

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT'S
<i>Appellee</i>	)	MOTION FOR ENLARGEMENT
	)	OF TIME (FIRST)
	)	
	)	
v.	)	Before Panel No. 3
	)	
Airman (E-1)	)	No. ACM 40178
<b>JORGEDIEGO RIVERA-MOYET</b>	)	
United States Air Force	)	19 November 2021
<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 Assignment of Errors. Appellant requests an enlargement for a period of 60 days, which will end on **27 January 2022**. The record of trial was docketed with this Court on 29 September 2021. From the date of docketing to the present date, 51 days have elapsed. On the date requested, 118 days will have elapsed.

**WHEREFORE**, Appellant respectfully requests this Honorable Court grant this requested first enlargement of time for the submission of an Assignment of Errors.

Respectfully submitted,

[REDACTED]

ESHAWN R. RAWLLEY, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

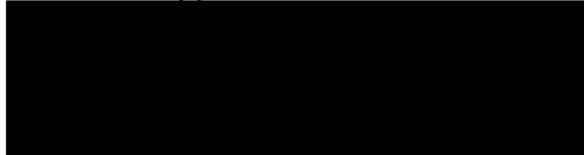
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 19 November 2021.

Respectfully submitted,

A black rectangular redaction box covering the signature of Eshawn R. Rawlley.

ESHAWN R. RAWLLEY, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

A large black rectangular redaction box covering the contact information of Eshawn R. Rawlley.

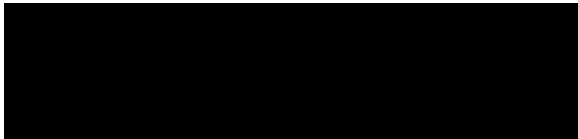

**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM 40178
JORGEDIEGO RIVERA-MOYET, USAF,	)	
<i>Appellant.</i>	)	Panel No. 3
	)	

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

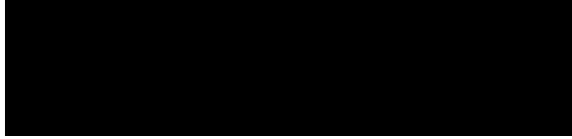
Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

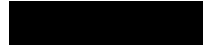
  
MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force  


**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 23 November 2021.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



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

)  
)  
) **NOTICE OF PANEL**  
) **CHANGE**  
)

It is by the court on this 20th day of January, 2022,

**ORDERED:**

The following records of trial are withdrawn from Panel 3 and referred to Panel 1 for appellate review.

1. United States v. Ashmore, Donovan	No. ACM 40036
2. United States v. Dixon, JaKorbie R.	No. ACM 39878 (f rev)
3. United States v. Beehler, Erik M.	No. ACM 39964
4. United States v. Lopez, Luis J.	No. ACM S32681
5. United States v. Lowe, Dalyn P.	No. ACM S32707
6. United States v. Emas, Nicholas F.	No. ACM 40020
7. United States v. Kim, Won-Jun	No. ACM 40057
8. United States v. Mock, Joshua P.	No. ACM 40072
9. United States v. Taylor II, Terry J.	No. ACM 40086
10. United States v. Cooper, Calvin M.	No. ACM 40092
11. United States v. Ross, Jaden C.	No. ACM 40107
12. United States v. Todd, Jeremy T.	No. ACM S32701
13. United States v. Scott, Daionte K.	No. ACM 40130
14. United States v. Lampkins, Bradley D.	No. ACM 40135
15. United States v. Goldsmith, Devonte R.C.	No. ACM 40148
16. United States v. Davis, Ryan J.	No. ACM S32709
17. United States v. Rivera-Moyet, Jorgediego	No. ACM 40178
18. United States v. Sanders III, Lonnie E.	No. ACM S32714
19. United States v. Covitz, Colin R.	No. ACM 40193
20. United States v. Schauer, Matthew D.	No. ACM 40203
21. United States v. Dagan, Donovan B.	No. ACM S32717

This panel letter supersedes all previous assignments.



