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

| | | |
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| **UNITED STATES,** *Appellee,* | ) | **NOTICE OF DIRECT APPEAL PURSUANT TO ARTICLE 66(b)(1)(A), UCMJ** |
| v. | ) | |
| Master Sergeant (E-7), **EILEEN G. ECHALUSE,** United States Air Force, *Appellant.* | ) | No. ACM SXXXXX |
| | ) | 20 December 2023 |

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

On 20 March 2023 and 10-14 April 2023, a special court-martial by military judge alone at Osan Air Base, Republic of Korea, convicted Master Sergeant (MSgt) Eileen G. Echaluse, contrary to her pleas, of three specifications, with excepted words, in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892 (2019). Record of Trial (ROT) Vol. 1, Entry of Judgement, dated 14 April 2023. The military judge alone found MSgt Echaluse, consistent with her pleas, not guilty of one specification of Article 92, UCMJ. *Id*. The military judge sentenced MSgt Echaluse to a reprimand and reduction to the grade of E-6. *Id*. The Convening Authority took no action on the findings or sentence. ROT Vol. 1, Convening Authority Decision on Action, dated 18 May 2023.

On 10 November 2023, the Government purportedly sent MSgt Echaluse the required notice by mail of her right to appeal within 90 days. Pursuant to Article 66(b)(1)(A), UCMJ, MSgt Echaluse files her notice of direct appeal with this Court.

Respectfully submitted,

HEATHER M. CAINE, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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Office: (240) 612-4770
Email: heather.caine.1@us.af.mil

**CERTIFICATE OF FILING AND SERVICE**

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

Respectfully submitted,

HEATHER M. CAINE, Maj, USAF
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# UNITED STATES AIR FORCE
# COURT OF CRIMINAL APPEALS

| | | |
|---|---|---|
| **UNITED STATES** | ) | **No. ACM _____** |
| ***Appellee*** | ) | |
| | ) | |
| **v.** | ) | |
| | ) | **NOTICE OF** |
| **Eileen G. ECHALUSE** | ) | **DOCKETING** |
| **Master Sergeant (E-7)** | ) | |
| **U.S. Air Force** | ) | |
| ***Appellant*** | ) | |

On 20 December 2023, this court received a notice of direct appeal from Appellant in the above-styled case, pursuant to Article 66(b)(1)(A), Uniform Code of Military Justice, 10 U.S.C. § 866(b)(1)(A).

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

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

**ORDERED:**

The case in the above-styled matter is referred to Panel 3.

**It is further ordered:**

The Government will forward a copy of the record of trial to the court forthwith.

FOR THE COURT

[redacted]

TANICA S. BAGMON
Appellate Court Paralegal

# UNITED STATES AIR FORCE
# COURT OF CRIMINAL APPEALS

| | | |
|---|---|---|
| **UNITED STATES** | ) | **No. ACM _____** |
| ***Appellee*** | ) | |
| | ) | |
| **v.** | ) | |
| | ) | **ORDER** |
| **Eileen G. ECHALUSE** | ) | |
| **Master Sergeant (E-7)** | ) | |
| **U.S. Air Force** | ) | |
| ***Appellant*** | ) | **Panel 3** |

On 20 December 2023, Appellant filed a "Notice of Direct Appeal Pursuant to Article 66(b)(1)(A), UCMJ," with this court. The above-styled case was docketed on 22 December 2023 and the court ordered the Government to "forward a copy of the record of trial to the court forthwith." Almost 90 days have elapsed and, to date, the record has not been provided to the court.

Accordingly, it is by the court on this 19th day of March, 2024,

**ORDERED:**

Government appellate counsel will inform the court in writing not later than **2 April 2024** of the status of this case with regard to this court's 22 December 2023 order.

FOR THE COURT

[redacted]

OLGA STANFORD, Capt, USAF
Commissioner

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

| | | |
|---|---|---|
| UNITED STATES,<br>*Appellee* | ) | UNITED STATES' NOTICE<br>OF STATUS OF COMPLIANCE |
| v. | ) | Before Panel No. 3 |
| Master Sergeant (E-7)<br>**EILEEN G. ECHALUSE**, USAF<br>*Appellant* | ) | No. ACM _____<br><br>2 April 2024 |

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

Pursuant to this Court's 19 March 2024 order, the United States hereby provides notice of status of compliance.

On 20 December, Appellant filed a "Notice of Direct Appeal Pursuant to Article 66(b)(1)(A), UCMJ," with this Court. The above-styled case was docketed on 22 December 2023 and the Court ordered the Government to "forward a copy of the record of trial to the court forthwith." (*Order*, dated 22 December 2023.) This Court further ordered, "Government appellate counsel will inform the court in writing not later than 2 April 2024 of the status of this case with regard to this court's 22 December 2023 order." (*Order,* dated 19 March 2024.)

On 19 March 2024, the Seventh Air Force legal office mailed the record of trial to JAJM via official mail. On 2 April 2024, JAJM informed JAJG that they had not yet received the record of trial, so the undersigned directed the Seventh Air Force legal office to re-send the record of trial to JAJM. With the Court's permission, JAJG will provide another update no later than 30 days from the date of this notice, 2 May 2024.

**WHEREFORE**, the United States requests this Honorable Court accept this filing as confirmation of the Government's compliance with its 19 March 2024 order.

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Counsel Division
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STEVEN R. KAUFMAN, Colonel, USAF
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FOR

MARY ELLEN PAYNE
Associate Chief
Government Trial and Appellate Operations
Military Justice and Discipline Directorate
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(240) 612-4800

**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 2 April 2024.

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

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

| | | |
|---|---|---|
| UNITED STATES,<br>*Appellee*<br><br>v.<br><br>Master Sergeant (E-7)<br>**EILEEN G. ECHALUSE**, USAF<br>*Appellant* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | **UNITED STATES' MOTION FOR LEAVE TO FILE NOTICE OF STATUS OF COMPLIANCE**<br><br>Before Panel No. 3<br><br>No. ACM____<br><br>1 May 2024 |

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

Pursuant to this Court's 19 March 2024 order, the United States respectfully requests that this Court grant leave to file a notice of status of compliance. The motion for leave to file and the status of compliance are combined in a single motion in accordance with Rule 23(d) of this Court's Rules of Practice and Procedure.

On 20 December, Appellant filed a "Notice of Direct Appeal Pursuant to Article 66(b)(1)(A), UCMJ," with this Court. The above-styled case was docketed on 22 December 2023 and the Court ordered the Government to "forward a copy of the record of trial to the court forthwith." (*Order,* dated 22 December 2023.) This Court further ordered "Government appellate counsel will inform the court in writing not later than 2 April 2024 of the status of this case with regard to this court's 22 December 2023 order." (*Order*, dated 19 March 2024.)

On 2 April 2024, JAJG provided this Court with the following update. On 19 March 2024, the Seventh Air Force legal office mailed the record of trial to JAJM via official mail. On 2 April 2024, JAJM informed JAJG that they had not yet received the record of trial, so the undersigned counsel directed the Seventh Air Force legal office to re-send the record of trial to JAJM. JAJG stated it would provide another update no later than 30 days from the date of this notice, 2 May 2024.

At the time of the last update, undersigned counsel mistakenly omitted an update on the progress being made on the verbatim transcript. JAT has now informed JAJG that the transcript is currently with the military judge for review. The military judge will certify the transcript by 10 May 2024. The rest of the record of trial has been assembled and is just waiting on completion of the transcript.

**WHEREFORE**, the United States requests this Honorable Court grant its motion for leave and accept this filing.

[redacted]
VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Counsel Division
Military Justice and Discipline Directorate
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(240) 612-4800

[redacted]
MARY ELLEN PAYNE
Associate Chief
Government Trial and Appellate Operations
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Appellate Defense Division on 1 May 2024.

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Counsel Division
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(240) 612-4800

# UNITED STATES AIR FORCE
# COURT OF CRIMINAL APPEALS

| | | |
|---|---|---|
| **UNITED STATES** | ) | **No. ACM 24027** |
| ***Appellee*** | ) | |
| | ) | |
| **v.** | ) | |
| | ) | **ORDER** |
| **Eileen G. ECHALUSE** | ) | |
| **Master Sergeant (E-7)** | ) | |
| **U.S. Air Force** | ) | |
| ***Appellant*** | ) | **Panel 3** |

On 20 December 2023, Appellant filed with this court a notice of direct appeal pursuant to Article 66(b)(1)(A), Uniform Code of Military Justice, 10 U.S.C. § 866(b)(1)(A). While Appellant's filing was not accompanied by a record of trial, the court docketed Appellant's case on 22 December 2023. In its notice of docketing, this court further ordered the Government to "forward a copy of the record of trial to the court forthwith."

On 21 May 2024, the Government forwarded the completed record of trial to this court and Appellant's counsel.

On 11 July 2024 (51 days after Appellant's counsel received the completed record of trial), counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant's assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 17th day of July, 2024,

**ORDERED:**

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **18 September 2024.**

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

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

FOR THE COURT

[redacted]

OLGA STANFORD, Capt, USAF
Commissioner

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

| | | |
|---|---|---|
| **UNITED STATES** | ) | **MOTION FOR ENLARGEMENT OF** |
| *Appellee* | ) | **TIME (FIRST)** |
| | ) | |
| v. | ) | Before Panel No. 3 |
| | ) | |
| Master Sergeant (E-7) | ) | No. ACM 24027 |
| **EILEEN G. ECHALUSE,** | ) | |
| United States Air Force | ) | 11 July 2024 |
| *Appellant* | ) | |

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for her 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 **18 September 2024**. The record of trial was docketed with this Court on 22 December 2023. This Court signed and receipted for the record of trial on 21 May 2024. From the date of docketing to the present date, 202 days have elapsed. On the date requested, 271 days will have elapsed. From the date the record of trial was received by this Court to the present date, 51 days have elapsed. On the date requested, 120 days will have elapsed.

On 20 March 2023 and 10-14 April 2023, a special court-martial by military judge alone at Osan Air Base, Republic of Korea, convicted Appellant, contrary to her pleas, of three specifications, with excepted words, in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892 (2019). Record of Trial (ROT) Vol. 1, *Entry of Judgement*, dated 14 April 2023. The military judge alone found Appellant, consistent with her pleas, not guilty of one specification of Article 92, UCMJ. *Id*. The military judge sentenced Appellant to a reprimand

and reduction to the grade of E-6. *Id*. The Convening Authority took no action on the findings or sentence. ROT Vol. 1, *Convening Authority Decision on Action*, dated 18 May 2023.

The electronic record of trial is 1094 pages long containing three prosecution exhibits, 34 defense exhibit, 16 appellate exhibits, and zero court exhibits. Appellant is not currently confined.

Undersigned counsel is currently assigned 25 cases, with 15 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.

This case is currently undersigned counsel's seventh priority before this Court. Undersigned counsel has not started review of the record of trial in this case. The following cases before this Court have priority over the present case:

1. *United States v. Martell* (ACM 40501): The trial transcript is 1,032 pages long and the record of trial is comprised of eight volumes containing nine prosecution exhibits, 32 defense exhibits, 48 appellate exhibits, and one court exhibit.
2. *United States v. Clark* (ACM 40540): The verbatim transcript is 1579 pages long and the record of trial is comprised of 13 volumes containing 19 prosecution exhibits, one defense exhibit, 87 appellate exhibits, and zero court exhibits.
3. *United States v. Arizpe* (ACM 40507): The unsealed portion of the verbatim transcript is 1,040 pages long and the record of trial is comprised of four volumes containing seven prosecution exhibits, one defense exhibit, 34 appellate exhibits, and one court exhibit.

4. *United States v. Cooley* (ACM 40376): The unsealed portion of the verbatim transcript is 1,587 pages long and the record of trial is comprised of 10 volumes containing 29 prosecution exhibits, 16 defense exhibits, 109 appellate exhibits, and two court exhibits. The sealed transcript is 69 pages long; there is one sealed exhibit that is a document and one sealed exhibit that is a video lasting approximately eight hours.
5. *United States v. Wells* (ACM S32762): The electronic record of trial is 1,581 pages long comprised of 14 prosecution exhibits, one defense exhibit, six appellate exhibits, and one court exhibit.
6. *United States v. Soloshenko* (ACM 40581): The electronic record of trial is 1,173 pages long comprised of seven prosecution exhibits, two defense exhibits, 27 appellate exhibits, and one court exhibit.

Appellant was advised of her 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 she consented to the request for this enlargement of time.

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

Respectfully submitted,

[redacted]

HEATHER M. BRUHA, Maj, USAF
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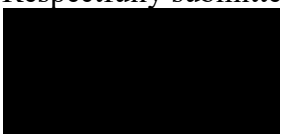
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 11 July 2024.

Respectfully submitted,



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12 July 2024

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

| | | |
|---|---|---|
| UNITED STATES,<br>*Appellee,*<br><br>v.<br><br>Master Sergeant (E-7)<br>EILEEN G. ECHALUSE, USAF,<br>*Appellant.* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME<br><br>ACM 24027<br><br>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 general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 12 July 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
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United States Air Force
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**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

| | | |
|---|---|---|
| **UNITED STATES** | ) | **MOTION FOR ENLARGEMENT OF** |
| *Appellee* | ) | **TIME (SECOND)** |
| | ) | |
| v. | ) | Before Panel No. 3 |
| | ) | |
| Master Sergeant (E-7) | ) | No. ACM 24027 |
| **EILEEN G. ECHALUSE,** | ) | |
| United States Air Force | ) | 6 September 2024 |
| *Appellant* | ) | |

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for her 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 **18 October 2024**. The record of trial was docketed with this Court on 22 December 2023. This Court signed and receipted for the record of trial on 21 May 2024. From the date of docketing to the present date, 259 days have elapsed. On the date requested, 301 days will have elapsed. From the date the record of trial was received by this Court to the present date, 108 days have elapsed. On the date requested, 150 days will have elapsed.

On 20 March 2023 and 10-14 April 2023, a special court-martial by military judge alone at Osan Air Base, Republic of Korea, convicted Appellant, contrary to her pleas, of three specifications, with excepted words, in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892 (2019). Record of Trial (ROT) Vol. 1, *Entry of Judgement*, dated 14 April 2023. The military judge alone found Appellant, consistent with her pleas, not guilty of one specification of Article 92, UCMJ. *Id*. The military judge sentenced Appellant to a reprimand

and reduction to the grade of E-6. *Id*. The Convening Authority took no action on the findings or sentence. ROT Vol. 1, *Convening Authority Decision on Action*, dated 18 May 2023.

The electronic record of trial is 1094 pages long containing three prosecution exhibits, 34 defense exhibit, 16 appellate exhibits, and zero court exhibits. Appellant is not currently confined.

Undersigned counsel is currently assigned 20 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 EOT 1 in this case, undersigned counsel filed the Reply Brief in *United States v. Greene-Watson* (Dkt. No. 24-0096/AF; ACM 40293) with the Court of Appeals for the Armed Forces (CAAF); the Petition and Supplement to the Petition for Grant of Review in *United States v. Arroyo* (ACM 40321 (f rev)) with the CAAF; the Petition for Grant of Review and a Motion to File the Supplement Separately in *United States v. Holmes* (Misc. Dkt. No. 2024-1) with the CAAF; civilian appellate defense counsel filed the Brief on Behalf of Appellant and Reply Brief in *United States v. Martell* (ACM 40501) with this Court; and the Petition and a Motion to File the Supplement Separately in *United States v. Van Velson* (ACM 40401) with the CAAF.

Of note, JAJA Newcomers Training was held 13-14 August 2024, and the Joint Appellate Advocacy Training (JAAT) is scheduled for 25-26 September 2024. Undersigned counsel is currently working on Supplement to the Petition in *Van Velson*. Undersigned counsel will turn next to the Supplement to the Petition in *Holmes*. Undersigned counsel will then begin oral argument preparations in *Greene-Watson*, which is currently scheduled as an outreach oral

argument with the CAAF on 10 October 2024. Finally, a potential Reply Brief will also be due to this Court in *United States v. Sherman* (ACM 40486) at some point in September 2024.

This case is currently undersigned counsel's sixth priority before this Court. Undersigned counsel has not started review of the record of trial in this case. The following cases before this Court have priority over the present case:

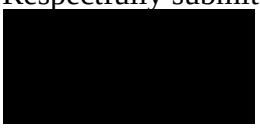
1. *United States v. Arizpe* (ACM 40507): The unsealed portion of the verbatim transcript is 1,040 pages long and the record of trial is comprised of four volumes containing seven prosecution exhibits, one defense exhibit, 34 appellate exhibits, and one court exhibit. Of note, this case was previously moved up in priority given civilian appellate defense counsel's availability to work this case, however, that may shift given her current availability.
2. *United States v. Clark* (ACM 40540): The verbatim transcript is 1579 pages long and the record of trial is comprised of 13 volumes containing 19 prosecution exhibits, one defense exhibit, 87 appellate exhibits, and zero court exhibits.
3. *United States v. Cooley* (ACM 40376): The unsealed portion of the verbatim transcript is 1,587 pages long and the record of trial is comprised of 10 volumes containing 29 prosecution exhibits, 16 defense exhibits, 109 appellate exhibits, and two court exhibits. The sealed transcript is 69 pages long; there is one sealed exhibit that is a document and one sealed exhibit that is a video lasting approximately eight hours. Undersigned counsel has viewed the sealed evidence in this case.
4. *United States v. Wells* (ACM S32762): The electronic record of trial is 1,581 pages long comprised of 14 prosecution exhibits, one defense exhibit, six appellate exhibits, and one court exhibit.

5. *United States v. Soloshenko* (ACM 40581): The electronic record of trial is 1,173 pages long comprised of seven prosecution exhibits, two defense exhibits, 27 appellate exhibits, and one court exhibit.

Appellant has provided limited consent to disclose confidential communications with counsel wherein she was advised of hers right to a timely appeal, counsels' progress on the case, the request for this enlargement of time, and wherein she consented to the request for this enlargement of time.

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

Respectfully submitted,



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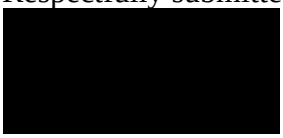
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 6 September 2024.

Respectfully submitted,



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9 September 2024

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

| | | |
|---|---|---|
| UNITED STATES,<br>*Appellee,*<br><br>v.<br><br>Master Sergeant (E-7)<br>EILEEN G. ECHALUSE, USAF,<br>*Appellant.* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME<br><br>ACM 24027<br><br>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 general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

[redacted]

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 9 September 2024.

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

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

| | | |
|---|---|---|
| **UNITED STATES**<br>*Appellee* | ) | **MOTION FOR ENLARGEMENT OF TIME (THIRD)** |
| v. | ) | Before Panel No. 3 |
| Master Sergeant (E-7)<br>**EILEEN G. ECHALUSE,**<br>United States Air Force<br>*Appellant* | ) | No. ACM 24027<br><br>8 October 2024 |

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

Pursuant to Rule 23.3(m) 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 **17 November 2024**. The record of trial was docketed with this Court on 22 December 2023. This Court signed and receipted for the record of trial on 21 May 2024. From the date of docketing to the present date, 291 days have elapsed. On the date requested, 331 days will have elapsed. From the date the record of trial was received by this Court to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 20 March 2023 and 10-14 April 2023, a special court-martial by military judge alone at Osan Air Base, Republic of Korea, convicted Appellant, contrary to her pleas, of three specifications, with excepted words, in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892 (2019). Record of Trial (ROT) Vol. 1, *Entry of Judgement*, dated 14 April 2023. The military judge alone found Appellant, consistent with her pleas, not guilty of one specification of Article 92, UCMJ. *Id*. The military judge sentenced Appellant to a reprimand

and reduction to the grade of E-6. *Id*. The Convening Authority took no action on the findings or sentence. ROT Vol. 1, *Convening Authority Decision on Action*, dated 18 May 2023.

The electronic record of trial is 1094 pages long containing three prosecution exhibits, 34 defense exhibit, 16 appellate exhibits, and zero court exhibits. Appellant is not currently confined.

Undersigned counsel is currently assigned 17 cases, with 8 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 EOT 2 in this case, undersigned counsel filed the Supplements to the Petitions for Grant of Review in *United States v. Van Velson* (ACM 40401, USCA Dkt. No. 24-0225/AF) and *United States v. Holmes* (Misc. Dkt. No. 2024-1, USCA Dkt. No. 24-0224/AF) with the Court of Appeals for the Armed Forces (CAAF); a Motion for Reconsideration in *United States v. Hennessy* (ACM 40439) with this Court; and the Reply Brief in *United States v. Sherman* (ACM 40486) with this Court.

Of note, the family day/Indigenous Peoples' Day is 11-14 October. Undersigned counsel was also on unexpected family leave 24-27 September 2024. Undersigned counsel is currently preparing for oral argument in *United States v. Greene-Watson* (ACM 40293, USCA Dkt. No. 24-0096/AF), which is currently scheduled as an outreach oral argument with the CAAF on 10 October 2024. Next, should the Government Answer *Holmes*'s Petition for Grant of Review in her Article 62, UCMJ, appeal to the CAAF, undersigned counsel will have a Reply due on or before 21 October 2024. Additionally, on 7 October 2024, the CAAF granted one issue in *United States v. Arroyo* (ACM 40321 (f rev), USCA Dkt. No. 24-0212/AF) with the grant brief currently due 28 October 2024. After that, the petition for certiorari in *United States v. Guihama* (ACM

40039, USCA Dkt. No. 23-0085/AF) is currently due to the Supreme Court of the United States (SCOTUS) on 12 November 2024.

This case is currently undersigned counsel's fifth priority before this Court given another military appellate defense counsel was detailed to *United States v. Wells* (ACM S32762) to ease undersigned counsel's docket congestion. Undersigned counsel has not started review of the record of trial in this case. The following cases before this Court have priority over the present case:

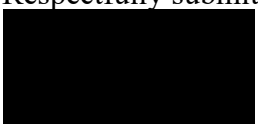
1. *United States v. Arizpe* (ACM 40507): The unsealed portion of the verbatim transcript is 1,040 pages long and the record of trial is comprised of four volumes containing seven prosecution exhibits, one defense exhibit, 34 appellate exhibits, and one court exhibit. Of note, this case was previously moved up in priority given civilian appellate defense counsel's availability to work this case, however, that may shift given her current availability.
2. *United States v. Clark* (ACM 40540): The verbatim transcript is 1579 pages long and the record of trial is comprised of 13 volumes containing 19 prosecution exhibits, one defense exhibit, 87 appellate exhibits, and zero court exhibits.
3. *United States v. Cooley* (ACM 40376): The unsealed portion of the verbatim transcript is 1,587 pages long and the record of trial is comprised of 10 volumes containing 29 prosecution exhibits, 16 defense exhibits, 109 appellate exhibits, and two court exhibits. The sealed transcript is 69 pages long; there is one sealed exhibit that is a document and one sealed exhibit that is a video lasting approximately eight hours. Undersigned counsel has viewed the sealed evidence in this case.

4. *United States v. Soloshenko* (ACM 40581): The electronic record of trial is 1,173 pages long comprised of seven prosecution exhibits, two defense exhibits, 27 appellate exhibits, and one court exhibit.

Appellant has provided limited consent to disclose confidential communications with counsel wherein she was advised of her right to a timely appeal, counsel's progress on the case, the request for this enlargement of time, and wherein she consented to the request for this enlargement of time.

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

Respectfully submitted,



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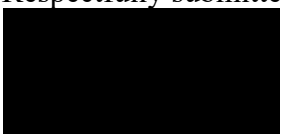
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 8 October 2024.

Respectfully submitted,



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10 October 2024

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

| | | |
|---|---|---|
| UNITED STATES,<br>*Appellee,*<br><br>v.<br><br>Master Sergeant (E-7)<br>EILEEN G. ECHALUSE, USAF,<br>*Appellant.* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME<br><br>ACM 24027<br><br>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 general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

[redacted]

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 10 October 2024.

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

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

| | | |
|---|---|---|
| **UNITED STATES** *Appellee* | ) | **MOTION FOR ENLARGEMENT OF TIME (FOURTH)** |
| v. | ) | Before Panel No. 3 |
| Master Sergeant (E-7) **EILEEN G. ECHALUSE,** United States Air Force *Appellant* | ) | No. ACM 24027 |
| | ) | 7 November 2024 |

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

Pursuant to Rule 23.3(m) 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 **17 December 2024**. The record of trial was docketed with this Court on 22 December 2023. This Court signed and receipted for the record of trial on 21 May 2024. From the date of docketing to the present date, 321 days have elapsed. On the date requested, 361 days will have elapsed. From the date the record of trial was received by this Court to the present date, 170 days have elapsed. On the date requested, 210 days will have elapsed.

