

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee,

v.

Airman Basic (E-1)

TROY D. SOUZA, JR.,

United States Air Force

Appellant

) **APPELLANT’S MOTION FOR**
) **ENLARGEMENT OF TIME (FIRST)**

)
) Before Panel No. 1

)
) No. ACM S32813

)
) 2 May 2025


)

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

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error. Appellant requests an enlargement for a period of 60 days, which will end on **12 July 2025**. The record of trial was docketed with this Court on 14 March 2025. From the date of docketing to the present date, 49 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,


MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 2 May 2025.

[REDACTED]

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
	)	Before Panel No. 1
Airman Basic (E-1))	
TROY D. SOUZA, JR.,	)	No. ACM S32813
United States Air Force,)	
<i>Appellant.</i>	)	5 May 2025

**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.

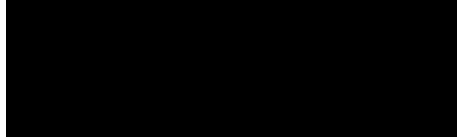
[Redacted Signature]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

[Redacted Address]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 5 May 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



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

UNITED STATES	)	No. ACM S32813
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Troy D. SOUZA, JR.)	
Airman Basic (E-1))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 2 May 2025, counsel for Appellant submitted a Motion for Enlargement of Time (First), requesting an additional 60 days to submit Appellant’s assignments of error. The Government generally opposed 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 7th day of May, 2025,

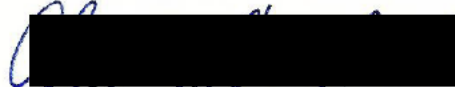
ORDERED:

Appellant’s Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **12 July 2025**.

Each request for an enlargement of time will be considered on its merits. Appellant’s counsel is advised that any subsequent motions for enlargement of time shall include, in addition to matters required under this court’s Rules of Practice and Procedure, statements as to: (1) whether Appellant was advised of Appellant’s right to a timely appeal, (2) whether Appellant was provided an update of the status of counsel’s progress on Appellant’s case, (3) whether Appellant was advised of the request for an enlargement of time, and (4) whether Appellant agrees with the request for an enlargement of time.



FOR THE COURT



OLGA STANFORD, Capt, USAF
Chief Commissioner

convening authority took no action on the findings and the sentence. Convening Authority Decision on Action.

The record of trial includes 2 prosecution exhibits, 2 defense exhibits, and 3 appellate exhibits. The transcript is 116 pages. AB Souza is not confined.

Through no fault of AB Souza, 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 AB Souza's case and advise him regarding potential errors. AB Souza was (1) advised of his right to a timely appeal, (2) updated on the status of undersigned counsel's progress on his case, and (3) advised of undersigned counsel's request for an enlargement of time. He asserts his right to a timely appeal, but recognizing undersigned counsel's workload, he (4) agrees with the request for an enlargement of time.

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

Respectfully submitted,



MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 30 June 2025.

[REDACTED]
MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
[REDACTED]

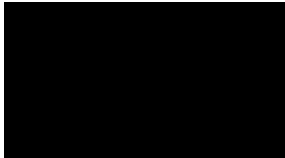
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
Airman Basic (E-1)	)	Before Panel No. 1
TROY D. SOUZA, JR.,	)	No. ACM S32813
United States Air Force,)	
<i>Appellant.</i>	)	1 July 2025

**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.



KATE E. LEE, Maj, USAF
Appellate Government Counsel
[Redacted]
[Redacted]
[Redacted]
[Redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 1 July 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES <i>Appellee</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
	)	(THIRD)
v.)	
	)	Before Panel No. 1
Airman Basic (E-1))	
TROY D. SOUZA, JR.	)	No. ACM S32813
United States Air Force)	
<i>Appellant</i>	)	31 July 2025

**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) Troy D. Souza, Jr., Appellant, hereby moves for a third enlargement of time (EOT) to file his Assignments of Error (AOE) in the above captioned case. AB Souza requests an enlargement for a period of thirty days, which will end on **10 September 2025**. The record of trial was docketed with this Court on 14 March 2025. From the date of docketing to the present date, 139 days have elapsed. On the date requested, 180 days will have elapsed.

On 20 November 2024, a special court-martial composed of a military judge sitting alone at Joint Base San Antonio-Fort Sam Houston, Texas convicted AB Souza, consistent with his pleas, of one specification of attempted wrongful possession of Lysergic Acid Diethylamide (LSD) with the intent to distribute, in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880; one specification of wrongful use of LSD and one specification of wrongful distribution of LSD, both in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. R. at 88; Entry of Judgment. The military judge sentenced him to a total of 90 days’ confinement and a bad conduct discharge. R. at 114; Statement of Trial Results. The convening authority took no action on the findings and the sentence. Convening Authority Decision on Action, 19 December 2024.

The record of trial includes 1 volume, 2 prosecution exhibits, 2 defense exhibits, 3 appellate exhibits, and 0 court exhibits. The transcript is 116 pages. AB Souza is not confined.

Through no fault of AB Souza, undersigned counsel has been unable to review the record and prepare a brief for his case prior to the current deadline to file his AOE. This enlargement of time is necessary to allow undersigned counsel to fully review AB Souza's case and advise him regarding potential errors. AB Souza was (1) advised of his right to a timely appeal, (2) updated on the status of undersigned counsel's progress on his case, and (3) advised of undersigned counsel's request for an enlargement of time. He asserts his right to a timely appeal but, recognizing the undersigned counsel's recent reassignment as an Appellate Defense Counsel and that she has not yet been able to thoroughly review his case, (4) agrees with the request for an enlargement of time.

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

Respectfully submitted,


PAIGE F. MARKLEY DENTON, Capt, USAF
Appellate Defense Counsel


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 31 July 2025.



PAIGE F. MARKLEY DENTON, Capt, USAF
Appellate Defense Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
Airman Basic (E-1)	)	Before Panel No. 1
TROY D. SOUZA, JR.,	)	No. ACM S32813
United States Air Force,)	
<i>Appellant.</i>	)	4 August 2025

**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.

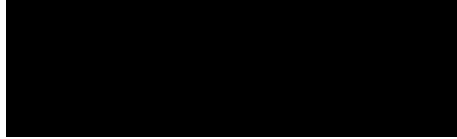
[Redacted Signature]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

[Redacted Address]

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 4 August 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR WITHDRAWAL OF
<i>Appellee,</i>	)	APPELLATE DEFENSE COUNSEL
)	
v.	)	Before Panel No. 1
)	
Airman Basic (E-1)	)	No. ACM S32813
TROY D. SOUZA, JR.,)	
United States Air Force,	)	31 July 2025
<i>Appellant.</i>)	

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

Pursuant to Rules 12(b), 12.4, and 23.3(h) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel respectfully requests to withdraw as counsel in the above-captioned case. As a result of new counsel joining the Air Force Appellate Defense Division, and in order to best allocate resources within the Division and support speedy appellate review for clients, Maj Megan Crouch is no longer detailed under Article 70, Uniform Code of Military Justice (UCMJ), to represent Appellant. Capt Paige Markley Denton has been detailed substitute appellate military defense counsel in undersigned counsel’s stead and made her notice of appearance on 31 July 2025. Counsel have completed a thorough turnover of the case.

Appellant has been advised of this motion to withdraw as counsel and consents to undersigned counsel’s withdrawal. A copy of this motion will be delivered to Appellant following its filing.

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

Respectfully submitted,

[REDACTED]

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel

[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 31 July 2025.

[REDACTED]

PAIGE F. MARKLEY DENTON, Capt, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

v.

Airman Basic (E-1)

Troy D. SOUZA

United States Air Force

Appellant

**BRIEF ON BEHALF OF
APPELLANT**

Before Panel No. 1

No. ACM S32813

10 September 2025

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

ASSIGNMENT OF ERROR

**WHETHER APPELLANT’S PLEA TO ATTEMPTS ON DIVERS
OCCASIONS WAS PROVIDENT WHEN THE APPELLANT ADMITTED
TO ONLY ONE ATTEMPT.**

STATEMENT OF STATUTORY JURISDICTION

Airman Basic (AB) Troy D. Souza is the Appellant. His approved sentence includes a bad-conduct discharge. Entry of Judgment, Dec. 27, 2024, at 2. Accordingly, this Court has jurisdiction pursuant to Article 66(b)(3), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(b)(3).

STATEMENT OF THE CASE

On 20 November 2024, a military judge sitting as a special court-martial convicted AB Souza, United States Air Force, pursuant to his pleas, of one specification of attempted possession of lysergic acid diethylamide (LSD) with the intent to distribute on divers occasions in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880, and one specification of use of LSD and one specification of distribution of LSD, both in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. R. at 51, 88; DD Form 458, *Charge Sheet*, Sep. 9, 2024 [hereinafter *Charge Sheet*], at 1, 3. The military judge sentenced AB Souza to a bad-conduct

discharge and ninety days confinement for each specification, to run concurrently. Statement of Trial Results, Nov. 20, 2024. The Convening Authority took no action in the case. Convening Authority Decision on Action, Dec. 19, 2024.

STATEMENT OF FACTS

A. First Order of LSD dated 22 February 2024: Completed Use and Distribution

The allegation of attempted conduct at issue traces back to a drug deal involving the same parties. Pros. Ex. 1 at 2; R. at 53. On 22 February 2024, AB Souza agreed to a plan with two other Airmen, A1C L.S. and AB R.D., to get and use LSD. Pros. Ex. 1 at 2, 28; R. at 45. First, the two Airmen would pay AB Souza to order LSD from a Canadian company's website. Pros. Ex. 1 at 2, 27; R. at 53. Second, AB Souza would give each of them a portion of that LSD and the three Airmen would use it. R. at 54-56. Both steps were completed, AB Souza received the ordered LSD in the mail, R. at 54, and this conduct constituted the offenses to which AB Souza pleaded guilty under Article 112a, UCMJ. R. at 44-49, 53-59; Charge Sheet at 3.

B. Second Order of LSD dated 11 March 2024: Attempted Possession with the Intent to Distribute

AB Souza placed another order for about ten tabs of LSD from the same Canadian company's website on 11 March 2024. Pros. Ex. 1 at 31; R. at 29. Like the first order described above, A1C L.S. and AB R.D. agreed to pay AB Souza to place this order and obtain LSD, which the three of them would share and use. R. at 29, 34, 38; Pros. Ex. 1 at 31. A1C L.S. and AB R.D. paid AB Souza for this order on 11 March 2024. Pros. Ex. 1 at 31.

On 20 March 2024, law enforcement intercepted a package of LSD the company sent to fulfill this order. R. at 29, 36; Pros. Ex. 1 at 2, 17 (page 17 showing the date of a field test on the contents of the package as 20 March 2024). AB Souza was not aware at the time that law enforcement intercepted the package, but he did notice the package had not been delivered. R. at

29, 36-37. About a week or two after the package was supposed to be delivered, AB Souza contacted the company on Discord. R. at 29-30, 37. He did this by following a link on the company's website for any customer service issues with orders and shipments. *Id.* AB Souza requested that his order be reshipped due to the lack of delivery. R. at 29-30, 36. In doing this, he "was just trying to get [his] purchase of the LSD that [he] first ordered." R. at 37. The company agreed to reship the order and did so. R. at 38.

Law enforcement also intercepted this package in March 2024 but allowed it to continue to AB Souza after removing the LSD from the package and replacing it with a sign reading, "Say no to drugs." Pros. Ex. 1 at 2. The package was delivered to AB Souza at Fort Sam Houston's on-base post office. *Id.* AB Souza went to the post office on 28 March 2024 and picked up the package. *Id.* After having the package in his hand for about ten seconds, law enforcement apprehended him. *Id.*; R. at 30.

This series of events is the basis for AB Souza's guilty plea to attempted possession of LSD with the intent to distribute *on divers occasions*. R. at 29-41; Charge Sheet at 1.

C. Providence Inquiry

During the providence inquiry for attempting to possess LSD with the intent to distribute *on divers occasions*, AB Souza and the military judge only discussed the second order of LSD, placed on 11 March 2024. R. at 29-44. They did not discuss any other order of LSD during the inquiry about this specification. *Id.* Trial and Defense Counsel did not request further inquiry into this specification. R. at 41.

The military judge asked AB Souza how many times he tried to possess LSD during the charged timeframe. R. at 30. AB Souza stated that he tried to possess LSD "[t]wice" between on or about 1 February 2024 and on or about 1 July 2024. *Id.* Asked to explain each of the two

occasions, AB Souza described the “first” as the events of 11 March 2024 related to ordering and purchasing LSD online. He discussed the website from which he ordered LSD, what he intended to purchase, where he was when he searched the website, how he placed the order, and how much LSD he ordered. R. at 31-36. He also described his plan as being to “buy [LSD] with the money I was provided, Your Honor, and then give it to those two airmen that gave me the money,” and that he had that intent at the time he placed the order. R. at 32.

AB Souza returned to this “first” order when the military judge asked about “the second instance.” R. at 36. When the military judge asked AB Souza to “tell [him] about the second instance,” AB Souza responded, “Well it was just like the fist package, but I asked it to be reshipped because I never got the first package fully because that was the one that was intercepted and that’s when they reshipped it and when I went to go pick it up, I was taken by [law enforcement].” *Id.* The military judge homed in on AB Souza’s request for his same order to be reshipped, asking when AB Souza asked the company “to send another package?” R. at 37. The military judge specifically asked AB Souza what his purpose and intent was behind discussing reshipment with the company. *Id.* AB Souza responded, “I was just trying to get my purchase of the LSD that I *first ordered.*” *Id.* (emphasis added).

The military judge then asked questions about the elements of an attempt offense, including “substantial steps.” R. at 38. He asked these questions with respect to two acts by AB Souza: (1) placing the online order, and (2) reaching out to the company to resend the package. *Id.* He asked, “[D]o you believe that your acts were a substantial step in a direct movement toward the offense of wrongful possession of LSD with the intent to distribute?” and, “[D]o you believe and admit that those actions on those two different occasions constituted a substantial step in furtherance of the offense as I’ve defined that to you previously?” R. 39-40.

