

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee</i>	)	TIME (FIRST)
)	
v.	)	Before Panel No. 2
)	
Airman First Class (E-3)	)	No. ACM 40375
OSCAR F. GONZALEZ,)	
United States Air Force	)	6 January 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **17 March 2023**. The record of trial was docketed with this Court on 17 November 2022. From the date of docketing to the present date, 50 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,

—
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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 6 January 2023.

Respectfully submitted,

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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
)	
Airman First Class (E-3)	)	ACM 40375
OSCAR F. GONZALEZ, 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.

OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

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 9 January 2023.

OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee</i>	)	TIME (SECOND)
)	
v.	)	Before Panel No. 2
)	
Airman First Class (E-3)	)	No. ACM 40375
OSCAR F. GONZALEZ,)	
United States Air Force	)	10 March 2023
<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 **16 April 2023**. The record of trial was docketed with this Court on 17 November 2022. From the date of docketing to the present date, 113 days have elapsed. On the date requested, 150 days will have elapsed.

On 21 July 2022, consistent with his pleas,¹ Appellant was convicted by a military judge at a general court-martial convened at Joint Base Charleston, South Carolina, of one charge and two specifications of assault consummated by a battery in violation of Article 128, Uniform Code of Military Justice (UCMJ). R. at 46. The military judge sentenced Appellant to be reduced to the grade of E-1, forfeiture of pay and allowances for six months, to be confined for a total of six months,² and to be discharged from the service with a bad-conduct discharge. R. at 106. The

¹ One charge and two specifications of sexual assault in violation of Article 120, UCMJ, and four specifications of assault consummated by a battery in violation of Article 128, UCMJ were withdrawn and dismissed without prejudice. ROT, Vol. 1, Entry of Judgment (EOJ), dated 20 September 2022.

² Appellant was sentenced to be confined for six months (for Specification 1 of Charge II), and to be confined for three months (for Specification 2 of Charge II), with the sentences all running concurrently. R. at 106.

convening authority took no action on the findings or sentence. ROT, Vol. 1, Decision on Action, dated 31 August 2022. The convening authority denied Appellant's request to have his adjudged forfeitures deferred, and also denied Appellant's request to waive his automatic forfeitures. *Id.*

The record of trial consists of 4 prosecution exhibits, 5 defense exhibits, and 5 appellate exhibits; the transcript is 107 pages. Appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and not yet begun her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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 10 March 2023.

Respectfully submitted,

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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
)	
Airman First Class (E-3)	)	ACM 40375
OSCAR F. GONZALEZ, 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.

OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

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 13 March 2023.

OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee</i>	)	TIME (THIRD)
)	
v.	)	Before Panel No. 2
)	
Airman First Class (E-3)	)	No. ACM 40375
OSCAR F. GONZALEZ,)	
United States Air Force	)	5 April 2023
<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 **16 May 2023**. The record of trial was docketed with this Court on 17 November 2022. From the date of docketing to the present date, 139 days have elapsed. On the date requested, 180 days will have elapsed.

On 21 July 2022, consistent with his pleas,¹ Appellant was convicted by a military judge at a general court-martial convened at Joint Base Charleston, South Carolina, of one charge and two specifications of assault consummated by a battery in violation of Article 128, Uniform Code of Military Justice (UCMJ). R. at 46. The military judge sentenced Appellant to be reduced to the grade of E-1, forfeiture of pay and allowances for six months, to be confined for a total of six months,² and to be discharged from the service with a bad-conduct discharge. R. at 106. The

¹ One charge and two specifications of sexual assault in violation of Article 120, UCMJ, and four specifications of assault consummated by a battery in violation of Article 128, UCMJ were withdrawn and dismissed without prejudice. ROT, Vol. 1, Entry of Judgment (EOJ), dated 20 September 2022.

² Appellant was sentenced to be confined for six months (for Specification 1 of Charge II), and to be confined for three months (for Specification 2 of Charge II), with the sentences all running concurrently. R. at 106.

convening authority took no action on the findings or sentence. ROT, Vol. 1, Decision on Action, dated 31 August 2022. The convening authority denied Appellant's request to have his adjudged forfeitures deferred, and also denied Appellant's request to waive his automatic forfeitures. *Id.*

The record of trial consists of 4 prosecution exhibits, 5 defense exhibits, and 5 appellate exhibits; the transcript is 107 pages. Appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and not yet begun her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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 5 April 2023.

