

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

UNITED STATES	)	No. ACM S32792
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Mario OSORNO, Jr.)	
Technical Sergeant (E-6))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

This case was docketed with the court on 25 September 2024. On 14 November 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 18th day of November, 2024,

ORDERED:

Appellant’s Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **23 January 2025**.

Any subsequent requests for enlargement of time 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



SEAN J. SULLIVAN, Maj, USAF
Deputy Clerk of Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

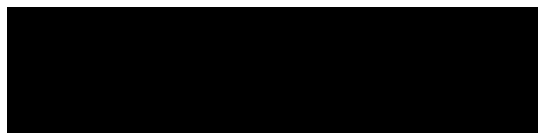
UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (FIRST)
)	
v.	)	Before Panel No. 3
)	
Technical Sergeant (E-6)	)	No. ACM S32792
MARIO OSORNO, JR.,)	
United States Air Force,	)	14 November 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **23 January 2025**. The record of trial was docketed with this Court on 25 September 2024. From the date of docketing to the present date, 50 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, 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: joyclin.webster.1@us.af.mil

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 14 November 2024.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
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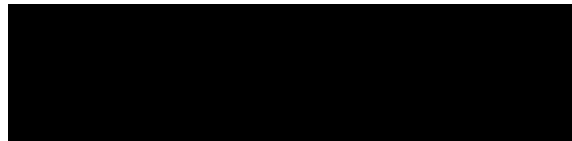
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Technical Sergeant (E-6)	)	ACM S32792
MARIO OSORNO, JR., USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

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

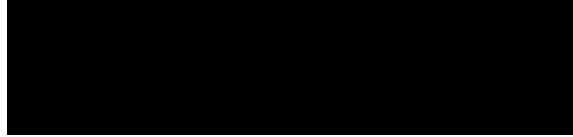
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(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 14 November 2024.



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
	)	TIME (SECOND)
)	
v.	)	Before Panel No. 3
)	
Technical Sergeant (E-6)	)	No. ACM S32792
MARIO OSORNO, JR.,)	
United States Air Force,	)	13 January 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **22 February 2025**. The record of trial was docketed with this Court on 25 September 2024. From the date of docketing to the present date, 110 days have elapsed. On the date requested, 150 days will have elapsed.

On 8 July 2024, a special court-martial consisting of a military judge alone a at Nellis Air Force Base, Nevada, found Appellant guilty, consistent to his pleas, of one charge and one specification of larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ).¹ Record of Trial (ROT), Entry of Judgment (EOJ), dated 10 September 2024; Record (R.) at 56.

The military judge sentenced Appellant to be reduced to the grade of E-3, to be confined for 28 months at \$1500 per month for 5 months, and to be discharged from the service with a Bad Discharge. R. at 80; EOJ.



GRANTED
15 JAN 2025

¹ Specifications 2 and 3 of the Charge were withdrawn and dismissed with prejudice upon the announcement of the sentence. R. at 80.

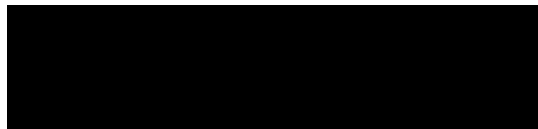
The Convening Authority took no action on the findings or sentence. ROT, Convening Authority Decision on Action – *United States v. Technical Sergeant Mario Osorno, Jr.*, dated 22 July 2024. The Convening Authority denied Appellant’s request for deferment of the reduction in grade and confinement. *Id.* The Convening Authority also denied Appellant’s request for waiver of the automatic forfeitures for the benefit of Appellant’s dependent children. *Id.*

The ROT is 2 volumes and consists of 3 Prosecution Exhibits, 4 Defense Exhibits, and 9 Appellate Exhibits; the transcript is 81 pages. Appellant is not currently confined.

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

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

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: joyclin.webster.1@us.af.mil

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 13 January 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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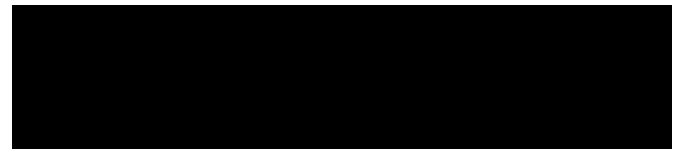
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Technical Sergeant (E-6)	)	ACM S32792
MARIO OSORNO, JR., USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

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

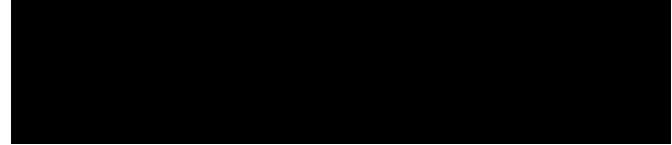
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 14 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	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (THIRD)
	)	OUT OF TIME
)	
v.	)	Before Panel No. 3
)	
Technical Sergeant (E-6)	)	No. ACM S32792
MARIO OSORNO, JR.,)	
United States Air Force,	)	17 February 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **24 March 2025**. The record of trial was docketed with this Court on 25 September 2024. Appellant brief is currently due to this court on 22 February 2024, 5 calendar days from the present date. However, by operation of Rule 15 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals, Appellant’s brief is currently due on Tuesday, 24 February 2025, 7 calendar days from the present date. From the date of docketing to the present date, 155 days have elapsed. On the date requested, 180 days will have elapsed.

On 8 July 2024, a special court-martial consisting of a military judge alone at Nellis Air Force Base, Nevada, found Appellant guilty, consistent to his pleas, of one charge and one

specification of larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ).¹ Board of Trial (ROT), Entry of Judgment (EOJ), dated 10 September 2024; Record (R.) at 56.

GRANTED by judge sentenced Appellant to be reduced to the grade of E-3, to be confined for 28
19 FEB 2025

¹ Specifications 2 and 3 of the Charge were withdrawn and dismissed with prejudice upon the announcement of the sentence. R. at 80.



days, forfeit \$1500 per month for 5 months, and to be discharged from the service with a Bad Conduct Discharge. R. at 80; EOJ.

The Convening Authority took no action on the findings or sentence. ROT, Convening Authority Decision on Action – *United States v. Technical Sergeant Mario Osorno, Jr.*, dated 22 July 2024. The Convening Authority denied Appellant’s request for deferment of the reduction in grade and confinement. *Id.* The Convening Authority also denied Appellant’s request for waiver of the automatic forfeitures for the benefit of Appellant’s dependent children. *Id.*

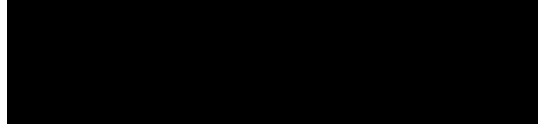
The ROT is 2 volumes and consists of 3 Prosecution Exhibits, 4 Defense Exhibits, and 9 Appellate Exhibits; the transcript is 81 pages. Appellant is not currently confined.

The undersigned counsel did not submit an enlargement of time within 7 calendar days of 22 February 2024. This inadvertent omission by the undersigned counsel was not due to bad faith but was an oversight in the course of managing case responsibilities. Upon realizing the missed deadline, counsel acted to correct the error.

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

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

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF
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CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF
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Air Force Appellate Defense Division
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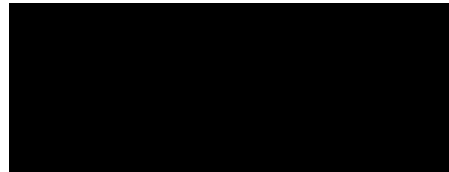
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME OUT OF TIME
)	
Technical Sergeant (E-6)	)	ACM S32792
MARIO OSORNO, JR., USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

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

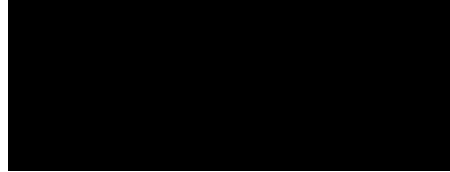
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel
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 18 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	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (FOURTH)
)	
)	
v.	)	Before Panel No. 3
)	
Technical Sergeant (E-6)	)	No. ACM S32792
MARIO OSORNO, JR.,)	
United States Air Force,	)	14 March 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **23 April 2025**. The record of trial was docketed with this Court on 25 September 2024. From the date of docketing to the present date, 170 days have elapsed. On the date requested, 210 days will have elapsed.

