

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee,

v.

Senior Airman (E-4)
RICHARD H. LINDNER,
United States Air Force,
Appellant.

**MOTION FOR ENLARGEMENT OF
TIME (FIRST)**

Before Panel No. 3

Case No. ACM S32715

Filed on: 10 December 2021

**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 a first enlargement of time to file an Assignment of Errors. Appellant requests an enlargement for a period of 60 days, which will end on 15 February 2022. The record of trial was received by this division on 18 October 2021. On the date requested, 120 days will have elapsed from the date this case was received by the division.

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

Respectfully Submitted,

[Redacted Signature]

NICOLE J. HERBERS
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

[Redacted Address]

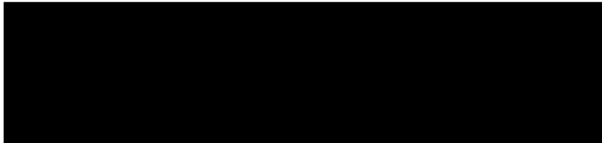


GRANTED

13 DECEMBER 2021

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via electronic mail to the Court and served on the Appellate Government Division on 10 December 2021.



NICOLE J. HERBERS
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604



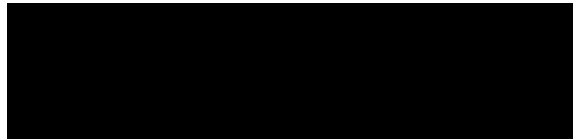
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Senior Airman (E-4)	)	ACM S32715
RICHARD H. LINDER, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its 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.

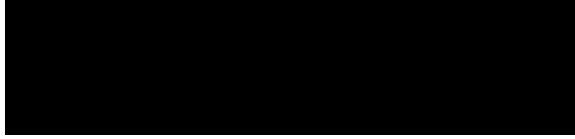


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



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 13 December 2021.



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**

)
)
)
) **NOTICE OF PANEL
CHANGE**
)
)
)

It is by the court on this 20th day of January, 2022,

ORDERED:

The following records of trial are withdrawn from Panel 3 and referred to Panel 2 for appellate review.

- | | |
|---|----------------|
| 1. United States v. Reid, Blake A. | No. ACM S32680 |
| 2. United States v. Guihama, Jonel H. | No. ACM 40039 |
| 3. United States v. Behunin, Mellodee L. | No. ACM S32684 |
| 4. United States v. Guereca Torres, Nestor J. | No. ACM S32688 |
| 5. United States v. Dominguez-Garcia, Jennesis V. | No. ACM S32694 |
| 6. United States v. Pacheco, Lucero | No. ACM S32697 |
| 7. United States v. Jones, Maxwell A. | No. ACM 40113 |
| 8. United States v. Little II, Terrance | No. ACM 40121 |
| 9. United States v. Payan, Christian D. | No. ACM 40132 |
| 10. United States v. Reimers, Michael G. | No. ACM 40141 |
| 11. United States v. Heard, Daesha R. | No. ACM 40159 |
| 12. United States v. Suarez, Alejandro | No. ACM S32708 |
| 13. United States v. Hoversten, Gregory V. | No. ACM S32711 |
| 14. United States v. Valentin-Andino, Michael A. | No. ACM 40185 |
| 15. United States v. Lindner, Richard H. | No. ACM S32715 |
| 16. United States v. Raver, Michael S. | No. ACM 40197 |
| 17. United States v. Williamson, Tyler J. | No. ACM 40211 |
| 18. United States v. Wells, Deshaun L. | No. ACM 40222 |

This panel letter supersedes all previous assignments.



FOR THE COURT

[Redacted signature]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION TO WITHDRAW FROM
<i>Appellee</i>	)	APPELLATE REVIEW AND ATTACH
)	
v.	)	Before Panel No. 2
)	
Airman Basic (E-1)	)	No. ACM S32715
RICHARD H. LINDNER)	
United States Air Force	)	8 February 2022
<i>Appellant</i>)	

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

Pursuant to Rule 16 of the Rules of Practice and Procedure of the United States Air Force Court of Criminal Appeals and Rule for Courts-Martial (R.C.M.) 1115, Appellant moves to withdraw his case from appellate review. Appellant has fully consulted with Major Nicole Herbers, his appellate defense counsel, regarding this motion to withdraw. No person has compelled, coerced or induced Appellant by force, promises of clemency, or otherwise, to withdraw his case from appellate review. Further, pursuant to Rules 23(b) and 23.3(b), undersigned counsel asks this Court to attach the two-page document appended to this pleading to the record of this proceeding. The appended document is necessary to comply with R.C.M. 1115(d).

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

Respectfully submitted,



NICOLE J. HERBERS, (Maj) USAFR
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

[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 8 February 2022.

