

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

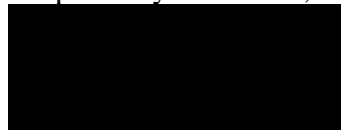
<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (FIRST)</b>
	)	
v.	)	Before Panel No. 1
	)	
Air Force Cadet	)	No. ACM 40324
<b>DEKOTA M. DOUGLAS,</b>	)	
United States Air Force	)	4 October 2022
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **10 December 2022**. The record of trial was docketed with this Court on 12 August 2022. From the date of docketing to the present date, 53 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,



HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 4 October 2022.

Respectfully submitted,

[REDACTED]

HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

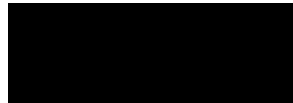
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Air Force Cadet	)	ACM 40324
DEKOTA M. DOUGLAS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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



OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 5 October 2022.



OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (SECOND)</b>
	)	
v.	)	Before Panel No. 1
	)	
Air Force Cadet	)	No. ACM 40324
<b>DEKOTA M. DOUGLAS,</b>	)	
United States Air Force	)	2 December 2022
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **9 January 2023**. The record of trial was docketed with this Court on 12 August 2022. From the date of docketing to the present date, 112 days have elapsed. On the date requested, 150 days will have elapsed.

On 25 April 2022, at a general court-martial convened at the United States Air Force Academy, Colorado Springs, Cadet Douglas was found guilty, contrary to his pleas, of two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ). He was found not guilty, consistent with his pleas, of two specifications of sexual assault in violation of Article 120, UCMJ. Record of Trial (ROT), Vol. 1, *Entry of Judgment*, 18 May 2022. The panel of officer members sentenced Cadet Douglas to a dismissal, 31 days of confinement, forfeiture of \$1,185 pay per month for one month, and a reprimand. *Id.* The convening authority took no action on the findings and sentence. ROT Vol. 1, *Convening Authority Decision on Action*, 13 May 2022. Cadet Douglas requested deferment of confinement

for 30 days, but the Convening Authority denied the request. *Id.* Cadet Douglas is not currently confined.

The trial transcript is 777 pages long and the record of trial is comprised of five volumes containing eleven prosecutions exhibits, thirteen defense exhibits, fifty-six appellate exhibits, and zero court exhibits.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time for the submission of an Assignments of Error brief for good cause shown.

Respectfully submitted,

[Redacted signature]

HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

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[Redacted line]

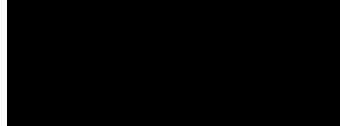
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**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 2 December 2022.

Respectfully submitted,



HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



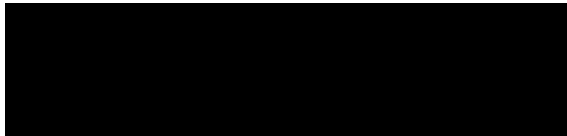
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Air Force Cadet	)	ACM 40324
DEKOTA M. DOUGLAS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

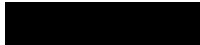
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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

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



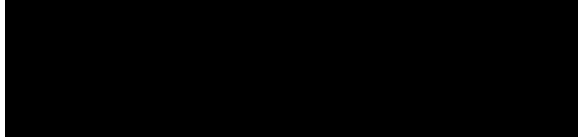
MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force





**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 2 December 2022.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (THIRD)</b>
	)	
v.	)	Before Panel No. 1
	)	
Air Force Cadet	)	No. ACM 40324
<b>DEKOTA M. DOUGLAS,</b>	)	
United States Air Force	)	29 December 2022
<i>Appellant</i>	)	

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

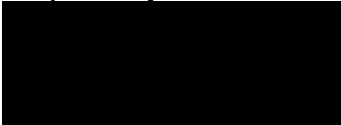
Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **8 February 2023**. The record of trial was docketed with this Court on 12 August 2022. From the date of docketing to the present date, 139 days have elapsed. On the date requested, 180 days will have elapsed.

On 25 April 2022, at a general court-martial convened at the United States Air Force Academy, Colorado Springs, Appellant was found guilty, contrary to his pleas, of two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ). He was found not guilty, consistent with his pleas, of two specifications of sexual assault in violation of Article 120, UCMJ. Record of Trial (ROT), Vol. 1, *Entry of Judgment*, 18 May 2022. The panel of officer members sentenced Appellant to a dismissal, 31 days of confinement, forfeiture of \$1,185 pay per month for one month, and a reprimand. *Id.* The convening authority took no action on the findings and sentence. ROT Vol. 1, *Convening Authority Decision on Action*, 13 May 2022. Appellant requested deferment of confinement for 30 days, but the Convening Authority denied the request. *Id.* Appellant is not currently confined.

The trial transcript is 777 pages long and the record of trial is comprised of five volumes containing 11 prosecution exhibits, 13 defense exhibits, 56 appellate exhibits, and zero court exhibits.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time for the submission of an Assignments of Error brief for good cause shown.

Respectfully submitted,

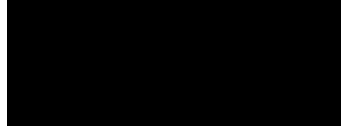


HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 29 December 2022.

Respectfully submitted,

A large black rectangular redaction box covering the signature of Heather M. Caine.

HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

Four horizontal black rectangular redaction boxes covering contact information, likely a phone number, email address, and office address.

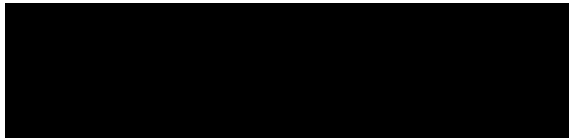
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Air Force Cadet	)	ACM 40324
DEKOTA M. DOUGLAS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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

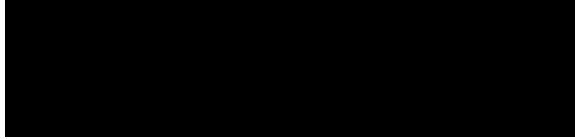


MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



**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 December 2022.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (FOURTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Air Force Cadet	)	No. ACM 40324
<b>DEKOTA M. DOUGLAS,</b>	)	
United States Air Force	)	1 February 2023
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **10 March 2023**. The record of trial was docketed with this Court on 12 August 2022. From the date of docketing to the present date, 173 days have elapsed. On the date requested, 210 days will have elapsed.

On 25 April 2022, at a general court-martial convened at the United States Air Force Academy, Colorado Springs, Appellant was found guilty, contrary to his pleas, of two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ). He was found not guilty, consistent with his pleas, of two specifications of sexual assault in violation of Article 120, UCMJ. Record of Trial (ROT), Vol. 1, *Entry of Judgment*, 18 May 2022. The panel of officer members sentenced Appellant to a dismissal, 31 days of confinement, forfeiture of \$1,185 pay per month for one month, and a reprimand. *Id.* The convening authority took no action on the findings and sentence. ROT Vol. 1, *Convening Authority Decision on Action*, 13 May 2022. Appellant requested deferment of confinement for 30 days, but the Convening Authority denied the request. *Id.* Appellant is not currently confined.

The trial transcript is 777 pages long and the record of trial is comprised of five volumes containing 11 prosecution exhibits, 13 defense exhibits, 56 appellate exhibits, and zero court exhibits.

Undersigned counsel is currently assigned 16 cases, with 11 initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Nine cases have priority over the present case:

1. *United States v. Guihama*, ACM 40039: Counsel is currently drafting the Supplement to Petition for Grant of Review, which is due to the CAAF on 2 February 2023.
2. *United States v. Arroyo*, ACM 40321: The trial transcript is 154 pages long and the record of trial is comprised of three volumes containing three prosecution exhibits, 20 defense exhibits, 26 appellate exhibits, and one court exhibit.
3. *United States v. Cabuhat, Jr.*, ACM 40191: Oral argument was ordered on three issues in this case, which is to be scheduled in March 2023.
4. *United States v. Walker*, ACM S32737: The trial transcript is 90 pages long and the record of trial is comprised of three volumes containing four prosecution exhibits, eight defense exhibits, three appellate exhibits, and zero court exhibits.
5. *United States v. Edwards*, ACM 40349: The trial transcript is 1505 pages long and the record of trial is comprised of 12 volumes containing 37 prosecution exhibits, 38 defense exhibits, 70 appellate exhibits, and one court exhibit.
6. *United States v. Greene-Watson*, ACM 40293: The trial transcript is 536 pages long and the record of trial is comprised of 11 volumes containing 21 prosecution exhibits, 12



defense exhibits, 46 appellate exhibits, and one court exhibit.

7. *United States v. Emerson*, ACM 40297: The trial transcript is 255 pages long and the record of trial is comprised of four volumes containing seven prosecutions exhibits, seven defense exhibits, 27 appellate exhibits, and zero court exhibits.
8. *United States v. Dugan*, ACM 40320: The trial transcript is 225 pages long and the record of trial is comprised of four volumes containing six prosecutions exhibits, 22 defense exhibits, 10 appellate exhibits, and zero court exhibits.
9. *United States v. Milla*, ACM 40307: The trial transcript is 210 pages long and the record of trial is comprised of five volumes containing three prosecutions exhibits, nine defense exhibits, 22 appellate exhibits, and zero court exhibits.

Appellant was advised of his right to a timely appeal. 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.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time for the submission of an Assignments of Error brief for good cause shown.

Respectfully submitted,

[REDACTED]

HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 1 February 2023.

Respectfully submitted,

[REDACTED]

HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

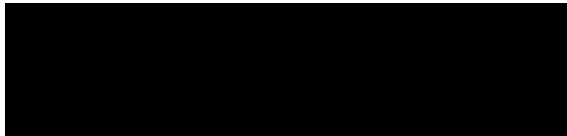
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Air Force Cadet	)	ACM 40324
DEKOTA M. DOUGLAS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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

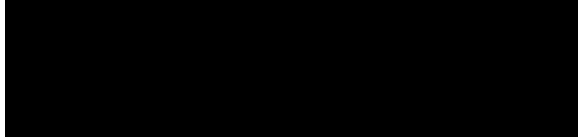


MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 2 February 2023.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (FIFTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Air Force Cadet	)	No. ACM 40324
<b>DEKOTA M. DOUGLAS,</b>	)	
United States Air Force	)	3 March 2023
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **9 April 2023**. The record of trial was docketed with this Court on 12 August 2022. From the date of docketing to the present date, 203 days have elapsed. On the date requested, 240 days will have elapsed.

On 25 April 2022, at a general court-martial convened at the United States Air Force Academy, Colorado Springs, Appellant was found guilty, contrary to his pleas, of two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ). He was found not guilty, consistent with his pleas, of two specifications of sexual assault in violation of Article 120, UCMJ. Record of Trial (ROT), Vol. 1, *Entry of Judgment*, 18 May 2022. The panel of officer members sentenced Appellant to a dismissal, 31 days of confinement, forfeiture of \$1,185 pay per month for one month, and a reprimand. *Id.* The convening authority took no action on the findings and sentence. ROT Vol. 1, *Convening Authority Decision on Action*, 13 May 2022. Appellant requested deferment of confinement for 30 days, but the Convening Authority denied the request. *Id.* Appellant is not currently confined.

The trial transcript is 777 pages long and the record of trial is comprised of five volumes containing 11 prosecution exhibits, 13 defense exhibits, 56 appellate exhibits, and zero court exhibits.

Undersigned counsel is currently assigned 15 cases, with 10 initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Seven cases have priority over the present case:

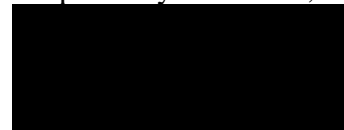
1. *United States v. Cabuhat, Jr.*, ACM 40191: Oral argument was ordered on three issues in this case and is scheduled for 22 March 2023. Counsel has reviewed the record of trial and is preparing for oral argument.
2. *United States v. Walker*, ACM S32737: The trial transcript is 90 pages long and the record of trial is comprised of three volumes containing four prosecution exhibits, eight defense exhibits, three appellate exhibits, and zero court exhibits.
3. *United States v. Edwards*, ACM 40349: The trial transcript is 1505 pages long and the record of trial is comprised of 12 volumes containing 37 prosecution exhibits, 38 defense exhibits, 70 appellate exhibits, and one court exhibit.
4. *United States v. Greene-Watson*, ACM 40293: The trial transcript is 536 pages long and the record of trial is comprised of 11 volumes containing 21 prosecution exhibits, 12 defense exhibits, 46 appellate exhibits, and one court exhibit.
5. *United States v. Emerson*, ACM 40297: The trial transcript is 255 pages long and the record of trial is comprised of four volumes containing seven prosecutions exhibits, seven defense exhibits, 27 appellate exhibits, and zero court exhibits.

6. *United States v. Dugan*, ACM 40320: The trial transcript is 225 pages long and the record of trial is comprised of four volumes containing six prosecutions exhibits, 22 defense exhibits, 10 appellate exhibits, and zero court exhibits.
7. *United States v. Milla*, ACM 40307: The trial transcript is 210 pages long and the record of trial is comprised of five volumes containing three prosecutions exhibits, nine defense exhibits, 22 appellate exhibits, and zero court exhibits.

Appellant was advised of his right to a timely appeal. 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.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time for the submission of an Assignments of Error brief for good cause shown.

Respectfully submitted,



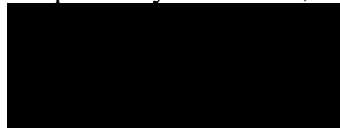
HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 3 March 2023.

