

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
	)	TIME (FIRST)
)	
v.	)	Before Panel No. 1
)	
Airman First Class (E-3)	)	No. ACM 40311
CODI A. IRVIN,)	
United States Air Force	)	19 September 2022
)	
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **25 November 2022**. The record of trial was docketed with this Court on 28 July 2022. From the date of docketing to the present date, 53 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

[Redacted signature block]

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[Redacted address block]



GRANTED
20 SEP 2022

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 19 September 2022.

Respectfully submitted,

[Redacted Signature]

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[Redacted Address]

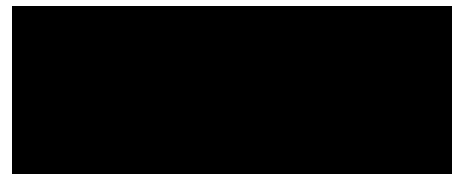
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman First Class (E-3)	)	ACM 40311
CODI A. IRVIN, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

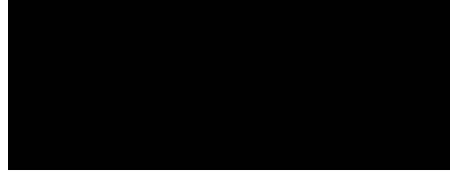


THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel, Government
Trial and Appellate Operations Division
Military Justice and Discipline
United States Air Force

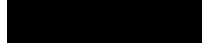


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 20 September 2022.



THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel, Government
Trial and Appellate Operations Division
Military Justice and Discipline
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
	)	TIME (SECOND)
)	
v.	)	Before Panel No. 1
)	
Airman First Class (E-3)	)	No. ACM 40311
CODI A. IRVIN,)	
United States Air Force	)	18 November 2022
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves 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 **25 December 2022**. The record of trial was docketed with this Court on 28 July 2022. From the date of docketing to the present date, 113 days have elapsed. On the date requested, 150 days will have elapsed.

On 18 April 2022, pursuant to his pleas,¹ Appellant was convicted at a general court-martial convened at Nellis Air Force Base, Nevada, of one charge and one specification of wrongful viewing of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 60. A military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 15 months, and



honorably discharged. R. at 81. The convening authority took no action on the ROT, Vol. 1, Decision on Action, dated 16 June 2022. The convening authority

GRANTED

22 NOVEMBER 2022

¹ Appellant was charged with possessing and viewing child pornography. ROT, Vol. 1, Charge Sheet. He pleaded guilty to the specification by exceptions; pleading not guilty to the excepted words “possess and.” R. at 16; ROT, Vol. 1, Entry of Judgment (EOJ), dated 22 June 2022.



suspended the adjudged forfeitures for six months, and waived the automatic forfeitures for a period of six months for the benefit of Appellant's dependent daughter. *Id.*

The record of trial consists of 4 prosecution exhibits, 11 defense exhibits, and 14 appellate exhibits; the transcript is 81 pages. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and not yet begun 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.

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

Respectfully submitted,


JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division


CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 18 November 2022.

Respectfully submitted,

[REDACTED]

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[REDACTED]

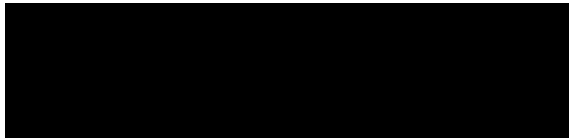
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman First Class (E-3)	)	ACM 40311
CODI A. IRVIN, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

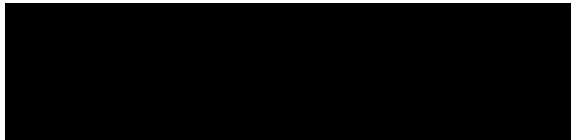


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 21 November 2022.



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



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
	)	TIME (THIRD)
)	
v.	)	Before Panel No. 1
)	
Airman First Class (E-3)	)	No. ACM 40311
CODI A. IRVIN,)	
United States Air Force	)	16 December 2022
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves 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 **24 January 2023**. The record of trial was docketed with this Court on 28 July 2022. From the date of docketing to the present date, 141 days have elapsed. On the date requested, 180 days will have elapsed.

