

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. 1
)	
Airman Basic (E-1)	)	No. ACM 40353
VICTOR HUGO)	
HERNANDEZ-HERNANDEZ	)	7 November 2022
United States Air Force)	
<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 his first enlargement of time to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **8 February 2023**. The record of trial was docketed with this Court on 11 October 2022. From the date of docketing to the present date, 27 days have elapsed. On the date requested, 120 days will have elapsed.

Undersigned counsel recognizes this request for enlargement of time could be considered early, as there are approximately four weeks remaining in the current time period for submission of Appellant’s AOE. However, counsel currently anticipates undergoing surgery within the next month for a recent unanticipated health diagnosis. Counsel anticipates losing several days of review and drafting time both for medical appointments related to the surgery as well as for recovery time. The recovery time following the surgery is currently unknown, as it will depend on the type and success of the surgery; however, counsel anticipates losing a week of review and drafting time at minimum. Counsel is therefore requesting an enlargement of time in an abundance of caution in considering the foregoing information.

Should additional requests for enlargement of time become necessary prior to return from convalescent leave, undersigned counsel will ensure completion through assignment of co-counsel.

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

Respectfully submitted,

ALEXANDRA K. FLESZAR, 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 November 2022.

Respectfully submitted,

ALEXANDRA K. FLESZAR, 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 FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Airman Basic (E-1)	)	ACM 40353
VICTOR HUGO HERNANDEZ-)	
HERNANDEZ, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

**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 does not oppose Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case. Due to Appellant's counsel's unexpected upcoming surgery, the United States does not oppose this one-time request for an enlargement of time. However, the United States will likely oppose future enlargements of time when counsel or co-counsel becomes available to work on this brief.

WHEREFORE, the United States respectfully requests that this Court grant 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 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)
)	
v.	)	Before Panel No. 1
)	
Airman Basic (E-1)	)	No. ACM 40353
VICTOR HUGO)	
HERNANDEZ-HERNANDEZ	)	30 January 2023
United States Air Force)	
<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 (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **10 March 2023**. The record of trial was docketed with this Court on 11 October 2022. From the date of docketing to the present date, 111 days have elapsed. On the date requested, 150 days will have elapsed.

On 29 March and 7 June 2022, at Creech Air Force Base (AFB), Nevada, Appellant was tried and sentenced by a military judge sitting as a General Court-Martial. R. at Vol. 1, Entry of Judgement in the Case of *United States v. Airman Basic VictorHugo Hernandez-Hernandez* (EOJ). In accordance with his pleas, Appellant was convicted of one charge and specification of assault by pointing a firearm in violation of Article 128, UCMJ, and an additional charge and two specifications of assault by unlawful touching in violation of Article 128, UCMJ.¹ *Id.* The military judge sentenced Appellant to six months confinement, total forfeiture of all pay and

¹ In accordance with the plea agreement, the Convening Authority withdrew and dismissed one charge and eight specifications of sexual assault in violation of Article 120, UMCJ, and one specification of Charge II, for assault by pointing a firearm, in violation of Article 128, UCMJ. *Id.*

allowances, a reprimand, and a bad conduct discharge.² *Id.* On 28 June 2022, the Convening Authority took no action on the findings, disapproved the adjudged reprimand, and approved the remainder of the sentence. R. at Vol. 1, Convening Authority Decision on Action – *United States v. Airman Basic VictorHugo Hernandez-Hernandez*, dated 28 June 2022.

The record of trial consists of six prosecution exhibits, three defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 198 pages. Appellant is not confined, understands his right to speedy appellate review, and consents to this request for enlargement of time.

Through no fault of Appellant’s, undersigned counsel has been working on other assigned matters and has not yet started her review of Appellant’s case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to 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,

ALEXANDRA K. FLESZAR, 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 did not receive any pretrial confinement credit. *Id.*

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 30 January 2023.

Respectfully submitted,

ALEXANDRA K. FLESZAR, 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
	)	OF TIME
v.)	
)	
Airman Basic (E-1)	)	ACM 40353
VICTOR HUGO HERNANDEZ-)	
HERNANDEZ, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

**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 31 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 (THIRD)
)	
v.	)	Before Panel No. 1
)	
Airman Basic (E-1)	)	No. ACM 40353
VICTOR HUGO)	
HERNANDEZ-HERNANDEZ	)	1 March 2023
United States Air Force)	
<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 (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **9 April 2023**. The record of trial was docketed with this Court on 11 October 2022. From the date of docketing to the present date, 141 days have elapsed. On the date requested, 180 days will have elapsed.