On 8 July 2024, a special court-martial consisting of a military judge alone a at Nellis Air Force Base, Nevada, found Appellant guilty, consistent to his pleas, of one charge and one specification of larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ).¹ Record of Trial (ROT), Entry of Judgment (EOJ), dated 10 September 2024; Record (R.) at 56.

military judge sentenced Appellant to be reduced to the grade of E-3, to be confined for 28 months, to be fined \$1500 per month for 5 months, and to be discharged from the service with a Bad Conduct Discharge. R. at 80; EOJ.



GRANTED
19 MAR 2025

¹ Specifications 2 and 3 of the Charge were withdrawn and dismissed with prejudice upon the announcement of the sentence. R. at 80.

The Convening Authority took no action on the findings or sentence. ROT, Convening Authority Decision on Action – *United States v. Technical Sergeant Mario Osorno, Jr.*, dated 22 July 2024. The Convening Authority denied Appellant’s request for deferment of the reduction in grade and confinement. *Id.* The Convening Authority also denied Appellant’s request for waiver of the automatic forfeitures for the benefit of Appellant’s dependent children. *Id.*

The ROT is 2 volumes and consists of 3 Prosecution Exhibits, 4 Defense Exhibits, and 9 Appellate Exhibits; the transcript is 81 pages. Appellant is not currently confined.

The undersigned counsel is currently assigned 24 cases; 20 cases are pending before this Court (17 cases are pending AOE). To date, eight cases have priority over the present case.

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

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

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

4. *United States v. Anderson*, No. ACM 40654 – The ROT is 12 volumes and consists of 15 Prosecution Exhibits, 14 Defense Exhibits, and 96 Appellate Exhibits; the transcript is 1229

pages. Appellant is currently confined. Although this case was docketed on 13 August 2024, undersigned counsel has prioritized this case to keep pace with the Appellant's civilian counsel.

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

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

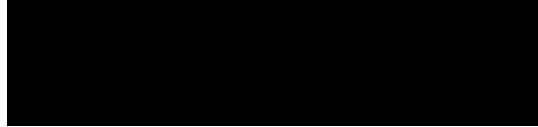
7. *United States v. Coley*, No. ACM 40675 – The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined.

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

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

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

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: joyclin.webster.1@us.af.mil

CERTIFICATE OF FILING AND SERVICE

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Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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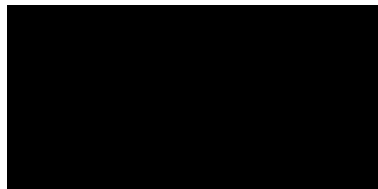
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
	)	Before Panel No. 3
Technical Sergeant (E-6))	
MARIO OSORNO, JR.,	)	No. ACM S32792
United States Air Force.)	
<i>Appellant</i>	)	18 March 2025

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

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

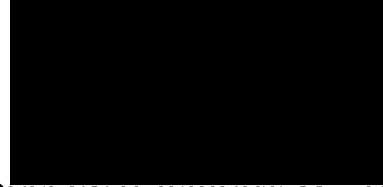
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel
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 18 March 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	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (FIFTH)
)	
)	
v.	)	Before Panel No. 3
)	
Technical Sergeant (E-6)	)	No. ACM S32792
MARIO OSORNO, JR.,)	
United States Air Force,	)	15 April 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **23 May 2025**. The record of trial was docketed with this Court on 25 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 8 July 2024, a special court-martial consisting of a military judge alone a at Nellis Air Force Base, Nevada, found Appellant guilty, consistent to his pleas, of one charge and one specification of larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ).¹ Record of Trial (ROT), Entry of Judgment (EOJ), dated 10 September 2024; Record (R.) at 56. The military judge sentenced Appellant to be reduced to the grade of E-3, to be confined for 28 days, forfeit \$1500 per month for 5 months, and to be discharged from the service with a Bad Discharge. R. at 80; EOJ.



The Convening Authority took no action on the findings or sentence. ROT, Convening Authority Decision on Action – *United States v. Technical Sergeant Mario Osorno, Jr.*, dated

GRANTED

17 APR 2025

¹ Specifications 2 and 3 of the Charge were withdrawn and dismissed with prejudice upon the announcement of the sentence. R. at 80.

22 July 2024. The Convening Authority denied Appellant's request for deferment of the reduction in grade and confinement. *Id.* The Convening Authority also denied Appellant's request for waiver of the automatic forfeitures for the benefit of Appellant's dependent children. *Id.*

The ROT is 2 volumes and consists of 3 Prosecution Exhibits, 4 Defense Exhibits, and 9 Appellate Exhibits; the transcript is 81 pages. Appellant is not currently confined.

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

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

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

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

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

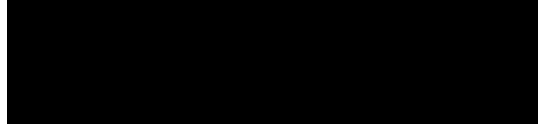
7. *United States v. Coley*, No. ACM 40675 – The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined.

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

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

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

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 15 April 2025.

Respectfully submitted,



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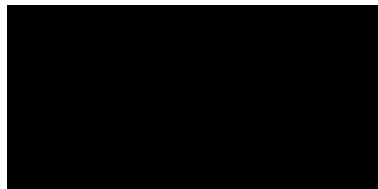
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO
	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
	)	Before Panel No. 3
Technical Sergeant (E-6))	
MARIO OSORNO, JR.,	)	No. ACM S32792
United States Air Force.)	
<i>Appellant</i>	)	17 April 2025

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

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

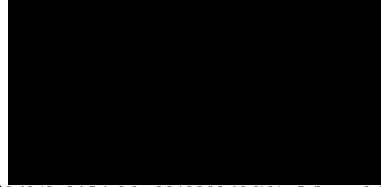
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

CERTIFICATE OF FILING AND SERVICE

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

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

UNITED STATES <i>Appellee</i>	)	No. ACM S32792
)	
)	
v.)	
	)	NOTICE OF PANEL CHANGE
Mario OSORNO, Jr. Technical Sergeant (E-6) U.S. Air Force <i>Appellant</i>)	
)	
)	
)	

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



Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (SIXTH)
)	
)	
v.	)	Before Panel No. 2
)	
Technical Sergeant (E-6)	)	No. ACM S32792
MARIO OSORNO, JR.,)	
United States Air Force,	)	14 May 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(1) and (3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **22 June 2025**. The record of trial was docketed with this Court on 25 September 2024. From the date of docketing to the present date, 231 days have elapsed. On the date requested, 270 days will have elapsed.

On 8 July 2024, a special court-martial consisting of a military judge alone a at Nellis Air Force Base, Nevada, found Appellant guilty, consistent to his pleas, of one charge and one specification of larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ).¹ Record of Trial (ROT), Entry of Judgment (EOJ), dated 10 September 2024; Record (R.) at 56.

Military judge sentenced Appellant to be reduced to the grade of E-3, to be confined for 28 months, to be fined \$1500 per month for 5 months, and to be discharged from the service with a Bad Conduct Discharge. R. at 80; EOJ.



GRANTED
16 MAY 2025

¹ Specifications 2 and 3 of the Charge were withdrawn and dismissed with prejudice upon the announcement of the sentence. R. at 80.

The Convening Authority took no action on the findings or sentence. ROT, Convening Authority Decision on Action – *United States v. Technical Sergeant Mario Osorno, Jr.*, dated 22 July 2024. The Convening Authority denied Appellant’s request for deferment of the reduction in grade and confinement. *Id.* The Convening Authority also denied Appellant’s request for waiver of the automatic forfeitures for the benefit of Appellant’s dependent children. *Id.*

The ROT is 2 volumes and consists of 3 Prosecution Exhibits, 4 Defense Exhibits, and 9 Appellate Exhibits; the transcript is 81 pages. Appellant is not currently confined.

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

1. *United States v. Capers*, No ACM 40641 – The electronic ROT is 1 volume and consists of 3 Prosecution Exhibits, 5 Defense Exhibits, 14 Appellate Exhibits, and 4 Court Exhibits; the transcript is 405 pages. Counsel has completed her review of the ROT and is finalizing the AOE.

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

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

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

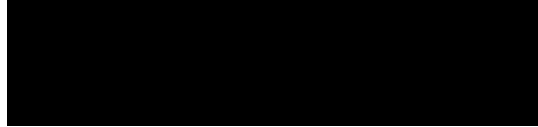
5. *United States v. Coley*, No. ACM 40675 – The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined.

