

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

UNITED STATES <i>Appellee</i>	)	No. ACM S32780
)	
v.)	
	)	ORDER
Darius M. JACKSON Senior Airman (E-4) U.S. Air Force <i>Appellant</i>)	
	)	Panel 1

On 21 June 2024, 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 opposes the motion.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure. Accordingly, it is by the court on this 27th day of June, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **31 August 2024**.

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
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (FIRST)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM S32780
DARIUS M. JACKSON,)	
United States Air Force,	)	21 June 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **31 August 2024**. The record of trial was docketed with this Court on 3 May 2024. 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 first enlargement of time.

Respectfully submitted,

[Redacted Signature]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[Redacted Address]

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

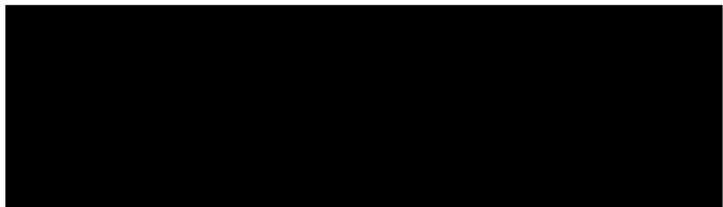
UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME – OUT
	)	OF TIME
v.)	
)	
Senior Airman (E-4)	)	ACM S32780
DARIUS M. JACKSON, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

This response is being filed out of time, because the United States mistakenly had wrong name on the heading of motion.

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

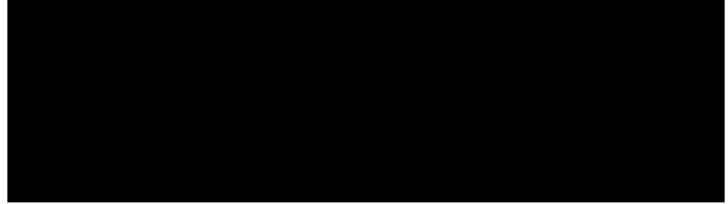


J. PETE FERRELL, Lt Col, USAF
Director of Operations



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, to Civilian Defense Counsel, and to the Air Force Appellate Defense Division on 27 June 2024.



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



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (SECOND)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM S32780
DARIUS M. JACKSON,)	
United States Air Force,	)	21 August 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a second enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **30 September 2024**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 110 days have elapsed. On the date requested, 150 days will have elapsed.

On 7 December 2023, a special court-martial consisting of a military judge alone at Offutt Air Force Base, Nebraska, found Appellant guilty, consistent with his pleas, of one charge and two specifications of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. R. at 71; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 23 January 2024. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for a total of 180 days, and to be discharged from the service with a bad conduct discharge. R. at 121; EOJ. The convening authority took no action on the findings or the sentence. ROT Vol. 1, Convening Authority Decision on Action, 28 December 2023.

The record of trial is five volumes consisting of 12 prosecution exhibits, 13 defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, 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 Government Trial and Appellate Operations Division on 21 August 2024.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Senior Airman (E-4)	)	ACM S32780
DARIUS M. JACKSON, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

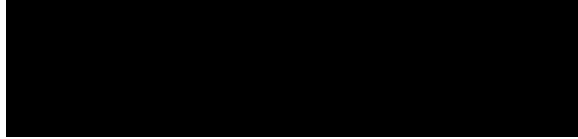
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MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division

[Redacted contact information]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, to Civilian Defense Counsel, and to the Air Force Appellate Defense Division on 22 August 2024.



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



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (THIRD)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM S32780
DARIUS M. JACKSON,)	
United States Air Force,	)	23 September 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a third enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **30 October 2024**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 143 days have elapsed. On the date requested, 180 days will have elapsed.

On 7 December 2023, a special court-martial consisting of a military judge alone at Offutt Air Force Base, Nebraska, found Appellant guilty, consistent with his pleas, of one charge and two specifications of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. R. at 71; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 23 January 2024. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for a total of 180 days, and to be discharged from the service with a bad conduct discharge. R. at 121; EOJ. The convening authority took no action on the findings or the sentence. ROT Vol. 1, Convening Authority Decision on Action, 28 December 2023.

The record of trial is five volumes consisting of 12 prosecution exhibits, 13 defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,


FREDERICK J. JOHNSON, Maj, 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 23 September 2024.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Senior Airman (E-4)	)	ACM S32780
DARIUS M. JACKSON, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

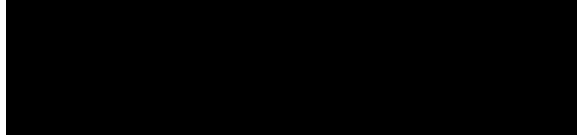
[REDACTED]

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 and to the Air Force Appellate Defense Division on 24 September 2024.



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



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (FOURTH)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM S32780
DARIUS M. JACKSON,)	
United States Air Force,	)	17 October 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a fourth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **29 November 2024**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 167 days have elapsed. On the date requested, 210 days will have elapsed.

On 7 December 2023, a special court-martial consisting of a military judge alone at Offutt Air Force Base, Nebraska, found Appellant guilty, consistent with his pleas, of one charge and two specifications of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. R. at 71; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 23 January 2024. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for a total of 180 days, and to be discharged from the service with a bad conduct discharge. R. at 121; EOJ. The convening authority took no action on the findings or the sentence. ROT Vol. 1, Convening Authority Decision on Action, 28 December 2023.

The record of trial is five volumes consisting of 12 prosecution exhibits, 13 defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Appellant is not currently confined.

Counsel is currently representing 27 clients; 14 clients are pending initial AOE's before this Court.¹ Nine matters currently have priority over this case:

- 1) *United States v. Zhong*, ACM 40411, USCA Dkt. No. 25-0011/AF – The record of trial is four volumes consisting of 14 prosecution exhibits, 11 defense exhibits, 12 appellate exhibits, and one court exhibit; the transcript is 482 pages. Undersigned counsel has petitioned the CAAF for a grant of review and is drafting the supplement to the petition in this case.
- 2) *United States v. Myers*, ACM S32749, USCA Dkt. No. 25-0012/AF – The record of trial is four volumes consisting of seven prosecution exhibits, nine defense exhibits, and 26 appellate exhibits; the transcript is 656 pages. Undersigned counsel has petitioned the CAAF for a grant of review and is drafting the supplement to the petition in this case.
- 3) *United States v. Henderson*, ACM 40419 – The record of trial is five volumes consisting of ten prosecution exhibits, 21 defense exhibits, two court exhibits, and 25

¹ Since the filing of Appellant's last request for an enlargement of time, counsel completed his review of the eight-volume record of trial and prepared and filed a merits brief in *U.S. v. Rodgers*, ACM 40528; petitioned the United States Court of Appeals for the Armed Forces (CAAF) for a grant of review and prepared and filed a 27-page supplement to the petition in *U.S. v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF; prepared and filed an eight-page supplemental reply brief in *U.S. v. Doroteo*, ACM 40363; petitioned the CAAF for a grant of review in *U.S. v. Zhong*, ACM 40411, USCA Dkt. No. 25-0011/AF; petitioned the CAAF for a grant of review in *U.S. v. Myers*, ACM S32749, USCA Dkt. No. 25-0012/AF; and participated in practice oral arguments for three additional cases. Additionally, counsel was off for the Columbus Day holiday, was on leave on 24–25 September 2024, and attended the Joint Appellate Advocacy Training on 26–27 September 2024.

- appellate exhibits; the transcript is 937 pages. Undersigned counsel has begun reviewing the record of trial in this case.
- 4) *United States v. Burkhardt-Bauder*, ACM 24011 – The record of trial is eight volumes consisting of five prosecution exhibits, 19 defense exhibits, 53 appellate exhibits, and one court exhibit; the transcript is 957 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
 - 5) *United States v. York*, ACM 40604 – The record of trial is seven volumes consisting of five prosecution exhibits, two defense exhibits, 36 appellate exhibits, and one court exhibit; the transcript is 847 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
 - 6) *United States v. Haymond*, ACM 40588 – The record of trial is seven volumes consisting of five prosecution exhibits, seven defense exhibits, 42 appellate exhibits, and one court exhibit; the transcript is 689 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
 - 7) *United States v. Harnar*, ACM 40559 – The record of trial is three volumes consisting of five prosecution exhibits, 14 defense exhibits, six appellate exhibits, and two court exhibits; the transcript is 106 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
 - 8) *United States v. Driskill*, ACM 39889 (rem) – The record of trial is 14 volumes consisting of 14 prosecution exhibits, four defense exhibits, and 169 appellate exhibits; the transcript is 2,062 pages. Undersigned counsel will need to conduct additional review of the record to prepare a brief on remand in this case.

9) *United States v. Keilberg*, ACM 40601 – The record of trial is four volumes consisting of 13 prosecution exhibits, one defense exhibit, and seven appellate exhibits; the transcript is 118 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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



Respectfully submitted,


FREDERICK J. JOHNSON, Maj, 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 17 October 2024.

Respectfully submitted,


FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel


IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' OUT OF TIME
	)	GENERAL OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Senior Airman (E-4)	)	ACM S32780
DARIUS M. JACKSON, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its Out of Time General Opposition to Appellant's 17 October 2024 Motion for Enlargement of Time to file an Assignment of Error in this case. This response is being filed out of time due to an administrative oversight.

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

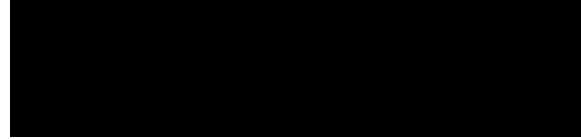
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MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division

[Redacted contact information]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 22 October 2024.



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



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (FIFTH)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM S32780
DARIUS M. JACKSON,)	
United States Air Force,	)	21 November 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a fifth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **29 December 2024**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 202 days have elapsed. On the date requested, 240 days will have elapsed.

On 7 December 2023, a special court-martial consisting of a military judge alone at Offutt Air Force Base, Nebraska, found Appellant guilty, consistent with his pleas, of one charge and two specifications of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. R. at 71; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 23 January 2024. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for a total of 180 days, and to be discharged from the service with a bad conduct discharge. R. at 121; EOJ. The convening authority took no action on the findings or the sentence. ROT Vol. 1, Convening Authority Decision on Action, 28 December 2023.

The record of trial is five volumes consisting of 12 prosecution exhibits, 13 defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing 29 clients; 15 clients are pending initial AOE's before this Court. Additionally, two clients have pending briefs before the United States Court of Appeals for the Armed Forces (CAAF).¹ Eight matters currently have priority over this case:

- 1) *United States v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 24-0146/AF – The record of trial is nine volumes consisting of 14 prosecution exhibits, 16 defense exhibits, one court exhibit, and 47 appellate exhibits; the transcript is 896 pages. Undersigned counsel was recently detailed to this case and is now reviewing the record and drafting a grant brief to the CAAF.
- 2) *United States v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF – The record of trial is six volumes consisting of six prosecution exhibits, one court exhibit, 12 defense exhibits, and 36 appellate exhibits; the transcript is 396 pages. Undersigned counsel is drafting a grant brief to the CAAF in this case.

¹ Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a 31-page supplement to the petition for grant of review to the CAAF in *U.S. v. Zhong*, ACM 40411, USCA Dkt. No. 25-0011/AF; prepared and filed a 20-page supplement to the petition for grant of review to the CAAF in *U.S. v. Myers*, ACM S32749, USCA Dkt. No. 25-0012/AF; prepared and filed a 15-page reply brief in *U.S. v. Cadavona*, ACM 40476; prepared and filed a thirteen-page brief on behalf of appellant following redocketing in *U.S. v. Kershaw*, ACM 40455; reviewed approximately 85 percent of the five-volume record of trial in *U.S. v. Henderson*, ACM 40419; prepared and filed a five-page response to the Government's motion for reconsideration in *U.S. v. Patterson*, ACM 40426; reviewed the entirety of the seven-volume record of trial and prepared and filed a 45-page brief on behalf of appellant in *U.S. v. York*, ACM 40604; and sat as second chair for outreach oral argument before this Court in *U.S. v. Menard*, ACM 40496. Additionally, counsel was off for the Veterans Day holiday and was on leave on 18–20 October 2024.