On 18 April 2022, pursuant to his pleas,¹ Appellant was convicted at a general court-martial convened at Nellis Air Force Base, Nevada, of one charge and one specification of wrongful viewing of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 60. A military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 15 months, and probably discharged. R. at 81. The convening authority took no action on the ROT, Vol. 1, Decision on Action, dated 16 June 2022. The convening authority



GRANTED
20 DEC 2022

¹ Appellant was charged with possessing and viewing child pornography. ROT, Vol. 1, Charge Sheet. He pleaded guilty to the specification by exceptions; pleading not guilty to the excepted words “possess and.” R. at 16; ROT, Vol. 1, Entry of Judgment (EOJ), dated 22 June 2022.

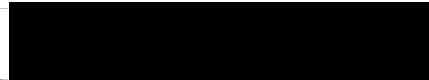

suspended the adjudged forfeitures for six months, and waived the automatic forfeitures for a period of six months for the benefit of Appellant's dependent daughter. *Id.*

The record of trial consists of 4 prosecution exhibits, 11 defense exhibits, and 14 appellate exhibits; the transcript is 81 pages. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and not yet begun 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.

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

Respectfully submitted,


JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division


CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 16 December 2022.

Respectfully submitted,

[REDACTED]

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[REDACTED]

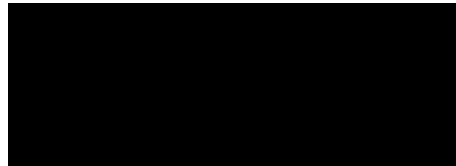
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman First Class (E-3)	)	ACM 40311
CODI A. IRVIN, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

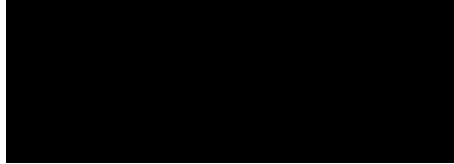


MATTHEW J. NEIL, Lt Col, USAF
Director of Operations, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 19 December 2022.



MATTHEW J. NEIL, Lt Col, USAF
Director of Operations, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
	)	TIME (FOURTH)
)	
v.	)	Before Panel No. 1
)	
Airman First Class (E-3)	)	No. ACM 40311
CODI A. IRVIN,)	
United States Air Force	)	13 January 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves 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 **23 February 2023**. The record of trial was docketed with this Court on 28 July 2022. From the date of docketing to the present date, 169 days have elapsed. On the date requested, 210 days will have elapsed.

On 18 April 2022, pursuant to his pleas,¹ Appellant was convicted at a general court-martial convened at Nellis Air Force Base, Nevada, of one charge and one specification of wrongful viewing of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 60. A military judge sentenced Appellant to be reprimanded, to be

reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 15 months, and dishonorably discharged. R. at 81. The convening authority took no action on the appeal. R. at 82. ROT, Vol. 1, Decision on Action, dated 16 June 2022. The convening authority



GRANTED

18 JAN 2023

¹ Appellant was charged with possessing and viewing child pornography. ROT, Vol. 1, Charge Sheet. He pleaded guilty to the specification by exceptions; pleading not guilty to the excepted words “possess and.” R. at 16; ROT, Vol. 1, Entry of Judgment (EOJ), dated 22 June 2022.

suspended the adjudged forfeitures for six months, and waived the automatic forfeitures for a period of six months for the benefit of Appellant's dependent daughter. *Id.*

The record of trial consists of 4 prosecution exhibits, 11 defense exhibits, and 14 appellate exhibits; the transcript is 81 pages. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters² and not yet begun her review of Appellant's case. Counsel is currently assigned 23 cases; 12 cases are pending initial AOE's before this Court. Appellant's case is military counsel's sixth priority case before this Court, and seventh priority case overall. The following cases have priority over Appellant's case.

1. *United States v. Knodel*, ACM 40018 – Appellant's *DuBay* hearing is currently underway at Naval Base San Diego. Counsel and Appellant's civilian co-counsel have called 16 of their 19 witnesses. Pursuant to this Court's *DuBay* hearing Order, dated 28 September 2022, the military judge has 46 questions (some with subparts) to provide further fact-finding regarding. Counsel arrived in San Diego on Saturday night, prepped with Appellant and co-counsel on Sunday and Monday, and has been in court since Tuesday. While counsel was scheduled to return home on Saturday, following an RCM 802 with the military judge this evening, counsel anticipates that the hearing will not conclude until either Saturday or Sunday.

