

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (FIRST)
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40702
CALEB L. LUCAS,	)	
United States Air Force,	)	15 December 2024
<i>Appellant.</i>	)	

**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 Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **25 February 2025**. The record of trial was docketed with this Court on 28 October 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.

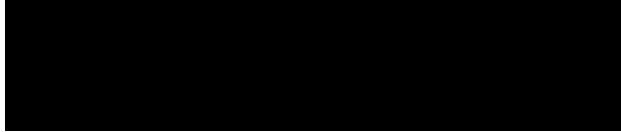
Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

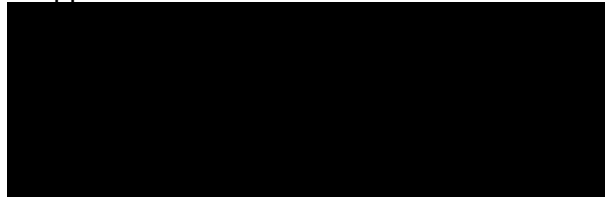
CERTIFICATE OF FILING AND SERVICE

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 15 September 2024.

Respectfully submitted,

A large black rectangular redaction box covering the signature of Joyclin N. Webster.

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

A large black rectangular redaction box covering the contact information of Joyclin N. Webster.

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 40702
CALEB L. LUCAS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

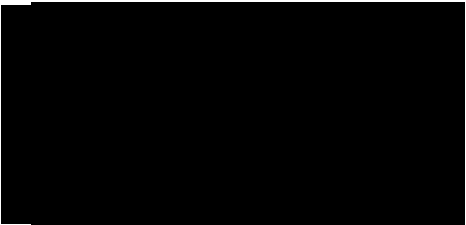
**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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.

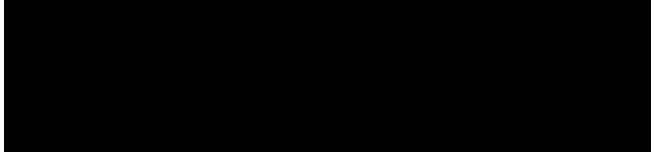


MARY ELLEN PAYNE
Associate Chief, Government Trial and

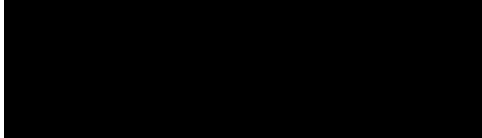


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 16 December 2024.



MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division



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

UNITED STATES	)	No. ACM 40702
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Caleb L. LUCAS	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 1

On 15 December 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 opposed the motion.

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

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

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **25 February 2025**.

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



FOR THE COURT

[Redacted signature block]

OLGA STANFORD, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (SECOND)
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40702
CALEB L. LUCAS,	)	
United States Air Force,	)	18 February 2025
<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 for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **27 March 2025**. Appellant's appeal was docketed with this Court on 28 October 2024. From the date of docketing to the present date 113 days have elapsed. On the date requested 150 days will have elapsed since docketing.

On 23 July 2024, a general court-martial consisting of a military judge alone at Nellis Air Force Base, Nevada, found Appellant guilty, inconsistent to his pleas, of one charge and one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ).¹ Record of Trial (ROT), Entry of Judgment (EOJ), dated August 2024; Record (R.) at 159. The military judge sentenced Appellant to be reprimanded, the grade of E-1, restricted to Nellis Air Force Base for two months, and discharged with conduct discharge. R. at 187; EOJ.



GRANTED
20 FEB 2025

¹ Appellate was acquitted of the remaining specification. R. at 159.

The Convening Authority took no action on the findings or sentence. ROT, Convening Authority Decision on Action – *United States v. SrA Calab L. Lucas*, dated 6 Aug 2024.

The electronic ROT is 5 volumes and consists of 11 Prosecution Exhibits, 3 Defense Exhibits, and 16 Appellate Exhibits; the transcript is 187 pages. Appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

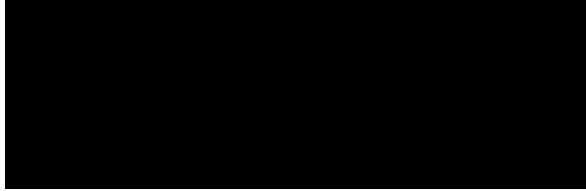
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Respectfully submitted,

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JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

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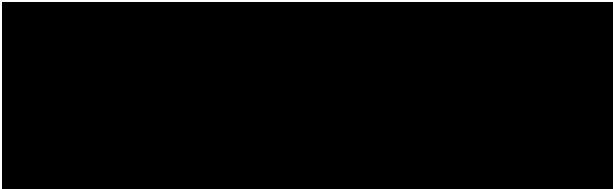
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’ GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM 40702
CALEB L. LUCAS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

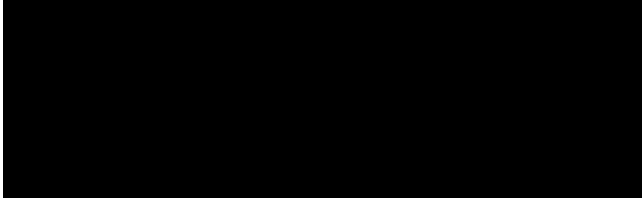
**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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 Assignments of Error in this case.

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

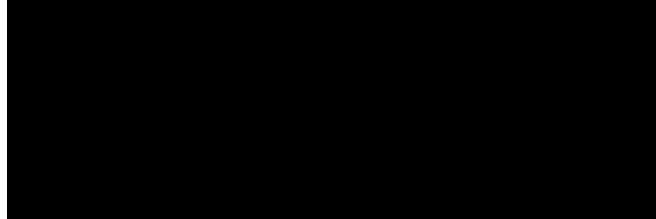


THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel

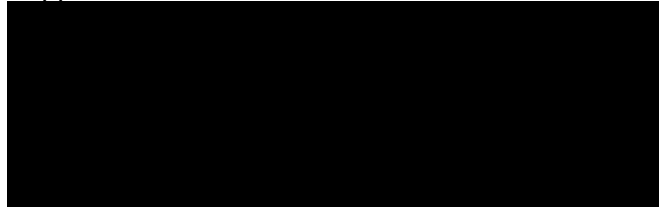


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 20 February 2025.



THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (THIRD)
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40702
CALEB L. LUCAS,	)	
United States Air Force,	)	17 March 2025
<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 for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **26 April 2025**. Appellant's appeal was docketed with this Court on 28 October 2024. From the date of docketing to the present date 140 days have elapsed. On the date requested 180 days will have elapsed since docketing.

On 23 July 2024, a general court-martial consisting of a military judge alone at Nellis Air Force Base, Nevada, found Appellant guilty, inconsistent to his pleas, of one charge and one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ).¹ Record of Trial (ROT), Entry of Judgment (EOJ), dated August 2024; Record (R.) at 159. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, restricted to Nellis Air Force Base for two months, and discharged with bad conduct discharge. R. at 187; EOJ.



GRANTED
20 MAR 2025

¹ Appellate was acquitted of the remaining specification. R. at 159.

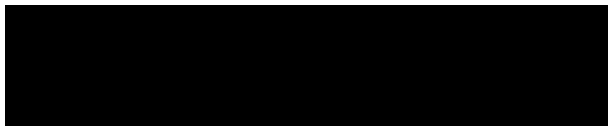
The Convening Authority took no action on the findings or sentence. ROT, Convening Authority Decision on Action – *United States v. SrA Calab L. Lucas*, dated 6 Aug 2024.

The electronic ROT is 5 volumes and consists of 11 Prosecution Exhibits, 3 Defense Exhibits, and 16 Appellate Exhibits; the transcript is 187 pages. Appellant is not currently confined.

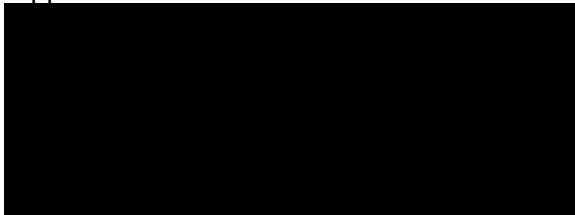
Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

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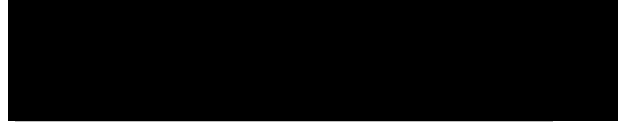
JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

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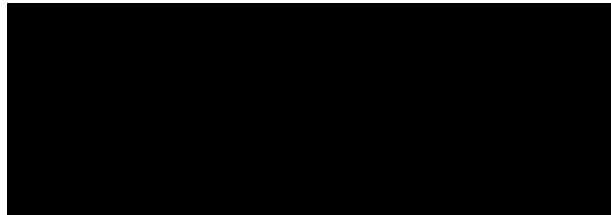
CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 17 March 2025.

Respectfully submitted,

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JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

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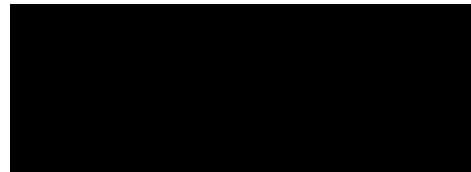
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
CALEB L. LUCAS,	)	No. ACM 40702
United States Air Force.	)	
<i>Appellant</i>	)	19 March 2025

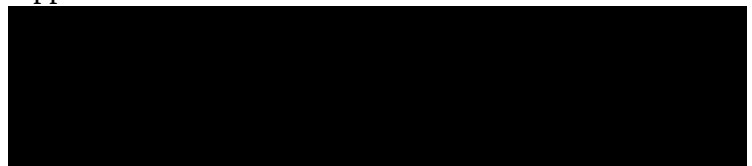
**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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 Assignments of Error in this case.

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

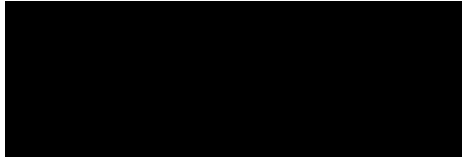


JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel



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 March 2025.



JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (FOURTH)
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40702
CALEB L. LUCAS,	)	
United States Air Force,	)	16 April 2025
<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 for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **26 May 2025**. Appellant's appeal was docketed with this Court on 28 October 2024. From the date of docketing to the present date 170 days have elapsed. On the date requested 210 days will have elapsed since docketing.

On 23 July 2024, a general court-martial consisting of a military judge alone at Nellis Air Force Base, Nevada, found Appellant guilty, inconsistent to his pleas, of one charge and one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ).¹ Record of Trial (ROT), Entry of Judgment (EOJ), dated 13 August 2024; Record (R.) at 159. The military judge sentenced Appellant to be reprimanded, the grade of E-1, restricted to Nellis Air Force Base for two months, and discharged conduct discharge. R. at 187; EOJ.



GRANTED
21 APR 2025

¹ Appellate was acquitted of the remaining specification. R. at 159.

The Convening Authority took no action on the findings or sentence. ROT, Convening Authority Decision on Action – *United States v. SrA Calab L. Lucas*, dated 6 Aug 2024.

The electronic ROT is 5 volumes and consists of 11 Prosecution Exhibits, 3 Defense Exhibits, and 16 Appellate Exhibits; the transcript is 187 pages. Appellant is not currently confined.

The undersigned counsel is currently assigned 24 cases; 21 cases are pending before this Court (20 cases are pending AOE). To date, eleven cases have priority over the present case.

1. *United States v. Cabrie*, No ACM 40615 – The ROT is 3 volumes and consists of 5 Prosecution Exhibits, 6 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 138 pages. Appellant is not currently confined. Counsel has begun drafting the AOE.

2. *United States v. Capers*, No ACM 40641 – The electronic ROT is 1 volume and consists of 3 Prosecution Exhibits, 5 Defense Exhibits, 14 Appellate Exhibits, and 4 Court Exhibits; the transcript is 405 pages. Counsel has begun, but not completed, her review of the record of trial.

3. *United States v. Griffin*, No ACM 40641 – The ROT is 6 volumes and consists of 24 Prosecution Exhibits, 29 Defense Exhibits, 30 Appellate Exhibits, and 1 Court Exhibits; the transcript is 605 pages. Appellant is currently confined. Counsel has begun, but not completed, her review of the record of trial.

4. *United States v. Anderson*, No. ACM 40654 – The ROT is 12 volumes and consists of 15 Prosecution Exhibits, 14 Defense Exhibits, and 96 Appellate Exhibits; the transcript is 1229 pages. Appellant is currently confined. Although this case was docketed on 13 August 2024, undersigned counsel has prioritized this case to keep pace with the Appellant's civilian counsel.

5. *United States v. Hooker*, No. ACM 40646 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

6. *United States v. Roedel*, No. ACM 40662 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

7. *United States v. Coley*, No. ACM 40675 – The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined.

8. *United States v. Nesbitt*, No. ACM 40679 - The electronic ROT is 6 volumes and consists of 6 Prosecution Exhibits, 0 Defense Exhibits, 65 Appellate Exhibits, and 2 Court Exhibits; the transcript is 373 pages. Appellant is currently confined.

9. *United States v. Osorno*, No. ACM S32792 - The ROT is 2 volumes and consists of 3 Prosecution Exhibits, 4 Defense Exhibits, and 9 Appellate Exhibits; the transcript is 81 pages. Appellant is not currently confined.

10. *United States v. Szabo*, No. ACM 40590 - The ROT is 12 volume and consists of 7 Prosecution Exhibits, 35 Defense Exhibits, and 121 Appellate Exhibits; the transcript is 1495 pages. Appellant is not currently confined.

11. *United States v. Hughes*, No. ACM 24066 - The electronic ROT is 1 volume and consists of 6 Prosecution Exhibits, 8 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 172 pages. Appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow

counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,



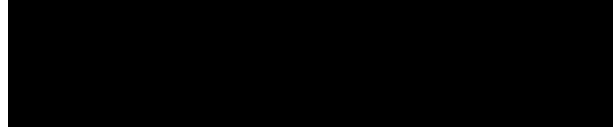
JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel



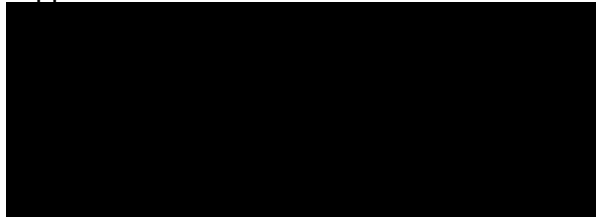
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Appellate Defense Counsel

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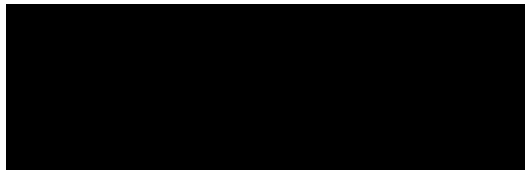
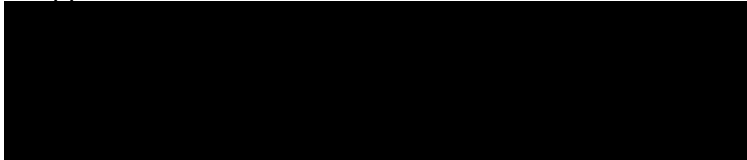
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
CALEB L. LUCAS,	)	No. ACM 40702
United States Air Force.	)	
<i>Appellant</i>	)	18 April 2025

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

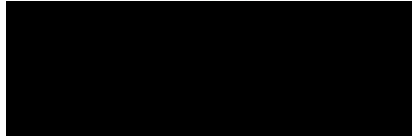
Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignments of Error in this case.

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

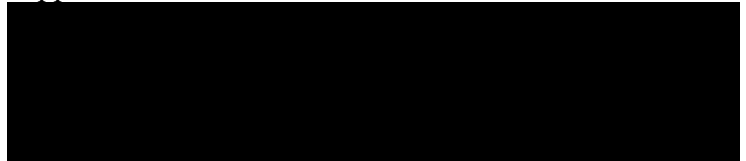

JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel


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JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (FIFTH)
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40702
CALEB L. LUCAS,	)	
United States Air Force,	)	15 May 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m)(1) and (3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **25 June 2025**. Appellant's appeal was docketed with this Court on 28 October 2024. From the date of docketing to the present date 199 days have elapsed. On the date requested 240 days will have elapsed since docketing.

On 23 July 2024, a general court-martial consisting of a military judge alone at Nellis Air Force Base, Nevada, found Appellant guilty, inconsistent to his pleas, of one charge and one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ).¹ Record of Trial (ROT), Entry of Judgment (EOJ), dated 13 August 2024; Record (R.) at 159. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, restricted to Nellis Air Force Base for two months, and discharged bad conduct discharge. R. at 187; EOJ. The Convening Authority took no action on the



GRANTED
19 MAY 2025

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findings or sentence. ROT, Convening Authority Decision on Action – *United States v. SrA Calab L. Lucas*, dated 6 Aug 2024.

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The undersigned counsel is currently assigned 25 cases; 21 cases are pending before this Court (20 cases are pending AOE). To date, ten cases have priority over the present case.

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3. *United States v. Hooker*, No. ACM 40646 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

4. *United States v. Roedel*, No. ACM 40662 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

5. *United States v. Coley*, No. ACM 40675 – The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined.

6. *United States v. Nesbitt*, No. ACM 40679 - The electronic ROT is 6 volumes and consists of 6 Prosecution Exhibits, 0 Defense Exhibits, 65 Appellate Exhibits, and 2 Court Exhibits; the transcript is 373 pages. Appellant is currently confined.

7. *United States v. Osorno*, No. ACM S32792 - The ROT is 2 volumes and consists of 3 Prosecution Exhibits, 4 Defense Exhibits, and 9 Appellate Exhibits; the transcript is 81 pages. Appellant is not currently confined.

8. *United States v. Szabo*, No. ACM 40590 - The ROT is 12 volume and consists of 7 Prosecution Exhibits, 35 Defense Exhibits, and 121 Appellate Exhibits; the transcript is 1495 pages. Appellant is not currently confined.

10. *United States v. Hughes*, No. ACM 24066 - The electronic ROT is 1 volume and consists of 6 Prosecution Exhibits, 8 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 172 pages. Appellant is not currently confined.

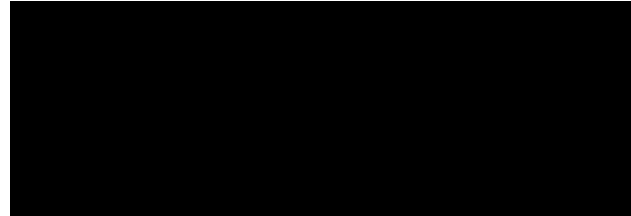
Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

A solid black rectangular box used to redact the signature of the Appellate Defense Counsel.

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

A solid black rectangular box used to redact the contact information of the Appellate Defense Counsel.

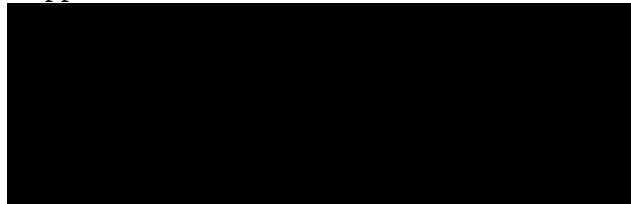
CERTIFICATE OF FILING AND SERVICE

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 15 May 2025.

Respectfully submitted,

A solid black rectangular box used to redact the signature of Joyclin N. Webster.

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

A large solid black rectangular box used to redact contact information, likely a phone number and email address.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
CALEB L. LUCAS,	)	No. ACM 40702
United States Air Force.	)	
<i>Appellant</i>	)	19 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 general opposition to Appellant's Motion for Enlargement of Time to file an Assignments 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

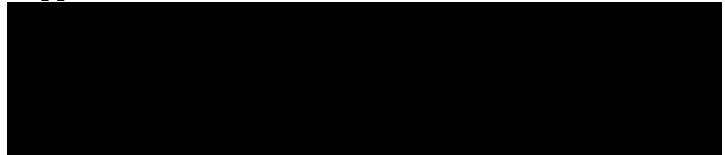
[REDACTED]

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 May 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (SIXTH)
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40702
CALEB L. LUCAS,	)	
United States Air Force,	)	16 June 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m)(1) and (3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **25 July 2025**. Appellant's appeal was docketed with this Court on 28 October 2024. From the date of docketing to the present date 231 days have elapsed. On the date requested 270 days will have elapsed since docketing.

On 23 July 2024, a general court-martial consisting of a military judge alone at Nellis Air Force Base, Nevada, found Appellant guilty, inconsistent to his pleas, of one charge and one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ).¹ Record of Trial (ROT), Entry of Judgment (EOJ), dated 13 August 2024; Record (R.) at 159. The military judge sentenced Appellant to be reprimanded, reduced to grade of E-1, restricted to Nellis Air Force Base for two months, and discharged with a full discharge. R. at 187; EOJ. The Convening Authority took no action on the



GRANTED
20 JUN 2025

¹ Appellate was acquitted of the remaining specification. R. at 159.

findings or sentence. ROT, Convening Authority Decision on Action – *United States v. SrA Calab L. Lucas*, dated 6 Aug 2024.

The electronic ROT is 5 volumes and consists of 11 Prosecution Exhibits, 3 Defense Exhibits, and 16 Appellate Exhibits; the transcript is 187 pages. Appellant is not currently confined.

The undersigned counsel is currently assigned 27 cases; 18 cases are pending before this Court (20 cases are pending AOE). To date, eight cases have priority over the present case.

1. *United States v. Griffin*, No ACM 40641 – The ROT is 6 volumes and consists of 24 Prosecution Exhibits, 29 Defense Exhibits, 30 Appellate Exhibits, and 1 Court Exhibits; the transcript is 605 pages. Appellant is currently confined. Counsel has begun, but not completed, her review of the record of trial.

2. *United States v. Hooker*, No. ACM 40646 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

3. *United States v. Roedel*, No. ACM 40662 – The electronic ROT is 1 volume and consists of 1 Prosecution Exhibits, 0 Defense Exhibits, and 11 Appellate Exhibits; the transcript is 1242 pages. Appellant is currently confined.

4. *United States v. Coley*, No. ACM 40675 – The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined.

5. *United States v. Nesbitt*, No. ACM 40679 - The electronic ROT is 6 volumes and consists of 6 Prosecution Exhibits, 0 Defense Exhibits, 65 Appellate Exhibits, and 2 Court Exhibits; the transcript is 373 pages. Appellant is currently confined.

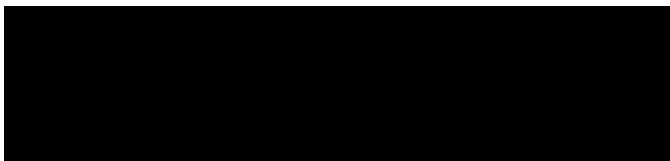
6. *United States v. Osorno*, No. ACM S32792 - The ROT is 2 volumes and consists of 3 Prosecution Exhibits, 4 Defense Exhibits, and 9 Appellate Exhibits; the transcript is 81 pages. Appellant is not currently confined.

7. *United States v. Szabo*, No. ACM 40590 - The ROT is 12 volume and consists of 7 Prosecution Exhibits, 35 Defense Exhibits, and 121 Appellate Exhibits; the transcript is 1495 pages. Appellant is not currently confined.

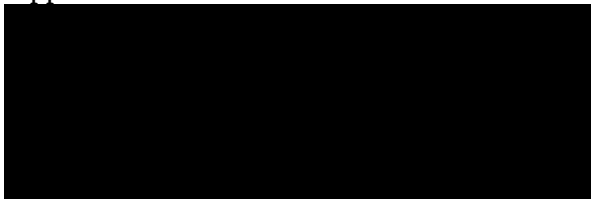
8. *United States v. Hughes*, No. ACM 24066 - The electronic ROT is 1 volume and consists of 6 Prosecution Exhibits, 8 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 172 pages. Appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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



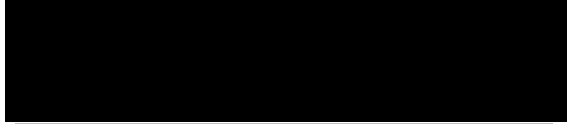
JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel



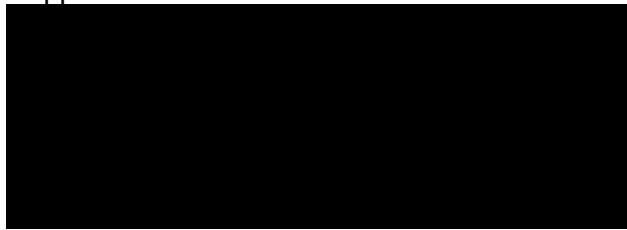
CERTIFICATE OF FILING AND SERVICE

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 June 2025.

Respectfully submitted,

A solid black rectangular box used to redact the signature of Joyclin N. Webster.

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

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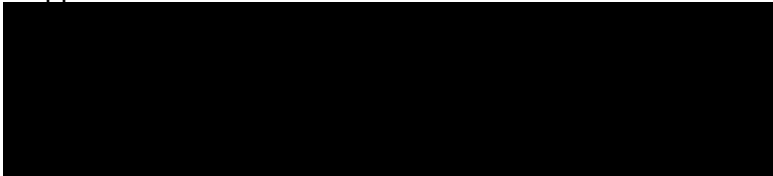
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
CALEB L. LUCAS,	)	No. ACM 40702
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	18 June 2025

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

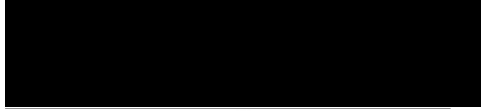
Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

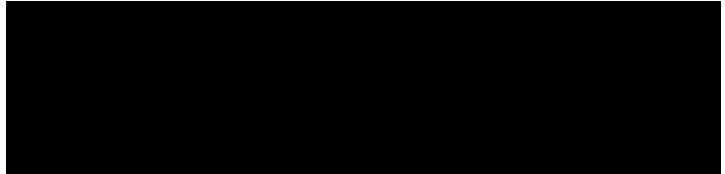

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel


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 June 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (SEVENTH)
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40702
CALEB L. LUCAS,	)	
United States Air Force,	)	16 July 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m)(1) and (3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **24 August 2025**. Appellant's appeal was docketed with this Court on 28 October 2024. From the date of docketing to the present date 261 days have elapsed. On the date requested 300 days will have elapsed since docketing.

On 23 July 2024, a general court-martial consisting of a military judge alone at Nellis Air Force Base, Nevada, found Appellant guilty, inconsistent to his pleas, of one charge and one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ).¹ Record of Trial (ROT), Entry of Judgment (EOJ), dated 12 August 2024; Record (R.) at 159. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, restricted to Nellis Air Force Base for two months, and discharged with an administrative discharge. R. at 187; EOJ. The Convening Authority took no action on the



GRANTED

17 JULY 2025

¹ Appellate was acquitted of the remaining specification. R. at 159.

findings or sentence. ROT, Convening Authority Decision on Action – *United States v. SrA Calab L. Lucas*, dated 6 Aug 2024.

The electronic ROT is 5 volumes and consists of 11 Prosecution Exhibits, 3 Defense Exhibits, and 16 Appellate Exhibits; the transcript is 187 pages. Appellant is not currently confined.

The undersigned counsel is currently assigned 27 cases; 18 cases are pending before this Court (18 cases are pending AOE). To date, one case before the Court of Appeals for the Armed Forces take priority over this case: *United States v. Menard*. The Court of Appeals for the Armed Forces has ordered a brief be filed no later than 29 July 25.

To date, six cases at this Court has priority over the present case: *United States v. Griffin*, No ACM 40641 – The ROT is 6 volumes and consists of 24 Prosecution Exhibits, 29 Defense Exhibits, 30 Appellate Exhibits, and 1 Court Exhibits; the transcript is 605 pages. Appellant is currently confined. Counsel is finalizing the AOE.

2. *United States v. Roedel*, No. ACM 40662 – The electronic ROT is 1 volume and consists of 1 Prosecution Exhibits, 0 Defense Exhibits, and 11 Appellate Exhibits; the transcript is 1242 pages. Appellant is currently confined.

3. *United States v. Coley*, No. ACM 40675 – The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined.

4. *United States v. Nesbitt*, No. ACM 40679 - The electronic ROT is 6 volumes and consists of 6 Prosecution Exhibits, 0 Defense Exhibits, 65 Appellate Exhibits, and 2 Court Exhibits; the transcript is 373 pages. Appellant is currently confined.

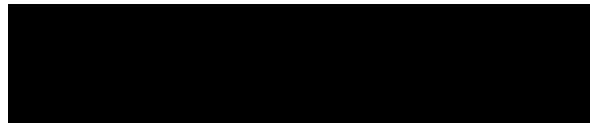
5. *United States v. Szabo*, No. ACM 40590 - The ROT is 12 volume and consists of 7 Prosecution Exhibits, 35 Defense Exhibits, and 121 Appellate Exhibits; the transcript is 1495 pages. Appellant is not currently confined.

