

**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (FIRST)</b>
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM 40675
<b>AARON T. COLEY</b>	)	
United States Air Force	)	30 October 2024
<i>Appellant</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **10 January 2025**. The record of trial was docketed with this Court on 12 September 2024. From the date of docketing to the present date, 48 days have elapsed. On the date requested, 120 days will have elapsed.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770



**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 Appellate Government Division on 30 October 2024.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770



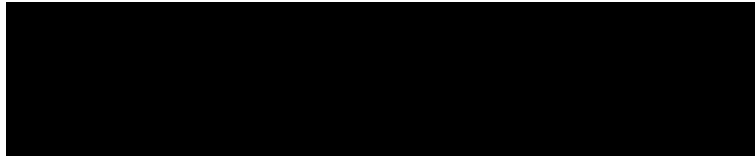
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM 40675
AARON T. COLEY, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2
	)	

**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

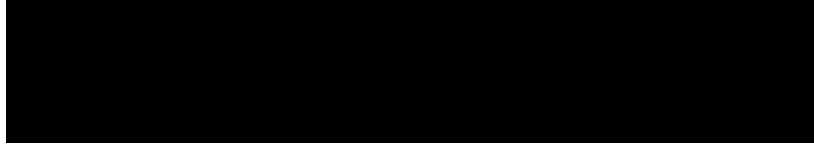
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 31 October 2024.



JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**UNITED STATES AIR FORCE  
COURT OF CRIMINAL APPEALS**

UNITED STATES	)	No. ACM 40675
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Aaron T. COLEY	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 30 October 2024, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant’s assignments of error. The Government opposes the motion.

The court has considered Appellant’s motion, the Government’s opposition, this court’s Rules of Practice and Procedure, and applicable case law.

Accordingly, it is by the court on this 1st day of November, 2024,

**ORDERED:**

Appellant’s Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error **not later than 10 January 2025**.

Counsel should not rely on any subsequent requests for enlargement of time being granted. Each request will be considered on its merits.

Appellant’s counsel is advised that any subsequent motions for enlargement of time shall include, in addition to the matters required under this court’s Rules of Practice and Procedure, statements as to: (1) whether Appellant was advised of Appellant’s right to a timely appeal, (2) whether Appellant was provided an update of the status of counsel’s progress on Appellant’s case, (3) whether Appellant was advised of the request for an enlargement of time, and (4) whether Appellant agrees with the request for an enlargement of time. Counsel is not required to re-address item (1) in each subsequent motion for enlargement of time if counsel previously replied in the affirmative.

Counsel may request, and the court may order *sua sponte*, a status conference to facilitate timely processing of this appeal.

Appellant's counsel is further advised that any future requests for enlargements of time that, if granted, would expire more than 330 days after docketing, will not be granted absent exceptional circumstances.



FOR THE COURT



CAROL K. JOYCE  
Clerk of the Court

**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (SECOND)</b>
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM 40675
<b>AARON T. COLEY</b>	)	
United States Air Force	)	31 December 2024
<i>Appellant</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **9 February 2025**. The record of trial was docketed with this Court on 12 September 2024. From the date of docketing to the present date, 110 days have elapsed. On the date requested, 150 days will have elapsed.

On 29 April 2024, consistent with his pleas, Appellant was convicted at a general court-martial at Grand Forks Air Force Base, North Dakota, of one charge and three specifications of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), and one specification of wrongful distribution of child pornography in violation of Article 134, UCMJ. Record of Trial (ROT), Entry of Judgment (EOJ), dated 30 June 2024; Record (R.) at 96. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, to be confined for five years<sup>1</sup>, and to be discharged from the service with a dishonorable discharge. R. at 124.

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<sup>1</sup> For Specification 1 of the Charge, Appellant was sentenced to 3 years confinement. For Specification 2 of the Charge, Appellant was sentenced to 3 years confinement. Specification 4 of the Charge, Appellant was sentenced to

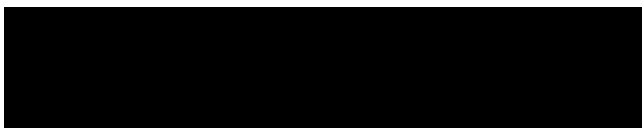
The convening authority took no action on the findings or sentence in this case. ROT, Convening Authority Decision on Action – *United States v. Senior Airmen Aaron T. Coley*, undated.

The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant’s case. An enlargement of time is necessary to allow counsel to fully review Appellant’s case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel’s progress on Appellant’s case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770



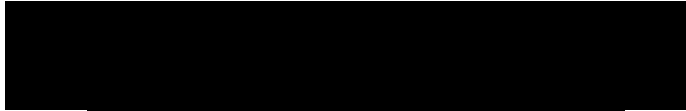
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3 years confinement. Specification 4 of the Charge, Appellant was sentenced to 5 years confinement. All confinement is to run concurrently.

**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 Government Trial and Appellate Operations Division on 31 December 2024.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
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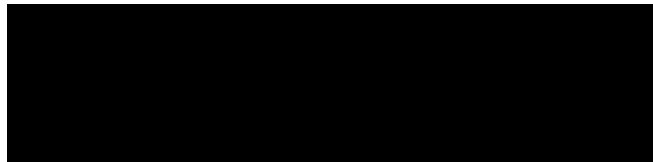
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM 40675
AARON T. COLEY, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2
	)	

**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 3 January 2025.



JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (THIRD)</b>
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM 40675
<b>AARON T. COLEY</b>	)	
United States Air Force	)	23 January 2025
<i>Appellant</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **11 March 2025**. The record of trial was docketed with this Court on 12 September 2024. From the date of docketing to the present date, 133 days have elapsed. On the date requested, 180 days will have elapsed.

On 29 April 2024, consistent with his pleas, Appellant was convicted at a general court-martial at Grand Forks Air Force Base, North Dakota, of one charge and three specifications of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), and one specification of wrongful distribution of child pornography in violation of Article 134, UCMJ. Record of Trial (ROT), Entry of Judgment (EOJ), dated 30 June 2024; Record (R.) at 96. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, to be confined for five years<sup>1</sup>, and to be discharged from the service with a dishonorable discharge. R. at 124.

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<sup>1</sup> For Specification 1 of the Charge, Appellant was sentenced to 3 years confinement. For Specification 2 of the Charge, Appellant was sentenced to 3 years confinement. Specification 4 of the Charge, Appellant was sentenced to

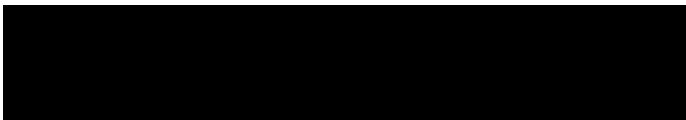
The convening authority took no action on the findings or sentence in this case. ROT, Convening Authority Decision on Action – *United States v. Senior Airmen Aaron T. Coley*, undated.

The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant’s case. An enlargement of time is necessary to allow counsel to fully review Appellant’s case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel’s progress on Appellant’s case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770



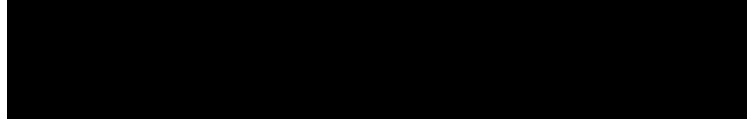
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3 years confinement. Specification 4 of the Charge, Appellant was sentenced to 5 years confinement. All confinement is to run concurrently.

**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 Government Trial and Appellate Operations Division on 23 January 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770



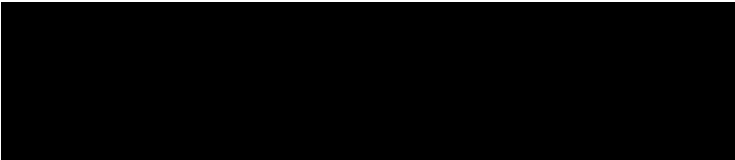
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM 40675
AARON T. COLEY, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2
	)	

**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

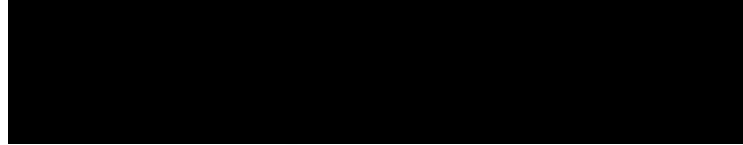
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 27 January 2025.



JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
	)	<b>TIME (FOURTH)</b>
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM 40675
<b>AARON T. COLEY</b>	)	
United States Air Force	)	28 February 2025
<i>Appellant</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **10 April 2025**. The record of trial was docketed with this Court on 12 September 2024. From the date of docketing to the present date, 169 days have elapsed. On the date requested, 210 days will have elapsed.

On 29 April 2024, consistent with his pleas, Appellant was convicted at a general court-martial at Grand Forks Air Force Base, North Dakota, of one charge and three specifications of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), and one specification of wrongful distribution of child pornography in violation of Article 134, UCMJ. Record of Trial (ROT), Entry of Judgment (EOJ), dated 30 June 2024; Record (R.) at 96. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, to be confined for five years<sup>1</sup>, and to be discharged from the service with a dishonorable discharge. R. at 124.

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<sup>1</sup> For Specification 1 of the Charge, Appellant was sentenced to 3 years confinement. For Specification 2 of the Charge, Appellant was sentenced to 3 years confinement. Specification 4 of the Charge, Appellant was sentenced to 3 years confinement. Specification 4 of the Charge, Appellant was sentenced to 5 years confinement. All confinement is to run concurrently.

The convening authority took no action on the findings or sentence in this case. ROT, Convening Authority Decision on Action – *United States v. Senior Airmen Aaron T. Coley*, undated.

The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined.

The undersigned counsel is currently assigned 23 cases; 20 cases are pending before this Court (17 cases are pending AOE). To date, seven cases have priority over the present case.

1. *United States v. Cabrie*, No ACM 40615 – The ROT is 3 volumes and consists of 5 Prosecution Exhibits, 6 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 138 pages. Appellant is not currently confined. Counsel has begun drafting the AOE.

2. *United States v. Capers*, No ACM 40641 – The electronic ROT is 1 volume and consists of 3 Prosecution Exhibits, 5 Defense Exhibits, 14 Appellate Exhibits, and 4 Court Exhibits; the transcript is 405 pages. Counsel has begun, but not completed, her review of the record of trial.

3. *United States v. Griffin*, No ACM 40641 – The ROT is 6 volumes and consists of 24 Prosecution Exhibits, 29 Defense Exhibits, 30 Appellate Exhibits, and 1 Court Exhibits; the transcript is 605 pages. Appellant is currently confined. Counsel has begun, but not completed, her review of the record of trial.

4. *United States v. Anderson*, No. ACM 40654 – The ROT is 12 volumes and consists of 15 Prosecution Exhibits, 14 Defense Exhibits, and 96 Appellate Exhibits; the transcript is 1229 pages. Appellant is currently confined. Although this case was docketed on 13 August 2024, undersigned counsel has prioritized this case to keep pace with the Appellant’s civilian counsel.

5. *United States v. Hooker*, No. ACM 40646 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

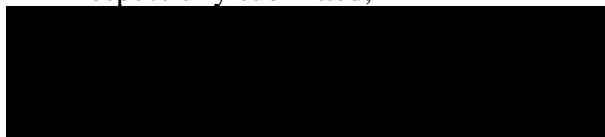
6. *United States v. Roedel*, No. ACM 40662 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

7. *United States v. Scofield*, No. ACM 40673 – The ROT is 7 volume and consists of 3 Prosecution Exhibits, 8 Defense Exhibits, and 11 Appellate Exhibits; the transcript is 257 pages. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant’s case. An enlargement of time is necessary to allow counsel to fully review Appellant’s case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel’s progress on Appellant’s case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770





**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 Government Trial and Appellate Operations Division on 28 February 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770



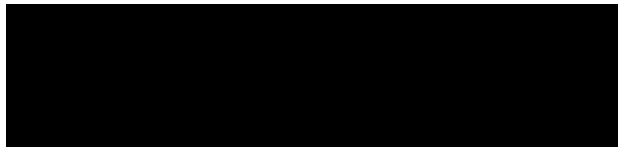
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	No. ACM 40675
AARON T. COLEY, USAF,	)	
<i>Appellant.</i>	)	Before Panel No. 2
	)	

**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

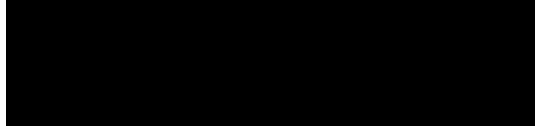
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JOCELYN Q. WRIGHT, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 4 March 2025.



JOCELYN Q. WRIGHT, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
	)	<b>TIME (FIFTH)</b>
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM 40675
<b>AARON T. COLEY</b>	)	
United States Air Force	)	1 April 2025
<i>Appellant</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **10 May 2025**. The record of trial was docketed with this Court on 12 September 2024. From the date of docketing to the present date, 201 days have elapsed. On the date requested, 240 days will have elapsed.

On 29 April 2024, consistent with his pleas, Appellant was convicted at a general court-martial at Grand Forks Air Force Base, North Dakota, of one charge and three specifications of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), and one specification of wrongful distribution of child pornography in violation of Article 134, UCMJ. Record of Trial (ROT), Entry of Judgment (EOJ), dated 30 June 2024; Record (R.) at 96. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, to be confined for five years<sup>1</sup>, and to be discharged from the service with a dishonorable discharge. R. at 124.

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<sup>1</sup> For Specification 1 of the Charge, Appellant was sentenced to 3 years confinement. For Specification 2 of the Charge, Appellant was sentenced to 3 years confinement. Specification 4 of the Charge, Appellant was sentenced to 3 years confinement. Specification 4 of the Charge, Appellant was sentenced to 5 years confinement. All confinement is to run concurrently.

The convening authority took no action on the findings or sentence in this case. ROT, Convening Authority Decision on Action – *United States v. Senior Airmen Aaron T. Coley*, undated.

The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined.

The undersigned counsel is currently assigned 21 cases; 18 cases are pending before this Court (17 cases are pending AOE). To date, six cases have priority over the present case.

1. *United States v. Cabrie*, No ACM 40615 – The ROT is 3 volumes and consists of 5 Prosecution Exhibits, 6 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 138 pages. Appellant is not currently confined. Counsel has begun drafting the AOE.

2. *United States v. Capers*, No ACM 40641 – The electronic ROT is 1 volume and consists of 3 Prosecution Exhibits, 5 Defense Exhibits, 14 Appellate Exhibits, and 4 Court Exhibits; the transcript is 405 pages. Counsel has begun, but not completed, her review of the record of trial.

3. *United States v. Griffin*, No ACM 40641 – The ROT is 6 volumes and consists of 24 Prosecution Exhibits, 29 Defense Exhibits, 30 Appellate Exhibits, and 1 Court Exhibits; the transcript is 605 pages. Appellant is currently confined. Counsel has begun, but not completed, her review of the record of trial.

4. *United States v. Anderson*, No. ACM 40654 – The ROT is 12 volumes and consists of 15 Prosecution Exhibits, 14 Defense Exhibits, and 96 Appellate Exhibits; the transcript is 1229 pages. Appellant is currently confined. Although this case was docketed on 13 August 2024, undersigned counsel has prioritized this case to keep pace with the Appellant’s civilian counsel.

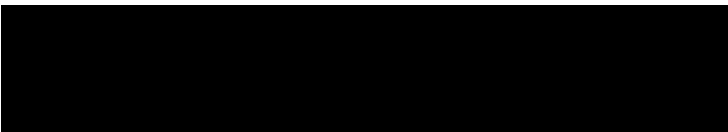
5. *United States v. Hooker*, No. ACM 40646 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

6. *United States v. Roedel*, No. ACM 40662 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant’s case. An enlargement of time is necessary to allow counsel to fully review Appellant’s case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel’s progress on Appellant’s case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



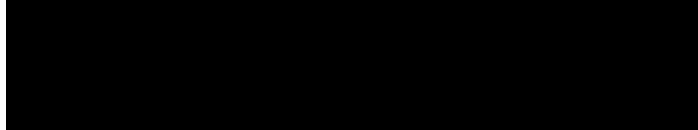
JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770



**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 Government Trial and Appellate Operations Division on 1 April 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770



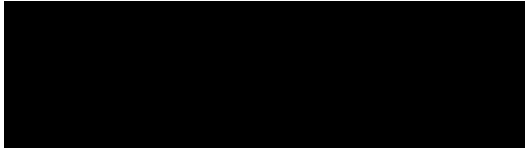
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 2
Senior Airman (E-4)	)	
<b>AARON T. COLEY,</b>	)	No. ACM 40675
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	3 April 2025

**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JOCELYN Q. WRIGHT, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 3 April 2025.



JOCELYN Q. WRIGHT, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (SIXTH)</b>
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM 40675
<b>AARON T. COLEY</b>	)	
United States Air Force	)	2 May 2025
<i>Appellant</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **9 June 2025**. The record of trial was docketed with this Court on 12 September 2024. From the date of docketing to the present date, 232 days have elapsed. On the date requested, 270 days will have elapsed.

On 29 April 2024, consistent with his pleas, Appellant was convicted at a general court-martial at Grand Forks Air Force Base, North Dakota, of one charge and three specifications of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), and one specification of wrongful distribution of child pornography in violation of Article 134, UCMJ. Record of Trial (ROT), Entry of Judgment (EOJ), dated 30 June 2024; Record (R.) at 96. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, to be confined for five years<sup>1</sup>, and to be discharged from the service with a dishonorable discharge. R. at 124.

---

<sup>1</sup> For Specification 1 of the Charge, Appellant was sentenced to 3 years confinement. For Specification 2 of the Charge, Appellant was sentenced to 3 years confinement. Specification 4 of the Charge, Appellant was sentenced to 3 years confinement. Specification 4 of the Charge, Appellant was sentenced to 5 years confinement. All confinement is to run concurrently.

The convening authority took no action on the findings or sentence in this case. ROT, Convening Authority Decision on Action – *United States v. Senior Airmen Aaron T. Coley*, undated.

