UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40715**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Daniel P. GOSSETT	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 12 January 2025, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant's assignments of error. The Government opposes the motion.

The court has considered Appellant's motion, the Government's opposition, this court's Rules of Practice and Procedure, and applicable case law.

Accordingly, it is by the court on this 15th day of January, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error **not later than 21 March 2025.**

Counsel should not rely on any subsequent requests for enlargement of time being granted. Each request will be considered on its merits.

Appellant's counsel is advised that any subsequent motions for enlargement of time shall include, in addition to the 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. Counsel is not required to re-address item (1) in each subsequent motion for enlargement of time if counsel previously replied in the affirmative.

Counsel may request, and the court may order *sua sponte*, a status conference to facilitate timely processing of this appeal.

Appellant's counsel is further advised that any future requests for enlargements of time that, if granted, would expire more than 360 days after docketing, will not be granted absent exceptional circumstances.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **DANIEL P. GOSSETT,** United States Air Force, *Appellant.*	)	No. ACM 40715
	)	12 January 2025

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

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for 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 **21 March 2025**. The record of trial was docketed with this Court on 21 November 2024. From the date of docketing to the present date, 52 days have elapsed. On the date requested, 120 days will have elapsed.

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

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 12 January 2025.

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
[redacted]

14 January 2025

1IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) DANIEL P. GOSSETT, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40715 Panel No. 2

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

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

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

[redacted]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
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 to the Air Force Appellate Defense Division on 14 January 2025.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SECOND)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **DANIEL P. GOSSETT,** United States Air Force, *Appellant.*	)	No. ACM 40715
	)	11 March 2025

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for a second enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **20 April 2025**. The record of trial was docketed with this Court on 21 November 2024. From the date of docketing to the present date, 110 days have elapsed. On the date requested, 150 days will have elapsed.

On 15–20 April 2024, a general court-martial consisting of officer and enlisted members at Edwards Air Force Base, California, convicted Appellant, contrary to his pleas, of one charge and one specification of child endangerment in violation of Article 119b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 919b, and one charge and two specifications of domestic violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 961, Record of Trial (ROT) Vol. 1, Entry of Judgment, 23 July 2024 (EOJ). The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for fifteen months, and a bad conduct discharge. R. at 1075; EOJ. The convening authority took no action on the findings but suspended the adjudged reduction in grade until 4 November 2024, at which time the suspended part of the sentence would be remitted unless the suspension was sooner vacated, and waived

automatic forfeitures for six months or until release from confinement or expiration of term of service, whichever is sooner, for the benefit of Appellant's dependents. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Daniel P. Gossett*, 28 June 2024.

The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 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 advised of his right to a 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 11 March 2025.

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
[redacted]

1IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) **DANIEL P. GOSSETT** United States Air Force. *Appellant*	))))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME Before Panel No. 2 No. ACM 40715 13 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 general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

[redacted]
VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
[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 13 March 2025.

[redacted]
VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
[redacted]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (THIRD)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **DANIEL P. GOSSETT,** United States Air Force, *Appellant.*	)	No. ACM 40715
	)	11 April 2025

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for a third enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **20 May 2025**. The record of trial was docketed with this Court on 21 November 2024. From the date of docketing to the present date, 141 days have elapsed. On the date requested, 180 days will have elapsed.

On 15–20 April 2024, a general court-martial consisting of officer and enlisted members at Edwards Air Force Base, California, convicted Appellant, contrary to his pleas, of one charge and one specification of child endangerment in violation of Article 119b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 919b, and one charge and two specifications of domestic violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 961, Record of Trial (ROT) Vol. 1, Entry of Judgment, 23 July 2024 (EOJ). The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for fifteen months, and a bad conduct discharge. R. at 1075; EOJ. The convening authority took no action on the findings but suspended the adjudged reduction in grade until 4 November 2024, at which time the suspended part of the sentence would be remitted unless the suspension was sooner vacated, and waived

automatic forfeitures for six months or until release from confinement or expiration of term of service, whichever is sooner, for the benefit of Appellant's dependents. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Daniel P. Gossett*, 28 June 2024.

The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 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 advised of his right to a 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,

[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 11 April 2025.

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
[redacted]

1IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
Appellee,	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Master Sergeant (E-7)	)	
DANIEL P. GOSSETT,	)	No. ACM 40715
United States Air Force	)	
Appellant	)	15 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 general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

[redacted]

KATE E. LEE, Maj, USAF
Appellate Government Counsel
[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 15 April 2025.



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FOURTH)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **DANIEL P. GOSSETT,** United States Air Force, *Appellant.*	)	No. ACM 40715
	)	12 May 2025

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 thirty days, which will end on **19 June 2025**. The record of trial was docketed with this Court on 21 November 2024. From the date of docketing to the present date, 172 days have elapsed. On the date requested, 210 days will have elapsed.

On 15–20 April 2024, a general court-martial consisting of officer and enlisted members at Edwards Air Force Base, California, convicted Appellant, contrary to his pleas, of one charge and one specification of child endangerment in violation of Article 119b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 919b, and one charge and two specifications of domestic violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 961, Record of Trial (ROT) Vol. 1, Entry of Judgment, 23 July 2024 (EOJ). The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for fifteen months, and a bad conduct discharge. R. at 1075; EOJ. The convening authority took no action on the findings but suspended the adjudged reduction in grade until 4 November 2024, at which time the suspended part of the sentence would be remitted unless the suspension was sooner vacated, and waived

automatic forfeitures for six months or until release from confinement or expiration of term of service, whichever is sooner, for the benefit of Appellant's dependents. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Daniel P. Gossett*, 28 June 2024.

The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 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-eight clients; twenty-five clients are pending initial AOEs before this Court.[1] Thirteen 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 fifty 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 needs to conduct additional review of the record of trial to prepare a brief on remand in this case.

[1] Since the filing of Appellant's last request for an enlargement of time, counsel reviewed approximately twenty-five percent of the seven-volume record of trial in *U.S. v. Haymond*, ACM 40588; assisted with preparing and filing two motions before this Court and one motion before the United States Court of Appeals for the Armed Forces (CAAF) in *U.S. v. Dawson*, ACM 24041; 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; prepared and presented a briefing for the Air Force Senior Defense Counsel Qualification Course; and participated in four practice oral arguments for two additional cases. Additionally, counsel was on leave on 18 and 26–29 April and 2–4 May 2025.

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

4) *United States v. Jackson*, ACM S32780 – 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. Undersigned counsel has not yet begun reviewing the record of trial in this case.

5) *United States v. Banks*, ACM 24057 – The record of trial is seven volumes consisting of ten prosecution exhibits, sixteen defense exhibits, and thirty appellate exhibits; the transcript is 985 pages. Undersigned counsel has begun reviewing the record of trial in this case.

6) *United States v. Smith*, ACM 40437 (f rev) – The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and twenty-nine appellate exhibits; the transcript is 338 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

7) *United States v. Nelson*, ACM 24042 – The record of trial is three volumes consisting of fifteen prosecution exhibits, one defense exhibit, and seventeen appellate exhibits; the transcript is 336 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

8) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight

appellate exhibits; the transcript is 248 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

9) *United States v. Myslow*, ACM 40668 – The record of trial is three volumes consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is eighty-five pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

10) *United States v. Payton*, ACM 40669 – The record of trial is five volumes consisting of three prosecution exhibits, five defense exhibits, and three appellate exhibits; the transcript is 175 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

11) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

12) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and one court exhibit; the transcript is 243 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

13) *United States v. Penninga*, ACM 40714 – The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 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 advised of his right to a 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,

[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 12 May 2025.

Respectfully submitted,

[redacted]
FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
[redacted]

1IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
Appellee,	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Master Sergeant (E-7)	)	
DANIEL P. GOSSETT	)	No. ACM 40715
United States Air Force.	)	
Appellant	)	13 May 2025

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

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

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

[redacted]
VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
[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 13 May 2025.

[redacted]
VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
[redacted]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIFTH)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **DANIEL P. GOSSETT,** United States Air Force, *Appellant.*	)	No. ACM 40715
	)	10 June 2025

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 thirty days, which will end on **19 July 2025**. The record of trial was docketed with this Court on 21 November 2024. From the date of docketing to the present date, 201 days have elapsed. On the date requested, 240 days will have elapsed.

On 15–20 April 2024, a general court-martial consisting of officer and enlisted members at Edwards Air Force Base, California, convicted Appellant, contrary to his pleas, of one charge and one specification of child endangerment in violation of Article 119b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 919b, and one charge and two specifications of domestic violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 961, Record of Trial (ROT) Vol. 1, Entry of Judgment, 23 July 2024 (EOJ). The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for fifteen months, and a bad conduct discharge. R. at 1075; EOJ. The convening authority took no action on the findings but suspended the adjudged reduction in grade until 4 November 2024, at which time the suspended part of the sentence would be remitted unless the suspension was sooner vacated, and waived

automatic forfeitures for six months or until release from confinement or expiration of term of service, whichever is sooner, for the benefit of Appellant's dependents. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Daniel P. Gossett*, 28 June 2024.

The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 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-nine clients; twenty-three clients are pending initial AOEs before this Court.[1] Additionally, one client has an upcoming petition for a grant of review and supplement to the petition before the United States Court of Appeals for the Armed Forces (CAAF). Eleven matters currently have priority over this case:

1) *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 completed his review of the record of trial and begun drafting the AOE in this case.

[1] Since the filing of Appellant's last request for an enlargement of time, counsel completed his review of the seven-volume record of trial and prepared and filed a twelve-page AOE in *U.S. v. Haymond*, ACM 40588; assisted with preparing and filing a motion and a twenty-two page supplement to the petition for a grant of review before the CAAF in *U.S. v. Dawson*, ACM 24041, USCA Dkt. No. 25-0156/AF; completed his review on remand of the fourteen-volume record and prepared and filed a twenty-nine-page brief in *U.S. v. Driskill*, ACM 39889 (rem); completed his review of the four-volume record of trial and began drafting the AOE in *U.S. v. Keilberg*, ACM 40601; and participated in five practice oral arguments for two additional cases. Additionally, counsel was off for the Memorial Day holiday and attended the funeral service for CMSgt Swigonski at Arlington National Cemetery on 28 May 2025.

2) *United States v. York*, ACM 40604 – The record of trial is seven volumes consisting of five prosecution exhibits, two defense exhibits, thirty-six appellate exhibits, and one court exhibit; the transcript is 847 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.

3) *United States v. Jackson*, ACM S32780 – 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. Undersigned counsel has not yet begun reviewing the record of trial, but additional counsel has been detailed to this case.

4) *United States v. Smith*, ACM 40437 (f rev) – The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and twenty-nine appellate exhibits; the transcript is 338 pages. Undersigned counsel has not yet begun reviewing the record of trial, but additional counsel has been detailed to this case.

5) *United States v. Banks*, ACM 24057 – The record of trial is seven volumes consisting of ten prosecution exhibits, sixteen defense exhibits, and thirty appellate exhibits; the transcript is 985 pages. Undersigned counsel has begun reviewing the record of trial in this case.

6) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

7) *United States v. Myslow*, ACM 40668 – The record of trial is three volumes consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the

transcript is eighty-five pages. Undersigned counsel has not yet begun reviewing the record of trial, but additional counsel has been detailed to this case.

8) *United States v. Payton*, ACM 40669 – The record of trial is five volumes consisting of three prosecution exhibits, five defense exhibits, and three appellate exhibits; the transcript is 175 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

9) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

10) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and one court exhibit; the transcript is 243 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

11) *United States v. Penninga*, ACM 40714 – The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 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 advised of his right to a 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,

[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 10 June 2025.

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
[redacted]

1IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) **DANIEL P. GOSSETT** United States Air Force. *Appellant*	))))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME Before Panel No. 2 No. ACM 40715 12 June 2025

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

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

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

[redacted]

JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel

[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 12 June 2025.

[redacted]

JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel
[redacted]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SIXTH)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **DANIEL P. GOSSETT,** United States Air Force, *Appellant.*	)	No. ACM 40715
	)	9 July 2025

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

Pursuant to Rule 23.3(m)(3) and (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 thirty days, which will end on **18 August 2025**. The record of trial was docketed with this Court on 21 November 2024. From the date of docketing to the present date, 230 days have elapsed. On the date requested, 270 days will have elapsed.

On 15–20 April 2024, a general court-martial consisting of officer and enlisted members at Edwards Air Force Base, California, convicted Appellant, contrary to his pleas, of one charge and one specification of child endangerment in violation of Article 119b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 919b, and one charge and two specifications of domestic violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 961, Record of Trial (ROT) Vol. 1, Entry of Judgment, 23 July 2024 (EOJ). The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for fifteen months, and a bad conduct discharge. R. at 1075; EOJ. The convening authority took no action on the findings but suspended the adjudged reduction in grade until 4 November 2024, at which time the suspended part of the sentence would be remitted unless the suspension was sooner vacated, and waived

automatic forfeitures for six months or until release from confinement or expiration of term of service, whichever is sooner, for the benefit of Appellant's dependents. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Daniel P. Gossett*, 28 June 2024.

The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing forty clients; twenty-five clients are pending initial AOEs before this Court.[1] Additionally, one client has an upcoming supplement to the petition for grant of review and another client has a pending answer brief, both before the United States Court of Appeals for the Armed Forces (CAAF). Ten matters currently have priority over this case:

1) *United States v. York*, ACM 40604, USCA Dkt. No. 25-0200/AF – The record of trial is seven volumes consisting of five prosecution exhibits, two defense exhibits, thirty-six appellate exhibits, and one court exhibit; the transcript is 847 pages. Undersigned counsel has petitioned the CAAF for a grant of review and is drafting the supplement to the petition in this case.

[1] Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a seven-page AOE in *U.S. v. Keilberg*, ACM 40601; petitioned the CAAF for a grant of review and began drafting the supplement to the petition in *U.S. v. York*, ACM 40604, USCA Dkt. No. 25-0200/AF; reviewed the Government's answer and prepared and filed a two-page reply brief in *U.S. v. Haymond*, ACM 40588; reviewed the Government's answer and prepared and filed an eight-page reply brief in *U.S. v. Driskill,* ACM 39889 (rem); and prepared and filed a motion to withdraw from appellate review in *U.S. v. Harnar*, ACM 40559 (f rev). Additionally, counsel was off for the Juneteenth and Independence Day holidays.

2) *United States v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF – The record of trial is eight volumes consisting of 11 prosecution exhibits, nine defense exhibits, one court exhibit, and 71 appellate exhibits; the transcript is 703 pages. Undersigned counsel is reviewing the Government's Brief in Support of the Certified Issue and drafting an answer brief in this case.

3) *United States v. Jackson*, ACM S32780 – 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. Undersigned counsel has begun reviewing the record of trial, and additional counsel has been detailed to this case.

4) *United States v. Smith*, ACM 40437 (f rev) – The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and twenty-nine appellate exhibits; the transcript is 338 pages. Undersigned counsel has begun reviewing the record of trial, and additional counsel has been detailed to this case.

5) *United States v. Banks*, ACM 24057 – The record of trial is seven volumes consisting of ten prosecution exhibits, sixteen defense exhibits, and thirty appellate exhibits; the transcript is 985 pages. Undersigned counsel has begun reviewing the record of trial in this case.

6) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

7) *United States v. Payton*, ACM 40669 – The record of trial is five volumes consisting of three prosecution exhibits, five defense exhibits, and three appellate exhibits; the

transcript is 175 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

8) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

9) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and one court exhibit; the transcript is 243 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

10) *United States v. Penninga*, ACM 40714 – The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 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 advised of his right to a 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 9 July 2025.

Respectfully submitted,

[redacted]
FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
[redacted]

1IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
Appellee,	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Master Sergeant (E-7)	)	
DANIEL P. GOSSETT	)	No. ACM 40715
United States Air Force.	)	
Appellant	)	10 July 2025

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

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

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

[redacted]
VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
[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 10 July 2025.

[redacted]
VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
[redacted]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SEVENTH)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **DANIEL P. GOSSETT,** United States Air Force, *Appellant.*	)	No. ACM 40715
	)	10 August 2025

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 thirty days, which will end on **17 September 2025**. The record of trial was docketed with this Court on 21 November 2024. From the date of docketing to the present date, 262 days have elapsed. On the date requested, 300 days will have elapsed.

On 15–20 April 2024, a general court-martial consisting of officer and enlisted members at Edwards Air Force Base, California, convicted Appellant, contrary to his pleas, of one charge and one specification of child endangerment in violation of Article 119b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 919b, and one charge and two specifications of domestic violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 961, Record of Trial (ROT) Vol. 1, Entry of Judgment, 23 July 2024 (EOJ). The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for fifteen months, and a bad conduct discharge. R. at 1075; EOJ. The convening authority took no action on the findings but suspended the adjudged reduction in grade until 4 November 2024, at which time the suspended part of the sentence would be remitted unless the suspension was sooner vacated, and waived

automatic forfeitures for six months or until release from confinement or expiration of term of service, whichever is sooner, for the benefit of Appellant's dependents. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Daniel P. Gossett*, 28 June 2024.

The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 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-three clients; nineteen clients are pending initial AOEs before this Court.[1] Additionally, one client has an upcoming petition for grant of review and supplement to the petition before the United States Court of Appeals for the Armed Forces (CAAF). Nine matters currently have priority over this case:

1) *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 is drafting a reply brief in this case.
2) *United States v. Smith*, ACM 40437 (f rev) – The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and twenty-nine

[1] Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a sixteen-page supplement to the petition for grant of review to the CAAF in *U.S. v. York*, ACM 40604, USCA Dkt. No. 25-0200/AF; prepared and filed an eleven-page answer brief to the CAAF in *U.S. v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF; prepared and filed a nine-page answer to the Government's petition for reconsideration before the CAAF in *U.S. v. Patterson*, ACM 40426, USCA Dkt. No. 25-0073/AF; completed his review of the seven-volume record of trial and began drafting the AOE in *U.S. v. Banks*, ACM 24057; and began reviewing the record of trial in *U.S. v. Simmons*, ACM 40658. Additionally, counsel was on leave on 17–20 July and 1–5 August 2025.

appellate exhibits; the transcript is 338 pages. Additional counsel has been detailed to this case and is drafting the AOE.

3) *United States v. Banks*, ACM 24057 – The record of trial is seven volumes consisting of ten prosecution exhibits, sixteen defense exhibits, and thirty appellate exhibits; the transcript is 985 pages. Undersigned counsel has reviewed the record of trial and is drafting the AOE in this case.

4) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel has begun reviewing the record of trial in this case.

5) *United States v. Payton*, ACM 40669 – The record of trial is five volumes consisting of three prosecution exhibits, five defense exhibits, and three appellate exhibits; the transcript is 175 pages. Undersigned counsel has begun reviewing the record of trial in this case.

6) *United States v. Soloshenko*, ACM 40581 – The electronic record of trial is two volumes consisting of seven prosecution exhibits, two defense exhibits, twenty-seven appellate exhibits, and one court exhibit; the transcript is 773 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.

7) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

8) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and one court exhibit; the transcript is 243 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

9) *United States v. Penninga*, ACM 40714 – The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 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 advised of his right to a 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,

[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 10 August 2025.

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
[redacted]

1IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES'
	)	OPPOSITION TO
Appellee,	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Master Sergeant (E-7)	)	
DANIEL P. GOSSETT	)	No. ACM 40715
United States Air Force.	)	
Appellant	)	11 August 2025

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 300 days in length. Appellant's nearly 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 leave about 8 months combined for the United States and this Court to perform their separate 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.

[redacted]
VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
[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 11 August 2025.

[redacted]
VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
[redacted]

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40715**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Daniel P. GOSSETT	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 10 August 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Seventh), requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 12th day of August, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (Seventh) is **GRANTED**. Appellant shall file any assignments of error not later than **17 September 2025**.

Further requests by Appellant for enlargements of time may necessitate a status conference.

FOR THE COURT

[redacted]

AGNIESZKA M. GAERTNER, Capt, USAF
Commissioner

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40715**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Daniel P. GOSSETT	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 10 September 2025, Appellant submitted a Motion for Enlargement of Time (Eighth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposed the motion and noted that "[i]f Appellant's new delay request is granted, the defense delay in this case will be 330 days in length."

On 15 September 2025, the court held a status conference to discuss the progress of this case. Appellant was represented by Major Frederick J. Johnson; Lieutenant Colonel Allen S. Abrams from the Appellate Defense Division was also present. Major Vanessa Bairos represented the Government. In response to questions from the court, Major Johnson provided additional information regarding his current workload before the United States Supreme Court, the United States Court of Appeals for the Armed Forces, and this court. He anticipated Appellant would need request two additional enlargements of time in order to complete his review of the case and file his assignments of error. Major Bairos did not dispute any representation by the Defense.

Accordingly, it is by the court on this 16th day of September 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (Eighth) is **GRANTED**. Appellant shall file any assignments of error not later than **17 October 2025**.

It is further ordered:

Counsel for Appellant is advised that the requirements stated in this

court's 15 January 2025 order, granting Appellant's Motion for Enlargement of Time (First), is still in effect. Counsel is reminded that any further requests for an enlargement of time requires compliance with that order.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (EIGHTH)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **DANIEL P. GOSSETT,** United States Air Force, *Appellant.*	)	No. ACM 40715
	)	10 September 2025

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 thirty days, which will end on **17 October 2025**. The record of trial was docketed with this Court on 21 November 2024. From the date of docketing to the present date, 293 days have elapsed. On the date requested, 330 days will have elapsed.

On 15–20 April 2024, a general court-martial consisting of officer and enlisted members at Edwards Air Force Base, California, convicted Appellant, contrary to his pleas, of one charge and one specification of child endangerment in violation of Article 119b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 919b, and one charge and two specifications of domestic violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 961, Record of Trial (ROT) Vol. 1, Entry of Judgment, 23 July 2024 (EOJ). The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for fifteen months, and a bad conduct discharge. R. at 1075; EOJ. The convening authority took no action on the findings but suspended the adjudged reduction in grade until 4 November 2024, at which time the suspended part of the sentence would be remitted unless the suspension was sooner vacated, and waived

automatic forfeitures for six months or until release from confinement or expiration of term of service, whichever is sooner, for the benefit of Appellant's dependents. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Daniel P. Gossett*, 28 June 2024.

The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 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-two clients; fourteen clients are pending initial AOEs before this Court.[1] Additionally, one client has an upcoming petition for grant of review and supplement to the petition before the United States Court of Appeals for the Armed Forces (CAAF). Five additional clients have upcoming petitions for a writ of certiorari before the Supreme Court of the United States. Seven matters currently have priority over this case:

1) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel has drafted the AOE in this case.

[1] Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a six-page motion for summary disposition to the CAAF in *U.S. v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF; prepared and filed a 24-page AOE in *U.S. v. Banks*, ACM 24057; prepared and filed a six-page reply in *U.S. v. Keilberg*, ACM 40601; prepared and filed a four-page motion for leave to file motion for remand and motion for remand, a six-page motion for reconsideration with suggestion for *en banc* consideration, and a motion to withdraw from appellate review in *U.S. v. Payton*, ACM 40669; and completed his review of the four-volume record of trial (except sealed materials) and drafted a four-page AOE in *U.S. v. Simmons*, ACM 40658. Additionally, counsel was on leave on 22–25 August 2025, was off for the Labor Day holiday, and attended the virtual preliminary hearing officer and legal advisor course on 3–4 September 2025.

2) *United States v. Payton*, ACM 40669 – The record of trial is five volumes consisting of three prosecution exhibits, five defense exhibits, and three appellate exhibits; the transcript is 175 pages. Undersigned counsel has filed a motion to withdraw from appellate review in this case.

3) *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 petition the Supreme Court of the United States for a writ of certiorari in this case.

4) *United States v. Soloshenko*, ACM 40581 – The electronic record of trial is two volumes consisting of seven prosecution exhibits, two defense exhibits, twenty-seven appellate exhibits, and one court exhibit; the transcript is 773 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.

5) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

6) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and one court exhibit; the transcript is 243 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

7) *United States v. Penninga*, ACM 40714 – The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and

seventy-three appellate exhibits; the transcript is 822 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 advised of his right to a 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 10 September 2025.

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
[redacted]

1IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES'
	)	OPPOSITION TO
Appellee,	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Master Sergeant (E-7)	)	
DANIEL P. GOSSETT	)	No. ACM 40715
United States Air Force.	)	
Appellant	)	12 September 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 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 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
[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 12 September 2025.



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (NINTH)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **DANIEL P. GOSSETT,** United States Air Force, *Appellant.*	)	No. ACM 40715
	)	9 October 2025

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 **16 November 2025**. The record of trial was docketed with this Court on 21 November 2024. From the date of docketing to the present date, 322 days have elapsed. On the date requested, 360 days will have elapsed.[1]

On 15–20 April 2024, a general court-martial consisting of officer and enlisted members at Edwards Air Force Base, California, convicted Appellant, contrary to his pleas, of one charge and one specification of child endangerment in violation of Article 119b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 919b, and one charge and two specifications of domestic violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 961, Record of Trial (ROT) Vol. 1, Entry of Judgment, 23 July 2024 (EOJ). The military judge sentenced Appellant to a

[1] Undersigned counsel is mindful of the Court's 15 January 2025 order stating that "any future requests for enlargements of time that, if granted, would expire more than 360 days after docketing, will not be granted absent exceptional circumstances." Order, Jan. 15, 2025. This enlargement request, if granted, will expire 360 days after docketing. Undersigned counsel is aware that, in accordance with the Court's order, this is the last enlargement request that can be granted absent exceptional circumstances.

reprimand, reduction to the grade of E-1, confinement for fifteen months, and a bad conduct discharge. R. at 1075; EOJ. The convening authority took no action on the findings but suspended the adjudged reduction in grade until 4 November 2024, at which time the suspended part of the sentence would be remitted unless the suspension was sooner vacated, and waived automatic forfeitures for six months or until release from confinement or expiration of term of service, whichever is sooner, for the benefit of Appellant's dependents. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Daniel P. Gossett*, 28 June 2024.

