DEPARTMENT OF THE AIR FORCE
IN THE UNITED STATES AIR FORCE TRIAL JUDICIARY

UNITED STATES v. CAPTAIN JACOB R. WULFSON [redacted]	DEFENSE MOTION TO RECONSIDER (R.C.M. 604, 707) 17 March 2026

MOTION

NOW COMES the Accused, Captain Jacob R. Wulfosn, by and through counsel, and pursuant to the Sixth Amendment to the Constitution of the United States, and Rules for Court-Martial (R.C.M.) 707, 604, 905(f) and 907(b)(2)(A), respectfully requests this Honorable Court to reconsider its prior ruling and dismiss the charges and their specifications in the above noted case.

SUMMARY

The Defense has additional evidence, which supports its conclusion, that the Government was not merely negligent in this matter, but that it systematically sidestepped court-ordered milestones in this case, depriving the Accused of a fair trial. The Defense also cites to additional caselaw for this Court's consideration.

FACTS

1. The Defense incorporates the facts and exhibits featured in its original motion herein.

2. Additionally, the Defense offer's the Government's most recent witness list for this iteration of *United States v. Wulfson.*[1] The Government's current witness list lacks [redacted] whose availability drove the issue in controversy here.

3. Defense Counsel spoke to [redacted] on 27 February 2026, the individual from AFMES who replaced [redacted] According to [redacted] [redacted] a lab technician, was never certified to testify at trial. Further, her understanding was that Trial Counsel had

[1] EXH A.

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never spoken directly to [redacted] about this case. The Government had not spoken to her either about the case at that time.

4. Additionally, the Defense offers correspondence between its experts, [redacted] and [redacted] and the Government's legal assistants.[2] This evidence tends to contradict Government Counsel's initial premise on 16 September 2025, that it sought the names of experts to iron out base access issues.[3]

LAW

1. The Defense incorporates the law from its former motion herein.

2. Additionally, the Defense cites to *United States v. Underwood*'s AFCCA decision.[4] Here, the court sought not to overturn *Vanover v. Clark*, which stood for a basic premise that appears to be lost now.[5] *Vanover*'s underlying position, which still stands as precedent, is that the Government cannot use its ability to prefer and dismiss charges in ways that effectively impede justice.

3. Pertinent here, CAAF did not overturn or distinguish *Underwood*'s AFCCA review in any legal or *de facto* sense. Of import, CAAF, in its analysis of *Underwood* left the lower court's understanding of that which constitutes "flouting" the trial judge's authority alone. In AFCCA's *Underwood* decision, the court noted that no court order or ruling had been sidestepped. There, the government requested a delay to trial in an R.C.M. 802 conference, which the trial judge denied.

4. In his commentary, the *Underwood* trial judge stated his intent to essentially teach the government a lesson in trial preparation, knowing that trial counsel would be forced to dismiss charges and begin all over again.[6] Indeed, the clear interpretation of the judge's position there was that the government had two choices post R.C.M. 802: (1) it could dismiss the charges there and then (which it did), or (2), it could file a dead-on-arrival motion, and then dismiss the charges, which the trial judge equated to defying his ruling.[7] In its analysis of this case, AFCCA was careful to point out the difference between the government's informal request for a delay and the imposition of a continuance ruling.[8]

> While not entirely dispositive of the improper withdrawal issue, we first address the parties' inaccurate use of the term of art "continuance" as synonymous with a "delay." It is germane because,

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[2] EXH B.

[3] AE XI – G at 13.

[4] *United States v. Underwood*, 47 M.J. 805 (A.F. Ct. Crim. App. 1997).

[5] *Vanover v. Clark*, 27 M.J. 345 (C.M.A. 1988).

[6] *Underwood*, 47 M.J. 805 at 808.

[7] *United States v. Underwood*, 50 M.J. 271, 273-74 (C.A.A.F. 1999) (noting that the only way the government could have "thwarted" the military judge's ruling would have been for there to have been a ruling prior to dismissal).

