IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Panel No. 2
Major (O-4), **TROY R. DILLION,** United States Air Force, *Appellant.*	)	No. ACM 40463
	)	13 July 2023

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

Pursuant to Rule 23.3(m)(2) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **19 September 2023**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 52 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

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

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 13 July 2023.

Respectfully submitted,

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

14 July 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Major (O-4) TROY R. DILLON, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40463 Panel No. 2

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 14 July 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, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (SECOND)**
v.	)	Before Panel No. 2
Major (O-4), **TROY R. DILLON,** United States Air Force, *Appellant.*	)	No. ACM 40463
	)	12 September 2023

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 his second enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **19 October 2023**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 113 days have elapsed. On the date requested, 150 days will have elapsed.

On 5-6 October 2022, Appellant was tried by a general court-martial, sitting as a military judge, at Misawa Air Base, Japan. R. at 1, 14, 380. Consistent with his pleas, a military judge convicted Appellant of one charge and two specifications of committing a lewd act with a child, in violation of Article 120b, Uniform Code of Military Justice (UCMJ), and one charge and one specification of indecent recording, in violation of Article 120c, UCMJ. R. at 17, 90. Prior to findings, the Government withdrew and dismissed, with prejudice, one specification of indecent viewing, in violation of Article 120c, UCMJ, one charge and one specification of unlawful touching of a child, in violation of Article 128, UMCJ, and one charge and two specification of possession and viewing child pornography, in violation of Article 134, UMCJ. R. at 90. On 6

October 2022, the military judge sentenced Appellant to forfeit all pay and allowances, 46 months of confinement and a dismissal. R. at 379.

The convening authority suspended the first six months of the adjudged forfeitures of total pay and allowances. Record of Trail (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Major Troy R. Dillon*, at 1. Further, the convening authority waived all automatic forfeitures for a period of six months. *Id*.

The record of trial is four volumes, consisting of nine prosecution exhibits, eight defense exhibits, one court exhibit, and seven appellate exhibits; the transcript is 380 pages.

Appellant was previously represented by Maj Jenna Arroyo. A motion to withdraw from Maj Arroyo is expected to be forthcoming.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

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 September 2023.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

12 September 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Major (O-4) TROY R. DILLON, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40463 Panel No. 2

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 12 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, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (THIRD)**
v.	)	Before Panel No. 2
Major (O-4), **TROY R. DILLON,** United States Air Force, *Appellant.*	)	No. ACM 40463
	)	12 October 2023

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 his third enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **18 November 2023**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 143 days have elapsed. On the date requested, 180 days will have elapsed.

On 5-6 October 2022, Appellant was tried by a general court-martial, sitting as a military judge, at Misawa Air Base, Japan. R. at 1, 14, 380. Consistent with his pleas, a military judge convicted Appellant of one charge and two specifications of committing a lewd act with a child, in violation of Article 120b, Uniform Code of Military Justice (UCMJ), and one charge and one specification of indecent recording, in violation of Article 120c, UCMJ. R. at 17, 90. Prior to findings, the Government withdrew and dismissed, with prejudice, one specification of indecent viewing, in violation of Article 120c, UCMJ, one charge and one specification of unlawful touching of a child, in violation of Article 128, UMCJ, and one charge and two specification of possession and viewing child pornography, in violation of Article 134, UMCJ. R. at 90. On 6

October 2022, the military judge sentenced Appellant to forfeit all pay and allowances, 46 months of confinement and a dismissal. R. at 379.

The convening authority suspended the first six months of the adjudged forfeitures of total pay and allowances. Record of Trail (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Major Troy R. Dillon*, at 1. Further, the convening authority waived all automatic forfeitures for a period of six months. *Id*. Appellant is currently confined.

The record of trial is four volumes, consisting of nine prosecution exhibits, eight defense exhibits, one court exhibit, and seven appellate exhibits; the transcript is 380 pages.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised 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 for good cause shown.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
Office: (240) 612-4770

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

12 October 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Major (O-4) TROY R. DILLON, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40463 Panel No. 2

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

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 12 October 2023.

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, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FOURTH)**
v.	)	Before Panel No. 2
Major (O-4), **TROY R. DILLON,** United States Air Force, *Appellant.*	)	No. ACM 40463
	)	9 November 2023

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

Pursuant to Rule 23.3(m)(3), (4), and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **18 December 2023**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 171 days have elapsed. On the date requested, 210 days will have elapsed.

On 5-6 October 2022, Appellant was tried by a general court-martial, sitting as a military judge, at Misawa Air Base, Japan. R. at 1, 14, 380. Consistent with his pleas, a military judge convicted Appellant of one charge and two specifications of committing a lewd act with a child, in violation of Article 120b, Uniform Code of Military Justice (UCMJ), and one charge and one specification of indecent recording, in violation of Article 120c, UCMJ. R. at 17, 90. Prior to findings, the Government withdrew and dismissed, with prejudice, one specification of indecent viewing, in violation of Article 120c, UCMJ, one charge and one specification of unlawful touching of a child, in violation of Article 128, UMCJ, and one charge and two specification of possession and viewing child pornography, in violation of Article 134, UMCJ. R. at 90. On 6 October 2022, the military judge sentenced Appellant to forfeit all pay and allowances, 46 months of confinement and a dismissal. R. at 379.

The convening authority suspended the first six months of the adjudged forfeitures of total pay and allowances. Record of Trail (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Major Troy R. Dillon*, at 1. Further, the convening authority waived all automatic forfeitures for a period of six months. *Id*.

The record of trial is four volumes, consisting of nine prosecution exhibits, eight defense exhibits, one court exhibit, and seven appellate exhibits; the transcript is 380 pages. Counsel is currently assigned 18 cases; 13 cases are pending initial AOEs before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his 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.

One case before the Court of Appeals for the Armed Forces have priority over this case: *United States v. Smith*. On 6 November 2023, the Government filed its answer to Appellant's brief in *United States v. Smith*. Undersigned counsel is currently working to draft the reply to that answer, which is due on 16 November 2023. In addition, five cases before this Court have priority over the instant case:

1) *United States v. Daughma*, ACM 40385 – The record of trial is nine volumes consisting of 18 prosecution exhibits, five defense exhibits, 64 appellate exhibits, and one court exhibit; the transcript is 841 pages. Undersigned counsel has completed a review of the unsealed transcript.
2) *United States v. Stelly*, ACM 40425 – The record of trial is four volumes consisting of three prosecution exhibits, five defense exhibits, and 10 appellate exhibits; the transcript is 109 pages. Undersigned counsel is presently reviewing the record of trial.

3) *United States v. Logan*, ACM 40407 – The record of trial is seven volumes, consisting of seven prosecution exhibits, 12 defense exhibits, 26 appellate exhibits, and three court exhibits; the transcript is 657 pages.

4) *United States v. Pulley*, ACM 40438 – The record of trial is 11 volumes, consisting of 22 prosecution exhibits, five defense exhibits, and 66 appellate exhibits; the transcript is 730 pages.

5) *United States v. Thomas*, ACM 40418 – The record of trial is six volumes, consisting of six prosecution exhibits, 16 defense exhibits, and 50 appellate exhibits; the transcript is 746 pages.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised 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 for good cause shown.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 9 November 2023.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

15 November 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Major (O-4) TROY R. DILLON, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40463 Panel No. 2

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

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 November 2023.

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, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FIFTH)**
v.	)	Before Panel No. 2
Major (O-4), **TROY R. DILLON,** United States Air Force, *Appellant.*	)	No. ACM 40463
	)	11 December 2023

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

Pursuant to Rule 23.3(m)(3), (4), and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 January 2024**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 203 days have elapsed. On the date requested, 240 days will have elapsed.

On 5-6 October 2022, Appellant was tried by a general court-martial, sitting as a military judge, at Misawa Air Base, Japan. R. at 1, 14, 380. Consistent with his pleas, a military judge convicted Appellant of one charge and two specifications of committing a lewd act with a child, in violation of Article 120b, Uniform Code of Military Justice (UCMJ), and one charge and one specification of indecent recording, in violation of Article 120c, UCMJ. R. at 17, 90. Prior to findings, the Government withdrew and dismissed, with prejudice, one specification of indecent viewing, in violation of Article 120c, UCMJ, one charge and one specification of unlawful touching of a child, in violation of Article 128, UMCJ, and one charge and two specification of possession and viewing child pornography, in violation of Article 134, UMCJ. R. at 90. On 6 October 2022, the military judge sentenced Appellant to forfeit all pay and allowances, 46 months of confinement and a dismissal. R. at 379.

The convening authority suspended the first six months of the adjudged forfeitures of total pay and allowances. Record of Trail (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Major Troy R. Dillon*, at 1. Further, the convening authority waived all automatic forfeitures for a period of six months. *Id.* Appellant is currently confined.

The record of trial is four volumes, consisting of nine prosecution exhibits, eight defense exhibits, one court exhibit, and seven appellate exhibits; the transcript is 380 pages. Counsel is currently assigned 18 cases; 13 cases are pending initial AOEs before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his 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.

