

**DEPARTMENT OF THE AIR FORCE
TRIAL JUDICIARY**

UNITED STATES

v.

CAPT JACOB R. WULFSON
[REDACTED]

DEFENSE MOTION TO COMPEL
DISCOVERY – CRIMINAL INJURIES
COMPENSATION SCHEME

1 April 2026

MOTION

NOW COMES the Accused, Capt Jacob R. Wulfson (Capt Wulfson), by and through counsel, respectfully requests this Honorable Court compel outstanding discovery pursuant to the Fifth Amendment to the U.S. Constitution, Article 46 of the Uniform Code of Military Justice (UCMJ), and Rule for Courts-Martial (R.C.M.) 703. The Defense requests an Article 39(a) session for this matter for additional argument.

SUMMARY

Under the Rules for Courts-Martial and relevant case law, the Government has an obligation to discover certain information to the Defense. The Defense specifically requested the Government provide documentation relating to [REDACTED]'s claim for compensation under the [REDACTED] Criminal Injuries Compensation Scheme, which the Government has denied. Considering the statements contained in [REDACTED]'s Criminal Injuries Compensation Scheme application provide evidence of a strong motive to fabricate and allow the Defense to conduct proper cross-examination of [REDACTED] at trial, the application and its supporting documents are relevant and necessary for Capt Wulfson's defense to this court-martial. As such, this Court should compel their production.

FACTS

1. On 3 October 2025, Lt Col Lisa Wotkowicz, Chief Special Trial Counsel, District 5, Office of Special Trial Counsel, preferred the following charges and specifications upon Capt Wulfson: one charge with one specification of willfully disobeying a superior commissioned officer in violation of Article 90, UCMJ; one charge with one specification of sexual assault without consent and one specification of sexual assault due to drug impairment (etizolam) in violation of Article 120, UCMJ; and charge with one specification of strangulation in violation of Article 128b, UCMJ. See DD Form 458, Charge Sheet, dated 3 October 2025.

2. On 15 November 2025, the charges and their specifications were referred to trial by general court-martial. See DD Form 458, Charge Sheet, dated 3 October 2025. This case is docketed for trial at [REDACTED], to begin on 13 April 2026.

3. In an e-mail sent on 2 March 2026, trial counsel notified the Defense that the alleged victim in the case, [REDACTED] applied for compensation under the [REDACTED] Criminal Injuries Compensation Scheme.¹ *Attachment 1*.

4. The Criminal Injuries Compensation Scheme (CICS) allows victims of violent crimes to claim compensation if they were (1) physically or mentally injured or (2) the victim of a sexual assault. *Attachment 2*, p. 4. Claims generally must be made within two years of the crime and must be reported to the police. Financial compensation ranges between 1,000 and 250,000 GBP, depending on the severity of the victim's injuries. *See generally Attachment 2*. Victims can receive compensation for up to three injuries. *Attachment 3*, p. 2. In the case of multiple injuries, a victim will receive 100 percent of the amount for the injury with the highest amount, 30 percent of the amount for the injury with the second-highest amount, and 15 percent of the amount for the injury with the third highest amount. *Id.* A victim of non-consensual penile penetration of the vagina, anus, and/or mouth by one attacker, without further injury, is eligible to receive 11,000 GBP in compensation. *Id.* at p. 46.

5. To receive payment, the Criminal Injuries Compensation Authority (CICA) requires confirmation from the police that the incident was in fact reported to the police; confirmation from the police that the claimant's behavior did not contribute to the incident that caused the injuries; confirmation from the police that the claimant cooperated with the investigation; and evidence from the police about the claimant's criminal record, should they have one, in addition to the submission of medical evidence that shows the claimant suffered an injury that can be compensated under CICS. *Attachment 2*, p. 25. CICA also considers any evidence available about the claimant's character that may make it "inappropriate" for CICA to make a full or reduced payment, which includes "involvement or association in illegal drugs, crime, tax evasion and benefit fraud." *Id.* at p. 11. While it is not necessary for the person who injured the claimant to be identified or convicted, the claimant must cooperate "as far as is reasonably practicable in bringing the assailant to justice." *Id.* at pp. 8-9.

6. However, CICS "is intended to be one of last resort," meaning claimants should first pursue compensation from another source before turning to CICS for financial payment. *Attachment 2*, p. 15. CICA requires claimants to explain whether they have claimed compensation from another source and to provide reasons if they have not done so. *Id.* CICA will withhold or reduce an award under CICS if a claimant has received or is entitled to receive a payment for the same injury through other means, including any other criminal injuries compensation award or any compensation order or offer made during criminal proceedings. *Id.* at pp. 15-16.