Respectfully submitted,



HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division





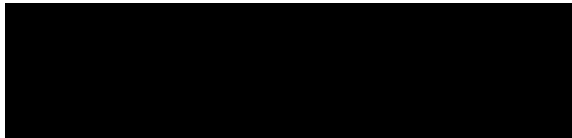
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Air Force Cadet	)	ACM 40324
DEKOTA M. DOUGLAS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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

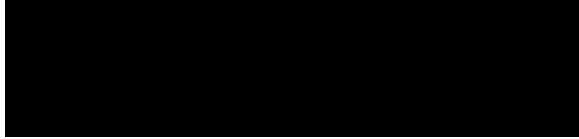


MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 3 March 2023.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



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

UNITED STATES	)	No. ACM 40324
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Dekota M. DOUGLAS	)	
Air Force Cadet	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 3 March 2023, counsel for Appellant submitted a Motion for Enlargement of Time (Fifth), requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure. Accordingly, it is by the court on this 6th day of March, 2023,

**ORDERED:**

Appellant's Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant's brief will be due **9 April 2023**.

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



FOR THE COURT



ANTHONY F. ROCK, Maj, USAF  
Deputy Clerk of the Court

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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (SIXTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Air Force Cadet	)	No. ACM 40324
<b>DEKOTA M. DOUGLAS,</b>	)	
United States Air Force	)	31 March 2023
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **9 May 2023**. The record of trial was docketed with this Court on 12 August 2022. From the date of docketing to the present date, 231 days have elapsed. On the date requested, 270 days will have elapsed.

On 25 April 2022, at a general court-martial convened at the United States Air Force Academy, Colorado Springs, Appellant was found guilty, contrary to his pleas, of two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ). He was found not guilty, consistent with his pleas, of two specifications of sexual assault in violation of Article 120, UCMJ. Record of Trial (ROT), Vol. 1, *Entry of Judgment*, 18 May 2022. The panel of officer members sentenced Appellant to a dismissal, 31 days of confinement, forfeiture of \$1,185 pay per month for one month, and a reprimand. *Id.* The convening authority took no action on the findings and sentence. ROT Vol. 1, *Convening Authority Decision on Action*, 13 May 2022. Appellant requested deferment of confinement for 30 days, but the Convening Authority denied the request. *Id.* Appellant is not currently confined.

The trial transcript is 777 pages long and the record of trial is comprised of five volumes containing 11 prosecution exhibits, 13 defense exhibits, 56 appellate exhibits, and zero court exhibits.

Undersigned counsel is currently assigned 15 cases, with 10 initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Six cases have priority over the present case:

1. *United States v. Walker*, ACM S32737: The trial transcript is 90 pages long and the record of trial is comprised of three volumes containing four prosecution exhibits, eight defense exhibits, three appellate exhibits, and zero court exhibits. Counsel has started review of the Record of Trial in this case and will begin writing the Assignment(s) of Error after the review is complete.
2. *United States v. Edwards*, ACM 40349: The trial transcript is 1505 pages long and the record of trial is comprised of 12 volumes containing 37 prosecution exhibits, 38 defense exhibits, 70 appellate exhibits, and one court exhibit.
3. *United States v. Greene-Watson*, ACM 40293: The trial transcript is 536 pages long and the record of trial is comprised of 11 volumes containing 21 prosecution exhibits, 12 defense exhibits, 46 appellate exhibits, and one court exhibit.
4. *United States v. Emerson*, ACM 40297: The trial transcript is 255 pages long and the record of trial is comprised of four volumes containing seven prosecutions exhibits, seven defense exhibits, 27 appellate exhibits, and zero court exhibits.
5. *United States v. Dugan*, ACM 40320: The trial transcript is 225 pages long and the record

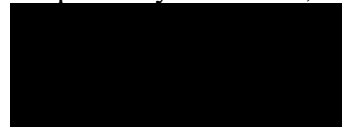
of trial is comprised of four volumes containing six prosecutions exhibits, 22 defense exhibits, 10 appellate exhibits, and zero court exhibits.

6. *United States v. Milla*, ACM 40307: The trial transcript is 210 pages long and the record of trial is comprised of five volumes containing three prosecutions exhibits, nine defense exhibits, 22 appellate exhibits, and zero court exhibits.

Appellant was advised of his right to a timely appeal. 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.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time for the submission of an Assignments of Error brief for good cause shown.

Respectfully submitted,



HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 31 March 2023.

Respectfully submitted,

[REDACTED]

HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

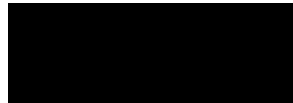
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Air Force Cadet	)	ACM 40324
DEKOTA M. DOUGLAS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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



OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force





**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 4 April 2023.



OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (SEVENTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Air Force Cadet	)	No. ACM 40324
<b>DEKOTA M. DOUGLAS,</b>	)	
United States Air Force	)	2 May 2023
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **8 June 2023**. The record of trial was docketed with this Court on 12 August 2022. From the date of docketing to the present date, 263 days have elapsed. On the date requested, 300 days will have elapsed.

On 25 April 2022, at a general court-martial convened at the United States Air Force Academy, Colorado Springs, Appellant was found guilty, contrary to his pleas, of two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ). He was found not guilty, consistent with his pleas, of two specifications of sexual assault in violation of Article 120, UCMJ. Record of Trial (ROT), Vol. 1, *Entry of Judgment*, 18 May 2022. The panel of officer members sentenced Appellant to a dismissal, 31 days of confinement, forfeiture of \$1,185 pay per month for one month, and a reprimand. *Id.* The convening authority took no action on the findings and sentence. ROT Vol. 1, *Convening Authority Decision on Action*, 13 May 2022. Appellant requested deferment of confinement for 30 days, but the Convening Authority denied the request. *Id.* Appellant is not currently confined.

The trial transcript is 777 pages long and the record of trial is comprised of five volumes containing 11 prosecution exhibits, 13 defense exhibits, 56 appellate exhibits, and zero court exhibits.

Undersigned counsel is currently assigned 16 cases, with 10 initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Six cases have priority over the present case:

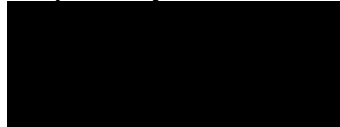
1. *United States v. Edwards*, ACM 40349: The trial transcript is 1505 pages long and the record of trial is comprised of 12 volumes containing 37 prosecution exhibits, 38 defense exhibits, 70 appellate exhibits, and one court exhibit. Counsel is currently reviewing the record of trial and drafting the Assignment of Errors brief.
2. *United States v. Greene-Watson*, ACM 40293: The trial transcript is 536 pages long and the record of trial is comprised of 11 volumes containing 21 prosecution exhibits, 12 defense exhibits, 46 appellate exhibits, and one court exhibit.
3. *United States v. Flores*, ACM 40294: The petition for grant of review is due to the CAAF on 7 June 2023.
4. *United States v. Emerson*, ACM 40297: The trial transcript is 255 pages long and the record of trial is comprised of four volumes containing seven prosecutions exhibits, seven defense exhibits, 27 appellate exhibits, and zero court exhibits.
5. *United States v. Dugan*, ACM 40320: The trial transcript is 225 pages long and the record of trial is comprised of four volumes containing six prosecutions exhibits, 22 defense exhibits, 10 appellate exhibits, and zero court exhibits.

6. *United States v. Milla*, ACM 40307: The trial transcript is 210 pages long and the record of trial is comprised of five volumes containing three prosecutions exhibits, nine defense exhibits, 22 appellate exhibits, and zero court exhibits.

Appellant was advised of his right to a timely appeal. 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.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time for the submission of an Assignments of Error brief for good cause shown.

Respectfully submitted,



HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 2 May 2023.

Respectfully submitted,



HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



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

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	
Air Force Cadet	)	ACM 40324
DEKOTA M. DOUGLAS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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

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

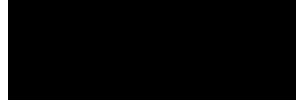


OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 3 May 2023.



OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force





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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (EIGHTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Air Force Cadet	)	No. ACM 40324
<b>DEKOTA M. DOUGLAS,</b>	)	
United States Air Force	)	1 June 2023
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **8 July 2023**. The record of trial was docketed with this Court on 12 August 2022. From the date of docketing to the present date, 293 days have elapsed. On the date requested, 330 days will have elapsed.

On 25 April 2022, at a general court-martial convened at the United States Air Force Academy, Colorado Springs, Appellant was found guilty, contrary to his pleas, of two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ). He was found not guilty, consistent with his pleas, of two specifications of sexual assault in violation of Article 120, UCMJ. Record of Trial (ROT), Vol. 1, *Entry of Judgment*, 18 May 2022. The panel of officer members sentenced Appellant to a dismissal, 31 days of confinement, forfeiture of \$1,185 pay per month for one month, and a reprimand. *Id.* The convening authority took no action on the findings and sentence. ROT Vol. 1, *Convening Authority Decision on Action*, 13 May 2022. Appellant requested deferment of confinement for 30 days, but the Convening Authority denied the request. *Id.* Appellant is not currently confined.

The trial transcript is 777 pages long and the record of trial is comprised of five volumes containing 11 prosecution exhibits, 13 defense exhibits, 56 appellate exhibits, and zero court exhibits.

Undersigned counsel is currently assigned 18 cases, with 10 initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Undersigned counsel recently submitted a Motion to Withdraw from Appellate Review and Motion to Attach in *United States v. Milla* (ACM 40307). There are then three cases before this Court with priority over the present case:

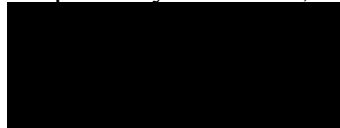
1. *United States v. Greene-Watson*, ACM 40293: The trial transcript is 536 pages long and the record of trial is comprised of 11 volumes containing 21 prosecution exhibits, 12 defense exhibits, 46 appellate exhibits, and one court exhibit. Counsel has reviewed the record of trial and will return to drafting the Assignments of Error after filing the Petition and Supplement to the Petition for Grant of Review in *United States v. Flores*, ACM 40294.
2. *United States v. Emerson*, ACM 40297: The trial transcript is 255 pages long and the record of trial is comprised of four volumes containing seven prosecutions exhibits, seven defense exhibits, 27 appellate exhibits, and zero court exhibits.
3. *United States v. Dugan*, ACM 40320: The trial transcript is 225 pages long and the record of trial is comprised of four volumes containing six prosecutions exhibits, 22 defense exhibits, 10 appellate exhibits, and zero court exhibits.

Appellant was advised of his right to a timely appeal. Appellant was advised of the request

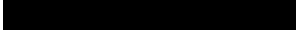
for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time for the submission of an Assignments of Error brief for good cause shown.

Respectfully submitted,



HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 1 June 2023.

Respectfully submitted,

[REDACTED]

HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

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

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

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	
Air Force Cadet	)	ACM 40324
DEKOTA M. DOUGLAS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 330 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 7 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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



OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 2 June 2023.



OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (NINTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Air Force Cadet	)	No. ACM 40324
<b>DEKOTA M. DOUGLAS,</b>	)	
United States Air Force	)	30 June 2023
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **7 August 2023**. The record of trial was docketed with this Court on 12 August 2022. From the date of docketing to the present date, 322 days have elapsed. On the date requested, 360 days will have elapsed.

On 25 April 2022, at a general court-martial convened at the United States Air Force Academy, Colorado Springs, Appellant was found guilty, contrary to his pleas, of two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ). He was found not guilty, consistent with his pleas, of two specifications of sexual assault in violation of Article 120, UCMJ. Record of Trial (ROT), Vol. 1, *Entry of Judgment*, 18 May 2022. The panel of officer members sentenced Appellant to a dismissal, 31 days of confinement, forfeiture of \$1,185 pay per month for one month, and a reprimand. *Id.* The convening authority took no action on the findings and sentence. ROT Vol. 1, *Convening Authority Decision on Action*, 13 May 2022. Appellant requested deferment of confinement for 30 days, but the Convening Authority denied the request. *Id.* Appellant is not currently confined.



The trial transcript is 777 pages long and the record of trial is comprised of five volumes containing 11 prosecution exhibits, 13 defense exhibits, 56 appellate exhibits, and zero court exhibits.

Undersigned counsel is currently assigned 18 cases, with 9 initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Since filing a Motion for EOT 8 in this case, undersigned counsel has filed a Response to the Government's Motion to Dismiss in *United States v. Cooley* (ACM 40376); the Petition and Supplement to the Petition for Grant of Review in *United States v. Flores* (ACM 40294); a Motion for Leave to File a Responsive Pleading in *United States v. Cooley* (ACM 40376); a Brief on Behalf of Appellant in *United States v. Greene-Watson* (ACM 40293); and a Reply Brief on of Appellant in *United States v. Edwards* (40349). Undersigned counsel also had scheduled and approved leave starting late afternoon on Wednesday, 21 June 2023, through Sunday, 25 June 2023. There are then two cases before this Court with priority over the present case:

1. *United States v. Emerson*, ACM 40297: The trial transcript is 255 pages long and the record of trial is comprised of four volumes containing seven prosecutions exhibits, seven defense exhibits, 27 appellate exhibits, and zero court exhibits. Counsel filed a Consent Motion to Examine Sealed Material on 30 May 2023, which was granted on 9 June 2023. Counsel subsequently reviewed the sealed material on 15 June 2023. Counsel completed review of the record of trial and is currently drafting the Assignments of Error. Additionally, counsel notes that Monday and Tuesday, 3-4 July 2023, are a Family Day

and Holiday.

2. *United States v. Dugan*, ACM 40320: The trial transcript is 225 pages long and the record of trial is comprised of four volumes containing six prosecutions exhibits, 22 defense exhibits, 10 appellate exhibits, and zero court exhibits. Reservist co-counsel has been recently assigned and has begun review of the record of trial.

Appellant was advised of his right to a timely appeal. 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.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time for the submission of an Assignments of Error brief for good cause shown.

Respectfully submitted,



HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 30 June 2023.

Respectfully submitted,

A large black rectangular redaction box covering the signature of Heather M. Caine.

HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

Four horizontal black rectangular redaction boxes covering contact information, likely a phone number, email address, and office address.