Respectfully submitted,

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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
)	
Airman First Class (E-3)	)	ACM 40375
OSCAR F. GONZALEZ, 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.

OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

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 April 2023.

OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF TIME (FOURTH)
<i>Appellee</i>)	
)	
v.	)	Before Panel No. 2
)	
Airman First Class (E-3)	)	No. ACM 40375
OSCAR F. GONZALEZ,)	
United States Air Force	)	9 May 2023
<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) and (m)(6) 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 **15 June 2023**. The record of trial was docketed with this Court on 17 November 2022. From the date of docketing to the present date, 173 days have elapsed. On the date requested, 210 days will have elapsed.

On 21 July 2022, consistent with his pleas,¹ Appellant was convicted by a military judge at a general court-martial convened at Joint Base Charleston, South Carolina, of one charge and two specifications of assault consummated by a battery in violation of Article 128, Uniform Code of Military Justice (UCMJ). R. at 46. The military judge sentenced Appellant to be reduced to the grade of E-1, forfeiture of pay and allowances for six months, to be confined for a total of six

¹ One charge and two specifications of sexual assault in violation of Article 120, UCMJ, and four specifications of assault consummated by a battery in violation of Article 128, UCMJ were withdrawn and dismissed without prejudice. ROT, Vol. 1, Entry of Judgment (EOJ), dated 20 September 2022.

months,² and to be discharged from the service with a bad-conduct discharge. R. at 106. The convening authority took no action on the findings or sentence. ROT, Vol. 1, Decision on Action, dated 31 August 2022. The convening authority denied Appellant's request to have his adjudged forfeitures deferred, and also denied Appellant's request to waive his automatic forfeitures. *Id.*

The record of trial consists of 4 prosecution exhibits, 5 defense exhibits, and 5 appellate exhibits; the transcript is 107 pages. Appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters³ and not yet begun her review of Appellant's case. This is military counsel's seventh priority case. The following cases have priority over the present case:

1. *United States v. Blackburn*, ACM 40303 – The record of trial is 6 volumes; the trial transcript is 519 pages. There are 8 prosecution exhibits, 8 defense exhibits, and 43 appellate exhibits. Counsel is reviewing Appellant's ROT and has reviewed the sealed materials in his case.

2. *United States v. Knodel*, ACM 40018 - Counsel received the *DuBay* transcript for proofing on 24 April 2023. The *DuBay* transcript is 1473 pages. Counsel has reviewed approximately 250 pages of the transcript.

3. *United States v. Irvin*, ACM 40311 - The record of trial is 4 volumes; the trial transcript is 81 pages. There are 4 prosecution exhibits, 11 defense exhibits, and 14 appellate

² Appellant was sentenced to be confined for six months (for Specification 1 of Charge II), and to be confined for three months (for Specification 2 of Charge II), with the sentences all running concurrently. R. at 106.

³ Since the filing of Appellant's last EOT, counsel filed a reply brief in *United States v. Jones*, ACM 40226, on 18 April 2023, filed a Supplement to Petition for Grant of Review to the Court of Appeals for the Armed Forces (CAAF) in *United States v. Kitchen*, ACM 40155, on 20 April 2023, filed a reply brief in *United States v. Flores*, ACM S32728, on 27 April 2023, and filed a brief in *United States v. Robles*, ACM 40280, on 8 May 2023.

exhibits. Counsel has begun reviewing Appellant's ROT and put in a request to view sealed materials.

4. *United States v. Graves*, ACM 40340 - The record of trial is 5 volumes; the trial transcript is 122 pages. There are 3 prosecution exhibits, 1 defense exhibits, and 5 appellate exhibits. Counsel has begun reviewing Appellant's ROT and put in a request to view sealed materials.

5. *United States v. Taylor Jr.*, ACM 40371 - The record of trial is 6 volumes; the trial transcript is 396 pages. There are 6 prosecution exhibits, 12 defense exhibits, and 36 appellate exhibits. Counsel has not yet begun her review of Appellant's ROT.

6. *United States v. Pittman*, ACM 40298 - The record of trial is 6 volumes; the trial transcript is 341 pages. There are 14 prosecution exhibits, 13 defense exhibits, and 30 appellate exhibits. Counsel has not yet begun her review of Appellant's ROT.

Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

JENNA M. ARROYO, ~~Maj~~, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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 9 May 2023.

Respectfully submitted,

—
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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
)	
Airman First Class (E-3)	)	ACM 40375
OSCAR F. GONZALEZ, 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.

OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

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 10 May 2023.

OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee</i>	)	TIME (FIFTH)
)	
v.	)	Before Panel No. 2
)	
Airman First Class (E-3)	)	No. ACM 40375
OSCAR F. GONZALEZ,)	
United States Air Force	)	8 June 2023
<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) and (m)(6) 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 **15 July 2023**. The record of trial was docketed with this Court on 17 November 2022. From the date of docketing to the present date, 203 days have elapsed. On the date requested, 240 days will have elapsed.

On 21 July 2022, consistent with his pleas,¹ Appellant was convicted by a military judge at a general court-martial convened at Joint Base Charleston, South Carolina, of one charge and two specifications of assault consummated by a battery in violation of Article 128, Uniform Code of Military Justice (UCMJ). R. at 46. The military judge sentenced Appellant to be reduced to the grade of E-1, forfeiture of pay and allowances for six months, to be confined for a total of six

¹ One charge and two specifications of sexual assault in violation of Article 120, UCMJ, and four specifications of assault consummated by a battery in violation of Article 128, UCMJ were withdrawn and dismissed without prejudice. ROT, Vol. 1, Entry of Judgment (EOJ), dated 20 September 2022.

months,² and to be discharged from the service with a bad-conduct discharge. R. at 106. The convening authority took no action on the findings or sentence. ROT, Vol. 1, Decision on Action, dated 31 August 2022. The convening authority denied Appellant's request to have his adjudged forfeitures deferred, and also denied Appellant's request to waive his automatic forfeitures. *Id.*

The record of trial consists of 4 prosecution exhibits, 5 defense exhibits, and 5 appellate exhibits; the transcript is 107 pages. Appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters³ and not yet begun her review of Appellant's case. This is military counsel's fifth priority case. The following cases have priority over the present case:

1. *United States v. Blackburn*, ACM 40303 – The record of trial is 6 volumes; the trial transcript is 519 pages. There are 8 prosecution exhibits, 8 defense exhibits, and 43 appellate exhibits. Counsel has completed her review of Appellant's ROT, consulted with Appellant concerning issues to raise, and is drafting Appellant's Assignment of Errors, which is due 28 June 2023.

2. *United States v. Knodel*, ACM 40018 - Counsel received the *DuBay* transcript for proofing on 24 April 2023. The *DuBay* transcript is 1473 pages. Counsel has reviewed approximately 900 pages of the transcript.

² Appellant was sentenced to be confined for six months (for Specification 1 of Charge II), and to be confined for three months (for Specification 2 of Charge II), with the sentences all running concurrently. R. at 106.

³ Since the filing of Appellant's last EOT, counsel filed a Supplement to Petition for Grant of Review to the Court of Appeals for the Armed Forces (CAAF) in *United States v. Hernandez*, ACM 39606 (rem), on 17 May 2023. Counsel was also on pass and leave for the Memorial Day holiday from 26 May 2023 - 2 June 2023.

3. *United States v. Pittman*, ACM 40298 - The record of trial is 6 volumes; the trial transcript is 341 pages. There are 14 prosecution exhibits, 13 defense exhibits, and 30 appellate exhibits. Counsel has begun reviewing Appellant's ROT.

4. *United States v. Taylor Jr.*, ACM 40371 - The record of trial is 6 volumes; the trial transcript is 396 pages. There are 6 prosecution exhibits, 12 defense exhibits, and 36 appellate exhibits. Counsel has not yet begun her review of Appellant's ROT.

Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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 8 June 2023.

Respectfully submitted,

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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
)	
Airman First Class (E-3)	)	ACM 40375
OSCAR F. GONZALEZ JR., 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.

OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

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 9 June 2023.

OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

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

UNITED STATES	)	No. ACM 40375
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Oscar F. GONZALEZ)	
Airman First Class (E-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 2

On 8 June 2023, counsel for Appellant submitted a Motion for Enlargement of Time (Fifth) 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, case law, and this court’s Rules of Practice and Procedure. Accordingly, it is by the court on this 12th day of June, 2023,


ORDERED:

Appellant’s Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant shall file any assignments of error not later than **15 July 2023**.

Any subsequent motions for enlargement of time shall, in addition to the matters required under this court’s Rules of Practice and Procedure, include a statement as to: (1) whether Appellant was advised of Appellant’s right to a timely appeal, (2) whether Appellant was advised of the request for an enlargement of time, and (3) whether Appellant agrees with the request for an enlargement of time.



