

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. 2
	)	
Technical Sergeant (E-6)	)	No. ACM 40821
RANDALL R. RAFAJKO,	)	
United States Air Force,	)	25 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)(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 sixty days, which will end on **2 September 2025**. The record of trial was docketed with this Court on 5 May 2025. From the date of docketing to the present date, fifty-one 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,



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 25 June 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

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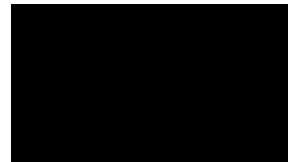
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 2
Technical Sergeant (E-6)	)	
RANDALL R. RAFAJKO,	)	No. ACM 40821
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	25 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.

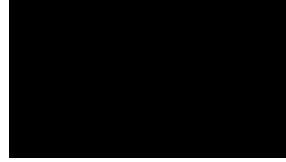


KATE E. LEE, Maj, USAF
Appellate Government Counsel



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 25 June 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



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

UNITED STATES	)	No. ACM 40821
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Randall R. RAFAJKO	)	
Technical Sergeant (E-6)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 2

On 25 June 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 26th day of June, 2025,

ORDERED:

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



OLGA STANFORD, Capt, USAF
Chief Commissioner

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

UNITED STATES	)	No. ACM 40821
<i>Appellee</i>	)	
	)	
v.	)	
	)	NOTICE OF PANEL
Randall R. RAFAJKO	)	CHANGE
Technical Sergeant (E-6)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	

It is by the court on this 28th day of August, 2025,

ORDERED:

The record of trial in the above-styled matter is withdrawn from Panel 2 and referred to a Special Panel for appellate review. The Special Panel in this matter shall be constituted as follows:

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge
KEARLEY, CYNTHIA T., Colonel, Appellate Military Judge
MORGAN, CHRISTOPHER S., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.



FOR THE COURT

JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES <i>Appellee</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
	)	(SECOND)
v.	)	
	)	Before Panel No. 2
Technical Sergeant (E-6)	)	
RANDALL R. RAFAJKO	)	No. ACM 40821
United States Air Force	)	
<i>Appellant</i>	)	22 August 2025

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

Pursuant to Rule 23.3(m)(1), (3)-(4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **2 October 2025**. The record of trial was docketed with this Court on 5 May 2025. From the date of docketing to the present date, 109 days have elapsed. On the date requested, 150 days will have elapsed.

On 18 February 2025, Appellant was tried by a general court-martial composed of a military judge alone at Andrews Air Force Base, Maryland. Trial Tr. at 1, 102, 114. Appellant was found guilty, consistent with his pleas, of one charge and six specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c; one charge and three specifications of viewing child pornography, possessing child pornography, and extramarital sexual conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. Trial Tr. at 117, 219; Electronic Record of Trial (eROT) Vol 1, *Entry of Judgment* (Mar. 27, 2025).

The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for a total of sixty-two months (with confinement for each specification running consecutively), a reprimand, and to be dishonorably discharged. Trial Tr. at 303; eROT Vol 1, *Entry of Judgment*

(Mar. 27, 2025). The convening authority took no action on the findings or the sentence. eROT Vol 1, *Convening Authority Decision on Action* (Mar. 19, 2025).

The trial transcript is 303 pages long. The electronic record of trial contains six Prosecution Exhibits, ten Defense Exhibits, fifty-two Appellate Exhibits, and six Court Exhibits. Appellant is currently confined.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

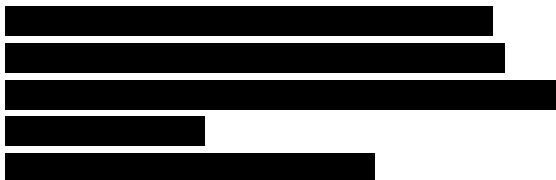
Through no fault of Appellant, undersigned counsel has been unable to complete their review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

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

Respectfully submitted,



JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 22 August 2025.



JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel



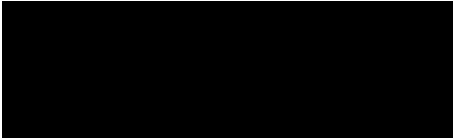
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Technical Sergeant (E-6)	)	
RANDALL R. RAFAJKO	)	No. ACM 40821
United States Air Force.	)	
<i>Appellant</i>	)	26 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 general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

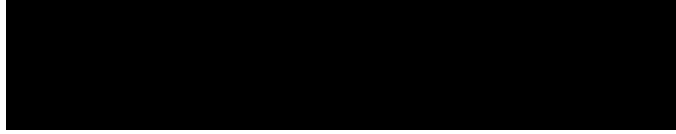

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel






CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 26 August 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



UNITED STATES,) **MOTION FOR WITHDRAWAL OF**
 Appellee,) **APPELLATE DEFENSE COUNSEL**
))
v.) Before Panel No. 2
))
Technical Sergeant (E-6)) No. ACM 40821
RANDALL R. RAFAJKO,))
United States Air Force,) 26 August 2025
 Appellant.)

Pursuant to Rules 12(b), 12.4, and 23.3(h) of this Honorable Court's Rules of Practice and Procedure, undersigned counsel respectfully requests to withdraw as counsel in the above-captioned case. Major Frederick Johnson is no longer detailed under Article 70, Uniform Code of Military Justice, to represent Appellant. Captain John Fredericks has been detailed as substitute appellate military counsel in undersigned counsel's stead and made his notice of appearance on 22 August 2025. Counsel have completed a thorough turnover of the record.

Appellant has been advised of this motion to withdraw as counsel and consents to undersigned counsel's withdrawal. A copy of this motion will be delivered to Appellant following its filing.

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

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

[REDACTED]

CERTIFICATE OF FILING AND SERVICE

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Respectfully Submitted,

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FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel

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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. 2
Technical Sergeant (E-6)	)	
RANDALL R. RAFAJKO	)	No. ACM 40821
United States Air Force	)	
<i>Appellant</i>	)	22 September 2025

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

Pursuant to Rule 23.3(m)(1), (3)-(4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **1 November 2025**. The record of trial was docketed with this Court on 5 May 2025. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 18 February 2025, Appellant was tried by a general court-martial composed of a military judge alone at Andrews Air Force Base, Maryland. Trial Tr. at 1, 102, 114. Appellant was found guilty, consistent with his pleas, of one charge and six specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c; one charge and three specifications of viewing child pornography, possessing child pornography, and extramarital sexual conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. Trial Tr. at 117, 219; Electronic Record of Trial (eROT) Vol 1, *Entry of Judgment* (Mar. 27, 2025).

The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for a total of sixty-two months (with confinement for each specification running consecutively), a reprimand, and to be dishonorably discharged. Trial Tr. at 303; eROT Vol 1, *Entry of Judgment*

(Mar. 27, 2025). The convening authority took no action on the findings or the sentence. eROT Vol 1, *Convening Authority Decision on Action* (Mar. 19, 2025).

The trial transcript is 303 pages long. The electronic record of trial contains six Prosecution Exhibits, ten Defense Exhibits, fifty-two Appellate Exhibits, and six Court Exhibits. Appellant is currently confined.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

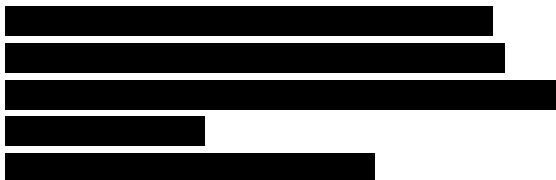
Through no fault of Appellant, undersigned counsel has been unable to complete their review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

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

Respectfully submitted,



JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel



CERTIFICATE OF FILING AND SERVICE

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JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel



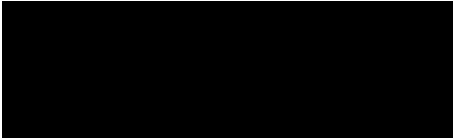
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Technical Sergeant (E-6)	)	
RANDALL R. RAFAJKO	)	No. ACM 40821
United States Air Force.	)	
<i>Appellant</i>	)	22 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 general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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


VANESSA BAIROS, Maj, USAF
Appellate Government Counsel






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Appellate Defense Division on 22 September 2025.

[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

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

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. 2
Technical Sergeant (E-6)	)	
RANDALL R. RAFAJKO	)	No. ACM 40821
United States Air Force	)	
<i>Appellant</i>	)	22 October 2025

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **1 December 2025**. The record of trial was docketed with this Court on 5 May 2025. From the date of docketing to the present date, 170 days have elapsed. On the date requested, 210 days will have elapsed.

On 18 February 2025, Appellant was tried by a general court-martial composed of a military judge alone at Andrews Air Force Base, Maryland. Trial Tr. 1, 102, 114. Appellant was found guilty, consistent with his pleas, of one charge and six specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c; one charge and three specifications of viewing child pornography, possessing child pornography, and extramarital sexual conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. Trial Tr. 117, 219; Electronic Record of Trial (eROT) Vol 1, *Entry of Judgment* (Mar. 27, 2025).

The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for a total of sixty-two months (with confinement for each specification running consecutively), a reprimand, and to be dishonorably discharged. Trial Tr. 303; eROT Vol 1, *Entry of Judgment* (Mar.

27, 2025). The convening authority took no action on the findings or the sentence. eROT Vol 1, *Convening Authority Decision on Action* (Mar. 19, 2025).

The trial transcript is 303 pages long. The electronic record of trial contains six Prosecution Exhibits, ten Defense Exhibits, fifty-two Appellate Exhibits, and six Court Exhibits. Appellant is currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned thirty-five cases; twenty cases are pending before this Court (seventeen cases are pending AOE's) and fourteen cases pending before the United States Supreme Court (for petition for writ of certiorari). To date, undersigned counsel has fourteen cases prioritized over the present case:

1. *United States v. Cook*, USCA Dkt. No. 24-0221/AF – The appellant's petition for a writ of certiorari to the Supreme Court is due on 26 November 2025. Counsel is currently working on the appellant's petition.

2. *United States v. Lara*, USCA Dkt. No. 25-0163/AF – The appellant's petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant's petition.

3. *United States v. Cadavona*, USCA Dkt. No. 25-0114/AF – The appellant's petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant's petition.

4. *United States v. Denney*, USCA Dkt. No. 24-0111/AF – The appellant's petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant's petition.

5. *United States v. Gubicza*, USCA Dkt. No. 24-0219/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

6. *United States v. Hollenback*, USCA Dkt. No. 24-0235/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

7. *United States v. Jackson*, USCA Dkt. No. 24-0106/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

8. *United States v. Lampkins*, USCA Dkt. No. 24-0069/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

9. *United States v. Maymi*, USCA Dkt. No. 24-0049/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

10. *United States v. Schneider*, USCA Dkt. No. 24-0228/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

11. *United States v. Van Velson*, USCA Dkt. No. 24-0225/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

12. *United States v. Wood*, USCA Dkt. No. 25-0005/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

13. *United States v. York*, USCA Dkt. No. 25-0200/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

14. *United States v. Mitton*, USCA Dkt. No. 25-0223/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

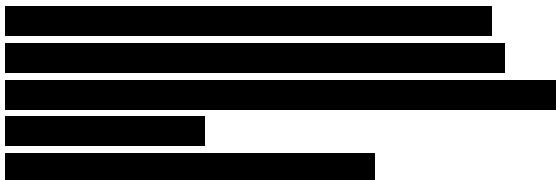
Through no fault of Appellant, undersigned counsel has been unable to complete their review of Appellant’s case. An enlargement of time is necessary to allow counsel to fully review Appellant’s case and advise them regarding potential errors.

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

Respectfully submitted,



JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel



CERTIFICATE OF FILING AND SERVICE

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JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel



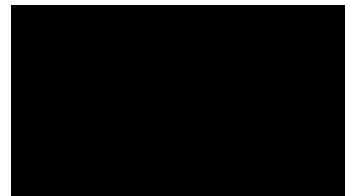
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Technical Sergeant (E-6)	)	Before Panel No. 2
RANDALL R. RAFAJKO,	)	
United States Air Force,	)	No. ACM 40821
<i>Appellant.</i>	)	
	)	23 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 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.

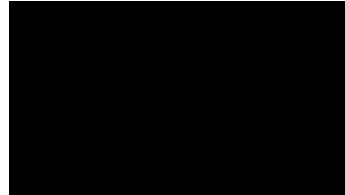


KATE E. LEE, Maj, USAF
Appellate Government Counsel



CERTIFICATE OF FILING AND SERVICE

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Appellate Defense Division on 23 October 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel



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

UNITED STATES	)	No. ACM 40821
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Randall R. RAFAJKO	)	
Technical Sergeant (E-6)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Special Panel

On 26 June 2025, this court issued an order in the above-referenced case granting Appellant's Motion for Enlargement of Time (First). That order included the following direction:

[A]ny 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.

