

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	NOTICE OF DIRECT APPEAL
<i>Appellee</i>	)	PURSUANT TO ARTICLE
	)	66(b)(1)(A)
v.)	
)	
Senior Airman (E-4)	)	No. ACM SXXXXX
MATTHEW A. CUNNINGHAM)	
United States Air Force	)	12 June 2023
<i>Appellant</i>)	

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

On 20 December 2022, a military judge sitting as a special court-martial convicted Senior Airman (SrA) Matthew A. Cunningham, consistent with his pleas, of one specification of drunken operation of a vehicle in violation of Article 113, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 913 (2019). The military judge sentenced SrA Cunningham to 11 days' confinement and reduction to the grade of E-3. (Entry of Judgement, 5 January 2023.) On 28 March 2023, the Government sent SrA Cunningham the required notice by mail of his right to appeal within 90 days. SrA Cunningham has not submitted any materials to The Judge Advocate General in accordance with Article 69, UCMJ. Pursuant to the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, § 544, 136 Stat. 2395, SrA Cunningham files his notice of direct appeal with this Court.

Respectfully submitted,

HEATHER M. CAINE, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 12 June 2023.

Respectfully submitted,

HEATHER M. CAINE, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762

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

UNITED STATES	)	No. ACM 23010
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF DOCKETING
Matthew A. CUNNINGHAM)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>)	

A notice of direct appeal pursuant to Article 66(b)(1)(A), Uniform Code of Military Justice, 10 U.S.C. § 866(b)(1)(A), was submitted by Appellant and received by this court in the above-styled case on 12 June 2023. On 13 June 2023, the record of trial was received by the Military Appellate Records Branch.

Accordingly, it is by the court on this 14th day of June 2023,

ORDERED:

The case in the above-styled matter is referred to Panel 1. Briefs will be filed in accordance with Rule 18 of the Joint Rules of Appellate Procedure and Rule 23.3(m) of this court's Rules of Practice and Procedure. *See JT. CT. CRIM. APP. R. 18, A.F. Ct. Crim. App. R. 23.3(m).*



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	)	CONSENT MOTION TO COMPEL
<i>Appellee</i>	)	PRODUCTION OF
	)	VERBATIM TRANSCRIPT
v.)	
	)	Before Panel 1
)	
Senior Airman (E-4)	)	No. ACM 23010
MATTHEW A. CUNNINGHAM)	
United States Air Force	)	21 June 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(e) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves this Honorable Court to compel the Government to produce a verbatim transcript. Additionally, Appellate respectfully requests this Court suspend its rules in regards to the time for filing a brief on behalf of Appellant, JT. CT. CRIM. APP. R. 18, until such a time as the verbatim transcript is produced.

On 20 December 2022, a military judge sitting as a special court-martial convicted SrA Cunningham, consistent with his pleas, of one charge and one specification of drunken operation of a vehicle, in violation of Article 113, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 913 (2019). The military judge sentenced SrA Cunningham to 11 days’ confinement and reduction to the grade of E-3. The Entry of Judgment was dated 5 January 2023. On 12 June 2023, SrA Cunningham filed his Notice of Direct Appeal with this Court. Two days later, this Court docketed his case.

On 9 May 2023, the Appellate Records Branch of the Military Justice Law and Policy Division (AF/JAJM) delivered the record of trial to the Appellate Defense Division (AF/JAJA) and this Court. The record of trial is a “summarized” record, presumably because Appellant’s sentence did not include confinement in excess of six months or a punitive discharge. *See* Article

54(c)(2), UCMJ. But now that SrA Cunningham exercised his statutory right to direct appeal under Article 66(b)(1)(A), UCMJ, a verbatim transcript is relevant and necessary for undersigned counsel to fulfill her responsibilities under Article 70, UCMJ, and for this Court to exercise its responsibilities under Articles 59(a) and 66(d), UCMJ.

Appellate Government Counsel have been consulted about this motion and consent to the production of a verbatim transcript.

WHEREFORE, Appellant respectfully requests this Honorable Court compel production of a verbatim transcript.

Respectfully submitted,

HEATHER M. CAINE, 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 was sent via email to the Court and served on the Appellate Government Division on 21 June 2023.

