

UNITED STATES OF AMERICA)

v.)

Manning, Bradley E.)
PFC, U.S. Army,)
HHC, U.S. Army Garrison,)
Joint Base Myer-Henderson Hall)
Fort Myer, Virginia 22211)

Prosecution Response to
Defense Motion to Merge
as Unreasonable Multiplication
of Charges for Sentencing

2 August 2013

RELIEF SOUGHT

The United States respectfully requests that the Court deny, in part, the Defense Motion to Merge as Unreasonable Multiplication of Charges for Sentencing (hereinafter the "Defense Motion"). The United States agrees with the defense that Specification 16 of Charge II and Specification 4 of Charge III should merge into a single, ten-year offense for sentencing. However, for the remaining specifications which the defense requests that this Court merge, except for Specifications 5 and 7 of Charge II which are addressed in a separate filing, the application of the *Quiroz* factors makes merger an inappropriate remedy.

BURDEN OF PERSUASION

The burden of proof on any factual issue the resolution of which is necessary to decide a motion shall be by preponderance of the evidence. *See* RCM 905(c)(1). The burden of persuasion on any factual issue the resolution of which is necessary to decide a motion shall be on the moving party. *See* RCM 905(c)(2). Here, the defense bears this burden.

FACTS

The accused was convicted of causing intelligence to be "wrongfully and wantonly" published in violation of Article 134, Uniform Code of Military Justice (hereinafter "UCMJ"), six specifications of misconduct in violation of 18 U.S.C. § 793(e), five specifications of misconduct in violation of 18 U.S.C. § 641, one specification of misconduct in violation of 18 U.S.C. § 1030(a)(1), five specifications of misconduct in violation of Article 92, UCMJ, and two specifications of conduct prejudicial to good order and discipline in violation of Article 134, UCMJ. *See* Appellate Exhibit (hereinafter "AE") 624.

WITNESSES/EVIDENCE

The United States does not request any witnesses or evidence be produced for this motion. The United States requests that the Court consider the evidence adduced at trial and the referenced Appellate Exhibits.

LEGAL AUTHORITY AND ARGUMENT

The Court of Appeals for the Armed Forces (hereinafter "CAAF") in *United States v. Campbell*, 71 M.J. 19 (C.A.A.F. 2012) endorsed the following non-exclusive factors, commonly

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known as the *Quiroz* factors in light of *United States v. Quiroz*, 55 M.J. 334, 339 (C.A.A.F. 2001), as a guide for military judges to consider when the defense objects that the United States has unreasonably multiplied the charges:

- (1) Whether each charge and specification is aimed at distinctly separate criminal acts;
- (2) Whether the number of charges and specifications misrepresent or exaggerate the accused's criminality;
- (3) Whether the number of charges and specifications unfairly increase the accused's punitive exposure; and
- (4) Whether there is any evidence of prosecutorial overreaching or abuse in the drafting of the charges.

See *Campbell*, 71 M.J. at 24. None of the *Quiroz* factors are pre-requisites, meaning one or more factors may be sufficient to establish an unreasonable multiplication of charges (hereinafter "UMC") based on prosecutorial over-reaching. See *Quiroz*, 55 M.J. at 339. A singular act may implicate multiple and significant criminal law interests, none necessarily dependent upon the other. See AE 78.

The CAAF in *Campbell* recognized that "the concept of UMC may apply differently to findings than to sentencing." *Campbell*, 71 M.J. at 23. When merging charges for sentencing purposes, the Court instructed military judges, in their discretion, to employ the above *Quiroz* factors and any other relevant factors as to whether merger for sentencing is appropriate. *Id.* at 24, n.9; RCM 1003(c)(1)(C) discussion; *United States v. Anderson*, 68 M.J. 378, 386 (C.A.A.F. 2010) (stating that "the application of the *Quiroz* factors involves a reasonableness determination, much like sentence appropriateness"); *Quiroz*, 55 M.J. at 399 (stating that the concept of UMC for sentencing applies "when the military judge...determines that the nature of the harm requires a remedy that focuses more appropriately on punishment than on findings").

I. This Court should not merge the specifications of 18 U.S.C. § 641 violations with those of 18 U.S.C. § 793(e) violations, specifically Specifications 4 and 5 of Charge II, Specifications 6 and 7 of Charge II, or Specifications 8 and 9 of Charge II (collectively the "Category 1 Specifications"), for sentencing purposes because each of the *Quiroz* factors makes merger an inappropriate remedy.

