UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40668**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Parker C. MYSLOW	)	
Second Lieutenant (O-1)	)	
U.S. Air Force	)	
Appellant	)	**Panel 3**

This case was docketed with the court on 5 September 2024. On 27 October 2024, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant's assignments of error. The Government opposes the motion.

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

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

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **3 January 2025**.

Any subsequent requests for enlargement will be considered individually on their merits.

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

Appellant's counsel is further advised that any future requests for enlargements of time that, if granted, would expire more than 360 days after docketing, ordinarily will not be granted absent *exceptional circumstances*.

FOR THE COURT

[redacted]

OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Panel No. 3
Second Lieutenant (O-1) **PARKER C. MYSLOW,** United States Air Force, *Appellant.*	)	No. ACM 40668
	)	27 October 2024

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 a first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **3 January 2025**. The record of trial was docketed with this Court on 5 September 2024. From the date of docketing to the present date, 52 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: frederick.johnson.11@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 Operations Division on 27 October 2024.

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: frederick.johnson.11@us.af.mil

28 October 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Second Lieutenant (O-1) PARKER C. MYSLOW, USAF, *Appellant.*	))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40668 Panel No. 3

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

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

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

[redacted]

JENNY A. LIABENOW, 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 28 October 2024.

JENNY A. LIABENOW, 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,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SECOND)**
v.	)	Before Panel No. 3
Second Lieutenant (O-1) **PARKER C. MYSLOW,** United States Air Force, *Appellant.*	)	No. ACM 40668
	)	23 December 2024

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 a second enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **2 February 2025**. The record of trial was docketed with this Court on 5 September 2024. From the date of docketing to the present date, 109 days have elapsed. On the date requested, 150 days will have elapsed.

On 26 March 2024, a general court-martial consisting of a military judge alone at Seymour Johnson Air Force Base, North Carolina, found Appellant guilty, consistent with his pleas, of one charge and one specification of violating a lawful general regulation in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892, and one charge and one specification of wrongful use of delta-9 tetrahydrocannabinol in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. R. at 43; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 22 April 2024. The military judge sentenced Appellant to a dismissal. R. at 84; EOJ. The convening authority took no action on the findings or the sentence. ROT Vol. 1, Convening Authority Decision on Action, 12 April 2024.

The record of trial is three volumes consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is 85 pages. Appellant is not currently confined.

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

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

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: frederick.johnson.11@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 Operations Division on 23 December 2024.

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: frederick.johnson.11@us.af.mil

30 December 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Second Lieutenant (O-1) PARKER C. MYSLOW, USAF, *Appellant.*	))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40668 Panel No. 3

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

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

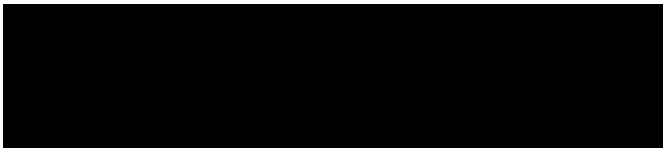
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

[redacted]

JENNY A. LIABENOW, 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 30 December 2024.



JENNY A. LIABENOW, 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,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (THIRD)**
v.	)	Before Panel No. 3
Second Lieutenant (O-1) **PARKER C. MYSLOW,** United States Air Force, *Appellant.*	)	No. ACM 40668
	)	24 January 2025

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 a third enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **4 March 2025**. The record of trial was docketed with this Court on 5 September 2024. From the date of docketing to the present date, 141 days have elapsed. On the date requested, 180 days will have elapsed.

On 26 March 2024, a general court-martial consisting of a military judge alone at Seymour Johnson Air Force Base, North Carolina, found Appellant guilty, consistent with his pleas, of one charge and one specification of violating a lawful general regulation in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892, and one charge and one specification of wrongful use of delta-9 tetrahydrocannabinol in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. R. at 43; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 22 April 2024. The military judge sentenced Appellant to a dismissal. R. at 84; EOJ. The convening authority took no action on the findings or the sentence. ROT Vol. 1, Convening Authority Decision on Action, 12 April 2024.

The record of trial is three volumes consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is 85 pages. Appellant is not currently confined.

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

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

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: frederick.johnson.11@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 Operations Division on 24 January 2025.

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: frederick.johnson.11@us.af.mil

27 January 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Second Lieutenant (O-1) PARKER C. MYSLOW, USAF, *Appellant.*	))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40668 Panel No. 3

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

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

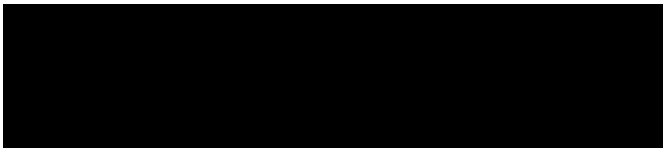
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

[redacted]

JENNY A. LIABENOW, 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 27 January 2025.



JENNY A. LIABENOW, 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,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FOURTH)**
v.	)	Before Panel No. 3
Second Lieutenant (O-1) **PARKER C. MYSLOW,** United States Air Force, *Appellant.*	)	No. ACM 40668
	)	21 February 2025

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 a fourth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **3 April 2025**. The record of trial was docketed with this Court on 5 September 2024. From the date of docketing to the present date, 169 days have elapsed. On the date requested, 210 days will have elapsed.

On 26 March 2024, a general court-martial consisting of a military judge alone at Seymour Johnson Air Force Base, North Carolina, found Appellant guilty, consistent with his pleas, of one charge and one specification of violating a lawful general regulation in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892, and one charge and one specification of wrongful use of delta-9 tetrahydrocannabinol in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. R. at 43; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 22 April 2024. The military judge sentenced Appellant to a dismissal. R. at 84; EOJ. The convening authority took no action on the findings or the sentence. ROT Vol. 1, Convening Authority Decision on Action, 12 April 2024.

The record of trial is three volumes consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is 85 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing 34 clients; 19 clients are pending initial AOEs before this Court. Additionally, one client has a pending brief, two other clients have upcoming oral arguments, and one additional client has an upcoming petition for a grant of review, all before the United States Court of Appeals for the Armed Forces (CAAF).[1] Thirteen matters currently have priority over this case:

1) *United States v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 24-0146/AF – The record of trial is nine volumes consisting of 14 prosecution exhibits, 16 defense exhibits, one court exhibit, and 47 appellate exhibits; the transcript is 896 pages. Undersigned counsel is preparing to present oral argument as lead counsel before the CAAF in this case on 26 February 2025.
2) *United States v. Patterson*, ACM 40426, USCA Dkt. No. 25-0073/AF – The record of trial is 8 volumes consisting of 12 prosecution exhibits, eight defense exhibits, two court exhibits, and 75 appellate exhibits; the transcript is 987 pages. Undersigned

[1] Since the filing of Appellant's last request for an enlargement of time, counsel reviewed approximately 50 percent of the eight-volume record of trial and prepared a filed a motion to remand in *U.S. v. Burkhardt-Bauder*, ACM 24011; conducted two practice oral arguments in *U.S. v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 24-0146/AF; assisted with preparing and filing a 44-page AOE in *U.S. v. Dawson*, ACM 24041; prepared and filed a six-page reply brief in *U.S. v. Henderson*, ACM 40419; began reviewing the seven-volume record of trial in *U.S. v. Haymond*, ACM 40588; prepared and filed a seven-page reply brief in *U.S. v. York*, ACM 40604; prepared and filed a 13-page reply brief to the CAAF in *U.S. v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF; and participated in eight practice oral arguments for four additional cases. Additionally, counsel was off for the Washington's Birthday holiday.

counsel is reviewing the Government's brief and drafting an answer to the CAAF in this case.

3) *United States v. Cadavona*, ACM 40476 – The record of trial is four volumes consisting of 11 prosecution exhibits, two defense exhibits, and 24 appellate exhibits; the transcript is 329 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.

4) *United States v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF – The record of trial is six volumes consisting of six prosecution exhibits, one court exhibit, 12 defense exhibits, and 36 appellate exhibits; the transcript is 396 pages. Undersigned counsel is preparing to present oral argument as lead counsel before the CAAF in this case on 19 March 2025.

5) *United States v. Haymond*, ACM 40588 – The record of trial is seven volumes consisting of five prosecution exhibits, seven defense exhibits, 42 appellate exhibits, and one court exhibit; the transcript is 689 pages. Undersigned counsel has begun reviewing the record of trial in this case.

6) *United States v. Harnar*, ACM 40559 – The record of trial is three volumes consisting of five prosecution exhibits, 14 defense exhibits, six appellate exhibits, and two court exhibits; the transcript is 106 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

7) *United States v. Driskill*, ACM 39889 (rem) – The record of trial is 14 volumes consisting of 14 prosecution exhibits, four defense exhibits, and 169 appellate exhibits; the transcript is 2,062 pages. Undersigned counsel will need to conduct additional review of the record to prepare a brief on remand in this case.

8) *United States v. Keilberg*, ACM 40601 – The record of trial is four volumes consisting of 13 prosecution exhibits, one defense exhibit, and seven appellate exhibits; the transcript is 118 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

9) *United States v. Banks*, ACM 24057 – The record of trial is seven volumes consisting of ten prosecution exhibits, 16 defense exhibits, and 30 appellate exhibits; the transcript is 985 pages. Undersigned counsel has begun reviewing the record of trial in this case.

10) *United States v. Jackson*, ACM S32780 – The record of trial is five volumes consisting of 12 prosecution exhibits, 13 defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

11) *United States v. Smith*, ACM 40437 (f rev) – The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and 29 appellate exhibits; the transcript is 338 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

12) *United States v. Nelson*, ACM 24042 – The record of trial is three volumes consisting of 15 prosecution exhibits, one defense exhibit, and 17 appellate exhibits; the transcript is 336 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

13) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and 38 appellate exhibits; the transcript is 248 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

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

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

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: frederick.johnson.11@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 Operations Division on 21 February 2025.

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: frederick.johnson.11@us.af.mil

24 February 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Second Lieutenant (O-1) PARKER C. MYSLOW, USAF, *Appellant.*	))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40668 Panel No. 3

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

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

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

[redacted]

THOMAS J. ALFORD, Lt Col, 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 24 February 2025.

THOMAS J. ALFORD, Lt Col, USAFR
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,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIFTH)**
v.	)	Before Panel No. 3
Second Lieutenant (O-1) **PARKER C. MYSLOW,** United States Air Force, *Appellant.*	)	No. ACM 40668
	)	26 March 2025

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 a fifth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **3 May 2025**. The record of trial was docketed with this Court on 5 September 2024. From the date of docketing to the present date, 202 days have elapsed. On the date requested, 240 days will have elapsed.

On 26 March 2024, a general court-martial consisting of a military judge alone at Seymour Johnson Air Force Base, North Carolina, found Appellant guilty, consistent with his pleas, of one charge and one specification of violating a lawful general regulation in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892, and one charge and one specification of wrongful use of delta-9 tetrahydrocannabinol in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. R. at 43; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 22 April 2024. The military judge sentenced Appellant to a dismissal. R. at 84; EOJ. The convening authority took no action on the findings or the sentence. ROT Vol. 1, Convening Authority Decision on Action, 12 April 2024.

The record of trial is three volumes consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is eighty-five pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing thirty-six clients; twenty-one clients are pending initial AOEs before this Court. Additionally, one client has an upcoming oral argument, and one other client has an upcoming supplement to the petition for a grant of review, both before the United States Court of Appeals for the Armed Forces (CAAF).[1] Eleven matters currently have priority over this case:

1) *United States v. Cadavona*, ACM 40476, USCA Dkt. No. 25-0114/AF – The record of trial is four volumes consisting of eleven prosecution exhibits, two defense exhibits, and twenty-four appellate exhibits; the transcript is 329 pages. Undersigned counsel has petitioned the CAAF for a grant of review and is drafting the supplement to the petition in this case.
2) *United States v. Patterson*, ACM 40426, USCA Dkt. No. 25-0073/AF – The record of trial is eight volumes consisting of twelve prosecution exhibits, eight defense exhibits,

[1] Since the filing of Appellant's last request for an enlargement of time, counsel conducted a practice oral argument and presented oral argument as lead counsel before the CAAF in *U.S. v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 24-0146/AF; reviewed approximately fifteen percent of the seven-volume record of trial in *U.S. v. Haymond*, ACM 40588; prepared and filed a thirteen-page supplemental reply brief, conducted three practice oral arguments, and presented oral argument as lead counsel before the CAAF in *U.S. v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF; prepared and filed a 28-page answer to the CAAF in *U.S. v. Patterson*, ACM 40426, USCA Dkt. No. 25-0073/AF; petitioned the CAAF for a grant of review and began drafting the supplement to the petition in *U.S. v. Cadavona*, ACM 40476, USCA Dkt. No. 25-0114/AF; assisted with preparing and filing an eighteen-page reply and an eight-page motion response in *U.S. v. Dawson*, ACM 24041; reviewed approximately forty percent of the three-volume record of trial in *U.S. v. Harnar*, ACM 40559; and participated in three practice oral arguments for two additional cases. Additionally, counsel attended the CAAF wreath laying ceremony and reception on 25 March 2025.

two court exhibits, and seventy-five appellate exhibits; the transcript is 987 pages. Undersigned counsel is preparing to present oral argument as lead counsel before the CAAF in this case on 9 April 2025.