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

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	
Air Force Cadet	)	ACM 40324
DEKOTA M. DOUGLAS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 360 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 6 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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



OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 30 June 2023.



OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



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

UNITED STATES	)	No. ACM 40324
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Dekota M. DOUGLAS	)	
Air Force Cadet	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 30 June 2023, 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.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure. Accordingly, it is by the court on this 5th day of July, 2023,

**ORDERED:**

Appellant's Motion for Enlargement of Time (Eighth) is **GRANTED**. Appellant shall file any assignments of error not later than **7 August 2023**.

Appellant's counsel is advised that given the number of enlargements granted thus far, the court will continue to closely examine any further requests for an enlargement of time.



FOR THE COURT



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

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

<b>UNITED STATES</b>	)	<b>CONSENT MOTION</b>
<i>Appellee</i>	)	<b>TO EXAMINE</b>
	)	<b>SEALED MATERIALS</b>
v.	)	
	)	Before Panel No. 1
Air Force Cadet	)	
<b>DEKOTA M. DOUGLAS</b>	)	No. ACM 40324
United States Air Force	)	
<i>Appellant</i>	)	19 July 2023

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

Pursuant to Rules 3.1 and 23.3(f) of this Court’s Rules of Practice and Procedure and Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i), the Appellant moves for both parties to examine the following sealed materials:

- 1) Appellate Exhibit V, which is the Defense Mil. R. Evid. 412 motion. R. at 15. Trial counsel, defense counsel, and the military judge viewed the motion.
- 2) Appellate Exhibit VI, which is the Victims’ Counsel’s response to the Defense Mil. R. Evid. 412 motion. R. at 16. Trial counsel, defense counsel, and the military judge viewed the motion.
- 3) Appellate Exhibit XIX, which is a medical record of the named complaining witness in the case. On the record at 427, the Defense asked for a 39(a) after the complaining witness said she went to the doctor to get a Plan B because she didn't know if the accused used protection. The military judge closed the hearing at that time. Then the military judge sealed transcript pages 429-35 on the record at 436. The military judge also ordered Appellate Exhibit XIX sealed in accordance with Mil. R. Evid. 412 and R.C.M. 1113. Further, on the record at 686, Defense's closing argument in findings argued that when presented with the medical records on cross-examination, the



complaining witness stated "I thought birth control and Plan B were the same." So, it seems as though the medical records were referenced in the closed session and would have been reviewed by both parties and the military judge.

- 4) The sealed audio and corresponding sealed transcript pages 133-38 and 429-35, which were the closed sessions wherein Mil. R. Evid. 412 evidence and the medical records were discussed. All parties were present as well as the military judge.

In accordance with R.C.M. 1113(b)(3)(B)(i), which requires a colorable showing that examination of these matters is reasonably necessary to appellate counsels' responsibilities, undersigned counsel asserts that review of the referenced exhibits is necessary to conduct a complete review of the record of trial and be in a position to advocate competently on behalf of Appellant.

Moreover, a review of the entire record of trial is necessary because this Court is empowered by Article 66, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866, to grant relief based on a review and analysis of "the entire record." To determine whether the record of trial yields grounds for this Court to grant relief under Article 66, UCMJ, 10 U.S.C. § 866, appellate defense counsel must, therefore, examine "the entire record."

Although Courts of Criminal Appeals have a broad mandate to review the record unconstrained by an appellant's assignments of error, that broad mandate does not reduce the importance of adequate representation. As we said in *United States v. Ortiz*, 24 M.J. 323, 325 (C.M.A. 1987), independent review is not the same as competent appellate representation.

*United States v. May*, 47 M.J. 478, 481, (C.A.A.F. 1998). The sealed materials referenced above must be reviewed to ensure undersigned counsel provides "competent appellate representation."

*Id.* Accordingly, examination of these exhibits is reasonably necessary since undersigned counsel

cannot fulfill her duty of representation under Article 70, UCMJ, 10 U.S.C. § 870, without first reviewing the complete record of trial.

Appellate Government Counsel have been consulted about this motion and consent to the relief sought by the Appellant.

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

Respectfully submitted,



HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**CERTIFICATE OF FILING AND SERVICE**

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

Respectfully submitted,



HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



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

UNITED STATES	)	No. ACM 40324
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Dekota M. DOUGLAS	)	
Air Force Cadet	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 19 July 2023, counsel for Appellant submitted a Consent Motion to Examine Sealed Materials. Specifically, counsel seeks to examine Appellate Exhibits V, VI, XIX, and the sealed audio and corresponding sealed transcript pages 133–38 and 429–35. The Government does not oppose the motion.

Appellate counsel may examine sealed materials released to counsel at trial “upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities.” Rule for Courts-Martial 1113(b)(3)(B)(i), *Manual for Courts-Martial, United States* (2019 ed.).

The court has considered Appellant’s motion, the Government’s response, case law, and this court’s Rules of Practice and Procedure. The court finds Appellant’s counsel has made a colorable showing that review of the sealed materials is necessary to fulfill counsel’s duties of representation to Appellant.

Accordingly, it is by the court on this 20th day of July, 2023,

**ORDERED:**

Appellant’s Motion to Examine Sealed Materials is **GRANTED**.

Appellate defense counsel and appellate government counsel may view **Appellate Exhibits V, VI, XIX, and the sealed audio and corresponding sealed transcript pages 133–38 and 429–35**, subject to the following conditions:

To view the sealed materials, counsel will coordinate with the court.

No counsel granted access to the materials may photocopy, photograph, reproduce, disclose, or make available the content to any other individual without the court's prior written authorization.



FOR THE COURT



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

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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (TENTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Air Force Cadet	)	No. ACM 40324
<b>DEKOTA M. DOUGLAS</b>	)	
United States Air Force	)	20 July 2023
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE).<sup>1</sup> Appellant requests an enlargement for a period of 30 days, which will end on **6 September 2023**. The record of trial was docketed with this Court on 12 August 2022. From the date of docketing to the present date, 342 days have elapsed. On the date requested, 390 days will have elapsed.

On 25 April 2022, at a general court-martial convened at the United States Air Force Academy, Colorado Springs, Appellant was found guilty, contrary to his pleas, of two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ). He was found not guilty, consistent with his pleas, of two specifications of sexual assault in violation of Article 120, UCMJ. Record of Trial (ROT), Vol. 1, *Entry of Judgment*, 18 May 2022. The panel of officer members sentenced Appellant to a dismissal, 31 days of confinement, forfeiture of \$1,185 pay per month for one month, and a reprimand. *Id.* The

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<sup>1</sup> This motion formally withdraws the previously filed Motion for Enlargement of Time (Tenth) dated 19 July 2023 for the reasons contained herein. This motion is intended to substitute in its place.

convening authority took no action on the findings and sentence. ROT Vol. 1, *Convening Authority Decision on Action*, 13 May 2022. Appellant requested deferment of confinement for 30 days, but the Convening Authority denied the request. *Id.* Appellant is not currently confined.

The trial transcript is 777 pages long and the record of trial is comprised of five volumes containing 11 prosecution exhibits, 13 defense exhibits, 56 appellate exhibits, and zero court exhibits.

Undersigned counsel is currently assigned 23 cases, with 12 initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Since filing a Motion for EOT 9 in this case, undersigned counsel has filed the Brief on Behalf of Appellant in *United States v. Emerson* (ACM 40297). Undersigned counsel currently has scheduled and approved leave on Wednesday, 26 July 2023, and Friday through Monday, 28-31 July 2023. Our office's going away is also scheduled for Thursday, 27 July 2023. Finally, on 20 July 2023, the Court of Appeals for the Armed Forces (CAAF) granted an issue for review in *United States v. Flores* (ACM 40294) with a brief due on or before 21 August 2023. Therefore, while there is one case before this Court with priority over the present case, undersigned counsel must now prioritize the CAAF Brief in *Flores* after filing the Brief on Behalf of Appellant in *United States v. Dugan* (ACM 40320), but prior to moving to the AOE in this case.

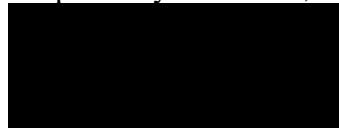
1. *United States v. Dugan*, ACM 40320: The trial transcript is 225 pages long and the record of trial is comprised of four volumes containing six prosecutions exhibits, 22 defense exhibits, 10 appellate exhibits, and zero court exhibits. Reservist co-counsel and

undersigned counsel have completed review of the record of trial and are currently drafting the Assignments of Error. Undersigned counsel will also have a Reply Brief on Behalf of Appellant in *United States v. Greene-Watson* (ACM 40293) due no later than 31 July 2023.

Appellant was advised of his right to a timely appeal. 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.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time for the submission of an Assignments of Error brief for good cause shown.

Respectfully submitted,



HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division





**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 20 July 2023.

Respectfully submitted,

[REDACTED]

HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	
Air Force Cadet	)	ACM 40324
DEKOTA M. DOUGLAS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 390 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 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.

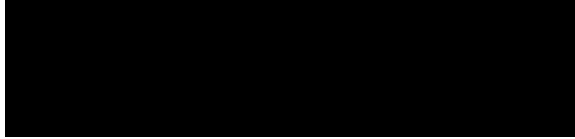


MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force

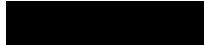


**CERTIFICATE OF FILING AND SERVICE**

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



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>No. ACM 40324</b>
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>NOTICE OF PANEL CHANGE</b>
<b>Dekota M. DOUGLAS</b>	)	
<b>Cadet</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	

It is by the court on this 8th day of August, 2023,

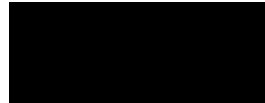
**ORDERED:**

That the Record of Trial in the above-styled matter is withdrawn from Panel 1 and referred to Panel 3 for appellate review.

This panel letter supersedes all previous panel assignments.



FOR THE COURT



TANICA S. BAGMON  
Appellate Court Paralegal

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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (ELEVENTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Air Force Cadet	)	No. ACM 40324
<b>DEKOTA M. DOUGLAS</b>	)	
United States Air Force	)	29 August 2023
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 14 days, which will end on **20 September 2023**. The record of trial was docketed with this Court on 12 August 2022. From the date of docketing to the present date, 382 days have elapsed. On the date requested, 404 days will have elapsed.

On 25 April 2022, at a general court-martial convened at the United States Air Force Academy, Colorado Springs, Appellant was found guilty, contrary to his pleas, of two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ). He was found not guilty, consistent with his pleas, of two specifications of sexual assault in violation of Article 120, UCMJ. Record of Trial (ROT), Vol. 1, *Entry of Judgment*, 18 May 2022. The panel of officer members sentenced Appellant to a dismissal, 31 days of confinement, forfeiture of \$1,185 pay per month for one month, and a reprimand. *Id.* The convening authority took no action on the findings and sentence. ROT Vol. 1, *Convening Authority Decision on Action*, 13 May 2022. Appellant requested deferment of confinement for 30 days, but the Convening Authority denied the request. *Id.* Appellant is not currently confined.

The trial transcript is 777 pages long and the record of trial is comprised of five volumes containing 11 prosecution exhibits, 13 defense exhibits, 56 appellate exhibits, and zero court exhibits.

Undersigned counsel is currently assigned 23 cases, with 12 initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Since filing a Motion for EOT 10 in this case, undersigned counsel has filed the Reply Brief on Behalf of Appellant in *United States v. Greene-Watson* (ACM 40293), the Brief on Behalf of Appellant in *United States v. Dugan* (ACM 40320), and the Grant Brief in *United States v. Flores* (ACM 40294) with the Court of Appeals for the Armed Forces (CAAF). Undersigned counsel trained new appellate defense counsel during our office orientation on 9-10 August 2023. Undersigned counsel also planned and coordinated the 10th Annual Joint Appellate Advocacy Training (JAAT), which was held 24-25 August 2023.

Of note, there is a scheduled Family Day on Friday, 1 September 2023, and Labor Day is on Monday, 4 September 2023. Undersigned counsel then currently has scheduled and approved leave Monday through Thursday, 11-14 September 2023. Undersigned counsel also has two Reply Briefs due to this Court in *United States v. Emerson* (ACM 40297), calculated as being due 20 September 2023, and in *United States v. Dugan* (ACM 40320), calculated as being due 30 September 2023. Additionally, on 27 July 2023, the CAAF granted an issue for review in *United States v. Guihama* (ACM 40039) with a brief, after an extension of time request, due on or before 27 September 2023. Finally, the Reply Brief in *United States v. Flores* (ACM 40294) is due to the CAAF on or before 30 September 2023.

This is undersigned counsel's first priority case before this Court. However, due to an unexpected personal emergency, undersigned counsel is requesting an extension of time for 14 days to allow for the completion of the Assignments of Error, receipt of a declaration on behalf of Appellant, and for the necessary reviews of the Assignments of Error prior to filing.

Appellant was advised of his right to a timely appeal. 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.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time for the submission of an Assignments of Error brief for good cause shown.

Respectfully submitted,



HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division





**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 29 August 2023.

Respectfully submitted,

[Redacted signature]

HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[Redacted contact information]

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

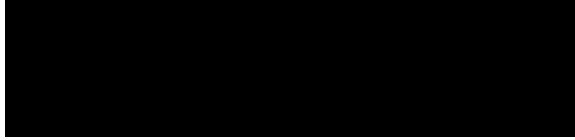
UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	
Air Force Cadet	)	ACM 40324
DEKOTA M. DOUGLAS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 3
	)	

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 404 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 over two-thirds of the 18-month standard for this Court to issue a decision, which only leaves less than 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.