7. On 19 March 2026, Defense requested "All documentation submitted by [REDACTED] and or her representative to the [REDACTED] Criminal Injuries Compensation Authority (CICA), or any other authority charged with awarding similar compensation under the Criminal Injuries Compensation Scheme. Specifically, the Defense is requesting all documents, including applications and supporting exhibits, submitted by Dr. [REDACTED] and or on behalf of Dr. [REDACTED] for the purpose of obtaining compensation under the subject compensation act. This includes documentation for any

¹ Trial counsel referred to the [REDACTED] Crime Victim Compensation Act, otherwise known as the Criminal Injuries Compensation Scheme.

injuries claimed regarding *U.S. v. Wulfson*, but is not limited to claims regarding only *U.S. v. Wulfson*.” *Attachment 4*.

8. Trial counsel denied Defense’s request for CICA materials on 25 March 2026, stating “Defense has failed to meet its burden under RCM 703 to establish that such items or evidence are relevant and necessary. The request is also overbroad in that it fails to specify what document(s) or item(s) Defense Counsel is requesting, and how those specific items are relevant and necessary to the case.” *Attachment 5*.

BURDEN

9. “[T]he burden of persuasion on any factual issue the resolution of which is necessary to decide a motion shall be on the moving party.” R.C.M. 905(c)(2). “[T]he burden of proof on any factual issue the resolution of which is necessary to decide a motion shall be by a preponderance of the evidence.” R.C.M. 905(c)(1). As the moving party, the Defense bears the burden in this motion. Moreover, the Defense as moving party under R.C.M. 703 must show that what is being requested actually exists. *United States v. Warda*, 84 M.J. 83, 91 (C.A.A.F. 2023) (citing *United States v. Rodriguez*, 60 M.J. 239, 246 (C.A.A.F. 2004)).

LAW

10. The military justice system provides for “open,” “quite liberal,” and “broad” discovery to an accused. (see, e.g., *United States v. Williams*, 50 M.J. 436 (C.A.A.F. 1999); *United States v. Eshalomi*, 23 M.J. 12 (C.M.A. 1986); *United States v. Enloe*, 15 U.S.C.M.A. 256 (C.M.A. 1965)).

11. “In a case referred for trial by court-martial, the trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe.” Article 46, UCMJ.

12. An accused has a right as a matter of due process to the discovery and production of favorable evidence. The United States Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to either guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Brady v. Maryland*, 373 U.S. 83, 87 (1963). “When a witness’s reliability ‘may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within the general rule.’” *United States v. Bowser*, 73 M.J. 889, 896 (A.F.C.C.A. 2014) (quoting *Giglio v. United States*, 405 U.S. 150, 154 (1972)).

13. Evidence need not be exculpatory, or even admissible to be discoverable. See *United States v. Roberts*, 59 M.J. 323, 325 (C.A.A.F. 2004) (citing *United States v. Stone*, 40 M.J. 420, 422 (C.M.A. 1994)). The key to fair and open discovery is to allow the defense equal access to evidence and information and to provide the defense with information material to its preparation of the case. This practice not only contributes to the truth-finding process, it is a substantial legal right of an accused. Trial counsel has a duty to protect the accused’s rights to discover the material required to be disclosed by the discovery rules. See *United States v. Green*, 37 M.J. 88 (C.M.A. 1993). The Government also has an affirmative obligation and duty to preserve evidence and make it available for defense review. That duty includes the preservation of “evidence that is of such central

importance to the defense that it is essential to a fair trial.” *United States v. Stellato*, 74 M.J. 473, 483 (C.A.A.F. 2015).

14. “After service of charges, upon request of the defense, the Government shall permit the defense to inspect any books, papers, documents . . . or copies of portions of those items if the item is within the possession, custody, or control of military authorities” and “the item is relevant to defense preparation.” R.C.M. 701(a)(2)(A) and 701(a)(2)(A)(i). R.C.M. 701(a)(6) requires production of evidence favorable to the defense, mandating that “trial counsel, as soon as practicable, disclose to the defense the existence of evidence known to the trial counsel which reasonably tends to: (A) Negate the guilt of the accused of an offense charged; (B) Reduce the degree of guilt of the accused of an offense charged; (C) Reduce the punishment; or (D) Adversely affect the credibility of any prosecution witness or evidence.”

