

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
)	
Senior Airman (E-4)	)	No. ACM 40340
CHRISTOPHER N. GRAVES,)	
United States Air Force	)	14 November 2022
<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 **18 January 2023**. The record of trial was docketed with this Court on 20 September 2022. From the date of docketing to the present date, 55 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,

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 14 November 2022.

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
)	
Senior Airman (E-4)	)	ACM 40340
CHRISTOPHER N. GRAVES, 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 15 November 2022.

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) OUT OF TIME
)	
v.	)	Before Panel No. 2
)	
Senior Airman (E-4)	)	No. ACM 40340
CHRISTOPHER N. GRAVES,)	
United States Air Force	)	16 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)(3) and (m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time out of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 February 2023**. The record of trial was docketed with this Court on 20 September 2022. From the date of docketing to the present date, 118 days have elapsed. On the date requested, 150 days will have elapsed. This EOT is being filed out of time due to an error in counsel’s docket indicating that Appellant’s brief was due on 23 January 2023, as opposed to 18 January 2023. Counsel failed to catch this error when reviewing her docket while she was TDY for another client’s *DuBay* hearing from 7 through 15 January 2023.

On 13 April and 26 May 2022, pursuant to his pleas,¹ Appellant was convicted at a general court-martial convened at Joint Base Anacostia-Bolling, D.C., of one charge and three specifications of sexual abuse of a child in violation of Article 120b, Uniform Code of Military

¹ Pursuant to a plea agreement, Appellant pleaded not guilty to one specification of sexual abuse of a child in violation of Article 120b, UCMJ, one specification of indecent exposure in violation of Article 134, UCJJ, one charge and one specification of extortion in violation of Article 127, UCMJ, and one charge and specification of attempted production of child pornography in violation of Article 80, UCMJ. R. at 33.

Justice (UCMJ), one charge and one specification of obstruction of justice, in violation of Article 131b, UCMJ, and one charge and one specifications of child pornography in violation of Article 134, UCMJ. R. at 33. A military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for a total of 36 months,² and to be dishonorably discharged from the service. R. at 79.

The record of trial consists of 3 prosecution exhibits, 1 defense exhibits, and 5 appellate exhibits; the transcript is 122 pages. Appellant is 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

² Appellant was sentenced to be confined for 12 months (for Specification 1 of Charge I), to be confined for 12 months (for Specification 2 of Charge I), and to be confined for 24 months (for Specification 4 of Charge I), to be confined for 2 months (for the Specification of Charge II), and to be confined for 36 months (for Specification 1 of Charge III), with all the sentences running concurrently. R. at 79.

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 16 January 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 – OUT OF TIME
)	
Senior Airman (E-4)	)	ACM 40340
CHRISTOPHER N. GRAVES, 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, Out 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.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
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 17 January 2023.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
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
)	
Senior Airman (E-4)	)	No. ACM 40340
CHRISTOPHER N. GRAVES,)	
United States Air Force	)	10 February 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 **19 March 2023**. The record of trial was docketed with this Court on 20 September 2022. From the date of docketing to the present date, 143 days have elapsed. On the date requested, 180 days will have elapsed.

On 13 April and 26 May 2022, pursuant to his pleas,¹ Appellant was convicted at a general court-martial convened at Joint Base Anacostia-Bolling, D.C., of one charge and three specifications of sexual abuse of a child in violation of Article 120b, Uniform Code of Military Justice (UCMJ), one charge and one specification of obstruction of justice, in violation of Article 131b, UCMJ, and one charge and one specifications of child pornography in violation of Article 134, UCMJ. R. at 33. A military judge sentenced Appellant to be reduced to the grade of E-1, to

¹ Pursuant to a plea agreement, Appellant pleaded not guilty to one specification of sexual abuse of a child in violation of Article 120b, UCMJ, one specification of indecent conduct in violation of Article 134, UCJJ, one charge and one specification of extortion in violation of Article 127, UCMJ, and one charge and specification of attempted production of child pornography in violation of Article 80, UCMJ. R. at 33.

be confined for a total of 36 months,² and to be dishonorably discharged from the service. R. at 79. The convening authority took no action on the findings and approved the sentence in its entirety. ROT, Vol. 1, Decision on Action, dated 17 June 2022.