3) *United States v. Haymond*, ACM 40588 – The record of trial is seven volumes consisting of five prosecution exhibits, seven defense exhibits, forty-two appellate exhibits, and one court exhibit; the transcript is 689 pages. Undersigned counsel has reviewed approximately twenty percent of the record of trial in this case.

4) *United States v. Harnar*, ACM 40559 – The record of trial is three volumes consisting of five prosecution exhibits, fourteen defense exhibits, six appellate exhibits, and two court exhibits; the transcript is 106 pages. Undersigned counsel has reviewed approximately forty percent of the record of trial in this case.

5) *United States v. Driskill*, ACM 39889 (rem) – The record of trial is fourteen volumes consisting of fourteen prosecution exhibits, four defense exhibits, and 169 appellate exhibits; the transcript is 2,062 pages. Undersigned counsel will need to conduct additional review of the record to prepare a brief on remand in this case.

6) *United States v. Keilberg*, ACM 40601 – The record of trial is four volumes consisting of thirteen prosecution exhibits, one defense exhibit, and seven appellate exhibits; the transcript is 118 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

7) *United States v. Jackson*, ACM S32780 – The record of trial is five volumes consisting of twelve prosecution exhibits, thirteen defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

8) *United States v. Banks*, ACM 24057 – The record of trial is seven volumes consisting of ten prosecution exhibits, sixteen defense exhibits, and thirty appellate exhibits; the transcript is 985 pages. Undersigned counsel has begun reviewing the record of trial in this case.

9) *United States v. Smith*, ACM 40437 (f rev) – The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and twenty-nine appellate exhibits; the transcript is 338 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

10) *United States v. Nelson*, ACM 24042 – The record of trial is three volumes consisting of fifteen prosecution exhibits, one defense exhibit, and seventeen appellate exhibits; the transcript is 336 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

11) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

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

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

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: frederick.johnson.11@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 Operations Division on 26 March 2025.

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: frederick.johnson.11@us.af.mil

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Second Lieutenant (O-1) **PARKER C. MYSLOW,** United States Air Force, *Appellant.*	)	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME Before Panel No. 3 No. ACM 40668 28 March 2025

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

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

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

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
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 28 March 2025.

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,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SIXTH)**
v.	)	Before Panel No. 3
Second Lieutenant (O-1) **PARKER C. MYSLOW,** United States Air Force, *Appellant.*	)	No. ACM 40668
	)	25 April 2025

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 a sixth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **2 June 2025**. The record of trial was docketed with this Court on 5 September 2024. From the date of docketing to the present date, 232 days have elapsed. On the date requested, 270 days will have elapsed.

On 26 March 2024, a general court-martial consisting of a military judge alone at Seymour Johnson Air Force Base, North Carolina, found Appellant guilty, consistent with his pleas, of one charge and one specification of violating a lawful general regulation in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892, and one charge and one specification of wrongful use of delta-9 tetrahydrocannabinol in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. R. at 43; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 22 April 2024. The military judge sentenced Appellant to a dismissal. R. at 84; EOJ. The convening authority took no action on the findings or the sentence. ROT Vol. 1, Convening Authority Decision on Action, 12 April 2024.

The record of trial is three volumes consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is eighty-five pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing thirty-seven clients; twenty-two clients are pending initial AOEs before this Court.[1] Eight matters currently have priority over this case:

1) *United States v. Haymond*, ACM 40588 – The record of trial is seven volumes consisting of five prosecution exhibits, seven defense exhibits, forty-two appellate exhibits, and one court exhibit; the transcript is 689 pages. Undersigned counsel has reviewed approximately forty percent of the record of trial in this case.
2) *United States v. Driskill*, ACM 39889 (rem) – The record of trial is fourteen volumes consisting of fourteen prosecution exhibits, four defense exhibits, and 169 appellate exhibits; the transcript is 2,062 pages. Undersigned counsel will need to conduct additional review of the record to prepare a brief on remand in this case.
3) *United States v. Keilberg*, ACM 40601 – The record of trial is four volumes consisting of thirteen prosecution exhibits, one defense exhibit, and seven appellate exhibits; the

[1] Since the filing of Appellant's last request for an enlargement of time, counsel reviewed approximately twenty percent of the seven-volume record of trial in *U.S. v. Haymond*, ACM 40588; conducted three practice oral arguments and presented oral argument as lead counsel before the United States Court of Appeals for the Armed Forces (CAAF) in *U.S. v. Patterson*, ACM 40426, USCA Dkt. No. 25-0073/AF; prepared and filed a twenty-seven-page supplement to the petition for grant of review to the CAAF in *U.S. v. Cadavona*, ACM 40476, USCA Dkt. No. 25-0114/AF; assisted with preparing and filing two motions in *U.S. v. Dawson*, ACM 24041; completed his review of the three-volume record of trial and prepared and filed a fifteen-page AOE in *U.S. v. Harnar*, ACM 40559; reviewed the two-volume record of trial and prepared and filed a motion to withdraw from appellate review in *U.S. v. Hatfield*, ACM S32791; and participated in three practice oral arguments for an additional case. Additionally, counsel was on leave on 18 April 2025.

transcript is 118 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

4) *United States v. Jackson*, ACM S32780 – The record of trial is five volumes consisting of twelve prosecution exhibits, thirteen defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

5) *United States v. Banks*, ACM 24057 – The record of trial is seven volumes consisting of ten prosecution exhibits, sixteen defense exhibits, and thirty appellate exhibits; the transcript is 985 pages. Undersigned counsel has begun reviewing the record of trial in this case.

6) *United States v. Smith*, ACM 40437 (f rev) – The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and twenty-nine appellate exhibits; the transcript is 338 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

7) *United States v. Nelson*, ACM 24042 – The record of trial is three volumes consisting of fifteen prosecution exhibits, one defense exhibit, and seventeen appellate exhibits; the transcript is 336 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

8) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

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

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

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: frederick.johnson.11@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 Operations Division on 25 April 2025.

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: frederick.johnson.11@us.af.mil

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 3
Second Lieutenant (O-1) **PARKER C. MYSLOW,** United States Air Force, *Appellant.*	)	No. ACM 40668
	)	28 April 2025

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

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

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

[redacted]

KATE E. LEE, Maj, USAF
Appellate Government Counsel
Government Trial & Appellate Operations
1500 W. Perimeter Road, Suite 1190
Joint Base Andrews, MD
DSN: 612-4809

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 28 April 2025.

KATE E. LEE, Maj, USAF
Appellate Government Counsel
Government Trial & Appellate Operations
1500 W. Perimeter Road, Suite 1190
Joint Base Andrews, MD
DSN: 612-4809

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40668**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF PANEL CHANGE**
Parker C. MYSLOW	)	
Second Lieutenant (O-1)	)	
U.S. Air Force	)	
Appellant	)	

It is by the court on this 6th day of May, 2025,

ORDERED:

That the Record of Trial in the above-styled matter is withdrawn from Panel 3 and referred to Panel 2 for appellate review.

This panel letter supersedes all previous panel assignments.

FOR THE COURT

[redacted]

Chief Commissioner

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40668**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Parker C. MYSLOW	)	
First Lieutenant (O-1)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 26 May 2025, 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.

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

Accordingly, it is by the court on this 30th day of May, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (Seventh) is **GRANTED**. Appellant shall file any assignments of error not later than **2 July 2025**.

Further requests by Appellant for enlargements of time may necessitate a status conference.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SEVENTH)**
v.	)	Before Panel No. 2
Second Lieutenant (O-1) **PARKER C. MYSLOW,** United States Air Force, *Appellant.*	)	No. ACM 40668
	)	26 May 2025

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 a seventh enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **2 July 2025**. The record of trial was docketed with this Court on 5 September 2024. From the date of docketing to the present date, 263 days have elapsed. On the date requested, 300 days will have elapsed.

On 26 March 2024, a general court-martial consisting of a military judge alone at Seymour Johnson Air Force Base, North Carolina, found Appellant guilty, consistent with his pleas, of one charge and one specification of violating a lawful general regulation in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892, and one charge and one specification of wrongful use of delta-9 tetrahydrocannabinol in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. R. at 43; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 22 April 2024. The military judge sentenced Appellant to a dismissal. R. at 84; EOJ. The convening authority took no action on the findings or the sentence. ROT Vol. 1, Convening Authority Decision on Action, 12 April 2024.

The record of trial is three volumes consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is eighty-five pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing thirty-nine clients; twenty-three clients are pending initial AOEs before this Court.[1] Seven matters currently have priority over this case:

1) *United States v. Driskill*, ACM 39889 (rem) – The record of trial is fourteen volumes consisting of fourteen prosecution exhibits, four defense exhibits, and 169 appellate exhibits; the transcript is 2,062 pages. Undersigned counsel has drafted a brief on remand in this case.
2) *United States v. Keilberg*, ACM 40601 – The record of trial is four volumes consisting of thirteen prosecution exhibits, one defense exhibit, and seven appellate exhibits; the transcript is 118 pages. Undersigned counsel has begun reviewing the record of trial in this case.
3) *United States v. York*, ACM 40604 – The record of trial is seven volumes consisting of five prosecution exhibits, two defense exhibits, 36 appellate exhibits, and one court exhibit; the transcript is 847 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.

[1] Since the filing of Appellant's last request for an enlargement of time, counsel completed his review of the seven-volume record of trial and prepared and filed a twelve-page AOE in *U.S. v. Haymond*, ACM 40588; assisted with preparing and filing two motions and a twenty-two page supplement to the petition for a grant of review before the United States Court of Appeals for the Armed Forces (CAAF) in *U.S. v. Dawson*, ACM 24041; completed his review on remand of the fourteen-volume record and drafted a twenty-eight page brief in *U.S. v. Driskill*, ACM 39889 (rem); prepared and presented a briefing for the Air Force Senior Defense Counsel Qualification Course; and participated in six practice oral arguments for two additional cases. Additionally, counsel was on leave on 26–29 April and 2–4 May 2025 and was off for the Memorial Day holiday.

4) *United States v. Jackson*, ACM S32780 – The record of trial is five volumes consisting of twelve prosecution exhibits, thirteen defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Undersigned counsel has not yet begun reviewing the record of trial, but additional counsel has been detailed to this case.

5) *United States v. Banks*, ACM 24057 – The record of trial is seven volumes consisting of ten prosecution exhibits, sixteen defense exhibits, and thirty appellate exhibits; the transcript is 985 pages. Undersigned counsel has begun reviewing the record of trial in this case.

6) *United States v. Smith*, ACM 40437 (f rev) – The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and twenty-nine appellate exhibits; the transcript is 338 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

7) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

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

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

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: frederick.johnson.11@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 Operations Division on 26 May 2025.

Respectfully submitted,

[redacted]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: frederick.johnson.11@us.af.mil

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Second Lieutenant (O-1) **PARKER C. MYSLOW,** United States Air Force, *Appellant.*	)	No. ACM 40668
	)	30 May 2025

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

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

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

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

JOCELYN Q. WRIGHT, Maj, 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 30 May 2025.

JOCELYN Q. WRIGHT, 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. Second Lieutenant (O-1) **PARKER C. MYSLOW,** United States Air Force, *Appellant*.	**BRIEF ON BEHALF OF APPELLANT** Before Panel No. 2 No. ACM 40668 18 June 2025

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

Assignments of Error

I.

WHETHER A DISMISSAL IS INAPPROPRIATELY SEVERE FOR THC USE AFTER SECOND LIEUTENANT MYSLOW SPENT 161 DAYS IN PRETRIAL CONFINEMENT.

II.