On 20 March 2023 and 10-14 April 2023, a special court-martial by military judge alone at Osan Air Base, Republic of Korea, convicted Appellant, contrary to her pleas, of three specifications, with excepted words, in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892 (2019). Record of Trial (ROT) Vol. 1, *Entry of Judgement*, dated 14 April 2023. The military judge alone found Appellant, consistent with her pleas, not guilty of one specification of Article 92, UCMJ. *Id*. The military judge sentenced Appellant to a reprimand

and reduction to the grade of E-6. *Id*. The Convening Authority took no action on the findings or sentence. ROT Vol. 1, *Convening Authority Decision on Action*, dated 18 May 2023.

The electronic record of trial is 1094 pages long containing three prosecution exhibits, 34 defense exhibit, 16 appellate exhibits, and zero court exhibits. Appellant is not currently confined.

Undersigned counsel is currently assigned 16 cases, with 8 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 EOT 3 in this case, undersigned counsel filed the Reply Brief in *United States v. Holmes* (Misc. Dkt. No. 2024-1, USCA Dkt. No. 24-0224/AF) with the Court of Appeals for the Armed Forces (CAAF) and prepared for and argued on behalf of the appellant in *United States v. Greene-Watson* (ACM 40293, USCA Dkt. No. 24-0096/AF) at the outreach oral argument with the CAAF on 10 October 2024.

Undersigned counsel is currently finishing the Grant Brief and Joint Appendix in *United States v. Arroyo* (ACM 40321 (f rev), USCA Dkt. No. 24-0212/AF) due to the CAAF on 12 November 2024. Of note, the petition for certiorari in *United States v. Guihama* (ACM 40039, USCA Dkt. No. 23-0085/AF) is now due to the Supreme Court of the United States (SCOTUS) on 11 January 2025.

This case is currently undersigned counsel's fifth priority before this Court. Undersigned counsel has not started review of the record of trial in this case. The following cases before this Court have priority over the present case:

1. *United States v. Arizpe* (ACM 40507): The unsealed portion of the verbatim transcript is 1,040 pages long and the record of trial is comprised of four volumes

containing seven prosecution exhibits, one defense exhibit, 34 appellate exhibits, and one court exhibit. Undersigned counsel has minimally begun review of the record and will return to it after filing the Grant Brief and Joint Appendix in *Arroyo*. Of note, this case was previously moved up in priority given civilian appellate defense counsel's availability to work this case, however, that may shift given her current availability.

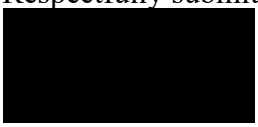
2. *United States v. Clark* (ACM 40540): The verbatim transcript is 1579 pages long and the record of trial is comprised of 13 volumes containing 19 prosecution exhibits, one defense exhibit, 87 appellate exhibits, and zero court exhibits. Undersigned counsel has only reviewed the sealed material in the case so far.
3. *United States v. Cooley* (ACM 40376): The unsealed portion of the verbatim transcript is 1,587 pages long and the record of trial is comprised of 10 volumes containing 29 prosecution exhibits, 16 defense exhibits, 109 appellate exhibits, and two court exhibits. The sealed transcript is 69 pages long; there is one sealed exhibit that is a document and one sealed exhibit that is a video lasting approximately eight hours. Undersigned counsel has viewed the sealed evidence in this case.
4. *United States v. Soloshenko* (ACM 40581): The electronic record of trial is 1,173 pages long comprised of seven prosecution exhibits, two defense exhibits, 27 appellate exhibits, and one court exhibit. Undersigned counsel plans to scan and transmit, pursuant to this Court's Order, the sealed material to civilian appellate defense counsel next week.

Appellant has provided limited consent to disclose confidential communications with counsel wherein she was advised of her right to a timely appeal, counsel's progress on the case,

the request for this enlargement of time, and wherein she consented to the request for this enlargement of time.

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

Respectfully submitted,



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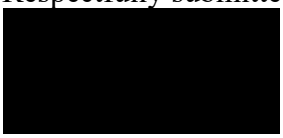
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 7 November 2024.

Respectfully submitted,



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12 November 2024

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

| | | |
|---|---|---|
| UNITED STATES,<br>*Appellee,*<br><br>v.<br><br>Master Sergeant (E-7)<br>EILEEN G. ECHALUSE, USAF,<br>*Appellant.* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME<br><br>ACM 24027<br><br>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 general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

[redacted]

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 12 November 2024.

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

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

| | | |
|---|---|---|
| **UNITED STATES** | ) | **MOTION FOR ENLARGEMENT OF** |
| *Appellee* | ) | **TIME (FIFTH)** |
| | ) | |
| v. | ) | Before Panel No. 3 |
| | ) | |
| Master Sergeant (E-7) | ) | No. ACM 24027 |
| **EILEEN G. ECHALUSE,** | ) | |
| United States Air Force | ) | 6 December 2024 |
| *Appellant* | ) | |

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

Pursuant to Rule 23.3(m) 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 **16 January 2025**. The record of trial was docketed with this Court on 22 December 2023. This Court signed and receipted for the record of trial on 21 May 2024. From the date of docketing to the present date, 350 days have elapsed. On the date requested, 391 days will have elapsed. From the date the record of trial was received by this Court to the present date, 199 days have elapsed. On the date requested, 240 days will have elapsed.

On 20 March 2023 and 10-14 April 2023, a special court-martial by military judge alone at Osan Air Base, Republic of Korea, convicted Appellant, contrary to her pleas, of three specifications, with excepted words, in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892 (2019). Record of Trial (ROT) Vol. 1, *Entry of Judgement*, dated 14 April 2023. The military judge alone found Appellant, consistent with her pleas, not guilty of one specification of Article 92, UCMJ. *Id.* The military judge sentenced Appellant to a reprimand

and reduction to the grade of E-6. *Id*. The Convening Authority took no action on the findings or sentence. ROT Vol. 1, *Convening Authority Decision on Action*, dated 18 May 2023.

The electronic record of trial is 1094 pages long containing three prosecution exhibits, 34 defense exhibit, 16 appellate exhibits, and zero court exhibits. Appellant is not currently confined.

Undersigned counsel is currently assigned 14 cases, with 7 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 EOT 4 in this case, undersigned counsel filed the Grant Brief and Joint Appendix in *United States v. Arroyo* (ACM 40321 (f rev), USCA Dkt. No. 24-0212/AF) with the Court of Appeals for the Armed Forces (CAAF) and a Motion to Withdraw from Appellate Review and Motion to Attach in *United States v. Harmon* (ACM S32785) with this Court. Motions to withdraw from appellate review require appellant counsel to conduct a review of the record and advise the appellant. Undersigned counsel also spent approximately 4 hours reviewing the opinion in *United States v. Martell* (ACM 40501) and applicable case law, consulting with civilian appellate defense counsel, and advising the appellant in *Martell* on a potential motion for reconsideration with this Court or petition for grant of review with the CAAF. The petition for grant of review in *Martell* is due to the CAAF on or before 16 December 2024.

Of note, the Veterans Day holiday and family day were 8-11 November 2024 and undersigned counsel took leave for Thanksgiving 26 November – 1 December 2024. Since filing the last EOT in this case, undersigned counsel prepared for and participated as a moot judge in three moot arguments and additional mentoring (equaling approximately 10 hours), completed

six peer reviews, and sent a draft petition for a new trial to a client for review prior to routing on his behalf.

This case is currently undersigned counsel's fifth priority before this Court. Undersigned counsel has not started review of the record of trial in this case. The following cases before this Court have priority over the present case:

1. *United States v. Clark* (ACM 40540): The verbatim transcript is 1579 pages long and the record of trial is comprised of 13 volumes containing 19 prosecution exhibits, one defense exhibit, 87 appellate exhibits, and zero court exhibits. Undersigned counsel completed review of the case, edited and added AOEs to the draft brief, and scheduled a meeting with the client, who is confined, to finalize the brief for filing. The brief is due to this Court by 14 December 2024.
2. *United States v. Arizpe* (ACM 40507): The unsealed portion of the verbatim transcript is 1,040 pages long and the record of trial is comprised of four volumes containing seven prosecution exhibits, one defense exhibit, 34 appellate exhibits, and one court exhibit. Undersigned counsel's intent was to begin review of this case after finishing the outreach oral argument with the CAAF in *Greene-Watson* and following the family day/Indigenous Peoples' Day weekend (11-14 October 2024). However, on 7 October 2024, the CAAF granted review of one issue in *Arroyo*. Undersigned counsel's intent was then to return to review of this case after filing the Grant Brief and JA in *Arroyo*, which she did. However, Panel 2 deny stamped undersigned counsel's EOT 10 in *Clark* case so undersigned counsel was forced to reprioritize. This case is now undersigned counsel's second priority before this Court. Undersigned counsel reviewed the sealed material at the Court

on 3 December 2024 and is still working to finish review of the four volumes, 1,040-page trial transcript, and the Board of Inquiry (BOI) transcript (relevant to the case for a potential Unlawful Command Influence AOE). Undersigned counsel has paused review of the record in order to finish editing the petition for certiorari in *United States v. Guihama* (ACM 40039, USCA Dkt. No. 23-0085/AF) which is due to the printer on 16 December 2024 and to the Supreme Court of the United States (SCOTUS) on 11 January 2025. Additionally, undersigned counsel will have to file the Reply Brief in *Arroyo* with the CAAF tentatively due 24 December 2024. The brief in *Arizpe* is currently due 9 January 2024, but undersigned counsel intends to file it earlier if possible.

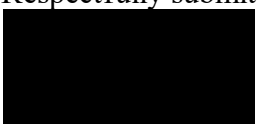
3. *United States v. Cooley* (ACM 40376): The unsealed portion of the verbatim transcript is 1,587 pages long and the record of trial is comprised of 10 volumes containing 29 prosecution exhibits, 16 defense exhibits, 109 appellate exhibits, and two court exhibits. The sealed transcript is 69 pages long; there is one sealed exhibit that is a document and one sealed exhibit that is a video lasting approximately eight hours. Undersigned counsel has viewed the sealed evidence in this case and been diligently working on potential motions with civilian appellate defense counsel, but no motion is reading for filing currently.
4. *United States v. Soloshenko* (ACM 40581): The electronic record of trial is 1,173 pages long comprised of seven prosecution exhibits, two defense exhibits, 27 appellate exhibits, and one court exhibit. Undersigned counsel scanned and transmitted, pursuant to this Court's Order, the sealed material to civilian appellate

defense counsel. Undersigned counsel missed the disc attached to AE VII, so she will need to schedule another time to copy and view it.

Appellant has provided limited consent to disclose confidential communications with counsel wherein she was advised of her right to a timely appeal, counsel's progress on the case, the request for this enlargement of time, and wherein she consented to the request for this enlargement of time.

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

Respectfully submitted,



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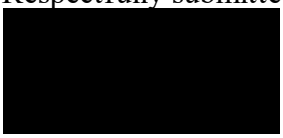
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 6 December 2024.

Respectfully submitted,



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9 December 2024

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

| | | |
|---|---|---|
| UNITED STATES,<br>*Appellee,*<br><br>v.<br><br>Master Sergeant (E-7)<br>EILEEN G. ECHALUSE, USAF,<br>*Appellant.* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME<br><br>ACM 24027<br><br>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 general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

[redacted]

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 9 December 2024.

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
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**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

| | | |
|---|---|---|
| **UNITED STATES** *Appellee* | ) | **MOTION FOR ENLARGEMENT OF TIME (SIXTH)** |
| v. | ) | Before Panel No. 3 |
| Master Sergeant (E-7) **EILEEN G. ECHALUSE,** United States Air Force *Appellant* | ) | No. ACM 24027 |
| | ) | 6 January 2025 |

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

Pursuant to Rule 23.3(m) 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 **15 February 2025**. The record of trial was docketed with this Court on 22 December 2023. This Court signed and receipted for the record of trial on 21 May 2024. From the date of docketing to the present date, 381 days have elapsed. On the date requested, 421 days will have elapsed. From the date the record of trial was received by this Court to the present date, 230 days have elapsed. On the date requested, 270 days will have elapsed.

On 20 March 2023 and 10-14 April 2023, a special court-martial by military judge alone at Osan Air Base, Republic of Korea, convicted Appellant, contrary to her pleas, of three specifications, with excepted words, in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892 (2019). Record of Trial (ROT) Vol. 1, *Entry of Judgement*, dated 14 April 2023. The military judge alone found Appellant, consistent with her pleas, not guilty of one specification of Article 92, UCMJ. *Id*. The military judge sentenced Appellant to a reprimand

and reduction to the grade of E-6. *Id*. The Convening Authority took no action on the findings or sentence. ROT Vol. 1, *Convening Authority Decision on Action*, dated 18 May 2023.

The electronic record of trial is 1094 pages long containing three prosecution exhibits, 34 defense exhibit, 16 appellate exhibits, and zero court exhibits. Appellant is not currently confined.

Undersigned counsel is currently assigned 14 cases, with 6 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 EOT 5 in this case, undersigned counsel filed the Brief on Behalf of Appellant in *United States v. Clark* (ACM 40540) with this Court; a Petition for Grant of Review and two Motions for an Extension of Time to File the Supplement Separately in *United States v. Martell* (ACM 40501) with the Court of Appeals for the Armed Forces (CAAF); submitted the Petition for Writ of Certiorari in *United States v. Guihama* (ACM 40039, USCA Dkt. No. 23-0085/AF) to the printer on 16 December 2024 which is due to the Supreme Court of the United States (SCOTUS) on 11 January 2025; filed the Reply Brief in *United States v. Arroyo* (ACM 40321 (f rev), USCA Dkt. No. 24-0212/AF) with the CAAF; an Answer to the Government's motion to reconsider in *United States v. Hennessy* (ACM 40439) with this Court; and motion to strike portion of amicus curiae brief of LP and opposition to amicus motion for oral argument in *Arroyo* with the CAAF.

Of note, the Court and undersigned counsel's office were closed 24-26 December 2024 due to the President's Executive Order, a federal holiday, and a family day; closed 1-2 January 2025 due to a federal holiday and family day; will be closed 9 January 2025 due to the President's Executive Order; and undersigned counsel has preapproved leave 13 January 2025. Since filing

EOT 5 in this case, undersigned counsel prepared for and participated as a moot judge in four moot arguments and attended one oral argument at the CAAF (equaling approximately 14 hours) and completed eight peer reviews. Undersigned counsel has also been working on the planning and preparations for a *DuBay*[1] hearing ordered in *United States v. Sherman,* (ACM 40486) by this Court, which is currently scheduled for the week of 27 January 2025.

This case is currently undersigned counsel's fourth priority before this Court. Undersigned counsel has not started review of the record of trial in this case. The following cases before this Court have priority over the present case:

1. *United States v. Arizpe* (ACM 40507): The unsealed portion of the verbatim transcript is 1,040 pages long and the record of trial is comprised of four volumes containing seven prosecution exhibits, one defense exhibit, 34 appellate exhibits, and one court exhibit. Undersigned counsel has reviewed the record and is currently drafting issues and conducting researching. The issues have been currently narrowed down from five to three.
2. *United States v. Cooley* (ACM 40376): The unsealed portion of the verbatim transcript is 1,587 pages long and the record of trial is comprised of 10 volumes containing 29 prosecution exhibits, 16 defense exhibits, 109 appellate exhibits, and two court exhibits. The sealed transcript is 69 pages long; there is one sealed exhibit that is a document and one sealed exhibit that is a video lasting approximately eight hours. Undersigned counsel has viewed the sealed evidence in this case and will turn to review of the rest of the record once the AOE in *Arizpe* is in review.

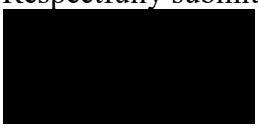
[1] *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967).

3. *United States v. Soloshenko* (ACM 40581): The electronic record of trial is 1,173 pages long comprised of seven prosecution exhibits, two defense exhibits, 27 appellate exhibits, and one court exhibit. Undersigned counsel scanned and transmitted, pursuant to this Court's Order, the sealed material to civilian appellate defense counsel.

Appellant has provided limited consent to disclose confidential communications with counsel wherein she was advised of her right to a timely appeal, counsel's progress on the case, the request for this enlargement of time, and wherein she consented to the request for this enlargement of time.

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

Respectfully submitted,



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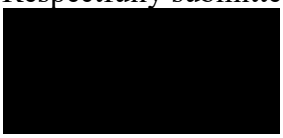
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 6 January 2025.

Respectfully submitted,



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7 January 2025

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

| | | |
|---|---|---|
| UNITED STATES,<br>*Appellee,*<br><br>v.<br><br>Master Sergeant (E-7)<br>EILEEN G. ECHALUSE, USAF,<br>*Appellant.* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME<br><br>ACM 24027<br><br>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 general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

[redacted]
MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 7 January 2025.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

# UNITED STATES AIR FORCE
# COURT OF CRIMINAL APPEALS

| | | |
|---|---|---|
| **UNITED STATES** | ) | **No. ACM 24027** |
| ***Appellee*** | ) | |
| | ) | |
| **v.** | ) | |
| | ) | **ORDER** |
| **Eileen G. ECHALUSE** | ) | |
| **Master Sergeant (E-7)** | ) | |
| **U.S. Air Force** | ) | |
| ***Appellant*** | ) | **Panel 3** |

On 5 February 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Seventh) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 10th day of February, 2025,

**ORDERED:**

Appellant's Motion for Enlargement of Time (Seventh) is **GRANTED**. Appellant shall file any assignments of error not later than **17 March 2025**.

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

FOR THE COURT

[redacted]

OLGA STANFORD, Capt, USAF
Chief Commissioner

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

| | | |
|---|---|---|
| **UNITED STATES** | ) | **MOTION FOR ENLARGEMENT OF** |
| *Appellee* | ) | **TIME (SEVENTH)** |
| | ) | |
| v. | ) | Before Panel No. 3 |
| | ) | |
| Master Sergeant (E-7) | ) | No. ACM 24027 |
| **EILEEN G. ECHALUSE,** | ) | |
| United States Air Force | ) | 5 February 2025 |
| *Appellant* | ) | |

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

Pursuant to Rule 23.3(m) 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 **17 March 2025**. The record of trial was docketed with this Court on 22 December 2023. This Court signed and receipted for the record of trial on 21 May 2024. From the date of docketing to the present date, 411 days have elapsed. On the date requested, 451 days will have elapsed. From the date the record of trial was received by this Court to the present date, 260 days have elapsed. On the date requested, 300 days will have elapsed. **Undersigned counsel requests a status conference should this Court be inclined to deny this EOT.**

On 20 March 2023 and 10-14 April 2023, a special court-martial by military judge alone at Osan Air Base, Republic of Korea, convicted Appellant, contrary to her pleas, of three specifications, with excepted words, in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892 (2019). Record of Trial (ROT) Vol. 1, *Entry of Judgement*, dated 14 April 2023. The military judge alone found Appellant, consistent with her pleas, not guilty of one specification of Article 92, UCMJ. *Id*. The military judge sentenced Appellant to a reprimand

and reduction to the grade of E-6. *Id*. The Convening Authority took no action on the findings or sentence. ROT Vol. 1, *Convening Authority Decision on Action*, dated 18 May 2023.

The electronic record of trial is 1094 pages long containing three prosecution exhibits, 34 defense exhibit, 16 appellate exhibits, and zero court exhibits. Appellant is not currently confined.

Undersigned counsel is currently assigned 14 cases, with 3 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 EOT 6 in this case, undersigned counsel filed the Supplement to the Petition for Grant of Review in *United States v. Martell* (ACM 40501) with the Court of Appeals for the Armed Forces (CAAF); the Petition for Writ of Certiorari in *United States v. Guihama* (ACM 40039, USCA Dkt. No. 23-0085/AF) with the Supreme Court of the United States (SCOTUS); an EOT to file the Reply Behalf in *United States v. Clark* (ACM 40540) with this Court; the Brief on Behalf of Appellant, Motion to Attach Documents, and a Motion for Leave to File a Reply to Opposition to Motion to Attach in *United States v. Arizpe* (ACM 40507) with this Court; and the Brief on Behalf of Appellant in *United States v. Soloshenko* (ACM 40581) with this Court. Undersigned counsel also represented SrA Sherman at a *DuBay*[1] hearing ordered in *United States v. Sherman,* (ACM 40486) by this Court.

Of note, the Court and undersigned counsel's office were closed 9 January 2025 due to the President's Executive Order and undersigned counsel took leave 13-15 January 2025. Since filing EOT 6 in this case, undersigned counsel prepared for and participated as a moot judge in five

[1] *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967).

moot arguments (equaling approximately 10 hours) and completed two peer reviews (equaling approximately 8 hours).

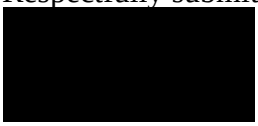
This case is currently undersigned counsel's second priority before this Court. Undersigned counsel has not started review of the record of trial in this case. The following case before this Court has priority over the present case:

1. *United States v. Cooley* (ACM 40376): The unsealed portion of the verbatim transcript is 1,587 pages long and the record of trial is comprised of 10 volumes containing 29 prosecution exhibits, 16 defense exhibits, 109 appellate exhibits, and two court exhibits. The sealed transcript is 69 pages long; there is one sealed exhibit that is a document and one sealed exhibit that is a video lasting approximately eight hours. Undersigned counsel has viewed the sealed evidence in this case and begun review of the rest of the record. However, undersigned counsel will have to pause review next week to begin preparing for Oral Argument ordered by the CAAF in *United States v. Arroyo* (ACM 40321 (f rev), USCA Dkt. No. 24-0212/AF) scheduled for 25 February 2025. Undersigned counsel will also have a Reply Brief due in *Arizpe* absent an EOT. Finally, the Reply Brief in *Clark* is due to this Court on 5 March 2025 and the AOEs in *Cooley* are currently due to this Court on 6 March 2025.

Appellant has provided limited consent to disclose confidential communications with counsel wherein she was advised of her right to a timely appeal, counsel's progress on the case, the request for this enlargement of time, and wherein she consented to the request for this enlargement of time.

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

Respectfully submitted,



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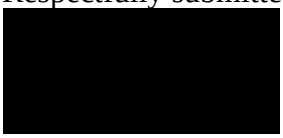
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 5 February 2025.

Respectfully submitted,



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7 February 2025

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

| | | |
|---|---|---|
| UNITED STATES,<br>*Appellee,*<br><br>v.<br><br>Master Sergeant (E-7)<br>EILEEN G. ECHALUSE, USAF,<br>*Appellant.* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME<br><br>ACM 24027<br><br>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 to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 300 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant will have consumed over 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. In addition, 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.

[redacted]
MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 7 February 2025.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

# UNITED STATES AIR FORCE
# COURT OF CRIMINAL APPEALS

| | | |
|---|---|---|
| **UNITED STATES** | ) | **No. ACM 24027** |
| ***Appellee*** | ) | |
| | ) | |
| **v.** | ) | |
| | ) | **ORDER** |
| **Eileen G. ECHALUSE** | ) | |
| **Master Sergeant (E-7)** | ) | |
| **U.S. Air Force** | ) | |
| ***Appellant*** | ) | **Panel 3** |

On 7 March 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Eighth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 11h day of March, 2025,

**ORDERED:**

Appellant's Motion for Enlargement of Time (Eighth) is **GRANTED**. Appellant shall file any assignments of error not later than **16 April 2025**.

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

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

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

| | | |
|---|---|---|
| **UNITED STATES**<br>*Appellee* | ) | **MOTION FOR ENLARGEMENT OF TIME (EIGHTH)** |
| v. | ) | Before Panel No. 3 |
| Master Sergeant (E-7)<br>**EILEEN G. ECHALUSE,**<br>United States Air Force<br>*Appellant* | ) | No. ACM 24027<br><br>7 March 2025 |

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

Pursuant to Rule 23.3(m) 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 **16 April 2025**. The record of trial was docketed with this Court on 22 December 2023. This Court signed and receipted for the record of trial on 21 May 2024. From the date of docketing to the present date, 441 days have elapsed. On the date requested, 481 days will have elapsed. From the date the record of trial was received by this Court to the present date, 290 days have elapsed. On the date requested, 330 days will have elapsed. **Undersigned counsel requests a status conference should this Court be inclined to deny this EOT.**

On 20 March 2023 and 10-14 April 2023, a special court-martial by military judge alone at Osan Air Base, Republic of Korea, convicted Appellant, contrary to her pleas, of three specifications, with excepted words, in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892 (2019). Record of Trial (ROT) Vol. 1, *Entry of Judgement*, dated 14 April 2023. The military judge alone found Appellant, consistent with her pleas, not guilty of one specification of Article 92, UCMJ. *Id*. The military judge sentenced Appellant to a reprimand

and reduction to the grade of E-6. *Id*. The Convening Authority took no action on the findings or sentence. ROT Vol. 1, *Convening Authority Decision on Action*, dated 18 May 2023.

