IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

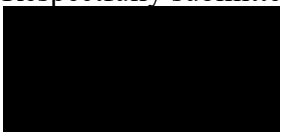
UNITED STATES	)	**MOTION FOR ENLARGEMENT OF**
Appellee	)	**TIME (FIRST)**
	)	
v.	)	Before Panel No. 2
	)	
Airman Basic (E-2)	)	No. ACM 40615
LAKOTA D. CABRIE,	)	
United States Air Force	)	24 July 2024
Appellant	)	

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 his first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **2 October 2024**. The record of trial was docketed with this Court on 4 June 2024. From the date of docketing to the present date, 50 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,



HEATHER M. BRUHA, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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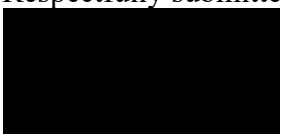
Office: (240) 612-4772
Email: heather.bruha@us.af.mil

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 Appellate Government Division on 24 July 2024.

Respectfully submitted,



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25 July 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman Basic (E-1) LAKOTA D. CABRIE, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40615 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 25 July 2024.

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 40615**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Lakota D. CABRIE	)	
Airman Basic (E-1)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 24 July 2024, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant's assignments of error.* The Government opposes the motion.

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

Accordingly, it is by the court on this 26th day of July, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **2 October 2024**.

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

Appellant's counsel is advised that any subsequent motions for enlargement of time shall include, in addition to matters required under this court's Rules of Practice and Procedure, statements as to: (1) whether Appellant was advised of Appellant's right to a timely appeal, (2) whether Appellant was provided an update of the status of counsel's progress on Appellant's case, (3) whether Appellant was advised of the request for an enlargement of time, and (4) whether Appellant agrees with the request for an enlargement of time. Counsel is not required to re-address item (1) in each subsequent motion for enlargement of time if counsel previously replied in the affirmative.

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

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* The motion misidentifies Appellant's rank and grade as "Airman Basic (E-2)."

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

FOR THE COURT

[redacted]

OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**MOTION FOR ENLARGEMENT OF TIME (SECOND)**
v.	)	Before Panel No. 2
Airmen Basic (E-1) **LAKOTA D. CABRIE,** United States Air Force *Appellant*	)	No. ACM 40615 20 September 2024

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **1 November 2024**. The record of trial was docketed with this Court on 4 June 2024. From the date of docketing to the present date, 108 days have elapsed. On the date requested, 150 days will have elapsed.

On 11 December 2023, consistent with his pleas, Appellant was convicted at a general court-martial at Davis-Monthan Air Force Base, Arizona, of one charge and one specification of absence without leave in violation of Article 86, Uniform Code of Military Justice (UCMJ); one charge and one specification of breaching restriction in violation of Article 87b, UCMJ; and one charge and one specification of the wrongful use of a controlled substance in violation of Article 112a. Record (R.) at 72. The military judge sentenced Appellant to be reprimanded, to be confined for 200 days[1], and to be discharged from the service with a bad conduct discharge. R. at 138.

[1] For the Specification of Charge I, Appellant was sentenced to 30 days confinement. For the Specification of Charge II, Appellant was sentenced to 10 days confinement. For Specification of Charge III, Appellant was sentenced to 160 days confinement. Appellant was credited with 133 days of pretrial confinement credit.

In accordance with Appellant's request, the convening authority deferred all automatic forfeitures for a period of three months, Appellant's release from confinement, or Appellant's expiration of term of service, whichever is soonest. The total deferred pay and allowances were directed to be paid for the benefit of Appellant's dependent children. The convening authority denied Appellant's request for a two-day deferment of his confinement sentence. Record of Trial (ROT) Vol. 3, Convening Authority Decision on Action – *United States v. AB Lakota D. Cabrie*, dated 21 December 2023.

The record of trial is 3 volumes and consists of 5 prosecution exhibits, 6 defense exhibits, and 12 appellate exhibits; the transcript is 144 pages. Appellant is not currently confined.

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

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

Respectfully submitted,

JOYCLIN N. WEBSTER, 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) 612-4770
Email: joyclin.webster.1@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 20 September 2024.

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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Email: joyclin.webster.1@us.af.mil

24 September 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman Basic (E-1) LAKOTA D. CABRIE, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40615 Panel No. 2

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

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

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

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(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 24 September 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*	)	**MOTION FOR ENLARGEMENT OF TIME (THIRD)**
v.	)	Before Panel No. 2
Airmen Basic (E-1) **LAKOTA D. CABRIE,** United States Air Force *Appellant*	)	No. ACM 40615 22 October 2024

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **1 December 2024**. The record of trial was docketed with this Court on 4 June 2024. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 11 December 2023, consistent with his pleas, Appellant was convicted at a general court-martial at Davis-Monthan Air Force Base, Arizona, of one charge and one specification of absence without leave in violation of Article 86, Uniform Code of Military Justice (UCMJ); one charge and one specification of breaching restriction in violation of Article 87b, UCMJ; and one charge and one specification of the wrongful use of a controlled substance in violation of Article 112a. Record (R.) at 72. The military judge sentenced Appellant to be reprimanded, to be confined for 200 days[1], and to be discharged from the service with a Bad Conduct Discharge. R. at 138.

[1] For the Specification of Charge I, Appellant was sentenced to 30 days confinement. For the Specification of Charge II, Appellant was sentenced to 10 days confinement. For Specification of Charge III, Appellant was sentenced to 160 days confinement. Appellant was credited with 133 days of pretrial confinement credit.

In accordance with Appellant's request, the Convening Authority deferred all automatic forfeitures for a period of three months, Appellant's release from confinement, or Appellant's expiration of term of service, whichever is soonest. The total deferred pay and allowances were directed to be paid for the benefit of Appellant's dependent children. The Convening Authority denied Appellant's request for a two-day deferment of his confinement sentence. Record of Trial (ROT) Vol. 3, Convening Authority Decision on Action – *United States v. AB Lakota D. Cabrie*, dated 21 December 2023.

The ROT is 3 volumes and consists of 5 Prosecution Exhibits, 6 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 144 pages. Appellant is not currently confined.

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

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

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 20 September 2024.

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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Joint Base Andrews NAF, MD 20762-6604
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Email: joyclin.webster.1@us.af.mil

23 October 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman Basic (E-1) LAKOTA D. CABRIE, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40615 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 23 October 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**MOTION FOR ENLARGEMENT OF**
Appellee	)	**TIME (FORTH)**
	)	
v.	)	Before Panel No. 2
	)	
Airman Basic (E-1)	)	No. ACM 40615
LAKOTA D. CABRIE,	)	
United States Air Force	)	21 November 2024
Appellant	)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **31 December 2024**. The record of trial was docketed with this Court on 4 June 2024. From the date of docketing to the present date, 170 days have elapsed. On the date requested, 210 days will have elapsed.

On 11 December 2023, consistent with his pleas, Appellant was convicted at a general court-martial at Davis-Monthan Air Force Base, Arizona, of one charge and one specification of absence without leave in violation of Article 86, Uniform Code of Military Justice (UCMJ); one charge and one specification of breaching restriction in violation of Article 87b, UCMJ; and one charge and one specification of the wrongful use of a controlled substance in violation of Article 112a. Record (R.) at 72. The military judge sentenced Appellant to be reprimanded, to be confined for 200 days[1], and to be discharged from the service with a Bad Conduct Discharge. R. at 138.

[1] For the Specification of Charge I, Appellant was sentenced to 30 days confinement. For the Specification of Charge II, Appellant was sentenced to 10 days confinement. For Specification of Charge III, Appellant was sentenced to 160 days confinement. Appellant was credited with 133 days of pretrial confinement credit.

In accordance with Appellant's request, the Convening Authority deferred all automatic forfeitures for a period of three months, Appellant's release from confinement, or Appellant's expiration of term of service, whichever is soonest. The total deferred pay and allowances were directed to be paid for the benefit of Appellant's dependent children. The Convening Authority denied Appellant's request for a two-day deferment of his confinement sentence. Record of Trial (ROT) Vol. 3, Convening Authority Decision on Action – *United States v. AB Lakota D. Cabrie*, dated 21 December 2023.

The ROT is 3 volumes and consists of 5 Prosecution Exhibits, 6 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 144 pages. Appellant is not currently confined.

Undersigned counsel is currently assigned 18 cases; 17 cases are pending before this Court (16 cases are pending AOEs). Her only priority before Appellant's case after considering his docketing date is *United States v. Grey*, No. ACM 40648, which has been docketed for 414 days. Without the verbatim transcript, the ROT is 4 volumes consisting of 7 Prosecution Exhibits, 9 Defense Exhibits, and 20 Appellate Exhibits. The verbatim transcript is 399 pages. The undesigned counsel is in the process of reviewing the ROT.

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

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

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
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CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
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22 November 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman Basic (E-1) LAKOTA D. CABRIE, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40615 Panel No. 2

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

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

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

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(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 22 November 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	)	**MOTION FOR ENLARGEMENT OF**
Appellee	)	**TIME (FIFTH)**
	)	
v.	)	Before Panel No. 2
	)	
Airman Basic (E-1)	)	No. ACM 40615
LAKOTA D. CABRIE,	)	
United States Air Force	)	19 December 2024
Appellant	)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **30 January 2025**. The record of trial was docketed with this Court on 4 June 2024. From the date of docketing to the present date, 198 days have elapsed. On the date requested, 240 days will have elapsed.

On 11 December 2023, consistent with his pleas, Appellant was convicted at a general court-martial at Davis-Monthan Air Force Base, Arizona, of one charge and one specification of absence without leave in violation of Article 86, Uniform Code of Military Justice (UCMJ); one charge and one specification of breaching restriction in violation of Article 87b, UCMJ; and one charge and one specification of the wrongful use of a controlled substance in violation of Article 112a. Record (R.) at 72. The military judge sentenced Appellant to be reprimanded, to be confined for 200 days[1], and to be discharged from the service with a Bad Conduct Discharge. R. at 138.

[1] For the Specification of Charge I, Appellant was sentenced to 30 days confinement. For the Specification of Charge II, Appellant was sentenced to 10 days confinement. For Specification of Charge III, Appellant was sentenced to 160 days confinement. All confinement was to run consecutively. Appellant was credited with 133 days of pretrial confinement credit.

In accordance with Appellant's request, the Convening Authority deferred all automatic forfeitures for a period of three months, Appellant's release from confinement, or Appellant's expiration of term of service, whichever is soonest. The total deferred pay and allowances were directed to be paid for the benefit of Appellant's dependent children. The Convening Authority denied Appellant's request for a two-day deferment of his confinement sentence. Record of Trial (ROT) Vol. 3, Convening Authority Decision on Action – *United States v. AB Lakota D. Cabrie*, dated 21 December 2023.

The ROT is 3 volumes and consists of 5 Prosecution Exhibits, 6 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 138 pages. Appellant is not currently confined.

Undersigned counsel is currently assigned 20 cases; 17 cases are pending before this Court (16 cases are pending AOEs). Her only priority before Appellant's case, after considering his docketing date, is *United States v. Gray*, No. ACM 40648, which has been docketed for 442 days. Without the verbatim transcript, the ROT is 4 volumes consisting of 7 Prosecution Exhibits, 9 Defense Exhibits, and 20 Appellate Exhibits. The verbatim transcript is 399 pages. Counsel has finished reviewing the record of trial, viewing the sealed materials, and is drafting the AOE.

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

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

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 19 December 2024.

Respectfully submitted,

JOYCLIN N. WEBSTER, 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) 612-4770
Email: joyclin.webster.1@us.af.mil

20 December 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman Basic (E-1) LAKOTA D. CABRIE, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40615 Panel No. 2

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

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

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

[redacted]
JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
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 20 December. 2024.

JENNY A. LIABENOW, 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*	)	**MOTION FOR WITHDRAWAL OF APPELLATE DEFENSE COUNSEL**
v.	)	Before Panel No. 2
Airman Basic (E-1) **LAKOTA D. CABRIE** United States Air Force *Appellant*	)	No. ACM 40615 19 December 2024

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

Pursuant to Rules 12(b), 12.4, and 23.3(h) of this Honorable Court's Rules of Practice and Procedure, undersigned counsel respectfully requests to withdraw as counsel in the above-captioned case. Appellant has released undersigned counsel due to her congested docket. Capt Joyclin Webster has previously been detailed substitute counsel in undersigned counsel's stead and has previously filed Extensions of Time in the case. Counsel have previously completed a thorough turnover of the case and Capt Webster has begun review of the record. This case is Capt Webster's second priority before this Court.

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

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

Respectfully submitted,

[redacted]

HEATHER M. BRUHA, 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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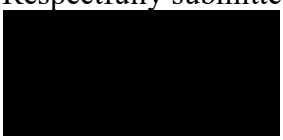
Email: heather.bruha@us.af.mil

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 Appellate Government Division on 19 December 2024.