The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 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-three clients; twelve clients are pending initial AOEs before this Court.[2] Additionally, two clients have pending supplements to petitions for a grant of review, and one additional client has an upcoming petition for grant of review and supplement to the petition, all before the United States Court of Appeals for the Armed Forces

[2] Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a four-page AOE in *U.S. v. Simmons*, ACM 40658; prepared and filed a two-page motion for oral argument in *U.S. v. Casillas*, ACM 40551; reviewed and edited a 45-page petition for a writ of certiorari in *Dawson v. U.S.*, ACM 24041, USCA Dkt. No. 25-0156/AF; filed a petition for grant of review to the CAAF and began drafting the supplement to the petition in *U.S. v. Soloshenko*, ACM 40581, USCA Dkt. No. 25-0273/SF; filed an application for an extension of time to file a petition for a writ of certiorari in *Schneider, et al. v. U.S.*; reviewed the record and drafted a supplement to the petition for grant of review to the CAAF in *U.S. v. Adams*, ACM 22018, USCA Dkt. No. 25-0270/AF; filed an application for an extension of time to file a petition for a writ of certiorari in *Zhong v. U.S.*; and participated in seven practice oral arguments for five additional cases. Additionally, counsel was on leave on 12 and 16 September 2025 and attended the Joint Appellate Advocacy Training on 25–26 September 2025.

(CAAF). Four additional clients have upcoming petitions for a writ of certiorari before the Supreme Court of the United States. Seven matters currently have priority over this case:

1) *United States v. Soloshenko*, ACM 40581 – The electronic record of trial is two volumes consisting of seven prosecution exhibits, two defense exhibits, twenty-seven appellate exhibits, and one court exhibit; the transcript is 773 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. Adams*, ACM 22018, USCA Dkt. No. 25-0270/AF – The record of trial is three volumes consisting of two prosecution exhibits, three defense exhibits, and seventeen appellate exhibits; the transcript is 299 pages. Undersigned counsel was recently detailed to this case and has drafted a supplement to the petition for grant of review to the CAAF.
3) *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 drafting a brief on remand in this case.
4) *United States v. Zhong*, ACM 40354, USCA Dkt. No. 24-0146/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 is preparing to petition the Supreme Court of the United States for a writ of certiorari in this case.
5) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate

exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial, but additional counsel has been detailed to this case.

6) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and one court exhibit; the transcript is 243 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

7) *United States v. Penninga*, ACM 40714 – The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 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 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]
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 9 October 2025.

Respectfully submitted,

[redacted]
FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
[redacted]

1IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES'
	)	OPPOSITION TO
Appellee,	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Master Sergeant (E-7)	)	
DANIEL P. GOSSETT	)	No. ACM 40715
United States Air Force.	)	
Appellant	)	14 October 2025

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 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 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
[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 14 October 2025.



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION TO ATTACH DOCUMENT**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **DANIEL P. GOSSETT,** United States Air Force, *Appellant.*	)	No. ACM 40715 9 November 2025

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

Pursuant to Rule 23(b) of the Joint Rules of Appellate Procedure, effective 17 May 2024, and Rule 23.3(b) of this Court's Rules of Practice and Procedure, effective 23 December 2020, Appellant hereby moves to attach the Declaration at the Appendix to the Record of Trial.

The two governing rules set out above describe different standards, but the end-result under both should be to grant this motion. The Joint Rules require "good cause shown." JT. CT. CRIM. APP. R. 23(b). This Court's rules must be consistent with the Joint Rules. JT. CT. CRIM. APP. R. 3; *United States v. Gilley*, 59 M.J. 245, 247 (C.A.A.F. 2004). This Court's rules require a statement concerning the relevance and necessity of the proposed item. A.F. CT. CRIM. APP. R. 23.3(b).

There is good cause to attach the proposed declaration because it is relevant and necessary to resolving Appellant's Motion for Enlargement of Time (Tenth), which requires a showing of exceptional circumstances in accordance with this Court's previous order. Order, *United States v. Gossett*, No. ACM 40715 (A.F. Ct. Crim. App. Jan. 15, 2025). In at least one order, this Court suggested that "established evidence of government-caused staff shortages in the Appellate Defense Division" was needed to show why "routine workload" supports a motion for an

enlargement of time to file an appellant's initial assignments of error. Order at 2 n.3, *United States v. Evangelista*, No. ACM 40531 (A.F. Ct. Crim. App. Dec. 6, 2024). The proposed document provides that evidence.

As such, the proposed document is relevant and necessary, and there is good cause to grant this motion to attach a document.

Respectfully Submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
[redacted]

Counsel for Appellant

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing and the Appendix were delivered by e-mail to the Court and served on the Government Trial and Appellate Operations Division on 9 November 2025.

[redacted]
FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
[redacted]

APPENDIX

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (TENTH)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **DANIEL P. GOSSETT,** United States Air Force, *Appellant.*	)	No. ACM 40715
	)	9 November 2025

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 **16 December 2025**. The record of trial was docketed with this Court on 21 November 2024. From the date of docketing to the present date, 353 days have elapsed. On the date requested, 390 days will have elapsed.

On 15–20 April 2024, a general court-martial consisting of officer and enlisted members at Edwards Air Force Base, California, convicted Appellant, contrary to his pleas, of one charge and one specification of child endangerment in violation of Article 119b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 919b, and one charge and two specifications of domestic violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 961, Record of Trial (ROT) Vol. 1, Entry of Judgment, 23 July 2024 (EOJ). The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for fifteen months, and a bad conduct discharge. R. at 1075; EOJ. The convening authority took no action on the findings but suspended the adjudged reduction in grade until 4 November 2024, at which time the suspended part of the sentence would be remitted unless the suspension was sooner vacated, and waived

automatic forfeitures for six months or until release from confinement or expiration of term of service, whichever is sooner, for the benefit of Appellant's dependents. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Daniel P. Gossett*, 28 June 2024.

The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 pages. Appellant is not currently confined. Undersigned counsel has begun reviewing the record of trial in this case.

Counsel is currently representing thirty-three clients; twelve clients are pending initial AOEs before this Court.[1] Additionally, four clients have upcoming petitions for grant of review and supplements to the petitions, and another client has an upcoming oral argument, all before the United States Court of Appeals for the Armed Forces (CAAF). Four additional clients have upcoming petitions for a writ of certiorari before the Supreme Court of the United States. Five matters currently have priority over this case:

1) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate

[1] Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a sixteen-page supplement to the petition for grant of review to the CAAF in *U.S. v. Soloshenko*, ACM 40581, USCA Dkt. No. 25-0273/SF; prepared and filed a four-page supplement to the petition for grant of review to the CAAF and drafted a reply to the Government's answer in *U.S. v. Adams*, ACM 22018, USCA Dkt. No. 25-0270/AF; prepared and filed a six-page brief on remand in *U.S. v. Navarro Aguirre*, ACM 40354 (rem); began reviewing the record of trial in *U.S. v. Polly*, ACM 40709; prepared and filed a seven-page reply to the Government's motion for reconsideration in *U.S. v. Casillas*, ACM 40551; prepared and filed a fourteen-page reply to the Government's answer in *U.S. v. Banks*, ACM 24057; began reviewing the ten-volume record of trial in this case; and participated in seven practice oral arguments for five additional cases. Additionally, counsel was off for the Columbus Day holiday and was on leave on 24–26 October 2025.

exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial, but additional counsel has been detailed to this case.

2) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and one court exhibit; the transcript is 243 pages. Undersigned counsel is 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, and one court exhibit; the transcript is 689 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.

4) *United States v. Zhong*, ACM 40354, USCA Dkt. No. 24-0146/AF – 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 is preparing to petition the Supreme Court of the United States for a writ of certiorari in this case.

5) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.

On 15 January 2025, this Court issued an order stating that "any future requests for an enlargement of time that, if granted, would expire more than 360 days after docketing, will not be granted absent exceptional circumstances." Order, *United States v. Gossett*, No. ACM 40715 (A.F. Ct. Crim. App. Jan. 15, 2025). Since this motion for enlargement of time, if granted, would

expire 390 days after docketing, exceptional circumstances must be shown in accordance with the Court's order.

Undersigned counsel is willing to gain the necessary familiarity with the record to submit assignments of error prior to the filing deadline, and his limited progress so far is not a deliberate tactical decision to create an appellate issue. *See United States v. Roach*, 66 M.J. 410, 418 (C.A.A.F. 2008). But, as can be seen by the Declaration of the Appellate Defense Division's Deputy Chief, he is impeded in doing so for reasons that amount to staffing shortages and, in turn, high workload demands on undersigned counsel. *See* Decl. at 1-6. The crux of these workload issues is that the Appellate Defense Division's workload is up, but its staff to carry out that work remains largely unchanged.

The Appellate Defense Division has the highest volume of cases pending initial briefing before this Court since 2017, but the demands on the Division's counsel are greater in today's cases because records of trial now are between twenty-five and thirty-five percent longer than those of 2017, based solely on their transcript pages. *Id.* at 1-4. The demand placed by this heightened amount of review per case has been compounded by a higher volume of clients, with the 2022 broadening of direct appeals in Article 65 requiring record-review and consultation for each eligible client, and with those direct appeals docketed with this Court amounting to approximately only forty percent of this pool of clients. *Id.* Over this same time since the December 2022 law change, the Appellate Defense Division faced a high volume of cases before the CAAF, a high volume of interlocutory appeals and writ-petitions, and multiple time-sensitive petitions to the Supreme Court of the United States. *Id.* All three of these classes of cases are particularly impactful on an attorney's ability to work cases before this Court because of the timelines involved, with interlocutory appeals taking priority and with cases appealed to the

CAAF and the Supreme Court subject to strict timeline requirements. 10 U.S.C. §§ 806b(e)(3)(B), 862(b), 867(b); 28 U.S.C. § 2101(c). The workload demands before the Supreme Court are only increasing, with every appellant seeking review at the CAAF now eligible to petition the Supreme Court. *Id.* at 5-6. Relative to the Court of Appeals for the Armed Forces and the Supreme Court, this Court has substantially greater flexibility to adjust its deadlines and should do so here. *Compare United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006) (setting eighteen months post-docketing with the Court of Criminal Appeals as a trigger for analysis but declining to make it dispositive in light of the possibility of reasonable delay), *with* 10 U.S.C. 867(b), 28 U.S.C. § 2101(c).

Good cause for granting this motion is even more evident in light of the Appellate Defense Division's multi-faceted efforts to mitigate its workload strain. Multiple long-term absences were filled through support by reservists trained for and experienced in appellate practice. Decl. at 5-6. In 2023, the Appellate Defense Division sought a legislative change to alleviate its workload but was unsuccessful. *Id.* at 6. Also in 2023, the Appellate Defense Division requested eight additional active-duty personnel. *Id.* at 6. One civilian has been permanently provided, starting work on 16 December 2024. *Id.* at 1, 6. The Division gained one additional active-duty counsel in 2025, but it is unclear whether that is intended as a permanent additional billet. *Id.* at 6. In 2024, the Appellate Defense Division again requested eight additional active-duty personnel. *Id.*

As noted in *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998), there is no substitute for the briefing by appellate defense counsel on behalf of an individual appellant, even considering this Court's broad mandate for independent review. Undersigned counsel regularly and continually examines his docket, in concert with supervisory counsel within the Appellate Defense Division, to assess the possibility of assigning additional counsel to expedite review of

his cases. This regular assessment of dockets has resulted in the detailing of additional counsel to one of the higher priority cases noted *supra*, which should help expedite undersigned counsel's progress in reviewing this case.[2] However, no additional counsel has been identified for this case.

Having been tasked with doing substantially more work with the same resources, undersigned counsel's docket is such that the ordinary workload precludes—and has precluded—undersigned counsel from finalizing review and briefing of Appellant's case. This is despite undersigned counsel regularly working at night, on weekends, and while on leave, including during the leave noted in footnote 1 *supra*. The workload is to a degree that it may warrant scrutiny of what The Judge Advocate General is doing to ameliorate it. *See Roach*, 66 M.J. at 418; *Moreno*, 63 M.J. at 137. The circumstances described here are exceptional, but not because they are new or previously unknown. They are exceptional because they demonstrate a task saturation brought about by numerous duties that often have conflicting timelines. These duties necessitate difficult prioritizations that have resulted in the requests for enlargements of time throughout the life of Appellant's case.

Crucially, the delay in reviewing Appellant's record necessitated by the prioritization of other matters is *through no fault of Appellant*. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant 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.

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[2] The additional counsel is a reservist and has been unable to work on the noted case during the lapse in appropriated funding.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested tenth 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 9 November 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
Appellee,	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Master Sergeant (E-7)	)	
DANIEL P. GOSSETT,	)	No. ACM 40715
United States Air Force.	)	
Appellant	)	12 November 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 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 390 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 5 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

[redacted]
VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
[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 12 November 2025.

[redacted]
VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
[redacted]

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40715**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Daniel P. GOSSETT	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 9 November 2025, Appellant submitted a motion to attach the following document to the record; specifically, a declaration from Lieutenant Colonel Allen S. Abrams, Deputy Chief of the Appellate Defense Division, which outlines the manning and workload challenges facing the Appellate Defense Division. The Government did not file a response to the motion.

The court has considered Appellant's motion and the applicable law. The court grants Appellant's motion; however, it specifically defers consideration of the applicability of *United States v. Jessie*, 79 M.J. 437 (C.A.A.F. 2020), and related case law to the attachment until it completes its Article 66, Uniform Code of Military Justice, 10 U.S.C. § 866, review of Appellant's entire case.

Accordingly, it is by the court on this 18th day of November 2025,

ORDERED:

Appellant's Motion to Attach is **GRANTED**.

FOR THE COURT

[redacted]

JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (ELEVENTH)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **DANIEL P. GOSSETT,** United States Air Force, *Appellant.*	)	No. ACM 40715
	)	9 December 2025

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 **15 January 2026**. The record of trial was docketed with this Court on 21 November 2024. From the date of docketing to the present date, 383 days have elapsed. On the date requested, 420 days will have elapsed.

On 15–20 April 2024, a general court-martial consisting of officer and enlisted members at Edwards Air Force Base, California, convicted Appellant, contrary to his pleas, of one charge and one specification of child endangerment in violation of Article 119b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 919b, and one charge and two specifications of domestic violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 961, Record of Trial (ROT) Vol. 1, Entry of Judgment, 23 July 2024 (EOJ). The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for fifteen months, and a bad conduct discharge. R. at 1075; EOJ. The convening authority took no action on the findings but suspended the adjudged reduction in grade until 4 November 2024, at which time the suspended part of the sentence would be remitted unless the suspension was sooner vacated, and waived

automatic forfeitures for six months or until release from confinement or expiration of term of service, whichever is sooner, for the benefit of Appellant's dependents. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Daniel P. Gossett*, 28 June 2024.

The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 pages. Appellant is not currently confined. Undersigned counsel is reviewing the record of trial in this case.

Counsel is currently representing thirty-three clients; ten clients are pending initial AOEs before this Court.[1] Additionally, six clients have upcoming petitions for grant of review and/or supplements to the petitions, and another client has an upcoming oral argument, all before the United States Court of Appeals for the Armed Forces (CAAF). Four additional clients have upcoming petitions for a writ of certiorari before the Supreme Court of the United States. This case is currently undersigned counsel's highest priority amongst cases pending initial AOEs before this Court, but four additional matters currently have priority over it:

1) *United States v. Zhong*, ACM 40354, USCA Dkt. No. 24-0146/AF – ACM 40411, USCA Dkt. No. 25-0011/AF – The record of trial is four volumes consisting of 14

[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 to the CAAF in *U.S. v. Adams*, ACM 22018, USCA Dkt. No. 25-0270/AF; completed his review of the seven-volume record of trial and prepared and filed a three-page AOE in *U.S. v. Polly*, ACM 40709; petitioned the CAAF for a grant of review and prepared and filed a six-page supplement to the petition in *U.S. v. Haymond*, ACM 40588, USCA Dkt. No. 26-0035/AF; drafted a thirty-seven-page petition for a writ of certiorari in *Zhong v. U.S.*, ACM 40354, USCA Dkt. No. 24-0146/AF; petitioned the CAAF for a grant of review and began drafting the supplement to the petition in *U.S. v. Simmons*, ACM 40658, USCA Dkt. No. 26-0049/AF; continued reviewing the ten-volume record of trial in this case; and participated in three practice oral arguments for two additional cases. Additionally, counsel was off for the Veterans Day holiday and was on leave on 22–29 November 2025, a period that included the Thanksgiving holiday.

prosecution exhibits, 11 defense exhibits, 12 appellate exhibits, and one court exhibit; the transcript is 482 pages. Undersigned counsel has drafted a petition for a writ of certiorari to the Supreme Court of the United States in this case.

2) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 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. 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 is preparing to petition the CAAF for a grant of review in this case.

4) *United States v. Martinez*, ACM 39903 – The record of trial is thirteen volumes consisting of eleven prosecution exhibits, twenty-four defense exhibits, and eighty-one appellate exhibits; the transcript is 1134 pages. Undersigned counsel was recently detailed to this case and is reviewing the record in preparation for petitioning the CAAF for a grant of review.

On 15 September 2025, the Court held a status conference to discuss progress in this case. Order, *Untied States v. Gossett*, No. ACM 40715 (A.F. Ct. Crim. App. Sep. 16, 2025). During the status conference, undersigned counsel indicated needing two additional enlargements of time beyond the one then under consideration. *Id.* This enlargement, if granted, will be the third additional enlargement following the one under consideration at the time of that status conference. The additional enlargement beyond the two anticipated by undersigned counsel at that time is necessary because of additional obligations that have arisen since that status conference. Most

notably, seven of counsel's cases have ripened for petitioning the CAAF for a grant of review since that status conference, and the statutory timing requirement for CAAF petitions necessitated prioritizing four of those cases over this case. Despite these additional obligations, undersigned counsel is currently reviewing the record in this case. Although not anticipated at the time of the previous status conference, this additional enlargement of time is now necessary to allow counsel to complete his review and draft an AOE while managing competing priorities.

On 15 January 2025, this Court issued an order stating that "any future requests for an enlargement of time that, if granted, would expire more than 360 days after docketing, will not be granted absent exceptional circumstances." Order, *United States v. Gossett*, No. ACM 40715 (A.F. Ct. Crim. App. Jan. 15, 2025). Since this motion for enlargement of time, if granted, would expire 420 days after docketing, exceptional circumstances must be shown in accordance with the Court's order.

Undersigned counsel is willing to gain the necessary familiarity with the record to submit assignments of error prior to the filing deadline, and his limited progress so far is not a deliberate tactical decision to create an appellate issue. *See United States v. Roach*, 66 M.J. 410, 418 (C.A.A.F. 2008). But, as can be seen by the Declaration of the Appellate Defense Division's Deputy Chief, he is impeded in doing so for reasons that amount to staffing shortages and, in turn, high workload demands on undersigned counsel. *See* Decl. at 1-6. The crux of these workload issues is that the Appellate Defense Division's workload is up, but its staff to carry out that work remains largely unchanged.

The Appellate Defense Division has the highest volume of cases pending initial briefing before this Court since 2017, but the demands on the Division's counsel are greater in today's cases because records of trial now are between twenty-five and thirty-five percent longer than

those of 2017, based solely on their transcript pages. *Id.* at 1-4. The demand placed by this heightened amount of review per case has been compounded by a higher volume of clients, with the 2022 broadening of direct appeals in Article 65 requiring record-review and consultation for each eligible client, and with those direct appeals docketed with this Court amounting to approximately only forty percent of this pool of clients. *Id.* Over this same time since the December 2022 law change, the Appellate Defense Division faced a high volume of cases before the CAAF, a high volume of interlocutory appeals and writ-petitions, and multiple time-sensitive petitions to the Supreme Court of the United States. *Id.* All three of these classes of cases are particularly impactful on an attorney's ability to work cases before this Court because of the timelines involved, with interlocutory appeals taking priority and with cases appealed to the CAAF and the Supreme Court subject to strict timeline requirements. 10 U.S.C. §§ 806b(e)(3)(B), 862(b), 867(b); 28 U.S.C. § 2101(c). The workload demands before the Supreme Court are only increasing, with every appellant seeking review at the CAAF now eligible to petition the Supreme Court. *Id.* at 5-6. Relative to the Court of Appeals for the Armed Forces and the Supreme Court, this Court has substantially greater flexibility to adjust its deadlines and should do so here. *Compare United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006) (setting eighteen months post-docketing with the Court of Criminal Appeals as a trigger for analysis but declining to make it dispositive in light of the possibility of reasonable delay), *with* 10 U.S.C. 867(b), 28 U.S.C. § 2101(c).

Good cause for granting this motion is even more evident in light of the Appellate Defense Division's multi-faceted efforts to mitigate its workload strain. Multiple long-term absences were filled through support by reservists trained for and experienced in appellate practice. Decl. at 5-6. In 2023, the Appellate Defense Division sought a legislative change to alleviate its workload

but was unsuccessful. *Id.* at 6. Also in 2023, the Appellate Defense Division requested eight additional active-duty personnel. *Id.* at 6. One civilian has been permanently provided, starting work on 16 December 2024. *Id.* at 1, 6. The Division gained one additional active-duty counsel in 2025, but it is unclear whether that is intended as a permanent additional billet. *Id.* at 6. In 2024, the Appellate Defense Division again requested eight additional active-duty personnel. *Id.*

As noted in *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998), there is no substitute for the briefing by appellate defense counsel on behalf of an individual appellant, even considering this Court's broad mandate for independent review. Undersigned counsel regularly and continually examines his docket, in concert with supervisory counsel within the Appellate Defense Division, to assess the possibility of assigning additional counsel to expedite review of his cases. This regular assessment of dockets has previously resulted in the detailing of additional counsel to cases prioritized above this one, which helped expedite undersigned counsel's progress in reviewing this case. However, no additional counsel has been identified for this case.

Having been tasked with doing substantially more work with the same resources, undersigned counsel's docket is such that the ordinary workload precludes—and has precluded—undersigned counsel from finalizing review and briefing of Appellant's case. This is despite undersigned counsel regularly working at night, on weekends, and while on leave. The workload is to a degree that it may warrant scrutiny of what The Judge Advocate General is doing to ameliorate it. *See Roach*, 66 M.J. at 418; *Moreno*, 63 M.J. at 137. The circumstances described here are exceptional, but not because they are new or previously unknown. They are exceptional because they demonstrate a task saturation brought about by numerous duties that often have conflicting timelines. These duties necessitate difficult prioritizations that have resulted in the requests for enlargements of time throughout the life of Appellant's case.

Crucially, the delay in reviewing Appellant's record necessitated by the prioritization of other matters is *through no fault of Appellant*. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant 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 eleventh 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 9 December 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
Appellee,	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Master Sergeant (E-7)	)	
DANIEL P. GOSSETT,	)	No. ACM 40715
United States Air Force.	)	
Appellant	)	10 December 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 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 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 combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

[redacted]
VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
[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 10 December 2025.

[redacted]
VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
[redacted]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*,	)	**CONSENT MOTION TO EXAMINE SEALED MATERIALS**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **DANIEL P. GOSSETT,** United States Air Force, *Appellant*.	)	No. ACM 40715
	)	31 December 2025

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

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and Rules 3.1, 23.1(b), and 23.3(f)(1) of this Court's Rules of Practice and Procedure, Appellant, Master Sergeant Daniel P. Gossett, hereby moves this Court to permit appellate counsel for the Appellant and the Government to examine Appellate Exhibits I–V and transcript pages 14–51 in Appellant's record of trial.

Facts

On 15–20 April 2024, a general court-martial consisting of officer and enlisted members at Edwards Air Force Base, California, convicted Appellant, contrary to his pleas, of one charge and one specification of child endangerment in violation of Article 119b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 919b, and one charge and two specifications of domestic violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 961, Record of Trial (ROT) Vol. 1, Entry of Judgment, July 23, 2024. In the course of the proceedings, trial defense counsel moved to disqualify from the court-martial individuals who had learned about some of Appellant's communications that were protected under Mil. R. Evid. 513. R. at 11. The military judge received evidence regarding this motion during a closed Article 39(a), UCMJ, session. R. at 12–13. The

court sealed the appellate exhibits related to this motion, which consist of Appellate Exhibits I–V. *See* ROT Vol. 1, Exhibit Index.

Law

Appellate counsel may examine materials presented or reviewed at trial and sealed, as well as materials reviewed *in camera*, released to trial or defense counsel, and sealed, upon a colorable showing to the appellate authority that examination is reasonably necessary to a proper fulfillment of the appellate counsel's responsibilities under the UCMJ, the Manual for Courts-Martial, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional conduct. R.C.M. 1113(b)(3)(B)(i).

Air Force regulations governing professional duties and conduct of appellate defense counsel impose upon counsel, *inter alia*, a duty to provide "competent representation," perform "reasonable diligence," and to "give a client his or her best professional evaluation of the questions that might be presented on appeal…[to] consider all issues that might affect the validity of the judgment of conviction and sentence…[to] advise on the probable outcome of a challenge to the conviction or sentence...[and to] endeavor to persuade the client to abandon a wholly frivolous appeal or to eliminate contentions lacking in substance." Air Force Instruction (AFI) 51-110, *Professional Responsibility Program*, Attachment 2: Air Force Rules of Professional Conduct, Rule 1.1, Attachment 7: Air Force Standards for Criminal Justice, Standard 4-8.3(b) (11 December 2018). These requirements are consistent with those imposed by the state bar to which counsel belongs.[1]

This Court may grant relief "on the basis of the entire record" of trial. Article 66, UCMJ, 10 U.S.C. § 866. Appellate defense counsel so detailed by The Judge Advocate General shall

[1] Counsel of record is licensed to practice law in Georgia.

represent accused servicemembers before this Court. Article 70, UCMJ, 10 U.S.C. § 870. This Court's "broad mandate to review the record unconstrained by appellant's assignments of error" does not reduce "the importance of adequate representation" by counsel; "independent review is not the same as competent appellate representation." *United States v. May,* 47 M.J. 478, 481 (C.A.A.F. 1998).

Analysis

The sealed materials include five appellate exhibits, all of which were "presented" and "reviewed" by the parties at trial. R.C.M. 1113(b)(3)(B)(i). Similarly, the sealed portions of the transcript record proceedings in which the parties participated. It is reasonably necessary for Appellant's counsel to review these sealed materials for counsel to competently conduct a professional evaluation of Appellant's case and uncover all issues which might afford him relief. Because examination of the materials in question is reasonably necessary to the fulfillment of counsel's Article 70, UCMJ duties, and because the materials were available to the parties at trial, Appellant has provided the "colorable showing" required by R.C.M. 1113(b)(3)(B)(i) to permit his counsel's examination of these sealed materials and has shown good cause to grant this motion.