15. “Under R.C.M. 701(a)(6), trial counsel are required to review certain files, documents, or evidence for exculpatory information.” *Stellato*, 74 M.J. at 486. “For example, trial counsel must review their own case files and must also exercise due diligence and good faith in learning about any evidence favorable to the defense ‘known to the others acting on the government’s behalf in the case, including the police.’” *Id.* (quoting *United States v. Williams*, 50 M.J. 436, 441 (C.A.A.F. 1999)).

16. For other evidence and witnesses, R.C.M. 703(e)(1) provides that “Each party is entitled to the production of evidence which is relevant and necessary.” Although an accused is not entitled to evidence that is “destroyed, lost, or otherwise not subject to compulsory process[.] . . . if such evidence is of such central importance to an issue that it is essential to a fair trial, and if there is no adequate substitute for such evidence, the military judge shall grant a continuance or other relief in order to attempt to produce the evidence or shall abate the proceedings, unless the availability of the evidence is the fault of or could have been prevented by the requested party.” R.C.M. 703(e)(2).

17. “Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” MRE 401. Relevant evidence is necessary when it is not cumulative and when it would contribute to a party’s presentation of the case in some positive way on a matter in issue. *United States v. Bishop*, 76 M.J. 627 (A.F.C.C.A. 2017).

18. Relevant to defense preparation means the requested item(s) could impact defense decisions on investigation, trial defenses, trial strategy, or pleas. *Eshalomi*, 22 MJ at 27; *United States v. Webb*, 66 M.J. 89, 92 (C.A.A.F. 2008).

19. There are two avenues for remedies for unproduced evidence in a case. The first assesses whether lack of evidence violates constitutional and military due process, specifically the Fifth, Sixth, and Fourteenth Amendments, as well as Article 46 and R.C.M. 701 and 703.

20. This requires a showing by the defense of bad faith on the part of the Government. *United States v. Terry*, 66 M.J. 514, 518 (A.F.C.C.A. 2008; see *California v. Trombetta*, 467 U.S. 479 (1984); *Arizona v. Youngblood*, 488 U.S. 51 (1988); *United States v. Kern*, 22 M.J. 49, 51 (C.M.A. 1986); and *United States v. Mobley*, 31 M.J. 273, 277 (C.M.A. 1990).

21. The second avenue for remedy stems from the requirements of access under Article 46, UCMJ, and of production under R.C.M. 703. These requirements go beyond what is necessitated under Constitutional due process standards because they do not require the Defense to show that the Government acted in bad faith in refusing to produce evidence in order to warrant relief. *United States v. Manuel*, 43 M.J. 282, 288 (C.A.A.F. 1995); *United States v. Seton*, 2014 CCA LEXIS 103, *11 (A.F.C.C.A. 2014).

22. In *United States v. Warda*, C.A.A.F. recognized that in cases “where there is no substantial evidence supporting the complaining witness’s allegation of domestic abuse, the credibility of the complaining witness is of central importance.” 84 M.J. at 94 (citing *United States v. Jasper*, 72 M.J. 276, 281 (C.A.A.F. 2013)). The crux of defense’s argument at trial was that the alleged victim, a Jordanian national, fabricated a rape allegation to remain in the United States through the Violence Against Women Act (VAWA), 8 USC § 1154(a)(1)(A)(iii), and Defense was therefore entitled to the victim’s immigration and VAWA application records. *Warda*, 84 M.J. at 88-89. As C.A.A.F. noted, the Government’s case at trial “rested almost entirely on [the alleged victim’s] testimony: there were no eyewitnesses, no medical evidence, no law enforcement reports or testimony admitted into evidence, and no forensic evidence.” *Id.* at 93. “Thus, the accused in such a case has a vital interest in being able to obtain evidence that could be used to impeach the complaining witness’s testimony at trial, thereby undermining her overall credibility.” *Id.* at 94. C.A.A.F. ultimately determined that the immigration records and VAWA visa application records were not only relevant and necessary but met the higher standard of “such central importance” that they were essential to a fair trial given the importance of the alleged victim’s credibility issues and should have been provided to the Defense. *Id.* at 93-94. In fact, C.A.A.F. went so far as to hold that providing defense “substantial leeway in cross-examination was an inadequate substitute” for the immigration and VAWA application records because defense was unable to impeach the alleged victim’s testimony, was “‘stuck’ with her answers, . . . [and] could not introduce evidence of her motive to fabricate[.]” *Id.* at 94.

