IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Panel No. 2
Staff Sergeant (E-5), **ALEX J. MEJIA,** United States Air Force, *Appellant.*	)	No. ACM 40497
	)	21 September 2023

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 his first enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **30 November 2023**. The record of trial was docketed with this Court on 2 August 2023. From the date of docketing to the present date, 50 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.

GRANTED
26 SEP 2023

Respectfully submitted,

[redacted]N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Division on 21 September 2023.

Respectfully submitted,

[redacted]N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

25 September 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) ALEX J. MEJIA, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40497 Panel No. 2

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

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

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

[redacted]

PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 25 September 2023.

PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (SECOND)**
v.	)	Before Panel No. 2
Staff Sergeant (E-5), **ALEX J. MEJIA,** United States Air Force, *Appellant.*	)	No. ACM 40497
	)	22 November 2023

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his second enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **30 December 2023**. The record of trial was docketed with this Court on 2 August 2023. From the date of docketing to the present date, 112 days have elapsed. On the date requested, 150 days will have elapsed.

On 8 March 2023, pursuant to his pleas and plea agreement, a military judge in a general court-martial at Osan Air Base, Republic of Korea, convicted Appellant of one charge with three specifications of possessing, viewing, and distributing child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934; and, of the same charge, two specifications of communicating indecent language in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 106. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the [illegible] to be confined for 12 months, and to be discharged dishonorably. R. at 208. The Convening Authority took no action on the findings, but took the following action on the sentence:

GRANTED
29 NOV 2023

deferral of the reduction in grade until the signing of the entry of judgment and waiver of automatic forfeitures for six months. *Convening Authority Decision on Action*.

The Record of Trial consists of three volumes, 13 prosecution exhibits, 13 defense exhibits, and five appellate exhibits. Appellant is confined.

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

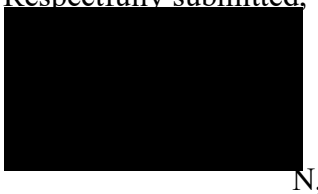
Respectfully submitted,

[redacted]N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Division on 22 November 2023.

Respectfully submitted,



N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

28 November 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) ALEX J. MEJIA, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40497 Panel No. 2

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

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

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

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

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

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (THIRD)**
v.	)	Before Panel No. 2
Staff Sergeant (E-5), **ALEX J. MEJIA,** United States Air Force, *Appellant.*	)	No. ACM 40497
	)	15 December 2023

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his third enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **29 January 2024**. The record of trial was docketed with this Court on 2 August 2023. From the date of docketing to the present date, 135 days have elapsed. On the date requested, 180 days will have elapsed.

On 8 March 2023, pursuant to his pleas and plea agreement, a military judge in a general court-martial at Osan Air Base, Republic of Korea, convicted Appellant of one charge with three specifications of possessing, viewing, and distributing child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934; and, of the same charge, two specifications of communicating indecent language in violation of Article 134, UCMJ, 10 U.S.C. [illegible] 106. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the [illegible], to be confined for 12 months, and to be discharged dishonorably. R. at 208. The Convening Authority took no action on the findings, but took the following action on the sentence:

GRANTED
20 DEC 2023

deferral of the reduction in grade until the signing of the entry of judgment and waiver of automatic forfeitures for six months. *Convening Authority Decision on Action*.

The Record of Trial consists of three volumes, 13 prosecution exhibits, 13 defense exhibits, and five appellate exhibits. Appellant is confined.

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

[redacted]N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

[redacted]N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

19 December 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) ALEX J. MEJIA, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40497 Panel No. 2

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

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

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

[redacted]

JOCELYN Q. WRIGHT, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 19 December 2023.

JOCELYN Q. WRIGHT, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FOURTH)**
v.	)	Before Panel No. 2
Staff Sergeant (E-5), **ALEX J. MEJIA,** United States Air Force, *Appellant.*	)	No. ACM 40497
	)	19 January 2024

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 his fourth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **28 February 2024**. The record of trial was docketed with this Court on 2 August 2023. From the date of docketing to the present date, 170 days have elapsed. On the date requested, 210 days will have elapsed.

On 8 March 2023, pursuant to his pleas and plea agreement, a military judge in a general court-martial at Osan Air Base, Republic of Korea, convicted Appellant of one charge with three specifications of possessing, viewing, and distributing child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934; and, of the same charge, two specifications of communicating indecent language in violation of Article 134, UCMJ, 10 U.S.C. § [illegible]. R. at 106. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the [illegible]1, to be confined for 12 months, and to be discharged dishonorably. R. at 208. The [illegible]g Authority took no action on the findings, but took the following action on the sentence:

GRANTED
19 JAN 2024

deferral of the reduction in grade until the signing of the entry of judgment and waiver of automatic forfeitures for six months. *Convening Authority Decision on Action*.

The Record of Trial consists of three volumes, 13 prosecution exhibits, 13 defense exhibits, and five appellate exhibits. Appellant is confined.

Appellate counsel is currently assigned 23 cases; 13 cases are pending initial AOEs before this Court. Counsel has four pending CAAF Petitions and Supplements. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Ten Air Force Court cases have priority over the present case:

1. *United States v. Ramirez*, No. ACM 40373 – On 26 August 2022, contrary to his pleas, a Military Judge sitting at a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of wrongfully possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 705. The Military Judge sentenced Appellant to be reprimanded, confined for 14 months, and dishonorably discharged. R. at 767. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, 26 Sep 2022. The Convening Authority denied Appellant's request for waiver of automatic forfeitures. *Id.* The ROT consists of seven volumes, 16 prosecution exhibits, 40 defense exhibits, and 35 appellate exhibits. The transcript is 767 pages. The Appellant is not confined. Except for sealed materials, Counsel has finished his review of this case. Counsel filed a motion to view sealed materials on 3 January 2024 which was granted. In his last EOT motion on 3 January 2024,

which was also granted, Counsel forecasted to this Court that he does not anticipate needing another EOT unless unforeseen circumstances arise. Counsel is currently writing the AOE.

2. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of this case.

3. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he

denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

4. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant's request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is currently confined. Counsel has not started his review of this case.

5. *United States v. Ellis*, No. ACM 40430 – On 21 October 2022, in accordance with his pleas, a Military Judge in a general court-martial, at Spangdahlem Air Base, Germany, convicted Appellant of one charge, two specifications of assault, in violation of Article 128, UCMJ; and an additional charge, three specifications of assault in violation of Article 128, UCMJ. ROT, Vol. 1, Entry of Judgment, dated 13 December 2022.[1] R. at 359. The Military Judge sentenced Appellant to be reprimanded, to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 640 days, to be discharged from the service with a bad conduct service

[1] Various charges and specifications were withdrawn and dismissed with prejudice.

characterization. *Id*.; R. at 398. The Convening Authority took no actions on the findings, sentence, and denied Appellant's requests for deferments. ROT, Vol. 1, Convening Authority Decision on Action, 26 November 2022. The ROT consists of seven volumes, nine prosecution exhibits, ten defense exhibits, 38 appellate exhibits, and one court exhibit. Appellant is currently confined. Counsel has not yet started his review of this case.

6. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

7. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant's request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening

Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

8. *United States v. Lawson*, No. ACM 23034 – On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a; one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 174, 204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit $200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023. The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined. Counsel has not yet started his review of this case.

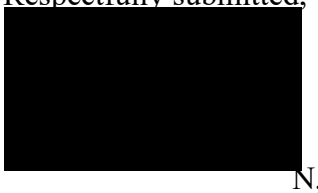
9. *United States v. Scott*, No. ACM 40369 – On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Appellant of one charge, one specification of communicating a threat, in violation of Article 115, UCMJ, 10 U.S.C. § 915; one charge, two specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge, one specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 32. Members sentenced Appellant to be reduced to the grade of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on

the sentence: 1) reduced the forfeiture of all pay and allowances to forfeiture of $3,704.00 pay for six months; 2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 28 June 2022. The ROT consists of four volumes, three prosecution exhibits, 25 defense exhibits, 11 appellate exhibits, and one court exhibit. Appellant is not confined. Counsel has not yet started his review of this case.

10. *United States v. Caswell*, No. ACM 23035 – On 31 January 2023, contrary to his pleas, a Military Judge sitting at a special court-martial at Seymour Johnson Air Force Base, NC, convicted Appellant of one charge, one specification of unlawfully carrying a firearm in violation of Article 114, UCMJ, 10 U.S.C. § 914; and one charge, one specification of communicating a threat in violation of Article 115, UCMJ, 10 U.S.C. § 915. R. at 172. The Military Judge sentenced Appellant to be reprimanded, to be confined for 31 days, and to be reduced to the rank of E-1. R. at 218. The Convening Authority took no action on the findings, no action on the sentence, and denied Appellant's deferment request. ROT, Vol. 1, Convening Authority Decision on Action, 13 February 2023. The ROT consists of three volumes, three prosecution exhibits, 11 defense exhibits, 21 appellate exhibits, and one court exhibit. Appellant is not confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,



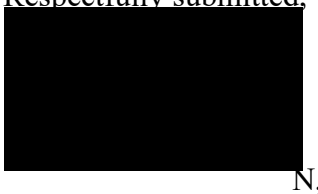
N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division

United States Air Force
(240) 612-4773

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Division on 19 January 2024.

Respectfully submitted,



N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

19 January 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) ALEX J. MEJIA, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40497 Panel No. 2

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

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

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

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 19 January 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FIFTH)**
v.	)	Before Panel No. 2
Staff Sergeant (E-5), **ALEX J. MEJIA,** United States Air Force, *Appellant.*	)	No. ACM 40497
	)	15 February 2024

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 his fifth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **29 March 2024**. The record of trial was docketed with this Court on 2 August 2023. From the date of docketing to the present date, 197 days have elapsed. On the date requested, 240 days will have elapsed.

On 8 March 2023, pursuant to his pleas and plea agreement, a military judge in a general court-martial at Osan Air Base, Republic of Korea, convicted Appellant of one charge with three specifications of possessing, viewing, and distributing child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934; and, of the same charge, two specifications of communicating indecent language in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 106. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the of E-1, to be confined for 12 months, and to be discharged dishonorably. R. at 208. The ning Authority took no action on the findings, but took the following action on the sentence:

GRANTED
23 FEB 2024

deferral of the reduction in grade until the signing of the entry of judgment and waiver of automatic forfeitures for six months. *Convening Authority Decision on Action*.

The Record of Trial consists of three volumes, 13 prosecution exhibits, 13 defense exhibits, and five appellate exhibits. Appellant is confined.

Appellate counsel is currently assigned 23 cases; 12 cases are pending initial AOEs before this Court. Counsel has one pending Supreme Court Reply Brief (Answer due to Court and Counsel on 20 February 2024) and four pending CAAF Petitions and Supplements. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Nine Air Force Court cases have priority over the present case:

1. *United States v. Ellis*, No. ACM 40430[1] – On 21 October 2022, in accordance with his pleas, a Military Judge in a general court-martial, at Spangdahlem Air Base, Germany, convicted Appellant of one charge, two specifications of assault, in violation of Article 128, UCMJ; and an additional charge, three specifications of assault in violation of Article 128, UCMJ. ROT, Vol. 1, Entry of Judgment, dated 13 December 2022.[2] R. at 359. The Military Judge sentenced Appellant to be reprimanded, to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 640 days, to be discharged from the service with a bad conduct service characterization. *Id.*; R. at 398. The Convening Authority took no actions on the findings, sentence,

[1] On 29 January 2024, this Court (Panel 1) approved Appellant's request for EOT 9. Without prior notice and without any status conferences, this Court said, "Given the nature of the case and the number of enlargements granted thus far, the court is not willing to grant any further enlargements of time absent exceptional circumstances." As such, Counsel has changed the prioritization of this guilty plea case over the two cases docketed before this case.

[2] Various charges and specifications were withdrawn and dismissed with prejudice.

and denied Appellant's requests for deferments. ROT, Vol. 1, Convening Authority Decision on Action, 26 November 2022. The ROT consists of seven volumes, nine prosecution exhibits, ten defense exhibits, 38 appellate exhibits, and one court exhibit. Appellant is currently confined. Except for sealed materials, Counsel has reviewed the entire record. Counsel filed a motion to view sealed materials contemporaneously with this request for an EOT. Barring unforeseen circumstances, Counsel intends to file this AOE on 1 March 2024.

2. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of this case.

3. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using

indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

4. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant's request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is currently confined. Counsel has not started his review of this case.

5. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child

pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

6. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant's request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

7. *United States v. Lawson*, No. ACM 23034 – On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a; one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at

174, 204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit $200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023. The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined. Counsel has not yet started his review of this case.

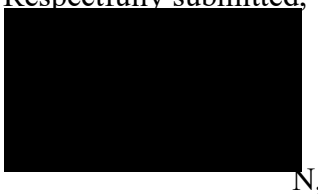
8. *United States v. Scott*, No. ACM 40369 – On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Appellant of one charge, one specification of communicating a threat, in violation of Article 115, UCMJ, 10 U.S.C. § 915; one charge, two specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge, one specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 32. Members sentenced Appellant to be reduced to the grade of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on the sentence: 1) reduced the forfeiture of all pay and allowances to forfeiture of $3,704.00 pay for six months; 2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 28 June 2022. The ROT consists of four volumes, three prosecution exhibits, 25 defense exhibits, 11 appellate exhibits, and one court exhibit. Appellant is not confined. Counsel has not yet started his review of this case.

9. *United States v. Caswell*, No. ACM 23035 – On 31 January 2023, contrary to his pleas, a Military Judge sitting at a special court-martial at Seymour Johnson Air Force Base, NC, convicted Appellant of one charge, one specification of unlawfully carrying a firearm in violation

of Article 114, UCMJ, 10 U.S.C. § 914; and one charge, one specification of communicating a threat in violation of Article 115, UCMJ, 10 U.S.C. § 915. R. at 172. The Military Judge sentenced Appellant to be reprimanded, to be confined for 31 days, and to be reduced to the rank of E-1. R. at 218. The Convening Authority took no action on the findings, no action on the sentence, and denied Appellant's deferment request. ROT, Vol. 1, Convening Authority Decision on Action, 13 February 2023. The ROT consists of three volumes, three prosecution exhibits, 11 defense exhibits, 21 appellate exhibits, and one court exhibit. Appellant is not confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,



N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Division on 15 February 2024.

Respectfully submitted,

[redacted]N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

26 February 2024

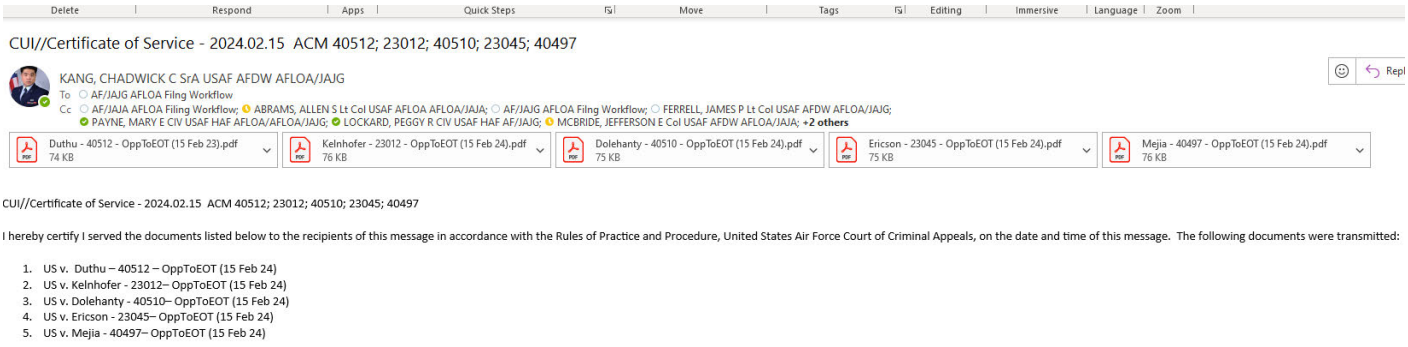
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) ALEX J. MEJIA, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40497 Panel No. 2

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

Pursuant to Rule 23.3 (m)(7) of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition, out of time, to Appellant's Motion for Enlargement of Time Out of Time to file an Assignment of Error in this case.

This response is being filed out of time because the United States accidentally served the wrong workflow box when filing the EOTs on 15 February 2024:


Delete | Respond | Apps | Quick Steps | Move | Tags | Editing | Immersive | Language | Zoom

CUI//Certificate of Service - 2024.02.15 ACM 40512; 23012; 40510; 23045; 40497

KANG, CHADWICK C SrA USAF AFDW AFLOA/JAJG
To AF/JAJG AFLOA Filng Workflow
Cc AF/JAJA AFLOA Filng Workflow; ABRAMS, ALLEN S Lt Col USAF AFLOA AFLOA/JAJA; AF/JAJG AFLOA Filng Workflow; FERRELL, JAMES P Lt Col USAF AFDW AFLOA/JAJG; PAYNE, MARY E CIV USAF HAF AFLOA/AFLOA/JAJG; LOCKARD, PEGGY R CIV USAF HAF AF/JAJG; MCBRIDE, JEFFERSON E Col USAF AFDW AFLOA/JAJA; +2 others

Duthu - 40512 - OppToEOT (15 Feb 23).pdf 74 KB | Kelnhofer - 23012 - OppToEOT (15 Feb 24).pdf 76 KB | Dolehanty - 40510 - OppToEOT (15 Feb 24).pdf 75 KB | Ericson - 23045 - OppToEOT (15 Feb 24).pdf 75 KB | Mejia - 40497 - OppToEOT (15 Feb 24).pdf 76 KB

CUI//Certificate of Service - 2024.02.15 ACM 40512; 23012; 40510; 23045; 40497

I hereby certify I served the documents listed below to the recipients of this message in accordance with the Rules of Practice and Procedure, United States Air Force Court of Criminal Appeals, on the date and time of this message. The following documents were transmitted:

1. US v. Duthu – 40512 – OppToEOT (15 Feb 24)
2. US v. Kelnhofer - 23012– OppToEOT (15 Feb 24)
3. US v. Dolehanty - 40510– OppToEOT (15 Feb 24)
4. US v. Ericson - 23045– OppToEOT (15 Feb 24)
5. US v. Mejia - 40497– OppToEOT (15 Feb 24)

The error did not come to the United States' attention until the motions were granted without opposition. The United States understands that this Court has already granted an enlargement of time in this case, but would still like to put its opposition to that enlargement of time on the record.

GRANTED
27 FEB 2024

WHEREFORE, the United States respectfully enters its opposition to Appellant's enlargement motion.