6. *United States v. Hughes*, No. ACM 24066 - The electronic ROT is 1 volume and consists of 6 Prosecution Exhibits, 8 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 172 pages. Appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,



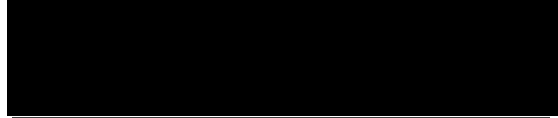
JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel



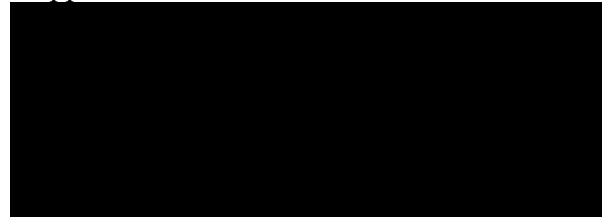
CERTIFICATE OF FILING AND SERVICE

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,

A solid black rectangular box used to redact the signature of Joyclin N. Webster.

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
CALEB L. LUCAS,	)	No. ACM 40702
United States Air Force,	)	
<i>Appellant.</i>	)	17 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 hereby enters its opposition to Appellant’s Motion for Enlargement of Time to file an Assignment of Error in this case.

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

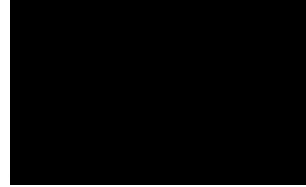


KATE E. LEE, Maj, USAF
Appellate Government Counsel

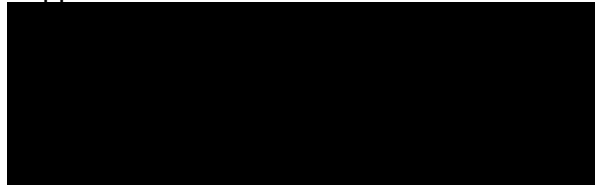


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 17 July 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (EIGHT)
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40702
CALEB L. LUCAS,	)	
United States Air Force,	)	15 August 2025
<i>Appellant.</i>	)	

Pursuant to Rule 23.3(m)(1) and (3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **23 September 2025**. Appellant’s appeal was docketed with this Court on 28 October 2024. From the date of docketing to the present date 291 days have elapsed. On the date requested 330 days will have elapsed since docketing.

On 23 July 2024, a general court-martial consisting of a military judge alone at Nellis Air Force Base, Nevada, found Appellant guilty, inconsistent to his pleas, of one charge and one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ).¹ Record of Trial (ROT), Entry of Judgment (EOJ), dated 13 August 2024; Record (R.) at 159. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, restricted to Nellis Air Force Base for two months', and discharged from the service with a bad conduct discharge. R. at 187; EOJ. The Convening Authority took



¹ Appellate was acquitted of the remaining specification. R. at 159.

GRANTED

21 AUG 2025

no action on the findings or sentence. ROT, Convening Authority Decision on Action – *United States v. SrA Calab L. Lucas*, dated 6 Aug 2024.

The electronic ROT is 5 volumes and consists of 11 Prosecution Exhibits, 3 Defense Exhibits, and 16 Appellate Exhibits; the transcript is 187 pages. Appellant is not currently confined. Counsel has not reviewed the record of trial in this case.

The undersigned counsel is currently assigned twenty-nine cases; twenty-one cases are pending before this Court (sixteen cases are pending AOE's). To date, one case before the Court of Appeals for the Armed Forces takes priority over this case: *United States v. Menard*. Counsel is finalizing the brief and will file with the court on 18 August 25.

To date, five cases before this Court have priority over the present case.

1. *United States v. Roedel*, No. ACM 40662 – The electronic ROT is 1 volume and consists of 1 Prosecution Exhibits, no Defense Exhibits, 11 Appellate Exhibits, and 1242 pages; the transcript is 65 pages. Appellant is currently confined. Counsel has reviewed the transcript in this case. The Government has responded to this Court's 1 August 25 show cause order acknowledging the need for this case to be remanded for correction.

2. *United States v. Coley*, No. ACM 40675 – The electronic ROT is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, 17 Appellate Exhibits; and is 736 pages; the transcript is 124 pages. Appellant is currently confined. Counsel has not reviewed the record of trial in this case.

3. *United States v. Nesbitt*, No. ACM 40679 - The electronic ROT is 6 volumes and consists of 6 Prosecution Exhibits, no Defense Exhibits, 65 Appellate Exhibits, 2 Court Exhibits, and is 1272 pages; the transcript is 373 pages. Appellant is currently confined. Counsel has not reviewed the record of trial in this case.

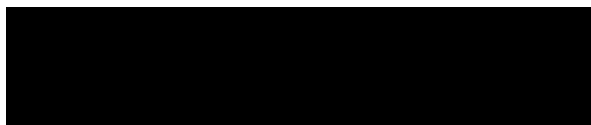
4. *United States v. Szabo*, No. ACM 40590 - The ROT is 12 volume and consists of 7 Prosecution Exhibits, 35 Defense Exhibits, and 121 Appellate Exhibits; the transcript is 1495 pages. Appellant is not currently confined. Counsel has not reviewed the record of trial in this case.

5. *United States v. Hughes*, No. ACM 24066 - The electronic ROT is 1 volume and consists of 6 Prosecution Exhibits, 8 Defense Exhibits, 12 Appellate Exhibits, and is 682 pages; the transcript is 172 pages. Appellant is not currently confined. Counsel has not reviewed the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

A large black rectangular redaction box covering the signature of the undersigned counsel.

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

A large black rectangular redaction box covering the contact information of the undersigned counsel.

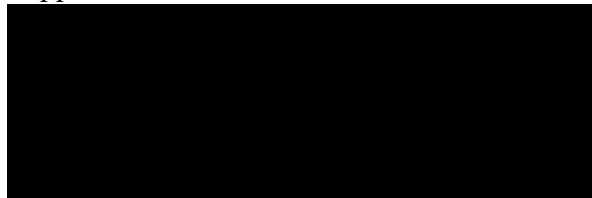
CERTIFICATE OF FILING AND SERVICE

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 15 August 2025.

Respectfully submitted,

A solid black rectangular box used to redact the signature of Joyclin N. Webster.

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

A solid black rectangular box used to redact the contact information of Joyclin N. Webster.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
CALEB L. LUCAS,	)	No. ACM 40702
United States Air Force,	)	
<i>Appellant.</i>	)	19 August 2025
	)	

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

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

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

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

[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

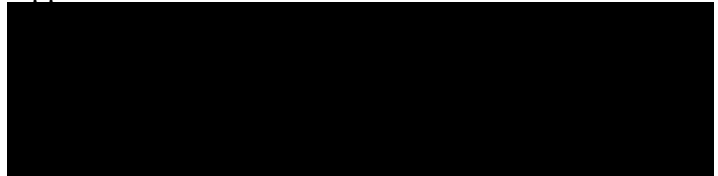
[REDACTED]

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 August 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (NINE)
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40702
CALEB L. LUCAS,	)	
United States Air Force,	)	15 September 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m)(1) and (3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **23 October 2025**. Appellant's appeal was docketed with this Court on 28 October 2024. From the date of docketing to the present date 322 days have elapsed. On the date requested 360 days will have elapsed since docketing.

On 23 July 2024, a general court-martial consisting of a military judge alone at Nellis Air Force Base, Nevada, found Appellant guilty, inconsistent to his pleas, of one charge and one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ).¹ Record of Trial (ROT), Entry of Judgment (EOJ), dated 13 August 2024; Record (R.) at 159. The military judge sentenced Appellant to be reprimanded,



ie grade of E-1, restricted to Nellis Air Force Base for two months', and discharged
vice with a bad conduct discharge. R. at 187; EOJ. The Convening Authority took

GRANTED
18 SEP 2025

¹ Appellate was acquitted of the remaining specification. R. at 159.

no action on the findings or sentence. ROT, Convening Authority Decision on Action – *United States v. SrA Calab L. Lucas*, dated 6 Aug 2024.

The electronic ROT is 5 volumes and consists of 11 Prosecution Exhibits, 3 Defense Exhibits, and 16 Appellate Exhibits; the transcript is 187 pages. Appellant is not currently confined. Counsel has not reviewed the record of trial in this case.

The undersigned counsel is currently assigned twenty-nine cases; twenty-two cases are pending before this Court (eighteen cases are pending AOE). To date, three cases before this Court have priority over the present case.

1. *United States v. Coley*, No. ACM 40675 – The electronic ROT is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, 17 Appellate Exhibits; and is 736 pages; the transcript is 124 pages. Appellant is currently confined. Counsel has reviewed the record of trial in this case and is working on the AOE.

2. *United States v. Nesbitt*, No. ACM 40679 - The electronic ROT is 6 volumes and consists of 6 Prosecution Exhibits, no Defense Exhibits, 65 Appellate Exhibits, 2 Court Exhibits, and is 1272 pages; the transcript is 373 pages. Appellant is currently confined. Counsel has not reviewed the record of trial in this case.

3. *United States v. Szabo*, No. ACM 40590 - The ROT is 12 volume and consists of 7 Prosecution Exhibits, 35 Defense Exhibits, and 121 Appellate Exhibits; the transcript is 1495 pages. Appellant is not currently confined. Counsel has not reviewed the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors.

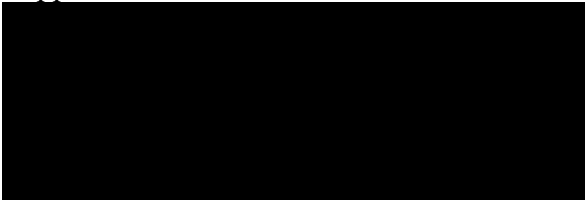
Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

A black rectangular redaction box covering the signature of Joyclin N. Webster.

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

A large black rectangular redaction box covering the contact information of Joyclin N. Webster.

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 15 September 2025.

Respectfully submitted,

A large black rectangular redaction box covering the signature of Joyclin N. Webster.

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

A large black rectangular redaction box covering the contact information of Joyclin N. Webster.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
CALEB L. LUCAS,	)	No. ACM 40702
United States Air Force,	)	
<i>Appellant.</i>	)	16 September 2025
	)	

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

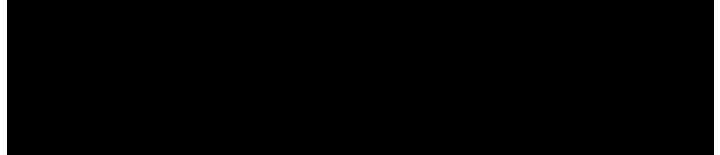
Pursuant to Rule 23.2 of this Court’s Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant’s Motion for Enlargement of Time to file an Assignment of Error in this case.

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

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



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

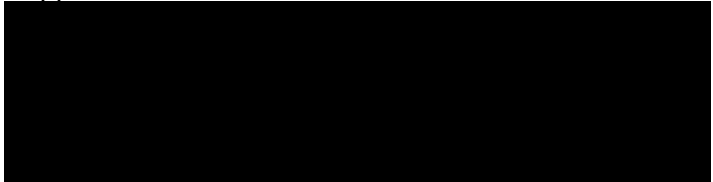


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 16 September 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (TENTH)
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40702
CALEB L. LUCAS,	)	
United States Air Force,	)	16 October 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m)(1) and (3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **22 November 2025**. Appellant's appeal was docketed with this Court on 28 October 2024. From the date of docketing to the present date 353 days have elapsed. On the date requested 390 days will have elapsed since docketing.

On 23 July 2024, a general court-martial consisting of a military judge alone at Nellis Air Force Base, Nevada, found Appellant guilty, inconsistent to his pleas, of one charge and one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ).¹ Record of Trial (ROT), Entry of Judgment (EOJ), dated 13 August 2024; Record (R.) at 159. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, restricted to Nellis Air Force Base for two months, and discharged from the service with a bad conduct discharge. R. at 187; EOJ. The Convening Authority took no action on the findings or sentence. ROT, Convening Authority Decision on Action – *United v. SrA Calab L. Lucas*, dated 6 Aug 2024.



llate was acquitted of the remaining specification. R. at 159.

GRANTED
23 OCT 2025

The electronic ROT is five volumes and consists of 11 Prosecution Exhibits, 3 Defense Exhibits, and 16 Appellate Exhibits; the transcript is 187 pages. Appellant is not currently confined. Counsel has not reviewed the record of trial in this case.

The undersigned counsel is currently assigned twenty-nine cases; twenty-two cases are pending before this Court (seventeen cases are pending AOE's). To date, two cases before this Court have priority over the present case.²

1. *United States v. Nesbitt*, No. ACM 40679 - The electronic ROT is 6 volumes and consists of 6 Prosecution Exhibits, no Defense Exhibits, 65 Appellate Exhibits, 2 Court Exhibits, and is 1272 pages; the transcript is 373 pages. Appellant is currently confined. Counsel is in the process of reviewing the record of trial in this case.

2. *United States v. Szabo*, No. ACM 40590 - The ROT is 12 volume and consists of 7 Prosecution Exhibits, 35 Defense Exhibits, and 121 Appellate Exhibits; the transcript is 1495 pages. Appellant is not currently confined. Counsel has not reviewed the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

² Since the filing of Appellant's last motion for an enlargement of time, before the Court of Appeals for the Armed Forces counsel filed a reply brief in *United States v. Menard*, Dkt. No. 25-0173. Additionally, counsel has also filed supplements and petitions in both *United States v. Tompkins*, Dkt. No. 25-0278 and *United States v. Capers*, Dkt. No. 25-0264. Before this court, counsel has filed a reply in *United States v. Anderson*, ACM 40752; and filed briefs in *United States v. Allen*, ACM 40809, and *United States v. Coley*, ACM 40675.

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

Respectfully submitted,

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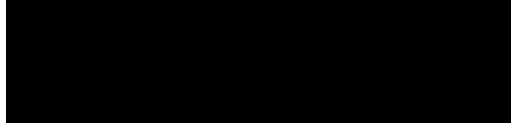
JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

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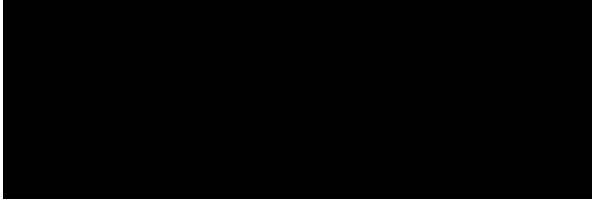
CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

A black rectangular redaction box covering the signature of Joyclinn N. Webster.

JOYCLINN. WEBSTER, Capt, USAF
Appellate Defense Counsel

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

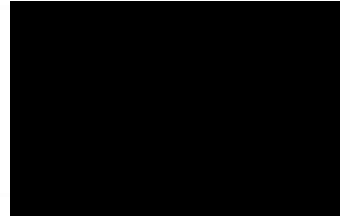
UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	Before Panel No. 1
CALEB L. LUCAS,	)	
United States Air Force,	)	No. ACM 40702
<i>Appellant.</i>	)	
	)	20 October 2025
	)	

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

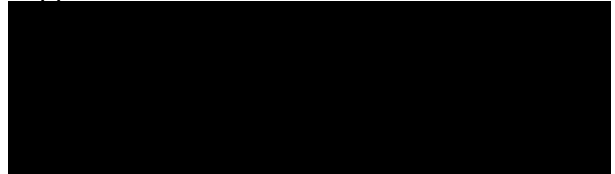
Pursuant to Rule 23.2 of this Court’s Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant’s Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 390 days in length. Appellant’s over 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 more than two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 5 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not completed review of the record at this late stage in the process.

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

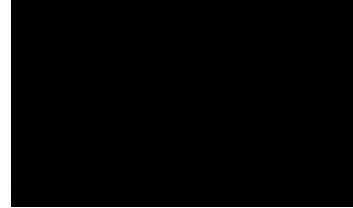


KATE E. LEE, Maj, USAF
Appellate Government Counsel



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 October 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



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

UNITED STATES	)	No. ACM 40702
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Caleb L. LUCAS	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 1

On 12 November 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Eleventh) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure. Accordingly, it is by the court on this 17th day of November, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (Eleventh) is **GRANTED**. Appellant shall file any assignments of error not later than 22 December 2025.

Appellant's counsel is advised that given the number of enlargements granted to date, the court will continue to closely examine any further requests for an enlargement of time. Further requests for an enlargement of time may necessitate a status conference.



FOR THE COURT

[Redacted Signature]

JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (ELEVEN)
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40702
CALEB L. LUCAS,	)	
United States Air Force,	)	12 November 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m)(1) and (3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **22 December 2025**. Appellant’s appeal was docketed with this Court on 28 October 2024. From the date of docketing to the present date 380 days have elapsed. On the date requested 420 days will have elapsed since docketing.

On 23 July 2024, a general court-martial consisting of a military judge alone at Nellis Air Force Base, Nevada, found Appellant guilty, inconsistent to his pleas, of one charge and one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ).¹ Record of Trial (ROT), Entry of Judgment (EOJ), dated 13 August 2024; Record (R.) at 159. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, restricted to Nellis Air Force Base for two months’, and discharged from the service with a bad conduct discharge. R. at 187; EOJ. The Convening Authority took

¹ Appellate was acquitted of the remaining specification. R. at 159.

no action on the findings or sentence. ROT, Convening Authority Decision on Action – *United States v. SrA Calab L. Lucas*, dated 6 Aug 2024.

The electronic ROT is five volumes and consists of eleven Prosecution Exhibits, three Defense Exhibits, and sixteen Appellate Exhibits; the transcript is 187 pages. Appellant is not currently confined. Counsel has not reviewed the record of trial in this case.

The undersigned counsel is currently assigned twenty-six cases; twenty-one cases are pending before this Court (fourteen cases are pending AOE). To date, one case before this Court has priority over the present case.²

1. *United States v. Szabo*, No. ACM 40590 - The ROT is twelve volume and consists of seven Prosecution Exhibits, thirty-five Defense Exhibits, and 121 Appellate Exhibits; the transcript is 1495 pages. Appellant is not currently confined. Counsel has not reviewed the record of trial in this case. Counsel has OCONUS leave scheduled from 14-23 November 2025. Upon her return, completing review of this case will be her first priority.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

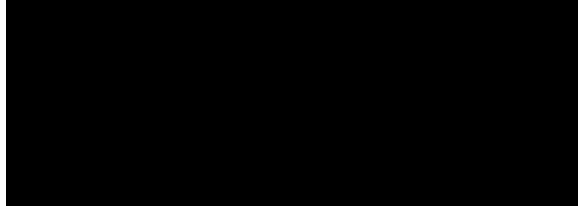
WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

² Since the filing of Appellant's last motion for an enlargement of time, counsel has filed reply briefs in *United States v. Griffin*, ACM 40642 and *United States v. Coley*, ACM 40675. Counsel also reviewed and filed a Merits Brief in *United States v. Nesbitt*, ACM 40679.

Respectfully submitted,



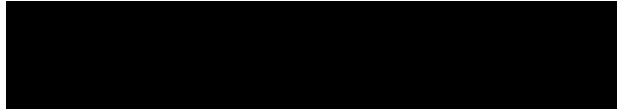
JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel



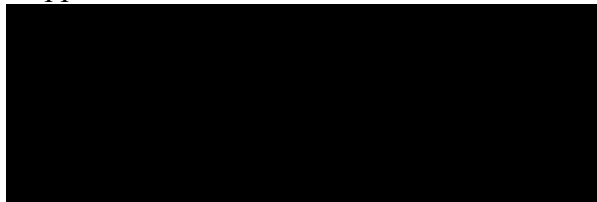
CERTIFICATE OF FILING AND SERVICE

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 12 November 2025.

Respectfully submitted,

A solid black rectangular box used to redact the signature of Joyclin N. Webster.

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
CALEB L. LUCAS,	)	No. ACM 40702
United States Air Force.	)	
<i>Appellant</i>	)	14 November 2025

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

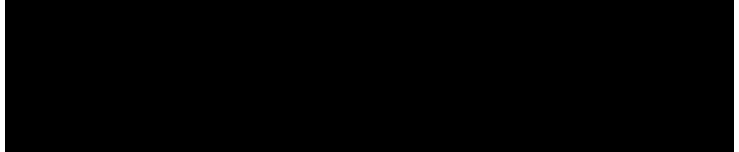
Pursuant to Rule 23.2 of this Court’s Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant’s Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over 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 420 days in length. Appellant’s over 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 more than two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 4 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

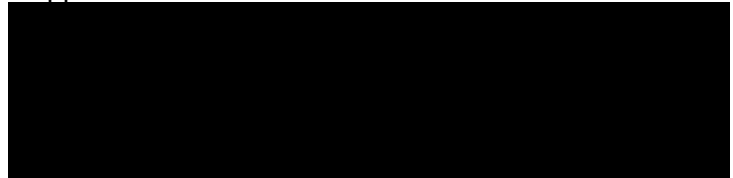


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 14 November 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (TWELVE)
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM 40702
CALEB L. LUCAS,	)	
United States Air Force,	)	15 December 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m)(1) and (3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **21 January 2026**. Appellant's appeal was docketed with this Court on 28 October 2024. From the date of docketing to the present date 413 days have elapsed. On the date requested 450 days will have elapsed since docketing.

On 23 July 2024, a general court-martial consisting of a military judge alone at Nellis Air Force Base, Nevada, found Appellant guilty, inconsistent to his pleas, of one charge and one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ).¹ Record of Trial (ROT), Entry of Judgment (EOJ), dated 13 August 2024; Record (R.) at 159. The military judge sentenced Appellant to be reprimanded,



the grade of E-1, restricted to Nellis Air Force Base for two months', and discharged service with a bad conduct discharge. R. at 187; EOJ. The Convening Authority took

GRANTED
18 DEC 2025

¹ Appellate was acquitted of the remaining specification. R. at 159.

no action on the findings or sentence. ROT, Convening Authority Decision on Action – *United States v. SrA Calab L. Lucas*, dated 6 Aug 2024.

The electronic ROT is five volumes and consists of eleven Prosecution Exhibits, three Defense Exhibits, and sixteen Appellate Exhibits; the transcript is 187 pages. Appellant is not currently confined. Counsel has not reviewed the record of trial in this case.

The undersigned counsel is currently assigned twenty-one cases; thirteen cases are pending before this Court (nine cases are pending AOE). To date, one case before this Court has priority over the present case.²

1. *United States v. Szabo*, No. ACM 40590 - The ROT is twelve volume and consists of seven Prosecution Exhibits, thirty-five Defense Exhibits, and 121 Appellate Exhibits; the transcript is 1495 pages. Appellant is not currently confined. Counsel has reviewed the record of trial in this case and intends to file the AOE on 24 December 2025. As this case was docketed on 30 September 2024, it has priority over the present case.

Based on the undersigned counsel's workload, it is not feasible for her to adequately complete a review and file a quality brief on behalf of Appellant by 22 December 2025. The undersigned counsel is also actively preparing for an oral argument in *United States v. Menard*, USCA Dkt. No. 25-0173/AF, before the United State Court of Criminal Appeals. The oral argument is scheduled for 13 January 2026. Counsel will strive to review as much of the present case as possible while preparing for her oral argument in *Menard*; however, the oral argument must take precedence over drafting the AOE in the present case. As such, an enlargement of time

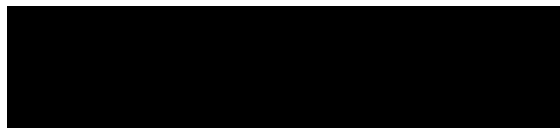
² Since the filing of Appellant's last motion for an enlargement of time, counsel has filed a Motion for Leave to File and Motion for Recusal and Motion to Attach in *United States v. Pettigrew*, ACM No. 40790 (f rev). Counsel has filed a Reply Brief in *United States v. Allen*, ACM No. 40809. Counsel has also reviewed the 18 volume ROT in *United States v. Szabo*, ACM No. 40680, the only case with priority over the present case.

until 21 January 2026 will allow counsel sufficient time to file the AOE in *Szabo*, prepare and present oral arguments in *Menard*, and review and draft adequate brief in the present case.

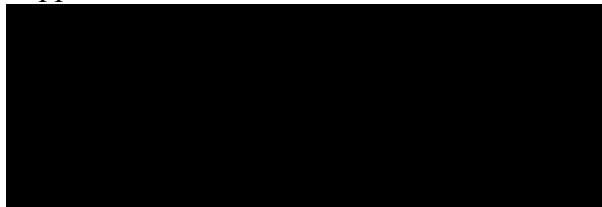
Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,



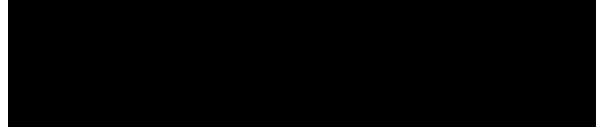
JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel



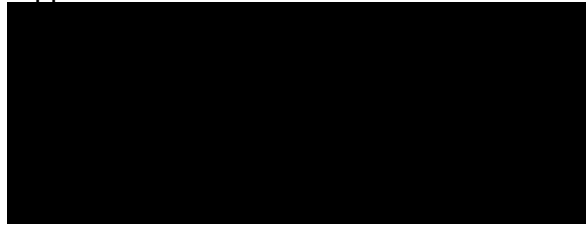
CERTIFICATE OF FILING AND SERVICE

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 15 December 2025.

Respectfully submitted,

A large black rectangular redaction box covering the signature of Joyclin N. Webster.

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

A large black rectangular redaction box covering the contact information of Joyclin N. Webster.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	Before Panel No. 1
CALEB L. LUCAS,	)	
United States Air Force,	)	No. ACM 40702
<i>Appellant.</i>	)	
	)	17 December 2025
	)	

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over 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 450 days in length. Appellant’s over 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 more than two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 3 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.



KATE E. LEE, Maj, USAF
Appellate Government Counsel

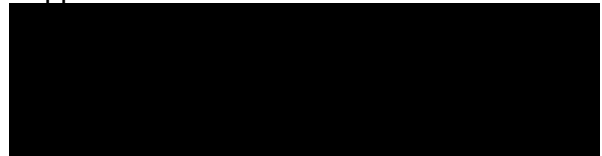


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 17 December 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	CONSENT MOTION
	)	TO EXAMINE SEALED
	)	MATERIALS
v.	)	
	)	Before Panel No. 1
	)	
Senior Airman (E-4),	)	No. ACM 40702
CALEB L. LUCAS,	)	
United States Air Force,	)	5 January 2026
<i>Appellant.</i>	)	

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

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B) and Rules 3.1 and 23.3(f)(1) of this Court’s Rules of Practice and Procedure, undersigned counsel hereby moves this Court to permit appellate counsel for the Appellant and the Government to examine Prosecution Exhibits V and VI, contraband material 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 matters is reasonably necessary to appellate counsels’ responsibilities, undersigned counsel asserts that review of the referenced exhibits is necessary to conduct a complete review of the record of trial and be able to advocate competently on behalf of Appellant.

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

Although Courts of Criminal Appeals have a broad mandate to review the record unconstrained by an appellant’s assignments of error, that broad mandate does not reduce the importance of adequate representation. As we said in *United States v.*

Ortiz, 24 M.J. 323, 325 (C.M.A. 1987), independent review is not the same as competent appellate representation.

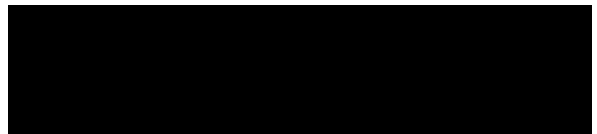
United States v. May, 47 M.J. 478, 481 (C.A.A.F. 1998).

At trial, the military judge, trial counsel, and defense counsel reviewed both Prosecution Exhibit V and VI. The sealed materials here must be reviewed for counsel to provide “competent appellate representation.” *Id.* Viewing these exhibits is reasonably necessary to determine whether Appellant is entitled to relief due to errors concerning the substance during the proceedings. Therefore, undersigned counsel’s examination of the sealed materials is reasonably necessary to fulfill her responsibilities in this case as counsel cannot perform her duty of representation under Article 70, UCMJ, 10 U.S.C. § 870, or fulfill her duty to provide effective assistance of counsel without first reviewing the complete record of trial.

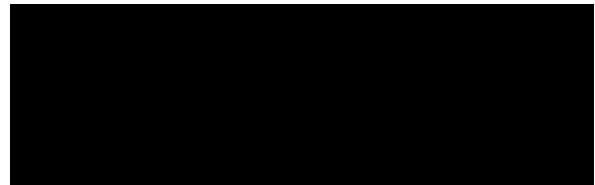
Appellate Government Counsel have been consulted about this motion and consent to the relief sought by Appellant.