- 3) *United States v. Henderson*, ACM 40419 – The record of trial is five volumes consisting of ten prosecution exhibits, 21 defense exhibits, two court exhibits, and 25 appellate exhibits; the transcript is 937 pages. Undersigned counsel has reviewed approximately 90 percent of the record of trial in this case.
- 4) *United States v. Burkhardt-Bauder*, ACM 24011 – The record of trial is eight volumes consisting of five prosecution exhibits, 19 defense exhibits, 53 appellate exhibits, and one court exhibit; the transcript is 957 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 5) *United States v. Haymond*, ACM 40588 – The record of trial is seven volumes consisting of five prosecution exhibits, seven defense exhibits, 42 appellate exhibits, and one court exhibit; the transcript is 689 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 6) *United States v. Harnar*, ACM 40559 – The record of trial is three volumes consisting of five prosecution exhibits, 14 defense exhibits, six appellate exhibits, and two court exhibits; the transcript is 106 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 7) *United States v. Driskill*, ACM 39889 (rem) – The record of trial is 14 volumes consisting of 14 prosecution exhibits, four defense exhibits, and 169 appellate exhibits; the transcript is 2,062 pages. Undersigned counsel will need to conduct additional review of the record to prepare a brief on remand in this case.
- 8) *United States v. Keilberg*, ACM 40601 – The record of trial is four volumes consisting of 13 prosecution exhibits, one defense exhibit, and seven appellate exhibits; the

transcript is 118 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,


FREDERICK J. JOHNSON, Maj, 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 21 November 2024.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

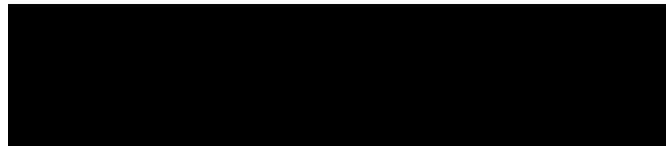
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' OUT OF TIME
	)	GENERAL OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Senior Airman (E-4)	)	ACM S32780
DARIUS M. JACKSON, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

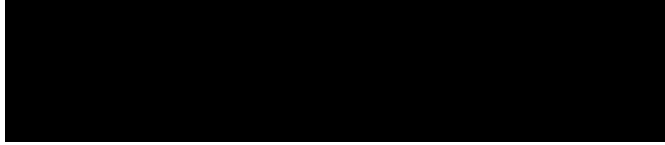


JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 21 November 2024.



JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (SIXTH)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM S32780
DARIUS M. JACKSON,)	
United States Air Force,	)	20 December 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a sixth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **28 January 2025**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 231 days have elapsed. On the date requested, 270 days will have elapsed.

On 7 December 2023, a special court-martial consisting of a military judge alone at Offutt Air Force Base, Nebraska, found Appellant guilty, consistent with his pleas, of one charge and two specifications of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. R. at 71; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 23 January 2024. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for a total of 180 days, and to be discharged from the service with a bad conduct discharge. R. at 121; EOJ. The convening authority took no action on the findings or the sentence. ROT Vol. 1, Convening Authority Decision on Action, 28 December 2023.

The record of trial is five volumes consisting of 12 prosecution exhibits, 13 defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing 29 clients; 17 clients are pending initial AOE's before this Court. Additionally, one client has a pending brief before the United States Court of Appeals for the Armed Forces (CAAF).¹ Six matters currently have priority over this case:

- 1) *United States v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF – The record of trial is six volumes consisting of six prosecution exhibits, one court exhibit, 12 defense exhibits, and 36 appellate exhibits; the transcript is 396 pages. Undersigned counsel is drafting a grant brief to the CAAF in this case.
- 2) *United States v. Burkhardt-Bauder*, ACM 24011 – The record of trial is eight volumes consisting of five prosecution exhibits, 19 defense exhibits, 53 appellate exhibits, and one court exhibit; the transcript is 957 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 3) *United States v. Haymond*, ACM 40588 – The record of trial is seven volumes consisting of five prosecution exhibits, seven defense exhibits, 42 appellate exhibits,

¹ Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a four-page reply to the Government's answer to the supplement to the petition for grant of review before the CAAF in *U.S. v. Zhong*, ACM 40411, USCA Dkt. No. 25-0011/AF; completed his review of the five-volume record of trial and prepared and filed a 17-page AOE in *U.S. v. Henderson*, ACM 40419; prepared and filed a 35-page grant brief to the CAAF in *U.S. v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 24-0146/AF; prepared and submitted a two-page bullet background paper in response to the Government's request for The Judge Advocate General to certify the record to the CAAF in *U.S. v. Patterson*, ACM 40426; prepared and filed a motion to withdraw from appellate review in *U.S. v. Manriquez*, ACM 40527; and participated in practice oral arguments for one additional case. Additionally, counsel was off for the Thanksgiving holiday.

and one court exhibit; the transcript is 689 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

- 4) *United States v. Harnar*, ACM 40559 – The record of trial is three volumes consisting of five prosecution exhibits, 14 defense exhibits, six appellate exhibits, and two court exhibits; the transcript is 106 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 5) *United States v. Driskill*, ACM 39889 (rem) – The record of trial is 14 volumes consisting of 14 prosecution exhibits, four defense exhibits, and 169 appellate exhibits; the transcript is 2,062 pages. Undersigned counsel will need to conduct additional review of the record to prepare a brief on remand in this case.
- 6) *United States v. Keilberg*, ACM 40601 – The record of trial is four volumes consisting of 13 prosecution exhibits, one defense exhibit, and seven appellate exhibits; the transcript is 118 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, 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 Government Trial and Appellate Operations Division on 20 December 2024.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
	)	OPPOSITION TO APPELLANT'S
<i>Appellee,</i>	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
Senior Airman (E-4)	)	ACM S32780
DARIUS M. JACKSON, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

[REDACTED]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
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 and to the Air Force Appellate Defense Division on 23 December 2024.



JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (SEVENTH)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM S32780
DARIUS M. JACKSON,)	
United States Air Force,	)	19 January 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a seventh enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **27 February 2025**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 261 days have elapsed. On the date requested, 300 days will have elapsed.

On 7 December 2023, a special court-martial consisting of a military judge alone at Offutt Air Force Base, Nebraska, found Appellant guilty, consistent with his pleas, of one charge and two specifications of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. R. at 71; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 23 January 2024. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for a total of 180 days, and to be discharged from the service with a bad conduct discharge. R. at 121; EOJ. The convening authority took no action on the findings or the sentence. ROT Vol. 1, Convening Authority Decision on Action, 28 December 2023.

The record of trial is five volumes consisting of 12 prosecution exhibits, 13 defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing 32 clients; 19 clients are pending initial AOE's before this Court.¹ Five matters currently have priority over this case:

- 1) *United States v. Burkhardt-Bauder*, ACM 24011 – The record of trial is eight volumes consisting of five prosecution exhibits, 19 defense exhibits, 53 appellate exhibits, and one court exhibit; the transcript is 957 pages. Undersigned counsel has reviewed approximately 30 percent of the record of trial in this case.
- 2) *United States v. Haymond*, ACM 40588 – The record of trial is seven volumes consisting of five prosecution exhibits, seven defense exhibits, 42 appellate exhibits, and one court exhibit; the transcript is 689 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 3) *United States v. Harnar*, ACM 40559 – The record of trial is three volumes consisting of five prosecution exhibits, 14 defense exhibits, six appellate exhibits, and two court exhibits; the transcript is 106 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.



¹ Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a 26-page grant brief to the United States Court of Appeals for the Armed Forces (CAAF) in *U.S. v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF; reviewed approximately 30 percent of the eight-volume record of trial in *U.S. v. Burkhardt-Bauder*, ACM 24011; prepared and filed a 17-page reply brief to the CAAF in *U.S. v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 24-0146/AF; and participated in practice oral arguments for three additional cases. Additionally, counsel was on leave on 24–29 December 2024 and was off for the New Year's Day holiday and the National Day of Mourning for President Carter's state funeral.

- 4) *United States v. Driskill*, ACM 39889 (rem) – The record of trial is 14 volumes consisting of 14 prosecution exhibits, four defense exhibits, and 169 appellate exhibits; the transcript is 2,062 pages. Undersigned counsel will need to conduct additional review of the record to prepare a brief on remand in this case.
- 5) *United States v. Keilberg*, ACM 40601 – The record of trial is four volumes consisting of 13 prosecution exhibits, one defense exhibit, and seven appellate exhibits; the transcript is 118 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,


FREDERICK J. JOHNSON, Maj, 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 19 January 2025.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES'
	)	OPPOSITION TO APPELLANT'S
<i>Appellee,</i>	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
Senior Airman (E-4)	)	ACM S32780
DARIUS M. JACKSON, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

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

[REDACTED]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
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 and to the Air Force Appellate Defense Division on 21 January 2025.

[REDACTED]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division

[REDACTED]
[REDACTED]
[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (EIGHTH)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM S32780
DARIUS M. JACKSON,)	
United States Air Force,	)	19 February 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an eighth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **29 March 2025**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 292 days have elapsed. On the date requested, 330 days will have elapsed.

On 7 December 2023, a special court-martial consisting of a military judge alone at Offutt Air Force Base, Nebraska, found Appellant guilty, consistent with his pleas, of one charge and two specifications of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. R. at 71; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 23 January 2024. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for a total of 180 days, and to be discharged from the service with a bad conduct discharge. R. at 121; EOJ. The convening authority took no action on the findings or the sentence. ROT Vol. 1, Convening Authority Decision on Action, 28 December 2023.

The record of trial is five volumes consisting of 12 prosecution exhibits, 13 defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing 33 clients; 20 clients are pending initial AOE's before this Court. Additionally, one client has a pending brief, two other clients have upcoming oral arguments, and one additional client has an upcoming petition for a grant of review, all before the United States Court of Appeals for the Armed Forces (CAAF).¹ Nine matters currently have priority over this case:

- 1) *United States v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 24-0146/AF – The record of trial is nine volumes consisting of 14 prosecution exhibits, 16 defense exhibits, one court exhibit, and 47 appellate exhibits; the transcript is 896 pages. Undersigned counsel is preparing to present oral argument as lead counsel before the CAAF in this case on 26 February 2025.
- 2) *United States v. Patterson*, ACM 40426, USCA Dkt. No. 25-0073/AF – The record of trial is 8 volumes consisting of 12 prosecution exhibits, eight defense exhibits, two court exhibits, and 75 appellate exhibits; the transcript is 987 pages. Undersigned

¹ Since the filing of Appellant's last request for an enlargement of time, counsel reviewed approximately 50 percent of the eight-volume record of trial and prepared a motion to remand in *U.S. v. Burkhardt-Bauder*, ACM 24011; conducted a practice oral argument in *U.S. v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 24-0146/AF; assisted with preparing and filing a 44-page AOE in *U.S. v. Dawson*, ACM 24041; prepared and filed a six-page reply brief in *U.S. v. Henderson*, ACM 40419; began reviewing the seven-volume record of trial in *U.S. v. Haymond*, ACM 40588; prepared and filed a seven-page reply brief in *U.S. v. York*, ACM 40604; prepared and filed a 13-page reply brief to the CAAF in *U.S. v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF; and participated in practice oral arguments for four additional cases. Additionally, counsel was off for the Birthday of Martin Luther King, Jr. and Washington's Birthday holidays.

counsel is reviewing the Government's brief and drafting an answer to the CAAF in this case.

- 3) *United States v. Cadavona*, ACM 40476 – The record of trial is four volumes consisting of 11 prosecution exhibits, two defense exhibits, and 24 appellate exhibits; the transcript is 329 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.
- 4) *United States v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF – The record of trial is six volumes consisting of six prosecution exhibits, one court exhibit, 12 defense exhibits, and 36 appellate exhibits; the transcript is 396 pages. Undersigned counsel is preparing to present oral argument as lead counsel before the CAAF in this case on 19 March 2025.
- 5) *United States v. Burkhardt-Bauder*, ACM 24011 – The record of trial is eight volumes consisting of five prosecution exhibits, 19 defense exhibits, 53 appellate exhibits, and one court exhibit; the transcript is 957 pages. Undersigned counsel has reviewed approximately 80 percent of the record of trial, including all non-sealed materials, and has filed a motion to remand for corrections to the record in this case.
- 6) *United States v. Haymond*, ACM 40588 – The record of trial is seven volumes consisting of five prosecution exhibits, seven defense exhibits, 42 appellate exhibits, and one court exhibit; the transcript is 689 pages. Undersigned counsel has begun reviewing the record of trial in this case.
- 7) *United States v. Harnar*, ACM 40559 – The record of trial is three volumes consisting of five prosecution exhibits, 14 defense exhibits, six appellate exhibits, and two court

exhibits; the transcript is 106 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

- 8) *United States v. Driskill*, ACM 39889 (rem) – The record of trial is 14 volumes consisting of 14 prosecution exhibits, four defense exhibits, and 169 appellate exhibits; the transcript is 2,062 pages. Undersigned counsel will need to conduct additional review of the record to prepare a brief on remand in this case.
- 9) *United States v. Keilberg*, ACM 40601 – The record of trial is four volumes consisting of 13 prosecution exhibits, one defense exhibit, and seven appellate exhibits; the transcript is 118 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, 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 Government Trial and Appellate Operations Division on 19 February 2025.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES'
	)	OPPOSITION TO APPELLANT'S
<i>Appellee,</i>	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
Senior Airman (E-4)	)	ACM S32780
DARIUS M. JACKSON, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstance, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 330 days in length. Appellant's nearly year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves approximately 7 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not begun review of the record of trial at this late stage of the appellate process.