WHETHER A 163-DAY POST-TRIAL PROCESSING PERIOD FOR A THREE-HOUR-AND-ELEVEN MINUTE GUILTY PLEA CASE WARRANTS ANY RELIEF.

III.

WHETHER THE GOVERNMENT CAN PROVE 18 U.S.C. § 922 IS CONSTITUTIONAL AS APPLIED TO SECOND LIEUTENANT MYSLOW WHEN HE WAS CONVICTED OF OFFENSES THAT DO NOT FALL WITHIN THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION.

Statement of the Case

On 26 March 2024, Second Lieutenant (2d Lt) Parker Myslow was tried by a general court-martial consisting of a military judge alone at Seymour Johnson Air Force Base, North Carolina. He was convicted, consistent with his pleas, of one charge and one specification of violation of a

general regulation in violation of Article 92, Uniform Code of Military Justice (UCMJ),[1] 10 U.S.C. § 892, and one charge and one specification of wrongful use of a controlled substance in violation of Article 112a, UCMJ, 10 U.S.C. § 112a. R. at 43. The military judge sentenced Appellant to a dismissal. R. at 84. The convening authority took no action on the findings or the sentence. Convening Authority Decision on Action – *United States v. Second Lieutenant Parker C. Myslow*, 12 April 2024.

Statement of Facts

On 31 July 2023, 2d Lt Myslow provided a urine sample that subsequently tested positive for delta-8 and delta-9-tetrahydocannabinol (THC). THC "is a naturally occurring chemical compound found in the cannabis plant [that] has the mind-altering properties associated with marijuana." *Med. Marijuana, Inc. v. Horn*, 145 S. Ct. 931, 936 (2025) (citing Substance Abuse and Mental Health Services Administration, *Cannabidiol (CBD) – Potential Harms, Side Effects and Unknowns*, at 1 (Feb. 2023)). THC-8 use by civilians is not explicitly proscribed by the Controlled Substances Act, 21 U.S.C. § 812, but its use by military personnel is prohibited under paragraph 1.2.2.1 of Department of the Air Force Manual (DAFMAN) 44-197, *Military Drug Demand Reduction Program*, dated 5 September 2023. THC-9 use is proscribed by the Controlled Substance Act, depending on the concentration level. *See Anderson v. Diamondback Inv. Grp., LLC*, 117 F.4th 165, 185 (4th Cir. 2024) ("To sum up, under state and federal law, then, certain hemp-derived products—those 'with a delta-9 [THC] concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis—don't come within the definition of an illegal controlled substance, and instead fall under the umbrella of a legal hemp-derived product. The

[1] Unless otherwise noted, all references to the UCMJ and Rules for Courts-Martial (R.C.M.) are to the *Manual for Courts-Martial*, *United States* (2019 ed.).

critical distinction that separates illegal marijuana and THC from legal hemp under both state and federal law is a product's delta-9 THC concentration.") (citing 7 U.S.C. § 1639o(1)); *AK Futures LLC v. Boyd St. Distro, LLC*, 35 F.4th 682, 690 (9th Cir. 2022) ("Importantly, the only statutory metric for distinguishing controlled marijuana from legal hemp is the delta-9 THC concentration level."). For this misconduct, 2d Lt Myslow received nonjudicial punishment of forfeitures and a reprimand. Pros. Ex. 3.

From 14 August 2023 through 6 October 2023, 2d Lt Myslow provided six additional urine samples that each tested positive for THC-8 and 9. Pros. Ex. 1 at 7–46. For this misconduct, 2d Lt Myslow pleaded guilty to one charge and one specification of violation of a general regulation[2] for the THC-8 use and one charge and one specification of wrongful use of a controlled substance for the THC-9 use. Pros. Ex. 1 at 2–4.

2d Lt Myslow admitted to divers use of THC-8 and 9 from between on or about 1 August 2023 and on or about 6 October 2023, but he never admitted to a specific number of uses in either the stipulation of fact or the *United States v. Care*, 18 C.M.A. 535 (1969), inquiry. *Cf.* Pros. Ex. 1 at 2–4; R. at 19–27. The prosecution never presented evidence of specific uses beyond the urinalyses themselves. Specifically, the test results documented the following levels of THC:

Date	THC-8 Level (ng/mL)	THC-9 Level (ng/mL)	Prosecution Exhibit 1 Page Number
14 August 2023	1653	122	7
23 August 2023	161	453	14
5 September 2023	36	340	20
14 September 2023	21	465	27
27 September 2023	564	91	33
6 October 2023	1423	34	40

[2] Specifically, 2d Lt Myslow pleaded guilty to violating the 23 September 2022 and 5 September 2023 editions of DAFMAN 44-197, because his misconduct occurred before and after the 5 September 2023 reissuance.

Notably, the THC-8 and 9 concentration levels from the 5 September 2023 test decreased from the 23 August 2023 test, clouding whether the above test results establish more than five separate THC uses.

2d Lt Myslow's unit did not direct him to substance abuse treatment. R. at 52. Instead, the unit ordered him into pretrial confinement on 17 October 2023. By the time the charges against him proceeded to trial on 26 March 2024, he had spent 161 days—over five months—in pretrial confinement. Pros. Ex. 2.

From pretrial confinement, on approximately 14 February 2024, 2d Lt Myslow submitted an offer for plea agreement in which he offered to plead guilty to the specifications regarding his wrongful use of THC-8 and 9. As part of that plea agreement, the parties agreed that the military judge must enter a sentence of:

a. To the Specification of Charge I: Time served/not applicable.
b. To the Specification of Charge II: Time served/not applicable.
c. A dismissal shall be adjudged.
d. Forfeitures may be adjudged.
e. A fine may not be adjudged.
f. No other available punishment may be adjudged to include restriction.

App. Ex. II at 2.[3]

The convening authority accepted the offer, and 2d Lt Myslow pleaded guilty on 26 March 2024. The court-martial began at 0855 and concluded at 1206 hours. During the three-hour proceeding, the prosecution presented the testimony of one witness—2d Lt Myslow's commander. R. at 47–55. The only marginal aggravation evidence the commander provided was that the unit

[3] Among other terms in the plea agreement, the convening authority also agreed to withdraw and dismiss additional charges and specifications. App. Ex. II at 1. Those charges and specifications were the subject of a defense motion to suppress which was mooted by the plea agreement. App. Ex. III. The prosecution did not present any evidence underlying those dismissed charges at sentencing.

had to make administrative adjustments due to collateral consequences of 2d Lt Myslow being unable to perform his duty while his security clearance was suspended and while he was in pretrial confinement. R. at 47–55.

The defense presented the testimony of two witnesses—2d Lt Myslow's parents, R. at 57–68, in addition to 2d Lt Myslow's unsworn statement, R. at 69–76. 2d Lt Myslow's military records were relatively sparse because he had only been on active duty for little over a year. Pros. Ex. 2. Both the prosecution and defense sentencing arguments focused on whether or not forfeitures were appropriate, presumably because that was the only punishment option left open by the terms of the plea agreement. R. at 76–82. Indeed, in the one sentence in which trial counsel addressed the dismissal, trial counsel did not argue that it was a warranted *punishment* but rather stated only that 2d Lt Myslow's "service should be characterized accurate to the degree that the Air Force recovered and received, which is the lowest amount possible." R. at 77.

The military judge sentenced Appellant to a dismissal (and no other punishment). R. at 84; *see also* Statement of Trial Results in the Case of *United States v. Second Lieutenant Parker C. Myslow*, 28 March 2024 (documenting Total Adjudged Confinement of "N/A" rather than "time served"). 2d Lt Myslow waived his right to submit matters to the convening authority under R.C.M. 1106. The convening authority took no action on the findings or the sentence. Convening Authority Decision on Action – *United States v. Second Lieutenant Parker C. Myslow*, 12 April 2024. The military judge signed the entry of judgment (EOJ) on 22 April 2024. Entry of Judgment in the Case of *United States v. Second Lieutenant Parker C. Myslow*, 22 April 2024.

Additional facts are included *infra* as necessary.

Argument

I.

A DISMISSAL IS INAPPROPRIATELY SEVERE FOR THC USE AFTER SECOND LIEUTENANT MYSLOW SPENT 161 DAYS IN PRETRIAL CONFINEMENT.

Standard of Review

Sentence appropriateness is reviewed *de novo*. *See United States v. McAlhaney*, 83 M.J. 164, 167 (C.A.A.F. 2023).

Law and Analysis

Under Article 66, UCMJ, as applicable to the 2023 offenses for which 2d Lt Myslow was convicted, 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." 10 U.S.C. § 866.[4] Fundamentally, this requires the Court to determine whether it finds the sentence to be appropriate. *United States v. Baier*, 60 M.J. 382, 384 (C.A.A.F. 2005). In assessing sentence appropriateness, this Court considers "the particular appellant, the nature and seriousness of the offense[s], the appellant's record of service, and all matters contained in the record of trial." *United States v. Sauk*, 74 M.J. 594, 606 (A.F. Ct. Crim. App. 2015) (en banc) (alteration in original) (citation omitted). "The purpose of Article 66[], UCMJ, is to ensure 'that justice is done and that the accused gets the punishment he deserves.'" *United States v. Sanchez*, 50 M.J. 506, 512 (A.F. Ct. Crim. App. 1999) (quoting *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1998)). A just sentence is one that is "sufficient, but not greater than necessary to promote

[4] As enacted by Section 542(b) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 542(b), 134 Stat. 3388, 3611 (2021). The August to October 2023 drug use is not reviewed under the amendments to Article 66, UCMJ, applicable to offenses occurring after 27 December 2023. *See* National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, § 539E(f), 135 Stat. 1541, 1706 (2021).

justice and to maintain good order and discipline in the armed forces." Article 56(c)(1), UCMJ, 10 U.S.C. § 856(c)(1).

A. THC use generally does not warrant the severe punishment of a dismissal.

"It is well settled that a punitive discharge from a component of the armed forces is severe punishment." *United States v. Burt*, 56 M.J. 261, 264 (C.A.A.F. 2002); *see also United States v. Carter*, 45 M.J. 168, 171 (C.A.A.F. 1996) (affirming the conversion of a bad-conduct discharge to two years of confinement, reasoning that the confinement was less severe than the punitive discharge). "[A] sentence to a dismissal of a [commissioned officer] is, in general, the equivalent of a dishonorable discharge of a noncommissioned officer, a warrant officer who is not commissioned, or an enlisted [service member]." *United States v. Mack*, 56 M.J. 786, 791 (A. Ct. Crim. App. 2002) (quoting Dep't of Army, Pam. 27-9, Legal Services: Military Judges' Benchbook, p 70.1 (Jan. 30, 1998)). "A dishonorable discharge should be reserved for those who should be separated under conditions of dishonor, after having been convicted of offenses usually recognized in civilian jurisdictions as felonies, or of offenses of a military nature requiring severe punishment." R.C.M. 1003(b)(8)(B).

THC use is not "usually recognized in civilian jurisdictions as [a] felon[y]." *See id.* THC use through legal hemp—as opposed to illegal marijuana (*i.e.*, depending on the THC-9 concentration level)—is not proscribed by the Controlled Substances Act. Indeed, DAFMAN 44-197 serves in part to prohibit military members from the otherwise legal use of hemp. Regardless of the hemp and marijuana distinction, the majority of U.S. states and the District of Columbia have either legalized or decriminalized simple marijuana possession. *See* United States Sentencing Commission, *Weighing the Impact of Simple Possession of Marijuana*, at 5, 29–31 (Jan. 10, 2023), available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-

publications/2023/20230509_Marijuana-Possession.pdf (summarizing state law); *see also* Proclamation No. 10467, 87 Fed. Reg. 61441 (Oct. 6, 2022) (A Proclamation Granting Pardon for the Offense of Simple Possession of Marijuana).

Likewise, simple THC use without aggravating factors (such as distribution, impairment during the performance of duty, or introduction onto an installation), whether in violation of Article 92 or 112a, is not an offense "of a military nature requiring severe punishment." *See* R.C.M. 1003(b)(8)(B). The sentencing parameters contained in Appendices 12B and 12C of the 2024 edition of the Manual for Courts-Martial were not in effect during these sentencing proceedings. They nevertheless serve by comparison to illustrate that simple THC use does not require severe punishment, even in the military. Specifically, Appendix 12C categorizes both violation of a general order or regulation and wrongful use of a controlled substance as Category 1 offenses that generally do not warrant more than twelve months of confinement. As these offenses do not normally warrant punishment of more than a year of confinement, they certainly do not normally warrant a punitive discharge—a punishment that the Court of Appeals for the Armed Forces (C.A.A.F.) has recognized as potentially more severe than even two years of confinement. *Carter*, 45 M.J. at 171. So, THC use is neither usually recognized in civilian jurisdictions as a felony nor an offense of a military nature requiring severe punishment, and it generally does not warrant the severe punishment of a punitive discharge.