2. *United States v. Jones*, ACM 40226 – The record of trial is 10 volumes; the trial transcript is 1070 pages. There are 13 prosecution exhibits, 11 defense exhibits, and 68 appellate exhibits. Counsel has reviewed Appellant's unsealed transcript, has reviewed a majority of the

² Since the filing of Appellant's last EOT, counsel filed a supplement to petition for grant of review in *United States v. Ramirez*, ACM S32538 on 5 January 2023.

sealed materials in this case, has consulted with Appellant regarding issues to raise, and has begun researching issues for his brief.

3. *United States v Robles*, ACM 40280 – The record of trial is 8 volumes; the trial transcript is 399 pages. There are 18 prosecution exhibits, 6 defense exhibits, and 15 appellate exhibits. Counsel has not yet begun her review of Appellant’s ROT.

4. *United States v. Arbo*, ACM 40285 – The record of trial is 2 volumes; the trial transcript is 118 pages. There are 6 prosecution exhibits, 2 defense exhibits, and 6 appellate exhibits. Counsel has not yet begun her review of Appellant’s ROT.

5. *United States v Flores*, ACM S32728 – The record of trial is 2 volumes; the trial transcript is 143 pages. There are 5 prosecution exhibits, 4 defense exhibits, and 5 appellate exhibits. Counsel has not yet begun her review of Appellant’s ROT.

6. *United States v. Blackburn*, ACM 40303 – The record of trial is 6 volumes; the trial transcript is 519 pages. There are 8 prosecution exhibits, 8 defense exhibits, and 43 appellate exhibits. Counsel has not yet begun her review of Appellant’s ROT.

Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant’s case and advise Appellant regarding potential errors.

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

Respectfully submitted,

[Redacted]

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[Redacted]

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

[REDACTED]

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[REDACTED]

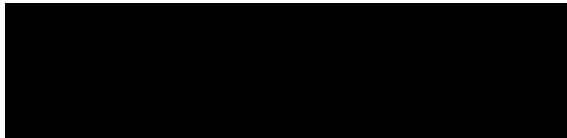
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman First Class (E-3)	)	ACM 40311
CODI A. IRVIN, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

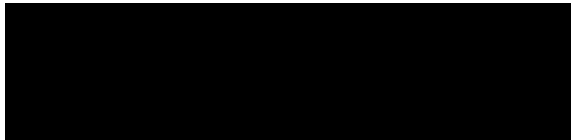


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 17 January 2023.



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



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF TIME (FIFTH)
<i>Appellee</i>)	
)	
v.	)	Before Panel No. 1
)	
Airman First Class (E-3)	)	No. ACM 40311
CODI A. IRVIN,)	
United States Air Force	)	15 February 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves 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 **25 March 2023**. The record of trial was docketed with this Court on 28 July 2022. From the date of docketing to the present date, 202 days have elapsed. On the date requested, 240 days will have elapsed.

On 18 April 2022, pursuant to his pleas,¹ Appellant was convicted at a general court-martial convened at Nellis Air Force Base, Nevada, of one charge and one specification of wrongful viewing of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 60. A military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 15 months, and to be dishonorably discharged. R. at 81. The convening authority took no action on the findings. ROT, Vol. 1, Decision on Action, dated 16 June 2022. The convening authority suspended the adjudged

¹ Appellant was charged with possessing and viewing child pornography. ROT, Vol. 1, Charge Sheet. He pleaded guilty to the specification by exceptions; pleading not guilty to the excepted words “possess and.” R. at 16; ROT, Vol. 1, Entry of Judgment (EOJ), dated 22 June 2022.

forfeitures for six months, and waived the automatic forfeitures for a period of six months for the benefit of Appellant's dependent daughter. *Id.*

The record of trial consists of 4 prosecution exhibits, 11 defense exhibits, and 14 appellate exhibits; the transcript is 81 pages. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters² and not yet begun her review of Appellant's case. Counsel is currently assigned 23 cases; 13 cases are pending initial AOE's before this Court. Appellant's case is military counsel's sixth priority case. The following cases have priority over Appellant's case:

1. *United States v. Jones*, ACM 40226 – The record of trial is 10 volumes; the trial transcript is 1070 pages. There are 13 prosecution exhibits, 11 defense exhibits, and 68 appellate exhibits. Counsel has consulted with Appellant on issue to raise, conducted research, and is finalizing Appellant's brief, which is due to this Court on 21 February 2023.