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

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

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

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF
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Air Force Appellate Defense Division
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Office: (240) 612-4770
Email: joyclin.webster.1@us.af.mil

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 14 May 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF
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Air Force Appellate Defense Division
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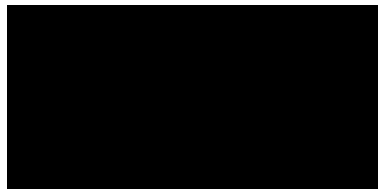
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO
	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
	)	Before Panel No. 3
Technical Sergeant (E-6))	
MARIO OSORNO, JR.,	)	No. ACM S32792
United States Air Force.)	
<i>Appellant</i>	)	15 May 2025

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

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

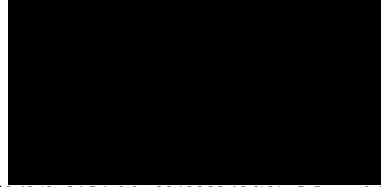
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel
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 15 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

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

UNITED STATES	)	No. ACM S32792
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Mario OSORNO Jr.)	
Technical Sergeant (E-6))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 2

On 12 June 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 17th day of June, 2025,

ORDERED:

Appellant’s Motion for Enlargement of Time (Seventh) is **GRANTED**. Appellant shall file any assignments of error not later than **22 July 2025**.

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



FOR THE COURT



AF

Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF TIME (SEVENTH)
<i>Appellee,</i>)	
)	
)	
v.	)	Before Panel No. 2
)	
Technical Sergeant (E-6)	)	No. ACM S32792
MARIO OSORNO, JR.,)	
United States Air Force,	)	12 June 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(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 30 days, which will end on **22 July 2025**. The record of trial was docketed with this Court on 25 September 2024. From the date of docketing to the present date, 260 days have elapsed. On the date requested, 300 days will have elapsed.

On 8 July 2024, a special court-martial consisting of a military judge alone a at Nellis Air Force Base, Nevada, found Appellant guilty, consistent with his pleas, of one charge and one specification of larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ).¹ Record of Trial (ROT), Entry of Judgment (EOJ), dated 10 September 2024; Record (R.) at 56. The military judge sentenced Appellant to be reduced to the grade of E-3, to be confined for 28 days, forfeit \$1500 per month for 5 months, and to be discharged from the service with a bad-conduct discharge. R. at 80; EOJ.

¹ Specifications 2 and 3 of the Charge were withdrawn and dismissed with prejudice upon the announcement of the sentence. R. at 80.

The Convening Authority took no action on the findings or sentence. ROT, Convening Authority Decision on Action – *United States v. Technical Sergeant Mario Osorno, Jr.*, dated 22 July 2024. The Convening Authority denied Appellant’s request for deferment of the reduction in grade and confinement. *Id.* The Convening Authority also denied Appellant’s request for waiver of the automatic forfeitures for the benefit of Appellant’s dependent children. *Id.*

The ROT is 2 volumes and consists of 3 Prosecution Exhibits, 4 Defense Exhibits, and 9 Appellate Exhibits; the transcript is 81 pages. Appellant is not currently confined.

Maj Brian Flanagan was recently detailed to this case after consideration of his and Capt Joyclin Webster’s respective dockets. Maj Flanagan has completed a review of the record and has begun research on several potential errors, but an enlargement of time is necessary to allow counsel to advise Appellant regarding potential errors and prepare a corresponding AOE. Capt Webster has not moved to withdraw as counsel yet. Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), both undersigned counsel provide the following information:

Maj Flanagan is currently assigned three cases, all of which are pending initial AOE’s before this Court. None of those matters take priority over the instant case.

Capt Webster is currently assigned 25 cases; 21 cases are pending before this Court (20 cases are pending AOE’s). To date, five cases have priority over the present case.

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

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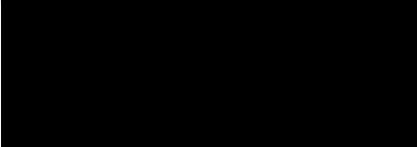
4. *United States v. Coley*, No. ACM 40675 – The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined.

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

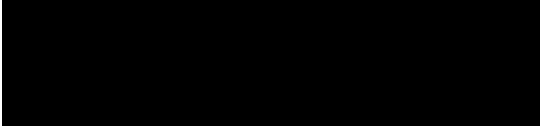
Through no fault of Appellant, undersigned counsel have been unable to complete their review and prepare a brief for Appellant’s case. An enlargement of time is necessary to allow counsel to fully review Appellant’s case and advise Appellant regarding potential errors. Appellant was advised on his right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

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

Respectfully submitted,



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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 12 June 2025.

Respectfully submitted,



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Email: brian.flanagan.7@us.af.mil

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
Technical Sergeant (E-6)	)	Before Panel No. 2
MARIO OSORNO, JR.,	)	No. ACM S32792
United States Air Force,)	
<i>Appellant.</i>	)	16 June 2025

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

Pursuant to Rule 23.2 of this Court’s Rules of Practice and Procedure, the United States hereby enters its 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 more nearly a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 300 days in length. Appellant’s nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 8 months for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not completed review of the record of trial at this late stage of the appellate process.

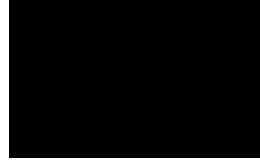
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



KATE E. LEE, Maj, USAF
Appellate Government Counsel
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 16 June 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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee,

v.

Technical Sergeant (E-6)
MARIO OSORNO, JR.,
United States Air Force,

Appellant.

**BRIEF ON BEHALF OF
APPELLANT**

Before Panel No. 2

No. ACM S32792

15 July 2025

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

Assignment of Error

**WHETHER A BAD-CONDUCT DISCHARGE IS INAPPROPRIATELY
SEVERE CONSIDERING THE HISTORY AND CHARACTERISTICS OF
TECHNICAL SERGEANT OSORNO.**

Statement of the Case

On 8 July 2024, Technical Sergeant (TSgt) Mario Osorno, Jr., was tried by a special court-martial consisting of a military judge alone at Nellis Air Force Base, Nevada. He was convicted, consistent with his pleas, of one charge and one specification of larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ),¹ 10 U.S.C. § 121. R. at 56. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-3, to be confined for twenty-eight days, to forfeit \$1,500 pay per month for five months, and to be discharged from the service with a bad-conduct discharge. R. at 80. The convening authority took no action on the findings or the sentence. Convening Authority Decision on Action – *United States v. TSgt Mario Osorno, Jr.*, 22 July 2024.

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.).

Statement of Facts

TSgt Osorno enlisted in the United States Air Force in 2009 and served over fourteen years on active duty without any history of misconduct. *See* Pros. Ex. 2. Indeed, he served excellently, operating in the maintenance career field and receiving the highest possible rating on his overall performance assessments in nine of his fourteen enlisted performance reports. *See* Pros. Ex. 3. TSgt Osorno was his squadron's armament systems technician of the year for 2014 and 2015, Pros. Ex. 3 at 12, 14; he served two six-month deployments, one to Al Udeid from 2016 to 2017 and one to Saudi Arabia from 2019 to 2020, Pros. Ex. 2; Def. Ex. B at 1; and—as a weapons load crew chief—he consistently achieved a high munitions release rate for the aircraft for which he was responsible, *see, e.g.*, Pros. Ex. 3 at 22 (100% muns release rt), *id.* at 24 (400% mnthly drop incr with 19 GBUs), *id.* at 26 (97% rlse rate). Throughout his career, TSgt Osorno directly contributed to Air Force efforts to deter and destroy aggression by the Islamic State of Iraq and the Levant (ISIL), North Korea, and Russia. *See id.* at 15 (“Performed >400 load ops; passed 47/52 WS load evals--delivered 340 bombs employ'd against ISIL/liberated Falluja”), *id.* at 18 (“Powered HHQ ‘Show of Force’ tasking; delivered 2 B-1B escort acft--proved USFK/ROK resolve/DPRK deterrence”), *id.* at 28 (“Expedited short-notice Ukraine resp; directed 12 Amn, gen'd 6 cmbt loaded F-16s--powered USAFE's Russia deterrence”).

Perhaps most notably, in September 2016, then-SSgt Osorno identified an electrical fire in an F-22 weapons bay. He extinguished the fire before it could reach and trigger an Air Intercept Missile (AIM), saving the lives of the pilot and six ground crew members as well as preventing the destruction of the 149-million-dollar aircraft. Def. Ex. at 3. For his heroism, he was awarded an Air Force Achievement Medal and was personally coined by the Chief of Staff of the Air Force. *Id.*; Pros. Ex. 3 at 16.

