

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(FIRST)
v.)	
	)	Before Panel No. 2
Airman Basic (E-1))	
ZACHARY J. TROVATORE,	)	No. ACM 40505
United States Air Force,)	
<i>Appellant.</i>	)	19 September 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 the first enlargement of time to file an Assignments of Error (AOE) brief. Appellant requests an enlargement for a period of 60 days, which will end on **6 December 2023**. The record of trial was docketed with this Court on 8 August 2023. From the date of docketing to the present date, 42 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,

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

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 19 September 2023.

Respectfully submitted,

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman Basic (E-1)	)	ACM 40505
ZACHARY J. TROVATORE, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

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

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

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

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 21 September 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,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(SECOND)
v.)	
	)	Before Panel No. 2
Airman Basic (E-1))	
ZACHARY J. TROVATORE,	)	No. ACM 40505
United States Air Force,)	
<i>Appellant.</i>	)	27 November 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, Airman Basic (AB) Zachary J. Trovatore, Appellant, hereby moves for a second enlargement of time to file his Assignments of Error. AB Trovatore requests an enlargement for a period of 30 days, which will end on **5 January 2024**. The record of trial was docketed with this Court on 8 August 2023. From the date of docketing to the present date, 111 days have elapsed. On the date requested, 150 days will have elapsed.

On 7 March 2023, at Osan Air Base, Republic of Korea, a military judge sitting as a general court-martial convicted AB Trovatore, consistent with his pleas, of two specifications of absence without leave, one specification of breach of restriction, one specification of willfully disobeying superior commissioned officer, two specifications of insubordinate conduct toward noncommissioned officer, two specifications of damage to military property of the United States, two specifications of communicating threats, and one specification of drunk and disorderly conduct, in violation of Articles 86, 87b, 90, 91, 108, 115, and 134, Uniform Code of Military Justice (UCMJ)¹, 10 U.S.C. §§ 886, 887b, 890, 891, 908, 915, and 934. The military judge

¹ All references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.) (2019 MCM).

sentenced AB Trovatore to a reprimand, total confinement for one year, and a bad conduct discharge. R. at 173-74. The convening authority took no action on the findings and sentence, and the military judge entered the findings and sentence in the Entry of Judgment. Convening Authority Decision on Action, 27 April 2023; Entry of Judgment, 11 May 2023. The record consists of 12 prosecution exhibits, 2 appellate exhibits, and 2 court exhibits. The transcript is 175 pages. AB Trovatore is confined.

Through no fault of AB Trovatore, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors.

WHEREFORE, AB Trovatore respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

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

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 27 November 2023.

Respectfully submitted,

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman Basic (E-1)	)	ACM 40505
ZACHARY J. TROVATORE, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 28 November 2023.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(THIRD)
v.)	
	)	Before Panel No. 2
Airman Basic (E-1))	
ZACHARY J. TROVATORE,	)	No. ACM 40505
United States Air Force,)	
<i>Appellant.</i>	)	28 December 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, Airman Basic (AB) Zachary J. Trovatore, Appellant, hereby moves for a third enlargement of time to file his Assignments of Error. AB Trovatore requests an enlargement for a period of 30 days, which will end on **4 February 2024**. The record of trial was docketed with this Court on 8 August 2023. From the date of docketing to the present date, 142 days have elapsed. On the date requested, 180 days will have elapsed.

On 7 March 2023, at Osan Air Base, Republic of Korea, a military judge sitting as a general court-martial convicted AB Trovatore, consistent with his pleas, of two specifications of absence without leave, one specification of breach of restriction, one specification of willfully disobeying superior commissioned officer, two specifications of insubordinate conduct toward noncommissioned officer, two specifications of damage to military property of the United States, two specifications of communicating threats, and one specification of drunk and disorderly conduct, in violation of Articles 86, 87b, 90, 91, 108, 115, and 134, Uniform Code of Military Justice (UCMJ)¹, 10 U.S.C. §§ 886, 887b, 890, 891, 908, 915, and 934. The military judge

¹ All references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.) (2019 MCM).

sentenced AB Trovatore to a reprimand, total confinement for one year, and a bad conduct discharge. R. at 173-74. The convening authority took no action on the findings and sentence, and the military judge entered the findings and sentence in the Entry of Judgment. Convening Authority Decision on Action, 27 April 2023; Entry of Judgment, 11 May 2023. The record consists of 12 prosecution exhibits, 2 appellate exhibits, and 2 court exhibits. The transcript is 175 pages. AB Trovatore is confined.

Through no fault of AB Trovatore, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors.

WHEREFORE, AB Trovatore respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

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

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 28 December 2023.

Respectfully submitted,

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman Basic (E-1)	)	ACM 40505
ZACHARY J. TROVATORE, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 3 January 2024.

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,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(FOURTH)
v.)	
	)	Before Panel No. 2
Airman Basic (E-1))	
ZACHARY J. TROVATORE,	)	No. ACM 40505
United States Air Force,)	
<i>Appellant.</i>	)	25 January 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Airman Basic (AB) Zachary J. Trovatore, Appellant, hereby moves for a fourth enlargement of time to file his Assignments of Error. AB Trovatore requests an enlargement for a period of 30 days, which will end on **5 March 2024**. The record of trial was docketed with this Court on 8 August 2023. From the date of docketing to the present date, 170 days have elapsed. On the date requested, 210 days will have elapsed.

On 7 March 2023, at Osan Air Base, Republic of Korea, a military judge sitting as a general court-martial convicted AB Trovatore, consistent with his pleas, of two specifications of absence without leave, one specification of breach of restriction, one specification of willfully disobeying superior commissioned officer, two specifications of insubordinate conduct toward noncommissioned officer, two specifications of damage to military property of the United States, two specifications of communicating threats, and one specification of drunk and disorderly conduct, in violation of Articles 86, 87b, 90, 91, 108, 115, and 134, Uniform Code of Military Justice (UCMJ)¹, 10 U.S.C. §§ 886, 887b, 890, 891, 908, 915, and 934. The military judge

¹ All references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.) (2019 MCM).

sentenced AB Trovatore to a reprimand, total confinement for one year, and a bad conduct discharge. R. at 173-74. The convening authority took no action on the findings and sentence, and the military judge entered the findings and sentence in the Entry of Judgment. Convening Authority Decision on Action, 27 April 2023; Entry of Judgment, 11 May 2023. The record consists of 12 prosecution exhibits, 2 appellate exhibits, and 2 court exhibits. The transcript is 175 pages. AB Trovatore is confined.

Through no fault of AB Trovatore, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors. Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information: undersigned counsel currently represents 36 clients and is presently assigned 17 cases pending initial brief before this Court. Seven cases pending before this Court currently have priority over the present case:

1. *United States v. George*, No. ACM 40397 – The record of trial consists of 3 prosecution exhibits, 12 defense exhibits, 1 court exhibit, and 22 appellate exhibits. The transcript is 779 pages. The appellant is not confined and undersigned counsel is reviewing his record and anticipates filing his assignments of error no later than 27 February 2024.
2. *United States v. Christensen*, No. ACM 40408 – The record of trial consists of 4 prosecution exhibits, 14 defense exhibits, 3 court exhibits, and 31 appellate exhibits. The appellant is not confined.
3. *United States v. Gubicza*, No. ACM 40464 - The record of trial consists of 3 prosecution exhibits, 23 defense exhibits, and 4 appellate exhibits. The transcript is 96 pages. The appellant is confined.

4. *United States v. Goodwater*, No. ACM 40304 (f rev) – The record of trial consists of 18 prosecution exhibits, 5 defense exhibits, and 26 appellate exhibits. The transcript is 413 pages. The appellant is confined.
5. *United States v. Galera*, No. ACM 40477 – The record of trial consists of three prosecution exhibits, five defense exhibits, three appellate exhibits, and three court exhibits. The transcript is 174 pages. The appellant is confined.
6. *United States v. Johnson*, No. ACM 40291 (f rev) – The record of trial consists of 23 appellate exhibits, 28 prosecution exhibits, and 4 defense exhibits. The transcript is 395 pages. The appellant is not confined.
7. *United States v. Riley*, No. ACM 40498 – The record of trial consists of 3 prosecution exhibits, 11 defense exhibits, 3 appellate exhibits, and 1 court exhibit. The transcript is 99 pages. The appellant is not confined.

WHEREFORE, AB Trovatore respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

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

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 25 January 2024.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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Joint Base Andrews NAF, MD 20762-6604

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(FIFTH)
v.)	
	)	Before Panel No. 2
Airman Basic (E-1))	
ZACHARY J. TROVATORE,	)	No. ACM 40505
United States Air Force,)	
<i>Appellant.</i>	)	23 February 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Airman Basic (AB) Zachary J. Trovatore, Appellant, hereby moves for a fifth enlargement of time to file his Assignments of Error. AB Trovatore requests an enlargement for a period of 30 days, which will end on **4 April 2024**. The record of trial was docketed with this Court on 8 August 2023. From the date of docketing to the present date, 199 days have elapsed. On the date requested, 240 days will have elapsed.

On 7 March 2023, at Osan Air Base, Republic of Korea, a military judge sitting as a general court-martial convicted AB Trovatore, consistent with his pleas, of two specifications of absence without leave, one specification of breach of restriction, one specification of willfully disobeying superior commissioned officer, two specifications of insubordinate conduct toward noncommissioned officer, two specifications of damage to military property of the United States, two specifications of communicating threats, and one specification of drunk and disorderly conduct, in violation of Articles 86, 87b, 90, 91, 108, 115, and 134, Uniform Code of Military Justice (UCMJ)¹, 10 U.S.C. §§ 886, 887b, 890, 891, 908, 915, and 934. The military judge

¹ All references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.) (2019 MCM).

sentenced AB Trovatore to a reprimand, total confinement for one year, and a bad conduct discharge. R. at 173-74. The convening authority took no action on the findings and sentence, and the military judge entered the findings and sentence in the Entry of Judgment. Convening Authority Decision on Action, 27 April 2023; Entry of Judgment, 11 May 2023. The record consists of 12 prosecution exhibits, 2 appellate exhibits, and 2 court exhibits. The transcript is 175 pages. AB Trovatore is not confined.

