

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

**UNITED STATES,**

*Appellee,*

v.

Second Lieutenant (O-1)

**SCOTT P. CULBRETH,**

United States Air Force,

*Appellant.*

) **APPELLANT'S MOTION**

) **FOR ENLARGEMENT**

) **OF TIME (FIRST)**

)

) Before Panel No. 2

)

) No. ACM 40704

)

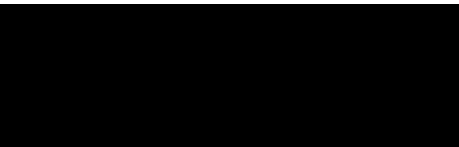
) 23 December 2024

**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 Court's Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 60 days, which will end on **12 March 2025**. The record of trial was docketed with this Court on 12 November 2024. From the date of docketing to the present date, 41 days have elapsed.<sup>1</sup> On the date requested, 120 days will have elapsed.

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

Respectfully submitted,



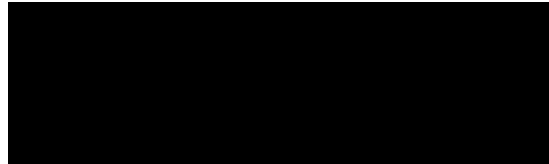
SAMANTHA M. CASTANIEN, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
(240) 612-4770  
samantha.castanien.1@us.af.mil

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<sup>1</sup> This request for an enlargement of time is being filed well in advance to avoid any issues while the Court is closed from 24-26 December 2024 and 1-2 January 2025.

## **CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 23 December 2024.



SAMANTHA M. CASTANIEN, 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: samantha.castanien.1@us.af.mil

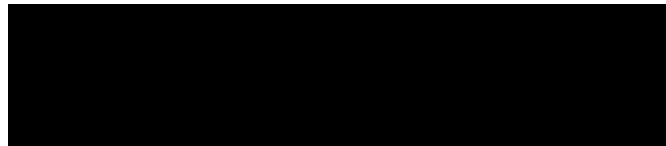
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Second Lieutenant (O-1)	)	ACM 40704
SCOTT P. CULBRETH, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2

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

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

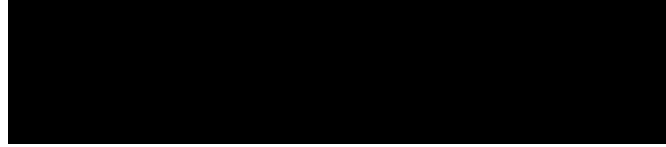
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

**CERTIFICATE OF FILING AND SERVICE**

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

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

UNITED STATES	)	No. ACM 40704
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Scott P. CULBRETH	)	
Second Lieutenant (O-1)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 23 December 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, this court's Rules of Practice and Procedure, and applicable case law.

Accordingly, it is by the court on this 23d day of December, 2024,

**ORDERED:**

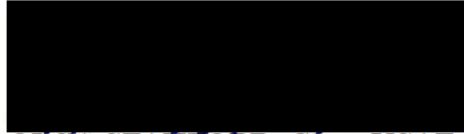
Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error **not later than 12 March 2025**.

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

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

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

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



OLGA STANFORD, Capt, USAF  
Chief Commissioner

UNITED STATES, ) APPELLANT’S MOTION  
 ) FOR ENLARGEMENT  
 ) OF TIME (SECOND)  
 )  
 ) Before Panel No. 2  
 )  
 ) No. ACM 40704  
 )  
 )  
 ) 24 February 2025

*Appellee,*

v.

Second Lieutenant (O-1)

**SCOTT P. CULBRETH,**

United States Air Force,

*Appellant.*

Pursuant to Rule 23.3(m)(3) and (4) of this Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **11 April 2025**. The record of trial was docketed with this Court on 12 November 2024. From the date of docketing to the present date, 104 days have elapsed. On the date requested, 150 days will have elapsed.

<sup>1</sup> Appellant pled not guilty to one charge and two specifications of Article 120c, UCMJ, and one charge and three specifications of Article 133, UCMJ, all of which were withdrawn and dismissed pursuant to a plea agreement. R. at 20, 102-03.

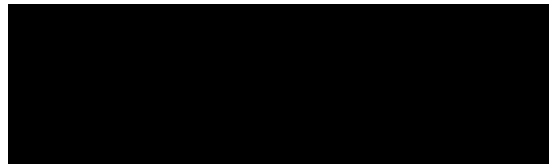
The trial transcript is 103 pages long and the record of trial is electronic, which is one volume of 513 pages. There are two Prosecution Exhibits, nineteen Defense Exhibits, nine Appellate Exhibits, and two Court Exhibits. Appellant is currently confined.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

**WHEREFORE**, Appellant requests that this Court grant the requested enlargement of time for good cause shown.

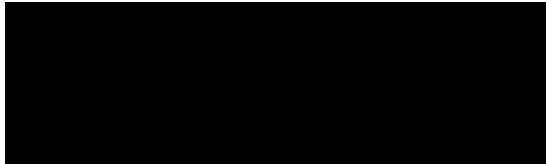
Respectfully submitted,



SAMANTHA M. CASTANIEN, 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: samantha.castanien.1@us.af.mil

## **CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 24 February 2025.



SAMANTHA M. CASTANIEN, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
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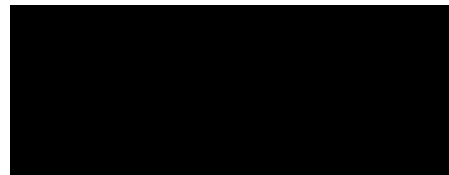
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Second Lieutenant (O-1)	)	ACM 40704
SCOTT P. CULBRETH, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2

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

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

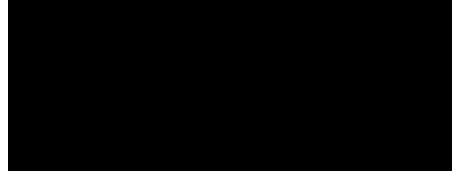
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



THOMAS J. ALFORD, Lt Col, USAFR  
Appellate Government Counsel  
Government Trial and  
Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 24 February 2024.



THOMAS J. ALFORD, Lt Col, USAFR  
Appellate Government Counsel  
Government Trial and  
Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

*Appellee*

v.

Scott CULBRETH

Second Lieutenant (O-1)

*Appellant*

NOTICE OF REPRESENTATION  
OF COUNSEL FOR K.K.

No. ACM 40704

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

To the Clerk of this Court and all parties of record, the undersigned notifies the Court of her representation of named victim A.F. in *United States v. Culbreth*. Ms. Devon Wells is detailed Appellate Victim's Counsel for K.K. Pursuant to Rule 12.2, Ms. Devon Wells notified this Court. A substantive Notice of Representation is attached hereto as an attachment.

Respectfully Submitted,

DEVON A. R. WELLS, GS-14, DAF CIVILIAN  
Appellate Victims' Counsel for K.K.  
HAF/JAJS  
Department of the Air Force  
240-636-2001  
devon.wells@us.af.mil

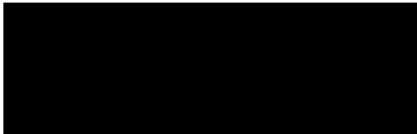
## **CERTIFICATE OF FILING AND SERVICE**

I certify that on 17 March 2025, the foregoing was electronically filed with the Court and served on all relevant parties via email at the following addresses:

AF.JAJG.AFLOA.Filing.Workflow@us.af.mil

AF.JAJA.AFLOA.Filing.Workflow@us.af.mil

af.ja.jajm.appellate.records@us.af.mil



DEVON A. R. WELLS, GS-14, DAF CIVILIAN  
Appellate Victims' Counsel for A.F.  
HAF/JAJS

Department of the Air Force  
240-636-2001

devon.wells@us.af.mil





DEPARTMENT OF THE AIR FORCE  
OFFICE OF THE JUDGE ADVOCATE GENERAL  
VICTIMS' COUNSEL DIVISION

17 March 2025

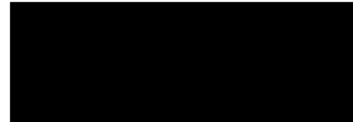
MEMORANDUM FOR AFCCA

FROM: AF/JAJS (Ms. Devon A. R. Wells)

SUBJECT: Appellate Victims' Counsel (VC) Notice of Representation – Ms. K.K.

1. This notice is to inform you that I represent and have an attorney-client relationship with K.K., a named victim in the case of *U.S. v. Culbreth*. I am representing Ms. K.K. to ensure her rights are accorded throughout the appellate process, to file pleadings as appropriate, and to assess the merits of filing a brief as *amicus curiae*.

2. If you have any questions, please contact Ms. Devon Wells at commercial 240-636-2001 or at [devon.wells@us.af.mil](mailto:devon.wells@us.af.mil)



DEVON A. R. WELLS, GS-14, USAF  
Victims' Counsel

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

**UNITED STATES,**

*Appellee,*

V.

## Second Lieutenant (O-1)

**SCOTT P. CULBRETH,**

United States Air Force,

*Appellant.*

**) APPELLANT'S MOTION**

) **FOR ENLARGEMENT**

### ) OF TIME (THIRD)

)

) Before Panel No. 2

)

) No. ACM 40704

)

) 31 March 2025

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

Pursuant to Rule 23.3(m)(3) and (4) of this Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **11 May 2025**. The record of trial was docketed with this Court on 12 November 2024. From the date of docketing to the present date, 139 days have elapsed. On the date requested, 180 days will have elapsed.

On 15 May 2024, at a general court-martial convened at Wright-Patterson Air Force Base, Ohio, a military judge, consistent with Appellant’s pleas, found him guilty of one charge and three specifications of indecent conduct in violation of Article 134, Uniform Code of Military Justice (UCMJ).<sup>1</sup> R. at 1, 13, 20, 22, 25-26, 66. The military judge sentenced Appellant to be dismissed and to be confined for a total of 26 months (confinement for each specification running concurrently). R. at 102. The convening authority took no action on the findings and approved the sentence in its entirety. Convening Authority Decision on Action (June 10, 2024). The convening authority denied Appellant’s request for deferment and waiver of all automatic forfeitures. *Id.*

<sup>1</sup> Appellant pled not guilty to one charge and two specifications of Article 120c, UCMJ, and one charge and three specifications of Article 133, UCMJ, all of which were withdrawn and dismissed pursuant to a plea agreement. R. at 20, 102-03.

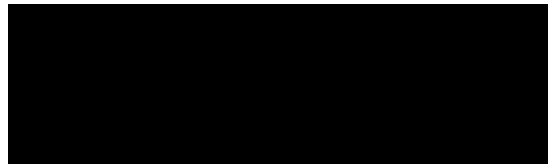
The trial transcript is 103 pages long and the record of trial is electronic, which is one volume of 513 pages. There are two Prosecution Exhibits, nineteen Defense Exhibits, nine Appellate Exhibits, and two Court Exhibits. Appellant is currently confined.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

**WHEREFORE**, Appellant requests that this Court grant the requested enlargement of time for good cause shown.

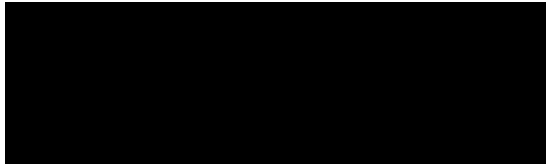
Respectfully submitted,



SAMANTHA M. CASTANIEN, 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: samantha.castanien.1@us.af.mil

## **CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division and Appellate Victims' Counsel for K.K. on 31 March 2025.



SAMANTHA M. CASTANIEN, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
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Joint Base Andrews NAF, MD 20762-6604  
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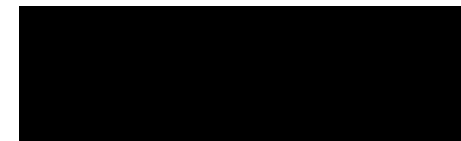
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 2
Second Lieutenant (O-1)	)	
<b>SCOTT P. CULBRETH,</b>	)	No. ACM 40704
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	1 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 general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

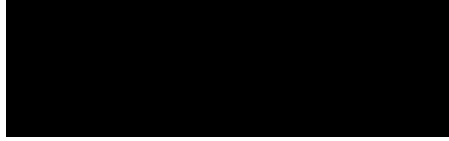
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 1 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

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

**UNITED STATES,**

*Appellee,*

V.

## Second Lieutenant (O-1)

**SCOTT P. CULBRETH,**

United States Air Force,

*Appellant.*

**) APPELLANT'S MOTION**

**) FOR ENLARGEMENT**

**) OF TIME (FOURTH)**

)

) Before Panel No. 2

)

) No. ACM 40704

)

) 28 April 2025

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

Pursuant to Rule 23.3(m)(3) and (6) of this Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **10 June 2025**. The record of trial was docketed with this Court on 12 November 2024. From the date of docketing to the present date, 167 days have elapsed. On the date requested, 210 days will have elapsed.

On 15 May 2024, at a general court-martial convened at Wright-Patterson Air Force Base, Ohio, a military judge, consistent with Appellant’s pleas, found him guilty of one charge and three specifications of indecent conduct in violation of Article 134, Uniform Code of Military Justice (UCMJ).<sup>1</sup> R. at 1, 13, 20, 22, 25-26, 66. The military judge sentenced Appellant to be dismissed and to be confined for a total of 26 months (confinement for each specification running concurrently). R. at 102. The convening authority took no action on the findings and approved the sentence in its entirety. Convening Authority Decision on Action (June 10, 2024). The convening authority denied Appellant’s request for deferment and waiver of all automatic forfeitures. *Id.*

<sup>1</sup> Appellant pled not guilty to one charge and two specifications of Article 120c, UCMJ, and one charge and three specifications of Article 133, UCMJ, all of which were withdrawn and dismissed pursuant to a plea agreement. R. at 20, 102-03.

The trial transcript is 103 pages long and the record of trial is electronic, which is one volume of 513 pages. There are two Prosecution Exhibits, nineteen Defense Exhibits, nine Appellate Exhibits, and two Court Exhibits. Appellant is currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned 37 cases; 19 cases are pending before this Court (16 cases are pending AOE's), and 18 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). To date, undersigned counsel has eight cases prioritized over the present case:

1. *United States v. Ziesche*, No. ACM 24022 – The trial transcript is 174 pages long and the record of trial is four volumes comprised of four Prosecution Exhibits, 13 Defense Exhibits, and 16 Appellate Exhibits. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

2. *United States v. Thomas*, No. ACM 22083 - The record of trial is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

3. *United States v. Tyson*, No. ACM 40617 – The trial transcript is 1,244 pages long and the electronic record of trial is three volumes containing 25 Prosecution Exhibits, 14 Defense Exhibits, one Court Exhibit, and 71 Appellate Exhibits. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

4. *United States v. Watkins*, No. ACM 40639 - The trial transcript is 519 pages long and the record of trial is five volumes containing 14 Prosecution Exhibits, three Defense Exhibits, 47

Appellate Exhibits, and one Court Exhibit. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

5. *United States v. Kristopik*, No. ACM 40674 - The trial transcript is 1,311 pages long. The electronic record of trial contains 10 Prosecution Exhibits, 20 Defense Exhibits, 118 Appellate Exhibits, and one Court Exhibit. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

6. *United States v. Stone*, No. ACM S32797 - The trial transcript is 105 pages long and the electronic ROT is one volume of 386 pages. There are three Prosecution Exhibits, five Defense Exhibits, and four Appellate Exhibits. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

7. *United States v. English*, No. ACM 40703 - The record of trial is seven volumes consisting of five admitted Prosecution Exhibits, 15 Defense Exhibits, 32 Appellate Exhibits, and two Court Exhibits. The transcript is 546 pages. This appellant is currently confined. Undersigned has not yet completed her review of the record of trial.

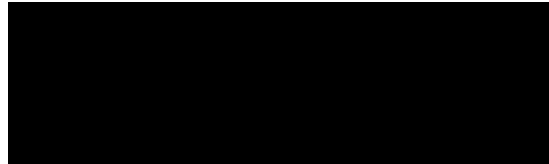
8. *United States v. Fortune*, No. ACM S32800 - The trial transcript is 102 pages long. The electronic record of trial contains four Prosecution Exhibits, seven Defense Exhibits, and six Appellate Exhibits. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

**WHEREFORE**, Appellant requests that this Court grant the requested enlargement of time for good cause shown.

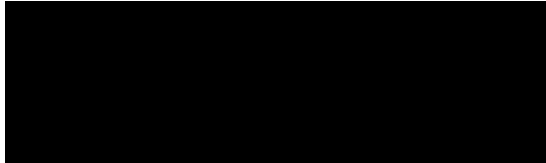
Respectfully submitted,



SAMANTHA M. CASTANIEN, 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: samantha.castanien.1@us.af.mil

## **CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division and Appellate Victim's Counsel for K.K. on 28 April 2025.



SAMANTHA M. CASTANIEN, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
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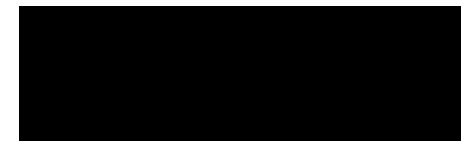
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 2
Second Lieutenant (O-1)	)	
<b>SCOTT P. CULBRETH,</b>	)	No. ACM 40704
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 general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

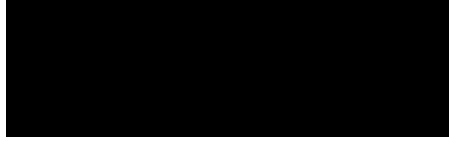
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

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

**UNITED STATES,**

*Appellee,*

V.