Unfortunately, during his fifteenth year of service in July 2023, TSgt Osorno had suicidal ideations. Fortunately, before attempting to kill himself, he sought help and was hospitalized for ten days, whereupon he was diagnosed with major depressive disorder. Def. Ex. A at 2; Def. Ex. D at 2. The suicidal ideations and subsequent depressive disorder diagnosis were the culmination of a life marked with emotional trauma. As a child, he did not have a relationship with his biological father. His mother was emotionally unavailable, and she eventually kicked him out of her home. He was also sexually abused. Def. Ex. A at 1–2; Def. Ex. D at 1–2.

His hardships continued in the military and at times were exacerbated by his service. His first marriage ended when his wife had an affair while TSgt Osorno was serving an unaccompanied tour in Korea. That same ex-wife refused to allow him to maintain physical custody of his child while serving outside of the United States. TSgt Osorno remarried, but his second wife suffered from borderline personality disorder, and that marriage also ended shortly before his hospitalization—after she told him that he deserved to be cheated on. Def. Ex. A at 1–2; Def. Ex. D at 1–2.

Following his release from inpatient treatment, between on or about 15 August 2023 and on or about 19 October 2023, TSgt Osorno used the unit’s government purchase card (GPC) to purchase \$8,000 worth of items for personal use or for personal resale. He had access to the GPC as the unit’s resource advisor (RA), and he was responsible for purchasing items for his unit’s operations and maintenance. On five occasions, he intermixed personal purchases with official government purchases. He masked these purchases by asking the vendors to change the invoices and by directing them to deliver the personal items to his home address, but his GPC misuse was ultimately discovered when one vendor delivered personal items to the unit. Pros. Ex. 1 at 2–6. He admitted to stealing the funds when interviewed by Air Force law enforcement. *Id.* at 6.

Pursuant to a plea agreement, App. Ex. III, TSgt Osorno pleaded guilty to stealing money on divers occasions from on or about 15 August 2023 to on or about 19 October 2023, specifically, military property of a value of more than \$1,000, in violation of Article 121, UCMJ, R. at 56. At the court-martial, the prosecution presented a stipulation of fact outlining the theft and TSgt Osorno's military records which included no other documented misconduct; rather, the records reflected his many contributions to the Air Force over his fifteen years of service. The prosecution also presented the testimony of one witness: TSgt Osorno's commander. R. at 59–66. The only marginal aggravation evidence the commander provided was that TSgt Osorno did not voluntarily disclose the theft in his standing meetings with the commander as an RA. R. at 62.

The defense presented a declaration from Dr. Keith Caruso, a psychiatrist who met with TSgt Osorno and reviewed the evidence underlying the GPC misuse. Dr. Caruso opined that TSgt Osorno was unconsciously reenacting the traumatic events of his past, keeping others at a distance rather than forming healthy, supportive relationships. Def. Ex. A. at 1–3. Indeed, TSgt Osorno confirmed in his unsworn statement that he was recovering from his suicidal ideations and hospitalization when he committed the offense at issue. Rather than seek the comfort of friends and family, he attempted to use the GPC to fund his hobbies, in a desperate and solitary attempt to “sprint out of the darkest point in [his] life.” R. at 70. In the sentencing argument asking for a sentence of, *inter alia*, a bad-conduct discharge, the prosecution attempted to portray TSgt Osorno as a deliberate schemer who orchestrated a careful manipulation of the GPC program, rather than a noncommissioned officer who served his country honorably for years and who embarrassed himself during a two-month period in which he was still recovering from a significant mental disorder. *Cf.* R. at 72–74.

Consistent with the terms of the plea agreement,² the military judge sentenced TSgt Osorno to be reprimanded, to be reduced to the grade of E-3, to be confined for twenty-eight days, to forfeit \$1,500 pay per month for five months, and to be discharged from the service with a bad-conduct discharge. R. at 80. The convening authority denied TSgt Osorno’s request for deferment of the reduction in grade and waiver of the automatic forfeitures and took no action on the findings or the sentence. Convening Authority Decision on Action – *United States v. TSgt Mario Osorno, Jr.*, 22 July 2024. The military judge signed a corrected copy of the entry of judgment on 10 September 2024. Entry of Judgment in the case of *United States v. TSgt Mario Osorno, Jr.*, 10 September 2024.

Argument

A BAD-CONDUCT DISCHARGE IS INAPPROPRIATELY SEVERE CONSIDERING THE HISTORY AND CHARACTERISTICS OF TECHNICAL SERGEANT OSORNO.

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

Under Article 66, UCMJ, as applicable to the 2023 offenses for which TSgt Osorno 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

² Under the terms of the plea agreement, the military judge would adjudge twenty-eight to ninety days of confinement; would not adjudge restriction to base or hard labor without confinement; and was authorized but not required to adjudge a punitive discharge, any forfeitures authorized under the R.C.M., and a reduction in grade to no lower than the grade of E-3. App. Ex. III at 2.

approved.” 10 U.S.C. § 866.³ 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 justice and to maintain good order and discipline in the armed forces.” Article 56(c)(1), UCMJ, 10 U.S.C. § 856(c)(1). Under Article 56(c), the sentencing authority should take into consideration: (A) the nature and circumstances of the offense and the history and characteristics of the accused; (B) the impact of the offense on any victim and the command; and (C) the need for the sentence to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, to promote adequate deterrence, to protect others from the accused, and to rehabilitate the accused. *Id.*

“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

³ 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 larceny 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).

two years of confinement, reasoning that the confinement was less severe than the punitive discharge).⁴ “A bad-conduct discharge is less severe than a dishonorable discharge and is designed as punishment for bad-conduct rather than as a punishment for serious offenses of either a civilian or military nature.” R.C.M. 1003(b)(8)(C). “It is also appropriate for an accused who has been convicted repeatedly of minor offenses and whose punitive separation appears to be necessary.” *Id.*⁵

Analysis

The portion of the punishment of a reprimand, reduction to the grade of E-3, confinement for twenty-eight days, and forfeiture of \$1,500 per month for five months is sufficient to promote justice and maintain good order and discipline in the armed forces considering the nature and circumstances of the offense and the history and characteristics of TSgt Osorno. The additional, severe punishment of a punitive discharge is unnecessary in this particular case and is therefore inappropriate.

⁴ Pursuant to the Benchbook, a military judge would instruct a panel that “The stigma of a punitive discharge is commonly recognized by our society. A punitive discharge will place limitations on employment opportunities and will deny the accused other advantages which are enjoyed by one whose discharge characterization indicates that (he) (she) has served honorably. A punitive discharge will affect an accused’s future with regard to (his) (her) legal rights, economic opportunities, and social acceptability.” Dep’t of Army, Pam. 27-9, Legal Services: Military Judges’ Benchbook at 87 (Feb. 29, 2020).

⁵ The Benchbook specifically instructs a bad-conduct discharge “may deprive one of substantially all benefits administered by the Department of Veterans Affairs and the military establishment. A bad-conduct discharge is a severe punishment and may be adjudged for one who in the discretion of the court warrants severe punishment for bad conduct (even though such bad conduct may not include the commission of serious offenses of a military or civil nature).” Dep’t of Army, Pam. 27-9, Legal Services: Military Judges’ Benchbook at 89 (Feb. 29, 2020).

A. Considering the nature and circumstances of the offense, the adjudged confinement and forfeitures sufficiently reflect the seriousness of the offense, promote respect for the law, and provide just punishment.

TSgt Osorno stole \$8,000. The adjudged confinement and forfeitures sufficiently reflect the seriousness of that offense and promote respect for the law. Through the forfeitures, he has effectively paid back to the military the money he attempted to take, so he is no longer unjustly enriched.⁶ On top of those forfeitures, he spent nearly a month in incarceration, providing just punishment for the offense and adequately deterring others who would be tempted to use their unit's GPC for personal gain.

Moreover, the circumstances of this particular offense particularly do not merit heavy-handed punishment. TSgt Osorno clearly committed the offense while still recovering from the traumatic chain of events that culminated in his suicidal ideations and hospitalization. Rather than some intricate scheme to amass wealth or prey upon the vulnerable, TSgt Osorno—still struggling to escape from his major depressive disorder—used the GPC to fund his hobbies, desperately searching for a light in his dark times. When caught, he confessed, accepted responsibility, and pleaded guilty. Twenty-eight days of confinement and forfeitures of \$1,500 a month for five months are an appropriate response to the theft under these extraordinarily sympathetic circumstances: TSgt Osorno may not have stolen a loaf of bread to try to stop from starving, but he stole funds in a similarly desperate attempt to repair his broken mental health. So, under the circumstances, the confinement, forfeitures, and lifelong stigma of a federal conviction adequately reflect the seriousness of the offense. Consequently, the bad-conduct discharge is simply disproportionate, especially considering the history and characteristics of this particular Appellant.