Respectfully submitted,



HEATHER M. BRUHA, Maj, USAF
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**MOTION FOR ENLARGEMENT OF**
Appellee	)	**TIME (SIXTH)**
	)	
v.	)	Before Panel No. 2
	)	
Airman Basic (E-1)	)	No. ACM 40615
LAKOTA D. CABRIE,	)	
United States Air Force	)	22 January 2025
Appellant	)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **1 March 2025**. The record of trial was docketed with this Court on 4 June 2024. From the date of docketing to the present date, 232 days have elapsed. On the date requested, 270 days will have elapsed.

On 11 December 2023, consistent with his pleas, Appellant was convicted at a general court-martial at Davis-Monthan Air Force Base, Arizona, of one charge and one specification of absence without leave in violation of Article 86, Uniform Code of Military Justice (UCMJ); one charge and one specification of breaching restriction in violation of Article 87b, UCMJ; and one charge and one specification of the wrongful use of a controlled substance in violation of Article 112a. Record (R.) at 72. The military judge sentenced Appellant to be reprimanded, to be confined for 200 days[1], and to be discharged from the service with a Bad Conduct Discharge. R. at 138.

[1] For the Specification of Charge I, Appellant was sentenced to 30 days confinement. For the Specification of Charge II, Appellant was sentenced to 10 days confinement. For Specification of Charge III, Appellant was sentenced to 160 days confinement. All confinement was to run consecutively. Appellant was credited with 133 days of pretrial confinement credit.

In accordance with Appellant's request, the Convening Authority deferred all automatic forfeitures for a period of three months, Appellant's release from confinement, or Appellant's expiration of term of service, whichever is soonest. The total deferred pay and allowances were directed to be paid for the benefit of Appellant's dependent children. The Convening Authority denied Appellant's request for a two-day deferment of his confinement sentence. Record of Trial (ROT) Vol. 3, Convening Authority Decision on Action – *United States v. AB Lakota D. Cabrie*, dated 21 December 2023.

The ROT is 3 volumes and consists of 5 Prosecution Exhibits, 6 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 138 pages. Appellant is not currently confined.

Undersigned counsel is currently assigned 26 cases; 19 cases are pending before this Court (17 cases are pending AOEs). To date, no case has priority over the present case. Undersigned counsel has started her review of the ROT in this case.

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

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

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, 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 22 January 2025.

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
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23 January 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman Basic (E-1) LAKOTA D. CABRIE, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40615 Panel No. 2

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

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

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

[redacted]
JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
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 23 January 2025.

JENNY A. LIABENOW, 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	)	**MOTION FOR ENLARGEMENT OF**
Appellee	)	**TIME (SEVENTH)**
	)	
v.	)	Before Panel No. 2
	)	
Airman Basic (E-1)	)	No. ACM 40615
LAKOTA D. CABRIE,	)	
United States Air Force	)	24 February 2025
Appellant	)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **31 March 2025**. The record of trial was docketed with this Court on 4 June 2024. From the date of docketing to the present date, 265 days have elapsed.[1] On the date requested, 300 days will have elapsed.

On 11 December 2023, consistent with his pleas, Appellant was convicted at a general court-martial at Davis-Monthan Air Force Base, Arizona, of one charge and one specification of absence without leave in violation of Article 86, Uniform Code of Military Justice (UCMJ); one charge and one specification of breaching restriction in violation of Article 87b, UCMJ; and one charge and one specification of the wrongful use of a controlled substance in violation of Article 112a. Record (R.) at 72. The military judge sentenced Appellant to be reprimanded, to be

[1] The filing of this Motion is timely in accordance with Rule 23.3(m)(1) of this Court's Rules of Practice and Procedure. In accordance with JT. CT. CRIM. APP. R. 15 and Rule 15 of this Court's Rules of Practice and Procedure, the seventh calendar day before this AOE is due is calculated as 24 February 2025 because 1 March 2025 is a Saturday. In accordance with JT. CT. CRIM. APP. R. 15, when the last day of a period of time to be computed ends on "a Saturday, Sunday, holiday, or day on which the Court is closed," that period of time, "runs until the end of the next day that is not a Saturday, Sunday, holiday, or day on which the Court is closed." The last day of the period of time to be computed in this case (the seventh day before this AOE is due) was a Saturday, and therefore, in accordance with JT. CT. CRIM. APP. R. 15 and Rule 15 of this Court's Rules of Practice and Procedure, the end of that period runs until the next day this Court is not closed, which is 3 March 2025.

confined for 200 days[2], and to be discharged from the service with a Bad Conduct Discharge. R. at 138.

In accordance with Appellant's request, the Convening Authority deferred all automatic forfeitures for a period of three months, Appellant's release from confinement, or Appellant's expiration of term of service, whichever is soonest. The total deferred pay and allowances were directed to be paid for the benefit of Appellant's dependent children. The Convening Authority denied Appellant's request for a two-day deferment of his confinement sentence. Record of Trial (ROT) Vol. 3, Convening Authority Decision on Action – *United States v. AB Lakota D. Cabrie*, dated 21 December 2023.

The ROT is 3 volumes and consists of 5 Prosecution Exhibits, 6 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 138 pages. Appellant is not currently confined. Undersigned counsel has started drafting the Assignments of Error (AOE) in this case.

Undersigned counsel is currently assigned 24 cases; 21 cases are pending before this Court (18 cases are pending AOEs). To date, the only one case has priority over the present case. Counsel has prioritized the reply brief in *United States v. Gray*, No. ACM 40648. Without the verbatim transcript, the ROT is 4 volumes consisting of 7 Prosecution Exhibits, 9 Defense Exhibits, and 20 Appellate Exhibits. The verbatim transcript is 399 pages.

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

[2] For the Specification of Charge I, Appellant was sentenced to 30 days confinement. For the Specification of Charge II, Appellant was sentenced to 10 days confinement. For Specification of Charge III, Appellant was sentenced to 160 days confinement. All confinement was to run consecutively. Appellant was credited with 133 days of pretrial confinement credit.

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

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

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, 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 24 February 2025.

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
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26 February 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman Basic (E-1) LAKOTA D. CABRIE, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40615 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 an Assignments of Error in this case.

The United States respectfully maintains that, short of a death penalty case or other extraordinary circumstance, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 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 close to 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 also appears that Appellant's counsel has not completed review of trial at this late stage of the appellate process.

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

THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel
Government Trial and
Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(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 26 February 2025.

THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel
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Appellate Operations Division
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(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**MOTION FOR ENLARGEMENT OF**
Appellee	)	**TIME (EIGHTH)**
	)	
v.	)	Before Panel No. 2
	)	
Airman Basic (E-1)	)	No. ACM 40615
LAKOTA D. CABRIE,	)	
United States Air Force	)	20 March 2025
Appellant	)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **30 April 2025**. The record of trial was docketed with this Court on 4 June 2024. From the date of docketing to the present date, 289 days have elapsed. On the date requested, 330 days will have elapsed.

On 11 December 2023, consistent with his pleas, Appellant was convicted at a general court-martial at Davis-Monthan Air Force Base, Arizona, of one charge and one specification of absence without leave in violation of Article 86, Uniform Code of Military Justice (UCMJ); one charge and one specification of breaching restriction in violation of Article 87b, UCMJ; and one charge and one specification of the wrongful use of a controlled substance in violation of Article 112a. Record (R.) at 72. The military judge sentenced Appellant to be reprimanded, to be confined for 200 days[1], and to be discharged from the service with a Bad Conduct Discharge. R. at 138.

[1] For the Specification of Charge I, Appellant was sentenced to 30 days confinement. For the Specification of Charge II, Appellant was sentenced to 10 days confinement. For Specification of Charge III, Appellant was sentenced to 160 days confinement. All confinement was to run consecutively. Appellant was credited with 133 days of pretrial confinement credit.

In accordance with Appellant's request, the Convening Authority deferred all automatic forfeitures for a period of three months, Appellant's release from confinement, or Appellant's expiration of term of service, whichever is soonest. The total deferred pay and allowances were directed to be paid for the benefit of Appellant's dependent children. The Convening Authority denied Appellant's request for a two-day deferment of his confinement sentence. Record of Trial (ROT) Vol. 3, Convening Authority Decision on Action – *United States v. AB Lakota D. Cabrie*, dated 21 December 2023.

The ROT is 3 volumes and consists of 5 Prosecution Exhibits, 6 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 138 pages. Appellant is not currently confined.

Undersigned counsel is currently assigned 24 cases; 21 cases are pending before this Court (18 cases are pending AOEs). To date, no case has priority over the present case. Undersigned counsel has started drafting the AOE in this case.

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

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

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, 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 20 March 2025.

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	Before Panel No. 2
	)	No. ACM 40615
Airman Basic (E-1) **LAKOTA D. CABRIE,** United States Air Force, *Appellant.*	)	21 March 2025

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

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

The United States respectfully maintains that, short of a death penalty case or other extraordinary circumstance, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 330 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed close to 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 also appears that Appellant's counsel has not completed review of trial at this late stage of the appellate process.

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

KATE E. LEE, Maj, USAF
Appellate Government Counsel
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1500 W. Perimeter Road, Suite 1190
Joint Base Andrews, MD
DSN: 612-4809

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 March 2025.

KATE E. LEE, Maj, USAF
Appellate Government Counsel
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1500 W. Perimeter Road, Suite 1190
Joint Base Andrews, MD
DSN: 612-4809

THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*,	)	**BRIEF ON BEHALF OF APPELLANT**
v.	)	Before Panel No. 2
Airman Basic (E-1) **LAKOTA D. CABRIE,** United States Air Force, *Appellant*.	)	No. ACM 40615
	)	30 April 2025

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

ASSIGNMENTS OF ERROR

I.

THE FIREARM PROHIBITION UNDER 18 U.S.C. § 922(g)IS UNCONSTITUTIONAL AS APPLIED TO AIRMAN BASIC CABRIE

II.

THE RECORD OF TRIAL'S OMISSION OF THE ARRAIGNMENT AUDIO REQUIRES RELIEF OR, AT A MINIMUM, REMAND FOR CORRECTION.

III.

AIRMAN BASIC CABRIE'S SENTENCE WAS INAPPROPRIATELY SEVERE.[1]

Statement of the Case

On 11 December 2023, Airman Basic (AB) Lakota D. Cabrie was tried by a general court-martial, consisting of a military judge sitting alone, convened at Davis-Monthan Air Force Base, Arizona. Record of Trial (ROT), Vol. 1, Entry of Judgement (EOJ), dated 23 Jan 24; R. at 10. AB Cabrie was charged with one charge with one specification of absence without leave, in violation

[1] Assignment of Error III is raised in the appendix pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

of Article 86, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 886; one charge with one specification of breach of restriction, in violation of Article 87b, UCMJ, 10 U.S.C. § 887b; and one charge with one specification of wrongful use of cocaine on divers occasions, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. ROT Vol. 1, DD Form 458, *Charge Sheet*, dated 23 August 2023. Pursuant to a plea agreement, AB Cabrie entered pleas of guilty to all charges and specifications with any adjudged confinement to run consecutively, which the military judge accepted. R. at 24, 64, 71. On the same day, the military judge sentenced AB Cabrie to a reprimand, a bad-conduct discharge, and a total of 200 days of confinement.[2] R. at 138.

In accordance with AB Cabrie's request, the Convening Authority deferred all automatic forfeitures for a period of three months, AB Cabrie's release from confinement, or his expiration of term of service, whichever was soonest. The total deferred pay and allowances were directed to be paid for the benefit of AB Cabrie's dependent children. The Convening Authority denied Appellant's request for a two-day deferment of his confinement sentence. ROT Vol. 1, Convening Authority Decision on Action – *United States v. AB Lakota D. Cabrie*, dated 21 December 2023.

Statement of Facts

AB Cabrie is a United States citizen by birth. Pros. Ex. 1 at 1; R. at 71. On his eighteenth birthday, AB Cabrie and his mother were evicted following the death of his grandmother. R. at 109, 115. AB Cabrie was homeless for a total of five years. R. at 115. He enlisted in the United States Air Force to gain stability for his family. R. at 115. He graduated from his technical school as a Distinguished Graduate. R. at 116. However, his separation from his then-wife soon led to an

[2] For the Specification of Charge I, AB Cabrie was sentenced to thirty days of confinement. For the Specification of Charge II, AB Cabrie was sentenced to ten days of confinement. For Specification of Charge III, AB Cabrie was sentenced to 160 days of confinement. All confinement was to run consecutively. AB Cabrie was credited with 133 days of pretrial confinement credit. R. at 138.

exacerbation of his already present depression and anxiety. *Id*. AB Cabrie began self-medicating with alcohol to cope. *Id*. AB Cabrie eventually contemplated suicide. R. at 87. In December 2022, his leadership became aware of his suicidal thoughts after they saw videos of him at a party holding a gun to his head while under the influence. *Id*. His command issued a Letter of Reprimand because AB Cabrie broke quarters to attend the party. R. at 87-88, 131. His command failed to provide AB Cabrie with mental health support after seeing the videos of him holding a gun to his head. *Id*. In March 2023, AB Cabrie used cocaine for the first time as a means to cope with his personal struggles. *Id*.

