UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40657**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Tanner W. HAHN	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 7 October 2024, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant's assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 8th day of October, 2024,

ORDERED:

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

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

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

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

Appellant's counsel is further advised that any future requests for enlargements of time that, if granted, would expire more than 330 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 *Appellee*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Panel 2
Senior Airman (E-4) **TANNER W. HAHN,** United States Air Force *Appellant*	)	No. ACM 40657 7 Oct 2024

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

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **18 December 2024**. This case was docketed with this Court on 20 August 2024. From the date of docketing to the present date, 48 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

[redacted]

JORDAN L. GRANDE, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
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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 October 2024.

Respectfully submitted,

JORDAN L. GRANDE, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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7 October 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) TANNER W. HAHN, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40657 Panel No. 2

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

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

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

[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 7 October 2024.

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SECOND)**
v.	)	Before Panel 2
Senior Airman (E-4) **TANNER W. HAHN,** United States Air Force *Appellant*	)	No. ACM 40657 6 Dec 2024

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

Pursuant to Rule 23.3(m)(1) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 January 2025**. This case was docketed with this Court on 20 August 2024. From the date of docketing to the present date, 108 days have elapsed. On the date requested, 150 days will have elapsed.

On 25 April 2024, Appellant was tried by a General Court-Martial sitting as a military judge alone at Joint Base McGuire-Dix-Lakehurst- New Jersey. R. at 10, 17-18. Appellant was convicted, consistent with his pleas, R. at 19, of one charge and one specification of possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 48. Pursuant to a plea agreement, Appellate Exhibit III, one specification of possession of obscene visual depictions of minors transported via interstate commerce, in violation of Article 134, UCMJ, was dismissed without prejudice. R. at 40-41. The military judge sentenced Appellant to a reduction in pay grade to Airman Basic (E-1), 12 months of confinement, and a dishonorable discharge. R. at 80.

The record of trial consists of three volumes with four prosecution exhibits, one court exhibit, seven defense exhibits, and five appellate exhibits; the transcript is 81 pages. Appellant

is currently confined. Undersigned counsel has not yet completed her review of the record for this case.

Through not fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of his right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

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

Respectfully submitted,

JORDAN L. GRANDE, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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Office: (240) 612-4770
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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,

JORDAN L. GRANDE, Capt, USAF
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6 December 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) TANNER W. HAHN, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40657 Panel No. 2

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

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

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

[redacted]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
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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 6 December 2024.

JENNY A. LIABENOW, Lt Col, USAF
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Government Trial and Appellate Operations Division
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (THIRD)**
v.	)	Before Panel 2
Senior Airman (E-4) **TANNER W. HAHN,** United States Air Force *Appellant*	)	No. ACM 40657 7 January 2025

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

Pursuant to Rule 23.3(m)(1) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **16 February 2025**. This case was docketed with this Court on 20 August 2024. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 25 April 2024, Appellant was tried by a General Court-Martial sitting as a military judge alone at Joint Base McGuire-Dix-Lakehurst- New Jersey. R. at 10, 17-18. Appellant was convicted, consistent with his pleas, R. at 19, of one charge and one specification of possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 48. Pursuant to a plea agreement, Appellate Exhibit III, one specification of possession of obscene visual depictions of minors transported via interstate commerce, in violation of Article 134, UCMJ, was dismissed without prejudice. R. at 40-41. The military judge sentenced Appellant to a reduction in pay grade to Airman Basic (E-1), 12 months of confinement, and a dishonorable discharge. R. at 80.

The record of trial consists of three volumes with four prosecution exhibits, one court exhibit, seven defense exhibits, and five appellate exhibits; the transcript is 81 pages. Appellant

is currently confined. Undersigned counsel has not yet completed her review of the record for this case.

Through not fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of his right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

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

Respectfully submitted,

JORDAN L. GRANDE, Capt, 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 7 January 2025.

Respectfully submitted,

JORDAN L. GRANDE, Capt, USAF
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8 January 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) TANNER W. HAHN, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40657 Panel No. 2

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

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

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

[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 8 January 2025.

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

UNITED STATES *Appellee*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FOURTH)**
v.	)	Before Panel 2
Senior Airman (E-4) **TANNER W. HAHN,** United States Air Force *Appellant*	)	No. ACM 40657 5 February 2025

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

Pursuant to Rule 23.3(m)(1), 23.3(m)(4), and 23.3(m)(6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **18 March 2025**. This case was docketed with this Court on 20 August 2024. From the date of docketing to the present date, 169 days have elapsed. On the date requested, 210 days will have elapsed.

On 25 April 2024, Appellant was tried by a General Court-Martial sitting as a military judge alone at Joint Base McGuire-Dix-Lakehurst- New Jersey. R. at 10, 17-18. Appellant was convicted, consistent with his pleas, R. at 19, of one charge and one specification of possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 48. Pursuant to a plea agreement, Appellate Exhibit III, one specification of possession of obscene visual depictions of minors transported via interstate commerce, in violation of Article 134, UCMJ, was dismissed without prejudice. R. at 40-41. The military judge sentenced Appellant to a reduction in pay grade to Airman Basic (E-1), 12 months of confinement, and a dishonorable discharge. R. at 80.

The record of trial consists of three volumes with four prosecution exhibits, one court exhibit, seven defense exhibits, and five appellate exhibits; the transcript is 81 pages. Appellant is currently confined. Undersigned counsel was assigned this case on 3 February 2025 and is lead counsel, though Capt Grande remains details. Undersigned counsel has not yet completed his review of the record for this case.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information: undersigned counsel is currently assigned 6 cases. Six cases are pending before this Court (6 cases are pending AOEs). Three cases have priority over the present case:

1. Lovell, No. ACM 40614 – 85 pages – presently on EOT 6 – Next action due 25 February 2025

2. *Hymel*, No. ACM 40627 – 634 pages – presently on EOT 6 – Next action due 9 February 2025

3. *Nelson*, No. ACM 24042 – 336 pages – presently on EOT 4 – 10 March 2025

Capt Grande is currently assigned 24 cases; 22 cases are pending before this Court (18 cases are pending AOEs); and 1 case is pending oral argument before the United States Court of Appeals for the Armed Forces (CAAF). Three cases have priority over the present case:

1. *United States v. Roan*, No. 24-0104/AF – Undersigned counsel is currently preparing for oral argument, scheduled for 26 February 2025.
2. *United States v. Ryder*, No. 40605 – Undersigned counsel is currently drafting a 4-issue AOE and anticipates filing the AOE by 23 February 2025.
3. *United States v. Gale,* Article 62, UCMJ appeal – Undersigned counsel received the record of trial for this case on 31 January 2025, and she is currently reviewing the record in anticipation of the Government's filing of this appeal.

Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of his right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

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

Respectfully submitted,

[redacted]
USAF
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JORDAN L. GRANDE, Capt, 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 5 February 2025.

R[redacted]

LUKE D. WILSON, Lt Col, USAF
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7 February 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) TANNER W. HAHN, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40657 Panel No. 2

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

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

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

[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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIFTH)**
v.	)	Before Panel 2
Senior Airman (E-4) **TANNER W. HAHN,** United States Air Force *Appellant*	)	No. ACM 40657 10 March 2025

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

Pursuant to Rule 23.3(m)(1), 23.3(m)(4), and 23.3(m)(6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 April 2025**. This case was docketed with this Court on 20 August 2024. From the date of docketing to the present date, 202 days have elapsed. On the date requested, 240 days will have elapsed.