FOR THE COURT

ANTHONY F. ROCK, Capt, USAF  
Deputy Clerk of the Court

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

UNITED STATES	)	APPELLANT'S
<i>Appellee</i>	)	MOTION FOR ENLARGEMENT
	)	OF TIME (SECOND)
	)	
	)	
v.	)	Before Panel No. 3
	)	
Airman (E-1)	)	No. ACM 40178
<b>JORGEDIEGO RIVERA-MOYET</b>	)	
United States Air Force	)	20 January 2022
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Airman Jorgediego Rivera-Moyet, the Appellant, hereby moves for a second enlargement of time to file an Assignment of Errors. Appellant requests an enlargement for a period of 30 days, which will end on **26 February 2022**. The record of trial was docketed with this Court on 29 September 2021. From the date of docketing to the present date, 113 days have elapsed. On the date requested, 143 days will have elapsed.

On 29 July 2021, at a general court-martial convened at Joint Base Langley-Eustis, Virginia, Amn Rivera-Moyet was, consistent with his pleas, found guilty of one charge and two specifications of attempt to record the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880<sup>1</sup> (Charge I and its specifications), and one charge, four

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<sup>1</sup> Unless otherwise specified, all references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.)

specifications of recording the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy, and three specifications of distributing a recording of the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy, in violation of Article 120c, UCMJ, 10 U.S.C. § 920c (Charge II and its specifications). Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2021. A military judge sentenced Amn Rivera-Moyet to fifteen months confinement for Charge I, Specification 1, thirteen months confinement for Charge I, Specification 2, thirteen months confinement for Charge II, Specifications, 1, 2, 3, and 4 respectively, fifteen months confinement for Charge II, Specifications 5, 6, and 7 respectively (with all confinement to be served concurrently), a bad conduct discharge, and a reduction to the grade of E-1. *Id.* The convening authority took no action on the findings and sentence. ROT Vol. 1, Convening Authority Decision on Action, 11 August 2021. Amn Rivera-Moyet is currently confined.

The trial transcript is 106 pages, and the record of trial consists of three volumes containing five prosecution exhibits, four defense exhibits, four appellate exhibits, and one court exhibit. Undersigned counsel currently represents nineteen clients, with thirteen Assignments of Error briefs pending before this Court. Through no fault of Amn Rivera-Moyet, counsel has been unable to review the record of trial in this case, advise Amn Rivera-Moyet appropriately, and draft an Assignments of Error brief, and will not be able to do so before this Court's 27 January 2022 deadline.

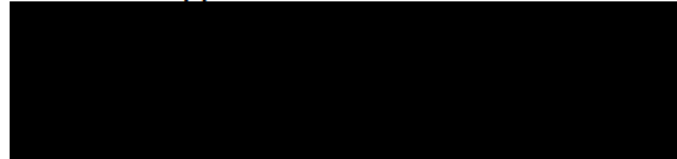
**WHEREFORE**, Appellant respectfully requests this Honorable Court grant this requested second enlargement of time for the submission of an Assignment of Errors

brief for good cause shown.

Respectfully submitted,



Y, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



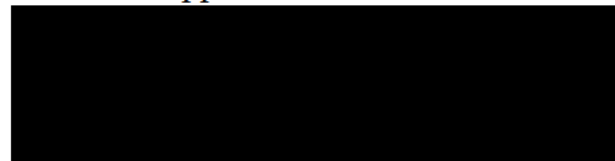
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 20 January 2022.

Respectfully submitted,



ESHAWN R. RAWLLEY, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division





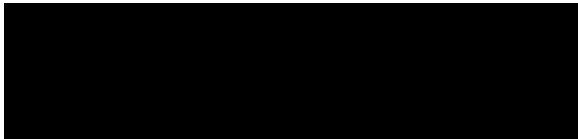

**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM 40178
JORGEDIEGO RIVERA-MOYET, USAF,	)	
<i>Appellant.</i>	)	Panel No. 3
	)	

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

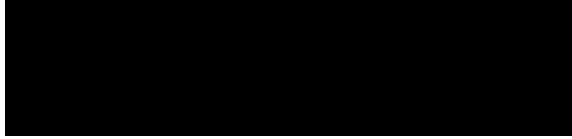
Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

