

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
	)	TIME (FIRST)
)	
v.	)	Before Panel No. 1
)	
Airman Basic (E-1)	)	No. ACM S32725
BRET R. McTHENY,)	
United States Air Force	)	26 May 2022
)	
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **3 August 2022**. The record of trial was docketed with this Court on 5 April 2022. From the date of docketing to the present date, 51 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

[Redacted signature block]

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

[Redacted address block]



GRANTED
2 JUN 2022

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 26 May 2022.

Respectfully submitted,

[REDACTED]

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

[REDACTED]

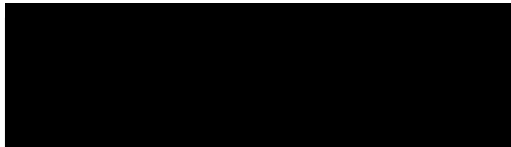
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman Basic (E-1)	)	ACM S32725
BRET R. McTHENY, 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.



JOHN P. PATERA, Maj, USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force

Appellate Defense Division on 31 May 2020



JOHN P. PATERA, Maj, USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee</i>	)	TIME (SECOND)
)	
v.	)	Before Panel No. 1
)	
Airman Basic (E-1)	)	No. ACM S32725
BRET R. McTHENY,)	
United States Air Force	)	27 July 2022
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **2 September 2022**. The record of trial was docketed with this Court on 5 April 2022. From the date of docketing to the present date, 113 days have elapsed. On the date requested, 150 days will have elapsed.

On 15 February 2022, consistent with his pleas, Appellant was convicted at a special court-martial at Barksdale Air Force Base, Louisiana, of one charge and two specifications of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ). R. at 69. The military judge sentenced Appellant to be confined for 30 days (Specification 1); to be confined for 45 days (Specification 2), and to be discharged with a bad conduct discharge. R. at 108. The confinement terms were to run concurrently, such that Appellant’s total confinement was 45 days. *Id.* The convening authority took no action on the findings or sentence. ROT, Vol. 1, Decision on Action, dated 17 February 2022.



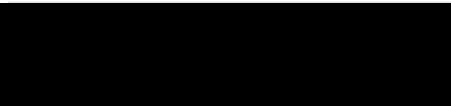
The record of trial consists of 3 prosecution exhibits, 5 defense exhibits, and 4 appellate exhibits; the transcript is 108 pages. Appellant is not currently confined.

GRANTED
29 JULY 2022

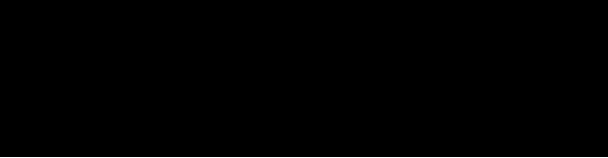
Through no fault of Appellant, undersigned counsel have been working on other assigned matters and have yet to complete their review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,



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



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 27 July 2022.

Respectfully submitted,



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



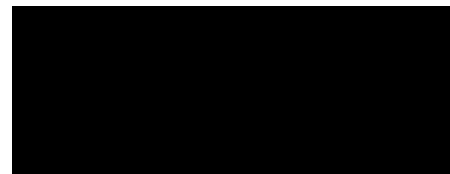
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman Basic (E-1)	)	ACM S32725
BRET R. McTHENY, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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



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



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 29 July 2022.



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



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
	)	TIME (THIRD)
)	
v.	)	Before Panel No. 1
)	
Airman Basic (E-1)	)	No. ACM S32725
BRET R. McTHENY,)	
United States Air Force	)	26 August 2022
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves an enlargement of time to file an Assignments of Error (AOE).

Appellant requests an enlargement for a period of 60 days, which will end on **2 October 2022**.

The record of trial was docketed with this Court on 5 April 2022. From the date of docketing to the present date, 143 days have elapsed. On the date requested, 180 days will have elapsed.

