

**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. 3
	)	
Airman Basic (E-1)	)	No. ACM S32814
<b>CHANCE J. BYRD,</b>	)	
United States Air Force,	)	30 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)(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 July 2025**. The record of trial was docketed with this Court on 12 March 2025. From the date of docketing to the present date, 49 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 Government Trial and Appellate Operations Division on 30 April 2025.

Respectfully submitted,



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



**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. 3
Airman Basic (E-1)	)	
<b>CHANCE J. BYRD,</b>	)	No. ACM S32814
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	2 May 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 Assignments 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 2 May 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 S32814
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Chance J. BYRD	)	
Airman Basic (E-1)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 3</b>

On 30 April 2025, counsel for Appellant submitted a Motion for Enlargement of Time (First), requesting an additional 60 days in which to file Appellant's assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 6th day of May, 2025,

**ORDERED:**

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

Appellant's counsel is advised that any subsequent motions for enlargement of time shall include, in addition to 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.



FOR THE COURT

[Redacted signature area]

OLGA STANFORD, Capt, USAF  
Chief Commissioner

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\* Appellant's motion lists 10 July 2025 as the date his brief will be due if we grant this enlargement of time. However, the 60th day is 9 July 2025. We attribute this discrepancy to a scrivener's error and grant the enlargement of time for the 60 days requested.

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

UNITED STATES	)	No. ACM S32814
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>NOTICE OF PANEL CHANGE</b>
Chance J. BYRD	)	
Airman Basic (E-1)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	

It is by the court on this 6th day of May, 2025,

**ORDERED:**

That the Record of Trial in the above-styled matter is withdrawn from Panel 3 and referred to Panel 2 for appellate review.

This panel letter supersedes all previous panel assignments.



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 (SECOND)</b>
	)	
v.	)	Before Panel No. 2
	)	
Airman Basic (E-1)	)	No. ACM S32814
<b>CHANCE J. BYRD,</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)(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 **8 August 2025**. The record of trial was docketed with this Court on 12 March 2025. From the date of docketing to the present date, 110 days have elapsed. On the date requested, 150 days will have elapsed.

On 18 December 2024, contrary to his pleas, Appellant was convicted at a special court-martial consisting of officer and enlisted members at Minot Air Force Base, North Dakota, of one charge with one specification of the wrongful use of a controlled substance violation of Article 112a, Uniform Code of Military Justice (UCMJ). Electronic Record of Trial (ROT), Volume 1, Entry of Judgment (EOJ), dated 20 February 2024; Record (R.) at 571.<sup>1</sup> The military judge sentenced Appellant to be confined for 5 months, and to be discharged from the service with a bad conduct discharge. R. at 615.

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<sup>1</sup> Charge II and its specification was dismissed with prejudice by the military judge for failure to state an offense. R. at 528-29. Appellant was acquitted on Charge III and its specification. R. at 517.

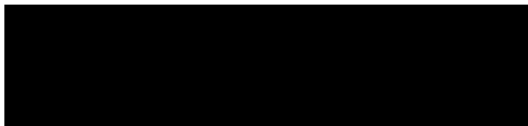
The convening authority took no action on the findings or sentence in this case. ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Airman Basic Chance J. Byrd*, dated 23 January 2025.

The electronic record of trial is 1 volume, and a separate file folder containing 21 audio recordings. The electronic record of trial consists of 40 Prosecution Exhibits, 2 Defense Exhibits, and 44 Appellate Exhibits; the transcript is 615 pages. Appellant is not 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



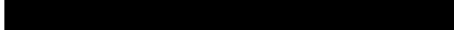
**CERTIFICATE OF FILING AND SERVICE**

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 30 June 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
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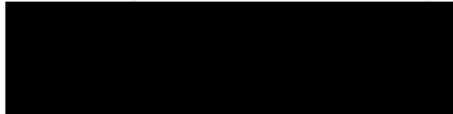
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 2
Airman Basic (E-1)	)	
<b>CHANCE J. BYRD,</b>	)	No. ACM S32814
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	1 July 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 Assignments 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 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

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

UNITED STATES <i>Appellee</i>	)	No. ACM S32814
	)	
	)	
v.	)	
	)	<b>NOTICE OF PANEL CHANGE</b>
Chance J. BYRD	)	
Airman Basic (E-1)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	

It is by the court on this 4th day of August, 2025,

**ORDERED:**

That the Record of Trial in the above-styled matter is withdrawn from Panel 2 and referred to Panel 3 for appellate review.

This panel letter supersedes all previous panel assignments.



FOR THE COURT



AGNIESZKA M. GAERTNER, Capt, USAF  
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 (THIRD)</b>
	)	
v.	)	Before Panel No. 2
	)	
Airman Basic (E-1)	)	No. ACM S32814
<b>CHANCE J. BYRD,</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 23.3(m)(1) and (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 September 2025**. The record of trial was docketed with this Court on 12 March 2025. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 18 December 2024, contrary to his pleas, Appellant was convicted at a special court-martial consisting of officer and enlisted members at Minot Air Force Base, North Dakota, of one charge with one specification of the wrongful use of a controlled substance violation of Article 112a, Uniform Code of Military Justice (UCMJ). Electronic Record of Trial (ROT), Volume 1, Entry of Judgment (EOJ), dated 20 February 2024; Record (R.) at 571.<sup>1</sup> The military judge sentenced Appellant to be confined for 5 months, and to be discharged from the service with a bad conduct discharge. R. at 615.

---

<sup>1</sup> Charge II and its specification was dismissed with prejudice by the military judge for failure to state an offense. R. at 528-29. Appellant was acquitted on Charge III and its specification. R. at 517.

The convening authority took no action on the findings or sentence in this case. ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Airman Basic Chance J. Byrd*, dated 23 January 2025.

The electronic record of trial is 1 volume, and a separate file folder containing 21 audio recordings. The electronic record of trial consists of 40 Prosecution Exhibits, 2 Defense Exhibits, and 44 Appellate Exhibits; the transcript is 615 pages. Appellant is not 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,



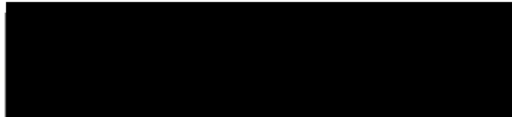

JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770



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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 July 2025.

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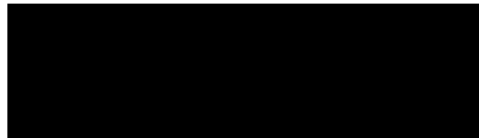
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
Airman Basic (E-1)	)	Before Panel No. 2
<b>CHANCE J. BYRD,</b>	)	No. ACM S32814
United States Air Force,	)	
<i>Appellant.</i>	)	30 July 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 Assignments 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

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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  
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(240) 612-4800

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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF TIME (FOURTH) OOT<sup>1</sup></b>
<i>Appellee,</i>	)	
	)	
v.	)	Before Panel No. 3
	)	
Airman Basic (E-1)	)	No. ACM S32814
<b>CHANCE J. BYRD,</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 23.3(m)(1) and (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 October 2025**. The record of trial was docketed with this Court on 12 March 2025. From the date of docketing to the present date, 174 days have elapsed. On the date requested, 210 days will have elapsed.