WHEREFORE, Appellant respectfully requests this Court grant this motion.

Respectfully Submitted,



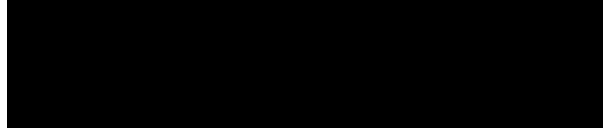
JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel



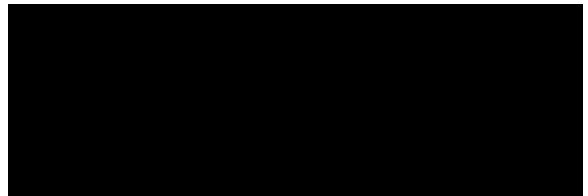
CERTIFICATE OF FILING AND SERVICE

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 5 January 2026.

Respectfully Submitted,

A large black rectangular redaction box covering the signature of Joyclin N. Webster.

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

A large black rectangular redaction box covering the contact information of Joyclin N. Webster.

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

UNITED STATES	)	No. ACM 40702
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Caleb L. LUCAS	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 1

On 5 January 2026, counsel for Appellant submitted a Consent Motion to Examine Sealed Materials. Specifically, counsel seeks to examine Prosecution Exhibits V and VI. The items were reviewed by trial counsel and trial defense counsel at trial.

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* (2024 ed.).

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

Accordingly, it is by the court on this 5th day of January 2026,

ORDERED:

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

Appellate defense counsel and appellate government counsel may view **Prosecution Exhibits V and VI**, subject to the following conditions:

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

It is further ordered:

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



FOR THE COURT



JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

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

UNITED STATES	)	No. ACM 40702
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Caleb L. LUCAS	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 1

On 12 January 2026, counsel for Appellant submitted a Motion for Enlargement of Time (Thirteenth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposed 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 15th day of January, 2026,

ORDERED:

Appellant's Motion for Enlargement of Time (Thirteenth) is **GRANTED**. Appellant shall file any assignments of error not later than **20 February 2026**.

It is further ordered:

At the time of filing any further enlargements of time, in addition to matters required by the court's rules and by prior orders of the court, Appellant's counsel will also identify the assignments of error Appellant reasonably expects to raise to the court, recognizing such identification will not bind or constrain Appellant with respect to which assignments he ultimately raises.



FOR THE COURT



JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT'S MOTION FOR
<i>Appellee</i>	)	ENLARGEMENT OF TIME
	)	(THIRTEENTH)
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
CALEB L. LUCAS	)	No. ACM 40702
United States Air Force	)	
<i>Appellant</i>	)	12 January 2026

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **20 February 2026**. The record of trial was docketed with this Court on 28 October 2024. From the date of docketing to the present date, 441 days have elapsed. On the date requested, 480 days will have elapsed.

On 24 June 2024 and 22-23 July 2024, Appellant was tried by a general court-martial composed of a military judge alone at Nellis Air Force Base, Nevada. Trial Tr. 1, 17, 21, 122. Appellant was found guilty, contrary to his pleas, of one charge and one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934.¹ Trial Tr. 8-9, 23; Electronic Record of Trial (eROT) Vol 1, *Entry of Judgment* (Aug. 13, 2024).

¹ Appellant was found not guilty, consistent with his pleas, of one charge and one specification of viewing child pornography in violation of Article 134, UCMJ, 10 U.S.C. § 934.

The military judge sentenced Appellant to reduction in pay grade to E-1, two months of restriction to Nellis Air Force Base, Nevada, a reprimand, and a bad conduct discharge. Trial Tr. 197; eROT Vol 1, *Entry of Judgment* (Aug. 13, 2024). The convening authority took no action on the findings or sentence. eROT Vol 1, *Convening Authority Decision on Action* (Aug. 6, 2024).

The trial transcript is 187 pages long. The electronic record of trial contains eleven Prosecution Exhibits, three Defense Exhibits, and sixteen Appellate Exhibits. Appellant is not currently confined.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned forty-six cases; thirty-one cases are pending before this Court (twenty-nine cases are pending AOE's), one case pending before the Court of Appeals of the Armed Forces, and fourteen cases pending before the United States Supreme Court (for petition for writ of certiorari). To date, undersigned counsel has the following cases prioritized over the present case:

1. *United States v. Menard*, No. 25-0173/AF – Undersigned counsel is preparing and providing oral argument before the Court of Appeals of the Armed Forces

on 27 January 2026. Undersigned counsel was assigned to the case on 30 December 2025.

2. *United States v. Rafajko*, ACM 40821 – The record of trial is one electronic volume consisting of six prosecution exhibits, ten defense exhibits, and fifty-two appellate exhibits; the transcript is 303 pages. Undersigned counsel has identified assignments of error and plans to submit them by the end of the month.

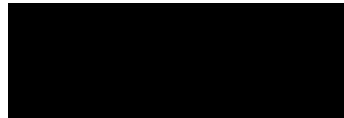
3. *United States v. Armour*, Misc. Dkt. No. 2025-10 – The record of trial is five volumes consisting of twenty-one appellate exhibits; the transcript is 118 pages. Undersigned counsel has completed a review of the record of trial. The appellant's petition to the Court of Appeals of the Armed Forces, if any, is due on 3 February 2026.

Appellant's other military appellate defense counsel, Capt Joyclin Webster, is currently unavailable for medical reasons and her future availability remains to be determined. Capt Webster remains assigned to this case, has not moved to withdraw, but has reviewed the record in this case. Her unavailability will not delay the undersigned counsel's review or briefing of Appellant's case. Capt Webster's caseload consists of thirty-six cases; thirty-one cases are pending before this Court (twenty-two cases are pending AOE's), four cases pending before the Court of Appeals for the Armed Forces, and one case pending before the United States Supreme Court (for petition for writ of certiorari). Capt Webster, before her unavailability, had no cases prioritized over the present case.

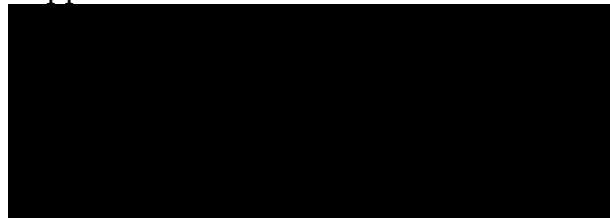
Through no fault of Appellant, undersigned counsel has been unable to complete their review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

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

Respectfully submitted,

A black rectangular redaction box covering the signature of John M. Fredericks.

JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel

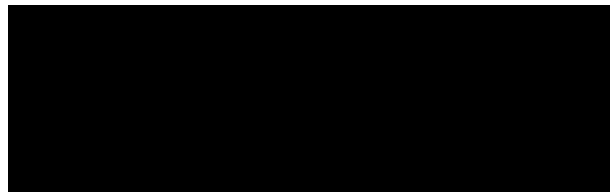
A large black rectangular redaction box covering the contact information of John M. Fredericks.

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 Air Force Government Trial and Appellate Operations Division on 12 January 2026.



JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
CALEB L. LUCAS,	)	No. ACM 40702
United States Air Force.	)	
<i>Appellant</i>	)	14 January 2026

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

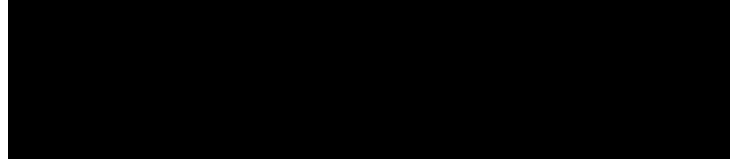
Pursuant to Rule 23.2 of this Court’s Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant’s Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over 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 480 days in length. Appellant’s over 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 more than two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 2 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

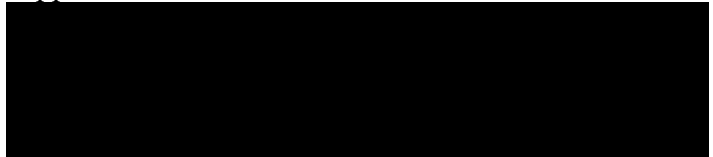


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 14 January 2026.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT'S MOTION FOR
<i>Appellee</i>	)	ENLARGEMENT OF TIME
	)	(FOURTEENTH)
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
CALEB L. LUCAS	)	No. ACM 40702
United States Air Force	)	
<i>Appellant</i>	)	12 February 2026

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **22 March 2026**. The record of trial was docketed with this Court on 28 October 2024. From the date of docketing to the present date, 472 days have elapsed. On the date requested, 510 days will have elapsed.

On 24 June 2024 and 22-23 July 2024, Appellant was tried by a general court-martial composed of a military judge alone at Nellis Air Force Base, Nevada. Trial Tr. 1, 17, 21, 122. Appellant was found guilty, contrary to his pleas, of one charge and one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934.¹ Trial Tr. 8-9, 23; Electronic Record of Trial (eROT) Vol 1, *Entry of Judgment* (Aug. 13, 2024).



DENIED
17 FEB 2026

¹ Appellant was found not guilty, consistent with his pleas, of one charge and one specification of viewing child pornography in violation of Article 134, UCMJ, 10 U.S.C. § 934.

The military judge sentenced Appellant to reduction in pay grade to E-1, two months of restriction to Nellis Air Force Base, Nevada, a reprimand, and a bad conduct discharge. Trial Tr. 197; eROT Vol 1, *Entry of Judgment* (Aug. 13, 2024). The convening authority took no action on the findings or sentence. eROT Vol 1, *Convening Authority Decision on Action* (Aug. 6, 2024).

The trial transcript is 187 pages long. The electronic record of trial contains eleven Prosecution Exhibits, three Defense Exhibits, and sixteen Appellate Exhibits. Appellant is not currently confined.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned forty-one cases; thirty-nine cases are pending before this Court (thirty-seven cases are pending AOE's) and two cases are pending before the Court of Appeals for the Armed Forces. Additionally, undersigned counsel is attending Squadron Officer School from 23 February 2026 to 27 March 2026. To date, undersigned counsel has the following cases prioritized over the present case:

1. *United States v. Rafajko*, ACM 40821 – The record of trial is one electronic volume consisting of six prosecution exhibits, ten defense exhibits, and fifty-

two appellate exhibits; the transcript is 303 pages. Undersigned counsel has filed the Brief on Behalf of Appellant, which is currently awaiting answer.

2. *United States v. Armour*, Misc. Dkt. No. 2025-10 – The record of trial is five volumes consisting of twenty-one appellate exhibits; the transcript is 118 pages. Undersigned counsel has submitted a petition to the Court of Appeals of the Armed Forces, which is currently awaiting answer.

Appellant's other military appellate defense counsel, Capt Joyclin Webster, returned from medical leave on 9 February 2026, remains assigned to this case, and has reviewed the record in this case. Capt Webster's caseload consists of thirteen cases; seven cases are pending before this Court (three cases are pending AOE's), five cases pending before the Court of Appeals for the Armed Forces. Capt Webster has no cases prioritized over the present case.

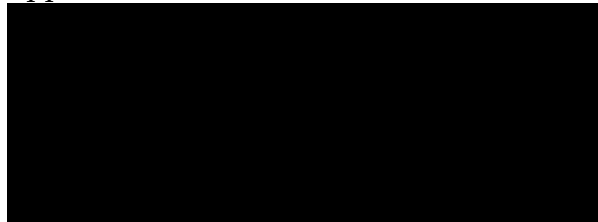
Through no fault of Appellant, undersigned counsel has been unable to complete an assignment of error in Appellant's case. Undersigned counsel has completed a review of the record of trial and has identified potential assignments of error that will require more time to finalize; Appellant reasonably expects to raise challenges to legal and factual sufficiency. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

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

Respectfully submitted,

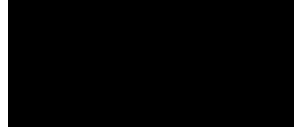
A black rectangular redaction box covering the signature of John M. Fredericks.

JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel

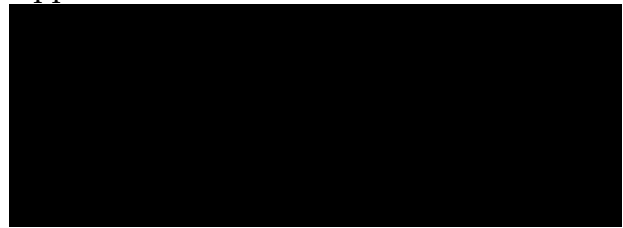
A large black rectangular redaction box covering the contact information of John M. Fredericks.

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 Air Force Government Trial and Appellate Operations Division on 12 February 2026.



JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME –
	)	OUT OF TIME
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
CALEB L. LUCAS,	)	No. ACM 40702
United States Air Force.	)	
<i>Appellant</i>	)	15 February 2026

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

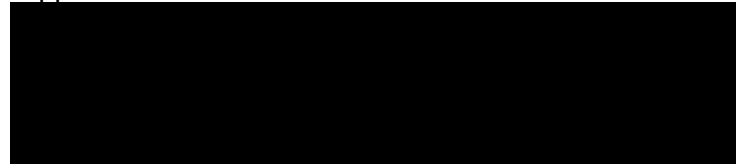
Pursuant to Rule 23.2 of this Court’s Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant’s Motion for Enlargement of Time, Out of Time, to file an Assignment of Error in this case. The United States is filing this motion out of time due to an administrative oversight.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over 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 510 days in length. Appellant’s over 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 more than two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 1 months combined for the United States and this Court to perform their separate statutory responsibilities.

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



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

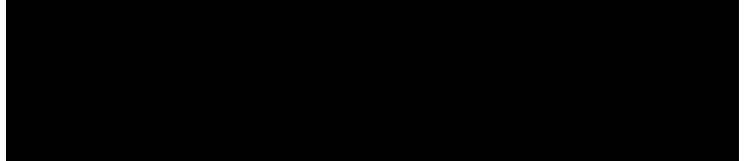


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 15 February 2026.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT'S MOTION FOR
<i>Appellee</i>	)	ENLARGEMENT OF TIME
	)	(FOURTEENTH) OUT OF TIME
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
CALEB L. LUCAS	)	No. ACM 40702
United States Air Force	)	
<i>Appellant</i>	)	17 February 2026

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 21 days, which will end on **6 March 2026**. The record of trial was docketed with this Court on 28 October 2024. From the date of docketing to the present date, 477 days have elapsed. On the date requested, 494 days will have elapsed.

Appellant has good cause for filing this motion out of time. Today, 17 February 2026, this Honorable Court denied the Appellant's Motion for EOT 14, timely filed on 12 February 2026. Because this Court did not issue that denial until less than seven days before the current filing deadline for Appellant's assignments of error, Appellant is submitting this motion out of time. This motion requests a shorter enlargement of time than the previously denied motion and includes additional details regarding undersigned counsel's priorities and progress on this and other cases since

Appellant's last motion for an enlargement of time.



GRANTED

18 FEB 2026

On 24 June 2024 and 22-23 July 2024, Appellant was tried by a general court-martial composed of a military judge alone at Nellis Air Force Base, Nevada. Trial Tr. 1, 17, 21, 122. Appellant was found guilty, contrary to his pleas, of one charge and one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934.¹ Trial Tr. 8-9, 23; Electronic Record of Trial (eROT) Vol 1, *Entry of Judgment* (Aug. 13, 2024).

The military judge sentenced Appellant to reduction in pay grade to E-1, two months of restriction to Nellis Air Force Base, Nevada, a reprimand, and a bad conduct discharge. Trial Tr. 197; eROT Vol 1, *Entry of Judgment* (Aug. 13, 2024). The convening authority took no action on the findings or sentence. eROT Vol 1, *Convening Authority Decision on Action* (Aug. 6, 2024).

The trial transcript is 187 pages long. The electronic record of trial contains eleven Prosecution Exhibits, three Defense Exhibits, and sixteen Appellate Exhibits. Appellant is not currently confined.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

¹ Appellant was found not guilty, consistent with his pleas, of one charge and one specification of viewing child pornography in violation of Article 134, UCMJ, 10 U.S.C. § 934.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned forty-four cases; forty-two cases are pending before this Court (thirty-seven cases are pending AOE's) and two cases are pending before the Court of Appeals for the Armed Forces.² Additionally, undersigned counsel is attending Squadron Officer School from 23 February 2026 to 27 March 2026. To date, undersigned counsel has the following cases prioritized over the present case:

1. *In re LB*, Misc. Dkt. 2026-03 – The Petition under Article 6b for Relief in the form of a Writ of Mandamus is 533 pages long and identifies three assignments of error. On 6 February 2026, this Court granted the Real Party in Interest, undersigned counsel's client, leave to file an answer to the Petition, due not later than 27 February 2026.

2. *United States v. Armour*, Misc. Dkt. No. 2025-10 – The record of trial is five volumes consisting of twenty-one appellate exhibits; the transcript is 118 pages. Undersigned counsel has submitted a petition to the Court of Appeals of the Armed

² Since the last enlargement of time was granted, undersigned counsel has filed a Petition for Grant of Review and Supplement to the Petition in *United States v. Armour*, Misc. Dkt. No. 2025-10; a Brief on Behalf of Appellant in *United States v. Rafajko*, ACM 40821; and eighteen requests for an enlargement of time in various cases. Undersigned counsel performed three peer reviews of court filings and participated in six moot arguments. Undersigned counsel sat as second chair for oral argument in *United States v. Talley*, ACM 40828, on 22 January 2025. In *United States v. Menard*, Dkt. No., 25-0173/AF, undersigned counsel started and finished the review of the record of trial after being assigned to the case on 30 December 2025 and presented oral argument as lead counsel at CAAF on 10 February 2026. Undersigned counsel also started and finished the review of Appellant's record of trial, to include conducting five witness interviews for potential assignments of error. Undersigned counsel was not assigned to Appellant's case until 5 January 2026.

Forces following an appeal by the United States under Article 62, UCMJ, 10 U.S.C. § 862, and is currently awaiting an answer. Since the Government's answer is due by 17 February 2026, counsel must file any reply by 24 February 2026.

3. *United States v. Rafajko*, ACM 40821 – The record of trial is one electronic volume consisting of six prosecution exhibits, ten defense exhibits, and fifty-two appellate exhibits; the transcript is 303 pages. Undersigned counsel has filed the Brief on Behalf of Appellant, which is currently awaiting an answer, due on 26 February 2026; therefore, Appellant's case is presently prioritized over this case. However, undersigned counsel adds this case for the Court's awareness of other upcoming deadlines that may take priority.

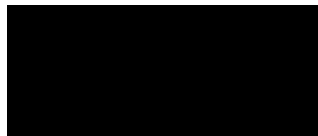
Appellant's other military appellate defense counsel, Capt Joyclin Webster, returned from medical leave on 9 February 2026, remains assigned to this case, and has reviewed the record in this case. Capt Webster's caseload consists of thirteen cases; seven cases are pending before this Court (three cases are pending AOE's), five cases pending before the Court of Appeals for the Armed Forces. Capt Webster has no cases prioritized over the present case; however, Capt Webster anticipates filing a motion to withdraw from this case.

Through no fault of Appellant, undersigned counsel has been unable to complete an assignments of error brief in Appellant's case. Undersigned counsel has completed a review of the record of trial and has identified potential assignments of error that will require more time to finalize. Appellant reasonably expects to raise

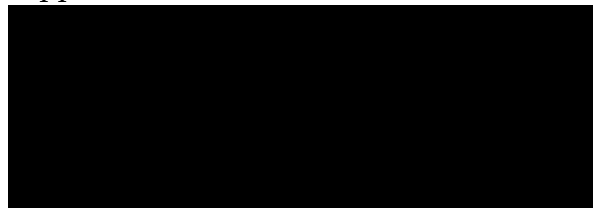
challenges involving legal and factual sufficiency, unlawful command influence, military judge recusal, and firearm restrictions. Undersigned counsel anticipates completing a draft by the end of next week, with required intraoffice reviews anticipated to be completed by 6 March 2026. Additionally, undersigned counsel reasonably expects to move this Court to attach affidavits to the record of trial in support of one or more of the potential assignments of error. Additional time is required to obtain those affidavits and draft a motion to attach. Furthermore, because of undersigned counsel's required attendance at Squadron Officer School beginning 23 February 2026, undersigned counsel will not have standard duty hours to complete Appellant's assignments of error. For the reasons identified above, an enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

WHEREFORE, Appellant requests that this Court grant the requested enlargement of time for good cause shown. If this Court anticipates denying this request for an enlargement of time, Appellant requests a status conference.

Respectfully submitted,

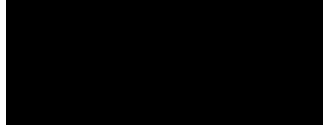


JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel

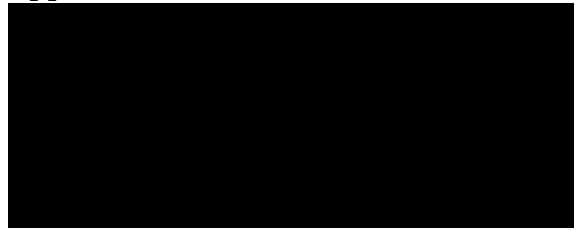


CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 17 February 2026.



JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
CALEB L. LUCAS,	)	No. ACM 40702
United States Air Force.	)	
<i>Appellant</i>	)	18 February 2026

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

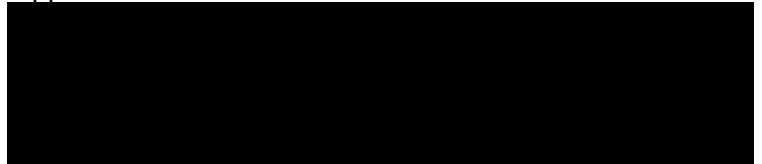
Pursuant to Rule 23.2 of this Court’s Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant’s Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over 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 494 days in length. Appellant’s over 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 more than two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 2 months combined for the United States and this Court to perform their separate statutory responsibilities.

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



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

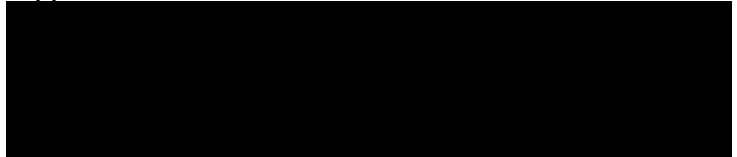


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 18 February 2026.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



UNITED STATES,) **MOTION FOR WITHDRAWAL OF**
 Appellee,) **APPELLATE DEFENSE COUNSEL**
))
v.) Before Panel No. 1
))
Senior Airman (E-4)) No. ACM 40702
CALEB L. LUCAS,))
United States Air Force,) 18 February 2026
 Appellant.)

A thorough turnover of the record between counsel has been completed. Appellant has been advised of this motion to withdraw as counsel and consents to undersigned counsel's withdrawal. A copy of this motion will be delivered to Appellant following its filing.

DRE, Appellant respectfully requests that this Court grant this motion.

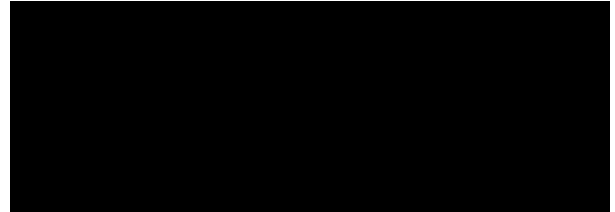


GRANTED
2 MAR 2026

Respectfully Submitted,

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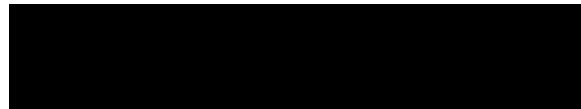
JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

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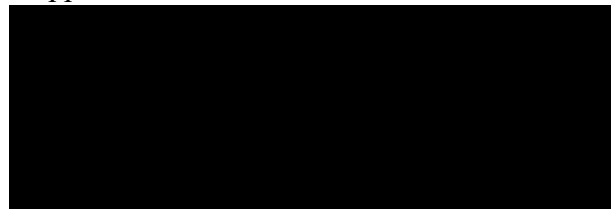
CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 18 February 2026.

Respectfully Submitted,

A large black rectangular redaction box covering the signature of Joyclin N. Webster.

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

v.

Senior Airman (E-4)

CALEB L. LUCAS

United States Air Force

Appellant

**BRIEF ON BEHALF OF
APPELLANT**

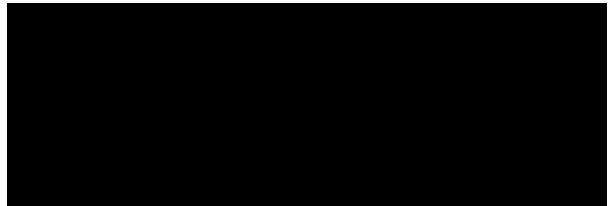
Before Panel No. 1

No. ACM 40702

5 March 2026

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

JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel



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ASSIGNMENTS OF ERROR

- I. Whether Appellant's conviction was legally and factually sufficient because of the lack of evidence that he knowingly and wrongfully possessed child pornography and that his conduct was of a nature to bring discredit upon the armed forces.**
- II. Whether the military judge abused his discretion by failing to recuse himself despite external pressures giving him an actual bias to convict Appellant.**
- III. Whether the Government can prove that 18 U.S.C. § 922 is constitutional as applied to Appellant when he was convicted of an offense that does not fall within the Nation's historical tradition of firearm regulation.**

STATEMENT OF STATUTORY JURISDICTION

Appellant's approved sentence includes a bad-conduct discharge. Entry of J. Accordingly, this Court has jurisdiction pursuant to Article 66(b)(3), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(b)(3).¹

STATEMENT OF THE CASE

A military judge sitting as a general court-martial convicted Appellant, contrary to his pleas, of one charge and one specification of possession of child pornography in violation of Article 134, UCMJ, 10 U.S.C. § 934.² Entry of J.; Trial Tr. 8-9, 23. The military judge sentenced Appellant to a reduction in rank to E-1, two months of restriction to Nellis Air Force Base (AFB), Nevada, and a bad-conduct discharge. Entry of J.; Trial Tr. 197. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action.

STATEMENT OF FACTS

A. Initial Report, Civilian Investigation, and Handoff to AFOSI

In November 2022, the Las Vegas Metropolitan Police Department (LVMPD) received a report from the National Center for Missing and Exploited Children (NCMEC). Trial Tr. 52:1-9. The NCMEC report identified an upload of potential child

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

² The military judge excepted the words "videos" and "was to the prejudice of good order and discipline in the armed forces and" and substituted the word "video," finding Appellant guilty of possessing only one file of child pornography and the conduct only of a nature to bring discredit upon the armed forces. Trial Tr. 159:6-17.

sex abuse material (CSAM) to a Dropbox³ account. Trial Tr. 51:16-17. The NCMEC report identified the internet protocol (IP) address associated with the alleged upload. Trial Tr. 53:1-3. Using that IP address, LVMPD found the internet service provider (ISP) who serviced that IP address, Cox Communications, and served them a subpoena. Trial Tr. 52:10-17.

After receiving the NCMEC report, LVMPD sent a search warrant to Dropbox. Trial Tr. 53:15-16. Dropbox's warrant return identified the name ("r[*****]007") and email address ("cll[*****]@gmail.com) of the account owner. Pros. Ex. 1.⁴ Dropbox's warrant return also provided that the account was currently disabled, had no computers ever linked to it, and had only been accessed a total of four times by cell phones from 2018-2022, to include an iPhone XS on 22 October 2022. *Id.*; Trial Tr. 144:11-22. Dropbox also sent a copy of the files saved in the account, which included two video files added between 0240-0242 UTC on 22 October 2022 (2040-2042 on 21 October 2022 Mountain Time). Pros. Exs. 2⁵, 5. Those two video files served as the basis for Specification 1 of the Charge.⁶ Appellate Ex. 5 at 21, ¶ 4. Those two video files were

³ Dropbox is a cloud-based file storage and synchronization service that allows users to securely store, manage, and share documents, photos, and videos.

⁴ Appellant later confirmed his username and email address to AFOSI, which matched the Dropbox warrant return. *Compare* Pros. Ex. 1, *with* Pros. Ex. 7, File 2 at 7:54-8:28.

⁵ Prosecution Exhibit 2 was admitted without redactions; however, the military judge considered the titles of all files added in 2018 as redacted. Trial Tr. 58:1-7 ("MJ: Alright, Defense Counsel, with the caveat based on my ruling that I am going to consider as redacted all of these titles . . . from this document . . . Prosecution Exhibit 2 for identification is so admitted.").

⁶ The military judge only found Appellant guilty of possessing the last file identified in Prosecution Exhibit 2, not both files. Trial Tr. 159:6-17.

added to the Dropbox account using an iPhone XS on the IP address 2600:8801:20b2:9d00:e108:494c:539d:8df. Pros. Ex. 1. The LVMPD Detective assigned to Appellant's case determined that the Dropbox warrant return's file upload time, date, and IP address matched the same information from the NCMEC report. Trial Tr. 56:8-9, 58:15-22.