One case before the Court of Appeals for the Armed Forces have priority over this case: *United States v. Smith*. Oral argument is scheduled for 16 January 2024. Undersigned counsel has begun preparation for that oral argument. In addition, four cases before this Court have priority over the instant case:

1) *United States v. Daughma*, ACM 40385 – The record of trial is nine volumes consisting of 18 prosecution exhibits, five defense exhibits, 64 appellate exhibits, and one court exhibit; the transcript is 841 pages. Undersigned counsel has completed a review of the unsealed transcript and is scheduled to review the sealed materials on 13 December 2023.
2) *United States v. Stelly*, ACM 40425 – The record of trial is four volumes consisting of three prosecution exhibits, five defense exhibits, and 10 appellate exhibits; the transcript is 109 pages. Undersigned counsel is presently reviewing the record of trial.

3) *United States v. Logan*, ACM 40407 – The record of trial is seven volumes, consisting of seven prosecution exhibits, 12 defense exhibits, 26 appellate exhibits, and three court exhibits; the transcript is 657 pages.

4) *United States v. Pulley*, ACM 40438 – The record of trial is 11 volumes, consisting of 22 prosecution exhibits, five defense exhibits, and 66 appellate exhibits; the transcript is 730 pages.

5) *United States v. Thomas*, ACM 40418 – The record of trial is six volumes, consisting of six prosecution exhibits, 16 defense exhibits, and 50 appellate exhibits; the transcript is 746 pages.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised 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 for good cause shown.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 11 December 2023.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

12 December 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Major (O-4) TROY R. DILLON, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40463 Panel No. 2

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

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 12 December 2023.

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, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (SEVENTH)**
v.	)	Before Panel No. 2
Major (O-4), **TROY R. DILLON,** United States Air Force, *Appellant.*	)	No. ACM 40463
	)	6 February 2024

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

Pursuant to Rule 23.3(m)(3), (4), and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 March 2024**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 260 days have elapsed. On the date requested, 300 days will have elapsed.

On 5-6 October 2022, Appellant was tried by a general court-martial, sitting as a military judge, at Misawa Air Base, Japan. R. at 1, 14, 380. Consistent with his pleas, a military judge convicted Appellant of one charge and two specifications of committing a lewd act with a child, in violation of Article 120b, Uniform Code of Military Justice (UCMJ), and one charge and one specification of indecent recording, in violation of Article 120c, UCMJ. R. at 17, 90. Prior to findings, the Government withdrew and dismissed, with prejudice, one specification of indecent viewing, in violation of Article 120c, UCMJ, one charge and one specification of unlawful touching of a child, in violation of Article 128, UMCJ, and one charge and two specification of possession and viewing child pornography, in violation of Article 134, UMCJ. R. at 90. On 6 October 2022, the military judge sentenced Appellant to forfeit all pay and allowances, 46 months of confinement and a dismissal. R. at 379.

The convening authority suspended the first six months of the adjudged forfeitures of total pay and allowances. Record of Trail (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Major Troy R. Dillon*, at 1. Further, the convening authority waived all automatic forfeitures for a period of six months. *Id*. Appellant is currently confined.

The record of trial is four volumes, consisting of nine prosecution exhibits, eight defense exhibits, one court exhibit, and seven appellate exhibits; the transcript is 380 pages. Counsel is currently assigned 19 cases; 16 cases are pending initial AOEs before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his 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.

Five cases before this Court have priority over the instant case:

1) *United States v. Daughma*, ACM 40385 – The record of trial is nine volumes consisting of 18 prosecution exhibits, five defense exhibits, 64 appellate exhibits, and one court exhibit; the transcript is 841 pages. Undersigned counsel has completed his review of the record, and will be filing assignment of errors tomorrow, 7 February 2024.
2) *United States v. Logan*, ACM 40407 – The record of trial is seven volumes, consisting of seven prosecution exhibits, 12 defense exhibits, 26 appellate exhibits, and three court exhibits; the transcript is 657 pages. Undersigned counsel has begun reviewing the unsealed exhibits and transcript.
3) *United States v. Stelly*, ACM 40425 – The record of trial is four volumes consisting of three prosecution exhibits, five defense exhibits, and 10 appellate exhibits; the

transcript is 109 pages. Undersigned counsel has completed an initial review of the transcript.

4) *United States v. Pulley*, ACM 40438 – The record of trial is 11 volumes, consisting of 22 prosecution exhibits, five defense exhibits, and 66 appellate exhibits; the transcript is 730 pages.

5) *United States v. Thomas*, ACM 40418 – The record of trial is six volumes, consisting of six prosecution exhibits, 16 defense exhibits, and 50 appellate exhibits; the transcript is 746 pages.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised 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 for good cause shown.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 6 February 2024.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

8 February 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Major (O-4) TROY R. DILLON, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40463 Panel No. 2

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its 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 has not completed review of the record of trial at this late stage of the appellate process.

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

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 8 February 2024.

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, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (EIGHTH)**
v.	)	Before Panel No. 2
Major (O-4), **TROY R. DILLON,** United States Air Force, *Appellant.*	)	No. ACM 40463
	)	7 March 2024

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

Pursuant to Rule 23.3(m)(3), (4), and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **16 April 2024**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 290 days have elapsed. On the date requested, 330 days will have elapsed.

On 5-6 October 2022, Appellant was tried by a general court-martial, sitting as a military judge, at Misawa Air Base, Japan. R. at 1, 14, 380. Consistent with his pleas, a military judge convicted Appellant of one charge and two specifications of committing a lewd act with a child, in violation of Article 120b, Uniform Code of Military Justice (UCMJ), and one charge and one specification of indecent recording, in violation of Article 120c, UCMJ. R. at 17, 90. Prior to findings, the Government withdrew and dismissed, with prejudice, one specification of indecent viewing, in violation of Article 120c, UCMJ, one charge and one specification of unlawful touching of a child, in violation of Article 128, UMCJ, and one charge and two specification of possession and viewing child pornography, in violation of Article 134, UMCJ. R. at 90. On 6 October 2022, the military judge sentenced Appellant to forfeit all pay and allowances, 46 months of confinement and a dismissal. R. at 379.

The convening authority suspended the first six months of the adjudged forfeitures of total pay and allowances. Record of Trail (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Major Troy R. Dillon*, at 1. Further, the convening authority waived all automatic forfeitures for a period of six months. *Id*. Appellant is currently confined.

The record of trial is four volumes, consisting of nine prosecution exhibits, eight defense exhibits, one court exhibit, and seven appellate exhibits; the transcript is 380 pages. Counsel is currently assigned 18 cases; 14 cases are pending initial AOEs before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his 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.

Four cases before this Court have priority over the instant case:

1) *United States v. Daughma*, ACM 40385 – The record of trial is nine volumes consisting of 18 prosecution exhibits, five defense exhibits, 64 appellate exhibits, and one court exhibit; the transcript is 841 pages. Undersigned counsel filed an AOE in this case on 7 February 2024. The Government's answer is due on 8 March 2024, with any reply by this appellant due on 15 March 2024. This appellant is currently confined.
2) *United States v. Logan*, ACM 40407 – The record of trial is seven volumes, consisting of seven prosecution exhibits, 12 defense exhibits, 26 appellate exhibits, and three court exhibits; the transcript is 657 pages. Undersigned counsel has reviewed the sealed and unsealed record, identified various issues, and has begun research on those issues. This appellant is not currently confined.

3) *United States v. Pulley*, ACM 40438 – The record of trial is 11 volumes, consisting of 22 prosecution exhibits, five defense exhibits, and 66 appellate exhibits; the transcript is 730 pages. On 21 February 2024, undersigned counsel filed a consent motion to review sealed materials. Undersigned counsel has not yet reviewed the record in this case. This appellant is currently confined.

4) *United States v. Thomas*, ACM 40418 – The record of trial is six volumes, consisting of six prosecution exhibits, 16 defense exhibits, and 50 appellate exhibits; the transcript is 746 pages. Undersigned counsel has reviewed the unsealed record and identified several issues. This appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised 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 for good cause shown.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

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 March 2024.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

8 March 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Major (O-4) TROY R. DILLON, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40463 Panel No. 2

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its 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 330 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 7 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

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 8 March 2024.

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 40463**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Troy R. DILLON	)	
Major (O-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 7 March 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Eighth) 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 11th day of March, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (Eighth) is **GRANTED**. Appellant shall file any assignments of error not later than **16 April 2024**.

Appellant's counsel is advised that given the number of enlargements granted thus far, the court will continue to closely examine any further requests for an enlargement of time.

FOR THE COURT

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (NINTH)**
v.	)	Before Panel No. 2
Major (O-4), **TROY R. DILLON,** United States Air Force, *Appellant.*	)	No. ACM 40463
	)	5 April 2024

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

Pursuant to Rule 23.3(m)(3), (4), and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **16 May 2024**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 319 days have elapsed. On the date requested, 360 days will have elapsed.

On 5-6 October 2022, Appellant was tried by a general court-martial, sitting as a military judge, at Misawa Air Base, Japan. R. at 1, 14, 380. Consistent with his pleas, a military judge convicted Appellant of one charge and two specifications of committing a lewd act with a child, in violation of Article 120b, Uniform Code of Military Justice (UCMJ), and one charge and one specification of indecent recording, in violation of Article 120c, UCMJ. R. at 17, 90. Prior to findings, the Government withdrew and dismissed, with prejudice, one specification of indecent viewing, in violation of Article 120c, UCMJ, one charge and one specification of unlawful touching of a child, in violation of Article 128, UMCJ, and one charge and two specification of possession and viewing child pornography, in violation of Article 134, UMCJ. R. at 90. On 6 October 2022, the military judge sentenced Appellant to forfeit all pay and allowances, 46 months of confinement and a dismissal. R. at 379.