B. Dismissal is particularly inappropriate considering the length of time 2d Lt Myslow served in pretrial confinement for THC use.

In this matter, the prosecution established no more than five uses of THC-8 and 9—the five instances in which the THC levels were greater than the previous test. For those five uses, 2d Lt Myslow was effectively punished to *both* 161 days of confinement and a dismissal. That is simply too severe.

2d Lt Myslow's commander ordered him to pretrial confinement—not drug treatment—on 17 October 2023. He remained in pretrial confinement for 161 days until he pleaded guilty and was sentenced. This Court should consider that confinement as a matter of mitigation in determining whether the dismissal is inappropriately severe. *United States v. Balboa*, 33 M.J. 304, 307 (C.A.A.F. 1991); *see also United States v. Smith*, 54 M.J. 783, 788 (A.F. Ct. Crim. App. 2001) (noting that while pretrial confinement credit may be applied against only confinement adjudged, the sentencing court as well as reviewing authorities may consider it when adjudging and acting upon the sentence as a whole).

The pretrial confinement in this case amounted to more than a *month* of imprisonment for every individual use of THC. Such imprisonment alone is sufficient to promote justice and maintain good order and discipline. It is hard to imagine the circumstance in which a month in confinement for every individual THC use would be insufficient to reflect the seriousness of the offense, provide just punishment for the offense, or promote adequate deterrence for THC use. *See* Article 56(c)(1), UCMJ, 10 U.S.C. § 856(c)(1). Given that significant period of confinement—to say nothing of 2d Lt Myslow's acceptance of responsibility through a guilty plea—an additional, severe punishment of a punitive discharge is simply unnecessary and is therefore inappropriate.

Moreover, 161 days of confinement and a punitive discharge for THC use is particularly inappropriate here where the prosecution presented no aggravating evidence other than the testimony of the commander that the unit had to make administrative adjustments. R. at 47–55. Indeed, trial counsel's argument made no attempt to contend with the severity of a punitive discharge in comparison to the THC use and the months of pretrial confinement. There is no evidence that 2d Lt Myslow distributed drugs or introduced them to his installation, that he was

impaired for the performance of his duties, or even that he used THC with anyone else or anywhere other than his own home. Of course, 2d Lt Myslow continued to use THC undeterred by the threat of additional testing, prompting his pretrial confinement. Still, that continued use is mitigated by the simple fact that his unit did not even attempt drug treatment, instead opting for imprisonment. R. at 52. Appellant did not contest and is not here contesting the legality of the order to pretrial confinement. Instead, he argues only that the resulting 161 days of confinement was a sufficient punishment for basic THC use. An *additional*, *severe* punishment in the form of a punitive discharge is unnecessary to achieve the purposes of sentencing. As an unnecessary punishment, it is inherently inappropriately severe under the R.C.M. and the UCMJ.

Finally, 2d Lt Myslow acknowledges that he offered to receive a sentence of a dismissal.[5] Neither his decision, nor the convening authority's acceptance of that offer, nor the military judge's sentence preempts this Court's obligation to perform an independent review of sentence appropriateness under Article 66. *See United States v. Kerr*, No. 202200140, 2023 CCA LEXIS 434, at *8 n.23 (N.M. Ct. Crim. App. Oct. 17, 2023) (setting aside a negotiated-for bad-conduct discharge after finding the punitive discharge inappropriate based on matters presented in extenuation and mitigation). The 161 days of confinement is more than sufficient punishment for repeated THC use, especially when drug treatment was never attempted. The severe, additional punishment of a dismissal is unnecessary and therefore inappropriate.

[5] It is not necessary to analyze 2d Lt Myslow's motives in making such an offer for the Court to perform its Article 66 duties. Still, the record makes clear that when he made the offer in February 2024, he had already been in pretrial confinement for THC use for three months. While he had a March trial date for the charges and specifications to which he offered to plead guilty, the convening authority was considering the referral of additional charges and specifications which presumably would have delayed his trial and further prolonged his pretrial confinement. *See* Charge Sheet, DD Form 458, dated 11 January 2024 (documenting preferral of additional charges in January 2024 and referral of additional charges in March 2024).

WHEREFORE, 2d Lt Myslow respectfully requests that this Honorable Court set aside his sentence to a dismissal as inappropriately severe.

II.

A 163-DAY POST-TRIAL PROCESSING PERIOD FOR A THREE-HOUR-AND-ELEVEN MINUTE GUILTY PLEA CASE WARRANTS RELIEF.

Additional Facts

The Record of Trial (ROT) for this matter consists of three volumes. The military judge signed the EOJ on 22 April 2024, twenty-seven days after sentencing. Entry of Judgment in the Case of *United States v. Second Lieutenant Parker C. Myslow*, 22 April 2024. This Court docketed the case on 5 September 2024, 163 days after sentencing and 136 days after the EOJ. The ROT provides no chronology or explanation of what delayed the processing of the court-martial from the date the EOJ was signed to the docketing with this Court.

Standard of Review

Whether post-trial processing was properly completed is reviewed *de novo*. *United States v. Zegarrundo*, 77 M.J. 612, 613–14 (A.F. Ct. Crim. App. 2018) (citing *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000)). A court of criminal appeals necessarily considers *de novo* whether excessive post-trial delay warrants relief under Article 66(d)(2), UCMJ. 10 U.S.C. § 866(d)(2).

Law and Analysis

The 163 days of post-trial processing from the date 2d Lt Myslow was sentenced to the date this matter was docketed with this Court is facially unreasonable. The court-martial was a straightforward guilty plea resulting in an eighty-five-page transcript and a three-volume ROT. Still, the post-trial processing exceeded the 150-day limit that this Court has previously held constitutes a facially unreasonable delay. *United States v. Livak*, 80 M.J. 631, 633 (A.F. Ct. Crim. App. 2020).

This Court is statutorily empowered to "provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record." Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2). Appropriate relief is that which is "suitable considering the facts and circumstances surrounding that case." *United States v. Valentin-Andino*, __ M.J. __, No. 24-0208, 2025 CAAF LEXIS 248, at *11 (C.A.A.F. Mar. 31, 2025). The facts and circumstances of this case are that (1) there was an unreasonable delay without any discernable justification and (2) the *only* relief the Court can apply is setting aside the dismissal. Such a remedy is not drastic here considering that the punitive discharge in addition to the pretrial confinement is inappropriately severe, as discussed above.

Moreover, setting aside the punitive discharge is appropriate, considering that both the delay and the lack of other available remedies are entirely of the government's making. First, regarding the delay, in *United States v. Livak*, this Court obviated the need to analyze individual segments of post-trial processing. 80 M.J. at 633. Still, it bears noting that the government took 136 days from the EOJ to docket the matter with this Court without any discernable explanation. This Court previously stated in *United States v. Atencio* that there does not appear to be a systemic problem across the Air Force with delays in assembling the record. However, in that case, the Court noted that taking months to transcribe the proceedings and assemble a three-volume ROT demonstrated a concerning "lack of urgency." No. S32783, 2024 CCA LEXIS 543, *9 (A.F. Ct. Crim. App. Dec. 20, 2024) (unpub. op.). The government's casual relationship with punctuality is more pronounced here where the matter was timely transcribed, 2d Lt Myslow waived his right to submit matters to the convening authority, and the military judge signed the EOJ twenty-seven days after sentencing. The matter nevertheless went undocketed for more than four months after the EOJ without explanation.

Second, regarding the available remedies, 2d Lt Myslow was already confined for 161 days for his THC use and has long since been released. The military judge did not sentence him to additional confinement, forfeitures, or a reprimand, so the only available remedy this Court may order to address a post-trial delay is to set aside the dismissal. This is the natural consequence of months of pretrial confinement for THC use: additional punishment is practically precluded and this Court's ability to grant more moderate relief (*i.e.,* setting aside additional confinement or forfeitures) is limited accordingly.

The combination of pretrial confinement and post-trial delay presents a significant paradox for this Court to address. By ordering 2d Lt Myslow to pretrial confinement, the government inherently viewed his THC use as serious criminal conduct that warranted a pre-verdict deprivation of his liberty. *See* R.C.M. 305(i)(2)(B). However, by sitting on his post-trial processing for 136 days from the EOJ to docketing—resulting in a cumulative post-trial processing time of 163 days—the government apparently now views the entire matter as trivial, underserving of prompt and attentive post-trial processing. Such a delay is consistent with the "systemic problem" identified by this Court in *United States v. Valentin-Andino*. No. ACM 40185 (f rev), 2024 CCA LEXIS 223, at *17 (A.F. Ct. Crim. App. June 7, 2024), *aff'd on other grounds*, __ M.J. __, No. 24-0208, 2025 CAAF LEXIS 248 (C.A.A.F. Mar. 31, 2025). In that matter, the Court summarized processing *errors* meriting remand, rather than *delays* like the one at issue here, before granting relief under Article 66(d). *Id.* at *17–19. However, the flippant nature with which the government docketed this matter appears symptomatic of the same "institutional neglect" the Court addressed in *Valentin-Andino*. So, the failure to properly complete post-trial processing warrants relief under Article 66 here just as it did in that matter.

Of course, in *Valentin-Andino*, the Court set aside only a portion of the sentence. *Id.* at

*19. Here, the only available remedy is setting aside the entire adjudicated sentence: the dismissal. Such a remedy nevertheless remains appropriate because only the threat of setting aside a portion of the sentence compels the government to expeditiously complete post-trial processing, particularly in matters in which an appellant already served the entirety of the other aspects of his or her punishment. The appropriate response from this Court is to send the message that, if a matter is so severe that it warrants a deprivation of liberty pre-verdict, then it must also warrant timely attention post-verdict; if the only sentence adjudged is a punitive discharge, then the government jeopardizes that discharge when it unreasonably delays the processing of that court-martial. The Court should send that message by vacating the dismissal under Article 66(d)(2).[6]

WHEREFORE, 2d Lt Myslow respectfully requests that this Honorable Court set aside his sentence to a dismissal as appropriate relief for the excessive delay in the processing of the court-martial.

[6] Under Article 66(d)(2), the Court should grant relief without conducting a due process violation analysis. *See United States v. Jenkins*, No. S32765, 2025 CCA LEXIS 148, at*23 (A.F. Ct. Crim. App. Apr. 7, 2025) (unpub. op.) (noting the Court's authority under Article 66(d)(2), to grant relief in the absence of prejudice or a due process violation). If the Court nevertheless reaches the issue, the Court should conduct a four-factor analysis to determine whether there has been a due process violation, weighing: "(1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of the right to timely review and appeal; and (4) prejudice." *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006) (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)). The first and second factors weigh in favor of a due process violation as the delay was facially unreasonable, and there is no discernable reason for the delay. The third factor should not weigh heavily against 2d Lt Myslow who asserts his right to a timely appellate review in conjunction with this assignment of error. *See Moreno*, 63 M.J. at 138 (citing *United States v. Bodkins*, 60 M.J. 322, 323–24 (C.A.A.F. 2004)). Regarding the fourth factor, the prejudice results because "the delay is so egregious that tolerating it would adversely affect the public's perception of the fairness and integrity of the military justice system." *United States v. Toohey*, 63 M.J. 353, 362 (C.A.A.F. 2006). Here, as stated above, the delay is egregious considering there simply is no explanation for the delay, the ROT is not particularly complex, and 2d Lt Myslow has effectively been punished by five months of confinement and an adjudged dismissal for THC use.

III.

THE GOVERNMENT CANNOT PROVE 18 U.S.C. § 922 IS CONSTITUTIONAL AS APPLIED TO SECOND LIEUTENANT MYSLOW BECAUSE HE WAS CONVICTED OF OFFENSES THAT DO NOT FALL WITHIN THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION.

Additional Facts

In the first indorsement to the EOJ, the staff judge advocate noted "Firearm Prohibition Triggered under 18 U.S.C. § 922: Yes." 1st Ind., Entry of Judgment, Parker C. Myslow, Second Lieutenant, dated 22 April 2024.

Standard of Review

Whether post-trial processing was properly completed is reviewed *de novo*. *Zegarrundo*, 77 M.J. at 613–14 (citing *Kho*, 54 M.J. at 65). 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

A. Section 922 is unconstitutional as applied to 2d Lt Myslow.

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."