2. *United States v Robles*, ACM 40280 – The record of trial is 8 volumes; the trial transcript is 399 pages. There are 18 prosecution exhibits, 6 defense exhibits, and 15 appellate exhibits. Counsel has begun reviewing Appellant's ROT.

3. *United States v. Arbo*, ACM 40285 – The record of trial is 2 volumes; the trial transcript is 118 pages. There are 6 prosecution exhibits, 2 defense exhibits, and 6 appellate exhibits. Counsel has begun reviewing Appellant's ROT.

² Since the filing of Appellant's last EOT, counsel represented another client at his *DuBay* hearing (*United States v. Knodel*, ACM 40018), which was conducted from 10-14 January 2023 at Naval Base San Diego.

4. *United States v Flores*, ACM S32728 – The record of trial is 2 volumes; the trial transcript is 143 pages. There are 5 prosecution exhibits, 4 defense exhibits, and 5 appellate exhibits. Counsel has reviewed three-fourths of Appellant’s ROT.

5. *United States v Blackburn*, ACM 40303 – The record of trial is 6 volumes; the trial transcript is 519 pages. There are 8 prosecution exhibits, 8 defense exhibits, and 43 appellate exhibits. Counsel has not yet begun her review of Appellant’s ROT.

Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant’s case and advise Appellant regarding potential errors.

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

Respectfully submitted,

[REDACTED]
JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 15 February 2023.

Respectfully submitted,

[REDACTED]

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[REDACTED]

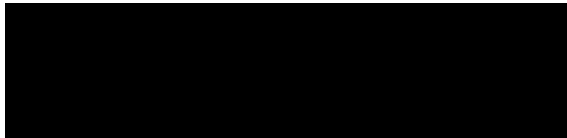
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman First Class (E-3)	)	ACM 40311
CODI A. IRVIN, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

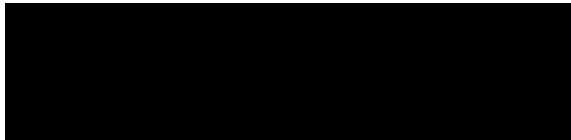


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 16 February 2023.



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



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

UNITED STATES	)	No. ACM 40311
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Codi A. IRVIN)	
Airman First Class (E-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 15 February 2023, counsel for Appellant submitted a Motion for Enlargement of Time (Fifth), requesting “an enlargement period of 30 days, which will end on 25 March 2023.” Appellant states that upon the requested end date, 240 days will have elapsed. 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 16th day of February, 2023,

ORDERED:

Appellant’s Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant’s brief will be due **25 March 2023**.

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



FOR THE COURT



FLEMING E. KEEFE, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
	)	TIME (SIXTH)
)	
v.	)	Before Panel No. 1
)	
Airman First Class (E-3)	)	No. ACM 40311
CODI A. IRVIN,)	
United States Air Force	)	17 March 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves 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 **24 April 2023**. The record of trial was docketed with this Court on 28 July 2022. From the date of docketing to the present date, 232 days have elapsed. On the date requested, 270 days will have elapsed.

On 18 April 2022, pursuant to his pleas,¹ Appellant was convicted at a general court-martial convened at Nellis Air Force Base, Nevada, of one charge and one specification of wrongful viewing of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 60. A military judge sentenced Appellant to be reprimanded, to be reduced to the rank of E-3, to forfeit all pay and allowances, to be confined for 15 months, and to be discharged. R. at 81. The convening authority took no action on the findings. ROT, Vol. 1, Decision on Action, dated 16 June 2022. The convening authority suspended the adjudged



GRANTED
21 MAR 2023

¹ Appellant was charged with possessing and viewing child pornography. ROT, Vol. 1, Charge Sheet. He pleaded guilty to the specification by exceptions; pleading not guilty to the excepted words “possess and.” R. at 16; ROT, Vol. 1, Entry of Judgment (EOJ), dated 22 June 2022.

forfeitures for six months, and waived the automatic forfeitures for a period of six months for the benefit of Appellant's dependent daughter. *Id.*

