

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

<b>UNITED STATES,</b>	)	<b>NOTICE OF DIRECT APPEAL</b>
<i>Appellee,</i>	)	<b>PURSUANT TO ARTICLE</b>
	)	<b>66(b)(1)(A), UCMJ</b>
v.	)	
	)	
	)	
Master Sergeant (E-7),	)	No. ACM _____
<b>SKYE D. COX,</b>	)	
United States Air Force,	)	20 April 2026
<i>Appellant.</i>	)	

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

On 9 October 2025, a panel of officer members sitting as a special court-martial convicted Master Sergeant (MSgt) Skye D. Cox, contrary to her pleas, of one charge and one specification of wrongful use of a Schedule I controlled substance, in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 912a. R. at 761; Entry of Judgment (EOJ), 12 November 2025. The military judge sentenced MSgt Cox to perform hard labor without confinement for seventy-five days, to be restricted to the limits of Ramstein Air Base for a period of sixty days, to be reduced to the grade of E-4, and to be reprimanded. R. at 807; EOJ.

On 10 October 2025, MSgt Cox signed Air Force Form 304, requesting appellate defense counsel represent her before this Court and urge on her behalf all efforts which appellate counsel may discover from the record of trial and accompanying papers. AF Form 304, 10 October 2025. On 27 January 2026, MSgt Cox received the Government’s required notice of her right to appeal. On 22 March 2026, MSgt Cox died. Daniel Funeral Home, *Skye Delane Cox Obituary*, <https://www.dfhlamar.com/obituaries/skye-cox> (last visited Apr. 16, 2026).

Pursuant to Articles 65 and 66(b)(1)(A), UCMJ, and on behalf of MSgt Cox, the undersigned counsel, as MSgt Cox’s attorneys of record, file this notice of direct appeal with this Court.<sup>1</sup>

Respectfully submitted,

[Redacted]

MEGAN R. CROUCH, Maj, USAF  
Air Force Appellate Defense Division

[Redacted]

[Redacted]

MENDEL AVTZON, Capt, USAF  
Air Force Trial Defense Division

[Redacted]

[Redacted]

JULIANNE K. DARIUS, Capt, USAF  
Air Force Trial Defense Division

[Redacted]

---

<sup>1</sup> This Court’s Rules do not specifically address filing a notice of direct appeal after an individual, who is eligible for direct appeal before this Court, dies. However, Federal Rule of Appellate Procedure 43(a) lends guidance to how a similar circumstance would be addressed in federal courts of appeals. “If a party entitled to appeal dies before filing a notice of appeal, the decedent’s personal representative—or, if there is no personal representative, the decedent’s attorney of record—may file a notice of appeal within the time prescribed by these rules.” Fed. R. App. P. 43(a)(2).

**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 April 2026.

Respectfully submitted,

A solid black rectangular redaction box covering the signature of MEGAN R. CROUCH.

MEGAN R. CROUCH, Maj, USAF  
Air Force Appellate Defense Division

A large, irregular black redaction box covering the contact information, including the address and phone number of MEGAN R. CROUCH.

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

<b>UNITED STATES</b>	)	<b>No. ACM _____</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	
<b>SKYE D. COX</b>	)	<b>NOTICE OF</b>
<b>Master Sergeant (E-7)</b>	)	<b>DOCKETING</b>
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	

On 20 April 2026, this court received a notice of direct appeal from counsel for Appellant in the above-styled case, pursuant to Article 66(b)(1)(A), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(b)(1)(A). Counsel stated this notice of appeal was filed on Appellant’s behalf, who died on 22 March 2026.

As of the date of this notice, the court has not received a record of trial in Appellant’s case.

Pursuant to Rule 18(d)(2) of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals, “[a]s soon as practicable after the filing of a Notice of Appeal, the [G]overnment shall provide the Court a complete record, including a verbatim transcript, and provide a copy to the defense. An appellant’s brief shall be filed no later than 60 days thereafter.” JT. CT. CRIM. APP. R. 18(d)(2) (as amended 17 May 2024). The court defers decision with regard to timeliness of Appellant’s appeal pending receipt of the record of trial. *See* Article 66(c), UCMJ.

Further, the court defers decision of whether this court has jurisdiction to hear this appeal under Article 66, UCMJ, given that Appellant died before the notice of direct appeal was filed with this court.

Accordingly, it is by the court on this 23d day of April, 2026,

**ORDERED:**

The case in the above-styled matter is referred to Panel 1.

**It is further ordered:**

The Government will forward a copy of the record of trial to counsel for Appellant and the court “as soon as practicable.” *See* JT. CT. CRIM. APP. R. 6(a)(1); 8(d)(2).