On 15 February 2022, consistent with his pleas, Appellant was convicted at a special court-martial at Barksdale Air Force Base, Louisiana, of one charge and two specifications of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ). R. at 69. The military judge sentenced Appellant to be confined for 30 days (Specification 1); to be confined for 45 days (Specification 2), and to be discharged with a bad conduct discharge. R. at 108. The confinement terms were to run concurrently, such that Appellant’s total confinement was 45 days. *Id.* The convening authority took no action on the findings or sentence. ROT, Vol. 1, Decision on Action, dated 17 February 2022.

The record of trial consists of 3 prosecution exhibits, 5 defense exhibits, and 4 appellate transcripts. The transcript is 108 pages. Appellant is not currently confined.

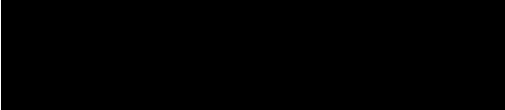


GRANTED
30 AUG 2022

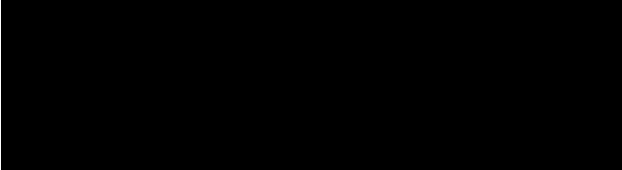
Through no fault of Appellant, undersigned counsel have been working on other assigned matters and have yet to complete their review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,



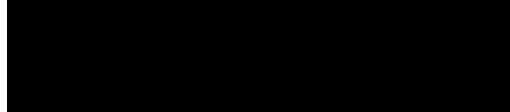
JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division



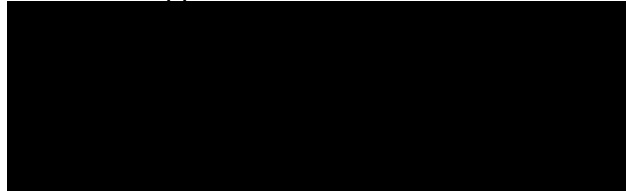
CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 26 August 2022.

Respectfully submitted,



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



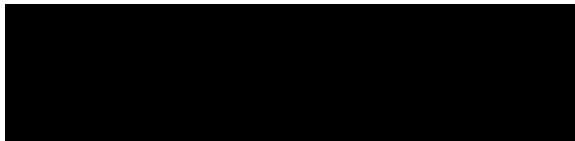
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman Basic (E-1)	)	ACM S32725
BRET R. McTHENY, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

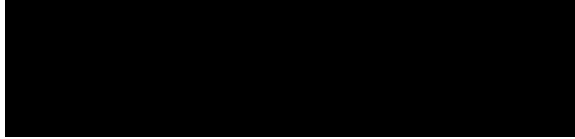


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 29 August 2022.



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



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
	)	TIME (FOURTH)
)	
v.	)	Before Panel No. 1
)	
Airman Basic (E-1)	)	No. ACM S32725
BRET R. McTHENY,)	
United States Air Force	)	23 September 2022
)	
)	

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

Pursuant to Rule 23.3(m)(3) and (m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **1 November 2022**. The record of trial was docketed with this Court on 5 April 2022. From the date of docketing to the present date, 171 days have elapsed. On the date requested, 210 days will have elapsed.

On 15 February 2022, consistent with his pleas, Appellant was convicted at a special court-martial at Barksdale Air Force Base, Louisiana, of one charge and two specifications of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ). R. at 69. The military judge sentenced Appellant to be confined for 30 days (Specification 1); to be confined for 45 days (Specification 2), and to be discharged with a bad conduct discharge. R. at 108. The confinement terms were to run concurrently, such that Appellant’s total confinement was 45 days. *Id.* The convening authority took no action on the findings or sentence. ROT, Vol. 1 Decision on Action, dated 17 February 2022.



record of trial consists of 3 prosecution exhibits, 5 defense exhibits, and 4 appellate transcript is 108 pages. Appellant is not currently confined.