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

[REDACTED]

THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel
Government Trial and

[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 21 February 2025.

[REDACTED]

THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel
Government Trial and

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (NINTH)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM S32780
DARIUS M. JACKSON,)	
United States Air Force,	)	21 March 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a ninth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **28 April 2025**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 322 days have elapsed. On the date requested, 360 days will have elapsed.

On 7 December 2023, a special court-martial consisting of a military judge alone at Offutt Air Force Base, Nebraska, found Appellant guilty, consistent with his pleas, of one charge and two specifications of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. R. at 71; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 23 January 2024. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for a total of 180 days, and to be discharged from the service with a bad conduct discharge. R. at 121; EOJ. The convening authority took no action on the findings or the sentence. ROT Vol. 1, Convening Authority Decision on Action, 28 December 2023.

The record of trial is five volumes consisting of twelve prosecution exhibits, thirteen defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing thirty-six clients; twenty-one clients are pending initial AOE's before this Court. Additionally, one client has an upcoming oral argument, and one other client has an upcoming supplement to the petition for a grant of review, both before the United States Court of Appeals for the Armed Forces (CAAF).¹ Six matters currently have priority over this case:

- 1) *United States v. Cadavona*, ACM 40476 – The record of trial is four volumes consisting of eleven prosecution exhibits, two defense exhibits, and twenty-four appellate exhibits; the transcript is 329 pages. Undersigned counsel has petitioned the CAAF for a grant of review and is drafting the supplement to the petition in this case.
- 2) *United States v. Patterson*, ACM 40426, USCA Dkt. No. 25-0073/AF – The record of trial is eight volumes consisting of twelve prosecution exhibits, eight defense exhibits, two court exhibits, and seventy-five appellate exhibits; the transcript is 987 pages.

¹ Since the filing of Appellant's last request for an enlargement of time, counsel conducted two practice oral arguments and presented oral argument as lead counsel before the CAAF in *U.S. v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 24-0146/AF; reviewed approximately fifteen percent of the seven-volume record of trial in *U.S. v. Haymond*, ACM 40588; prepared and filed a thirteen-page supplemental reply brief, conducted three practice oral arguments, and presented oral argument as lead counsel before the CAAF in *U.S. v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF; prepared and filed a 28-page answer to the CAAF in *U.S. v. Patterson*, ACM 40426, USCA Dkt. No. 25-0073/AF; petitioned the CAAF for a grant of review in *U.S. v. Cadavona*, ACM 40476, USCA Dkt. No. 25-0114/AF; assisted with preparing and filing an eighteen-page reply and an eight-page motion response in *U.S. v. Dawson*, ACM 24041; reviewed approximately thirty-five percent of the three-volume record of trial in *U.S. v. Harnar*, ACM 40559; and participated in six practice oral arguments for four additional cases.

Undersigned counsel is preparing to present oral argument as lead counsel before the CAAF in this case on 9 April 2025.

- 3) *United States v. Haymond*, ACM 40588 – The record of trial is seven volumes consisting of five prosecution exhibits, seven defense exhibits, forty-two appellate exhibits, and one court exhibit; the transcript is 689 pages. Undersigned counsel has reviewed approximately twenty percent of the record of trial in this case.
- 4) *United States v. Harnar*, ACM 40559 – The record of trial is three volumes consisting of five prosecution exhibits, fourteen defense exhibits, six appellate exhibits, and two court exhibits; the transcript is 106 pages. Undersigned counsel has reviewed approximately thirty-five percent of the record of trial in this case.
- 5) *United States v. Driskill*, ACM 39889 (rem) – The record of trial is fourteen volumes consisting of fourteen prosecution exhibits, four defense exhibits, and 169 appellate exhibits; the transcript is 2,062 pages. Undersigned counsel will need to conduct additional review of the record to prepare a brief on remand in this case.
- 6) *United States v. Keilberg*, ACM 40601 – The record of trial is four volumes consisting of thirteen prosecution exhibits, one defense exhibit, and seven appellate exhibits; the transcript is 118 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to timely appeal, was provided an update of the status of counsel's progress

on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

[Redacted signature block]



FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[Redacted address block]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 21 March 2025.

Respectfully submitted,


FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel


IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
Senior Airman (E-4)	)	Before Panel No. 1
DARIUS M. JACKSON,	)	No. ACM S32780
United States Air Force,)	
<i>Appellant.</i>	)	24 March 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 opposition to Appellant’s Motion for Enlargement of Time.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstance, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 360 days in length. Appellant’s nearly year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves approximately 6 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not begun review of the record of trial at this late stage of the appellate process.

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

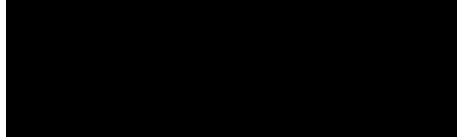


VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



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 24 March 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (TENTH)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM S32780
DARIUS M. JACKSON,)	
United States Air Force,	)	21 April 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a tenth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **28 May 2025**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 353 days have elapsed. On the date requested, 390 days will have elapsed.

On 7 December 2023, a special court-martial consisting of a military judge alone at Offutt Air Force Base, Nebraska, found Appellant guilty, consistent with his pleas, of one charge and two specifications of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. R. at 71; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 23 January 2024. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for a total of 180 days, and to be discharged from the service with a bad conduct discharge. R. at 121; EOJ. The convening authority took no action on the findings or the sentence. ROT Vol. 1, Convening Authority Decision on Action, 28 December 2023.

The record of trial is five volumes consisting of twelve prosecution exhibits, thirteen defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing thirty-seven clients; twenty-three clients are pending initial AOE's before this Court.¹ Three matters currently have priority over this case:

- 1) *United States v. Haymond*, ACM 40588 – The record of trial is seven volumes consisting of five prosecution exhibits, seven defense exhibits, forty-two appellate exhibits, and one court exhibit; the transcript is 689 pages. Undersigned counsel has reviewed approximately twenty-five percent of the record of trial in this case.
- 2) *United States v. Driskill*, ACM 39889 (rem) – The record of trial is fourteen volumes consisting of fourteen prosecution exhibits, four defense exhibits, and 169 appellate exhibits; the transcript is 2,062 pages. Undersigned counsel will need to conduct additional review of the record to prepare a brief on remand in this case.
- 3) *United States v. Keilberg*, ACM 40601 – The record of trial is four volumes consisting of thirteen prosecution exhibits, one defense exhibit, and seven appellate exhibits; the



¹ Since the filing of Appellant's last request for an enlargement of time, counsel reviewed approximately five percent of the seven-volume record of trial in *U.S. v. Haymond*, ACM 40588; conducted three practice oral arguments and presented oral argument as lead counsel before the United States Court of Appeals for the Armed Forces (CAAF) in *U.S. v. Patterson*, ACM 40426, USCA Dkt. No. 25-0073/AF; prepared and filed a twenty-seven-page supplement to the petition for grant of review to the CAAF in *U.S. v. Cadavona*, ACM 40476, USCA Dkt. No. 25-0114/AF; assisted with preparing and filing two motions in *U.S. v. Dawson*, ACM 24041; completed his review of the three-volume record of trial and prepared and filed a fifteen-page AOE in *U.S. v. Harnar*, ACM 40559; reviewed the two-volume record of trial and prepared and filed a motion to withdraw from appellate review in *U.S. v. Hatfield*, ACM S32791; and participated in two practice oral arguments for one additional case. Additionally, counsel attended the CAAF wreath laying ceremony and reception on 25 March 2025 and was on leave on 18 April 2025.

transcript is 118 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,


FREDERICK J. JOHNSON, Maj, 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 21 April 2025.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
Senior Airman (E-4)	)	Before Panel No. 1
DARIUS M. JACKSON,	)	No. ACM S32780
United States Air Force,)	
<i>Appellant.</i>	)	23 April 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 opposition to Appellant’s Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant more than a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 390 days in length. Appellant’s year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed almost two thirds of the 18-month standard for this Court to issue a decision, which only leaves about 5 months for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not completed review of the record of trial at this late stage of the appellate process.

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

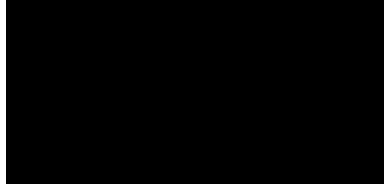


JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 23 April 2025.



JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(ELEVENTH)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM S32780
DARIUS M. JACKSON,)	
United States Air Force,	)	19 May 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an eleventh enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **27 June 2025**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 381 days have elapsed. On the date requested, 420 days will have elapsed.

On 7 December 2023, a special court-martial consisting of a military judge alone at Offutt Air Force Base, Nebraska, found Appellant guilty, consistent with his pleas, of one charge and two specifications of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. R. at 71; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 23 January 2024. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for a total of 180 days, and to be discharged from the service with a bad conduct discharge. R. at 121; EOJ. The convening authority took no action on the findings or the sentence. ROT Vol. 1, Convening Authority Decision on Action, 28 December 2023.

The record of trial is five volumes consisting of twelve prosecution exhibits, thirteen defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Undersigned counsel was recently detailed to Appellant's case last week, given the high volume of cases currently pending in the Appellate Defense Division. Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. However, Appellant's case will have docket priority on undersigned counsel's docket and undersigned counsel will efficiently review the record in this case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

A solid black rectangular redaction box covering the signature of the undersigned counsel.

THOMAS R. GOVAN, JR., Maj, USAF
Appellate Defense Counsel

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 19 May 2025.

Respectfully submitted,

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THOMAS R. GOVAN, JR., Maj, USAF
Appellate Defense Counsel

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
Senior Airman (E-4)	)	Before Panel No. 1
DARIUS M. JACKSON,	)	No. ACM S32780
United States Air Force,)	
<i>Appellant.</i>	)	20 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 opposition to Appellant’s Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant more than a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 420 days in length. Appellant’s over year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed more than two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 4 months for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not completed review of the record of trial at this late stage of the appellate process.

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

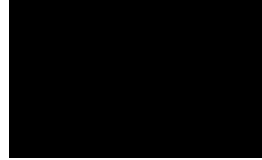


KATE E. LEE, Maj, USAF
Appellate Government Counsel



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 20 May 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



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

UNITED STATES	)	No. ACM S32780
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Darius M. JACKSON)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 20 June 2025, a counsel for Appellant submitted a Motion for Enlargement of Time (Twelfth) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

In the enlargement request, counsel for Appellant Maj TG detailed his progress on reviewing the case and caseload, highlighting that he has been “recently detailed” to the case. However, Maj FJ remains detailed also as counsel for Appellant but there is no mention of Maj FJ’s progress on review of the case or current caseload as is required by the Rule 23.3(m)(6) of this Court.

The court has considered Appellant’s motion, the Government’s opposition, prior filings and orders in this case, case law, and this court’s Rules of Practice and Procedure.

Accordingly, it is by the court on this 25th day of June, 2025,

ORDERED:

Appellant’s Motion for Enlargement of Time (Twelfth) is **GRANTED**. Appellant shall file any assignments of error not later than **28 July 2025**. Appellant’s counsel is advised that given the number of enlargements granted thus far, the court will continue to closely examine any further requests for an enlargement of time. Any further requests for an enlargement must include the workload and progress of *all* detailed attorneys and may necessitate a status conference.



FOR THE COURT

[Redacted signature block]

USAF

Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S CORRECTED
	)	MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(TWELFTH)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM S32780
DARIUS M. JACKSON,)	
United States Air Force,	)	20 June 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a twelfth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **28 July 2025**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 413 days have elapsed. On the date requested, 451¹ days will have elapsed.