The Government consents to both parties examining the sealed materials detailed above.

WHEREFORE, Appellant respectfully requests that this Court grant this motion and permit examination of the aforementioned sealed materials contained within the original record of trial.

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 31 December 2025.

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
[redacted]

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40715**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Daniel P. GOSSETT	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 31 December 2025, counsel for Appellant submitted a Consent Motion to Examine Sealed Materials. Specifically, counsel seeks to examine Appellate Exhibits I–V and transcript pages 14–51 in Appellant's record of trial.

Appellate counsel may examine sealed materials released to counsel at trial "upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel's responsibilities." Rule for Courts-Martial 1113(b)(3)(B)(i), *Manual for Courts-Martial*, *United States* (2024 ed.).

The court has considered Appellant's motion, the Government's consent, case law, and this court's Rules of Practice and Procedure. The court finds Appellant's counsel has made a colorable showing that review of the sealed materials is necessary to fulfill counsel's duties of representation to Appellant.

Accordingly, it is by the court on this 7th day of January, 2026,

ORDERED:

Appellant's Consent Motion to Examine Sealed Materials is **GRANTED**.

Appellate defense counsel and appellate government counsel may view **Appellate Exhibits I–V** and **transcript pages 14–51** in Appellant's record of trial, subject to the following conditions:

To view the sealed materials, counsel will coordinate with the court.

It is further ordered:

No counsel granted access to the materials may photocopy, photograph, reproduce, disclose, or make available the content to any other individual without the court's prior written authorization.

FOR THE COURT

[redacted]

JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (TWELFTH)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **DANIEL P. GOSSETT,** United States Air Force, *Appellant.*	)	No. ACM 40715
	)	7 January 2026

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 **14 February 2026**. The record of trial was docketed with this Court on 21 November 2024. From the date of docketing to the present date, 412 days have elapsed. On the date requested, 450 days will have elapsed.

On 15–20 April 2024, a general court-martial consisting of officer and enlisted members at Edwards Air Force Base, California, convicted Appellant, contrary to his pleas, of one charge and one specification of child endangerment in violation of Article 119b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 919b, and one charge and two specifications of domestic violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 961, Record of Trial (ROT) Vol. 1, Entry of Judgment, 23 July 2024 (EOJ). The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for fifteen months, and a bad conduct discharge. R. at 1075; EOJ. The convening authority took no action on the findings but suspended the adjudged reduction in grade until 4 November 2024, at which time the suspended part of the sentence would be remitted unless the suspension was sooner vacated, and waived

automatic forfeitures for six months or until release from confinement or expiration of term of service, whichever is sooner, for the benefit of Appellant's dependents. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Daniel P. Gossett*, 28 June 2024.

The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 pages. Appellant is not currently confined. Undersigned counsel is reviewing the record of trial in this case.

Counsel is currently representing twenty-nine clients; ten clients are pending initial AOEs before this Court.[1] Additionally, six clients have upcoming petitions for grant of review and/or supplements to the petitions, and two clients have upcoming oral arguments, all before the United States Court of Appeals for the Armed Forces (CAAF). Four additional clients have upcoming petitions for a writ of certiorari before the Supreme Court of the United States. This case is currently undersigned counsel's highest priority amongst cases pending initial AOEs before this Court, but four additional matters currently have priority over it:

[1] Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a thirty-seven-page petition for a writ of certiorari to the Supreme Court of the United States in *Zhong v. U.S.*, ACM 40354, USCA Dkt. No. 24-0146/AF; prepared and filed a five-page supplement to the petition for grant of review at the CAAF in *U.S. v. Simmons*, ACM 40658, USCA Dkt. No. 26-0049/AF; continued reviewing the ten-volume record of trial and prepared and filed a consent motion to examine sealed materials in this case; petitioned the CAAF for a grant of review and prepared and filed a ten-page supplement to the petition in *U.S. v. Keilberg*, ACM 40601, USCA Dkt. No. 26-0065/AF; prepared and filed an application for extension of time to file a petition for a writ of certiorari at the Supreme Court of the United States in *Sherman v. U.S.*, ACM 40486, USCA Dkt. No. 25-0209/AF; petitioned the CAAF for a grant of review and began drafting the supplement to the petition in *U.S. v. Martinez*, ACM 39903, USCA Dkt. No. 26-0073/AF; conducted two practice oral arguments for *U.S. v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF; and participated in three practice oral arguments for two additional cases. Additionally, counsel was TDY on 11–12 December 2025 and was off for the Christmas and New Year's Day holidays.

1) *United States v. Martinez*, ACM 39903 – The record of trial is thirteen volumes consisting of eleven prosecution exhibits, twenty-four defense exhibits, and eighty-one appellate exhibits; the transcript is 1134 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. Casillas*, ACM 40551 – The record of trial is ten volumes consisting of nineteen prosecution exhibits, four defense exhibits, and sixty-five appellate exhibits; the transcript is 1627 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case, and a request for the officer performing the duties of The Judge Advocate General to certify issues in this case to the CAAF is currently pending.
3) *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 is preparing to petition the CAAF for a grant of review in this case.
4) *United States v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF – The record of trial is eight volumes consisting of 11 prosecution exhibits, nine defense exhibits, one court exhibit, and 71 appellate exhibits; the transcript is 703 pages. Undersigned counsel is preparing to present oral argument to the CAAF as lead counsel in this case on 13 January 2026.

On 15 September 2025, the Court held a status conference to discuss progress in this case. Order, *Untied States v. Gossett*, No. ACM 40715 (A.F. Ct. Crim. App. Sep. 16, 2025). During the status conference, undersigned counsel indicated needing two additional enlargements of time beyond the one then under consideration. *Id.* This enlargement, if granted, will be the fourth

additional enlargement following the one under consideration at the time of that status conference. The additional enlargements beyond the two anticipated by undersigned counsel at that time are necessary because of additional obligations that have arisen since that status conference. Most notably, eight of counsel's cases have ripened for petitioning the CAAF for a grant of review since that status conference, and the statutory timing requirement for CAAF petitions necessitated prioritizing six of those cases over this case. Despite these additional obligations, undersigned counsel is currently reviewing the record in this case. Although not anticipated at the time of the previous status conference, this additional enlargement of time is now necessary to allow counsel to complete his review and draft an AOE while managing competing priorities.

On 15 January 2025, this Court issued an order stating that "any future requests for an enlargement of time that, if granted, would expire more than 360 days after docketing, will not be granted absent exceptional circumstances." Order, *United States v. Gossett*, No. ACM 40715 (A.F. Ct. Crim. App. Jan. 15, 2025). Since this motion for enlargement of time, if granted, would expire 450 days after docketing, exceptional circumstances must be shown in accordance with the Court's order.

Undersigned counsel is willing to gain the necessary familiarity with the record to submit assignments of error prior to the filing deadline, and his limited progress so far is not a deliberate tactical decision to create an appellate issue. *See United States v. Roach*, 66 M.J. 410, 418 (C.A.A.F. 2008). But, as can be seen by the Declaration of the Appellate Defense Division's Deputy Chief, he is impeded in doing so for reasons that amount to staffing shortages and, in turn, high workload demands on undersigned counsel. *See* Decl. at 1-6. The crux of these workload issues is that the Appellate Defense Division's workload is up, but its staff to carry out that work remains largely unchanged.

The Appellate Defense Division has the highest volume of cases pending initial briefing before this Court since 2017, but the demands on the Division's counsel are greater in today's cases because records of trial now are between twenty-five and thirty-five percent longer than those of 2017, based solely on their transcript pages. *Id.* at 1-4. The demand placed by this heightened amount of review per case has been compounded by a higher volume of clients, with the 2022 broadening of direct appeals in Article 65 requiring record-review and consultation for each eligible client, and with those direct appeals docketed with this Court amounting to approximately only forty percent of this pool of clients. *Id.* Over this same time since the December 2022 law change, the Appellate Defense Division faced a high volume of cases before the CAAF, a high volume of interlocutory appeals and writ-petitions, and multiple time-sensitive petitions to the Supreme Court of the United States. *Id.* All three of these classes of cases are particularly impactful on an attorney's ability to work cases before this Court because of the timelines involved, with interlocutory appeals taking priority and with cases appealed to the CAAF and the Supreme Court subject to strict timeline requirements. 10 U.S.C. §§ 806b(e)(3)(B), 862(b), 867(b); 28 U.S.C. § 2101(c). The workload demands before the Supreme Court are only increasing, with every appellant seeking review at the CAAF now eligible to petition the Supreme Court. *Id.* at 5-6. Relative to the Court of Appeals for the Armed Forces and the Supreme Court, this Court has substantially greater flexibility to adjust its deadlines and should do so here. *Compare United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006) (setting eighteen months post-docketing with the Court of Criminal Appeals as a trigger for analysis but declining to make it dispositive in light of the possibility of reasonable delay), *with* 10 U.S.C. 867(b), 28 U.S.C. § 2101(c).

Good cause for granting this motion is even more evident in light of the Appellate Defense Division's multi-faceted efforts to mitigate its workload strain. Multiple long-term absences were filled through support by reservists trained for and experienced in appellate practice. Decl. at 5-6. In 2023, the Appellate Defense Division sought a legislative change to alleviate its workload but was unsuccessful. *Id.* at 6. Also in 2023, the Appellate Defense Division requested eight additional active-duty personnel. *Id.* at 6. One civilian has been permanently provided, starting work on 16 December 2024. *Id.* at 1, 6. The Division gained one additional active-duty counsel in 2025, but it is unclear whether that is intended as a permanent additional billet. *Id.* at 6. In 2024, the Appellate Defense Division again requested eight additional active-duty personnel. *Id.*

As noted in *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998), there is no substitute for the briefing by appellate defense counsel on behalf of an individual appellant, even considering this Court's broad mandate for independent review. Undersigned counsel regularly and continually examines his docket, in concert with supervisory counsel within the Appellate Defense Division, to assess the possibility of assigning additional counsel to expedite review of his cases. This regular assessment of dockets has previously resulted in the detailing of additional counsel to cases prioritized above this one, which helped expedite undersigned counsel's progress in reviewing this case. However, no additional counsel has been identified for this case.

Having been tasked with doing substantially more work with the same resources, undersigned counsel's docket is such that the ordinary workload precludes—and has precluded—undersigned counsel from finalizing review and briefing of Appellant's case. This is despite undersigned counsel regularly working at night, on weekends, and while on leave. The workload is to a degree that it may warrant scrutiny of what The Judge Advocate General is doing to ameliorate it. *See Roach*, 66 M.J. at 418; *Moreno*, 63 M.J. at 137. The circumstances described

here are exceptional, but not because they are new or previously unknown. They are exceptional because they demonstrate a task saturation brought about by numerous duties that often have conflicting timelines. These duties necessitate difficult prioritizations that have resulted in the requests for enlargements of time throughout the life of Appellant's case.

Crucially, the delay in reviewing Appellant's record necessitated by the prioritization of other matters is *through no fault of Appellant*. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant 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,

[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 7 January 2026.

Respectfully submitted,

[redacted]
FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
[redacted]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) **DANIEL P. GOSSETT**, United States Air Force, *Appellant.*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME Before Panel No. 2 No. ACM 40715 9 January 2026

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 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 3 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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



KATE E. LEE, Maj, USAF
Appellate Government Counsel
[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 9 January 2026.



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

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40715**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Daniel P. GOSSETT	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 7 January 2026, 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.

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 14th day of January, 2026,

ORDERED:

Appellant's Motion for Enlargement of Time (Twelfth) is **GRANTED**. Appellant shall file any assignments of error not later than **14 February 2026**.

It is further ordered:

At the time of filing any further motions for enlargement of time, Appellant's counsel will, in addition to matters required by the court's rules and by prior orders of the court, specifically identify the assignments of error Appellant reasonably expects to raise to the court, recognizing such identification will not bind or constrain Appellant with respect to which assignments he ultimately raises.

FOR THE COURT

[redacted]

JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	**APPELLANT'S MOTION FOR**
Appellee,	)	**ENLARGEMENT OF TIME**
	)	**(THIRTEENTH) OUT OF TIME**
v.	)	
	)	Before Panel No. 2
Master Sergeant (E-7)	)	
DANIEL P. GOSSETT,	)	No. ACM 40715
United States Air Force,	)	
Appellant.	)	8 February 2026

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 thirteenth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **16 March 2026**. The record of trial was docketed with this Court on 21 November 2024. From the date of docketing to the present date, 444 days have elapsed. On the date requested, 480 days will have elapsed.

Good cause exists to grant this out of time motion. The filing of the motion out of time is due to an administrative error by the undersigned counsel. Counsel has been diligent with meeting all filing deadlines in the case to this point, and the error here was the result of an innocent mistake. The filing is one day out of time and should not create an unfair advantage for Appellant or undue hardship for the Court or the opposing party. Undersigned counsel will take appropriate measures to prevent this error from recurring in the future.

On 15–20 April 2024, a general court-martial consisting of officer and enlisted members at Edwards Air Force Base, California, convicted Appellant, contrary to his pleas, of one charge and one specification of child endangerment in violation of Article 119b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 919b, and one charge and two specifications of domestic

violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 961, Record of Trial (ROT) Vol. 1, Entry of Judgment, 23 July 2024 (EOJ). The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for fifteen months, and a bad conduct discharge. R. at 1075; EOJ. The convening authority took no action on the findings but suspended the adjudged reduction in grade until 4 November 2024, at which time the suspended part of the sentence would be remitted unless the suspension was sooner vacated, and waived automatic forfeitures for six months or until release from confinement or expiration of term of service, whichever is sooner, for the benefit of Appellant's dependents. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Daniel P. Gossett*, 28 June 2024.

The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 pages. Appellant is not currently confined. Undersigned counsel has reviewed the unsealed exhibits and approximately fifty percent of the record of trial in this case.

Counsel is currently representing twenty-seven clients; ten clients are pending initial AOEs before this Court.[1] Additionally, two clients have upcoming petitions for grant of review and/or supplements to the petitions before the United States Court of Appeals for the Armed Forces (CAAF). Three additional clients have upcoming petitions for a writ of certiorari before the Supreme Court of the United States. This case is currently undersigned counsel's highest priority amongst cases pending initial AOEs before this Court, but two additional matters currently have priority over it:

1) *United States v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 26-0100/AF – The record of trial is nine volumes consisting of fourteen prosecution exhibits, sixteen defense exhibits, one court exhibit, and forty-seven appellate exhibits; the transcript is 896 pages. Undersigned counsel has petitioned the CAAF for a grant of review and drafted the supplement to the petition in this case.
2) *Sherman v. United States*, ACM 40486, USCA Dkt. No. 25-0209/AF – The record of trial is five volumes consisting of seventeen prosecution exhibits, twelve defense

[1] Since the filing of Appellant's last request for an enlargement of time, counsel continued reviewing the ten-volume record of trial in this case; prepared and filed a twenty-one-page supplement to the petition for grant of review to the CAAF in *U.S. v. Martinez*, ACM 39903, USCA Dkt. No. 26-0073/AF; conducted a practice oral argument and presented oral argument before the CAAF as lead counsel in *U.S. v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF; petitioned the CAAF for a grant of review and prepared and filed a fourteen-page supplement to the petition in *U.S. v. Casillas*, ACM 40551, USCA Dkt. No. 26-0092/AF; prepared and filed a twenty-eight-page supplement to the petition for grant of review to the CAAF in *U.S. v. Driskill*, ACM 39889, USCA Dkt. No. 26-0087/AF; petitioned the CAAF for a grant of review and drafted an eight-page supplement to the petition in *U.S. v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 26-0100/AF; drafted an eighteen-page petition for a writ of certiorari to the Supreme Court of the United States in *Sherman v. U.S.*, ACM 40486, USCA Dkt. No. 25-0209/AF; prepared and filed an application for extension of time to file a petition for a writ of certiorari at the Supreme Court of the United States in *Soloshenko, et al. v. United States*; and participated in six practice oral arguments for three additional cases. Additionally, counsel was on leave on 6 February 2026 and was off for the Birthday of Martin Luther King, Jr. holiday.

exhibits, one court exhibit, and twenty-five appellate exhibits; the transcript is 469 pages. Undersigned counsel has drafted a petition for a writ of certiorari to the Supreme Court of the United States in this case.

On 15 September 2025, the Court held a status conference to discuss progress in this case. Order, *Untied States v. Gossett*, No. ACM 40715 (A.F. Ct. Crim. App. Sep. 16, 2025). During the status conference, undersigned counsel indicated needing two additional enlargements of time beyond the one then under consideration. *Id.* This enlargement, if granted, will be the fifth additional enlargement following the one under consideration at the time of that status conference. The additional enlargements beyond the two anticipated by undersigned counsel at that time are necessary because of additional obligations that have arisen since that status conference. Most notably, eight of counsel's cases have ripened for petitioning the CAAF for a grant of review since that status conference, and the statutory timing requirement for CAAF petitions necessitated prioritizing seven of those cases over this case. Despite these additional obligations, undersigned counsel is currently reviewing the record in this case. Although not anticipated at the time of the previous status conference, this additional enlargement of time is now necessary to allow counsel to complete his review and draft an AOE while managing competing priorities.

On 15 January 2025, this Court issued an order stating that "any future requests for an enlargement of time that, if granted, would expire more than 360 days after docketing, will not be granted absent exceptional circumstances." Order, *United States v. Gossett*, No. ACM 40715 (A.F. Ct. Crim. App. Jan. 15, 2025). Since this motion for enlargement of time, if granted, would expire 480 days after docketing, exceptional circumstances must be shown in accordance with the Court's order.

Undersigned counsel is willing to gain the necessary familiarity with the record to submit assignments of error prior to the filing deadline, and his limited progress so far is not a deliberate tactical decision to create an appellate issue. *See United States v. Roach*, 66 M.J. 410, 418 (C.A.A.F. 2008). But, as can be seen by the Declaration of the Appellate Defense Division's Deputy Chief, he is impeded in doing so for reasons that amount to staffing shortages and, in turn, high workload demands on undersigned counsel. *See* Decl. at 1-6. The crux of these workload issues is that the Appellate Defense Division's workload is up, but its staff to carry out that work remains largely unchanged.

The Appellate Defense Division has the highest volume of cases pending initial briefing before this Court since 2017, but the demands on the Division's counsel are greater in today's cases because records of trial now are between twenty-five and thirty-five percent longer than those of 2017, based solely on their transcript pages. *Id.* at 1-4. The demand placed by this heightened amount of review per case has been compounded by a higher volume of clients, with the 2022 broadening of direct appeals in Article 65 requiring record-review and consultation for each eligible client, and with those direct appeals docketed with this Court amounting to approximately only forty percent of this pool of clients. *Id.* Over this same time since the December 2022 law change, the Appellate Defense Division faced a high volume of cases before the CAAF, a high volume of interlocutory appeals and writ-petitions, and multiple time-sensitive petitions to the Supreme Court of the United States. *Id.* All three of these classes of cases are particularly impactful on an attorney's ability to work cases before this Court because of the timelines involved, with interlocutory appeals taking priority and with cases appealed to the CAAF and the Supreme Court subject to strict timeline requirements. 10 U.S.C. §§ 806b(e)(3)(B), 862(b), 867(b); 28 U.S.C. § 2101(c). The workload demands before the Supreme

Court are only increasing, with every appellant seeking review at the CAAF now eligible to petition the Supreme Court. *Id.* at 5-6. Relative to the Court of Appeals for the Armed Forces and the Supreme Court, this Court has substantially greater flexibility to adjust its deadlines and should do so here. *Compare United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006) (setting eighteen months post-docketing with the Court of Criminal Appeals as a trigger for analysis but declining to make it dispositive in light of the possibility of reasonable delay), *with* 10 U.S.C. 867(b), 28 U.S.C. § 2101(c).

Good cause for granting this motion is even more evident in light of the Appellate Defense Division's multi-faceted efforts to mitigate its workload strain. Multiple long-term absences were filled through support by reservists trained for and experienced in appellate practice. Decl. at 5-6. In 2023, the Appellate Defense Division sought a legislative change to alleviate its workload but was unsuccessful. *Id.* at 6. Also in 2023, the Appellate Defense Division requested eight additional active-duty personnel. *Id.* at 6. One civilian has been permanently provided, starting work on 16 December 2024. *Id.* at 1, 6. The Division gained one additional active-duty counsel in 2025, but it is unclear whether that is intended as a permanent additional billet. *Id.* at 6. In 2024, the Appellate Defense Division again requested eight additional active-duty personnel. *Id.*

As noted in *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998), there is no substitute for the briefing by appellate defense counsel on behalf of an individual appellant, even considering this Court's broad mandate for independent review. Undersigned counsel regularly and continually examines his docket, in concert with supervisory counsel within the Appellate Defense Division, to assess the possibility of assigning additional counsel to expedite review of his cases. This regular assessment of dockets has previously resulted in the detailing of additional

counsel to cases prioritized above this one, which helped expedite undersigned counsel's progress in reviewing this case. However, no additional counsel has been identified for this case.

Having been tasked with doing substantially more work with the same resources, undersigned counsel's docket is such that the ordinary workload precludes—and has precluded—undersigned counsel from finalizing review and briefing of Appellant's case. This is despite undersigned counsel regularly working at night, on weekends, and while on leave. The workload is to a degree that it may warrant scrutiny of what The Judge Advocate General is doing to ameliorate it. *See Roach*, 66 M.J. at 418; *Moreno*, 63 M.J. at 137. The circumstances described here are exceptional, but not because they are new or previously unknown. They are exceptional because they demonstrate a task saturation brought about by numerous duties that often have conflicting timelines. These duties necessitate difficult prioritizations that have resulted in the requests for enlargements of time throughout the life of Appellant's case.

On 14 January 2026, this Court issued an order stating that any additional motions for enlargements of time will "specifically identify the assignments of error Appellant reasonably expects to raise to the court." Order, *United States v. Gossett*, No. ACM 40715 (A.F. Ct. Crim. App. Jan. 14, 2026). Although Appellant views this information as protected by privilege, he has explicitly consented to the disclose of the anticipated assignments of error for the limited purpose of complying with this Court's order. Pursuant to this consent, and "recognizing such identification will not bind or constrain Appellant with respect to which assignments he ultimately raises," *id.*, Appellant reasonably expects to raise the following assignments of error:

- Whether the Record of Trial is incomplete because Appellate Exhibit XXXVI does not match the description in the transcript.

- Whether the military judge abused his discretion by admitting Prosecution Exhibit 2 where the Government failed to lay an adequate foundation for admission of the exhibit.
- Whether the military judge abused his discretion by denying the Defense motion to dismiss for multiplicity.
- Whether denial of Appellant's right to speedy trial warrants relief.
- Whether excessive delay in the post-trial processing of the record between sentencing and docketing at this Court warrants relief.

Crucially, the delay in reviewing Appellant's record necessitated by the prioritization of other matters is *through no fault of Appellant*. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant 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 thirteenth 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 8 February 2026.

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
Appellee,	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME –
	)	OUT OF TIME
v.	)	
	)	Before Panel No. 2
Master Sergeant (E-7)	)	
DANIEL P. GOSSETT,	)	No. ACM 40715
United States Air Force.	)	
Appellant	)	10 February 2026

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion for Enlargement of Time, Out of Time, 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 480 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 2 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

[redacted]
VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
[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 10 February 2026.

[redacted]
VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
[redacted]

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40715**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Daniel P. GOSSETT	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 8 February 2026, counsel for Appellant submitted a Motion for Enlargement of Time (Thirteenth) Out of Time requesting an additional 30 days to submit Appellant's assignments of error. The Government opposed the motion and noted that "[i]f Appellant's new delay request is granted, the defense delay in this case will be 480 days in length."

On 12 February 2026, the court held a status conference to discuss the progress of this case. Appellant was represented by Major Frederick J. Johnson; Lieutenant Colonel Allen S. Abrams from the Appellate Defense Division was also present. Major Vanessa Bairos represented the Government. In response to questions from the court, Major Johnson discussed his workload and indicated that various CAAF petitions and cases coming ripe for review impacted his estimation on the number of enlargements he told the court he needed during the last status conference on this case in September 2025. Major Johnson indicated he has resolved most of his other cases and has already reviewed the exhibits in this case as well as half of the transcript. If this motion is granted, Major Johnson does not currently anticipate needing an additional enlargement of time. Major Bairos did not dispute any representation made by the Defense and stands by her submitted opposition to the 8 February 2026 Motion for Enlargement of Time.

Accordingly, it is by the court on this 12th day of February, 2026,

ORDERED:

Appellant's Motion for Enlargement of Time (Thirteenth) Out of Time is **GRANTED**. Appellant shall file any assignments of error not later than **16 March 2026**.

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

FOR THE COURT

[redacted]

AGNIESZKA M. GAERTNER, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	**APPELLANT'S MOTION FOR**
Appellee,	)	**ENLARGEMENT OF TIME**
	)	**(FOURTEENTH)**
v.	)	
	)	Before Panel No. 2
Master Sergeant (E-7)	)	
DANIEL P. GOSSETT,	)	No. ACM 40715
United States Air Force,	)	
Appellant.	)	9 March 2026

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 fourteenth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of ten days, which will end on **26 March 2026**. The record of trial was docketed with this Court on 21 November 2024. From the date of docketing to the present date, 473 days have elapsed. On the date requested, 490 days will have elapsed.

On 15–20 April 2024, a general court-martial consisting of officer and enlisted members at Edwards Air Force Base, California, convicted Appellant, contrary to his pleas, of one charge and one specification of child endangerment in violation of Article 119b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 919b, and one charge and two specifications of domestic violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 961, Record of Trial (ROT) Vol. 1, Entry of Judgment, 23 July 2024 (EOJ). The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for fifteen months, and a bad conduct discharge. R. at 1075; EOJ. The convening authority took no action on the findings but suspended the adjudged reduction in grade until 4 November 2024, at which time the suspended part of the sentence would be remitted unless the suspension was sooner vacated, and waived

automatic forfeitures for six months or until release from confinement or expiration of term of service, whichever is sooner, for the benefit of Appellant's dependents. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Daniel P. Gossett*, 28 June 2024.