Each of the *Quiroz* factors makes merger of the Category 1 Specifications an inappropriate remedy. The criminal acts in the Category 1 Specifications are separate and distinct, and the number of charges and specifications do not misrepresent or exaggerate the accused's criminality, or unfairly increase the accused's punitive exposure.

A. *The theft of the records in Specifications 4, 6, and 8 of Charge II and the transmission of those records in Specifications 5, 7, and 9 of Charge II are aimed at separate and distinct criminal acts.*

For Specification 4 of Charge II, the evidence proved that, in early January 2010, the accused began exporting the Significant Activities (hereinafter "SIGACTs") spanning six years from the Combined Information Data Network Exchange (hereinafter "CIDNE") Iraq database in

30-day increments. *See* PE 116 (stating that a user can export data from the CIDNE database *only* one month at a time). Put another way, the accused manually exported the CIDNE Iraq SIGACTs on 144 separate occasions. The accused completed exporting more than 380,000 SIGACTs from the CIDNE-I database between 04:39:13C and 04:54:04C (Iraq time) on 3 January 2010.

SA Shaver testified that he found a password-protected folder named "yada.tar.bz2.nc" on the accused's personal computer. *See* Testimony of SA Shaver. This folder was created using "MCrypt", which SA Shaver testified is an open source utility to encrypt files that was found on the accused's personal computer. *See id.* Four files were located within the "yada.tar.bz2.nc" folder, one of which was entitled "irq_events.csv." The file "irq_events.csv" contained more than 380,000 SIGACTs from the CIDNE Iraq database. *See id.* The file "irq_events.csv" was last written on 5 January 2010, meaning the last time the file was written to or updated was 5 January 2010. *See id.*

For Specification 5 of Charge II, the evidence proved that, on 30 January 2010, the accused created the above folder entitled "yada.tar.bz2.nc" where he stored the file containing more than 380,000 SIGACTs from the CIDNE Iraq database. *See* Testimony of SA Shaver. Prior to forensically wiping his personal computer on 31 January 2010, the accused transmitted those records to WikiLeaks. *See* Testimony of Mr. Johnson; PE 125.

For Specification 6 of Charge II, the evidence proved that the accused completed exporting more than 90,000 SIGACTs from the CIDNE Afghanistan database between 11:51:30Z and 11:52:27Z (Zulu time) on 7 January 2010. *See* PE 116. The accused manually exported the CIDNE Afghanistan SIGACTs in 30-day increments on 144 separate occasions. *See* PE 116 (stating that a user can export data from the CIDNE database *only* one month at a time). SA Shaver testified that one of the files contained within the "yada.tar.bz2.nc" folder was named "afg_events.csv." *See* Testimony of SA Shaver. The file "afg_events.csv" contained more than 90,000 SIGACTs from the CIDNE Afghanistan database. The file "afg_events.csv" was last written on 8 January 2010, meaning the last time the file was written to or updated was 8 January 2010. *See id.*

For Specification 7 of Charge II, the evidence proved that, on 30 January 2010, the accused created the above folder entitled "yada.tar.bz2.nc" where he stored the file containing more than 90,000 SIGACTs from the CIDNE Afghanistan database. *See id.* Prior to forensically wiping his personal computer on 31 January 2010, the accused transmitted those records to WikiLeaks. *See* Testimony of Mr. Johnson; PE 125.

For Specification 8 of Charge II, the evidence proved that, upon returning from leave on 5 March 2010, the accused unsuccessfully attempted to manually download the Detainee Assessment Briefs (hereinafter "DABs") from the United States Southern Command (hereinafter "USSOUTHCOM") database. *See* PE 82; *see also* Testimony of SA Shaver (testifying that the accused attempted to download the DABs using a right-click save method as an ordinary user on 5 March 2010 and that the code "000" on PE 82 means that the download was unsuccessful). Two days later, on 7 March 2010, the accused downloaded more than 700 DABs from the

USSOUTHCOM database with the software, WGET. *See* PE 83; Testimony of SA Shaver. The accused subsequently transferred the records to his personal computer.

For Specification 9 of Charge II, the evidence proved that the accused inquired about how valuable the DABs would be to WikiLeaks, to which he was told "quite valuable." *See* PE 123 at 5-6. Knowing that, on 8 March 2010, the accused then transmitted those records to WikiLeaks. *See* PE 123 at 5-6.