The electronic record of trial is 1094 pages long containing three prosecution exhibits, 34 defense exhibit, 16 appellate exhibits, and zero court exhibits. Appellant is not currently confined.

Undersigned counsel is currently assigned 14 cases, with 3 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 EOT 7 in this case, undersigned counsel filed the Reply Brief on Behalf of Appellant in *United States v. Arizpe* (ACM 40507) with this Court; the Reply Brief on Behalf of Appellant in *United States v. Clark* (ACM 40540) with this Court; and the Reply Brief on Behalf of Appellant in *United States v. Soloshenko* (ACM 40581) with this Court. Undersigned counsel prepared for and argued on behalf of the appellant at oral argument before the Court of Appeals for the Armed Forces (CAAF) in *United States v. Arroyo* (ACM 40321 (f rev), USCA Dkt. No. 24-0212 AF); reviewed and certified the verbatim transcript of the *DuBay*[1] hearing ordered in *United States v. Sherman* (ACM 40486); drafted an Article 138 complaint for a client; and reviewed/edited a request for a presidential pardon for a client.

Of note, this Court was closed 14-17 February for a holiday and family day. Since filing EOT 7 in this case, undersigned military counsel prepared for and participated as a moot judge in four moot arguments (equaling approximately ten hours); presented in three moot arguments;

[1] *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967).

attended four oral arguments at the CAAF with feedback afterwards (equaling approximately 12 hours); and completed one peer review (equaling approximately three hours).

This case is currently undersigned counsel's second priority before this Court. Undersigned counsel has not started review of the record of trial in this case. The following case before this Court has priority over the present case:

1. *United States v. Cooley* (ACM 40376): The unsealed portion of the verbatim transcript is 1,587 pages long and the record of trial is comprised of 10 volumes containing 29 prosecution exhibits, 16 defense exhibits, 109 appellate exhibits, and two court exhibits. The sealed transcript is 69 pages long; there is one sealed exhibit that is a document and one sealed exhibit that is a video lasting approximately eight hours. Undersigned counsel has viewed the sealed evidence and all volumes of the record of trial except the completed transcript. Undersigned counsel has approximately 400 pages of the transcript left and has identified nine potential issues. Undersigned counsel had to pause review in order to file two replies with this Court. The brief in *Cooley* is currently due 21 March 2025.

Appellant has provided limited consent to disclose confidential communications with counsel wherein she was advised of her right to a timely appeal, counsel's progress on the case, the request for this enlargement of time, and wherein she consented to the request for this enlargement of time.

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

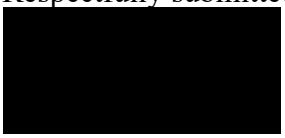
Respectfully submitted,

HEATHER M. BRUHA, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4772
Email: heather.bruha@us.af.mil

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 7 March 2025.

Respectfully submitted,



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10 March 2025

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

| | | |
|---|---|---|
| **UNITED STATES**, *Appellee,* | ) | UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME |
| | ) | Before Panel No.3 |
| v. | ) | |
| | ) | ACM 24027 |
| Master Sergeant (E-7) **EILEEN G. ECHALUSE**, United States Air Force, *Appellant.* | ) | 10 March 2025 |

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

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

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 10 March 2025.

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

# UNITED STATES AIR FORCE
# COURT OF CRIMINAL APPEALS

| | | |
|---|---|---|
| **UNITED STATES** | ) | **No. ACM 24027** |
| ***Appellee*** | ) | |
| | ) | |
| **v.** | ) | |
| | ) | **ORDER** |
| **Eileen G. ECHALUSE** | ) | |
| **Master Sergeant (E-7)** | ) | |
| **U.S. Air Force** | ) | |
| ***Appellant*** | ) | **Panel 3** |

On 7 April 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Ninth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

On 10 April 2025, the court held a status conference to discuss the progress of this case. Appellant was represented by Major Heather M. Bruha, who participated by telephone; Lieutenant Colonel Allen S. Abrams and Mr. Dwight H. Sullivan from the Appellate Defense Division were also present. Major Vanessa Bairos represented the Government. In response to questions from the court, Major Bruha provided clarifications and additional detail regarding her review of Appellant's record of trial and other obligations that were impacting her ability to prepare Appellant's case. Major Bruha indicated she expected to begin drafting the assignments of error the week of 21 April 2025 and believed she might be able to submit a brief to the court without further enlargements of time beyond the pending motion. Major Bairos reiterated the Government's opposition to Appellant's motion but did not specifically challenge any written or oral representation by the Defense.

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

Accordingly, it is by the court on this 10th day of April, 2025,

**ORDERED:**

Appellant's Motion for Enlargement of Time (Ninth) is **GRANTED**. Appellant shall file any assignments of error not later than **16 May 2025**.

FOR THE COURT

[redacted]

OLGA STANFORD, Capt, USAF
Chief Commissioner

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

| | | |
|---|---|---|
| **UNITED STATES** | ) | **MOTION FOR ENLARGEMENT OF** |
| *Appellee* | ) | **TIME (NINTH)** |
| | ) | |
| v. | ) | Before Panel No. 3 |
| | ) | |
| Master Sergeant (E-7) | ) | No. ACM 24027 |
| **EILEEN G. ECHALUSE,** | ) | |
| United States Air Force | ) | 7 April 2025 |
| *Appellant* | ) | |

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

Pursuant to Rule 23.3(m) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **16 May 2025**. The record of trial was docketed with this Court on 22 December 2023. This Court signed and receipted for the record of trial on 21 May 2024. From the date of docketing to the present date, 472 days have elapsed. On the date requested, 511 days will have elapsed. From the date the record of trial was received by this Court to the present date, 321 days have elapsed. On the date requested, 360 days will have elapsed. **Undersigned counsel requests a status conference should this Court be inclined to deny this EOT.**

On 20 March 2023 and 10-14 April 2023, a special court-martial by military judge alone at Osan Air Base, Republic of Korea, convicted Appellant, contrary to her pleas, of three specifications, with excepted words, in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892 (2019). Record of Trial (ROT) Vol. 1, *Entry of Judgement*, dated 14 April 2023. The military judge alone found Appellant, consistent with her pleas, not guilty of one specification of Article 92, UCMJ. *Id*. The military judge sentenced Appellant to a reprimand

and reduction to the grade of E-6. *Id*. The Convening Authority took no action on the findings or sentence. ROT Vol. 1, *Convening Authority Decision on Action*, dated 18 May 2023.

The electronic record of trial is 1094 pages long containing three prosecution exhibits, 34 defense exhibit, 16 appellate exhibits, and zero court exhibits. Appellant is not currently confined.

Undersigned counsel is currently assigned 12 cases, with 2 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 EOT is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Since filing EOT 8 in this case, undersigned counsel filed the Brief on Behalf of Appellant in *United States v. Cooley* (ACM 40376) with this Court; a motion for reconsideration in *United States v. Van Velson* (ACM 40401) with the Court of Appeals for the Armed Forces (CAAF); and a Petition for Grant of Review and the Supplement to the Petition for Grant of Review in *United States v. Hennessy* (ACM 40439) with the CAAF. Civilian appellate defense counsel also filed a motion for remand in *United States v. Kindred* (ACM 40607) with this Court. Undersigned counsel also sent a partial draft brief in *United States v. Sherman* (ACM 40486) to civilian appellate defense counsel for additions/edits. The brief in response to the military judge's findings of fact in *Sherman* is due 15 April 2025.

Of note, undersigned counsel had unexpected leave 25-31 March 2025 and has preapproved leave scheduled for 14-18 April 2025. Since filing EOT 8 in this case, undersigned military counsel prepared for and participated as a moot judge in five moot arguments (equaling approximately eleven hours) and completed one peer review (equaling approximately two hours).

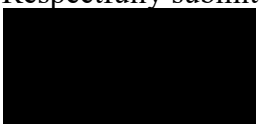
This case is currently undersigned counsel's first priority before this Court. Undersigned counsel has begun review of the record of trial in this case. However, undersigned counsel has a

brief due in *Sherman* by 15 April 2025 with this Court; an Answer Brief in *Hennessy* due to the CAAF; a Reply Brief in *Cooley* with this Court; a Petition for Grant of Review and Supplement (absent an EOT) in *United States v. Arizpe* (ACM 40507) due to the CAAF; a Petition for Certiorari in *United States v. Martell* (ACM 40501) (absent an EOT) due to the Supreme Court of the United States (SCOTUS); and training slides for the Defense Orientation Course (DOC) due. Undersigned counsel is currently slotted to train at the DOC on 2 May 2025 and then attend the Senior Defense Counsel Qualification Course during 5-9 May 2025.

Appellant has provided limited consent to disclose confidential communications with counsel wherein she was advised of her right to a timely appeal, counsel's progress on the case, the request for this enlargement of time, and wherein she consented to the request for this enlargement of time.

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

Respectfully submitted,



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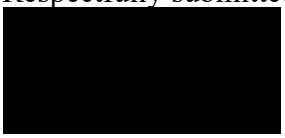
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 7 April 2025.

Respectfully submitted,



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

| | | |
|---|---|---|
| UNITED STATES,<br>*Appellee,* | ) | UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME |
| v. | ) | |
| | ) | Before Panel No. 3 |
| Master Sergeant (E-3)<br>**EILEEN G. ECHALUSE,**<br>United States Air Force,<br>*Appellant.* | ) | No. ACM 24027 |
| | ) | 8 April 2025 |

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

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

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 8 April 2025.

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
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# UNITED STATES AIR FORCE
# COURT OF CRIMINAL APPEALS

| | | |
|---|---|---|
| **UNITED STATES** | ) | **No. ACM 24027** |
| ***Appellee*** | ) | |
| | ) | |
| **v.** | ) | |
| | ) | **NOTICE OF PANEL CHANGE** |
| **Eileen G. ECHALUSE** | ) | |
| **Master Sergeant (E-7)** | ) | |
| **U.S. Air Force** | ) | |
| ***Appellant*** | ) | |

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

**ORDERED:**

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

This panel letter supersedes all previous panel assignments.

FOR THE COURT

[redacted]

Chief Commissioner

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

| | | |
|---|---|---|
| **UNITED STATES** | ) | **BRIEF ON BEHALF OF** |
| *Appellee* | ) | **APPELLANT** |
| | ) | |
| v. | ) | Before Panel 1 |
| | ) | |
| Master Sergeant (E-7) | ) | No. ACM 24027 |
| **EILEEN G. ECHALUSE** | ) | |
| United States Air Force | ) | 16 May 2025 |
| *Appellant* | ) | |

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

**Assignments of Error**

**I.**

**Whether, by finding Appellant guilty of Specifications 1-3 of the Charge except for the words "on divers occasions," the military judge rendered ambiguous findings not capable of review under Article 66(d).**

**II.**

**Whether the findings of guilty to Specifications 1-3 of the Charge are legally and factually sufficient.**

**III.**

**Whether AFI 36-2909 and AFI 1-1 are unconstitutional as applied to Appellant because they are void for vagueness.**

**IV.**

**Whether the military judge abused his discretion when he denied the Defense's R.C.M. 914 motion to strike SrA LI's testimony.**

**V.** [1]

**Whether the military judge was biased against Appellant and in favor of the prosecution.**

[1] Issue V is raised in Appendix in accordance with *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1992).

## Statement of the Case

On 20 March 2023 and 10-14 April 2023, a special court-martial consisting of a military judge alone at Osan Air Base, Republic of Korea, convicted Master Sergeant (MSgt) Eileen Echaluse (Appellant), contrary to her pleas, of three specifications, with excepted words, of violating Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892.[2] R. at 1035[3]; Entry of Judgment (EOJ). The military judge found Appellant, consistent with her pleas, not guilty of one specification of violating Article 92, UCMJ. *Id*. The military judge sentenced Appellant to a reprimand and reduction to the grade of E-6. R. at 1084; EOJ. The Convening Authority took no action on the findings or sentence. Convening Authority Decision on Action.

## Statement of the Facts

In approximately June of 2022, Appellant moved to the Pacific House Dining Facility (PAC House) as the facility manager. R. at 53. While she was in that position, the Government charged Appellant with three specifications of being "derelict in the performance of [her] duties" by "negligently fail[ing] to refrain from having an unprofessional relationship [(UPR)]" with three Airmen "on diverse occasions" "as it was her duty to do."[4] Charge Sheet.

### 1. Appellant's exceptional military character.[5]

Prior to serving as the facility manager at the PAC House, Appellant was hand-selected by the Chief Master Sergeant of the Air Force for multiple events to brief visitors and lead visits. R. at 920. Chief Master Sergeant (CMSgt) TH testified that Appellant was an "impeccable" Military

[2] 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 those found in the *Manual for Courts-Martial, United States* (2019 ed.) [2019 *MCM*].
[3] All record (R.) citations are to the Verbatim Transcript.
[4] The military judge found Appellant not guilty of Specification 4 of the Charge. R. at 1035; EOJ.
[5] At trial, the Defense put on extensive evidence of Appellant's exceptional military character. R. at 899, 922; DE C-P.

Training Instructor (MTI) to the point where other squadrons asked her how to run their programs. R. at 919. CMSgt TH stated Appellant had "[i]mpecable, excellent military character. Unquestioned in [her] eyes." R. at 922. Colonel (ret) MN, who was a former senior Noncommissioned Officer (NCO), described Appellant as a "very exceptional senior NCO." R. at 898. Appellant had been one of his blue rope MTIs at Basic Military Training (BMT). *Id.* Blue rope is "a very sought-after award, a coveted award, a unique position." R. at 920-21. Appellant brought "great talent to the mix" and was "a very disciplined young lady." R. at 899. She knew her responsibilities and held people accountable. *Id.* Appellant had good military character, was someone one could trust and didn't have to follow up on, and Colonel (ret) MN wished the Air Force had more like her. R. at 899-90.

**2. The Defense Filed a Motion to Dismiss for Failure to State an Offense.**

The charge sheet read that Appellant "on diverse occasions" was "derelict in the performance of [her] duties in that she negligently failed to refrain from having [a UPR] with" Senior Airman (SrA) IS, SrA ST, and Staff Sergeant (SSgt) RL in three separate specifications "as it was her duty to do." Charge Sheet. The Defense filed a Motion to Dismiss for Failure to State an Offense. AE I. Previously, the Government provided a bill of particulars regarding all specifications of the charge in response to a request from the Defense. AE V at 19-20.[6] The bill of particulars identified the sources of the duty as Air Force Instruction (AFI) 36-2909, *Professional Relationships and Conduct*, and AFI 1-1, *Air Force Standards*. *Id.* The Defense had also asked for "clarity on the specific manner in which [Appellant] had [a UPR] that form the charged misconduct for [S]pecifications 1-3." *Id.* With respect to all three specifications, the

[6] The bill of particulars is not an attachment to either the Defense's Motion to Dismiss nor the Government's Response. Instead, it is attached to the Defense's Objections and Response to the Government's Motion in Limine to Exclude Evidence under Mil. R. Evid. 404(a)(2).

Government explained, "the charged misconduct occurred through showings of favoritism, close friendships, and/or shared activities. Evidence of such conduct is available through witness testimony and the Investigation Findings Report." *Id.* The military judge considered the bill of particulars when ruling on the Defense's Motion to Dismiss; he ultimately denied the motion. AE VI; R. at 37.

**3. At trial, the Government described "factions" within the PAC House.**

The Government started its opening statement by describing three fractions within the PAC House. R. at 41. The first faction consisted of Appellant, SSgt RL, SrA IS, and SrA ST. *Id.* The last three are each named in one of the first three specifications of the charge. Charge Sheet; EOJ. The second faction included SrA DS, Airman First Class (A1C) DW, and A1C MR. R. at 41. The final faction – described by the Government as "the outsiders" – was comprised of SSgt NA, SrA LI, SrA NP, and SrA JE. *Id.* Testimony from SSgt NA and SrA JE was stricken from the record by the military judge pursuant to a R.C.M. 914 motion. AE XV (*see also* para. 7 below).

**4. Seemingly in an attempt to prove what constituted professional conduct versus UPRs, the Government elicited opinion testimony from witnesses.**

The military judge took judicial notice of Air Force Instruction (AFI) 36-2909, *Air Force Professional Relationships and Conduct*, and paragraph 2 of AFI 1-1, *Air Force Standards*. R. at 28, 999. The Government asked its witnesses about professional relationships versus UPRs throughout its case-in-chief. *See generally* R. at 52-843.

**a. SrA LI initially testified that she felt excluded.**

The military judge did not strike SrA LI's testimony after the Defense raised a R.C.M. 914 motion and the Government could not produce SrA LI's prior statement regarding what she testified about. AE XV. As such, the military judge considered SrA LI's testimony. The first time SrA LI testified, she said that before Appellant got to the PAC House the environment was

"very stiff, like separated" and that most Airmen were very close to each other, hung out and talked to each other, and there were no issues. R. at 54. After Appellant became manager, SrA LI said everyone started spreading out into their own groups and "staying away in different areas of the facility." *Id.* SrA LI said Appellant did not acknowledge her very often and would at times ignore her when she said good morning or good afternoon. *Id.* SrA LI claimed Appellant hung around SrA ST and SrA IS more than others. *Id.* SrA LI felt excluded. R. at 55. Appellant did not make her feel included either. R. at 76.

At one point, SrA LI had an appointment to get her wisdom teeth removed but was put on the schedule to work. R. at 55-56. SrA LI first said she asked for another Airman to be scheduled instead, and the schedule was changed to accommodate the request. R. at 56. Trial counsel then asked further about a "conflict" with Appellant. R. at 57. SrA LI then explained that she had a back-and-forth with leadership about the schedule, and her reasoning for scheduling the procedure when she was scheduled to work. R. at 58. SrA LI ended up lying to Appellant by telling her that the day her wisdom teeth were scheduled to be removed was the only day available. R. at 65. SrA LI then talked about wanting to go to a volunteer program but was told she had to work her shift instead. R. at 60.

SrA LI further testified about her opinion that Appellant gave SrA IS and SrA ST—both named in the charge—their choice of compensation days, and that Appellant drove the two Airmen around base as well. R. at 62-63. She also said she was never invited to go out to the Songtan Entertainment District (SED) nor to go on a Seoul trip. R. at 63. However, in a pretrial interview with the Defense, SrA LI did not mention a Seoul trip at all. R. at 886. And SrA SI testified that she did invite SrA LI as well as SrA NP, but they both declined to go. R. at 263.

SrA LI felt that Appellant treated SrA IS, SrA ST, and SrA DS differently because, "They

got more like, you know, like being liked with them, like being a normal conversation and getting along with." R. at 66. SrA LI felt like the main person Appellant did not get along with was herself. *Id.* She also mentioned SrA NP may not have gotten along well with Appellant either. *Id.* SrA LI and SrA IS used to be good friends until they had a falling out because a man SrA LI was interested in made a pass at SrA IS. R. at 68, 260-61. There were several things SrA LI felt she was never invited to. R. at 69.

**b. Unit morale—Seoul trip.**

SrA IS's perception was that everyone in PAC House was going to take a trip to Seoul as "kind of like a group team." R. at 246, 263. The trip was for SSgt NA's birthday and was intended to build unit cohesion. *Id.* The original plan was for it to be a day trip, but the group ended up staying at an Airbnb. R. at 263. Appellant, Appellant's friend (SSgt DF), SSgt RL, SrA ST, and SrA IS ended up going. R. at 247, 249. SSgt DF was a victims' paralegal at Osan Air Base and accompanied Appellant and the other Airmen to Seoul. R. at 485, 497. SSgt DF did not believe there were any UPRs. R. at 488-495. The Airbnb had three or four rooms. R. at 247. SrA ST and SrA IS shared a room, SSgt DF and SSgt RL shared a room, and Appellant stayed in her own room. *Id.* Everyone split the cost of the Airbnb evenly. *Id.* The group drank together and ate Korean barbecue. R. at 248. Appellant only drank "one cup or so." R. at 285. When the group went to the club, Appellant did not dance; she stayed at the table the whole time. R. at 286.

**c. At trial, the Government focused on a "rumor" that Appellant had slept with SrA IS, which was disproved.**

The Government referenced a "rumor" that Appellant had consensual sex with SrA IS during a group trip to Seoul. R. at 42. It also argued that this rumor that was going around PAC House after the Seoul trip was evidence of a "perception of an [UPR]." R. at 1008. SSgt DF stayed with the group that went to Seoul and he did not see anything romantic going on between

Appellant and SrA IS. R. at 489. SrA IS testified that the rumor was not true and she never had sex with Appellant. R. at 266. SrA IS also testified she is not sexually attracted to women. *Id.*

**d. SrA LI's secondary testimony during the Government's case-in-chief alleged she saw SrA IS massaging Appellant's hand in the office.**

The Government recalled SrA LI to testify after twelve other witnesses. R. at 784. The second time SrA LI testified, she said she saw SrA IS giving Appellant a hand massage in the office when she walked in. R. at 784-85. SrA LI thought it was unprofessional because she believed one would only do that with someone one is close with. *Id.* She later said that it was only after the Seoul trip that the unit started becoming more separated with lower morale. R. at 786-87. SrA LI testified she reported Appellant as a supervisor because of the atmosphere in the workplace. R. at 789. Trial counsel asked SrA LI about the hand massage three times when they recalled her. R. at 784-85, 790.

On cross-examination, the Defense confronted SrA LI about having not mentioned the massage incident when she first testified and was asked if there was anything professional she observed at the PAC House. R. at 792. SrA LI said she did not remember the massage incident at the time—during direct examination, cross-examination, nor when the military judge first questioned her. R. at 793-94. The Defense then asked SrA LI when Appellant crossed the line and she said the Seoul trip and the wisdom teeth situation—by which, she later explained, she meant being denied a volunteer opportunity. R. at 794, 796. When interviewed by the Defense the night before her testimony, SrA LI said Appellant crossed the line when she denied SrA LI's volunteer opportunity and said nothing about the Seoul trip. R. at 796. SrA LI was surprised Appellant told her she could not go to the volunteer event, because it was a big opportunity for her and she had always been allowed to go in the past. R. at 799. SrA LI even asked Appellant about going a second time and recorded their conversation because she was very concerned she was

being denied an opportunity. R. at 800.

**e. Trial counsel's closing argument.**

Trial Counsel in closing argument acknowledged that "each member had a different view of what could be professional and unprofessional" but that "they all agreed that favoritism could sometimes be unprofessional" and could "lead towards [UPR]." R. at 1000; *see* AE XIV. Trial counsel went on to argue, "[a]ll of the caveats that those witnesses placed on when this could be professional, do not exist in this case." R. at 1001. Pointing to AFI 36-2909, paragraph 2.2, trial counsel argued that relationships become unprofessional when they "detract from the authority of superiors or results in or reasonably creates the appearance of favoritism." R. at 1009. Trial counsel referenced AFI 36-2909, paragraph 2.2.2.2., which says relationships are prohibited if the relationship "[c]auses actual or reasonable perception of favoritism, partiality, or unfairness." *Id.* Trial counsel then discussed AFI 36-2909, paragraph 2.3.3., which stated that close friendships can also create a perception or reality of UPRs. *Id.*

**5. In an attempt to rebut the prosecution's case, the Defense countered with opinion evidence of customary behavior of units in separated areas and leaders in the same or similar circumstances.**

Colonel (ret) MN and CMSgt TH both testified regarding hypotheticals and stated that drinking with others in one's unit was not per se unprofessional, but rather has often been used to build *esprit de corps*. R. at 905, 924. CMSgt TH described having gone to the SED personally with senior NCOs and drinking with other NCOs, which she did not believe to be a UPR. R. at 929. It was customary for units or work centers stationed at Osan Air Base to go out and drink together at bars in the SED. R. at 496, 564, 904-05, 924. It was also customary for deployed units, such as at Al Udeid, to go to bars together in mixed ranks and drink. R. at 948-49. There was nothing unprofessional about it. *Id.* As for a senior NCO staying at an Airbnb or hotel with their

Airmen, Colonel (ret) MN said whether it is appropriate must be assessed on a case-by-case basis and has more to do with what is happening in the rooms than with generally staying in the same place but in different rooms. R. at 907-08. TSgt TR also testified that while deployed overseas, it was common to have mixed ranks staying in the same dorm or rooms, sometimes even with bunk beds. R. at 939-43; DE B.

