No. _____

In the Supreme Court of the United States

CRAIG R. BECKER, LIEUTENANT,
UNITED STATES NAVY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Chambers v. Mississippi*, 410 U.S. 284 (1973) and *Holmes v. South Carolina*, 547 U.S. 319 (2006), this Court reinforced the Sixth Amendment's guarantee of the right to present a complete defense, which necessarily includes evidence of third-party liability in murder cases. Petitioner stands convicted of murdering his then-wife. His main defense at trial was the theory that she committed suicide. But the military trial court excluded material and relevant evidence, later determined not to be hearsay, that his wife was "terrified" of losing her "memory" and "mental faculties."

The Navy-Marine Corps Court of Criminal Appeals (NMCCA) acknowledged both the hearsay ruling and Mil. R. Evid. 403 rulings were erroneous, but nevertheless affirmed, finding the evidence lacked relevance or probative value. The Court of Appeals for the Armed Forces (CAAF) declined review.

The question presented is:

Whether the trial court's exclusion of the decedent's statements about her mental health violated Petitioner's constitutional right to present a complete defense.

PARTIES TO THE PROCEEDING

The parties to the proceeding in the court whose judgment is sought to be reviewed are: The United States and Lieutenant Craig R. Becker, U.S. Navy.

CORPORATE DISCLOSURE STATEMENT

No publicly-traded entity has an interest in the outcome of this appeal.

RELATED PROCEEDINGS

Other than the direct appeal that forms the basis for this petition, there are no related proceedings for purposes of S. CT. R. 14.1(b)(iii).

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OPINIONS BELOW

The order of the United States Court of Appeals for the Armed Forces (CAAF) denying Petitioner's petition for reconsideration of denial of review is not yet reported. It is available at 2026 CAAF LEXIS 643 (C.A.A.F. July 27, 2026), and is reproduced in App. A. The CAAF's initial order denying the petition for grant of review is not yet reported. It is available at 2026 CAAF LEXIS 542 (C.A.A.F. June 22, 2026), and is reproduced in App. B. The decision of the Navy-Marine Corps Court of Criminal Appeals (NMCCA) is unreported. It is available at 2025 CCA LEXIS 574 (N-M. Ct. Crim. App. Dec. 17, 2025), and is reproduced in App. C.

JURISDICTION

The NMCCA had jurisdiction over this case pursuant to Article 66(b)(3), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(b)(3) (2024). The CAAF had jurisdiction pursuant to Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3) (2024). On July 27, 2026, the CAAF issued its final order denying review, under 10 U.S.C. § 867(b)(1)-(2) (2024). This Court has jurisdiction under 28 U.S.C. § 1259(3).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

1. The Sixth Amendment to the Constitution states:

   In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

2. Military Rule of Evidence 403 states:

   Rule 403. Excluding relevant evidence for prejudice, confusion, waste of time, or other reasons

   The military judge may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the members, undue delay, wasting time, or needlessly presenting cumulative evidence.

STATEMENT OF THE CASE

On the evening of October 8, 2015, Petitioner's then-wife, Ms. Bravo, fell to her death from the window of their apartment in Mons, Belgium.[1] At the time, Petitioner and Ms. Bravo were separated and had both started relationships with other people, but continued to live together and co-parent.[2] Before Ms. Bravo's death, they had resolved the terms of their separation via a signed agreement, including property division, financial arrangements, and custody.[3]

The United States eventually charged Appellant with, inter alia, premeditated murder and brought him to trial more than six years later.[4] The trial theory was that Petitioner stole sleeping pills (zolpidem) from his old boss, a Navy admiral, and secretly stored them in his old desk for over a year.[5] Although Petitioner had left that job over a year before Ms. Bravo's death, the Government alleged that he retrieved the pills from his old desk, crushed them, put them in Ms. Bravo's wine, and then threw her out the window.[6]

At trial, Petitioner's defense centered on the theory that Ms. Bravo committed suicide and that he possessed no motive to murder her, especially since

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[1] App. 11-12.