[redacted]
MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 26 February 2024.

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

DEPARTMENT OF THE AIR FORCE
U.S. AIR FORCE COURT OF CRIMINAL APPEALS
1500 WEST PERIMETER ROAD, SUITE 1900
JOINT BASE ANDREWS MD 20762-6604

29 February 2024

MEMORANDUM FOR HQ USAF/JAJG
ATTENTION: MS. PAYNE, ESQ.

FROM: HQ USAF/JAH

SUBJECT: *United States v. Kelnhofer*, No. ACM 23012
United States v. Ericson, No. ACM 23045
United States v. Mejia, No. ACM 40497
United States v. Dolehanty, No. ACM 40510
United States v. Duthu, No. ACM 40512

1. On 26 February 2024, this court received five filings to the subject cases from the Government titled "United States' General Opposition to Appellant's Motion for Enlargement of Time." However, the court is returning these filings because they are not properly filed in accordance with the Joint Rules of Appellate Procedure and this court's Rules of Practice and Procedure, for the reasons outlined below.

2. Counsel for each of the five Appellants submitted a Motion for Enlargement of Time (EOT) to the court requesting an additional 30 days to submit Appellants' assignments of error. After two business days pursuant to Rule 23.2 of this court's Rules of Practice and Procedure, and no opposition by the Government, the court granted Appellants' motions on 22 and 23 February 2024.* A.F. CT. CRIM. APP. R. 23.2. The Government then served the five filings, dated 26 February 2024, on the court to explain that "th[eir] response is being filed out of time because the United States accidentally served the wrong workflow box" when filing their general oppositions in response to the five EOT motions, and "would still like to put its opposition to th[ose] enlargements of time on the record." The Government further stated that it "understands that this [c]ourt has already granted an enlargement of time in [each] case." Such filings are not authorized by this court.

3. Rule 23(d) of the Joint Rules of Appellate Procedure state that "[a]ny pleading not authorized or required by these or Service Court rules shall be accompanied by a motion for leave to file such pleading. A motion for leave to file the pleading and the pleading may be combined in the same document." JT. CT. CRIM. APP. R. APP. 23(d). Rule 31.2 of this court's Rules of Practice and Procedure provide guidance regarding motions for reconsideration. A.F. CT. CRIM. APP. R. 31.2.

4. Further, the court notes that all five filings by the Government incorrectly refer to the Appellants' motions as "Motion[s] for Enlargement of Time Out of Time," when our records show that their motions were not filed out of time.

* The court granted the *Dolehanty* motion for an enlargement of time on 22 February 2024, while all other motions were granted by the court on 23 February 2024.

5. Therefore, for the reasons stated above and pursuant to A.F. CT. CRIM. APP. R. 13.4, the Government's five filings to the subject cases, titled "United States' General Opposition to Appellant's Motion for Enlargement of Time," and dated 26 February 2024, are returned with no action.

[redacted]

CAROL K. JOYCE
Clerk of the Court
U.S. Air Force Court of Criminal Appeals

5 March 2024

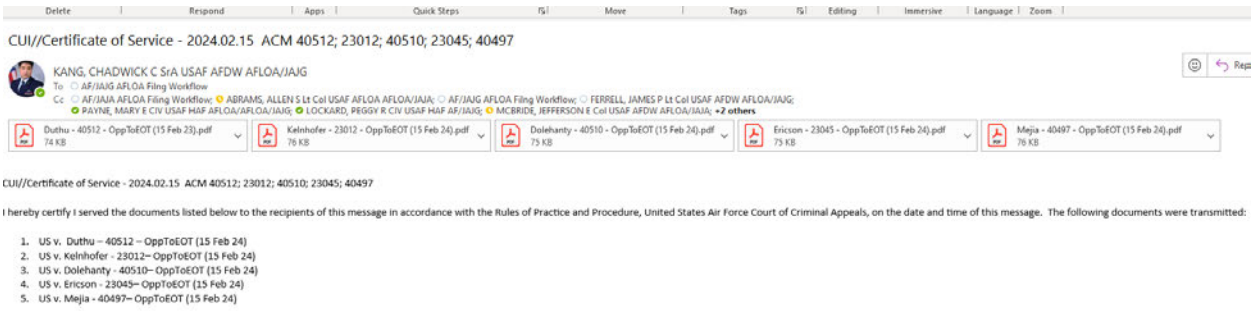
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) ALEX J. MEJIA, USAF, *Appellant.*	)))))))))))	MOTION FOR LEAVE TO FILE UNITED STATES' OUT OF TIME GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40497 Panel No. 2

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

Pursuant to Rules 23(d), 23.2 and 23.3(m)(7), of this Court's Rules of Practice and Procedure, the United States hereby enters its Motion for Leave to File and the United States' Out of Time General Opposition to Appellant's 15 February 2024 Motion for Enlargement of Time to file an Assignment of Error in this case.

This response is being filed out of time because the United States accidentally served the wrong workflow box when filing the EOT opposition on 15 February 2024.


Delete | Respond | Apps | Quick Steps | Move | Tags | Editing | Immersive | Language | Zoom

CUI//Certificate of Service - 2024.02.15 ACM 40512; 23012; 40510; 23045; 40497

KANG, CHADWICK C SrA USAF AFDW AFLOA/JAJG

To: AF/JAJG AFLOA Filing Workflow

Cc: AF/JAJA AFLOA Filing Workflow; ABRAMS, ALLEN S Lt Col USAF AFLOA AFLOA/JAJA; AF/JAJG AFLOA Filing Workflow; FERRELL, JAMES P Lt Col USAF AFDW AFLOA/JAJG; PAYNE, MARY E CIV USAF HAF AFLOA/AFLOA/JAJG; LOCKARD, PEGGY R CIV USAF HAF AF/JAJG; MCBRIDE, JEFFERSON E Col USAF AFDW AFLOA/JAJA; +2 others

Duthu - 40512 - OppToEOT (15 Feb 23).pdf 74 KB | Kelnhofer - 23012 - OppToEOT (15 Feb 24).pdf 76 KB | Dolehanty - 40510 - OppToEOT (15 Feb 24).pdf 75 KB | Ericson - 23045 - OppToEOT (15 Feb 24).pdf 75 KB | Mejia - 40497 - OppToEOT (15 Feb 24).pdf 76 KB

CUI//Certificate of Service - 2024.02.15 ACM 40512; 23012; 40510; 23045; 40497

I hereby certify I served the documents listed below to the recipients of this message in accordance with the Rules of Practice and Procedure, United States Air Force Court of Criminal Appeals, on the date and time of this message. The following documents were transmitted:

1. US v. Duthu – 40512 – OppToEOT (15 Feb 24)
2. US v. Kelnhofer - 23012– OppToEOT (15 Feb 24)
3. US v. Dolehanty - 40510– OppToEOT (15 Feb 24)
4. US v. Ericson - 23045– OppToEOT (15 Feb 24)
5. US v. Mejia - 40497– OppToEOT (15 Feb 24)

The error did not come to the United States attention until the motions were granted without
n. The United States understands that this Court has already granted an enlargement of
s case, but would still like to put its general opposition to that enlargement of time on the

GRANTED
13 MAR 2024

record. The United States filed an out of time opposition to this motion on 26 February 2024, however, that opposition was returned without action because it was not styled as a "motion for leave to file." The United States has now styled the opposition as a "motion for leave to file."

WHEREFORE, the United States respectfully requests this Court grant its motion for leave to file an out of time opposition.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 5 March 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (SIXTH)**
v.	)	Before Panel No. 2
Staff Sergeant (E-5), **ALEX J. MEJIA,** United States Air Force, *Appellant.*	)	No. ACM 40497
	)	19 March 2024

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 his sixth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **28 April 2024**. The record of trial was docketed with this Court on 2 August 2023. From the date of docketing to the present date, 230 days have elapsed. On the date requested, 270 days will have elapsed.

On 8 March 2023, pursuant to his pleas and plea agreement, a military judge in a general court-martial at Osan Air Base, Republic of Korea, convicted Appellant of one charge with three specifications of possessing, viewing, and distributing child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934; and, of the same charge, two specifications of communicating indecent language in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 106. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be discharged dishonorably. R. at 208. The ing Authority took no action on the findings, but took the following action on the sentence:

GRANTED
20 MAR 2024

deferral of the reduction in grade until the signing of the entry of judgment and waiver of automatic forfeitures for six months. *Convening Authority Decision on Action*.

The Record of Trial consists of three volumes, 13 prosecution exhibits, 13 defense exhibits, and five appellate exhibits. Appellant is not confined.

Appellate counsel is currently assigned 22 cases; 11 cases are pending initial AOEs before this Court. Counsel has three pending CAAF Petitions and Supplements. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Eight Air Force Court cases have priority over the present case:

1. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense

exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has reviewed all unsealed exhibits and has started reviewing the transcript.

2. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

3. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant's request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is not confined. Counsel has not started his review of this case.

4. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

5. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant's request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

6. *United States v. Lawson*, No. ACM 23034 – On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted

Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a; one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 174, 204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit $200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023. The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined. Counsel has not yet started his review of this case.

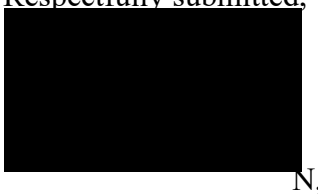
7. *United States v. Scott*, No. ACM 40369 – On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Appellant of one charge, one specification of communicating a threat, in violation of Article 115, UCMJ, 10 U.S.C. § 915; one charge, two specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge, one specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 32. Members sentenced Appellant to be reduced to the grade of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on the sentence: 1) reduced the forfeiture of all pay and allowances to forfeiture of $3,704.00 pay for six months; 2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 28 June 2022. The ROT consists of four volumes,

three prosecution exhibits, 25 defense exhibits, 11 appellate exhibits, and one court exhibit. Appellant is not confined. Counsel has not yet started his review of this case.

8. *United States v. Caswell*, No. ACM 23035 – On 31 January 2023, contrary to his pleas, a Military Judge sitting at a special court-martial at Seymour Johnson Air Force Base, NC, convicted Appellant of one charge, one specification of unlawfully carrying a firearm in violation of Article 114, UCMJ, 10 U.S.C. § 914; and one charge, one specification of communicating a threat in violation of Article 115, UCMJ, 10 U.S.C. § 915. R. at 172. The Military Judge sentenced Appellant to be reprimanded, to be confined for 31 days, and to be reduced to the rank of E-1. R. at 218. The Convening Authority took no action on the findings, no action on the sentence, and denied Appellant's deferment request. ROT, Vol. 1, Convening Authority Decision on Action, 13 February 2023. The ROT consists of three volumes, three prosecution exhibits, 11 defense exhibits, 21 appellate exhibits, and one court exhibit. Appellant is not confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,



N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Division on 19 March 2024.

Respectfully submitted,

[redacted]N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

20 March 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) ALEX J. MEJIA, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40497 Panel No. 2

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

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

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

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 20 March 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40497**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Alex J. MEJIA	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 19 April 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Seventh) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

In the motion, and consistent with this court's Rules of Practice and Procedure, Appellant's counsel identified his cases with priority over Appellant's case, and his progress on those cases. The eight cases listed are the same eight cases listed in Appellant's Motion for Enlargement of Time (Six), which this court granted on 20 March 2024. It appears Appellant's counsel has made some progress towards filing a brief in two of the eight cases, and no progress with any other cases.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure. The United States Court of Appeals for the Armed Forces "will apply a presumption of unreasonable delay where appellate review is not completed and a decision is not rendered within eighteen months of docketing the case before the Court of Criminal Appeals." *United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006).

If granted, almost ten months will have elapsed between docketing and submission of Appellant's brief. At appellate defense counsel's current pace, this court will face a presumption of unreasonable delay in deciding Appellant's case.

Accordingly, it is by the court on this 23d day of April, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (Seventh) is **GRANTED**. Appellant shall file any assignments of error not later than **28 May 2024**.

Appellant's counsel should not rely on subsequent requests for enlargement of time being granted; each request will be considered on its merits. Appellant's

counsel is advised that any future requests for enlargements of time that, if granted, would expire more than 390 days after docketing, will not be granted absent exceptional circumstances.

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 Appellant's right to a timely appeal, (2) whether Appellant was provided an update of the status of counsel's progress on Appellant's case, (3) whether Appellant was advised of the request for an enlargement of time, and (4) whether Appellant agrees with the request for an enlargement of time. Counsel is not required to re-address item (1) in each subsequent motion for enlargement of time.

FOR THE COURT

[redacted]

OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (SEVENTH)**
v.	)	Before Panel No. 2
Staff Sergeant (E-5), **ALEX J. MEJIA,** United States Air Force, *Appellant.*	)	No. ACM 40497
	)	19 April 2024

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 his seventh enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **28 May 2024**. The record of trial was docketed with this Court on 2 August 2023. From the date of docketing to the present date, 261 days have elapsed. On the date requested, 300 days will have elapsed.

On 8 March 2023, pursuant to his pleas and plea agreement, a military judge in a general court-martial at Osan Air Base, Republic of Korea, convicted Appellant of one charge with three specifications of possessing, viewing, and distributing child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934; and, of the same charge, two specifications of communicating indecent language in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 106. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be discharged dishonorably. R. at 208. The Convening Authority took no action on the findings, but took the following action on the sentence:

deferral of the reduction in grade until the signing of the entry of judgment and waiver of automatic forfeitures for six months. *Convening Authority Decision on Action*.

The Record of Trial consists of three volumes, 13 prosecution exhibits, 13 defense exhibits, and five appellate exhibits. Appellant is not confined.

Appellate counsel is currently assigned 20 cases; 10 cases are pending initial AOEs before this Court. Counsel has one pending CAAF Petition and Supplement. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Eight Air Force Court cases have priority over the present case:

1. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense

exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has reviewed the entire case, except for sealed materials, and is writing the AOE.

2. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has reviewed the entire record except for sealed materials and the transcript.

3. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant's request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is not confined. Counsel has not started his review of this case.

4. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

5. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant's request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

6. *United States v. Lawson*, No. ACM 23034 – On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted

Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a; one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 174, 204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit $200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023. The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined. Counsel has not yet started his review of this case.

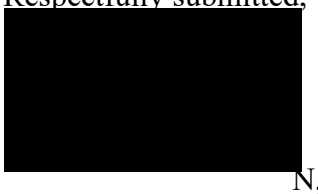
7. *United States v. Scott*, No. ACM 40369 – On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Appellant of one charge, one specification of communicating a threat, in violation of Article 115, UCMJ, 10 U.S.C. § 915; one charge, two specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge, one specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 32. Members sentenced Appellant to be reduced to the grade of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on the sentence: 1) reduced the forfeiture of all pay and allowances to forfeiture of $3,704.00 pay for six months; 2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 28 June 2022. The ROT consists of four volumes,

three prosecution exhibits, 25 defense exhibits, 11 appellate exhibits, and one court exhibit. Appellant is not confined. Counsel has not yet started his review of this case.

8. *United States v. Caswell*, No. ACM 23035 – On 31 January 2023, contrary to his pleas, a Military Judge sitting at a special court-martial at Seymour Johnson Air Force Base, NC, convicted Appellant of one charge, one specification of unlawfully carrying a firearm in violation of Article 114, UCMJ, 10 U.S.C. § 914; and one charge, one specification of communicating a threat in violation of Article 115, UCMJ, 10 U.S.C. § 915. R. at 172. The Military Judge sentenced Appellant to be reprimanded, to be confined for 31 days, and to be reduced to the rank of E-1. R. at 218. The Convening Authority took no action on the findings, no action on the sentence, and denied Appellant's deferment request. ROT, Vol. 1, Convening Authority Decision on Action, 13 February 2023. The ROT consists of three volumes, three prosecution exhibits, 11 defense exhibits, 21 appellate exhibits, and one court exhibit. Appellant is not confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,



N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

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 19 April 2024.

Respectfully submitted,

[redacted]N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

22 April 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) ALEX J. MEJIA, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40497 Panel No. 2

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its 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 a 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 yet begun 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]
MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 22 April 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40497**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Alex J. MEJIA	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 20 May 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Eighth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

Also on 20 May 2024, Appellant's counsel filed a Motion to Attach Document, specifically a declaration from Appellant. In the declaration, Appellant states, *inter alia*, "I understand that this [c]ourt has ordered my counsel to give me an update on my case before it will grant an extension of time, but I do not want to be updated monthly unless my appellate counsel has something substantive to discuss with me." We will rule on this motion separately.

In the motion for an extension of time, Appellant's counsel requests this court "remove the language ordering [c]ounsel to continue to contact [A]ppellant regarding extensions" that appears in this court's order granting Extension of Time (Seventh), dated 23 April 2024. That order required Appellant's counsel, in any subsequent motions for enlargement of time, to state: "(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." (Emphasis added). The court did not require affirmative answers as a prerequisite to granting any future requests for enlargements of time. The order also stated that "each request will be considered on its merits," which includes counsel's statements concerning the timely processing of Appellant's appeal.

---

[*] The court stated in its order that "[c]ounsel is not required to re-address item (1) in each subsequent motion for enlargement of time."

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

Accordingly, it is by the court on this 23d day of May, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (Eighth) is **GRANTED**. Appellant shall file any assignments of error not later than **27 June 2024**.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (EIGHTH)**
v.	)	Before Panel No. 2
Staff Sergeant (E-5), **ALEX J. MEJIA,** United States Air Force, *Appellant.*	)	No. ACM 40497
	)	20 May 2024

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 his eighth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **27 June 2024**. The record of trial was docketed with this Court on 2 August 2023. From the date of docketing to the present date, 292 days have elapsed. On the date requested, 330 days will have elapsed.

On 8 March 2023, pursuant to his pleas and plea agreement, a military judge in a general court-martial at Osan Air Base, Republic of Korea, convicted Appellant of one charge with three specifications of possessing, viewing, and distributing child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934; and, of the same charge, two specifications of communicating indecent language in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 106. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be discharged dishonorably. R. at 208. The Convening Authority took no action on the findings, but took the following action on the sentence:

deferral of the reduction in grade until the signing of the entry of judgment and waiver of automatic forfeitures for six months. *Convening Authority Decision on Action*.

The Record of Trial consists of three volumes, 13 prosecution exhibits, 13 defense exhibits, and five appellate exhibits. Appellant is not confined.

Appellate counsel is currently assigned 20 cases; 9 cases are pending initial AOEs before this Court. Counsel has one pending CAAF Supplement. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case.