[8] *Underwood*, 47 M.J. 805 at 810-11.

> if a convening authority runs afoul of a military judge's decision regarding a continuance, it is almost always deemed an illegal interference with the judicial functioning of the court-martial.[9]

5. AFCCA is there stating that an informal request for a delay is just that, an informal request, absent any legal meaning until it is rendered otherwise. Conversely, a motion for a continuance made under R.C.M. 906 carries with it a different weight, as it will incorporate application of *United States v. Miller* and the recording of evidence for, among other things, appellate review. In following, just like any other ruling, the trial judge's ruling on the same motion is binding under R.C.M. 906: "[a] continuance may be granted only by the military judge."

6. We cite to *United States v. Knudson* as well.[10] It is an old case, but it served to institute clear guidance on the issue at bar and was relied upon in AFCCA's *Underwood* opinion on the subject. In *Knudson*, the appellant's conviction was overturned due to a now antiquated and hard to fathom form of UCI, in which the trial judge's decision on whether to issue a continuance was swayed by the convening authority.

7. On its path to reversal, the *Knudson* court differentiated between motions for continuances and convening authority requests for delays or recesses. That court drew from law, which has since been rebound in, among other places, R.C.M. 906(b)(1). In order to come to its final result, the *Knudson* court had to first establish that the trial court had authority over even the convening authority in granting formal continuances.

> The record clearly shows that the law officer yielded to the pressure of the convening authority. "It is the personal view of the law officer," he said, "that it was not an abuse of discretion to grant the continuance when the continuance was granted." Nevertheless, he ordered the trial to proceed. In so doing, he abdicated his powers to the convening authority. Manifestly, this was error.[11]
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> The Manual expressly provides that "he cannot control the exercise by the court of the powers vested in it by law." Manual, supra, paragraph 5*a*(6), page 8. His action constituted illegal interference with the law officer in the exercise of his judicial functions.[12]

8. Its concurring opinion expounded on this rationale regarding the procedural division at play both there and in the present:

> [...] [I]n paragraph 67*g* the Manual states that certain matters "are not proper subjects for motion prior to plea, however much they may constitute ground for a continuance." This statement makes clear

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[9] *Id* at 810.
[10] 16 C.M.R. 161 (U.S. C.M.A. 1954).
[11] *Id* at 166.
[12] *Id* at 167.

> beyond peradventure that, in dealing with the convening authority's power to obtain reconsideration of a court's ruling on a motion, the Manual's draftsmen had no purpose to deprive the law officer of his power to make the final determination as to continuances.[13]
>
> The Manual provides additionally that the "law officer rules *finally* on any application for a continuance presented while the court is in session."[14]

9. In its concurring opinion, [redacted] also spoke definitively to prejudice: "I prefer to bottom my vote for reversal on the notion that general prejudice enters the picture when a convening authority interferes -- as he did here -- with the law officer's ruling on a continuance."[15]

10. The Court can review [redacted] lengthy analysis beyond this initial sentence in his concurrence, but it means an accused is exposed to prejudice prima facie when the convening authority circumvents the rule of law in order to obtain one outcome over another; and that circumvention prejudices the organization as well.

11. The Defense also cites to *United States v. Gale*.[16] This case, we fear is bad law, and is destined for higher review. The dissent in *Gale* is as meaningful as it is detailed.[17] There, the convening authority sidestepped the trial court's pending ruling on a motion to dismiss for unlawful command influence (UCI), where the first trial judge poignantly shifted the burden to the government immediately prior to the convening authority's decision to dismiss charges.

12. There, one could argue – and invariably will argue – that, had the government been confident in its case's ability to withstand the trial court's scrutiny regarding the subject UCI issue, it would not have needed to dismiss its case just before such scrutiny was applied. Naturally, *Gale* is more complex factually, but there is a common thread with it and the case at bar: an issue was put to the trial judge for decision, and the government abandoned the trial process to rectify its case.