The record of trial consists of 4 prosecution exhibits, 11 defense exhibits, and 14 appellate exhibits; the transcript is 81 pages. Appellant is currently confined, is aware of his appellate rights, and has consented to necessary requests for extensions of time, including this request.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters² and not yet begun her review of Appellant's case. Counsel is currently assigned 23 cases; 12 cases are pending initial AOE's before this Court. Appellant's case is military counsel's fifth priority case. The following cases have priority over Appellant's case:

1. *United States v Robles*, ACM 40280 – The record of trial is 8 volumes; the trial transcript is 399 pages. There are 18 prosecution exhibits, 6 defense exhibits, and 15 appellate exhibits. Counsel has reviewed approximately 200 pages of Appellant's transcript, has reviewed the unsealed exhibits in his ROT, and has submitted a motion to view sealed materials.

2. *United States v. Arbo*, ACM 40285 – The record of trial is 2 volumes; the trial transcript is 118 pages. There are 6 prosecution exhibits, 2 defense exhibits, and 6 appellate exhibits. Counsel has completed her review of Appellant's case and will be discussing potential issues to raise with Appellant.

3. *United States v Flores*, ACM S32728 – The record of trial is 2 volumes; the trial transcript is 143 pages. There are 5 prosecution exhibits, 4 defense exhibits, and 5 appellate exhibits. Counsel has completed her review of Appellant's case, identified potential issues to

² Since the filing of Appellant's last EOT, counsel filed a lengthy brief in *United States v. Jones*, ACM 40226, on 21 February 2023, and a Petition for Reconsideration to the Court of Appeals for the Armed Forces (CAAF) in *United States v. Daniels III*, ACM 39407 (rem) on 10 March 2023.



raise, has spoken with Appellant to discuss what issues she would like raised in her brief, and is drafting her Assignments of Error.

4. *United States v. Blackburn*, ACM 40303 – The record of trial is 6 volumes; the trial transcript is 519 pages. There are 8 prosecution exhibits, 8 defense exhibits, and 43 appellate exhibits. Counsel has not yet begun her review of Appellant’s ROT.

Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant’s case and advise Appellant regarding potential errors.

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



Respectfully submitted,


JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division


CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 17 March 2023.

Respectfully submitted,


JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division


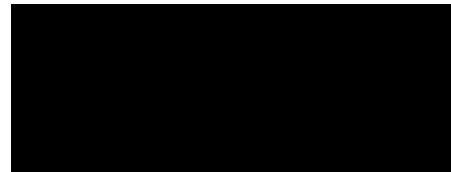
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman First Class (E-3)	)	ACM 40311
CODI A. IRVIN, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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



THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel, Government
Trial and Appellate Operations Division
Military Justice and Discipline
United States Air Force

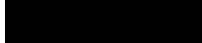


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 20 March 2023.



THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel, Government
Trial and Appellate Operations Division
Military Justice and Discipline
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
	)	TIME (SEVENTH)
<i>Appellee</i>)	
)	
v.	)	Before Panel No. 1
)	
Airman First Class (E-3)	)	No. ACM 40311
CODI A. IRVIN,)	
United States Air Force	)	17 April 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves 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 **24 May 2023**. The record of trial was docketed with this Court on 28 July 2022. From the date of docketing to the present date, 263 days have elapsed. On the date requested, 300 days will have elapsed.

On 18 April 2022, pursuant to his pleas,¹ Appellant was convicted at a general court-martial convened at Nellis Air Force Base, Nevada, of one charge and one specification of wrongful viewing of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 60. A military judge sentenced Appellant to be reprimanded, to be reduced to the E-1, to forfeit all pay and allowances, to be confined for 15 months, and to be



GRANTED
19 APR 2023

Vol. 1, Decision on Action, dated 16 June 2022. The convening authority suspended the adjudged

¹ Appellant was charged with possessing and viewing child pornography. ROT, Vol. 1, Charge Sheet. He pleaded guilty to the specification by exceptions; pleading not guilty to the excepted words “possess and.” R. at 16; ROT, Vol. 1, Entry of Judgment (EOJ), dated 22 June 2022.

forfeitures for six months, and waived the automatic forfeitures for a period of six months for the benefit of Appellant's dependent daughter. *Id.*