The defense, for the second time, argues the theft was a "necessary step" for the accused to transfer those records to WikiLeaks. *See* Defense Motion, at ¶ 7(a); *see also* AE 78, at 5 (noting the "defense argument that each violation of 18 U.S.C. § 641 was simply the 'first step' in a violation of 18 U.S.C. § 793(e)"). As previously foreclosed by this Court, this argument "has been discounted by the appellate courts in the context of larceny and false claims convictions." *Id.* (citing *United States v. Chatman*, 2003 WL 25945959 (A.C.C.A. 2003) (unpublished)). Appellate courts continue to discount this argument for sentencing purposes. *See United States v. Roosa*, 2013 WL 1850867 at 2-3 (A.C.C.A. 2013) (upholding the military judge's decision not to merge a larceny offense with a false claim offense for sentencing because "larceny is separate and distinct from [the appellant's] false claim, as collecting unauthorized funds from the United States requires a specific intent to permanently deprive").

In *Roosa*, the appellant was charged with stealing thousands of dollars by submitting fraudulent travel vouchers that reflected inflated lodging expenses based on fabricated lease agreements. At trial, the defense counsel requested to merge the larceny charge, false claim charge, and conduct unbecoming charge relating to the use of a co-worker's personal information for the purpose of sentencing. Instead, the military judge merged the false official statement charges with the conduct unbecoming charges. On appeal, the appellant sought to merge the larceny charge, false claim charge, and conduct unbecoming charge relating to the use of a co-worker's personal information on the fabricated lease agreements. The appellate court denied, *inter alia*, the request to merge the conduct unbecoming charge with the other charges because "[a]lthough the use of her co-worker's personal information formed part of the foundation for the false claim, this specification addressed the separate act of involving an unwitting partner in a criminal enterprise, and therefore reflects a distinct set of activities." *Id.* at 3. Similarly, here, although stealing the records may have eventually formed part of the foundation for the subsequent transmission, both acts reflect a distinct set of activities. *See id.*

During pretrial proceedings, this Court held that the Category 1 Specifications allege separate and distinct acts. *See* AE 78, at 5 (finding that "[t]he 18 U.S.C. § 641 offenses are aimed at the theft of government property...while the gravamen of the 18 U.S.C. § 793(e) offenses is the transmittal of national defense information to unauthorized persons"). This Court correctly reasoned that, as in the *Campbell* case, "the crime of theft of government records can be complete whether or not the accused willfully 'communicated...[or] transmitted' the records to persons not entitled to receive them." *Id.* at 5.

The CAAF also declines to find charges of distinct criminal acts multiplicitous, even where the acts, as a whole, represent a singular act. *See Campbell*, 71 M.J. at 22. In *Campbell*, the appellant was a nurse who was convicted of entering fraudulent physician orders into a

machine that dispensed medication and then stealing that medication. The appellant was convicted of falsely stating that he had a physician's order, wrongful possession of that medication, and larceny. The defense counsel requested that the military judge merge the possession charge with the larceny charge *for findings*, which the judge denied. On appeal, the Court affirmed that the criminal acts were separate and distinct for findings, and reasoned as follows:

In essence, the transactions at the [dispensing] machine may have each represented a singular act, *but each implicated multiple and significant criminal law interests*, none necessarily dependent on the others. For instance, in this case the evidence showed that Appellant falsely indicated in the [dispensing] machine that he had the proper authority to retrieve the particular medication when in fact he had no such authority. This offense was complete whether or not Appellant actually had the machine dispense the medication. Also, theoretically, after indicating he had proper authority and after forming the requisite specific intent to steal, Appellant could nonetheless have changed his mind regarding his intent to steal after the machine dispensed the medications. He could, at that point, have decided to turn the medications over to proper authority and avoided wrongfully possessing the property.

Id., at 24-5 (emphasis added). Similarly, here, the accused could have stolen the SIGACTs and then he could have chosen not to transmit them to WikiLeaks.

In *Campbell*, the military judge did merge the above offenses *for sentencing*. The military judge reasoned that the false official statement, larceny, and wrongful possession "essentially arose out of this same transaction and were part of the same impulse." *Id.*, at 22. Here, the accused's theft and transmission did not arise out of the same transaction and certainly were not part of the same impulse. In *Campbell*, the criminal acts forming the basis of the three offenses all took place in a short amount of time, consecutive to one another. The appellant entered the fraudulent physician's order into the dispensing machine, which promptly dispensed medication into his wrongful possession.