MSgt KR's husband also regularly hosted a monthly dinner with pizza, wings, alcohol, and card games at her apartment in Korea where junior enlisted and NCOs were invited and attended. R. at 562; *see also* R. at 1013. MSgt KR herself agreed that was not a UPR. *Id.* She also confirmed that it was not out of the ordinary for groups including mixed ranks to drink shots of soju together in the SED. R. at 563.

**6. Counter evidence regarding favoritism in the unit.**

Prior to Appellant arriving at the PAC House, the facility was not well-organized. R. at 635. Once Appellant arrived, people were excited to have another NCO in the facility (R. at 244) and the facility's Airmen began to win awards. R. at 659-60. Appellant had a positive effect on the PAC House. R. at 660. SrA LI was coined by the 51st Force Support Squadron Commander. R. at 71. SrA NP was recognized with the Sharpest Knife Award and nominated for Airman of the Year. R. at 186. SrA DS was sad—as was everyone else in the unit—when Appellant left the unit because morale went down. R. at 987. SrA IS did not feel anything inappropriate happened in the PAC House under Appellant. R. at 255. Nor did she feel there was any type of favoritism happening. *Id.* Outside of group office outings, SrA IS did not hang out with Appellant. R. at 257-58. She also felt that Appellant treated everyone in PAC House equally. R. at 258-59. When initially interviewed by MSgt KR, SrA DS did not report any unprofessionalism. R. at 987-88. A1C MR did not see anyone treated unequally. R. at 596. SrA DS felt that Appellant treated

everyone equally and spoke to everyone equally. R. at 741. SrA NP testified it appeared everyone was being treated equally. R. at 185. SSgt RL believed Appellant held everyone to standards equally. R. at 354.

**7. The military judge denied part of the Defense's R.C.M. 914 motion.**

After SSgt NA, SrA JE, and SrA TM testified on direct examination, the Defense made oral R.C.M. 914 motions to produce their previous statements about the matter they had just testified about. R. at 136, 203, 689. SrA LI was the Government's first witness and second-to-last witness. R. at 52, 784. The Defense made an oral R.C.M. 914 motion regarding SrA LI after she testified the second time for the Government. R. at 790. None of the prior statements of the witnesses were produced. As such, the Defense filed a written R.C.M. 914 motion after all of them had testified. AE XII-XIII. The military judge granted a remedy on the motion in part—striking the testimony of SSgt NA, SrA JE, and SrA TM—and denied the motion in part—as it related to SrA LI's testimony. AE XV. The trial counsel focused on SrA LI during the Government's opening statement and closing argument. R. at 42, 1000, 1002, 1007. The military judge ruled the Defense waived the right to make an R.C.M. 924 motion as to SrA LI and was not entitled to a remedy when her statement was not produced. AE XV at 6-7. His reasoning was that the Defense knew about the statement of SrA LI prior to trial and did not object after her initial testimony during the Government's case-in-chief before cross-examining her. AE XV at 6. The military judge relied on the text of R.C.M. 914, which says, "[a]fter a witness . . . has testified on direct examination, the military judge, on motion of a party who did not call the witness, shall order the party who called the witness to produce" the statement. AE XV at 6-7. The military judge also relied on *United States v. Gonzalez*, 79 M.J. 466, 468 (C.A.A.F. 2020) (citing *United States v. Haynes*, 79 M.J. 17, 19 (C.A.A.F. 2019)), when finding waiver. *Id.* The military judge declined

to consider *United States v. McKenzie*, 768 F.2d 602, 607 (5th Cir. 1985), argued by the Defense for the position that as long as the issue is raised at trial, it is preserved. AE XV at 7.

## Argument

### I.

**Whether, by finding Appellant guilty of Specifications 1-3 of the Charge except for the words "on divers occasions," the military judge rendered ambiguous findings not capable of review under Article 66(d).**

*Standard of Review*

Whether a verdict is ambiguous and therefore precludes this Court from performing a factual sufficiency review is a question of law reviewed de novo. *United States v. Frantz*, No. ACM 39657, 2020 CCA LEXIS 404, at *20 (A.F. Ct. Crim. App. Nov. 10, 2020) (quotation omitted) (citing *United States v. Ross*, 68 M.J. 415, 417 (C.A.A.F. 2010)).

*Law and Analysis*

In *United States v. Walters*, 58 M.J. 391, 392 (C.A.A.F. 2003), a specification included the words "on divers occasions," yet the panel members excepted those words, thereby creating a one-occasion specification but failed to indicate what the one occasion was that resulted in the finding of guilty. *Id.* The Court of Appeals for the Armed Forces (CAAF) held the resulting ambiguity in the findings then precluded review by the Court of Criminal Appeals (CCA) under Article 66, UCMJ, 10 U.S.C. § 866 (2000). *Id.* Similarly, in *Ross*, the CAAF held the findings were ambiguous and, therefore, could not be reviewed as a matter of law where the military judge, without an on-the-record explanation, excepted the words "on divers occasions" from a specification. 68 M.J. at 415. The CAAF explained:

> A clear record as to the occasion for which an accused is found guilty is necessary when the words "on divers occasions" are excepted from findings. No such clarity exists in this case and the findings are therefore ambiguous as to which acts Appellant was found not guilty and guilty of.

*Id.* at 416 (internal citations omitted). As such, the CAAF set aside the findings of guilty and the sentence as to the single charge and its specification and dismissed both with prejudice. *Id.* That principle controls the outcome of this case.

As to factual sufficiency review, while *Walters* and *Ross* both involved a CCA reviewing the case under a prior version of Article 66, UCMJ, that does not render that precedent inapposite. Those cases apply here, where a factual sufficiency review is appropriate because (1) Appellant has personally requested this Court consider whether the findings are correct in fact pursuant to Article 66(d)(1)(B)(i), UCMJ, 10 U.S.C. § 866(d)(1)(B)(i),[7] and (2) Appellant has made "a specific showing of a deficiency in proof." *See* Issue II *infra*. Generally, the Government failed to prove beyond a reasonable doubt what the exact duty Appellant had as it related to refraining from having UPRs as the AFIs judicially noticed are vague as applied to Appellant's case. Further, the Government failed to prove that Appellant knew or reasonably should have known what the exact duty she had in refraining from having UPRs—aside from not having romantic or sexual relationships with her subordinates. Additionally, the Government did not prove that a reasonably prudent senior NCO in the same or similar circumstances would not have shown the same due care as Appellant. As such, the precedent established by the CAAF still applies in this case under the new factual sufficiency review in Article 66(d), UCMJ. However, this Court cannot complete a factual sufficiency review because the findings of guilty are ambiguous and cannot be reviewed as a matter of law as seen in *Ross*. 68 M.J. at 415.

While CCAs have a unique power to review findings of guilty for factual sufficiency, there is still a critical limitation—CCAs "cannot find as fact any allegation in a specification for which

[7] Reprinted in Appendix 2, *Manual for Courts-Martial, United States* (2024 ed.) (2024 *MCM*).

the factfinder below has found the accused not guilty." *United States v. Rosario*, 76 M.J. 114, 117 (C.A.A.F. 2017) (citing *United States v. Bennitt*, 72 M.J. 266, 269 (C.A.A.F. 2013) (quoting *Walters*, 58 M.J. at 395), and citing *United States v. Smith*, 39 M.J. 448, 451-52 (C.M.A. 1994) (overruled on other grounds)). "Where a specification alleges wrongful acts on 'divers occasions,' any findings by exceptions and substitutions that remove the 'divers occasions' language must clearly reflect the specific instance of conduct upon which [the] modified findings are based." *Walters*, 58 M.J. at 396.

Here, the military judge was the factfinder. Appellant was charged with being negligently derelict in failing to refrain from having UPRs with three separate individuals. Charge Sheet. Yet, the military judge in his findings found Appellant guilty of specifications 1-3 of the charge, but found Appellant not guilty of the excepted words "on divers occasions" as to each of those specifications. R. at 1035; EOJ. The military judge did not clearly reflect on the record of what specific instances of conduct he found Appellant guilty beyond a reasonable doubt. The military judge simply announced:

**FINDINGS**

**MJ: Master Sergeant Eileen G. Echaluse, this Court finds you:**

**Of Specification 1 of the Charge: Guilty, except the words "on divers occasions." Of the excepted words: Not guilty.**

**Of Specification 2 of the Charge: Guilty, except for the words "on divers occasions." Of the excepted words: Not guilty.**

**Of Specification 3 of the Charge: Guilty, except the words "on divers occasions." Of the excepted words: Not guilty.**

**Of Specification 4 of the Charge: Not guilty.**

**Of the Charge: Guilty.**

You may be seated.

R. at 1035. A clear record as to what conduct for which an accused is found guilty is necessary

when the factfinder finds an accused guilty of an offense with the excepted words of "on divers occasions." *Ross*, 68 M.J. at 416 (citing, *e.g.*, *United States v. Trew*, 68 M.J. 364, 365 (C.A.A.F. 2010); *United States v. Wilson*, 67 M.J. 423, 428 (C.A.A.F. 2009); *United States v. Augspurger*, 61 M.J. 189, 190 (C.A.A.F. 2005); *United States v. Seider*, 60 M.J. 36, 37-38 (C.A.A.F. 2004)). Just as there was no such clarity in *Ross*, there is no such clarity here. The CAAF in *Trew* made a point to state clarification of the ambiguity can be accomplished by the military judge by clearly stating on the record which alleged incident formed the basis for the conviction. 68 M.J. at 365. The military judge did not state on the record—clearly or otherwise—what alleged incidents formed the basis for the convictions of specifications 1-3 and the charge. As such, this Court as a matter of law cannot conduct factual sufficiency review even though Appellant made a specific showing of deficiency of proof.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court set aside the findings of guilty to specifications 1-3 of the charge, dismiss them with prejudice, and set aside the sentence.

## II.

**The findings of guilty to Specifications 1-3 of the Charges are legally and factually insufficient.**

*Standard of Review*

This Court reviews issues of factual and legal sufficiency de novo. Article 66(d), UCMJ, 10 U.S.C. § 866(d); *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002).

*Law*

For offenses occurring after 1 January 2021, the UCMJ specifies this Court "may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof." Article 66(d)(1)(B)(i), UCMJ, 10 U.S.C. § 866(d)(1)(B)(i)

(reprinted in Appendix 2, 2024 *MCM*). If "the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding."[8] Article 66(d)(1)(B)(iii), UCMJ, 10 U.S.C. § 866(d)(1)(B)(iii) (2024 *MCM*). The CAAF held "weight of the evidence" and "clearly convinced" do not change the burden of proof, which is beyond a reasonable doubt. *United States v. Harvey*, 85 M.J. 127, 131-32 (C.A.A.F. 2024). This is true because the quantum of proof required to sustain a conviction is the same. *Id.*

The CAAF recently stated that some language this Court previously used regarding deference when conducting a factual sufficiency review "might be seen as an overstatement" since "deference is not necessarily greater under amended Article 66(d)(1)(B), UCMJ, because the degree of deference depends on the evidence at issue." *United States v. Csiti*, __ M.J. __, No. 24-0175/AF, 2025 CAAF LEXIS 349, at *13 (C.A.A.F. May 8, 2025).

The test for legal sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements beyond a reasonable doubt. *Id.* at *10.

*Analysis*

The elements of negligent dereliction of duty are: (1) that the accused had certain duties; (2) that the accused knew or reasonably should have known of the duties; and (3) that the accused was through neglect derelict in the performance of those duties. 2019 *MCM*, Pt. IV-27, ¶ 18.b.(3)(a)-(c). The Government charged Appellant with "on diverse occasions" being "derelict in the performance of [her] duties in that she negligently failed to refrain from having [a UPR]

[8] This standard does not require an appellant to show a total lack of evidence supporting an element, which would be redundant with legal sufficiency review. *United States v. Csiti*, No. ACM 40386, 2024 CCA LEXIS 160, at *18 (A.F. Ct. Crim. App. Apr. 29, 2024), *aff'd*, __ M.J. __, No. 24-0175, 2025 CAAF LEXIS 349 (C.A.A.F. May 8, 2025).

with" IS, ST, and RL (alleged in three separate specifications) "as it was her duty to do." Charge Sheet. While actual knowledge can be proved using circumstantial evidence, it need not be proved if the accused reasonably should have known of the duties. 2019 *MCM*, Pt. IV-28, ¶ 18c.(3)(b). "This may be demonstrated by regulations, training or operating manuals, customs of the Service, academic literature or testimony, testimony of persons who have held similar or superior positions, or similar evidence." *Id.* "'Negligently' means an act or omission of a person who is under a duty to use due care which exhibits a lack of that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances." 2019 *MCM*, Pt. IV-28, ¶ 18c.(3)(c). While the Government proved that Appellant had certain duties under the AFIs, it failed to prove (1) Appellant knew or reasonably should have known of those duties given the AFIs are vague (*see* Issue II *infra*); and (2) that Appellant's conduct lacked the degree of care that a reasonably prudent person would have exercised in the same or similar circumstances. As such, each conviction should be set aside.

**1. The Government attempted to use opinion evidence to prove what behavior rose to the level of UPRs.**

The Government failed to prove beyond a reasonable doubt that Appellant knew or reasonably should have known of the duties she was charged with violating given the AFIs' vagueness (*see* Issue II *infra*). Nor did the Government prove that Appellant was negligent by failing to use the degree of care that a reasonably prudent person would have exercised under the same or similar circumstances. The Government stated in its closing argument that "each member had a different view of what could be professional and unprofessional." R. at 1000. While the witnesses agreed that "favoritism could sometimes be unprofessional" or "can lead towards [UPRs]," the Government had to prove beyond a reasonable doubt that Appellant was negligently derelict in failing to refrain from having UPRs with three junior Airmen in her unit. *Id.*; Charge

Sheet. It failed to do so.

Instead, the Government put on "tabloid evidence" (R. at 1013) or opinion evidence with rumors and a primary witness, SrA LI—the testimony of whom should have been stricken (*see* Issue III *infra*)—who was biased. The clearest line established through opinion testimony concerning UPR was that dating and sex were prohibited. *See* R. at 1014. And while the Government emphasized throughout the trial the "rumor" that Appellant had sex with SrA IS, no evidence proved that occurred or even made it a reasonable probability (if beyond a reasonable doubt was not the standard of proof). Friendship alone is not prohibited by AFI 36-2909 or AFI 1-1. The AFIs discuss close relationships or close friendships, but none of the witnesses described Appellant engaging in such relationships. Further, perception is not based on any one person's perception, especially a biased person's perception, but on a reasonably prudent person's perception—*i.e.*, an objective standard.

In this case, Appellant maintained authority over her unit, and while not case dispositive, that is a major factor in determining whether a UPR existed. R. at 262, 275, 365, 447, 591-92, 595, 599, 659. SrA NP did not feel uncomfortable going to the manager's office. R. at 172. She was treated the same as everyone else at work. R. at 171. Unit cliques do not equal UPRs. Further, opinion testimony does not meet the proof required to establish what a reasonably prudent person in the same or similar circumstance would have done. The opinion evidence offered by the Government established that some people in Appellant's unit chose not to go to certain events. These weren't mandatory work events; as it is commonly known that mandatory "fun" events can actually decrease morale, some people may voluntarily excuse themselves from the events. In fact, paragraph 2.3. explicitly states, "[t]he rules regarding personal relationships must be somewhat elastic to accommodate differing conditions and operational necessities." AFI 36-2909,

para. 2.3. The culture of the overseas environment should be taken into account, especially when there was no evidence of adverse effect on mission accomplishment, respect for authority, or the like. *See* R. at 496, 564, 904-05, 924, 948-49. As to paragraph 2.3.5. regarding shared activities, AFI 36-2909 states that it could lead to UPR or be reasonably perceived as a UPR if done on a frequent or recurring basis. *Id.* at para. 2.3.5. There was only one trip to Seoul.

**2. The finding of guilty to specification 1 of the charge is factually insufficient.**

SrA IS was the object of the UPR alleged in specification 1 of the charge. Charge Sheet. The main witness against Appellant was SrA LI. The Government again focused on opinion evidence—not a reasonably prudent person in the same or similar circumstances. SrA IS did not feel included by Appellant. R. at 55. She felt excluded by all the other Airmen except maybe SrA NP. R. at 55. SrA LI was most jealous of SrA IS. *See* R. at 68, 260-61. SrA LI and SrA IS used to be good friends until they had a falling out. *Id.* She was jealous of other people in the unit getting their pick of compensation days and of Appellant helping others with rides, but SrA LI did not ask Appellant for a ride and she declined to go to group events when invited. R. at 62-63, 263. Everyone in Appellant's unit was invited on the trip to Seoul—including SrA LI. R. at 263. SrA LI chose not to go. *Id.* When the group that went to Seoul decided to get an Airbnb, Appellant had her own room and everyone split the cost evenly. R. at 247.

The Government conceded that "favoritism" is not defined in the AFI. *Id.* So, the Government described evidence of the alleged favoritism for the military judge as "hand massages," "dinners in the SED," "lunches," "going out to bars," and "going to Seoul." *Id.* The Government argued that "taken together" there was the favoritism and shared conditions talked about in the AFIs. *Id.* Yet, the military judge did not find Appellant guilty of being negligently derelict in failing to refrain from having a UPR with SrA IS "on divers occasions." R. at 1035;

EOJ; *see* Issue I *supra*. He found Appellant not guilty of the words "on divers occasions." *Id.* It is still unclear what exactly the military judge found amounted to a UPR on one occasion. *See* Issue I *supra*. Even the Government acknowledged that "taken alone and apart from the facts of the situation, there could potentially be a justification for" the conduct. R. at 1000. The rumor that SrA IS and Appellant slept together was a lie. R. at 266. It was a blatantly false rumor that the Government used to spin its theory that there was perceived favoritism in the PAC House. R. at 42, 1000. And after the Defense had made R.C.M. 914 oral motions regarding several Government witnesses, the Government recalled SrA IS to testify about a hand massage allegation—one she says she did not remember when trial counsel, trial defense counsel, and the military judge questioned her earlier. R. at 784-85, 790. 792-94; *see* Issue IV *infra*. SrA LI's opinion that she felt excluded and that others were favored above her because she chose not to go to group events does not amount to Appellant violating her duty to refrain from UPRs based on a reasonably prudent senior NCO's actions in the same or similar circumstances.

**3. The finding of guilty to specification 2 of the charge is legally and factually insufficient.**

SrA ST was the person named in the UPR allegation in specification 2 of the charge. Charge Sheet. SrA LI also did not get along with SrA ST. During a car ride, SrA ST vented to Appellant about SrA LI. R. at 420. Appellant told SrA ST that her language was not appropriate and SrA ST should choose words different if he wanted to vent. *Id.* SrA ST was upset about having to go into work in order to cover for SrA LI so she could have her wisdom teeth removed. R. at 421.

By the end of trial, trial counsel argued the UPR with SrA ST was based on how Appellant and SrA ST were both in the first "faction" together—the "inner circle." R. at 1001. They sat in the management office together. *Id.* The UPR was allegedly based on showings of "favoritism"

and "friendship." *Id.* But SrA ST did not get special favors from Appellant. R. at 435. In SrA ST's opinion, friendship amongst senior ranking members is not per se unprofessional. R. at 455. However, even SrA ST's opinion is not the bar for deciding a negligent dereliction of duty; the standard is what a reasonably prudent senior NCO in the same or similar circumstances would do. The Government pointed to the fact that Appellant went out to bars with SrA ST (R. at 1001), but that type of engagement was part of the Air Force culture in Korea. R. at 496, 564, 904-05, 924, 948-49. Of note, the Government again identified that "those bits and pieces taken apart singularly may not lead to much, but when you look at the big picture, when you look at the perception . . . it created the perception of unfair treatment . . . [and] of a close friendship within PAC House." R. at 1002. The Government simply did not prove a UPR existed between Appellant and SrA ST. There was animosity between SrA LI and SrA ST, but that does not equal favoritism on the side of Appellant, especially given that SrA LI did not like or get along with Appellant. There were personality conflicts; that is all. R. at 395.

**4. The finding of guilty to specification 3 of the charge is legally and factually insufficient.**

Specification 3 of the charge named SSgt RL as the person with whom Appellant allegedly had a UPR. Charge Sheet. While SSgt RL spent time with Appellant outside of work, it was with a group from work. R. at 304. The purpose of spending time together outside of work was to cultivate a good work environment. R. at 306. There were some Airmen who joined more often than others. R. at 304. SSgt RL would drink with the group and Appellant (R. at 306) but, as discussed above, that was the culture of the base. The Government also asked SSgt RL about his opinion regarding UPRs. SSgt RL testified that he learned generally about the line between professionalism and unprofessionalism while at the Airman Leadership School. R. at 338. He described the expectation that a supervisor would be someone he could confide in if he needed

help or assistance. *Id.* SSgt RL believed that it was acceptable to drink with others of various ranks as long as the Airmen knew the boundaries. *Id.* Even the Government acknowledged that "there was some back-and-forth discord with trial counsel about [SSgt RL's] thoughts about professionalism and that he thought he never acted unprofessional" with Appellant. R. at 1003. SSgt RL believed the line that would constitute a UPR if crossed is a sexual relationship or intimacy. R. at 339. That line had never been crossed. Regardless, the opinion testimony of those in the unit does not provide the framework for the objective standard of what a reasonably prudent senior NCO in the same or similar circumstances would do.

In closing, trial counsel first noted that members of the PAC House experienced Appellant's interactions with SSgt RL as "normal" and "they expected those interactions to an extent because he was the assistant manager." *Id.* But trial counsel then argued that Appellant created the "perception of favoritism, that of friendship" with SSgt RL based on the two going out to Seoul, to Korean barbecue, and to clubs while drinking together. R. at 1004. However, the legally required perception must be based on an objective standard, not a poll of a few Airmen from the office. Everyone was invited to those events even if they chose not to go.

***5. Conclusion.***

Appellant has made a specific showing of a deficiency in proof—that the conduct testified to at trial failed to rise to the level of UPRs. Article 66(d)(1)(B)(i), UCMJ. "[C]liques exist[ing] in a work center does not equal [] an automatic UPR." R. at 1012. This Court should be clearly convinced that the findings of guilty were against the weight of the evidence and should set aside the findings. Article 66(d)(1)(B)(iii). Also, considering the trip and actions as a whole and even viewing the evidence in the light most favorable to the prosecution, no rational trier of fact could have found this trip and actions to prove UPRs beyond a reasonable doubt. *Csiti*, 2025 CAAF

LEXIS 349, at *10.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court set aside the findings of guilty to specifications 1-3 of the charge and set aside the sentence.

## III.

### AFI 36-2909 and AFI 1-1 are unconstitutional as applied to Appellant because they are void for vagueness.

*Standard of Review*

Whether a punitive enactment is unconstitutional is a question of law that is reviewed de novo. *United States v. Disney*, 62 M.J. 46, 48 (C.A.A.F. 2005); *United States v. Sollmann*, 59 M.J. 831, 834 (A.F. Ct. Crim. App. 2004).

*Law and Analysis*

"The standard for sustaining a facial challenge to constitutional validity remains the same, whether the challenge addresses a statute or a regulation." *United States v. Castillo*, 74 M.J. 160, 162 n.1 (C.A.A.F. 2015) (citing *Reno v. Flores*, 507 U.S. 292, 301 (1993)).

AFI 36-2909 and AFI 1-1 are facially unconstitutional because they are void for vagueness. The void for vagueness doctrine is rooted in the Fifth Amendment of the Constitution, which requires that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V. Due process requires a heightened degree of specificity when dealing with criminal offenses, as opposed to civil prohibitions, such that ordinary people can understand what conduct is proscribed so that the prohibition is not enforced in an arbitrary or discriminatory manner. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Likewise, the Sixth Amendment entitles an accused "to be informed of the nature and cause of the accusation." U.S. CONST. amend. VI. A regulation is void for vagueness if it does not provide sufficient notice for

a servicemember to reasonably understand that his or her conduct is proscribed. *United States v. Moore*, 58 M.J. 466, 469 (C.A.A.F. 2003).