Appellant is in receipt of this Court's order, dated 23 April 2024. *See* Motion to Attach Document, dated 20 May 2024. Appellant is aware of his right to speedy appellate review, extensions of time, consents to this extension of time, and was given an update on the prioritization of his case. *Id.* Appellant stated that he does not want to be bothered with non-substantive updates and that he trusts me—as his attorney—to requests extensions of time that are in his best interest. *Id.* Counsel requests that this Court grant this extension and, if granted, remove the language ordering Counsel to continue to contact appellant regarding extensions. In that vein, and given Counsel's workload over approximately the last year at the Supreme Court, CAAF, and this Court—including the new direct appeals that Congress enacted—Counsel notes the following:

> Appellate counsel caseloads are a result of management and administrative priorities and as such are subject to the administrative control of the Government. To allow caseloads to become a factor in determining whether appellate delay is excessive *would allow administrative factors to trump the Article 66 and due process rights of appellants.* To the contrary, the Government has a statutory responsibility to establish a system of appellate review under Article 66 that preserves rather than diminishes the rights of convicted servicemembers. In connection with that responsibility, **the Government has a statutory duty under Article 70 to provide Petitioner with appellate defense counsel who is able to represent him in both a competent and timely manner before the Court of Criminal Appeals**.

Diaz v. JAG of the Navy, 59 M.J. 34, 38 (C.A.A.F. 2003) (emphases added) (footnote omitted).

Seven Air Force Court cases have priority over the present case:

1. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is not confined. Counsel has reviewed the entire record, drafted a four-issue AOE, and is finalizing edits on the AOE. Counsel will be filing the AOE on or before the current deadline of 26 May 2024.

2. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant's request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits,

and two court exhibits. Appellant is not confined. Counsel has reviewed the entire record of trial except for sealed materials. On 16 May 2024, Counsel moved this Court to examine sealed materials. It is likely, although not certain, that Counsel will file this AOE on or before the deadline of 30 May 2024.

3. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

4. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant's request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three

prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

5. *United States v. Lawson*, No. ACM 23034 – On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a; one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 174, 204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit $200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023. The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined. Counsel has not yet started his review of this case.

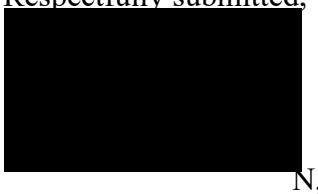
6. *United States v. Scott*, No. ACM 40369 – On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Appellant of one charge, one specification of communicating a threat, in violation of Article 115, UCMJ, 10 U.S.C. § 915; one charge, two specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge, one specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 32. Members sentenced Appellant to be reduced to the grade of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on the sentence: 1) reduced the forfeiture of all pay and allowances to forfeiture of $3,704.00 pay for

six months; 2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 28 June 2022. The ROT consists of four volumes, three prosecution exhibits, 25 defense exhibits, 11 appellate exhibits, and one court exhibit. Appellant is not confined. Counsel has not yet started his review of this case.

7. *United States v. Caswell*, No. ACM 23035 – On 31 January 2023, contrary to his pleas, a Military Judge sitting at a special court-martial at Seymour Johnson Air Force Base, NC, convicted Appellant of one charge, one specification of unlawfully carrying a firearm in violation of Article 114, UCMJ, 10 U.S.C. § 914; and one charge, one specification of communicating a threat in violation of Article 115, UCMJ, 10 U.S.C. § 915. R. at 172. The Military Judge sentenced Appellant to be reprimanded, to be confined for 31 days, and to be reduced to the rank of E-1. R. at 218. The Convening Authority took no action on the findings, no action on the sentence, and denied Appellant's deferment request. ROT, Vol. 1, Convening Authority Decision on Action, 13 February 2023. The ROT consists of three volumes, three prosecution exhibits, 11 defense exhibits, 21 appellate exhibits, and one court exhibit. Appellant is not confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,



N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

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 20 May 2024.

Respectfully submitted,

[redacted]N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

21 May 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

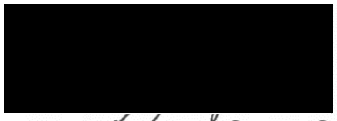
UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) ALEX J. MEJIA, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40497 Panel No. 2

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its 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 330 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 7 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not started 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.



BRITTANY M. SPEIRS, Maj, USAFR
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 21 May 2024.

BRITTANY M. SPEIRS, Maj, USAFR
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40497**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Alex J. MEJIA	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 23 April 2024, this court granted Appellant's counsel's Motion for Enlargement of Time (Seventh). That order required Appellant's counsel, in any subsequent motions for enlargement of time, to state:

> (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.

On 23 May 2024, this court granted Appellant's counsel's Motion for Enlargement of Time (Eighth). That order stated that counsel was not required to answer each question in the affirmative, but was required to address (1) through (3) from our previous order.*

On 18 June 2024, this court summarily denied Appellant's counsel's Motion for Enlargement of Time (Ninth). In that motion, dated 17 June 2024, counsel stated: "Appellant has provided limited consent to disclose confidential communications with counsel which only include the following: That Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time." Counsel did not state whether Appellant was provided an update of the status of counsel's progress on Appellant's case. Instead, counsel stated: "Counsel is in compliance with his ethical obligations as it relates to communications with his client."

---

* In its order dated 23 April 2024, the court stated that "[c]ounsel is not required to readdress item (1) in each subsequent motion for enlargement of time."

On 18 June 2024, Appellant's counsel submitted a "Motion for Reconsideration" of our order denying his request for a ninth enlargement of time. He argued:

> This Court should find the required "good cause," grant reconsideration, and afford Appellant the requested enlargement because (1) the Court's order for information about communications made by undersigned counsel to Appellant call for a confidential communication; (2) through this motion and as set out below, the requested information has now been provided; (3) the Air Force Standards for Criminal Justice state that this Court should not be requesting such information; (4) this Court's published opinion on the matter is distinguishable; and (5) Appellant is requesting the extension because of counsel's workload.
>
> . . . .
>
> Through its order in this case, this Court puts Appellant's counsel in the position where what ordinarily [would] be privileged information must be revealed in order get an extension of time.

Additionally, he stated that, based on his understanding that this court ordered him to reveal a privileged communication, "and against the Appellant's wishes to not be provided an update, counsel reveals that he has given an update on the status of his case to Appellant."

The Government maintained its opposition to Appellant's counsel's request for an enlargement of time (ninth).

The court has considered Appellant's request for an enlargement of time, the Government's opposition, and applicable case law, Air Force Standards for Criminal Justice, and this court's Rules of Practice and Procedure. First, we deem counsel's motion for reconsideration as a motion for enlargement of time. Counsel failed to comply with our order dated 23 April 2024, resulting in denial of his Motion for Enlargement of Time (Ninth). In this "reconsideration" request, counsel cured his failure to comply with that order.

We are compelled to restate the language from our 23 May 2024 order: Counsel is required to include statements as indicated in our 23 April 2024 order, but counsel is not required to provide a "yes" response to prevail on a motion for enlargement of time. This court did not require counsel to communicate his progress with Appellant, much less tell the court what was said; however, counsel was required to provide a responsive statement to the court about "whether Appellant was provided an update of the status of counsel's progress on Appellant's case." Ultimately, the court cannot grant an enlargement of time absent "good cause shown," *see* A.F. Ct. Crim. App. R. 23.3(m)(1), and we leave to counsel how to demonstrate good cause.

Counsel may request a status conference for further clarification of this court's orders in this case, or otherwise to facilitate timely processing of this appeal.

Accordingly, it is by the court on this 27th day of June, 2024,

ORDERED:

Appellant's second motion for enlargement of time (ninth), styled as "Motion for Reconsideration" is **GRANTED**. Appellant shall file any assignments of error not later than **27 July 2024**.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (NINTH)**
v.	)	Before Panel No. 2
Staff Sergeant (E-5), **ALEX J. MEJIA,** United States Air Force, *Appellant.*	)	No. ACM 40497
	)	17 June 2024

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 his ninth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **27 July 2024**. The record of trial was docketed with this Court on 2 August 2023. From the date of docketing to the present date, 320 days have elapsed. On the date requested, 360 days will have elapsed.

On 8 March 2023, pursuant to his pleas and plea agreement, a military judge in a general court-martial at Osan Air Base, Republic of Korea, convicted Appellant of one charge with three specifications of possessing, viewing, and distributing child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934; and, of the same charge, two specifications of communicating indecent language in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 106. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be discharged dishonorably. R. at 208. The Authority took no action on the findings, but took the following action on the sentence:

DENIED
18 JUN 2024

deferral of the reduction in grade until the signing of the entry of judgment and waiver of automatic forfeitures for six months. *Convening Authority Decision on Action*.

The Record of Trial consists of three volumes, 13 prosecution exhibits, 13 defense exhibits, and five appellate exhibits. Appellant is not confined.

Appellate counsel is currently assigned 20 cases; five cases are pending initial AOEs before this Court. Counsel has two CAAF Grant Briefs, with a total of five issues that require briefing per CAAF's orders. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant has provided limited consent to disclose confidential communications with counsel which only include the following: That Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Counsel is in compliance with his ethical obligations as it relates to communications with his client.

Three Air Force Court cases have priority over the present case:

1. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The

Appellant is currently confined. Counsel has reviewed the entire case except for sealed materials. On 14 June 2024, the Government answered this Court's Show Cause Order and provided the password to the sealed materials. The Government moved to attach the password to the record and this Court has not yet ruled on that motion. Counsel has requested to review the sealed materials on 18 June 2024.

2. *United States v. Scott*, No. ACM 40369 – On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Appellant of one charge, one specification of communicating a threat, in violation of Article 115, UCMJ, 10 U.S.C. § 915; one charge, two specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge, one specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 32. Members sentenced Appellant to be reduced to the grade of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on the sentence: 1) reduced the forfeiture of all pay and allowances to forfeiture of $3,704.00 pay for six months; 2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 28 June 2022. The ROT consists of four volumes, three prosecution exhibits, 25 defense exhibits, 11 appellate exhibits, and one court exhibit. Appellant is not confined. Counsel has started an initial review of this case.

3. *United States v. Caswell*, No. ACM 23035 – On 31 January 2023, contrary to his pleas, a Military Judge sitting at a special court-martial at Seymour Johnson Air Force Base, NC, convicted Appellant of one charge, one specification of unlawfully carrying a firearm in violation of Article 114, UCMJ, 10 U.S.C. § 914; and one charge, one specification of communicating a

threat in violation of Article 115, UCMJ, 10 U.S.C. § 915. R. at 172. The Military Judge sentenced Appellant to be reprimanded, to be confined for 31 days, and to be reduced to the rank of E-1. R. at 218. The Convening Authority took no action on the findings, no action on the sentence, and denied Appellant's deferment request. ROT, Vol. 1, Convening Authority Decision on Action, 13 February 2023. The ROT consists of three volumes, three prosecution exhibits, 11 defense exhibits, 21 appellate exhibits, and one court exhibit. Appellant is not confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,

[redacted]N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

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 June 2024.

Respectfully submitted,

[redacted]N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

17 June 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) ALEX J. MEJIA, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40497 Panel No. 2

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its 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 360 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 6 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not started 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]

J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 17 June 2024.

[redacted]

J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR RECONSIDERATION**
v.	)	Before Panel No. 2
Staff Sergeant (E-5), **ALEX J. MEJIA,** United States Air Force, *Appellant.*	)	No. ACM 40497 18 June 2024

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

Pursuant to Rules 23.3(k), 31(c), and 31.1 of this Honorable Court's Rules of Practice and Procedure, Appellant respectfully moves this Honorable Court to reconsider its 18 June 2024 denial of Appellant's motion for a ninth enlargement of time. This Court should find the required "good cause," grant reconsideration, and afford Appellant the requested enlargement because (1) the Court's order for information about communications made by undersigned counsel to Appellant call for a confidential communication; (2) through this motion and as set out below, the requested information has now been provided; (3) the Air Force Standards for Criminal Justice state that this Court should not be requesting such information; (4) this Court's published opinion on the matter is distinguishable; and (5) Appellant is requesting the extension because of counsel's workload.

JURISDICTION

In accordance with Rules 15 and 31(b)-(c), this Court has jurisdiction to consider this motion because neither the Court of Appeals for the Armed Forces nor any other court has acquired jurisdiction over this case. This motion is also filed the same day as the denial of Appellant's motion.

STATEMENT OF THE CASE

On 8 March 2023, pursuant to Appellant's pleas and plea agreement, a military judge in a general court-martial at Osan Air Base, Republic of Korea, convicted Appellant of one charge with three specifications of possessing, viewing, and distributing child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934; and, of the same charge, two specifications of communicating indecent language in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 106. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be discharged dishonorably. R. at 208. The Convening Authority took no action on the findings, but took the following action on the sentence: deferral of the reduction in grade until the signing of the entry of judgment and waiver of automatic forfeitures for six months. *Convening Authority Decision on Action*. The Record of Trial consists of three volumes, 13 prosecution exhibits, 13 defense exhibits, and five appellate exhibits. Appellant is not confined.

On 23 May 2024, this Court issued an order requiring Appellant to Answer four questions. The question in dispute for the purposes of this motion was "(2) *whether* Appellant was provided an update of the status of counsel's progress on Appellant's case." This Court stated in the order, "The court did not require affirmative answers as a prerequisite to granting any future requests for enlargements of time. The order [dated 23 April 2024] also stated that 'each request will be considered on its merits,' which includes counsel's statements concerning the timely processing of Appellant's appeal."

On 17 June 2024, Appellant requested his ninth extension of time. In that request, and to address this Court's 23 May 2024 order, Counsel stated the following:

> Appellant has provided limited consent to disclose confidential communications with counsel which only include the following: That Appellant is aware of his right

> to speedy appellate review, extensions of time, and consents to this extension of time. Counsel is in compliance with his ethical obligations as it relates to communications with his client.

On 18 June 2024, this Court denied Appellant's request for an extension of time without explanation.

ARGUMENT

This Court should reconsider its denial for several legal and factual reasons. First, Appellant implicitly invoked, and hereby explicitly invokes, his attorney-client privilege to refuse to disclose confidential communications from and to his counsel.

Second, undersigned counsel is licensed in Virginia and the Virginia State Bar's on-call ethics counsel has confirmed that this Court's request calls for a confidential communication that is covered under attorney client privilege. *See also Air Force Rules of Professional Conduct*, Rule 1.6 ("A lawyer shall not reveal *information* relating to the representation of a client unless the client gives informed consent") (emphasis added). However, the ethics counsel also stated that since the request for this privileged communication is coming from a court order, counsel can disclose the communication. As such, and against the Appellant's wishes to not be provided an update, counsel reveals that he has given an update on the status of his case to Appellant.

This Court previously held that "defense counsel provid[ing] an averment of prior coordination with the client [does not] force disclosure of confidential information." *United States v. Greska*, 65 M.J. 835, 840 (A.F. Ct. Crim. App. 2007). However, that case is distinguishable because the "Air Force Professional Responsibility Division" declined to answer an inquiry as to whether this type of communication was confidential and privileged, "deferring instead to the court system to assess the validity and lawfulness of its orders on a case-by-case basis." Here, the Virginia State Bar, through its on-call ethics counsel, has said that the communication is confidential under Rule 1.6. This Court should respect that confidentiality.

That leads to the third reason this Court should reconsider, which is the material legal matter that this Court overlooked in denying the request for an extension. Standard 6-2.5 of the Air Force Standards for Criminal Justice states:

> *The military judge should respect the obligation of counsel to refrain from speaking on privileged matters and should avoid putting counsel in a position where counsel's adherence to the obligation, such as by a refusal to answer, may tend to prejudice the client.* Unless the privilege is waived or is otherwise inapplicable, the military judge should not request counsel to comment on evidence or other matters where counsel's knowledge is likely to be gained from privileged communications.

(emphasis added). Through its order in this case, this Court puts Appellant's counsel in the position where what ordinarily be privileged information must be revealed in order get an extension of time. The prejudice to the client cuts two ways: If an Appellant, through counsel, refuses to answer the question, this Court will deny the request for an extension of time. If an Appellant, through counsel, answers this Court's question, this Court may use that answer against the client in resolving a later speedy appellate review issue. The question at issue is of the same sort as one asking a trial defense counsel whether they've met with a client absent a client's consent, a classic example of a question that trial defense counsel do not answer because of what it may confirm about their client and place the client in jeopardy of discipline. As such, asking these types of questions is exactly what the Air Force Standards say a military judge should not do. Given this Court's expectation in *Greska* that counsel and clients consult regularly, 65 M.J. at 842, coupled with counsel's averment in his request for an extension of time that "[c]ounsel is in compliance with his ethical obligations as it relates to communications with his client," there is little, if any cause for this Court's further inquiry into what, according to counsel's licensing authority, constitutes a confidential attorney-client communication.

Finally, good cause for reconsideration stems from the fact that Appellant is requesting the extension of time at issue because of counsel's workload. The Court of Appeals for the Armed

Forces has stated that caseload management is the Government's prerogative, not the Appellate Defense Division's:

> Appellate counsel caseloads are a result of management and administrative priorities and as such are subject to the administrative control of the Government. To allow caseloads to become a factor in determining whether appellate delay is excessive *would allow administrative factors to trump the Article 66 and due process rights of appellants.* To the contrary, the Government has a statutory responsibility to establish a system of appellate review under Article 66 that preserves rather than diminishes the rights of convicted servicemembers. In connection with that responsibility, **the Government has a statutory duty under Article 70 to provide Petitioner with appellate defense counsel who is able to represent him in both a competent and timely manner before the Court of Criminal Appeals**.

Diaz v. JAG of the Navy, 59 M.J. 34, 38 (C.A.A.F. 2003) (emphases added) (footnote omitted). In that vein, over the past 30 days and through no fault of Appellant, counsel's workload has been substantial. Specifically, counsel completed the following in the past 30 days:

1. Reviewed, drafted, and filed a four-issue, 16-page Assignment of Errors in *United States v. Van Velson*, No. ACM 40401

2. Reviewed, drafted, and filed a Merits Brief with one issue raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982) in *United States v. Wood*, No. ACM 40429

3. Drafted a two-issue, 30-page Supplement to a petition to the Court of Appeals for the Armed Forces (CAAF) in *United States v. Aguirre*, No. 24-0146/AF, 2024 CAAF LEXIS 263 (C.A.A.F. May 9, 2024) for submission on 29 May 2024

4. Reviewed, drafted, and filed a Merits Brief with one *Grostefon* issue *United States v. Block*, No. ACM 40466

5. Reviewed, drafted, and filed a Merits Brief with one *Grostefon* issue *United States v. Hollenback*, No. ACM 40481

6. Reviewed, drafted, and filed a Merits Brief with two *Grostefon* issues in *United States v. Lawson*, No. ACM 23034

7. Started drafting a brief on an issue granted review by the CAAF in *United States v. Saul*, No. 24-0098/AF, 2024 CAAF LEXIS 308 (C.A.A.F. June 6, 2024)

8. Prepared for and participated in two moots as a judge to prepare other counsel for oral arguments before this Court

WHEREFORE, Appellant respectfully requests that this Honorable Court reconsider its denial for a motion of time and grant the requested enlargement of time.