On 20 March 2023, AB Cabrie was randomly selected for urinalysis testing. R. at 135. His sample came back positive for cocaine, for which he received nonjudicial punishment. *Id*. During subsequent testing, AB Cabrie tested positive for cocaine on several more occasions. Pros. Ex. 1 at 7-8.

Six times between 5 April 2023 and 11 August 2023, AB Cabrie was administratively restricted from possessing or purchasing firearms, ammunition, or explosives through multiple Air Force Forms 177, Notice of Qualification for Prohibition of Firearms, Ammunition, and Explosives. Appellate Ex. X at 18-31. Further, the forms ordered AB Cabrie to divest himself of firearms. *Id*.

Pursuant to the plea agreement, AB Cabrie was sentenced to a total of 200 days of confinement, within the agreed maximum of 210 days. R. at 53, 138; EOJ; Appellate. Ex. VIII at 2. By pleading guilty, he "saved the Government time, effort, and the expense of a fully litigated trial." Pros. Ex. 1 at 8.

During the providence inquiry, AB Cabrie acknowledged the following: Between on or about 21 March 2023 and 12 July 2023, AB Cabrie wrongfully ingested cocaine on multiple

occasions in Arizona. R. at 48-51, 90, 126. While subject to a commander-ordered restriction to base, AB Cabrie knowingly departed the base on 22 July 2023 to see his pregnant girlfriend without escort or permission. R. at 40-45. From on or about 24 July 2023 until 27 July 2023, AB Cabrie knowingly absented himself from his required duty location without authority and remained absent until his apprehension by Air Force Office of Special Investigations agents and the Tucson Police Department. R. at 32-37.

After the trial, the Acting Staff Judge Advocate included a firearms prohibition pursuant to 18 U.S.C. § 922 in the Statement of Trial Results (STR). ROT Vol. 1, STR, dated 11 December 2023. AB Cabrie challenged this prohibition as unconstitutional in a post-trial motion, asserting that historical tradition does not support disarming non-violent individuals based solely on felony convictions or non-violent drug offenses. Appellate Ex. X at 1. The military judge considered and rejected AB Cabrie's motion, concluding the firearm prohibition was consistent with historical traditions and existing federal law. Appellate Ex. XII at 7–9.

On 23 January 2025, the same day the military judge issued his ruling, the Staff Judge Advocate included a firearms prohibition pursuant to 18 U.S.C. § 922 in the EOJ. *Compare* Appellate Ex. XII, *with* ROT Vol. 1, EOJ.

Argument

I.

THE FIREARM PROHIBITION UNDER 18 U.S.C. § 922(g) IS UNCONSTITUTIONAL AS APPLIED TO AIRMAN BASIC CABRIE.

Standards of Review

Whether post-trial processing was properly completed is reviewed de novo. *Zegarrundo*, 77 M.J. at 613–14 (citing *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000)). When reviewing a statute as unconstitutional as applied, this court must conduct a fact-specific inquiry. *Id.* at 265.

"The scope, applicability, and meaning of Article 66(d), UCMJ, is a matter of statutory interpretation that [is] review[ed] de novo." *United States v. McAlhaney*, 83 M.J. 164, 166 (C.A.A.F. 2023) (citing *United States v. Gay*, 75 M.J. 264, 267 (C.A.A.F. 2016)).

Law and Analysis

A. This Court has statutory authority to review an erroneous 18 U.S.C. § 922(g) annotation in the Entry of Judgment.

The Courts of Criminal Appeals possess "limited jurisdiction, defined entirely by statute." *United States v. Arness*, 74 M.J. 441, 442 (C.A.A.F. 2015) (citation omitted). In *United States v. Williams*, the Court of Appeals for the Armed Forces (CAAF) recently rejected the authority of the Courts of Criminal Appeals (CCAs) to address the firearms prohibition in the STR under Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1). *United States v. Williams*, 85 M.J. 121(C.A.A.F. 2024). However, this Court remains empowered by statute to correct the unconstitutional deprivation of AB Cabrie's Second Amendment right to bear arms through Article 66(d)(2), UCMJ. 10 U.S.C. § 866(d)(2) (2019); *see also Williams* at 126-27 (considering relief under that statute but rejecting it only because of the unique procedural posture of the case).

This Court's authority to review the erroneous firearm ban under Article 66(d)(2), UCMJ, is consistent with 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 that are 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 Court of Appeals for the Armed Forces (CAAF) agreed with this interpretation. *Williams*, at 126. But whereas *Vanzant* and *Williams* concerned matters leading up to the EOJ, AB Cabrie is asking this Court to review an error in post-trial processing *after* the EOJ under Article 66(d)(2),

UCMJ, which this Court did not analyze in *Vanzant*. *See Vanzant*, 84 M.J. at 680 (quoting the language of Article 66(d)(1), UCMJ, not (d)(2)).

Vanzant does not control review of this issue as raised under Article 66(d)(2), UCMJ. *But see United States v. Lawson*, No. ACM 23034, 2024 CCA LEXIS 431, at *2 (A.F. Ct. Crim. App. Oct. 17, 2024) (broadly summarizing *Vanzant* as standing for the proposition that "the 18 U.S.C. § 922 firearm prohibition notation included in the staff judge advocate's indorsement to the [EOJ] is beyond a Court of Criminal Appeals' statutory authority to review"). The characterization of *Vanzant* in *Lawson* is incorrect. The 18 U.S.C. § 922 firearm prohibition notation included in the First Indorsement to the EOJ is not beyond this Court's statutory authority to review under Article 66(d)(2), UCMJ. *See Williams*, 85 M.J. at 126 (calling Article 66(d)(2), UCMJ, the "error-correction authority"); *but see United States v. Pulley*, No. ACM 40438 (f rev), 2024 CCA LEXIS 442, at *3 (A.F. Ct. Crim. App. Oct. 24, 2024) (citing *Vanzant* and *Williams* for this Court's inability to correct the firearm prohibition, but without analyzing Article 66(d)(2), UCMJ). Article 66(d)(1), UCMJ, is distinct, and that section is all *Vanzant* analyzes.

Using the CAAF's analysis in *Williams*, this Court should find jurisdiction under Article 66(d)(2), UCMJ, and ensure correction of the unconstitutional firearms prohibition in post-trial processing tied to the facts of Appellant's court-martial. To effectuate any remedy, this Court should use its power under Rule for Courts-Martial (R.C.M.) 1112(d)(2), which permits this Court to send a defective record back to the military judge for correction. This is appropriate because the First Indorsement is a required component of the EOJ, albeit not part of the "findings" and "sentence," and the error materially affects Appellant's constitutional rights. R.C.M. 1111(b)(3)(F); R.C.M. 1112(b)(9); Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice*, ¶ 20.41 (Apr. 14, 2022).

Further supporting jurisdiction under Article 66(d)(2), UCMJ, the Court of Appeals for the Armed Forces (CAAF) recently clarified that post-trial processing errors are now governed exclusively by Article 66(d)(2), effectively superseding earlier cases such as *Tardif* that relied upon the more general authority previously provided by Article 66(c). *United States v. Valentin-Andino*, __ M.J. __, 2024 CAAF LEXIS 223, at *16 n.4 (C.A.A.F. Mar. 31, 2025). Specifically, the CAAF emphasized that "a general statutory provision may not be used to nullify or to trump a specific provision," reaffirming that Article 66(d)(2) specifically and solely governs post-trial errors. *Id.* (quoting *California ex rel. Sacramento Metro. Air Quality Mgmt. Dist. v. United States*, 215 F.3d 1005, 1013 (9th Cir. 2000)). Here, because the constitutional defect in the firearms prohibition arises directly from errors committed during the post-trial processing stage—specifically within the First Indorsement to the Entry of Judgment—this Court should correct that defect pursuant to its clear and specific authority under Article 66(d)(2), without reference to Air Force departmental regulations.

In this case, defense counsel explicitly contested a significant error in the STR notation through a post-trial motion, which the military judge subsequently denied in a written ruling. This ruling directly impacts the case because it improperly validated the flawed § 922(g) annotation underlying the EOJ. *See* R.C.M. 1111(b)(4) (the STR is required to be included with the EOJ) Although the judge's decision on the motion itself does not constrain this Court's independent authority to address the underlying error, the ruling, having been entered into the record as an appellate exhibit, becomes reviewable as an integral part of the trial record. *See* R.C.M. 1112(b)(5) (appellate exhibits are part of the record of trial). Thus, because the military judge's ruling misapplies the law and directly contributes to the incorrect EOJ, this Court is empowered under Article 66(d)(2) to rectify this error.

In *Williams*, the CAAF held that the Army Court of Criminal Appeals (ACCA) exceeded its authority by unilaterally modifying an annotation about the Lautenberg Amendment in the STR. 85 M.J. at 121. The CAAF reasoned that because "Block 32" in the STR did not affect the actual findings or the sentence, the ACCA lacked statutory authority under Article 66(d)(1) to edit the military judge's annotation. *Id*. at 126.

By contrast, in this case, trial defense counsel filed a timely post-trial motion specifically contesting the 18 U.S.C. § 922(g) annotation, thereby placing that issue squarely before the military judge. The military judge found that the annotation was in "compliance with applicable guidance," citing DAFI 51-201, ¶ ¶ 23.30.1.1 and 29.30.3.3, and was in line with the historical analogs for applying the firearms bar, even though AB Cabrie's offense was non-violent. Appellate Ex. XII at 6. This ruling directly shaped the EOJ.

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." DAFI 51-201, ¶ 20.41 (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*.

Under these circumstances, the military judge's denial of the post-trial motion—and the resulting annotation in the EOJ—are part of the record of trial and directly implicate the correctness of the court-martial process post-entry of judgment. Unlike in *Williams*, this case does not present a CCA unilaterally modifying an administrative notation that no party complained about. Instead, it is an appellate issue squarely preserved for review. The CAAF in *Williams* emphasized that CCAs "may provide appropriate relief if the accused demonstrates error . . . in

the processing of the court-martial," and that an alleged post-trial error that was properly raised by the accused is within a CCA's authority to correct. *Id.* at 126 (quotations omitted); *see also* Article 66(d)(2), UCMJ. This is exactly the posture here.

Article 66(d)(2), UCMJ, authorizes this Court to "provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the" EOJ. *Id*. AB Cabrie meets each of the statutory thresholds: (1) an error, (2) raised by Appellant, (3) occurring after the entry of judgment under Article 60c, UCMJ. *Id*.; *Williams*, 85 M.J. at 126-27.

First, there is an error in AB Cabrie's case: He was unconstitutionally deprived of his right to bear arms. Second, AB Cabrie has raised the error in both this filing and to the military judge, based on the notation's initial presentation in the STR. Third, as the error also found its way into the First Indorsement to the EOJ, it is an error occurring after the entry of judgment.

This requested remedy is in line with *Williams*. While this Court cannot correct the erroneous firearms bar associated with the STR, it *can* correct the erroneous firearm notation on the First Indorsement attached to the EOJ, which was completed *after* the EOJ during post-trial processing. *Williams*, 85 M.J. at 126–27.

Even if the § 922(g) notation is styled as an administrative error or "collateral consequence," *Vanzant*, 84 M.J. at 681, once it is incorporated into the EOJ and stands as a formal judicial determination that Appellant is barred from firearm possession, it wields real and immediate consequences.

If an individual wants to purchase a firearm lawfully, a seller must run a NICS background check. 18 U.S.C. §§ 922(s), (t)(1)(A). NICS determines whether the seller may proceed with the transaction. 28 C.F.R. § 25.6(c)(2014). A "proceed" response will occur if no disqualifying information is found in the NICS. 28 C.F.R. § 25.6. Because sellers must run a NICS background

check before lawfully transferring a firearm, erroneous reporting during the DAF post-trial processing will deprive individuals of their right to bear arms.

But for the indorsement stating "Yes" next to "Firearm Prohibition Triggered Under 18 U.S.C. § 922," AB Cabrie could purchase a firearm from a federally licensed firearm seller. The Federal Gun Control Act, codified at 18 U.S.C. §§ 922(a)(1)(A) and 923(c), requires that any person engaged in the business of dealing in firearms be licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives. To lawfully purchase a firearm, AB Cabrie would need to buy from a federally licensed firearm seller, who is obligated to use NICS. *See* ABOUT NICS, https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/about-nics (last visited Apr. 15, 2025) (showing all states use NICS in some form).