On 22 October 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Fourth), requesting an additional 30 days to submit Appellant's assignments of error. The motion does not include the information required by this court's order of 26 June 2025. The Government opposes the motion.

Accordingly, it is by the court on this 28th day of October, 2025,
ORDERED:

Appellant's Motion for Enlargement of Time (Fourth) is **DENIED**.



A black rectangular box redacting the signature of Jacob B. Hoeferkamp.

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
	)	(FOURTH) OUT OF TIME
v.	)	
	)	Before Special Panel
Technical Sergeant (E-6)	)	
RANDALL R. RAFAJKO	)	No. ACM 40821
United States Air Force	)	
<i>Appellant</i>	)	28 October 2025

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **1 December 2025**. The record of trial was docketed with this Court on 5 May 2025. From the date of docketing to the present date, 176 days have elapsed. On the date requested, 210 days will have elapsed.

On 18 February 2025, Appellant was tried by a general court-martial composed of a military judge alone at Andrews Air Force Base, Maryland. Trial Tr. 1, 102, 114. Appellant was found guilty, consistent with his pleas, of one charge and six specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c; one charge and three specifications of viewing child pornography, possessing child pornography, and extramarital sexual conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. Trial Tr. 117, 219; Electronic Record of Trial (eROT) Vol 1, *Entry of Judgment* (Mar. 27, 2025).

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The trial transcript is 303 pages long. The electronic record of trial contains six Prosecution Exhibits, ten Defense Exhibits, fifty-two Appellate Exhibits, and six Court Exhibits. Appellant is currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned thirty-three cases; eighteen cases are pending before this Court (fifteen cases are pending AOE) and fourteen cases pending before the United States Supreme Court (for petition for writ of certiorari). To date, undersigned counsel has fourteen cases prioritized over the present case:

1. *United States v. Cook*, USCA Dkt. No. 24-0221/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 26 November 2025. Counsel is currently working on the appellant’s petition.

2. *United States v. Lara*, USCA Dkt. No. 25-0163/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

3. *United States v. Cadavona*, USCA Dkt. No. 25-0114/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

4. *United States v. Denney*, USCA Dkt. No. 24-0111/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

5. *United States v. Gubicza*, USCA Dkt. No. 24-0219/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

6. *United States v. Hollenback*, USCA Dkt. No. 24-0235/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

7. *United States v. Jackson*, USCA Dkt. No. 24-0106/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

8. *United States v. Lampkins*, USCA Dkt. No. 24-0069/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

9. *United States v. Maymi*, USCA Dkt. No. 24-0049/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

10. *United States v. Schneider*, USCA Dkt. No. 24-0228/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

11. *United States v. Van Velson*, USCA Dkt. No. 24-0225/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

12. *United States v. Wood*, USCA Dkt. No. 25-0005/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

13. *United States v. York*, USCA Dkt. No. 25-0200/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

14. *United States v. Mitton*, USCA Dkt. No. 25-0223/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

Through no fault of Appellant, undersigned counsel has been unable to complete their review of Appellant’s case. An enlargement of time is necessary to allow counsel to fully review Appellant’s case and advise them regarding potential errors.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of counsel’s progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

This motion is being submitted out of time because undersigned counsel failed to include the immediately preceding paragraph of information ordered by this Honorable Court in its original filing, which was submitted on time on 22 October 2025. While undersigned counsel should have been aware of this accidental omission prior to filing, undersigned counsel did not notice it until the Court’s denial order today, 28 October 2025.

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

Respectfully submitted,



JOHN M. FREDERICKS, Capt, 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 Appellate Government Division on 28 October 2025.

[REDACTED]

JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[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 – OUT OF TIME
v.	)	
	)	
	)	Before Special Panel
Technical Sergeant (E-6)	)	
RANDALL R. RAFAJKO,	)	No. ACM 40821
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	30 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 general opposition to Appellant's Motion for Enlargement of Time, Out 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.

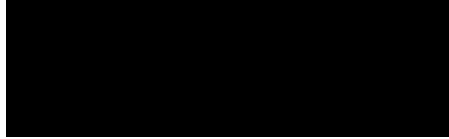
[REDACTED]

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 30 October 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES <i>Appellee</i>	)	MOTION TO EXAMINE
	)	SEALED MATERIALS
	)	
v.	)	
	)	Before Panel No. 2
Technical Sergeant (E-6)	)	
RANDALL R. RAFAJKO	)	No. ACM 40821
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 for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and Rules 3.1(c) and 23.3(f)(1) of this Court's Rules of Practice and Procedure, undersigned counsel hereby move to examine the following sealed materials: transcript pages 24-26 (closed hearing on Mil. R. Evid. 412 motions), Prosecutions Exhibits 2-3 (contraband), Appellate Exhibits VII, VIII, IX, X, XI, XII, XXXIII, XXXVIII, XXXIX, XL, XLI, XLII, XLIII, XLVII (Mil. R. Evid. 412 motions and attachments, contraband), and PHO Exhibits 8, 28 (recorded interview and contraband).

In accordance with R.C.M. 1113(b)(3)(B)(i), which requires a colorable showing that examining these materials is reasonably necessary to fulfill appellate counsel's responsibilities, undersigned counsel assert that viewing the referenced materials is reasonably necessary to assess whether there are any issues regarding evidence offered under Mil. R. Evid. 412, the contraband supporting the convictions, and the preliminary hearing officer's determinations. All parties to the trial had access to the exhibits listed above.

While this Court has “a broad mandate to review the record unconstrained by an appellant’s assignments of error, that broad mandate does not reduce the importance of adequate representation.” *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998). “Independent review is not the same as competent appellate representation.” *Id.* The sealed materials here must be reviewed for counsel to provide “competent appellate representation.” *Id.* Viewing these exhibits is reasonably necessary to determine whether Appellant is entitled to relief due to errors during any portion of the proceedings—before, during, or after trial. Counsel cannot fulfill their duty to provide effective assistance of counsel without first reviewing the complete record of trial. Therefore, undersigned counsel’s examination of the sealed materials is reasonably necessary to fulfill their responsibilities in this case.

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

Respectfully submitted,

[REDACTED]

JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel

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

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 12 November 2025.



JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, <i>Appellee,</i>	)	UNITED STATES' RESPONSE
	)	TO MOTION TO EXAMINE
	)	SEALED MATERIALS
v.	)	
	)	Before Panel No. 2
Technical Sergeant (E-6)	)	
RANDALL R. RAFAJKO	)	No. ACM 40821
United States Air Force	)	
<i>Appellant.</i>	)	14 November 2025

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

Pursuant to Rules 23.2 of this Court's Rules of Practice and Procedure, the United States responds to Appellant's Motion to Examine Sealed Materials, dated 12 November 2025. The United States does not object to Appellant's counsel examining any transcript portions or exhibits that were released to the parties if the United States can also review the sealed portions of the record as necessary to respond to any assignment of error that references the sealed materials. The United States thus respectfully requests that any order issued by this Court also allows appellate counsel for the United States to view the sealed material.

WHEREFORE, the United States respectfully responds to Appellant's motion.

[REDACTED]

HEATHER R. BEZOLD, Capt, USAF
Appellate Government Counsel

[REDACTED]

[REDACTED]

MARY ELLEN PAYNE
Associate Chief
Government Trial and Appellate Operations
Division

[REDACTED]

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 14 November 2025.

[REDACTED]

HEATHER R. BEZOLD, Capt, USAF
Appellate Government Counsel

[REDACTED]

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

UNITED STATES	)	No. ACM 40821
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Randall R. RAFAJKO	)	
Technical Sergeant (E-6)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Special Panel

On 12 November 2025, counsel for Appellant submitted a Motion to Examine Sealed Materials, requesting to be allowed to examine transcript pages 24–26; Prosecution Exhibits 2 and 3; Appellate Exhibits VII, VIII, IX, X, XI, XII, XXXIII, XXXVIII, XXXIX, XL, XLI, XLII, XLIII, and XLVII; and Pretrial Hearing Officer (PHO) Exhibits 8 and 28, which were reviewed by trial counsel and trial defense counsel below. The Government does not oppose the motion so long as its counsel are also permitted to view the sealed material.

Appellate counsel may examine sealed materials released to counsel at trial “upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities” Rule for Courts-Martial 1113(b)(3)(B)(i), Manual for Courts-Martial, United States (2024 ed.).

Upon review of the record, the court determined Appellate Exhibit VII is not sealed and was not ordered sealed by the military judge.

The court finds Appellant has made a colorable showing that review of sealed materials is reasonably necessary for a proper fulfillment of appellate counsel’s responsibilities. This court’s order permits counsel for both parties to examine the identified sealed materials.

Accordingly, it is by the court on this 18th day of November, 2025,

ORDERED:

Appellant’s Motion to Examine Sealed Materials dated 12 November 2025 is **GRANTED IN PART**.

Appellate defense counsel and appellate government counsel may view transcript pages 24–26; Prosecution Exhibits 2 and 3; Appellate Exhibits **VIII, IX, X, XI, XII, XXXIII, XXXVIII, XXXIX, XL, XLI, XLII, XLIII, and XLVII**; and **PHO Exhibits 8 and 28**, subject to the following conditions:

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

No counsel granted access to the materials may photocopy, photograph, reproduce, disclose, or make available the content to any other individual without the court's prior written authorization.

With respect to **Appellate Exhibit VII**, Appellant's Motion to Examine Sealed Materials is **DENIED AS MOOT**.



FOR THE COURT



JACOB B. HOEFERKAMP, ⁴Capt, 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 (FIFTH)
	)	
v.	)	
	)	Before Special Panel
Technical Sergeant (E-6)	)	
RANDALL R. RAFAJKO	)	No. ACM 40821
United States Air Force	)	
<i>Appellant</i>	)	21 November 2025

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **31 December 2025**. The record of trial was docketed with this Court on 5 May 2025. From the date of docketing to the present date, 200 days have elapsed. On the date requested, 240 days will have elapsed.

On 18 February 2025, Appellant was tried by a general court-martial composed of a military judge alone at Andrews Air Force Base, Maryland. Trial Tr. 1, 102, 114. Appellant was found guilty, consistent with his pleas, of one charge and six specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c; one charge and three specifications of viewing child pornography, possessing child pornography, and extramarital sexual conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. Trial Tr. 117, 219; Electronic Record of Trial (eROT) Vol 1, *Entry of Judgment* (Mar. 27, 2025).

The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for a total of sixty-two months (with confinement for each specification running consecutively), a reprimand, and to be dishonorably discharged. Trial Tr. 303; eROT Vol 1, *Entry of Judgment* (Mar.

27, 2025). The convening authority took no action on the findings or the sentence. eROT Vol 1, *Convening Authority Decision on Action* (Mar. 19, 2025).

The trial transcript is 303 pages long. The electronic record of trial contains six Prosecution Exhibits, ten Defense Exhibits, fifty-two Appellate Exhibits, and six Court Exhibits. Appellant is currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned thirty-nine cases; twenty-four cases are pending before this Court (twenty-one cases are pending AOE's) and fourteen cases pending before the United States Supreme Court (for petition for writ of certiorari). To date, undersigned counsel has fourteen cases prioritized over the present case:

1. *United States v. Lara*, USCA Dkt. No. 25-0163/AF – The appellant's petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant's petition.

2. *United States v. Cadavona*, USCA Dkt. No. 25-0114/AF – The appellant's petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant's petition.

3. *United States v. Denney*, USCA Dkt. No. 24-0111/AF – The appellant's petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant's petition.

4. *United States v. Gubicza*, USCA Dkt. No. 24-0219/AF – The appellant's petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant's petition.

5. *United States v. Hollenback*, USCA Dkt. No. 24-0235/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

6. *United States v. Jackson*, USCA Dkt. No. 24-0106/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

7. *United States v. Lampkins*, USCA Dkt. No. 24-0069/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

8. *United States v. Maymi*, USCA Dkt. No. 24-0049/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

9. *United States v. Schneider*, USCA Dkt. No. 24-0228/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

10. *United States v. Van Velson*, USCA Dkt. No. 24-0225/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

11. *United States v. Wood*, USCA Dkt. No. 25-0005/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

12. *United States v. York*, USCA Dkt. No. 25-0200/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

13. *United States v. Mitton*, USCA Dkt. No. 25-0223/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 15 December 2025. Counsel is currently working on the appellant’s petition.

14. *United States v. Cook*, USCA Dkt. No. 24-0221/AF – The appellant’s petition for a writ of certiorari to the Supreme Court is due on 25 January 2025. Counsel has completed appellant’s petition and it is currently awaiting receipt of the printed filing.

