IN THE UNITED STATES AIR FORCE

COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee,

v.

Staff Sergeant (E-5)

REMINGTON E. CARLISLE,

United States Air Force,

Appellant.

Before Panel No. 1

No. ACM 40784

BRIEF OF *AMICUS CURIAE ON BEHALF OF APPELLEE* THE UNIVERSITY OF PENNSYLVANIA CENTER FOR ETHICS AND THE RULE OF LAW

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INTEREST OF AMICUS CURIAE

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ISSUES PRESENTED

I.

WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION BY FAILING TO SUFFICIENTLY ADDRESS ALL REQUIRED ELEMENTS AND DEFINITIONS OF 18 U.S.C. § 1466A(b)(1) DURING APPELLANT'S GUILTY PLEA COLLOQUY.

II.

WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION BY ACCEPTING APPELLANT'S GUILTY PLEA IF THE POSSESSION OF OBSCENE MATERIALS WAS CONSTITUTIONALLY PROTECTED UNDER STANLEY V. GEORGIA, 394 U.S. 557 (1969).

SUMMARY OF THE ARGUMENT

Appellant pleaded guilty, pursuant to a plea agreement, to possessing thirty-three obscene visual depictions of minors engaging in sexually explicit conduct, in violation of 18 U.S.C. § 1466A(b)(1), as incorporated by clause 3, Article 134, UCMJ, 10 U.S.C. § 934. On November 12, 2024, a military judge, sitting as a general court-martial, accepted that plea. He did not abuse his discretion in doing so.

First, the military judge's choices in conducting the plea inquiry were well within his discretion. The record contains every element of the charged offense and shows that Appellant understood those elements. In this case, the law requires no more.

Second, *Stanley v. Georgia* does not establish a substantial basis in law to question the plea. *Stanley* recognized only a narrow right to possess obscene material privately in one's own home, and the Supreme Court, military courts, and lower federal courts have declined to extend it. Appellant's possession went far beyond that. Because of this, his possession of the images was not constitutionally protected, and the military judge didn't abuse his discretion in accepting a plea.

ARGUMENT

Standard of Review

A military judge's decision to accept a guilty plea is reviewed under an abuse of discretion standard. *United States v. Aguirre*, 86 M.J. 43, 52 (C.A.A.F. 2025). Here, courts give "broad discretion" to military judges in their choice to accept a plea. *Id.* A military judge abuses his or her discretion "only where there is a substantial basis in law or fact for questioning the guilty plea." *Id.* When an appellant asserts that a military judge abused their discretion by accepting a plea, they bear the burden of establishing that the record shows a basis for their claim. *United States v. Phillips*, 74 M.J. 20, 21-22 (C.A.A.F. 2015).

I. THE MILITARY JUDGE DID NOT ABUSE HIS DISCRETION IN ACCEPTING THE PLEA BECAUSE THE RECORD AS A WHOLE ESTABLISHES A PROVIDENT PLEA, AND THE LAW DOES NOT, AND SHOULD NOT, DEMAND MORE.

In this case, the military judge's descriptions of the elements and definitions of 18 U.S.C. § 1466A(b)(1), taken together with the rest of the record, established a sufficient factual basis for a guilty plea and did not amount to an abuse of discretion. (R. at 200-11); *Miller v. California*, 413 U.S. 15, 23–24 (1973) (establishing the test for obscene material). To properly accept a guilty plea, a military judge must find that there is a "knowing, intelligent, and conscious waiver" of the constitutional rights associated with a jury trial. *United States v. Care,* 40 C.M.R. 247, 250–54 (C.M.A. 1969). To make that finding, judges conduct plea inquiries; questioning the accused about what they did or did not do and explaining the elements of each offense charged. R.C.M. 910(e); Care, 40 C.M.R. at 253. A central purpose of doing so is that the record reflects a "complete understanding by the accused . . . that he [is], in truth, guilty" and the "true facts of the accused's offense." *United States v. Johnson*, 1 M.J. 36, 38–39 (C.M.A. 1975), *on reconsideration,* 1 M.J. 291 (C.M.A. 1976).

Reviewing courts examine the entire record of the plea proceeding, including the colloquy between the appellant and the military judge, the stipulation of fact, and any inferences that may reasonably be drawn from them. *United States v. Hardeman*, 59 M.J. 389, 391 (C.A.A.F. 2004). Military judges are afforded significant deference, and a plea is set aside only where the record shows a substantial basis in law or fact to question it. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008).

Here, the military judge's explanation of the elements of 18 U.S.C. § 1466A(b)(1)—including the *Miller* test—together with his questioning of Appellant and the stipulation of fact, established a sufficient factual basis for the plea. (R. at 200-11). The record supports the plea in four ways. First, the military judge walked Appellant through each element of the offense and the record shows that Appellant understood—and admitted facts satisfying—each. Second, the military judge acted within his discretion in declining to further define "the work, taken as a whole," and "our community," because the offense is not a layered one, and Appellant demonstrated that he understood both terms. Third, any leading questions were factually supported by Appellant's own responses and the stipulation of fact. Finally, holding the plea improvident would impose a standard of perfection that the law does not require.

A. The Military Judge Listed Every Element of 18 U.S.C. §1466A(b)(1), and the Record Shows Appellant Understood—and Admitted Facts Satisfying—Each One.

The military judge more than sufficiently covered the elements of Appellant's offense. He walked through every element of 18 U.S.C. § 1466A(b)(1), and the record shows that Appellant understood them and provided facts satisfying each. (R. at 200-11); *see Care,* 40 C.M.R. at 253. In reviewing a military judge's acceptance of a guilty plea for an abuse of discretion, courts have found a plea provident when the military judge "adequately" covers the elements during a providence inquiry, with any necessary supporting facts supplied by the stipulation of facts.