  
MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force  


**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 January 2022.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>APPELLANT'S</b>
<i>Appellee</i>	)	<b>MOTION FOR ENLARGEMENT</b>
	)	<b>OF TIME (THIRD)</b>
	)	
	)	
v.	)	Before Panel No. 1
	)	
Airman (E-1)	)	No. ACM 40178
<b>JORGEDIEGO RIVERA-MOYET</b>	)	
United States Air Force	)	17 February 2022
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court's Rules of Practice and Procedure, Airman Jorgediego Rivera-Moyet, the Appellant, hereby moves for a third enlargement of time to file an Assignment of Errors. Appellant requests an enlargement for a period of 30 days, which will end on **28 March 2022**. The record of trial was docketed with this Court on 29 September 2021. From the date of docketing to the present date, 141 days have elapsed. On the date requested, 180 days will have elapsed.

On 29 July 2021, at a general court-martial convened at Joint Base Langley-Eustis, Virginia, Amn Rivera-Moyet was, consistent with his pleas, found guilty of one charge and two specifications of attempt to record the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880<sup>1</sup> (Charge I and its specifications), and one charge, four

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<sup>1</sup> Unless otherwise specified, all references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.)


specifications of recording the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy, and three specifications of distributing a recording of the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy, in violation of Article 120c, UCMJ, 10 U.S.C. § 920c (Charge II and its specifications). Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2021. A military judge sentenced Amn Rivera-Moyet to fifteen months confinement for Charge I, Specification 1, thirteen months confinement for Charge I, Specification 2, thirteen months confinement for Charge II, Specifications, 1, 2, 3, and 4 respectively, fifteen months confinement for Charge II, Specifications 5, 6, and 7 respectively (with all confinement to be served concurrently), a bad conduct discharge, and a reduction to the grade of E-1. *Id.* The convening authority took no action on the findings and sentence. ROT Vol. 1, Convening Authority Decision on Action, 11 August 2021. Amn Rivera-Moyet is currently confined.

The trial transcript is 106 pages, and the record of trial consists of three volumes containing five prosecution exhibits, four defense exhibits, four appellate exhibits, and one court exhibit. Undersigned counsel currently represents sixteen clients, with eleven Assignments of Error briefs pending before this Court. Through no fault of Amn Rivera-Moyet, counsel has been unable to review the record of trial in this case, advise Amn Rivera-Moyet appropriately, and draft an Assignments of Error brief, and will not be able to do so before this Court's 26 February 2022 deadline.

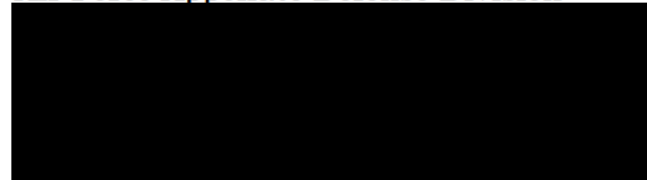
**WHEREFORE**, Appellant respectfully requests this Honorable Court grant this requested third enlargement of time for the submission of an Assignment of Errors

brief for good cause shown.

Respectfully submitted,



E [Signature] Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 17 February 2022.

Respectfully submitted,



ESHAWN R. RAWLLEY, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division





**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
	)	
Airman (E-2)	)	ACM 40178
JORGEDIEGO RIVERA-MOYET, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

**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.

  
JOHN P. PATERA, Maj, USAF  
Appellate Government Counsel, Government Trial  
and Appellate Operations Division  
Military Justice and Discipline  
United States Air Force  


**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 February 2000



JOHN P. PATERA, Maj, USAF  
Appellate Government Counsel, Government Trial  
and Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>APPELLANT'S</b>
<i>Appellee</i>	)	<b>MOTION FOR ENLARGEMENT</b>
	)	<b>OF TIME (FOURTH)</b>
	)	
	)	
v.	)	Before Panel No. 1
	)	
Airman (E-1)	)	No. ACM 40178
<b>JORGEDIEGO RIVERA-MOYET</b>	)	
United States Air Force	)	21 March 2022
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Airman Jorgediego Rivera-Moyet, the Appellant, hereby moves for a fourth enlargement of time to file an Assignment of Errors. Appellant requests an enlargement for a period of 30 days, which will end on **27 April 2022**. The record of trial was docketed with this Court on 29 September 2021. From the date of docketing to the present date, 173 days have elapsed. On the date requested, 210 days will have elapsed.