GRANTED
27 SEP 2022

Through no fault of Appellant, undersigned counsel has been working on other assigned matters¹ and has yet to complete her review of Appellant's case. Counsel is currently assigned 20 cases; 10 cases are pending initial AOE's before this Court. This is military counsel's fourth priority case, and third priority case before this Court. The following cases have priority over the present case:

1. *United States v. Anderson*, ACM 39969, USCA Dkt No. 22-1093/AF - the CAAF granted review of one issue on 25 July 2022. Appellant's reply brief is due 3 October 2022.

2. *United States v. Kitchen*, ACM 40155 – The record of trial is 10 volumes; the trial transcript is 1371 pages. There are 8 prosecution exhibits, 11 defense exhibits, and 60 appellate exhibits. Counsel has reviewed Appellant's entire record of trial, consulted with Appellant concerning Assignments of Error to raise, and has begun drafting Appellant's brief. Appellant's brief is due 17 October 2022, and absent extraordinary circumstances, no further enlargements will be requested.

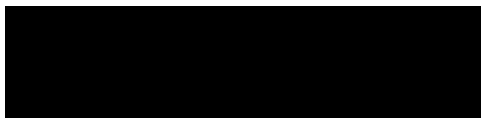
3. *United States v. Jones*, ACM 40226 – The record of trial is 10 volumes; the trial transcript is 1070 pages. There are 13 prosecution exhibits, 11 defense exhibits, and 68 appellate exhibits. Counsel has begun her review of Appellant's ROT.

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

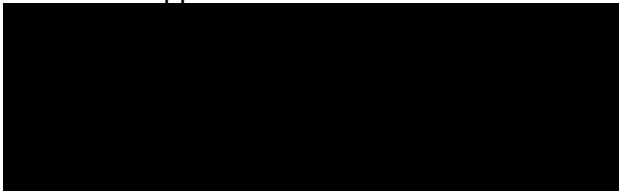
WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

¹ Since the filing of Appellant's last EOT, counsel filed a brief in *United States v. Ramirez*, ACM S32538 (f rev) on 9 September 2022, and co-authored a reply brief in *United States v. Witt*, ACM 36785 (reh), USCA Dkt. No 22-0090/AF, which was submitted to the Court of Appeals for the Armed Forces (CAAF) on 16 September 2022.

Respectfully submitted,



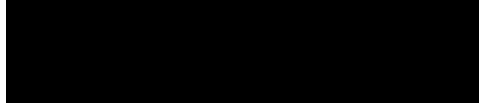
JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division



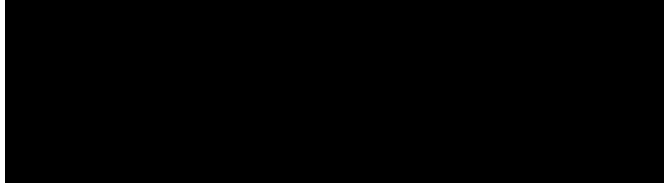
CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 23 September 2022.

Respectfully submitted,



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



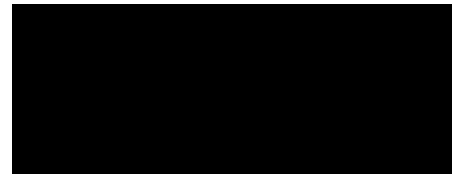
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman Basic (E-1)	)	ACM S32725
BRET R. McTHENY, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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



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

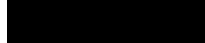


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 26 September 2022.



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



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF TIME (FIFTH)
<i>Appellee</i>)	
)	
v.	)	Before Panel No. 1
)	
Airman Basic (E-1)	)	No. ACM S32725
BRET R. McTHENY,)	
United States Air Force	)	25 October 2022
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **1 December 2022**. The record of trial was docketed with this Court on 5 April 2022. From the date of docketing to the present date, 203 days have elapsed. On the date requested, 240 days will have elapsed.