## Second Lieutenant (O-1)

**SCOTT P. CULBRETH,**

United States Air Force,

*Appellant.*

**) APPELLANT'S MOTION**

**) FOR ENLARGEMENT**

) **OF TIME (FIFTH)**

)

) Before Panel No. 2

)

) No. ACM 40704

)

) 22 May 2025

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

Pursuant to Rule 23.3(m)(3) and (6) of this Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **10 July 2025**.<sup>1</sup> The record of trial was docketed with this Court on 12 November 2024. From the date of docketing to the present date, 191 days have elapsed. On the date requested, 240 days will have elapsed.

On 15 May 2024, at a general court-martial convened at Wright-Patterson Air Force Base, Ohio, a military judge, consistent with Appellant's pleas, found him guilty of one charge and three specifications of indecent conduct in violation of Article 134, Uniform Code of Military Justice (UCMJ).<sup>2</sup> R. at 1, 13, 20, 22, 25-26, 66. The military judge sentenced Appellant to be dismissed and to be confined for a total of 26 months (confinement for each specification running concurrently). R. at 102. The convening authority took no action on the findings and approved the

<sup>1</sup> This EOT request is being filed well in advance to alleviate any concerns that could arise while undersigned counsel is on leave out of the country from 30 May 2025 to 7 June 2025.

<sup>2</sup> Appellant pled not guilty to one charge and two specifications of Article 120c, UCMJ, and one charge and three specifications of Article 133, UCMJ, all of which were withdrawn and dismissed pursuant to a plea agreement. R. at 20, 102-03.

sentence in its entirety. Convening Authority Decision on Action (June 10, 2024). The convening authority denied Appellant's request for deferment and waiver of all automatic forfeitures. *Id.*

The trial transcript is 103 pages long and the record of trial is electronic, which is one volume of 513 pages. There are two Prosecution Exhibits, nineteen Defense Exhibits, nine Appellate Exhibits, and two Court Exhibits. Appellant is currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned 36 cases; 18 cases are pending before this Court (14 cases are pending AOE's), and 18 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). To date, undersigned counsel has seven cases prioritized over the present case:

1. *United States v. Ziesche*, No. ACM 24022 – The brief for this case is undergoing final review before filing this week.

2. *United States v. Thomas*, No. ACM 22083 - The record of trial is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

3. *United States v. Tyson*, No. ACM 40617 – The trial transcript is 1,244 pages long and the electronic record of trial is three volumes containing 25 Prosecution Exhibits, 14 Defense Exhibits, one Court Exhibit, and 71 Appellate Exhibits. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

4. *United States v. Watkins*, No. ACM 40639 - The trial transcript is 519 pages long and the record of trial is five volumes containing 14 Prosecution Exhibits, three Defense Exhibits, 47

Appellate Exhibits, and one Court Exhibit. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

5. *United States v. Kristopik*, No. ACM 40674 - The trial transcript is 1,311 pages long. The electronic record of trial contains 10 Prosecution Exhibits, 20 Defense Exhibits, 118 Appellate Exhibits, and one Court Exhibit. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

6. *United States v. English*, No. ACM 40703 - The record of trial is seven volumes consisting of five admitted Prosecution Exhibits, 15 Defense Exhibits, 32 Appellate Exhibits, and two Court Exhibits. The transcript is 546 pages. This appellant is currently confined. Undersigned has not yet completed her review of the record of trial.

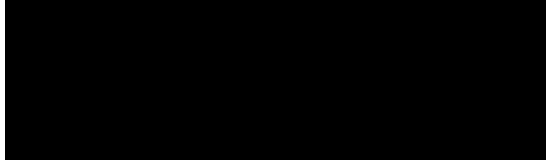
7. *United States v. Fortune*, No. ACM S32800 - The trial transcript is 102 pages long. The electronic record of trial contains four Prosecution Exhibits, seven Defense Exhibits, and six Appellate Exhibits. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

**WHEREFORE**, Appellant requests that this Court grant the requested enlargement of time for good cause shown.

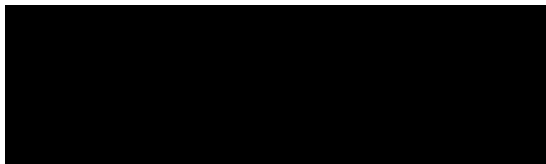
Respectfully submitted,



SAMANTHA M. CASTANIEN, Capt, USAF  
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Air Force Appellate Defense Division  
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Email: samantha.castanien.1@us.af.mil

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division and Appellate Victims' Counsel for K.K. on 22 May 2025.



SAMANTHA M. CASTANIEN, Capt, USAF  
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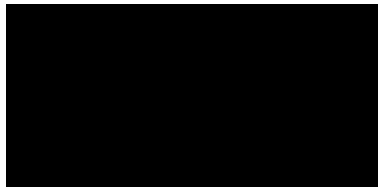
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 2
Second Lieutenant (O-1)	)	
<b>SCOTT P. CULBRETH,</b>	)	No. ACM 40704
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	22 May 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 general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

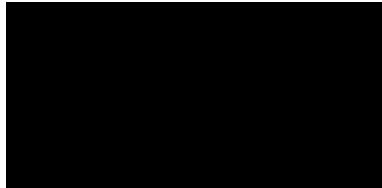
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 22 May 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

UNITED STATES, ) APPELLANT’S MOTION  
Appellee, ) FOR ENLARGEMENT  
 ) OF TIME (SIXTH)  
v. )  
 ) Before Panel No. 2  
Second Lieutenant (O-1) )  
SCOTT P. CULBRETH, ) No. ACM 40704  
United States Air Force, )  
Appellant. ) 30 June 2025

Pursuant to Rule 23.3(m)(3) and (6) of this Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **9 August 2025**. The record of trial was docketed with this Court on 12 November 2024. From the date of docketing to the present date, 230 days have elapsed. On the date requested, 270 days will have elapsed.

<sup>1</sup> Appellant pled not guilty to one charge and two specifications of Article 120c, UCMJ, and one charge and three specifications of Article 133, UCMJ, all of which were withdrawn and dismissed pursuant to a plea agreement. R. at 20, 102-03.

The trial transcript is 103 pages long and the record of trial is electronic, which is one volume of 513 pages. There are two Prosecution Exhibits, nineteen Defense Exhibits, nine Appellate Exhibits, and two Court Exhibits. Appellant is currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned 40 cases; 18 cases are pending before this Court (14 cases are pending AOE's), and 22 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). To date, undersigned counsel has six cases prioritized over the present case:

1. *United States v. Ziesche*, No. ACM 24022 – The reply brief for this appellant's personally raised issue is being finalized for filing today.

2. *United States v. Thomas*, No. ACM 22083 – Undersigned counsel is finalizing this appellant's case. She reviewed the record and drafted the AOE, but coordination with this appellant is still on-going. Even though this case is still pending and the brief still needs to be filed, this case should not delay review of other appellants' cases.

3. *United States v. Tyson*, No. ACM 40617 – The trial transcript is 1,244 pages long and the electronic record of trial is three volumes containing 25 Prosecution Exhibits, 14 Defense Exhibits, one Court Exhibit, and 71 Appellate Exhibits. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

4. *United States v. Kristopik*, No. ACM 40674 - The trial transcript is 1,311 pages long. The electronic record of trial contains 10 Prosecution Exhibits, 20 Defense Exhibits, 118 Appellate Exhibits, and one Court Exhibit. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

5. *United States v. English*, No. ACM 40703 - The record of trial is seven volumes consisting of five admitted Prosecution Exhibits, 15 Defense Exhibits, 32 Appellate Exhibits, and

two Court Exhibits. The transcript is 546 pages. This appellant is currently confined. Undersigned has not yet completed her review of the record of trial.

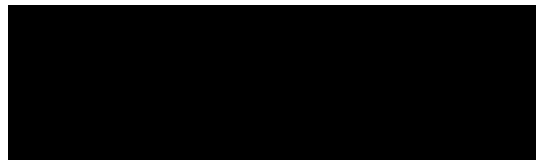
6. *United States v. Fortune*, No. ACM S32800 - The trial transcript is 102 pages long. The electronic record of trial contains four Prosecution Exhibits, seven Defense Exhibits, and six Appellate Exhibits. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

**WHEREFORE**, Appellant requests that this Court grant the requested enlargement of time for good cause shown.

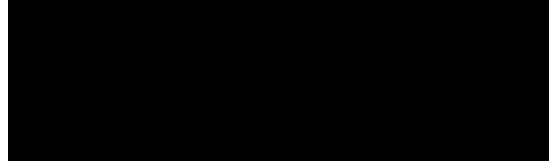
Respectfully submitted,



SAMANTHA M. CASTANIEN, Capt, USAF  
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Email: samantha.castanien.1@us.af.mil

## **CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division and Appellate Victims' Counsel for K.K. on 30 June 2025.



SAMANTHA M. CASTANIEN, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
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Office: (240) 612-4770  
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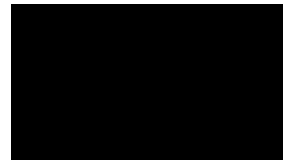
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 2
Second Lieutenant (O-1)	)	
<b>SCOTT P. CULBRETH,</b>	)	No. ACM 40704
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	1 July 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 general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

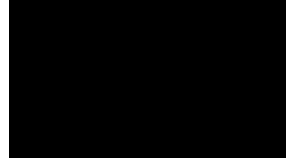
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4804

**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 1 July 2025.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4804

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,  
*Appellee*

v.

Second Lieutenant (O-1)  
SCOTT P. CULBRETH,  
United States Air Force,  
*Appellant*

MOTION FOR LEAVE TO OBJECT TO  
ENLARGEMENT OF TIME ON BEHALF  
OF VICTIM K.K. and MOTION FOR  
APPROPRIATE RELIEF

No. ACM 40704

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

K.K. through her undersigned counsel pursuant to A.F. CT. CRIM. APP. R. 23(d) moves to object to the Appellant's Motion for Enlargement of Time (Seventh) and move this Court to order Appellant file his Assignments of Error without delay. As the Appellant has a statutory right to appeal his conviction under Article 66; his victim K.K. has a statutory right to proceedings free from unreasonable delay codified in Article 6b(a)(7), UCMJ. Granting the seventh enlargement of time violates K.K.'s right to proceedings free from unreasonable delay as the granting of the *seventh* enlargement of time discounts and undermines K.K.'s statutory rights. This Court should not underwrite policy decisions by Appellant's Counsel to file discretionary appeals on behalf of convicted offenders to the detriment of victims who have a statutory right to proceedings free from unreasonable delay. Granting a seventh enlargement of time in this case would do just that and is unfair. See Article 6b(a)(9) ("A victim of an offense under this chapter has the following rights: [...] The right to be treated with fairness.")

## K.K. CAN OBJECT

K.K. has standing to object to violations of her statutory rights. K.K. asserts the notion of Article III standing as a necessity to ensure separation of powers is inapplicable to military justice as courts-martial are Article I tribunals where a case and controversy arises when statutory provisions allow; however, K.K. acknowledges C.A.A.F.’s declaration that “[C.A.A.F.] follows the principles of standing that apply to Article III courts.” *B.M. v. United States*, 84 M.J. 314, 317 (C.A.A.F. 2024) (internal citation omitted). C.A.A.F. goes on to state in *B.M.*, “[i]n accordance with these principles, this Court [C.A.A.F.] only addresses claims raised by parties who can show an injury in fact, causation, and redressability.” *Id.* (internal citations and quotations omitted). C.A.A.F. acknowledged in *B.M.* that B.M. had a statutory right to proceedings free from unreasonable delay, but she could not challenge an abatement order because she did not have a “a judicially cognizable interest in the ultimate question of whether the government will or will not prosecute the accused.” *Id.* at 319 (internal quotations omitted). K.K. is not seeking to effectuate a prosecution, she is objecting to granting a ***seventh*** enlargement of time—in a case where Appellant pled guilty—that delays the appellate proceedings.

In 2004, when Senator Diane Feinstein described the identical right to Article 6b(a)(7)’s right to proceedings free from unreasonable delay contained in the

Crime Victims' Right Act<sup>1</sup> codified at 18 U.S.C. § 3771 (2004) she stated:

I would like to move on to section 2, (a)(7), which provides crime victims with a right to proceedings free from unreasonable delay. This provision does not curtail the Government's need for reasonable time to organize and prosecute its case. Nor is the provision intended to infringe on the defendant's due process right to prepare a defense. Too often, however, **delays in criminal proceedings occur for the mere convenience of the parties** and those delays reach beyond the time needed for defendant's due process or the Government's need to prepare. The result of such delays is that **victims cannot begin to put the crime behind them and they continue to be victimized**. It is not right to hold crime victims under the stress and pressure of future court proceedings merely because it is convenient for the parties or the court.

150 Cong. Rec. S4268-9 (daily ed. April 22, 2004) (Statement of Sen.

Diane Feinstein) (emphasis added).

If the Air Force Court of Criminal Appeals will not consider K.K.'s objection and infringes on her unequivocal right to proceedings free from unreasonable delay without accounting for K.K.'s statutory rights, where does K.K. seek a remedy? As Justice Marshall astutely proclaimed, all rights have a remedy; otherwise they are meaningless. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803) (internal quotations and citations omitted).

C.A.A.F. stated when addressing whether it is appropriate for a trial counsel to assist a victim in giving a victim impact statement,

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<sup>1</sup> Congress adopted the Crime Victims' Rights Act into the UCMJ as Article 6b, titling the section of the National Defense Authorization Act codifying Article 6b as "Extension of crime victims' rights to victims of offenses under the Uniform Code of Military Justice." National Defense Authorization Act of Fiscal Year 2014, 113 P.L. 66, § 1701 (2013).

More recently, Congress has changed the traditional paradigm by providing the victims of the accused's crimes with limited authority to participate in the proceedings. See, e.g., Crime Victims' Rights Act, 18 U.S.C. § 3771 (2018) (establishing the rights of crime victims in federal courts); Article 6b, UCMJ, 10 U.S.C. § 806b (2018) (establishing the rights of crime victims in the military justice system). In the military justice system, victims of certain sex-related offenses and certain domestic violence offenses not only have limited rights to participate in the proceedings but may also be represented by a special victims' counsel at government expense. Special victims counsel represent the victim's interests instead of the government's.

*United States v. Harrington*, 83 M.J. 408, 418-19 (C.A.A.F. 2023). K.K. has a limited right to participate and to object to unreasonable delay. Article 6b(a)(7), UCMJ (2004).

## ARGUMENT

Military offenders [hereinafter "Accused[s]"<sup>2</sup>] in non-capital cases only have a statutory right, upon their request, to **representation** before the Courts of Criminal Appeals, the Court of Appeals of the Armed Forces, and the United States Supreme Court. Article 70, UCMJ (stating “Appellate defense counsel shall **represent** the accused before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court—when requested by the accused.”) Accuseds do not have a statutory right to have a petition for review filed on their behalf, but Accuseds would have a statutory right to counsel upon their request if review by the Court of Appeals for the Armed Forces or the United States Supreme

---

<sup>2</sup> Accused is the term used in the referenced laws – a term that seemingly ignores that Appellants are convicted offenders.

Court was granted. When the Military Justice Review Group published its initial report, it interpreted Article 70 similarly. “Although the Constitution does not require a state to provide an indigent with counsel when seeking a second-level, discretionary review, as a matter of practice, the Supreme Court and the state high courts appoint counsel ***once review has been granted.***” *Report of the Military Justice Review Group Part I: UCMJ Recommendations*, page 642 (December 20, 2015). In addressing the Fourth Circuit’s rules on appointed counsel the Supreme Court in *Austin v. United States* says

[a]nd though indigent defendants pursuing appeals as of right have a constitutional right to a brief filed on their behalf by an attorney, that right does not extend to forums for discretionary review [ . . . ] We believe that the Circuit councils should, if necessary, revise their Criminal Justice Plans so that they do not create any conflict with our Rules. The plan should allow for relieving a lawyer of the duty to file a petition for certiorari if the petition would present only frivolous claims.

513 U.S. 5, 8 (1994) (internal citations omitted).

K.K. concedes Appellant in this case may have a Constitutional right to a brief filed on his behalf<sup>3</sup>, but the 13 cases where Appellant’s Counsel is preparing to

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<sup>3</sup> As the Supreme Court clearly stated in its footnote in *Davis v. United States*

We have never had occasion to consider whether the Fifth Amendment privilege against self-incrimination, or the attendant right to counsel during custodial interrogation, applies of its own force to the military, and we need not do so here. The President, exercising his authority to prescribe procedures for military criminal proceedings, see Art. 36(a), UCMJ, 10 U.S.C. § 836(a), has decreed that statements obtained in violation of the Self-Incrimination Clause are generally not admissible at trials by court-martial. Mil. Rules Evid. 304(a) and (c)(3). Because the Court of Military Appeals has held that our cases construing the Fifth Amendment right to counsel apply to military interrogations and

file petitions for writs of certiorari to the United States Supreme Court—those Appellant’s do not have a right to those filings. See Motion for Enlargement of Time (Seventh). Moreover, Rule for Court-Martial 1205 mentions nothing about a right to counsel to petition the United States Supreme Court; whereas, in R.C.M. 1204 the President does require military appellate counsel be detailed to advise and assist on the petition. R.C.M. 1205 was updated on December 20, 2024 in Executive Order 14130, and did not expand a right to counsel. EO at 105360-1. K.K. should not suffer the harm for a choice by her offender’s counsel to petition the United States Supreme Court on behalf of other Appellants when no law demands Appellant’s Counsel be detailed to do just that. The law, however, does require that victims are entitled to proceedings free from unreasonable delay and to be treated with fairness. Article 6b(a)(7),(9), UCMJ.