Through no fault of AB Trovatore, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors. Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information: undersigned counsel currently represents 29 clients and is presently assigned 17 cases pending initial brief before this Court. Seven cases pending before this Court currently have priority over the present case:

1. *United States v. George*, No. ACM 40397 – The record of trial consists of 3 prosecution exhibits, 12 defense exhibits, 1 court exhibit, and 22 appellate exhibits. The transcript is 779 pages. The appellant is not confined and undersigned counsel is finalizing his assignments of error for filing by or before 27 February 2024.
2. *United States v. Christensen*, No. ACM 40408 – The record of trial consists of 4 prosecution exhibits, 14 defense exhibits, 3 court exhibits, and 31 appellate exhibits. The appellant is not confined and undersigned counsel is reviewing his record.
3. *United States v. Gubicza*, No. ACM 40464 - The record of trial consists of 3 prosecution exhibits, 23 defense exhibits, and 4 appellate exhibits. The transcript is 96 pages. The appellant is confined.

4. *United States v. Galera*, No. ACM 40477 – The record of trial consists of three prosecution exhibits, five defense exhibits, three appellate exhibits, and three court exhibits. The transcript is 174 pages. The appellant is confined.
5. *United States v. Goodwater*, No. ACM 40304 (f rev) – The record of trial consists of 18 prosecution exhibits, 5 defense exhibits, and 26 appellate exhibits. The transcript is 413 pages. The appellant is confined.
6. *United States v. Johnson*, No. ACM 40291 (f rev) – The record of trial consists of 23 appellate exhibits, 28 prosecution exhibits, and 4 defense exhibits. The transcript is 395 pages. The appellant is not confined.
7. *United States v. Riley*, No. ACM 40498 – The record of trial consists of 3 prosecution exhibits, 11 defense exhibits, 3 appellate exhibits, and 1 court exhibit. The transcript is 99 pages. The appellant is not confined.

WHEREFORE, AB Trovatore respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

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

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 23 February 2024.

Respectfully submitted,

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman Basic (E-1)	)	ACM 40505
ZACHARY J. TROVATORE, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 26 February 2024.

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

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

UNITED STATES)	No. ACM 40505
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Zachary J. TROVATORE)	
Airman Basic (E-1))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 2

On 23 February 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Fifth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure. Accordingly, it is by the court on this 26th day of February, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant shall file any assignments of error not later than **4 April 2024**.

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



FOR THE COURT

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(SIXTH)
v.)	
	)	Before Panel No. 2
Airman Basic (E-1))	
ZACHARY J. TROVATORE,	)	No. ACM 40505
United States Air Force,)	
<i>Appellant.</i>	)	25 March 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Airman Basic (AB) Zachary J. Trovatore, Appellant, hereby moves for a sixth enlargement of time to file his Assignments of Error. AB Trovatore requests an enlargement for a period of 30 days, which will end on **4 May 2024**. The record of trial was docketed with this Court on 8 August 2023. From the date of docketing to the present date, 230 days have elapsed. On the date requested, 270 days will have elapsed.

On 7 March 2023, at Osan Air Base, Republic of Korea, a military judge sitting as a general court-martial convicted AB Trovatore, consistent with his pleas, of two specifications of absence without leave, one specification of breach of restriction, one specification of willfully disobeying superior commissioned officer, two specifications of insubordinate conduct toward noncommissioned officer, two specifications of damage to military property of the United States, two specifications of communicating threats, and one specification of drunk and disorderly conduct, in violation of Articles 86, 87b, 90, 91, 108, 115, and 134, Uniform Code of Military Justice (UCMJ)¹, 10 U.S.C. §§ 886, 887b, 890, 891, 908, 915, and 934. The military judge

¹ All references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.) (2019 MCM).

sentenced AB Trovatore to a reprimand, total confinement for one year, and a bad conduct discharge. R. at 173-74. The convening authority took no action on the findings and sentence, and the military judge entered the findings and sentence in the Entry of Judgment. Convening Authority Decision on Action, 27 April 2023; Entry of Judgment, 11 May 2023. The record consists of 12 prosecution exhibits, 2 appellate exhibits, and 2 court exhibits. The transcript is 175 pages. AB Trovatore is not confined.

Through no fault of AB Trovatore, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors. **AB Trovatore was informed of his right to a timely appeal and this request for an enlargement of time and agrees with this request for an enlargement of time.**

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information: undersigned counsel currently represents 30 clients and is presently assigned 18 cases pending initial brief before this Court. Nine cases currently have priority over the present case:

1. *United States v. Gubicza*, No. ACM 40464 – The record of trial consists of 3 prosecution exhibits, 23 defense exhibits, and 4 appellate exhibits. The transcript is 96 pages. The appellant is confined. Undersigned counsel is reviewing the record of trial and anticipates filing any assignments of error on or before 11 April 2024.
2. Before the United States Court of Appeals for the Armed Forces (CAAF), undersigned counsel anticipates filing a petition and supplemental brief in *United States v. Bickford*, No. ACM 40326, which is due on 9 April 2024.

3. Before the CAAF, undersigned counsel anticipates filing a petition and supplemental brief in *United States v. Stanford*, No. ACM 40327, which is also due on 9 April 2024.
4. *United States v. Carlisle*, Misc. Dkt. No. 2024-03 – The Government filed the record of trial and notice of an intent to appeal pursuant Article 62, UCMJ, 10 U.S.C. § 862. The Government’s supporting brief is due on 7 April 2024. Undersigned counsel represents the appellee and anticipates the appellee’s answer will be due on 27 April 2024, or sooner if the Government’s brief is filed early. In accordance with Article 62(b), UCMJ, and Rule 20(d) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel will give priority to this appeal.
5. Before the CAAF, undersigned counsel anticipates filing a petition and supplemental brief in *United States v. Kight*, No. ACM 40337, which is due on 8 May 2024. Civilian appellate defense counsel is taking lead on this brief and undersigned counsel has already provided her first round of edits and suggestions.
6. *United States v. Galera*, No. ACM 40477 – The record of trial consists of three prosecution exhibits, five defense exhibits, three appellate exhibits, and three court exhibits. The transcript is 174 pages. The appellant is confined but will soon be released.
7. *United States v. Goodwater*, No. ACM 40304 (f rev) – The record of trial consists of 18 prosecution exhibits, 5 defense exhibits, and 26 appellate exhibits. The transcript is 413 pages. The appellant is confined. Undersigned counsel has received the Government’s consent to file a consent motion to view certain sealed materials and will be filing this motion promptly.

8. *United States v. Johnson*, No. ACM 40291 (f rev) – The record of trial consists of 23 appellate exhibits, 28 prosecution exhibits, and 4 defense exhibits. The transcript is 395 pages. The appellant is not confined. Undersigned counsel has received the Government’s consent to file a consent motion to view certain sealed materials and will be filing this motion promptly.
9. *United States v. Riley*, No. ACM 40498 – The record of trial consists of 3 prosecution exhibits, 11 defense exhibits, 3 appellate exhibits, and 1 court exhibit. The transcript is 99 pages. The appellant is not confined.

During the requested enlargement of time, in addition to the above priorities, undersigned counsel anticipates drafting a reply brief in *United States v. George*, No. ACM 40397, which she anticipates will be due on 4 April 2024. Additionally, undersigned counsel will be on leave

WHEREFORE, AB Trovatore respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

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

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 25 March 2024.

Respectfully submitted,

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman Basic (E-1)	)	ACM 40505
ZACHARY J. TROVATORE, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 25 March 2024.

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,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(SEVENTH)
v.)	
	)	Before Panel No. 2
Airman Basic (E-1))	
ZACHARY J. TROVATORE,	)	No. ACM 40505
United States Air Force,)	
<i>Appellant.</i>	)	26 April 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Airman Basic (AB) Zachary J. Trovatore, Appellant, hereby moves for a seventh enlargement of time to file his Assignments of Error. AB Trovatore requests an enlargement for a period of 30 days, which will end on **3 June 2024**. The record of trial was docketed with this Court on 8 August 2023. From the date of docketing to the present date, 262 days have elapsed. On the date requested, 300 days will have elapsed.

On 7 March 2023, at Osan Air Base, Republic of Korea, a military judge sitting as a general court-martial convicted AB Trovatore, consistent with his pleas, of two specifications of absence without leave, one specification of breach of restriction, one specification of willfully disobeying superior commissioned officer, two specifications of insubordinate conduct toward noncommissioned officer, two specifications of damage to military property of the United States, two specifications of communicating threats, and one specification of drunk and disorderly conduct, in violation of Articles 86, 87b, 90, 91, 108, 115, and 134, Uniform Code of Military Justice (UCMJ)¹, 10 U.S.C. §§ 886, 887b, 890, 891, 908, 915, and 934. The military judge

¹ All references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.) (2019 MCM).

sentenced AB Trovatore to a reprimand, total confinement for one year, and a bad conduct discharge. R. at 173-74. The convening authority took no action on the findings and sentence, and the military judge entered the findings and sentence in the Entry of Judgment. Convening Authority Decision on Action, 27 April 2023; Entry of Judgment, 11 May 2023. The record consists of 12 prosecution exhibits, 2 appellate exhibits, and 2 court exhibits. The transcript is 175 pages. AB Trovatore is not confined.

Through no fault of AB Trovatore, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors. AB Trovatore was informed of his right to a timely appeal and this request for an enlargement of time, and agrees with this request for an enlargement of time.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information: undersigned counsel currently represents 29 clients and is presently assigned 17 cases pending initial brief before this Court. Eight cases currently have priority over the present case:

1. *United States v. Carlisle*, Misc. Dkt. No. 2024-03 – The Government filed a supporting brief for its Article 62, UCMJ, appeal on 8 April 2024. In accordance with Article 62(b), UCMJ, and A.F. CT. CRIM. APP. R. 20(d), appellee's answer is undersigned counsel's number one priority and is due on 29 April 2024. *See* A.F. CT. CRIM. APP. R. 15. The record consists of trial consists of 8 volumes, 30 appellate exhibits, and 171 transcript pages.
2. *United States v. George*, No. ACM 40397 – On 18 April 2024, this Honorable Court ordered briefs be filed on a specified issue, not later than 8 May 2024.

