

01 February 2019

General Deedrick,

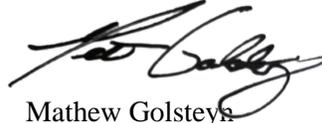
This is a cover letter for the petition that was submitted to BG Allan M. Pepin who is the Summary Court-Martial Convening Authority for my upcoming Article 32 hearing. As the next senior officer with General Court-Martial Convening Authority (GCMCA), I am submitting that same petition to you which asks you to retain jurisdiction in my case and dismiss the charge of premeditated murder with prejudice. You are receiving this petition because we have not received a response from BG Pepin within the requested time. As I explain in the petition, my request for a response within five business days is driven by the seriousness of the consequences associated with the charge and the methods by which the charge materialized. It is in no way intended to transmit a lack of respect for the rank and authority of the recipient.

On the contrary, it is out of respect for your rank and authority that I submit this petition. It is my earnest hope that you redress the contempt shown towards our system of military justice by those responsible for administering that process with integrity. The petition provides ample justification in the context of the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial (MCM) for the exercise of your authority to dispose of my case in the manner requested. It is important to note that the justifications provided in the petition are verifiable and known to the government. However, to assist you in your consideration of my petition, I have provided some additional context with supporting documentation. In addition to the petition, you will find:

- A two-page email from the CID investigative lead to another agent. Nearly three months into the investigation, the lead agent indicates that their efforts had failed to produce any substantiation for the allegations and he expressed his hope that interviews with local Afghan leaders could save an investigation that was “going nowhere fast”.
- A three-page exchange of emails between the USASFC Chief of Military Justice and my attorney Phil Stackhouse. In this 2014 exchange, CPT Lori Lincoln indicated that there was “no further USASFC(A) action anticipated” after the revocation of my Special Forces Tab and a reclassification to my previous occupational specialty.
- A two-page email in which USASFC SJA Catherine Godfrey transmitted the newly created verbatim transcript of my job interview at the CIA to my attorney via an unclassified channel.

A review of the last seven years yields a counter-intuitive conclusion. The assessment made by Special Agent Armstrong about the substance of his investigation in 2011 was reaffirmed by the Board of Inquiry (BOI) in 2015 and remains true today. The lack of evidence for an allegation based on investigative misrepresentations and distortions appears to have only energized military lawyers for a prosecutorial effort. The Army continued to punish me long after CPT Lincoln indicated that my ordeal was over. Today, a recycling of evidence previously considered by the BOI is currently justifying the reappearance of these allegations. The only discernable difference is that the lead prosecutor, CPT Joe Mormon, has placed the 26-page verbatim transcript created by the government for use at the BOI behind a military protective order. The motive behind this action is unclear. It is possible that this action is intended to create the false impression that the transcript is ‘new’ evidence not previously considered by the panel members at the BOI (see <https://www.armytimes.com/news/your-army/2018/12/13/former-green-beret-major-faces-murder-charge-for-2010-afghanistan-incident/>). The government delivered this document to the defense via unclassified means on multiple occasions and, although it was intended to assist in my prosecution at the BOI, the verbatim transcript was instrumental in my defense. This bell cannot be ‘un-rung’; regardless of the motivation, the action to limit the access to and discussion of this document is unjustified and arbitrary.

To date, we are unaware of any attempt by the government to address the improper conduct identified or correct the factual errors in my case. The foundation of this prosecution is irreparably flawed and effectively recharacterizes an overwhelming majority of lawful combat actions as murder. Allowing this process to continue along its current trajectory is contrary to the truth-seeking nature of the military justice system, is hostile to the preservation of good order and discipline, and undermines the intra-organizational trust required for us to succeed in our wartime mission.



Mathew Golsteyn  
MAJ, SF

Encl (13 pages)

- Cover Letter (2 pages)
- Petition to Dismiss Charges of Premeditated Murder with Prejudice (4 pages)
- Email from Special Agent Adam Armstrong dated 23DEC2011 (2 pages)
- Emails from USASFC Chief of Military Justice CPT Lori Lincoln dated 18JUL2014 and 31JUL2014 (3 pages)
- Email from USASFC SJA Catherine Godfrey dated 14MAY2015 (2 pages)

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Secretary of the Army

Secretary of Defense

01 February 2019

**MEMORANDUM FOR** Commanding General, United States Army Special Forces Command  
(USASFC)

**THRU SEE DISTRIBUTION**

**SUBJECT:** Petition to Dismiss Charges of Premeditated Murder with Prejudice

1. **PURPOSE:** The undersigned formally requests that you retain jurisdiction over my proceedings and dismiss the charge of premeditated murder with prejudice.