FOR THE COURT



JACOB B. HOEFERKAMP, Capt, USAF  
Chief Commissioner

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

<b>UNITED STATES</b>	)	<b>MOTION TO ABATE PROCEEDINGS</b>
	)	<b><i>AB INITIO</i> AND MOTION TO ATTACH</b>
v.	)	
	)	Before Panel 1
Master Sergeant (E-7)	)	
<b>SKYE D. COX,</b>	)	No. ACM 26038
United States Air Force	)	
<i>Deceased</i>	)	18 May 2026

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

Pursuant to Rule 23.3(1) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel submits this motion for abatement *ab initio*, as the Appellant, Master Sergeant (MSgt) Skye D. Cox, died on 22 March 2026 while her case was eligible for direct appellate review under Article 66, Uniform Code of Military Justice (UCMJ) before this Court. Further, undersigned counsel asks that the document located in Appendix A of this pleading be attached to the record of the above-captioned proceeding pursuant to Rules 23(b) and 23.3(b). Appendix A is a copy of the Certificate of Death, DD Form 2064, dated 24 April 2026.

**Statement of Facts**

On 9 October 2025, a panel of officer members sitting as a special court-martial convicted MSgt Skye D. Cox, contrary to her pleas, of one charge and one specification of wrongful use of a Schedule I controlled substance, in violation of Article 112a, UCMJ, 10 U.S.C. §§ 912a. R. at 761; Entry of Judgment (EOJ), Nov. 12, 2025. The military judge sentenced MSgt Cox to perform hard labor without confinement for seventy-five days, to be restricted to the limits of Ramstein Air Base for a period of sixty days, to be reduced to the grade of E-4, and to be reprimanded. R. at 807; EOJ. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action – *United States v. Master Sergeant Skye D. Cox*, Nov. 4, 2025.

On 10 October 2025, MSgt Cox signed Air Force Form 304, requesting military appellate defense counsel representation. AF Form 304, Oct. 10, 2025. On 27 January 2026, MSgt Cox received the Government’s required notice of her right to appeal.

On 22 March 2026, MSgt Cox died. Appendix A. On 20 April 2026, MSgt Cox’s attorneys of record filed a notice of direct appeal with this Court. *United States v. Cox*, No. ACM 26038, Notice of Direct Appeal, Apr. 20, 2026. On 23 April 2026, this Court docketed MSgt Cox’s case. *United States v. Cox*, No. ACM 26038, Notice of Docketing, Apr. 23, 2026.

## **Law and Analysis**

### **A. This Court has jurisdiction over Master Sergeant Cox’s case.**

This Court has jurisdiction over “a timely appeal from the judgment of a court-martial entered into the record under [Article 60c(a), UCMJ,] that includes a finding of guilty.” 10 U.S.C. § 866(b)(1)(A).<sup>1</sup> An appeal eligible for direct review is timely if it is filed before “the end of the 90-day period beginning on the date the accused is provided notice of appellate rights under [Article 65, UCMJ.]” 10 U.S.C. § 866(c)(1)(A). If a case is eligible for direct review under Article 66(b)(1), UCMJ, “the Judge Advocate General shall, upon written request of the accused . . . forward a copy of the record of trial to an appellate defense counsel who shall be detailed to review the case and to represent the accused before the Court of Criminal Appeals[.]” 10 U.S.C. 865(b)(2)(A).<sup>2</sup>

---

<sup>1</sup> All references to 10 U.S.C. § 866 are to the 2018 version, as amended by William M. (Mac) Thornberry National Defense Authorization Act [(NDAA)] for Fiscal Year 2021, Pub. L. No. 116-283, § 542(b), 134 Stat. 3388, 3611 (2021), NDAA for Fiscal Year 2022, Pub. L. No. 117–81, § 539E, 135 Stat. 1541, 1700 (2021), and James M. Inhofe NDAA for Fiscal Year 2023, Pub. L. No. 117-263, § 544, 136 Stat. 2395, 2582 (2022).

<sup>2</sup> All references to 10 U.S.C. § 865 are to the 2018 version, as amended by NDAA for Fiscal Year 2022, Pub. L. No. 117–81, § 539A, 135 Stat. 1541, 1698 (2021), and Servicemember Quality of Life Improvement and NDAA for Fiscal Year 2025, Pub. L. No. 118-159, § 563, 138 Stat. 1773, 1903 (2022).

Prior to her death, MSgt Cox signed an Air Force Form 304, requesting appellate defense counsel represent her before this Court and urge on her behalf all efforts that appellate counsel may discover from the record of trial and accompanying papers. AF Form 304, Oct. 10, 2025. The deadline for MSgt Cox to file a timely notice of appeal with this Court was 27 April 2026. Despite MSgt Cox's death on 22 March 2026, her case was still eligible for direct review before this Court. In accordance with MSgt Cox's wishes and Article 65, UCMJ, MSgt Cox's attorneys of record filed a timely notice of appeal with this Court on 20 April 2026.

