

**IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS**

UNITED STATES,  
Appellee

**MOTION TO FILE A  
MEMORANDUM OF  
ARGUMENT**

v.

Docket No. ARMY 20230151

Sergeant First Class (E-7)  
**MICHAEL S. MALONE,**  
United States Army,  
Appellant

Tried at Fort Bliss, Texas, on 22  
March 2023, before a general court-  
martial convened by Commander,  
Headquarters, Fort Bliss, Lieutenant  
Colonel Jessica Conn, Military Judge,  
presiding.

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

COMES NOW the undersigned appellate government counsel, pursuant to Rule 25.5(b) of this Honorable Court’s Rules of Appellate Procedure, and hereby moves for leave to file this Memorandum of Argument to clarify an argument made during the hearing. The undersigned counsel seeks to clarify its response to this court’s question regarding legislative intent. Namely, if Congress is silent or intended the unit of prosecution for Article 128b(1), UCMJ to be a “continuous course-of-conduct type” offense, the government’s argument would fail *only if* this court finds the Specifications 1 and 3 of Charge I are part of an ongoing, uninterrupted attack united in time, circumstance and impulse. However, the government maintains these specifications are separate and distinct acts interrupted in time, circumstance, and impulse. Thus, regardless of whether Congress

intended Article 128b(1), UCMJ to be a “continuous course-of-conduct type” offense or “discrete act” offense, the government prevails.

### **Conclusion**

WHEREFORE, the government respectfully requests this honorable court grant this motion and consider the above clarified argument.

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MEMORANDUM OF  
ARGUMENT

**EN BANC**

**Motion to File a Memorandum  
of Argument**

GRANTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

DATE: \_\_\_\_\_



VY/T. NGUYEN  
CPT, JA  
Appellate Attorney, Government  
Appellate Division

**CERTIFICATE OF SERVICE, U.S. v. MALONE (20230151)**

I certify that a copy of the foregoing was sent via electronic submission to  
the Defense Appellate Division at [REDACTED]

[REDACTED] on the 1st day of November, 2024.

[REDACTED]  
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