

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

UNITED STATES	)	No. ACM 40641
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Clayton E. CAPERS, II	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 29 August 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 5th day of September 2024,

**ORDERED:**

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **7 November 2024**.

Each request for an enlargement of time will be considered on its merits. Appellant's counsel is advised that any subsequent motions for enlargement of time shall include, in addition to matters required under this court's Rules of Practice and Procedure, statements as to: (1) whether Appellant was advised of Appellant's right to a timely appeal, (2) whether Appellant was provided an update of the status of counsel's progress on Appellant's case, (3) whether Appellant was advised of the request for an enlargement of time, and (4) whether Appellant agrees with the request for an enlargement of time.



FOR THE COURT

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OLGA STANFORD, Capt, USAF  
Commissioner

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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (FIRST)</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airmen (E-4)	)	No. ACM 40641
<b>CLAYTON E. CAPERS II</b>	)	
United States Air Force	)	29 August 2024
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(1) and (2) 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 60 days, which will end on **7 November 2024**. The record of trial was docketed with this Court on 10 July 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,



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 Appellate Government Division on 29 August 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

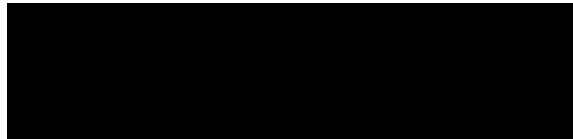
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM 40641
CLAYTON E. CAPERS II, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time 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 4 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**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (SECOND)</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airmen (E-4)	)	No. ACM 40641
<b>CLAYTON E. CAPERS II,</b>	)	
United States Air Force	)	28 October 2024
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) 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 **7 December 2024**. The record of trial was docketed with this Court on 10 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 5 March 2024, consistent with his pleas, Appellant was convicted at a general court-martial at Moody Air Force Base, Georgia. Record of Trial (ROT), Entry of Judgment, dated 5 April 2024. Appellant was charged with one charge with two specifications of sexual assault of a minor and two specifications of sexual abuse of a minor in violation of Article 120(b), Uniform Code of Military Justice (UCMJ); and one charge and four specifications of abusive sexual contact, in violation of Article 120 of the UCMJ. *Id.* Consistent with his pleas, Appellant was found guilty of Specification 1 of Charge I; guilty of Specification 2 of Charge I, except the words “sexual act” and “penetrating,” substituting therefor the words “lewd act” and “touching,” and “with an intent to gratify sexual desire,” Appellant was found not guilty of the excepted words; guilty of Specification 4 of Charge I, except the words “sexual act” and

“penetrating,” substituting therefor the words “lewd act” and “touching,” and “with an intent to gratify his sexual desire,” Appellant was found not guilty of the excepted words; guilty of Specification 1 and 2 of Charge II. Record (R.) at 275. The remaining charges were withdrawn and dismissed. *Id.* The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for a total of 5 years and 6 months<sup>1</sup>, and to be discharged from the service with a Bad Conduct Discharge. R. at 403-404.

In accordance with Appellant’s request, the Convening Authority deferred the Appellant reduction in grade for six months. The Convening Authority also deferred all automatic forfeitures for a period of six 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 deferred the Appellant reduction in grade for six months. ROT, Convening Authority Decision on Action – *United States v. SrA Clayton E. Capers II*, dated 26 Mar 2024.

The electronic ROT is 1 volume and consists of 3 Prosecution Exhibits, 5 Defense Exhibits, 14 Appellate Exhibits, and 4 Court Exhibits; the transcript is 405 pages. Appellant is 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

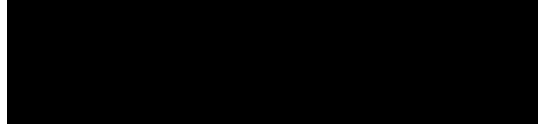
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<sup>1</sup> For Specification 1 of Charge I, Appellant was sentenced to 5 years confinement. For Specification 2 of Charge I, Appellant was sentenced to 5 years confinement. For Specification 4 of Charge I, Appellant was sentenced to 5 years and 6 months confinement. For Specification 1 of Charge II, Appellant was sentenced to 1 year confinement. For Specification 2 of Charge II, Appellant was sentenced to 1 year confinement. Confinement for all Specifications is to run concurrently.

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 28 October 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

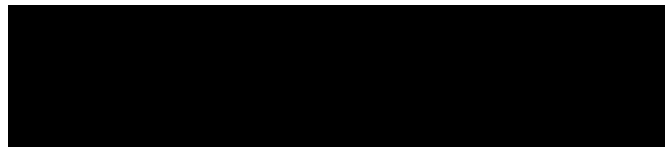
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM 40641
CLAYTON E. CAPERS II, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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



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

**5IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (THIRD)</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40641
<b>CLAYTON E. CAPERS II,</b>	)	
United States Air Force	)	27 November 2024
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) 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 **6 January 2025**. The record of trial was docketed with this Court on 10 July 2024. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 5 March 2024, consistent with his pleas, Appellant was convicted at a general court-martial at Moody Air Force Base, Georgia. Record of Trial (ROT), Entry of Judgment, dated 5 April 2024. Appellant was charged with one charge with two specifications of sexual assault of a minor and two specifications of sexual abuse of a minor in violation of Article 120(b), Uniform Code of Military Justice (UCMJ); and one charge and four specifications of abusive sexual contact, in violation of Article 120 of the UCMJ. *Id.* Consistent with his pleas, Appellant was found guilty of Specification 1 of Charge I; guilty of Specification 2 of Charge I, except the words “sexual act” and “penetrating,” substituting therefor the words “lewd act” and “touching,” and “with an intent to gratify sexual desire,” Appellant was found not guilty of the excepted words; guilty of Specification 4 of Charge I, except the words “sexual act” and “penetrating,” substituting therefor the words “lewd act” and “touching,” and “with an intent to

gratify his sexual desire,” Appellant was found not guilty of the excepted words; guilty of Specification 1 and 2 of Charge II. Record (R.) at 275. The remaining charges were withdrawn and dismissed. *Id.* The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for a total of 5 years and 6 months<sup>1</sup>, and to be discharged from the service with a Bad Conduct Discharge. R. at 403-404.

