

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT'S
<i>Appellee</i>	)	MOTION FOR ENLARGEMENT
	)	OF TIME (FIRST)
)	
v.	)	Before Panel No. 2
)	
Senior Airman (E-4)	)	No. ACM 40405
ALEX J. BAK)	
United States Air Force	)	24 March 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court's Rules of Practice and Procedure, Senior Airman Alex J. Bak, the Appellant, hereby moves for a first enlargement of time to file an Assignment of Errors brief. Appellant requests an enlargement for a period of 60 days, which will end on **31 May 2023**. The record of trial was docketed with this Court on 31 January 2023. From the date of docketing to the present date, 52 days have elapsed. On the date requested, 120 days will have elapsed.

WHEREFORE, Appellant respectfully requests this Honorable Court grant this requested first enlargement of time for the submission of an Assignment of Errors brief.

Respectfully submitted,

[Redacted Signature]

ESHAWN R. RAWLLEY, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[Redacted Address]

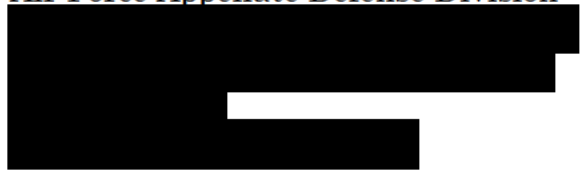
CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 24 March 2023.

Document fully submitted



ESHAWN R. RAWLLEY, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division



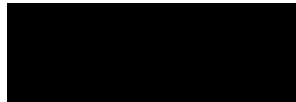
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Senior Airman (E-4)	)	ACM 40405
ALEX J. BAK, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

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

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

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

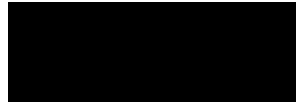


OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 27 March 2023.



OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES <i>Appellee</i>	)	APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME (SECOND)
)	
v.	)	Before Panel No. 2
)	
Senior Airman (E-4)	)	No. ACM 40405
ALEX J. BAK)	
United States Air Force	)	24 May 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Senior Airman Alex J. Bak, Appellant, hereby moves for a second enlargement of time to file an Assignment of Errors brief. Appellant requests an enlargement for a period of 30 days, which will end on **30 June 2023**. The record of trial was docketed with this Court on 31 January 2023. From the date of docketing to the present date, 113 days have elapsed. On the date requested, 150 days will have elapsed.

On 25 October 2022, at a general court-martial convened at Pope Army Airfield, North Carolina and comprised of a military judge alone, Appellant was found guilty, consistent with his pleas, of one charge and two specifications of wrongful possession of child pornography in violation of Article 134, UCMJ, 10 U.S.C. § 934.¹ Record of Trial

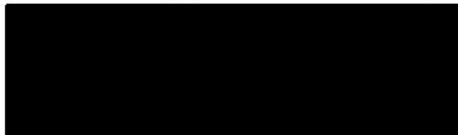
¹ The specifications allege misconduct occurring both before and after 1 January 2019. ROT Vol 1., Entry of Judgment, 22 Dec. 2022. The version of Article 134, UCMJ in effect during all instances of misconduct is substantially identical to the version in effect at the time of Appellant’s court-martial. Thus, unless otherwise stated, all references to the UCMJ are to the version published in the *Manual for Courts-Martial, United States* (2019 ed.).

(ROT) Vol. 1, Entry of Judgment, 22 Dec. 2022. The military judge sentenced Appellant to a bad conduct discharge, 30 months confinement for each specification of the charge to be served concurrently, a reduction to the lowest enlisted grade, and a reprimand. *Id.* The convening authority took no action on the findings, approved the sentence in its entirety, and waived the automatic forfeitures of Appellant's pay for six months beginning on 8 November 2022 for the benefit of Appellant's dependent spouse and child. ROT Vol. 1, Convening Authority Decision on Action, 19 Dec. 2022. Appellant is currently confined.

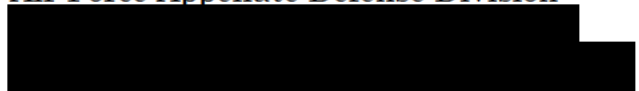
The trial transcript is 95 pages long and the record of trial is comprised of four volumes containing seven prosecution exhibits, two defense exhibits, nine appellate exhibits, and two court exhibits. Undersigned counsel currently represents 16 clients, with eleven matters pending before this Court. This case is counsel's fifth priority case. Through no fault of Appellant, counsel has not yet reviewed the record of trial in this case, advised Appellant, and prepared an Assignments of Error brief, and will be unable to reasonably do so before this Court's current deadline.

WHEREFORE, Appellant respectfully requests this Honorable Court grant this requested second enlargement of time for the submission of an Assignment of Errors brief for good cause shown.

Respectfully submitted,



ESHAWN R. RAWLEY, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division



[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 24 May 2023.

Respectfully submitted,

[REDACTED]

Maj, USAF

Appellate Defense Counsel
Air Force Appellate Defense Division

[REDACTED]

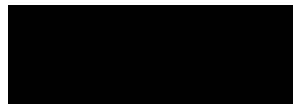
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Senior Airman (E-4)	)	ACM 40405
ALEX J. BAK, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

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

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

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

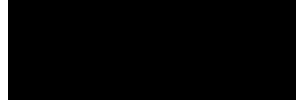


OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 30 May 2023.



OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES <i>Appellee</i>	)	APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME (THIRD)
)	
v.	)	Before Panel No. 2
)	
Senior Airman (E-4)	)	No. ACM 40405
ALEX J. BAK)	
United States Air Force	)	23 June 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Senior Airman Alex J. Bak, Appellant, hereby moves for a second enlargement of time to file an Assignment of Errors brief. Appellant requests an enlargement for a period of 30 days, which will end on **30 July 2023**. The record of trial was docketed with this Court on 31 January 2023. From the date of docketing to the present date, 143 days have elapsed. On the date requested, 180 days will have elapsed.

On 25 October 2022, at a general court-martial convened at Pope Army Airfield, North Carolina and comprised of a military judge alone, Appellant was found guilty, consistent with his pleas, of one charge and two specifications of wrongful possession of child pornography in violation of Article 134, UCMJ, 10 U.S.C. § 934.¹ Record of Trial (ROT) Vol. 1, Entry of Judgment, 22 Dec. 2022. The military judge sentenced Appellant

¹ The specifications allege misconduct occurring both before and after 1 January 2019. ROT Vol 1., Entry of Judgment, 22 Dec. 2022. The version of Article 134, UCMJ in effect during all instances of misconduct is substantially identical to the version in effect at the time of Appellant’s court-martial. Thus, unless otherwise stated, all references to the UCMJ are to the version published in the *Manual for Courts-Martial, United States* (2019 ed.).

to a bad conduct discharge, 30 months confinement for each specification of the charge to be served concurrently, a reduction to the lowest enlisted grade, and a reprimand. *Id.* The convening authority took no action on the findings, approved the sentence in its entirety, and waived the automatic forfeitures of Appellant's pay for six months beginning on 8 November 2022 for the benefit of Appellant's dependent spouse and child. ROT Vol. 1, Convening Authority Decision on Action, 19 Dec. 2022. Appellant is currently confined.

The trial transcript is 95 pages long and the record of trial is comprised of four volumes containing seven prosecution exhibits, two defense exhibits, nine appellate exhibits, and two court exhibits. Undersigned counsel currently represents fourteen clients, with twelve matters pending before this Court. This case is counsel's fifth priority case. Through no fault of Appellant, counsel has not yet reviewed the record of trial in this case, advised Appellant, and prepared an Assignments of Error brief, and will be unable to reasonably do so before this Court's current deadline.

WHEREFORE, Appellant respectfully requests this Honorable Court grant this requested third enlargement of time for the submission of an Assignment of Errors brief for good cause shown.

Respectfully submitted,

[REDACTED]

ESHAWN R. RAWLLEY, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[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 23 June 2023.

Respectfully submitted,

[Redacted Signature]

[Redacted Name] EY, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[Redacted Address]

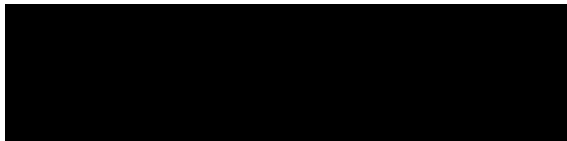
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Senior Airman (E-4)	)	ACM 40405
ALEX J. BAK, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

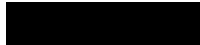
**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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

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

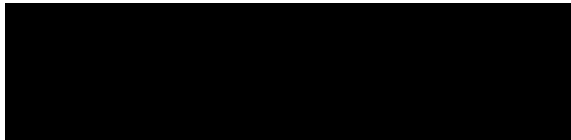


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 23 June 2023.



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



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, <i>Appellee,</i>	)	APPELLANT’S OUT-OF-TIME MOTION FOR ENLARGEMENT OF TIME (FOURTH)
)	
)	
v.	)	Before Panel No. 2
)	
Senior Airman (E-4), ALEX J. BAK,	)	No. ACM 40405
United States Air Force, <i>Appellant.</i>	)	24 July 2023
)	

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

Pursuant to Rule 23.3(m)(3), 23.3(m)(6), and 23.3(m)(7) of this Honorable Court’s Rules of Practice and Procedure, Senior Airman Alex J. Bak, Appellant, hereby moves for a fourth enlargement of time to file an Assignment of Errors brief. Appellant requests an enlargement for a period of 30 days, which will end on **29 August 2023**. The record of trial was docketed with this Court on 31 January 2023. From the date of docketing to the present date, 174 days have elapsed. On the date requested, 210 days will have elapsed.

There is good cause to grant this motion out of time. Since the filing of the last requested enlargement of time, Appellant’s first detailed appellate defense counsel, Major Eshawn Rawlley, has transitioned out of the Appellate Defense Division. The case was internally reassigned to Major Megan Crouch; however, upon reassignment, Major Crouch recognized a conflict of interest which prevents her appellate representation of Appellant. Major David Bosner enters his notice of appearance for the purpose of filing this motion. In full disclosure, Major Bosner will not be filing Appellant’s brief before this Court due to his forthcoming reassignment. The Appellate Defense Division is reassigning this case to another staff attorney, who will review the record and represent Appellant in further matters before this Court.