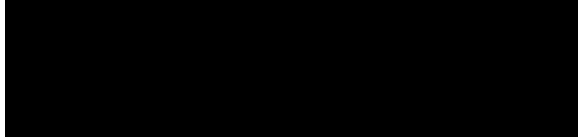


MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 30 August 2023.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>MOTION TO ATTACH</b>
<i>Appellee</i>	)	<b>DOCUMENT</b>
	)	
	)	
v.	)	Before Panel No. 3
	)	
Air Force Cadet	)	No. ACM 40324
<b>DEKOTA M. DOUGLAS</b>	)	
United States Air Force	)	
<i>Appellant</i>	)	13 September 2023

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

Pursuant to Rule 23(b) of this Honorable Court’s Rules of Practice and Procedure, Appellant, Cadet Dekota M. Douglas, hereby moves to attach the following document to the Record of Trial:

1. Declaration of Cadet Dekota M. Douglas, dated 8 September 2023, 2 pages (Appendix)

The attached document is the sworn declaration of Cadet Dekota M. Douglas. He provides this declaration in support of his argument relating to Assignment of Error II. Specifically, Cadet Douglas’s declaration is relevant to this Court’s consideration of Assignment of Error II because Cadet Douglas’s declaration provides additional support for his assertion that he was not timely served with R.H.’s submission of matters. It is also necessary because it provides an essential factual predicate for determining Cadet Douglas did not, in fact, receive the victim matters. Cadet Douglas’s declaration expounds upon the areas of R.H.’s submission of matters that he would have addressed, corrected, or clarified if he had been timely served R.H.’s submission of matters. Cadet Douglas’s areas of rebuttal relating to R.H.’s submission of matters were never presented to the convening authority. Therefore, his declaration is relevant and necessary to this Court’s consideration of whether he has demonstrated “some colorable showing

of possible prejudice” concerning Issue II (R.H.’s submission of matters). *United States v. Scalo*, 60 M.J. 435, 436 (C.A.A.F. 2005).


In *United States v. Jessie*, 79 M.J. 437, 445 (C.A.A.F. 2020), the Court of Appeals for the Armed Forces continued the practice of allowing consideration of matters outside the record to resolve issues reasonably raised by materials in the record but not fully resolvable by those materials. The failure to timely serve Cadet Douglas with R.H.’s submission of matters is reasonably raised by materials in Cadet Douglas’s record, but not fully resolvable from the materials in the record.

**WHEREFORE**, Cadet Douglas respectfully requests this motion be granted.

Respectfully submitted,



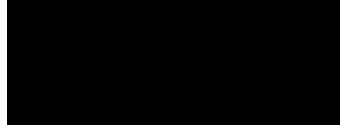
HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 13 September 2023.

Respectfully submitted,



HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



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

UNITED STATES	)	No. ACM 40324
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Dekota M. DOUGLAS	)	
Air Force Cadet	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 3</b>

On 13 September 2023, Appellant submitted a motion to attach the following document(s) to the record: a sworn declaration from Appellant in support of his argument relating to Assignment of Error II, that he was not timely served with RH’s submission of matters. The Government did not respond to the motion.

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

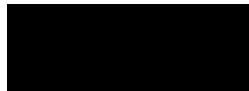
Accordingly, it is by the court on this 22d day of September, 2023,

**ORDERED:**

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



FOR THE COURT



CAROL K. JOYCE  
Clerk of the Court



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

<b>UNITED STATES</b>	)	<b>BRIEF ON BEHALF OF</b>
<i>Appellee</i>	)	<b>APPELLANT</b>
	)	
v.	)	Before Panel No. 3
	)	
Air Force Cadet	)	No. ACM 40324
<b>DEKOTA M. DOUGLAS</b>	)	
United States Air Force	)	13 September 2023
<i>Appellant</i>	)	

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

**Assignments of Error**

**I.**

**WHETHER A DISMISSAL FOR TWO SPECIFICATIONS OF  
NEGLIGENT DERELICTION OF DUTY IS INAPPROPRIATELY  
SEVERE?**

**II.**

**WHETHER CADET DOUGLAS IS ENTITLED TO RELIEF BECAUSE HE  
WAS NOT TIMELY SERVED A COPY OF R.H.'S SUBMISSION OF  
MATTERS, NOR WAS HE PROVIDED AN OPPORTUNITY TO REBUT  
THE MATTERS IN ACCORDANCE WITH RULES FOR COURTS-  
MARTIAL 1106A AND 1109 PRIOR TO THE CONVENING  
AUTHORITY'S DECISION ON ACTION?**

**III.**

**WHETHER CADET DOUGLAS WAS DEPRIVED OF HIS  
CONSTITUTIONAL RIGHT TO A UNANIMOUS VERDICT?**

**Statement of the Case**

On 28 April 2022, at the United States Air Force Academy (USAFA), a panel of officer members sitting as a general court-martial convicted Air Force Cadet (Cadet) Dekota M. Douglas contrary to his pleas, of one specification of negligent dereliction of duty for an unprofessional relationship with R.H. and one specification of negligent dereliction of duty for providing alcohol

to underage R.H., both in violation of Article 92, Uniform Code of Military Justice (UCMJ),<sup>1</sup> 10 U.S.C. § 892. R. at 715. The members found Cadet Douglas not guilty, consistent with his pleas, of two specifications of sexual assault, in violation of Article 120, UCMJ, 10 U.S.C. § 920. *Id.* At all times relevant to the offenses in issue, R.H. was a fourth-degree cadet at the USAFA. Charge Sheet, 30 August 2021. The panel sentenced Cadet Douglas to a reprimand, forfeiture of \$1,185 pay per month for one month, 31 days' confinement, and a dismissal. R. at 774. Cadet Douglas requested deferment of confinement for 30 days on the same day he received his sentence, but the convening authority denied the request. App. Ex. LVI. Cadet Douglas then asked for a reduction in confinement in his clemency request, but the convening authority also denied clemency. Req. for Clemency [Clemency], 1, 3 May 2022; Convening Authority Decision on Action [CADA], 13 May 2022. Ultimately, the convening authority took no action on the findings or sentence. CADA.

### **Statement of Facts**

#### ***1. Cadet Douglas and R.H. were both in JROTC prior to attending the USAFA.***

Cadet Douglas grew up in Texas. R. at 741. His parents worked hard for Cadet Douglas to be the first in the family to attend college. *Id.* Cadet Douglas participated in the Junior Reserve Officer's Training Corps (JROTC) in high school. R. at 742. He was a "consistent top[-]level performer" whose "outstanding character, military bearing and discipline" led to his selection for an elite course three years in a row. Def. Ex. D. Cadet Douglas was "absolutely the top student leader" in the 2017-2018 school year as #1 of 103 cadets and the top graduate of nearly 350 cadets. *Id.* He graduated high school with honors. Def. Ex. F. Cadet Douglas next went to the New Mexico Military Institute for a year of prep school. R. at 742. He then attended the USAFA. *Id.*

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<sup>1</sup> Unless otherwise noted, all references to the UCMJ, the Rules for Courts-Martial (R.C.M.), and the Military Rules of Evidence (Mil. R. Evid.) are to the *Manual for Courts-Martial, United States* (2019 ed.) (*MCM*).

Cadet Douglas was involved in church, bible study, and serving his community. Def. Ex. E. Nine different individuals provided character letters, describing him as an outstanding cadet, respectful, and a hard-working young adult. Def. Ex. D-L.

R.H.'s life-long dream was to get into the USAFA. R. at 360. She worked for it her whole life—it was her dream school. *Id.* In pursuit of this dream, she spent 13 years in the Girl Scouts. *Id.* The first time R.H. tried to get into the USAFA, she received nominations, but not an appointment. *Id.* She was attending Embry-Riddle Aeronautical University at the time she applied to the USAFA and participated in typical college experiences such as drinking alcohol and attending JROTC. R. at 400, 556-57. The second time she applied to the USAFA, she got both nominations and an appointment. R. at 360. Admission felt “incredible,” and like all her dreams had come true. R. at 361. R.H. arrived at the USAFA in June of 2020. *Id.*

***2. Cadet Douglas and R.H. became friends amidst R.H.'s struggles in her first year.***

R.H. met Cadet Douglas, a third-degree, sometime in mid-September when he introduced himself to the fourth-degrees as an upperclassman. R. at 368, 403. They were one year apart. R. at 369. Cadet Douglas was 21 years old at the time. Pros. Ex. 7; Clemency. R.H. spoke to Cadet Douglas about being academically behind due to her emergency leave. *Id.* At the time, R.H. was struggling in several classes. R. at 403. By mid-semester of the fall of 2020, she was facing academic probation. R. at 509. Cadet Douglas offered to help her with Japanese since they were both taking it at the time. R. at 369. R.H. also talked to Cadet Douglas about her two roommates. R. at 369-70. Her two roommates thought R.H.'s emergency leave was a vacation, and they were jealous R.H. saw her family when they did not get to see theirs. R. at 365. R.H.'s two roommates also thought R.H. had faked a concussion and believed R.H. was lying about it to get out of things. R. at 368. R.H. felt bullied by and isolated from her two roommates. R. at 370. R.H. was grateful

for Cadet Douglas because he was someone who would listen to her and provide advice on her problems. *Id.* By October 2020, R.H. and Cadet Douglas were spending time with each other multiple days per week. R. at 371. They communicated in-person, over Microsoft Teams, and over Snapchat. *Id.* R.H. was aware that fourth-degree Cadets were allowed to have third-degree contacts on Snapchat, but determined that having Cadet Douglas on her Snapchat was not an issue.<sup>2</sup> R. at 405. Even more, R.H. was open to drinking alcohol with Cadet Douglas and agreed to do so. R. at 372. At this time, R.H. viewed Cadet Douglas as a friend. R. at 373. She was aware that she could have a relationship with an upperclassman as long as it was professional. R. at 405. R.H. considered Cadet Douglas an important friend—one of her only friends. R. at 392.

***3. After being suspected of underage drinking and having an unprofessional relationship with Cadet Douglas, R.H. alleged Cadet Douglas sexually assaulted her.***

On 16 October 2020, R.H. met up with Cadet Douglas to drink alcohol at the academic building at Fairchild Hall. R. at 373. They did not meet at their squadron, because they were worried other people would see them together. *Id.* R.H. and Cadet Douglas first met in one of the classrooms, but decided to go to the woods because they were concerned about the officer of the day seeing them. R. at 374. They began relocating to the woods after taps at around 2200. R. at 409. R.H. and Cadet Douglas walked up a mountain trail for about a mile and a half. R. at 374. Prior to this occasion, Cadet Douglas previously asked R.H. what she wanted to drink, to which she responded Mike’s Hard Lemonade. R. at 410-411. Cadet Douglas brought R.H. a pint of peach vodka and apple whiskey for himself. R. at 375. R.H. told her sister that she drank half the

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<sup>2</sup> Having someone as a contact on Snapchat allows both individuals to message each other and send “snaps” or photos, messages, videos, etc.

pint of vodka but told the members that she drank the entire pint. R. at 412, 457. R.H. got back to her room around 0300 the next morning. R. at 415.

When another fourth-degree cadet asked R.H. about drinking with an upperclassman, R.H. denied drinking with Cadet Douglas. R. at 388-90. At a later time, R.H.'s leadership heard about allegations of an unprofessional relationship between Cadet Douglas and R.H. and pulled her in to ask her about it. R. at 390-91. In that meeting, R.H. admitted Cadet Douglas gave her alcohol and that they had "sexual relations." *Id.* Her leadership pulled her in a second time to ask her about the relationship. R. at 391. The second time, R.H. alluded to a sexual assault. *Id.*

***4. Cadet Douglas was then investigated for and charged with sexually assaulting R.H.***

As a result of the second meeting with her leadership, a sexual assault investigation was opened against Cadet Douglas. R. at 511. During this time, and at no other point, did R.H. receive any disciplinary action for underage drinking or participating in an unprofessional relationship with Cadet Douglas. *Id.* R.H. was later disenrolled from the USAFA for academic, not disciplinary, reasons. R. at 511. In stark contrast, two specifications of negligent dereliction of duty with R.H. and two specifications of sexually assaulting R.H. were preferred against Cadet Douglas. Charge Sheet, 30 August 2021.

***5. During R.H.'s testimony at trial, the members asked her multiple questions about the details of her drinking.***

R.H. testified that prior attending the USAFA, she had never consumed hard liquor and claimed the entire extent of her alcohol experience was a single sip of her mother's piña colada. R. at 411. When a panel member asked why R.H. asked for Mike's Hard Lemonade, in response to Cadet Douglas's question about her alcohol preference, she responded it seemed like something fruity and not hard liquor. *Id.* When another member further inquired how R.H. knew about Mike's Hard Lemonade, and R.H. testified that she had seen someone drink it in the past. *Id.*;

App. Ex. XXII. When a panel member asked R.H. why she drank peach vodka, a hard liquor, when she had asked for Mike's Hard Lemonade, she responded that "the whole point was to drink, so [she] drank." R. at 444; App. Ex. XXIV.

**6. *The members acquitted Cadet Douglas of the sexually assaulting R.H.***

The members acquitted Cadet Douglas of the two sexual assault allegations. R. at 715. However, they convicted him of two specifications of negligent dereliction of duty for having an unprofessional relationship with R.H. and providing her alcohol while she was underage. *Id.*

**7. *During pre-sentencing, the military judge instructed the members on the meaning of a dismissal.***

The military judge instructed the members that a dismissal of a cadet is equivalent to a dishonorable discharge for an enlisted member. R. at 749. A dismissal may deprive the member of all Veterans' Affairs benefits. *Id.* He instructed that a dismissal "should be reserved for those who in the opinion of the court should be separated under conditions of dishonor after conviction of serious offenses of a civil or military nature warranting such severe punishment." *Id.* During sentencing deliberations, one member asked a question causing the military judge to reopen the court-martial. R. at 768-70. Specifically, the member asked, "[i]f the defendant were sentence[d] to confinement, what would be the discharge characterization?" R. at 768, 770; App. Ex. LV. The military judge instructed the members that a discharge does not necessarily occur after being sentenced to confinement and explained that the only discharge option for a cadet or officer in a court-martial is a dismissal. R. at 770. He went on to say "if dismissal is not adjudged, then whether Cadet Douglas were administratively separated, or whatever, would be up to his chain-of-command, and wouldn't be [a] decision for the – the court-martial to – to weigh in on." *Id.*

**8. *The members sentenced Cadet Douglas to a dismissal.***

Subsequently, the members sentenced Cadet Douglas to a reprimand, forfeiture of \$1,185 pay per month for one month, 31 days' confinement, and a dismissal. R. at 774. Cadet Douglas requested deferment of confinement for 30 days on the same day he received his sentence, but the convening authority denied the request. App. Ex. LVI.