In accordance with Appellant’s request, the Convening Authority deferred the Appellant reduction in grade for six months. The Convening Authority also deferred all automatic forfeitures for a period of six 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 deferred the Appellant reduction in grade for six months. ROT, Convening Authority Decision on Action – *United States v. SrA Clayton E. Capers II*, dated 26 Mar 2024.

The electronic ROT is 1 volume and consists of 3 Prosecution Exhibits, 5 Defense Exhibits, 14 Appellate Exhibits, and 4 Court Exhibits; the transcript is 405 pages. Appellant is 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

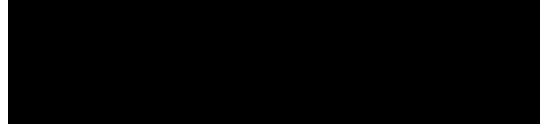
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<sup>1</sup> For Specification 1 of Charge I, Appellant was sentenced to 5 years confinement. For Specification 2 of Charge I, Appellant was sentenced to 5 years confinement. For Specification 4 of Charge I, Appellant was sentenced to 5 years and 6 months confinement. For Specification 1 of Charge II, Appellant was sentenced to 1 year confinement. For Specification 2 of Charge II, Appellant was sentenced to 1 year confinement. Confinement for all Specifications is to run concurrently.

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,

A solid black rectangular box used to redact the signature of Joyclin N. Webster.

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 27 November 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  
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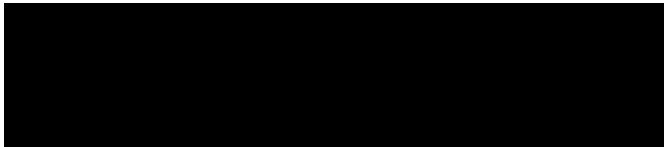
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM 40641
CLAYTON E. CAPERS II, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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



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



**CERTIFICATE OF FILING AND SERVICE**

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

**5IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (FORTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40641
<b>CLAYTON E. CAPERS II,</b>	)	
United States Air Force	)	27 December 2024
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) 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 **5 February 2025**. The record of trial was docketed with this Court on 10 July 2024. From the date of docketing to the present date, 170 days have elapsed. On the date requested, 210 days will have elapsed.

On 5 March 2024, consistent with his pleas, Appellant was convicted at a general court-martial at Moody Air Force Base, Georgia. Record of Trial (ROT), Entry of Judgment, dated 5 April 2024. Appellant was charged with one charge with two specifications of sexual assault of a minor and two specifications of sexual abuse of a minor in violation of Article 120(b), Uniform Code of Military Justice (UCMJ); and one charge and four specifications of abusive sexual contact, in violation of Article 120 of the UCMJ. *Id.* Consistent with his pleas, Appellant was found guilty of Specification 1 of Charge I; guilty of Specification 2 of Charge I, except the words “sexual act” and “penetrating,” substituting therefor the words “lewd act” and “touching,” and “with an intent to gratify sexual desire,” Appellant was found not guilty of the excepted words; guilty of Specification 4 of Charge I, except the words “sexual act” and “penetrating,” substituting therefor the words “lewd act” and “touching,” and “with an intent to gratify his

sexual desire,” Appellant was found not guilty of the excepted words; guilty of Specification 1 and 2 of Charge II. Record (R.) at 275. The remaining charges were withdrawn and dismissed. *Id.* The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for a total of 5 years and 6 months<sup>1</sup>, and to be discharged from the service with a Bad Conduct Discharge. R. at 403-404.

In accordance with Appellant’s request, the Convening Authority deferred the Appellant reduction in grade for six months. The Convening Authority also deferred all automatic forfeitures for a period of six 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 deferred the Appellant reduction in grade for six months. ROT, Convening Authority Decision on Action – *United States v. SrA Clayton E. Capers II*, dated 26 Mar 2024.

The electronic ROT is 1 volume and consists of 3 Prosecution Exhibits, 5 Defense Exhibits, 14 Appellate Exhibits, and 4 Court Exhibits; the transcript is 405 pages. Appellant is currently confined.

The undersigned counsel is currently assigned 19 cases; 17 cases are pending before this Court (16 cases are pending AOE). To date, two case have priority over the present case.

1. *United States v. Gray*, No. ACM 40648 –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 and is drafting the AOE.

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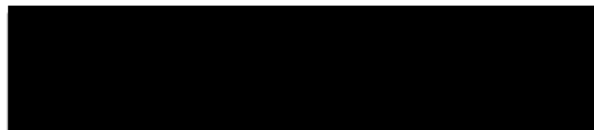
<sup>1</sup> For Specification 1 of Charge I, Appellant was sentenced to 5 years confinement. For Specification 2 of Charge I, Appellant was sentenced to 5 years confinement. For Specification 4 of Charge I, Appellant was sentenced to 5 years and 6 months confinement. For Specification 1 of Charge II, Appellant was sentenced to 1 year confinement. For Specification 2 of Charge II, Appellant was sentenced to 1 year confinement. Confinement for all Specifications is to run concurrently.