The record of trial consists of 3 prosecution exhibits, 1 defense exhibits, and 5 appellate exhibits; the transcript is 122 pages. Appellant is 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

² Appellant was sentenced to be confined for 12 months (for Specification 1 of Charge I), to be confined for 12 months (for Specification 2 of Charge I), and to be confined for 24 months (for Specification 4 of Charge I), to be confined for 2 months (for the Specification of Charge II), and to be confined for 36 months (for Specification 1 of Charge III), with all the sentences running concurrently. R. at 79.

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 February 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
)	
Senior Airman (E-4)	)	ACM 40340
CHRISTOPHER N. GRAVES, 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 February 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 (FOURTH)
)	
v.	)	Before Panel No. 2
)	
Senior Airman (E-4)	)	No. ACM 40340
CHRISTOPHER N. GRAVES,)	
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) 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 **18 April 2023**. The record of trial was docketed with this Court on 20 September 2022. From the date of docketing to the present date, 171 days have elapsed. On the date requested, 210 days will have elapsed.

On 13 April and 26 May 2022, pursuant to his pleas,¹ Appellant was convicted at a general court-martial convened at Joint Base Anacostia-Bolling, D.C., of one charge and three specifications of sexual abuse of a child in violation of Article 120b, Uniform Code of Military Justice (UCMJ), one charge and one specification of obstruction of justice, in violation of Article 131b, UCMJ, and one charge and one specifications of child pornography in violation of Article 134, UCMJ. R. at 33. A military judge sentenced Appellant to be reduced to the grade of E-1, to

¹ Pursuant to a plea agreement, Appellant pleaded not guilty to one specification of sexual abuse of a child in violation of Article 120b, UCMJ, one specification of indecent conduct in violation of Article 134, UCJJ, one charge and one specification of extortion in violation of Article 127, UCMJ, and one charge and specification of attempted production of child pornography in violation of Article 80, UCMJ. R. at 33.

be confined for a total of 36 months,² and to be dishonorably discharged from the service. R. at 79. The convening authority took no action on the findings and approved the sentence in its entirety. ROT, Vol. 1, Decision on Action, dated 17 June 2022.

The record of trial consists of 3 prosecution exhibits, 1 defense exhibits, and 5 appellate exhibits; the transcript is 122 pages. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters³ and has yet to complete her review of Appellant's case. Counsel is currently assigned 23 cases; 12 cases are pending initial AOE's before this Court. This is military counsel's seventh priority case. The following cases have priority over the present case:

1. *United States v Robles*, ACM 40280 – The record of trial is 8 volumes; the trial transcript is 399 pages. There are 18 prosecution exhibits, 6 defense exhibits, and 15 appellate exhibits. Counsel has reviewed approximately 200 pages of Appellant's transcript.

2. *United States v. Arbo*, ACM 40285 – The record of trial is 2 volumes; the trial transcript is 118 pages. There are 6 prosecution exhibits, 2 defense exhibits, and 6 appellate exhibits. Counsel has reviewed Appellant's transcript, has reviewed $\frac{3}{4}$ of Appellant's ROT, and is scheduled to review the sealed materials in his case this upcoming Monday.

² Appellant was sentenced to be confined for 12 months (for Specification 1 of Charge I), to be confined for 12 months (for Specification 2 of Charge I), and to be confined for 24 months (for Specification 4 of Charge I), to be confined for 2 months (for the Specification of Charge II), and to be confined for 36 months (for Specification 1 of Charge III), with all the sentences running concurrently. R. at 79.

³ Since the filing of Appellant's last EOT, counsel filed a lengthy brief in *United States v. Jones*, ACM 40226, on 21 February 2023, and filed a petition for reconsideration to the Court of Appeals for the Armed Forces (CAAF) in *United States v. Daniels III*, ACM 39407 (rem) on 10 March 2023.

3. *United States v Flores*, ACM S32728 – The record of trial is 2 volumes; the trial transcript is 143 pages. There are 5 prosecution exhibits, 4 defense exhibits, and 5 appellate exhibits. Counsel has completed her review of Appellant’s case, identified potential issues to raise, and has spoken with Appellant to discuss what issues she would like raised in her brief, and has started drafting her Assignments of Error.

4. *United States v. Goldman*, ACM 39939 (f rev) – The record of trial is 12 volumes; the trial transcript is 924 pages. There are 5 prosecution exhibits, 1 defense exhibit, and 48 appellate exhibits. Counsel has not yet completed her review of Appellant’s post-trial paperwork.