13. Conversely, there is one monumental difference between the case at bar and the cited cases, *Underwood* and *Gale*: no court rulings were issued in the latter cases.

ARGUMENT

Improper Purpose

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[13] *Id* (noting that there was - is - clear procedural guidance enabling the convening authority to request reconsideration of court rulings, which suggests that convening authority's options can be exhausted and are not limitless).

[14] *Id* at 168 (noting that R.CM. 906(b)(1) reflects this same language, *i.e.* "[a] continuance may be granted only by the military judge").

[15] *Id* at 67.

[16] *United States v. Gale*, No. 2025-01, 2025 LX 141138 (A.F. Ct. Crim. App. June 12, 2025).

[17] *Id* at 34-44.

1. The additional evidence offered in Exhibit (A) lends to the Defense's initial argument before the Court that the Government was not ready for trial on the previously specified trial date, 6 October 2025 due to its own lack of preparation. Importantly, the Government couched its readiness failure in negligence, a fact which is now part of the record.

2. The Government has since cleansed its pallet, modifying its witness list to match the Defense. Of note, Government Counsel stated on the record at the previous Article 39a hearing, on 27 February, that it had previously sought expertise in the realm of, e.g., forensic psychology; however, no such request ever surfaced, nor was any such potential employment noted in a joint status update until just recently.

3. Now, the Government has come to realize that AFMES cannot simply task anyone at any time to testify in one of its courts martial overseas on a moment's notice. Indeed, [redacted] was someone who, apparently, would never have testified in *U.S. v. Wulfson* due to a lack of professional certifications; and yet, this entire matter arose out of [redacted] availability.

4. Put differently, Trial Counsel represented to the Court in its previous iteration and in the present, that [redacted] was the lynchpin to its case. This prompted the previous trial court and the Defense to beg the question, *if* [redacted] *was so important, why was he not contacted until 25 September 2025?* Indeed, he was on no other witness list prior to 29 September 2025, which was more of a wish list than an anticipated witness list. Now, [redacted] is, once again, nowhere to be found.

5. Again, at the recent Article 39a, the Court was attuned to the question of whether all this controversy was the result of negligence or intentional subterfuge. Not to "rub it in," but the Government admitted negligence. What is to be said, though, when subterfuge is employed by Government Counsel to shroud negligence? We have seen overtures from Trial Counsel invoking last year's government shutdown, blaming that event for its failure to be ready. This was not true. Likewise, trial Counsel informed the prior trial court that [redacted] was unequivocally unavailable for trial, but that was not true either, as AFMES informed the Government that it could make experts available for VTC testimony.[18]

6. In the Defense's motion and at the corresponding Article 39a hearing, Defense Counsel clearly articulated the following chain of events: on 23 September 2025, the Defense issued the Government a list of experts, who had been funded at that juncture for trial production via the DEAO. The Defense listed three expert witnesses, [redacted] (forensic psychology), [redacted] (forensic nurse), and [redacted] (toxicologist). Importantly, we provided the Government with the names of our experts in advance to facilitate their base access on invitation from Trial Counsel.[19]

7. Next, the Government published its 29 September 2025 final witness list, which included ten new individuals, not identified on their May 2025 witness list. Had the Defense known that the

[18] AE XI - F at 39.
[19] *Id* - G at 12-13.

Government was going to use the pretext of base access administration to retool its entire case, and then dismiss the same case when it was unable to do so, we would have entrusted a Defense paralegal with the task of obtaining base access for our experts.

8. Exhibit B clearly shows that no one ultimately requisitioned base access for our experts, which indicates here that the Government's only purpose in requisitioning the subject names in advance was to find out who the Defense would be working with at trial. When Trial Counsel realized that it lacked matching expertise, it then set about frantically calling people like [redacted] and piecemealing together a final witness list of placeholders. It then used [redacted] inevitable unavailability as a means to justify its request for a continuance so that it could actually go about creating availability for the witnesses it needed to match the Defense's roster.