AFI 36-2909 and AFI 1-1 are void for vagueness because, as applied to this case, they do not clearly differentiate lawful conduct from criminal conduct. While the military judge judicially noticed both AFIs (R. at 28), the Government struggled to articulate what duty Appellant negligently failed to perform. R. at 1000-01, 1009. In fact, even the Government had to acknowledge that "each member had a different view of what could be professional and unprofessional" but that "they all agreed that favoritism could sometimes be unprofessional" and could "lead towards [UPR]." R. at 1000; *see* AE XIV. The Government's own witnesses were not clear on what exact duty was imposed by the UPR regulations and, when faced with hypotheticals, their responses were inconsistent—thus demonstrating the regulations' lack of clarity. The best the Government could argue was that "[a]ll of the caveats that those witnesses placed on when this could be professional, do not exist in this case." R. at 1001.

Grasping for some clarity, the Government argued conduct was UPR under AFI 36-2909, paragraph 2.2 when it "detract[s] from the authority of superiors or results in or reasonably creates the appearance of favoritism." R. at 1009. Of note, the evidence did not establish the appearance of favoritism beyond a reasonable doubt. *See* Issue II *supra*. The Defense requested the Government to provide what the prescribed duty was and the specific manner in which Appellant had criminally violated that duty. AE V at 19-20. The Government responded with the vague general response concerning all three specifications, that "the charged misconduct occurred through showings of favoritism, close friendships, and/or shared activities. Evidence of such conduct is available through witness testimony and the Investigation Findings Report." *Id.* During oral argument on the Defense's Motion to Dismiss for Failure to State an Offense (AE I), the

military judge pointed the parties to *United States v. Allen*, No. ACM 39001, 2017 CCA LEXIS 549, at *1 (A.F. Ct. Crim. App. Aug. 11, 2017) (R. at 24), where this Court held that AFI 36-2909 provided the appellant with sufficient notice of his duty to refrain from UPRs and breaching that duty may properly be the basis for violating Article 92, UCMJ. However, that case is distinguishable because there the appellant was charged with willfully failing to refrain from pursuing UPRs by pursuing unprofessional dating relationships with two Airmen and pursuing unprofessional sexual relationships with two other Airmen. 2017 CCA LEXIS 549, at *11. Similarly, *United States v. Greenwood*, No. ACM 38147, 2013 CCA LEXIS 894, at *1 (A.F. Ct. Crim. App. Oct. 22, 2013), also cited by the military judge, involved a specification of failing to obey a lawful general regulation by attempting to develop a personal, intimate, or sexual relationship. Both of those cases involved the only potentially real takeaway from the AFIs—no dating, no sex. R. at 1014; *but see Allen*, 2017 CCA LEXIS 549, at *19 (where this Court set aside a specification of violating Article 92, UCMJ, for UPR of having sex with a junior Airman when the appellant was not in the same unit as her and the appellant had no official duty superior/subordinate relationship with her either). And, while the Government spent significant time talking about a rumor that Appellant had sex with SrA IS, no evidence was presented that it was true. In fact, SrA IS testified it was blatantly false. R. at 266.

During closing argument, trial counsel pointed to AFI 36-2909, paragraph 2.2.2.2., which states that UPR "[c]auses actual or reasonable perception of favoritism, partiality, or unfairness." *See also* R. at 1009. Again with generality, trial counsel argued paragraph 2.3.3., which referenced how close friendships can also create a perception or reality of UPRs. *Id.* The AFIs fail under the void for vagueness doctrine both because they do not provide adequate notice of the prohibited conduct—even the Government could not clearly identify the prohibited conduct when asked to

(*see* AE V at 19-20)—and because they do not provide adequate grounds for enforcement. *Moore*, 58 M.J. at 469. The AFIs do not clearly distinguish between lawful and unlawful conduct as applied to Appellant's case. In fact, contrary to trial counsel's arguments, paragraph 2.2.2. of AFI 36-2909 states that social interactions that contribute appropriately to unit cohesiveness and effectiveness are encouraged. *See* R. at 1029. The AFIs' discussion of UPRs goes straight to the heart of the Supreme Court's concern in *Lawson*, in that it invites arbitrary enforcement. 461 U.S. at 358. Specifically, it enabled the Government to criminally prosecute conduct witnesses could not even agree was UPR. The arbitrary nature of the AFIs is reinforced by even Government witnesses like MSgt KR, whose husband regularly hosted monthly events where members drank, ate, and played games amongst others of various ranks. R. at 562.

*City of Chi. v. Morales*, 527 U.S. 41 (1999), involved a Chicago ordinance that prohibited suspected street gang members from loitering. *Id.* at 45. The ordinance required four predicates for enforceability.

> First, the police officer must reasonably believe that at least one of the two or more persons present in a "public place" is a "criminal street gang member." Second, the persons must be "loitering," which the ordinance defines as "remaining in any one place with no apparent purpose." Third, the officer must then order "all" of the persons to disperse and remove themselves "from the area." Fourth, a person must disobey the officer's order. If any person, whether a gang member or not, disobeys the officer's order, that person is guilty of violating the ordinance.

*Id.* at 47. The Supreme Court found the ordinance void for vagueness for failing to provide notice and because of its tendency to encourage arbitrary and discriminatory enforcement. On the first point, the Supreme Court determined that the ordinance did not advance a definition of loitering that narrowly encompassed conduct threatening harm as opposed to merely standing without a purpose, which would be harmless, innocent, and therefore constitutionally protected. *Id.* at 58-59. This showed the ordinance to be impermissibly vague "in the sense that no standard of conduct

[was] specified at all." *Id.* at 60 (quoting *Coates v. Cincinnati*, 402 U.S. 611, 614 (1971)). The AFIs are similarly vague because they do not clearly specify what exact conduct is impermissible beyond not dating or having sex with one's subordinates. *See* R. at 1014.

In *Morales*, the Supreme Court also concluded that the ordinance failed to provide sufficient clarity to prevent arbitrary enforcement. *Morales*, 527 U.S. at 60. This was because the definition of loitering, that is standing with no particular purpose, was so broad that it provided law enforcement absolute discretion to determine what activities qualified as such. *Id.* at 61. Importantly, the Supreme Court noted that the provisions could have withstood scrutiny "if the ordinance only applied to loitering that had an apparently harmful purpose or effect." *Id.* at 60 and 62 ("It matters not whether the reason that a gang member and his father, for example, might loiter near Wrigley Field is to rob an unsuspecting fan or just to get a glimpse of Sammy Sosa leaving the ballpark."). Accordingly, the AFIs are void-for-vagueness. They were arbitrarily and criminally enforced against Appellant. Therefore, Appellant's convictions cannot stand.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court set aside her convictions to Specifications 1-3 of the Charge and set aside her sentence.

## IV.

### The military judge abused his discretion when he denied the Defense's R.C.M. 914 motion to strike SrA LI's testimony.

*Standard of Review*

"A military judge's decision to admit evidence is reviewed for an abuse of discretion." *United States v. Ayala*, 81 M.J. 25, 27 (C.A.A.F. 2021) (citation omitted). The military judge abuses his discretion when he (1) bases his ruling on findings of fact which are not supported by the evidence; (2) uses incorrect legal principles; (3) applies the correct legal principles to the facts in a clearly unreasonable way; or (4) fails to consider important facts. *United States v. Tapp*, 85

M.J. 19, 26-27 (C.A.A.F. 2024).

*Law and Analysis*

After making oral motions to produce signed statements of several witnesses the Government called to testify (R. at 136, 203, 689), the Defense filed two written motions.[9] AE XII-XIII. While the Defense argued for application of R.C.M. 914 after three of the witnesses initially testified (R. at 136, 203, 689), it asked for application of R.C.M. 914 after the second time that SrA LI testified. R. at 790. The military judge put great weight on the timing of the Defense's motion and oral arguments for each by granting the motion in part—striking the testimony of SSgt NA, SrA JE, and SrA TM—and denying the motion in part—as it related to SrA LI's testimony. AE XV. Denying the Defense's motion as it related to SrA LI was an abuse of discretion. The military judge ruled the Defense waived the right to make an argument as to SrA LI. AE XV at 6-7. His reasoning was that the Defense knew about the statement of SrA LI prior to trial and did not object after her initial testimony during the Government's case-in-chief before cross-examining her. AE XV at 6. The military judge relied on the text of R.C.M. 914 and *United States v. Gonazalez*, 79 M.J. 466, 468 (C.A.A.F. 2020) (citing *United States v. Haynes*, 79 M.J. 17, 19 (C.A.A.F. 2019)). AE XV at 6-7. However, the text of R.C.M. 914 simply states that after a witness "has testified on direct examination, the military judge, on motion of a party who did not call the witness, shall order the party who called the witness to produce . . . any statement of the witness that relates to the subject matter" that was testified about. The Defense raised the motion after SrA LI, who was called by the Government, testified on direct examination. That motion

[9] The first written motion did not include SrA LI, because it was filed before the Defense made its oral R.C.M. 914 motion as it related to her. AE XII. The second written motion included all four witnesses whose statements existed but were not produced. AE XIII. The military judge's written ruling addressed all four witnesses. AE XV.

sought a statement related to the testimony she just gave on the record. The rule does not require the motion be made *immediately* after direct examination. What's more, the military judge declined to consider *United States v. McKenzie*, 768 F.2d 602, 607 (5th Cir. 1985), which the Defense cited for the position that as long as the issue is raised at trial, it is preserved. AE XV at 7.

**1. The Defense did not waive its right to have the staetment produced, so the initial testimony of SrA LI should have been stricken.**

The military judge focused on *Gonzalez* in finding waiver, but as the CAAF stated, waiver must result from the intentional relinquishment of a known right or by operation of law. 79 M.J. at 468. The CAAF found the appellant in *Gonzalez* neither waived nor forfeited his challege to the CCA's reassessment authority. *Id.* In that case, the issue was whether the appellant waived when he waited until his peition to the CAAF to raise an issue challenging the CCA's authority to issue a specific remand instruction. *Id.* Here, Appellant objected and raised an R.C.M. 914 motion while the trial was still ongoing and after one of SrA LI's direct testimonies (after the Government recalled her to testify in its case-in-chief)—that cannot be waiver in the midst of trial. The appellants in *McKenzie*, however, did not pursue their discovery rights to prior recorded statements of witnesses who testified *during trial* and as such, the 5th Circuit found the appellants waived their right to production. 768 F.2d at 607. Appellant moved for production of SrA LI's previously recorded statement after she testified, albiet the second time she testified, but still during trial.

**2. At a minimum, the Defense made an oral R.C.M. 914 motion after the second time SrA LI testified on direct examination so that testimony should have been stricken.**

When the Government recalled SrA LI, the Defense made an oral R.C.M. 914 motion prior to conducting cross-examination—so "[a]fter [SrA LI] . . . testified on direct examination." R. at 790; R.C.M. 914(a). Even if this Court were to agree with the military judge's waiver analysis as

it relates to the initial testimony of SrA LI, that would not apply to the second time SrA LI testified. As such, SrA LI's testimony after the Government recalled her should have been struck.

**3. Appellant was prejudiced.**

The prejudice starts with the fact that the Government no longer had SrA LI's prior statement relating to her in-court testimony. Then when the military judge applied the law incorrectly to Appellant's case, he failed to provide one of the two remedies—sriking the testimony of the witness or declaring a mistrial—the CAAF made clear R.C.M. 914 provides. *United States v. Palik*, 84 M.J. 284, 290 (C.A.A.F. 2024). SrA LI was an "outsider" as described by the Government. R. at 41. It was SrA LI who had the most issues with Appellant and the error was not harmless—it had a substantial influence on the findings that led to Appellant's convictions. *United States v. Sigrah,* 82 M.J. 463, 467 (C.A.A.F. 2022) (citing *United States v. Clark*, 79 M.J. 449, 455 (C.A.A.F. 2022)). This Court's review of prejudice is de novo. *Id.* (citing *Clark*, 79 M.J. at 455). In considering (1) the strength of the Government's case, (2) the strength of the Defense's case, (3) the materiality of SrA SL's testimony, and (4) the quality of SrA SL's testimony, this Court should find that Appellant was prejudiced. *Id.* (citing *Clark*, 79 M.J. at 455 (internal citation and quotations omitted)). The strength of the Government's case was not high without SrA LI's testimony and the strength of the Defense's case was. Had the Defense been successful in its R.C.M. 914 motion, the obvious remedy would have been to strike SrA LI's testimony just as the military judge had done with three other witnesses because the Government could not produce the prior statement. Doing so would have greatly undermined the Government's case against Appellant, because SrA LI's testimony was categorically material to the Government as seen in trial counsel's focus on SrA LI's testimony in both opening statement and closing argument. R. at 42, 1000, 1002, 1007. While the quality of the testimony was greatly undermined by SrA LI's

biases and personal feelings (*see* Issue I *supra*), the other three factors weigh in favor of the Defense. Specifically as it relates to SrA LI's secondary testimony, SrA LI testified about a brand new incident—SrA IS allegedly massaging Appellant's hand while in the office. R. at 784-85, 790. Trial counsel asked SrA LI about this new allegation three times during SrA LI's secondary testimony. *Id.*

The military judge misapplied R.C.M. 914 when he decided that the Defense waived its objection by not stating it immediately after SrA LI first testified when the Defense still raised the objection during trial and after her "direct examination." R.C.M. 914(a). The military judge should have provided one of two remedies once the Government failed to produce the qualifying statement: strike the testimony or declare a mistrial. *Palik*, 84 M.J. at 290. He also abused his discretion when he failed to conduct a separate analysis as it related to waiver regarding the second time SrA LI testified. His failure to do so prejudiced Appellant. The Government heavily used SrA LI's testimony—she was its first witness and second-to-last witness and the Government focused on her testimony in both opening statement and closing argument. R. at 42, 52, 784, 1000, 1002, 1007. Trial counsel specifically pointed to the hand massage twice in closing argument as evidence of "favoritism." R. at 1000-01. As such, Appellant is entitled to relief.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court set aside her convictions to Specifications 1-3 of the Charge and set aside her sentence.

Respectfully submitted,

HEATHER M. BRUHA, Maj, USAF
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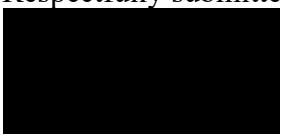
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 16 May 2025.

Respectfully submitted,



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# APPENDIX

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

**V.**

**Whether the military judge was biased against Appellant and in favor of the prosecution.**

**Additional Facts**

The military judge questioned all but two of the Government's witnesses at trial. R. at 78, 92, 160, 221, 207, 276, 381, 504, 561, 611, 705, 729, 759, 775, 807, 826, 990. He only questioned one of the Defense witnesses. R. at 910. The military judge denied part of the Defense's motion to produce signed statements under R.C.M. 914. AE XV. The military judge denied the Defense's motion to dismiss for failure to state an offense. AE VI. During closing argument, the military judge interrupted trial defense counsel when he said that "subordinate-to-supervisor relationships are a vast gray area." R. at 1012. The military judge asked trial defense counsel to explain which AFI he was talking about so he could "track[] [the] argument." *Id.* Trial defense counsel said he was referring to AFI 36-2909 and that "it's absolutely unclear that the conduct alleged in this case veers so strongly to the left that it warranted criminal prosecution." *Id.*

**Standard of Review**

"'[W]hen a military judge's impartiality is challenged on appeal, the test is whether, taken as a whole in the context of this trial, a court-martial's legality, fairness, and impartiality were put into doubt' by the military judge's actions." *United States v. Martinez*, 70 M.J. 154, 157-58 (C.A.A.F. 2011) (quoting *United States v. Burton*, 52 M.J. 223, 226 (C.A.A.F. 2000). The Court considers the appearance of impartiality objectively, *i.e.*, "[a]ny conduct that would lead a reasonable [person] knowing all the circumstances to the conclusion that the judge's impartiality

might reasonably be questioned is a basis for the judge's disqualification." *Martinez*, 70 M.J. at 158 (citations and quotations omitted). With no objection at trial, a review is for plain error. *Id.* at 157.

**Law**

"An accused has a constitutional right to an impartial judge." *United States v. Butcher*, 56 M.J. 87, 90 (C.A.A.F. 2001). R.C.M. 902 gives two bases for the disqualification of a military judge and gives a general rule of disqualification for appearances of partiality. *See United States v. Quintanilla*, 56 M.J. 37, 45 (C.A.A.F. 2001). "Because not every judicial disqualification requires reversal," the CAAF follows the *Liljeberg* standards to determine if a "military judge's conduct warrants [a] remedy to vindicate public confidence in the military justice system." *Martinez*, 70 M.J. at 158 (referencing *Liljeberg v. Health Svcs. Acquisition Corp.,* 486 U.S. 847 (1988)).

**Analysis**

Appellant alleges actual bias by the military judge and the appearance of bias. *But see Burton*, 52 M.J. at 226 (noting an inference that the defense believes the military judge remained impartial when there is a failure to challenge said impartiality). In the context of Appellant's trial as a whole, the military judge's actions put in doubt the legality, fairness, and impartiality of the court-martial. *Martinez*, 70 M.J. at 157. The military judge questioned eleven of the Government witnesses in an effort to assist the prosecution. In fact, the military judge questioned all but two of the Government's thirteen witnesses. While trial counsel continued to struggle to perform in the court-martial, the military judge assisted the prosecution over and over again with questioning witnesses, denying the Defense requests for relief, and more. At a minimum, the military judge's conduct warrants a remedy to vindicate public confidence in the military justice system. *Id.* at

158.

**WHEREFORE**, Appellant respectfully requests this Honorable Court set aside her convictions and set aside the sentence.

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

| | | |
|---|---|---|
| **UNITED STATES**,<br>*Appellee,* | ) | **CONSENT MOTION FOR ENLARGEMENT OF TIME (FIRST)** |
| v. | ) | Before Panel No. 1 |
| Master Sergeant (E-7)<br>**EILEEN G. ECHALUSE**<br>United States Air Force,<br>*Appellant.* | ) | No. ACM 24027<br><br>3 June 2025 |

**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 seven-day enlargement of time, to respond in the above captioned case. This case was initially docketed with the Court on 22 December 2023 after Appellant filed her notice of direct appeal. This Court ordered the government to "forward a copy of the record of trial to the [C]ourt forthwith." (*Order*, dated 22 December 2023.) The record of trial and a complete verbatim transcript were delivered to this Court on 21 May 2024. Appellant filed her initial brief with this Court on 16 May 2025. The government's response is currently due on 15 June 2025. This is the United States' first request for an enlargement of time. As of the date of this request, 530 days have elapsed since initial docketing. If the enlargement of time is granted the United States' response will be due on 22 June 2025, and 537 days will have elapsed since initial docketing. Prior to filing her assignments of error, Appellant requested and received nine enlargements of time. Undersigned counsel has conferred with Appellant's appellate defense counsel, and the defense consents to the enlargement of time.

There is good cause for the enlargement of time in this case. Undersigned counsel filed two briefs with this Court in United States v. Cabrie and United States v. Tompkins on 30 May 2025 and 2 June 2025, respectively. Undersigned counsel also drafted and submitted three motions with this Court in United States v. Haymond and United States v. Kindred since Appellant filed her initial assignments of error. Undersigned counsel also presented oral argument at the Court of Appeals for the Armed Forces on 20 May 2025 in United States v. Cook. Thus, undersigned counsel was not available to begin work on the government's response before 30 May 2025. Moreover, the 30-day time period authorized for the United States to submit its motion response included a federal holiday with two non-duty days between Appellant's filing of her assignments of error and the current brief due date. Due to office workload and the prescheduled leave of other office members, there was no other attorney who could begin work on this brief sooner than undersigned counsel.

A short enlargement of time is necessary to allow undersigned counsel adequate time to review the over one thousand page transcript and the eight volume record of trial. To date, undersigned counsel has reviewed Appellant's brief and begun legal research on the issues presented therein. Undersigned counsel has also reviewed approximately 150 pages of the verbatim transcript. The additional time will also allow undersigned counsel adequate time to conduct legal research and to appropriately address the five assignments of error presented by Appellant.

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

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**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 3 June 2025.

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

| | | |
|---|---|---|
| **UNITED STATES**,<br>*Appellee*,<br><br>v.<br><br><br>Master Sergeant (E-7)<br>**EILEEN G. ECHALUSE,**<br>United States Air Force<br>*Appellant*. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | **UNITED STATES ANSWER TO ASSIGNMENTS OF ERROR**<br><br>Before Panel No. 1<br><br>No. ACM 24027<br><br>23 June 2025 |

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

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

| | | |
|---|---|---|
| **UNITED STATES**,<br>*Appellee,* | ) | ANSWER TO ASSIGNMENTS OF ERROR |
| v. | ) | Before Panel No. 1 |
| Master Sergeant (E-7)<br>**EILEEN G. ECHALUSE**<br>United States Air Force<br>*Appellant.* | ) | No. ACM 24027<br><br>23 June 2025 |

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

## ISSUES PRESENTED

**I.**

**WHETHER, BY FINDING APPELLANT GUILTY OF SPECIFICATIONS 1-3 OF THE CHARGE EXCEPT FOR THE WORDS "ON DIVERS OCCASIONS," THE MILITARY JUDGE RENDERED AMBIGUOUS FINDINGS NOT CAPABLE OF REVIEW UNDER ARTICLE 66(D).**

**II.**

**WHETHER THE FINDINGS OF GUILTY TO SPECIFICATIONS 1-3 OF THE CHARGE ARE LEGALLY AND FACTUALLY SUFFICIENT.**

**III.**

**WHETHER AFI 36-2909 AND AFI 1-1 ARE UNCONSTITUTIONAL AS APPLIED TO APPELLANT BECAUSE THE ARE VOID FOR VAGUENESS.**

**IV.**

**WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION WHEN HE DENIED THE DEFENSE'S R.C.M. 914 MOTION TO STRIKE SRA LI'S TESTIMONY.**

## V[1].

**WHETHER THE MILITARY JUDGE WAS BIASED AGAINST APPELLANT AND IN FAVOR OF THE PROSECUTION.**

## STATEMENT OF CASE[2]

On 10 April 2023, a special court-martial by military judge alone pursuant to Article 16(c)(2)(A), UCMJ, convicted Appellant, contrary to her pleas, of one charge and three specifications of dereliction of duty for engaging in unprofessional relationships, in violation of Article 92, UCMJ. (*Entry of Judgment*, dated 5 June 2023, ROT, Vol. 1.) Appellant was acquitted of one specification of dereliction of duty, in violation of Article 92, UCMJ. (Id.) The military judge sentenced Appellant to a reduction to the grade of E-6 and a reprimand. (R. at 1084.) The convening authority took no action on the findings or sentence. (*Convening Authority Decision on Action*, dated 18 May 2023, ROT, Vol. 1.)

## STATEMENT OF FACTS

Appellant, a former Military Training Instructor (MTI), arrived at Osan Air Base, Korea in approximately late June of 2022. (R. at 302, 354.) After her arrival, Appellant assumed the role of manager of the Pacific House (PAC), a dining facility at Osan Air Base. (R. at 53, 716.) Appellant was the most senior member of the PAC and supervised several Airmen, including IS, ST, and RL. (R. at 372, 276-77.)

After Appellant's arrival at the PAC, members of the unit noticed that cliques had begun to form within the unit. (R. at 54-55, 718, 634, 574, 559.) Specifically, the members noticed

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

[2] 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 versions in the Manual for Courts-Martial, United States (2019 ed.) (MCM).

that Appellant, SrA IS, SrA ST, and SSgt RL spent more time together than with others in the unit.[3] (R. at 54-55, 718, 634, 574, 559.) Members noticed that Appellant was friendlier with this group than others in the workplace, occasionally taking them to Starbucks on base, giving them rides around base, and frequently meeting with them behind closed doors. (R. at 61-63, 66, 171-172, 412-413, 559.) TS, a member of this group, noted that she often had personal conversations with Appellant and other members of the group but did not have similar conversations with other members of the unit. (R. at 394-95.) The perception emerged that Appellant was friends with IS, ST, and RL, but not the rest of the unit. (R. at 180.) Multiple members of the unit repeatedly saw this group out at bars drinking together in the Songtan Entertainment District (SED), a bar area just outside of Osan Air Base. (R. at 347, 363, 399, 722, 631, 609-10.) Over time, some members of the unit began to feel excluded and were not happy to come to work. (R. at 63, 66, 611.) Overall, some members of the unit felt there was a decline in unit cohesion while Appellant was in the unit. (R. at 81, 83, 181.)