[2] App. 14.

[3] *Id.*

[4] App. 21-44. The court of first instance exercised federal jurisdiction pursuant to Article 2(a)(1), UCMJ, 10 U.S.C. § 802(a)(1) (2024).

[5] App. 15-16, 79-80, 86-87, 182-83.

[6] *Id.*

their marital separation issues were resolved.[7] He also contested the Government's physical and testimonial evidence: primarily, that the sole eyewitness saw no one in the window and that she heard Ms. Bravo scream (inconsistent with incapacitation).[8] He also argued the absence of defensive wounds, the absence of his DNA under her fingernails, and the lack of evidence of struggle in her bedroom or anywhere in the apartment.[9]

At trial, the Government's case centered on two pieces of character evidence. First, that twenty-six months before Ms. Bravo died, Petitioner had assaulted her (an allegation she recanted and that never rose to criminal or administrative action).[10] And second, that a week earlier, he had texted a friend in Virginia, who was searching for a lost dog, a sarcastic message about what he would do to someone who took his dog.[11] These items were admitted over Petitioner's objection and were the centerpiece of the Government's opening and closing arguments.[12]

The Government preempted Petitioner's defense by focusing its affirmative case on Ms. Bravo's purported stellar mental health and lack of suicidal intent.[13] In opening, the prosecutor stated: "[p]eople

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[7] App. 14, 19, 79-80, 135-36, 239-43.

[8] R. at 225-33.

[9] App. 162, 214-18, 225-27, 237.

[10] App. 82-83, 204-07.

[11] App. 71-74, 82-83, 204-07, 243-45.

[12] *Id.*

[13] App. 206-07.

are not concerned that she's suicidal. In fact, people think she's happy with her new life."[14] The Government proceeded to ask every witness who knew her personally, except one, about her lack of suicidal ideations, covering her background from her childhood until her death.[15] Several of these witnesses were asked the question multiple times covering different time periods.[16]

Petitioner presented expert testimony that Ms. Bravo had an elevated risk of suicide.[17] However, in surrebuttal, the trial judge excluded messages Ms. Bravo sent Petitioner seven months before her death, where she stated:

> Mrs. Bravo: Trying to work on not being nuts. Lol
>
> [Petitioner]: GOOD! Nuts is not good and makes me scared
>
> Mrs. Bravo: Seriously I never asked for it. I'm terrified
>
> [Petitioner]: Terrified of what?
>
> Mrs. Bravo: Something happening to me
>
> Mrs. Bravo: Nothing. I'm afraid that something could happen again. I'm just terrified

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[14] *Id*.

[15] App. 207-08, 211, 218-25, 227-28, 233-37.

[16] App. 218-25 (covering 2006-2008, 2010, 2014, and 2015 with one witness); App. 233-37 (covering 2003-2004, 2014, and 2015 with another witness).

[17] App. 20, 105, 135-36.

> [Petitioner]: What is happening to you
>
> [Petitioner]: What would happen again
>
> Mrs. Bravo: It is so f[***]ing scary
>
> Mrs. Bravo: Losing my memory and my wits
>
> Mrs. Bravo: Losing my mental faculties against my will.[18]

The trial judge ruled the messages were inadmissible hearsay and also excluded them under Military Rule of Evidence (MRE) 403 because they would be "unfairly prejudicial to the trial process."[19] A court-martial panel of eight members convicted Petitioner of, inter alia, premeditated murder and sentenced him to life without parole.[20]

On appeal, the NMCCA acknowledged the trial judge erred because the messages fell within a hearsay exception.[21] It also acknowledged the judge erred in applying MRE 403.[22] It ruled, however, that the messages were nonetheless excluded under MRE 403 because they "presented a clear risk of confusing the issues because of their focus on [Ms. Bravo's] mental state seven months earlier than her death[,]" and the probative value was "very limited" because "they did not express that she was suicidal."[23] The

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[18] App. 97-98.

[19] App. 98-106.