9. The Government's input for the latest JSU is telling here as well. Now, Trial Counsel are working to get a forensic psychologist, and forensic nurse, and a digital forensics examiner.[20] This expertise was not on the Government's radar until we submitted our list of expected witnesses. Here the Government will argue that there is no direct evidence of any of this subterfuge. Meanwhile, at the recent Article 39a hearing, the Government proffered that it had its eye on a forensic psychologist and a DFE for some time, minus any supporting evidence of its own.

10. That said, we have no direct evidence that the Government employed this level of subterfuge because there would be no natural way for us to obtain such evidence. Circumstantially, however, there is still proverbial rainwater draining into the gutters; but even if there was no pre-conceived scheme to take advantage of its power under R.C.M. 604, that does not mean that the Government did not run afoul of the rule here.

11. Regardless of whether Trial Counsel needed additional time to retool its entire case, which it is still in the process of accomplishing, or whether it believed that [redacted] was essential to its case all along, despite never having spoken to him, there is no rule or caselaw, which allows the Government to grant itself a continuance over a court's ruling.

12. R.C.M. 906(b)(1) states, "[a] continuance may be granted *only* by the military judge."[21] There is no follow-on discussion here and nothing to misinterpret. The Government made a motion under R.C.M. 906(b)(1) for a continuance, and the military judge denied that ruling. We can talk about prejudice momentarily, but there is no sidestepping this singular fact, that "only" the military judge could lawfully grant the Government's continuance, and she didn't.

13. If the law were not sound here, there would be no *Miller* factors. E.g., "prejudice to the opposing party" would not matter if one party could move trial at will.[22] According to

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[20] EXH C (noting that the Defense retained a DFE, a toxicologist, a forensic psychologist, a forensic biologist, and a forensic nurse in the first iteration of *U.S. v. Wulfson*, all of which the Government came to find out about between 23 and 29 September 2025).

[21] (Emphasis added).

[22] *United States v. Miller*, 47 M.J. 352, 358 (C.A.A.F. 1997).

Underwood, "if a convening authority runs afoul of a military judge's decision regarding a continuance, it is almost always deemed an illegal interference with the judicial functioning of the court-martial."[23] There, AFCCA cited to untouched case law dating back to the 1950s.

14. There is no legal or logical off-ramp here. It does not matter if the Government engaged in subterfuge all along or just to issue itself more time, where the military judge would not. It does not matter if the root cause of the Government's dismissal was guided deceit or mere negligence. There is no law, no caselaw, no treatise, no law review article in support of the notion that the prosecution may issue itself a continuance, where it otherwise failed under R.C.M. 906(b)(1).

15. This case is fundamentally different than any of the other cases cited because, here, the Government, by its own hand, triggered judicial reach when it filed a motion under R.C.M. 906(b)(1). That event, and that event alone, placed the issue of this continuance singularly within the military judge's authority to decide.

16. To view this matter otherwise creates a slippery slope. Defense Counsel found itself going down this slope as well. In our motion, we spent a great deal of ink talking about why the Government needed the continuance and why it was not granted. None of that ultimately matters. It is all dicta. The only thing that matters here is that a motion for a continuance was made under R.C.M. 906(b)(1), and it was denied.

17. The Government might argue that there is no meaningful difference between what occurred in *Underwood* and the case at bar, but it is wrong. The Rules of Court Martial are not informal, and they *do* create unambiguous lines of demarcation; and these lines are *not* arbitrary. The difference between an informal request to a military judge and a motion under the banner of an R.C.M. is not only the rule in question, but its implications. For example, a motion is captured as an appellate exhibit and memorialized verbatim on the record. That did not occur in *Underwood*, but it occurred here.

