024. (*Response to [ST] Matters, U.S. v. Maj Francisco Torres*, dated 1 August 2024). There was no requirement under R.C.M. 1103, 1106, or 1109, or under DAFI 51-201, for the convening authority to explicitly state the date of Appellant’s “timely” submitted matters. The inclusion of the previous deferral request, the denial, and the waiver of automatic forfeitures under R.C.M. 1103 was made in accordance with DAFI 51-201, paras. 20.25.5.3, 20.32.1.3., 20.32.2.2, and had no relation to the submission of matters under R.C.M. 1106.

That the entry of judgment (EOJ) does not mention the submitted matters is likewise not a cause for concern. Under R.C.M. 1111(b)(1) and (b)(2), the EOJ captures the findings and sentence “accounting for any modifications made by reason of any post-trial action by the convening authority.” If an accused requested deferral or waiver of automatic forfeitures, the EOJ reflects the request and the convening authority’s action, among other things, as “additional

information.” R.C.M. 1111(b)(3). While the judgment is “entered” “as soon as practicable after the [SJA] . . . notifies the military judge of the convening authority’s post-trial action or decision to take no action under R.C.M. 1109 or 1110,” there is no requirement that an accused’s submission of matters considered under R.C.M. 1106 and 1109 be annotated on the EOJ.

R.C.M. 1111(e)(2). Per DAFI 51-201, para. 20.40, the “EOJ *may only* include the contents listed in R.C.M. 1111(b),” and “[a]ttachments are not required to justify or explain actions taken in the case.” As with the CADAM, JAJM provides a template EOJ for legal offices to use. *Entry of Judgment – Segmented Sentencing Template (Feb 26)*.² The template does not provide a place to annotate whether an accused submitted matters for consideration by the convening authority. It does, however, contain language that “[t]his judgment reflects the result of the court-martial, as modified by any post-trial actions, rulings, or orders, if any, and is hereby entered into the record on (date).”

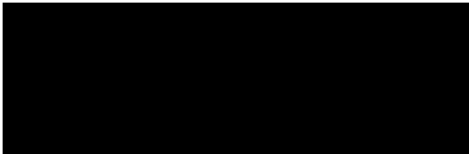
Per the guidance prohibiting information not required by R.C.M. 1111(b), the EOJ in this case did not contain reference to Appellant’s submission of matters. *Entry of Judgment*, dated 20 August 2024. The EOJ also correctly included Appellant’s request for deferral and the convening authority’s denial as well as the convening authority’s *sua sponte* decision to waive Appellant’s automatic forfeitures, as required by R.C.M. 1111(b)(3). *Id.* Finally, the EOJ stated “This judgment reflects the result of the court-martial, as modified by any post-trial actions,

² Available at:
[https://usaf.dps.mil/w:/r/teams/AFJAJMMilitaryJusticeLawandPolicy/_layouts/15/Doc.aspx?sourcedoc=%7BDBBC82A0-97BB-4DF9-9BD3-07717D0AED4E%7D&file=Entry%20of%20Judgment-%20Segmented%20Sentencing%20Template%20\(Feb%2026\).docx&action=default&mobileredirect=true](https://usaf.dps.mil/w:/r/teams/AFJAJMMilitaryJusticeLawandPolicy/_layouts/15/Doc.aspx?sourcedoc=%7BDBBC82A0-97BB-4DF9-9BD3-07717D0AED4E%7D&file=Entry%20of%20Judgment-%20Segmented%20Sentencing%20Template%20(Feb%2026).docx&action=default&mobileredirect=true)

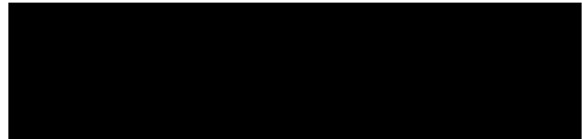
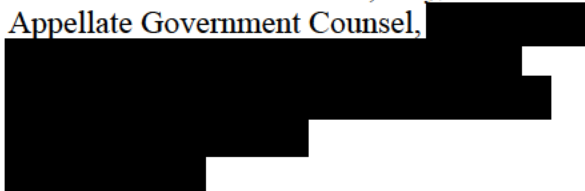
rulings, or orders, if any, and is hereby entered into the record on 20 August 2024,” which captured the convening authority’s decision to take no action in the case per the CADAM.