At least one Circuit Court of Appeals has determined that even when an appellant dies prior to the notice of appeal being filed, the court still has jurisdiction over the case and held abatement was appropriate. *United States v. Oberlin*, 718 F.2d 894, 896 (9th Cir. 1983). In *Oberlin*, the appellant died after the sentence was announced but before judgment was entered in his case, and before a notice of appeal was filed. *Id.* "Therefore, he did not die pending appeal. Nonetheless, at the time of his death, [the appellant] possessed an appeal of right from his conviction." *Id.* The Court held that although the appellant "did not die pending appeal, the effect of his death is the same." *Id.* As such, the Court found "no reason to treat a criminal defendant who dies before judgment is entered any differently from one who dies after a notice of appeal has been filed. In either case, he is denied the resolution of the merits of the case on appeal." *Id.*

The 90-day period had not yet ceased when the notice of appeal for MSgt Cox's case was filed with this Court; therefore, the appeal was timely. *See* 10 U.S.C. § 866(c)(1)(A). Pursuant to Article 66, UCMJ, this Court has jurisdiction over MSgt Cox's case.

**B. This Court should abate the proceedings against Master Sergeant Cox.**

"Review by a Court of Criminal Appeals pursuant to Article 66, UCMJ, is an appeal of right." *United States v. Ribaldo*, 62 M.J. 286, 288 (C.A.A.F. 2006) (citing *United States v. Rorie*,

58 M.J. 399, 406 (C.A.A.F. 2003)). “[D]eath during the pendency of an appeal of right abates the proceedings ab initio.” *Ribaudo*, 62 M.J. at 289.

*Ab initio* means “From the beginning.” BLACK’S LAW DICTIONARY (11th ed. 2019). Accordingly, the death of the MSgt Cox during the pendency of an appeal abates not merely the appellate proceedings, but all proceedings, from the point of preferral of charges onward. *United States v. Rorie*, 58 M.J. 399, 400 (C.A.A.F. 2003). “It is the ‘longstanding and unanimous view of the lower federal courts that the death of an appellant during the pendency of his appeal of right from a criminal conviction abates the entire course of the proceedings brought against him.’” *Ribaudo*, 62 M.J. at 288 (quoting *United States v. Mochlenkamp*, 557 F.2d 126, 128 (7th Cir. 1977)). “[I]t is as if the defendant had never been indicted and convicted.” *United States v. Logal*, 106 F.3d 1547, 1551-52 (11th Cir. 1997). “It is not until that appeal of right is complete that we can rest assured the interests of justice have been served.” *Ribaudo*, 62 M.J. at 288; see *United States v. Wright*, 160 F.3d 905, 905, 908 (2d Cir. 1998).

MSgt Cox died during the pendency of an appeal of right. Even though MSgt Cox died prior to filing a notice of direct appeal, she was still entitled to direct appellate review of her court-martial conviction. Her attorneys of record filed a timely notice of appeal, and as such, her case is eligible for review by this Court. Because MSgt Cox died prior to her appeal of right being completed, this Court should abate the entire course of the proceedings brought against MSgt Cox. This includes setting aside the findings and the sentence, dismissing the charge and its specification, and restoring all rights, privileges, and property of which MSgt Cox was deprived by virtue of the execution of any portion of her sentence. Further this Court should attach the document appended to this pleading to the record of the above-captioned proceeding.

**Conclusion**

MSgt Cox’s attorneys of record request that this Court grant this motion for abatement *ab initio* and motion to attach.

Respectfully submitted,

[Redacted]

MEGAN R. CROUCH, Maj, USAF  
Air Force Appellate Defense Division

[Redacted]

[Redacted]

MENDEL AVTZON, Capt, USAF  
Air Force Trial Defense Division

[Redacted]

JULIANNE K. DARIUS, Capt, USAF  
Air Force Trial Defense Division

[Redacted]

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 18 May 2026.



MEGAN R. CROUCH, Maj, USAF  
Air Force Appellate Defense Division



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

<b>UNITED STATES,</b> <i>Appellee,</i>	)	UNITED STATES' RESPONSE TO MOTION TO ABATE AND MOTION TO ATTACH
v.	)	
	)	Before Panel No. 1
	)	
Master Sergeant (E-7) <b>SKYE D. COX,</b> United States Air Force <i>Appellant.</i>	)	No. ACM 26038  26 May 2026

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

Pursuant to Rules 23(c) and 23.3(b) of this Court's Rules of Practice and Procedure, the United States respectfully requests this Honorable Court deny Appellant's counsel's Motion to Abate and Motion to Attach, dated 18 May 2026.<sup>1</sup> In addition, since this court lacks jurisdiction over the appeal, the Court should dismiss it.

**STATEMENT OF FACTS**

The United States agrees with the facts as stated in Appellant's counsel's Motion to Abate Proceedings *Ab Initio* and Motion to Attach. Pertinent to this filing, MSgt Cox passed away before filing a notice of direct appeal under Article 66(b)(1)(A), UCMJ. MSgt Cox's appellate defense counsel filed the notice of appeal. (Notice of Appeal, dated 20 April 2026.)

**LAW AND ARGUMENT**

At the outset, it is important to note that there is no requirement in the Constitution or statute that requires abatement *ab initio*, but that it is done as a matter of policy in Federal courts.

---

<sup>1</sup> Since MSgt Cox died prior to the appeal being filed, the United States will refer to the other side as Appellant's counsel because that is who filed the appeal.