On 18 December 2024, contrary to his pleas, Appellant was convicted at a special court-martial consisting of officer and enlisted members at Minot Air Force Base, North Dakota, of one charge with one specification of the wrongful use of a controlled substance violation of Article 112a, Uniform Code of Military Justice (UCMJ). Electronic Record of Trial (ROT), Volume 1, Entry of Judgment (EOJ), dated 20 February 2024; Record (R.) at 571.<sup>2</sup> The military judge sentenced Appellant to be confined for 5 months, and to be discharged from the service with a bad conduct discharge. R. at 615.

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<sup>1</sup> A motion for an enlargement of time was timely filed on 29 August 2025; however, it was inadvertently captioned for Panel 2, from which the case was previously withdrawn and referred to Panel 3. This clerical oversight was neither intentional nor made in bad faith. Appellant bears no responsibility for the error.

<sup>2</sup> Charge II and its specification was dismissed with prejudice by the military judge for failure to state an offense. R. at 528-29. Appellant was acquitted on Charge III and its specification. R. at 517.

The convening authority took no action on the findings or sentence in this case. ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Airman Basic Chance J. Byrd*, dated 23 January 2025.

The electronic record of trial is 1 volume, and a separate file folder containing 21 audio recordings. The electronic record of trial consists of 40 Prosecution Exhibits, 2 Defense Exhibits, and 44 Appellate Exhibits; the transcript is 615 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

The undersigned counsel is currently assigned 29 cases; 21 cases are pending before this Court (17 cases are pending AOE). To date, ten cases at this Court have priority over the present case:

1. *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 65 pages. Appellant is currently confined. Counsel has begun drafting the AOE in this case.

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.

3. *United States v. Coley*, No. ACM 40675 – 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 began, but not completed her review of the ROT.

4. *United States v. Nesbitt*, No. ACM 40679 - The electronic ROT is 6 volumes and consists of 6 Prosecution Exhibits, 0 Defense Exhibits, 65 Appellate Exhibits, and 2 Court Exhibits; the transcript is 373 pages. Appellant is currently confined. Counsel has not yet reviewed the ROT in this case.

5. *United States v. Szabo*, No. ACM 40590 - The ROT is 12 volume and consists of 7 Prosecution Exhibits, 35 Defense Exhibits, and 121 Appellate Exhibits; the transcript is 1495 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

6. *United States v. Lucas*, No. ACM 40702 - The electronic ROT is 5 volumes and consists of 11 Prosecution Exhibits, 3 Defense Exhibits, and 16 Appellate Exhibits; the transcript is 187 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

7. *United States v. Kelly*, No. ACM 40710 - The electronic ROT is 1 volume and consists of 6 Prosecution Exhibits, 8 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 172 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

8. *United States v. Lumm*, No. ACM 40752 - The electronic record of trial is 1 volume and consists of 4 Prosecution Exhibits, 14 Defense Exhibits, 7 Appellate Exhibits, and 1 Court Exhibit; the transcript is 111 pages. Appellant is not currently confined. Counsel has not yet reviewed the record of trial in this case. Counsel has not yet reviewed the ROT in this case.

9. *United States v. Gonzaga*, No. ACM 40744 – The electronic ROT is 1 volume and consists of 24 Prosecution Exhibits, 1 Defense Exhibit, 36 Appellate Exhibits, and 5 Court Exhibits; the transcript is 490 pages. Appellant is currently confined. Counsel has not yet reviewed the ROT in this case.

10. *United States v. Lowery*, No. ACM 40781 - The electronic ROT is 7 volumes and consists of 31 Prosecution Exhibits, 13 Defense Exhibits, and 42 Appellate Exhibits. The total length of the ROT is 4529 pages; the transcript is 2491 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

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**

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Respectfully submitted,



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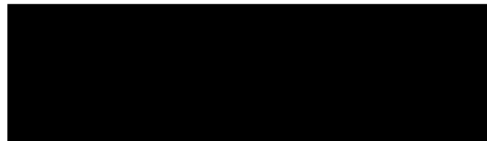
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
Airman Basic (E-1)	)	Before Panel No. 2
<b>CHANCE J. BYRD,</b>	)	No. ACM S32814
United States Air Force,	)	
<i>Appellant.</i>	)	2 September 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 Assignments 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

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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>
<i>Appellee,</i>	)	<b>TIME (FIFTH)</b>
	)	
v.	)	Before Panel No. 3
	)	
Airman Basic (E-1)	)	No. ACM S32814
<b>CHANCE J. BYRD,</b>	)	
United States Air Force,	)	1 October 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)(1) and (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 November 2025**. The record of trial was docketed with this Court on 12 March 2025. From the date of docketing to the present date, 203 days have elapsed. On the date requested, 240 days will have elapsed.

On 18 December 2024, contrary to his pleas, Appellant was convicted at a special court-martial consisting of officer and enlisted members at Minot Air Force Base, North Dakota, of one charge with one specification of the wrongful use of a controlled substance violation of Article 112a, Uniform Code of Military Justice (UCMJ). Electronic Record of Trial (ROT), Volume 1, Entry of Judgment (EOJ), dated 20 February 2024; Record (R.) at 571.<sup>1</sup> The military judge sentenced Appellant to be confined for 5 months, and to be discharged from the service with a bad conduct discharge. R. at 615.

---

<sup>1</sup> Charge II and its specification was dismissed with prejudice by the military judge for failure to state an offense. R. at 528-29. Appellant was acquitted on Charge III and its specification. R. at 517.

The convening authority took no action on the findings or sentence in this case. ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Airman Basic Chance J. Byrd*, dated 23 January 2025.

The electronic record of trial is 1 volume, and a separate file folder containing 21 audio recordings. The electronic record of trial consists of 40 Prosecution Exhibits, 2 Defense Exhibits, and 44 Appellate Exhibits; the transcript is 615 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

The undersigned counsel is currently assigned 29 cases; 21 cases are pending before this Court (16 cases are pending AOE). To date, one case before the Court of Appeals for the Armed Forces has priority over the present case: *United States v. Menard*, the reply brief is due on 7 October 2025. To date, seven cases at this Court have priority over the present case:

1. *United States v. Nesbitt*, No. ACM 40679 - The electronic ROT is 6 volumes and consists of 6 Prosecution Exhibits, 0 Defense Exhibits, 65 Appellate Exhibits, and 2 Court Exhibits; the transcript is 373 pages. Appellant is currently confined. Counsel has not yet reviewed the ROT in this case.

2. *United States v. Szabo*, No. ACM 40590 - The ROT is 12 volume and consists of 7 Prosecution Exhibits, 35 Defense Exhibits, and 121 Appellate Exhibits; the transcript is 1495 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

3. *United States v. Lucas*, No. ACM 40702 - The electronic ROT is 5 volumes and consists of 11 Prosecution Exhibits, 3 Defense Exhibits, and 16 Appellate Exhibits; the transcript is 187 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

4. *United States v. Kelly*, No. ACM 40710 - The electronic ROT is 1 volume and consists of 6 Prosecution Exhibits, 8 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 172 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

5. *United States v. Lumm*, No. ACM 40752 - The electronic record of trial is 1 volume and consists of 4 Prosecution Exhibits, 14 Defense Exhibits, 7 Appellate Exhibits, and 1 Court Exhibit; the transcript is 111 pages. Appellant is not currently confined. Counsel has not yet reviewed the record of trial in this case. Counsel has not yet reviewed the ROT in this case.