The convening authority suspended the first six months of the adjudged forfeitures of total pay and allowances. Record of Trail (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Major Troy R. Dillon*, at 1. Further, the convening authority waived all automatic forfeitures for a period of six months. *Id*. Appellant is currently confined.

The record of trial is four volumes, consisting of nine prosecution exhibits, eight defense exhibits, one court exhibit, and seven appellate exhibits; the transcript is 380 pages. Counsel is currently assigned 17 cases; 12 cases are pending initial AOEs before this Court. One case before the Court of Appeals for the Armed Forces has priority over this case: *United States v. Knodel*. Undersigned and civilian co-counsel are conducting research in preparation of a petition and corresponding supplement.

Four cases before this Court have priority over the instant case:

1) *United States v. Daughma*, ACM 40385 – The record of trial is nine volumes consisting of 18 prosecution exhibits, five defense exhibits, 64 appellate exhibits, and one court exhibit; the transcript is 841 pages. Undersigned counsel has completed an initial AOE and reply brief. This Court granted appellant's request for oral argument, which is scheduled for 25 April 2024. Undersigned counsel is preparing for that argument. This appellant is currently confined.
2) *United States v. Logan*, ACM 40407 – The record of trial is seven volumes, consisting of seven prosecution exhibits, 12 defense exhibits, 26 appellate exhibits, and three court exhibits; the transcript is 657 pages. Undersigned counsel and civilian co-counsel completed appellant's assignment of errors and filed the same today, 5 April 2024. The Government's response will be due on 6 May 2024, with any reply being due on 13 May 2024. This appellant is not currently confined.

3) *United States v. Pulley*, ACM 40438 – The record of trial is 11 volumes, consisting of 22 prosecution exhibits, five defense exhibits, and 66 appellate exhibits; the transcript is 730 pages. On 21 February 2024, undersigned counsel filed a consent motion to review sealed materials. Undersigned counsel has not yet reviewed the record in this case. This appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised 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 for good cause shown.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 5 April 2024.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

5 April 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Major (O-4) TROY R. DILLON, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40463 Panel No. 2

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its 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 360 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 6 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

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 5 April 2024.

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 40463**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Troy R. DILLON	)	
Major (O-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 5 April 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Ninth) 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. While the court will allow Appellant's counsel another enlargement of time, we will only approve 25 days to submit Appellant's brief. Appellant's case has been docketed with this court since 22 May 2023.

Accordingly, it is by the court on this 8th day of April, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (Ninth) is **GRANTED IN PART**. Appellant shall file any assignments of error not later than **11 May 2024**.

Appellant's counsel is advised that given the number of enlargements granted thus far, any further requests for enlargement of time may necessitate a status conference in order for counsel to provide an update of progress on Appellant's case.

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, *Appellee,*	)	**BRIEF ON BEHALF OF APPELLANT**
v.	)	Before Panel No. 2
Major (O-4), **TROY R. DILLON,** United States Air Force, *Appellant.*	)	No. ACM 40463
	)	13 May 2024

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

ASSIGNMENT OF ERROR

WHETHER MAJOR DILLON'S SENTENCE TO NEARLY FOUR YEARS OF CONFINEMENT AND A DISMISSAL IS INAPPROPRIATELY SEVERE, CONSIDERING THE SIGNIFICANT EVIDENCE OF MITIGATION.

STATEMENT OF THE CASE

On 5-6 October 2022, Major (Maj) Troy R. Dillon was tried by a general court-martial, sitting as a military judge alone, at Misawa Air Base, Japan. R. at 1, 14, 380. Consistent with his pleas, a military judge convicted Maj Dillon of one charge and two specifications of committing a lewd act upon a child, in violation of Article 120b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920b, and one charge and one specification of indecent recording, in violation of Article 120c, UCMJ, 10 U.S.C. § 920c. R. at 17, 90. Prior to findings, the Government withdrew and dismissed, with prejudice, one specification of indecent viewing, in violation of Article 120c, UCMJ, one charge and one specification of unlawful touching of a child, in violation of Article 128, UMCJ, 10 U.S.C. § 928, and one charge and two specifications of possession and viewing of child pornography, in violation of Article 134, UMCJ, 10 U.S.C. § 934. R. at 90. On 6 October

2022, the military judge sentenced Appellant to forfeit all pay and allowances, 46 months of confinement, and a dismissal. R. at 379.

The convening authority suspended the first six months of the adjudged forfeitures of total pay and allowances. Record of Trail (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Major Troy R. Dillon*, at 1. Further, the convening authority waived all automatic forfeitures for a period of six months. *Id*.

STATEMENT OF FACTS

Maj Dillon's Misconduct

At the time of the offenses for which he pled guilty, Maj Dillon was married to J.D. Pros. Ex. 1 at 1. Relevant to this appeal, S.S., J.D.'s sister, has two children: A.S.[1] and E.S. Pros. Ex. 1 at 1. In January of 2017—when A.S. was 13 years old—Maj Dillon and J.D.'s family, to include S.S., A.S., and E.S., were on vacation. Pros. Ex. 1 at 1. During the vacation, Maj Dillon and A.S. swam in a pool together. Pros. Ex. 1 at 2; R. at 41-42. On two separate occasions, Maj Dillon grazed A.S.'s breast over her clothing three or four times.[2] R. at 42, 45; Pros. Ex. 1 at 2. Maj Dillon testified that these touches were committed with the intent of gratifying his sexual desire. R. at 42. A.S. does not remember these touches. R. at 110.

In June of 2017, S.S. and her family visited Maj Dillon and J.D. in Nebraska. Pros. Ex. 1 at 2. During this visit, A.S. was 14 years old. Pros. Ex. 1 at 2. At some point during this visit, Maj Dillon and A.S. were on a couch; A.S. was laying on her stomach. Pros. Ex. 1 at 2; R. at 50. Maj Dillon began to scratch A.S.'s back with his hand, which was initially not intended to be sexual.

[1] A.S.'s legal initials are R.S. *See, e.g.*, R. at 39-40, 98.
[2] During the first occasion, Maj Dillon grazed A.S.'s breast once; on the second occasion, he grazed her breast two or three times. R. at 42.

R. at 50. However, at some point, Maj Dillon placed his hand on A.S.'s buttocks under her clothes, which he testified was done with an intent to gratify his sexual desire. R. at 51.

In August of 2018, E.S. visited Maj Dillon and J.D. in Japan. R. at 58. While E.S. was taking a shower, Maj Dillon placed a tablet at the bottom of the door and recorded E.S. Pros. Ex. 1 at 2; R. at 58-59. The recording lasted about five or ten minutes. R. at 58. After making the recording, Maj Dillon viewed the video before deleting it. R. at 58. E.S. did not know that there was a recording until one day before trial. R. at 141-42.

Maj Dillon's Confession and AFOSI Investigation

Since 2017, Maj Dillon's actions tormented him. R. at 51. "Throughout the years [he was] crippled by guilt [and] shame." R. at 51. Maj Dillon informed the military judge that his actions had slowly been destroying him, "[r]emoving and robbing . . . any value [he felt]." R. at 265. Despite being under no investigation by either military or civilian authorities, *see, e.g.*, R. at 170 (showing Maj Dillon's command did not know of this misconduct until he confessed), in the summer of 2021 Maj Dillon decided that he was morally compelled to confess his crimes. R. at 51; Def. Ex. H at 3. Maj Dillon first confessed to his wife, J.D.,[3] before seeking spiritual guidance from the base chaplain. Def. Ex. H at 3. Maj Dillon "poured out [his] heart to [the Chaplain] and before God. [He] confessed [his] sins and sought forgiveness from God. That day was a turning point in [his] life." Def. Ex. H at 3.

As part of this turning point, Maj Dillon "sought to be accountable for [his] sins by confessing to [his] commander." Def Ex. H at 3. When Maj Dillon first met with his commander, Lt Col K A , he stopped Maj Dillon before he confessed; Lt Col A advised him of his

[3] This confession came after J.D.'s disclosure to Maj Dillon that A.S. had informed her parents that she recalled Maj Dillon inappropriately touching her buttocks when Maj Dillon lived in Nebraska. R. at 214.

Article 31, UCMJ, 10 U.S.C. § 831, rights. R. at 182-83. Specifically, Lt Col A informed Maj Dillon to seek the advice of the area defense counsel before confessing. Def. Ex. H at 3. Out of respect for his commander, Maj Dillon agreed to seek defense counsel advice. Def. Ex. H at 3. Unsurprisingly, Maj Dillon's defense counsel advised him against making any statements. R. at 268; Def. Ex. H at 3. In fact, the attorneys prepared a memo explaining the consequences of making a confession, which they provided to Maj Dillon. Def. Ex. H at 3. In one section, entitled "Extreme Legal Consequences of Confessing," his attorneys advised that his confession would likely lead to immense criminal culpability. Def. Ex. H at 3.