3. *United States v. Kight*, No. ACM 40337 – Also due not later than 8 May 2024, before the United States Court of Appeals for the Armed Forces (CAAF), undersigned counsel will file a petition and supplemental brief. Undersigned counsel needs to complete her second round of edits to the drafted supplemental brief.
4. *United States v. Gubicza*, No. ACM 40464 – The record of trial consists of 3 prosecution exhibits, 23 defense exhibits, and 4 appellate exhibits. The transcript is 96 pages. The appellant is confined. Undersigned counsel reviewed the record of trial and anticipates filing any assignments of error on or before 11 May 2024. The filing of the appellant's assignments of error was forestalled by undersigned counsel's discovery that the appellant never received a copy of his record of trial. She therefore worked with the Government Trial and Appellate Operations Division to move for a consent EOT. This EOT allowed the Government time to send appellant a copy of his record of trial and undersigned counsel is now consulting with appellant after receipt.
5. *United States v. Blackburn*, 40303 (f rev) – Due not later than 29 May 2024, before the United States Court of Appeals for the Armed Forces (CAAF), undersigned counsel will file a petition and supplemental brief. Undersigned counsel needs time to draft the appellant's supplemental brief.
6. *United States v. Galera*, No. ACM 40477 – The record of trial consists of three prosecution exhibits, five defense exhibits, three appellate exhibits, and three court exhibits. The transcript is 174 pages. The appellant is not confined. Undersigned counsel anticipates filing not later than 2 June 2024.

7. *United States v. Goodwater*, No. ACM 40304 (f rev) – The record of trial consists of 18 prosecution exhibits, 5 defense exhibits, and 26 appellate exhibits. The transcript is 413 pages. The appellant is confined. Undersigned counsel has begun her review.
8. *United States v. Johnson*, No. ACM 40291 (f rev) – The record of trial consists of 23 appellate exhibits, 28 prosecution exhibits, and 4 defense exhibits. The transcript is 395 pages. The appellant is not confined. Undersigned counsel has begun her review.

During the requested enlargement of time, in addition to the above priorities, undersigned counsel will also be managing the following priorities:

- *Teaching three courses for a new Senior Defense Qualification Course at AFJAGS.* Given that this a new course, which will require the attendees to pass a certification test after the course instruction ends, undersigned counsel needs sufficient time to prepare. Undersigned counsel will be traveling to, and teaching the three courses in person, at Maxwell Air Force Base, Alabama, .
- *Attending the CAAF CLE Program in-person.* Undersigned counsel is required to attend this program for two full days of in-person instruction

Since requesting AB Trovatore's sixth enlargement of time, undersigned counsel filed a petition and supplemental brief in *United States v. Bickford*, No. ACM 40326, and *United States v. Stanford*, No. ACM 40327, a reply brief in *United States v. George*, No. ACM 40397, and a briefs on further review in *United States v. Donley*, No. ACM 40350 (f rev). She drafted the appellee's answer in *United States v. Carlisle*, Misc. Dkt. No. 2024-03 and is currently editing

this brief. She also prepared for and participated in four moot arguments and attended one argument before this Court.

WHEREFORE, AB Trovatore respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

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

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 26 April 2024.

Respectfully submitted,

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME (SEVENTH)
)	
	)	Before Panel No. 2
Airman Basic (E-1))	
ZACHARY J. TROVATORE	)	No. ACM 40505
United States Air Force,)	
<i>Appellant.</i>	)	30 April 2024

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

Pursuant to Rule 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 (Seventh) to file an Assignment of Error in this case.

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

J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 30 April 2024.

J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(EIGHTH) OUT OF TIME
v.)	
	)	Before Panel No. 2
Airman Basic (E-1))	
ZACHARY J. TROVATORE,	)	No. ACM 40505
United States Air Force,)	
<i>Appellant.</i>	)	28 May 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Airman Basic (AB) Zachary J. Trovatore, Appellant, hereby moves for an eighth enlargement of time to file his Assignments of Error. AB Trovatore requests an enlargement for a period of 30 days, which will end on **3 July 2024**. The record of trial was docketed with this Court on 8 August 2023. From the date of docketing to the present date, 294 days have elapsed. On the date requested, 330 days will have elapsed. There is good cause to grant this out of time filing because this motion was initially filed and served on time, on 23 May 2024. This Honorable Court received AB Trovatore’s motion but was unable to open it due to what appears to be an error caused within the Microsoft Outlook program. Undersigned counsel was notified of this Court’s inability to open AB Trovatore’s motion at approximately 10:07 hours, local time, and is refiling his motion within thirty minutes of receiving this notification. This error was of no fault to AB Trovatore and this enlargement of time is necessary to allow undersigned counsel to complete her review AB Trovatore’s case and advise him regarding potential errors.

On 7 March 2023, at Osan Air Base, Republic of Korea, a military judge sitting as a general court-martial convicted AB Trovatore, consistent with his pleas, of two specifications of absence without leave, one specification of breach of restriction, one specification of willfully disobeying

superior commissioned officer, two specifications of insubordinate conduct toward noncommissioned officer, two specifications of damage to military property of the United States, two specifications of communicating threats, and one specification of drunk and disorderly conduct, in violation of Articles 86, 87b, 90, 91, 108, 115, and 134, Uniform Code of Military Justice (UCMJ)¹, 10 U.S.C. §§ 886, 887b, 890, 891, 908, 915, and 934. The military judge sentenced AB Trovatore to a reprimand, total confinement for one year, and a bad conduct discharge. R. at 173-74. The convening authority took no action on the findings and sentence, and the military judge entered the findings and sentence in the Entry of Judgment. Convening Authority Decision on Action, 27 April 2023; Entry of Judgment, 11 May 2023. The record consists of 12 prosecution exhibits, 2 appellate exhibits, and 2 court exhibits. The transcript is 175 pages. AB Trovatore is not confined.

Through no fault of AB Trovatore, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors. AB Trovatore was informed of his right to a timely appeal and this request for an enlargement of time, and agrees with this request for an enlargement of time.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information: undersigned counsel currently represents 35 clients and is presently assigned 17 cases pending initial brief before this Court. Four cases currently have priority over the present case:

¹ All references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.) (2019 MCM).

1. *United States v. Blackburn*, 40303 (f rev) – Due not later than 29 May 2024, before the United States Court of Appeals for the Armed Forces (CAAF), undersigned counsel will file a petition and supplemental brief. Undersigned counsel is drafting the appellant’s supplemental brief and plans to request a brief extension from the CAAF to ensure thorough editing can occur before filing.
2. *United States v. Galera*, No. ACM 40477 – The record of trial consists of three prosecution exhibits, five defense exhibits, three appellate exhibits, and three court exhibits. The transcript is 174 pages. The appellant is not confined. Undersigned counsel anticipates filing not later than 2 June 2024.
3. *United States v. Goodwater*, No. ACM 40304 (f rev) – The record of trial consists of 18 prosecution exhibits, 5 defense exhibits, and 26 appellate exhibits. The transcript is 413 pages. The appellant is confined. Undersigned counsel has begun her review and plans to review the sealed materials as soon as possible.
4. *United States v. Johnson*, No. ACM 40291 (f rev) – The record of trial consists of 23 appellate exhibits, 28 prosecution exhibits, and 4 defense exhibits. The transcript is 395 pages. The appellant is not confined. Undersigned counsel has begun her review.

During the requested enlargement of time, in addition to the above priorities, undersigned counsel will also prepare for and participate in two moot arguments and has been tasked with reviewing and providing input on an update to a Department of Air Force Instruction.

Since requesting AB Trovatore’s seventh enlargement of time, undersigned counsel filed briefs in *United States v. Carlisle*, Misc. Dkt. No. 2024-03, *United States v. George*, No. ACM 40397, *United States v. Kight*, No. ACM 40337 (before the CAAF), and *United States v. Gubicza*, No. ACM 40464. In addition, undersigned counsel prepared for, traveled to, and taught three

courses at Maxwell Air Force Base, Alabama,
the CAAF CLE Program in person

. She also was required to attend

WHEREFORE, AB Trovatore respectfully requests this Honorable Court grant the
requested enlargement of time.

Respectfully submitted,

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

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 28 May 2024.

Respectfully submitted,

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME -
v.	)	OUT OF TIME
)	
Airman Basic (E-1)	)	ACM 40505
ZACHARY J. TROVATORE, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion for Enlargement of Time, Out 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.

BRITTANY M. SPEIRS, Maj, USAFR
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 28 May 2024.

BRITTANY M. SPEIRS, Maj, USAFR
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,)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(NINTH)
v.)	
	)	Before Panel No. 2
Airman Basic (E-1))	
ZACHARY J. TROVATORE,	)	No. ACM 40505
United States Air Force,)	
<i>Appellant.</i>	)	21 June 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Airman Basic (AB) Zachary J. Trovatore, Appellant, hereby moves for a ninth and final enlargement of time to file his assignments of error. AB Trovatore requests an enlargement for a period of 30 days, which will end on **2 August 2024**. The record of trial was docketed with this Court on 8 August 2023. From the date of docketing to the present date, 318 days have elapsed. On the date requested, 360 days will have elapsed.

On 7 March 2023, at Osan Air Base, Republic of Korea, a military judge sitting as a general court-martial convicted AB Trovatore, consistent with his pleas, of two specifications of absence without leave, one specification of breach of restriction, one specification of willfully disobeying superior commissioned officer, two specifications of insubordinate conduct toward noncommissioned officer, two specifications of damage to military property of the United States, two specifications of communicating threats, and one specification of drunk and disorderly conduct, in violation of Articles 86, 87b, 90, 91, 108, 115, and 134, Uniform Code of Military Justice (UCMJ)¹, 10 U.S.C. §§ 886, 887b, 890, 891, 908, 915, and 934. The military judge

¹ All references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.) (2019 MCM).

sentenced AB Trovatore to a reprimand, total confinement for one year, and a bad conduct discharge. R. at 173-74. The convening authority took no action on the findings and sentence, and the military judge entered the findings and sentence in the Entry of Judgment. Convening Authority Decision on Action, 27 April 2023; Entry of Judgment, 11 May 2023. The record consists of 12 prosecution exhibits, 2 appellate exhibits, and 2 court exhibits. The transcript is 175 pages. AB Trovatore is not confined.