6. *United States v. Gonzaga*, No. ACM 40744 – The electronic ROT is 1 volume and consists of 24 Prosecution Exhibits, 1 Defense Exhibit, 36 Appellate Exhibits, and 5 Court Exhibits; the transcript is 490 pages. Appellant is currently confined. Counsel has not yet reviewed the ROT in this case.

7. *United States v. Lowery*, No. ACM 40781 - The electronic ROT is 7 volumes and consists of 31 Prosecution Exhibits, 13 Defense Exhibits, and 42 Appellate Exhibits. The total length of the ROT is 4529 pages; the transcript is 2491 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

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

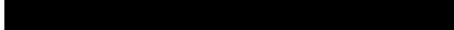


**CERTIFICATE OF FILING AND SERVICE**

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 October 2025.



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
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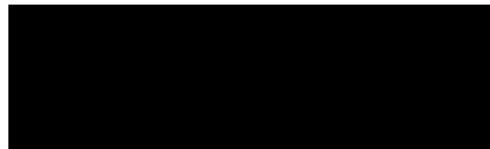
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
Airman Basic (E-1)	)	Before Panel No. 3
<b>CHANCE J. BYRD,</b>	)	No. ACM S32814
United States Air Force,	)	
<i>Appellant.</i>	)	3 October 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 Assignments 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 3 October 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 TIME (SIXTH)</b>
<i>Appellee,</i>	)	
	)	
v.	)	Before Panel No. 3
	)	
Airman Basic (E-1)	)	No. ACM S32814
<b>CHANCE J. BYRD,</b>	)	
United States Air Force,	)	31 October 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)(1) and (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 December 2025**. The record of trial was docketed with this Court on 12 March 2025. From the date of docketing to the present date, 233 days have elapsed. On the date requested, 270 days will have elapsed.

On 18 December 2024, contrary to his pleas, Appellant was convicted at a special court-martial consisting of officer and enlisted members at Minot Air Force Base, North Dakota, of one charge with one specification of the wrongful use of a controlled substance violation of Article 112a, Uniform Code of Military Justice (UCMJ). Electronic Record of Trial (ROT), Volume 1, Entry of Judgment (EOJ), dated 20 February 2024; Record (R.) at 571.<sup>1</sup> The military judge sentenced Appellant to be confined for 5 months, and to be discharged from the service with a bad conduct discharge. R. at 615.

---

<sup>1</sup> Charge II and its specification was dismissed with prejudice by the military judge for failure to state an offense. R. at 528-29. Appellant was acquitted on Charge III and its specification. R. at 517.

The convening authority took no action on the findings or sentence in this case. ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Airman Basic Chance J. Byrd*, dated 23 January 2025.

The electronic record of trial is 1 volume, and a separate file folder containing 21 audio recordings. The electronic record of trial consists of 40 Prosecution Exhibits, 2 Defense Exhibits, and 44 Appellate Exhibits; the transcript is 615 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

The undersigned counsel is currently assigned 27 cases; 22 cases are pending before this Court (16 cases are pending AOE).<sup>2</sup> To date, seven cases at this Court have priority over the present case:

1. *United States v. Nesbitt*, No. ACM 40679 - The electronic ROT is 6 volumes and consists of 6 Prosecution Exhibits, 0 Defense Exhibits, 65 Appellate Exhibits, and 2 Court Exhibits; the transcript is 373 pages. Appellant is currently confined. Counsel has begun reviewing the ROT in this case.

2. *United States v. Szabo*, No. ACM 40590 - The ROT is 12 volume and consists of 7 Prosecution Exhibits, 35 Defense Exhibits, and 121 Appellate Exhibits; the transcript is 1495 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

---

<sup>2</sup> Since the filing of Appellant's last motion for an enlargement of time, before the Court of Appeals for the Armed Forces, counsel filed a reply brief in *United States v. Menard*, Dkt. No. 25-0173. Additionally, counsel has filed supplements and petitions in both *United States v. Tompkins*, Dkt. No. 25-0278 and *United States v. Capers*, Dkt. No. 25-0264. Before this court, counsel has filed a reply in *United States v. Anderson*, ACM 40752 and *United States v. Griffin*, ACM 40642; and filed briefs in *United States v. Allen*, ACM 40809, and *United States v. Coley*, ACM 40675.

3. *United States v. Lucas*, No. ACM 40702 - The electronic ROT is 5 volumes and consists of 11 Prosecution Exhibits, 3 Defense Exhibits, and 16 Appellate Exhibits; the transcript is 187 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

4. *United States v. Kelly*, No. ACM 40710 - The electronic ROT is 1 volume and consists of 6 Prosecution Exhibits, 8 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 172 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

5. *United States v. Lumm*, No. ACM 40752 - The electronic record of trial is 1 volume and consists of 4 Prosecution Exhibits, 14 Defense Exhibits, 7 Appellate Exhibits, and 1 Court Exhibit; the transcript is 111 pages. Appellant is not currently confined. Counsel has not yet reviewed the record of trial in this case. Counsel has not yet reviewed the ROT in this case.

6. *United States v. Gonzaga*, No. ACM 40744 – The electronic ROT is 1 volume and consists of 24 Prosecution Exhibits, 1 Defense Exhibit, 36 Appellate Exhibits, and 5 Court Exhibits; the transcript is 490 pages. Appellant is currently confined. Counsel has not yet reviewed the ROT in this case.

7. *United States v. Lowery*, No. ACM 40781 - The electronic ROT is 7 volumes and consists of 31 Prosecution Exhibits, 13 Defense Exhibits, and 42 Appellate Exhibits. The total length of the ROT is 4529 pages; the transcript is 2491 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

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,



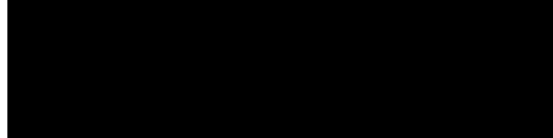
JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770



**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 31 October 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
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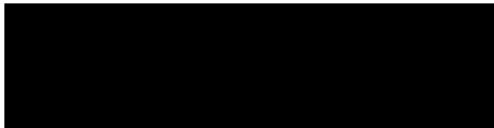
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
Airman Basic (E-1)	)	Before Panel No. 3
<b>CHANCE J. BYRD,</b>	)	No. ACM S32814
United States Air Force,	)	
<i>Appellant.</i>	)	4 November 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.



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 4 November 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>
<i>Appellee,</i>	)	<b>TIME (SEVENTH)</b>
	)	
v.	)	Before Panel No. 3
	)	
Airman Basic (E-1)	)	No. ACM S32814
<b>CHANCE J. BYRD,</b>	)	
United States Air Force,	)	30 November 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)(1) and (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 **6 January 2026**. The record of trial was docketed with this Court on 12 March 2025. From the date of docketing to the present date, 263 days have elapsed. On the date requested, 300 days will have elapsed.

On 18 December 2024, contrary to his pleas, Appellant was convicted at a special court-martial consisting of officer and enlisted members at Minot Air Force Base, North Dakota, of one charge with one specification of the wrongful use of a controlled substance, in violation of Article 112a, Uniform Code of Military Justice (UCMJ). Electronic Record of Trial (ROT), Volume 1, Entry of Judgment (EOJ), dated 20 February 2024; Record (R.) at 571.<sup>1</sup> The military judge sentenced Appellant to be confined for 5 months and to be discharged from the service with a bad conduct discharge. R. at 615.

