

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

UNITED STATES
Appellee

v.

Sergeant (E-5)
JACOB L. BRUBAKER-ESCOBAR
United States Army
Appellant

JOINT MOTION FOR LEAVE TO FILE
PETITIONS FOR RECONSIDERATION
OUT OF TIME

Crim. App. Dkt. No. 20190618

USCA Dkt. No. 20-0345/AR

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES:

COME NOW the undersigned appellate counsel pursuant to Rules 30, 31, and 33 of this Court's Rules of Practice and Procedure and jointly move for this Court to grant the parties' requests to file the contemporaneously-filed Petitions for Reconsideration out of time.

Procedural History

On June 4, 2021, this Court issued the opinion and judgment in this case. The time for reconsideration passed on June 14, 2021. Rule of Practice and Procedure 31(a). On June 22, 2021, this Court issued the mandate.

On June 24, 2021, after the time for reconsideration had expired, undersigned appellate counsel discovered that Section 531(n)(1) of the National

Defense Authorization Act for Fiscal Year 2018 (2018 NDAA)¹ directly impacted this Court’s analysis and ruling in this case. Realizing the impact of this provision, described more fully in the attached Petitions for Reconsideration, undersigned appellate defense counsel and undersigned appellate government counsel now join in this request for leave to file an out-of-time Petition for Reconsideration.

The Army Court issued a Certificate of Completion of Appellate Review on June 29, 2021. The conviction is not yet final, because the time for filing a petition for a writ of certiorari at the Supreme Court has not yet expired, and the discharge has not yet been executed. *See* Article 76, UCMJ; Rule for Court-Martial 1209(a)(1)(B)(iii) (2018).

Argument

Although the time for reconsideration has expired under Rule 31(a), Rule 33 authorizes this Court to suspend its rules “for good cause shown.” The belated discovery of Section 351(n)(1)’s amendment to Section 5542(c)(1) of the National Defense Authorization Act for Fiscal Year 2017² and its apparent relevance to the issues in this case is good cause for this Court to suspend the rules and allow an out-of-time petition for reconsideration. Immediately upon discovering this oversight, counsel filed this motion with the Court. Had either party become aware

¹ Pub. L. No. 115-91, 131 Stat. 1283 (2017).

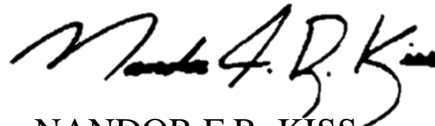
² Pub. L. No. 114-328, 130 Stat. 2000 (2016).

of this provision sooner, undersigned counsel would have immediately filed a supplemental citation of authority to this Court or request for reconsideration of the opinion, since both parties agreed in their pleadings before this Court that Executive Order 13,825, 83 Fed. Reg. 9889 (Mar. 1, 2018) was a valid exercise of authority delegated by Congress.

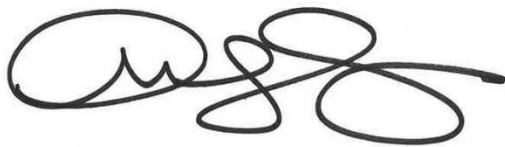
Wherefore, undersigned counsel request this Court grant the motion to file the Petitions for Reconsideration Out of Time.



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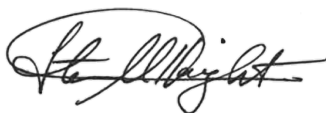
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Certificate of Filing and Service

I hereby certify that a copy of the foregoing in the case of *United States v. Brubaker-Escobar*, Crim. App. Dkt. No. 20190618, USCA Dkt No. 20-0345/AR, was electronically served on the Clerk of Court and Government Appellate Division on June 30, 2021.

A handwritten signature in black ink, appearing to read "Alexander Hess", with a long horizontal stroke extending to the right.

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