On 15 February 2022, consistent with his pleas, Appellant was convicted at a special court-martial at Barksdale Air Force Base, Louisiana, of one charge and two specifications of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ). R. at 69. The military judge sentenced Appellant to be confined for 30 days (Specification 1); to be confined for 45 days (Specification 2), and to be discharged with a bad conduct discharge. R. at 108. The confinement terms were to run concurrently, such that Appellant’s total confinement was 45 days. *Id.* The convening authority took no action on the findings or sentence. ROT, Vol. 1, Decision on Action, dated 17 February 2022.

The record of trial consists of 3 prosecution exhibits, 5 defense exhibits, and 4 appellate exhibits; the transcript is 108 pages. Appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters¹ and has yet to complete her review of Appellant's case. Counsel is currently assigned 20 cases; 9 cases are pending initial AOE's before this Court. This is military counsel's second priority case. The following case² has priority over the present case:

1. *United States v. Jones*, ACM 40226 – The record of trial is 10 volumes; the trial transcript is 1070 pages. There are 13 prosecution exhibits, 11 defense exhibits, and 68 appellate exhibits. Counsel has begun her review of Appellant's ROT.

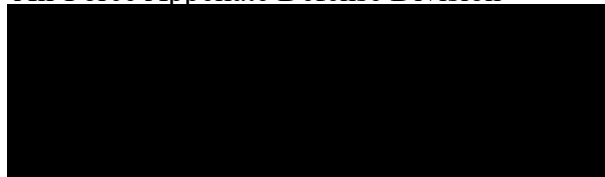
Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,



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



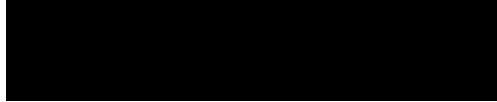
¹ Since the filing of Appellant's last EOT, counsel co-authored a reply brief in *United States v. Anderson*, ACM 39969, USCA Dkt. No 22-0193/AF, which was submitted to the Court of Appeals for the Armed Forces (CAAF) on 30 September 2022, filed a lengthy brief in *United States v. Kitchen*, ACM 40155 on 17 October 2022, submitted a reply brief in *United States v. Ramirez*, ACM S32538 (f rev) on 18 October 2022, and was second chair for the *United States v. Anderson* oral argument at the CAAF on 25 October 2022.

² Counsel also has a supplement to grant of review due to the CAAF in *United States v. Torello*, ACM S32691 on 7 November 2022, and a supplement to grant of review due to the CAAF in *United States v. Daniels III*, ACM 39407 (rem) on 16 November 2022.

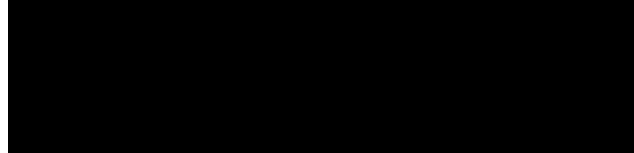
CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 25 October 2022.

Respectfully submitted,



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



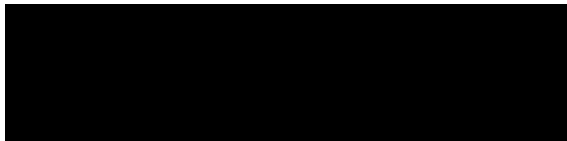
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman Basic (E-1)	)	ACM S32725
BRET R. McTHENY, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

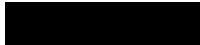
**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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

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

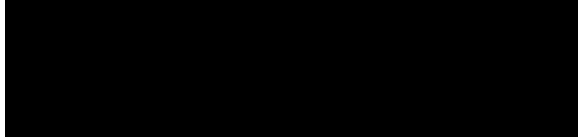


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 27 October 2022.