B. The firearm prohibition under 18 U.S.C. 922(g) is unconstitutional as applied to AB Cabrie

Facially, only two parts of 18 U.S.C. § 922 could conceivably apply to Appellant:

(1) 18 U.S.C. § 922(g)(1)'s prohibition arising from a conviction of a crime punishable by imprisonment for a term greater than one year. Indeed, AB Cabrie faced up to five years and seven months, R. at 138; and

(2) Appellant also faces 18 U.S.C. § 922(g)(3)'s prohibition against unlawful users of a controlled substance arising from his Article 112a conviction.

As applied to AB Cabrie, both unconstitutionally infringe upon his Second Amendment rights. Although the Supreme Court has previously indicated that prohibitions against felons and certain categories of persons possessing firearms may be "presumptively lawful," *District of Columbia v. Heller*, 554 U.S. 570, 627 n.26 (2008), to take *Heller* to stand for the specific application of this prohibition to AB Cabrie's non-violent, drug-related offense violates his Second

Amendment rights under the constitutional jurisprudence articulated in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022).

In *Heller*, the Supreme Court stated that its holding should not be construed to "cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill." *Heller* at 626. However, the Supreme Court did not exhaustively analyze who may be categorically barred from possessing firearms in *Heller*. *See Range v. AG United States*, 124 F.4th 218, 226 (3d Cir. 2024). Because *Heller* did not hinge on the constitutionality of such prohibitions, its reference to felons and the mentally ill stands as dicta rather than a binding precedent. *Id.*

In *Range*, for instance, the Third Circuit underscored that *Heller* conducted only a limited discussion of "law-abiding citizens," leaving unresolved whether all felons or persons with mental illness may be disarmed under the Second Amendment. *Range,* 124 F.4th at 226. Accordingly, the military judge inappropriately relied on the quoted *Heller* dictum, as it does not categorically foreclose constitutional challenges by individuals who were previously convicted of a crime or designated mentally ill, absent further historical justification for disarmament. *Compare Heller*, 554 U.S. at 635, *with* Appellate Ex. XII at 7-9.

As such, AB Cabrie is indisputably among "the people" protected by the Second Amendment, notwithstanding his conviction, as the Supreme Court's references to "law-abiding citizens" were dicta not directly addressing the scope of "the people." *See Range*, 124 F.4th at 226. As emphasized in *Range* and "the Supreme Court noted recently: 'a felon is not always more dangerous than a misdemeanant.'" *Id*. at 227 (quoting *Lange v. California*, 594 U.S. 295, 305 (2021) (cleaned up)).

1. Supreme Court President in *Bruen* and *Rahimi* Requires a Demonstrated Historical Analogue for Disarming Individuals

The historical record does not support a lifetime or extended firearms prohibition based solely on non-violent felonies or drug use. *United States v. Connelly*, 117 F.4th 269, 273 (5th Cir. 2024). "The short of it is that our history and tradition may support some limits on a *presently* intoxicated person's right to carry a weapon . . . but they do not support disarming a sober person based solely on past substance usage." *Id.*

In *Rahimi*, the Supreme Court clarified the constitutional test articulated in *Bruen*, reinforcing that the historical tradition of firearm regulation supports the disarmament of individuals who pose a credible threat to the physical safety of another. *United States v. Rahimi*, 602 U.S. 680, 702 (2024). Concluding that 18 U.S.C. § 922(g)(8) "fits comfortably within [the Nation's historical] tradition," the Court employed a methodology considering whether the regulation at issue is "relevantly similar"—as opposed to identical—to those acceptable to the Nation's founding generation. *Id.* at 690, 692.

The determination was clear under the facts specific to *Rahimi* because "the Government offer[ed] ample evidence that the Second Amendment permits the disarmament of individuals who pose" what the Court described as "a credible threat to the physical safety of others." *Id*. at 693. But the Court cabined its approval, limiting its affirmance to temporary disarmament after a finding of a credible threat to physical safety and noting the vital nexus found between 18 U.S.C. § 922(g)(8) and the historical tradition of "banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse." *Id*. at 699,701-02 (rejecting the contention that a "responsible" person is the governing principle for disarming individuals).

Unlike the appellant in *Rahimi*, who engaged in documented violent conduct resulting in judicially determined threats to physical safety, AB Cabrie has been convicted solely for non-

violent offenses. *Compare Rahimi*, 602 U.S. at 686-88, *with* ROT Vol. 1, EOJ. There was no judicial determination at trial or during sentencing that AB Cabrie presented a credible threat of violence or physical danger toward others. R. at 72.

2. Historical Practice Does Not Justify Stripping Second Amendment Rights Solely for Nonviolent Felons

Founding-era regulations regarding felons targeted only those individuals perceived as genuinely dangerous. *Range*, 124 F.4th at 222-23. Historical prohibitions were narrowly tailored to specific classes deemed dangerous, primarily violent offenders. *Id*. at 230-31. Colonial and early American laws restricted firearm possession explicitly for violent conduct or active intoxication, never imposing blanket prohibitions on non-violent offenders or former drug users. *See United States v. Daniels*, 77 F.4th 337, 345, (5th Cir. 2023), *vacated*, 144 S. Ct. 2707 (2024) (remanded for further consideration in light of *Rahimi*) ("Founding-era statutes concerning guns and alcohol were few. They were also limited in scope and duration. The laws that did exist had two primary concerns: (1) the misuse of weapons while intoxicated and (2) the discipline of state militias.").

AB Cabrie presents no special danger of misuse because violence is the keystone to the Supreme Court's analysis in *Rahimi*. *See Rahimi*, 602 U.S. at 698-700. Without it, 18 U.S.C. § 922(g) cannot constitutionally apply to AB Cabrie. Indeed, the distinction between violent and nonviolent offenses is important and lies deeply rooted in history and tradition:

> [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. Earlier, the Uniform Firearms Act of 1926 and 1930 stated that "a person convicted of a 'crime of violence' could not own or have in his possession or under his control, a pistol or revolver." *Id.* at 701, 704 (quotations omitted). 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 (quotations omitted). It was not until 1968 that Congress "banned [all felons from] 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.

Without a clear historical analogue supporting broad prohibitions on firearm ownership based solely on drug use or non-violent misconduct, applying § 922(g) to AB Cabrie is unconstitutional as it extends beyond any relevant historical tradition required by *Bruen* and *Rahimi*.

3. Reliance On Unconstitutional and Discriminatory Analogues Contravenes Modern Constitutional Protections and Should Not Be Used to Support Stripping AB Cabrie of His Second Amendment Rights

The military judge, in his ruling denying AB Cabrie's motion challenging the firearm prohibition under 18 U.S.C. § 922(g), cited historical practices and statutes purportedly justifying modern felony firearm prohibitions. Specifically, the military judge referenced pre-Founding English common law traditions and colonial-era statutes disarming certain groups perceived as threats. However, these examples do not provide relevant historical analogues to justify disarming individuals convicted of non-violent offenses after their sentences have been discharged.

First, while the military judge correctly cited Blackstone's Commentaries and colonial traditions regarding felony disarmament, he misapplied their significance. Blackstone noted felons could not bear arms precisely because, at that time, felony convictions resulted primarily in capital punishment or permanent imprisonment—a situation where rights became irrelevant because the convicted faced either execution or perpetual confinement. *See* 4 William Blackstone, Commentaries on the Laws of England 98 (1769). These early practices have little relevance for modern-day felons who have completed their sentences and reintegrated into society. *See Kanter v. Barr*, 919 F.3d 437, 461-62 (7th Cir. 2019) (Barrett, J., dissenting) (As now Justice Barrett stated in her dissent, "The obvious point that the dead enjoy no rights does not tell us what the founding-era generation would have understood about the rights of felons who lived, discharged their sentences, and returned to society.").

Historical analogues based on statutes that disarmed religious sects, racial groups, or political dissidents are problematic precisely because modern constitutional law explicitly rejects the legitimacy of such discriminatory disarmament. *See Range*, 124 F.4th at 229. Colonial-era statutes targeting religious minorities, racial groups, or political dissidents are clearly "unconstitutional under the First and Fourteenth Amendments." *Id.* The court in *Range* explicitly found such precedents unpersuasive, concluding: "That Founding-era governments disarmed groups they distrusted . . . does nothing to prove that [a modern non-violent felon] is part of a similar group today. And any such analogy would be "far too broad[ ]." " *Id.*

Moreover, the military judge's reliance on the Federal Firearms Act of 1938 and subsequent expansions of firearm prohibitions to all felons in 1961 departs significantly from the constitutional interpretative framework mandated by the Supreme Court in *Bruen*. *Bruen* explicitly emphasized that historical sources closest to the ratification of the Second Amendment and

Reconstruction Amendments carry the greatest interpretative weight. *Bruen*, 597 U.S. at 20. As the original 1938 federal statute explicitly limited firearm prohibitions only to violent offenders, the modern expansion to include non-violent offenders, such as AB Cabrie, lacks meaningful constitutional and historical justification. See *Range*, 124 F.4th at 230.

Additionally, until it was defunded by Congress in 1992, federal law permitted felons to seek relief from firearm prohibitions by demonstrating they posed no threat to public safety. *Id.* at 276 (Krause, J. concurring in the judgement, with whom Roth, J. joined in part); *see* 18 U.S.C. § 925(c). The abandonment of this provision in favor of an absolute lifelong prohibition significantly departs from the historical and constitutional norm, undermining any suggestion that modern felony prohibitions align historically with founding-era practices or understandings. *See Rahimi*, 602 U.S. at 287 n.9.

The federal circuit decisions further underscore the constitutional flaw in applying broad firearm prohibitions to non-violent offenders. The Third Circuit in *Range* found no historically valid basis for imposing lifelong firearm prohibitions on an individual convicted of non-violent crimes, absent evidence of violent behavior or threat. *Range*, 124 F.4th at 231-32. Similarly, the Fifth Circuit, in *Connelly*, explicitly stated historical traditions supported disarming currently intoxicated persons, but "do not support disarming a sober person based solely on past substance usage." 117 F.4th at 273.

Importantly, the military judge's analysis was based on a facial challenge, although the defense counsel raised an as-applied challenge to the prohibition. *Compare* Appellate Ex. XII at 5–9, *with* Appellate Ex. X at 1, 14. Consequently, this Court should reject the military judge's analysis and hold 18 U.S.C. § 922(g) unconstitutional as applied to AB Cabrie.

This Court should remand the record to correct the EOJ's unconstitutional firearm prohibition or grant other relief it deems warranted to effectuate the same.

II.

THE RECORD OF TRIAL'S OMISSION OF THE ARRAIGNMENT AUDIO REQUIRES RELIEF OR, AT A MINIMUM, REMAND FOR CORRECTION.

Additional Facts

The audio is missing for the arraignment on 7 November 2023. *See* R. at 1-9. This session included a discussion of forum rights, rights to counsel, and arraignment. *Id*. On 11 December 2023, during the trial, the military judge arraigned AB Cabrie once again for the same charges. R. at 23-24.

Standard of Review

Whether a record of trial is incomplete or not substantially verbatim is reviewed de novo. *United States v. Henry*, 53 M.J. 108, 110 (C.A.A.F. 2000).

Law and Analysis

The record of trial is "the very heart of the criminal proceedings and the single essential element to meaningful appellate review." *United States v. Credit*, 4 M.J. 118, 119 (C.M.A. 1977). A complete record of proceedings is required for every court-martial in which the sentence adjudged includes "a sentence of death, dismissal, discharge, confinement for more than six months, or forfeiture of pay for more than six months." Article 54(c)(2), 10 U.S.C. § 854(c)(2). A complete record shall include "[a] substantially verbatim recording of the court-martial proceedings except sessions closed for deliberations and voting." R.C.M. 1112(b)(1). A substantial omission in a record of trial raises a presumption of prejudice to an appellant, which the Government must rebut. *Henry*, 53 M.J. at 111 (citations omitted). "Moreover, since in military

criminal law administration the Government bears responsibility for preparing the record of trial, it is fitting that every inference be drawn against the Government with respect to the existence of prejudice because of an omission." *United States v. McCullah*, 11 M.J. 234, 237 (C.M.A. 1981) (citation omitted).