SUMMARY OF ARGUMENT

The facts in the record raise a substantial question regarding AB Souza's guilty plea to attempted possession of LSD with the intent to distribute *on divers occasions* because the conduct he described during the providence inquiry consisted of only one attempt. An accused taking two "substantial steps" toward the commission of an intended offense does not automatically equate to two attempts. There can be multiple substantial steps toward the same, single attempt. In this case, AB Souza's acts of ordering and seeking re-shipment of the twice-intercepted order of LSD were both steps to arrange for the commission of a single intended offense: possession of LSD with the intent to distribute on one occasion. The facts in the record show that AB Souza made *one* attempt to possess *one* online order of LSD to distribute to A1C L.S. and AB R.D. *one* time.

Therefore, there is a substantial question for AB Souza's guilty plea to this offense and his plea is improvident. The finding for this specification should be affirmed only with the language "on divers occasions" excepted. Affirming the finding in this way accurately embraces the conduct admitted to by AB Souza and ensures the findings are correct in law and fact.

ARGUMENT

AB Souza committed only one attempt to possess LSD with the intent to distribute, rather than two or more. Because his plea was only provident to one occasion, the plea to *divers occasions* was not.

The military judge did not announce what two (or at least two) attempts formed the basis for his finding of guilty for "on divers occasions." *See* R. at 29-44, 88. However, the providence inquiry for that offense indicates the military judge understood there to be two attempts based on (1) AB Souza ordering LSD online, and (2) AB Souza requesting reshipment of that same online order after he noticed his order had not been delivered. *See* R. at 38-40. This constituted an abuse

of discretion for the “on divers occasions” language because both purported two attempts were actually part of the same, single attempt.

A. Standard of Review

The Court “review[s] a military judge’s decision to accept an accused’s guilty plea for an abuse of discretion.” *United States v. Riley*, 72 M.J. 115, 119 (C.A.A.F. 2013). “An abuse of discretion occurs when there is ‘something in the record of trial, with regard to the factual basis or the law, that would raise a substantial question regarding the appellant’s guilty plea.’” *Riley*, 72 M.J. at 119 (quoting *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008)). “A military judge abuses [his] discretion where [he] fails to obtain an adequate factual basis to support the plea.” *Inabinette*, 66 M.J. at 322. “The military judge must ensure there is a basis in law and fact to support the plea to the offense charged.” *United States v. Soto*, 69 M.J. 304, 307 (C.A.A.F. 2011) (citing *Inabinette*, 66 M.J. at 321-22) (additional citation omitted).

The Court reviews “questions of law arising from a guilty plea de novo.” *United States v. Murphy*, 74 M.J. 302, 305 (C.A.A.F. 2015). This includes de novo review of the military judge’s legal conclusion that an appellant’s plea was provident. *United States v. Harris*, 61 M.J. 391, 398 (C.A.A.F. 2005).

B. The conduct admitted and described by Appellant constitutes one, single attempt to possess LSD with the intent to distribute.

To be valid, AB Souza’s guilty plea needed to reflect what the Government charged and what he entered a plea of guilty to: attempting to possess LSD with the intent to distribute *on divers occasions*. Charge Sheet at 1. “‘Divers’ means ‘two or more.’” *United States v. Ozbirn*, No. ACM 39556, 2020 CCA LEXIS 138, *20 (A.F. Ct. Crim. App. May 1, 2020).

Each of those divers occasions was required to meet all four elements of an attempt. An attempt is “an act, done with specific intent to commit an offense under this chapter, amounting

to more than mere preparation and tending, even though failing to effect its commission.” Article 80, UCMJ, 10 U.S.C § 880. The elements of an attempt under Article 80, UCMJ, are: “(1) That the accused did a certain overt act; (2) That the act was done with the specific intent to commit a certain offense under the UCMJ; (3) That the act amounted to more than mere preparation; and (4) That the act apparently tended to effect the commission of the intended offense.” *Manual for Courts-Martial*, United States, 2024 ed. (2024 *MCM*), Part IV, ¶ 4(b).

“Preparation consists of devising or arranging the means or measures necessary for the commission of the offense. The overt act required goes beyond preparatory steps and is a direct movement toward the commission of the offense.” 2024 *MCM*, Part IV, ¶ 4(c)(2). “For example, a purchase of matches with the intent to burn a haystack is not an attempt to commit arson, but it is an attempt to commit arson to apply a burning match to a haystack, even if no fire results.” *Id.* “More than mere preparation is interpreted as requiring that the accused take a ‘substantial step’ toward committing the crime.” *United States v. Hale*, 78 M.J. 268, 271 (C.A.A.F. 2019) (quoting *United States vs. Payne*, 73 M.J. 19, 24 (C.A.A.F. 2014)). The difference between mere preparation and a substantial step is primarily one of fact, not law. *United States v. Choat*, 21 C.M.R. 313, 317 (C.M.A. 1956).

The military judge abused his discretion in accepting AB Souza’s guilty plea because, other than a conclusory admission to divers occasions, everything AB Souza said boiled down to only one attempt. The stipulation of fact discussed only a single “act” with respect to this offense. Pros. Ex. 1 at ¶ 18(1)-(4). And while the military judge endeavored to ask about two occasions of attempting to obtain LSD, the so-called second was a mere continuation of the first.

AB Souza described this so-called second attempt as part of a throughline with the package intercepted by law enforcement on 20 March 2024 and never received or possessed by

AB Souza. During the providence inquiry, the military judge asked AB Souza what his purpose and intent was behind requesting reshipment of his LSD order. R. at 37. AB Souza responded, “I was just trying to get my purchase of the LSD that I *first ordered*.” R. at 37 (emphasis added). He did not state he was re-attempting to get LSD. Instead, his stated intent shows he was just taking another step toward his same, single intended offense of possessing the LSD that he “first ordered” with the intent to distribute it to A1C L.S. and AB R.D. *Id.*

The surrounding circumstances only reinforce that AB Souza’s intent was always to possess the *same order* of LSD from the *same company* pursuant to the *same transaction*. AB Souza did not make a second purchase. *See* R. at 29-44. He did not place a new order. *Id.* He did not alert the two Airmen to whom he planned to distribute the LSD that they needed to make another purchase, and he did not form a new arrangement with them in which he would find different LSD or other drugs to distribute to them. *Id.* Instead, AB Souza used the company’s procedures for getting in touch if there were any issues with his order, made contact, and requested that the company reship his order of LSD. R. at 29-30. AB Souza did not add any new items to the order. *See* R. at 29-44. He went to the post office on only one occasion to pick up this single order. Pros. Ex. 1 at 2-3. He held a package in his hands that he thought contained LSD only once. *Id.* That is because this was all the same, single order and purchase of LSD, and thus all the same, single attempt. R. at 29-30.

There can be multiple substantial steps toward the same, single attempt. *See* 2024 MCM, Part IV, ¶ 4(c)(2) (the “certain over act” required by element one of the attempt offense “need not be the last act essential to the consummation of the offense.”); *United States v. Hale*, 78 M.J. 268, 273 (C.A.A.F. 2019) (affirming a finding of guilty for two attempted larceny offenses against a reservist because he took at least one substantial step for each attempt at a time when he

was subject to the UCMJ, even though he took other substantial steps toward each attempt while he was not subject to the UCMJ). All of these acts were part of the same attempt: AB Souza placing an online order for LSD with the intent to possess and distribute LSD, AB Souza requesting reshipment of that online order with the same intent to possess and distribute the same order to A1C L.S. and AB R. D., and AB Souza picking up the package he thought contained LSD at the post office with the intent to distribute it (this being the “last act essential to the consummation of the offense”).

The fact that there were two intercepted packages of LSD distracted the military judge and the parties from the facts revealed in the providence inquiry. The parties and military judge wrongly concluded that if there were two packages, there must have been two orders. The Stipulation of Fact states that “at least two of the Accused’s *orders* were intercepted,” Pros. Ex. 1 at 2 (emphasis added). But the providence inquiry clarified that two *packages* of LSD addressed to AB Souza were intercepted—not two *orders*. R. at 36. There was only one order; both packages were sent by the company to fulfill that single order. *Id.*

Additionally, the parties agreed that the “certain overt act” for this attempt offense was purchasing LSD online. Pros. Ex. 1 at ¶ 18(1). This agreement and understanding by the parties further established AB Souza’s conduct as one attempt because AB Souza purchased LSD online once. *See United States vs. George*, 2025 CAAF LEXIS 577, *2 (holding that “the reading of the specification adopted by the parties at trial is determinative”). In the Stipulation of Fact, the parties identified the overt act as: between “on or about 1 February 2024 and on or about 1 July 2024, the accused did a certain overt act, that is: purchase an unknown quantity of Lysergic Acid Diethylamide (LSD) online.” Pros. Ex. 1 at ¶ 18(1). Because the provident inquiry clarified that

the act of purchasing LSD online only happened once, R. at 29-38, there was only one attempt and AB Souza's plea to the divers occasions part of this offense is improvident.

While AB Souza did admit to divers occasions, R. at 30, the military judge "must elicit actual facts from an accused and not merely legal conclusions." *United States v. Price*, 76 M.J. 136, 138 (C.A.A.F. 2017) (citing *United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002)). The facts that came out during the providence inquiry undermined the stated legal conclusion that there were two or more attempts, and the military judge missed it. The military judge was focused on identifying two "overt acts" that would each be the first element of the two (or more) charged attempts. *See* R. at 30-40. But he did not zoom out to consider the overall factual situation, which shows that the identified acts were both steps to arrange for the commission of a single intended offense.

Lastly, the conclusion that the order and reshipment were all part of a single attempt is solidified by the absence of any abandonment after the initial package was intercepted. There are three different ways an attempt to commit an offense can be completed or ended: (1) completion of the intended offense (i.e., completion of possession of LSD with the intent to distribute), (2) getting to the logical end of the process needed to complete the intended offense but there is an intervening circumstance or the attempt is unsuccessful (i.e., holding a package of LSD ordered online with the intent to possess LSD with the intent to distribute, but no LSD is in the package because law enforcement removed it), or (3) the would-be perpetrator abandons the attempt in some way. 2024 *MCM*, Part IV, ¶ 4(c)(4) states multiple ways and reasons an attempt can be abandoned. While not a defense, a person might abandon an attempt because they "feared detection or apprehension, decided to await a better opportunity for success, was unable to complete the crime, or encountered unanticipated difficulties or unexpected resistance." *Id.*

When AB Souza noticed that the LSD he ordered had not been delivered, R. at 37, he could have abandoned his attempt to possess LSD with the intent to distribute due to being “unable to complete the crime, or encounter[ing] unanticipated difficulties or unexpected resistance.” 2024 *MCM*, Part IV, ¶ 4(c)(4). His LSD was not initially ordered because law enforcement intercepted the package, but AB Souza did not know that at the time. R. at 37. All he knew was that the package did not make it, and he followed the company’s pre-identified steps to get customer service in such a situation. R. at 36-38. If he had abandoned this attempt and later placed a new order for LSD with the intent to possess that order of LSD with the intent to distribute it, then perhaps there would be a second occasion of this offense. But that is not what happened. Instead, AB Souza continued to arrange for the means necessary to commit the same offense by requesting reshipment of the order. His intent was always to possess the *same order* of LSD pursuant to the *same transaction* to distribute it to the *same Airmen*.

C. The appropriate remedy in this case is to affirm the finding, excepting “on divers occasions.”

“If the Court of Criminal Appeals sets aside the findings, the Court (i) may affirm any lesser included offense; and (ii) may, except when prohibited by section 844 of this title (article 44), order a rehearing. . . . If the Court of Criminal Appeals sets aside the findings and does not order a rehearing, the Court shall order that the charges be dismissed.” Article 66(f)(1), UCMJ; 10 U.S.C. § 866(f)(1); *see United States v. Ingram*, No. ACM S32781, 2025 CCA LEXIS 354, *8 (A.F. Ct. Crim. App. July 31, 2025).

Affirming the finding as a single attempt to possess LSD with the intent to distribute accurately embraces the conduct admitted to by Appellant and ensures the findings are correct in law. Specifically, the attempt offense should only be affirmed with the phrase “on divers occasions” excepted. This Court and its sister courts have granted similar relief in multiple cases.



See United States v. Perez, No. ACM S32771, 2025 CCA LEXIS 266, *11-12, *14 (A.F. Ct. Crim. App. June 13, 2025), (affirming the findings of guilty for one specification in a case with a plea agreement by excepting the words and figures “about \$21,300.00” and substituting the words “more than \$1,000.00”), *pet. for review filed*, __ M.J. __, No. 25-0238/AF, 2025 CAAF LEXIS 663 (C.A.A.F. Aug. 8, 2025); *United States v. Hunter*, No. 202100162, 2022 CCA LEXIS 517, at *10 (N-M. Ct. Crim. App. Aug. 31, 2022) (affirming the findings of guilty in a case with a plea agreement only to the lesser included offense of wrongful appropriation of non-military property where appellant was originally charged with larceny); *see also Ingram*, 2025 CCA LEXIS 354, at *13 (dismissing without prejudice the improvident specification in a case with a plea agreement because there was no applicable lesser included offense).

CONCLUSION

The facts in the record raise a substantial question about the providence of the guilty plea because AB Souza pled guilty to two or more occasions but only described one. The military judge abused his discretion in accepting AB Souza’s guilty plea for the “on divers occasions” portion of that offense. AB Souza’s guilty plea is accordingly improvident in part and this Court should correct the military judge’s error.

WHEREFORE, Appellant asks this Court to affirm the finding of Guilty as to the Specification of Charge I, excepting the phrase “on divers occasions.”

Respectfully submitted,


PAIGE F. MARKLEY DENTON, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division


CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were electronically delivered to the Court and served on the Air Force Government Trial and Appellate Operations Division on 10 September 2025.

[REDACTED]

PAIGE F. MARKLEY DENTON, Capt, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' MOTION
<i>Appellee,</i>	)	FOR ENLARGEMENT OF TIME
	)	OUT OF TIME (FIRST)
v.)	
	)	Before Panel No. 1
Airman Basic (E-1))	
TROY D. SOUZA	)	No. ACM S32813
United States Air Force)	
<i>Appellant.</i>	)	7 October 2025

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

Pursuant to Rule 23.3(m) of this Court's Rules of Practice and Procedure, the United States requests a 30-day enlargement of time, out of time, to respond in the above-captioned case. This is the United States' first request for an enlargement of time.