The convening authority took no action on the findings or sentence in this case. ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Airman Basic Chance J. Byrd*,

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<sup>1</sup> Charge II and its specification was dismissed with prejudice by the military judge for failure to state an offense. R. at 528-29. Appellant was acquitted on Charge III and its specification. R. at 517.

dated 23 January 2025.

The electronic record of trial is 1 volume, and a separate file folder containing 21 audio recordings. The electronic record of trial consists of 40 Prosecution Exhibits, 2 Defense Exhibits, and 44 Appellate Exhibits; the transcript is 615 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

The undersigned counsel is currently assigned twenty cases; fifteen cases are pending before this Court (eight cases are pending AOE).<sup>2</sup> To date, six cases at this Court have priority over the present case:

1. *United States v. Szabo*, No. ACM 40590 - The ROT is 12 volumes and consists of 7 Prosecution Exhibits, 35 Defense Exhibits, and 121 Appellate Exhibits; the transcript is 1495 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

2. *United States v. Lucas*, No. ACM 40702 - The electronic ROT is 5 volumes and consists of 11 Prosecution Exhibits, 3 Defense Exhibits, and 16 Appellate Exhibits; the transcript is 187 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

3. *United States v. Kelly*, No. ACM 40710 - The electronic ROT is 1 volume and consists of 6 Prosecution Exhibits, 8 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 172 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

4. *United States v. Lumm*, No. ACM 40752 - The electronic record of trial is 1 volume and consists of 4 Prosecution Exhibits, 14 Defense Exhibits, 7 Appellate Exhibits, and 1 Court Exhibit; the transcript is 111 pages. Appellant is not currently confined. Counsel has not yet reviewed the record of trial in this case. Counsel has not yet reviewed the ROT in this case.

---

<sup>2</sup> Since the filing of Appellant's last motion for an enlargement of time, counsel has filed reply briefs in *United States v. Griffin*, ACM 40642, *United States v. Coley*, ACM 40675, and *United States v. Allen*, ACM 40809. Counsel also reviewed and filed a Merits Brief in *United States v. Nesbitt*, ACM 40679.

5. *United States v. Gonzaga*, No. ACM 40744 - The electronic ROT is 1 volume and consists of 24 Prosecution Exhibits, 1 Defense Exhibit, 36 Appellate Exhibits, and 5 Court Exhibits; the transcript is 490 pages. Appellant is currently confined. Counsel has not yet reviewed the ROT in this case.

6. *United States v. Lowery*, No. ACM 40781 - The electronic ROT is 7 volumes and consists of 31 Prosecution Exhibits, 13 Defense Exhibits, and 42 Appellate Exhibits. The total length of the ROT is 4529 pages; the transcript is 2491 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

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,

[REDACTED]

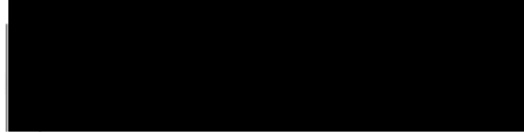
JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770

[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 30 November 2025.

Respectfully submitted,

A large black rectangular redaction box covering the signature of Joyclin N. Webster.

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 Joyclin N. Webster.

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

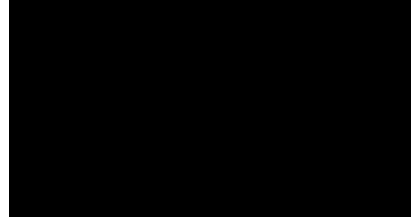
<b>UNITED STATES,</b>	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman Basic (E-1)	)	Before Panel No. 3
<b>CHANCE J. BYRD,</b>	)	
United States Air Force,	)	No. ACM S32814
<i>Appellant.</i>	)	
	)	2 December 2025
	)	

**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 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.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4804

**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 December 2025.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4804

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

<b>UNITED STATES</b>	)	<b>No. ACM S32814</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>NOTICE OF PANEL</b>
<b>Chance J. BYRD</b>	)	<b>CHANGE</b>
<b>Airman Basic (E-1)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	

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

**ORDERED:**

That the Record of Trial in the above-styled matter is withdrawn from Panel 3 and referred to Panel 2 for appellate review.

This panel letter supersedes all previous panel assignments.



JACOB B. HOEFERKAMP, Capt, USAF  
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	BRIEF ON BEHALF OF
	)	APPELLANT
	)	
v.	)	
	)	Before Panel 2
Airman Basic (E-1)	)	
Chance J. Bryd,	)	No. S32814
United States Air Force,	)	
Appellant.	)	6 January 2026

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

Assignments of Error

I.

Because delta-8 tetrahydrocannabinol is not a controlled substance if derived from hemp and the prosecution presented no evidence that the delta-8 tetrahydrocannabinol Appellant ingested was not derived from hemp, the military judge erred by denying a motion for finding of not guilty to a specification alleging that Appellant wrongfully used a controlled substance.

II.

Because delta-8 tetrahydrocannabinol is not a controlled substance if derived from hemp and the prosecution presented no evidence that the delta-8 tetrahydrocannabinol Appellant ingested was not derived from hemp, the evidence is factually and legally insufficient to prove beyond a reasonable doubt that Appellant wrongfully used a controlled substance.

Preface

Delta-8 tetrahydrocannabinol (THC) is not a controlled substance if derived from hemp.<sup>1</sup>

The prosecution presented *no* evidence that the delta-8 THC Appellant used was not derived

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<sup>1</sup> Schedule I includes “Tetrahydrocannabinols, except for tetrahydrocannabinols in hemp (as defined under section 1639o of title 7).” 21 U.S.C. § 812(c)(17); *see also* 21 C.F.R. §1308.11(d)(31)(ii) (“Tetrahydrocannabinols does not include any material, compound, mixture, or preparation that falls within the definition of hemp set forth in 7 U.S.C. 1639o.”). At the time of Appellant’s alleged violation of Article 112a, Uniform Code of Military Justice (UCMJ), the

from hemp. The prosecution’s expert witness—a laboratory certifying official for the Air Force Drug Testing Laboratory Joint Base San Antonio-Lackland (AFDTL)—testified at an Article 39(a) session that “almost all” delta-8 THC *is* derived from hemp. Trial Tr. 396, 427. And yet Appellant was somehow convicted of using a controlled substance by ingesting delta-8 THC. That conviction cannot stand.

### **Statement of the Case**

On 7 November and 16 through 18 December 2024, Appellant was tried by a special court-martial consisting of a military judge and officer and enlisted members at Minot Air Force Base, North Dakota. Contrary to Appellant’s pleas, the members found him guilty of one charge and its specification alleging wrongful use of a controlled substance in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. Trial Tr. 62, 571. Consistent with Appellant’s pleas, the members found him not guilty of one specification of willfully disobeying a superior commissioned officer in violation of Article 90, UCMJ, 10 U.S.C. § 890. Trial Tr. 62, 571. The military judge dismissed with prejudice a charged violation of Article 86, UCMJ, for failure to state an offense. Trial Tr. 528–29. The military judge sentenced Appellant to confinement for five months and a bad-conduct discharge. *Id.* at 615. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action – *United States v. Airman Basic Chance J. Byrd*, Jan. 23, 2025.