LVMPD also submitted a search warrant to Google for information associated with the email address "c1l[*****]@gmail.com," as identified in the Dropbox warrant return. Trial Tr. 65:10-14. Google provided the name (Caleb Lucas) and birthday (Appellant's birthday) of the Google email account owner, and a list of IP address activity. Pros. Ex. 3. On 23 October 2022, Google reported a login from an iPhone XS using IP address [REDACTED]. *Id.* at 3; Trial Tr. 144:11-22. The LVMPD Detective assigned to Appellant's case determined that the IP address used for the Google login on 23 October 2022 matched the IP address on the Dropbox warrant return for the 22 October 2022 file uploads.⁷ Trial Tr. 67:4-7. Google also provided a photo of the account user, which matched photos found from LVMPD's other searches of Appellant's name online. Pros. Ex. 4; Trial Tr. 69-70.

LVMPD also received information from Cox Communications (an internet service provider), TransUnion Locator Services (TLO, an open-source intelligence tool),

⁷ The IP address listed by both Dropbox and Google is an IPv6 address in hexadecimal form and consists of two, sixteen letter/number parts: a network prefix (first half) and an interface identifier (second half). R. Hinden, & S. Deering, *IP Version 6 Addressing Architecture* 2.5 (2006). While the two IPv6 addresses from the Dropbox and Google warrant returns have a different interface identifier (second half), their network prefixes (first half) are the same, indicating the devices were using the same WiFi network. *Id.*

and Epieos (an open-source intelligence tool). Trial Tr. 61-64. An LVMPD detective determined that information from those services matched other information within the case file linking accounts and information to Appellant, but those matches were not admitted for the truth of the matter they asserted. Trial Tr. 61:14-22 to 62:1-2, 63:5-10, 63:13-17. Nonetheless, the LVMPD detective found that the Cox Communications subpoena returned a physical address for the IP address identified in the NCMEC report, and the WiFi router's type, serial number, and MAC address. Trial Tr. 64:6-20; *see* Appellate Ex. XIII. After conducting its preliminary investigation, LVMPD turned the investigation over to the Air Force Office of Special Investigations (AFOSI). Trial Tr. 68:14, 70-71.

B. AFOSI Investigation

On 30 May 2023, AFOSI interviewed Appellant. Pros. Ex. 7, 8. During that interview, Appellant waived his right to remain silent and spoke to AFOSI for nearly seven hours. Pros. Ex. 7. During the interview, Appellant consented to searches of his home, car, electronic devices, and social media accounts. Pros. Ex. 7, File 3 at 50:04-53:06, File 4 at 1:02-5:11. Appellant voluntarily provided his passwords to electronic devices. *Id.* Appellant even telephonically assisted law enforcement's search of his home and electronic devices during the interview. Pros. Ex. 7, File 5 at 52:06-53:57. Appellant also wrote a statement. Pros. Ex. 8.

After being notified that he was suspected of possessing and distributing child pornography, Appellant expressed shock. Pros. Ex. 7, File 1 at 54:01-56:20, File 2 at 28:12-28:20. Appellant thought he was being interviewed by AFOSI because of an ongoing case involving his then-girlfriend. Pros. Ex. 7, File 2 at 2:48-3:07. AFOSI then

provided Appellant with details from its investigation, including that the file of child pornography was uploaded to Dropbox, the file name, and the general timeframe of the upload. Pros. Ex. 7, File 2 at 40:48-41:18, 41:51-42:08, 53:29-54:07.

After receiving those details, Appellant provided his best guess at what could have happened and stated that he may have accidentally downloaded a video from Twitter when he had meant to download adult pornography from a link on a Twitter post. Pros. Ex. 7, File 2 at 54:12-56:02, File 3 at 0:35-1:28, 16:13-17:08, 20:38-21:25, 28:04-28:15, 36:23-36:50. Appellant stated that he had been drinking alcohol a lot the previous autumn, and recalled vague details of one time when he was drunk and he tried to download adult pornography from Twitter. Pros. Ex. 7, File 2 at 55:39-55:46, 56:41-56:47, File 3 at 4:55-5:06, 14:51-15:14, 21:45-22:16, 44:31-44:54. Appellant stated that when the adult pornography file was saved to the local files on his phone, the title was in an odd format. Pros. Ex. 7, File 2 at 57:53-58:13. Appellant stated that he could not open the file, so he uploaded the file to his Dropbox. Pros. Ex. 7, File 2 at 56:51-57:13, File 3 at 13:46-14:25. After Appellant transferred the file to Dropbox, the title of the video unscrambled, and he saw the title and thumbnail of the video and realized he had accidentally downloaded child pornography. Pros. Ex. 7, File 2 at 58:25-59:49, File 3 at 0:00-0:14, 17:08-17:32. After seeing the title of the video and the thumbnail, Appellant stated he would have deleted the video immediately after seeing its title and thumbnail; however, evidence retrieved later showed his Dropbox account was locked two seconds after the file's upload, and no deletion activity was detected. Pros. Ex. 7, File 2 at 59:48, File 3 at 4:28-4:45, 18:39-18:50, 19:35-20:02,

28:47-30:00, 40:39-40:48; *see* Trial Tr. 59:1-11, 76:18-21. Appellant expressed that he was molested as a child, and that he would never seek out child pornography. Pros. Ex. 7, File 2 at 47:12-47:29, File 3 at 41:02-41:32. Appellant repeatedly expressed disgust about child pornography. Pros. Ex. 7, File 2 at 47:16, 49:51, 57:20, 58:54, File 3 at 22:18, 28:15, 31:36, 38:04, 39:19.

Despite Appellant denying the allegations and consistently providing only a guess at how the file could have ended up in his Dropbox account, AFOSI agents continued to call him a liar (Pros. Ex. 7, File 2 at 53:29, 53:55, File 3 at 21:25-21:53, 25:25, 26:23, 26:47, 36:16, 38:29, 47:14, 47:52, 48:37), swore at him (Pros. Ex. 7, File 3 at 17:43, 25:34, 27:39, 38:29, 44:54, 45:33, 47:14, 47:42, 48:14), accused him of wasting their time (Pros. Ex. 7, File 2 at 43:23, 43:34, File 3 at 17:43, 25:38, 36:20, 48:02), cornered him in the interview room (Pros. Ex. 7, File 2 at 40:52-50:00, 53:32-60:00, File 3 at 0:00-5:15, 12:30-30:19, 35:50-50:57), threatened him with felony punishment (Pros. Ex. 7, File 3 at 36:50-37:05), threatened to tell his commander that he was lying (Pros. Ex. 7, File 3 at 37:05-37:33, 44:54), and made him repeat himself countless times over nearly six hours. Pros. Ex. 7.

Following AFOSI's investigation, the Government charged Appellant with one specification of possessing child pornography and one specification of viewing child pornography. Both specifications alleged Appellant's conduct was "to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces." Charge Sheet, Feb. 7, 2024.

C. Trial

At trial, the Government called four witnesses to testify about investigative steps and enter exhibits: Detective (Det) M [REDACTED] F [REDACTED] (LVMPD Detective), Special Agent (SA) J [REDACTED] R [REDACTED] (AFOSI Agent), SA A [REDACTED] K [REDACTED] (AFOSI Agent), and Mr. B [REDACTED] J [REDACTED] (digital forensics examiner). Trial Tr. 50-120.

Det F [REDACTED] testified about the investigative steps taken from the NCMEC report to LVMPD's handoff to AFOSI. Trial Tr. 50-88; *supra* Statement of Facts, Pt. A. The Government admitted Prosecution Exhibits 1-5 through Det F [REDACTED]. Trial Tr. 53-54, 57-58, 65-68, 69-70, 73-74. Det F [REDACTED] also testified about how the CSAM videos could have ended up in the Dropbox account. Trial Tr. 76:6-21. Det F [REDACTED] opined:

So, I know that the downloads between the two videos were clicked on and what ends up happening on the person's device is it will create a pop-up and ask you pretty much where you want to put it The end user on that ended up clicking Dropbox.

Trial Tr. 76:8-14.

Det F [REDACTED] testified that "there's nothing specifically in the data that says whether those videos were viewed." Trial Tr. 82:9-11. The detective also testified that it was "possible that someone click[ed] a link in social media . . . that could lead to child pornography." Trial Tr. 85:3-5.

SA R [REDACTED] was used to offer and admit Prosecution Exhibit 6 into evidence, which was only used to support Specification 2 of the Charge, of which Appellant was acquitted. Trial Tr. 89-97; *Compare* Pros. Ex. 6, *with* Appellate Ex. V at 22-25 (Bill of Particulars matching the contents of Pros. Ex. 6).

SA K [REDACTED] was solely used to offer and admit Prosecution Exhibits 7 and 8, Appellant's AFOSI interview and written statement, into evidence. Trial Tr. 97-103.

Mr. J [REDACTED] testified about the digital extraction performed on Appellant's cell phone. Trial Tr. 104-120. Mr. J [REDACTED] testimony focused on Prosecution Exhibit 6, and Specification 2 of the Charge, of which Appellant was acquitted. *Id.*

D. Military Judge's Apology

After the court adjourned, Appellant's grandmother, mother, and sister were walking away from the courtroom to a conference room where they encountered the military judge in the hallway, spurring a conversation. Appellant's Mot. to Attach Affs., Mar. 5, 2026. The military judge apologized to Appellant's mother for having to go through the court-martial process and told Appellant's mother, "I can't let [Appellant] walk out of here a free man because of everything that is going on at Nellis." *Id.* at App. A. The military judge then advised Appellant's mother to ensure Appellant appealed his conviction. *Id.* at Apps. A-C.

ARGUMENT

I. Appellant's conviction was legally and factually insufficient because of the lack of evidence that he knowingly and wrongfully possessed child pornography and that his conduct was of a nature to bring discredit upon the armed forces.

Appellant's conviction was factually insufficient because of two specific deficiencies of proof: (1) the Government did not provide sufficient evidence of Appellant's knowing and wrongful possession and (2) the Government provided no evidence that Appellant's conduct was of a nature to bring discredit upon the armed forces. Appellant's conviction was also legally insufficient; a rational trier of fact could not have found the essential elements of Appellant's alleged crime beyond a reasonable doubt because evidence of both elements was missing. Therefore, this Court must set aside the finding.

A. Standard of Review

This Court reviews "questions of factual sufficiency when an appellant asserts an assignment of error and shows a specific deficiency of proof." *United States v. Hughes*, No. ACM 24066, 2026 CCA LEXIS 66, at *8 (A.F. Ct. Crim. App. Feb. 6, 2026) (citing *United States v. Harvey*, 85 M.J. 127, 130 (C.A.A.F. 2024)). The current version of Article 66(d)(1)(B), UCMJ, states:

(B) FACTUAL SUFFICIENCY REVIEW.

(i) In an appeal of a finding of guilty under subsection (b), the Court may consider whether the finding is correct in fact upon a request of the accused if the accused makes a specific showing of a deficiency of proof.

(ii) After an accused has made a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—

(I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and

(II) appropriate deference to findings of fact entered into the record by the military judge.

(iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

10 U.S.C. § 866(d)(1)(B).

This Court reviews “the legal sufficiency of convictions de novo.” *United States v. Harrington*, 83 M.J. 408, 414 (C.A.A.F. 2023). “A conviction is legally sufficient if, ‘after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Id.* (quoting *United States v. Robinson*, 77 M.J. 294, 297-98 (C.A.A.F. 2018)).

B. Insufficient Evidence of Knowing and Wrongful Possession

The only evidence of knowing and wrongful possession before the factfinder was that Appellant accidentally downloaded the single file of CSAM. Pros. Ex. 7, 8. Appellant’s conviction is factually insufficient: even with appropriate deference to the factfinder, this Court should not be clearly convinced that the finding of guilty was in accord with the weight of the evidence. Appellant’s conviction is also legally insufficient: even in the light most favorable to the prosecution, this Court should find that a rational trier of fact could not have found the essential elements of the crime beyond a reasonable doubt.

Article 134, UCMJ, sets out the following elements for possession of child pornography, in relevant part: “(a) That the accused knowingly and wrongfully possessed

. . . child pornography; and (b) 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.) (2019 *MCM*), pt. IV, ¶ 95.b. “Possession must be knowing and conscious.” *Id.* at ¶ 95.c.(8). Furthermore, the 2019 *MCM* states the following about “awareness:”

An accused may not be convicted of possessing . . . child pornography if he was not aware that the images were of minors, or what appeared to be minors, engaged in sexually explicit conduct. Awareness may be inferred from circumstantial evidence such as the name of a computer file or folder, the name of the host website from which a visual depiction was viewed or received, search terms used, and the number of images possessed.

Id. at ¶ 95.c.(5). Additionally, “[a]ny facts or circumstances that show that a visual depiction of child pornography was unintentionally or inadvertently acquired are relevant to wrongfulness.” This Court can consider “the method by which the visual depiction was acquired, the length of time the visual depiction was maintained, and whether the visual depiction was promptly, and in good faith, destroyed or reported to law enforcement.” *Id.* at ¶ 95.c.(12).

Appellant explicitly, repeatedly, and consistently denied knowing and wrongful possession of child pornography throughout his AFOSI interview. Pros. Ex. 7, 8. After AFOSI fed Appellant the timeframe of the alleged upload, file location (Dropbox), and file name, Appellant guessed that the only way the file got into his Dropbox account was when he was intoxicated and attempted to download adult pornography from Twitter. *Contrast* Pros. Ex. 7, File 2 at 40:53-41:18 (AFOSI told Appellant that

the CSAM was uploaded to Dropbox), 41:51-42:08 (AFOSI told Appellant the file title), 53:25-53:52 (AFOSI told Appellant the upload timeframe), *with* Pros. Ex. 7, File 2 at 54:12-56:02 (Appellant guessing how the file ended up in his Dropbox after AFOSI fed him information). An expert clinical and forensic psychologist, Dr. T█████, testified at trial, stating AFOSI conducted “a terrible interview,” heavily influencing Appellant’s memory by mentioning investigative facts to him and asking leading questions. Trial Tr. 131:7-20. Dr. T█████ concluded it was “probable” that “false facts were elicited because of OSI’s questioning.” Trial Tr. 132:9-12. Those false facts serve as the basis of Appellant’s legally and factually sufficient conviction.

Appellant’s vague memory of a file title and Dropbox being involved were all elicited from Appellant *after* AFOSI fed him those facts. *Contrast* Pros. Ex. 7, File 2 at 40:53-41:18 (AFOSI told Appellant that the CSAM was uploaded to Dropbox), 41:51-42:08 (AFOSI told Appellant the file title), 53:25-53:52 (AFOSI told Appellant the upload timeframe), *with* Pros. Ex. 7, File 2 at 54:12-56:02 (Appellant guessing how the file ended up in his Dropbox after AFOSI fed him information), 56:29-56:35 (AFOSI asking Appellant for the video title, Appellant stating he “just remembered” it). Dr. T█████ un rebutted testimony shows that Appellant’s guess was “probabl[y]” the result of AFOSI’s interview, not the result of actual criminal conduct. Trial Tr. 132:9-12; *see* Pros. Ex. 7, File 2 at 59:53-60:00 to File 3 at 0:00-0:14 (Appellant: “I do like I remember the title you spoke of and like I vaguely remember that, and I somewhat remember a thumbnail, and I don’t know if this is just my brain f**king orchestrating random s**t because you said it . . .”).

Even taking Appellant’s guess at face-value, he still explicitly, repeatedly, and consistently denied knowing and wrongful possession of child pornography throughout his AFOSI interview. Pros. Ex. 7, File 2 at 41:45, 41:59, 42:15, 42:15, 42:59, 43:49, 44:00, 45:46, File 3 at 12:48, 28:15, 28:47, 35:57, 39:19, 40:39, 41:35, 43:01. The Government had to rely on circumstantial evidence it did not have for a crime that did not occur. Analysis of the factors provided by the *MCM* shows that this alleged crime did not occur. “[T]he name of a computer file or folder” does not support knowing and wrongful possession. 2019 *MCM*, at pt. IV, ¶ 95.c.(5). Appellant stated that he never saw the title of the video before downloading it and that the original file name was in an odd format. Pros. Ex. 7, File 2 at 57:05-58:23, File 3 at 4:37, 39:37-39:54, 47:27-47:35. Det F ██████ testified that the file was not saved in any particular folder or organized in any fashion. Trial Tr. 80-81. Neither “the name of the host website from which a visual depiction was viewed or received” nor “the method by which the visual depiction was acquired” support knowing and wrongful possession. 2019 *MCM*, at pt. IV, ¶ 95.c.(5), (12). Appellant guessed that the file came from Twitter, which has safety protocols that prevent CSAM from being accessible on its website, although those protections were diminished at the time. Pros. Ex. 7, File 2 at 54:15-55:11, File 3 at 0:46-2:18, 4:45-4:52, 6:16, 12:40-13:04, 20:02-20:15, 28:04-28:21, 43:00-43:14, 44:16, 49:30; Trial Tr. 83-84. “[T]he number of images possessed” does not support knowing and wrongful possession—there was only one. 2019 *MCM*, at pt. IV, ¶ 95.c.(5); Pros. Ex. 2; Trial Tr. 159:15-17. “[T]he length of time the visual depiction was maintained” does not support knowing and wrongful possession—it was in the

account for two seconds before the account was automatically disabled, giving him no time to delete the file. 2019 *MCM*, at pt. IV, ¶ 95.c.(12); Trial Tr. 76:18-20.

At trial, the Government relied on two pieces of evidence to prove knowing and wrongful possession: the timing of file downloads into the Dropbox account and Appellant's guess about the thumbnail. Trial Tr. 147:2-14; Pros. Ex. 2. The Government identifies one minute and forty-eight seconds between the two files downloaded into the Dropbox account as proof that Appellant separately saved the files and knew "exactly what these files were." Trial Tr. 147:12-14; Pros. Ex. 2. The Government's conclusion ignores other real possibilities. The files could have different upload times due to upload speeds and relative file sizes (i.e., one finished uploading or had priority uploading before the other). Appellant may not have opened Dropbox until after both files were uploaded. Appellant may not have opened Dropbox at all before the account was disabled. There was no evidence that Appellant ever viewed, opened, or otherwise altered the files either. Trial Tr. 82:5-13. No digital forensic expert testified to activity or keystroke logs from the cell phone analysis to support its assertion that Appellant separately uploaded each file or opened either file. *See* Trial Tr. 50-88 (Det. Fortunato Testimony), 104-120 (Government's Digital Forensic Expert's Testimony). The Government and the factfinder relied on a single inference and ignored several reasonable ones.

Appellant's memory of the thumbnail is similarly unpersuasive because the AFOSI agents first fed Appellant the information they wanted to hear. First, AFOSI told Appellant the title of the video: "four years [sic] old girl with a fifteen years [sic]

old teenager.” Pros. Ex. 7, File 2 at 41:58-42:08. Fourteen minutes later, AFOSI asked Appellant, “What was the title?” to which Appellant responded, “It was something about a 15-year-old, I just remembered.” Pros. Ex. 7, File 2 at 56:19-56:35. Appellant’s memory was being influenced by AFOSI. Appellant then stated that he remembered the thumbnail, “seeing what looked like a younger kid on top of like . . . naked like a 15-year-old-ish looking.” Pros. Ex. 7, File 2 at 58:23-58:37. Appellant then makes the following statements about the thumbnail after AFOSI asked repeated questions about its contents:

[I]f I remember correctly it was like a 15-year-old or something naked. Pros. Ex. 7, File 2 at 58:40-58:58.

I just remember seeing it being like a younger person that appeared to be naked. Pros. Ex. 7, File 2 at 59:15-59:20.

I remember it being from behind like it was like a picture from behind them or on the side. I know I couldn’t see like what they were. Pros. Ex. 7, File 2 at 59:27-59:37.

I think it was just the one like person. Pros. Ex. 7, File 2 at 59:37-59:45.

I remembered it looking like like somebody of younger age naked. Pros. Ex. 7, File 3 at 29:01-29:08.

I think it was from the side. I think it was like a side angle. Pros. Ex. 7, File 3 at 29:13-29:17.

I think white. I’m pretty sure white, like I’m pretty sure it was white or maybe a Latino. Like darker skins. I can’t remember. They weren’t, I don’t recall them being black. I’ve never seen like anybody’s face. Pros. Ex. 7, File 3 at 29:19-29:34.

I don’t remember any facial features or anything like that. Pros. Ex. 7, File 3 at 29:42-29:48.

Appellant was simply describing the title AFOSI told him: “four years [sic] old girl with a fifteen years [sic] old teenager.” All other details he provided are jumbled or non-specific: he remembers a younger person being naked and is unsure about the position, facial features, race, and the amount of people in the thumbnail. The Government’s focus on Appellant’s memory of the thumbnail only bolsters Dr. T [REDACTED] testimony that “when we’re trying to recall an event, if someone asks us a question, we might fill in those memories with what [investigators] ask.” Trial Tr. 123:19-20. The Government’s reliance on upload times and altered memories to prove knowing and wrongful possession is unavailing and legally and factually insufficient.

The lack of knowing and wrongful possession is not only supported by Appellant’s direct denial and circumstantial evidence but is also shown through Appellant’s full cooperation with law enforcement. Appellant waived his right to remain silent and spoke to AFOSI for nearly seven hours. Pros. Ex. 7, File 1 at 54:01-55:19. Appellant consented to searches of his home, car, electronic devices, and social media accounts. Pros. Ex. 7, File 3 at 50:04-53:06, File 4 at 1:02-5:11. Appellant voluntarily provided his passwords to electronic devices. *Id.* Appellant even telephonically assisted law enforcement’s search of his home and electronic devices during the interview. Pros. Ex. 7, File 5 at 52:06-53:57. Appellant wrote a statement too. Pros. Ex. 8.

The specific deficiencies in proof for both elements are bolstered by the military judge’s actions in this case. The military judge expressed that he did not want to convict Appellant of this crime. Appellant’s Mot. to Attach Affs., Mar. 5, 2026, at

Apps. A-C. This is likely because there is a lack of sufficient evidence for both elements of the alleged conduct. *See supra* Pt. I.B.; *infra* Pts. I.C., II. The military judge felt guilty for convicting a not guilty man, and asked Appellant's mother to ensure his conviction was appealed. Appellant's Mot. to Attach Affs., Mar. 5, 2026, at Apps. A-C. The pressure on the military judge moved him to disregard real possibilities and state he was firmly convinced of Appellant's guilt when he was not.

The lack of sufficient evidence of knowing and wrongful possession is a specific deficiency of proof that should lead this Court to be clearly convinced that the finding of guilty was against the weight of the evidence. Even with appropriate deference to the factfinder, who felt pressured to find Appellant guilty,⁸ and viewing the evidence in the light most favorable to the prosecution, the Government was missing evidence of the first element. Therefore, Appellant's conviction was legally and factually insufficient and must be set aside.

C. No Evidence of the Terminal Element

The Government provided no evidence that Appellant's alleged conduct was of a nature to bring discredit upon the armed forces. Instead, the Government and military judge relied on a conclusive presumption that Appellant's alleged conduct was *per se* service discrediting. "The use of conclusive presumptions to establish the elements of an offense is unconstitutional because such presumptions conflict with the presumption of innocence and invade the province of the trier of fact." *United States v. Phillips*, 70 M.J. 161, 164-65 (C.A.A.F. 2011) (citing *Sandstrom v. Montana*, 442

⁸ *Infra* Pt. II.

U.S. 510, 523, (1979)); see *United States v. Williams*, 24 C.M.R. 135, 137 (1957) (rejecting the government’s contention that instructions to the members on the terminal element were not necessary because the charged conduct constituted proof of the terminal element “as a matter of law”). While “proof of the charged conduct itself ‘may be sufficient for a rational trier of fact to conclude beyond a reasonable doubt that, under all the circumstances, it was of a nature to bring discredit upon the armed forces,’” it is not sufficient here. *United States v. Wells*, 85 M.J. 154, 159 (C.A.A.F. 2024) (Hardy, J., dissenting) (quoting *Phillips*, 70 M.J. at 163); see *United States v. Rocha*, 84 M.J. 346, 352-54 (Hardy, J., dissenting) (C.A.A.F. 2024).

“To prove the terminal element ‘of a nature to bring discredit upon the armed forces,’ the Government must prove that the conduct ‘has a tendency to bring the service into disrepute or [] tends to lower it in public esteem.’” *United States v. Smith*, 2026 CCA LEXIS 1, at *11 (A.F. Ct. Crim. App. Jan. 5, 2026) (quoting *United States v. Heppermann*, 82 M.J. 794, 799 (A.F. Ct. Crim. App. 2022) (citing MCM, pt. IV, ¶ 91.c.(3))). “[T]he degree to which others became aware of the accused’s conduct may bear upon whether the conduct is service discrediting,’ but actual public knowledge is not a prerequisite.” *Hepperman*, 82 M.J. at 801 (quoting *Phillips*, 70 M.J. at 166). “The trier of fact must determine beyond a reasonable doubt that the conduct alleged actually occurred and must also evaluate the nature of the conduct and determine beyond a reasonable doubt that the accused’s conduct would tend to bring the service into disrepute if it were known.” *Id.* at 801-02 (citations omitted).

Since *Hepperman*, this Court has found multiple child pornography cases under Article 134, UCMJ, 10 U.S.C. § 934, legally and factually sufficient after challenges to the lack of evidence of the terminal element. *See Smith*, 2026 CCA LEXIS 1, at *20; *United States v. Pulley*, 2024 CCA LEXIS 442, at *40 (A.F. Ct. Crim. App. Oct. 24, 2024); *United States v. Nestor*, 2023 CCA LEXIS 272, at *33 (A.F. Ct. Crim. App. June 30, 2023); *United States v. Massey*, 2023 CCA LEXIS 46, at *26 (A.F. Ct. Crim. App. Jan. 30, 2023). However, this case is distinct and warrants a different outcome.

Here, proof of the conduct itself, which is also lacking, is not “sufficient for a rational trier of fact to conclude beyond a reasonable doubt that, under all the circumstances, it was of a nature to bring discredit upon the armed forces.” *Wells*, 85 M.J. at 159 (Hardy, J., dissenting). No one knew about Appellant’s alleged misconduct. *Cf. Pulley*, 2024 CCA LEXIS 442, at *3-5 (appellant entered a chat room for the purpose of talking to others about starting sexual relationships with minor children; spouse found child pornography on appellant’s devices); *Nestor*, 2023 CCA LEXIS 272, at *3-4 (appellant shared child pornography to the public on a peer-to-peer file sharing network); *Massey*, 2023 CCA LEXIS 46, at *3-11 (appellant solicited the production of child pornography from another person; his spouse also discovered the solicitation). Appellant was convicted of possessing only a single file. Pros. Ex. 2; Trial Tr. 159:15-17; *cf. Smith*, 2026 CCA LEXIS 1, at *5-6 (thirteen images and one video of child pornography); *Nestor*, 2023 CCA LEXIS 272, at *6-7 (over one hundred photos and videos of child pornography); *but see Pulley*, 2024 CCA LEXIS 442, at *5 (one

video of child pornography). Appellant pled not guilty to the offense and did not stipulate to the terminal element. Trial Tr. 23: 17-18; *cf. Smith*, 2026 CCA LEXIS 1, at *3 (appellant pled guilty, and testified and stipulated to the conduct being service-discrediting); *Pulley*, 2024 CCA LEXIS 442, at *5 (appellant pled guilty and testified to the conduct being service-discrediting). Appellant accidentally downloaded the file. *See supra* Pt. I.B. The Government put on no evidence that the alleged conduct “has a tendency to bring the service into disrepute or [] tends to lower it in public esteem.” *Smith*, 2026 CCA LEXIS 1, at *11.

The United States Court of Appeals for the Armed Forces’ (CAAF’s) use of “may” in *Phillips* underscores the fact that the military does not consider every act of possession of child pornography to be “of a nature to bring discredit upon the armed forces.” *See Wells*, 85 M.J. at 159 (Hardy, J., dissenting) (summarizing the current evidentiary requirements for service discrediting conduct under Article 134, UCMJ). “Thus, in applying *Phillips* the Court must look at the underlying circumstances of the charged conduct . . . to determine whether the service discrediting element has been proven beyond a reasonable doubt.” *Id.* The Government failed to provide the military judge any underlying circumstances relevant to the terminal element; it did not prove the element beyond a reasonable doubt and instead relied on an unconstitutional conclusive presumption. “[T]he Government offered no theory, either through evidence or through argument, to explain why Appellee’s entirely private conduct was service discrediting in nature.” *Rocha*, 84 M.J. at 352 (Hardy, J., dissenting).