United States v. Whitaker, 72 M.J. 292, 293 (C.A.A.F. 2013); *see also Inabinette*, 66 M.J. at 322 (explaining that an abuse of discretion occurs when there is not an "adequate" factual basis demonstrated to support the plea).

Even a plea inquiry that omits an element of the offense may still be sufficient where the military judge otherwise takes care to ensure that the appellant understands the elements. *United States v. Barton*, 60 M.J. 62, 65 (C.A.A.F. 2004). In *Barton*, the military judge, "'in the interest of time'" elected not to repeat the elements of each offense for which the appellant had been charged and instead cross-referenced elements he had explained earlier. *Id* at 63. Still, the C.A.A.F. found the inquiry sufficient because the appellant told the military judge that he understood the elements when asked, and the military judge tested that answer rather than taking it at face value. *Id.* at 65.

In the present case, the military judge's coverage of the elements went well beyond *Barton*: he began by listing *every* element of the charged offense and still took additional steps to ensure that Appellant understood them. Unlike the military judge in *Barton*, who omitted elements in the name of efficiency, he walked through each element one by one. (R. at 200–04). He then confirmed that Appellant understood them and asked whether Appellant had any questions. (R. at 204).

The military judge here was especially careful during the *Miller* inquiry, where he laid out the three-part obscenity standard. *Miller*, 413 U.S. at 23–24; (R. at 206–08). Appellant argues that the military judge failed to establish the "serious value" prong because he called this question "redundant" and confused Appellant, but the record shows Appellant understood him. (App. Br. at 16); (R. at 207–08). When the military judge asked why Appellant believed that the images at issue lacked serious literary, artistic, political, or scientific value, Appellant explained

that because the images depicted minors, a reasonable person would find them offensive. (R. at 207).

As in *Barton*, the military judge here tested Appellant's understanding rather than accepting his answer at face value. (R. at 207–08). He broke the question down by section, gave Appellant the chance to confirm that the images lacked value in each, and Appellant did so. (R. at 208). That detailed inquiry gives this Court no reason to question the adequacy of the military judge's coverage of the elements, nor any substantial basis in law or fact to find an abuse of discretion.

B. The Military Judge Acted Within His Discretion in Declining to Further Define "The Work, Taken as a Whole," and "Our Community" Because the Offense is Not a Layered One, and the Record Shows That Appellant Understood Both Terms.

Military judges need not define an element in detail to establish a factual basis for a plea when the offense is simple, its elements are commonly understood by servicemembers, and the record otherwise shows that the accused understood them. *United States v. Nystrom*, 39 M.J. 698, 701 (N.M.C.M.R. 1993) (*citing United States v. Kilgore,* 44 C.M.R. 89, 91 (C.M.A. 1971)) (explaining that covering the "essential requirements of proof for [the] offense" satisfies *Care*'s requirement that the military judge "explain the elements.").

In multilayered offenses, a complete explanation of the elements is likely necessary to avoid reversal. *Nystrom,* 39 M.J. at 702, 704. In *Nystrom*, the reviewing court held a guilty plea to accessory after the fact improvident because the military judge never explained the elements of murder, the underlying offense. *Id.* at 702, 704. The court reasoned that for more complex offenses, particularly those where criminal liability turns on another offense, military judges have an obligation to explain the elements to ensure that an accused sufficiently understands them. *Id.* at 701–02.

By contrast, in pleas to simpler offenses, this detail may be unnecessary. In *Kilgore*, the appellant pleaded guilty to several offenses, none of which turned on another crime. 43 C.M.R. 789, 789 (A.C.M.R. 1970), *rev'd*, 44 C.M.R. 89 (C.M.A. 1971). The military judge gave only a "summary of the offenses" during the colloquy, without discussing the elements. *Id.* The Court of Military Appeals nonetheless held the inquiry sufficient because the appellant "could only conclude" that each group of questions covered the essential requirements of proof for the offense it addressed. *Kilgore*, 44 C.M.R. at 91; *see also United States v. Kiefer*, No. NMCM 96 00216, 1998 WL 37492, at *1–2 (N-M. Ct. Crim. App. 26 Jan., 1998) (upholding a plea to possession of drugs with intent to distribute, even though the military judge omitted the "intent" element from his inquiry, because the offense was "simple" and the record made it "abundantly clear" that the appellant understood the nature of the offense).

In this case, the military judge acted within his discretion in declining to further define "the work, taken as a whole," and "our community" for two reasons. First, this offense is closer to *Kilgore* or *Kiefer* than *Nystrom*. Appellant pleaded guilty to the crime of possession, not a multi-layered offense, suggesting that a full definition of each element is less essential. Second, the record makes it abundantly clear that Appellant understood these terms. Appellant showed that he understood the meaning of "the work, taken as a whole," to be the thirty-three images at issue by repeatedly answering questions that addressed them as a group—not the manga or cartoons they may have come from. (R. at 205–08). He also referred to this same group in his stipulation of fact. (Pros. Ex. 1¶ 27). Further, Appellant demonstrated that he understood the contextual meaning of "our community standards." He answered "[y]es" when the military judge asked whether a reasonable person applying the standards of "our community" would find them offensive (R. 207). Appellant's stipulation of fact confirms that he knew which community he

was measuring against. There, he acknowledged that he expected consequences from his military chain of command due to his possession of the images: "[P]retty much I know I'm going to get in trouble. Get something from my leadership." (Pros. Ex. 1¶¶ 24–25). Given this record, a formal definition of either term would not have added to Appellant's understanding, and the military judge did not abuse his discretion in declining to give one.

C. Leading Questions That Draw Simple Answers Do Not Necessarily Result in "Mere Legal Conclusions" That Would Render a Plea Improvident.