On 7 December 2023, a special court-martial consisting of a military judge alone at Offutt Air Force Base, Nebraska, found Appellant guilty, consistent with his pleas, of one charge and two specifications of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. R. at 71; Record of Trial (ROT) Vol. 1, Entry of Judgment

¹ The Appellant originally filed a Motion for Enlargement of Time (Twelfth) with this Court on 18 June 2025. That motion contained a typographical error in that the motion stated that 450 days would have elapsed from the date of docketing to the date requested after the enlargement of time. However, the correct number of days that would have elapsed would be 451 days. Appellant hereby submits this Corrected Motion for Enlargement of Time (Twelfth) with the corrected number of days. Outside of corrections to the number of days elapsed since docketing, no other substantive changes were made to the body of the motion.

(EOJ), 23 January 2024. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for a total of 180 days, and to be discharged from the service with a bad conduct discharge. R. at 121; EOJ. The convening authority took no action on the findings or the sentence. ROT Vol. 1, Convening Authority Decision on Action, 28 December 2023.

The record of trial is five volumes consisting of twelve prosecution exhibits, thirteen defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Appellant is not currently confined. Undersigned counsel has completed review of the record of trial in this case, but has not yet completed briefing on the case.

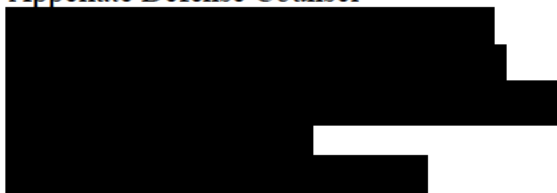
Undersigned counsel was recently detailed to Appellant's case, given the high volume of cases currently pending in the Appellate Defense Division. Through no fault of Appellant, undersigned counsel has diligently worked on Appellant's case and has completed review of the record in this case. However, undersigned counsel is a reservist not currently on orders and has been unable to complete the brief for Appellant's case. Undersigned counsel anticipates coming on orders in the next few weeks to complete the Appellant's brief. Additionally, Appellant's case will have docket priority on undersigned counsel's docket and undersigned counsel will efficiently review the record in this case. An enlargement of time is necessary to allow counsel to advise Appellant regarding potential errors and complete the briefing in this case. Appellant was informed of his right to timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

A solid black rectangular redaction box covering the signature area.

THOMAS R. GOVAN, JR., Maj, USAF
Appellate Defense Counsel

A large, irregular black redaction box covering the contact information, including phone and email details.

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 20 June 2025.

Respectfully submitted,

A solid black rectangular redaction box covering the signature of the sender.

THOMAS R. GOVAN, JR., Maj, USAF
Appellate Defense Counsel

A large, irregular black redaction box covering the contact information, including a phone number and email address.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM S32780
DARIUS M. JACKSON,)	
United States Air Force,	)	24 June 2025
<i>Appellant.</i>)	

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 450 days in length. Appellant’s year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed more than two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 3 months combined for the United States and this Court to perform their separate statutory responsibilities.

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



JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel



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 24 June 2025.



JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	BRIEF ON BEHALF OF
<i>Appellee</i>	)	APPELLANT
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM S32780
DARIUS M. JACKSON,)	
United States Air Force	)	28 July 2025
<i>Appellant</i>)	

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

Assignments of Error

I.

WHETHER THE MILITARY JUDGE ERRED BY FAILING TO INQUIRE INTO SENIOR AIRMAN JACKSON’S UNDERSTANDING OF THE RAMIFICATIONS OF HIS AGREEMENT TO A BAD-CONDUCT DISCHARGE.

II.

WHETHER 18 U.S.C. § 922 IS CONSTITUTIONAL AS APPLIED TO SENIOR AIRMAN JACKSON BECAUSE HE WAS CONVICTED OF OFFENSES THAT DO NOT FALL WITHIN THE NATION’S HISTORICAL TRADITION OF FIREARM REGULATION.¹

III.

WHETHER SENIOR AIRMAN JACKSON’S RIGHT TO A SPEEDY TRIAL WAS VIOLATED.

¹ Senior Airman Jackson raises Issues II and III pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). See Appendix A.

Statement of the Case

On 7 December 2023, Senior Airman (SrA) Darius M. Jackson was tried by a special court-martial composed of a military judge alone at Offutt Air Force Base (AFB), Nebraska. R. at 1. Consistent with his pleas, the military judge found him guilty of one charge and two specifications of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ). R. at 71; Vol. 1, Entry of Judgment (EOJ), 23 January 2024.² The military judge sentenced SrA Jackson to be reprimanded, to be reduced to the grade of E-1, to be confined for a total of 180 days, and to be discharged from the service with a bad-conduct discharge. R. at 121; EOJ. The convening authority took no action on the findings or the sentence. Vol. 1, Convening Authority Decision on Action, 28 December 2023.

Statement of Facts

SrA Jackson married S.H., a fellow servicemember, on 2 April 2022. Prosecution Exhibit (Pros. Ex.) 1 at 1. S.H. deployed later that April and returned Offutt AFB in October 2022. Pros. Ex. 1 at 2. After returning home, SrA Jackson and S.H. argued about whether S.H. had been unfaithful during their marriage. Pros. Ex. 1 at 2; R. at 28-29. On or about 5 November 2022, the couple got into an argument about whether S.H. had been unfaithful during her deployment after S.H. had picked up SrA Jackson from a bar. R. at 28. Upon returning home, S.H. admitted to SrA Jackson that she had been unfaithful. R. at 29. SrA Jackson was angered at learning this news and hit S.H. in her face with the back of his hand during the argument. R. at 29. Around 2 December 2022, SrA Jackson and S.H. got into another argument. R. at 40. SrA Jackson began

² Unless otherwise noted, all references to the UCMJ, the Rules for Courts-Martial (R.C.M.), and the Military Rules of Evidence (Mil. R. Evid.) are to the Manual for Courts-Martial, United States (2019 ed.) [2019 MCM].

to ignore S.H. and told her that he wanted to separate, which made her upset. R. at 40. S.H. began to yell at SrA Jackson, at which point he grabbed her arms near her wrist area and pulled them into an unnatural position to get her to stop yelling. Pros. Ex. 1 at 2; R. at 40.

Argument

I.

THE MILITARY JUDGE PLAINLY ERRED BY FAILING TO INQUIRE INTO SENIOR AIRMAN JACKSON'S UNDERSTANDING OF THE RAMIFICATIONS OF HIS AGREEMENT TO A BAD-CONDUCT DISCHARGE.

Additional Facts

SrA Jackson pleaded guilty pursuant to a plea agreement. R. at 52; Appellate Exhibit (App. Ex.) IV. At the time of the offer for a plea agreement, SrA Jackson faced charges that were referred to a general court-martial. R. at 54; App Ex. IV at 1. Under the terms of the plea agreement, SrA Jackson agreed to plead guilty to Specifications 1 and 2 of Charge IV at a special court-martial. App. Ex. IV at 1. In exchange, the government agreed to withdraw and dismiss Charge III and Specifications 3, 4, 5, 6, and 7 of Charge IV with prejudice and withdraw and dismiss Charge I and II without prejudice. App. Ex. IV at 2. Moreover, the plea agreement called for a sentence which included, among other things, total confinement for not less than ninety days and not more than 180 days and a bad-conduct discharge. *Id.*

During the *Care*³ inquiry at trial, the military judge engaged in a colloquy with SrA Jackson prior to accepting the plea agreement. R. at 52-69. The military judge asked SrA Jackson if he understood that the plea agreement called for a bad-conduct discharge to be imposed at sentencing. R. at 63. SrA Jackson affirmed that he understood what was called for in the plea agreement. *Id.*

³ *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969).

Specifically, the military judge's colloquy with SrA Jackson on the provision of the plea agreement calling for a bad-conduct discharge was limited to the following:

MJ: So as to paragraph 4(d) specifically, do you understand that I am essentially mandated by this agreement that you have with the convening authority to impose a bad conduct discharge. Do you understand that?

ACC: Yes, Your Honor. I understand.

R. at 63. But the military judge did not ask SrA Jackson whether he understood the ramifications of a bad-conduct discharge. Nor, upon determining whether SrA Jackson understood those ramifications, did the military judge inquire as to whether SrA Jackson still wanted to proceed with the offer for a plea agreement.

During presentencing arguments, defense counsel made repeated concessions that SrA Jackson would receive a bad-conduct discharge and that an appropriate sentence included a bad-conduct discharge. Defense counsel affirmed that "Senior Airman Jackson is going to receive [a bad-conduct discharge] and there is no question about it." R. at 112. Defense counsel stated that "a fair sentence that is sufficient but not greater than necessary to promote justice and maintain good order and discipline would be a [bad-conduct discharge]" R. at 113. Moreover, defense counsel argued that "[e]very person in this courtroom today" knew that SrA Jackson "will be sentenced to a [bad-conduct discharge]." R. at 114.

Notably, in his argument, defense counsel referenced the fact that the military judge understood "the stigma of a punitive discharge and how that will place limitations on Senior Airman Jackson's future" and that the discharge would deprive him of many benefits from the Department of Veterans Affairs (VA). R. at 114. But despite defense counsel's concession, the military judge did not inquire with SrA Jackson after the argument as to whether he himself understood the negative stigma of a bad-conduct discharge that counsel referenced and whether he

understood that such a discharge could potentially jeopardize his ability to obtain VA benefits. After deliberation, the military judge ultimately imposed a bad-conduct discharge as part of the sentence. R. at 121.

Standard of Review

This Court reviews de novo a “military judge’s determinations of questions of law arising during or after the plea inquiry[.]” *United States v. Inabinette*, 66 M.J. 320, 321 (C.A.A.F. 2008). *see also United States v. Lundy*, 63 M.J. 299, 301 (C.A.A.F. 2006) (“Interpretation of a pretrial agreement is a question of law, which we review de novo.”) To establish plain error, an appellant must establish that (1) there is error, (2) the error is plain or obvious, and (3) the error results in material prejudice to a substantial right of the accused. *United States v. McPherson*, 81 M.J. 372, 376 (C.A.A.F. 2021).

Law

A punitive separation from the military, such as a bad-conduct discharge, has long been recognized as a “severe punishment.” *United States v. Pineda*, 54 M.J. 298, 300 (C.A.A.F. 2001). An “accused has the right to ask the sentencing authority for one kind of punishment to the exclusion of others.” *United States v. Lyons*, 36 M.J. 425, 426 (C.M.A. 1993). But “where the record is silent regarding an accused’s desires, defense counsel may not concede that a punitive discharge is appropriate.” *Id.* Indeed, if an apparent conflict exists between an accused’s wishes and a request for a punitive discharge, the military judge should make appropriate inquiries into the request. *Pineda*, 54 M.J. at 300. Moreover, “a defense counsel may not even concede the appropriateness of a punitive discharge in the face of a silent record.” *Id.* (noting that military judge in that case “did not ask appellant any questions regarding his understanding of the ramifications of a bad-conduct discharge, nor did he ask appellant if he authorized his counsel to

request a punitive discharge on his behalf” (quoting *United States v. Pineda*, NMCM 98 01659, 1999 CCA LEXIS 149, at *4 (N-M. Ct. Crim. App. May 28, 1999)); *see also United States v. Butts*, 25 M.J. 535, 537 (A.C.M.R. 1987) (“[W]e believe the military judge, upon hearing defense counsel’s request, should have advised appellant of the adverse consequences of a bad-conduct discharge and asked appellant whether he desired that discharge.”).

Analysis

The military judge committed plain error by failing to conduct any inquiry with SrA Jackson concerning whether he understood the consequences of a bad-conduct discharge. Although SrA Jackson pleaded guilty pursuant to a plea agreement, the record was silent as to whether he understood the ramifications of either the agreement to a bad-conduct discharge as part of that plea agreement or his counsel’s concession to a bad-conduct discharge during sentencing arguments.

A concession to a bad-conduct discharge as an appropriate sentence may not occur on a silent record. *See Pineda*, 54 M.J. at 300. Notably, in such situations, military judges are encouraged to conduct an inquiry with the accused to determine whether the accused agrees to the request for a punitive discharge and whether the accused fully understands the ramifications of such a discharge. *See Department of the Army Pamphlet 27-9, Military Judges’ Benchbook* (unofficial update), Section 2-7-26 (14 July 2025). For example, this inquiry would include questions directed to whether the accused understood that a bad-conduct discharge “will forever adversely stigmatize the character of your military service and it will limit your future employment and schooling opportunities,” “may adversely affect your future with regard to legal rights, economic opportunities, and social acceptability,” and may result in losing “substantially all benefits from the Department of Veterans Affairs and the military establishment, as well as other

benefits normally given by other governmental agencies.” *Id.* The military judge asked none of these questions, despite having two opportunities to do so. This failure resulted in clear error and materially prejudiced SrA Jackson.