The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined.

The undersigned counsel is currently assigned 25 cases; 21 cases are pending before this Court (20 cases are pending AOE). To date, five cases have priority over the present case.

1. *United States v. Capers*, No ACM 40641 – The electronic ROT is 1 volume and consists of 3 Prosecution Exhibits, 5 Defense Exhibits, 14 Appellate Exhibits, and 4 Court Exhibits; the transcript is 405 pages. Counsel has completed her review of the ROT and is drafting the AOE.

2. *United States v. Anderson*, No. ACM 40654 – The ROT is 12 volumes and consists of 15 Prosecution Exhibits, 14 Defense Exhibits, and 96 Appellate Exhibits; the transcript is 1229 pages. Appellant is currently confined. Although this case was docketed on 13 August 2024, undersigned counsel has prioritized this case to keep pace with the Appellant’s civilian counsel. Counsel has completed her review of the ROT.

3. *United States v. Griffin*, No ACM 40641 – The ROT is 6 volumes and consists of 24 Prosecution Exhibits, 29 Defense Exhibits, 30 Appellate Exhibits, and 1 Court Exhibits; the transcript is 605 pages. Appellant is currently confined. Counsel has begun, but not completed, her review of the record of trial.

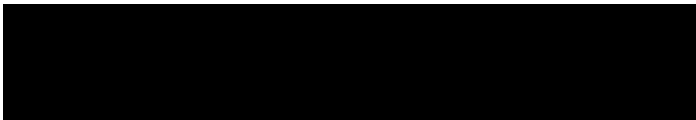
4. *United States v. Hooker*, No. ACM 40646 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

5. *United States v. Roedel*, No. ACM 40662 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant’s case. An enlargement of time is necessary to allow counsel to fully review Appellant’s case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel’s progress on Appellant’s case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



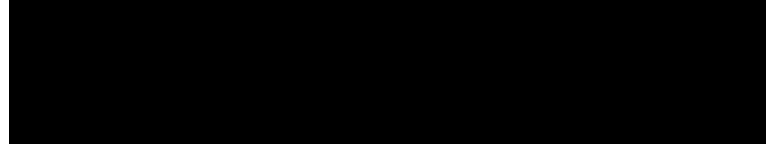
JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770



**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 Government Trial and Appellate Operations Division on 2 May 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770



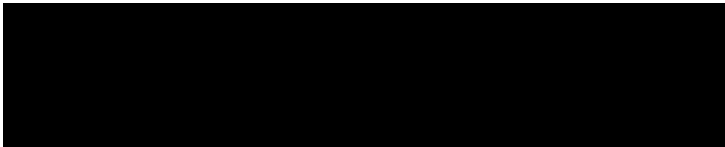
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM 40675
<b>AARON T. COLEY,</b>	)	
United States Air Force,	)	6 May 2025
<i>Appellant.</i>	)	

**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

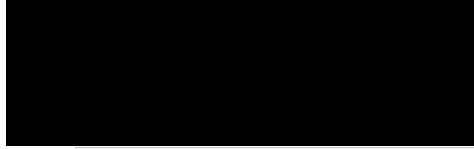


VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force

Appellate Defense Division on 6 May 2025.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
	)	<b>TIME (SEVENTH)</b>
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM 40675
<b>AARON T. COLEY</b>	)	
United States Air Force	)	2 June 2025
<i>Appellant</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **9 July 2025**. The record of trial was docketed with this Court on 12 September 2024. From the date of docketing to the present date, 263 days have elapsed. On the date requested, 300 days will have elapsed.

On 29 April 2024, consistent with his pleas, Appellant was convicted at a general court-martial at Grand Forks Air Force Base, North Dakota, of one charge and three specifications of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), and one specification of wrongful distribution of child pornography in violation of Article 134, UCMJ. Record of Trial (ROT), Entry of Judgment (EOJ), dated 30 June 2024; Record (R.) at 96. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, to be confined for five years<sup>1</sup>, and to be discharged from the service with a dishonorable discharge. R. at 124.

---

<sup>1</sup> For Specification 1 of the Charge, Appellant was sentenced to 3 years confinement. For Specification 2 of the Charge, Appellant was sentenced to 3 years confinement. Specification 4 of the Charge, Appellant was sentenced to 3 years confinement. Specification 4 of the Charge, Appellant was sentenced to 5 years confinement. All confinement is to run concurrently.

The convening authority took no action on the findings or sentence in this case. ROT, Convening Authority Decision on Action – *United States v. Senior Airmen Aaron T. Coley*, undated.

The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined.

The undersigned counsel is currently assigned 29 cases; 21 cases are pending before this Court (19 cases are pending AOE). To date, two cases before the Court of Appeals for the Armed Forces take priority over this case: *United States v. Grey* and *United States v. Menard*. Counsel is finalizing the supplement in *Grey*. Counsel will continue drafting the supplement in *Menard* next, which is due 17 June. To date, three cases at this Court have priority over the present case.

1. *United States v. Griffin*, No. ACM 40641 – The ROT is 6 volumes and consists of 24 Prosecution Exhibits, 29 Defense Exhibits, 30 Appellate Exhibits, and 1 Court Exhibits; the transcript is 605 pages. Appellant is currently confined. Counsel has begun, but not completed, her review of the record of trial.

2. *United States v. Hooker*, No. ACM 40646 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

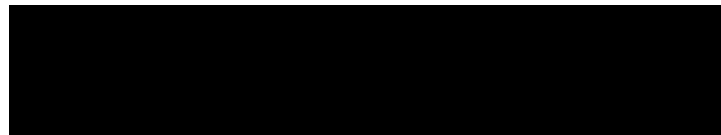
3. *United States v. Roedel*, No. ACM 40662 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow

counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



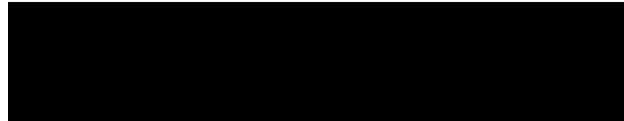
JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770



**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 Government Trial and Appellate Operations Division on 2 June 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770



**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

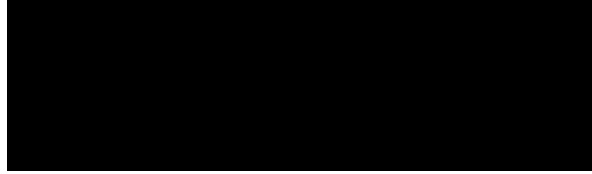
<b>UNITED STATES,</b>	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM 40675
<b>AARON T. COLEY,</b>	)	
United States Air Force,	)	3 June 2025
<i>Appellant.</i>	)	

**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court’s Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant’s Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 300 days in length. Appellant’s nearly year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 8 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not completed review of the record of trial at this late stage of the appellate process.

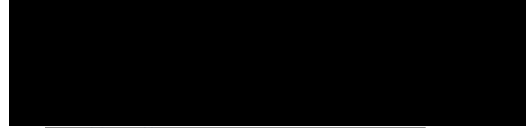
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JOCELYN Q. WRIGHT, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 3 June 2025.



JOCELYN Q. WRIGHT, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**UNITED STATES AIR FORCE  
COURT OF CRIMINAL APPEALS**

UNITED STATES	)	No. ACM 40675
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Aaron T. COLEY	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 2 June 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Seventh), requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

The court has considered Appellant’s motion, the Government’s opposition, prior filings in this case, case law, and this court’s Rules of Practice and Procedure.

Accordingly, it is by the court on this 4th day of June, 2025,

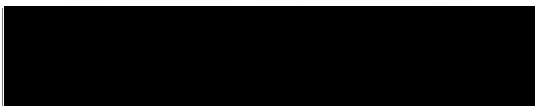
**ORDERED:**

Appellant’s Motion for Enlargement of Time (Seventh) is **GRANTED**. Appellant shall file any assignments of error not later than **9 July 2025**.

Further requests by Appellant for enlargements of time may necessitate a status conference.



FOR THE COURT



OLGA STANFORD, Capt, USAF  
Chief Commissioner

**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (EIGHTH)</b>
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM 40675
<b>AARON T. COLEY</b>	)	
United States Air Force	)	30 June 2025
<i>Appellant</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **8 August 2025**. The record of trial was docketed with this Court on 12 September 2024. From the date of docketing to the present date, 291 days have elapsed. On the date requested, 330 days will have elapsed.

On 29 April 2024, consistent with his pleas, Appellant was convicted at a general court-martial at Grand Forks Air Force Base, North Dakota, of one charge and three specifications of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), and one specification of wrongful distribution of child pornography in violation of Article 134, UCMJ. Record of Trial (ROT), Entry of Judgment (EOJ), dated 30 June 2024; Record (R.) at 96. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, to be confined for five years<sup>1</sup>, and to be discharged from the service with a dishonorable discharge. R. at 124.

---

<sup>1</sup> For Specification 1 of the Charge, Appellant was sentenced to 3 years confinement. For Specification 2 of the Charge, Appellant was sentenced to 3 years confinement. Specification 4 of the Charge, Appellant was sentenced to 3 years confinement. Specification 4 of the Charge, Appellant was sentenced to 5 years confinement. All confinement is to run concurrently.

The convening authority took no action on the findings or sentence in this case. ROT, Convening Authority Decision on Action – *United States v. Senior Airmen Aaron T. Coley*, undated.

The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined.

The undersigned counsel is currently assigned 28 cases; 23 cases are pending before this Court (20 cases are pending AOE). To date, three cases at this Court have priority over the present case.

1. *United States v. Griffin*, No ACM 40641 – The ROT is 6 volumes and consists of 24 Prosecution Exhibits, 29 Defense Exhibits, 30 Appellate Exhibits, and 1 Court Exhibits; the transcript is 605 pages. Appellant is currently confined. Counsel has completed her review of the record of trial.

2. *United States v. Hooker*, No. ACM 40646 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

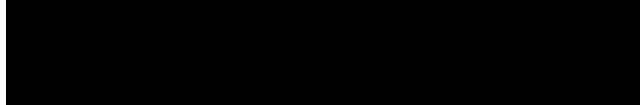
3. *United States v. Roedel*, No. ACM 40662 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant’s case. An enlargement of time is necessary to allow counsel to fully review Appellant’s case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of

counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

A large black rectangular redaction box covering the signature of the appellant.

JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770

A black rectangular redaction box covering the contact information of the appellant.

**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 Government Trial and Appellate Operations Division on 30 June 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770



**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

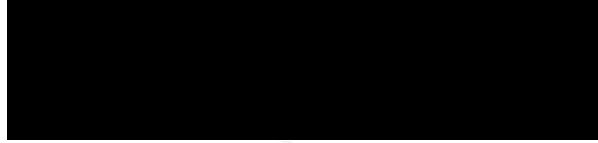
<b>UNITED STATES,</b>	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM 40675
<b>AARON T. COLEY,</b>	)	
United States Air Force,	)	1 July 2025
<i>Appellant.</i>	)	

**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 330 days in length. Appellant's nearly year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 7 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 1 July 2025.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
	)	<b>TIME (NINTH)</b>
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM 40675
<b>AARON T. COLEY</b>	)	
United States Air Force	)	29 July 2025
<i>Appellant</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **7 September 2025**. The record of trial was docketed with this Court on 12 September 2024. From the date of docketing to the present date, 320 days have elapsed. On the date requested, 360 days will have elapsed.

On 29 April 2024, consistent with his pleas, Appellant was convicted at a general court-martial at Grand Forks Air Force Base, North Dakota, of one charge and three specifications of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), and one specification of wrongful distribution of child pornography in violation of Article 134, UCMJ. Record of Trial (ROT), Entry of Judgment (EOJ), dated 30 June 2024; Record (R.) at 96. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, to be confined for five years<sup>1</sup>, and to be discharged from the service with a dishonorable discharge. R. at 124.

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<sup>1</sup> For Specification 1 of the Charge, Appellant was sentenced to 3 years confinement. For Specification 2 of the Charge, Appellant was sentenced to 3 years confinement. Specification 4 of the Charge, Appellant was sentenced to

The convening authority took no action on the findings or sentence in this case. ROT, Convening Authority Decision on Action – *United States v. Senior Airmen Aaron T. Coley*, undated.

The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined.

The undersigned counsel is currently assigned 27 cases; 18 cases are pending before this Court (18 cases are pending AOE). To date, one case before the Court of Appeals for the Armed Forces take priority over this case: *United States v. Menard*. The Court of Appeals for the Armed Forces has ordered the brief be filed no later than 18 August 25.

To date, two cases at this Court have priority over the present case:

1. *United States v. Griffin*, No ACM 40641 – The ROT is 6 volumes and consists of 24 Prosecution Exhibits, 29 Defense Exhibits, 30 Appellate Exhibits, and 1 Court Exhibits; the transcript is 605 pages. Appellant is currently confined. Counsel is finalizing the AOE.

2. *United States v. Roedel*, No. ACM 40662 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

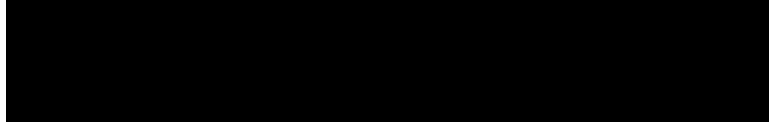
Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant’s case. An enlargement of time is necessary to allow counsel to fully review Appellant’s case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel’s progress on Appellant’s case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

---

3 years confinement. Specification 4 of the Charge, Appellant was sentenced to 5 years confinement. All confinement is to run concurrently.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



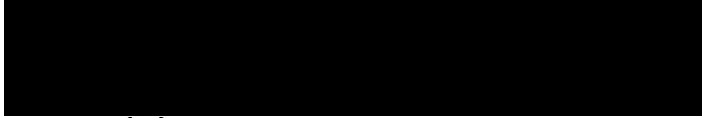
JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
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Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770



**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 Government Trial and Appellate Operations Division on 29 July 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
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**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM 40675
<b>AARON T. COLEY,</b>	)	
United States Air Force,	)	30 July 2025
<i>Appellant.</i>	)	

**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 360 days in length. Appellant's nearly year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 6 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 30 July 2025.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**UNITED STATES AIR FORCE  
COURT OF CRIMINAL APPEALS**

UNITED STATES	)	No. ACM 40675
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Aaron T. COLEY	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 29 July 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Ninth) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

On 1 August 2025, the court held a status conference to discuss the progress of this case. Appellant was represented by Captain Joyclin N. Webster; Lieutenant Colonel Allen S. Abrams from the Appellate Defense Division was also present. Major Vanessa Bairos represented the Government. In response to questions from the court, Captain Webster provided additional information regarding her current workload. She anticipated Appellant would need to file at least one additional motion for enlargement of time in order to complete the assignments of error. Major Bairos maintained the Government’s opposition to the motion but did not dispute any representation by the Defense.

The court has considered Appellant’s motion, the Government’s opposition, prior filings and orders in this case, case law, and this court’s Rules of Practice and Procedure.

Accordingly, it is by the court on this 1st day of August, 2025,

**ORDERED:**

Appellant’s Motion for Enlargement of Time (Ninth) is **GRANTED**. Appellant shall file any assignments of error not later than **7 September 2025**.



FOR THE COURT

[Redacted signature block]

AGNIESZKA M. GAERTNER, Capt, USAF  
Commissioner

**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	<b>CONSENT MOTION TO EXAMINE</b>
<i>Appellee,</i>	)	<b>SEALED MATERIALS</b>
	)	
v.	)	
	)	Before Panel No. 2
	)	
Senior Airman (E-4),	)	No. ACM 40675
<b>AARON T. COLEY,</b>	)	
United States Air Force,	)	20 August 2025
<i>Appellant.</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B) and Rules 3.1 and 23.3(f)(1) of this Court’s Rules of Practice and Procedure, undersigned counsel hereby moves this Court to permit appellate counsel for the Appellant and the Government to examine Prosecution Exhibit 2 which was sealed by the military judge.

In accordance with R.C.M. 1113(b)(3)(B)(i), which requires a colorable showing that examination of these matters is reasonably necessary to appellate counsels’ responsibilities, undersigned counsel asserts that review of Prosecution Exhibit 2 is necessary to conduct a complete review of the record of trial and be able to advocate competently on behalf of Appellant.

Moreover, a review of the entire record of trial is necessary because this Court is empowered by Article 66, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866, to grant relief based on a review and analysis of “the entire record.” To determine whether the record of trial yields grounds for this Court to grant relief under Article 66, UCMJ, 10 U.S.C. § 866, appellate defense counsel must, therefore, examine “the entire record.”

Although Courts of Criminal Appeals have a broad mandate to review the record unconstrained by an appellant’s assignments of error, that broad mandate does not reduce the importance of adequate representation. As we said in *United States v.*

*Ortiz*, 24 M.J. 323, 325 (C.M.A. 1987), independent review is not the same as competent appellate representation.

*United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998).

At trial, the military judge, trial counsel, and defense counsel at trial reviewed Prosecution Exhibit 2. R. at 91. The sealed exhibit must be reviewed for counsel to provide “competent appellate representation.” *May*, 47 M.J. at 481. Viewing this exhibit is reasonably necessary to determine whether Appellant is entitled to relief due to errors concerning the substance during any portion of the proceedings—before, during, or after trial. Therefore, undersigned counsel’s examination of the sealed exhibit is reasonably necessary to fulfill her responsibilities in this case as counsel cannot perform her duty of representation under Article 70, UCMJ, 10 U.S.C. § 870, or fulfill her duty to provide effective assistance of counsel without first reviewing the complete record of trial.

Appellate Government Counsel have been consulted about this motion and consent to the relief sought by Appellant.

**WHEREFORE**, Appellant respectfully requests this Court grant this motion.

Respectfully Submitted,

[REDACTED]

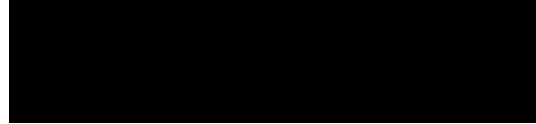
JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
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Office: (240) 612-4770

[REDACTED]

**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 Government Trial and Appellate Operations Division on 20 August 2025.