The military judge's use of leading questions did not render Appellant's plea improvident, as Appellant's own explanations and stipulation of facts supported the factual basis the inquiry required. A military judge, in accepting a guilty plea, must go beyond asking whether "the accused realizes that a guilty plea admits 'every element charged. . . without further proof.'" *Care,* 40 C.M.R. at 253. The military judge must ensure an adequate factual basis exists for every element of the charged offense by eliciting facts from an accused, rather than mere legal conclusions. *United States v. Weeks*, 71 M.J. 44, 46 (C.A.A.F. 2012); *United States v. Price*, 76 M.J. 136, 138 (C.A.A.F. 2017). However, leading questions do not by themselves render a plea improvident: the question is whether the totality of the circumstances of the inquiry provides the facts needed to support the guilty plea. *United States v. Nance*, 67 M.J. 362, 365–66 (C.A.A.F. 2009).

Leading questions used to "amplify" facts otherwise established by the record are permissible. *Id.* at 366. In *Nance*, the military judge asked the appellant several questions about his offense, and the appellant answered with "[y]es, Sir," "[y]es, Your Honor," or "[n]ot entirely, Your Honor." *Id.* The court explained that, while yes-or-no answers are disfavored during a plea inquiry, "it has never been the law that a military judge's use of leading questions automatically results in an improvident plea" *Id.* at 366. In doing so, the court judged the plea provident based

on the totality of the circumstances, including not only the appellant's supportive stipulation of fact, but also the full range of the appellant's responses during the inquiry. *Id.*; *see also United States v. McCrimmon,* 60 M.J. 145, 153 (C.A.A.F. 2004) (holding that a simple "[y]es, Sir" can establish an element when that element is also supported by a stipulation of fact).

The military judge's "leading" questions during the *Miller* line of questioning did not render the plea improvident, as Appellant's own explanations and the stipulation of fact—not bare legal conclusions—supplied the required factual basis to answer them. Appellant argues that the military judge's questions about the literary, artistic, political, or scientific value of the depictions at issue, and his answers, constituted mere legal conclusions. (App. Br. 15–16). But unlike the yes-or-no answers held provident in *Nance*, Appellant answered these questions in his own words: "I believe . . . a reasonable person would find it offensive because it is minors in those visual depictions" (R. at 207). That is a factual explanation, far more than a bare "yes," and it also serves to "amplify" the fact explained within his stipulation that he used the animated "children" for his sexual desires as part of his pornography collection. (Pros. Ex. 1 ¶¶ 20, 21).

D. Holding the Plea Improvident Would Demand a Standard for Military Judges That the Law Should Not Impose.

Finding Appellant's plea improvident would impose an unrealistic standard of perfection on military judges that military law does not require. Military law exists, in part, "to promote efficiency and effectiveness" in the military establishment to thereby strengthen the national security of the United States. *United States v. Sneed*, 43 M.J. 101, 104 (C.A.A.F. 1995)(quoting Manual for Courts-Martial, United States, pt I, para. 3 (preamble)). Setting aside a plea that the record so thoroughly supports would undermine that purpose and invite a flood of meritless abuse-of-discretion claims.

Guilty pleas play a large role in the judicial economy of military courts. More than sixty percent of the records of trial received by the Army Court of Military Review involved guilty pleas. *Terry L. Elling, Guilty Plea Inquiries: Do We Care Too Much?*, 134 MIL. L. REV. 195, 196 (1991). These pleas "maximize the effective use of legal resources by foregoing lengthy trials in cases in which an accused is willing to admit guilt." *Id.* They serve this purpose well: an accused who pleads guilty spares the victim and the government the costs and consequences of a trial. *Barton*, 60 M.J. at 65–66. While speed and economy must not "cede" to care, a guilty plea record is often less fully developed than that of a trial record, and hindsight should not be used to demand more. *Id.* at 65–66.

In this case, Appellant's guilty plea spared the military judge and the Government the cost of a contested trial, while providing Appellant an efficient resolution and reduced sentence. Having reaped those benefits, Appellant now asks this Court to treat the military judge's inquiry as though it had to meet a standard of perfection, rather than the abuse of discretion standard discussed *supra*. To do so would unwind the very efficiency Appellant's own plea bargain secured and require a new trial to litigate what he has already admitted. It would also set an unworkable precedent. If any lack of detail or minor perceived flaw in a providence inquiry can unravel a plea, every accused who has received a beneficial bargain might find reason to dissect the colloquy on appeal. The law does not require that result, and because of this the Court should affirm the findings and the original sentence given.

II. THE MILITARY JUDGE DID NOT ABUSE HIS DISCRETION IN ACCEPTING APPELLANT'S GUILTY PLEA BECAUSE HIS POSSESSION OF OBSCENE MATERIAL ON THE INTERNET WAS NOT CONSTITUTIONALLY PROTECTED UNDER *STANLEY v. GEORGIA*.

Hartman requires a heightened providence inquiry only when a charge "may implicate both criminal and constitutionally protected conduct." *United States v. Hartman*, 69 M.J. 467, 468

(C.A.A.F. 2011). When the conduct is not protected, no such inquiry is required. *United States v. Torres*, No. ACM 40758, 2026 WL 2986515, at *5 (A.F. Ct. Crim. App. 5 Oct., 2026); *United States v. Timsuren*, 72 M.J. 823, 827 (A.F. Ct. Crim. App. 2013). *Stanley v. Georgia* protects only the private possession of obscene material in the home. Appellant's conduct went beyond that. No *Hartman* inquiry was required, and the military judge did not abuse his discretion in accepting the plea.

Courts have consistently read *Stanley* narrowly. The Supreme Court, the C.A.A.F., and the federal courts of appeals have limited it to possession inside the home. Appellant's conduct falls outside that protection for three independent reasons: (1) he uploaded his collection over the internet to Google Drive and MEGA, which moved it through interstate commerce; (2) he stored the collection on company servers outside his home, where Google could—and did—access it; and (3) he shared a link to the collection with a group of Airmen online. Each reason alone defeats his *Stanley* claim.