2. *United States v. Cabrie*, No ACM 40615 – 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. Counsel has begun, but not completed, her review of the record of trial.

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,

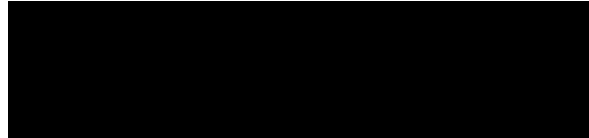


JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: joyclin.webster.1@us.af.mil

**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 27 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  
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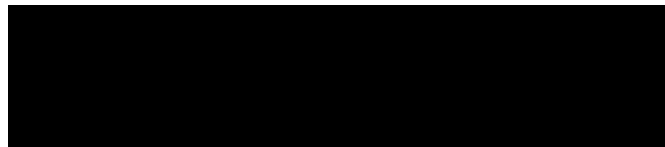
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM 40641
CLAYTON E. CAPERS II, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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



JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations  
Government Trial and Appellate Operations Division  
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 30 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**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (FIFTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40641
<b>CLAYTON E. CAPERS II,</b>	)	
United States Air Force	)	23 January 2025
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) 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 **7 March 2025**. The record of trial was docketed with this Court on 10 July 2024. From the date of docketing to the present date, 197 days have elapsed. On the date requested, 240 days will have elapsed.

On 5 March 2024, consistent with his pleas, Appellant was convicted at a general court-martial at Moody Air Force Base, Georgia. Record of Trial (ROT), Entry of Judgment, dated 5 April 2024. Appellant was charged with one charge with two specifications of sexual assault of a minor and two specifications of sexual abuse of a minor in violation of Article 120(b), Uniform Code of Military Justice (UCMJ); and one charge and four specifications of abusive sexual contact, in violation of Article 120 of the UCMJ. *Id.* Consistent with his pleas, Appellant was found guilty of Specification 1 of Charge I; guilty of Specification 2 of Charge I, except the words “sexual act” and “penetrating,” substituting therefor the words “lewd act” and “touching,” and “with an intent to gratify sexual desire,” Appellant was found not guilty of the excepted words; guilty of Specification 4 of Charge I, except the words “sexual act” and “penetrating,” substituting therefor the words “lewd act” and “touching,” and “with an intent to gratify his



sexual desire,” Appellant was found not guilty of the excepted words; guilty of Specification 1 and 2 of Charge II. Record (R.) at 275. The remaining charges were withdrawn and dismissed. *Id.* The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for a total of 5 years and 6 months<sup>1</sup>, and to be discharged from the service with a Bad Conduct Discharge. R. at 403-404.

In accordance with Appellant’s request, the Convening Authority deferred the Appellant reduction in grade for six months. The Convening Authority also deferred all automatic forfeitures for a period of six 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 deferred the Appellant reduction in grade for six months. ROT, Convening Authority Decision on Action – *United States v. SrA Clayton E. Capers II*, dated 26 Mar 2024.

The electronic ROT is 1 volume and consists of 3 Prosecution Exhibits, 5 Defense Exhibits, 14 Appellate Exhibits, and 4 Court Exhibits; the transcript is 405 pages. Appellant is currently confined.

The undersigned counsel is currently assigned 26 cases; 19 cases are pending before this Court (17 cases are pending AOE). To date, one case has priority over the present case. *United States v. Cabrie*, No ACM 40615, 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. Counsel has begun, but not completed her review of the record of trial.

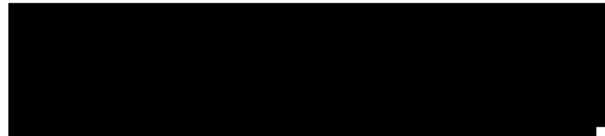
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<sup>1</sup> For Specification 1 of Charge I, Appellant was sentenced to 5 years confinement. For Specification 2 of Charge I, Appellant was sentenced to 5 years confinement. For Specification 4 of Charge I, Appellant was sentenced to 5 years and 6 months confinement. For Specification 1 of Charge II, Appellant was sentenced to 1 year confinement. For Specification 2 of Charge II, Appellant was sentenced to 1 year confinement. Confinement for all Specifications is to run concurrently.

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 23 January 2025.

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

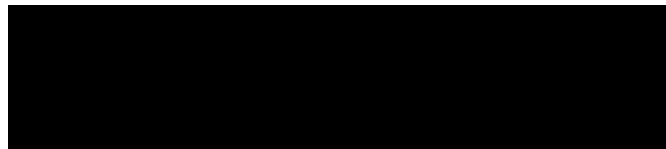
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM 40641
CLAYTON E. CAPERS II, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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



JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations  
Government Trial and Appellate Operations Division  
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 27 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**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (SIXTH)</b>
	)	<b>OUT OF TIME<sup>1</sup></b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40641
<b>CLAYTON E. CAPERS II,</b>	)	
United States Air Force	)	3 March 2025
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) 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 **6 April 2025**. The record of trial was docketed with this Court on 10 July 2024. From the date of docketing to the present date, 236 days have elapsed. On the date requested, 270 days will have elapsed.