Despite being aware of these consequences, Maj Dillon confessed. He did so, first, by meeting with Lt Col A Def. Ex. H at 3; R. at 170-71. After this confession, Lt Col A informed Maj Dillon that he was required to report him to the Air Force Office of Special Investigations (AFOSI). R. at 180. Thereafter, AFOSI sought an interview with Maj Dillon. *See, e.g.*, Pros. Ex. 1 at 3. Maj Dillon voluntarily consented to this interview, where he confessed to the information that would ultimately make up the three charges for which he pled guilty. Def Ex. H at 3. Specifically, Maj Dillon "chose to speak with [AF]OSI, to confess the things [he] had done to [A.S. and E.S.]. R. at 51.

During the subsequent AFOSI investigation, agents contacted A.S. and E.S.; both declined to be interviewed.[4] Pros. Ex. 1 at 4.

Maj Dillon's Treatment and Support Network

After confessing to his commander and AFOSI, Maj Dillon sought to make positive changes to his life. For Maj Dillon, that meant "making a daily choice that nothing in [his] life is

[4] Both A.S. and E.S. provided responses to AFOSI questions via email prior to trial, Pros. Ex. 1 at 4, and both testified for the Government at sentencing. R. at 98, 134. E.S. also provided a victim impact statement. Ct. Ex. A. These statements are discussed in more detail, below.

hidden before God or others." R. at 270. This openness included creating a support network to help him rehabilitate. R. at 269-70. By the time of trial, this support network was made up of approximately eight to ten men. R. at 270.

Immediately after his confessions, Maj Dillon also requested to receive mental health treatment from the L R Treatment Facility, which his commander approved. R. at 270. This program included seven weeks of inpatient treatment followed by five weeks of outpatient treatment. R. at 270. When Maj Dillon returned from L R he immediately involved himself in the base's twelve-step program, which he met with twice a week.[5] R. at 270. Maj Dillon averred that he would continue attending twelve-step meetings after his confinement. R. at 271. In addition, Maj Dillon started a bible study group for other men and began volunteering at various organizations. Def. Ex. H at 3.

Trial

At his trial, Maj Dillon took responsibility for the crimes he committed by pleading guilty. *See, e.g.*, R. at 42 (articulating that he regretted taking "this long" to come forward and confess). Not only did he take responsibility by admitting to the facts underlying his misconduct in open court, but Maj Dillon also testified that he understood that his misconduct was wrong. R. at 42 ("[W]hat I had done was wrong. It was repulsive, immoral, and I am ashamed."). During his verbal unsworn statement, Maj Dillon explained that he was pleading guilty not only because he was guilty, but because he did not want A.S. or E.S. to have to go through a litigated trial. R. at 273. He understood the hurt and emotional damage he had caused and was taking steps—by pleading guilty—to ensure he did not cause any additional harm to the victims. R. at 273-74.

[5] While Maj Dillon did not, and does not, have a substance abuse problem, he decided to join the twelve-step program because it encourages "rigorous honesty." R. at 271.

At the sentencing phase of trial, the Government presented several witnesses; only some of this testimony was ruled substantively admissible. *See, e.g.*, R. at 333-55. Two witnesses who did provide admissible, substantive evidence were A.S. and E.S. A.S. testified that she felt heartbroken and betrayed by Maj Dillon's actions. R. at 111. A.S. also testified that, in or around 2021, she was depressed and started self-harming.[6] R. at 116. She also stated that she can become "paralyzed with anxiety" around tall men and that the "thought of being with a man is not [sexually] appealing in any sense." R. at 116. When asked if all of her mental health issues were caused "solely" by Maj Dillon's actions, A.S. responded in the negative and indicated the COVID-19 pandemic also had an impact.[7] R. at 116-17.

E.S. testified that it "was incredibly difficult" to witness how Maj Dillon's actions impacted her sister, A.S. R. at 143. She further testified that learning about Maj Dillon's actions was difficult to comprehend and it made her "feel like [she] was going crazy." R. at 143. E.S. stated that she thinks about Maj Dillon recording her multiple times a day, especially when in a public restroom or around tall white men. R. at 144. In addition, E.S. also submitted a victim impact statement. Ct. Ex. A. E.S. told the court that Maj Dillon took her dignity, ability to trust, sense of security, and youth. Ct. Ex. A. However, she also told the military judge, "In my life [Maj Dillon] tried to do good, and because of that I think he deserves some type of mercy." Ct. Ex. A.

The trial defense counsel put on a robust sentencing case, to include eight sentencing exhibits. Def. Ex. A-H. Notably, the defense admitted a character letter from a retired major general, Def. Ex. E, and a character letter from one of Maj Dillon's pastors. Def. Ex. D. In addition,

[6] According to A.S.'s 16-year-old sister, this may have a future impact on A.S.'s ability to be a pilot, her preferred career. R. at 150. However, A.S. did not testify to this.
[7] During cross-examination, A.S. stated that some of these issues may also have been caused by an internal conflict she experienced about her same-sex attractions, as well as the conflict her sexuality caused between her and her parents. R. at 126, 128-29.

Maj Dillon presented testimony from Maj Dillon's mental health provider. R. at 277-78. The provider testified that Maj Dillon was committed to changing his behavior because he understood the harm that his actions caused. R. at 280. The provider also testified that Maj Dillon's rehabilitative potential was good. R. at 281.

The Defense also called a witness who worked with Maj Dillon. R. at 302-03. This witness testified that Maj Dillon had "tremendous" rehabilitative potential based on his work ethic, consistent remorse, and disappointment in his own actions. R. at 303-04. The Government had the opportunity to test the veracity of the witnesses' opinions through extensive "have you heard, are you aware questions." *See, e.g.*, R. at 290-92, 308-09; Pros. Ex. 9. Despite this, no defense witness or affiant changed their opinion. R. at 299, 309; Def. Ex. A-E.

ARGUMENT

MAJ DILLON'S SENTENCE TO NEARLY FOUR YEARS OF CONFINEMENT AND A DISMISSAL IS INAPPROPRIATELY SEVERE, CONSIDERING THE SIGNIFICANT EVIDENCE OF MITIGATION.

Standard of Review

Sentence appropriateness is reviewed de novo. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).

Law

Article 66(d)(1), UCMJ, "provides that [this Court] 'may affirm only . . . the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved.'" *United States v. Flores*, __ M.J. __, 2024 CAAF LEXIS 162, at *8-9 (C.A.A.F. 2024). Fundamentally, this means that this Court must "determine whether it finds the sentence to be appropriate." *Id.* at *9 (citation omitted).

This Court has "broad discretion to determine whether a sentence should be approved, a power that has no direct parallel in the federal civilian sector." *United States v. Behunin*, 83 M.J. 158, 161 (C.A.A.F. 2023). And, while this Court need not grant relief merely as a matter of clemency, *United States v. Sauk*, 74 M.J. 594, 606 (A.F. Ct. Crim. App. 2015) (en banc), it is required to "do justice." *United States v. Nerad*, 69 M.J. 138, 146 (C.A.A.F. 2010). In assessing sentence appropriateness, this Court considers "the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the record of trial." *Id.* (cleaned up). This Court also takes into consideration "uniformity and evenhandedness of sentencing decisions." *United States v. Sothen*, 54 M.J. 294, 296 (C.A.A.F. 2001).

Moreover, Article 66(d)(1) requires this Court to conduct a segmented sentence appropriateness review. *Flores*, 2024 CAAF LEXIS, at *11-12. This does not, however, change this Court's obligation to also conduct a review of the entire sentence. *Id.* at *12.

Further, just because a plea agreement contains certain terms does not mean that those terms are inherently appropriate. For example, in *Kerr*, the Navy-Marine Corps Court of Criminal Appeals held that a bad conduct discharge was an inappropriate sentence, even though it was required to be adjudged by the plea agreement. *United States v. Kerr*, No. 202200140, 2023 CCA LEXIS 434, at *8, n.23 (N-M Ct. Crim. App. 17 Oct 2023) (unpub. op.).

Argument

Maj Dillon was not under investigation by any law enforcement agency, military or civilian. Maj Dillon had not been confronted by any member of the military, to include his command or his peers. Maj Dillon had been told not to confess by his commander and two defense counsel. Nevertheless, in the summer of 2021, Maj Dillon confessed his crimes, initiating the process that placed him in confinement for nearly four years. Given this, and the great wealth of

other mitigation evidence in this case, Maj Dillon's sentence to a dismissal and nearly four years of confinement for each offense is inappropriate.

1. Charge I, Specification 1 (A.S. breast grazes)

For the offense of brushing his hand against A.S.'s breasts over the clothes three or four times, the military judge sentenced Maj Dillon to 42 months of confinement, in addition to a dismissal and total forfeitures. This sentence is inappropriately severe for several reasons. First, the underlying facts of this offense are not so severe to warrant three and a half years of confinement. The only evidence of this offense exists in Maj Dillon's *Care*[8] inquiry and the stipulation of fact. R. at 41-45; Pros. Ex. 1 at 2. That evidence was that Maj Dillon grazed A.S.'s breast, over her clothes while swimming, three or four times. R. at 42, 25; Pros. Ex. 1 at 2. These acts were so minimal that A.S. had no memory of them at the time of trial, even after listening to Maj Dillon's *Care* inquiry. R. at 110.

Second, the Government presented virtually no victim impact for this offense. After all, the only victim impact elicited from A.S. concerned Specification 2 of Charge I, not Specification 1. *See, e.g.*, R. at 110-17. This makes sense because A.S. does not have an independent memory of this incident and did not—and could not—attribute any of her mental health issues to this offense.