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



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

UNITED STATES	)	No. ACM S32725
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Bret R. MCTHENY)	
Airman Basic (E-1))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 25 October 2022, counsel for Appellant submitted a Motion for Enlargement of Time (Fifth) 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 28th day of October, 2022,

ORDERED:

Appellant's Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant shall file any assignments of error not later than **1 December 2022**.

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



FOR THE COURT



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
	)	TIME (SIXTH)
)	
v.	)	Before Panel No. 1
)	
Airman Basic (E-1)	)	No. ACM S32725
BRET R. McTHENY,)	
United States Air Force	)	22 November 2022
)	
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **31 December 2022**. The record of trial was docketed with this Court on 5 April 2022. From the date of docketing to the present date, 231 days have elapsed. On the date requested, 270 days will have elapsed.

On 15 February 2022, consistent with his pleas, Appellant was convicted at a special court-martial at Barksdale Air Force Base, Louisiana, of one charge and two specifications of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ). R. at 69. The military judge sentenced Appellant to be confined for 30 days (Specification 1); to be confined for 45 days (Specification 2), and to be discharged with a bad conduct discharge. R. at 108. The confinement terms were to run concurrently, such that Appellant’s total confinement was 45 days. *Id.* The convening authority took no action on the findings or sentence. ROT, Vol. 1, *Decision on Action*, dated 17 February 2022.



GRANTED

28 NOVEMBER 2022

The record of trial consists of 3 prosecution exhibits, 5 defense exhibits, and 4 appellate exhibits; the transcript is 108 pages. Appellant is not currently confined, is aware of his appellate rights, and has consented to necessary requests for extensions of time.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters¹ and has yet to complete her review of Appellant's case. At this time, counsel has reviewed approximately half of Appellant's record of trial. Counsel is currently assigned 23 cases; 11 cases are pending initial AOE's before this Court. This is military counsel's fourth priority case, and second priority case before this Court. The following cases has priority over the present case:

1. *United States v. Witt*, ACM 36785 (reh), USCA Dkt No. 22-0090/AF – Counsel will be presenting oral argument before the Court of Appeals for the Armed Forces (CAAF) on 6 December 2022.

2. *United States v. Knodel*, ACM 40018 – Counsel anticipates attending a motions hearing 12-13 December 2022 in Miramar, CA as part of Appellant's *DuBay* proceedings. Appellant's *DuBay* hearing has been scheduled for 10-12 January 2023. Two motions have been filed and counsel anticipates another two motions may be filed and litigated during the motions hearing.

3. *United States v. Jones*, ACM 40226 – The record of trial is 10 volumes; the trial transcript is 1070 pages. There are 13 prosecution exhibits, 11 defense exhibits, and 68 appellate exhibits. Counsel has reviewed approximately 650 pages of Appellant's transcript.

¹ Since the filing of Appellant's last EOT, counsel filed a supplement to petition for grant of review in *United States v. Torello*, ACM S32691 on 7 November 2022, filed a supplement to petition for grant of review in *United States v. Daniels III*, ACM 39407 (rem) on 16 November 2022, and filed two motions relating to *Dubay* proceedings in *United States v. Knodel*, ACM 40018 on 16 November 2022.

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

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

Respectfully submitted,



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




CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 22 November 2022.

Respectfully submitted,



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



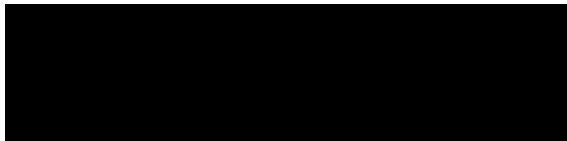
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman Basic (E-1)	)	ACM S32725
BRET R. McTHENY, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

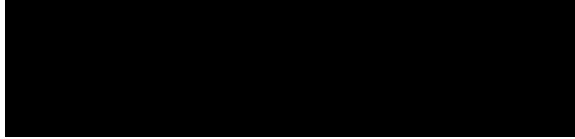


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 23 November 2022.