The lack of evidence of the terminal element is a specific deficiency of proof that should lead this Court to be clearly convinced that the finding of guilty was against the weight of the evidence. Even with appropriate deference to the factfinder, who felt pressured to find Appellant guilty,⁹ and viewing the evidence in the light most favorable to the prosecution, the Government failed to prove the second element. Therefore, Appellant’s conviction was legally and factually insufficient and must be set aside.

II. The military judge abused his discretion by failing to recuse himself despite external pressures giving him an actual bias to convict Appellant.

The military judge failed to *sua sponte* disqualify himself in Appellant’s court-martial because his impartiality was reasonably questioned. The military judge felt pressured to convict Appellant “because of everything that [was] going on at Nellis,” calling into question his ability to be an objective fact finder and adjudicator. Appellant’s Mot. to Attach Affs., Mar. 5, 2026, at App. A. The military judge’s failure to recuse himself requires reversal. *See Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847 (1988).

A. Standard of Review

This Court reviews “a military judge’s disqualification decision . . . for an abuse of discretion.” *United States v. Sullivan*, 74 M.J. 448, 453 (C.A.A.F. 2015). “A military judge’s ruling constitutes an abuse of discretion if it is ‘arbitrary, fanciful, clearly

⁹ *Infra* Pt. II.

unreasonable or clearly erroneous,’ not if this Court merely would reach a different conclusion.” *Id.* (quoting *United States v. Brown*, 72 M.J. 359, 362 (C.A.A.F. 2013)).

B. The Military Judge Damaged the Validity and Integrity of the Court-Martial

The military judge failed to recuse himself under Rule for Courts-Martial 902(a) for an actual bias or, at least, the appearance of bias. R.C.M. 902(a); *see United States v. Norfleet*, 53 M.J. 262, 270 (C.A.A.F. 2000). The military judge’s failure to recuse himself requires reversal under the *Liljeberg* factors. *United States v. Martinez*, 70 M.J. 154, 159 (C.A.A.F. 2011).

1. The Military Judge Abused His Discretion

The military judge abused his discretion because he failed to *sua sponte* recuse himself; that decision was clearly unreasonable. “[A] military judge shall disqualify himself or herself in any proceeding in which that military judge’s impartiality might reasonably be questioned.” R.C.M. 902(a). “The military judge shall, upon motion of any party or *sua sponte*, decide whether the military judge is disqualified.” R.C.M. 902(d)(1). “Possible grounds for disqualification should be raised at the earliest reasonable opportunity.” R.C.M. 902(d)(1), Discussion.

Here, the military judge recognized his actual bias: he “[could not] let [Appellant] walk out of [t]here a free man because of everything that [wa]s going on at Nellis.” Appellant’s Mot. to Attach Affs., Mar. 5, 2026, at App. A. The military judge felt

pressured to convict Appellant, despite the state of the evidence, because of circumstances at Nellis Air Force Base.¹⁰ The military judge had an actual bias against Appellant: he was predisposed to convict him because of external pressures. The military judge's message was clear and "a reasonable person knowing all the circumstances would conclude that the military judge's impartiality might reasonably be questioned." *Sullivan*, 74 M.J. at 453. If the public knew that the military judge felt pressured to convict a servicemember and lightly sentenced that servicemember to compensate for the unlawful conviction, public confidence in the integrity of the judicial process would be destroyed. *See id.* at 453-54. The military judge knew of his actual bias and only disclosed it to Appellant's family after announcing Appellant's sentence. The military judge abused his discretion by not disclosing his actual bias prior to trial and by not *sua sponte* recusing himself prior to trial. The military judge's decision to keep his actual bias to himself until after he acted on it was clearly unreasonable and an abuse of discretion.

¹⁰ While the military judge did not communicate the meaning of "everything that is going on at Nellis" to Appellant's family, during Appellant's court-martial in July 2024, there was significant news coverage of a child pornography and child sex abuse case involving a commander at Nellis Air Force Base. V██████ M██████, *Air Force commander accused of sexually assaulting child still has military job*, 8NewsNow (July 19, 2024), <https://www.8newsnow.com/investigators/air-force-commander-accused-of-sexually-assaulting-child-still-has-military-job/>. That news coverage consistently criticized the military's handling of that case, including it initially being handled through administrative, rather than criminal, processes. *Id.*; *see also* 57 WG/PA, *DiFalco trial concludes*, Nellis Air Force Base Press Releases (Sep. 24, 2025), <https://www.nellis.af.mil/News/News-Releases/Display/Article/4314427/difalco-trial-concludes/>; Riley Ceder, *Air Force lieutenant colonel will face trial for child sex crimes*, Air Force Times (Apr. 25, 2025), <https://www.airforcetimes.com/news/your-air-force/2025/04/25/air-force-lieutenant-colonel-will-face-trial-for-child-sex-crimes/>.

2. The *Liljeberg* Factors Require Reversal

When a military judge abuses his discretion regarding recusal, this Court uses the *Liljeberg* factors to determine whether “to reverse the results of the present trial in order to ensure that military judges exercise the appropriate degree of discretion in the future.” *Martinez*, 70 M.J. at 159. The factors help “determine whether a military judge’s conduct [reversal] to vindicate public confidence in the military justice system.” *Id.* at 158. There are three factors: (1) Is there “any specific injustice that [the appellant] personally suffered?” *Id.* at 159. (2) Would granting relief “encourag[e] a judge or litigant to more carefully examine possible grounds for disqualification and to promptly disclose them when discovered?” *Liljeberg*, 486 U.S. at 868. (3) Will “the circumstances of [the] case . . . risk undermining the public’s confidence in the military justice system?” *Martinez*, 70 M.J. at 159. Here, all three factors weigh in favor of reversal.

The first *Liljeberg* factor weighs heavily in favor of reversal. Appellant suffered the greatest injustice possible at trial—a wrongful conviction. There were significant evidentiary issues that the military judge’s actual bias caused him to overlook and then convict Appellant, which he admitted to the accused’s family. Appellant’s Mot. to Attach Affs., Mar. 5, 2026, at Apps. A-C; *supra* Pt. I.

The second and third *Liljeberg* factors weigh heavily in favor of reversal. If this Court reverses, the military judge would be encouraged to promptly disclose his actual bias *before* trial and to the *litigants*, rather than *post-sentencing* to the *service-member’s family*. Here, the military judge injected immediate doubt into the public’s

confidence in the military justice system. He told Appellant’s family that he felt pressured to convict Appellant despite the lack of evidence, that he gave a light sentence to compensate for it, and then encouraged Appellant to appeal his case. He knew he erred and that the conviction was wrongful.

The military judge abused his discretion by making the clearly unreasonable decision to not recuse himself, despite his actual bias to convict Appellant. The military judge himself recommended this appeal. This Court should find reversal as the appropriate remedy “to vindicate public confidence in the military justice system.” *Martinez*, 70 M.J. at 158.

III. The Government cannot prove that 18 U.S.C. § 922 is constitutional as applied to Appellant when he was convicted of an offense that does not fall within the Nation’s historical tradition of firearm regulation.

A. Standard of Review

Whether post-trial processing was properly completed is reviewed de novo. *United States v. Zegarrundo*, 77 M.J. 612, 613-14 (A.F. Ct. Crim. App. 2018) (citing *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000)). This Court reviews questions of jurisdiction, law, and statutory interpretation de novo. *United States v. Lepore*, 81 M.J. 759, 760-61 (A.F. Ct. Crim. App. 2021).

B. Law and Analysis

Appellant acknowledges that CAAF recently held that this Court lacks the authority to act upon the indication of a firearm prohibition under 10 U.S.C. § 922. *United States v. Johnson*, 86 M.J. 8, 9 (C.A.A.F. 2025). However, Appellant asserts that *Johnson* was wrongly decided and that the firearm prohibition indicated on the first indorsement to the Entry of Judgment is unconstitutional, as applied, because

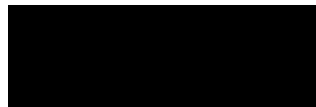
the offense he was convicted of does not fall within the Nation’s historical tradition of firearm regulation. *See N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022) (holding that the Government must justify a firearm regulation by demonstrating that it is “consistent with this Nation’s historical tradition of firearm regulation”). Appellant raises this issue for preservation purposes.¹¹

Appellant respectfully requests that this Court hold that 18 U.S.C. § 922 is unconstitutional as applied to him.

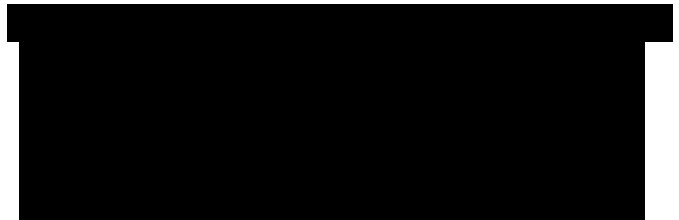
CONCLUSION

Appellant respectfully requests that this Court set aside the findings and sentence of guilty for Specification 1 of the Charge, with prejudice. Should this Court find the conviction legally and factually sufficient, Appellant respectfully requests that this Court reverse the results of trial due to the military judge’s failure to recuse himself.

Respectfully submitted,



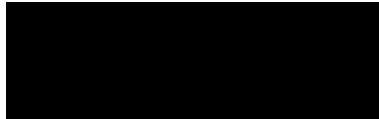
JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel



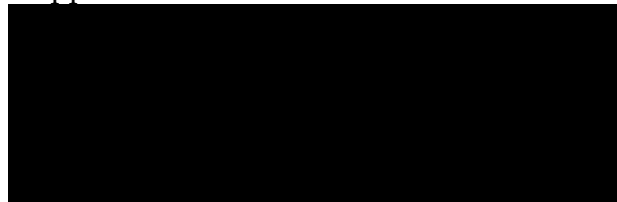
¹¹ *See* Pros. Ex. 7, File 1 at 35:59-44:33 (Appellant discusses his history of firearm ownership).

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were electronically delivered to the Court and served on the Air Force Government Trial and Appellate Operations Division on 5 March 2026.



JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION TO ATTACH
<i>Appellee</i>	)	
	)	
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
CALEB L. LUCAS	)	No. ACM 40702
United States Air Force	)	
<i>Appellant</i>	)	5 March 2026

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

Pursuant to Rule 23.3(b) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves to attach (1) a declaration from Ms. M█████ B█████, Appendix A; (2) a declaration from Ms. C█████ L█████, Appendix B; and (3) a declaration from Ms. D█████ W█████, Appendix C. All three statements comply with Rule 23(b) because they are declarations made under penalty of perjury pursuant to 28 U.S.C. § 1746.

These declarations are relevant and necessary to Appellant's assignments of error brief, which was filed contemporaneously with this motion. Br. on Behalf of Appellant. In his assignments of error brief, Appellant requests that his conviction be set aside and the finding reversed because, in part, the military judge failed to recuse himself from the proceedings due to an actual bias to convict Appellant. *Id.* at Pt. II. The military judge communicated his actual bias off the record, post-sentencing, and only to the three individuals who wrote the appended declarations. Apps. A-C. The three appended declarations are the only evidence of the military judge's actual bias; therefore, they are relevant and necessary to the resolution of

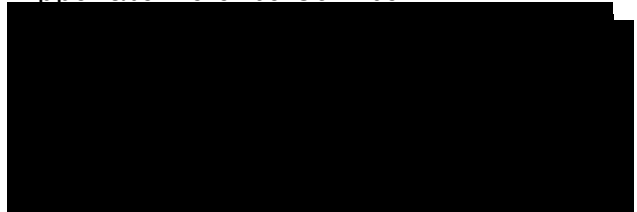
Appellant's assignments of error. Without the appended declarations, this Court cannot consider all the relevant circumstances and resolve the Appellant's assignments of error.

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

Respectfully submitted,

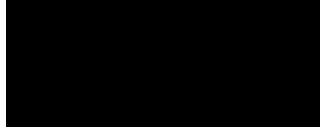
A solid black rectangular box used to redact the signature of John M. Fredericks.

JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel

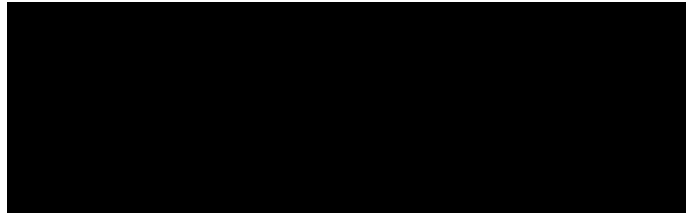
A large solid black rectangular box used to redact the contact information of John M. Fredericks.

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 Air Force Government Trial and Appellate Operations Division on 5 March 2026.



JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	
<i>Appellee,</i>	)	MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	ACM 40702
Senior Airman (E-4)	)	
CALEB B. LUCAS, USAF	)	Panel No. 1
<i>Appellant.</i>	)	

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

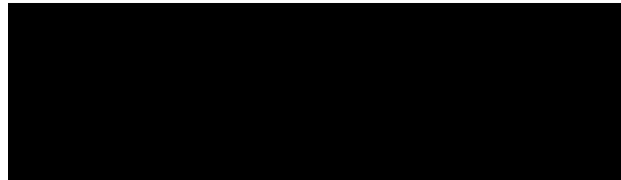
Pursuant to Rule 23.3(m) of this Court’s Rules of Practice and Procedure, the United States hereby requests an enlargement of time in order to adequately respond to Appellant’s Assignment of Error in which he claims that the “military judge abused his discretion by failing to recuse himself despite external pressures giving him an actual bias to convict Appellant.” (*See* App. Br. at 1.) Filed in conjunction with this motion, the United States filed a Motion to Compel Affidavit and asked this Court to order the military judge, Col BT, to provide an affidavit or declaration in response to Appellant’s alleged claim. The United States seeks a fourteen-day enlargement of time following the Court’s receipt of the military judge’s affidavit in order to properly and completely respond to Appellant’s brief. To avoid any confusion, the United States respectfully asks this Court to set specific due dates for both the affidavit/declaration and the brief.

The United States’ answer to Appellant’s brief is currently due to the Court on 6 April 2026. Undersigned counsel will require a short amount of time after the submission of the affidavit in order to properly address Appellant’s claim. Good cause exists to grant this request. Undersigned counsel needs this additional time in order to properly address Appellant’s claim, which cannot be analyzed until the military judge’s affidavit is received. Barring unforeseen

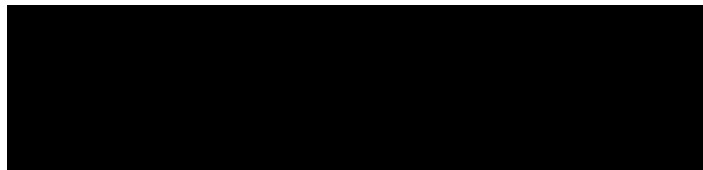
circumstances, the Government believes fourteen days is sufficient to prepare a proper and responsive brief for this Honorable Court on this issue once the ordered affidavit is filed with the Court.

This case was docketed with the Court on 28 October 2024. Appellant filed his Assignment of Error brief with this Honorable Court on 5 March 2026, 493 days after docketing. This is the United States' first request for an enlargement of time. As of the date of this request, 518 days have elapsed since docketing.

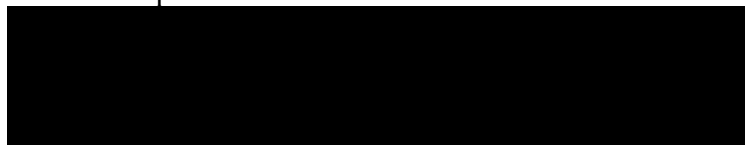
WHEREFORE, the United States requests this Court grant this Motion for Enlargement of Time.



G. MATT OSBORN, Colonel, USAF
Appellate Government Counsel

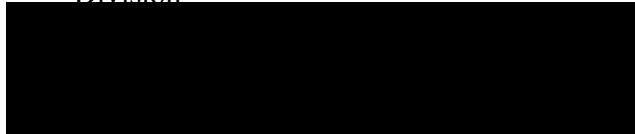


MARY ELLEN PAYNE
Associate Chief, Government Trial and Appellate
Operations Division



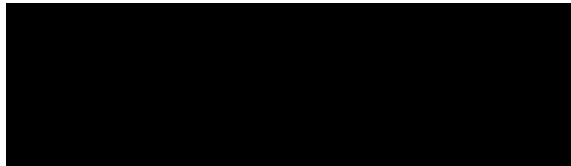


MATTHEW D. TALCOTT, Colonel, USAF
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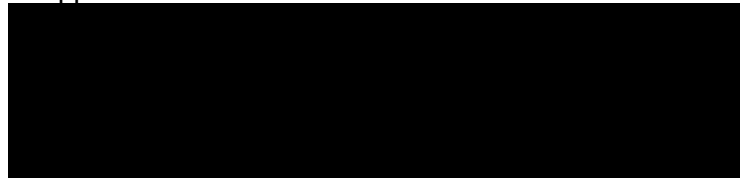


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate defense counsel, and the Air Force Appellate Defense Division on 30 March 2026 via electronic filing.



G. MATT OSBORN, Colonel, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	
<i>Appellee,</i>	)	MOTION TO COMPEL
	)	AFFIDAVIT
v.	)	
	)	ACM 40702
Senior Airman (E-4)	)	
CALEB B. LUCAS, USAF	)	Panel No. 1
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(e) of this Court’s Rules of Practice and Procedure, the United States hereby requests this Court order the military judge in this case, Col BT, to provide an affidavit or declaration in response to Appellant’s alleged claim that the “military judge abused his discretion by failing to recuse himself despite external pressures giving him an actual bias to convict Appellant.”¹ (*See App. Br. at 1.*)

At trial, the military judge, sitting alone, convicted Appellant of one specification of possessing child pornography. (R. at 159.) Appellant filed his Assignments of Error brief with this Court on 5 March 2026. In it, Appellant claims that after the court-martial concluded, his grandmother, mother, and sister “encountered the military judge in the hallway, spurring a conversation.” (Id. at 9.) Appellant claims the “military judge apologized to Appellant’s mother for having to go through the court-martial process and told Appellant’s mother, ‘I can’t let [Appellant] walk out of here a free man because of everything that is going on at Nellis.’” (Id.) Appellant further claims the “military judge advised Appellant’s mother to ensure Appellant

¹ Filed in conjunction with this motion, the United States has also moved this Court for an enlargement of time in order to adequately respond to Appellant’s Assignment of Error involving the military judge. The United States seeks an enlargement of time following the submission of the affidavit or declaration in order to properly and completely respond to Appellant’s brief.

appealed his conviction.” (Id.) Filed in conjunction with his brief, Appellant moved to attach declarations from his mother, grandmother, and sister. (See Mot. to Attach, dtd 5 March 2026.)

Relying on these declarations, Appellant claims that the “military judge abused his discretion by failing to recuse himself despite external pressures giving him an actual bias to convict Appellant.” (App. Br. at 22.) Appellant claims the military judge “failed to *sua sponte* disqualify himself in Appellant’s court-martial because his impartiality was reasonably questioned,” adding that the “military judge felt pressured to convict Appellant ‘because of everything that [was] going on at Nellis,’ calling into question his ability to be an objective fact finder and adjudicator.” (Id.)

The Government requires an affidavit or declaration from the military judge to adequately respond to Appellant’s “actual bias” claim against the military judge. At present, this Court has declarations from Appellant’s family about the alleged conversation between them and the military judge. However, this Court does not have any evidence from the military judge himself as to what exactly he allegedly said to Appellant’s family or what he meant by any of his alleged statements. Indeed, as Appellant even admits in his brief, “the military judge did not communicate the meaning of ‘everything that is going on at Nellis’ to Appellant’s family.” (Id. at 24.)

Furthermore, though not discussed by Appellant in his brief, Appellant’s claim implicates a host of judicial conduct canons that presumably would have been violated by the military judge if what Appellant claims is actually true. For example, Canon 1 of the Department of the Air Force Uniform Code of Judicial Conduct, states that “a judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” (See Department of the Air Force Instruction (DAFI) 51-110,

Attachment 5.) Rule 1.2 of that Canon further states, “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” (Id.) Canon 2 states, “A judge shall perform the duties of judicial office impartially, competently, and diligently.” Rule 2.4 of Canon 2, entitled *External Influences on Judicial Conduct*, includes three sections, including the following two which are pertinent here:

(a) A judge shall not be swayed by public clamor or fear of criticism.

...

(c) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

(Id.)

Considering the serious ethical and judicial concerns implicated by Appellant’s claim, and in order to determine whether the military judge in fact had an “actual bias” in this case, this Court should provide the military judge the opportunity to detail any actual statements he may have made to Appellant’s family, as well as the entire context and meaning behind those statements.

To be clear, the Government is not seeking information from the military judge regarding his deliberative process in finding Appellant guilty of possessing child pornography. Rather, the Government is *only* seeking information and context from the military judge regarding the alleged post-trial conversation he had with Appellant’s family, to include the following:

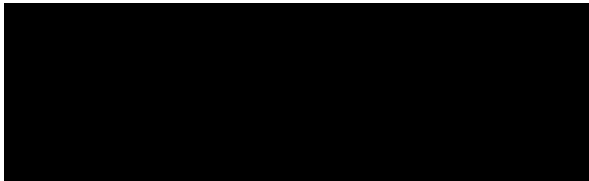
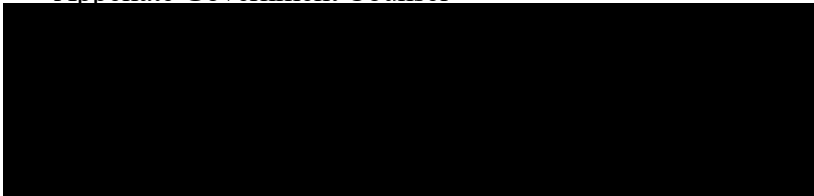
- (1) whether the conversation took place;
- (2) the exact comments, if any, made by the military judge to Appellant’s family;
- (3) the full context and meaning behind any statements made to Appellant’s family;

(4) confirmation on whether any of the following specific comments mentioned in the previously cited declarations were made by the military judge and, if so, the context and/or meaning behind those statements:

- “I’m sorry you are going through this, but I can’t let [Appellant] walk out of here a free man because of everything that is going on at Nellis,” or words to that effect; (*See* Mot. to Atch, App. A.)
- Comment to the effect that the outcome of Appellant’s trial was “due to another situation going on at Nellis AFB;” (*See* Mot. to Atch, App. B.)
- Comment to the effect that the military judge “didn’t want to make it look like they weren’t doing anything about these situations;” (*See* Mot. to Atch, App. B.)
- Comment to the effect that the military judge “apologized and stated that he was frustrated for having to sentence [Appellant] and find him guilty like he did;” (*See* Mot. to Atch, App. C.)
- Comment to the effect that the military judge was “in the spotlight because of things at Nellis;” (*See* Mot. to Atch, App. C.)
- Comment to the effect that the military judge said the case should be appealed for a “lack of evidence.” (*See* Mot. to Atch, App. C.)

Accordingly, the United States respectfully requests this Court order the military judge to provide a declaration or affidavit within 30 days of the Court’s order.

WHEREFORE, the United States requests this Court grant this Motion to Compel Affidavit.

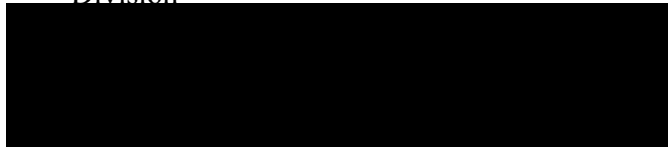

G. MATT OSBORN, Colonel, USAF
Appellate Government Counsel




MARY ELLEN PAYNE
Associate Chief, Government Trial and Appellate
Operations Division

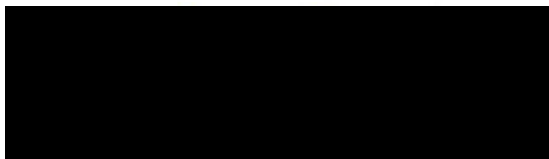


MATTHEW D. TALCOTT, Colonel, USAF
Chief, Government Trial and Appellate Operations
Division



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate defense counsel, and the Air Force Appellate Defense Division on 30 March 2026 via electronic filing.



G. MATT OSBORN, Colonel, USAF
Appellate Government Counsel



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

UNITED STATES	)	No. ACM 40702
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Caleb B. LUCAS	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 1

On 5 March 2026, Appellant submitted his assignments of error brief to the court, claiming, *inter alia*, that “the military judge abused his discretion by failing to recuse himself despite external pressures giving him an actual bias to convict Appellant.” On this same date, counsel for Appellant filed a motion to attach the following documents in support of this claim: sworn declarations from Appellant’s mother, MB, dated 19 February 2026; Appellant’s sister, CL, dated 19 February 2026; and Appellant’s grandmother, DW, dated 27 February 2026. Appellant avers that these three declarations “are relevant and necessary” to the assignment of error described *supra*.

The Government did not oppose Appellant’s motion to attach, but instead, on 30 March 2026, moved this court to compel the military judge to submit an affidavit or declaration in response to the Appellant’s claim of bias and the military judge’s “post-trial conversations he had with Appellant’s family” as described in the three declarations. On this same date, the Government moved this court for a 14-day enlargement of time “following the [c]ourt’s receipt of the military judge’s affidavit in order to properly and completely respond to Appellant’s brief.” Appellant did not respond to these motions.

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

The Court of Appeals for the Armed Forces (CAAF) “has concluded based on experience that ‘extra-record fact determinations’ may be ‘necessary predicates to resolving appellate questions’ that arise during Article 66[], UCMJ, reviews.” *United States v. Jessie*, 79 M.J. 437, 442–43 (C.A.A.F. 2020) (citing *United States v. Parker*, 36 M.J. 269, 272 (C.M.A. 1993)). When an appellant

raises a claim outside the record, the CAAF has noted “there are legitimate and salutary reasons for the now-Court of Criminal Appeals to have the discretion to obtain evidence by affidavit, testimony, stipulation, or a factfinding hearing, as it deems appropriate.” *Id.* at 446 (quoting *United States v. Boone*, 49 M.J. 187, 193 (C.A.A.F. 1998)).

We have considered the Appellant’s motion to attach, the Government’s response to the Appellant’s motion to attach, the Government’s motion to compel an affidavit by the military judge, the Government’s motion for a 14-day enlargement of time, Appellant’s lack of response to the Government’s motion, case law, and the record of trial.

Accordingly, it is by the court on this 7th day of April, 2026,

ORDERED:

Appellant’s Motion to Attach, dated 5 March 2026, is **GRANTED**.

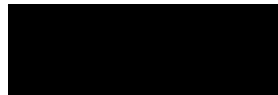
The Government’s Motion to Compel Affidavit, dated 30 March 2026, is **GRANTED**. The military judge, Colonel Brian M. Thompson, is ordered to provide an affidavit or declaration responsive to the three declarations by Appellant’s family members. The affidavit or declaration shall be provided to counsel for the Government **not later than 4 May 2026**.

It is further ordered:

The Government’s Motion for Enlargement of Time is **GRANTED**. The Government may file its answer **not later than 18 May 2026**.



FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	
<i>Appellee,</i>	)	MOTION TO ATTACH
	)	DOCUMENT
v.	)	
	)	ACM 40702
Senior Airman (E-4)	)	
CALEB B. LUCAS, USAF	)	Panel No. 1
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(b) of this Court’s Rules of Practice and Procedure, the United States submits the following document previously ordered by this Honorable Court on 7 April 2026:

- Declaration of Col BT, 2 pages

On 30 March 2026, the United States requested this Honorable Court compel Col BT to provide an affidavit or declaration regarding Appellant’s claim of bias. On 7 April 2026, this Honorable Court granted that motion and ordered Col BT “to provide an affidavit or declaration responsive to the three declarations by Appellant’s family members.” The Order stated that the affidavit or declaration “will be provided to counsel for the Government not later than 4 May 2026” and that the United States’ answer to Appellant’s assignments of error brief will be filed “not later than 18 May 2026.” Col BT provided his declaration on 29 April 2026.

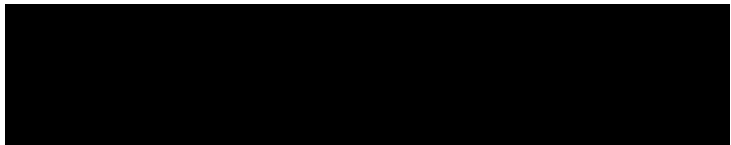
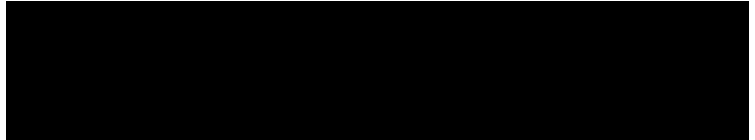


GRANTED
1 MAY 2026

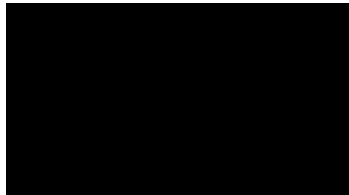
WHEREFORE, the United States respectfully requests this Honorable Court grant this Motion to Attach Document.