2. **AUTHORITY:** Within the Manual for Courts-Martial (MCM), commanders have the authority to dispose of charges preferred against members under their command. This option is available to commanders with (MCM 2019; R.C.M 403) and without (MCM 2019; R.C.M. 402) general courts-martial convening authority (GCMCA) prior to the referral of charges to a general courts-martial. If charges are referred to a general courts-martial subsequent to an Article 32 hearing, then the authority to dispose of the charges is limited to individuals with GCMCA (MCM 2019; R.C.M 603) beginning with referring commander up to the President of the United States.

3. **APPLICABILITY:** In general, Rule of Courts-Martial (R.C.M) 401(c)(1) provides the commander the unfettered ability to dispose of charges against members under their command up until the conclusion of a general courts-martial. Article 33 of UCMJ describes how civilian leadership over the military issues disposition guidance (MCM 2019; A2-12) to commanders, convening authorities, staff judge advocates and judge advocates. Appendix 2.1 of the MCM expands upon Art. 33 to provide nonbinding guidance concerning the relevant factors to be considered by those entrusted to administer the military justice system.

a. Commanders are to dismiss charges that are “unsupported by available evidence, or when there are other sound reasons why trial by courts-martial is not appropriate” (MCM 2019; R.C.M. 401(c)(1) , II-35).

b. Commanders are advised to consider the totality of the circumstances pertaining to the allegation(s) when selecting the appropriate disposition of charges against a service member. Specifically, commanders are encouraged to consider alternatives to courts-martial proceedings to dispose of charges when the admissibility and availability of evidence undermines the possibility of successful prosecution (MCM 2019; Appendix 2.1, A2.1-2).

c. Commanders are expected to prevent the extenuation of proceedings containing charges that “exaggerate the nature and extent of the accused’s criminal conduct” or “expose the accused to a harsher potential sentence or range of punishments than the circumstances of the case justify” (MCM 2019; Appendix 2.4, A2.1-2)

d. Commanders have a duty to ensure that the military justice system is used appropriately in the service of justice and maintaining good order and discipline while safeguarding the civil rights of the service member (MCM 2019; Appendix 2.1, A2.1-2).

4. **JUSTIFICATION:** A seven year investigative and prosecutorial effort involving nearly a hundred military lawyers and investigators has failed to produce any evidence to support any of the allegations made by the government to date. Beyond the current allegation of premeditated murder, the list of

unjustified allegations includes, but are not limited to, war crimes, Law of Armed Conflict (LOAC) violations, Rules of Engagement (ROE) violations, conspiracy, and obstruction of justice. The reasons for the vacuous investigations are simple: 1) premeditated murder did not occur; 2) premeditated murder was not disclosed or inferred during a job interview with the CIA in 2011; and 3) premeditated murder was not disclosed or inferred during a Fox News interview in 2016. It has been and continues to be difficult to comprehend the motivation behind the government's actions and identify the government's desired outcome in my case.

a. Available evidence does not support the allegations. The Board of Inquiry (BOI) in 2015, which considered the same set of facts and evidence the government repackaged for the current allegation, found that the government's allegations were not substantiated at the lowest standard of jurisprudence possible. Conversely, that body of evidence showed beyond a reasonable doubt that my actions were lawful and necessary to accomplish our mission to liberate Marjah from the Taliban and protect the civilian population from harm.

b. Key evidence is purposefully incomplete and likely inadmissible. While the transcript of my interview with the CIA has been critical to my defense, it did not factor into the conduct of the first investigation or the extrajudicial punishment that was taken against me in 2014. According to the 3<sup>rd</sup> Special Forces Group SJA MAJ Edward Martin, CID failed to create a verbatim transcript during their investigation and doing so after the fact was necessary for "everyone's sake" since the CIA would no longer allow Army officials to view the video of the interview. An Army court reporter was sent to make the transcription at the direction of the MAJ Martin and his supervisor, USASFC SJA LTC Russell Parsons. During transcription, Army officials selectively chose which portions of the interview to transcribe while purposefully omitting others. Once created, the transcription was subjected to CIA redactions. The incomplete nature of this evidence is principally the result of purposeful actions by Army officials in 2015 which cannot be remedied in the present. As such, the transcript is unlikely to be admissible under R.C.M 304(h).