First, the military judge erred in failing to conduct a colloquy with SrA Jackson about whether he understood the consequences of agreeing to a bad-conduct discharge as a term of the plea agreement. During the *Care* inquiry, the military judge noted that the plea agreement contained a paragraph stating that the military judge had to impose a bad-conduct discharge as part of the sentence. R. at 62. The military judge then asked SrA Jackson if he understood that this requirement was in the plea agreement and that the military judge was “essentially mandated by this agreement” to impose a bad-conduct discharge. R. at 63.

But asking whether an accused knows that a provision requiring a bad-conduct discharge is in a plea agreement is a different inquiry altogether from confirming whether an accused understands that consequences of that bad-conduct discharge. The military judge here did nothing to ensure that SrA Jackson understood the implications of agreeing to a bad-conduct discharge. Simply confirming that a bad-conduct discharge is part of a plea agreement does not cure a silent record as to whether an accused understands and agrees to a concession regarding a punitive discharge. *See Pineda*, 54 M.J. at 300.

In the context of litigated courts-martials, military courts have recognized that a military judge should make an inquiry into whether an accused understands the consequences of a punitive discharge when defense counsel argues for or concedes to the appropriateness of a punitive discharge in situations where either an apparent conflict exists between counsel and the accused on that subject or where the record is silent. *See Pineda*, 54 M.J. at 300; *Lyons*, 36 M.J. at 426; *Butts*, 25 M.J. at 537; *see also United States v. Dresen*, 40 M.J. 462, 465 (C.M.A. 1994) (holding

that “when defense counsel does seek a punitive discharge or does concede the appropriateness of such a discharge—even as a tactical step to accomplish mitigation of other elements of a possible sentence—counsel must make a record that such advocacy is pursuant to the accused’s wishes.”).

It is not clear whether this Court or a superior court has had the occasion to address whether that same expectation at a litigated trial that the record reflect that an accused understands the ramifications of a punitive discharge, when conceded by counsel, should also be applied in the context of a plea agreement. There is no compelling reason why an accused’s understanding of the consequences of a punitive discharge should be confirmed in one context and not the other. SrA Jackson’s case presents an opportunity for this Court to confirm that the same concerns over an accused’s understanding of the consequences of a punitive discharge apply when an accused pleads guilty pursuant to a plea agreement, and further, that a military judge should inquire as to whether the accused understands the consequences of the punitive discharge if the record is silent as to the accused’s understanding.

The military judge also erred in failing to conduct a colloquy with SrA Jackson after defense counsel conceded during presentencing arguments that a bad-conduct discharge was an appropriate sentence. Putting aside the issue of whether the military judge erred in not conducting such an inquiry during the acceptance of the plea agreement, as noted above, courts have made clear that a concession during presentencing arguments to a punitive discharge cannot occur on a silent record. *See Pineda*, 54 M.J. at 300.

Here, after defense counsel conceded to a bad-conduct discharge numerous times during presentencing argument, R. at 112-14, the military judge erred by not conducting a colloquy with SrA Jackson where the record was not clear that he understood the serious consequences of the concession. To be sure, in his unsworn statement, SrA Jackson stated that he recognized his Air

Force career was over and that he would look forward to his life outside the military. R. at 100, 102. But these brief statements did not speak to whether he understood the consequences and stigma of a bad-conduct discharge, and whether it was his express desire to still concede to such a discharge. *Compare* Department of the Army Pamphlet 27-9, *Military Judges' Benchbook* (unofficial update), Section 2-7-26 (14 July 2025). Simply acknowledging that his Air Force career was over was more akin to the bare acknowledgement that a bad-conduct discharge was included as a term in his plea agreement, R. at 62-63, and did not inquire into his understanding of the full ramifications of conceding to such a discharge. *Compare Pineda*, 54 M.J. at 301 (holding that “there was not an adequate record of appellant’s desire that a punitive discharge be actually imposed” even where the appellant “implicitly acknowledged the reasonable certainty of a punitive discharge in his case when questioned by defense counsel”).

Ironically, it was defense counsel who highlighted the distinction between understanding at a basic level that a bad-conduct discharge would end SrA Jackson’s service in the Air Force and understanding the full consequences of a punitive discharge. Defense counsel argued that the military judge understood “the stigma of a punitive discharge and how that will place limitations on Senior Airman Jackson’s future,” such as the potential deprivation of VA benefits. R. at 114. But despite this argument, the military judge did not inquire into whether SrA Jackson himself understood those severe, far-reaching consequences.

Finally, the military judge’s error materially prejudiced SrA Jackson. As noted above, a bad-conduct discharge is a severe punishment that carries with it an adverse stigma and consequences. *See Pineda*, 54 M.J. at 300. By failing to inquire as to whether SrA Jackson understood the consequences of a bad-conduct discharge, it is not clear whether he expressly agreed to the concession of a bad-conduct discharge. Moreover, this Court can have no confidence

that, had he been fully informed of the consequences of a bad-conduct discharge, SrA Jackson still would have agreed to go forward with the plea agreement.

Further, the prejudicial nature of this error is heightened by the fact that the circumstances of this case do not compel the conclusion that a bad-conduct discharge was inevitable. *See United States v. McNally*, 16 M.J. 32, 33 (C.M.A. 1983) (holding that accused was prejudiced by the defense counsel's concession during presentencing argument that a punitive discharge would be an appropriate sentence). Similar to *McNally*, because SrA Jackson was tried before a special court-martial, there was no possibility of a more severe discharge being imposed. Moreover, mitigation evidence was present in SrA Jackson's case that could have weighed against the imposition of a bad-conduct discharge. For example, SrA Jackson presented numerous character letters that elicited strong support for him as an Airman and as a person. *See* Defense Exhibits (Def. Ex.) B-G. The defense also presented evidence that SrA Jackson experienced a challenged childhood and, as a result, suffered from serious psychological and mental health issues. Def. Ex. J; R. at 101-04. Thus, there was no guarantee that SrA Jackson would have still been sentenced to a bad-conduct discharge had he not agreed to the discharge in his plea agreement. For these reasons, this error materially prejudiced SrA Jackson's substantial rights.

WHEREFORE, SrA Jackson respectfully requests that this Honorable Court reassess the sentence and set aside the bad-conduct discharge.

Respectfully submitted,

A large black rectangular redaction box covering the signature of the appellant.

THOMAS R. GOVAN, JR., Maj, USAF
Appellate Defense Counsel

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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 Government Trial and Appellate Operations Division on 28 July 2025.

Respectfully submitted,

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THOMAS R. GOVAN, JR., Maj, USAF
Appellate Defense Counsel

A black rectangular redaction box covering the contact information of the sender.

APPENDIX A

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), Senior Airman (SrA) Darius M. Jackson, through appellate defense counsel, personally requests that this Honorable Court consider the following matters:

II.

THE GOVERNMENT CANNOT PROVE 18 U.S.C. § 922 IS CONSTITUTIONAL AS APPLIED TO SENIOR AIRMAN JACKSON BECAUSE HE WAS CONVICTED OF OFFENSES THAT DO NOT FALL WITHIN THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION.

Additional Facts

The first indorsements to both the EOJ and Statement of Trial Results (STR) state that SrA Jackson is subject to a “Firearm Prohibition Triggered Under 18 U.S.C. § 922.” Vol. 1, EOJ; Vol. 1, STR.

Standard of Review

Whether post-trial processing was properly completed is reviewed de novo. *United States v. Zegarrundo*, 77 M.J. 612, 613–14 (A.F. Ct. Crim. App. 2018) (citing *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000)). This Court reviews questions of jurisdiction, law, and statutory interpretation de novo. *United States v. Lepore*, 81 M.J. 759, 760 (A.F. Ct. Crim. App. 2021).

Law and Analysis

SrA Jackson acknowledges that the United States Court of Appeals for the Armed Forces (CAAF) recently held that this Court lacks the authority to act upon the indication of a firearms prohibition under 10 U.S.C. § 922. *United States v. Johnson*, __ M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499, at *2 (C.A.A.F. June 24, 2025). However, SrA Jackson asserts that *Johnson* was wrongly decided and that the firearms prohibition indicated on the first indorsement to the

Entry of Judgment is unconstitutional, as applied, under *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022). He raises this issue for preservation purposes.

WHEREFORE, SrA Jackson respectfully requests that this Court hold 18 U.S.C. § 922 is unconstitutional as applied to him.

III.

SENIOR AIRMAN JACKSON’S RIGHT TO A SPEEDY TRIAL WAS VIOLATED.

Additional Facts

The instant charges were preferred against SrA Jackson on 1 August 2023. Vol. 1, Charge Sheet. The military judge’s scheduling order does not appear to exclude any time from speedy trial calculations. Vol. 5, Confirmation of “Initial Trial Date” Memo (4 December 2023). However, the military judge did not arraign SrA Jackson until the trial date of 7 December 2023—128 days later. R. at 1, 16.

Standard of Review

“The conclusion whether an accused received a speedy trial is a legal question that is reviewed de novo” *United States v. Lehr*, 73 M.J. 364, 367 (C.A.A.F. 2014) (citation omitted).

Law and Analysis

SrA Jackson’s right to a speedy trial pursuant to Rule for Courts-Martial (R.C.M.) 707 was violated. An accused “shall be brought to trial within 120 days” of the preferral of charges. R.C.M. 707(a)(1). “The accused is brought to trial within the meaning of this rule at the time of arraignment under R.C.M. 904.” R.C.M. 707(b)(1). “The purpose of the specific time limit in the rule is to protect the appellant’s right to a speedy trial under the Sixth Amendment and Article 10,

UCMJ, and society's interests in the prompt administration of justice." *United States v. Proctor*, 58 M.J. 792, 795 (A.F. Ct. Crim. App. 2003).

"A failure to comply with this rule will result in dismissal of the affected charges[.]" R.C.M. 707(d). "Dismissal will be with or without prejudice to the Government's right to reinstitute court-martial proceedings against the accused for the same offense at a later date." R.C.M. 707(d)(1). In determining whether to dismiss a charge with or without prejudice, a court should consider, among others, each of the following factors: "the seriousness of the offense; the facts and circumstances of the case that lead to dismissal; the impact of a re-prosecution on the administration of justice; and any prejudice to the accused resulting from the denial of a speedy trial." *Id.*

The government violated R.C.M. 707 by failing to bring SrA Jackson to trial within 120 days from the preferral of charges. The government preferred charges on 1 August 2023, but did not bring SrA Jackson to trial until 128 days later on 7 December 2023. R. at 1, 16. This delay violated the 120-day standard in R.C.M. 707.

R.C.M. 707(d) provides that the failure to comply with the right to speedy trial will result in a dismissal of the affected charges. Pursuant to R.C.M. 707(d), the dismissal should be with prejudice. Here, although SrA Jackson was convicted of Article 128b, UCMJ, offenses, the forum was a special court-martial, which would weigh against a need for retrial of the case. Moreover, there is nothing in the record that provides facts or circumstances that would justify the government's delay in bringing the case to trial, which weighs in favor of dismissal with prejudice. Further, the administration of justice is frustrated when there is unnecessary and excessive delay in bringing an accused to trial, which weighs in favor of dismissal with prejudice. Finally, SrA Jackson was prejudiced by having to wait to be brought to trial, particularly when considering the

fact that SrA Jackson's instant charges were the last in a series of charges that were preferred against him over a year-long period, which resulted in SrA Jackson being involuntarily recalled to active duty. Vol. 5, Preliminary Hearing Officer Exhibit 17, Attachment 4 ("Timeline of Administrative Holds, Involuntary Extensions of Active Duty, and Trials by Court-Martial."). SrA Jackson would once again suffer prejudice by being forced to retry a case after these delays. Thus, when balancing all these factors, the affected charges should be dismissed with prejudice.