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statutory definition of “hemp” was “the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.” Agricultural Improvement Act of 2018, Pub. L. No. 115-334, § 10133, 132 Stat. 4490, 4908 (formerly codified at 7 U.S.C. § 1639o(1)); *amended by* Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026, Pub. L. No. 119–37, § 781, 139 Stat. 495, 558.

### Statement of Facts

Charge I's specification alleged that Appellant "did, within the continental United States, on divers occasions between on or about 1 July 2024 and on or about 31 August 2024, wrongfully use delta-8 tetrahydrocannabinol, a controlled substance." Charge Sheet.

On 5 December 2024, the trial counsel and the prosecution's expert witness—EW, Ph.D., a laboratory certifying official for the AFDTL—exchanged a flurry of emails. Dr. EW's message was consistent throughout: delta-8 THC is not a controlled substance if derived from hemp and most delta-8 THC is derived from hemp. Dr. EW initially wrote to Appellant's defense counsel, "Delta-8 is not controlled when derived from hemp. There is no way for me to tell from the chromatography the source of the delta-8." EW to Captain (Capt) Leeza N. Tirado, Dec. 5, 2024, 11:55 AM, Subject: RE: Delta 9 (US v. Byrd), attached to Request for Clemency – AB Chance Byrd, Dec. 27, 2024 [hereinafter Clemency Request]. Dr. EW elaborated, "[T]he concentration of delta-8 in plants is between 0.1 and 1% of the THC-9 concentration. Thus, delta-8 is most likely synthesized from [cannabidiol (CBD)] isolated from hemp by acid-catalyzed cyclization." *Id.* Dr. EW then forwarded his email to the district trial counsel. EW to Capt Susan S. Lee, Dec. 5, 2024, 1:02 PM, Subject: FW: Delta 8 (US v. Byrd), attached to Clemency Request. The district trial counsel replied, "Is there a possibility in which delta-8 THC could be a controlled substance? If so, what is the chemical analysis behind that rationale?" Capt Susan S. Lee to EW, Dec. 5, 2024, 12:06 PM, Subject: RE: Delta 8 (US v. Byrd), attached to Clemency Request.<sup>2</sup> Dr. EW's answer explained that "[d]elta-8 THC is synthesized from cannabis (hemp) material." EW to Capt Susan S. Lee, Dec. 5, 2024, 1:26 PM, Subject: RE: Delta 8 (US v. Byrd), attached to

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<sup>2</sup> The non-sequential time stamps on Capt Lee's and Dr. EW's emails probably result from the senders being in different time zones.

Clemency Request. The district trial counsel replied by asking, “Is it possible for delta-8 THC to be synthesized from marijuana and sold on the markets to consumers?” Capt Susan S. Lee to EW, Dec. 5, 2024, 12:46 PM, Subject: RE: Delta 8 (US v. Byrd), attached to Clemency Request. Dr EW answered, “Yes, but it[']s much more likely that the CBD serving as its basis comes from hemp rather than marijuana,” adding, “I can’t believe anyone would isolate Delta-8 from marijuana plants because of its low concentration.” EW to Capt Susan S. Lee, Dec. 5, 2024, 12:50 PM, Subject: RE: Delta 8 (US v. Byrd), attached to Clemency Request.

Five days after her exchange with Dr. EW—and six days before Appellant’s court-martial resumed following an initial arraignment—the district trial counsel the emails to Appellant’s defense counsel, who forwarded it to the convening authority’s staff judge advocate. Capt Susan S. Lee to Capt Leeza N. Tirado, Dec. 10, 2024, 6:05PM, Subject: FW: Delta 8 (US v. Byrd), attached to Clemency Request; Capt Leeza N. Tirado to Lieutenant Colonel Micah W. Elggren, Dec. 10, 2024, 6:56 PM, Subject: FW: Delta 8 (US v. Byrd). Despite the Government’s own expert opining that most delta-8 THC is derived from hemp—and, thus, is not a controlled substance—the Government proceeded to trial with a specification alleging that Appellant used a controlled substance by ingesting delta-8 THC.

During its case-in-chief, the prosecution called Dr. EW as a witness. Trial Tr. 395. On direct examination, the trial counsel asked whether delta-8 THC is “a scheduled drug.” *Id.* at 399. Dr. EW answered, “It’s a scheduled drug, depending on the source of what it’s – of how it’s prepared.” *Id.* Dr. EW later elaborated, “According to the Drug Enforcement Agency, delta-8 is a controlled substance depending on how it’s produced.” *Id.* at 419. Dr. EW’s direct examination ended by him explaining to the members, “[I]f you isolate delta-8 THC from marijuana, it’s a controlled substance. If it’s synthesized from a non-cannabis method in other

words, small molecules, it's a controlled substance. If it's synthesized from cannabidiol, isolated from hemp, it is not a controlled substance." *Id.* at 420.

On cross-examination, Dr. EW testified that to know whether delta-8 THC is a controlled substance, "you need to know how it was produced." *Id.* at 421. He subsequently elaborated, "[T]he Farm Act of 2018, according to the [Drug Enforcement Administration (DEA)], says that all tetrahydrocannabinoids from hemp are legal, except for THC-9. And therefore, if THC-8 is made from cannabinoid material from hemp, that's a legal synthesis, as far as I understand it." *Id.* at 423.

The military judge held an Article 39(a) session to consider a prosecution objection to a question during the defense's cross-examination of Dr. EW. *Id.* at 426. At that session, Dr. EW testified—consistent with his earlier email exchange with the district trial counsel—that "it would be very difficult to isolate" large amounts "of THC-8 from the marijuana plant." *Id.* On the other hand, CBD can be obtained very inexpensively from hemp and then used to produce delta-8 THC through the use of solvents. *Id.* at 427. Therefore, "no one's wasting time isolating THC-8 from marijuana, particularly in those states where marijuana has not been legalized yet, but are taking the cannabidiol from hemp, doing what's called the acid-catalyzed cyclization, which is a one-pot synthesis, and producing THC-8." *Id.* Dr. EW continued, "The assumption among most of us at AFDTL is that almost all THC-8 – 99.99% of it, is produced by the acid-catalyzed cyclization of cannabidiol. We just cannot believe they're isolating a product at such a – at such a low concentration from plant material." *Id.* A short time later during the Article 39(a) session, Dr. EW interjected, "The synthesis from cannabidiol meets the DEA idea that you're making THC-8 from cannabis material, which according to DEA, is not – is not scheduled." *Id.* at 428. He explained, "The DEA has said that all cannabinoids from hemp are legal, and

therefore the synthesis of THC-8 starting with cannabinoid material, i.e., cannabidiol, . . . is not scheduled.” *Id.*

When Dr. EW’s cross-examination resumed with the members present, he stated that “chromatography does not tell you the source of the delta-8.” *Id.* at 429. He agreed with the defense counsel that the delta-8 THC Appellant ingested could have been derived from hemp. *Id.* at 430. When the defense counsel observed, “[Y]ou have really zero way of telling that just by looking at the paper,” Dr. EW replied, “Right. There’s no way to tell from the chromatography the source of the material.” *Id.*