The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 pages. Appellant is not currently confined. Undersigned counsel has reviewed the record of trial (except sealed materials) and is drafting the AOE in this case.

Counsel is currently representing twenty-six clients; nine clients are pending initial AOEs before this Court.[1] Additionally, one client has an upcoming answer brief before the United States Court of Appeals for the Armed Forces (CAAF). Three additional clients have an upcoming consolidated petition for a writ of certiorari before the Supreme Court of the United States. This case is currently undersigned counsel's highest priority amongst cases pending initial AOEs before this Court.

On 12 February 2026, the Court held a status conference to discuss progress in this case. Order, *Untied States v. Gossett*, No. ACM 40715 (A.F. Ct. Crim. App. Feb. 12, 2026). During the status conference, undersigned counsel indicated he did not anticipate needing an additional

[1] Since the filing of Appellant's last request for an enlargement of time, counsel completed his review of the ten-volume record of trial (except sealed materials) and began drafting the AOE in this case; prepared and filed a two-page reply to the Government's answer to the supplement to the petition for grant of review in *U.S. v. Casillas*, ACM 40551, USCA Dkt. No. 26-0092/AF; prepared and filed an eight-page supplement to the petition for grant of review in *U.S. v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 26-0100/AF; prepared and filed a twenty-one-page petition for a writ of certiorari to the Supreme Court of the United States in *Sherman v. U.S.*, ACM 40486, USCA Dkt. No. 25-0209/AF; petitioned the CAAF for a grant of review and prepared and filed a seventeen-page supplement to the petition in *U.S. v. Banks*, ACM 24057, USCA Dkt. No. 26-0127/AF; and participated in seven practice oral arguments for three additional cases. Additionally, counsel was off for the Washington's Birthday holiday.

enlargement of time beyond the one then under consideration. *Id.* This enlargement, if granted, will be one additional enlargement following the one under consideration at the time of that status conference. The additional enlargement is necessary because of the number of potential errors identified during counsel's review of the record as well as delays in the progress of this case due to deadlines in other cases. Because of counsel's progress thus far, Appellant is only requesting an enlargement of ten days to allow sufficient time to complete the AOE. Although not anticipated at the time of the previous status conference, this additional enlargement of time is now necessary to allow counsel to prepare the AOE.

On 15 January 2025, this Court issued an order stating that "any future requests for an enlargement of time that, if granted, would expire more than 360 days after docketing, will not be granted absent exceptional circumstances." Order, *United States v. Gossett*, No. ACM 40715 (A.F. Ct. Crim. App. Jan. 15, 2025). Since this motion for enlargement of time, if granted, would expire 490 days after docketing, exceptional circumstances must be shown in accordance with the Court's order.

Undersigned counsel is willing to gain the necessary familiarity with the record to submit assignments of error prior to the filing deadline, and his limited progress so far is not a deliberate tactical decision to create an appellate issue. *See United States v. Roach*, 66 M.J. 410, 418 (C.A.A.F. 2008). But, as can be seen by the Declaration of the Appellate Defense Division's Deputy Chief, he is impeded in doing so for reasons that amount to staffing shortages and, in turn, high workload demands on undersigned counsel. *See* Decl. at 1-6. The crux of these workload issues is that the Appellate Defense Division's workload is up, but its staff to carry out that work remains largely unchanged.

The Appellate Defense Division has the highest volume of cases pending initial briefing before this Court since 2017, but the demands on the Division's counsel are greater in today's cases because records of trial now are between twenty-five and thirty-five percent longer than those of 2017, based solely on their transcript pages. *Id.* at 1-4. The demand placed by this heightened amount of review per case has been compounded by a higher volume of clients, with the 2022 broadening of direct appeals in Article 65 requiring record-review and consultation for each eligible client, and with those direct appeals docketed with this Court amounting to approximately only forty percent of this pool of clients. *Id.* Over this same time since the December 2022 law change, the Appellate Defense Division faced a high volume of cases before the CAAF, a high volume of interlocutory appeals and writ-petitions, and multiple time-sensitive petitions to the Supreme Court of the United States. *Id.* All three of these classes of cases are particularly impactful on an attorney's ability to work cases before this Court because of the timelines involved, with interlocutory appeals taking priority and with cases appealed to the CAAF and the Supreme Court subject to strict timeline requirements. 10 U.S.C. §§ 806b(e)(3)(B), 862(b), 867(b); 28 U.S.C. § 2101(c). The workload demands before the Supreme Court are only increasing, with every appellant seeking review at the CAAF now eligible to petition the Supreme Court. *Id.* at 5-6. Relative to the Court of Appeals for the Armed Forces and the Supreme Court, this Court has substantially greater flexibility to adjust its deadlines and should do so here. *Compare United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006) (setting eighteen months post-docketing with the Court of Criminal Appeals as a trigger for analysis but declining to make it dispositive in light of the possibility of reasonable delay), *with* 10 U.S.C. 867(b), 28 U.S.C. § 2101(c).

Good cause for granting this motion is even more evident in light of the Appellate Defense Division's multi-faceted efforts to mitigate its workload strain. Multiple long-term absences were filled through support by reservists trained for and experienced in appellate practice. Decl. at 5-6. In 2023, the Appellate Defense Division sought a legislative change to alleviate its workload but was unsuccessful. *Id.* at 6. Also in 2023, the Appellate Defense Division requested eight additional active-duty personnel. *Id.* at 6. One civilian has been permanently provided, starting work on 16 December 2024. *Id.* at 1, 6. The Division gained one additional active-duty counsel in 2025, but it is unclear whether that is intended as a permanent additional billet. *Id.* at 6. In 2024, the Appellate Defense Division again requested eight additional active-duty personnel. *Id.*

As noted in *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998), there is no substitute for the briefing by appellate defense counsel on behalf of an individual appellant, even considering this Court's broad mandate for independent review. Undersigned counsel regularly and continually examines his docket, in concert with supervisory counsel within the Appellate Defense Division, to assess the possibility of assigning additional counsel to expedite review of his cases. This regular assessment of dockets has previously resulted in the detailing of additional counsel to cases prioritized above this one, which helped expedite undersigned counsel's progress in reviewing this case. However, no additional counsel has been identified for this case.

Having been tasked with doing substantially more work with the same resources, undersigned counsel's docket is such that the ordinary workload precludes—and has precluded—undersigned counsel from finalizing review and briefing of Appellant's case. This is despite undersigned counsel regularly working at night, on weekends, and while on leave. The workload is to a degree that it may warrant scrutiny of what The Judge Advocate General is doing to ameliorate it. *See Roach*, 66 M.J. at 418; *Moreno*, 63 M.J. at 137. The circumstances described

here are exceptional, but not because they are new or previously unknown. They are exceptional because they demonstrate a task saturation brought about by numerous duties that often have conflicting timelines. These duties necessitate difficult prioritizations that have resulted in the requests for enlargements of time throughout the life of Appellant's case.

On 14 January 2026, this Court issued an order stating that any additional motions for enlargements of time will "specifically identify the assignments of error Appellant reasonably expects to raise to the court." Order, *United States v. Gossett*, No. ACM 40715 (A.F. Ct. Crim. App. Jan. 14, 2026). Although Appellant views this information as protected by privilege, he has explicitly consented to the disclose of the anticipated assignments of error for the limited purpose of complying with this Court's order. Pursuant to this consent, and "recognizing such identification will not bind or constrain Appellant with respect to which assignments he ultimately raises," *id.*, Appellant reasonably expects to raise the following assignments of error:

- Whether the Record of Trial is incomplete because Appellate Exhibit XXXVI does not match the description in the transcript.
- Whether the military judge abused his discretion by admitting Prosecution Exhibit 2 where the Government failed to lay an adequate foundation for admission of the exhibit.
- Whether Appellant was denied effective assistance of counsel when his counsel failed to request a new examination under Rule for Courts-Martial 706.
- Whether the military judge abused his discretion by denying the Defense motion to dismiss for multiplicity.
- Whether denial of Appellant's right to speedy trial warrants relief.

- Whether excessive delay in the post-trial processing of the record between sentencing and docketing at this Court warrants relief.

Crucially, the delay in reviewing Appellant's record necessitated by the prioritization of other matters is *through no fault of Appellant*. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant 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 fourteenth 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 9 March 2026.

Respectfully submitted,

[redacted]
FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
[redacted]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) **DANIEL P. GOSSETT**, United States Air Force, *Appellant.*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME Before Panel No. 2 No. ACM 40715 11 March 2026

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 490 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 2 month combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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



KATE E. LEE, Maj, USAF
Appellate Government Counsel
[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 11 March 2026.



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) **Daniel P. GOSSETT,** United States Air Force, *Appellant.*	**BRIEF ON BEHALF OF APPELLANT** Before Panel No. 2 No. ACM 40715 26 March 2026

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

Frederick J. Johnson
Major, U.S. Air Force
Appellate Defense Counsel
[redacted]

ASSIGNMENTS OF ERROR

I. Whether Appellant was denied effective assistance of counsel when his counsel failed to request a new mental competency examination under Rule for Courts-Martial 706.

II. Whether Appellant's record of trial is substantially incomplete because Appellate Exhibit XXXVI does not match the description in the record.

III. Whether excessive delay in the post-trial processing of the record between sentencing and docketing at this Court warrants relief.

IV. Whether Appellant's constitutional rights were violated when he was convicted of an offense with no requirement that the court-martial panel (the functional equivalent of the jury) vote unanimously for guilt.[1]

[1] Appellant raises this assignment of error for issue preservation purposes.

STATEMENT OF STATUTORY JURISDICTION

Master Sergeant (MSgt) Daniel P. Gossett's approved sentence includes a bad-conduct discharge. R. at 1075. Accordingly, this Court has jurisdiction pursuant to Article 66(b)(3), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(b)(3).

STATEMENT OF THE CASE

A panel of members with enlisted representation sitting as a general court-martial convicted Appellant, MSgt Daniel P. Gossett, United States Air Force, contrary to his pleas, of one specification of child endangerment and two specifications of domestic violence in violation of Articles 119b and 128b, UCMJ, 10 U.S.C. §§ 919b, 928b. R. at 961. The military judge sentenced him to a reprimand, reduction to the grade of E-1, confinement for fifteen months, and a bad-conduct discharge. R. at 1075. The convening authority took no action on the findings but suspended the adjudged reduction in grade until 4 November 2024, at which time the suspended part of the sentence would be remitted unless the suspension was sooner vacated. Convening Authority Decision on Action, June 28, 2024. The convening authority also waived automatic forfeitures for six months or until release from confinement or expiration of term of service, whichever is sooner, for the benefit of Appellant's dependents. *Id.*

STATEMENT OF FACTS

Appellant and his wife have two children. R. at 568. In September 2023, they looked at video footage from a camera in their daughter's nursery to try and determine the cause of some unknown marks on her body. R. at 934. On the footage, they saw Appellant bring their daughter in to change her diaper. Pros. Ex. 2. While she was on the changing table, Appellant briefly applied pressure to her neck, once with his hands and once with a piece of clothing. *Id.* Appellant had no memory of this incident. R. at 864.

Upon discovering this, Appellant immediately sought mental health treatment. R. at 651. His wife notified law enforcement, who initiated an investigation. R. at 244. Within a few days, Appellant's leadership ordered him into pretrial confinement, but they quickly decided to send him to in-patient mental health care based on concerns about self-harm. R. at 62–63. Appellant's counsel requested an inquiry under Rule for Courts-Martial (R.C.M.) 706 to assess his mental responsibility at the time of the offense and competency to stand trial. App. Ex. XLV at 7. An Air Force provider completed in late October, while Appellant was still receiving in-patient care. Def. Ex. B. The inquiry concluded that he did not suffer from a disease or defect that prevented him from appreciating the nature or wrongfulness of his actions at the time of the offense and was competent to stand trial. Def. Ex. B. Appellant completed his in-patient care and showed significant improvement. R. at 63.

The case against Appellant proceeded to trial, and much of Appellant's case focused on his mental health. The Defense called an expert witness, a former Air Force psychologist who conducted over 150 psychological examinations during his career. R. at 763. The expert criticized the report, saying the provider did not use the best available assessment, spent too little time with Appellant, and failed to speak with others who may have had pertinent information, including Appellant's in-patient providers, his wife, and his mother. R. at 771–72, 778–82. Overall, this expert opined that the inquiry was insufficient, and the report should never have been presented to the court-martial. R. at 798.

The military judge entered a finding of not guilty for one specification of domestic violence pursuant to a motion under R.C.M. 917. R. at 755. The members found Appellant guilty of the other three specifications. R. at 961.

SUMMARY OF ARGUMENT

Despite focusing on Appellant's mental health and presenting ample evidence of the shortcomings of the R.C.M. 706 mental competency inquiry, trial defense counsel did not request a new inquiry. This constitutes ineffective assistance of counsel. A reasonable attorney in this situation would have requested a new inquiry upon learning from an expert about the problems with the existing report. Had they done so, there is a reasonable probability that a new inquiry would have produced results that the Defense could have leveraged more effectively when defending Appellant. And there was little risk to doing so because the Defense could have still utilized the same trial strategy that they did if the court denied a request for a new inquiry. Because Appellant received ineffective assistance of counsel, the findings and the sentence should be set aside.

There is also a problem with one of the appellate exhibits in Appellant's record of trial. The military judge went to great lengths on the record to resolve a discrepancy between an exhibit the parties used to question a witness and the exhibit provided to the court. The result was that the exhibit used to question the witness became App. Ex. XXXVI. However, what purports to be App. Ex. XXXVI in the record of trial does not match the description of that exhibit in the transcript. This is a substantial omission because it prevents this Court and the parties from analyzing the witness's testimony that included references to this exhibit. This Court should remand the case to correct this error.

The Government created an unreasonable delay in the post-trial processing of Appellant's record. Between sentencing and docketing with this Court, 215 days elapsed. This is despite having the transcript completed and reviewed, one of the most time-consuming post-trial processes, 100 days after sentencing. This delay indicates indifference to timely post-trial processing and warrants appropriate relief.

ARGUMENT

I. Appellant was denied effective assistance of counsel because his counsel failed to request a new mental competency examination under Rule for Courts-Martial 706 after learning that the one conducted was inadequate.

A. Standard of review.

This Court reviews allegations of ineffective assistance of counsel de novo. *United States v. Palik*, 84 M.J. 284, 288 (C.A.A.F. 2024) (citing *United States v. Tippit*, 65 M.J. 69, 76 (C.A.A.F. 2007)).

B. There is a reasonable probability that requesting a new R.C.M. 706 inquiry would have led to a different result, and failing to make that request was ineffective assistance.

To prevail on an ineffective assistance of counsel claim, an appellant must demonstrate "(1) that his counsel's performance was deficient, and (2) that this deficiency resulted in prejudice." *Id.* at 288 (quoting *United States v. Captain*, 75 M.J. 99, 101 (C.A.A.F. 2016)). This test comes from the seminal case *Strickland v. Washington*, which also notes an appellant must overcome "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." 466 U.S. at 689. The CAAF uses a three-part test to determine whether this presumption of competence has been overcome:

> 1. Are appellant's allegations true; if so, "is there a reasonable explanation for counsel's actions"?
>
> 2. If the allegations are true, did defense counsel's level of advocacy "fall measurably below the performance . . . [ordinarily expected] of fallible lawyers"?
>
> 3. If defense counsel was ineffective, is there "a reasonable probability that, absent the errors," there would have been a different result?

Palik, 84 M.J. at 289 (quoting *United States v. Gooch*, 69 M.J. 353, 362 (C.A.A.F. 2011)).

For the first part of the test, there is no indication in the record that Appellant's trial defense counsel requested a new inquiry. Appellant's declaration confirms this by stating that he

was not aware he could request a new inquiry and never discussed this with his counsel. Declaration of 26 March 2026. Moreover, the Defense's focus on attacking the errors in the inquiry implies that they did not request a new inquiry. R. at 937–40.

There is no apparent reasonable explanation for this action. Trial defense counsel clearly believed that a mental health inquiry under R.C.M. 706 was necessary because they requested one in the first place. App. Ex. XLV at 7. And they had ample indications that the inquiry Appellant underwent was insufficient, as established by the extensive testimony the Defense introduced through its own expert. R. at 759–99. The provider who conducted the inquiry utilized only one psychological test, and the report indicates the results of that test. Def. Ex. B at 4. The Defense's expert, who conducted over 150 psychological evaluations himself during his Air Force career, testified that there was another, better test available to Air Force psychologists. R. at 763, 771–72. But the evaluating provider did not use that test. *See* Def. Ex. B. Moreover, the expert considered the time spent by the evaluating provider to be too short for an inquiry of this nature and opined that the provider should have spoken to other people in Appellant's life, like his in-patient treatment providers, his wife, or his mother. R. at 778–79, 781–82. The evaluating provider did not speak to anyone other than Appellant. R. at 781. Overall, the expert opined that the inquiry report "should never have been submitted to [the court-martial] for consideration" because it was so lacking. R. at 798. Although the trial defense counsel introduced evidence of these deficiencies through the expert witness, they never took the logical step of requesting a new inquiry.

Turning to the second part of the test, the failure of trial defense counsel to request a new inquiry fell measurably below the performance ordinarily expected of fallible lawyers. *See Palik*, 84 M.J. at 293 (finding that failure to bring a motion under R.C.M. 914 fell measurably below

the performance ordinarily expected of fallible lawyers). When an inquiry under R.C.M. 706 is insufficient, the most reasonable way to address the insufficiency is to conduct a new inquiry. For example, the appellant in *United States v. Mancillas* underwent three R.C.M. 706 inquiries because the first was defective and the second was inconclusive. No. NMCCA 200401950, 2006 CCA LEXIS 339, at *8–9 (N-M. Ct. Crim. App. Dec. 18, 2006). Further, requesting a new inquiry posed little risk for the Defense. If granted, the new inquiry would have presented an opportunity to obtain a more complete, sufficient report. That report, in turn, may have provided the Defense with additional information it could utilize to defend Appellant. On the other hand, if the Court denied the request for a new inquiry, the Defense would have remained in essentially the same position in which it already found itself. It could have then presented exactly the same defense that it did, including attacking the existing inquiry as deficient. Requesting a new inquiry presented significant upside with almost no downside, such that failing to do so fell measurably below the performance ordinarily expected of fallible lawyers. *See Palik*, 84 M.J. at 291 (finding ineffective assistance of counsel for failing to bring a motion that had "tremendous upside and virtually no downside for the defense").

Absent this error, there is a reasonable probability that there would have been a different result, so the third part of the test is also satisfied. Much of the Defense's case focused on Appellant's mental health, particularly at the time of the offense. Through their expert witness, trial defense counsel suggested that Appellant may have been in a dissociative or fugue state at the time of the offense. R. at 787. His actions, including checking the cameras and immediately seeking mental health care, further bolster such a possibility. R. at 934. But without a report establishing this as more than a mere possibility, the Defense was hamstrung in its efforts to utilize this in Appellant's defense. An adequate inquiry may have created stronger options for the

Defense, including pursuing a not guilty due to lack of mental responsibility verdict. R.C.M. 916(k). This would be similar to what happened in *Mancillas*, where a third psychological evaluation produced a result that differed from the first two and benefited the appellant. 2006 CCA LEXIS 339, at *3–4. While it is not certain what the results of a new inquiry would have been, the standard is reasonable probability, not certainty. *Palik*, 84 M.J. at 289. Based on the testimony of the Defense's expert, it is at least reasonably probable that a new, sufficient R.C.M. 706 inquiry would have documented additional details about Appellant's mental health that could lead to a different outcome. R. at 759–99.

Trial defense counsel found Appellant's mental health sufficiently compelling to "demand" an R.C.M. 706 inquiry. R. at 198. But when presented with a report that their own expert indicated was inadequate, trial defense counsel inexplicably took no further steps to obtain an adequate report. Because he received ineffective assistance of counsel, Appellant requests that this Court set aside findings and the sentence.

II. Appellant's record of trial is substantially incomplete because Appellate Exhibit XXXVI does not match the description in the record.

A. Additional facts.

During motions practice, the parties questioned a witness regarding the Defense's speedy trial motion. R. at 136–65. Both parties used a document—a speedy-trial chronology with associated support—that purported to be App. Ex. XXXVI. R. at 138–65. However, the military judge identified a discrepancy. The document being used to question the witness was a 147-page document in hard-copy, while what had been identified to the court as App. Ex. XXXVI was a 136-page document on a disk. R. at 165–66. To remedy this, the military judge directed that the 147-page document be marked as App. Ex. XXXVI, while the 136-page document became App. Ex. XLV. R. at 167.

B. Standard of review.

"Whether an omission from a record of trial is 'substantial' is a question of law which [appellate courts] review de novo." *United States v. Stoffer*, 53 M.J. 26, 27 (C.A.A.F. 2000).

C. The appellate exhibit in the record that purports to be Appellate Exhibit XXXVI is not what the military judge described on the record when resolving a discrepancy between exhibits.

Article 54(c)(2), UCMJ, 10 U.S.C. § 854(c)(2), requires that a "complete record of proceedings and testimony shall be prepared in any case" where the sentence includes a discharge. A substantial omission renders a record of trial incomplete and raises a presumption of prejudice that the government must rebut. *United States v. Henry*, 53 M.J. 108, 111 (C.A.A.F. 2000). A record that is missing exhibits may be substantially incomplete. *See Stoffer*, 53 M.J. at 27 (holding that the record was substantially incomplete for sentencing when all three defense sentencing exhibits were missing). "Insubstantial" omissions from a record of trial do not render the record incomplete. *See Henry*, 53 M.J. at 111 (holding that four missing prosecution exhibits were insubstantial omissions when other exhibits of similar explicit material were included). The threshold question is whether the missing exhibits are substantial, either qualitatively or quantitatively. *United States v. Davenport*, 73 M.J. 373, 377 (C.A.A.F. 2014). Omissions may be quantitatively insubstantial when, considering the entire record, the omission is "so unimportant and so uninfluential . . . that it approaches nothingness." *Id.* (citing *United States v. Nelson*, 3 C.M.A. 482 (C.M.A. 1953)). This Court individually analyzes whether an omission is substantial. *United States v. Abrams*, 50 M.J. 361, 363 (C.A.A.F. 1999).

During motions practice, the Defense filed a speedy-trial motion seeking to have the case dismissed for violating Appellant's rights under Article 10, UCMJ, 10 U.S.C. § 810. App. Ex. XI. The Government opposed this motion and produced a speedy trial chronology. R. at 139. Both parties and the military judge used this chronology, App. Ex. XXXVI, when examining a

witness regarding this motion. R. at 138–69. The witness discussed many specific items in this exhibit, including items listed in the chronology and specific supporting documents. R. at 141–57. The military judge ultimately denied the Defense motion. App. Ex. XLIX.

In the midst of the hearing on the motion, the military judge identified a discrepancy between the appellate exhibit presented to the court and what was being used to examine the witness. R. at 165–66. The exhibit provided to the court was a disk containing a 136-page speedy-trial chronology with associated supporting documents, but the parties showed the witness a different hard-copy document that they referred to as App. Ex. XXXVI. R. at 165–66. To remedy this disconnect, the military judge decided to have the document about which the witness had been testifying marked as App. Ex. XXXVI and mark the other document as a subsequent appellate exhibit. R. at 166. Following a recess, the military judge confirmed that App. Ex. XXXVI is a 147-page hard-copy document. R. at 167. The 136-page document on a disk became App. Ex. XLV. R. at 167. The military judge also noted later that the first five pages of App. Ex. XXXVI listed the Government's purported actions to bring the case to trial. R. at 168.

The confusion from trial about these appellate exhibits appears to have infected the record. The "App. Ex. XXXVI" contained in the record is a disk containing a 136-page document, of which only the first three pages present a chronology. It appears to be the same document as App. Ex. XLV. This is a substantial error. The parties used App. Ex. XXXVI extensively to examine a witness, and the military judge went to significant lengths to confirm that the document they used would be reflected as App. Ex. XXXVI. R. at 165–67. The missing document, and the witness's testimony about it, affected the military judge's decision on Appellant's speedy trial motion, a motion that could have resulted is dismissal of the case. *See*

United States v. King, No. ACM 39583, 2021 CCA LEXIS 415, at *22 – 23 (A.F. Ct. Crim. App. Aug. 16, 2021) (finding missing documents to be substantial omissions because they affected the appellant's rights at trial). Yet that 147-page document is not in the record. Without it, this Court and the parties cannot adequately review the witness testimony regarding the speedy-trial motion because they cannot follow the witness's references to this exhibit. As the military judge observed when attempting to resolve this issue on the record, it was important to have the right exhibit so that "whoever ends up having to review this will have an idea as to what the heck this witness is referring to and what the parties are referring to during this witnesses [sic] testimony." R. at 166. Because of the prominent role this appellate exhibit played during witness testimony, its omission from the record is substantial.

Unless this Court sets aside the findings and sentence for ineffective assistance of counsel, the appropriate relief for the error regarding App. Ex. XXXVI is remand for correction or, if the issue cannot be corrected on remand, sentence reassessment. R.C.M. 1112(d)(2); *Stoffer*, 53 M.J. at 28. An incomplete record may be returned to the military judge for correction. R.C.M. 1112(d)(2); *e.g., United States v. Welsh*, No. ACM S32719, 2022 CCA LEXIS 631, at *2–3 (A.F. Ct. Crim. App. Oct. 26, 2022) (explaining that R.C.M. 1112(d) provides for correction of a record of trial found to be incomplete or defective after authentication and returning the record for correction after finding the absence of eight attachments to the stipulation of fact substantial); *United States v. Mardis*, No. ACM 39980, 2022 CCA LEXIS 10, at *9-10 (A.F. Ct. Crim. App. Jan. 6, 2022). R.C.M. 1112(d)(2) states, "A superior competent authority may return a record of trial to the military judge for correction under this rule. The military judge shall give notice of the proposed correction to all parties and permit them to examine and respond to the proposed correction."