c. The allegation grossly overstates and misrepresents the conduct. The first agents to watch the CIA interview in 2011 produced an investigative report in which they quoted me as saying that I, with the aid of another unknown individual, took the Afghan in question to his home and assassinated him. This statement was reproduced in various forms in nearly every investigative report from 2011 to the current day. On page 197 of the unclassified portion of the BOI transcript, the lead agent from the Criminal Investigative Division (CID) was asked if he could locate that statement anywhere in the verbatim transcript of that interview. He conceded that the statement originally attributed to me in CID reports could not be found in the verbatim transcript because that statement was not said by me during the interview. Additionally, my immediate commanders, who were on the ground with me in Marjah, testified at the BOI that my actions were in accordance with the SROE and well within my authorities as a battlespace owner. Their testimony was augmented by expert legal testimony from a senior NATO advisor for the Law of Armed Conflict. In addition to his testimony provided at the BOI, this well-respected, retired Marine JAG recently provided an interview discussing the massive distortion of the facts of my case (see <https://connectingvets.radio.com/articles/retired-jag-speaks-out-green-beret-murder-case>). There is no question that the charge of premeditated murder grossly misrepresents my conduct in Afghanistan and exposes me to the death penalty for serving this nation in accordance with the requirements of my mission.

d. The allegations represent a miscarriage of justice. In conjunction with the announcement for the Article 32 hearing date on 15JAN19, the USASOC public affairs office added that I have been, "provided

with the respect and privileges his rank commands while awaiting the completion of the just legal process". Stating that I have been treated with 'respect' in the course of a 'just process' is immeasurably incommensurate with reality. The terms 'detainee', 'civilian', 'noncombatant', and 'executed' were introduced and/or misrepresented by military lawyers and investigators to create a narrative that served the interests of the investigation and not the interests of justice. The lead SJA for the first part of this persecution, MAJ Edward Martin, testified at the BOI that he aggressively pursued prosecution while having absolutely no intimate knowledge of the contents of the investigation and, in his own words, was 'biased' to believe that I had committed murder without cause or justification. Based on false statements by investigators and recommendations of biased lawyers, my leadership issued me a General Officer Letter of Reprimand (GOMOR), took my Special Forces Tab, revoked my security clearance, and rescinded my Distinguished Service Cross while denying me any recourse or due process rights. As a reminder, those punishments were enacted without the verbatim transcript. Furthermore, I have yet to receive a paycheck after returning from excess leave due to the sudden appearance of a 200k debt to the government which leaves me with no pay due. Stating that the process is 'just' when the body of evidence for prosecutorial and investigative misconduct is substantial, well documented, and known to the government simply does not make it so. It is terribly distressing to see that process repeat itself again. CPT Joe Morman, an inexperienced staff judge advocate, advised the HHC USASOC Commander LTC Todd Sunday to prefer this charge against me given the facts and circumstances of the last seven years which are all known to the government. We have a substantial amount of documentation to show that CPT Morman's questionable judgement is not isolated to my case. His conduct in a separate case indicates that he, and likely his supervisor, struggle with the ethics and principles of the military justice system. It is difficult to see how the integrity of the military justice system, good order and discipline, and protection of my civil rights are advanced by this action or are even in consideration. I fear that the continuation of this process will inevitably result in irreparable harm to the confidence service members and the public have in our ability to police ourselves with integrity.

5. **NEXT STEPS:** Military law recognizes that commanders, not lawyers and investigators, are best suited to evaluate battlefield actions and charges them with maintaining the balance between accomplishing the mission, maintaining discipline, and preserving justice. The military justice system has been compromised in my case and it will take commanders with the moral courage to act decisively to restore integrity to this process. It is my sincere hope that this petition has found that commander who has the courage to exercise the authority given to them by the UCMJ. Failing to dismiss this charge with prejudice, whether by omission or commission, would reflect your tacit approval for the misuse of the military justice system and the questionable conduct by military lawyers and investigators which is simply summed up by the CID agent's testimony referenced earlier. As we face this injustice for the second time, I have an obligation to my family to use all lawful means and resources at my disposal to combat this charge and the abuse of power behind it. If we have not heard from your office within five business days, I will be compelled to forward this petition to the next higher commander for action.



Mathew Golsteyn  
MAJ, SF

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Chairman, Joint Chiefs of Staff

Secretary of the Army

Secretary of Defense

100-110023-43647

**Armstrong, Adam C WO1 USA MIL (US)**

**From:** Armstrong, Adam C WO1 USA MIL (US)  
**Sent:** Friday, December 23, 2011 10:36 AM  
**To:** 'Cesare, Anthony A WO1 USA Special Agent'  
**Subject:** RE: FOB MCQUEARY (UNCLASSIFIED)

Classification: UNCLASSIFIED  
Caveats: NONE

SA CESARE,

I apologize, I did receive your previous email and failed to respond. I appreciate all of your team's efforts and dedication to ensuring all facets of this investigation are investigated appropriately.