On 25 October 2022, at a general court-martial convened at Pope Army Airfield, North Carolina and comprised of a military judge alone, Appellant was found guilty, consistent with his pleas, of one charge and two specifications of wrongful possession of child pornography in violation of Article 134, UCMJ, 10 U.S.C. § 934.¹ Record of Trial (ROT) Vol. 1, Entry of Judgment, 22 Dec. 2022. The military judge sentenced Appellant to a bad conduct discharge, 30 months confinement for each specification of the charge to be served concurrently, a reduction to the lowest enlisted grade, and a reprimand. *Id.* The convening authority took no action on the findings, approved the sentence in its entirety, and waived the automatic forfeitures of Appellant's pay for six months beginning on 8 November 2022 for the benefit of Appellant's dependent spouse and child. ROT Vol. 1, Convening Authority Decision on Action, 19 Dec. 2022.

The trial transcript is 95 pages long and the record of trial is comprised of four volumes containing seven prosecution exhibits, two defense exhibits, nine appellate exhibits, and two court exhibits. Appellant is currently confined.

Counsel is currently assigned 38 cases; 18 cases are pending initial AOE's before this Court. Through no fault of Appellant's, undersigned counsel has been working on other assigned matters and has not reviewed Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to review Appellant's case and advise Appellant regarding potential errors. At least six cases have priority over the present case:

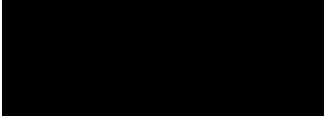

1. *United States v. Leipart*, ACM 39711, Misc. Dkt. No. 2021-03: The CAAF granted review on 20 July 2023. The Brief on Behalf of Appellant is due on 21 August 2023.

¹ The specifications allege misconduct occurring both before and after 1 January 2019. ROT Vol 1., Entry of Judgment, 22 Dec. 2022. The version of Article 134, UCMJ in effect during all instances of misconduct is substantially identical to the version in effect at the time of Appellant's court-martial. Thus, unless otherwise stated, all references to the UCMJ are to the version published in the *Manual for Courts-Martial, United States* (2019 ed.).

2. *United States v. Martinez*, ACM 39973: After the CAAF's decision in *United States v. Anderson*, __ M.J. __, 2023 CAAF LEXIS 439 (C.A.A.F. 29 Jun. 2023), counsel is preparing a consolidated petition for a writ of certiorari to file at the Supreme Court of the United States.
3. *United States v. Thompson*, ACM 40019 (rem): The appellant's supplement to the petition for grant of review is due to the CAAF on 2 August 2023.
4. *United States v. Daddario*, ACM 40351: Counsel will draft a reply brief for this Court in August 2023.
5. *United States v. Nestor*, ACM 40250: The appellant's petition for grant of review is due to the CAAF on 29 August 2023.
6. *United States v. Daughma*, ACM 40385: The record of trial consists of 18 Prosecution Exhibits, five Defense Exhibits, 64 Appellate Exhibits, and one Court Exhibit.

WHEREFORE, Appellant respectfully requests this Honorable Court grant this requested third enlargement of time for the submission of an Assignment of Errors brief for good cause shown.

Respectfully submitted,


DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force


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 24 July 2023.

Respectfully submitted,



DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force



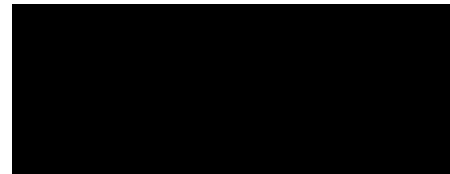
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME – OUT OF TIME
)	
Senior Airman (E-4)	)	ACM 40405
ALEX J. BAK, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

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

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



THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel, Government
Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 26 July 2023.



THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel, Government
Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



“Attachments 8 and 9” were separately made a part of the record as PEs 2 and 3, which the military judge sealed. R. at 14-15; ROT Vols. 1, 2.

LAW AND ANALYSIS

The above-noted exhibits were released to both trial and defense counsel, either at the preliminary hearing or during trial. Rule for Courts-Martial 1113(b)(3)(B)(i) requires “a colorable showing” that examination of these materials is reasonably necessary to fulfill appellate counsel’s responsibilities. As these items are directly related to pre-trial matters and what SrA Bak pled guilty to, viewing these exhibits is reasonably necessary to determine whether SrA Bak is entitled to relief due to errors before, during, or after trial.

A review of the entire record of trial is also necessary because this Court is empowered by Article 66(d), UCMJ, 10 U.S.C. § 866(d), to grant relief based on a review and analysis of “the entire record.” This Court’s “broad mandate to review the record unconstrained by an appellant’s assignments of error . . . does not reduce the importance of adequate representation. . . . [I]ndependent review is not the same as competent appellate representation.” *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998). Therefore, to determine whether the record of trial yields grounds for this Court to grant relief under Article 66(d), UCMJ, appellate defense counsel must also examine “the entire record” to ensure competent representation.

Accordingly, good cause exists in this case since undersigned counsel cannot fulfill her duty of representation under Article 70, UCMJ, 10 U.S.C. § 870, without first reviewing the complete record of trial.

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

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

Respectfully submitted,

[REDACTED]

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

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

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 16 August 2023.

[REDACTED]

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

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

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

UNITED STATES	)	No. ACM 40405
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Alex J. BAK)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 2

On 16 August 2023, Appellant’s counsel submitted a Consent Motion to Examine Sealed Materials, requesting both parties be allowed to examine Preliminary Hearing Officer Exhibit 7 and Prosecution Exhibits 2–3. These exhibits were reviewed for the preliminary hearing or trial by trial counsel, defense counsel, the preliminary hearing officer, and the military judge.

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.” R.C.M. 1113(b)(3)(B)(i), *Manual for Courts-Martial, United States* (2019 ed.).

The court’s review of the record indicates that none of the requested exhibits were viewed solely *in camera* and finds Appellant has made a colorable showing that review of sealed materials is reasonably necessary for a proper fulfillment of appellate defense counsel’s responsibilities. This court’s order permits counsel for both parties to examine the materials.

Accordingly, it is by the court on this 17th day of August, 2023,

ORDERED:

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

Appellate defense counsel and appellate government counsel may view **Preliminary Hearing Exhibit 7 and Prosecution Exhibits 2–3**, subject to the following conditions:

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

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

AK
[Redacted signature]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT
<i>Appellee,</i>	)	OF TIME (FIFTH)
)	
v.	)	Before Panel No. 2
)	
Senior Airman (E-4),)	
ALEX J. BAK,	)	No. ACM 40405
United States Air Force,)	
<i>Appellant.</i>	)	21 August 2023

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

Pursuant to Rule 23.3(m)(3) and 23.3(m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his fifth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **28 September 2023**. The record of trial was docketed with this Court on 31 January 2023. From the date of docketing to the present date, 202 days have elapsed. On the date requested, 240 days will have elapsed.

On 25 October 2022, at a general court-martial convened at Pope Army Airfield, North Carolina, and comprised of a military judge alone, Appellant was found guilty, consistent with his pleas, of one charge and two specifications of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934.¹ R. at 63. The military judge sentenced Appellant to a bad conduct discharge, 30 months confinement for each specification of the charge to be served concurrently, a reduction to the lowest enlisted grade, and a reprimand. R. at 94. The convening authority took no action on the findings, approved the

¹ The specifications allege misconduct occurring both before and after 1 January 2019. R. at 9, 11. The version of Article 134, UCMJ, in effect during all instances of misconduct is substantially identical to the version in effect at the time of Appellant’s court-martial. Thus, unless otherwise stated, all references to the UCMJ are to the version published in the *Manual for Courts-Martial, United States* (2019 ed.).

sentence in its entirety, and waived the automatic forfeitures of Appellant's pay for "a period of 6 months, or release from confinement, or [expiration term of service], whichever is sooner," beginning on 8 November 2022 for the benefit of Appellant's dependent spouse and child. Record of Trial (ROT) Vol. 1, *Convening Authority Decision on Action – United States v. SrA Alex J. Bak*, dated 19 December 2022.

The trial transcript is 95 pages long and the record of trial is comprised of four volumes containing seven Prosecution Exhibits, two Defense Exhibits, nine Appellate Exhibits, and two Court Exhibits. Appellant is currently confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned fifteen cases; nine cases are pending initial AOE's before this Court. At this time, the following cases have priority over the present case:

1. *In re HVZ v. United States*, Misc. Dkt. No. 2023-03 – On 16 August 2023, Appellate Victims' Counsel requested The Judge Advocate General (TJAG) of the Air Force certify four issues for review to the United States Court of Appeals for the Armed Forces (CAAF), pursuant to Article 67(a)(2), UCMJ, 10 U.S.C. § 867(a)(2). Undersigned counsel is drafting the Real Party in Interest's input on this request for certification of review, which is due to the relevant parties on 26 August 2023.

2. *United States v. Trueman*, ACM 40404 – The trial transcript is 134 pages long and the record of trial consists of two volumes containing three Prosecution Exhibits, zero Defense Exhibits, two Appellate Exhibits, and one Court Exhibit. Appellant is not currently in confinement. Counsel has not yet completed her review of the record of trial.

As to the current case, on 16 August 2023, the undersigned counsel filed a Consent Motion

to Examine Sealed Materials, which this Honorable Court granted on 17 August 2023. Undersigned counsel has begun her review of the record, but has not yet completed her review.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to fully review Appellant's case and advise Appellant regarding potential issues.

Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,



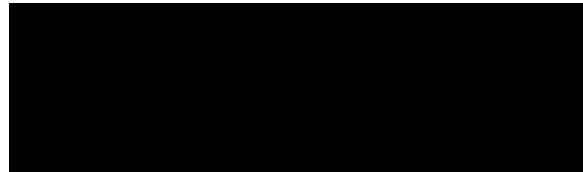
SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 21 August 2023.