The Air Force Court of Criminal Appeals must account for victim’s statutory rights when rendering decisions and issuing orders pursuant to Congress’s direction in the National Defense Authorization Act of Fiscal Year 2014. 113 P.L. 66 (2013) (hereinafter 2014 NDAA). Congress required the Department of Defense and services “. . . shall prescribe such regulations as each such Secretary considers appropriate to implement such section [Article 6b].” 2014 NDAA § 1701 (b)(1)(B).

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control the admissibility of evidence at trials by court-martial, see, *e. g.*, *United States v. McLaren*, 38 M.J. 112, 115 (1993); *United States v. Applewhite*, 23 M.J. 196, 198 (1987), and the parties do not contest this point, we proceed on the assumption that our precedents apply to courts-martial just as they apply to state and federal criminal prosecutions.

512 U.S. 452, 457 (1994) (footnote).

Congress further outlined “Mechanisms for Affording Rights.— The recommendations and regulations required by paragraph (1) shall include the following: [. . .] Mechanisms for ensuring that members of the Armed Forces and civilian personnel of the Department of Defense [. . .] make their best efforts to ensure that victims are notified of, and accorded, the rights specified in such section.” *Id.* at § 1701(b)(2)(B). Congress duly enacted a law requiring all members of the Armed Forces make best efforts to accord victim’s rights.

K.K. deserves a case that is timely processed and efficiently moved through the military justice appellate proceedings as recognized by Congress and codified under Article 6b(a)(7). K.K. has a right to timely finality of judgment, especially since Appellant pled guilty to all offenses for which he was found guilty. “Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out.” *Calderon v. Thompson*, 523 U.S. 538, 556 (1998).

K.K. should not have to endure this unreasonable delay simply because of the ***discretionary*** workload of appellate counsel. The Appellant’s request attests that her sole reason seeking the seventh enlargement of time is linked to her caseload and is “[t]hrough no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant’s case.” Motion for EOT (Seventh) at 3.

To accord K.K. her right to proceedings free from unreasonable delay, K.K. respectfully motions for leave to object to the Appellant’s Motion and moves this Court to order Appellant to file his Assignments of Error without delay.

RESPECTFULLY SUBMITTED this 28th day of July, 2025.

DEVON A. R. WELLS, GS-14, DAF CIVILIAN  
Appellate Victims' Counsel  
HAF/JAJS  
Department of the Air Force  
240-636-2001  
devon.wells@us.af.mil

**CERTIFICATE OF FILING AND SERVICE**

I certify that on July 28, 2025, the foregoing was electronically filed with the  
Court and served on the following addresses:

Capt Samantha Castanien, Counsel for Appellant  
samantha.castanien.1@us.af.mil

Air Force Government Trial and Appellate Operations Division  
af.jajg.afloa.filng.workflow@us.af.mil

DEVON A. R. WELLS, GS-14, DAF CIVILIAN  
Appellate Victims' Counsel  
HAF/JAJS  
Department of the Air Force  
240-636-2001  
devon.wells@us.af.mil

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

<b>UNITED STATES,</b> <i>Appellee,</i>	)	UNITED STATES’ OPPOSITION
	)	TO VICTIM’S MOTION FOR
	)	LEAVE TO FILE OPPOSITION TO
	)	APPELLANT’S MOTION FOR
v.	)	ENLARGEMENT OF TIME
	)	
	)	Before Panel No. 2
Second Lieutenant (O-1)	)	
<b>SCOTT P. CULBRETH,</b>	)	No. ACM 40704
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	29 July 2025

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

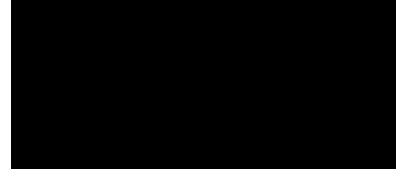
The United States opposes the Appellate Victim’s Counsel’s motion pursuant to Rule 23.2. of this Court’s Rules of Practice and Procedure. The motion fails because the victim, K.K., lacks standing under Article 6b to oppose the Appellant’s request for an enlargement of time.

Article 6b(a)(7) grants K.K. a “right to proceedings free from unreasonable delay.” However, Article 6b(e) specifies that a petition for a writ of mandamus is the proper mechanism to enforce that right when violated at the trial level. A victim petitions the Court for a writ to seek relief from lower court rulings that violated their rights. Article 6b(e)(1), (e)(4); *see In re HK*, 2021 CCA LEXIS 535, at \*7 (A.F. Ct. Crim. App. Sep. 13, 2021) (Victim had “standing to be heard on her right to proceedings free from unreasonable delay” through writ of mandamus). No statutory language grants K.K. standing to file motions in a case already under appellate review, and this Court should not consider the motion. *See United States v. Fundis*, ACM 40689, order at 2 (A.F. Ct. Crim. App. 17 July 2025).

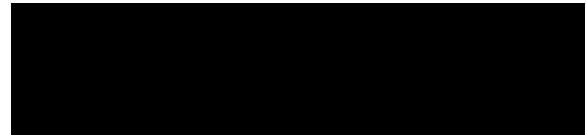
The United States shares K.K.’s desire for “real finality” in Appellant’s case, including a complete appellate review. *Calderon v. Thompson*, 523 U.S. 538, 556 (1998). Regardless, neither

Article 6b nor Article 66 contain language that implies K.K. has standing to oppose Appellant's motion for enlargement of time with this Court.

**WHEREFORE**, the United States respectfully opposes K.K.'s motion.



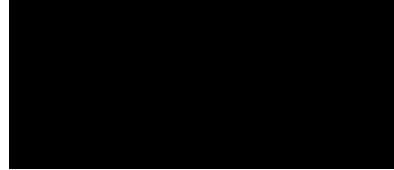
ADAM M. LOVE, Maj, USAF  
Appellate Government Counsel  
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DSN: 612-4807



MARY ELLEN PAYNE  
Associate Chief  
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, to the Air Force Appellate Victims' Counsel, and to the Air Force Appellate Defense Division on 29 July 2025.



ADAM M. LOVE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
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**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	<b>APPELLANT’S OPPOSITION TO</b>
	)	<b>MOTION FOR LEAVE TO OBJECT</b>
<i>Appellee,</i>	)	<b>TO ENLARGEMENT OF TIME ON</b>
	)	<b>BEHALF OF K.K. AND MOTION</b>
v.	)	<b>FOR APPROPRIATE RELIEF</b>
	)	
Second Lieutenant (O-1)	)	Before Panel No. 2
<b>SCOTT P. CULBRETH,</b>	)	
United States Air Force,	)	No. ACM 40704
	)	
<i>Appellant.</i>	)	29 July 2025

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

Pursuant to Rule 23(c) of the Joint Rules of Appellate Procedure and Rule 23.2 of this Court’s Rules of Practice and Procedure, Appellant files this opposition and response to K.K.’s “Motion For Leave to Object to Enlargement of Time on Behalf of Victim K.K. and Motion for Appropriate Relief,” filed on 28 July 2025 (hereinafter K.K.’s Motion). Counsel for K.K. seeks leave to “object” to Appellant’s Motion for Enlargement of Time (Seventh) and requests this Court order Appellant to file his assignments of error “without delay” on the basis that “K.K. has a statutory right to proceedings free from unreasonable delay codified in Article 6b(a)(7), [Uniform Code of Military Justice].” K.K.’s Motion at 1. For the reasons set out below, this Court should deny that request.

K.K. is not a party to this litigation. *See LRM v. Kastenberg*, 72 M.J. 364, 368 (C.A.A.F. 2013) (describing LRM as a “nonparty”). The only parties to the action before the Court, No. ACM 40704, are the United States of America and Second Lieutenant Scott P. Culbreth.

There is no basis for K.K. to intervene in this case. This case does not present a question via a petition for an extraordinary writ to enforce rights under Article 6b(e), Uniform Code of

Military Justice (UCMJ), 10 U.S.C. § 806b(e), or any other statutory right. The codification of rights in Article 6b, UCMJ, is devoid of the terms “appeal” and “appellate.”

Furthermore, any right that K.K. may have under Article 6b, UCMJ, is unenforceable in this Court except through a petition for writ of mandamus to address the specific circumstances discussed in Article 6b(e), UCMJ. As this Court noted eleven days ago, this Court will not consider motions such as K.K.’s because the “motions discussed *supra* are not the mechanism, if any, in which [K.K.] may exercise her rights before this [C]ourt pursuant to Article 6b, UCMJ.” *United States v. Fundis*, No. ACM 40689, at 2 n.2 (A.F. Ct. Crim. App. July 18, 2025) (order). K.K.’s motion does not acknowledge *Fundis* or seek to distinguish this case from it in any way, even though the motions are alike.

As in *Fundis*, K.K.’s motion is not a petition for a writ and does not seek redress for any circumstance under Article 6b(e), UCMJ. Framed as vindicating K.K.’s statutory right under Article 6b(a)(7), UCMJ, the motion amounts to the equivalent of a submission under *United States v. Grostefon*, as it has no basis in the law to support its consideration. 12 M.J. 431 (C.M.A. 1982). But *Grostefon* is limited to an appellant’s right to raise issues. *Id.* at 436-37. There is no such equivalent for K.K. *Id.* at 435 n.6. Simply, K.K. does not have a basis to intervene through Article 6b, UCMJ, the statute she offers as the legal justification for the motion. As in *Fundis*, K.K.’s motion should not be considered.

Additionally, K.K.’s statutory rights do not and cannot infringe upon—let alone prevail over—Appellant’s constitutional rights to counsel or effective assistance of counsel. *See, e.g., United States v. Gaddis*, 70 M.J. 248, 252-53 (C.A.A.F. 2011) (discussing how Mil. R. Evid. 412 cannot limit an accused’s constitutional rights); *United States v. Adams*, 59 M.J. 367, 370 (C.A.A.F. 2004) (citing *United States v. Knight*, 53 M.J. 340, 342 (C.A.A.F. 2000) (“The right of

a military accused to effective assistance of counsel after his trial is a fundamental right.”)). Appellant has requested additional time for his counsel to review, research, advise, and draft any assignments of error. Additional time is required to ensure these constitutional rights are protected. *See United States v. Roach*, 66 M.J. 410, 419 (C.A.A.F. 2008). Additionally, Appellant’s constitutional due process right to timely appellate review is not presumptively implicated until eighteen months after docketing. *United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006). To date, it has been eight months, two weeks, and three days since docketing. Even if Article 6b, UCMJ, was applicable on appeal, whatever purported *statutory* right K.K. complains about cannot impose a more stringent standard than Appellant’s *constitutional* right of eighteen months.

K.K. has no standing to be heard in this appeal as postured. If the situations enumerated in Article 6b(e), UCMJ, appear during the pendency of Appellant’s appeal, K.K. can attempt to follow the process in Article 6b, UCMJ, to enforce any perceived violation of her rights therein. Currently, there is no basis to intervene as articulated.

Appellant, conversely, has standing all the way to the Supreme Court of the United States to challenge his conviction, if he so chooses—and he is afforded the right to do so with the assistance of detailed military appellate defense counsel. The “policy decisions” pertinent to the professional and ethical obligations described in the requested enlargement of time are not determined by undersigned counsel, contrary to K.K.’s assertion. K.K. Motion at 1. Rather, these obligations were determined by Congress and signed into law by the President. Under 28 U.S.C. § 1259, a service member has the right to seek Supreme Court review of a decision by the United States Court of Appeals for the Armed Forces. Article 70(c), UCMJ, 10 U.S.C. § 870, provides service members a statutory right to counsel to seek such review. The requirements of Article 70, UCMJ, cannot be narrowed by any Rule for Courts-Martial. *Compare* K.K. Motion at 5, *with*

*United States v. Romano*, 46 M.J. 269, 274 (C.A.A.F. 1997). The language in Article 70, UCMJ, is clear when it comes to representation before the Supreme Court: it is a right of the service member when “requested by the accused”—and such a right has been invoked in each of the cases cited in Appellant’s motion. Representation during these discretionary direct appeals is not a matter of undersigned counsel’s whim, contrary to the arguments made in K.K.’s motion. K.K. Motion at 5-6 (“K.K. should not suffer the harm for a *choice by her offender’s counsel* to petition the United States Supreme Court on behalf of *other* Appellants when no law demands *Appellant’s Counsel* be detailed to do just that.”) (emphasis added); K.K. Motion at 7 (“The Appellant’s request attests that *her* sole reason seeking the seventh enlargement of time is linked to *her caseload* . . . .”) (emphasis added). Each appellant chooses whether to appeal—and appellants have a statutory right to detailed military counsel to assist them when they choose to exercise their appellate rights. *See* 10 U.S.C. § 870.

Appellate review “spans a continuum of process” where an appellant has the right to effective representation through the *entire period of review*, from the end of trial to a decision by the Supreme Court. *See Diaz v. JAG of the Navy*, 59 M.J. 34, 37 (C.A.A.F. 2003) (articulating this right to representation up to the CAAF); 28 U.S.C. § 1259 (codifying an appellant’s right to seek review at the Supreme Court); 10 U.S.C. § 870 (codifying an appellant’s right to have free military appellate defense counsel representation at the Supreme Court). There is no break in counsel at each phase of discretionary review; an appellant is entitled to counsel through the *entire period*. *Diaz*, 59 M.J. at 37. Rather than incorrectly attributing to counsel the choices made by multiple appellants in cases where K.K. is neither a party nor has any interest in their disposition, K.K. and her counsel could request the Government provide adequate staffing to the Appellate Defense Division (which would expedite review), urge this Court to order The Judge Advocate General of

the Air Force to do the same (another way to accelerate the Division's output, *see Roach*, 66 M.J. at 419), or petition Congress to change the law.

**WHEREFORE**, Appellant requests that this Court deny K.K.'s Motion.

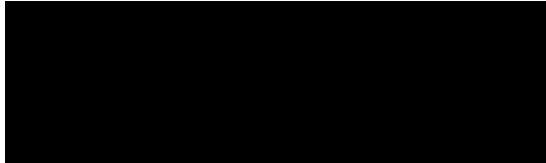
Respectfully submitted,



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## **CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division and Appellate Victims' Counsel for K.K. on 29 July 2025.



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**UNITED STATES,**  
*Appellee,*

v.

Second Lieutenant (O-1)  
**SCOTT P. CULBRETH,**  
United States Air Force,  
*Appellant.*

) **APPELLANT’S MOTION**  
) **FOR ENLARGEMENT**  
) **OF TIME (SEVENTH)**  
)  
) Before Panel No. 2  
)  
) No. ACM 40704  
)  
) 28 July 2025

Pursuant to Rule 23.3(m)(3) and (6) of this Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **8 September 2025**. The record of trial was docketed with this Court on 12 November 2024. From the date of docketing to the present date, 258 days have elapsed. On the date requested, 300 days will have elapsed.

<sup>1</sup> Appellant pled not guilty to one charge and two specifications of Article 120c, UCMJ, and one charge and three specifications of Article 133, UCMJ, all of which were withdrawn and dismissed pursuant to a plea agreement. R. at 20, 102-03.

The trial transcript is 103 pages long and the record of trial is electronic, which is one volume of 513 pages. There are two Prosecution Exhibits, nineteen Defense Exhibits, nine Appellate Exhibits, and two Court Exhibits. Appellant is currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned 37 cases; 18 cases are pending before this Court (13 cases are pending AOE's); six cases are pending before the United States Court of Appeals for the Armed Forces (CAAF) (including one supplement to a petition for grant of review); and 13 cases are pending before the United States Supreme Court (each case is pending a petition for a writ of certiorari). To date, undersigned counsel has four cases prioritized over the present case:

1. *United States v. Tyson*, No. ACM 40617 – The trial transcript is 1,244 pages long and the electronic record of trial is three volumes containing 25 Prosecution Exhibits, 14 Defense Exhibits, one Court Exhibit, and 71 Appellate Exhibits. This appellant is not currently confined. Undersigned has almost completed her review of the record of trial and is starting to research and draft the AOE.

2. *United States v. Kristopik*, No. ACM 40674 - The trial transcript is 1,311 pages long. The electronic record of trial contains 10 Prosecution Exhibits, 20 Defense Exhibits, 118 Appellate Exhibits, and one Court Exhibit. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

3. *United States v. English*, No. ACM 40703 - The record of trial is seven volumes consisting of five admitted Prosecution Exhibits, 15 Defense Exhibits, 32 Appellate Exhibits, and two Court Exhibits. The transcript is 546 pages. This appellant is currently confined. Undersigned has not yet completed her review of the record of trial.