Even if the Government were to move to attach the missing exhibit to the record, the record would still be incomplete. Attachments to the appellate record do not complete the record. *See United States v. Garcia-Arcos*, No. ACM 40009, 2022 CCA LEXIS 339, at *6 (A.F. Ct. Crim. App. 9 Jun. 2022) ("[W]e do not consider the attachments to the appellate record as a means to complete the record; we assume our granting both motions does not change the fact that the record, as certified and submitted to the court, is incomplete."); *Welsh*, 2022 CCA LEXIS 631, at *2 ("We acknowledge the motion to attach was granted, but we do not agree that this cures the defect without the exhibit actually being incorporated into the [record of trial]."); *Mardis*, 2022 CCA LEXIS 10, at *7 ("[W]e considered the attachments to trial counsel's declaration to determine whether the omission of the exhibits from the record of trial was substantial, . . . ; we did not consider the exhibits as a means to complete the record."). R.C.M. 1112(d)(2) requires a military judge to permit the parties "to examine and respond to the proposed correction" when correcting a record of trial. Here, this role can only be properly fulfilled by attorneys for the parties at the trial level who have knowledge of what App. Ex. XXXVI was at trial. This Court and the appellate attorneys for the parties have no knowledge beyond the descriptions in the record and could therefore not accurately determine whether a correction reflects the exhibit used at trial. Consequently, remand for correction is the necessary remedy for this error.

Where a substantial omission exists and the record cannot be completed, a rebuttable presumption of prejudice is raised, and where unrebutted, the appellant may not receive a sentence that includes a punitive discharge. *See Stoffer*, 53 M.J. at 27. Thus, if correction on remand is not possible, Appellant's bad-conduct discharge should not stand.

III. The post-trial processing delays are unreasonable and warrant relief.

A. Additional facts.

Appellant was sentenced on 20 April 2024. Entry of Judgment (EOJ). The military judge signed the EOJ on 23 July 2024, ninety-four days after sentencing. *Id.* The court reporter completed the transcript, including reviews, on 29 July 2024, 100 days after sentencing. Court Reporter Chronology. The record was docketed with this Court on 21 November 2024, 215 days after sentencing.

B. Standard of review.

A Court of Criminal Appeals necessarily considers de novo whether excessive post-trial delay warrants relief under Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2).

C. This Court should grant appropriate relief for the post-trial processing delay.

The Government unreasonably delayed the post-trial processing of Appellant's record. It took the Government 215 days after sentencing to docket the record with this Court. This delay is facially unreasonable because it exceeds the 150 days from sentencing to docketing that this Court has previously held constitutes a facially unreasonable delay. *United States v. Livak*, 80 M.J. 631, 633 (A.F. Ct. Crim. App. 2020).

There is no clear explanation for this delay. It took the military judge ninety-four days after sentencing to sign the EOJ. But the transcript was complete on 29 July 2024, just six days after the military judge signed the EOJ and 100 days after sentencing. Court Reporter Chronology. Despite having fifty days left to meet the *Livak* standard, the Government took an additional 115 days to docket the case. This inexplicable delay demonstrates institutional indifference to timely post-trial processing. *See United States v. Valentin-Andino*, No. ACM 40185 (f rev), 2024 CCA LEXIS 223, at *17 (A.F. Ct. Crim. App. June 7, 2024) (holding that the

Government's actions "demonstrate[ ] gross indifference to post-trial processing in this case which impacted timely processing"), *aff'd on other grounds*, 85 M.J. 361 (C.A.A.F. 2025).

As in *Valentin-Andino*, "this case is not an aberration." *Id.* This Court previously identified a pattern of neglect in post-trial processing that constitutes "a systemic problem indicating institutional neglect." *Id.* at *17. As this Court stated,

> This court has recently been obliged to grapple with a series of cases involving post-trial delay at various stages, all of which raise serious questions as to the scope of potential institutional neglect within the Air Force, particularly when it comes to timely and accurate assembly of records of trial and forwarding of verbatim trial transcripts.

United States v. Cassaberry-Folks, No. ACM 40444, 2024 CCA LEXIS 500, at *43 (A.F. Ct. Crim. App. Nov. 22, 2024). Despite a clear message from this Court, the Government continues to cause unreasonable delays in post-trial processing. Appellant's case is a continuation of the institutional neglect highlighted by this Court, and it presents another opportunity for this Court to emphasize the importance of timely post-trial processing.

This Court is statutorily empowered to "provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record." Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2). Article 66(d)(2) now constitutes the only authority for this Court to grant relief for post-trial processing issues because it superseded previous cases that addressed post-trial error under the old statute. *United States v. Valentin-Andino*, 85 M.J. 361, 366 n.4 (C.A.A.F. 2025). Because the post-trial processing resulted in an unreasonable delay that evinces gross indifference, this Court should grant appropriate relief under Article 66(d)(2), UCMJ. Appropriate relief is that which is "suitable considering the facts and circumstances surrounding that case." *Valentin-Andino*, 85 M.J. at 363. The only relief that would change anything of consequence at this point is to set

aside the bad-conduct discharge. Although that might seem extreme for post-trial processing delays, consequential relief is the best tool to attempt to stem the tide of such delays by emphasizing the importance of timely post-trial processing. If this Court does not set aside the sentence as a remedy for any other assignment of error, it should set aside Appellant's bad-conduct discharge as relief for unreasonable post-trial processing delay.

IV. Appellant's constitutional rights were violated when he was convicted of an offense with no requirement that the court-martial panel (the functional equivalent of the jury) vote unanimously for guilt.

A. Additional facts.

At trial, the military judge later instructed the members:

> The concurrence of at least three-fourths of the members present when the vote is taken is required for any finding of guilty. Since we have eight members, that means six members must concur in any finding of guilty. If you have at least six votes of guilty of any offense, then that will result in a finding of guilty for that offense.

R. at 951. Appellant did not object to this instruction at trial. The members found Appellant guilty of three specifications. R. at 961. It is unknown and unknowable whether that conviction was based on a vote of 6–2, 7–1, or 8–0.

B. Standard of review.

The standard of review for questions of constitutional law is de novo. *United States v. Busch*, 75 M.J. 87, 91 (C.A.A.F. 2016).

C. This Court should grant appropriate relief for the post-trial processing delay.

In *United States v. Anderson*, the United States Court of Appeals for the Armed Forces (CAAF) held that non-unanimous findings of guilty do not violate a court-martial accused's constitutional rights. 83 M.J. 291, 302 (C.A.A.F. 2023), *cert. denied*, 144 S. Ct. 1003 (2024). Appellant acknowledges that, absent intervening CAAF or Supreme Court case law, this Court is

bound by the *Anderson* opinion. Nevertheless, Appellant maintains that *Anderson* was wrongly decided and expressly preserves this issue for further appellate review.

CONCLUSION

Appellant respectfully asks this Court to set aside the findings and sentence to remedy the ineffective assistance of counsel he received. If this Court does not grant relief for ineffective assistance, it should remand the case to address the substantial error in the record of trial and set aside the bad-conduct discharge as a result of unreasonable post-trial processing delay.

Respectfully submitted,

[redacted]

Frederick J. Johnson
Major, U.S. Air Force
Appellate Defense Counsel
[redacted]

CERTIFICATE OF FILING AND SERVICE

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

[redacted]
Frederick J. Johnson
Major, U.S. Air Force
Appellate Defense Counsel
[redacted]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**UNITED STATES' MOTION FOR AN ENLARGEMENT OF TIME**
v.	)	
	)	Before Panel No. 2
Airman First Class (E-7) **DANIEL P. GOSSETT** United States Air Force	)	No. ACM 40715
Appellant.	)	2 April 2026

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

Pursuant to Rule 23.3(m)(5) of this Court's Rules of Practice and Procedure, the United States respectfully requests an enlargement of time to respond to Appellant's assignments of error in which Appellant alleges one claim of ineffective assistance of counsel against his trial defense counsel. Filed in conjunction with this motion, the United States filed a Motion to Compel Declarations and asked this court to order Appellant's trial defense counsel, Maj SRF, Capt AJ, and civilian defense counsel, MJ, to each, provide a declaration responding to Appellant's ineffective assistance of counsel claims. The United States seeks a 14-day enlargement of time following the submission of Maj SRF's, Capt AJ's, and MJ's declarations to properly and completely respond to Appellant's brief.

The United States' Answer to Appellant's Assignment of Errors brief is currently due to this Court on 27 April 2026. Good cause exists to grant this request. Undersigned counsel will require a reasonable amount of time after the submission of declarations to properly address Appellant's ineffective assistance of counsel claims. Thus, the United States believes 14 days is sufficient to prepare a proper and responsive brief for this Honorable Court on this issue once the ordered declarations are received.

This case was docketed with the Court on 21 November 2024. Since docketing, Appellant has been granted fourteen (14) enlargements of time. This is the United States' first request for an enlargement of time. As of the date of this request, 498 days have elapsed.

To avoid any confusion concerning the dates, the United States respectfully asks this Court to provide a specific date on which the United States' brief will be due to the Court.

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 2 April 2026.

[redacted]
DONNELL D. WRIGHT, Capt, USAF
Appellate Government Counsel
[redacted]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**UNITED STATES' MOTION TO COMPEL DECLARATIONS**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **DANIEL P. GOSSETT** United States Air Force *Appellant.*	)	No. ACM 40715 2 April 2026

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

Pursuant to Rule 23.3(e) of this Honorable Court's Rules of Practice and Procedure, the United States hereby requests this Court compel each of Appellant's trial defense counsel, Maj SRF, Capt AJ, and civilian defense counsel, MJ, to provide an affidavit or declaration in response to Appellant's allegations of ineffective assistance of counsel. In his assignments of error, Appellant asserts he was "denied effective assistance of counsel because his counsel failed to request a new mental competency examination under Rule for Courts-Martial 706 after learning that the one conducted was inadequate." (App. Br. at 5-8.)

On 30 March 2026, Maj SRF and Capt AJ responded to the undersigned counsel asserting that they would only provide an affidavit or declaration pursuant to an order from this Court. MJ, Appellant's civilian defense counsel, has yet to respond. To prepare an answer in accordance with United States v. Polk, 32 M.J. 150, 153 (C.M.A. 1991), the United States requests this Court compel trial defense counsel to provide an affidavit or declaration. Appellant alleges that his trial defense counsel failed to request a new mental competency examination under Rule for Courts-Martial 706 after testimony from his expert witness indicated the examination conducted was deficient. A statement from Appellant's counsel is necessary

because the record is insufficient, alone, to assess the strategy employed by trial defense counsel during the presentation of the government's case. Thus, the United States requires statements from all trial defense counsel to adequately respond to Appellant's brief. *See* United States v. Rose, 68 M.J. 236, 236 (C.A.A.F. 2009); United States v. Melson, 66 M.J. 346, 347 (C.A.A.F. 2008). In fact, this Court cannot grant Appellant's ineffective assistance of counsel claim without first obtaining statements from all trial defense counsel. *See* Rose, 68 M.J. at 237; Melson, 66 M.J. at 347.

Accordingly, the United States respectfully requests this Court order each trial defense counsel to provide a declaration, containing specific and factual responses to Appellant's allegations of ineffective assistance of counsel, within 30 days of this Court's order.

WHEREFORE, the United States respectfully requests that this Honorable Court grant this motion to compel declarations.

[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 2 April 2026.

[redacted]
DONNELL D. WRIGHT, Capt, USAF
Appellate Government Counsel
[redacted]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*, v. Master Sergeant (E-7) **Daniel P. GOSSETT,** United States Air Force, *Appellant*.	**APPELLANT'S MOTION TO ATTACH A DOCUMENT** Before Panel No. 2 No. ACM 40715 26 March 2026

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

Pursuant to Rules 23 and 23.3(b) of this Honorable Court's Rules of Practice and Procedure, Appellant, Master Sergeant (MSgt) Daniel Gossett, hereby moves to attach the Appendix to this motion to his record of trial. The Appendix may be attached consistent with *United States v. Jessie*, because its consideration is necessary to "resolv[e] issues raised by materials in the record." 79 M.J. 437, 444 (C.A.A.F. 2020); *accord United States v. Willman*, 81 M.J. 355, 358 (C.A.A.F. 2021) ("In addition to permitting consideration of any materials contained in the 'entire record,' our precedents also authorize the CCAs to supplement the record to decide any issues that are raised, but not fully resolved, by evidence in the record."). The Appendix totals one page and consists of the following:

Declaration of Master Sergeant Daniel P. Gossett, 26 March 2026: A declaration made by Appellant under penalty of perjury. The declaration indicates that he did not know he could have requested a new mental health inquiry under Rule for Courts-Martial 706, never discussed this possibility with his trial defense counsel, and would have wanted to make such a request if he knew it was a possibility. The record raises the issue of whether Appellant's trial defense counsel provided ineffective assistance when they failed to request a new mental health evaluation despite introducing extensive evidence of the inadequacy of the first evaluation. The declaration provides

context about the Defense's consideration, or lack thereof, of this option. This context is not included in the record but contributes to an analysis of the ineffective assistance of counsel issue raised by information in the record. Thus, the declaration is necessary to resolve an issue raised by the record and may be considered by this Court. *Jessie*, 79 M.J. at 444.

WHEREFORE, Appellant respectfully requests that this Court grant this motion to attach a document.

Respectfully submitted,

[redacted]
FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
[redacted]

Appendix

1. Declaration of Master Sergeant Daniel P. Gossett, 26 March 2026, 1 page.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 26 March 2026.

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
[redacted]

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40715**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Daniel P. GOSSETT	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 26 March 2026, Appellant filed his assignments of error brief to the court, claiming, among other things, that "Appellant was denied effective assistance of counsel when his counsel failed to request a new mental competency examination under Rule for Courts-Martial [(R.C.M.)] 706 after learning that the one conducted was inadequate." On this same date, counsel for Appellant filed a motion to attach a one-page declaration, dated 26 March 2026, by Appellant. According to the motion, Appellant claims "he did not know he could have requested a new mental health inquiry under [R.C.M. 706], never discussed this possibility with his trial defense counsel, and would have wanted to make such a request if he knew it was a possibility."

The Government did not oppose this motion, but instead, on 2 April 2026, moved this court to compel each of Appellant's trial defense counsel—Major Sarah Racataian-Frick, Captain Annie Jed, and Mr. Matthew Jubelt, civilian defense counsel—to provide affidavits or declarations in response to the claimed ineffective assistance of counsel. According to the Government, two of Appellant's trial defense counsel indicated they would only provide a declaration upon order by this court, and the civilian defense counsel has not yet responded. On this same date, the Government moved this court for a 14-day enlargement of time "to prepare a proper and responsive brief" once the ordered declarations are received. Appellant did not oppose these motions.

The court has considered Appellant's motion to attach his declaration and the applicable law, and grants Appellant's motion.

The court has further examined the claimed deficiency and finds good cause to compel a response. The court cannot fully resolve Appellant's claim without piercing the privileged communications between Appellant and trial defense counsel. Moreover, in light of the court's order, it finds the Government's requested enlargement of time is appropriate.

Accordingly, the court has considered Appellant's motion, the deficiency alleged by Appellant, the Government's motions, the absence of opposition by both parties, case law, and this court's Rules of Practice and Procedure.

Accordingly, it is by the court on this 14th day of April, 2026,

ORDERED:

Appellant's Motion to Attach, dated 26 March 2026, is **GRANTED**.

The Government's Motion to Compel Declarations, dated 2 April 2026, is **GRANTED**. Major Sarah Racataian-Frick, Captain Annie Jed, and Mr. Matthew Jubelt, are each ordered to provide an affidavit or declaration to the court that is a specific and factual response to Appellant's claim that they were ineffective when they "failed to request a new mental competency examination under Rule for Courts-Martial 706 after learning that the one conducted was inadequate."

A responsive declaration by each counsel will be provided to the court **not later than 14 May 2026.** The Government shall deliver a copy of the responsive affidavits or declarations to Appellant's counsel.

It is further ordered:

The Government's Motion for Enlargement of Time, dated 2 April 2026, is **GRANTED**. The Government's answer to Appellant's assignments of error brief will be filed **not later than 28 May 2026**.

FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**UNITED STATES' MOTION TO ATTACH DOCUMENTS**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **DANIEL P. GOSSETT** United States Air Force *Appellant.*	)	No. ACM 40715 14 May 2026

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

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

- Appendix A – Matthew G. Jubelt, Esq. Declaration, dated 13 May 2026, with one (1) attachment, (4 pages)
- Appendix B – Maj Sarah Racataian-Frick Declaration, dated 13 May 2026, with six (6) attachments, (11 pages)
- Appendix C – Maj Annie E. Jed Declaration, dated 13 May 2026, (2 pages)

The attached declarations are responsive to this Court's order directing Maj Sarah Racataian-Frick, Maj Annie E. Jed, and Matthew G. Jubelt to provide declarations responsive to Appellant's Assignments of Error concerning his assertions of ineffective assistance of counsel. (Court Order, dated 2 April 2026.) These declarations are necessary to resolve this specific assignment of error.

Our Superior Court previously held matters outside the record may be considered "when doing so is necessary for resolving issues raised by materials in the record." United States v. Jessie, 79 M.J. 437, 444 (C.A.A.F. 2020). The Court concluded that "based on experience . . . 'extra-record fact determinations' may be 'necessary predicates to resolving appellate questions.'" Id. at 442 (quoting

United States v. Parker, 36 M.J. 269, 272 (C.M.A. 1993)). Accordingly, the attached documents are relevant and necessary to address this Court's order and Appellant's Assignment of Error.

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

[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 14 May 2026.

[redacted]
DONNELL D. WRIGHT, Capt, USAF
Appellate Government Counsel
[redacted]

IN THE UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*, v. Master Sergeant (E-7) **DANIEL P. GOSSETT,** United States Air Force *Appellant*,	))))))))))	**ANSWER TO ASSIGNMENTS OF ERROR** Before Panel No. 2 No. ACM 40715 28 May 2026

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

DONNELL D. WRIGHT, Capt, USAF
Appellate Government Counsel
Government Trial and
[redacted]

MARY ELLEN PAYNE
Associate Chief
Government Trial and
[redacted]

INDEX OF BRIEF

TABLE OF AUTHORITIES……..iv

ISSUES PRESENTED……1

STATEMENT OF THE CASE 2

STATEMENT OF THE FACTS 2

ARGUMENT 13

I.

APPELLANT RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS COUNSEL STRATEGICALLY DID NOT REQUEST A NEW MENTAL COMPETENCY EXAMINATION UNDER RULE FOR COURTS-MARTIAL 706.

Additional Facts.....13

Standard of Review……13

Law and Analysis.....13

A. There Was A Reasonable Explanation For Counsel's Actions......14

B. Defense Counsel's Level Of Advocacy Did Not "Fall Measurably Below The Performance . . . [Ordinarily Expected] Of Fallible Lawyers.".....16

C. An Additional R.C.M. 706 Evaluation Would Not Have Produced A Different Result......19

II.

APPELLANT'S RECORD OF TRIAL IS NOT SUBSTANTIALLY INCOMPLETE.

Additional Facts.....22

Standard of Review.....25

Law and Analysis 25

A. The Omission In The Record Of Trial Is Insubstantial. 26

B. If This Court Determines The Omission Is Substantial, Appellant Has Suffered No Material Prejudice. 28

III.

APPELLANT IS NOT ENTITLED TO RELIEF FOR THE POST-TRIAL PROCESSING DELAY BETWEEN SENTENCING AND DOCKETING.

Additional Facts 30

Standard of Review 31

Law and Analysis 32

A. Length of the Delay 33

B. Reasons for the Delay 33

C. Appellant Did Not Assert His Right to Timely Review 33

D. Appellant Suffered No Prejudice 34

E. Appellant Is Entitled To No Relief Under Article 66(d)(2) 34

IV.

APPELLANT'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED WHEN HE WAS CONVICTED OF AN OFFENSE WITHOUT A REQUIREMENT THAT THE COURT-MARTIAL PANEL VOTE UNANIMOUSLY THAT HE WAS GUILTY

Additional Facts 36

Standard of Review 36

Law and Analysis 36

CONCLUSION 37

CERTIFICATE OF FILING AND SERVICE 38

TABLE OF AUTHORITIES

UNITED STATES CONSTITUTION

U.S. CONST. amend. VI 13

SUPREME COURT OF THE UNITED STATES

Barker v. Wingo, 407 U.S. 514 (1972) 32,33

Harrison v. Richter, 562 U.S. 86 (2011) 19

Strickland v. Washington, 466 U.S. 668 (1984) ..... *passim*

United States v. Anderson, 144 S. Ct. 1003 (2024) 36

United States v. Cronic, 466 U.S. 648 (1984) 13

COURT OF APPEALS FOR THE ARMED FORCES & COURT OF MILITARY APPEALS

United States v. Abrams, 50 M.J. 361 (C.A.A.F. 1999) 27

United States v. Akbar, 74 M.J. 364 (C.A.A.F. 2015) 17

United States v. Anderson, 83 M.J. 291 (C.A.A.F. 2023) 36

United States v. Datavs, 71 M.J. 420 (C.A.A.F. 2012) 13,19

United States v. Davenport, 73 M.J. 373 (C.A.A.F. 2014) 25

United States v. Dearing, 63 M.J. 478 (C.A.A.F. 2006) 36

United States v. Green, 68 M.J. 360 (C.A.A.F. 2010) 13

United States v. Gooch, 69 M.J. 353 (C.A.A.F. 2011) ..... *passim*

United States v. Jones, 61 M.J. 80 (C.A.A.F. 2005) 32

United States v. McConnell, 55 M.J. 479 (C.A.A.F. 2001) 17

United States v. Moreno, 63 M.J. 129 (C.A.A.F. 2006). ..... *passim*

United States v. Napoleon, 46 M.J. 279 (C.A.A.F. 1997) 17

United States v. Palacios- Cueto, 82 M.J. 323 (C.A.A.F. 2022) 13,17,18

United States v. Palik, 84 M.J. 284 (C.A.A.F. 2024) ..... *passim*

United States v. Polk, 32 M.J. 150 (C.M.A. 1991).....14,22

United States v. Stoffer, 53 M.J. 26 (C.A.A.F. 2000)..... *passim*

United States v. Toohey, 60 M.J. 100 (C.A.A.F. 2004). 32

United States v. Valentin-Andino, 85 M.J. 361 (C.A.A.F. 2025).....32,35

United States v. Wright, 53 M.J. 476 (C.A.A.F. 2000) 36

AIR FORCE COURT OF CRIMINAL APPEALS

United States v. Anderson, No. ACM 39969, 2022 CCA LEXIS 181 (A.F. Ct. Crim. App. 25 March 2022) (unpub. op.) 36

United States v. Barnes, No. ACM 39834, 2021 CCA LEXIS 177 (A.F. Ct. Crim. App. 16 April 2021) (unpub. op.) 13,16,19

United States v. Cabrie, No. ACM 40615, 2025 CCA LEXIS 552 (A.F. Ct. Crim. App. 3 December 2025) (unpub. op.) 25,28

United States v. Clifford, No. ACM 39299, 2019 CCA LEXIS 16 (A.F. Ct. Crim. App. 16 January 2019) (unpub. op.) ..... *passim*

United States v. Garcia-Arcos, 2022 CCA LEXIS 339 (A.F. Ct. Crim. App. 9 June 2022) (unpub. op.) 29

United States v. Gerdes, No. ACM S32091, 2013 CCA LEXIS 971 (A.F. Ct. Crim. App. 14 November 2013) (unpub. op.).....16

United States v. Livak, 80 M.J. 631 (A.F. Ct. Crim. App. 2020) 31,32,33,34

United States v. Monarch, No. ACM 38585, 2015 CCA LEXIS 428 (A.F. Ct. Crim. App. 14 October 2015) (unpub. op.).....27

United States v. Valentin-Andino, No. ACM 40185 (f rev), 2024 CCA LEXIS 223 (A.F. Ct. Crim. App. 7 June 2024) (unpub. op.).....35

OTHER SERVICE COURTS

United States v. White, 52 M.J. 713, 716 (A. Ct. Crim. App. 2000).....27

United States v. Mancillas, No. NMCCA 200401950, 2006 CCA LEXIS 339 (N.M. Ct. Crim. App 18 December 2006) (unpub. op.) 16

FEDERAL CIRCUIT COURTS

Vieux v. Pepe, 184 F.3d 59 (1st Cir. 1999) 17

United States v. Brown, 25 F.3d 307 (6th Cir. 1994). 36

MANUAL FOR COURTS-MARTIAL

R.C.M. 706..... *passim*

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**ANSWER TO ASSIGNMENTS OF ERROR**
v.	)	
	)	Before Panel No. 2
Master Sergeant (E-7) **DANIEL P. GOSSETT** United States Air Force	)	No. ACM 40715
Appellant.	)	28 May 2026

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

ISSUES PRESENTED

I.

WHETHER APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS COUNSEL FAILED TO REQUEST A NEW MENTAL COMPETENCY EXAMINATION UNDER RULE FOR COURTS-MARTIAL 706.

II.

WHETHER APPELLANT'S RECORD OF TRIAL IS SUBSTANTIALLY INCOMPLETE BECAUSE APPELLATE EXHIBIT XXXVI DOES NOT MATCH THE DESCRIPTION IN THE RECORD.

III.

WHETHER EXCESSIVE DELAY IN THE POST-TRIAL PROCESSING OF THE RECORD BETWEEN SENTENCING AND DOCKETING AT THIS COURT WARRANTS RELIEF.

IV.

WHETHER APPELLANT'S CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN HE WAS CONVICTED OF AN OFFENSE WITH NO REQUIREMENT THAT THE COURT-

MARTIAL PANEL (THE FUNCTIONAL EQUIVALENT OF THE JURY) VOTE UNANIMOUSLY FOR GUILT.

STATEMENT OF CASE

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

STATEMENT OF FACTS

"I'm terrified because she could have stopped [sic] – could have not started breathing again." (R. at 568.) On or about 8 September 2023, Appellant strangled AG, his six month old daughter, using his hands and clothing, in base housing. (R. at 576.) Appellant's actions were recorded by a "baby monitoring system" located on the dresser, and the footage from the system was provided by SG, AG's mother. (R. at 580; R. at 582.) In the video, Appellant is observed placing AG's onesie over her neck and applying force until she stops crying. (Pros. Ex. 2.) Appellant then removes the onesie and throws it to the ground after it appears that AG is struggling to breathe. (Id.) Shortly thereafter, AG begins crying again, and Appellant applies force directly to her neck. (Id.) AG immediately stops crying and remains silent until Appellant removes his hands. (Id.) According to Appellant, his "next memory was sitting on the couch in his living room" with no awareness of how he had got there, and his "only memory of [the] event was watching the video or watching the screen with his wife, when they were looking to see why there might be red marks on [AG]s neck." (R. at 825-826.)