18. In this case, the Government filed a motion with the court and Defense under R.C.M. 906. Not unlike arbitration, it made a formal request to the court, asking for the court's authority to mediate a matter between the parties. In doing so, it submitted to the trial court's authority. If this were not the order of operation by law, then why would any party request anything from a court of law, especially a continuance where the government is concerned?

19. The Government has also contended that it did not give itself a continuance to rectify its case, *per se*, but it has conceded that it gave itself a continuance, nonetheless. We direct the Court to Trial Counsel's reply brief, dated 6 February 2026. On page 11, the second paragraph into its argument, Trial wrote as follows:

> In fact, the evidence presented demonstrates the Government continued to diligently investigate, obtain new evidence, and secure witness availability well prior to the scheduled trial date. *The previously military judge erred and abused her discretion when she*

[23] 47 M.J. 805 at 810.

> *concluded that the loss of the critical witness and his testimony was limited to a single sexual assault specification.* Rather, the loss of the testimony to explain that etizolam was found in [redacted]'s body affected every Article 120 and 128b charge and specification because it is, as the prior judge noted, evidence for which there was "no adequate substitute" and provides the only conceivable explanation for her extended loss of consciousness and subsequent physical symptoms.[24]

20. On the following page, Trial Counsel wrote:

> [...] Deciding to not move forward with only the sexual assault etizolam specification would not have minimized the massive impact of the military judge's ruling.
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> [...]
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> [...] The prior military judge erred when she failed to account for, or fully acknowledge, the Government inability to adequately present its case to the members in this case.

21. Where the Government is not obviously equivocating in these passages, it is editorializing. For one, if it believed the trial court got it wrong, it had the opportunity to make a motion for reconsideration to further explain how [redacted] testimony was relevant to it entire charge sheet. More pertinent to this discussion, Trial Counsel openly stated that it believed the trial court "abused her discretion" and "erred" in her R.C.M. 906(b)(1) ruling, which apparently had a "massive impact" on OSTC's case.

22. We note that Trial Counsel failed to state any legal foundation for the standard of review it applied to [redacted] R.C.M. 906 ruling. Regardless, Trial Counsel told this Court in no uncertain terms that the prior judge's ruling was both wrong and a monumental problem for its case, so it (the Government) took evasive action in a moment of extremis. Of course, the Government's action here was still completely unlawful and, therefore, improper; and no "CYA" memorandum to higher authorities legitimizes it.

Prejudice

23. Because dismissal was improper in this case under R.C.M. 707, Capt Wulfson's trial clock is now well over 300 days and counting. The Government still has the burden to establish that dismissal was proper in this case, and it cannot meet that burden for the reasons stated above.

24. Regarding R.C.M. 707, the Defense has nothing to add to its prejudice analysis.

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[24] (Emphasis added).

25. Regarding R.C.M. 604, the Court here has looked to *Underwood* and concluded that Capt Wulfson was never entitled to an absence of Government witnesses. Legally speaking CAAF's review of *Underwood* did nothing to advance or clarify the law under R.C.M. 604. If anything, CAAF only confused the issue.

26. The courts subsequent to *Vanover* have been eager to narrowly analyze the concept of a "favorable ruling" to the accused; but one does not need to consult with Black's law dictionary to determine what a favorable ruling is for one party or another. The question of favorable rulings is applied to the R.C.M. 604 prejudice analysis because, obviously, an accused cannot dismiss charges when the government receives a favorable ruling. Hence, it is not just a matter of the trial court's authority in issuing rulings, but also one of fundamental fairness, i.e. general prejudice.[25]

27. Here, Capt Wulfson received a favorable ruling from the trial judge. The court and Government can attempt to slice this up however it sees fit, but it is what it is. The Government made a motion. We opposed it, and we won. That is by definition a favorable ruling for the Accused. The Government then dismissed charges to mitigate its negligence. Importantly, CAAF has not reinterpreted *Vanover* or any other case or law to the extent that a "favorable evidentiary ruling" is now required in the subject R.C.M. 604 prejudice analysis.