First, the documentation of the excavation may be done on an AIR with attached photographic packet and originals. You are absolutely correct that a CS/DS AIR would not be necessary due to lack of physical evidence.

Second, when you are able to meet with the Shura and village elders, the main questions I have are as follows:

1. What type of interaction did they have with the US Forces in Feb 10?
2. Did they know of MAJ GOLSTEYN and his ODA members?
3. Have they ever heard of "Rosoul?" If so, do they know what happened to him?
4. Did anyone disappear from one of the villages during the said timeframe by ANA or US Forces?
5. Was there a village elder named "Sabaad?" If so, what happened to him?
6. Did the ODA members, to include GOLSTEYN ever utilize unnecessary force in their presence?
7. Are there any burn pits or burial locations utilized by US Forces away from FOB MCQUEARY?
8. Did they know of the two alleged bomb makers killed by the IED on 18 Feb 10 at the Bazaar which killed the two Marines?
9. Any further knowledge you deem they may have would be crucial.

Third, we have interviewed multiple people, ODA members, Marines, and attached personnel. GOLSTEYN invoked as he walked into the office, LARSON and KILGORE talked but stated they had no knowledge of the incident. KILGORE stated they did question one guy with the ANA at a mosque in the area, but he was freed and walked away. One of the Psyops Agents stated he was part of only some of the situations, and he only interviewed one guys, which was days after the incident and he released him to the ANA. Other members of the ODA have invoked or have been selective in their assistance.

The imagery of the area for ISR and ground movement showed nothing of evidentiary value. The burn pits were utilized on a daily basis as a trash dump, barbeque, etcetera.

We are going nowhere fast on this due to the duration of time since the incident, physical evidence, interviews, and investigative leads. The village elder meeting may be the most beneficial IA to this investigation.

I hope you are able to enjoy your Christmas and I am sorry you and your team cannot be home for the holidays. My family and I will pray for you guys and be thinking of you guys during his time.

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...is there anything you guys need that my wife and I can send you? Send me your  
address and maybe we can send some homemade cookies for your office.

Take care of yourself,

SA ARMSTRONG

Special Agent Adam C. ARMSTRONG  
Economic Crimes Team Chief  
Fort Bragg CID Office  
8-1221 Randolph Street  
Fort Bragg, NC 28310  
O: (910)643-4639  
C: (910)916-2718  
F: (910)643-0104

-----Original Message-----

From: Cesare, Anthony A WO1 USA Special Agent [mailto:anthony.cesare@afghan.swa.army.mil]  
Sent: Tuesday, December 20, 2011 2:54 AM  
To: Armstrong, Adam C WO1 USA MIL (US)  
Subject: RE: FOB MCQUEARY (UNCLASSIFIED)

Classification: UNCLASSIFIED  
Caveats: NONE

SA Armstrong,

Just wante to check back in with you and make sure you received my last info report and email from 12 Dec 11. I will continue to coordinated with to determine new unit POC for future operations as necessary. I have two questions: first, essentially this RFA is for your office and case do you want the excavation completed as a Death/CS AIR or would it be suitable just to be documented as a regular AIR entry with attached Photo Packet documenting the scene. I am more inclined towards the latter as nothing of evidentiary value was located/collected, no remains were found, and such their essentially is no Death/Crime scene, merely an activity or lead completed. The second is, the Shura or village meeting: can you outline exactly what it is very specifically that you want answered or accomplished from this Shura. Please advise, if any new information is found or revealed which might help. Further just out of curiosity and possibly being able to shed some light; what was the outcome of the interviews with the SFG members and specifically the Subject. Please advise and have a wonderful holiday.

V/r  
Anthony A. Cesare  
Special Agent  
Kandahar CID Office  
Kandahar, Afghanistan  
APO AE 09355  
DSN: 318-421-6623  
SVOIP: 318-841-1579

Those who no longer can't and do not; write policy for those who do and can"

-----Original Message-----

From: Rasmussen, Patrick L. CW3 USA DETACHMENT COMMANDER

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**From:** Lincoln Lori E CPT USASFC <[lori.lincoln@soc.mil](mailto:lori.lincoln@soc.mil)>  
**Date:** July 31, 2014 at 6:36:50 PM MDT  
**To:** "'[Phillip@metierlaw.com](mailto:Phillip@metierlaw.com)'" <[Phillip@metierlaw.com](mailto:Phillip@metierlaw.com)>  
**Subject: Re: MAJ Mathew Golsteyn status on Admin Actions**

Phil,

The flag was lifted today. Regarding reassignment, I will need to check on that for you.