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



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

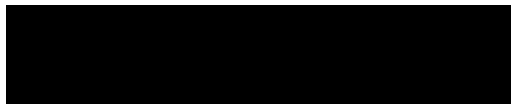
UNITED STATES	)	MOTION TO WITHDRAW FROM
<i>Appellee</i>	)	APPELLATE REVIEW AND ATTACH
)	
v.	)	Before Panel No. 1
)	
Airman Basic (E-1)	)	No. ACM S32725
BRET R. McTHENY,)	
United States Air Force	)	5 January 2023
<i>Appellant</i>)	

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

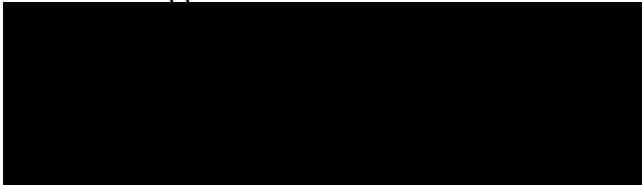
Pursuant to Rule 16 of the Rules of Practice and Procedure of the United States Air Force Court of Criminal Appeals and Rule for Courts-Martial (R.C.M.) 1115, Appellant moves to withdraw his case from appellate review. Appellant has fully consulted with Major Jenna Arroyo, his appellate defense counsel,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

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

Respectfully submitted,



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



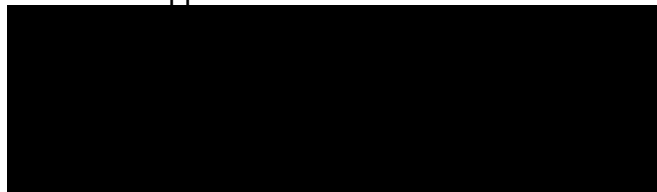
CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 5 January 2023.

Respectfully submitted,

A solid black rectangular redaction box covering the signature of Jenna M. Arroyo.

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

A large solid black rectangular redaction box covering the contact information of Jenna M. Arroyo.

APPENDIX

**WAIVER/WITHDRAWAL OF APPELLATE RIGHTS IN GENERAL AND SPECIAL COURTS-MARTIAL SUBJECT TO
REVIEW BY A COURT OF CRIMINAL APPEALS**
(For use in courts-martial referred on or after 1 January 2019)

I have read the attached entry of judgment in my case dated 20220215

I have consulted with Maj Jenna M. Arroyo, my ~~(associate)~~ defense counsel concerning my appellate rights and I am satisfied with his/her advice.

I understand that:

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

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

2. If I waive or withdraw appellate review –

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

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

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

Bret R. McTheny

Airman Basic

TYPED NAME OF ACCUSED

RANK OF ACCUSED

Bret R McTheny

Digitally signed by Bret R McTheny
Date: 2022.12.22 23:28:46 -05'00'

20221223

SIGNATURE OF ACCUSED

DATE

STATEMENT OF COUNSEL

(Check appropriate block)

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

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

Jenna M. Arroyo

AF/JAJA

TYPED NAME OF COUNSEL

UNIT OF COUNSEL

Major

RANK OF COUNSEL

BUSINESS ADDRESS (If Civilian Counsel)

[Redacted Signature]

5 January 2023

SIGNATURE OF COUNSEL

DATE

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

UNITED STATES <i>Appellee</i>	)	No. ACM S32725
)	
v.)	
	)	ORDER
Bret R. MCTHENY Airman Basic (E-1) U.S. Air Force <i>Appellant</i>)	
	)	Panel 1

On 5 January 2023, Appellant submitted a Motion to Withdraw from Appellate Review and Motion to Attach. Specifically, Appellant moved to attach; (1) DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals*, signed by Appellant on 22 December 2022* and Appellant’s counsel on 5 January 2023. The Government did not submit any opposition.