On 25 April 2024, Appellant was tried by a General Court-Martial sitting as a military judge alone at Joint Base McGuire-Dix-Lakehurst- New Jersey. R. at 10, 17-18. Appellant was convicted, consistent with his pleas, R. at 19, of one charge and one specification of possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 48. Pursuant to a plea agreement, Appellate Exhibit III, one specification of possession of obscene visual depictions of minors transported via interstate commerce, in violation of Article 134, UCMJ, was dismissed without prejudice. R. at 40-41. The military judge sentenced Appellant to a reduction in pay grade to Airman Basic (E-1), 12 months of confinement, and a dishonorable discharge. R. at 80.

The record of trial consists of three volumes with four prosecution exhibits, one court exhibit, seven defense exhibits, and five appellate exhibits; the transcript is 81 pages. Appellant is currently confined. Undersigned counsel was assigned this case on 3 February 2025 and is lead counsel. Undersigned counsel has not yet completed review of the record for this case.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information: undersigned counsel is currently assigned 6 cases. Six cases are pending before this Court (6 cases are pending AOEs). Three cases have priority over the present case:

1. Lovell, No. ACM 40614 – 85 pages – presently on EOT 7. The record has been reviewed and is in the process of being briefed. The record is two volumes, includes 4 prosecution exhibits, and 5 appellate exhibits. SrA Lovell is confined

2. *Hymel*, No. ACM 40627 – 634 pages – presently on EOT 7. Counsel is in the process of reviewing the record. The record of trial consists of five volumes. There are five prosecution exhibits, eight defense exhibits, and 18 appellate exhibits. Capt Hymel is not currently confined.

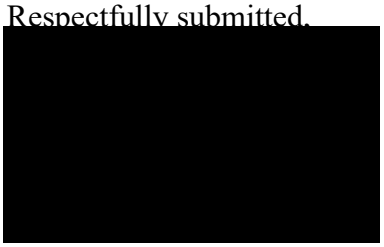
3. *Nelson*, No. ACM 24042 – 336 pages – presently on EOT 4 – The record of trial is three volumes consisting of 15 prosecution exhibits, one defense exhibit, and 17 appellate exhibits; the transcript is 336 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of his right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose

a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

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

Respectfully submitted,



LUKE D. WILSON, Lt Col, USAF
Appellate Defense Counsel
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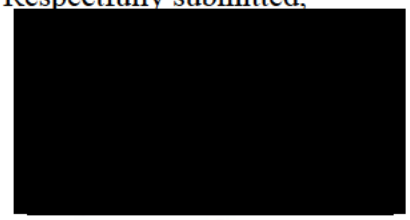
CERTIFICATE OF FILING AND SERVICE

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 10 March 2025.

Respectfully submitted,



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11 March 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) **TANNER W. HAHN**, United States Air Force *Appellant.*	)))))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME Before Panel No. 2 ACM 40657 11 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 general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

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

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 11 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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

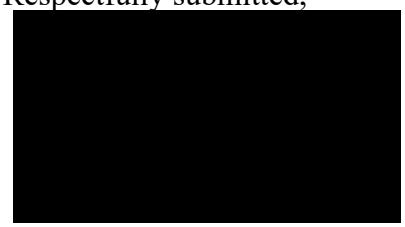
UNITED STATES,	)	**APPELLANT'S MOTION FOR LEAVE TO WITHDRAW AND REFILE MOTION FOR ENLARGEMENT OF TIME (FIFTH)**
Appellee,	)	
v.	)	Before Panel No. 2
Senior Airman (E-4) **TANNER W. HAHN**, United States Air Force, *Appellant.*	)	No. ACM 40657
	)	10 March 2025

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

Pursuant to Rule 23 of the Joint Rules of Appellate Practice for Courts of Criminal Appeals, Appellant moves for leave to withdraw his motion for enlargement of time (fifth) filed at 1407 on 10 March 2025 and substitute the attached motion for enlargement of time (fifth).

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

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 Division on 10 March 2025.

Respectfully submitted,

L SAF
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SIXTH)**
v.	)	Before Panel 2
Senior Airman (E-4) **TANNER W. HAHN,** United States Air Force *Appellant*	)	No. ACM 40657
	)	7 April 2025

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

Pursuant to Rule 23.3(m)(1), 23.3(m)(4), and 23.3(m)(6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 May 2025**. This case was docketed with this Court on 20 August 2024. From the date of docketing to the present date, 230 days have elapsed. On the date requested, 270 days will have elapsed.

On 25 April 2024, Appellant was tried by a General Court-Martial sitting as a military judge alone at Joint Base McGuire-Dix-Lakehurst- New Jersey. R. at 10, 17-18. Appellant was convicted, consistent with his pleas, R. at 19, of one charge and one specification of possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 48. Pursuant to a plea agreement, Appellate Exhibit III, one specification of possession of obscene visual depictions of minors transported via interstate commerce, in violation of Article 134, UCMJ, was dismissed without prejudice. R. at 40-41. The military judge sentenced Appellant to a reduction in pay grade to Airman Basic (E-1), 12 months of confinement, and a dishonorable discharge. R. at 80.

The record of trial consists of three volumes with four prosecution exhibits, one court exhibit, seven defense exhibits, and five appellate exhibits; the transcript is 81 pages. Appellant is currently confined. Undersigned counsel was assigned this case on 3 February 2025 and is lead counsel. Undersigned counsel has not yet completed review of the record for this case.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information: undersigned counsel is currently assigned 6 cases. Five cases are pending before this Court. As of the date of this filing undersigned counsel has not yet reviewed the record of trial in the instant case. Two cases have priority over the present case:

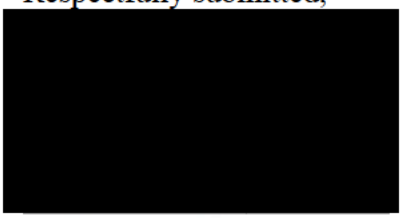
1. *Hymel*, No. ACM 40627 – 634 pages – presently on EOT 7. Counsel is in the process of reviewing the record. The record of trial consists of five volumes. There are five prosecution exhibits, eight defense exhibits, and 18 appellate exhibits. Capt Hymel is not currently confined.

2. *Nelson*, No. ACM 24042 – 336 pages – presently on EOT 4 – The record of trial is three volumes consisting of 15 prosecution exhibits, one defense exhibit, and 17 appellate exhibits; the transcript is 336 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of his right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

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

Respectfully submitted,



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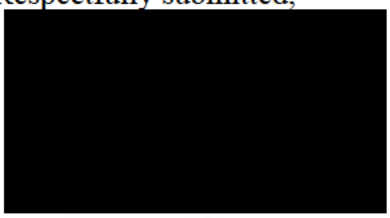
CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing 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, *Appellee,*	)	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Senior Airman (E-4) **TANNER W. HAHN,** United States Air Force, *Appellant.*	)	No. ACM 40657
	)	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 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]

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
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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40657**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Tanner W. HAHN	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 9 April 2025, this court granted Appellant an enlargement of time in which to file his assignments of error until 17 May 2025.