On 29 March and 7 June 2022, at Creech Air Force Base (AFB), Nevada, Appellant was tried and sentenced by a military judge sitting as a General Court-Martial. R. at Vol. 1, Entry of Judgement in the Case of *United States v. Airman Basic VictorHugo Hernandez-Hernandez* (EOJ). In accordance with his pleas, Appellant was convicted of one charge and specification of assault by pointing a firearm in violation of Article 128, UCMJ, and an additional charge and two specifications of assault by unlawful touching in violation of Article 128, UCMJ.¹ *Id.* The military judge sentenced Appellant to six months confinement, total forfeiture of all pay and

¹ In accordance with the plea agreement, the Convening Authority withdrew and dismissed one charge and eight specifications of sexual assault in violation of Article 120, UMCJ, and one specification of Charge II, for assault by pointing a firearm, in violation of Article 128, UCMJ. *Id.*

allowances, a reprimand, and a bad conduct discharge.² *Id.* On 28 June 2022, the Convening Authority took no action on the findings, disapproved the adjudged reprimand, and approved the remainder of the sentence. R. at Vol. 1, Convening Authority Decision on Action – *United States v. Airman Basic VictorHugo Hernandez-Hernandez*, dated 28 June 2022.

The record of trial consists of six prosecution exhibits, three defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 198 pages. Appellant is not confined, understands his right to speedy appellate review, and consents to this request for enlargement of time.

Through no fault of Appellant’s, undersigned counsel has been working on other assigned matters and has not yet started her review of Appellant’s case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to 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,

ALEXANDRA K. FLESZAR, 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 did not receive any pretrial confinement credit. *Id.*

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 1 March 2023.

Respectfully submitted,

ALEXANDRA K. FLESZAR, 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
	)	OF TIME
v.)	
)	
Airman Basic (E-1)	)	ACM 40353
VICTOR HUGO HERNANDEZ-)	
HERNANDEZ, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

**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 2 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 (FOURTH)
)	
v.	)	Before Panel No. 1
)	
Airman Basic (E-1)	)	No. ACM 40353
VICTOR HUGO)	
HERNANDEZ-HERNANDEZ	)	22 March 2023
United States Air Force)	
<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 (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **9 May 2023**. The record of trial was docketed with this Court on 11 October 2022. From the date of docketing to the present date, 162 days have elapsed. On the date requested, 210 days will have elapsed.

On 29 March and 7 June 2022, at Creech Air Force Base (AFB), Nevada, Appellant was tried and sentenced by a military judge sitting as a General Court-Martial. R. at Vol. 1, Entry of Judgement in the Case of *United States v. Airman Basic VictorHugo Hernandez-Hernandez* (EOJ). In accordance with his pleas, Appellant was convicted of one charge and specification of assault by pointing a firearm in violation of Article 128, UCMJ, and an additional charge and two specifications of assault by unlawful touching in violation of Article 128, UCMJ.¹ *Id.* The military judge sentenced Appellant to six months confinement, total forfeiture of all pay and

¹ In accordance with the plea agreement, the Convening Authority withdrew and dismissed one charge and eight specifications of sexual assault in violation of Article 120, UMCJ, and one specification of Charge II, for assault by pointing a firearm, in violation of Article 128, UCMJ. *Id.*

allowances, a reprimand, and a bad conduct discharge.² *Id.* On 28 June 2022, the Convening Authority took no action on the findings, disapproved the adjudged reprimand, and approved the remainder of the sentence. R. at Vol. 1, Convening Authority Decision on Action – *United States v. Airman Basic VictorHugo Hernandez-Hernandez*, dated 28 June 2022.

The record of trial consists of six prosecution exhibits, three defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 198 pages. Appellant is not confined, understands his right to speedy appellate review, and consents to this request for enlargement of time.