Appellant's OSI Interview

On 8 September 2023, the same day of the incident, OSI conducted an interview with Appellant. (R. at 632.) During his interview, when describing his conduct, Appellant stated, "I went to take [AG] to the room and change her because she was dirty and I got her undressed and I mean, she was crying the whole time and my son was chasing me around and he's crying because she's crying and she's crying because he's crying and I — I don't know." (R. at 641.)

Appellant indicated, "It [was] just a regular day. I got up, [SG] gave me the kids camera at 6:30 . . . I was like, okay, gotta get the day started . . .." (R. at 655.) Appellant stated, "I feel like it's just because [SG] [and] I've been arguing about so many things that kind of makes me feel alone sometimes. Maybe that added stress is what caused me to just, I don't know, lose — lose my composure today." (Id.) Shortly thereafter, Appellant invoked his right to counsel, and according to Special Agent JW, during the booking process and unprompted, Appellant uttered, "I think both you and I know that I'm guilty" or words to that effect. (R. at 592-593; R. at 614-615.) Appellant was then placed in pretrial confinement.

Appellant's R.C.M. 706 Evaluation

Concerned about Appellant's suicidal ideations and depression, trial defense counsel requested an R.C.M. 706 evaluation. (*Maj AJ Declaration*, dated 13 May 2025, paragraph 2, (Appendix C)). On 31 October 2023, Maj DJ[1], a forensic neuropsychologist, performed an R.C.M. 706 evaluation on Appellant at Via Linda Behavioral Hospital (VLBH). (Def. Ex. B.) The R.C.M. 706 long report was provided to the Defense team on 7 November 2023. (*Maj AJ Declaration*, dated 13 May 2025, paragraph 2, (Appendix C)). In the report, Maj DJ concluded (1) "[a]t the time of the [] criminal conduct, [Appellant] was able to appreciate the nature and quality of his conduct;" (2) Appellant understood the "nature and objective of the legal proceedings against him;" and (3) Appellant was able to assist in his defense. (Def. Ex. B. at 2-3.) Maj DJ also indicated that "[s]ome deliberate distortion of the clinical picture may be present; one explanation to be considered is the possibility of malingering based on his response pattern." (Def. Ex. B. at 4.) During his evaluation, Maj DJ also documented that Appellant

[1] At the time of his testimony, Maj DJ was also the Flight Commander for Vandenberg Air Force Base, Mental Health Department. Maj DJ also oversaw Family Advocacy, the ADAPT program, and the mental health program. (R. at 848-849; Def. Ex. B.)

appeared "well-groomed in clean, casual civilian clothes," and "cooperative and polite." (Def. Ex. B. at 5.) Concerning Appellant's competency evaluation, Maj DJ provided the following:

> When asked, member was able to name his charges. He knew that a felony was more serious than a misdemeanor and that he was facing a felony. He knew it could result in jail time.
>
> [Appellant] was able to name the possible pleas of Guilty and Not Guilty to his charges
>
> He was able to identify key players in the courtroom and their roles. He understood the judge must make sure the trial is fair. He stated the jury determines guilt or innocence. He understood his lawyer, the Area Defense Counsel, tries to defend him. He stated the prosecutor attempts to prove his guilt. He understood the adversarial process between the two sides.
>
> He was familiar with the concept of plea-bargaining and described it adequately.
>
> [Appellant] remained calm and logical throughout the evaluation and in his discussion of the events leading to his charges, though became emotional at times. He was able to describe appropriate courtroom behavior.

(Def. Ex. B. at 5.) Lastly, Maj DJ concluded, "[Appellant] has a mental health condition that is currently not disqualifying for continued service," and "his mental health prognosis is guarded as predicted by his past behavior and the multiple risk factors presented by his current legal situation." (Def. Ex. B. at 5.)

Article 39a Prior to Trial

During an Article 39(a), the military judge detailed an 802 conference concerning the manner in which trial defense counsel intended to address any potential issues concerning Appellant's mental competency. The military judge then provided his observations of Appellant's demeanor. The military judge stated, "defense counsel made clear that [] if and when they decide to put on a case, and if and when the topic of the earlier R.C.M. 706 inquiry

[becomes] relevant, they were not challenging the accused's competency to stand trial at any stage to include where we sit today." (R. at 560.) The military judge noted, "[trial defense counsel] just wanted to be clear that whatever shortcomings [] they would be putting forward with regard to that report, it did not refer to issues with the accused's competency." (R. at 560-561.) The military judge then emphasized:

> I would just note for the record that throughout the Article 39(a) sessions we've conducted thus far, I've observed [Appellant]; I've engaged with [Appellant]. *He has appeared to engage with his — both detailed and civilian defense counsel. It appears that he has been tracking everything that has gone on every time we've been in session and has been an active participant in his own defense by consulting with his attorneys as necessary*. So I just want to put that out there for the record. If and when some sort of issue comes up as part of the defense's challenge or defense of their client, either through a lack of sufficiency of the evidence or in support of an applicable defense related to lack of mental responsibility, that it did not pertain to any concerns with — sitting here today, [Appellant's] [] mental capacity to stand trial."

(R. at 561.) (emphasis added)

AG's Injuries

Capt AW, a family medicine physician, testified concerning AG's injuries. (R. at 664-692.) Capt AW testified that she performed a limited exam on AG, three days after Appellant's abuse, and AG suffered "mild petechiae on the right side of her neck." (R. at 671-673.) Capt AW also indicated that it was possible that there were more injuries, but they were "resolved" by the time of her examination. (R. at 674.) On cross-examination, Capt AW testified that the petechiae suffered by AG could be consistent with strangulation by hands and ligature.[2] (R. at 687.)

[2] *Ligature*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/word (last visited May. 25, 2026). (defining ligature as "something that is used to bind").

AC, a forensic health examiner and team lead for DHA Network, also provided testimony concerning AG's injuries and clarified the distinction between "choking" and "strangulation." (R. at 705-741.) AC confirmed that she watched the video of Appellant strangling AG with his hands and then with the onesie. (R. at 726.) When describing her observations, AC detailed that she observed AG crying and that she stopped after a short period of time. (R. at 727.) AC testified, "The baby stopped crying. And that to me indicates that there was probably pressure on the larynx, right, enough to make that baby stop crying. Because once that was released, we heard the baby cry again." (R. at 727.) AC indicated that when watching the video, she also observed Appellant forcefully pressing down on AG's abdomen. (R. at 727.) AC confirmed the bruising on AG's abdomen was consistent with Appellant's actions in the video. (R. at 730; Pros. Ex. 7.) On cross-examination, AC affirmed that while Appellant's conduct—compressing AG's abdomen—in the video was consistent with the injuries to her abdomen, the actual report, created prior to AC's examination, did not document the presence of a bruise. (R. at 736.) Additionally, when discussing the type or pressure placed on AG's neck, AC stated, ". . . it looks to me that there was enough pressure put on the larynx, the voice box of that child to stop the crying because when he released it, [AG] started crying again." (R. at 741.)

Testimony from Dr. AR

During Appellant's case-in-chief, Dr. AR, a clinical and forensic psychologist, testified on his behalf. (R. at 759.) Dr. AR testified that the test used by Maj DJ for Appellant's sanity board was not the "gold standard." (R. at 771.) According to Dr. AR, the "gold standard" is the Minnesota Multiphasic Personality Inventory (MMPI) and the second version, the MMPI-2, is the test *typically* used. (Id.) Dr. AR testified that every clinic in the Air Force has access to the MMPI. (R. at 772.) Maj DJ used the Psychological Assessment Inventory (PAI) for Appellant's

sanity board. (Id.) When comparing the two tests, Dr. AR indicated that the "MMPI has in excess of 500 statements that need to be considered and responded to versus the psychological assessment, the PAI, that has in excess of but about 200." (R. at 773.) Dr. AR, however, testified the PAI "gets you where you want to go" and is appropriate for clinical and forensic settings. (R. at 772; R. at 810.)

Dr. AR indicated that he was not questioning the efficacy of the PAI, generally, but its application to Appellant's case. (R. at 773-774.) Dr. AR opined that the test was rendered invalid because Appellant "focus[ed] on and endorsed too many negative aspects about himself" and that the length of time used to conduct Appellant's assessment was insufficient. (R. at 774; R. at 778-779.) Dr. AR also questioned the reliability of Maj DJ's assessment because he did not interview Appellant's psychiatrists, the charge nurse from his prior treatment facility, family members, coworkers, or friends. (R. at 782.) As a result, Dr. AR termed the long report a lacking document and questioned its integrity. (Id.) Dr. AR opined that "[Appellant's] report should have never been submitted to this court for consideration, lacking the amount of evaluation." (R. at 798.)

On cross-examination, Dr. AR confirmed that he had not diagnosed Appellant because he never performed an R.C.M. 706 evaluation. (R. at 801-802.) Dr. AR affirmed that a patient's work performance is a factor in evaluating whether a member is impaired in his social or occupational life due to a mental disorder, and he agreed that Appellant's record indicates he was a "high-performing and thriving Airman." (R. at 802-804.) When discussing the tests used in Appellant's R.C.M. 706 evaluation, Dr. AR affirmed that (1) the type of testing and how many tests required are dictated by a patient's history and (2) it is within the examiner's *discretion* to make those determinations. (R. at 808-809.)

When discussing the PAI, Dr. AR confirmed the test is appropriate for clinical and forensic settings. (R. at 810.) When asked to opine on whether Appellant was competent at the time of his offenses, Dr. AR stated, "There is little if any solid substantive evidence presented in *that long form* to support [Maj DJ's] conclusion" that Appellant was competent. (R. at 831.) However, Dr. AR ultimately acknowledged that "[d]ifferent individuals might have different ways of approaching [] a 706, especially when it comes to psych testing" and those differences do not mean the test is incorrect—only different. (R. at 834.)

Government's Rebuttal Case

On rebuttal, the government called Maj DJ, the forensic neuropsychologist that performed Appellant's R.C.M. 706 evaluation. (Def. Ex. B: R. at 848-849.) Maj DJ testified that "the PAI is a well-regarded exam with excellent validity" and that medical necessity governs which exams are appropriate. (R. at 850.) Maj DJ indicated he performed a clinical interview, reviewed Appellant's medical records, and additional information received from the R.C.M. 706 evaluation to determine which tests were appropriate for Appellant. (R. at 852.) When describing Appellant's ability to recall, Maj DJ stated:

> [Appellant's] ability [] to recall was well within normal limits based on the clinical interview, he had no long-term memory impairments, he exhibited no short-term memory impairments, his attention and concentration were phenomenal, his word finding and language abilities were intact and well within normal limits, his executive functioning was well within normal limits. His processing speed was also within normal limits.

(R. at 853.) Maj DJ described Appellant as high-functioning and testified there was "[n]o evidence of responding to internal stimuli, no evidence of psychosis, no evidence of severe mental health disorder, or no evidence of bipolar, or mania, or any of those kinds of more severe psychiatric conditions." (R. at 854-855; R. at 875.) On cross-examination, Maj DJ confirmed

that Appellant indicated he had no independent memory of strangling AG. (R. at 863-864.) During cross-examination, Maj DJ also provided additional context concerning his opinion that Appellant was exaggerating his symptoms or malingering to affect the results of the PAI. (Def. Ex. B: R. at 867-870.) When asked why he did not perform more tests to confirm his suspicions, Maj DJ testified:

> So, validating malingering is a very, very, very difficult and somewhat tricky legal concept. That puts the person in considerable legal jeopardy if you say that they had malingered in front of a provider or they had malingered to avoid the potential consequences of a court-martial or whatever, right. Additionally, you cannot just test the patient and then cherry pick data that you think is sufficient, right, or that you like, right. Once you have somebody that has invalidated symptom validity questionnaires that are objective that's kind of it for what you consider with regard to their objective psychological testing.

(R. at 869.) Maj DJ emphasized, "I am not diagnosing him [with] malingering. The words I'm saying and it's an objective fact, that he intentionally exaggerated his symptomatology on that particular test." (R. at 869-870: R. at 875-881.) When asked by one of the panel members to clarify which symptoms were exaggerated, Maj DJ testified:

> It actually would be difficult. There's [] a whole host of symptoms; it would be extreme psychosis, like I hear things all the time, the frequency, the intensity, the severity of a whole host of symptoms were exaggerated. The specific questions, I mean I couldn't tell you without the PAI sort of in front of me. *But the idea is those traits of severe, severe, severe mental illness were highly elevated. And it would not be consistent with anybody that was even sort of taking the test, right*. That's the idea.
>
> So, it wasn't just like the PTSD symptoms were elevated. The symptoms severity for everything across the board was pretty elevated for him.

(R. at 884-885.) Maj DJ affirmed that with reasonable medical certainty, at the time of the offenses, Appellant was able to appreciate the wrongfulness of his conduct. (R. at 882.)

Findings Instructions on Mental Responsibility

During findings instructions, the following colloquy took place between the military judge and Mr. MJ, Appellant's civilian trial defense counsel, concerning potential instructions on mental responsibility:

> MJ: Okay. Now by that, I just want to make sure it is clear on the record, we discussed on the record yesterday, the intended instructions and then had further discussion during an 802 today. Defense seemed satisfied that as far as the issue of any sort of mental disease that the accused may have been experiencing at the time of the alleged offenses was only – or only warranted an instruction regarding evidence *negating mens rea*.
>
> In fact, during the discussions, to include oral and email traffic, [d]efense Counsel, you had indicated specifically that you were not requesting that the members be instructed on the instructions regarding mental responsibility at the time of the offense, as captured in essentially Chapter 6 of the Military Judge's Benchbook. I have not included an instruction on military — or I'm sorry, mental responsibility at the time of the offense, contained in chapter 6 of the Benchbook based on that. I just want to make sure it is clear for the record. Defense Counsel, are you affirmatively waiving the members being instructed on the mental responsibility at the time of the offense?
>
> CivDC: I just need to confer with my client to make sure that he understands.
>
> [*The civilian defense counsel conferred with the accused*.]
>
> CivDC: Yes, Your Honor. We affirm.
>
> MJ: Okay. [Appellant], understanding that under normal circumstances, the court has a sua sponte or a duty on its own to provide any applicable instructions that are raised by the evidence. In certain situations, including the one we find ourselves in now, you can affirmatively waive that instruction being given. Your defense counsel has asserted that that is the defense's position that the members not be instructed on whether you lacked criminal responsibility as a result of severe mental disease or defect. Have you had the opportunity to discuss this with your defense counsel?
>
> ACC: Yes, Your Honor.

MJ: Do you feel like you understand the issue?

ACC: Yes, Your Honor.

MJ: And, is it in fact your voluntary decision to waive the members being instructed on this matter?

CivDC: Just one moment, Your Honor.

[*The accused conferred with his defense team*.]

ACC: Yes, Your Honor.

(R. at 895-897.) Appellant was ultimately convicted by a panel of officer and enlisted members, of one specification of child endangerment and two specifications of domestic violence in violation of Articles 119b and 128b, UCMJ, respectively. (R. at 961.) During his unsworn statement, Appellant affirmed that he was the only one to blame for his conduct. (R. at 1044.) Appellant was sentenced to a reprimand, reduction to the grade of E-1, confinement for fifteen months, and a bad-conduct discharge. (R. at 1075.)

In a declaration submitted to this Court, Appellant asserted, "I was not aware that I could request a new inquiry under [R.C.M. 706]. I did not discuss this possibility with my trial defense counsel while preparing for, or during, my court-martial." (*Appellant's Motion to Attach*, dated 26 March 2026) Appellant claimed, "I would have wanted to a request a new inquiry under R.C.M. 706 if I had known about that possibility." (Id.)

In response to Appellant's claims, Mr. MJ stated, "The Defense had multiple discussions with [Dr. AR] concerning the Government's prior R.C.M. 706 inquiry, [Appellant's] mental health presentation, competency-related issues, criminal responsibility considerations, and the strategic implications of potentially requesting an additional R.C.M. 706 inquiry." (*MJ Declaration*, dated 13 May 2026 (Appendix A.) Mr. MJ indicated that based on his discussions

with Dr. AR, "if [Dr. AR] were appointed or otherwise tasked with participating in an additional R.C.M. 706 inquiry, he would likely be ethically and professionally obligated to report conclusions that would be unlikely to differ substantially from the Government's existing inquiry with respect to competency-related findings." (Appendix A.) Dr. AR confirmed this assessment. (Appendix A, Attachment 1.) Further, Dr. AR declared, "I did not advise defense counsel that an additional R.C.M. 706 inquiry would be likely to produce substantially exculpatory competency findings" and "based upon [his] knowledge of the facts of the case, and interviews of [Appellant] and members of his family, [] a second R.C.M. 706 inquiry was likely to reach similar conclusions [as] the existing R.C.M. 706 inquiry, and potentially undermine the strategy of the defense at trial." (Appendix A, Attachment 1.) Additionally, according to Maj SRF and Maj AJ, Dr. AR "warned the defense that if [Appellant] was to be reevaluated, there was a strong likelihood that a more competent psychologist would find [Appellant] was exaggerating his symptoms, which would result in a malingering diagnosis." (Appendix B; Appendix C.) Mr. MJ declared:

> [T]he decision not to request an additional R.C.M. 706 inquiry was not an oversight, omission, or failure to consider the issue. Rather, it was a *deliberate strategic decision made after consultation with [Dr. AR] and after consideration of the potential risks and benefits to the Defense*.

(Appendix A). Maj SRF declared, "The decision was entirely strategic and discussed thoroughly with . . . *the client* . . . ." (Appendix B.) (emphasis added) Lastly, Mr. MJ emphasized, "At all times, I believed that pursuing the chosen litigation strategy was in [Appellant's] best interests under the circumstances then-existing." (Id.)

ARGUMENT

I.

APPELLANT RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS COUNSEL STRATEGICALLY DID NOT REQUEST A NEW MENTAL COMPETENCY EXAMINATION UNDER RULE FOR COURTS-MARTIAL 706.

Standard of Review

Allegations of ineffective assistance are reviewed de novo. United States v. Palacios-Cueto, 82 M.J. 323, 327 (C.A.A.F. 2022) (citations omitted).

Law & Analysis

The Sixth Amendment guarantees an accused the right to effective assistance of counsel. U.S. CONST. amend. VI; Strickland v. Washington, 466 U.S. 668, 686 (1984). "In order to prevail on a claim of ineffective assistance of counsel (IAC), an appellant must demonstrate both (1) that his counsel's performance was deficient, and (2) that this deficiency resulted in prejudice." United States v. Green, 68 M.J. 360, 361 (C.A.A.F. 2010) (citing Strickland, 466 U.S. at 698). "The burden is on the appellant to demonstrate both deficient performance and prejudice." United States v. Datavs, 71 M.J. 420, 424 (C.A.A.F. 2012)

"Courts begin this analysis presum[ing] that the lawyer is competent with the burden rest[ing] on the accused to demonstrate a constitutional violation." United States v. Barnes, No. ACM 39834, 2021 CCA LEXIS 177, at *13 (A.F. Ct. Crim. App. Apr. 16, 2021) (unpub. op.) (quoting United States v. Cronic, 466 U.S. 648, 658, (1984)) (footnote and citation omitted). This Court applies the following three-part test to determine whether the presumption of competence has been overcome:

> (1) Are Appellant's allegations true; if so, "is there a reasonable explanation for counsel's actions;

> (2) If the allegations are true, did defense counsel's level of advocacy "fall measurably below the performance . . . [ordinarily expected] of fallible lawyer?"
>
> (3) If defense counsel was ineffective, is there "a reasonable probability that, absent the errors, there would have been a different result?

United States v. Gooch, 69 M.J. 353, 362 (C.A.A.F. 2011) (alterations in original) (quoting United States v. Polk, 32 M.J. 150, 153 (C.M.A. 1991)). "Strategic choices made by counsel after a thorough investigation of the law and facts are virtually unchallengeable." United States v. Palik, 84 M.J. 284, 288-89 (C.A.A.F. 2024) (quoting Strickland, 466 U.S. at 690-91.)

Appellant asserts that his trial defense counsels were ineffective because they failed to motion for an additional R.C.M. 706 inquiry despite repeatedly attacking his inquiry as insufficient during trial. (App. Br. at 6.) Appellant's argument is without merit, because he cannot satisfy any of the prongs of the Gooch/Polk test.

A. There Was A Reasonable Explanation For Counsel's Actions

While Appellant's allegation that his trial defense counsels did not request a new R.C.M. 706 inquiry is true, there was a reasonable explanation for their choice. In his declaration, Mr. MJ indicated, "the decision not to request an additional R.C.M. 706 inquiry was not an oversight, omission, or failure to consider the issue," but a "deliberate strategic choice after consultation with Dr. AR." (Appendix A). Mr. MJ stated, "in my professional judgment [] a second inquiry reaching conclusions similar to the Government's prior R.C.M. 706 findings would materially undermine the Defense strategy of attacking the adequacy, reliability, methodology, and conclusions of the Government's R.C.M. 706 process and mental health-related evidence." (Appendix A at 2.) Dr. AR also declared, "it was my professional opinion that an additional R.C.M. 706 inquiry was not likely to identify substantial competency-related defects,

incapacities, or findings materially favorable to the Defense under the applicable R.C.M. 706 standards." (Appendix A, Attachment at 1.) Mr. MJ further opined that, "an additional R.C.M. 706 inquiry carried substantial strategic risk," and he was concerned that "an additional inquiry could generate new adverse expert findings, strengthen the Government's litigation position, diminish the Defense's ability to challenge the Government's mental health evidence, and negatively affect credibility arguments that the Defense intended to advance before the military judge and members." (Appendix A at 2.) Since trial defense counsel's decision not to request a new R.C.M. 706 inquiry was strategic and based on a thorough consultation with their expert, it is virtually unassailable on appeal. Palik, 84 M.J. at 288-89.

Appellant further contends that his defense counsel had "ample indications that the inquiry Appellant underwent was insufficient based on the testimony introduced by the Defense team through Dr. AR. (App. Br at 6.) However, Appellant ignores the opposing testimony provided by Maj DJ, which the members ultimately credited by convicting Appellant. While Dr. AR challenged the adequacy of the R.C.M. 706 inquiry, Maj DJ explained the parameters of his examination and his findings in extensive detail during the Government's rebuttal case. (R. at 847-885.) Maj DJ described the PAI as "a well-regarded exam with excellent validity." (R. at 850.) When asked to clarify how one determines which exam to administer—and thus, which exam is proper to use—Maj DJ testified "it's a clinical decision," and "you don't administer exams that are not necessary to administer." (R. at 850.) Maj DJ also testified that the PAI has "built in measures that will allow you to see whether a patient is intentionally trying to make themselves look worse than they actually are." (R. at 851.) Maj DJ indicated, "the PAI results were clear that [Appellant] intentionally exaggerated his symptomatology to make himself look sicker than he actually was"—a concern shared by defense counsel, which informed their

decision, in part, not to request a second R.C.M. 706 inquiry. (R. at 851; Appendix B; Appendix C.)

Additionally, Appellant has not requested this Court order a post-trial R.C.M 706 inquiry, which undercuts his claim that his trial defense counsel should have requested a further inquiry at trial. *See* United States v. Gerdes, No. ACM S32091, 2013 CCA LEXIS 971, at *14-15 (A.F. Ct. Crim. App. Nov. 14, 2013) (unpub. op.) (declining to find IAC where the record and post-trial affidavits established that defense counsel reasonably found no good cause for an R.C.M. 706 inquiry while noting that Appellant failed to request a post-trial R.C.M 706 inquiry.) "[D]efense counsel receive wide latitude in making tactical decisions." Strickland, 466 U.S. at 689. This latitude "also applies to trial defense counsel's strategic decisions." Barnes, 2021 CCA LEXIS 177, at *14. The decisions made by trial defense counsel reflect reasonable and deliberate choices, based upon Appellant's then-existing circumstances. Accordingly, this factor should be decided in the Government's favor.

B. Defense Counsel's Level Of Advocacy Did Not "Fall Measurably Below The Performance . . . [Ordinarily Expected] Of Fallible Lawyers."

Appellant contends that his defense counsel's failure "to request a new inquiry fell measurably below the performance ordinarily expected of fallible lawyers." (App. Br. at 6.) However, Appellant ignores that a capacity inquiry is necessary under R.C.M. 706(a) only "if it appears to any commander . . . trial counsel, defense counsel, military judge, or member or other concerned party, that the accused lacked mental responsibility for any offense charged or lacks capacity to stand trial"—circumstances that were not present here. In contrast to Appellant's prior hospitalization for suicidal ideations and mental health issues at VLBH, the then-existing circumstances prior to, and during trial, did not indicate Appellant suffered from any severe mental disease or defect. (R. at 560-561.) *See* United States v. Mancillas, No. NMCCA

200401950, 2006 CCA LEXIS 339, at *14 (N-M Ct. Crim. App. Dec. 18, 2006) (unpub. op.) (finding "no reason for . . . the military judge to order a fourth inquiry into the appellant's capacity to stand trial after the factors in R.C.M. 706(a) no longer applicable.") Thus, given the circumstances at trial, it would have been reasonable for an ordinary, fallible lawyer to forego requesting another R.C.M. 706 hearing.

Appellant also ignores that a claim of ineffective assistance of counsel premised on counsel's failure to make a motion—here, an additional R.C.M. 706 motion—"must show that there is a reasonable probability that such a motion would have been meritorious." *See* United States v. McConnell, 55 M.J. 479, 482 (C.A.A.F. 2001) (quoting United States v. Napoleon, 46 M.J. 279, 284 (C.A.A.F. 1997)); *see also* United States v. Akbar, 74 M.J. 364, 384 (C.A.A.F. 2015) (finding "no reasonable probability that [the] motion[s for a continuance and additional funding] would have been [deemed] meritorious' by the military judge.") "An attorney's decision to forego taking actions that likely would be futile is not deficient." Cueto, 82 M.J. at 329 (quoting) Vieux v. Pepe, 184 F.3d 59, 64 (1st Cir. 1999).