In early October 2022—just four months after Appellant's arrival—this group planned a trip to Seoul, allegedly for another member of the unit's birthday. (R. at 462, 369.) The trip was supposed to be an office morale event. (R. at 69, 177-79.) But some members of the unit were not invited. (R. at 69.) Traditionally, there was an office group chat that was used for planning office morale events such as potluck dinners. (R. at 179.) That office group chat was not used for planning the trip to Seoul. (R. at 179.) Even though the Seoul trip was alleged to have been an office morale event, only Appellant, IS, ST, RL, and a friend of Appellant's from outside of

[3] The ranks of these members are referenced here to highlight their rank compared to Appellant. The remainder of the brief will only refer to these members by their initials.

the unit attended. (R. at 463.) In fact, other members of the unit held a birthday dinner the same evening as the Seoul trip because not everyone had been invited on the trip. (R. at 69-70, 757.)

When Appellant and her group arrived in Seoul, they went to the AirBnB that they had rented as a group. (R. at 180.) After settling their stuff in, the group then went out for dinner at a Korean barbecue restaurant. (R. at 247-48.) At the restaurant, the group ordered a bottle of Soju and between the four of them they finished the bottle, each having roughly two or three shots of Soju. (R. at 280-81.) After leaving the restaurant, the group returned to the AirBnB, "pregamed" by drinking more shots of Soju, changed clothes and headed out for a club. (R. at 283-284, 463-464.) On their way to the club, the group stopped at a photo booth and took group photos. (R. at 326.) Appellant also took a "girls only photo" solely with IS and ST. (R. at 326, 465.) Some of these photos were later posted by ST to her SnapChat and were seen by other members of the unit. (R. at 725-26.) After the photos, the group went to a nightclub and ordered bottle service, which came with two bottles of liquor. (R. at 329, 466.) Together the group did shots of tequila and continued to drink for some time. (R. at 466.) At some point, Appellant's friend noticed that IS was intoxicated and asked her if she wanted to go back to the AirBnB. (R. at 466.) IS indicated she was not feeling well and Appellant's friend determined it was time to take her home. (R. at 466-67.)

Together Appellant and her friend carried IS out of the nightclub and walked her the 15-20 minutes back to the AirBnB. (R. at 516.) ST and RL stayed at the nightclub, eventually moving on to other bars, returning to the AirBnB around 0500 hours in the morning. (R. at 383, 470.) When Appellant and her friend got IS back to the AirBnB, they put her in the bedroom she was sharing with ST. (R. at 468.) Appellant remained in the room with IS for approximately 30 minutes to an hour talking with her. (R. at 469.) Eventually, Appellant left the room, showered,

and went to bed. (R. at 470.) In the morning after they all awoke, they returned to Osan Air Base. (R. at 337-338.)

After the groups return to the unit, a rumor began to spread throughout the unit that Appellant and IS had sex and were engaged in an unprofessional relationship. (R. at 551, 587, 628-29, 733.) Based on the photos that were posted to SnapChat and the rumor, at least one member of the unit believed Appellant and IS had sex on the Seoul trip. (R. at 732, 749, 754-55.) DS, the member of the unit who initially believed the rumor, stated she felt it created an appearance of favoritism. (R. at 737-38.) At some point after the Seoul trip, members of the unit went to higher leadership to report Appellant and the air of unprofessionalism permeating the unit. (R. at 70, 84.) An investigation was initiated into unprofessional relationships within PAC. (R. at 527.) During the investigation, the investigating official was informed of the suspicions that Appellant and IS had sex in Seoul. (R. at 551.) The investigating official, a fellow Master Sergeant, grew concerned throughout the investigation because Appellant's conduct was not what she would have expected from a Master Sergeant. (R. at 558.)

## ARGUMENT

### I.

### APPELLANT'S CONVICTIONS FOR UNPROFESSIONAL RELATIONSHIPS WERE NOT AMBIGUOUS.

#### *Additional Facts*

In Specifications 1-3 of the Charge, Appellant was charged with dereliction of duty for engaging in unprofessional relationships in violation of Article 92, UCMJ, with IS, ST, and RL, as follows:

> [Appellant] who knew or reasonably should have known of her duties at or near Osan Air Base, Republic of Korea, on divers occasions, between on or about 15 August 2022 and on or about 31

> October 2022, was derelict in the performance of those duties in that she negligently failed to refrain from having an unprofessional relationship with [IS, ST, and RL, respectively], as it was her duty to do.

(*Charge Sheet,* dated 15 February 2023, ROT, Vol. 1.) During the trial, the military judge asked for clarity on the government's charging scheme:

> MJ: And, Government, I may be wrong, but my understanding is that you're charging an overall unprofessional relationship from some time to some time. It's all-encompassing as far as what happened during that time. Is that correct?
>
> TC: Yes, Your Honor.

(R. at 114.) With that understanding, in announcing his findings regarding the three specifications of which Appellant was convicted, the military judge excepted the phrase "on divers occasions" from each of the three specifications. (R. at 1035; *Entry of Judgment*, dated 5 June 2023, ROT, Vol. 1.)

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

Whether a verdict is ambiguous and thus precludes a CCA from performing a factual sufficiency review is a question of law reviewed de novo. United States v. Ross, 68 M.J. 415, 417 (C.A.A.F. 2010) (citing United States v. Rodriguez, 66 M.J. 201, 203 (C.A.A.F. 2008)).

### ***Law and Analysis***

Appellant cites to United States v. Walters, 58 M.J. 391 (C.A.A.F. 2003), in support of her assertion that the verdict in this case is ambiguous. (App Br. at 11.) Appellant's reliance is misplaced. "Walters applies only in those "narrow circumstance[s] involving the conversion of a 'divers occasions' specification to a 'one occasion' specification through exceptions and substitutions. United States v. Brown, 65 M.J. 356, 358 (C.A.A.F. 2007). The primary concern in those situations is that "[w]hen the phrase 'on divers occasions' is removed, the effect is that

"the accused has been found guilty of conduct on a single occasion and not guilty of the remaining occasions." Ross, 68 M.J. at 417. Where the record does not indicate which of the alleged incidents forms the basis of the conviction, and thereby leaves it unclear as to which conduct the appellant was acquitted of, "double-jeopardy principles bar the CCA from performing its usual factual sufficiency review." Id. But this logic does not extend to the convicted offenses in this case.

In the cases cited by Appellant, the charge in question required proof of a specific act. *See* Walters, 58 M.J. at 398 (required explanation of the specific instance of ecstasy use); *see also* Ross, 68 M.J. at 415-16 (required a clear record of the specific occasion of possession of child pornography); United States v. Trew, 68 M.J. 364, 365 (C.A.A.F. 2010) (requiring a specific identification of the act constituting a battery upon a child under sixteen years of age); United States v. Augspurger, 61 M.J. 189 (C.A.A.F. 2005) (requiring a specific finding of the occasion of marijuana use that supported appellant's conviction).

But our superior Court has noted that in cases of unprofessional relationships, specific acts do not constitute the relationship, "they evidence[] it." United States v. Rogers, 54 M.J. 244, 257 (C.A.A.F. 2000). The Court in Rogers held that there is no requirement to identify the specific acts which constitute the unprofessional relationship. Id. Thus, the term unprofessional relationships refers not to any one specific occurrence, but to the totality of the circumstances. In that way, unprofessional relationship offenses are continuing course-of-conduct offenses that do not require the finding of specific acts constituting the existence of the relationship. At trial the military judge recognized this when he inquired into the government's charging scheme:

> MJ: And, Government, I may be wrong, but my understanding is that you're charging an overall unprofessional relationship from some time to some time. It's all-encompassing as far as what happened during that time. Is that correct?

TC: Yes, Your Honor.

(R. at 114.) The defense did not object to this understanding. The military judge recognized that the government had, perhaps unartfully[4], charged a continuing course-of-conduct offense as opposed to multiple relationships between the same individuals. When the military judge struck the "on divers occasions" language from the specification, he was not finding Appellant not guilty of other unprofessional relationships—he was ensuring his findings ultimately reflected that Appellant was guilty of one overarching unprofessional relationship based on the totality of the evidence presented at trial. Which logically makes sense when you consider that an individual cannot have multiple relationships with the same person during a set timeframe. Appellant notably fails to cite to this inquiry by the military judge to the Government in his brief, and thus, provides no analysis or argument refuting the clear intent of the military judge's question – to confirm that the incident at issue in the specification all-encompassed the "overall unprofessional relationship" between Appellant and each of the other airmen.

Thus, consistent with Rogers, the military judge was not required to identify any specific acts that constituted the unprofessional relationship, merely that the totality of the circumstances presented at trial demonstrated that during the charged timeframe, Appellant engaged in an unprofessional relationship. In Walters, the Court held that "[i]f there is no indication on the record which of the alleged incidents form the basis of the conviction, then the findings of guilt are ambiguous and the Court of Criminal Appeals cannot perform a factual sufficiency review. United States v. Walters, 58 M.J. 391, 396-97 (C.A.A.F. 2003). Here, there was only one alleged incident – the overall unprofessional relationship between Appellant and IS, ST, and RL,

[4] Undersigned Government counsel has been unable to find a single case charging unprofessional relationships under Article 92, UCMJ, where divers occasions were alleged.

respectfully. The military judge's explanation above provides this Court an indication that the totality of the evidence presented at trial related to Appellant's overall unprofessional relationship with each of these airmen is what forms the basis of Appellant's conviction.

Further, in the cases cited by Appellant, the concern driving the Court's analysis is the danger of Double Jeopardy. Walters, 58 M.J. at 397. Here, because the military judge's findings involved a totality of the circumstances analysis, that danger does not exist. The military judge found that based on all of the evidence presented at trial, Appellant engaged in one overarching unprofessional relationship with each individual during the charged timeframe. Appellant is protected from further prosecution for all the acts presented at trial. The military judge noted as much: "Simply stated, [Appellant] is protected from prosecution from all of the evidence in the government's possession at this time and will not be prosecuted again for the same evidence." (App. Ex. VI, at para. 34.) Thus, this Court should not have the same Double Jeopardy concerns that drove the Court's decision-making in Walters.

Therefore, the military judge's exception of the "on divers occasions" language did not constitute an acquittal—it was a recognition of the reality that the government had charged one overarching unprofessional relationship and that his evaluation of the evidence required a totality of the circumstances analysis to determine whether that one unprofessional relationship existed. He determined that it did and this Court should find that based on the specific facts of this case, the verdict was not ambiguous and this Court can conduct its factual sufficiency review.

## II.

## APPELLANT'S CONVICTIONS FOR UNPROFESSIONAL RELATIONSHIPS ARE LEGALLY AND FACTUALLY SUFFICIENT.

### *Standard of Review*

This Court reviews issues of legal and factual sufficiency de novo. United States v. Washington, 57 M.J. 394, 399 (C.A.A.F. 2002). The assessment of legal and factual sufficiency is limited to the evidence produced at trial." United States v. Rodela, 82 M.J. 521, 525 (A.F. Ct. Crim. App. 2021).

### *Law*

While this Court has not yet determined a clear standard of review for issues of factual sufficiency under the amended Article 66(d)(1), UCMJ, this Court has agreed that Congress intended this new statutory standard to "make [] it more difficult to [an appellant] to prevail on appeal."[5] *See* United States v. Csiti, ACM 40386, 2024 CCA LEXIS 160 (A.F. Ct. Crim. App. 29 April 2024) (quoting United States v. Scott, 83 M.J. 778, 780 (A. Ct. Crim. App. 27 Oct. 2023). This Court reviews issues of legal sufficiency de novo. Washington, 57 M.J. at 399.

The test for legal sufficiency of the evidence is "whether, considering the evidence in the light most favorable to the prosecution, a reasonable factfinder could have found all the essential elements beyond a reasonable doubt." United States v. Humphreys, 57 M.J. 83, 94 (C.A.A.F. 2002). Applying this test, this Court draws every reasonable inference from the evidence in the record of trial in favor of the prosecution. United States v. McGinty, 38 M.J. 131, 132 (C.M.A. 1993).

[5] All offenses in this case occurred after 1 January 2021.

The test of factual sufficiency is governed by the following amendment to Article 66(d)(1), UCMJ:

> (B) Factual sufficiency review
>
> > (i) [T]he Court may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.
> >
> > (ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—
> >
> > > (I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and
> > >
> > > (II) appropriate deference to findings of fact entered into the record by the military judge.
> >
> > (iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, Section 542(b), 134 Stat. 3611-12.

The requirement of "appropriate deference" when a Court of Criminal Appeals weighs the evidence and determines controverted questions of fact "depend[s] on the nature of the evidence at issue." United States v. Harvey, 85 M.J. 127, 130 (C.A.A.F. 6 September 2024). This Court has discretion to determine what level of deference is appropriate. Id. "[T]he quantum of proof necessary to sustain a finding of guilty during a factual sufficiency review is proof beyond a reasonable doubt, the same as the quantum of proof necessary to find an accused guilty at trial." Id. at 131. For this Court "to be clearly convinced that the finding of guilty was against the weight of the evidence, two requirements must be met." Id. at 132. First, this Court must decide that the evidence, as it weighs it, "does not prove that the appellant is guilty beyond

a reasonable doubt." Id. Second, this Court "must be clearly convinced of the correctness of this decision." Id.

***Analysis***

The military judge at Appellant's court-martial correctly found Appellant guilty of three specifications of dereliction of duty for engaging in unprofessional relationships with IS, ST, and RL, respectively. Here, the government presented the military judge with ample evidence to convince him of Appellant's guilt beyond a reasonable doubt. This Court should equally be convinced and affirm Appellant's convictions.

At trial, the government was required to prove (1) that the Appellant had certain duties; (2) that the Appellant knew or should have known of the duties; and (3) that the Appellant was through neglect derelict in the performance of those duties. MCM, pt. IV, para. 18.b.(3). Despite Appellant's assertions to the contrary (App. Br. at 16), the government proved all three elements at trial. After making the appropriate deference to the trial court hearing the witnesses at trial, this Court should not be clearly convinced that the findings of guilty were against the weight of the evidence.

Appellant concedes that the government proved that Appellant had certain duties under Air Force regulations. (App. Br. at 16.) Specifically, through the use of AFI 1-1 and AFI 36-2909, the government established that Appellant had a duty to refrain from engaging in unprofessional relationships, especially with her subordinates. Appellant points to two specific alleged deficiencies in proof: (1) the government failed to prove Appellant knew or should have known of those duties "given the AFIs are vague"; and (2) the government failed to establish that Appellant was negligent in her dereliction of duty. (App. Br. at 16.)

*Appellant Knew or Should Have Known of her Duties*

Actual knowledge can be proved using circumstantial evidence. MCM, Pt. IV, para. 18.c.(3)(b). Actual knowledge need not be shown if the individual reasonably should have known of the duties. (Id.) This may be demonstrated by regulations, training or operating manuals, customs of the Service, academic literature or testimony, testimony of persons who have held similar or superior positions, or similar evidence. (Id.)

At trial, the military judge took judicial notice of both AFI 1-1 and AFI 36-2909. M.R.E. 201, which governs judicial notice states "[t]he military judge may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known universally, locally, or in the area of the pertinent event; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Trial defense counsel did not object to the military judge taking judicial notice of either AFI 1-1 or AFI 36-2909. (R. at 27-28.) In fact, they asked the military judge to take judicial notice of the entirety of Chapter Two in AFI 36-2909. (R. at 28.) This alone suggests that the existence of this regulation and the prohibitions therein were "universally" or "locally" known and were not subject to reasonable dispute. Moreover, the Manual permits the "should have known" element through regulations. Both AFI 1-1 and AFI 36-2909 are widely available Air Force regulations. Military members are expected to adhere to the regulations that govern them and Appellant is no different. At a bare minimum, viewed in the light most favorable to the prosecution, the government's use of AFI 1-1 and AFI 36-2909 demonstrates that Appellant should have known of her duty to refrain from engaging in unprofessional relationships.

Moreso, the government provided ample evidence from which a reasonable factfinder could have concluded the Appellant had actual knowledge of her duty to refrain from engaging

in unprofessional relationships. Appellant was a Master Sergeant who previously served as an MTI. (R. at 926.) The defense's own witness testified that there are annual training requirements for MTI's that include annual training on unprofessional relationships. (R. at 926.) Specifically, the witness testified that Appellant received annual trainings on unprofessional relationships. (R. at 926.) This Court should be unpersuaded by Appellant's assertion of a deficiency of proof where there was none.

*Evidence of Negligence*

Appellant asserts the government failed to demonstrate that she acted negligently in her dereliction of duty. (App. Br. at 16.) The Manual defines negligence as "an act or omission of a person who is under a duty of care to use due care which exhibits a lack of that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances." MCM, Pt. IV, para. 18.c.(3)(c).

As explained in more detail in Issue III below, AFI 1-1 cautions that relationships between a supervisor and a subordinate, especially one where there is a difference in grade, creates a danger of becoming an unprofessional relationship. AFI 1-1, Para. 2.2.6. It goes on to explain the concern of such relationships is that they pose a danger of creating the appearance of favoritism, which causes members of the unit to question the superior's impartiality toward the subordinate and their peers. (Id.) Similarly, AFI 36-2909 cautions against pursuing any relationship which may result in or create the appearance of favoritism. Given these warnings, a reasonable factfinder could believe that a reasonably prudent person in Appellant's position would take great care in their interactions with their subordinates to ensure their authority within the unit was maintained and no appearance of favoritism could be perceived. Yet, Appellant did

not heed the warnings, nor did she act in a manner which a reasonably prudent Master Sergeant would have acted towards their subordinates.

Notably, Appellant does not seem to dispute that she routinely spent time outside of work drinking and socializing with these three airmen or that she took the overnight trip to Seoul with the airmen – a trip that involved heavy drinking, taking group pictures, and then posting those pictures on social media for other members to see. Instead, Appellant renews her "divers occasions" argument from Issue I, and that her activities did not amount to "favoritism" or create an unprofessional relationship. (*See* App. Br. at 17-21.)

The evidence introduced at trial demonstrated that Appellant was the acting manager of the PAC. (R. at 83.) In that role, she was responsible for the supervision of IS, ST, and RL—all of whom were her subordinates both in overall rank (E-7 vs. E-5 and E-4) and within the unit's chain of command. (R. at 372, 276-77.) In fact, Appellant served as their rater. (R. at 124, 278-79, 339.) During her time as manager of the PAC, a clique formed amongst the members of PAC consisting of Appellant, IS, ST, and RL. (R. at 718, 634, 574, 559.) Members of the PAC reported numerous closed-door meetings between the group during duty hours, which did not occur with any other unit members. (R. at 559.) Appellant would often take IS and ST to Starbucks, without inviting other members of the unit. (R. at 61-63.) Appellant and these three subordinates were routinely seen out together in the SED drinking together at bars, while the rest of the unit was not present or not invited. (R. at 399, 722, 631, 609-10.) Members of the unit began to feel excluded and were not happy to come to work. (R. at 63, 66, 611.) Towards the beginning of October of 2022, this group planned a trip to Seoul, allegedly for another members birthday. (R. at 462, 369.) The trip to Seoul was billed as an office morale event but some members of the unit were not invited and the office group chat was not used to invite or plan the

trip. (R. at 69, 177-79.) Despite the claims that the Seoul trip was intended to be an office morale event, the only people who attended were Appellant, IS, ST, RL, and a friend of Appellant's from outside the shop. (R. at 463.)

During the Seoul trip, the clique rented an AirBnB in which they all stayed. (R. at 180.) When they arrived they all began doing shots of Soju and "pregaming" before going out. (R. at 322-23, 463.) Eventually, the group left the AirBnB and took photos in a photobooth. (R. at 250.) Some of the photos taken were posted to SnapChat, which other members of the unit saw. (R. at 725-26.) The group then proceeded to a bar, where they all again consumed multiple shots of liquor. (R. at 330.) At some point during the evening, IS became intoxicated and had to be carried home by Appellant and her friend. (R. at 411, 515-16.)

After the group returned from Seoul, a rumor began to spread within the unit and outside of the unit that Appellant and IS had sex while on the Seoul trip. (R. at 735.) Based on the photos that were posted on SnapChat, at least one member of the unit believed the rumors to be true and felt that there was an appearance of favoritism. (R. at 732, 737-738.)

Based on the above, a reasonable factfinder could have found that Appellant's actions in (1) routinely spending time outside of work drinking and socializing with a select group of subordinates and (2) taking an overnight trip with this select group of subordinates that involved heavy drinking, taking group pictures, and posting those pictures on social media for other members of Appellant's unit to see, while (3) failing to ensure that all members of the unit were included and felt welcome, (4) created a perception of favoritism. More than that, the evidence introduced at trial would have easily caused a reasonable factfinder to conclude that a reasonably prudent former MTI and supervisor to all of these individuals would not have put themselves in a position, through their own repeated actions and lack of diligence, for a rumor—regardless of its

veracity—to spread both inside and outside their unit that she was having sex with one of her subordinates. Thus, further undermining her authority as both a supervisor and unit member.

To be sure, this is not a case where Appellant periodically took these airmen, as well as the rest of the airmen under her supervision, for an occasional drink at a bar or a coffee at Starbucks. Instead, the evidence showed Appellant took part in frequent and routine shared activities with only the three airmen in question – to the exclusion of the rest of her subordinate – and those shared activities included an overnight vacation, drinking at bars and coffee shops, and in-office closed-door meetings. To make things worse, Appellant took part in pictures of the overnight trip to Seoul that were then posted on social media in a fashion that other members of her unit, including her subordinates, to see. This conduct of close friendships and shared activities created an overall unprofessional relationship between Appellant and the three airmen.

Considering all of these facts and circumstances, the Government provided the panel ample evidence of Appellant's guilt beyond a reasonable doubt. After giving the appropriate deference to the trial court having heard the witnesses at trial, the Court should not be clearly convinced that the findings of guilty was against the weight of the evidence. Accordingly, Appellant's factual sufficiency claim must fail.

The same holds true for his legal sufficiency claim. Here, the record provides ample evidence from which a reasonable factfinder could have found all the essential elements beyond a reasonable doubt. In drawing every reasonable inference from the evidence in the record of trial in favor of the prosecution, the Court should deny Appellant's claim.

## III.

## AFI 36-2909 AND AFI 1-1 PROVIDE FAIR NOTICE TO APPELLANT OF THE PROHIBITION ON UNPROFESSIONAL RELATIONSHIPS.

### *Additional Facts*

Appellant was convicted of three specifications alleging violations of Article 92, UCMJ, specifically, dereliction of duty. (*Entry of Judgment*, dated 5 June 2023, ROT, Vol. 1.) All three specifications alleged Appellant was negligently derelict in the performance of her duty by failing to "refrain from having an unprofessional relationship" with two separate junior enlisted Airmen and a subordinate Non-Commissioned Officer. (Id.)

At trial, the military judge took judicial notice of AFI 36-2909, *Air Force Professional Relationships and Conduct*, and AFI 1-1, *Air Force Standards*, without defense objection. (R. at 27.) Government trial counsel requested the military judge to focus on AFI 1-1, paragraph 2.2 and AFI 36-2909, paragraphs 2.2 and 2.3. (R. at 27-28.)

AFI 1-1, para. 2.2, entitled "Professional Relationships" states:

> While personal relationships between military members are normally matters of individual choice and judgment, they can in certain circumstances become matters of official concern. They become such matters when the relationships adversely affect, or have the reasonable potential to adversely affect, the Air Force by eroding morale, good order, discipline, respect for authority, unit cohesion, or mission accomplishment.

AFI 1-1, para. 2.2.6, in relevant part states:

> Relationships in which one members exercises supervisory or command authority over another can become unprofessional. Similarly, differences in grade increase the risk that a relationship will be, or will be perceived to be, unprofessional because senior members in military organizations exercise authority, or have some direct or indirect organizational influence, over the duties and careers of junior members… Once established, unprofessional

> relationships, such as inappropriate personal relationships and favoritism, do not go unnoticed by other members of a unit and call into question the superior's impartiality toward the subordinate [their] peers.