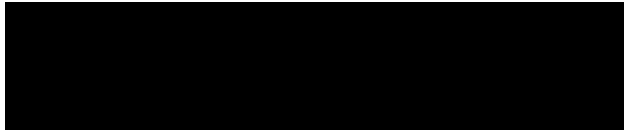
G. MATT OSBORN, Colonel, USAF
Appellate Government Counsel



MARY ELLEN PAYNE
Associate Chief, Government Trial and Appellate
Operations Division

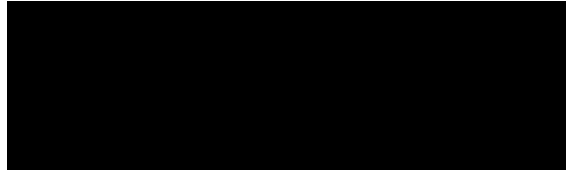


MATTHEW D. TALCOTT, Colonel, USAF
Chief, Government Trial and Appellate Operations
Division

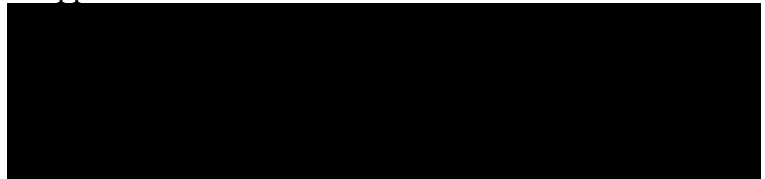


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate defense counsel, and the Air Force Appellate Defense Division on 30 April 2026 via electronic filing.



G. MATT OSBORN, Colonel, USAF
Appellate Government Counsel

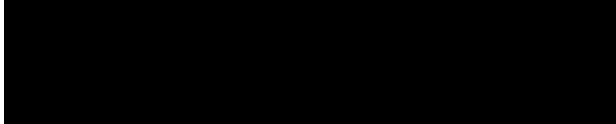


IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

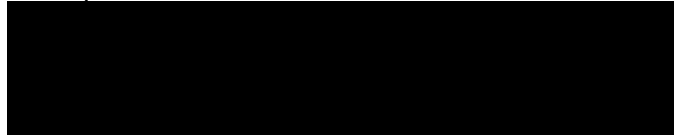
UNITED STATES,	)	
<i>Appellee,</i>	)	ANSWER TO ASSIGNMENTS
	)	OF ERROR
v.	)	
	)	Panel 1
Senior Airman (E-4)	)	
CALEB B. LUCAS, USAF,	)	ACM 40702
<i>Appellant.</i>	)	

ANSWER TO ASSIGNMENTS OF ERROR

G. MATT OSBORN, Colonel, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division



MARY ELLEN PAYNE
Associate Chief, Government Trial and Appellate
Operations Division



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	
<i>Appellee,</i>	)	ANSWER TO ASSIGNMENTS
	)	OF ERROR
v.	)	
	)	Panel 1
Senior Airman (E-4)	)	
CALEB B. LUCAS, USAF,	)	ACM 40702
<i>Appellant.</i>	)	

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

ISSUES PRESENTED

I.

**WHETHER APPELLANT’S CONVICTION WAS LEGALLY
AND FACTUALLY SUFFICIENT BECAUSE OF THE LACK
OF EVIDENCE THAT HE KNOWINGLY AND
WRONGFULLY POSSESSED CHILD PORNOGRAPHY
AND THAT HIS CONDUCT WAS OF A NATURE TO BRING
DISCREDIT UPON THE ARMED FORCES.**

II.

**WHETHER THE MILITARY JUDGE ABUSED HIS
DISCRETION BY FAILING TO RECUSE HIMSELF
DESPITE EXTERNAL PRESSURES GIVING HIM AN
ACTUAL BIAS TO CONVICT APPELLANT.**

III.

**WHETHER THE GOVERNMENT CAN PROVE THAT 18
U.S.C. § 922 IS CONSTITUTIONAL AS APPLIED TO
APPELLANT WHEN HE WAS CONVICTED OF AN
OFFENSE THAT DOES NOT FALL WITHIN THE
NATION’S HISTORICAL TRADITION OF FIREARM
REGULATION.**

STATEMENT OF THE CASE

The United States generally accepts Appellant’s Statement of the Case.

STATEMENT OF FACTS

- *Government's Case*

Det MF, a 24-year detective with the Las Vegas Metropolitan Police Department, testified that he received a report from the National Center for Missing and Exploited Children (NCMEC) regarding a Dropbox account that indicated an upload of child sex abuse material (CSAM). (R. at 51-52.) Det MF explained the report went from Dropbox to NCMEC to his department.

Det MF said his office sent a subpoena to the internet service provider associated with the IP address provided in the NCMEC report. (R. at 53.) Det MF also sent a search warrant to Dropbox. (ID.) Dropbox sent back information contained at Prosecution Exhibit 1. (R. at 53-54.)

Prosecution Exhibit 1 shows the Dropbox account associated with the NCMEC report had the name "[REDACTED]" and the email address "cl*****@gmail.com." (Pros. Ex. 1.) The report also shows mobile information captured by Dropbox for the account, including activity on 22 October 2022 from an iPhone 11 with an associated IP address. (ID.) The time listed for this activity was 02:42:41 UTC. (ID.) Det MF explained, "That is the upload date of the file that I received from Dropbox. It captures the IP address. They also captured the device information. In this case, the only thing they captured that it was an iPhone 11 and that the carrier for that particular device was AT&T." (R. at 55.)

Det MF testified that the IP address listed on the Dropbox report matched the IP address listed on the NCMEC report. (R. at 56.) Det MF also highlighted that no computer was ever linked or connected to this particular Dropbox account.

Dropbox also sent the file activity for this particular Dropbox account, which is at Prosecution Exhibit 2. (R. at 57.) Two videos were uploaded to this Dropbox account on the

date in question. The first was uploaded on 22 October 2022 at 02:40:51 UTC. (Pros. Ex. 2.) A second video, titled “4yo Girl Molested by 15yo Neighbour Teen Boy.avi,” was uploaded on 22 October 2022 at 02:42:39 UTC.¹ (Pros. Ex. 2.) Det MF highlighted that there was about two minutes between each of those files being uploaded to Dropbox. (R. at 59.) Det MF testified he also received the files in question from Dropbox. (Id.)

Det MF testified that he then used open-source information in an effort to determine the owner of the “cl*****@gmail.com” e-mail address. Using an open-source website, Det MF inputted the email address and saw a profile picture associated with the Google account, as well as Appellant’s name. (R. at 62.) The information also showed that the geolocation of activity associated for the individual was in the “generalized area of Las Vegas more towards the North Las Vegas area.” (Id.)

Det MF then went to Facebook and searched using Appellant’s name, which provided numerous results. Det MF eventually came across Appellant’s Facebook account. Det MF explained, “I immediately noticed the facial features matched to the profile photo,” adding, “And I noticed right off the bat the same exact photo that was in the profile photo of the Google account.” (R. at 63-64.) Appellant’s Facebook account also “identified that he was at Nellis Air Force Base.” (R. at 64.)

Det MF received information directly from Google related to the “cl*****@gmail.com” email address, which is at Prosecution Exhibit 3. (R. at 65.) The information identified the

¹ Appellant was originally charged with possessing “videos” of a minor, specifically the two videos mentioned in this Dropbox report. However, by exceptions and substitutions, the military judge found Appellant guilty of possessing one “video.” (R. at 159.) Following his verdict, the military judge stated, “For purpose of the record, as to Specification 1, the court rests its verdict of guilty on the single identified in Prosecution Exhibit 2 titled “4-year old girl molested by 15-year old 17 neighbor teen boy.” (Id.)

account belonged to someone with Appellant's name. (Pros. Ex. 3.) Google also provided account activity for this email. Det MF highlighted the activity shown for 23 October 2022, stating, "It captures the same IP and then off to the right you're going to see that raw data. That raw data is basically telling me that an iPhone 11.2 which is the exact same one that accessed the Dropbox account. Using the iOS software 15.61 at that time, which clearly matched the Dropbox return." (R. at 66.) Det MF concluded, "So, that tells me that this user accessed that Dropbox account with the exact same phone." (Id.)

Google also sent photos contained within the email account. (R. at 69.) One of those photos, which is of Appellant in his service dress uniform, is at Prosecution Exhibit 4. Det MF testified, "This was the same photo that was located in his email Google account, specifically, in the photos of the account. This was also the exact same photo that was in the profile return that I did with the [] open source tool that was in that profile photo that I was talking about." (Id.) Det MF said this photo was also contained on Appellant's Facebook page. (R. at 70.)

Det MF said other personal information associated with the Google account, including the phone number and date of birth, matched Appellant's information. (R. at 67.) From there, Det MF contacted the Air Force Office of Special Investigations (AFOSI) because the individual in question "appeared to be an active military personnel." (R. at 68.)

During his testimony, Det MF also identified videos contained in Prosecution Exhibit 5 as the videos received from Dropbox. (R. at 74.) When asked if there was anything in his investigation that told him how the videos ended up in the Dropbox account, Det MF responded as follows:

So, yes and no. Where specifically, no. I can tell you that based on the Dropbox return and the fact that iPhone, iOS was used, they interact with each other in a very specific way. So, I know that the downloads between the two videos were clicked on and what ends

up happening on the person's device is it will create a pop-up and ask you pretty much where you want to put it. Do you want to put it in your camera roll? Do you want to put it in this cloud account? Where exactly do you want to put this thing? Do you want to share it? Whatever.

The end user on that ended up clicking Dropbox. And then because there were other file naming in that account that was created by the end user, it would give them the option, hey, do you want to put it in this file or do you just want to put it in Dropbox? In this case, they selected just to put it into the Dropbox account.

What needs to be understood is that the first video occurred at a certain time. Approximately two minutes later, the second video was uploaded. Two seconds later, Dropbox pinged the device, the IP address, and shut the account down.² There was no way that any further manipulation could occur to that account and to those files specifically.

(R. at 76.) On cross-examination, Det MF agreed that there was no evidence of manipulation of the videos or of any changing of the videos' file names. (R. at 82.)

Also on cross-examination, Appellant's trial defense counsel asked Det MF about Twitter (or X) and discussed how Twitter monitored CSAM material. (R. at 83-84.) Det MF was also asked if role-play videos were legal, to which Det MF responded, "Well, as long as it's got adults in it, yes absolutely." (R. at 84.) When asked, "Now, if somebody was looking for those, it's possible that there could be – it's possible that there could be child pornography interspersed in that, correct," Det MF responded, "Is it possible, yes, but it would have to be seeked out." (R. at 84-85.) The exchanged continued:

DC: Okay, So, is it – how about this, is it possible that someone clicks a link in social media and that could lead to child pornography. Especially if they're in that role-play domain?

Det MF: Yes, but once they get to the link, they're going to see exactly what they are seeing. You're going to – if you're clicking a

² Det MF agreed during this testimony that Dropbox disabled the account in a matter of seconds because the video was flagged as potential CSAM. (R. at 51, 59, 86.)

link, you're going to go, best example, it would be like a Dropbox link. So, you can package all those files, do a link, someone clicks on that link, it gives them only access to that linked information that somebody created. When you go in there and look, then you're going to see the files, the file names, all of that, and that's usually when you're going to start to see, okay, here's what I'm getting, or here's what I'm looking at.

DC: And so, you would see a thumbnail, not necessarily the video playing, correct?

Det MF: That's correct.

(R. at 85.)

Appellant's counsel then asked Det MF, "Hypothetically, if someone has the pin to his cell phone, it could be possible that they were the ones who downloaded that, correct?"

(R. at 85.) Det MF responded, "They would have to be in his house accessing his Wi-Fi, which is also password protected. They would need the functionality of their – of the device as well to then pick specifically Dropbox to save it there," adding, "If they have the individual's phone, passcode, and access to the Wi-Fi, it would be possible." (R. at 85-86.)

On redirect examination, Det MF agreed that, in his experience, Twitter had a similar response to the detection of CSAM material as Dropbox in terms of how quickly an account would be disabled and NCMEC would be notified. (R. at 86.) Det MF said, "It could be seconds, minutes, it all kind of matters with the algorithms and crawlers that they have in place that are scanning. I know from experience with Twitter, now X, because you've got your main page that you have and then you have your direct message capabilities. Those get scanned faster, quicker than direct messaging. Direct messaging, it takes a bit and it eventually gets scanned." (Id.) Det MF added, "But it's still checked, but if you're on your main page trying to advertise child porn, I got three cases right now they hit within three seconds that's how fast it is." (R. at 87.)

When asked if there was any evidence that the videos in this case had been part of a mass download, Det MF testified, “In this particular case, there’s no – they were individually clicked on and saved.” (Id.) Det MF continued, “There was no links, there was no – they had to pick that video and make the decision on the capabilities of the phone to save it to that location. So, they had to interact with the phone to do that with that individual file. It wasn’t a link, it wasn’t anything. Could it have been contained in a link, yes. But they clicked on that [sic] individual files and then decided to save it to that Dropbox account.” (Id.) Det MF also said that if someone had “decide[d] to save the entire link,” the time of the download for each video would have been “the exact same time.” Det MF said, “That is indicative to a link being downloaded, that was not the case in this matter.” (Id.)

Mr. BJ, who was recognized by the court as an expert in digital forensics, testified that an iPhone 11.2 is commercially known as an iPhone XS. (R. at 144.)

AFOSI Special Agent (SA) JR was contacted by Det MF and began the investigation into Appellant. (R. at 90.) SA AK did the subject interview of Appellant. (R. at 98.) The interview is at Prosecution Exhibit 7. Appellant also completed a written statement, which is at Prosecution Exhibit 8. (R. at 101.) On cross-examination, SA AK agreed that Appellant was “pretty cooperative” during the interview, that the interview lasted over six hours, and that Appellant gave AFOSI consent to search his devices. (R. at 103.)

During his interview with AFOSI, Appellant confirmed that he lived in North Las Vegas, that “[REDACTED]” was his “go-to” username, and that “cl*****@gmail.com” was his email account. (Pros. Ex. 7, Part 1 at 13:15, Part 2 at 8:00, 8:25.) Appellant also stated that he got an iPhone 14 right before the previous Christmas in 2022, but admitted that he previously had an iPhone XS. (Id., Part 2 at 9:15-9:35.)

When asked about his hobbies, Appellant stated that he was a “tech guy,” adding, “I just built my first personal rig, I’ve helped like friends build their rigs, I restore electronics.” (Id., Part 1 at 18:00.) Appellant continued, “I just actually finished building an \$1,800 computer,” while specifically highlighting the type of graphics card he used. (Id., Part 1 at 18:40.) Appellant stated, “And now I’ve got the strongest computer of all my friends.” (Id., Part 1 at 51:20.)

Regarding his Cox internet account and wifi access at his house, Appellant said that his girlfriend and neighbor used his internet, but that his neighbor only had access to his internet from November 2022 until Memorial Day weekend of 2023. (Id., Part 2 at 1:30.) Appellant said, “I’m the only one with controls” of the internet account. (Id., Part 2 at 2:15.) Appellant said the only person who would have access to his cloud account was his mother. (Id., Part 2 at 10:15.) When asked if his girlfriend would use his devices, Appellant said “I don’t think so” because she had her own devices. (Id., Part 2 at 12:00.)

At first, Appellant admitted that he had a Dropbox account but that he did not use it very much. (Id., Part 2 at 7:15.) He later said he had not used the Dropbox account in years and denied uploading anything to Dropbox. (Id., Part 2 at 25:45, 41:30.) Appellant and an AFOSI SA then had the following exchange:

AFOSI SA: and how do you explain that, that video that I watched on the – on your account?

Appellant: I’m not certain what video you’re talking about.

AFOSI SA: It was like a 4-years-old girl with a 15-years-old teenager

(Id., Part 2 at 41:50-42:05.)

Appellant then stated again that the Dropbox account had not been used or opened for a long time. (Id., Part 2 at 42:30.) When asked how he could explain how that file got into his Dropbox account, Appellant said, “I’ve never done that,” and “I’ve not opened that thing in a very long time.” (Id., Part 2 at 43:00, 43:15.) When asked if anyone else had access to the Dropbox account, Appellant responded, “Not that I’m aware of.” (Id., Part 2, 45:10.)

Appellant then stated that maybe he had hit a link on Twitter, which he had earlier stated was somewhere he watched pornography. (Id., Part 2 at 54:30-56:00.) Appellant then stated that after hitting a link on Twitter, “I remember vaguely because I was drunk, I was drinking that day, and I was, I remember seeing a title similar to what you said, I do, I do vaguely remember that, and I was like what the fuck, and if I remember correctly I deleted the file.” (Id., Part 2 at 55:40.) Appellant continued, “I have some phantom memory of seeing something, like after you said that, I have some phantom memory of like the title.” (Id., Part 2 at 56:22.) When an AFOSI SA asked, “What was the title,” Appellant responded, “It was something about a 15-year old. I just remember, I so vaguely remember cause I do remember like in November I was drinking a lot.” (Id., Part 2 at 56:30.)

The AFOSI SAs and Appellant then had the following exchange:

AFOSI SA 1: So you uploaded data to the Dropbox when it downloaded from twitter?

Appellant: What do you mean?

SA 2: Yeah, you clicked the link and it downloaded the video, is that how it works?

Appellant: Well I think it went to the files on my phone and then I had to send it to the Dropbox because it wouldn’t, like it wouldn’t open on my phone.

...

SA 2: So before you clicked the link to download it, what, did you see the title?

Appellant: No I didn't, at least I don't recall seeing it. I remember sending it to my Dropbox because it downloaded to the files on my phone and I was like ok. Sent it.

(Id., Part 2 at 56:53-57:15.)

The conversation continued:

SA 2: So I'm trying to picture in my head, right, you downloaded the file. How did you realize what you had?

Appellant: I remember opening a folder and then inside of that folder was the title of the video but it was like broken up into a weird format. It didn't just like say word for word, it had like underscores if I remember correctly.

...

SA 1: Did you open file, uh video?

Appellant: No. I saw the thumbnail and the title and then fucking .
..

SA 2: What was the thumbnail?

Appellant: I just remember seeing what looked like a younger kid on top of . . . like, like naked, like a 15-year-old-ish looking

SA1: Do you recall the details of that thumbnail?

Appellant: Huh?

SA1: Do you recall the details of that thumbnail?

Appellant: If I remember correctly, it was like a 15-year-old or something naked. It was some – I remember seeing like, cause I saw the title, I looked at the thumbnail and it looked like a young person naked. And I was like – what the fuck.

SA2: So, and before I ask a question, I understand this can be a little uncomfortable. These are certain details that we have to get ok. So when you say a naked, younger person naked on top, just kind of describe.

Appellant: Yeah, let me clarify myself. I know I'm like . . .

SA2: No, you're good. Take your time.

Appellant: I just remember seeing it being like a younger person who appeared to be naked.

SA2: OK, what do you mean by younger person?

Appellant: It, I could not identify their age, but they did not . . .

SA2: What about their sex?

Appellant: If I . . . I remember it being from behind. Like a picture from behind or on the side. I know I couldn't see like what they were.

SA2: And then who else was in the thumbnail?

Appellant: I don't think it was two. I think it was just the, like, person.

SA2: So when you saw it what did you do?

Appellant: I deleted the video.

(Id., Part 2 at 57:58-59:50.)

AFOSI asked Appellant what was he was looking at to come into contact with this link. Appellant said he was scrolling Twitter and clicked a photo that he thought was going to someone from OnlyFans. (Id., Part 3 at 1:20.) Appellant claimed that on this particular night, he blacked out due to being drunk, but admitted to seeing the file name in Dropbox. (Id., Part 3 at 4:20, 4:45.) Appellant claimed again that he deleted the file and did not open it.

The AFOSI SAs then caught onto an inconsistency in Appellant's statement – namely that he had previously said that he had not logged onto Dropbox in years. (Id., Part 3 at 13:35.) Appellant then again admitted to saving the file to Dropbox, while adding, "Honestly, I don't remember much from that night." (Id., Part 3 at 13:35-14:35.) Appellant then said, "what I

believed happen was I clicked the link, it was like download here,” and it gave him a list of options. (Id., Part 3 at 16:00.) Appellant guessed he chose Dropbox.

When asked when he saw the file name of the video, Appellant said it was in the Dropbox, adding, “I told you I hadn’t used it in years first because I didn’t recall using it.” (Id., Part 3 at 17:30-17:50.) Appellant said he has a terrible memory, but remembered the Dropbox account because “of you bringing it up.” (Id., Part 3 at 18:05.) Appellant said “all I recall is deleting the video” once he saw the filename in Dropbox. (Id., Part 3 at 18:50.) When an AFOSI SA said it was odd that Appellant said he clicked a link supposedly of an OnlyFans girl, but it ended up leading to child pornography, Appellant said he might have clicked another link but only remembered clicking the OnlyFans girl link. (Id., Part 3 at 19:30.)

In his written statement, Appellant wrote that he did not recall watching the video, that he believed it was downloaded from Twitter while he was drunk, and that “I have a vague memory of the title.” (Pros. Ex. 8 at 3.) Appellant continued, “I have not used my drop box in a long time prior to the video or since.” (Id.) Appellant wrote, “I originally didn’t even remember the video and barely do now my only guess is I clicked the link labeled as something else or I was to [sic] drunk to even remember it.” (Id.) Appellant concluded, “I don’t recall the link or downloading the video.” (Id.)

- *Defense’s Case*

During his opening statement, Appellant’s trial defense counsel acknowledged that a video matching known child pornography was uploaded to a Dropbox account, and that the file “came from an iPhone 11 that was at an IP address in Las Vegas, Nevada.” (R. at 123.) Appellant’s counsel also stated that Det MF’s investigation “led him to believe that [Appellant] had used the iPhone to upload child pornography,” but said that the evidence did not

“conclusively point to” appellant because “[a]s [Det MF] said, the only thing he can conclude with certainty is that an iPhone 11 at an IP address associated with [Appellant’s home address, had uploaded child pornography to Dropbox.” (Id.)

Appellant’s counsel next stated that Appellant was “fully cooperative” during his OSI interview and was “shocked, appalled, disgusted” when confronted with child pornography in the Dropbox account. (Id.) Appellant’s counsel said that “OSI kept pushing, kept badgering, they were feeding him facts of the case,” and that “eventually, [Appellant] said, you know, now that you say, I don’t know if this is my memory or only because you’re saying it, I don’t know if this is a phantom memory, but I might remember something about a 15-year-old file name.” (R. at 123-24.) Appellant’s counsel then called that interview “tainted” based on “false memories.” (R. at 124.)

Dr. JT, a defense witness, was recognized as an expert in clinical and forensic psychology. (R. at 127.) Dr JT testified generally about “how memory works,” and “that we are just really bad at memory and that memory is fallible and that it’s constructive and that it’s selective.” (R. at 128-30.) Dr. JT also called the AFOSI interview “terrible,” adding that “You’re supposed to ask open-ended questions, and where the witness or suspect brings up the facts of the case.” (R. at 131.) Dr. JT said, “And what happened in this case is [AFOSI agents] mentioned the title of the video, and then, lo and behold, and, you know, some minutes later, [Appellant] said, oh, well, now I’m starting to remember, maybe it was something with the 15-year-old in the title.” (Id.) Dr. JT called that “useless,” because he did not know if Appellant was “actually remembering it or if it was fabricated” or “manufactured . . . based on the information the investigators gave him.” (R. at 132.)

On cross-examination, however, Dr. JT answered, “Yes, absolutely,” when asked, “You just said on direct that you’re not sure, but it is possible that OSI actually jogged [Appellant’s] memory?” (R. at 133.) Dr. JT also agreed that while memory is fallible, it can also be accurate. (Id.) He also agreed when asked if it was “possible that you hear a fact, and then that recalls to your memory actual things that did happen.” (Id.)

Ms. MB, Appellant’s mom, testified and stated that she was familiar with the email address “CL*****@gmail.com.” (R. at 139.) Ms. MB said it was Appellant’s. (R. at 140.) Ms. MB also said she was familiar with the phone number 985-***-****, again stating that it was Appellant’s. (R. at 140.) This number matches the recovery phone number listed on the “CL*****@gmail.com” Google account information. (*See* Pros. Ex. 3.)

Additional facts necessary to the disposition of this case are discussed in the specific issues below.

ARGUMENT

I.

APPELLANT’S CONVICTION FOR POSSESSING CHILD PORNOGRAPHY IS LEGALLY AND FACTUALLY SUFFICIENT.

Standard of Review and Law

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

In the performance of this review, “the Court of Criminal Appeals applies neither a presumption of innocence nor a presumption of guilt.” Washington, 57 M.J. at 399. While this Court must find that the evidence was sufficient beyond a reasonable doubt, it “does not mean that the evidence must be free of conflict.” United States v. Galchick, 52 M.J. 815, 818 (A.F. Ct. Crim. App. 2000) (citation omitted).

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

(B) Factual sufficiency review

(i) [T]he Court may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.

(ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—

(I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and

(II) appropriate deference to findings of fact entered into the record by the military judge.

(iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

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

Thus, whereas the former Article 66(d)(1), UCMJ, required service courts to conduct a *de novo* review of factual sufficiency in every case, the amended Article 66(d)(1)(B)(i), UCMJ, eliminates that duty absent an appellant (1) asserting an assignment of error, and (2) showing a deficiency of proof. *See United States v. Harvey*, 85 M.J. 127, 130 (C.A.A.F. 2024).

Though our superior Court has not yet addressed what constitutes a “specific showing of a deficiency of proof,”³ the Navy-Marine Corps Court of Criminal Appeals (NMCCA) has held that “a general disagreement with a verdict falls short of a specific showing of a deficiency in proof, and thus will not trigger a full factual sufficiency analysis.” United States v. Valencia, 85 M.J. 529, 535 (N-M. Ct. Crim. App. 2024). Instead, “an appellant must identify a weakness in the evidence admitted at trial to support an element (or more than one element) and explain why, on balance, the evidence (or lack thereof) admitted at trial contradicts a guilty finding.” Id.

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

Based on the military judge’s modified findings, Appellant stands convicted of, between on or about 20 October 2022 and on or about 30 May 2023, wrongfully possessing a video of a minor, or what appears to be a minor, engaging in sexually explicit conduct, and that said conduct was of a nature to bring discredit upon the armed forces. (ROT, Vol. I, Charge Sheet.)

³ See Harvey, 85 M.J. at 130.

Analysis

The military judge at Appellant's court-martial correctly found Appellant guilty of possessing child pornography, and there is no credible basis in the record for this Court to disturb Appellant's just verdict and sentence. Here, the United States presented the military judge with ample evidence to convince him of Appellant's guilt beyond a reasonable doubt.

Under the new factual sufficiency standard, Appellant has failed to make a specific showing of a deficiency of proof. Yet even if he had, after making the appropriate deference to the trial court hearing the witnesses at trial, the Court should not be clearly convinced that the finding of guilty was against the weight of the evidence. Further, Appellant has failed to show his conviction is legally insufficient.

- *Knowing and Wrongful Possession*

The evidence conclusively proves Appellant knowingly and wrongfully possessed child pornography during the charged timeframe. The evidence shows that on 22 October 2022, a video entitled "4yo Girl Molested By 15yo Neighbour Teen Boy" was uploaded to a Dropbox account with (1) a username that Appellant admitted was his "go-to" username; and (2) a "CL*****@gmail.com" email account that both Appellant and his mother admit was Appellant's email. Further, the video was uploaded from an iPhone 11.2, i.e. an iPhone XS, which Appellant admitted was the phone he used during this timeframe. Finally, the video was uploaded from an IP address belonging to Appellant. Thus, all digital evidence points to this video being uploaded to Appellant's Dropbox account, from Appellant's iPhone, using Appellant's IP address and internet connection at his residence in North Las Vegas.

In terms of Appellant's knowing possession, the Government pointed to the fact that Appellant uploaded the two files in question to Dropbox two minutes apart, meaning there was

not a mass upload of several files and that Appellant had to have specifically clicked on the video file and specifically selected the video file to be saved from his phone to on Dropbox. Indeed, Appellant admitted to AFOSI that he thought the file, after being downloaded from the internet, “went to the files on my phone and then I had to send it to the Dropbox because it wouldn’t, like it wouldn’t open on my phone.” Moreover, Appellant admitted to AFOSI that he had actually seen the video’s file when he told them he remembered the title and that it included “something about a 15-year old.” (Pros. Ex. 7, Part 2 at 56:30.)