FOR THE COURT


 Capt, USAF
 Deputy Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee</i>	)	TIME (SIXTH)
)	
v.	)	Before Panel No. 2
)	
Airman First Class (E-3)	)	No. ACM 40375
OSCAR F. GONZALEZ,)	
United States Air Force	)	7 July 2023
<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) and (m)(6) 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 **14 August 2023**. The record of trial was docketed with this Court on 17 November 2022. From the date of docketing to the present date, 232 days have elapsed. On the date requested, 270 days will have elapsed.

On 21 July 2022, consistent with his pleas,¹ Appellant was convicted by a military judge at a general court-martial convened at Joint Base Charleston, South Carolina, of one charge and two specifications of assault consummated by a battery in violation of Article 128, Uniform Code of Military Justice (UCMJ). R. at 46. The military judge sentenced Appellant to be reduced to the grade of E-1, forfeiture of pay and allowances for six months, to be confined for a total of six

¹ One charge and two specifications of sexual assault in violation of Article 120, UCMJ, and four specifications of assault consummated by a battery in violation of Article 128, UCMJ were withdrawn and dismissed without prejudice. ROT, Vol. 1, Entry of Judgment (EOJ), dated 20 September 2022.

months,² and to be discharged from the service with a bad-conduct discharge. R. at 106. The convening authority took no action on the findings or sentence. ROT, Vol. 1, Decision on Action, dated 31 August 2022. The convening authority denied Appellant's request to have his adjudged forfeitures deferred, and also denied Appellant's request to waive his automatic forfeitures. *Id.*

The record of trial consists of 4 prosecution exhibits, 5 defense exhibits, and 5 appellate exhibits; the transcript is 107 pages. Appellant is not currently confined, is aware of his appellate rights, and has consented to necessary requests for extensions of time, including this request.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters³ and not yet begun her review of Appellant's case. Counsel is currently assigned 22 cases; 8 cases are pending initial AOE's before this Court. This is military counsel's third priority case. The following cases⁴ have priority over the present case:

1. *United States v. Pittman*, ACM 40298 - The record of trial is 6 volumes; the trial transcript is 341 pages. There are 14 prosecution exhibits, 13 defense exhibits, and 30 appellate exhibits. Counsel has begun reviewing Appellant's ROT.

2. *United States v. Taylor Jr.*, ACM 40371 - The record of trial is 6 volumes; the trial transcript is 396 pages. There are 6 prosecution exhibits, 12 defense exhibits, and 36 appellate exhibits. Counsel has not yet begun her review of Appellant's ROT.

² Appellant was sentenced to be confined for six months (for Specification 1 of Charge II), and to be confined for three months (for Specification 2 of Charge II), with the sentences all running concurrently. R. at 106.

³ Since the filing of Appellant's last EOT, counsel filed a lengthy brief in *United States v. Blackburn*, ACM 40303, on 28 June 2023, a reply brief in *United State v. Robles*, ACM 40280, on 29 June 2023, and completed her review of the 1473-page *DuBay* transcript in *United States v. Knodel*, ACM 40018 on 7 July 2023. Since the last EOT, counsel was also off for the Juneteenth holiday and for the 4th of July holiday.

⁴ Counsel will also be filing a Supplement to Petition for Grant of Review to the Court of Appeals for the Armed Forces (CAAF) in *United States v. Jones*, ACM 40226.

Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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 7 July 2023.

Respectfully submitted,

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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
)	
Airman First Class (E-3)	)	ACM 40375
OSCAR F. GONZALEZ JR., 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.

OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

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 11 July 2023.

OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	
<i>Appellee,</i>	)	Brief on Behalf of Appellant
)	
v.	)	Before Panel 2
)	
Airman First Class (E-3),	)	No. ACM 40375
OSCAR F. GONZALEZ)	
United States Air Force,	)	28 July 2023
<i>Appellant.</i>)	

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

ISSUE PRESENTED

WHETHER THE RECORD OF TRIAL IS INCOMPLETE WHEN THIRTY-TWO PAGES OF ATTACHMENTS TO PROSECUTION EXHIBIT 1, THE STIPULATION OF FACT, WHICH WAS RELIED UPON BY THE MILITARY JUDGE TO SUPPORT THE FINDINGS AND SENTENCING, ARE MISSING FROM THE RECORD OF TRIAL.