On 5 March 2024, consistent with his pleas, Appellant was convicted at a general court-martial at Moody Air Force Base, Georgia. Record of Trial (ROT), Entry of Judgment, dated 5 April 2024. Appellant was charged with one charge with two specifications of sexual assault of a minor and two specifications of sexual abuse of a minor in violation of Article 120(b), Uniform Code of Military Justice (UCMJ); and one charge and four specifications of abusive sexual contact, in violation of Article 120 of the UCMJ. *Id.* Consistent with his pleas, Appellant was found guilty of Specification 1 of Charge I; guilty of Specification 2 of Charge I, except the

---

<sup>1</sup> In compliance with Rule 23.3(m)(1), undersigned counsel previously filed a Motion for Enlargement of Time on 1 March 2025. However, a scrivener's error resulted in the prior motion stating 133 days had elapsed rather than 233 days. In response to this error and under this Honorable Court's direction, undersigned counsel has filed this corrected Motion for Enlargement of Time. However, due to the timing of this correction, this motion is now out of time. Appellant bears no responsibility for this delay.

words “sexual act” and “penetrating,” substituting therefor the words “lewd act” and “touching,” and “with an intent to gratify sexual desire,” Appellant was found not guilty of the excepted words; guilty of Specification 4 of Charge I, except the words “sexual act” and “penetrating,” substituting therefor the words “lewd act” and “touching,” and “with an intent to gratify his sexual desire,” Appellant was found not guilty of the excepted words; guilty of Specification 1 and 2 of Charge II. Record (R.) at 275. The remaining charges were withdrawn and dismissed. *Id.* The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for a total of 5 years and 6 months<sup>2</sup>, and to be discharged from the service with a Bad Conduct Discharge. R. at 403-404.

In accordance with Appellant’s request, the Convening Authority deferred the Appellant reduction in grade for six months. The Convening Authority also deferred all automatic forfeitures for a period of six 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 deferred the Appellant reduction in grade for six months. ROT, Convening Authority Decision on Action – *United States v. SrA Clayton E. Capers II*, dated 26 Mar 2024.

The electronic ROT is 1 volume and consists of 3 Prosecution Exhibits, 5 Defense Exhibits, 14 Appellate Exhibits, and 4 Court Exhibits; the transcript is 405 pages. Appellant is currently confined.

---

<sup>2</sup> For Specification 1 of Charge I, Appellant was sentenced to 5 years confinement. For Specification 2 of Charge I, Appellant was sentenced to 5 years confinement. For Specification 4 of Charge I, Appellant was sentenced to 5 years and 6 months confinement. For Specification 1 of Charge II, Appellant was sentenced to 1 year confinement. For Specification 2 of Charge II, Appellant was sentenced to 1 year confinement. Confinement for all Specifications is to run concurrently.

The undersigned counsel is currently assigned 23 cases; 20 cases are pending before this Court (17 cases are pending AOE's). To date, one case has priority over the present case. *United States v. Cabrie*, No ACM 40615, 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. Counsel has begun drafting the AOE's.

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,



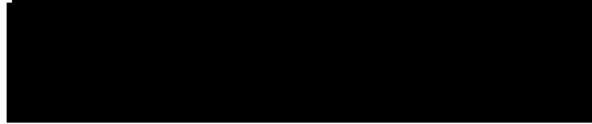
JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: joyclin.webster.1@us.af.mil



**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 3 March 2025.

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

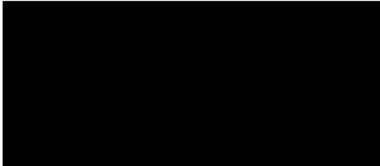
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	No. ACM 40641
CLAYTON E. CAPERS II, USAF,	)	
<i>Appellant.</i>	)	Before Panel No. 1
	)	

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

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

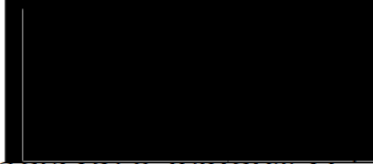
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JOCELYN Q. WRIGHT, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 4 March 2025.



JOCELYN Q. WRIGHT, Maj, USAF  
Appellate Government Counsel  
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**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (SEVENTH)</b>
	)	
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40641
<b>CLAYTON E. CAPERS II,</b>	)	
United States Air Force	)	27 March 2025
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) 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 **6 May 2025**. The record of trial was docketed with this Court on 10 July 2024. From the date of docketing to the present date, 260 days have elapsed. On the date requested, 300 days will have elapsed.

On 5 March 2024, consistent with his pleas, Appellant was convicted at a general court-martial at Moody Air Force Base, Georgia. Record of Trial (ROT), Entry of Judgment, dated 5 April 2024. Appellant was charged with one charge with two specifications of sexual assault of a minor and two specifications of sexual abuse of a minor in violation of Article 120(b), Uniform Code of Military Justice (UCMJ); and one charge and four specifications of abusive sexual contact, in violation of Article 120 of the UCMJ. *Id.* Consistent with his pleas, Appellant was found guilty of Specification 1 of Charge I; guilty of Specification 2 of Charge I, except the words “sexual act” and “penetrating,” substituting therefor the words “lewd act” and “touching,” and “with an intent to gratify sexual desire,” Appellant was found not guilty of the excepted words; guilty of Specification 4 of Charge I, except the words “sexual act” and “penetrating,”

substituting therefor the words “lewd act” and “touching,” and “with an intent to gratify his sexual desire,” Appellant was found not guilty of the excepted words; guilty of Specification 1 and 2 of Charge II. Record (R.) at 275. The remaining charges were withdrawn and dismissed. *Id.* The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for a total of 5 years and 6 months<sup>1</sup>, and to be discharged from the service with a Bad Conduct Discharge. R. at 403-404.