The CADAM demonstrated the convening authority’s awareness of Appellant’s request for deferral and his separate submission of matters under R.C.M. 1106. It also reflected that the convening authority consulted with his SJA in accordance with R.C.M. 1109. There is nothing in the ROT to correct.

WHEREFORE, the United States respectfully requests this Court decline to remand the record for correction.



REGINA HENENLOTTER, Maj, USAF
Appellate Government Counsel,



MARY ELLEN PAYNE
Associate Chief, Government
Trial and Appellate Operations Division



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Appellate Defense Division on 7 August 2026.



REGINA HENENLOTTER, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

v.

Major (O-4)

Francisco J. TORRES

United States Air Force

Appellant

) NOTICE OF APPEARANCE

)

)

)

) Before Panel No. 1

)

) No. ACM 40758

)

) 10 August 2026

TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rules 12(a) and 13(a) of this Honorable Court's Rules of Practice and Procedure, the undersigned, an attorney admitted to practice before this Court, hereby enters her appearance as appellate defense counsel for Appellant in the above-captioned case.

Respectfully submitted,

[REDACTED]

PAIGE F. MARKLEY DENTON, Capt, USAF
Appellate Defense Counsel

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 10 August 2026.



PAIGE F. MARKLEY DENTON, Capt, USAF
Appellate Defense Counsel



**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

UNITED STATES	)	No. ACM 40758
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
FRANCISCO J. TORRES	)	
Major (O-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 1

A military judge sitting as a general court-martial convicted Appellant, consistent with his pleas and pursuant to a plea agreement, of one specification of attempt to commit pandering in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880, and three specifications of conduct unbecoming an officer, in violation of Article 133, UCMJ, 10 U.S.C. § 933.* On 16 July 2024, the military judge sentenced Appellant to a dismissal, confinement for 30 days, and reprimand. On this same date, Appellant submitted to the convening authority an “Anticipatory Request for Deferral of Confinement,” asking the convening authority to defer his adjudged confinement “for at least one day,” which the convening authority denied in a separate memorandum, also on 16 July 2024.

In addition, on 16 July 2024, the staff judge advocate (SJA) for the convening authority advised Appellant, in writing, of his right to submit clemency matters.

On 18 July 2024, Appellant submitted to the convening authority matters, requesting the convening authority “commute his entire confinement sentence, or in the alternative, reduce his confinement sentence by ten days.”

On 7 August 2024, the convening authority took no action on the findings and the sentence, and specifically addressed the 16 July 2024 request for deferment of confinement as follows: “On 16 July 2024, the accused requested deferment of confinement for at least 1 day. On 16 July 2024 deferment was denied.”

* References to the punitive articles are to the *Manual for Courts-Martial, United States* (2019 ed.).

In the entry of judgment, signed by the military judge on 20 August 2024, it stated, “On 16 July 2024, the accused requested deferment of the adjudged confinement until 17 July 2024. On 16 July 2024, the convening authority denied the request for deferment of the adjudged confinement.”

On 9 February 2026, Appellant’s counsel submitted four assignments of error with this court challenging the providence of the guilty plea, but did not allege that the convening authority’s potential omission or lack of clarity in the Convening Authority Decision on Action Memorandum (CADAM) constituted legal error.

Upon our review of the record of trial, this court was unable to deduce whether the convening authority had knowledge of Appellant’s 18 July 2024 clemency request, whether the SJA advised the convening authority of such request, and whether any action was taken in response to this request. The entry of judgment, signed by the military judge, only referenced the 16 July 2024 deferment request, but not the 18 July 2024 clemency request. Therefore, on 15 July 2026, this court ordered the Government to show cause why we should not remand Appellant’s case to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the record of trial prior to completing our review under Article 66, UCMJ, 10 U.S.C. § 866, or offer another solution to remedy the record.