WHEREFORE, SrA Jackson respectfully requests that this Honorable Court dismiss with prejudice Specifications 1 and 2 of Charge IV.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT
<i>Appellee,</i>	)	OF TIME
	)	(FIRST)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM S32780
DARIUS M. JACKSON)	
United States Air Force	)	20 August 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(5), the United States respectfully requests a 7-day enlargement of time to respond in the above captioned case. This case was docketed with the Court on 3 May 2024. Appellant filed his brief with this Court on 28 July 2025. This is the United States’ first request for an enlargement of time. As of the date of this request, 474 days have elapsed. The United States’ response in this case is currently due on 27 August 2025. If the enlargement of time is granted the United States’ response will be due on 3 September 2025, and 481 days will have elapsed since docketing.

There is good cause for the enlargement of time in this case. The undersigned is newly assigned appellate counsel and arrived on station on 31 July 2025. From 2-7 August 2025, the undersigned counsel participated in motions practice in his former capacity as a Victims’ Counsel in United States v. DiFalco at Nellis Air Force Base, Nevada. Shortly thereafter, the undersigned counsel filed a supplemental briefing per the military judge’s order due on 15 August 2025. On 19 August 25, the undersigned counsel attended a mandatory newcomer’s briefing required by the 316th Wing at Andrews Air Force Base. From 26-28 August, counsel

will also attend mandatory JAJG appellate newcomer's training. JAJG will then be closed on Friday, 29 August 2025, and Monday, 1 September 2025 for Labor Day.

The undersigned counsel was assigned this case on 31 July 2025. The trial transcript in this case is 125 pages, and Appellant has raised three assignments of error in a 16-page brief. The undersigned respectfully requests additional time to review the record and answer all three assignments of error. The extension of time also allows sufficient time for supervisory review and will ensure that the division can file the most thorough, helpful brief possible. No other JAJG attorney will be able to file a brief sooner as all other appellate government counsel are currently assigned extensive briefs, some before the Court of Appeals for the Armed Forces.

WHEREFORE, the United States respectfully requests this Honorable Court grant this motion for an enlargement of time.

[REDACTED]

DONNELL D. WRIGHT, Capt, USAF
Appellate Government Counsel

[REDACTED]

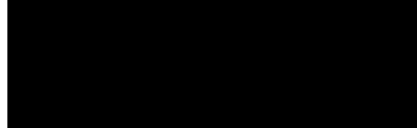
[REDACTED]

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 and the Air Force Appellate Defense Division on 20 August 2025.



DONNELL D. WRIGHT, Capt, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	ANSWER TO ASSIGNMENTS OF
<i>Appellee,</i>	)	ERROR
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4)	)	No. ACM S32780
DARIUS M. JACKSON)	
United States Air Force	)	3 September 2025
<i>Appellant.</i>)	

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

ISSUES PRESENTED

I.

WHETHER THE MILITARY JUDGE ERRED BY FAILING TO INQUIRE INTO SENIOR AIRMAN JACKSON’S UNDERSTANDING OF THE RAMIFICATIONS OF HIS AGREEMENT TO A BAD CONDUCT DISCHARGE.

II.

WHETHER 18 U.S.C. § 922 IS CONSTITUTIONAL AS APPLIED TO SENIOR AIRMAN JACKSON BECAUSE HE WAS CONVICTED OF OFFENSES THAT DO NOT FALL WITHIN THE NATION’S HISTORICAL TRADITION OF FIREARM REGULATION.¹

III.

WHETHER SENIOR AIRMAN JACKSON’S RIGHT TO A SPEEDY TRIAL WAS VIOLATED.

¹ Appellant raises Issues II and III pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

STATEMENT OF CASE

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

STATEMENT OF FACTS

On 7 December 2023, Appellant was convicted, consistent with his pleas, of one charge with two specifications of assault consummated by a battery in violation of Article 128b, Uniform Code of Military Justice (UCMJ). (*Entry of Judgment*, 23 January 2024, Record of Trial (ROT) Vol. 1). The military judge sentenced Appellant to a bad conduct discharge, 6 months in confinement, and reduction in grade to E-1, and a reprimand. (Id.)

Additional Facts

During her interview with OSI, SH, an active duty military member and Appellant's former spouse, described being "struck, strangled, whipped, and gagged" by Appellant. (Pros. Ex. 1 at 2.) As a result of Appellant's violence, SH's teeth were broken and her shoulder dislocated. (Id.) She was also "forced to crawl on her hands and knees until they bled." (Id.) SH told OSI that in their shared home, Appellant "pressed down on [her] shoulders and forced her to sit on the floor." (Id.) Appellant "then punched [SH] in the face and on her head repeatedly, resulting in a black eye and two chipped teeth." (Id.) During her dental examination, SH reported that she was "struck in the face the week prior." The dental surgeon noted that SH suffered from "two fractured teeth" and a "diffuse contusion surrounding her left eye and malar region." (Id.) SH also reported another assault to OSI that occurred on 2 December 2022. (Id.) SH reported that Appellant pushed her down on the floor and strangled her to the point she was unable to breathe. (Id.) After attempting to run away, Appellant pinned SH on the floor, forced her arms behind her back, applied pressure, and forced her arm into an "unnatural position." (Id.) Following this assault, Appellant told SH not to seek medical treatment. (Id.) The next day, SH went to urgent care at Nebraska Medicine

Bellevue Health Center. SH was diagnosed with an anterior dislocation to her left shoulder and immediately transferred to the emergency room, placed under sedation, and her shoulder relocated.

(Id.) Three days later, SH was observed with “subconjunctival hemorrhag[ing] in both eyes.” (Id.)

On 21 January 2023, SH visited Methodist Women’s Health Hospital in Omaha, Nebraska, where she reported being “physically assaulted [by Appellant] on an ongoing basis.” (Id.) She reported that two days prior, Appellant strangled her and struck her on the back with a belt. (Id.) For her safety, SH was relocated to another base. (Pros. Ex. 1 at 3.)

Sentencing Testimony on SH’s Dental and Medical Examinations

Capt CC, an advanced clinical dentist, testified during sentencing proceedings that SH presented with two fractured teeth. (R. at 76.) As a result, Capt CC recommended “two fillings to restore the missing tooth structure.” (R. at 79.) Capt CC also noted a contusion on SH’s left eye. (R. at 77.)

Major JV, a nurse practitioner, also testified during sentencing. Maj JV examined SH’s shoulder after her emergency room treatment and noted SH’s inability to complete the exam due to significant pain. (R. at 87.) Maj JV indicated that SH was having difficulty raising her arm which would “impact her ability to function on a day-to-day basis.” (R. at 89.) Maj JV also testified that the numbness and tingling sensation SH was experiencing was likely “related to *nerve compression or damage* due to the dislocation in her shoulder.” (Id.) According to Maj JV, “significant damage, particularly a dislocation, can cause either temporary or even permanent damage to the structure.” (Id.) Maj JV stated, “the most common long-term risk involved with shoulder dislocation is an increased chance that the shoulder will be dislocated again in the future” and “for some of these types of injuries, the only potential for improvement [is] surgical repair. (Id.) Maj JV advised, “[it is] possible [after] surgical repair that the patient [will not] regain either

the function that they had originally or not regain function without added pain.” (R. at 93.) Maj JV also “noted some minor bleeding had taken place on the white part of [SH’s] eye called the sclera,” a condition known as subconjunctile hemorrhaging. (R. at 86.)

ARGUMENT

I.

THE MILITARY JUDGE DID NOT PLAINLY ERR BY NOT INQUIRING AS TO WHETHER APPELLANT UNDERSTOOD THE CONSEQUENCES OF HIS AGREEMENT TO A BAD CONDUCT DISCHARGE

Standard of Review

This Court reviews a military judge’s decision to accept a guilty plea for abuse of discretion. United States v. Shaw, 64 M.J. 460, 462 (C.A.A.F. 2007) (quoting United States v. Eberle, 44 M.J. 374, 375 (C.A.A.F. 1996)). Questions of law arising from a guilty plea are reviewed de novo. United States v. Inabinette, 66 M.J. 320, 322 (C.A.A.F. 2008). When applying this standard, this Court uses the substantial basis test and considers “whether there is something in the record of trial with regard to the factual basis or the law that would raise a substantial question regarding appellant’s guilty plea.” Id. at 322; *see also*, United States v. Yanger, 67 M.J. 56 (C.A.A.F. 2008). “Once the military judge has accepted a plea as provident and has entered findings based on [them], an appellate court will not reverse that finding . . . unless it finds a substantial conflict between the plea and the accused's statements or other evidence of record.” Shaw, 64 M.J. at 462 (quoting United States v. Garcia, 44 M.J. 496, 498 (C.A.A.F. 1996)).

“To prevail [on plain error review], Appellant bears the burden of establishing (1) error, (2) that is clear or obvious, and (3) results in material prejudice to a substantial right of the accused.” United States v. Cole, 84 M.J. 398, 404 (C.A.A.F. 2024). “[F]ailure to establish any one of the prongs is fatal to a plain error claim.” United States v. Bungert, 62 M.J. 346, 348 (C.A.A.F. 2006).

Law and Analysis**A. The military judge was not required to ask Appellant about the bad conduct discharge because it was an agreed upon term of the plea agreement, not a concession by the defense counsel.**

Appellant asserts that “the military judge committed plain error by failing to conduct any inquiry with [Appellant] concerning whether he understood the consequences of a bad conduct discharge.” (App. Br. at 6.) Appellant also asserts that while he entered into a pretrial agreement, it is unclear whether he understood the ramifications of entering into an agreement with a bad conduct discharge as part of the agreement or the consequences of his counsel conceding to a bad conduct discharge during sentencing arguments. (Id.)

Defense counsel did not concede to a bad-conduct discharge during his sentencing arguments; he acknowledged and affirmed the terms contained in the pretrial agreement, as understood by all parties. During sentencing arguments, the Government asserted, “[u]nderstanding that accused will receive a bad conduct discharge” (R. at 106.) Acknowledging the terms of the plea agreement, defense counsel stated, “Your Honor, when thinking about the sentence that you’re going to impose today, a few choices *have already been made* for you.” (R. at 112.) (emphasis added) “Senior Airman Jackson is going to receive [a bad conduct discharge] and there is no question about it.” (Id.) During the colloquy, the military judge asked Appellant, “do you understand that I am essentially mandated by this agreement . . . to impose a bad conduct discharge.” (R. at 63.)

Appellant attempts to revisit the terms of his plea agreement, indirectly, by citing to United States v. Pineda, 54 M.J. 298, 300 (C.A.A.F. 2001). In Pineda, the Court of Appeals for the Armed Forces (CAAF) affirmed the lower court’s determination that “*defense counsel* erred in conceding the appropriateness of a bad-conduct discharge in his sentencing argument without putting in the

record that appellant agreed with this argument.” *Id.* at 299 (emphasis added). Unlike the present case, in Pineda, a bad conduct discharge was not included as a material term within the plea agreement but was a punishment available for argument for both parties during sentencing. In Pineda, the sole consideration granted by the Government in the pretrial agreement was a referral to a special court martial in lieu of a general court-martial. *Id.* Here, a bad conduct discharge was *voluntarily* included within the plea agreement with Appellant’s concurrence. (App. Ex. IV.) The inclusion of a punitive discharge, as a material term in the plea agreement and Appellant’s signature *was* the acknowledgement from Appellant that he understood the consequences of his choice. As noted in United States v. Bolkan, 55 M.J. 425, 428 (C.A.A.F. 2001) (quoting United States v. Teague, 953 F.2d 1525 (11th Cir. 1992)), an “accused has control of the plea, *pretrial agreement*, questions as to forum, right to testify, and whether to appeal.” (emphasis added) Appellant did not express a desire to be retained. Absent more, the military judge did not err and was not required to inquire further.

Prior to Pineda, the Court of Military Appeals (CMA) examined a similar question—whether the military judge erred in not inquiring into Appellant’s understanding of the ramifications of his request for a bad-conduct discharge in United States v. Lyons, 36 M.J. 425, 426 (C.M.A. 1993). In Lyons, the appellant entered into a pretrial agreement and while delivering his unsworn statement, asserted, “I feel that it is in both my interest and the Navy [sic] to discharge me.” *Id.* Trial counsel specifically requested the military judge inquire about the appellant’s request for a punitive discharge; the military judge declined. *Id.* On appeal, the Government argued the military judge had no duty to *sua sponte* inquire about the appellant’s request for a punitive discharge when the appellant “had not otherwise expressed or implied a desire to remain in the service.” *Id.* The Court agreed, holding, based on the unique facts of this case, the military

judge possessed no *sua sponte* duty to inquire further. *See id.* (“Appellant does not contend that his defense counsel failed to explain the ramifications of a punitive discharge; that he did not understand those ramifications; or that his defense counsel's sentencing argument was inconsistent with his desires.”). Here, arguably, Appellant was equally as explicit about his intentions, if not more, because his intentions were made clear, in written form—via the plea agreement. Similar to Lyons, the record in the present case does not reflect a conflict between defense counsel and Appellant’s desire to be retained. The record also does not reflect an amended desire by Appellant to remain in the service after signing the plea agreement.