5. *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 not yet begun her review of Appellant’s ROT.

6. *United States v. Irvin*, ACM 40311 - The record of trial is 2 volumes; the trial transcript is 81 pages. There are 4 prosecution exhibits, 11 defense exhibits, and 14 appellate exhibits. Counsel has not yet begun her review of Appellant’s ROT.

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
)	
Senior Airman (E-4)	)	ACM 40340
CHRISTOPHER N. GRAVES, 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 (FIFTH)
)	
v.	)	Before Panel No. 2
)	
Senior Airman (E-4)	)	No. ACM 40340
CHRISTOPHER N. GRAVES,)	
United States Air Force	)	11 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) 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 **18 May 2023**. The record of trial was docketed with this Court on 20 September 2022. From the date of docketing to the present date, 203 days have elapsed. On the date requested, 240 days will have elapsed.

On 13 April and 26 May 2022, pursuant to his pleas,¹ Appellant was convicted at a general court-martial convened at Joint Base Anacostia-Bolling, D.C., of one charge and three specifications of sexual abuse of a child in violation of Article 120b, Uniform Code of Military Justice (UCMJ), one charge and one specification of obstruction of justice, in violation of Article 131b, UCMJ, and one charge and one specifications of child pornography in violation of Article 134, UCMJ. R. at 33. A military judge sentenced Appellant to be reduced to the grade of E-1, to

¹ Pursuant to a plea agreement, Appellant pleaded not guilty to one specification of sexual abuse of a child in violation of Article 120b, UCMJ, one specification of indecent conduct in violation of Article 134, UCJJ, one charge and one specification of extortion in violation of Article 127, UCMJ, and one charge and specification of attempted production of child pornography in violation of Article 80, UCMJ. R. at 33.

be confined for a total of 36 months,² and to be dishonorably discharged from the service. R. at 79. The convening authority took no action on the findings and approved the sentence in its entirety. ROT, Vol. 1, Decision on Action, dated 17 June 2022.

The record of trial consists of 3 prosecution exhibits, 1 defense exhibits, and 5 appellate exhibits; the transcript is 122 pages. Appellant is 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 has yet to complete her review of Appellant's case. Counsel is currently assigned 22 cases; 12 cases are pending initial AOE's before this Court. This is military counsel's fifth priority⁴ case. The following cases have priority over the present case:

1. *United States v Robles*, ACM 40280 – The record of trial is 8 volumes; the trial transcript is 399 pages. There are 18 prosecution exhibits, 6 defense exhibits, and 15 appellate exhibits. Counsel has reviewed Appellant's ROT, has consulted with Appellant on issues to raise, is researching the issues, and is drafting Appellant's Assignments of Error to submit to this Court by 7 May 2023.

² Appellant was sentenced to be confined for 12 months (for Specification 1 of Charge I), to be confined for 12 months (for Specification 2 of Charge I), and to be confined for 24 months (for Specification 4 of Charge I), to be confined for 2 months (for the Specification of Charge II), and to be confined for 36 months (for Specification 1 of Charge III), with all the sentences running concurrently. R. at 79.

³ Since the filing of Appellant's last EOT, counsel filed a brief in *United States v. Flores*, ACM S32728 on 21 March 2023.

⁴ Counsel will also be filing a reply brief in *United States v. Jones*, ACM 40226, due 18 April 2023 and will be filing a Supplement to Petition for Grant of Review to the Court of Appeals for the Armed Forces in *United States v. Kitchen*, ACM 40155, due 20 April 2023.

2. *United States v. Arbo*, ACM 40285 – The record of trial is 2 volumes; the trial transcript is 118 pages. There are 6 prosecution exhibits, 2 defense exhibits, and 6 appellate exhibits. Counsel has reviewed Appellant’s ROT and has consulted with Appellant on issues to raise.

3. *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 begun reviewing Appellant’s ROT and will be setting up an appointment to view sealed materials in his case.

4. *United States v. Irvin*, ACM 40311 - The record of trial is 2 volumes; the trial transcript is 81 pages. There are 4 prosecution exhibits, 11 defense exhibits, and 14 appellate exhibits. Counsel has not yet begun her review of Appellant’s ROT.