On 7 August 2026, after being granted an extension of time, the Government provided its answer to the show cause order, asserting that remand of Appellant’s case was not necessary because the CADAM and the Entry of Judgment complied with the applicable requirements of the Rules for Court-Martial and Department of Air Force Instruction 51-101, *Administration of Justice*; thereby, reflecting the convening authority’s consideration of the clemency submission, dated 18 July 2024. The Government asks this court not to remand the record for correction because there is no error.

Accordingly, it is by the court on this 12th day of August, 2026,

ORDERED:

Not later than **26 August 2026**, counsel for the Appellant may file a reply to the Government's answer to the order to show cause.

FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

UNITED STATES	)	No. ACM 40758
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Francisco J. TORRES	)	
Major (O-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 1

A military judge sitting as a general court-martial convicted Appellant, consistent with his pleas and pursuant to a plea agreement, of one specification of attempt to commit pandering in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880, and three specifications of conduct unbecoming an officer, in violation of Article 133, UCMJ, 10 U.S.C. § 933.* On 16 July 2024, the military judge sentenced Appellant to a dismissal, confinement for 30 days, and reprimand. On this same date, Appellant submitted to the convening authority an “Anticipatory Request for Deferral of Confinement,” asking the convening authority to defer his adjudged confinement “for at least one day,” which the convening authority denied in a separate memorandum, also on 16 July 2024.

In addition, on 16 July 2024, the staff judge advocate (SJA) for the convening authority advised Appellant, in writing, of his right to submit clemency matters.

On 18 July 2024, Appellant submitted to the convening authority matters, requesting the convening authority “commute his entire confinement sentence, or in the alternative, reduce his confinement sentence by ten days.”

On 7 August 2024, the convening authority took no action on the findings and the sentence, and addressed the 16 July 2024 request for deferment of confinement as follows: “On 16 July 2024, the accused requested deferment of confinement for at least 1 day. On 16 July 2024 deferment was denied.” There is no evidence that the convening authority was aware of or was advised by his SJA regarding Appellant’s clemency request of 18 July 2024.

* Unless otherwise stated, references to the UCMJ and Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2019 ed.).

In the entry of judgment, signed by the military judge on 20 August 2024, it similarly stated, “On 16 July 2024, the accused requested deferment of the adjudged confinement until 17 July 2024. On 16 July 2024, the convening authority denied the request for deferment of the adjudged confinement.” There is no evidence in the record the military judge had any information regarding Appellant’s clemency request of 18 July 2024.

Upon our full review of the record of trial, this court is unable to deduce whether the convening authority had knowledge of Appellant’s 18 July 2024 clemency request, whether the SJA advised the convening authority of such request, and whether any action was taken in response to this request. The fact that the entry of judgment, signed by the military judge, only references the 16 July 2024 deferment request, further concerns this court whether the 18 July 2024 clemency request was ever considered. Therefore, we find it appropriate to order the Government to show cause why the court should not remand Appellant’s case to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the record of trial prior to completing our review under Article 66, UCMJ, 10 U.S.C. § 866, or offer another solution to remedy this omission from the record.

Accordingly, it is by the court on this 15th day of July, 2026,

ORDERED:

Not later than **29 July 2026**, counsel for the Government shall **SHOW GOOD CAUSE** as to why this court should not remand the record back to the trial judiciary to correct the record of trial consistent with this order.

FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

v.

Major (O-4)

Francisco J. TORRES

United States Air Force

Appellant

**MOTION FOR LEAVE TO FILE
APPELLANT’S REPLY TO UNITED
STATES’ ANSWER TO SHOW CAUSE
OUT OF TIME**

Before Panel No. 1

No. ACM 40758

27 August 2026

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

On 15 July 2026, this Court ordered the Government to show cause “as to why this court should not remand the record back to the trial judiciary to correct the record of trial consistent with this order.” After being granted an extension, the Government provided its answer on 7 August 2026. On 12 August 2026, this Court ordered that Appellant may file a reply to the Government’s answer no later than 26 August 2026. Appellant, Major (Maj) Francisco J. Torres, files this reply out of time.