Respectfully submitted,

HEATHER M. CAINE, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

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

UNITED STATES	)	No. ACM 23010
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Matthew A. CUNNINGHAM)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 20 December 2022, a military judge sitting as a special court-martial, convicted Appellant, pursuant to a plea agreement and consistent with his pleas, of one specification of drunken operation of a vehicle, in violation of Article 113, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 913.* On 5 January 2023, the military judge sentenced Appellant to 11 days' confinement and reduction to the grade of E-3. The convening authority took no action on the sentence. On 12 June 2023, Appellant filed a notice of direct appeal pursuant to Article 66(b)(1)(A), UCMJ, 10 U.S.C. § 866(b)(1)(A), pursuant to the National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, § 544(b)(1)(A), 136 Stat. 2395, 2582 (23 Dec. 2022). Appellant's case was docketed with this court on 14 June 2023. The record of trial in Appellant's case contains a summarized transcript of the proceedings.

On 21 June 2023, Appellant moved this court to compel a verbatim transcript of Appellant's case and suspend its rules pursuant to Rule 32 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals, specifically as to Rule 18 in regard to the time for filing a brief on behalf of Appellant, until the verbatim transcript is produced. JT. CT. CRIM. APP. R. 32, 18. Appellant's counsel states that for him to fulfill his responsibilities under Article 70, UCMJ, 10 U.S.C. § 870, and for this court to fulfill its statutory responsibilities, a verbatim transcript is "relevant and necessary." The Government consents to Appellant's motion.

In consideration of the foregoing, and the Government's consent to the production of a transcript, we order the production of a certified verbatim

* Unless otherwise noted, references to the UCMJ and Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2019 ed.).

transcript pursuant to Rule for Courts-Martial (R.C.M.) 1114(a)(2).

Accordingly, it is by the court on this 27th day of June, 2023,

ORDERED:

Appellant's Motion to Compel Verbatim Transcript is **GRANTED**. The Government will prepare a certified verbatim transcript and provide it, in either printed or digital format, to the court, appellate defense counsel, and appellate government counsel not later than **31 July 2023**.

If the transcript cannot be provided to the court and the parties by the above date, the Government will inform the court in writing not later than **24 July 2023** of the status of the Government's compliance with this order.

It is further ordered:

Appellant's brief will be submitted in accordance with the timelines established under Rule 18 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals, JT. CT. CRIM. APP. R. 18, with one exception: Appellant's brief shall be filed within 60 days after appellate defense counsel has received a printed or digital copy of the certified verbatim transcript.



FOR THE COURT

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	
<i>Appellee</i>)	
	)	UNITED STATES' RESPONSE TO
v.	)	COURT ORDER
)	
Senior Airman (E-4)	)	Panel 1
MATTHEW A. CUNNINGHAM, USAF)	
<i>Appellant</i>	)	No. ACM 23010

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

Status of Assembly and Delivery of the Certified Verbatim Transcript

On 21 June 2023, Appellant moved this Court to compel a certified verbatim transcript in the above-captioned case. The Government consented to the production of a transcript. This Court ordered a verbatim transcript to be provided to the Court no later than 31 July 2023. (Court Order, dated 27 June 2023.) This Court also required, "If the transcript cannot be provided to the court and the parties by the above date, the Government will inform the court in writing not later than 24 July 2023 of the status of the Government's compliance with this order." (Id.)

As of the date of this filing, the court reporter has communicated to undersigned counsel that the transcript will be provided to the Court no later than 31 July 2023. Presently, the transcript needs to be certified by trial and defense counsel, and then the court reporter will be able to finalize the verbatim transcript. The court reporter has accordingly represented that she will accomplish finalizing the transcript this week. Once this is accomplished, the Government will provide the verbatim transcript to the Court. Undersigned counsel thus believes that the record can be returned to the Court by its deadline per discussions with the court reporter. The Government submits this status update out of an abundance of caution.

JOCELYN Q. WRIGHT, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

THOMAS J. ALFORD, Lt Col, USAF
Associate Chief
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

FOR

MARY ELLEN PAYNE
Associate Chief
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 Appellate Defense Division on 24 July 2023.

JOCELYN Q. WRIGHT, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, <i>Appellee,</i>	)	UNITED STATES’ MOTION TO ATTACH DOCUMENT
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM 23010
MATTHEW A. CUNNINGHAM,)	
United States Air Force	)	27 July 2023
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(b) of this Court’s Rules of Practice and Procedure, the United States moves the Court to attach the following documents to this motion:

- **Appendix –Special Court-Martial Verbatim Transcript - *United States v. Senior Airman Matthew A. Cunningham, dated 12 October 2022 (149 pages)***

On 27 June 2023, this Court ordered the Government to prepare a certified verbatim transcript in this case and provide it either printed or digital format. (*Order*, dated 27 June 2023). The appendix contains the digital verbatim transcript and is responsive to the Court’s order.