Respectfully submitted, /

[REDACTED]

NICOLE J. HERBERS, Maj, USAFR
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

[REDACTED]

APPENDIX

WAIVER/WITHDRAWAL OF APPELLATE RIGHTS IN GENERAL AND SPECIAL COURTS-MARTIAL SUBJECT TO REVIEW BY A COURT OF CRIMINAL APPEALS

(For use in courts-martial referred on or after 1 January 2019)

I have read the attached entry of judgment in my case dated 20210803.

I have consulted with Major Nicole J. Herbers, my (associate) defense counsel concerning my appellate rights and I am satisfied with his/her advice.

I understand that:

1. If I do not waive or withdraw appellate review –

- a. My court-martial will be automatically reviewed by the Air Force Court of Criminal Appeals per Article 66(b)(3) or is eligible for direct review by the _____ Court of Criminal Appeals per Article 66(b)(1)(A-B).
- b. The Court of Criminal Appeals will review my case to determine whether the findings and sentence are correct in law and fact and whether the sentence is appropriate.
- c. After review by the Court of Criminal Appeals, my case could be reviewed for legal error by the United States Court of Appeals for the Armed Forces on petition by me or on request of the Judge Advocate General.
- d. If the Court of Appeals for the Armed Forces reviews my case, my case could be reviewed for legal error by the United States Supreme Court on petition by me or the Government.
- e. I have the right to be represented by military counsel, at no cost to me, or by civilian counsel, at no expense to the United States, or both, before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, and the Supreme Court.

2. If I waive or withdraw appellate review –

- a. My case will not be reviewed by the Court of Criminal Appeals, or be subject to further review by the Court of Appeals for the Armed Forces, or by the Supreme Court under 28 U.S.C. § 1259.
- b. My case will be reviewed by a judge advocate per Article 65(d)(3). Upon completion of that review, I may submit an application for consideration by The Judge Advocate General under Article 69(b), for review limited to the issue of whether this waiver or withdrawal was invalid under the law. See R.C.M. 1201(h)(4)(B).
- c. An Article 69(b) application must be filed within one year after the date of completion of review under Article 65(d)(3), if I can show good cause for filing later the period may be extended up to three years after the completion date.
- d. I may file a waiver of appellate review at any time after entry of judgment.
- e. I may file withdrawal from appellate review any time before such review is completed.
- f. A waiver or withdrawal, once filed, cannot be revoked, and bars further appellate review. A waiver or withdrawal may not be filed in any case where the sentence includes death.

3. Whether or not I waive or withdraw appellate review, I may petition the Judge Advocate General for a new trial under Article 73 on the grounds of newly discovered evidence or fraud on the court at any time within three years after the date of the entry of judgment.

I understand the foregoing, and I (~~waive my rights to appellate review~~) (withdraw my case from appellate review). I make this decision freely and voluntarily. No one has made any promises that I would receive any benefit from this waiver/withdrawal, and no one has forced me to make it.

RICHARD H. LINDNER

AIRMAN BASIC

TYPED NAME OF ACCUSED

RANK OF ACCUSED

SIGNATURE OF ACCUSED

07 Feb 22
DATE

STATEMENT OF COUNSEL

(Check appropriate block)

- 1. I represented the accused at his/her court-martial
- 2. I am associate counsel detailed under R.C.M. 1115(b). I have communicated with the accused's (detailed) (individual military) (civilian) (appellate) defense counsel concerning the accused's waiver/withdrawal and discussed this communication with the accused.
- 3. I am substitute counsel detailed under R.C.M. 1115(b).
- 4. I am civilian counsel whom the accused consulted concerning this matter. I am a member in good standing of the bar of _____
- 5. I am appellate defense counsel for the accused.

I have advised the accused of his/her appellate rights and of the consequences of waiving or withdrawing appellate review. I was given a reasonable opportunity to examine the record of trial and any attachments in the accused's case before advising the accused. The accused has elected to ~~(waive)~~ (withdraw) appellate review.

NICOLE J. HERBERS

AF/JAJA

TYPED NAME OF COUNSEL

UNIT OF COUNSEL

MAJOR

RANK OF COUNSEL

BUSINESS ADDRESS (If Civilian Counsel)



4 February 2022

SIGNATURE OF COUNSEL

DATE

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

UNITED STATES	)	No. ACM S32715
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Richard H. LINDNER)	
Airman Basic (E-1))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 2

On 8 February 2022, Appellant submitted a Motion to Withdraw from Appellate Review and a request to attach document. Specifically, Appellant moved to attach DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals*, signed by Appellant and Appellant's counsel on 7 February 2022 and 4 February 2022, respectfully. The Government did not submit any opposition.

Accordingly, it is by the court on this 11th day of February, 2022,

ORDERED:

Appellant's Motion to Withdraw from Appellate Review and Attach is **GRANTED**. Appellant's case is forwarded to the Appellate Records Branch, AFLOA/JAJM, for further processing in accordance with Rules for Courts-Martial 1115(f)(3) and 1201, *Manual for Courts-Martial, United States* (2019 ed.).



FOR THE COURT



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