[20] App. 6-7.

[21] App. 104-06.

[22] *Id*.

[23] *Id*.

court added they were "cumulative" to the expert's testimony that Ms. Bravo was at an elevated risk of suicide.[24]

In addressing other raised issues, the court acknowledged the Government's case was "largely circumstantial" but pointed to the follow items as supporting the guilty finding: the retrieval of pills "that match[ed] a description of zolpidem"; buying wine for someone "described as having a drinking problem[,]" "misleading of false statements" about Ms. Bravo's drinking, and Petitioner's actions and statements after Ms. Bravo's fall.[25]

The Court of Appeals for the Armed Forces (CAAF) declined to review the case.[26]

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[24] *Id*.

[25] App. 79-80.

[26] App. 1-4.

REASONS FOR GRANTING THE PETITION

The military's exclusion of critical evidence supporting Petitioner's main defense of suicide conflicted with this Court's jurisprudence and that of several circuits.

In a premeditated murder trial, in which the Government's case was largely circumstantial, the military trial court prevented Petitioner from admitting statements that directly supported his main defense: that his wife committed suicide. This ruling directly contradicted this Court's jurisprudence because the evidence was "critical to [Petitioner's] defense" and the "mechanistically"-applied evidentiary rules "defeat[ed] the ends of justice."[27]

The ruling epitomized the unfair imbalance that pervaded the trial. The parties were held to different standards, particularly regarding the relevance of prior events and the passage of time. This Court rejected a similar imbalance in *Holmes v. South Carolina*, and federal circuit courts have likewise reversed unfair trials where the Government is permitted inroads that the Defense is not.[28] This Court should grant the writ of certiorari to align the military's application of the Sixth Amendment's right to present a defense with federal jurisprudence.[29]

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[27] *Chambers v. Mississippi*, 410 U.S. 284, 302-03 (1973).

[28] *Holmes v. South Carolina*, 547 U.S. 319 (2006); *Parle v. Runnels*, 505 F.3d 922 (9th Cir. 2007).

[29] U.S. Const. amend. VI.

A. The excluded messages were admissible and critical to Petitioner's defense; their exclusion violated the Sixth Amendment.

The key factual question for the members (jury) in this case was whether Ms. Bravo committed suicide. Consequently, Ms. Bravo's history of mental health problems, substance abuse, and alcohol abuse were central to Petitioner's defense against the premeditated murder charge.[30] This was no secret, and the court permitted the prosecution to frame its case-in-chief around a preemptive attack on Petitioner's main defense. It opened the case by highlighting Ms. Bravo's purported stellar mental health and lack of suicidal intent.[31] It was then permitted to ask virtually every fact witness who personally knew Ms. Bravo about her mental health and lack of suicidal intent—with *no* limitation on temporal recency.[32]

The Defense, meanwhile, could only call an expert witness, who was heavily cross-examined.[33] But it had *more* than just an expert's opinion that Ms. Bravo had an elevated risk of suicide: Petitioner had text messages from months before her death, in which she

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[30] App. 79-80, 98-99, 104-06, 168-70, 184.

[31] App. 207 ("People are not concerned that she's suicidal. In fact, people think she's happy with her new life").

[32] App. 207-08, 211, 218-25, 227-28, 233-37. This testimony covers the timeframe from Ms. Bravo's childhood to her death.

[33] App. 145-47 (describing concessions the expert made on cross-examination, which formed the basis of an ineffective assistance of counsel claim).

expressed "terror[]" at losing her mental faculties and memory.[34]

In *Chambers*, the appellant was able to present several pieces of evidence supporting his defense that someone else killed the decedent.[35] However, in "large measure, he was thwarted" by the "strict application of certain Mississippi rules of evidence."[36] As in *Chambers*, the "evidence of [Petitioner's] guilt was extremely close. A shred of evidence one way or the other could have been persuasive to the jury."[37]

Third-party culpability evidence, if believed, renders "'reasonable doubt' an 'almost . . . forgone conclusion.'"[38] "As is usually the case with pieces of evidence," the text messages "gave meaning and coherence" to the expert testimony by "put[ing] it in context" and "explain[ing] it."[39] By excluding the messages, Petitioner was left only with expert testimony and without direct evidence of Ms. Bravo's deteriorating mental health. This lowered, if not eviscerated, "the probative force of the whole chain."[40] As in *Chambers*, Petitioner's "defense was far less persuasive than it might have been had he been given

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[34] App. 97-98.