Undersigned counsel has completed their review of Appellant’s case and is actively researching and drafting potential matters for this Court’s consideration. However, through no fault of Appellant, undersigned counsel has been unable to complete any potential filings at this time. An enlargement of time is necessary to allow counsel to fully review Appellant’s case and advise them regarding potential errors.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of counsel’s progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,



JOHN M. FREDERICKS, Capt, 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 Appellate Government Division on 21 November 2025.

[REDACTED]

JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel

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

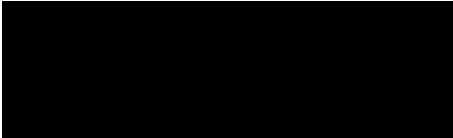
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before a Special Panel
Technical Sergeant (E-6)	)	
RANDALL R. RAFAJKO	)	No. ACM 40821
United States Air Force.	)	
<i>Appellant</i>	)	24 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 general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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


VANESSA BAIROS, Maj, USAF
Appellate Government Counsel






CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 24 November 2025.

[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

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

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 Special Panel
Technical Sergeant (E-6)	)	
RANDALL R. RAFAJKO	)	No. ACM 40821
United States Air Force	)	
<i>Appellant</i>	)	18 December 2025

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **30 January 2026**. The record of trial was docketed with this Court on 5 May 2025. From the date of docketing to the present date, 227 days have elapsed. On the date requested, 270 days will have elapsed.

On 5 December 2024 and 18 February 2025, Appellant was tried by a general court-martial composed of a military judge alone at Joint Base Andrews NAF, Maryland. Trial Tr. 1, 102, 114. Appellant was found guilty, consistent with his pleas, of one charge and six specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c; one charge and one specification of viewing child pornography, one specification of possessing child pornography, and one specification of extramarital sexual conduct in violation of

Article 134, UCMJ, 10 U.S.C. § 934. Trial Tr. 117, 219; Electronic Record of Trial (eROT) Vol 1, *Entry of Judgment* (Mar. 27, 2025).

The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for a total of sixty-two months (with confinement for each specification running consecutively), a reprimand, and to be dishonorably discharged. Trial Tr. 303; eROT Vol 1, *Entry of Judgment* (Mar. 27, 2025). The convening authority took no action on the findings or the sentence. eROT Vol 1, *Convening Authority Decision on Action* (Mar. 19, 2025).

The trial transcript is 303 pages long. The electronic record of trial contains six Prosecution Exhibits, ten Defense Exhibits, fifty-two Appellate Exhibits, and six Court Exhibits. Appellant is currently confined.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned forty-three cases; twenty-seven cases are pending before this Court (twenty-five cases are pending AOE's), one case pending before the Court of Appeals of the Armed Forces, and fourteen cases pending before the United States Supreme Court (for petition for

writ of certiorari). To date, undersigned counsel has no cases prioritized over the present case.

Undersigned counsel has completed their review of Appellant's case and is completing final edits on an Assignment of Errors for this Court's consideration. However, through no fault of Appellant, undersigned counsel has been unable to complete the brief at this time. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise them regarding potential errors. Undersigned counsel anticipates filing an Assignments of Error brief before 2026 but is requesting this enlargement of time out of an abundance of caution due to the upcoming holiday season and schedule.

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

Respectfully submitted,

[REDACTED]

JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[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 Appellate Government Division on 18 December 2025.



JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel



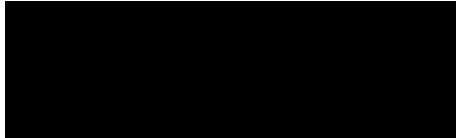
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before a Special Panel
Technical Sergeant (E-6)	)	
RANDALL R. RAFAJKO,	)	No. ACM 40821
United States Air Force.	)	
<i>Appellant</i>	)	22 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 general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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


VANESSA BAIROS, Maj, USAF
Appellate Government Counsel






CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 22 December 2025.

[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

v.

Technical Sergeant (E-6)

RANDALL R. RAFAJKO

United States Air Force

Appellant

BRIEF ON BEHALF OF
APPELLANT

Before Special Panel

No. ACM 40821

27 January 2026

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

JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel

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

ASSIGNMENTS OF ERROR

- I. Whether the military judge abused his discretion when he accepted Appellant's improvident plea to Charge I, Specification 1, because the alleged conduct was outside the statute of limitations.**
- II. Whether Charge I, Specifications 2 through 6 are unreasonably multiplied because they are part of one continuous recording and transaction.**

STATEMENT OF STATUTORY JURISDICTION

Appellant's approved sentence includes a dishonorable discharge and confinement for two years or more. Entry of Judgment. Accordingly, this Court has jurisdiction pursuant to Article 66(b)(3), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(b)(3).¹

STATEMENT OF THE CASE

A military judge sitting as a general court-martial convicted Appellant, consistent with his pleas, of one charge and six specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c; as well as one charge and one specification of viewing child pornography, one specification of possessing child pornography, and one specification of extramarital sexual conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. Trial Tr. 1, 102, 114, 117, 219; Entry of Judgment; App. Ex. XLV.

A military judge sentenced Appellant to a reduction in rank to the grade of E-1, confinement for a total of sixty-two months (with confinement for each specification running consecutively), to be reprimanded, and to be dishonorably discharged. Trial Tr. 303; Entry of Judgment. The convening authority took no action on the findings or the sentence. Convening Authority Decision on Action.

¹ Unless otherwise indicated, all references to the Uniform Code of Military Justice (UCMJ), the Rules for Courts-Martial (R.C.M.), and the Military Rules of Evidence (Mil. R. Evid.) are to the *Manual for Courts-Martial, United States* (2024 ed.).

STATEMENT OF FACTS

On 7 September 2022, the Ann Arundel Police Department (AAPD) received National Center for Missing and Exploited Children (NCMEC) CyberTips, identifying Appellant as a suspected uploader of child sexual abuse material (CSAM) to a Google account. Preliminary Hearing Officer (PHO) Ex. 4 at 5, ¶ 2-2 (Air Force Office of Special Investigations (AFOSI) Report of Investigation (ROI)). Shortly after, Google and Apple provided law enforcement a full copy of Appellant's Google and Apple iCloud accounts. PHO Ex. 4 at 6-7, 25-26, ¶¶ 2-3, 2-4, 2-34; Pros. Ex. 1 at 3-4, ¶¶ 28, 30. Examination of the Google and Apple iCloud accounts revealed multiple files of CSAM. PHO Ex. 4 at 6-7, 25-26, ¶¶ 2-3, 2-4, 2-34; Pros. Ex. 1 at 3-4, ¶¶ 28, 30.

In 2022, Appellant allegedly viewed those CSAM files in a social media group on his phone and subsequently saved them to his Google Drive account, resulting in the NCMEC CyberTips. Trial Tr. 182-83. Those CSAM files formed the basis for Charge II, Specification 1. Pros. Ex. 1 at 3-7, ¶¶ 27-36. During law enforcement's review of Appellant's Google account, they also discovered video recordings that formed the bases for the specifications of Charge I. *Compare* PHO Ex. 4 at 7, ¶ 2-4 (AFOSI saying they found hidden camera recordings and screen recordings in Appellant's Google account), *with* Pros. Ex. 1 at 1-3, ¶¶ 7, 15, 19-20 (using those recordings to support the specifications).

A. Charge I, Specification 1: Indecent Recording of P.D.J.

In 2018, Appellant met an adult woman, P.D.J., on an online dating application. Trial Tr. 130. Appellant and P.D.J. communicated via text and video chat. *Id.* Appellant and P.D.J. engaged in nude, sexual activities over video chat (i.e., “sexting”). *Id.* In “[l]ate 2018 to early 2019,” but “[b]efore March [2019],” Appellant allegedly recorded P.D.J.’s private area “on [at] least one occasion,” without her knowledge or her consent. Trial Tr. 130-31, 137. Appellant did not make any indecent recordings of P.D.J. in or after March 2019. *Id.*

On 27 February 2024, Appellant was charged with the following violation of Article 120c, UCMJ:

In that [Appellant], did, within the continental United States, *between on or about 1 March 2019 and on or about 31 December 2019*, without legal justification or lawful authorization, knowingly make a recording of the private area of [P.D.J.], without her consent and under circumstances in which she had a reasonable expectation of privacy.

App. Ex. XVIII at 11-12 (DD Form 458, *Charge Sheet*, Feb. 27, 2024) (emphasis added).²

During the military judge’s guilty plea inquiry with Appellant, he asked Appellant several questions about the date of the offense:

MJ: Okay. So, regarding the video recordings[,] about when do you remember making those?

[Appellant]: Late 2018 to early 2019.

² In this filing, DD Form 458, *Charge Sheets*, are dated when “sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command” were received. 10 U.S.C. § 843(b)(1).

MJ: Okay. And then did you make any subsequent video recordings? So, you said late 2018, early 2019. Did you make any recordings after early 2019?

[Trial defense counsel conferred with Appellant.]

MJ: All right, I'm going to ask the question I asked before again. So, did you make a recording -- you mentioned early 2019, earlier, did you make a recording in early 2019 or did you make a recording after that point?

[Appellant]: Early 2019, Your Honor.

MJ: Okay, do you remember about when it was? And I am not expecting you to know an exact date, I know you are not going to say you know this exact day, but do you about when it might have been?

[Appellant]: Before March.

MJ: Before March but within the year 2019?

[Appellant]: Yes, Your Honor.

....

[Military judge asks other questions unrelated to the date of the offense.]

....

MJ: And do you agree and admit that at least one of these occasions was sometime during the year 2019, so after the year turns over but within close in time to March 2019?

[Appellant]: Yes, Your Honor.

MJ: Do you agree this incident that you're talking about where you used the screen capture application on your iPhone to record [P.D.J.]'s breasts to include her areola or nipples was on it [sic] between on or about 1 March 2019 and on or about 31 December 2019?

[Appellant]: Yes, Your Honor.

Trial Tr. 131-32, 137.

The record does not explain why the Government chose “between on or about 1 March 2019 and on or about 31 December 2019” as the charged timeframe. *See* PHO Ex. 4 at 7, ¶ 2-4 (identifying the indecent recordings of P.D.J. as uploaded to Appellant’s Google Drive on 26 January 2022); PHO Ex. 4 at 27, ¶ 2-38 (AFOSI summary of unrecorded P.D.J. interview with no date references); PHO Ex. 4 at 28-29, ¶ 2-42 (AFOSI summary of unrecorded P.D.J. interview where P.D.J. states her relationship with Appellant lasted from “early 2018” and ended in 2019; P.D.J. does not specify when her and Appellant engaged in sexting); PHO Ex. 17 at 3, 8 (referencing an in-person meeting between Appellant and P.D.J. from 8-14 March 2019 followed by Appellant deploying to Turkey for six months).

Furthermore, the Preliminary Hearing Officer did not analyze whether the evidence supported the Government’s charged timeframe for Charge I, Specification 1. PHO Report at 10-11, 22-23. Regardless, the Government created the charging timeframe, starting with the earliest date it could charge under the statute of limitations and ending with the latest date P.D.J. and Appellant’s relationship could have ended in 2019. *Compare* App. Ex. XVIII at 11-12 (DD Form 458, *Charge Sheet*, Feb. 27, 2024, Block 13) (the earliest prosecutable offense date being 27 February 2019), *with* PHO Ex. 4 at 28-29, ¶ 2-42 (P.D.J. stating her and Appellant’s relationship ended in 2019); *see* 10 U.S.C. § 843(b) (providing five-year statute of limitations). There is no apparent nexus between the charged timeframe and actual conduct alleged in the record.

Appellant was charged with this specification on two separate occasions. *Compare* App. Ex. XVIII at 11-12 (DD Form 458, *Charge Sheet*, Feb. 27, 2024) (first time being charged), *with* DD Form 458, *Charge Sheet*, Aug. 14, 2024 (second time being charged). Appellant was charged the first time on 27 February 2024, with “receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command” also happening on 27 February 2024. App. Ex. XVIII at 11-12 (DD Form 458, *Charge Sheet*, Feb. 27, 2024); 10 U.S.C. § 843(b)(1). That Charge and Specification was withdrawn and dismissed on 14 June 2024. App. Ex. XIX at 1. “The purpose of the withdrawal and re-referral was promoting judicial economy . . . specifically, the purpose was to accomplish OSTC’s objective of trying all known charges together once civilian authorities finally relinquished jurisdiction over the remaining indecent recording offenses.” App. Ex. XIX at 9, ¶ 39 (Government response to Defense motion to dismiss for improper dismissal of charges).

On 22 July 2024, the Government preferred the same Charge and Specification against Appellant, the present Charge I, Specification 1. DD Form 458, *Charge Sheet*, Aug. 14, 2024. “[R]eceipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command” happened on 14 August 2024, which barred prosecution for any offense committed before 14 August 2019. *Id.*; 10 U.S.C. § 843(b)(1).

B. Charge I, Specifications 2-6: Indecent Recordings of Stepdaughters and their friends.

In 2022, Appellant lived with his wife, M.R., and her three daughters (Appellant's stepdaughters), S.D.M., H.C.A., and K.J.M. Pros. Ex. 1 at 2, ¶ 10; Trial Tr. 142-43. Two of Appellant's stepdaughters' friends, O.E. and L.M., also frequently visited Appellant and M.R.'s home, and lived with them for extended periods of time. Pros. Ex. 1 at 2, ¶ 12; Trial Tr. 142-43.

In June 2022, Appellant allegedly purchased and installed a hidden camera from Amazon in one of their home's bathrooms; specifically, the bathroom primarily used by Appellant's stepdaughters and their friends. Pros. Ex. 1 at 2, ¶¶ 12-14; Trial Tr. 142-43, 150. Appellant installed the camera behind an electrical outlet cover, connecting it to power with the house's electrical wiring, and connected it to Wi-Fi. Pros. Ex. 1 at 2, ¶ 13, Atchs. 1, 3; Trial Tr. 144-45. The camera would turn on and begin recording video when it sensed motion. Trial Tr. 143, 145-46. After motion ended, the camera stopped recording, saved the file, and uploaded the video recording to a cloud-based application that could be accessed on a cell phone. Trial Tr. 144-46. "[T]he camera makes the recording whenever there is motion, . . . so [Appellant was] not triggering it each time." Trial Tr. 148.

Between 17 and 23 June 2022, the camera created multiple indecent recordings of S.D.M., L.M., K.J.M., O.E., and H.C.A., individually, "in various states of undress." Pros. Ex. 1 at 3, ¶¶ 19-20; Pros. Ex. 2 (sealed); Trial Tr. 142-43. "At the time the recordings were made, S.[D.]M. was 17 years old, L.M. was 17 years old, K.[J.]M. was 18 years old, O.E. was 17 years old, and H.[C.]A. was 22 years old."

Pros. Ex. 1 at 2, ¶ 18. Appellant allegedly accessed the application where the camera uploaded those recordings, downloaded them to his phone, and uploaded a video compilation of those recordings to his Google Drive cloud account. Pros. Ex. 1 at 3, ¶¶ 19-20; Trial Tr. 16-18, 143, 146.

On 23 June 2022, K.M. discovered the hidden camera, and then Appellant removed it and returned it to Amazon. Pros. Ex. 1 at 3, ¶¶ 21-26; Trial Tr. 143. During law enforcement’s review of Appellant’s Google account, they discovered those hidden camera recordings that formed the bases for Charge I, Specifications 2-6. *Compare* PHO Ex. 4 at 7, ¶ 2-4 (AFOSI finding the recordings on Appellant’s Google Drive account), *with* Pros. Ex. 1 at 2-3, ¶¶ 15, 19-20 (identifying those recordings as the charged misconduct). Appellant was subsequently charged with five specifications in violation of Article 120c, UCMJ, on 22 July 2024—one for each named victim. DD Form 458, *Charge Sheet*, Aug. 14, 2024.

ARGUMENT

I. The military judge abused his discretion when he accepted Appellant’s improvident plea to Charge I, Specification 1, because the alleged conduct was outside the statute of limitations.

A. Standard of Review

This Court reviews “a military judge’s decision to accept a guilty plea for an abuse of discretion.” *United States v. Jones*, 69 M.J. 294, 299 (C.A.A.F. 2011) (citing *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996)).

“When an appellant raises a statute of limitations defense for the first time on appeal and appears to have been unaware of the right at trial, our superior court

reviews for plain error.” *United States v. Jensen*, No. ACM 39573, 2020 CCA LEXIS 163, at *6 (A.F. Ct. Crim. App. May 19, 2020) (citing *United States v. Briggs*, 78 M.J. 289, 295 (C.A.A.F. 2019), *rev’d on other grounds*, 592 U.S. 69 (2020)); *see* R.C.M. 907 (b)(2)(B); *United States v. Thompson*, 59 M.J. 432, 439 (C.A.A.F. 2004). Under a plain error analysis, the “[a]ppellant has the burden of demonstrating that: (1) there was error; (2) the error was plain or obvious; and (3) the error materially prejudiced a substantial right of the accused.” *United States v. Girouard*, 70 M.J. 5, 11 (C.A.A.F. 2011).

B. Law and Analysis

The military judge abused his discretion by accepting Appellant’s guilty plea to Charge I, Specification 1, because the charged misconduct fell outside the statute of limitations. The military judge’s acceptance of Appellant’s plea was a plain and obvious error, materially prejudicing a substantial right. Appellant only described misconduct that occurred before March 2019, outside of the charged timeframe and outside of the prosecutable timeframe allowed under 10 U.S.C. § 843(b). *See* Trial Tr. 127-39; Pros. Ex. 1 at 1-2, ¶¶ 4-9. Appellant was never made aware of his right to assert the statute of limitations and never waived the issue, and the military judge did not inform Appellant of that right during trial. *See* Trial Tr. 127-39, 197; App. Ex. XLV at 2, ¶ 4.b. The military judge’s acceptance of Appellant’s guilty plea to Charge I, Specification 1, was an abuse of discretion and plain error; therefore, the finding and sentence must be set aside.

A person charged with violating Article 120c, UCMJ, 10 U.S.C. § 920c, “is not liable to be tried by court-martial if the offense was committed more than five years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.” 10 U.S.C. § 843(b)(1). The statute of limitations can be tolled if “charges or specifications are dismissed as defective or insufficient for any cause.” *Id.* at § 843(g)(1). The right to assert the running of the statute of limitations is waivable; however, “if it appears that the accused is unaware of the right to assert the statute of limitations in bar of trial, the military judge shall inform the accused of this right.” R.C.M. 907(b)(2)(B); *see Thompson*, 59 M.J. at 439. “A plea of guilty does not waive a statute of limitations defense when the record does not disclose that an accused was aware of the right to assert the defense.” *Jensen*, 2020 CCA LEXIS 163, at *8 (citing *United States v. Salter*, 20 M.J. 116, 117 (C.M.A. 1985)). When “neither party nor the military judge addressed the applicability of the statute of limitations at any point during the trial . . . the principle of waiver does not apply, and [this Court] review[s] for plain error.” *Id.* (citing *Briggs*, 78 M.J. at 295).

“A military judge abuses his discretion by accepting a plea of guilty where a portion of the pleaded-to charged timeframe extends outside the statute of limitations.” *United States v. Astacio Burgess*, No. ACM S32827, 2025 CCA LEXIS 573, at *6-7 (A.F. Ct. Crim. App. Dec. 12, 2025) (citing *Jensen*, 2020 CCA LEXIS 163, at *10–11). “Erroneous findings, however, do not reach the providence of an appellant’s

pleas which encompass acts of misconduct committed within a statutory limit.” *Jensen*, 2020 CCA LEXIS 163, at *10–11 (citing *United States v. Lee*, 29 M.J. 516, 518 (A.C.M.R. 1989), *aff’d*, 29 M.J. 446 (C.M.A. 1989) (mem.) (holding “time-barred period of a specification does not ‘affect the provident portions of guilty pleas encompassing acts of misconduct committed *within* the statutory limit”))).

1. Appellant committed no misconduct within Charge I, Specification 1’s prosecutable timeframe.

Appellant was “not liable to be tried by court-martial” for offenses allegedly committed on or before 14 August 2019. 10 U.S.C. § 843(b)(1). Charge I, Specification 1, alleged that Appellant made an indecent recording of P.D.J. between on or about 1 March 2019 and on or about 31 December 2019. DD Form 458, *Charge Sheet*, Aug. 14, 2024. But, because “an officer exercising summary court-martial jurisdiction over the command” did not receive the “sworn charges and specifications” until 14 August 2024, the Appellant was “not liable to be tried by court-martial” for offenses allegedly committed prior to 14 August 2019. 10 U.S.C. § 843(b)(1); DD Form 458, *Charge Sheet*, Aug. 14, 2024. Therefore, the only portion of Charge I, Specification 1, that was not barred by the statute of limitations is between 14 August 2019 and on or about 31 December 2019. The Appellant stated that the misconduct took place in “[l]ate 2018 to early 2019,” and agreed with the military judge that it took place “[b]efore March but within the year 2019” and “after the year turn[ed] over but within close in time to March 2019.” Trial Tr. 131-32, 137. The alleged misconduct

took place prior to 14 August 2019; therefore, it was barred by the statute of limitations under 10 U.S.C. § 843(b) and the military judge abused his discretion by accepting Appellant's plea.

2. The statute of limitations did not toll for any allowable reason under 10 U.S.C. § 843.

When the Government withdrew and dismissed this Charge and Specification on 14 June 2024, the statute of limitations expired for any offense committed on or prior to 13 June 2019. In the Government's own words, "[t]he purpose of the withdrawal and re-referral was promoting judicial economy . . . specifically, the purpose was to accomplish OSTC's objective of trying all known charges together once civilian authorities finally relinquished jurisdiction over the remaining indecent recording offenses." App. Ex. XIX at 9, ¶ 39. The military judge agreed. App. Ex. XXXV at 11, ¶ 62. This Charge and Specification were not dismissed as defective or insufficient, or for any other reason that would have tolled the statute of limitations. *See* 10 U.S.C. § 843(a), (b)(2), (c)-(h). Rather, the Government chose to allow the statute of limitations to run in exchange for trying all the offenses together. The Government's choice prevents them from holding Appellant "liable to be tried by court-martial" for offenses committed on or before 13 August 2019. *Id.* at § 843(b).

Even if this Court finds that the statute of limitations was tolled, the military judge still committed plain error and abused his discretion in accepting Appellant's guilty plea because his conduct fell outside the statutory limit. *See Jensen*, 2020 CCA LEXIS 163, at *11; *Lee*, 29 M.J. at 518 ("A review of the appellant's providence inquiry reveals no basis for finding the commission of an act constituting these offenses

within the statutory period. Therefore, the findings of guilty to these specifications cannot be affirmed on the basis of the appellant's pleas."). Even if the charging language stated, "on or about 1 March 2019," prosecution for any conduct committed before 27 February 2019 was barred by the statute of limitations. *See* App. Ex. XVIII at 11-12 (DD Form 458, *Charge Sheet* (Feb. 27, 2024)). Appellant only described conduct committed before 1 March 2019, with no indication that it took place in the last two days of February 2019. Trial Tr. 131-32, 137. Therefore, even if this Court finds that the statute of limitations was tolled, Appellant's conduct still fell outside of the tolled timeframe, and the military judge should not have accepted his guilty plea.

3. The running of the statute of limitations was not waived.

Like in *United States v. Jensen*, this Court should find that "an examination of the charge sheet [i]s enough to determine that the statute of limitations had run" and "the military judge committed clear and obvious error by failing to inform Appellant that a five-year period of limitation existed." 2020 CCA LEXIS 163, at *8. In *Jensen*, the Government charged the appellant with a five-year time period for possession and distribution of child pornography. *Id.* at *4. However, the charges were not received by the summary court-martial convening authority until five years and two months after the first day of the charged timeframe. *Id.* This Court found "the military judge committed clear and obvious error by failing to inform Appellant that a five-year period of limitation existed." *Id.* at *8. However, this Court did not find plain error in *Jensen* because there was no material prejudice. *Id.* This Court found no material prejudice because there was evidence that the appellant committed the offenses within the rest of timeframe that was not time-barred. *Id.* at *9.

Here, like *Jensen*, the record does not show that Appellant was aware of the right to assert the defense. Like *Jensen*, the military judge did not discuss the statute of limitations with Appellant, and the charge sheet plainly shows that the statute of limitations had run for half of the charged timeframe. Like *Jensen*, there is no waiver and there is clear and obvious error. But, unlike *Jensen*, there is material prejudice here because Appellant allegedly only committed the offense within the time-barred period (i.e., before 14 August 2019, or, if tolled, before 27 February 2019). Trial Tr. 131-32, 137. Appellant's plea of guilty to Charge I, Specification 1, is improvident, and thus the military judge abused his discretion in accepting Appellant's pleas. Therefore, the finding of guilty was incorrect in law and fact.

Appellant requests that this Court set aside the finding of guilty as to Specification 1 of Charge I.

II. Charge I, Specifications 2 through 6 are unreasonably multiplied because they are part of one continuous recording and transaction.

A. Standard of Review

This Court reviews a military judge's denial of relief for claims of unreasonable multiplication of charges for an abuse of discretion. *United States v. Campbell*, 71 M.J. 19, 22 (C.A.A.F. 2012) (citing *United States v. Pauling*, 60 M.J. 91, 95 (C.A.A.F. 2004)). However, when claims of unreasonable multiplication of charges are not raised at trial, the issue is considered waived. *United States v. Hardy*, 77 M.J. 438, 442-43 (C.A.A.F. 2018); *United States v. Gladue*, 67 M.J. 311, 314 (C.A.A.F. 2009). Nonetheless, "a CCA may choose to use its Article 66(c), UCMJ, power to address a

UMC objection that has been waived.” *Hardy*, 77 M.J. at 443; *see United States v. Quiroz*, 55 M.J. 334, 339 (C.A.A.F. 2001) (“We emphasize that, in this [UMC] process, *the court is making a determination of law* under a classic legal test -- whether the action under review was ‘reasonable’ or ‘unreasonable.’”); 10 U.S.C. § 866(d) (“The Court may affirm only such findings of guilty as the Court finds correct in law.”).³

B. Law and Analysis

The Government unreasonably multiplied one transaction into five criminal specifications. Appellant received five separate, consecutive sentences for a single act: the installation of a hidden camera and setting it to record upon motion. The Government’s charging scheme fails the *United States v. Quiroz* factors discussed below for the findings and sentence. *Quiroz*, 55 M.J. at 338-39. Therefore, this Court should exercise its 10 U.S.C. § 866(d) power to merge Charge I, Specifications 2-6 for findings and direct the sentences to be merged by having them served concurrently in accordance with R.C.M. 1002(b)(2)(B)(iii).

“What is substantially one transaction should not be made the basis for an unreasonable multiplication of charges against one person.” R.C.M. 307(c)(4); *see* R.C.M. 906(b)(12) (“Charges that arise from substantially the same transaction, while not legally multiplicitous, may still be unreasonably multiplied as applied to findings . . . [and] as applied to sentence”). The Government may not needlessly “pile on”

³ This Court’s power to address a waived unreasonable multiplication of charges objection was not changed by the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021’s amendments to 10 U.S.C. 866 because the Court’s ability to determine what is “correct in law” has not changed. Pub. L. No. 116-283, § 542(b), 134 Stat. 3388, 3611 (2021).

charges against an accused. *United States v. Foster*, 40 M.J. 140, 144 n.4 (C.M.A. 1994), *overruled on other grounds by United States v. Miller*, 67 M.J. 385, 388-89 (C.A.A.F. 2009).

This Court considers the following non-exhaustive list of factors when analyzing whether charges have been unreasonably multiplied:

- (1) whether each charge and specification is aimed at distinctly separate criminal acts;
- (2) whether the number of charges and specifications misrepresents or exaggerates the accused's criminality;
- (3) whether the number of charges and specifications unreasonably increases the accused's punitive exposure; and
- (4) whether there is any evidence of prosecutorial overreaching or abuse in the drafting of the charge.

. . . .

- (5) whether the appellant objected at trial or forfeited the issue.

United States v. Clark, No. ACM 40540, 2025 CCA LEXIS 208, at *77 (A.F. Ct. Crim. App. May 13, 2025) (citation modified) (citing *Campbell*, 71 M.J. at 24 (citing *Quiroz*, 55 M.J. at 338-39; *Pauling*, 60 M.J. at 95)).

The military judge must “specify whether the terms of confinement are to run consecutively or concurrently.” 10 U.S.C. § 853(c)(4). Confinement for two or more specifications must be concurrent if “the military judge finds that the charges or specifications are unreasonably multiplied.” R.C.M. 1002(b)(2)(B)(iii). If charges “arise from substantially the same transaction,” they should be merged into one spec-

ification for findings and sentencing. R.C.M. 906(b)(12). “Transaction” means “a series of occurrences or an aggregate of acts which are logically related to a single course of criminal conduct.” *United States v. Batres*, __ M.J. __, No. 25-0019, 2025 CAAF LEXIS 755, at *12 (C.A.A.F. Sep. 9, 2025) (quoting *United States v. Baker*, 14 M.J. 361, 366 (C.M.A. 1983)).

1. A. Quiroz Factors 1-3: The Specifications are aimed at the same act; therefore, they exaggerate Appellant’s criminality and unreasonably increase his punitive exposure.

Appellant engaged in *one* transaction, *one* act in Charge I, Specifications 2-6—the installation of a hidden camera and setting it to record upon motion. Pros. Ex. 1 at 2, ¶ 14; Trial Tr. 142-43. Appellant did not manually record any of the named victims; therefore, each recording was not a separate act or transaction. Trial Tr. 143:3-5 (“The camera was motion activated and would record whenever someone was using the bathroom. The recordings were then saved onto the application and would be accessible through my phone.”); Trial Tr. 144:4-5 (“MJ: And when did this recording occur? [Appellant]: It was motion activated so whenever she would come into the restroom it would activate the camera.”); Trial Tr. 145:12-21 (“This camera is powered through the wall. It connects to the Wi-Fi and saves the videos onto an application.”); Trial Tr. 146:3-9, 21 (Appellant and military judge discussing how the camera automatically records, uploads the file to a cloud, and that file can be downloaded later).

The military judge identified the single criminal act during his providency inquiry: “[T]he camera makes the recording whenever there is motion, right, *so you are not triggering it each time.*” Trial Tr. 148:1-5 (emphasis added). Each specification is

aimed at the same criminal act but identifies a different object of the act: the victim recorded. The Government’s error lies there—it confused an aggravating factor (i.e., number of victims) with the single act of setting up the camera.

“[T]he ‘unit of prosecution’ question is relevant to—and in this case, dispositive on—the issue of unreasonable multiplication of charges.” *Forrester*, 76 M.J. at 485. Charge I, Specifications 2-6 are aimed at the same unit of prosecution, the same act; therefore, the first *Quiroz* factor weighs toward merger.

Because the Specifications are aimed at the same single act under the same statute, they exaggerated the Appellant’s criminality and unreasonably increased his punitive exposure at trial. While the Appellant’s plea agreement limited his punitive exposure to a total of seventy-two months, that was the result of negotiating in an unreasonably multiplied space. App. Ex. XLV at 2-3. Had Charge I, Specifications 2-6 been properly preferred as one specification, successfully challenged during pretrial motions, or identified as unreasonably multiplied during plea negotiations, the maximum confinement would have been thirty-one years instead of fifty-one years.⁴ The negotiating parameters would have been much narrower, potentially resulting in a lower cap on confinement in the plea agreement or a lower sentence adjudged at trial. Appellant recognizes that he received a total of thirty-eight months of confinement for Charge I, Specifications 2-6, below the maximum seventy-two months allowed for

⁴ The relevant maximum punishments are five years for each 10 U.S.C. § 920c specification, ten years for each child pornography 10 U.S.C. § 934 specification, and one year for the extramarital sexual conduct 10 U.S.C. § 934 specification. *Manual for Courts-Martial, United States* (2024 ed.) (2024 *MCM*), pt. IV, ¶¶ 63.d.(1); 95.d.(1); 99.d.(1).

a single specification. Entry of Judgment. However, had the sentences been merged, or in other words, served concurrently as required under R.C.M. 1002(b)(2)(B)(iii), Appellant would have only received nine months of confinement for Charge I, Specifications 2-6. *Id.* Even with a negotiated plea agreement, Charge I, Specifications 2-6 unreasonably increased Appellant's punitive exposure.

Charge I, Specifications 2-6 are aimed at the same single act; therefore, they exaggerate criminality and unreasonably increase punitive exposure, and *Quiroz* factors one, two, and three weigh in favor of merging Charge I, Specifications 2-6 for the findings and sentence.

2. Quiroz Factor 4: There is no evidence of prosecutorial overreach or abuse.

Appellant does not assert prosecutorial overreach or abuse for Charge I, Specifications 2-6. Therefore, this *Quiroz* factor weighs against merging Charge I, Specifications 2-6 for the findings and sentence. *See also* App. Ex. XIII at 6, ¶ 22 (trial defense counsel stating there was no evidence of prosecutorial overreaching or abuse in the drafting of Charge II, Specifications 1 and 3).

3. Factor 5: Appellant did not object at trial but did not knowingly waive this issue.

Appellant did not object at trial and included a “[w]aive all waivable motions” provision in the plea agreement. App. Ex. XLV at 2, ¶ 4.b. While “[t]he caution against the unreasonable multiplication of charges is not a constitutional imperative,” like multiplicity, “but rather a presidential policy,” waiver of the issue must still be “knowingly and voluntarily.” *Gladue*, 67 M.J. at 314. Furthermore, even if waived, this Court can use its Article 66(d) power “to address a UMC objection that

has been waived.” *Hardy*, 77 M.J. at 443; see *Quiroz*, 55 M.J. 334, 339 (C.A.A.F. 2001).

Appellant did not knowingly waive this issue. The record shows that Appellant was not aware of the issue because trial defense counsel never made a motion on the issue, nor was this motion discussed during the plea agreement inquiry. Trial Tr. 196-200. When the military judge discussed the “[w]aive all waivable motions” provision in the plea agreement with Appellant, Appellant indicated that he thought he was only waiving the motions identified by his trial defense counsel, which did not include the unreasonable multiplication of Charge I, Specifications 2-6. *Id.*

This case is distinct from *Gladue*, which was limited to the facts before it. 67 M.J. at 312. In *Gladue*, the C.A.A.F. considered whether a “waive any waiveable [sic] motions’ [provision] barred Appellant from asserting claims of multiplicity or multiplication of charges on appeal.” *Id.* (first alteration in original). The C.A.A.F. found that “*under [those] facts* it did.” *Id.* (emphasis added). In *Gladue*, the Court found the waiver was “knowing and intentional” because (1) “[t]he text of the [plea agreement] unambiguously agree[d] to ‘waive any waiveable [sic] motions,’” and (2) “Appellant explicitly indicated his understanding that he was giving up the right ‘to make any motion which by law is given up when you plead guilty’” during the military judge’s colloquy. *Id.* at 314. Here, the second reason is not present—the Appellant did not “explicitly indicate[] his understanding that he was giving up the right ‘to make any motion which by law is given up when you plead guilty.’” *Id.*

In *Gladue*, the civilian trial defense counsel never filed any motions prior to the appellant entering the plea agreement. *Id.* at 313 (identifying four “possible motions” waived by the plea agreement and discussed with appellant, which did not include an unreasonable multiplication of charges motion). Here, during the military judge’s colloquy, trial defense counsel identified the motions they had already made, and the motions they had not yet made but were waiving under the plea agreement. Trial Tr. 197 (“the defense is waiving our previously filed motions . . . as well as two additional motions that the defense would have filed in this case”). Both here and in *Gladue*, none of the motions made or identified on the record raised the issue of unreasonable multiplication of charges for the relevant specifications. Trial Tr. 196-200; *but see* Appellate Exs. XIII-XVI (raising unreasonable multiplication of charges for Charge II, Specifications 1 and 3). However, here the military judge’s colloquy about these motions is markedly different than the one performed in *Gladue*.

In the present case, after trial defense counsel identified the motions they were waiving under the plea agreement, the military judge limited the scope of the plea agreement’s waiver provision to those exact motions. The military judge asked trial defense counsel, “Defense Counsel, in general, what do you believe to be the factual basis of *any motions covered by this term of the plea agreement?*” Trial Tr. 199 (emphasis added). The descriptions that followed did not include a motion for appropriate relief regarding an unreasonable multiplication of charges for Charge I, Specifications 2-6. Trial Tr. 199. The military judge then explicitly referenced the exact motions identified by trial defense counsel, rather than all motions generally, asking

the Appellant, “And knowing what your defense counsel and I have told you[,] do you still want to give up the right to make *those* motions to get the benefit of your plea agreement?” Trial Tr. 200 (emphasis added). That was the end of the colloquy.

The record shows that Appellant did not “explicitly indicate[] his understanding that he was giving up the right ‘to make any motion which by law is given up when you plead guilty.’” *Gladue*, at 314. While the military judge started with general terms about “any other motions” being waived, Trial Tr. 197:1-7, the conversation that followed only indicates that Appellant believed he was giving up the right to make the motions referenced by his trial defense counsel and the military judge—the motions he knew were available to him. Because Appellant did not know a motion regarding an unreasonable multiplication of charges for Charge I, Specifications 2-6 was available, his decision to “[w]aive all waivable motions” was not knowing. Therefore, this issue was not waived.

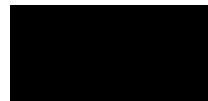
Even if this Court finds that Appellant did waive this issue through his plea agreement, this Court can correct it. An unreasonable multiplication of charges is a legal error that 10 U.S.C. § 866 allows this Court to correct despite waiver. *Hardy*, 77 M.J. at 443. *Quiroz* factors one, two, and three weigh in favor of this Court exercising that Article 66(d), UCMJ, power. Because of the substantial prejudice Appellant is actively experiencing, being confined for thirty-eight months instead of the concurrent and correct nine, he respectfully requests this Court exercise its Article 66(d) discretion and correct this legal error.

Appellant respectfully requests this Honorable Court merge Charge I, Specifications 2-6 for the findings and sentence, resulting in a single conviction and confinement for nine months as the appropriate and required sentence under R.C.M. 1002(b)(2)(B)(iii). *See United States v. Winckelmann*, 73 M.J. 11, 15 (C.A.A.F. 2013).

CONCLUSION

Appellant respectfully requests that this Honorable Court set aside the finding of guilty as to Charge I, Specification 1, and merge Charge I, Specifications 2-6 for the findings and sentence because they are unreasonably multiplied.

Respectfully submitted,



JOHN M. FREDERICKS, Capt, 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 Air Force Government Trial and Appellate Operations Division on 27 January 2026.



JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	
<i>Appellee,</i>	)	ANSWER TO ASSIGNMENT
	)	OF ERROR
v.	)	
	)	Before Special Panel
Technical Sergeant (E-6)	)	
RANDALL R. RAFAJKO, USAF,	)	No. ACM 40821
<i>Appellant.</i>	)	

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

ISSUES PRESENTED

I.

**WHETHER THE MILITARY JUDGE ABUSED HIS
DISCRETION WHEN HE ACCEPTED APPELLANT'S
IMPROVIDENT PLEA TO CHARGE I, SPECIFICATION 1,
BECAUSE THE ALLEGED CONDUCT WAS OUTSIDE THE
STATUTE OF LIMITATIONS.**

II.

**WHETHER CHARGE I, SPECIFICATIONS 2 THROUGH 6
ARE UNREASONABLY MULTIPLIED BECAUSE THEY
ARE PART OF ONE CONTINUOUS RECORDING AND
TRANSACTION.**

STATEMENT OF CASE

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

STATEMENT OF FACTS

On 2 November 2023, one charge and two specifications, in violation of Article 134, UCMJ, were preferred against Appellant. (App. Ex. XVII at 6.) One specification alleged Appellant possessed child pornography between on or about 22 February 2022 and on or about 2 November 2022. The second specification alleged Appellant viewed child pornography during the same timeframe. (Id.)

On 27 February 2024, two additional charges were preferred against Appellant. (Id. at 11.) Additional Charge I and its specification, in violation of Article 120c, UCMJ, alleged Appellant, between on or about 1 March 2019 and on or about 31 December 2019, made a recording of the private area of PDJ.¹ (Id.) Additional Charge II and its specification, in violation of Article 134, UCMJ, alleged Appellant engaged in extramarital conduct during the same timeframe. (Id.) These charges were received by the Summary Court-Martial Convening Authority on 27 February 2024. (Id. at 12.)

After receiving jurisdiction of additional misconduct from local civilian authorities, the Government withdrew and dismissed all preferred charges against Appellant on 14 June 2024. On 22 July 2024, one charge and six specifications of indecent recording, in violation of Article 120c, UCMJ, and one charge and three specifications, in violation of Article 134 UCMJ, were preferred against Appellant. (Charge Sheet.) Charge I, Specification 1 encompassed the previous Additional Charge and specification. (Id.) Specifications 2 through 6 of Charge I were five new specifications that were not previously preferred.² (Id.) Specifications 1 and 3 of Charge II encompassed the specifications of the previous original Charge, and Specification 2 of Charge II encompassed the specification of the previous Addition Charge II. (Id.) The newly preferred charges were received by the Summary Court Martial Convening Authority on 14 August 2024. (Id.)

Prior to trial, Appellant submitted a Motion for Appropriate Relief based on an unreasonable multiplication of charges regarding Specifications 1 and 3 of Charge II. (App. Ex.

¹ This specification is at issue in Issue I.

² These specifications are at issue in Issue II below. These specifications allege that Appellant, between on or about 5 June 2022 and on or about 12 July 2022, made recordings of the private areas of SDM, LM, KJM, OE, and HCA. (Id.)

XIII.) The specifications alleged Appellant viewed (Specification 1) and possessed (Specification 3) child pornography during the same charged timeframe. Appellant did not raise a similar motion regarding Specifications 2 through 6 of Charge I.

- *Appellant's Plea Agreement*

Appellant eventually offered to plead guilty pursuant to a plea agreement. (App. Ex. XLV.) Pursuant to the plea agreement, the convening authority agreed to withdraw and dismiss Specifications 2 and 3 of Charge II, the latter of which involved possession of child pornography. The plea agreement also limited Appellant's confinement exposure from 40 years to 72 months (six years). (Id. at 3.)

The plea agreement also contained a "waive all waivable motions" clause, which stated that Appellant offered to "[w]aive all waivable motions under the Rules for Court-Martial," save for certain motions under R.C.M. 705(c)(1)(B) that are not applicable to this issue. (Id. at 2.)

At trial, in discussing this provision, the military judge, Appellant, and Appellant's counsel had the following exchange:

MJ: Paragraph 4b states that you agree to waive all waivable motions under the Rules for court-martial and you understand that you are not waiving certain rights that being the right to counsel, the right to due process, the right to challenge the jurisdiction of a court-martial, the right to a speedy trial, the right to complete sentencing proceedings, and a complete and effective exercise of posttrial and appellate rights. And [Appellant], do you understand that one of these so, one of these motions regarding speedy trial is a motion that you cannot wa[i]ve and that is a motion the court issued that the military judge issued a ruling on already, do you understand that?

Appellant: Yes, Your Honor.

MJ: Do you understand that the provision of your plea agreement you are agreeing to give up any other motions that are not explicitly listed to make it not to make it a little more simpler motions are your counsel can ask for the court to either do or did not do certain things. They can ask for relief from the court. Examples of that are like

suppressing evidence or compelling the production of a witnesses to testify. There are all things that your counsel can file a motion to ask for this court to do and by entering into the plea agreement term in paragraph 4b you are waiving all of those rights that that can be waived. Do you understand that?

Appellant: Yes, Your Honor.

MJ: Defense Counsel, what motions are you not making pursuant to this provision of your plea agreement?

SDC: Yes, Your Honor, the defense is waiving our previously filed motions to the court including a motion under M.R.E. 412, for 3 of the named victims, P.D.J., H.A., and S.M. And two motions under M.R.E. 404b, a motion under M.R.E. 503, a motion under M.R.E. 504, a motion for unreasonable multiplication of charges, as well as two additional motions that the defense would have filed in this case, Your Honor, the first being a motion to suppress the evidence derived from the search of [Appellant's] iCloud account, pursuant to Article 30a, and a motion to compel discovery under R.C.M. 703 which corresponds with Appellate Exhibit XXXVII which is in the record as a discovery request made by defense counsel yesterday, 19 February 2025.

MJ: Okay, thank you, Defense Counsel. [Appellant] again your plea agreement states that you waive or give up the right to make a motion which may be waived under Rules for Court-Martial. I advise you that certain motions are waived or given up if your defense counsel does not make a motion prior to entering your plea. Some motions however, such as motions to dismiss for lack of jurisdiction can never be given up. An example of a motion that cannot be given up is the motion your counsel made, and which the previously detailed military judge ruled on, the motion to dismiss for Speedy Trial.

Do you understand that this term of your plea agreement means that you give up the right to make this, and any motion which by law is given up when you plead guilty?

Appellant: Yes, Your Honor.

MJ: In particular, do you understand that this term of your agreement may preclude this court or any appellate court from having the opportunity to determine if you are entitled to any relief based upon these motions?

Appellant: Yes, Your Honor.

MJ: When you elected to give up the right to litigate these motions, did your defense counsel explain this term of your agreement and the consequences of it to you?

Appellant: Yes, Your Honor.

MJ: Did anyone force you to enter into this term of your agreement?

Appellant: No, Your Honor.

MJ: Defense Counsel, which side originated the waiver of motions provision?

DC: The defense did, Your Honor.

(R. at 196-98.)

Pursuant to the plea agreement, Appellant pled guilty to Charge I and its specifications, as well as Specification 1 of Charge II. (R. at 117.) As part of his plea agreement, Appellant stated that his “counsel fully advised me of the nature of the charges against me, the possibility of my defending against them, any defense which might apply, and the effect of the guilty plea which I am offering to make, and I fully understand their advice and the meaning, effect, and consequences of this plea.” (App. Ex. XLV at 3.)

- ***Appellant’s Providency Inquiry***

During his providency inquiry on Specification 1 of Charge I, Appellant admitted to recording the victim “without her knowledge on at least one occasion.” (R. at 130.) Appellant stated, “The recordings I made of [victim] showed her breasts and I did not have consent to make those recordings.” (Id.) Appellant said he made the recordings in “Late 2018 to early 2019.” (R. at 131.) When asked, “did you make a recording in early 2019 or did you make a recording after that point,” Appellant responded, “Early 2019, Your Honor.” (Id.) When asked if he remembered when, Appellant responded, “Before March.” (Id.)

The conversation continued:

MJ: And do you agree and admit that at least one of these occasions was sometime during the year 2019, so after the year turns over but within close in time to March 2019?

Appellant: Yes, Your Honor.

MJ: Do you agree this incident that you're talking about where you used the screen capture application on your iPhone to record [victim's] breasts to include her areola or nipples was on it between on or about 1 March 2019 and on or about 31 December 2019?

Appellant: Yes, Your Honor.

...

MJ: All right, [Appellant], do you agree and admit that within the continental United States between on or about 1 March 2019 and on or about 31 December 2019, you knowingly recorded [victim's] private areas, that you did so without the consent of [victim] and that [victim] had a reasonable expectation of privacy at the time and that your conduct in making this recording was wrongful?

Appellant: Yes, Your Honor.

(R. at 137-38.)

ARGUMENT

I.

APPELLANT WAIVED ANY ISSUE RELATED TO STATUTE OF LIMITATIONS THROUGH THE WAIVE ALL WAIVABLE MOTIONS CLAUSE IN HIS PLEA AGREEMENT.

Standard of Review

This Court reviews de novo whether an appellant has waived an issue. United States v. Harborth, 85 M.J. 469, 475 (C.A.A.F. 2025).

Law

R.C.M. 907(b)(2)(B) states that an accused can waive the statute of limitations when it has run “provided that, if it appears that the accused is unaware of the right to assert the statute of limitations in bar of trial, the military judge shall inform the accused of this right.”

“When the evidence reasonably raises issues concerning . . . the statute of limitations, the military judge is charged with specific affirmative responsibilities.” United States v. Thompson, 59 M.J. 432, 439 (C.A.A.F. 2004). “The military judge has an affirmative obligation to advise an accused of the right to assert the statute of limitations, and must determine that any waiver of the statute of limitations bar is both knowing and voluntary.” Id. (citations omitted).

“For there to be such a waiver, the record must disclose that -- by reason of advice from the military judge or otherwise -- the accused was aware of his right to assert the statute of limitations and nonetheless chose to plead guilty.” United States v. Tunnell, 23 M.J. 110, 111 (C.M.A. 1986).

Analysis

The Government is cognizant of this Court’s previous unpublished opinions in both United States v. Sayers, ACM 40142 (f rev), 2023 CCA LEXIS 199 (A.F. Ct. Crim. App. Mar. 27, 2023), and United States v. Jensen, ACM 39573, 2020 CCA LEXIS 163 (A.F. Ct. Crim. App. May 19, 2020). In each of those cases, citing to R.C.M. 907(b)(2)(B), this Court held a military judge committed plain error by not discussing with an appellant whether the appellant was aware of the right to assert the statute of limitations defense during a guilty plea. Additionally, Sayers involved a plea agreement that included a “waive all waivable motions” provision. *See Sayers*, at *12.

The Government is also aware of multiple unpublished cases from the Navy-Marine Court of Criminal Appeals holding the same in guilty plea cases involving “waive all waivable motions” plea agreement provisions. See United States v. Espejo, No. 202300135, 2024 CCA LEXIS 454 (N-M Ct. Crim. App. Oct 29, 2024); United States v. Miller, No. 202200230, 2023 CCA LEXIS 445, *13-14 (N-M Ct. Crim. App. Oct. 23, 2023).

However, our superior Court recently granted review of the following issue in United States v. Askins:

WHETHER APPELLANT WAIVED OR FORFEITED
APPLICATION OF THE STATUTE OF LIMITATIONS TO HIS
LARCENY CONVICTION IN SPECIFICATION 1 OF CHARGE
I. IF FORFEITED, DOES APPELLANT MEET HIS BURDEN OF
PROOF UNDER PLAIN ERROR REVIEW?

United States v. Askins, 2026 CAAF LEXIS 118, *1 (C.A.A.F. Feb. 4, 2026).

In Askins, an appellant pled guilty to a larceny charge that was received by the summary court-martial convening authority approximately five years and three months from the latest date the appellant told the military judge the property at issue had been stolen. United States v. Askins, ARMY 20230303, 2025 CCA LEXIS 420 (A. Ct. Crim. App. Aug. 28, 2025). While our superior Court is also reviewing an issue deciding whether or not this offense qualified for tolling due to the United States being in a “time of war,” CAAF is also reviewing whether the appellant potentially waived the statute of limitations in a case where the military judge (1) discussed a “waive all waivable motions” clause with the appellant that was included in his plea agreement, but (2) *did not* specifically discuss a statute of limitations defense with the appellant. Id. at *5.

Thus, while the unpublished cases mentioned above appear to favor Appellant’s argument on this issue, CAAF’s grant in Askins shows this issue may not yet be settled. There is

good reason to apply waiver in this case. A “waive all waivable motions” clause in a plea agreement offers significant benefit to the government, and the accused may agree to it in order to secure other benefits for himself. For instance here, Appellant received the benefit of having two specifications, one of which involved the possession of child pornography, withdrawn and dismissed. He also had his confinement exposure limited to 72 months versus the original maximum of 40 years. The government should then get the benefit of its bargain – a waivable motion should automatically be deemed waived without any additional inquiry needed.

Where an accused has already agreed that he will not challenge any potential defects in his trial, there is no reason for a military judge to inquire into his understanding of the statute of limitations. A military judge should not presume that an accused “is unaware of the right to assert the statute of limitation,” if the accused has already agreed to “waive all waivable motion under the Rules for Courts-Martial,” as Appellant did here. The statute of limitations is the second waivable motion listed under R.C.M. 907(b). It is inconceivable that an accused who is represented by counsel in negotiating a plea agreement with such a term would not understand that he had the right to assert the statute of limitations. Here, the plea inquiry made clear that Appellant had discussed the “waive all waivable motions” provision with his trial defense counsel, and that, in fact, the term had originated with the defense. (*See* R. at 198; *see also* United States v. Gladue, 67 M.J. 311, 314 (C.A.A.F. 2009) (“The text of the [agreement] unambiguously agrees to ‘waive *any* waiveable [sic] motions,’ and after the military judge conducted a detailed, careful, and searching examination of Appellant to ensure that he understood the effect of the [agreement] provision, Appellant explicitly indicated his understanding that he was giving up the right ‘to make *any* motion which by law is given up when you plead guilty.’”)) This Court should ensure that “waive all waivable motions” is

enforced exactly as to its terms – not that there is some caveat whereby a waivable motion is not actually waived.

Still, even if this Court should find the military judge committed plain error and that Appellant was materially prejudiced as a result, this Court can remedy the error by dismissing Specification 1 of Charge I and reassessing the sentence pursuant to United States v. Winckelmann, 73 M.J. 11, 15-16 (C.A.A.F. 2013). Here, because Appellant’s plea agreement involved segmented sentencing with all sentences running consecutively, this Court knows that Appellant was sentenced to two months confinement for this offense. (R. at 303.) Thus, this Court can simply reduce Appellant’s sentence by two months.

Furthermore, the Court knows that this offense, while distasteful, was the least egregious offense to which he pled guilty. Appellant’s more egregious offenses included filming 17 through 22-year-old females (including his stepdaughters) with a camera he installed in a bathroom of his house and, most egregiously, viewing numerous child pornography videos and images. (Pros. Ex. 1.) Considering these offenses, this Court should be convinced that Appellant would have received a dishonorable discharge irrespective of his guilty plea to Specification 1 of Charge I.³

³ Importantly, Appellant does not attempt to argue that his adjudged dishonorable discharge should be modified in any way as a result of his claimed error related to this specification. (*See* App. Br. at 16.)

II.

APPELLANT UNCONDITIONALLY WAIVED THIS ISSUE THROUGH THE WAIVE ALL WAIVABLE MOTIONS CLAUSE IN HIS PLEA AGREEMENT.

Standard of Review

This Court reviews de novo whether an appellant has waived an issue. United States v. Harborth, 85 M.J. 469, 475 (C.A.A.F. 2025).⁴ Whether a waiver of a right was “knowing and intelligent” is “a question of law [assessed] under a de novo standard of review.” United States v. Rosenthal, 62 M.J. 261, 262 (C.A.A.F. 2005). The voluntariness of a waiver is also reviewed de novo; voluntariness “is measured by reference to the surrounding circumstances.” United States v. Hasan, 84 M.J. 181, 198 (C.A.A.F. 2024) (citation omitted). No magic words are required to establish a waiver. United States v. Elespuru, 73 M.J. 326, 328 (C.A.A.F. 2014) (quotation omitted). Instead, the determination of whether there has been an intelligent waiver must depend, in each case, upon the particular facts and circumstances surrounding that case. Id. (quotation omitted).

Law

Our superior Court recently addressed unconditional guilty pleas and waivable motions in United States v. Malone, __ M.J. __, 2026 CAAF LEXIS 62 (C.A.A.F. Jan. 20, 2026). There, the Court highlighted the following case law surrounding the issue:

An “express” waiver occurs when there is “the ‘intentional relinquishment or abandonment of a known right,’” [United States v. Gladue, 67 M.J. 311, 313 (C.A.A.F. 2009)] (quoting United States v. Olano, 507 U.S. 725, 733, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (1993)), and is accomplished via affirmative action by the accused or the accused’s counsel. Affirmative action may occur when a trial defense counsel states that there is “no objection” to a proposed

⁴ Appellant’s brief mentions an abuse of discretion standard that is not at issue in this case. (*See* App. Br. at 16.)

course of legal action. United States v. Swift, 76 M.J. 210, 217 (C.A.A.F. 2017) (“[A]s a general proposition of law, ‘no objection’ constitutes an affirmative waiver of the right or admission at issue.”); United States v. Ahern, 76 M.J. 194, 198 (C.A.A.F. 2017) (“[U]nder the ordinary rules of waiver, Appellant’s affirmative statements that he had no objection to admission [of the evidence] . . . operate to extinguish his right to complain about [its] admission on appeal.”). Affirmative action also may occur when an accused chooses to enter into a plea agreement with a “waive[] all waivable motions” provision. Gladue, 67 M.J. at 314 (“Appellant’s express waiver of any waivable motions waived claims of multiplicity and unreasonable multiplication of charges and extinguished his right to raise these issues on appeal.”). And affirmative action may further occur when a party seeks “[n]o changes” to a military judge’s instructions. United States v. Davis, 79 M.J. 329, 330-32 (C.A.A.F. 2020) (holding that defense counsel waived objections to findings instructions by stating “No changes,” when the military judge asked if there were any objections or requests for additional instructions and responding, “No Your Honor,” when later asked if there were any objections to the findings instructions).

Malone, at *9-10.

In Gladue, our superior Court held that a “waive all waivable motions” provision waived, rather than forfeited, a claim of unreasonable multiplication of charges on appeal and therefore the claim was extinguished and could not be raised on appeal. The Court held the issue was waived because the pretrial agreement required the appellant to waive all waivable motions, the military judge conducted a thorough inquiry to ensure the appellant understood the effect of this provision, and the appellant explicitly indicated his understanding that he was waiving the right to raise any waivable motion. *See Gladue*, 67 M.J. at 313. Importantly, in Gladue, CAAF highlighted that a motion related to unreasonable multiplication of charges was not among those specifically discussed by the military judge and defense counsel. Still, CAAF held “this does not affect the validity of the waiver,” adding, “The text of the [agreement] unambiguously agrees to ‘waive *any* waiveable [sic] motions,’ and after the military judge conducted a detailed, careful, and searching examination of Appellant to ensure that he understood the effect of the

[agreement] provision, Appellant explicitly indicated his understanding that he was giving up the right ‘to make *any* motion which by law is given up when you plead guilty.’” Id. at 314. (emphasis in original).

Malone involved a plea agreement that *did not* include a “waive all waivable motions” provision. Malone, at *25-26. However, CAAF still held the appellee’s⁵ multiplicity claim at trial was waived based on the actions of the appellee and his counsel. Id. at *13-16. Furthermore, while he dissented in the case by finding the appellee forfeited, rather than waived, the issue, Judge Hardy twice highlighted this was a case where the Government “failed to negotiate a ‘waive all waivable motions’ providing in the plea agreement.” Id. at 25-26.

Based on the changes to Article 66(d)(1)(A), UCMJ, 10 U.S.C. § 866(d)(1)(A), in which Congress removed the phrase “should be approved,” and because the offense in this case occurred after 1 January 2021, this Court no longer has the ability to pierce waiver with regard to findings. *See United States v. George*, ACM 40397, 2024 CCA LEXIS 224 (A.F. Ct. Crim. App. 7 June 2024) (*citing United States v. Chin*, 75 M.J. 220, 223 (C.A.A.F. 2016); United States v. Coley, ARMY 20220231, 2024 CCA LEXIS 127, at *8-9 (A. Ct. Crim. App. 13 Mar. 2024).)

Analysis

Based on the facts and circumstances surrounding this unconditional guilty plea that included a “waive all waivable motions” provision in the plea agreement, the record establishes an express waiver of Appellant’s newly alleged unreasonable multiplication of charges claim. Here, Appellant knowingly and voluntarily consented to waiving all waivable motions as part of

⁵ In Malone, the lower court concluded there was no waiver of the multiplicity issue and overturned the appellant’s conviction. United States v. Malone, 85 M.J. 573, 576 (A. Ct. Crim. App. 2025) (en banc). The acting Judge Advocate General of the Army then certified the case to CAAF, making the appellant the appellee before CAAF. Malone, at *2.

his plea agreement – a provision that was originated by Appellant and his defense team. (R. at 198.)

Next, Appellant affirmatively stated that he understood this term meant (1) he was giving up the right to make “any motion which by law is given up when you plead guilty;” (2) that this term “may preclude . . . any appellate court from having the opportunity to determine if you are entitled to any relief based” upon the motions; and (3) that his counsel explained this term of the plea agreement and the consequences of it to Appellant. (Id.)

In his brief, Appellant claims he “did not ‘explicitly indicate[] his understanding that he was giving up the right to make any motion which by law is given up when you plead guilty.’” (See App Br. at 22.) However, Appellant told the military judge, “Yes, Your Honor,” when asked, “Do you understand that this term of your plea agreement means that you give up the right to make this, and *any motion which by law is given up when you plead guilty?*” (R. at 198.) (emphasis added.) Appellant fails to reference this exchange in his brief. Instead, Appellant contends that the military judge’s colloquy with Appellant regarding motions was limited only to the motions mentioned by the trial defense counsel. (See App. Br at 23-24, citing R. at 200.) However, a complete review of the colloquy between the military judge, Appellant, and Appellant’s counsel shows Appellant’s contention is incorrect. (See R. at 196-200.)

Importantly, earlier in the trial, Appellant had filed a motion related to unreasonable multiplication of charges. Though that motion involved different charges and specifications, the motion still highlights that both Appellant and his counsel were aware of the concept of unreasonable multiplication of charges. However, not only did Appellant and his counsel chose to not file such a motion specifically related to the specifications in question, but then affirmatively chose to include a waive all waivable motions provision in Appellant’s plea

agreement.⁶

Based on these circumstances, Appellant relinquished and abandoned a known right, and took affirmative action to waive any issue related to unreasonable multiplication of charges when he knowingly and voluntarily agreed to a plea agreement with a waive all waivable motions provision. As our superior Court found in Gladue, this provision constitutes an express waiver of unreasonable multiplication of charges issues. Gladue, 67 M.J. at 313.

Finally, Appellant contends that this Court retains the ability to pierce waiver because “the Court’s ability to determine what is ‘correct in law’ has not changed.” (App. Br. at 17.) Appellant is incorrect. Our superior Court has held that a valid waiver “leaves no error to correct on appeal.” Ahern 76 M.J. at 197-98. Considering a valid waiver thus extinguishes the claim of legal error, our sister Court has held, “a case becomes ‘correct in law’ for purposes of Article 66 review when a valid waiver applies to what would otherwise be prejudicial error.” United States v. Conley, 78 M.J. 747, 749 (A. Ct. Crim. App. 2019). Further, this Court has held that it “no longer ha[s] the ability to pierce waiver with regard to findings to address what would otherwise be prejudicial error.” George, at *3; *see also* United States v. Roberts, ACM 40608, 2025 CCA LEXIS 476, *4 (A.F. Ct. Crim. App. Sept 30, 2025); United States v. Coley, ACM 40675, 2026 CCA LEXIS 69, *15 (A.F. Ct. Crim. App. Feb. 12, 2026) (finding that this Court had the ability in that case to pierce waiver because the specification pre-dated 1 January 2021); United States

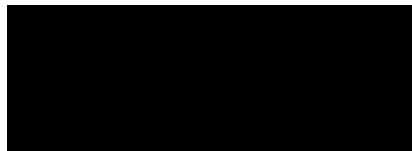
⁶ Appellant has not raised a claim of ineffective assistance of counsel against his trial defense counsel, which “results in a presumption that defense counsel acted in a competent manner,” and this presumption should influence this court’s analysis of this case. *See* Malone, at *12-13 (citing United States v. Hill, 528 U.S. 110, 115 (2000) (“Absent a demonstration of ineffectiveness, counsel’s word on [decisions pertaining to the conduct of the trial] is the last.”)); United States v. Campos, 67 M.J. 330, 333 (C.A.A.F. 2009) (citing the appellant’s failure to allege ineffective assistance of counsel as a factor in this Court’s waiver determination); Strickland v. Washington, 466 U.S. 668, 689 (1984).

v. Sanger, ACM S32773, 2025 CCA LEXIS 370, *44 (A.F. Ct. Crim. App. Aug. 7, 2025) (“We have waiver ‘piercing authority’ for misconduct committed before 1 January 2021”).

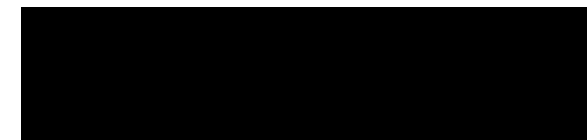
Considering Appellant’s issue is based on a findings issue that would otherwise be addressed for prejudicial error,⁷ this Court is foreclosed from piercing waiver in this case since the convicted offense took place after 1 January 2021. Accordingly, this Court should deny Appellant’s claim.

CONCLUSION

WHEREFORE, this Court should deny affirm Appellant’s provident guilty plea and sentence.



G. MATT OSBORN, Colonel, USAF
Appellate Government Counsel



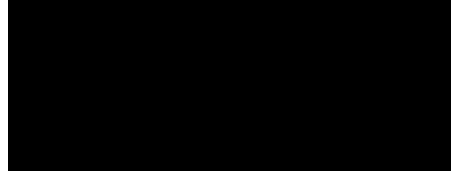
MARY ELLEN PAYNE
Associate Chief, Government Trial and Appellate
Operations Division



⁷ See App. Br. at 24.

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate counsel, and the Air Force Appellate Defense Division on 26 February 2026 via electronic filing.



G. MATT OSBORN, Colonel, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

v.

Technical Sergeant (E-6)

RANDALL R. RAFAJKO

United States Air Force

Appellant

**REPLY TO THE UNITED STATES'
ANSWER TO ASSIGNMENT OF
ERROR**

Before Special Panel

No. ACM 40821

5 March 2026

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

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Appellant, pursuant to Rule 18(d) of this Court's Rules of Practice and Procedure, files this Reply to the United States' Answer to Assignment of Error, dated 26 February 2026. In addition to the arguments in Appellant's Brief on Behalf of Appellant, dated 27 January 2026, Appellant submits the following.

I. The military judge abused his discretion when he accepted Appellant's improvident plea to Charge I, Specification 1, because the alleged conduct was outside the statute of limitations.

The military judge abused his discretion by accepting Appellant's guilty plea to Charge I, Specification 1, because the charged misconduct fell outside the statute of limitations. The military judge's acceptance of Appellant's plea was an abuse of discretion, in contradiction to all current, relevant, and applicable precedent *See* Ans. to Assignment of Error at 7-8 (acknowledging that case law on this issue "appear[s] to favor Appellant's argument on this issue") (citing *United States v. Sayers*, No. ACM 40142 (f rev), 2023 CCA LEXIS 199 (A.F. Ct. Crim. App. Mar. 27, 2023); *United States v. Jensen*, No. ACM 39573, 2020 CCA LEXIS 163 (A.F. Ct. Crim. App. May 19, 2020); *United States v. Espejo*, No. 202300135, 2024 CCA LEXIS 454 (N-M. Ct. Crim. App. Oct. 29, 2024); *United States v. Miller*, No. 202200230, 2023 CCA LEXIS 445 (N-M. Ct. Crim. App. Oct. 23, 2023)). The military judge did not inform Appellant of his right to assert the statute of limitations defense, and the Appellant never waived it. *See* Tr. 127-39, 197; Appellate Ex. XLV at 2, ¶ 4.b. The Government concedes the military judge did not inform Appellant of that right during trial. *See* Ans. to Assignment of Error at 8-9 (arguing that caselaw requiring military judges to address the statute of limitations concerns with an accused should not apply).

Additionally, the Government does not argue that the statute of limitations in the present case is tolled. Ans. to Assignment of Error at 6-10. The Government’s argument on Assignment of Error I solely focuses on whether Appellant waived the statute of limitations defense. *Id.* The military judge’s acceptance of Appellant’s guilty plea to Charge I, Specification 1, was an abuse of discretion¹; therefore, the finding and sentence must be set aside.

While the Court of Appeals for the Armed Forces (CAAF) granted review of a similar issue in *Askins*, the Government is merely guessing its outcome and effect on this case. Ans. to Assignment of Error at 8-9; see *United States v. Askins*, __ M.J. __, Dkt. No. 26-0002/AR, 2026 CAAF LEXIS 118 (C.A.A.F. Feb. 4, 2026) (grant of

¹ The correct standard of review in this case is for an abuse of discretion. *United States v. Astacio Burgess*, No. ACM S32827, 2025 CCA LEXIS 573, at *5-6 (A.F. Ct. Crim. App. Dec. 12, 2025) (only using abuse of discretion); see *United States v. Espejo*, No. 202300135, 2024 CCA LEXIS 454, at *2, *9 (N-M. Ct. Crim. App. Oct. 29, 2024) (only using abuse of discretion). Appellant also cited the plain error standard of review in its Brief on Behalf of Appellant due to this Court’s decision in *Jensen* which uses both an abuse of discretion and plain error standard of review. *Jensen*, 2020 CCA LEXIS 163, at *5-6; see Br. on Behalf of Appellant at 10-11. While not clearly delineated in *Jensen*, it appears this Court used the abuse of discretion standard of review to answer the first two requirements of the plain error analysis: whether (1) there was error and (2) the error was plain and obvious. *Jensen*, 2020 CCA LEXIS 163, at *9, *11 (finding “the military judge abused his discretion in accepting [a]ppellant’s pleas” but also that there was “no material prejudice”). Using both an abuse of discretion and plain error standard of review would be inconsistent with this Court’s subsequent opinions on this issue and controlling caselaw. See *Astacio Burgess*, 2025 CCA LEXIS 573, at *5-6; see also *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008) (utilizing the abuse of discretion standard because, in part, it is the military judge’s responsibility to ensure an accused is “advised of an available defense” prior to accepting a guilty plea). The applicable standard of review in the present case is for an abuse of discretion; however, plain error review was also utilized in the Brief on Behalf of Appellant due to this Court’s opinion in *Jensen*. Regardless, under either standard of review, Appellant prevails.

petition for grant of review). *Askins* is different because there, the appellant, before pleading guilty, expressed understanding that a statute of limitations defense may have existed in his case. *United States v. Askins*, ARMY 20230303, 2025 CCA LEXIS 420, at *4 (A. Ct. Crim. App. Aug. 28, 2025) (Appellant “acknowledged the typical five-year statute of limitations period did not apply to his larceny” and “contended he could be prosecuted for [the] misconduct.”). No similar circumstances exist here. Here, no acknowledgement or waiver of the statute of limitations defense occurred. Nowhere in the record do Appellant, the parties, or the military judge appear aware of the statute of limitations defense. Br. on Behalf of Appellant at 10-16. “A plea of guilty does not waive a statute of limitations defense when the record does not disclose that an accused was aware of the right to assert the defense.” *Jensen*, 2020 CCA LEXIS 163, at *8 (citing *United States v. Salter*, 20 M.J. 116, 117 (C.M.A. 1985)); see Rule for Courts-Martial 907(b)(2)(B) (“[I]f it appears that the accused is unaware of the right to assert the statute of limitations in bar of trial, the military judge shall inform the accused of this right.”).

Contrary to the Government’s argument, this Court is “not at liberty to simply disregard requirements in the Rules for Courts-Martial that protect an accused’s right to make fully informed decisions regarding his defense.” *Sayers*, 2023 CCA LEXIS 199, at *13-14; Ans. to Assignment of Error at 9. The statute of limitations defense was not waived, and the military judge abdicated his affirmative obligation to advise Appellant of the defense. The military abused his discretion by accepting

Appellant's plea of guilty, contrary to "military case law and procedure." *Miller*, 2023 CCA LEXIS 445, at *13-14.

Appellant requests that this Court set aside the finding of guilty as to Specification 1 of Charge I and reduce Appellant's sentence by two months.

II. Charge I, Specifications 2 through 6 are unreasonably multiplied because they are part of one continuous recording and transaction.

This Court may review Appellant's conviction for Charge I, Specifications 2-6, because Appellant did not knowingly and voluntarily waive this issue. *See United States v. Malone*, __ M.J. __, 2026 CAAF LEXIS 62, at *8 (C.A.A.F. 2026) ("Waiver can occur either by a party's intentional relinquishment or abandonment of a known right or by operation of law" (quoting *United States v. Day*, 83 M.J. 53, 56 (C.A.A.F. 2022))); *United States v. Gladue*, 67 M.J. 311, 314 (C.A.A.F. 2009) ("[A] party may knowingly and voluntarily waive . . . a nonconstitutional right"); *contrast* Br. on Behalf of Appellant at 16, 21-24, *with* Ans. to Assignment of Error at 11-15. Because Appellant did not waive the unreasonable multiplication of charges issue, this Court can and should still review the issue and associated convictions for legal error. Br. on Behalf of Appellant at 16-21; Ans. to Assignment of Error at 15-16 (assuming the issue is waived and declining to address the substance of the issue or the *Quiroz*² factors).

But even if waived, this Court may still review Appellant's unreasonable multiplication of charges issue. Appellant maintains his position that Congress has not

² *United States v. Quiroz*, 55 M.J. 334, 338-39 (C.A.A.F. 2001)

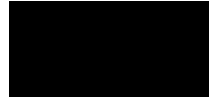
changed this Court's ability to pierce waiver to correct legal, prejudicial error, for post-1 January 2021 offenses. Br. on Behalf of Appellant at 17 n.3, 24. Pursuant to Rule 30.4(a) of this Court's Rules of Practice and Procedure, this Court's holding in *United States v. George* is unpublished and does not serve as precedent. *Contrast* 2024 CCA LEXIS 224, at *2-3 (A.F. Ct. Crim. App. June 7, 2024) (holding that Congress' removal of the phrase "should be approved" in 10 U.S.C. § 866 removed Courts of Criminal Appeals' (CCA) ability to "pierce waiver with regard to findings to address what would otherwise be prejudicial error"), *with* A.F. CT. CRIM. APP. R. 30.4(a); *but see* *United States v. Coley*, 2026 CCA LEXIS 69, at *8-9 (A.F. Ct. Crim. App. Feb. 12, 2026) (holding that CCAs can pierce waiver for pre-1 January 2021 offenses).

Appellant respectfully requests this Court merge Charge I, Specifications 2-6, for the findings and sentence, resulting in a single conviction and confinement for nine months as the appropriate and required sentence under R.C.M. 1002(b)(2)(B)(iii). *See United States v. Winckelmann*, 73 M.J. 11, 15 (C.A.A.F. 2013); Br. on Behalf of Appellant at 16-25.

CONCLUSION

Appellant respectfully requests that this Honorable Court set aside the finding of guilty as to Charge I, Specification 1, and merge Charge I, Specifications 2-6, for the findings and sentence because they are unreasonably multiplied.

Respectfully submitted,



JOHN M. FREDERICKS, Capt, 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 Air Force Government Trial and Appellate Operations Division on 5 March 2026.



JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel



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

UNITED STATES	)	No. ACM 40821
<i>Appellee</i>	)	
	)	
v.	)	
	)	NOTICE OF PANEL
Randall R. RAFAJKO	)	CHANGE
Technical Sergeant (E-6)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	

It is by the court on this 3d day of April, 2026,

ORDERED:

That the record of trial in the above-styled matter is withdrawn from a Special Panel and referred to another Special Panel for appellate review. The Special Panel in this matter shall be constituted as follows:

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge
RAMÍREZ, ROBERTO, Lieutenant Colonel, Appellate Military Judge
MORGAN, CHRISTOPHER S., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.



FOR THE COURT

A handwritten signature in black ink, appearing to read "TSB".

TANICA S. BAGMON
Appellate Court Paralegal