During a later Article 39(a) session, the military judge granted a prosecution request to “take judicial notice that 21 U.S.C. Section 812 lists in its Schedule I of Controlled Substances, ‘Tetrahydrocannabinols, except for tetrahydrocannabinols in hemp, as defined under Section 1639o of Title 7.’” *Id.* at 495.<sup>3</sup> Then, in a session with the members, the prosecution recalled Dr. EW to establish that tetrahydrocannabinol is “a Schedule I drug” and that delta-8 is a tetrahydrocannabinol. *Id.* at 501. Dr. EW agreed with the defense counsel on cross-examination that not every type of delta-8 THC is controlled. *Id.*

After the prosecution rested, the defense moved for a finding of not guilty under Rule for Courts-Martial (R.C.M.) 917.<sup>4</sup> *Id.* at 503. That motion was based, in part, on the prosecution’s failure to introduce any evidence reasonably tending to prove that the delta-8 THC Appellant ingested was a controlled substance. *Id.* The trial counsel argued, in relevant part, that Dr. EW

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<sup>3</sup> Consistent with that ruling, during his findings instructions, the military judge informed the members that he had taken judicial notice of what he misidentified as “Title 8, Section 812, of the United States Code.” Trial Tr. 541. In accordance with a defense request, he also informed the members that he had taken judicial notice of the statutory definition of hemp, which he misidentified as coming from 7 U.S.C. § 1390o. *Id.* at 515–16, 541. *See also* App. Ex. XLIII at 2–3.

<sup>4</sup> R.C.M. 917, *Manual for Courts-Martial, United States (MCM)* (2024 ed.).

testified “that delta-8 THC is a tetrahydrocannabinol itself. There are exceptions for tetrahydrocannabinols in hemp, however, a question of fact regarding whether the accused used a Schedule I substance has been raised at this point, and the evidence is potentially sufficient to sustain a finding of this element.” *Id.* The military judge denied the defense’s R.C.M. 917 motion, explaining that taking into account “the permissive inference, which at this point the Court would intend to give, pending any arguments by parties, the Court does find that there is some evidence . . . upon which the fact finder, using all reasonable inferences and presumptions, could find that the offense is proved beyond a reasonable doubt.” *Id.* at 505.

The military judge later instructed the members that they “may infer from the presence of delta-8 tetrahydrocannabinol in the accused’s urine, that the accused knew he used delta-8 tetrahydrocannabinol; however, the drawing of this inference is not required.” *Id.* at 540; App. Ex. XLIII at 2. The military judge did not instruct the members that they may infer that the delta-8 THC Appellant ingested was a controlled substance.

During closing argument, the trial counsel told the members, “Defense may argue that THC-8 was derived from hemp, but Dr. [EW] testified that he could not opine to the source of the THC-8, on whether it comes from hemp or marijuana . . . .” *Id.* at 550. During rebuttal sentencing argument, the trial counsel linked the permissive inference to the source of the delta-8 THC that Appellant ingested. *Id.* at 563. He began by telling the members, “The permissive use inference is important.” *Id.* He continued, “[T]his goes back to what I stated earlier, because Dr. [EW] cannot opine – and could not opine – because they do not test at Air Force DTL what source the delta THC-8 comes from.” *Id.* The trial counsel concluded that portion of his rebuttal argument by observing, “So therefore, even as an expert, he could not opine to that fact regarding the controlled substance.” *Id.*

## Argument

### Assignment of Error I

**Because delta-8 THC is not a controlled substance if derived from hemp and the prosecution presented no evidence that the delta-8 THC Appellant ingested was not derived from hemp, the military judge erred by denying a motion for finding of not guilty to a specification alleging that Appellant wrongfully used a controlled substance.**

#### Standard of Review and Applicable Legal Test

Appellate courts review a military judge’s ruling on a motion for finding of not guilty de novo. *E.g., United States v. Wilson*, 76 M.J. 4, 6 (C.A.A.F. 2017); *United States v. Hughes*, 48 M.J. 214, 216 (C.A.A.F. 1998) (“Where, as in this case, the question is whether the military judge correctly understood and applied a legal concept, we review the ruling de novo.”). “A motion for a finding of not guilty shall be granted only in the absence of some evidence which, together with all reasonable inferences and applicable presumptions, could reasonably tend to establish every essential element of an offense charged.” *Hughes*, 48 M.J. at 216 (quoting R.C.M. 917(d)). In considering such a motion, the military judge will view the evidence “in the light most favorable to the prosecution, without an evaluation of the credibility of witnesses.” *Id.*

#### Analysis

The military judge erred by denying the defense’s motion for finding of not guilty. One element the prosecution must prove beyond a reasonable doubt to obtain a conviction under Article 112a, UCMJ, for wrongful use of a controlled substance is that “the accused used a controlled substance.” Pt. IV, ¶ 50.b.(2)(a), *MCM* (2024 ed.). The prosecution presented *no* evidence that the delta-8 THC Appellant ingested was not derived from hemp. Because, even when viewed in the light most favorable to the prosecution, the evidence did not “reasonably

tend to establish every essential element of the offense charged,” R.C.M. 917(d), the military judge erred by denying the defense’s motion for finding of not guilty.

It appears that the military judge’s erroneous denial of the defense’s R.C.M. 917 motion resulted from an epic misunderstanding of the permissive inference in Article 112a cases. The *MCM* provides, “Possession, use, distribution, introduction, or manufacture of a controlled substance may be inferred to be wrongful in the absence of evidence to the contrary.” Pt. IV, ¶50.c.(5), *MCM* (2024 ed.); *see generally United States v. Downum*, \_\_\_ M.J. \_\_\_, No. 24-0156, 2025 CAAF LEXIS 828, at \*8 (C.A.A.F. Sep. 30, 2025) (discussing the permissive inference of wrongfulness). Additionally, for purposes of use of a controlled substance, “Knowledge of the presence of the controlled substance may be inferred from the presence of the controlled substance in the accused’s body or from other circumstantial evidence.” Pt. IV, ¶50.c.(10), *MCM* (2024 ed.). Those permissive inferences are predicated on proof of “[p]ossession, use, distribution, introduction, or manufacture of a controlled substance” or the “presence of the controlled substance in the accused’s body.” Contrary to what the military judge (and trial counsel in rebuttal closing argument) seemed to believe, Trial Tr. 505, 563, the permissive inference does not permit inferring that a substance the accused used was controlled. Such an inference is unrecognized by military law and would be unconstitutional even if it existed.

The Supreme Court has held that, in a criminal case, a statutory inference is “‘irrational’ or ‘arbitrary,’ and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend.” *Leary v. United States*, 395 U.S. 6, 36 (1969). To be constitutional, a permissive inference must “satisfy due process standards in light of present-day experience.” *Barnes v. United States*, 412 U.S. 837, 844–45 (1973); *see also Ulster County Court v. Allen*,

442 U.S. 140, 157–63 (1979). The Ninth Circuit has helpfully summarized the governing law: “Ultimately, the seminal Supreme Court cases on this issue all say the same thing: a permissive inference violates due process when the presumed fact does not follow from the facts established.” *Hall v. Haws*, 861 F.3d 977, 991 (9th Cir. 2017).

The only information before the military judge concerning whether it is more likely than not that delta-8 THC is a controlled substance emphatically rejected that proposition. The prosecution’s own expert witness—Dr. EW, an AFDTL scientist—testified at an Article 39(a) session that delta-8 THC is *almost always* derived from hemp and is, therefore, not a controlled substance. Trial Tr. 427. Thus, to infer that the delta-8 THC Appellant ingested was a controlled substance would not merely shift the burden of proof to Appellant but would cede an element to the prosecution that it could never satisfy in the absence of the inference. That would be plainly unconstitutional. *Leary*, 395 U.S. at 36; *Hall*, 861 F.3d at 991. And yet that appears to have been the military judge’s basis for denying the motion for finding of not guilty. Trial Tr. 505.