A. Courts Have Consistently Read *Stanley* Narrowly: *Stanley* Protects Only Private Possession of Obscene Material in the Home and Does Not Extend Beyond.

1. The Supreme Court has limited *Stanley's* protection to the physical home and has refused to allow a zone of privacy to follow obscene material outside it.

Stanley protects mere private possession of obscenity within the home, and nothing more. *Stanley* rested on a man's right "to satisfy his intellectual and emotional needs in the privacy of his own home" and to be free from "state inquiry into the contents of his library." *Stanley v. Georgia*, 394 U.S. 557, 565 (1969). The Court preserved the States' "broad power to regulate obscenity," limiting only its reach into privacy of one's home. *Id.* at 568.

The Supreme Court immediately and repeatedly cabined *Stanley* to its facts. Earlier decisions, *Orito* explained, "negate the idea that some zone of constitutionally protected privacy

follows such material when it is moved outside the home area protected by *Stanley*." *United States v. Orito*, 413 U.S. 139, 141–42 (1973). The Court has also described *Stanley*'s protection as "restricted to a place, the home." *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 66 & n.13 (1973). It has rested *Stanley* "not on any First Amendment right to purchase or possess obscene materials, but on the right to privacy in the home." *United States v. 12 200-Ft. Reels of Super 8mm Film*, 413 U.S. 123, 126 (1973); *see also Paris Adult Theatre I*, 413 U.S. at 66 ("If obscene material unprotected by the First Amendment in itself carried with it a 'penumbra' of constitutionally protected privacy, this Court would not have found it necessary to decide *Stanley* on the narrow basis of the 'privacy of the home,' which was hardly more than a reaffirmation that 'a man's home is his castle.'").

2. Military courts and lower federal courts have reached the same conclusion.

Military courts and lower federal courts have consistently refused to extend *Stanley* beyond the physical home. In *Bowersox*, the C.A.A.F. held that the zone of privacy *Stanley* protects does not extend beyond the confines of the home.[1] *United States v. Bowersox*, 72 M.J. 71, 76 (C.A.A.F. 2013). There, recognizing that "*Stanley* has been strictly limited to its facts," the court refused to extend its protection to obscenity stored in a shared barracks room, as a servicemember does not enjoy the same expectation of privacy there as in a civilian home. *Id.* at 75, 77. The court further noted that a servicemember's Fourth Amendment privacy interest in password-protected files on a personal computer "is not congruent with the discrete and special privacy interest in one's home recognized by *Stanley*." *Id.* at 76–77. In *Meakin*, the C.A.A.F. reaffirmed the zone of privacy applicable to obscene material under *Stanley* does not extend beyond the home. *United States v. Meakin*, 78 M.J. 396, 402 (C.A.A.F. 2019).

[1] The Army Court of Criminal Appeals had reached the same conclusion below. *United States v. Bowersox*, 71 M.J. 561, 562 (A. Ct. Crim. App. 2012).

Federal courts agree. The Fourth Circuit reads *Stanley* narrowly, protecting only private possession in the home and leaving the government free to regulate the channels of commerce. *United States v. Whorley*, 550 F.3d 326, 332–33 (4th Cir. 2008) (holding that *Stanley* did not protect a defendant who received obscene anime cartoons of children on a public computer, because *Stanley* protects only possession in the home, not movement through channels of commerce.).

B. Uploading Obscene Material to a Cloud Server Through the Internet Constitutes Placing Obscenity in Interstate Commerce and is Thus Outside the Home That *Stanley* Protects.

1. By its nature, storing obscenity in the Cloud meant the material was not confined to Appellant's home.

Cloud storage services keep a user's files on remote servers that the provider owns and runs. "Cloud storage services store electronic files . . . on physical servers controlled by the service provider." *United States v. McGaffey*, 587 F. Supp. 3d 550, 552 n.1 (E.D. Tex. 2021). Google Drive is one such service. *United States v. Lowers*, 170 F.4th 134, 141 (4th Cir. 2026). MEGA is another.[2]

A user puts a file in the cloud by uploading it over the internet. The internet does not send a file in one piece. It breaks the file into small units called packets.[3] Each packet carries the address of its sender and its destination.[4] Routers pass the packets from network to network, and

[2] Mega Ltd., *MEGA Security White Paper* § 1.1, https://mega.nz/SecurityWhitepaper.pdf (last visited 3 Nov., 2026).
[3] *Packet-switched network*, Encyclopedia Britannica, https://www.britannica.com/technology/packet-switched-network (last visited 3 Nov., 2026).
[4] *Id.*

the packets may take different paths.[5] The receiving computer then reassembles the packets into the original file.[6] Google encrypts files while they travel to its servers.[7]

MEGA encrypts each file on the user's device, splits it into chunks, and then sends it to MEGA's servers.[8] Appellant used this process. He admitted that he stored the images "initially on my Google Drive account and then later on my Mega Account online." (R. at 205). All 91 images reported to NCMEC were uploaded from his Google Drive account. (Pros. Ex. 1¶¶ 10, 13).