Third, Maj Dillon submitted substantial evidence of mitigation to the military judge. This included character letters containing evidence of rehabilitative potential, Def Ex. A-E, testimony from his mental health provider explaining the steps Maj Dillon had taken to take responsibility, R. 277-81, and character testimony concerning Maj Dillon's "tremendous" rehabilitative potential. R. at 281, 303-04.

[8] *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969).

Perhaps most important is that Maj Dillon—without prompting from military or civilian authorities—provided the sole evidence of this offense through his confessions and plea of guilty. Def. Ex. H at 3; R. at 51; 170-71; 180. As noted, A.S. had no memory of this offense and could not possibly provide enough evidence to obtain a conviction. Despite knowing of the consequences of his confessions, Def. Ex. H at 3, Maj Dillon nevertheless came forward, incriminated himself, and took responsibility at every stage of the investigation and trial. That is extremely mitigating.

This is even more mitigating when reviewing Maj Dillon's motives. Obviously, Maj Dillon was not concerned with escaping criminal culpability, because there was no risk of culpability before his confession. Rather, his confessions were made so "that nothing in [his] life is hidden before God or others," R. at 270; Def. Ex. H at 3, to mend the harm he had done to A.S., R. at 42, 273-74, and to seek the necessary help to get better. R. at 269-71. Further, Maj Dillon declined to contest the offenses at trial—forfeiting many constitutional rights—to ensure that A.S. (and E.S.) were not unnecessarily harmed by being dragged into a litigated trial. R. at 273. This is not only extremely mitigating, but also convincing evidence of rehabilitative potential.

There can be no doubt that sexually touching a minor is a serious offense. But, the underlying facts of this offense, the impact (or lack thereof) on the victim, and the robust evidence of mitigation and rehabilitation shows that the adjudged sentence is inappropriately severe.

2. Charge I, Specification 2 (A.S. buttocks touch)

For the offense of touching A.S.'s buttock one time, the military judge sentenced Maj Dillon to 46 months of confinement, on top of total forfeitures and a dismissal. While admittedly this offense is more aggravating than the other two specifications in this case, the evidence in the record shows that this sentence is inappropriately severe. This is made most evident when

reviewing Maj Dillon's decision to confess to his crimes when there was no law enforcement investigation, Pros. Ex. 1 at 1-3, and to continue to take responsibility at every stage of the subsequent investigation and court-martial. Def. Ex. H. This evidence, along with the robust information available to the military judge concerning rehabilitative potential—discussed in greater detail under Specification 1 of Charge II— demonstrates that the sentence is inappropriately severe.

3. Charge II, Specification 1 (recording of E.S.)

For the offense of recording E.S. while she took a shower, the military judge sentenced Maj Dillon to 46 months of confinement, on top of total forfeitures and a dismissal. This sentence is inappropriately severe for several reasons.

First, the facts underlying the offense are not so severe as to warrant nearly four years of confinement. While Maj Dillon did unlawfully record E.S. while she was naked, there is no evidence that this video was distributed to others or that it was used for Maj Dillon's sexual gratification. In fact, the evidence shows that after Maj Dillon recorded the video, he deleted it. R. at 58-59. E.S. was not even aware that a recording existed until a day before trial when her father informed her. R. at 141-42.

Second, while the Government presented some victim impact of this incident, it was limited due to E.S. learning of the offense just the day before trial. Even so, in her victim impact statement, E.S. averred that Maj Dillon deserved mercy from the court despite his misconduct. Court Exhibit A.

Third, much like Specification 1 of Charge I, Maj Dillon provided the sole evidence for this offense. No person—to include E.S.—had knowledge that Maj Dillon recorded E.S. while

she was in the shower. Maj Dillon, through his confessions, provided the Government with the only evidence of this offense. This is extremely mitigating.

Last, all the mitigation and rehabilitative evidence discussed under Specification 1 of Charge I demonstrates that, when reviewing the facts of the offense and the victim impact, nearly four years of confinement is inappropriately severe.

4. The Dismissal

As discussed above, four years of confinement is inappropriately severe on its own. The fact that the military judge also adjudged a dismissal makes an already severe sentence extremely inappropriate. After all, a dismissal is one of the harshest punishments that can be adjudged. "A [dismissal] is an unquestionably severe punishment with significant impacts and a long-lasting stigma." *United States v. Plourde*, No. ACM 39478, 2019 CCA LEXIS 488, at *48 (A.F. Ct. Crim. App. 6 Dec 2019) (unpub. op.) (citing *United States v. Mitchell*, 58 M.J. 446 (C.A.A.F. 2003)); *see also* Dep't of Army, Pam. 27-9, Legal Services: Military Judges' Benchbook, para 2-5-22 (29 Feb. 2020) (discussing how a dismissal is equivalent to a dishonorable discharge). This severe sentence, which carries significant practical impacts and life-long stigma—combined with nearly four years of confinement—is an inappropriately severe sentence both under a unitary sentencing review and a segmented review of each specification.

For all the reasons articulated above, as well as all information contained in the record, the sentence adjudged in this case is inappropriately severe.

WHEREFORE, Appellant respectfully requests that this Honorable Court set aside a portion of Maj Dillon's confinement, his dismissal, or both.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

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 13 May 2024.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' ANSWER TO ASSIGNMENTS OF ERROR
v.	)	Before Panel No. 2
Major (O-4) **TROY R. DILLON** United States Air Force *Appellant.*	)	No. ACM 40463 June 12, 2024

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

ASSIGNMENT OF ERROR

WHETHER MAJOR DILLON'S SENTENCE TO NEARLY FOUR YEARS OF CONFINEMENT AND A DISMISSAL IS INAPPROPRIATELY SEVERE, CONSIDERING THE SIGNIFICANT EVIDENCE OF MITIGATION.

STATEMENT OF CASE

The Government generally agrees with Appellant's statement of the case.

STATEMENT OF FACTS

In June 2021 A.S., while being hospitalized for suicide, disclosed that Appellant, who is her uncle, sexually abused her, when she was 14 years old. (R. at 115, 182, 214.) Soon after, Appellant confessed to his wife J.D., and then to his commander, that he had committed crimes against A.S. and A.S.'s younger sister, E.S. when A.S. and E.S. were children. (Id. R. at 182.) Appellant's commander reported Appellant's confession of child sexual abuse to the Air Force Office of Special Investigations (AFOSI). (R. at 180.) Appellant was ultimately convicted of one charge and two specifications of sexually abusing A.S. and one charge of making an inappropriate recording of E.S.

In Charge I Specification 1 of sexual abuse of a child Appellant was convicted of repeatedly grabbing A.S.'s breasts to gratify his sexual desire. This abuse happened in Florida, when A.S. was 13 years old and visiting Disney World with Appellant and the rest of her family. All A.S.'s great memories of that trip to Florida and Disney World are overshadowed by Appellant sexually abusing her. (R. at 111.)

> VICTIM A.S.: Troy [Appellant] was holding me bridal style, and it was too close for my comfort. And I remember gently pushing away at him. But I didn't want to offend or insult so I continued to let him hold me until my youngest sister asked 'what are you guys in love or something?' then at that point Troy let me go.

(R. at 109.)

> VICTIM A.S.: I remember specifically a rush of bubbles floating or shooting past my face. As if I was diving underneath the water. […] And I remember feeling uncomfortable because I was touched. But I don't remember specifically where I was touched.

(R. at 110.)

A.S. was only able to describe a single incident of abuse, while Appellant plead guilty to grabbing A.S.'s breasts in the pool on two different days:

> ACC: I accidentally grazed A.S.'s breast with my hand. When I noticed she did not react, I proceeded to touch her breast again. This time it was intentional, and I did it to gratify my sexual desire.

(R. at 42.)

> ACC: About two days later [...] While at the bottom of the pool, I touched AS's breast on 2 or 3 occasions. Each time was intentional, and again, I did it to gratify my sexual desires.

(R. at 42.)

Appellant was sentenced to 42 months of confinement for the first specification of sexual abuse of A.S. (R. at 379.)

In Charge I Specification 2, Appellant was again convicted of sexually abusing A.S., this time in the basement of Appellant's home in Nebraska. A.S. was 14 years old and tried to convince herself that Appellant loved her and would not do anything to hurt her.

> VICTIM A.S.: But just as he was going up and down on my back, he was going up and down on my front, and each time he would raise his hand. He would touch a little bit closer to my breasts. And then each time he lowered his hands he would touch a little but closer in-between my legs.

(R. at 115.)

Appellant continued to grope A.S. until his hand reached A.S.'s buttocks. Appellant only stopped touching A.S. when his cat bit his foot, which gave A.S. time gather her courage and remove herself from harm. (R. at 113, Pros. Ex. 4 at pg. 97.) For this sexual abuse, Appellant was sentenced to 46 months of confinement. (R. at 379.)

In Charge II Specification 2 Appellant was convicted of making an indecent recording of E.S. when E.S. visited Appellant in Japan. E.S. was "thrilled beyond any [words]" to visit Japan. (R. at 137.) Appellant responded to E.S.'s joy by exploiting her while she showered.