Lori

---

**From:** Phillip Stackhouse [<mailto:Phillip@metierlaw.com>]  
**Sent:** Wednesday, July 30, 2014 10:25 AM Eastern Standard Time  
**To:** Lincoln Lori E CPT USASFC  
**Subject:** RE: MAJ Mathew Golsteyn status on Admin Actions

Lori:

Rick emailed me this morning that action had been completed on Matt's case.

Will the flag be removed today? And, who should Matt be coordinating

with regarding reassignment?

Phil

---

**From:** Lincoln Lori E CPT USASFC [<mailto:lori.lincoln@soc.mil>]  
**Sent:** Thursday, July 24, 2014 3:33 PM  
**To:** Phillip Stackhouse  
**Subject:** RE: MAJ Mathew Golsteyn status on Admin Actions

Phil,

We just checked, and action on the packet has not been taken yet by the CG. It is suspected to go in next week. I will let you know as soon as I hear word.

**Lori**

Respectfully,

Lori E. Lincoln  
CPT, JA  
Chief, Military Justice  
U.S. Army Special Forces Command (Airborne)  
Fort Bragg, North Carolina

Comm: 910.432.3028

DSN: 239.3028

BB: 910.568.9827

[lori.lincoln@soc.mil](mailto:lori.lincoln@soc.mil)

---

**From:** Phillip Stackhouse [<mailto:Phillip@metierlaw.com>]  
**Sent:** Thursday, July 24, 2014 4:10 PM  
**To:** Lincoln Lori E CPT USASFC  
**Subject:** RE: MAJ Mathew Golsteyn status on Admin Actions

Lori:

From what I know, the JFKSWCS Commander has made his decision on revoking Matt's SF Tab.

Can you tell me if the flag has been lifted?

Phil

---

**From:** Lincoln Lori E CPT USASFC [<mailto:lori.lincoln@soc.mil>]  
**Sent:** Wednesday, June 18, 2014 4:27 PM

**To:** [stackhouse@militarydefender.com](mailto:stackhouse@militarydefender.com)  
**Subject:** MAJ Mathew Golsteyn status on Admin Actions

Mr. Stackhouse,

Good evening. I am the Chief of Justice here at US Army Special Forces Command (Airborne). I wanted to give you an update on your client's, MAJ Mathew Golsteyn's, administrative actions. The General Officer Memorandum of Reprimand (GOMOR) was filed permanently by the Commanding General on 11 June 2014. The CG recommended his SF tab be revoked and be reclassified to a different MOS. There is currently no further USASFC(A) action anticipated. The administrative flag will lift when the JFKSWCS Commander makes his decision on the Tab Revocation/reclassification of MOS. Please let me know if you have any questions.

Lori

Respectfully,

Lori E. Lincoln  
CPT, JA  
Chief, Military Justice  
U.S. Army Special Forces Command (Airborne)  
Fort Bragg, North Carolina

Comm: 910.432.3028  
DSN: 239.3028  
BB: 910.568.9827  
[lori.lincoln@soc.mil](mailto:lori.lincoln@soc.mil)

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**From:** [Phillip Stackhouse](#)

**Sent:** Thursday, May 14, 2015 4:22 PM

**To:** [Matt Golsteyn](#)

Haven't ready it yet – but here it is

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**From:** Godfrey Catherine E CPT USASOC-1SFC-SJA [<mailto:catherine.e.godfrey@soc.mil>]

**Sent:** Thursday, May 14, 2015 2:21 PM

**To:** Phillip Stackhouse

**Cc:** McKenna Jason M CPT (3SFG); Lincoln Lori E CPT USASOC-1SFC-SJA; Hutton Larris MAJ (3SFG); Osterberg Jackie J SGT (3SFG); Banks, Nina S CPT USARMY XVIII ABN CORPS (US)

**Subject:** Redacted Verbatim Transcript

Mr. Stackhouse,

Please find attached the redacted verbatim transcript of MAJ Golsteyn's pre-employment interview.

V/r,

CATHERINE E. GODFREY  
CPT, JA  
Command Trial Counsel

U.S. Army Special Forces Command (Airborne)

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NIPR: [catherine.e.godfrey@ahqb.soc.mil](mailto:catherine.e.godfrey@ahqb.soc.mil)

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<Golsteyn transcript (redacted-locked).pdf>