WHEREFORE, the United States respectfully requests this Court grant this Motion to Attach the Document.

JOCELYN Q. WRIGHT, Capt, USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

THOMAS J. ALFORD, Lt Col, USAF
Associate Chief
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

FOR

MARY ELLEN PAYNE
Associate Chief
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 the Appellate Defense Division on 27 July 2023.

JOCELYN Q. WRIGHT, 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 (FIRST)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM 23010
MATTHEW A. CUNNINGHAM,)	
United States Air Force	)	18 September 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **24 November 2023**. The record of trial was docketed with this Court on 14 June 2023. From the date of docketing to the present date, 96 days have elapsed. On the date requested, 163 days will have elapsed.

On 12 June 2023, Appellant submitted his Notice of Direct Appeal pursuant to Article 66 (b)(1)(A). On 14 June 2023, it was docketed with this court. On 21 June 2023, Appellant moved this court to compel a verbatim transcript of Appellant’s case and suspend its rule pursuant to Rule 32 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals, specifically as to Rule 18 in regard to the time for filing a brief on behalf of Appellant, until a verbatim transcript was produced. The Government consented to Appellant’s motion. On 27 June 2023 this Honorable court granted Appellant’s Motion to Compel Verbatim Transcript and ordered that Appellant’s brief will be submitted in accordance with timelines established under Rule 18 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals with one exception that Appellant’s brief should be filed within 60 days after appellate defense counsel

has received a printed or digital copy of the certified verbatim transcript. On 27 July 2023, the Government submitted the United States Motion to Attach Document, Appendix-Special Court-Martial Verbatim Transcript-*United States v. Senior Airman Matthew A. Cunningham*, dated 12 October 2022 (149 pages). On 4 August 2023, this Honorable court granted that motion.

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

Respectfully submitted,

HEATHER M. CAINE, 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 18 September 2023.

Respectfully submitted,

HEATHER M. CAINE, 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 23010
MATTHEW A. CUNNINGHAM, 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 20 September 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 (SECOND)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM 23010
MATTHEW A. CUNNINGHAM,)	
United States Air Force	)	17 November 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **24 December 2023**. The record of trial was docketed with this Court on 14 June 2023. From the date of docketing to the present date, 156 days have elapsed. On the date requested, 193 days will have elapsed.

On 12 June 2023, Appellant submitted his Notice of Direct Appeal pursuant to Article 66 (b)(1)(A). On 14 June 2023, it was docketed with this court. On 21 June 2023, Appellant moved this court to compel a verbatim transcript of Appellant’s case and suspend its rule pursuant to Rule 32 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals, specifically as to Rule 18 in regard to the time for filing a brief on behalf of Appellant, until a verbatim transcript was produced. The Government consented to Appellant’s motion. On 27 June 2023 this Honorable court granted Appellant’s Motion to Compel Verbatim Transcript and ordered that Appellant’s brief will be submitted in accordance with timelines established under Rule 18 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals with one exception that Appellant’s brief should be filed within 60 days after appellate defense counsel has received a

printed or digital copy of the certified verbatim transcript. On 27 July 2023, the Government submitted the United States Motion to Attach Document, Appendix-Special Court-Martial Verbatim Transcript-*United States v. Senior Airman Matthew A. Cunningham*, dated 12 October 2022 (149 pages). On 4 August 2023, this Honorable court granted that motion.

The trial transcript is 149 pages long and the record of trial is comprised of two volumes containing 14 prosecution exhibits, four defense exhibits, 11 appellate exhibits, and zero court exhibits. Appellant is not currently confined.

Undersigned counsel is currently assigned 19 cases, with seven initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete 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. Since filing a Motion for EOT 1 in this case, undersigned counsel has filed: the Reply Brief on Behalf of Appellant in *United States v. Dugan* (ACM 40320); the Grant Brief in *United States v. Guihama* (ACM 40039) with the Court of Appeals for the Armed Forces (CAAF); an Extension of Time to File a Petition for Writ of Certiorari in *United States v. Smith* (ACM 40013) with the Supreme Court of the United States (SCOTUS); the Reply Brief in *United States v. Flores* (ACM 40294) with the CAAF; the Petition and Supplement to the Petition for Grant of Review in *United States v. Cabuhat* (ACM 40191) with the CAAF; the Reply Brief on Behalf of Appellant in *United States v. Douglas* (ACM 40324); the Reply Brief in *United States v. Guihama* (ACM 40039) with the CAAF; and the Petition for Writ of Certiorari in *United States v. Witt* (ACM 36785) with SCOTUS. Undersigned counsel also presented oral argument before the CAAF in *United States v. Flores* (ACM 40294).