N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 24 (2022) (quoting *United States v. Konigsberg*, 366 U.S. 36, 50 n.10 (1961)).

Here, the government seeks to deprive 2d Lt Myslow of his Second Amendment rights

through the first indorsement by referencing 18 U.S.C. § 922. The first indorsement does not specifically identify a subsection, but the government presumably 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."[7]

Under *Bruen*, the government bears the burden of proving that Section 922(g)(1) is consistent with the Nation's historical tradition of firearm regulation. The government cannot meet such a burden here because firearm restrictions have not historically been so broadly applied.

Instead, "actual '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, when Congress enacted the operative provision of Section 922, "the original [Federal Firearms Act] had a narrower basis for a disability, limited to those convicted of a 'crime of violence.'" *Id.* at 699. Earlier, the Uniform Firearms Act of 1926 and 1930 stated that "a person convicted of a 'crime of violence' could not 'own or have in his possession or under his control, a pistol or revolver.'" *Id*. at 701, 704 (quoting 1926 Uniform Firearms Act §§ 1, 4). A "crime of violence" meant "committing or attempting to commit 'murder, manslaughter, rape, mayhem, assault to do great bodily harm,

[7] To the extent the government intended to implicate Section 922(g)(3), which bars the possession of firearms for any person "who is an unlawful user of or addicted to any controlled substance (as defined in Section 102 of the Controlled Substances Act)," that prohibition generally applies for only one year after the drug use conviction and accordingly no longer implicates 2d Lt Myslow. *See* 27 C.F.R. § 478.11. Regardless, the U.S. Court of Appeals for the Fifth Circuit has held Section 922(g)(3) was unconstitutional as applied to an admitted habitual marijuana user, for reasons similar to those articulated above in the Section 922(g)(1) context. *United States v. Daniels*, 124 F.4th 967, 978 (5th Cir. 2025) ("Daniels's § 922(g)(3) conviction is inconsistent with our 'history and tradition' of gun regulation.") (quoting *Bruen*, 597 U.S. at 22).

robbery, [larceny], burglary, and housebreaking.'" *Id.* (quoting 1926 Uniform Firearms Act § 1).

So, Section 922(g)(1), the lifetime ban for all felons (rather than felons that present a danger that they will misuse arms or who committed a crime of violence) is overbroad and is unconstitutional as applied to 2d Lt Myslow, who was not convicted of a crime of violence. The U.S. Court of Appeals for the Third Circuit adopted this logic to conclude that Section 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' imprisonment. *Range v. AG United States*, 124 F.4th 218, 232 (3d Cir. 2024). Evaluating Section 922(g)(1) in light of *Bruen* and *United States v. Rahimi*,[8] 602 U.S. 680 (2024), the Third Circuit noted that the earliest version of the statute from 1938 prohibiting those convicted of crimes punishable by more than one year of imprisonment from bearing arms "applied only to *violent* criminals." *Range*, 124 F.4th at 229. It found no "relevantly similar" analogue to imposing lifetime disarmament upon those who committed nonviolent crimes. *Id.* at 228–32. The Court should follow this reasoning and find that the application of Section 922(g)(1) to 2d Lt Myslow is unconstitutional.

B. This Court may order correction of the first indorsement to the entry of judgment under Article 66(d)(2).

Again, this Court is statutorily empowered to "provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record under Article 60c [*i.e.*, after the EOJ]." Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2). The error here is the unconstitutional restriction of 2d Lt Myslow's right to bear arms,

[8] The *Rahimi* opinion does not change the analysis. In *Rahimi*, 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." 602 U.S. at 698. The Court itself noted the limited nature of its holding, stating, "[W]e conclude 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 702.

documented in the first indorsement. The first indorsement inherently occurs after the EOJ. As stated in the applicable Air Force regulation, "*After* the EOJ is signed by the military judge and returned to the servicing legal office, the [Staff Judge Advocate] signs and attaches to the [EOJ] a first indorsement, indicating whether . . . firearm prohibitions are triggered." Department of the Air Force Instruction 51-201, *Administration of Military Justice*, ¶ 20.41 (Jan. 24, 2024) (emphasis added). The firearm denotation on the first indorsement to the EOJ explicitly happens *after* the EOJ is signed by the military judge pursuant to Article 60c, UCMJ. *Id*. Additionally, as this first indorsement is the most recent notification to law enforcement entities about the applicability of 18 U.S.C. § 922 to 2d Lt Myslow, it makes sense that this is the document this appellate Court should review for post-trial processing error. *See id*. ¶¶ 20.42, 29.6, 29.32, 29.33 (dictating when notifications are made through distribution of the EOJ with its first indorsement).

So, this Court should exercise its Article 66(d)(2) authority to correct this error. The Court may do so in accordance with not only Article 66(d)(2) but also R.C.M. 1112(d)(2), which permits this Court to send a defective record back to the military judge for correction. The military judge may direct the correction of the first indorsement in a modified EOJ pursuant to R.C.M. 1111(b)(3)(F).

Neither C.A.A.F.'s decision in *United States v. Williams*, nor this Court's decision in *United States v. Vanzant* proscribe this Court's authority under Article 66(d)(2) to correct this post-trial error. In *Williams*, C.A.A.F. analyzed a related error in the *statement of trial results*, which fell outside the purview of Article 66(d)(2) for a variety of reasons, including dispositively that "any error took place prior to the entry of judgment." 85 M.J. 121, 127 (C.A.A.F. 2024). In *Vanzant*, this Court determined it did not have authority to act on collateral consequences not a part of the findings or sentence under Article 66(d)(1), but the Court did not squarely address its

authority to provide appropriate relief under Article 66(d)(2). 84 M.J. 671, 680 (A.F. Ct. Crim. App. 2024), *rev. granted*, 85 M.J. 198 (C.A.A.F. 2024).

WHEREFORE, 2d Lt Myslow respectfully requests that this Court hold 18 U.S.C. § 922 is unconstitutional as applied to him and order correction of the first indorsement to the EOJ, pursuant to its authority under Article 66(d)(2), UCMJ.

Respectfully submitted,

BRIAN E. FLANAGAN, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: brian.flanagan.7@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 Operations Division on 18 June 2025.

Respectfully submitted,

BRIAN E. FLANAGAN, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: brian.flanagan.7@us.af.mil

18 July 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*, v. Second Lieutenant (O-1) PARKER C. MYSLOW, USAF *Appellant*.	))))))))	ANSWER TO ASSIGNMENTS OF ERROR ACM 40668 Panel No. 2

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

ISSUES PRESENTED

I.

WHETHER A DISMISSAL IS INAPPROPRIATELY SEVERE FOR THC USE AFTER [APPELLANT] SPENT 161 DAYS IN PRETRIAL CONFINEMENT[?]

II.

WHETHER A 163-DAY POST-TRIAL PROCESSING PERIOD FOR A THREE-HOUR-AND-ELEVEN MINUTE GUILTY PLEA CASE WARRANTS ANY RELIEF[?]

III.

WHETHER THE GOVERNMENT CAN PROVE 18 U.S.C. § 922 IS CONSTITUTIONAL AS APPLIED TO SECOND LIEUTENANT MYSLOW WHEN HE WAS CONVICTED OF OFFENSES THAT DO NOT FALL WITHIN THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION[?]

STATEMENT OF THE CASE

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

STATEMENT OF FACTS

Appellant entered active duty on 6 January 2023 after completing the ROTC program at Clemson University, where he was on an ROTC scholarship. (Pros. Ex. 1; R. at 70.) After

initial training at Keesler Air Force Base, in Biloxi, Mississippi, Appellant arrived at Seymour Johnson Air Force Base in July 2023. (R. at 48, 70.) Within weeks, he was using drugs. In his plea inquiry, Appellant admitted to consuming delta-8-tetrahydrocannabinol and ingesting delta-9-tetrahydrocannabinol on divers occasions between on or about 1 August 2023 and on or about 6 October 2023. (R. at 19-27.)

Appellant's drug use came to light as a result of a urinalysis. On 14 August 2023, Appellant provided a urine sample that tested positive for both delta-8-tetrahydrocannabinol and delta-9-tetrahydrocannabinol. (Pros. Ex. 1 at 7.) Appellant would provide five more urine samples from 23 August 2023 until 6 October 2023. *All* five were positive for both delta-8-tetrahydrocannabinol and delta-9-tetrahydrocannabinol. (Id. at 14, 20, 27, 33, 40.)

Due to Appellant's repeated positive urinalysis results, which indicated repeated drug use at the time and to which Appellant would eventually admit guilt, Appellant's command ordered him into pretrial confinement on 17 October 2023. (R. at 49.) Just three days later, charges were preferred against Appellant. The initial charges included the following:

- Charge I, Article 92, UCMJ: Violation of a law general regulation on divers occasions between on or about 1 August 2023 and on or about 6 October 2023 by wrongfully using delta-8-tetrahydrocannabinol;

- Charge II, Article 112a, UCMJ: Wrongful use of delta-9-tetrahydrocannabinol on divers occasions between on or about 1 August 2023 and on or about 6 October 2023; and

- Charge III, Article 133: Conduct unbecoming an officer by ignoring orders to cease and desist illicit drug use on divers occasions between on or about 21 September 2023 and on or about 6 October 2023[1]

(ROT, Vol. I.)

[1] This charge was later withdrawn and dismissed with prejudice on 8 December 2023. (Id.)

On 11 January 2024, two additional charges and four additional specifications were preferred against Appellant, including the following:

- Additional Charge I, Article 92, UCMJ:
  - Specification 1: Violation of a law general regulation on divers occasions between on or about 13 July 2023 and on or about 13 December 2023 by wrongfully possessing delta-8-tetrahydrocannabinol;
  - Specification 2: Violation of a law general regulation on divers occasions between on or about 13 July 2023 and on or about 13 December 2023 by wrongfully possessing delta-10-tetrahydrocannabinol;
- Additional Charge II, Article 112a, UCMJ:
  - Specification 1: Wrongful possession of delta-9-tetrahydrocannabinol on divers occasions between on or about 13 July 2023 and on or about 13 December 2023; and
  - Specification 2: Wrongful possession of Hexahydrocannabinol on divers occasions between on or about 13 July 2023 and on or about 13 December 2023

(ROT, Vol. I.)

On 9 February 2024, Appellant submitted a plea agreement to the convening authority. (App. Ex. II.) As part of the agreement, Appellant would plead guilty to Charge I and Charge II and specifically agreed that a "dismissal shall be adjudged." (Id. at 1-2.) In exchange, the two additional charges and four specifications against Appellant would be withdrawn and dismissed and Appellant would be adjudged no further confinement (i.e. "time served"). (Id.) Additionally, the convening authority agreed to not refer any additional charges against Appellant for any other known misconduct at the time of the agreement. (Id. at 3.)

At trial, the military judge found Appellant guilty of Charges I and II. (R. at 43.) Pursuant to the plea agreement, the Government agreed that the Additional Charges and their

specifications must be withdrawn. (Id.) Based on his guilty plea, the maximum punishment for Appellant's convictions was a dismissal and seven years confinement. (R. at 28.)

During the plea inquiry, Appellant acknowledged that, pursuant to his plea agreement, a dismissal shall be adjudged and that the military must adjudge a dismissal. (R. at 36.) Appellant confirmed to the military judge that he knew the adverse consequences of a dismissal, that he had discussed the consequences with his defense counsel, and that he fully understood the ramifications of a dismissal. (R. at 37.) When asked if it was his "your expressed desire to be discharged from the service with a dismissal," Appellant responded, "Yes, ma'am." (Id.)

During sentencing argument, Appellant's trial defense counsel recognized that a dismissal was a "mandated punishment . . . pursuant to the agreement." (R. at 80.) Appellant's trial defense counsel again mentioned the dismissal, stating, "the dismissal which again [Appellant] has acknowledged throughout today with the inquiry to the Court and his acceptance of the agreement." (R. at 82.)

The military judge ultimately sentenced Appellant to a dismissal. (R. at 84.)

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

ARGUMENT

I.

APPELLANT'S APPROVED SENTENCE IS APPROPRIATE.

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

"Sentence appropriateness involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves." United States v. Healy, 26 M.J. 394, 395 (C.M.A. 1988). This Court should affirm sentences it finds correct in law and fact and determines, based on the entire record, should be approved. Article 66(d), UCMJ. This Court also has the power to disapprove a mandatory minimum sentence. United States v. Kelly, 77 M.J. 404, 408 (C.A.A.F. 2018).