On 5 May 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Seventh), requesting "an enlargement for a period of 30 days, which will end on **17 June 2025** [sic]." 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 8th day of May, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (Seventh) is **GRANTED IN PART**. Appellant shall file any assignments of error not later than **16 June 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 *Appellee,* v. Senior Airman (E-4) **TANNER W. HAHN**, United States Air Force, *Appellant.*	**APPELLANT'S MOTION FOR ENLARGMENT OF TIME (SEVENTH)** Before Panel No. 2 No. ACM 40657 5 May 2025

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

Pursuant to Rule 23.3(m)(1), 23.3(m)(4), and 23.3(m)(6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 June 2025**. This case was docketed with this Court on 20 August 2024. From the date of docketing to the present date, 258 days have elapsed. On the date requested, 300 days will have elapsed.

On 25 April 2024, Appellant was tried by a General Court-Martial sitting as a military judge alone at Joint Base McGuire-Dix-Lakehurst- New Jersey. R. at 10, 17-18. Appellant was convicted, consistent with his pleas, R. at 19, of one charge and one specification of possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 48. Pursuant to a plea agreement, Appellate Exhibit III, one specification of possession of obscene visual depictions of minors transported via interstate commerce, in violation of Article 134, UCMJ, was dismissed without prejudice. R. at 40-41. The military judge sentenced

Appellant to a reduction in pay grade to Airman Basic (E-1), 12 months of confinement, and a dishonorable discharge. R. at 80.

The record of trial consists of three volumes with four prosecution exhibits, one court exhibit, seven defense exhibits, and five appellate exhibits; the transcript is 81 pages. Appellant is currently confined. Undersigned counsel was assigned this case on 3 February 2025 and is lead counsel. Undersigned counsel has not yet completed review of the record for this case.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information: undersigned counsel is currently assigned 6 cases. Five cases are pending before this Court. As of the date of this filing undersigned counsel has not yet reviewed the record of trial in the instant case. Two cases have priority over the present case:

1. *Hymel*, No. ACM 40627 – 634 pages – presently on EOT 8. Counsel has drafted the AOE and it is being reviewed. The record of trial consists of five volumes. There are five prosecution exhibits, eight defense exhibits, and 18 appellate exhibits. Capt Hymel is not currently confined.

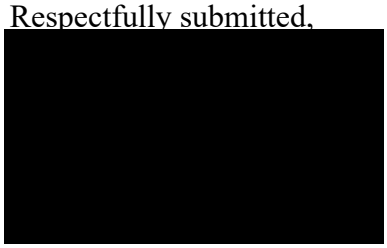
2. *Nelson*, No. ACM 24042 – 336 pages – presently on EOT 7 – The record of trial is three volumes consisting of 15 prosecution exhibits, one defense exhibit, and 17 appellate exhibits; the transcript is 336 pages. Appellant is not currently confined. Undersigned counsel has reviewed the record and is drafting the AOE.

Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of his right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose

a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

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

Respectfully submitted,



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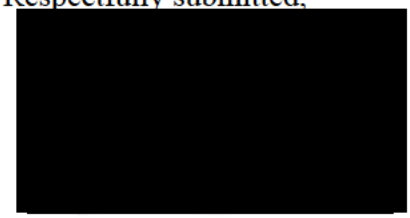
CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Senior Airman (E-4) **TANNER W. HAHN,** United States Air Force, *Appellant.*	)	No. ACM 40657
	)	7 May 2025

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

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

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

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

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 7 May 2025.

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
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IN THE UNTED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	BRIEF ON BEHALF OF APPELLANT
	)	
Appellee,	)	Before Panel No. 2
	)	
v.	)	No. ACM 40657
	)	
Senior Airman (E-4)	)	
TANNER W. HAHN,	)	4 June 2025
United States Air Force,	)	
	)	
Appellant.	)	

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

Assignment of Error

APPELLANT PLED GUILTY TO ONE SPECIFICATION OF POSSESSION OF CHILD PORNOGRAPHY UNDER ARTICLE 134, UCMJ. DURING THE PLEA COLLOQUY THE MILITARY JUDGE ONLY ELICITED A FACTUAL BASIS TO ESTABLISH APPELLANT'S POSSESSION OF IMAGES OF WHAT APPEARS TO BE MINORS. DOES THIS RENDER THE PLEA PARTIALLY IMPROVIDENT FOR THE PORTION OF THE SPECIFICATION THAT ALLEGES IMAGES OF ACTUAL MINORS?

Statement of the Case

Appellant was tried by a general court-martial composed of a military judge alone at Joint Base McGuire-Dix-Lakehurst, NJ, on 25 April 2024. The Charges and Specifications on which he was arraigned, his pleas, and the findings of the court-martial are as follows:

Charge	UCMJ Art	Spec	Summary of Offense	Plea	Finding
I	134			G	G
		1	Did b/o/a 2 Dec 2020 and o/a 3 Nov 2023, knowingly and wrongfully possess child pornography, to wit: digital images of a minor, or what appears to be a minor, engaging in sexually explicit conduct, and that said conduct	G	G

			was of a nature to bring discredit upon the armed forces.		
		2	Did b/o/a 2 Dec 2020 and o/a 3 Nov 2023, knowingly and wrongfully possess obscene visual depictions of minors engaging in sexually explicit conduct that was transported via interstate commerce by a computer, in violation of 18 U.S. Code Section 1466A(b)(1), an offense not capital.	NG	Withdrawn and dismissed without prejudice.

The military judge sentenced Appellant to a reduction in pay grade to Airman Basic (E-1), twelve months of confinement, and a dishonorable discharge. Trial Tr. at 80. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action.

Statement of Facts

Appellant pled guilty to Specification 1 of the Charge brought against him. Trial Tr. at 19. Pursuant to this plea, the military trial judge engaged in a colloquy to establish a factual basis for the plea. Trial Tr. at 26-34.

During the colloquy, the military trial judge defined "child pornography" as follows:

> Child pornography means material that contains a visual depiction of an actual minor engaging in sexually explicit conduct. Child pornography also means material that contains an obscene visual depiction of a minor engaging in sexually explicit conduct. Such a depiction need not involve an actual minor, but only what appears to be a minor.

Trial Tr. at 27.

Appellant repeatedly stated that he did possess "child pornography" as that phrase was defined to him. Trial Tr. 30-32.

The only interaction during which the military judge apparently attempted to distinguish between images of "actual" minors and "what appears to be" minors came at page 32 of the trial transcript. The military judge asked Appellant, "Did the material include a visual depiction of an actual minor engaging in sexually explicit conduct or an obscene visual depiction of what

appears to be a minor engaging in sexually explicit conduct or both?" Trial Tr. 32. Appellant answered that "the content does appear to be minors and minor-like individuals," and "the individuals appear to be between the ages of 8 and 16." *Id*.

Appellant also entered into a Stipulation of Fact (Stipulation). Pros. Ex. 1. The Stipulation references "child pornography" a number of times, but does not define the phrase. *Id*. It also attaches a number of modifiers to the phrase; sometimes it references "apparent child pornography," sometimes "actual child pornography," and sometimes "known child pornography." *Id*. at 1-5. But, whenever the Stipulation references a minor, it always references "a minor, or what appears to be a minor." *Id*. at 3-4.