The missing arraignment audio is a substantial omission. *See United States v. Matthew*, No. ACM 39796 (f rev), 2022 CCA LEXIS 425, at *11–12 (A.F. Ct. Crim. App. 21 Jul. 2022). In *Matthew*, this Court held that the omission of audio of the arraignment was quantitatively substantial. *Id.* Interpreting the 2016 *MCM*, this Court followed the procedures in R.C.M. 1103 and remanded to the Judge Advocate General. *Id*. at *15–16. Here, like *Matthew*, the omission of the arraignment audio is substantial. This case is unique in that there were two arraignments. *See* R. at 8, 21. However, this does not cure the defect in the record. Further, while the transcript does exist here (and did not in *Matthew*), the transcript is not part of the record of trial; instead, it is one of the attachments for appellate review under R.C.M. 1112(f). The record of trial is incomplete. *See Matthew*, 2022 CCA LEXIS 425, at * 11; *United States v. Valentin-Andino*, 83 M.J. 537, 540–41 (A.F. Ct. Crim. App. 2023) (remanding for correction because of missing substantially verbatim recordings).

This Court should use its broad remit under Article 66, UCMJ, to provide any sentence relief appropriate for the Government's failure to provide a record of trial within the meaning of R.C.M. 1112. The Government's chronic failure to docket complete records of trial shows no signs of abating. As this Court has recognized, this is institutional neglect. *United States v. Valentin-Andino*, No. ACM 40185 (f rev), 2024 CCA LEXIS 223, at *17 (A.F. Ct. Crim. App. 7 Jun. 2024) (finding institutional neglect in Air Force post-trial processing), *aff'd*, __ M.J. __, 2025 CAAF

LEXIS 248 (C.A.A.F. Mar. 31, 2025). Real consequences for this continued behavior are necessary to correct this issue.

If this Court disagrees that sentencing relief is warranted, a remand is required to determine whether the audio exists.[3] The absence of the audio impedes appellate review for AB Cabrie and this Court.

AB Cabrie respectfully requests this Honorable Court provide sentencing relief or remand to correct the record. AB Cabrie also demands speedy appellate review.

Respectfully submitted,

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[3] *See United States v. Garcia-Arcos*, No. ACM 40009, 2022 CCA LEXIS 339, at *6 (A.F. Ct. Crim. App. Jun. 9, 2022) ("[W]e do not consider the attachments to the appellate record as a means to complete the record; we assume our granting both motions does not change the fact that the record, as certified and submitted to the court, is incomplete."); *United States v. Welsh*, No. ACM S32719, 2022 CCA LEXIS 631, at *2 (A.F. Ct. Crim. App. Oct. 26, 2022) ("We acknowledge the motion to attach was granted, but we do not agree that this cures the defect without the exhibit actually being incorporated into the ROT."); *United States v. Mardis*, No. ACM 39980, 2022 CCA LEXIS 10, at *7 (A.F. Ct. Crim. App. Jan. 6, 2022) ("[W]e considered the attachments to trial counsel's declaration to determine whether the omission of the exhibits from the record of trial was substantial . . . we did not consider the exhibits as a means to complete the record.").

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 30 April 2025.

Respectfully submitted,

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APPENDIX

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

III.

AIRMAN BASIC CABRIE'S SENTENCE WAS INAPPROPRIATELY SEVERE.

AB Cabrie personally raises the issue that his sentence, while consistent with the plea agreement, is nevertheless disproportionately severe given the non-violent nature of his offenses and the matters he presented in mitigation.

Article 66(d)(1), UCMJ, "provides that [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.'" *United States v. Flores*, 84 M.J. 277, 280-81 (C.A.A.F. 2024). Fundamentally, this means that this Court must "determine whether it finds the sentence to be appropriate." *Id.* at 281 (citation omitted).

AB Cabrie asks this Court to exercise its broad power to ensure a just sentence, not to grant mercy. *See United States v. Nerad*, 69 M.J. 138, 146 (C.A.A.F. 2010) (citation omitted). In assessing sentence appropriateness, this Court considers "the particular appellant, the nature and seriousness of the offense[s], the appellant's record of service, and all matters contained in the record of trial." *United States v. Sauk*, 74 M.J. 594, 606 (A.F. Ct. Crim. App. 2015) (en banc) (alteration in original) (citation omitted). "The power to review the entire record for sentence appropriateness includes the power to consider the allied papers, as well as the record of trial proceedings." *United States v. Hutchison*, 57 M.J. 231, 234 (C.A.A.F. 2002).

Sentence appropriateness is reviewed under an abuse-of-discretion standard, granting significant deference to trial-level sentencing decisions. *United States v. Lacy*, 50 M.J. 286, 288

(C.A.A.F. 1999). While a sentence falling within the range established by a plea agreement is presumptively appropriate, this presumption does not eliminate this Court's responsibility to ensure justice and fairness by individually reviewing all facts and circumstances in the record. *United States v. Martinez*, 76 M.J. 837, 841-42 (A. Ct. Crim. App. 2017).

At the time of sentencing, AB Cabrie had already served substantial pretrial confinement from 1 August 2023 until the date of trial on 11 December 2023, amounting to 133 days of restriction prior to sentencing. R. at 73, 84; *see also* ROT Vol. 1, DD Form 2707, *Confinement Order*, dated 1 August 2023. His prolonged pretrial confinement significantly impacted his freedom and personal relationships, specifically limiting meaningful contact and his ability to provide emotional support to his pregnant girlfriend during a critical period of her pregnancy. R. at 99, 118, 132-33.

Further, Appellant's chain of command acknowledged at trial that their negative opinion of AB Cabrie's rehabilitative potential would change if AB Cabrie stopped his drug use. R. at 85, 102. After suffering from tonsillitis since January 2022, AB Cabrie was scheduled for surgery while he was in pretrial confinement; however, his surgery was cancelled due to his unit not being able to find transportation for him out of the unit of around 260 Airmen. R. at 100-01, 118. The record also demonstrates that AB Cabrie expressed sincere remorse, cooperated fully during the investigation and trial proceedings, and his misconduct, while serious, was entirely non-violent and did not cause physical harm or pose direct threats to other individuals. R. at 73, 157–58.

Additionally, AB Cabrie was subjected to highly restrictive pretrial conditions, including administrative firearm prohibitions, canceled medical appointments, and severely limited access to his pregnant girlfriend, thus exacerbating the punitive nature of his pretrial treatment. R. at 99, 113, 133. These factors warrant significant consideration in reviewing the appropriateness of his

ultimate sentence. Indeed, the CAAF has consistently emphasized the importance of individualized sentence appropriateness review considering all relevant mitigating factors. *See United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005).

Therefore, AB Cabrie contends that the sentence was inappropriately severe in light of the particular facts and circumstances presented in this case, and requests this Court reassess his sentence.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	ANSWER TO ASSIGNMENTS OF ERROR
v.	)	Before Panel No. 2
Airman Basic (E-1) **LAKOTA D. CABRIE** United States Air Force *Appellant.*	)	No. ACM 40615 30 May 2025

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

ISSUES PRESENTED

I.

THE FIREARM PROHIBITION UNDER 18 U.S.C. § 922(G) IS UNCONSTITUTIONAL AS APPLIED TO [APPELLANT].

II.

THE RECORD OF TRIAL'S OMMISSION OF THE ARRAIGNMENT AUDIO REQUIRES RELIEF OR, AT A MINIMUM, REMAND FOR CORRECTION.

III[1].

AIRMAN BASIC CABRIE'S SENTENCE WAS INAPPROPRIATELY SEVERE.

STATEMENT OF CASE

On 11 December 2023, a general court-martial composed of a military judge sitting alone convicted Appellant, consistent with his pleas, of one charge and one specification of absence without leave in violation of Article 86, UCMJ, one charge and one specification of breaking

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

restriction, in violation of Article 87b, UCMJ, and one charge and one specification of wrongful use of a controlled substance on divers occasions, in violation of Article 112a, UCMJ. (*Entry of Judgment*, dated 23 January 2024, ROT, Vol. 1.) In accordance with Appellant's plea agreement, the military judge sentenced Appellant to a bad conduct discharge, to 200 total days of confinement, and a reprimand. (R. at 138.) The convening authority took no action on the findings and granted Appellant's request for waiver of all automatic forfeitures for a period of three months, Appellant's release from confinement, or his expiration of term of service, whichever was soonest for the benefit of Appellant's two dependent children. (*Convening Authority Decision on Action*, dated 21 December 2023, ROT, Vol. 1.) The convening authority denied Appellant's request for a two-day deferment of his confinement sentence. (Id.)

STATEMENT OF FACTS

Wrongful Use of Cocaine

On 20 March 2023, Appellant was randomly selected for Drug Remand Reduction Program (DDRP) testing. (Pros. Ex. 1, at 1-2.) The Air Force Drug Testing Laboratory (AFDTL) tested his urine sample which tested positive for cocaine at 4,225 ng/mL. (Id. at 6.) The Department of Defense cut-off level for cocaine is 100 ng/mL. (Id.) On 5 April 2023, the 355th Wing Security Forces Squadron (SFS) was notified Appellant had tested positive for cocaine and brought him in for questioning. (Id. at 1.) During the interview, Appellant was advised of and waived his Article 31 rights and consented to a search of his phone. (Id. at 7.) After Appellant's interview, SFS investigators interviewed his girlfriend, who stated that Appellant had used cocaine on or about the day he took his urinalysis test. (Id.) On 17 April 2023, SFS investigators interviewed a civilian friend of Appellant's who indicated Appellant had confided that he had been partying a lot and using a lot of cocaine. (Id.) On 26 April 2023, a

Bickel[2] follow-up urinalysis was conducted and Appellant again tested positive for cocaine at 3,482 ng/mL. (Id.) On 12 May 2023, another Bickel test was conducted which again reflected positive for cocaine at 412,097 ng/mL. (Id.) On 17 May 2023, Appellant was randomly selected for urinalysis and he again tested positive for cocaine at 818,783 ng/mL. (Id.) On 8 June 2023, SFS investigators again brought Appellant in for questioning based on his numerous positive urinalyses for cocaine. (Id.) During that interview, Appellant stated he had intentionally used cocaine the weekend before his urinalysis. (Id.) Appellant also consented to a search of his phone. (Id.) The search of Appellant's phone revealed Appellant had communicated his cocaine use to others on multiple occasions ranging from 26 March 2023 to 7 June 2023. (Id. at 7, Attachment 6.) Later that day, a Bickel test was conducted and Appellant again tested positive for cocaine at 878,495 ng/mL. (Id. at 7-8.) In total, after his initial positive drug test, Appellant tested positive for cocaine on six subsequent urinalysis tests. (Id. at 2.) On 6 July 2023, one charge and one specification of wrongful use of cocaine on divers occasions was preferred against Appellant. (Id.)

Breaking Restriction

On 12 July 2023, Appellant received a lawful order restricting him to base. (Id.) Appellant received a written copy of the order restricting him to base and signed an indorsement where he acknowledged receipt of said order. (Pros. Ex. 1, at 5.) As part of the order restricting him to base, Appellant was required to obtain permission to leave base for any off-base appointments and was required to have an escort with him for any such appointments. (Id.) On 20 July 2023, Appellant drove off base without permission and without an escort, in violation of his restriction, to visit his girlfriend at her off-base residence. (Id.)

[2] United States v. Bickel, 30 M.J. 277 (C.M.A. 1990).

On 21 July 2021. Appellant checked himself into the Northwest Medical Center, located off-base. (Id. at 6.) Appellant did not have permission to leave base and did not have an escort with him, as required by the order restricting him to base. (Id.) Upon his release from the Northwest Medical Center, Appellant was instructed by his leadership to return to base, which he did. (Id.) Later that same day, Appellant requested permission from his leadership to leave base to visit his off-base girlfriend. (Id.) Appellant's request was denied by his leadership because he had been placed on quarters by a doctor earlier that morning. (Id.) The next day, again without authorization and without an escort, Appellant left the base to visit his girlfriend at her off-base residence. (Id.) At 1730 hours on 22 July 2023, a member of Appellant's leadership contacted him when they noticed that his vehicle was not in the dormitory parking lot. (Id. at 3.) That member contacted Appellant to determine his whereabouts. (Id.) Appellant stated that he was "sitting in his car somewhere to get out of his dorm room." (Id.) The member asked Appellant to provide his whereabouts so they could verify that he was still on base. (Id.) Appellant was uncooperative and refused to provide his location and refused to meet with leadership in person to confirm his presence on base. (Id.) The member instructed Appellant that they would see him on Monday, 24 July 2023. (Id.)

Absence Without Leave

At 0730 hours on 24 July 2023, Appellant failed to report to his scheduled place of duty at the required time. (Pros. Ex. 1, at 2.) When his leadership team attempted to contact him to determine his whereabouts, it was discovered that Appellant had disconnected his phone and was not in his on-base dorm room. (Id. at 3.) Multiple members of Appellant's leadership team tried to reach him via cell phone throughout the day, but his phone remained disconnected. (Id.) His

leadership team also tried, unsuccessfully, to contact Appellant through Facebook Messenger. (Id.)