Respectfully submitted,

[redacted]N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

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 June 2024.

Respectfully submitted,

[redacted]N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

24 June 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) ALEX J. MEJIA, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR RECONSIDERATION ACM 40497 Panel No. 2

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States reiterates its 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 motion for reconsideration.

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 24 June 2024.

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40497**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Alex J. MEJIA	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 20 May 2024, counsel for Appellant filed a Motion to Attach Document, specifically a declaration from Appellant. Counsel avers that the "declaration is relevant and necessary to answer the questions this [c]ourt posed in an [o]rder granting an extension of time." Counsel refers to this court's order on Appellant's motion for enlargement of time (seventh), dated 23 April 2024, which required counsel to state, inter alia, "whether Appellant was provided an update of the status of counsel's progress on Appellant's case." In the motion and declaration, Appellant's counsel and Appellant respectively state Appellant asked that his declaration be attached to the record of trial. The Government did not file an opposition.

The court accepts but does not endorse counsel's assertion that Appellant's declaration was relevant and necessary for counsel to request an extension of time to file Appellant's brief with this court.

Accordingly, it is by the court on this 30th day of May, 2024,

ORDERED:

Appellant's Motion to Attach Document is **GRANTED**.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION TO ATTACH DOCUMENT**
v.	)	Before Panel No. 2
Staff Sergeant (E-5), **ALEX J. MEJIA,** United States Air Force, *Appellant.*	)	No. ACM 40497
	)	20 May 2024

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

Pursuant to Rules 23 and 23.3(b) of this Honorable Court's Rules of Practice and Procedure, Staff Sergeant Alex J. Mejia, the Appellant, hereby moves to attach the following document to the record of trial: a one-page declaration of Appellant, dated 16 May 2024. This Declaration is contained in the Appendix to this motion. This declaration is relevant and necessary to answer the questions this Court posed in an Order granting an extension of time. *See* Order, Panel 2, dated 23 April 2024.

This Court may attach this declaration to the record. *See United States v. Jessie*, 79 M.J. 437, 444 (C.A.A.F. 2020) (holding service Courts of Criminal Appeals may consider affidavits "when doing so is necessary for resolving issues raised by materials in the record"); *accord United States v. Willman*, 81 M.J. 355, 358 (C.A.A.F. 2021) ("In addition to permitting consideration of any materials contained in the 'entire record,' our precedents also authorize the CCAs to supplement the record to decide any issues that are raised, but not fully resolved, by evidence in the record."). Appellant's claims were raised in the record—an Order from this Court. Because this Court asked direct questions that affected the attorney-client relationship, Appellant chose to respond to this Court. Because the Appellant's declaration is responsive to this Court's questions, this Court may consider and attach Appellant's declaration. Appellant also asked that his

declaration be attached to the record.

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

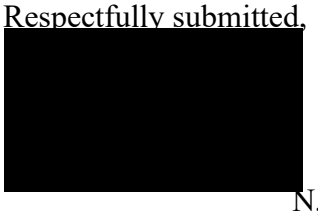
Respectfully submitted,

SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773
spencer.nelson.1@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 Government Trial and Appellate Division on 20 May 2024.

Respectfully submitted,



N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40497**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Alex J. MEJIA	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 28 June 2024, counsel for Appellant submitted a Consent Motion to Examine Sealed Materials, requesting both parties be allowed to examine Prosecution Exhibit 2, which was reviewed by trial and defense counsel at Appellant's 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 finds Appellant has made a colorable showing that review of sealed materials is reasonably necessary for a proper fulfillment of appellate defense counsel's responsibilities. This court's order permits counsel for both parties to examine the materials.

Accordingly, it is by the court on this 2d day of July 2024,

ORDERED:

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

Appellate defense counsel and appellate government counsel may view **Prosecution Exhibit 2** subject to the following conditions:

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

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

[redacted]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**CONSENT MOTION TO EXAMINE SEALED MATERIALS**
v.	)	
	)	No. ACM 40497
Staff Sergeant (E-5) **ALEX J. MEJIA** United States Air Force	)	Before Panel 2
Appellant	)	28 June 2024

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)(i) and Rule 23.3(f)(1) of this Honorable Court's Rules of Practice and Procedure, undersigned counsel hereby moves for both appellant and appellee to examine Prosecution Exhibit 2. This exhibit represents the contraband images that support the guilty plea to Specifications 1, 2, and 3 of the Charge. All parties had access to the exhibit, and the military judge sealed the exhibit pursuant to R.C.M. 1113. (R. at 110.)

R.C.M. 1113(b)(3)(B)(i) requires a colorable showing that examining these materials is reasonably necessary to fulfill appellate counsel's responsibilities. To assess the validity of the guilty plea, it is necessary for counsel to examine the underlying images and videos. More broadly, to determine whether the record of trial yields grounds for this Court to grant relief under Article 66(d), UCMJ, 10 U.S.C. § 866(d), appellate defense counsel must 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). Undersigned counsel must review the sealed materials to provide "competent appellate representation." *See id.* Accordingly, good cause exists in this case since counsel cannot fulfill his duty of representation under Article 70, UCMJ, 10 U.S.C. § 870, without first reviewing this exhibit. Undersigned counsel also moves for the Government to be able to examine the same documents. The Government unconditionally consents to this motion for both it and undersigned counsel to examine Prosecution Exhibit 2.

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

Respectfully submitted,

[redacted]

MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

I certify that this document was sent via email to the Court and the Government Trial and Appellate Operations Division on 28 June 2024.

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**MOTION TO WITHDRAW AS APPELLATE DEFENSE COUNSEL**
	)	
v.	)	Before Panel No. 2
	)	
Staff Sergeant (E-5)	)	No. ACM 40497
ALEX J. MEJIA	)	
United States Air Force	)	1 July 2024
Appellant.	)	

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

Pursuant to Rules 12(b), 12.4, and 23.3(h) of this Honorable Court's Rules of Practice and Procedure, undersigned counsel respectfully requests to withdraw as counsel in this case. Major Matthew L. Blyth has been detailed as counsel and a thorough turnover with undersigned counsel has been completed. Appellant has been advised of this motion and consents to undersigned counsel's withdrawal. A copy of this motion will be delivered to Appellant following this Court's action on it.

Undersigned counsel is PCA'ing at the end of July 2024 and will not be able to review Appellant's case before his departure. Prior to his departure, undersigned counsel must complete two CAAF Grant Briefs, one Assignment of Error for a case before this Court, and counsel will be taking a week's leave at the end of July prior to his departure. To date, undersigned counsel has not reviewed the record in the case which is his third priority among his Air Force Court cases. In light of undersigned's counsel caseload and his PCA, a release of counsel is in [illegible] best interest and will expedite review of his case.

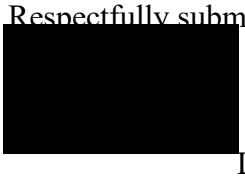
[illegible]lyth will not be requesting any extension of time, has started to review the case, and [illegible]t motion to view sealed materials on 28 June 2024.

GRANTED

9 JULY 2024

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

Respectfully submitted,

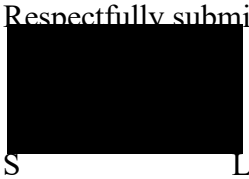


LSON, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

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 1 July 2024.

Respectfully submitted,



S LSON, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,*	)	**BRIEF ON BEHALF OF APPELLANT**
v.	)	Before Panel No. 2
Staff Sergeant (SSgt) **ALEX J. MEJIA,** United States Air Force *Appellant*	)	No. ACM 40497 25 July 2024

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

Assignments of Error

I.

WHETHER STAFF SERGEANT MEJIA'S SENTENCE IS INAPPROPRIATELY SEVERE.

II.

WHETHER THIS COURT SHOULD STRIKE AN INACCURATE PORTION OF THE CONVENING AUTHORITY'S REPRIMAND.

III.

WHETHER THE MILITARY JUDGE ERRONEOUSLY INSERTED A LATER EFFECTIVE DATE FOR DEFERMENT OF RANK REDUCTION INTO THE ENTRY OF JUDGMENT.

IV.

WHETHER THE RECORD OF TRIAL'S OMISSIONS REQUIRE RELIEF OR, AT A MINIMUM, REMAND FOR CORRECTION.

V.

WHETHER, AS APPLIED TO STAFF SERGEANT MEJIA, 18 U.S.C. § 922 IS UNCONSTITUTIONAL BECAUSE THE GOVERNMENT CANNOT DEMONSTRATE THAT BARRING HIS POSSESSION OF FIREARMS IS "CONSISTENT WITH THE

NATION'S HISTORICAL TRADITION OF FIREARM REGULATION."[1]

VI.[2]

WHETHER A PLEA AGREEMENT REQUIRING A BAD-CONDUCT DISCHARGE RENDERS THE SENTENCING PROCEEDING AN "EMPTY RITUAL" AND THUS VIOLATES PUBLIC POLICY.

Statement of the Case

On 8 March 2023, at a general court-martial at Osan Air Base, Republic of Korea, a military judge convicted Appellant, Staff Sergeant (SSgt) Alex J. Mejia, consistent with his pleas, of three specifications involving child pornography (possession, viewing, and distribution) in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934[3]; and two specifications of communicating indecent language in violation of Article 134, UCMJ. (R. at 106.) The military judge sentenced SSgt Mejia to a dishonorable discharge, 12 months' confinement, reduction to the grade of E-1, and a reprimand. (R. at 208.) The convening authority took no action on the findings but deferred the reduction of grade until entry of judgment (EOJ) and waived automatic forfeitures for six months. (Convening Authority Decision on Action (CADAM), 2 Jun. 2023.)

---

[1] *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 24 (2022).

[2] Assignment of error (AOE) VI is raised in the appendix pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

[3] All references to the punitive articles are to the versions in the *Manual for Courts-Martial, United States* (2019 ed.) (*MCM*); all other references to the UCMJ and references to the Rules for Courts-Martial (R.C.M.) are to the 2023 *MCM* version.

Statement of Facts

In November 2019, SSgt Mejia viewed, possessed, and uploaded to Tumblr[4] a gif (a type of moving image similar to a video) and a video that constituted child pornography.[5] (Pros. Ex. 1 at 2; R. at 27–30, 48–49, 54–55.) In the same timeframe, SSgt Mejia communicated indecent language relating to sexual activity with children to two users on Tumblr. (Pros. Ex. 1 at 2–3, 5–6.) This came after SSgt Mejia learned of his wife's infidelity, which led him to feel angry and act in an "irrational" way. (Def. Ex. M at 2.)

Argument

I.

STAFF SERGEANT MEJIA'S SENTENCE IS INAPPROPRIATELY SEVERE.

Additional Facts

SSgt Mejia grew up with challenges few must endure: his family struggled with poverty, his mother left his abusive father when he was young, and his stepfather was physically abusive to him and sexually abusive to his sister. (Def. Ex. M at 1.) He joined the Air Force to help his mother financially, make his family proud, and

[4] Tumblr is a microblogging and social networking website.

[5] The stipulation of fact references the uploading of a third picture of two nude young girls kissing each other. (Pros. Ex. 1.) Even though it would appear from this inclusion that the Government intended it as a charged image, the colloquy with the military judge indicated it would not meet the definition of child pornography, and the circuit trial counsel stated "we're not asking the court to find that that image met the legal definition of child pornography." (R. at 37–40, 44.) Despite this oddity in the case, SSgt Mejia does not raise any challenges on this point because the image was not mentioned again, including in argument, and SSgt Mejia does not challenge that the gif and video sufficed to meet the definition of child pornography.

hopefully get his mother away from his stepfather. (*Id.*) His years of service were characterized by consistently impressive performance. (Def. Exs. A-L; Pros. Ex. 2.) He promoted on 1 December 2020, more than a year after the misconduct, thus much of this service came after the misconduct. (Def. Ex. M at 2–3; Pros. Ex. 6.) He even volunteered to extend his assignment at Osan AB for an extra year and helped his troops through difficult experiences. (R. at 176.) The Government's sentencing case consisted primarily of the facts and circumstances of the offenses. (Pros. Ex. 1-7, 11.)

Standard of Review

This Court reviews sentence appropriateness de novo. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).

Law and Analysis

This Court "may affirm only the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved." Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1). Considerations include "the particular appellant, the nature and seriousness of the offenses, the appellant's record of service, and all matters contained in the record of trial." *United States v. Anderson*, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009) (citations omitted). An accused's decision to agree to the terms of a plea agreement is but *one* factor to consider; it "does not mean [the Court] surrender[s] to the parties or military judge [its] duty to determine sentence appropriateness." *United States v. Williams*, No. 202300217, 2024 CCA LEXIS 111, at *6 (N-M. Ct. Crim. App. 15 Mar. 2024) (unpublished).

"The breadth of the power granted to the Courts of Criminal Appeals to review a case for sentence appropriateness is one of the unique and longstanding features of the [UCMJ]." *United States v. Hutchison*, 57 M.J. 231, 233 (C.A.A.F. 2002) (citations omitted). This Court's role in reviewing sentences under Article 66(d), UCMJ, is to "do justice," as distinguished from the discretionary power of the convening authority to grant mercy. *See United States v. Boone*, 49 M.J. 187, 192 (C.A.A.F. 1998).

SSgt Mejia's dishonorable discharge is inappropriately severe in light of the fleeting misconduct on the charge sheet. SSgt Mejia, in the wake of the devastating revelation of his wife's infidelity, made a series of "irrational" decisions. (Def. Ex. M.) His otherwise stellar career paints a broader picture of his character. And the fact that he continued to contribute at a high level despite being under extended investigation shows his resiliency and rehabilitation potential.

This is not to downplay the gravity of the offenses; rather, it asks this Court to place the offenses in context and see that the severe stigma of a dishonorable discharge is inappropriately severe for these offenses. The limited duration and scope of the conduct here merits no more than a bad-conduct discharge. This Honorable Court should exercise its authority under Article 66, UCMJ, and disapprove the dishonorable discharge as inappropriately severe.

WHEREFORE, Staff Sergeant Mejia respectfully requests this Honorable Court disapprove his dishonorable discharge.

II.

THIS COURT SHOULD STRIKE AN INACCURATE PORTION OF THE CONVENING AUTHORITY'S REPRIMAND.

Additional Facts

The convening authority issued a reprimand that contained the following sentence: "Not only is your egregious conduct a significant departure from the standards expected of all members of society, but worse, your misconduct violated the high values and standards expected of you as a non-commissioned officer [(NCO)] and member of the United States Air Force." (CADAM.) SSgt Mejia's date of rank is 1 December 2020. (Pros. Ex. 6.)

Standard of Review

As part of sentence appropriateness review, this Court reviews the reprimand, which is a component of the sentence, de novo. *United States v. McAlhaney*, 83 M.J. 164, 167 (C.A.A.F. 2023).

Law and Analysis

A reprimand is a punitive censure and is an authorized punishment for persons found guilty of an offense at a court-martial. R.C.M. 1003(a); (b)(1); (b)(1), Discussion. If adjudged and approved, a reprimand shall be issued in writing by the convening authority; a court-martial "shall not" specify the terms or wording of a reprimand. R.C.M. 1003(b)(1). In *United States v. Wolcott*, this Court held that a convening authority's discretion to reprimand an accused is not "unfettered," and that, in practice, a reprimand is "a frank and common-sense expression of formal disapproval by the convening authority to the accused regarding the offenses for which the

individual was sentenced." No. ACM 39639, 2020 CCA LEXIS 234, at *18 (A.F. Ct. Crim. App. 15 Jul. 2020) (unpublished). The reprimand may be based on "the offenses, the evidence and testimony admitted at trial, and other matters that are properly before the convening authority." *Id.* at *16.

The convening authority issued a reprimand emphasizing that SSgt Mejia's conduct was "worse" because it "violate the high values and standards expected of you as [an NCO]." (CADAM.) But SSgt Mejia was a Senior Airman when he committed the misconduct in November 2019. (*See* Pros. Ex. 6.) The convening authority, as part of the sentence, is making the factually wrong statement that his misconduct violated the standards for an NCO. Stated differently, SSgt Mejia's conduct violated the standards of a group of which he was not a part. This is inaccurate, betrays a lack of familiarity with the case, and goes beyond what the convening authority can permissibly state. *See Wolcott*, 2020 CCA LEXIS 234, at *18.

WHEREFORE, SSgt Mejia respectfully requests this Honorable Court set aside the reference to non-commissioned officer in his reprimand.

III.

THE MILITARY JUDGE IMPROPERLY INSERTED A LATER EFFECTIVE DATE FOR DEFERMENT OF RANK REDUCTION INTO THE ENTRY OF JUDGMENT.

Additional Facts

Post-trial processing in this case is difficult to understand. SSgt Mejia's defense counsel submitted post-trial matters asking the convening authority to suspend or defer forfeitures and the reduction in grade "to the maximum extent allowed under law and remit the reprimand." (Post-Trial Submission of Matters,

ROT Vol. 2, 17 March 2023.) The convening authority deferred the reduction in rank until the date of the EOJ. (CADAM.) He denied the request to suspend or defer automatic forfeitures until the entry of judgment, but instead waived automatic forfeitures for the benefit of SSgt Mejia's spouse. (*Id.*) In the EOJ, the military judge wrote that the convening authority "deferred the adjudged reduction in rank from 27 April 2023 until the date of this judgment," which was 15 June 2023. (EOJ.) The source of the 27 April date is uncertain, but there is a reference in the convening authority's action to prior action on 24 and 27 April 2023. (CADAM.) It is unclear what happened on those dates in April. The EOJ also references a request for waiver of forfeitures on 22 April 2023 which, like the previous convening authority action, is not included in the record.

Standard of Review

Appellate courts perform *de novo* review of post-trial processing. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citing *United States v. Kho*, 54 M.J. 63 (C.A.A.F. 2000)).