In accordance with Appellant’s request, the Convening Authority deferred the Appellant reduction in grade for six months. The Convening Authority also deferred all automatic forfeitures for a period of six 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 deferred the Appellant reduction in grade for six months. ROT, Convening Authority Decision on Action – *United States v. SrA Clayton E. Capers II*, dated 26 Mar 2024.

The electronic ROT is 1 volume and consists of 3 Prosecution Exhibits, 5 Defense Exhibits, 14 Appellate Exhibits, and 4 Court Exhibits; the transcript is 405 pages. Appellant is currently confined.

The undersigned counsel is currently assigned 23 cases; 20 cases are pending before this Court (17 cases are pending AOE). To date, two cases has priority over the present case:

---

<sup>1</sup> For Specification 1 of Charge I, Appellant was sentenced to 5 years confinement. For Specification 2 of Charge I, Appellant was sentenced to 5 years confinement. For Specification 4 of Charge I, Appellant was sentenced to 5 years and 6 months confinement. For Specification 1 of Charge II, Appellant was sentenced to 1 year confinement. For Specification 2 of Charge II, Appellant was sentenced to 1 year confinement. Confinement for all Specifications is to run concurrently.

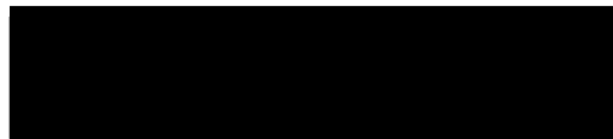
1. *United States v. Cabrie*, No ACM 40615, the ROT is 3 volumes and consists of 5 Prosecution Exhibits, 6 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 138 pages. Appellant is not currently confined. Counsel has begun drafting the AOE's.

2. *United States v. Edwards*, No ACM S32787, the ROT is 4 volumes and consists of 10 Prosecution Exhibits, 7 Defense Exhibits, 12 Appellate Exhibits, and 1 Court Exhibit; the transcript is 431 pages. Appellant is not currently confined. Counsel is working on the Reply to Appellee's Answer to Assignments of Error.

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 27 March 2025.

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

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

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
<b>CLAYTON E. CAPERS II,</b>	)	No. ACM 40641
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	31 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 Assignment of Error in this case.

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



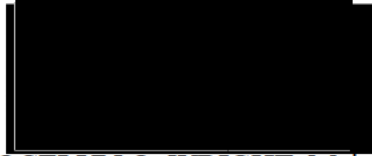
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JOCELYN Q. WRIGHT, Maj, USAF  
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 31 March 2025.



JOCELYN Q. WRIGHT, Maj, USAF  
Appellate Government Counsel  
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**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (EIGHTH)</b>
	)	
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40641
<b>CLAYTON E. CAPERS II,</b>	)	
United States Air Force	)	27 April 2025
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) 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 10 days, which will end on **16 May 2025**. The record of trial was docketed with this Court on 10 July 2024. From the date of docketing to the present date, 291 days have elapsed. On the date requested, 310 days will have elapsed.

On 5 March 2024, consistent with his pleas, Appellant was convicted at a general court-martial at Moody Air Force Base, Georgia. Record of Trial (ROT), Entry of Judgment, dated 5 April 2024. Appellant was charged with one charge with two specifications of sexual assault of a minor and two specifications of sexual abuse of a minor in violation of Article 120(b), Uniform Code of Military Justice (UCMJ); and one charge and four specifications of abusive sexual contact, in violation of Article 120 of the UCMJ. *Id.* Consistent with his pleas, Appellant was found guilty of Specification 1 of Charge I; guilty of Specification 2 of Charge I, except the words “sexual act” and “penetrating,” substituting therefor the words “lewd act” and “touching,” and “with an intent to gratify sexual desire,” Appellant was found not guilty of the excepted words; guilty of Specification 4 of Charge I, except the words “sexual act” and “penetrating,”

substituting therefor the words “lewd act” and “touching,” and “with an intent to gratify his sexual desire,” Appellant was found not guilty of the excepted words; guilty of Specification 1 and 2 of Charge II. Record (R.) at 275. The remaining charges were withdrawn and dismissed. *Id.* The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for a total of 5 years and 6 months<sup>1</sup>, and to be discharged from the service with a Bad Conduct Discharge. R. at 403-404.

In accordance with Appellant’s request, the Convening Authority deferred the Appellant reduction in grade for six months. The Convening Authority also deferred all automatic forfeitures for a period of six 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 deferred the Appellant reduction in grade for six months. ROT, Convening Authority Decision on Action – *United States v. SrA Clayton E. Capers II*, dated 26 Mar 2024.

The electronic ROT is 1 volume and consists of 3 Prosecution Exhibits, 5 Defense Exhibits, 14 Appellate Exhibits, and 4 Court Exhibits; the transcript is 405 pages. Appellant is currently confined. The undersigned counsel has reviewed the record of trial.

The undersigned counsel is currently assigned 23 cases; 20 cases are pending before this Court (17 cases are pending AOE). To date, one cases has priority over the present case: *United States v. Cabrie*, No ACM 40615, the ROT is 3 volumes and consists of 5 Prosecution Exhibits,

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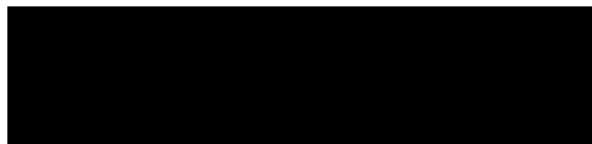
<sup>1</sup> For Specification 1 of Charge I, Appellant was sentenced to 5 years confinement. For Specification 2 of Charge I, Appellant was sentenced to 5 years confinement. For Specification 4 of Charge I, Appellant was sentenced to 5 years and 6 months confinement. For Specification 1 of Charge II, Appellant was sentenced to 1 year confinement. For Specification 2 of Charge II, Appellant was sentenced to 1 year confinement. Confinement for all Specifications is to run concurrently.