The record of trial was docketed with this Court on 14 March 2025. As of the date of this request, 206 days have elapsed since docketing. The United States' brief is currently due 10 October 2025. If the enlargement of time is granted, the United States' response will be due on 9 November 2025, and 240 days will have elapsed since docketing. Appellant's assignment of error involves whether his plea of guilty to one charge and one specification of attempted possession of lysergic acid diethylamide with intent to distribute on divers occasions, in violation of Article 80, UCMJ, was provident when he admitted to only one attempt. Appellant was sentenced to 90-days of confinement and a bad conduct discharge. Appellant has already served his confinement sentence. The Convening Authority took no action in the case. The transcript of the proceedings is 116 pages.

There is good cause for enlargement of time. Before the end of the fiscal year, the Government's response to Appellant's brief was assigned to Major Abhishek Kambli, an

individual mobilization augmentee/reservist. The current lapse in appropriations associated with the government shutdown on 1 October prevents Maj Kambli from performing inactive duty training periods to complete his work. The Government considered assigning active duty counsel to the case, but doing so would not be more efficient because Maj Kambli has completed the review of the record, and the current workload of the active duty counsel at the Appellate Operations Division (JAJG) would prevent accomplishing the brief sooner. The United States hopes that 30 days will be sufficient for the shutdown to resolve and for Maj Kambli to reschedule his IDT days. If the shutdown is not resolved within the next 30 days, the United States will look into reassigning this brief.

This motion is filed out of time but there is good cause to grant it. As the deadline for an enlargement of time approached, there was uncertainty about whether there would be a quick resolution to the lapse in appropriations. Once it became apparent that there would not be a quick resolution, the Government filed this motion for an enlargement of time.

The Air Force Appellate Operations Division (JAJG), as a whole, currently has 16 briefs (answer briefs and motions for reconsideration) with due dates pending at this Court and 1 brief with a pending due date at CAAF. JAJG currently only has 6 active duty appellate attorneys, 1 active duty division chief, and one civilian associate chief. JAJG's director of operations, Lt Col Liabenow, was reassigned out of the office in August 2025 without a replacement, which means that JAJG has one less supervisory attorney to conduct supervisory review of briefs. Finally, two government appellate attorneys have been at temporary duty locations for the majority of the month of September. Two reservists started long term MPA orders as of 1 October, but they are assigned to other briefs. JAJG is leveraging undersigned counsel as Reserve support for this brief, and due to office workload, there is no other JAJG counsel who

could file a brief sooner. Finally, most of JAJG's other cases pending answer briefs have progressed further on the 18-month Moreno timeline than Appellant's case and therefore should be given priority over this one in JAJG's workload.

WHEREFORE, the United States requests this Court grant this Motion for Enlargement of Time, out of time.

[REDACTED]

HEATHER R. BEZOLD, Capt, USAF
Appellate Government Counsel

[REDACTED]

[REDACTED]

MARY ELLEN PAYNE
Associate Chief

[REDACTED]

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 7 October 2025.



HEATHER R. BEZOLD, Capt, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

v.

Airman Basic (E-1)

Troy D. SOUZA

United States Air Force

Appellant

**APPELLANT’S OPPOSITION TO
GOVERNMENT’S MOTION FOR
ENLARGEMENT OF TIME
OUT OF TIME**

Before Panel No. 1

No. ACM S32813

8 October 2025

**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, Appellant, Airman Basic (AB) Troy D. Souza, opposes the Government’s Motion for Enlargement of Time Out of Time. Because the Government’s request to file out of time and the requested enlargement both derive from discretionary choices made by the Government, good cause is lacking for both and the Government’s motion should be denied.

The requested enlargement should be denied because there is not good cause for filing it four days out of time. Appropriations lapsed two days before the Government’s deadline to file this motion, which was Friday, 3 October 2025. *See* A.F. Ct. Crim. App. R. 23(m)(1). Therefore, any uncertainty it had about reservist funding already existed on their deadline. The Government also concedes this point in its motion. Mot. at 2. The Government had at least some awareness it might want more time for its Answer brief prior to the enlargement deadline because they had “uncertainty about whether there would be a quick resolution to the lapse in appropriations” “[a]s the deadline for an enlargement of time approached.” *Id.* (emphasis added). After appropriations lapsed on 1 October 2025, the Government had two full duty days to recognize its upcoming Answer deadline of 10 October 2025, evaluate its manning and workload, and file this

motion within the time allotted by Rule 23(m)(1) if additional time to Answer was needed. Instead, the Government either knowingly declined to meet this motion deadline to wait and see if the appropriations situation would resolve itself, or was paralyzed into inaction as appropriations lapsed and the filing deadline grew nearer. *See Mot.* at 2.

Neither course of inaction constitutes good cause because there was no significant change or trigger on 7 October 2025, the day of filing this motion, that switched the Government from a state of not needing more time to a state of needing more time. Nothing occurred on 7 October 2025 that clarified the funding landscape for appellate reservists. The Government does not assert that it forgot about AB Souza's case or made a genuine calendar error that it only realized on 7 October 2025. Instead, the Government was already aware the shutdown might create complications for the filings assigned to its reservists, yet claims this awareness and uncertainty prevented it from filing a three-page motion on 3 October 2025, 4 October 2025, 5 October 2025, and 6 October 2025. Requesting an enlargement of time four days late for a reason that was known on the deadline is not good cause and defeats the purpose of this Court's seven-calendar-day deadline. The Government has not met its burden to justify filing out of time and its motion should be denied.

Should this Court reach the merits of the Government's motion, the motion should be denied because there is not good cause for the requested enlargement of time. The current government shutdown and associated lapse in appropriations cited by the Government has not unduly affected military appellate litigation, nor reserve support for appellate litigation. Appellate litigation is an excepted activity during a government shutdown and can continue during this time. While securing reserve support can be challenging, it has been authorized during this shutdown. *See Mot.* at 2. Reserve support during this shutdown has been authorized

in the Appellate Defense Division and “[t]wo reservists started long term MPA orders as of 1 October [in the Government Trial and Appellate Operations Division], but they are assigned to other briefs.” *Id.* These two reservists currently on orders with the Government were able to start the very day the shutdown began. *Id.* Not only is the Government *able* to secure reserve support during this shutdown, but it already *has* reserve support available to assist in meeting its current Answer deadline of 10 October 2025. Government counsel are fungible, *see United States v. Royster*, 42 M.J. 488, 491 (C.A.A.F. 1995), so either can file this Answer in lieu of Maj Kambli.

While the Government’s ability to Answer AB Souza’s brief does not hinge on Maj Kambli’s availability, the Government’s motion also fails to show why he cannot perform reserve duties this week. The Government can put him on MPA orders like its other two reservists rather than have him perform inactive duty training periods (IDTs). *See Mot.* at 2. There is no explanation for why this cannot be done. The appropriate conclusion to draw from this gap in information is that there is no reason, other than the Government declining to do so in its own discretion. This lack of interest in investing resources to timely resolve AB Souza’s appeal is demonstrated elsewhere in the Government’s motion, with the Government suggesting that AB Souza’s case is not long-running enough to warrant appellate review now. *Mot.* at 3. This way of thinking is not good cause and will relegate AB Souza’s case to that same bucket of cases with long timelines when the parties could otherwise make AB Souza’s case ready for this Court’s decision within the next nine days.

Further, an enlargement of time should not be granted because it will compound delays in this case due to the undersigned counsel’s anticipated timeline for giving birth and taking convalescent leave and parental leave. If the Government’s Motion is granted, its new Answer deadline will be 9 November 2025 with AB Souza’s Reply due 16 November 2025. The

undersigned counsel is currently over eight months pregnant, due to give birth on or about 25 October 2025, and will likely be on convalescent leave on 9 November 2025. As AB Souza's sole attorney, with whom he has an attorney-client relationship, undersigned counsel is not fungible and would need to move this Honorable Court for enlargements of time to Reply to the Government's Answer for at least eighteen weeks, until approximately March 2025. This is because the undersigned counsel will be entitled to and utilizing at least six weeks of convalescent leave (which is the standard amount given to recover from an uncomplicated birth), followed by twelve weeks of parental leave.

Ultimately, this case is not complicated, does not have a long record of trial nor a long brief, and can be answered within the allotted time frame. The transcript in this case is only 116 pages long, the entire electronic record of trial, including exhibits and other documents, is only 361 pages long, and AB Souza's brief is thirteen pages long covering a single assignment of error on a very specific issue. Granting the requested enlargement will drag out a case for months that would otherwise be ripe for decision within the next nine days.

WHEREFORE, AB Souza respectfully requests that this Court deny the Government's enlargement motion.

Respectfully submitted,


PAIGE F. MARKLEY DENTON, Capt, USAF
Appellate Defense Counsel


CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were electronically delivered to the Court and served on the Air Force Government Trial and Appellate Operations Division on 8 October 2025.



PAIGE F. MARKLEY DENTON, Capt, USAF
Appellate Defense Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S MOTION TO SUSPEND
	)	RULE 23.3(m)(3) AND MOTION FOR
<i>Appellee</i>	)	ENLARGEMENT OF TIME TO FILE
	)	APPELLANT’S REPLY BRIEF
v.)	
)	
	)	Before Panel 1
Airman Basic (E-1))	
Troy D. SOUZA	)	No. ACM S32813
United States Air Force)	
<i>Appellant</i>	)	19 October 2025

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

Pursuant to Rule 32 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals and Rule 23.3(r) of this Honorable Court’s Rules of Practice and Procedure, Airman Basic (AB) Troy D. Souza (Appellant) hereby moves this Court to suspend the portion of Rule 23.3(m)(3) which provides that “subsequent motions for enlargement by either party . . . may be granted for periods not to exceed 30 calendar days.” (emphasis added).

Additionally, pursuant to Rules 23.3(m)(1), (3), and (6) of this Honorable Court’s Rules of Practice and Procedure, AB Souza moves for his first enlargement of time to file a Reply—his fourth motion for enlargement of time overall. Specifically, AB Souza moves this Court for an enlargement of time until **31 March 2026**. This case was docketed with this Court on 14 March 2025. From the date of docketing to the present date, 219 days have elapsed. On the date requested, 382 days will have elapsed.

STATEMENT OF THE CASE

On 20 November 2024, a special court-martial composed of a military judge sitting alone at Joint Base San Antonio-Fort Sam Houston, Texas convicted AB Souza, consistent with his pleas, of one specification of attempted wrongful possession of Lysergic Acid Diethylamide

(LSD) with the intent to distribute on divers occasions, in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880, and one specification of wrongful use of LSD and one specification of wrongful distribution of LSD, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. R. at 88. The military judge sentenced AB Souza to a total of 90 days' confinement and a bad-conduct discharge. R. at 114. The convening authority took no action on the findings and the sentence. Convening Authority Decision on Action (Dec. 19, 2024).

The record of trial includes one volume, two prosecution exhibits, two defense exhibits, three appellate exhibits, and zero court exhibits. The transcript is 116 pages. The electronic record of trial is 361 pages. AB Souza is not confined. Undersigned counsel has completed review of the case and filed one Assignment of Error on 10 September 2025. The Government's Answer was originally due on 10 October 2025. The Government moved for a 30-day enlargement of time out of time on 7 October 2025, which this Court granted over AB Souza's opposition on 10 October 2025. The Government's Answer is now due on 9 November 2025.

SUMMARY OF ARGUMENT

Rule 32 of this Court's Rules of Practice and Procedure authorizes this Court to suspend its own rules in the interest of justice. Rule 23.3(m)(3) specifically limits subsequent motions for enlargement of time to periods not exceeding 30 calendar days, unless this Court orders otherwise. However, this Court retains broad discretion to modify or suspend procedural requirements when good cause is shown. In this case, there is good cause to suspend the 30-day limitation and grant the requested enlargement until 31 March 2026. The undersigned counsel's upcoming childbirth and related eighteen weeks of convalescent and parental leave constitute significant, unavoidable circumstances that directly impact counsel's ability to meet the current Reply deadline. Undersigned counsel is anticipated to give birth and begin leave no later than 31

October 2025 and will be unable to file pleadings until returning from leave on or about 6 March 2026. The Government's Answer is due 9 November 2025; without the requested enlargement, AB Souza's Reply would be due while counsel is recovering from childbirth and on leave.

ARGUMENT

Undersigned counsel is currently assigned only two cases in anticipation of upcoming convalescent and parental leave. Both cases are pending before this Court. This case has priority over the other, as it was docketed four months earlier. However, workload and case priority are not driving this request to suspend the 30-day enlargement limitation and to enlarge AB Souza's time to Reply to the Government's Answer until 31 March 2026.

Undersigned counsel is AB Souza's only detailed appellate counsel and, through no fault of AB Souza, is pregnant and will need to take at least six weeks of convalescent leave to physically recover from birth. Unit commanders "normally approve 42 days", or six weeks, of convalescent leave for childbirth. Department of the Air Force Instruction 36-3003, *Military Leave Program* (May 5, 2025) (DAFI 36-3003) at Table 4.2 Rule 2C. The undersigned counsel's medical provider has explained six weeks is the standard minimum time given, assuming no complications. The undersigned counsel is then entitled to twelve weeks of parental leave to learn how to care for her first child. *Id.* at ¶ 4.2.2.2.1.1. She is due to give birth on or about 25 October 2025, with an induction scheduled for 31 October 2025 if she does not give birth before then. An enlargement until 31 March 2026 would place AB Souza's Reply deadline a few weeks after the combined eighteen weeks of leave end on or about 6 March 2025.

This enlargement is necessary to allow AB Souza's counsel to file the Reply in his case since she will be unable to file anything with this Court after 31 October 2025, and the Government's Answer is now due after that, with no indication that the Government's Answer

will be filed sooner. There is no substitute for the briefing by appellate defense counsel on behalf of an individual appellant. *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998). The request to suspend the 30-day limitation and enlarge AB Souza's time to Reply until 31 March 2026 is not made out of an unwillingness to file a Reply, nor is it a deliberate tactical decision intended to create an appellate issue. *See United States v. Roach*, 66 M.J. 410, 418 (C.A.A.F. 2008). Rather, in light of the amended briefing schedule following the enlargement of time afforded to the Government, the proposed suspension and enlargement are meant to ensure (a) AB Souza receives the benefit of his counsel's advice and advocacy, (b) undersigned counsel medically recovers post-partum and takes authorized parental leave as a new mother, and (c) this Court has the information it needs to exercise appropriate oversight regarding the timely progress of this appeal consistent with both Article 66, UCMJ, 10 U.S.C. § 866, and Article 70, UCMJ, 10 U.S.C. § 870. *Roach*, 66 M.J. at 418. As such, suspending Rule 23.3(m)(3) and granting the requested enlargement until 31 March 2026 will allow the undersigned counsel to take her entitled leave without having to file additional motions while on leave and will, most importantly, protect AB Souza's right to competent and continuous appellate defense counsel.