Here, for Specification 4 of Charge II charging violations of 18 U.S.C. § 641, the evidence proved that the accused completed manually exporting more than 380,000 SIGACTs from the CIDNE-I database on 3 January 2010. For Specification 6 of Charge II, the accused completed exporting more than 90,000 SIGACTs from the CIDNE-A database on 7 January 2010. SA Shaver testified that he found a file entitled "irq_events.csv" on the accused's personal computer contained more than 380,000 SIGACTs from the CIDNE Iraq database. *See id.* The file "irq_events.csv" was last written on 5 January 2010, which means 5 January 2010 was the last time the file "irq_events.csv" was written to or updated on his personal computer. *See id.* SA Shaver testified that he found a file entitled "afg_events.csv" containing more than 90,000 SIGACTs from the CIDNE Afghanistan database. The file "afg_events.csv" was last written on 8 January 2010, meaning the last time that file was written to or updated on his personal computer was 8 January 2010. *See id.*

For Specifications 5 and 7 of Charge II charging violations of 18 U.S.C. § 793(e), the evidence proved that the accused transmitted the records originating from two separate and distinct classified databases to WikiLeaks prior to forensically wiping his personal computer on 31 January 2010. *See* Testimony of Mr. Johnson; PE 125.

For Specification 8 of Charge II, the evidence proved that the accused stole the records on 7 March 2010 after unsuccessfully attempting to download the DABs two days earlier. For Specification 9 of Charge II, after confirming with Julian Assange that the DABs would be valuable, the accused transmitted the records to WikiLeaks.

Unlike in *Campbell*, here, the offenses at issue did not take place concurrently or in a matter of seconds. Instead, the evidence proved that the accused stole the records and, *days later*, eventually transmitted the records to WikiLeaks. *See* PE 30 (admitting to Adrian Lamo that he sorted and compressed the data before transmitting it to WikiLeaks). Further, the accused formed a separate criminal intent for the theft offenses than for the transmission offenses.

Further, the theft and transmission are not part of one transaction. In *Roosa*, the military judge merged the conduct unbecoming charge relating to the use of a co-worker's personal information in a fabricated lease agreement with the false official statement charge relating to signing fabricated lease agreements for sentencing. *See Roosa*, 2013 WL 1850867, at 2. The fabricated lease agreement included the co-worker's personal information, thereby consisting of one transaction for UMC purposes for sentencing. Here, the theft and the transmission are not part of one transaction. Instead, the accused stole the records and then engaged in a separate criminal act when he later chose to transmit those records to WikiLeaks.

B. *The number of charges and specifications do not misrepresent or exaggerate the accused's criminality, or unfairly increase the accused's punitive exposure.*

The CAAF in *Campbell* upheld the military judge's decision to merge the offenses for sentencing because not doing so "might have exaggerated Appellant's criminal and punitive exposure in light of the fact that, from Appellant's perspective, he had committed one act implicating three separate criminal purposes." *Id.*, at 25. Here, in contrast with *Campbell*, the number of charges and specifications do not misrepresent or exaggerate the accused's criminality, or unfairly increase the accused's punitive exposure. The accused has been convicted of stealing nearly 500,000 SIGACTs from two separate and distinct classified databases and then, days later, transmitting several of those classified records to WikiLeaks. The sheer volume of data supports not merging these offenses. *See* AE 78, at 5 (concluding that the sheer volume of records weighs this *Quiroz* factor in favor of not merging the offenses). To steal these records, the accused exported SIGACTs from the CIDNE databases on 144 separate occasions. Further, the evidence adduced at trial proved that the records transmitted by the accused have been in the possession of the enemies of our nation. The accused's criminal acts are far more serious, both in scope and gravity, than those in *Campbell*. The combined maximum punishment for these specifications, 40 years, accurately reflects the gravity and scope

of the accused's theft of nearly 500,000 SIGACTs from two separate and distinct classified databases and then, days later, transmitting several of those classified records to WikiLeaks.

II. This Court should not merge Specifications 12 and 13 of Charge II (collectively the "Category 2 Specifications") for sentencing purposes because each of the Quiroz factors makes merger an inappropriate remedy.