[35] *Chambers*, 410 U.S. at 289-90.

[36] *Id*.

[37] *Id*. at 306-07 (White, J., concurring).

[38] *United States v. Maebane*, 86 M.J. 173, 184 (C.A.A.F. 2025) (quoting *Bradford v. Paramo*, 100 F.4th 1088, 1096 (9th Cir. 2024)).

[39] *Lunbery v. Hornbeak*, 605 F.3d 754, 761 (9th Cir. 2010).

[40] *Id*.

an opportunity" to submit direct evidence of his defense, as opposed to merely expert testimony.[41]

While a "criminal defendant's right to present evidence is not boundless," evidentiary rules cannot be applied "arbitrar[ily] or disproportionate[ly] to the purposes they are designed to serve."[42] The NMCCA's opinion that Ms. Bravo's statements lacked relevance because they reflected *only* her current state of mind was an incorrect recitation of the law.[43] That's because the "state of mind exception to the hearsay rule . . . allows such statements to show a future intent of the declarant to perform and act if the occurrence of that act is at issue."[44] In holding to the contrary, the military justice system prevented an accused facing a life sentence from presenting admissible evidence directly supporting his defense; in doing so, it conflicted with a well-settled principle of law from this Court and the federal circuits.

In *Scrimo v. Lee*, the Second Circuit found prejudicial error in the exclusion of testimony pointing to third-party culpability; the court explained the testimony did not just contradict the state's witness, but was to "affirmatively support the defense's theory[.]"[45] So too here. And as in *Scrimo*, the Government's case here was "thin," the "forensic

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[41] *Id.* at 294.

[42] *Scrimo v. Lee*, 935 F.3d 103, 112 (2d Cir. 2019) (quoting *Rock v. Arkansas*, 583 U.S. 44, 56 (1987); *Chambers*, 410 U.S. at 302).

[43] App. 104-06.

[44] *United States v. Brown*, 490 F.2d 758, 762 (D.C. Cir. 1973) (citing *Mutual Life Ins. Co. v. Hillmon*, 145 U.S. 285 (1892)).

[45] *Scrimo*, 935 F.3d at 116.

evidence was inconclusive," and the "sole motive for the murder" was "weak if not risible."[46]

The sole eyewitness did not see Petitioner in the window and heard Ms. Bravo scream, which is inconsistent with the theory that she was drugged.[47] The Government's biomechanical expert could not conclude whether she jumped out or was thrown from the window.[48] Ms. Bravo had tramadol (a power opiate) in her system at the time of her death, and toxicology reports showed she used it regularly over the preceding nine months.[49] She had prior prescriptions for both zolpidem and tramadol.[50] Petitioner and his wife were cohabitating, raising their child, both seeing other people, and had amicably resolved all marital property and custody issues.[51] The Government's theory that Petitioner acted out of anger over infidelity was weak.[52]

Also, as in *Scrimo*, the Government's fanciful theory—that Petitioner surreptitiously stole pills from an admiral a year earlier, hid them in an old desk, continued living with his wife for over a year,

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[46] *Id*. at 120.

[47] App. 13, 135-36, 162, 212-18, 232-33. The amount of zolpidem in her system was described as "sub-therapeutic." App. 171.

[48] App. 13 ("Dr. Felix could not give a conclusive opinion whether Ms. Bravo exited the window herself or if she was pushed by another person."), 135-36.

[49] App. 184.

[50] App. 245.

[51] App. 14.