The record of trial consists of 4 prosecution exhibits, 11 defense exhibits, and 14 appellate exhibits; the transcript is 81 pages. Appellant is currently confined, is aware of his appellate rights, and has consented to necessary requests for extensions of time, including this request.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters² and not yet begun her review of Appellant's case. Counsel is currently assigned 22 cases; 12 cases are pending initial AOE's before this Court. Appellant's case is military counsel's fourth priority³ case. The following cases have priority over Appellant's case:

1. *United States v. Arbo*, ACM 40285 – The record of trial is 2 volumes; the trial transcript is 118 pages. There are 6 prosecution exhibits, 2 defense exhibits, and 6 appellate exhibits. Counsel has completed her review of Appellant's case, has discussed potential issues with Appellant, and will be filing his brief by 20 April 2023.

2. *United States v. Robles*, ACM 40280 – The record of trial is 8 volumes; the trial transcript is 399 pages. There are 18 prosecution exhibits, 6 defense exhibits, and 15 appellate exhibits. Counsel has reviewed Appellant's ROT, has consulted with Appellant on issues to raise, is researching the issues, and is drafting Appellant's Assignments of Error to submit to this Court by 7 May 2023.

3. *United States v. Blackburn*, ACM 40303 – The record of trial is 6 volumes; the trial transcript is 519 pages. There are 8 prosecution exhibits, 8 defense exhibits, and 43 appellate

² Since the filing of Appellant's last EOT, counsel filed a brief in *United States v. Flores*, ACM S32.

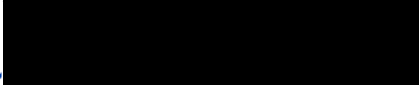
³ Counsel will also be filing a reply brief in *United States v. Jones*, ACM 40226, due 18 April 2023 and will be filing a Supplement to Petition for Grant of Review to the Court of Appeals for the Armed Forces in *United States v. Kitchen*, ACM 40155, due 20 April 2023.

exhibits. Counsel has begun reviewing Appellant's ROT and will be setting up an appointment to view the sealed materials in his case.

Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,





JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 17 April 2023.

Respectfully submitted,


JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division


IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Airman First Class (E-3)	)	ACM 40311
CODI A. IRVIN, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

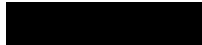
Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion for Enlargement of Time.

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

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

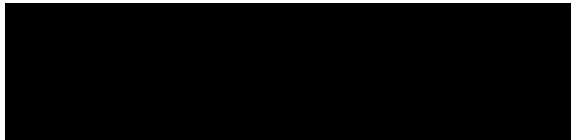


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 18 April 2023.



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



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

UNITED STATES	)	No. ACM 40311
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Codi A. IRVIN)	
Airman First Class (E-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 27 April 2023, Appellant’s counsel submitted a Motion to Examine Sealed Material, specifically: Prosecution Exhibit 1 and its attachments.

The motion states, “This exhibit and its attachments, which contain contraband, were examined by trial counsel and defense counsel and ordered sealed by the military judge” and that examination of these sealed materials is reasonably necessary to fulfill appellate counsel’s responsibilities. The Government does not oppose the motion, as long as the materials were viewed by both counsel at trial and Government counsel can also examine the sealed materials.

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

The court has considered Appellant’s motion, the Government’s response, case law, and this court’s Rules of Practice and Procedure. The court has reviewed the requested material and finds that appellate defense counsel has made a colorable showing that review of the material is reasonably necessary to a proper fulfillment of appellate defense counsel’s responsibilities.

Upon review of the record, the court notes Prosecution Exhibit 1 and its attachments were ordered sealed by the military judge at trial but is not sealed in the record of trial filed with the court. The Clerk of Court will ensure Prosecution Exhibit 1 is properly “sealed” in the record retained by the court.

Accordingly, it is by the court on this 1st day of May, 2023,

ORDERED:

Appellant’s Motion to Examine Sealed Material is **GRANTED**. Appellate defense counsel and appellate government counsel are authorized to examine,

Prosecution Exhibit 1 and its attachments, subject to the following conditions:

To examine these materials, counsel will coordinate with the court.

No counsel will photocopy, photograph, or otherwise reproduce this material and will not disclose or make available its contents to any other individual without this court's prior written authorization.