Each of the *Quiroz* factors makes merger of the Category 2 Specifications an inappropriate remedy. The criminal acts in the Category 2 Specifications are separate and distinct, and the number of charges and specifications do not misrepresent or exaggerate the accused's criminality, or unfairly increase the accused's punitive exposure.

A. The evidence adduced at trial proved that the theft of the records in Specification 12 of Charge II and the subsequent transmission of those records in Specification 13 of Charge II are aimed at separate and distinct criminal acts.

For Specification 12 of Charge II, the evidence proved that, from 28 March 2010 to 9 April 2010, the accused connected to the Department of State firewall more than 700,000 times. *See* PE 159. During this time, the accused employed WGET to download more than 250,000 cables from the Net-Centric Diplomacy (hereinafter "NCD") database webserver. *See* Testimony of SA Shaver (testifying that the accused stored an automated WGET script used to download cables from the NCD database webserver on the accused's SIPRNET computer). On 28 March 2010, the accused systematically began stealing the downloaded cables by transferring them, in batches, to his personal computer. *See* PE 127, lines 36-48. The accused completed his theft of more than 250,000 cables on 10 April 2010. *See id.*, at line 48.

After stealing the cables, the accused sorted and compressed the data into a Comma Separated Value (hereinafter "CSV") file, and encoded the cables in Base64 format, which compacts the data and makes it easier to transport. *See* Testimony of Mr. Johnson (testifying that the accused stored a script on his personal computer that he used to convert information from a cable into Base64 CSV format); *see also* Testimony of SA Shaver (testifying that the CSV format makes it easier to move around data and Base64 compacts the data); *see also* PE 30 (admitting to Adrian Lamo that he sorted and compressed the data before transmitting it to WikiLeaks). Then, the accused transmitted those cables to WikiLeaks.

During the pretrial stage, this Court held that the Category 2 Specifications allege separate and distinct acts. *See* AE 78, at 6 (finding that "[t]he 18 U.S.C. § 641 offense is aimed at the theft of government property...while the 18 U.S.C. § 1030(a)(1) offense requires the transmittal of classified information to unauthorized persons"). This Court correctly reasoned, as in the *Campbell* case, that the crime of theft of government records can be complete whether or not the accused willfully transmitted the records to persons not entitled to receive them. *Id.*, at 6.

The evidence adduced at trial proved that the accused's theft of more than 250,000 cables is separate and distinct from his subsequent transmission. The accused stole the cables over a two week period, from 28 March 2010 to 10 April 2010. After stealing the cables, the accused packaged and catalogued the cables. Afterwards, the accused chose to transmit those cables to

WikiLeaks. As stated above, although the theft may have eventually formed part of the foundation for the subsequent transmission, both acts reflect a distinct set of activities. *See Roosa*, 2013 WL 1850867 at 3.

B. The number of charges and specifications do not misrepresent or exaggerate the accused's criminality, or unfairly increase the accused's punitive exposure.

The number of charges and specifications do not misrepresent or exaggerate the accused's criminality, or unfairly increase the accused's punitive exposure. The accused has been convicted of stealing more than 250,000 Department of State cables from a classified database and transmitting several of those classified records to WikiLeaks. The sheer volume of data supports not merging these offenses. *See* AE 78, at 5 (concluding that the sheer volume of records weighs this *Quiroz* factor in favor of not merging the offenses). Further, the evidence adduced at trial proved that a portion of the cables transmitted by the accused have been in the possession of the enemies of our nation. *See* PE 153(a). The combined maximum punishment for these specifications, 20 years, accurately reflects the gravity and scope of the convicted offenses of stealing more than 250,000 cables from a classified database and transmitting those records to WikiLeaks.

III. This Court should not merge Specification 8 of Charge II with Specification 2 of Charge III or Specification 12 of Charge II and Specification 3 of Charge III (collectively "Category 3 Specifications") for sentencing purposes because each of the *Quiroz* factors makes merger an inappropriate remedy.

Each of the *Quiroz* factors makes merger of the Category 3 Specifications an inappropriate remedy. The criminal acts in the Category 3 Specifications are separate and distinct, and the number of charges and specifications do not misrepresent or exaggerate the accused's criminality, or unfairly increase the accused's punitive exposure.