Once uploaded, the file sits in the provider's data centers, not on the user's computer. Google states that files uploaded to Drive are "stored securely in our world-class data centers."[9] Google breaks stored data into chunks and keeps multiple copies on its storage systems.[10] By default, Google manages the encryption keys for that data.[11] MEGA likewise stores user data "over multiple geographic locations."[12] Its primary infrastructure is in a data center in Luxembourg.[13]

The user does not own or operate any of these servers. He holds an account that lets him reach his files. *See McGaffey*, 587 F. Supp. 3d at 552 n.1 (files "are generally accessible only to the account holder and anyone with whom the account holder shares access to the files"). Appellant's collection sat on Google's servers until his account was banned in 2020. (Pros. Ex. 1

[5] *Id.*; Cloudflare, *What Is Routing?*, https://www.cloudflare.com/learning/network-layer/what-is-routing/(last visited 3 Nov., 2026).
[6] Cloudflare, *What Is a Packet?*, https://www.cloudflare.com/learning/network-layer/what-is-a-packet/ (last visited 3 Nov., 2026).
[7] Google, *How Drive Protects Your Privacy & Keeps You in Control*, Google Drive Help, https://support.google.com/drive/answer/10375054 (last visited 3 Nov., 2026).
[8] *MEGA Security White Paper supra* note 2, § 1.2.
[9] Google, *How Drive Protects Your Privacy*, *supra* note 7.
[10] Google, *How Google Workspace Uses Encryption to Protect Your Data* 4–5, https://services.google.com/fh/files/misc/google-workspace-encryption-wp.pdf (last visited 3 Nov., 2026).
[11] *Id.*
[12] *MEGA Security White Paper*, *supra* note 2.
[13] *Id.*

¶ 22). It then sat on MEGA's servers, which he reached through "the Internet and computer systems engaging in interstate commerce." (*Id.* ¶¶ 22, 28).

To retrieve a file, the user signs in and downloads it. The data then travels from the provider's servers back to the user's device over an encrypted connection.[14] MEGA also offers a desktop app that syncs folders on the user's computer with folders in his MEGA account.[15] The sync runs both ways. A change on the computer is uploaded to MEGA, and a change in MEGA is downloaded to the computer.[16] The app does this automatically, in real time, while it runs.[17] The local folder and the cloud folder therefore hold the same set of files. Every update between them moves over the internet.[18] Appellant used this feature. His MEGA account "stored files locally" on his computers and hard drives. (Pros. Ex. 1¶ 30). Most of the charged files were found in "MEGAsync" folders on those drives. (*Id.* ¶ 27).

The two providers can see stored files in different ways. Google scans uploaded content for child sexual abuse material. It compares the hash value of each uploaded file with a database of hash values of known material. *Lowers*, 170 F.4th at 141. A Google employee may then open and view a matching file. *Id.* Google reports such material to NCMEC and may disable the account.[19] Google's policy states that this material "includes cartoons."[20] Google banned Appellant's Google Drive account "due to his storage of animated child pornography." (Pros. Ex. 1 ¶ 22).

[14] Google, *How Google Workspace Uses Encryption*, *supra* note 10, at 7.
[15] Mega Ltd., *How Does Syncing in the Desktop App Work?*, MEGA Help Centre, https://help.mega.io/desktop-app/desktop-syncs/how-does-syncing-work (last visited 3 Nov., 2026).
[16] Mega Ltd., *What's the Difference Between Backup and Sync?*, MEGA Help Centre, https://help.mega.io/desktop-app/desktop-syncs/backup-vs-sync (last visited 3 Nov., 2026).
[17] Mega, *How Does Syncing Work?*, *supra* note 15.
[18] *See id.*
[19] Google, *Learn How Google Addresses Online Child Sexual Abuse and Exploitation*, https://support.google.com/product-documentation/answer/15464420 (last visited 3 Nov., 2026).
[20] Google, *Your Account Is Disabled*, Google Drive Help, https://support.google.com/drive/answer/40695 (last visited 3 Nov., 2026).

MEGA works differently. Because MEGA encrypts files before upload, it states that it cannot view their contents.[21] But a MEGA user can create a link to a file or folder.[22] By default, the link includes the decryption key.[23] Therefore, "[a]nyone with your link and a valid decryption key can view, download, and import its contents."[24] A folder link "always shows the folder's current contents, even if they change later."[25] Appellant shared a link to his MEGA account with members of a Facebook Messenger group. (Pros. Ex. 1¶ 23). If the link carried the key, as MEGA links do by default, any member could open and download the collection.

2. Moving material via the internet is viewed as implicating interstate commerce.

Appellant's collection was not strictly confined to the home. He uploaded it over the internet to paid cloud services: first Google Drive, then MEGA. R. at 205. Doing so moved the files through a channel of interstate commerce. Military and federal courts agree that internet transmission is interstate commerce. The Supreme Court has never recognized a right to move obscenity through commerce. Appellant's conduct therefore falls outside *Stanley*.

a. The internet is a channel and instrumentality of interstate commerce.

Military and federal courts have agreed that the use of the internet implicates interstate commerce. The C.A.A.F. has acknowledged that "[e]very court to address the issue agrees with the unremarkable proposition that the Internet is a means of interstate commerce." *Meakin*, 78 M.J. at 402 (quoting *United States v. Pierce*, 70 M.J. 391, 395 (C.A.A.F. 2011)). In *Meakin*, the court held that internet transmission of obscenity constitutes travel in interstate commerce—thus bearing no resemblance to *Stanley*'s protection. *Meakin*, 78 M.J. at 402. It also endorsed treating

[21] Mega Ltd., *MEGA Transparency Report* (2025), https://mega.io/transparency (last visited 3 Nov., 2026).
[22] Mega Ltd., *How Do I Share a File or Folder on MEGA?*, MEGA Help Centre, https://help.mega.io/files-folders/sharing/files-folders (last visited 3 Nov., 2026).
[23] Mega Ltd., *How MEGA Protects Your Privacy and Data*, https://mega.io/security (last visited 3 Nov., 2026).
[24] Mega, *How Do I Share a File or Folder?*, *supra* note 22.
[25] *Id.*

a message sent to a computer in the same state as interstate commerce. *Id.* (citing *United States v. Kammersell*, 196 F.3d 1137, 1138–39 (10th Cir. 1999)).

The other service courts agree. The Navy-Marine Corps court has held that an internet transmission, "whether across state lines or across the street," is "a means of transmission in interstate commerce." *United States v. Smith*, 47 M.J. 588, 592 (N-M. Ct. Crim. App. 1997). The C.A.A.F. has affirmed a transportation conviction where the members were instructed that "[m]aterial traveling over the Internet, by its very nature, is within the definition of interstate commerce," even if "the receiving computer and the sending computer are located in the same state." *United States v. Ober*, 66 M.J. 393, 402, (C.A.A.F. 2008).