28. Moreover, there was no favorable ruling in *Underwood* or *Gale*. There was no ruling in controversy at all in either of those cases. Furthermore, under *Vanover* and *Knudson*, the Court cannot "cut and paste" a ruling into those cases and anticipate the same results. Similarly, here, the Court cannot omit the former trial court's R.C.M. 906(b)(1) ruling from the record to better apply *Underwood*'s analysis.

29. Here, there was a ruling, which cut in the Defense's favor, but it was not a complete windfall according to the original trial judge, and the Government has not demonstrated through evidence that it would have been a windfall. It is understood that CAAF does not believe an accused is entitled to a dearth of government witnesses.[26] That may be true, but Capt Wulfson does have a "cognizable right" to due process, which occasionally entails the intervention of a fair and impartial military judge on matters such as continuances.

30. Put plainly, under R.C.M. 604, Capt Wulfson may not have the "cognizable right to a trial without [...] prosecution witness[es]," but he did have the right to a fair hearing and a non-arbitrary ruling, which very well might have deprived the Government of a live witness in this case. What is more, the prior trial judge's ruling did not deprive Trial Counsel of any witness altogether. According to AFMES, Trial Counsel could have called [redacted] via VTC or obtained an affidavit from him.[27]

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[25] *See Underwood*, 47 M.J. 805 at 812.
[26] *See Underwood*, 50 M.J. 271 at 276.
[27] AE XI - F at 39.

31. To our knowledge, the Government does not have a "cognizable right" to call *live* witnesses at trial. Certainly, the Defense does not. Hence, the prior trial judge deprived the Government of nothing, as [redacted] was not unavailable for the original trial date.

32. The Government might have assumed that the Defense would not have agreed to anything but a live confrontation with [redacted] but it never asked; and as *Gale* informs us, the Court cannot speculate over how the Defense would have handled Trial Counsel's request here had Trial Counsel made such a request.

33. In following, Capt Wulfson did not inadvertently obtain the verdict with the prior trial judge's ruling. Nevertheless, the prior trial judge did issue him a favorable ruling in denying the Government's motion for a continuance. The Government's subsequent denial of the military judge's denial of the Government's own motion caused the very prejudice the military judge anticipated in her ruling. Capt Wulfson testified to this prejudice coming to pass.

34. The prior judge's R.C.M. 906(b)(1) ruling did not bestow onto either party a windfall when it was issued. It is this Court's current ruling that only one party unjustly benefits from. Now, Capt Wulfson must pay money and time to the Government in exchange for Government negligence. Indeed, the Court sets a dangerous precedent here.

35. Based on this Court's present ruling, Trial Counsel can continue to shirk its due diligence, and, presumably, Capt Wulfson, an innocent person by law, will be expected to pay for it. The Defense contends that there is a choice of counsel issue at play here as well. With enough delay, OSTC can render civilian representation unaffordable to any accused. The Government is now on notice that it can *sua sponte* create delays to a trial schedule at will, so long as there is no direct evidence of prosecutorial misconduct or convening authority overreach.

36. This means that Trial Counsel can effectively bleed Capt Wulfson's bank account and career dry before he sees his day in court. As Trial Counsel put it during the subject Article 39a, the defendant in *Barker* was incarcerated for four years before his day in court, and that was not considered prejudice. By that logic, the Government can kick this can down the road indefinitely without any concern for judicial intervention because its "negligence" is now deemed a "legitimate command purpose;" and Capt Wulfson will not experience prejudice until he can find a Defense "fact witness" to lose recall.