**9. *During clemency, R.H.'s submission of matters were not served on Cadet Douglas.***

While both the Government and the Defense agreed at trial that R.H. was not a victim of the Article 92, UCMJ, offenses, the military judge disagreed. R. at 729-30, 737. As such, the Government notified R.H. that she had the right to submit matters for the convening authority's consideration under Article 6b, UCMJ, and R.C.M. 1106A prior to his decision on action, if any, on 29 April 2022. Submission of Matters [R.H. Submission], 1, 29 April 2022. While R.H. did not submit a victim impact statement during pre-sentencing, she did submit matters for consideration by the convening authority on 9 May 2022. R.H. Submission at 3. Four days later, the convening authority signed the decision on action memorandum stating he considered matters timely submitted by Cadet Douglas and R.H. CADA. Cadet Douglas was not served with R.H.'s submission of matters. Motion to Attach, Appendix [Appendix], 8 September 2023.

**10. *Cadet Douglas would have asked the convening authority not to consider R.H. a victim under R.C.M. 1106A or Article 6b, UCMJ, and, in the alternative, rebutted R.H.'s submission of matters if given the opportunity.***

In her submission of matters to the convening authority, R.H. stated she was extremely relieved that Cadet Douglas was dismissed from the Air Force and that he "will never be allowed to serve as either an officer or enlisted member." R.H. Submission at 3. R.H. characterized Cadet Douglas's convicted offenses as "not a one-time mistake, but the result of separate and deliberate and intentional decisions" on his part. *Id.* R.H. claimed that:

Based on [Cadet Douglas's] utter lack of integrity alone, by *tricking* me into a friendship, that he knew was unprofessional and taking me to a remote area of the woods outside the cadet area where he *coerced* me into drinking an entire pint of hard liquor, he demonstrated to the members that he is not fit to serve.

*Id.* (emphasis added). The focus of R.H.'s matters was Cadet Douglas's dismissal and how others in the military service would view Cadet Douglas's "egregious misconduct." *Id.*

Had Cadet Douglas received a copy of R.H.'s submission of matters, he would have asked the convening authority not to consider R.H. as a victim under R.C.M. 1106A or Article 6b, UCMJ. Appendix at 1. In the alternative, Cadet Douglas would have rebutted her comments. Appendix. Cadet Douglas would have offered counter evidence to several comments made by R.H. *Id.* R.H. previously and repeatedly engaged in actions amounting to an unprofessional relationship with Cadet Douglas and was evasive and misleading when questioned about it by leadership or others. App. Ex. VIII. They watched a movie together with other cadets. R. at 406. Another cadet saw the two of them in the stairwell talking at 0300 or 0400. R. at 406, 575-76. However, R.H. stated at trial that it was not deliberate and they would have only been passing by each other. R. at 406. When asked again, R.H. admitted that maybe they were standing having a conversation. R. at 407. R.H. and Cadet Douglas were also out on the quad after a football game talking just the two of them. R. at 407, 574-75. Nevertheless, when asked about it, R.H. stated it also was not deliberate. R. at 407. After being pressed, R.H. admitted that she did not want to be seen walking alone with Cadet Douglas after 2100 when it was dark. R. at 409. Cadets like R.H. receive multiple briefings on the rules that govern cadet conduct, to include professional relationships. R. at 518. The briefings included the fact that it was unprofessional for a third-degree to be friends with a fourth-degree on social media. *Id.*

Additionally, R.H. previously consumed alcohol on multiple occasions prior to drinking with Cadet Douglas. App. Ex. VIII. R.H. testified she never drank alcohol, other than a sip of her



mother's pina colada, before attending the USAFA and that she had not told another cadet she got "really intoxicated" or went out drinking in college. R. at 411. However, R.H. did tell one of her roommates that she had gotten drunk before in college. R. at 557. R.H. told another roommate that she had gone out drinking while on emergency leave. R. at 588. Of note, several members indicated R.H. has a character for untruthfulness. R. at 513, 560, 576, 586.

## **Argument**

### **I.**

#### **A DISMISSAL FOR TWO SPECIFICATIONS OF NEGLIGENT DERELICTION OF DUTY IS INAPPROPRIATELY SEVERE.**

##### *Standard of Review*

Sentence appropriateness is reviewed *de novo*. See *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).

##### *Law and Analysis*

Under Article 66(d), UCMJ, this Court may only approve "the sentence or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved." Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1). Based on the entire record, the sentence to a dismissal in this case should not be approved. "It follows that a sentence should be approved only to the extent it is found appropriate based on a CCA's review of the entire record." *United States v. Varone*, No. ACM S32685, 2022 CCA LEXIS 426, at \*7 (A.F. Ct. Crim. App. 21 Jul. 2022) (unpub. op). Cadet Douglas's convictions of two negligent dereliction of duty offenses does not warrant the equivalent of a dishonorable discharge for an enlisted member. R. at 749. A dismissal carries with it a life-long stigma recognized by society that affects his legal rights, economic opportunities, and social acceptability. R. at 749. Cadet Douglas's separation under conditions of dishonor for negligent dereliction of duty is not

appropriate. They are not serious offenses. They do not warrant “*severe punishment.*” *Id.* (emphasis added).

This Court considers the nature and seriousness of the offenses when assessing sentence appropriateness. *United States v. Sauk*, 74 M.J. 594, 606 (A.F. Ct. Crim. App. 2015) (*en banc*) (alteration in original) (citation omitted). Here, Cadet Douglas befriended a lower classmate who was struggling with her academics and with her roommates bullying her. R.H. encouraged and welcomed the friendship. This provides matters in extenuation (R.C.M. 1001(d)(1)(A)) to explain the circumstances surrounding the negligent dereliction of duty and provides context affecting the nature and seriousness of the offense. R.H. was not “tricked” into her friendship with Cadet Douglas. *See* Issue II *infra*. They both knew the rules about relationships between different year groups at the USAFA. They both chose to add each other as contacts on Snapchat. They both chose to meet up to drink alcohol. They both chose to walk into the woods to avoid others seeing them together. R.H. chose to drink the peach vodka. She admitted to her roommates that she previously drank in college and previously agreed to drink with Cadet Douglas, meaning his actions were not the lone impetus for her misconduct. He was clearly not the only cause of her drinking, which illustrates these were not serious offenses. Further, Cadet Douglas’s conviction was for negligent—not willful—dereliction of duty. The circumstances surrounding these offenses are those of two young cadets spending time together. While not a strictly professional relationship, these were not the type of circumstances warranting a dismissal.

This Court also considers the particular appellant and all matters contained in the record of trial. *Sauk*, 74 M.J. at 606. This particular appellant was a 23-year-old young man who grew up with two siblings in Texas. Clemency; R. at 741. He was the first in the family to attend college thanks to the hard work of his parents. *Id.* Cadet Douglas carried on the work-ethic his parents

modeled for him. Cadet Douglas participated in JROTC in high school, served as the corps commander, and graduated with honors. R. at 742; Def. Ex. F. While in JROTC, he was the top student leader in 2017-2018, #1 of 103 cadets, and the top graduate of nearly 350 cadets. Def. Ex. D. Cadet Douglas went to the New Mexico Military Institute for a year of prep school and then attended the USAFA. *Id.* Cadet Douglas was involved in church, bible study, and serving his community. Def. Ex. E. Nine different individuals vouched for his character, describing him as an outstanding cadet, respectful, and a hard-working young adult. Def. Ex. D-L. Based on this particular appellant and the entire record, a dismissal is not appropriate.

The maximum punishment for negligent dereliction of duty is forfeiture of two-thirds pay per month for three months and confinement for three months. *MCM*, pt. IV-28, ¶ 18d(3)(A). Regardless of the maximum punishment specified for an offense, a dismissal may be adjudged by a general court-martial for any offense of which a cadet has been found guilty. R.C.M. 1003(b)(8)(A). Considering all matters contained in the record, a dismissal for two specifications of negligent dereliction of duty—an offense for which an enlisted member could not receive a punitive discharge—is inappropriately severe. *MCM*, pt. IV-28, ¶ 18d(3)(A). The last question the members asked was specific to what kind of characterization Cadet Douglas would get with confinement. R. at 770. The military judge informed the members that the only discharge they could adjudge was a dismissal and not adjudging it left the decision up to the command. *Id.* The members—after 32 questions—still harbored doubts about the appropriateness of a dismissal. Cadet Douglas is not asking for mercy, which is within the purview of the convening authority, but he is asking this Court to do justice. *See United States v. Nerad*, 69 M.J. 138, 146 (C.A.A.F. 2010) (quotations and citations omitted).

**WHEREFORE**, Cadet Douglas respectfully requests that this Honorable Court set aside

the sentence to a dismissal.

## II.

**CADET DOUGLAS IS ENTITLED TO RELIEF BECAUSE HE WAS NOT TIMELY SERVED A COPY OF R.H.'S SUBMISSION OF MATTERS, NOR WAS HE PROVIDED AN OPPORTUNITY TO REBUT THE MATTERS IN ACCORDANCE WITH RULE FOR COURTS-MARTIAL 1106A PRIOR TO THE CONVENING AUTHORITY'S DECISION ON ACTION.**

### *Standard of Review*

The standard of review for determining whether post-trial processing was properly completed is *de novo*. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citing *United States v. Kho*, 54 M.J. 63 (C.A.A.F. 2000)). When reviewing post-trial errors, this Court will grant relief if an appellant presents “some colorable showing of possible prejudice.” *United States v. LeBlanc*, 74 M.J. 650, 660 (A.F. Ct. Crim. App. 2015) (quoting *United States v. Scalo*, 60 M.J. 435, 436 (C.A.A.F. 2005)).

### *Law and Analysis*

#### ***1. Cadet Douglas did not have an opportunity to rebut R.H.'s submission of matters.***

Any crime victim of an offense may submit matters for consideration by the convening authority. R.C.M. 1106A(a). “The convening authority shall ensure any matters submitted by a crime victim under this subsection be provided to the accused as soon as practicable.” R.C.M. 1106A(c)(3). Contrary to R.C.M. 1106A(c)(3), the convening authority did not ensure R.H.'s submission of matters was served on Cadet Douglas. There is no receipt in the record of trial indicating that it was, and Cadet Douglas personally attests that it was not. Appendix at 1. After receipt of matters submitted by a crime victim, the accused “shall have five days from receipt of those matters to submit any matters in rebuttal.” R.C.M. 1106(d)(3). However, the failure to serve R.H.'s submission of matters on Cadet Douglas means he did not have the mandatory five days to

submit matters in rebuttal to her submission. In fact, the convening authority signed the decision on action memorandum only four days after R.H. submitted her matters. R.H. Submission at 2; CADA.

Had Cadet Douglas been served the matters, he would have, as an initial matter, asked the convening authority not to consider R.H. a victim under R.C.M. 1106A or Article 6b, UCMJ. Appendix at 1. This is a point upon which both the Government and Defense agreed in the court-martial. R. at 729-30. Though, even if the convening authority did not find R.H. was a crime victim under the rules, he could have still considered other matters he deemed appropriate. R.C.M. 1109(d)(3)(B)(iv). Regardless, the convening authority may not consider matters adverse to the accused without first notifying and providing an opportunity to rebut. R.C.M. 1109(d)(3)(C)(i). Therefore, even if the convening authority would have found R.H. was not a crime victim under the rules, and yet considered her submission under R.C.M. 1109(d)(3)(B)(iv), he may not have considered the matters adverse to Cadet Douglas without first notifying him and giving him an opportunity to rebut the other matters.

***2. This Court has recently held remand to the Air Force Trial Judiciary is appropriate when an appellant is not provided an opportunity to rebut matters.***

In two recent cases where a convening authority did not ensure the appellant was provided an opportunity to rebut the victim's submission of matters prior to making a decision on action, this Court found error. *United States v. Haynes*, No. ACM 40306, 2023 CCA LEXIS 361, at \*2 (A.F. Ct. Crim. App. 30 August 2023) (unpub. op.) (finding remand to the Air Force Trial Judiciary is appropriate when the convening authority erred by not giving appellant the opportunity to rebut two victims' submission of matters prior to deciding what action, if any, to take); *United States v. Arroyo*, No. ACM 40321, 2023 CCA LEXIS 358, at \*2 (A.F. Ct. Crim. App. 25 August 2023) (unpub. op.) (finding the appellant was entitled to relief because she was not served with the

victim's submission of matters and, therefore, not given an opportunity to rebut those matters before the convening authority made his decision on action). This Court should find the same in this case and remand this case to the Air Force Trial Judiciary in order to provide Cadet Douglas an opportunity to rebut R.H.'s matters.

**3. R.H.'s submission included new adverse information against Cadet Douglas.**

R.H. focused first on her extreme relief that Cadet Douglas was dismissed from the Air Force and “will never be allowed to serve as either an officer or enlisted member.” R.H. Submission at 3. R.H. had not previously expressed her desire that Cadet Douglas be dismissed, as she did not provide an unsworn statement at trial, but she did not stop there. She opined that, given the dismissal, the members viewed Cadet Douglas's conduct as “egregious.” *Id.* Despite Cadet Douglas being convicted of *negligent* dereliction of duty, R.H. characterized the offenses as “the result of separate and deliberate and intentional decisions” on his part—a discrepancy Cadet Douglas would have countered had he been given the chance. *Id.* The most prejudicial statements R.H. made was that Cadet Douglas “tricked” her in an unprofessional friendship, took her into a remote area of the woods, and “coerced” her into drinking an entire pint of hard liquor. R.H. Submission at 3.