AFI 36-2909, para. 2.2 in relevant part states:

> Relationships are unprofessional, whether pursued on or off duty, when the relationship detracts from the authority of superiors or results in or reasonably creates the appearance of: favoritism, misuse of office or position, or the abandonment of organizational goals for personal interests. Unprofessional relationships can exist between officers, between enlisted members, between officers and enlisted members, between military personnel and civilian employees, or between Air Force members and contractor personnel.

AFI 36-2909, para. 1.2.9, states: "All Air Force members share the responsibility for maintaining professional relationships. The senior member (officer, enlisted or civilian) in a personal relationship bears primary responsibility for maintaining the professionalism of that relationship."

***Standard of Review***

The constitutionality of a statute is a question of law and is ordinarily reviewed de novo. Washington, 57 M.J. at 399. This Court reviews questions of constitutional law de novo. United States v. Busch, 75 M.J. 87 (C.A.A.F. 2016).

***Law and Analysis***

A negligent violation of Article 92, UCMJ, dereliction of duty, occurs when: (1) the appellant had certain duties; (2) the appellant knew or reasonably should have known of the duties; and (3) the appellant was negligently derelict in the performance of those duties. MCM, pt. IV, para. 18.b.(3). Article 92(3), UCMJ, requires proof of certain military duties. The Manual states that the duty "may be imposed by treaty, statute, regulation, lawful order, standard operating procedure, or custom of the Service." MCM, pt. IV, para. 18.c.(3)(a). "Actual

knowledge need not be shown if the individual reasonably should have known of the duties," which can be demonstrated by "regulations, training or operating manuals, customs of the Service, academic literature or testimony, testimony of persons who have held similar or superior positions, or similar evidence." MCM, Pt. IV, para. 18.c.(3)(b).

To withstand a challenge on vagueness grounds, a regulation must provide sufficient notice so that a servicemember can reasonably understand that his conduct is proscribed. United States v. Moore, 58 M.J. 466, 469 (C.A.A.F. 2003); *see also* United States v. Vaughn, 58 M.J. 29, 31 (C.A.A.F. 2003) ("Due process requires 'fair notice' that an act is forbidden and subject to criminal sanction." (quoting United States v. Bivins, 49 M.J. 328, 330 (C.A.A.F. 1998)). The void for vagueness doctrine requires the criminal activity to be defined with sufficient clarity such that "ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." Kolender v. Lawson, 461 U.S. 352, 357 (1983)).

Here, the military judge took judicial notice of AFI 1-1 and AFI 36-2909. Both regulations provide fair notice that military members have a duty to maintain professional relationships with other military members. Appellant asks this Court to find the government's reliance on AFI 1-1 and AFI 36-2909 to establish the duty to refrain from unprofessional relationships violates due process because the two regulations are "void for vagueness." (App. Br. at 22.) Such a claim is not supported by law or the facts in this case.

First, this Court has already held that AFI 36-2909 provides sufficient notice to appellants of their duty to refrain from unprofessional relationships. *See* United States v. Allen, 2017 CCA LEXIS 549, at *16 (A.F. Ct. Crim. App. Aug. 11, 2017). Moreover, our superior Court has also found that AFI 36-2909 provides sufficient notice to service members to refrain from

unprofessional relationships. Rogers, 54 M.J. at 256-57. This Court should adhere to its own precedent and that of our superior Court and find that AFI 36-2909 provides sufficient notice of the duty to refrain from engaging in unprofessional relationships and thus, the void for vagueness doctrine is inapplicable in this case.

Even if this Court were to find the aforementioned precedents unpersuasive, both AFI 1-1 and AFI 36-2909 explicitly establish a duty to refrain from engaging in unprofessional relationships. The regulations are clear that unprofessional relationships can exist between enlisted members. AFI 36-2909, para. 2.2. It also establishes that such relationships become unprofessional when they have a reasonable potential to adversely affect the Air Force by eroding morale, good order, discipline, respect for authority, unit cohesion or mission accomplishment. AFI 1-1, para. 2.2. Further, a relationship between enlisted members is unprofessional if it results in, or creates the appearance of favoritism. AFI 36-2909, para. 2.2. To be unprofessional, the senior member of the relationship may, but need not hold a supervisory or command position over the junior member, it is enough that the senior member exercises direct or indirect organizational influence over the duties and career of the junior member.

AFI 36-2909, para. 2.3.5, *Shared activities,* also states that "[s]haring . . . vacations, transportation, and off duty interest on a frequent or recurring basis can be, or could reasonably be perceived to be, an unprofessional relationship." The paragraph continues, "These types of arrangements often lead to claims of abuse of position or favoritism," and that it "is often the frequency of these activities or the absence of any official purpose or organizational benefit which causes them to become, or reasonably perceived to be, unprofessional relationships." The paragraph differentiates between the "occasional round of golf" between a supervisor and subordinate versus "daily or weekly activities."

Given AFI 36-2909, Appellant was on notice that she had a duty to refrain from engaging in personal relationships with her subordinates that risked creating the danger of an appearance of favoritism. At the time of these offenses, Appellant was a Master Sergeant, former MTI, and acting as the manager of the PAC. (R. at 53.) Appellant was responsible for the supervision of the individuals she engaged in unprofessional relationships with. (R. at 372, 276-77.) Appellant was even assigned as their rater. (R. at 124, 278-79, 339.) As discussed in Issue II above, Appellant's frequent and recurring partying, drinking, and socializing outside of work with her subordinates, to include an overnight vacation, to the exclusion of other subordinates resulted in those other subordinates feeling ostracized in the work place. (R. at 798.) So much so, that some of those subordinates lodged a complaint that ultimately led to an investigation into Appellant's conduct and ultimately, her court-martial. (R. at 531-32.) Moreover, her interactions led to a rumor spreading both inside and outside the unit that Appellant was engaging in a sexual relationship with IS. (R. at 580, 732.) These incidents are strong evidence of the erosion of good order, discipline, and unit cohesion. Moreover, these incidents had no official purpose or organizational benefit and occurred on a frequent and recurring basis, all of which resulted in the unprofessional relationship between Appellant and her three subordinates.

To this end, Appellant attempts to argue the "arbitrary nature of the AFIs is reinforced by even Government witnesses like MSgt KR, whose husband regularly hosted monthly events where members drank, ate, and played games amongst others of various ranks." (App. Br. at 25, citing R. at 562.) However, Appellant fails to note this witness stated that these events were "monthly flight dinners," that, considering its name, included *all* members of that flight. In contrast, however, the incidents at issue here are those where Appellant had frequent and recurring activities with just these three airmen to the *exclusion* of the rest of her subordinates.

Appellant's example does not highlight the supposed "arbitrary nature" of the AFIs, but instead highlights the exact distinctions between professional relationships (monthly flight dinners) versus unprofessional relationships (recurring partying and drinking with only three of your subordinates to the exclusion of the others).

Neither AFI 1-1, nor AFI 36-2909 are unconstitutionally vague. The regulation and the custom of the Service put Appellant on notice that she had a duty to refrain from pursuing unprofessional relationships that risked creating the appearance of favoritism. To the extent Appellant now claims she was not aware of exactly what conduct was prohibited under the regulations, it is not "unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that [she] may cross the line." Boyce Motor Lines, Inc. v United States, 342 U.S. 337, 340 (1952). Appellant had notice that her conduct was potentially proscribed by Air Force regulations and by engaging in the relationships with her subordinates as she did, she accepted the risk that her conduct might cross the line into the realm of a crime, as it did in this case. As the void for vagueness doctrine is inapplicable in this case, this assignment of error must fail.

## IV.

## THE MILITARY JUDGE DID NOT ABUSE HIS DISCRETION WHEN HE DENIED THE DEFENSE'S MOTION TO EXCLUDE LI'S TESTIMONY PURSUANT TO R.C.M. 914.

### *Additional Facts*

*Initial Facts Regarding R.C.M. 914 Motion*

Prior to trial, trial defense counsel filed a motion to produce signed statements of NA, JE, and TM pursuant to R.C.M. 914. (App. Ex. XII.) At the time of trial, those statements were no longer in the possession of the government. (App. Ex. XV, para. 28.) All three individuals

testified at trial. (App. Ex. XV.) Trial defense counsel possessed unsigned versions of the statements of each witness, but each witness stated that the signed version would have been different than the unsigned version as they had corrected some of the information prior to signing. (App. Ex. XV.) At the conclusion of each respective direct examination, trial defense counsel made a timely objection under R.C.M. 914, due to the government's inability to provide their signed statements. (App. Ex. XV, para. 7.)

During trial, LI testified as a government witness. (App. Ex. XV, para. 13.) At the conclusion of her direct testimony, trial defense counsel did not make a motion pursuant to R.C.M. 914 and proceeded to cross-examination. (Id.) Towards the end of the government's case, LI was recalled by the government. (R. at 784.) During her recall testimony, LI referenced having made a prior statement like the statements provided by NA, JE, and TM. (App. Ex. XV, para. 13.) At the conclusion of LI's direct examination on recall, trial defense counsel made an oral motion to strike LI's testimony pursuant to R.C.M. 914 as the government had failed to provide a signed version of LI's statement. (Id.)

In support of their motion, the military judge permitted trial defense counsel to cross-examine LI on facts relevant to their motion. (R. at 790-91.) During cross-examination, LI explained that she was interviewed as part of an investigation into allegations of unprofessionalism within PAC house. (R. at 791.) LI stated that during the interview, she accomplished and signed an AF Form 1168 recording her statements. (R. at 791-792.) The signed version of her statement was given to the commander and subsequently lost. (App. Ex. XV.) LI testified that the unsigned version of her statement was the same as the signed version and that she had not made any changes to the document prior to signing it. (R. at 802.)

*R.C.M. 914 Motion Hearing and Ruling*

At the conclusion of trial, the military judge held a hearing to discuss the defense's oral motion to exclude testimony pursuant to R.C.M. 914. (R. at 963.) During the hearing, the military judge asked defense counsel whether they were aware that LI had provided a statement prior to her taking the stand for the first time. (R. at 974.) Trial defense counsel acknowledged that they were aware and that they actively chose not to bring an R.C.M. 914 motion at the conclusion of her direct testimony prior to cross-examining her. (R. at 974.) The military judge pointed out that the defense properly brought R.C.M. 914 motions for the other three witnesses at the appropriate time. (R. at 975.) The military judge then explained his reading of the plain language of the rule required the defense to make a timely objection at the conclusion of direct examination and explained waiver to trial defense counsel. (R. at 975-976.) The defense once again acknowledged that they knew they had the right to make an R.C.M. 914 motion the first time LI testified on direct examination and that they intentionally chose not to. (R. at 976.)

In the military judge's written ruling he denied the defense's R.C.M. 914 motion as it pertained to LI based on the plain language of R.C.M. 914, the defense's admissions at trial, and the military judge's conclusion that the defense had waived the opportunity to make an R.C.M. 914 motion when they failed to make said motion prior to cross-examining LI during her initial testimony. (App. Ex. XV.) Ultimately, the military judge concluded that the testimony of LI did not meet the requirements of R.C.M. 914. (Id.)

***Standard of Review***

This Court reviews a military judge's ruling on an R.C.M. 914 motion for an abuse of discretion. United States v. Clark, 79 M.J. 449, 453 (C.A.A.F. 2020). "A military judge abuses [their] discretion when (1) the findings of fact upon which [they] predicate [their] ruling are not

supported by the evidence of the record, (2) if incorrect legal principles were used, or (3) if [their] application of the correct legal principles to the facts is clearly unreasonable." United States v. Ellis, 68 M.J. 341, 344 (C.A.A.F. 2010). An abuse of discretion includes actions that are "arbitrary, fanciful, clearly unreasonable, or clearly erroneous." United States v. McElhaney, 54 M.J. 120, 130 (C.A.A.F. 2000) (internal quotation marks and citations omitted).

Whether an appellant has waived an objection is a legal question that this Court reviews de novo. United States v. Davis, 79 M.J. 329, 331 (C.A.A.F. 2020). Waiver is the intentional relinquishment or abandonment of a known right. United States v. Gladue, 67 M.J. 311, 313 (C.A.A.F. 2009).

***Law***

*R.C.M. 914 Generally*

In 1984, the President promulgated R.C.M. 914 with language that closely mirrored the Jencks Act. *Compare* R.C.M. 914 (MCM, (1984 ed.)) with 18 U.S.C. § 3500. Given the overlap between R.C.M. 914 and the Jencks Act, CAAF has concluded that "our Jencks Act case law and that of the Supreme Court informs our analysis of R.C.M. 914 issues." *See* United States v. Muwwakil, 74 M.J. 187, 191 (C.A.A.F. 2015).

R.C.M. 914 states:

> After a witness other than the accused has testified on direct examination, the military judge, on motion of a party who did not call the witness, shall order the party who called the witness to produce, for examination and use by the moving party, any statement of the witness that relates to the subject matter concerning which the witness has testified that is…in the possession of the United States.

R.C.M. 914(a)(1). A statement is "in the possession of the United States" for purposes of R.C.M. 914 if it is or was possessed by a "prosecutorial arm of the federal government." United States v. Thompson, 81 M.J. 391, 396 (C.A.A.F. 2021).

The relevant portion of R.C.M. 914 defines a "statement" as "a written statement made by the witness that is signed or otherwise adopted or approved by the witness."

*R.C.M. 914's Good Faith Exception*

Prior to July 2023, the Jencks Act jurisprudence of our superior courts recognized a judicially-created "good faith loss doctrine." Muwwakkil, 74 M.J. at 191. "This doctrine excuse[d] the government's failure to produce 'statements' if the loss…of evidence was in good faith." Id. (quoting Killian v. United States, 368 U.S. 231, 242 (1961)). However, the United States Court of Military Appeals noted that the good faith loss doctrine was "generally limited in its application." United States v. Jarrie, 5 M.J 193, 195 (C.M.A. 1978)).

Since Appellee was arraigned before 28 July 2023, the previous version of R.C.M. 914 applies to his court-martial. Id. at 1.

The sanctions available under R.C.M. 914(e)(1) require the military judge to order either (a) that the testimony of the witness be disregarded by the trier of fact, or (b) order a mistrial if required in the interest of justice.

***Analysis***

Appellant has failed to show the military judge abused his discretion in denying the request to strike LI's testimony. Appellant waived the right to raise the motion when they failed to object at the conclusion of her initial direct examination. Moreover, Appellant was in possession of LI's statement and therefore, R.C.M. 914 was not violated. Finally, even if the

military judge's denial was error, any error did not have a substantial impact on the findings. This Court should deny this assignment of error.

*Waiver*

Appellant cites no case law indicating that waiver cannot be applied to an R.C.M. 914 motion for failure to timely object. Here, the military judge based his reasoning largely on the plain language of the statute. "Unless the text of a statute is ambiguous, 'the plain language…will control unless it leads to an absurd result.'" United States v. Schell, 72 M.J. 339, 343 (C.A.A.F. 2013) (quoting United States v. King, 71 M.J. 50, 52 (C.A.A.F. 2012). Regarding the timing of an R.C.M. 914 objection, that statute states:

> *After* a witness other than the accused has testified on *direct* examination, the military judge, on motion of a party who did not call the witness, shall order the party who called the witness to produce, for examination and use by the moving party, any statement of the witness that relates to the subject matter concerning which the witness has testified that is…in the possession of the United States.

(emphasis added). The plain language of the statute indicates that the proper timing for an objection is immediately after direct examination. This conclusion is further supported by the purpose of the rule. As the rule explains, the statement will be produced "for examination and use by the moving party," logically for use in their cross-examination of the relevant witness. Taken together the plain language and the purpose of the rule demonstrate that the proper time to make an R.C.M. 914 motion is immediately after direct examination. Adhering to the plain language of a statute is not "arbitrary, fanciful, clearly unreasonable, or clearly erroneous." McElhaney, 54 M.J. at 130.

To hold that after direct examination is not the timing requirement for a proper R.C.M. 914 motion, is contrary to the concepts of fairness, judicial economy, and logic. If defense

counsel could make an R.C.M. 914 motion at any point in proceedings after a witness has testified, defense would be free to sit idly by while the government presents their case under the belief that the witness' testimony was admissible. The government would conduct their case and organize their trial strategy on that assumption. And defense counsel would be at liberty to spring an objection at the conclusion of the government's case, potentially throwing the entire proceeding into disarray. Courts-martial are not arenas for trial by ambush. *See* United States v. Trimper, 28 M.J. 460, 468 (C.M.A. 1989). This Court should decline Appellant's invitation to create a rule that permits trial defense counsel to ambush the government at trial, at any time by waiting well past the proper moment of asking. (App. Br. at 28.)

Having established that the plain language and the reasoning behind R.C.M. 914 supports the military judge's conclusion that the proper timing for an R.C.M. 914 objection is immediately following direct examination, we next turn to the evidence of waiver. While ordinarily a failure to object at trial constitutes forfeiture, here there is evidence supporting the military judge's conclusion that trial defense counsel waived their objection. Waiver is different than forfeiture. Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the intentional relinquishment or abandonment of a known right. Davis, 79 M.J. at 331. "[U]nder the ordinary rules of waiver, [an a]ppellant's affirmative statement that he had no objection to [the] admission of evidence…operate[s] to extinguish his right to complain about [the] admission [of evidence] on appeal." United States v. Ahern, 76 M.J. 194, 198 (C.A.A.F. 2017) (citing United States v. Campos, 67 M.J. 330, 332-33 (C.A.A.F. 2009).

Here, during the hearing in support of their motion, trial defense counsel conceded that they were aware of the existence of LI's statement prior to trial, they did not include LI in their written motion for R.C.M. 914 relief, they knew of their right to make such a motion, and they

twice confirmed they made a conscious decision not to make said motion. (App. Ex. XII, R. at 974-976.) Normally, an affirmative statement that an accused at trial has no objection "constitutes an affirmative waiver of the right or admission at issue." United States v. Swift, 76 M.J. 210, 217 (C.A.A.F. 2017) (citations omitted). But here, this Court has significantly stronger evidence of waiver beyond a mere affirmation of "no objection." Trial defense counsel clearly articulated that they knew of the right and that there was an intentional decision to relinquish that right when LI testified for the first time on direct. (R. at 974-976.) The military judge's determination that Appellant waived any objection to LI's testimony is supported by the plain language of the rule and trial defense counsel's own concessions. This Court should find the military judge did not abuse his discretion and deny this assignment of error.

*Objection after LI's Testimony during Re-call*

Appellant asserts that if this Court were to find that Appellant waived the right to object to LI's initial testimony by failing to make a timely objection, this Court should nonetheless find that trial defense counsel preserved the issue as it relates to LI's testimony on recall as they did object following the government's direct examination. (App. Br. at 28-29.) The government's position remains that the initial waiver waived all right to object under R.C.M. 914. But even if this Court were to find that Appellant's initial waiver did not extend to LI's second testimony, Appellant has still failed to meet the requirements of R.C.M. 914, and thus the military judge did not abuse his discretion in denying the motion.

The testimony at trial established that during the course of the investigation into Appellant's unprofessional relationships, several witnesses including LI provided statements to the investigator. (App. Ex. XV.) At some point, a copy of those statements was signed by each witness and provided to the commander for his review. (Id.) Trial defense counsel conceded in

their motion that the government provided them unsigned versions of the AF Form 1168's provided by all the witnesses. (App. Ex. XII.) Three of the witnesses, those for whom the defense filed a written motion for relief under R.C.M. 914, testified at trial that prior to signing their AF Form 1168's they had made amendments to the unsigned versions of their AF Form 1168's and that the unsigned copies were not accurate to the final version of their statement. (App. Ex. XV.) The one exception being LI, who testified that the unsigned version and the signed version of her AF Form 1168 were the same and she had not made any changes to the content prior to signing it. (R. at 802.) R.C.M. 914 defines a statement as ""a written statement made by the witness that is signed or otherwise adopted or approved by the witness." Here, LI adopted the unsigned version of the AF Form 1168 as being a complete and accurate copy of her signed statement. The only difference between the two statements would have been that one was signed, while the other was not. In reality, the unsigned copy of the statement that the government provided to the defense was provision of the requested statement. There is no evidence to contradict LI's testimony that this was a complete and accurate copy of her final statement. The fact that it was unsigned is of little import given LI's adoption of the unsigned version. The defense had the full content of her statement and were free to use it in their cross-examination of LI at the time of trial. When defense made their R.C.M. 914 motion to produce LI's statement, they were already in possession of the full and complete statement and the government's failure to produce the signed version—which was no different than the unsigned version with the exception of a missing signature—was not sufficient to constitute a failure to provide a statement necessitating a remedy under R.C.M. 914. This Court should be convinced that the military judge's denial of the defense's R.C.M. 914 motion was not an abuse of discretion.

*Prejudice Analysis*

Even assuming *arguendo* that this Court disagrees with the government and reaches the issue of prejudice, Appellant's claim still fails. "For nonconstitutional evidentiary errors, the test for prejudice 'is whether the error had a substantial influence on the findings.'" United States v. Kohlbek, 78 M.J. 326, 334 (C.A.A.F. 2019) (quoting United States v. Fetrow, 76 M.J. 181, 187 (C.A.A.F. 2017)). This Court evaluates prejudice from an erroneous evidentiary ruling by weighing (1) the strength of the government's case, (2) the strength of the defense case, (3) the materiality of the evidence in question, and (4) the quality of the evidence in question. United States v. Kerr, 51 M.J. 401, 405 (C.A.A.F. 1999). Here, the application of these factors shows that the challenged testimony of LI did not have a substantial influence on the findings.

First, contrary to Appellant's assertions, the prosecution's case was not weak. (App. Br. at 29.) Even in the absence of LI's testimony, there was sufficient evidence to support Appellant's convictions. More importantly, as discussed in more detail in Issue II above, LI's testimony was not the most damning evidence presented against Appellant. The evidence provided by other witnesses established that Appellant was frequently seen out with the same core group of subordinates in the SED drinking at bars. (R. at 304-307, 399, 535, 609-10, 634, 722.) It was undisputed that Appellant went on a trip to Seoul with this same group of subordinates, which culminated in one of those subordinates, IS, getting so intoxicated that Appellant had to carry her home. (R. at 466-467.) Appellant does not dispute this evidence—instead, she argues that her behavior did not amount to "favoritism" or create an unprofessional relationship. (App. Br. at 17-21.) DS then delivered the most damning evidence against Appellant. DS testified that after Appellant's trip to Seoul with her subordinates, a rumor spread both within the unit and outside of it that Appellant had sex with IS, one of her subordinates. (R.

at 732-733, 734-735, 737-738, 755.) More importantly, DS explained that due to pictures she had seen of Appellant during the Seoul trip, she believed the rumors. (R. at 732.) DS explained that the perception that a supervisor is having sex with a subordinate can rise to the level of unprofessional when it is known by other subordinates and that based on the rumor a perception of favoritism was created. (R. at 737-738.) Thus, even in the absence of LI's testimony the evidence against Appellant was strong.

Despite Appellant's assertion that the defense case was strong (App. Br.at 29), it largely revolved around good military character and prior performance. (R. at 896-954.) The defense's case did little if anything to address the fact that Appellant's repeated and continual conduct with three subordinate Airmen created the appearance of favoritism within her unit and constituted an overall unprofessional relationship. Moreover, the fact that Appellant possessed good military character, had a strong duty performance, and had served as an MTI (R. at 898) only served to further highlight that Appellant knew or should have known that she had a duty to refrain from engaging in unprofessional relationships with her subordinates. The defense's case was not strong because it tended to strengthen the government's case.

The material and quality of the challenged evidence also weighs against a finding of prejudice. In examining materiality and quality of erroneously admitted evidence, this Court assesses "how much the erroneously admitted evidence may have affected the court-martial." United States v. Washington, 80 M.J. 106, 111 (C.A.A.F. 2020). This assessment considers the "particular factual circumstances of each case":

> For example, we have previously considered such things as the extent to which the evidence contributed to the government's case; the extent to which instructions to the panel may have mitigated the error; the extent to which the government referred to the evidence in argument; and the extent to which the members could weigh the evidence using their own layperson knowledge.

Id.

Here, the factual circumstances demonstrate that the challenged evidence, while probative, would not have decisively "affected the court-martial." Id. As discussed above, the most damning evidence stemmed from other witnesses. LI's testimony did not serve as the sole evidence of any key fact at issue and LI's testimony was largely corroborated by a number of other witnesses throughout the course of the trial. Taken together neither the materiality or quality of the evidence weighs in favor of a finding of prejudice.

Taken altogether, these circumstances support a conclusion that any alleged error involving LI's testimony did not "substantially influence the findings." Kohlbek, 78 M.J. at 334. Accordingly, even if this Court finds that the military judge erred, Appellant is not entitled to relief.