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 11 April 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
)	
Senior Airman (E-4)	)	ACM 40340
CHRISTOPHER N. GRAVES, 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.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
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 12 April 2023.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force

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

UNITED STATES	)	No. ACM 40340
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Christopher N. GRAVES)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 2

On 11 April 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 13th day of April, 2023,

ORDERED:

Appellant’s Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant shall file any assignments of error not later than **18 May 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

FLEMING E. KEEFE, Capt, USAF
Deputy Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S MOTION TO
<i>Appellee,</i>	)	EXAMINE SEALED MATERIAL
)	
v.)	
	)	Before Panel No. 2
Senior Airman (E-4))	
CHRISTOPHER N. GRAVES,	)	Case No. ACM 40340
United States Air Force)	
<i>Appellant</i>	)	Filed on: 1 May 2023
)	

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

Pursuant to Rules 3.1 and 23.3(f) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves to examine the sealed materials in Appellant’s record of trial: Prosecution Exhibit (Pros. Ex.) 1, Attachment 1, and Appellate Exhibit (App. Ex) 1. Pros. Ex. 1, Attachment 1, which contains contraband, was examined by trial counsel and defense counsel, and ordered sealed by the military judge. App. Ex. 1, entitled “Composite Exhibit of Article 30a Proceedings from 26 Feb through 23 April 21” was also ordered sealed.

In accordance with R.C.M. 1113(b)(3)(B)(i), which requires a colorable showing that examination of these materials is reasonably necessary to appellate counsel’s responsibilities, undersigned counsel asserts that review of the referenced exhibits is necessary to conduct a complete review of the record of trial and be in a position to advocate competently on behalf of Appellant. A review of the entire record is necessary because this Court is empowered by Article 66(c), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(c), to grant relief based on a review and analysis of “the entire record.” To determine whether the record of trial yields grounds for this Court to

grant relief under Article 66(c), UCMJ, 10 U.S.C. §866, counsel must therefore examine “the entire record.”

Although Courts of Criminal Appeals have a broad mandate to review the record unconstrained by an appellant's assignments of error, that broad mandate does not reduce the importance of adequate representation. As we said in *United States v. Ortiz*, 24 M.J. 323, 325 (C.M.A. 1987), independent review is not the same as competent appellate representation.

United States v. May, 47 M.J. 478, 481, (C.A.A.F. 1998). The sealed material must be reviewed in order for counsel to provide “competent appellate representation.” *Id.* Therefore, military defense counsel’s examination of sealed materials is reasonably necessary to fulfill their responsibilities in this case, since counsel cannot perform their duty of representation under Article 70, UCMJ, 10 U.S.C. §870, without first reviewing the complete record of trial.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant this motion.

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 was sent via email to the Court and served on the Appellate Government Division on 1 May 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' RESPONSE
<i>Appellee,</i>	)	TO APPELLANT'S MOTION
	)	TO EXAMINE
v.	)	SEALED MATERIAL
)	
Senior Airman (E-4)	)	ACM 40340
CHRISTOPHER N. GRAVES, 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 responds to Appellant's Motion to Examine Sealed Material. The United States does not object to Appellant's counsel reviewing any materials listed in Appellant's motion that were available to all parties at trial – so long as the United States can also review the sealed portions of the record as necessary to respond to any assignment of error that refers to the sealed materials. The United States respectfully requests that any order issued by this Court also allow counsel for the United States to view the sealed materials.

The United States would not consent to Appellant's counsel viewing any exhibits that were reviewed in camera but not released to the parties unless this Court has first determined there is good cause for Appellant's counsel to do so under R.C.M. 1113.

WHEREFORE, the United States respectfully responds to Appellant's motion.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
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 1 May 2023.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MERITS BRIEF
<i>Appellee</i>)	
)	
v.	)	Before Panel No. 2
)	
Senior Airman (E-4)	)	No. ACM 40340 Filed
CHRISTOPHER N. GRAVES)	
United States Air Force	)	6 June 2023
<i>Appellant</i>)	

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

Submission of Case Without Specific Assignments of Error

The undersigned appellate defense counsel attests he has, on behalf of Senior Airman Christopher N. Graves, Appellant, carefully examined the record of trial in this case. Ann Graves, does not admit that the findings and sentence are correct in law and fact, but submits the case to this Honorable Court on its merits with no specific assignments of error.¹

Respectfully submitted,

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

¹ Ann Graves has conformed this merits brief to the format in Appendix B of this Honorable Court’s Rule of Practice and Procedure. Ann Graves understands this Court will exercise its independent “awesome, plenary, and de novo power” to review the entire record of this proceeding for factual and legal sufficiency, and for sentence propriety, and to “substitute its judgment” for that of the court below, as is provided for and required by Article 66(c), UCMJ, 10 U.S.C. §866(c) (2012) [now Article 66(d), UCMJ, 10 U.S.C. §866(d) (2019)]. *United States v. Cole*, 31 M.J. 270, 272 (C.M.A. 1990); *United States v. Chin*, 75 M.J. 220 (C.A.A.F. 2016).