See United States v. Rorie, 58 M.J. 399, 405 (C.A.A.F. 2003). The Court of Appeals of the Armed Forces (CAAF) also noted that it is “less constrained by the doctrine of stare decisis” when addressing abatement *ab initio* “because we are determining a matter of court policy rather than contemplating a change in the law or a change impacting upon an articulable right of an appellant.” Id. at 406-07. Finally, CAAF also held, “an appeal to the Courts of Criminal Appeals is an appeal of right, we leave to those courts or the Judge Advocates General to establish the parameters of a policy of abatement in the event that an appellant dies pending review at a Court of Criminal Appeals.” Id. at 407. See also United States v. Ribaud, 62 M.J. 286, 288 (C.A.A.F. 2006) (“Rorie did not dictate a rule of abatement *ab initio* for the Courts of Criminal Appeals . . .”). It is no surprise then that some states have abandoned the policy of abatement *ab initio* altogether. See generally Commonwealth v. Hernandez, 481 Mass. 582, 118 N.E.3d 107 (2019).

Although this Court has applied the doctrine of abatement *ab initio* in the past, the Court has never explicitly stated that it was adopting a policy of abatement *ab initio*. See United States v. Waldron, No. ACM S32788, 2024 CCA LEXIS 550 (A.F. Ct. Crim. App. Dec. 30, 2024); United States v. Larson, No. ACM 39893, 2020 CCA LEXIS 496 (A.F. Ct. Crim. App. May 15, 2020). And in those instances where this Court applied the doctrine, the appellants were entitled to automatic review under Article 66, UCMJ and/or their cases has already been docketed with this Court. Id. This Court has not yet addressed a scenario where a deceased servicemember was only entitled to review by this Court after filing a notice of appeal – and had not yet filed one at the time of death. What is more, even if this Court has applied abatement *ab initio* in the past, *stare decisis* does not compel this Court to apply it again, especially to different circumstances. Rorie, 58 M.J. at 406-07.

This Court should decline to extend its application of the doctrine of abatement *ab initio* to the present circumstances. After all, the doctrine has several drawbacks. The government “as the representative of the community, continues to have an interest in maintaining a conviction” and that interest is thwarted by abatement *ab initio*. Hernandez, 481 Mass at 597. And in criminal cases with victims, the victims, survivors, witnesses, and the public have an interest in the community expressing “its condemnation with firmness and confidence.” Id. (internal citations omitted). Abatement *ab initio* “strips away any solace the victim or the victim’s family may have received from the appellant’s conviction.” Id. (internal citations and quotations omitted). These realities weigh against applying abatement *ab initio* at all, but certainly counsel against this Court extending the doctrine further than it has already been applied.

But even assuming this Court continues to adopt the policy of abatement *ab initio*, this Court must still have jurisdiction over the appeal. As Appellant’s counsel notes, it was not MSgt Cox that filed the notice of appeal, but her appellate defense counsel. (App. Mot. at 4.) Because of that, this Court lacks jurisdiction since the right to file an appeal belongs to the accused alone. Our superior Court has held that the decision to appeal to CAAF “is personal to an appellant,” and CAAF “lacks statutory jurisdiction” if there is no evidence in the record that an appellant authorized an appeal. United States v. Moss, 73 M.J. 64, 69 (C.A.A.F. 2014). “As in all critical choices governing the conduct of his case, the accused must be the final arbiter and his defense counsel must accede to his wishes.” United States v. Larnear, 3 M.J. 76, 82 (C.M.A. 1977). Since review under both Article 66(b)(1)(A) and Article 67(a)(3) requires action and a decision to appeal by the appellant (as opposed to automatic review under Article 66(b)(3)), the same rules should apply.

Here, there is no evidence in the record that MSgt Cox specifically authorized her appellate defense counsel to file a notice of direct appeal under Article 66(b)(1)(A) at this Court. MSgt Cox’s counsel cites the AF Form 304 contained in the record as evidence that MSgt Cox desired a notice of direct appeal to be filed. (Notice of Appeal at 1; App. Mot. at 2-3.) But such a desire cannot be gleaned from that form. First, the AF Form 304 has not been updated since 20 November 2019 and does not account for the FY 2023 amendments to Article 66(b)(1)(A) that allow any servicemember with a court-martial conviction to file an appeal at a Court of Criminal Appeals. *See* National Defense Authorization Act for Fiscal Year 2023, Section 554(b).<sup>2</sup> The AF Form 304 says “I am entitled to request that appellate defense counsel represent me before the [AFCCA] or [CAAF] *if the record of my trial is referred to that court* under Articles 66, 67, or 69 UCMJ.” (emphasis added). MSgt Cox then checked a box saying, “I REQUEST APPELLATE DEFENSE COUNSEL TO REPRESENT ME before the above named court(s) (*if my case is referred to such a court*) and to urge on my behalf all efforts or other matters which appellate counsel may discover from the record of trial and accompanying papers.” (emphasis added). In this case, the record of trial was never “referred to” this Court under Article 66, because MSgt Cox was not entitled to automatic review. The AF Form 304 is silent as to whether MSgt Cox desired her appellate defense counsel to actually file a notice of direct appeal under Article 66(d)(1)(A). This silence is relevant, because it is possible that after discussing possible grounds for appeal with her appellate defense counsel – who would not yet have been detailed at the time MSgt Cox signed the AF Form 304 on 10 October 2025 – MSgt Cox might have decided not to appeal at all. MSgt Cox’s counsel has provided no evidence to the Court

---

<sup>2</sup> James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law No. 117-263, 136 Stat. 2395, 23 December 2022.

that she ever talked with MSgt Cox and that MSgt Cox personally communicated her desire to file a notice of direct appeal.