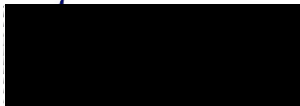
It is further ordered:

The Government shall take all steps necessary to ensure Prosecution Exhibit 1 and its attachments in the possession of any Government office, Appellant, counsel for Appellant (trial and appellate), or any other known copy, be retrieved and destroyed if a paper copy, or destroyed if an electronic copy.*

However, if appellate defense counsel and appellate government counsel possess Prosecution Exhibit 1 and its attachments, counsel are authorized to retain copies of the exhibit in their possession until completion of our Article 66, Uniform Code of Military Justice, 10 U.S.C. § 866, review of Appellant's case, to include the period for reconsideration in accordance with JT. CT. CRIM. APP. R. 31. After this period, appellate defense and appellate government counsel shall destroy any retained copies in their possession.



FOR THE COURT



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

* The base legal office may maintain a sealed copy in accordance with Department of the Air Force Manual 51-203, *Records of Trial*, ¶ 9.3.6 (21 Apr. 2021).

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S MOTION TO
<i>Appellee,</i>	)	EXAMINE SEALED MATERIAL
)	
v.)	
	)	Before Panel No. 1
Airman First Class (E-3))	
CODI A. IRVIN,	)	Case No. ACM 40311
United States Air Force)	
<i>Appellant</i>	)	Filed on: 27 April 2023
)	

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

Pursuant to Rules 3.1 and 23.3(f) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves to examine the sealed material in Appellant’s record of trial: Prosecution Exhibit (Pros. Ex.) 1, including its attachments. This exhibit and its attachments, which contain contraband, were examined by trial counsel and defense counsel, and ordered sealed by the military judge.

In accordance with R.C.M. 1113(b)(3)(B)(i), which requires a colorable showing that examination of these materials is reasonably necessary to appellate counsel’s responsibilities, undersigned counsel asserts that review of the referenced exhibits is necessary to conduct a complete review of the record of trial and be in a position to advocate competently on behalf of Appellant. A review of the entire record is necessary because this Court is empowered by Article 66(c), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(c), to grant relief based on a review and analysis of “the entire record.” To determine whether the record of trial yields grounds for this Court to grant relief under Article 66(c), UCMJ, 10 U.S.C. §866, counsel must therefore examine “the entire record.”

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

United States v. May, 47 M.J. 478, 481, (C.A.A.F. 1998). The sealed material must be reviewed in order for counsel to provide “competent appellate representation.” *Id.* Therefore, military defense counsel’s examination of sealed materials is reasonably necessary to fulfill their responsibilities in this case, since counsel cannot perform their duty of representation under Article 70, UCMJ, 10 U.S.C. §870, without first reviewing the complete record of trial.

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

Respectfully submitted,

[REDACTED]



JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 27 April 2023.

Respectfully submitted,


AF
Appellate Defense Counsel
Air Force Appellate Defense Division


IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

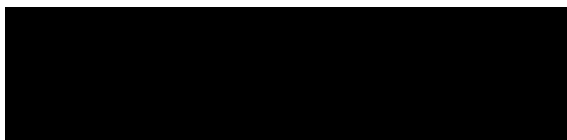
UNITED STATES,	)	UNITED STATES' RESPONSE
<i>Appellee,</i>	)	TO APPELLANT'S MOTION
	)	TO EXAMINE
v.	)	SEALED MATERIAL
)	
Airman First Class (E-3)	)	ACM 40311
CODI A. IRVIN, USAF)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States responds to Appellant's Motion to Examine Sealed Material. The United States does not object to Appellant's counsel reviewing the materials listed in Appellant's motion (Prosecution Exhibit 1 and attachments) –which appear to have been available to all parties at trial – so long as the United States can also review the sealed portions of the record as necessary to respond to any assignment of error that refers to the sealed materials. The United States respectfully requests that any order issued by this Court also allow counsel for the United States to view the sealed materials.

The United States would not consent to Appellant's counsel viewing any exhibits that were reviewed in camera but not released to the parties unless this Court has first determined there is good cause for Appellant's counsel to do so under R.C.M. 1113.

WHEREFORE, the United States respectfully responds to Appellant's motion.



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



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 28 April 2023.