6 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 138 pages. The appellant is not currently confined. Counsel is finalizing the AOE.

Through no fault of Appellant, undersigned counsel has been unable to complete her research and preparation of a brief for Appellant's case. Since the last granted enlargement of time, counsel has had eye surgery and is currently on convalescent leave related to the procedure. 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 27 April 2025.

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

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

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
<b>CLAYTON E. CAPERS II,</b>	)	No. ACM 40641
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	29 April 2025

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant 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 310 days in length. Appellant’s nearly year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 7 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not completed review of the record of trial at this late stage of the appellate process.

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

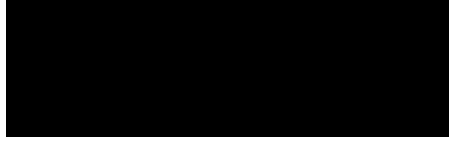


VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800



**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 29 April 2025.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

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

<b>UNITED STATES</b>	)	<b>MERITS BRIEF</b>
<i>Appellee</i>	)	
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40641
<b>CLAYTON E. CAPERS II,</b>	)	
United States Air Force	)	16 May 2025

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

**Submission of Case Without Specific Assignment of Error**

The undersigned appellate defense counsel attests she has, on behalf of Senior Airman (SrA) Clayton E. Capers II, Appellant, carefully examined the record of trial in this case. SrA Capers does not admit the findings and sentence are correct in law and fact, but submits the case to this Honorable Court on its merits with no specific attorney-raised assignments of error during this stage of appellate processing. SrA Capers does, however, personally raise one issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). See Appendix A.

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 16 May 2025.

Respectfully submitted,

A large black rectangular redaction box covering the signature of Joyclin N. Webster.

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

## APPENDIX

Pursuant to *Grostefon*, 12 M.J. 431, SrA Capers, through appellate defense counsel, personally requests that this Court consider the following matter:

### **THE FIREARM PROHIBITION UNDER 18 U.S.C. § 922 IS UNCONSTITUTIONAL AS APPLIED TO SENIOR AIRMAN CAPERS.**

#### **Statement of the Case**

On 5 March 2024, consistent with his pleas, Senior Airman (SrA)Capers was convicted at a general court-martial at Moody Air Force Base, Georgia. Electronic Record of Trial (ROT), Entry of Judgment (EOJ), dated April 5, 2024. Consistent with his pleas, SrA Capers was found guilty of three specifications of sexual abuse of a child in violation of Article 120(b), Uniform Code of Military Justice (UCMJ), and two specifications of abusive sexual contact in violation of Article 120 of the UCMJ. *Id.* The remaining charges were withdrawn and dismissed with prejudice. *Id.* The military judge sentenced SrA Capers to be reduced to the grade of E-1, confined for a total of five years and six months,<sup>1</sup> and discharged from the service with a bad conduct discharge. R. at 403-04.

In accordance with SrA Capers's request, the Convening Authority deferred the reduction in grade for six months. ROT, Convening Authority Decision on Action – *United States v. SrA Clayton E. Capers II*, dated March 24, 2024. The Convening Authority also deferred all automatic forfeitures for a period of six months, SrA Capers's release from confinement, or

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<sup>1</sup> For Specification 1 of Charge I, SrA Capers was sentenced to five years confinement. For Specification 2 of Charge I, SrA Capers was sentenced to five years confinement. For Specification 4 of Charge I, SrA Capers was sentenced to five years and six months confinement. For Specifications 1 and 2 of Charge II, SrA Capers was sentenced to one year confinement for each specification. Confinement for all Specifications is to run concurrently. R. at 403-04.

SrA Capers's expiration of term of service, whichever was soonest. *Id.* The total deferred pay and allowances were directed to be paid for the benefit of SrA Capers's dependent children. *Id.*

### **Statement of Facts**

SrA Capers is a United States citizen by birth. Pros. Ex. 1 at 1; R. at 273. Prior to his conviction, SrA Capers owned approximately eighteen different weapons, including rifles and pistols. ROT, *Report of Investigation* at 11.

After his conviction, the Government determined that SrA Capers's case met the firearm prohibition under 18 U.S.C. § 922, as reflected in the Statement of Trial Results (STR) and the EOJ. ROT, STR at 5; ROT, EOJ at 5. The post-trial documents memorializing the outcome of SrA Capers's case, purport to make the loss of his firearms permanent, stripping SrA Capers of his constitutional right to bear arms for life. *Id.*; U.S. CONST. amend. II. SrA Capers's father took responsibility for storing the firearms. ROT, *Report of Investigation* at 11.

The Government did not specify why, or under which section, SrA Capers's case met the requirements of 18 U.S.C. § 922. ROT, STR at 5; ROT, EOJ at 5. However, no evidence suggested or demonstrated that SrA Capers was a "fugitive from justice," an unlawful user of or addict to a controlled substance, "adjudicated as a mental defective," or "committed to a mental institution." *Compare* Pros. Ex. 1., with 18 U.S.C. § 922(g)(2)-(4). Based solely on the charges, SrA Capers could have been sentenced to a dishonorable discharge. R. at 239. The maximum period of confinement for all charges was seventy-four years. R. at 329. Both the STR and EOJ note that SrA Capers was not convicted of a crime of domestic violence. ROT, STR at 5; ROT, EOJ at 5.