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 June 2023.

Respectfully submitted,

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

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

UNITED STATES	)	No. ACM 40340
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF PANEL CHANGE
Christopher N. GRAVES)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>)	

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

ORDERED:

The Record of Trial in the above-styled matter is withdrawn from Panel 2 and referred to a Special Panel for appellate review. The Special Panel in this matter shall be constituted as follows:

RICHARDSON, NATALIE D., Colonel, Senior Appellate Military Judge
CADOTTE, ERIC J., Colonel, Senior Appellate Military Judge
ANNEXSTAD, WILLIAM J., Colonel, Senior Appellate Military Judge

This panel letter supersedes all previous panel assignments.



FOR THE COURT

TANICA S. BAGMON
Appellate Court Paralegal

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

No. ACM 40340

UNITED STATES

Appellee

v.

Christopher N. GRAVES

Senior Airman (E-4), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary

Decided 23 August 2023

Military Judge: Rebecca E. Schmidt (pretrial motion); Matthew D. Talcott (pretrial motions); Pilar G. Wennrich (arraignment); Brian C. Mason (trial).¹

Sentence: Sentence adjudged on 26 May 2022 by GCM convened at Joint Base Anacostia-Bolling, Washington, District of Columbia.² Sentence entered by military judge on 27 June 2022: Dishonorable discharge, confinement for 36 months, and reduction to E-1.

For Appellant: Major Jenna M. Arroyo, USAF; Major Jarett Merk, USAF.

For Appellee: Captain Olivia B. Hoff, USAF; Mary Ellen Payne, Esquire. Before RICHARDSON, CADOTTE, and ANNEXSTAD, *Appellate Military Judges.*

¹ The pretrial motions were pursuant to Article 30a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 830a.

² Appellant was arraigned at Fort George G. Meade, Maryland.

This is an unpublished opinion and, as such, does not serve as precedent under AFCCA Rule of Practice and Procedure 30.4.

PER CURIAM:

In accordance with his pleas and pursuant to a plea agreement, Appellant was convicted of three specifications of sexual abuse of a minor, one specification of obstruction of justice, and one specification of possession of child pornography, in violation of Articles 120b, 131b, and 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 920b, 931b, 934.³ The military judge sentenced Appellant to a dishonorable discharge, 36 months' confinement, and reduction to the grade of E-1. The convening authority approved the sentence in its entirety.

This case was submitted for our review on its merits without assignment of error. During our review, we found the entry of judgment (EoJ) contains errors, at least one of which is to the material prejudice of a substantial right of Appellant. In our decretal paragraph we remand the case to the Chief Trial Judge, Air Force Trial Judiciary, for modification of the EoJ.

I. BACKGROUND

Appellant entered into a plea agreement (PA) with the convening authority on 12 May 2023. Pursuant to paragraph 1 of the PA, Appellant agreed to plead guilty to some offenses, and not guilty to others; he did not specify that he would plead guilty by exceptions. Paragraph 3 of the PA, addressing the offenses to which Appellant would plead not guilty, stated:

The convening authority agrees to dismiss specification 3 of Charge I, specification 2 of Charge III, Charge IV and its specification, and Charge V and its specification *after sentencing*. The convening authority agrees to *line out* “pictures, videos, and” from the specification of Charge II. The dismissal will be *without prejudice*, but the convening authority agrees not to refer the specifications anew unless [Appellant] break[s] the terms of this agreement.

³ One offense was committed before 1 January 2019; the others were committed after that date. We considered the applicable edition of the *Manual for Courts-Martial* in our review of the punitive articles of the UCMJ. Unless otherwise noted, all other references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.).

(Emphasis added). The Specification of Charge II alleged Appellant obstructed justice by deleting “pictures, videos, and messages” between himself and the victim identified in Specifications 1 and 2 of Charge I.