Law and Analysis

"Deferment of a sentence to confinement, forfeitures, or reduction in grade is a postponement of the running of the sentence." R.C.M. 1103(a)(2). Reduction in rank is effective 14 days after sentence. R.C.M. 1102(b)(6)(A)). Deferment ends, in a case such as this, with the EOJ. R.C.M. 1103(f)(1)(A). When completing the EOJ, "if the accused requested that any portion of the sentence be deferred, the judgment

shall specify the nature of the request, the convening authority's action, [and] the effective date if approved." R.C.M. 1111(b)(3)(A).

It is unclear why the military judge stated that the deferments began on 27 April 2023. It appears that the convening authority took some type of action on 23 April 2023 and 27 April 2023. (*See* CADAM.) But the 27 April 2023 date is not found in the only action present in the record, which is dated 2 June 2023. Thus, the military judge has artificially constrained the time for the deferred reduction in grade. Indeed, given what the military judge added to the EOJ, it is hard to imagine what happened with his rank afterwards. Was SSgt Mejia an E-5 for 14 days, then an E-1 until 27 April 2023, then an E-5 again until 2 June 2023? That is what the EOJ would seem to require. This Court should order correction of the EOJ such that deferment runs from the date of sentence to the EOJ.

WHEREFORE, SSgt Mejia respectfully requests this Honorable Court order correction of the EOJ.

IV.

THE RECORD OF TRIAL'S OMISSIONS REQUIRES RELIEF OR, AT A MINIMUM, REMAND FOR CORRECTION.

Additional Facts

An Article 30a, UCMJ, proceeding was held in this case on 9 April 2022. (R. at 2.) There is no record of the proceedings in the record of trial and no other mention of what occurred. As noted above, the request for waiver of automatic forfeitures, supposedly filed on 22 April 2023, is also absent from the record of trial. (*See* CADAM.)

Standard of Review

Whether a record of trial is incomplete or not substantially verbatim is reviewed de novo. *United States v. Henry*, 53 M.J. 108, 110 (C.A.A.F. 2000).

Law and Analysis

The record of trial is "the very heart of the criminal proceedings and the single essential element to meaningful appellate review." *United States v. Credit*, 4 M.J. 118, 119 (C.M.A. 1977). A complete record of proceedings is required for every court-martial in which the sentence adjudged includes "a sentence of death, dismissal, discharge, confinement for more than six months, or forfeiture of pay for more than six months." Article 54(c)(2), 10 U.S.C. § 854(c)(2).

The threshold question is whether the "omitted material was substantial, either qualitatively or quantitatively." *United States v. Davenport*, 73 M.J. 373, 377 (C.A.A.F. 2014). "Omissions are quantitatively substantial unless the totality of omissions becomes so unimportant and so uninfluential when viewed in the light of the whole record, that it approaches nothingness." *Id.* (cleaned up). A substantial omission in a record of trial "raises a presumption of prejudice" to an appellant, which the Government must rebut. *Henry*, 53 M.J. at 111 (citations omitted). "Moreover, since in military criminal law administration the Government bears responsibility for preparing the record of trial, it is fitting that every inference be drawn against the Government with respect to the existence of prejudice because of an omission." *United States v. McCullah*, 11 M.J. 234, 237 (C.M.A. 1981) (citation omitted).

When an Article 30a, UCMJ, proceeding occurs, a "separate record of any proceeding under this rule shall be prepared . . . [and] shall be included in the record of trial." R.C.M. 309(e). Counsel cannot know what occurred in the Article 30a, UCMJ, proceeding. In his unsworn statement, SSgt Mejia mentioned that his case was re-opened (seemingly years later) because a subpoena gained access to Tumblr conversations in the latter part of 2022. (Def. Ex. M.) This certainly seems important, and the timing aligns with the Article 30a, UCMJ, proceeding in April 2022. But because the Government neglected to include it, neither counsel nor this Court can know what happened. Given the potential importance to appellate review, this is a substantial omission. It certainly does not "approach[] nothingness." *Davenport*, 73 M.J. at 377.

As for the missing waiver request, curiously, this is not a requirement of the record of trial nor the attachments to the record of trial. *See* R.C.M. 1112(b), (f). But since unpacking what occurred with the EOJ is challenging without all the post-trial documents, *see* AOE III, *supra*, this Court should order the production of the waiver request when remanding to obtain the Article 30a, UCMJ, proceedings.

This Court should use its broad remit under Article 66, UCMJ, to provide any sentence relief appropriate for the Government's failure to provide a record of trial within the meaning of R.C.M. 1112. The Government's chronic failure to docket complete records of trial shows no signs of abating.[6] As this Court has recognized,

[6] *See United States v. Boren*, No. ACM 40296, 2024 CCA LEXIS 246 (A.F. Ct. Crim. App. 24 Jun. 2024) (remand order); *United States v. Howard*, No. ACM 40478, 2024 CCA LEXIS 137 (A.F. Ct. Crim. App. 9 Apr. 2024) (remand order); *United States v.*

this is institutional neglect. *United States v. Valentin-Andino*, No. ACM 40185 (f rev), 2024 CCA LEXIS 223, at *17 (A.F. Ct. Crim. App. 7 Jun 2024) (unpublished) (finding

---

Moore, No. ACM 40442, 2024 CCA LEXIS 118 (A.F. Ct. Crim. App. 21 Mar. 2024) (remand order); *United States v. Donley*, No. ACM 40350, 2024 CCA LEXIS 115 (A.F. Ct. Crim. App. 19 Mar. 2024) (unpublished) (remanding due to record of trial issues); *United States v. Smith*, No. ACM 40437, 2024 CCA LEXIS 109 (A.F Ct. Crim. App. 11 Mar. 2024) (remand order); *United States v. Harnar*, No. ACM 40559, 2024 CCA LEXIS 39 (A.F. Ct. Crim. App. 31 Jan. 2024) (remand order); *United States v. Wells*, No. ACM S32762, 2024 CCA LEXIS 15 (A.F. Ct. Crim. App. 18 Jan. 2024) (remand order); *United States v. Conway*, No. ACM 40372, 2023 CCA LEXIS 501 (A.F. Ct. Crim. App. 5 Dec. 2023) (unpublished); *United States v. Blackburn*, No. ACM 40303, 2023 CCA LEXIS 386 (A.F. Ct. Crim. App. 11 Sep. 2023) (remand order); *United States v. Portillos*, No. ACM 40305, 2023 CCA LEXIS 321 (A.F. Ct. Crim. App. 1 Aug. 2023) (remand order); *United States v. Manzano Tarin*, No. ACM S32734, 2023 CCA LEXIS 291 (A.F. Ct. Crim. App. 27 Jun. 2023) (remand order); *United States v. Hubbard*, No. ACM 40339, 2023 CCA LEXIS 263 (A.F. Ct. Crim. App. 15 Jun. 2023) (remand order); *United States v. Simmons*, No. ACM 40462, 2023 CCA LEXIS 236 (A.F. Ct. Crim. App. 5 Jun. 2023) (remand order); *United States v. Gammage*, No. ACM S32731, 2023 CCA LEXIS 240 (A.F. Ct. Crim. App. 5 Jun. 2023) (remand order); *United States v. Goodwater*, No. ACM 40304, 2023 CCA LEXIS 231 (A.F. Ct. Crim. App. 31 May 2023) (remand order); *United States v. Irvin*, No. ACM 40311, 2023 CCA LEXIS 201 (A.F. Ct. Crim. App. 12 May 2023) (remand order); *United States v. Valentin-Andino*, 83 M.J. 537, 544 (A.F. Ct. Crim. App. 2023) (remanding because of audio issue); *United States v. Lake*, No. ACM 40168, 2022 CCA LEXIS 706 (A.F. Ct. Crim. App. 7 Dec. 2022) (remand order); *United States v. Fernandez*, No. ACM 40290, 2022 CCA LEXIS 668 (A.F. Ct. Crim. App. 17 Nov. 2022) (remand order); *United States v. Stafford*, No. ACM 40131, 2022 CCA LEXIS 654 (A.F. Ct. Crim. App. 8 Nov. 2022) (remand order); *United States v. Lampkins*, No. ACM 40135, 2020 CCA LEXIS 500 (A.F. Ct. Crim. App. 25 Oct. 2022) (remand order); *United States v. Romero-Alegria*, No. ACM 40199, 2022 CCA LEXIS 558 (A.F. Ct. Crim. App. 22 Sep. 2022) (remand order); *United States v. Payan*, No. ACM 40132, 2022 CCA LEXIS 242 (A.F. Ct. Crim. App. 28 Apr. 2022) (remand order); *United States v. Cooper*, No. ACM 40092, 2022 CCA LEXIS 243 (A.F. Ct. Crim. App. 28 Apr. 2022) (remand order); *United States v. Westcott*, No. ACM 39936, 2022 CCA LEXIS 156 (A.F. Ct. Crim. App. 17 Mar. 2022) (unpublished); *United States v. Goldman*, No. ACM 39939, 2022 CCA LEXIS 43 (A.F. Ct. Crim. App. 20 Jan. 2022) (unpublished) (requiring second remand for noncompliance with initial remand order), *United States v. Goldman*, No. ACM 39939 (f rev), 2022 CCA LEXIS 511 (A.F. Ct. Crim. App. 30 Aug. 2022) (remand order); *United States v. Mardis*, No. ACM 39980, 2022 CCA LEXIS 10 (A.F. Ct. Crim. App. 6 Jan. 2022) (unpublished); *United States v. Daley*, No. ACM 40012, 2022 CCA LEXIS 7 (A.F. Ct. Crim. App. 5 Jan. 2022) (unpublished).

institutional neglect in Air Force post-trial processing). Perhaps real consequences for this continued behavior will correct the issue.

If this Court disagrees that sentencing relief is warranted, a remand is required to locate the Article 30a, UCMJ, proceedings and the waiver request.

WHEREFORE, SSgt Mejia respectfully requests this Honorable Court provide sentencing relief or remand to correct the record. SSgt Mejia also demands speedy appellate review.

V.

AS APPLIED TO STAFF SERGEANT MEJIA, 18 U.S.C. § 922 IS UNCONSTITUTIONAL BECAUSE THE GOVERNMENT CANNOT DEMONSTRATE THAT BARRING HIS POSSESSION OF FIREARMS IS "CONSISTENT WITH THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION."

Additional Facts

After his conviction, the Government determined that SSgt Mejia's conviction qualified for a firearms prohibition under 18 U.S.C. § 922, without specifically identifying the relevant provision. (EOJ; Statement of Trial Results (STR), 8 Mar. 2023.)

Standard of Review

This Court reviews questions of jurisdiction, law, and statutory interpretation de novo. *United States v. Lepore*, 81 M.J. 759, 760 (A.F. Ct. Crim. App. 2021).

Law and Analysis

1. Section 922 is unconstitutional as applied to SSgt Mejia.

The test for applying the Second Amendment is as follows:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Bruen, 597 U.S. at 24 (citation omitted).

This brief will address the vague annotation that Section 922 applies to the case. Presumably the Government intended to apply Section 922(g)(1), which bars the possession of firearms for those convicted "in any court, of a crime punishable by imprisonment for a term exceeding one year." Under *Bruen*, Section 922 cannot constitutionally apply to SSgt Mejia. To prevail, the Government would have to show a historical tradition of applying an undifferentiated ban on firearm possession, no matter the convicted offense. Murder or mail fraud, rape or racketeering, battery or bigamy—all would be painted with the same brush. This the Government cannot show.

The historical tradition took a narrow view of firearms regulation for criminal acts than that reflected in Section 922:

> [A]ctual "longstanding" precedent in America and pre-Founding England suggests that a firearms disability can be consistent with the Second Amendment to the extent that . . . its basis credibly indicates *a present danger that one will misuse arms against others and the disability redresses that danger*.

C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun*, 32 HARV. J.L. & PUB. POL'Y 695, 698 (2009) (emphasis added). Prior to 1961, "the original [Federal Firearms Act] had a narrower basis for a disability, limited to those convicted of a 'crime of violence.'" *Id.* at 699. For example, under the 1926 Uniform Firearms Act,

a "crime of violence" meant "committing or attempting to commit murder, manslaughter, rape, mayhem, assault to do great bodily harm, robbery, larceny, burglary, and housebreaking." *Id.* at 701 (cleaned up) (citing Uniform Act to Regulate the Sale & Possession of Firearms (Second Tentative Draft 1926)). SSgt Mejia's falls completely outside these categories. It was not until 1968 that Congress "banned possession and extended the prohibition on receipt to include any firearm that ever had traveled in interstate commerce." *Id.* at 698. "[I]t is difficult to see the justification for the complete lifetime ban for all felons that federal law has imposed only since 1968." *Id.* at 735.

The Third Circuit adopted this logic to conclude that § 922(g)(1) was unconstitutional as applied to an appellant with a conviction for making a false statement to obtain food stamps, which was punishable by five years' confinement. *Range v. AG United States*, 69 F.4th 96, 98 (3rd Cir. 2023), *vacated* (U.S. 2 Jul. 2024) (remanding for further consideration in light of *United States v. Rahimi*, 602 U.S. ___, 2024 U.S. LEXIS 2714 (21 Jun. 2024)). Evaluating Section 922(g)(1) in light of *Bruen*, the court noted that the earliest version of the statute prohibiting those convicted of crimes punishable by more than one year of imprisonment, from 1938, "applied only to violent criminals." *Id.* at 104 (emphasis in original). It found no "relevantly similar" analogue to imposing lifetime disarmament upon those who committed nonviolent crimes. *Id.* at 103–05.

In addition to the distinction on violence, a felony conviction today is vastly different from what constituted a felony prior to the 20th century, let alone at the

time of this country's founding. This is problematic because categorizing crimes as felonies has not only increased, but done so in a manner inconsistent with the traditional understanding of a felony:

> The need [for historical research] is particularly acute given the cancerous growth since the 1920s of "regulatory" crimes punishable by more than a year in prison, as distinct from traditional common-law crimes. The effect of this growth has been to expand the number and types of crimes that trigger "felon" disabilities to rope in persons whose convictions do not establish any threat that they will physically harm anyone, much less with a gun.

Marshall, *Why Can't Martha Stewart Have a Gun*, 32 HARV. J.L. & PUB. POL'Y at 697. Notably, the "federal 'felon' disability--barring any person convicted of a crime punishable by more than a year in prison from possessing any firearm--is less than [64] years old." *Id*. at 698. In fact, "one can with a good degree of confidence say that bans on convicts possessing firearms were unknown before World War I." *Id.* at 708. On this point alone, the Government has not proven that such a ban is consistent with this country's history and tradition.

The recent *Rahimi* case does not change the analysis. 2024 U.S. LEXIS 2714. In *Rahimi*, the Supreme Court addressed the validity of Section 922(g)(8)(C)(i), which applies once a court has found that a defendant "represents a credible threat to the physical safety of another" and issues a restraining order. *Id.* at *26. The Supreme Court concluded that the historical analysis supported the proposition that when "an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Id.* at *25.

In *Rahimi*, the Supreme Court noted that the "surety" and "going armed laws" that supported a restriction involved "whether a particular defendant likely would threaten or had threatened another with a weapon." *Id.* at *26. The Supreme Court also noted that surety bonds were of limited duration, and that Section 922(g)(8) only applied while a restraining order was in place. *Id.* Additionally, the majority pointed out that Section 922(g)(8) "involved judicial determinations," comparable to the historical surety laws' "significant procedural protections." *Id.* at *23.

But the historical analogue breaks down when applied here. This case is utterly unrelated to violence or threats, is devoid of any procedural protection, and carries a firearms ban that will last forever. Ultimately, the Supreme Court itself noted the limited nature of its holding when it concluded "only this: An individual found by a court to pose a credible threat to the physical safety of another may be *temporarily* disarmed consistent with the Second Amendment." *Id.* at *30 (emphasis added). Such a narrow holding cannot support the broad restriction encompassed here.

2. This Court may order correction of the EOJ.

In *United States v. Lepore*, citing to the 2016 Rules for Courts-Martial (R.C.M.), this Court held, "the mere fact that a firearms prohibition annotation, not required by the Rules for Courts-Martial, was recorded on a document that is itself required by the Rules for Courts-Martial is not sufficient to bring the matter within our limited authority under Article 66, UCMJ." 81 M.J. at 763. Despite the court-martial order erroneously identifying that A1C Lepore fell under the firearms prohibition, this

Court did not act because the "correction relates to a collateral matter and is beyond the scope of our authority under Article 66." *Id.* at 760.

Six months after this Court's decision in *Lepore*, the CAAF decided *United States v. Lemire*. The CAAF granted Sergeant Lemire's petition, affirmed the Army Court of Criminal Appeals' (ACCA) decision, and "directed that the promulgating order be corrected to delete the requirement that Appellant register as a sex offender." 82 M.J. 263, 2022 CAAF LEXIS 182, at *1 n.* (C.A.A.F. 2022) (decision without published opinion). This disposition stands in tension with *Lepore*.

The CAAF's decision in *Lemire* reveals three things. First, the CAAF has the power to correct administrative errors in promulgating orders.[7] Second, the CAAF believes that CCAs have the power to address collateral consequences under Article 66 as well since it "directed" the ACCA to fix—or have fixed—the erroneous requirement that Sergeant Lemire register as a sex offender. Third, if the CAAF and the CCAs have the power to fix administrative errors under Article 66 as they relate to collateral consequences, then perforce, they also have the power to address constitutional errors in promulgating orders, even if the Court deems them to be a collateral consequence.

Moreover, *Lepore* relates to a prior version of the Rules for Courts-Martial—"[a]ll references in this opinion to the UCMJ and [R.C.M.] are to the *Manual for*

[7] While a promulgating order was at issue in *Lemire*, the same should apply to the EOJ, which replaced the promulgating order as the "document that reflects the outcome of the court-martial." 2019 *MCM*, App. 15 at A15-22.

Courts-Martial, United States (2016 ed.)." 81 M.J. at 760 n.1. In the 2019 *MCM*, both the STR and EOJ contain "[a]ny additional information . . . required under regulations prescribed by the Secretary concerned." R.C.M. 1101(a)(6), 1111(b)(3)(F). Under DAFI 51-201, *Administration of Military Justice*, dated 14 April 2022, ¶ 29.32, the STR and EOJ must include whether the offenses trigger a prohibition under Section 922. As such, this Court's analysis in *Lepore* is no longer controlling since the Rules for Courts-Martial now require—by incorporation—a determination on whether the firearm prohibition is triggered.[8] Thus, this Court can rule in Staff Sergeant Mejia's favor without taking the case en banc.[9] If this Court disagrees, Staff Sergeant Mejia offers the above argument to overrule *Lepore* under Joint Rule of Appellate Procedure 27(d).

WHEREFORE, SSgt Mejia respectfully requests this Court hold Section 922(g)'s firearm prohibition unconstitutional as applied to him and order correction of the STR and EOJ to indicate that no firearm prohibition applies in his case.