On 25 July 2023, Appellant's leadership team contacted various family members and friends of Appellant, including his father, in an attempt to determine his whereabouts. (Id. at 4.) Appellant's leadership team learned from his father that Appellant had contacted him that morning from a new phone number asking for money. (Id.) Appellant's father provided the number to his leadership who attempted to contact Appellant without success. (Id.) A minute after calling his phone, Appellant's leadership team received a Facebook message from Appellant stating "I'll turn myself in soon." (Id.) Appellant then blocked his leadership team from further communication via the Facebook Messenger application. (Id.)

On 26 July 2023, Appellant's leadership notified OSI that Appellant had deserted and OSI began investigating. (Id.) As part of their investigation, OSI coordinated with Tucson Police Department (TPD) to identify, locate, and apprehend Appellant. (Id.) In an attempt to locate Appellant, OSI in conjunction with TPD began surveilling a vehicle matching Appellant's that was seen parked at his old apartment complex. (Id.) During their surveillance, OSI and TPD observed Appellant drive to a local bank and withdraw money from an ATM. (Id.) Appellant then met with another individual in the parking lot of the bank and then left the bank in his own vehicle. (Id.) TPD officers pulled over the individual Appellant had met with at the bank, who was identified as a suspected drug dealer and was arrested for possession of narcotics. (Id.) OSI agents followed Appellant to his old apartment complex and observed him exit his vehicle and enter an apartment. (Id.) OSI approached the front door of Appellant's apartment and yelled out his name. (Id.) Appellant then exited the apartment and was taken into custody by OSI and TPD officers without incident. (Id. at 5.) After his arrest, OSI conducted an

interview with Appellant. (Id.) During that interview, Appellant admitted that he knew he was absent without leave and that he had been staying at an old neighbor's apartment off-base and visiting his girlfriend in violation of his restriction to base. (Id.)

Appellant's Plea Agreement

On 29 November 2023, Appellant submitted an offer for plea agreement which was approved by the Convening Authority on 8 December 2023. (App. Ex. VIII.) In the agreement, Appellant agreed to plead guilty to Charge I, II, and III and their respective Specifications. (Id. at 1.) As part of Appellant's plea agreement, the military judge was required to sentence Appellant to confinement as follows:

(1) To Charge I and its Specification: A minimum confinement of twenty (20) days and a maximum confinement of thirty (30) days.

(2) To Charge II and its Specification: A minimum of ten (10) days confinement and a maximum of fifteen (15) days.

(3) To Charge III and its Specification: A minimum confinement of one-hundred-and-fifty (150) days and a maximum confinement of one-hundred-and-sixty-five (165) days. A Bad-Conduct discharge was required.

(App. Ex. VIII at 2.) Per the plea agreement, the periods of confinement for each Charge were required to run consecutively. (Id.)

ARGUMENT

I.

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 INSTRUCTIONS REQUIRED THE STATEMENT OF TRIAL RESULTS AND ENTRY OF JUDGMENT TO ANNOTATE APPELLANT'S CRIMINAL INDEXING. FINALLY, 18 U.S.C. § 922 IS CONSTITUTIONAL AS APPLIED TO APPELLANT.

Additional Facts

Appellant was convicted of one specification of absence without leave, in violation of Article 86, UCMJ; one specification of breaking restriction, in violation of Article 87b, UCMJ; and one specification of wrongful use of a controlled substance on divers occasions, in violation of Article 112a, UCMJ. (*Entry of Judgment*, dated 23 January 2024, ROT, Vol. 1.) The statutory maximum punishment for Appellant's wrongful use of cocaine conviction was forfeiture of all pay and allowances, confinement for five years, and a dishonorable discharge. MCM, pt. IV, para. 50.d.(1)[3].

The Staff Judge Advocate's (SJA) First Indorsement to the Entry of Judgement (EOJ) and Statement of Trial Results (STR) in Appellant's case contains the following statement: "Firearm Prohibition Triggered Under 18 U.S.C. § 922: Yes." (*Entry of Judgment,* 23 January 2024, ROT, Vol. 1; *Statement of Trial Results*, 11 December 2023, ROT, Vol. 1.)

[3] All references to the UCMJ, the Rules for Courts-Martial (R.C.M.), and the Military Rules of Evidence (M.R.E.) are to the Manual for Courts-Martial, United States (2023 ed.) [MCM], unless otherwise noted.

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, 18 U.S.C. § 922, makes it unlawful for any person, *inter alia*, "who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year." 18 U.S.C. § 922(g)(1). 18 U.S.C. § 922(g)(3) also prohibits those who are unlawful users of—or addicted to—any controlled substances from possessing a firearm.

Appellant asserts that 18 U.S.C. § 922 is unconstitutional as applied to him. (App. Br. at 10.) Appellant asserts that under the Second Amendment, U.S. CONST. AMEND. II, and N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022), the government cannot show that there is a historical tradition in applying a firearm ban in Appellant's case. (App. Br. at 10-14.) Appellant's constitutional argument is without merit and is a collateral matter beyond this Court's authority to review.

1. 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, that 18 U.S.C. § 922(g)'s firearm prohibition and the criminal indexing requirements that follow that statute are collateral consequences of the conviction, rather than elements of the findings or sentence—thus, they are beyond the scope of this Court's jurisdiction under Article 66(d)(1), UCMJ. 84 M.J. 671, 681 (A.F. Ct. Crim. App. 2024).

Appellant's argument that this Court could provide relief under Article 66(d)(2) also fails because Article 66(d)(2) does not grant this Court the authority to modify the 18 U.S.C. § 922

annotation on the First Indorsement of the STR or the EOJ. "Article 66(d)(2), UCMJ, only authorizes a CCA to provide relief when there has been an 'error or excessive delay in the processing of the court-martial." United States v. Williams, 2024 CAAF LEXIS 501, *14 (C.A.A.F. 5 September 2024). In Williams, CAAF pointed to three statutory conditions that must be met before this Court may review a post-trial processing error under Article 66(d)(2): (1) an error must have occurred; (2) an appellant must raise a post-trial processing error with this Court; and (3) the error must have occurred after the judgment was entered. Id.

The military judge enters the court-martial judgment into the record via the EOJ. 10 U.S.C. § 860c(a)(1). By statute, the EOJ includes the STR. 10 U.S.C. § 860c(a)(1)(A). The STR contains: (1) "each plea and finding;" (2) "the sentence, if any; and (3) "such other information as the President may prescribe by regulation." 10 U.S.C. § 860(a)(1). The President prescribed that "[a]ny additional information directed by the military judge or required under regulations prescribed by the Secretary concerned" may be added to the STR. R.C.M. 1101(a)(6). Our superior Court determined an annotation on the STR notifying the Appellant of an 18 U.S.C. § 922 firearm prohibition constituted "other information" as required by R.C.M. 1101(a)(6). Williams, 2024 CAAF LEXIS 501, *12-13.

Following the President's instructions in R.C.M. 1101(a)(6), the Secretary of the Air Force required "other information" be provided in a First Indorsement attached to the STR. Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice*, para. 20.6 (dated 14 April 2022). On the STR, the SJA must annotate whether "firearm prohibitions are triggered." (Id.) The Secretary of the Air Force also requires a First Indorsement to the EOJ that also states whether a firearm prohibition is triggered by a conviction. DAFI 51-201, para. 20.41. "In cases where specifications allege offenses which trigger a prohibition under 18

U.S.C. § 922 and the accused is found guilty of one or more such offenses, the appropriate box must be completed on the first indorsements to the STR and EoJ by the SJA." DAFI 51-201, para. 20.39.

Firstly, while Appellant has requested relief under the second prong of Article 66(d)(2), the 18 U.S.C. § 922 firearm annotation was neither an error, nor one that occurred after the judgment of the court-martial was entered on the record. The 18 U.S.C. § 922 annotation on the First Indorsement of the STR and the EOJ were not errors because they accurately stated that the firearm prohibition applied to Appellant in accordance with federal law. Secondly, because the STR and the First Indorsement are entered into the record before the EOJ is entered into the record under Article 60c, the § 922 annotation on the STR's First Indorsement is not an error occurring "*after* the judgment was entered into the record." 10 U.S.C. § 866(d)(2) (emphasis added).

2. 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 wrongful use of cocaine on divers occasions; a crime punishable by imprisonment for a term exceeding one year. (MCM, pt. IV, para. 50.d.(1); R. at 53-54.) Thus, the Staff Judge Advocate followed the appropriate Air Force regulations in signing the first indorsement to the STR and the EOJ. DAFI 51-201, paras. 29.30, 29.32. Moreover, Appellant's conviction and the facts surrounding his case demonstrate that he is a user of a controlled substance and 18 U.S.C. § 922(g)(3) would also apply to Appellant.

3. The Firearm Prohibition is constitutional as applied to Appellant because this nation has a historical tradition of disarming the dangerous.[4]

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* Bruen, 597 U.S. at 20; 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. 680, 691 (2024).

While the Amendment guarantees "the right of *law-abiding, responsible citizens* to use arms for self-defense," Bruen, 597 U.S. at 26 (emphasis added), the same cannot be said for those who have broken the law. 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, 602 U.S. at 735 (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.

For Appellant, therein lies the rub. As someone whose right to possess firearms was restricted as a consequence of his conviction, Appellant is in a fundamentally different position

[4] Although analysis of this assignment of error should start and end with the scope of this Court's jurisdiction, the United States addresses, *arguendo*, Appellant's claim that 18 U.S.C. § 922 is unconstitutional as applied to him.

than the law-abiding, non-criminal petitioners in Bruen, Heller, and McDonald.[5] For Appellant—now a felon—falls into a class of non-law abiding, "irresponsible persons." Barrett, 423 U.S. at 220. And despite his suggestions to the contrary, the fact that Appellant's crime did not involve physical violence does not absolve him of his sins.

The plain language of 18 U.S.C. § 922 makes no distinction between violent and non-violent felonies. The law has often treated non-violent offenses as harshly as it has violent offenses. *See, e.g.*, 2 RECORDS OF THE COURT OF ASSISTANTS OF THE COLONY OF THE MASSACHUSETTS BAY 1630-1692, at 32 (John Noble ed., 1904) (punishing theft by ordering, among other penalties, that "all his estate shalbe forfected"); Act of Feb. 21, 1788, ch. 37, 1788 N.Y. Laws 664-65 (authorizing the death penalty for theft of chattels worth over five pounds); Kathryn Preyer, *Crime and Reform in Post-Revolutionary Virginia*, 1 LAW & HIST. REV. 53, 73 (1983) (those convicted of horse theft were often subject to the death penalty).

Moreover, this nation has a historical tradition of disarming not only violent offenders, but also "dangerous persons." In the early days of the republic, the law was frequently used to disarm groups that were considered dangerous, such as British loyalists. *See* Joseph Blocher & Caitlan Carberry, *Historical Gun Laws Targeting "Dangerous" Groups and Outsiders*, DUKE LAW SCHOOL PUBLIC & LEGAL THEORY SERIES NO. 2020-80 (2020). This tradition of disarming the dangerous endures today—in part, through the "longstanding prohibitions on the possession of firearms by felons," which the Supreme Court has identified as "presumptively lawful regulatory measures." Heller, 554 U.S. at 626, 627 n.26.

[5] *See* Bruen, 597 U.S. at 8 (where "law-abiding New York residents" challenged a state restriction on carrying a firearm outside the home); Heller, 554 U.S. at 573 (where a policeman challenged the District of Columbia's ban on handgun possession in the home); McDonald, 561 U.S. at 790 (challenging a city ordinance that effectively banned "law-abiding members of the community" from having handguns in the home).

In the modern age, dangerousness cannot be defined by physical violence alone. Thus, it matters little that Appellant's crime did not involve physical violence. As the world has evolved, crime has evolved with it. There are more laws to violate than there were in the Founding Era, more ways to violate them, and more ways to be dangerous as a result. "[H]abitual drug abusers, like the mentally ill, are more likely to have difficulty exercising self-control, making it dangerous for them to possess deadly firearms." United States v. Yancey, 621 F.3d 681, 685 (7th Cir. 2010). Appellant may not be a physically violent offender, but he is a danger to our society nonetheless. Given this nation's historical tradition of disarming dangerous persons, 18 U.S.C. § 922 is constitutional as applied to Appellant, and he is not entitled to relief.

Ultimately, the constitutional question posed here is unrelated to the actual findings and sentence in the case, and therefore outside the scope of this Court's authority. Thus, as discussed above, Appellant is not only unentitled to relief, but also powerless to obtain any from this Court at all.

II.

THE RECORD OF TRIAL'S OMISSION OF THE ARRAIGNMENT AUDIO DOES NOT REQUIRE RELIEF OR REMAND.