Accordingly, it is by the court on this 10th day of January, 2023,

ORDERED:

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



FOR THE COURT

[Redacted signature]

[Redacted name], Capt, USAF
Acting Deputy Clerk of the Court

* The court notes that Appellant’s digital signature is dated 22 December 2022, but 23 December 2022 appears to have been incorrectly typed in the “Date” field.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
	)	TIME (SEVENTH)
)	
v.	)	Before Panel No. 1
)	
Airman Basic (E-1)	)	No. ACM S32725
BRET R. McTHENY,)	
United States Air Force	)	27 December 2022
)	
)	

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

Pursuant to Rule 23.3(m)(3) and (m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **30 January 2023**. The record of trial was docketed with this Court on 5 April 2022. From the date of docketing to the present date, 266 days¹ have elapsed. On the date requested, 300 days will have elapsed.

On 15 February 2022, consistent with his pleas, Appellant was convicted at a special court-martial at Barksdale Air Force Base, Louisiana, of one charge and two specifications of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ). R. at 69. The military judge sentenced Appellant to be confined for 30 days (Specification 1); to be confined for 45 days (Specification 2), and to be discharged with a bad conduct discharge. R. at



confinement terms were to run concurrently, such that Appellant’s total confinement s. *Id.* The convening authority took no action on the findings or sentence. ROT, Vol.

¹ Decision on Action, dated 17 February 2022.

GRANTED

28 DEC 2022

¹ This EOT is being filed on 27 December 2022 based upon the Court’s closure for the family day and federal holiday.

The record of trial consists of 3 prosecution exhibits, 5 defense exhibits, and 4 appellate exhibits; the transcript is 108 pages. Appellant is not currently confined, is aware of his appellate rights, and has consented to necessary requests for extensions of time.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters² and is finishing up her work for Appellant's case. Counsel has completed her review of Appellant's ROT, has consulted with Appellant on potential issues to raise, and is working with Appellant to determine whether he wishes to raise any *Grostepon* issues. Absent extraordinary circumstances, counsel does not anticipate needing any further enlargements of time.

Counsel is currently assigned 23 cases; 12 cases are pending initial AOE's before this Court. This is military counsel's second priority case. The following case has priority over the present case:

1. *United States v. Jones*, ACM 40226 – The record of trial is 10 volumes; the trial transcript is 1070 pages. There are 13 prosecution exhibits, 11 defense exhibits, and 68 appellate exhibits. Counsel has completed her review of Appellant's transcript, but still needs to complete her review of the rest of Appellant's ROT.

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

² Since the filing of Appellant's last EOT, counsel filed a supplement to petition for grant of review to the Court of Appeals for the Armed Forces (CAAF) in *United States v. Carlile*, ACM 40053 on 23 November 2022, argued *United States v. Witt*, USCA Dkt. No. 22-0090/AF on 6 December 2022, filed a reply brief in *United States v. Kitchen*, ACM 40155 on 13 December 2022, and participated in a *DuBay* motions hearing held at MCAS Miramar in *United States v. Knodel*, ACM 40018 on 13 December 2022. Counsel was also on leave and off for the family day and holiday from 22-26 December 2022.

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

Respectfully submitted,



JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: jenna.arroyo@us.af.mil

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 27 December 2022.

Respectfully submitted,



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



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Airman Basic (E-1)	)	ACM S32725
BRET R. McTHENY, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

Also, Appellant should be required to state whether he agrees to this specific request for an enlargement of time.

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

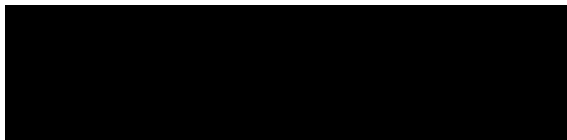


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 27 December 2022.



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