---

[8] *See United States v. Robertson*, No. 202000281, 2021 CCA LEXIS 531 (N.M. Ct. Crim. App. 18 Oct. 2021) (unpublished) (ordering correction of an STR because it incorrectly stated Section 922 did not apply); *United States v. Moreldelossantos*, ARMY 20210167, 2022 CCA LEXIS 164 (A. Ct. Crim. App. 17 Mar. 2022) (unpublished) (ordering correction of the STR to change the Subsection 922(g)(1) designator to "No").

[9] SSgt Mejia recognizes this Court has repeatedly ruled against this argument. *See, e.g.*, *United States v. Vanzant*, No. ACM 22004, 2024 CCA LEXIS 215, at *23–26 (A.F. Ct. Crim. App. 28 May 2024). However, this Court has not yet addressed the question of whether the Rules change provides a basis for this Court to reach a different result.

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770

Appendix

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), Appellant, through appellate defense counsel, personally requests that this Court consider the following matter:

VI.

A PLEA AGREEMENT REQUIRING A BAD-CONDUCT DISCHARGE RENDERS THE SENTENCING PROCEEDING AN "EMPTY RITUAL" AND THUS VIOLATES PUBLIC POLICY.

Additional Facts

The plea agreement required the military judge to adjudge at least a bad-conduct discharge. (App. Ex. II at 2 ¶ 4.g.) The military judge briefly discussed the provision on the record. (R. at 93.)

Standard of Review

Whether a condition of a plea agreement violates R.C.M. 705(c)(1)(B) is a question of law that this Court reviews de novo. *See United States v. Tate*, 64 M.J. 269, 271 (C.A.A.F. 2007).[1]

[1] This case implicates R.C.M. 705 from the 2023 *MCM*. However, the body of law on the plea agreement's predecessor, the pretrial agreement, is still applicable, as this Court has recognized. *See, e.g.*, *United States v. Marable*, No. ACM 39954, 2021 CCA LEXIS 662, at *10 (A.F. Ct. Crim. App. 10 Dec. 2021) (unpublished) ("We find our superior court's precedent with respect to [pretrial agreements] instructive when interpreting plea agreements.").

Law and Analysis

The mandatory bad-conduct discharge provision is contrary to public policy and this Court should not enforce it.

1. Legal framework for assessing plea agreements.

A plea agreement between an accused and convening authority may require either one to fulfill promises or conditions unless barred by relevant legal provisions. R.C.M. 705(a)-(c). The agreement may contain a minimum punishment, maximum punishment, both, or may specify a sentence or portion of the sentence. R.C.M. 705(d). Yet the terms cannot be contrary to law or public policy, R.C.M. 705(e)(1), such as those that "interfere with court-martial fact-finding, sentencing, or review functions or undermine public confidence in the integrity and fairness of the disciplinary process." *United States v. Cassity*, 36 M.J. 759, 762 (N.M.C.M.R. 1992) (citations omitted).

It is the military judge's "responsibility to police the terms of pretrial agreements to insure compliance with statutory and decisional law as well as adherence to basic notions of fundamental fairness." *United States v. Partin*, 7 M.J. 409, 412 (C.M.A. 1979) (citation omitted). "To the extent that a term in a pretrial agreement violates public policy, it will be stricken from the pretrial agreement and not enforced." *United States v. Edwards*, 58 M.J. 49, 52 (C.A.A.F. 2003) (citing *United States v. Clark*, 53 M.J. 280, 283 (C.A.A.F. 2000); R.C.M. 705(c)(1)(B)).

2. A plea agreement cannot render a proceeding an "empty ritual."

The mandatory discharge provision of the agreement is contrary to public policy and requires severance from the plea agreement. "A fundamental principle underlying [the CAAF's] jurisprudence on pretrial agreements is that 'the agreement cannot transform the trial into an empty ritual.'" *United States v. Davis*, 50 M.J. 426, 429 (C.A.A.F. 1999) (citing *United States v. Allen*, 25 C.M.R. 8, 11 (C.M.A. 1957)).

The mandatory discharge term hollowed out the presentencing proceeding and deprived SSgt Mejia of his opportunity to secure a fair and just sentence. While addressing a different issue, *United States v. Libecap* provides helpful insight for this case. There, the Coast Guard Court of Criminal Appeals (CGCCA) addressed a pretrial agreement that required the accused to request a punitive discharge. 57 M.J. 611, 615 (C.G. Ct. Crim. App. 2002). The court wrote that "whether or not to impose a punitive discharge as a part of the sentence in a court-martial is always a significant sentencing issue, and often is the most strenuously contested sentencing issue." *Id.* at 615. While the provision at issue still allowed the presentation of a complete presentencing case, the CGCCA believed the request for a bad-conduct discharge undercut any presentation. The court wrote:

> [W]e are convinced that although such a sentencing proceeding might in some sense be viewed as complete, the requirement to request a bad conduct discharge would, in too many instances, largely negate the value of putting on a defense sentencing case, and create the impression, if not the reality, of a proceeding that was little more than an empty ritual, at least with respect to the question of whether a punitive discharge should be imposed. Therefore, we conclude that such a requirement may, as a practical matter, deprive the accused of a complete sentencing proceeding.

Id. at 615–16. It reasoned that the Government had placed the appellant in a position where he would either be forced to forego a desirable deal or sacrifice a complete presentencing hearing. *Id*. at 616. For these reasons, the term violated public policy because the public would lose confidence in the integrity and fairness of the appellant's court-martial. *Id*.

Requiring the request for a punitive discharge, like the *mandatory* punitive discharge here, "create[s] the impression, if not the reality, of a proceeding that was little more than an empty ritual." *Id.* The presentencing session in *Libecap* was, for all intents and purposes, the "empty ritual"—where the result is a foregone conclusion—prohibited by *Allen*, *Davis*, and their progeny. 25 C.M.R. at 11; 50 M.J. at 429. If it violates public policy to require a *request* for a punitive discharge, it violates public policy to mandate the result.

The revisions to R.C.M. 705(d) that purport to allow this type of specified sentence stand contrary to this principal that sentencing cannot become an empty ritual. And as noted below, the revisions stand in conflict with the applicable statute.

3. A mandatory bad-conduct discharge obstructs individualized sentencing.

Court-martial sentences must be individualized; they must be appropriate to the offender and the offense. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). "[A] court-martial shall impose punishment that is sufficient, *but not greater than necessary*, to promote justice and to maintain good order and discipline in the armed forces." Article 56(c)(1), UCMJ (emphasis added); R.C.M. 1002(f). Because the statute sets forth this mandate, and because Article 53a(b)(4), UCMJ, prohibits

plea agreement terms that are "prohibited by law," the mandatory bad-conduct discharge term is unenforceable because it prevents individualized sentencing. If Congress wanted to strip discretion from the sentencing authority and make such an offense bear a mandatory minimum sentence, it could have. But it did not for this Article 128, UCMJ, offense. Article 56(b), UCMJ. And its choice to leave discretion to the sentencing authority means the convening authority cannot usurp that role by mandating a certain result. The President cannot, by rule, circumvent the statute.

The *Manual for Courts-Martial* has, for generations, cherished the concept of individualized sentencing. *Snelling*, 14 M.J. at 268. If a court-martial *shall* impose punishment that is sufficient, but not greater than necessary, this mandatory discharge provision impermissibly precludes the sentencing authority from determining what is sufficient, but not greater than necessary, to achieve the principles of sentencing. This Court should not enforce the provision and should reassess the sentence.

WHEREFORE, SSgt Mejia requests this Honorable Court sever the term for the mandatory bad-conduct discharge, uphold the remainder of the plea agreement, and reassess the sentence.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Government Trial and Appellate Operations Division on 25 July 2024.

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**UNITED STATES' MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Panel No. 2
Staff Sergeant (E-5) **Alex. J Mejia** United States Air Force *Appellant.*	)	No. ACM 40497 8 August 2024

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

Pursuant to Rule 23.3(m)(5), the United States respectfully requests a 7-day enlargement of time, to respond in the above captioned case. This case was docketed with the Court on 2 August 2023. Since docketing, Appellant has been granted nine enlargements of time. Appellant filed his brief with this Court on 25 July 2024. This is the United States' first request for an enlargement of time. As of the date of this request, 372 days have elapsed. The United States' response in this case is currently due on 24 August 2024. If the enlargement of time is granted the United States' response will be due on 31 August 2024, and 395 days will have elapsed since docketing.

There is good cause for the enlargement of time in this case. On 5 August 2024, undersigned counsel was assigned to this case. Since Appellant filed his brief with this Court, undersigned counsel was assigned United States v. Matti, ACM 22072, and filed a 49-page United States' Answer on 4 August 2024 to this Court, which responded to Appellant's six of error. Simultaneously, undersigned counsel worked on a 31-page United States' United States v. Saul, USCA Dkt. No. 24-0098/AF, submitted on 7 August 2024 to

GRANTED
12 AUG 2024

the Court of Appeals for the Armed Forces. Lastly, undersigned counsel has pre-approved leave and will be on leave status for 10 days, from 11 August – 20 August 2024. Undersigned counsel has use or lose leave balance to use prior to 30 September 2024. Undersigned counsel cannot take leave in September given that JAJG's Newcomers training is tentatively scheduled for 10-12 September 2024. Also, the annual Joint Appellate Advocacy Training is scheduled 26-27 September 2024.

The trial transcript in this case is 208 pages and the record of trial consists of three volumes. Appellant has raised six assignments of error in a 26-page brief. Given undersigned counsel's workload, upcoming leave status, and Appellant's six assignments of errors raised a 7-day enlargement of time is warranted. This case is undersigned counsel's first priority. Now that the United States' responses to United States v. Matti and United States v. Saul have been filed, undersigned counsel began reviewing the record of trial in the above-captioned case.

Due to office workload, there is no other appellate government counsel. Out of six appellate government counsel, two are new to the position and arrived on station within the past month.

WHEREFORE, the United States respectfully requests this Honorable Court grant this motion for an enlargement of time.

[redacted]
VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

MARY ELLEN PAYNE
Associate Chief
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 8 August 2024.

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,* v. Staff Sergeant (E-5) **ALEX J. MEJIA,** United States Air Force *Appellant*	)))))))))	**APPELLANT'S RESPONSE TO GOVERNMENT MOTION FOR ENLARGEMENT OF TIME** Before Panel No. 2 No. ACM 40497 9 August 2024

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

Pursuant to Rule 23.2 of this Honorable Court's Rules of Practice and Procedure, Appellant responds to the Government's Motion for Enlargement of Time. Appellant does not oppose the Government's Motion for Enlargement of Time.

WHEREFORE, Appellant respectfully responds to the Government's motion.

Respectfully submitted,

[redacted]

MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Government Trial and Appellate Operations Division on 9 August 2024.

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**UNITED STATES' ANSWER TO ASSIGNMENTS OF ERROR**
v.	)	Before Panel No. 2
Staff Sergeant (E-5) **ALEX. J MEJIA** United States Air Force *Appellant.*	)	No. ACM 40497
	)	3 September 2024

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

ISSUES PRESENTED

I.

WHETHER APPELLANT'S SENTENCE IS INAPPROPRIATELY SEVERE.

II.

WHETHER THIS COURT SHOULD STRIKE AN INACCURATE PORTION OF THE CONVENING AUTHORITY'S REPRIMAND.

III.

WHETHER THE MILITARY JUDGE ERRONEOUSLY INSERTED A LATER EFFECTIVE DATE FOR DEFERMENT OF RANK REDUCTION INTO THE ENTRY OF JUDGMENT.

IV.

WHETHER THE RECORD OF TRIAL'S OMISSIONS REQUIRE RELIEF OR, AT MINIMUM, REMAND FOR CORRECTION.

V.

WHETHER, AS APPLIED TO APPELLANT, 18 U.S.C. § 922 IS UNCONSTITUTIONAL BECAUSE THE GOVERNMENT CANNOT DEMONSTRATE THAT BARRING HIS POSSESSION OF FIREARMS IS "CONSISTENT WITH THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION."

VI.[1]

WHETHER A PLEA AGREEMENT REQUIRING A BAD-CONDUCT DISCHARGE RENDERS THE SENTENCING PROCEEDING AN "EMPTY RITUAL" AND THIS VIOLATES PUBLIC POLICY.

STATEMENT OF CASE

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

STATEMENT OF FACTS

Appellant's Crimes

On or about 21 May 2017, Appellant created a Tumblr account. (Pros. Ex. 1 at 1.) Appellant used this Tumblr account to access child pornography and engage in conversations with other Tumblr users. (Id.) In November 2019, while stationed overseas at Spangdahlem Air Base, Germany Appellant possessed and viewed child pornography on his cell phone. (Id. at 2.) Appellant also uploaded and distributed two videos and one photo of child pornography to his Tumblr account. (Id.) During this time frame, Appellant actively sought child pornography on his Tumblr account. (Pros. Ex. 1 at 2.) For example, on or about 2 November 2019, Appellant re-blogged a Tumblr post that requested, "Don't keep you littles to yourself. Send pics to my

[1] Appellant raised Assignment of Error VI pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

inbox. I am always interested in the real thing. Daughters, nieces, cousins. If they have a little pussy, share them with me." (Id.)

Between on 3 November 2019 and 5 November 2019, Appellant used his Tumblr account to send indecent messages to a Tumblr user discussing sexually abusing children. (Pros. Ex. 1; Pros. Ex. 3.) On 3 November 2019, Appellant sent more indecent messages to another Tumblr user, once again discussing sexually abusing children. (Pros. Ex. 1; Pros. Ex. 5.)

Appellant's Guilty Plea

Appellant entered into a voluntary plea agreement with the government. (R. at 78.) Appellant agreed to plead guilty to three specifications involving child pornography – distributing, possessing, and viewing – in violation of Article 34, UCMJ. (App. Ex. II.) Appellant also pleaded guilty to two specifications involving indecent language in violation of Article 134, UCMJ. (Id.) In exchange for his guilty plea, Appellant received a limit on his sentencing liability. (Id.) The terms of the agreement required the military judge to adjudge a punitive discharge of at least a bad conduct discharge and adjudge a sentence to confinement between three and 12 months. (Id.) Confinement for all sentences were to run concurrently and the military judge could not adjudge forfeitures. (Id.) Based on Appellant's guilty plea alone, without the plea agreement sentence limitations, the maximum punishment authorized by law was reduction to the grade of E-1, forfeiture of all pay and allowances, confinement for 41years, and a dishonorable discharge.

ARGUMENT

I.

APPELLANT'S SENTENCE IS NOT INAPPROPRIATELY SEVERE.

Additional Facts

During the pre-sentencing hearing the prosecution admitted the following evidence: the personal data sheet, enlisted performance reports, and matters in aggravation – a Tumblr post demonstrating a continuous course of conduct of Appellant's continued efforts to engage with children in a sexual manner. (R. at 150; Pros. Ex. 11.)

Appellant chose not to call any witnesses, but he did submit a sentencing package that included awards, certificates, a photo collage, and a written unsworn statement. (Def. Ex. A-M.) Appellant also provided a verbal unsworn statement. (R. at 175.) The military judge adjudged the following sentence:

> To be reprimanded.
>
> To be reduced to the grade of E-1.
>
> To be confined as follows:
>
> For Specification 1 of the Charge: To be confined for 12 months;
>
> For Specification 2 of the Charge: To be confined for 6 months;
>
> For Specification 3 of the Charge: To be confined for 4 months;
>
> For Specification 4 of the Charge: To be confined for 6 months;
>
> For Specification 5 of the Charge: To be confined for 6 months;
>
> All sentences to confinement will run concurrently.
>
> And to be dishonorably discharged from the service.

(R. at 208.)

Standard of Review

This Court reviews sentence appropriateness de novo. United States v. Lane, 64 M.J. 1, 2 (C.A.A.F. 2006). The Court should affirm the sentence if it finds the sentence to be "correct in law and fact and determines, on the basis of the entire record, [it] should be approved." Article 66(d)(1), UCMJ.

Law and Analysis

The appropriateness of a sentence is assessed "by considering the particular appellant, the nature and seriousness of the offenses, the appellant's record of service, and all matters contained in the record of trial." United States v. Bare, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006). Unlike the act of bestowing mercy through clemency, which was delegated to other hands by Congress, Courts of Criminal Appeals are entrusted with the task of determining sentence appropriateness, thereby ensuring the accused gets the punishment he deserves. United States v. Healy, 26 M.J. 394, 395-96 (C.M.A. 1988).

This Court has recognized the use of aggravating circumstances in sentencing to inform the "sentencing authority regarding the charged offense and 'putting appellant's offenses into context.'" United States v. Tanner, ACM 39301, 2019 CCA LEXIS 43, at *5 (A.F. Ct. Crim. App. 5 Feb. 2019) (unpub. op.) (quoting United States v. Nourse, 55 M.J. 229, 232 (C.A.A.F. 2011)). According to R.C.M. 1001(b)(4), trial counsel may "present evidence as to any aggravating circumstances directly relating to or resulting from the offenses of which the accused has been found guilty." Appellant's sentence should "fit the offender" and his convictions. United States v. Mack, 9 M.J. 300, 317 (C.M.A. 1980) (citations omitted).

Appellant's sentence is not inappropriately severe. Rather, his sentence fits his crimes and the findings of guilt. This Court should affirm Appellant's sentence as a reasonable

consequence of pleading guilty to three specifications involving child pornography and two specifications involving indecent language discussing sexually abusing children. (*Entry of Judgment*, 15 June 2023, ROT, Vol. 1.)

Appellant argues that his dishonorable discharge is "inappropriately severe in light of the fleeting misconduct on the charge sheet." (App. Br. at 5.) He points out that he made a series of "irrational" decisions when he found out about his wife's infidelity. (Id. citing Def. Ex. M.) While Appellant's wife's infidelity may have been a difficult time for Appellant, it did not excuse Appellant for his crimes against the most vulnerable, children. Appellant did not engage in "fleeting misconduct." Appellant's deliberate actions demonstrated that he actively sought child pornography. Not only did Appellant view, possess, and distribute child pornography, but he also engaged in indecent language with other Tumblr users to discuss sexual abuse of children. Appellant pleaded guilty to the following indecent language demonstrating his lust for children:

> I wish I could meet a pedomom that I can breed with, I wanna fuck all my little daughters and raise them to be little whores from the day they leave her womb, and share them with other people, I wanna fuck tight little holes.
>
> One of my fantasies is just one day to have a little girl sitting on my lap rubbing her little cunny on my leg.