Argument

BECAUSE THE MILITARY JUDGE ONLY ELICITED A FACTUAL BASIS TO ESTABLISH APPELLANT'S POSSESSION OF IMAGES OF WHAT APPEARS TO BE MINORS, THE PORTION OF THE PLEA THAT ALLEGES IMAGES OF ACTUAL MINORS IS IMPROVIDENT.

Standard of Review

A military judge's acceptance of a guilty plea is reviewed for an abuse of discretion. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008). The test for an abuse of discretion in accepting a guilty plea is whether the record shows a substantial basis in law or fact for questioning the plea. *United States v. Passut*, 73 M.J. 27, 29 (C.A.A.F. 2014).

Law and Analysis

"Before accepting a guilty plea, a military judge must ensure that there is a factual basis for the accused's plea." *United States v. Care*, 40 C.M.R. 247, 253 (C.M.A. 1969). A sufficient factual basis for a plea, in turn, requires a sufficient factual basis for each element of the offense for which the accused is pleading guilty. *United States v. Barton*, 60 M.J. 62, 64 (C.A.A.F. 2004). Additionally, "a military judge must elicit *actual facts* from an accused and not merely

legal conclusions." *United States v. Moratalla*, 82 M.J. 1, 3 (C.A.A.F. 2021) (emphasis in original) (citing *United States v. Price*, 76 MJ 136, 138 (C.A.A.F. 2017)).

A military judge's failure to obtain an adequate factual basis for a guilty plea constitutes an abuse of discretion. *Inabinette*, 66 M.J. at 322. However, military judges are afforded significant deference on this point and are granted substantial leeway in conducting providence inquiries. *Moratalla*, 82 M.J. at 4. In determining whether a military judge abused his or her discretion, a court applies the "substantial basis" test. *Inabinette*, 66 M.J. at 322. "Specifically, [the court asks] 'whether there is something in the record of trial, with regard to the factual basis or the law, that would raise a substantial question regarding the appellant's guilty plea.'" *Id*. (citations omitted).

Unlike the Federal civilian criminal code, the military justice system collapses the possession of sexually explicit images of actual minors and the possession of obscene images of what appears to be minors into a single Article 134, UCMJ, offense. *See Manual for Courts-Martial, United States*, (2024 ed.) (*MCM*), pt. IV, ¶ 95. Indeed, beyond collapsing the two into a single offense, the *MCM* goes a step further and collapses both offenses into the single definition of the phrase "child pornography." *Id*. "Child pornography means material that contains *either* an obscene visual depiction of a minor engaging in sexually explicit conduct *or* a visual depiction of an actual minor engaging in sexually explicit conduct." *MCM*, ¶ 95(c)(4) (emphasis added).

Because the UCMJ defines child pornography as encompassing two different types of images, Appellant's admissions in the stipulation and during the colloquy to possession of "child pornography" does nothing to shed light on whether the images were of actual minors, or what appears to be minors. Nor does the use of the modifiers "apparent," "actual," and "known" child

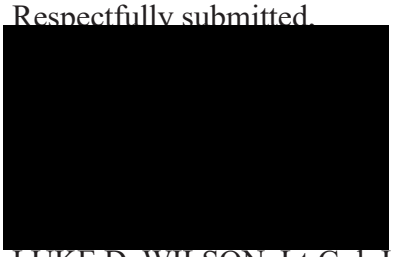
pornography in the Stipulation narrow the subject matter of the images; it still leaves open whether the images were of actual minors, or what appears to be minors.

When pressed by the military judge for a factual basis concerning the nature of the images (i.e., whether the images were of actual minors, or merely what appears to be minors), Appellant stated the "videos and images depict what appears to be minors." Tr. at 32. Appellant then said the "content does appear to be minors and minor-like individuals," and explained that the images "appear[ed] to be between the ages of 8 and 16." *Id*.

While the military judge elicited an adequate factual basis to establish Appellant's possession of images of what appears to be minors, the evidence is insufficient to establish that Appellant possessed images of actual minors. The proper remedy is to except out that portion of the specification that contains an inadequate factual basis. *See, e.g., United States v. Firth*, 64 M.J. 508, 509 (A. Ct. Crim. App. 2006). Therefore, the finding of guilty to the specification should be corrected from "possess child pornography, to wit: digital images of a minor, or what appears to be a minor, engaging in sexually explicit conduct," to "possess child pornography, to wit: digital images of what appears to be a minor engaging in sexually explicit conduct[.]"

WHEREFORE, Appellant respectfully requests this Honorable Court except out the words "a minor, or" of specification 1, and set aside the finding of guilty to the excepted words leaving only "digital images of what appears to be a minor[.]"

Respectfully submitted,



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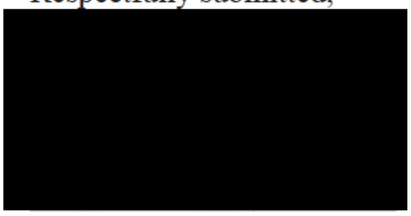
Respectfully submitted,



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	ANSWER TO ASSIGNMENT OF ERROR
v.	)	Before Panel No. 2
Senior Airman (E-4) **TANNER W. HAHN** United States Air Force *Appellant.*	)	No. ACM 40657 3 July 2025

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

ISSUE PRESENTED

APPELLANT PLED GUILTY TO ONE SPECIFICATION OF POSSESSION OF CHILD PORNOGRAPHY UNDER ARTICLE 134, UCMJ. DURING THE PLEA COLLOQUY THE MILITARY JUDGE ONLY ELICITED A FACTUAL BASIS TO ESTABLISH APPELLANT'S POSSESSION OF IMAGES OF WHAT APPEARS TO BE MINORS. DOES THIS RENDER THE PLEA PARTIALLY IMPROVIDENT FOR THE PORTION OF THE SPECIFICATION THAT ALLEGES IMAGES OF ACTUAL MINORS?

STATEMENT OF CASE

The United States generally agrees with Appellant's statement of the case.

STATEMENT OF FACTS

Stipulation of Fact

Appellant entered active duty in the United States Air Force in December 2018. (Pros. Ex. 1, *Stipulation of Fact*, dated 24 April 2024). He was assigned to the 305th Aircraft Maintenance Squadron (305 AMS) at Joint Base McGuire-Dix-Lakehurst (JBMDL) and performed the entirety of his active-duty service there. (Id.).

On 5 December 2023, one charge and two specifications of child pornography were preferred against Appellant. The specification to which Appellant ultimately pled guilty alleged in relevant part that Appellant "did . . . knowingly and wrongfully possess child pornography, to wit: digital images of a minor, or what appears to be a minor, engaging in sexually explicit conduct." (Record of Trial (ROT), Vol 1, *Charge Sheet*, dated 26 February 2024).

On 24 April 2024 and pursuant to a plea agreement, Appellant signed a stipulation of fact with the Government. (Pros. Ex. 1). Within the stipulation of fact, Appellant confessed that between on or about 2 December 2020 and on or about 3 November 2023, Appellant obtained 125 digital images and 38 videos of child pornography. (Id. at 1). 53 of the 125 images were unique files while the others were duplicates. (Id.). Of the 38 videos files, 14 were unique while the others were duplicates. (Id.). Appellant possessed these files across his personal cell phone, cloud storage, and computer. (Id. at 2).