**4. Cadet Douglas would have submitted a rebuttal statement to deny, counter or explain R.H.'s submission had he been given the chance.**

Not only was Cadet Douglas's clemency request for a reduction in confinement denied, but Cadet Douglas would have also submitted a statement to rebut R.H.'s submission. Clemency; CADA. R.H. described Cadet Douglas as tricking her into an unprofessional relationship and coercing her into drinking a pint of liquor. R.H. Submission at 3. Though, in court R.H. described Cadet Douglas as an important friend. R. at 392. She confided in him about her problems. R. at 369-70. She chose to accept him as a contact on Snapchat. R. at 371, 404-05. R.H. admitted she

met up with Cadet Douglas to drink. R. at 373. Cadet Douglas did not drag, trick, or coerce her into meeting with him. He did ask her what kind of alcohol she would like. R. at 410. They met at Fairchild Hall and then decided not to drink in the classroom in case an officer of the day was around. R. at 373. They then agreed to go into the woods together. R. at 373-74. She walked—was not dragged or carried—up the mile and a half mountain trail to get to where they would stop in the woods. R. at 374. She then chose to drink a pint of peach vodka even though she allegedly told Cadet Douglas she wanted Mike’s Hard Lemonade (R. at 411), regardless of the fact that it was hard liquor. R. at 457. Why? “Cause the whole point was to drink, so [she] drank.” R. at 444. This, of course, was not the first time R.H. lied and mischaracterized her voluntary drinking experience. R.H. testified she never drank in college before attending the USAFA, but she told both of her roommates that she drank to the point of intoxication. R. at 411, 557, 588. Cadet Douglas would have highlighted all these discrepancies to counter R.H.’s submission. This alone demonstrates “prejudice by stating what, if anything, would have been submitted to ‘deny, counter or explain’ the new matter.” *United States v. Chatman*, 46 M.J. 321, 323 (C.A.A.F. 1997). The threshold is low and Cadet Douglas has made a colorable showing of prejudice. *Id.* at 323-34 (“[T]he threshold should be low, and if an appellant makes some colorable showing of possible prejudice, we will give that appellant the benefit of the doubt and ‘we will not speculate on what the convening authority might have done’ if defense counsel had been given an opportunity to comment.”) (quoting *United States v. Jones*, 44 M.J. 242, 244 (C.A.A.F. 1996))).

Cadet Douglas would have also pointed out that R.H. previously and repeatedly engaged in actions amounting to an unprofessional relationship with him and, when questioned about it, was evasive and misleading. Appendix at 1. This was not a friendship she was “tricked” into. They watched a movie together, talked alone in a stairwell in the early morning hours, and talked

alone after a football game, to name a few instances which highlight the reciprocal nature of their friendship. R. at 406-07, 575-76. While R.H. tried to minimize her interactions with Cadet Douglas, she did admit after being pressed that she did not want to be seen walking alone with him after 2100. R. at 409. She received multiple briefings on the rules that govern cadet conduct, to include professional relationships, and knew she was not supposed to have third-degrees as contacts on social media. R. at 518. Cadet Douglas did not trick her into a friendship. She considered him one of her only friends and relied on him when dealing with her academic and roommate struggles. R. at 369-70, 392, 403. Since Cadet Douglas has made a colorable showing, this Court must either provide meaningful relief or return the case to the Judge Advocate General for new post-trial action. *United States v. Wheelus*, 49 M.J. 283, 289 (C.A.A.F. 1998).

**WHEREFORE**, Cadet Douglas respectfully requests this Honorable Court remand the case to provide Cadet Douglas an opportunity to rebut R.H.'s submission of matters.

### **III.**

#### **CADET DOUGLAS WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHT TO A UNANIMOUS GUILTY VERDICT.**

##### *Additional Facts*

Cadet Douglas filed a motion requesting the military judge honor his right to a unanimous verdict. App. Ex. II. The military judge denied the motion. App. Ex. IV. In providing Cadet Douglas forum advice, the military judge advised Cadet Douglas that he could be convicted if three-fourths of the members concurred as to guilt. R. at 11. Later, the members received the same instruction. R. at 696. Throughout the findings portion and prior to reading the verdict, the members had 30 questions. App. Ex. XV-XVIII, XX-XLIII, XLVIII, XLIX. The members returned a finding of guilty to Charge I and its Specifications, but a finding of not guilty to Charge II and its Specifications. R. at 645.



*Standard of Review*

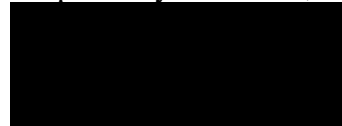
“The constitutionality of a statute is a question of law; therefore, the standard of review is *de novo*.” *United States v. Wright*, 53 M.J. 476, 478 (C.A.A.F. 2000).

*Law and Analysis*

The United States Court of Appeals for the Armed Forces decided in *United States v. Anderson* that a military accused does not “have a right to a unanimous guilty verdict under the Sixth Amendment, the Fifth Amendment Due Process Clause, or the Fifth Amendment component of equal protection.” \_\_\_ M.J. \_\_\_, No. 22-0193, 2023 CAAF LEXIS 439, at \*1 (C.A.A.F. 29 June 2023). Since this decision, sixteen appellants filed a consolidated petition for writ of certiorari with the Supreme Court of the United States on 8 September 2023. *See United States v. Martinez*, No. 22-0165, 2023 CAAF LEXIS 494 (C.A.A.F. 2023) (affirming this Court’s decision pursuant to *Anderson*). Despite this decision, the litigation of this issue has not concluded, Cadet Douglas respectfully contends he was deprived of his constitutional right to a unanimous verdict.

**WHEREFORE**, Cadet Douglas requests this Honorable Court set aside and dismiss the finding of guilt for Charge I and its Specifications and the sentence.

Respectfully submitted,



HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 13 September 2023.

Respectfully submitted,



HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force



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

<b>UNITED STATES,</b> <i>Appellee,</i>	)	<b>UNITED STATES’ MOTION FOR ENLARGEMENT OF TIME (FIRST)</b>
	)	
v.	)	Before Panel No. 3
	)	
Air Force Cadet	)	No. ACM 40324
<b>DEKOTA M. DOUGLAS</b>	)	
United States Air Force	)	5 October 2023
<i>Appellant.</i>	)	

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

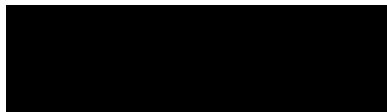
Pursuant to Rule 23.3(m)(5), the United States respectfully requests a 7-day enlargement of time, to respond in the above captioned case. This case was docketed with the Court on 12 August 2022. Since docketing, Appellant has been granted eleven enlargements of time. Appellant filed his brief with this Court on 13 September July 2023. This is the United States’ first request for an enlargement of time. As of the date of this request, 420 days have elapsed since docketing. The United States’ response in this case is currently due on 13 October 2023. If the enlargement of time is granted the United States’ response will be due on 20 October 2023, and 435 days will have elapsed since docketing.

There is good cause for the enlargement of time in this case. On 20 September 2023 undersigned counsel was assigned to this case. Undersigned counsel is currently assigned to a case before the Court of Appeals for the Armed Forces (CAAF). In the past thirty days undersigned counsel was on use or lose leave for two weeks, filed a 29-page four issue Answer to Assignment of Errors in United States v. Emerson (ACM 40297), an 8-page response to a Motion for Appellate Discovery in United States v. Taylor Jr. (ACM 40371), two government

motions in United States v. Maymi (ACM 40332) and Emerson, a 30-page amended brief in Maymi, and a 6-page response to a Show Cause order in Emerson. Counsel's brief is due to CAAF on 10 October 2023. The trial transcript in this case is 777 pages and the record of trial comprised of five volumes containing 11 prosecution exhibits, 13 defense exhibits, and 56 appellate exhibits. Appellant has raised three assignments of error in an 18-page brief.

An extension of time is necessary to allow undersigned counsel adequate time to complete work on the CAAF brief, United States v. Palik, and then to prepare an adequate response for the above-styled case. In the time undersigned counsel has been assigned to this case, counsel has investigated Appellant's claims, obtained evidence, reviewed 300 pages of the trial transcript and totality of the other ROT items. Undersigned counsel has also begun drafting the brief and has completed one issue, but two issues remain. This case is undersigned counsel's second priority after the CAAF brief. Of note, there is a scheduled Family Day on Friday, 1 September 2023, and Labor Day is on Monday, 4 September 2023. There is no other appellate government counsel who would be able to file a brief sooner because they are also assigned briefs with similar due dates to this case.

**WHEREFORE**, the United States respectfully requests this Honorable Court grant this motion for an enlargement of time.



TYLER L. WASHBURN, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force





MARY ELLEN PAYNE

Associate Chief

Government Trial and Appellate Operations Division

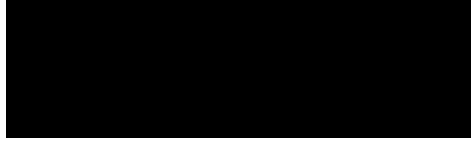
Military Justice and Discipline Directorate

United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force  
Appellate Defense Division on 5 October 2023.



TYLER L. WASHBURN, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



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

UNITED STATES,	)	UNITED STATES' ANSWER
<i>Appellee,</i>	)	TO ASSIGNMENTS OF ERROR
	)	
v.	)	No. ACM 40324
	)	
Air Force Cadet	)	Panel No. 3
<b>DEKOTA M. DOUGLAS, USAF,</b>	)	
<i>Appellant.</i>	)	

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

**ISSUES PRESENTED**

**I.**

**WHETHER A DISMISSAL FOR TWO SPECIFICATIONS  
OF NEGLIGENT DERELICTION OF DUTY IS  
APPROPRIATELY SEVERE?**

**II.**

**WHETHER CADET DOUGLAS IS ENTITLED TO RELIEF  
BECAUSE HE WAS NOT TIMELY SERVED A COPY OF  
R.H.'S SUBMISSION OF MATTERS, NOR WAS HE  
PROVIDED AN OPPORTUNITY TO REBUT THE  
MATTERS IN ACCORDANCE WITH RULES FOR  
COURTS-MARTIAL 1106A AND 1109 PRIOR TO THE  
CONVENING AUTHORITY'S DECISION ON ACTION?**

**III.**

**WHETHER CADET DOUGLAS WAS DEPRIVED OF HIS  
CONSTITUTIONAL RIGHT TO A UNANIMOUS VERDICT?**

**STATEMENT OF THE CASE**

Appellant's statement of the case is accepted.

## STATEMENT OF FACTS

R.H. arrived at the Air Force Academy on 25 June 2020. (R. at 361). Attending the Air Force Academy had been a lifelong dream of hers, and she had devoted a significant amount of effort to gaining admission. (R. at 360-361). Shortly after beginning basic cadet training, RH was placed into isolation due to COVID-19 concerns. (R. at 361-362). RH remained in quarantine for three and a half weeks. (R. at 363). Approximately a month after her release from quarantine, the academic year at the Academy began. (Id.) A month after the academic year started, RH took emergency leave after a friend and mentor from her home in Florida shot himself. (R. at 364-365). While she was home on emergency leave, her father required quadruple bypass surgery. (R. at 364).

After her return from emergency leave, Appellant approached RH in a study room and asked where she had been. (R. at 369-370). RH explained her personal situation and expressed that it had caused her to fall behind academically. (R. at 369). Appellant offered to help RH with Japanese, as they were both in the same class. (Id.) RH previously met Appellant when he introduced himself to her squad as an upper classman. (R. at 368). RH confided in Appellant that she had been experiencing conflict with her roommates, and she felt isolated from them. (R. at 370). RH was a fourth-degree cadet, and Appellant was a third-degree cadet. (R. at 369-370). Fourth-degree and third-degree cadets are required to constrain their interactions to those of a professional relationship. (R. at 405). Cadets at the Air Force Academy received multiple briefings on the rules pertaining to professional relationships. (R. 518). Fourth-degree cadets are essentially in a protected status, and while they are trained regarding unprofessional relationships, the responsibility for engaging in one ultimately falls on the higher ranking member. (R. at 520-521).



RH and Appellant struck up a friendship and around October 2020, they began to spend time together two times a week. (R. at 371). Appellant and RH usually talked about issues she was having within her squad and with her two roommates. (R. 370-371). Appellant requested RH's SnapChat name and added her as a contact, so they could "talk whenever." (R. at 371). It was against Academy rules for a third-degree and a fourth-degree cadet to connect on SnapChat. (R. at 405, 518). Appellant then offered to go to an off-base hotel with RH to drink. (Id.) RH was not comfortable being alone in a hotel room with Appellant so she declined. (Id.) However, RH and Appellant ultimately agreed to meet on Academy grounds to drink. (R. at 372-373).

On 16 October 2020, Appellant and RH met near the academic building sometime after 11 P.M. (R. at 373, 409). Appellant and RH went into the woods to avoid being seen by the officer of the day. (R. at 373). Appellant led RH to a spot in the woods he claimed he had been to before to drink. (R. at 374). Appellant had asked RH what type of alcohol she wanted to drink, and she requested Mike's Hard Lemonade. (R. at 410-411). Despite RH's request, Appellant brought peach vodka and apple whiskey. (R. at 375). Although RH was only 19 years old, Appellant gave RH the pint of peach vodka to drink. (R. at 375, 516). RH began drinking slowly, but at Appellant's cajoling, began to drink faster. (R. at 375). As the effects of the alcohol set in, RH laid down on a blanket the Appellant had brought with them. (R. at 375-376). After RH laid down, Appellant removed her clothes, digitally penetrated RH, which ultimately culminated in sexual intercourse. (R. at 378-379). After he finished, Appellant encouraged RH to throw up due to her intoxication level, prior to returning to their dormitories, which she did. (R. at 380). When they arrived at their dormitories, RH was intoxicated to the point Appellant had to swipe his CAC card to let her in. (R. at 382-383).