## Standards of Review

Whether post-trial processing was properly completed is reviewed de novo. *United States v. Zegarrundo*, 77 M.J. 612, 613–14 (A.F. Ct. Crim. App. 2018) (citing *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000)). 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 annotation in the Entry of Judgment.

The Courts of Criminal Appeals (CCAs) 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 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 SrA Capers’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 CAAF agreed with this interpretation. *Williams*, at 126. But whereas *Vanzant* and *Williams* concerned matters leading up to the EOJ, SrA Capers 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, e.g., 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 SrA Capers’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 SrA Capers’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 (Jan. 24, 2024).

Further supporting jurisdiction under Article 66(d)(2), UCMJ, the 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. \_\_, 2025 CAAF LEXIS 248, 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.

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.

First, there is an error in SrA Capers’s case: He was unconstitutionally deprived of his right to bear arms. Second, SrA Capers has raised the error in this filing. Third, as the error found its



way into the First Indorsement to the EOJ, it is an error occurring after the entry of judgment.

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.

B. The erroneous 18 U.S.C. 922 notation wields real and immediate consequences for SrA Capers.

Even if the 18 U.S.C. § 922 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 SrA Capers 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 background check through the National Instant Criminal Background Check System (NICS). 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,” SrA Capers 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, SrA Capers 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 May 8, 2025) (showing all states use NICS in some form).

As such, SrA Capers has been, and will continue to be, affected by the Government's 18 U.S.C. § 922 notation in the EOJ.

C. The firearm prohibition under 18 U.S.C. 922 is unconstitutional as applied to SrA Capers

Facially, only once part of 18 U.S.C. § 922 could conceivably apply to SrA Capers: 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, SrA Capers was sentenced to five years and six months of confinement. R. at 405.

As applied to SrA Capers, this bar unconstitutionally infringes 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 SrA Capers's non-violent 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 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. *Id.*

As such, SrA Capers 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 misdemeanor.’” *Id.* at 227 (quoting *Lange v. California*, 594 U.S. 295, 305 (2021) (cleaned up)).

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.

Historical prohibitions were narrowly tailored to specific classes deemed dangerous, primarily violent offenders. *Range*, 124 F.4th at 230-31. 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.” *Rahimi*, 602 U.S. 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).

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.

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. *Range*, 124 F.4th at 276; *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.

The Third Circuit in *Range* further underscored the constitutional flaw in applying broad firearm prohibitions to non-violent offenders. *Range*, 124 F.4th 218. The court 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. *Id.* at 231-32. Here, unlike the appellant in *Rahimi*, who engaged in documented violent conduct while armed resulting in judicially determined threats to the physical safety of others, SrA Capers 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 SrA Capers posed a special danger of misusing a firearm. ROT Vol. 1, EOJ. Without it, 18 U.S.C. § 922 cannot constitutionally apply to SrA Capers.

Without a clear historical analogue supporting broad prohibitions on firearm ownership based solely on non-violent misconduct, applying § 922 to SrA Capers is unconstitutional as it extends beyond any relevant historical tradition required by *Bruen* and *Rahimi*.

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

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

<b>UNITED STATES,</b> <i>Appellee,</i>	)	ANSWER TO ASSIGNMENT OF ERROR
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40641
CLAYTON E. CAPERS II,	)	
United States Air Force	)	11 June 2025
<i>Appellant.</i>	)	

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

**ISSUE PRESENTED**

**WHETHER THE FIREARM PROHIBITION UNDER 18  
U.S.C. § 922 IS UNCONSTITUTIONAL AS APPLIED TO  
APPELLANT.<sup>1</sup>**

**STATEMENT OF CASE**

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

**STATEMENT OF FACTS**

On 5 March 2025, Appellant was sentenced to five years and six months confinement when he was convicted of two specifications of abusive sexual contact in violation Article 120, Uniform Code of Military Justice (UCMJ), and three specifications of committing a lewd act on a child in violation of Article 120b, UCMJ. The maximum amount of confinement for Appellant’s convictions was seventy-four (74) years. (R. at 239.)

Both the Staff Judge Advocate’s first indorsement to the Statement of Trial Results (STR) and Entry of Judgment (EOJ) in Appellant’s case contains the following statements: “Firearm Prohibition Triggered Under 18 U.S.C. § 922: Yes.” (*STR* and *EOJ*, ROT, Vol. 1.)

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<sup>1</sup> The Issue is raised in accordance with United States v. Grostefon, 12 M.J. 431 (1982).

## **ARGUMENT**

**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.**

### ***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 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). Appellant acknowledges that the Court of Appeals for the Armed Forces recently rejected the authority of the Courts of Criminal Appeals to address the firearms prohibition notation in the STR under Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) in United States v. Williams, 82 M.J. 121, 126 (C.A.A.F. 2024). (App. Gr. Br. at 3.) Still, Appellant claims that this Court may “correct” the alleged error through Article 66(d)(2), UCMJ. 10 U.S.C. § 866(d)(2); *see also Williams*, 2024 CAAF LEXIS 501, at \*14-15. (Id.) Appellant’s assertions are inaccurate for several reasons.