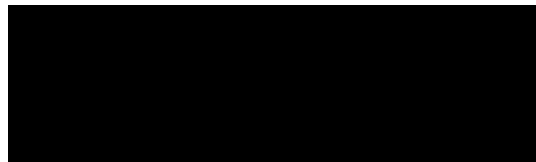
4. *United States v. Fortune*, No. ACM S32800 - The trial transcript is 102 pages long. The electronic record of trial contains four Prosecution Exhibits, seven Defense Exhibits, and six Appellate Exhibits. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

**WHEREFORE**, Appellant requests that this Court grant the requested enlargement of time for good cause shown.

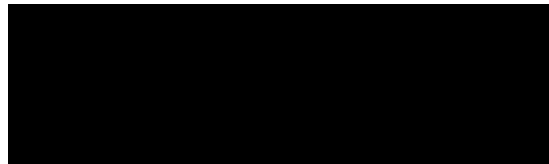
Respectfully submitted,



SAMANTHA M. CASTANIEN, Capt, USAF  
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## **CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division and Appellate Victims' Counsel for K.K. on 28 July 2025.



SAMANTHA M. CASTANIEN, Capt, USAF  
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**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 2
Second Lieutenant (O-1)	)	
<b>SCOTT P. CULBRETH,</b>	)	No. ACM 40704
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	28 July 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 8-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.

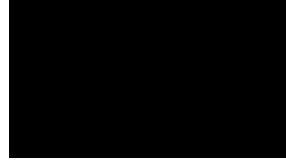
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4804

**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 28 July 2025.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4804

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

UNITED STATES	)	No. ACM 40704
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Scott P. CULBRETH	)	
Second Lieutenant (O-1)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 28 July 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Seventh), requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 30th day of July, 2025,

**ORDERED:**

Appellant's Motion for Enlargement of Time (Seventh) is **GRANTED**. Appellant shall file any assignments of error not later than **8 September 2025**.

Further requests by Appellant for enlargements of time may necessitate a status conference.



FOR THE COURT



CAROL K. JOYCE  
Clerk of the Court

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

UNITED STATES	)	No. ACM 40704
<i>Appellee</i>	)	
	)	
v.	)	
	)	NOTICE OF PANEL
Scott P. CULBRETH	)	CHANGE
Second Lieutenant (O-1)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	

It is by the court on this 22d day of August, 2025,

**ORDERED:**

The record of trial in the above-styled matter is withdrawn from Panel 2 and referred to a Special Panel for appellate review.

The Special Panel in this matter shall be constituted as follows:

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge  
KEARLEY, CYNTHIA T., Colonel, Appellate Military Judge  
MORGAN, CHRISTOPHER S., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.



FOR THE COURT



AGNIESZKA M. GAERTNER, Capt, USAF  
Commissioner

**UNITED STATES,**  
*Appellee,*

v.

Second Lieutenant (O-1)  
**SCOTT P. CULBRETH,**  
United States Air Force,  
*Appellant.*

) **APPELLANT’S MOTION**  
) **FOR ENLARGEMENT**  
) **OF TIME (EIGHTH)**  
)  
) Before Special Panel  
)  
) No. ACM 40704  
)  
) 24 August 2025

Pursuant to Rule 23.3(m)(3) and (6) of this Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **8 October 2025**. The record of trial was docketed with this Court on 12 November 2024. From the date of docketing to the present date, 285 days have elapsed. On the date requested, 330 days will have elapsed.

<sup>1</sup> Appellant pled not guilty to one charge and two specifications of Article 120c, UCMJ, and one charge and three specifications of Article 133, UCMJ, all of which were withdrawn and dismissed pursuant to a plea agreement. R. at 20, 102-03.

The trial transcript is 103 pages long and the record of trial is electronic, which is one volume of 513 pages. There are two Prosecution Exhibits, nineteen Defense Exhibits, nine Appellate Exhibits, and two Court Exhibits. Appellant is currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned 32 cases; 13 cases are pending before this Court (9 cases are pending AOE's), 5 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF) (including one supplement to a petition for grant of review), and 14 cases are pending before the Supreme Court of the United States (all pending filing a petition for a writ of certiorari).<sup>2</sup> Of these fourteen cases before the Supreme Court, undersigned counsel anticipates three to four petitions for a writ of certiorari. Not all of these cases deal with 18 U.S.C. § 922 issues and even for the ones that do, some of the cases cannot be joined into a petition together. To date, undersigned counsel has five cases prioritized over the present case:

1. *United States v. Tyson*, No. ACM 40617 – The eleven-issue AOE is complete and is about to undergo leadership review before being submitted at the end of this week, 29 August 2025.

2. *United States v. Marin Perez*, USCA Dkt. No. 25-0238/AF – Undersigned counsel is drafting this one-issue supplement to the petition for grant of review, which is due 2 September 2025 to the CAAF.

---

<sup>2</sup> Appellate review “spans a continuum of process” where an appellant has the right to effective representation through the entire period of review, from the end of trial to a decision by the Supreme Court. *See Diaz v. JAG of the Navy*, 59 M.J. 34, 37 (C.A.A.F. 2003) (articulating this right to representation up to the CAAF); 28 U.S.C. § 1259 (codifying an appellant’s right to seek review at the Supreme Court); 10 U.S.C. § 870 (codifying an appellant’s right to have free military appellate defense counsel representation at the Supreme Court). There is no break in counsel at each phase of review; an appellant is entitled to counsel through the entire period. *Diaz*, 59 M.J. at 37.

3. *United States v. Kristopik*, No. ACM 40674 - The trial transcript is 1,311 pages long. The electronic record of trial contains 10 Prosecution Exhibits, 20 Defense Exhibits, 118 Appellate Exhibits, and one Court Exhibit. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial to be able to coordinate with civilian appellate defense counsel on the initially drafted AOE.

4. *United States v. English*, No. ACM 40703 - The record of trial is seven volumes consisting of five admitted Prosecution Exhibits, 15 Defense Exhibits, 32 Appellate Exhibits, and two Court Exhibits. The transcript is 546 pages. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

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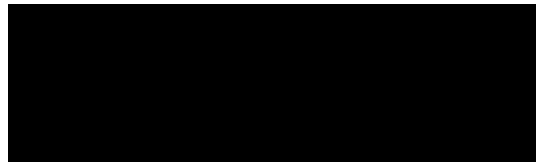
Undersigned counsel also anticipates working a brief petition for reconsideration for one of her cases pending at the CAAF, which is due 10 September 2025. Additionally, undersigned counsel also anticipates doing the oral argument for *United States v. Braum*, USCA Dkt. No. 25-0046/AF on 8 October 2025.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

**WHEREFORE**, Appellant requests that this Court grant the requested enlargement of time for good cause shown.

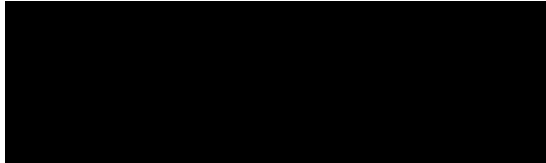
Respectfully submitted,



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### **CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division and Appellate Victims' Counsel for K.K. on 24 August 2025.



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

<b>UNITED STATES,</b>	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
	)	
v.	)	Before Special Panel
	)	
Second Lieutenant (O-1)	)	No. ACM 40704
<b>SCOTT P. CULBRETH,</b>	)	
United States Air Force,	)	26 August 2025
<i>Appellant.</i>	)	

**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 330 days in length. Appellant’s nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 7 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not completed review of the record of trial at this late stage of the appellate process.

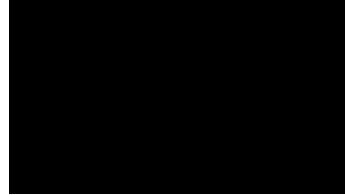
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4804

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 26 August 2025.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4804

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

*Appellee,*

*v.*

Captain (O-3)

**Scott P. CULBRETH**

United States Air Force,

*Appellant.*

NOTICE OF APPEARANCE

Before Special Panel

Case No. ACM 40704

Filed on: 29 September 2025

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

COMES NOW, Frank J. Spinner, pursuant to Rule 12 of this Court's Rules of Practice and Procedure and hereby files this written notice of appearance. In addition, counsel hereby informs this Court of the following:

- (1) Business mailing address is: 1420 Golden Hills Road, Colorado Springs, CO 80919;
- (2) Phone number is: 719-233-7192
- (3) Business email is: lawspin@aol.com; and
- (5) I am member of this Court's bar since 1987.

Respectfully submitted,

[REDACTED]

FRANK J. SPINNER

Attorney at Law

1420 Golden Hills Road

Colorado Springs, CO 80919

[REDACTED]

[REDACTED]

[REDACTED]

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via electronic mail to the Court and served on the Appellate Government Division on 29 September 2025.

[REDACTED]  
FRANK J. SPINNER  
Attorney at Law  
1420 Golden Hills Road  
Colorado Springs, CO 80919  
[REDACTED]  
[REDACTED]

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

UNITED STATES	)	No. ACM 40704
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Scott P. CULBRETH	)	
Second Lieutenant (O-1)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Special Panel</b>

On 21 September 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Ninth), requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

On 30 September 2025, the court held a status conference to discuss the progress of this case. Appellant was represented by Captain Samantha M. Castanien; Lieutenant Colonel Allen S. Abrams and Mr. Dwight H. Sullivan from the Appellate Defense Division were also present. Major Kate E. Lee represented the Government. In response to questions from the court, Captain Castanien provided additional information regarding her current workload, Appellant's confinement status, and other pertinent topics. Of note, she advised the court that Appellant had now retained civilian appellate defense counsel; however, Appellant still desired Captain Castanien to review his record, and Captain Castanien did not foresee the retention of civilian counsel would be a cause of delay in this case. Captain Castanien further advised the Defense had already identified one or more appellate issues to raise, but she did not expect to begin reviewing Appellant's record before December 2025 at the earliest due to her other obligations. Lieutenant Colonel Abrams provided additional information regarding the Appellate Defense Division's workload and manning more generally. Major Lee maintained the Government's opposition to the motion but did not specifically challenge or dispute any written or oral representation by the Defense.

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

Accordingly, it is by the court on this 1st day of October, 2025,

**ORDERED:**

Appellant's Motion for Enlargement of Time (Ninth) is **GRANTED**. Appellant shall file any assignments of error not later than **7 November 2025**.



FOR THE COURT



JACOB B. HOEFERKAMP, Capt, USAF  
Chief Commissioner

UNITED STATES, ) APPELLANT’S MOTION  
 ) FOR ENLARGEMENT  
 ) OF TIME (NINTH)  
 )  
 ) Before Special Panel<sup>1</sup>  
 )  
 ) No. ACM 40704  
 )  
 ) 21 September 2025

*Appellee,*

v.

Second Lieutenant (O-1)

**SCOTT P. CULBRETH,**

United States Air Force,

*Appellant.*

Pursuant to Rule 23.3(m)(3) and (6) of this Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **7 November 2025**. The record of trial was docketed with this Court on 12 November 2024. From the date of docketing to the present date, 313 days have elapsed. On the date requested, 360 days will have elapsed.

On 15 May 2024, at a general court-martial convened at Wright-Patterson Air Force Base, Ohio, a military judge, consistent with Appellant's pleas, found him guilty of one charge and three specifications of indecent conduct in violation of Article 134, Uniform Code of Military Justice (UCMJ).<sup>2</sup> R. at 1, 13, 20, 22, 25-26, 66. The military judge sentenced Appellant to be dismissed and to be confined for a total of 26 months (confinement for each specification running concurrently). R. at 102. The convening authority took no action on the findings and approved the

<sup>1</sup> In an order dated 22 August 2025, this case was referred to a Special Panel, but the online docket indicates this case is before Panel 2. United States Air Force Court of Criminal Appeals, Court Docket, <https://afcca.law.af.mil/docket.html> (last visited Sep. 21, 2025). It appears either counsel was not served an order in this case or the online docket is incorrect.

<sup>2</sup> Appellant pled not guilty to one charge and two specifications of Article 120c, UCMJ, and one charge and three specifications of Article 133, UCMJ, all of which were withdrawn and dismissed pursuant to a plea agreement. R. at 20, 102-03.

sentence in its entirety. Convening Authority Decision on Action (June 10, 2024). The convening authority denied Appellant's request for deferment and waiver of all automatic forfeitures. *Id.*

The trial transcript is 103 pages long and the record of trial is electronic, which is one volume of 513 pages. There are two Prosecution Exhibits, nineteen Defense Exhibits, nine Appellate Exhibits, and two Court Exhibits. Appellant is currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned 21 cases; 12 cases are pending before this Court (7 cases are pending AOE's), 6 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF) (two cases are pending action on petitions for reconsideration; one is pending a petition for a grant of review and supplement), and 3 cases are pending before the Supreme Court of the United States (all pending filing an individual petition for a writ of certiorari). Within the next month, two more cases are anticipated to move from pending at the CAAF to pending before the Supreme Court. These clients will also have individualized petitions for writs of certiorari. All anticipated Supreme Court petitions are expected to be filed before the end of this calendar year.

Since Appellant's last request for an EOT, undersigned counsel filed an eleven-issue AOE in *United States v. Tyson*, No. ACM 40617, filed the supplement to the petition for grant of review in *United States v. Marin Perez*, USCA Dkt. No. 25-0238/AF, responded to the Government's petition for reconsideration in *United States v. Folts*, USCA Dkt. No. 25-0043/AF, prepared a response to the Government's motion for reconsideration in *United States v. Kim*, No. ACM 24007, 2025 LX 340225 (A.F. Ct. Crim. App. Aug. 15, 2025), filed a petition for reconsideration in *United States v. Casillas*, USCA Dk. No. 24-0089/AF, and prepared a reply to the Government's response to the same, and conducted turnover on a number of cases relating to *United States v.*

*Johnson*, USCA Dk. No. 24-0004/SF, that were pending before the Supreme Court (removing approximately nine cases from undersigned counsel's docket). The remaining cases undersigned counsel has pending before the Supreme Court are for individual clients, all on distinct issues.

To date, undersigned counsel has four<sup>3</sup> cases prioritized over the present case:

1. *United States v. Kristopik*, No. ACM 40674 - The trial transcript is 1,311 pages long. The electronic record of trial contains 10 Prosecution Exhibits, 20 Defense Exhibits, 118 Appellate Exhibits, and one Court Exhibit. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial. However, civilian appellate defense counsel has completed review and drafted an AOE. This appellant has not waived undersigned counsel's review of the record, and thus undersigned counsel intends to review this record as soon as possible. This AOE is due 7 October 2025. However, due to the Government filing a petition for reconsideration at the CAAF in *United States v. Folts*, USCA Dkt. No. 25-0043/AF, and a motion for reconsideration at this Court in *United States v. Kim*, No. ACM 24007, 2025 LX 340225 (A.F. Ct. Crim. App. Aug. 15, 2025), undersigned counsel's review of this record has been disrupted and delayed.

2. *United States v. Baumgartner*, Application No. 25A241 (before the Supreme Court) – The CAAF denied review of this case on 20 June 2025. This case is now pending a one-issue petition for a writ of certiorari before the Supreme Court. The petition is due 17 November 2025, but the filing must be completely drafted and formatted at least two weeks beforehand to ensure it is printed by an outside agency on time. Thus, realistically, this petition must be complete by the

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<sup>3</sup> *United States v. Fortune*, No. ACM S32800, which undersigned counsel has not withdrawn from, just received additional counsel. Thus, this case is no longer prioritized above Appellant's.

end of October 2025. This appellant was previously represented by a civilian counsel, but before the Supreme Court, undersigned counsel is his only representation.<sup>4</sup>

3. *United States v. Tyson*, No. ACM 40617 – The Government requested an EOT for its answer to this appellant’s AOE. If granted, the Government’s answer will be due at the end of October, at which time undersigned counsel anticipates working a reply brief.

4. *United States v. English*, No. ACM 40703 - The record of trial is seven volumes consisting of five admitted Prosecution Exhibits, 15 Defense Exhibits, 32 Appellate Exhibits, and two Court Exhibits. The transcript is 546 pages. This appellant is not currently confined. Undersigned counsel has not yet completed her review of the record of trial.

Additionally, undersigned counsel will be traveling to sit second chair in *United States v. Braum*, USCA Dkt. No. 25-0046/AF, from 7-8 October 2025, will be on leave on 29 September 2025, and attending the required Joint Appellate Advocacy Training on 25 and 26 September 2025.<sup>5</sup> Undersigned counsel does not anticipate being able to work any of the cases prioritized above Appellant’s on these five days.

Undersigned counsel is tracking that this Court issued an order in this case on 23 December 2024 stating, “[A]ny future requests for enlargements of time that, if granted, would expire more than 360 days after docketing, will not be granted absent exceptional circumstances.” Order at 2,

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<sup>4</sup> Appellate review “spans a continuum of process” where an appellant has the right to effective representation through the entire period of review, from the end of trial to a decision by the Supreme Court. *See Diaz v. JAG of the Navy*, 59 M.J. 34, 37 (C.A.A.F. 2003) (articulating this right to representation up to the CAAF); 28 U.S.C. § 1259 (codifying an appellant’s right to seek review at the Supreme Court); 10 U.S.C. § 870 (codifying an appellant’s right to have free military appellate defense counsel representation at the Supreme Court). There is no break in counsel at each phase of review; an appellant is entitled to counsel through the entire period. *Diaz*, 59 M.J. at 37.

<sup>5</sup> Undersigned counsel’s alternate duty locations and travel during these days is also why this EOT is being filed well in advance.