A. The evidence adduced at trial proved that the theft of the records in Specifications 8 and 12 of Charge II and the regulatory violations in Specifications 2 and 3 Charge III, respectively, are aimed at separate and distinct criminal acts.

For Specification 8 of Charge II and Specification 2 of Charge III, the evidence proved that, sometime before 7 March 2010, the accused added unauthorized software, WGET, to his SIPRNET computer. After adding WGET to his SIPRNET computer, the accused then had to learn how to program WGET to operate. *See* Testimony of SA Shaver. The accused downloaded the WGET help output file to determine how to operate WGET. *See id*; *see also* PE 189. The accused also searched how to make WGET operate faster, *after* he unsuccessfully attempted to manually download the DABs on 5 March 2010. *See* PE 157. On 7 March 2010, the accused downloaded more than 700 DABs from the USSOUTHCOM database and subsequently transferred the records to his personal computer. The act of adding WGET to his SIPRNET computer and the act of stealing DABs are separate and distinct. Army Regulation 25-2 criminalizes the act of introducing unauthorized software on a SIPRNET computer; the purpose being to protect the information system. That offense was committed when the accused uploaded WGET onto his computer sometime before 7 March 2010. But then, after adding

WGET to his computer, the accused had to learn how WGET operated and what script to write to steal the DABs. Specification 8 of Charge II criminalizes the act of stealing United States Government property; the purpose being to protect government property. Although adding WGET to his computer may have eventually formed part of the foundation for the subsequent theft, it was the accused's use of WGET that ultimately led to the theft. *See Campbell*, 71 M.J. at 24-25 (recognizing that a singular act may implicate multiple and significant criminal interests not dependent on the others).

For Specification 12 of Charge II, as explained above, the accused stole more than 250,000 cables over a two week period, from 28 March 2010 to 10 April 2010. *See supra*. Specification 3 of Charge III, on the other hand, relates to when the accused re-introduced WGET to his SIPRNET computer in early May 2010. *See Charge Sheet*. In early May 2010, after stealing more than 250,000 cables one month earlier, the accused returned to the NCD database to download the remaining cables from March 2010 forward. *See PE 159* (showing that the accused connected to the Department of State firewall more than 53,000 times on 3 May 2010). The accused catalogued these additional cables in a file entitled "backup.xlsx," which was created that same day. *See PE 104* (showing that the first cable downloaded was dated 1 March 2010 and that more than 250,000 cables had already been downloaded before 3 May 2010); *see also PE 104* (proving that the "backup.xlsx" file was created on 3 May 2010). The "backup.xlsx" contained all the cables from 1 March 2010 to 30 April 2010. *See PE 102*. The accused also stored these cables from 1 March 2010 to 30 April 2010 in a file entitled "files.zip," which he transferred to his personal computer on 4 May 2010. *See Testimony of SA Shaver; see also PE 127, line 57*. Simply put, the accused re-introduced WGET to his SIPRNET computer after he had already stolen more than 250,000 Department of State cables.

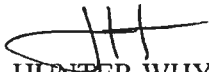
B. The number of charges and specifications do not misrepresent or exaggerate the accused's criminality, or unfairly increase the accused's punitive exposure.

The number of charges and specifications do not misrepresent or exaggerate the accused's criminality, or unfairly increase the accused's punitive exposure. The combined maximum punishment for Specification 8 of Charge II and Specification 2 of Charge III, 12 years, accurately reflects the gravity and scope of the convicted offenses of adding unauthorized software to his SIPRNET computer and stealing more than 700 DABs. The combined maximum punishment for Specification 12 of Charge II and Specification 3 of Charge III, 12 years, accurately reflects the gravity and scope of the convicted offenses of stealing more than 250,000 cables, and later re-introducing unauthorized software to download another batch of cables almost one month later.

CONCLUSION

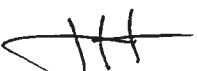
The United States respectfully requests that the Court deny, in part, the Defense Motion. The United States agrees with the defense that Specification 16 of Charge II and Specification 4 of Charge III should merge into a single, ten-year offense for sentencing. However, for the remaining specifications which the defense requests that this Court merge, except for

Specifications 5 and 7 of Charge II which are addressed in a separate filing, the application of the *Quiroz* factors makes merger an inappropriate remedy.



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I certify that I served or caused to be served a true copy of the above on Mr. David Coombs, Civilian Defense Counsel via electronic mail, on 2 August 2013.



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