The stipulation of fact explained that in February 2023, the Air Force Office of Special Investigations (AFOSI) received a tip that Appellant had uploaded images identified as child pornography to the Verizon cloud storage account associated with his phone number. (Id.). In August 2023, AFOSI obtained a search warrant to search Appellant's cloud storage account. (Id.). After obtaining the data from Appellant's account, AFOSI sent it to the Defense Cyber Crime Center (DC3) and Defense Computer Forensic Lab (DCFL). DC3/DCFL found 26 images and nine videos of apparent child pornography within the data. (Id.).

AFOSI later seized two personal cell phones and a personal laptop belonging to Appellant. (Id.). One cell phone contained nine images of apparent child pornography. (Id.). Within the hard drive of Appellant's personal laptop, AFOSI discovered a picture file named "aline-showing-underage-pussy.jpg." (Id.).

Per the stipulation of fact, the National Center for Missing and Exploited Children (NCMEC) identified the digital images using "hash values." (Id. at 2). "A hash value is a unique identifier that is linked to a digital image. Identical digital images have the same has value, which allows NCMEC servers to identify child pornography through the metadata." (Id.). AFOSI submitted 53 images and 14 videos of "apparent child pornography" to NCMEC for identification. (Id. at 3). 12 of the images and three of the videos matched NCMEC's hash values for child pornography. (Id.).

Appellant stated in his stipulation that from those 53 unique images of "apparent child pornography," 32 were "actual child pornography." (Id.). Of the 14 unique videos of "apparent child pornography," 13 were "actual child pornography." (Id.).

Attached to the stipulation of fact was a single disc containing four file folders. (Id.). Folder 1 contained the 45 unique images found in Appellant's digital cloud storage accounts. (Id.). These images "depict[ed] minors, or what appears to be minors, engaging in sexually explicit conduct, including sexual intercourse, masturbation, and the lascivious exhibition of the genitals or pubic area of a person." (Id.). More specifically, the "sexual intercourse depicted includes oral-to-genital sexual intercourse involving a minor and an adult male and genital-to-genital intercourse either between a minor and an adult male or between a minor and another minor." (Id.). The images showing "masturbation all depict a minor, or what appears to be a minor, masturbating." (Id.). The images with "lascivious exhibition of the genitals or pubic area of a person include photographs of a minor, or what appears to be a minor, bent forward to expose the pubic region of a minor, or what appears to be a minor, with legs spread open, exposing the pubic region." (Id.).

Folder 2 contained seven digital images from Appellant's cell phone. (Id.). These images "depict a minor, or what appears to be a minor, engaged in sexual acts or lascivious exhibition of their genitals." (Id.).

Folder 3 contained the digital image from Appellant's hard drive on his personal computer and showed "a minor, or what appears to be a minor, engaged in lascivious exhibition of their genitals." (Id.).

Folder 4 contained 14 unique videos that "depict minors, or what appears to be minors, engaging in sexually explicit conduct." (Id.). This conduct included "depictions of actual or simulated masturbation and sexual intercourse." (Id.). The videos of simulated or actual masturbation included "either one or multiple minors, or what appears to be minors, engaged in genital-to-genital sexual intercourse and/or genital-to-oral sexual intercourse with an adult male." (Id.).

Plea Colloquy

On 25 April 2024, Appellant's court-martial began. Pursuant to the plea agreement, Appellant waived his right to a trial by a panel of members and proceeded with a military judge alone. (App. Ex. III, *Offer for Plea Agreement*, 10 April 2024).

During his plea colloquy, the military judge discussed the stipulation of fact with Appellant. (R. at 22). The military judge confirmed with Appellant that Appellant "read [the] documents thoroughly before [he] signed it." (Id.). The military judge also confirmed that Appellant understood that the contents of the stipulation of fact would be treated as "true" and "uncontradicted facts in this case" if it was entered into evidence. (R. at 22-23). The military judge asked, and Appellant confirmed, that Appellant "voluntarily" entered into the stipulation of fact because he believed it was in his "best interest to do so." The military judge informed

Appellant that, if admitted, the military judge would use the stipulation of fact to determine if Appellant was guilty of the offense. (R. at 23). Appellant understood. (Id.). Finally, the military judge asked Appellant if he understood that the stipulation of fact "ordinarily cannot be contradicted," and Appellant should let the military judge know if he thought anything in the stipulation of fact was untrue. (Id.). Appellant stated he understood. (Id.).

After taking an opportunity to read through the stipulation of fact again, Appellant stated everything in the stipulation was true, there was nothing Appellant did "not wish to admit is true," and he agreed "under oath that the matters contained in the stipulation are true and correction to the best of [his] knowledge and belief." (R. at 24).

The military judge provided Appellant with the elements of possession of child pornography as:

> knowingly and wrongfully possess[ing] child pornography, to wit: digital images and videos of minors . . . or what appears to be a minor engaging in sexually explicit conduct;
>
> And, . . . that under the circumstances [the] conduct was of a nature to bring discredit upon the armed forces.

(R. at 26).

The military judge defined child pornography as follows:

> "Child pornography" means material that contains a visual depiction of an actual minor engaging in sexually explicit conduct. "Child pornography" also means material that contains an obscene visual depiction of a minor engaging in sexually explicit conduct. Such a depiction need not involve an actual minor but instead only what appears to be a minor. . . . "Minor" and "child" mean any person under the age of 18 years."

(R. at 27).

The military judge explained that "visual depiction" included:

> any developed or undeveloped photograph, picture, film or video, any digital or computer image, picture, film or video made by any means including those transmitted by any means, including streaming media, even if not stored in a permanent format, or any digital or electronic data capable of conversion into a visual image.

(R. at 28).

Appellant stated he understood those definitions and had no questions about them. (R. at 28-29).

Appellant explained that he sought child pornography using terms such as "'jailbait,' 'young,' 'teen,' 'small,' and 'loli.'" (R. at 31). The material Appellant found and downloaded as a result of using these search terms "constituted child pornography" as the military judge had defined it. (Id.).

When asked by the military judge what made Appellant believe the material was child pornography, Appellant stated "[t]he videos and images depict what appears to be minors engaging in sexual activity." (R. at 32). The military judge asked if the material included "a visual depiction of an actual minor engaging in sexually explicit conduct or an obscene visual depiction of what appears to be a minor engaging in sexually explicit conduct or both?" (Id.). Appellant stated "[w]hile the images and videos do not directly show the age of the individuals depicted, the content does appear to be minors and minor-like individuals." (Id.). The military judge asked Appellant to describe the ages and body characteristics of the individuals that led him "to believe they were minors." (Id.). Appellant stated "the individuals appear to be between the ages of 8 and 16. . . the individuals appear to be in various stages of puberty." (Id.). When the military judge asked "[w]ere the children performing sexual acts or posed in a sexual or promiscuous manner," Appellant answered "yes." (Id.).

ARGUMENT

I.

APPELLANT'S PLEA WAS PROVIDENT BECAUSE THE COLLOQUY AND STIPULATION OF FACT PROVIDE A SUFFICIENT FACTUAL BASIS TO CONCLUDE THAT APPELLANT POSSESSED IMAGES OF ACTUAL MINORS.