In order to determine the appropriateness of the sentence, this Court must consider: (1) the particular appellant, (2) the nature and seriousness of the offense, (3) the appellant's record of service, and (4) all matters contained in the record of trial. United States v. Amador, 61 M.J. 619, 626 (A.F. Ct. Crim. App. 2005) (*citing* United States v. Snelling, 14 M.J. 267, 268 (C.M.A. 1982); United States v. Alis, 47 M.J. 817, 828 (A.F. Ct. Crim. App. 1998)).

This determination is separate from an act of clemency, i.e., treating an accused with less rigor than he deserves due to a consideration of mercy. The service appeals courts are not authorized to engage in exercises of clemency. Healy, 26 M.J. at 396; *see also* United States v. Lacy, 50 M.J. 286, 288 (C.A.A.F. 1999).

Our sister court has held that "although not dispositive, when an accused who is represented by competent counsel bargains for a specific sentence, that is strong evidence that the sentence is not inappropriately severe and it will likely not be disturbed on appeal." United States v. Avellaneda, 84 M.J. 656, 663 (N.M. Ct. Crim. App. 2024).

Analysis

Having now received the complete benefit of a very lenient plea agreement that dismissed two charges and four specifications, and reduced Appellant's confinement exposure

from seven years to "time served" (which amounted to 161 days), Appellant now claims his sentence to a dismissal is "inappropriately severe." (App. Br. at 6.) Appellant believes his dismissal, which he specifically agreed to receive in his plea agreement and which he told the military judge he expressly desired to receive, is inappropriate because "THC use generally does not warrant the severe punishment of a dismissal" and because of the 161 days he spent in pretrial confinement. (Id.)

Appellant is mistaken. To start, as noted above, Appellant specifically agreed to receive a dismissal as part of his plea agreement. He purposefully and intentionally included in his plea agreement that a "dismissal shall be adjudged." (App. Ex. II at 2.) He specifically agreed that he understood the ramifications of the dismissal and that he consulted his counsel on the matter. And above all, he specifically told the military judge, "Yes, ma'am," when asked if it was his "expressed desire to be discharged from the service with a dismissal." (R. at 37.)

Here, Appellant received a wealth of benefits within his plea agreement in exchange for the dismissal. Two charges and four specifications were dismissed. Appellant's confinement exposure went from seven years confinement to "time served." (App. Ex. II. at 2.) Moreover, Appellant's counsel used the fact that the plea agreement included a "mandated" dismissal to argue for an even lesser sentence at trial. In short, Appellant has received all the benefit from his plea agreement. This Court should thus well hold Appellant to account for his portion of the plea agreement and approve the dismissal that Appellant readily agreed, and "express[ly] desire[d]," to receive.

Yet, even if it was not an explicit part of his plea agreement, a dismissal in this case is appropriate. Within months of coming on active duty and within weeks of reporting to his unit at Seymour Johnson Air Force Base, Appellant repeatedly used drugs. Worse, this use continued

even *after* Appellant's urine tested positive for both delta-8-tetrahydrocannabinol and delta-9-tetrahydrocannabinol. While Appellant claims that "the prosecution presented no aggravating evidence other than the testimony of the commander that the unit had to make administrative adjustments," Appellant misses the true aggravation of this case - his repeated use of drugs despite his continued positive urinalysis tests.

Indeed, it is Appellant's own repeated actions that even brought this case to a court-martial. As explained by his commander, Appellant was offered non-judicial punishment under Article 15, UCMJ, after the first positive urinalysis. (R. at 48.) However, after the ensuing *five* positive tests, which indicated repeated use, that Article 15 process was stopped, Appellant was placed into pretrial confinement, and court-martial proceedings commenced. (R. at 48-49.)

All of what occurred between July 2023 to this point is because of Appellant's repeated use of drugs. Yet now, Appellant wants to Court to use the consequences of his actions (pretrial confinement) as a reason to *lessen* his court-martial sentence, which, again, Appellant specifically agreed to received in his plea agreement. This Court should decline Appellant's request to engage in such clemency.

Appellant next attempts to lessen the severity of his drug use by highlighting that the "majority of U.S. states and the District of Columbia have either legalized or decriminalized simple marijuana possession." (App. Br. at 7.) Aside from the fact that he stands convicted of "use" rather than "possession," Appellant also seemingly forgets that he is bound as a military member and officer to uphold the rules, regulations, and laws of the military regardless of what the laws of a "majority of U.S. states and the District of Columbia" may say. Here, Appellant seemingly wishes to be bound by the less stringent laws of other civilian jurisdictions and unbound by conduct expected of all military members. His appropriately earned dismissal from

the military service, which he agreed with the military judge that he "expressly desired," will aid in that wish.

Next, Appellant attempts to compare his case to that of United States v. Kerr, No. 202200140, 2023 CCA LEXIS 434 (N.M. Ct. Crim. App. 17 October 2023). (App. Br. at 10.) Appellant uses this case as an example where our sister court found a "negotiated-for bad-conduct discharge" was "inappropriate based on matters presented in extenuation and mitigation." Appellant uses this case to argue that his case, which includes a negotiated-for dismissal, warrants a similar "inappropriate" finding. (Id.)

Appellant's reliance on this case is badly misplaced. First, Kerr involved an appellant who was "competitive selected to serve" in "highly competitive Marine Corps billets," had deployed to Afghanistan, and had "performed with exceptional valor and calmness throughout the difficult day of the infamous Abbey Gate bombing" that occurred on 26 August 2021, where he "survived the improvised explosive device [IED] suicide bombing that detonated approximately 25 meters away from where he was standing." Kerr, at *5. After the blast, which claimed 13 servicemembers lives, killed dozens of Afghans, and wounded many more, that appellant "responded immediately" by carrying a Marine who died before he could get him to safety, assisting a wounded Army soldier to safety, and also helping save the life of another Marine. Id. at *6. Further, upon his return home, the appellant experienced nightmares and vivid flashbacks of the IED blast. Id. In fact, during that appellant's court-martial, a 28-year licensed professional counsel testified that the appellant scored "very high" on an evaluation for both traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD).

Based on these facts and circumstances, our sister court determined an eight-month confinement sentence was adequate in that case and set aside the punitive discharge. Id. at *8.

A strong consideration in that case was the fact that the trial military judge did not feel a punitive discharge was appropriate in the case but adjudged one nonetheless pursuant to the plea agreement that required a bad-conduct discharge be adjudged.

None of those extraordinary facts and circumstances are present in this case. There is no TBI or PTSD. Appellant had not recently been mere meters away from an IED explosion in a deployed environment where his fellow servicemembers were killed or where he helped save others. He has no decorated service history and had never competitively selected to serve in highly competitive billets. Instead, Appellant was just six months into his military career and assigned to a CONUS base when he made the purposeful and repeated decision to use drugs. Furthermore, the judge in this case expressed no reservation about the required dismissal portion of Appellant's plea agreement.[2] Appellant's circumstances simply do not remotely compare to the extreme circumstances at play in Kerr that moved our sister court to look past the fact that the appellant negotiated for the bad-conduct discharge in that case.[3]

---

[2] Notably, since Kerr, the NMCCA has twice denied similar arguments in other cases. In those cases, the NMCCA highlighted the difference in Kerr, where the military judge expressed profound reservations about the plea agreement and required punitive discharge, and other cases. where the military judge expressed no such reservation. *See* Avellaneda, 84 M.J. at 663; United States v. Williams, No. 202300217, 2024 CCA LEXIS 111, *5 (N.M. Ct. Crim. App. 15 March 2024). Further, as noted above, in Avellaneda, our sister court stated, "although not dispositive, when an accused who is represented by competent counsel bargains for a specific sentence, that is strong evidence that the sentence is not inappropriately severe and it will likely not be disturbed on appeal." Avellaneda, 84 M.J. at 663. Williams contains similar language. Williams, at *5.

[3] Appellant does not appear to attempt to engage in sentence comparison within his argument, but instead uses Kerr only to highlight a case where our sister court had overturned a punitive discharge even though it had been specifically agreed upon in that appellant's plea agreement. Therefore, the Government has not analyzed Appellant's argument as one of sentence comparison. However, even if it he had raised that issue, Appellant has failed to show that his case and Kerr are "closely related" or that the sentences are highly disparate. *See* United States

In all, Appellant was placed in pretrial confinement specifically because of his continued and repeated drug use. Then, despite well knowing he had been in pretrial confinement, Appellant willfully and purposefully entered into a plea agreement that specifically included an adjudged dismissal. This Court should use this as "strong evidence that the sentence is not inappropriately severe." *See* Avellaneda, 84 M.J. at 663.

Yet, even with his plea agreement aside, Appellant's repeated acts of drug use in these circumstances warrant a dismissal. All things considered, Appellant's sentence amounts to a lawful and legally supportable sentence. Evaluating the facts and circumstances in the record of Appellant's case, the seriousness of his offense, his service record, his particular character and rehabilitative potential, and in consideration of the entire record, this Honorable Court should leave his sentence undisturbed.

II.

APPELLANT IS ENTITLED TO NO RELIEF FOR ANY POST-TRIAL DELAY IN THIS CASE.

Additional Facts

Appellant was sentenced at his court-martial on 26 March 2024. Appellant's case was docketed with this Honorable Court on 5 September 2024, 163 days later. Appellant never asserted a right to speedy post-trial processing during this time.

In the next nine months, Appellant's counsel submitted seven enlargements of time motions, the last of which necessitated an Order by this Court. (*See* Order, dated 20 May 2025.) In the second, third, fourth, fifth, sixth, and seventh motion, Appellant's counsel wrote each

---

v. Anderson, 67 M.J. 703, 705-06 (A.F. Ct. Crim. App. 2009) (citations omitted); United States v. Lacy, 50 M.J. 286, 288 (C.A.A.F. 1999).

time, "Appellant was informed of his right to a timely appeal, . . . was consulted with regard to the enlargements of time, and agrees with necessary requests for enlargements of time, including this request." (*See* App. Motions., dated 23 December 2024, 24 January 2025, 21 February 2025, 26 March 2025, 25 April 2025, 26 May 2025.) Appellant never asserted a right to speedy post-trial processing during this time.

Appellant filed his brief to this Court on 18 June 2025, 286 days after docketing.

Standard of Review

This Court reviews de novo an appellant's entitlement to relief for post-trial delay. United States v. Livak, 80 M.J. 631, 633 (A.F. Ct. Crim. App. 2020) (citing United States v. Moreno, 63 M.J. 129, 135 (C.A.A.F. 2006)).

Law

When evaluating post-trial constitutional due process complaints of delay, our superior Court has adopted the Supreme Court's analysis in Barker v. Wingo, 407 U.S. 514 (1972). Moreno, 63 M.J. at 135. The four factors set forth in Barker are: (1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of the right to timely review and appeal; and (4) prejudice. Moreno, 63 M.J. at 135 (*citing* Barker, 407 U.S. at 530). All of these factors are to be considered together with the relevant circumstances in the case. Id. at 136.

In Moreno, our superior Court established thresholds for facially unreasonable delay, including docketing with the Court of Criminal Appeals more than 30 days after the convening authority's action or when a Court of Criminal Appeals completes appellate review and renders its decision over 18 months after the case is docketed with the court. 63 M.J. at 142-143. Post-trial processing of courts-martial has changed significantly since Moreno, including the

requirement to issue an Entry of Judgment before appellate proceedings begin. *See* Livak, 80 M.J. at 633.

This Court now applies an aggregate standard threshold of 150 days from the day the appellant was sentenced to docketing with this Court. Id.

Absent a showing of prejudice, a due process violation warranting relief only occurs when, "in balancing the other three factors [for analyzing post-trial delays], the delay is so egregious that tolerating it would adversely affect the public's perception of the fairness and integrity of the military justice system." United States v. Toohey, 63 M.J. 353, 362 (C.A.A.F. 2006).