[52] App. 82 (explaining the Government's motive and intent theory was Petitioner's purported anger of alleged infidelity).

and then retrieved them and drugged her "lack[ed] firm evidentiary support."[53]

Other circuits have reached similar conclusions. In *Ellis v. Mullin*, the defendant put on an insanity defense and was able to elicit "testimony from several witnesses, none of them medical professionals, regarding events in the weeks prior to the shootings."[54] However, an expert's report on his mental health was excluded "on grounds of relevancy and Rule 403."[55] There, as in Petitioner's case, the prosecution specifically argued against the defense theory, even though the defendant was precluded from presenting evidence the prosecution faulted him for not having.[56] The Tenth Circuit reversed, finding the expert report "would have 'created reasonable doubt that did not exist without' it."[57] As in *Ellis*, Petitioner's case "was highly vulnerable" to counterargument, which was "seized upon by the prosecution in its closing argument[.]"[58]

From opening through closing, the prosecution in Petitioner's case weaponized Ms. Bravo's purported stellar mental health, using it to preemptively attack and undermine the defense's sole theory of innocence. When the time came for Petitioner to defend that

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[53] *Scrimo*, 935 F.3d at 121.

[54] *Ellis v. Mullin*, 312 F.3d 1201, 1204 (10th Cir. 2002).

[55] *Id.*

[56] *Id.* 1204-05.

[57] *Id.* at 1207 (quoting *Richmond v. Embry*, 122 F.3d 866, 872 (10th Cir. 1997)).

[58] *Id.*; App. 244 (The prosecutor argued to the members: "She would not have committed suicide that evening.").

attack and affirmatively present his case with direct evidence (that qualified for a hearsay exception) from the decedent herself, the court excluded it as distracting and not relevant.[59] This ruling conflicted with this Court's precedent, and that of several federal circuits, and violated the Sixth Amendment's guarantee of a right to present a complete defense.

[59] App. 104-06.

B. The messages' exclusion created a fundamentally unfair trial: the military trial and appellate courts held the parties to different standards, violating the balancing principle of *Holmes v. South Carolina*.

The double standards the military justice system applied in this case are as glaring as they are unfair. In *Holmes*, this Court explained the balance between the right to present a defense and evidentiary rules like Federal Rule of Evidence 403 (which is identical to MRE 403).[60] It held that evidence like the kind in question here—showing another person committed the homicide—"may be excluded where it does not sufficiently connect the other person to the crime, as, for example, where the evidence is speculative or remote, or does not tend to prove or disprove a material fact in issue at the defendant's trial."[61]

Holmes rejected a state rule that "radically changed" the balance because it looked to the strength of the government's case in analyzing the admissibility of the defense evidence.[62] The Court explained "the true strength of the prosecution's proof cannot be assessed without considering challenges to the reliability of the prosecution's evidence."[63] That is precisely the problem here: the Government was permitted to preemptively attack Petitioner's defense

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[60] *Holmes*, 547 U.S. at 326-327.

[61] *Id*. at 327 (quoting 40A AM. JUR. 2D, HOMICIDE § 286, pp 136-138 (1999)).

[62] *Id*. at 329-30.

[63] *Id*. at 330.

and offer "non-suicide" evidence covering Ms. Bravo's entire life. But Petitioner could not present significantly closer-in-time messages from Ms. Bravo herself to challenge the reliability of the Government's evidence.

Even worse, the unequal standards extended beyond just the messages in question. The military courts applied different standards of temporal remoteness and relevance when evaluating the parties' evidence. Prior occurrences are either relevant or not; the passage of time either diminishes their relevance, or it does not. When it came to Petitioner's state of mind, motive, and intent, neither relevance nor the passage of time was a concern. A sarcastic text message about a lost dog half-a-world away became the centerpiece of the Government's case. In fact, the Government featured the text message in the opening lines its opening and closing statements, published it to the members on the merits, and displayed it in big bold letters on its first closing argument slide.[64]

A recanted, twenty-six-month-old simple assault allegation, which required calling numerous other witnesses, somehow presented no Rule 403 concerns of confusion or distraction.[65] The military justice system found that allegation probative for *motive* and *intent* to murder over two years later, even though Petitioner and his wife continued on with their lives

[64] App. 14, 73, 76-78, 204-07, 243-45.