Additional Facts

The audio of Appellant's 7 November 2023 arraignment was not included in the record of trial (ROT). But the full transcription of the arraignment is included in the ROT. (R. at 1-9.) The court reporter certified that she reviewed the transcript of the 7 November 2023 "arraignment in its entirety and that it is a true and accurate reflection of the proceeding of the court." (*Certification of the Transcript in the case of United States v. Airman Basic Lakota Cabrie*, dated 19 December 2023, ROT, Vol. 3.) Both trial counsel and trial defense counsel

reviewed the transcript before certification and verified its accuracy. (*Trial Counsel's Certification of Transcript*, dated 8 December 2023, ROT, Vol. 3; *Defense Counsel's Certification of Transcript*, dated 12 February 2024, ROT, Vol. 3.)

Standard of Review

Whether a record of trial is complete is a question of law that is reviewed de novo. United States v. Davenport, 73 M.J. 373, 376 (C.A.A.F. 2014).

Law

A complete record of proceedings, including all exhibits and a verbatim transcript, must be prepared for any general or special court-martial where a sentence of "death, dismissal, discharge, confinement for mor than six months, or forfeiture of pay for mor than six months" is adjudged. Article 54(c)(2), UCMJ; 10 U.S.C. § 854. Article 1, UCMJ, defines the term "record," when used in connection with the proceedings of a court-martial, as either: "(A) an official written transcript, written summary, or other writing related to the proceedings; or (B) an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced." 10 U.S.C. 801(14)(A), (B). The record of trial in every general and special court-martial shall include a substantially verbatim recording of the court-martial proceedings except sessions closed for deliberations and voting. R.C.M. 1112(b)(1). R.C.M. 1112(f) identifies items a court reporter must attach to the record of trial when it is sent to the Judge Advocate General for appellate review. One of those items is "[a]ny transcription of the court-martial proceedings created pursuant to R.C.M. 1114." R.C.M. 1112(f)(8). R.C.M. 1114 states:

> A certified verbatim transcript of the record shall be prepared—
>
> (1) When the judgment entered into the record includes a sentence of death, dismissal of a commissioned officer, cadet, or midshipman,

a dishonorable or bad-conduct discharge, or confinement for more than six months; or

(2) As otherwise required by court rule, court order or under regulations prescribed by the Secretary concerned.

Department of the Air Force Instruction 51-201, *Administration of Military Justice*, para. 15.12 (18 March 2025), states that transcription requirements for Article 30(a) proceedings and courts-martial are set forth in Department of the Air Force Manual (DAFMAN) 51-203, *Records of Trial* (12 April 2021). DAFMAN 51-203 provides guidance on compiling the ROT. It states, "[a] completed ROT consists of two parts: the required contents of the certified ROT as listed in R.C.M. 1112(b)… and the required ROT attachments and allied papers required by this manual…" DAFMAN 51-203, para. 1.4.

Appellate courts understand that inevitably, records will be imperfect and therefore review for substantial omissions. *See* United States v. Lashley, 14 M.J. 7, 8 (C.M.A. 1982). A substantial omission renders a record incomplete and raises a presumption of prejudice that the government must rebut. United States v. Henry, 53 M.J. 108, 111 (C.A.A.F. 2000) (*citing* United States v. McCullah, 11 M.J. 234, 237 (C.M.A. 1981)). Insubstantial omissions do not raise a presumption of prejudice or affect the record's characterization as complete. Id. A substantial omission may not be prejudicial if the appellate courts are able to conduct an informed review. United States v. Simmons, 54 M.J. 883, 887 (N-M. Ct. Crim. App. 2001); *see also* United States v. Morrill, ARMY 20140197, 2016 CCA LEXIS 644, at *4-5 (A. Ct. Crim. App. 31 October 2016) (unpub. op.) (finding the record "adequate to permit informed review by this court and any other reviewing authorities") (citations omitted).

Analysis

The court reporter in this case created an audio recording of Appellant's 7 November 2023 arraignment. The audio is not included in the record of trial. The government has

confirmed that the audio recording still exists. Appellant argues the record is not complete and this Court should provide sentencing relief or remand to correct the error. (App. Br. at 18-19.) This Court should deny the request, however, because no omission exists in the record since the government compiled a record of trial which included a certified transcription of the court-martial proceedings, to include the 7 November 2023 arraignment.

This Court has found in a remarkably similar case that missing audio was either not an omission where there was a certified transcript or, even assuming the audio was an omission, such omission was insubstantial. United States v. Reedy, No. ACM 40358, 2024 CCA LEXIS 40 (A.F. Ct. Crim. App. 2 Feb. 2024) (unpub. op.). In Reedy, there was no recording of the court-martial included in the record of trial because, although it was recorded by the court reporter, the files on the disc later became inaccessible. Id. at *6. Before they became inaccessible, the court reporter had used the audio recording to create a transcript, which was included in the record of trial. Id. In Reedy, the appellant argued that the absence of any court-martial audio rendered the record incomplete. Id. This Court disagreed, finding that for a court-martial like appellant's, Article 1, UCMJ, defined "record" as *either* the transcript *or* the audio recording. Id. (*citing* 10 U.S.C. § 801) (emphasis in original). This Court noted that although it is often the case that both are included in Air Force records of trial, there are instances where both are required and instances where they are not. Id. The Court found that there was no omission in the record because of the certified transcription. Id. The Court further found that even assuming there was an omission, the omission was insubstantial as the certified transcription was available for all to reference. Id. Finding that appellant failed to substantiate how the lack of audio recording materially prejudiced his rights or negatively impacted him in any particular way, the Court declined to provide relief. Id.

Appellant here has also failed to identify how the missing audio has impacted or prejudiced him. Instead, he cites to this Court's decision in United States v. Valentin-Andino, No. ACM 40185 (f rev), 2024 CCA LEXIS 223, at *17 (A.F. Ct. Crim. App. 7 Jun. 2024), and asserts there should be real consequences for this perceived continued failure to docket complete ROTs. (App. Br. at 18-19.) Appellant also cites to United States v. Matthew, No. ACM 39796 (f rev), 2022 CCA LEXIS 425, at *11-12 (A.F. Ct. Crim. App. 21 Jul. 2022) (unpub. op.), to support his position that the missing audio is a substantial omission. (App. Br. at 18.) Yet, the key distinguishing fact between Matthew and Reedy is that in Matthew there was no certified transcription. This Court hinged its analysis in Matthew on the fact that the loss of the audio recording prevented the preparation of a verbatim transcript, rendering the omission a substantial one. Here, as in Reedy, there is a verbatim transcription included in the record. This Court should find that the omission of the audio recording of Appellant's 7 November 2023 arraignment was insubstantial, thus relief is not appropriate.

Although the audio was omitted from the record of trial, the proceedings were audio recorded and the audio was used to make a certified transcript of the arraignment. Thus, there is no reason for a remand.

Appellant's arraignment was fully captured in the verbatim transcript allowing for sufficient appellate review. Because the omission was insubstantial, this Court should deny Appellant's assignment of error.

III[6].

APPELLANT'S APPROVED SENTENCE IS NOT INAPPROPRIATELY SEVERE.

Additional Facts

In addition to the evidence presented supporting Appellant's convictions described above; the government introduced additional aggravating evidence. Trial counsel called WM and CM to testify during pre-sentencing proceedings. (R. at 78, 86.) WM, Appellant's Commander, explained that prior to his convictions, the unit had placed Appellant into the ADAPT treatment programs on several occasions for both alcohol and drug abuse. (R. at 79-80.) Appellant was also sent to an off-base treatment program. (R. at 80.) But Appellant repeatedly failed the ADAPT program and the off-base treatment program due to lack of attendance. (R. at 80.) WM explained that during Appellant's time in the unit, he failed to show to work on at least a dozen occasions, requiring members of the unit to drive to his off-base apartment to locate him and ensure he came to work. (R. at 81.) Appellant's commander believed Appellant had low rehabilitative potential. (R. at 82.)

CM, Appellant's First Sergeant, similarly testified that Appellant had failed out of treatment programs due to lack of attendance and explained that his attendance issues also applied to him attending his duties, which frequently required man hours to track him down and get him to his place of duty. (R. at 88-90.) CM explained that Appellant had previously been issued an Article 15 for drug abuse after she was shown a video of Appellant snorting cocaine off a naked woman's buttocks. (R. at 90-91.) As a result of his Article 15, Appellant was

[6] This issue is raised in the appendix pursuant to Grostefon.

reduced to the rank of Airman Basic but he did not stop his illegal drug use. (R. at 91.) Based on her interactions with Appellant and her knowledge of the above, CM testified that she believed Appellant had "very low" rehabilitative potential. (R. at 96-97.)

The government also introduced several pieces of documentary evidence: (1) a referral Enlisted Performance Report for adultery and failure to go, (2) a Letter of Counseling (LOC) for extramarital sexual conduct, (3) an LOC for failure to go, (4) three Letters of Reprimand for failure to go, and (5) and non-judicial punishment for wrongful use of cocaine in March 2023. (Pros. Ex. 2-4.)

Trial defense counsel called Appellant's mother to testify to Appellant's personal struggles. (R. at 112.) They also introduced four sentencing exhibits: a photo array of Appellant's military career and family, and three character letters. (Def. Ex. A-F.) Appellant also provided an oral unsworn statement. (R. at 114-118.)

Standard of Review

This Court reviews sentence appropriateness de novo. United States v. McAlhaney, 83 M.J. 164, 166 (C.A.A.F. 2023).

Law

Pursuant to Article 66(d), UCMJ, 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. 10 U.S.C. § 866(d). The purpose of such review is "to ensure 'that justice is done and that the accused gets the punishment he deserves.'" United States v. Joyner, 39 M.J. 965, 966 (A.F.C.M.R. 1994) (quoting United States v. Healy, 26 M.J. 394, 395 (C.M.A. 1988)).

In assessing sentence appropriateness, this Court considers "the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the record of trial." United States v. Hamilton, 77 M.J. 579, 587 (A.F. Ct. Crim. App. 2017) (citations omitted).

Although this Court has discretion to determine whether a sentence is appropriate, it has "no authority to 'grant mercy.'" Id. at 587 (citing United States v. Nerad, 69 M.J. 138, 146 (C.A.A.F. 2010)); *see also* United States v. Walters, 71 M.J. 695, 698 (A.F. Ct. Crim. App. 2012) ("[W]e are not authorized to engage in exercises of clemency."). Thus, if a sentence is not inappropriately severe, this Court may affirm it even if it is not what this Court would have adjudged:

> By affirming a sentence, we do not necessarily mean that it is the sentence we would have adjudged had we been the sentencing authority. The numerous permutations and combinations of sentencing alternatives available to the sentencing authority are so broad that, normally, there will not be only one sentence that is appropriate for a particular appellant. Thus, it may be more fitting for this Court to find that a particular sentence "is not inappropriate," rather than "is appropriate."

Joyner, 39 M.J. at 966.

Absent a plea agreement, the total maximum confinement sentence for Appellant's convictions was five years and seven months confinement. (R. at 53-54.)

Analysis

Appellant argues that his sentence was "disproportionately severe given the non-violent nature of his offenses and the matters he presented in mitigation." (App. Br., Appx. at 1.) Yet, as Appellant himself concedes, his sentence was consistent with the framework established by

his plea agreement (Id.) and his argument fails to establish that his sentence was inappropriately severe.

While not determinative, a sentence falling within the range of an appellant's own sentence proposal is a reasonable indication of its probable fairness to him, absent evidence to the contrary. United States v. Cron, 73 M.J. 718, 736 n.9 (A.F. Ct. Crim. App. 2014). Thus, when considering the appropriateness of a sentence, this Court may consider that a plea agreement—to which an appellant agreed—placed limits on the sentence that could be imposed. United States v. Fields, 74 M.J. 619, 625-626 (A.F. Ct. Crim. App. 2015). Here, Appellant's plea agreement—one which he initiated—required at a *minimum* a confinement sentence of at least 180 days. (App. Ex. VIII at 2.) At a maximum, the plea agreement limited Appellant's confinement exposure to no more than 210 days. (Id.) His sentence to a total of 200 days confinement falls squarely within the range of punishment that Appellant negotiated and agreed to. Appellant makes no argument that his plea agreement was unfair or that he was in any way pressured into entering into said agreement. Given that Appellant initiated the plea agreement and agreed to receive precisely the punishment he did, this Court should conclude that his sentence was not inappropriately severe.

While Appellant asserts that the time he spent in pretrial confinement should somehow act as a mitigating circumstance for this Court's consideration (App. Br., Appx. at 2-3), this Court should not take the bait. Appellant fails to recognize that he only has himself to blame for his pretrial confinement. After his initial positive urinalysis, for which he was questioned by SFS investigators, he continued to abuse cocaine—testing positive on six additional urinalyses. (Pros. Ex. 1, at 2.) His repeated use of cocaine ultimately led to Appellant being restricted to base. (Id.) Yet, Appellant failed to comply with that restriction and breached it on several

occasions. (Id. at 5-6.) Ultimately, Appellant's non-compliance culminated with him going absent without leave for three days, only returning when he was arrested by OSI and TPD—after he had been observed withdrawing cash and meeting with an individual who had narcotics in the vehicle. (Id. at 2-5.) Appellant's pretrial confinement and the opportunities that he missed out on due to his confinement should not give this Court any concern—he earned it through his repeated and prolific use of cocaine and flagrant inability to comply with basic military orders.