Undersigned counsel is finishing the Petition for Writ of Certiorari in *United States v. Smith* (ACM 40013). Next, undersigned counsel will turn to the Petition and Supplement to the Petition for Grant of Review in *United States v. Dugan* (ACM 40320) due to the CAAF. Then, this is my fifth priority case before this Court following:

1. *United States v. Hennessy* (ACM 40439): The trial transcript is 1,190 pages long and the record of trial is comprised of nine volumes containing seven prosecution exhibits, 11 defense exhibits, 54 appellate exhibits, and three court exhibits. Undersigned counsel will begin review of the record of trial after completing the current priorities listed above.
2. *United States v. Alvarez* (ACM 40471): The trial transcript is 74 pages long and the record of trial is comprised of three volumes containing two prosecution exhibits, five defense exhibits, six appellate exhibits, and one court exhibit. Undersigned counsel filed a motion to withdraw from appellate review and is pending action by this Court on it.
3. *United States v. Sherman* (ACM 40486): The trial transcript is 469 pages long and the record of trial is comprised of five volumes containing 17 prosecution exhibits, 12 defense exhibits, 25 appellate exhibits, and one court exhibit.
4. *United States v. Martell* (ACM 40501): The trial transcript is 1,032 pages long and the record of trial is comprised of eight volumes containing nine prosecution exhibits, 32 defense exhibits, 48 appellate exhibits, and one court exhibit.

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,

HEATHER M. CAINE, 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 17 November 2023.

Respectfully submitted,

HEATHER M. CAINE, 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 23010
MATTHEW A. CUNNINGHAM, 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 21 November 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. 1
)	
Senior Airman (E-4)	)	No. ACM 23010
MATTHEW A. CUNNINGHAM,)	
United States Air Force	)	15 December 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **23 January 2024**. The record of trial was docketed with this Court on 14 June 2023. From the date of docketing to the present date, 184 days have elapsed. On the date requested, 223 days will have elapsed.

On 12 June 2023, Appellant submitted his Notice of Direct Appeal pursuant to Article 66 (b)(1)(A). On 14 June 2023, it was docketed with this court. On 21 June 2023, Appellant moved this court to compel a verbatim transcript of Appellant’s case and suspend its rule pursuant to Rule 32 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals, specifically as to Rule 18 in regard to the time for filing a brief on behalf of Appellant, until a verbatim transcript was produced. The Government consented to Appellant’s motion. On 27 June 2023 this Honorable court granted Appellant’s Motion to Compel Verbatim Transcript and ordered that Appellant’s brief will be submitted in accordance with timelines established under Rule 18 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals with one exception that Appellant’s brief should be filed within 60 days after appellate defense counsel has received a

printed or digital copy of the certified verbatim transcript. On 27 July 2023, the Government submitted the United States Motion to Attach Document, Appendix-Special Court-Martial Verbatim Transcript-*United States v. Senior Airman Matthew A. Cunningham*, dated 12 October 2022 (149 pages). On 4 August 2023, this Honorable court granted that motion.

The trial transcript is 149 pages long and the record of trial is comprised of two volumes containing 14 prosecution exhibits, four defense exhibits, 11 appellate exhibits, and zero court exhibits. Appellant is not currently confined.

Undersigned counsel is currently assigned 19 cases, with nine initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete 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. Since filing a Motion for EOT 2 in this case, undersigned counsel has filed the Petition for Writ of Certiorari in *United States v. Smith* (ACM 36785) with the Supreme Court of the United States (SCOTUS). Undersigned counsel also had three days of prescheduled leave after the Thanksgiving holiday and spent around 18 hours preparing for and assisting in moots.

Undersigned counsel intends to file the Petition and Supplement to the Petition for Grant of Review in *United States v. Dugan* (ACM 40320) with the Court of Appeals for the Armed Forces (CAAF) early next week. Then, this is my fourth priority case before this Court following:

1. *United States v. Hennessy* (ACM 40439): The trial transcript is 1,190 pages long and the record of trial is comprised of nine volumes containing seven prosecution exhibits, 11 defense exhibits, 54 appellate exhibits, and three court exhibits.