In United States v. Tardif, 57 M.J. 219 (C.A.A.F. 2002), our superior Court determined that an appellant may be entitled to relief pursuant to a Court of Criminal Appeals Article 66(d) power "to grant relief for excessive post-trial delay without a showing of 'actual prejudice' . . . if it deems relief appropriate under the circumstances." Tardif, 57 M.J. at 224. Post-trial delay does not require that relief be given under these circumstances; rather, appellate courts are cautioned to "tailor an appropriate remedy, if any is warranted, to the circumstances of this case." Id. at 225. Additionally, this Court is guided by the following factors, with no single factor being dispositive:

> (1) How long the delay exceeded the standards set forth in Moreno;
>
> (2) What reasons, if any, the Government set forth for the delay, and whether there is any evidence of bad faith or gross indifference to the overall post-trial processing of this case;
>
> (3) Keeping in mind that our goal under Tardif is not to analyze for prejudice, whether there is nonetheless some evidence of harm (either to the appellant or institutionally) caused by the delay;

(4) Whether the delay has lessened the disciplinary effect of any particular aspect of the sentence, and is relief consistent with the dual goals of justice and good order and discipline;

(5) Whether there is any evidence of institutional neglect concerning timely post-trial processing, either across the service or at a particular installation; and

(6) Given the passage of time, whether this court can provide meaningful relief in this particular situation.

United States v. Gay, 74 M.J. 736, 744 (A.F. Ct. Crim. App. 2015). Relief under Article 66(d), UCMJ, "should be viewed as the last recourse to vindicate, where appropriate, an appellant's right to timely post-trial processing and appellate review." Tardif, 57 M.J. at 225.

Analysis

The circumstances of this case do not warrant relief, and certainly not the windfall requested by Appellant for this Court to set aside the sole component of his sentence – the well-deserved dismissal he bargained for in his plea agreement. For the reasons set forth below, Appellant's claim should be denied.

a. Moreno Analysis

The whole of Appellant's Moreno/Barker/Toohey analysis occurs within a one-paragraph footnote in his brief. (App. Br. at 14.) Appellant's argument fails to provide while this Court should set aside his dismissal.

The first factor, the length of delay, weighs very slightly in Appellant's favor since this case exceeded the Livak standard of sentence to action by 13 days. While considered facially unreasonable, the circumstances of this case do not warrant relief. Additionally, our superior Court has not awarded relief even when the Government has taken over four times the presumptively reasonable amount of time to docket an appellant's case. *See generally* United

States v. Anderson, 82 M.J. 82, 86 (C.A.A.F. 2022) (holding 481 days of Government delay between sentencing and convening authority action would not "caus[e] the public to doubt the entire military justice system's fairness and integrity.")

The second factor, the reasons for delay, does not weigh in Appellant's favor. A review of the timeline of Appellant's post-trial processing shows both the base (Seymour-Johnson) and Numbered Air Force (15 AF) legal offices processed Appellant's record of trial on a consistent basis. In fact, the 15 AF legal office timeline shows the ROT was sent to JAJM on 2 August 2024 (Day 129), 21 days prior to the Livak standard.

As shown, both the base legal office and 15 AF diligently worked to complete Appellant's ROT and sent it to JAJM within 129 days of Appellant's sentence. While there appears to have been a slight delay in JAJM completing its review of the ROT prior to forwarding it to this Court, post-trial processing of Appellant's case did not languish after his trial. Instead, as shown by TSgt SS's and TSgt BR's declarations, Appellant's case was worked on a consistent basis throughout the timeframe from Appellant's sentencing to this Court's docketing and that the two base legal offices completed their portion of the post-trial process on Day 129, three weeks prior to the Livak deadline.

The third Barker "factor calls upon [this Court] to examine an aspect of [Appellant's] role in this delay." Moreno, 63 M.J. at 138. Specifically, whether Appellant "object[ed] to any delay or assert[ed] his right to timely review and appeal prior to his arrival at this court." Id. While failing to demand timely review and appeal does not waive that right, only if Appellant actually "asserted his speedy trial right, [is he] 'entitled to strong evidentiary weight'" in his favor. Id. (*quoting* Barker, 407 U.S. at 528).

Appellant never asserted his right to timely appellate review prior to his case being docketed with this Court. Moreover, Appellant never asserted it during the 286 days in which his counsel was preparing to file his brief to this Court, while at the same time specifically agreeing to seven enlargements of time. This factor weighs heavily against Appellant.

Regarding prejudice because of this delay, our superior Court has recognized three interests that should be considered when determining prejudice due to post-trial delay: (1) prevention of oppressive incarceration pending appeal; (2) undue anxiety and concern; and (3) limiting the possibility that a convicted person's grounds for appeal and defenses, in case of retrial, might be impaired. Barker, 407 U.S. at 532. "Of those, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." Id.

Notably, Appellant provided this Court no declaration addressing any alleged prejudice he has faced. Appellant has faced no incarceration at all pending appeal, let alone any "oppressive incarceration." He has alleged no undue anxiety or concern or any impairment to any grounds for appeal or defenses or his ability to participate in his appeal. In fact, in his sole footnote addressing Moreno, Appellant makes no prejudice argument at all.

As to relief pursuant to Toohey, our superior Court held that a delay of 481 days between sentencing and convening authority action was "not severe enough to taint public perception of the military justice system," adding that it did not involve the years of post-trial delay seen in Moreno and Toohey.[4] *See* Anderson, 82 M.J. at 86. The reasons for delay in that case included delays in "creating the transcript or authenticating the record of trial." Id. at 86-87. Notably in

[4] Toohey involved a six-year delay from the end of the appellant's trial to the lower court issuing a decision. Toohey, 63 M.J. at 362.

Anderson, the appellant made three speedy trial requests to the Chief of Justice, but "there was no indication that [the Chief of Justice] took any steps to speed the process beyond confirming that the military judge had the record." Additionally, the military judge in that case took 298 days to authenticate the record. Id.

Despite the appellant's repeated assertion of his speedy trial rights and the 481-day delay, our superior Court still granted no Toohey relief because there "is no indication of bad faith on the part of any of the Government actors," and "no indication of prejudice." Id. at 88. The Court continued, "Though we cannot condone the military judge's unsubstantiated delay in authenticating a fairly straightforward trial record, we find it difficult to imagine these circumstances causing the public to doubt the entire military justice system's fairness and integrity." Id.

The same can be said in this case. Here, there is no indication of bad faith on the part of any Government actor and there is no indication of prejudice. Further, the time between sentencing is docketing in this case, 163 total days, is 318 days less than the delay in Anderson. Using our superior Court's reasoning and basis for not granting Toohey relief in Anderson, this Court should likewise grant Appellant no relief in this case.

b. Tardif Analysis

Appellant's case does not warrant relief under Tardif either. As discussed above, the only reason this case exceeded the Livak standards was apparently due to a slight delay in JAJM's review of the record before sending it to this Court. Notably, the record was sent to JAJM 21 days before the Livak 150-day standard. Here, neither the base legal office nor 15 AF/JA exhibited any indifference or a lackadaisical approach to this case. Instead, the record shows both legal offices worked expeditiously to complete post-trial processing in this case as

quickly as possible. There is no showing in this case of either bad faith or gross indifference in the overall post-trial processing of this case.

Moreover, Appellant's brief fails to present any evidence of harm, either to Appellant or institutionally, caused by the delay in this case. Indeed, there is none. Further, there is no evidence that the delay has lessened the disciplinary effect of any particular aspect of Appellant's sentence, and any granted relief would be inconsistent with the dual goals of justice and good order and discipline. Finally, Appellant has failed to show any "gross indifference" or "systemic institutional neglect" on the part of either the Seymour Johnson legal office or 15 AF/JA.

Furthermore, any granted relief would be inconsistent with the dual goals of justice and good order and discipline. Notably, Appellant asks this Court for the utter windfall of setting aside his well-deserved dismissal, which, as discussed above, Appellant specifically and voluntarily bargained to receive in his plea agreement.

Finally, while this Court recently granted sentence relief pursuant to Tardif and Gay in United States v. Cassaberry-Folks, ACM 40444, 2024 CCA LEXIS 500 (A.F. Ct. Crim. App. 22 November 2024), that case involved a sentence-to-docketing timeline of 412 days, more than two times the 163-day timeframe in this case. This Court should deny this assignment of error.

III.

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

Additional Facts

The maximum amount of confinement for Appellant's convictions was seven years. (R. at 27.) Appellant's trial defense counsel agreed with this maximum sentence. (Id.)

Both the Staff Judge Advocate's first indorsement to the Statement of Trial Results (STR) and Entry of Judgment (EOJ) in Appellant's case contains the following statements: "Firearm Prohibition Triggered Under 18 U.S.C. § 922: Yes." (*STR* and *EOJ*, ROT, Vol. 1.)

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 Courts of Criminal Appeals possess "limited jurisdiction, defined entirely by statute." United States v. Arness, 74 M.J. 441, 442 (C.A.A.F. 2015) (citation omitted). Appellant acknowledges that the Court of Appeals for the Armed Forces recently rejected the authority of the Courts of Criminal Appeals to address the firearms prohibition notation in the STR under Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) in United States v. Williams, 82 M.J. 121, 126 (C.A.A.F. 2024). (App. Br. at 18.)

Still, Appellant claims that this Court may "correct" the alleged error through Article 66(d)(2), UCMJ. (Id. at 18-19.) However, in the days following Appellant's 18 June 2025 filing of his brief to this Court, our superior Court issued its decision in United States v. Johnson, __ M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499 (C.A.A.F. 24 June 2025). There, our superior Court rejected the same arguments Appellant makes to this Court, concluding that "Article 67(c), UCMJ, does not give this Court authority to modify the § 922 indication in the EOJ, and Article 66(d)(2), UCMJ, does not give the AFCCA authority to modify the § 922 indication either." Id. at *13-14.

Accordingly, this Court should deny Appellant's claim.

CONCLUSION

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

G. MATT OSBORN, Colonel, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

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

JENNY A. LIABENOW, 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, appellate counsel, and the Air Force Appellate Defense Division on 18 July 2025 via electronic filing.

G. MATT OSBORN, Colonel, 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. Second Lieutenant (O-1) **PARKER C. MYSLOW,** United States Air Force, *Appellant*.	**REPLY BRIEF ON BEHALF OF APPELLANT** Before Panel No. 2 No. ACM 40668 25 July 2025

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

Appellant, Second Lieutenant (2d Lt) Parker Myslow, pursuant to Rule 18(d)(1) of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals, files this Reply to the United States' Answer to Assignments of Error (July 18, 2025) (Ans.). In addition to the arguments in the Brief on Behalf of Appellant (June 18, 2025), 2d Lt Myslow submits the following additional arguments.

I.

A DISMISSAL IS INAPPROPRIATELY SEVERE FOR THC USE AFTER SECOND LIEUTENANT MYSLOW SPENT 161 DAYS IN PRETRIAL CONFINEMENT.

This Court should set aside the adjudged dismissal because it is inappropriately severe given the facts and circumstances of this case. Although the punitive discharge was a term of the plea agreement, 2d Lt Myslow negotiated the plea agreement from pretrial confinement for tetrahydrocannabinol (THC) use while awaiting referral and docketing of additional charges. This case exemplifies the need for an independent, *de novo* review of negotiated-for sentences. Removing the specter of additional pretrial confinement of an indeterminate length makes it

apparent that credit for five months of pretrial imprisonment is sufficient punishment for repeated THC use, and a dismissal in addition to such confinement is inappropriately severe.

Under Article 66 of the Uniform Code of Military Justice (UCMJ),[1] 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." 10 U.S.C. § 866.[2] This requires a *de novo* review of the sentence. *See United States v. McAlhaney*, 83 M.J. 164, 167 (C.A.A.F. 2023) ("sentence appropriateness [] is reviewed de novo"); *see also United States v. Kelly*, 77 M.J. 404, 406 (C.A.A.F. 2018) (quoting *United States v. Cole*, 31 M.J. 270, 272 (C.M.A. 1990), and *United States v. Claxton*, 32 M.J. 159, 162 (C.M.A. 1991)) ("Given their 'awesome, plenary *de novo* power of review' it is little wonder that this Court has described the [courts of criminal appeal] as having a '*carte blanche* to do justice.'"). The Government nevertheless begins and ends its argument by highlighting that the dismissal was a condition of the plea agreement for which 2d Lt Myslow negotiated. Ans. at 6, 10. This case exemplifies why Article 66 does not call for blanket acceptance of the terms of a plea agreement but rather mandates an independent review of the sentence. *Cf. United States v. Kerr*, No. 202200140, 2023 CCA LEXIS 434, at *8 n.23 (N.M. Ct. Crim. App. Oct. 17, 2023) (setting aside a negotiated-for bad-conduct discharge after finding the punitive discharge inappropriate based on matters presented in extenuation and mitigation).

[1] Unless otherwise noted, all references to the UCMJ and Rules for Courts-Martial (R.C.M.) are to the *Manual for Courts-Martial*, *United States* (2019 ed.).