Roughly a week later, Appellant invited RH to watch a movie and have Chik-Fil-A in the academic building. (R. at 384). While they watched the movie, Appellant put his hand on RH's thigh and tried to tickle her. (Id.) Appellant's behavior made RH feel uncomfortable and she made an excuse and left. (Id.)

After these incidents another cadet reported the potential unprofessional relationship between RH and Appellant. (R. at 516). This report resulted in leadership opening an investigation that ultimately led to Appellant's court-martial. (R. 510).

Appellant was convicted of two specifications of dereliction of duty in violation of Article 92, UCMJ. (Entry of Judgment (EOJ), ROT, Vol. 1.) Appellant was acquitted of two specifications of sexual assault, in violation of Article 120, UCMJ. Specifically, Appellant was convicted of one specification of providing alcohol to a minor and one specification of engaging in an unprofessional relationship. (Id.)

## **ARGUMENT**

### **I.**

#### **A DISMISSAL FOR ENGAGING IN AN UNPROFESSIONAL RELATIONSHIP AND PROVIDING ALCOHOL TO A MINOR WAS APPROPRIATE.**

##### *Additional Facts*

The maximum punishment for negligent dereliction of duty is forfeiture of two-thirds pay per month for three months and confinement for three months. MCM, pt.IV-28, ¶ 18d(3)(A). A dismissal may be adjudged by a general court-martial for any offense of which a cadet has been found guilty. R.C.M. 1003(b)(8)(A).

Appellant was advised of his forum rights by the military judge and elected trial and sentencing by members. (R. at 10-12, 718-719.) The member's sentenced Appellant to a

reprimand, forfeiture of \$1,185 of his pay for one month, confinement for 31 days, and a dismissal. (R. at 774). The convening authority took no action on Appellant’s sentence. (ROT Vol. 1, *Convening Authority Decision on Action Memo*, 13 May 2022).

During the sentencing phase of trial, Appellant provided twelve exhibits consisting of an exhibit index, a written unsworn statement, nine character letters, and a picture collage. (Def. Ex. B-M).

Prior to his court-martial, Appellant was disciplined twice for alcohol related offenses. (Pros. Ex. 8-11.) On 31 August 2020, Appellant received his first disciplinary action for entering Haps Place, an establishment that serves alcohol, when he was not authorized to do so. (Pros. Ex. 8-9.) Appellant claimed to be ignorant of the fact that he was not permitted to frequent Haps Place. (Pros. Ex. 9.) Appellant had also missed a CQ shift due to being preoccupied with “stressful home circumstances.” (Id.) For his misconduct, Appellant received 70 demerits. (Id.)

On 31 October 2020, Appellant consumed alcohol to excess at Haps Place, which he was still not permitted to enter. (Pros. Ex. 8.) Appellant had to be carried back to his room and could not function without the help of other cadets. (Id.) For this misconduct, Appellant received 90 demerits, 70 tours<sup>1</sup>, loss of pass privileges for 6 months, was placed on conduct and aptitude probation, was referred to ADAPT, and had mandatory monthly counseling. (Id.)

### ***Standard of Review***

This Court reviews sentence appropriateness de novo. United States v. Lane, 64 M.J. 1, 2 (C.A.A.F. 2006). The Court may only affirm the sentence if it finds the sentence to be “correct in law and fact and determines, on the basis of the entire record, [it] should be approved.” Article 66(d)(1), UCMJ.

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<sup>1</sup> A “tour” is a marching punishment imposed on Air Force Academy cadets for disciplinary punishments. Traditionally, a tour consists of one hour of marching.

### *Law*

Sentence appropriateness is assessed “by considering the particular appellant, the nature and seriousness of the offense, the appellant’s record of service, and all matters contained in the record of trial.” United States v. Anderson, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009).

Although this Court has great discretion to determine whether a sentence is appropriate, the Court has no authority to grant mercy. United States v. Nerad, 69 M.J. 138, 146 (C.A.A.F. 2010) (citation omitted). Unlike the act of bestowing mercy through clemency, which was delegated to other channels by Congress, CCAs are entrusted with the task of determining sentence appropriateness, thereby ensuring the accused gets the punishment he deserves. United States v. Healy, 26 M.J. 394, 395-96 (C.M.A. 1988).

### *Analysis*

Appellant’s sentence should be affirmed as entered on the Entry of Judgment, dated 18 May 2022, because Appellant received the punishment he deserved. This Court should find the reasons Appellant advanced as to why his sentence is inappropriately severe unpersuasive, distinctly and in the aggregate. Appellant advanced two reasons why he should receive leniency: (1) the circumstances of the offenses were not serious enough to warrant dismissal; and (2) Appellant’s mitigation evidence and record demonstrate dismissal was not appropriate. (App. Br. at 10-11.)

Appellant’s claims that his misconduct was not serious in nature do not appropriately consider the weight and impact of his actions. Appellant was a cadet preparing to serve as an officer in the United States Air Force. Officers are expected to exemplify the core values of the force, set and enforce standards, administer discipline to those who fail to live up to standards, and are often entrusted with leading subordinate members over whom they hold a position of

authority. Serving as an officer in the United States Air Force is a responsibility and a privilege. Appellant failed to live up to the standards expected, demonstrated he was not receptive to corrective actions, and failed to be a proper mentor and leader to a lower ranking member.

Appellant participated in JROTC in high school, served as the corps commander, and graduated with honors. (R. at 742; Def. Ex. F.) While in JROTC, he was the top student leader in 2017-2018. (Def. Ex. D.) He knew the expectations, understood the military environment, and should have known better than to engage in the misconduct for which he was convicted. As a cadet, Appellant was briefed on unprofessional relationships multiple times. Yet, when the opportunity presented itself, Appellant failed to follow the expectations set before him.

Appellant met RH at a time when she was struggling to adjust to the rigors of the United States Air Force Academy, she was experiencing significant family stressors, and was struggling to fit in with her roommates. When RH expressed that she was struggling academically due to missing time for emergency leave, Appellant seized the opportunity to ingratiate himself to RH and offered to help her with Japanese. But rather than tutor her or provide her guidance to enable her success at the Academy, Appellant became her confidante. This was the beginning of the unprofessional relationship. Appellant sought out RH's SnapChat contact information and added her on SnapChat so they could be in constant communication, despite the fact third-degree and fourth-degree cadets are not permitted to connect through social media. Then, Appellant again escalated the unprofessional nature of their relationship when he invited RH to a hotel to drink. After she declined, Appellant convinced RH to drink with him on academy grounds. He encouraged her to sneak across campus in the dark of night, into the woods. He encouraged her to drink alcohol despite the fact she was under the legal age to consume alcohol. He provided the alcohol, and specifically an alcohol significantly stronger than the one she had requested.

When she started drinking too slowly, he encouraged her to drink faster. When she felt the effects of the alcohol and needed to lay down, Appellant seized the opportunity and engaged in sexual intercourse with her, the highest degree of an unprofessional relationship. Appellant's actions are not worthy of an officer in the armed forces. Officers should not be sneaking through the dark of night, into the woods, to get underage individuals so drunk they have to throw up, and then having sex with them. The relationship Appellant fostered with RH was not a simple overfamiliarity bordering on unprofessional friendship, it was the epitome of the most egregious example of an unprofessional relationship. Worse still, Appellant's actions corrupted another cadet, and he induced RH to violate the standards expected of her. He failed as a mentor, failed as a role model, and failed as a cadet.

Appellant's conduct was serious in nature. Through his purposeful actions, Appellant violated the trust of someone he should have been mentoring. Rather than helping RH to adjust and guiding her to success, Appellant led her down a dark path into the woods of misconduct and unprofessionalism. Rather than lifting RH up, he dragged her down with him.

Appellant's claim that his entire record indicates a dismissal was not appropriate is equally unconvincing. Appellant's sentencing package paints the picture of a high achiever, someone with high potential who had everything he needed to excel in the military environment. Yet, Appellant when given the opportunity and the privilege of attending the Academy, squandered it. First, Appellant went to an establishment he was prohibited from frequenting. Then, Appellant engaged in an egregious unprofessional relationship and provided alcohol to a minor. Finally, Appellant once again went to an establishment he knew he was not permitted to frequent and proceeded to consume so much alcohol that he could not function without the aid of other cadets. Appellant has repeatedly demonstrated an inability to follow the rules and a lack of

respect for those rules. It is as though he believes the rules do not apply to him. Those are not the traits the Air Force would hope to see in a future leader. Those are traits that indicate Appellant does not have significant rehabilitative potential, as he has not demonstrated that he is responsive to corrective action. Those are traits that demonstrate Appellant's misconduct and his character warranted dismissal.

Appellant's punitive exposure was well above the sentence he received. The offenses for which he was convicted came with a potential for six months of confinement. Considering the circumstances, 31 days of confinement and a dismissal was lenient but legally supportable. Evaluating the facts and circumstances in the record of Appellant's individual case, the seriousness of his offenses, his service record, his particular character, his rehabilitative potential, and in consideration of the entire record, this Court should leave his sentence undisturbed and affirm his entire approved sentence.

## II.

### **APPELLANT IS NOT ENTITLED TO RELIEF BECAUSE HE WAS PROVIDED AN OPPORTUNITY TO REBUT THE VICTIM'S SUBMISSION OF MATTERS IN ACCORDANCE WITH RULE FOR COURTS-MARTIAL 1106A PRIOR TO THE CONVENING AUTHORITY'S DECISION ON ACTION.**

On 29 April 2022, both Appellant and RH were advised of their right to submit matters to the convening authority; both indicated they would be submitting matters. (Memorandum for Appellant, Submission of Matters, 29 April 2022, ROT, Vol. 2; Memorandum for RH, Submission of Matters, 29 April 2022, ROT, Vol. 2.) On 2 May 2022, RH submitted a one-page memorandum consisting of four paragraphs. (Victim Submission of Matters, 2 May 2022, ROT, Vol. 2.) On 3 May 2022, Appellant requested the convening authority to shorten the term of confinement. (Request for Clemency, 3 May 2022, ROT, Vol. 2.) On 5 May 2022, Appellant's

trial defense counsel provided a memorandum in support of Appellant’s clemency request. (ADC Memo In Support of Clemency, 3 May 2022, ROT, Vol. 2.) Attached to the trial defense counsel’s memorandum in support of clemency were the same character letters Appellant submitted at trial. (Id.)

On 10 May 2022, the government case paralegal emailed RH’s submission of matters to trial defense counsel. (*United States Motion to Attach*, dated 19 October 2023.) On 10 May 2022, trial defense counsel acknowledged receipt of RH’s submission of matters. (Id.)

On 13 May 2022, the convening authority issued his decision on action memorandum. (Convening Authority Decision on Action, 13 May 2022, ROT, Vol. 1.) In relevant part, the convening authority took no action on the findings and sentence, outlined his reasons for denying Appellant’s deferment request from 29 April 2022, and stated he considered matters submitted by RH and Appellant prior to coming to this decision. (Id.)

### ***Standard of Review***

“The standard of review for determining whether post-trial processing was properly completed is de novo.” *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citing *United States v. Kho*, 54 M.J. 63 (C.A.A.F. 2000)).

### ***Law***

“In a case with a crime victim, after a sentence is announced in a court-martial any crime victim of an offense may submit matters to the convening authority for consideration in the exercise of the convening authority’s powers under R.C.M. 1109 or 1110.” R.C.M. 1106A(a). “The convening authority shall ensure any matters submitted by a crime victim under this subsection be provided to the accused as soon as practicable.” R.C.M. 1106A(c)(3). If a victim submits R.C.M. 1106A matters, “the accused shall have five days from receipt of those matters to submit any matters in rebuttal.” R.C.M. 1106(d)(3). “Before taking or declining to take action on the sentence . . . the



convening authority shall consider matters timely submitted under R.C.M. 1106 and 1106A, if any, by the accused and any crime victim.” R.C.M. 1109(d)(3)(A).

Regarding post-trial rebuttal matters, our superior court requires “an appellant to demonstrate prejudice by stating what, if anything, would have been submitted to deny, counter, or explain the new matter.” United States v. Chatman, 46 M.J. 321, 323 (C.A.A.F. 1997) (internal quotation marks and citation omitted). While the threshold is low, an appellant must make “some colorable showing of possible prejudice.” Id. at 323-24. “If the appellant makes such a showing, the Court of Criminal Appeals must either provide meaningful relief or return the case to the Judge Advocate General concerned for a remand to a convening authority for a new . . . action.” United States v. Wheelus, 49 M.J. 283, 289 (C.A.A.F. 1998).

### *Analysis*

The United States acknowledges that Appellant was not afforded the required five days from receipt of RH’s submission of matters to submit a response required by R.C.M. 1106(d)(3). The convening authority took action prior to the expiration of the five days for rebuttal. The United States also acknowledges that Appellant has made “some colorable showing of prejudice” resulting from the early action of the convening authority. Appellant asks this Court to remand his case to provide him the opportunity to rebut R.H.’s submission of matters. (App. Br. at 16.) In similar cases this Court has said the appropriate relief ““is to provide Appellant with what [s]he is entitled to: the right to be served with [the victim’s] submission of matters, and the opportunity to submit rebuttal matters for the convening authority’s consideration before deciding whether to grant Appellant sentence relief.” United States v. Baker, No. ACM 40091, 2022 CCA LEXIS 523, at \*9 (A.F. Ct. Crim. App. 6 September 2022) (unpub. op.). Therefore, this Court should remand Appellant’s case for new post-trial processing.

### III.

#### **APPELLANT IS NOT CONSTITUTIONALLY ENTITLED TO A UNANIMOUS VERDICT.**

##### *Standard of Review*

The constitutionality of a statute is a question of law that is reviewed de novo. United States v. Wright, 53 M.J. 476, 478 (C.A.A.F. 2000) (citing United States v. Brown, 25 F.3d 307, 308 (6th Cir. 1994)).