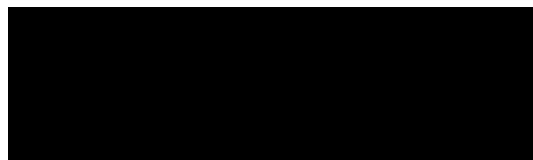
Dec. 23, 2024. In light of undersigned counsel's docket, undersigned counsel anticipates needing *at least* one additional EOT, that, if granted, would expire more than 360 days after the date of docketing. Undersigned counsel desires to complete review of Appellant's case as soon as possible but has been unable to do so to her high workload. Whether that high workload constitutes "exceptional circumstances" is a question for this Court to resolve. Nevertheless, Appellant desires the assistance of undersigned counsel in his appeal and good cause exists to grant this EOT.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

**WHEREFORE**, Appellant requests that this Court grant the requested enlargement of time for good cause shown.

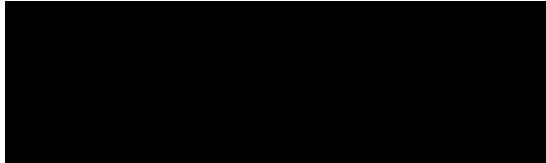
Respectfully submitted,



SAMANTHA M. CASTANIEN, 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: samantha.castanien.1@us.af.mil

## **CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division and Appellate Victims' Counsel for K.K. on 21 September 2025.



SAMANTHA M. CASTANIEN, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
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Office: (240) 612-4770  
Email: samantha.castanien.1@us.af.mil

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

<b>UNITED STATES,</b>	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
	)	
v.	)	Before Special Panel
	)	
Second Lieutenant (O-1)	)	No. ACM 40704
<b>SCOTT P. CULBRETH,</b>	)	
United States Air Force,	)	23 September 2025
<i>Appellant.</i>	)	

**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 360 days in length. Appellant’s nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 6 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not completed review of the record of trial at this late stage of the appellate process.

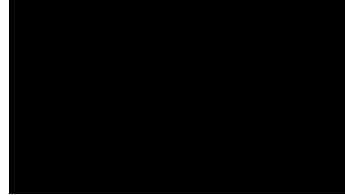
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4804

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 23 September 2025.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4804

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

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**UNITED STATES,**  
*Appellee*

v.

**SCOTT P. CULBRETH,**  
Second Lieutenant (O-1)  
United States Air Force  
*Appellant*

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No. ACM 40704

Before Special Panel

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**VICTIM/PATIENT K.K.'S MOTION TO COMPEL  
CLERK TO FOLLOW THE COURT'S RULES**

**(CORRECTED NOVEMBER 3, 2025)**

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Peter Coote  
*Counsel for Victim K.K.*

Pennoni Associates Inc.  
1900 Market Street, Third Floor  
Philadelphia, PA 19103  
(215) 254-7857  
pcoote@pennoni.com

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November 3, 2025

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

Under Rule 23.3(e) of this Court's Rules of Practice and Procedure ("Rules"), Victim K.K. moves this Court to compel the Clerk to follow the Court's Rules and the Joint Rules of Appellate Procedure ("Joint Rules"). The Clerk has refused to provide the previous counsel for Victim K.K. access to pleadings that in accordance with the Court's Rules should have been served on counsel. Victim K.K. asks the Court to order the Clerk to provide her with all pleadings except those that have been sealed.

### **Preliminary Matters**

#### **1. Victim K.K. has Standing.**

A person has standing when she suffers an injury in fact caused by the challenged action and redressable by a court order. *FDA v. All. For Hippocratic Med.*, 602 U.S. 367, 380 (2024); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). An injury in fact is an invasion of a legally protected interest which is concrete and particularized. *Lujan*, 504 U.S. at 560. Victim K.K. has legally protected interests to reasonable, accurate, and timely notice of any post-trial filing that may address the finding or sentence of the accused or unseal privileged or private information of the victim, the right to confer with government counsel, the right to proceedings free from unreasonable delay, and the right to be treated with respect for her dignity and privacy. 10 U.S.C. § 806b(a)(2)(D), (a)(5), (a)(7), and (a)(9). Victim K.K. has the right to receive all

pleadings filed in the Court in accordance with Rule 13.3 and Joint Rule 13(b). Victim K.K. has the right to the pleadings, and the Clerk's refusal to provide K.K. with the pleadings is causing her injury, not only because she has the right to the pleadings, but also because her ability to defend her 10 U.S.C. § 806b rights are impaired.

Victim K.K.'s injury is directly caused by the Clerk's refusal to provide the pleadings, and an order by the Court to compel the Clerk to follow the Rules will fully redress her injury.

Victim K.K. has standing.

## **2. Notice of Appearance.**

By filing this motion to compel, the undersigned counsel has entered his appearance. Joint Rule 12(a). As counsel who is a member of good standing in the highest court of the Commonwealth of Pennsylvania but who has not been admitted to this Court, I am deemed admitted pro hac vice upon filing this motion to compel. Joint Rule 9(a) and (c). Nevertheless, attached as Exhibit A is the sworn affidavit and certificate of good standing required by the Court's Rule 12.3 for my appearance pro hac vice. I am also submitting my application for admission to practice before this Court.

This Court may not have rules that are inconsistent with the Joint Rules. Joint Rule 3. The Court's Rules 12.1 and 12.2 are not consistent with the Joint Rules. Rule 12.1 requires non-federal civilian counsel to submit a separate notice of appearance while acknowledging the requirement's inconsistency with Joint Rule 12(a)'s "general rule."

The Joint Rules do not place any special burdens upon victims by requiring the Notice of Representation required by Rule 12.2. In fact, Rule 12.2 seems to serve no purpose since the Rule does not prohibit victim counsel from filing pleadings or appearing. A Notice of Representation is not related to and does not affect a counsel's notice of appearance under the Joint Rules or the Court's Rules. To the extent Rule 12.2 prohibits a victim counsel from appearing, it would be inconsistent with Joint Rule 12(a).

### **Basis for Victim K.K.'s Motion to Compel**

#### **1. Factual Background.**

Appellant Culbreth pled guilty to multiple specifications of nonconsensual indecent conduct. Appellant has requested, and the Court has granted, nine enlargements of time. After Appellant filed a seventh enlargement of time, counsel for Victim K.K. entered her appearance by filing a motion for leave to object to the requested enlargement. Her appearance made her counsel of record under Court Rule 13.3 and Joint Rule 13(b).

Despite victim counsel's appearance, the parties have not served her with pleadings. When Victim K.K.'s previous counsel asked the Clerk of the Court how to obtain the Court's orders relating of the enlargements of time, the Clerk responded that although she had filed a motion, "there may be some question as to whether [she was] entitled to receive follow-on filings." See September 18, 2025, email from the Clerk to victim's previous counsel attached as Exhibit B.

The Clerk inexplicably asserted that because Victim K.K.’s previous counsel was “not considered an attorney of record” and did not “currently have standing,” she was not entitled to receive filings from the Court. Exhibit B. The Clerk further stated that the Joint Rules and Rules allow victims’ counsel to appear only “via an Article 6b petition in accordance with Rule 12, or if granted leave to file as an amicus under Rule 22.” Exhibit B. “This is the only authorized process at this time.” Exhibit B.

On September 19, 2025, the Clerk explained the Court’s obligations under 10 U.S.C. § 940a (“Article 140a”) and the January 9, 2025, Department of War’s General Counsel’s memorandum concerning revised uniform standard required by Article 140a. Exhibit B. The General Counsel’s memorandum promulgated the Military Justice Case Management, Data Collection, and Accessibility Standards (“Accessibility Standards”). The Clerk reasoned that since the Court has not issued its opinion in this case, Victim K.K.’s previous counsel was not entitled to any pleadings. Exhibit B.

## **2. Analysis.**

The Clerk is not following the Court’s Rules. Rule 1.3(b) permits the Clerk to entertain and act on certain unopposed and insubstantial motions. The Clerk is not authorized to make determinations about whether an attorney who enters an appearance has standing. She may not ignore the Joint Rules that explicitly state that the filing of any pleading constitutes notice of appearance, and such appearance makes the counsel deemed admitted pro hac vice. Joint Rules 12(a) and 9(c) respectively. As the custodian

of records, the Clerk has an obligation to provide all unsealed pleadings to counsel of record and to assure the parties comply with the service requirements of Joint Rule 13 and Court Rules 13.3 and 13.4

The Clerk must comply with the rules.

In her September 19, 2025, email to Victim K.K.’s previous counsel, the Clerk relied upon the Accessibility Standards to refuse to follow the Court’s Rules. Exhibit B. Article 140a and the Accessibility Standards have no relation to or effect on this Court’s Rules except for Rule 17.2.<sup>1</sup> The application of Article 140a to the Court’s Rules is wrong. The Court of Appeals for the Armed Forces (“CAAF”) and the courts of criminal appeals of the other serves provide pleadings to counsel of record in accordance with their respective rules without being hindered by Article 140a.

The Clerk selectively, but inappropriately, relies upon the Accessibility Standards. She cites paragraph IV.B.2.b to explain what information must be provided at docketing. Exhibit B. She cites paragraph IV.D.5 to justify her refusal to provide appellate documents any earlier 45 days after the Court issues its decision in this case. Exhibit B.

The Clerk ignores the Accessibility Standards’ purpose and its other provisions. The purpose of Article 140a is to protect individuals’ privacy while increasing public

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<sup>1</sup> The Court’s Rules reference Article 140a in its Rule 17.2(c)(1). The Court requires counsel to make all filings with an awareness that Article 140a requires posting on a public-facing website. The Court requires counsel to follow the standards in the JAJM Redaction Guide. The Court’s specific reference to Article 140a in Rule 17.2 indicates it is knows of the Article 140a requirements. If Article 140a affected any other rule, the Court would have changed the rule to comply with Article 140a. It did not change any other rule.

access to military justice filings, pleadings, and data. It requires the creation of a military justice case processing and management system capable of collecting information in accordance with the Data Points and Uniform Definitions in its Appendix A.

Accessibility Standards, I.A and II.A. It provides both the accused and victim access (“as soon as practicable”) to records in accordance with the existing R.C.M. 1106, 1106A, and 1112(e). Accessibility Standards, III.

The Accessibility Standards require public access to appellate documents. Accessibility Standards, IV.A. Public access should follow the best practices of federal and state courts, and information should be made available to the public to the maximum extent possible. When items are made “publicly accessible,” the Accessibility Standards require them to be made available on a publicly accessible website. Accessibility Standards, IV.E.6. See also IV.C.4-.6, .and IV.D.1.

The Clerk cited the Accessibility Standards, IV.D.5, which require public accessibility no later than 45 days after the Court issues its decision. Exhibit B. The Clerk ignored that this provision further states, “This requirement does not preclude a Military Service from making . . . appellate documents publicly accessible earlier than the 45-day deadline.”

The Clerk further ignores the additional public access that is required in specific instances. “Unsealed appellate documents *will be made available prior* to [45 calendar days after this Court issues its decision] *upon receipt of a request.*” Accessibility

Standards, IV.E.4 (emphasis added) See also Accessibility Standards, IV.E.1.a (the Court, upon receipt of a request *or on its own initiative*, may make appellate documents publicly accessible sooner than the date required by the standards. Accessibility Standards, IV.E.1.a.

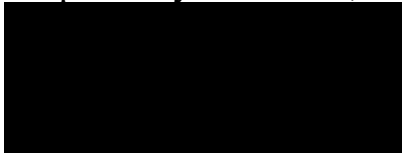
Even if the Accessibility Standards affected the Court's Rules (which they do not), the Clerk is required to make requested documents available sooner than otherwise required by the Accessibility Standards. Accessibility Standards, IV.E.4.

### **3. Conclusion.**

The Rules do not authorize the Clerk to determine whether a filer has standing or whether *she considers* an attorney who enters an appearance is an attorney of record. The Clerk's refusal to provide victim counsel with the requested pleadings violates the Court's Rules, Joint Rules, and Article 140a.

WHEREFORE, Victim K.K. requests the Court to grant Victim K.K.'s motion to compel and to order her to provide Victim K.K.'s counsel all unsealed pleadings and filings.

Respectfully submitted,



Peter Coote, Esq.  
*Counsel for Victim K.K.*

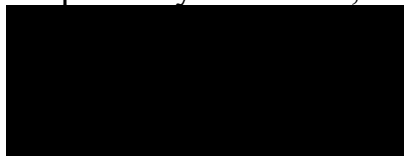
Pennoni Associates Inc.  
1900 Market Street, Suite 300

Philadelphia, PA 19103  
[pcoote@pennoni.com](mailto:pcoote@pennoni.com)  
Phone: (215) 254-7857

**CERTIFICATE OF FILING AND SERVICE**

I certify that on November 3, 2025, a copy of the foregoing was transmitted by electronic means to the Court and counsel for the parties.

Respectfully submitted,



Peter Coote, Esq.  
Peter Coote, Esq.  
*Counsel for Patient/Victim K.K.*

Pennoni Associates Inc.  
1900 Market Street, Suite 300  
Philadelphia, PA 19103  
[pcoote@pennoni.com](mailto:pcoote@pennoni.com)  
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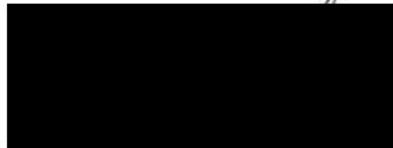
# **EXHIBIT A - Pro Hac Vice Affidavit**

## **AFFIDAVIT**

I, Peter Coote, certify that I am admitted to practice before the Supreme Court of the United States, the highest courts of Pennsylvania, and Maryland, the United States Courts of Appeals for the Seventh and Ninth Circuits, the United States District Courts for the Eastern District of Pennsylvania and the District of Maryland, and the United States Court of Appeals for the Armed Forces.

I further certify that I have never been disbarred or suspended from the practice of law, am not currently under investigation, and there are no pending disciplinary proceedings against me.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



October 28, 2025

Peter Coote

**Sworn to and subscribed before me this 28th day of October, 2025.**

Commonwealth of Pennsylvania  
County of Philadelphia



**Notary Public**

Commonwealth of Pennsylvania - Notary Seal  
CHRISTINA M IANNARONE - Notary Public  
Philadelphia County  
My Commission Expires May 3, 2028  
Commission Number 1269300



**Supreme Court of Pennsylvania**

**CERTIFICATE OF GOOD STANDING**

***Peter Jeffrey Coote, Esq.***

**DATE OF ADMISSION**

***June 1, 1998***

The above named attorney was duly admitted to the bar of the Commonwealth of Pennsylvania, and is now a qualified member in good standing.



**Witness my hand and official seal**

**Dated: October 24, 2025**



**Amy Dreibelbis, Esq.  
Deputy Prothonotary**

## EXHIBIT B - Email Chain Between Clerk and Victim Counsel

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**From:** [REDACTED] **Clerk**  
**To:** [REDACTED] **Victim Counsel**  
**Sent:** Friday, September 19, 2025 12:01 PM  
**Cc:** [REDACTED]  
**Subject:** RE: Orders/Grants in US v Fundis and US v Culbreth

Ms. [REDACTED] **Victim Counsel**

Thank you for your response and the attached document. The court is very well aware of the requirements of the Article 140a, UCMJ, provisions outlined by the OGC.

Paragraph IV.B.2.b describes what information must be provided at docketing—case name, panel assignment, and date, time, and location of any scheduled oral argument.

As you will also note in paragraph IV.D.5, “appellate documents other than an audio recording of an oral argument before a Court of Criminal Appeals will be publicly accessible no later than 45 calendar days . . . after the Court of Criminal Appeals issues its decision (at the appellate level).”

The court has not issued its opinion in the cases of *Fundis* or *Culbreth* yet.

R/s,

[REDACTED] **Clerk**  
Clerk of the Court  
U.S. Air Force Court of Criminal Appeals  
1500 West Perimeter Road, Suite 1900  
Joint Base Andrews, MD 20762-6604  
240-612-5082 (Direct)  
240-612-5070 (Main)

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

---

From: [REDACTED] **Victim Counsel**

Sent: Thursday, September 18, 2025 9:21 AM

To: [REDACTED] **Clerk**

Subject: RE: Orders/Grants in US v Fundis and US v Culbreth

Ms. [REDACTED] **Clerk**

Thank you, as they are public filings is it the Court's position that I should seek permission from SECAF to view them in accordance with the attached memo?

Regards,  
[REDACTED] **Victim Counsel**

---

From: [REDACTED] **Clerk**

Sent: Thursday, September 18, 2025 9:16 AM

To: [REDACTED] **Victim Counsel**

Cc: [REDACTED]

Subject: RE: Orders/Grants in US v Fundis and US v Culbreth

Ms. [REDACTED] **Victim Counsel**

Thank you for your email and inquiry.

I am aware that you filed a motion in both the *Culbreth* and *Fundis* cases, and therefore, there may be some question as to whether you are entitled to receive follow-on filings.

However, because you are not considered an attorney of record nor do you currently have standing, you are not entitled to receiving the filings in *Culbreth* and *Fundis* from this court. Both the Joint Rules and this court's Rules of Practice and Procedure allow victims' counsel to appear before this court via an Article 6b petition in accordance with Rule 12, or if granted leave to file as amicus under Rule 22. This is the only authorized process at this time.