[2] As enacted by Section 542(b) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 542(b), 134 Stat. 3388, 3611 (2021). The August to October 2023 drug use is not reviewed under the amendments to Article 66, UCMJ, applicable to offenses occurring after 27 December 2023. *See* National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, § 539E(f), 135 Stat. 1541, 1706 (2021).

When 2d Lt Myslow made the offer for a plea agreement in February 2024, he was in his fourth month of pretrial confinement for THC use. *Compare* Pros. Ex. 2 ("NATURE OF PRETRIAL RESTRIANT: Military Confinement, 17 October 2023"), *with* App. Ex. II at 1 (dated 9 February 2024). He had a 26 March 2024 trial date for the charges and specifications to which he offered to plead guilty pursuant to a 28 December 2023 Scheduling Order. App. Ex. I at 1. However, in February, the convening authority was considering the referral of additional charges and specifications, which threatened to delay his trial and further prolong his pretrial confinement, regardless of any conviction for these alleged offenses; the additional charges were preferred in January but not referred until March 2024 (*i.e.*, after the offer for plea agreement). Charge Sheet, DD Form 458, dated 11 January 2024. Rather than risk additional pretrial confinement for an indeterminate length, 2d Lt Myslow offered to plead guilty. This Court's duty under Article 66 is not to evaluate the merits of 2d Lt Myslow's decision regarding how much pretrial confinement one should endure in order to preempt a punitive discharge, but rather to determine whether the adjudged sentence is appropriate.

The Army Court of Criminal Appeals executed its Article 66 obligation and set aside a dishonorable discharge as inappropriately severe even though the parties agreed that a dishonorable discharge would be adjudged in *United States v. Hunter*. 84 M.J. 715 (A. Ct. Crim. App. 2024). In that opinion, the court highlighted that the appellant bargained for the dishonorable discharge in his plea agreement and even noted that "appellant could have, or perhaps even tried to, bargain for a bad-conduct discharge." *Id.* at 718. The court nevertheless reviewed the matter *de novo*, concluded the dishonorable discharge was inappropriately severe, and set aside the dishonorable discharge pursuant to Article 66. *Id.* This Court should likewise conduct an independent review of this matter and determine whether the adjudged sentence is appropriate

considering "the particular appellant, the nature and seriousness of the offense[s], the appellant's record of service, and all matters contained in the record of trial." *United States v. Sauk*, 74 M.J. 594, 606 (A.F. Ct. Crim. App. 2015) (en banc) (alteration in original) (quoting *United States v. Anderson*, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009)).

Considering those matters, the adjudged sentence is not appropriate. The dismissal is inappropriately severe considering that 2d Lt Myslow spent 161 days in pretrial confinement and his offense of conviction—THC use—is not even treated as criminal in the majority of U.S. civilian jurisdictions. Brief on Behalf of Appellant (June 18, 2025) at 7–8 (citing United States Sentencing Commission, *Weighing the Impact of Simple Possession of Marijuana*, at 5, 29–31 (Jan. 10, 2023)). The Government highlights that, as a servicemember, 2d Lt Myslow is bound by military rather than civilian law. Ans. at 7. Appellant recognizes this and does not object to his conviction or even his confinement for that reason. Still, the fact most civilian jurisdictions have decriminalized his conduct is evidence that a federal conviction and 161 days of pretrial confinement surely is sufficient punishment for THC use; the conduct is not so severe as to additionally require a dismissal. *Cf.* R.C.M. 1003(b)(8)(B) ("A dishonorable discharge should be reserved for those who should be separated under conditions of dishonor, after having been convicted of offenses usually recognized in civilian jurisdictions as felonies"); Dep't of Army Pam. 27-9, Legal Services: Military Judges' Benchbook at 89 (Feb. 29, 2020) ("[A] sentence to a dismissal of a [commissioned officer] is, in general, the equivalent of a dishonorable discharge.").

Likewise, 2d Lt Myslow acknowledges that his repeated use of THC justified a court-martial and some period of confinement, but the simple fact that he tested positive for THC use on divers occasions does not justify the severe punishment of a punitive discharge. As stated in his initial brief, under the current sentencing parameters, violation of a general order or regulation and

wrongful use of a controlled substance—even if repeated—generally do not warrant a year of imprisonment, and so his offenses generally are not treated even in the military as particularly severe crimes. *See* Brief on Behalf of Appellant (June 18, 2025) at 8. So, time served is a "sufficient, but not greater than necessary punishment to promote justice" in this case. UCMJ art. 56(c)(1), 10 U.S.C. § 856(c)(1).

WHEREFORE, 2d Lt Myslow respectfully requests that this Honorable Court set aside his sentence to a dismissal as inappropriately severe.

II.

A 163-DAY POST-TRIAL PROCESSING PERIOD FOR A THREE-HOUR-AND-ELEVEN MINUTE GUILTY PLEA CASE WARRANTS RELIEF.

Setting aside the punitive discharge is also the appropriate response under Article 66(d)(2) to the post-trial processing delay in this case, even in the absence of prejudice. This is particularly true considering the inaction from 12 June 2024, when 2d Lt Myslow acknowledged receipt of the Record of Trial (ROT), to 5 September 2024, when this matter was docketed with this Court. The Government spills much ink arguing that 2d Lt Myslow did not suffer a due-process violation pursuant to *United States v. Tardif*, 57 M.J. 219 (C.A.A.F. 2002), *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006), *United States v. Toohey*, 63 M.J. 353 (C.A.A.F. 2006), and other cases that predate the operative provision of Article 66. *See generally* Ans. at 11–17. Indeed, while these cases may highlight some helpful factors to consider, Article 66(d)(2), UCMJ, is now the sole authority governing relief for post-trial delay, having superseded *Tardif* and its progeny. *United States v. Valentin-Andino*, 85 M.J. 361, No. 24-0208/AF, 2025 CAAF LEXIS 248, at *10 n.4 (C.A.A.F. 2025). Article 66(d)(2), UCMJ, requires that the Court conduct a *de novo* review of the post-trial processing and grant appropriate relief for any excessive post-trial delay, regardless of prejudice to the appellant. 10 U.S.C. § 866(d)(2); *see also United States v. Jenkins*, No. ACM

S32765, 2025 CCA LEXIS 148, at *23 (A.F. Ct. Crim. App. Apr. 7, 2025) (unpub. op.) (noting the Court's authority under Article 66(d)(2) to grant relief in the absence of prejudice or a due process violation); *United States v. Cassaberry-Folks*, No. ACM 40444, 2024 CCA LEXIS 500, at *51 (A.F. Ct. Crim. App. Nov. 22, 2024) (unpub. op.) (noting that a *Tardif* analysis remains "a useful mechanism" for exercising Article 66(d)(2) authority).

As stated in 2d Lt Myslow's initial brief, the 163 days of post-trial processing were presumptively unreasonable and warrant relief pursuant to Article 66. *See* Brief on Behalf of Appellant (June 18, 2025) at 11 (citing *United States v. Livak*, 80 M.J. 631, 633 (A.F. Ct. Crim. App. 2020)). The Government has now provided some timelines as to the processing of this matter, and the specifics only highlight the indifference to timely post-trial processing that occurred from 12 June 2024 to 5 September 2024. After 2d Lt Myslow signed for receipt on 12 June 2024, the base legal office submitted the ROT to the legal office for the convening authority. The Government acknowledges that the convening authority's legal office then sat on the ROT for a month without taking any action, instead only beginning the review on 18 July 2024. United States' Mot. To Attach Documents (July 18, 2025) at 6 (Declaration of TSgt BR, dated 8 July 2025) (noting the delay from 16 June 2024 to 16 July 2024 and explaining that "Due to low manning . . . the ROT was not immediately reviewed."). The legal offices for the base and the convening authority then made corrections and submitted the ROT to the Military Justice Law & Policy Division (HQ USAF/JAJM) on 2 August 2024, but the matter nevertheless remained undocketed for thirty-four days until 5 September 2024. *Id.* In sum, the Government's own timeline identifies seventy days—over two months and nearly half of the post-trial processing time in this case—of inaction.

Under Article 66(d)(2), this Court may provide appropriate relief for this delay. Relief in the form of setting aside the punitive discharge is not an undue windfall to 2d Lt Myslow; reducing the sentence is this Court's only mechanism to encourage timely processing generally, and setting aside the punitive discharge is the only remedy available here when 2d Lt Myslow served all of his confinement pretrial. Additionally, setting aside the punitive discharge is not disproportionate here in part because the sentence was already inappropriately severe. *Cf. Cassaberry-Folks*, 2024 CCA LEXIS 500, at *52 (declining to set aside a punitive discharge as "disproportionate" and instead setting aside a portion of the remaining period of adjudged confinement).

WHEREFORE, 2d Lt Myslow respectfully requests that this Honorable Court set aside his sentence to a dismissal as appropriate relief for the excessive delay in the processing of the court-martial.

III.

THE GOVERNMENT CANNOT PROVE 18 U.S.C. § 922 IS CONSTITUTIONAL AS APPLIED TO SECOND LIEUTENANT MYSLOW BECAUSE HE WAS CONVICTED OF OFFENSES THAT DO NOT FALL WITHIN THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION.

After 2d Lt Myslow filed his initial brief on 18 June 2025, the United States Court of Appeals for the Armed Forces (C.A.A.F.) issued its opinion in *United States v. Johnson*, __ M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499 (C.A.A.F. June 24, 2025), *reconsideration denied*, __ M.J. __, USCA Dkt. No. 24-0004/SF, 2025 CAAF LEXIS 545 (C.A.A.F. July 14, 2025). 2d Lt Myslow acknowledges that, in that opinion, C.A.A.F. held that this Court lacks the authority to act upon the indication of a firearms prohibition under 10 U.S.C. § 922. *Id.* at *2. However, 2d Lt Myslow asserts that *Johnson* was wrongly decided and maintains that the firearms prohibition indicated on the first indorsement to the Entry of Judgment is unconstitutional, as

applied, under *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). He does not concede this issue but rather continues to raise it for preservation purposes.

WHEREFORE, 2d Lt Myslow respectfully requests that this Court hold 18 U.S.C. § 922 is unconstitutional as applied to him and order correction of the first indorsement to the EOJ, pursuant to its authority under Article 66(d)(2), UCMJ.

Respectfully submitted,

BRIAN E. FLANAGAN, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: brian.flanagan.7@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 Operations Division on 25 July 2025.

Respectfully submitted,

BRIAN E. FLANAGAN, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: brian.flanagan.7@us.af.mil

18 July 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Second Lieutenant (O-1) PARKER C. MYSLOW, USAF *Appellant*.	))))))))	MOTION TO ATTACH DOCUMENTS ACM 40668 Panel No. 2

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

Pursuant to Rule 23.3(b) of this Court's Rules of Practice and Procedure, the United States submits the following documents in support of the government's Answer to Appellant's Assignment of Error brief in the above referenced case:

- Declaration of TSgt SS, dated 3 July 2025, 2 pages;
- Declaration of TSgt BR, dated 8 July 2025, 1 page.

These documents provide additional information and context outside the record but are relevant and necessary for the United States to answer Appellant's brief. Specifically, TSgt SS's and TSgt BR's declarations provide this Court necessary background and context regarding Appellant's claim that he is entitled to relief due to post-trial processing delay. These declarations provide needed context necessary to address Appellant's claims.

Our superior Court has held 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). The Court has also concluded that "based on experience . . . 'extra-record fact determinations' may be 'necessary predicates to resolving appellate questions.'" Id. at 442 (*quoting* United States v. Parker, 36 M.J. 269, 272 (C.M.A. 1993)). Here, Appellant's claim of post-trial delay is directly raised by materials in the record. These

declarations are relevant to address Appellant's claims of prejudice due to post-trial processing delay. Thus, this Court may consider them under Jessie.

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

G. MATT OSBORN, Colonel, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

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

JENNY A. LIABENOW, 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, appellate defense counsel, and the Air Force Appellate Defense Division on 18 July 2025 via electronic filing.

G. MATT OSBORN, Colonel, USAF
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 40668**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF PANEL CHANGE**
Parker C. MYSLOW	)	
Second Lieutenant (O-1)	)	
U.S. Air Force	)	
Appellant	)	

It is by the court on this 5th day of August, 2025,

ORDERED:

That the Record of Trial in the above-styled matter is withdrawn from Panel 2 and referred to Panel 3 for appellate review.

This panel letter supersedes all previous panel assignments.

FOR THE COURT

[redacted]

AGNIESZKA M. GAERTNER, Capt, USAF
Commissioner