(Pros. Ex. 1.) The government also presented evidence demonstrating a continuous course of conduct in that Appellant continued to seek conversations with young girls in exchange for "some lil pics in return!" (Pros. Ex. 11.)

Evidence presented during his court-martial showed that Appellant deliberately engaged in the trade of child pornography, and he did not innocently view or access contraband images. Rather, Appellant had an interest in children, fantasized about them, and eagerly sought any

depictions of children performing sexual acts. But Appellant's actions did not stop there. When discussing child pornography with another Tumblr user, Appellant said, "I'll send you two of my fav videos." (Pros. Ex. 1 at 3; Pros. Ex. 3.) Then Appellant sent a video of an adult male engaging in sexual intercourse with a female child. (Pros. Ex. 1 at 3.) Appellant's obvious interest in children was motive for him to purposefully view, possess, and distribute child pornography. Appellant's crimes warranted a dishonorable discharge.

This Court is allowed to look at the sentence as a whole to determine that a dishonorable discharge is an appropriate punishment given the numerous crimes Appellant pleaded guilty to. *See* United States v. Flores, 84 M.J. 277, 282 (CA.A.F. 2024) ("In addition to reviewing the appropriateness of each segment, the CCAs must also continue to review the appropriateness of the entire sentence.") (citing United States v. Sessions, 45 C.M.R. 931 (C.M.A. 1972)) (internal citations omitted). A dishonorable discharge "should be reserved for those who, in the opinion of the court, should be separated under conditions of dishonor after conviction of serious offenses of a civil or military nature warranting such severe punishment." Department of the Army Pamphlet (D.A. Pam.) 27-9, *Military Judge's Benchbook*, para. 2-6-10 (Dishonorable Discharge) (29 February 2020). Appellant pleaded guilty to three specifications involving child pornography. And all three offenses permitted a dishonorable discharge. Although Appellant may have had positive performance reports before, during, and after the charged time frame, his crimes nonetheless warranted the dishonorable discharge he received. Appellant not only viewed child pornography, but he also facilitated other criminals in viewing such inhumane material when he distributed two videos and a photograph of children engaging in sexual acts. Appellant's actions of viewing, possessing, and distributing child pornography played a role in revictimizing child victims given the "permanent record of the depicted child's abuse, and the

harm to the child is exacerbated by [its] circulation." United States v. Barker, 77 M.J. 377, 381 (C.A.A.F. 2018) (quoting Paroline v. United States, 572 U.S. 434, 440 (2014)). "The unlawful conduct of everyone who reproduces, distributes, or possess the images of the victim's abuse…plays a part in sustaining and aggravating this tragedy." United States v. Hamilton, 78 M.J. 335, 340 (C.A.A.F. 2019) (quoting Paroline, 572 U.S. at 457). For these reasons, the dishonorable discharge is not inappropriately severe.

Appellant asks this Court to consider his offenses in the context that the severe stigma of a dishonorable discharge is inappropriately severe and therefore his crimes merit no more than a bad-conduct discharge. (App. Br. at 5.) But Appellant agreed that the military judge was free to adjudicate a dishonorable discharge when he accepted a plea agreement with a provision requiring the military judge to adjudge at least a bad-conduct discharge. (App. Ex. II.) Even if no plea agreement were in place, the military judge could still have adjudicated a dishonorable discharge for child pornography, especially when Appellant pleaded guilty to distributing child pornography, a more serious offense than viewing and possessing. Without his plea agreement, Appellant could have been exposed to 41 years of confinement. By entering into the plea agreement, Appellant received his end of the bargain and had limitations on confinement. The plea agreement shaved 40 years of potential confinement. Appellant's willingness to enter into a plea agreement and its sentencing terms was indicative of an appropriate sentence. This Court has recognized that a plea agreement with the convening authority is "some indication of the fairness and appropriateness of [an appellant's] sentence." United States v. Perez, ACM S32637 (f rev), 2021 CCA Lexis 501 at *7 (A.F. Ct. Crim. App. 28 September 2021) (unpub. op).

Appellant is requesting this Court to essentially grant mercy which it cannot do. Appellant's dishonorable discharge is correct in law. Given the nature of Appellant's crimes,

along with his plea agreement, a dishonorable discharge is not inappropriately severe. This Court should deny this assignment of error.

II.

THIS COURT SHOULD STRIKE AN INACCURATE PORTION OF THE CONVENING AUTHORITY'S REPRIMAND.

Additional Facts

The convening authority adjudicated the following reprimand:

> SSgt Alex J. Mejia is reprimanded as follows: You are hereby reprimanded! Your decision to willingly and knowingly possess and distribute images and videos depicting sexual abuse and exploitation of children is appalling and violates all standards of human decency. You continuously exchanged indecent comments, professing your desire to participate in sexual acts with minors. Not only is your egregious conduct a significant departure from the standards expected of all members of society, but worse, your misconduct violated the high values and standards expected of you as a non-commissioned officer and member of the United States Air Force. You have disgraced yourself and brought discredit upon this great service with the reprehensible misconduct you committed when you thought no one was watching. I hope this conviction causes you to truly appreciate the severity of your actions and serves as a catalyst for you to take the steps necessary to be a productive member of society.

(*Convening Authority Decision on Action Memorandum*, 2 June 2023, ROT. Vol. 1.)

Standard of Review

This Court determines whether a reprimand is appropriate under a de novo standard. United States v. McAlhaney, 83 M.J. 164, 169 (C.A.A.F. 2023).

Law and Analysis

Appellant was a Senior Airman at the time he committed the offenses. The United States agrees with Appellant and requests that this Court set aside the convening authority's reference to Appellant's non-commissioned officer status in the reprimand. In United States v. Hinds, this Court fixed typographical errors contained in the reprimand portion of the Entry of Judgment. ACM S32756, 2024 CCA LEXIS 315, at *5-6 (A.F. Ct. Crim App. 31 July 2024) (unpub. op.). Pursuant to its authority under R.C.M. 1111(c)(2), this Court can modify the Entry of Judgment and strike out the convening authority's reference to Appellant's rank as a non-commissioned officer. This Court should grant this assignment of error.

III.

THIS COURT CAN MODIFY APPELLANT'S ENTRY OF JUDGMENT TO REFLECT THE CORRECT DATES OF APPELLANT'S DEFERMENT OF REDUCTION IN RANK.

Additional Facts

On 8 March 2023, the military judge sentenced Appellant to reduction in rank to the grade of E-1. (R. at 208.) Under Article 57(a)(1)(A), the effective date of this sentence was 22 March 2023, 14 days after the announcement of sentence. On 17 March 2024, Appellant requested suspension or deferment of reduction in grade until the Entry of Judgment. (*Convening Authority Decision on Action Memorandum*, 2 June 2023, ROT. Vol. 1.) The convening authority granted Appellant's request to defer his reduction in rank until the date of the Entry of Judgment. (Id.) The military judge in the Entry of Judgment stated that the convening authority deferred the adjudged reduction in rank from 27 April 2023 until the date of this judgment. (*Entry of Judgment*, 15 June 2023, ROT. Vol. 1.)

Standard of Review

Completion of post-trial processing is a question of law that this Court reviews de novo. United States v. Sheffield, 60 M.K. 591, 593 (A.F. Ct. Crim. App. 2004).

Law and Analysis

The effective date of reduction in grade is 14 days after the announcement of sentence. Article 57(a)(1))(A), UCMJ. The convening authority may defer the effective date of a reduction in rank until the Entry of Judgment. Article 57(b)(1), UCMJ. The Rules for Court-Martial states that Court of Criminal Appeals and the Court of Appeals for the Armed Forces "may modify a judgment in the performance of their duties and responsibilities." United States v. Pullings, 83 M.J. 205, 217 (C.A.A.F. 2023); R.C.M. 1111(c)(2).

Appellant is right in that the Entry of Judgment is incorrect in that the military judge erroneously mentioned that the convening authority deferred the reduction in rank from 27 April 2023 until the date of the Entry of Judgment. The Entry of Judgment should have notated instead that the convening authority deferred the adjudged reduction in rank from 22 March 2023, when Appellant's reduction in rank would have been effective pursuant to Article 57(a)(1)(A), UCMJ, until the date of the Entry of Judgment. Article 57(b)(1), UMCJ.

It appears that the military judge's language contained in the Entry of Judgment is a typographical oversight. This Court is well within its authority to modify the Entry of Judgment, instead of ordering correction, to reflect the correct deferment dates. Recently, in Hinds, this Court exercised this authority under R.C.M. 1111(c)(2) to correct a reprimand in the Entry of Judgment to avoid post-trial processing delay. Hinds, unpub. op. at 5-6. The Court should do the same in Appellant's case. This Court should correct the Entry of Judgment to reflect that the

convening authority deferred Appellant's reduction in rank from 22 March 2023 until the date of the Entry of Judgment, which in this case was 15 June 2023.

For these reasons, this Court should modify the Entry of Judgment deferment dates and not remand for correction.

IV.

THE RECORD OF TRIAL'S OMISSIONS DO NOT REQUIRE RELIEF OR REMAND FOR CORRECTION.

Additional Facts

An Article 30a proceeding was held on 9 April 2022. (R. at 2.) As Appellant correctly stated, the record of the Article 30a proceeding was not included in the record of trial. The United States, in a motion to attach filed simultaneously with this answer, provided this Court with the Article 30a proceeding. On 22 April 2023, as indicated in the Convening Authority Decision on Action Memorandum, Appellant requested waiver of all the automatic forfeitures. (*Convening Authority Decision on Action Memorandum*, 2 June 2023, ROT. Vol. 1.) The Convening Authority waived automatic forfeitures for a period of six months, or release from confinement, or expatriation of term of service, which is sooner with the waiver commencing 14 days after the sentence was adjudged. (Id.) The total pay and allowances were directed to be paid to Appellant's spouse. (Id.) Appellant's 22 April 2023 request for waiver of all automatic forfeitures was not included in the record of trial.

Standard of Review

Whether an omission from a record of trial is "substantial" is a question of law reviewed de novo. United States v. Stoffer, 53 M.J. 26, 27 (C.A.A.F. 2000).

Law and Analysis

Appellate courts understand that inevitably records will be imperfect, and therefore review for substantial omissions. United States v. Lashley, 14 M.J. 7, 8 (C.M.A. 1982). A substantial omission renders a record incomplete and raises a presumption of prejudice that the government must rebut. United States v. Henry, 53 M.J. 108, 1111 (C.A.A.F. 2000) (citing United States v. McCullah, 11 M.J. 234, 237 (C.M.A. 1981)). Insubstantial omissions do not raise a presumption of prejudice or affect the record's characterization as complete. Id. A substantial omission may not be prejudicial if the appellate courts can conduct an informed review. *See* United States v. Simmons, 54 M.J. 883, 887 (N-M. Ct. Crim. App. 2001); *see also* United States v. Morrill, ARMY 20140197, 2016 CCA LEXIS 644, at *4-5 (A. Ct. Crim. App. 31 October 2016) (unpub. op.) (finding that despite the omission from the record of an Article 39(a) session containing the military judge's findings and conclusions related to an R.C.M. 917 motion, the record, as it was, was "adequate to permit informed review by this court and any other reviewing authorities"). R.C.M. 1112(b) states that a record of trial shall include "[a] substantially verbatim recording of the court-martial proceedings."

A. Missing Article 30a proceeding

Appellant asserts that his Article 30a proceeding was not included in the record of trial. (App. Br. at 9.) Although the record of trial was missing the Article 30a proceeding, this Court can conduct appellate review because in a separate motion to attach the United States filed the missing documents from the record. Recently, in United States v. Haynes, this Court completed its Article 66, UCMJ, review of the appellant's court-martial when the United States filed a separate motion to attach missing documents from the record of trial. ACM 40306 (f rev) 2024

CCA LEXIS 219, at *4-5 (A.F. Ct. Crim. App. 31 May 2024) (unpub. op.) Therefore, a remand is not necessary or appropriate.

Even if this Court did not have access to the Article 30a proceeding, this Court can conduct meaningful appellate review. By virtue of his plea agreement and guilty plea, Appellant gave up his right to a trial of the facts and did not challenge in his Care[2] inquiry or in his assignments of error the underlying evidence that resulted from the search authorizations responsive to Appellant's Article 30a proceeding. Appellant waived all waivable motions. (App. Ex. II; R. at 88-90.) Moreover, Mil. R. Evid. 311(d)(2)(A) states that the defense must make any motion to suppress or object for an unlawful search and seizure prior to a submission of a plea. Failure to move or object constitutes a waiver of the motion or objection. Mil. R. Evid. 311(d)(2)(A). Accordingly, Appellant waived any motion regarding the search and seizure of his Tumblr account. As a result, this Court's appellate review will not require any scrutiny of Appellant's Article 30a proceeding. Thus, Appellant was not prejudice given that the initial record of trial did not contain his Article 30a proceeding.

B. Missing request for waiver of automatic forfeitures

Appellant also asserts that his request for waiver of automatic forfeitures was also missing from the record of trial. (App. Br. at 9.) Appellant acknowledges that inclusion of the missing waiver request was not a requirement of the record of trial nor the attachments to the record of trial. (App. Br. at 11 citing R.C.M. 1112(b), (f).) But Appellant nonetheless is asking this Court to order the production of the waiver request when remanding to obtain the Article 30a proceeding. (Id.) As mentioned above, remand is not warranted because the United States has

[2] United States v. Care, 40 C.M.R. 247 (C.M.A. 1969) (requiring the military judge to make a finding that the accused made a knowing, intelligent, and a conscious waiver to accept the guilty plea).

attached the Article 30a proceeding in a separate motion to attach. (United States' Motion to Attach, dated 3 September 2024.) Lastly, the missing waiver request was not an omission, and if so, it was an insubstantial omission.

In any event, Appellant was not prejudice due to the lack of waiver request obtained in the record of trial. The convening authority's decision on action states that he considered Appellant's waiver request and granted this request for a period of six months for the benefit of Appellant's spouse. Given that the convening authority considered Appellant's waiver request, and granted such request, Appellant was not prejudice. In United States Burrell, this Court found no prejudice even though the record of trial did not include any evidence of the deferral and waiver request. ACM S29772, 2000 CCA LEXIS 197, at *3 (A.F. Ct. Crim. App. 3 August 2000) (unpub. op.). But, in Burrell, the government did attach the convening authority's memoranda addressing the requests. Id. Since there was no evidence that the appellant did not receive the benefit of the waiver of forfeitures, this Court found no prejudice. Id. Here there is indication that the convening authority considered Appellant's request and granted it. Like in Burrell, there is no indication that Appellant did not receive the benefit of the waiver of automatic forfeitures. Thus, Appellant suffered no prejudice and remand for correction of the record of trial is not warranted.

C. Institutionalized Neglect

Finally, Appellant argues that this "Court should use its broad remit under Article 66, UCMJ, to provide any relief appropriate for the Government's failure to provide a record of trial within the meaning of R.C.M. 1112." (App. Br. at 11.) Appellant's asserts that the government's failure to docket complete records of trial is institutionalized neglect. Appellant relies on United States v. Valentin-Andino, where this Court found institutional neglect in Air

Force post-trial processing. ACM 40185 (f rev), 2024 CCA LEXIS 223, at *17 (A.F. Ct. Crim. App. 7 Jun 2024) (unpub. op.). In Valentin-Andino, this Court found a gross indifference to post-trial processing in that particular case. Id. Missing documents were retrieved from a paralegal's email communication rather than the base legal office's copy of the record of trial, which demonstrated a gross indifference to post-trial processing. Id. Appellant's case is distinguishable from Valentin-Andino, which was remanded to address two errors, which delayed appellate review. Id. at *16. Here, omissions in the record of trial do not require a remand, and therefore will not cause post-trial delay. The Article 30a proceeding are included in a motion to attach, and Appellant waived any issue related to them anyway. As for the request for Appellant's request for a waiver, that was not a required item for the record, and would have been an insubstantial omission in any event. As a result, this Court can still complete meaningful appellate review.

The omissions from the record of trial do not require sentencing relief or a remand. For these reasons, this Court should deny this assignment of error.

V.

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. EVEN IF THIS COURT DID POSSESS JURISDICTION TO REVIEW THIS ISSUE, AIR FORCE INSTRUCTION REQUIRED THE STATEMENT OF TRIAL RESULTS AND ENTRY OF JUDGMENT TO ANNOTATE APPELLANT'S CRIMINAL INDEXING. FINALLY, 18 U.S.C. § 922 IS CONSTITUTIONAL AS APPLIED TO APPELLANT

Additional Facts

The military judge sentenced Appellant to reduction in grade to E-1, 12 months of confinement, and a dishonorable discharge. (*Entry of Judgment*, 15 June 2023, ROT, Vol. 1.) The first indorsement to the Entry of Judgment included the following annotation: "Firearm Prohibition Triggered Under 18 U.S.C. § 922: Yes." (Id.)

Standard of Review

The scope and meaning of Article 66, UCMJ, is a matter of statutory interpretation, which is reviewed de novo. United States v. Lepore, 81 M.J. 759, 760-61 (A.F. Ct. Crim. App. 2021).

Law and Analysis

The Gun Control Act of 1968 makes it unlawful for a person to possess a firearm if he has been, *inter alia*, "convicted in any court of a crime punishable by imprisonment for a term exceeding one year" or "discharged from the Armed Forces under dishonorable conditions." 18 U.S.C. § 922(g)(1), (g)(6).

Appellant asserts that 18 U.S.C. § 922 is unconstitutional as applied to him. (App. Br. at 13.) Appellant asserts that any prohibitions on the possession of firearms imposed runs afoul of the Second Amendment, U.S. CONST. AMEND. II, the Supreme Court's interpretation of that

amendment in N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022). Appellant's constitutional argument is without merit and is a collateral matter beyond this Honorable Court's authority to review.

A. This Court lacks jurisdiction to determine whether Appellant should be criminally indexed in accordance with 18 U.S.C. § 922.

This Court recently held in its published opinion in United States v. Vanzant, ACM 22004, 2024 CCA LEXIS 215, __ M.J. __ (A.F. Ct. Crim. App. 28 May 2024), that 18 U.S.C. § 922(g)'s firearm prohibitions and the criminal indexing requirements that follow that statute are collateral consequences of the conviction, rather than elements of the findings or sentence, so they are beyond the scope of this Court's jurisdiction under Article 66, UCMJ. Id. at *24.

B. The Statement of Trial Results and Entry of Judgment were prepared correctly in accordance with the applicable Air Force Instruction.