You may try to reach out to JAJI, Ms. Charles, for information as she oversees the statutory requirement of Notification to Victims, or to JAJG should they decide to assist you with your inquiry.

Hope this answers your inquiry.

R/s,

[REDACTED] **Clerk**

Clerk of the Court

U.S. Air Force Court of Criminal Appeals

1500 West Perimeter Road, Suite 1900

Joint Base Andrews, MD 20762-6604

240-612-5082 (Direct)

240-612-5070 (Main)

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

---

**From:** [REDACTED] **Victim Counsel**

**Sent:** Wednesday, September 17, 2025 8:11 AM

**To:** [REDACTED] **Clerk**

**Subject:** Orders/Grants in US v Fundis and US v Culbreth

Ma'am:

I did not receive any orders or the indications of granting of enlargements of time in US v Fundis and US v Culbreth? What is the process to get these documents?

Kind Regards,

[REDACTED] **Victim Counsel**

[REDACTED]

Chief, Appellate and Outreach, Victims' Counsel

Military Justice and Discipline Directorate

1500 W. Perimeter Road, Suite 1310

JB Andrews, MD 20762

240-636-2001

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

[REDACTED]

[REDACTED]

[REDACTED]

UNITED STATES, ) APPELLANT’S MOTION  
Appellee, ) FOR ENLARGEMENT  
 ) OF TIME (TENTH)  
v. )  
 ) Before Special Panel  
Second Lieutenant (O-1) )  
SCOTT P. CULBRETH, ) No. ACM 40704  
United States Air Force, )  
Appellant. ) 26 October 2025

Pursuant to Rule 23.3(m)(3) and (6) of this Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **7 December 2025**. The record of trial was docketed with this Court on 12 November 2024. From the date of docketing to the present date, 348 days have elapsed. On the date requested, 390 days will have elapsed.

<sup>1</sup> Appellant pled not guilty to one charge and two specifications of Article 120c, UCMJ, and one charge and three specifications of Article 133, UCMJ, all of which were withdrawn and dismissed pursuant to a plea agreement. R. at 20, 102-03.

The trial transcript is 103 pages long and the record of trial is electronic, which is one volume of 513 pages. There are two Prosecution Exhibits, nineteen Defense Exhibits, nine Appellate Exhibits, and two Court Exhibits. Appellant is currently confined.

On 29 September 2025, Mr. Frank Spinner entered a notice of appearance in this case as civilian appellate defense counsel.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), on behalf of both appellate defense counsel, undersigned counsel provides the following information. Civilian appellate defense counsel, Mr. Spinner, has read the record, but, upon coordination with military appellate defense counsel, is waiting for her review of the record before preparing the AOE. He is currently working five (5) cases at the Courts of Criminal Appeals (CCAs) and two (2) cases at the United States Court of Appeals for the Armed Forces (CAAF). Since Appellant's last EOT, he filed two AOE's, argued at the CAAF, and traveled to Miramar Brig to meet with five appellate clients. To date, Mr. Spinner has **four** cases prioritized over the present case:

1. *United States v. Flores* (pending at the CAAF) – This is a supplement to the petition for grant of review, currently due 29 October 2025. This case has two major 5th and 6th Amendment issues that require extensive work as Mr. Spinner was brought on at the CAAF phase and did not represent this appellant at the CCA. There will also likely be issues that this appellant would like to raise personally in this supplement.

2. *United States v. Augustin*, No. ACM 40655 – The reply brief in this case is due 3 November 2025.

3. *United States v. Thomas* (pending before the CCA) – This record is over 1,000 pages and contains multiple issues, which include jurisdiction, a confession suppression motion that was

denied, a court-member selection issue, and a M.R.E. 412 issue. This appellant will also likely want to raise several issues personally.

4. *United States v. Puente-Gonzalez* (pending at the CCA) – The CCA in this case has indicated no more extensions will be granted. This was a litigated Article 120, 120b, and 131b, UCMJ, case that Mr. Spinner must work before turning to Appellant’s case.

Military appellate defense counsel, Captain Samantha Castanien, is currently assigned 20 cases; 8 cases are pending before this Court (6 cases are pending AOE), 6 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF) (2 cases are pending petitions for a grant of review and their respective supplements), and 6 cases are pending before the Supreme Court of the United States (5 cases are pending filing an individual petition for a writ of certiorari; 1 case is pending client consultation on appealing further). Since Appellant’s last request for an EOT, undersigned counsel filed a nine-issue AOE in *United States v. Kristopik*, No. ACM 40674, filed the supplement to the petition for grant of review in *United States v. Torres Gonzalez*, USCA Dkt. No. 26-0018/AF, prepared co-counsel for, and attended oral argument in, *United States v. Braum*, USCA Dkt. No. 25-0046/AF, and participated in nine moots for various cases scheduled for oral argument at the CAAF and this Court.

To date, undersigned counsel has nine cases prioritized over the present case, but all cases pending before the Supreme Court should be complete before the end of the year:

1. *United States v. Baumgartner*, Application No. 25A241 (before the Supreme Court) – The CAAF denied review of this case on 20 June 2025. This case is now pending a one-issue, joint petition for a writ of certiorari before the Supreme Court. This appellant was previously represented by a civilian counsel, but before the Supreme Court, undersigned counsel is his only

representation.<sup>2</sup> While this is a joint petition, undersigned counsel is the lead attorney for drafting the petition. From the date of the decision, this appellant has 90 days to file a petition for a writ of certiorari to the Supreme Court. 28 U.S.C. § 1259(3); Supreme Court Rule 13(1). Due to various other case priorities, to include cases pending before this Court, undersigned counsel requested a 60-day extension. Supreme Court Rule 13(5). The Chief Justice granted an extension on the filing deadline to 17 November 2025. To meet this deadline, undersigned counsel must complete the petition before the end of October 2025 because it takes about two weeks to meet the booklet printing requirements of the Supreme Court. Supreme Court Rules 12, 33.

2. *United States v. Dominguez-Garcia*, Application No. 25A340 (before the Supreme Court) – This appellant’s petition is due to the Supreme Court on 19 December 2025. As with *Baumgartner*, a 60-day extension was already requested. This is a joint petition on one issue that has been partially briefed in another case pending before the Supreme Court. However, there are multiple servicemembers’ appeals in this petition, which requires fact-specific analyses and tailoring. Undersigned counsel is lead counsel for this joint petition and shoulders the responsibility of drafting. Most of the formatting is already complete. To meet the filing deadline at the Supreme Court, this petition must be drafted, reviewed, and formatted before Thanksgiving 2025 due to undersigned counsel’s leave from 25 November to 2 December 2025.

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<sup>2</sup> Appellate review “spans a continuum of process” where an appellant has the right to effective representation through the entire period of review, from the end of trial to a decision by the Supreme Court. *See Diaz v. JAG of the Navy*, 59 M.J. 34, 37 (C.A.A.F. 2003) (articulating this right to representation up to the CAAF); 28 U.S.C. § 1259 (codifying an appellant’s right to seek review at the Supreme Court); 10 U.S.C. § 870 (codifying an appellant’s right to have free military appellate defense counsel representation at the Supreme Court). There is no break in counsel at each phase of review; an appellant is entitled to counsel through the entire period. *Diaz*, 59 M.J. at 37.

3. *United States v. Marin Perez*, USCA Dkt. No. 25-0238/AF – On 16 October 2025, the CAAF granted one issue in this case. Undersigned counsel requested an extension, which was granted. The grant brief is now due 24 November 2025.

4. *United States v. Johnson*, Application No. 25A339 (before the Supreme Court) – This appellant’s petition is due to the Supreme Court on 11 December 2025. As with *Baumgartner*, a 60-day extension was already requested. This is a one-issue petition on an issue that was not fully briefed in the case, but developed while the appellant’s case was on appeal. Undersigned counsel is the only counsel working on this petition. To meet the filing deadline at the Supreme Court, this petition must be drafted, reviewed, and formatted before Thanksgiving 2025. Undersigned counsel will be on leave from 25 November to 2 December 2025, necessitating reprioritization of this case due to Supreme Court formatting and printing constraints.

5. *United States v. Tyson*, No. ACM 40617 – The Government’s answer to this appellant’s AOE is due on 28 October 2025. Undersigned counsel anticipates working a reply brief upon receiving the Government’s answer and may also request an EOT due to the impending Supreme Court deadlines listed above and below.

6. *United States v. Folts* (pending docketing number before the Supreme Court) – This appellant’s petition is due to the Supreme Court on 23 December 2025. No extension request has occurred in this case, although another petitioner is joining this case. That petitioner requested a 60-day extension for the specific purpose of joining his case with *Folts*. Thus, due to the other petitioner’s extension, there will not be an extension request in this case. *See* Supreme Court Rule 13(5) (disfavoring extensions to begin with and not contemplating multiple extensions). Undersigned counsel is one of three attorneys working on this petition, and the anticipated issue has been previously briefed. To meet the filing deadline at the Supreme Court, undersigned

counsel's role in drafting and assisting on this petition must be complete before Thanksgiving 2025.

7. *United States v. Casillas* (pending docketing number before the Supreme Court) – This appellant's brief is due to the Supreme Court on 25 December 2025. No extension request has occurred in this case, nor is one anticipated at this time. This is a companion case to *Johnson*, but it is not a joint petition. The same issue will be raised in this appellant's case, but tailored to the facts. Undersigned counsel is the sole counsel for this petition. To meet the filing deadline at the Supreme Court, this petition must be drafted, reviewed, and formatted before 11 December 2025, although undersigned counsel is aiming for earlier, if feasible.

8. *United States v. Kristopik*, No. ACM 40674 – Undersigned counsel submitted this ten-issue AOE on 24 October 2025. Undersigned counsel anticipates working a reply brief upon receiving the Government's answer, expected late November or early December.

9. *United States v. English*, No. ACM 40703 - The record of trial is seven volumes consisting of five admitted Prosecution Exhibits, 15 Defense Exhibits, 32 Appellate Exhibits, and two Court Exhibits. The transcript is 546 pages. This appellant is not currently confined. Undersigned counsel has not yet completed her review of the record of trial.

For context on the petitions, Supreme Court petitions have very specific formatting and content requirements. Supreme Court Rule 33. Additionally, much like a supplement to a petition for grant of review at the CAAF, a petition for a writ of certiorari is not a carbon copy of what was submitted to the CAAF; the filing must be adjusted, often rewritten, and then painstakingly reformatted to fit the Court's requirements. Additional drafting time is required to meet these constraints, along with additional time for printing the forty required booklets. *See* Supreme Court Rule 12 (dictating the number of copies required). Built into this timeline is also the Division's

internal review process. “Review” is a reference to peer and leadership review, a Division requirement for every substantive filing. Peer review is when another appellate defense counsel reviews the first final draft of the filing and provides feedback and edits. Leadership review is when a member of Division leadership reviews the new version of the final draft and provides feedback and edits. This required process can take anywhere between a few days to over a full week depending on the case and the workload of the Division. Thus, while the filing deadlines for the various Supreme Court petitions are weeks away, the logistical process of putting together a Supreme Court petition, to include researching and drafting, is about a 30-day process. Undersigned counsel must move from petition to petition to meet the filing deadlines and not delay Appellant’s case further.

Undersigned counsel is tracking that this Court issued an order in this case on 23 December 2024 stating, “[A]ny future requests for enlargements of time that, if granted, would expire more than 360 days after docketing, will not be granted absent exceptional circumstances.” Order at 2, Dec. 23, 2024. Military appellate defense counsel’s caseload in front of the Supreme Court is an exceptional circumstance. *Twelve* Air Force Appellate Defense Division clients appealed to the Supreme Court in all of 2023, with multiple Division counsel having responsibility to ensure formatting and printing of those in six cases. Undersigned counsel *alone* has *five* clients currently appealing to the Supreme Court with near simultaneous deadlines. One counsel is doing almost half the Supreme Court filing workload that was accomplished over 2023 in approximately two months. This is an unusual and uncontrollable situation; undersigned counsel has no control over when CAAF issues its opinions and must adhere to the Supreme Court filing deadlines to ensure a client can exercise his or her right to appeal.

There has long been anticipation that beginning in December 2024, the Division's workload would be increased and strained due to the expansion of servicemember access to the Supreme Court. National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, § 533, 137 Stat. 136, 261 (2023). This expansion means that, instead of appellants ordinarily having to petition to the CAAF and garner review to be able to appeal to the Supreme Court, *any* case petitioned to the CAAF would be able to be appealed to the Supreme Court. *Id.* Undersigned counsel has one client in that posture currently, *Baumgartner*. But *Folts*, *Casillas*, *Johnson*, and *Dominguez-Garcia* were all granted at the CAAF. Having five petitioners before the Supreme Court in of itself is exceptional. But the timing of the five petitions is what justifies good cause and exceptional circumstances to grant this EOT.

Data may be helpful to the Court in understanding the revolutionary change in caseload over the past few years and why workload alone is an exceptional circumstance here. In summer 2024, based on an analysis of the Division's filings and corresponding reports from the Joint Service Committee on Military Justice under Article 146a(b), UCMJ, 10 U.S.C. § 946a(b), a comparative analysis between the services was performed to show the anticipated increase in Supreme Court workload. This data assumed 40% to 60% of clients who appealed to the CAAF would continue their appeal to the Supreme Court. That data was compiled into the tables below:

Fiscal Year	Air Force		
	Automatic Appeals	Direct Appeals	Cases to CAAF
2019	199	0	82/147 (56%)
2020	127	2	72/188 (38%)
2021	137	2	87/150 (58%)
2022	121	1	76/189 (40%)
2023	97	20	77/164 (46%)

Average Annual CAAF Petitions	Assume 40% to SCOTUS	Assume 60% to SCOTUS
78.8	32	47
Average Minus <i>Grotesfon</i> /Merits Only		
59	24	35

Fiscal Year	Army		
	Automatic Appeals	Direct Appeals	Cases to CAAF
2019	387 (+94% vs AF)	0	312/457 (68%)
2020	486 (+283% vs AF)	0	252/458 (55%)
2021	314 (+129% vs AF)	1	203/364 (56%)
2022	303 (+150% vs AF)	2	168/342 (49%)
2023	344 (+254% vs AF)	14	118/321 (36%)

Average Annual CAAF Petitions	Assume 40% to SCOTUS	Assume 60% to SCOTUS
210.6	84	126

Fiscal Year	Department of the Navy		
	Automatic Appeals	Direct Appeals	Cases to CAAF
2019	280 (+40% vs AF)	1	54/276 (20%)
2020	260 (+104% vs AF)	4	33/267 (12%)
2021	265 (+93% vs AF)	0	51/317 (16%)
2022	239 (+97% vs AF)	7	41/289 (14%)
2023	166 (+71% vs AF)	71	44/293 (15%)

Average Annual CAAF Petitions	Assume 40% to SCOTUS	Assume 60% to SCOTUS
44.6	18	27

The increase in workload is significant and though military appellate defense counsel's workload comes mainly from granted cases, it is a glimpse of the exceptionally high workload to come for many of the Division's counsel. Overall, based on military appellate defense counsel's Supreme Court workload and the timing of those petitions, exceptional circumstances exist to exceed the "360 days after docketing" deadline originally set almost one year ago in this case. Furthermore, based on this workload and civilian counsel's cases, appellate defense counsel anticipate needing at least one more EOT, possibly two. While there is civilian appellate counsel on this case, Appellant has not waived his Article 70, UCMJ, counsel's review.

Undersigned counsel is tracking one possible issue in Appellant's case already. But undersigned counsel has been unable to perform the research required to assess the merits of this

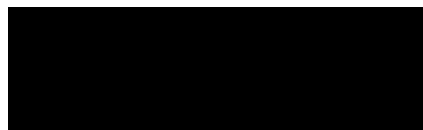
issue, confer with civilian appellate defense counsel, or advise Appellant. At this time, though, if an AOE is submitted, undersigned counsel does not anticipate this case being submitted on the merits. Additional time is required to properly research, brief, and advise Appellant on *at least* this issue.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of appellate defense counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Through no fault of Appellant, military appellate defense counsel has been unable complete her review of Appellant's case, confer with Appellant and civilian appellate defense counsel, and advise Appellant on any assignments of error. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors.

**WHEREFORE**, Appellant requests that this Court grant the requested enlargement of time for good cause shown.

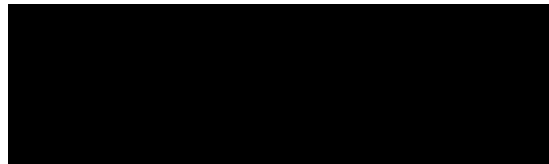
Respectfully submitted,



SAMANTHA M. CASTANIEN, 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: samantha.castanien.1@us.af.mil

## **CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division and Appellate Victims' Counsel for K.K. on 26 October 2025.



SAMANTHA M. CASTANIEN, 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: samantha.castanien.1@us.af.mil

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

<b>UNITED STATES,</b>	)	UNITED STATES’
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME -
v.	)	OUT OF TIME
	)	
	)	Before Special Panel
Second Lieutenant (O-1)	)	
<b>SCOTT P. CULBRETH,</b>	)	No. ACM 40704
United States Air Force.	)	
<i>Appellant</i>	)	28 October 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 over a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 390 days in length. Appellant’s 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 over two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 5 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not completed review of the record of trial at this late stage of the appellate process.