Furthermore, Appellant provided AFOSI details about the thumbnail – and, by inference, the video itself – when he stated that the thumbnail showed “a younger kid on top of . . . like naked, like a 15-year-old ish.” (Id., Part 2, at 58:25-59:02.) These facts, plus Appellant being a self-professed “tech guy” who understood how computers and technology functioned, shows he knew the video in question contained child pornography and knowingly possessed it.

Moreover, Appellant stated that he, and he alone, controlled access to the internet at his house and stated, unprovoked by AFOSI agents, that he did not think his girlfriend would have used his devices. (Id., Part 1 at 12:00.) Further, while Appellant did say his neighbor had access to Appellant’s internet service, Appellant told AFOSI that the neighbor did not gain access to his internet until November 2022, which was after Appellant began possessing the child pornography video in October 2022. Altogether, the evidence establishes that Appellant, and Appellant alone, downloaded the child pornography video from the internet.

Still, Appellant claims his conviction is legally and factually insufficiency because the “only evidence of knowing and wrongful possession before the factfinder was that Appellant *accidentally* downloaded the single file of CSAM.” (App. Br. at 11.) (emphasis added.) Appellant highlights that he “explicitly, repeatedly, and consistently denied knowing and

wrongful possession of child pornography throughout his AFOSI interview.” (Id. at 12.)

Appellant claims that he “guessed that the only way the file got into his Dropbox account was when he was intoxicated and attempted to download adult pornography from Twitter,” only after “AFOSI fed [him] the timeframe of the alleged upload, file location (Drop-box), and file name.” (Id. at 12.)

Yet, in making this argument, Appellant fails to mention a key admission that undermines his “accidental” argument. Appellant omits the portion of his AFOSI interview where he admits to being a “tech guy” who had just recently built his own computer. (Pros. Ex. 7, Part 1 at 18:00, 18:40, 51:20.) As he professed, all unprovoked by AFOSI, Appellant knew and understood the inner workings of computers, technology, and the internet. This was no mistake.

Instead of addressing his prowess with technology, Appellant claims that AFOSI fed him all the pertinent information during his interview and that, as a result, anything Appellant said to AFOSI is tainted. (App. Br. at 12-14.) Appellant is wrong.

First, pointing to Prosecution Exhibit 7, Part 1 at 41:51-42:08, Appellant claims on two occasions in his brief that “AFOSI told Appellant” the title of the video. (App. Br. at 13.) However, as detailed above, the conversation that took place during that portion of the interview went as follows:

AFOSI SA: and how do you explain that, that video that I watched on the – on your account?

Appellant: I’m not certain what video you’re talking about.

AFOSI SA: It was like a 4-years-old girl with a 15-years-old teenager.

(Id., Part 2 at 41:40-41:50.) Here, while the AFOSI SA did mention the ages and genders of who was in the video, the agent mentioned nothing about the video's title – just its contents. Instead, as Appellant points out, when AFOSI later asked Appellant about the title, he responded, “It was something about a 15-year-old.”⁴ (App. Br. at 16, citing Pros. Ex. 7, Part 2 at 56:19-56:35.) Notably, Dr. JT's testimony calling Appellant's confession “useless” was based on Dr. JT's belief that “what happened in this case is [AFOSI agents] mentioned the title of the video, and then, lo and behold, and, you know, some minutes later, [Appellant] said, oh, well, now I'm starting to remember, maybe it was something with the 15-year-old in the title.” (R. at 131.) However, again, as shown above, the agents never mentioned anything about the video's title, only its contents.

Next, Appellant explained the thumbnail that accompanied the video – again unprovoked by AFOSI. That portion of the interview went as follows:

AFOSI SA 1: Did you open the file, uh video?

Appellant: No. I saw like the thumbnail and the title and . . .

AFOSI SA 2: What was the thumbnail?

Appellant: I just remember seeing what looked like a younger kid on top of . . . like naked, like a 15-year-old ish . . .

AFOSI SA 1: Do you recall the details of that thumbnail?

Appellant: Huh?

AFOSI SA 1: Do you recall the details of that thumbnail?

⁴ Here, Appellant's brief misquotes Appellant's statement at this point of the AFOSI interview. Appellant does not state, “I just remembered,” but instead says, “It was something about a 15-year old. I just remember, I so vaguely remember cause I do remember like in November I was drinking a lot.” (Id., Part 2 at 56:30.)

Appellant: If I remember correctly, it was like a 15-year-old or something naked. It was some – I remember seeing like, cause I saw the title. I looked at the thumbnail and it looked like a young person naked. And I was like – like what the fuck.

(Id., Part 2, 58:25-59:02.) The AFOSI SA then asked Appellant the open-ended question, “So when you say a naked younger person naked on top, just kind of describe.” (Id., Part 2, 59:05.) When Appellant replied that “I just remember seeing, it being like a younger person that appeared to be naked,” the AFOSI agent asked the open-ended question, “What do you mean by a younger person?” (Id., Part 2, 59:20.)

Here again, the AFOSI agents was not implanting memories into Appellant’s brain, but instead were asking him open-ended questions to describe the thumbnail. But most importantly, Appellant is the one who brought up the thumbnail in the first place. AFOSI never mentioned a thumbnail or asked about the thumbnail until Appellant brought it up. Furthermore, Appellant provided details about the thumbnail – and, by inference, the video itself – when he stated that video showed “a younger kid on top of . . . like naked, like a 15-year-old ish.” (Id., Part 2, at 58:25-59:02.) AFOSI never provided this specific detail of the video to Appellant. Instead, up until that point, AFOSI had only mentioned ages and genders.

This was no implanted or false memory, and was based on nothing “fed” to Appellant as he repeatedly claims. (*See App. Br.* at 12-15.) Instead, Appellant described the specifics of that thumbnail based on his actual recollection of what he saw on the night that he possessed the child pornography video.

Finally, Appellant takes issue with the two-minute time difference shown on the Dropbox report. (*App. Br.* at 15, citing *Pros. Ex. 2*.) He claims the Government’s theory that this shows Appellant separately saved the files “ignores other real possibilities,” including the files having different upload times. (Id.) He also claims he “may not have opened Dropbox under after both

files were uploaded,” he “may not have opened Dropbox at all before the account was disabled,” and that there “was no evidence that Appellant ever viewed, opened, or otherwise altered the files either.” (Id.)

Appellant is mistaken on multiple counts. First, whether the files had different upload times or not, the fact remains that Det MF testified that having the two different time stamps indicated that Appellant clicked on an individual file and then decided to save it to that Dropbox account. (R. at 87.) Moreover, as Appellant admitted, again unprovoked by AFOSI, that he knew the file name and knew what was contained in the thumbnail of the video. The two time stamps show that he purposefully and individually uploaded this video to Dropbox, proving his knowing possession.

Appellant also claims here that there was “no evidence” that he ever viewed the file. But his own admissions to AFOSI prove that he knew exactly what that file contained. He knew the file name. And he knew what that thumbnail showed, as he put it, “what looked like a younger kid on top of . . . like naked, like a 15-year-old ish” (Id., Part 2, 58:25-59:02.) Here, a military judge sitting alone, after reviewing first-hand all the evidence in this case, found Appellant guilty of possessing child pornography. While Appellant attempts to downplay the appropriate deference that this Court is required to give the military judge by claiming he “did not want to convict” Appellant and that he was “pressured,” Issue II of this brief shows such a claim is simply not true. This Court should provide the military judge’s review of the evidence the appropriate deference, and not be clearly convinced that Appellant’s conviction is against the weight of the evidence.

- *The Terminal Element*

Law

Clause 2 of Article 134, that is “conduct of a nature to bring discredit upon the armed forces,” “makes punishable conduct which has a tendency to bring the service into disrepute or which tends to lowers it in public esteem.” MCM, Part IV, para. 91.c.(3). As to whether an appellant’s conduct must be known by the public to meet this element, our superior court in United States v. Phillips, 70. M.J. 161 (C.A.A.F. 2011), held as follows:

The focus of clause 2 is on the “nature” of the conduct, whether the accused’s conduct would tend to bring discredit on the armed forces if known by the public, not whether it was in fact so known. The statute, which requires proof of the “nature” of the conduct, does not require the government to introduce testimony regarding views of “the public” or any segment thereof. The responsibility for evaluation of the nature of the conduct rests with the trier of fact. The responsibility for evaluation of the nature of the conduct rests with the trier of fact. As discussed below, the degree to which others became aware of the accused’s conduct may bear upon whether the conduct is service discrediting, but the statute does not establish a requirement that the accused’s conduct must in every case be in some respect public knowledge.

...

In general, the government is not required to present evidence that anyone witnessed or became aware of the conduct. Nor is the government required to specifically articulate how the conduct is service discrediting. Rather, the government’s obligation is to introduce sufficient evidence of the accused’s allegedly service discrediting conduct to support a conviction. In a panel case, the military judge must instruct the members how to evaluate that evidence. *See* Article 51(c), UCMJ, 10 U.S.C. § 851(c) (2006); Neder v. United States, 527 U.S. 1, 9, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999). When the military judge sits as the trier of fact, we presume that the military judge knows the law and applies it correctly. United States v. Robbins, 52 M.J. 455, 457 (C.A.A.F. 2000).

Whether conduct is of a “nature” to bring discredit upon the armed forces is a question that depends on the facts and circumstances of

the conduct, which includes facts regarding the setting as well as the extent to which Appellant's conduct is known to others. The trier of fact must consider all the circumstances, but such facts -- including the fact that the conduct may have been wholly private -- do not mandate a particular result unless no rational trier of fact could conclude that the conduct was of a "nature" to bring discredit upon the armed forces.

Phillips, 70 M.J. at 165-167.

CAAF has historically applied a "low evidentiary threshold . . . to Article 134, UCMJ's terminal element." United States v. Goings, 72 M.J. 202, 206 n.5 (C.A.A.F. 2013).

Our superior Court in United States v. Wells, 85 M.J. 154 (C.A.A.F. 2024), reaffirmed Phillips, stating, "Consistent with our precedent, we reiterate that whether any given conduct violates Clause 2 is a question for the trier of fact to determine, based upon all the facts and circumstances; it cannot be conclusively presumed from any particular course of conduct." Id. at 158.

Analysis

Here, Appellant contends that the "Government provided no evidence that Appellant's alleged conduct was of a nature to bring discredit upon the armed forces," and that the "Government and military judge relied on a conclusive presumption that Appellant's alleged conduct was *per se* service discrediting." (App. Br. at 18.) Appellant is wrong.

Here, the Government provided the military judge evidence that (1) Appellant used an online platform (Dropbox) to upload a video of child pornography; and (2) the ensuing investigation, began by Dropbox's notification to law enforcement authorities, resulted in a civilian police detective learning that Appellant was a member of the Air Force. Considering Appellant's use of an online platform to upload the video and that the civilian detective learned that Appellant was a member of the Air Force, the military judge had ample evidence to find

Appellant's actions were of a nature to discredit the Armed Forces outside of the misconduct itself. Given the "low evidentiary threshold" applied to "Article 134's terminal element," the military judge did not err in finding Appellant guilty. *See Goings*, 72 M.J. at 206 n.5.

In his brief, Appellant commendably notes that this Court "has found multiple child pornography cases under Article 134, UCMJ, 10 U.S.C. § 934, legally and factually sufficient after challenges to the lack of evidence of the terminal element." (App. Br. at 20, citing United States v. Smith, ACM 40437 (f rev), 2026 CCA LEXIS 1 (A.F. Ct. Crim. App. Jan. 5, 2026); United States v. Pulley, ACM 40438, 2024 CCA LEXIS 442 (A.F. Ct. Crim. App. Oct. 24, 2024); United States v. Nestor, ACM 40250, 2023 CCA LEXIS 272 (A.F. Ct. Crim. App. June 30, 2023); United States v. Massey, ACM 40017, 2023 CCA LEXIS 46 (A.F. Ct. Crim. App. Jan. 30, 2023).) However, he then unpersuasively attempts to argue his case is "distinct and warrants a different outcome." (Id.)

Appellant first states that "[n]o one knew about Appellant's alleged misconduct." (App. Br. at 20.) Yet, Appellant overlooks nearly 80 years of jurisprudence where military courts have repeatedly stated that no "actual injury" to the Armed Forces is required for Clause 2 to be met. The Government is not required to prove any actual harm to the reputation of the Armed Forces and both this Court, and our superior Court has repeatedly held that "actual public knowledge is not a prerequisite." *See United States v. Heppermann*, 82 M.J. 794, 801 (A.F. Ct. Crim. App. 2022) (citing Phillips, 70 M.J. at 166). Instead, a trier of fact must "evaluate the nature of the conduct and determine beyond a reasonable doubt that [the appellant]'s conduct would tend to bring the service into disrepute if it were known." Phillips, 70 M.J. at 166 (citing United States v. Saunders, 59 M.J. 1, 11 (C.A.A.F. 2003)).

Here again, the Government presented evidence that Appellant used an online platform to commit the misconduct and that Det MF, a civilian police detective, learned that Appellant was a member of the Air Force. Considering this, the military judge, who was the trier of fact and is presumed to know the law and follow it, had ample evidence to find Appellant's actions were of a nature to discredit the Armed Forces.

Appellant next attempts to differentiate his case by stating that he was "convicted of possessing only a single file." (App. Br. at 20.) In doing so, Appellant appears to be arguing that having multiple files of child pornography would be considered service discrediting, but having one file would not. Appellant, however, fails to cite to any case law or precedent standing for such a stance, and is forced to highlight this Court's opinion in Pulley, where this Court found the element was met based on one video of child pornography – which is exactly the case here.

Appellant next states his case is different because he "pled not guilty to the offense and did not stipulate to the terminal element." (App. Br. at 21.) Again, Appellant fails to explain how an appellant's plea is somehow dispositive of this issue. Indeed, based on cases cited within his own brief, it is not as three of the four cases cited in Appellant's brief – Massey, Nestor and Pulley – involved litigated charges that included the service discrediting terminal element.⁵ In each of those litigated cases, this Court found challenges to the lack of evidence for the terminal element unpersuasive and affirmed.

⁵ While Appellant is partially correct in noting that the appellant in Pulley "pled guilty and testified to the conduct being service-discrediting," Appellant fails to recognize the appellant in that case pled guilty to two child pornography specifications, but litigated an indecent conduct specification which also involved the service discrediting terminal element. *See Pulley*, at *38-39. This Court reviewed the terminal element issue for both the litigated and non-litigated specifications.

Lastly, the Government seeks to clarify a final assertion made by Appellant. Citing Judge Hardy's dissent in Wells, Appellant states, "The United States Court of Appeals for the Armed Forces' (CAAF's) use of 'may' in Phillips underscores the fact that the military does not consider every act of possession of child pornography to be 'of a nature to bring discredit upon the armed forces.'" (App. Br. at 21, citing Wells, 85 M.J. at 159.) Appellant's statement here, along with the accompanying dissent citation, could be interpreted to mean that Judge Hardy wrote that the "military does not consider every act of possession of child pornography to be 'of a nature to bring discredit upon the armed forces.'"

However, that is not what is contained within Judge Hardy's dissent. Instead, Judge Hardy wrote, "The Court emphasized the word '*may*,' underscoring the fact that in some cases, additional evidence would be necessary to prove beyond a reasonable doubt that the charged conduct was of a nature to bring discredit upon the armed forces." This language is far different than what is surmised in Appellant's statement within his brief.

In sum, the evidence shows Appellant accessed a video file entitled "4yo Girl Molested by 15yo Neighbour Teen Boy.avi." The evidence also shows Appellant knew the video contained, as he put it, "like a younger kid on top of . . . like naked, like a 15-year-old ish" (Id., Part 2, 58:25-59:02.) Rather than deleting and reporting the existence of such a file to law enforcement, Appellant demonstrated a different motive. He then took active steps to upload that video to an online chat platform that immediately flagged and disabled his account, which then led directly to an investigation where civilian authorities learned that a member of the Air Force was implicated in the perpetuating the market for such heinous material. Here, the Government provided ample evidence displaying the service discrediting nature of Appellant's

conduct. A military judge sitting alone concluded as much, and this Court should not be clearly convinced this finding was against the weight of the evidence.

All told, Appellant's claim that his conviction occurred through "a conclusive presumption" is not supported by the evidence. As shown, the military judge did not rely on "a conclusive presumption" in finding Appellant guilty. As a result, Appellant's claim must fail.

Considering all of these facts and circumstances, the Government provided the military judge ample evidence of Appellant's guilt beyond a reasonable doubt. Appellant has failed to make a specific showing of a deficiency of proof as to his child pornography possession conviction. Yet even if he had, after giving the appropriate deference to the trial court hearing the witnesses at trial and viewing the evidence, the Court should not be clearly convinced that the finding of guilty was against the weight of the evidence. Accordingly, Appellant's factual sufficiency claim must fail.

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

II.

THE MILITARY JUDGE DID NOT ABUSE HIS DISCRETION WHEN HE DID NOT SUA SPONTE RECUSE HIMSELF FROM APPELLANT'S CASE.

Standard of Review

Appellate courts "will reverse a military judge's decision on the issue of recusal only for an abuse of discretion." United States v. McIlwain, 66 M.J. 312, 314 (C.A.A.F. 2008) (citing

United States v. Butcher, 56 M.J. 87, 90 (C.A.A.F. 2001)). “A military judge abuses his discretion when: (1) the findings of fact upon which he predicates his ruling are not supported by the record; (2) if incorrect legal principles were used; or (3) if his application of the correct legal principles to the facts was clearly unreasonable.” United States v. Ellis, 68 M.J. 341, 344 (C.A.A.F. 2010) (citation omitted).

Law

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

Pursuant to R.C.M. 902(a), where concerns of actual bias or prejudice are not at issue, the question of whether there is an appearance of impartiality is decided under an objective standard. United States v. Norfleet, 53 M.J. 262, 270 (C.A.A.F. 2000). Under this standard, recusal is

required when “a reasonable man knowing all the circumstances” concludes that “the judge’s ‘impartiality might reasonably be questioned.’” Butcher, 56 M.J. at 91 (quoting citations omitted). However, despite the objective standard, a military judge’s “statements concerning his intentions and the matters upon which he will rely are” still relevant to the inquiry. Wright, 52 M.J. at 141 (citations omitted); United States v. Sullivan, 74 M.J. 448, 454 (C.A.A.F. 2015).

If an appellate court finds that the military judge should have recused himself under R.C.M. 902(a), it must then determine whether the error was harmless under Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988). Butcher, 56 M.J. at 92; United States v. Roach, 69 M.J. 17, 20 (C.A.A.F. 2010); United States v. Martinez, 70 M.J. 154, 158 (C.A.A.F. 2011). The test for harmless error for violations of R.C.M. 902(a) requires consideration of three factors. First, “any specific injustice that [the appellant] personally suffered.” United States v. Uribe, 80 M.J. 442, 449 (C.A.A.F. 2021) (quoting Martinez, 70 M.J. at 159) (brackets in original). Second, “whether granting relief would ‘encourag[e] a judge or litigant to more carefully examine possible grounds for disqualification and to promptly disclose them when discovered.” Id. (quoting Liljeberg, 486 U.S. at 868) (brackets in original). Third, using an “objective standard,” determine whether “the circumstances of [a] case will risk undermining the public’s confidence in the military justice system.” Id. (quoting Martinez, 70 M.J. at 160) (brackets in original).

While the third part of the Liljeberg test is similar to the R.C.M. 902(a) analysis in that it is objective, it differs from R.C.M. 902(a) in that it is not limited only to facts relevant to recusal, but rather includes a “review [of] the entire proceedings.” Martinez, 70 M.J. at 160; *see also* United States v. Rivers, 49 M.J. 434, 444 (C.A.A.F. 1998) (“Our review of the entire record convinces us that . . . [there are no] reasonable doubts about the fairness of appellant’s trial.”).

The military judge “is not a figurehead” or “simply an umpire in a contest between the [g]overnment and accused.” United States v. Kimble, 49 C.M.R. 384, 386 (C.M.A. 1974). The military judge is required to “exercise reasonable control over the proceedings” and “should prevent unnecessary waste of time and promote the ascertainment of truth, but must avoid undue interference with the parties’ presentations or the appearance of partiality.” R.C.M. 801(a)(3) and Discussion.

Additional Facts

At trial, the military judge, sitting alone, convicted Appellant of one specification of possessing child pornography. (R. at 159.) In doing so, the military judge excepted the word “videos,” and substituted the word “video,” in essence convicting Appellant of possessing one video instead of multiple videos. The military judge acquitted Appellant of a separate specification alleging Appellant viewed child pornography. (Id.)

In conjunction with his Assignment of Errors brief to this Court, Appellant moved to attach declarations from his mother, sister, and grandmother. (*See* Mot. to Attach, dtd 5 March 2026.) In her declaration, Appellant’s mother, Ms. MB, stated that following the court-martial, the military judge spoke with Ms. MB, her daughter, and mother. (Dec. of Ms. MB.) Ms. MB stated in her declaration, “[T]he judge apologized to me and said, ‘Mrs. [MB], I’m sorry you are going through this, but I can’t let [Appellant] walk out of here a free man because of everything that is going on at Nellis.’” (Id.) Ms. MB continued, “I asked the judge how we should get through this, and the judge told us to ‘Appeal my decision.’” (Id.)

Ms. MB stated that the military judge then “encouraged us all to make sure [Appellant] appealed his ruling and for me to support him through it,” adding that she then “expressed that we would appeal and I would stand by him through the entire process.” (Id.) Ms. MB further

stated that the “judge then expressed that his sentence was very light, [and] that he let [Appellant] out as easily as he could.” Finally, Ms. MB stated in her declaration, “These statements are as close to verbatim as I can remember,” and that her “impression was that the judge felt pressured to convict [Appellant].” (Id.)

Appellant’s sister, Ms. CL, stated in a declaration that she, her mom, and grandmother “were met by the judge in the hallway” following Appellant’s trial. (Dec. of Ms. CL.) In her declaration, Ms. CL stated, “The judge spoke mainly to my mom, and he stated that he was apologetic for how [Appellant] was sentenced and strongly encouraged us that [Appellant] needed to appeal his case.” (Id.) Ms. CL continued, “The judge also mentioned that this was the outcome due to another situation going on at Nellis AFB.” And that the “judge said Nellis was being watched already, and he didn’t want to make it look like they weren’t doing anything about these situations.” (Id.)

Appellant’s grandmother, Ms. DW, also provided a declaration. In it, Ms. DW stated she, her daughter, and granddaughter spoke with the military judge following the trial. (Dec. of Ms. DW.) Ms. DW stated, “The judge asked us how we were doing,” and that the “judge then apologized and stated that he was frustrated for having to sentence [Appellant] and find him guilty like he did.” (Id.) Ms. DW continued, “The judge said he was in the spotlight because of things at Nellis with a commander or something, and the man got away with something related to child pornography for a long time until it was brought out as public.” Ms. DW further stated in her declaration, “The judge then told my daughter to ‘Make sure this case was appealed’ because ‘of the lack of evidence,’ adding that the military judge ‘then said something about the sentence and that he felt that he should not have had to sentence [Appellant].’” (Id.) Ms. DW closed her declaration by stating, “These statements are as close to verbatim as I can remember.” (Id.)

In response to a Government motion, this Court ordered the military judge, Col BT, to provide a declaration addressing Appellant's claims of bias. Col BT first noted that the "Nellis courtroom building is not designed or used in a way that minimizes the judge's potential of running into parties, witnesses, families or other interested parties in that hallway," and that when he saw Appellant's family in the hallway "appear[ing] to be in some distress," he "elected to stop and attempt to provide them some encouraging words (as I had done in Court when two of them testified)" . . . "rather than slink into my office without acknowledging them." (Dec. of Col BT at 1.)

Col BT stated in his declaration, "I told them generally that I wanted to reiterate that I appreciated them supporting their family member (Accused), that I was sure he appreciated it as well, and that I understood that trials like this are hard on everyone, including family members," adding, "I told them that their continued support will be important as Accused transitions out of the military back into civilian life and it appeared he had an excellent support system with all of them and the larger community they described in their testimony." (Id. at 1.)

Col BT stated that one of Appellant's family members asked what would happen next, and that he "told them that Accused's defense counsel can explain that processes to them but generally there would be a process where command would review the results of the case and make decisions what to approve," and that "then there would be an appeal where a higher court which would decide whether I made any errors in the case." (Id.) Col BT stated that he "again reiterated that they could get more details with defense counsel, who I expected they were on their way to speak with," adding that he then "steered the conversation back to the idea that the best thing they could do for their family member was continue the level of support they had been providing and testified that they intended to continue to provide." Col BT stated that he "wished

them the best of luck, they thanked me, and we parted,” noting that “[i]t was a brief, one to two minute conversation intentionally short on details of anything we discussed.”

In his declaration, Col BT specifically stated that “given Accused has an automatic appeal, I did not advise them to appeal.” (Id. at 2.) He also stated, “Further Nellis was not an installation within my District and I was not aware of any ‘issues’ with command or some unresolved prior child pornography case or anything along those lines,” adding, “Frankly, there was no ‘spotlight’ I was aware of on this fairly routine case (and I understand it was not ‘routine’ to Accused or his family, but from my perspective there was nothing noteworthy about this particular case)”

Col BT continued, “No one in command (and I knew no one in command at Nellis), in the local Nellis legal community (I do not believe I even spoke with any of the Legal Office leadership team certainly not before nor after the close of the court; I rarely have conversations even after courts with Legal Office leadership), or even the broader legal community had any conversation about this or any other case at Nellis with me.” (Id.) Specifically addressing the declarations of Appellant’s family members, Col BT stated, “I am not sure what in the conversation led them to believe I was feeling pressure to convict or impose a particular sentence,” adding, “I absolutely was not and I believe my mixed findings were completely consistent with the evidence.” (Id.) Col BT continued, “Again frankly, at this stage of my career, I cannot think of any situation where an outside entity could impact my decision making in any court-martial,” and that “[i]f I had had a conversation with anyone pretrial or during trial that even remotely appeared to me to be an effort to influence my decision-making, I would have taken steps to address it formally.” (Id.)

Col BT also stated, “I do not recall saying I gave Accused a light sentence, but believe I noted that given the sentence not including confinement it was likely Accused’s separation from the Air Force would happen relatively soon.” (Id.) However, Col BT declared, “Even with that I did not suggest or mean to suggest that I had to sentence Accused to something because of any non-existent ‘spotlight’ on the case,” but instead “adjudged a sentence consistent with the sentencing rules and with the offense for which he was convicted.” (Id.) Col BT also highlighted, “In fact, my notes indicate Defense Counsel asked for a Bad Conduct Discharge in their sentencing argument which required me to engage in a colloquy with Accused about such a request,” and confirmed that “[h]ad Defense Counsel in post-trial submissions asked me to provide a letter in support because of the families’ belief that I had regret about my findings or sentence (they did not) I would not have provided one as I had no such regret (and had not been pressured in any way).” (Id.)

Finally, Col BT stated, “I am disappointed that the family seems to have taken my sincere efforts to express sympathy and provide encouragement as regret, bias, or outside pressure to render a specific result.” (Id.) Col BT ended by stating, “I had and have no regret with the outcome, findings or sentence, was not operating with any bias, and no one pressured me (or even communicated with me) about this case.” (Id.)

Analysis

Relying on the declarations of his mother, sister, and grandmother, Appellant claims that the “military judge abused his discretion by failing to recuse himself despite external pressures giving him an actual bias to convict Appellant.” (App. Br. at 22.) Appellant claims the military judge “failed to sua sponte disqualify himself in Appellant’s court-martial because his impartiality was reasonably questioned,” adding that the “military judge felt pressured to convict

Appellant ‘because of everything that [was] going on at Nellis,’ calling into question his ability to be an objective fact finder and adjudicator.” (Id.)

However, Col BT’s declaration confirms this is simply not the case. While it is understandable that Appellant’s family misinterpreted, misunderstood, or simply misheard Col BT – likely due to their emotional state following Appellant’s court-martial, Col BT’s declaration illustrates there was no “impartiality,” “bias,” or “pressure to convict Appellant” due to any supposed happenings at Nellis.

To Appellant’s claim that the Col BT felt “pressured to convict Appellant ‘because of everything that [was] going on at Nellis,’”⁶ Col BT stated that he was aware of no “spotlight” or “issues” with command at Nellis, that Nellis was not an installation within his District, and that he had no conversation with anyone at Nellis or the broader legal community about Appellant’s or any other case at Nellis. (Dec. of Col BT.) Appellant’s claims that the military judge had “actual bias” because the military judge could not “let [Appellant] walk out of here a free man because of everything [was] going on at Nellis” are directly refuted and denied by Col BT. (*See* App. Br. at 23; *but see* Dec. of Col BT at 2.)