On 26 May 2022, Appellant entered pleas through his trial defense counsel “[p]ursuant to the Plea Agreement.” He entered guilty and not guilty pleas in line with his agreement in the PA, with one notable difference. To the Specification of Charge II he pleaded as follows: “Guilty, except for the words ‘pictures, videos, and,’ to those words: Not Guilty; to Charge II: Guilty.” The military judge confirmed with Appellant that he pleaded guilty by exceptions to the Specification of Charge II. The military judge conducted a providency inquiry into all the specifications to which Appellant pleaded guilty. For the Specification of Charge II, the inquiry related only to messages, and not pictures or videos.

During his plea-agreement inquiry with Appellant, the military judge asked for “the Government’s position with regards to whether or not [Appellant] has complied with his terms of his plea agreement as listed under [paragraph] 1 when he excepted those words.” Circuit Trial Counsel replied, “Our position is he complied.” Later during this inquiry, the military judge briefly asked Appellant about paragraph 3 of the PA, *supra*. He confirmed Appellant understood and agreed

the convening authority [is] agreeing to dismiss Specification 3 of Charge I, Specification 2 of Charge III, Charge IV and its Specification, and Charge V and its Specification. And . . . the convening authority would agree to line out “pictures, videos, and,” consistent with the way [Appellant] pled, the excepted words from the Specification of Charge II; the dismissal would be without prejudice, but the convening authority agrees not to refer the specification[s] anew . . . unless [Appellant] break[s] the terms of the agreement.

At the end of the plea-agreement inquiry, both parties stated they agreed with the military judge’s interpretation of the PA.

The military judge announced findings “in accordance with [Appellant’s] pleas of guilty” as follows:

- Of Specification 1 of Charge I: Guilty;
- Of Specification 2 of Charge I: Guilty;
- Of Specification 4 of Charge I: Guilty;
- Of Charge I: Guilty.

Of the Specification of Charge II: Guilty, except the words “pictures, videos, and;” of the excepted words: Not Guilty.

Of Charge II: Guilty.

.....

Of Specification 1 of Charge III, and

Of Charge III: Guilty.

After he announced findings, the military judge asked trial counsel whether he had “a motion to make with regards to the remaining specifications and charges.” Trial counsel replied, “The Government makes a motion to dismiss Specification 3 of Charge I; Specification 2 of Charge III, the Specification of Charge IV, and the Specification of Charge V, without prejudice.”⁴ With no defense objection, the military judge granted the motion.

The Statement of Trial Results—dated the same day as the court-martial—and the EoJ reflect findings to the specifications to which Appellant pleaded not guilty and which the Government moved to dismiss without prejudice. That is, the entries on the EoJ for Specification 3 of Charge I, Specification 2 of Charge III, and the specifications of Charges IV and V indicate (1) Appellant pleaded not guilty, (2) Appellant was found not guilty, and (3) the specification was “withdrawn and dismissed after arraignment (without prejudice).” Charges IV and V also reflect that Appellant pleaded not guilty and was found not guilty.

Moreover, in both documents, the language of the offense alleged in the Specification of Charge II (1) omits the words, “pictures, videos, and,” (2) indicates a guilty plea without exceptions, and (3) indicates a guilty finding without exceptions.

The charge sheet reflects that on 26 May 2022, the same day as the court-martial, (1) Specification 3 of Charge I, Specification 2 of Charge III, and Charges IV and V and their specifications were “withdrawn and dismissed without prejudice,” and (2) the words “pictures, videos, and” were lined out. The initials next to the changes are the same as assistant trial counsel’s initials.

II. LAW

Proper completion of post-trial processing is a question of law that this court reviews de novo. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citing *United States v. Kho*, 54 M.J. 63 (2000)). The EoJ is

⁴ The Government did not specifically ask that Charges IV and V be dismissed.

part of a record of trial. *See* Rule for Courts-Martial (R.C.M.) 1112(b)(9). “A record of trial found to be incomplete or defective before or after certification may be corrected to make it accurate.” R.C.M. 1112(d)(2). “The Judge Advocate General, the Court of Criminal Appeals, and the [United States] Court of Appeals for the Armed Forces may modify a judgment in the performance of their duties and responsibilities.” R.C.M. 1111(c)(2). “A superior competent authority may return a record of trial to the military judge for correction under this rule.” R.C.M. 1112(d)(2). “The Chief Trial Judge[, Air Force Trial Judiciary,] has been delegated the authority to modify EoJs in accordance with R.C.M. 1111(c)(2), and may detail a subordinate trial judge to modify an EoJ in a particular case.” Department of the Air Force Instruction 51-201, *Administration of Military Justice*, ¶ 21.9.1 (14 Apr. 2022). “If a case is remanded to a military judge, the military judge may modify the judgment consistent with the purposes of the remand.” R.C.M. 1111(c)(3).