Respectfully submitted,

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SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

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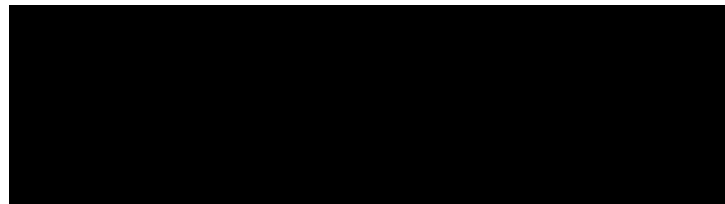
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Senior Airman (E-4)	)	ACM 40405
ALEX J. BAK, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

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

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

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

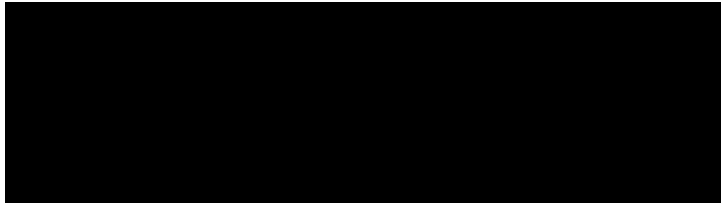


PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 22 August 2023.



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



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

UNITED STATES	)	No. ACM 40405
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Alex J. BAK)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 2

On 21 August 2023, counsel for Appellant submitted a Motion for Enlargement of Time (Fifth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 23d day of August, 2023,

ORDERED:

Appellant's Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant shall file any assignments of error not later than **28 September 2023**.

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



FOR THE COURT

Fleming E. Keefe
[Redacted Signature]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR WITHDRAWAL
<i>Appellee,</i>	)	OF APPELLATE DEFENSE
	)	COUNSEL
v.)	
	)	Before Panel No. 2
Senior Airman (E-4),)	
ALEX J. BAK,	)	No. ACM 40405
United States Air Force,)	
<i>Appellant.</i>	)	21 August 2023

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

Pursuant to Rules 12(b), 12.4, and 23.3(h) of this Honorable Court's Rules of Practice and Procedure, undersigned counsel respectfully requests to withdraw as counsel in the above-captioned case. The Judge Advocate General has reassigned undersigned counsel from the Air Force Appellate Defense Division to Headquarters Air Force. Accordingly, undersigned counsel is no longer detailed under Article 70, Uniform Code of Military Justice (UCMJ) to represent Appellant. Capt Samantha M. Castanien has been detailed to represent Appellant in undersigned counsel's stead and made her notice of appearance on 21 August 2023. Counsel have completed a thorough turnover of the record.

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

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

Respectfully submitted,



, Maj, USAF

Appellate Defense Counsel



Counsel for Appellant

CERTIFICATE OF FILING AND SERVICE

I certify that I filed an electronic copy of the foregoing with the Court and on the Government Trial and Appellate Operations Division on 21 August 2023.

Respectfully submitted,



ESHAWN R. RAWLEY, Maj, USAF

Appellate Defense Counsel



Counsel for Appellant

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR WITHDRAWAL OF
<i>Appellee,</i>	)	APPELLATE DEFENSE COUNSEL
)	
v.	)	Before Panel No. 2
)	
Senior Airman (E-4),	)	No. ACM 40405
ALEX J. BAK,)	
United States Air Force,	)	22 August 2023
<i>Appellant.</i>)	

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

Pursuant to Rules 12(b), 12.4, and 23.3(h) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel respectfully requests to withdraw as counsel in the above-captioned case. Captain Samantha Castanien has been detailed substitute counsel in undersigned counsel’s stead and made her notice of appearance on 21 August 2023. A thorough turnover of the record between counsel has been completed. The undersigned counsel will be departing from the Air Force Appellate Defense Division and beginning a new assignment on 5 September 2023.

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

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

Respectfully submitted,



DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 22 August 2023.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, <i>Appellee,</i>	)	MOTION FOR ENLARGEMENT OF TIME (SIXTH)
)	
v.	)	Before Panel No. 2
)	
Senior Airman (E-4), ALEX J. BAK, United States Air Force, <i>Appellant.</i>	)	No. ACM 40405 18 September 2023

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

Pursuant to Rule 23.3(m)(3) and 23.3(m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his sixth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **28 October 2023**. The record of trial was docketed with this Court on 31 January 2023. From the date of docketing to the present date, 230 days have elapsed. On the date requested, 270 days will have elapsed.

On 25 October 2022, at a general court-martial convened at Pope Army Airfield, North Carolina, and comprised of a military judge alone, Appellant was found guilty, consistent with his pleas, of one charge and two specifications of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934.¹ R. at 63. The military judge sentenced Appellant to a bad conduct discharge, 30 months confinement for each specification of the charge to be served concurrently, a reduction to the lowest enlisted grade, and a reprimand. R. at 94. The convening authority took no action on the findings, approved the

¹ The specifications allege misconduct occurring both before and after 1 January 2019. R. at 9, 11. The version of Article 134, UCMJ, in effect during all instances of misconduct is substantially identical to the version in effect at the time of Appellant’s court-martial. Thus, unless otherwise stated, all references to the UCMJ are to the version published in the *Manual for Courts-Martial, United States* (2019 ed.).

sentence in its entirety, and waived the automatic forfeitures of Appellant's pay for "a period of 6 months, or release from confinement, or [expiration term of service], whichever is sooner," beginning on 8 November 2022 for the benefit of Appellant's dependent spouse and child. Record of Trial (ROT) Vol. 1, *Convening Authority Decision on Action – United States v. SrA Alex J. Bak*, dated 19 December 2022.

The trial transcript is 95 pages long and the record of trial is comprised of four volumes containing seven Prosecution Exhibits, two Defense Exhibits, nine Appellate Exhibits, and two Court Exhibits. Appellant is currently confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned sixteen cases; ten cases are pending initial AOE's before this Court and two cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). As to the current case, undersigned counsel has completed her review of the sealed materials and is working to complete her review of the rest of the record. However, three cases have priority over the present case:

1. *In Re HVZ*, USCA Dkt. No. 23-0250/AF – The Judge Advocate General of the Air Force certified for review four issues, which were docketed by the CAAF on 13 September 2023. The Real Party in Interest's brief is due on 25 September 2023.

2. *United States v. Leipart*, USCA Dkt. No. 23-0163/AF – The Government's Answer Brief is expected on 20 September 2023, making the Reply Brief due on 30 September 2023. Oral argument is anticipated to occur by the end of the year.

3. *United States v. Trueman*, ACM 40404 – A Motion to Withdraw from Appellate Review was filed in this case on 13 September 2023, after appellate defense counsel completed her review of the record. At the time of this filing, the request for withdrawal is

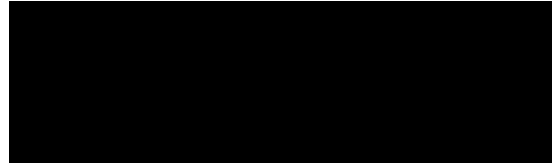
pending action by this Court, and, as such, this case remains a priority over Appellant's case.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to fully review Appellant's case and advise Appellant regarding potential issues.

Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,



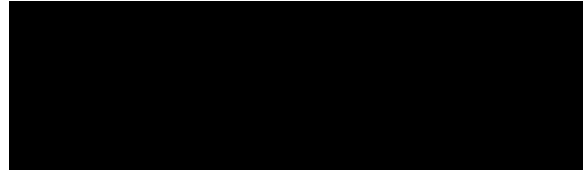
SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 18 September 2023.

Respectfully submitted,

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SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

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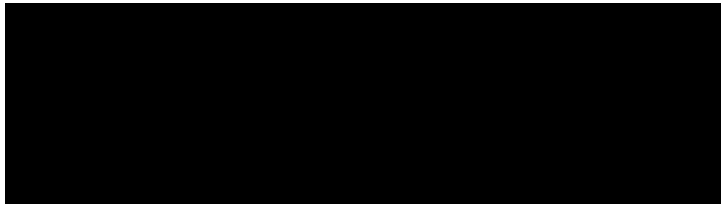
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Senior Airman (E-4)	)	ACM 40405
ALEX J. BAK, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

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

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

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



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



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 18 September 2023.



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



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR LEAVE
<i>Appellee,</i>	)	TO FILE MOTION
	)	FOR REMAND
)	
v.)	
	)	Before Panel No. 2
Senior Airman (E-4),)	
ALEX J. BAK,	)	No. ACM 40405
United States Air Force,)	
<i>Appellant.</i>	)	5 October 2023

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

Pursuant to Rule 23(d) and 23.3 of this Court’s Rules of Practice and Procedure, Senior Airman (SrA) Alex J. Bak, Appellant, hereby moves this Honorable Court for leave to file a motion for remand to correct omissions in the entire record. Pursuant to Rule 23(d), the motion for leave to file the pleading, along with the pleading itself, are combined herein.

The Record of Trial (ROT) in SrA Bak’s case omits the following items:

- Receipts showing that Rule for Courts-Martial (R.C.M.)¹ 1106A matters considered by the Convening Authority were timely served on SrA Bak such that he had an opportunity to rebut those matters before the Convening Authority acted;
- Any rebuttal to the victims’ submissions of matters submitted by SrA Bak to the Convening Authority;
- The charge sheet associated with paragraph 4.f of the Plea Agreement (Appellate Exhibit VI) as announced on the record by Trial Counsel;² and

¹ Unless otherwise stated, all references to the R.C.M. and Uniform Code of Military Justice (UCMJ) are to the version published in the *Manual for Courts-Martial, United States* (2019 ed.).

² While not an omission, there is an error with Prosecution Exhibits 6 and 7 in that they, too, do not match what was described on the record. *Compare* Pros. Ex. 6, 7 *with* R. at 68. Both exhibits

- The complete Article 30a, UCMJ, proceedings.³

Addressing these omissions and errors in the ROT now, as opposed to in SrA Bak's Assignments of Error brief, avoids piecemeal review of SrA Bak's court-martial, prevents raising assignments of error unnecessarily, and allows this Court and undersigned counsel to meaningfully fulfill their individual roles under Article 66 and Article 70, UCMJ, 10 U.S.C. §§ 866, 870.

WHEREFORE, Appellant respectfully requests this Honorable Court grant his motion for leave and consider the motion below.

MOTION

Facts

On 25 October 2022, at a general court-martial convened at Pope Army Airfield, North Carolina, and comprised of a military judge alone, SrA Bak was found guilty, consistent with his pleas, of two specifications of wrongful possession of child pornography in violation of Article 134, UCMJ, 10 U.S.C. § 934.⁴ R. at 63. The military judge sentenced SrA Bak to a bad conduct discharge, 30 months' confinement for each specification to be served concurrently, a reduction to the lowest enlisted grade, and a reprimand. R. at 94. The Convening Authority took no action on

as described are *present* in the ROT; they just appear to be swapped. *Id.*

³ Additionally, the original Article 32, UCMJ, Preliminary Hearing Officer (PHO) Exhibit 7 was destroyed and replaced by a copy made by a special agent who attested, "[T]he compact disc included in the [ROT] is a fair, accurate, and true representation and contains the same content as the original PHO exhibit 7." ROT Vol. 3, *United States v. SrA Alex J. Bak PHO Exhibit 7*, dated 6 January 2023. At this time, destruction of the original exhibit attached to the PHO report does not appear to impede review of the record, so it is not raised herein. However, PHO report issues are additional reasons to remand. *See United States v. Simmons*, No. ACM 40462, 2023 CCA LEXIS 236, at *2 (A.F. Ct. Crim. App. Jun. 5, 2023) (remand order) (remanding record for PHO exhibits not properly attached).

⁴ The specifications allege misconduct occurring both before and after 1 January 2019. R. at 9, 11. The version of Article 134, UCMJ, in effect during all instances of misconduct is substantially identical to the version in effect at the time of SrA Bak's court-martial.

the findings, approved the sentence in its entirety, and waived the automatic forfeitures of SrA Bak’s pay for “a period of 6 months, or release from confinement, or [expiration term of service], whichever is sooner,” beginning on 8 November 2022 for the benefit of SrA Bak’s dependent spouse and child. ROT Vol. 1, *Convening Authority Decision on Action – United States v. SrA Alex J. Bak*, dated 19 December 2022.

R.C.M. 1106A Matters

During post-trial processing, the Convening Authority considered “matters timely submitted by the accused under R.C.M. 1106 and the *victims* under R.C.M. 1106A.” ROT Vol. 1, *Convening Authority Decision on Action – United States v. SrA Alex J. Bak*, dated 19 December 2022 (emphasis added). The ROT reflects *two* victims submitted matters under R.C.M. 1106A, of which, ostensibly, the Convening Authority considered due to the word “victims” in the action memorandum.⁵ *Id.* There is a slip page in ROT Volume 2 concerning “Sweet Sugar,”⁶ legally known as K.C., and another concerning “aprilblonde,” legally known as S.G. Both are known victims of child pornography series, which SrA Bak admitted to possessing. Pros. Ex. 1 at 4, 6, 74, 97. S.G.’s redacted submission of matters was admitted at trial as Court Exhibit B, but K.C.’s, which is a submission by her mother, was not. *Compare* Court Ex. A, B *with* ROT Vol. 2, *Victim*

⁵ However, this itself is unclear from the record because the Staff Judge Advocate stated one of the victims, K.C., never provided matters. ROT Vol 2., *Submission of Matters*, United States v. Senior Airman Alex J. Bak, *3d Indorsement*, dated 3 January 2023. This indorsement is dated after the Convening Authority acted on 19 December 2023. Nonetheless, a submission about K.C. is present in the ROT and a slip page asserts the associated matters were submitted by K.C.’s mother. If SrA Bak submitted a rebuttal, and that rebuttal was included in the ROT, this guessing game of what was considered, and when and what was served on SrA Bak, would not be happening.

⁶ The series name is incorrect on the slip page. “Sweet White Sugar” is the correct label. Pros. Ex. 1 at 97. The slip page likely contains a scrivener’s error when it attempts to identify K.C. as the known victim in this series. However, this slip page is the only document in the record indicating the child associated with the Sweet White Sugar series is K.C.

Impact Statement Sweet Sugar Victims,⁷ dated 27 September 2016 and 30 June 2019.

The ROT does not reflect SrA Bak received K.C.’s mother’s submission or was offered an opportunity to rebut both matters submitted in accordance with his rights under R.C.M. 1106(d)(3) or R.C.M. 1109(3)(C)(i). The *Receipt of Copy of Victims Submission of Matters* states SrA Bak’s defense counsel was purportedly served one page of “Victims Submission of Matters” dated November 2020 on 14 November 2022, but the receipt was signed 5 January 2023. ROT Vol. 2, *Receipt of Copy of Victims Submission of Matters*, signed 5 January 2022. This “served” “Victims Submission of Matters” dated November 2020 matches S.G.’s submission at the court-martial, except it is not redacted. Compare ROT Vol. 2, *Memorandum for Court Martial*, United States v. SrA Alex Bak, dated 25 October 2022 with Court Ex. B.⁸ There is nothing in the record indicating SrA Bak was served K.C.’s mother’s six-page submission with various dates, informed of his right to rebut either submission, or provided any rebuttal matters, assuming he was served those matters.

Special Court Martial Charge and Specification Tied to the Guilty Plea

During the guilty plea colloquy, the military judge covered Appellate Exhibit VI, the plea agreement, and the term captured in paragraph 4.f. R. at 55-56; App. Ex. VI at 2. This term states that the Special Court Martial Convening Authority will withdraw and dismiss with prejudice “the Charge and Specification referred against [SrA Bak] to a special court-martial on 6 September 2022.” App. Ex. VI at 2. The Special Court Martial Convening Authority signed the plea

⁷ The victim impact statement submitted discusses multiple victims, all daughters of the purported author. ROT Vol. 2, *Victim Impact Statement Sweet Sugar Victims*, dated 27 September 2016 and 30 June 2019. However, the image associated with the series name “Sweet White Sugar” (Pros. Ex. 1 at 97) contained in the record (Pros. Ex. 2) as described in Prosecution Exhibit 1 on page 4 only contains one victim.

⁸ Although, the receipt does not reflect SrA Bak was served the attorney memorandum dated 25 October 2022, which accompanied the November 2020 submission of matters. See ROT Vol. 2, *Receipt of Copy of Victims Submission of Matters*, signed 5 January 2022 (noting only one page dated November 2020 was served).

agreement approving “specifically paragraph 4.f.” *Id.* at 5. When initially discussing this term and when Government performance would occur, the trial counsel explained to the military judge: “[T]he government intends to dismiss it at the conclusion of this court.” R. at 56. Defense agreed.

Id. Later, though, after the guilty plea was accepted, trial counsel corrected themselves stating:

I know that during the colloquially [sic] on the plea agreement there was discussion about the timing of the withdraw and dismissal of the special court-martial charges that were pending. I just note that in the language of the plea agreement it’s indicative that that’s going to be withdrawn and dismissed with prejudice upon acceptance of the guilty plea, so it’s the government counsel’s interpretation that at this time we’ve been authorized by the convening authority to announce withdrawal and dismissal of that charge and specification pending, and it will be so annotated on the charge sheet, Your Honor.

R. at 63-64. A charge sheet referring one charge and one specification against SrA Bak to a special court-martial on 6 September 2022 is included in the ROT at the very end of Volume 2 in the “Pretrial” section. ROT Vol. 2, DD Form 458, *Charge Sheet* (May 2000), dated 6 September 2022. However, this charge sheet does not reflect what was announced by trial counsel on the record; the charge and specification are not shown to be withdrawn and dismissed with prejudice on 25 October 2022. *Compare* R. at 63-64 *with id.*

Article 30a Proceedings

The Government sought five Article 30a, UCMJ, proceedings in this case. These proceedings are found in two places in the ROT, as Appellate Exhibits I-V and after the “Art 30a Pre-Referral Judicial Proceeding” cover page in Volume 3.

In both sections, there are missing submissions to the detailed military judge. In Appellate Exhibit III and its matching documentation in the “Art 30a Pre-Referral Judicial Proceeding” section, the detailed military judge rejected several warrant submissions before finding probable cause. App. Ex. III at 15-16. For purposes of the “separate record” required by R.C.M. 309(e), discussed below, those rejected submissions are not present in the “Art 30a Pre-Referral Judicial

Proceeding” section. The same occurred in Appellate Exhibit V, and its matching documentation in the “Art 30a Pre-Referral Judicial Proceeding” section—the detailed military judge rejected several warrant submissions before finding probable cause. App. Ex. V at 18-20. These rejected submissions are also not present in the “Art 30a Pre-Referral Judicial Proceeding” section.⁹

Law

The record of trial is “the very heart of the criminal proceedings and the single essential element to meaningful appellate review.” *United States v. Credit*, 4 M.J. 118, 119 (C.M.A. 1977). A complete record of proceedings is required for every court-martial in which the sentence adjudged includes “a sentence of death, dismissal, discharge, confinement for more than six months, or forfeiture of pay for more than six months.” Article 54(c)(2), 10 U.S.C. § 854(c)(2). A complete record shall include “[e]xhibits . . . and any appellate exhibits” along with “any action by the convening authority under R.C.M. 1109.” R.C.M. 1112(b).

Additionally, the Government, through a court reporter, is required to attach certain items to a record of trial before a certified record is forwarded for appellate review. R.C.M. 1112(f). This includes any matter filed by an appellant in clemency under R.C.M. 1106, as well as any requests for deferments. R.C.M. 1112(f)(3-4).

Finally, when pre-referral judicial proceedings occur in accordance with Article 30a, UMCJ, R.C.M. 309(e) requires a “separate record of any proceedings under this rule shall be prepared” and “[i]f charges are referred to trial in the case, such record shall be included in the

⁹ There are also omissions from the “Art 30a Pre-Referral Judicial Proceeding” section, but which are otherwise captured in Appellate Exhibits I-V. These omissions include the following:

- (1) The warrant returns present in Appellate Exhibits I-III and V;
- (2) Pages 12-13 of Appellate Exhibit IV, concerning the detailed military judge’s denial of the warrant request; and
- (3) Page 2 of Appellate Exhibit V, the detailing memorandum.

record of trial.” Department of the Air Force Manual (DAFMAN) 51-203, *Records of Trial*, ¶ 14.7.2 (21 Apr. 2021) defines what “such record will include.” “Any *submissions* and exhibits offered by any party” are amongst the items to be included. *Id.* (emphasis added).

This Court may grant relief “on the basis of the entire record” of trial. Article 66, UCMJ, 10 U.S.C. § 866. The Court of Appeals for the Armed Forces has defined the “‘entire record’ to include the ‘record of trial,’ [and] ‘matters attached to the record’ pursuant to the Rules for Courts-Martial (formerly known as ‘allied papers’).” *United States v. Brissa*, No. ACM 40206, 2023 CCA LEXIS 97, at *8-9 (A.F. Ct. Crim. App. Feb. 27, 2023) (unpub. op.) (citing *United States v. Jessie*, 79 M.J. 437, 440-41 (C.A.A.F. 2020)). *See also United States v. Chin*, 75 M.J. 220, 222 (C.A.A.F. 2016) (stating that in conducting this review, the Courts of Criminal Appeals “may not rely on only selected portions of a record”).

Appellate defense counsel so detailed by the Judge Advocate General shall 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 an appellant’s assignments of error . . . does not reduce the importance of adequate representation. . . . [I]ndependent review is not the same as competent appellate representation.” *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998). Therefore, to determine whether the “entire record of trial” yields grounds for this Court to grant relief under Article 66(d), UCMJ, appellate defense counsel must examine “the entire record” to ensure competent representation.

An incomplete record is one that does not comply with the requirements of R.C.M. 1112(b). R.C.M. 1112(d)(2). An incomplete record may be returned to the military judge for correction. *Id.* However, even if a record is “complete” per R.C.M. 1112(b) and (d)(2), that does not necessarily save it from being returned to the military judge for corrective action when it omits

the required attached matters listed in R.C.M. 1112(f). *E.g.*, *Simmons*, 2023 CCA LEXIS 236 at *2 (remanding the record because PHO exhibits were not properly attached); *United States v. Ort*, No. ACM 40261 (f rev), 2022 CCA LEXIS 571, at *1-3 (A.F. Ct. Crim. App. Oct. 11, 2022) (remand order) (remanding the ROT to the military judge *again* to correct PHO exhibits). *But see United States v. Reynolds*, No. ACM 40308, 2023 CCA LEXIS 407, at *2 (A.F. Ct. Crim. App. Sep. 28, 2023) (unpub. op.) (not remanding the ROT for failing to attach the preliminary hearing audio because the Court, “despite this omission,” was able to complete its Article 66(d), UCMJ, review.)

Analysis

This Court cannot meaningfully complete its duties under Article 66, UCMJ, and appellate defense counsel cannot meaningfully complete her duties under Article 70, UCMJ, because neither can be certain that the missing and incomplete attachments impact, *inter alia*, post-trial processing and whether the Government complied with the terms of the plea agreement. 10 U.S.C. §§ 866, 870. *C.f. United States v. Valentin-Andino*, 83 M.J. 537, 543-544 (A.F. Ct. Crim. App. Jan. 20, 2023) (evaluating failure to serve victim matters after a colorable showing of prejudice); *United States v. Halter*, No. ACM S32666, 2022 CCA LEXIS 9, at *8 (A.F. Ct. Crim. App. Jan. 6, 2022) (finding error when appellant did not receive victim’s R.C.M. 1106A submission before the convening authority signed a decision memorandum); *United States v. Curry*, No. ACM 39773, 2020 CCA LEXIS 341, at *1 n.2 (A.F. Ct. Crim. App. Sep. 22, 2020) (unpub. op.) (finding no material prejudice where the charge sheet did not properly reflect dismissal but other court-martial documents did). These are possible assignments of error that should be easily resolved—or dismissed—by the inclusion of the proper attachments to the record. This is not a case where this Court can, despite these omissions, complete its review; too many inferences and assumptions

would have to occur based on a “selected portion of the record.” Correcting the “lack of attention to detail” prior to full Article 66, UCMJ, review avoids “unnecessarily raised concerns about the validity of the post-trial processing,” amongst other things. *E.g.*, *United States v. Green*, No. ACM S32607 (f rev), 2021 CCA LEXIS 230, at *14-17 (A.F. Ct. Crim. App. May 13, 2021) (unpub. op.). It also ensures appellate defense counsel can properly fulfill her obligations.

Air Force regulations governing professional duties and conduct of appellate defense counsel impose a duty to (1) provide “competent representation,”¹⁰ (2) perform “reasonable diligence,”¹¹ (3) “give a client his or her best professional evaluation of the questions that might be presented on appeal,”¹² (4) “consider all issues that might affect the validity of the judgment of conviction and sentence,”¹³ (5) advise on the probable outcome of a challenge to the conviction or sentence,¹⁴ and (6) “endeavor to persuade the client to abandon a wholly frivolous appeal or to eliminate contentions lacking in substance.”¹⁵ When there are missing attachments to the record, appellate defense counsel cannot provide competent services, *even if* those missing attachments do not render the record “incomplete” under R.C.M. 1112(d)(2).

Remanding this case would align with this Court’s precedent in similar cases where attachments to the ROT are absent. *Simmons*, 2023 CCA LEXIS 236 at *2; *Ort*, 2022 CCA LEXIS 571 at *1-3. While not contemplated in R.C.M. 1112(f) as an attachment, R.C.M. 309(e) makes it clear Article 30a, UCMJ, proceedings shall be attached to the record as well. According

¹⁰ Air Force Instruction (AFI) 51-110, *Professional Responsibility Program*, Attachment 2: Air Force Rules of Professional Conduct, Rule 1.1 (11 Dec. 2018).

¹¹ *Id.* at Rule 1.3.

¹² AFI 51-110, Attachment 7: Air Force Standards for Criminal Justice, Standard 4-8.3(b).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

to the Air Force Manual, that means *all submissions* to the military judge are to be included, even those which are rejected during the proceeding. DAFMAN 51-203, ¶ 14.7.2.

A Government motion to attach the wholly missing matters—presuming they can be found—is insufficient to correct the ROT in light of the charge sheet issue; more must be done. The charge sheet associated with Appellate Exhibit IV arguably did not have to be included in the ROT,¹⁶ but it was—and its presence contradicts what was stated on the record in that the Government did *not* withdraw and dismiss with prejudice the charge and specification as required by the plea agreement. This error is potentially a scrivener’s error, but the inconsistency exposes the ROT to being remanded and corrected along with the other omissions. For the sake of judicial economy, all three of these issues can be resolved by this Court returning the ROT to the military judge for correction under R.C.M. 1112(d)(2). This is also another opportunity for this Court to remind practitioners “that careful attention to the assembly and processing of the record would have avoided [these issues]”¹⁷ since the Government’s chronic failure to docket complete records of trial shows no signs of abating.¹⁸

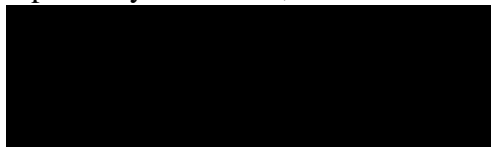
¹⁶ *But see* DAFMAN 51-203, ¶ 7.4.2. (“If charges are referred and later dismissed before arraignment, annotate the charge sheet accordingly and serve a copy on the accused and defense counsel. No ROT is required.”). As such, this charge sheet must be served on SrA Bak in one way or another. Doing so via the ROT that contains the plea agreement requiring the Government to withdraw and dismiss the listed charge with prejudice seems perfectly logical. Plus, by capturing the charge sheet in this ROT, the error can be fixed with the remand as opposed to various other motions and assignments of error.

¹⁷ *United States v. Taylor*, No. ACM 39978 (f rev), 2022 CCA LEXIS 196, at *41 n.20 (A.F. Ct. Crim. App. Mar. 30, 2022) (unpub. op.).

¹⁸ *See United States v. Blackburn*, No. ACM 40303, 2023 CCA LEXIS 386 (A.F. Ct. Crim. App. Sep. 11, 2023) (remand order); *United States v. Portillos*, No. ACM 40305, 2023 CCA LEXIS 321 (A.F. Ct. Crim. App. Aug. 1, 2023) (remand order); *United States v. Manzano Tarin*, No. ACM S32734, 2023 CCA LEXIS 291 (A.F. Ct. Crim. App. Jun. 27, 2023) (remand order); *United States v. Hubbard*, No. ACM 40339, 2023 CCA LEXIS 263 (A.F. Ct. Crim. App. Jun. 15, 2023) (remand order); *United States v. Gammage*, No. ACM S32731, 2023 CCA LEXIS 240 (A.F. Ct. Crim. App. 5 Jun. 2023) (remand order); *United States v. Goodwater*, No. ACM 40304, 2023 CCA LEXIS 231 (A.F. Ct. Crim. App. May 31, 2023) (remand order); *United States v. Irvin*, No. ACM 40311,

WHEREFORE, SrA Bak respectfully requests this Honorable Court grant this motion and return this case to the Chief Trial Judge, Air Force Trial Judiciary, for correction under R.C.M. 1112(d).

Respectfully submitted,



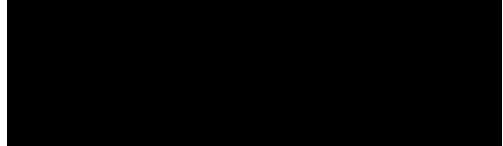
SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division



2023 CCA LEXIS 201 (A.F. Ct. Crim. App. May 12, 2023) (remand order); *Valentin-Andino*, 83 M.J. at 544 (remanding because of audio issue); *United States v. Lake*, No. ACM 40168, 2022 CCA LEXIS 706 (A.F. Ct. Crim. App. Dec. 7, 2022) (remand order); *United States v. Fernandez*, No. ACM 40290, 2022 CCA LEXIS 668 (A.F. Ct. Crim. App. Nov. 17, 2022) (remand order); *United States v. Stafford*, No. ACM 40131, 2022 CCA LEXIS 654 (A.F. Ct. Crim. App. Nov. 8, 2022) (remand order); *United States v. Lampkins*, No. ACM 40135, 2020 CCA LEXIS 500 (A.F. Ct. Crim. App. Oct. 25, 2022) (remand order); *United States v. Romero-Alegria*, No. ACM 40199, 2022 CCA LEXIS 558 (A.F. Ct. Crim. App. Sep. 22, 2022) (remand order); *United States v. Payan*, No. ACM 40132, 2022 CCA LEXIS 242 (A.F. Ct. Crim. App. Apr. 28, 2022) (remand order); *United States v. Cooper*, No. ACM 40092, 2022 CCA LEXIS 243 (A.F. Ct. Crim. App. Apr. 28, 2022) (remand order); *United States v. Westcott*, No. ACM 39936, 2022 CCA LEXIS 156 (A.F. Ct. Crim. App. Mar. 17, 2022) (unpub. op.); *United States v. Goldman*, No. ACM 39939, 2022 CCA LEXIS 43 (A.F. Ct. Crim. App. Jan. 20, 2022) (unpub. op.) (requiring second remand for noncompliance with initial remand order), *United States v. Goldman*, No. ACM 39939 (f rev), 2022 CCA LEXIS 511 (A.F. Ct. Crim. App. Aug. 30, 2022) (remand order).

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 Appellate Division on 5 October 2023.



SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' RESPONSE
<i>Appellee,</i>	)	TO MOTION FOR LEAVE TO
	)	FILE MOTION FOR REMAND
v.)	
	)	No. ACM 40405
)	
Senior Airman (E-4)	)	Panel No. 2
ALEX J. BAK , USAF,)	
<i>Appellant.</i>)	

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

Pursuant to Rules 23.2 of this Court's Rules of Practice and Procedure, the United States hereby responds to Appellant's motion for leave to file a motion for remand. The United States opposes the motion as remand is not appropriate in this case.

Supplemental Statement of the Facts

On 5 October 2023, Appellant filed a motion for leave to file a motion for remand. As justification for his request, Appellant cites four alleged errors with the Record of Trial (ROT). Specifically, Appellant claims the following items are missing from the ROT: (1) receipts showing that Rule for Courts-Martial (R.C.M.) 1106A matters considered by the Convening Authority were timely served on SrA Bak such that he had an opportunity to rebut those matters before the Convening Authority acted; (2) rebuttal to the victim's submissions of matters submitted by SrA Bak to the Convening Authority; (3) the charge sheet associated with paragraph 4.f of the Plea Agreement as announced on the record by government trial counsel (App. Ex. IV); and (4) the complete Article 30a, UCMJ, proceedings. (*Motion for Leave to File Motion for Remand*, dated 5 October 2023, at 1-2.)

On 13 October 2022, the legal office provided a memorandum from trial counsel

notifying Appellant of both victims' submission of matters and informing him of his right to respond, along with Appellant's acknowledgement. (*United States Motion to Attach*, dated 16 October 2023). The legal office also provided a copy of Appellant's 18 November 2022 memorandum entitled "Submission of Matters in Rebuttal to the Victim Submission of Matters" in which Appellant addressed the matters submitted by both victims. (Id.) The memorandum was signed by Appellant's counsel and submitted on his behalf. (Id.) The legal office telephonically confirmed to undersigned counsel the charge sheet contained in the ROT is an accurate copy of the original. The legal office confirmed to undersigned counsel the rejected warrant submissions from the Article 30a pre-referral judicial proceedings could not be located.

Standard of Review

Whether a record of trial is complete is a question of law that courts review *de novo*. United States v. Henry, 53 M.J. 108, 110 (C.A.A.F. 2000).

Law and Argument

a. Victim's Submission of Matters and Appellant's Rebuttal

In the United States' Motion to Attach, the government provided the notification of the victim's submission of matters with Appellant's acknowledgment of receipt of the notification and the attachments. It is clear Appellant received a copy of the victim matters, because his counsel submitted a response to them directly addressing both victim's submissions and including the submission of one victim as an attachment. This Court need not remand to remedy the omission of this documentation from the ROT because the documentation has now been provided to the Court. This Court has often elected not to provide any remedy for an incomplete record where the Government has provided the missing portions through a motion to attach.

When a record is incomplete, Rule for Court-Martial Court Martial 1112(d)(2) allows this

Court to return the record of trial to the military judge for correction. Yet if the omitted portions of the record have already been provided to this Court and there is no dispute as to their authenticity, there is no utility in returning the record for correction. Where the government has produced missing documents through a motion to attach, this Court has often not granted any remedy. See United States v. King, ACM 39583, 2021 CCA LEXIS 415 (A.F. Ct. Crim. App. 16 August 2021) (unpub. op.); United States v. Jones, 2022 CCA LEXIS 584, *10 (A.F. Ct. Crim. App. 17 October 2022) (unpub. op.); United States v. Garron, 2023 CCA LEXIS 67, *5 (A.F. Ct. Crim. App. 9 February 2023) (unpub. op.). Here, there is no reason to dispute the authenticity of the receipt or the Appellant's rebuttal submission. These are not the types of missing documents that would require military judge or trial and defense counsel involvement under R.C.M. 1112(d)(2) to correct the record. Since the United States has provided the missing documents, this Court should decline to remand the record for correction based on those issues.

b. Charge Sheet

Prior to Appellant's general court-martial, one charge and one specification of wrongful use of delta-8 tetrahydrocannabinol, in violation of Article 92, UCMJ, was referred to a separate special court-martial on 6 September 2022. ROT Vol. 2, DD Form 458, *Charge Sheet*, dated 6 September 2022. Appellant entered into a plea agreement requiring him to plead guilty to the charge and two specifications pending before his general court-martial. (App. Ex. VI at 1) Paragraph 4.f. of Appellant's plea agreement states:

In exchange for my plea of guilty to the aforementioned charge and specifications, it is understood that the Special Court-Martial Convening Authority will withdraw and dismiss with prejudice, upon acceptance by the military judge of my plea of guilty, the Charge and Specification referred against me to a special court-martial on 6 September 2022.

Id. at 2.

Appellant asserts the special court-martial Charge Sheet included in the ROT, does not properly reflect the charge and specification were dismissed with prejudice consistent with Appellant's plea agreement. ROT Vol. 2, DD Form 458, *Charge Sheet*, dated 6 September 2022. First, Appellant has pointed to no legal requirement for this secondary charge sheet to be included in the Record of Trial, since that particular charge was referred to a different court-martial. Second, the Charge Sheet included in the ROT is in proper form and does not constitute an omission in the ROT. DAFI 51-201, *Administration of Military Justice*, dated 14 April 2022, para. 16.2.1 discusses how to properly annotate complete withdrawal of charges:

To withdraw all charges and specifications from a court-martial, trial counsel should "Z-out" the referral section (Part V) of the charge sheet, specify the disposition and the date, and initial the action taken (e.g., "Withdrawn on 28 Aug 20, [initials]"). If the convening authority or a superior competent authority directs both withdrawal and dismissal of all charges and specifications, reflect accordingly (e.g., "Withdrawn and Dismissed on 28 Aug 20, [initials]").

The Charge Sheet included in the record conforms with the direction of DAFI-51-201 for complete withdrawal of a charge. DAFI 51-201 does not require "with prejudice" or "without prejudice" be annotated on the Charge Sheet. Normally, with prejudice or without prejudice would be annotated on an Entry of Judgment, however, that charge was referred to a different court-martial, not the one at issue here. Further, Appellant was never brought to court-martial on that charge, no judgment of the court was issued, and therefore no Entry of Judgment was required for that charge. See *DAFMAN 51-203, Records of Trial*, dated 21 April 2021, para. 7.4.2 (stating where charges are referred and later dismissed before arraignment, the charge sheet should be annotated accordingly and a copy served on the accused and defense counsel, but no ROT is required). Given the language of the plea agreement and the assertions made by trial counsel to the military judge that they were withdrawing and dismissing the charges with

prejudice, it's clear that the withdrawal and dismissal in this case was with prejudice, and the government complied with that provision of his plea agreement. ROT Vol. 2, DD Form 458, *Charge Sheet*, dated 6 September 2022; App. Ex. VI at 2; R. at 63-64.

Thus, there is no error with the Charge Sheet, and Appellant has not justified remand based on this alleged omission.

c. Article 30a Submissions

R.C.M. 309(e) requires a separate record of any Article 30a proceeding be included in the ROT. A complete record of proceedings, including all exhibits and a verbatim transcript, must be prepared for any general or special court-martial where a sentence of “death, dismissal, discharge, confinement for more than six months, or forfeiture of pay for more than six months” is adjudged. Article 54(c)(2), UCMJ. Appellate courts understand that inevitably records will be imperfect, and therefore review for substantial omissions. United States v. Lashley, 14 M.J. 7, 8 (C.M.A. 1982). A substantial omission renders a record incomplete and raises a presumption of prejudice that the government must rebut. Henry, 53 M.J. at 111 (citing United States v. McCullah, 11 M.J. 234, 237 (C.M.A. 1981)). Insubstantial omissions do not raise a presumption of prejudice or affect the record’s characterization as complete. Id. A substantial omission may not be prejudicial if the appellate courts can conduct an informed review. See United States v. Simmons, 54 M.J. 883, 887 (N-M. Ct. Crim. App. 2001); see also United States v. Morrill, ARMY 20140197, 2016 CCA LEXIS 644, at *4-5 (A. Ct. Crim. App. 31 October 2016) (unpub. op.) (finding that despite the omission from the record of an Article 39(a) session containing the military judge’s findings and conclusions related to an R.C.M. 917 motion, the record, as it was, was “adequate to permit informed review by this court and any other reviewing authorities”).