Standard of Review

This Court reviews a military judge's decision to accept an accused's guilty plea for an abuse of discretion. United States v. Riley, 72 M.J. 115, 119 (C.A.A.F. 2013) (citing United States v. Inabinette, 66 M.J. 320, 322 (C.A.A.F. 2008)). A military judge can abuse this discretion "if he fails to obtain from the accused an adequate factual basis to support the plea – an area which [the Court must] afford significant deference." Inabinette, 66 M.J. at 322.

Law

"During a guilty plea inquiry the military judge is charged with determining whether there is an adequate basis in law and fact to support the plea before accepting it." Inabinette, 66 M.J. at 321-322 (internal citation omitted). A military judge abuses his or her discretion by "fail[ing] to obtain from the accused an adequate factual basis to support the plea." Id. at 322. A military judge is afforded "significant deference" in obtaining an adequate factual basis to support the plea. Id. A military judge can also abuse his or her discretion if acceptance of the plea is based on an erroneous view of the law. Id. "The abuse of discretion standard is a strict one, calling for more than a mere difference of opinion. An abuse of discretion is more than a mere difference of opinion. The challenged action must be arbitrary, fanciful, clearly unreasonable, or clearly erroneous." United States v. McElhaney, 54 M.J. 120, 130 (C.A.A.F. 2000).

When reviewing the adequacy of an appellant's plea, the Court applies a substantial basis test to evaluate whether the record shows "a substantial basis in law and fact for questioning the guilty plea." Id. (quoting United States v. Prater, 32 M.J. 433, 436 (C.M.A. 1991). When taking a guilty plea, the military judge must ensure an accused understands the facts that support a guilty plea, be satisfied that the accused understands the law applicable to his facts, and conclude that the accused is actually guilty. *See* United States v. Care, 18 U.S.C.M.A. 535, 541 (C.M.A. 1969). "The factual predicate is sufficiently established if the factual circumstances as revealed by the accused himself objectively support that plea." United States v. Castro, 81 M.J. 209, 215 (C.A.A.F. 2021) (citations omitted). In reviewing the providence of a guilty plea, courts consider the appellant's "colloquy with the military judge, as well [as] any inferences that may reasonably be drawn from it." United States v. Carr, 65 M.J. 39, 41 (C.A.A.F. 2007).

"Article 45(a) requires that, in a guilty-plea case, inconsistencies and apparent defenses must be resolved by the military judge or the guilty pleas must be rejected." United States v. Outhier, 45 M.J. 326, 331 (C.A.A.F. 1996).

To obtain a conviction for possession of child pornography, the government must prove (1) that the accused knowingly and wrongfully possessed child pornography, and (2) that, under the circumstances, the conduct of the accused was of a nature to bring discredit upon the armed forces. Manual for Courts-Martial, United States (2019 ed.) (MCM), pt. IV, ¶ 95(b)(1).

Child pornography is "material that contains either an obscene visual depiction of a minor engaging in sexually explicit conduct or a visual depiction of an actual minor engaging in sexually explicit conduct." MCM, pt. IV, ¶ 95.c.(4) "Minor" means any person under the age of 18 years. MCM, pt. IV, ¶ 95.c.(7).

Analysis

There is sufficient evidence within the record to establish a factual basis that Appellant possessed images of actual minors. Appellant is correct that during the colloquy with the military judge, he did not specifically refer to his images of child pornography as images of "actual minors." (App. Br. at 5; *see* R. at 32). However, there is no "substantial basis" in fact to question Appellant's plea because Appellant never contradicted his stipulation of fact wherein he repeatedly admitted to possessing child pornography of actual minors. Further, Appellant was properly instructed on the elements and definitions of the offense and Appellant admitted that those elements and definitions taken together described what he did. (R. at 29.)

Appellant was charged with possessing "digital images of a minor, or what appears to be a minor, engaging in sexually explicit conduct." (ROT, Vol 1, *Charge Sheet*, dated 26 February 2024). The phrase "a minor, or what appears to be a minor," was used repeatedly in Appellant's stipulation of fact to describe the images found on Appellant's cell phone, hard drive, and cloud storage. (Pros. Ex. 1 at 3). Appellant was also cognizant of the difference between "apparent" and "actual child pornography," because he confessed to possessing 32 images and 13 videos of "actual child pornography" from a collection of 53 images and 14 videos of "apparent child pornography." (Id.). That specific language captures the difference between what appears to be a minor and "an actual minor" within the definition of child pornography, and captures all of the convicted specification. MCM, pt. IV, ¶ 95.c.(4). Finally, when describing the digital images contained in Folder 1, Appellant unambiguously described sexual acts performed "between a minor and an adult male or between a minor and another minor," without any mitigating language such as "what appears to be a minor." (Id.). When compared to "appear to be"

language contained elsewhere in the stipulation, this was an admission by Appellant that the images in Folder 1 were of a minor and not just what appeared to be a minor. (Id.).

Appellant understood that the stipulation of fact would be treated as "uncontradicted facts in this case," and that he needed to let the military judge know if anything in the stipulation of fact was untrue. (R. at 23). Appellant made no corrections or contradictions to the stipulation of fact on the record with the military judge. (Id.). After reviewing the complete stipulation of fact, Appellant stated that everything in the stipulation of fact was true. (R. at 24). While Appellant focused on using words like "appear to be" a minor during his verbal colloquy with the military judge, he did not *deny* that the images also depicted "a minor" as provided several times in his stipulation of fact. (R. at 32; Pros. Ex. 1 at 3). It is understood that an accused may "make a conscious choice to plead guilty in order to limit the nature of the information that would otherwise be disclosed in an adversarial contest." Inabinette, 66 M.J. at 322 (internal citations and quotation marks omitted). Appellant's choice to mitigate his conduct by using the word "appear" during his colloquy was not substantial enough to contradict his stipulation of fact or create an inconsistency for the military judge to resolve under Article 45(a). *See* Outhier, 45 M.J. at 331.

As the stipulation was uncontradicted, the military judge was able to consider Appellant's admission in his stipulation that the downloaded images contained "a minor" as well as "what appears to be a minor" when accepting Appellant's guilty plea. If Appellant did not wish to plead guilty to possessing child pornography that depicted "a minor," he had ample opportunity to negotiate that term into his plea with the Government, clarify his position on the record with the military judge, or withdraw from the plea agreement. (R. at 42-43). The factual predicate

was sufficiently established that Appellant had child pornography of "a minor." (Pros. Ex. 1 at 3). Based on the uncontradicted stipulation of fact and plea colloquy, the military judge's decision to accept Appellant's plea was not arbitrary, fanciful, or based on an erroneous conclusion of the law. McElhaney, 54 M.J. at 130. The military judge did not abuse his discretion in accepting Appellant's plea, and this Court should not except this portion of Appellant's conviction.

In the event this Court finds this insufficient, the plea colloquy still supports Appellant's full conviction without exceptions. The military judge explained the legal definitions of "child pornography" and "minor" to Appellant. (R. at 27). Appellant understood that the definition of "child pornography" included "digital images and videos" of both "minors" and "what appears to be a minor." (R. at 27). Appellant also understood a "minor" and "child" to mean "any person under the age of 18 years." (Id.).

While Appellant explained that the images he downloaded did not "directly show the age of the individuals," he stated that the "individuals appear to be between the ages of 8 and 16," "appear[ed] to be in various stages of puberty," and "appear[ed] to be minors or minor-like." (R. at 32). Appellant never described these images as computer generated, nor did he say the individuals in the images were cartoons or fictional in some other way. While less specific, calling the individuals "minors and minor-like individuals" mirrors the phrase "a minor, or what appears to be a minor," reflected in Appellant's specification. When seeking child pornography, Appellant's search terms included "jailbait," "young," "teen," "small," and "loli." (R. at 31). The most basic understanding of the use of these terms is that Appellant sought child pornography with actual "teens" and "young" people. The reasonable inference that may be

drawn from Appellant's statement was that the "individuals" depicted were real people as opposed to drawings or cartoons. *See* Carr, 65 M.J. at 41. Because these real people "appear[ed] to be in various stages of puberty," the military judge could reasonably infer that the individuals were actual minors going through puberty between the ages of 8 and 16 and accept Appellant's plea of guilty as contemplated by the charged language. The use of such an inference by the military judge was not "clearly unreasonable" or arbitrary. McElhaney, 54 M.J. at 130.

Finally, the military judge asked Appellant "[w]ere the *children* performing sexual acts or posed in a sexual or promiscuous manner?" (R. at 32) (emphasis added). Appellant answered "[y]es" without making any kind of clarification or denial that the individuals in the digital images were in fact "children." (R. at 33). Considering Appellant had already stated that he understood the word "child" to mean "any person under the age of 18 years" (R. at 27), this was another admission by Appellant that the digital images depicted a minor, not *just* what appeared to be a minor.

Considering the details provided by the Appellant in response to the military judge's questions during the plea colloquy; the details already available to the military judge from the stipulation of fact, which included images of "actual child pornography" and of "a minor and an adult male or a minor and another minor" without mitigating language (Pros. Ex. 1); and the "substantial deference" afforded to a military judge's decision to find an adequate factual basis exists to support a guilty plea, this Court should not find that the military judge abused his discretion in this case. Inabinette, 66 M.J. at 322. This Court should decline to except language from Appellant's convicted charge.

CONCLUSION

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

[redacted]
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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 July 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,* v. Senior Airman (E-4) **TANNER W. HAHN**, United States Air Force, *Appellant.*	**MOTION FOR ENLARGMENT OF TIME TO FILE REPLY BRIEF – OUT OF TIME** Before Panel No. 2 No. ACM 40657 8 July 2025

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

Pursuant to Rule 23.3(m)(2) and 23.3(m)(6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file a Reply to the Government Answer to Appellant's Assignment of Error (AOE). Appellant requests an enlargement for a period of 7 days, which will end on **17 July 2025**. This case was docketed with this Court on 20 August 2024. From the date of docketing to the present date, 322 days have elapsed. On the date requested, 331 days will have elapsed.

On 25 April 2024, Appellant was tried by a General Court-Martial sitting as a military judge alone at Joint Base McGuire-Dix-Lakehurst- New Jersey. R. at 10, 17-18. Appellant was convicted, consistent with his pleas, R. at 19, of one charge and one specification of possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 48. Pursuant to a plea agreement, Appellate Exhibit III, one specification of possession of obscene visual depictions of minors transported via interstate commerce, in violation of Article 134, UCMJ, was dismissed without prejudice. R. at 40-41. The military judge sentenced

Appellant to a reduction in pay grade to Airman Basic (E-1), 12 months of confinement, and a dishonorable discharge. R. at 80.

The record of trial consists of three volumes with four prosecution exhibits, one court exhibit, seven defense exhibits, and five appellate exhibits; the transcript is 81 pages. Appellant is currently confined. Undersigned counsel was assigned this case on 3 February 2025 and is lead counsel. Undersigned counsel has not yet completed review of the record for this case.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information: undersigned counsel is currently assigned 7 cases. Three cases are pending Assignments of Error before this Court. One case has priority over the present case:

1. *Lovell*, No. ACM 40614 – 85 pages – presently pending a petition at the Court of Appeals for the Armed Forces. The petition is drafted while the supplement is being edited. The record is two volumes, includes 4 prosecution exhibits, 5 appellate exhibits, and 85 pages of transcript. SrA Lovell is confined.

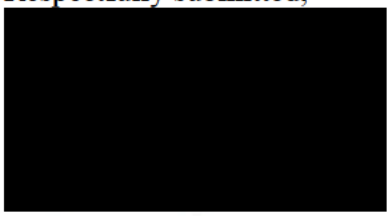
Counsel requests the additional time in order to timely complete the supplement for petition of review before the Court of Appeals for the Armed Forces in *United States v. Lovell*, which is currently due on 16 July 2025. It was, unfortunately, not possible for me to file this motion "in time" as the timing for the motion to be "in time" to this Court is seven days (*see* AFCCA Rule 23.3(m)(1), and the timing for a Reply to this Court is also seven days. *See* AFCCA Rule 17(d). Thus, once the Government files an answer, any request for an extension of time to file a reply would necessarily be "out of time."

Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of his right to a timely appeal. Appellant has been

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

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

Respectfully submitted,



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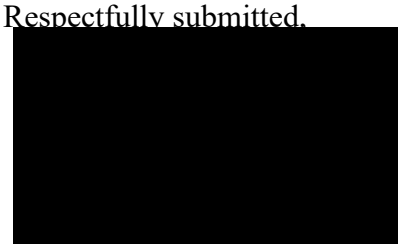
CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 8 July 2025.

Respectfully submitted,



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME TO FILE REPLY BRIEF -
v.	)	OUT OF TIME
Senior Airman (E-4) **TANNER W. HAHN**, USAF, *Appellant.*	)	Before Panel No. 2
	)	No. ACM 40657
	)	9 July 2025

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States enters its opposition to Appellant's Motion for Enlargement of Time, Out of Time, to file a Reply to the United States' Answer to Assignments of Error.

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

[redacted]

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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 July 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT'S REPLY TO THE UNITED
	)	STATES' ANSWER TO ASSIGNMENT OF
Appellee,	)	ERROR
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	ACM 40657
TANNER W. HAHN,	)	
United States Air Force,	)	
	)	16 July 2025
Appellant	)	

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

Appellant, Senior Airman Tanner W. Hahn, by and through undersigned counsel pursuant to Rule 18(d) of this Honorable Court's Rules of Practice and Procedure, files this reply to the Government's Answer to Assignment of Error, dated 3 July 2025 (Answer). In addition to the arguments in the opening brief (AOE), filed on 4 June 2025, Appellant submits the following arguments for the issue listed below.

APPELLANT PLED GUILTY TO ONE SPECIFICATION OF POSSESSION OF CHILD PORNOGRAPHY UNDER ARTICLE 134, UCMJ. DURING THE PLEA COLLOQUY THE MILITARY JUDGE ONLY ELICITED A FACTUAL BASIS TO ESTABLISH APPELLANT'S POSSESSION OF IMAGES OF WHAT APPEARS TO BE MINORS. DOES THIS RENDER THE PLEA PARTIALLY IMPROVIDENT FOR THE PORTION OF THE SPECIFICATION THAT ALLEGES IMAGES OF ACTUAL MINORS?