AB Souza was advised of his right to a timely appeal. AB Souza has been consistently informed about the undersigned counsel's medical and upcoming leave status. He was informed of this Court's order granting an enlargement of time to the Government to file its Answer and was advised on how that affects his case. He specifically wishes that undersigned counsel continue representing him because she has already spent many hours reviewing his record of trial, conferring with him about his case, filing his brief, and considering what may need to be set out in a Reply to the Government's Answer. Not only was AB Souza advised of this request for a suspension of the rules and an enlargement of time, but he desires that it be filed so that

undersigned counsel can write and file the Reply in his case. AB Souza provided limited consent to disclose the confidential communications described above.

CONCLUSION

Rule 32 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals contemplates the requested flexibility to ensure parties are not unfairly prejudiced by rigid application of procedural timelines, particularly where AB Souza has acted diligently to move his case forward through the undersigned counsel and the requested relief is necessary to preserve his right to competent and continuous representation. Granting this motion is consistent with this Court's authority to ensure the fair administration of justice and to accommodate circumstances that would otherwise undermine a party's ability to fully and effectively participate in the appellate process.

WHEREFORE, AB Souza respectfully requests this Honorable Court grant this motion by (a) suspending the portion of Rule 23.3(m)(3) that caps enlargements at 30 calendar days, and (b) granting the requested enlargement to Reply to the Government's Answer until **31 March 2026**. Alternatively, if this Court denies AB Souza's Motion to Suspend Rule 23.3(m)(3), AB Souza respectfully requests this Honorable Court grant a 30-day enlargement of time for his Reply deadline, consistent with Rule 23.3(m)(3) for the same good cause shown above.

Respectfully submitted,


PAIGE F. MARKLEY DENTON, Capt, USAF
Appellate Defense Counsel


CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were electronically delivered to the Court and served on the Air Force Government Trial and Appellate Operations Division on 19 October 2025.

Respectfully submitted,

A solid black rectangular redaction box covering the signature of Paige F. Markley Denton.

PAIGE F. MARKLEY DENTON, Capt, USAF
Appellate Defense Counsel

A solid black rectangular redaction box covering the contact information of Paige F. Markley Denton.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	CONSENT TO
	)	APPELLANT’S MOTION TO
v.	)	SUSPEND RULE 23.3(m)(3) AND
	)	MOTION FOR ENLARGEMENT
Airman Basic (E-1)	)	OF TIME
TROY D. SOUZA	)	Before Panel No. 1
United States Air Force	)	No. ACM S32813
<i>Appellant.</i>	)	22 October 2025

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

The United States notes that Appellant’s motion improperly consolidates two motions: a motion to suspend the rules and a motion for enlargement of time. Rule 23.1(a). For efficiency, given the United States’ consent to both of Appellant’s motions, this Court should not reject the filing.

The United States does not oppose Appellant’s motion to suspend Rule 23.3(m)(3) pursuant to Rule 32 or his motion for enlargement of time until 31 March 2026 to file a reply brief. While the United States would prefer Appellant’s case to be fully reviewed by this Court sooner, under the unique and specific circumstances of this case, appellate defense counsel’s imminent childbirth and parental leave and Appellant’s desire for her continued representation are good cause for this Court to suspend Rule 23.3(m)(3) to allow Appellant’s reply brief to be filed on 31 March 2026. Essential to the United States’ non-opposition is the fact that 382 days will have elapsed since docketing at the expiration of the requested enlargement and so this Court will be able to issue an opinion within the 18-month Moreno timeline. Additionally, Appellant has been informed of and specifically agreed to the delay.

WHEREFORE, the United States does not oppose Appellant's motion to suspend Rule 23.3(m)(3) and motion for enlargement of time.

[REDACTED]

HEATHER R. BEZOLD, Capt, USAF
Appellate Government Counsel

[REDACTED]

[REDACTED]

MARY ELLEN PAYNE
Associate Chief

[REDACTED]

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 22 October 2025.

[REDACTED]

HEATHER R. BEZOLD, Capt, USAF
Appellate Government Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	
<i>Appellee,</i>	)	ANSWER TO ASSIGNMENT
	)	OF ERROR
v.)	
	)	Before Panel No. 1
Airman Basic (E-1))	
TROY D. SOUZA, USAF,	)	No. ACM S32813
<i>Appellant.</i>)	

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

ISSUE

**WHETHER APPELLANT’S PLEA TO ATTEMPTS ON
DIVERS OCCASIONS WAS PROVIDENT WHEN THE
APPELLANT ADMITTED TO ONLY ONE ATTEMPT.**

STATEMENT OF CASE

The United States generally accepts Appellant’s Statement of the Case.

STATEMENT OF FACTS

Pursuant to a plea agreement, Appellant pled guilty to, among other things, wrongfully attempting to possess Lysergic Acid Diethylamide (LSD) with the intent to distribute on divers occasions between on or about 1 February 2024 and 1 July 2024. (R. at 15.) Appellant also pled guilty to using and distributing LSD between on or about 1 February 2024 and on or about 21 May 2024. (Id.)

During his providency inquiry to the attempt specification, Appellant admitted that he tried to possess LSD two times. (R. at 30.) Appellant said that in late March 2024, while he was in his on-base dorm room, he went to a website and ordered 10 tabs of LSD. (R. at 31-32, 34.) Appellant admitted that he intended to distribute the LSD to two airmen who had given him

some money. (R. at 32-33.) The delivery address for the order was his dorm mailbox. (R. at 33.)

However, the package never arrived. Instead, Appellant would later find out that the packaged was intercepted by Homeland Security and Customs and Border Patrol and then transferred over the Air Force Office of Special Investigations (AFOSI). (R. at 35.)

The military judge then asked about the second instance Appellant attempted to possess LSD. Appellant said, “Well it was just like the first package, but I asked it to be reshipped because I never got the first package fully because that was the one that was intercepted and that’s when they reshipped it and when I went to go pick it up, I was taken by CID and OSI.” (R. at 36.)

When asked for further explanation, Appellant said that about a week or two after the first package did not arrive, Appellant went to the website where he ordered the LSD and clicked a link that took him to Discord. (R. at 37.) Appellant said, “that was how you contacted, I guess, the owner of the website, and if it ever got intercepted -- like you wouldn’t know it was going to get intercepted or anything, but if it was stayed in one location because it was coming from Canada that you would ask for it to be reshipped and they would do so.” (Id.) Appellant said he was “trying to get my purchase of the LSD that I first ordered.” (Id.)

Appellant stated that the company told him that they would resend the package. (R. at 38.) Appellant admitted that he intended to give the LSD in this second shipment to the two airmen who gave him money. (Id.)

The military judge then asked, “So when you’re placing the order, and then again, secondly, when you’re reaching out to the company to resend the package, do you admit that you specifically intended to commit the offense of wrongful possession of LSD with the intent to

distribute?” (R. at 38.) Appellant responded, “Yes.” Appellant then agreed with the military judge when asked, “Do you agree that your *acts* of placing the online order *and then* your act of reaching out to the company to resend the package that these acts were more than mere preparation.” (Id.) (emphasis added.)

When discussing the issue of preparation, Appellant and the military judge talked about Appellant receiving money from the other military members. They also had the following interaction:

MJ: So you went through the actual process of paying for the LSD, having it shipped to you?

Appellant: Yes, Your Honor.

MJ: And then secondly, contacting the company and going through the process of identifying that the package had been taken?

Appellant: Yes, Your Honor.

(R. at 39.)

Appellant also admitted that he took two separate overt acts toward the commission of possessing LSD with the intent to distribute, stating as follows:

Appellant: Your Honor, I received the money to purchase it. I purchased it online, got it delivered, and -- was trying to get delivered, and when it wasn't delivered, I contacted the company to have it redelivered, and then to distribute it.

MJ: And so do you believe and admit that those actions on those two different occasions constituted a substantial step in furtherance of the offense as I've defined that to you previously?

Appellant: Yes, Your Honor.

(R. at 40.)

ARGUMENT

THE MILITARY JUDGE DID NOT ABUSE HIS DISCRETION IN ACCEPTING APPELLANT'S GUILTY PLEA.

Standard of Review

A military judge's decision to accept a guilty plea is reviewed for an abuse of discretion. United States v. Inabinette, 66 M.J. 320, 322 (C.A.A.F. 2008). This Court explained that an abuse of discretion, in the guilty plea context, "occurs only when the decision of the military judge is arbitrary, clearly unreasonable, or clearly erroneous." United States v. McAfee, 64 M.J. 675, 678 (A.F. Ct. Crim. App. 2007). The abuse of discretion standard requires then a mere difference of opinion. United States v. Wicks, 73 M.J. 93, 98 (C.A.A.F. 2014). Recently, our superior Court has reiterated this deferential standard – "We 'giv[e] broad discretion to military judge's in accepting [guilty] pleas.'" United States v. Navarro-Aguirre, 2025 CAAF LEXIS 614, at *20 (C.A.A.F. 24 July 2025) (internal citations omitted).

"[W]hen a plea of guilty is attacked for the first time on appeal, the facts will be reviewed in the light most favorable to the government." United States v. Arnold, 40 M.J. 744, 745 (A.F.C.M.R. 1994). When a military judge decides there is a factual basis to accept a guilty plea an appellate court "will defer to [the military judge]'s discretionary decision so long as that decision was within a range of reasonable possible decisions." United States v. Holmes, 65 M.J. 684, 686 (N.M. Ct. Crim. App. 2007).

Law

An appellate court will set aside a decision to accept a guilty plea only where it finds a substantial basis in law or fact for questioning the plea. United States v. Shaw, 64 M.J. 460, 462 (C.A.A.F. 2007). The record must contain a sufficient factual basis to support a guilty plea.

United States v. Care, 18 C.M.A. 535, 40 C.M.R. 247 (C.M.A. 1969); Rule for Courts-Martial 910(e), Manual for Courts-Martial, United States (2012 ed.) (MCM).

The test for determining the providency of a guilty plea is whether there is a substantial conflict raised in the record between Appellant's plea of guilty and some inconsistent statement. United States v. James, 55 M.J. 297 (C.A.A.F. 2001); United States v. Shearer, 44 M.J. 330, 335 (C.A.A.F. 1996). Once a military judge has accepted a plea and entered findings, an appellate court will not disturb the findings and plea "unless it finds a substantial conflict between the plea and the accused's statements or other evidence of record." United States v. Peterson, 47 M.J. 231, 233 (C.A.A.F. 1997) (*citing* United States v. Garcia, 44 M.J. 497, 498 (C.A.A.F. 1996)).

When reviewing a providence inquiry, the Court does not end its analysis at the edge of the inquiry. It can look at the entire record to determine whether the dictates of Article 45, UCMJ, 10 U.S.C. § 845; Rule for Courts-Martial 910(e); and United States v. Care and its progeny have been met. United States v. Jordan, 57 M.J. 236, 238 (C.A.A.F. 2002) ("When this Court has addressed a bare bones providence inquiry, we have not ended our analysis at the edge of the providence inquiry but, rather, looked to the entire record to determine whether the dictates of Article 45, RCM 910, and Care and its progeny have been met.").

The military judge explained the elements of Article 80, UCMJ, with the underlying offense of possession of LSD with intent to distribute, are as follows:

1. That [Appellant] on divers occasions between on or about 1 February 2024 and on or about 1 July 2024, at or near San Antonio, Texas, did certain overt acts, that is wrongfully tried to possess an unknown quantity of Lysergic Acid Diethylamide, LSD, with the intent of distributing it;
2. That the acts were done with the specific intent to commit the offense of wrongful possession of LSD with the intent to distribute;

3. That the acts amounted to more than mere preparation, that is, they were a substantial step and a direct movement toward the commission of the intended offense, and;
4. That, such acts apparently tended to bring about the commission of the offense of wrongful possession of LSD with the intent to distribute, that is the acts apparently would have resulted in the actual commission of the offense of wrongful possession of LSD with the intent to distribute, except for an unexpected intervening circumstance which prevented completion of that offense.

(R. at 25-26.)

“To constitute an attempt there must be a specific intent to commit the offense accompanied by an overt act which directly tends to accomplish the unlawful purpose.” Manual for Courts-Martial (2019 ed.) (MCM), pt. IV, ¶ 4.c.(1). “The overt act must be more than mere preparation to commit the offense.” United States v. Byrd, 24 M.J. 286, 289 (C.M.A. 1987) (citation omitted). An accused must take a “substantial step” toward the commission of the crime. United States v. Jones, 37 M.J. 459, 461 (C.M.A. 1993) (*citing* Article 80, UCMJ; United States v. Schoof, 37 M.J. 96, 102 (C.M.A. 1993)). To constitute a substantial step, the overt act must “unequivocally demonstrat[e] that the crime will take place unless interrupted by independent circumstances.” United States v. Winckelmann, 70 M.J. 403, 407 (C.A.A.F. 2011) (alteration in original) (internal quotation marks and citation omitted). “[A] substantial step must be conduct strongly corroborative of the firmness of the defendant’s criminal intent.” Byrd, 24 M.J. at 290 (citations omitted).

Voluntary abandonment is an affirmative defense to a completed attempt offense. United States v. Schoof, 37 M.J. 96, 103 (C.M.A. 1993); Byrd, 24 M.J. at 290. “It is a defense to an attempt offense that the person voluntarily and completely abandoned the intended crime, solely because of the person’s own sense that it was wrong, prior to the completion of the crime.” MCM, pt. IV, ¶ 4.c.(4). The defense is raised when the accused abandons his effort to

commit a crime “under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.” Schoof, 37 M.J. at 104 (citation omitted). Voluntary abandonment does not exist “if the abandonment results, in whole or in part, from other reasons, for example, the person feared detection or apprehension, decided to await a better opportunity for success, was unable to complete the crime, or encountered unanticipated difficulties or unexpected resistance.” MCM, pt. IV, ¶ 4.c.(4).

Analysis

Just as he admitted to at trial, the evidence shows Appellant attempted to possess LSD with the intent to distribute on divers occasions. Here, Appellant has failed in his burden to establish that the military judge abused his discretion in accepting Appellant’s pleas. Indeed, the military judge’s providency inquiry with Appellant, as well as the entire record, contains a sufficient factual basis to support Appellant’s guilty plea. Further, Appellant has failed to show there is a substantial conflict raised between his plea and any other evidence of record because there is no conflict.

