IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,* v. Staff Sergeant (E-5) **JACQUES D. BENOIT JR.,** United States Air Force *Appellant.*	))))))))))	**NOTICE OF DIRECT APPEAL PURSUANT TO ARTICLE 66(b)(1)(A), UCMJ** No. ACM _____ 7 August 2023

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

On 12 January 2023, officer and enlisted members sitting as a general court-martial convicted Staff Sergeant (SSgt) Jacques D. Benoit Jr., 437th Aerial Port Squadron, Joint Base Charleston, South Carolina, contrary to his pleas, of violating Article 113, Uniform Code of Military Justice (UCMJ). Record (R.) at 150, 609. Consistent with his pleas, the members acquitted SSgt Benoit Jr. of an alleged violation of Article 92, UCMJ. R. at 150, 609. The military judge sentenced SSgt Benoit Jr. to be reprimanded, reduced to the grade of E-1, and confined for eight months. R. at 678.

SSgt Benoit Jr. has not submitted any materials to The Judge Advocate General in accordance with Article 69, UCMJ. On 13 May 2023, the Government purportedly delivered SSgt Benoit Jr. the required notice by mail of his right to appeal, within 90 days, because his court-martial sentence included confinement for more than six months but less than two years and no dismissal, dishonorable discharge, or bad conduct discharge. [1]

[1] The memorandum titled "Notice of Right to Submit Direct Appeal to the Air Force Court of Criminal Appeals" is undated and unsigned but the delivery receipt states the date of delivery was 13 May 2023.

Pursuant to Article 66(b)(1)(A), UCMJ, SSgt Benoit Jr. respectfully files his notice of direct appeal with this Court.

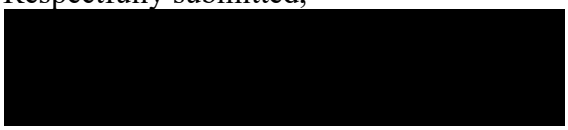
Respectfully submitted,

SAMANTHA P. GOLSETH, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4777
Email: samantha.golseth@us.af.mil

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 7 August 2023.

Respectfully submitted,



SAMANTHA P. GOLSETH, Capt, USAF
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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40508**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF**
Jacques D. BENOIT Jr.	)	**DOCKETING**
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	

A notice of direct appeal pursuant to Article 66(b)(1)(A), Uniform Code of Military Justice, 10 U.S.C. § 866(b)(1)(A), was submitted by Appellant and received by this court in the above-styled case on 7 August 2023. On 15 August 2023, the record of trial was delivered to this court by the Military Appellate Records Branch.

Accordingly, it is by the court on this 15th day of August, 2023,

ORDERED:

The case in the above-styled matter is referred to Panel 2. Briefs will be filed in accordance with Rule 18 of the Joint Rules of Appellate Procedure and Rule 23.3(m) of this court's Rules of Practice and Procedure. *See* JT. CT. CRIM. APP. R. 18, A.F. Ct. Crim. App. R. 23.3(m).

FOR THE COURT

[redacted]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	
	)	Before Panel No. 2
Staff Sergeant (E-5) **JACQUES D. BENOIT JR.,** United States Air Force,	)	No. ACM 40508
Appellant.	)	19 September 2023

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

Pursuant to Rule 23.3(m)(2) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for the first enlargement of time to file an Assignments of Error (AOE) brief. Appellant requests an enlargement for a period of 60 days, which will end on **13 December 2023**. The record of trial was docketed with this Court on 15 August 2023. From the date of docketing to the present date, 35 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

[redacted]

SAMANTHA P. GOLSETH, Maj, USAF
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Email: samantha.golseth@us.af.mil

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
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21 September 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) JACQUES D. BENOIT JR., USAF, *Appellant.*	))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40508 Panel No. 2

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

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

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

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

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

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SECOND)**
v.	)	
	)	Before Panel No. 2
Staff Sergeant (E-5) **JACQUES D. BENOIT JR.,** United States Air Force,	)	No. ACM 40508
Appellant.	)	6 December 2023

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

Pursuant to Rules 23.3(m)(3) and (4) of this Honorable Court's Rules of Practice and Procedure, Staff Sergeant (SSgt) Jacques D. Benoit Jr., Appellant, hereby moves for a second enlargement of time to file assignments of error. SSgt Benoit requests an enlargement for a period of 30 days, which will end on **12 January 2024**. The record of trial was docketed with this Court on 15 August 2023. From the date of docketing to the present date, 113 days have elapsed. On the date requested, 150 days will have elapsed.

On 9-13 January 2023, contrary to his pleas, SSgt Benoit was convicted by officer and enlisted members at a general court-martial at Joint Base Charleston, South Carolina, of one charge and specification of reckless operation of a vehicle resulting in personal injury, in violation of Article 113, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 913, *Manual for Courts-Martial, United States* (2019 ed.) (2019 *MCM*). R. at 609. On 13 January 2023, the military judge sentenced SSgt Benoit to a reprimand, reduction to the grade of E-1, and eight months' confinement. R. at 678. The convening authority took no action on the findings or sentence and the military judged entered the above findings and sentence in the entry of judgment. Convening Authority Decision on Action, 17 March 2023; Entry of Judgment, 13 April 2023. The record of

trial consists of 11 prosecution exhibits, 12 defense exhibits, 58 appellate exhibits, and 2 court exhibits. The transcript is 678 pages. SSgt Benoit is not confined.

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

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

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: samantha.golseth@us.af.mil

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 6 December 2023.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
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Email: samantha.golseth@us.af.mil

8 December 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) JACQUES D. BENOIT JR., USAF, *Appellant.*	))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40508 Panel No. 2

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

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

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

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

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 8 December 2023.

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
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United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (THIRD)**
v.	)	
	)	Before Panel No. 2
Staff Sergeant (E-5) **JACQUES D. BENOIT JR.,** United States Air Force,	)	No. ACM 40508
Appellant.	)	4 January 2024

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

Pursuant to Rules 23.3(m)(3) and (4) of this Honorable Court's Rules of Practice and Procedure, Staff Sergeant (SSgt) Jacques D. Benoit Jr., Appellant, hereby moves for a third enlargement of time to file assignments of error. SSgt Benoit requests an enlargement for a period of 30 days, which will end on **11 February 2024**. The record of trial was docketed with this Court on 15 August 2023. From the date of docketing to the present date, 142 days have elapsed. On the date requested, 180 days will have elapsed.

On 9-13 January 2023, contrary to his pleas, SSgt Benoit was convicted by officer and enlisted members at a general court-martial at Joint Base Charleston, South Carolina, of one charge and specification of reckless operation of a vehicle resulting in personal injury, in violation of Article 113, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 913, *Manual for Courts-Martial, United States* (2019 ed.) (2019 *MCM*). R. at 609. On 13 January 2023, the military judge sentenced SSgt Benoit to a reprimand, reduction to the grade of E-1, and eight months' confinement. R. at 678. The convening authority took no action on the findings or sentence and the military judged entered the above findings and sentence in the entry of judgment. Convening Authority Decision on Action, 17 March 2023; Entry of Judgment, 13 April 2023. The record of

trial consists of 11 prosecution exhibits, 12 defense exhibits, 58 appellate exhibits, and 2 court exhibits. The transcript is 678 pages. SSgt Benoit is not confined.

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

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

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
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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 Operations Division on 4 January 2024.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
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4 January 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) JACQUES D. BENOIT JR., USAF, *Appellant.*	))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40508 Panel No. 2

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

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

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

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 4 January 2024.

[redacted]

MARY ELLEN PAYNE
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United States Air Force
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FOURTH)**
v.	)	
	)	Before Panel No. 2
Staff Sergeant (E-5) **JACQUES D. BENOIT JR.,** United States Air Force,	)	No. ACM 40508
Appellant.	)	2 February 2024

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

Pursuant to Rules 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Staff Sergeant (SSgt) Jacques D. Benoit Jr., Appellant, hereby moves for a fourth enlargement of time to file assignments of error. SSgt Benoit requests an enlargement for a period of 30 days, which will end on **12 March 2024**. The record of trial was docketed with this Court on 15 August 2023. From the date of docketing to the present date, 171 days have elapsed. On the date requested, 210 days will have elapsed.

On 9-13 January 2023, contrary to his pleas, SSgt Benoit was convicted by officer and enlisted members at a general court-martial at Joint Base Charleston, South Carolina, of one charge and specification of reckless operation of a vehicle resulting in personal injury, in violation of Article 113, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 913, *Manual for Courts-Martial, United States* (2019 ed.) (2019 *MCM*). R. at 609. On 13 January 2023, the military judge sentenced SSgt Benoit to a reprimand, reduction to the grade of E-1, and eight months' confinement. R. at 678. The convening authority took no action on the findings or sentence and the military judged entered the above findings and sentence in the entry of judgment. Convening Authority Decision on Action, 17 March 2023; Entry of Judgment, 13 April 2023. The record of

trial consists of 11 prosecution exhibits, 12 defense exhibits, 58 appellate exhibits, and 2 court exhibits. The transcript is 678 pages. SSgt Benoit is not confined.

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

1. *United States v. George*, No. ACM 40397 – The record of trial consists of 3 prosecution exhibits, 12 defense exhibits, 1 court exhibit, and 22 appellate exhibits. The transcript is 779 pages. The appellant is not confined and undersigned counsel is reviewing his record and anticipates filing his assignments of error no later than 27 February 2024.
2. *United States v. Christensen*, No. ACM 40408 – The record of trial consists of 4 prosecution exhibits, 14 defense exhibits, 3 court exhibits, and 31 appellate exhibits. The appellant is not confined.
3. *United States v. Gubicza*, No. ACM 40464 - The record of trial consists of 3 prosecution exhibits, 23 defense exhibits, and 4 appellate exhibits. The transcript is 96 pages. The appellant is confined.
4. *United States v. Goodwater*, No. ACM 40304 (f rev) – The record of trial consists of 18 prosecution exhibits, 5 defense exhibits, and 26 appellate exhibits. The transcript is 413 pages. The appellant is confined.

5. *United States v. Galera*, No. ACM 40477 – The record of trial consists of three prosecution exhibits, five defense exhibits, three appellate exhibits, and three court exhibits. The transcript is 174 pages. The appellant is confined.
6. *United States v. Johnson*, No. ACM 40291 (f rev) – The record of trial consists of 23 appellate exhibits, 28 prosecution exhibits, and 4 defense exhibits. The transcript is 395 pages. The appellant is not confined.
7. *United States v. Riley*, No. ACM 40498 – The record of trial consists of 3 prosecution exhibits, 11 defense exhibits, 3 appellate exhibits, and 1 court exhibit. The transcript is 99 pages. The appellant is not confined.
8. *United States v. Trovatore*, No. ACM 40505 – The record of trial consists of 12 prosecution exhibits, 2 appellate exhibits, and 2 court exhibits. The transcript is 175 pages. The appellant is confined.
9. *United States v. Simmons*, No. ACM 40462 (f rev) – The record of trial consists of 5 prosecution exhibits, 5 defense exhibits, and 9 appellate exhibits. The transcript is 104 pages. A1C Simmons is not confined.

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

Respectfully submitted,

[redacted]

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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Office: (240) 612-4770
Email: samantha.golseth@us.af.mil

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
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5 February 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) JACQUES D. BENOIT JR., USAF, *Appellant.*	))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40508 Panel No. 2

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

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

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

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 5 February 2024.

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40508**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Jacques D. BENOIT, JR.	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 1 March 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Fifth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure. Accordingly, it is by the court on this 5th day of March, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant shall file any assignments of error not later than **11 April 2024**.

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

FOR THE COURT

[redacted]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIFTH)**
v.	)	
	)	Before Panel No. 2
Staff Sergeant (E-5) **JACQUES D. BENOIT JR.,** United States Air Force,	)	No. ACM 40508
Appellant.	)	1 March 2024

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

Pursuant to Rules 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Staff Sergeant (SSgt) Jacques D. Benoit Jr., Appellant, hereby moves for a fifth enlargement of time to file assignments of error. SSgt Benoit requests an enlargement for a period of 30 days, which will end on **11 April 2024**. The record of trial was docketed with this Court on 15 August 2023. From the date of docketing to the present date, 199 days have elapsed. On the date requested, 240 days will have elapsed.

On 9-13 January 2023, contrary to his pleas, SSgt Benoit was convicted by officer and enlisted members at a general court-martial at Joint Base Charleston, South Carolina, of one charge and specification of reckless operation of a vehicle resulting in personal injury, in violation of Article 113, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 913, *Manual for Courts-Martial, United States* (2019 ed.) (2019 *MCM*). R. at 609. On 13 January 2023, the military judge sentenced SSgt Benoit to a reprimand, reduction to the grade of E-1, and eight months' confinement. R. at 678. The convening authority took no action on the findings or sentence and the military judged entered the above findings and sentence in the entry of judgment. Convening Authority Decision on Action, 17 March 2023; Entry of Judgment, 13 April 2023. The record of

trial consists of 11 prosecution exhibits, 12 defense exhibits, 58 appellate exhibits, and 2 court exhibits. The transcript is 678 pages. SSgt Benoit is not confined.

Through no fault of SSgt Benoit, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors. Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information: undersigned counsel currently represents 30 clients and is presently assigned 17 cases pending initial brief before this Court. Nine cases pending before this Court currently have priority over the present case:

1. *United States v. Christensen*, No. ACM 40408 – The record of trial consists of 4 prosecution exhibits, 14 defense exhibits, 3 court exhibits, and 31 appellate exhibits. The appellant is not confined.
2. *United States v. Carlisle*, Misc. Dkt. No. _____, – Undersigned counsel has been detailed to represent the real party in interest, following the Government's notice of Article 62 appeal and anticipates this case will become her second priority based on the timing requirements of this Court's Rules of Practice and Procedure, assuming the Government indeed files an Article 62 appeal.
3. *United States v. Gubicza*, No. ACM 40464 - The record of trial consists of 3 prosecution exhibits, 23 defense exhibits, and 4 appellate exhibits. The transcript is 96 pages. The appellant is confined.
4. *United States v. Galera*, No. ACM 40477 – The record of trial consists of three prosecution exhibits, five defense exhibits, three appellate exhibits, and three court exhibits. The transcript is 174 pages. The appellant is confined.

5. *United States v. Goodwater*, No. ACM 40304 (f rev) – The record of trial consists of 18 prosecution exhibits, 5 defense exhibits, and 26 appellate exhibits. The transcript is 413 pages. The appellant is confined.
6. *United States v. Johnson*, No. ACM 40291 (f rev) – The record of trial consists of 23 appellate exhibits, 28 prosecution exhibits, and 4 defense exhibits. The transcript is 395 pages. The appellant is not confined.
7. *United States v. Riley*, No. ACM 40498 – The record of trial consists of 3 prosecution exhibits, 11 defense exhibits, 3 appellate exhibits, and 1 court exhibit. The transcript is 99 pages. The appellant is not confined.
8. *United States v. Trovatore*, No. ACM 40505 – The record of trial consists of 12 prosecution exhibits, 2 appellate exhibits, and 2 court exhibits. The transcript is 175 pages. The appellant is confined.
9. *United States v. Simmons*, No. ACM 40462 (f rev) – The record of trial consists of 5 prosecution exhibits, 5 defense exhibits, and 9 appellate exhibits. The transcript is 104 pages. A1C Simmons is not confined.

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

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: samantha.golseth@us.af.mil

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 1 March 2024.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: samantha.golseth@us.af.mil

4 March 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) JACQUES D. BENOIT JR., USAF, *Appellant.*	))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40508 Panel No. 2

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

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

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

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 4 March 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SIXTH)**
v.	)	
	)	Before Panel No. 2
Staff Sergeant (E-5) **JACQUES D. BENOIT JR.,** United States Air Force,	)	No. ACM 40508
Appellant.	)	2 April 2024

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

Pursuant to Rules 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Staff Sergeant (SSgt) Jacques D. Benoit Jr., Appellant, hereby moves for a sixth enlargement of time to file assignments of error. SSgt Benoit requests an enlargement for a period of 30 days, which will end on **11 May 2024**. The record of trial was docketed with this Court on 15 August 2023. From the date of docketing to the present date, 231 days have elapsed. On the date requested, 270 days will have elapsed.

On 9-13 January 2023, contrary to his pleas, SSgt Benoit was convicted by officer and enlisted members at a general court-martial at Joint Base Charleston, South Carolina, of one charge and specification of reckless operation of a vehicle resulting in personal injury, in violation of Article 113, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 913, *Manual for Courts-Martial, United States* (2019 ed.) (2019 *MCM*). R. at 609. On 13 January 2023, the military judge sentenced SSgt Benoit to a reprimand, reduction to the grade of E-1, and eight months' confinement. R. at 678. The convening authority took no action on the findings or sentence and the military judged entered the above findings and sentence in the entry of judgment. Convening Authority Decision on Action, 17 March 2023; Entry of Judgment, 13 April 2023. The record of

trial consists of 11 prosecution exhibits, 12 defense exhibits, 58 appellate exhibits, and 2 court exhibits. The transcript is 678 pages. SSgt Benoit is not confined.

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

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

1. *United States v. George*, No. ACM 40397 – Undersigned counsel is drafting the appellant's reply brief, which is due on 3 April 2024.
2. *United States v. Gubicza*, No. ACM 40464 – The record of trial consists of 3 prosecution exhibits, 23 defense exhibits, and 4 appellate exhibits. The transcript is 96 pages. The appellant is confined. Undersigned counsel is reviewing the record of trial and anticipates filing any assignments of error on or before 11 April 2024.
3. Before the United States Court of Appeals for the Armed Forces (CAAF), undersigned counsel has drafted a petition and supplemental brief and is awaiting edits from her leadership in *United States v. Bickford*, No. ACM 40326. The appellant's petition and supplemental brief are due on 9 April 2024.
4. Before the CAAF, undersigned counsel is drafting a petition and supplemental brief in *United States v. Stanford*, No. ACM 40327, which is also due on 9 April 2024.