A. The appropriate remedy for a partially improvident plea is to except out the improvident portion of the plea.

To the degree that the Government argues that excepting out the improvident portion of a guilty plea is not appropriate, it is incorrect. *See United States v. Stapp*, 60 M.J. 795 (A. Ct. Crim. App. 2004). In *Stapp*, the appellant was charged with a single specification of willfully violating three separate subparts of a lawful general order by having underage visitors stay overnight in the

barracks. *Id*. at 797-98. Subpart "6(d)(1)(a)" of the general order regarded barracks visitation times and allowance of overnight visitors, subpart "6(d)(1)(b)" was about barracks visitors under the age of 18, and subpart "6(d)(1)(c)" was about escorting and sponsoring visitors in the barracks. *Id*. Although the military judge appropriately elicited facts to support appellant's violation of subpart 6(d)(1)(a) and 6(d)(1)(c) of the general order during the providence inquiry, the judge failed to elicit facts to support that appellant knew the visitors were underage at the time of the offense. *Id*. at 799. Because of this, the Army Court of Criminal Appeals excepted out that portion of the specification regarding the appellant's violation of 6(d)(1)(b), while leaving the other two provisions in place. *Id*. at 803. This Court should do the same here because no factual basis was elicited to support possession of images "actual minors."

B. The Government's arguments regarding a factual basis for images of actual minors fail.

The Government makes a series of arguments that the military judge elicited an adequate factual basis to support the idea that Appellant possessed images of "actual" minors. *See generally* Answer at 9-12. As discussed below, none of those arguments are persuasive.

First, the Government latches onto admissions to "actual" and "apparent" child pornography without grappling with how the very definition of child pornography causes the former qualifier to swallow the latter. Article 134, UCMJ, defines "child pornography" as both an "actual minor engaging in sexually explicit conduct" *and* as "an obscene visual depiction of [what appears to be] a minor engaging in sexually explicit conduct." AOE at 2; Trial Tr. at 27. "Actual" child pornography could mean "actual minor," or it could mean "what appears to be a minor." Thus, the use of the adjective "actual" before the phrase "child pornography" in the Stipulation of Fact is not dispositive; it could mean either theory of liability (obscenity or visual depictions of real minors). The Government's argument merges these theories of liability without appreciating the legal difference. Answer at 9 (Appellant "was . . . cognizant of the difference between

'apparent' child pornography and 'actual child pornography[.]'"). Use of the word "actual" to modify the phrase "child pornography" does not demonstrate Appellant understood or pled to facts supporting possession of images of real minors. Second, it is well established that during a providence inquiry the military judge must elicit facts, not merely legal conclusions. *See United States v. Moratalla*, 82 M.J. 1, 3 (C.A.A.F. 2021). The Government asserts Appellant "unambiguously described" an image involving a minor "without any mitigating language such as 'what appears to be a minor.'" Answer at 9. But what the military judge elicited here was a legal conclusion. It is hard to understand the Government's argument that the judge eliciting half of a legal conclusion is sufficient. If the judge were eliciting facts to determine if an object was a red car or a blue car, the idea that the accused said it was a car in no way illuminates whether the car was blue or red.

The Government then broadens that same argument by saying that although Appellant "focused on using words like 'appears to be' a minor during his verbal colloquy with the military judge, he did not *deny* that the images also depicted 'a minor[.]'" Answer at 10. This is unpersuasive for two reasons. First, this argument suffers from the same problem discussed above; an acknowledgement of "a minor" does not establish whether the minor was actually a minor, or merely what appears to be a minor. Second, although a guilty plea's factual basis can rely on "any inferences reasonably drawn from the record," the idea that a lack of denial of one fact supports the existence of that fact is far from a reasonable inference. *See United v. Hardeman*, 59 M.J. 389, 391 (C.A.A.F. 2004).

Lastly, the Government argues, "Appellant's choice to mitigate his conduct by using the word 'appear' during his colloquy was not substantial enough to . . . create an inconsistency for the military judge to resolve under Article 45(a)." Answer at 10. Inconsistent means, "not

compatible with another fact or claim." *Inconsistent*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/inconsistent (last visited July 14, 2025). Certainly adherence to an image only appearing to depict a minor is different in certitude from saying that an image shows an actual minor and thereby "not compatible." Indeed, if the two statements were not inconsistent it is doubtful that the Government would care enough about this issue to make its current arguments.

Not only are the two inconsistent, that inconsistency is substantial. The substantial basis test asks if the record, as a whole, shows a substantial basis in law or fact for questioning the plea. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008). While there may not be a substantial basis in the instant case to question the *entire* plea, there are a number of factual examples in the record to question whether Appellant pled to possession of images of actual minors. *See* Trial Tr. at 31, 32, 34.

C. The Government cannot now complain about its choice to charge Appellant in the disjunctive.

The Government gave Appellant the option to plead *either* to images of actual minors or images of what appears to be minors. This is because the Government charged Appellant in the *disjunctive* with possession of sexually explicit images of "a minor, *or* what appears to be a minor," even though such a practice is disfavored by the military appellate system. Charge Sheet (emphasis added); *United States v. Miles*, 71 M.J. 671, 673 (N-M. Ct. Crim. App. 2012).

"In ordinary use the word 'or' . . . marks an alternative which generally corresponds to the word 'either.'" *United States v. Sager*, 76 M.J. 158, 161 (C.A.A.F. 2017). Additionally, "[c]anons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings[.]" *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979).

If the Government wanted Appellant to plead guilty to possession of images of actual minors, the Government should have charged only the possession of images of actual minors or

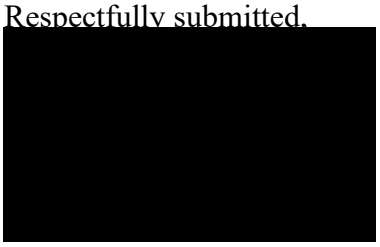
used the conjunctive, "and." Instead, it charged Appellant with possessing one type of image, *or* possessing a different type of image.

The Government's argument blaming Appellant for failing to "negotiate" his plea properly, "clarify his position on the record with the military judge, or withdraw from the plea agreement" completely ignores the fact that the *Government* controls the charge sheet. *United States v. Simmons*, 82 M.J. 134, 141 (C.A.A.F. 2022); Answer at 10.

The Government cannot now complain that Appellant is exercising the option it gave him and of which it never complained of at trial. Trial Tr. at 34 (responding to the military judge's question of whether further inquiry was required following the providency inquiry, "Nothing further from the government, Your Honor.") Conjuctive pleading was simply never required nor did it occur.

WHEREFORE, Appellant respectfully requests this Honorable Court except out the words "a minor, or" of specification 1, and set aside the finding of guilty to the excepted words, leaving only "digital images of what appears to be a minor[.]"

Respectfully submitted,



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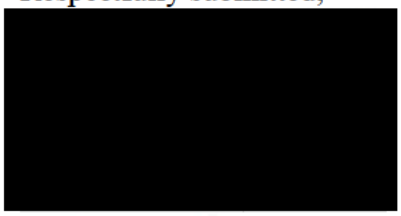
CERTIFICATE OF FILING AND SERVICE

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 16 July 2025.

Respectfully submitted,



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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40657**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF**
Tanner W. HAHN	)	**PANEL CHANGE**
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	

It is by the court on this 17th day of July, 2025,

ORDERED:

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

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

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge
KEARLEY, CYNTHIA T., Colonel, Appellate Military Judge
BREEN, DANIEL J., Lieutenant Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.

FOR THE COURT

[redacted]

TANICA S. BAGMON
Appellate Court Paralegal