[65] App. 14, 81-82, 85-89.

for years, got pregnant, had a child, and amicably separated in the intervening years.[66]

Yet, the same trial judge and same appellate judges found no probative value in Ms. Bravo's text messages about *losing her mind*.[67] This was because, in the courts' views, they happened so far in the past: seven months before her death. But the Government's character evidence happened twenty-six months earlier. The double standard does not pass constitutional muster and is violative of the balancing principles *Holmes* established.

The Iowa Supreme Court directly addressed the issue of temporal relevance for mental health evidence in a suicide defense case. In *State v. Buelow*, the state contended that much of the defense's offered evidence, "particularly past suicide attempts, [was] too remote to be admissible."[68] The court gave an overview of a hundred years of case law on the issue, citing a number of cases, from multiple states, holding "evidence tending to show a predisposition to suicide is admissible" and a "court had erred in keeping evidence of the deceased's suicidal disposition out."[69]

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[66] *Id*.

[67] App. 97-106.

[68] *State v. Buelow*, 951 N.W.2d 879, 885 (Iowa 2020).

[69] *Id*. at 885-86 (citing *State v. Stanley*, 2001-NMSC-037, 131 N.M. 368, 37 P.3d 85, 90 (N.M. 2001); *State v. Jaeger*, 1999 UT 1, 973 P.2d 404, 407 (Utah 1999); *State v. Marti*, 290 N.W.2d 570, 575 (Iowa 1980); *State v. Meyer*, 180 Iowa 210, 214, 163 N.W. 244, 245-46 (Iowa 1917); *State v. Beeson*, 155 Iowa 355, 364, 136 N.W. 317, 321 (Iowa 1912); *People v. Conklin*, 175 N.Y. 333, 67 N.E. 624, 17 N.Y. Cr. 414 (N.Y. 1903); *Blackburn v. State*, 23 Ohio St. 146 (Ohio 1872)).

The *Buelow* court explained that other courts held "that suicidal declarations made as far back as three to six years prior to the alleged murder were admissible to support a theory of suicide."[70] While relevance "decays as time elapses . . . suicide attempts and mental health diagnoses from a few years prior are clearly relevant to the question of whether she took her own life or was killed by [the accused]."[71] The military justice system's conclusion that seven months was a bridge too far is an outlier—especially when the Government was allowed to present far more temporally-remote evidence.

The military courts' application of MRE 403, which is identical to FRE 403, reflects a similar double standard. First, the trial judge got the test wrong, which even NMCCA acknowledged.[72] The NMCCA conducted a purported de novo review, but determined the text messages would be "confusing" to the members and a distraction.[73] Yet the messages required no witnesses or testimony, unlike the twenty-six-month-old assault allegation (which became a trial within a trial and led to a mistrial motion).[74]

The NMCCA does not question, let alone answer, what risk of confusion there was. The principal

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[70] *Id.* at 886 (adding that some courts held suicide attempts "going back more than ten years" were relevant when the defense was suicide).

[71] *Id.* at 887.

[72] App. 104-06.

[73] *Id.*

[74] App. 106-08.

question of the trial was whether Ms. Bravo committed suicide or not. The text messages showed recent terror about losing her mind and memory.[75] It is unclear what confusion the NMCCA feared, but it is clear this evidence directly supported Petitioner's defense. As in *Ellis*, if there could have been confusion, an instruction would have cured it.[76]

The trial judge permitted, and the NMCCA credited, the Government's *repeated* eliciting of testimony that Ms. Bravo was not suicidal in its case in chief.[77] This included covering at least fifteen years of her life across various stages and locations.[78] It included allowing the Government to ask the same witnesses the same question multiple times covering time periods years before her death.[79] Yet, when Petitioner tried to rebut this evidence and present *his* defense, the trial judge refused and the NMCCA found the messages cumulative to the expert testimony that Ms. Bravo was at a higher risk of suicide.[80] At the same time, it criticized his defense for not corroborating the expert's opinion.[81]

As the NMCCA acknowledged, the expert was heavily cross-examined and even made some

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[75] App. 97-98.