5. *United States v. Carlisle*, Misc. Dkt. No. 2024-03 – The Government filed the record of trial and notice of its intent to appeal pursuant Article 62, UCMJ, 10 U.S.C. § 862. The Government's supporting brief is due on 7 April 2024. Undersigned counsel represents the appellee and anticipates the appellee's answer will be due on 27 April 2024, or sooner if the Government's brief is filed early. In accordance with Article 62(b), UCMJ, and Rule 20(d) of this Honorable Court's Rules of Practice and Procedure, undersigned counsel will give priority to this appeal.
6. Before the CAAF, undersigned counsel anticipates filing a petition and supplemental brief in *United States v. Kight*, No. ACM 40337, which is due on 8 May 2024. Civilian appellate defense counsel is taking lead on this brief and undersigned counsel has already provided her first round of edits and suggestions.
7. *United States v. Galera*, No. ACM 40477 – The record of trial consists of three prosecution exhibits, five defense exhibits, three appellate exhibits, and three court exhibits. The transcript is 174 pages. The appellant is confined but will soon be released.
8. *United States v. Goodwater*, No. ACM 40304 (f rev) – The record of trial consists of 18 prosecution exhibits, 5 defense exhibits, and 26 appellate exhibits. The transcript is 413 pages. The appellant is confined.
9. *United States v. Johnson*, No. ACM 40291 (f rev) – The record of trial consists of 23 appellate exhibits, 28 prosecution exhibits, and 4 defense exhibits. The transcript is 395 pages. The appellant is not confined.

10. *United States v. Riley*, No. ACM 40498 – The record of trial consists of 3 prosecution exhibits, 11 defense exhibits, 3 appellate exhibits, and 1 court exhibit. The transcript is 99 pages. The appellant is not confined.
11. *United States v. Trovatore*, No. ACM 40505 – The record of trial consists of 12 prosecution exhibits, 2 appellate exhibits, and 2 court exhibits. The transcript is 175 pages. The appellant is not confined.
12. *United States v. Simmons*, No. ACM 40462 (f rev) – The record of trial consists of 5 prosecution exhibits, 5 defense exhibits, and 9 appellate exhibits. The transcript is 104 pages. A1C Simmons is not confined.

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

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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Office: (240) 612-4770
Email: samantha.golseth@us.af.mil

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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2 April 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) JACQUES D. BENOIT JR., USAF, *Appellant.*	))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40508 Panel No. 2

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

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

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

[redacted]

J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

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 2 April 2024.

J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SEVENTH)**
v.	)	
	)	Before Panel No. 2
Staff Sergeant (E-5) **JACQUES D. BENOIT JR.,** United States Air Force,	)	No. ACM 40508
Appellant.	)	1 May 2024

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

Pursuant to Rules 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Staff Sergeant (SSgt) Jacques D. Benoit Jr., Appellant, hereby moves for a seventh enlargement of time to file assignments of error. SSgt Benoit requests an enlargement for a period of 30 days, which will end on **10 June 2024**. The record of trial was docketed with this Court on 15 August 2023. From the date of docketing to the present date, 260 days have elapsed. On the date requested, 300 days will have elapsed.

On 9-13 January 2023, contrary to his pleas, SSgt Benoit was convicted by officer and enlisted members at a general court-martial at Joint Base Charleston, South Carolina, of one charge and specification of reckless operation of a vehicle resulting in personal injury, in violation of Article 113, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 913, *Manual for Courts-Martial, United States* (2019 ed.) (2019 *MCM*). R. at 609. On 13 January 2023, the military judge sentenced SSgt Benoit to a reprimand, reduction to the grade of E-1, and eight months' confinement. R. at 678. The convening authority took no action on the findings or sentence and the military judged entered the above findings and sentence in the entry of judgment. Convening Authority Decision on Action, 17 March 2023; Entry of Judgment, 13 April 2023. The record of

trial consists of 11 prosecution exhibits, 12 defense exhibits, 58 appellate exhibits, and 2 court exhibits. The transcript is 678 pages. SSgt Benoit is not confined.

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

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information: undersigned counsel currently represents 28 clients and is presently assigned 17 cases pending initial brief before this Court. Eight cases currently have priority over the present case:

1. *United States v. George*, No. ACM 40397 – On 18 April 2024, this Honorable Court ordered briefs be filed on a specified issue, not later than 8 May 2024. Undersigned counsel is researching the specified issue and preparing to draft the appellant's brief.
2. *United States v. Gubicza*, No. ACM 40464 – The record of trial consists of 3 prosecution exhibits, 23 defense exhibits, and 4 appellate exhibits. The transcript is 96 pages. The appellant is confined. Undersigned counsel reviewed the record of trial and anticipates filing any assignments of error on or before 11 May 2024. The filing of the appellant's assignments of error was forestalled by undersigned counsel's discovery that the appellant never received a copy of his record of trial. She therefore worked with the Government Trial and Appellate Operations Division to move for a consent EOT. This EOT allowed the Government time to send appellant a copy of his record of trial and undersigned counsel to consult with the appellant after receipt.

3. *United States v. Blackburn*, 40303 (f rev) – Due not later than 29 May 2024, before the United States Court of Appeals for the Armed Forces (CAAF), undersigned counsel will file a petition and supplemental brief. Undersigned counsel needs time to draft the appellant's supplemental brief.
4. *United States v. Galera*, No. ACM 40477 – The record of trial consists of three prosecution exhibits, five defense exhibits, three appellate exhibits, and three court exhibits. The transcript is 174 pages. The appellant is not confined. Undersigned counsel anticipates filing not later than 2 June 2024.
5. *United States v. Goodwater*, No. ACM 40304 (f rev) – The record of trial consists of 18 prosecution exhibits, 5 defense exhibits, and 26 appellate exhibits. The transcript is 413 pages. The appellant is not confined. Undersigned counsel has begun her review.
6. *United States v. Johnson*, No. ACM 40291 (f rev) – The record of trial consists of 23 appellate exhibits, 28 prosecution exhibits, and 4 defense exhibits. The transcript is 395 pages. The appellant is not confined. Undersigned counsel has begun her review.
7. *United States v. Trovatore*, No. ACM 40505 – The record of trial consists of 12 prosecution exhibits, 2 appellate exhibits, and 2 court exhibits. The transcript is 175 pages. The appellant is not confined.
8. *United States v. Simmons*, No. ACM 40462 (f rev) – The record of trial consists of 5 prosecution exhibits, 5 defense exhibits, and 9 appellate exhibits. The transcript is 104 pages. A1C Simmons is not confined.

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

- *Teaching three courses for a new Senior Defense Qualification Course at AFJAGS*. Given that this a new course, which will require the attendees to pass a certification test after the course instruction ends, undersigned counsel needs sufficient time to prepare. Undersigned counsel will be traveling to, and teaching the three courses in person, at Maxwell Air Force Base, Alabama, on 8-9 May 2024.
- *Attending the CAAF CLE Program in-person*. Undersigned counsel is required to attend this program for two full days of in-person instruction on 15-16 May 2024.

Additionally, undersigned counsel has been authorized to take leave on 10 May 2024 and 20-23 May 2024. 24 May 2024 is a family day and 27 May 2024 is a federal holiday.

Since requesting SSgt Benoit's sixth enlargement of time, undersigned counsel filed a petition and supplemental brief at CAAF in *United States v. Bickford*, No. ACM 40326, *United States v. Stanford*, No. ACM 40327, and *United States v. Kight*, No. ACM 40337; appellee's answer to the United States' Appeal under Article 62, UCMJ, in *United States v. Carlisle*, Misc. Dkt. No. 2024-03; a reply brief in *United States v. George*, No. ACM 40397; and a brief on further review in *United States v. Donley*, No. ACM 40350 (f rev). She also prepared for and participated in four moot arguments and attended one argument before this Court.

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

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: samantha.golseth@us.af.mil

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 1 May 2024.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
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3 May 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) JACQUES D. BENOIT JR., USAF, *Appellant.*	))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40508 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. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

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

PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (EIGHTH)**
v.	)	
	)	Before Panel No. 2
Staff Sergeant (E-5) **JACQUES D. BENOIT JR.,** United States Air Force,	)	No. ACM 40508
Appellant.	)	31 May 2024

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

Pursuant to Rules 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Staff Sergeant (SSgt) Jacques D. Benoit Jr., Appellant, hereby moves for an eighth enlargement of time to file assignments of error. SSgt Benoit requests an enlargement for a period of 30 days, which will end on **10 July 2024**. The record of trial was docketed with this Court on 15 August 2023. From the date of docketing to the present date, 290 days have elapsed. On the date requested, 330 days will have elapsed.

On 9-13 January 2023, contrary to his pleas, SSgt Benoit was convicted by officer and enlisted members at a general court-martial at Joint Base Charleston, South Carolina, of one charge and specification of reckless operation of a vehicle resulting in personal injury, in violation of Article 113, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 913, *Manual for Courts-Martial, United States* (2019 ed.) (2019 *MCM*). R. at 609. On 13 January 2023, the military judge sentenced SSgt Benoit to a reprimand, reduction to the grade of E-1, and eight months' confinement. R. at 678. The convening authority took no action on the findings or sentence and the military judged entered the above findings and sentence in the entry of judgment. Convening Authority Decision on Action, 17 March 2023; Entry of Judgment, 13 April 2023. The record of

trial consists of 11 prosecution exhibits, 12 defense exhibits, 58 appellate exhibits, and 2 court exhibits. The transcript is 678 pages. SSgt Benoit is not confined.

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

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information: undersigned counsel currently represents 35 clients and is presently assigned 19 cases pending initial brief before this Court. Five cases currently have priority over the present case:

1. *United States v. Goodwater*, No. ACM 40304 (f rev) – The record of trial consists of 18 prosecution exhibits, 5 defense exhibits, and 26 appellate exhibits. The transcript is 413 pages. The appellant is not confined. His case was docketed before this Court on 20 June 2023 and was a partially litigated general court-martial. Undersigned counsel anticipates completing her review of the appellant's record next week after reviewing the sealed materials and filing his assignments of error no later than 14 June 2024.
2. *United States v. Blackburn*, 40303 (f rev) – Undersigned counsel has filed the appellant's petition at the United States Court of Appeals for the Armed Forces (CAAF), is currently completing the supplemental brief, and will need to incorporate edits following internal review within the Appellate Defense Division for filing by or before 20 June 2024.

3. *United States v. Johnson*, No. ACM 40291 (f rev) – The record of trial consists of 23 appellate exhibits, 28 prosecution exhibits, and 4 defense exhibits. The transcript is 395 pages. The appellant is not confined. His case was redocketed before this Court on 13 July 2023 and was a fully litigated general court-martial. Undersigned counsel is reviewing the appellant's record and anticipates filing his assignments of error no later than 7 July 2024, if this Honorable Court grants her pending motion for a final enlargement of time.
4. *United States v. Trovatore*, No. ACM 40505 – The record of trial consists of 12 prosecution exhibits, 2 appellate exhibits, and 2 court exhibits. The transcript is 175 pages. The appellant is not confined. His case was docketed before this Court on 8 August 2023.
5. *United States v. Simmons*, No. ACM 40462 (f rev) – The record of trial consists of 5 prosecution exhibits, 5 defense exhibits, and 9 appellate exhibits. The transcript is 104 pages. A1C Simmons is not confined. His case was re-docketed before this Court on 15 August 2023.

During the requested enlargement of time, undersigned counsel will also participate in a moot argument and has been authorized to take leave from 21-24 June 2024 to attend a family reunion in another state. 19 June 2024 is a federal holiday and 20 June 2024 is a family day.

Since requesting SSgt Benoit's seventh enlargement of time, undersigned counsel filed appellant's specified issue brief in *United States v. George*, No. ACM 40397; appellant's petition and supplement (before the CAAF) in *United States v. Kight*, No. ACM 40337; and appellant's brief in *United States v. Gubicza*, No. ACM 40464. Undersigned counsel also completed her review of *United States v. Galera*, No. ACM 40477, conducted research, and consulted with the

appellant before the appellant decided to withdraw from appellate review. She further completed her review of *United States v. Matthew*, No. ACM 39796 (f rev), conducted research, and consulted with the appellant and appellant's civilian counsel, before appellant's brief was filed on 28 May 2024.

Undersigned counsel was also recently detailed nine new clients. For each new client, she must locate their contact information which is not always contained within the record of trial and engage in initial communications which include detailed conversations about the appellate process.

In addition, undersigned counsel prepared for, traveled to, and taught three courses at Maxwell Air Force Base, Alabama, on 8-9 May 2024. She also was required to attend the CAAF CLE Program in person on 15-16 May 2024, and was authorized to take leave on 10 May 2024 and 20-23 May 2024. Further, 24 May 2024 was a family day and 27 May 2024 was a federal holiday. She was also tasked with reviewing and providing input on an update to a Department of Air Force Instruction, which she has accomplished. She further prepared for and participated in a moot argument.

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

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: samantha.golseth@us.af.mil

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 31 May 2024.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
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Email: samantha.golseth@us.af.mil

4 June 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) JACQUES D. BENOIT JR., USAF, *Appellant.*	))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40508 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. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

BRITTANY M. SPEIRS, Maj, USAFR
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 4 June 2024.

BRITTANY M. SPEIRS, Maj, USAFR
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40508**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Jacques D. BENOIT JR.	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 3 July 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Ninth) requesting an additional thirty days to submit Appellant's assignments of error brief. The Government opposes the motion.

This court held a status conference on 10 July 2024 to discuss the progress of Appellant's case. Major Brittany M. Speirs represented the Government. Lieutenant Colonel Allen S. Abrams and Major (Maj) Samantha P. Golseth represented Appellant. Maj Golseth stated that although this case was currently her seventh priority, she has a plan to move the case forward in a timely manner. She anticipates, absent unexpected circumstances, needing only one more enlargement of time before filing Appellant's assignments of error brief.

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 10th day of July, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (Ninth) is **GRANTED**. Appellant shall file any assignments of error not later than **9 August 2024**.

FOR THE COURT

[redacted]

OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (NINTH)**
v.	)	
	)	Before Panel No. 2
Staff Sergeant (E-5) **JACQUES D. BENOIT JR.,** United States Air Force,	)	No. ACM 40508
Appellant.	)	3 July 2024

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

Pursuant to Rules 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Staff Sergeant (SSgt) Jacques D. Benoit Jr., Appellant, hereby moves for a ninth enlargement of time to file assignments of error. SSgt Benoit requests an enlargement for a period of 30 days, which will end on **9 August 2024**. The record of trial was docketed with this Court on 15 August 2023. From the date of docketing to the present date, 323 days have elapsed. On the date requested, 360 days will have elapsed.

On 9-13 January 2023, contrary to his pleas, SSgt Benoit was convicted by officer and enlisted members at a general court-martial at Joint Base Charleston, South Carolina, of one charge and specification of reckless operation of a vehicle resulting in personal injury, in violation of Article 113, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 913, *Manual for Courts-Martial, United States* (2019 ed.) (2019 *MCM*). R. at 609. On 13 January 2023, the military judge sentenced SSgt Benoit to a reprimand, reduction to the grade of E-1, and eight months' confinement. R. at 678. The convening authority took no action on the findings or sentence and the military judged entered the above findings and sentence in the entry of judgment. Convening Authority Decision on Action, 17 March 2023; Entry of Judgment, 13 April 2023. The record of

trial consists of 11 prosecution exhibits, 12 defense exhibits, 58 appellate exhibits, and 2 court exhibits. The transcript is 678 pages. SSgt Benoit is not confined.

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

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information: undersigned counsel currently represents 33 clients and is presently assigned 18 cases pending initial brief before this Court. Six cases currently have priority over the present case:

1. *United States v. Johnson*, No. ACM 40291 (f rev) – The record of trial consists of 23 appellate exhibits, 28 prosecution exhibits, and 4 defense exhibits. The transcript is 395 pages. The appellant is not confined. His case was docketed before this Court on 13 July 2023 and was a fully litigated general court-martial. The appellant's brief is fully drafted and currently being reviewed by undersigned counsel's leadership. It will be filed no later than 8 July 2024.
2. *United States v. Goodwater*, No. ACM 40304 (f rev) – The appellant raised four issues in his initial brief. The government's answer is due on 15 July 2024. Undersigned counsel anticipates needing to draft and file a reply brief.
3. *United States v. George*, No. ACM 40397 – Due not later than 1 August 2024, before the United States Court of Appeals for the Armed Forces (CAAF), undersigned counsel

will file a petition and supplemental brief. Undersigned counsel needs time to draft the appellant's supplemental brief.

4. *United States v. Trovatore*, No. ACM 40505 – The record of trial consists of 12 prosecution exhibits, 2 appellate exhibits, and 2 court exhibits. The transcript is 175 pages. The appellant is not confined. His case was docketed before this Court on 8 August 2023. Undersigned counsel is reviewing the record of trial and anticipates filing any assignments of error on or before 2 August 2024.
5. *United States v. Donley*, No. ACM 40350 – Due not later than 5 August 2024, before the United States Court of Appeals for the Armed Forces (CAAF), undersigned counsel will file a petition and supplemental brief. Undersigned counsel needs time to draft the appellant's supplemental brief.
6. *United States v. Simmons*, No. ACM 40462 (f rev) – The record of trial consists of 5 prosecution exhibits, 5 defense exhibits, and 9 appellate exhibits. The transcript is 104 pages. The appellant is not confined. His case was re-docketed before this Court on 15 August 2023, after this Court *sua sponte* remanded his record for correction.

During the requested enlargement of time, 4 July 2024 is a federal holiday and 5 July 2024 is a family day.

Since requesting SSgt Benoit's eighth enlargement of time, undersigned counsel filed appellant's brief in *United States v. Goodwater*, No. ACM 40304 (f rev); and appellant's supplemental brief (before the CAAF) in *United States v. Blackburn*, No. ACM 40303 (f rev). Undersigned counsel also completed her review of *United States v. Johnson*, No. ACM 40291 (f rev), and drafted appellant's brief, in addition to reviewing five records of trial to advise servicemembers regarding their opportunity to file a direct appeal before this Court. She also

prepared for and participated in two moot arguments for two cases. Finally, 19 June 2024 was a federal holiday, 20 June 2024 was a family day, and undersigned counsel was on leave from 21-24 June 2024.

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

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 3 July 2024.