Through no fault of Appellant’s, undersigned counsel has been working on other assigned matters and has not yet started her review of Appellant’s case. Since filing the last EOT in this case, counsel submitted two AOE’s before this Court, in *United States v. United States v. Thompson*, ACM No. 40019 and *United States v. Pelletier*, ACM No. 40277. Undersigned counsel is currently assigned 22 cases, 12 of which are pending initial AOE before this Court. Four cases have priority for submission of the AOE to this Court:

1. *United States v. Lee*, ACM No. 40258 – The record of trial consists of five prosecution exhibits, eleven defense exhibits, and twenty-four appellate exhibits; the transcript is 595 pages. Counsel has completed her review of this appellant’s case with the exception of sealed materials, and is currently researching identified potential errors and drafting the AOE.

2. *United States v. Haynes*, ACM No. 40306 – The record of trial consists of four prosecution exhibits; 11 defense exhibits; 18 appellate exhibits; and two court exhibits; the transcript is 216 pages. Counsel has not yet begun review of this case.

² Appellant did not receive any pretrial confinement credit. *Id.*

3. *United States v. Porterie*, ACM No. S32735 – The record of trial consists of seven prosecution exhibits; five appellate exhibits; and one court exhibit. The transcript is 87 pages. Counsel has not yet begun review of this case.

4. *United States v. Hubbard*, ACM No. 40339 – The record of trial consists of three prosecution exhibits; one defense exhibit; and six appellate exhibits; the transcript is 68 pages. Counsel has not yet begun review of this case.

Additionally, Counsel anticipates filing a Replies to the Government’s Answers in *United States v. Stradtman*, ACM No. 40237, *United States v. United States v. Thompson*, ACM No. 40019, and *United States v. Lee*, ACM No. 40258, prior to submission of Appellant’s AOE.

Further, undersigned counsel is currently scheduled on 30 March 2023 that will through 31 March, followed by 30 days’ leave. Though

, alternative counsel may need to be assigned. Counsel is requesting this enlargement of time both because the current deadline falls within the period of and to ensure there is sufficient time for the Appellate Defense Division to assign new counsel, should this be required.

Appellant has been informed of these developments and the delay in review that will result from . Appellant specifically consents to this request for enlargement of time and affirmatively seeks to maintain undersigned counsel as his defense attorney. Should additional requests for enlargement of time become necessary prior to , undersigned counsel will ensure completion through assignment of new or co-counsel.

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

ALEXANDRA K. FLESZAR, 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 22 March 2023.

Respectfully submitted,

ALEXANDRA K. FLESZAR, 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
	)	FOR ENLARGEMENT OF TIME
)	
v.)	
)	
Airman Basic (E-1)	)	ACM 40353
VICTOR HUGO HERNANDEZ-)	
HERNANDEZ, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

**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 does not oppose Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case. Due to Appellant's upcoming the United States does not oppose this request for an enlargement of time. However, the United States will likely oppose future enlargements of time when counsel or co-counsel becomes available to work on this brief.

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

THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel, 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 23 March 2023.

THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel, 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 (FIFTH)
)	
v.	)	Before Panel No. 1
)	
Airman Basic (E-1)	)	No. ACM 40353
VICTOR HUGO)	
HERNANDEZ-HERNANDEZ	)	1 May 2023
United States Air Force)	
<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 (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **8 June 2023**. The record of trial was docketed with this Court on 11 October 2022. From the date of docketing to the present date, 202 days have elapsed. On the date requested, 240 days will have elapsed.

On 29 March and 7 June 2022, at Creech Air Force Base (AFB), Nevada, Appellant was tried and sentenced by a military judge sitting as a General Court-Martial. R. at Vol. 1, Entry of Judgement in the Case of *United States v. Airman Basic VictorHugo Hernandez-Hernandez* (EOJ). In accordance with his pleas, Appellant was convicted of one charge and specification of assault by pointing a firearm in violation of Article 128, UCMJ, and an additional charge and two specifications of assault by unlawful touching in violation of Article 128, UCMJ.¹ *Id.* The military judge sentenced Appellant to six months confinement, total forfeiture of all pay and

¹ In accordance with the plea agreement, the Convening Authority withdrew and dismissed one charge and eight specifications of sexual assault in violation of Article 120, UMCJ, and one specification of Charge II, for assault by pointing a firearm, in violation of Article 128, UCMJ. *Id.*

allowances, a reprimand, and a bad conduct discharge.² *Id.* On 28 June 2022, the Convening Authority took no action on the findings, disapproved the adjudged reprimand, and approved the remainder of the sentence. R. at Vol. 1, Convening Authority Decision on Action – *United States v. Airman Basic VictorHugo Hernandez-Hernandez*, dated 28 June 2022.