37. Furthermore, we find the *Underwood* trial judge's remarks about prejudice to the government lifeless.

> The Government did not get to do what they wanted to do which was go to trial with all these charges on the 28th of June 1996. Their choice, if they chose to go forward, was to do it at some date down the road. Before doing that, they would have to re-prefer, have another investigation providing the accused additional benefits, additional inquiries, additional opportunity for an investigating officer to recommend it not go to trial, additional opportunity for the

> convening authority to decide not to take these charges to this forum or to a different forum and that's what did transpire in this case.[28]

38. This is not prejudice. This is a day job. Government counsel have no personal stake in Capt Wulfson's trial taking place on any particular day. OSTC rotate on and off cases at will. The convening authority is not restricted to [redacted]. The convening authority is still able to promote. The prospects of the convening authority's career are not dwindling with every month. It does not have to pay out of pocket for additional appearances. The taxpayers do.

39. Removing the tongue from cheek, there is general prejudice here where it was not in *Underwood.* Again, here a ruling was issued on the matter. OSTC Counsel have admitted on the record that it dismissed and re-preferred this case to sidestep the court's ruling, which it felt was wrong.

> General prejudice is invoked only in the absence of specific prejudice to an accused *and* when the egregiousness of the illegal act is so severe that it necessitates the invocation of the Court's supervisory authority to protect the integrity of the military justice process.[29]

40. Under R.C.M. 604, the government has a tremendous advantage, in that it may dismiss charges at will and prefer charges virtually at will. These decisions may drastically impact an accused's freedom, his income, and his psyche; and this is part of the process. This same power, however, does not negate adherence to rule of law, and the rule says as much.

41. The Accused does not have the ability to decide which court orders to follow. Neither does the Government. For this Court to determine otherwise, would place the juris prudence here in uncharted territory.

42. The Government admitted on the record that it reviewed Judge Marcus's ruling and overturned it, using what it presumed to be unfettered power under R.C.M. 604. This is no small thing. The prosecution lawyers in this Court assumed appellate level authority over the prior trial court and did not even seek to minimize it in their filing. This is general prejudice in plain sight, and it must be corrected on sight.

CONCLUSION

1. This is a motion to reconsider the Defense's prior motion to dismiss under R.C.M. 604 and 707. It is the precise kind of motion the Government should have filed when its R.C.M. 906(b)(1) motion was denied by the prior trial court; and based off of its reply to our former motion, it seems like Trial Counsel left a great deal of meat on the bone before it dismissed this case on 3 October 2025.

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[28] *Underwood*, 50 M.J. 271 at 274.

[29] *Underwood*, 47 M.J. 805 at 812 (citing, *inter alia*, *Clark*, 27 M.J. 345 at 346).

2. If the Court subsequently denies this motion for reconsideration, a monumentally important request, Capt Wulfson does not have the option to walk away from this court martial, lest he face pre-trial confinement and additional prosecution. We ask, why should the Government not have stomach disappointing rulings as well?

3. For the above reasons, we request that this Court reconsider its ruling.

EVIDENCE AND BURDEN OF PROOF

As the Court has already noted, the Defense has the burden with respect to matters raised under R.C.M. 604: whereas the Government has the burden concerning matters raised under R.C.M. 707.

Enclosure A: Government Witness List, dated 12 January 2026 (2 pages)

Enclosure B: Email Correspondence Between Defense Expert Witnesses and Government Legal Office, dated 3 October 2025 (1 page)

Enclosure C: Joint Status Update, dated 26 February 2026

RELIEF REQUESTED

The Defense requests this Court to reconsider its ruling on the Defense's Motion to Dismiss under R.C.M. 604 and 707.

Respectfully submitted this 6th day of June 2025.

[redacted]

[redacted] Timothy Bilecki
Civilian Defense Counsel

CERTIFICATE OF SERVICE

I certify that on the date listed above, I served a copy of this document on the military judge and trial counsel via email and electronic filing.

[redacted]

TIMOTHY BILECKI
Civilian Defense Counsel