Respectfully submitted,

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8 July 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) JACQUES D. BENOIT JR., USAF, *Appellant.*	))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40508 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 360 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 6 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

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 8 July 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (TENTH)**
v.	)	
	)	Before Panel No. 2
Staff Sergeant (E-5) **JACQUES D. BENOIT JR.,** United States Air Force,	)	No. ACM 40508
Appellant.	)	2 August 2024

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

Pursuant to Rules 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Staff Sergeant (SSgt) Jacques D. Benoit Jr., Appellant, hereby moves for a tenth enlargement of time to file assignments of error. SSgt Benoit requests an enlargement for a period of 30 days, which will end on **8 September 2024**. Undersigned counsel anticipates this will be SSgt Benoit's final request for an enlargement of time. The record of trial was docketed with this Court on 15 August 2023. From the date of docketing to the present date, 353 days have elapsed. On the date requested, 390 days will have elapsed.

On 9-13 January 2023, contrary to his pleas, SSgt Benoit was convicted by officer and enlisted members at a general court-martial at Joint Base Charleston, South Carolina, of one charge and specification of reckless operation of a vehicle resulting in personal injury, in violation of Article 113, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 913, *Manual for Courts-Martial, United States* (2019 ed.) (2019 *MCM*). R. at 609. On 13 January 2023, the military judge sentenced SSgt Benoit to a reprimand, reduction to the grade of E-1, and eight months' confinement. R. at 678. The convening authority took no action on the findings or sentence and the military judged entered the above findings and sentence in the entry of judgment. Convening Authority Decision on Action, 17 March 2023; Entry of Judgment, 13 April 2023. The record of

trial consists of 11 prosecution exhibits, 12 defense exhibits, 58 appellate exhibits, and 2 court exhibits. The transcript is 678 pages. SSgt Benoit is not confined.

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

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information: undersigned counsel currently represents 29 clients and is presently assigned 16 cases pending initial brief before this Court. Two cases currently have priority over the present case:

1. *United States v. Donley*, No. ACM 40350 – Undersigned counsel is drafting the appellant's petition and supplemental brief for filing before the United States Court of Appeals for the Armed Forces (CAAF) on or around Monday, 5 August 2024.
2. *United States v. Simmons*, No. ACM 40462 (f rev) – The record of trial consists of 5 prosecution exhibits, 5 defense exhibits, and 9 appellate exhibits. The transcript is 104 pages. The appellant is not confined. Undersigned counsel is reviewing this record of trial and will file any assignments of error on or before Friday, 9 August 2024.

In addition to the progress reflected in the above priority list, since requesting SSgt Benoit's ninth enlargement of time, undersigned counsel filed briefs in *United States v. Johnson*, No. ACM 40291 (f rev) and *United States v. Goodwater*, No. ACM 40304 (f rev). Today, she also filed a petition and supplemental brief before the CAAF in *United States v. George*, No. ACM 40397, USCA Dkt. No. 24-0206/AF, and a brief before this Court in *United States v. Trovatore*, No.

ACM 40505. She also reviewed one record of trial to advise a servicemember regarding their opportunity to file a direct appeal before this Court.

Finally, during the requested enlargement of time, undersigned counsel has been authorized leave outside of the Continental United States on 11-16 August 2024. Undersigned counsel has factored this leave time into her assessment of the time needed to review SSgt Benoit's case.

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

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

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6 August 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) JACQUES D. BENOIT JR., USAF, *Appellant.*	))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40508 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 over a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 390 days in length. Appellant's over year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 5 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

[redacted]
JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
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(240) 612-4800

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 6 August 2024.

[redacted]
JENNY A. LIABENOW, Lt Col, USAF
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**BRIEF ON BEHALF OF APPELLANT**
v.	)	Before Panel No. 2
Staff Sergeant (E-5) **JACQUES D. BENOIT JR.,** United States Air Force, *Appellant.*	)	No. ACM 40508
	)	9 September 2024

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

Assignments of Error

I.

WHETHER THE FINDING OF GUILTY IS FACTUALLY SUFFICIENT.

II.

WHETHER STAFF SERGEANT BENOIT'S SENTENCE IS INAPPROPRIATELY SEVERE.

III.

WHETHER, AS APPLIED TO STAFF SERGEANT BENOIT, 18 U.S.C. § 922 IS UNCONSTITUTIONAL BECAUSE THE GOVERNMENT CANNOT DEMONSTRATE THAT BARRING HIS POSSESSION OF FIREARMS IS "CONSISTENT WITH THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION."[1]

IV.

WHETHER THE CONVENING AUTHORITY ABUSED HER DISCRETION IN DENYING STAFF SERGEANT BENOIT'S REQUEST TO WAIVE THE AUTOMATIC FORFEITURE OF HIS PAY AND ALLOWANCES FOR THE BENEFIT OF HIS WIFE AND INFANT SON.[2]

[1] *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 24 (2022).
[2] Issue IV is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Statement of the Case

On 9-13 January 2023, at Joint Base Charleston, South Carolina, a general court-martial composed of officer and enlisted members convicted Appellant, Staff Sergeant Jacques D. Benoit Jr. (SSgt Benoit), contrary to his pleas, of one specification of reckless operation of a vehicle resulting in personal injury, in violation of Article 113, Uniform Code of Military Justice (UCMJ),[3] 10 U.S.C. § 913. R. at 609. The military judge sentenced SSgt Benoit to a reprimand, reduction to the grade of E-1, and eight months' confinement. R. at 678. The convening authority took no action on the findings or sentence and the military judged entered the above findings and sentence in the entry of judgment. Convening Authority Decision on Action; Entry of Judgment.

Statement of Facts

At Ali Al Salem, Kuwait, SSgt Benoit worked in Special Handling, where he was responsible for handling "anything that's not cargo . . . explosives, hazardous materials, registered mail, vehicles," the things that general cargo handlers could not handle. R. at 269-70. SSgt Benoit was a subject matter expert in the operability of various types of vehicles and "very technically sound." R. at 284. He was also a "very capable driver," who possessed the character trait of being a safe driver. R. at 285, 484, 498, 509 ("he is a very safe driver"), 529 ("I trust him with my life"). Moreover, it was in Special Handling's realm to drive Polaris Rangers. R. at 298. Polaris Rangers are designed with suspension that makes them capable of traversing uneven terrain and the terrain at Ali Al Salem would not have impacted this. R. at 471.

The members of Special Handling were entrusted to "take care of the job," to include anything that they needed to do with vehicles. R. at 516. SSgt Benoit took his job very seriously.

[3] Unless otherwise noted, all references to the UCMJ and the Rules for Courts-Martial (R.C.M.) are to the *Manual for Courts-Martial, United States* (2019 ed.) (*MCM*).

R. at 285. He possessed good military character and a character for abiding the law. R. at 484 ("very upstanding" military character), 490 ("[e]xceptional and by the book"), 499, 508, 522-23, 529. SSgt Benoit's supervisor, Master Sergeant (MSgt) A.B., worked with SSgt Benoit at Joint Base Charleston and supervised him at Ali Al Salem. R. at 269. In the three years that he had worked with SSgt Benoit, MSgt A.B. never saw any extreme or egregious behavior from SSgt Benoit. R. at 269, 285.

On 14 September 2020, when SSgt Benoit drove a Polaris Ranger during his shift, with his close friend, R.O., his driving was not impeded by inclement weather nor reduced visibility. R. at 302, 639. It was daylight. R. at 333. His faculties were also not impeded—he was not under the influence of alcohol or any illegal substances. R. at 478.

SSgt Benoit took a turn and the Polaris Ranger tipped onto its passenger side, on top of R.O. R. at 308-09, 311. SSgt Benoit called for help and in disbelief he explained that "he wasn't driving that fast." R. at 275-76. Emergency personnel responded and the "whole time, [SSgt Benoit] was asking like, is there anything that we can do, can you help me pick up the side-by-side, I can't pick it up alone it's too heavy. He wanted us to help him move it and help his buddy out." R. at 308. SSgt Benoit appeared to be frantic. R. at 310. He was breathing really hard. *Id*. He was in shock. R. at 311. After the emergency personnel "told him to calm down, look at them, and breathe," SSgt Benoit kept saying "it was an accident. I didn't mean to do it." R. at 308. His hands were on his head and he explained, "he took a turn too hard and it just started to roll and then, he said it looked like his friend, the passenger, tried to jump out as it was tipping and got caught." R. at 308-09. SSgt Benoit was crying, "visibly shaking, pale, and in distress." R. at 326. He appeared to be at his "breaking point." *Id*.

SSgt Benoit was driving in an area known as "Bay 69." R. at 276. Bay 69 is a sizeable area that is removed from, for example, the flightline and living quarters. *See* Pros. Ex. 1. It was a temporary storage area for cargo where some pallets were located.[4] R. at 275; Pros. Ex. 2-3. There were no pedestrians or other drivers in proximity to the area. *See* R. at 275-76 (SSgt Benoit had to call MSgt A.B. to request assistance). This area is sandy, but it was a "dry sand," where your feet would not sink into the sand. R. at 280.

There were no speed limit signs in Bay 69. R. at 365. Where speed limit signs were posted in other areas, they were posted in kilometers.[5] R. at 354. There was little awareness about what the speed limit was in Bay 69. R. at 354 ("Around the perimeter, I want to say it was only 10 [miles an hour]"), 378 (SSgt Benoit's leadership had not addressed speeding in Bay 69), 511. However, those who were aware of the speed limit knew that it was very low. R. at 378, 511. SSgt Benoit's commander volunteered, "On more than one occasion we had been asked if it was potentially possible to raise the speed limit because . . . the speed limit is almost as if you could walk by somebody and he'd be going faster than they would be." *Id*. It was common for members at Ali Al Salem to "speed." R. at 278, 378.

According to the government's expert witness, SSgt Benoit was driving at least 15.38 miles per hour,[6] and his speed was approximated to be "18.1/18.5 miles an hour."[7] R. at 423, 464. The

[4] Contrary to trial counsel's assertion during the government's closing argument, there was no evidence that Bay 69 was a "crowded lot" at the time. R. at 569.
[5] One kilometer equals 0.6214 miles, therefore, a speed posted in kilometers would state a higher number than if posted in miles. *See* 7 Energy Law and Transactions § 3.02 (2024).
[6] This estimate is not reliant on the surface terrain of the accident scene, but rather based on the center of mass of the Polaris Ranger. R. at 423.
[7] The government's expert witness had earlier testified SSgt Benoit's speed would have been "18.68 miles an hour." R. at 426, 464. The expert's approximation of speed is based on measurements taken at the scene. R. at 426.

government's expert witness was unable to analyze the Polaris Ranger that SSgt Benoit drove and there was no evidence of whether it had a working speedometer. *See* R. at 416.

Additional facts are included *infra* as necessary.

Argument

I.

THE FINDING OF GUILTY IS FACTUALLY INSUFFICIENT BECAUSE SSGT BENOIT WAS NOT CULPABLY NEGLIGENT.

Standard of Review

This Court reviews issues of factual sufficiency de novo. Art. 66(d), UCMJ, 10 U.S.C. § 866(d); *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002) (*United States v. Cole*, 31 M.J. 270, 272 (CMA 1990)).

Law and Analysis

This Court cannot affirm SSgt Benoit's finding of guilty because the evidence does not prove he was culpably negligent beyond a reasonable doubt. *See id*. at 399 (this Court "may affirm a conviction only if it concludes, as a matter of factual sufficiency, that the evidence proves appellant's guilt beyond a reasonable doubt") (citing *United States v. Sills*, 56 M.J. 239, 240-41 (2002); *United States v. Turner*, 25 M.J. 324, 324-25 (CMA 1987)). This Court "may affirm only such findings of guilty . . . as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved." Art. 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1). "The test for factual sufficiency is 'whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, [this Court is] convinced of the [appellant]'s guilt beyond a reasonable doubt.'" *United States v. Rodela*, 82 M.J. 521, 525 (A.F. Ct. Crim. App. 2021) (second alteration in original) (quoting *Turner*, 25 M.J. at 325).

"In conducting this unique appellate role, this Court takes 'a fresh, impartial look at the

evidence,' applying 'neither a presumption of innocence nor a presumption of guilt' to 'make [its] own independent determination as to whether the evidence constitutes proof of each required element beyond a reasonable doubt.'" *United States v. Wheeler*, 76 M.J. 564, 568 (A.F. Ct. Crim. App. 2017) (alteration in original) (quoting *Washington*, 57 M.J. at 399), aff'd, 77 M.J. 289 (C.A.A.F. 2018). This Court's assessment "is limited to the evidence produced at trial." *Rodela*, 82 M.J. at 525 (*United States v. Dykes*, 38 M.J. 270, 272 (C.M.A. 1993)).

A. The government must prove culpable negligence.

> The elements of reckless operation of a vehicle are:
>
> 1) That the accused was operating or in physical control of a vehicle, aircraft, or vessel; and
>
> 2) That while operating or in physical control of a vehicle, aircraft, or vessel, the accused-
>
> a) did so in a wanton[8] or reckless manner . . .

MCM, Part. IV, para. 51.b.

> The physical control of a vehicle is reckless when:
>
> it exhibits a culpable disregard of foreseeable consequences to others from the act or omission involved. Recklessness is not determined solely by reason of the happening of an injury, or the invasion of the rights of another, nor by proof alone of excessive speed or erratic operation, but all of these factors may be admissible and relevant as bearing upon the ultimate question: whether, under all the circumstances, the accused's manner of operation or physical control of the vehicle . . . was of that heedless nature which made it actually or imminently dangerous to the occupants, or to the rights or safety of others. It is operating or physically controlling a vehicle . . . with such a high degree of negligence that if death were caused, the accused would have committed involuntary manslaughter, at least.

MCM, Part. IV, para. 51.c(7).

Involuntary manslaughter by culpable negligence demonstrates "a degree of carelessness

[8] Wanton "includes 'reckless,' but . . . may connote willfulness, or a disregard of probable consequences." *MCM*, Part. IV, para. 51.c(8).

greater than simple negligence." *MCM*, Part. IV, para. 57.c(2)(a)(i). It requires "a negligent act or omission accompanied by a culpable disregard of foreseeable consequences to others." *Id.*

Simple negligence, by comparison, is defined as "the absence of due care, that is, an act or omission of a person who is under a duty to use due care which exhibits a lack of that degree of care of the safety of which a reasonably careful person would have exercised under the same or similar circumstances." *MCM*, Part. IV, para. 103.c(2).

This Court applies an objective test to determine whether the consequences of an act are foreseeable. *United States v. McDuffie*, 65 M.J. 631, 635 (A.F. Ct. Crim. App. 2007) (citing *United States v. Riley*, 58 M.J. 305, 311 (C.A.A.F. 2003); *United States v. Oxendine*, 55 M.J. 323, 326 (C.A.A.F. 2001)). "The test for foreseeability is 'whether a reasonable person, in view of all the circumstances, would have realized the *substantial and unjustifiable danger* created by his acts.'" *Oxendine*, 55 M.J. at 325 (quoting *United States v. Henderson*, 23 M.J. 77, 80 (C.M.A. 1986)) (emphasis added).

In *McDuffie*, this Court found the appellant's convictions for involuntary manslaughter and reckless operation of a vehicle were factually insufficient because this Court was "not convinced beyond a reasonable doubt that the appellant acted with a culpable disregard for the foreseeable consequences of his actions when, whether due to his falling asleep or inattentiveness, he crossed the center line into oncoming traffic while operating his vehicle," killing a pregnant woman. 65 M.J. at 632, 637. There, "A forensic crash investigator testified in his opinion, the accident was 'entirely consistent' with someone falling asleep behind the wheel. He also said one could see the upcoming bend in the road for about 1000 feet prior to making the turn." *Id*. The appellant suffered from a sleep apnea condition, however, there was no evidence that the appellant had ever fallen asleep before while driving and he did not appear tired prior to the accident. *Id*. at 636-37. The

appellant's passenger could not remember the appellant doing anything distracting in the car, and they had been going the posted speed limit. *Id*. at 636. The appellant's blood tested negative for alcohol and narcotic drugs. *Id*. This Court determined that the appellant's operation amounted to simple negligence, rather than culpable negligence. *Id*. at 637.

Further, "[E]xceeding the speed limit, . . . standing alone, may show nothing more than simple negligence. . . . Nor may we conclude from the mere occurrence of the accident that it was precipitated by a culpably negligent or wanton operation of the vehicle." *United States v. Smith*, No. ACM 39816, 2021 CCA LEXIS 218, at *32 (A.F. Ct. Crim. App. May 5, 2021) (quoting *United States v. Lawrence*, 18 C.M.R. 855, 857 (A.F.C.M.R. 1955) (citations omitted)).

B. The government did not prove SSgt Benoit was culpably negligent.

Like *McDuffie*, SSgt Benoit tested negative for alcohol and narcotic drugs and the surrounding circumstances of the accident do not prove that he acted with culpable negligence. R. at 478. It was daylight and there was no inclement weather. R. at 302, 333; *Cf*. *Smith*, 2021 CCA LEXIS 218, at *33-35 (finding the appellant culpably disregarded the foreseeable consequences of his actions and created an unjustifiable danger when excessively speeding "as much as 32 miles per hour over the speed limit" on a two-lane residential road, while his view was obstructed by fog or condensation, in a residential area that the appellant would have been aware had "decreased visibility" and caution signs, including "BLIND PERSON AREA").

Moreover, unlike *United States v. Cox*, No. ACM 38885, 2017 CCA LEXIS 169, at *9 (A.F. Ct. Crim. App. Feb. 22, 2017), where this Court found culpable negligence when the appellant was an inexperienced driver who was speeding at over 80 miles per hour and potentially as high as 120 miles per hour, while engaging in high-speed passing on both sides of other vehicles, on a stretch of road with curves and a notable downhill grade, SSgt Benoit was a "very capable"

driver who was not driving at a substantial and unjustifiably dangerous speed. R. at 285. By the government's own estimations, he was driving "18.1/18.5 miles an hour." R. at 464. Even if this was in excess of the speed limit for Bay 69, the speed limit was so low that "you could walk by somebody and . . . be going faster than they would be." R. at 378. As further comparison, the average speed limit in the United States in urban or residential areas is at or above 25 miles per hour. *Urban and Residential Speed Limits by State*, Massachusetts Institute of Technology, https://www.mit.edu/~jfc/urban-speed.html (last visited Sept. 5, 2024). At eighteen miles per hour, it was not foreseeable that a crash would occur, even when turning. The Polaris Ranger was capable of traversing over the terrain at Ali Al Salem. R. at 471. Turning at this speed did not objectively create a substantial and unjustifiable danger. Moreover, SSgt Benoit was driving in a large area with no other moving vehicles or pedestrians nearby. *See* R. at 275-76 (SSgt Benoit had to use his phone to call for help because no one else was nearby); Pros. Ex. 1 (displaying vast size of Bay 69).