The record of trial consists of six prosecution exhibits, three defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 198 pages. Appellant is not confined, understands his right to speedy appellate review, and consents to this request for enlargement of time.

Through no fault of Appellant’s, undersigned counsel has been working on other assigned matters and has not yet started her review of Appellant’s case. Since filing the last EOT in this case, counsel submitted an AOE before this Court in *United States v. Lee*, ACM No. 40258 and a Reply to the Government’s Answer in *United States v. Thompson*, ACM No. 40019 and *United States v. Stradtmann*, ACM No. 40237.

Undersigned counsel is currently assigned 19 cases, 11 of which are pending initial AOE before this Court. Three cases currently have priority for filing an AOE ahead of Appellant’s:

1. *United States v. Porterie*, ACM No. S32735 – The record of trial consists of seven prosecution exhibits; five appellate exhibits; and one court exhibit. The transcript is 87 pages. Undersigned counsel has reviewed the entirety of this record with the exception of sealed materials, and anticipates filing an AOE in this case no later than 9 May 2023.

2. *United States v. Haynes*, ACM No. 40306 – The record of trial consists of four prosecution exhibits; 11 defense exhibits; 18 appellate exhibits; and two court exhibits; the transcript is 216 pages. Counsel has not yet begun review of this case.

² Appellant did not receive any pretrial confinement credit. *Id.*

3. *United States v. Hubbard*, ACM No. 40339 – The record of trial consists of three prosecution exhibits; one defense exhibit; and six appellate exhibits; the transcript is 68 pages. Counsel has not yet begun review of this case.

Additionally, undersigned counsel anticipates filing the following prior to submission of Appellant’s AOE: a Reply to the Government’s Answer in *United States v. Lee*, ACM No. 40258 before this Court by 29 May 2023; and two Supplements to Petitions for Review in *United States v. Dunleavy*, ACM No. S32724 (due 11 May 2023) and *United States v. Rodriguez*, ACM No. 40218 (due 23 May 2023) before the Court of Appeals for the Armed Forces.

Through no fault of Appellant’s, undersigned counsel has been working on other assigned matters and has not yet started her review of Appellant’s case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to 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,

aj, 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 1 May 2023.

Respectfully submitted,

ALEXANDRA K. FLESZAR, 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
	)	OF TIME
v.)	
)	
Airman Basic (E-1)	)	ACM 40353
VICTOR HUGO HERNANDEZ-)	
HERNANDEZ, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

**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 1 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

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

UNITED STATES	)	No. ACM 40353
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Victor Hugo)	
HERNANDEZ-HERNANDEZ)	
Airman Basic (E-1))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 1 May 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 2d day of May, 2023,

ORDERED:

Appellant’s Motion for Enlargement of Time (Fifth), is **GRANTED**. Appellant’s brief will be due **8 June 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

V U , 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. 1
)	
Airman Basic (E-1)	)	No. ACM 40353
VICTOR HUGO)	
HERNANDEZ-HERNANDEZ	)	25 May 2023
United States Air Force)	
<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 (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **8 July 2023**. The record of trial was docketed with this Court on 11 October 2022. From the date of docketing to the present date, 226 days have elapsed. On the date requested, 270 days will have elapsed.

On 29 March and 7 June 2022, at Creech Air Force Base (AFB), Nevada, Appellant was tried and sentenced by a military judge sitting as a General Court-Martial. R. at Vol. 1, Entry of Judgement in the Case of *United States v. Airman Basic VictorHugo Hernandez-Hernandez* (EOJ). In accordance with his pleas, Appellant was convicted of one charge and specification of assault by pointing a firearm in violation of Article 128, UCMJ, and an additional charge and two specifications of assault by unlawful touching in violation of Article 128, UCMJ.¹ *Id.* The military judge sentenced Appellant to six months confinement, total forfeiture of all pay and

¹ In accordance with the plea agreement, the Convening Authority withdrew and dismissed one charge and eight specifications of sexual assault in violation of Article 120, UMCJ, and one specification of Charge II, for assault by pointing a firearm, in violation of Article 128, UCMJ. *Id.*

allowances, a reprimand, and a bad conduct discharge.² *Id.* On 28 June 2022, the Convening Authority took no action on the findings, disapproved the adjudged reprimand, and approved the remainder of the sentence. R. at Vol. 1, Convening Authority Decision on Action – *United States v. Airman Basic VictorHugo Hernandez-Hernandez*, dated 28 June 2022.