CAAF addressed a similar issue again in Bolkan, emphasizing the issue was not novel. Bolkan, 55 M.J. at 427. In Bolkan, CAAF clarified in the numerous cases addressing this precise issue, “[the] cases clearly instruct that when an accused *asks the sentencing authority to be allowed to remain* on active duty, defense counsel errs by conceding the propriety of a punitive discharge. This is because ‘defense counsel is an advocate for the accused, not an amicus to the court.’” Id. Here, no ambiguity exists. Appellant did not express a desire to be retained; he agreed to be discharged in writing in exchange for other benefits in his plea agreement. Thus, the military judge did not plainly err by not inquiring further on the record.

B. The record is not silent, and Appellant acknowledged and expressed some understanding of the ramifications of his agreement to receive a bad conduct discharge.

Contrary to Appellant’s assertions, the record is not silent as to Appellant’s understanding of the potential consequences of a bad conduct discharge. (App. Br. at 5.) Whether the record is silent is not governed solely by whether Appellant *verbally* expressed his intentions during delivery of his unsworn statement or a colloquy with the judge. The record is also developed and informed by Appellants intentions and knowledge as expressed through the plea agreement and other documentary evidence.

Paragraph 7(c) of the plea agreement states: “My counsel fully advised me [on] . . . the *effect of the guilty plea* which I am offering to make, and I fully understand their advice and the meaning, *effect*, and consequence of this plea.” (App. Ex. IV.) (emphasis added). In paragraph 8, Appellant stated, “I understand the military judge must sentence me in accordance with the sentence limitations of this agreement.” (Id.) During the colloquy, the military judge asked, “do you understand the contents of your plea agreement?” (R. at 52.) Appellant responded, “Yes, Your Honor.” (Id.) When asked “[h]as anyone made any promises to you that are not written into this agreement in an attempt to get you to plead guilty?” (R. at 53). Appellant responded, “No, Your Honor.” (Id.) During the colloquy, the military judge emphasized to Appellant, “do you understand that I am essentially mandated by this agreement . . . to impose a bad conduct discharge. Do you understand that?” (R. at 63.) Appellant confirmed, “Yes, Your honor. I understand.” (Id.) Appellant’s understanding and consent to receive a bad conduct discharge was clear.

During his unsworn statement, Appellant repeatedly discussed his future plans on the record—his plans did not include the military. (R. at 100-102.) “And I look to continue my life *outside* the military.” (Id. at 100.) “Once I am *released*, I will live with my father who is out of prison and currently works as a plumber.” (Id. at 102.) “I plan to become an electrician.” (Id.) Appellant states, “while this means the Air Force—my Air Force career is over, I know it is just *closing* one chapter and opening another.” (Id.) Appellant mentioned becoming a new father and his thoughts “about providing not only for [himself] but for [his] family.” (Id.) Appellant did not address providing for his family through future service, but through life *outside* of the military. Thus, it is inaccurate to conclude that Appellant did not understand the life that awaited him upon receiving a bad conduct discharge.

C. There is no conflict on the record between defense counsel’s sentencing argument and Appellant’s desires.

During his sentencing argument, defense counsel asserted, “[Appellant] is marked for life by the BCD.” (R. at 113.) “This type of discharge deprives him of substantially all benefits administered by the Department of Veterans Affairs, and it tells those who [Appellant] meets that not only was he discharged from the military, but he was removed specifically for bad conduct.” (R. at 114.) “[A] BCD alone is severe punishment. It is not just a slap on the wrist. There is no rehabilitative purpose behind a BCD.” (R. at 113.) “It is pure punishment and social retribution that he will carry with him for the rest of his life.” (Id.) “[Appellant] is a young man that will have to pick up the pieces of his life after being convicted of a federal offense and carrying the stigma of a punitive discharge associated with his name.” (Id. at 115.) During his unsworn statement, Appellant stated, “I know my life will be difficult with a *federal conviction and a punitive discharge.*” (Id. at 102.)

Unlike some of the cases cited by Appellant in his brief, there was no conflict between defense counsel’s advocacy and Appellant’s desires. (App. Br. at 7.) See United States v. Dresen, 40 M.J. 462, 463 (C.M.A. 1994) (finding defense counsel erred after suggesting a punitive discharge may be appropriate in her clemency brief against the Appellant’s *expressed* wishes.) (emphasis added) This point is bolstered by the fact that Appellant agreed to a bad conduct discharge within the plea agreement, and Appellant has not directly attacked the effectiveness of *any* of his counsel.² Nor has Appellant now claimed that if he understood all the ramifications of a bad conduct discharge, he would not have pled guilty. While the military judge *could* have

² Appellant was represented by six different ADCs in 2023. See (App Exs. I, II, and III)

inquired further, he was not *required* to, and his declination, is not an error, much less plain and obvious error.

Appellant references the non-binding Military Judges Benchbook as additional support for his assertion that military judges err when they do not *sua sponte* inquire on the record whether an accused understands the consequences of a punitive discharge. (App. Br. at 9.) However, as indicated by the plain language of the Benchbook, “military judges are *encouraged* to conduct an inquiry,” not required. Department of the Army Pamphlet (D.A. Pam.) 27-9, Military Judges Benchbook, para. 2-7-26 (25 July 2025). Judicial discretion is important, especially in cases such as the present, where the record indicates no conflict between defense counsel’s advocacy and Appellant’s expressed wishes. Appellant is unable to demonstrate error, much less clear error, and is not entitled to relief.

D. The military judge’s failure to conduct an additional inquiry was not prejudicial

When testing for prejudice, the court often presumes *error*. However, the court does not presume *prejudice*. See Pineda, 54 M.J. at 301 (quoting United States v. Dresen, 40 M.J. 462 (C.M.A. 1994) (“the failure to make a proper record of the accused’s wishes does not, *per se*, require an appellate court to set aside a court-martial sentence.”)); When assessing whether there is prejudice from a military judge’s decision to failure to conduct an inquiry into the accused’s wishes for a punitive discharge, our superior Court stated, “where the facts of a given case compel a conclusion that a bad-conduct discharge was reasonably likely, we do not normally order a new sentence hearing.” *see id.* (citing United States v. Volmar, 15 M.J. 339, 343 (C.M.A. 1983))

Often, when the court finds error, either actual or presumed, the error is deemed harmless. See Bolkan 55 M.J. at 428 (assuming defense counsel’s concession was error and the military judge erred; the error was harmless.). Courts have deemed errors harmless, even in cases with similar

facts as the present case, where the appellant does not directly attack the adequacy of their representation.³ Id. This is particularly true when sentencing is by judge alone. *See Pineda*, 54 M.J. at 301. (“[T]his was a trial before a military judge alone, and we are confident that this judge was aware that a proper record [was not] made and disregarded the improper argument before him.”).

Appellant cites United States v. McNally, 16 M.J. 32, 32 (C.M.A. 1983) as controlling authority. (App. Br. At 10.) However, McNally is factually distinct. In McNally, the appellant was convicted in a special court-martial for possessing two ration cards in violation of an Army regulation and possessing 752 grams of heroin. Id. at 33. According to the appellant’s unsworn statement, this was the first time the appellant purchased heroin. Id. While in the Army, the appellant amassed a record of four nonjudicial punishments, but no prior court-martial convictions. Id. During the sentencing argument, defense counsel argued that “a bad-conduct discharge, with its permanent detrimental effect,” was a proper punishment. Id. Assessing the events surrounding Appellant’s charges, the Court determined the surrounding facts “[did] not compel the conclusion that a bad-conduct discharge was inevitable.” Id.

In contrast, here, Appellant committed multiple violent offenses against his former spouse, with at least one offense, potentially resulting in permanent injury. (R. at 93.) For Charge IV, Specification 1, Appellant forced SH to the floor, “punched [her] in the face and on [the] head repeatedly, resulting in a black eye and two chipped teeth.” (Pros. Ex. 1 at 2.) For Charge IV, Specification 2, SH told OSI that after attempting to run away, Appellant strangled her to the point she was unable to breathe. (Id.) Appellant then pinned SH down to the floor, forced her arms

³Notably, there is no declaration from the Appellant stating that if the military judge provided an additional advisement on the record about the consequences of a bad conduct discharge, he would have withdrawn his guilty plea.

behind her back, applied pressure, and forced her arm into an “unnatural position.” (Id.) As a result of his violence, Appellant dislocated SH’s shoulder. (Id.)

During follow-up care after her shoulder relocation, SH presented with numbness and tingling in her shoulder. (R. at 86.) Maj JV testified the numbing and tingling sensation experienced by SH was likely “nerve compression or damage” as a result of the dislocation. (R. at 89.) Maj JV also testified that some patients never regain functionality, even after surgery. (R. at 93.) Approximately one year later, during her victim impact statement, SH stated she is no longer able to play tennis, her favorite sport, due to her shoulder injury. (R. at 96; Ct. Ex. 1). Appellant’s egregious misconduct, under either specification, was sufficient, by itself, for the military judge to impose a bad conduct discharge. Based on Appellant’s misconduct, the military judge would more than likely have imposed a bad conduct discharge, and the record contains ample support for such a determination.

In his brief, Appellant asserts that “mitigation evidence was present in [his] case that could have weighed against the imposition of a bad-conduct discharge.” (App. Br. at 10.) As support, Appellant cited numerous character letters submitted on his behalf and evidence of psychological trauma and poor mental health resulting from his childhood. Id. Appellant’s violent misconduct on the record speaks loudly, and his misconduct, even if the court presumes error, supports a logical conclusion that a bad conduct discharge was inevitable and warranted. Under such circumstances, Appellant was not prejudiced by the military judge’s failure to inquire into his understanding of the bad conduct discharge. Appellant failed to satisfy his burden and there was no plain error or prejudice; thus, this Court should deny this assignment of error.

II.⁴

**THIS COURT LACKS JURISDICTION TO ACT UPON AN
18 U.S.C. § 922 DESIGNATION.**

Standard of Review

The Court reviews questions of jurisdiction de novo. United States v. Williams, 85 M.J. 121, 124 (C.A.A.F. 2024) (citing United States v. Kuemmerle, 67 M.J. 141, 143 (C.A.A.F. 2009)).

Law and Analysis

In light of United States v. Johnson No. 24-0004/SF, slip op. at 2 (C.A.A.F. 24 June 2025), Appellant's claim fails. In Johnson, CAAF concluded that it "lacks authority to act upon a § 922 indication because no Court of Criminal Appeals has the authority to act upon that indication in the first instance," and therefore, the question of 18 U.S.C. § 922's constitutionality is "moot." Id. The Court's holding is applicable here and this Court should deny this assignment of error.

III⁵

**THE GOVERNMENT DID NOT VIOLATE APPELLANT'S
SPEEDY TRIAL RIGHTS**

Standard of Review

"The standard of review on appeal for speedy trial issues is de novo." United States v. Cooper, 58 M.J. 54, 57 (C.A.A.F. 2003).

Law and Analysis

R.C.M. 707(a)(1) "The accused shall be brought to trial within 120 days after the earlier of: (1) Preferral of charges." R.C.M. 707(b)(1) provides: "The accused is brought to trial . . . at the time of arraignment" "[T]he duty imposed on the Government by R.C.M. 707 is to arraign an

⁴ Appellant raises this issue pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

⁵ Appellant raises this issue pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

accused within 120 days of preferral” Id. at 59 “The duty is no more and no less and is satisfied once an accused is arraigned.” Id.

Here, Appellant asserts a speedy trial violation based solely upon R.C.M. 707. It appears the ROT was missing the transcript of Appellant’s arraignment which occurred on 12 September 2023 at Offutt Air Force Base, Nebraska. The prior arraignment was referenced on the record by the military judge. (R. at 16.) The transcript of this prior arraignment is located on Webdocs and was posted on 9 July 2024. Should this Court conclude that remand is necessary to include this transcript in the original record of trial, it may remand the case under R.C.M. 1112(d).

Nonetheless, charges were preferred against Appellant on 1 August 2023. (*Charge Sheet*, ROT, Vol. 1). Arraignment occurred on 12 September 2023. (R. at 10.) Forty-three days elapsed between preferral and arraignment on the charges Appellant pled guilty to. Thus, Appellant was brought to trial within 120 days, and no speedy trial violation occurred. This Court should also deny this assignment of error.