STATEMENT OF THE CASE

Airman First Class Oscar F. Gonzalez (Appellant) was tried by a military judge alone sitting as a general court-martial at Joint Base Charleston, South Carolina on 21 July 2022. Record (R.) at 1. Consistent with his pleas, the military judge found him guilty of one charge and two specifications of assault in violation of Article 128, Uniform Code of Military Justice (UCMJ)¹, for touching and squeezing his wife’s, B.G.’s, neck with his hands (Charge II, Specification 1), and grabbing B.G.’s wrist with his hand (Charge II, Specification 2)². R. 11, 46.

¹ Unless otherwise specified, all references to the UCMJ, the Military Rules of Evidence, and the Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2019 ed.) (2019 *MCM*).

² Under the plea agreement’s terms, the Government withdrew and dismissed both specifications (Specifications 1 and 2) of Charge I, which alleged violations of Article 120, UCMJ, and also

The military judge sentenced Appellant to be reduced to E-1, to forfeit all pay and allowances for six months, and to be confined for six months for Specification 1 of Charge II, and three months for Specification 2 of Charge II, with all sentences to confinement running concurrently, and to be discharged with a bad conduct discharge. R. 106.

STATEMENT OF FACT

Appellant and B.G. married on 22 July 2020 and have one child together, a son born on 15 April 2020. Prosecution Ex. 1, p.1. Both were members and more specifically, were trained as . Id. Around 10 October 2020, B.G. moved to Charleston and was assigned to the Squadron (at Joint Base Charleston, SC. Id. B.G. stayed with her parents when she first arrived and was waiting for Appellant to finish out his assignment at Minot Air Force Base. Appellant was due to transition to the S about a month later. Id.

Appellant arrived in Charleston on 5 November 2020 and stayed at a Hilton Garden Inn near the base while the couple house hunted and in-processed to their new assignment. Id. The brief period between their wedding and moving to Charleston was turbulent for the couple – marked by frequent arguments and discussions about divorce. Id. The afternoon of 11 November began on such a turbulent note. That afternoon, B.G. came to Appellant's hotel room to pick him up for a unit barbeque. R. 21. The couple began to argue about their son and moving to Charleston. Id. Appellant tried to end the argument by kissing his wife, but she rejected his gesture. Id. Tensions continued to build and ultimately Appellant grabbed B.G.

Specifications 3 through 6 of Charge II, which alleged additional violations of Article 128, UCMJ. (R. Vol. 1, Entry of Judgment, 20 Sep 22).

by the neck and applied pressure for a few seconds before B.G. kicked Appellant and he removed his hands. R. 21-22.

Tensions calmed and B.G. went to the bathroom to shower. Prosecution Ex. 1, p.1. When she returned the couple began arguing over the same subject, their son. R. 26. At one-point B.G. said something to the effect of “ I’m leaving you and never coming back,” and left the hotel room. Prosecution Ex. 1, p.1, R. 26. Appellant ran after B.G. and grabbed her wrist before she could get onto the elevator. R. 26. She pulled trying to leave, but Appellant held on pleading with her to stay and work things out. Id. Then, B.G. stopped pulling, Appellant let go of her wrist, and they both returned to the hotel room. Id.

At his court-martial, Appellant pleaded guilty to two specifications of assault under Article 128, UCMJ for grabbing his wife’s neck and wrist. R. 11. In addition to the statements Appellant made during his providence inquiry, the military judge admitted a stipulation of fact (Prosecution Exhibit 1) into evidence for use in determining both Appellant’s guilt and sentence. R. 18. Prosecution Exhibit 1 was admitted as a 35-page document consisting of 3 pages of factual stipulations and two attachments consisting of 32 pages of photographs. R. 17, and Prosecution Exhibit 1 at p. 3. The attachments were referenced in trial counsel’s argument but are absent from the record. R. 94.

ARGUMENT

THE RECORD OF TRIAL IS INCOMPLETE PREVENTING THIS COURT FROM CONDUCTING ITS ARTICLE 66(d), UCMJ REVIEW BECAUSE THIRTY-TWO PAGES OF ATTACHMENTS TO PROSECUTION EXHIBIT 1, THE STIPULATION OF FACT, WHICH WERE RELIED UPON BY THE MILITARY JUDGE TO SUPPORT APPELLANT’S FINDINGS AND SENTENCING ARE MISSING FROM THE RECORD.