> VICTIM E.S.: [..] I was in the restroom getting ready to take a shower. And I had already undressed when I noticed a-what looked like a camera flash light from underneath the door. And when I saw it I froze. And I could still hear my heartbeat because I didn't understand, I didn't comprehend or know what that was. And so I just froze. And I guess, uncomfortable is an ok word for what I felt.

(R. at 140)

Appellant admitted that the "camera flash light" E.S. noticed while she showered came from an iPad he placed strategically underneath the door, so he could watch his nude 12-year-old niece. (R. at 68.) For this offense, Appellant was sentenced to 46 months of confinement. (R. at 379.)

The three confinement periods were ordered to be served concurrently, pursuant to the plea agreement. (Id., App. Ex. III.) Appellant's sentence also included forfeitures and a dismissal from service. (Entry of Judgement, Record of Trail (ROT), Vol. 1.) Additional relevant facts are included below.

ARGUMENT

APPELLANT'S SENTENCE OF LESS THAN FOUR YEARS FOR SEXUALLY ABUSING A CHILD AND CREATING AN INDECENT RECORDING OF A 12-YEAR-OLD VICTIM IS APPROPRIATE.

Standard of Review

This Court reviews the appropriateness of an appellant's sentence *de novo*. See United States v. McAlhaney, 83 M.J. 164, 166 (C.A.A.F. 2023).

Law

Pursuant to Article 66(d), UCMJ, this Court "may affirm only the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved." 10 U.S.C. § 866(d). The purpose of such review is "to ensure 'that justice is done and that the accused gets the punishment he deserves.'" United States v. Joyner, 39 M.J. 965, 966 (A.F.C.M.R. 1994) (quoting United States v. Healy, 26 M.J. 394, 395 (C.M.A. 1988)). In assessing sentence appropriateness, this Court considers "the particular appellant, the nature and seriousness of the offense[s], the appellant's record of service, and all matters contained in the record of trial." United States v. Hamilton, 77 M.J. 579, 587 (A.F. Ct. Crim. App. 2017) (citations omitted).

Although this Court has discretion to determine whether a sentence is appropriate, it has "no power to 'grant mercy.'" 77 M.J. at 587 (citing United States v. Nerad, 69 M.J. 138, 146 (C.A.A.F. 2010)); *see also* United States v. Walters, 71 M.J. 695, 698 (A.F. Ct. Crim. App. 2012) ("[W]e are not authorized to engage in exercises of clemency."). Thus, if a sentence is not inappropriately severe, this Court must affirm it even if it is not what this Court would have adjudged:

> By affirming a sentence, we do not necessarily mean that it is the sentence we would have adjudged had we been the sentencing authority. The numerous permutations and combinations of sentencing alternatives available to the sentencing authority are so broad that, normally, there will not be only one sentence that is appropriate for a particular appellant. Thus, it may be more fitting for this Court to find that a particular sentence "is not inappropriate," rather than "is appropriate."

United States v. Joyner, 39 M.J. 965, 966 (A.F.C.M.R. 1994).

In weighing sentence appropriateness, special consideration should be given to the Appellant's agreed upon sentence in the plea agreement. "An accused's own sentence proposal is a reasonable indication of its probable fairness to him" United States v. Hendon, 6 M.J. 171, 175 (C.M.A. 1979). The Court also considers the "limits of the [plea agreement] that the appellant voluntarily entered into with the convening authority." United States v. Fields, 74 M.J. 619, 626 (A.F. Ct. Crim. App. 2015). Among those limits, the Court may consider, are ones that are not explicitly stated. For example, an Appellant's agreement to a sentence cap that does not preclude punitive discharges, indicates an Appellant agrees that a punitive discharge is not inappropriately severe. (Id.)

Analysis

A review of the entire record shows that the adjudged sentence of 46 months, forfeitures and a dismissal was appropriate for Appellant's crimes for three reasons. First, Appellant plead guilty pursuant to a plea agreement and the adjudged sentence was well within that agreement. Second, a complete review of the record shows that the adjudged sentences were appropriate for the offense conduct and trauma inflicted on the victims. Lastly, Appellant's guilty plea and other mitigating factors were properly weighed in the sentencing decision.

1. <u>Appellant agreed that up to 48 months of confinement and a dismissal was appropriate</u>.

Appellant benefited from a plea agreement that reduced his potential confinement period from 45 years to an actual confinement period of 46 months. (R. at 65, 379.) In exchange for Appellant's guilty plea, the convening authority agreed to dismiss one specification of indecent viewing, one charge of unlawful touching of a child, and one charge and two specifications of possessing and viewing child pornography. (App. Ex. III.) The plea agreement limited the confinement period to 48 months for each offense and required that all terms of confinement be served concurrently. (App. Ex. III.) The plea agreement was silent on forfeitures and a dismissal. (Id.) Appellant now asks this Court to grant him benefits he did not bargain for; a sentence of less than 46 months and withdrawal of his dismissal. (App. Br. at 9.) There is no legal or factual reason for this Court to reduce Appellant's sentence. The terms of the plea agreement were fulfilled, and the adjudged sentence was correct in law and fact.

Appellant agreed that he could be confined for up to 48 months and the adjudged sentence of 46 months is two months less than that limit. (App. Ex. III, R. at 379.) If Appellant believed that 46 months of total confinement was not fair to him, Appellant could have entered into a plea agreement with a lower maximum confinement period. If Appellant believed, as he now argues, that some specifications deserved lower sentences based on the evidence available, Appellant could have entered into a plea agreement that provided different maximums for those specifications. (App. Br. at 9-11.) Appellant instead entered into an agreement that only required a sentencing cap of 48 months. Appellant believed that this confinement period was fair to him at trial and it should be affirmed.

Appellant also believed a dismissal was not inappropriate, since the plea agreement was silent on the issue. (App. Br. at III.) (*See* United States v. Fields, 74 M.J. 626 (A.F. Ct. Crim. App. 2015) where the court found a bad conduct discharge was not inappropriate because the accused did not oppose one in a plea agreement.) Appellant asks this Court to withdraw his order of dismissal because it is a severe punishment and carries a lifelong impact. (App. Br. at 12.) Appellant does not explain why he does not deserve to live with that stigma, considering he sexually abused his niece during his military service. Appellant cites the unpublished opinion of United States v. Kerr, No. 202200140, 2023 CCA LEXIS 434, at *8, n.23 (N-M Ct. Crim. App. 17 Oct 2023) to persuade this Court that "just because a plea agreement contains certain terms does not mean that those terms are inherently appropriate". (App. Br. at 8.) That case is not instructive, Kerr was a Marine convicted of larceny and issued a bad-conduct discharge pursuant to a plea agreement. The court found the bad-conduct discharge was inappropriate after considering the Marine's outstanding military record, which included heroic acts that saved a child, an Afghan woman, and a wounded U.S. soldier during the U.S.'s withdrawal from Afghanistan. Appellant's crimes were more predatory than Kerr's and his military record less valorous, these cases are not analogous.

To the extent Appellant is implying that the dismissal is inappropriate in comparison to other sentences for sexual abuse of children or indecent recordings, Appellant falls short of establishing that he is entitled to relief on those grounds. Appellant bears the burden of demonstrating that any cases are "closely related" to his and that the sentences are "highly disparate." United States v. Lacy, 50 M.J. 286, 288 (C.A.A.F. 1999). Appellant has not met that burden in this case. The dismissal and confinement periods were appropriate and should be affirmed.

2. <u>The adjudged sentences appropriately reflect Appellant's conduct for each offense.</u>

Considering Appellant's behavior toward A.S. and E.S. prior to victimizing them, along with the offense conduct, it becomes evident that Appellant's crimes justified the adjudged sentences. Appellant spent years playing the role of loving uncle and earning the trust of A.S. and E.S. When Appellant victimized A.S. and E.S. they were unable to comprehend that Appellant was hurting them. Appellant also used the relationships he fostered with A.S. and E.S. to conceal his first sexual abuse of A.S. and to convince E.S. that his exploitation of her was a "prank".

<u>Charge I Specifications 1 and 2: Child Sexual Abuse of A.S.</u>

Appellant spent hours on Facetime with A.S. and Appellant would not hang up the phone, even when A.S. had to change her clothes or get ready for bed. (Pros. Ex. 4 at pg. 97.) A.S. said "[I] didn't feel it was polite to just hang up on him so I would face the camera away from me when I was changing". (Id.) Appellant would often pull A.S. onto his lap while talking to her. (Id.) A.S. tried to be polite to Appellant, even when Appellant made her uncomfortable. (Id.) Appellant learned from these experiences that A.S. trusted him and then exploited that trust.

Appellant first exploited that trust when he disguised the sexual abuse of A.S. in Florida as a pool game. (R. at 42.) Appellant, A.S., and A.S.'s sisters played a game that involved diving to the bottom of the pool to retrieve toys. (Id.) A.S. describes pushing Appellant away when he held her during the game but A.S. "didn't push away from [Appellant] too much because I didn't want to hurt [Appellant's] feelings". (Pros. Ex. 4 at 97.) Appellant accidentally "grazed" A.S.'s breast underwater. (R. at 42.) Appellant noticed that A.S. "did not react" to her

breasts being touched and took advantage of that lack of awareness by intentionally grabbing A.S.'s breast's again. (R. at 42.)