Here, trial defense counsel was clear on the record at trial that the then-existing circumstances did not warrant an additional capacity examination because Appellant was mentally competent to stand trial. (R. at 560-561.) The military judge also placed his observations of Appellant's mental capacity on the record. (R. at 560-561.) Further, Dr. AR communicated to trial defense counsel "that a second R.C.M. 706 inquiry was likely to reach similar conclusions of the existing R.C.M inquiry." (Appendix A, Attachment 1 at 2.) Dr. AR also declared that he did "not advise defense counsel that an additional R.C.M. 706 inquiry would be likely to produce substantially exculpatory competency findings or *findings demonstrating that [Appellant] lacked mental responsibility or competency under the applicable*

legal standards. (Appendix A, Attachment 1 at 2.) (emphasis added). Based on the then-existing circumstances, defense counsel made the strategic decision to attack *only* the adequacy, reliability, methodology, and conclusions of the Government's R.C.M. 706 process and other mental health-related evidence. (Appendix A; Appendix B; Appendix C.) This choice was objectively reasonable, and Appellant's trial defense counsels were not required to submit a non-meritorious motion or request. *See* Cueto, 82 M.J. at 329 ("Counsel is not required to waste the court's time.") Based on trial defense counsel's declarations and the military judge's personal observations, Appellant's then-existing circumstances did not warrant an additional capacity examination, and a motion for another R.C.M. 706 inquiry would have failed. Thus, it did not fall measurable below expectations for Appellant's counsel not to make such a request.

Additionally, in advancing his argument, Appellant cites Palik and further contends, "requesting a new inquiry posed little risk for the Defense" because "if granted, the new inquiry would have presented an opportunity to obtain a more complete, sufficient report." (App. Br. at 7.) Appellant's reliance on Palik is misplaced, and the contention posed by Appellant misstates the legal standard.

In Palik, CAAF emphasized that at the time of Appellant's court-martial, the law was well-settled about what the defense should do—file an R.C.M. 914 motion. Palik, 84. M.J. at 293. Similar circumstances are not before the court here. There is no well-settled law or strategy here that would have compelled a reasonable attorney to request an additional R.C.M. 706 inquiry. A reasonable attorney would have had no reason to believe that a new R.C.M. 706 inquiry would generate a more complete, sufficient, or helpful report. In contrast, the motion not filed in Palik would likely have succeeded based on existing law—and a reasonable attorney would have recognized that. Given the circumstances of Appellant's case, his attorneys'

decision not to pursue an additional R.C.M. 706 inquiry did not fall measurably below what is expected of ordinary, fallible lawyers. Accordingly, Appellant failed to meet his burden and this factor should also be decided in the Government's favor.

C. An Additional R.C.M. 706 Evaluation Would Not Have Produced A Different Result.

Appellant speculates that a second R.C.M. 706 inquiry may have altered his defense strategy and produced a better result, but this contention fails to address the demanding standard required to demonstrate prejudice. (App. Br. at 7-8.) When evaluating prejudice, "[t]he likelihood of a different result must be substantial, not just conceivable." Barnes, 2021 CCA LEXIS 177, at *18 (quoting Harrington v. Richter, 562 U.S. 86, 112, (2011) (citation omitted). "It is not enough to show that the errors had some conceivable effect on the outcome . . . ." Strickland, 466 U.S. at 693 (internal quotations omitted)). "Instead, [a] reasonable probability is a probability sufficient to undermine confidence in the outcome." Datavs, 71 M.J. 420, 424 (C.A.A.F. 2012). "In making this determination courts must be 'highly deferential' to trial defense counsel and make every effort to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689.

First, considering trial defense counsel's proffers to the parties concerning Appellant's competency, the military judge's personal observations, the long report, and the testimony concerning Appellant's symptom exaggeration, it is highly unlikely that any request for an additional R.C.M. 706 hearing would have been meritorious, let alone produced a different trial result.

Appellant also contends his trial defense counsel's failure to request a new R.C.M. 706 inquiry limited their ability to advance a strategy that Appellant was experiencing a dissociative

or fugue state at the time of the offense. (App. Br. at 7.) Appellant speculates that "an adequate inquiry may have created stronger options for defense counsel including a not guilty [verdict] due to a lack of mental responsibility." (App. Br. at 7-8.) Appellant's arguments are without merit for many of the same reasons articulated under the second prong of this analysis.

As part of their overall strategy and during trial, defense counsel explored whether Appellant could have been experiencing a dissociative or fugue state at the time the offenses were committed. In fact, defense counsel placed a significant emphasis on this strategy during their direct examination of Dr. AR. (R. at 769-770; R. at 782-783; R. at 786-788.) Critically, Dr. AR was cross-examined extensively on dissociative fugue disorder. (R. at 812-816; R. at 821.) Despite defense counsel's emphasis on the possibility that Appellant was experiencing a dissociated fugue state during their case-in-chief, Dr. AR communicated to trial defense counsel off the record "that an additional R.C.M. 706 inquiry was [un]likely to identify substantial competency-related defects, incapacities, or findings material to the Defense . . . ." (Appendix A, Attachment 1.) Instead, Dr. AR indicated a second inquiry "was likely to reach similar conclusions [as] the existing R.C.M. 706 inquiry, and potential[ly] undermine the strategy of the defense at trial." (Appendix A, Attachment at 2.)

Additionally, Maj DJ testified that only about 2% of the entire population will ever experience any kind of dissociative episode, and among the 2% population, dissociation is more common in females and Appellant was likely outside the 2% of that population based on his clinical presentation. (R. at 851-855.) When asked, Maj DJ affirmed that nothing within Appellant's records and the manner in which he presented, indicated a severe mental disorder. (R. at 856.) Based on the foregoing, there was no reasonable probability that a second R.C.M.

706 inquiry would have produced stronger evidence of Appellant's mental incapacity during the offense and that such evidence would have generated a different result at trial.

Further, there is no reason to believe that a second R.C.M. 706 inquiry could have successfully combatted the government's compelling evidence that Appellant was malingering. (Def. Ex. B. at 5; R. at 867- 870: R. at 876-882.) Specifically, Maj DJ testified:

> So, it is extraordinarily unlikely, extremely unlikely that somebody would have been experiencing symptoms to that extent. That's how the test is built. It would just be extraordinarily unlikely. I don't — I mean in the world of possibilities I suppose anything is possible. But it is extremely unlikely given other aspects of his function.

(R. at 870.)

What trial defense counsel learned from their own expert reinforced Maj DJ's testimony. Maj SRF declared that "[Dr. AR] warned the defense that if [Appellant] was to be reevaluated, there was a strong likelihood that a more competent psychologist would find [Appellant] was exaggerating his symptoms, which would result in a malingering diagnosis." (Appendix B.) Maj AJ confirmed Dr. AR's warning, stating, "[Dr. AR] [] stated that despite the inexperience of [Maj DJ] . . . a more experienced psychologist would likely formally find that [Appellant] was intentionally malingering." (Appendix C at 2.) Additionally, Maj AJ concluded:

> Given [Dr. AR's] assessment, [Mr. MJ] decided that the best defense strategy was not to request a new R.C.M. 706, to prevent a more credible finding of intentional malingering by [Appellant]. Instead, [Mr. MJ] argued that [Appellant's] mental condition at the time of the charged offenses, while not rising to the level of a full lack of mental responsibility, negated the mens rea element of the charged offenses. Had a new R.C.M. 706 been conducted and [Appellant] was found to be malingering, it would have severely negatively impacted our ability to attack the mens rea element of the charged offenses.

(Appendix C at 2.)

Appellant now asserts—post-trial—that he should have been afforded the ability to take an additional evaluation, despite extensive testimony that he greatly exaggerated his symptoms and purposely sought to invalidate the previous evaluation. However, because an additional R.C.M. 706 evaluation would have corroborated—not contradicted—evidence of malingering, there is no reasonable probability that a second R.C.M. 706 inquiry would have produced a different result.

In the end , Appellant was observed on camera, strangling his six month old daughter, and this powerful, video evidence was introduced at trial and viewed by the members. Maj SRF indicated the video evidence limited trial defense counsel's strategy. (Appendix B). Considering all the circumstances, it is highly unlikely that a second R.C.M. 706 inquiry would have established a reasonable probability of a different result. This factor should be decided in the government's favor. Since Appellant has failed to establish any prong of the Gooch/Polk test, this Court should deny this assignment of error.

II.

APPELLANT'S RECORD OF TRIAL IS NOT SUBSTANTIALLY INCOMPLETE.

Additional Facts

During two separate Article 39(a) sessions,[3] the parties litigated the Defense's Motion to Dismiss under Article 10, UCMJ. (R. at 104-116: R. at 133-187.) During the second Article 39(a), both parties used a pretrial confinement chronology prepared and maintained by the legal office during witness testimony. After both parties examined the witness, the military judge

[3] The Article 39(a) sessions occurred on 16 January 2024 and 12 April 2024.

noted on the record that the pages in his copy of Appellate Exhibit XXXVI,[4] which contained the pretrial confinement chronology were different than the hard copy provided to the witness. (R. at 165-166.) To remedy the discrepancy, the military judge indicated, "So, what we need to do is have this document now marked as Appellate Exhibit XXXVI, since that apparently is what this witness has been testifying about and re-mark what the court was provided as Appellate Exhibit XXXVI, as some subsequent document." (R. at 166.) During recess, the parties addressed the discrepancy. (R. at 166.) Once the parties returned on the record, the military judge described each exhibit, and the following colloquy took place:

> MJ: If I could get what we are now identifying as Appellate Exhibit XXXVI. Court reporter has handed that to me. *It is a 147-page document in hard copy*. Defense Counsel, do you concur that that is what Appellate Exhibit XXXVI consists of?
>
> DC1: Yes, Your Honor.
>
> MJ: Appellate Exhibit XLV[5] consists of a disc. *Contained on the disc is a PDF file consisting of 136 pages and it is what had been identified on the record as the attachment to the government's response to the defense motion to compel*. Well, actually, I'm not sure what XXXVI is attached to because the index identifies it as attachment to, presumably, Appellate Exhibit XXXVI. So, I'm not exactly sure how what's an attachment to itself? Can you clear that up, Trial Counsel?
>
> ATC: Yes, Your Honor. That should be attachment to XXXV. We'll make that change, Your Honor.

[4] Appellate Exhibit XXXVI is titled "Speedy Trial Chronology with Attachments, various dates (147 pages)." (*Exhibit Index*, (ROT) Vol 1. at 3.) Appellate Exhibit XXXVI consists of the pretrial confinement chronology, attachments to the pretrial confinement chronology, various emails between the parties discussing preferral, and the parties attempts to schedule court dates to comply with the speedy trial requirements.

[5] Appellate Exhibit XLV is titled, "The Attachment to Government's Response to Defense Motion to Compel, Titled "App. Ex_Gossett 707 Chronology Attachments_Marked, 136 pages," various dates (1 disc) (See App Ex. XXXV for corresponding Gov't Response)" (*Exhibit Index*, (ROT) Vol. 1, at 3.)

> MJ: Very well. Appellate Exhibit XLV is [] one disc containing a 136-page PDF that is the attachment to Appellate Exhibit XXXV. Okay.

(R. at 166.) The military judge then conducted an extensive examination with Capt CS about the contents of the pretrial confinement chronology in Appellate Exhibit XXXVI only. (R. at 168-174.) Capt CS confirmed that the first five pages of Appellate Exhibit XXXVI detailed the government's actions to bring the case to trial. (R. at 168.) When asked by the military judge, "[Is the] information similar, if not identical, to information that is contained in what purports to be the speedy trial chronology," Capt CS affirmed it was. (R. at 168.) The military judge then questioned Capt CS about the government's actions in bringing the case to trial and any impediments. (R. at 168-174.)

In an extensive, nine-page ruling, denying the motion to dismiss for speedy trial, the military judge found the government met its burden by a preponderance of the evidence and explained in great detail, the factual and legal matters considered in his ruling. (App. Ex. XLIX.) The military judge concluded (1) "the length of delay in this case [was] not facially unreasonable;" (2) "the government was aware of its speedy trial obligations and worked with reasonable diligence to bring the case against the accused to trial;" and (3) "the government immediately begin coordination of trial dates . . . with the date set for arraignment and trial being driven by the accused's defense counsel's availability." (Id. at 8-9.)

The correct Appellate Exhibit XXXVI should be a 147-page document. The current Appellate Exhibit XXXVI in the record of trial is a 136-page document. The United States has contemporaneously filed a motion to attach a copy of the 147-page document that should have been Appellate Exhibit XXXVI. (*Motion to Attach Documents*, dated 28 May 2026.) This attachment shows that the 11 pages omitted from the version of Appellate Exhibit XXXVI in the

record of trial consists of the same pretrial confinement chronology in a different format as Appellate Exhibit XXXVI, totaling 5 pages, and 6 pages of email correspondence between the parties and the military judge providing joint status updates, discussing discovery matters, and the military judge's request to the government to produce a speedy trial chronology. (Id.) The exact same information contained within the 5-page pretrial confinement chronology in the 147-page document is contained in the 136-page version of Appellate Exhibit XXXVI in the record of trial. (*Motion to Attach Documents*, dated 28 May 2026; App. Ex. XXXVI.)

Standard of Review

The issue of whether a ROT is complete is a question of law reviewed de novo. United States v. Stoffer, 53 M.J. 26, 27 (C.A.A.F. 2000).

Law & Analysis

"A record of trial that is missing exhibits may be substantially incomplete." Stoffer, 53 M.J. 26. "Insubstantial omissions from a record of trial do not raise a presumption of prejudice or affect that record's characterization as a complete one." Id. "The threshold question is whether the item is 'substantial,' either qualitatively or quantitatively." United States v. Davenport, 73 M.J. 373, 377 (C.A.A.F. 2014) "Omissions are qualitatively substantial if the substance of the omitted material related directly to the sufficiency of the Government's case on the merits and the testimony could not ordinarily have been recalled with any degree of fidelity." Id. "Omissions may be quantitatively insubstantial when, in light of the entire record, the omission is so unimportant and so uninfluential . . . that it approaches nothingness." United States v. Cabrie, No. ACM 40615, 2025 CCA LEXIS 552, at *6-7 (A.F. Ct. Crim. App. Dec. 3, 2025) (unpub. op.)

A. The Omission In The Record Of Trial Is Insubstantial.

Appellant claims that the record is substantially incomplete because the 136-page version of Appellate Exhibit XXXVI contained in the record of trial does not match the description of Appellant Exhibit XXXVI placed on the record—a 147-page document. (App. Br. at 8.) While the Government acknowledges that Appellate Exhibit XXXVI in the record of trial is a 136 page exhibit and not the 147-page exhibit indicated on the record, the omission of the 11 pages is insubstantial. In Stoffer, our superior Court determined the absence of three defense exhibits was a substantial omission and as a result, disapproved a punitive discharge. Stoffer, 53 M.J. at 28. But this case is unlike Stoffer, which "involved the introduction of three defense exhibits that were admitted without any further identification as to what the exhibits were or what was contained within them, and the exhibits were never referred to again after their introduction or otherwise identified in the ROT." Id. at 27. And as previously articulated by this Court, " . . .the holding in Stoffer must be limited to the facts of that case." United States v. Clifford, No. ACM 39299, 2019 CCA LEXIS 16, at *10 (A.F. Ct. Crim. App. Jan. 16, 2019) (unpub. op.)

This case is more analogous to Clifford and Henry, because here, the content of the missing pages is available elsewhere in the record. In Clifford, four attachments were omitted from the record of trial despite the military judge addressing the omitted exhibits on the record and ultimately authenticating the record without the attachments. Clifford, 2019 CCA LEXIS 16, at *9. There, this Court noted two of the four missing attachments were actually contained in the authenticated ROT and references to the other missing attachments were contained elsewhere in the ROT. Clifford, 2019 CCA LEXIS 16, at *11. (emphasis added) Despite these errors, this Court found the "record contain[ed] sufficient information to allow [the court] to fully perform [its] appellate review function pursuant to Article 66"—a determination based, in part, on

Abrams and Henry. Clifford, 2019 CCA LEXIS 16, at *9. *See* United States v. Abrams, 50 M.J. 361, 363 (C.A.A.F. 1999); *see also* Henry, 53 M.J. at 111 (finding "the absence of prosecution exhibits [] insubstantial *because other matters within the record contained similar material*.") (emphasis added)

Here, contrary to Appellant's assertions, the matters contained within the pretrial confinement chronology used by the parties are included elsewhere within the record of trial in Appellate Exhibit XLV, including the dates, government actions taken, and the attachments referenced on the record. (App. Ex. XLV.) The pretrial confinement chronology used to question Capt CS was a five (5) page, printed copy and the pretrial confinement chronology currently in Appellate Exhibit XXXVI is a three (3) page version in landscape format. The contents of the document are substantially the same. The three (3) page pretrial confinement chronology also lists the substantiating attachments, "Julian dates," "elapsed days," and "Gov't days." The five (5) page pretrial confinement chronology does not include those matters, which is the only difference between the two versions.

When viewed within the context of the entire record, the totality of the omitted pages is insubstantial considering both versions of the pretrial confinement chronology contain the same content. *See* United States v. Monarch, No. ACM 38585, 2015 CCA LEXIS 428, at *17 (A.F. Ct. Crim. App. Oct. 14, 2015) (unpub. op.) ("Based on all the information in the record of trial to include the stipulation of fact and Appellant's detailed description of each individual image during the plea inquiry, we conclude the omission of four of the images the omission is insubstantial"); *see also* United States v. White, 52 M.J. 713, 716 (A. Ct. Crim. App. 2000) (finding a missing videotape insubstantial when testimony provided a sufficient description and

the missing videotape would not have changed the weight of evidence accumulated against the appellant even if reflected in a light most favorable to the accused).

In this case, the omitted material does not relate directly to the sufficiency of the Government's case on the merits, and "in light of the entire record, the omission is so unimportant and so uninfluential . . . that it approaches nothingness." Cabrie, 2025 CCA LEXIS 552, at *6-7. Thus, the admission is insubstantial, and there is no reason to return the record for correction.

B. If This Court Determines The Omission Is Substantial, Appellant Has Suffered No Material Prejudice.

If this Court determines the omission was substantial, and thus a rebuttable presumption arises, then Appellant failed to articulate and establish how the omitted five-page version of the pretrial confinement chronology—which is substantially similar to the three-page pretrial confinement chronology—materially prejudiced his rights or prevents this Court from conducting its Article 66 review. The government moved to attach the declaration of Capt KO, Chief of Litigation, at the legal office. While not the trial counsel in this court-martial, Capt KO acknowledged the omission included in the ROT and declared that he located the correct version of Appellate Exhibit XXXVI (147 pages) on the legal office's shared drive. (*Capt KO Declaration*, dated 27 2026.)

Based on Capt KO's declaration and attachment, this Court can assess the content of the pretrial confinement chronology used by both parties and the military judge to question Capt CS about the legal office's steps to comply with the speedy trial requirements under Article 10, UCMJ. (R. at 104-116: R. at 133-187.) The military judge's findings of fact and conclusions of law thoroughly discussed the facts contained within the pretrial confinement chronology, the witness testimony, the conclusions formed as a result, and was properly included in the record of

trial submitted to this Court. (App. Ex. XLIX.) This Court considered similar factors persuasive in United States v. Garcia-Arcos. 2022 CCA LEXIS 339, at *7-8 (A.F. Ct. Crim. App. June 9, 2022) (unpub. op.) There, this Court declined to return a record for correction under R.C.M. 1112(d) despite a missing appellate exhibit. Because the record clearly identified the missing motion, the attachments sufficiently explained the military judge's reasoning, and the final ruling was properly included in the record to the court, this Court found a sufficient basis to complete its review. Id. Accordingly, this Court held that the Government successfully rebutted any presumption of prejudice—a conclusion that should apply with equal force here. Id. Here, the facts and content forming the basis of the military judge's ruling are currently contained in the pretrial confinement chronology and accessible in the record of trial in the military judge's ruling and both Appellate Exhibits XXXVI and XLV. (App. Ex. XLIX; App. Ex. XXXVI; App. Ex. XLV.) Similar to this Court's determination in Clifford, the current record does not hinder this Court's ability to conduct its Article 66 review. Clifford, 2019 CCA LEXIS 16, at *15

The actions taken by the Government to comply with its Article 10, UCMJ, obligations are detailed extensively in the pretrial confinement chronology, and the military judge's ruling denying the defense motion are both properly within the record of trial. When assessing the entire record, the pretrial confinement chronology, witness testimony, and the military judge's ruling provide a detailed description of the dates and specific actions taken by the legal office. Accordingly, Appellant has suffered no prejudice as a result of this insubstantial omission. Because the substantive content of the pretrial confinement chronology is fully preserved and accessible, the record remains legally sufficient for this Court's review, and remand for correction is unnecessary. This Court should deny this assignment of error. If, however, this

Court determines that a remand under R.C.M. 1112(d) for correction is required, Capt KO's declaration shows that the government will be able to adequately reconstruct the record.

III.

APPELLANT IS NOT ENTITLED TO RELIEF FOR THE POST-TRIAL PROCESSING DELAY BETWEEN SENTENCING AND DOCKETING.

Additional Facts

The ROT includes the court reporter's chronology. (*Post Sentencing – Court Reporter Chronology*, (ROT), Vol. 2.)

The government submitted, along with this Answer, a Motion to Attach the Declaration of Capt Kendall Orton, Chief, Litigation, 412 Test Wing Legal Office (412 TW/JA), Edwards Air Force Base, California. The declaration addresses the time between sentencing and docketing, among other issues.

Appellant's trial concluded on 20 April 2024. Four days later, the court reporter began transcribing the proceedings on 24 April 2024. The military judge signed the EOJ on 23 July 2024. On 29 July 2024, the court reporter completed the transcript and forwarded the corresponding documents to the legal office—100 days after sentencing. (*Post Sentencing – Court Reporter Chronology*, (ROT), Vol. 2.) The record was docketed with this Court on 21 November 2024—215 days after sentencing.

Date Range	Moreno Clock	Event
20 April 2024		Court-martial concludes; sentence adjudged.
29 July 2024	100 days	ROT transcribed, proofread, and certified.

17 August 2024	119 days	Legal office working on the ROT.
4 September 2024	137 days	Legal office uploaded 140a redactions for MAJCOM review.
9 September 2024	142 days	ROT routed for review.
18 September 2024	151 days	ROT under review by Air Force Test Center (AFTC).
4-9 November 2024	203 days	Corrections to ROT by legal office.
21 November 2024	215 days	ROT docketed with the Court.
Total (Sentence to Docketing)	**215 days**	

After docketing, Appellant requested fourteen (14) enlargements of time to file his Assignments of Error, with the exception of the first request, each were opposed. The first enlargement of time was requested on 12 January 2025 with the fourteenth and final request filed on 9 March 2026. Appellant's 14th enlargement of time was granted on 12 March 2026. On 26 March 2026, Appellant filed his Assignments of Error. Approximately 425 days elapsed between Appellants first enlargement of time request and the filing of his Assignments of Error.

Standard of Review

This court reviews de novo whether an appellant has been denied the due process right to speedy appellate review. United States v. Livak, 80 M.J. 631, 633 (A.F. Ct. Crim. App. 2020) (citing United States v. Moreno, 63 M.J. 129, 135 (C.A.A.F. 2006)).

Law and Analysis

Convicted servicemembers possess a due process right to timely post-trial review and appeal. Moreno, 63 M.J. 129, 135 (C.A.A.F. 2006). When assessing timeliness, this Court applies an aggregate standard, which presumes a delay is unreasonable if the period from sentencing to docketing exceeds 150 days. Livak, 80 M.J. at 633.

The CAAF established four factors when determining whether any post-trial delay resulted in a due process violation: (1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of his right to a timely review; and (4) prejudice to the appellant. Moreno, 63 M.J. at 135 (citing United States v. Jones, 61 M.J. 80, 83 (C.A.A.F. 2005), United States v. Toohey, 60 M.J. 100, 102 (C.A.A.F. 2004)). "No single factor is required for finding a due process violation and the absence of a given factor will not prevent such a finding." Moreno, 63 M.J. at 135 (citing Barker v. Wingo, 407 U.S. 514, 533 (1972)). When analyzing prejudice, the CAAF established three types of cognizable prejudice for purposes of the right to timely appellate review: (1) oppressive incarceration; (2) "particularized" anxiety and concern "that is distinguishable from the normal anxiety experienced by prisoners awaiting an appellate decision;" and (3) impairment of the appellant's grounds for appeal or ability to present a defense at a rehearing. Moreno, 63 M.J. at 138–40 (citations omitted).

If an appellant fails to demonstrate prejudice, no due process violation has occurred unless the delay is so egregious as to "adversely affect the public's perception of the fairness and integrity of the military justice system." United States v. Toohey, 63 M.J. 353, 362 (C.A.A.F. 2006). As the CAAF recently clarified in United States v. Valentin-Andino, Article 66(d)(2) solely governs relief under Article 66 for excessive post-trial delay. 85 M.J. 361, 366-67 (C.A.A.F. 2025). The standard is whether "appropriate relief" is warranted, which means relief

that is "suitable under the facts and circumstances of the case." Valentin-Andino, 85 M.J. at 367. This standard also does not require "a [CCA] to provide relief that is objectively meaningful . . . ." Id. Here, the Barker factors reveal that Appellant has suffered no due process violation.

A. Length of the Delay

The 215-day period from sentencing to docketing exceeded the 150-day benchmark established in Livak by 65 days—a presumptively unreasonable delay. This factor weighs in Appellant's favor.

B. Reasons for the Delay

The government acknowledges that there are several unexplained gaps in post-trial processing by the legal office between 17 August 2024 – 4 September 2024 and between 18 September 2024 - 9 November 2024 which could favor Appellant. However, the record reflects reasonable movement by the legal office in seeking to comply with its post-trial requirements. (*Capt KO Declaration*, dated 27 2026.) Additionally, as Capt KO indicates, the legal office, in addition to preparing the ROT for Gossett, was also preparing the ROT for seven other courts-martials with limited manpower. (*Capt KO Declaration*, dated 27 2026.) The record reflects that the government diligently attempted to create an accurate record for appeal, despite limited manpower, and a significant portion of the time preparing the ROT was devoted to addressing corrections prior to docketing.