⁶ See also Department of the Air Force Instruction 64-117, *Government Purchase Card Program*, ¶ 13.5.4 (May 19, 2022) (“If financial management confirms the purchase was improper, they will apply the appropriate remedy to recoup the funds, ensure the funds are returned to the correct billing account, and in turn provide the GPC program office with all pertinent information.”).

B. Considering the history and characteristics of the accused, the punitive discharge is inappropriately severe.

Prior to his hospitalization, TSgt Osorno served for fourteen years without incident. That length of service alone merits consideration, and the specifics of TSgt Osorno's career especially demonstrate why a bad-conduct discharge is not a necessary punishment for this particular Airman. He served excellently, often receiving the highest possible evaluations from his supervisors. He did so from deployed locations, where his efforts directly contributed to Air Force missions. TSgt Osorno's efforts resulted in the reliable delivery of munitions to repel, defeat, and destroy those who would harm the nation and our allies. It can often be difficult to measure these results, but there is no need to guess as to the impact TSgt Osorno has made. Through his actions in September 2016, he saved seven lives and a 149-million-dollar aircraft by identifying and extinguishing the fire in the F-22 weapons bay. This does not justify or excuse the theft of \$8,000, but it must be considered in determining the appropriate sentence. A bad-conduct discharge for an \$8,000 crime—in addition to confinement and forfeitures—simply does not reflect due consideration to the lives and millions of dollars TSgt Osorno saved or his myriad other contributions to the Air Force over his fifteen years of service.

The severe punishment of a bad-conduct discharge punitively reduces TSgt Osorno's years of service to his actions over the course of two months during which he was recovering from a significant mental health disorder. Before acting on that punitive discharge, this Court must take into account that the events causing this downward spiral were exacerbated in part by his military service. Specifically, his first wife had an affair while he was serving on an unaccompanied, year-long tour. Following their divorce, she refused to allow their child to accompany him on his subsequent overseas assignments. He remarried and divorced again after his second wife told him he deserved to be cheated on. These events that caused him to consider suicide were the

unfortunate results of the strain his military service put on his familial relationships. In sum, a bad-conduct discharge fails to account for not only the fourteen years of honorable military service he provided prior to 2023 but also his mental state in 2023 when he committed the offense—a mental state to which his sacrifices in service of his country directly contributed. A punitive discharge—and with it the collateral consequences of stripping TSgt Osorno from Department of Veterans Affairs and other military benefits—is unnecessarily severe considering the history and characteristics of this Appellant when weighed against the offense itself and the other forms of punishment adjudged.

C. The punitive discharge is not necessary to achieve the purposes of sentencing outlined in the remaining Article 56(c) factors.

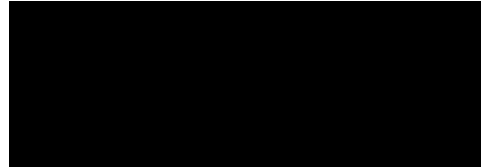
The victim—the command in this case—did not identify any harm to the unit other than the loss of \$8,000 itself. As stated above, the confinement and forfeitures sufficiently reflect the seriousness of that offense, promote respect for the law, and provide just punishment for the theft. Moreover, the reduction in rank surely serves as an adequate balm for any tangential effect on good order and discipline; it effectively ends TSgt Osorno’s military service and sends the visible message of the consequences of misusing unit funds. Likewise, it is unfathomable that a would-be-GPC-abuser exists who would be undeterred by the threat of conviction, incarceration, and forfeitures but who would refrain from misconduct due only to the additional threat of a bad-conduct discharge. Similarly, a bad-conduct discharge does not protect the public from the Appellant nor does it serve to rehabilitate him; indeed, through his service he has shown that he can be an exceptional member of even the most demanding of communities. As a punishment without an Article 56(c) purpose, the punitive discharge is unnecessary and therefore inappropriate.

D. Setting aside the punitive discharge is just.

This Court should follow the precedent of the Navy-Marine Corps Court of Criminal Appeals in *United States v. Kerr*. No. 202200140, 2023 CCA LEXIS 434 (N.M. Ct. Crim. App. Oct. 17, 2023). In that case, a Marine pleaded guilty to larceny for stealing an explosive flashbang, two gas cannisters, and a fellow Marine’s car. The military judge sentenced him to eight months of confinement and a bad-conduct discharge, but the appellate court set aside the punitive discharge as inappropriately severe. *Id.* at *7. In doing so, the court noted that, while serving in Afghanistan, the appellant responded to an improvised explosive device and “assisted a wounded U.S. Army Soldier to reach safety and also helped save the life of another wounded Marine.” *Id.* at *6. The court also found mitigating that the appellant suffered from post-traumatic stress disorder, a condition he developed due to the “mental stress and traumas that Appellant incurred in the Marine Corps.” *Id.* at *7. Notably, the Marine enlisted in 2017 and committed his offenses in 2021 after admirably serving his country for four years. *Id.* at *4–6.

The mitigating evidence here is remarkably similar and merits equal consideration from this Court through the same remedy: setting aside the punitive discharge. Like the Marine, TSgt Osorno saved lives during his military service. He committed his offenses while recovering from a severe mental disorder—a disorder resulting from the traumas he incurred while in military service. The cases are distinguishable in that TSgt Osorno served nearly ten years longer than did the Marine and committed a less severe form of larceny (misusing a GPC rather than stealing a car from a fellow service member and stealing military weapons). This Court should follow the logic of its sister court and hold that, considering these mitigating factors, a reprimand, confinement, forfeitures, and a reduction in grade sufficiently punishes Appellant; a punitive discharge in addition to that other punishment is unnecessary and inappropriately severe.

WHEREFORE, Appellant respectfully requests that this Honorable Court set aside the portion of his sentence to a bad-conduct discharge as inappropriately severe.

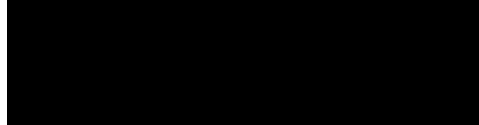


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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 15 July 2025.

Respectfully submitted,



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	ANSWER TO ASSIGNMENT
<i>Appellee,</i>	)	OF ERROR
)	
v.)	
	)	No. ACM S32792
Technical Sergeant (E-6))	
MARIO OSORNO, JR.,	)	Before Panel No. 2
United States Air Force)	
<i>Appellant.</i>	)	7 August 2025

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

ISSUE PRESENTED

**WHETHER A BAD-CONDUCT DISCHARGE IS
INAPPROPRIATELY SEVERE CONSIDERING THE
HISTORY AND CHARACTERISTICS OF [APPELLANT].**

STATEMENT OF THE CASE

The United States agrees with Appellant’s Statement of the Case.

STATEMENT OF FACTS

Appellant’s Crimes

On 8 July 2024, Appellant pleaded guilty to the following offense in violation of Article 121, UCMJ:

Did, within the continental United States, on divers occasions, between on or about 15 August 2023 and on or about 19 October 2023, steal money, military property, of a value of more than \$1,000, property of the United States.

(Entry of Judgement, 10 September 2024, ROT, Vol. 1.)

In June 2023, Appellant was selected to serve as a resource advisor (RA) for the 757th Aircraft Maintenance Squadron at Nellis AFB. (Pros. Ex. 1 at 1.) RAs are appointed as authorizing officials (AOs) over their respective unit’s government purchase card (GPC)

accounts. (Id. at 2.) As part of his competitive selection, Appellant was required to complete a training curriculum before getting access and authority to approve the expenditure of government funds. (Id.)

While Appellant was the RA, he wrongfully purchased items “from various government vendors for personal use and/or benefit. [Appellant] did so through multiple vendors and transactions.” (Id. at 2.) For example, on or about 14 September 2023, Appellant requested a quote for 27 unique items from Xpress Gov Supply. (Pros. Ex. 1 at 5-6; R. at 32-38.) Eight of the items listed in the invoice were for Appellant’s personal use and benefit and included items such as modifications for Appellant’s truck (Rough Country Lift Kit, Beast Rims, and off-roading tires) and a Ring Doorbell. (Pros. Ex. 1 at 5.) The approximate value of the eight items was somewhere between \$5,000 to \$6,000. (Id.) Appellant requested that the eight items were shipped directly to his personal address, while the others would be sent to his unit. (R. at 33.) Appellant made at least four other transactions from three different vendors to illicitly purchase items for his hobbies, such as buying accessories for his truck, while using government funds. (Pros. Ex. 1.)