In his brief, Appellant concedes that his actions in late March 2024 constitute a valid attempt offense. (App. Br. at 6-8.) However, Appellant then argues that his later act of contacting the website, which occurred weeks later, was not a separate attempt but instead was part of the ongoing first attempt that began when he ordered the LSD from the website. Appellant requests that he be only convicted of a single attempt to possess LSD with the intent to distribute, not of “divers” attempts. (Id.)

Appellant is correct that his actions in late March 2024 constitute substantial steps sufficient to sustain his attempt conviction for that instance. Indeed, in late March 2024, Appellant, sitting in his on-base dorm room, went to a website, ordered 10 tabs of LSD, and

sought to have them delivered to his dorm mailbox. (R. at 31-34.) Appellant admitted to the military judge that he ordered these drugs with the specific intent to distribute them to other airmen. (R. at 32-33.) Those acts were not just “mere preparation,” but were instead “substantial steps” taken to obtain those LSD tabs.

Where Appellant is incorrect is in his assertion that his later acts, which occurred weeks later, were all part of this initial attempt. Instead, the facts, as admitted by Appellant and elicited by the military judge, show that Appellant’s actions weeks after this initial attempt show a separate and distinct attempt to possess LSD with the intent to distribute.

Appellant admitted that the first package of 10 LSD tabs never arrived. After waiting a week or two and realizing the drugs would not be delivered, Appellant then commenced on his second and separate attempt to obtain LSD. (R. at 36.) Appellant admitted to going *back* to the website, finding a link on the website to contact the drug-selling company, and clicking on that link. That link then took Appellant to a separate platform – Discord. (R. at 37.) Appellant explained this link and process was used to contact the company if a package was “intercepted” or it if “stayed in one location,” and “ask for it to be reshipped.” (Id.)

Once on Discord, Appellant then asked the company to resend the package – a request that resulted in 10 *additional* LSD tabs being shipped to Appellant. (R. at 38.) Appellant admitted that this was a separate act from his initial order on the website and was done only after he realized the first package was not going to be delivered. Furthermore, when Appellant contacted the company, the circumstances show that he *knew* that the initial shipment of LSD was never coming going to be delivered to him – thus, he knew he needed a new, separate shipment that contained 10 different LSD tablets.

Under these circumstances, Appellant's actions – separated by weeks – constitute two separate attempts to obtain LSD. As shown, once he realized the initial package was never going to be delivered to him, Appellant recognized his initial attempt to obtain those 10 tabs, for whatever reason, had been foiled. Though he may not have actually known the shipment had been intercepted, Appellant's responses to the military judge show the purpose of contacting the company for undelivered shipments involved the possibility that the shipment had been intercepted or was otherwise compromised.

In any case, when Appellant realized the package did not arrive and was either lost, intercepted, or otherwise compromised, that attempt was over – those first 10 tabs that he ordered were never going to come to him. So Appellant then embarked on a brand-new attempt to possess LSD by contacting the website company and requesting the company send a *new* and *separate* shipment of 10 more LSD tabs to him. Crucially, Appellant admitted at trial that these were separate acts and that this constituted a separate attempt from his initial March 2024 online order.

In his brief, Appellant contends that since he never made a second purchase or placed a new order, all of his actions amounted to just one large attempt because the underlying offense – distributing LSD to other airmen – was the same. Appellant's reasoning is flawed. Using his line of reasoning, Appellant seemingly believes that he could (1) attempt to rob a bank one week; (2) have that attempt be thwarted; (3) then attempt to rob the same bank a few weeks later; (4) but then only be charged with one large attempt because the underlying offense – the bank robbery – was the same.

However, the fact that the underlying offense is the same is of no consequence. Instead, the focus is on whether Appellant made two separate attempts to possess LSD with an intent to

distribute. The evidence, as well as Appellant's admissions clearly show he did by (1) placing the initial order; and (2) contacting the company to send a separate shipment.

Appellant next argues that while there were two packages in this case, "both packages were sent by the company to fulfill [a] single order." (App. Br. at 9.) Appellant again claims this shows only one attempt. But again, however, Appellant fails to recognize the separate and distinct acts Appellant took to have the company send that *second* package, as well as the fact that Appellant contacted the company to send this second package only after he realized the first package he ordered would never be delivered to him.

Appellant next declares that the "parties agreed that the 'certain overt act' for this attempt offense was purchasing LSD online." (App. Br. at 9, *referencing* the Stipulation of Fact, which states, in part, "on or about 1 February 2024 and on or about 1 July 2024, the accused did a certain overt act, that is: purchase an unknown quantity of Lysergic Acid Diethylamide (LSD) online.")

However, neither this Court nor the military judge are limited to facts contained within the Stipulation of Facts. To this point, Appellant states that a "military judge 'must elicit actual facts from an accused and not merely legal conclusions.'" (App. Br. at 10, *quoting* United States v. Price, 76 M.J. 136, 138 (C.A.A.F. 2017).) Here, the military judge did just that. As shown above, the military judge and Appellant discussed the specific overt acts (i.e., substantial steps) that differentiated Appellant's first attempt (the online order) with his second attempt (his contacting the company and requesting a second shipment).

Finally, Appellant discusses the issue of abandonment and says that since he never abandoned his first attempt to possess the LSD, he could not commit a second attempt offense.

Appellant essentially argues that he would have to completely abandon his first attempt to be able to start a new attempt.

Appellant is correct in that he did not abandon his first attempt to possess LSD. However, he is incorrect in his assertion that he had to have abandoned that attempt before commencing on a new, second attempt. Here, once Appellant realized that his first shipment was not going to be delivered –because it was lost, intercepted, or otherwise compromised – Appellant no longer had the ability to abandon this first attempt because voluntary abandonment does not exist if the abandonment results from an appellant “encounter[ing] unanticipated difficulties or unexpected resistance.” *See MCM*, pt. IV, ¶ 4.c.(4).

But that does not mean he could not start a brand-new attempt to possess LSD. As stated above, Appellant knew his first attempt was dead in the water. Though he might not have known why that first shipment had not being delivered to him, Appellant still knew that the first shipment was never being delivered. As the military judge instructed, an “unexpected intervening circumstance . . . prevented completion of that offense.” (*See R.* at 26.)

Thus, he knew he needed to start a new attempt if you ever wanted to possess LSD with the intent to distribute. And he did just that by commencing a new overt act to try and complete the offense – that act was contacting the company and requesting that the send him a separate, second shipment containing 10 different LSD tabs. And this new, second attempt was then thwarted by a second and separate “unexpected intervening circumstance” – namely the interception of the second package by authorities. In short, the fact that Appellant did not abandon his first attempt to obtain LSD did not invalidate or impact his ability to begin a new, second attempt to obtain LSD.

In sum, the military judge did not abuse his discretion in accepting Appellant’s plea. The military judge’s discussion with Appellant, specifically with regard to the distinct substantial steps undertaken by Appellant to perpetuate his two separate attempts, was neither arbitrary, clearly unreasonable, or clearly erroneous. *See McAfee*, 64 M.J. at 678. Here, the record contains a sufficient factual basis to support Appellant voluntary guilty plea and there are no substantial conflicts in the record between Appellant’s plea and any other evidence. Importantly, a difference of opinion as to how the military judge conduct the plea inquiry is not enough to overturn Appellant’s conviction. Instead, the abuse of discretion standard requires more – specifically, a substantial basis for questioning the plea. *See Wicks*, 73 M.J. at 98; *Inabinette*, 66 M.J. at 322. Here, when providing the military judge “broad discretion” in accepting Appellant’s guilty plea,¹ this Court should find the military judge did not abuse his discretion in accepting Appellant’s guilty plea and affirm Appellant’s conviction and sentence.

However, should this Court find the military judge did abuse his discretion, the Government agrees with Appellant that the proper remedy is to except the phrase “on divers occasions” from the Specification of Charge I and affirm Appellant’s conviction of a single attempt. (*See App. Br.* at 11-12; *see also United States v. English*, 79 M.J. 116, 122 n.5 (C.A.A.F. 2019) (Courts of Criminal Appeals (CCA) may affirm a conviction by exceptions and substitutions when it narrows the finding on appeal)).

Importantly, Appellant does not seek any change in his sentence. The Government also agrees that no change in Appellant’s sentence is appropriate in this case. Even if Appellant is convicted of just one attempt to possess LSD, Appellant’s sentencing landscape does not change. Pursuant to Appellant’s plea agreement, the military judge sentenced Appellant to 45 days for

¹ *See Navarro-Aguirre*, at *20.

the attempt specification, 45 days for the use specification, and 45 days for the distribution specification – all of which would run concurrently. Thus, not only can this Court be sure the military judge would have adjudged the same sentence had he found Appellant guilty of only one attempt (versus on divers occasions), but can also be confident that it would not have impacted Appellant’s overall confinement sentence. *See United States v. Winckelmann*, 73 M.J. 11, 15 (C.A.A.F. 2013).

CONCLUSION

WHEREFORE, this Court should deny affirm Appellant’s provident guilty plea and sentence.

[REDACTED]

G. MATT OSBORN, Colonel, USAF
Appellate Government Counsel

[REDACTED]

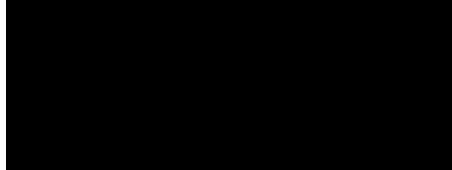
[REDACTED]

MARY ELLEN PAYNE
Associate Chief, Government Trial and Appellate
Operations Division

[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate counsel, and the Air Force Appellate Defense Division on 10 November 2025 via electronic filing.



G. MATT OSBORN, Colonel, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S OUT OF TIME
	)	CONSENT MOTION FOR AN
<i>Appellee</i>	)	ENLARGEMENT OF TIME TO FILE A
	)	REPLY BRIEF
v.)	
)	
	)	Before Panel 1
)	
Airman Basic (E-1)	)	No. ACM S32813
Troy D. SOUZA)	
United States Air Force)	
<i>Appellant</i>	)	11 November 2025

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

Pursuant to Rule 23.3(m) of this Honorable Court’s Rules of Practice and Procedure, Airman Basic (AB) Troy D. Souza (Appellant) hereby moves this Court to grant a twenty-five (25) day enlargement of time to submit the Reply to the Government’s Answer brief. The Government consents to this motion. Further requests for enlargements are anticipated.

This motion is submitted out of time because the counsel submitting this motion on behalf of Appellant’s counsel, Lieutenant Colonel Allen Abrams, failed to attach it to the e-mail submission on 10 November 2025, when it would have been timely. Having then logged off e-mail for the remainder of the command’s Family Day, Lieutenant Colonel Abrams learned of the error on 11 November 2025, and is now submitting the motion out of time.

The motion is out of time because, with the Government’s brief filed yesterday, 10 November 2025, AB Souza’s Reply brief is presently due on 17 November 2025. If this Court grants the requested enlargement, AB Souza’s Reply brief would be due on **12 December 2025**. This case was docketed with this Court on 14 March 2025. From the date of docketing to the present date, 242 days have elapsed. On the date requested, 273 days will have elapsed.

STATEMENT OF THE CASE

On 20 November 2024, a special court-martial composed of a military judge sitting alone at Joint Base San Antonio-Fort Sam Houston, Texas, convicted AB Souza, consistent with his pleas, of one specification of attempted wrongful possession of Lysergic Acid Diethylamide (LSD) with the intent to distribute on divers occasions, in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880, as well as one specification of wrongful use of LSD and one specification of wrongful distribution of LSD, both in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. R. at 88. The military judge sentenced AB Souza to a total of 90 days' confinement and a bad-conduct discharge. R. at 114. The convening authority took no action on the findings and the sentence. Convening Authority Decision on Action (Dec. 19, 2024).

The record of trial includes one volume, two prosecution exhibits, two defense exhibits, three appellate exhibits, and zero court exhibits. The transcript is 116 pages. The electronic record of trial is 361 pages. AB Souza is not confined.

Appellant's counsel, Captain (Capt) Paige Markley-Denton, completed review of the case and subsequently filed one Assignment of Error on 10 September 2025. The Government's Answer brief was originally due on 10 October 2025. Three days before the Government's brief was due, the Government moved out of time for a thirty-day extension, which this Court granted over AB Souza's opposition on 10 October 2025. The Government's Answer brief was submitted on 10 November 2025. Appellant requested an enlargement of time to file a Reply brief through 31 March 2025 or, in the alternative, a thirty-day enlargement of time. Although the Government agreed, this Court denied Appellant's request in full based on the written filings.

ARGUMENT

Good cause exists to grant the requested enlargement because of Appellant's relationship with his counsel and his counsel's leave following childbirth. Beginning on 23 October 2025, Capt Markley-Denton is on convalescent leave followed by parental leave after giving birth. That leave is expected to continue through early March 2025.

Capt Markley-Denton's workload is not the basis for this request. She is currently assigned only two cases: this case, and *United States v. Astacio-Burgess*, No. ACM S32827. Appellant's case has top priority, as *Astacio-Burgess* is pending a decision from this Court and has no further briefing presently required.

Rather, at the heart of Appellant's request is his attorney-client relationship, which is with only one attorney: Capt Markley-Denton. No other attorney has been detailed to represent Appellant. AB Souza has authorized a disclosure to this Court that he specifically wishes that Capt Markley-Denton continue to lead his defense on appeal because of her work so far as his sole counsel: expending many hours to review the record of trial, conferring with Appellant about his case, finalizing and filing the initial brief on his behalf, and considering what may warrant discussion in a Reply to the Government's Answer brief. There is no substitute for such briefing by appellate defense counsel on behalf of an individual appellant. *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998).

Now, because the Government's submission of its Answer brief fell, as projected in light of the granted extension, after Capt Markley-Denton gave birth, she is temporarily unavailable. Capt Markley-Denton requires at least six weeks of convalescent leave to physically recover from birth. *See* Department of the Air Force Instruction 36-3003, *Military Leave Program* (May 5, 2025) (DAFI 36-3003), Table 4.2, Rule 2C. Capt Markley-Denton's medical provider

explained prior to childbirth that six weeks is the standard minimum time given, assuming no complications. She is then entitled to twelve weeks of parental leave to learn how to care for her first child. *Id.* at ¶ 4.2.2. To enable Capt Markley-Denton to resume her duties as appellate defense counsel without further interruption, that parental leave is projected to be taken consecutively with her convalescent leave through on or about 6 March 2026. No duties are expected to be performed during Capt Markley-Denton’s leave.