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



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel  
Government Trial & 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 28 October 2025.



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

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

UNITED STATES	)	No. ACM 40704
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Scott P. CULBRETH	)	
Second Lieutenant (O-1)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Special Panel</b>

On 3 November 2025, Mr. PC, counsel for KK, one of the named victims in the above-referenced case, filed a Motion to Compel Clerk to Follow the Court’s Rules, with several attachments. Mr. PC asserts the Clerk of the Court (Clerk) “has refused to provide the previous counsel for Victim K.K. access to pleadings that in accordance with the Court’s Rules should have been served on counsel.” Neither Appellant nor the Government filed a response to the motion. Having carefully considered the motion and its attachments, we deny the motion.

**I. BACKGROUND**

Appellant’s record was docketed with this court on 12 November 2024. On 28 July 2025, Appellant filed his seventh motion for enlargement of time in which to file his assignments of error, seeking to extend the due date until 8 September 2025. The Government filed its opposition to the motion on 28 July 2025.

Also on 28 July 2025, Ms. DW, then representing KK, filed a Motion for Leave to Object to Motion for Enlargement of Time on Behalf of Victim K.K. and Motion for Appropriate Relief. Ms. DW contended granting the requested delay would violate KK’s “statutory right to proceedings free from unreasonable delay codified in Article 6b(a)(7), [Uniform Code of Military Justice (UCMJ)] [, 10 U.S.C. § 806b(a)(7)],” and would “underwrite policy decisions by Appellant’s Counsel to file discretionary appeals on behalf of convicted offenders to the detriment of victims . . . .”

On 29 July 2025, both Appellant and the Government filed oppositions to KK’s Motion for Leave to Object. Both parties asserted KK lacked standing to oppose Appellant’s motion for enlargement of time. On 30 July 2025, this court denied KK’s Motion for Leave to Object and granted Appellant’s motion for enlargement of time. The court subsequently granted Appellant three

additional motions for enlargement of time to file his assignments of error, which are currently due on 7 December 2025.

In the meantime, on 17 September 2025, Ms. DW sent an email to the Clerk stating that Ms. DW had not received “any orders or indications of granting enlargements of time” in Appellant’s case, and inquiring as to the process to obtain these documents. On 18 September 2025, the Clerk responded to Ms. DW and explained that “because [Ms. DW was] not considered an attorney of record nor [did she] currently have standing, [she was] not entitled to receive the filings” in Appellant’s case directly from the court. The Clerk suggested Ms. DW contact the Investigations, Inquiries, and Relief Division—which oversees the Victim Appellate Notification Program—or the Government Trial and Appellate Operations Division for assistance. Ms. DW followed up with a question as to whether she could receive filings pursuant to Article 140a, UCMJ, 10 U.S.C. § 940a, and implementing guidance issued by the Department of the Air Force. The Clerk responded to the effect that Article 140a, UCMJ, did not call for the filings to be publicly accessible yet because the court had not issued its decision in Appellant’s case.

## II. AUTHORITIES

Rule 12(a) of the Joint Rules for Appellate Procedure for Courts of Criminal Appeals (Joint Rules) provides, in relevant part, “The filing of any pleading relative to a case that contains the signature of counsel pursuant to Rule 14 constitutes notice of appearance by such counsel.” JT. CT. CRIM. APP. R. 12(a).

Joint Rule 13(b) provides, “At or before the filing of any pleading or other paper relative to a case, a copy thereof shall be served on all counsel of record, including *amicus curiae* counsel.” JT. CT. CRIM. APP. R. 13(b).

Rule 13.3 of the United States Air Force Court of Criminal Appeals Rules of Practice and Procedure (AFCCA Rules) provides, in pertinent part, “Pleadings filed with the Court shall be served on all counsel of record, including civilian counsel who have filed a notice of appearance in compliance with [Joint] Rule 12 . . . .” A.F. CT. CRIM. APP. R. 13.3.

Article 6b(a), UCMJ, 10 U.S.C. § 806b(a), provides that the victim of an offense under the UCMJ has a number of rights, including *inter alia* the rights to “reasonable, accurate, and timely notice of . . . [a] post-trial motion, filing, or hearing that may address the finding or sentence of a court-martial with respect to the accused, unseal privileged or private information of the victim, or result in the release of the accused;” “[t]he reasonable right to confer with counsel representing the Government” in such proceedings; and “[t]he right to proceedings free from unreasonable delay.” Article 6b(e), UCMJ, provides the victim of an offense who believes that a ruling at a preliminary hearing or court-martial violates certain rights of the victim afforded by, *inter alia*, Article 6b(a),

UCMJ, “may petition the Court of Criminal Appeals for a writ of mandamus to require the preliminary hearing officer or the court-martial to comply with the section (article) or rule.” 10 U.S.C. § 806b(e)(1) and (4). Article 6b, UCMJ, does not specify a mechanism for the victim of an offense to intervene in litigation at the appellate level.

### III. ANALYSIS

The instant motion asserts KK has suffered an injury from “the Clerk’s refusal to provide K.K. with the pleadings” in Appellant’s case, “not only because she has the right to the pleadings, but also because her ability to defend her [Article 6b, UCMJ,] 10 U.S.C. § 806b rights [is] impaired.”<sup>1</sup> The motion asserts Joint Rule 13(b) and AFCCA Rule 13.3 give KK “the right to receive all pleadings filed in the [c]ourt.”

As an initial matter, with respect to the instant motion we will assume for purposes of analysis, without deciding, that KK has standing to seek relief in some manner from this court to “compel the Clerk to follow the Court’s Rules and the Joint Rules of Appellate Procedure.” *Cf. LRM v. Kastenbergh*, 72 M.J. 364, 367–69 (C.A.A.F. 2013) (citations omitted) (recognizing that the All Writs Act, 10 U.S.C. § 1651, empowers the Courts of Criminal Appeals to issue writs necessary and appropriate in aid of their jurisdiction, and that “[l]imited participant standing has also been recognized by the Supreme Court and other federal courts” with respect to certain rights).

However, we do not agree that Joint Rule 13(b) and AFCCA Rule 13.3 give KK “the right to receive all pleadings filed in the [c]ourt.” The motion correctly notes that the filing of a pleading that contains the signature of counsel is sufficient notice of appearance by that counsel under Joint Rule 12(a). However, Joint Rule 12(a) must be understood in the context of counsel appearing *on behalf of a party with standing to be heard* in a matter pending before this court. A counsel who represents a party who lacks standing to be heard cannot insert themselves into appellate litigation merely by sending a pleading to the court.

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<sup>1</sup> In particular, the motion cites KK’s

legally protected interests to reasonable, accurate, and timely notice of any post-trial filing that may address the finding or sentence of the accused or unseal privileged or private information of the victim, the right to confer with government counsel, the right to proceedings free from unreasonable delay, and the right to be treated with respect for her dignity and privacy.

See 10 U.S.C. § 806b(a)(2)(D), (a)(5), (a)(7), (a)(9).

When Ms. DW filed KK's Motion for Leave to Object on 28 July 2025, both Appellant and the Government opposed the motion on the grounds that KK lacked standing to be heard on Appellant's motion for enlargement of time. This court summarily denied the Motion for Leave to Object; to be clear, we agreed with the parties that KK lacked standing to be heard on Appellant's motion for enlargement of time. Article 6b, UCMJ, provides victims of an offense under the UCMJ with a number of rights, to include *inter alia* to notice of certain filings at the appellate level and to confer with government counsel. However, it does not provide the right to directly file oppositions to motions pending before this court, nor to receive filings directly from the court.

The instant motion alleges an injury to KK in that "[t]he Clerk is not following the [c]ourt's Rules," specifically, her "obligation to provide all unsealed pleadings to counsel of record and to assure the parties comply with the service requirements of Joint Rule 13 and [AFCCA] Rules 13.3 and 13.4."<sup>2</sup> Because KK did not have standing to oppose Appellant's motion for enlargement of time, Ms. DW was not "counsel of record" for purposes of Joint Rule 13 and AFCCA Rule 13.3. Therefore, we do not find the Clerk has failed to follow the court's rules nor do we find any cause to "compel" her to do so.

Accordingly, it is by the court on this 2d day of December, 2025,

**ORDERED:**

The Motion to Compel Clerk to Follow the Court's Rules dated 3 November 2025 is **DENIED**.



FOR THE COURT

[REDACTED]

JACOB B. HOEFERKAMP, Capt, USAF  
Deputy Clerk of the Court

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<sup>2</sup> AFCCA Rule 13.4 provides in pertinent part that "[f]ailure to comply with any of these rules may result in rejection of the offered filing by the Clerk of the Court." A.F. CT. CRIM. APP. R. 13.4.

**UNITED STATES,** ) **APPELLANT’S MOTION**  
                    *Appellee,* ) **FOR ENLARGEMENT**  
                                       ) **OF TIME (ELEVENTH)**  
  
v. )  
                                       ) Before Special Panel  
  
Second Lieutenant (O-1) )  
**SCOTT P. CULBRETH,** ) No. ACM 40704  
United States Air Force, )  
                    *Appellant.* ) 19 November 2025

Pursuant to Rule 23.3(m)(3) and (6) of this Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file 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 12 November 2024. From the date of docketing to the present date, 372 days have elapsed.<sup>1</sup> On the date requested, 420 days will have elapsed.

On 15 May 2024, at a general court-martial convened at Wright-Patterson Air Force Base, Ohio, a military judge, consistent with Appellant's pleas, found him guilty of one charge and three specifications of indecent conduct in violation of Article 134, Uniform Code of Military Justice (UCMJ).<sup>2</sup> R. at 1, 13, 20, 22, 25-26, 66. The military judge sentenced Appellant to be dismissed and to be confined for a total of 26 months (confinement for each specification running concurrently). R. at 102. The convening authority took no action on the findings and approved the

<sup>2</sup> Appellant pled not guilty to one charge and two specifications of Article 120c, UCMJ, and one charge and three specifications of Article 133, UCMJ, all of which were withdrawn and dismissed pursuant to a plea agreement. R. at 20, 102-03.

sentence in its entirety. Convening Authority Decision on Action (June 10, 2024). The convening authority denied Appellant's request for deferment and waiver of all automatic forfeitures. *Id.*

The trial transcript is 103 pages long and the record of trial is electronic, which is one volume of 513 pages. There are two Prosecution Exhibits, nineteen Defense Exhibits, nine Appellate Exhibits, and two Court Exhibits. Appellant is currently confined.

On 29 September 2025, Mr. Frank Spinner entered a notice of appearance in this case as civilian appellate defense counsel.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), on behalf of both appellate defense counsel, undersigned counsel provides the following information. Civilian appellate defense counsel, Mr. Spinner, has read the record, but, upon coordination with military appellate defense counsel and Appellant, is waiting for her review of the record before preparing the AOE. He is currently working five (5) cases at the Courts of Criminal Appeals (CCAs) and two (2) cases at the United States Court of Appeals for the Armed Forces (CAAF). Since Appellant's last EOT, he filed the reply briefs in *United States v. Augustin*, No. ACM 40655, and *United States v. Turtu*, No. ACM 40649, and submitted the AOE in *United States v. Thomas* (pending before the CCA). To date, Mr. Spinner has **three** cases prioritized over the present case:

1. *United States v. Fundis*, No. ACM 40689 – A reply brief pending final coordination.
2. *United States v. Flores* (pending at the CAAF) – This is a supplement to the petition for grant of review, now due 21 November 2025 (third extension request filed 18 Nov. 2025). This case has two major 5th and 6th Amendment issues that require extensive work as Mr. Spinner was brought on at the CAAF phase and did not represent this appellant at the CCA. There will also likely be issues that this appellant would like to raise personally in this supplement.

3. *United States v. Puente-Gonzalez* (pending at the CCA) – This appellant’s brief is due 28 November 2025. This was a litigated Article 120, 120b, and 131b, UCMJ, case that Mr. Spinner must work before turning to Appellant’s case.

Military appellate defense counsel, Major Samantha Castanien, is currently assigned 21 cases; 9 cases are pending before this Court (7 cases are pending AOE’s), 5 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF) (1 case is pending a petition for a grant of review and the respective supplement; 1 case is pending grant briefing), and 7 cases are pending before the Supreme Court of the United States (5 cases are pending filing a petition for a writ of certiorari; 1 case is pending client consultation on appealing further). Since Appellant’s last request for an EOT, undersigned counsel re-filed the ten-issue AOE in *United States v. Kristopik*, No. ACM 40674, after eliminated approximately 3,000 words from the brief, filed the reply brief in *United States v. Tyson*, No. ACM 40617, filed the supplement to the petition for grant of review in *United States v. Ziesche*, USCA Dkt. No. 26-0036/AF, and filed the petition for a writ of certiorari in *United States v. Baumgartner et al*, petition application number pending.

To date, undersigned counsel has six cases prioritized over the present case, but all cases pending before the Supreme Court (#2-4 below) should be complete before the end of the year:

1. *United States v. Marin Perez*, USCA Dkt. No. 25-0238/AF – On 16 October 2025, the CAAF granted one issue in this case. Undersigned counsel requested an extension, which was granted. The grant brief is now due 24 November 2025.

2. *United States v. Casillas et al.* (incorporating *United States v. Johnson*, Application No. 25A339 (before the Supreme Court)) – This joint petition is due to the Supreme Court on 11 December 2025 because *Casillas* is joining *Johnson*. From the date of the *Johnson* decision, these appellants had 90 days to file a petition for a writ of certiorari to the Supreme Court. 28 U.S.C.

§ 1259(3); Supreme Court Rule 13(1). Due to various other case priorities, to include cases pending before this Court, undersigned counsel requested a 60-day extension in *Johnson*, which was granted. Supreme Court Rule 13(5). This is a one-issue petition on an issue that was not fully briefed in either case, but developed while the appellants' cases were on appeal. Undersigned counsel is the only counsel working on this petition. To meet the filing deadline at the Supreme Court, this petition must be drafted, reviewed, and formatted before Thanksgiving 2025. Undersigned counsel will be on leave from 25 November to 2 December 2025, necessitating reprioritization of this case due to Supreme Court formatting and printing constraints.

3. *United States v. Dominguez-Garcia*, Application No. 25A340 (before the Supreme Court) – This appellant's petition is due to the Supreme Court on 19 December 2025. As with *Johnson*, a 60-day extension was already requested. This is a joint petition on one issue that has been partially briefed in another case pending before the Supreme Court. However, there are multiple servicemembers' appeals in this petition, which requires fact-specific analyses and tailoring. Undersigned counsel is lead counsel for this joint petition and shoulders the responsibility of drafting. Most of the formatting is already complete. To meet the filing deadline at the Supreme Court, this petition must be drafted, reviewed, and formatted before Thanksgiving 2025 due to undersigned counsel's leave from 25 November to 2 December 2025.

4. *United States v. Folts* (pending docketing number before the Supreme Court) – This appellant's petition is due to the Supreme Court on 23 December 2025. No extension request has occurred in this case, although another petitioner is joining this case. That petitioner requested a 60-day extension for the specific purpose of joining his case with *Folts*. Thus, due to the other petitioner's extension, there will not be an extension request in this case. *See* Supreme Court Rule 13(5) (disfavoring extensions to begin with and not contemplating multiple extensions).

Undersigned counsel is one of three attorneys working on this petition, and the anticipated issue has been previously briefed. To meet the filing deadline at the Supreme Court, undersigned counsel's role in drafting and assisting on this petition must be complete by the first week of December.

5. *United States v. English*, No. ACM 40703 - The record of trial is seven volumes consisting of five admitted Prosecution Exhibits, 15 Defense Exhibits, 32 Appellate Exhibits, and two Court Exhibits. The transcript is 546 pages. This appellant is not currently confined. Undersigned counsel has not yet completed her review of the record of trial.

6. *United States v. Kristopik*, No. ACM 40674 – Undersigned counsel re-submitted this ten-issue AOE on 18 November 2025. Undersigned counsel anticipates working a reply brief upon receiving the Government's answer, expected late December or mid-January.

For context on the petitions, Supreme Court petitions have very specific formatting and content requirements. Supreme Court Rule 33. Additionally, much like a supplement to a petition for grant of review at the CAAF, a petition for a writ of certiorari is not a carbon copy of what was submitted to the CAAF; the filing must be adjusted, often rewritten, and then painstakingly reformatted to fit the Court's requirements. Additional drafting time is required to meet these constraints, along with additional time for printing the forty required booklets. *See* Supreme Court Rule 12 (dictating the number of copies required). Built into this timeline is also the Division's internal review process.<sup>3</sup> This required process can take anywhere between a few days to over a full week depending on the case and the workload of the Division. Thus, the logistical process of

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<sup>3</sup> "Review" is a reference to peer and leadership review, a Division requirement for every substantive filing. Peer review is when another appellate defense counsel reviews the first final draft of the filing and provides feedback and edits. Leadership review is when a member of Division leadership reviews the new version of the final draft and provides feedback and edits.

putting together a Supreme Court petition, to include researching and drafting, is about a 30-day process. Undersigned counsel must move from petition to petition to meet the filing deadlines and not delay Appellant's case further.