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



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

UNITED STATES	)	No. ACM 40311
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Codi A. IRVIN)	
Airman First Class (E-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 27 April 2023, Appellant’s counsel submitted a Motion to Examine Sealed Material, requesting permission for appellate counsel for the Appellant and the Government to examine Prosecution Exhibit 1 and its attachments, the stipulation of fact. Upon this court’s initial review of the record, it discovered Prosecution Exhibit 1 and its attachments were ordered sealed by the military judge at trial but were not sealed in the record of trial filed with the court. On 1 May 2023, the court granted Appellant’s Motion to Examine Sealed Material, sealed Prosecution Exhibit 1 in the record retained by the court, and ordered the Government to retrieve and destroy any unauthorized copies.

Upon further review of the record, it was discovered that Attachments 2 and 3 of Prosecution Exhibit 1 were not appended to the exhibit. Attachment 2 is identified as “Child Pornography – six video files (1 disc),” and Attachment 3 is identified as “Aggravation Evidence – four picture files (1 disc).” Both attachments are missing from the record.

Accordingly, it is by the court on this 12th day of May, 2023,

ORDERED:

The record of trial in Appellant’s case is returned to the Chief Trial Judge, Air Force Trial Judiciary, for correction under R.C.M. 1112(d) to account for Prosecution Exhibit 1, and any other portion of the record that is determined to be missing or defective hereafter, after consultation with the parties. *See* Article 66(g), UCMJ, 10 U.S.C. § 866(g); R.C.M. 1112(d)(2)–(3). Thereafter, the record of trial will be returned to this court for completion of its appellate review under Article 66(d), UCMJ, 10 U.S.C. § 866(d).

The record of trial will be returned to the court not later than **5 June 2023**. If the record cannot be returned to the court by that date, the Government will inform the court in writing not later than **23 May 2023** of the status of the Government's compliance with this order.



FOR THE COURT



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	
<i>Appellee</i>)	
	)	UNITED STATES' RESPONSE TO
v.	)	COURT ORDER OUT OF TIME
)	
Airman First Class (E-3)	)	Panel 1
CODI A. IRVIN, USAF)	
<i>Appellant</i>	)	No. ACM 40311

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

Supplemental Statement of the Case

On 28 July 2022, Appellant’s record of trial was docketed with this Court. During the Court’s initial review of the record, it discovered Attachments 2 and 3 of Prosecution Exhibit 1 were missing from the record. (*Remand Order*, dated 12 May 2023.) Attachment 2 is identified as “Child Pornography – six video files (1 disc),” and Attachment 3 is identified as “Aggravation Evidence – four picture files (1 disc).” (Id.)

In its decree, the Court ordered the case returned to the Chief Trial Judge of the Air Force for return to the military judge for correction of the record pursuant to R.C.M. 1112(d)(2). (Id.) Upon compliance with these actions, this Court ordered the record returned for completion of appellate review under Article 66, UCMJ, 10 U.S.C. § 866. (Id.) The Court ordered the record returned no later than **5 June 2023**. (Id.) (emphasis in original). At the same time, this Court directed appellate government counsel to “inform the court in writing not later than **23 May 2023** of the status of the Government’s compliance with this order” if the record cannot be returned to the Court by 5 June 2023. (Id.) (emphasis on original).

Status of the Record of Trial

On 19 May 2023, OSI Detachment 206 at Nellis AFB, Nevada, sent the missing exhibits (containing contraband) to OSI Detachment 331 at Joint Base Andrews, Maryland via registered mail. The missing exhibits are currently in transit. Once the exhibits arrive, undersigned counsel will personally receipt for the missing exhibits, return to JAJM, and coordinate with the military judge detailed to accomplish the post-trial correction. While undersigned counsel is cautiously optimistic the record can be returned to the Court prior to the 5 June 2023 deadline, the Government submits this status update in an abundance of caution. The Government will return the record with corrections to this Court as soon as it is able.

Out of Time Filing

The Government acknowledges the initial filing was sent 14 minutes late. Undersigned counsel does not have an excuse for the late filing other than negligence as undersigned counsel was balancing other work-related tasks. Although the filing was drafted, reviewed, and ready for filing well in advance of the deadline, due to an oversight, undersigned counsel failed to timely send the email to the Court with said filing.

[Redacted Signature]

USAF

Appellate Government Counsel
Government Trial and Appellate Operations

[Redacted Contact Information]

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 24 May 2023.



USAF

Appellate Government Counsel
Government Trial and Appellate Operations