As the Government appears to recognize with its consent to Appellant’s earlier motion seeking more time to file a Reply brief and to this one, the requested enlargement is not because of an unwillingness to file a Reply brief, nor is it a deliberate tactical decision intended to create an appellate issue.¹ *See United States v. Roach*, 66 M.J. 410, 418 (C.A.A.F. 2008). Rather, the requested enlargement is meant to ensure: (a) AB Souza receives the benefit of his only counsel’s advice and advocacy, (b) that counsel is able to medically recover from childbirth and take authorized parental leave as a new mother, and (c) this Court has the information it needs to exercise appropriate oversight regarding the timely progress of this appeal consistent with both Article 66, UCMJ, 10 U.S.C. § 866, and Article 70, UCMJ, 10 U.S.C. § 870. *Roach*, 66 M.J. at 418. Taken together, there is good cause to grant the requested enlargement—as well as further enlargements that may be submitted later to enable Capt Markley-Denton to return in March 2026 and resume assisting Appellant—and this Court should exercise its authority to grant the requested relief.

The propriety of doing so is only heightened because of the advice to Appellant and his stated preferences. AB Souza has been advised of his right to a timely appeal. AB Souza has

¹ While creation of an appellate issue is not Appellant’s purpose, this should not be construed as waiving any issue that may arise out of the Court’s disposition of this request or any other requests seeking an enlargement of time to file a Reply brief.

been consistently informed about Capt Markley-Denton's medical and leave status, to include in preparation for submission of this motion. Appellant was informed of this Court's order granting an enlargement of time to the Government to file its Answer brief, the denial of Appellant's earlier motion seeking more time to file a Reply brief, and how those rulings affect his case. He specifically wishes that Capt Markley-Denton continue representing him in writing and filing the Reply brief in his case. AB Souza provided limited consent to disclose the confidential communications described above.

Appellant requests the requested enlargement and anticipates requesting further enlargements needed through Capt Markley-Denton's return in March 2026. The Government previously agreed to an enlargement for a Reply brief through 31 March 2026 and now specifically consents to this motion seeking a twenty-five day enlargement. This Court should agree and grant the requested relief. Should the Court be disinclined to grant this motion in full, Appellant requests that this Court hold a status conference before ruling on the motion.

WHEREFORE, AB Souza respectfully requests this Honorable Court grant this motion by granting a twenty-five day enlargement of time to 12 December 2025.

Respectfully submitted,



1, USAF

For:

PAIGE F. MARKLEY DENTON, Capt, USAF
Appellate Defense Counsel



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were electronically delivered to the Court and served on the Air Force Government Trial and Appellate Operations Division on 11 November 2025

Respectfully submitted,



ALLEN S. ABRAMS, Lt Col, USAF

For:

PAIGE F. MARKLEY DENTON, Capt, USAF
Appellate Defense Counsel



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

UNITED STATES	)	No. ACM S32813
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Troy D. SOUZA)	
Airman Basic (E-1))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 20 November 2024, at Joint Base San Antonio-Fort Sam Houston, Texas, a special court-martial, consisting of a military judge, found Appellant guilty, in accordance with his pleas, of one specification of attempt to wrongfully possess, on divers occasions, Lysergic Acid Diethylamide (LSD), in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880; one specification of wrongful possession of LSD, and one specification of wrongful distribution of LSD, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a.¹ The military judge sentenced Appellant to confinement for 90 days and a bad-conduct discharge. Appellant’s case was docketed with this court on 14 March 2025.

After three requests for enlargements of time, which this court granted, on 31 July 2025, Appellant’s appellate defense counsel, Major (Maj) Megan Crouch, moved this court to withdraw as appellate defense counsel. Maj Crouch’s motion for withdrawal specifically stated that “in order to best allocate resources within the [Appellate Defense] Division and *support speedy appellate review for clients*, Maj Couch is no longer detailed under Article 70, [UCMJ], to represent Appellant.” (Emphasis added). She further stated, “Capt[ain (Capt)] Paige Markley Denton has been detailed substitute appellate military defense counsel in undersigned counsel’s stead and made her notice of appearance on 31 July 2025.”²

On 10 September 2025, Appellant submitted his brief before this court with one assignment of error: whether Appellant’s plea to attempts on divers occasions was provident when the Appellant admitted to only one attempt. In his

¹ References to the punitive articles are to the *Manual for Courts-Martial, United States* (2019 ed.).

² Capt Markley Denton made her appearance before this court by signing Appellant’s Motion for an Enlargement of Time (Third) in accordance with Rule 12(a) of the Joint Rules of Appellate Procedures for Courts of Criminal Appeals. JT. CT. CRIM. APP. R. 12(a).

brief, Appellant requests the court to affirm the finding for attempt to wrongfully possess LSD, excepting “on divers occasions.” Appellant raised no other issues.

On 7 October 2025, the Government moved this court, out of time, for an enlargement of time to complete its answer in response to Appellant’s assignment of error. The Government’s reason for this unanticipated request was because it was during the time of the then-existing lapse of appropriations throughout the Government which affected the ability of reserve appellate government counsel from performing their duties. Maj Abhishek Kambli, an individual mobilization augmentee and reserve appellate government counsel, was assigned to Appellant’s case. Because she had completed her review of the record, and the current workload of active-duty appellate government counsel “would prevent accomplishing the brief sooner,” the Government requested a 30-day enlargement of time.³

Appellant’s counsel opposed the Government’s motion for an enlargement of time out of time stating that granting the Government’s motion “will compound delays in this case due to undersigned counsel’s anticipated timeline for giving birth and taking convalescent leave and parental leave.”⁴ Appellant’s counsel avers that this case “is not complicated, does not have a long record of trial nor a long brief, and can be answered within the allotted time frame.” Further, Appellant’s counsel stated that “this case is only 116 pages long, the entire electronic record of trial, including exhibits and other documents, is only 361 pages long, and [Appellant]’s brief is thirteen pages long covering a single assignment of error on a specific issue.” The appellate defense counsel concludes by saying, “Granting the requested enlargement *will drag out a case for months that would otherwise be ripe for decision within the next nine days.*” (Emphasis added).

On 10 October 2025, the court granted the Government’s motion to file its answer to Appellant’s assignment of error. On 19 October 2025, Appellant’s counsel moved this court to suspend its Rule 23.3(m)(3), A.F. Ct. Crim. App. R. 23.3(m)(3), and grant an enlargement of time until 31 March 2026 to file its reply brief. The court denied the motion on 23 October 2025.

The Government timely answered Appellant’s assignment of error and emphasized that Appellant pleaded guilty to the Article 80, UCMJ, offense on divers occasions, and further that Appellant “failed in his burden to establish that the military judge abused his discretion in accepting Appellant’s pleas,” and

³ Capt Heather R. Bezold submitted the motion on behalf of Maj Kambli.

⁴ Capt Markley Denton was detailed to Appellant’s case in July 2025, and according to the motion, she was eight months pregnant at the time of filing Appellant’s opposition.

that “the military judge’s providency inquiry with Appellant, as well as the entire record, contains a sufficient factual basis to support Appellant’s guilty plea.”

Now, on 11 November 2025, Appellant, through Lieutenant Colonel Allen S. Abrams, Deputy Chief, Appellate Defense Division, on behalf of Capt Markley Denton, moves this court out of time, and unopposed, for an enlargement of time of 25 days; and further states that “enlargements may be submitted later to enable Capt Markley Denton to return in March 2026 and resume assisting Appellant.” Lt Col Abrams states that Appellant “specifically wishes” Capt Markley Denton continue to lead his defense on appeal. This is her only case pending any further filings before this court.⁵ The court interprets Appellant’s motion to mean that the Appellate Defense Division will continue to request incremental enlargements of time on Appellant’s behalf until Capt Markley Denton returns in March 2026.

The United States Court of Appeals for the Armed Forces (CAAF) has recognized “the Courts of Criminal Appeals have broad powers to issue orders to counsel to ensure the timely progress of cases reviewed under Article 66.” *United States v. Roach*, 66 M.J. 410, 418 (C.A.A.F. 2008) (citations omitted). In *Roach*, the CAAF outlined several actions this court could take to ensure timely appellate review including, but not limited to, “asking the Judge Advocate General to direct the assignment of additional or substitute counsel.” *Id.* Further, this court in *United States v. Wilson*, asserted its broad powers to ensure timely progress of a case reviewed under Article 66, UCMJ, when appellant’s detailed military civilian counsel was deployed in his reserve capacity and therefore unavailable. No. ACM 39387, 2021 CCA LEXIS 284, at *158–59 (A.F. Ct. Crim. App. 10 Jun. 2021) (unpub. op.). In that case, The Judge Advocate General detailed an additional appellate defense counsel, allowing appellant a total of three appellate military defense counsel to represent him.

While the court has no intention of seeking to sever the attorney-client relationship between Appellant and Capt Markley Denton, Appellant has no representation at this time as Lt Col Abrams specifically states that “[n]o duties are expected to be performed during Capt Markley Denton’s leave.” The Appellant’s assignment of error brief and the Government’s answer have now been filed with this court, and while an Appellant *may* file a reply brief, it is this court’s responsibility to ensure the timely progress of cases. Therefore, without another counsel assigned to Appellant’s case, he has no representation until Capt Markley Denton’s return in March 2026. We find enlarging an authorized

⁵ Per Joint Rule 18(d)(1), “[a] reply brief *may be filed* by the appellant no later than 7 days after the filing of the United States’ answer.” JT. CT. CRIM. APP. R. 18(d)(1) (emphasis added).

seven-day period to nearly six months runs counter to Appellant's expectation for speedy appellate review. There is no indication Appellate Defense Division will detail another counsel during this leave period. The court therefore requests The Judge Advocate General detail an additional counsel to Appellant's case.

Accordingly, it is by the court on this 17th day of November, 2025,

ORDERED:

This court hereby requests that The Judge Advocate General appoint additional counsel to represent Appellant in the above-styled case. Not later than **2 December 2025**, counsel for the Government shall notify the court of the status of this court's request.

It is further ordered:

Appellant's Out of Time Consent Motion for an Enlargement of Time to File A Reply Brief is **GRANTED IN PART**. Counsel for Appellant shall file a reply brief **not later than 16 December 2025**.

FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)
<i>Appellee</i>	) UNITED STATES' NOTICE
	) OF STATUS OF COMPLIANCE
v.)
	) Before Panel No. 1
Airman Basic (E-1))
TROY D. SOUZA, USAF,	) No. ACM S32813
<i>Appellant.</i>)

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

Pursuant to this Court's 17 November 2025 order, the United States hereby provides notice of its status of compliance.

On 17 November 2025, this Court requested that The Judge Advocate General appoint additional counsel to represent Appellant in the above-styled case. This Court further ordered a status update by 2 December 2025.

On 24 November 2025, Maj Gen Mitchel Neurock, performing the duties of The Judge Advocate General, appointed an additional appellate defense counsel, Captain Olga Stanford. The appointment memorandum also highlighted this Court's Order that any reply brief would be due to this Court no later than 16 December 2025.

WHEREFORE, the United States requests this Honorable Court accept this filing as confirmation of the government's compliance with its 17 November 2025 order.

[Redacted signature block]

G. MATT OSBORN, Colonel, USAF
Appellate Government Counsel

[Redacted address block]

[REDACTED]

MARY ELLEN PAYNE
Associate Chief, Government Trial and Appellate
Operations Division

[REDACTED]
[REDACTED]
[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate counsel, and the Air Force Appellate Defense Division on 2 December 2025 via electronic filing.

[REDACTED]

G. MATT OSBORN, Colonel, USAF
Appellate Government Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S MOTION FOR AN
	)	ENLARGEMENT OF TIME (SECOND)
	)	TO FILE A REPLY BRIEF
v.)	
)	
	)	Before Panel 1
)	
Airman Basic (E-1)	)	No. ACM S32813
Troy D. SOUZA)	
United States Air Force)	
<i>Appellant</i>	)	9 December 2025

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

Pursuant to Rules 12 and 13 of this Honorable Court’s Rules of Practice and Procedure, the undersigned, an attorney admitted to practice before this Court, hereby enters her appearance as an appellate counsel for the appellant in the above-captioned case for the limited purpose of attempting to vindicate Airman Basic (AB) Troy D. Souza (Appellant)’s desire to be represented by Captain (Capt) Page F. Markley-Denton.

Pursuant to Rule 23.3(m) of this Honorable Court’s Rules of Practice and Procedure, Airman Basic (AB) Troy D. Souza (Appellant) hereby moves this Court to grant a thirty (30) day enlargement of time to submit the Reply to the Government’s Answer brief. If this Court grants the requested enlargement, AB Souza’s Reply brief would be due on **15 January 2026**. This case was docketed with this Court on 14 March 2025. From the date of docketing to the present date, 269 days have elapsed. On the date requested, 307 days will have elapsed.

STATEMENT OF THE CASE

On 20 November 2024, a special court-martial composed of a military judge sitting alone at Joint Base San Antonio-Fort Sam Houston, Texas, convicted AB Souza, consistent with his pleas, of one specification of attempted wrongful possession of Lysergic Acid Diethylamide

(LSD) with the intent to distribute on divers occasions, in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880, as well as one specification of wrongful use of LSD and one specification of wrongful distribution of LSD, both in violation of Article 112a, UCMJ, 10 U.S.C. § 912a.¹ R. at 88. The military judge sentenced AB Souza to a total of 90 days' confinement and a bad-conduct discharge. R. at 114. The convening authority took no action on the findings and the sentence. Convening Authority Decision on Action (Dec. 19, 2024).

The record of trial includes one volume, two prosecution exhibits, two defense exhibits, three appellate exhibits, and zero court exhibits. The transcript is 116 pages. The electronic record of trial is 361 pages. AB Souza is not confined.

Appellant's counsel, Capt Markley-Denton, completed review of the case and subsequently filed one Assignment of Error on 10 September 2025. The Government's Answer brief was originally due on 10 October 2025. Three days before the Government's brief was due, the Government moved out of time for a thirty-day extension, which this Court granted on 10 October 2025 over AB Souza's opposition. The Government's Answer brief was submitted on 10 November 2025. Appellant requested an enlargement of time to file a Reply brief through 31 March 2025 or, in the alternative, a thirty-day enlargement of time. The stated reason for the request was Capt Markley-Denton's "upcoming childbirth and related eighteen weeks of convalescent and parental leave[, which] constitute[ed] significant, unavoidable circumstances that directly impact[ed] counsel's ability to meet the . . . Reply deadline." Although the Government agreed, this Court denied Appellant's request in full based on the written filings.