“No person may, without his consent, be tried a second time for the same offense.” Article 44(a), UCMJ, 10 U.S.C. § 844(a). “Under the constitutional and statutory protections against double jeopardy, an announced decision to acquit is final. The decision cannot be impeached, and the accused cannot be retried” *United States v. Hardy*, 46 M.J. 67, 73 (C.A.A.F. 1997) (citations omitted).

III. DISCUSSION

The EoJ in this case does not appear to accurately reflect Appellant’s pleas and the findings of the court-martial. We address the two sets of errors in turn.

Appellant pleaded guilty by exceptions to the Specification of Charge II. However, the EoJ indicates those excepted words were not part of the specification when Appellant entered his pleas. More importantly, however, the military judge found Appellant not guilty of those words. A not-guilty finding has enduring consequences to the benefit of an accused, including the attachment of jeopardy.⁵ The failure of the EoJ to reflect the not-guilty findings to the excepted words materially prejudices Appellant’s substantial right to former-jeopardy protection.

Next, the EoJ indicates that for certain specifications and charges (1) Appellant was found not guilty, and (2) they were withdrawn from the court-martial and dismissed without prejudice after arraignment. This scenario is not only perplexing, it is contrary to the findings announced by the military judge. Appellant was arraigned on those offenses, and entered pleas of not guilty; at

⁵ While the PA was clear the dismissals would be “without prejudice,” a not-guilty finding is the equivalent of the words being dismissed “with prejudice.”

that point, our review of the record indicates they had not been withdrawn and dismissed. The military judge did not enter a finding to those charges and specifications. The military judge granted the government motion to withdraw and dismiss them, and the markings on the charge sheet indicate the Government did so. As discussed *supra*, the result of a not-guilty finding is that Appellant could not be re-tried for those offenses. If the offenses instead were dismissed without prejudice, further prosecution is possible. From our read of the record, it appears the “F[inding]” column of the EoJ for Specification 3 of Charge I, Specification 2 of Charge III, and Charges IV and V and their specifications should not state “NG” and instead state what appears in the next column: “Withdrawn and dismissed after arraignment (without prejudice).”

We decline to exercise authority under R.C.M. 1111(c)(2) to modify the contents of the EoJ, or under Article 66(f)(3), UCMJ, 10 U.S.C. § 866(f)(3), to order a hearing. We determine the better approach is to allow a military judge under R.C.M. 1111(c)(3) to ensure the EoJ accurately reflects the specifications, pleas, and findings or other disposition of the offenses in Appellant’s case.

IV. CONCLUSION

The record of trial is **REMANDED** to the Chief Trial Judge, Air Force Trial Judiciary, for modification of the entry of judgment as noted above. Article 66(f)(3), UCMJ, 10 U.S.C. § 866(f)(3); R.C.M. 1111(c)(3). We retain jurisdiction and do not dismiss the appellate proceedings. *See* JT. CT. CRIM. APP. R. 29(b)(1).

The military judge shall give notice of the proposed corrections to all parties and permit them to examine and respond before finalizing modification to the entry of judgment. R.C.M. 1112(d)(2). Thereafter, and **not later than 22 September 2023**, the record of trial will be returned to this court for completion of appellate review under Article 66, UCMJ, 10 U.S.C. § 866. Any motion for leave to file a supplemental filing must be submitted **not later than 14 days** after the record is returned to the court. *See* A.F. Ct. Crim. App. R. 18.4.⁶



FOR THE COURT

CAROL K. JOYCE
Clerk of the Court

⁶ As we are not returning the record to The Judge Advocate General, Article 66(g), UCMJ, 10 U.S.C. § 866(g), and JT. CT. CRIM. APP. R. 18(d) are inapplicable. Additionally, we are not ordering a hearing under Article 66(f), UCMJ. *See* JT. CT. CRIM. APP. R. 29.