Appellant sexually abused A.S. that same way a few days later, but A.S. only remembers one incident. (R. at 40-42, 112, 127.) A.S. described the incident she remembered as "feeling a lot of bubbles" and having "negative feelings". (R. at 110, 127.) A.S. was 13 years old at the time of this sexual abuse. A.S.'s juvenile description of "feeling a lot of bubbles" reflects her young mindset, trust in Appellant, and explains why she may not have been able to comprehend that Appellant was sexually abusing her. (R. at 110.)

Five years later, when A.S. was told by Appellant's wife J.D., that Appellant confessed to sexually abusing A.S. on two different days while they were in Florida, A.S. was "not surprised". (R. at 111.) A.S., now an adult, looked back on the day in the pool and "[R]emembered the instance with Troy [Appellant] in his basement in Nebraska. [Charge I Specification 2] And I remembered him holding me. So another – it just was a logical next step." (R. at 111.) In retrospect, A.S. was able to comprehend that the discomfort she felt in the pool was triggered by sexual abuse. (Id.) Appellant argues that A.S.'s inability to recognize one of the assaults in the pool is a mitigating factor. (App. Br. at 9.) Appellant concealed his crimes successfully because A.S. loved and trusted him not to hurt her, that is not a mitigating factor, that is an aggravating factor. The evidence supports the adjudged confinement period of 42 months for this offense.

A.S.'s admiration for Appellant was shattered by his conduct in Charge I Specification 2 when he exploited her trust a second time. (R. at 112-114.)

> VICTIM A.S.: I was confused. But of course in my head, you know, I'm telling myself he means well. He's my uncle. He loves me. He's not going to do anything wrong. […] But then the lower he went on my back, the more uncomfortable I grew.

(R. at 112.)

A.S. described feeling "alarmed" and "frozen" because Appellant was moving his hands closer to her genitals. (R. at 114.) Appellant reached A.S.'s buttocks with his hand and only stopped groping A.S. when the pet cat bit Appellant's foot. (Id. Pros. Ex. 4.) A.S., alarmed, frozen and fearful, said to Appellant "maybe we should stop, I need to go to sleep". (Id.) Appellant did not immediately stop the sexual abuse, instead asking his 14-year-old niece if she "wanted" him to stop. (R. at 113.) Only after A.S. repeated that she wanted the sexual abuse to stop, did Appellant leave A.S. alone. (Id.) A.S. was hospitalized for suicide and self-harm but felt better when she disclosed to her providers and parents that Appellant sexually abused her in his basement in Ohama. (R. at 115-117.) At trial, A.S. said as a result of the abuse she cannot trust other adults, even her father, and sometimes is paralyzed by anxiety around men. (R. at 116- 117.)

Appellant argues that the effects of his crimes on A.S. are minimal, because A.S. did not recognize the breasts grabs in the pool as sexual abuse and A.S. was also dealing with the COVID-19 pandemic and same sex attraction during her hospitalization. (App. Br. at 6.) A.S. may not have been able to comprehend the sexual abuse Appellant inflicted on her in the Florida swimming pool but she clearly indicated she felt negative feelings during the assault. (R. at 127.) Defense counsel at trial also tried to attribute A.S.'s hospitalizations to other challenges. (R. at 128.) A.S. responded directly to defense counsel's theory that A.S.'s sexuality caused her mental health crisis, telling the court, "they [defense] want to place the blame not solely on what Troy [Appellant] did to me […] but I do not see my same sex attraction as part of the equation of why I was in the hospital". (R. at 131.) A.S.'s mother also testified that A.S. started to "feel better" only when she was treated for sexual abuse. (R. at 151.) A.S. and A.S.'s mother unequivocally connected Appellant's sexual abuse of A.S. to the self-harm, suicidal ideations and

hospitalization that A.S. suffered. (R. at 127, 151.) The adjudged confinement period of 46 months for this crime, that caused so much suffering for A.S., should be affirmed.

Charge II Specification 1: Indecent Recording of E.S.

E.S. also dealt with inappropriate behavior from Appellant, before Appellant victimized her. (Pros. Ex. 4 at 98.) E.S. said she often dismissed her discomfort around Appellant for shyness, but there were times she felt truly uncomfortable. (Id.) One of those times of discomfort happened under the guise of Appellant "joking around". (Id.) Appellant laid on the floor and refused to move until E.S. tried to move him. (Id.) E.S. was only 11 years old at the time and thought it was a strange because as an 11-year-old girl E.S. would not be able to move Appellant. (Id.) Appellant wanted E.S. to touch him, but E.S. did not partake in the game, instead retrieving a blanket for Appellant and leaving him alone. (Id.)

Despite those uncomfortable moments, E.S. loved Appellant so dearly that she wanted to believe Appellant when he claimed the recording of her naked in the shower was a "prank".

> VICTIM E.S.: He (Appellant) told me he was playing a prank on me.
>
> And I in a way forced myself to believe that. But some part of me never accepted that because no one plays pranks by flashing lights under a door.

(R. at 141)

E.S. did "not want it to be true" that Appellant was making a recording of her naked. (R. at 140-141.) E.S. decided to ignore what Appellant did because E.S. trusted Appellant. (Pros. Ex. 4 at pg. 98.) After all, Appellant paid for E.S.'s flight to Japan, treated E.S. "like a daughter" and spent a lot of money spoiling E.S. (Id.) E.S. was a high-school sophomore when she found out the truth about Appellant recording her naked in Japan. (R. at 143.) E.S. was "unsurprised" by the revelation, but still felt shock and physical discomfort at the news. (Id.)

Appellant argues that his sentence for this offense is inappropriately severe because E.S. did not know the recording existed. (App. Br. at 11-12.) E.S. may not have known the recording existed, but E.S. knew that *something* indecent happened to her. E.S. told the court that she "didn't want it to be true" that Appellant was making a recording of her. (R. at 140-141.) Appellant does not deserve a reduced sentence because E.S., out of love for Appellant, refused to believe Appellant victimized her.

Appellant also argues that the confinement period for this offense is too severe because there is no evidence that the recording of E.S. naked was distributed, or that it was made to gratify Appellant's sexual desire. (App. Br. at 11.) Gratification of a sexual desire and distribution are not elements of the crime of indecent recording. While Appellant did not admit that the purpose of the recording was sexual, a finder of fact can reasonably infer from the evidence that the recording served a sexual purpose. Ultimately, it does not matter *why* Appellant recorded his niece naked without her knowledge. There is no acceptable reason for an uncle to secretly record his 12-year-old niece showering and then try to convince the 12-year-old that the recording was a "prank". (Pros. Ex. 4 at 98.)

Every time E.S. uses a restroom outside of her home she is fearful that there is a camera in the room and must actively talk herself out of that fear. (R. at 144.) E.S. told the court she thought about Appellant violating her "multiple times a day". (R. at 144.) E.S. says she cannot trust anyone besides her parents and is constantly fearful of tall white men. (Id.) E.S. has suffered very real harm because of Appellant's crimes against her. These are aggravating factors that the sentencing judge weighed appropriately. The adjudged sentence of 46-months of confinement for the indecent recording of 12-year-old E.S. in the shower was appropriate and should be affirmed.

3. The trial court properly considered Appellant's guilty plea and rehabilitative potential.

Appellant's guilty plea and potential for rehabilitation were considered by the trial court, which sentenced Appellant to less than the maximum term of confinement. (R. at 379). Appellant's confession was triggered by A.S.'s disclosure, which makes it less persuasive in support of a mitigation argument. (R. at 214.) Appellant claims that he admitted guilt so "that nothing in [his] life is hidden before God or others," but the sexual abuse of A.S. was not hidden at the time of Appellant's admission. (App. Br. at 10, citing R. at 270; Def. Ex. H at 3.) Appellant's wife J.D., A.S.'s parents, and A.S.'s medical providers all knew that Appellant had sexually abused A.S. before Appellant confessed his crimes to his commander. (R. at 111, R. at 157.) Appellant also argues that his commitment to "get better" and supportive character references are strong mitigating factors that were not properly considered. (App. Br. at 10.) Every person with an addiction *should* seek treatment, seeking treatment alone does not warrant a sentence reduction. Evidence of Appellant's mental health and his character were presented to the trial court at sentencing. The record indicates the military judge properly heard this evidence and weighed them in sentencing. (Def. Ex. A -E, R. at 271-281, 303-04.)

Appellant's last argument in support of mitigation is that he was the only source of evidence for the sexual abuse in the pool, and the existence of the indecent recording, and that his candor should be more mitigating. (App. Br. at 9, 11.) First, As already discussed, Appellant could have agreed to a plea agreement with a lesser term of confinement if he believed that up to 48 months of confinement was unfair based on the evidence. Second, for the charge of sexually abusing A.S. in a pool during the family vacation, Appellant was sentenced to 42 months of confinement, six months less than the maximum term permitted by the plea agreement. (R. at

379, App. Ex. III.) This illustrates that the trial court properly considered the mitigating circumstances of that offense, and credited Appellant for his admissions. In fact, the trial court did not sentence Appellant to the maximum term of confinement for any offense. (R. at 379.) That is because the trial court considered Appellant's guilty plea and his attempts at rehabilitation and weighed those factors properly. This Court should affirm the trial court's sentence because all the factors in mitigation were already considered and Appellant's sentence as adjudged was appropriate.