A fresh, impartial review of the facts demonstrates the Government did not prove that SSgt Benoit acted with "a degree of carelessness greater than simple negligence." *MCM*, Part. IV, para. 57.c(2)(a)(i). Speeding is not sufficient to demonstrate culpable negligence and neither is the mere occurrence of the accident. *See Smith*, 2021 CCA LEXIS 218, at *32 (*Lawrence*, 18 C.M.R. at 857). Moreover, there are no attending circumstances which support sustaining this conviction.

WHEREFORE, SSgt Benoit respectfully requests this Honorable Court set aside the finding of guilty and sentence and dismiss the Specification and Charge with prejudice.

II.

SSGT BENOIT'S SENTENCE IS INAPPROPRIATELY SEVERE.

Additional Facts

If anyone needed help, SSgt Benoit was one of the first people to step up. R. at 489. It is the way he has been since he was a kid, taking care of things without having to be asked. R. at 637. Since the time he was five years old, "[t]he only thing he ever really talked about was either the military or becoming a police officer. Those were his two dreams." *Id*. SSgt Benoit became a stellar airman who was very passionate about his work and helping others. R. at 651 ("He's the first one to go help you."), 655 ("[H]e's always there for everybody. He always has been."); Pros. Ex. 10-11; Def. Ex. A-L.

SSgt Benoit did not need a sentence to rehabilitate him. R. at 652. He tried to be there for R.O. but he could not. R. at 308 (The "whole time, [SSgt Benoit] was asking like, is there anything that we can do, can you help me pick up the side-by-side, I can't pick it up alone it's too heavy. He wanted us to help him move it and help his buddy out.") "[T]here's nothing that we can say or do that he doesn't say to himself everyday." R. at 652. There was not a day that went by after the accident that he did not think about it. R. at 663. It will "forever haunt [him]." R. at 664.

R.O. was not just another airman, he was SSgt Benoit's close friend. R. at 642, 663. They were inseparable in Kuwait. R. at 663. "[R.O.] was my wingman and friend and I miss him so much." *Id*.

Despite SSgt Benoit's personal loss of R.O. and the weight of his court-martial, "day in and day out he still goes to work. He gives 110%." R. at 661.

Standard of Review

This Court reviews sentence appropriateness de novo. *United States v. Lane*, 64 M.J. 1, 2

(C.A.A.F. 2006).

Law and Analysis

SSgt Benoit's sentence is inappropriately severe and this Court "may affirm only the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved." Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1). Considerations include "the particular appellant, the nature and seriousness of the offenses, the appellant's record of service, and all matters contained in the record of trial." *United States v. Anderson*, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009) (citations omitted).

Under Rule for Courts-Martial (R.C.M.) 1002(f), a court-martial "shall impose punishment that is sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces." In appropriate cases, the sentence should provide "the opportunity for retraining and returning to duty to meet the needs of the service." R.C.M. 1002(f)(2)(G).

SSgt Benoit's reduction in pay grade to E-1 and sentence to eight months of confinement was inappropriately severe, in light of the accidental nature of this offense, the limited duration and scope of the conduct at issue, the personal tragedy that this accident was to SSgt Benoit, and his demonstrated character before and after the accident. This was not a case of driving while intoxicated. R. at 478. The only evidence of impact to good order and discipline was positive development in SSgt Benoit. R. at 652. This sentence was not needed to promote respect for the law, the seriousness of the offense, or deterrence; R.O.'s accidental death had already provided for that. In this case, sentencing SSgt Benoit to eight months of confinement was greater punishment than necessary and inappropriately severe for the facts of this offense.

Moreover, reducing him to the pay grade of E-1 failed to acknowledge that this is an appropriate case for providing the opportunity for SSgt Benoit to return to duty and meet the needs

of the service. SSgt Benoit had been in the Air Force for 7 years and 6 months at the time of trial and reducing him to E-1, meant that he would be subject to high year tenure separation and would not have the opportunity to meaningfully return to duty. Pros. Ex. 10; Department of the Air Force Instruction 36-3211, para. 12.3.1.4., 24 June 2022. SSgt Benoit is someone that experienced airmen and total force members want to work for and with. Def. Ex. A-D. It is their hope they will have the opportunity to continue to serve with him. Def. Ex. B. This Honorable Court should exercise its authority under Article 66, UCMJ, and disapprove his reduction in pay grade to E-1.

WHEREFORE, SSgt Benoit respectfully requests this Honorable Court disapprove his reduction in pay grade to E-1 and confinement in excess of five months.

III.

WHETHER, AS APPLIED TO STAFF SERGEANT BENOIT, 18 U.S.C. § 922 IS UNCONSTITUTIONAL BECAUSE THE GOVERNMENT CANNOT DEMONSTRATE THAT BARRING HIS POSSESSION OF FIREARMS IS "CONSISTENT WITH THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION."

Additional Facts

After his conviction, the government made the determination that SSgt Benoit's case met the firearm prohibition under 18 U.S.C. § 922, without specifically identifying the relevant provision. Entry of Judgment (EoJ); Statement of Trial Results (STR). The government did, however, state SSgt Benoit's conviction did not trigger 18 U.S.C. § 922(g)(9). *Id.*

Standard of Review

This Court reviews questions of jurisdiction, statutory interpretation, and proper completion of post-trial processing de novo. *United States v. Vanzant*, __ M.J. __, No. 22004, 2024 CCA LEXIS 215, at *22 (A.F. Ct. Crim. App. 28 May 2024).

Law and Analysis

The test for applying the Second Amendment is:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Bruen, 597 U.S. at 24 (quoting *United States v. Konigsberg*, 366 U.S. 36, 50, n.10 (1961)).

Presumably, through its the vague annotation the government intended to apply Section 922(g)(1), which bars the possession of firearms for those convicted "in any court, of a crime punishable by imprisonment for a term exceeding one year." Under *Bruen*, Section 922 cannot constitutionally apply to SSgt Benoit. To prevail, the government would have to show a historical tradition of applying an undifferentiated ban on firearm possession, no matter what the convicted offense. Murder or mail fraud, rape or racketeering, battery or bigamy—all would be painted with the same brush. This the government cannot show.

The historical tradition took a narrower view of firearms for criminal acts than that reflected in Section 922:

> [A]ctual "longstanding" precedent in America and pre-Founding England suggests that a firearms disability can be consistent with the Second Amendment to the extent that . . . its basis credibly indicates a present danger that one will misuse arms against others and the disability redresses that danger.

C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun*, 32 HARV. J.L. & PUB. POL'Y 695, 698 (2009) (emphasis added). Prior to 1961, "the original [Federal Firearms Act] had a narrower basis for a disability, limited to those convicted of a 'crime of violence.'" *Id.* at 699. For example, under the 1926 Uniform Firearms Act, a "crime of violence" meant "committing or attempting to commit murder, manslaughter, rape, mayhem, assault to do great bodily harm, robbery, larceny, burglary, and housebreaking." *Id.* at 701 (cleaned up) (citing Uniform Act to

Regulate the Sale & Possession of Firearms (Second Tentative Draft 1926)). SSgt Benoit's conviction falls completely outside these categories. It was not until 1968 that Congress "banned possession and extended the prohibition on receipt to include any firearm that ever had traveled in interstate commerce." *Id.* at 698. "[I]t is difficult to see the justification for the complete lifetime ban for all felons that federal law has imposed only since 1968." *Id.* at 735.

The Third Circuit adopted this logic to conclude that § 922(g)(1) was unconstitutional as applied to an appellant with a conviction for making a false statement to obtain food stamps, which was punishable by five years' confinement. *Range v. AG United States*, 69 F.4th 96, 98 (3rd Cir. 2023), *vacated* (U.S. Jul. 2, 2024) (remanding for further consideration in light of *United States v. Rahimi*, 602 U.S. ___, 2024 U.S. LEXIS 2714 (Jun. 21, 2024)). Evaluating Section 922(g)(1) in light of *Bruen*, the court noted that the earliest version of the statute prohibiting those convicted of crimes punishable by more than one year of imprisonment, from 1938, "applied only to violent criminals." *Id.* at 104 (emphasis in original). It found no "relevantly similar" analogue to imposing lifetime disarmament upon those who committed nonviolent crimes. *Id.* at 103–05.

In addition to the distinction on violence, a felony conviction today is vastly different from what constituted a felony prior to the 20th century, let alone at the time of this country's founding. This is problematic because categorizing crimes as felonies has not only increased, but done so in a manner inconsistent with the traditional understanding of a felony:

> The need [for historical research] is particularly acute given the cancerous growth since the 1920s of "regulatory" crimes punishable by more than a year in prison, as distinct from traditional common-law crimes. The effect of this growth has been to expand the number and types of crimes that trigger "felon" disabilities to rope in persons whose convictions do not establish any threat that they will physically harm anyone, much less with a gun.

Marshall, *Why Can't Martha Stewart Have a Gun*, 32 HARV. J.L. & PUB. POL'Y at 697. Notably, the "federal 'felon' disability--barring any person convicted of a crime punishable by

more than a year in prison from possessing any firearm--is less than [64] years old." *Id*. at 698. In fact, "one can with a good degree of confidence say that bans on convicts possessing firearms were unknown before World War I." *Id.* at 708. On this point alone, the government has not proven that such a ban is consistent with this country's history and tradition.

The *Rahimi* case does not change the analysis. 2024 U.S. LEXIS 2714. In *Rahimi*, the Supreme Court addressed the validity of Section 922(g)(8)(C)(i), which applies once a court has found that a defendant "represents a credible threat to the physical safety of another" and issues a restraining order. *Id.* at *26. The Supreme Court concluded that the historical analysis supported the proposition that when "an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Id.* at *25.

In *Rahimi*, the Supreme Court noted that the "surety" and "going armed laws" that supported a restriction involved "whether a particular defendant likely would threaten or had threatened another with a weapon." *Id.* at *26. The Supreme Court also noted that surety bonds were of limited duration, and that Section 922(g)(8) only applied while a restraining order was in place. *Id.* Additionally, the majority pointed out that Section 922(g)(8) "involved judicial determinations," comparable to the historical surety laws' "significant procedural protections." *Id*. at *23. But the historical analogue breaks down when applied here. This case is utterly unrelated to violence or threats, is devoid of any procedural protection, but carries a firearms ban that will last forever. Ultimately, the Supreme Court itself noted the limited nature of its holding: "We conclude only this: An individual found by a court to pose a credible threat to the physical safety of another may be *temporarily* disarmed consistent with the Second Amendment." *Id.* at *30 (emphasis added). Such a narrow holding cannot support the broad restriction encompassed here.

SSgt Benoit recognizes that *United States v. Williams*, __ M.J. __, No. 24-0015/AR, slip.

op. at 11 (C.A.A.F. 5 Sep 2024), states this Court does not have jurisdiction to correct the firearms prohibition annotation on an STR. However, he preserves this issue in anticipation of the potential for further litigation.

WHEREFORE, SSgt Benoit respectfully requests this Court hold Section 922(g)'s firearm prohibition unconstitutional as applied to him and order correction of the STR and EoJ to indicate that no firearm prohibition applies in his case.

Respectfully submitted,

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APPENDIX

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), SSgt Benoit, through appellate defense counsel, personally requests that this Court consider the following matter:

IV.

THE CONVENING AUTHORITY ABUSED HER DISCRETION IN DENYING STAFF SERGEANT BENOIT'S REQUEST TO WAIVE THE AUTOMATIC FORFEITURE OF HIS PAY AND ALLOWANCES FOR THE BENEFIT OF HIS WIFE AND INFANT SON.

Additional Facts

SSgt Benoit's trial defense counsel requested that the convening authority waive the forfeiture of his pay and allowances to benefit his wife and one-year old son. Submission of Clemency Matters on Behalf of SSgt Benoit. The convening authority denied this request because the forfeitures were "an appropriate sentence for the crime." Convening Authority Decision on Action.

Standard of Review

This Court reviews a convening authority's decision on a deferment request for an abuse of discretion. *See United States v. Sloan*, 35 M.J. 4, 6 (C.M.A. 1992) (citing R.C.M. 1103), *overruled on other grounds, United States v. Dinger*, 77 M.J. 447 (C.A.A.F. 2018). The convening authority's power to waive automatic forfeitures under Article 58b is a matter of clemency under Article 60, and thus "not subject to judicial review." *United States v. Edwards*, 77 M.J. 668, 670 (A.F. Ct. Crim. App. 2018) (*United States v. Gentry*, No. ACM S31361, 2008 CCA LEXIS 454, at *9 (A.F. Ct. Crim. App. Oct. 30, 2008).

Law and Analysis

The convening authority may waive and direct payment of forfeitures of pay and allowances resulting from the operation of Article 58(b), UCMJ. R.C.M. 1103(h)(1). Factors to

consider include, but are not limited to, the following: "The length of the accused's confinement, the number and age(s) of the accused's family members, whether the accused requested waiver, any debts owed by the accused, the ability of the accused's family members to find employment . . . ." R.C.M. 1103(h)(2).

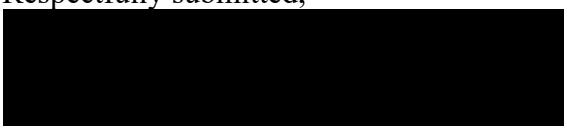
The convening authority abused her discretion in denying SSgt Benoit's request to waive the forfeiture of his pay and allowances for his family. The rational provided was that "it was an appropriate sentence for the crime." Convening Authority Decision on Action. However, providing relief to a military family with an infant child while the accused is confined has no negative impact on good order and discipline. By denying this request, this convening authority fostered hurting instead of healing.

SSgt Benoit respectfully requests this Honorable Court order new post-trial processing.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Government Trial and Appellate Operations Division on 9 September 2024.

Respectfully submitted,



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9 October 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*,	)	ANSWER TO ASSIGNMENTS OF ERROR
v.	)	
	)	ACM 40508
Staff Sergeant (E-5) JACQUES D. BENOIT JR., USAF *Appellant*.	)	Panel No. 2

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

ISSUES PRESENTED

I.

WHETHER THE FINDING OF GUILTY IS FACTUALLY SUFFICIENT?

II.

WHETHER [APPELLANT'S] SENTENCE IS INAPPROPRIATELY SEVERE?

III.

WHETHER, AS APPLIED TO [APPELLANT], 18 U.S.C. §922 IS UNCONSTITUTIONAL BECAUSE THE GOVERNMENT CANNOT DEMONSTRATE THAT BARRING HIS POSSESSION OF FIREARMS IS "CONSISTENT WITH THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION?"

IV.[1]

WHETHER THE CONVENING AUTHORITY ABUSED HER DISCRETION IN DENYING [APPELLANT'S] REQUEST TO WAIVE THE AUTOMATIC FORFEITURE OF HIS PAY AND ALLOWANCES FOR THE BENEFIT OF HIS WIFE AND INFANT SON?

[1] This issue is raised in the appendix pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

STATEMENT OF THE CASE

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

STATEMENT OF FACTS

Beginning in 2019, MSgt AB worked with Appellant at Joint Base Charleston, where MSgt AB was the Non-Commissioned Officer in Charge (NCOIC) of the cargo deployment function. (R. at 269.) In July 2020, he and Appellant deployed together to Ali Al Salem where MSgt AB was Appellant's direct supervisor and the NCOIC of the special handling section. (Id.) The special handling section included "anything that's not general cargo; so, a lot of times, explosives, hazardous materials, registered mail, vehicles, most things that just general cargo can't handle." (R. at 270.)

When his unit arrived at Ali Al Salem, MSgt AB said they received safety briefings, including "a general outline of the speed limits on the flightline," adding that informally "there was talk about how there was a speeding problem around the area." (R. at 277-78.)

MSgt AB stated that Bay 69 on Ali Al Salem was the area used for terminating cargo. (R. at 271.) MSgt AB explained that "terminating cargo" was "anything that, for example, stuff that -- cargo that comes through to Charleston, it no longer moves on for air movement, it's terminated here; so, it's either destined for Charleston or it's going to be trucked out, somebody is going to come and pick it up with their vehicle or some kind of method." For Ali Al Salem, MSgt AB said all the terminating cargo had a final destination either in Ali, Kuwait, or somewhere in the general area in Kuwait. (R. at 274.) MSgt AB said, "the cargo would come off the aircraft and then we would park it over there and we'd get a hold of the user, also known as the customer, to come and pick up whatever it was, whether it be a vehicle or some form of

box." (Id.) MSgt AB said the term "terminating" was used in the career field, in governing AFIs, and that three-levels know what terminating cargo was.

When asked why someone might move cargo that had been terminated, MSgt AB replied, "So, cargo coming out for Ali, Ali Al Salem, we had a system in place for cargo that came off of the aircraft, rep services they would drive it onto whiskey pad and for accountability purposes, they would leave it there and, then, we would come down and we would take account for it and then, we would move it over to the terminating bay, Bay 69." (R. at 275.) MSgt AB said they would move a terminated piece of cargo "[j]ust to get it to it's destination where it would stay until the customer would come and pick it up," adding that terminated cargo would not be moved for recreational purposes because the cargo "doesn't belong to us; that's not what we do. It sits in the area for the user to come - the customer to come and pick it up." (Id.) MSgt AB also said his unit did not do any maintenance on any equipment. (R. at 277.)

On 14 September 2020, MSgt AB received a Facebook message from Appellant that an accident had happened at Bay 69. (R. at 275-76.) Appellant told MSgt AB that SSgt RO was hurt. MSgt AB testified, "I told him don't move, I'm on my way; and, then, right before I hung up, [Appellant] said that he wasn't driving that fast." (R. at 276.)