This Court has taken the same view. In *Taylor*, this Court later held that a nearly identical instruction—that material traveling over the internet "by its very nature is within the definition of interstate commerce,"—was "substantively complete and correct." *United States v. Taylor*, No. ACM 38700, 2016 WL 787245, at *9 (A.F. Ct. Crim. App. Feb. 25, 2016) *aff'd*, 76 M.J. 126 (C.A.A.F. 2017). It further held that transmitting images over the internet "was tantamount to moving images across state lines." *Id.* (citing *United States v. MacEwan*, 445 F.3d 237, 244 (3d Cir. 2006); *United States v. Carroll*, 105 F.3d 740, 742 (1st Cir. 1997)). It also held that images "obtained via the Internet" were "transported in interstate commerce." *Taylor*, 2016 WL 787245, at *8.

Federal courts also agree when interpreting the term "interstate commerce" in other contexts. The Third Circuit held that the internet is "both a channel and instrumentality of interstate commerce." *MacEwan*, 445 F.3d at 253. Because of the interstate nature of the Internet, data travels in interstate commerce once a user sends a connection request to a server or an image is transmitted from the website back to user." *Id.* at 244. The route the data took does

not matter, for it is "difficult to find an act more intertwined with…interstate commerce than downloading an image from the internet." *Id.* at 244–45. The Sixth Circuit likewise held that internet use satisfies the interstate-commerce element "regardless of whether there is evidence that the data travelled interstate." *United States v. Clark*, 24 F.4th 565, 574 (6th Cir. 2022) (construing 18 U.S.C. § 2252(a)(2), which prohibits distributing child pornography).

b. Uploading files to cloud storage is transportation in interstate commerce.

Uploading a file to cloud storage constitutes "transportation" in interstate commerce. Courts do not require that the file be delivered to another person; transportation occurs when the defendant moves the file from one location to another. *United States v. Wasson*, 426 F. Supp. 3d 822, 827 (D. Kan. 2019). In *Wasson*, the court analogized uploading child pornography from one's home computer to an internet-based cloud storage to carrying a suitcase across state lines. *Id.* The court further held that the defendant's Google account was "a facility of interstate commerce." *Id.* at 830.

The Fourth Circuit is in accord. It held that moving a file from a laptop to a cloud account qualifies as transportation. *United States v. Fall*, 955 F.3d 363, 374–75 (4th Cir. 2020). Transportation "does not require conveyance to another person." *Id.* at 374. The element is satisfied "even if the government presented no evidence that anyone other than [the defendant] accessed the file-sharing account." *Id.* at 375. The court also held that the defendant's use of the internet satisfied the interstate-commerce element. *Id.*

Nor does the digital form of the material change the analysis. The Sixth Circuit rejected the argument that computer image files are too "intangible" to be transported under federal obscenity law. *United States v. Thomas*, 74 F.3d 701, 707 (6th Cir. 1996). The relevant point was that the transmission began with images in one place and ended with the same images in another. *Id.*

c. Stanley *does not protect obscenity moved through the channels of commerce.*

In *Orito*, the Court held that the right to possess obscenity at home creates no "correlative right to receive it, transport it, or distribute it." *Orito*, 413 U.S. at 141; *see also United States v. Thirty–Seven (37) Photographs*, 402 U.S. 363, 376 (1971) ("That the private user under *Stanley* may not be prosecuted for possession of obscenity in his home does not mean that he is entitled to import it from abroad free from the power of Congress to exclude noxious articles from commerce.").

In *Meakin*, the C.A.A.F. added that internet transmission of obscenity constitutes travel in interstate commerce and thus bears no resemblance to *Stanley*'s protection. *Meakin*, 78 M.J. at 402 (citing *Pierce*, 70 M.J. at 395 ("Every court to address the issue agrees with the unremarkable proposition that the Internet is a means of interstate commerce.")).

This Court has similarly held that possession of obscenity transported through the internet falls outside of *Stanley*. *Taylor*, 2016 WL 787245, at *7. There, an airman downloaded obscene anime depicting minors from the internet and stored it on his laptop in his dormitory room. *Id.* at *1–2. This Court rejected his *Stanley* challenge because he was "not charged with simple possession of obscene materials," but with possessing obscene materials transported through interstate commerce. *Id.* at *7. Because transmitting images through the internet constitutes transportation in interstate commerce, the airman's conduct was thus not protected by *Stanley*. *Id.* at *9;[26] *see also United States v. Yeasley*, No. 1:23-CR-00273-AKB, 2025 WL 3063712, at *4 (D. Idaho Nov. 3, 2025) (citing *Taylor* to support the holding that obtaining AI-generated

[26] The Court expressly declined to decide whether the dormitory room was "tantamount to a private home." *Taylor*, 2016 WL 787245, at *7 n.9. *Taylor*'s holding therefore does not depend on where the material was kept. Appellant cannot avoid it by stressing that he possessed the files in his house rather than in a barracks room. *Cf.* Reply Br. at 17.

obscenity via a cellphone through the internet—thus transporting the image in interstate commerce—falls outside *Stanley*'s protection.).[27]

The Eleventh Circuit applied the same reasoning to § 1466A(b)(1) itself, noting the statute's legitimate sweep "targets defendants . . . who do not merely possess the covered obscenity in the privacy of their homes, but who are downloading or exchanging hundreds of such images on the internet." *United States v. Ostrander*, 114 F.4th 1348, 1363 (11th Cir. 2024) (rejecting an overbreadth challenge by a homeless defendant belonging to a group chat where obscene images were shared). Because *Stanley* gives no right to transport, the court found it "difficult to imagine" many prosecutions under the statute that involve mere possession. *Id.* at 1364. Appellant's case is not one of them. He used the internet to store and move his collection through a paid cloud service. (R. at 205, 208); (Pros. Ex. 1¶ 22).

d. Appellant moved his obscene collection through interstate commerce.