Respectfully Submitted,

A large black rectangular redaction box covering the signature of the sender.

JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770.

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**UNITED STATES AIR FORCE  
COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>No. ACM 40675</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>ORDER</b>
<b>Aaron T. COLEY</b>	)	
<b>Senior Airman (E-4)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 20 August 2025, counsel for Appellant submitted a Consent Motion to Examine Sealed Materials, requesting appellate counsel for both parties be allowed to examine Prosecution Exhibit 2, which was reviewed by trial counsel and trial defense counsel at Appellant’s court-martial and sealed by the military judge. The Government consents to the motion.

Appellate counsel may examine sealed materials released to counsel at trial “upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities . . . .” Rule for Courts-Martial 1113(b)(3)(B)(i), *Manual for Courts-Martial, United States* (2024 ed.).

The court finds Appellant has made a colorable showing that review of the identified sealed materials is reasonably necessary for a proper fulfillment of appellate counsel’s responsibilities. This court’s order permits counsel for both parties to examine the materials.

Accordingly, it is by the court on this 22d day of August 2025,

**ORDERED:**

Appellant’s Consent Motion to Examine Sealed Materials dated 20 August 2025 is **GRANTED**.

Appellate defense counsel and appellate government counsel may examine **Prosecution Exhibit 2** subject to the following conditions:

To examine the sealed materials, counsel will coordinate with the court.

No counsel granted access to the materials may photocopy, photograph, reproduce, disclose, or make available the sealed content to any other individual without the court's prior written authorization.



FOR THE COURT



CAROL K. JOYCE  
Clerk of the Court

**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
	)	<b>TIME (TENTH)</b>
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM 40675
<b>AARON T. COLEY</b>	)	
United States Air Force	)	28 August 2025
<i>Appellant</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 20 days, which will end on **27 September 2025**. The record of trial was docketed with this Court on 12 September 2024. From the date of docketing to the present date, 350 days have elapsed. On the date requested, 380 days will have elapsed.

On 29 April 2024, consistent with his pleas, Appellant was convicted at a general court-martial at Grand Forks Air Force Base, North Dakota, of one charge and three specifications of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), and one specification of wrongful distribution of child pornography in violation of Article 134, UCMJ. Record of Trial (ROT), Entry of Judgment (EOJ), dated 30 June 2024; Record (R.) at 96. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, to be confined for five years<sup>1</sup>, and to be discharged from the service with a dishonorable discharge. R. at 124.

---

<sup>1</sup> For Specification 1 of the Charge, Appellant was sentenced to 3 years confinement. For Specification 2 of the Charge, Appellant was sentenced to 3 years confinement. Specification 4 of the Charge, Appellant was sentenced to

The convening authority took no action on the findings or sentence in this case. ROT, Convening Authority Decision on Action – *United States v. Senior Airmen Aaron T. Coley*, undated.

The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined. Counsel has begun, but has not yet completed, her review of the ROT.

The undersigned counsel is currently assigned twenty-nine cases; twenty-one cases are pending before this Court (16 cases are pending AOE).

To date, two cases at this Court have priority over the present case:

1. *United States v. Roedel*, No. ACM 40662 – The electronic ROT is one volume and consists of four Prosecution Exhibits, sixteen Defense Exhibits, and thirty-two Appellate Exhibits; the transcript is sixty-five pages. Appellant is currently confined. Counsel is finalizing the AOE, which is due to this Court on 8 September 2025.
2. *United States v. Anderson*, No. ACM 40752 – The Government’s answer is currently due on 6 September 2025, as such the reply brief will be due on 13 September 2025.

Through no fault of Appellant, the undersigned counsel has been unable to complete her review and prepare a brief for Appellant’s case. An enlargement of time is necessary to allow counsel to fully review Appellant’s case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel’s progress on Appellant’s case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

---

3 years confinement. Specification 4 of the Charge, Appellant was sentenced to 5 years confinement. All confinement is to run concurrently.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



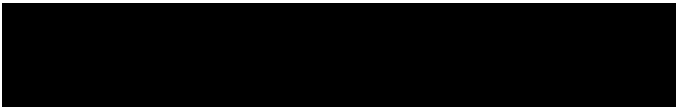
JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770




**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 Government Trial and Appellate Operations Division on 28 August 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770



**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM 40675
<b>AARON T. COLEY,</b>	)	
United States Air Force,	)	2 September 2025
<i>Appellant.</i>	)	

**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 390 days in length. Appellant's over a year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 5 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

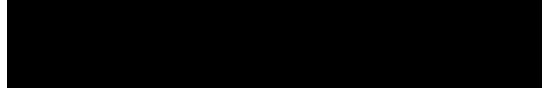
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 2 September 2025.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>BRIEF ON BEHALF OF</b>
<i>Appellee</i>	)	<b>APPELLANT</b>
v.	)	
	)	Before Panel No. 2
Senior Airman (E-4)	)	
<b>AARON T. COLEY</b>	)	No. ACM 40675
United States Air Force	)	
<i>Appellant</i>	)	29 September 2025

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

**Assignments of Error**

**I**

**Whether Appellant’s rights against double jeopardy under the Fifth Amendment were violated when Appellant was twice convicted for the same “material,” a Samsung Galaxy Tablet.**

**II**

**Whether Appellant’s sentence was inappropriately severe.<sup>1</sup>**

**III**

**Whether the Government can prove that 18 U.S.C. § 922 is constitutional as applied to Appellant when he was convicted of offenses that do not fall within the Nation’s historical tradition of firearm regulation.**

**Statement of the Case**

On 29 April 2024, consistent with his pleas, Senior Airman Aaron T. Coley, Appellant, was convicted at a general court-martial at Grand Forks Air Force Base, North Dakota, of one charge with three specifications of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), and one specification of wrongful

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<sup>1</sup> Assignments of Error II and III are raised in the appendix pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

distribution of child pornography in violation of Article 134, UCMJ. Record of Trial (ROT), Entry of Judgment (EOJ), dated 30 June 2024; Record (R.) at 96. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, confined for five years,<sup>2</sup> and discharged from the service with a dishonorable discharge. R. at 124.

The convening authority took no action on the findings or sentence in this case. ROT, Convening Authority Decision on Action – *United States v. Senior Airmen Aaron T. Coley*.

### **Statement of Facts**

On 8 June 2022, agents from the Air Force Office of Special Investigations executed search warrants at Appellant’s residences in Grand Forks, North Dakota, and Al Dhafra Air Base, resulting in the seizure of thirteen digital media devices. Pros. Ex. 3 at 4. Subsequent forensic analysis by the Defense Computer Forensics Laboratory identified suspected child sexual abuse material on three devices: a Samsung Galaxy Tablet, a Samsung Galaxy cellphone, and an ASUS Republic of Gamers cellphone. *Id.* The forensic reports indicate that images on these devices were downloaded and saved on various dates spanning from 2020 to 2022. *Id.*

Specification 1 alleges Appellant possessed child pornography on the Samsung Galaxy Tablet during Appellant’s assignment at Grand Forks AFB, North Dakota, from on or about 3 November 2021 to on or about 27 March 2022. Charge Sheet; Pros. Ex. 3 at 4. During the Government’s forensic examination of Appellant’s Samsung Galaxy Tablet, investigators identified various images that met the definition of child pornography were downloaded during this time frame. Pros. Ex. 3 at 4-5. Appellant pled guilty to knowingly and wrongfully possessing

---

<sup>2</sup> For Specification 1 of the Charge, Appellant was sentenced to 3 years confinement. For Specification 2 of the Charge, Appellant was sentenced to 3 years confinement. For Specification 3 of the Charge, Appellant was sentenced to 3 years confinement. For Specification 4 of the Charge, Appellant was sentenced to 5 years confinement. All confinement is to run concurrently.

child pornography in or near Grand Forks, ND from 3 November 2021 to on or about 27 March 2022. R. at 18.

Specification 3 also concerns the same Samsung Galaxy Tablet, but covers the timeframe when Appellant was stationed at Misawa AB, Japan, from on or about 5 January 2020 to on or about 2 November 2021. Charge Sheet; Pros. Ex. 3 at 8. During the Government's forensic examination of Appellant's Samsung Galaxy Tablet, investigators identified various images that had been downloaded during this time frame that met the definition of child pornography. Pros. Ex. 3 at 8-9. Appellant pled guilty to knowingly and wrongfully possessing child pornography in or near Misawa AB, Japan from on or about 5 January 2020 to on or about 2 November 2021. R. at 18.

Throughout the entire period relevant to both Specification 1 and Specification 3, Appellant maintained uninterrupted ownership of his Samsung Galaxy Tablet. Pros. Ex. 3 at 4-5, 8-9. The only distinctions between these specifications are the locations and the specific date. Pros. Ex. 3 at 4-5, 8-9; Charge Sheet. Each specification is based on separate images found in Appellant's possession. Pros. Ex. 3 at 4-5, 8-9. The specifications are tied to both the dates and locations where Appellant saved the images on his Samsung Galaxy Tablet. *Id.*

## **Argument**

### **I.**

**Appellant's rights against double jeopardy under the Fifth Amendment were violated when Appellant was twice convicted for the same "material," a Samsung Galaxy Tablet.**

### **Standard of Review**

This Court reviews double jeopardy de novo because it is a question of law. *United States v. Driskill*, 84 M.J. 248, 252 (C.A.A.F. 2024) (citing *United States v. Hutchins*, 78 M.J. 437, 444

(C.A.A.F. 2019)). When an appellant does not raise an issue at trial, this Court reviews for plain error. *United States v. Gladue*, 67 M.J. 311, 313 (C.A.A.F. 2009) (citing *United States v. Harcrow*, 66 M.J. 154, 156 (C.A.A.F. 2008)). “Plain error occurs when (1) there is error, (2) the error is plain or obvious, and (3) the error results in material prejudice.” *United States v. Flores*, 69 M.J. 366, 369 (C.A.A.F. 2011) (citing *United States v. Maynard*, 66 M.J. 242, 244 (C.A.A.F. 2008)). For a constitutional error, “‘material prejudice’ is assessed using the ‘harmless beyond a reasonable doubt’ standard set out in *Chapman v. California*, 386 U.S. 18 (1967).” *United States v. Tovarchavez*, 78 M.J. 458, 460 (C.A.A.F. 2019) (citing *United States v. Jones*, 78 M.J. 37, 45 (C.A.A.F. 2018)). Therefore, the burden is on the appellant to show that there was error and the error was plain. *United States v. Carter*, 61 M.J. 30, 34 (C.A.A.F. 2005) (citation omitted). But the burden is on the Government to establish that the error was harmless beyond a reasonable doubt. *Tovarchavez*, 78 M.J. at 463.

## Law and Analysis

### **A. Appellant was charged and convicted twice for offenses stemming from the possessing the “material,” a Samsung Galaxy Tablet.**

It was plain error to charge Appellant twice for the same “material,” a Samsung Galaxy Tablet. For child pornography offenses under Article 134, UCMJ, the controlling precedent establishes that the “unit of prosecution” is the “material”—that is, the physical medium or device—that contains the illicit images, not the individual images themselves. *United States v. Forrester*, 76 M.J. 479, 486 (C.A.A.F. 2017); *see also United States v. Mobley*, 77 M.J. 749, 751-52 (A. Ct. Crim. App. 2018) (holding that the computer—not the individual videos or still pictures—constitutes the allowable “unit of prosecution” for possession).

In *United States v. Casillas*, this Court applied this principle to find that charging possession of child pornography on the same device over overlapping periods constituted a single

offense, and that duplicative charging violated the appellants rights against double jeopardy. *United States v. Casillas*, No. ACM 40551, 2025 CCA LEXIS 445, at \*25-26 (A.F. Ct. Crim. App. Sep. 18, 2025). This Court rejected the argument that different images on the same device created separate offenses, emphasizing that the relevant actus reus is the possession of the “material” itself. *Id.* at \*26-27.

In this case, both Specification 1 and Specification 3 of the Charge require proof the same elements: (1) That Appellant knowingly and wrongfully possessed child pornography; and (2) That, under the circumstances, the conduct of Appellant was of a nature to bring discredit upon the armed forces. *See MCM*, pt. IV, ¶ 95.b.(1); Charge Sheet.

Critically, these specifications are based on the same “material” under the “unit if prosecution” for the offense. Further, there is no additional fact necessary to prove the second offense that is not required for the first. Accordingly, these specifications should be treated as the same offense for double jeopardy purposes. As Judge Warren observed in his concurrence in *United States v. Patterson*, “The date of an offense is generally only an ancillary fact (i.e., relevant to jurisdiction over the offense and offender, but not itself an element), and need only be pleaded when it is an ‘essential element of the offense’ (i.e., when time is of the essence for the offense).” *United States v. Patterson*, No. ACM 40426, 2024 CCA LEXIS 399, at \*53 (A.F. Ct. Crim. App. Sep. 27, 2024) (Warren, J., concurring in part and in the judgment). In this case, neither date nor location is an element of either specification, nor are they of the essence for the offense.

The “unit of prosecution” for possession of child pornography under Article 134, UCMJ, is the knowing possession of the device containing the child pornography, not the act of downloading each image or the location where the images were acquired. Where an Appellant maintains continuous possession of the same device, the conduct—regardless of when or where

the images were saved—should constitute a single offense. This approach is consistent with the reasoning *Forrester*, which recognized that the actus reus is the possession of the device, not the acquisition of individual images. *See Forrester*, 76 M.J. at 486.

Applying these authorities to the facts here, the Government’s decision to charge Specifications 1 and 3—both predicated on the same Samsung Galaxy Tablet—was plain error. By fragmenting a single unit of prosecution into multiple charges, the specifications run afoul of the established framework for child pornography offenses under Article 134, UCMJ. *Id.*

**B. Appellant did not waive the issue of double jeopardy by pleading guilty.**

This Court should review Appellant’s double jeopardy claim for forfeiture, as it was not affirmatively waived by Appellant’s guilty plea. “A waiver of a constitutional right is effective if it ‘clearly established that there was an intentional relinquishment of a known right.’” *United States v. Jones*, 78 M.J. 37, 44 (C.A.A.F. 2018 (quoting *Sweeney*, 70 M.J. at 303-04). “Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the intentional relinquishment or abandonment of a known right.” *Gladue*, 67 M.J. at 313 (quoting *United States v. Olano*, 507 U.S. 725, 733 (1993)) (citation omitted).

The Court of Appeals for the Armed Forces (CAAF) clarified the effect of waiver in *Gladue*, holding that a “waive all waivable motions” provision in a pretrial agreement can extinguish the right to raise multiplicity, on which is based on double jeopardy, on appeal, but only if the facts giving rise to the motion were known at the time of trial and the waiver was knowing and voluntary. *Gladue*, 67 M.J. at 313-14; *see United States v. Mitchell*, 62 M.J. 673, 678 (N-M. Ct. Crim. App. 2006) (requiring the military judge to ensure the accused understands any waiver provision); *see also United States v. Sweeney*, 70 M.J. 296, 303–04 (C.A.A.F. 2011) (presumption against waiver of constitutional rights).

Here, there is no evidence that Appellant intentionally relinquished his protections against double jeopardy. The plea agreement did not contain a “waive all waivable motions” provision. R. at 18. The record is silent as to any discussion of double jeopardy, and the waived motions do not encompass this issue. The motions waived at trial were specific and did not include double jeopardy. R. at 18-21; App. Ex. VI, VIII, X, XII. The facts giving rise to the challenge were known at the time of the trial; however, unlike in *Casillas*—where the military judge proactively raised double jeopardy concerns during a motions hearing, *Casillas*, No. ACM 40551, 2025 CCA LEXIS 445 at \*10, 20—no such notice or discussion occurred in this case. R. at 18-21.

In *United States v. Malone*, the Army Court of Criminal Appeals found forfeiture, not waiver, when the appellant’s plea agreement lacked any provision explicitly waiving motions, and there was no evidence that the appellant knowingly relinquished his right to challenge multiplicity. *United States v. Malone*, 85 M.J. 573 (A. Ct. Crim. App. 2025). The military judge did not discuss multiplicity or waiver with the appellant, and defense counsel’s statement of “defense has no motions” was deemed insufficient to show a deliberate, informed abandonment of the claim. *Id.* at 579-80. As a result, the court held that the appellant merely forfeited the issue, allowing for appellate review under the plain error standard, especially given the constitutional implications of multiplicity and double jeopardy protections. *Id.* at 579, 581 (citing *United States v. Blackburn*, 80 M.J. 205, 209 (C.A.A.F. 2020)). Accordingly, in light of the presumption against waiver of constitutional rights and as discussed in *Malone*, Appellant’s failure to raise this issue at trial should be treated as forfeiture.

Accordingly, the issue is properly before this Court.

**C. Even if this court finds the double jeopardy issue was waived, this Court should pierce the waiver and review the issue.**

The circumstances presented in this case warrant this Court’s intervention to ensure Appellant’s double jeopardy concerns receive full consideration, despite any potential waiver. In cases where waiver is found, Article 66, UCMJ, grants this Court discretion to pierce the waiver and address underlying errors of law where substantial rights are at stake or the integrity of the system is implicated. *See United States v. Hardy*, 77 M.J. 438, 442-43 (C.A.A.F. 2018), *see also Casillas*, No. ACM 40551, 2025 CCA LEXIS 445, at \*12-13 (A.F. Ct. Crim. App. Sep. 18, 2025) (“Under the applicable version of Article 66, UCMJ, 10 U.S.C. § 866, for cases involving offenses that occurred prior to 1 January 2021, a Court of Criminal Appeals (CCA) has ‘special power . . . to revise a case notwithstanding the [appellant’s] failure to preserve the objection at trial.’” (quoting *Hardy*, 77 M.J. at 442). In *Casillas*, after determining that waiver had occurred, this Court exercised its “special power” under Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1), to look to pierce the waiver and address the merits of the double jeopardy claim. *Id.* at 21-22. As in *Casillas*, the gravity of double jeopardy violations in this case warrants review, even if this Court finds that the issue was waived.

**D. Appellant’s conviction of two separate specifications arising from possessing the same “material” constitutes plain error.**

The record demonstrates that treating Specification 1 and Specification 3 of the Charge as separate convictions was a plain error, given that they stem from the same “material”. *See Forrester*, 76 M.J. at 486. To meet the plain error test, the appellant must show “(1) there is error, (2) the error is plain or obvious, and (3) the error results in material prejudice.” *Flores*, 69 M.J. at 369 (citing *Maynard*, 66 M.J. at 244). Here, the error is clear: the Government charged Appellant with two separate specifications—Specification 1 and Specification 3—based on possession of

child pornography possessed on the same device, a Samsung Galaxy Tablet, despite binding precedent holding that the “unit of prosecution” in such cases is based on the material (the device), not the of images involved. *See Forrester*, 76 M.J. at 486.

The error is plain or obvious because the controlling law is not ambiguous. The Manual for Courts-Martial and CAAF precedent both require that the actus reus is possession of the “material,” not the images, and the government’s charging decision directly contravenes this settled doctrine. *See Forrester*, 76 M.J. at 486; *see also Mobley*, 77 M.J. at 752.

Material prejudice is also present. The Double Jeopardy Clause is designed to protect against the hazards of multiple convictions and sentences for a single criminal act. *United States v. Rice*, 80 M.J. 36, 45 (C.A.A.F. 2020). 80 M.J. at 45 (citing *Green v. United States*, 355 U.S. 184, 187 (1957)). Appellant has been exposed to multiple convictions and sentences for the same offense, which is a distinct constitutional harm. This Court has made clear, in circumstances like these, that prosecuting a sole device (material) as separate specifications violates both constitutional and statutory rights and results in substantial prejudice to the Appellant. *See Casillas*, No. ACM 40551, 2025 CCA LEXIS 445, at \*22.

The Government bears the burden to show that this error was harmless beyond a reasonable doubt, and given the nature of the violation, it cannot do so. *See Tovarchavez*, 78 M.J. at 460. The harm here is not theoretical or trivial. Appellant now carries an additional conviction for possession of child pornography, a charge that should never have been brought under the Constitution’s protections.

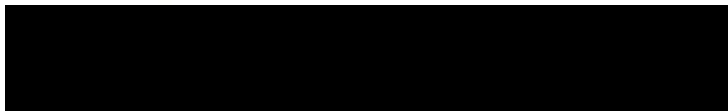
### *Conclusion*

The Government cannot circumvent double jeopardy protections by charging possession of the same device based on images downloaded at different times or locations. The courts have

consistently held that the focus must remain on the device, not the individual images downloaded. *See Forrester*, 76 M.J. at 486. Accordingly, even with differing download dates and locations, double jeopardy bars prosecuting the same “material” in multiple specifications as it related to possession of child pornography under Article 134, UCMJ. In this case, Appellant’s findings of guilty for both Specification 1 and Specification 3 of the Charge violate the prohibition against double jeopardy.

This Court should set aside Appellant’s conviction of either Specification 1 or Specification 3 of the Charge.

Respectfully submitted,



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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 Government Trial and Appellate Operations Division on 29 September 2025.

Respectfully submitted,



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## APPENDIX

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), Appellant, through appellate defense counsel, personally requests that this Court consider the following matter:

### III

**Appellant's sentence was inappropriately severe.**

#### Standard of Review

This Court reviews sentence appropriateness de novo employing “a sweeping Congressional mandate to ensure ‘a fair and just punishment for every accused.’” *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005) (quoting *United States v. Bauerbach*, 55 M.J. 501, 504 (A. Ct. Crim. App. 2001)).

#### Law and Analysis

Appellant submits that, although the sentence imposed was within the terms of the plea agreement, it is unduly severe in light of the circumstances of the offense and the matters he presented in mitigation.

Article 66(d)(1), UCMJ, “provides that [this Court] ‘may affirm only . . . the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved.’” *United States v. Flores*, 84 M.J. 277, 280-81 (C.A.A.F. 2024). Fundamentally, this means that this Court must “determine whether it finds the sentence to be appropriate.” *Id.* at 281 (citation omitted).

Appellant asks this Court to exercise its broad power to ensure a just sentence, not to grant mercy. *See United States v. Nerad*, 69 M.J. 138, 146 (C.A.A.F. 2010) (citation omitted). In assessing sentence appropriateness, this Court considers “the particular appellant, the nature and seriousness of the offense[s], the appellant’s record of service, and all matters contained in the

record of trial.” *United States v. Sauk*, 74 M.J. 594, 606 (A.F. Ct. Crim. App. 2015) (en banc) (alteration in original) (citation omitted). “The power to review the entire record for sentence appropriateness includes the power to consider the allied papers, as well as the record of trial proceedings.” *United States v. Hutchison*, 57 M.J. 231, 234 (C.A.A.F. 2002).

Sentence appropriateness is reviewed under an abuse of discretion standard, granting significant deference to trial level sentencing decisions. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999). While a sentence falling within the range established by a plea agreement is presumptively appropriate, this presumption does not eliminate this Court’s responsibility to ensure justice and fairness by individually reviewing all facts and circumstances in the record. *United States v. Martinez*, 76 M.J. 837, 841-42 (A. Ct. Crim. App. 2017).

Here, the record reveals a young man shaped by instability, frequent relocations, and unresolved trauma. Def. Ex. A. Appellant’s childhood was marked by the absence of his biological father, the challenges of being a military child, and the emotional toll of family separations. *Id.* Despite these hardships, he sought out positive outlets in school and later in his military service, striving for structure and a sense of belonging. *Id.* His mental health struggles, exacerbated by isolation and past trauma, ultimately contributed to the conduct for which he stands convicted. *Id.*

The decision to accept a plea agreement with a maximum of six years’ confinement was a deliberate choice, motivated by Appellant’s hope of receiving meaningful treatment and the support of a family that has stood by him unconditionally. *Id.*; App. Ex. XIV.

A just sentence should reflect not only the seriousness of the offense, but also the potential for redemption. The five years’ confinement adjudged, in this context, is greater than necessary. It does not adequately account for the mitigating factors present: Appellant’s background, his remorse, his efforts to seek help, and the strong support system that will aid his rehabilitation.

This Honorable Court should reassess Appellant’s sentence under Specification 4 of the Charge and reduce his term of confinement to four years.

#### IV

**The Government can prove that 18 U.S.C. § 922 is constitutional as applied to Appellant when he was convicted of offenses that do not fall within the Nation’s historical tradition of firearm regulation.**

#### Standard of Review

Whether post-trial processing was properly completed is reviewed de novo. *United States v. Zegarrundo*, 77 M.J. 612, 613–14 (A.F. Ct. Crim. App. 2018) (citing *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000)). This Court reviews questions of jurisdiction, law, and statutory interpretation de novo. *United States v. Lepore*, 81 M.J. 759, 760 (A.F. Ct. Crim. App. 2021).

#### Law and Analysis

Appellant acknowledges that the CAAF recently held that this Court lacks the authority to act upon the indication of a firearm prohibition under 10 U.S.C. § 922. *United States v. Johnson*, \_\_ M.J. \_\_, No. 24-0004/SF, 2025 CAAF LEXIS 499, at \*2 (C.A.A.F. June 24, 2025). However, Appellant asserts that *Johnson* was wrongly decided and that the firearm prohibition indicated on the first indorsement to the EOJ is unconstitutional, as applied, because the offenses to which he pleaded guilty do not fall within the Nation’s historical tradition of firearm regulation. *See N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022) (holding that the Government must justify a firearm regulation by demonstrating that it is “consistent with this Nation’s historical tradition of firearm regulation”). Based on the Court of Appeals for the Armed Forces precedent, Appellant raises this issue for preservation purposes.

**WHEREFORE**, Appellant respectfully requests that this Court hold that 18 U.S.C. § 922 is unconstitutional as applied to him.

**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(FIRST)
v.	)	
	)	Before Panel No. 2
Senior Airman (E-4)	)	
<b>AARON T. COLEY,</b>	)	No. ACM 40675
United States Air Force,	)	
<i>Appellant.</i>	)	22 October 2025

**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(3) of this Court’s Rules of Practice and Procedure, the United States requests a 10-day enlargement of time, to respond in the above-captioned case. This is the United States’ first request for an enlargement of time.

The record of trial was docketed with this Court on 12 September 2024. As of the date of this request, 405 days have elapsed since docketing. The United States’ brief is currently due on 29 October 2025. If the enlargement of time is granted, the United States’ response will be due on 8 November 2025, and 422 days will have elapsed since docketing.

At a general court-martial, Appellant was convicted, consistent with his pleas, of one charge and three specifications of wrongful possession of child pornography and one specification of wrongful distribution of child pornography in violation of Article 134, UCMJ. Appellant was sentenced, by military judge, to a reprimand, reduction to the grade of E-1, and confinement for five years, and to be dishonorably discharged from the service. The Convening Authority took no action on the findings or sentence in this case.

The electronic record of trial contains 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate exhibits. The transcript is 124 pages. Appellant is currently confined.

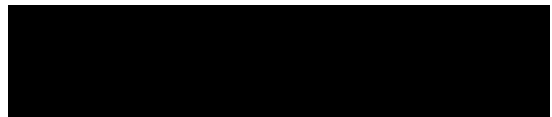
Undersigned counsel has completed review of Appellant's brief and the record of trial. Undersigned counsel has begun drafting the answer to Appellant's assignments of error but requires additional time to complete the draft and for supervisory review. This brief is undersigned counsel's second priority. Undersigned counsel anticipates filing the United States' answer in United States v. Griffin, No. ACM 40642, on 24 October. The brief in Appellant's case will be the first priority after that.

There is good cause for enlargement of time because an additional 10 days is needed to complete the brief and have supervisory review. Since being assigned Appellant's case, undersigned counsel has: prepared and filed the United States' answer brief to the appellants supplement to his petition for grant of review at the Court of Appeals for the Armed Forces (CAAF) in United States v. Gale, No. ACM 2025-01, on 30 September; filed a motion to attach in United States v. Griffin, No. ACM 40642, on 6 October; prepared for and argued United States v. Braum, No. 25-0046/AF, before the CAAF on 8 October; filed a motion for enlargement of time in United States v. Souza, No. ACM S32813 on 7 October; finalized the United States' answer in United States v. Griffin, No. ACM 40642, and routed it for supervisory review. Undersigned counsel has also been involved in roundtables and moots courts for 5 other oral arguments in which JAJG will participate from 21-29 October.

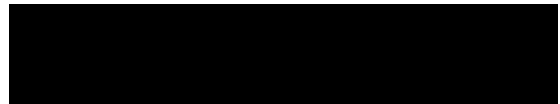
While neither the record nor the number of assignments of error is particularly lengthy, the first AOE involves a complex issue of double jeopardy relating to this Court's newly issued opinion in United States v. Casillas. Undersigned counsel's workload and duties have prevented completion of the necessary research and analysis to file the brief without an extension. Due to office workload, there is no other appellate government counsel who could complete the brief sooner. The other counsel in the office all have assigned briefs and duties that restrict their abilities.

Additionally JAJG, as a whole, currently has 15 briefs (answer briefs and motions for reconsideration) with due dates pending at this Court and one brief with a pending due dates at CAAF all requiring supervisory review. An extra 10 days will ensure there is adequate time for undersigned counsel to prepare a thorough brief that is helpful to the court and to secure supervisory review.

**WHEREFORE**, the United States respectfully requests that this Court grant this motion for an enlargement of time.



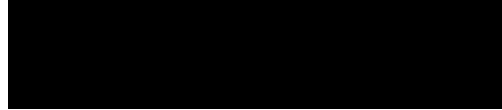
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**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 22 October 2025.



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**IN THE UNITED STATES AIR FORCE  
COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	ANSWER TO ASSIGNMENTS OF
<i>Appellee,</i>	)	ERROR
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM 40675
<b>AARON T. COLEY</b>	)	
United States Air Force	)	5 November 2025
<i>Appellant.</i>	)	

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**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE**  
**COURT OF CRIMINAL APPEALS**

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**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	ANSWER TO ASSIGNMENTS OF
<i>Appellee,</i>	)	ERROR
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM 40675
<b>AARON T. COLEY</b>	)	
United States Air Force	)	5 November 2025
<i>Appellant.</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

**ISSUES PRESENTED**

**I.**

**WHETHER APPELLANT’S RIGHTS AGAINST DOUBLE  
JEOPARDY UNDER THE FIFTH AMENDMENT WERE  
VIOLATED WHEN APPELLANT WAS TWICE  
CONVICTED FOR THE SAME “MATERIAL,” A SAMSUNG  
GALAXY TABLET.**

**II.<sup>1</sup>**

**WHETHER APPELLANT’S SENTENCE WAS  
INAPPROPRIATELY SEVERE.**

**III.**

**WHETHER THE GOVERNMENT CAN PROVE THAT 18  
U.S.C. § 922 IS CONSTITUTIONAL AS APPLIED TO  
APPELLANT WHEN HE WAS CONVICTED OF OFFENSES  
THAT DO NOT FALL WITHIN THE NATION’S  
HISTORICAL TRADITION OF FIREARM REGULATION.**

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<sup>1</sup> Appellant personally raised issues II and III under United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

**STATEMENT OF CASE**

Consistent with his pleas, and pursuant to a negotiated plea agreement, Appellant was convicted at a general court-martial of one charge with three specifications of wrongful possession of child pornography and one specification of wrongful distribution of child pornography in violation of Article 134, UCMJ. (ROT Vol. 1, *Entry of Judgment* (EOJ); App. Ex. XIV, *Offer for Plea Agreement*).

The total maximum sentence Appellant could receive for his charged crimes was a reprimand, a reduction to the grade of E-1, total forfeitures, confinement for 50 years, and a dishonorable discharge. (R. at 85). Appellant’s negotiated plea agreement limited his potential confinement to a maximum of four years and a minimum of six months for specifications 1, 2, and 3, and a maximum of six years and a minimum of three years for specification 4. (App. Ex. XIV, *Offer for Plea Agreement*). It required that all periods of confinement to run concurrently. (Id.) The judge was required to sentence Appellant to a bad conduct discharge but was authorized to sentence Appellant to a dishonorable discharge. (Id.)

The judge sentenced Appellant to a reprimand, reduction to the grade of E-1, five years of confinement, and a dishonorable discharge. (R. at 124). The confinement adjudged for each specification was:

<b>Specification</b>	<b>Confinement</b>
Specification 1: Possession of child pornography on divers occasions in or near North Dakota between on or about 3 November 2021 and on or about 27 March 2022	Three years
Specification 2: Possession of child pornography on divers occasions at or near Al Dhafra Air Base between on or about 31 March 2022 and on or about 20 June 2022	Three years
Specification 3: Possession of child pornography on divers occasions in or near Japan between on or about 5 January 2020 and on or about 2 November 2021	Three years
Specification 4: Distribution of child pornography in or near North Dakota on or about 9 March 2022:	Five years

(EOJ). All confinement was adjudged to run concurrently. (Id.)

### **STATEMENT OF FACTS**

From approximately 20 August 2018 until 2 November 2021, Appellant was stationed at Misawa Air Base, Japan. (Pros. Ex. 2, para. 2). Around 3 November 2021, Appellant PCS'd from Misawa Air Base, Japan to Grand Forks Air Force Base, North Dakota. (Id.) Appellant received deployment orders from North Dakota to Al Dhafra Air Base, Abu Dhabi, United Arab Emirates, and arrived at his deployed location on around 1 April 2022. (Id.)

#### ***North Dakota: 3 November 2021 – 27 March 2022***

Specification 1 alleged,

In that [Appellant], [. . . ] did, in or near the state of North Dakota, between on or about 3 November 2021 and on or about 27 March 2022, on divers occasions, knowingly and wrongfully possess child pornography, to wit: digital images and videos of a minor or what appears to be a minor, engaging in sexually explicit conduct, and that said conduct was of a nature to bring discredit upon the armed forces.

*(Charge Sheet).*

During his Care inquiry Appellant explained why he was guilty of Specification 1. (R. at 37-48). He said that between 3 November 2021 and 27 March 2022 he lived in Grand Forks, North Dakota. (R. at 37). During that time, he intentionally saved multiple images and videos of child pornography on his Samsung Galaxy tablet. (R. at 37; Pros. Ex. 1, *Stipulation of Fact* at para. 17).

Appellant explained that he possessed videos and photographs in various file formats including “JPEGs, PNGs, and MP4 videos.” (R. at 38). While he did not remember the specific images he saved during that time, he reviewed the 24 files identified in the Stipulation of Fact and generally remembered possessing these types of images between 3 November 2021 and 27

March 2022. (R. at 37-38). He discussed the evidence with his defense counsel, a digital forensics expert, and a pediatrician expert and explained the files contained images and videos of children under 12 years old engaged in sexual acts. (R. at 37).

Appellant explained how he obtained the images and videos. Appellant went to a website where a QR code to an online application called Kik Messenger was posted. (R. at 45-47).

Appellant knew the QR code led to a group chat where child pornography was posted and he scanned it to intentionally get into the group. (Id.) Once in the group chat, a person sent the files in a group chat, and Appellant downloaded them. (R. at 45-46). Appellant admitted that when he possessed the images and videos that he knew that they were child pornography. (R. at 47).

The stipulation of fact identifies 24 unique files of child pornography that Appellant downloaded between 3 November 2021 and 27 March 2022.

milk_x137x.jpg	c94b9c40-b7c0-4a82-b8f8-2a722b1a681b.mp4
FukLol_x62x.jpg	1567805991917.jpg
FukLol_x59x.jpg	b0607683cb3cfd8affa.jpg
fr546.jpg	Felixxxx113916xhWBxaa5.jpg
fr545.jpg	FukLol x52x.jpg
fr543.jpg	FukLol x71x.jpg
fr542.jpg	img-kids-porn-3.jpg
DildoPLay_x6xa.jpg	img-kids-porn-6.jpg
1577524631.jpg	milk x117x.jpg
1572047511480.jpg	pthc-after-fuck.jpg
122.gif	0b944c0a-22e6-4d04-96c9-c8a902801306.mp4
	-912875907-1683871360_embedded_1.jpg
	135.jpg

(Pros. Ex. 2, *Stipulation of Fact* at paras. 19-20).

***Al Dahfra, Abu Dhabi, United Arab Emirates: 31 March 2022 – 10 June 2022***

During his Care inquiry, Appellant explained why he was guilty of Specification 2 by possessing child pornography on divers occasions between on or about 31 March 2022 and on or about 10 June 2022 at or near Al Dhafra, Abu Dhabi, United Arab Emirates. (R. at 48-60). He said he was deployed to Al Dhafra Air Base, Abu Dhabi, UAE between on or about 1 April 2022

and 10 June 2022. (R. at 52). He explained that he “knew and intentionally saved multiple images and videos of child pornography on [his] ASUS ROG cell phone and [his] Samsung Galaxy cellphone.” (R. at 52). Appellant admitted that there were approximately nine pictures saved to his ASUS ROG cell phone and four images and videos saved to his Samsung Galaxy cell phone on various dates between 1 April 2022 and 10 June 2022. (Id.)

As with Specification 1, Appellant explained the visual depictions were pictures and videos in the form of PNGs, JPEGs, and MP4s. (R. at 53). He explained that the images and videos were child pornography after reviewing the evidence and consulting a digital forensics and pediatrician expert. (R. at 52-53).

The images contained children displaying their genitalia in a sexual manner such as by spreading their genitalia with their fingers as well as children being penetrated by adult penises. (R. at 54). Appellant believed the depictions were of actual minors because of their prepubescent physical development after reviewing the evidence and consulting a pediatrician. (R. at 54-55).

Appellant explained that he obtained these files by joining a group chat on Kik Messenger and downloading the images and videos when they were sent “in that group chat.” (R. at 58). He got into the group chat by using a “QR code from the Internet.” (R. at 59). He intentionally joined a group chat that he knew specifically dealt in exchanging child pornography. (R at 59).

*Japan: 5 January 2020 – 2 November 2021*

Specification 3 alleged,

In that [Appellant], [ . . . ] did, in or near the country of Japan, between on or about 5 January 2020 and on or about 2 November 2021, on divers occasions, knowingly and wrongfully possess child pornography, to wit: digital images and videos of a minor or what appears to be a minor, engaging in sexually explicit conduct, and that said conduct was of a nature to bring discredit upon the armed forces.

*(Charge Sheet).*

During the Care inquiry, Appellant explained why he was guilty of Specification 3. (R. at 61-72). Appellant said he was stationed at Misawa, Japan between on or about 20 August 2018 and on or about 2 November 2021. (R. at 64).

Appellant explained that on various dates between on or about 5 January 2020 and 2 November 2021 he knowingly and intentionally downloaded around 21 images and videos of child pornography to his Samsung Galaxy tablet. (R. at 64-65, 66; Pros. Ex. 1, *Stipulation of Fact* at para. 36).

Like Specifications 1 and 2, Appellant explained he knew the images depicted child pornography because the images and videos showed children that appeared be under the age of 12 years old engaged in sexually explicit conduct with adult males, such as being penetrated by adult men, performing oral sex on adult men, or exposing their genitalia. (R. at 64-65, 66). He also consulted a pediatrician and a digital forensics expert to reach this conclusion. (Id.)

Appellant explained that he obtained the files by downloading them from a group chat in Kik Messenger. (R. at 70-71). He intentionally joined the group by scanning a QR code for a group chat that he knew was dedicated to child pornography and where he could obtain child pornography. (R. at 71).

Between 5 January 2020 and 2 November 2021, Appellant downloaded 21 unique files to his tablet. (Id. at paras. 37-40). Two were downloaded in February 2020 but then deleted: 88a24917-005e4291-8185-56c96ff81c9d and ef3a1b4b-c3d6-4fb9-a990-bb9d9c0649b5. (Id. at para. 37). The remainder were:

793656796492911521	4398213522498233549
1071317470238949727	-4417445683284458986.
-1467505963090360126	
-1507734330994040334	
3025761196799014023	
3325494847717860050	
3395949369511727346	
-4018021905048787817	
4249534717326565884	
4656060074269132911	
5164833233233150093	
5188822855626870888	
-5667867026841091673	
-6061733610687824819	
7061538141210253045	
8493870566552105096	
8947931082561717826.	

(Id. at paras. 39-40).

### ***Waiver of Motions***

Appellant’s plea agreement did not include a “waive all waivable motions” provision. (App. Ex. XIV). When discussing whether trial defense counsel was waiving the motions she did file, the judge advised Appellant that “certain motions are waived, or given up, if [his] defense counsel does not make the motion prior to entering [his] plea. Some motions, however, such as motions to dismiss for a lack of jurisdiction, for example, can never be given up.” (R. at 24). She asked Appellant if he understood that meant he would give up the right to make these kinds of motions as a matter of law when he pleads guilty. (R. at 24-25). After conferring with counsel, and hearing the question a second time, Appellant affirmed that he understood. (R. at 25).

## ARGUMENT

### I.

**APPELLANT WAIVED THE ISSUE OF WHETHER SPECIFICATIONS 1 AND 3 WERE MULTIPLICIOUS, BUT EVEN IF HE DID NOT EACH SPECIFICATION COVERS A SEPARATE UNIT OF PROSECUTION BY COVERING DIFFERENT FILES THAT CONTAIN DATA CAPABLE OF CONVERSION INTO A VISUAL IMAGE.**

#### **Standard of Review**

Objections based on defects in the preferral, forwarding, or referral of charges must be raised before pleas are entered. R.C.M. 905(b)(1). Failure to do so “forfeits the defenses or objections absent an affirmative waiver.” R.C.M. 905(e)(1). When an issue is forfeited, it is reviewed for plain error but when the issue is waived it cannot be reviewed at all. United States v. Hardy, 77 M.J. 438, 440 (C.A.A.F. 2018) (citing United States v. Ahern, 76 M.J. 197 (C.A.A.F. 2017)).

“[A]n unconditional plea of guilty waives all nonjurisdictional defects at earlier stages of the proceedings . . . .” Id. at 442 (citation and quotation omitted). Even multiplicity, which is grounded in the Double Jeopardy clause, is waived by an unconditional guilty plea unless the appellant can show offenses are “facially duplicative; that is, factually the same.” United States v. Pauling, 60 M.J. 91, 94 (C.A.A.F. 2004) (quoting United States v. Lloyd, 46 M.J. 19, 23 (C.A.A.F. 1997)). Whether offenses are facially duplicative is a matter of law that this Court reviews de novo. Id.

#### **Law and Analysis**

The Double Jeopardy clause of the Fifth Amendment prohibits any person from being “twice put in jeopardy of life or limb” for the same offense. U.S. Const. amend. V. Article 44, UCMJ, codifies the Double Jeopardy clause for military members by stating, “no person may,

without his consent, be tried a second time for the same offense.” The doctrine of multiplicity addresses the Double Jeopardy clause by prohibiting “the charging of a single offense in several counts and is intended to prevent multiple punishment for the same act.” United States v. Hurt, 795 F.2d 765, 774 (9th Cir. 1986) (citation omitted); *See* United States v. Gladue, 67 M.J. 311, 313 (C.A.A.F. 2009) (“Multiplicity is grounded in compliance with the constitutional and statutory restrictions against Double Jeopardy.”)

**A. Appellant waived any claim of multiplicity by operation of law when he pleaded guilty unconditionally.**

“Just as a defendant who pleads guilty to a single count admits guilt to the specified offense, so too does [an accused] who pleads guilty to two counts with facial allegations of distinct offenses concede that he has committed two separate crimes.” United States v. Broce, 488 U.S. 563, 570 (1989). In Broce, the defendants were charged with rigging two sets of bids for state highway contracts. Id. at 565. They eventually pleaded guilty to two counts of conspiracy. Id. at 566. After another court tried different defendants for the same crime and ruled that the rigged bids were part and parcel of a single conspiracy, the Broce defendants attacked their conviction for the first time on appeal alleging a violation of the Double Jeopardy clause. Id. at 567. The Supreme Court rejected their challenge and found their plea of guilty waived the double jeopardy challenge. The Court recognized that Menna v. New York, 423 U.S. 61, 63 n.2 (1975), required judging the charge “on its face.” Id. at 575. The Court determined that if the charge has “facial allegations of distinct offenses” then a plea of guilty concedes that an appellant has committed separate crimes. Id. at 570.

Appellant’s case is the same as Broce. He pleaded guilty to two specifications which are comprised of “facial allegations of distinct offenses” by alleging different locations, different timeframes, and, as explained in section B.1. below, different material for possession of child

pornography. (*Charge Sheet*; Pros. Ex. 1, *Stipulation of Fact*). He now challenges those specifications for the first time on appeal after this Court, in Casillas, found specifications to be multiplicitous if a separately charged image is contained within the same physical device. Like the Supreme Court did in Broce, this Court should find Appellant's challenge was waived because the specifications are facially distinct and so Appellant admitted to committing separate crimes through his unconditional guilty plea.

Although this Court has the authority to pierce waiver in this case, it should decline to do so. This Court has adhered to the principle that it “will only ignore waiver in the most deserving cases.” United States v. Emerson, 2024 CCA LEXIS 2, \*7 (A.F. Ct. Crim. App. 3 Jan 2024) (quoting United States v. Blanks, 2017 CCA LEXIS 186, \*22, n.11 (A.F. Ct. Crim. App. 16 Mar 2017)). Appellant's case is not a most deserving case for two reasons: (1) he pleaded guilty pursuant to a highly favorable plea agreement and (2) he affirmed that he understood the effects of his guilty plea.

Unlike Casillas, Appellant pleaded guilty pursuant to a negotiated plea agreement. *C.f.* App. Ex. XIV, *Offer for Plea Agreement*; Casillas, 2025 CCA LEXIS at \*2. He received a substantial benefit from his offer to plead guilty because not only was his confinement exposure reduced from 50 years to a maximum of six years, but also the two specifications he now challenges were prevented from running concurrently reducing the possibility of 20 years to a maximum of three years. (App. Ex. XIV, *Offer for Plea Agreement*; Manual for Courts-Martial, United States, pt. IV, para. 95(d)(1) (2019 ed.<sup>2</sup>) (MCM)). Also, the trial judge explained to Appellant that his unconditional plea of guilty would waive all motions, except for jurisdiction, by operation of law. (R. at 24-25). Before accepting that fact, Appellant took the time to confer

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<sup>2</sup> All references to the MCM are to the 2019 ed. unless stated otherwise.

with his counsel and had the judge repeat the statement a second time. (R. at 25). Only then did he agree that he understood what he was giving up by pleading guilty. (R. at 25).

Appellant pleaded guilty because he was guilty and because he believed it was in his best interest to do so. In fact, he received a substantial benefit by doing so. He also knew he was giving up any issue regarding multiplicity because it is a non-jurisdictional issue that is waived by operation of law through an unconditional guilty plea. Therefore, this Court should decline to pierce waiver and deny Appellant's requested relief.

**B. Specifications 1 and 3 do not violate the Double Jeopardy clause because they cover separate units of prosecution and arise from separate impulses.**

Even if this Court pierces Appellant's waiver of the issue, Specifications 1 and 3 are not multiplicitous. There are two distinct "species" of multiplicity: single-act/multiple statute and multiple-violations/single statute. United States v. Forrester, 76 M.J. 479, 485 (C.A.A.F. 2017) (quotation and citation omitted). Single-act/multiple statute cases apply the "Bockburger/Teters analysis." United States v. Campbell, 71 M.J. 19, 23 (C.A.A.F. 2012). Thus, unless statutory intent is clear, "where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." Blockburger v. United States, 284 U.S. 299, 304 (1932).

The second "species" of multiplicity occurs when there are charges for multiple violations of the same statute based on arguably the same criminal conduct. Forrester, 76 M.J. at 485. Specifications 1 and 3 alleged the same statute, possession of child pornography in violation of Article 134. (*Charge Sheet*). Appellant now challenges these two specifications by claiming they are based on the same criminal conduct. (App. Br. at 4). Therefore, this is the type of multiplicity at issue.

In single statute cases, the Court does not apply the elements test. Instead, it uses all the tools of statutory interpretation to determine whether the statute was aimed at an offense continuous in character or one “that can be committed *uno ictu* (in one stroke).” United States v. Hernandez, 78 M.J. 643, 646 n4 (C.G. Ct. Crim. App. 2018) (quoting Blockburger, 284 U.S. at 286)); United States v. Neblock, 45 M.J. 191, 196-198 (C.A.A.F. 1996). One part of this analysis requires evaluating the statutory language to determine what “aspect of criminal activity that Congress intended to punish” – i.e. what is the allowable unit of prosecution? United States v. Chipps, 410 F.3d 438, 448 (8th Cir. 2010) (citation and quotation omitted); Forrester, 76 M.J. at 485 (citation omitted).

A second part of this analysis requires evaluating whether the facts of the case implicate a single impulse or separate successive impulses. When there are “successive impulses [that] are separately given,” even if they unite in a “common stream of action,” separate specifications do not violate the Double Jeopardy clause. Neblock, 45 M.J. at 198 (quoting Blockburger, 284 U.S. at 301-302). Courts have evaluated the identity of the victim, the character of the offense, interruptions in the offense, and timing of the actions to determine whether the actions stemmed from one or separate impulses. Neblock, 45 M.J. at 198 (citations omitted).

**1. Specifications 1 and 3 are not multiplicitious because they address separate units of prosecution.**

Specifications 1 and 3 are not multiplicitious because each specification addresses different material because it charged different files which contain data capable of conversion into a visual image as the unit of prosecution. The language in the specifications make this clear by charging “on divers occasions.” (*Charge Sheet*). Possession of one unit of prosecution is a continuous course of conduct. See United States v. Ruiz, 710 F.3d 1077, 1081 (9th Cir. 2013) (“[P]ossession is presumed continuous absent specific evidence that the defendant lost

possession at some point.”). As a result, Appellant’s possession could only be divers (i.e. on two or more occasions) if he possessed multiple units of prosecution. *See United States v. Ross*, 68 M.J. 415, 417-18 (C.A.A.F. 2010) (explaining possession is a continuing offense but circumstances, such as possession of different images on different media, allows for charging on divers occasions).

Appellant’s claim that the material encompassing the unit of prosecution must be a “physical medium or device” is wrong. (App. Br. at 4). The plain language of Article 134, the ordinary definitions of file and data, federal caselaw, and *Forrester* all establish that a file is an allowable unit of prosecution because it is “material” that contains “data capable of conversion into a visual image.” *MCM*, pt. IV, para. 95(c)(4), (11). The Government therefore did not violate the Double Jeopardy clause by charging Appellant with two specifications where each specification covered unique files possessed at different times and on different continents.<sup>3</sup>

This Court’s unpublished opinion in *United States v. Casillas*, 2025 CCA LEXIS 445, is unpersuasive for this case because the Court’s reasoning (1) incorrectly expands our superior Court’s holding in *Forrester*; (2) conflicts with the plain language of Article 134; (3) contradicts federal cases that have found files are “material” that contains data capable of conversion into a visual image; and (4) misapplies federal caselaw. *See In re Collins*, 79 M.J. 640, 643 (A.F. Ct. Crim. App. 2019) (Unpublished decisions are not binding precedent upon this Court).

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<sup>3</sup> The Government could have charged Appellant for each discrete file. Consolidating Appellant’s criminal conduct based on Appellant’s location and the timeframe significantly limited Appellant’s punitive exposure and was to his benefit. *United States v. Poole*, 26 M.J. 272, 274 (C.M.A. 1988) (explaining that the Government could have pleaded “at least 87 specifications” and so the court was “reluctant to criticize” the Government “particularly since it was to the benefit of appellant to do so.”).

**a. Forrester does not hold that physical material is the only allowable unit of prosecution under Article 134, *Child Pornography*.**

Child pornography is defined as “material that contains” an illicit “visual depiction.” MCM, part IV, para. 95(c)(4). Visual depiction “includes any photograph, picture, film [. . .] *or any digital or electronic data capable of conversion into a visual image.*” *Id.* at para. 95(c)(11). The allowable unit of prosecution for child pornography offenses under Article 134, UCMJ, is the “material that contains” the illicit visual depiction. Forrester, 76 M.J. at 486. Our superior Court recognized that federal courts interpreted a similar provision under 18 U.S.C. §2252A to permit “separate counts of possession for each device or material possessed that contains” an illicit visual depiction. *Id.* at 487 (citation omitted).

Contrary to Appellant’s argument, Forrester does not restrict the allowable unit of prosecution under Article 134, UCMJ, to physical material. (App. Br. at 4). While the facts in Forrester involved physical material – a laptop, a hard drive, and a cloud-storage server – the Court did not establish a bright line rule that *only* physical material may be treated as a unit of prosecution. Instead, the Court merely explained that the allowable unit of prosecution is the “material that contains” the illicit visual depictions, not the illicit visual depictions themselves. Forrester, 76 M.J. at 487. This means that the image displayed on photopaper, the images on a reel of film, or the images displayed on a screen when computer software interprets data in a file are not the allowable unit of prosecution but the photopaper, reel of film, and file containing the data are.

Put another way, the Court left open the possibility that a computer file could be “material that contains” an illicit visual depiction in violation of Article 134 because the case before it did not require discerning whether a file contains “data capable of conversion into a visual image.” MCM, part IV, para. 95(c)(11) (defining a visual depiction). Therefore, this

Court must engage in statutory interpretation to discern whether a file is material that contains an illicit visual depiction.

**b. The plain language of Article 134 establishes that a file is material that contains electronic data and is distinct from the data itself.**

This Court must define three terms to determine whether Specifications 1 and 3 are multiplicitous – (1) material; (2) contain; (3) file. As with all statutory interpretation, this Court must begin with the text. Forrester, 76 M.J. 486. Each word should be given its “ordinary, contemporary, and common meaning.” United States v. Andrews, 77 M.J. 393, 400 (C.A.A.F. 2018) (quoting Star Athletica, L.L.C. v. Varsity Brands, Inc., 580 U.S. 405 (2017)). “[G]eneral words . . . are to be accorded their full and fair scope. They are not to be arbitrarily limited.” United States v. Lopez, \_\_\_ M.J. \_\_\_, 2025 CAAF LEXIS 735, \*27 (2 Sep. 2025) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 101 (2012)). The plain meanings of each of the words – material, contain, and file – all establish that a file is material that contains data and is distinct from the data itself.

**(1) The plain meaning of “material” is not confined to physical material.**

Appellant misapplies Forrester by assuming the Court defined “material” to mean physical material. (App. Br. at 4). This is wrong because the Court in Forrester never defined “material.” Instead, it merely referenced a withdrawn opinion that explained that “contain” in 18 U.S.C. § 2252 suggests the visual depiction must have some sort of host. United States v. Falk, 50 M.J. 385, 391 (C.A.A.F. 1999). *But see* United States v. Falk, 50 M.J. 385 (30 September 1999) (Ordering withdrawal of its opinion as it relates to the construction of 18 U.S.C. § 2252(a)). The Court used this analysis to find that “material” must be distinct from the illicit visual depiction, but having a “host” does not restrict the term “material” to physical items. Because there is not a controlling definition for “material” this Court must apply the ordinary

meaning without arbitrarily constraining the term. Lopez, \_\_\_ M.J. \_\_\_, 2025 CAAF LEXIS at \*27.

“Material” is something that has qualities which give it individuality and by which it may be categorized. Merriam-Webster Dictionary, *Material* (noun), 1.a(2)<sup>4</sup>. Synonyms for “material” are “substance” and “stuff.” Collins English Dictionary, *Material* (noun)<sup>5</sup>.

**(2) The plain meaning of “contain” is to have within or comprise.**

The “ordinary, contemporary, and common meaning” of contain is “to have within” or “comprise.” Merriam-Webster Dictionary, *Contain*, 2.a-b<sup>6</sup>. In the context of Article 134, “material that contains” refers to a medium which is “substance or material which is used for a particular purpose.” Collins English Dictionary, *Medium* (5. Countable noun)<sup>7</sup>.

When applied to the text of Article 134, these ordinary definitions lead to an unambiguous statute. Possessing child pornography means possessing a medium that has within it or is comprised of “any digital or electronic data capable of conversion into a [prohibited] visual image.” MCM, pt. IV, para 95(c)(11).

**(3) A file is a medium that has within it or is comprised of digital or electronic data.**

Our superior Court explained this concept, in less detail, in United States v. Navrestad, 66 M.J. 262, 265-66 (C.A.A.F. 2008) when it was distinguishing between a hyperlink and a file.

The Court said, a hyperlink is a path to a website and “not a file that *contains* data that is

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<sup>4</sup> <https://www.merriam-webster.com/dictionary/material> (last accessed 5 Nov 2025).

<sup>5</sup> <https://www.collinsdictionary.com/us/dictionary/english-thesaurus/material> (last accessed 31 Oct 2025).

<sup>6</sup> <https://www.merriam-webster.com/dictionary/contain> (last accessed 31 Oct 2025).

<sup>7</sup> <https://www.collinsdictionary.com/us/dictionary/english/medium> (last accessed 31 Oct 2025).

‘capable of being converted’ into visual images.’ Id. (emphasis added). The basics of computer science support the Court’s explanation.

Computer data is a collection of 1s and 0s – called bits – that the operating system interprets and displays. (Department of Computer Science and Statistics, University of Rhode Island, *Data In The Computer*.<sup>8</sup>) A file is a collection of data that is stored in a computer system. (Merriam-Webster Dictionary, *File* (noun)(2)<sup>9</sup>; Lenovo, *Glossary – File*.<sup>10</sup>) File size is the amount of data a file contains and is expressed by measuring how many bytes – the term for a group of 8 bits – are within the file (kilobyte; megabyte; gigabyte etc.). (Vancouver Public Library, *File Size*<sup>11</sup>; Federal Agencies Digital Guidelines Initiative, *File Size*<sup>12</sup>).

A file can have *zero data* in it which is known as a “zero-byte” or empty file. See Price v. Cnty. of Salem, No. 22-6042 (MAS) (JTQ), 2025 U.S. Dist. LEXIS 106826, at \*16, \*18 (D.N.J. June 5, 2025) (New Jersey Dist. Ct. 5 June 2025) (explaining that a computer system for CCTV footage revealed several “zero-byte” or empty files; “CCTV video files were showing on the [system] but the files had zero data”); In re Google Digit. Advert. Antitrust Litig., No. 21-MD-3010 (PKC), 2023 U.S. Dist. LEXIS 49016, at \*41 (S.D.N.Y. Mar. 17, 2023) (S.D.N.Y. 17

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<sup>8</sup> <https://homepage.cs.uri.edu/faculty/wolfe/book/Readings/Reading02.htm> (last accessed 29 Oct 2025).

<sup>9</sup> <https://www.merriam-webster.com/dictionary/file#dictionary-entry-5> (last accessed 31 Oct 2025).

<sup>10</sup> <https://www.lenovo.com/us/en/glossary/file/?orgRef=https%253A%252F%252Fwww.google.com%252F> (last accessed 29 Oct 2025).

<sup>11</sup> <https://www.vpl.ca/guide/inspiration-lab-general-technology-skills/file-size> (last accessed 31 Oct 2025).

<sup>12</sup> <https://www.digitizationguidelines.gov/term.php?term=filesize#:~:text=X%20%7C%20Y%20%7C%20Z-,Term:%20File%20size,Category:%20General%20See%20also> (last accessed 31 Oct 2025).

March 2023) (allowing filtering “zero-byte” files from ESI discovery). But a single file can also contain data capable of displaying thousands of pages of information, thousands of images, or thousands of hours of audio. See United States v. Harper 218 F.3d 1285, 1287 n.2 (11th Cir. 2000) (explaining that 600 to 1000 pornography pictures were contained in more than 10 electronic files); State v. Shreve, 2017 Ariz. App. Unpub. LEXIS 51, \*1 (Ct. App. Jan. 12, 2017) (explaining two different files each contained over 100 photographs).

This brief is a perfect example of the difference between data and the file which contains it. Currently, the data in this file instructs the computer to display text. If I were to paste 31 pages of images into this file that would be adding data to the file so that the operating system displays each image. Deleting any one of those images would alter the data within the file by removing the data necessary to display that visual image on the screen even though the file itself would still exist. This is because files are distinct from the data they contain.

But even in a file that contains a single image, the file is still distinct from the data. File corruption illustrates this fact. The more correct term for file corruption is data corruption because it results from errors in the data necessary to write, read, store, transmit, or process the data within a file.<sup>13</sup> A file still exists even when that data within it is unreadable because of corruption. But that data is no longer capable of conversion into a visual image and so it is not a “visual depiction” under Article 134, UCMJ.

The definition of file is clear – much like a hard drive or photo paper or film, it is a container for data to display an image, but it is not the image itself. That a file changes size based on the data it contains, can contain no data, or can have data incapable of displaying a

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<sup>13</sup> Data Core, Glossary – *data corruption*, <https://www.datacore.com/glossary/data-corruption/> (last accessed 3 Nov 2025)

visual image because of corruption supports that a file is distinct from the data itself. Therefore, it is a medium which contains a visual depiction because it can contain “data capable of conversion into a visual image.” MCM, pt. IV, para. 95(c)(11). Because it is a medium that can contain a visual depiction, a file is an allowable unit of prosecution under Forrester, 76 M.J. at 487.

This Court should not rely on its unpublished decision in Casillas because this Court arbitrarily limited the word “material” to physical materials by overlooking the plain meaning of the words and failing to analyze the nature of files and the data they contain. Also, the Court seemingly equated computer files with images which is incorrect because it contradicts the plain meaning of file, material, and contain. Casillas, 2025 CCA LEXIS at 24-25. (Repeatedly defining material as having to contain illicit images rather than data). As explained above, a file can exist without the data necessary to display an image. So this Court should not follow its unpublished opinion.

**c. Federal cases support that files are material that contain illicit visual depictions because they contain data capable of conversion into an image.**

Federal cases support the basics of computer science that files are a medium that contains data and that the plain language used in Article 134 covers that type of medium.

18 U.S.C. §2252A is what Article 134 is “*generally* based” on but it is not what it is *exclusively* based on. MCM, App. 17, Analysis of Punitive Articles, para. 66 (emphasis added). By using the adverb “generally,” the drafters were signaling that other federal statutes criminalizing possession of child pornography contributed to the language in Article 134. This becomes more apparent when three other federal statutes addressing possession of child pornography are compared with the language in Article 134 – 18 U.S.C. §2252(a)(4)(B), 18 U.S.C. §2256(5), and 18 U.S.C. Appx. §2G2.4.

<b>Article 134</b>	Child pornography means material that contains . . . a visual depiction . . .
<b>§2252A</b>	Criminalizes possessing . . . any book, magazine, periodical, film . . . or any other material that contains an image of child pornography . . .
<b>§2252</b>	Criminalizes possessing . . . 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction . . .
<b>§2256</b>	Child pornography means any visual depiction . . .
<b>§2G2.4</b>	If the offense involved possessing ten or more books, magazines, periodicals, films, video tapes, or other items containing a visual depiction . . .

<b>Article 134</b>	Visual depiction includes any developed or undeveloped photograph . . . or any digital or electronic data capable of conversion into a visual image
<b>§2256</b>	“Visual depiction” includes any undeveloped film and videotape, data stored on a computer disk or by electronic means which is capable of conversion into a visual image. . .

Each of these statutes is nearly identical to the language of Article 134, UCMJ, and the definitions. As a result, federal cases analyzing the plain language of §2252 and §2G2.4 should be just as persuasive to this Court as §2252A to answer whether the plain language of Article 134 includes computer files as material which contains data capable of conversion into a visual image.

The 5th Circuit applied a detailed plain language analysis of 18 U.S.C. §2252A(a)(2)(B) and found that computer files can be a proper unit of prosecution. United States v. Knowlton, 993 F.3d 354, 357 (5th Cir. 2021). The court recognized that §2252A uses the definition of child pornography and visual depiction from §2256. The court explained that visual depiction is defined in §2256 to include data which is capable of conversion into a visual image. Because the statute does not define “material” or “contain” the court applied the ordinary definitions.

The court explained that a computer file is “material” because it is a “basic unit of storage” and therefore it can be a “medium containing” child pornography. Id. (citing United States v. Woerner, 709 F.3d 527, 540 (5th Cir. 2013); File, Microsoft Computer Dictionary 211 (5th ed. 2002)). The court then applied the plain meaning of “contain” – “to have within;

enclose” and “to have as component parts; comprise; include.” Id. (citation omitted). The court found that files are comprised of data. Id. So the court held that receipt of computer files is properly chargeable as receipt of material containing child pornography under §2252A. Id.<sup>14</sup>

In United States v. Vig, 167 F.3d 443 (8th Cir. 1999), the appellant was convicted of violating 18 U.S.C. §2252(a)(4)(B) by possessing 3 or more computer image files that were located on a single hard drive. The statute at that time criminalized possession of “three or more books, magazines, periodicals, films, video tapes, or “other matter” containing any visual depiction of a minor engaging in sexually explicit conduct. The court explained that the plain language “indicates that ‘other matter’ is simply something which, at a minimum, must be capable of containing a visual depiction.” Id. at 447. The court recognized that the computer image files all contained one, and some more than one, visual depiction. Id. The court concluded that the “plain common sense meaning of ‘other matter’ [containing a visual depiction] encompasses computer image files.” Id. at 488. The Seventh Circuit Court of Appeals similarly found files are “matter which contains” visual depictions under §2252 and §2G2.4. United States v. Hall, 142 F.3d 988, 998-999 (7th Cir. 1998).

Under §2G2.4, “[e]very circuit that has addressed the issue of whether an individual file constitutes an item has agreed with the government's position [that an individual file constitutes an item that contains a visual depiction].” United States v. Hilton, 257 F.3d 50 (1st Cir. 2001) (citing United States v. Harper, 218 F.3d 1285, 1287 (11th Cir. 2000) (per curiam); United States v. Demerritt, 196 F.3d 138, 141 (2d Cir. 1999); United States v. Perreault, 195 F.3d 1133, 1135

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<sup>14</sup> It is not significant that the charge in Knowlton was for receipt of child pornography rather than possession because both possession and receipt are included in the same section of §2252A. Therefore, the language for both possession and receipt is the same and so the plain language analysis applies equally to possession and receipt.

(9th Cir. 1999); United States v. Hall, 142 F.3d 988, 997-99 (7th Cir. 1998); United States v. Wind, 128 F.3d 1276, 1278 (8th Cir. 1997)).

The language of Article 134 – “material that contains” and “visual depiction” – are not only the same but likely derived from these federal statutes. These cases support that the United States’ interpretation of the plain language of Article 134 is correct – “material that contains” includes files that contain data capable of conversion into a visual image.

Holding that “material” under Article 134 excludes files leads to absurd results. The crimes of receipt, possession, and distribution of child pornography use the same “material that contains” language under Article 134. MCM, pt. IV, para. 95. If this Court disagrees with the plain language of the terms, and federal cases analyzing the plain language, and finds that a file is not a “material” under Article 134, then it is also not a “material” for receipt or distribution of child pornography. This would result in the Government being unable to prosecute a person for receiving or distributing child pornography unless the person is handed or distributes a physical device containing child pornography. Limiting the statute in such a way is clearly contrary to the intent of the statute because in this digital age pedophiles almost exclusively deal in computer files when trading images and videos of children being sexually abused.

This Court has seemingly already rejected the idea that receipt of child pornography requires a physical medium when it found “receiving child pornography can only logically mean taking possession of the *material which contains* the child pornography, whether it is a magazine, a disc, or a *file downloaded from the internet*.” United States v. Buford, 2020 CCA LEXIS 78, \*39 (A.F. Ct. Crim. App. 9 Mar. 2020) (unpub. op.) (emphasis added). Because a file downloaded from the internet is material which contains child pornography for receipt under

Article 134, it must also be material which contains child pornography for possession under Article 134.

**d. This Court’s unpublished opinion in Casillas is unpersuasive because it incorrectly expanded federal cases.**

This Court incorrectly applied United States v. Bopp, 79 F.4th 567 (5th Cir. 2023), United States v. Thomas, No. 24-1183, 2025 U.S. App. LEXIS 463 (7th Cir. Jan. 7, 2025), and United States v. Planck, 493 F.3d 501 (5th Cir. 2007)) in Casillas to find that a PDF was not the material which contained a visual depiction. Casillas, 2025 CCA LEXIS at \*28. These errors further support that this Court should not find its unpublished opinion persuasive.

“[G]eneral expressions, in every opinion, are to be taken in connection with the case in which those expressions are used.” Cohens v. Virginia, 19 U.S. 264, 399 (1821). This Court’s reliance on Bopp, Thomas, and Planck in Casillas was incorrect because the Court relied on the general expressions made in those cases and missed the distinction between charging a “device” and the file.

This Court correctly stated that federal circuits support the view that “where an accused is charged with possessing *a device* containing child pornography, possession of *the device* constitutes the offense” but it overlooked that there are cases, like Casillas, where the Government chooses to charge the files as the material and not the device. Casillas, 2025 CCA LEXIS at \*28 (emphasis added). While the cases cited by the Court support the argument that when the Government charges the physical device it is the device that constitutes the offense, that general expression does not support that the Government can *never* charge the file as the material that contains the image. An analysis of the facts of Bopp and Thomas shows this error.

In both Bopp and Thomas, the appellant was charged with possessing a physical device containing child pornography – not the files. In Bopp, the charge specifically alleged the phone

– “one Motorola Moto G Stylus android cellular phone” – as the material that contained the visual depictions and so the 5th Circuit was merely confirming that the material he was charged with could not be the files *in that case*. Bopp, 79 F.4th at 571.

In Thomas, 2025 U.S. App. LEXIS 463, the appellant was charged with one count of “knowingly possess[ing] material that contained images of child pornography” under 18 U.S.C. §2252A(a)(5)(B). The indictment “added that the child pornography [he] possessed ‘included’ two files identified by their partial file names.” Id. at \*2. At trial, the government presented two hard drives containing hundreds of images of child pornography as the material. Id. at \*3, 5-6. The court found that listing specific files in the indictment did not change that the government was charging the two hard drives as the material and not the files. Id. at \*5-6. The language of the charge supports this finding. The charge did not allege that the “material that contained” the child pornography “included” the two files, instead it said that the child pornography included the files. This distinction makes it clear that the government considered the hard drives the material and the files the images.

Neither of these cases involved the Government charging a file containing data as the material under the federal statutes as the Government did in Appellant’s case. In Appellant’s case, none of the specifications listed a physical device. (*Charge Sheet*). Instead, each specification alleged that appellant “on divers occasions, knowingly and wrongfully possess[ed] child pornography.” (Id.) As explained in section B.1. above, this language demonstrates that the government was not alleging the physical devices as the “material” that contained the illicit visual depictions because possession can only be divers if it involves discrete units of prosecution. Therefore, neither case means that the government cannot charge the files as the material containing the visual depiction in the form of data. Ross, 68 M.J. at 417-18 (C.A.A.F.

2010); Ruiz, 710 F.3d at 1081. To hold otherwise would incorrectly expand the general expression in these cases beyond their factual confines.

Finally, this Court’s analysis of Planck, in Casillas, overlooks the Fifth Circuit’s key explanation in Planck that “had the government proved separate acts leading to . . . possession [. . .] it [would be] . . . a different case.” Planck, 493 F.3d at 504 (quoting United States v. Prestenbach, 230 F.3d 780, 783 (5th Cir. 2000)) (first, third, and fourth alteration in original). The Fifth Circuit court relied on the fact that the government proved separate acts leading to possession on three material “each capable of independently storing” child pornography, and so the Government could charge separate counts. Id. The court was not faced with whether files are material capable of containing data capable of conversion into a visual image because, like Bopp and Thomas, the Government charged the devices as the material. But Planck’s reasoning supports that when the Government charges specific files as material containing data, so long as the Government proves separate acts leading to possession, it may charge individual specifications. Id. at 504.