#### **A. Even if some error was demonstrated, this Court lacks jurisdiction to determine the constitutionality of a collateral issue.**

Appellant’s argument that this Court can simply make the requested “correction” pursuant to Article 66(d)(2) presumes that 18 U.S.C. § 922 is unconstitutional. First, the preliminary question of the statute’s constitutionality far exceeds the scope of this Court’s authority under Article 66(d)(1) and (2), as discussed below. Moreover, the law mandating the

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

Here, Appellant concedes that he was sentenced to five years and six months imprisonment for his conviction and that the maximum confinement for all charges and specifications was 74 years. (App. Gr. Br. at 2, 7; *EOJ* ROT, Vol. 1.) While the analysis should end there, Appellant nonetheless maintains that the statute’s firearm ban should not apply to him because his convictions were not sufficiently violent in nature to overcome his Second Amendment right to bear arms. (App. Gr. Br. at 7.) But Appellant’s focus on whether the nature of his crimes should justify a firearm ban – at least for Article 66(d) analysis – is misplaced. Article 66(d)(2) grants courts of criminal appeals the authority to correct facial errors in post-trial documents and to provide appropriate relief for excessive delay in processing. Appellant’s request, on the other hand, asks this Court to declare a federal statute unconstitutional as applied and except him from its application under the guise of a post-trial processing error. (App. Gr. Br. at 10.)

This Court held in its published opinion in United States v. Vanzant, 84 M.J. 671 (A.F. Ct. Crim. App. 2024), that 18 U.S.C. § 922(g)’s firearm prohibitions and the criminal indexing requirements that follow that statute are collateral consequences of the conviction, rather than elements of the findings or sentence, so they are beyond the scope of this Court’s jurisdiction under Article 66, UCMJ. Id. at \*24. First, the Vanzant opinion was clear as to the scope of its jurisdiction under Article 66, UCMJ, and none of the cases cited by Appellant support his position that this Court has the authority to amend post-trial documents beyond correcting clerical errors related to the findings or sentence. *See, e.g., United States v. Jones*, No. ACM



S32717, 2022 CCA LEXIS 652, at \*4 (A.F. Ct. Crim. App. 7 Nov. 2022); United States v. Graves, No. ACM 40340, 2023 CCA LEXIS 356, at \*8-9 (A.F. Ct. Crim. App. 23 Aug. 2023). (App. Gr. Br. at 3-10.)

Likewise, Appellant is not entitled to relief under Article 66(d)(2), UCMJ. A CCA “*may* provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial *after* the judgment was entered into the record under section 860c of this title[.]” (emphasis added).

The 18 U.S.C. § 922 annotation was entered into the record before the EOJ was entered into the record. The 18 U.S.C. § 922 annotation on the First Indorsement of the STR is attached to the STR as “other information” under R.C.M. 1101(a)(6), and then both the other information and the STR are entered into the record. Article 60(1)(C). Then the EOJ is entered into the record – after the STR. The EOJ is “the judgment of the court” cited in Article 66(d)(2). *Compare* Article 66 *with* Article 60c. 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.” Article 66(d)(2) (emphasis added).

Then the STR and its First Indorsement are entered into the record again as attachments to the EOJ. Article 60c (a)(1)(A). Because they are entered again as attachments to the EOJ they are simultaneous with the judgment of the court. The STR and the STR’s First Indorsement are not errors occurring after the judgment was entered into the record.

**B. No meaningful remedy is available.**

Appellant suggests that this Court should remand the record back to the military judge to correct the “EOJ’s unconstitutional prohibition” or grant other relief it deems appropriate. (App.


Gr. Br. at 4, 10.) First, it is unclear how the military judge could accomplish such a change to the SJA's indorsement. Then, even if removal of the firearms prohibition notation to the First Indorsement to the EOJ were possible, it would be a pyrrhic victory. An amendment to the EOJ's indorsement would not remove the firearms annotation from the STR that was incorporated into the EOJ (*EOJ*, ROT, Vol. 1, Attach. at 5) because that annotation on the STR occurred before the EOJ was entered into the record.

The statute's application is not triggered by a First Indorsement notation nor is it within the SJA's discretion. More plainly stated, the SJA's notation on the First Indorsement does not disqualify Appellant from possessing firearms; § 922 does. The SJA's notation simply ensures proper criminal indexing. Similarly, even if Appellant's proposed course of action were sufficient to accomplish the removal of Appellant's firearm prohibition from the National Criminal Background Check System (NICS), it would still be unlawful for Appellant to possess a firearm pursuant to 18 U.S.C. § 922(g)(1). Thus, Appellant would remain in the same situation he is in now.

Since this Court's intervention under Article 66(d)(2) would not provide meaningful relief, this Court should deny Appellant's claim.

### **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.

  
BRITTANY M. SPEIRS, Maj, USAF  
Appellate Government Counsel  
Government Trial and  
Appellate Operations Division  
United States Air Force  
1500 W. Perimeter Rd., Ste. 1190  
Joint Base Andrews, MD 20762  
(240) 612-4800

## **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 11 June 2025.



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

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

<b>UNITED STATES</b>	)	<b>No. ACM 40641</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>NOTICE OF</b>
<b>Clayton E. CAPERS II</b>	)	<b>PANEL CHANGE</b>
<b>Senior Airman (E-4)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	

It is by the court on this 23d day of June, 2025,

**ORDERED:**

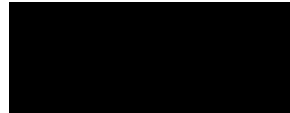
The record of trial in the above styled matter is withdrawn from Panel 1 and referred to a Special Panel for appellate review. The Special Panel in this matter shall be constituted as follows:

ANNEXSTAD, WILLIAM J., Colonel, Senior Appellate Military Judge  
DOUGLAS, KRISTINE M., Colonel, Appellate Military Judge  
MCCALL, KRISTIN K.B., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.



FOR THE COURT



TANICA S. BAGMON  
Appellate Court Paralegal