[76] *Ellis*, 312 F.3d at 1208.

[77] App. 79-80, 207-08, 211, 218-25, 227-28, 233-37.

[78] *Id*.

[79] App. 218-25, 233-37.

[80] App. 104-06.

[81] App. 79-80, 104-06.

concessions.[82] Meanwhile, Petitioner had direct evidence supporting Ms. Bravo's terror at her deteriorating mental health.[83] As this Court explained in *Old Chief v. United States*, when considering the Rule 403 balancing test, "conventional evidence" and "tangible things . . . [u]nlike an abstract premise," has "force beyond any linear scheme of reasoning" and "strik[es] hard[.]"[84] "The persuasive power of the concrete and particular is often essential to the capacity of jurors to satisfy the obligations that the law places on them."[85] The NMCCA's Rule 403 holding that Petitioner's direct evidence—critical to his complete defense—was cumulative to an expert's disputed opinion violated this Court's precedent.

The double standard in this case is similar to that in *Parle v. Runnels*. There, the Ninth Circuit criticized the "starkly one-sided impact of the errors," where a "unique and critical thread runs through the trial errors in [the] case[.]"[86] All of the excluded evidence was the defense's evidence, and all of the erroneously admitted evidence was the government's.[87]

A brief example explains the unfairness in Petitioner's case. The NMCCA pointed numerous times, in a case it admitted was "largely circumstantial," to the fact that Petitioner reported

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[82] App. 145-47.

[83] App. 97-98.

[84] *Old Chief v. United States*, 519 U.S. 172, 187-88 (1997).

[85] *Id*.

[86] *Parle*, 505 F.3d at 929.

[87] *Id*. at 929-30.

his wife's drinking problem.[88] It found this report misleading and false and found it inconceivable that Ms. Bravo was a heavy drinker at the time of her death.[89] But the Government's own evidence *proved* she was drinking heavily at the time of her death.[90] Then, when the Defense tried to reinforce this at trial, the military judge specifically excluded any reference to her drinking.[91]

Similarly, the Government offered numerous pieces of evidence purporting to show Ms. Bravo's dissatisfaction with Petitioner leading up to her death.[92] But when Appellant had attempted to introduce the same type of evidence reflecting their relationship was in a good place, the military judge excluded them.[93] Petitioner bemoaned the double standard and unfairness at trial: "there's a giant disconnect between the government's objections to our evidence, and now, their desire to introduce this evidence. It seems as if for some reason the alleged victim in this case, that her state of mind is somehow more relevant than the accused."[94]

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[88] App. 17, 79-80, 168-70.

[89] *Id*.

[90] App. 208-10 ("Q. She told you that she was drinking a bottle of wine a night by the time she died? A. She told me that, yes."); 238 (suggesting the type of wine she wants), 244 ("I am drinking wine straight from the bottle"); *see also* App. 244-45 ("Showering . . . Have wine will travel").

[91] App. 238-39.

[92] App. 239-43.

[93] *Id*.

[94] App. 241.

As in *Parle*, this theme permeated the trial and is best reflected by the exclusion of Ms. Bravo's messages at the heart of Petitioner's defense. It exemplifies the unfairness and double standard that *Holmes* rejected: the Defense's evidence is either admissible or not, regardless of the Government's case or theory. Here, the Government got its cake and ate it too. It was allowed, at every turn, to do what it wanted. When it was Appellant's turn, the goalposts were moved: temporal remoteness and relevance became grounds to exclude Petitioner's only meaningful chance to raise reasonable doubt.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for a writ of certiorari.

Respectfully submitted.

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