Further, even if MSgt Cox had communicated her desire to appeal under Article 66(d)(1)(A) to her appellate defense counsel, this Court should find that her attorney lacked standing to file a notice of direct appeal on her behalf after she died. By comparison, in United States v. Dwyer, 855 F.2d 144, 145 (3d Cir. 1988), the Court held that “the attorneys here, who represented Dwyer...lacked legal authority to act as his agents after his death and thus had no standing to move to abate his conviction.” *See also In re Chin*, 848 F.2d 55, 57 (4th Cir. 1988) (after client’s death, attorneys acted without authority and lacked standing when they filed a motion to abate the deceased’s conviction); United States v. Crawford, 36 C.M.R. 697, 702 (A.B.R. 1966) (“We agree with Government counsel that Crawford’s death terminated the attorney-client relationship.”).

The Minnesota Supreme Court also agreed with this position in Glaze v. State, 909 N.W.2d 322, 325 (Minn. 2018) holding that, “these attorneys, whose attorney-client relationship with Glaze terminated on his death and who are not aggrieved parties themselves, do not have standing to pursue Glaze's postconviction claims on appeal.” It concluded, “the notice of appeal was filed by attorneys who do not themselves have standing to seek review of the district court order...Thus, we lack appellate jurisdiction in this case and must dismiss the appeal.” *Id.* at 327. Likewise here, since MSgt Cox’s appellate defense counsel had no standing to file a notice of direct appeal on her behalf after her death, this Court should find that it lacks jurisdiction over the appeal.

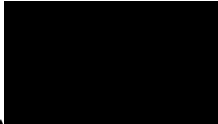
Appellant’s counsel’s reliance on United States v. Oberlin, 718 F.2d 894 (9th Cir. 1983) is misplaced. While that case did involve an attorney filing a notice of appeal on behalf of a

deceased defendant, the court in that case did not squarely address the jurisdictional issue raised here. Indeed, that case was in an entirely different posture altogether because the defendant in that case died before *judgment* was entered. *Id.* at 895. In its reasoning the court stated, “[w]e see no reason to treat a criminal defendant who dies before judgment is entered any differently from one who dies after a notice of appeal has been filed.” *Id.* at 896 (emphasis added). In this case, Appellant’s counsel concedes that the accused died after the judgment was final. (App. Mot. at 1-2.) There is good reason for treating an accused who died before judgment differently than one who dies afterward (but before a notice of appeal is filed), because there is technically no conviction in the former scenario.

But even if Oberlin is read the way Appellant’s counsel argues, this court should reject that interpretation because it goes against the plain language of 10 U.S.C. § 866(b)(1) which is entitled, “Appeals by Accused.” The plain language of the statute demonstrates that the decision to appeal belongs to the accused alone and not to her attorneys. For instance, if the attorney for an accused recommended appeal but the accused wished to withdraw, his attorney would be obligated to abide by that decision. *See Larneard*, 3 M.J. at 82. It should be no different here, since the decision to appeal a conviction is a personal one that should not be left in the hands of an attorney who is not injured herself by the conviction and therefore does not have standing.

### **CONCLUSION**

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant’s counsel’s Motion and dismiss this appeal for lack of jurisdiction.



ABHISHEK S. KAMBLI, Lt Col, USAF  
Appellate Government Counsel



[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

MARY ELLEN PAYNE  
Associate Chief  
Government Trial and Appellate Operations Division

[REDACTED]  
[REDACTED]  
[REDACTED]

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force  
Appellate Defense Division on 26 May 2026.

[REDACTED]  
ABHISHEK S. KAMBLI, Lt Col, USAF  
Appellate Government Counsel  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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

<b>UNITED STATES,</b>	)	<b>MOTION FOR LEAVE TO FILE</b>
<i>Appellee</i>	)	<b>REPLY AND REPLY TO THE</b>
	)	<b>GOVERNMENT’S RESPONSE TO</b>
	)	<b>MOTION TO ABATE PROCEEDINGS</b>
v.	)	<b><i>AB INITIO</i></b>
	)	
	)	Before Panel 1
Master Sergeant (E-7)	)	
<b>SKYE D. COX,</b>	)	No. ACM 26038
United States Air Force,	)	
<i>Deceased</i>	)	1 June 2026

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

Pursuant to 23(d) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel, on behalf of Master Sergeant (MSgt) Skye D. Cox, moves this Court for leave to file a reply to the Government’s Response to the Motion to Abate (“Government Response”). Pursuant to Rule 23(d), the motion for leave to file the pleading, along with the pleading itself, are combined herein.