The record of trial consists of six prosecution exhibits, three defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 198 pages. Appellant is not confined, understands his right to speedy appellate review, and consents to this request for enlargement of time.

Through no fault of Appellant’s, undersigned counsel has been working on other assigned matters and has not yet started her review of Appellant’s case. Maj Fleszar will be commencing terminal leave on 1 June 2023 and will be unable to complete review of the case prior to terminal leave. Maj Bosner has just been assigned as new counsel for Appellant, and has similarly not yet started review of Appellant’s case. Maj Bosner is currently assigned 20 cases; 8 cases are pending initial AOE’s before this Court. Six cases have priority over the present case:

1. *United States v. Gause-Radke*, ACM 40343: The record of trial consists of eight volumes. The transcript is 1,167 pages. There are 14 Prosecution Exhibits, two Defense Exhibits, 42 Appellate Exhibits, and four Court Exhibits. Counsel is drafting the AOE.

2. *In Re HVZ*, Misc. Dkt. No. 2023-03: As counsel for the real party in interest, a brief is due to this Court on 8 June 2023.

3. *United States v. Daddario*, ACM 30351: The record of trial consists of three volumes. The transcript is 77 pages. There are four Prosecution Exhibits, no Defense Exhibits, and five Appellate Exhibits. Counsel is drafting the Brief on Behalf of Appellant.

4. *United States v. McLeod*, ACM 40374: The record of trial consists of eight volumes.

² Appellant did not receive any pretrial confinement credit. *Id.*

The transcript is 533 pages. There are 43 Prosecution Exhibits, two Defense Exhibits, and 42 Appellate Exhibits. Counsel is currently reviewing the record.

5. *United States v. Smith*, ACM 40202: The appellant's petition for grant of review is due to the Court of Appeals for the Armed Forces on 29 June 2023.

6. *United States v. Hubbard*, ACM 40339: The record of trial consists of three prosecution exhibits; one defense exhibit; and six appellate exhibits; the transcript is 68 pages.

Through no fault of Appellant's, Maj Bosner has been working on other assigned matters and has not yet started his review of Appellant's case. Accordingly, an enlargement of time is necessary to allow Maj Bosner to 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,

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

DAVID L. BOSNER, Maj, USAF
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 25 May 2023.

Respectfully submitted,

ALEXANDRA K. FLESZAR, Maj, USAF
Appellate Defense Counsel
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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
	)	OF TIME
v.)	
)	
Airman Basic (E-1)	)	ACM 40353
VICTOR HUGO HERNANDEZ-)	
HERNANDEZ, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

**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 25 May 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 (SEVENTH)
)	
v.	)	Before Panel No. 1
)	
Airman Basic (E-1)	)	No. ACM 40353
VICTOR HUGO)	
HERNANDEZ-HERNANDEZ	)	22 June 2023
United States Air Force)	
<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 23.3(m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his seventh enlargement of time to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **7 August 2023**. The record of trial was docketed with this Court on 11 October 2022. From the date of docketing to the present date, 254 days have elapsed. On the date requested, 300 days will have elapsed.

On 29 March and 7 June 2022, at Creech Air Force Base (AFB), Nevada, Appellant was tried and sentenced by a military judge sitting as a General Court-Martial. R. at Vol. 1, Entry of Judgement in the Case of *United States v. Airman Basic VictorHugo Hernandez-Hernandez* (EOJ). In accordance with his pleas, Appellant was convicted of one charge and specification of assault by pointing a firearm in violation of Article 128, UCMJ, and an additional charge and two specifications of assault by unlawful touching in violation of Article 128, UCMJ. *Id.* The military judge sentenced Appellant to six months confinement, total forfeiture of all pay and

allowances, a reprimand, and a bad conduct discharge. *Id.* On 28 June 2022, the Convening Authority took no action on the findings, disapproved the adjudged reprimand, and approved the remainder of the sentence. R. at Vol. 1, Convening Authority Decision on Action – *United States v. Airman Basic VictorHugo Hernandez-Hernandez*, dated 28 June 2022.