Appellant disagrees with the Government’s assertion that remand is unnecessary. Despite the Government’s claims, the Convening Authority Decision on Action Memorandum [hereinafter “CADAM”] does not comply with applicable Rules for Courts-Martial.

GOOD CAUSE FOR FILING OUT OF TIME

Due to no fault of Appellant, the undersigned counsel failed to file this reply by the deadline of 26 August 2026. The undersigned counsel was aware of this deadline and worked with Appellant personally, as well as Appellate Defense Division leadership, prior to 26 August 2026. However, on the day of the deadline, the undersigned counsel was working on multiple different matters and cases and, amidst her efforts to manage competing priorities, overlooked

making final edits to this reply and filing it. The undersigned counsel takes full responsibility for this oversight and respectfully requests this Honorable Court consider Appellant’s reply out of time due to the delay not being attributable to Appellant personally; Maj Torres does not deserve to have his perspective overlooked due to his counsel’s tardiness. Therefore, there is good cause to consider the filing out of time.

STATEMENT OF FACTS

On 16 July 2024, Appellant’s trial defense counsel submitted an “Anticipatory Request for Deferral of Confinement” to the Convening Authority prior to the sentence being announced in Appellant’s case. Anticipatory Request for Deferral of Confinement at 1, ¶ 1 (Jul. 16, 2024). In this request, Appellant asked that his sentence to confinement be deferred under Rule for Court-Martial [hereinafter “R.C.M.”] 1103(d)(2) so that he could attend a hearing on 17 July 2024 in Arizona state court. *Id.* at ¶ 1, 3. The Convening Authority denied this request that same day. Decision on Deferment of Confinement Request at ¶ 1 (Jul. 16, 2026).

On 18 July 2024, Appellant’s trial defense counsel submitted a “Submission of Matters” memorandum “[o]n behalf of Maj Torres.” Submission of Matters at 1 (Jul. 18, 2024). There are two attachments to this submission: a five-page personal statement by Appellant and twenty-six pages of character letters on Appellant’s behalf. *Id.* at 2. In this 18 July 2024 submission, Appellant requests clemency under R.C.M. 1109(c)(5)—specifically commutation of his confinement sentence or its reduction by ten days. *Id.* at ¶ 1–2.

On 7 August 2024, the Convening Authority signed a CADAM wherein he took no action on the findings or sentence in Appellant’s case. CADAM at ¶ 1–2. The CADAM expressly references Appellant’s Anticipatory Request for Deferral of Confinement from 16 July 2024 and matters in response to the victim’s submission, *id.* at ¶ 3, 4, but is silent as to

Appellant’s 18 July 2024 Submission of Matters requesting clemency. The details of the 18 July 2024 clemency request are similarly omitted—there is no mention of commutation of Appellant’s confinement sentence nor reducing it by ten days. *See generally id.*

ARGUMENT

As this Court observed in its 12 August 2026 Order, it is unclear “whether the convening authority had knowledge of Appellant’s 18 July 2024 clemency request, whether the SJA advised the convening authority of such request, and whether any action was taken in response to this request.” *United States v. Torres*, No. 40758, Order at 2 (A. F. Ct. Crim. App. Aug. 12, 2026). Appellant agrees, and this Court should not speculate as to whether the Convening Authority considered Appellant’s clemency request. *See United States v. Craig*, 28 M.J. 321, 325 (C.M.A. 1989) (explaining “this court will not ‘guess’ as to whether clemency matters prepared by the defense counsel were attached to the recommendation or otherwise considered by the convening authority”). Remand is necessary.