Undersigned counsel has reviewed part of the sealed material in this case and will

schedule time next week to complete review of the sealed material given this Court's recent grant of the second Consent Motion to View Sealed Material.

2. *United States v. Sherman* (ACM 40486): The trial transcript is 469 pages long and the record of trial is comprised of five volumes containing 17 prosecution exhibits, 12 defense exhibits, 25 appellate exhibits, and one court exhibit.
3. *United States v. Martell* (ACM 40501): The trial transcript is 1,032 pages long and the record of trial is comprised of eight volumes containing nine prosecution exhibits, 32 defense exhibits, 48 appellate exhibits, and one court exhibit.

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,

HEATHER M. CAINE, 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 15 December 2023.

Respectfully submitted,

HEATHER M. CAINE, 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 23010
MATTHEW A. CUNNINGHAM, 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.

JOCELYN Q. WRIGHT, 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 19 December 2023.

JOCELYN Q. WRIGHT, 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	)	OUT OF TIME MOTION FOR
<i>Appellee</i>	)	ENLARGEMENT OF TIME (FOURTH)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM 23010
MATTHEW A. CUNNINGHAM,)	
United States Air Force	)	17 January 2024
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an out of time, due to the timing of the filing being after midnight eastern standard time, enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **22 February 2024**. The record of trial was docketed with this Court on 14 June 2023. From the date of docketing to the present date, 217 days have elapsed. On the date requested, 253 days will have elapsed.

On 12 June 2023, Appellant submitted his Notice of Direct Appeal pursuant to Article 66 (b)(1)(A). On 14 June 2023, it was docketed with this court. On 21 June 2023, Appellant moved this court to compel a verbatim transcript of Appellant’s case and suspend its rule pursuant to Rule 32 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals, specifically as to Rule 18 in regard to the time for filing a brief on behalf of Appellant, until a verbatim transcript was produced. The Government consented to Appellant’s motion. On 27 June 2023 this Honorable court granted Appellant’s Motion to Compel Verbatim Transcript and ordered that Appellant’s brief will be submitted in accordance with timelines established under Rule 18 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals with one exception that Appellant’s brief should be filed within 60 days after appellate defense counsel has received a

printed or digital copy of the certified verbatim transcript. On 27 July 2023, the Government submitted the United States Motion to Attach Document, Appendix-Special Court-Martial Verbatim Transcript-*United States v. Senior Airman Matthew A. Cunningham*, dated 12 October 2022 (149 pages). On 4 August 2023, this Honorable court granted that motion.

The trial transcript is 149 pages long and the record of trial is comprised of two volumes containing 14 prosecution exhibits, four defense exhibits, 11 appellate exhibits, and zero court exhibits. Appellant is not currently confined.

Undersigned counsel is currently assigned 21 cases, with 11 initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete 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. Since filing a Motion for EOT 3 in this case, undersigned counsel filed the Petition and Supplement to the Petition for Grant of Review in *United States v. Dugan* (ACM 40320) with the Court of Appeals for the Armed Forces (CAAF). There were then two Family Days and two Holidays followed by undersigned counsel's three days of prescheduled leave at the beginning of the year. Undersigned counsel also spent around 6 hours preparing for and assisting in moots.

Then Tuesday, 16 January, Joint Base Andrews was closed due to encllement weather and there were interruptions to connecting to VPN for those teleworking. Finally, undersigned counsel will be out of the office on Friday, 19 January, while coordinating the all-day Human Trafficking Training Event located at the Smart Center on Joint Base Andrews.

This is undersigned counsel's fourth priority case before this Court following:

1. *United States v. Hennessy* (ACM 40439): The trial transcript is 1,190 pages long and the record of trial is comprised of nine volumes containing seven prosecution exhibits, 11 defense exhibits, 54 appellate exhibits, and three court exhibits. Undersigned counsel has reviewed the record of trial. Several potential issues have been identified and civilian defense counsel has begun drafting.
2. *United States v. Sherman* (ACM 40486): The trial transcript is 469 pages long and the record of trial is comprised of five volumes containing 17 prosecution exhibits, 12 defense exhibits, 25 appellate exhibits, and one court exhibit.
3. *United States v. Martell* (ACM 40501): The trial transcript is 1,032 pages long and the record of trial is comprised of eight volumes containing nine prosecution exhibits, 32 defense exhibits, 48 appellate exhibits, and one court exhibit.