To hide his actions, Appellant abused his authority as the RA and AO and would intermix items intended for “fund[ing] his hobbies” with legitimate government purchases and pay a lump sum using money belonging to the United States. (App. Br. at 4; R. at 70.) Appellant would either pick up the items himself or intentionally alter the shipping address to private residences. (Pros. Ex. 1; R. at 19-20.) That way Appellant could keep the wrongfully purchased items for his own use, and then bring the legitimate items to his unit. (Pros. Ex. 1; R. at 19-20.) Appellant would intentionally request the vendors to alter certain line items on the invoices to further decrease the likelihood of detection. (R. at 19, 26-27.) Appellant kept several items for personal

use, while others were sold for personal benefit. (Pros. Ex. 1 at 2-3; R. at 37.) As a result, between August 2023 and October 2023, Appellant stole between \$8,000 to \$10,000 of military property, money, with the intent to permanently deprive the United States of the use and benefit of the property.¹

On or about 10 October 2023, the eight items Appellant purchased from Xpress Gov Supply for himself were inadvertently included in the shipment to Appellant's unit. (Pros. Ex. 1 at 5-6; R. at 32-38.) Appellant was notified of the error and immediately "denied that the items belonged to him, cancelled his leave, and returned to the unit, stating he would 'sort it out.'" (Pros. Ex. 1 at 6; R. at 35-38.) Due to the vendor's shipping error, Appellant proceeded to delete and modify the invoices containing his illicit purchases. (Pros. Ex. 1 at 6; R. at 35-38.) Appellant would change or delete specific items from the invoice and told the other RAs that the items were simply misdelivered and the vendor would be picking them up. (Pros. Ex. 1 at 6; R. at 35-38.) Over two and a half months later, on or about 28 December 2023, during his law enforcement interview, Appellant confessed to stealing government funds and abusing his position as an RA to wrongfully purchase personal items with money belonging to the United States military. (Pros. Ex. 1 at 6; R. at 37.)

Between June 2023 and August 2023, Appellant experienced an acute mental health crisis which resulted in inpatient hospitalization. (Pros. Ex. 1 at 2.) This was attributed to past trauma prior to his military service, two divorces, and the loss of physical custody over his son. (Def

¹ Appellant repeatedly asserts that the total amount stolen was \$8,000. (App. Br. 3, 8-10.) However, as evidenced by the Stipulation of Fact and Appellant's own words in the Care inquiry, the true amount ranged from a minimum of \$8,000 to a maximum of \$10,000. (Pros. Ex. 1; R. at 20, 37.) Appellant told the military judge the following: "I am confident I stole somewhere between eight thousand and ten thousand from the government by appropriating GPC funds through personal purchases." (R. at 20.)

Ex. A at 2-3.) Appellant was diagnosed with major depressive disorder and started a psychiatric treatment plan. (Id.; Pros. Ex.1 at 2; R. at 69.) Following treatment, Appellant was cleared to return to his duties, finish his training, and serve as an RA. (Pros. Ex. 1 at 2; R. at 69.) Still, at the time of the offenses committed, Appellant was able to appreciate the nature, quality, and wrongfulness of the conduct and did not suffer from any mental disease or defect that would make him unable to appreciate the wrongfulness of his conduct. (Pros. Ex. 1 at 1; *Order for Mental Capacity/Responsibility Inquiry*, 3 July 2024, ROT, Vol. II; R. at 41-42.)

Appellant's Service History

Appellant has been in the United States Air Force since 2009. (Pros. Ex. 1 at 1.) Appellant served two six-month deployments. (Pros. Ex. 2.) During his deployment in Al Udeid, Appellant identified and extinguished an electrical fire in an F-22 weapons bay, for which he was awarded an Air Force Achievement Medal. (Def. Ex. B at 3.)

Appellant's Plea Agreement

Appellant was charged with three specifications of stealing military property of a value of more than \$1,000 in violation of Article 121, Uniform Code of Military Justice (UCMJ). (*Charge Sheet*, 20 May 2024, ROT, Vol. 1.) Pursuant to a plea agreement, Appellant pleaded guilty to stealing money on divers occasions from on or about 15 August 2023 to on or about 19 October 2023, specifically, military property of a value of more than \$1,000, in violation of Article 121, UCMJ. (*Entry of Judgement*, 10 September 2024, ROT, Vol. 1.; App. Ex. III.) In return for a guilty plea, the trial counsel would withdraw and dismiss with prejudice two of the specifications and consolidate the first specification to include the entire period when Appellant was stealing military funds. (App Ex. III at 1.) Further, in return for Appellant's guilty plea, the military judge was required to enter a sentence as follows:

- a. Punitive Discharge: The military judge may adjudge a punitive discharge.
- b. Confinement:
For the Charge and its Specification: 28 to 90 days confinement.
- c. Forfeiture of Pay and Allowances: The military judge may adjudge any forfeiture of pay and allowances permissible under the Rules for Court-Martial.
- d. Reduction in Rank: The military judge may adjudge a reduction in rank to no less than the grade of E-3.
- e. Other Limitations: The military judge may not adjudge a restriction to base or hard labor without confinement.

(Id. at 2.) Appellant agreed and signed the plea agreement. (Id. at 2, 4.) During the Care inquiry, the military judge confirmed that Appellant was aware of the entire contents of the agreement and its ramifications:

MJ: ... the court may impose any lawful sentence that includes a potential punitive discharge, a bad conduct discharge in this case, and forfeitures of two thirds pay and allowances for up to twelve months. Is this your understanding of the agreement with the convening authority?

ACC: Yes, Your Honor.

...

MJ: Did you enter the agreement of your own free will?

ACC: Yes, Your Honor.

...

MJ: Do you fully understand all the terms of the plea agreement and how they affect your case?

ACC: Yes, Your Honor.

...

MJ: Do you fully understand the meaning and effect of your plea of guilty?

ACC: Yes, Your Honor.

(R. at 51, 53.)² Appellant knew the plea could result in a bad-conduct discharge, and still believed it was a fair deal secured by a competent trial defense counsel. (R. at 53-55, App. Ex. III.)

ARGUMENT

APPELLANT’S ADJUDGED 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.

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)). Unlike the act of bestowing mercy through clemency, which was delegated to other hands by Congress, Courts of Criminal Appeals are entrusted with the task of determining sentence appropriateness, thereby ensuring the accused gets the punishment he deserves. Healy, 26 M.J. at 395-96.

² United States v. Care, 40 C.M.R. 247 (C.M.A. 1969).

This Court has observed that the terms of a plea agreement can help determine whether a sentence is appropriate. United States v. Fields, 74 M.J. 619, 625 (A.F. Ct. Crim. App 2015) (“[A]ccused’s own sentence proposal is a reasonable justification of its probable fairness to him.”) (quoting United States v. Hendon, 6 M.J. 171, 175 (C.M.A. 1979)). The Navy-Marine Corps Court of Criminal Appeals (NMCCA) similarly stated 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

Upon agreeing to a favorable plea agreement, Appellant seeks to reduce his sentence claiming that a bad-conduct discharge is “inappropriately severe.” (App. Br. at 5.) As explained in detail below, Appellant’s claims fail because he agreed that a bad-conduct discharge was a possible punishment, and his sentence matched the severity of the crimes committed.

A. Appellant’s willingness to agree to a plea agreement – that allowed the military judge to adjudicate a bad-conduct discharge – was indicative of an appropriate sentence.

Appellant told the military judge that he understood the ramifications of a maximum possible sentence per the agreement, which included a bad-conduct discharge. (R. at 51.) The terms of the plea agreement state that, “The military judge may adjudge a punitive discharge.” (App. Ex. III at 2.) Appellant repeatedly affirmed with “Yes, Your Honor” when asked whether he understood the terms and implications of the agreement, including the provision that allowed the military judge to adjudicate a bad-conduct discharge. (R. at 44-55.) Appellant confirmed that he discussed the agreement with his trial defense counsel and was satisfied with the advice given. (R. at 53.) Appellant received benefits from the plea agreement, such as limiting his

maximum term of confinement to 90 days, in exchange for maintaining a punitive discharge as a possible punishment. (App. Ex. III.) Per the plea agreement, Appellant's confinement exposure reduced from 12 months to 90 days, prohibited hard labor and restriction to base, and had three specifications consolidated into one, limiting Appellant's number of convictions. This Court should hold Appellant accountable for his side of the agreement and approve the bad-conduct discharge that Appellant allowed the military judge to consider.

