

<b>UNITED STATES</b>	)	
	)	
<b>v.</b>	)	<b>MOTION FOR APPROPRIATE RELIEF</b>
	)	<b>FOR ILLEGAL PRETRIAL</b>
<b>1st Lt Travis C. Baker</b>	)	<b>PUNISHMENT</b>
<b>Delta 4 Detachment 2 (SpOC)</b>	)	
<b>Buckley SFB, SD</b>	)	<b>1 May 2023</b>

## FACTS

- 1

5. On 9 December 2022, charges were preferred against Lt Baker and the charge sheet identified that the nature of restraint of the Accused included “conditions on liberty” and “restriction” from “21 Oct 2022 to 2 Nov 2022” and “conditions on liberty” from “3 Nov 2022 to present.”

6. Lt Baker has remained under the conditions on his liberty, detailed in the 9 December 2022 Amendment to Pretrial Restraint Order, since 21 November 2022, 162 days. To date, the Accused has been under conditions on his liberty for 192 days.

7. Throughout this period, the Accused has lived approximately 20 miles from base and commuted to and from his home and work, base appointments, off-base appointments, and other activities requiring transportation via ride-sharing service applications, such as Lyft and Uber. Over the last 192 days, these conditions on his liberty have financially impacted the Accused in additional transportation costs. At no point in the last 162 days has Lt Baker’s leadership team discussed or intended to lift these restrictions. (Anticipated Testimony of [REDACTED]).

8. The Accused was in in-patient treatment at Denver Springs for a month in November, in in-patient treatment at Cedar Springs for a month in December, and had out-patient treatment sessions and other medical and mental health appointments from January to the present. During the prior 4 months since leaving in-patient treatment, Lt Baker has been given no meaningful, substantive work to perform. He has been required to report in (approximately 0730 to 1200) and directed to work on his individual medical readiness and computer-based training. (Anticipated Testimony of [REDACTED]).

### **BURDEN**

9. Pursuant to R.C.M. 905(c)(1), (2) the burden of proof shall be by a preponderance of the evidence and is on the moving party. Thus, the Defense bears the burden.

### **LAW**

10. Article 13, UCMJ, prohibits pretrial punishment under certain conditions:

*“No person, while being held for trial, may be subjected to punishment of penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances required to insure his presence, but he may be subject to minor punishment during that period for infractions of discipline.”*

11. Pursuant to R.C.M. 304(a), “[p]retrial restraint is moral or physical restraint on a person’s liberty which is imposed before and during disposition of offenses. Pretrial restraint may consist of conditions on liberty, restriction in lieu of arrest, arrest, or confinement.” Specifically, “conditions on liberty are imposed by orders directing a person to do or refrain from doing specified acts. Such conditions may be imposed in conjunction with other forms of restraint or separately.” R.C.M. 304(a)(1).

12. The Discussion to R.C.M. 304(a) “Conditions on liberty include orders to report periodically to a specified official, orders not to go to a certain place (such as the scene of the alleged offense), and orders not to associate with specified persons (such as the alleged victim or potential witnesses). Conditions on liberty must not hinder pretrial preparation, however. Thus, when such conditions are imposed, they must be sufficiently flexible to permit pretrial preparation.”

13. Pretrial punishment is further proscribed by R.C.M. 304(f), such that “[p]retrial restraint is not punishment and shall not be used as such. No person who is restrained pending trial may be subjected to punishment or penalty for the offense which is the basis for that restraint.” The Air Force may not impose conditions considered to be *ignominious*, as such are considered to “public denunciation by the commander” and “constitute unlawful pretrial punishment prohibited by Article 13.” *United States v. Cruz*, 25 M.J. 326, 330 (C.M.A. 1987) (emphasis added).

14. The R.C.M. 304(b) Discussion cautions that “the decision whether to impose pretrial restraint, and, if so, what type or types, should be made on a case-by-case basis. The factors listed in the Discussion of R.C.M. 305(h)(2)(B) should be considered. The restraint should not be more rigorous than the circumstances require to ensure the presence of the person restrained or to prevent foreseeable serious criminal misconduct. Restraint is not required in every case.”

15. In deciding whether an accused suffered pretrial punishment in violation of Article 13, UCMJ, the court must determine whether one of two things has occurred: either (1) “the purposeful imposition of punishment on a military accused prior to court-martial” or (2) “pretrial confinement conditions which are more rigorous than the circumstances required to ensure an accused's presence [at trial].” *United States v. Fricke*, 53 M.J. 149, 154 (CAAF 2000) (citing *United States v. McCarthy*, 47 M.J. 162, 165 (CAAF 1997)).

16. If the military judge is convinced by the evidence presented that it is more likely than not the accused suffered from illegal pretrial punishment, then the accused would be entitled to credit against any sentence. *United States v. Carter*, 74 M.J. 204, 208 (C.A.A.F. 2015). The military judge has discretion to award credit even beyond day-for-day credit against confinement for time spent under conditions that constitute pretrial punishment even if not determined to be tantamount to confinement. *United States v. Rock*, 52 M.J. 154, 156 (C.A.A.F. 1999).