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,

HEATHER M. BRUHA, 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 17 January 2024.

Respectfully submitted,

HEATHER M. BRUHA, 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 OUT OF TIME
)	
Senior Airman (E-4)	)	ACM 23010
MATTHEW A. CUNNINGHAM, 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, 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.

J. PETE FERRELL, Lt Col, USAF
Director of Operations
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 18 January 2024.

J. PETE FERRELL, Lt Col, USAF
Director of Operations
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
<i>Appellee</i>	)	OF TIME (FIFTH)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM 23010
MATTHEW A. CUNNINGHAM,)	
United States Air Force	)	12 February 2024
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **23 March 2024**. The record of trial was docketed with this Court on 14 June 2023. From the date of docketing to the present date, 243 days have elapsed. On the date requested, 283 days will have elapsed.

On 12 June 2023, Appellant submitted his Notice of Direct Appeal pursuant to Article 66 (b)(1)(A). On 14 June 2023, it was docketed with this court. On 21 June 2023, Appellant moved this court to compel a verbatim transcript of Appellant’s case and suspend its rule pursuant to Rule 32 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals, specifically as to Rule 18 in regard to the time for filing a brief on behalf of Appellant, until a verbatim transcript was produced. The Government consented to Appellant’s motion. On 27 June 2023 this Honorable court granted Appellant’s Motion to Compel Verbatim Transcript and ordered that Appellant’s brief will be submitted in accordance with timelines established under Rule 18 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals with one exception that Appellant’s brief should be filed within 60 days after appellate defense counsel has received a

printed or digital copy of the certified verbatim transcript. On 27 July 2023, the Government submitted the United States Motion to Attach Document, Appendix-Special Court-Martial Verbatim Transcript-*United States v. Senior Airman Matthew A. Cunningham*, dated 12 October 2022 (149 pages). On 4 August 2023, this Honorable court granted that motion.

The trial transcript is 149 pages long and the record of trial is comprised of two volumes containing 14 prosecution exhibits, four defense exhibits, 11 appellate exhibits, and zero court exhibits. Appellant is not currently confined.

Undersigned counsel is currently assigned 23 cases, with 15 initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete 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. Since filing a Motion for EOT 4 in this case, undersigned counsel filed the Brief on Behalf of Appellant in *United States v. Hennessy* (ACM 40439) with this Court. Undersigned counsel also spent around 12 hours preparing for moots, assisting in moots, and attending oral arguments. Undersigned counsel was second chair at the oral argument before the CAAF on 7 February 2024 in *United States v. Guihama* (ACM 40039).

This is undersigned counsel's fourth priority case before this Court following:

1. *United States v. Holmes* (Misc. Dkt. No. 2024-1): The current transcript is 489 pages long and the current record of trial is comprised of 14 volumes. Undersigned counsel will begin review of the record once the Petitions and Supplements to the Petitions for *United States v. Edwards* (40349) (anticipated to be filed this week); *United States v. Greene-Watson* (ACM 40293); and *United States v. Emerson* (ACM 40297) are filed with the Court of Appeals for the Armed Forces (CAAF).

2. *United States v. Sherman* (ACM 40486): The trial transcript is 469 pages long and the record of trial is comprised of five volumes containing 17 prosecution exhibits, 12 defense exhibits, 25 appellate exhibits, and one court exhibit.
3. *United States v. Martell* (ACM 40501): The trial transcript is 1,032 pages long and the record of trial is comprised of eight volumes containing nine prosecution exhibits, 32 defense exhibits, 48 appellate exhibits, and one court exhibit.

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,

HEATHER M. BRUHA, 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 12 February 2024.

Respectfully submitted,

HEATHER M. BRUHA, 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 OUT OF TIME
)	
Senior Airman (E-4)	)	ACM 23010
MATTHEW A. CUNNINGHAM, 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, 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.

J. PETE FERRELL, Lt Col, USAF
Director of Operations
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 2024.

J. PETE FERRELL, Lt Col, USAF
Director of Operations
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,	)	NOTICE OF APPEARANCE
<i>Appellee,</i>)	
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4))	
MATTHEW A. CUNNINGHAM,	)	No. ACM 23010
United States Air Force,)	
<i>Appellant.</i>	)	11 March 2024

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

COMES NOW the undersigned counsel, pursuant to Rule 13 of this Honorable Court's Rules of Practice and Procedure, and enters an appearance as counsel for Appellant.