Because there was no evidence establishing that the delta-8 THC Appellant ingested was a controlled substance, the military judge erred by denying the motion for finding of not guilty. This Court should, therefore, set aside the findings of guilty to Charge I and its specification, dismiss Charge I and its specification with prejudice, and set aside the sentence.

## Assignment of Error II.

**Because delta-8 THC is not a controlled substance if derived from hemp and the prosecution presented no evidence that the delta-8 THC Appellant ingested was not derived from hemp, the evidence is factually and legally insufficient to prove beyond a reasonable doubt that Appellant wrongfully used a controlled substance.**

### Standard of Review and Applicable Legal Tests

This Court reviews issues of both factual and legal sufficiency de novo. *United States v. Cabuhat*, 83 M.J. 755, 770 (A.F. Ct. Crim. App. 2023) (en banc), *petition denied*, 84 M.J. 275 (C.A.A.F. 2024); *United States v. Harrington*, 83 M.J. 408, 414 (C.A.A.F. 2023).

This case—in which the lone charge and specification resulting in findings of guilty alleged an offense occurring “between on or about 1 July 2024 and on or about 31 August 2024”—is subject to this Court’s factual sufficiency review authority under the current version of Article 66(d)(1)(B), UCMJ, 10 U.S.C. § 866(d)(1)(B). Under that provision, this Court may conduct a factual sufficiency review “upon request of the accused if the accused makes a specific showing of a deficiency in proof.” Appellant makes such a request as to Charge I and its specification because the prosecution presented no evidence that the delta-8 THC Appellant ingested was not derived from hemp, thereby failing to prove that Appellant ingested a controlled substance.

“[T]he quantum of proof necessary to sustain a finding of guilty during a factual sufficiency review is ‘proof beyond a reasonable doubt,’ the same as the quantum of proof necessary to find an accused guilty at trial.” *United States v. Harvey*, 85 M.J. 127, 131 (C.A.A.F. 2024). If this “Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.” UCMJ art. 66(d)(1)(B)(iii), 10 U.S.C. § 866(d)(1)(B)(iii). To meet the “clearly convinced that

the finding of guilty was against the weight of the evidence” standard, “two requirements must be met. First, the [Court of Criminal Appeals (CCA)] must decide that the evidence, *as the CCA has weighed it*, does not prove that the appellant is guilty beyond a reasonable doubt. Second, the CCA must be clearly convinced of the correctness of this decision.” *Harvey*, 85 M.J. at 132.

The test for legal sufficiency is ‘whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ *United States v. Vela*, 71 M.J. 283, 286 (C.A.A.F. 2012) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

### **Analysis**

Delta-8 THC is not a controlled substance if derived from hemp. 21 U.S.C. § 812(c)(17); 21 C.F.R. § 1308.11(d)(31)(ii). No evidence was presented in this case that the delta-8 THC Appellant ingested was not derived from hemp. The evidence, therefore, does not even suggest—much less prove beyond a reasonable doubt—that Appellant used a controlled substance. The findings of guilty to Charge I and its specification must, therefore, be reversed as factually insufficient. Nor could any rational trier of fact have found beyond a reasonable doubt that Appellant used a controlled substance. The findings of guilty to Charge I and its specification are, therefore, reversible for legal insufficiency as well.

This Court should, therefore, reverse the findings of guilty to Charge I and its specification, dismiss Charge I and its specification with prejudice, and set aside the sentence.

Respectfully submitted,



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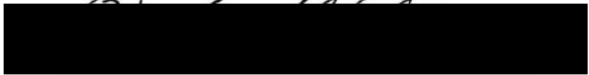


Counsel for Appellant

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were hand-delivered to the Court and to the Air Force Government Trial and Appellate Operations Division on 6 January 2026.

Respectfully submitted,

  
Joyclin N. Webster, Capt, USAF  
Appellate Defense Counsel

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	ANSWER TO ASSIGNMENTS OF
<i>Appellee,</i>	)	ERROR
	)	
v.	)	Before Panel No. 2
	)	
Airman Basic (E-1)	)	No. ACM S32814
<b>CHANCE J. BYRD</b>	)	
United States Air Force	)	5 February 2026
<i>Appellant.</i>	)	

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

**ISSUES PRESENTED**

**I.**

BECAUSE DELTA-8 TETRAHYDROCANNABINOL IS NOT A CONTROLLED SUBSTANCE IF DERIVED FROM HEMP AND THE PROSECUTION PRESENTED NO EVIDENCE THAT THE DELTA-8 TETRAHYDROCANNABINOL APPELLANT INGESTED WAS NOT DERIVED FROM HEMP, THE MILITARY JUDGE ERRED BY DENYING A MOTION FOR FINDING OF NOT GUILTY TO A SPECIFICATION ALLEGING THAT APPELLANT WRONGFULLY USED A CONTROLLED SUBSTANCE.

**II.**

BECAUSE DELTA-8 TETRAHYDROCANNABINOL IS NOT A CONTROLLED SUBSTANCE IF DERIVED FROM HEMP AND THE PROSECUTION PRESENTED NO EVIDENCE THAT THE DELTA-8 TETRAHYDROCANNABINOL APPELLANT INGESTED WAS NOT DERIVED FROM HEMP, THE EVIDENCE IS FACTUALLY AND LEGALLY INSUFFICIENT TO PROVE BEYOND A REASONABLE DOUBT THAT APPELLANT WRONGFULLY USED A CONTROLLED SUBSTANCE.

## **STATEMENT OF CASE**

Appellant was tried by a special court-martial consisting of a mixed panel from 16-18 December 2024 involving one charge with one specification in violation of Article 112a, Uniform Code of Military Justice (UCMJ) for wrongful use of Delta-8-tetrahydrocannabinol (THC8), a Schedule I controlled substance; one charge with one specification in violation of Article 90, UCMJ, for willfully disobeying a superior commissioned officer; and one charge with specification in violation of Article 86, UCMJ, for absence from place of duty without authority. (R. at 87; Charge Sheet, ROT, Vol. 1.) Appellant pled not guilty to all charges and specifications. (R. at 62.)

Following the close of the government's case, trial defense counsel motioned the military judge to dismiss the allegation in violation of Article 86 for failure to state an offense, and under Rule for Courts Martial (R.C.M.) 917 for a finding of not guilty for the allegation in violation of Article 112a. (R. at 520.) The military judge granted the motion to dismiss for failure to state an offense and denied the R.C.M. 917 motion. (R. at 528-529.) The panel found Appellant guilty of wrongful use of a controlled substance in violation of Article 112a, UCMJ and not guilty of willfully disobeying a superior commissioned officer under Article 90, UCMJ. (R. at 571.) Following a sentencing hearing, the military judge sentenced Appellant to five months of confinement and a bad conduct discharge. (R. at 615.)