“Proper completion of post-trial processing is a question of law this court reviews de novo.” *United States v. Green*, 2021 CCA LEXIS 6, *3 (A.F. Ct. Crim. App. 2021) (citing *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004).

In the CADAM, the Convening Authority focused on two things that were not in Appellant’s 18 July 2024 clemency request: Appellant’s 16 July 2024 deferment request, CADAM at ¶ 3, and a *sua sponte* waiver of automatic forfeitures that were not requested by Appellant in either document. *Id.* at ¶ 4. The amount of detail on these two topics, compared with the complete absence of detail regarding the 18 July 2024 clemency request or the commutation and reduction requested therein, suggests that the Convening Authority did not consider the 18 July 2024 clemency request. *See generally id.*

The Government argues that “the CADAM properly reflected [] consideration” of the 18 July 2024 clemency request in paragraph 8 [sic],¹ United States’ Answer to Show Cause at 2 (Aug. 7, 2026), but the boilerplate reference to a “timely submi[ssion] of matters for my consideration under R.C.M. 1106,” CADAM at ¶ 7, does not clear up the confusion created by the abundance of detail on two topics that were not addressed in Appellant’s 18 July 2024 clemency request. This Court should decline to engage in guesswork and remand Appellant’s case. The Convening Authority had significant authority to act on Appellant’s sentence, *see* R.C.M. 1109(c)(5)(A) (allowing Convening Authorities to act on sentences of six months or less); Entry of J. (reflecting Appellant’s sentence to confinement for only thirty days), but it is unclear whether he was aware of that and, if so, if he properly considered Appellant’s request under R.C.M. 1109(d)(3)(A) and was properly advised on it under R.C.M. 1109(d)(2).

The Government’s interpretation of paragraph 7 of the CADAM might control if paragraph 2 of the CADAM clearly stated that the 16 July 2024 request was *not* a request under R.C.M. 1106 and was instead a request under R.C.M. 1103. While the nature and authority of the 16 July 2024 deferment request is clear from the text of the request, the CADAM does not reflect that. *See* CADAM at ¶ 3. It is possible the Convening Authority believed the 16 July 2024 deferment request was actually Appellant’s one submission of matters under R.C.M. 1106. *See* R.C.M. 1106(e)(2) (“Submission of any matters under [R.C.M. 1106] shall be deemed a waiver of the right to submit additional matters.”). If that were true, the Convening Authority would not have been required to consider a subsequent submission of matters under R.C.M. 1106(e)(2). While Appellant agrees with the Government that the Convening Authority did refer to a R.C.M.

¹ Appellant notes that there is no paragraph 8 in the CADAM. *See generally* CADAM. Appellant believes and assumes the Government is referring to paragraph 7 of the CADAM when it discusses paragraph 8 of the CADAM in its Answer to Show Cause. *See id.* at ¶ 7.

1106 submission in paragraph 7, it is unclear whether the Convening Authority believed the referred-to submission was the 16 July 2024 deferment request or the 18 July 2024 clemency request.

Lastly, we agree with the Government's argument on page four of its Answer that the Entry of Judgment does not have to be corrected because summaries of clemency requests do not have to be included under R.C.M. 1111(b). However, the Entry of Judgment does not shine any light on the CADAM's ambiguity. The Entry of Judgment's lack of reference to the 18 July 2024 clemency request does not render it erroneous but compounds Appellant's concern that the Convening Authority mistook his 16 July 2024 deferment request for his official submission of matters under R.C.M. 1106.

CONCLUSION

The CADAM is not sufficiently clear on whether the Convening Authority considered Appellant's clemency request, made on 18 July 2024 under R.C.M. 1106. Given this ambiguity, it is not possible to determine, without guessing, whether the Convening Authority complied with R.C.M. 1109(d)(2) and (3)(A). Therefore, Appellant's case must be remanded for full consideration by the Convening Authority and re-accomplishment of the CADAM.

Respectfully submitted,



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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 27 August 2026.

[REDACTED]

PAIGE F. MARKLEY DENTON, Capt, USAF
Appellate Defense Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]