The record of trial consists of six Prosecution Exhibits, three Defense Exhibits, 16 Appellate Exhibits, and two Court Exhibits; the transcript is 198 pages. Appellant is not confined.

There are two counsel currently detailed to this case: Maj David Bosner and Maj Jarett Merk. Maj Merk is a reservist assigned to AF/JAJA and will be acting as lead counsel, given Maj Bosner's case load and upcoming reassignment. He anticipates being returned to orders in July 2023 and expects—absent unforeseen circumstances—to file Appellant's brief before the requested extension window closes on 7 August 2023. Maj Merk is currently assigned four cases, three pending initial AOE's before this Court. Appellant's case is Maj Merk's highest priority case. Though no fault of Appellant, an enlargement of time is necessary to fully review Appellant's case and advise Appellant regarding potential issues.

Maj Bosner is currently assigned 33 cases; 13 cases are pending initial AOE's before this Court. Through no fault of Appellant's, Maj Bosner has been working on other assigned matters and has not reviewed Appellant's case. Six cases have priority over Appellant's case:

1. *United States v. Smith*, ACM 40202: The appellant's petition for grant of review is due to the Court of Appeals for the Armed Forces on 29 June 2023.
2. *United States v. McLeod*, ACM 40374: The record of trial consists of eight volumes. The transcript is 533 pages. There are 43 Prosecution Exhibits, two Defense Exhibits, and 38 Appellate Exhibits. Counsel is reviewing the record.
3. *United States v. Gause-Radke*, ACM 40343: Counsel filed the Brief on Behalf of Appellant on 7 June 2023 and expect to reply in July 2023.

4. *United States v. Daddario*, ACM 40351: Counsel filed the Brief on Behalf of Appellant on 7 June 2023 and expect to reply in July 2023.
5. *United States v. Daughma*, ACM 40385: The record of trial consists of 18 Prosecution Exhibits, five Defense Exhibits, 64 Appellate Exhibits, and one Court Exhibit. The transcript is 841 pages. Counsel is reviewing the record.
6. *United States v. Hernandez*, ACM 40287: The appellant's petition for grant of review is due to the Court of Appeals for the Armed Forces on 13 August 2023.

Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,

DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

JARETT F. MERK, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

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 22 June 2023.

Respectfully submitted,

DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
)	
v.)	
)	
Airman Basic (E-1)	)	ACM 40353
VICTOR HUGO HERNANDEZ-)	
HERNANDEZ, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

**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.

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 have 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.

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 22 June 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,)	
<i>Appellee,</i>	)	Merits Brief (Corrected)
)	
v.	)	Before Panel 1
)	
Airman Basic (E-1),	)	No. ACM 40353
VICTORHUGO HERNANDEZ-)	
HERNANDEZ,	)	26 July 2023
United States Air Force,)	
<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 Airman Basic (AB) Victorhugo Hernandez-Hernandez, Appellant, carefully examined the record of trial in this case. Appellant does not admit 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 Appellant has conformed this merits brief to the format in Appendix B of this Honorable Court’s Rules of Practice and Procedure. Appellant 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(d), UCMJ, 10 U.S.C. §866(d) (2019). *United States*

¹ While Appellant raises no specific assignments of error, Appellant requests this Court use its Article 66(d), UCMJ authority to take corrective action on Specification 1 of Charge 2 so that it accurately reflects Appellant’s finding and plea to simple assault with an unloaded firearm. Currently, Specification 1 of Charge 2 is ambiguous because it fails to specify whether the “firearm” was loaded or unloaded. “Leaving the specification[] unmodified would suggest the military judge found Appellant guilty of using a dangerous weapon, specifically a loaded firearm, which would also make him guilty of an aggravated assault—and that was evidently not the military judge’s intent.” *United States v. Stradtman*, ACM 40237, 2023 CCA LEXIS 238 *10 (A.F. Ct. Crim. App 30 May 2023).

v. Cole, 31 M.J. 270, 272 (C.M.A. 1990); *United States v. Chin*, 75 M.J. 220 (C.A.A.F. 2016).

Respectfully submitted,

JARETT MERK, Maj, USAFR
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Joint Base Andrews NAF, MD 20762

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 26 July 2023.

Respectfully submitted,

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