This Court considers an appellant's own sentence proposal as weighing notably in favor of producing an appropriate sentence. Fields, 74 M.J. at 625. In Fields, the appellant voluntarily entered into a pretrial agreement and "voluntarily agreed to a sentence cap that limited confinement to no more than six months but did not prevent a punitive discharge." 74 M.J. at 626. Similarly here, Appellant voluntarily entered into a plea agreement and voluntarily agreed to a sentence that "did not prevent a punitive discharge." *See id.* This Court in Fields found the sentence to be appropriate due in part to the appellant's willingness to receive a bad-conduct discharge. Id. The same reasoning should apply here.

B. The nature and circumstances of the Appellant's thefts warrant a bad-conduct discharge.

Furthermore, the nature and circumstances of Appellant's offense warrant a bad-conduct discharge. Regardless of the plea agreement, Appellant still could have received a bad-conduct discharge. The only scenario where a bad-conduct discharge would have eliminated the possibility was if Appellant had specifically bargained to prohibit a bad-conduct discharge. Within a month of completing his GPC training, Appellant was stealing taxpayer funds for personal benefit, such as buying parts for his truck. (Pros. Ex. 1 at 2-3.) Appellant did not engage in a "desperate [one time] attempt to repair his broken mental health" through one isolated incident; he proceeded to steal military property at least four more times because he

thought he could get away with it. (App. Br. at 8; Pros. Ex. 1 at 2-6.) As explained, Appellant went through great lengths to conceal his theft. Appellant made calculated decisions to have the illicit personal items mailed to his residence, while the lawful GPC purchases were mailed to his unit. (Pros. Ex. 1; R. at 19-20.) Appellant knew what he did was wrong because when the unit suspected theft, Appellant deleted and altered line items and changed dates to conceal the unlawful purchases. (Pros. Ex. 1 at 6; R. at 35-38.)

As the assistant trial counsel explained in sentencing argument, “He manipulated, he misused, he misled.” (R. at 71.) The facts and Appellant’s own admissions during the Care inquiry demonstrate that this was not a case of \$1,001 stolen, which would still warrant a potential punitive discharge, but rather eight to ten times that minimum amount. (Pros. Ex. 1; R. at 20, 37.) As a trusted GPC user, AO, and RA, Appellant deliberately abused his positions of trust and stole military property. This aggravating factor supports a bad-conduct discharge.

a) Appellant’s length in service did not mitigate the seriousness of the crimes committed.

Appellant argues that his 14 years of service prior to this action merit consideration. (App. Br. at 9.) The United States agrees those years should be considered, but for a different reason. The 14 years of service was an aggravating factor because Appellant knew better than to steal military property close to \$10,000 in value. Appellant was “[n]ot some junior airman who used their government travel card.” (R. at 72.) Rather, Appellant was a “veteran NCO,” a decorated Technical Sergeant in a position of trust who abused his authority for personal gain. (Id.) The assistant trial counsel emphasized this point in the government’s sentencing argument that, “Technical Sergeants are expected to lead by example, properly use resources within [their] control, and foster a positive culture of trust within their organization.” (R. at 72); *see also The Enlisted Force Structure*, AIR UNIVERSITY,

<https://www.airuniversity.af.edu/Portals/10/Foundational-Resources/Enlisted-Force-Structure.pdf>
(last visited 4 August 2025) (“[Technical Sergeants] lead by example as role models to all[,] ensure proper use of resources within their control...[and] fostering a positive culture of trust within and outside their organizations.”). Appellant knew better than to steal and betray that trust.

Appellant’s service history was a demonstration of an aggravating factor under Rules for Court Martial, 1001(b)(4) that weighed in favor of the approved sentence that included a bad-conduct discharge. Appellant’s theft was not a mistake, but an intricate plan to strip funds from the United States military that occurred at least five times over multiple months. Appellant’s own words during the Care inquiry established that all of his actions were done with the knowledge that he was committing wrongful acts and with the specific intention of permanently depriving the United States Air Force of its property, between \$8,000 to \$10,000 of appropriated funds. (R. at 22, 25.) Thus, his conduct merits a bad-conduct discharge.

b) Appellant’s mental health struggles at the time of the offense did not mitigate his crimes.

Appellant attempts to argue that the nature and circumstances of his crimes warrant only 28 days of confinement and forfeitures of \$1,500 a month for five months. (App. Br. at 8.) Appellant points to the “major depressive disorder” that he was struggling with in the lead up to the theft. (App. Br. at 3; Def. Ex. A at 2; Def Ex. D at 2.) Appellant disregards both the results of the R.C.M. 706(b) inquiry and his own words during the Care inquiry:

MJ: ... do you believe that you knew what you were doing when you stole money from the United States and could have avoided doing so if you wanted to at the time?

ACC: Yes, Your Honor.

(R. at 41-42; Pros. Ex. 1 at 1; *Order for Mental Capacity/Responsibility Inquiry*, 3 July 2024, ROT, Vol. II; R. at 41-42). Appellant knew or should have known of services available to “repair [Appellant’s] broken mental health.” (App. Br. at 8). Rather than seeking out those services, Appellant abused his authority and stole money from the Air Force to fund his hobbies and make some money. (App. Br. at 4; R. at 70.) While mental health struggles can serve to weigh in the consideration of a sentence, the circumstances here presented a different reality than what Appellant portrays. Appellant stole military property – appropriated funds to support his recreational activities to accessorize his truck. As established by this Court, the grounds for determining the appropriateness of a sentence are not from one specific aspect but require the review of the totality of facts and circumstances connected to the given case. Amador, 61 M.J. at 626 (citing Snelling, 14 M.J. at 268); Alis, 47 M.J. at 828. Under the totality of the facts and circumstances, a bad-conduct discharge is appropriate.

Moreover, Appellant attempts to demonstrate that a bad-conduct discharge is not necessary to achieve the purposes of sentencing outlined in Article 56(c), UCMJ. (App. Br. at 10.) As discussed above, a bad-conduct discharge is representative of the nature and circumstances of the offense even when weighed against the history and characteristics of Appellant.

c) Appellant’s reliance on United States v. Kerr is misplaced.

Finally, Appellant argues that his honorable service warrants sentence relief on appeal, and draws comparisons to United States v. Kerr, No. 202200140, 2023 CCA LEXIS 434 (N.M. Ct. Crim. App. 17 October 2023) (unpub. op.); (App. Br. at 11.) Appellant mistakenly refers to

Kerr as precedent, but this case is an unpublished opinion and therefore does not serve as binding precedent to this Court or the NMCCA.³ Appellant’s reliance on Kerr is not persuasive.

Kerr involved an appellant, also convicted of stealing military property, who deployed to Afghanistan, and was assigned as security forces working on behalf of the U.S. Department of State at the Hamid Karzai International Airport as part of the U.S. withdrawal from Afghanistan in August 2021. Kerr, unpub. op. at 4-5. The appellant survived the Abbey Gate improvised explosive device (IED) bombing and saved a wounded Army soldier and a Marine by bringing them to safety. Kerr, unpub. op. at 5-6. The appellant scored “very high” on an evaluation for both traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD) due to the attack. Id. at 7-8. Based on these facts and circumstances, the court determined an eight-month confinement sentence was adequate and set aside the punitive discharge. Id. at 8. A strong consideration was the fact that the trial military judge did not feel that a punitive discharge was appropriate given the extraordinary, extenuating circumstances but adjudged one pursuant to the plea agreement that mandated a bad-conduct discharge. Id.