Undersigned counsel is tracking that this Court issued an order in this case on 23 December 2024 stating, "[A]ny future requests for enlargements of time that, if granted, would expire more than 360 days after docketing, will not be granted absent exceptional circumstances." Order at 2, Dec. 23, 2024. Military appellate defense counsel's caseload in front of the Supreme Court is an exceptional circumstance. *Twelve* Air Force Appellate Defense Division clients appealed to the Supreme Court in all of 2023, with multiple Division counsel having responsibility to ensure formatting and printing of those in six cases. Undersigned counsel *alone* has *five* clients appealing to the Supreme Court with near simultaneous deadlines. One counsel is doing almost half the Supreme Court filing workload that was accomplished over 2023 in approximately two months. This is an unusual and uncontrollable situation; undersigned counsel has no control over when CAAF issues its opinions and must adhere to the Supreme Court filing deadlines to ensure a client can exercise his or her right to appeal.

There has long been anticipation that beginning in December 2024, the Division's workload would be increased and strained due to the expansion of servicemember access to the Supreme Court. National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, § 533, 137 Stat. 136, 261 (2023). This expansion means that, instead of appellants ordinarily having to petition to the CAAF and garner review to be able to appeal to the Supreme Court, *any* case petitioned to the CAAF would be able to be appealed to the Supreme Court. *Id.* Undersigned counsel has one client in that posture, *Baumgartner*, who just filed at the Supreme Court (docket number pending). But *Folts*, *Casillas*, *Johnson*, and *Dominguez-Garcia* were all granted at the

CAAF. Having five petitioners before the Supreme Court in of itself is exceptional. But the timing of the five petitions is what justifies good cause and exceptional circumstances to grant this EOT. Appellant's Motion for Enlargement of Time (Tenth).<sup>4</sup>

Based on military appellate defense counsel's workload and civilian counsel's cases, appellate defense counsel anticipate needing at least one more EOT. While there is civilian appellate counsel on this case, Appellant has not waived his Article 70, UCMJ, counsel's review.

Undersigned counsel is tracking one possible issue in Appellant's case already. But undersigned counsel has been unable to perform the research required to assess the merits of this issue, confer with civilian appellate defense counsel, or advise Appellant. At this time, though, if an AOE is submitted, undersigned counsel does not anticipate this case being submitted on the merits. Additional time is required to properly research, brief, and advise Appellant on *at least* this issue.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of appellate defense counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Through no fault of Appellant, military appellate defense counsel has been unable complete her review of Appellant's case, confer with Appellant and civilian appellate defense counsel, and

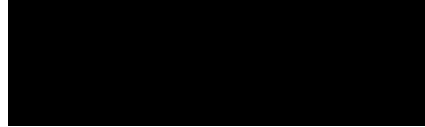
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<sup>4</sup> The Court granted Appellant's last EOT that detailed "exceptional circumstances" and provided data highlighting the Air Force Appellate Defense Division's increased workload as support. Appellant's Motion for Enlargement of Time (Tenth). This EOT includes some of those same circumstances, but does not repeat the data included in the previous EOT. That data has not changed, and remains an "exceptional circumstance" justifying approval of this EOT that Appellant requests this Court consider.

advise Appellant on any assignments of error. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors.

**WHEREFORE**, Appellant requests that this Court grant the requested enlargement of time for good cause shown.

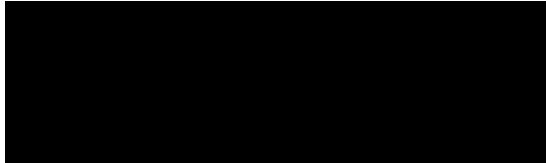
Respectfully submitted,



SAMANTHA M. CASTANIEN, Maj, USAF  
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Air Force Appellate Defense Division  
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Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: samantha.castanien.1@us.af.mil

## **CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division and Appellate Victims' Counsel for K.K. on 19 November 2025.



SAMANTHA M. CASTANIEN, Maj, USAF  
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**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Second Lieutenant (O-1)	)	Before a SpecialPanel
<b>SCOTT P. CULBRETH,</b>	)	
United States Air Force,	)	No. ACM 40704
<i>Appellant.</i>	)	
	)	21 November 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 over a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 420 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 more than two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 4 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.

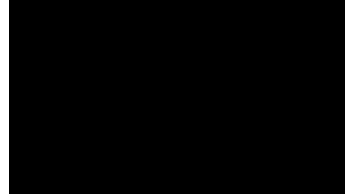
**WHEREFORE**, the United States respectfully requests that this Court deny Appellant's enlargement motion.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4804

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 21 November 2025.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4804

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

UNITED STATES	)	No. ACM 40704
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Scott P. CULBRETH	)	
Second Lieutenant (O-1)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Special Panel</b>

On 19 November 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Eleventh), requesting an additional 30 days to submit Appellant’s assignments of error.\* The Government opposes the motion.

On 4 December 2025, the court held a status conference to discuss the progress of this case. Appellant was represented by Major Samantha M. Castanien; Ms. Megan P. Marinos from the Appellate Defense Division was also present. Major Kate E. Lee represented the Government. Major Castanien provided updated information to supplement the information in Appellant’s motion. Of note, she advised the court that due to progress on her other cases, and in light of recent communication with Appellant, the assignments of error might be filed by the date requested in the current motion, 6 January 2026. However, she indicated it was also possible Appellant might request one additional enlargement of time. Major Castanien also confirmed civilian appellate defense counsel, Mr. Spinner, continues to represent Appellant. Major Lee maintained the Government’s opposition to the motion but did not specifically challenge or dispute any representation by the Defense.

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

Accordingly, it is by the court on this 4th day of December, 2025,

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\* The motion erroneously states the requested enlargement will end on “6 January 2025,” vice “6 January 2026.” We understand Appellant to be requesting an enlargement of 30 days until 6 January 2026.

**ORDERED:**

Appellant's Motion for Enlargement of Time (Eleventh) is **GRANTED**. Appellant shall file any assignments of error not later than **6 January 2026**.



[REDACTED]  
JACOB B. HOEFERKAMP, Capt, USAF  
Chief Commissioner

**UNITED STATES,**

*Appellee,*

v.

Second Lieutenant (O-1)

**SCOTT P. CULBRETH,**

United States Air Force,

*Appellant.*

) **APPELLANT’S MOTION**

) **FOR ENLARGEMENT**

) **OF TIME (TWELFTH)**

)

) Before Special Panel

)

) No. ACM 40704

)

) 19 December 2025

Pursuant to Rule 23.3(m)(3) and (6) of this Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **5 February 2026**. The record of trial was docketed with this Court on 12 November 2024. From the date of docketing to the present date, 402 days have elapsed.<sup>1</sup> On the date requested, 450 days will have elapsed. **Undersigned counsel anticipates this EOT request to be Appellant’s last.**

On 15 May 2024, at a general court-martial convened at Wright-Patterson Air Force Base, Ohio, a military judge, consistent with Appellant's pleas, found him guilty of one charge and three specifications of indecent conduct in violation of Article 134, Uniform Code of Military Justice (UCMJ).<sup>2</sup> R. at 1, 13, 20, 22, 25-26, 66. The military judge sentenced Appellant to be dismissed and to be confined for a total of 26 months (confinement for each specification running concurrently). R. at 102. The convening authority took no action on the findings and approved the

<sup>2</sup> Appellant pled not guilty to one charge and two specifications of Article 120c, UCMJ, and one charge and three specifications of Article 133, UCMJ, all of which were withdrawn and dismissed pursuant to a plea agreement. R. at 20, 102-03.

sentence in its entirety. Convening Authority Decision on Action (June 10, 2024). The convening authority denied Appellant's request for deferment and waiver of all automatic forfeitures. *Id.*

The trial transcript is 103 pages long and the record of trial is electronic, which is one volume of 513 pages. There are two Prosecution Exhibits, nineteen Defense Exhibits, nine Appellate Exhibits, and two Court Exhibits. Appellant is not currently confined.

On 29 September 2025, Mr. Frank Spinner entered a notice of appearance in this case as civilian appellate defense counsel.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), on behalf of both appellate defense counsel, undersigned counsel provides the following information. Civilian appellate defense counsel, Mr. Spinner, has read the record and conferred with military appellate counsel about Appellant's case. But consultation with military appellate defense counsel and Appellant remains on going. He is currently working five (5) cases at the Courts of Criminal Appeals (CCAs) and two (2) cases at the United States Court of Appeals for the Armed Forces (CAAF). Since Appellant's last EOT, he filed the AOE in *United States v. Puente-Gonzalez* (pending at the CCA) and filed the supplement to the petition for grant of review in *United States v. Flores* (pending at the CAAF). To date, Mr. Spinner has **three** cases that are prioritized over the present case:

1. *United States v. Flores* (pending at the CAAF) – Mr. Spinner is working with this appellant to finish filing motions related to matters raised under *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

2. *United States v. Thomas* (pending at the CCA) – Mr. Spinner is coordinating with this appellant to file motions related to matters raised under *Grostefon*.

3. *United States v. Puente-Gonzalez* (pending at the CCA) – A reply brief may come due during the requested time for Appellant's case. It is possible any reply brief *may* impact

Appellant's AOE.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned 20 cases; 9 cases are pending before this Court (6 cases are pending AOE's; 1 case was remanded), 4 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF) (1 case is pending reply briefing), and 7 cases are pending before the Supreme Court of the United States (1 case is pending filing an individual petition for a writ of certiorari).

Since Appellant's last request for an EOT, undersigned counsel filed the petitions for a writ of certiorari in *United States v. Baumgartner et al*, No. No. 25-599, *United States v. Casillas et al*, No. 25-682, *United States v. Dominguez-Garcia et al*, No. 25-730, and *United States v. Folts et al*, No. 25-727. She reviewed the record in *United States v. English*, No. ACM 40703 (minus sealed materials), and completed an initial review of Appellant's case to be able to advise him on his options. To date, undersigned counsel has three cases prioritized over the present case, but all cases should be complete by 21 January 2026:

1. *United States v. Marin Perez*, USCA Dkt. No. 25-0238/AF – The Government's answer brief is due on 29 December 2025. Upon receipt, undersigned counsel has seven days to file the reply brief. No extension requests are anticipated. Oral argument is scheduled for 25 February 2026.

2. *United States v. Kristopik*, No. ACM 40674 – The Government's answer brief is due on 31 December 2025. Undersigned counsel will likely request additional time to reply due to *Marin Perez*.

3. *United States v. English*, No. ACM 40703 - The record of trial is seven volumes consisting of five admitted Prosecution Exhibits, 15 Defense Exhibits, 32 Appellate Exhibits, and

two Court Exhibits. The transcript is 546 pages. This appellant is not currently confined. Undersigned counsel has reviewed the record (excluding sealed materials) and is conferring with this appellant on his options. This appellant's case is on EOT (Twelfth), which is the last anticipated EOT.

Undersigned counsel has completed an initial review of Appellant's case. Based on undersigned counsel's review so far, civilian and military appellate defense counsel require additional time to consult with Appellant on his options. Undersigned counsel has been able to perform some research on the issue that was already flagged for the Court in previous EOTs, but needs additional time to advise Appellant on this issue and others in his case. If an AOE is submitted, undersigned counsel does not anticipate this case being submitted on the merits. Depending on further consultation with Appellant and the filing deadlines in *Marin Perez* and *Kristopik*, additional time is required to properly research and brief several identified issues in Appellant's case. If an AOE is filed, both civilian and undersigned counsel anticipate this being the last EOT request.

Undersigned counsel is tracking that this Court issued an order in this case on 23 December 2024 stating, "[A]ny future requests for enlargements of time that, if granted, would expire more than 360 days after docketing, will not be granted absent exceptional circumstances." Order at 2, Dec. 23, 2024. As previously asserted, undersigned counsel's caseload in front of the Supreme Court is an exceptional circumstance. Appellant's Motion for Enlargement of Time (Tenth). **Twelve** Air Force Appellate Defense Division clients appealed to the Supreme Court in all of 2023, with multiple Division counsel having responsibility to ensure formatting and printing of those in six cases. *Id.* Undersigned counsel **alone** had **five** clients appealing to the Supreme Court with near simultaneous deadlines. One counsel did almost half the Supreme Court filing workload that was

accomplished over 2023 in approximately one month. This is an unusual and uncontrollable situation; undersigned counsel has no control over when CAAF issues its opinions and must adhere to the Supreme Court filing deadlines to ensure a client can exercise his or her right to appeal.

There has long been anticipation that beginning in December 2024, the Division's workload would be increased and strained due to the expansion of servicemember access to the Supreme Court. National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, § 533, 137 Stat. 136, 261 (2023). This expansion means that, instead of appellants ordinarily having to petition to the CAAF and garner review to be able to appeal to the Supreme Court, *any* case petitioned to the CAAF would be able to be appealed to the Supreme Court. *Id.* Undersigned counsel had one client in that posture, *Baumgartner*. But *Folts*, *Casillas*, *Johnson*, and *Dominguez-Garcia* were all granted at the CAAF. Having five petitioners before the Supreme Court in of itself is exceptional. But the timing of the five petitions is what justifies good cause and exceptional circumstances to grant this EOT. Appellant's Motion for Enlargement of Time (Tenth).<sup>3</sup>

Based on undersigned counsel's review of Appellant's record to date, undersigned counsel believes this will be the last EOT request, but needs the additional thirty days to consult with Appellant, finish reviewing the record, draft and research any issues, assist with any issues raised pursuant to *Grostefon*, and ensure peer and leadership review.<sup>4</sup> Appellant's AOE is currently due

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<sup>3</sup> The Court granted Appellant's last EOT that detailed "exceptional circumstances" and provided data highlighting the Air Force Appellate Defense Division's increased workload as support. Appellant's Motion for Enlargement of Time (Tenth). This EOT includes some of those same circumstances, but does not repeat the data included in the previous EOT. That data has not changed, and remains an "exceptional circumstance" justifying approval of this EOT that Appellant requests this Court consider.

<sup>4</sup> "Review" is a reference to peer and leadership review, a Division requirement for every substantive filing. Peer review is when another appellate defense counsel reviews the first final draft of the filing and provides feedback and edits. Leadership review is when a member of Division leadership reviews the new version of the final draft and provides feedback and edits.

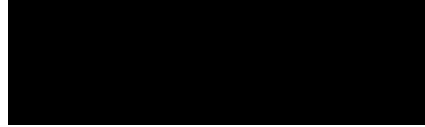
on 9 January 2026, which is not enough time to accomplish these tasks, brief *Marin Perez* and *Kristopik*, complete *English*, and provide effective assistance of counsel to all her clients. Additionally, during the next two weeks, the Appellate Defense Division has a substantial amount of counsel and leadership taking leave, reducing the ability to conduct peer and leadership reviews, a Division requirement. Undersigned counsel desires to complete review of Appellant's case as soon as possible but has been unable to do so to her high workload. Based on undersigned counsel's Supreme Court workload, which is now complete, the reply briefs in *Marin Perez* and *Kristopik*, and *English*, exceptional circumstances exist to exceed the "360 days after docketing" deadline originally set almost one year ago in this case.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of appellate defense counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Through no fault of Appellant, civilian and military appellate defense counsel have been unable to finish advising Appellant on various assignments of error and complete an AOE. An enlargement of time is necessary to allow counsel to provide effective assistance of counsel and file an AOE.

**WHEREFORE**, Appellant requests that this Court grant the requested enlargement of time for good cause shown.

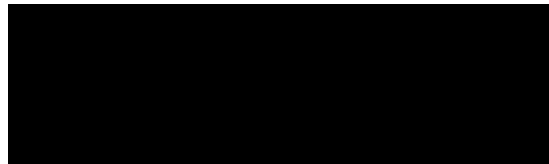
Respectfully submitted,



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#### **CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division and Appellate Victims' Counsel for K.K. on 19 December 2025.



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

<b>UNITED STATES,</b>	)	UNITED STATES’
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before a Special Panel
Second Lieutenant (O-1)	)	
<b>SCOTT P. CULBRETH,</b>	)	No. ACM 40704
United States Air Force.	)	
<i>Appellant</i>	)	23 December 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 over a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 450 days in length. Appellant’s over year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed more than two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 3 months combined for the United States and this Court to perform their separate statutory responsibilities.

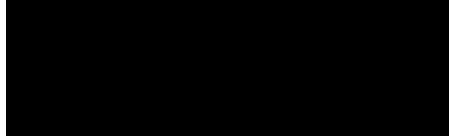
**WHEREFORE**, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 23 December 2025.



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

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

UNITED STATES,

*Appellee,*

v.

Second Lieutenant (O-1)

**SCOTT P. CULBRETH,**

United States Air Force,

*Appellant.*

) **APPELLANT'S MOTION TO**

) **WITHDRAW FROM**

) **APPELLATE REVIEW**

) **AND ATTACH**

)

) Before Special Panel

)

) No. ACM 40704

)

) 7 January 2026

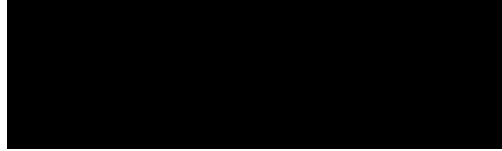
**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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

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

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

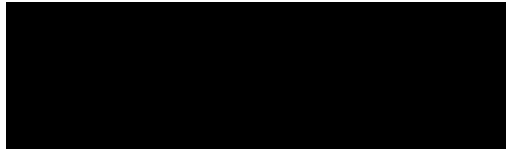
Respectfully submitted,



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**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division and Appellate Victims' Counsel for K.K. on 7 January 2026.



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