When MSgt AB arrived at the scene, he saw an all-terrain vehicle (ATV) flipped over. When MSgt AB asked Appellant where SSgt RO was, Appellant "gave me the hand gesture that he's died, that he's gone." (Id.) MSgt AB testified that he did not know why Appellant was driving the ATV, which was a terminated vehicle. (R. at 296.) MSgt AB also stated the incident occurred during shift, and that there was no inclement weather or issues with visibility. (R. at 302.)

On cross-examination, MSgt AB agreed that Bay 69 consisted of bump, sandy terrain, that was not smooth, was not paved, and had many divots. (R. at 280.) MSgt AB also agreed that after the incident, the cargo and pallets were removed from Bay 69 and an attempt was made to smooth the surface. (R. at 281.) MSgt AB testified that he did not see any posted speed limit in Bay 69.

When asked what rules were in place for terminally parked vehicles, MSgt AB said, "I mean, cargo that's parked terminally, we don't perform maintenance on it, we don't take it and drive it to the chow hall. It's there for the user to come and pick up." (R. at 282.) MSgt AB did acknowledge that sometimes cargo was moved around in Bay 69 "in a way that it was easier for us to get it and for the users to come and pick it up." (Id.)

MSgt AB also testified that Appellant was "very technically sound" and agreed that he seemed like a very capable driver. (R. at 285.) MSgt AB agreed that Appellant took his job seriously and would not play around when it came to his job. (Id.)

SrA JB and SSgt JV, both Security Forces members, were called to the incident on 14 September 2020. (R. at 305.) When they arrived, SrA JB saw the flipped Polaris ATV and Appellant pacing around. (R. at 307.) When SrA JB got to the vehicle, he saw SSgt RO trapped under the vehicle and saw that "there was nothing to be done to render medical care to the individual." (Id.) SrA JB detailed the positioning of SSgt RO's body and said, "there was no response, no movement at all; so, we deemed him deceased." (R. at 308.)

SrA JB said Appellant said he "didn't mean to do it" and "was repeatedly saying it was an accident," adding, "he was very like stressed out, hands on his head and he kept saying that they were just messing around." (Id.) Appellant told SrA JB that "he took a turn too hard and it

started to roll and then, he said that it looked like his friend, the passenger, tried to jump out as it was tipping and got caught when it was on the earth." (R. at 308-09.)

SSgt JV[2] also testified about arriving onto the scene with SrA JB and seeing the overturned Polaris ATV. (R. at 322-23.) SSgt JV testified that Appellant told him, "I'm not going to lie, we were out here joyriding and it just flipped." (R. at 323.) SSgt JV said Appellant was "visibly shaking, pale, and in distress," was crying and appeared scared. (R. at 326.)

On cross-examination, SSgt JV acknowledged that during a safety investigation, he stated that Appellant had told him that he was joyriding but that it was an accident. (R. at 328.) SSgt JV further acknowledged that in another interview during the safety investigation, SSgt JV stated that Appellant told him that "he was just fucking around." (R. at 329.) SSgt JV acknowledged that during a ground accident investigation board, SSgt JV stated that Appellant told him that "[w]e were our here messing around." (Id.) Finally, SSgt JV acknowledged that during an interview with Appellant's trial defense counsel, he stated that Appellant told him that "[w]e're out here messing around doing donuts or laps." (R. at 330.)

SMSgt CO was the superintendent of the Aerial Port Squadron at Ali Al Salem and testified to various trainings and briefings members of his unit received when they arrived at Ali Al Salem. (R. at 353.) When asked if members were briefed on speeding, SMSgt CO stated, "I vividly remember when everyone came in, because it was their first big rotation and they did talk about speeding then." (Id.) SMSgt CO recalled speed limits signs being in kilometers and that speed limits were between five and 15 but stated that Bay 69 did not have a speed limit sign posted. (R. at 354.)

[2] At the time of Appellant's trial, SSgt JV had separated from the Air Force.

For terminated vehicles, SMSgt CO stated that the vehicles would sometimes be used out of necessity. (R. at 356.) For example, SMSgt CO said, "sometimes we had to use a Humvee to tow, because there's not much tow vehicles out there." (Id.) SMSgt CO said they would also sometimes have to do maintenance on a vehicle, but added that, "We don't like doing that, just because it's not our vehicle, but sometimes you have to do it." However, to either use or perform maintenance on a vehicle, approval was required. (Id.) When asked, "And if you have to use an ATV for an official purpose, what would you have to do before you used it," SMSgt CO responded, "They would have to route it up to one of the leadership positions." (Id.)

When asked if he remembered Appellant routing up a request to operate the ATV in question, SMSgt CO responded, "Negative." (Id.) While SMSgt CO could not "100% say that [Appellant] knew" about this policy, he stated that it was a "known policy" and that he would have expected Appellant to have known of the policy. (R. at 357.) When asked if it was customary in the career field to not move terminated cargo, SMSgt CO responded, "That's correct. If it's something terminated, we're waiting for the user to come pick it up, there's really no requirement to move it." (R. at 367.) SMSgt CO said this was the custom at Ali Al Salem. (Id.)

When SMSgt CO arrived on the scene on the day in question, he sat next to Appellant on a tailgate. SMSgt CO said Appellant was rambling. SMSgt CO said, "The only thing I remember is he said, 'It was stupid. It was stupid.'" (R. at 358.)

Lt Col TR was the squadron commander of Appellant's squadron at Ali Al Salem. (R. at 375.) Lt Col TR said his unit had no maintenance function for cargo being received off of planes and agreed that it would surprise him if members of his squadron were troubleshooting vehicles

or performing maintenance. (R. at 375-76.) When asked if it would be an authorized use of their time, Lt Col TR said, "It wouldn't be normal, no." (R. at 376.)

Lt Col TR stated the Polaris ATV driven by Appellant on the day of the incident was not a unit-owned vehicle but was instead a terminated vehicle. (R. at 376-77.) When asked if his members would have reason on the daily to move terminally parked vehicles, Lt Col TR said, "Certainly not daily, no," and added that if the Polaris needed to be moved to a different position, "somebody would've told them to move it over there." (R. at 377.)

For briefings upon arrival to Ali Al Salem, Lt Col TR said one briefing discussed speeding, stating, "If, for no other reason because there's other areas around the base, not the specific one that we're talking about where it was highlighted to us on several occasions that folks had been speeding, we would be controlling that." (R. at 378.) When asked about the published speed limit in Bay 69, Lt Col TR responded as follows:

> I don't recall and I'm fairly certain . . . I know it was very low. Very low, like single digit low and that was the speed in the yard, in fact. On more than one occasion we had been asked if it was potentially possible to raise the speed limit because we had spoken to folks about slowing down on several occasions because there was speed limit signs I don't believe in Bay 69 itself, but around the yards that the speed limit is almost as if you could walk by somebody and he'd be going faster than they would be.

(R. at 378.)

SSgt TP was a Security Forces major accident inspection officer who reconstructed major accidents. (R. at 381-82.) SSgt TP investigated the incident at issue by first taking measurements of tire markings, the ATV's position, and indentations on the ground, and explained how he used these measurements to reconstruct the accident. (R. at 384-87.) SSgt TP compiled all of his measurements into a report. (R. at 387.)

Mr. GM was an expert accident reconstructionist with over 30-years' experience, including conducting between 800 to 1,000 fatal accident reconstructions. (R. at 411.) For this case, Mr. GM determined the speed required for the Polaris ATV to tip over was 15.38 miles per hour. (R. at 423.)

Using the measurements by SSgt TP, Mr. GM stated that the turn radius of the Polaris in this case at the time it tipped over was "tight," adding, "[b]ased on the photographs that I saw and the tire, the travel path and the marks left in the roadway for the tire pass and how it decreased at the end abruptly, it was a radius that exceeded the ability of the Polaris Ranger to maintain stability." (R. at 424.) Mr. GM further stated, "The speed estimate based on the radius that was measured at the scene was 18.68 miles per hour." (R. at 426.) Mr. GM later said, "Based on the radius at the scene it was I believe 18 miles – 18.1/18.5 miles an hour." (R. at 464.) Mr. GM also agreed that he performed his calculations in the most conservative means possible to weigh in favor of Appellant. (Id.)

SSgt JP, a defense witness, agreed that the speed limit by Bay 69 was pretty slow and agreed that if you were following the speed limit, that people might jog by you while you were driving. (R. at 511.) SSgt JP said he typically drove between 5 and ten miles per hour in Bay 69. (R. at 515.)

The military judge took judicial notice of the 386th Air Expeditionary 1 Wing Instruction 31-218, Motor Vehicle Supervision, dated 26 August 2019, paragraph 4.1.1., which states that speed in parking lots and unpaved areas on "The Rock" is to be limited to 10 kilometers per hours/6 miles per hours (unless otherwise posted). (R. at 562.) The military judge also took judicial notice of Department of Defense Instruction 4500.36, Acquisition, Management, and Use of Non-Tactical Vehicles (NTVs), dated December 11, 2012 and incorporating Change 4,

dated 31 December 2019, paragraph 4, which states NTVs shall be used for official purposes only. (Id.)

Appellant was charged and convicted by a member panel of recklessly operating a vehicle, the Polaris ATV, by attempting a sharp turn at an excess speed in sandy terrain and did thereby cause the vehicle to roll and injure SSgt RO. (ROT, Vol. 1, Charge Sheet; R. at 609.) Appellant was acquitted of a dereliction of duty charge that alleged Appellant "willfully failed to refrain from operating a terminally parked vehicle for an unlawful purpose . . . and that such dereliction of duty resulted in the death of [SSgt RO]." (Id.)

Additional facts necessary to the disposition of this case are discussed in the specific issues below.

ARGUMENT

I.

APPELLANT'S CONVICTION IS FACTUALLY SUFFICIENT.

Standard of Review

This Court reviews issues of factual sufficiency de novo. United States v. Washington, 57 M.J. 394, 399 (C.A.A.F. 2002).

Law[3]

The test for factual sufficiency "is whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses," this Court is "convinced of the accused's guilt beyond a reasonable doubt." United States v. Reed, 54 M.J.

[3] Because Appellant's offense occurred prior to 1 January 2021, the prior factual sufficiency review standards under Article 66 apply.

37, 41 (C.A.A.F. 2000) (quoting United States v. Turner, 25 M.J. 324, 325 (C.M.A. 1987)). This Court's review of the factual sufficiency of evidence for findings is limited to the evidence admitted at trial. Article 66(d)(1), UCMJ; United States v. Beatty, 64 M.J. 456, 458 (C.A.A.F. 2007) (citations omitted).

In the performance of this review, "the Court of Criminal Appeals applies neither a presumption of innocence nor a presumption of guilt." Washington, 57 M.J. at 399. While this Court must find that the evidence was sufficient beyond a reasonable doubt, it "does not mean that the evidence must be free of conflict." United States v. Galchick, 52 M.J. 815, 818 (A.F. Ct. Crim. App. 2000) (citation omitted).

As charged, the elements of reckless operation of a vehicle, Article 113, UCMJ, as instructed to the members by the military judge, are as follows:

> (1) That [at] or near Ali Al Salem Air Base, Kuwait, on or about 14 September 2020, in Bay 69, the location in which terminally parked cargo is located, [Appellant] was in physical control of a vehicle, to wit: a Polaris Ranger;
>
> (2) That [Appellant] physically controlled the vehicle in a reckless manner by attempting a sharp turn at an excess speed in sandy terrain and did thereby cause said vehicle to roll;
>
> (3) That [Appellant] thereby caused the vehicle to injure SSgt RO.

(R. at 559.)

The military judge then defined various terms within those elements are follows:

> "Reckless" means a degree of carelessness greater than simple negligence.
>
> "Simple negligence" is the absence of due care; that is, an act by a person who is under a duty to use due care which demonstrates a

> lack of care for the safety of others which a reasonably careful person would have used under the same or similar circumstances.
>
> "Recklessness," on the other hand, is a negligent act combined with a culpable disregard for the foreseeable consequences to others.
>
> "Reckless" means that the accused's manner of control of the vehicle was, under all the circumstances, of such a heedless nature that it made it actually or imminently dangerous to the occupant or to the rights or safety of another. Recklessness is not determined solely by reason of the happening of an injury, or the invasion of the rights of another, nor by proof alone of excessive speed or erratic operation, although, all these factors may be relevant as bearing upon the question of recklessness.
>
> In deciding whether the accused physically controlled the vehicle in a reckless manner, you must consider all the relevant evidence, including, but not limited to the condition of the surface on which the vehicle was operated, the time of day or night, traffic conditions, condition of the vehicle as known by the accused, the degree that the vehicle had or had not been maintained as known by the accused, and speed.

(R. at 559-60.)

This Court applies an objective test in determining whether the consequences of an act are foreseeable. United States v. McDuffie, 65 M.J. 631, 635 (A.F. Ct. Crim. App. 2007) (*citing* United States v. Riley, 58 M.J. 305, 311 (C.A.A.F. 2003); United States v. Oxendine, 55 M.J. 323, 326 (C.A.A.F. 2001)).

Analysis

The panel at Appellant's court-martial correctly found him guilty of reckless operation of a vehicle, and there is no credible basis in the record for this Court to disturb Appellant's just verdict and sentence. Here, the United States presented the panel with ample evidence to convince him of Appellant's guilt beyond a reasonable doubt. This Honorable Court should equally be convinced and affirm Appellant's convictions.

On appeal, only one of the elements of this offense is at issue: Whether Appellant was reckless in the operation of the vehicle?[4] That answer is clearly in the affirmative. Appellant claims the Government in this case did not prove his actions were "culpably negligent beyond a reasonable doubt." (App. Br. at 5.) Appellant also attempts to compare his case with the facts of McDuffie and United States v. Cox, ACM 3885, 2017 CCA LEXIS 169 (A.F. Ct. Crim. App. 22 February 2017. Regarding Appellant's reliance on Cox, the appellant in Cox was charged with involuntary manslaughter due to culpable negligence. However, this Court noted that "recklessness, in the context of operating a vehicle," and "'culpable negligence' employ the same operative language." Cox, at *6-7.

As shown below, the Government provided ample evidence to show Appellant recklessly operated the Polaris ATV.

a. Appellant's Reckless Acts

Appellant first tries to divert responsibility by claiming he was not driving "at a substantial and unjustifiably dangerous speed" and that his it was "not foreseeable that a crash would occur."[5] However, the overwhelming evidence in this case points squarely to Appellant acting with recklessness by driving the Polaris ATV on 14 September 2020, therein endangering himself and SSgt RO. He did this all with a "culpable disregard" for the foreseeable consequences of his actions - namely, that on sandy terrain, while out "messing around," "joyriding," doing "donuts and laps," and driving at a speed over three times the speed limit,

[4] Appellant's argument centers squarely on arguing Appellant was not culpably negligent in this case. There is no question that Appellant physically controlled the vehicle on the day in question and that SSgt RO was injured.

[5] *See* App. Br. at 9.

Appellant could foreseeably lose control and flip the vehicle due to his high rate of speed and tight turning, crash, and cause injuries to either himself or SSgt RO.

To start, the surface on which Appellant chose to go out on a "joyride" in an ATV at a deployed, forward-operating location was not one with paved roads, smooth surfaces, or anything resembling an ordinary driving surface. Instead, Appellant operated the ATV on sandy, uneven terrain with divots. As the military judge instructed the members, all relevant evidence of Appellant's control of the vehicle must be considered in determining recklessness, including "the condition of the surface on which the vehicle was operated." (R. at 560.) Yet, this is but the first factor showing Appellant's recklessness on that September day.

Next, Appellant's own statements show his reckless use of the vehicle. In the aftermath of the incident, Appellant told SrA JB that he was just "messing around" and that he "took a turn too hard." (R. at 308.) He told SSgt JV that he was "out joyriding" and that he was either "fucking around" or "messing around" while doing donuts and laps in the sandy terrain. (R. at 323, 329-30.) Here, instead of leaving the terminal ATV parked, Appellant decided to take it on a "joyride" around Bay 69 by doing donuts, laps, and taking tight turns "too hard." The operation of this vehicle for these reasons and in this manner, especially in a deployed, forward-operating environment, on sandy, uneven terrain, showed Appellant's acts were of "such a heedless nature that it made it actually or imminently dangerous to the occupant or to the rights or safety of another."

Further, considering Appellant's unit did not own the ATV he operated, Appellant had no way of knowing whether the ATV had been properly maintained or was even in working order. As MSgt AB testified, terminated cargo "doesn't belong to us . . . [i]t sits in the area for . . . the customer to come and pick it up." (R. at 275.) As the military judge instructed the members, all

relevant evidence of Appellant's control of the vehicle must be considered, including the "condition of the vehicle as known by [Appellant]" and "the degree that the vehicle had or had not been maintained as known by the accused." (R. at 560.)

Then comes the matter of Appellant's speed, which again shows Appellant's recklessness. As Appellant acknowledges in his brief, he was driving 18.1 to 18.5 miles an hour. (App. Br. at 9, *citing* R. at 464.) What Appellant does not mention is that Mr. GM stated that these calculations were performed in the most favorable light for Appellant. (R. at 464.) Yet, even in the light most favorable for Appellant, his speed was *still* more than *three times* the speed limit for unpaved areas of Ali Al Salem. (R. at 562.) While the military judge did instruct that speed alone did not equate to recklessness, the military judge also said that all relevant evidence, including speed, must be considered and may be relevant to the question of recklessness. Here again, Appellant driving at speeds more than three times the speed limit, together with the other factors previously discussed, were of "such a heedless nature that it made it actually or imminently dangerous to the occupant or to the rights or safety of another." (R. at 560.)

Still, Appellant attempts to downplay his excessive speed by stating "the speed limit was so low that 'you could walk by somebody and . . . be going faster than they would be.'" (App. Br. at 9, *citing* Lt Col TR's testimony, R. at 378.) However, Appellant's argument hurts his case rather than helps it. Here, the speed limits on Ali Al Salem were low to prevent the very thing that Appellant caused – a vehicle wreck that resulted in injuries to, and ultimately the death of, an airman.

