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

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| UNITED STATES,<br>Appellee<br><br>v.<br><br>Staff-Sergeant (E-6)<br>**ZACKERY J. ASKINS**,<br>United States Army,<br>Appellant | **MOTION FOR SUPPLEMENTAL ARGUMENT AND JUDICIAL NOTICE**<br><br>Docket No. ARMY 20230303<br><br>Tried at Fort Sill, Oklahoma, on 11 April 2022, 3 August 2022, 25 October 2022, 28 November 2022, 23–25 May 2023, by a general court-martial convened by Commander, United States Army Fires Center of Excellence and Fort Sill, Lieutenant Colonel Tiffany Pond, Military Judges, presiding. |

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

COMES NOW the undersigned appellate government counsel, pursuant to Rules 23.3 and 25.5(b) of this Honorable Court's Rules of Appellate Procedure, and hereby moves for leave to file this Motion for Judicial Notice. During oral argument on 17 June 2025, the court asked undersigned counsel to address "time of war" for purposes of Article 43(f), Uniform Code of Military Justice, 10 U.S.C. § 843 (2019) [UCMJ] in writing. Accordingly, the government filed a Supplemental Brief contemporaneously with this instant motion. The following accompanying documents and the reference materials cited therein will aid this court in resolving whether the United States was "at war" for purposes of Article 43(f)(2), UCMJ:

1. **Government Appellate Exhibit 1** contains excerpts of the 2024 Congressional Research Report, titled, "U.S. Periods of War and Dates of Recent Conflicts." This Report provides an overview of Operation ENDURING FREEDOM (OEF), Operation FREEDOM'S SENTINEL (OFS), and Operation INHERENT RESOLVE (OIR). Notably, its introduction references the entities involved in determining "termination of hostilities," which is relevant to the court's questions about the requisite formality for the President's proclamation.

2. **Government Appellate Exhibit 2** contains an account of OEF, OFS, and OIR military casualties from the Defense Casualty Analysis System. This is relevant to the court's "de facto" war analysis.

3. **Government Appellate Exhibit 3** contains the Department of Defense (DOD) estimate of the annual cost of OEF, OFS, and OIR to each U.S. taxpayer. This is relevant to the court's "de facto" war analysis.

4. **Government Appellate Exhibit 4** contains excerpts of Lead Inspector General (IG) for Overseas Contingency Operations (OCO), "[OIR]: Quarterly Report and Biannual Report to the United States Congress, December 17, 2014–March 31, 2015," (2015). Appellant stipulated to stealing C-4 blocks beginning in August 2014. This is relevant to evaluating the state of OIR in August 2014.

5. **Government Appellate Exhibit 5** contains excerpts of Lead IG OCO, "[OIR]: Report to the United States Congress, October 1, 2016–December 31,

2016," (2016). Appellant discussed forming the requisite intent for one block of C-4 no later than December 2016. This is relevant to evaluating the state of OIR in December 2016.

6. **Government Appellate Exhibit 6** contains excerpts of DOD Office of Inspector General (OIG), "[OIR] and Other U.S. Government Activities Relating to Iraq & Syria, January 1, 2025–March 31, 2025" (2025). This is relevant to evaluating whether the United States continues to be at de facto war due to OIR, suspending the SOL under Article 43(f), UCMJ.

7. **Government Appellate Exhibit 7** contains excerpts of Lead IG OCO, "[OFS]: Quarterly Report to the United States Congress, April 1, 2015–June 30, 2015," (2015). It discusses the transition between OEF and OFS and continuation of counterterrorism efforts. This is relevant to evaluating the "termination of hostilities" for OEF in December 2014, if any, and state of OFS in January 2015.

8. **Government Appellate Exhibit 8** contains excerpts of Lead IG OCO, "[OFS]: Report to the United States Congress, October 1, 2016–December 31, 2016," (2016). This is relevant to evaluating the state of OFS in December 2016.

9. **Government Appellate Exhibit 9** contains excerpts of DOD OIG, "[OFS]: Lead Inspector General Report to the United States Congress, July 1, 2020–September 30, 2020," (2020). It discusses the conditional nature of the 2020 Doha peace agreement. This is relevant to the government's position that such an

agreement did not terminate hostilities.

10. **Government Appellate Exhibit 10** contains excerpts of DOD OIG, "[OFS]: Lead Inspector General Report to the United States Congress, January 1, 2021–March 31, 2021," (2021). It illustrates the uncertainty during this time due to renewed violence and contains an accounting of civilian casualties. This is relevant to the government's position that a conditional peace agreement did not terminate hostilities.

11. **Government Appellate Exhibit 11** contains excerpts of "Operation Enduring Sentinel, [OFS]: Lead Inspector General Report to the United States Congress, July 1, 2022–September 30, 2022," (2022). This is relevant to evaluating the date of "termination of hostilities" for OFS in 2021.

12. Judicial notice of these documents and the reference materials cited therein will aid this court in resolving whether the United States was "at war" for purposes of Article 43(f)(2), UCMJ.

## Conclusion

WHEREFORE, the government respectfully requests this honorable court grant this motion.



VY T. NGUYEN
MAJ, JA
Branch Chief, Government
Appellate Division

Panel No. 2

**Leave to File Motion**

GRANTED: _____

DENIED: _____

DATE: _____

**Motion re: Gov't App. Ex. 1**

GRANTED: _____

DENIED: _____

DATE: _____

**Motion re: Gov't App. Ex. 2**

GRANTED: _____

DENIED: _____

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**Motion re: Gov't App. Ex. 3**

GRANTED: _____

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**Motion re: Gov't App. Ex. 4**

GRANTED: _____

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**Motion re: Gov't App. Ex. 5**

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**Motion re: Gov't App. Ex. 6**

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**Motion re: Gov't App. Ex. 7**

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**Motion re: Gov't App. Ex. 8**

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**Motion re: Gov't App. Ex. 9**

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**Motion re: Gov't App. Ex. 10**

GRANTED: _____

DENIED: _____

DATE: _____

**Motion re: Gov't App. Ex. 11**

GRANTED: _____

DENIED: _____

DATE: _____

**CERTIFICATE OF SERVICE**

**UNITED STATES v. ASKINS, ARMY 20230303**

I certify that a copy of the foregoing was sent via electronic submission to the Defense Appellate Division at [redacted] on the 1st day of July, 2025.

[redacted]
VY T. NGUYEN
MAJ, JA
Branch Chief, Government
Appellate Division

Panel No. 2