**REPLY TO THE GOVERNMENT’S RESPONSE**

**A. This Court has jurisdiction over Master Sergeant Cox’s case.**

This Court’s jurisdiction over cases eligible for direct appeal is plainly dictated in Article 66, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(b)(1)(A).<sup>1</sup> The 90-day period had not yet ceased when the notice of appeal for MSgt Cox’s case was filed with this Court; therefore, the appeal was timely and this Court has jurisdiction in MSgt Cox’s case.<sup>2</sup>

---

<sup>1</sup> All references to 10 U.S.C. § 866 are to the 2018 version, as amended by William M. (Mac) Thornberry National Defense Authorization Act [(NDAA)] for Fiscal Year 2021, Pub. L. No. 116-283, § 542(b), 134 Stat. 3388, 3611 (2021), NDAA for Fiscal Year 2022, Pub. L. No. 117–81, § 539E, 135 Stat. 1541, 1700 (2021), and James M. Inhofe NDAA for Fiscal Year 2023, Pub. L. No. 117-263, § 544, 136 Stat. 2395, 2582 (2022).

<sup>2</sup> See 10 U.S.C. § 866(c)(1)(A).

As the Government conceded in its response to the motion to abate, an accused is the “final arbiter” in all critical choices governing the conduct of his case and “his defense counsel must accede his wishes.”<sup>3</sup> This is exactly what MSgt Cox’s attorneys of record did in MSgt Cox’s case. Article 65, UCMJ, instructs that “upon written request of the accused,” an appellate defense counsel “shall be detailed to review the case and to represent the accused before the Court of Criminal Appeals.”<sup>4</sup> MSgt Cox signed an Air Force Form 304, thereby providing a written request to have appellate defense counsel represent her before this Court and “urge on [her] behalf all efforts that appellate counsel may discover from the record of trial and accompanying papers.”<sup>5</sup> In accordance with MSgt Cox’s wishes and Article 65, UCMJ, MSgt Cox’s attorneys of record filed a timely notice of appeal with this Court.

The Government’s assertion that “there is no evidence in the record that MSgt Cox specifically authorized her appellate defense counsel to file a notice of direct appeal”<sup>6</sup> with this Court is unfounded. First and foremost, both of MSgt Cox’s trial defense counsel—Captains Mendel Avtzon and Julianne Darius—who represented her at her court-martial,<sup>7</sup> signed as attorneys of record for the notice of direct appeal, the motion to abate, and this reply. If MSgt Cox had ever communicated to either of her trial defense attorneys that she did not want to appeal, they would have had an ethical duty *not* to sign any of the filings with this Court.

Additionally, although the Government posits that this Court cannot rely on MSgt Cox’s

---

<sup>3</sup> Government Response at 3 (citing *United States v. Larneard*, 3 M.J. 76, 82 (C.M.A 1977)).

<sup>4</sup> 10 U.S.C. § 865(b)(2)(A). All references to 10 U.S.C. § 865 are to the 2018 version, as amended by NDAA for Fiscal Year 2022, Pub. L. No. 117–81, § 539A, 135 Stat. at 1698, and Servicemember Quality of Life Improvement and NDAA for Fiscal Year 2025, Pub. L. No. 118–159, § 563, 138 Stat. 1773, 1903 (2024).

<sup>5</sup> AF Form 304, Oct. 10, 2025.

<sup>6</sup> Government Response at 4.

<sup>7</sup> R. at 3, 4-6, 60-61; Entry of Judgment (EOJ), Nov. 12, 2025.

signature on the AF Form 304 because that form “has not been updated since . . . November 2019,”<sup>8</sup> the Government itself continues to rely on that form.<sup>9</sup> The Government continues to utilize the form, mandate the form be completed in all general and special courts-martial where there is a conviction<sup>10</sup>—regardless of whether the convicted servicemember is eligible for an automatic or direct appeal—and rely on the form to complete its duties under Article 65, UCMJ, 10 U.S.C. § 865 to “forward a copy of the record to an appellate defense counsel” “upon written request of the accused.” This Court should not take issue with the form merely because the Government has failed to update it based on the changes in the law, nor should the Government’s lack of due diligence harm MSgt Cox’s case and appeal.

MSgt Cox signed the AF Form 304 and specifically checked the box that said she requested an appellate defense counsel “urge on [her] behalf all efforts and other matters which appellate counsel may discover from the record of trial and accompanying papers.”<sup>11</sup> Also contained in the record of trial is MSgt Cox’s signature on Appellate Exhibit XXXIII, the Post-Trial and Appellate Rights Form. MSgt Cox signed this form five days prior to signing the AF Form 304 and indicated that she “read and [understood her] post-trial and appellate rights.”<sup>12</sup> This document specifically explained her right to request appellate review before this Court.<sup>13</sup> Furthermore, when questioned

---

<sup>8</sup> Government Response at 4.