## V.

## THE MILITARY JUDGE EXHIBITED NEITHER ACTUAL—NOR THE APPEARANCE OF—BIAS[6].

### *Additional Facts*

Prior to trial, trial defense counsel filed a motion to dismiss for failure to state an offense. (App. Ex. I.) The military judge denied the defense's motion to dismiss via written ruling. (App. Ex. VI.) The defense counsel also filed a motion to suppress Appellant's statements (App. Ex. III, which the military judge granted. (R. at 14.)

The military judge questioned eleven of the government's thirteen witnesses. (R. at 78, 92, 160, 221, 207, 276, 381, 504, 561, 611, 705, 729, 759, 775, 807, 826, 990.) Trial defense counsel objected to a single question of the military judge's questioning of those eleven

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

witnesses on the basis of hearsay, which the military judge agreed he would not consider. (R. at 772.) During the military judge's question of ST, the military judge explained his authority to ask questions as the fact-finder and requested both parties' permission to ask questions outside the scope of the parties' questions. (R. at 825.) Both parties affirmatively stated they did not have any objections. (R. at 825-26.)

The defense filed a written motion to exclude the testimony of three witnesses for failure to produce written statements pursuant to R.C.M. 914. (App. Ex. XII.) The military judge granted this defense motion. LI testified on two occasions during Appellant's court-martial. (R. at 52, 784.) At the conclusion of her initial testimony, trial defense counsel did not move for production of a statement or relief under R.C.M. 914. At the conclusion of her second testimony, the defense made an oral R.C.M. 914 motion (R. at 784), which the military judge subsequently denied in a written ruling. (App. Ex. XV.)

***Standard of Review***

When an appellant does not raise the issue of disqualification until appeal, this Court reviews for plain error. United States v. Martinez, 70 M.J. 154, 157 (C.A.A.F. 2011). The test is whether, taken as a whole in the context of the trial, the court-martial's legality, fairness, and impartiality were put into doubt by the military judge's actions. United States v. Foster, 64 M.J. 331, 333 (C.A.A.F. 2007). The test is applied from the viewpoint of a reasonable person observing the proceedings, and failure to object at trial to alleged partisan action on the part of the military judge "may present an inference that the defense believed that the military judge remained impartial." Id.

***Law***

"[A] military judge shall disqualify himself or herself in any proceeding in which that military judge's impartiality might reasonably be questioned." R.C.M. 902(a). "The military judge shall, upon motion of any party or sua sponte, decide whether the military judge is disqualified." R.C.M. 902(d)(1). "Military judges should 'broadly construe' possible reasons for disqualification, but also should not recuse themselves 'unnecessarily.'" United States v. McIlwain, 66 M.J. 312, 314 (C.A.A.F. 2008) (quoting United States v. Wright, 52 M.J. 136, 140 (C.A.A.F. 1999); Discussion, R.C.M. 902(d)(1)). "Of course, 'a…judge has as much obligation not to…[disqualify] himself when there is no reason to do so as he does to…[disqualify] himself when the converse is true.'" United States v. Kincheloe, 14 M.J. 40, 50 n.14 (C.M.A. 1982) (quoting citation omitted); *see also* McCann v. Communications Design Corp., 775 F. Supp. 1506, 1508-09 (D. Conn. 1991) ("Where there is no basis for recusal other than a litigant's unhappiness with a judge's decisions, the presiding judge has an obligation to prevent 'judge shopping' by refusing to recuse himself."). "There is a strong presumption that a judge is impartial." United States v. Quintanilla, 56 M.J. 37, 44 (C.A.A.F. 2001) (citation omitted). Interest and biases are only disqualifying if they are "personal, not judicial, in nature." United States v. Burton, 52 M.J. 223, 226 (C.A.A.F. 2000).

***Analysis***

Appellant alleges, for the first time on appeal, both actual bias and the appearance of bias on the part of the military judge. (App. Br., Appx. at 3.) "There is a strong presumption that a judge is impartial, and a party seeking to demonstrate bias must overcome a *high* hurdle…" Quintilla, 56 M.J. at 44 (emphasis added). Appellant has failed to overcome that high hurdle and this Court should deny this assignment of error.

Appellant asserts two specific examples to demonstrate the military judge's alleged bias: (1) the military judge questioned eleven of the government's thirteen witnesses; and (2) the military judge denied the defense's R.C.M. 914 motion to exclude the testimony of LI. (App. Br., Appx. at 3.) Yet, neither of these examples demonstrate any basis for recusal and Appellant makes no assertion that the military judge erred by failing to sua sponte recuse himself.

First, it has "long been the law" that the military judge may question witnesses. United States v. Dock, 40 M.J. 112, 127 (C.M.A. 1994). The military judge does not abandon his impartiality by asking appropriate questions "to clarify factual uncertainties." United States v. Reynolds, 24 M.J. 261, 264 (C.M.A. 1987) (citations omitted). The military judge has "wide latitude" to ask questions, including "questions which might adversely affect one party or the other." United States v. Acosta, 49 M.J. 14, 17-18 (C.A.A.F. 1998). The law sets no limit on the number of witnesses which a military judge may question, so long as those questions are appropriate. Appellant provides no examples of questions where the military judge's questions were inappropriate or were not oriented towards clarifying "factual uncertainties." Reynolds, 24 M.J. at 264. As the ultimate factfinder at a military judge alone special court-martial, the military judge certainly had an interest in exploring the facts to enable him to make an appropriate determination as to guilt or innocence.

Moreover, trial defense counsel never objected to any of the eleven witness examinations the military judge conducted. This Court should view the trial defense counsel's lack of objection at trial to these now alleged partisan actions on the part of the military judge as evidence that the trial defense counsel "believed that the military judge remained impartial." Foster, 64 M.J. at 333. Even now on appeal, Appellant fails to point to any specific instance or question where the military judge strayed outside the "wide latitude" to ask questions. Appellant

merely complains about the volume of witness questions, which does not constitute a grounds for recusal, nor does it demonstrate any impartiality—it merely demonstrates the military judge fulfilling the court-martial's "truth-seeking" function. *See* United States v. Jasper, 72 M.J. 276, 280 (C.A.A.F. 2013) (internal citations omitted) (recognizing the court-martial's truth-seeking function). Further, after each witness he examined, the military judge permitted both parties equal opportunity for further questioning. Taken as a whole in the context of the trial, a reasonable person would have no concerns regarding the court-martial's legality, fairness, and impartiality because of the military judge's questioning of witnesses. This Court should be equally unconcerned and find that the military judge's questioning of the government's witness constituted neither actual nor the appearance of bias.

Second, while Appellant claims that the military judge denied his requests for relief under R.C.M. 914 (App. Br., Appx. at 2-3), Appellant neglected to mention that the military judge excluded the testimony of three government witnesses pursuant to Appellant's request for relief under R.C.M. 914. (App. Ex. XV.) The military judge also granted Appellant's motion to suppress Appellant's statements. (App. Ex. III; R. at 14.) There is no indication in the record that the military judge's decision to deny the defense's R.C.M. 914 motion regarding LI stemmed from any bias towards either party at trial. On the contrary, the evidence in the record supports that the military judge's denial of the request to exclude LI's testimony stemmed from a thoughtful review of the law and application of the law to the facts at hand. (App. Ex. XV.) Further, there is no evidence the military judge's denial of the defense's motion to dismiss for failure to state and offense was motivated by anything other than the binding case law. Of note, Appellant does not even assert that the denial of the motion to dismiss for failure to state an offense constitutes an error. A mere disagreement with the military judge's rulings on motions is

not sufficient to constitute evidence of actual—or the appearance of—bias. This Court should deny this assignment of error.

Notably, Appellant makes no assertion of prejudice stemming from the military judge's questioning of the government witnesses. Moreover, Appellant does not request any specific remedy beyond a mere assertion that "the military judge's conduct warrants a remedy to vindicate public confidence in the military justice system. (App. Br., Appx. at 3.) As Appellant has failed to demonstrate either actual or the appearance of bias, this Court should deny his requested relief.

## CONCLUSION

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

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**CERTIFICATE OF FILING AND SERVICE**

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

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

| | | |
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| **UNITED STATES** | ) | **CONSENT MOTION FOR** |
| *Appellee* | ) | **ENLARGEMENT OF TIME** |
| | ) | **(FIRST) TO FILE A REPLY** |
| v. | ) | |
| | ) | Before Panel No. 1 |
| Master Sergeant (E-7) | ) | No. ACM 24027 |
| **EILEEN G. ECHALUSE,** | ) | |
| United States Air Force | ) | 23 June 2025 |
| *Appellant* | ) | |

**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 her first enlargement of time (EOT) to file a Reply Brief to the Government's Answer, filed 23 June 2025. The Reply Brief is currently due 30 June 2025. Appellant requests an EOT for a period of ten (10) days, which will end on **10 July 2025**. The record of trial was docketed with this Court on 22 December 2023. This Court signed and receipted for the record of trial on 21 May 2024. From the date of docketing to the present date, 549 days have elapsed. On the date requested, 566 days will have elapsed. From the date the record of trial was received by this Court to the present date, 398 days have elapsed. On the date requested, 415 days will have elapsed. **The Government consents to this EOT.**

On 20 March 2023 and 10-14 April 2023, a special court-martial by military judge alone at Osan Air Base, Republic of Korea, convicted Appellant, contrary to her pleas, of three specifications, with excepted words, in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892 (2019). Entry of Judgement. The military judge alone found Appellant, consistent with her pleas, not guilty of one specification of Article 92, UCMJ. *Id*. The military judge sentenced Appellant to a reprimand and reduction to the grade of E-6. *Id*. The Convening Authority took no action on the findings or sentence. Convening Authority Decision on Action.

The electronic record of trial is 1094 pages long containing three prosecution exhibits, 34 defense exhibit, 16 appellate exhibits, and zero court exhibits. Appellant is not currently confined.

There is good cause to grant this EOT. Undersigned counsel is currently on pre-scheduled and approved leave in California from 21-27 June 2025. Undersigned counsel consented to the Government's EOT for the Answer understanding the Government also consented to an EOT that would allow at least seven duty days for undersigned counsel to file a Reply. Given undersigned counsel's leave and the 4th of July holiday and family day, the ten day EOT provides undersigned counsel seven duty days to file the Reply. Further, the Government consents to this EOT.

Due to undersigned counsel's pre-approved leave, the holiday and family day, and through no fault of Appellant, an enlargement of time is necessary to allow undersigned counsel time to complete a review of the Government's Answer, conduct research, confer with Appellant, draft a Reply, and route it through various levels of internal review prior to filing. Appellant provides limited consent to disclose a confidential communication with counsel wherein she previously consented to requests for enlargements to coordinate with her.

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

Respectfully submitted,

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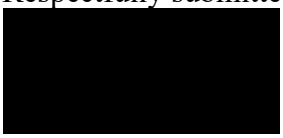
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 23 June 2025.

Respectfully submitted,



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

| | | |
|---|---|---|
| **UNITED STATES** | ) | **REPLY BRIEF ON BEHALF** |
| *Appellee* | ) | **OF APPELLANT** |
| | ) | |
| v. | ) | Before Panel 1 |
| | ) | |
| Master Sergeant (E-7) | ) | No. ACM 24027 |
| **EILEEN G. ECHALUSE** | ) | |
| United States Air Force | ) | 10 July 2025 |
| *Appellant* | ) | |

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

COMES NOW, Appellant, Master Sergeant (MSgt) Eileen G. Echaluse, by and through her undersigned counsel pursuant to Rule 18(d) of this Honorable Court's Rules of Practice and Procedure, and submits this Reply Brief to the Government's Answer, filed 23 June 2025 (hereinafter Gov. Ans.). Appellant primarily rests on the arguments contained in her Brief on Behalf of Appellant, filed on 16 May 2025 (hereinafter App. Br.), but provides the following additional arguments in reply to the Government's Answer.

**Argument**

**I. This Court cannot be convinced of what conduct the military judge found constituted an unprofessional relationship (UPR) in each specification. Because of this, this Court cannot sufficiently conduct its review under Article 66(d), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(d).**

This Court must be convinced beyond a reasonable doubt of Appellant's guilt but cannot find Appellant guilty of incidents of which the military judge did not find her guilty of. *United States v. Walters*, 58 M.J. 391, 391 (C.A.A.F. 2003). However, this Court has no way of knowing what conduct the military judge found constituted the UPR. Because of this, this Court cannot find Appellant's guilt beyond a reasonable doubt without potentially finding her guilty of incidents the military judge did not. *Id.*

*A. The military judge did not clarify on the record what conduct he found Appellant guilty of in specifications 1-3 of the charge. Nor did the military judge state on the record that he found Appellant guilty of a continuing course of conduct or what his intent was in finding Appellant not guilty of the words "on divers occasions."*

The military judge found Appellant not guilty of the words "on divers occasions" in all three specifications. R. at 1035;[1] EOJ. But the military judge failed to specify which occasion—or which conduct—he found Appellant guilty of. *Id.* (s*ee* Walters, 58 M.J. at 391). The Government cites to a single question the military judge posed on page 114 of the verbatim transcript as evidence of his intent in finding Appellant guilty "of one overarching [UPR] based on the totality of the evidence presented at trial." Gov. Ans. at 8. However, the question relied upon by the Government was from the military judge during motion's testimony prior to trial. *See* R. at 114. There, the defense counsel was objecting to testimony regarding uncharged acts under failure to provide notice under Mil. R. Evid. 404(b). *Id.* The military judge asked the Government if it charged "an overall [UPR] from some time to some time" making it "all-encompassing as far as what happened during that time." *Id.* The Government answered in the affirmative.

Almost one thousand verbatim transcript pages later, when announcing the findings, the military judge did not state that his findings of guilty were based on an overarching UPR for any of the specifications. *See* R. at 1056. Had the military judge meant to find Appellant guilty of an overarching UPR when finding Appellant not guilty of "on divers occasions," the military judge needed to specify such on the record pursuant to *Walters*, 58 M.J. at 391, and *United States v. Ross*, 68 M.J. 415, 415 (C.A.A.F. 2010). But he did not. Absent a clear identification of which conduct the military judge found Appellant guilty of, this Court cannot conduct its Article 66(d), UCMJ, review.

[1] All record (R.) citations are to the Verbatim Transcript.

*B. The Government chose to charge "on divers occasions" and did not amend the charge sheet to indicate any other intent.*

An ambiguity in findings precludes a Court of Criminal Appeals' review as stated by the Court of Appeals for the Armed Forces (CAAF) in *Walters*. 58 M.J. at 392. Contrary to the Government's assertion, Appellant's reliance on *Walters* is not "misplaced." *Contra* Gov. Ans. at 6. Had the Government intended to charge Appellant with an overarching UPR involving each named person, it would not have charged "on divers occasions." The Government controls the charge sheet and chose to charge specifications 1-3 of the charge with the language of "on divers occasions." Charge Sheet. The Government did not change this charging theory even after the military judge asked the question the Government now relies upon. Gov. Ans. at 7-8. The Government may assert over and over on appeal that "there was only one alleged incident – the overall" UPRs with each of those named in specifications 1-3 (Gov. Ans. at 8-9), but this conflicts with the charging theory of "on divers occasions." Charge Sheet.

In fact, prior to trial, the Defense requested a bill of particulars to ascertain what exact conduct the Government charged as UPRs. AE V at 19-20.[2] The Government gave the same canned response for each of the three specifications of the charge: "With respect to [the specification], the charged misconduct occurred through showings of favoritism, close friendships, and/or shared activities. Evidence of such conduct is available through witness testimony and the Investigation Findings Report." *Id.* The Government further stated that "Any further information would amount to a discolusre of the Government's theory of the case." *Id.* The Government's

[2] The bill of particulars is not an attachment to either the Defense's Motion to Dismiss nor the Government's Response. Instead, it is attached to the Defense's Objections and Response to the Government's Motion in Limine to Exclude Evidence under Mil. R. Evid. 404(a)(2).

response did not state the charges were for a continuing course of conduct, which it now argues on appeal. *Compare* AE V at 19-20, *with* Gov. Ans. at 7.

*C. Appellant's case is vastly different from* United States v. Rogers *that the Government relies on, but even if it was not, the military judge still needed to clarify of what conduct he found Appellant guilty versus not guilty.*

The Government cites to *Rogers* for the proposition that "specific acts do not constitute the relationship, 'they evidence[] it.'" *Id.* (quoting *Rogers*, 54 M.J. 244, 257 (C.A.A.F. 2000)). But that quote came from the CAAF's analysis under a failure to state an offense issue where the court stated evidence of the "acts" was provided to the appellant through a bill of particulars wherein the prosecution "outlined the core events." *Rogers*, 54 M.J. at 257. First, that was not done in this case—the Government only provided a canned, vague response to the defense request for a bill of particulars. *See* AE V at 19-20. Second, even if the bill of particulars combined with the Investigations Findings Report put Appellant on notice of what acts the prosecution intended to prove at trial (*see Rogers*, 54 M.J. at 257), that does not clarify what the military judge actually found Appellant guilty of and what other "occasions" the military judge found Appellant not guilty of. Similarly, while the dissenting judge in *Rogers* agreed that, in light of the bill of particulars, the charge was sufficient to state an offense, he did not agree that the evidence sufficiently proved the offense alleged. 54 M.J. at 258 (Effron, J., dissenting).

The facts of *Rogers* are also vastly different than Appellant's case. In *Rogers*, the evidence demonstrated an evolution of a relationship between the appellant and a subordinate member in his unit over which he was the commander. 54 M.J. at 245-55. He was charged with willfully developing a UPR of inappropriate familiarity with the subordinate. *Id.* at 245. Their relationship started out with physical flirtation noted by several members of the unit. *Id.* at 247. The appellant was even warned about the appearance of familiarity he was demonstrating, which then led to

others commenting that the two of them were "joined at the hip" and spending a great deal of time together off-duty. *Id.* at 248-49. Their relationship continued to snowball with the two of them going on a weekend trip together, other officers confronting the appellant on their relationship, and the subordinate confessing they were having an affair. *Id.* at 250-52. While initially agreeing to end things, the subordinate later changed her mind and instead switched her hotel room from several floors down from the appellant to a room right next door to his. *Id.* at 253.

In Appellant's case, there was no romantic or sexual relationship established. The most the Government could do was focus on a *false* rumor that Appellant engaged in consensual sex with IS from specification 1 of the charge. R. at 42, 1008; Gov. Ans. at 5. The Government's own witness disproved this false rumor (R. at 266), but the Government continued to highlight it. R. at 1008. The Government on appeal also continues to focus on the false rumor stating "at least one member of the unit believed" it. Gov. Ans. at 5, 16. Under Issue II, the Government generalized the evidence presented and broadened the testimony to members in the unit at large, but that was not what was testified to. *See* Gov. Ans. at 15-17. The main person offended and upset about Appellant was LI, who testified twice. R. at 52, 784. She was the only one who testified that Appellant took IS and ST to Starbucks without inviting her. R. at 63. LI was the witness upset that Appellant never drove her around base, invited her to go to the SED, or invited her to go on the Seoul trip. *Id.* Significantly, another witness testified that LI *was* invited on the Seoul trip but chose not to go. R. at 263. The evidence presented by the Government was vague and inconsistent among witnesses. And unlike in *Rogers*, Appellant was not "warn[ed]" about her actions appearing to show favoritism or creating issues with morale. *Compare* Gov. Ans. at 15 (providing no record cite for when and how Appellant was warned), *with* 54 M.J. at 247-51 (showing the appellant acknowledged he was warned several times throughout the course of his relationship

with his subordinate).

In the end, the military judge left the findings ambiguous when he found Appellant not guilty of the words "on divers occasions" without providing clarity on the record for which acts Appellant was found not guilty and guilty of. *Ross*, 68 M.J. at 416.

*D. The Government is guessing as to what the military judge's findings meant, and that ambiguity is why this Court cannot fulfill its Article 66(d), UCMJ, review requirements.*

The Government asserts that "[w]hen the military judge struck the 'on divers occasions' language from the specification, he was not finding Appellant not guilty of other unprofessional relationships;" but the military judge literally did find Appellant not guilty of the words "on divers occasions." *Compare* Gov. Ans. at 8, *with* R. at 1035 ("Of the excepted words: Not guilty"), EOJ ("of the excepted words: Not guilty"). The Government instead argues the military judge "was ensuring his findings ultimately reflected that Appellant was guilty of one overarching [UPR] based on the totality of the evidence presented at trial. Gov. Ans. at 8. However, the military judge never said that and the Government repeating it in its brief over and over does not make it true. Gov. Ans. at 7-9. The Government concedes it did not "find a single case charging" UPR on divers occasions (Gov. Ans. at 8 n4), but the Government did charge it that way in this case. Charge Sheet. As such, when the military judge found Appellant not guilty of the words "on divers occasions," he needed to provide clarity as to either what occasion he found Appellant guilty of or explain his rationale for announcing "Of the excepted words: Not guilty." R. at 1045; *see Ross*, 68 M.J. at 415. The military judge did neither. As such, the findings are ambiguous and this Court cannot conduct its Article 66(d), UCMJ, review. *Walters*, 58 M.J. at 396-97.

**II. Air Force Instruction (AFI) 36-2909 and AFI 1-1 may provide fair notice in cases like *Rogers*, but as applied to Appellant, they are unconstitutional.**

While AFI 36-2909 and AFI 1-1 may direct members to maintain professional

relationships, the instructions fail to clearly articulate what is unprofessional. *See* AFI 36-2909, para. 1.2.9; AFI 1-1, para. 2.2. A heightened degree of specificity is required in cases where prohibitions will be pursued criminally versus civilally. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). In Appellant's case, that heightened degree of specificity means she—as an ordinary person—would have been able to understand what exact conduct is prohibited. *Id.* Such a due process requirement protects against arbitrary or discriminatory enforcement. *Id.*

The CAAF noted in *Rogers* that "[o]bviously, there will be many gradations of relationships and associations between servicemembers that will not put the parties fairly on notice that the conduct might be inappropriate." 54 M.J. at 257. In contrast, the CAAF found that Article 133, UCMJ, 10 U.S.C. § 933, as applied to the conduct at issue in *Rogers*, based on the circumstances, was not vague or imprecise. *Id.* The CAAF quoted language from the 1995 version of AFI 36-2909 specifying that dating or indebtedness by senior members with junior members in the same chain of command can easily become unprofessional. 54 M.J. at 256-57. At a minimum, the evidence abduced at trial during *Rogers* showed the appellant had been dating his subordinate and that he had been warned about the appearance of favoritism within the unit (*see* I.C. *supra*).

However here, AFI 36-2909 and AFI 1-1 are unconstitutional as applied to Appellant because they are void for vagueness. The regulations did not provide sufficient notice for Appellant to reasonably understand that her conduct was proscribed. *United States v. Moore*, 58 M.J. 466, 469 (C.A.A.F. 2003). Appellant was not dating any of the members listed in the specifications nor was evidence presented that she was indebted to any of them. The most the Governemnt at trial—and now on appeal—can point to is a rumor that was proven *false*. *Compare* R. at 42, 1008, Gov. Ans. at 5, 22, *with* R. at 266. In contrast, one trip to Seoul is more akin to the occaisional round of golf example given by the Government than a daily or weekly activity. *See*

Gov. Ans. at 21 (assumingly quoting AFI 36-2909, para. 2.3.5). As for the general instances of drinking in the Songtan Entertainment District, there were several witnesses who testified that such conduct was regularly engaged in and considered part of the culture given the location of the base. R. at 496, 564, 904-05, 924, 929, 948-49. Testimony regarding any exclusion of rides to other places on base or invitations to outings were mainly based upon the singular perspective of LI whose testimony should have been stricken in accordance with Issue IV. *See* App. Br. at 26-30. Just as the definitoin of loitering in *Morales* allowed law enforcement abosulte discretion to determine what activities qualified as such, so too the AFIs allowed the Government abosulte discretion to determine what activities qualified as UPR. *Morales*, 527 U.S. at 60-62. As such, the AFIs are void for vagueness as applied to Appellant and her convictions cannot stand.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court set aside the findings of guilty to specifications 1-3 of the charge, dismiss them with prejudice, and set aside the sentence.

Respectfully submitted,

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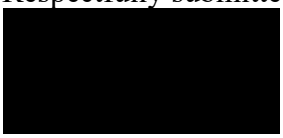
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 10 July 2025.

Respectfully submitted,



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