CONCLUSION

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

[REDACTED]

DONNELL D. WRIGHT, Capt, 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 and the Air Force Appellate Defense Division on 3 September 2025.



DONNELL D. WRIGHT, Capt, USAF
Appellate Government Counsel



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

UNITED STATES	)	No. ACM S32780
<i>Appellee</i>)	
)	
v.)	
)	
Darius M. JACKSON	)	NOTICE OF
Senior Airman (E-4)	)	PANEL CHANGE
U.S. Air Force)	
<i>Appellant</i>)	

It is by the court on this 10th day of September, 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

KEARLEY, CYNTHIA T., Colonel, Appellate Military Judge

MORGAN, CHRISTOPHER S., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.



JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee,

v.

Senior Airman (E-4)

DARIUS M. JACKSON,

United States Air Force,

Appellant.

**REPLY BRIEF ON BEHALF OF
APPELLANT**

Before Special Panel

No. ACM S32780

Filed on: 10 September 2025

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

Appellant, Senior Airman (SrA) Darius Jackson, by and through his undersigned counsel and pursuant to Rule 18(d) of this Honorable Court's Rules of Practice and Procedure, files this reply to the Appellee's answer of 3 September 2025 (hereinafter Gov. Ans.). SrA Jackson stands on the arguments in his initial brief, filed on 28 July 2025 (hereinafter App. Br.), and submits additional arguments for the issue listed below.

I.

THE MILITARY JUDGE PLAINLY ERRED BY FAILING TO INQUIRE INTO SENIOR AIRMAN JACKSON'S UNDERSTANDING OF THE RAMIFICATIONS OF HIS AGREEMENT TO A BAD CONDUCT DISCHARGE.

The military judge committed plain error by failing to conduct any inquiry with SrA Jackson concerning whether he understood the consequences of a bad conduct discharge. As detailed in Appellant's initial brief, the military judge erred in failing to inquire into SrA Jackson's understanding of the ramifications of a bad conduct discharge in two instances. First, because SrA Jackson pleaded guilty pursuant to a plea agreement and the record was silent as to whether he understood the implications of agreeing to a bad conduct discharge as part of that plea

agreement, the military judge should have conducted a colloquy with SrA Jackson about the specific provision in the plea agreement that mandated a bad conduct discharge. Second, given the silence in the record and the gravity of the consequences of a bad conduct discharge, the military judge also should have conducted a colloquy with SrA Jackson after defense counsel conceded to a bad conduct discharge during sentencing arguments.

Seizing on the obvious fact that the plea agreement mandated that the military judge impose a bad conduct discharge, the government mistakenly argues that SrA Jackson is attempting to “revisit the terms of his plea agreement.” Gov. Br. at 5.¹ The government also posits that defense counsel did not “concede” to a bad conduct discharge during argument, but only acknowledged the terms of the plea agreement. *Id.* This argument largely misses the point. There is no question that the plea agreement in this case required the imposition of a bad conduct discharge. But that fact says little about whether SrA Jackson understood the consequences of agreeing to the bad conduct discharge as a term of the plea agreement and whether the military judge erred in failing to conduct any inquiry into SrA Jackson’s understanding. The government unpersuasively argues that such an inquiry was not necessary by engaging in circular reasoning, pointing to inadequate references in the record, and highlighting the irrelevant lack of an expressed disagreement between SrA Jackson and his counsel.

First, the government engages in circular reasoning, arguing that the military judge was not required to inquire into whether SrA Jackson understood the ramifications of agreeing to a bad conduct discharge in his plea agreement because this provision was a term in the plea agreement. Gov. Br. at 5-6. The government asserts that a bad conduct discharge was “voluntarily” included

¹ Because the government’s brief does not appear to include page numbers, SrA Jackson’s citations to the page numbers of the government’s brief follow the numerical order of the pages in the document.

in the plea agreement and that the inclusion of this provision “and Appellant’s signature *was* the acknowledgment from Appellant that he understood the consequences of his choice.” Gov. Br. at 6 (emphasis in original). This argument misses the mark. Contrary to the government’s suggestion, the inclusion of the provision in the plea agreement mandating a bad conduct discharge does not answer the question of whether SrA Jackson understood the consequences of that sentence. Rather, it creates the question. Without any other context or factual inquiry in the record, a bare provision regarding a bad conduct discharge in a plea agreement presents a problem similar to when a defense counsel concedes a punitive discharge in sentencing arguments in the face of a silent record. *See United States v. Lyons*, 36 M.J. 425, 427 (C.M.A. 1993) (“where the record is silent regarding an accused's desires, defense counsel may not concede that a punitive discharge is appropriate.”). Given the particular facts present, this Court should apply similar reasoning and hold that the military judge erred in failing to conduct appropriate inquiries into SrA Jackson’s understanding of that provision when the record is silent as to his knowledge of the ramifications.

Indeed, the unpersuasive nature of the government’s argument is manifested when compared to how the military judge ensured SrA Jackson’s understanding of other provisions in the plea agreement. For example, the plea agreement also provided a provision to “waive all waivable motions[.]” Appellate Exhibit (App. Ex.) IV at 1. Under the government’s view, Gov. Br. at 5-6, because SrA Jackson signed his name to the plea agreement, that is all the acknowledgment that was needed for that term of the plea agreement. No further inquiry was needed.

But the military judge did not stop the inquiry regarding the “waive all waivable motions” provision simply because SrA Jackson signed his name to the plea agreement. Instead, the military judge engaged in a focused colloquy with SrA Jackson to ensure that he “understand[s] what the

provision means,” and to make sure SrA Jackson knew that he was giving up the right to raise certain motions at trial and on appeal. R. at 55-57. Given that a punitive separation, such as a bad conduct discharge,” is considered a “severe punishment,” *United States v. Pineda*, 54 M.J. 298, 300 (C.A.A.F. 2001), there is no meaningful reason why a military judge would need to guarantee that an accused understands a provision in a plea agreement waiving all waivable motions as part of ensuring a knowing and voluntary plea that comports with due process, but fail to guarantee that an accused understand a provision mandating a bad conduct discharge.

The government also cites *United States v. Bolkan*, 55 M.J. 425, 428 (C.A.A.F. 2001), for the proposition that an “accused has control of the plea, *pretrial agreement*, questions as to forum, right to testify, and whether to appeal,” Gov. Br. at 6 (emphasis in original), but the point of law relied on by the government in this context is not germane to SrA Jackson’s case. The proposition of law in *Bolkan* that the government cites refers to the well-established principle that decisions on matters such as whether to plead guilty and plea agreements are decisions to be made personally by the accused, rather than tactical decisions made by counsel, such as what evidence to introduce at a trial. 55 M.J. at 428. That legal principle, while not in dispute in this case, is irrelevant. It is true that SrA Jackson had the ability to control what provisions were included in his plea agreement, but that fact does not answer the separate question of whether the military judge erred by failing to ensure that he understood the consequences of agreeing to a bad conduct discharge, as part of the military judge’s duty to ensure the plea agreement was knowingly and voluntarily made.

Second, the government’s argument that the military judge was not required to inquire into SrA Jackson’s understanding of the provision in the plea agreement mandating a bad conduct discharge because the record was not silent as to SrA Jackson’s wishes is unpersuasive. In support

of this argument, the government points to general provisions in the plea agreement about the “effect of the guilty plea,” questions the military judge asked SrA Jackson generally about the contents of the plea agreement, and the fact that the military judge asked SrA Jackson if he understood that the military judge was “essentially mandated by this agreement” to impose a bad conduct discharge. Gov. Br. at 8 (citing R. at 63). But asking whether an accused generally knows that a provision requiring a bad conduct discharge is in a plea agreement is a different inquiry altogether from confirming whether an accused understands the consequences of that bad conduct discharge. None of the general questions posed by the military judge and cited by the government specifically inquired into whether SrA Jackson understood the ramifications of a bad conduct discharge, in a manner consistent with the guidance provided in the Military Judges’ Benchbook. See Department of the Army Pamphlet 27-9, *Military Judges’ Benchbook* (unofficial update), Section 2-7-26 (July 14, 2025). This guidance arises because of the distinctly adverse effects of a bad conduct discharge, and merely confirming that SrA Jackson knew of that term in the plea agreement revealed nothing about his comprehension of those effects.

The government also points to part of SrA Jackson’s unsworn statement where he discussed his future plans outside the military, Gov. Br. at 8, but this argument is also unavailing. As an initial matter, SrA Jackson’s comments in his unsworn statement came after the military judge had accepted the plea agreement. Compare R. 69 with R. 100-02. In any event, SrA Jackson’s acknowledgement that his Air Force career was over was more akin to the bare acknowledgement that a bad conduct discharge was included as a term in his plea agreement, R. at 62-63, and did not inquire into his understanding of the full ramifications of conceding to such a discharge. *Pineda*, 54 M.J. at 301 (holding that “there was not an adequate record of appellant’s desire that a punitive discharge be actually imposed” even where the appellant “implicitly

acknowledged the reasonable certainty of a punitive discharge in his case when questioned by defense counsel.”).

Finally, the government again misses the point by maintaining that there was no conflict between defense counsel’s sentencing argument conceding a bad conduct discharge and SrA Jackson’s desires because SrA Jackson did not express specific disagreement with defense counsel. Gov. Br. at 9. Contrary to the government’s view, it is not just in situations where an accused expressly disagrees with defense counsel’s concession of a punitive discharge in sentencing arguments where an accused’s rights are violated. Rather, a superior court has also made clear that “where the record is silent regarding an accused’s desires, defense counsel may not concede that a punitive discharge is appropriate.” *Lyons*, 36 M.J. at 426. The colloquy is to ensure an accused’s wishes are fully informed, not to confirm a lack of conflict between counsel and their client. As noted above, SrA Jackson’s brief statements in his unsworn statement about his future life outside the military did not speak to whether he understood the consequences and stigma of a bad conduct discharge or whether it was his express desire to still concede to such a discharge. Moreover, the fact that a provision requiring the imposition of a bad conduct discharge was included in his plea agreement, absent any specific inquiry conducted by the military judge as to SrA Jackson’s understanding of that provision, did not provide sufficient evidence of his appreciation of the effects of conceding to a bad conduct discharge.

WHEREFORE, SrA Jackson respectfully requests that this Honorable Court reassess the sentence and set aside the bad conduct discharge.

Respectfully submitted,

A large black rectangular redaction box covering the signature of the appellant.

THOMAS R. GOVAN, JR., Maj, USAF
Appellate Defense Counsel

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via electronic mail to the Court and served on the Government Trial and Appellate Operations Division on 10 September 2025.

[REDACTED]

THOMAS R. GOVAN, JR., Maj, USAF
Appellate Defense Counsel

[REDACTED]

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

UNITED STATES	)	No. ACM S32780 (f rev)
<i>Appellee</i>)	
)	
v.)	
)	
Darius M. JACKSON	)	NOTICE OF
Senior Airman (E-4)	)	DOCKETING
U.S. Air Force)	
<i>Appellant</i>)	

The record of trial in the above-styled case was returned to this court by the Military Appellate Records Branch (JAJM).

Accordingly, it is by the court on this 3d day of December, 2025,

ORDERED:

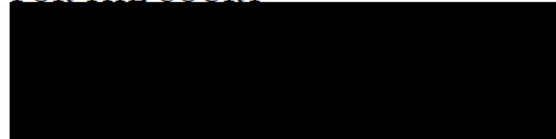
That the Record of Trial in the above styled matter is referred to a Special Panel. The Special Panel in this matter shall be constituted as follows:

GRUEN, PATRICIA A., Colonel, Senior Appellate Military Judge
KEARLEY CYNTHIA T., Colonel, Appellate Military Judge
MORGAN, CHRISTOPHER S., Colonel, Appellate Military Judge

Based on the procedural history of this case, the court is already in receipt of Appellant's brief, Government's answer, and Appellant's reply. The court will now continue its Article 66, Uniform Code of Military Justice, 10 U.S.C. § 866, review of Appellant's case.



FOR THE COURT



Chief Commissioner

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

UNITED STATES	)	No. ACM S32780 (f rev)
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF PANEL
Darius M. JACKSON	)	CHANGE
Senior Airman (E-4))	
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 Special Panel and referred to Panel 1 for appellate review.

This panel letter supersedes all previous panel assignments.



FOR THE COURT



JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner