

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

UNITED STATES	)	No. ACM 40714
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Marc W. PENNINGA	)	
Major (O-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 3

On 9 January 2025, counsel for Appellant submitted a Motion for Enlargement of Time (First), requesting an additional 60 days in which to file 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 14th day of January, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **20 March 2025**.

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



FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (FIRST)
	)	
v.	)	Before Panel No. 3
	)	
Major (O-4)	)	No. ACM 40714
MARC W. PENNINGA,	)	
United States Air Force,	)	9 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)(1) and (2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **20 March 2025**. The record of trial was docketed with this Court on 20 November 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 first enlargement of time.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

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 9 January 2025.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
Major (O-4)	)	ACM 40714
MARC W. PENNINGA, 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.

[Redacted Signature]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division

[Redacted Address Line 1]
[Redacted Address Line 2]
[Redacted Address Line 3]

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 13 January 2025.



JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (SECOND)
	)	
v.	)	Before Panel No. 3
	)	
Major (O-4)	)	No. ACM 40714
MARC W. PENNINGA,	)	
United States Air Force,	)	11 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) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a second enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **19 April 2025**. The record of trial was docketed with this Court on 20 November 2024. From the date of docketing to the present date, 111 days have elapsed. On the date requested, 150 days will have elapsed.

On 4–5 March and 24–27 June 2024, a military judge sitting as a general court-martial at Seymour Johnson Air Force Base, North Carolina, convicted Appellant, consistent with his pleas, of one charge and one specification of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a, and one charge and one specification of fraternization in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 266, Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2024 (EOJ). The military judge sentenced Appellant to a reprimand, confinement for 30 days, and a dismissal. R. at 821. The convening authority took no action on the findings but disapproved the adjudged reprimand. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Maj Marc W. Penninga*.

The electronic record of trial is three volumes consisting of 16 prosecution exhibits, three defense exhibits, one court exhibit, and 73 appellate exhibits; the transcript is 822 pages. Appellant is not currently confined.

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

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

Respectfully submitted,

A solid black rectangular redaction box covering the signature of Frederick J. Johnson.

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

A solid black rectangular redaction box covering the contact information, likely a phone number and address.

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 11 March 2025.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

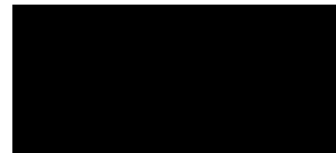
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 3
Major (O-4)	)	
MARC W. PENNINGA	)	No. ACM 40714
United States Air Force.	)	
<i>Appellant</i>	)	12 March 2025

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

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

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



KATE E. LEE, Maj, USAF
Appellate Government Counsel



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 12 March 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (THIRD)
	)	
v.	)	Before Panel No. 3
	)	
Major (O-4)	)	No. ACM 40714
MARC W. PENNINGA,	)	
United States Air Force,	)	11 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) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a third enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **19 May 2025**. The record of trial was docketed with this Court on 20 November 2024. From the date of docketing to the present date, 142 days have elapsed. On the date requested, 180 days will have elapsed.

On 4–5 March and 24–27 June 2024, a military judge sitting as a general court-martial at Seymour Johnson Air Force Base, North Carolina, convicted Appellant, consistent with his pleas, of one charge and one specification of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a, and one charge and one specification of fraternization in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 266, Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2024 (EOJ). The military judge sentenced Appellant to a reprimand, confinement for thirty days, and a dismissal. R. at 821. The convening authority took no action on the findings but disapproved the adjudged reprimand. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Maj Marc W. Penninga*.

The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Appellant is not currently confined.

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

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

Respectfully submitted,

A solid black rectangular redaction box covering the signature of Frederick J. Johnson.

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

A solid black rectangular redaction box covering the address and contact information of Frederick J. Johnson.

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 11 April 2025.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

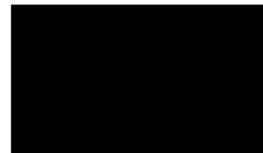
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 3
Major (O-4)	)	
MARC W. PENNINGA,	)	No. ACM 40714
United States Air Force	)	
<i>Appellant.</i>	)	15 April 2025

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

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

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



KATE E. LEE, Maj, USAF
Appellate Government Counsel



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 15 April 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



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

UNITED STATES	)	No. ACM 40714
<i>Appellee</i>	)	
	)	
v.	)	
	)	NOTICE OF PANEL CHANGE
Marc W. PENNINGA	)	
Major (O-4)	)	
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 1 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,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (FOURTH)
	)	
v.	)	Before Panel No. 1
	)	
Major (O-4)	)	No. ACM 40714
MARC W. PENNINGA,	)	
United States Air Force,	)	9 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)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a fourth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **18 June 2025**. The record of trial was docketed with this Court on 20 November 2024. From the date of docketing to the present date, 170 days have elapsed. On the date requested, 210 days will have elapsed.

On 4–5 March and 24–27 June 2024, a military judge sitting as a general court-martial at Seymour Johnson Air Force Base, North Carolina, convicted Appellant, consistent with his pleas, of one charge and one specification of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a, and one charge and one specification of fraternization in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 266, Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2024 (EOJ). The military judge sentenced Appellant to a reprimand, confinement for thirty days, and a dismissal. R. at 821. The convening authority took no action on the findings but disapproved the adjudged reprimand. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Maj Marc W. Penninga*.

The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing thirty-eight clients; twenty-five clients are pending initial AOE's before this Court.¹ Twelve matters currently have priority over this case:

- 1) *United States v. Haymond*, ACM 40588 – The record of trial is seven volumes consisting of five prosecution exhibits, seven defense exhibits, forty-two appellate exhibits, and one court exhibit; the transcript is 689 pages. Undersigned counsel has reviewed approximately fifty percent of the record of trial in this case.
- 2) *United States v. Driskill*, ACM 39889 (rem) – The record of trial is fourteen volumes consisting of fourteen prosecution exhibits, four defense exhibits, and 169 appellate exhibits; the transcript is 2,062 pages. Undersigned counsel needs to conduct additional review of the record of trial to prepare a brief on remand in this case.
- 3) *United States v. Keilberg*, ACM 40601 – The record of trial is four volumes consisting of thirteen prosecution exhibits, one defense exhibit, and seven appellate exhibits; the transcript is 118 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

¹ Since the filing of Appellant's last request for an enlargement of time, counsel reviewed approximately twenty-five percent of the seven-volume record of trial in *U.S. v. Haymond*, ACM 40588; assisted with preparing and filing two motions before this Court and one motion before the United States Court of Appeals for the Armed Forces (CAAF) in *U.S. v. Dawson*, ACM 24041; prepared and filed a fifteen-page AOE in *U.S. v. Harnar*, ACM 40559; reviewed the two-volume record of trial and prepared and filed a motion to withdraw from appellate review in *U.S. v. Hatfield*, ACM S32791; prepared and presented a briefing for the Air Force Senior Defense Counsel Qualification Course; and participated in four practice oral arguments for two additional cases. Additionally, counsel was on leave on 18 and 26–29 April and 2–4 May 2025.

- 4) *United States v. Jackson*, ACM S32780 – The record of trial is five volumes consisting of twelve prosecution exhibits, thirteen defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 5) *United States v. Banks*, ACM 24057 – The record of trial is seven volumes consisting of ten prosecution exhibits, sixteen defense exhibits, and thirty appellate exhibits; the transcript is 985 pages. Undersigned counsel has begun reviewing the record of trial in this case.
- 6) *United States v. Smith*, ACM 40437 (f rev) – The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and twenty-nine appellate exhibits; the transcript is 338 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 7) *United States v. Nelson*, ACM 24042 – The record of trial is three volumes consisting of fifteen prosecution exhibits, one defense exhibit, and seventeen appellate exhibits; the transcript is 336 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 8) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 9) *United States v. Myslow*, ACM 40668 – The record of trial is three volumes consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the

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

10) *United States v. Payton*, ACM 40669 – The record of trial is five volumes consisting of three prosecution exhibits, five defense exhibits, and three appellate exhibits; the transcript is 175 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

11) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

12) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and one court exhibit; the transcript is 243 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

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

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

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

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 9 May 2025.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

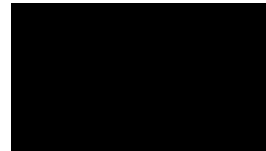
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Major (O-4)	)	
MARC W. PENNINGA	)	No. ACM 40714
United States Air Force.	)	
<i>Appellant</i>	)	13 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.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 13 May 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (FIFTH)
	)	
v.	)	Before Panel No. 1
	)	
Major (O-4)	)	No. ACM 40714
MARC W. PENNINGA,	)	
United States Air Force,	)	10 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 fifth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **18 July 2025**. The record of trial was docketed with this Court on 20 November 2024. From the date of docketing to the present date, 202 days have elapsed. On the date requested, 240 days will have elapsed.

On 4–5 March and 24–27 June 2024, a military judge sitting as a general court-martial at Seymour Johnson Air Force Base, North Carolina, convicted Appellant, consistent with his pleas, of one charge and one specification of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a, and one charge and one specification of fraternization in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 266, Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2024 (EOJ). The military judge sentenced Appellant to a reprimand, confinement for thirty days, and a dismissal. R. at 821. The convening authority took no action on the findings but disapproved the adjudged reprimand. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Maj Marc W. Penninga*.

The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing thirty-nine clients; twenty-three clients are pending initial AOE's before this Court.¹ Additionally, one client has an upcoming petition for a grant of review and supplement to the petition before the United States Court of Appeals for the Armed Forces (CAAF). Ten matters currently have priority over this case:

- 1) *United States v. Keilberg*, ACM 40601 – The record of trial is four volumes consisting of thirteen prosecution exhibits, one defense exhibit, and seven appellate exhibits; the transcript is 118 pages. Undersigned counsel has completed his review of the record of trial and begun drafting the AOE in this case.
- 2) *United States v. York*, ACM 40604 – The record of trial is seven volumes consisting of five prosecution exhibits, two defense exhibits, thirty-six appellate exhibits, and one court exhibit; the transcript is 847 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.

¹ Since the filing of Appellant's last request for an enlargement of time, counsel completed his review of the seven-volume record of trial and prepared and filed a twelve-page AOE in *U.S. v. Haymond*, ACM 40588; assisted with preparing and filing a motion and a twenty-two page supplement to the petition for a grant of review before the CAAF in *U.S. v. Dawson*, ACM 24041, USCA Dkt. No. 25-0156/AF; completed his review on remand of the fourteen-volume record and prepared and filed a twenty-nine-page brief in *U.S. v. Driskill*, ACM 39889 (rem); completed his review of the four-volume record of trial and began drafting the AOE in *U.S. v. Keilberg*, ACM 40601; and participated in five practice oral arguments for two additional cases. Additionally, counsel was off for the Memorial Day holiday and attended the funeral service for CMSgt Swigonski at Arlington National Cemetery on 28 May 2025.

- 3) *United States v. Jackson*, ACM S32780 – The record of trial is five volumes consisting of twelve prosecution exhibits, thirteen defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Undersigned counsel has not yet begun reviewing the record of trial, but additional counsel has been detailed to this case.
- 4) *United States v. Smith*, ACM 40437 (f rev) – The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and twenty-nine appellate exhibits; the transcript is 338 pages. Undersigned counsel has not yet begun reviewing the record of trial, but additional counsel has been detailed to this case.
- 5) *United States v. Banks*, ACM 24057 – The record of trial is seven volumes consisting of ten prosecution exhibits, sixteen defense exhibits, and thirty appellate exhibits; the transcript is 985 pages. Undersigned counsel has begun reviewing the record of trial in this case.
- 6) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 7) *United States v. Myslow*, ACM 40668 – The record of trial is three volumes consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is eighty-five pages. Undersigned counsel has not yet begun reviewing the record of trial, but additional counsel has been detailed to this case.
- 8) *United States v. Payton*, ACM 40669 – The record of trial is five volumes consisting of three prosecution exhibits, five defense exhibits, and three appellate exhibits; the

transcript is 175 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

9) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

10) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and one court exhibit; the transcript is 243 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

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

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

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

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 10 June 2025.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

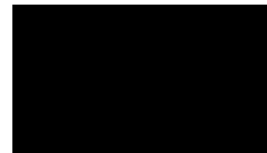
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Major (O-4)	)	
MARC W. PENNINGA	)	No. ACM 40714
United States Air Force.	)	
<i>Appellant</i>	)	12 June 2025

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

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

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



KATE E. LEE, Maj, USAF
Appellate Government Counsel



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 12 June 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (SIXTH)
	)	
v.	)	Before Panel No. 1
	)	
Major (O-4)	)	No. ACM 40714
MARC W. PENNINGA,	)	
United States Air Force,	)	8 July 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a sixth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **17 August 2025**. The record of trial was docketed with this Court on 20 November 2024. From the date of docketing to the present date, 230 days have elapsed. On the date requested, 270 days will have elapsed.

On 4–5 March and 24–27 June 2024, a military judge sitting as a general court-martial at Seymour Johnson Air Force Base, North Carolina, convicted Appellant, consistent with his pleas, of one charge and one specification of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a, and one charge and one specification of fraternization in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 266, Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2024 (EOJ). The military judge sentenced Appellant to a reprimand, confinement for thirty days, and a dismissal. R. at 821. The convening authority took no action on the findings but disapproved the adjudged reprimand. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Maj Marc W. Penninga*.

The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing forty-two clients; twenty-five clients are pending initial AOE's before this Court.¹ Additionally, one client has an upcoming supplement to the petition for grant of review and another client has a pending answer brief, both before the United States Court of Appeals for the Armed Forces (CAAF). Nine matters currently have priority over this case:

- 1) *United States v. York*, ACM 40604, USCA Dkt. No. 25-0200/AF – The record of trial is seven volumes consisting of five prosecution exhibits, two defense exhibits, thirty-six appellate exhibits, and one court exhibit; the transcript is 847 pages. Undersigned counsel has petitioned the CAAF for a grant of review and is drafting the supplement to the petition in this case.
- 2) *United States v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF – The record of trial is eight volumes consisting of 11 prosecution exhibits, nine defense exhibits, one court exhibit, and 71 appellate exhibits; the transcript is 703 pages. Undersigned

¹ Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a seven-page AOE in *U.S. v. Keilberg*, ACM 40601; petitioned the CAAF for a grant of review and began drafting the supplement to the petition in *U.S. v. York*, ACM 40604, USCA Dkt. No. 25-0200/AF; reviewed the Government's answer and prepared and filed a two-page reply brief in *U.S. v. Haymond*, ACM 40588; reviewed the Government's answer and prepared and filed an eight-page reply brief in *U.S. v. Driskill*, ACM 39889 (rem); and prepared and filed a motion to withdraw from appellate review in *U.S. v. Harnar*, ACM 40559 (f rev). Additionally, counsel was off for the Juneteenth and Independence Day holidays.

counsel is reviewing the Government's Brief in Support of the Certified Issue and preparing to draft an answer brief in this case.

- 3) *United States v. Jackson*, ACM S32780 – The record of trial is five volumes consisting of twelve prosecution exhibits, thirteen defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Undersigned counsel has begun reviewing the record of trial, and additional counsel has been detailed to this case.
- 4) *United States v. Smith*, ACM 40437 (f rev) – The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and twenty-nine appellate exhibits; the transcript is 338 pages. Undersigned counsel has begun reviewing the record of trial, and additional counsel has been detailed to this case.
- 5) *United States v. Banks*, ACM 24057 – The record of trial is seven volumes consisting of ten prosecution exhibits, sixteen defense exhibits, and thirty appellate exhibits; the transcript is 985 pages. Undersigned counsel has begun reviewing the record of trial in this case.
- 6) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 7) *United States v. Payton*, ACM 40669 – The record of trial is five volumes consisting of three prosecution exhibits, five defense exhibits, and three appellate exhibits; the transcript is 175 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

- 8) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 9) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and one court exhibit; the transcript is 243 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

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

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

Respectfully submitted,


FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel


CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 8 July 2025.

Respectfully submitted,

A large black rectangular redaction box covering the signature of Frederick J. Johnson.

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

A large black rectangular redaction box covering the contact information of Frederick J. Johnson.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Major (O-4)	)	
MARC W. PENNINGA	)	No. ACM 40714
United States Air Force.	)	
<i>Appellant</i>	)	10 July 2025

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

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

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

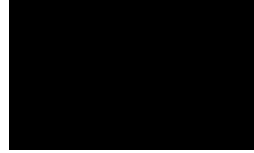
[REDACTED]

KATE E. LEE, Maj, USAF
Appellate Government Counsel

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 10 July 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (SEVENTH)
	)	
v.	)	Before Panel No. 1
	)	
Major (O-4)	)	No. ACM 40714
MARC W. PENNINGA,	)	
United States Air Force,	)	10 August 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 thirty days, which will end on **16 September 2025**. The record of trial was docketed with this Court on 20 November 2024. From the date of docketing to the present date, 263 days have elapsed. On the date requested, 300 days will have elapsed.

On 4–5 March and 24–27 June 2024, a military judge sitting as a general court-martial at Seymour Johnson Air Force Base, North Carolina, convicted Appellant, consistent with his pleas, of one charge and one specification of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a, and one charge and one specification of fraternization in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 266, Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2024 (EOJ). The military judge sentenced Appellant to a reprimand, confinement for thirty days, and a dismissal. R. at 821. The convening authority took no action on the findings but disapproved the adjudged reprimand. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Maj Marc W. Penninga*.

The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing thirty-three clients; nineteen clients are pending initial AOE's before this Court.¹ Additionally, one client has an upcoming petition for grant of review and supplement to the petition before the United States Court of Appeals for the Armed Forces (CAAF). Eight matters currently have priority over this case:

- 1) *United States v. Keilberg*, ACM 40601 – The record of trial is four volumes consisting of thirteen prosecution exhibits, one defense exhibit, and seven appellate exhibits; the transcript is 118 pages. Undersigned counsel is drafting a reply brief in this case.
- 2) *United States v. Smith*, ACM 40437 (f rev) – The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and twenty-nine appellate exhibits; the transcript is 338 pages. Additional counsel has been detailed to this case and is drafting the AOE.
- 3) *United States v. Banks*, ACM 24057 – The record of trial is seven volumes consisting of ten prosecution exhibits, sixteen defense exhibits, and thirty appellate exhibits; the

¹ Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a sixteen-page supplement to the petition for grant of review to the CAAF in *U.S. v. York*, ACM 40604, USCA Dkt. No. 25-0200/AF; prepared and filed an eleven-page answer brief to the CAAF in *U.S. v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF; prepared and filed a nine-page answer to the Government's petition for reconsideration before the CAAF in *U.S. v. Patterson*, ACM 40426, USCA Dkt. No. 25-0073/AF; completed his review of the seven-volume record of trial and began drafting the AOE in *U.S. v. Banks*, ACM 24057; and began reviewing the record of trial in *U.S. v. Simmons*, ACM 40658. Additionally, counsel was on leave on 17–20 July and 1–5 August 2025.

transcript is 985 pages. Undersigned counsel has reviewed the record of trial and is drafting the AOE in this case.

- 4) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel has begun reviewing the record of trial in this case.
- 5) *United States v. Payton*, ACM 40669 – The record of trial is five volumes consisting of three prosecution exhibits, five defense exhibits, and three appellate exhibits; the transcript is 175 pages. Undersigned counsel has begun reviewing the record of trial in this case.
- 6) *United States v. Soloshenko*, ACM 40581 – The electronic record of trial is two volumes consisting of seven prosecution exhibits, two defense exhibits, twenty-seven appellate exhibits, and one court exhibit; the transcript is 773 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.
- 7) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 8) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and one court exhibit; the transcript is 243 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

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

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

Respectfully submitted,

A solid black rectangular redaction box covering the signature of Frederick J. Johnson.

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

A solid black rectangular redaction box covering several lines of text, likely a closing or additional information.

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 10 August 2025.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Major (O-4)	)	
MARC W. PENNINGA	)	No. ACM 40714
United States Air Force.	)	
<i>Appellant</i>	)	11 August 2025

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 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 leave about 8 months combined for the United States and this Court to perform their separate responsibilities. It appears that Appellant’s counsel has not completed review of the record of trial at this late stage of the appellate process.

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

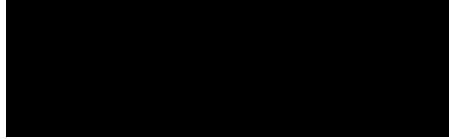
[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 11 August 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (EIGHTH)
	)	
v.	)	Before Panel No. 1
	)	
Major (O-4)	)	No. ACM 40714
MARC W. PENNINGA,	)	
United States Air Force,	)	9 September 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an eighth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **16 October 2025**. The record of trial was docketed with this Court on 20 November 2024. From the date of docketing to the present date, 293 days have elapsed. On the date requested, 330 days will have elapsed.

On 4–5 March and 24–27 June 2024, a military judge sitting as a general court-martial at Seymour Johnson Air Force Base, North Carolina, convicted Appellant, consistent with his pleas, of one charge and one specification of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a, and one charge and one specification of fraternization in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 266, Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2024 (EOJ). The military judge sentenced Appellant to a reprimand, confinement for thirty days, and a dismissal. R. at 821. The convening authority took no action on the findings but disapproved the adjudged reprimand. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Maj Marc W. Penninga*.

The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing thirty-three clients; fourteen clients are pending initial AOE's before this Court.¹ Additionally, one client has an upcoming petition for grant of review and supplement to the petition before the United States Court of Appeals for the Armed Forces (CAAF). Five additional clients have upcoming petitions for a writ of certiorari before the Supreme Court of the United States. Six matters currently have priority over this case:

- 1) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel has drafted the AOE in this case.
- 2) *United States v. Payton*, ACM 40669 – The record of trial is five volumes consisting of three prosecution exhibits, five defense exhibits, and three appellate exhibits; the transcript is 175 pages. Undersigned counsel has reviewed the record of trial in this case.

¹ Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a six-page motion for summary disposition to the CAAF in *U.S. v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF; prepared and filed a 24-page AOE in *U.S. v. Banks*, ACM 24057; prepared and filed a six-page reply in *U.S. v. Keilberg*, ACM 40601; prepared and filed a four-page motion for leave to file motion for remand and motion for remand as well as a six-page motion for reconsideration with suggestion for *en banc* consideration in *U.S. v. Payton*, ACM 40669; and completed his review of the four-volume record of trial (except sealed materials) and drafted a four-page AOE in *U.S. v. Simmons*, ACM 40658. Additionally, counsel was on leave on 22–25 August 2025, was off for the Labor Day holiday, and attended the virtual preliminary hearing officer and legal advisor course on 3–4 September 2025.

- 3) *United States v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 24-0146/AF – The record of trial is nine volumes consisting of 14 prosecution exhibits, 16 defense exhibits, one court exhibit, and 47 appellate exhibits; the transcript is 896 pages. Undersigned counsel is preparing to petition the Supreme Court of the United States for a writ of certiorari in this case.
- 4) *United States v. Soloshenko*, ACM 40581 – The electronic record of trial is two volumes consisting of seven prosecution exhibits, two defense exhibits, twenty-seven appellate exhibits, and one court exhibit; the transcript is 773 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.
- 5) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 6) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and one court exhibit; the transcript is 243 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

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

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

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

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 9 September 2025.

Respectfully submitted,

A large black rectangular redaction box covering the signature of Frederick J. Johnson.

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

A large black rectangular redaction box covering the contact information of Frederick J. Johnson.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Major (O-4)	)	
MARC W. PENNINGA	)	No. ACM 40714
United States Air Force.	)	
<i>Appellant</i>	)	10 September 2025

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 330 days in length. Appellant’s nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leave about 7 months combined for the United States and this Court to perform their separate responsibilities. It appears that Appellant’s counsel has not yet begun reviewing the record of trial at this late stage of the appellate process.

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

[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 10 September 2025.

[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

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

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

UNITED STATES	)	No. ACM 40714
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Marc W. PENNINGA	)	
Major (O-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 1

On 9 October 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Ninth), requesting an additional 30 days in which to file Appellant's assignments of error.

On 17 October 2025, the Government filed its opposition out of time to Appellant's motion. However, the Government failed to ask for leave of the court to file their motion out of time. *See* JT. CT. CRIM. APP. R. 23(d). In the interest of judicial economy, the court will accept the Government's opposition out of time as is.

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

Accordingly, it is by the court on this 17th day of October, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (Ninth) is **GRANTED**. Appellant shall file any assignments of error not later than **15 November 2025**.



FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (NINTH)
	)	
v.	)	Before Panel No. 1
	)	
Major (O-4)	)	No. ACM 40714
MARC W. PENNINGA,	)	
United States Air Force,	)	9 October 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a ninth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **15 November 2025**. The record of trial was docketed with this Court on 20 November 2024. From the date of docketing to the present date, 323 days have elapsed. On the date requested, 360 days will have elapsed.

On 4–5 March and 24–27 June 2024, a military judge sitting as a general court-martial at Seymour Johnson Air Force Base, North Carolina, convicted Appellant, consistent with his pleas, of one charge and one specification of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a, and one charge and one specification of fraternization in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 266, Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2024 (EOJ). The military judge sentenced Appellant to a reprimand, confinement for thirty days, and a dismissal. R. at 821. The convening authority took no action on the findings but disapproved the adjudged reprimand. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Maj Marc W. Penninga*.

The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing thirty-three clients; twelve clients are pending initial AOE's before this Court.¹ Additionally, two clients have pending supplements to petitions for a grant of review, and one additional client has an upcoming petition for grant of review and supplement to the petition, all before the United States Court of Appeals for the Armed Forces (CAAF). Four additional clients have upcoming petitions for a writ of certiorari before the Supreme Court of the United States. Six matters currently have priority over this case:

- 1) *United States v. Soloshenko*, ACM 40581 – The electronic record of trial is two volumes consisting of seven prosecution exhibits, two defense exhibits, twenty-seven appellate exhibits, and one court exhibit; the transcript is 773 pages. Undersigned counsel has petitioned the CAAF for a grant of review and is drafting the supplement to the petition in this case.

¹ Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a motion to withdraw from appellate review in *U.S. v. Payton*, ACM 40669; prepared and filed a four-page AOE in *U.S. v. Simmons*, ACM 40658; prepared and filed a two-page motion for oral argument in *U.S. v. Casillas*, ACM 40551; reviewed and edited a 45-page petition for a writ of certiorari in *Dawson v. U.S.*, ACM 24041, USCA Dkt. No. 25-0156/AF; filed a petition for grant of review to the CAAF and began drafting the supplement to the petition in *U.S. v. Soloshenko*, ACM 40581, USCA Dkt. No. 25-0273/SF; filed an application for an extension of time to file a petition for a writ of certiorari in *Schneider, et al. v. U.S.*; reviewed the record and drafted a supplement to the petition for grant of review to the CAAF in *U.S. v. Adams*, ACM 22018, USCA Dkt. No. 25-0270/AF; filed an application for an extension of time to file a petition for a writ of certiorari in *Zhong v. U.S.*; and participated in five practice oral arguments for four additional cases. Additionally, counsel was on leave on 12 and 16 September 2025 and attended the Joint Appellate Advocacy Training on 25–26 September 2025.

- 2) *United States v. Adams*, ACM 22018, USCA Dkt. No. 25-0270/AF – The record of trial is three volumes consisting of two prosecution exhibits, three defense exhibits, and seventeen appellate exhibits; the transcript is 299 pages. Undersigned counsel was recently detailed to this case and has drafted a supplement to the petition for grant of review to the CAAF.
- 3) *United States v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 24-0146/AF – The record of trial is nine volumes consisting of 14 prosecution exhibits, 16 defense exhibits, one court exhibit, and 47 appellate exhibits; the transcript is 896 pages. Undersigned counsel is drafting a brief on remand in this case.
- 4) *United States v. Zhong*, ACM 40354, USCA Dkt. No. 24-0146/AF – ACM 40411, USCA Dkt. No. 25-0011/AF – The record of trial is four volumes consisting of 14 prosecution exhibits, 11 defense exhibits, 12 appellate exhibits, and one court exhibit; the transcript is 482 pages. Undersigned counsel is preparing to petition the Supreme Court of the United States for a writ of certiorari in this case.
- 5) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial, but additional counsel has been detailed to this case.
- 6) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and one court exhibit; the transcript is 243 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

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

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

Respectfully submitted,

A solid black rectangular box redacting the signature of Frederick J. Johnson.

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

A solid black rectangular box redacting the address and contact information of Frederick J. Johnson.

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 9 October 2025.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' OPPOSITION
	)	TO APPELLANT'S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME -
	)	OUT OF TIME
v.	)	
	)	Before Panel No. 1
Major (O-4)	)	
MARC W. PENNINGA,	)	No. ACM 40714
United States Air Force.	)	
<i>Appellant</i>	)	17 October 2025

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

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

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

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

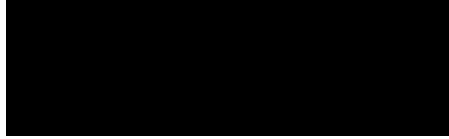
[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

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

CERTIFICATE OF FILING AND SERVICE

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



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (TENTH)
	)	
v.	)	Before Panel No. 1
	)	
Major (O-4)	)	No. ACM 40714
MARC W. PENNINGA,	)	
United States Air Force,	)	7 November 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a tenth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **15 December 2025**. The record of trial was docketed with this Court on 20 November 2024. From the date of docketing to the present date, 352 days have elapsed. On the date requested, 390 days will have elapsed.

On 4–5 March and 24–27 June 2024, a military judge sitting as a general court-martial at Seymour Johnson Air Force Base, North Carolina, convicted Appellant, consistent with his pleas, of one charge and one specification of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a, and one charge and one specification of fraternization in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 266, Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2024 (EOJ). The military judge sentenced Appellant to a reprimand, confinement for thirty days, and a dismissal. R. at 821. The convening authority took no action on the findings but disapproved the adjudged reprimand. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Maj Marc W. Penninga*.

The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing thirty-three clients; twelve clients are pending initial AOE's before this Court.¹ Additionally, four clients have upcoming petitions for grant of review and supplements to the petitions, and another client has an upcoming oral argument, all before the United States Court of Appeals for the Armed Forces (CAAF). Four additional clients have upcoming petitions for a writ of certiorari before the Supreme Court of the United States. Six matters currently have priority over this case:

- 1) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial, but additional counsel has been detailed to this case.
- 2) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and

¹ Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a sixteen-page supplement to the petition for grant of review to the CAAF in *U.S. v. Soloshenko*, ACM 40581, USCA Dkt. No. 25-0273/SF; prepared and filed a four-page supplement to the petition for grant of review to the CAAF and drafted a reply to the Government's answer in *U.S. v. Adams*, ACM 22018, USCA Dkt. No. 25-0270/AF; prepared and filed a six-page brief on remand in *U.S. v. Navarro Aguirre*, ACM 40354 (rem); began reviewing the record of trial in *U.S. v. Polly*, ACM 40709; prepared and filed a seven-page reply to the Government's motion for reconsideration in *U.S. v. Casillas*, ACM 40551; prepared and filed a fourteen-page reply to the Government's answer in *U.S. v. Banks*, ACM 24057; and participated in nine practice oral arguments for four additional cases. Additionally, counsel was off for the Columbus Day holiday and was on leave on 24–26 October 2025.

- one court exhibit; the transcript is 243 pages. Undersigned counsel is reviewing the record of trial in this case.
- 3) *United States v. Haymond*, ACM 40588 – The record of trial is seven volumes consisting of five prosecution exhibits, seven defense exhibits, 42 appellate exhibits, and one court exhibit; the transcript is 689 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.
 - 4) *United States v. Zhong*, ACM 40354, USCA Dkt. No. 24-0146/AF – ACM 40411, USCA Dkt. No. 25-0011/AF – The record of trial is four volumes consisting of 14 prosecution exhibits, 11 defense exhibits, 12 appellate exhibits, and one court exhibit; the transcript is 482 pages. Undersigned counsel is preparing to petition the Supreme Court of the United States for a writ of certiorari in this case.
 - 5) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.
 - 6) *United States v. Gossett*, ACM 40715 – The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

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

on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

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 7 November 2025.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Major (O-4)	)	
MARC W. PENNINGA,	)	No. ACM 40714
United States Air Force.	)	
<i>Appellant</i>	)	12 November 2025

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

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

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

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

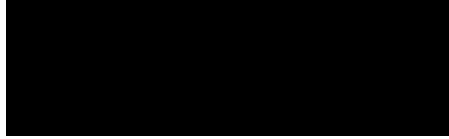
[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 12 November 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



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

UNITED STATES	)	No. ACM 40714
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Marc W. PENNINGA	)	
Major (O-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 1

On 8 December 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Eleventh) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure. Accordingly, it is by the court on this 10th day of December, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (Eleventh) is **GRANTED**. Appellant shall file any assignments of error not later than 14 January 2026.

Appellant's counsel is advised that given the number of enlargements granted thus far, any further requests for an enlargement of time may necessitate a status conference to determine the progress being made on Appellant's case per this court's Rule 23.3(m)(6). A.F. CT. CRIM. APP. R. 23.3(m)(6).



JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (ELEVENTH)
	)	
v.	)	Before Panel No. 1
	)	
Major (O-4)	)	No. ACM 40714
MARC W. PENNINGA,	)	
United States Air Force,	)	8 December 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an eleventh enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **14 January 2026**. The record of trial was docketed with this Court on 20 November 2024. From the date of docketing to the present date, 383 days have elapsed. On the date requested, 420 days will have elapsed.

On 4–5 March and 24–27 June 2024, a military judge sitting as a general court-martial at Seymour Johnson Air Force Base, North Carolina, convicted Appellant, consistent with his pleas, of one charge and one specification of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a, and one charge and one specification of fraternization in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 266, Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2024 (EOJ). The military judge sentenced Appellant to a reprimand, confinement for thirty days, and a dismissal. R. at 821. The convening authority took no action on the findings but disapproved the adjudged reprimand. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Maj Marc W. Penninga*.

The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing thirty-three clients; ten clients are pending initial AOE's before this Court.¹ Additionally, six clients have upcoming petitions for grant of review and/or supplements to the petitions, and another client has an upcoming oral argument, all before the United States Court of Appeals for the Armed Forces (CAAF). Four additional clients have upcoming petitions for a writ of certiorari before the Supreme Court of the United States. Five matters currently have priority over this case:

- 1) *United States v. Zhong*, ACM 40354, USCA Dkt. No. 24-0146/AF – ACM 40411, USCA Dkt. No. 25-0011/AF – The record of trial is four volumes consisting of 14 prosecution exhibits, 11 defense exhibits, 12 appellate exhibits, and one court exhibit; the transcript is 482 pages. Undersigned counsel has drafted a petition for a writ of certiorari to the Supreme Court of the United States in this case.

¹ Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a four-page reply to the Government's answer to the supplement to the petition for grant of review to the CAAF in *U.S. v. Adams*, ACM 22018, USCA Dkt. No. 25-0270/AF; completed his review of the seven-volume record of trial and prepared and filed a three-page AOE in *U.S. v. Polly*, ACM 40709; petitioned the CAAF for a grant of review and prepared and filed a six-page supplement to the petition in *U.S. v. Haymond*, ACM 40588, USCA Dkt. No. 26-0035/AF; drafted a thirty-seven-page petition for a writ of certiorari in *Zhong v. U.S.*, ACM 40354, USCA Dkt. No. 24-0146/AF; petitioned the CAAF for a grant of review and began drafting the supplement to the petition in *U.S. v. Simmons*, ACM 40658, USCA Dkt. No. 26-0049/AF; began reviewing the ten-volume record of trial in *U.S. v. Gossett*, ACM 40715; and participated in three practice oral arguments for two additional cases. Additionally, counsel was off for the Veterans Day holiday and was on leave on 22–29 November 2025, a period that included the Thanksgiving holiday.

- 2) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel has petitioned the CAAF for a grant of review and is drafting the supplement to the petition in this case.
- 3) *United States v. Keilberg*, ACM 40601 – The record of trial is four volumes consisting of thirteen prosecution exhibits, one defense exhibit, and seven appellate exhibits; the transcript is 118 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.
- 4) *United States v. Gossett*, ACM 40715 – The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 pages. Undersigned counsel has begun reviewing the record of trial in this case.
- 5) *United States v. Martinez*, ACM 39903 – The record of trial is thirteen volumes consisting of eleven prosecution exhibits, twenty-four defense exhibits, and eighty-one appellate exhibits; the transcript is 1134 pages. Undersigned counsel was recently detailed to this case and is reviewing the record in preparation for petitioning the CAAF for a grant of review.

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

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

Respectfully submitted,

[REDACTED]

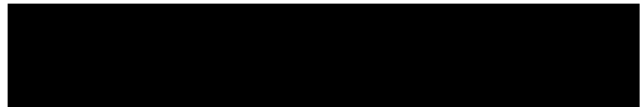
FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

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 8 December 2025.

Respectfully submitted,

A solid black rectangular box used to redact the signature of Frederick J. Johnson.

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Major (O-4)	)	
MARC W. PENNINGA,	)	No. ACM 40714
United States Air Force.	)	
<i>Appellant</i>	)	9 December 2025

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 420 days in length. Appellant’s over year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed more than two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 4 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not begun reviewing the record of trial at this late stage of the appellate process.

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

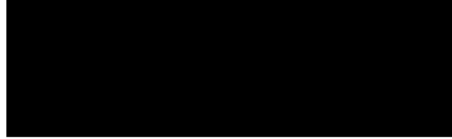
[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 9 December 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



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

UNITED STATES	)	No. ACM 40714
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Marc W. PENNINGA	)	
Major (O-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 1

On 4 January 2026, counsel for Appellant submitted a Motion for Enlargement of Time (Twelfth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 6th day of January, 2026,

ORDERED:

Appellant's Motion for Enlargement of Time (Twelfth) is **GRANTED**. Appellant shall file any assignments of error not later than **13 February 2026**.

It is further ordered:

Appellant's counsel is advised that given the number of enlargements granted thus far, any further requests for an enlargement of time may necessitate a status conference.



FOR THE COURT

[Redacted signature block]

JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (TWELFTH)
	)	
v.	)	Before Panel No. 1
	)	
Major (O-4)	)	No. ACM 40714
MARC W. PENNINGA,	)	
United States Air Force,	)	4 January 2026
<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 twelfth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **13 February 2026**. The record of trial was docketed with this Court on 20 November 2024. From the date of docketing to the present date, 410 days have elapsed. On the date requested, 450 days will have elapsed.

On 4–5 March and 24–27 June 2024, a military judge sitting as a general court-martial at Seymour Johnson Air Force Base, North Carolina, convicted Appellant, consistent with his pleas, of one charge and one specification of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a, and one charge and one specification of fraternization in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 266, Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2024 (EOJ). The military judge sentenced Appellant to a reprimand, confinement for thirty days, and a dismissal. R. at 821. The convening authority took no action on the findings but disapproved the adjudged reprimand. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Maj Marc W. Penninga*.

The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing twenty-nine clients; ten clients are pending initial AOE's before this Court.¹ Additionally, six clients have upcoming petitions for grant of review and/or supplements to the petitions, and two clients have upcoming oral arguments, all before the United States Court of Appeals for the Armed Forces (CAAF). Three additional clients have upcoming petitions for a writ of certiorari before the Supreme Court of the United States. Six matters currently have priority over this case:

- 1) *United States v. Keilberg*, ACM 40601 – The record of trial is four volumes consisting of thirteen prosecution exhibits, one defense exhibit, and seven appellate exhibits; the transcript is 118 pages. Undersigned counsel has petitioned the CAAF for a grant of review and drafted the supplement to the petition in this case.

¹ Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a thirty-seven-page petition for a writ of certiorari to the Supreme Court of the United States in *Zhong v. U.S.*, ACM 40354, USCA Dkt. No. 24-0146/AF; prepared and filed a five-page supplement to the petition for grant of review at the CAAF in *U.S. v. Simmons*, ACM 40658, USCA Dkt. No. 26-0049/AF; continued reviewing the ten-volume record of trial in *U.S. v. Gossett*, ACM 40715; petitioned the CAAF for a grant of review and drafted a ten-page supplement to the petition in *U.S. v. Keilberg*, ACM 40601, USCA Dkt. No. 26-0065/AF; prepared and filed an application for extension of time to file a petition for a writ of certiorari at the Supreme Court of the United States in *Sherman v. U.S.*, ACM 40486, USCA Dkt. No. 25-0209/AF; petitioned the CAAF for a grant of review and began drafting the supplement to the petition in *U.S. v. Martinez*, ACM 39903, USCA Dkt. No. 26-0073/AF; conducted a practice oral argument for *U.S. v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF; and participated in two practice oral arguments for two additional cases. Additionally, counsel was TDY on 11–12 December 2025 and was off for the Christmas and New Year's Day holidays.

- 2) *United States v. Martinez*, ACM 39903, USCA Dkt. No. 26-0073/AF – The record of trial is thirteen volumes consisting of eleven prosecution exhibits, twenty-four defense exhibits, and eighty-one appellate exhibits; the transcript is 1134 pages. Undersigned counsel has petitioned the CAAF for a grant of review and is drafting the supplement to the petition in this case.
- 3) *United States v. Gossett*, ACM 40715 – The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 pages. Undersigned counsel is reviewing the record of trial in this case.
- 4) *United States v. Casillas*, ACM 40551 – The record of trial is ten volumes consisting of nineteen prosecution exhibits, four defense exhibits, and sixty-five appellate exhibits; the transcript is 1627 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.
- 5) *United States v. Driskill*, ACM 39889 (rem) – The record of trial is fourteen volumes consisting of fourteen prosecution exhibits, four defense exhibits, and 169 appellate exhibits; the transcript is 2,062 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.
- 6) *United States v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF – The record of trial is eight volumes consisting of 11 prosecution exhibits, nine defense exhibits, one court exhibit, and 71 appellate exhibits; the transcript is 703 pages. Undersigned counsel is preparing to present oral argument to the CAAF as lead counsel in this case on 13 January 2026.

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

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

Respectfully submitted,

A solid black rectangular box used to redact the signature of Frederick J. Johnson.

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

A solid black rectangular box used to redact the address and contact information of Frederick J. Johnson.

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 4 January 2026.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Major (O-4)	)	
MARC W. PENNINGA,	)	No. ACM 40714
United States Air Force.	)	
<i>Appellant</i>	)	5 January 2026

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 450 days in length. Appellant’s over year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed more than two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 3 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not started review of the record of trial at this late stage of the appellate process.

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

[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 5 January 2026.

[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

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

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

UNITED STATES	)	No. ACM 40714
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Marc W. PENNINGA	)	
Major (O-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 1

On 5 February 2026 counsel for Appellant submitted a Motion for Enlargement of Time (Thirteenth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion, stating, "Appellant's over year-long delay practically ensures this [c]ourt will not be able to issue a decision that complies with our superior [c]ourt's appellate processing standards."

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 12th day of February, 2026,

ORDERED:

Appellant's Motion for Enlargement of Time (Thirteenth) is **GRANTED**. Appellant shall file any assignments of error not later than **15 March 2026**.

Appellant's counsel is advised that given the number of enlargements granted thus far, any further requests for an enlargement of time may necessitate a status conference.



FOR THE COURT

[Redacted signature]

AGNIESZKA M. GAERTNER, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(THIRTEENTH)
v.	)	
	)	Before Panel No. 1
Major (O-4)	)	
MARC W. PENNINGA,	)	No. ACM 40714
United States Air Force,	)	
<i>Appellant.</i>	)	5 February 2026

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a thirteenth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **15 March 2026**. The record of trial was docketed with this Court on 20 November 2024. From the date of docketing to the present date, 442 days have elapsed. On the date requested, 480 days will have elapsed.

On 4–5 March and 24–27 June 2024, a military judge sitting as a general court-martial at Seymour Johnson Air Force Base, North Carolina, convicted Appellant, consistent with his pleas, of one charge and one specification of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a, and one charge and one specification of fraternization in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 266, Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2024 (EOJ). The military judge sentenced Appellant to a reprimand, confinement for thirty days, and a dismissal. R. at 821. The convening authority took no action on the findings but disapproved the adjudged reprimand. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Maj Marc W. Penninga*.

The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing twenty-eight clients; ten clients are pending initial AOE's before this Court.¹ Additionally, two clients have upcoming petitions for grant of review and/or supplements to the petitions before the United States Court of Appeals for the Armed Forces (CAAF). Three additional clients have upcoming petitions for a writ of certiorari before the Supreme Court of the United States. Four matters currently have priority over this case:

- 1) *United States v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 26-0100/AF – The record of trial is nine volumes consisting of fourteen prosecution exhibits, sixteen defense exhibits, one court exhibit, and forty-seven appellate exhibits; the transcript is

¹ Since the filing of Appellant's last request for an enlargement of time, counsel continued reviewing the ten-volume record of trial and prepared and filed a consent motion to examine sealed materials in *U.S. v. Gossett*, ACM 40715; prepared and filed a ten-page supplement to the petition for grant of review to the CAAF in *U.S. v. Keilberg*, ACM 40601, USCA Dkt. No. 26-0065/AF; prepared and filed a twenty-one-page supplement to the petition for grant of review to the CAAF in *U.S. v. Martinez*, ACM 39903, USCA Dkt. No. 26-0073/AF; conducted two practice oral arguments and presented oral argument before the CAAF as lead counsel in *U.S. v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF; petitioned the CAAF for a grant of review and prepared and filed a fourteen-page supplement to the petition in *U.S. v. Casillas*, ACM 40551, USCA Dkt. No. 26-0092/AF; petitioned the CAAF for a grant of review and prepared and filed a twenty-eight-page supplement to the petition in *U.S. v. Driskill*, ACM 39889, USCA Dkt. No. 26-0087/AF; petitioned the CAAF for a grant of review and drafted an eight-page supplement to the petition in *U.S. v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 26-0100/AF; began drafting a petition for a writ of certiorari to the Supreme Court of the United States in *Sherman v. U.S.*, ACM 40486, USCA Dkt. No. 25-0209/AF; prepared and filed an application for extension of time to file a petition for a writ of certiorari at the Supreme Court of the United States in *Soloshenko, et al. v. United States*; and participated in seven practice oral arguments for three additional cases. Additionally, counsel was off for the Birthday of Martin Luther King, Jr. holiday.

896 pages. Undersigned counsel has petitioned the CAAF for a grant of review and drafted the supplement to the petition in this case.

- 2) *Sherman v. United States*, ACM 40486, USCA Dkt. No. 25-0209/AF – The record of trial is five volumes consisting of seventeen prosecution exhibits, twelve defense exhibits, one court exhibit, and twenty-five appellate exhibits; the transcript is 469 pages. Undersigned counsel is drafting a petition for a writ of certiorari to the Supreme Court of the United States in this case.
- 3) *United States v. Gossett*, ACM 40715 – The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 pages. Undersigned counsel is reviewing the record of trial in this case.
- 4) *United States v. Banks*, ACM 24057 – The record of trial is seven volumes consisting of ten prosecution exhibits, sixteen defense exhibits, and thirty appellate exhibits; the transcript is 985 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.

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

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

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 5 February 2026.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Major (O-4)	)	Before Panel No. 1
MARC W. PENNINGA,	)	
United States Air Force,	)	No. ACM 40714
<i>Appellant.</i>	)	
	)	9 February 2026
	)	

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 480 days in length. Appellant’s over year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed more than thirds of the 18 month standard for this Court to issue a decision, which only leaves about 2 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not started review of the record of trial at this late stage of the appellate process.

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

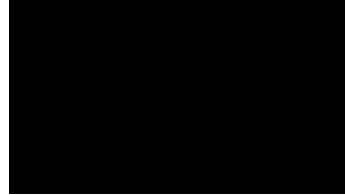


KATE E. LEE, Maj, USAF
Appellate Government Counsel



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 9 February 2026.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



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

UNITED STATES	)	No. ACM 40714
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Marc W. PENNINGA	)	
Major (O-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 1

On 5 March 2026, counsel for Appellant submitted a Motion for Enlargement of Time (Fourteenth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure. Accordingly, it is by the court on this 12th day of March, 2026,

ORDERED:

Appellant's Motion for Enlargement of Time (Fourteenth) is **GRANTED**. Appellant shall file any assignments of error not later than **14 April 2026**.

Appellant's counsel is advised that given the number of enlargements granted thus far, any further requests for an enlargement of time may be denied absent exceptional circumstances.



FOR THE COURT

[Redacted signature]

JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
	)	(FOURTEENTH)
v.	)	
	)	Before Panel No. 1
Major (O-4)	)	
MARC W. PENNINGA,	)	No. ACM 40714
United States Air Force,	)	
<i>Appellant.</i>	)	5 March 2026

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a fourteenth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **14 April 2026**. The record of trial was docketed with this Court on 20 November 2024. From the date of docketing to the present date, 470 days have elapsed. On the date requested, 510 days will have elapsed.

On 4–5 March and 24–27 June 2024, a military judge sitting as a general court-martial at Seymour Johnson Air Force Base, North Carolina, convicted Appellant, consistent with his pleas, of one charge and one specification of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a, and one charge and one specification of fraternization in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 266, Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2024 (EOJ). The military judge sentenced Appellant to a reprimand, confinement for thirty days, and a dismissal. R. at 821. The convening authority took no action on the findings but disapproved the adjudged reprimand. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Maj Marc W. Penninga*.

The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing twenty-six clients; nine clients are pending initial AOE's before this Court.¹ Additionally, one client has an upcoming supplement to the petition for grant of review, and another client has an upcoming answer brief, both before the United States Court of Appeals for the Armed Forces (CAAF). Three additional clients have an upcoming consolidated petition for a writ of certiorari before the Supreme Court of the United States. Four matters currently have priority over this case:

- 1) *United States v. Banks*, ACM 24057, USCA Dkt. No. 26-0127/AF – The record of trial is seven volumes consisting of ten prosecution exhibits, sixteen defense exhibits, and thirty appellate exhibits; the transcript is 985 pages. Undersigned counsel has petitioned the CAAF for a grant of review and drafted the supplement to the petition in this case.
- 2) *United States v. Gossett*, ACM 40715 – The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy

¹ Since the filing of Appellant's last request for an enlargement of time, counsel continued reviewing the ten-volume record of trial in *U.S. v. Gossett*, ACM 40715; prepared and filed a two-page reply to the Government's answer to the supplement to the petition for grant of review in *U.S. v. Casillas*, ACM 40551, USCA Dkt. No. 26-0092/AF; prepared and filed an eight-page supplement to the petition for grant of review in *U.S. v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 26-0100/AF; prepared and filed a twenty-one-page petition for a writ of certiorari to the Supreme Court of the United States in *Sherman v. U.S.*, ACM 40486, USCA Dkt. No. 25-0209/AF; petitioned the CAAF for a grant of review and drafted a seventeen-page supplement to the petition in *U.S. v. Banks*, ACM 24057, USCA Dkt. No. 26-0127/AF; and participated in seven practice oral arguments for three additional cases. Additionally, counsel was on leave on 6 February 2026 and was off for the Washington's Birthday holiday.

appellate exhibits; the transcript is 1076 pages. Undersigned counsel has reviewed approximately eighty-five percent of the record of trial in this case.

- 3) *United States v. Casillas*, ACM 40551, USCA Dkt. No. 26-0096/AF – The record of trial is ten volumes consisting of nineteen prosecution exhibits, four defense exhibits, and sixty-five appellate exhibits; the transcript is 1627 pages. Undersigned counsel is drafting an answer brief to the CAAF on the certified issues in this case.
- 4) *Soloshenko, et al. v. United States* – This petition for a writ of certiorari to the Supreme Court of the United States consolidates five cases that are all seeking certiorari for the same issue. Undersigned counsel is the counsel of record for this consolidated petition.

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

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

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 5 March 2026.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Major (O-4)	)	Before Panel No. 1
MARC W. PENNINGA,	)	
United States Air Force,	)	No. ACM 40714
<i>Appellant.</i>	)	
	)	9 March 2026
	)	

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 510 days in length. Appellant's over year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed more than two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 1 month combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not started review of the record of trial at this late stage of the appellate process.

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

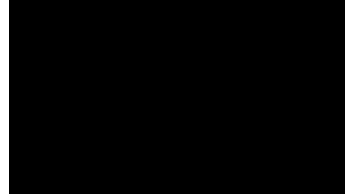


KATE E. LEE, Maj, USAF
Appellate Government Counsel



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 9 March 2026.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(FIFTEENTH)
v.	)	
	)	Before Panel No. 1
Major (O-4)	)	
MARC W. PENNINGA,	)	No. ACM 40714
United States Air Force,	)	
<i>Appellant.</i>	)	5 April 2026

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a fifteenth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of ten days, which will end on **24 April 2026**. The record of trial was docketed with this Court on 20 November 2024. From the date of docketing to the present date, 501 days have elapsed. On the date requested, 520 days will have elapsed.

On 4–5 March and 24–27 June 2024, a military judge sitting as a general court-martial at Seymour Johnson Air Force Base, North Carolina, convicted Appellant, consistent with his pleas, of one charge and one specification of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a, and one charge and one specification of fraternization in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 266, Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2024 (EOJ). The military judge sentenced Appellant to a reprimand, confinement for thirty days, and a dismissal. R. at 821. The convening authority took no action on the findings but disapproved the adjudged reprimand. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Maj Marc W. Penninga*.

The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Appellant is not currently confined. Undersigned counsel has reviewed approximately ninety percent of the record of trial in this case.

Counsel is currently representing twenty-three clients; five clients are pending initial AOE's before this Court.¹ Three additional clients have an upcoming consolidated petition for a writ of certiorari before the Supreme Court of the United States. This case is undersigned counsel's highest priority amongst cases pending initial AOE's before this court, but one matter currently has priority over it:

- 1) *Soloshenko, et al. v. United States* – This petition for a writ of certiorari to the Supreme Court of the United States consolidates five cases that are all seeking certiorari for the same issue. Undersigned counsel is the counsel of record for this consolidated petition and has prepared the petition, which is being printed.

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

¹ Since the filing of Appellant's last request for an enlargement of time, counsel reviewed approximately ninety percent of the three-volume electronic record of trial in this case; completed his review of the ten-volume record of trial and prepared and filed a sixteen-page AOE in *U.S. v. Gossett*, ACM 40715; prepared and filed a 30-page answer brief on the certified issues to the United States Court of Appeals for the Armed Forces (CAAF) in *U.S. v. Casillas*, ACM 40551, USCA Dkt. No. 26-0096/AF; prepared and filed a seventeen-page supplement to the petition for grant of review to the CAAF in *U.S. v. Banks*, ACM 24057, USCA Dkt. No. 26-0127/AF; edited and filed a twenty-one-page petition for a writ of certiorari to the Supreme Court of the United States in *Myslow v. U.S.*, ACM 40668; prepared a thirty-five-page consolidated petition for a writ of certiorari to the Supreme Court of the United States in *Soloshenko, et al. v. U.S.*; prepared and filed motions to withdraw as counsel in *U.S. v. Byington*, ACM 40816, *U.S. v. Docker*, ACM 25029, and *U.S. v. Brown*, ACM 25055; and prepared and filed a motion to withdraw from appellate review in *U.S. v. Polly*, ACM 40709. Additionally, counsel was on temporary duty on 15–27 March 2026 and was on leave on 13–14 and 28 March 2026.

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

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

Respectfully submitted,

A solid black rectangular box redacting the signature of Frederick J. Johnson.

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

A solid black rectangular box redacting the contact information, likely a phone number and address, of Frederick J. Johnson.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 5 April 2026.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Major (O-4)	)	Before Panel No. 1
MARC W. PENNINGA,	)	
United States Air Force,	)	No. ACM 40714
<i>Appellant.</i>	)	
	)	6 April 2026
	)	

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 520 days in length. Appellant’s over year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed more than two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 1 month combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not completed review of the record of trial at this late stage of the appellate process.

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

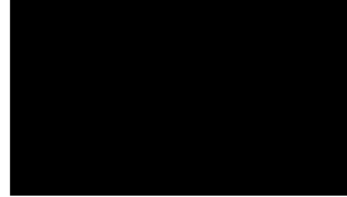


KATE E. LEE, Maj, USAF
Appellate Government Counsel



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 6 April 2026.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



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

UNITED STATES	)	No. ACM 40714
<i>Appellee</i>	)	
	)	
v.	)	
	)	NOTICE OF PANEL
Marc W. PENNINGA	)	CHANGE
Major (O-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	

It is by the court on this 14th day of April, 2026,
ORDERED:
The record of trial in the above-styled matter is withdrawn from Panel 1 and referred to a Special Panel for appellate review.

The Special Panel in this matter shall be constituted as follows:
GRUEN, PATRICIA A., Colonel, Senior Appellate Military Judge
MORGAN, CHRISTOPHER S., Colonel, Appellate Military Judge
KUBLER, JOSEPH J., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.



FOR THE COURT

AGNIESZKA M. GAERTNER, Capt, USAF
Commissioner

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

UNITED STATES	)	No. ACM 40714
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Marc W. PENNINGA	)	
Major (O-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Special Panel

On 7 April 2026, counsel for Appellant moved this court for both parties to examine sealed material in Appellant’s case; specifically, Prosecution Exhibit 11, Appellate Exhibits (A.E.) III–XXII and XLVII–LVIII; and trial transcript pages 68–86 and 297–98.

Upon the court’s review of the requested sealed material, we discovered that A.E. VI, X, XVII, and XXI were not in the record of trial, but contained a place holder that read as follows: A.E. VI – Defense Motion Mil. R. Evid. 513 O.G., *was reserved but never entered*; A.E. X – Defense Motion Mil. R. Evid. 513 O.G., *was reserved but never entered*; A.E. XVII – Defense Motion Mil. R. Evid. 412 A.S., *was reserved but never entered*; and A.E. XXI – Defense Motion Mil. R. Evid. O.G., *was reserved but never entered*.* Further, A.E. XLXIX is mismarked and should be A.E. XLIX.

Appellate counsel may examine sealed materials released to counsel at trial “upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities.” R.C.M. 1113(b)(3)(B)(i).

Accordingly, it is by the court on this 14th day of April, 2026,

ORDERED:

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

Appellant’s counsel and government appellate counsel may view **Prosecution Exhibit 11, Appellate Exhibits III–V, VII–IX, XI–XVI, XVIII–XX, XXII, and XLVII–LVIII; and trial transcript pages 68–86 and 297–98.**

* See Exhibit Index in record of trial for additional information.

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

No counsel will photocopy, photograph, or otherwise reproduce this material and will not disclose or make available its contents to any other individual without this court's prior written authorization.

FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	CONSENT MOTION
<i>Appellee,</i>	)	TO EXAMINE SEALED
	)	MATERIALS
	)	
v.	)	Before Panel No. 1
	)	
Major (O-4)	)	No. ACM 40714
MARC W. PENNINGA,	)	
United States Air Force,	)	7 April 2026
<i>Appellant.</i>	)	

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

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and Rules 3.1, 23.1(b), and 23.3(f)(1) of this Court’s Rules of Practice and Procedure, Appellant, Major Marc W. Penninga, hereby moves this Court to permit appellate counsel for the Appellant and the Government to examine Prosecution Exhibit 11, Appellate Exhibits III–XXII and XLVII–LVIII, and transcript pages 68–86 and 297–98 in Appellant’s record of trial.

Facts

On 4–5 March and 24–27 June 2024, a military judge sitting as a general court-martial at Seymour Johnson Air Force Base, North Carolina, convicted Appellant, consistent with his pleas, of one charge and one specification of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a, and one charge and one specification of fraternization in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 266; Record of Trial (ROT) Vol. 1, Entry of Judgment, Aug. 11, 2024 (EOJ). In the course of litigating additional specifications of which Maj Penninga was ultimately acquitted, the court-martial considered numerous motions and attachments that resulted in thirty-two appellate exhibits that the military judge ordered sealed. R. at 43 (ordering App. Exs. III–XXII and XLVII–LVIII sealed). The

military judge also received evidence and heard argument during two closed Article 39(a), UCMJ, sessions. R. at 66, 294 (closing the courtroom). The court also sealed Prosecution Exhibit 11, which consists of a copy of Appellant's medical records. R. at 659; *see* ROT Vol. 1, Exhibit Index.

Law

Appellate counsel may examine materials presented or reviewed at trial and sealed, as well as materials reviewed *in camera*, released to trial or defense counsel, and sealed, upon a colorable showing to the appellate authority that examination is reasonably necessary to a proper fulfillment of the appellate counsel's responsibilities under the UCMJ, the Manual for Courts-Martial, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional conduct. R.C.M. 1113(b)(3)(B)(i).

Air Force regulations governing professional duties and conduct of appellate defense counsel impose upon counsel, *inter alia*, a duty to provide "competent representation," perform "reasonable diligence," and to "give a client his or her best professional evaluation of the questions that might be presented on appeal...[to] consider all issues that might affect the validity of the judgment of conviction and sentence...[to] advise on the probable outcome of a challenge to the conviction or sentence...[and to] endeavor to persuade the client to abandon a wholly frivolous appeal or to eliminate contentions lacking in substance." Air Force Instruction (AFI) 51-110, *Professional Responsibility Program*, Attachment 2: Air Force Rules of Professional Conduct, Rule 1.1, Attachment 7: Air Force Standards for Criminal Justice, Standard 4-8.3(b) (11 December 2018). These requirements are consistent with those imposed by the state bar to which counsel belongs.¹

This Court may grant relief "on the basis of the entire record" of trial. Article 66, UCMJ,

¹ Counsel of record is licensed to practice law in Georgia.

10 U.S.C. § 866. Appellate defense counsel so detailed by The Judge Advocate General shall represent accused servicemembers before this Court. Article 70, UCMJ, 10 U.S.C. § 870. This Court's "broad mandate to review the record unconstrained by appellant's assignments of error" does not reduce "the importance of adequate representation" by counsel; "independent review is not the same as competent appellate representation." *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998).

Analysis

The sealed materials include a prosecution exhibit and thirty-two appellate exhibits, all of which were "presented" and "reviewed" by the parties at trial. R.C.M. 1113(b)(3)(B)(i). Similarly, the sealed portions of the transcript record proceedings in which the parties participated. It is reasonably necessary for Appellant's counsel to review these sealed materials for counsel to competently conduct a professional evaluation of Appellant's case and uncover all issues which might afford him relief. Because examination of the materials in question is reasonably necessary to the fulfillment of counsel's Article 70, UCMJ duties, and because the materials were available to the parties at trial, Appellant has provided the "colorable showing" required by R.C.M. 1113(b)(3)(B)(i) to permit his counsel's examination of these sealed materials and has shown good cause to grant this motion.

The Government consents to both parties examining the sealed materials detailed above.

WHEREFORE, Appellant respectfully requests that this Court grant this motion and permit examination of the aforementioned sealed materials contained within the original record of trial.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

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 7 April 2026.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee,

v.

Major (O-4)

Marc W. PENNINGA,

United States Air Force,

Appellant.

BRIEF ON BEHALF OF APPELLANT

Before Special Panel

No. ACM 40714

24 April 2026

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

Frederick J. Johnson
Major, U.S. Air Force
Appellate Defense Counsel



ASSIGNMENT OF ERROR

Whether the sentence to a dismissal is inappropriately severe considering Appellant's distinguished service record and the nature of the offenses to which he pled guilty.

STATEMENT OF STATUTORY JURISDICTION

Major (Maj) Marc W. Penninga's approved sentence includes a dismissal. R. at 821. Accordingly, this Court has jurisdiction pursuant to Article 66(b)(3), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(b)(3).

STATEMENT OF THE CASE

A military judge sitting as a general court-martial convicted Appellant, Maj Marc W. Penninga, United States Air Force, consistent with his pleas, of one specification of wrongful use of cocaine and one specification of fraternization in violation of Articles 112a and 134, UCMJ, 10 U.S.C. §§ 912a, 934. R. at 266. The military judge sentenced him to a reprimand, confinement for thirty days, and a dismissal. R. at 821. The convening authority took no action on the findings but disapproved the adjudged reprimand. Convening Authority Decision on Action, undated.

STATEMENT OF FACTS

After being contacted by two Airmen about socializing on Christmas Day in 2020, Appellant invited the Airmen to his home in Cambridge, United Kingdom. R. at 526. These Airmen went to his home after drinking numerous alcoholic drinks at one of their houses, arriving intoxicated. R. at 522, 525–28. One of the Airmen, AS, was an enlisted member of the Air Force who worked with Appellant, providing intelligence support for Appellant's squadron. R. at 250–53. AS stayed at Appellant's house overnight, and Appellant slept in his bed with AS. R. at 250. For occupying a bed with AS, Appellant pled guilty to fraternization without a plea agreement. R. at 216, 247–62, 264.

The events of this evening and the following morning gave rise to other allegations, and Appellant first received a letter of reprimand (LOR) for fraternization, wrongful distribution of a controlled substance, and conduct unbecoming an officer and a gentleman. Pros. Ex. 15. The

court-martial later tried Appellant for the same offenses for which he received the LOR,¹ as well as a specification of sexual assault. DD Form 458, *Charge Sheet*, Oct. 20, 2023. The court-martial acquitted Appellant of the additional offenses arising from this occasion, including sexual assault, wrongful distribution of a controlled substance, and conduct unbecoming. R. at 794.

It took several years for the Air Force to learn of the events from Christmas 2020, investigate them, and bring them to trial. *See* R. at 202 (indicating findings phase of court-martial began on 24 June 2024). During that time, Appellant was no longer allowed to perform his primary duties, causing him to feel like he had lost part of his identity. Def. Ex. C at 6. After struggling with this for more than a year and a half, Appellant hit a low point. *Id.* He accepted offers to use cocaine on two occasions within the same month, once at a party in Raleigh and once on a boat near Wilmington, both in North Carolina. R. at 225. He pled guilty without a plea agreement to one specification for wrongfully using cocaine these two times. R. at 216, 221–47, 264.

The incidents derailed Appellant’s otherwise distinguished service. After graduating from the Air Force Academy, he attended pilot training and became a first assignment instructor pilot. Def. Ex. C at 4. In his first year as an instructor, he logged the most flying hours of anyone in his Wing, and he went on to receive an award as the “Top Pilot Producer.” *Id.*; Pros. Ex. 16 at 13; Def. Ex. B at 7. The Air Force then selected him to fly the F-15E Strike Eagle, and he earned Distinguished Graduate honors in the Introduction to Fighter Fundamentals Training. Def. Ex. C

¹ While the LOR described the conduct unbecoming as engaging in sexual activity with enlisted members, the conduct unbecoming specification at court-martial alleged inviting junior enlisted Airmen to his residence to consume alcohol. *Contrast* Pros. Ex. 15, with DD Form 458, *Charge Sheet*, Oct. 20, 2023.

at 4. He excelled as an F-15E pilot, quickly advancing through his four-ship flight lead qualification and instructor upgrade. *Id.* at 4–5. He also deployed to the Middle East, logging approximately 350 combat flight hours in support of Operation Inherent Resolve. *Id.* at 5. As a result of his outstanding performance, his squadron commander named him the squadron Company Grade Officer of the Year for 2020. *Id.*; Pros. Ex. 16 at 17. His accomplishments throughout his career earned him three Air Medals, including two with a “C” device for combat, and two Air Force Commendation Medals. Def. Ex. B. at 1–5. His performance reports frequently characterized him as a top performer, including multiple high stratifications amongst competitive peers. *E.g.*, Pros. Ex. 16 at 11 (“#1/39 [squadron] pilots”), 17 (“#2/59 [squadron company grade officers]”). Appellant excelled at his duties, describing his favorite part of his service as “flying and training the Air Force’s next Generation of fighter pilots to be as lethal as possible.” Def. Ex. C at 6. The Defense presented this evidence, and more, as mitigating evidence at Appellant’s presentencing hearing.

SUMMARY OF ARGUMENT

Consideration of the entire record shows that a dismissal is an inappropriately severe sentence. Appellant has an extensive and laudable service record, including combat service. He outperformed many of his peers, especially as an instructor pilot. On the other hand, the offenses of which he was convicted—fraternization and wrongful use of cocaine—are relatively less serious. He readily accepted responsibility for both offenses by pleading guilty without a plea agreement. Overall, a dismissal is inappropriately severe for this Appellant under these circumstances, and this Court should not approve the dismissal.

ARGUMENT

A dismissal is an inappropriately severe sentence considering Appellant’s distinguished service record and the nature of the offenses to which he pled guilty.

A. Standard of review.

This Court reviews sentence appropriateness de novo. *See United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006) (citing *United States v. Cole*, 31 M.J. 270, 272 (C.M.A. 1990)).

B. A dismissal is not warranted for an accomplished combat aviator who was convicted of only less-serious offenses for which he accepted responsibility by pleading guilty.

The dismissal is inappropriately severe for Appellant’s case. This Court may only approve “the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved.” Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) (2018).² “[A] sentence should be approved only to the extent it is found appropriate based on [the Court’s] review of the entire record.” *United States v. Varone*, No. ACM S32685, 2022 CCA LEXIS 426, at *7 (A.F. Ct. Crim. App. July 21, 2022). In assessing sentence appropriateness, this Court considers “the particular appellant, the nature and seriousness of the offenses, the appellant’s record of service, and all matters contained in the record of trial.” *United States v. Fields*, 74 M.J. 619, 625 (A.F. Ct. Crim. App. 2015) (quoting *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006)).

Although Appellant’s court-martial included allegations of serious offenses, the two specifications to which he pled guilty were not the most serious. *See United States v. Douglas*, No. 40324 (f rev), 2024 CCA LEXIS 254, at *7, 10 (A.F. Ct. Crim. App. June 27, 2024) (finding dismissal to be an inappropriately severe sentence where the offenses of which appellant was

² Since Appellant pled guilty to offenses that occurred in 2020 and 2022, the sentencing rules and statutory standards for sentence appropriateness review in effect before 27 December 2023 apply here. National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, § 539E(f), 135 Stat. 1541, 1706 (2021).

convicted were not serious offenses). The fraternization specification involved only occupying a bed with an enlisted member. R. at 250; Enty of Judgment (EOJ), Aug. 11, 2024. While this was inappropriate, the context is not severe. AS and another Airman initially contacted Appellant because they were looking for people with whom they could socialize on Christmas Day, and they arrived at his house already intoxicated from drinking earlier. R. at 525–28. Appellant has repeatedly taken responsibility for his conduct, first in his LOR response, and then by pleading guilty without the benefit of a plea agreement. Pros. Ex. 15 at 4; R. at 216, 250–51, 264. This offense does not warrant a dismissal, the most severe punishment available here and one that carries an “ineradicable stigma” that will affect Appellant for the rest of his life. *United States v. Boyd*, 55 M.J. 217, 219 (C.A.A.F. 2001); R. at 263 (describing maximum punishment authorized by law).

While Appellant’s use of cocaine is arguably more serious, it still does not warrant a dismissal under these circumstances. This specification was for two instances of off-base personal use while Appellant was at a low point resulting from the stress of a protracted investigation. R. at 225; Def. Ex. C at 6. Although Appellant used cocaine twice, the two uses were within the same month, not over a long period of time. R. at 225; *see United States v. Edwards*, No. 38190, 2013 CCA LEXIS 873, at *6 (A.F. Ct. Crim. App. 2013) (noting drug use over a longer period of time as an aggravating factor). After that low point led Appellant to these poor decisions, he made a concerted effort to turn his life around and passed additional drug tests. R. at 227–28. Neither instance of drug use involved supplying drugs to anyone else, introducing them onto a military installation, or any other aggravating factors. *See Edwards*, 2013 CCA LEXIS 873, at *6 (describing aggravating factors for drug use). Appellant accepted responsibility for this offense by pleading guilty without the benefit of a plea agreement. R. at

216, 225–28, 264. He also received thirty days of confinement that the military judge specifically adjudged for wrongfully using cocaine. R. at 821. Considering the context of this offense, the lack of aggravating factors, and the additional punishment, a dismissal is inappropriately severe for this offense.

An examination of this particular Appellant and his record of service furthers the conclusion that the dismissal here is inappropriately severe. Appellant is a decorated combat aviator who served for years in exemplary fashion. Pros. Ex. 16; Def. Ex. B. His performance reports establish a record of sustained accomplishments in both training and deployed environments that elevated him above many of his peers. *E.g.*, Pros. Ex. 16 at 11 (“#1/39 [squadron] pilots”), 17 (“#2/59 [squadron company grade officers]”). He especially excelled in two areas of particular importance to the Air Force: training pilots³ and delivering combat lethality.⁴ Pros. Ex. 16 at 11 (“Lethal combat aviator . . . eradicated ISIL [Islamic State of Iraq and the Levant] threat”), 13 (“[U]nprecedented impact on SUPT [Specialized Undergraduate Pilot Training] [mission]”; Def. Ex. B; Def. Ex. C at 6. This record of commendable service counsels against a dismissal.

Appellant’s record did include one negative indicator: the LOR arising from *the same incident* at issue in his court-martial. Pros. Ex. 15. He received this LOR for fraternization, wrongful distribution of a controlled substance, and conduct unbecoming an officer and a

³ In the past few years, the Air Force has worked to address a pilot shortage by changing its pilot training processes. Patrick Parrish and John R. Hoen, CONG. RSCH. SERV., IF12257, U.S. AIR FORCE PILOT TRAINING TRANSFORMATION 1 (2022).

⁴ Last year, the Chief of Staff of the Air Force described the service’s focus on increasing combat readiness and effectiveness to deliver more combat lethality. David Vergun, *Air Force Aims to Instill Warrior Ethos, Increase Lethality*, DOD News (March 4, 2025), <https://www.war.gov/News/News-Stories/Article/Article/4099520/air-force-aims-to-instill-warrior-ethos-increase-lethality/>.

gentleman, all from the Christmas 2020 incident . *Id.* at 1. But after the court-martial acquitted him of the wrongful distribution and conduct unbecoming offenses, the outcome ballooned from an LOR to a criminal conviction with a sentence that includes a dismissal. This disparity underscores the inappropriate severity of the dismissal. At one point, Appellant's chain of command determined that an LOR was an appropriate disposition for his misconduct. Pros. Ex. 15. A dismissal should not result from a later conviction for only one of three offenses in the LOR. While the findings include an additional specification for wrongfully using a controlled substance, the LOR included distribution of a controlled substance, a more serious offense. *Edwards*, 2013 CCA LEXIS 873, at *6 (indicating that distribution of a controlled substance is more egregious than use). Appellant should not receive the most severe punishment available after he was convicted of fewer and less severe offenses than those included in the LOR, especially when he pled guilty and accepted responsibility for both convicted offenses. The fact that an LOR was appropriate for this situation before demonstrates that a dismissal is inappropriately severe now.

The circumstances here show a contrite Appellant with an otherwise admirable service record who was convicted, pursuant to his guilty pleas, of only two less-serious offenses. He already served a confinement sentence that appropriately reflects the gravamen of his misconduct. Considering all of these factors, this Court should find that the severe punishment of a dismissal is inappropriate and not approve that portion of the sentence.

CONCLUSION

Appellant respectfully asks this Court to not affirm the dismissal.

Respectfully submitted,

[REDACTED]

Frederick J. Johnson
Major, U.S. Air Force
Appellate Defense Counsel

[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were electronically delivered to the Court and served on the Air Force Government Trial and Appellate Operations Division on 24 April 2026.

[REDACTED]

Frederick J. Johnson
Major, U.S. Air Force
Appellate Defense Counsel

[REDACTED]

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

UNITED STATES	)	No. ACM 40714
<i>Appellee</i>	)	
	)	
v.	)	
	)	NOTICE OF PANEL
Marc W. PENNINGA	)	CHANGE
Major (O-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	

It is by the court on this 4th day of May, 2026,

ORDERED:

The record of trial in the above-styled matter is withdrawn from Special Panel and referred to a new Special Panel for appellate review.

The Special Panel in this matter shall be constituted as follows:

GRUEN, PATRICIA A., Colonel, Senior Appellate Military Judge
RAMIREZ, ROBERTO, Lieutenant Colonel, Appellate Military Judge
MORGAN, CHRISTOPHER S., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.



FOR THE COURT



AGNIESZKA M. GAERTNER, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, <i>Appellee,</i>	)	ANSWER TO ASSIGNMENT OF
	)	ERROR
	)	
v.	)	Before Special Panel
	)	
Major (O-4)	)	No. ACM 40714
MARC W. PENNINGA	)	
United States Air Force	)	21 May 2026
<i>Appellant.</i>	)	

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

ISSUE PRESENTED

**WHETHER THE SENTENCE TO A DISMISSAL IS
INAPPROPRIATELY SEVERE CONSIDERING
APPELLANT’S DISTINGUISHED SERVICE RECORD AND
THE NATURE OF THE OFFENSES TO WHICH HE PLED
GUILTY.**

STATEMENT OF CASE

On 27 June 2024, Appellant was convicted, consistent with his pleas, by a military judge-alone special court-martial of one charge, one specification of wrongful use of cocaine, a Schedule II controlled substance, in violation of Article 112a, Uniform Code of Military Justice (UCMJ) and one specification of fraternization in violation of Article 134, UCMJ. (ROT, Vol 1, *Entry of Judgment (EOJ)*, dated 11 August 2024).¹ The military judge sentenced Appellant to 30

¹ Appellant entered mixed pleas: He pled not guilty to (1) one specification of wrongful distribution of cocaine in violation of Article 112a; (2) one charge and one specification of sexual assault in violation of Article 120; (3) and one charge and one specification of conduct unbecoming an officer in violation of Article 134, UCMJ. These offenses were fully litigated before the military judge, who found Appellant not guilty of the listed offenses. (R. at 794).

days confinement, a reprimand, and a dismissal, and the convening authority approved the sentence except for the reprimand. (Id.; R. at 821).

STATEMENT OF FACTS

Guilty Plea Colloquy

Appellant pled guilty to Specification 2 of Charge I and to Charge IV and its specification without a plea agreement or stipulation of facts. (R. at 219, 264).

On 25 and 26 December 2020, Appellant was a commissioned officer in the Air Force stationed at Royal Air Force (RAF) Lakenheath, UK. (R. at 250). AS was a junior enlisted member of the United States Air Force that worked with Appellant and who he had known for about eight months. (R. at 250, 252, 254). Appellant worked with AS about once a month in the unit and knew her rank. (R. at 254).

Appellant lived off-base in Cambridge. (R. at 251). On the evening of 25 December 2020, AS came to Appellant's house. According to Appellant, Appellant and AS slept in Appellant's bed that night and woke in the same bed on 26 December 2020. (R. at 250). There was no military necessity that forced Appellant to sleep in the same bed as AS, and Appellant's choice to share the bed with her was a personal one. (R. at 257). Appellant's actions with AS compromised the chain of the command through "the appearance of partiality" as other members of the Air Force who worked with Appellant became aware of Appellant's conduct with AS. (R. at 259-260). Appellant agreed that his actions "diminished in their eyes the respect they otherwise would have for [him] as a military officer." (R. at 261). During the plea colloquy, the area defense counsel (ADC) acknowledged that the specification for fraternization was "within the course of conduct of the alleged sexual assault" of AS. (R. at 249).

Appellant also confessed that on 14 July 2023 while at a get-together in Raleigh, NC, an associate of Appellant's civilian friend offered him cocaine for free. (R. at 225-226). Appellant had "not really talked" to this person before that get-together. (R. at 230). Appellant was "very depressed about how the claims made by AS in this case had impacted my career and my life." (R. at 225). Appellant used cocaine because he "was presented with the opportunity when I was feeling so low" and Appellant "hop[ed] it would help me feel better and allow me to escape my problems." (Id.) Appellant also thought that, if he did not use the offered cocaine, the other people at the get-together "would have maybe felt differently about me." (R. at 237). Appellant took a rolled-up dollar bill from the associate and snorted the cocaine off the bathroom counter. (R. at 231). Appellant was randomly selected to provide a urinalysis sample on 17 July 2023. (Id.)

Appellant explained that two weeks later on 29 July 2023, Appellant was boating in Wilmington, NC with his civilian friends. (R. at 226). When a civilian friend offered Appellant "a bump of cocaine . . . on the tip of his car key," Appellant once again took "the opportunity when I was feeling terrible about my life and my future." (Id.) Appellant was "feeling even worse" about himself because he was worried the first drug test was going to be positive. (R. at 227). Appellant snorted cocaine off his friend's key to "feel better and try[] to escape my problems like I did before." (R. at 227, 241). During both instances of cocaine use, Appellant was not undergoing any mental health counseling or taking a prescription for his self-described depression. (R. at 235-236).

Pursuant to his pleas, the military judge found Appellant guilty of Charge I, Specification 2 for wrongful use of cocaine and Charge IV and its specification for occupying a bed with AS in

violation of the custom of the United States Air Force against fraternization between officer and enlisted persons. (R. at 266).

Litigated Offenses

During trial on the litigated offenses, AS testified regarding the night of 25 December 2020. OG, the other enlisted airman present at Appellant's home the night of 25 December 2020, was friends with AS and stationed at RAF Lakenheath with AS and Appellant. (R. at 341-343).

AS had a professional, working relationship with Appellant due to her position as an intel analyst assigned to his fighter squadron. (R. at 516). Appellant sent AS a friend request on Facebook, which she accepted. (R. at 517). Appellant sent AS Facebook messages that included comments about her 2020 Halloween costume, her popularity, and a request to see her art. (Pros. Ex. 1).

On 25 December 2020, OG invited AS to spend Christmas together at OG's house in Cambridge. (R. at 346, 519). Due to the coronavirus SARS-CoV-2 (Covid-19) pandemic, restrictions were in place that limited social interactions and individuals were not permitted to visit each other's houses. (R. at 385, 481-482, 521). Information about the restrictions in place due to Covid-19 were distributed to AS, OG, and Appellant's squadron through e-mails. (R. at 481-482). Despite this, AS went to OG's house. (R. at 521). AS and OG drank alcohol and watched movies together in the afternoon. (R. at 347, 521-522, 524). They drank tequila sunrises made of tequila, orange juice, and curacao. (R. at 522). AS had three tequila sunrises before she drank some amount of whiskey. (Id.)

Eventually, AS and OG reached out to Appellant, and he invited them to come to his house in Cambridge. (R. at 350, 526). Appellant sent both women a text message with his

address. (Pros. Ex. 1, 2). AS and OG went to Appellant's house with a bottle of whiskey because the plan was to drink and play board games. (R. at 391, 527). AS was intoxicated and could not clearly remember arriving at Appellant's house before standing in his kitchen. (R. at 529). OG and AS both suffered from memory loss during the evening, and OG recalled seeing Appellant with his hand on AS's thigh. (R. at 358, 530). OG took photographs of AS sitting on Appellant's lap. (Pros. Ex. 6, 7).

At one point during the evening, OG and AS had a physical altercation, and OG asked AS to leave Appellant's house with her. (R. at 362, 530; Pros. Ex. 3). OG took a video of a portion of this argument, wherein Appellant can be seen sitting on the couch behind AS while OG tells AS "we can fuck him tomorrow" and cries for them to leave. (Pros. Ex. 3). OG did not believe AS was aware of herself and felt AS was "incoherent" based on the way AS was speaking and acting. (R. at 362-363). AS testified that she had "rarely" been as intoxicated as she was on 25 December 2020. (R. at 535).

OG eventually left Appellant's house while AS remained. (R. at 365, 537). AS remembered Appellant taking her upstairs and then remembered being in a bed while it was still dark out. (R. at 537-538). AS next woke up and saw sunlight in the room, but she still felt intoxicated. (R. at 539-540). AS could then recall being on her stomach naked in the bed with Appellant caressing her back and talking with her. (R. at 541-542). AS's next memory was of Appellant behind her with his penis inside her vagina while AS remained on her stomach on the bed. (R. at 543-544).

Later that morning on 26 December 2020, Appellant drove AS back to OG's house. (R. at 548). At 1500 and 1629 on 26 December 2020, AS asked Appellant to "just keep yesterday

between us three” with respect to AS and OG’s fight and then to “actually keep everything between us three.” (Pros. Ex. 2).

On 28 December 2020, Appellant sent AS a picture of his bare legs from the upper thigh down with a comment about his weight. (Pros. Ex. 2). Before Appellant moved to Seymour Johnson AFB, NC, AS texted him on 9 January 2021 to ask if he had plans for his last weekend in England. (Id.) Appellant offered to go over to AS’s house to help her with cleaning. (Id.) AS said that while she did not mind hanging out:

what happened on Christmas can’t happen again. I don’t like when my work and social life have interference and what we did put both of our careers at serious risk. I don’t think hanging out is a good idea because we both know it’s only going to lead to one thing.

(Id.)

Appellant responded that he was “leaving in 6 days so it won’t really affect your work. But that’s fine if you’re not down, just thought I’d put the offer out there.” (Id.)

ARGUMENT

APPELLANT’S DISMISSAL IS APPROPRIATE IN LIGHT OF THE OFFENSES AND SURROUNDING CIRCUMSTANCES.

Additional Facts

During Appellant’s guilty plea, trial counsel announced that the maximum sentence was dismissal, total forfeiture of all pay and allowances, seven years confinement, a fine, and a reprimand. (R. at 263). ADC and Appellant affirmed the accuracy of the sentencing range. (Id.)

For consideration in sentencing, trial counsel admitted Appellant’s personal data sheet, officer performance reports, and a letter of reprimand (LOR) from 21 July 2022 for, among other things, fraternizing with AS and OG on 25 December 2020. (Pros. Ex. 15-17). The LOR

included Appellant's response, wherein he said, "I take full responsibility for my actions and thus do not contest this [LOR]." (Pros. Ex. 15).

For defense's sentencing evidence, Appellant admitted additional Facebook messages between himself and AS; various awards, coins, and commendations of Appellant; and a 7-page written unsworn statement (Def. Ex. A-C). In his short verbal unsworn statement, Appellant acknowledged that because of his convictions, "one way or the other my Air Force career is now over." (R. at 802). Appellant then said he would "accept whatever sentence [the military judge feels] is appropriate in this case." (Id.)

In her unsworn statement, AS explained that she "spent these last three and a half years in psychological solitude, protecting myself from the unpredictability of those around me." (R. at 804). AS asserted that her days have been "riddled with mistrust, apprehension, anxiety, and feelings of dread." (Id.) AS stated she would "find relief in knowing that a conclusion has been reached. And that this conclusion has resulted in [Appellant]'s inaccessibility to other young women." (R. at 805).

Trial counsel asked the military judge to sentence Appellant to eight months confinement, total forfeiture of all pay and allowances, a reprimand, and a dismissal. (R. at 810). Trial counsel's argument focused on Appellant's tendency to "take an opportunity to do what he wants" with respect to lying naked in bed with AS and two uses of cocaine. (R. at 807-808). Trial counsel argued that the "floor" of Appellant's sentence should be a dismissal because Appellant's actions demonstrated that he, as a Field Grade Officer, did not respect Air Force customs against fraternization and used cocaine. (R. at 808-809). Trial counsel also urged the military judge to consider the "emotion turmoil" felt by AS because of Appellant's actions and Appellant's attempt to shift blame for his cocaine use onto his "depression" from the allegations

made by AS. (Id.) Because Appellant’s actions “harmed the Air Force and its airmen,” Appellant deserved a dismissal. (R. at 810).

ADC argued that a dismissal and any confinement in Appellant’s case was “greater than necessary” and “not appropriate in this case.” (R. at 811). ADC argued that Appellant was going to be administratively separated from the Air Force even without a dismissal, and so a dismissal was unnecessary in this case in light of the finality of Appellant’s aviation career both in and out of the military. (R. at 812-813).

Standard of Review

This Court reviews the appropriateness of an appellant’s sentence *de novo*. See United States v. McAlhaney, 83 M.J. 164, 166 (C.A.A.F. 2023). This Court has the statutory duty to “independently determine, in every case within [its] limited Article 66, UCMJ, jurisdiction, the sentence appropriateness of each case [it] affirm[s].” United States v. Baier, 60 M.J. 382, 384–85 (C.A.A.F. 2005) (alterations in original).

Law and Analysis

Pursuant to Article 66(d), UCMJ, this Court “may affirm only the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved.” 10 U.S.C. § 866(d). The purpose of such review is “to ensure ‘that justice is done and that the accused gets the punishment he deserves.’” United States v. Joyner, 39 M.J. 965, 966 (A.F.C.M.R. 1994) (quoting United States v. Healy, 26 M.J. 394, 395 (C.M.A. 1988)).

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. Hamilton, 77 M.J. 579, 587 (A.F. Ct. Crim.

App. 2017) (citations omitted). “The power to review the entire record includes the power to consider the allied papers, as well as the record of trial proceedings.” United States v. Hutchison, 57 M.J. 231, 234 (C.A.A.F. 2002).

Although this Court has discretion to determine whether a sentence is appropriate, it has “no power to ‘grant mercy.’” Id. at 587 (citing United States v. Nerad, 69 M.J. 138, 146 (C.A.A.F. 2010)); see also United States v. Walters, 71 M.J. 695, 698 (A.F. Ct. Crim. App. 2012) (“[W]e are not authorized to engage in exercises of clemency.”) Thus, as long as a sentence is not inappropriately severe, this Court may affirm it even if it is not what this Court would have adjudged:

By affirming a sentence, we do not necessarily mean that it is the sentence we would have adjudged had we been the sentencing authority. The numerous permutations and combinations of sentencing alternatives available to the sentencing authority are so broad that, normally, there will not be only one sentence that is appropriate for a particular appellant. Thus, it may be more fitting for this Court to find that a particular sentence “is not inappropriate,” rather than “is appropriate.”

Joyner, 39 M.J. at 966.

R.C.M. 1002(f) provides four sentencing factors for a court-martial to consider²:

(1) the nature and circumstances of the offense and the history and characteristics of the accused;

(2) the impact of the offense on—

(A) the financial, social, psychological, or medical well-being of any victim of the offense; and

(B) the mission, discipline, or efficiency of the command of the accused and any victim of the offense;

(3) the need for the sentence to—

² See also Article 56(c)(1), UCMJ

- (A) reflect the seriousness of the offense;
- (B) promote respect for the law;
- (C) provide just punishment for the offense;
- (D) promote adequate deterrence of misconduct;
- (E) protect others from further crimes by the accused;
- (F) rehabilitate the accused; and
- (G) provide, in appropriate cases, the opportunity for retraining and returning to duty to meet the needs of the service;

and
(4) the sentences available under these rules.

When applying the sentencing factors under R.C.M. 1002(f), the military judge could consider “any evidence admitted by the military judge during the findings proceeding.” R.C.M. 1002(g)(2). To arrive at an appropriate sentence for Appellant, the military judge (and this Court on review) could consider the facts offered during the litigated portion of Appellant’s court-martial, even for acquitted offenses. United States v. Plourde, 2019 CCA LEXIS 488, at *44-45 (A.F. Ct. Crim. App. Dec. 6, 2019) (even if a panel acquitted accused, they could consider “the conduct underlying those [acquitted] offenses [that] amounts to facts and circumstances surrounding and immediately preceding the convicted-of offense . . . in arriving at a sentence”); *cf.* United States v. Rosario, 76 M.J. 114, 117 (C.A.A.F. 2017) (“a reviewing court may consider facts underlying an acquitted charge in considering whether the facts support a separate charge.”) In Appellant’s case, the “entire record of trial,” Hamilton, 77 M.J. at 587 and “any evidence admitted . . . during the findings” included AS and OG’s testimony and the Government’s exhibits, not just his guilty plea colloquy.

The sentence as determined by the military judge at trial is appropriate. The maximum confinement for Appellant's convictions was seven years confinement and a dismissal. (Manual for Courts-Martial, United States, pt. IV, para. 50.d.; 101.d. (2023 ed.) (MCM). A dismissal meets the sentencing factors under R.C.M. 1002(f).

To start, Appellant contends that his conviction of fraternization for occupying a bed with AS is not a "serious offense." (App. Br. at 6). That perspective is too narrow and focuses only on the literal words within the specification of Charge IV. Addressing the "the nature and circumstances of the offense and the history and characteristics of the accused" from R.C.M. 1002(f), Appellant did not *just* share a bed with a subordinate. R.C.M. 1002(f)(1). Appellant knew AS was an enlisted member in his squadron obligated to follow his orders. (R. at 254). He knew he was not allowed to associate with her on terms of military equality and that a friendship with her or the appearance of partiality would prejudice good order and discipline in the unit. (R. at 256). Despite this, he invited AS and OG, both enlisted members in his squadron, to come to his home during Covid-19 restrictions with the understanding they would be drinking. (R. at 350, 481, 526). Even if he did not directly provide AS with the alcohol, she arrived intoxicated at his house with the expectation that they would continue to drink with Appellant.³ (R. at 391, 527). He further compounded his inappropriate behavior by sitting with AS in his lap on his couch. (Pros. Ex. 5-7). This culminated in Appellant deliberately taking AS upstairs, sleeping naked with her in his bed, and having sex with her the next morning.⁴ (R. at 537-538, 541-544).

³ ADC conceded during findings argument that AS and OG "certainly were" drunk "to some degree." (R. at 760).

⁴ Appellant's acquittal for sexual assault does not prevent the facts surrounding the sexual assault, which was the same course of conduct as the allegation of fraternization, from being considered with respect to his sentence. Neither the military judge nor this Court must conclude

His actions demonstrated a lack of respect for the custom against fraternization *and* his duty to obey Covid-19 restrictions issued by his superiors.

Appellant's unsworn statement and appellate brief highlight his lack of true accountability. In his unsworn statement, Appellant said he "wish[ed] [AS and OG] had never reached out to me, and I had never agreed to the plan." (Def. Ex. C). The use of these passive verbs to show passive involvement reflected Appellant's belief that AS and OG were the true culprits behind his convictions, rather than his own actions. In his brief, Appellant highlighted that AS and OG came to his house on Christmas of 2020 "already intoxicated," and Appellant's fraternization charge was for "only occupying a bed with an enlisted member." (App. Br. at 5-6). It is neither a defense nor an excuse for Appellant that AG and OG reached out to him first or that he did not specifically provide AS or the other airman with the alcohol that led to their intoxication; rather, it condemns him further because he *knew* they were intoxicated and still invited them into his home and AS into his bed, where he then had sex with AS the next morning. (R. at 250).

Furthermore, Appellant's text messages with AS on 9 January 2021 belie the argument that this was a one-time lapse by Appellant: Appellant offered to come over to AS's house, AS explained that what happened at Christmas -implicitly sex - could not happen again because it jeopardized both their careers and working relationship. (Pros. Ex. 2). AS also implied that she expected sex between Appellant and herself would occur again if Appellant came to her house, and she did not want to mingle her personal and work lives. (Id.) Appellant's response was not a denial that he wished to have sex or that they jeopardized their careers at Christmas; instead, he

that Appellant sexually assaulted AS to consider whether the record showed that he had sex with AS while sharing a bed with her while she was his enlisted subordinate.

merely said that since he was moving away in six days, AS's work would not be affected if Appellant came over to her house. (Id.) That was not the statement of an officer who regretted having sex with his enlisted subordinate. It was the statement of someone who did not consider this violation of the necessary separation between enlisted and officers to be anything to worry about, even after his enlisted subordinate *reminded* him of the danger to their military careers.

Without even addressing Appellant's cocaine use in 2023, such a brazen violation of the custom against fraternization between officer and enlisted members required sufficient consequences – in this case, removal of Appellant from the service through a dismissal. Under this factor, a dismissal appropriately reflects the seriousness of Appellant's actions.

The second factor is the “impact of the offense on... the financial, social, psychological, or medical well-being of any victim of the offense.” R.C.M. 1002(f)(2). Under this factor, AS has suffered psychologically because of Appellant. In her victim impact statement, AS described the impact of Appellant's actions, which included feelings of “mistrust, apprehension, anxiety, and feelings of dread.” (R. at 804). AS spent the years following 25 December 2020 in a state of “psychological solitude” because of Appellant's actions when he was her superior officer. (Id.) Pursuant to this factor and factor (3)(e), protecting others from further crimes by the accused, the dismissal is appropriate because Appellant's removal from the Air Force prevented him from using a position of authority to inflict psychological damage onto any other junior airman.

Turning to the third factor, when an officer commits fraternization and drug use, it damages the reputation of the armed forces and undermines morale within the ranks. (R. at 251). Appellant's impact to good order and discipline is an important consideration for an appropriate sentence under R.C.M. 1002(f)(3). Disapproving the dismissal and affirming only a sentence of

30 days confinement, roughly 1.2 percent of the available maximum confinement sentence, does not convey the severity of Appellant's offenses. *Id.* Affirming the dismissal promotes respect for the law by issuing a just punishment for wrongful drug use and fraternization. The preamble to the MCM lays out that the purposes of military justice are "to promote justice, to deter misconduct, to facilitate appropriate accountability, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States." (MCM, Preamble). Appellant's sentence fulfills these purposes.

Appellant's argument that he had an "exemplary" career outside his misconduct completely disregards the principle of general deterrence and respect for the law. (App. Br. at 7). It is not only Appellant's specific deterrence that matters, but the general deterrence of enforcing the standards expected of all servicemembers and enacting a just punishment for officers who abuse their position to commit fraternization and then use drugs like cocaine while out with civilian companions. For his cocaine use, Appellant cites to the fact that it was the result of Appellant's "stress of a protracted investigation." (App. Br. at 6). That Appellant deliberately used cocaine twice because he was stressed about the investigation, a time when he should have been on his best behavior, demonstrates that a dismissal is appropriate – Appellant could not stop committing misconduct even when under additional scrutiny. A dismissal sends a powerful deterrent message to the service that when you are under stress, that does not give you leeway to address it with recreational drug use. Furthermore, Appellant did not only use cocaine to cope with the stress of his criminal investigation. Appellant admitted during the plea colloquy that he believed his civilians friends present at the get together "would have maybe felt differently about me" if he did not accept the offer of cocaine. (R. at 237). But Appellant was a 35-year-old Field

Grade Officer in the Air Force who should have been beyond the forces of peer pressure. (Pros. Ex. 17). Applying common sense and knowledge of human nature and the ways of the world, being an Air Force officer subject to random drug testing is an unassailable reason to tell one's peers that one cannot engage in illegal drug use. Peer pressure by civilian friends cannot be considered strong evidence in mitigation, and a dismissal will deter future servicemembers from believing it is an excuse to wrongfully use drugs.

Appellant had been in the military for almost a decade when he committed fraternization and for twelve years when he used cocaine. Dismissal serves both the function of punishment and as a reminder of behavior which will absolutely not be tolerated. All officers should be aware that committing fraternization or drug use can result in their dismissal from the service. Based on these principles and under this factor, the dismissal is not inappropriate and should be affirmed. Joyner, 39 M.J. at 966.

The fourth factor is consideration of the available sentences at a given court-martial. R.C.M. 1002(f)(4). Dismissal is the only portion of the sentence Appellant contends is inappropriately severe. (App. Br. at 5). However, the dismissal was not only available under the law, but a mere fraction of the maximum statutory punishment – seven years confinement was also available to the military judge. While Appellant argued that a dismissal is too severe because he originally received an LOR for the fraternization and other offenses in July of 2022 (App. Br. at 7-8), that is not a factor that cuts against his sentence. The military judge *did* sentence Appellant to a reprimand for his conviction under Article 112a (the conviction that was not captured in the earlier LOR), and the convening authority disapproved it. (ROT, Vol 1, *EOJ*, dated 11 August 2024). It is perfectly logical to conclude that the fraternization *with* the

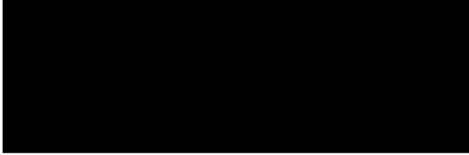
wrongful use of cocaine conviction elevated Appellant’s conduct to warrant a dismissal. Under this final factor, the sentence is not inappropriate and should be affirmed.

Given the above, Appellant’s request to set aside his dismissal amounts to a cry for mercy. However, mercy or clemency is distinct from this Court’s responsibility to review for sentence appropriateness. This Court’s sentence appropriateness review is aimed at “assuring that justice is done and that the accused gets the punishment he *deserves*.” Healy, 26 M.J. at 395 (emphasis added). By contrast, “[c]lemency involves bestowing mercy—treating an accused with *less rigor than he deserves*.” Id. at 395 (emphasis added). This responsibility for clemency “was placed by Congress in other hands”—those of the convening authority. Id. at 396. “Granting mercy for any reason or no reason is within the purview of the convening authority.” See Nerad, 69 M.J. at 146. The convening authority already granted some mercy by disapproving Appellant’s reprimand. (ROT, Vol 1, *EOJ*, dated 11 August 2024).

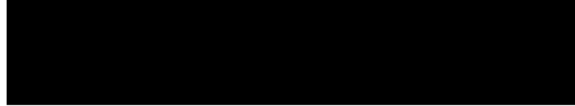
Appellant received far less than the maximum allowable sentence under the law. Only by preserving the sentence can this Court ensure that “justice is done and that the accused gets the punishment he deserves.” Healy, 26 M.J. at 395. To grant Appellant relief would not only be an improper exercise of a clemency power that this Court does not have, but also a miscarriage of justice. The dismissal is appropriate, reasonable, and was adjudicated after consideration of all facts, circumstances, and matters presented in mitigation or extenuation at trial. No additional matters have been presented which warrant reduction. Thus, Appellant’s sentence to a dismissal should be affirmed.

CONCLUSION

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



REGINA HENENLOTTER, Maj, USAF
Appellate Government Counsel,

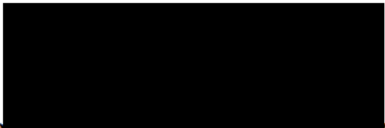


MARY ELLEN PAYNE
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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force
Appellate Defense Division on 21 May 2026.


R  Maj, USAF
Appellate Government Counsel


IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee,

v.

Major (O-4)

Marc W. PENNINGA,

United States Air Force,

Appellant.

**REPLY BRIEF ON BEHALF OF
APPELLANT**

Before Special Panel

No. ACM 40714

28 May 2026

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

Appellant, Major (Maj) Marc Penninga, pursuant to Rule 18(d) of the Joint Rules of Appellate Procedure and Rule 17.3 of this Court's Rules of Practice and Procedure, files this Reply to the United States' Answer to Assignments of Error. In addition to the arguments in the Brief on Behalf of Appellant, Maj Penninga submits the following additional argument.

ARGUMENT

A dismissal is an inappropriately severe sentence considering Appellant's distinguished service record and the nature of the offenses to which he pled guilty.

Appellant was convicted of only the two specifications to which he pled guilty—fraternization and wrongful use of cocaine. Entry of J. (Aug. 11, 2024). “[I]t is a fundamental principal of military justice that an accused is to be punished only for the offenses of which he has been convicted.” *United States v. Gehlhausen*, No. ACM 35280, 2004 CCA LEXIS 243, at *11 (A.F. Ct. Crim. App. Oct. 14, 2004) (citing *United States v. Saferite*, 59 M.J. 270 (C.A.A.F. 2004)). The Government tries to expand the conduct for which Appellant is being punished by imploring the Court to consider testimony regarding the offenses for which Appellant was acquitted, especially AS's account of sexual activity. Answer to Assignments of Error (Ans.) at 10–11 (citing *United States v. Plourde*, 2019 CCA LEXIS 488, at *44–45 (A.F. Ct. Crim. App.

Dec. 6, 2019). *Plourde* allows the consideration of underlying conduct from acquitted offenses because it “amounts to facts and circumstances surrounding and immediately preceding the convicted-of offense”—that is, it provides context. 2019 CCA LEXIS 488, at *44. The Government takes this consideration of context too far, using evidence regarding an acquitted offense to justify the sentence. Ans. at 10–13.

Even though additional matters, including those related to acquitted offenses, can be considered to contextualize an offense, the Government crosses the line between considering context and punishing for unconvicted conduct. “While matters in aggravation can assist the [sentencing authority] in understanding the true context of the offenses, it is improper to urge that an accused be punished for acts not fairly embraced by the conviction.” *Gelhausen*, 2004 CCA LEXIS 243, at *11. Yet that is exactly what the Government is urging this court to do when it emphasizes the testimony that Appellant “had sex with AS the next morning.” Ans. at 12. That conduct is not fairly embraced by the conviction for fraternization by “occupying a bed with [AS].” R. at 248. Under the Government’s approach, the context swallows the charged offense, resulting in improper emphasis on conduct underlying an acquitted offense when determining sentence appropriateness. The Court should eschew that approach.

The Government’s argument disregards the central importance of the specifications themselves. It claims that Appellant’s argument “is too narrow and focuses only on the literal words within the specification of Charge IV.” Ans. at 11. This raises two significant problems. First, the words of a specification are essential to determining what constitutes the charged offense. *See United States v. English*, 79 M.J. 116, 120 (C.A.A.F. 2019). In *English*, the Government “narrowed the scope of the charged offense by alleging the particular type of force” in the specification. *Id.* Likewise here, the Government narrowed the scope of the charged

fraternization by alleging particular conduct—that Appellant “occupied a bed with [AS]”—in the specification. DD Form 458, *Charge Sheet* (Oct. 20, 2023). The Government controls the charge sheet. *English*, 79 M.J. at 120. If it wanted to punish Appellant for other conduct that it views as encompassed by the fraternization, it could have drafted a specification that included that conduct. But once it chose charging language, “it was bound to abide by it.” *Id.* That includes only sentencing Appellant for the offenses within the scope of the specifications.

The second problem is that the scope of the fraternization specification was particularly important in this case. During the plea colloquy, the trial defense counsel highlighted that Appellant was “pleading guilty to one alleged event within that alleged course of conduct,” a reference to sharing the bed with AS. R. at 249–50. The trial defense counsel asked the military judge to limit questioning to the actual specification, and the military judge responded that he had recognized the scope of the specification and guilty plea and limited his questions accordingly. R. at 250. Considering this exchange, Appellant’s focus is not too narrow; it is focused on the precise conduct for which he pled guilty. The Government’s attempt to justify the sentence based on conduct beyond the scope of the specification’s language, as confirmed on the record, is unfounded. As the Army Court of Criminal Appeals has stated, “Words matter, especially words that are legally significant.” *United States v. Hurd*, No. ARMY 20240033, 2025 CCA LEXIS 374, at *4 (A. Ct. Crim. App. Aug. 6, 2025) (quoting *United States v. Mahnke*, No. ARMY 20210533, 2022 CCA LEXIS 566, at *7 (A. Ct. Crim. App. Sep. 30, 2022)). This Court should reject the Government’s encouragement not to focus “on the literal words within the specification.” Ans. at 11.

Despite its reliance on considerations beyond the scope of the charged offenses, the Government is dismissive of additional context that does not support its argument. It argues that

AS and the other Airman reaching out to Appellant first and Appellant not providing “the alcohol that led to their intoxication” are “neither a defense nor an excuse.” Ans. at 12. It also takes umbrage at Appellant noting the stress that led to his poor choice to use cocaine. Ans. at 14. Appellant did not present these facts as a defense or an excuse. Rather, they provide “the true context of the offenses,” a proper consideration when determining an appropriate sentence. *Gehlhausen*, 2004 CCA LEXIS 243, at *11.

Similarly, Appellant’s strong twelve-year service record, including his achievements as a combat aviator and instructor at pilot training, is a crucial consideration for this Court. Pros. Ex. 16; *United States v. Fields*, 74 M.J. 619, 625 (A.F. Ct. Crim. App. 2015) (noting that the Court considers “the appellant’s record of service” when determining sentence appropriateness (quoting *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006))). The Government disregards his service record in the name of “general deterrence.” Ans. at 14. “General deterrence is an appropriate consideration for sentencing, provided it is not relied upon to the exclusion of other factors.” *United States v. Mandy*, 73 M.J. 619, 628 (A.F. Ct. Crim. App. 2014) (citing *United States v. Lania*, 9 M.J. 100, 104 (C.M.A. 1980)). If the need for general deterrence foreclosed consideration of an appellant’s service record, as the Government suggests, Ans. at 14, that would prevent consideration of the service record in almost all cases. But the opposite is true. An appellant’s service record is one factor that the Court always considers, alongside “the particular appellant, the nature and seriousness of the offenses, . . . and all matters contained in the record of trial,” when assessing sentence appropriateness. *Fields*, 74 M.J. at 625. This Court should consider Appellant’s extensive record of commendable service, along with other factors, and determine that a dismissal is inappropriately severe for this appellant and these offenses.

The Government’s argument culminates by tearing down the straw man that Appellant’s

argument “amounts to a cry for mercy.”¹ Ans. at 16. This allows the Government to rely on the uncontroverted principle that appellate courts do not engage in acts of clemency. *Id.* But the Government’s employment of this fallacy is meaningless for the analysis of Appellant’s case. Appellant never requested clemency or mercy from this Court. Br. on Behalf of Appellant (Apr. 24, 2026). Rather, Appellant requests that this Court conduct a sentence appropriateness review in accordance with Article 66(d)(1), Uniform Code of Military Justice, 10 U.S.C. § 866(d)(1) (2018). The Court should not be distracted by the Government’s manufactured argument.

Focusing on matters beyond the scope of the specifications and employing logical fallacies helps the Government avoid grappling with the most confounding aspect of this analysis: the Letter of Reprimand (LOR) Appellant first received for more numerous and more serious offenses. Pros. Ex. 15. The Government addresses this LOR only once in its analysis, quickly dismissing it as not cutting against the sentence. Ans. at 15–16. This misses the point underscored by such an irregular procedural history. Appellant’s leadership initially decided to resolve three offenses at issue in this case by giving Appellant a single LOR. Pros. Ex. 15. After Appellant was acquitted of two of the offenses in the LOR at this court-martial, it defies reason to conclude that a dismissal is an appropriate sentence for fewer and less serious offenses. This aspect of Appellant’s case strongly counsels in favor of finding that the dismissal is inappropriately severe.

Considering Appellant’s record of admirable service and the nature and seriousness of the specific offenses to which he pled guilty, this Court should conclude that a dismissal is an

¹ Attempting to reframe matters of sentence appropriateness as requests for clemency is a common Government tactic in appeals before this Court. *E.g.*, Answer to Assignments of Error at 20, *United States v. Castillo*, No. ACM 40705, 2026 CCA LEXIS 118 (A.F. Ct. Crim. App. Mar. 11, 2026); Answer to Assignments of Error at 16, *United States v. Turtu*, No. ACM 40649 (f rev), 2026 CCA LEXIS 4 (A.F. Ct. Crim. App. Jan. 14, 2026).

inappropriately severe sentence.

CONCLUSION

Appellant respectfully requests that this Court not affirm the dismissal.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

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 28 May 2026.

Respectfully submitted,

[REDACTED]

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[REDACTED]