None of these extraordinary facts outlined in Kerr were present in this case. Here, there was no TBI or PTSD resulting from military service. Appellant attempts to characterize his divorces and resulting mental health issues as “exacerbated in part by his military service.” (App. Br. at 9.) But Appellant fails to articulate how his personal life struggles and mental health

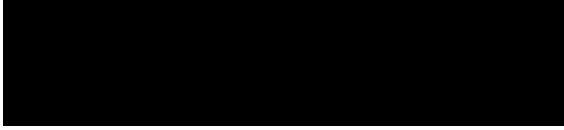
³ Since Kerr, the NMCCA has twice denied similar arguments in other cases, one of which is binding to the NMCCA. See Avellaneda, 84 M.J. at 662 (“We held in Kerr that the bad-conduct discharge for that appellant under the specific circumstances of that case was inappropriately severe and set it aside. And the decision in that case was not a close call. In contrast, the military judge in this case, who accepted the plea agreement, after conducting a detailed colloquy with Appellant and his counsel, accepted the plea agreement without expressing any reservation.”); see also Williams, unpub. op. at 5 (finding a plea agreement with a bad-conduct discharge included lends to the sentence being appropriate).

issues were a result of his military service. Appellant's own psychiatrist, Dr. Keith Caruso, produced a declaration for the defense. (Def. Ex. A.) Nowhere in Dr. Caruso's declaration is there any mention of Appellant's military service as a possible reason for the mental health struggles, but rather his childhood traumas are considered as possible explanations. (Id.) While several of these events occurred while Appellant was in the military, there was no evidence provided to connect the two beyond a year-long deployment. (App. Br. at 3, 9.) As a result, Appellant's case is not analogous to Kerr. Appellant performed an honorable act that involved putting out a fire before it caused damage to an F-22 and potential harm to himself and his colleagues. While this act deserves recognition, it does not equate to standing meters away from an IED explosion in a crowded airport while the United States was removing its troops and presence from Afghanistan. Kerr, unpub. op. at 5-6.

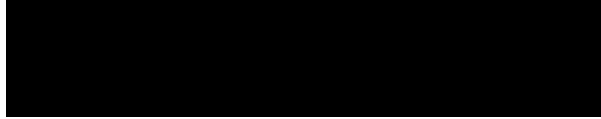
In sum, Appellant has failed to show that his case and Kerr are "closely related" or that the sentences are highly disparate. United States v. Anderson, 67 M.J. 703, 705-06 (A.F. Ct. Crim. App. 2009); United States v. Lacy, 50 M.J. 286, 288 (C.A.A.F. 1999). Notably, the military judge in this case expressed no reservation about adjudging a punitive discharge. In fact, unlike in Kerr, where the military judge had no choice but to adjudicate a bad-conduct discharge, here, the decision was entirely up to the military judge. Appellant's circumstances simply do not compare to the extreme circumstances at play in Kerr that moved the court to look past the fact that the appellant negotiated for the bad-conduct discharge in that case. Thus, this Court should affirm Appellant's bad-conduct discharge.

CONCLUSION

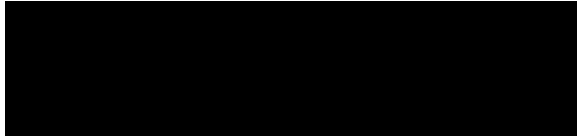
For these reasons, the United States respectfully requests that this Honorable Court deny Appellant’s claim and affirm the finding and sentence in this case.



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⁴ As a civilian extern, Mr. Korologos as a signing, non-attorney was always supervised during the appellate process, and undersigned counsel assumes responsibility for the content of the filing pursuant to this Court’s Rules of Practice and Procedure, Rule 14(c).

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force
Appellate Defense Division on 7 August 2025.



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee,

v.

Technical Sergeant (E-6)
MARIO OSORNO, JR.,
United States Air Force,

Appellant.

REPLY BRIEF ON BEHALF OF
APPELLANT

Before Panel No. 2

No. ACM S32792

14 August 2025

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

Appellant, Technical Sergeant (TSgt) Mario Osorno, Jr., 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 (August 7, 2025) (Ans.).

**A BAD-CONDUCT DISCHARGE IS INAPPROPRIATELY SEVERE
CONSIDERING THE HISTORY AND CHARACTERISTICS OF
TECHNICAL SERGEANT OSORNO.**

This Court should set aside the adjudged bad-conduct discharge because it is inappropriately severe. As stated by this Court in *United States v. Sauk*, 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.” 74 M.J. 594, 606 (A.F. Ct. Crim. App. 2015) (*en banc*) (alteration in original) (citation omitted). In its Answer, the Government does not earnestly attempt to balance these factors to argue for a just sentence. Instead, the Government meticulously restates the details of the offense while failing to properly acknowledge TSgt Osorno’s mental health or his record of service. *Compare* Ans. at 1–4 (restating the stipulation of fact over three pages), *with* Ans. at 4 (summarizing TSgt Osorno’s sixteen-year service history in three sentences).

First, at the time of the offense, TSgt Osorno was recovering from a significant mental health disorder. Def. Ex. A at 2; Def. Ex. D at 2. That disorder is unquestionably mitigating as an extenuating circumstance. *Cf. United States v. Perez*, No. ACM S32637 (f rev), 2021 CCA LEXIS 501, at *6 (A.F. Ct. Crim. App. Sep. 28, 2021) (unpub. op.) (“The court acknowledges that Appellant presents a sympathetic explanation of his mental health issues as evidence in mitigation and extenuation.”). But the Government conflates mental responsibility with mitigation to incorrectly conclude that the disorder does not constitute any mitigation. Ans. at 10–11. Moreover, the Government denies that TSgt Osorno’s military service contributed to his depression, Ans. at 13, when his spouse cheated on him *during his deployment* and refused to allow him to bring his son *on his overseas assignments*. Def. Ex. A at 1–2; Def. Ex. D at 1–2. These dismissive arguments ignore the human experience and betray the Government’s unwillingness to contend with “the particular appellant [and] the nature . . . of the offense.” *Sauk*, 74 M.J. at 606.

Second, TSgt Osorno had an impressive service record from 2009 into 2023 that likewise constitutes significant mitigation. The Government attempts to pay lip service to the fact that TSgt Osorno extinguished an electrical fire in an F-22 weapons bay, Ans. at 4, before concluding—with reliance grounded in trial counsel’s own sentencing argument and without any legal analysis—that his service that his service nevertheless is an aggravating factor, Ans. at 9–10. Even in that brief concession, the Government still fails to acknowledge that by recognizing the danger and then acting to prevent it, TSgt Osorno saved a multi-million dollar aircraft and multiple lives, for which he was personally coined by the Chief of Staff of the Air Force. Def. Ex. at 3; Pros. Ex. 3 at 16. More importantly, his heroism in September 2016 was not his only contribution to the military during his years of service. It instead was the highlight of a lengthy career consistently marked by personal sacrifice and technical proficiency in service of Air Force

operations to deter and defeat threats to the United States. Brief on Behalf of Appellant at 2 (July 15, 2025) (noting various contributions and results throughout TSgt Osorno’s career documented in his enlisted performance reports).

Case law and the Uniform Code of Military Justice (UCMJ)¹ require that this Court adjudge a sentence based not solely on an appellant’s worst or best days in the Air Force but rather on his entire military record. *See* Article 66; 10 U.S.C. § 866² (“The Court may affirm only such findings of guilty, and 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.”) (emphasis added); *United States v. Anderson*, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009) (“We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense, the appellant’s *record of service*, and *all matters* contained in the record of trial.”) (emphasis added). Under that standard, it becomes clear that TSgt Osorno’s theft in 2023 was an aberration, symptomatic of his mental disorder. While not a defense to or an excuse for the offense, it is another extenuating circumstance that the Government refuses to acknowledge. It also becomes equally clear that, considering the “nature and circumstances of the offense and the history and characteristics of the offender,” a bad-conduct discharge simply is not warranted. Article 56(c)(1), UCMJ, 10 U.S.C. § 856(c)(1)(A). The theft was a crime and was appropriately punished with a conviction, reprimand, reduction in grade, forfeitures, and confinement, but

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 theft 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).

reducing the entirety of TSgt Osorno’s service to this offense—permanently marking his military career with the stigma of a punitive discharge—is an unbalanced sentence.

Perhaps recognizing that the severe punishment of a bad-conduct discharge is disproportionate when considering not only the circumstances of the offense but also the entirety of TSgt Osorno’s career, the Government emphasizes the red herring that a bad-conduct discharge was not proscribed by the plea agreement. Ans. at 4–5, 7–8. The bad-conduct discharge was an authorized punishment given the offense, the forum of the court-martial, and the terms of the plea agreement. Entry of Judgment in the case of *United States v. TSgt Mario Osorno, Jr.*, 10 September 2024. However, that is simply not the only test at issue here. Pursuant to Article 66 of the UCMJ, this Court must review *de novo* whether the sentence is inappropriately severe. 10 U.S.C. § 866 (“The Court may affirm only such findings of guilty, and 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.*”) (emphasis added); *see also 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.’”). For the aforementioned reasons and those stated in the initial brief, after reviewing *de novo* all the matters in the record, including the extenuating circumstances of the offense and the mitigating service history of TSgt Osorno, the punitive discharge is inappropriately severe.

WHEREFORE, Appellant respectfully requests that this Honorable Court set aside his bad-conduct discharge.

Respectfully submitted,



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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 14 August 2025.

Respectfully submitted,



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