ARGUMENT

23. This court should compel the Government to provide [REDACTED]’s CICS application and associated attachments in order to allow the Defense to prepare for trial. Here, as in *Warda*, the Government’s case “rises and falls” on the credibility of [REDACTED] which is, at bottom, the only matter at issue in this case. *See Warda*, 84 M.J. at 94. Her allegations of sexual assault and domestic violence are largely unsupported by other evidence: there are no eyewitnesses; none of Capt Wulfson’s DNA was found in or near [REDACTED]’s vulva; there is no physical evidence of strangulation other than [REDACTED]’s self-reported sore throat, which could equally be explained by her heavy vomiting the night of the alleged incident; and there is no evidence that connects Capt Wulfson to the etizolam found in [REDACTED]’s system, save for the fact that [REDACTED] denies having taken any drugs, let alone a benzodiazepine, prior to the alleged incident. The only piece of evidence that could conceivably tie up the loose ends in the Government’s case is [REDACTED]’s sworn, in-court testimony. If she is to be believed, [REDACTED] is the only witness who could establish the facts necessary to sustain a conviction for the sexual assault and domestic violence offenses and is therefore of central importance to the Government’s case. As such, Capt Wulfson has a vital interest in being able to obtain evidence that could impeach [REDACTED]’s testimony at trial, in this case being the CICS application records, which would undermine her overall credibility.

24. The fact that [REDACTED] stands to receive, at a minimum, 11,000 GBP through CICS on the condition that she cooperate with the law enforcement investigation, meaningfully participate in “bringing [Capt Wulfson] to justice,” and maintain a good character (e.g., not actively involved in illicit drugs) is perhaps the most significant motive she could have to fabricate the allegations. The CICS application and supporting documents [REDACTED] submitted, which trial counsel confirmed the existence of, would include: when she applied for compensation; her acknowledgement that she is required to participate in the case proceedings to receive compensation; her acknowledgement that CICA takes into account a claimant’s character, particularly any involvement in illegal drugs; the injuries for which she is claiming compensation; and how much compensation she stands to receive. Not only will the fact-finder need that information to consider that [REDACTED] fabricated the allegations and participated in the ensuing legal proceedings to receive a significant sum of money from the [REDACTED] government, the fact-finder will also need to consider that [REDACTED] knew she could not claim to have taken an illegal benzodiazepine (e.g., etizolam) the night of the incident, which would otherwise prevent her from receiving at least some of the compensation she is now requesting.

25. All of this information contained in the CICS application and supporting documents is essential to a fair trial, as it needs to be considered by the fact-finder when deciding whether they believe [REDACTED] the Government’s most important witness, or whether they believe there is any reasonable doubt based on cross-examination or any case put on by Defense illustrating [REDACTED]’s motive to fabricate. *See Warda*, 84 M.J. at 93. Considering [REDACTED]’s credibility is *the* matter of central importance in this case, the Government’s failure to produce this information prevents the Defense from effectively attacking [REDACTED]’s credibility and would result in the finder of fact receiving an incomplete picture of the evidence. *See id.*

26. Lastly, there is no adequate substitute for the requested documentation, and substantial leeway on cross-examination would be insufficient. As in *Warda*, the Defense here would have no recourse should [REDACTED] deny her knowledge of or understanding of the compensation conditions under CICS. Effectively, the Defense would be “stuck” with her answers and would have no way of introducing her strongest motive to fabricate through any other means. *See Warda*, 84 M.J. at 94. The information [REDACTED] provided to CICA in support of her claim is the only means by which the Defense is able to effectively cross-examine [REDACTED] on the issue and prove up a motive to fabricate against the Government’s case. Therefore, the only adequate materials under the law are the CICS application documents themselves

RELIEF REQUESTED

WHEREFORE, the Defense respectfully requests this Honorable Court compel the Government to provide Defense [REDACTED]’s CICS application records to prepare for trial. The Defense requests an Article 39(a) session for this matter to present additional argument.

[REDACTED]
ASHLEY M. HARTSHORN, Capt, USAF
Defense Counsel

5 Attachments:

1. Trial Counsel E-mail Regarding [REDACTED]'s CICS Application, dated 2 Mar 26, 1 page
2. Criminal Injuries Compensation Guide, dated 1 May 25, 34 pages
3. Criminal Injuries Compensation Scheme – Injury Payments, dated 1 Sept 25, 54 pages
4. Defense First Specific Discovery Request, dated 19 Mar 26, 2 pages
5. Government Response to First Specific Discovery Request, dated 25 Mar 26, 2 pages

CERTIFICATE OF SERVICE

I certify that I have served a true copy (via email and e-filing) of the above on the Military Judge and Trial Counsel on 1 April 2026.



ASHLEY M. HARTSHORN, Capt, USAF
Defense Counsel