Moreover, testimony showed that speeding on base was a well-known issue and cause for concern. Yet, despite the concerns about speeding and despite the low speed limits in place to

prevent speeding and accidents, Appellant still decided to take a terminally parked ATV out for a joyride on sandy terrain to do donuts and laps, all while driving three times over the speed limit.

Finally, Appellant attempts to compare the speed limit at Ali Al Salem, which he states was "so low," to the "average speed limit in the United States in urban or residential areas." (App. Br. at 9.) Yet, Ali Al Salem is not an urban or residential area in the United States. Instead, it is a military air base located in Kuwait that consists of unpaved, sandy terrain being used by military vehicles transporting military vehicles, weapons, explosives, and other materials. Considering the dangerous nature of the mission and location of Ali Al Salem, conditions certainly not present on the average American neighborhood street, a reasonable person would expect a lowered speed limit on Ali Al Salem and understand why driving in a slow, orderly fashion was essential to ensure the safety and well-being of personnel at the base. Appellant's attempt to compare the speed limits of Ali Al Salem to a normal American residential street lacks merit and should easily be dismissed.

In sum, Appellant's actions met the definition of "recklessness" as his actions involved a "negligent act combined with a culpable disregard for the foreseeable consequences of others." (R at 559-60.) His manner of control of the ATV was, "under all the circumstances, of such a heedless nature that it made it actually or imminently dangerous to the occupant or to the rights or safety of another." (Id.)

Further, while Appellant argues that "speeding is not sufficient to demonstrate culpable negligence and neither is the mere occurrence of the accident,"[6] Appellant fails to recognize the

[6] *See* App. Br. at 9.

litany of factors showing his recklessness, including the following, which are each discussed above:

> 1. The ATV was terminally parked and not owned by Appellant's unit;
>
> 2. Since the ATV was terminally parked and not owned by the unit, Appellant had no way of knowing if the ATV was properly maintained or suitable for operation;
>
> 3. Appellant took the ATV to "mess around" in a self-proclaimed "joyride" that consisted of laps and donuts and tight turns;
>
> 4. Appellant drove at speeds over three times the speed limit;
>
> 5. Appellant drove at these speeds on bumpy, unsmooth sandy terrain on Ali Al Salem, a deployment, forward-operating environment.

Here, considering all of these factors (not just Appellant's speeding), the evidence is clear that Appellant operated the ATV in a reckless manner.

b. Appellant's Reliance on McDuffie and Cox

Appellant next attempts to compare his case with the facts of McDuffie and Cox. In United States v. McDuffie, 65 M.J. 631 (A.F. Ct. Crim. App. 2007), this Honorable Court found the following:

> The evidence of record does not convince this Court that the appellant's actions rose to the level of culpable negligence required to sustain a conviction for involuntary manslaughter or reckless driving. The appellant, despite having been diagnosed with sleep apnea four years prior to this accident, was licensed to drive in Europe and, in fact, his Air Force job required him to drive large vehicles on the flight line. The Air Force was presumably in possession of the appellant's medical records and aware of the appellant's condition. There was no evidence the appellant was likely to fall asleep on this particular trip or had ever done so before while driving. There was no evidence the appellant was not following his CPAP treatment.

> The evidence did show he was not doing anything to distract his attention from operating his car, and was not speeding. In fact, SSgt R said the appellant did not appear tired, and they engaged in conversation 5 to 10 minutes prior to the accident and were listening to music.

Id. at 637.

Based on these facts, it is quite difficult to see how Appellant's case is comparable. Appellant's case does not involve sleep apnea or any medical condition of any kind. McDuffie involved a driver who was not only following his medical treatment, but also following standard traffic and road laws. Most notably, that appellant was not speeding and was driving on a paved road in a normal fashion. In stark contrast, Appellant was speeding, driving on sandy, uneven terrain, and was "joyriding" by doing donuts and laps.

The actual outcome of McDuffie also cuts against Appellant's case. As determined by this Court, the incident in McDuffie was an accident that was not influenced by the appellant's medical condition, prior warnings, or speed. Therefore, this Court found no culpable negligence and, thus, no involuntary manslaughter. However, this Court still found the appellant failed in his duty to operate his vehicle with due care for the safety of other drivers when he crossed into oncoming traffic (thus, a finding of simple negligence), and found him guilty of negligent homicide. McDuffie, 65 M.J. at 637.

Even in McDuffie, "due care" was not met and that appellant ended with a conviction for negligent homicide. Appellant's driving in this case is much more egregious, as shown above. If simply crossing over the center line while driving the speed limit amounted to simple negligence, Appellant's case requires a much greater amount of criminal liability - namely recklessness.

Likewise, Appellant seems to argue that his acts were not as egregious as the facts of Cox. (*See* App. Br. at 8.) Yet, there are multiple similarities between the two. Both were speeding (though the appellant in Cox was not going three times the speed limit), both involved unfavorable road conditions (in Cox, hills and curves; here, sandy and uneven terrain with divots), and both involved abnormal driving (in Cox, weaving in and out of traffic; here, "joyriding" while doing donuts and laps). Additionally, where in Cox, the appellant was shown to be an inexperienced driver, the record here is silent on whether or not Appellant had any experience driving an ATV, especially in an erratic, "donut and laps" fashion.

Further, there are additional reckless factors in play here that were not present in Cox. For example, the appellant in Cox was operating on a paved highway in the United States. In contrast, Appellant was operating in a deployed location, at a forward-operating base, and not on a road, but instead on unpaved, sandy terrain. Thus, just as the appellant in Cox, Appellant operated his vehicle with a "culpable disregard for the foreseeable consequences to others."

On that fateful September afternoon, Appellant, by "messing around," "joyriding" and doing donuts in an ATV, on sandy, uneven terrain, at three times the speed limit, all in a deployed environment at a forward-operating base, committed a negligent act accompanied by a culpable disregard for the foreseeable consequences to SSgt RO. Such acts, when viewed in light of human experience, had the easily foreseeable result of Appellant losing control and flipping the vehicle due to his high rate of speed, crashing, and causing injuries to either himself or SSgt RO.

When weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, this Court should be convinced beyond a reasonable doubt that the evidence is factually sufficient to sustain Appellant's conviction for reckless operation of

a vehicle. The panel correctly found Appellant guilty of this offense, and the United States is confident on this record that this Court will reach the same conclusion.

II.

APPELLANT'S APPROVED SENTENCE IS APPROPRIATE.

Standard of Review

This Court reviews sentence appropriateness de novo. United States v. Lane, 64 M.J. 1, 2 (C.A.A.F. 2006).

Law

"Sentence appropriateness involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves." United States v. Healy, 26 M.J. 394, 395 (C.M.A. 1988). This Court should affirm sentences it finds correct in law and fact and determines, based on the entire record, should be approved. Article 66(d), UCMJ. This Court also has the power to disapprove a mandatory minimum sentence. United States v. Kelly, 77 M.J. 404, 408 (C.A.A.F. 2018).

In order to determine the appropriateness of the sentence, this Court must consider: (1) the particular appellant, (2) the nature and seriousness of the offense, (3) the appellant's record of service, and (4) all matters contained in the record of trial. United States v. Amador, 61 M.J. 619, 626 (A.F. Ct. Crim. App. 2005) (*citing* United States v. Snelling, 14 M.J. 267, 268 (C.M.A. 1982); United States v. Alis, 47 M.J. 817, 828 (A.F. Ct. Crim. App. 1998)).

This determination is separate from an act of clemency, i.e., treating an accused with less rigor than he deserves due to a consideration of mercy. The service appeals courts are not

authorized to engage in exercises of clemency. Healy, 26 M.J. at 396; *see also* United States v. Lacy, 50 M.J. 286, 288 (C.A.A.F. 1999).

Analysis

Convicted of reckless operating a vehicle that resulted in injuries to SSgt RO that ultimately killed him, Appellant claims his sentence is "inappropriately severe." (App. Br. at 11.) Appellant believes his offense does not warrant his sentence "in light of the accidental nature of this offense, the limited duration and scope of the conduct at issue, the personal tragedy that this accident was to [Appellant], and his demonstrated character before and after the accident." (Id.)

Appellant is mistaken. To start, Appellant's sentence is appropriate. Looking at the facts and circumstances of his crime, as well as Appellant personally, a sentence that includes eight months confinement and a reduction in rank is deserved. As described throughout this brief, Appellant recklessly operated a vehicle in a deployed, forward-operating location by "mess[ing] around," "joyrid[ing]," and doing donuts, laps, and tight turns. All of this occurred on sandy, uneven terrain at speeds up to three times over the speed limit. And his actions then led to an easily foreseeable crash that left SSgt RO with injuries that immediate killed him. All of this was entirely avoidable. While Appellant may well suffer from the effects of his reckless acts, that does not absolve him of responsibility and punishment.

Likely understanding the effects of the incident on Appellant, the military judge sentenced Appellant to a rather lenient, but legally supportable, sentence of just eight months confinement and a reduction in rank. Notably, the military judge's sentence did not include a punitive discharge. Further, the military judge's confinement sentence of just eight months was a 55-percent reprieve from the maximum allowable sentence of 18 months.

While the incident was indeed tragic and a personal tragedy for Appellant himself, Appellant's statement that the "only evidence of impact to good order and discipline was positive development in [Appellant]" is unconvincing. (App. Br. at 11.) Here, Appellant's actions certainly impacted good order and discipline at Ali Al Salem. He operated a terminal ATV, one that was not owned by his unit, by taking a joyride at speeds three times the legal limit. In doing so, he violated multiple policies, and did so by speeding, a known issue and concern throughout Ali Al Salem. In everything he did, Appellant exhibited a deliberate disregard for the foreseeable outcome of his behavior. And that behavior hurt good order and discipline by killing another airman. Appellant's actions showed neither good order nor discipline in his reckless acts. For this alone, Appellant deserved his reduction in rank to E-1.

Further, Appellant's reckless acts led to SSgt RO's injuries, which resulted in his immediate death. Another service member lost his life as the result of an act of profound and senseless stupidity. A young man lost his life and the promising future he had ahead of him. The Air Force lost an airman, a mother lost her son, and a sister lost a brother. While Appellant may not have intended for this to happen, the terrible costs of his actions still deserved some punishment. Such punishment was necessary to deter Appellant and others from engaging in such reckless behavior in the future. Appellant's relatively lenient sentence was sufficient and appropriate to do that.

Overall, Appellant's record shows he has received awards, decorations and performance reviews consistent with an airman who had served seven years at the time of his court-martial, yet shows nothing exceedingly remarkable or stellar that would warrant overlooking his wholly reckless act in September 2020.

All things considered, Appellant's sentence amounts to a lawful and legally supportable sentence. Evaluating the facts and circumstances in the record of Appellant's case, the seriousness of his offense, his service record, his particular character and rehabilitative potential, and in consideration of the entire record, this Honorable Court should leave his sentence undisturbed.

III.

THIS COURT DOES NOT HAVE JURISDICTION TO DECIDE WHETHER THE FIREARM PROHIBITION IN THE GUN CONTROL ACT OF 1968, 18 U.S.C. § 922, IS CONSTITUTIONAL BECAUSE IT IS A COLLATERAL ISSUE NOT SUBJECT TO REVIEW UNDER ARTICLE 66, UCMJ. EVEN IF THIS COURT DID POSSESS JURISDICTION TO REVIEW THIS ISSUE, AIR FORCE INSTRUCTION REQUIRED THE STATEMENT OF TRIAL RESULTS AND ENTRY OF JUDGMENT TO ANNOTATE APPELLANT'S CRIMINAL INDEXING. FINALLY, 18 U.S.C. § 922 IS CONSTITUIONAL AS APPLIED TO APPELLANT.

Additional Facts

The Staff Judge Advocate's first indorsement to the Statement of Trial Results (STR) and Entry of Judgment (EOJ) in Appellant's case contains the following statements: "Firearm Prohibition Triggered Under 18 U.S.C. § 922: Y[es.]" (*STR* and *EOJ*, ROT, Vol. 1.)

Standard of Review

The scope and meaning of Article 66, UCMJ, is a matter of statutory interpretation, which is reviewed de novo. United States v. Lepore, 81 M.J. 759, 760-61 (A.F. Ct. Crim. App. 2021).

Law and Analysis

The Gun Control Act of 1968 makes it unlawful for a person to possess a firearm if he has been, *inter alia*, "convicted in any court of a crime punishable by imprisonment for a term exceeding one year." 18 U.S.C. § 922(g)(1), (g)(6).

Appellant asserts that 18 U.S.C. § 922 is unconstitutional as applied to him. (App. Br. at 12.) Appellant asserts that any prohibitions on the possession of firearms imposed runs afoul of the Second Amendment, U.S. Const. Amend. II, the Supreme Court's interpretation of that amendment in N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022). Appellant's constitutional argument is without merit and is a collateral matter beyond this Honorable Court's authority to review.

- ***This Court lacks jurisdiction to determine whether Appellant should be criminally indexed in accordance with 18 U.S.C. § 922.***

This Court recently held in its published opinion in United States v. Vanzant, 84 M.J. 671 (A.F. Ct. Crim. App. 2024), that 18 U.S.C. § 922(g)'s firearm prohibitions and the criminal indexing requirements that follow that statute are collateral consequences of the conviction, rather than elements of the findings or sentence, so they are beyond the scope of this Court's jurisdiction under Article 66, UCMJ. Id. at 681.

Our superior Court agreed with this Court in its recent United States v. Williams opinions. *See* United States v. Williams, 2004 CAAF LEXIS 501, __ M.J. __, at *12-15 (C.A.A.F. 5 September 2024). There, our superior Court held that the portion of an STR related to the Lautenberg Amendment (which asked if Appellant had been convicted of a misdemeanor crime of domestic violence under 18 U.S.C. §922(g)(9)) "not part of the sentence of findings" and therefore the Army Court of Criminal Appeals (ACCA) "lack[ed] the authority to act upon

it." Id. at *12-13. Our superior Court also held a service court could not rely on Article 66(d)(2) because that "only authorizes a CCA to provide relief when there has been an 'error or excessive delay in the processing of the court-martial," and our superior Court noted there "was no error in processing." Id. at *14. Our superior Court concluded, "In our view, neither Article 66(d)(1)(A), UCMJ, nor Article 66(d)(2), UCMJ, granted the ACCA authority to modify the Lautenberg Amendment annotation in . . . the STR. The ACCA's modification was an ultra vires act that exceeded its statutorily defined authority to act with respect to the findings and sentence." Id. at *14-15.

The same holds true in this case. Here, the question in the STR related to firearm prohibitions are not elements of Appellant's findings or sentence, and there were no errors or excessive delay in the processing of Appellant's court-martial after the entry of judgment. Accordingly, consistent with Williams and this Court's own holding in Vanzant, this Court should find Appellant's issue is beyond this Court's jurisdiction under Article 66 and deny it.

- ***The Statement of Trial Results and Entry of Judgment were prepared correctly in accordance with the applicable Air Force Instruction.***

Even if this Court has jurisdiction to review this issue, Appellant was found guilty of reckless operation of a vehicle, in violation of Article 113, UCMJ, which is a crime punishable by imprisonment for a term exceeding one year, that is, by 1.5 years (18 months) of confinement. (Manual for Courts-Martial, pt. IV, para. 51.d (2019 ed.)). Thus, the Staff Judge Advocate followed the appropriate Air Force regulations in signing the first indorsement to the STR and EOJ. DAFI 51-201, dated 14 April 2022, paras. 29.30, 29.32.

- ***The Firearm Prohibition in the Gun Control Act of 1968 is Constitutional as Applied to Appellant.***

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend. II. But as the Supreme Court has repeatedly emphasized, "the right secured by the Second Amendment is not unlimited." District of Columbia v. Heller, 554 U.S. 570, 626 (2008); *see* N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 20 (2022); McDonald v. City of Chicago, 561 U.S. 742, 786 (2010) (plurality opinion). "[T]he right was *never* thought to sweep indiscriminately." United States v. Rahimi, 602 U.S. _, 144 S. Ct. 1889, 1897, Docket No. 22-915, 2024 U.S. LEXIS 2714 (21 June 2024) (slip op.). The history of firearms regulation reflects "a concern with keeping firearms out of the hands of categories of potentially irresponsible persons, including convicted felons," Barrett v. United States, 423 U.S. 212, 220 (1976), and "an intent to impose a firearms disability on *any* felon based on the fact of conviction." Lewis v. United States, 445 U.S. 55, 62 (1980) (emphasis added). Firearms prohibitions for felons are "presumptively lawful." Rahimi, 144 S. Ct. at 1902 (citing Heller, 554 U.S. at 626). Because Appellant has been convicted by a general court-martial of a serious crime, application of 18 U.S.C. 922(g) to him is constitutional.

Because Appellant's constitutional argument is without merit and is a collateral matter beyond this Honorable Court's authority to review, the Court should deny the assignment of error.

IV.[7]

THE CONVENING AUTHORITY'S DECISION ON APPELLANT'S REQUEST TO WAIVE MANDATORY FORFEITURES IS NOT SUBJECT TO JUDICIAL REVIEW.

Additional Facts

Within a memorandum entitled *Submission of Clemency Matters*, Appellant, through his counsel, requested the convening authority, pursuant to Article 58(b), "grant [his] clemency petition to waive the automatic forfeitures for six months." (ROT, Vol. 3.)

In her *Convening Authority Decision on Action*, the convening authority denied the request, stating, "I deny the waiver because the adjudge sentence, to include the automatic forfeitures resulting from the adjudged confinement, is an appropriate sentence for the crime of which [Appellant] was convicted." (ROT, Vol. 1.)

Standard of Review, Law and Analysis

As Appellant correctly notes in his brief,[8] this Court in United States v. Edwards determined that a convening authority's decision on waiver of mandatory forfeitures under Article 58b, UCMJ, is a matter of clemency under Article 60(c), and thus "not subject to judicial review." Edwards, 77 M.J. 668, 670 (A.F. Ct. Crim. App. 2018) (*citing* United States v. Gentry, No. ACM S31361, 2008 CCA LEXIS 454, at *9 (A.F. Ct. Crim. App. 30 Oct. 2008) (unpub. op.); United States v. Quintin, 47 M.J. 798, 801 (N.M. Ct. Crim. App. 1998)). Indeed, it is well settled that this court is not authorized to engage in exercises of clemency. Healy, 26 M.J. at 395-96.