<sup>9</sup> See Department of the Air Force Instruction 51-201, *Administration of Military Justice*, Jan. 9, 2026, para. 19.21, as amended by Department of the Air Force Guidance Memorandum to Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice*, Feb. 4, 2026 (“In all [General Courts-Martial] or [Special Courts-Martial] in which there was a finding of guilty, the accused must complete an AF Form 304. If not completed prior to the conclusion of the court-martial proceeding, an AF Form 304 must be completed as part of the immediate post-trial paperwork.”).

<sup>10</sup> *Id.*

<sup>11</sup> AF Form 304, Oct. 10, 2025.

<sup>12</sup> App. Ex. XXXIII.

<sup>13</sup> *Id.* at 7.

by the military judge, MSgt Cox’s counsel stated in the affirmative that he had advised MSgt Cox orally and in writing of her post-trial and appellate rights and MSgt Cox agreed that she had been advised of said rights.<sup>14</sup>

This Court has never required that an appellate defense counsel provide proof of privileged attorney-client communications indicating an appellant’s desire to file a notice a direct appeal, nor should this Court entertain the Government’s proclamation that such evidence is required upon filing a notice of appeal.<sup>15</sup> Nevertheless, it is clear from the record itself that MSgt Cox discussed orally her appellate rights with her defense counsel, understood her appellate options, and submitted a written request expressing her desire for defense counsel to represent her at this Court and to urge on her behalf all efforts which may be discovered from the record.

The Government compares MSgt Cox’s case to *United States v. Dwyer*, 855 F.2d 144 (3d Cir. 1988);<sup>16</sup> but even the Third Circuit has held that the view that *Dwyer* is an “exception” to the abatement doctrine is “based on an erroneous reading of that opinion.”<sup>17</sup> In *Dwyer*, the defendant died after the entry of the jury’s guilty verdict but before the sentence had been imposed.<sup>18</sup> When evaluating the question of jurisdiction, the Third Circuit explained that it “may have lacked appellate jurisdiction” in the *Dwyer* case “because no judgment of sentence—and thus no final order—had been entered.”<sup>19</sup> This is distinguishable from MSgt Cox’s case because a sentence had been imposed<sup>20</sup> and the entry of judgment had been signed by the military judge<sup>21</sup> prior to

---

<sup>14</sup> R. at 804-805.

<sup>15</sup> See Government Response at 4-5.

<sup>16</sup> Government Response at 5.

<sup>17</sup> *United States v. Christopher*, 273 F.3d 294, 297 (3d Cir. 2001).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> R. at 807; Statement of Trial Results, Oct. 27, 2025.

<sup>21</sup> EOJ.

MSgt Cox's death and the filing of the notice of direct appeal.

Nevertheless, in a case with a somewhat similar posture to *Dwyer*, where the defendant died prior to judgment being entered, the Ninth Circuit did not question its jurisdiction when an attorney filed a notice of appeal on behalf of the deceased defendant.<sup>22</sup> And the Ninth Circuit held abatement *ab initio* was appropriate, concluding it saw “no reason to treat a criminal defendant who dies before judgment is entered any differently from one who dies after a notice of appeal has been filed. In either case, he is denied the resolution of the merits of the case on appeal.”<sup>23</sup> At a minimum, the federal courts are split as to whether they have jurisdiction, and whether attorneys can file a notice of appeal and motion to abate on behalf of their deceased clients.

As was highlighted in the notice of direct appeal for this case, this Court's Rules do not specifically address filing a notice of direct appeal after an individual who is eligible for direct appeal dies. However, Federal Rule of Appellate Procedure 43(a) lends guidance to how a similar circumstance would be addressed in federal courts of appeals. “If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative—or, if there is no personal representative, the decedent's attorney of record—may file a notice of appeal within the time prescribed by these rules.”<sup>24</sup>

At the time of the filing of the notice of direct appeal, MSgt Cox's attorneys of record were not aware of any court of law that had appointed a personal representative of MSgt Cox's estate.<sup>25</sup> Therefore, the attorneys of record, acting based on MSgt Cox's proclaimed wishes, filed a timely

---

<sup>22</sup> *United States v. Oberlin*, 718 F.2d 894, 896 (9th Cir. 1983).

<sup>23</sup> *Id.*

<sup>24</sup> Fed. R. App. P. 43(a)(2).

<sup>25</sup> At the timing of the filing of the motion to abate and this reply, MSgt Cox's attorneys of record were not aware, and are still not aware, of any court of law that had, or has, appointed a personal representative of MSgt Cox's estate.

notice of appeal with this Court. Pursuant to Article 66, UCMJ, this Court has jurisdiction in MSgt Cox’s case.

**B. This Court should abate the proceedings against Master Sergeant Cox.**

In 2006, the United States Court of Appeals for the Armed Forces (CAAF) recognized “the ‘longstanding and unanimous view of the lower federal courts that the death of an appellant during the pendency of his appeal of right from a criminal conviction abates the entire course of the proceedings brought against him.’”<sup>26</sup> As recently as two years ago, in *United States v. Reynolds*, the First Circuit acknowledged that “every other federal court of appeals that hears direct criminal appeals has adopted the [abatement] doctrine in a published (and therefore precedential) decision.”<sup>27</sup> In that same case, the First Circuit went so far as to publish its decision upholding the doctrine of abatement *ab initio*, since all of its previous decisions regarding abatement *ab initio* had been unpublished rulings and therefore non-precedential. Although not binding on this Court, it is persuasive that at least most—if not all—federal appellate courts still apply the abatement doctrine when a criminal defendant dies during the pendency of a direct appeal from his conviction.