Appellant transported his files in interstate commerce when he uploaded them to the cloud. He admitted that he uploaded the images over the internet and stored them first on Google Drive and later on MEGA. R. at 205. Courts have held that uploading files from a home computer to cloud storage is transportation. *Wasson*, 426 F. Supp. 3d at 827; *Fall*, 955 F.3d at 374–75. This Court has held that moving images over the internet is transportation in interstate commerce. *Taylor*, 2016 WL 787245, at *8–9. *Stanley* does not protect material once it has been moved outside the home through interstate commerce. *Orito*, 413 U.S. at 141–42.

Appellant relies on *Anderegg* to argue that the interstate-commerce element would make *Stanley* a "dead letter," but *Anderegg* does not apply to these facts. (App. Br. at 36–37);

[27] Notably, *Yeasley* arose in the District of Idaho, the federal district that includes Mountain Home, where Appellant possessed the charged material. R. at 205. The federal court with jurisdiction where Appellant lived has thus rejected the same *Stanley* argument he makes here.

(Reply Br. at 14–16). *Anderegg* involved only possession inside the home. *United States v. Anderegg*, 189 F.4th 576, at *20–21 (7th Cir. 2026). The government there conceded that it relied "solely" on that possession. *Id.* Its only commerce argument was that the defendant's computer and software had once traveled interstate. *Id.* at *19 n.4. The Seventh Circuit also agreed that there is no "correlative right to transport obscene material in interstate commerce." *Id.* at *19.

Conversely, Appellant did not just possess material that had crossed state lines at some earlier point. He uploaded the material over the internet to servers outside his home. R. at 205. *Stanley* itself recognized this distinction. It set apart earlier cases that involved "use of the mails" or "public distribution or dissemination." *Yeasley*, 2025 WL 3063712, at *4 (quoting *Stanley*, 394 U.S. at 560–61). Appellant's uploads are thus unprotected and holding him accountable for them does not undermine *Stanley*.

C. Storing Obscene Material on Servers Outside the Home, Where Third Parties Could and Did Access It, Removes It from *Stanley's* Protection.

Stanley protects obscene material kept in the home, not material that one has placed in the hands of others. The Court in *Stanley* relied on a man's right, "sitting alone in his own house," to decide what he reads or watches. *Stanley*, 394 U.S. at 565. It also noted that private possession in the home did not present the danger that obscenity "might intrude upon the . . . privacy of the general public." *Id.* at 567. The C.A.A.F. has used both points to limit *Stanley*. In *Bowersox*, it held that *Stanley* did not reach a shared barracks room because "[t]he very nature of a shared barracks room increases the risk that obscene materials will be viewed by those who do not wish to view them." *Bowersox*, 72 M.J. at 76. In that setting, "[t]he 'natural tendency of material in the home being kept private' . . . is substantially diminished." *Id.* (quoting *Orito*, 413 U.S. at 143).

Appellant's collection was even less private than the material in *Bowersox*. He stored it on servers owned and run by Google, and later by MEGA. (R. at 205); (Pros. Ex. 1 ¶22). Google can review what users uploaded to those servers (R. at 92). It compares the hash values of uploaded content against a database of known child sexual abuse material. *Lowers*, 170 F.4th at 140–41. When it finds a match, a Google employee may open the file and view it. *Id.* at 141. Google also warns users that it "may 'analyze your content to help us detect abuse such as spam, malware, and illegal content.'" *Id.* Other providers do the same. *See United States v. Reddick*, 900 F.3d 636, 637–38 (5th Cir. 2018) (noting Microsoft automatically scanned files uploaded to its SkyDrive cloud service).

Here, Google identified the material in Appellant's Google Drive and banned Appellant's account "due to his storage of animated child pornography." (Pros. Ex. 1 ¶ 22). Appellant then moved his collection to MEGA so he could keep it. *Id.* A third party therefore found, reviewed, and acted on obscene material that Appellant stored in the cloud. Material that a third party can scan, report, and remove is not being kept "alone in [one's] own house." *Stanley*, 394 U.S. at 565.

Appellant's possession was also outside the home in a literal sense. It does not matter that MEGA synced copies to his personal devices. *See* (App. Br. at 37); (Pros. Ex. 1¶ 30). The collection still sat on remote servers that Appellant did not own or control. (Pros. Ex. 1 ¶¶ 22, 28). The Supreme Court has rejected the idea that a "zone of constitutionally protected privacy follows" obscene material once it leaves the home. *Orito*, 413 U.S. at 141–42. Appellant's ability to limit access with a password does not change the analysis. *Id.* at 143 ("That the transporter has an abstract proprietary power to shield the obscene material from all others and to guard the material with the same privacy as in the home is not controlling.").

Further, Congress has a legitimate interest in protecting the public commercial environment by preventing obscenity from entering the stream of commerce in the first place. *Id.* Congress may regulate based on "the contrary tendency" of material once it leaves the home, "regardless of a transporter's professed intent." *Id.* The Court has also recognized that "[e]ven single copies, represented to be for personal use, can be quickly and cheaply duplicated by modern technology thus facilitating wide-scale distribution." *12 200-Ft. Reels of Super 8mm Film*, 413 U.S. at 129. Google's use of its scanning tools to prevent obscenity from continuing to circulate on its platform exemplifies the concern. *Lowers*, 170 F.4th at 141.