Here, the Government proceeded on charges involving specific files. Each of the files was an allowable unit of prosecution because they contain data capable of conversion into a visual image. Nothing in Forrester limits the Government’s ability to charge files as material that contains the illicit visual depiction and the plain meaning of “material,” “contain,” and “file” support that a file is material which contains data capable of conversion into a visual image. Further the Government proved that Appellant’s possession stemmed from separate acts or impulses because his possession of individual files, with individual victims, occurred at different times and on different continents. *See* Neblock, 45 M.J. 191 (considering the character, interrupted nature, and different times to determine whether the offense was continuous or

separate acts). Even if these separate impulses were united in a “common stream of action,” separate specifications for separate impulses do not violate the Double Jeopardy clause. *Id.* at 198 (quoting *Blockburger*, 284 U.S. at 301-302).

Appellant was found guilty of possessing two sets of unique files that contained data capable of conversion into a visual image and so each specification was aimed at an allowable unit of prosecution. Further, because his possession occurred at distinct timeframes and on different continents each specification was aimed at separate impulses. (Pros. Ex. 1, *Stipulation of Fact; Charge Sheet*). For these reasons, the Double Jeopardy clause was not violated, and this Court should deny Appellant’s assignment of error.

**2. Even if this Court disagrees, there is no plain error because military courts have never addressed the specific type of visual depiction here.**

At the time of Appellant’s court-martial, no court had held that files are not material that contains data capable of conversion into a visual image. Even *United States v. Mobley*, 77 M.J. 749 (A. Ct. Crim. App. 2018), which Appellant relies on, did not address whether files contain data as defined under Article 134. (App. Br. at 4, 9). Instead the Army Court of Criminal Appeals made the same mistake as this Court in *Casillas* and merely analyzed what material contained the pictures and videos – a different kind of visual depiction than data under Article 134. *Mobley*, 77 M.J. at 752. Because the federal precedent supports that files are material that contains data capable of conversion into a visual image, and no military court had analyzed that specific issue, any error by the trial court in this regard cannot be plain error. *United States v. Schmidt*, 82 M.J. 68, 74 (C.A.A.F. 2022) (“An error cannot be plain or obvious if the law is unsettled on the issue at the time of trial and remains so on appeal.”). Therefore, this Court should deny Appellant’s requested relief.

Appellant’s alleged error must fail. Appellant waived any issue with multiplicity when he offered to unconditionally plead guilty pursuant to a plea agreement that reduced his confinement exposure by decades. Further, Specifications 1 and 3 were aimed at different units of prosecution and therefore were not multiplicitous. But even if this Court finds that files are not “material” that contains data, there could not have been plain or obvious error because no military court has reached that conclusion in a published case, and the plain language, and federal cases, support the conclusion that files contain data and are therefore material that contains data capable of conversion into a visual image under Article 134. For these reasons, this Court should deny Appellant’s requested relief.

## II.<sup>15</sup>

### **APPELLANT’S NEGOTIATED SENTENCE TO FIVE YEARS OF CONFINEMENT FOR POSSESSING AND DISTRIBUTING CHILD PORNOGRAPHY IS NOT INAPPROPRIATELY SEVERE.**

#### **Additional Facts**

Appellant pleaded guilty to one charge and three specifications of wrongful possession of child pornography and one specification of wrongful distribution of child pornography, in violation of Article 134, UCMJ, pursuant to a negotiated plea agreement. (*EOJ*; R. at 91, 96; App. Ex. XIV). His negotiated agreement included the following sentence limitations:

- For Specification 1, maximum confinement of four years, minimum confinement of six months
- For Specification 2, maximum confinement of four years, minimum confinement of six months
- For Specification 3, maximum confinement of four years, minimum confinement of six months
- For Specification 4, maximum confinement of six years, minimum confinement of three years

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<sup>15</sup> Appellant personally raises this issue under Grosteffon, 12 M.J. 431.

(R. at 94). All periods of confinement were to run concurrently. (Id.) Pursuant to the plea agreement, the judge was required to adjudge a bad-conduct discharge but was allowed to adjudge a dishonorable discharge if he determined it was appropriate based on the presentencing and sentencing evidence. (Id.) Appellant acknowledged that he understood these provisions of the agreement. (Id.)

Appellant affirmed that he had enough time to discuss his plea agreement with his defense counsel and that he was satisfied with their advice. (R. at 95). He confirmed that he entered into the plea agreement of his own free will and that nobody tried to force him to make the plea agreement. (Id.) He denied having any questions about the plea agreement and confirmed that he fully understood all the terms of the agreement and how it affected his case. (Id.) Finally, Appellant confirmed that he was pleading guilty, not only because he hoped to receive a lighter sentence, or relief set forth in the plea agreement, but because he was convinced that he was, in fact, guilty. (Id.)

In his unsworn statement, Appellant told the judge, “I can ensure [sic] you I will use this time in confinement to take positive steps to ensure I’m never in this position again. I know I deserve punishment, and I need to repay my debt to society for my crimes.” (R. at 113).

Appellant sought out and possessed heinous images and videos of children – including toddlers and infants – being bound, sodomized, penetrated and sexually abused. (R. at 110, 112, 115, 116; Pros. Ex. 2). In some videos, the victim’s distress can be heard. (R. at 115). Obtaining these images required Appellant to go through multiple websites to find and download this material. (R. at 113). He intentionally and repeatedly sought out at least five different Kik group chats that dealt in child pornography to obtain these images and videos. (R. at 113-114).

Appellant eventually progressed beyond merely possessing the images and began distributing them. (R. at 117). He distributed seven images involving six different children across two messaging groups which could reach upwards of 90 people. (R. at 117-119). Appellant admitted that the images he distributed were seen by others. (R. at 118). He was apprehended after law enforcement followed a tip reported to the National Center for Missing and Exploited Children. (Pros. Ex. 3, Stipulation of Fact).

### **Standard of Review**

This Court reviews the issue of sentence appropriateness de novo. United States v. Lane, 64 M.J. 1, 2 (C.A.A.F. 2006).

### **Law and Analysis**

This court “may affirm only . . . the sentence or such part or amount of the sentence, as [it] finds correct in law and fact and determines, on the basis of the entire record, should be approved.” Article 66(d)(1), UCMJ. Courts “assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense[s], the appellant's record of service, and all matters contained in the record of trial.” United States v. Sauk, 74 M.J. 594, 606 (A.F. Ct. Crim. App. 2015) (en banc) (per curiam) (alteration in original) (citation omitted). Although this Court has broad discretion in determining whether a particular sentence is appropriate, and Article 66, UCMJ, empowers it to “do justice,” it has no authority to “grant mercy” by engaging in exercises of clemency. United States v. Nerad, 69 M.J. 138, 146 (C.A.A.F. 2010) (citation omitted).

Our superior Court has “long recognized that, absent evidence to the contrary, an accused's own sentence proposal is a reasonable indication of its probable fairness to [him].” United States v. Arroyo, \_\_\_ M.J. \_\_\_, 2025 CAAF LEXIS 688, \*9 (C.A.A.F. 2025) (citations

and quotations omitted) (cleaned up). The existence of a plea agreement “is a material consideration in a service court's sentence appropriateness review[.]” Id. (citing United States v. Hendon, 6 M.J. 171, 175 (C.M.A. 1979)).

Appellant’s crime is one of the most serious offenses a person can commit. He intentionally possessed images and videos of babies and toddlers being mercilessly sexually abused. But he didn’t stop there. He contributed to six children’s continued victimization by distributing the images and videos of their sexual abuse to as many as 90 people. (R. at 117-119). Five years of confinement is not inappropriately severe for such a heinous crime. Rather than face up to 50 years of confinement, the maximum confinement authorized, Appellant successfully negotiated a favorable plea agreement and agreed up to six years of confinement was reasonable and just punishment for his crimes. (R. at 94). Even now he concedes that the decision to accept the maximum six years of confinement was a “deliberate choice[.]” (App. Br. at 2a). Appellant’s own deliberate choice in accepting the maximum sentence of six years of confinement is strong evidence that the five years of confinement he ultimately received was reasonable. Arroyo, \_\_\_ M.J. \_\_\_, 2025 CAAF LEXIS at \*9.

Appellant’s argument that his unresolved trauma, difficult upbringing, or mental health struggles justify a lesser sentence is unpersuasive for two reasons. (R. at 2a). First, his upbringing and personal struggles do not offset the seriousness of possessing and distributing child pornography. Second, all the facts Appellant raises were presented to the trial judge and considered as she sentenced him to a year below the maximum authorized. Therefore, this Court should deny Appellant’s request to reduce his term of confinement.

### III.<sup>16</sup>

**THIS COURT DOES NOT HAVE JURISDICTION TO DECIDE WHETHER THE FIREARM PROHIBITION IN THE GUN CONTROL ACT OF 1968, 18 U.S.C. § 922, IS CONSTITUTIONAL BECAUSE IT IS A COLLATERAL ISSUE NOT SUBJECT TO REVIEW UNDER ARTICLE 66, UCMJ.**

#### **Additional Facts**

The maximum amount of confinement for Appellant's convictions was 50 years. (R. at 90). Appellant's trial defense counsel agreed this was the maximum sentence. (Id.)

Both the Staff Judge Advocate's first indorsement to the Statement of Trial Results (STR) and Entry of Judgment (EOJ) in Appellant's case contains the following statements: "Firearm Prohibition Triggered Under 18 U.S.C. § 922: Yes." (STR and EOJ, ROT, Vol. 1.)

#### **Standard of Review**

The scope and meaning of Article 66, UCMJ, is a matter of statutory interpretation, which is reviewed de novo. United States v. Lepore, 81 M.J. 759, 760-61 (A.F. Ct. Crim. App.2021).

#### **Law and Analysis**

The Courts of Criminal Appeals possess "limited jurisdiction, defined entirely by statute." United States v. Arness, 74 M.J. 441, 442 (C.A.A.F. 2015) (citation omitted).

The Court of Appeals for the Armed Forces recently rejected the argument that Courts of Criminal Appeals have jurisdiction to address the firearms prohibition notation in the STR under Article 66(d)(1), UCMJ, in United States v. Williams, 82 M.J. 121, 126 (C.A.A.F. 2024).

Appellant acknowledges that the Court of Appeals for the Armed Forces also concluded that neither Article 67(c) nor Article 66(d)(2), UCMJ, could give our superior Court or the

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<sup>16</sup> Appellant personally raises this issue under Grosteffon, 12 M.J. 431.

Courts of Criminal Appeals the authority to modify the §922 indication in the EOJ. United States v. Johnson, \_\_ M.J. \_\_, No. 24-0004/SF, 2025 CAAF LEXIS 499, \*13-14 (C.A.A.F. 24 June 2025). (App. Br. at 3a).

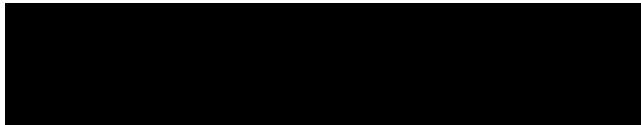
Since our superior Court has ruled that this Court neither has jurisdiction to modify the notation on Appellant's STR or EOJ under Article 66, UCMJ, this Court should deny Appellant's claim.

**CONCLUSION**

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's claims and affirm the findings and sentence in this case.



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**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force

Appellate Defense Division on 5 November 2025



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,

*Appellee,*

v.

Senior Airman (E-4)

**AARON T. COLEY,**

United States Air Force,

*Appellant.*

**REPLY BRIEF ON BEHALF OF  
APPELLANT**

Before Panel No. 2

No. ACM 40675

12 November 2025

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

Appellant, Senior Airman Aaron T. Coley, pursuant to Rule 18(d) of this Court’s Rules of Practice and Procedure, files this Reply Brief to the Appellee’s Answer (Gov. Ans.), dated 5 November 2025. In addition to the arguments in his opening brief, filed on 29 October 2025 (App. Br.), Appellant submits the following arguments.

**I.**

**Appellant’s rights against Double Jeopardy under the Fifth Amendment were violated when Appellant was twice convicted for the same “material,” a Samsung Galaxy tablet.**

The facts of this case, when analyzed under the standards set forth in *United States v. Forrester*, 76 M.J. 479, 486 (C.A.A.F. 2017) and *United States v. Casillas*, No. ACM 40551, 2025 CCA LEXIS 445 (A.F. Ct. Crim. App. Sep. 18, 2025), demonstrates that the specifications Specification 1 and Specification 3 of the Charge, were based on images found on the same unit of prosecution—the Samsung Galaxy Tablet. DD Form 458, *Charge Sheet*, 6 July 2023; Pros. Ex. 3 at 4-5, 8-9. The government’s arguments to the contrary are inconsistent with *Forrester* and should be rejected. The multiplicitous specifications should be set aside to preserve the protections against double jeopardy.

**A. Appellant’s protections against double jeopardy were not waived by his guilty plea.**

The Double Jeopardy Clause of the Fifth Amendment provides that no person shall “be subject for the same offence to be twice put in jeopardy of life or limb.” U.S. CONST. amend. V. The Supreme Court has consistently recognized double jeopardy as a fundamental constitutional right, one that is not easily set aside or waived by implication. *See Green v. United States*, 355 U.S. 184, 187–88 (1957) (“The constitutional prohibition against ‘double jeopardy’ was designed to protect an individual from being subjected to the hazards of trial and possible conviction more than once for an alleged offense.”).

“Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.” *Brady v. United States*, 397 U.S. 742, 748 (1970). Courts “cannot presume a waiver of [constitutional] rights from a silent record.” *Boykin v. Alabama*, 395 U.S. 238, 243 (1969). Thus, the mere act of entering a plea agreement does not, in itself, constitute a waiver of double jeopardy protections unless the record demonstrates “knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.” *Brady*, 397 U.S. at 748.

Courts have repeatedly held that the right against double jeopardy is not forfeited by a guilty plea unless the waiver is explicit, knowing, and unequivocal. The Supreme Court’s decision in *Menna v. New York*, 423 U.S. 61 (1975), is instructive. There, the Court stated, “Where the State is precluded by the United States Constitution from haling a defendant into court on a charge, federal law requires that a conviction on that charge be set aside even if the conviction was entered pursuant to a counseled plea of guilty” *Id.* at 62. The Court emphasized that a guilty plea does not inherently waive a double jeopardy claim unless the record demonstrates a clear and informed

relinquishment of that right. *Id.* The Court further explained, “[A] plea of guilty to a charge does not waive a claim that - judged on its face - the charge is one which the State may not constitutionally prosecute.” *Id.* at 62 n.2.

In *United States v. Broce*, 488 U.S. 563 (1989), the Supreme Court clarified that a guilty plea forecloses a double jeopardy claim only when the defendant admits to conduct that constitutes separate offenses, and the record reflects a knowing waiver. The Court observed that if “on the face of the record the court had no power to enter the conviction or impose the sentence,” *id.* at 569, then the plea does not waive the double jeopardy claim.

The two military-specific provisions addressing double jeopardy do not alter the outcome required in this case. Article 44(a), UCMJ, and R.C.M. 907(b)(2)(C) prohibit trial for a second time for the same offense. However, they both limit their application by defining the first trial as a proceeding where an accused has been found guilty and that conviction is final. Article 44(b), UCMJ, and R.C.M. 907(b)(2)(C)(iii). This is meant to allow re-prosecution of an offense *if* it is successfully appealed. *See United States v. Scott*, 437 U.S. 82, 90-91 (1978) (citing *Burks v. United States*, 437 U.S. 1, 1 (1978) (“The successful appeal of a judgment of conviction, on any ground other than the insufficiency of the evidence to support the verdict . . . poses no bar to *further* prosecution on the same charge.”) (emphasis added)). Implicit here is the requirement that there first be a successful appeal. This makes sense because otherwise, if this was read to mean that a second trial could occur so long as it occurred before the first trial was made final, the limitations in Article 44(a), UCMJ, and R.C.M. 907(b)(2)(C)(iii) would conflict with the Double Jeopardy Clause of the Fifth Amendment, which particularly guards against the distinct wrong of a second trial for the same offense. *See Rice*, 80 M.J. at 45 (quoting *Abney*, 431 U.S. 661) (“A successive prosecution is a distinct wrong because it forces an accused ‘to endure the personal strain, public

embarrassment, and expense of a criminal trial more than once for the same offense”); *see also Green*, 355 U.S. at 187-88 (“[T]he [Government] with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity”). And Article 44(b), UCMJ, and R.C.M. 907(b)(2)(C)(iii) cannot conflict with the Double Jeopardy Clause of the Fifth Amendment because “[t]he military has a hierarchical scheme as to rights, duties, and obligations.” *United States v. Romano*, 46 M.J. 269, 274 (C.A.A.F. 1997). Above all is the Constitution, under which applicable statutes must fall in line. *See id.* “While a lower source on the hierarchy may grant additional or greater rights than a higher source, those additional rights may not conflict with a higher source.” *Id.*

Taken together, these authorities demonstrate that courts require a clear, knowing, and explicit waiver of double jeopardy rights before finding such rights forfeited by a plea. Ambiguous language, general admissions, or silence in the record are insufficient.

Contrary to the Government’s argument, Gov. Ans. at 9-11, the record in this case does not support the conclusion that Appellant knowingly and explicitly waived his double jeopardy rights by virtue of pleading guilty.

In this case, the plea agreement and the *Care* inquiry<sup>1</sup> at the time of the plea do not contain any language indicating that Appellant was advised of, or knowingly relinquished, his double jeopardy protections. R. at 18-19. Nor was there a waive all waivable motions provision in the plea agreement. *Id.* There is no evidence that either the trial defense counsel or the military judge explained the nature of the double jeopardy claim, nor that Appellant was made aware that pleading guilty to multiple specifications arising from possession of the same device could implicate double

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<sup>1</sup> *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969)

jeopardy concerns. R. at 19-20. The absence of such an explicit waiver should be treated as dispositive under Supreme Court precedent.