¹ Unless otherwise indicated, all references to the UCMJ are to the *Manual for Courts-Martial, United States* (2024 ed.).

On 23 October 2025, Capt Markley-Denton began her convalescent leave. On 10 November 2025, the Government filed its Answer to Appellant’s brief. That same day, Appellant filed a consent motion for enlargement of time out of time, requesting a delay until 12 December 2025.²

On 17 November, this Court issued an order requesting the Judge Advocate General to detail an additional counsel to Appellant’s case. The Court’s order also granted, in part, Appellant’s request for enlargement of time until 16 December 2025. On 24 November 2025, Major General Mitchel Neurock, Performing the Duties of the Judge Advocate General, appointed the undersigned counsel as additional appellate defense counsel for Appellant. Appellant authorizes a disclosure to this Court that he and the undersigned counsel formed an attorney-client relationship on 5 December 2025.

ARGUMENT

Good cause exists to grant the requested enlargement because of Appellant’s stated desire to exercise his choice to file a reply and to be represented by his counsel of choice—Captain Markley-Denton. AB Souza has authorized a disclosure to this Court that he remains steadfast in his wishes that Capt Markley-Denton continue to lead his defense on appeal because of her work so far as his sole counsel—expending many hours to review the record of trial, conferring with Appellant about his case, finalizing and filing the initial brief on his behalf, and considering what may warrant discussion in a Reply to the Government’s Answer brief. There is no substitute for such briefing by appellate defense counsel on behalf of an individual appellant. *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998); *see also United States v. Gonzalez-Lopez*, 548 U.S. 140

² Lt Col Allen S. Abrams, Deputy Chief, Appellate Defense Division, submitted the motion on behalf of Capt Markley-Denton.

(2006) (holding that a violation of the right to counsel of choice is structural error). The undersigned counsel needs time to research the available legal options, to advise Appellant, and to draft appropriate filings.

WHEREFORE, AB Souza respectfully requests this Honorable Court grant this motion by granting a thirty-day enlargement of time to 15 January 2026. Should the Court be disinclined to grant this motion in full, Appellant requests that this Court hold a status conference before ruling on the motion.

Respectfully submitted,



OLGA STANFORD, *OL* Capt, USAF
Appellate Defense Counsel



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were electronically delivered to the Court and served on the Air Force Government Trial and Appellate Operations Division on 9 December 2025

Respectfully submitted,

A large black rectangular redaction box covering the signature of Olga Stanford.

OLGA STANFORD, Capt, USAF
Appellate Defense Counsel

Four horizontal black rectangular redaction boxes covering contact information, likely a phone number and email address.

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

UNITED STATES	)	No. ACM S32813
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF PANEL
Troy D. SOUZA	)	CHANGE
Airman Basic (E-1))	
U.S. Air Force)	
<i>Appellant</i>)	

It is by the court on this 15th day of December, 2025,

ORDERED:

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

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

GRUEN, PATRICIA A., Colonel, Senior Appellate Military Judge
PERCLE, DAYLE P., Lieutenant Colonel, Appellate Military Judge
MORGAN, CHRISTOPHER S., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.



FOR THE COURT



JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	REPLY TO APPELLEE’S
<i>Appellee</i>	)	ANSWER TO
	)	ASSIGNMENTS OF ERROR
)	
v.	)	Before Special Panel
)	
Airman Basic (E-1)	)	No. ACM S32813
Troy D. SOUZA)	
United States Air Force)	
<i>Appellant</i>	)	16 December 2025

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

INVOCATION OF RIGHT TO COUNSEL OF CHOICE

Pursuant to Rule 18(d)(2) of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals, Appellant, Airman Basic (AB) Troy D. Souza, replies to the United States’ answer filed on 10 November 2025 (Gov. Ans.).

This pleading is submitted solely to comply with this Court’s order, dated 17 November 2025, that AB Souza “shall file a reply brief” by 16 December 2025. Appellant prioritizes representation through his counsel of choice over expedient submission of this Reply brief and explicitly preserves the right to seek all available avenues for relief. Should this Court sua sponte reconsider its earlier denials of AB Souza’s motions for an enlargement of time, the undersigned replacement counsel will seek to withdraw this filing to allow AB Souza’s counsel of choice to file a Reply brief on Appellant’s behalf. This pleading is filed under AB Souza’s protest, as he asserts structural error because of this Court’s interference with—and de facto severance of—his attorney-client relationship with his assigned counsel and counsel of choice, Captain Paige Markley Denton. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150 (2006).

ARGUMENT

AB Souza made a single attempt to possess Lysergic Acid Diethylamide (LSD), and the Government’s argument to the contrary ignores the plain language of the law it cites.

AB Souza’s actions to obtain a second package amounted to only a single attempt to possess LSD. The Government tries to characterize AB Souza’s conduct as two separate attempts by arguing that he took two “separate and distinct acts . . . to have the company send him that *second* package” Gov. Ans. at 10. However, without more, the Government’s argument does not hold water because *all* attempts—legal or otherwise—are comprised of separate and distinct acts. The overall number of separate and distinct acts cannot be what determines the number of times someone attempted to commit a crime. For criminal liability to attach, “[t]he overt act required goes beyond preparatory steps and is a direct movement toward the commission of the offense.” *Manual for Courts-Martial, United States* (2024 ed.) (*MCM*), pt. IV, ¶ 4.c.(2). In AB Souza’s case, that act—that direct movement toward the commission of the offense—was the act of ordering LSD from sunsetcity.ca,¹ a Canadian company’s website. If he had not placed that order, AB Souza would have never been able to simply email the store owners and secure a shipment of LSD free of charge. The “separate and distinct act[]” that the Government claims is a separate offense is, to the contrary, an act that is inextricably tied to the single act of purchase—a mere follow up encompassed in the initial attempt.

The Government’s reliance on the alleged unavailability of the voluntary abandonment defense is similarly misplaced and shifts the discussion away from the core issue that

¹ Sometime after AB Souza placed his order, sunsetcity.ca migrated to sunsetcity.co. *Sunset City Mushrooms Migrates to SunsetCity.co—New Website for Mushroom Dispensary*, THE FARMERS ELEVATOR, <https://www.thefarmerselevator.com/markets/stocks.php?article=accwirecq-2025-6-24-sunset-city-mushrooms-migrates-to-sunsetcityco-new-website-for-mushroom-dispensary> (Jun. 24, 2025, 1:55 PM).

AB Souza’s actions constitute one continuous attempt. *See* Gov. Ans. at 11; *MCM*, pt. IV, ¶ 4.c.(2). As the Government correctly notes, “Voluntary abandonment does not exist ‘if the abandonment results from an appellant ‘encounter[ing] unanticipated difficulties or unexpected resistance.’” *See* Gov. Ans. At 11 (quoting *MCM* (2019 ed.), pt. IV, ¶ 4.c.(4)). However, contrary to what the Government argues, an “unexpected intervening circumstance . . . [did not] prevent[] completion of that offense.” *Id.* (quoting *R.* at 26). AB Souza had the opportunity to abandon his chosen course by giving up his right to enforce the purchase agreement. He could have simply chosen to view the waylaid package as an economic loss and leave it at that. Instead, he chose to let the vendor know that they failed to deliver his purchase. *R.* at 36–37.

“Although Manual explanations of codal offenses are not binding on this Court, they are persuasive indications of how the President, as head of the Executive Branch of Government, perceives an offense, including limitations on the Executive power that are not required by the Code or other applicable law.” *United States v. Miller*, 47 M.J. 352, 356 (C.A.A.F. 1997) (internal quotation marks omitted) (citation omitted). The adjectives “unanticipated” and “unexpected” are not mere surplusage—they clearly and unambiguously indicate that the defense of voluntary abandonment is *only* unavailable when the actor experiences difficulties that were neither expected nor predicted.^{2,3} Human experience tells us that there is always a chance that a package sent through the mail may never reach its destination. There is nothing unanticipated or extraordinary about a lost package. In fact, *sunsetcity.ca* expressly advises its customers on its policy regarding lost packages:

² MERRIAM-WEBSTER, Unanticipated, <https://www.merriam-webster.com/dictionary/unanticipated> (last visited Dec. 7, 2025).

³ MERRIAM-WEBSTER, Unexpected, <https://www.merriam-webster.com/dictionary/unexpected> (last visited Dec. 7, 2025).

CANADA POST SHIPPING
When shipping via Canada Post Expedited Parcel.
Delivery times are:

■ 6-10 Bus. Days
■ 5-10 Bus. Days
■ 1-6 Bus. Days

For faster delivery, Xpress Post and Priority Courier can be used. Additional charges for these services apply.

GVRD (Vancouver , Burnaby, North/ West Van, Coquitlam, Richmond, Surrey, Langely, Maple Ridge, Delta, New Westminster) 1-2 Bus. Days

Based on July / Aug 2022 Order Delivery times

As of Feb 22 2023, ALL orders are going through. We routinely switch shipping systems / packaging to ensure your order arrives safely to your shipping address. However, on the slim chance that your order is lost, we offer a free full replacement, no questions asked.

SUNSET CITY, <https://sunsetcity.co/shipping/>, (last visited Dec. 7, 2025). AB Souza did not place a second order on sunsetcity.ca, nor did he attempt to buy LSD from another vendor. AB Souza made one transaction with a Canada-based merchant and subsequently asked this merchant to abide by its clearly advertised policy for lost packages.

The military judge abused his discretion when he found that AB Souza committed two attempts to possess LSD based on a single transaction because his finding was contrary to the facts of this case and to the plain language of Article 80, Uniform Code of Military Justice, 10 U.S.C. § 880. *See United States v. Riley*, 72 M.J. 115, 119 (C.A.A.F. 2013). AB Souza’s plea is therefore improvident as to the language “on divers occasions,” and this Court should correct the error.

Appellant asks this Court to affirm the finding of Guilty as to the Specification of Charge

I, excepting the phrase “on divers occasions.”

Respectfully submitted,

[REDACTED]

OLGA STANFORD, Capt, USAF
Appellate Defense Counsel

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were delivered by e-mail to the Court and served on the Government Trial and Appellate Operations Division on 16 December 2025.

Respectfully submitted,



OLGA STANFORD, Capt, USAF
Appellate Defense Counsel









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

UNITED STATES	)	No. ACM S32813
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Troy D. SOUZA JR.)	
Airman Basic (E-1))	
U.S. Air Force)	
<i>Appellant</i>	)	Special Panel

On 20 November 2024, consistent with his pleas, Appellant was convicted at a special court-martial of one specification of attempted possession of Lysergic Acid Diethylamide (LSD) with the intent to distribute on divers occasions, in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880; and one specification of wrongful use of LSD and one specification of wrongful distribution of LSD, both in violation of Article 112a, UCMJ, 10 U.S.C. § 912a.¹ On 27 December 2024, a military judge entered a sentence consisting of 90 days' confinement and a bad conduct discharge. Appellant's case was docketed with this court on 14 March 2025.

Already, this case has a lengthy procedural history, which we briefly summarize. After three requests for enlargements of time, which this court granted, Appellant's original appellate defense counsel, Major (Maj) MC, on 31 July 2025, moved this court to withdraw as appellate defense counsel, which this court granted. Appellant was then represented by a second appellate defense counsel, Captain (Capt) PMD.²

On 10 September 2025, Appellant, through Capt PMD, submitted his brief before this court with one assignment of error. On 19 October 2025, pending the filing of the Government's answer brief, Capt PMD moved this court to suspend its rule of 30-day enlargements of time, A.F. CT. CRIM. APP. R. 23.3(m)(3), and grant an enlargement of time until 31 March 2026 to file its reply brief after Capt PMD returns from parental leave. We denied this motion.

¹ References to the punitive articles are to the *Manual for Courts-Martial, United States* (2019 ed.).

² This court notes that Capt PMD still represents Appellant, although Capt PMD is currently unavailable until March 2026.

After an enlargement of time over defense objection, the Government filed its answer to Appellant's assignment of error on 10 November 2025.

On 11 November 2025, with the Government's concurrence, Lt Col AA, Deputy Chief, Appellate Defense Division, on behalf of Capt PMD, filed a consent motion for an enlargement of time out of time to file the reply brief. On 17 November 2025, this court denied the motion and requested The Judge Advocate General appoint additional counsel to represent Appellant in the above-styled case. In this same order, the court ordered the reply brief be filed not later than 16 December 2025.

On 24 November 2025, the officer performing the duties of The Judge Advocate General appointed a third appellate defense counsel, Capt OS, to Appellant's case. On 9 December 2025, Appellant, through Capt OS, filed a motion for an enlargement of time (second) to file the reply brief, to be due on 15 January 2026, which this court denied.

On 12 December 2025, Capt OS filed two petitions for extraordinary relief – one in the nature of a writ of prohibition and mandamus, and the other in the nature of an emergency stay of proceedings – before our superior court, the United States Court of Appeals for the Armed Forces (CAAF). On 16 December 2025, Capt OS filed Appellant's reply brief. On 17 December 2025, the CAAF denied both petitions without prejudice.

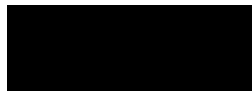
Upon our initial review of Appellant's record of trial, we note that Capt OS was previously a commissioner with this court, and signed, on behalf of this court, this court's order related to Appellant's motion for his first enlargement of time, dated 7 May 2025.

Accordingly, it is by the court on this 13th day of January, 2026,

ORDERED:

Not later than **26 January 2026**, counsel for the Appellant shall **SHOW GOOD CAUSE** as to why this court should consider any matter submitted by Capt OS after participating in Appellant's case as a commissioner of this court.

FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S RESPONSE TO
<i>Appellee,</i>	)	SHOW CAUSE ORDER
)	
v.)	
)	
	)	Before Special Panel
)	
Airman Basic (E-1)	)	No. ACM S32813
Troy D. SOUZA,)	
United States Air Force,)	
<i>Appellant.</i>	)	26 January 2026

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

As demonstrated herein, there is good cause for this Court to consider matters submitted by the undersigned counsel. The undersigned counsel’s performance of a routine administrative task in Airman Basic (AB) Troy D. Souza’s case during her time as the Chief Commissioner for the Court does not meet the criteria for a conflict of interest pursuant to the Department of the Air Force Rules of Professional Conduct.