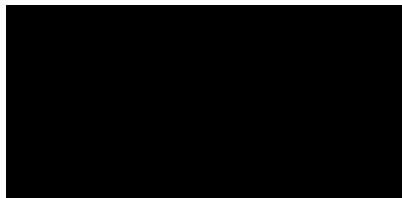
The military judge rejected several warrant submissions before ultimately issuing a

warrant based upon probable cause. Specifically, the military judge rejected applications by the government on 15 October 2020, 19 October 2020, 10 November, 12 November 2020, and 17 and 18 November 2020. (App. Ex. III at 14-18, App. Ex. IV at 12-13, and App. Ex. V at 18-21.) The rejections were not premised upon lack of probable cause. (Id.) The rejections were premised on technical errors with the application, such as incorrect dates and late submissions requiring a new Article 30a detailing memorandum. (Id.) The government is not able to provide the rejected application materials because the Pope Legal Office is unable to locate them. However, the technical errors that resulted in the rejection of each application were enumerated by the military judge in email traffic with the government. Appellant has sufficient documentation to determine why the application was rejected and to surmise what the missing applications would have looked like. Also, these applications were rejected and resulted in no evidence gathering by the government. The application and affidavit for all issued search warrants are included in the Record of Trial. Appellant could not have been prejudiced by rejected Article 30(a) applications. Therefore, this is not a substantial omission from the ROT warranting relief and this Court and Appellant can still conduct a meaningful and informed review of the record.

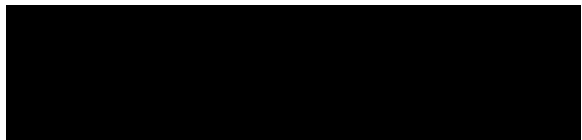
Thus, there is no error, and this Court should reject Appellant's motion for leave to file a motion for remand.

WHEREFORE, the government respectfully requests this Honorable Court deny Appellant's motion for leave to file a motion for remand.

Respectfully submitted,



TYLER L. WASHBURN, Capt, USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

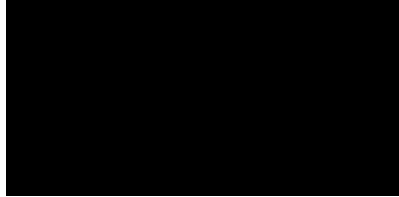


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

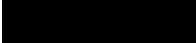


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 16 October 2023 via electronic filing.



TYLER L. WASHBURN, Capt, USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’ MOTION
<i>Appellee,</i>	)	FOR ENLARGEMENT OF TIME
	)	OUT OF TIME
)	
v.	)	Before Panel No. 2
)	
Senior Airmen (E-4)	)	No. ACM 40405
ALEX J. BAK)	
United States Air Force	)	12 October 2023
<i>Appellant.</i>)	

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

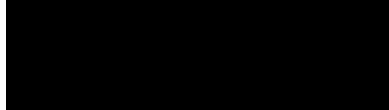
Pursuant to Rule 23.3(m)(5) and 18.5, the United States respectfully requests a 2-day enlargement of time, out of time, to respond in the above captioned case. This case was docketed with the Court on 31 January 2023. Since docketing, Appellant has been granted six enlargements of time. Appellant filed a motion for leave to file a motion for remand on 5 October 2023. This is the United States’ first request for an enlargement of time. As of the date of this request, 255 days have elapsed since docketing. The United States’ response in this case is currently due on 12 October 2023. If the enlargement of time is granted the United States’ response will be due on 14 October 2023, and 257 days will have elapsed since docketing.

There is good cause for the enlargement of time in this case. Appellant’s motion was filed on Thursday, 5 October 2023. Appellant’s filing was served via email after duty hours at 1729 hours. 6 October 2023 and 9 October 2023 were a family day and a federal holiday, respectively, and this Court was closed. 7-8 October 2023 was the weekend. Given the circumstances, the government did not assign a counsel to this case until Tuesday, 10 October 2023. Undersigned counsel was assigned to a case before the Court of Appeals for the Armed

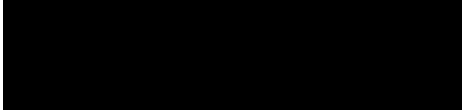
Forces (CAAF) that was due on 10 October 2023. In the time undersigned counsel has been assigned to this case, he has contacted the Pope legal office and obtained all missing documentation enumerated in Appellant's motion for leave to file a motion for remand. The omission of these documents from the Record of Trial constitutes the basis for Appellant's motion. Undersigned counsel is currently awaiting a signed declaration from the Pope Legal office attesting to the authenticity of the missing documents and providing context as to their omission. The Pope legal office informed undersigned counsel at 1615 hours on 12 October 2023 said declaration cannot be provided until 13 October 2023.

An extension of time is necessary to allow undersigned counsel to obtain the necessary declaration and permit counsel adequate time to prepare an appropriate response for the above-styled case. Issues such as these are often raised in assignments of error briefs, which gives government counsel 30 days to respond. Government counsel has effectively only had 3 days to respond to this motion. There is good cause for this out of time filing because undersigned counsel has made diligent efforts to obtain evidence and responsive materials to allow counsel to respond meaningfully to Appellant's motion. Undersigned counsel anticipated a declaration from the Pope legal office would be provided on 12 October 2023 and that a response to the motion could be filed by the deadline; however, it became clear this afternoon that the deadline could not be met . Undersigned counsel did not previously request an enlargement of time so as not to delay this process unless it was absolutely necessary to do so. If the response to this motion can be filed tomorrow, counsel will do so. However, counsel requests two additional days to ensure no further enlargements of time are necessary.

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



TYLER L. WASHBURN, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



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



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force
Appellate Defense Division on 12 October 2023.



TYLER L. WASHBURN, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	UNITED STATES' MOTION
<i>Appellee</i>	)	TO ATTACH DOCUMENTS
)	
v.	)	Panel No. 2
Senior Airman (E-4)	)	No. ACM 40405
ALEX J. BAK)	
United States Air Force	)	16 October 2023
<i>Appellant</i>)	

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

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

- Appendix – Maj Matthew Cole Declaration, with attachments, dated 13 October 2023 (7 pages)

Maj Cole's declaration explains that the Pope Legal Office located (1) documentation that the convening authority served Appellant with the victim's matters submitted under R.C.M. 1106A prior to the convening authority taking action in this case; and (2) Appellant's Submission of Matters in Rebuttal to the Victim's submission of matters. The attached documents show the victim's submission of matters were served on Appellant personally, and Appellant was able to respond to the victim's submission of matters. These two attachments rectify omissions from the ROT and are directly responsive to issues raised by Appellant in his Motion for Leave to File a Motion for Remand.

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



TYLER L. WASHBURN, Capt, USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline
United States Air Force



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



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Appellate Defense Division on 16 October 2023.



TYLER L. WASHBURN, Capt, USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline
United States Air Force



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

UNITED STATES	)	No. ACM 40405
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Alex J. BAK)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 2

On 5 October 2023, Appellant submitted a motion for leave to file a motion for remand combined with the motion for remand. Specifically, Appellant moves this court remand the record of trial to correct certain omissions in the record pursuant to Rule for Courts-Martial (R.C.M.) 1112(d)(2): (1) receipts from Appellant acknowledging two R.C.M. 1106A submissions of matters, one each from two victims, which were received by the Government and would be provided to the convening authority prior to his decision on action; (2) any rebuttal matters Appellant may have submitted to the convening authority responding to the two victims' R.C.M. 1106A submission of matters; (3) the DD Form 458 (charge sheet) associated with a new charge preferred against Appellant but not referred to this court-martial, and referenced in paragraph 4.f of the plea agreement of the present case, specifically requesting that it be amended to demonstrate that the convening authority withdrew and dismissed the charge "with prejudice" per the plea agreement; and (4) the "complete" Article 30a, UCMJ, 10 U.S.C. § 830a, proceedings, referring to warrants requested by the Government, but denied by the assigned military judge.

On 12 October 2023, the Government moved for an enlargement of time, out of time. Specifically, Appellee requested two additional days to respond to Appellant's remand motion.

On 16 October 2023, the Government moved to attach documents (responsive to Appellant's motion for remand) and provided a seven-page Appendix, including a declaration by the Deputy Staff Judge Advocate of the 43d Air Mobility Operations Group, who was a Government trial counsel in this case; a receipt from Appellant acknowledging the two victims' R.C.M. 1106A submissions of matters received by the convening authority; and a rebuttal to those matters submitted by trial defense counsel on behalf of Appellant prior to convening authority decision on action.

Appellant did not oppose the Government's request for an extension out of time and did not oppose the Government's motion to attach.

The court has considered the above motions, and responses, and the applicable law. The court grants Appellant's motion for leave to file a motion to remand, and grants Government's motion for enlargement out of time, and grants Government's motion to attach. We defer ruling on Appellant's Motion for Remand until we complete our Article 66, UCMJ, 10 U.S.C. § 866, review of Appellant's entire case.

Accordingly, it is by the court on this 30th day of October 2023,

ORDERED:

Appellant's Motion for Leave to File Motion for Remand is **GRANTED**.

Appellee's Motion for Enlargement of Time Out of Time is **GRANTED**.

Appellee's Motion to Attach Documents is **GRANTED**.

Appellant's Motion for Remand is **DEFERRED**.



FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, <i>Appellee,</i>	)	MOTION FOR ENLARGEMENT OF TIME (SEVENTH)
)	
v.)	
	)	Before Panel No. 2
Senior Airman (E-4),)	
ALEX J. BAK,	)	No. ACM 40405
United States Air Force,)	
<i>Appellant.</i>	)	16 October 2023

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

Pursuant to Rule 23.3(m)(3) and 23.3(m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his seventh enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **27 November 2023**. The record of trial was docketed with this Court on 31 January 2023. From the date of docketing to the present date, 258 days have elapsed. On the date requested, 300 days will have elapsed.