## **STATEMENT OF FACTS**

### *Urinalysis Results*

Appellant was randomly selected for urinalysis on 22 July 2024. (R. at 308.) Appellant was again randomly selected to provide a second urinalysis on 31 July 2024. (Id.) The results of the first urinalysis were completed on 25 July 2024 and returned a positive result for THC8 at a

level of 17 nanograms per milliliter. (R. at 413, Prox. Ex. 1.) The second urinalysis result returned on 6 August 2024 and reflected a positive result for THC8 at a level of 24 nanograms per milliliter. (R. at 414, Prox. Ex. 2.) Appellant was ordered to provide another urinalysis for inspection purposes, commonly referred to as a *Bickel* test, on 5 August 2024, which returned a positive result for THC8 at a level of 245 nanograms per milliliter. (R. at 417, Prox. Ex. 3.) Appellant was ordered to provide a second *Bickel* test on 12 August 2025, which returned a positive result of THC8 at a level of 37 nanograms per milliliter. (Prox. Ex. 4.) The cut-off for THC8 under Department of Defense Policy is 15 nanograms per milliliter. (R. at 399, 401.)

#### *Expert Testimony*

During the government's case-in-chief, trial counsel called Dr. EH, a laboratory certifying official and expert witness for the Air Force Drug Testing Laboratory (AFDTL). (R. at 395-398.) Dr. EH provided expert testimony on matters within his area of expertise, including AFDTL procedures, how urinalysis samples are processed, and the urinalysis tests returning positive results for anything over 15 nanograms per milliliter. (R. at 398-420.) Further, Dr. EH testified that THC8 is a psychoactive substance that can be derived from marijuana or synthesized from non-cannabis sources. (R. at 419-20.) He described the chemical composition of THC8, explaining the double bond between carbon atoms 8 and 9, that THC8 can be purchased in various forms for recreational consumption, that it is not a federally recognized prescription medication, and that the effects of THC8 are comparable to delta-9-tetrahydrocannabinol (THC9). (R. at 398, 401-402.)

Dr. EH clarified that he cannot determine from a positive urinalysis where the THC8 was derived, but that it could be a controlled substance depending on its origin. (R. at 436-37.) Trial counsel recalled Dr. EH later in its case to clarify that tetrahydrocannabinols are a Schedule I

controlled substance, and THC8 is a tetrahydrocannabinol. (R. at 501.) On cross examination, Dr. EH clarified that not all types of THC8 are controlled. (Id.) Dr. EH also stated that he could not determine the source of the THC8, that it could be from a marijuana product or it could be from a hemp product. (R. at 430-31.)

Additionally, Dr. EH opined that the pattern of positive urinalysis results—with increasing levels among the two random tests and first *Bickel* test— were consistent with three independent uses and recreational use of THC8. (R. at 419.) He further explained that the second *Bickel* test results were possibly the leftovers from the previous test because of the drop in detected levels. (R. at 439.) He further testified that THC8 is a recreational drug, not a prescription medication. (R. at 398.)

#### *Judicial Notice*

The military judge took judicial notice of Title 7, United States Code (U.S.C.) § 812, “lists tetrahydrocannabinols as a Schedule I controlled substance, except for tetrahydrocannabinols derived from hemp.” (R. at 541.) The military judge also took judicial notice of 7 U.S.C. § 1390(o), which defines hemp, “as the plant *Cannabis sativa L.* and any part of that plant, including [...] cannabinoids [...] with a delta-9-tetrahydrocannabinol concentration of not more than 0.3% on a dry-weight basis.” (Id.) The military judge further instructed the members that they were permitted “to recognize and consider those laws without further proof.” (Id.)

#### **ARGUMENT**

The United States elects not to file an answer to Issue I.

## II.

### **APPELLANT’S CONVICTION FOR WRONGFUL USE OF A CONTROLLED SUBSTANCE IS NOT LEGALLY OR FACTUALLY SUFFICIENT.**

#### *Standard of Review*

Issues of legal sufficiency are reviewed de novo. United States v. Washington, 57 M.J. 394, 399 (C.A.A.F. 2002). “The Court may affirm only such findings of guilty as the Court finds correct in law, and in fact in accordance with subparagraph (B).” 10 U.S.C. § 866(d)(1)(A).

Factual sufficiency is reviewed using the following standard for every finding of guilty for an offense occurring on or after 1 January 2021<sup>1</sup>:

- (i) In an appeal of a finding of guilty under subsection (b), the Court may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.
- (ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—
  - (I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and
  - (II) appropriate deference to findings of fact entered into the record by the military judge.
- (iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

Article 66 (d)(1)(B), UCMJ.

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<sup>1</sup> National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, Section 542(b), 134 Stat. 3611-12.

### *Law and Analysis*

The United States agrees that Appellant's conviction is legally and factually insufficient and should be reversed.


"The test for legal sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." United States v. Robinson, 77 M.J. 294, 297-98 (C.A.A.F. 2018) (quoting United States v. Rosario, 76 M.J. 114, 117 (C.A.A.F. 2017)). "[I]n resolving questions of legal sufficiency, we are bound to draw every reasonable inference from the evidence of record in favor of the prosecution." United States v. Barner, 56 M.J. 131, 134 (C.A.A.F. 2001) (emphasis added). Even viewing the evidence in favor of the prosecution, no evidence was put forward which established that the THC8 in question was derived from a non-hemp source, making it a controlled substance. The inference that the THC8 was derived from a non-hemp source was not a reasonable inference from the evidence and no rational juror could have found that it was a controlled substance beyond a reasonable doubt. Therefore, the conviction is not legally sufficient and should be reversed.

Turning to factual sufficiency, Courts of Criminal Appeals (CCAs) "may affirm only such findings of guilty as the Court finds correct in law, and in fact in accordance with [Article 66(d)(1)(B)]." Article 66(d)(1)(A), UCMJ (2024 ed.); United States v. Harvey, 85 M.J. 127, 130 (C.A.A.F. 2024). Factual sufficiency review is triggered only if an appellant (1) asserts it as an assignment of error, and (2) shows "a specific deficiency in proof." Article 66(d)(1)(B)(i), UCMJ; Harvey, 85 M.J. at 130. If both threshold elements are met, a CCA may "weigh the evidence and determine controverted questions of fact." Article 66(d)(1)(B)(ii). The CCA must give "appropriate deference to the fact that the trial court saw and heard the witnesses and other

evidence.” Id. “[T]he degree of deference will depend on the nature of the evidence at issue.” Harvey, 85 M.J. at 130-131. Then, the CCA must be “clearly convinced that the finding of guilty was against the weight of the evidence” before they may “dismiss, set aside, or modify the finding, or affirm a lesser finding.” Article 66(d)(1)(B)(iii), UCMJ. The evidence presented in this case suggests a possibility that the THC8 could be derived from marijuana rather than hemp, however it falls short of proving beyond a reasonable doubt that the THC8 in Appellant’s body was derived from a non-hemp source and therefore a controlled substance. Simply put, the conviction is not factually sufficient because it is against the weight of the evidence and the findings should be reversed.


**CONCLUSION**

For these reasons, the United States respectfully requests that this Honorable Court reverse the findings and set aside the sentence in this case.



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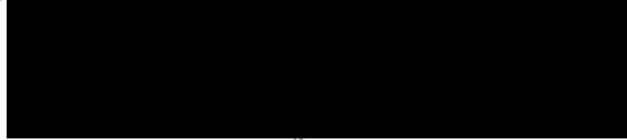
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**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force  
Appellate Defense Division on 5 February 2026.



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