The Government’s argument for declining to apply the doctrine of abatement *ab initio*<sup>28</sup> lacks logic as it relates to this case. There is no named victim in this case. MSgt Cox was convicted of one specification of wrongful use of tetrahydrocannabinol. There is no “victim” or “victim’s

---

<sup>26</sup> *United States v. Ribaldo*, 62 M.J. 286, 288 (C.A.A.F. 2006) (quoting *United States v. Moehlenkamp*, 557 F.2d 126, 128 (7th Cir. 1977)).

<sup>27</sup> 98 F.4th 62, 64 (1st Cir. 2024) (referencing *Moehlenkamp*, 557 F.2d at 127-28; *United States v. Bechtel*, 547 F.2d 1379, 1380 (9th Cir. 1977); *United States v. Littlefield*, 594 F.2d 682, 683 (8th Cir. 1979); *United States v. Pauline*, 625 F.2d 684, 685 (5th Cir. 1980); *United States v. Dudley*, 739 F.2d 175, 176 (4th Cir. 1984); *United States v. Wilcox*, 783 F.2d 44, 44 (6th Cir. 1986) (order); *United States v. Mollica*, 849 F.2d 723, 726 (2d Cir. 1988); *United States v. Schumann*, 861 F.2d 1234, 1236 (11th Cir. 1988); *United States v. Davis*, 953 F.2d 1482, 1486 (10th Cir. 1992); *United States v. Pogue*, 19 F.3d 663, 665, 305 U.S. App. D.C. 224 (D.C. Cir. 1994); *United States v. Christopher*, 273 F.3d 294, 297 (3d Cir. 2001); and *Ribaldo*, 62 M.J. at 287).

<sup>28</sup> See Government Response at 3.

family” for whom abatement *ab initio* would “strip away” their solace, as the Government claims.<sup>29</sup> Despite the fact that some states have rejected the abatement doctrine, “the highest court in the federal system has not purported to cast doubt on what it described many decades ago as the ‘impressive’ ‘unanimity of the lower federal courts which have worked with this problem over the years’ regarding the doctrine’s legitimacy.”<sup>30</sup> And “no federal court of appeals in the decades since has seen fit to break with that unanimous consensus.”<sup>31</sup>

Rather, the reasons for adopting and applying the doctrine of abatement *ab initio* make logical sense in this case, especially given the doctrine’s “deep roots in federal appellate practice.”<sup>32</sup> The doctrine is “grounded in procedural due process concerns”<sup>33</sup> and “concerns about the conviction’s ‘finality.’”<sup>34</sup> “The notion is that the criminal defendant’s death precludes the conviction from being tested on appeal despite the criminal defendant’s attempt to invoke the statutory right to do so.”<sup>35</sup> “It is not until that appeal of right is complete that we can rest assured the interests of justice have been served.”<sup>36</sup>

MSgt Cox had a direct appeal of right with this Court. Her attorneys of record filed a timely notice of appeal, and as such, her case is eligible for review by this Court. Because MSgt Cox died prior to her appeal of right being completed, this Court should abate the entire course of the proceedings brought against MSgt Cox.

---

<sup>29</sup> *Id.*

<sup>30</sup> *Reynolds*, 98 F.4th at 72 (quoting *Durham v. United States*, 401 U.S. 481, 483 (1971)).

<sup>31</sup> *Reynolds*, 98 F.4th at 72.

<sup>32</sup> *Id.* at 68.

<sup>33</sup> *Id.* (quoting *United States v. DeMichael*, 461 F.3d 414, 416 (3d Cir. 2006)).

<sup>34</sup> *Reynolds*, 98 F.4th at 68 (quoting *United States v. Libous*, 858 F.3d 64, 66 (2d Cir. 2017)).

<sup>35</sup> *Reynolds*, 98 F.4th at 68 (referencing *Moehlenkamp*, 557 F.2d at 128 (explaining that it is against the interests of justice for a person to “stand convicted without resolution of the merits of his appeal”)).

<sup>36</sup> *Ribaudo*, 62 M.J. at 288; see *United States v. Wright*, 160 F.3d 905, 908 (2d Cir. 1998).

**Conclusion**

MSgt Cox's attorneys of record request that this Court grant this motion for leave to file this reply and consider this reply.

Respectfully submitted,

[Redacted]

MEGAN R. CROUCH, Maj, USAF  
Air Force Appellate Defense Division

[Redacted]

[Redacted]

MENDEL AVTZON, Capt, USAF  
Air Force Trial Defense Division

[Redacted]

JULIANNE K. DARIUS, Capt, USAF  
Air Force Trial Defense Division

[Redacted]

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 1 June 2026.



MEGAN R. CROUCH, Maj, USAF  
Air Force Appellate Defense Division