C. Appellant Did Not Assert His Right to Timely Review to the Convening Authority.

This factor requires this Court to examine Appellant's role in a timely review and appeal. *See* Moreno, 63 M.J. at 138. Specifically, the Court considers whether Appellant objected to any delay or asserted his right to timely review and appeal prior to his arrival at the appellate court. Id. Here Appellant made multiple requests for an enlargement of time—which numbered

fourteen (14) in total—prior to filing his brief. In each filing, appellate defense counsel indicated "Appellant was advised of his right to timely appeal . . . was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request." Approximately 425 days elapsed between Appellant's first enlargement of time and the filing of his brief. Additionally, Appellant never asserted his right to a timely review, prior to his arrival to this Court or within his requests for enlargement of time. Thus, while Appellant primarily focuses on the gap of time between sentencing and docketing, Appellant's arguments are unpersuasive in light of his contributing actions. This factor should weigh in the government's favor.

D. Appellant Suffered No Prejudice

This Court recognizes three factors when assessing prejudice consistent with Moreno; Appellant addresses none. (App. Br. at 13-15.); *see also* Moreno, 63 M.J. at 138–39. Appellant neither sets forth a claim of oppressive incarceration, nor a "particularized" anxiety or concern. Appellant also fails to address any potential impairment of his appellate rights or ability to present a defense at a rehearing. Since Appellant does not assert any meritorious assignments of error, the delay will have no effect on a rehearing. Additionally, the delay here is not "so egregious as to adversely affect the public's perception of the fairness and integrity of the military justice system." Accordingly, because Appellant advances no claim of prejudice, this factor should also weigh in the government's favor.

E. Appellant Is Entitled To No Relief Under Article 66(d)(2).

Appellant asserts that "[d]espite having fifty days left to meet the Livak standard, the government took an additional 115 days to docket the case" and this "delay demonstrates institutional indifference to timely post-trial proceeding." (App. Br. at 13.) In advancing this

argument, Appellant focuses his entitlement to post-trial relief on perceived institutional neglect. (App. Br. at 14.) Specifically, Appellant contends, "despite a clear message from this Court, the Government continues to cause unreasonable delays in post-trial processing, his case is a continuation of institutional neglect and is "another opportunity for this Court to emphasize the importance of timely post-trial processing." (App. Br. at 14.) Appellant's argument is misplaced. As emphasized in Valentin-Andino, relief must be suitable considering the facts and circumstances surrounding Appellant's particular case. 85 M.J. at 367. In Valentin-Andino, this Court found gross indifference and institutional neglect but only modified the sentence to reduce the appellant's reduction in grade from E-2, rather than E-1. United States v. Valentin-Andino, No. ACM 40185 (f rev), 2024 CCA LEXIS 223, at *17-19 (A.F. Ct. Crim. App. June 7, 2024) (unpub. op.) There, this Court determined "the totality of the Government's repeated errors regarding the record demonstrates gross indifference to post-trial processing in this case which impacted timely processing." Id, 2024 CCA LEXIS 223 at *17.

Here, Appellant asserts "[t]he only meaningful relief that would change anything of consequence . . . is to set aside the bad conduct discharge." (App. Br. at 14-15.) Appellant's request is extraordinary considering his conviction for strangling his six month old daughter, on two separate, but close in time occasions. Appellant committed two separate acts of strangulation. After the first act of strangulation, Appellant had an opportunity to cease and reflect on his prior actions; he committed another assault instead. As a result, Appellant was sentenced to a reprimand, reduction to the grade of E-1, confinement for fifteen months out of a possible maximum of 27 years, and a bad-conduct discharge. (R. at 1062; R. at 1075.) In this case, the delay was not the result of institutional neglect or gross indifference to post-trial processing—such as repeated, incomplete record of trial submissions—across the service, or at

Edwards Air Force Base. Further, Appellant cites to only one error in the record of trial in his assignments of error. (App. Br. at 8.) This error, alone, is insufficient to warrant the relief Appellant seeks and Appellant advances no facts sufficient to find institutional neglect or gross indifference. Setting aside Appellant's bad conduct discharge would not be "appropriate relief." Appellant received a sentence commensurate with his specific conduct and is entitled to no post-trial relief. Accordingly, this Court should deny this assignment of error.

IV.

APPELLANT'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED WHEN HE WAS CONVICTED OF AN OFFENSE WITHOUT A REQUIREMENT THAT THE COURT-MARTIAL PANEL VOTE UNANIMOUSLY THAT HE WAS GUILTY.

Standard of Review

The adequacy of a military judge's instructions is reviewed de novo. United States v. Dearing, 63 M.J. 478, 482 (C.A.A.F. 2006) (citations omitted). The constitutionality of a statute is a question of law that is reviewed de novo. United States v. Wright, 53 M.J. 476, 478 (C.A.A.F. 2000) (*citing* United States v. Brown, 25 F.3d 307, 308 (6th Cir. 1994)).

Law and Analysis

In United States v. Anderson, No. ACM 39969, 2022 CCA LEXIS 181, at *55-56 (A.F. Ct. Crim. App. Mar. 25, 2022), this Court rejected the precise claims Appellant advances now. As Appellant concedes, our Superior Court affirmed this Court's decision and definitively held that military members do not have a right to a unanimous verdict in a court-martial under the Sixth Amendment, Fifth Amendment due process, or Fifth Amendment equal protection. *See* United States v. Anderson, 83 M.J. 291 (C.A.A.F. 2023) *cert. denied*, 144 S. Ct. 1003 (2024) Accordingly, the military judge did not err in not providing a unanimous verdict instruction and

Appellant's constitutional rights were not violated. Appellant is not entitled to relief, his claim is without merit, and this assignment of error should be denied.

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's claims and affirm the sentence as correct in law and fact.

[redacted]
DONNELL D. WRIGHT, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
[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 28 May 2026.

[redacted]
DONNELL D. WRIGHT, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
[redacted]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' MOTION TO ATTACH DOCUMENTS
v.	)	Before Panel No. 2
Master Sergeant (E-7) **DANIEL P. GOSSETT** United States Air Force *Appellant.*	)	No. ACM 40715 28 May 2026

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

Pursuant to Rule 23(b) of this Court's Rules of Practice and Procedure, the United States moves this Court to attach the following documents to this motion addressing Appellant's claims in Issues II and III of his Assignments of Error:

- Declaration of Capt Kendall Orton (1 page) with attachment (147 pages), dated 27 May 2026. (148 pages total)

In Issue II, Appellant asserts that his record of trial is substantially incomplete because Appellant Exhibit XXXVI in the record of trial does not match the description in the record. (App. Br. at 8-12.)

In Issue III, Appellant asserts that he was denied speedy post-trial processing and is entitled to relief for an alleged violation of United States v. Moreno, 63 M.J. 129 (C.A.A.F. 2006). (App. Br. at 13-15.) Appellant contends that he is entitled to sentencing relief because his case was not docketed with this Court until 21 November 2024, 215 days after sentencing. (App. Br. at 13.)

The Court of Appeals for the Armed Forces held that matters outside the record may be considered "when doing so is necessary for resolving issues raised by materials in the record."

United States v. Jessie, 79 M.J. 437, 444 (C.A.A.F. 2020). The Court concluded that "based on experience . . . 'extra-record fact determinations' may be 'necessary predicates to resolving appellate questions.'" Id. at 442 (quoting United States v. Parker, 36 M.J. 269, 272 (C.M.A. 1993)). Here, the issue of the completeness of Appellate Exhibit XXXVI was raised in the record because both parties and the military judge used the document when questioning a pertinent witness while litigating Appellant's Motion to Dismiss under Article 10, UCMJ. The attached information is necessary to resolve Appellant's assignment of error regarding the incompleteness of Appellate Exhibit XXXVI, which Appellant asserts is necessary for him and this Court to review to assess Appellant's denied speedy trial motion. (App. Br. at 11.)

The issue of post-trial delay is raised by materials currently in the record but not "fully resolvable by those materials." Jessie, 79 M.J. at 445. The declaration from the base legal office contains additional chronological information addressing the post-trial processing of Appellant's case from sentencing to docketing with this Court, so it is relevant and necessary to address Appellant's claim that the United States deprived him of speedy post-trial processing.

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

[redacted]
DONNELL WRIGHT, Capt, USAF
Appellate Government Counsel
Government Trial and
Appellate Operations Division
[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 28 May 2026.

[redacted]

DONNELL WRIGHT, Capt, USAF
Appellate Government Counsel
Government Trial and
Appellate Operations Division
[redacted]

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40715**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Daniel P. GOSSETT	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 28 May 2026, the Government moved this court to attach the following document to the Appellant's record of trial: Declaration of Capt Kendall Orton (1 page) with attachment (147 pages), dated 27 May 2026 (148 pages total). Appellant did not file a response to the motion to attach.*

The court has considered the Government's motion, Appellant's reply, case law, and this court's Rules of Practice and Procedure. The court grants the Government's motion; however, it specifically defers consideration of the applicability of *United States v. Jessie*, 79 M.J. 437 (C.A.A.F. 2020), and related case law to the attachment until it completes its Article 66, UCMJ, 10 U.S.C. § 866, review of Appellant's entire case.

Accordingly, it is by the court on this 9th day of June, 2026,

ORDERED:

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

FOR THE COURT

[redacted]

AGNIESZKA M. GAERTNER, Capt, USAF
Commissioner

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* Though Appellant did not file a response to the motion, we note Appellant did file a reply brief referencing the motion and asking this court to remand the case.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*, v. Master Sergeant (E-7) **Daniel P. GOSSETT,** United States Air Force, *Appellant*.	**REPLY BRIEF ON BEHALF OF APPELLANT** Before Panel No. 2 No. ACM 40715 4 June 2026

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

Appellant, Master Sergeant (MSgt) Daniel Gossett, pursuant to Rule 18(d) of the Joint Rules of Appellate Procedure and Rule 17.3 of this Court's Rules of Practice and Procedure, files this Reply to the United States' Answer to Assignments of Error. In addition to the arguments in the Brief on Behalf of Appellant, MSgt Gossett submits the following additional arguments.

ARGUMENT

I. Appellant was denied effective assistance of counsel because his counsel failed to request a new mental competency examination under Rule for Courts-Martial 706 after learning that the one conducted was inadequate.

Appellant's assignment of error for ineffective assistance of counsel is centered on the failure of his Trial Defense Counsel to request a new mental health inquiry under Rule for Courts-Martial (R.C.M.) 706 despite ample indications of the inadequacy of the first R.C.M. 706 inquiry. Br. on Behalf of Appellant at 5–8; R. at 759–99. The Government concedes that Appellant's allegation is true—Trial Defense Counsel did not request a new R.C.M. 706 inquiry. Answer to Assignments of Error (Ans.) at 14; *see United States v. Palik*, 84 M.J. 284, 289 (C.A.A.F. 2024) (quoting *United States v. Gooch*, 69 M.J. 353, 362 (C.A.A.F. 2011)) (stating that the first part of the test for whether the presumption of competence has been overcome is

"[a]re appellant's allegations true"). But the Government contends that this was a reasonable strategic decision because the Defense believed that a new R.C.M. 706 inquiry would not produce better results. Ans. at 14–15, 17–18. To support this position, the Government relies heavily on declarations from the Trial Defense Counsel and the Defense's expert. Ans. at 14–15, 17–18.

The declarations are not credible because they conflict with the testimony at trial. The Defense's expert repeatedly testified that he had not examined Appellant and could not render an opinion about his mental status. R. at 801–02, 806. That same expert now claims that "it was [his] professional opinion that an additional R.C.M. 706 inquiry was not likely to identify substantial competency related defects, incapacities, or findings materially favorable to the Defense under the applicable R.C.M. 706 standards." Ans. at 14 -15 (quoting United States' Motion to Attach Documents (May 14, 2026), Appendix A, Attachment at 1). One of the Trial Defense Counsel goes further, claiming that the expert concluded that Appellant was able to appreciate the wrongfulness of his actions and was competent to stand trial. United States' Motion to Attach Documents (May 14, 2026), Appendix C at 2. These conclusions are characteristic of an R.C.M. 706 inquiry, but the claim that the expert reached such conclusions lacks credibility because the expert was clear at trial that he was not asked to perform an R.C.M. 706 inquiry and did not do so. R. at 802. If, as the expert testified, he had not evaluated Appellant, then it is unclear what he could use to form a professional opinion. *Contrast* R. at 806, *with* Ans. at 14–15. This disparity between the testimony at trial and the post-trial excuses for failing to request a new, adequate R.C.M. 706 inquiry undermines the credibility of the post-trial declarations.

"[A]ttacking the adequacy, reliability, methodology, and conclusions of the

Government's R.C.M. 706 process and mental health-related evidence" was not a reasonable strategic decision, contrary to the Government's argument. Ans. at 14, 18. Specifically, it was not a reasonable decision because the Government did not offer mental health-related evidence; only the Defense did. It was the Defense that offered the long-form R.C.M. 706 report into evidence as Defense Exhibit B. R. at 766–67. The Defense then attacked the adequacy of the inquiry documented in its own exhibit. R. at 759–99. Introducing an exhibit only to criticize the inquiry documented in it is not a reasonable strategic decision because it does not counter the Government's actual case. At best, it was undermining a previous process that had little bearing on the prosecution. To the extent that the Defense wanted to make Appellant's mental health an issue at trial, the reasonable strategy would have been seeking an adequate R.C.M. 706 evaluation, not criticizing the existing one that was not a part of the Government's case.

The declarations from Trial Defense Counsel provide inconsistent accounts of whether they discussed the possibility of a new R.C.M. 706 inquiry with Appellant. While all three claim to remember considering the possibility of a new R.C.M. 706 inquiry, only one of three notes discussing this possibility with Appellant. *Contrast* United States' Motion to Attach Documents (May 14, 2026), Appendix B, *with* United States' Motion to Attach Documents (May 14, 2026), Appendices A and C. Appellant himself was clear that he did not discuss this possibility with Trial Defense Counsel and was not even aware that it was a possibility. Declaration of 26 March 2026. These discrepancies further undermine the credibility of Trial Defense Counsel's declarations.

Lastly, the Government faults Appellant for not requesting a new R.C.M. 706 inquiry on appeal. Ans. at 16. It is now almost three years after the charged timeframe. R. at 900. Since that time, Appellant has completed extensive mental health treatment and shown significant

improvement. R. at 63. While this is a positive development, it does mean that an R.C.M. 706 inquiry at this point is less likely to capture what a new one conducted before trial could have. At the time, there was significant reason for concern about Appellant's mental health, as evidenced by his inpatient treatment and Trial Defense Counsel's prompt request for an R.C.M. 706 inquiry. R. at 62–63; App. Ex. XLV at 7. This distinguishes this case from *United States v. Gerdes*, a case in which the Court noted that there was never any concern about mental illness. No. ACM S32091, 2013 CCA LEXIS 971, at *14 (A.F. Ct. Crim. App. Nov. 14, 2013). The circumstances at the time of trial plainly warranted an R.C.M. 706 inquiry, and it was necessary to have one that was done properly. Failing to request a new one at the time Trial Defense Counsel discovered the deficiencies in the first one constitutes ineffective assistance of counsel and warrants relief.

II. Appellant's record of trial is substantially incomplete because Appellate Exhibit XXXVI does not match the description in the record.

The Government concedes that the Appellate Exhibit XXXVI contained in the record of trial differs from what was described on the record. Ans. at 26. It argues, however, that this error is either insubstantial or can be corrected by attaching the correct exhibit to the record. Ans. at 26; United States' Motion to Attach Documents (May 28, 2026). Both arguments are wrong.

"Omissions are quantitatively substantial unless 'the totality of omissions . . . becomes so unimportant and so uninfluential when viewed in the light of the whole record, that it approaches nothingness.'" *United States v. Davenport*, 73 M.J. 373, 377 (C.A.A.F. 2014) (alteration in original) (quoting *United States v. Nelson*, 3 C.M.A. 482, 487 (1953)). The difference between Appellate Exhibit XXXVI as utilized at trial and what was included in the record is not so unimportant and uninfluential that it approaches nothingness. The difference was sufficient to lead the military judge to replace the 135-page document with the 147-page document because

"that apparently is what [a] witness has been testifying about." R. at 166. The military judge did that specifically so that reviewing authorities could know what the witness and the parties were referencing during the witness's testimony. *Id.* But that effort has been stymied by the omission of the 147-page document from the record. Where an issue with an appellate exhibit was so substantial as to necessitate replacing that exhibit to ensure adequate review, the same error cannot later be said to approach nothingness. It was a substantial difference at trial, and it remains substantial on appeal.

The Government's description of the differences between the two documents is also facially inaccurate. It points to a difference between a five-page chronology used to question a witness and a three-page chronology in the record, claiming that the "only difference between the two versions" is the inclusion of additional information in the three-page version. Ans. at 27. This cannot account for the total difference between the 135-page and 147-page documents, which on its face is a difference of twelve pages. The Government's argument falls far short of accounting for this entire discrepancy. In fact, the Government remakes the same error that occurred at trial. It claims that the chronology used by the parties is included in Appellate Exhibit XLV. Ans. at 27. But Appellate Exhibit XLV is the 135-page document that was previously marked as Appellate Exhibit XXXVI. R. at 167. The military judge re-marked these exhibits because Appellate Exhibit XLV was *not* what the parties were using. R. at 165–67. In its haste to claim that the missing appellate exhibit could be found elsewhere in the record, the Government seemingly tries to undo the military judge's correction, further hampering full appellate review.

Attachments to the appellate record do not complete the record. *See United States v. Garcia-Arcos*, No. ACM 40009, 2022 CCA LEXIS 339, at *6 (A.F. Ct. Crim. App. June 9,

2022) ("[W]e do not consider the attachments to the appellate record as a means to complete the record; we assume our granting both motions does not change the fact that the record, as certified and submitted to the court, is incomplete."); *United States v. Welsh*, No. ACM S32719, 2022 CCA LEXIS 631, at *2 (A.F. Ct. Crim. App. Oct. 26, 2022) ("We acknowledge the motion to attach was granted, but we do not agree that this cures the defect without the exhibit actually being incorporated into the ROT."); *United States v. Mardis*, No. ACM 39980, 2022 CCA LEXIS 10, at *7 (A.F. Ct. Crim. App. Jan. 6, 2022) ("[W]e considered the attachments to trial counsel's declaration to determine whether the omission of the exhibits from the record of trial was substantial . . . we did not consider the exhibits as a means to complete the record."). Remand provides an opportunity for the parties to review the proposed correction and respond to it. R.C.M. 1112(d)(2). That is particularly important here because the declarant who provided what purports to be the 147-page document had no personal knowledge about it. Declaration of Kendall W. Orton. By his own admission, the declarant simply found what "appears to be the version discussed on the record" on a shared drive. *Id.* But he "was unable to contact trial counsel in this case" and does not claim to be able to confirm whether what he found is an accurate version of Appellate Exhibit XXXVI. *Id.* Moreover, the declaration itself provides an insufficient basis to establish the authenticity of the document because it is unsigned and gives the wrong year in which the document was supposedly executed. *Id.*

Attaching a document that someone purportedly found on a shared drive is inadequate to correct the record. Without a copy of Appellate Exhibit XXXVI that the parties have had the opportunity to examine and the military judge has properly added to the record, the witness testimony and the proceedings surrounding the speedy-trial motion cannot be fully assessed on appeal. *See* R. at 166 (noting the importance of providing the utilized exhibit for reviewing

authorities). A remand is necessary to properly correct the record, and the Government has already assured the Court that it "will be able to adequately reconstruct the record" on remand. Ans. at 30. The Court should therefore remand the record for correction.

III. The post-trial processing delays are unreasonable and warrant relief.

Despite acknowledging "several unexplained gaps in post-trial processing," the Government attempts to explain the post-trial processing delays by saying that the legal office was also preparing records in other cases. Ans. at 33. The timely post-trial processing of Appellant's case should not be disregarded simply because the United States had more than one record to prepare at a given time. This excuse only serves to further underscore the institutional indifference to timely post-trial processing. *See United States v. Valentin-Andino*, No. ACM 40185 (f rev), 2024 CCA LEXIS 223, at *17 (A.F. Ct. Crim. App. June 7, 2024) (holding that the Government's actions "demonstrate[ ] gross indifference to post-trial processing in this case which impacted timely processing"), *aff'd on other grounds*, 85 M.J. 361 (C.A.A.F. 2025).

Further, the Government's references to Appellant's requests for enlargements of time after his case was docketed with this Court, Ans. at 31, 34, are largely irrelevant to an analysis of post-trial processing delays between sentencing and docketing. The issue raised by Appellant is about delay in the post-trial processing before docketing, not a lack of speedy appellate review after docketing. However, to the extent the Court considers requests for additional time by appellate defense counsel on behalf of Appellant, these requests reflect Government-created delay. "While appellate defense counsel's caseload is the underlying cause of much of this period of delay, responsibility for this portion of the delay and the burden placed upon appellate defense counsel initially rests with the *Government*." *United States v. Moreno*, 63 M.J. 129, 137 (C.A.A.F. 2006) (emphasis added). "Appellate counsel caseloads are a result of management and

administrative priorities and as such are subject to the administrative control of the Government." *Diaz v. JAG of the Navy,* 59 M.J. 34, 38 (C.A.A.F. 2003). It is the Government that "must provide adequate staffing within the Appellate Defense Division to fulfill its responsibility under the [Uniform Code of Military Justice (UCMJ)] to provide competent and timely representation." *Moreno*, 63 M.J. at 137 (citing Article 70, UCMJ, 10 U.S.C. § 870 (2000)); *see Barker v. Wingo*, 407 U.S. 514, 531 (1972) (noting that ultimate responsibility for delay caused by negligence or overcrowded courts rests with the Government). If anything, the number of requested enlargements of time provides further reason for this Court to grant relief.

This Court should grant appropriate relief for the post-trial processing delays for which the Government has failed to adequately account by not approving the bad-conduct discharge. Article 66(d)(2), Uniform Code of Military Justice, 10 U.S.C. § 866(d)(2).

CONCLUSION

Appellant respectfully asks this Court to set aside the findings and sentence to remedy the ineffective assistance of counsel he received. If this Court does not grant relief for ineffective assistance, it should remand the case to address the substantial error in the record of trial and set aside the bad-conduct discharge as a result of unreasonable post-trial processing delay.

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 4 June 2026.

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
[redacted]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee* v. Master Sergeant (E-7) **Daniel P. GOSSETT** United States Air Force *Appellant*	)	**MOTION FOR LEAVE TO FILE NOTICE OF APPELLANT'S ASSERTION OF THE RIGHT TO TIMELY REVIEW AND APPEAL** Before Panel No. 2 No. ACM 40715 23 October 2026

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

Pursuant to Rule 23(d) of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals and *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006), Appellant hereby moves for leave to file this notice asserting his right to speedy appellate review. Appellant respectfully asks this Honorable Court to allow him to assert his right to speedy appellate review via this Notice, and to decide his case as soon as possible.

On 15–20 April 2024, a general court-martial consisting of officers and enlisted members convicted Appellant, contrary to his pleas, of one specification of child endangerment and two specifications of domestic violence in violation of Articles 119b and 128b, UCMJ, 10 U.S.C. §§ 919b, 928b. R. at 961; Entry of Judgment (July 23, 2024).

The military judge sentenced him on 20 April 2024 to a reprimand, reduction to the grade of E-1, confinement for fifteen months, and a bad-conduct discharge. R. at 1075; Entry of Judgment (July 23, 2024).

On 28 June 2024, the convening authority took no action on the findings but suspended the adjudged reduction in grade until 4 November 2024, at which time the suspended part of the sentence would be remitted unless the suspension was sooner vacated. Convening

Authority Decision on Action (June 28, 2024). The convening authority also waived automatic forfeitures for six months or until release from confinement or expiration of term of service, whichever is sooner, for the benefit of Appellant's dependents. *Id.*

The Entry of Judgment was signed on 23 July 2024. Entry of Judgment (July 23, 2024).

Appellant's case was then docketed with this court approximately four months later, on 21 November 2024.

After fourteen enlargements of time due to "staffing shortages and, in turn, high workload demands on undersigned counsel" and the fact "that the Appellate Defense Division's workload is up, but its staff to carry out that work remains largely unchanged," *United States v. Gossett*, No. ACM 40715 at 3 (A.F. Ct. Crim. App. Mar. 9, 2026) (Appellant's Motion for Enlargement of Time (Fourteenth)), Appellant's appellate military defense counsel filed the initial AOE Brief on Behalf of Appellant on 26 March 2026. Following one enlargement of time and a motion to compel declarations from trial defense counsel, the Government filed its answer on 28 May 2026. Full briefing was complete when the reply brief was filed on 4 June 2026.

As of today's date, this Court has not yet issued an opinion in Appellant's case.

"[C]onvicted servicemembers have a due process right to timely review and appeal of courts-martial convictions." *Moreno* 63 M.J. at 135 (citing *Toohey v. United States*, 60 M.J. 100, 101 (C.A.A.F. 2004); *Diaz v. Judge Advocate General of the Navy*, 59 M.J. 34, 37–38 (C.A.A.F. 2003)). Appellant requests this Court's leave to formally file notice of his assertion of this right. When facially unreasonable delay in a convicted servicemembers' appeal is presumed, such as "where appellate review is not completed and a decision is not rendered within eighteen months of docketing the case before the Court of Criminal Appeals," *see id.* at 142, the Court must

consider four factors, including "the appellant's assertion of the right to timely review and appeal." *Id*. at 135 (citing *United States v. Jones*, 61 M.J. 80, 83 (C.A.A.F. 2005); *Toohey*, 60 M.J. at 102). Given this legal standard, and the fact that it has now been more than twenty-three months since Appellant's case was docketed on 21 November 2024, this motion should be granted so that Appellant can provide notice to this Court of his assertion of his right to timely review and appeal. Furthermore, Appellant respectfully requests this Court decide his case as soon as possible in light of this facially unreasonable delay.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant this motion for leave to file this notice asserting his right to speedy appellate review.

Respectfully submitted,

[redacted]

PAIGE F. MARKLEY DENTON, Capt, 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 Air Force Government Trial and Appellate Operations Division on 23 October 2026.

[redacted]
PAIGE T. MARKLEY DENTON, Capt, USAF
Appellate Defense Counsel
[redacted]