Through no fault of AB Trovatore, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors. AB Trovatore was informed of his right to a timely appeal and this request for an enlargement of time, and agrees with this request for an enlargement of time.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information: undersigned counsel currently represents 36 clients and is presently assigned 17 cases pending initial brief before this Court. Three cases currently have priority over the present case, which she anticipates accomplishing in conjunction with her review of this case:

1. *United States v. Johnson*, No. ACM 40291 (f rev) – The record of trial consists of 23 appellate exhibits, 28 prosecution exhibits, and 4 defense exhibits. The transcript is 395 pages. The appellant is not confined. Undersigned counsel is reviewing the record of trial and plans to review the sealed materials as soon as possible and file the appellant's brief no later than 8 July 2024.
2. *United States v. Goodwater*, No. ACM 40304 (f rev) – The Government's answer brief is due on 14 July 2024. Undersigned counsel anticipates she will need to file a reply brief no later than 21 July 2024.

3. *United States v. George*, No. ACM 40397 – Due not later than 1 August 2024, before the United States Court of Appeals for the Armed Forces (CAAF), undersigned counsel will file a petition and supplemental brief.

During the requested enlargement of time, in addition to the above priorities, undersigned counsel will also begin drafting a petition and supplemental brief for *United States v. Donley*, No. ACM 40350 (f rev), prepare for and participate in one moot argument, and advise four servicemembers regarding their decision whether to file a notice of direct appeal.

Since requesting AB Trovatore's eighth enlargement of time, undersigned counsel filed briefs in *United States v. Goodwater*, No. ACM 40304 (f rev), and *United States v. Blackburn*, 40303 (f rev) (before the CAAF). In addition, she reviewed the record of trial and draft brief in *United States v. Matthew*, No. ACM 39796 (f rev), before lead civilian counsel filed appellant's brief. She further reviewed the record of trial in *United States v. Galera*, No. ACM 40477, and advised the appellant, before the appellant moved to withdraw from appellate review.

WHEREFORE, AB Trovatore respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

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

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 21 June 2024.

Respectfully submitted,

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Airman Basic (E-1)	)	ACM 40505
ZACHARY J. TROVATORE, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion for Enlargement of Time, Out 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 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.

J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 25 June 2024.

J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

UNITED STATES,) **BRIEF ON BEHALF OF**
) **APPELLANT**
)
)
 v.)
) Before Panel No. 2
)
 Airman Basic (E-1))
 ZACHARY J. TROVATORE,) No. ACM 40505
 United States Air Force,)
)
) 2 August 2024
)
)

Assignment of Error

Statement of the Case

¹ All references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.) (2019 *MCM*).

specification of drunk and disorderly conduct, in violation of Article 134, UCMJ. R. at 8-10, 133; Charge Sheet, 12 December 2022; App. Ex. I.

The same day, the military judge sentenced AB Trovatore to a reprimand, total confinement for one year, and a bad-conduct discharge. R. at 173-74. The convening authority took no action on the findings and sentence, and the military judge entered the findings and sentence in the Entry of Judgment (EoJ). Convening Authority Decision on Action Memorandum (CADAM); EoJ.

Statement of Facts

AB Trovatore's Struggle with Alcoholism

AB Trovatore struggles with alcoholism. During his childhood, his mother was an alcoholic. R. at 147. By the tenth grade, he was made a ward of the state and placed in foster care. *Id.* He had “never really been in a supportive environment” and developed his own addiction to alcohol. *Id.*

On 27 April 2021, AB Trovatore joined the United States Air Force. Pros. Ex. 9. During his time in the Air Force, he made significant strides, including being named as the most improved airman in Basic Military Training, working to attain his Associate of Applied Science degree from the Community College of the Air Force and other certifications. Pros. Ex. 10 at 6.

AB Trovatore had arrived at his first duty station, Osan Air Base, on 28 September 2021. Pros. Ex. 9. It was at Osan Air Base that his alcoholism became apparent to the Air Force.

On 15 December 2021, AB Trovatore was drunk and disorderly. Pros. Ex. 10 at 2-3. He had begun binge drinking over the weekend, beginning on 10 December 2021, and his drinking continued until 15 December 2021 as he spiraled into a “dark place.” *Id.* at 5. He received nonjudicial punishment for his actions in March 2022, waived his right to court-martial, and took ownership of his actions. *Id.* By 1 April 2022, with the benefit of attending rehabilitation courses and a clear mind, AB Trovatore recognized that in his drunk state, he damaged many relationships.

Id. He recognized his behavior was egregious and that he had been struggling to handle his life stressors in a healthy manner. *Id.* at 6.

The Air Force also became aware that AB Trovatore's struggle with alcoholism had begun before he joined the Air Force. On 17 May 2022, AB Trovatore received a letter of reprimand for knowingly misrepresenting or deliberately concealing material facts about his qualifications for enlistment between on or about 1 September 2020 and on or about 27 April 2021. Pros. Ex. 11 at 1. Specifically, AB Trovatore knowingly misrepresented or deliberately concealed his prior history of treatment for alcohol abuse. *Id.* Further, he failed to disclose and deliberately concealed an arrest on 13 November 2020 for driving under the influence of alcohol. *Id.* AB Trovatore waived his right to respond. *Id.* at 2.

The next month, in June 2022, while waiting to be discharged, AB Trovatore relapsed. R. at 148. He drank alcohol and became drunk and disorderly. Pros. Ex. 7. On 4 October 2022, he was court-martialed for his actions, and he took responsibility for them and pleaded guilty. *Id.* AB Trovatore was not punitively discharged at his court-martial, but he had been given the impression that he would be administratively discharged quickly. Pros. Ex. 7 at 4; R. at 145, 153. AB Trovatore tried to keep his head above water, but his life was in limbo. R. at 145. An error on the Convening Authority's Decision on Action Memorandum from his first court-martial led to a delay in the military judge signing the EoJ. R. at 146; Pros. Ex. 7 at 15-16. He didn't feel like anyone really wanted to invest anything into him because he was going to be discharged. R. at 145. He didn't have any tasks at work or purpose there. *Id.* He didn't have a support system at Osan Air Base or at least, didn't know how to accept that support. *Id.* On top of this, the time difference to the United States made it hard for him to find support in the fragile relationships he had there. R. at 145-47.

By November 2022, AB Trovatore had again relapsed. He felt “like [he] was in prison and there was no end in any sight to be able to go home back to the United States.” R. at 30. It was the second time that he was awaiting discharge from the Air Force. R. at 30-31, 148. He drank alcohol and “was depressed.” R. at 30, 35. He “had let himself down and [he] knew everyone was going to be upset about him drinking again.” R. at 35. This led him to spiral out of control and “he decided it was time to end [his] life.” *Id.* AB Trovatore went off base to commit suicide. R. at 52.

Like each instance before, AB Trovatore again took responsibility for these actions and pleaded guilty. R. at 9-10. At his court-martial in March 2023, it was no secret that AB Trovatore’s battle with alcoholism continued. He admitted, “I still struggle with alcohol today.” R. at 148.

His sobriety and mental health were fragile and the government knew that existing in limbo was a trigger that had caused him to relapse in November 2022. *See* R. at 30-31, 35, 145-46 (“I was supposed to be out of here in two weeks, but it got held up with legal and I was – ended up being here in that situation for over two months. And I felt trapped and eventually relapsed.”) The government knew that this airman had expressed suicidal ideations. R. at 35, 52, 146.

Post-Trial Processing

On 7 March 2023, the military judge sentenced AB Trovatore, and on 6 June 2023, the court reporter certified the record of trial “as accurate and complete” in accordance with Rule for Courts-Martial (R.C.M.) 1112(b) and R.C.M. 1112(c)(1). R. at 173-74; Certification of the Record of Trial (Record of Trial (ROT), Vol. 2). AB Trovatore’s case was docketed with this Court on 8 August 2023—154 days from the date he was sentenced.

It was not a surprise that AB Trovatore was going to plead guilty. The plea agreement was signed on 1 March 2023, and it required that AB Trovatore be sentenced to a punitive discharge. App. Ex. I. Therefore, the government knew even before AB Trovatore’s court-martial that it was

going to be responsible for post-trial processing and that this Court would be automatically reviewing his case under Article 66(b)(3), UCMJ. *See id.* Review of the record provides no justification for the delay.

Date	Event	Days after Sentence (7 March 2023)
7 March 2023	AB Trovatore requested appellate defense counsel. AF Form 304 (ROT, Vol. 2).	0 days
17 March 2023	AB Trovatore submitted a request for the deferment of forfeitures. Request for Deferment of Forfeitures for AB Zachary J. Trovatore (ROT, Vol. 2).	10 days
27 April 2023	The convening authority issued their decision on action. CADAM (ROT, Vol. 1).	51 days
11 May 2023	The EoJ was signed by the military judge. EoJ at 5 (ROT, Vol. 1).	65 days
17 May 2023	The staff judge advocate signed the first indorsement to the EoJ. EoJ at 6 (ROT, Vol. 1).	71 days
6 June 2023	The court reporter certified the record and sent it to the base legal office. Certification of the Record of Trial; Court Reporter's Chronology (ROT, Vol. 2).	91 days
29 June 2023	Court reporter certified the transcript, uploaded the transcript to Webdocs, and sent court reporter documents to the legal office. Certification of the Transcript; Court Reporter's Chronology (ROT, Vol. 2).	114 days
30 June 2023	AB Trovatore was served with his copy of the record. AB Trovatore's Receipt for Record of Trial (ROT, Vol. 2).	115 days
31 July 2023	The Military Justice Law & Policy Division (AF/JAJM) received the record at Joint Base Andrews. JAJM / JAJG / JAJA Routing Sheet, (ROT, Vol. 1).	146 days
8 August 2023	This Court docketed AB Trovatore's case and the Appellate Defense Division received a copy of the record.	154 days

Errors in AB Trovatore's Record of Trial

AB Trovatore's record was docketed with multiple errors. First, the EoJ is incorrect because S.L.'s name is spelled incorrectly in Specification 1 of Charge VI and Specification 2 of Charge VIII. EoJ. For comparison, S.L.'s name is spelled correctly on the Charge Sheet and

Statement of Trial Results. Charge Sheet; Statement of Trial Results. Due to this error, the EoJ fails to properly reflect the military judge's findings at AB Trovatore's court-martial.

Second, the compact discs that are supposed to contain Prosecution Exhibits 3 and 5 (CCTV footage) are empty in appellate defense counsel's copy of the record.² Further, the compact disc which is supposed to contain attachments 4a-4d to the Air Communications Squadron Commander's first indorsement to the Charge Sheet is also empty in appellate defense counsel's copy of the record.³ The same compact disc in the Court's copy of the record is also missing attachment 4a (Phone call with S.L.). *Cf.* 1st Indorsement, DD Form 458 *with* 1st Indorsement, DD Form 458, Attachment 4. Further, the compact disc in the Court's copy contains a total of 87 photos and 2 videos but it should contain 104 photos and 3 videos. *Id.*

Third, the military judge's sentence included a reprimand that was not authorized under the terms of the plea agreement. AB Trovatore's plea agreement required the military judge to sentence him to a total period of confinement that was no less than seven months and no more than one year, with all confinement served concurrently. App. Ex. I at 2-3. The military judge was also required to adjudge a punitive discharge. *Id.* at 2. The plea agreement stated the military judge may only sentence AB Trovatore "in accordance with the terms of this agreement." *Id.* at

² The videos that should be found in Prosecution Exhibit 3 in appellate defense counsel's copy of the record are present in the Court's copy of the record and are also found in Preliminary Hearing Exhibit 11. *See* Pros. Ex. 1, 3; PHO Exhibit 11. The video that should be found in Prosecution Exhibit 5 in appellate defense counsel's copy of the record is present in the Court's copy of the record and is also found in PHO Exhibit 11. *See* Pros. Ex. 1, 5; PHO Exhibit 11.

³ The audio that should be found in attachment 4a is found in Prosecution Exhibit 8 and Preliminary Hearing Exhibit 10. *See* 607 ACOMS/CC 1st Ind. to the Charge Sheet (ROT, Vol. 2); Pros. Ex. 8; PHO Ex. 10. The dormitory damage photos that should be found in attachment 4b are also located in attachment 3 to the probable cause determination. *See* 607 ACOMS/CC 1st Ind. to the Charge Sheet; Probable Cause Determination (ROT, Vol. 2). The dorm footage that should be found in attachment 4c is also located in Preliminary Hearing Exhibit 11. *See* 607 ACOMS/CC 1st Ind. to the Charge Sheet; PHO Ex. 11. The holding cell and dormitory photos that should be found in attachment 4d are also located in attachment 2 to the probable cause determination. *See* 607 ACOMS/CC 1st Ind. to the Charge Sheet; Probable Cause Determination.

4. The agreement does not state that the military judge could sentence him to a reprimand. *See* App. Ex. I. Further, it does not state that there are no further limitations on the sentence that the military judge may adjudge. *See id.* The military judge also did not state that a reprimand was authorized or clarify with the parties whether he could issue a reprimand. *See* R. at 113-133. Nevertheless, the military judge adjudged a reprimand.⁴ R. at 173. The government and defense counsel incorrectly agreed the sentence comported with the plea agreement. R. at 174.

Argument

THE GOVERNMENT’S PRESUMPTIVELY UNREASONABLE 154-DAY POST-TRIAL PROCESSING DELAY DEPRIVED AIRMAN BASIC TROVATORE OF HIS DUE PROCESS RIGHT TO SPEEDY APPELLATE REVIEW WHEN THE GOVERNMENT WAS AWARE THAT DELAY CAUSED PARTICULARIZED ANXIETY TO AIRMAN BASIC TROVATORE, AND THE RECORD, AS SUBMITTED, STILL CONTAINS ERRORS THAT TOGETHER WITH THE DELAY IN THIS CASE REFLECT SYSTEMIC NEGLECT BY THE GOVERNMENT.

Standard of Review

This Court reviews de novo whether an appellant has been denied the due process right to speedy appellate review. *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006).

Law and Analysis

The 154-day post-trial processing delay in this case is presumptively unreasonable and triggers an analysis of the four non-exclusive factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972) to assess whether AB Trovatore’s due process right to timely post-trial and appellate review has been violated. *United States v. Livak*, 80 M.J. 631, 634 (A.F. Ct. Crim. App. 2020) (citing *Moreno*, 63 M.J. at 135); *United States v. Lampkins*, No. ACM 40135 (f rev), 2023 CCA LEXIS 465, at *8-9 (A.F. Ct. Crim. App. Nov. 2, 2023). “[T]he four factors are balanced, with no single factor being required to find that post-trial delay constitutes a due process violation.”

⁴ AB Trovatore asserts this was in error, but he does not request a new sentencing hearing.

Moreno, 63 M.J. at 136 (citing *Barker*, 407 U.S. at 533 (“We regard none of the four factors identified above as either a necessary or sufficient condition to the finding of a deprivation of [due process]”).

A. The 154-day post-trial processing delay is presumptively unreasonable.

In *Livak*, this Court explained that a “150-day threshold appropriately protects an appellant’s due process right to timely post-trial and appellate review.” *Livak*, 80 M.J. at 633. When docketing occurs more than 150 days after sentencing, the delay is presumptively unreasonable. *Id.* The delay in AB Trovatore’s case was docketed 154 days after sentencing and is therefore presumptively unreasonable.

B. AB Trovatore’s due process right to timely post-trial and appellate review was violated.

Given that the delay is presumptively unreasonable, this Court must assess whether AB Trovatore’s due process right to timely post-trial and appellate review has been violated. *Livak*, 80 M.J. at 634. This Court must consider (1) the length of the delay; (2) the reasons for the delay; (3) AB Trovatore’s assertion of his right to a timely review; and (4) prejudice to him. *Id.*

1. The length of the delay.

The post-trial processing delay in this case exceeds the threshold by four days. Unless rebutted, “a presumptively unreasonable delay satisfies the first factor.” *Moreno*, 63 M.J. at 142.

2. The reasons for the delay.

To justify a delay beyond the 150-day threshold requires proving that this case presented specific circumstances that warranted additional time. *Id.* at 143. “[T]hese must be justifiable, case-specific delays supported by the circumstances of [the] case and not delays based upon administrative matters, manpower constraints or the press of other cases.” *Id.*

The record reflects no reasonable justification for the delay in this case. To the contrary, the record reveals indifference by the government. For example, the convening authority took 41

days to issue the decision on action after receiving AB Trovatore's uncomplicated request for the deferment of forfeitures. *See* Request for Deferment of Forfeitures for AB Zachary J. Trovatore; CADAM. Furthermore, to emphasize the lack of justification for this delay, neither victim provided input for this decision and no additional time was requested. 3d Ind. to Memorandum for A.M. from Fighter Wing Staff Judge Advocate (ROT, Vol. 2); 3d Ind. to Memorandum for S.L. from Fighter Wing Staff Judge Advocate (ROT, Vol. 2).

Similarly, the record reflects no reasonable justification for why after the convening authority had acted, the military judge took fourteen days to sign the EoJ. EoJ; CADAM. There is also no reasonable justification for why after the military judge signed the EoJ, the staff judge advocate took six more days to sign the first endorsement to the EoJ. EoJ.

Furthermore, there is no reasonable justification for why it took 63 days after the record had been certified, and 40 days after the court reporter distributed the certified transcript, to docket AB Trovatore's case. Court Reporter's Chronology. This is especially true, when the record had been delivered to AB Trovatore one day after the court reporter distributed the certified transcript. AB Trovatore's Receipt for Record of Trial. The government's ability to deliver his copy to him one day after receiving the certified transcript demonstrates there was no case-specific delay impeding the creation of the record. Therefore, there is no reasonable justification for why it then took 31 days to send the same record to Joint Base Andrews. JAJM / JAJG / JAJA Routing Sheet. To make matters worse, it appears AB Trovatore's case was received by AF/JAJM on 31 July 2023 where it sat for eight days before being delivered to this Court and appellate defense counsel. JAJM / JAJG / JAJA Routing Sheet.

The CAAF made it clear that it expects "convening authorities, reviewing authorities and the Courts of Criminal Appeals to document reasons for delay and to exercise . . . institutional

vigilance,” but here the unjustifiable delay before docketing demonstrates institutional neglect, not vigilance. *Moreno*, 63 M.J. at 143.

The Air Force currently has “a systemic problem” with post-trial processing errors, which “indicat[es] institutional neglect.” *United States v. Valentin-Andino*, No. ACM 40185 (f rev), 2024 CCA LEXIS 223, at *17 (A.F. Ct. Crim. App. Jun. 7, 2024) (finding that post-trial processing errors “are happening at an alarming frequency in the Air Force,” which cause “delays in appellate review”). The institutional neglect in this case is evidenced by the unreasonable delay and the fact that when AB Trovatore’s record was finally docketed, it was docketed with errors that could have been easily avoided had appropriate attention been given. Correctly spelling S.L.’s name on the EoJ and properly formatting compact discs for each copy of the record would have required only minimal effort and yet, this case becomes another example of the government’s gross indifference to post-trial processing. *See id.*

3. *AB Trovatore’s assertion of the right to a timely review.*

AB Trovatore timely filed his request for deferment and made no efforts to slow the docketing of his case. Request for Deferment of Forfeitures for AB Zachary J. Trovatore. At the time of his request, he had no reason to assert speedy appellate review because his case had not yet been delayed and his right to speedy appellate review is a known right, for which the government bears responsibility. *See Moreno*, 63 M.J. at 138. Furthermore, he was served his record on 30 June 2023, within 115 days of his sentence. AB Trovatore’s Receipt for Record of Trial. By all appearances, his case was moving forward. What he could not know was the delay that would continue for 39 more days, for no case-specific reason. Moreover, as the CAAF recognized in *Moreno*, AB Trovatore “is not required to complain in order to receive timely convening authority action”; he “bears no responsibility for transmitting the record of trial to the Court of Criminal Appeals after action”; and it is not unreasonable to assume “that a convicted

person wants anything other than a prompt resolution of his appeal.” 63 M.J. at 138. Here, the government knew that remaining in limbo was a trigger for AB Trovatore to relapse and therefore, it is especially true that this airman would want prompt resolution of his appeal. *See* R. at 30-31, 35, 145-46. Nevertheless, if it isn’t clear, AB Trovatore asserts his right to timely appellate review.

4. *Prejudice to AB Trovatore.*

In assessing prejudice, this Court considers, *inter alia*, the “minimization of anxiety and concern of those convicted awaiting the outcome of their appeals.” *Moreno*, 68 M.J. at 138-39. The unreasonable delay by the government resulted in AB Trovatore remaining in limbo, without appellate defense counsel, longer than necessary. On 7 March 2023, AB Trovatore requested the representation of an appellate defense counsel to assist him. AF Form 304. While he had his copy of the record on 30 June 2023, his appellate defense counsel did not and would not for another 39 days, therefore, his requested representation was delayed without his consent and for no justifiable reason. AB Trovatore’s Receipt for Record of Trial. His area defense counsel had completed their representation of him, but he did not yet have the representation of appellate defense counsel, and this was the government’s fault. The government was on notice of AB Trovatore’s unique anxiety because he had explained during his court-martial that the limbo he was in while awaiting discharge was a trigger for his relapse and suicidal ideations. R. at 30-31, 35, 145-46. Moreover, he explained that his time in pretrial confinement had caused him a “significant amount of anxiety,” causing him to suffer from panic attacks. R. at 148. He explained that he needed a better support system and yet, the government unnecessarily delayed his ability to receive support from his appellate defense counsel. *See id.*

A delay under these facts should lead this Court to find that, in addition to causing particularized anxiety to AB Trovatore by causing him to exist in limbo between counsel, tolerating the government’s unreasonable delay would affect the public perception of the military-

justice system. *See United States v. Toohey*, 63 M.J. 353, 362 (C.A.A.F. 2006) (a due process violation exists when “the delay is so egregious that tolerating it would adversely affect the public perception of the fairness and integrity of the military justice system.”) The neglect in this case, when the government was aware of AB Trovatore’s struggles is indefensible and worthy of no patience. *See United States v. Dunbar*, 31 M.J. 70, 73 (C.A.A.F. 1990) (“[The] delay in the administrative handling and forwarding of the record of trial and related documents to an appellate court – is the least defensible of all and worthy of the least patience.”)

C. Even if this Court finds no due process violation, sentencing relief is still appropriate.

Even if this Court does not find a due process violation, this Court may grant relief for excessive post-trial delay under its broad authority to determine sentence appropriateness pursuant to Article 66(d), UCMJ, 10 U.S.C. § 866(d). *See United States v. Tardif*, 57 M.J. 219, 225 (C.A.A.F. 2002); *Valentin-Andino*, 2024 CCA LEXIS 223, at *15. This Court should determine there is a basis for relief under Article 66(d)(2), UCMJ, or *Tardif*, based on the government’s gross indifference to accurate and timely post-trial processing in this case. *See supra* at 5-7, 10-11. This conclusion is supported by analyzing the factors set out in *United States v. Gay*, 74 M.J. 736, 744 (A.F. Ct. Crim. App. 2015), *aff’d* 75 M.J. 264 (C.A.A.F. 2016).

The delay in this case exceeded the standard set forth in *Moreno*. *Id.* (citing *Moreno*, 63 M.J. at 129). While this delay was only four days, there was no reasonable justification for this delay. *Id.* To the contrary, the government knew that it was going to be responsible for creating his record and that his case would be automatically reviewed by this Court. App. Ex. I; Art. 66(b)(3), UCMJ. The government knew this before AB Trovatore’s court-martial even began because he agreed to a plea agreement in advance, which required that the military judge sentence him to a punitive discharge. *Id.* Further, AB Trovatore received his copy of the record on 30 June 2023, therefore, there is no reasonable justification for why it then took 31 more days for copies

to be delivered to the AF/JAJM and 39 days for copies to be delivered to this Court and appellate defense counsel. *Cf.* AB Trovatore’s Receipt for Record of Trial *with* JAJM / JAJG / JAJA Routing Sheet.

Moreover, there is evidence of the government’s gross indifference to the overall post-trial processing of this case because, with no reasonable justification for its delay, the government docketed AB Trovatore’s record with an erroneous EoJ⁵ and incomplete exhibits (and for the second time – gave AB Trovatore a reprimand that was not authorized). *Id.* The lack of attention by the government in this case is reflective of the “systemic problem” that this Court found in *Valentin-Andino*, and the “general lack of attention by the Government to overall post-trial processing” that this Court found in *Lampkins*. 2024 CCA LEXIS 223, at *17; 2023 CCA LEXIS 465, at *15.

The government knew that leaving AB Trovatore in limbo was part of what caused him to become suicidal and that he did not have a strong support system. R. at 52, 145-47. Despite the uncomplicated record and with no reasonable justification, the government delayed the docketing of his case and therefore delayed AB Trovatore’s appellate defense counsel’s ability to support him by pursuing his best interests to the greatest extent possible. *See United States v. Harper*, 80 M.J. 540, 546 (N-M Ct. Crim. App. 2020) (“appellate defense counsel must pursue his or her client’s best interests to the greatest extent possible until the specific matter—in this case, Appellant’s mandatory appeal before this Court—has been concluded or otherwise resolved.”)

⁵ *See United States v. Stanford*, No. ACM 40327, 2024 CCA LEXIS 77, at *13-14 (A.F. Ct. Crim. App. 14 Feb. 2024) (finding, *inter alia*, “the EoJ requires correction as it fails to properly reflect the military judge’s findings at [a]ppellant’s court-martial,” when the EoJ read “AK-74” and “RO,” instead of the military judge’s actual finding: “AK-47”). Though AB Trovatore does not raise this error as a separate issue, this Court should order correction to properly reflect the findings.

This harmed AB Trovatore by unnecessarily minimizing the support available to him from his appellate defense counsel.

AB Trovatore does not ask this Court to set aside his bad-conduct discharge. In fact, he conceded that he was deserving of a punitive discharge at his court-martial. R. at 148. Instead, he asks that this Court disapprove the reprimand that was not authorized under his plea agreement and affirm only so much of the sentence that includes seven months' confinement and a bad-conduct discharge. By granting this request, this Court would provide meaningful relief that is both consistent with justice and good order and discipline. *See Gay*, 74 M.J. at 744. AB Trovatore would continue to suffer from the lifelong stigma associated with a bad-conduct discharge and the loss of benefits. *See R.* at 121-22. He would also have a sentence that still reflects the minimum amount of confinement that he and the convening authority agreed he would serve. App. Ex. I. This sentence would continue to reflect the seriousness of his offenses, but the relief it provides would also be meaningful to AB Trovatore who has twice now been issued a reprimand at a court-martial, where no reprimand should have been issued. Pros. Ex. 7 at 4 (at his previous court-martial, no reprimand was adjudged "but one was erroneously included"); *see* App. Ex. I (the plea agreement in this case did not authorize the military judge to sentence AB Trovatore to any sentence beyond the terms of the plea agreement and did not provide the option for a reprimand). Lastly, it would send a message to the Air Force that post-trial processing is not an afterthought but deserves the same time and attention as the rest of the court-martial.

WHEREFORE, AB Trovatore requests that this Court provide meaningful relief by affirming only so much of the sentence that includes seven months' confinement and a bad-conduct discharge.

Respectfully submitted,

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//signed//
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⁶ Lt Ivy is a second-year law student at Tulane University School of Law. Lt Ivy was at all times supervised by Maj Golseth during her participation in the writing of this brief and Maj Golseth assumes responsibility for the content of this filing, in accordance with Rule 14.1(c) of this Court's Rules of Practice and Procedure.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 2 August 2024.

Respectfully submitted,

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, <i>Appellee,</i>)	ANSWER TO ASSIGNMENT OF
	)	ERROR
)	
v.	)	Before Panel No. 2
)	
Airman Basic (E-1)	)	No. ACM 40505
ZACHARY J. TROVATORE)	
United States Air Force	)	3 September 2024
<i>Appellant.</i>)	

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

ISSUE PRESENTED

**THE GOVERNMENT’S POST-TRIAL PROCESSING
DELAY DID NOT DEPRIVE AIRMAN BASIC TROVATORE
OF HIS DUE PROCESS RIGHT TO SPEEDY APPELLATE
REVIEW.**

STATEMENT OF CASE

The United States generally agrees with Appellant’s statement of the case.

STATEMENT OF FACTS

Appellant pled guilty pursuant to a plea agreement and sentenced on 7 March 2023.
(*Entry of Judgment*, ROT, Vol 1; App. Ex. I.) Pursuant to his plea agreement, he was sentenced
to a reprimand, total confinement for one year, and a bad conduct discharge. (R. at 173-174;
Entry of Judgment, ROT, Vol 1.) His case was docketed with this court on 8 August 2023.
(*JAJM Routing Slip*, ROT, Vol 1.)

Appellant’s Alcoholism

Appellant has a history of alcohol abuse that predated his time in the military. (App. Br.
at 2-4.) Appellant uses this information to contextualize his struggles. Id. Appellant attributes

his previous relapses to being in “limbo” during the military justice process. (App. Br. at 4.)

Post-Trial Processing

From 7 March 2023 until 9 June 2023, the court reporter was either in court, on leave, working on transcripts from earlier courts, or working on the transcript for this case. (*Court Reporter Chronology*, ROT, Vol 2.) In total, the court reporter worked on 3 other transcripts and sat in 7 other courts-martial during that time frame. Id.

During that period, the legal office continued to process Appellant’s post-trial documents. (*TSgt Thompson Declaration*, 26 August 2024.) After receiving the transcript from the court reporter over the weekend (10 June 2023 in Korea), trial counsel provided recommended edits to the transcript two duty days later on 12 June 2023 (13 June 2023 in Korea). Id. The Defense did not provide their edits to the transcript until, at the earliest, 17 days later on 27 June 2024. (*Court Reporter Chronology*, ROT, Vol 2.) The court reporter provided the final transcript to the parties on 29 June 2023 (30 June 2023 in Korea). (*Court Reporter Chronology*, ROT, Vol 2; *TSgt T Declaration*, 26 August 2024.) Following the Fourth of July weekend, the case paralegal completed the ROT AMJAMS QC checklist and provided the ROT to 7 AF/JA for review. (*TSgt T Declaration*, 26 August 2024.) From 5 July to 13 July 2023, the base legal office was copying and blocking the ROT. Id. The ROT was mailed to JAJM on 14 July 2023 from Korea. Id. All three copies arrived at JAJM 17 days later on 31 July 2023. (*JAJM Routing Sheet*, ROT, Vol 1.) The case was docketed on 8 August 2023, 154 days after the sentence was announced. Appellant demanded speedy appellate review in his assignment of errors filed with this Court on 2 August 2024. (App. Br. at 11.)

Errors in ROT

The EOJ misspells the victim SL's name in Charge VI, specification 1, and in Charge VIII, specification 2. (ROT, Vol 1.) The victim's name was spelled correctly on the charge sheet through pen-and-ink changes dated 7 March 2023. Id.

While several pieces of evidence were not properly copied onto each appropriate disc within the ROT, all the evidence is still contained within other locations in the ROT:

Evidence Missing from JAJA's Copy	Court Copy	Additional Information
Pros Ex 3	Present	Also found in PH Ex 11.
Pros Ex 5	Present	Also found in PH Ex 11.
1st Indorsement, 4a	Present	Also found in Pros Ex 8 and PH 10.
1st Indorsement, 4b	4b was mislabeled as 4c. Within 4c, there are 36 files where there should be 38.	All 38 files are contained in the Probable Cause Determination, Exhibit 3, ROT, Vol 2.
1st Indorsement, 4c	4c was mislabeled as 4b. Within 4b, there are 3 videos are folders labeled as "Disc 1" and "Disc 2."	This evidence was also located in PH Ex. 11, ROT, Vol 2.
1st Indorsement, 4d	4d contains 40 files where there should be 66.	All 66 files are present in PC Det 2.

Including Reprimand in Sentence

Appellant's offer to plead guilty was contingent on "agreement by the Convening Authority to approve a sentence in accordance with the limitations set forth. . . ." (App. Ex. I at 1). In para. 6.e., Appellant stated he understood that "the military judge must sentence [Appellant] in accordance with the limitations set forth above." (App. Ex. I at 3.) In para. 8, Appellant stated he understood "that the military judge may only sentence me to confinement in

accordance with the terms of this agreement.” (App. Ex. I at 4).

In summary, Appellant’s plea agreement imposed the following limitations on his sentence: (1) All adjudged confinement would be served concurrently, with maximum confinement limited to one year; (2) the military judge would adjudge a punitive discharge; and (3) the military judge would not adjudge forfeitures. (App. Ex. I at 2-3) (emphasis added.) No other language limited the military judge’s ability to sentence Appellant.

ARGUMENT

THE AIR FORCE DID NOT VIOLATE AB TROVATORE’S RIGHT TO A SPEEDY TRIAL WHEN IT DOCKETED HIS APPEAL 154 DAYS AFTER SENTENCING.

Standard of Review

This Court reviews *de novo* an appellant’s entitlement to relief for post-trial delay. United States v. Livak, 80 M.J. 631, 633 (A.F. Ct. Crim. App. 2020) (citing United States v. Moreno, 63 M.J. 129, 135 (C.A.A.F. 2006)).

Law

CAAF established thresholds for facially unreasonable delay, including docketing with the Court of Criminal Appeals more than 30 days after the convening authority’s action or when a Court of Criminal Appeals completes appellate review and renders its decision more than 18 months after the case is docketed with the court. United States v. Moreno, 63 M.J. 129, 142-143 (C.A.A.F. 2006). Since Moreno, post-trial processing has changed to include the requirement to issue an Entry of Judgment before appellate proceedings begin. See Livak, 80 M.J. at 633. This Court now applies an aggregate standard threshold of 150 days from the day an appellant was sentenced to docketing with this Court. Id.

When a case does not meet one of the above standards, the delay is presumptively unreasonable and in reviewing claims of unreasonable post-trial delay this Court evaluates (1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of the right of timely review and appeal; and (4) prejudice. Moreno, 63 M.J. at 135 (citing Barker v. Wingo, 407 U.S. 514, 530 (1972)). All four factors are considered together and "[n]o single factor is required for finding a due process violation and the absence of a given factor will not prevent such a finding." Id. at 136.

CAAF has recognized three interests that should be considered when determining prejudice due to post-trial delay: (1) prevention of oppressive incarceration pending appeal; (2) undue anxiety and concern; and (3) limiting the possibility that a convicted person's grounds for appeal and defenses, in case of retrial, might be impaired. Barker, 407 U.S. at 532. "Of those, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." Id. "The anxiety and concern subfactor involves constitutionally cognizable anxiety that arises from excessive delay and we 'require an appellant to show particularized anxiety or concern that is distinguishable from the normal anxiety experienced by prisoners awaiting an appellate decision.'" United States v. Toohey, 63 M.J. 353, 361 (C.A.A.F. 2006) (citing Moreno, 63 M.J. at 140). To find a due process violation when there is no prejudice under the fourth Barker factor, a court would need to find that, "in balancing the other three factors, the delay is so egregious that tolerating it would adversely affect the public's perception of the fairness and integrity of the military justice system." Id. at 362.

An appellant may be entitled to relief without a showing of actual prejudice. In United States v. Tardif, CAAF determined that an appellant may be entitled to relief under Article 66,

UCMJ, because it allows courts “to grant relief for excessive post-trial delay without a showing of ‘actual prejudice’ if it deems relief appropriate under the circumstances.” 57 M.J. 219, 224 (C.A.A.F. 2002). But the existence of a post-trial delay does not *necessitate* relief; instead, appellate courts are to “tailor an appropriate remedy, if any is warranted, to the circumstances of this case.” *Id.* at 225.

This authority to grant appropriate relief is “for unreasonable *and* unexplained post-trial delays.” *Id.* at 220 (emphasis added). Relief is not required, but the court may “tailor an appropriate remedy, if any is warranted, to the circumstances of the case.” *Id.* at 225. Further, relief under Article 66, UCMJ, “should be viewed as the last recourse to vindicate, where appropriate, an appellant’s right to timely post-trial processing and appellate review.” *Id.* In deciding whether to invoke Article 66, UCMJ, to grant relief as a “last recourse,” this Court laid out a non-exhaustive list of factors to be considered, including:

- (1) How long the delay exceeded the standards set forth in Moreno;
- (2) What reasons, if any, the Government set forth for the delay, and whether there is any evidence of bad faith or gross indifference to the overall post-trial processing of this case;
- (3) Whether there is some evidence of harm (either to the appellant or institutionally) caused by the delay;
- (4) Whether the delay has lessened the disciplinary effect of any particular aspect of the sentence, and is relief consistent with the dual goals of justice and good order and discipline;
- (5) Whether there is any evidence of institutional neglect concerning timely post-trial processing; and
- (6) Given the passage of time, whether the court can provide meaningful relief.

United States v. Gay, 74 M.J. 736, 744 (A.F. Ct. Crim. App. 2015).

Analysis

Because this case was docketed with this Court 154 days after sentencing, under Livak there is a facially unreasonable delay of four days. This Court must consider the Barker factors to determine whether there was a due process violation. Under any of the Barker factors, Appellant is not entitled to relief for post-trial delay because there were reasonable explanations for the delay, Appellant did not suffer prejudice, and Appellant did not assert his right to speedy post-trial processing until filing this assignment of error.

Length of Delay

The length of the delay weighs in favor of the Government. While the case was docketed late, it was only four days past Livak's 150-day deadline. In United States v. Lundby, a four day-delay was not considered egregious when the government “acted with reasonable diligence in the post-trial processing of Appellant's case.” No. ACM S32500, 2019 CCA LEXIS 181, at *13 (A.F. Ct. Crim. App. Apr. 23, 2019) (action took place well within the 120-day window, and “final modifications to the record took place over the course of an extended holiday period, and the record of trial spent 11 days in transit before being docketed with the court.”) Here, the transcript was completed within 115 days of the sentence, and the ROT took 17 days in transit from Korea to JAJM. (ROT, Vol 1, 2.) And like in Lundby, the government acted with reasonable diligence in post-trial processing.

Even in cases where the Government has taken over three times the presumptively reasonable amount of time to docket an appellant's case, courts have not awarded sentence relief. *See generally* United States v. Anderson, 82 M.J. 82, 86 (C.A.A.F. 2022) (holding 481 days of Government delay between sentencing and convening authority action would not “caus[e] the

public to doubt the entire military justice system’s fairness and integrity.”) Although the delay is presumptively unreasonable, the delay alone is not sufficient to justify relief—it merely triggers a due process analysis.

Reason for Delay

From 7 March 2024 until 8 August 2024, the Government efficiently processed Appellant’s case post-trial. From the court reporter’s chronology and TSgt T ’s declaration, there is no evidence of a “deliberate attempt to delay the trial in order to hamper the defense.” Barker, 407 U.S. at 531. In United States v. Hennessy, No. ACM 40439, 2024 CCA LEXIS 343, at *37 (A.F. Ct. Crim. App. Aug. 20, 2024), this Court criticized the base legal’s office’s apparent decision to wait to build the ROT until receiving the final transcript and then taking 36 days to ship the ROT to JAJM. Here, during the 96 days the court reporter had the transcript, the base legal office was building the ROT shell and processing the Convening Authority Decision on Action Memo and the Entry of Judgment with 7 AF. (*Court Reporter Chronology*, ROT, Vol 2; *TSgt T Declaration*, 26 August 2024.)

Upon initial receipt of the transcript for edits, trial counsel provided their recommended edits to the court reporter two duty days later (having received it on a Saturday in Korea.) Id. In contrast, the Defense took 17 days to provide their recommended edits due to their busy court schedule. Id. This 15-day difference should be attributed to the Defense, not the Government.

Following completion of the ROT, it was sent to 7 AF/JA for review on 4 July 2024. (*TSgt T Declaration*, 26 August 2024.) The base legal office took 5 July to 13 July 2023 to build copies of the ROT for submission to JAJM. (*TSgt T Declaration*, 26 August 2024.) Eight days was not an unreasonable amount of time to build all of the

necessary copies of the ROT. The ROT was mailed on 14 July 2023 from Korea and took 17 days to reach JAJM, which could not be considered a deliberate delay by the Government. Id. While there were small delays in the process, the court reporter chronology and TSgt T ’s declaration demonstrate that all parties attempted to move the case swiftly through post-trial processing. Any delays should be attributed to a heavy workload rather than deliberate delay, and accordingly weighed less heavily. Moreover, 17 days of delay was attributable to the trial defense counsel taking extra time to review the 178-page trial transcript. Had trial defense counsel taken the same amount of time as trial counsel to review the transcript – two days – then the government would have met the 150-day Livak standard.