[7] This issue is raised in the appendix pursuant to Grostefon.
[8] *See*. App. Grostefon Br. at 1.

Notably, Appellant's issue does not question the processing of his request, but only the convening authority's decision to deny it. As noted above, that decision is not subject to judicial review.

Yet even if this Court did review the convening authority's decision, Appellant has failed to show any prejudicial error. *See* United States v. Wheelus, 49 M.J. 283 (C.A.A.F. 1998) (When error is raised with respect to the convening authority's exercise of clemency, an appellant must allege prejudicial error and show what he would do to resolve the error if given such an opportunity.) Here, Appellant, while claiming the "convening authority abused her discretion," provides no legal analysis, case law, or precedent showing any error in the convening authority's decision. Instead, Appellant only makes superfluous statements that "providing relief to a military family with an infant child while [Appellant] is confined has no negative impact on good order and discipline" and that the convening authority "fostered hurting instead of healing." (App. Grostefon Br. at 2.)

These statements, however, allege no error, let alone prejudicial error. Thus, even if this Court decides to review this case (even though waiver of mandatory forfeitures under Article 58b, UCMJ, is a matter of clemency under Article 60(c), and not subject to judicial review), this Court should decline Appellant's requested relief due to his failure to provide any credible evidence that the convening authority's decision was based on an unlawful reason.

CONCLUSION

WHEREFORE, this Court should deny Appellant's claims and affirm the findings and sentence.

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate counsel, and the Air Force Appellate Defense Division on 9 October 2024 via electronic filing.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME FOR REPLY BRIEF**
v.	)	
	)	Before Panel No. 2
Staff Sergeant (E-5) **JACQUES D. BENOIT, JR.**, United States Air Force, *Appellant.*	)	No. ACM 40508
	)	9 October 2024

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

Pursuant to Rules 23.3(m)(3) and 23.3(m)(6) of this Honorable Court's Rules of Practice and Procedure, Staff Sergeant (SSgt) Jacques D. Benoit, Jr., Appellant, hereby moves for an enlargement of time to file a reply brief to the Government's answer brief, filed 9 October 2024. SSgt Benoit's reply brief is currently due on 16 October 2024. SSgt Benoit respectfully requests an enlargement of time for a period of six days, which will end on 22 October 2024. Undersigned counsel requests an enlargement of six days because undersigned counsel will be on leave outside of the local area for six days, 9-14 October 2024, during the time to reply. Upon return from leave, SSgt Benoit's reply brief will be undersigned counsel's first priority.

The record of trial was docketed with this Court on 15 August 2023. From the date of docketing to the present date, 421 days have elapsed. On the date requested, 434 days will have elapsed.

On 9-13 January 2023, contrary to his pleas, SSgt Benoit was convicted by officer and enlisted members at a general court-martial at Joint Base Charleston, South Carolina, of one charge and specification of reckless operation of a vehicle resulting in personal injury, in violation of Article 113, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 913, Manual for Courts-Martial, United States (2019 ed.) (2019 MCM). R. at 609. On 13 January 2023, the military judge sentenced

SSgt Benoit to a reprimand, reduction to the grade of E-1, and eight months' confinement. R. at 678. The convening authority took no action on the findings or sentence and the military judged entered the above findings and sentence in the entry of judgment. Convening Authority Decision on Action; Entry of Judgment. SSgt Benoit is not confined. He has been advised of his right to a timely appeal and this request for an enlargement of time and agrees with this request for an enlargement of time.

WHEREFORE, SSgt Benoit respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

[redacted]

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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 9 October 2024.

Respectfully submitted,

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15 October 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) JACQUES D. BENOIT JR., USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME FOR REPLY BRIEF No. ACM 40508 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 to file a Reply to the United States' Answer to Assignments of Error.

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

[redacted]

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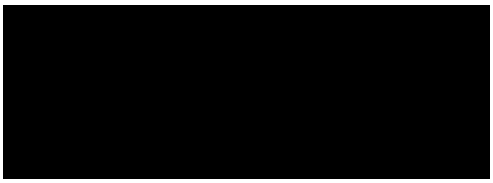
CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 15 October 2024.



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S REPLY BRIEF**
v.	)	Before Panel No. 2
Staff Sergeant (E-5) **JACQUES D. BENOIT, JR.,** United States Air Force, *Appellant.*	)	No. ACM 40508 22 October 2024

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

Appellant, Staff Sergeant (SSgt) Jacques D. Benoit, Jr., by and through his undersigned counsel pursuant to Rule 18(d) of this Honorable Court's Rules of Practice and Procedure, files this reply to the Government's answer, dated 9 October 2024 (Ans.). In addition to the arguments in his opening brief, filed on 9 September 2024 (App. Br.), SSgt Benoit submits the following arguments for the issues listed below.

I.

THE FINDING OF GUILTY IS FACTUALLY INSUFFICIENT BECAUSE SSGT BENOIT WAS NOT CULPABLY NEGLIGENT.

This Court cannot affirm SSgt Benoit's finding of guilty because the evidence does not prove that he was culpably negligent—and therefore physically controlling a vehicle in a reckless manner—beyond a reasonable doubt. *Manual for Courts-Martial, United States* (2019 ed.) (*MCM*), Part. IV, para. 51.b., 51.c(7). To be guilty of this offense, SSgt Benoit must have culpably disregarded a substantial and unjustifiable danger created by his acts. *United States v. Oxendine*, 55 M.J. 323, 325 (C.A.A.F. 2001) (quoting *United States v. Henderson*, 23 M.J. 77, 80 (C.M.A. 1986)); *MCM*, Part. IV, para. 51.c(7), 57.c(2)(a)(i). The circumstances here instead demonstrate that a reasonable person would not have realized that SSgt Benoit's acts created a substantial and

unjustifiable danger.

A. Driving in Bay 69 was not dangerous.

The Government repeatedly declares this accident occurred in a deployed and "dangerous" location—presumably to inflame the passions of this Court—but this is a red herring. Ans. at 13, 15, 16, 18. There is no evidence in the record that driving in a deployed location made his acts more likely to create a substantial and unjustifiable danger. Just as there is no evidence in the record that this was a "dangerous" location. To the contrary, the evidence highlights why driving in Bay 69 did not amount to "such a high degree of negligence" as to be reckless. *MCM*, Part. IV, para. 51.c(7).

Bay 69 is a sizeable area that is removed from the flightline and living quarters. *See* Pros. Ex. 1 (showing satellite image of Bay 69). While Bay 69 is used as a temporary storage area, there was no evidence that it was crowded at the time of the accident or that there was anything located in Bay 69 that made it dangerous. *See* R. at 272 (Trial counsel agreed that Pros. Ex. 1 provided orientation but the image itself did not accurately depict Bay 69 at the time of the accident). The location of this accident is one of many facts that distinguishes SSgt Benoit's case from cases like *United States v. Smith*, No. ACM 39816, 2021 CCA LEXIS 218 (A.F. Ct. Crim. App. May 5, 2021). There this Court determined the appellant culpably disregarded the foreseeable consequences of his actions when he drove "47 to 57 miles per hour," which was "as much as 32 miles per hour over the speed limit," on a two-lane road, while his view was obstructed by fog or condensation, in a residential area that the appellant would have been aware had "decreased visibility" and caution signs, including "BLIND PERSON AREA." *Id*. at *7, *32. SSgt Benoit was not driving in a residential area nor was he near any other drivers or pedestrians. *See* R. at 275-76 (SSgt Benoit had to call MSgt A.B. to request assistance). He was driving in the daylight,

and there was no inclement weather or reduced visibility. R. at 302, 333. Further, there were no warning or speed limit signs related to driving in this area. R. at 281, 497-98, 508.

B. SSgt Benoit was familiar with the sandy and relatively flat terrain in Bay 69.

Driving on sandy terrain does not inherently create a substantial and unjustifiable danger to the occupants of the vehicle. This Court can see the exact terrain at issue in Prosecution Exhibits 2 and 3. SSgt Benoit was not driving over sand dunes. Pros. Ex. 2-3. Though there were small divots, this was a relatively flat and sandy area. *Id*. SSgt Benoit was familiar with driving in this area. *See* R. at 298 (members of Special Handling, such as SSgt Benoit, drove vehicles to Bay 69). He was driving a Polaris Ranger, a vehicle that was designed with suspension that made it capable of traversing over uneven terrain, and the terrain where the accident occurred would not have impacted this. R. at 471 ("[T]he surface that I saw, may – it may have been uneven and had some deficiencies in it but not enough to effect [sic] it . . . .").

C. SSgt Benoit had expertise with this type of vehicle.

SSgt Benoit is a subject matter expert in the operation of various types of vehicles and "very technically sound." R. at 284. He was familiar with driving vehicles, like the Polaris Ranger. R. at 298, 517. While the Government asserts SSgt Benoit had no way of knowing the condition of the Polaris Ranger, it is possible that he was aware of the vehicle's working condition because it was part of his responsibility to drive vehicles, such as the Polaris Ranger, from the flightline area ("Whiskey Pad") to Bay 69. R. at 283, 298, 516. Moreover, there is no evidence that SSgt Benoit did not know the condition of the vehicle.

D. SSgt Benoit is a "very capable" and "safe" driver with "good military character."

Multiple witnesses provided testimony of SSgt Benoit's character as a safe driver and person of "good military character," which the Government did not contest at trial or on appeal.

Master Sergeant (MSgt) A.B. was SSgt Benoit's direct supervisor. R. at 269. At the time of SSgt Benoit's court-martial, MSgt A.B. had served in the Air Force for "[a]bout 12 years, eight months." *Id*. MSgt A.B. had held several roles, to include serving as a section chief, noncommissioned officer in charge, and senior controller. *Id*. MSgt A.B. knew SSgt Benoit for three years when they worked together at Joint Base Charleston, and he deployed with SSgt Benoit in 2020. R. at 269-70. MSgt A.B. testified that SSgt Benoit was a "very capable driver," and he had never seen any "extreme or egregious behavior from Benoit." R. at 285.

MSgt (Ret.) C.K. served for twenty-four years in the Air Force, and he had done everything there was to do in air freight. R. at 480-81. MSgt C.K. had worked in special handling and had been an instructor for air transportation, a subject-matter expert for AFCENT locations, section chief, and superintendent, for example. R. at 481. MSgt C.K. worked with SSgt Benoit daily and had worked with him for approximately three years. R. at 481-82. MSgt C.K. opined SSgt Benoit has a character for safe driving and a "very upstanding military character." R. at 484.

Technical Sergeant (TSgt) K.C. worked with and had known SSgt Benoit for four years. R. at 488. At the time of his testimony, TSgt K.C. had served for fifteen years in the Air Force. *Id*. TSgt K.C. had been responsible for fleet services, meaning "the whole squadron of vehicle, ops, special handling, [passenger] terminal." *Id*. TSgt K.C. was an experienced non-commissioned officer; he had deployed a total of six times to "Afghanistan, Syria, Qatar, [and] Kuwait." *Id*. He interacted with SSgt Benoit daily when they worked together in special handling. R. at 490. TSgt K.C. unequivocally opined that SSgt Benoit's military character was "exceptional and by the book." *Id*.

SSgt D.D. worked with and had known SSgt Benoit for approximately five years. R. at 494. SSgt D.D. had been in the Air Force for almost seven years when he testified. R. at 493. He

had worked in fleet services and special handling. R. at 494. He had also deployed to Qatar and Kuwait. *Id*. SSgt D.D. interacted with SSgt Benoit daily, both at work and outside of work. R. at 495. SSgt D.D. drove with SSgt Benoit regularly and believed SSgt Benoit "would always be [a safe driver]." R. at 495, 498.

SSgt J.P. worked with and had known SSgt Benoit for approximately seven years. R. at 505. SSgt J.P. had been in the Air Force for seventeen years and had deployed eight times: four times to Al Udeid, one time to Afghanistan, one time to Iraq, and twice to Ali Al Salem. *Id*. SSgt J.P. had supervised SSgt Benoit, deployed with him, and driven with him. R. at 506, 508. He opined that SSgt Benoit's military character was "awesome," and that SSgt Benoit "is a very safe driver." R. at 508-09.

SSgt D.T. worked with and had known SSgt Benoit for approximately four years. R. at 522. SSgt D.T. had been in the Air Force for over six years, and at the time of his testimony, he was serving as a military training leader. R. at 520. Prior to serving in that role, he worked with SSgt Benoit daily and spent time with him both at work and outside of work. R. at 521. SSgt D.T. opined SSgt Benoit had a good military character. R. at 522.

TSgt P.H. worked with and had known SSgt Benoit for approximately six years. R. at 526. TSgt P.H. had been in the Air Force "a little under 12 years." R. at 526. He had served in air transportation for "approximately 9 years" before deciding to retrain into the religious affairs career field. *Id*. TSgt P.H. first met SSgt Benoit when SSgt Benoit filled in for another Airman on a deployment. *Id*. SSgt Benoit deployed with TSgt P.H. for approximately seven months and interacted with him "[a]lmost every day". R. at 527. Following their deployment, TSgt P.H. and SSgt Benoit continued to interact weekly, bringing their families together for dinners. *Id*. TSgt P.H. rode as SSgt Benoit's passenger "[h]undreds of times. More times than I can count."

R. at 528. TSgt P.H. opined SSgt Benoit has an "excellent" military character and "excellent" character for safe driving. R. at 529. TSgt P.H. explained "I trust him with my life." *Id*.

There were a large number of impressive Airmen testifying on SSgt Benoit's behalf, and each witness vouched for his character, swearing under oath that SSgt Benoit is a safe driver and that he possesses good military character. This evidence should provide this Court with a reasonable doubt as to whether, in view of all the circumstances—including SSgt Benoit's character—he culpably disregarded a substantial and unjustifiable danger. *See United States v. Hirst*, No. 202300208, 2024 CCA LEXIS 372 (N-M. Ct. Crim. App. Sep. 4, 2024) (recognizing the potential weight of character evidence when assessing the factual sufficiency of an appellant's conviction). As this Court conducts a fresh, impartial assessment of the facts of this case, it simply does not fit that SSgt Benoit would have acted with such a high degree of negligence to foreseeably create a substantial and unjustifiable danger, with one of his closest friends in the passenger seat.

E. SSgt Benoit was not driving while impaired.

There is no evidence that SSgt Benoit's driving was impaired. Security Forces personnel responded to the scene quickly and spoke with SSgt Benoit in the first moments after the accident. R. at 310, 322-23. Shortly thereafter, MSgt A.B. responded to the scene and talked to SSgt Benoit (after having already spoken to SSgt Benoit on the phone). R. at 275. MSgt A.B. was SSgt Benoit's supervisor and had worked with him for approximately two years prior to this accident and presumably would have noticed if SSgt Benoit appeared to be under the influence of any intoxicating substances. R. at 269. However, not a single witness mentioned any suspicion of him being under the influence of any intoxicating substance. Following the accident, SSgt Benoit's blood and urine were tested and found to be negative. R. at 349, 478.

F. SSgt Benoit's driving did not objectively create a substantial and unjustifiable danger.

The Government asserts repeatedly that SSgt Benoit was "doing donuts and laps." Ans. at 12-13, 15-18, 20. This hearsay evidence was not admitted for the truth of the matter asserted, but rather only as a prior inconsistent statement by SSgt J.V. R. at 327-30 (confronting SSgt J.V. with his earlier inconsistent statements), 563 (instructing the members that they could not use SSgt J.V.'s "earlier statements as evidence of the truth of the matters contained in the prior statements"). This Court must reject the Government's improper invitation to consider this evidence for the truth of the matter on appeal, when it was not considered for the truth of the matter during SSgt Benoit's court-martial.[1] *See United States v. Collier*, 67 M.J. 347, 355 (C.A.A.F. 2009) ("Members are presumed to follow a military judge's instructions to consider evidence for a proper purpose").

SSgt Benoit made a turn while driving, and in trying to reconcile what happened, he allegedly opined it must have been too hard. R. at 308. Even if SSgt Benoit made a turn too hard and, for argument's sake, that error amounts to an absence of due care that a reasonably careful person would have exercised, his conviction cannot be affirmed, because it is not sufficient for there to be an absence of due care. *MCM*, Part. IV, para. 51.c(7), 57.c(2)(a)(i), 103.c(2). Simple negligence is not sufficient. *Id*. To be sufficient, this Court must instead find "such a high degree of negligence that if death were caused, the accused would have committed involuntary manslaughter, at least." MCM, Part. IV, para. 51.c(7). To find such a high degree of negligence

[1] This Court should also consider giving no weight to SSgt J.V.'s in-court testimony because (1) responding to the scene was traumatic for SSgt J.V. and he experienced "tunnel vision," potentially impacting his memory (R. at 325-26); and (2) SSgt J.V. made several prior inconsistent statements regarding SSgt Benoit's alleged statements, which is concerning given his training and eight years of experience as a Security Forces member (R. at 324, 327-30).

requires finding that SSgt Benoit culpably disregarded "the substantial and unjustifiable danger created by his acts." *Oxendine*, 55 M.J. at 325 (quoting *Henderson*, 23 M.J. at 80); *MCM*, Part. IV, para. 57.c(2)(a)(i). But here, any error by SSgt Benoit does not equate to such a high degree of negligence. *MCM*, Part. IV, para. 51.c(7). SSgt Benoit was not engaging in high-speed passing of other vehicles. *Cf. United States v. Cox,* No. ACM 38885, 2017 CCA LEXIS 169, at *9 (A.F. Ct. Crim. App. Feb. 22, 2017). He was not driving in a residential area. *Cf. Smith*, 2021 CCA LEXIS 218, at *4. He was driving in a large area where the only evidence of anything nearby was a stack of pallets that was located many feet away. Pros. Ex. 3. Moreover, SSgt Benoit was not driving something less capable such as a golf cart, but instead a vehicle that was specifically designed with suspension that made it capable of handling uneven terrain. R. at 471. Here, though the ground had divots, it was relatively flat, and SSgt Benoit was driving at a speed that is lower than the average residential speed limit in the United States. *Urban and Residential Speed Limits by State*, Massachusetts Institute of Technology, https://www.mit.edu/~jfc/urban-speed.html (last visited Oct. 20, 2024).