Standard of Review

Whether a record is complete and a transcript is verbatim are questions of law that this Court reviews de novo. *Cf. United States v. Henry*, 53 M.J. 108, 110 (C.A.A.F. 2000). “The requirement that a record of trial be complete and substantially verbatim in order to uphold the validity of a verbatim record sentence is one of jurisdictional proportion that cannot be waived.” *Id.*

Law & Analysis

A complete record of proceedings, including all exhibits and a verbatim transcript, must be prepared for any general court-martial that results in a punitive discharge or more than six months of confinement. Article 54(c)(2), UCMJ, 10 U.S.C. § 854(c)(2); Rules for Courts-Martial (R.C.M.) 1112; R.C.M. 1114. Further, R.C.M. 1112(b) mandates that records of trial contain “the court-martial proceedings, and includes any evidence or exhibits considered by the court martial in determining the findings or sentence.” “A substantial omission renders a record of trial incomplete and raises a presumption of prejudice that the Government must rebut.” *United States v. Henry*, 53 M.J. 108, 111 (C.A.A.F. 2000) (citations omitted).

The threshold question in assessing whether a record is complete is whether the omitted material was either qualitatively or quantitatively substantial. *United States v. Davenport*, 73 M.J. 373, 377 (C.A.A.F. 2014). “[O]missions are qualitatively substantial if the substance of the omitted material ‘related directly to the sufficiency of the Government’s case on the merits,’ and ‘the testimony could not ordinarily have been recalled with any degree of fidelity.’” *Id.* (quoting *Lashley*, 14 M.J. at 9). “Omissions are quantitatively substantial unless ‘the totality of omissions . . . becomes so unimportant and so uninfluential when viewed in the light of the

whole record, that it approaches nothingness.” Id. (omission in original) (quoting United States v. Nelson, 3 C.M.A. 482, 13 C.M.R. 38, 43 (C.M.A. 1953)).

Here, the omission of the attachments is substantial. The attachments were the seminal evidence supporting Appellant’s findings, sentence, and were relied on heavily by the Government during its sentencing argument. Prosecution Exhibit 1 states that it contains the Stipulation of Fact (3 pages) and two attachments consisting of 32 pages of photographs. Prosecution Exhibit 1, p. 3. The military judge admitted Prosecution Exhibit 1 into evidence stating that it was a “35-page document...” R. 18. The military judge also explained that she would use the 35-page document to determine whether Appellant was guilty and to determine an appropriate sentence. R. 16-17.

Moreover, the missing attachments were integral to trial counsel’s sentencing argument. In arguing for a more severe sentence for Appellant, the Government repeatedly referenced and displayed pictures contained in the attachments to Prosecution Exhibit 1. Seeking to support his lengthy sentence recommendation, the trial counsel tried to emphasize how “dangerous” Appellant’s conduct was, claiming that “this is how people die,” while holding up Prosecution Exhibit 1, Attachment 1, page 2. R. 94. But that exhibit is absent from the record. Similarly, trial counsel bolstered his argument by waving about Prosecution Exhibit 1, Attachment 2, page 11, claiming it showed how how severe B.G.’s injuries were and stating the exhibits showed the “[b]ruises lasted for 3 days, 6 days, maybe longer.” Id. But again that attachment to the exhibit is absent from the record.

The missing 32 pages of the attachment presumably contained photographs of the bruising and what it looked like close in time to the assault as well as days after. In short, it was the only evidence that spoke to the severity of the force Appellant used, and in turn, the severity

of the assault. As such it is key evidence in determining the severity of punishment. This is why trial counsel repeatedly referenced and used the exhibits as demonstratives during his argument. Further, the military judge was duty-bound to consider such evidence during both findings and sentencing. For these reasons, the omission of the attachments is both qualitatively and quantitatively substantial and this Court cannot conduct its mandatory Article 66(d) review. See e.g., United States v. Mardis, 2022 CCA LEXIS 10 *9 (A.F. Ct. Crim. App. 6 January 2022) (unpub. op.) (finding missing attachments quantitatively and qualitatively substantial when they contained key evidence referred to in the stipulation of fact and relied upon by trial counsel during argument).

Conclusion

Wherefore, Appellant respectfully requests this Court set aside his findings and sentence.

Respectfully submitted,

JARETT MERK, Maj, USAFR
1500 Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762

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 28 July 2023.

Respectfully submitted,

JARETT MERK, Maj, USAFR
1500 Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762

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

UNITED STATES	)	No. ACM 40375
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF PANEL CHANGE
Oscar F. GONZALEZ)	
Airman First Class (E-3))	
U.S. Air Force)	
<i>Appellant</i>)	

It is by the court on this 8th day of August, 2023,

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

[Redacted signature]

TANICA S. BAGMON
Appellate Court Paralegal