In assessing sentence appropriateness, this Court should consider "the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the record of trial." United States v. Hamilton, 77 M.J. 579, 587 (A.F. Ct. Crim. App. 2017) (citations omitted). After considering all these factors, this Court should be convinced that Appellant's sentence was not inappropriately severe.

First, Appellant's crimes were serious in nature. He repeatedly used cocaine despite knowing that he was actively being investigated for using cocaine and despite having already received an Article 15 for prior use of cocaine. (Pros. Ex. 1; Pros Ex. IV. R. at 90-91.) After being restricted to base—a strong signal from command to discontinue his behavior—Appellant failed to comply, ultimately culminating in him going absent without leave, changing his phone number, and refusing to comply or cooperate with his command's efforts to locate him. (Pros. Ex. 1.) When his command was unable to find him, it required OSI partnering with local civilian law enforcement to track Appellant down and apprehend him. (Id.) He was then apprehended after law enforcement observed him meeting with an individual who was immediately stopped and arrested for possession of narcotics. (Id.)

Turning toward Appellant himself, CM's and WM's testimony that Appellant has a low rehabilitative potential is supported by the facts and circumstances surrounding his convictions

and the sentencing evidence introduced at trial. Prior to his convictions, Appellant was *repeatedly* issued paperwork for failure to go and *repeatedly* demonstrated his inability to comply with basic duty requirements. Most significantly, he had previously been issued an Article 15 for wrongful use of cocaine. (Pros. Ex. 4; R. at 90-91.) None of these corrective measures were effective in deterring Appellant from engaging in the conduct which ultimately culminated in his court-martial. Moreover, when his leadership provided him with the opportunity to seek rehabilitative treatment both through ADAPT and an off-base provider, Appellant failed those programs because of a lack of attendance. (R. at 80, 88-90.) Despite several lesser measures taken by his leadership, the only thing that ended Appellant's persistent law-breaking was his placement into pretrial confinement.

There was no excuse for Appellant's repeated and flagrant violations of the law. Likewise, there is nothing that calls for a lesser sentence than what was ultimately adjudged. Appellant's sentence is not inappropriately severe and is well-within the sentencing framework that he himself negotiated. Thus, this Court should uphold the terms of the plea agreement Appellant made and decline to disturb his sentence.

CONCLUSION

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

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 30 May 2025.

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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40615**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF**
Lakota D. CABRIE	)	**PANEL CHANGE**
Airman Basic (E-1)	)	
U.S. Air Force	)	
Appellant	)	

It is by the court on this 6th day of June, 2025,

ORDERED:

The record of trial in the above styled matter is withdrawn from Panel 2 and referred to a Special Panel for appellate review. The Special Panel in this matter shall be constituted as follows:

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge
KEARLEY, CYNTHIA T., Colonel, Appellate Military Judge
ORTIZ, ANTHONY D., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.

FOR THE COURT

[redacted]

TANICA S. BAGMON
Appellate Court Paralegal

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*,	)	**REPLY BRIEF ON BEHALF OF APPELLANT**
v.	)	Special Panel
Airman Basic (E-1) **LAKOTA D. CABRIE,** United States Air Force, *Appellant*.	)	No. ACM 40615
	)	6 June 2025

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

Appellant, Airman Basic (AB) Lakota D. Cabrie, pursuant to Rule 18(d) of this Honorable Court's Rules of Practice and Procedure, files this Reply to the Appellee's Answer, dated 30 May 2025 (Gov. Ans.). In addition to the arguments in his opening brief, filed on 30 April 2025 (App. Br.), AB Cabrie submits the following argument.

I.

THE FIREARM PROHIBITION UNDER 18 U.S.C. § 922(g) IS UNCONSTITUTIONAL AS APPLIED TO AIRMAN BASIC CABRIE.

A. This Court has jurisdiction under Article 66(d)(2), UCMJ, to address the erroneous firearm prohibition annotation in the Entry of Judgment.

The Government incorrectly argues that this Court lacks jurisdiction under Article 66(d)(1), UCMJ, to address the firearm prohibition noted in the Entry of Judgment (EOJ). Gov. Ans. at 8-10. The Government's reliance on *United States v. Vanzant*, 84 M.J. 671 (A.F. Ct. Crim. App. 2024), *rev. granted*, 85 M.J. 198 (C.A.A.F. 2024), in furtherance of its position is misplaced. *See* Gov. Ans. at 8. In *Vanzant*, this Court held it lacked jurisdiction under Article 66(d)(1), which pertains solely to findings and sentence; this Court did not decide whether it lacked jurisdiction Article 66(d)(2). *Id*. at 680-81. Therefore, *Vanzant* does not foreclose jurisdiction under Article 66(d)(2) as applied here.

The Court of Appeals for the Armed Forces (CAAF) left open the jurisdictional avenue for Courts of Criminal Appeals (CCAs) under Article 66(d)(2) to address post-trial errors. *See United States v. Williams*, 85 M.J. 121, 126-27 (C.A.A.F. 2024) (considering relief under Article 66(d)(2) but rejecting it only because of the unique procedural posture of the case). Specifically, the CAAF highlighted that Article 66(d)(2) grants CCAs authority to correct post-trial errors identified and preserved by an appellant after entry of judgment. *Williams*, 85 M.J. at 126. Thus, this Court's authority clearly encompasses the correction of improper post-trial annotations affecting constitutional rights, such as firearm prohibitions erroneously applied under 18 U.S.C. § 922.

In this case, the trial defense counsel properly filed a post-trial motion to address the erroneous 18 U.S.C. § 922(g) annotation in the Statement of Trial Results (STR). Appellate Ex. X. However, the military judge incorrectly applied the law in his analysis of the issue, which resulted in the error carrying over to the post EOJ processing. *Id.* at 7, 16. Therefore, the firearm prohibition annotation was a post-trial error that was explicitly challenged by AB Cabrie, placing this matter squarely within the Court's authority. This Court should find that jurisdiction under Article 66(d)(2) is proper.

B. The firearm prohibition under 18 U.S.C. § 922(g) is unconstitutional as applied to AB Cabrie's non-violent offense.

The Government's argument for the historic disarmament of felons, Gov. Ans. at 11-12, amounts to a generalized assertion and thereby fails to measure up to the constitutional demands articulated by the Supreme Court.

Notably, *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 24 (2022), requires a detailed historical analysis, placing the burden squarely on the Government to show historical analogues to the challenged prohibition. *See also United States v. Rahimi*, 602 U.S. 680, 702 (2024)

(holding that historical analogues support the disarmament of individuals who pose a credible threat to the physical safety of another).

The Supreme Court's post-*Bruen* methodology requires the Government to identify a "relevantly similar" Founding- or Reconstruction-era analogue that disarmed non-violent offenders after they completed their sentences. *See. id.* at 689, 692. The Government has offered none. *See* Gov. Ans. at 11-13. The Government predicates its argument entirely on AB Cabrie's status as a felon, contending that felons are inherently "irresponsible" and "dangerous." *See* Gov. Ans. at 11-13. However, the historical analogues it invokes fail to establish that a tradition of disarmament applied to all felons, let alone a non-violent, sentence-completed offender, in a manner consistent with the requirements of *Bruen*. *See* Gov. Ans. at 12. As the Government has not presented a sufficiently analogous historical justification for disarming individuals in circumstances comparable to AB Cabrie, it has failed to meet its burden as established by *Bruen*.

Modern federal appellate decisions confirm that the Framers carved out disbarment with a scalpel, not a battle axe. Surveying colonial regulations, the Eighth Circuit observed that the few early disbarment laws surrounding intoxicants "were temporary and narrow in scope," addressing immediate, active intoxication rather than past, non-contemporaneous use. *United States v. Veasley*, 98 F.4th 906, 911 (8th Cir. 2024). As stated in AB Cabrie's brief and ignored by the Government, the sweeping, permanent disability now imposed by 18 U.S.C. § 922(g) first appeared when Congress rewrote the Federal Firearms Act in the Gun Control Act of 1968, departing from the earlier rule that reached only "crimes of violence." C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun*, 32 Harv. J.L. & Pub. Pol'y 695, 699-704 (2009); *contrast* App. Br. at 14, *with* Gov. Ans. at 11-13. Therefore, the Gun Control Act of 1968 rewrite to the Federal Firearms Act should not be viewed as a sufficient historical analogue. And, as the Third Circuit

recently underscored, felons in the founding era "regained their rights when . . . they completed their sentence," *Range v. AG United States*, 124 F.4th 218, 289 n.9 (3d Cir. 2024), demonstrating that the lifelong civil-rights disabilities now-championed by the Government were unknown to the generation that adopted the Second Amendment.

Under the Supreme Court's two-step test, once an appellant shows that his desired conduct (possessing a firearm for lawful purposes) is covered by the Second Amendment, the burden shifts to the Government to identify a relevantly similar historical analogue *Bruen*, 597 U.S. at 24. The Government's recitation of a generalized fear of felons is not enough to meet the burden established under *Bruen*. *See* Gov. Ans. at 11-13. The proffered "tradition" is historically and legally irrelevant to the case at bar, *see* Gov. Ans. at 12-13; without an analogue tethered to the facts of AB Cabrie's case, the blanket application of 18 U.S.C. § 922(g) to AB Cabrie runs afoul the Second Amendment, and the Government's contrary contention cannot stand. The Government's silence on any true historical analogue that disables a non-violent, sentence-completed offender should be dispositive of this issue as the Government failed to meet its burden under *Bruen*.

This Court should remand the record to correct the EOJ's unconstitutional firearm prohibition or grant other relief it deems warranted to effectuate the same.

II.

THE RECORD OF TRIAL'S OMISSION OF THE ARRAIGNMENT AUDIO REQUIRES RELIEF OR, AT A MINIMUM, REMAND FOR CORRECTION.

The Government's answer fails to resolve the substantial omission in the record of trial and instead tries to paper over it with inapt reliance on *United States v. Reedy*, No. ACM 40358, 2024 CCA LEXIS 40 (A.F. Ct. Crim. App. Feb. 2, 2024). In *Reedy*, the audio recording was initially

created and later became inaccessible solely due to a technical malfunction after transcription had already occurred. *Id*. at *3. Specifically, the Court noted that the recording was previously available and reviewed prior to the unforeseen loss. *Id*. at *16-18. This in-depth analysis of the facts surrounding the missing audio is consistent with the CAAF's requirement that the Government must rebut the presumption of prejudice against an appellant. *See United States v. Henry*, 53 M.J. 108, 111 (C.A.A.F. 2000) (emphasizing that substantial omissions trigger presumptive prejudice absent clear rebuttal). Despite its assertions concerning the missing audio in AB Cabrie's case, the Government provides no comparable evidence to overcome the presumptive prejudice against AB Cabrie. *See* Gov. Ans. at 15, 17. The Government has neither produced documentation nor certification confirming the creation, review, or existence of the audio recording. *See id*. Unlike in *Reedy*, where evidence established that a recording existed and was reviewed, the Government has failed to provide any such verification in this instance. *See id*. Thus, the central issue in *Reedy*—technical malfunction after confirmed existence—is materially different from AB Cabrie's situation, where existence itself remains unsubstantiated. Consequently, the holding in *Reedy* offers no support for the Government's position here.

Although the Government insists the omission was harmless due to the presence of a certified transcript, at no point does its Answer provide evidence or explicit certification from the court reporter or the Davis-Monthan Air Force Base legal office verifying the initial creation, retention, or current existence of the arraignment audio recording. *See* Gov. Ans. at 15-17. Without such confirmation, the Government's assertions about harmlessness or completeness of the record remain speculative. The Government fails entirely to substantiate its claim, further highlighting the necessity for sentencing relief or, at minimum, a remand for correction of the record.

Not only has the Government failed to support a finding that the missing audio ever existed, the absence of the audio is also substantial. This Court's analysis in *United States v. Matthew*, No. ACM 39796, 2022 CCA LEXIS 425, at *11-16 (A.F. Ct. Crim. App. July 21, 2022), emphasizes the fact that missing audio recordings inherently undermine reliability of the accuracy of the record. Without the audio recording, appellate review for accuracy or completeness is fundamentally compromised, as the record of trial is incomplete.

AB Cabrie respectfully requests this Honorable Court provide sentencing relief or, at minimum, a remand for correction of the record.

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 6 June 2025.

Respectfully submitted,

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