The government’s reliance on general admissions or the mere act of pleading guilty is insufficient to establish waiver. Gov. Ans. at 9-10. As the Supreme Court stated in *Boykin*, courts “cannot presume a waiver of [constitutional] rights from a silent record.” *Id.* at 243. The record here is silent as to any waiver of double jeopardy protections. R. at 19-20.

Therefore, this Court should reject any assertion of waiver and address the double jeopardy issue.

**B. Under *Forrester*, the unit of prosecution for possession of child pornography is the physical material or medium, not the individual images.**

The *Manual for Courts-Martial, United States (MCM)* (2019 ed.), pt. IV, ¶ 95.c.(4), which defines “child pornography” as “material that contains a visual depiction of a minor engaging in sexually explicit conduct.” This definition was central to the United States Court of Appeals for the Armed Force’s (CAAF) reasoning in *Forrester*, 76 M.J. at 486. In *Forrester*, the CAAF addressed whether multiple specifications for possession of child pornography on different devices were multiplicitous. The court held that the “unit of prosecution” is not the individual image, but the “material” that contains the illicit images. *Id.* at 486. Specifically, the CAAF stated, “possessing child pornography . . . is tied to ‘material that contains’ illicit visual depictions of child pornography, not the quantity or variety of visual depictions.” *Id.* at 481 (quoting *MCM* (2012 ed.), pt. IV, ¶ 68b.c.(1)).<sup>2</sup>

This Court recently applied *Forrester* in *United States v. Casillas*, No. ACM 40551, 2025 CCA LEXIS 445 (A.F. Ct. Crim. App. Sep. 18, 2025). The *Casillas* court found *Forrester* did not

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<sup>2</sup> The CAAF’s analysis was based off the definition contained in the *MCM* (2012 ed.). The substance of the definition is the same in the *MCM* (2019 ed.), pt. IV, para. 93.c.(4).

exist on an island, multiple “federal circuit decisions support the view that where an accused is charged with possessing a device containing child pornography, possession of the device constitutes the offense.” *Casillas*, 2025 CCA LEXIS 445, at \*28.

The holding in *Forrester*, as applied in *Casillas*, is clear that the focus is on the material—the device. This created a clear charging boundary. If all images are found on a single device, only one specification is appropriate. If the same images are possessed across multiple devices, then multiple specifications are supported. In short, the number of devices determines the number of offenses, not the number of images.

Though the government’s answer contends that charging multiple specifications for possession of child pornography on the same device is permissible under Article 134, UCMJ, by treating files as distinct units of prosecution, Gov. Ans. at 14-23, this position is contrary and should yield to *Forrester*.

The government’s attempt to read into *Forrester* an unstated permission to charge by “files” is not consistent with the CAAF’s actual holding. *See* Gov. Ans. at 14-15. The CAAF’s analysis was rooted in the statutory and regulatory language, which defines “child pornography” as “material that contains” illicit images. *Forrester*, 76 M.J. at 486. The CAAF’s focus was on the physical medium—the device or tangible object—not on the digital subdivisions within it. *Id.* The government’s argument that the absence of the word “only” leaves the door open to charging by files, *see* Gov. Ans. at 14-15, is a misreading of the opinion. The CAAF’s reasoning was not about what was omitted, but about what was explained: the material is the unit, not its contents.

The arguments made in *Forrester* illustrate how the government’s attempt now to shift the unit of prosecution from “image” to “file” is a semantic maneuver that does not alter the controlling legal standard. In *Forrester*, the government argued that images stored on the same devices could

be charged as a separate specification. 76 M.J. at 481. Critically, the government charged the appellant with possessing images of child pornography that were contained on the same “Hewlett Packard Laptop Computer Hard Drive” in two different specifications and images contained on the same “black in color Seagate External Hard Drive” in two other specifications. *Id.* at 481-82. The CAAF rejected this approach, holding that the unit of prosecution is the material, not the image. *Id.* at 486.

The government now seeks to revive the same argument by substituting “file” for “image,” contending that each file on a device constitutes a separate unit of prosecution. *See* Gov. Ans. at 14-23. This is a distinction without a difference. The reasoning in *Forrester* applies with equal force to files, as the CAAF explained that in defining child pornography in this manner, the offending “material” was the “*physical* media or storage location ‘that contains’ the offensive images.” *Forrester*, 76 M.J. at 486 (citing *MCM* (2012 ed.), pt. IV, ¶ 68b.c.(5)) (emphasis added).

The government’s answer contends that federal courts support treating individual files as the unit of prosecution for possession of child pornography, arguing that the plain language of Article 134, UCMJ, and analogous federal statutes encompass files as “material that contains” illicit visual depictions. Gov Ans. 19-24. This position relies on a line of cases interpreting federal statutes criminalizing the possession of child pornography, where some circuits have held that each file containing a prohibited image may be charged separately. However, the Government fails to address the fact that there is also a line of federal cases that are in line with the CAAF’s holding in *Forrester*.

In *United States v. Chiaradio*, the United States Court of Appeals for the First Circuit rejected a similar argument to the one the Government offers here. 684 F.3d 265 (1st Cir. 2012). “The short of it is that . . . the defendant's unlawful possession of a multitude of files on two

interlinked computers located in separate rooms within the same dwelling gave rise to only a single count of unlawful possession under section 2252(a)(4)(B).” *Chiaradio*, 684 F.3d at 276. Section 2252(a)(4)(B) outlaws the “possession of one or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction.” *Id.* at 274. (citations omitted) (emphasis in original).

Likewise, in *United States v. Elliott*, the Tenth Circuit held that separate devices containing various images of child pornography that were possessed simultaneously framed a single unit of prosecution. 937 F.3d 1310, 1316 (10th Cir. 2019). The court noted that “[p]ossession of the storage device is the actus reus of [18 U.S.C. § 2252A(a)(5)].” *Id.* (emphasis in original). That statute “criminalizes the act of possessing any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography.” *Id.* Ultimately, that court construed the statute to preclude distinct charges for each electronic device or medium simultaneously possessed. *Id.*

The government’s attempt to salvage its prosecution by recasting the charge as possession of “files” is also foreclosed by the actual language of the charge sheet. The specifications state that Appellant violated Article 134 by possessing “images and videos,” not “files.” DD Form 458, *Charge Sheet*, 6 July 2023. The government cannot now argue that the prosecution is based on possession of “files” when the charging document specifies “images and videos.” The Specifications as drafted undermine the government’s attempt to save a facially flawed prosecution by retroactively redefining the unit of prosecution. *See Bell v. United States*, 349 U.S. 81, 83-84 (1955) (“When Congress leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity.”); *United States v. Universal C.I.T. Credit*

*Corp.*, 344 U.S. 218, 221-22 (1952) (rejecting the multiplication of charges where the statute did not clearly authorize it).

The controlling legal standard, as set forth by the CAAF in *Forrester* and applied by this Court in *Casillas*, is that the unit of prosecution for possession of child pornography under Article 134, UCMJ, is the physical material (device or medium) containing the illicit images, not the images or files themselves. The government’s arguments to the contrary are unsupported by the plain language of the *Manual for Courts-Martial*, as well as the reasoning of the CAAF, this Court, and multiple federal circuits.

**C. Appellant was prejudiced by the Government’s multiplicious charging.**

The standard for plain error requires (1) an error, (2) that is clear or obvious, and (3) that results in material prejudice. *United States v. Gladue*, 67 M.J. 311, 313 (C.A.A.F. 2009); *United States v. Flores*, 69 M.J. 366, 369 (C.A.A.F. 2011). The CAAF has made clear that an error is “plain” when it is contrary to the law at the time of appeal. *United States v. Harcrow*, 66 M.J. 154, 159 (C.A.A.F. 2008).

Here, the error is plain because prior to Appellant’s case, in 2017 the CAAF in *Forrester* had held that the unit of prosecution for possession of child pornography under Article 134, UCMJ, is the “material” containing the illicit images, not the images or files themselves. 76 M.J. at 486. This court recently applied *Forrester* in *Casillas*, holding that charging multiple specifications for the same device over different periods constitutes a single offense and that multiplicious charging violates double jeopardy. *Casillas*, 2025 CCA LEXIS 445, at \*25–26.

The relevant legal principle—that the material or device is the unit of prosecution—has been clearly established by *Forrester*. The error in this case is therefore both clear and obvious under current law.

The material prejudice from multiplicitous convictions is not theoretical. The protection against double jeopardy is that a person may not be twice subjected to prosecution for the same offense. *See* U.S. CONST. amend. V. When an appellant is convicted and sentenced multiple times for a single, uninterrupted act of possession—whether the government divides the conduct by images, files, or timeframes—the result is additional punishment, collateral consequences, and the stigma of multiple criminal findings for the same conduct.

Therefore, Appellant was prejudiced by being convicted and sentenced for multiplicitous specifications in violation of his protections against double jeopardy.

**D. The prejudice to Appellant was not harmless beyond a reasonable doubt.**

In *Casillas*, this Court recognized that multiplicitous charging for the same device violated the appellant’s rights against double jeopardy and warranted reversal. *Casillas*, 2025 CCA LEXIS 445, at \*22. “Where an error is of constitutional dimensions, an appellate court may not affirm the result unless the error was harmless beyond a reasonable doubt.” *Casillas*, 2025 CCA LEXIS 445, at \*12 (citing *United States v. Mason*, 59 M.J. 416, 424 (C.A.A.F. 2004)). The government’s attempt to minimize the harm in this case should be unpersuasive, given that the error here mirrors the one in *Casillas*. Just as this Court was not convinced the error was harmless in *Casillas*, *id.* at \*29, it should reach the same conclusion now, as the constitutional injury and practical consequences are equally present.

This makes sense, as with *Casillas*, the prejudice to Appellant is not harmless; it is manifest in the imposition of multiple convictions and sentences for a single continuous possession of the same material.

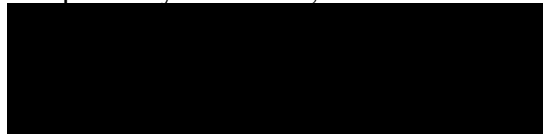
When a double jeopardy violation is established, courts have not hesitated to set aside multiplicitous convictions. The CAAF in *United States v. Rice* found that the appropriate remedy

was to set aside the multiplicitous convictions. 80 M.J. 36, 42 (C.A.A.F. 2020). This Court in *Casillas* followed this approach, vacating the multiplicitous conviction. *Casillas*, 2025 CCA LEXIS 445, at \*22.

The record in this case demonstrates a clear, obvious, and prejudicial error in charging multiple specifications for the same material—a Samsung Galaxy tablet. The error is not harmless beyond a reasonable doubt and warrants reversal of the multiplicitous convictions.

Appellant requests that the Court set aside the multiplicitous convictions in Specification 1 and Specification 3 of the Charge, and reduce his overall term of confinement to four years.

Respectfully submitted,



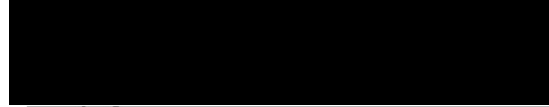
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**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 12 November 2025.

Respectfully submitted,



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**UNITED STATES AIR FORCE  
COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>No. ACM 40675</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>NOTICE OF PANEL</b>
<b>Aaron T. COLEY</b>	)	<b>CHANGE</b>
<b>Senior Airman (E-4)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	

It is by the court on this 15th day of December, 2025,

**ORDERED:**

The record of trial in the above -styled matter is withdrawn from Panel 2 and referred to a Special Panel for appellate review.

The Special Panel in this matter shall be constituted as follows:

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge

KEARLEY, CYNTHIA T., Colonel, Appellate Military Judge

MCCALL, KRISTIN K.B., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.



F [REDACTED]

JACOB B. HOEFERKAMP, Capt, USAF  
Chief Commissioner

**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b> <i>Appellee,</i>	)	UNITED STATES’ MOTION TO CITE SUPPLEMENTAL AUTHORITY
v.	)	
Senior Airman (E-4)	)	Before Special Panel
<b>AARON T. COLEY</b>	)	No. ACM 40675
United States Air Force	)	
<i>Appellant.</i>	)	22 January 2026

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rules 23.3(d) and 25.2(e) of this Court’s Rules of Practice and Procedure, the United States moves to cite additional authority that was issued by the Court of Appeals for the Armed Forces after the United States’ brief was filed.

CAAF’s decision in United States v. Malone, \_\_\_ M.J. \_\_\_, No. 25-0140/AR, (21 January 2026)<sup>1</sup>, is relevant to the United States’ argument that Appellant waived his claim that Specifications 1 and 3 of the Charge were multiplicitous as alleged in his first Assignment of Error. In Malone, slip op. at 3, CAAF held that the appellant affirmatively waived the multiplicity issue by pleading guilty unconditionally after his defense counsel affirmed that he did not have any motions to make prior to entering pleas. The Court relied on the presumption that trial defense counsel are competent and found waiver because R.C.M. 907(b)(3)(B) plainly states that multiplicity serves as a ground for dismissing a specification, the multiplicity was obvious on the face of the specifications, and the appellant did not allege that his defense counsel

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<sup>1</sup> This case was decided on 20 January 2026 and at the time of this motion has not been uploaded to Lexis. As a result, the United States does not have a reporter number for this case, but it is available on the Court’s website at the following link <https://www.armfor.uscourts.gov/opinions/2025OctTerm/250140.pdf>.

were ineffective. Id. at 9-14. The Court reached this conclusion even though there was not a “waive all waivable motions” provision in the appellants plea agreement. *See* Malone, slip. op at 6 (Hardy, J., dissenting) (identifying that there was not a waive all waivable motions provision in the appellant’s plea agreement).

These factors are present in Appellant’s case. First, like the appellant in Malone, Appellant was convicted pursuant to a negotiated plea agreement that significantly decreased his punitive exposure. Second, as in Malone, the judge twice advised Appellant that certain motions are waived if they are not made before entering a plea. (R. at 18, 24). Appellant conferred with counsel, affirmed that he understood what that meant, and entered a plea of guilty. (R. at 25). Finally, like Malone, despite Appellant’s claim that the multiplicity issue was plain and obvious, he has not raised an ineffective assistance of counsel claim against his trial defense counsel. (App. Br. at 8-9).

As competent counsel, Appellant’s trial defense counsel would have identified that R.C.M. 907(b)(3)(B) “plainly states that multiplicity serves as a proper ground for dismissal of specifications” and would have discussed the advantages and disadvantages of seeking dismissal on multiplicity grounds. Malone, slip op. at 11-12. Because Appellant’s trial defense counsel are presumed competent and did not raise the multiplicity issue, this Court should conclude that Appellant waived the issue of multiplicity through his unconditional guilty plea.

**WHEREFORE**, the United States request that this Court consider the above-referenced supplemental authority.



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**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force  
Appellate Defense Division on 22 January 2026.



HEATHER R. BEZOLD, Capt, USAF  
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**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES’ MOTION FOR
<i>Appellee,</i>	)	ORAL ARGUMENT
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM 40675
<b>AARON T. COLEY</b>	)	
United States Air Force	)	5 November 2025
<i>Appellant.</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rules 23 and 24 of this Honorable Court’s Rules of Practice and Procedure, the United States hereby moves for oral argument on the following issue:

**WHETHER APPELLANT’S RIGHTS AGAINST DOUBLE  
JEOPARDY UNDER THE FIFTH AMENDMENT WERE  
VIOLATED WHEN APPELLANT WAS TWICE  
CONVICTED FOR THE SAME “MATERIAL,” A SAMSUNG  
GALAXY TABLET.**

Our superior Court has held that the allowable unit of prosecution under Article 134, *Child pornography*, is the “material that contains” the illicit visual depiction. United States v. Forrester, 76 M.J. 479 (C.A.A.F. 2017). But despite computers being accessible to the general public since the 1970s, no military court has specifically analyzed whether a file is a material that contains data capable of conversion into a visual image for possession of child pornography. Courts frequently lag behind society when it comes to technology<sup>1</sup>, but by explaining the nature

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<sup>1</sup> See John G. Roberts, *2014 Year-End Report on the Federal Judiciary*, United States Supreme Court, at 3, (Dec. 31, 2014) (“[T]he courts will often choose to be late to the harvest of American ingenuity.”); Lillian R. BeVier, *The Communications Assistance for Law Enforcement Act of 1994: A Surprising Sequel to the Break Up of AT&T*, 51 Stan. L. Rev. 1049, 1061-62 (1999) (“For many reasons, the pace of legal change can never keep up with the pace of technological evolution.”)

of digital files as vessels for data under Article 134, this Court will be addressing an issue that has been overlooked for too long. Not only is this issue novel, but it is also critically important because this Court's decision is likely to impact the Government's ability to charge and obtain convictions for all crimes involving child pornography under Article 134, because possession, viewing, receipt, and distribution of child pornography use the same definitions.<sup>2</sup>

Oral argument would assist this Court in deciding the issue because it will allow the parties to answer any questions the Court may have as it addresses this novel and important issue. The opportunity to clarify and address any questions of the Court is particularly important given this Court's recent unpublished opinion in Casillas, which addressed a similar double jeopardy issue related to charging Article 134, child pornography.<sup>3</sup> Additionally, granting oral argument will not impede this Court's ability to comply with the Moreno<sup>4</sup> requirement to issue an opinion within 18-months of docketing. Appellant's response to the United States' answer is due to this Court on 12 November 2025 and this Court still have almost 4 months (120 days) to issue an opinion. Undersigned counsel does not have any duties which would impact scheduling oral argument quickly to allow this Court to render an opinion in compliance with the Moreno deadline.

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<sup>2</sup> Manual for Courts-Martial, United States, pt. IV, para. 95.

<sup>3</sup> 2025 CCA LEXIS 445 (A.F. Ct. Crim. App. 18 Sept 2025).

<sup>4</sup> United States v. Moreno, 63 M.J. 129, 142 (C.A.A.F. 2006).

WHEREFORE, the United States requests this Court grant this motion for oral argument.



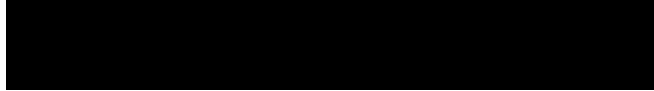
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**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 5 November 2025.



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