G. SSgt Benoit's speed did not objectively create a substantial and unjustifiable danger.

The Government estimates that SSgt Benoit was driving "18.1/18.5 miles an hour." R. at 464. A reasonable person would not expect this speed to result in substantial and unjustifiable danger. *Oxendine*, 55 M.J. at 325 (quoting *Henderson*, 23 M.J. at 80). Even if this was three times the speed limit for the area, SSgt Benoit's commander made it clear that the speed limit in Bay 69 was incredibly low, volunteering that "[o]n more than one occasion we had been asked if it was potentially possible to raise the speed limit because . . . the speed limit is almost as if you could walk by somebody and he'd be going faster than they would be." R. at 378. Further, SSgt Benoit's

speed limit was not only less than the average residential speed limit in the United States,[2] but it was also less than the average speed limit for unpaved roads in the United States[3] and within the range of safe speed limits for turning left[4] (which is the direction SSgt Benoit turned[5]).

While SSgt Benoit may have been speeding in reference to the incredibly low speed limit, a reasonable person would not expect a speed around eighteen miles an hour to result in substantial and unjustifiable danger. This again differentiates SSgt Benoit's case from cases like *Cox,* because SSgt Benoit was driving around eighteen miles per hour, not speeding at over 80 miles per hour and potentially as high as 120 miles per hour, while engaging in high-speed passing on both sides of other vehicles on a curvy and down sloped road. 2017 CCA LEXIS 169, at *9. While still under the stress of the accident in this case, SSgt Benoit—an experienced, safe, and capable driver—explained that he did not think he was "driving that fast." R. at 276. SSgt Benoit was not driving that fast. He was driving within what is the "ideal [left] turn speed . . . 85-90% of the time" and well within what is considered a safe speed limit for unpaved roads. *See supra* at n.4 and n.5.

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[2] *Urban and Residential Speed Limits by State*, Massachusetts Institute of Technology, https://www.mit.edu/~jfc/urban-speed.html (last visited Oct. 20, 2024).

[3] The speed limit for unpaved roads is 35 miles per hour (mph) in Alabama, 35 mph in Georgia, 40 mph in South Carolina, and 55 mph in Wyoming. U.S. Department of Transportation National Highway Traffic Safety Administration, *Summary of State Speed Laws*, 12th ed. https://www.nhtsa.gov/sites/nhtsa.gov/files/summary_state_speed_laws_12th_edition_811769.pdf. Further, the speed limit on an unpaved road cannot be *less than* 25 mph in Montana, while in Vermont it cannot be *less than* 35 mph. *Id*. As an additional reference point, in Tennessee the speed limit for *school buses* on unpaved roads is 35 mph. *Id*.

[4] http://www.drivingtips.org/steering-a-car.html (last visited Oct. 20, 2024) (explaining the "ideal speed in the middle of a left turn is usually 15-20 [mph]" and while the "ideal turn speed will vary depending on the width of the road, degree of the turn and weather conditions, [15-20 mph] will be accurate about 85-90% of the time.")

[5] R. at 391; Pros. Ex. 2.

Conclusion

Taking a fresh and impartial look at the evidence admitted at trial, this Court cannot be convinced beyond a reasonable doubt that SSgt Benoit culpably disregarded the foreseeable consequences to others because, in view of all the circumstances, it was not foreseeable that his acts would create a substantial and unjustifiable danger. *Oxendine*, 55 M.J. at 325 (quoting *Henderson*, 23 M.J. at 80). SSgt Benoit was a sober and very capable driver with good military character, who was driving a capable vehicle in good weather, and a reasonable person would not have realized that his turning at approximately eighteen miles per hour in a large, sandy, and relatively flat terrain, far away from any other moving cars or pedestrians, created a substantial and unjustifiable danger.

WHEREFORE, SSgt Benoit respectfully requests this Honorable Court set aside the finding of guilty and sentence and dismiss the Specification and Charge with prejudice.

II.

STAFF SERGEANT BENOIT'S SENTENCE IS INAPPROPRIATELY SEVERE.

SSgt Benoit's sentence is inappropriately severe because his case is the appropriate case to provide "the opportunity for retraining and returning to duty to meet the needs of the service." R.C.M. 1002(f)(2)(G). The Government offered no argument as to why SSgt Benoit's case is not the appropriate case to provide this opportunity, and given the unique facts here, there is no reasonable argument against returning him to duty.

At his sentencing, SSgt Benoit was not just an average Airman who had served for seven years. Ans. at 21. He was an Airman who suffered personal loss because R.O. was his close friend. R. at 639, 652, 663-64. Unlike the average Airman, SSgt Benoit carried the weight of this with him every day, but "day in and day out he still [went] to work. He [gave] 110%." R. at 661.

Through this tragic accident, SSgt Benoit became an even greater asset to the Air Force; he took action to do better. R. at 652 (In the defense's sentencing case, TSgt K.C. testified "I've realized that now he's always got the regs on his phone. He's constantly looking for the answers right away and helping people find it faster."). Moreover, his unit and the Air Force do not need to see SSgt Benoit be reduced in rank to promote respect for the law, the seriousness of the offense, or deterrence, because R.O.'s death speaks louder than any sentence could.

Significantly, reducing SSgt Benoit to the grade of E-1 provided no meaningful opportunity for him to return to duty because it subjects him to high year of tenure separation. Pros. Ex. 10; Department of the Air Force Instruction 36-3211, para. 12.3.1.4., 24 June 2022. SSgt Benoit's reduction in rank is "greater than necessary[] to promote justice and to maintain good order and discipline in the armed forces," and inappropriately severe. R.C.M. 1002(f).

WHEREFORE, SSgt Benoit respectfully requests that this Court disapprove his reduction in grade to E-1 and confinement in excess of five months.

III.

THE GOVERNMENT CANNOT DEMONSTRATE THAT BARRING STAFF SERGEANT BENOIT'S POSSESSION OF FIREARMS IS "CONSISTENT WITH THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION."

18 U.S.C. § 922(g) is unconstitutional as applied to SSgt Benoit because the Government has not proven—and cannot prove—a historical tradition of applying an undifferentiated ban on firearm possession, no matter what the convicted offense, and SSgt Benoit was not convicted of a violent offense. Ans. at 23, 25 (asserting "[b]ecause Appellant has been convicted by a general court-martial of a serious crime, application of 18 U.S.C. § 922(g) to him is constitutional"). This Court can and should direct correction, consistent with this Court's authority under Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2).

On 5 September 2024, the United States Court of Appeals for the Armed Forces (CAAF) issued *United States v. Williams*, where the CAAF considered whether the Army Court of Criminal Appeals (Army Court) had the authority to alter the military judge's correction to the Statement of Trial Results (STR), which is incorporated into the judgment of the court signed by the military judge. *Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *1-3 (C.A.A.F. 2024). In *Williams*, the military judge had erroneously marked on the STR that the appellant's conviction triggered the Lautenberg Amendment, 18 U.S.C. § 922(g), after advising the appellant of the opposite during his guilty plea. *Id*. at *1-2. Later, in promulgating the judgment, the military judge incorporated and amended the original STR to correct the firearms ban so that 18 U.S.C. § 922(g) was not triggered. *Id*. at *6. On appeal, the Army Court changed the firearm ban on the STR *back*, to reindicate the appellant was barred from possessing a firearm. *Id*.

The CAAF determined that changing the STR back was an ultra vires act by the Army Court because "the STR is not part of the findings or sentence," but rather "other information" required by R.C.M. 1101(a)(6). *Id*. at *12-13. Therefore, the Army Court did not have authority to act pursuant to Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) (2018),[6] in this way. *Id*.

The CAAF then analyzed whether the Army Court had the authority to change the firearm ban under Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2), as an "error . . . in the processing of the court-martial after the judgment was entered into the record." *Id*. at *13. The CAAF concluded Article 66(d)(2), UCMJ, did not apply for three reasons related to the unique facts of that case. *Id*. at *14-15. First, there was no "error" because the military judge corrected any erroneous notation on the STR before signing the judgment. *Id*. at *14. Thus, by the plain language of the statute,

[6] The language at issue in Article 66, UCMJ, is not substantively different between the 2018 version analyzed in *Williams* and the version applicable to SSgt Benoit's appeal.

there was no error to consider after the entry of judgment (EOJ). Second, assuming error, the burden of raising such error was on the accused. *Id*. As the appellant in *Williams* agreed with the military judge's action in correcting the firearm notation, no error was raised. *Id*. Therefore, the Army Court's "correction authority" had not been "triggered," as the appellant never raised the firearm notation as an error. Third, assuming error and assuming the error had been raised, the timing of the military judge's erroneous notation preceded the entry of judgment; it was on the STR. *Id*. Therefore, based on the plain language of Article 66(d)(2), UCMJ, it was not an error occurring *after* the entry of judgment.

The CAAF did not foreclose properly raising an erroneous firearm notation to the service courts of appeal under Article 66(d)(2), UCMJ, when the error raised occurs *after* the entry of judgment, as in SSgt Benoit's case.[7] Here, this Court remains empowered by statute to correct the unconstitutional deprivation of SSgt Benoit's Second Amendment right to bear arms through Article 66(d)(2), UCMJ, which authorizes this Court to "provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the" entry of judgment. 10 U.S.C. 922 § 866(d)(2). Moreover, SSgt Benoit meets the factual predicate to trigger this Court's review under Article 66(d)(2), UCMJ.

First, SSgt Benoit has demonstrated error. The error warranting correction here is the unconstitutional application of 18 U.S.C. § 922(g)(1) to SSgt Benoit.[8] App. Br. at 12-15

[7] The statutory authority for this Court to act may differ from the authority of the CAAF to address this issue under Article 67, 10 U.S.C. § 867, a question that may be resolved by the CAAF in *United States v. Johnson*, No. ACM 40257, USCA Dkt. No. 24-0004/SF, 84 M.J. 343 (C.A.A.F. Mar. 29, 2024), *vacated and review of other issues granted*, ___M.J. ___ (C.A.A.F. Sep. 24, 2024). The military judge's inclusion of the STR and its First Indorsement—and the firearms prohibition therein—into the EOJ is a "decision, judgment, or order" that was "incorrect in law."

[8] The Government's application of 18 U.S.C. § 922(g) terminated SSgt Benoit's lawful possession of firearms. Appellant's Mot. to Attach, App.

(discussing historical tradition of narrowly applying firearms disability to crimes of violence). SSgt Benoit asks this Court to correct the entry of judgment, in line with *Williams*.

Second, the error on the First Indorsement erroneously depriving SSgt Benoit of his constitutional right to a firearm was an error in the "processing of the court-martial after the judgment was entered into the record under section 860(c) . . . (article 60(c))." Article 66(d)(2), UCMJ. Under the applicable Air Force regulation, "*[a]fter* the EOJ is signed by the military judge and returned to the servicing legal office, the [Staff Judge Advocate] signs and attaches to the [EOJ] a first indorsement, indicating whether . . . firearm prohibitions are triggered." Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice* ¶ 20.41 (Apr. 14, 2022) (emphasis added). The firearm denotation on the First Indorsement that accompanies the entry of judgment into the record of trial explicitly happens *after* the entry of judgment is signed by the military judge pursuant to Article 60(c), UCMJ. *Id*. Additionally, as this First Indorsement is the most recent notification to law enforcement entities about the applicability of 18 U.S.C. § 922 to SSgt Benoit, it makes sense that this is the document the Court should review for post-trial processing error. *See id*. at ¶¶ 20.42, 29.6, 29.32, 29.33 (dictating when notifications are made through distribution of the entry of judgment and attachments). Therefore, unlike in the issue addressed in *Williams*, here, the error occurred after the entry of judgment, in accordance with the last triggering criterion under Article 66(d)(2), UCMJ.

Finally, this Court's authority to review the erroneous firearm ban under Article 66(d)(2), UCMJ, is not foreclosed by this Court's published opinion in *United States v. Vanzant*, 84 M.J. 671 (A.F. Ct. Crim. App. 2024). In *Vanzant*, this Court determined it did not have authority to act on collateral consequences not a part of the findings or sentence under Article 66(d)(1), UCMJ. *Id*. at 680 ("Article 66(d), UCMJ, provides that a CCA 'may act only with respect to the findings

and sentence as entered into the record under [Article 60c, UCMJ, 10 U.S.C. § 860c].'"). The CAAF agreed with this interpretation. *Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *11-13. However, SSgt Benoit is asking this Court to review an error in post-trial processing under Article 66(d)(2), UCMJ, which this Court did not analyze in *Vanzant*. *See* 84 M.J. at 680 (quoting the language of Article 66(d)(1), UCMJ, not (d)(2)). To effectuate any remedy, this Court should use its power under R.C.M. 1112(d)(2), which permits this Court to send a defective record back to the military judge for correction, as, ultimately, the First Indorsement is a required component of the EOJ, albeit not part of the "findings" and "sentence," and the error materially affects SSgt Benoit's constitutional rights. R.C.M. 1111(b)(3)(F); R.C.M. 1112(b)(9); DAFI 51-201, at ¶ 20.41.

WHEREFORE, SSgt Benoit respectfully requests that this Court hold Section 922(g)'s firearm prohibition unconstitutional as applied to him and order correction of the EOJ to indicate that no firearm prohibition applies in his case.

Respectfully submitted,

[redacted]

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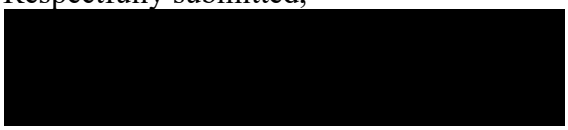
CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Government Trial and Appellate Operations Division on 22 October 2024.

Respectfully submitted,



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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40508**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Jacques D. BENOIT, JR.	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 22 October 2024, Appellant submitted a motion to attach a declaration of Appellant, dated 17 October 2024, to the record. Appellant filed his reply brief on the same day that he filed this motion to attach. The Government opposes the motion.

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

Accordingly, it is by the court on this 1st day of November, 2024,

ORDERED:

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

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION TO ATTACH DOCUMENT**
v.	)	
	)	Before Panel No. 2
Staff Sergeant (E-5) **JACQUES D. BENOIT, JR.,** United States Air Force, *Appellant.*	)	No. ACM 40508
	)	22 October 2024

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

Pursuant to Rule 23(b) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves to attach the Declaration of Appellant found at the Appendix to the Record of Trial. The attached sworn declaration is relevant to this Court's consideration of Assignment of Error III because it presents the factual bases that create a controversy in this case, the deprivation of Appellant's possession of firearms.

This Court should attach this declaration to the record and consider its contents pursuant to *United States v. Jessie*, 79 M.J. 437 (C.A.A.F. 2020), because it is necessary to resolve whether an injury in fact occurred when the Staff Judge Advocate's indorsement to the entry of judgment stated Appellant was firearm prohibited. *B.M. v. United States*, 84 M.J. 314, 317 (C.A.A.F. 2024); Entry of Judgment.

> As a prudential matter, this Court follows the principles of standing that apply to Article III courts. *United States v. Wuterich*, 67 M.J. 63, 69 (C.A.A.F. 2008). In accordance with these principles, this Court only addresses claims raised by parties who can show "an injury in fact, causation, and redressability." *Id*. (citing *Sprint Commc'ns Co. v. APCC Servs., Inc*., 554 U.S. 269, 273, 128 S. Ct. 2531, 171 L. Ed. 2d 424 (2008)).

Id. Appellant's declaration outlines the specific, particularized injury to Appellant as a result of the 18 U.S.C. § 922 prohibition on the Staff Judge Advocate's indorsement to the entry of judgment.

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

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing and the Appendix were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 22 October 2024.

Respectfully submitted,

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29 October 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) JACQUES D. BENOIT JR., USAF *Appellant*.	))))))))	OPPOSITION TO MOTION TO ATTACH DOCUMENT ACM 40508 Panel No. 2

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

Pursuant to Rule 23(c) of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion to Attach Document, dated 22 October 2024.

To begin, Appellant filed his assignments of error brief on 9 September 2024 in which he raised an issue related to firearms prohibition. The Government timely filed its answer on 9 October 2024. After seeking an enlargement of time, Appellant filed his reply brief on 22 October 2024, 43 days after filing his initial brief. On the same date, Appellant moved his instant motion seeking to attach his own declaration, claiming that it "presents the factual bases that create a controversy in this case," and is "necessary to resolve whether an injury in fact occurred when the Staff Judge Advocate's indorsement to the entry of judgment stated Appellant was firearm prohibited." (App. Mot. at 1.)

However, in doing so, Appellant fails to explain his delay in filing his own declaration or why it was not filed in conjunction with his original brief. The proper time to have filed this declaration was with Appellant's original brief. At that point, when Appellant originally presented this issue to the Court, was when Appellant should have "present[ed] the factual bases" for his issue – not after the Government has already answered Appellant's brief. Notably, since Appellant never raised his claimed "specific, particularized injury . . . as a result of the 18 U.S.C. § 922 prohibition"

in his original brief, the Government never discussed any supposed injury. Thus, Appellant's declaration is not in reply to the Government's brief, but instead raises *new matter* to this Court to consider 43 days after filing his original brief.

Worse still, Appellant's reply brief never mentions or cites to Appellant's newfound declaration, showing his declaration is not in reply to the Government's brief at all but is, instead, completely new matter for this Court to consider. This Court's rules do not allow for such an untimely submission and this Court should not condone Appellant's piecemeal approach of filing documents related to his original issue 43 days after filing his brief.

Here, Appellant's motion to attach offers no explanation for why it was filed out of time or why Appellant was unable to file his declaration with his original brief. Considering Appellant's delay in filing this motion and his lack of justification for the delay, this Court should not allow Appellant to attach his new declaration to the record, which presents new matter to this Court, at this point in the proceedings, especially when the United States does not have an opportunity to fully respond in a written brief.

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

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate counsel, and the Air Force Appellate Defense Division on 29 October 2024 via electronic filing.

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