Respectfully submitted,

REBECCA J. SAATHOFF, 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 Government Trial and Appellate Operations Division on 11 March 2024.

REBECCA J. SAATHOFF, 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,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (SIXTH)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4),	)	No. ACM 23010
MATTHEW A. CUNNINGHAM,)	
United States Air Force,	)	12 March 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **22 April 2024**. The record of trial was docketed with this Court on 14 June 2023. From the date of docketing to the present date, 272 days have elapsed. On the date requested, 314 days will have elapsed.

On 12 June 2023, Appellant submitted his Notice of Direct Appeal pursuant to Article 66(b)(1)(A). On 14 June 2023, it was docketed with this court. On 21 June 2023, Appellant moved this court to compel a verbatim transcript of Appellant’s case and suspend its rule pursuant to Rule 32 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals, specifically as to Rule 18 in regard to the time for filing a brief on behalf of Appellant, until a verbatim transcript was produced. The Government consented to Appellant’s motion. On 27 June 2023 this Honorable court granted Appellant’s Motion to Compel Verbatim Transcript and ordered that Appellant’s brief will be submitted in accordance with timelines established under Rule 18 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals with one exception that Appellant’s brief should be filed within 60 days after appellate defense counsel has received a

printed or digital copy of the certified verbatim transcript. On 27 July 2023, the Government submitted the United States Motion to Attach Document, Appendix-Special Court-Martial Verbatim Transcript-*United States v. Senior Airman Matthew A. Cunningham*, dated 12 October 2022 (149 pages). On 4 August 2023, this Honorable court granted that motion.

On 20 December 2022, consistent with his pleas, a military judge sitting as a Special Court-Martial convicted Appellant of one charge and one specification of drunken operation of a vehicle, in violation of Article 113, Uniform Code of Military Justice (UCMJ). The military judge sentenced Appellant to be reduced to the grade of E-3 and to be confined for 11 days. Entry of Judgement. The record of trial (ROT) consists of two volumes, 14 prosecution exhibits, four defense exhibits, 11 appellate exhibits, and zero court exhibits. The trial transcript is 149 pages long. Appellant is not confined.

Undersigned counsel is currently assigned 3 cases, all of which are pending initial AOE's before this Court. Undersigned counsel is a Reservist and has a full-time civilian job in the private sector serving clients. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete review of Appellant's case. Undersigned Counsel has Inactive Duty Training (IDT) days scheduled in March, April, and May to work on cases. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. This is undersigned counsel's second priority case before this Court following:¹

1. *United States v. Edwards*, No. ACM 40522 –The transcript is 189 pages long and the ROT is comprised of three volumes containing nine appellate exhibits, 11 prosecution exhibits,

¹ Maj Heather Bruha remains assigned to this case. However, undersigned counsel is lead appellate counsel. This case would be Maj Bruha's sixth priority case before this Court. As the case is higher on undersigned counsel's priority case list, only undersigned counsel's list is provided, to provide the most accurate view of the case's prioritization and counsel's ability to complete review on the case.

one defense exhibit, and zero court exhibits. Appellant is currently confined. Counsel has reviewed the entire record. Counsel filed a motion to withdraw from appellate review and to attach, on 11 March 2024, and is awaiting the Court's decision on the motion. As such, *Cunningham* is undersigned counsel's current focus while awaiting this Court's decision.

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

Respectfully submitted,

REBECCA J. SAATHOFF, 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 Government Trial and Appellate Division on 12 March 2024.

REBECCA J. SAATHOFF, 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 23010
MATTHEW A. CUNNINGHAM, 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.

J. PETE FERRELL, Lt Col, USAF
Director of Operations
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 14 March 2024.

J. PETE FERRELL, Lt Col, USAF
Director of Operations
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 (SEVENTH)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4),	)	No. ACM 23010
MATTHEW A. CUNNINGHAM,)	
United States Air Force,	)	11 April 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **22 May 2024**. The record of trial was docketed with this Court on 14 June 2023. From the date of docketing to the present date, 302 days have elapsed. On the date requested, 344 days will have elapsed.