CONCLUSION

For the above reasons, the United States respectfully requests that this Honorable Court deny Appellant's claims and affirm the sentence in this case.

DEYANA UNIS, 1st Lt USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

MATTHEW TALCOTT, Col, USAF
Chief, Government Trial and
Appellate Counsel Division
Air Force Legal Operations Agency
United States Air Force

FOR

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 12 June 2024.

DEYANA UNIS, 1st Lt 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, *Appellee,*	)	**REPLY BRIEF ON BEHALF OF APPELLANT**
v.	)	Before Panel No. 2
Major (O-4) **TROY R. DILLON,** United States Air Force, *Appellant.*	)	No. ACM 40463
	)	18 June 2024

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

The Government argues that Maj Dillon's sentence was appropriate. In doing so, it misrepresents the facts of this case, applicable law, and Maj Dillon's argument.

1. Just because a sentence falls within the limits of a plea agreement does not mean the sentence is inherently appropriate.

The Government contends that Maj Dillon "believed" neither the adjudged confinement nor dismissal were inappropriate since the plea agreement provided for such terms. Ans. at 6-7. The Government cites *United States v. Hendon*, 6 M.J. 171 (C.M.A. 1979), for the proposition that "special consideration should be given to [Maj Dillon's] agreed upon sentence in the plea agreement." Ans. at 5 (quoting the *Hendon* Court as providing "[a]n accused's own sentence proposal is a reasonable indication of its probable fairness."). In doing so, however, the Government ignores the very next sentence in the opinion: "Of course, the sentence factors that may be taken into account in connection with a pretrial agreement may be different from those before the court-martial." *Hendon*, 6 M.J. at 175. The *Hendon* Court continued, articulating that courts "can legally, and . . . in practice, do[], adjudge a sentence less than that provided in the pretrial agreement." *Id.*; *cf. United States v. Villa*, 42 C.M.R. 166, 169 (C.M.A. 1970) (articulating myriad factors considered for sentencing that are not considered when making a plea agreement).

The Government's reliance on the *Hendon* decision is at odds with their argument that if Maj Dillon "believed . . . that some specifications deserved lower sentences . . . [Maj Dillon] could have entered into a plea agreement with different maximums." Ans. at 5.

The Government also cited *United States v. Fields*, 74 M.J. 619 (A.F. Ct. Crim. App. 2015), arguing that "an [a]ppellant agrees" with any sentence not precluded by a plea agreement. Ans. at 5. But the Government similarly misrepresents *Fields*. Immediately after the quoted language in the Government's Answer, this Court made clear that "a sentence within the limits of a [plea agreement] might be inappropriately severe." *Fields*, 74 M.J. at 626.

The Government goes too far to suggest that the law requires a finding that a sentence is appropriate merely because it falls within the limits of a plea agreement. The contention that an appellant's plea is *per se* evidence of appellant's "agreement" to the adjudged sentence ignores the practical and legal distinction between a plea agreement and sentence appropriateness. Senior Judge Annexstad highlighted this distinction while questioning the Government on this exact argument. Oral argument at 34:44-35:13, *United States v. Arroyo*, ACM No. 40321 (f rev), https://afcca.law.af.mil/afcca_audio/cp/arroyo_-_40321_f_rev_-__oral_argument_10_apr_24_1729911.mp3 ("Is that really the agreement . . . or is it just the best deal Appellant could get? To me, I don't see how that's an agreement that that's a fair sentence. It's just a deal that's negotiated between two parties who aren't sitting in the same negotiating position.").

Just like the Navy-Marine Corps Court of Criminal Appeals did in *United States v. Kerr*, No. 202200140, 2023 CCA LEXIS 434, at *8 (N-M Ct. Crim. App. Oct 17, 2023), this Court can and should conclude that Maj Dillon's sentence is inappropriately severe notwithstanding the plea agreement.

2. The Government misrepresents facts to make its argument more palatable.

To prove to this Court that Maj Dillon's sentence is appropriate, the Government misrepresents several material facts. First, the Government obscures the facts surrounding Specification 1, Charge I (grazing A.S.'s breasts). The Government states that "[a]ll A.S.'s great memories of [the trip] to Florida and Disney World are overshadowed by Appellant sexually abusing her." Ans. at 2. This is inaccurate. A.S. testified that she had *no memory* of Maj Dillon's misconduct in Florida, even after hearing details of that incident in open court. R. at 110. The Government goes on to imply that a memory of "bubbles" in a pool is indicative of "a[n] incident of abuse." Ans. at 2, 9. This argument is untethered from the record; evidence of a link between a memory of "pool bubbles" and sexual abuse was not before the military judge, nor could one be logically construed. Yet, the Government continues, arguing (for the first time on appeal) that a memory of bubbles "reflects [A.S.'s] young mindset, trust in Appellant, and explain[s] why she may not have been able to comprehend that Appellant was sexually abusing her." Ans. at 9. It is inappropriate for the Government to make this argument when there is no evidence—to include forensic testimony—linking a *lack of memory* with a memory of sexual abuse. To be sure, the only evidence the military judge had on this issue at sentencing was that A.S. had no memory of this incident.

Keeping with this specification, the Government goes on to say that Maj Dillon disguised the sexual abuse in Florida as a game. Ans. at 8-9. This is also not true. No witness testified that the pool game was a ruse for sexual abuse. Moreover, the military judge had evidence to the contrary. During his *Care*[1] inquiry, Maj Dillon testified that A.S., E.S., and he dove for toys while swimming as part of a pool game. R. at 41-42. Maj Dillon was clear that, when the diving games

[1] *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969).

started, he had no intent to abuse A.S. R. at 42 ("The *intent* of the game was to dive underwater to see who could get [the rods] first. At some point during the game, I *accidently* grazed [A.S.'s] breast with my hand.") (emphasis added).

Next, the Government misconstrues the facts underlying Specification 2 of Charge I (touching A.S.'s buttocks). Specifically, the Government contends that after A.S. told Maj Dillon "maybe we should stop, I need to go to sleep," Ans. at 10 (quoting Pros. Ex. 4 at 2), Maj Dillon "did not immediately stop the sexual abuse." Ans. at 10. Despite this contention, the evidence supports that the touching stopped *before* A.S. made the quoted statement. R. at 114 (indicating that A.S. made the quoted statement only after Maj Dillon got up off the couch and stopped the touching). There is no evidence that any touching occurred after A.S. made the above statement or that Maj Dillon persisted in any way.

The Government also mischaracterized the facts of this case for Specification 1 of Charge II (recording E.S.). For example, the Government states that "E.S. [] dealt with inappropriate behavior from Appellant, before Appellant victimized her." Ans. at 11. The Government seems to ascertain this from a single "incident" where Maj Dillon laid on the ground and told E.S. to try and move him. Ans. at 11. As an 11-year-old, E.S. thought this was strange because she did not think she would be able to physically move Maj Dillon. Ans. at 11. Despite finding this strange, there was no evidence before the military judge that Maj Dillon had ever engaged in inappropriate behavior with E.S. prior to the recording.[2]

[2] Trial counsel tried to argue that it is "reasonable to conclude [that the plead-to misconduct] aren't isolated incidents." R. at 362. But, the judge, *sua sponte*, stopped this argument and admonished trial counsel for referencing evidence not before him. R. at 362. It is similarly inappropriate for the Government to resurrect this impermissible argument on appeal when it is not supported by evidence in the record.

Next, the Government contends that Maj Dillon has an unspecified addiction, which (for some reason) means that his attendance at treatment programs should not be a mitigating factor nor a factor for rehabilitative potential. Ans. at 13. There are two problems with this argument. First, the Government fails to cite any authority for the proposition that evidence of an addict attending treatment is neither mitigating nor rehabilitative. Second, it is unclear what evidence the Government is relying upon for the contention that Maj Dillon is an addict. There is simply no evidence in the record to suggest Maj Dillon has any addiction.[3] *Cf.* R. at 284 (trial counsel noting there is no evidence of treatment or diagnosis for sexual addictions). Maj Dillon even went out of his way to ensure there was no confusion on this issue in his opening brief: "While Maj Dillon did not, and does not, have a substance abuse problem, he decided to join the twelve-step program *because it encourages 'rigorous honesty.'*" Appellant's Br. at 5 n.5 (citing R. at 271) (emphasis added).

Finally, the Government argues that Maj Dillon was merely "*playing the role* of [a] loving uncle," speculating that Maj Dillon was engaged in some type of grooming. Ans. at 8 (stating that this "role playing" was intended to "earn[] the trust of A.S. and E.S." for future victimization) (emphasis added). There is no evidence of grooming in the record, and trial counsel did not argue such to the military judge. In fact, there is evidence to the contrary. For example, E.S. wrote in her unsworn statement that Maj Dillon "tried to do good, and because of that I think he deserves . . . mercy." Ct. Ex. A.

[3] Trial counsel did ask "have you heard, are you aware" questions of several witnesses about Maj Dillon's alleged treatment for sex addiction in 2011. *See, e.g.*, R. at 291. However, such questions—and their answers—are not substantive evidence and were not viewed by the military judge as such. *See, e.g.*, R. at 306-07.

WHEREFORE, Appellant respectfully requests that this Honorable Court set aside a portion of Maj Dillon's confinement, his dismissal, or both.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

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 June 2024.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division