Even if this Court has jurisdiction to review this issue, Appellant was found guilty of viewing, possessing, and distributing child pornography, in violation of Article134 UCMJ, which are crimes punishable by imprisonment for a term exceeding one year. Manual for Courts-Martial, United States part IV, para. 95.d.(1), (3) (2023 ed.) (MCM). Viewing and possessing child pornography are punishable by up to 10 years confinement for each offense. MCM, pt. IV. para. 95.d.(1). Distributing child pornography is punishable up to 20 years for each offense. MCM, pt. IV. para. 95.d.(3). Thus, the Staff Judge Advocate followed the appropriate Air Force regulations in signing the first indorsement to the Statement of Trial Results and Entry of Judgment. DAFI 51-201, dated 14 April 2022, paras. 29.30, 29.32.

C. The Firearm Prohibition in the Gun Control Act of 1968 is Constitutional as Applied to Appellant.

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST., amend. II. But as the Supreme Court has repeatedly emphasized, "the right secured by the Second Amendment is not unlimited." District of Columbia v. Heller, 554 U.S. 570, 626 (2008); *see* N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 20 (2022); McDonald v. City of Chicago, 561 U.S. 742, 786 (2010) (plurality opinion). "[T]he right was *never* thought to sweep indiscriminately." United States v. Rahimi, 602 U.S. _, 144 S. Ct. 1889, 1897, Docket No. 22-915, 2024 U.S. LEXIS 2714 (21 June 2024) (slip op.). The history of firearms regulation reflects "a concern with keeping firearms out of the hands of categories of potentially irresponsible persons, including convicted felons," Barrett v. United States, 423 U.S. 212, 220 (1976), and "an intent to impose a firearms disability on *any* felon based on the fact of conviction." Lewis v. United States, 445 U.S. 55, 62 (1980) (emphasis added). Firearms prohibitions for felons are "presumptively lawful." Rahimi, 144 S. Ct. at 1902 (citing Heller, 554 U.S. at 626). Because Appellant has been convicted by a general court-martial of a serious crime, application of 18 U.S.C. 922(g) to him is constitutional.

Appellant's argument presumes, incorrectly, that his crime was not a violent offense or "crime of violence." (App. Br. at 15.) But Child Pornography is a "crime of violence." The Federal Bail Reform Act, 18 U.S.C. § 3156(a)(4)(C), defines the term "crime of violence" to include Distribution of Child Pornography; that is, a felony under Chapter 110 of the U.S. Code, including 18 U.S.C. § 2252A. Also, 18 U.S.C. § 3142, which governs the detention or release of a defendant pending trial in Federal court, puts those charged with child pornography crimes squarely in the same class of dangerousness as those accused of drug trafficking, firearms

offenses, and terrorism. *See* Section 3142(e)(3)(E) (establishing statutory presumption of danger to the community). Even if this Court considers Appellant not to be a physically violent offender, he is a danger to our society nonetheless. *See* New York v. Ferber, 458 U.S. 747, 758 n.9 (1982) ("[The] use of children as … subjects of pornographic materials is very harmful to both the children and the society as a whole."). Given this nation's historical tradition of disarming dangerous persons, 18 U.S.C. § 922 is constitutional as applied to Appellant, and he is not entitled to relief.

Because Appellant's constitutional argument is without merit and is a collateral matter beyond this Honorable Court's authority to review, the Court should deny this assignment of error.

VI.[3]

A PLEA AGREEMENT REQUIRING AT LEAST A BAD CONDUCT DISCHARGE DID NOT RENDER THE SENTENCE PROCEEDING AN "EMPTY RITUAL" AND THUS DID NOT VIOLATE PUBLIC POLICY.

Additional Facts

Appellant entered into a voluntary plea agreement with the government. (R. at 78.) In exchange for his guilty plea, Appellant received a limit on his sentencing liability. (App. Ex. II.) The terms of the agreement required the military judge to adjudge a punitive discharge of at least a bad conduct discharge. (Id.) Based on Appellant's guilty plea alone, without the plea agreement limitations, the maximum punishment authorized by law was reduction to the grade of E-1, forfeiture of all pay and allowances, confinement for 41 years, and a dishonorable discharge. (R. at 77.)

[3] Appellant raised Assignment of Error VI pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

Standard of Review

This Court determines whether a term in a plea agreement violates R.C.M. 705 de novo. United States v. Hunter, 65 M.J. 399 (C.A.A.F. 2008). Even where the appellate court is reviewing an issue de novo, it normally defers to any findings of fact by the military judge unless they are clearly erroneous. United States v. Ayala, 43 M.J. 296, 298 (C.A.A.F. 1995).

Law and Analysis

The term requiring the military judge to adjudge at least a bad conduct discharge did not render the sentencing proceeding into an empty ritual that violated public policy. Neither case law nor the Rules for Courts-Martial preclude a provision in a plea agreement that requires the military judge to adjudge a bad conduct discharge or dishonorable discharge. This Court addressed a similar issue in United States v. Geier, where an appellant argued a mandatory bad conduct discharge provision in his plea agreement turned his presentencing proceeding into an empty ritual that violated public policy. ACM S32679, 2022 LEXIS CCA 468, at *4 (A.F. Ct. Crim. App. 2 Aug. 2022) (unpub. op.). This Court concluded the term "violate[d] neither the Constitution nor the UCMJ, nor [did] it run afoul of public policy under the arguments raised on appeal." Id. at *13.

R.C.M. 705(a) allows for an appellant and a convening authority to enter into a plea agreement in accordance with this rule, subject to limitations prescribed by the service's secretary. Case law favors the "ability of an [appellant] to waive his rights as part of a pretrial agreement, absent some affirmative indication the accused entered the agreement unknowingly and involuntarily." United States v. Edwards, ACM S29885, 2001 LEXIS 302 at *7 (A.F. Ct. Crim. App. 29 Nov 2001) (unpub. op.) (citing United States v. Mezzanatto, 513 U.S. 196

(1995)). The record supports that Appellant knowingly and voluntarily entered into this plea agreement and all its terms to receive benefit of the bargain. (R. at 78-102.)

A. The punitive discharge provision did not violate Appellant's right to a complete presentencing proceeding.

The agreed upon terms of a plea agreement will be enforced unless they deprive an appellant of "the right to counsel; the right to due process; the right to challenge the jurisdiction of the court-martial; the right to a speedy trial; the right to complete presentencing proceedings; the complete and effective exercise of post-trial and appellate rights." R.C.M. 705(c)(1)(B). Appellant argues that the mandatory discharge term of his plea agreement "hollowed out the presentencing proceeding" and deprived him of "his opportunity to secure a fair and just sentence." (App. Br. Appendix at 3.)

Appellant's presentencing proceeding was not transformed into an empty ritual. Not only has this Court already dismissed this argument about this exact plea agreement term, but also our superior court has held that "[j]udicial scrutiny of [plea agreement] provisions at the trial level helps to ensure" trials are not turned into empty rituals. United States v. Soto, 69 M.J. 304, 307 (C.A.A.F. 2011). Here, in the plea agreement inquiry, the military judge told Appellant that "when the convening authority accepted [Appellant's] plea agreement offer, it accepted a binding agreement." (R. at 94.) Appellant understood that he entered int a binding agreement with the government. (Id.); Soto, 69 M.J. at 306-07 (citing United States v. King, 3 M.J. 458, 459 (C.M.A. 1977) ("[J]udicial scrutiny of plea agreements at the trial level enhances public confidence in the plea bargaining process.")).

Moreover, the plea agreement did not limit Appellant's ability to present matters in mitigation and extenuation, showing that Appellant was not deprived of complete presentencing proceedings. It has been commonly held that a provision limiting an appellant's ability to

present a sentencing case is prohibited. *See* United States v. Cummings, 38 C.M.R. 174, 177 (C.M.A. 1968) (citing United States v. Callahan, 22 M.J. 443 (A.B.R. 1956) (finding that a term preventing an appellant from presenting matters in extenuation and mitigation violated the appellant's right to due process)); United States v. Sunzeri, 59 M.J. 758 (N-M. Ct. Crim. App. 2004) (holding that a provision that prevented the appellant from calling any witnesses in his sentencing case prevented him from having a complete presentencing hearing and was not enforceable.) Nothing in Appellant's plea agreement prevented him from presenting a full sentencing case. And the record showed that Appellant did present a full sentencing case. While Appellant chose not to call any witnesses, he did submit a sentencing package that included awards, certificates, a photo collage, and a written unsworn statement. (Def. Ex. A-M.) Appellant also provided a verbal unsworn statement. (R. at 175.) The mandatory discharge term did not transform Appellant's presentencing proceedings into an empty ritual.

B. The punitive discharge provision did not violate public policy.

Despite having negotiated for the terms of his plea agreement, Appellant now argues the exchange of his guilty plea for a specific sentence violated public policy. In part, he argues such a term precluded the sentencing authority from determining what is sufficient, but not greater than necessary, to achieve the principles of sentencing. (App. Br. Appendix at 5.) Still, the military judge did determine what sentence was appropriate for Appellant, and he received an individualized sentence. The military judge, after hearing all matters in aggravation, extenuation, and mitigation, sentenced Appellant be reduced to the grade of E-1, to be confined for 1 year, and to be dishonorably discharged from service. (R. at 208.) The requirement that Appellant receive a minimum punishment as a result of his bargained for plea agreement no more violates public policy than a term that limits confinement or a statutorily required minimum

punishment for certain crimes.

Appellant argues that "no one in this case knows if the military judge believed a mandatory discharge was "not greater than necessary" to promote justice and to maintain good order and discipline because the plea agreement required a mandatory discharge. (App. Br. Appendix at 4.) But Congress has determined that a punitive discharge is within the range of an appropriate sentences for the crime Appellant pleaded guilty to. Furthermore, as this Court noted in Geier,

> Congress has authorized plea agreements which involve 'limitations on the sentence that may be adjudged.' Given the fact Congress elsewhere in the UCMJ addresses minimum and maximum sentences, the absence of such qualifications with respect to the 'limitations' in Article 53a, UCMJ, is strong evidence such limitations may apply to both the upper and lower ends of the punishment spectrum. We see no indication Congress intended a contrary outcome.

Geier, unpub. op. at *13.

To support that a mandatory discharge is against public policy, Appellant relies on United States v. Libecap, 57 M.J. 611 (C.G. Ct. Crim. App. 2002). Appellant argues that "[i]f it violates public policy to require requesting a punitive discharge, surely it violates public policy to mandate the result." (App. Br. Appendix at 3-4.) That said, Appellant does not distinguish his case from Geier. This Court explained that the issue in Libecap "was the accused was required to give up his bargaining position, thereby undermining the sentencing process in place at the time, in which the accused would typically try to obtain a sentence lighter than the limitations in the pretrial agreement," but because under the current rules a military judge was "aware of, and bound by the sentence limits in the plea agreement, the concerns in Libecap do not exist." Id. at *11-12.

Appellant, here, did not have to agree to a potential sentence he did not want. The term

requiring a mandatory punitive discharge was negotiated by Appellant in return for a cap on the amount of confinement Appellant could have received. (App. Ex. II.) The plea agreement ensured Appellant was not exposed to 41 years of confinement. Unlike Libecap, where the appellant was put in a position where he had to ask for a punishment he did not want, Appellant negotiated his plea agreement, which guaranteed he would not face more than 1 year of confinement. If Appellant did not want to agree to those terms, he did not have to sign the plea agreement. If the military judge felt compelled to render punitive discharge only because of the plea agreement, he would have adjudicated only a bad-conduct discharge. Instead, the military judge adjudicated a dishonorable discharge given the egregiousness of Appellant's crimes. Thus, the military judge rendered an individualized sentence within the parameters of the plea agreement. The mandatory bad-conduct discharge did not violate public policy.

C. Appellant was not prejudiced.

Even if the term requiring the military judge to adjudge a punitive discharge is not enforceable and violated public policy, there was no prejudice to Appellant. As a result of the plea agreement, Appellant faced criminal liability for various crimes that allowed a punitive discharge as part of the range of punishment. (*Entry of Judgment*, 15 June 2023, ROT, Vol. 1.) Had the Appellant not voluntarily agree to a punitive discharge provision, the military judge could have and would have adjudged a punitive discharge of a dishonorable discharge. The fact that the military judge adjudged a dishonorable discharge showed that particular sentence was inevitable. If the military judge felt compelled to give a punitive discharge solely based on the plea agreement, one would have expected a bad conduct discharge not a dishonorable discharge. As discussed above, Appellant's egregious crimes involving the exploitation of children warranted such a severe sentence.

No prejudice existed when the plea agreement and the mandatory discharge provision ensured Appellant was protected from 41 years of confinement. (App. Ex. II.) Appellant voluntarily and knowingly agreed to all the terms of the plea agreement and, as a result, received the benefit of his bargain. If the provision was in error, the error was harmless, and Appellant suffered no prejudice from the term of his plea agreement being enforced.

Given that the plea agreement provision here did not violate Appellant's right to a complete presentencing hearing or violate public policy, there was no error, and Appellant suffered no prejudice. Thus, this Court should deny this assignment of error.

CONCLUSION

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

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

MARY ELLEN PAYNE
Associate Chief
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 3 September 2024.

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5), **ALEX J. MEJIA,** United States Air Force, *Appellant.*	)))))))))	**APPELLANT'S REPLY BRIEF** Before Panel No. 2 No. ACM 40497 5 September 2024

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

Appellant, Staff Sergeant (SSgt) Alex J. Mejia, pursuant to Rule 18(d) of this Honorable Court's Rules of Practice and Procedure, files this Reply to the Appellee's Answer, dated 3 September 2024 (Ans.). In addition to the arguments in his opening brief, filed on 25 July 2024 (App. Br.), SSgt Mejia submits the following arguments.

I.

STAFF SERGEANT MEJIA'S SENTENCE IS INAPPROPRIATELY SEVERE.

One of SSgt Mejia's chief arguments is that a dishonorable discharge for his is inappropriately severe for conduct that occurred in a very brief period. (App. Br. at 5.) The Government rejects this characterization. But its only citations—to Prosecution Exhibits 1, 3, and 11—relate to a narrow window in early November 2019. (Ans. at 6; Pros. Exs. 1, 3 11; Charge Sheet.) This was fleeting misconduct. SSgt Mejia does not seek to minimize the offenses, but rather to ask this Court to recognize that, for him and for these offenses, a dishonorable discharge is inappropriately severe.

V.

AS APPLIED TO STAFF SERGEANT MEJIA, 18 U.S.C. § 922 IS UNCONSTITUTIONAL BECAUSE THE GOVERNMENT CANNOT DEMONSTRATE THAT BARRING HIS POSSESSION OF FIREARMS IS "CONSISTENT WITH THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION."

1. This Court has power to correct the Entry of Judgment.

SSgt Mejia recognizes that *United States v. Vanzant* binds this Court. ACM 22004, 2024 CCA LEXIS 215, __ M.J. __ (A.F. Ct. Crim. App. 28 May 2024). However, resolution on this question will ultimately come from *United States v. Williams*, No. 24-0015/AR, 84 M.J. 270 (C.A.A.F. 2024) (granting review of an analogous jurisdictional issue).

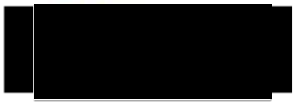
2. Unrelated federal statutes are not instructive on whether distribution of child pornography is violent.

The Government suggests that distribution of child pornography is a crime of violence. Since distribution of child pornography is plainly not violent, the Government seeks refuge in statutes that categorically identify offenses as violent for a different purpose, even if they are not. (Ans. at 19–20 (citing 18 U.S.C. § 3156(a)(4)(C) (the Bail Reform Act); and then 18 U.S.C. § 3142 (on detention of defendants awaiting trial, which equates child pornography with terrorism for that limited purpose)).) This focus on other provisions misses the essence of the *Bruen* analysis: What is permissible regulation when viewed through the lens of history and tradition? And as explained in the opening brief, the definition formerly used in the Federal Firearms Act included "committing or attempting to commit murder, manslaughter, rape, mayhem, assault to do great bodily harm, robbery, [larceny],

burglary, and housebreaking." (App. Br. at 3–4 (citing Uniform Firearms Act of 1926 and 1930).) The question is what the historical tradition will support, not the definition provided in the Bail Reform Act or a statue relating to pretrial detention.

WHEREFORE, SSgt Mejia respectfully requests this Court hold § 922(g)(1)'s firearms prohibition unconstitutional as applied to him and order correction of the Statement of Trial Results and Entry of Judgment to indicate that no firearms prohibition applies in his case.

Respectfully submitted,



MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770

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 September 2024.

MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*,	)	**UNITED STATES' MOTION TO ATTACH DOCUMENTS**
v.	)	Before Panel No. 2
Staff Sergeant (E-5) **ALEX J. MEJIA** United States Air Force *Appellant.*	)	No. ACM 40497
	)	3 September 2024

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 moves this Court to attach the following documents to this motion:

- Appendix A – *Email Traffic – Article 30a Request*, various dates (3 pages)
- Appendix B – *Request for Military Judge, Pre-Referral Proceeding*, dated 7 April 2022 (1 Page)
- Appendix C – *Detailing Memorandum*, dated 7 April (1 page)
- Appendix D – *Application for Search and Seizure Warrant Pursuant to 18 U.S.C. § 2703*, dated 8 April 2022 (1 page)
- Appendix E – *Affidavit in Support of Search Warrant*, dated 7 April 2022 (23 pages)
- Appendix F – *Request for non-disclosure*, dated 8 April 2022 (2 pages)
- Appendix G – *Search and Seizure Warrant Pursuant to 18 U.S.C. § 2703*, dated 23 April 2022 (2 pages)
- Appendix H – *Attachment A and B*, undated (4 pages)
- Appendix I – *Nondisclosure Order*, 9 April (1 page)

GRANTED
12 SEP 2024

Appellant's fourth assignment of error asserts that his Article 30a proceeding was not included in the record of trial. Assistant trial counsel mentioned during arraignment that an Article 30a proceeding was held in Appellant's case on 9 April 2022. (R. at 2.) Undersigned counsel reached out to the servicing base legal office to inquire about the missing documents listed in Appellant's Assignment of Error IV and received the following appendices.

Our Superior Court held that matters outside the record may be considered "when doing so is necessary for resolving issues raised by materials in the record." United States v. Jessie, 79 M.J. 437, 444 (C.A.A.F. 2020). Here, the transcript did raise the issue that an Article 30a proceeding was conducted in Appellant's case, and the motion to attach can help resolve that issue. (R. at 2.) Now, the United States moves this Court to grant this motion to attach to include Appellant's Article 30a proceeding in the record of trial.

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

[redacted]
VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

[redacted]
MARY ELLEN PAYNE
Associate Chief
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 3 September 2024.

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800