On 25 October 2022, at a general court-martial convened at Pope Army Airfield, North Carolina, and comprised of a military judge alone, Appellant was found guilty, consistent with his pleas, of one charge and two specifications of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934.¹ R. at 63. The military judge sentenced Appellant to a bad conduct discharge, 30 months confinement for each specification of the charge to be served concurrently, a reduction to the lowest enlisted grade, and a reprimand. R. at 94. The convening authority took no action on the findings, approved the

¹ The specifications allege misconduct occurring both before and after 1 January 2019. R. at 9, 11. The version of Article 134, UCMJ, in effect during all instances of misconduct is substantially identical to the version in effect at the time of Appellant’s court-martial. Thus, unless otherwise stated, all references to the UCMJ are to the version published in the *Manual for Courts-Martial, United States* (2019 ed.).

sentence in its entirety, and waived the automatic forfeitures of Appellant's pay for "a period of 6 months, or release from confinement, or [expiration term of service], whichever is sooner," beginning on 8 November 2022 for the benefit of Appellant's dependent spouse and child. Record of Trial (ROT) Vol. 1, *Convening Authority Decision on Action – United States v. SrA Alex J. Bak*, dated 19 December 2022.

The trial transcript is 95 pages long and the record of trial is comprised of four volumes containing seven Prosecution Exhibits, two Defense Exhibits, nine Appellate Exhibits, and two Court Exhibits. Appellant is currently confined. Undersigned counsel has completed her review of the record, but, on 5 October 2023, filed a motion for leave to file motion for remand due to several errors and omitted attachments in the record of trial. This motion is pending.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned thirteen cases; nine cases are pending initial AOE's before this Court and two cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). Only the two cases before the CAAF take priority over this case. At least one of these cases will be scheduled for oral argument before the end of the year, although both may be (*United States v. Leipart*, USCA Dkt. No. 23-0163/AF and *In Re HVZ*, USCA Dkt. No. 23-0250/AF). Counsel is waiting for scheduling. In the interim, counsel has two upcoming appellate advocacy trainings, which will also impact her ability to draft the AOE at this time: (1) Appellate Advocacy Training, scheduled from 25 – 27 October 2023 at University of North Carolina, Chapel Hill; and (2) Appellate Judges Education Institute Summit, scheduled from 2-5 November 2023 in Washington D.C.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters, to include the motion to complete the record in Appellant's case, and has yet to complete

the AOE. Accordingly, an enlargement of time is necessary to fully review Appellant's case and advise Appellant regarding potential issues.

Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,

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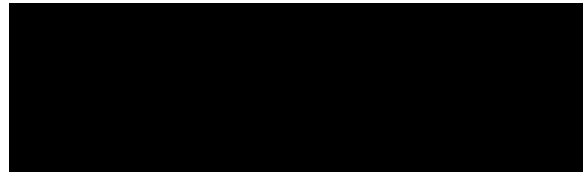
SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 16 October 2023.

Respectfully submitted,

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SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

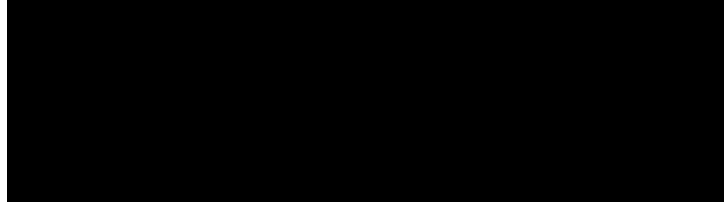
UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Senior Airman (E-4)	)	ACM 40405
ALEX J. BAK, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

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

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

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

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



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



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 18 October 2023.



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



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, <i>Appellee,</i>	)	MOTION FOR ENLARGEMENT OF TIME (EIGHTH)
)	
v.)	
	)	Before Panel No. 2
Senior Airman (E-4),)	
ALEX J. BAK,	)	No. ACM 40405
United States Air Force,)	
<i>Appellant.</i>	)	17 November 2023

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

Pursuant to Rule 23.3(m)(3) and 23.3(m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his eighth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **27 December 2023**. The record of trial was docketed with this Court on 31 January 2023. From the date of docketing to the present date, 290 days have elapsed. On the date requested, 330 days will have elapsed.

On 25 October 2022, at a general court-martial convened at Pope Army Airfield, North Carolina, and comprised of a military judge alone, Appellant was found guilty, consistent with his pleas, of one charge and two specifications of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934.¹ R. at 63. The military judge sentenced Appellant to a bad conduct discharge, 30 months confinement for

¹ The specifications allege misconduct occurring both before and after 1 January 2019. R. at 9, 11. The version of Article 134, UCMJ, in effect during all instances of misconduct is substantially identical to the version in effect at the time of Appellant’s court-martial. Thus, unless otherwise stated, all references to the UCMJ are to the version published in the *Manual for Courts-Martial, United States* (2019 ed.).

each specification of the charge to be served concurrently, a reduction to the lowest enlisted grade, and a reprimand. R. at 94. The convening authority took no action on the findings, approved the sentence in its entirety, and waived the automatic forfeitures of Appellant's pay for "a period of 6 months, or release from confinement, or [expiration term of service], whichever is sooner," beginning on 8 November 2022 for the benefit of Appellant's dependent spouse and child. Record of Trial (ROT) Vol. 1, *Convening Authority Decision on Action – United States v. SrA Alex J. Bak*, dated 19 December 2022.

The trial transcript is 95 pages long and the record of trial is comprised of four volumes containing seven Prosecution Exhibits, two Defense Exhibits, nine Appellate Exhibits, and two Court Exhibits. Appellant is currently confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned fifteen cases; twelve cases are pending AOE's before this Court and three cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). Only the three cases before the CAAF have priority over the present case:

1. *United States v. Wells*, USCA Dkt. No. 23-0219/AF – On 20 October 2023, the CAAF granted review of one issue. Counsel is currently writing the Grant Brief and compiling the Joint Appendix, due 15 December 2023.

2. *In re HVZ*, USCA Dkt. No 23-0250/AF – Oral argument is scheduled for 5 December 2023. While working on *United States v. Wells*, counsel will be preparing to argue on behalf of the real party in interest.

3. *United States v. Leipart*, USCA Dkt. No. 23-0163/AF – Oral argument is scheduled for 16 January 2023. While working on Appellant’s case, counsel will be preparing for oral argument in this case.

Since Appellant’s last request for an enlargement of time, undersigned counsel completed her review of Appellant’s record of trial and identified and outlined what will be raised in the AOE. She attended the University of North Carolina (UNC) Appellate Advocacy Training in Chapel Hill, NC, from 25-27 October 2023. Upon returning from the UNC training, counsel immediately began working on *United States v. Wells*, which she took over from a previous appellate defense counsel. She reviewed the 1093-page transcript, researched the granted issue, and began drafting the Grant Brief. Due to her unfamiliarity with the record and need to review it before writing the brief, counsel was unable to attend the Appellate Judges Education Institute 2023 Summit from 2-5 November 2023; she worked on *United States v. Wells* instead. Over the last month, counsel has also assisted with five different moot court arguments for five different cases. She assisted by reading the briefs, doing legal research to ask questions, and participating in a mock oral argument for each case. To forewarn the Court, counsel will be preparing to assist with two more moots over the next month, in addition to her own, and she also has leave scheduled from 18-22 December 2023.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete the AOE. Accordingly, an enlargement of time is necessary to fully review Appellant’s case and advise Appellant regarding potential issues.

Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,

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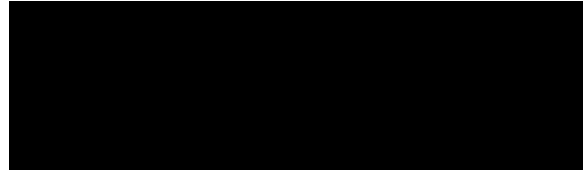
SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 17 November 2023.

Respectfully submitted,

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SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

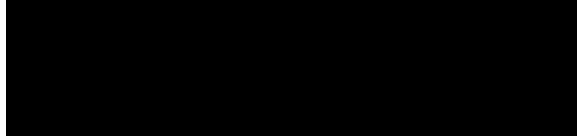
UNITED STATES,)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION
	)	FOR ENLARGEMENT OF TIME
v.)	
)	
Senior Airman (E-4)	)	ACM 40405
ALEX J. BAK, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

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

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

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

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

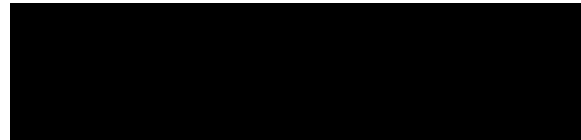


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 21 November 2023.



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



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION TO WITHDRAW
<i>Appellee,</i>	)	FROM APPELLATE REVIEW
	)	AND ATTACH
v.)	
	)	Before Panel No. 2
Senior Airman (E-4),)	
ALEX J. BAK,	)	No. ACM 40405
United States Air Force,)	
<i>Appellant.</i>	)	1 December 2023

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

Pursuant to Rule 16 of the Rules of Practice and Procedure of the United States Air Force Court of Criminal Appeals and Rule for Courts-Martial (R.C.M.) 1115, Appellant moves to withdraw his case from appellate review. Appellant has fully consulted with Captain Samantha Castanien, his appellate defense counsel, regarding this motion to withdraw. No person has compelled, coerced, or induced Appellant by force, promises of clemency, or otherwise, to withdraw his case from appellate review.

Further, pursuant to Rules 23(b) and 23.3(b), undersigned counsel asks this Court to attach the two-page document appended to this pleading to the record of this proceeding. The appended document, Appellant's completed DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals*, is necessary to comply with R.C.M. 1115(d) and Rule 16.1 of this Honorable Court's Rules of Practice and Procedure.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant this motion to withdraw from appellate review and attach matters to the record.

Respectfully submitted,

[Redacted signature block]

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Division on 1 December 2023.



SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