STATEMENT OF FACTS

AB Souza’s case was docketed with this Court on 14 March 2025. On 2 May 2025, AB Souza’s appellate defense counsel filed a request for enlargement of time. Appellant’s Motion for Enlargement of Time (EOT) (First), May 2, 2025. The request consisted of two paragraphs and did not address any matter contained within AB Souza’s record of trial:

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error. Appellant requests an enlargement for a period of 60 days, which will end on 12 July 2025. The record of trial was docketed with this Court on 14 March 2025. From the date of docketing to the present date, 49 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.

Id. The Government generally opposed the request. United States' General Opposition to Appellant's Motion for EOT, May 5, 2025. The Government's opposition consisted of two sentences and was not based on any substantive matter within AB Souza's record of trial:

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.

Id. On 7 May 2025, this Court issued an order granting the requested enlargement of time. Order, May 7, 2025. The undersigned counsel served as the Chief Commissioner at the Court and signed the order on behalf of the Court. *Id.* The 7 May 2025 order is an administrative order issued in most cases pending before this Court as automatic appeals (Article 66(b)(3), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(b)(3)^{*}) or as direct appeals (Article 66(b)(1)(A), UCMJ, 10 U.S.C. § 866(b)(1)(A)). These orders address the requested enlargement of time and serve to inform the counsel about the Court's expectations for subsequent requests for enlargement of time, but do not address any substantive or case-dispositive issues raised by the record.

The undersigned counsel did not review AB Souza's record of trial during her time with the Court, was not present when AB Souza's case was discussed, and did not advise any judge regarding any matter within the record. The undersigned counsel provided no input on how the Court should adjudicate administrative requests by the parties such as requests for enlargement of time. Pursuant to Rule 1.3 of this Court's Rules of Practice and Procedure the undersigned counsel had no authority to adjudicate AB Souza's 2 May 2025 request for enlargement of time. A.F. CT. CRIM. APP. R. 1.3(a) (authorizing the Clerk or designee to act on certain motions, including

^{*} Unless otherwise indicated, all references to the UCMJ are to the *Manual for Courts-Martial, United States* (2024 ed.).

motions for enlargement of time only if “such motion is not opposed and such action does not substantially affect the rights of the parties or the ultimate decision of the case”). The undersigned counsel was reassigned to Appellate Defense Division beginning 30 July 2025.

After granting the first enlargement of time, this Court approved two more enlargements of time and subsequently approved the withdrawal of AB Souza’s first detailed appellate defense counsel. Appellant’s Motion for EOT (Second) – Granted, Jul. 1, 2025; Appellant’s Motion for EOT (Third) with Opposition (wOpp) – Granted, Jul. 31, 2025; Motion for Withdrawal of Appellate Defense Counsel wOpp – Granted, Aug. 8, 2025. Like the first request for enlargement of time, these filings did not address any substantive issues in AB Souza’s case and made no references to any files contained within his record of trial. *Id.* On 31 July 2025, Captain (Capt) Paige Markley Denton entered her appearance as the sole appellate defense counsel representing AB Souza. Withdrawal of Appellate Defense Counsel – Granted, Aug. 8, 2025.

On 10 September 2025, Capt Markley Denton filed an assignments of error brief on behalf of AB Souza, raising one assignment of error. Brief on Behalf of Appellant, Sep. 10, 2025. The Government’s Answer brief was due on 10 October 2025. Three days before the due date, the Government filed an out-of-time request for a thirty-day extension, which this Court granted on 10 October 2025, over AB Souza’s opposition. United States’ Motion for EOT Out of Time wOpp – Granted, Oct. 10, 2025. After this Court granted the Government’s requested enlargement, AB Souza requested an enlargement of time on 19 October 2025 to file a reply brief through 31 March 2026, or, in the alternative, a thirty-day enlargement of time. Appellant’s Motion to Suspend Rule 23.3(m)(3) and Motion for EOT, Oct. 19, 2025. The stated reason for the request was Capt Markley Denton’s “upcoming childbirth and related eighteen weeks of convalescent and parental leave[, which] constitute[ed] significant, unavoidable circumstances that directly

impact[ed] counsel’s ability to meet the . . . Reply deadline.” *Id.* at 2. Although the Government consented to the enlargement of time, this Court denied AB Souza’s request in full. Motion to Suspend Rule 23.3(m)(3) and Motion for EOT – Denied, Oct 23, 2025.

On 23 October 2025, Capt Markley Denton began her convalescent leave. On 10 November 2025, the Government filed its Answer brief. Answer to Assignment of Error, Nov. 10, 2025. The next day, AB Souza filed a consent motion for enlargement of time out of time, requesting a delay until 12 December 2025. Appellant’s Out of Time Consent Motion for EOT to File a Reply. Nov. 11, 2025. The language of the motion suggested that further requests were forthcoming through Capt Markley Denton’s return. *Id.* at 4–5.

On 17 November 2025, this Court issued an order requesting that the Judge Advocate General detail “additional counsel” to AB Souza’s case. Order, Nov. 17, 2025. The order also granted, in part, AB Souza’s request for enlargement of time: “Counsel for Appellant shall file a reply brief not later than 16 December 2025.” *Id.* at 4. On 24 November 2025, the officer performing the duties of the Judge Advocate General (PDOTJAG) appointed the undersigned counsel as “additional appellate defense counsel” for AB Souza. Appointment of Additional Appellate Counsel, Nov. 24, 2025.

On 9 December 2025, the undersigned counsel entered her notice of appearance. Notice of Appearance and Appellant’s Motion for EOT (Second) to File Reply Brief, Dec. 8, 2025. On 16 December 2025, the undersigned counsel filed AB Souza’s reply brief. Reply to Appellee’s Answer to Assignments of Error, Dec. 16, 2025.

AB Souza is aware of the extent of the undersigned counsel’s involvement in his case during her time as the Chief Commissioner for the Court. Appendix. Throughout this process, AB Souza continued to maintain his specific wish that Capt Markley Denton continue representing

him in writing and filing the reply brief in his case. *Id.* His concern with the undersigned counsel is specific to the way her assignment to his case came about and the resulting denial of his right to be represented by his counsel of choice—Capt Markley Denton. *Id.* While AB Souza does not believe that the undersigned counsel has any conflict of interest in his case, he continues to maintain that the counsel best positioned to represent him is Capt Markley Denton. *Id.*

ARGUMENT

The only issue with AB Souza’s representation in this case remains this Court’s effective denial of his right to be represented by his counsel of choice. However, so long as AB Souza is required to continue his appeal with a PDOTJAG-appointed counsel, there are no other legal or ethical issues with the undersigned counsel’s continued representation of his interests. The undersigned counsel’s performance of a routine administrative task in AB Souza’s case during her time as the Chief Commissioner for the Court does not meet the criteria for a conflict of interest pursuant to the Department of the Air Force Rules of Professional Conduct.

In relevant part, Rule 1.12 states that “a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and *substantially* as a judge or other adjudicative officer or law clerk to such a person, or as an arbitrator, mediator or other third party neutral unless all parties to the proceeding give informed consent, confirmed in writing.” Department of the Air Force Instruction 51-110, *Professional Responsibility Program*, Attachment 2, Rule 1.12., Former Judge, Arbitrator, Mediator, or Other Third-Party Neutral (Jan. 12, 2026) (emphasis added). Undersigned counsel is licensed in the State of New Mexico, which adopted an identical rule. *See* Rule 16-112, New Mexico Rules Annotated.

Without more, performing a routine administrative task by signing a template order on behalf of the Court is not “substantial” participation in a matter. *See, e.g., Am. Tax Funding, LLC*






v. City of Schenectady, No. 1:12-CV-1026 (MAD/RFT), 2014 U.S. Dist. LEXIS 167464, at *10–11 (N.D.N.Y. Dec. 2, 2014) (finding no substantial participation in a matter by a former law clerk in part because the court never “conferred with [him] about anything related to [the] litigation nor had any reason to do so,” and the clerk “did not acquire any confidences that would jeopardize either party’s position in this case nor taint a jury trial”). In a recent and factually-analogous case, the United States District Court for the Middle District of Florida found that the former clerk “did not substantially participate in this litigation during her tenure” because the orders she entered on the court’s behalf did not have “‘clear and weighty importance’ to the litigation.” *Sos v. State Farm Mut. Auto. Ins. Co.*, No. 6:17-cv-890-PGB-LRH, 2021 U.S. Dist. LEXIS 52893, at *6 (M.D. Fla. Mar. 16, 2021). The Court reasoned that without more, docketing “five procedural orders, none of which came close to implicating the merits of the case” is not personal and substantial participation. *Id.* at *7. “Conduct rising to the level of ‘personal and substantial’ participation would involve a substantive role, such as the law clerk recommending a disposition to the judge or otherwise contributing directly to the judge’s analysis of the issues before the court.” *Id.* at 6–7 (quoting *Comparato v. Schait*, 180 N.J. 90, 99, 848 A.2d 770 (N.J. 2004) (applying New Jersey’s similarly worded Rules of Professional Conduct)). During her time with this Court, the undersigned counsel was not familiar with any facts contained within AB Souza’s record, made no recommendation to this Court regarding this case, made no contribution to any judge’s analysis of the substantive issues raised in filings, and was not present for any discussion pertaining to this case. Because the 7 May 2025 Order dealt with a request for enlargement of time which the Government opposed, the undersigned counsel was not authorized to independently act on this filing. *See* A.F. CT. CRIM. APP. R. 1.3(a). All substantive filings in this case were made over a month after the undersigned counsel’s reassignment from the Court. Therefore, the undersigned

counsel's involvement in AB Souza's case prior to her departure from the Court does not amount to personal and substantial participation. *See State Farm*, 2021 U.S. Dist. LEXIS 52893, at *6–7.

This Court made no indication that it would be willing to wait for Capt Markley Denton to return from convalescent leave and submit a reply brief on AB Souza's behalf—as he repeatedly requested. On the contrary, this Court's 13 January 2026 order suggests that this Court is considering requesting yet another attorney to represent AB Souza. “[T]he more frequently a litigant is delayed or otherwise disadvantaged by the unnecessary disqualification of his lawyer under the appearance of impropriety doctrine, the greater the likelihood of public suspicion of both the bar and the judiciary.” *In re Andry*, No. 15-2478, 2020 U.S. Dist. LEXIS 186903, at *35 (E.D. La. Oct. 8, 2020) (quoting *F.D.I.C. v. United States Fire Ins. Co.*, 50 F.3d 1304, 1316 (5th Cir. 1995)). No interest of justice would be served by subjecting AB Souza to a second change in counsel in the span of three months when there is no conflict to form the basis of doing so.

WHEREFORE, AB Souza renews his request that this Honorable Court honor his wishes for Capt Markley Denton to continue leading his defense on appeal because of her work so far. If this Court declines to reconsider its prior rulings on this matter, then AB Souza requests that it consider matters submitted by the undersigned counsel, as there is no conflict with her involvement in his case.

Respectfully submitted,


OLGA STANFORD, Capt, USAF
Appellate Defense Counsel





CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were electronically delivered to the Court and served on the Air Force Government Trial and Appellate Operations Division on 26 January 2026

Respectfully submitted,

[Redacted signature]

OLGA STANFORD, Capt, USAF
Appellate Defense Counsel

[Redacted contact information]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, <i>Appellant,</i>	)	APPELLANT'S MOTION TO ATTACH A DOCUMENT
)	
v.)	
	)	Before Special Panel
Airman Basic (E-1))	
Troy D. SOUZA,	)	No. ACM S32813
United States Air Force,)	
<i>Appellee.</i>	)	26 January 2026

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

Pursuant to Rule 23.3(b) of this Honorable Court's Rules of Practice and Procedure, Appellee, Airman Basic (AB) Troy D. Souza, hereby moves to attach the following to the Record of Trial:

- **Appendix**—a two-page sworn declaration of AB Souza, dated 26 January 2026.

The attached declaration is relevant and necessary to this Court's evaluation of AB Souza's response to this Court's 26 January 2026 show cause order. This request to attach AB Souza's declaration is in no way intended to suggest that AB Souza or the undersigned counsel agree that there is a conflict in this case, as contemplated by Rule 1.12. *See* Department of the Air Force Instruction 51-110, *Professional Responsibility Program*, Attachment 2, Rule 1.12., Former Judge, Arbitrator, Mediator, or Other Third-Party Neutral (Jan. 12, 2026).

In *United States v. Jessie*, 79 M.J. 437, 445 (C.A.A.F. 2020), the Court of Appeals for the Armed Forces continued the practice of allowing consideration of matters outside the record to resolve issues reasonably raised by materials in the record but not fully resolvable by those materials. Def. App. Ex. A is necessary to this Court's evaluation of AB Souza's response to the show cause order pertaining to a matter reasonably raised by materials in AB Souza's record, but not fully resolvable from the materials in the record.

WHEREFORE, AB Souza respectfully requests that this Honorable Court grant this motion.

Respectfully submitted,



OLGA STANFORD, Capt, USAF
Appellate Defense Counsel



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 January 2026.

Respectfully submitted,



OLGA STANFORD, Capt, USAF
Appellate Defense Counsel



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

UNITED STATES	)	No. ACM S32813
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Troy D. SOUZA)	
Airman Basic (E-1))	
U.S. Air Force)	
<i>Appellant</i>	)	Special Panel

On 13 January 2026, this court ordered counsel for Appellant to show good cause why this court should consider any matter submitted by Captain (Capt) OS (one of Appellant’s counsel) after participating in Appellant’s case as a commissioner of this court.

On 26 January 2026, counsel for Appellant, Capt OS, timely filed a response to the court’s show cause order; accompanied by a Motion to Attach a two-page sworn declaration of Appellant, also dated 26 January 2026. The Government did not file any response to Appellant’s Motion to Attach.

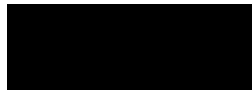
The court has considered Capt OS’s response to the court’s show cause order, Appellant’s declaration, and the Government’s lack of response, and where Appellant raises no prejudice, we find none. These documents will be filed in the record of trial accordingly.

Accordingly, it is by the court on this 4th day of February, 2026,

ORDERED:

Appellant’s Motion to Attach a Document, dated 26 January 2026, is **GRANTED**.

FOR THE COURT



CAROL K. JOYCE
Clerk of the Court