Appellant also claims Col BT felt “pressured to convict Appellant, despite the state of the evidence, because of circumstances at Nellis Air Force Base.” (App. Br. at 24.) Yet again, however, Col BT stated in his declaration that he had no clue about any “issues” at Nellis. Moreover, Appellant fails to recognize that Col BT *acquitted* Appellant of one specification and reduced the specification for which he did convict him from including multiple videos to including just one. Indeed, as Col BT declared, “I am not sure what in the conversation led them to believe I was feeling pressure to convict or impose a particular sentence,” adding, “I

⁶ *See* App. Br. at 22.

absolutely was not and I believe my *mixed findings were completely consistent with the evidence.*” (Dec. of BT at 2.) (emphasis added.) As shown by Col BT’s declaration, there were no “external pressures” as Appellant alleges.

Finally, though Appellant claims that Col BT “gave a light sentence to compensate” for any alleged pressure and that he “then encouraged Appellant to appeal his case,” Col BT again denied any such conversation took place. (*See App. Br. at 26; but see Dec. of Col BT.*) Col BT explained the context of his discussions regarding Appellant’s sentence (namely that since it did not include confinement, Appellant’s separation from the Air Force would happen relatively soon), but said that he “did not suggest or meant to suggest” that Appellant’s sentence had anything to do with “any non-existent ‘spotlight’ on the case.” (Dec. of Col BT at 2.) Col BT also stated that he “did not advise them to appeal,” but instead generally explained to Appellant’s family that “there would be an appeal where a higher court which would decide whether I made any errors in the case.” (*Id.* at 1.)

Again, it is understandable why Appellant’s family misunderstood or misheard Col BT’s comments. Appellant, who was the child, grandchild, and sibling of the family members involved, had just been convicted and sentenced for possessing child pornography. It was undoubtedly an emotional time for the family so confusion and recollection as to what Col BT actually said to them is reasonable considering the circumstances, and their overall unfamiliarity with the military justice system.

In contrast, Col BT’s recollection is much more certain and credible considering the circumstances. Unlike Appellant’s family, Col BT had no emotional attachment to this case. Instead, as Col BT put it, Appellant’s case was “fairly routine,” even noting the contrast by stating, “I understand it was not ‘routine’ to Accused or his family, but from my perspective

there was nothing noteworthy about this particular case.” (*See* Dec. of Col BT.) Furthermore, unlike Appellant’s family, Col BT possessed a high level of understanding of the military justice system and had presided over numerous courts-martial in his career. Thus, while the likelihood of uncertainty and misinterpretation in the recollection of Appellant’s family is extremely high, this Court can be certain that Col BT’s recollection was free of such factors, rendering his the more credible recollection of the conversation.

Considering Col BT’s outright denial of any actual bias and the overall circumstances of the interaction between Appellant’s family and Col BT, Appellant has failed to show Col BT abused his discretion by not *sua sponte* recusing himself from Appellant’s case. Further, Appellant has failed to show even an appearance of bias. Besides Col BT’s denial of all allegations Appellant’s now raises, Col BT’s mixed findings at Appellant’s court-martial highlight that he had neither an actual bias or the appearance of bias.

Since Appellant has failed to show any abuse of discretion by Col BT, an analysis of the Liljeberg factors is unnecessary in this case. Yet, even if this Court did review them, the second and third factors weigh heavily in the Government’s favor. For the second factor, considering Col BT’s declaration confirming there were no grounds for disqualification because he was unaware of any “issues” at Nellis that might allegedly impact his ability to perform his judicial duties, granting any relief in this case would not “encourag[e] a judge or litigant to more carefully examine possible grounds for disqualification and to promptly disclose them when discovered.” *See Liljeberg*, 486 U.S. at 868.

For the third factor, considering Col BT’s clear statements refuting any allegation of bias (actual or otherwise), the circumstances of this case do not “risk undermining the public’s confidence in the military justice system.” *See Martinez*, 70 M.J. at 159.

As Col BT intimates in his declaration, it is unfortunate that Appellant’s family misinterpreted and/or misheard Col BT during their brief conversation following Appellant’s court-martial. However, the fact remains that Col BT has declared to this Court that he “had and have no regret with the outcome, findings or sentence, was not operating with any bias, and no one pressured me (or even communicated with me) about this case.” (Dec. of Col BT at 2.) Considering this, Appellant has failed to show Col BT abused his discretion in not *sua sponte* recusing himself from Appellant’s case, and this Court should deny his claim.

III.

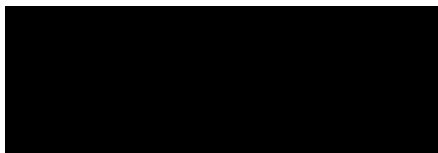
THIS COURT DOES NOT HAVE JURISDICTION TO DECIDE WHETHER THE FIREARM PROHIBITION IN THE GUN CONTROL ACT OF 1968, 18 U.S.C. § 922, IS CONSTITUTIONAL BECAUSE IT IS A COLLATERAL ISSUE NOT SUBJECT TO REVIEW UNDER ARTICLE 66, UCMJ.

Standard of Review, Law and Analysis

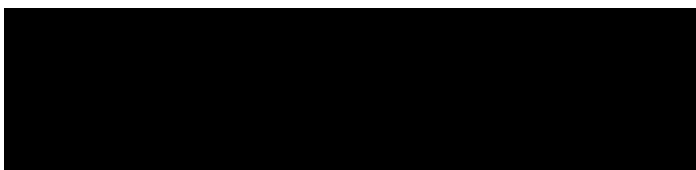
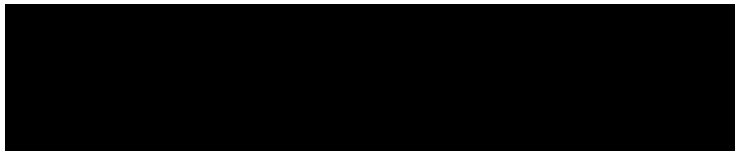
Appellant “requests that this Court hold that 18 U.S.C. § 922 is unconstitutional as applied to him.” (App. Br. at 27.) However, as Appellant is forced to acknowledge, our superior Court definitely held in United States v. Johnson, 86 M.J. 8, 14 (C.A.A.F. 2025), that “Article 67(c), UCMJ, does not give this Court authority to modify the § 922 indication in the EOJ, and Article 66(d)(2), UCMJ, does not give the AFCCA authority to modify the § 922 indication either.” Accordingly, this Court should decline Appellant’s invitation to defy our superior Court’s holding, and deny his claim.

CONCLUSION

WHEREFORE, this Court should deny Appellant's claims and affirm the findings and sentence.



G. MATT OSBORN, Colonel, USAF
Appellate Government Counsel

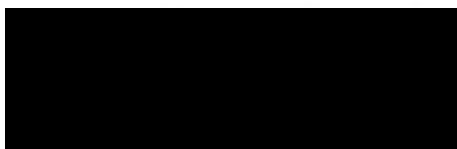


MARY ELLEN PAYNE
Associate Chief, Government Trial and Appellate
Operations Division

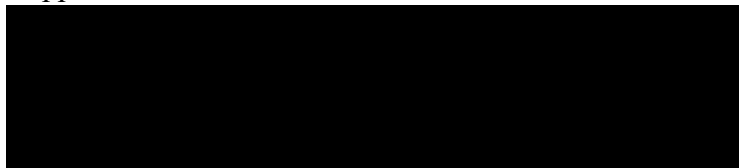


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate counsel, and the Air Force Appellate Defense Division on 18 May 2026 via electronic filing.



G. MATT OSBORN, Colonel, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

v.

Senior Airman (E-4)

CALEB L. LUCAS

United States Air Force

Appellant

**REPLY TO THE UNITED STATES'
ANSWER TO ASSIGNMENTS OF
ERROR**

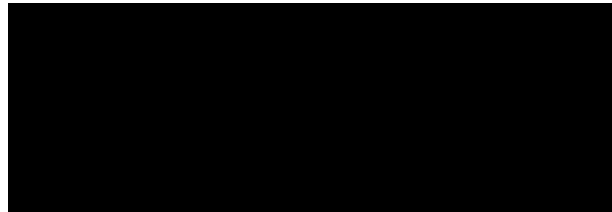
Before Panel No. 1

No. ACM 40702

26 May 2026

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

JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel



Appellant, pursuant to Rule 18(d) of this Court’s Rules of Practice and Procedure, files this Reply to the United States’ Answer to Assignments of Error, dated 18 May 2026. In addition to the arguments in Appellant’s Brief on Behalf of Appellant, dated 5 March 2026, Appellant submits the following.

I. Appellant’s conviction was legally and factually insufficient because of the lack of evidence that he knowingly and wrongfully possessed child pornography and that his conduct was of a nature to bring discredit upon the armed forces.

Appellant’s conviction was factually insufficient because of two specific deficiencies of proof: (1) the Government did not provide sufficient evidence of Appellant’s knowing and wrongful possession and (2) the Government provided no evidence that Appellant’s conduct was of a nature to bring discredit upon the armed forces.¹ Appellant’s conviction was also legally insufficient—a rational trier of fact could not have found the essential elements of Appellant’s alleged crime beyond a reasonable doubt because evidence of both elements was missing. Therefore, this Court must set aside the finding.

A. The Government’s evidence of knowing and wrongful possession is legally and factually insufficient.

The record shows Appellant’s conviction is factually and legally insufficient because the Government failed to prove beyond a reasonable doubt that Appellant

¹ In its brief, the Government claims, “Appellant has failed to make a specific showing of a deficiency of proof,” which is followed by its response to Appellant’s specific showings of multiple deficiencies of proof. Answer to Assignments of Error at 17. Because the Government provided no additional analysis after its claim, the portion of Appellant’s Brief articulating the specific deficiencies is copied here. Br. on Behalf of Appellant at 10; *see also* Br. on Behalf of Appellant at 18, 22.

(1) knowingly and wrongfully possessed child pornography and (2) did not hold a mistake of fact that the file was not child pornography.

The Government's answer to Appellant's specific deficiencies of proof regarding knowing and wrongful possession argues: (1) Appellant's download could not have been accidental because he was a "tech guy," (2) the Air Force Office of Special Investigations (AFOSI) telling Appellant the description and title of the file, the file's digital location, and the alleged upload time before Appellant discussed any of those matters was not "fed" to Appellant; and (3) the non-expert detective's opinion on the file download times is conclusive as to knowing possession. Answer to Assignments of Error at 19-22. These arguments are unavailing, mistaken on multiple counts, and unsupported by the record.

1. The Government overgeneralizes Appellant's computer hardware knowledge.

While Appellant knows how to build a computer, it is only because he is "hardware savvy," not software savvy.² Pros. Ex. 7, File 3 at 00:16-00:24. Computer hardware and software are two different fields of study, expertise, and knowledge. The Government's jump from Appellant being "hardware savvy" to "Appellant knew and understood the inner workings of computers, technology, and the internet" is an

² "Hardware refers to the physical parts that are inside a computer. This includes the graphics card, processor, motherboard, memory, and much more. Software refers to the programs and operating system that you use your computer to access. *Examples of software are your internet browser, games, Microsoft Word, and yes, the Windows operating system you're probably using right now.*" *Hardware vs Software: What's the difference?*, Corsair, <https://www.corsair.com/us/en/explorer/gamer/gaming-pcs/hardware-vs-software-whats-the-difference/?srsltid=AfmBOop-ysWoyXcjFIhfjKaAx-OnSzO7kyzgza2gQhSeeasJPje2564j>.

overgeneralization and distortion of the facts. Answer to Assignments of Error at 19. Just because a carpenter can build the frame of a house, one cannot assume the carpenter knows and understands the inner workings of electricity and plumbing, especially after the carpenter says they do not know and understand those things. Appellant already made this distinction between hardware and software and directly refuted this assertion during his AFOSI interview. Pros. Ex. 7, File 3 at 00:16-00:24.

2. Appellant only knew what AFOSI told him.

AFOSI fed Appellant all the information about the alleged crime before Appellant discussed his “memory” of it. Appellant’s Br. at 12-13, 15-17. Appellant first discussed a “memory” of the alleged crime one hour and fifty-four minutes into the AFOSI interview. Pros. Ex. 7, File 2 at 54:12. Before that, AFOSI told Appellant the description and title of the file, the file’s digital location, and the alleged upload time. Pros. Ex. 7, File 2 at 40:53-41:18, 41:51-42:08, 45:49-46:03, 53:25-53:52.

The Government first argues that the “the agent mentioned nothing about the video’s title – just its contents,” before Appellant first discussed a “memory” of the alleged crime. Answer to Assignments of Error at 20. That is incorrect. Appellant’s first discussion of the alleged crime is at one hour and fifty-four minutes into the AFOSI interview. Pros. Ex. 7, File 2 at 54:12. Prior to that, at one hour and forty-five minutes, the AFOSI agent said to Appellant: “Well, you seem like a very tech savvy [sic], from my understanding, building supercomputers and all that fun stuff. So, you would understand that there’s *a video with the title saying 15 years old with four years old*. You understand that’s child pornography?” Pros. Ex. 7, File 2 at 45:49-

46:03 (emphasis added); *see also* Pros. Ex. 7, File 2 at 41:58-42:08 (AFOSI told Appellant the title of the video: “four years [sic] old girl with a fifteen years [sic] old teenager”). AFOSI could not have more explicitly fed the title to Appellant. This case is precisely as Dr. T■■■■■, the only expert who testified about memory at trial, described: “[W]hat happened in this case is [AFOSI agents] mentioned the title of the video, and then, lo and behold, and, you know, some minutes later, [Appellant] said, oh, well, now I’m starting to remember, maybe it was something with the 15-year-old in the title.” Trial Tr. 131.

The Government next argues that because Appellant described details of a thumbnail of the file, he knowingly and wrongfully possessed child pornography. Answer to Assignments of Error at 20-21. This is unsupported by the record and is non-responsive to Appellant’s assignment of error. Appellant only described the title AFOSI told him, all the other details he provided are non-specific: he remembers a younger person being naked and is unsure about the position, facial features, race, and the amount of people in the thumbnail. Pros. Ex. 7, File 2 at 58:40-58:58, 59:15-59:20, 59:27-59:37, 59:37-59:45, File 3 at 29:01-29:08, 29:13-29:17, 29:19-29:34, 29:42-29:48. The Government’s focus on Appellant’s memory of the thumbnail only bolsters Dr. T■■■■■ testimony that “when we’re trying to recall an event, if someone asks us a question, we might fill in those memories with what [investigators] ask.” Trial Tr. 123:19-20. That is precisely what happened here—AFOSI fed Appellant the infor-

mation it had (the title and description of the file), creating false memories. Appellant did not know “exactly what the file contained,” he only knew what AFOSI told him. Answer to Assignments of Error at 22.

3. Detective F██████ opinion on download times does not establish knowing possession of contraband.

The Government also argues “The two time stamps show that [Appellant] purposefully and individually uploaded this video to Dropbox, proving his knowing possession.” Answer to Assignments of Error at 22. This argument ignores other real possibilities that were identified by Detective F██████ himself, creates a false dichotomy, and does not address knowing and wrongful possession of *child pornography*.

The Government argues “the fact remains that Detective MF testified that having the two different time stamps indicated that Appellant clicked on an individual file and then decided to save it to that Dropbox account.” Answer to Assignments of Error at 22 (citing Trial Tr. 87). Detective F██████ full testimony on this point was:

In this particular case, there’s no – they were individually clicked on and saved. There was no links, there was no – they had to pick that video and make the decision on the capabilities of the phone to save it to that location. So, they had to interact with the phone to do that with that individual file. It wasn’t a link, it wasn’t anything. Could it have been contained in a link, yes. But they clicked on that individual files and then decided to save it to that Dropbox account.

Trial Tr. 87:12-17.

Detective F██████ opined that Appellant could have clicked on a link, a link that led to a site where files could be downloaded, and then downloaded multiple

individual files from that site. *Id.* The Government argues that Detective F█████ opinion on what could have happened somehow refutes Appellant’s explanation of innocence to AFOSI. Answer to Assignments of Error at 22. This is a false dichotomy—both can be true. In fact, Detective F█████ opinion actually *corroborates* Appellant’s explanation: Appellant may have followed a link for adult pornography and then downloaded the pornography from that link. Pros. Ex. 7, File 2 at 54:12-56:02, File 3 at 0:35-1:28, 16:13-17:08, 20:38-21:25, 28:04-28:15, 36:23-36:50. Detective Fortunato also testified that it was “possible that someone click[ed] a link in social media . . . that could lead to child pornography.” Trial Tr. 85:3-5. Furthermore, the Government does not dispute the other real possibilities regarding download speeds and file sizes identified in Appellant’s assignment of error. *Compare* Br. on Behalf of Appellant at 15, *with* Answer to Assignments of Error at 21-22. Detective F█████ and the Government’s digital forensics expert offered no opinion on those topics either. *See generally* Trial Tr. 50-88, 104-120.

The Government also argues that the two file time stamps and the account linking information prove Appellant’s “knowing possession.” Answer to Assignments of Error at 17, 22. Assuming that the Government proved knowing and wrongful possession of the file, they failed to prove knowing and wrongful possession of *child pornography*. Appellant’s repeated denials of the alleged misconduct, AFOSI’s “terrible” interview that fed Appellant facts, and Appellant’s full cooperation with law enforcement show that he did not knowingly or wrongfully possess child pornography—this was, at most, a mistake, which is not a crime. Trial Tr. 131:7-20; Pros. Exs. 7, 8.

4. Appellant mistakenly believed the file was adult pornography and the Government failed to disprove that affirmative defense.

The Government failed to prove beyond a reasonable doubt that Appellant knowingly and wrongfully possessed child pornography because the evidence overwhelmingly shows that Appellant held a mistake of fact that the file was not child pornography.

“[I]t is a defense to an offense that the accused held, as a result of ignorance or mistake, an incorrect belief of the true circumstances such that, if the circumstances were as the accused believed them, the accused would not be guilty of the offense.” Rule for Courts-Martial (R.C.M.) 916(j)(1). Because possession of child pornography is a specific intent offense, “the ignorance or mistake need only have existed in the mind of the accused.” *Id.* (specific intent applies when the “mistake goes to an element requiring . . . knowledge of a particular fact); see *United States v. Thompson*, 2021 CCA LEXIS 641, at *16-17 (A.F. Ct. Crim. App. Nov. 29, 2021) (“the Government must prove an accused knew or believed the pornography depicted a minor”), *set aside on other grounds*, 83 M.J. 1 (C.A.A.F. 2022); *United States v. Hickerson*, 71 M.J. 659, 666 (N-M. Ct. Crim. App. 2012) (discussing possession of child pornography, “[h]ere, the Government had to prove specific intent and knowledge, issues that required proof that the appellant acted purposefully and with a desired end state”), *set aside on other grounds*, 73 M.J. 53 (C.A.A.F. 2013); *Manual for Courts-Martial, United States* (2019 ed.) (2019 MCM), pt. IV, ¶ 95.c.(5), (8) (“An accused may not be convicted of possessing, receiving, viewing, distributing, or producing child pornography if he

was not aware that the images were of minors, or what appeared to be minors, engaged in sexually explicit conduct.”) (“Possession must be knowing and conscious.”).

After trial defense counsel raised the issue, the Government had “the burden of proving beyond a reasonable doubt that the defense did not exist.” R.C.M. 916(b)(1); Trial Tr. 155:10-14, 152:5-8. The Government failed to meet their burden because the only evidence before the factfinder that explained how the file appeared in the Dropbox was due to Appellant’s mistaken belief that the file was adult pornography. *Supra* § A.1.-3.; see Trial Tr. 155:10-14, 152:5-8. The “mistake need only have existed in the mind of the [Appellant].” R.C.M. 916(j)(1). Here, Appellant only expressed a mistaken belief that the file he downloaded was adult pornography. Pros. Ex. 7, File 2 at 54:12-56:02, File 3 at 0:35-1:28, 16:13-17:08, 20:38-21:25, 28:04-28:15, 36:23-36:50. If the file was adult pornography, no crime was committed. The Government did not put on any evidence to prove beyond a reasonable doubt that the mistake did not exist in Appellant’s mind. See Br. on Behalf of Appellant at 14-15.

The lack of sufficient evidence of knowing and wrongful possession is a specific deficiency of proof that should lead this Court to be clearly convinced that the finding of guilty was against the weight of the evidence. Even with appropriate deference to the factfinder and viewing the evidence in the light most favorable to the prosecution, the Government was missing evidence of the first element. The record shows Appellant’s conviction is factually and legally insufficient because (1) the Government failed to prove beyond a reasonable doubt that Appellant knowingly and wrongfully

possessed child pornography and (2) the Government failed to prove beyond a reasonable doubt that Appellant did not hold a mistake of fact that the file was not child pornography. Therefore, Appellant's conviction was legally and factually insufficient and must be set aside.

B. The Government provided no evidence that Appellant's alleged conduct was of a nature to bring discredit upon the armed forces.

The Government and military judge relied on a conclusive presumption that Appellant's alleged conduct was *per se* service discrediting. Br. on Behalf of Appellant at 18-22. The Government argues that merely because civilian law enforcement discovered a servicemember was associated with an alleged wrongful possession of child pornography from a website, there was "ample evidence to find Appellant's actions were of a nature to discredit the Armed Forces outside of the misconduct itself." Answer to Assignments of Error at 24-25. That is an untenably low bar for evidence that the Government is required to prove beyond a reasonable doubt.

Mere knowledge of an association between a contraband image and a military servicemember does not have "a tendency to bring the service into disrepute or . . . lower it in public esteem" without an unconstitutional conclusive presumption. 2019 MCM, pt. IV, ¶ 91.c.(3); *see United States v. Phillips*, 70 M.J. 161, 164-65 (C.A.A.F. 2011). The Government is still required to prove that the association was the result of knowing and wrongful conduct (i.e., that the first element of Article 134, Child Pornography, is met), and even then, that only *may* be sufficient to prove the terminal element. *United States v. Wells*, 85 M.J. 154, 159 (C.A.A.F. 2024) (Hardy, J., dissenting) (quoting *Phillips*, 70 M.J. at 163).

In *Phillips*, the appellant “was convicted of wrongfully possessing child pornography as conduct . . . of a nature to bring discredit upon the armed forces.” *Phillips*, 70 M.J. at 163. The Court majority wrote “proof of the conduct itself may be sufficient for a rational trier of fact to conclude beyond a reasonable doubt that, under all the circumstances, it was of a nature to bring discredit upon the armed forces.” *Id.* (emphasis in original). In his dissent in *Wells*, Judge Hardy cited this portion of *Phillips*, explaining that “[t]he Court emphasized the word ‘*may*,’ underscoring the fact that in some cases, additional evidence would be necessary to prove beyond a reasonable doubt that the charged conduct was of a nature to bring discredit upon the armed forces.” *Wells*, 85 M.J. at 159 (Hardy, J., dissenting) (emphasis in original). This is one of those cases. See Br. on Behalf of Appellant at 18-22.

Assuming Appellant did knowingly and wrongfully possess child pornography, the facts in the record do not prove the terminal element beyond a reasonable doubt. No one knew about Appellant’s alleged misconduct and there was only a single file that was accessible for two seconds. Trial Tr. 76:18-21. There is no evidence in the record that Appellant was in a chatroom looking to solicit contraband or on a peer-to-peer file sharing network to find contraband, no co-worker, family member, or friend discovered the alleged possession, and this was not recurring or repeated conduct. *Cf. Pulley*, 2024 CCA LEXIS 442, at *3-5; *United States v. Nestor*, 2023 CCA LEXIS 272, at *3-4 (A.F. Ct. Crim. App. June 30, 2023); *United States v. Massey*, 2023 CCA LEXIS 46, at *3-11 (A.F. Ct. Crim. App. Jan. 30, 2023).

The Government was required to put on evidence of the terminal element, and the mere fact that a civilian law enforcement agent was notified of Appellant's association with a single file is not evidence of service discrediting conduct. Allowing this scintilla of an association to meet the Government's burden of proof beyond a reasonable doubt would be a judicial stamp of approval for the unconstitutional conclusive presumption—every child pornography case would be *per se* service discrediting just because law enforcement was involved.

The lack of evidence of the terminal element is a specific deficiency of proof that should lead this Court to be clearly convinced that the finding of guilty was against the weight of the evidence. Even with appropriate deference to the factfinder and viewing the evidence in the light most favorable to the prosecution, the Government failed to prove the terminal element. Therefore, Appellant's conviction was legally and factually insufficient and must be set aside.

II. The military judge abused his discretion by failing to recuse himself despite external pressures giving him an actual bias to convict Appellant.

Due to the material differences between Appellant's family's affidavits and the military judge's affidavit, a *Dubay* hearing is required to address this substantial issue if the Court does not decide Assignment of Error I in favor of Appellant. *See supra* § I.

“If the Court of Criminal Appeals determines that additional proceedings are warranted, the Court may order a hearing as may be necessary to address a substantial issue” 10 U.S.C. § 866(f)(3). These hearings are often referred to as “*DuBay*

hearings.” *United States v. DuBay*, 17 C.M.A. 147 (C.M.A. 1967) (per curiam). “A remand . . . is generally not appropriate to determine facts or investigate matters which could, through a party’s exercise of reasonable diligence, have been investigated or considered at trial.” R.C.M. 810(f)(1). “In determining whether to grant a post-trial hearing to resolve a factual matter pursuant to Article 66(f)(3), UCMJ, 10 U.S.C. § 866(f)(3)” this Court is “guided by the standard enunciated in *United States v. Ginn*, 47 M.J. 236 (C.A.A.F. 1997).” *United States v. Barlow*, 2025 CCA LEXIS 263, at *8 (A.F. Ct. Crim. App. June 12, 2025).

In *Ginn*, the Court of Appeals for the Armed Forces (CAAF) outlined five circumstances that may be present on appeal. 47 M.J. at 248. The CAAF held that if *none* of those circumstances are present, the “Court of Criminal Appeals is required to order a factfinding hearing.” *Id.* Those five circumstances are:

First, if the facts alleged in the affidavit allege an error that would not result in relief even if any factual dispute were resolved in appellant’s favor, the claim may be rejected on that basis.

Second, if the affidavit does not set forth specific facts but consists instead of speculative or conclusory observations, the claim may be rejected on that basis.

Third, if the affidavit is factually adequate on its face to state a claim of legal error and the Government either does not contest the relevant facts or offers an affidavit that expressly agrees with those facts, the court can proceed to decide the legal issue on the basis of those uncontroverted facts.

Fourth, if the affidavit is factually adequate on its face but the appellate filings and the record as a whole “compellingly demonstrate” the improbability of those facts, the Court may discount those factual assertions and decide the legal issue.

Fifth, when an appellate claim of ineffective representation contradicts a matter that is within the record of a guilty plea, an appellate court may decide the issue on the basis of the appellate file and record (including the admissions made in the plea inquiry at trial and appellant's expression of satisfaction with counsel at trial) unless the appellant sets forth facts that would rationally explain why he would have made such statements at trial but not upon appeal.

Id.

None of the five *Ginn* circumstances are present here. This assignment of error comes down to competing affidavits. *Compare* Br. on Behalf of Appellant at 22-26, *and* Mot. to Attach Affs., Mar. 5, 2026, at Apps. A-C, *with* Answer to Assignments of Error at 28-39, *and* Mot. to Attach Doc., Apr. 30, 2026, at 4-5. If the factual disputes between the affidavits, which both set forth specific facts, were resolved in Appellant's favor, Assignment of Error II would result in relief. *See* Br. on Behalf of Appellant at 26. Therefore, neither the first nor second *Ginn* circumstances are present. The Government contests the relevant facts of Appellant's family's affidavits, so the third *Ginn* circumstance is not present. The encounter occurred post-sentencing, nothing in the record suggests Appellant's trial defense counsel were made aware of the issue, and there is nothing in the trial record that "compellingly demonstrate[s]" the "improbability of those facts," because it was never addressed at trial. Therefore, the fourth *Ginn* circumstance is not present. Lastly, there is no claim of ineffective assistance of counsel nor was there a guilty plea, so the fifth *Ginn* circumstance is not present.

Accordingly, a *DuBay* hearing is required to resolve Assignment of Error II. But, as a matter of judicial economy, this Court should first resolve Assignment of Error I, *supra* § I, because resolution of Assignment of Error I in favor of Appellant would moot Assignment of Error II.³

CONCLUSION

Appellant respectfully requests that this Court set aside the findings and sentence of guilty for Specification 1 of the Charge, with prejudice. Should this Court find the conviction legally and factually sufficient, Appellant respectfully requests that this Court order a *DuBay* hearing regarding Assignment of Error II.

Respectfully submitted,

[REDACTED]

JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel

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

³ However, if this Court determines the finding of guilty is factually and legally sufficient, remands the case for a *DuBay* hearing on Assignment of Error II, and during the *DuBay* hearing new facts are discovered that would support a claim of factual and legal insufficiency, Appellant would again raise Assignment of Error I to include those new facts.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were electronically delivered to the Court and served on the Air Force Government Trial and Appellate Operations Division on 26 May 2026.



JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel

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