##### *Law and Analysis*

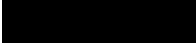
In United States v. Anderson, No. ACM 39969, 2022 CCA LEXIS 181, at \*55-56 (A.F. Ct. Crim. App. Mar. 25, 2022), this Court rejected the same claims Appellant raises now. Then, as Appellant readily admits, our Superior Court just last month affirmed this Court's decision and definitively held that military members do not have a right to a unanimous verdict at court-martial under the Sixth Amendment, Fifth Amendment due process, or Fifth Amendment equal protection. *See* United States v. Anderson, 83 M.J. \_\_\_, 2023 CAAF LEXIS 439 (C.A.A.F. 2023). Accordingly, Appellant's claim must fail.

**CONCLUSION**

**WHEREFORE**, the United States respectfully requests this Honorable Court deny the Appellant's requests in Assignments of Error I and III. As to Assignment of Error II, the United States respectfully requests this Honorable Court remand Appellant's case for new post-trial processing.



TYLER L. WASHBURN, Capt, USAF  
Appellate Government Counsel, Government Trial  
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Military Justice and Discipline Directorate  
United States Air Force

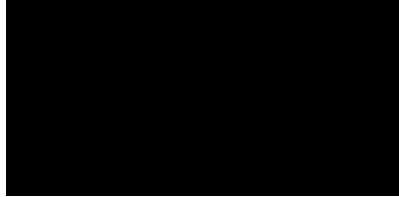


MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 19 October 2023 via electronic filing.



TYLER L. WASHBURN, Capt, USAF  
Appellate Government Counsel, Government Trial  
and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>REPLY BRIEF ON BEHALF OF</b>
	)	<b>APPELLANT</b>
	)	
v.	)	Before Panel No. 3
	)	
Air Force Cadet	)	No. ACM 40324
<b>DEKOTA M. DOUGLAS</b>	)	
United States Air Force	)	26 October 2023
<i>Appellant</i>	)	

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

COMES NOW, Appellant, Air Force Cadet (Cadet) Dekota M. Douglas, by and through his undersigned counsel pursuant to Rule 18(d) of this Honorable Court’s Rules of Practice and Procedure, and submits this Reply to the Government’s Answer, filed 19 October 2023.

**Argument**

***1. The Government framed a narrative not argued by trial counsel upon which Cadet Douglas was sentenced.***

The facts section in the Government’s Answer sets the scene of a sinister senior cadet who purposefully gives an underage girl liquor to get her drunk, takes advantage of her while she is intoxicated, and forces her to throw up in an attempt to cover his tracks. Gov. Ans. at 3. The Government described Cadet Douglas meeting R.H. “after 11 P.M.,” leading R.H. “to a spot in the woods,” giving her peach vodka instead of Mike’s Hard Lemonade, “cajoling” her to drink faster, taking R.H.’s clothes off after “the effects of the alcohol set in,” “digitally penetrat[ing]” her, and having sex with her. Gov. Ans. at 3. The Government continued, “After *he* finished” he encouraged R.H. “to throw up due to her intoxication level.” *Id.* (emphasis added). The Government then added that when they got back to the dorms, R.H. “was intoxicated to the point [Cadet Douglas] had to swipe his CAC card to let her in. *Id.*

While the Government on appeal attempts to justify a dismissal by arguing that Cadet Douglas took advantage of R.H. in an intoxicated state, the members clearly did not believe R.H. was so intoxicated that she could not consent to the sexual acts. *See* R. at 715 (finding Cadet Douglas not guilty of Charge II and its Specifications). The Government contends Cadet Douglas “seized the opportunity” to have sex with R.H. to the “highest degree of an unprofessional relationship.” Gov. Ans. at 8. In contrast, trial counsel, in his sentencing argument, stated once that Cadet Douglas got R.H. drunk and they had sex. Trial counsel focused on Cadet Douglas developing a personal relationship with her and adding her on Snapchat. R. at 751. The Government on appeal also failed to state that Cadet Douglas’s convictions were for *negligent* dereliction of duty (Gov. Ans. at 4)—a point on which they argued quite the contrary (*see* Para. 2 *infra*). Gov. Ans. at 6-9. Cadet Douglas was a *cadet*—not yet an officer—who was found guilty of negligently providing alcohol to R.H. while she was underage. He was not found guilty of forcing R.H. to drink to the point of intoxication so he could take advantage of her. Cadet Douglas was also found guilty of negligently having an unprofessional relationship with R.H. who was also a cadet and only one year behind him in school. Trial counsel concluded that “30 days confinement, for being derelict in his duty as a cadet” was “sufficient to address his misconduct.” R. at 752. Not a dismissal. *See* Para. 3 *infra*.

***2. The Government misapplied the expectations of an officer on Cadet Douglas who had not yet been commissioned, then found a dismissal was appropriate.***

The Government began its analysis of Issue I (sentence appropriateness of the dismissal) by stating Cadet Douglas “received the punishment he deserved.” Gov. Ans. at 6. The Government then alleged Cadet Douglas “claims that his misconduct was not serious in nature do [sic] not appropriately consider the weight and impact of his actions.” *Id.* It then went on to state Cadet Douglas was “a cadet preparing to serve as an officer in the United States Air Force” and

that “[o]fficers are expected to exemplify the core values of the force . . . and are entrusted with leading subordinate members over whom they hold a position of authority.” Gov. Ans. at 6-7.

First, the Government is holding Cadet Douglas to a standard for a position he had not yet obtained. The Government states, “Serving as an officer in the United States Air Force is a responsibility and a privilege. [Cadet Douglas] failed to live up to the standards expected, demonstrated he was not receptive to corrective actions, and failed to be a proper mentor and leader to a lower ranking member.” Gov. Ans. at 7. By that argument alone, Cadet Douglas should not have been commissioned—a natural and likely consequence of his conviction. Submission of Matters at 3, 5 May 2022. However, not commissioning is vastly different from forever carrying the “stigma of a punitive discharge” which affects “his legal rights, economic opportunities, and social acceptability.” R. at 749. The appropriate sentence here is not “the equivalent of a dishonorable discharge.” *Id.*

Second, while Cadet Douglas was a year ahead of R.H. in school, he did not hold a position of authority over her. He listened to her talk about issues she was having, including falling behind in school and problems with her roommates. The Government went on to pronounce, “Officers should not be sneaking through the dark of night, into the woods, to get underage individuals so drunk they have to throw up, and then having sex with them.” *Id.* Again, Cadet Douglas was not an officer to the extent the Government argues a dismissal is appropriate as opposed to not commissioning. Further, the Government is harping on facts surrounding the acquitted sexual assault to make the offense of negligent dereliction of duty (offering alcohol to a minor) to be more than it is. R.H. chose to meet Cadet Douglas at the school, chose to walk with him into the woods, and chose to consume alcohol with him to the point of intoxication. She voluntarily communicated with Cadet Douglas over Snapchat though she knew she was not allowed to. R. at 371, 404-05.

This far-reaching theme and theory that the Government provided in its Answer went beyond trial counsel's argument in sentencing. Further, trial counsel's two and a half page pre-sentencing argument asked the members to "impose a punishment that is sufficient, but not greater" than necessary and asked for 30 days' confinement after pointing out the maximum punishment was six months' confinement. R. at 751-52; *see also* Para. 3 *infra*.

Third, in an effort to justify a dismissal, the Government on appeal contends that Cadet Douglas engaged in an egregious and unprofessional relationship with R.H. while also providing alcohol to her, and that such conduct is "not the traits the Air Force would hope to see in a future leader." Gov. Ans. at 9. However, trial counsel addressed this head on:

If the rules and regulations mean nothing to Cadet Douglas as a cadet, what will they mean when is an officer? When he has a duty that's much bigger than being a cadet. Whether he's at the tip of the spear, or directly supporting those who are, the punishment imposed today needs to be sufficient to address the impacts of his misconduct. That punishment is 30 days of confinement and a total forfeiture of all pay and allowances for those 30 days.

R. at 753. Even trial counsel appreciated that two specifications of negligent dereliction of duty here do not warrant a dismissal. A dismissal from service is equivalent of a dishonorable discharge for an enlisted member. R. at 749. The military judge instructed the members it "should be reserved for those who in the opinion of the court should be separated under conditions of dishonor after conviction of serious offenses of a civil or military nature warranting such severe punishment." *Id.* Further, a punitive discharge is not an authorized punishment for an enlisted member convicted of two specifications of negligent dereliction of duty. *MCM*, pt. IV, ¶ 18.d.(3)(A). While officers, cadets, and warrant officers may receive a dismissal for any conviction, that does not make it automatically appropriate here.



**3. Trial counsel argued that “the right punishment” was 30 days’ confinement and total forfeiture of pay and allowances for those 30 days.**

In his sentencing argument, trial counsel did not ask for Cadet Douglas to receive a dismissal. R. at 752-53. Trial counsel asked for the punishment of 30 days’ confinement and total forfeiture of all pay and allowances for those 30 days.<sup>1</sup> *Id.* Specifically, he argued that the “right punishment” or a punishment that is “sufficient, but not greater, to promote justice, and maintain good order and discipline” is 30 days confinement and no dismissal. R. at 751-52. Trial counsel argued that Cadet Douglas “might have thought that he was helping [R.H.], when he took her out into the woods that night, but what he was really doing was contributing to her collapse here at the academy.” R. at 752. Trial counsel’s argument is in stark contrast with the Government’s argument in its Answer. *Compare* R. at 751-53, *with* Gov. Ans. at 2-4.

Closing his sentencing argument, trial counsel stated that “the punishment imposed here today needs to be sufficient to address the impacts of his misconduct. That punishment is 30 days of confinement and a total forfeiture of all pay and allowances for those 30 days.” R. at 753. The fact that trial counsel, who accurately understood the convictions were for a cadet found guilty of negligent dereliction of duty, argued that 30 days’ confinement without a dismissal was necessary but not greater than necessary is quite telling. While this Court cannot be sure why the members adjudged a dismissal in this case, a dismissal is inappropriately severe for two specifications of *negligent* dereliction of duty on behalf of a *cadet*.

**4. Conclusion.**

A dismissal for Cadet Douglas’s negligent dereliction of duty is not appropriate. The Government’s attempt to paint Cadet Douglas as a having taken advantage of R.H. while she was

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<sup>1</sup> Of note, the member sentenced Cadet Douglas to 31 days’ confinement. R. at 774.

drinking is not supported by the member's findings or trial counsel's argument at trial. Instead, Cadet Douglas was sentenced to a dismissal for two specifications of *negligent* dereliction of duty, which do not support a dismissal that "should be reserved" for convictions of "serious offenses" or "warranting severe punishment." R. at 749. A dismissal, based on the entire record, should not be approved. Article 66, UCMJ.

**WHEREFORE**, Cadet Douglas respectfully requests that this Honorable Court set aside the sentence to a dismissal.

Respectfully submitted,



HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 26 October 2023.

Respectfully submitted,



HEATHER M. CAINE, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>UNITED STATES' MOTION</b>
<i>Appellee</i>	)	<b>TO ATTACH DOCUMENTS</b>
	)	
v.	)	
	)	
Air Force Cadet	)	Panel No. 2
<b>DEKOTA M. DOUGLAS</b>	)	No. ACM 40324
United States Air Force	)	
<i>Appellant</i>	)	19 October 2023

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

Pursuant to Rule 23.3(b) of this Court’s Rules of Practice and Procedure, the United States moves the Court to attach the following documents to this motion:

- Appendix – Maj Nick Tesmer Declaration, with attachment, dated 19 October 2023 (2 pages)

Maj Tesmer’s declaration explains that the United States Air Force Academy Legal Office located (1) documentation that the convening authority served Appellant’s trial defense counsel with the victim’s matters submitted under R.C.M. 1106A prior to the convening authority taking action in this case. The attached documents show the victim’s submission of matters were served on Appellant’s trial defense counsel and provides clarity regarding the timeframe Appellant had to respond prior to the convening authority’s action – which was less than the required 5 days. This attachment rectifies omissions from the ROT and is directly responsive to an assignment of error raised by Appellant.

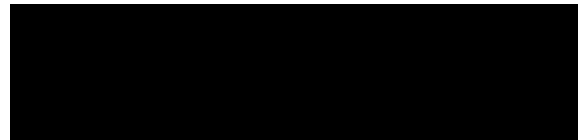
An appellant’s receipt of victim post-sentencing matters is a required allied paper and must be inserted into the record of trial. Department of the Air Force Manual 51-203, *Records of Trial*, ¶ 1.4.3 (dated 21 April 2021). The attached documents are required portions of the record

and are responsive to Appellant's assignment of error, and the attached documents are relevant and necessary to address whether the record of trial is complete.

**WHEREFORE**, the United States respectfully requests this Court grant this Motion to Attach the Documents.



TYLER L. WASHBURN, Capt, USAF  
Appellate Government Counsel, Government Trial  
and Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



MARY ELLEN PAYNE  
Associate Chief  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Appellate Defense Division on 19 October 2023.



TYLER L. WASHBURN, Capt, USAF  
Appellate Government Counsel, Government Trial  
and Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



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

UNITED STATES	)	No. ACM 40324
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Dekota M. DOUGLAS	)	
Air Force Cadet	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 3</b>

On 19 October 2023, Appellee submitted a motion to attach the following document(s) to the record: a sworn declaration from Major NT, the deputy staff judge advocate, the United States Air Force Academy, and an accompanying email exchange relating to Appellant’s second assignment of error, that Appellant was not timely served with RH’s submission of matters. Appellant did not respond to the motion.

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

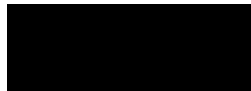
Accordingly, it is by the court on this 30th of October, 2023,

**ORDERED:**

Appellee’s Motion to Attach is **GRANTED**.



FOR THE COURT



CAROL K. JOYCE  
Clerk of the Court