On 12 June 2023, Appellant submitted his Notice of Direct Appeal pursuant to Article 66(b)(1)(A). On 14 June 2023, it was docketed with this court. On 21 June 2023, Appellant moved this court to compel a verbatim transcript of Appellant’s case and suspend its rule pursuant to Rule 32 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals, specifically as to Rule 18 in regard to the time for filing a brief on behalf of Appellant, until a verbatim transcript was produced. The Government consented to Appellant’s motion. On 27 June 2023 this Honorable court granted Appellant’s Motion to Compel Verbatim Transcript and ordered that Appellant’s brief will be submitted in accordance with timelines established under Rule 18 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals with one exception that Appellant’s brief should be filed within 60 days after appellate defense counsel has received a

printed or digital copy of the certified verbatim transcript. On 27 July 2023, the Government submitted the United States Motion to Attach Document, Appendix-Special Court-Martial Verbatim Transcript-*United States v. Senior Airman Matthew A. Cunningham*, dated 12 October 2022 (149 pages). On 4 August 2023, this Honorable court granted that motion.

On 20 December 2022, consistent with his pleas, a military judge sitting as a Special Court-Martial convicted Appellant of one charge and one specification of drunken operation of a vehicle, in violation of Article 113, Uniform Code of Military Justice (UCMJ). The military judge sentenced Appellant to be reduced to the grade of E-3 and to be confined for 11 days. Entry of Judgement. The record of trial (ROT) consists of two volumes, 14 prosecution exhibits, four defense exhibits, 11 appellate exhibits, and zero court exhibits. The trial transcript is 149 pages long. Appellant is not confined.

Undersigned counsel is currently assigned three cases. This case is Undersigned counsel's first priority case.¹ Undersigned counsel is a Reservist and has a full-time civilian job in the private sector serving clients. Through no fault of Appellant, undersigned counsel has completed review of Appellant's case, but additional time is required to effectuate the client's decisions in the case. Undersigned Counsel has Inactive Duty Training (IDT) days scheduled in April and May to work on cases. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time.

¹ Maj Heather Bruha remains assigned to this case. However, undersigned counsel is lead appellate counsel. As the case is higher on undersigned counsel's priority case list, only undersigned counsel's case information is provided, to provide the most accurate view of the case's prioritization and counsel's ability to complete review on the case.

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

Respectfully submitted,

REBECCA J. SAATHOFF, 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 Government Trial and Appellate Division on 11 April 2024.

REBECCA J. SAATHOFF, 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’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Senior Airman (E-4)	)	ACM 23010
MATTHEW A. CUNNINGHAM, 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 to file an Assignment of Error in this case.

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

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

J. PETE FERRELL, Lt Col, USAF
Director of Operations
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 April 2024.

J. PETE FERRELL, Lt Col, USAF
Director of Operations
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 23010
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF
Matthew A. CUNNINGHAM	)	PANEL CHANGE
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>)	

It is by the court on this 7th day of May, 2024,

ORDERED:

The record of trial in the above styled matter is withdrawn from Panel 1 and referred to a Special Panel for appellate review.

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

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge
ANNEXSTAD, WILLIAM J., Colonel, Senior Appellate Military Judge
DOUGLAS, KRISTINE M., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.



FOR THE COURT

TANICA S. BAGMON
Appellate Court Paralegal

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION TO WITHDRAW
<i>Appellee,</i>	)	FROM APPELLATE REVIEW
	)	AND ATTACH
v.)	
	)	Before Panel No. 1
Senior Airman (E-4),)	
MATTHEW A. CUNNINGHAM,	)	No. ACM 23010
United States Air Force,)	
<i>Appellant.</i>	)	30 April 2024

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

Pursuant to Rule 16 of the Rules of Practice and Procedure of the United States Air Force Court of Criminal Appeals and Rule for Courts-Martial (R.C.M.) 1115, Appellant moves to withdraw his case from appellate review. Appellant has fully consulted with Major Rebecca Saathoff, his appellate defense counsel, regarding this motion to withdraw. No person has compelled, coerced, or induced Appellant by force, promises of clemency, or otherwise, to withdraw his case from appellate review.

Further, pursuant to Rules 23(b) and 23.3(b), undersigned counsel asks this Court to attach the two-page document appended to this pleading to the record of this proceeding. The appended document, Appellant's completed DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals*, is necessary to comply with R.C.M. 1115(d) and Rule 16.1 of this Honorable Court's Rules of Practice and Procedure.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant this motion to withdraw from appellate review and attach matters to the record.

Respectfully submitted,

REBECCA J. SAATHOFF, 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 Government Trial and Appellate Division on 30 April 2024.

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