## ANALYSIS

17. Lt Baker retains the presumption of innocence and may not be punished pending trial; however, the conditions of pretrial restraint levied upon him are more rigorous than necessary to ensure his presence at trial or to prevent additional misconduct. Thus, the military judge should award him credit against any adjudged confinement.

18. Article 13 prohibits the imposition of punishment prior to trial and the discussion in R.C.M. 304(b) warns that the restraint should not be more rigorous than the circumstances require to ensure the presence of the person restrained or to prevent foreseeable serious criminal

misconduct. The conditions on the Accused's liberties are so overbroad and oppressive as to amount to pretrial punishment.

19. The three pretrial restraint orders vaguely assert that the "restraint is required by the circumstances based on the factors in RCM 305(h)(2)(B)," without clarifying the permissive, non-punitive purpose nor that the restraints are no more rigorous than the circumstances require. (Attachments 3-5). Prohibiting the Accused from driving a vehicle on- or off-base when he lives 20 miles from the base and from buying or drinking legal alcoholic beverages for 192 days is facially punitive in nature and not narrowly tailored.

20. The Accused's chain of command knowingly created restraints that would force the Accused to pay out-of-pocket for transportation beyond his personal vehicle, including costly ride-sharing services. The duties he was required to report into work in-person to accomplish were menial, consisting of keeping his individual medical readiness and computer-based training up-to-date, regardless of the member's engineering degree and knowledge. The financial strain of being required to spend thousands of dollars to be transported 20 miles to work and back every duty day, as well as to and from countless other mental health and medical treatment appointments, including the two sanity board evaluations at Fort Carson, which is more than 75 miles from base, and other required daily activities for nearly 7 months. Such a rigorous condition is far more rigorous a restraint than necessary.

21. Anyone undergoing this level of unexpected financial strain and managing the logistical issues of these restraints would be expected to experience stress, let alone someone facing general court-martial proceedings. The embarrassment twice a duty day of riding with strangers, being dropped off or picked up by strangers at the gate and walking more than a mile to work to do menial tasks at most for such an excessive period of time raises to the level of ignominious and implied public denunciation by the commander. Additionally, such severe restraints for such an extended period of time are likely to hamper pretrial preparation due to heightened emotional stress and financial barriers to in-person meetings. Instead of triggering these serious impacts on the Accused, the restraints could have been more narrowly tailored or reevaluated over time, such as returning to the original installation-only driving restrictions. (Attachments 1-2).

22. Most egregiously, the duration of the restraints and the lack of reevaluation since December even as the months progressed and the member completed Denver Springs and Cedar Springs treatment facility treatment programs. In nearly 200 days, no alterations were made or discussed to the restrictions even as his leadership observed the emotional and financial impacts of the restraints. Based on the totality of the circumstances, the conditions are sufficiently egregious as to amount to punishment in violation of Article 13, UCMJ.

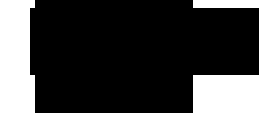
23. The conditions under which Lt Baker's liberties were restrained for 192 days to this point amount to pretrial punishment, rather than merely restraint. Credit must be awarded in this case, not only to remedy the illegal treatment of Lt Baker, but also to prevent this type of conduct by the Government in the future. No future Air Force members should have their liberties so severely disproportionately restricted as to equate to illegal pretrial punishment. The only mechanism to deter this behavior is to award Lt Baker meaningful credit for each day he had to endure such conditions.

24. The Defense reserves the right to supplement this motion as additional information becomes available. Notably, the Defense has not yet received the report and findings of the Defense requested and military judge ordered R.C.M. 706 sanity board.

### **RELIEF REQUESTED**

THEREFORE, the Defense respectfully requests that this Court award Lt Baker confinement credit for the days from 21 October 2022 until the issuing of a sentence in this case due to the illegal pretrial punishment to which he was subjected. The Defense does request an Article 39A hearing regarding this motion.

Respectfully submitted this 1st day of May 2022



ANNA K. E. STURGES, Capt, USAF  
Defense Counsel

#### **5 Attachments:**

1. Notice of Suspension of Installation Driving Privileges, dated 18 October 2022 (3 pages)
2. Notice of Suspension of Installation Driving Privileges, dated 21 October 2022 (2 pages)
3. Pretrial Restraint Order, dated 21 October 2022 (2 pages)
4. Amendment to Pretrial Restraint Order, dated 3 November 2022 (2 pages)
5. Amendment to Pretrial Restraint Order, dated 9 December 2022 (2 pages)

**CERTIFICATE OF SERVICE**

I hereby certify that I e-mailed a scanned copy of the foregoing motion for appropriate relief with all attachments to the Trial Counsel and the Military Judge on 1 May 2023.



ANNA K. E. STURGES, Capt, USAF  
Defense Counsel