Assertion of the Right of Timely Review and Appeal

This factor favors the Government. The third Barker “factor calls upon [this Court] to examine an aspect of [Appellant’s] role in this delay.” Moreno, 63 M.J. at 138. Specifically, whether Appellant “object[ed] to any delay or assert[ed] his right to timely review and appeal prior to his arrival at this court.” Id. While failing to demand timely review and appeal does not waive that right, only if Appellant actually “asserted his speedy trial right, [is he] ‘entitled to strong evidentiary weight’” in his favor. Id. (quoting Barker, 407 U.S. at 528). Appellant did not assert his right to speedy post-trial processing in his submission of matters to the convening authority. (ROT, Vol 2.) He only asserted this right when filing his assignment of error on 2 August 2024. (App. Br. at 1.) Appellant is not entitled to strong evidentiary weight for this factor, and it weighs in the government’s favor.

Prejudice

There was no prejudice with a four-day delay. While this Court considers the “minimization of anxiety and concern of those convicted awaiting the outcome of their appeals,” Moreno, 68 M.J. at 138-39, the four days that Appellant waited for his case to be docketed is not significant enough to warrant relief. Appellant previously admitted to struggles with alcohol, and he connected the lengthy disciplinary process he’s undergone since 2022 to explain what triggered his alcohol relapses in the past. (App. Br. at 3-4.) While Appellant calls attention to his history of relapses during stressful periods in his life and feels that being in “limbo” during the military justice process is a trigger for his relapses or suicidal ideations (App. Br. at 2-4, 11), these are not a “particularized anxiety or concern that is distinguishable from normal anxiety experienced by prisoners awaiting an appellate decision. Anderson, 82 M.J. at 87 (citing Toohy, 63 MJ at 361). It is not uncommon for prisoners to feel anxious while awaiting appointment of their appellant counsel, or to feel depressed. As an additional matter, Appellant was serving his one-year confinement sentence during this four-day delay. Despite any anxiety this may have produced, Appellant was not able to suffer from an alcoholic relapse because he did not have access to alcoholic beverages while confined.

Appellant further contends that he developed a “significant amount of anxiety” from his time in pretrial confinement. R. at 148. However, even if Appellant Defense Counsel had received the case four days earlier and filed an assignment of error the same day, there was little to no possibility that Appellant would have been released from confinement by 8 August 2023 or prior to serving his full sentence. Appellant’s argument is particularly weak considering his appeal was not filed until almost a year after docketing on 2 August 2024. The four-day delay did not cause Appellant to suffer from oppressive incarceration.

While Appellant does not assign this as an independent error, he did address evidentiary errors in the ROT as evidence of the government’s “institutional neglect” with post-trial processing. United States v. Valentin-Andino, No. ACM 40185 (f rev), 2024 CCA LEXIS 223, at *17 (A.F. Ct. Crim. App. Jun. 7, 2024). While portions of the evidence were not in their appropriate place within the ROT, all the evidence admitted at trial *was* nonetheless contained in other places in the ROT. When evidence is “found elsewhere in the record of trial, its absence as an attachment . . . does not render the record of trial incomplete.” United States v. Hinds, No. ACM S32756, 2024 CCA LEXIS 315, at *2 (A.F. Ct. Crim. App. July 31, 2024). These errors were not significant enough to warrant remand to the base legal office, in contrast to Valentin-Andino, 83 M.J. 537. There, victim matters were not served on appellant before convening authority action, and open session audio files were missing from the ROT. Id. at 544. In contrast, here, Appellant was not prejudiced by such extreme errors, since his Appellate Defense Counsel did not lack access to the evidence admitted at trial.

With respect to the spelling error in Charge VI, Specification 1, and in Charge VIII, Specification 2, this Court can modify the EOJ under its authority in RCM 1111(c)(2) to ensure SL’s name is correctly spelled within the record. Remand is unnecessary, so appellate review need not be delayed any further.

In sum, there was no prejudice in this case, and the facts above should not lead this Court to find that Appellant’s anxiety would affect the public perception of the military justice system. *See Toohey*, 63 M.J. at 362 (a due process violation exists when “the delay is so egregious that tolerating it would adversely affect the public perception of the fairness and integrity of the military justice system.”) Any anxiety Appellant suffered is typical of confinees. The public would not be appalled to learn that a confinee’s case was docketed for appellate review four days

later than it should have been, considering docketing does not trigger a release from confinement or any other similar benefit. Appellant is not entitled to relief for a due process violation or under Toohey.

Sentencing Relief is not appropriate under Tardif

Finally, under the Gay factors, this Court should not grant Appellant sentencing relief under its broad authority to determine sentence appropriateness. While the delay exceeded the standard from Moreno, it was only by four days. There is no evidence of gross indifference or bad faith, because the Government was processing Appellant's post-trial documents while awaiting the transcript. (*TSgt T 's Declaration*, 26 August 2024.) The Government promptly provided recommended transcript edits to the court reporter. Id. The only further day attributable to the base legal office was the delay between 5 July 2023 and 14 July 2023, and the Government was still preparing and copying the ROT for distribution during that timeframe. With respect to the errors in the ROT, these would only be evidence of negligence at worst, and the errors did not harm Appellant in any way. Such errors were minor and not evidence of institutional neglect in post-trial processing. The Government's delay did not lessen any disciplinary effect of Appellant's sentence to confinement or his discharge, as Appellant was already serving his sentence. Lastly, Appellant fails to show how his requested relief would be meaningful under Gay. Disapproval of the reprimand would not alter the "lifelong stigma associated with a bad-conduct discharge and the loss of benefits" Appellant must face because of his actions. (App. Br. at 14.) Furthermore, given the passage of time, approving only seven months of the one-year confinement would make no difference to Appellant at this point.

Appellant's one-year sentence was completed in March 2024, about five months before his appeal was filed. Besides being unwarranted, approving only seven months now would make no difference to the time Appellant has already served.

While not assigned as an error, Appellant also contends it is only fair to disapprove his reprimand because it "was not authorized under his plea agreement." (App. Br. at 14.) However, Appellant's plea agreement made no restriction on the military judge's ability to sentence Appellant to a reprimand. (App. Ex. I.) The military judge sentenced Appellant "in accordance with the limitations set forth," which provided for minimum and maximum confinement, a punitive discharge, and the inability to adjudge forfeitures. (Id. at 1-3.)

Rules for Courts-Martial (RCM) 705(d) covers sentence limitations in plea agreements. While RCM 705(d)(2) specifically addresses confinement and fines, RCM 705(d)(3) states that "a plea agreement *may* include a limitation as to *other* authorized punishments as set forth in RCM 1003" (emphasis added). RCM 1003(b)(1) and 1003(c)(1)(A)(ii) permit the military judge to sentence Appellant to a reprimand. Appellant understood this rule as his plea agreement specifically withheld the military judge's ability to adjudge forfeitures, which is also considered "other authorized punishments" beyond confinement and fines under RCM 705(d)(2) and 705(d)(3). (App. Ex. I at 2.) Absent a similar limitation in writing, the military judge was permitted to sentence Appellant to a reprimand. Thus, this alleged error does not support setting aside the reprimand as relief under Gay.

The four Barker factors and the six Gay factors weigh in the government's favor, and the four-day delay is not an egregious and prejudicial delay requiring post-trial sentencing relief from this Court. This Court should deny this Assignment of Error.

CONCLUSION

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

REGINA M.B. HENENLOTTER, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

MARY ELLEN PAYNE
Associate Chief
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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 3 September 2024.

REGINA MB HENENLOTTER, Maj, 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,	)	UNITED STATES' MOTION TO
<i>Appellee,</i>	)	ATTACH DOCUMENTS
)	
v.	)	Before Panel No. 2
)	
Airman Basic (E-1)	)	No. ACM 40505
ZACHARY J. TROVATORE)	
United States Air Force	)	3 September 2024
<i>Appellant.</i>)	

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

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

- Appendix – *TSgt C T Declaration*, dated 26 August 2024, with attachment (6 pages)

Appellant's only assignment of error asserts that he is entitled to relief due to post-trial processing delays. Appellant was sentenced on 7 March 2023, but the case was not docketed with this Court until 8 August 2023.

The attached declaration is responsive to Appellant's assigned error. TSgt T is the current Noncommissioned Officer in Charge (NCOIC) of Military Justice with the

Fighter Wing, Office of the Staff Judge Advocate, Osan Air Base, Republic of Korea. After reviewing AMJAMS and consulting with assigned trial counsel and the previous NCOIC of Military Justice for the above captioned case, TSgt T prepared the attached declaration to provide a chronology of the steps taken by the legal office to process Appellant's case post-trial.

Our Superior Court held matters outside the record may be considered “when doing so is necessary for resolving issues raised by materials in the record.” United States v. Jessie, 79 M.J. 437, 444 (C.A.A.F. 2020). The Court concluded that “based on experience . . . ‘extra-record fact determinations’ may be ‘necessary predicates to resolving appellate questions.’” Id. at 442 (quoting United States v. Parker, 36 M.J. 269, 272 (C.M.A. 1993)). The issue of prejudicial post-trial delay was directly raised by materials in the record because they show, but do not fully explain, the delays in the post-trial processing of Appellant’s case. These documents are relevant and necessary to resolve Appellant’s claims of error and prejudice from a processing delay.

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

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Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

MARY ELLEN PAYNE
Associate Chief
Government Trial and Appellate Operations Division
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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 3 September 2024.

REGINA HENENLOTTER, Maj, USAF
Appellate Government Counsel
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Military Justice and Discipline Directorate
United States Air Force

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

UNITED STATES	)	No. ACM 40505
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Zachary J. TROVATORE)	
Airman Basic (E-1))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 2

On 3 September 2024, the Government submitted a motion to attach post-trial declarations from TSgt CT. The Government avers that this declaration is relevant and necessary to resolve Appellant's assignment of error claiming that he is entitled to relief due to post-trial processing delay. Appellant did not oppose the motion.

The court has considered the Government's motion and the applicable law. The court grants the Government's motion; however, it specifically defers consideration of the applicability of *United States v. Jessie*, 79 M.J. 437 (C.A.A.F. 2020), and related case law to the attachments until it completes its Article 66, UCMJ, review of Appellant's entire case.

Accordingly, it is by the court on this 11th day of September 2024,

ORDERED:

The Government's Motion to Attach is **GRANTED**.



FOR THE COURT

OLGA STANFORD, Capt, USAF
Commissioner