Lowers recognized a Fourth Amendment privacy interest in a Google Drive account, but that interest does not bring cloud storage within *Stanley*. The court there found that a user had a Fourth Amendment expectation of privacy in his Google Drive account. *Id.* at 147–48. The court compared the account to "a digital file cabinet of sorts." *Id.* at 150. But a Fourth Amendment privacy interest in stored files is not the same as *Stanley*'s protection of the home. The C.A.A.F. has held that a servicemember's Fourth Amendment privacy interest in files on a personal, password-protected computer "is not congruent with the discrete and special privacy interest in one's home recognized by *Stanley*." *Bowersox*, 72 M.J. at 76–77. If files on a password-protected computer inside a barracks room fall outside *Stanley*, files on a company's servers do too. Because Appellant stored his collection outside his home, where a third party could and did access it, his possession was not protected by *Stanley*. No *Hartman* inquiry was required.

D. Sharing a Link to His Collection with a Facebook Messenger Group Took Appellant's Possession Outside Stanley.

Stanley protects a person who keeps obscene material to himself. It does not protect a person who gives that material to others. Appellant gave it to others. He shared a link to his MEGA account with members of a Facebook Messenger group called "Satinia's Fortress." (Pros.

Ex. 1¶ 23). The account held his "entire animated pornography collection, which specifically included animated child pornography." (*Id.*). The group included active-duty military members. (*Id.*).

The Supreme Court has drawn the line at sharing. The right to possess obscene material in the home "does not give rise to a correlative right to have someone sell or give it to others." *12 200-Ft. Reels of Super 8mm Film*, 413 U.S. at 128. *Stanley* also creates no "correlative right to receive it, transport it, or distribute it." *Orito*, 413 U.S. at 141. *Stanley* itself set apart cases involving "public distribution or dissemination." *Stanley*, 394 U.S. at 560–61; *see Ostrander*, 114 F.4th at 1355 (quoting *Stanley*, 394 U.S. at 560–61). Those who disseminate obscenity "have no claim, and could make none, about unwanted governmental intrusions into the privacy of their home." *United States v. Reidel*, 402 U.S. 351, 355 (1971). *Stanley* does not create "a constitutional right in people like Reidel to distribute or sell obscene materials." *Id.* at 356.

The C.A.A.F. applied this rule in *Meakin*. The appellant there sent obscene writings over the internet from his home to seventeen people. *Meakin*, 78 M.J. at 402. The court held that "[n]either transmission nor distribution of obscenity in interstate commerce bears any resemblance to *Stanley*'s protection." *Id.* It explained that *Stanley* rests on "both the sanctity of the home and solitude." *Id.* The court also noted "a stark difference between thinking thoughts within the confines of the home and reaching outward to share obscenity." *Id.* Appellant reached outward. He gave a group of people the means to open his whole collection.

Sharing the link also defeated the privacy that *Stanley* protects. *Stanley* relied on the point that private possession in the home does not risk intruding "upon the . . . privacy of the general public." 394 U.S. at 567. In *Bowersox*, the C.A.A.F. held that a shared barracks room fell outside *Stanley* because it "increases the risk that obscene materials will be viewed by those who

do not wish to view them." *Bowersox*, 72 M.J. at 76. Here, Appellant did more than increase risk. He actively invited others to view the obscenity. Material a person offers to a group is not being kept "alone in his own house." *Stanley*, 394 U.S. at 565.

Courts treat sharing a cloud-storage link as giving the material to others. Several circuits have upheld distribution convictions where a defendant shared a link to files in a cloud account. *See United States v. Hyatt*, 28 F.4th 776, 785 (7th Cir. 2022) (collecting cases, including *United States v. Saemisch*, 18 F.4th 50, 53 (1st Cir. 2021), and *United States v. Davis*, 751 F.3d 769, 771 (6th Cir. 2014)). In *Davis*, the defendant emailed others an invitation to view images he had uploaded to his Microsoft SkyDrive account. *Davis* 751 F.3d at 771. In *Wilson*, the defendant gave an undercover officer the login for her Dropbox account. *United States v. Wilson*, 217 F. Supp. 3d 165, 169–70 (D.D.C. 2016). The court held that this "apportioned" or "delivered" the material to him. *Id.* at 173–74. Courts have also held that a person who "consciously makes files available for others to take" has distributed them. *Clark*, 24 F.4th at 575 (construing 18 U.S.C. § 2252(a)(2)). While these cases construe child pornography statutes, they show that sharing a link is not private possession.

Navrestad does not change this result. There, the C.A.A.F. held that sending a hyperlink to a Yahoo! Briefcase was not distribution of "child pornography" as 18 U.S.C. § 2256(5) and (8) define that term. *United States v. Navrestad*, 66 M.J. 262, 267 (C.A.A.F. 2008). That was a statutory holding about what a hyperlink contains. *Id.* at 265–66. It said nothing about the scope of *Stanley*. The court also noted that the Briefcase was public and that Navrestad had no "dominion or control" over it. *Id.* at 266–67. Appellant's link led to his own account, which held his own collection. (Pros. Ex. 1¶ 23). Even if appellant did not necessarily distribute the obscenity, by granting others access to his collection, he certainly did not keep it private in his

home. Because Appellant shared his collection with a group of other people, his possession fell outside *Stanley*. No *Hartman* inquiry was required.

In sum, *Stanley* protects a man "sitting alone in his own house." Appellant was not alone, and his collection was not confined to his house. He uploaded it over the internet to Google Drive and MEGA. It sat on company servers, where Google found it and banned his account. He then gave a group chat a link to the whole collection. Each of these acts alone took his possession outside *Stanley*. Because his conduct was not constitutionally protected, no *Hartman* inquiry was required. The military judge did not abuse his discretion in accepting Appellant's guilty plea, and this Court should affirm.

CONCLUSION

For the reasons stated above, we respectfully concur with Appellee that the military judge did not abuse his discretion in accepting Appellant's guilty plea.

Respectfully submitted,

5 November 2026

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division and the Air Force Appellate Division on 5 November 2026.

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