On 29 July 2021, at a general court-martial convened at Joint Base Langley-Eustis, Virginia, Amn Rivera-Moyet was, consistent with his pleas, found guilty of one charge and two specifications of attempt to record the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880<sup>1</sup> (Charge I and its specifications), and one charge, four

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<sup>1</sup> Unless otherwise specified, all references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.)



specifications of recording the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy, and three specifications of distributing a recording of the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy, in violation of Article 120c, UCMJ, 10 U.S.C. § 920c (Charge II and its specifications). Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2021. A military judge sentenced Amn Rivera-Moyet to fifteen months confinement for Charge I, Specification 1, thirteen months confinement for Charge I, Specification 2, thirteen months confinement for Charge II, Specifications, 1, 2, 3, and 4 respectively, fifteen months confinement for Charge II, Specifications 5, 6, and 7 respectively (with all confinement to be served concurrently), a bad conduct discharge, and a reduction to the grade of E-1. *Id.* The convening authority took no action on the findings and sentence. ROT Vol. 1, Convening Authority Decision on Action, 11 August 2021. Amn Rivera-Moyet is currently confined.

The trial transcript is 106 pages, and the record of trial consists of three volumes containing five prosecution exhibits, four defense exhibits, four appellate exhibits, and one court exhibit. Undersigned counsel currently represents fifteen clients, with eleven Assignments of Error briefs pending before this Court. Counsel is also currently assigned to two petitions for review before the Court of Appeals for the Armed Forces (CAAF). This case is counsel's seventh priority case before this court. Since Amn Rivera-Moyet's last request for an enlargement of time, counsel prepared a supplemental brief to CAAF in *United States v. Vargas* (ACM 38991 (f rev)), and has continued to prepare an Assignments of Error brief in *United States v. Cooper* (ACM

40092). Through no fault of Amn Rivera-Moyet, counsel has been unable to review the record of trial in this case, advise Amn Rivera-Moyet appropriately, and draft an Assignments of Error brief, and will not be able to do so before this Court's 28 March 2022 deadline.

**WHEREFORE**, Appellant respectfully requests this Honorable Court grant this requested fourth enlargement of time for the submission of an Assignment of Errors brief for good cause shown.

Respectfully submitted,

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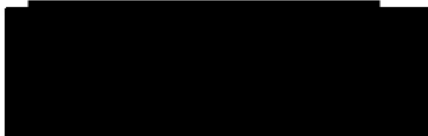
ESHAUN R. RAWLEY, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

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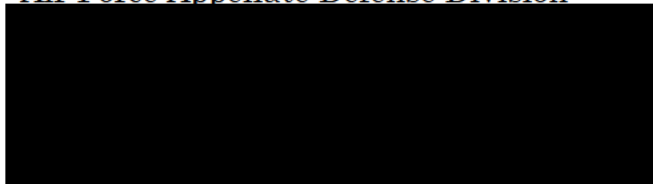
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 21 March 2022.

Respectfully submitted,

A large black rectangular redaction box covering the signature of the submitter.

 Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

A large black rectangular redaction box covering the contact information of the submitter.

**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
	)	
Airman (E-2)	)	ACM 40178
JORGEDIEGO RIVERA-MOYET, USAF,	)	
<i>Appellant.</i>	)	Panel No. 3
	)	

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

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

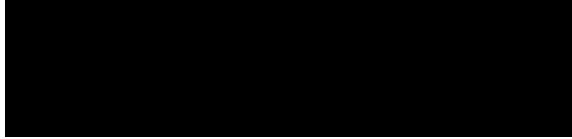
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

[REDACTED]

MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force  
[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 23 March 2022.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>APPELLANT'S</b>
<i>Appellee</i>	)	<b>MOTION FOR ENLARGEMENT</b>
	)	<b>OF TIME (FIFTH)</b>
	)	
	)	
v.	)	Before Panel No. 1
	)	
Airman (E-1)	)	No. ACM 40178
<b>JORGEDIEGO RIVERA-MOYET</b>	)	
United States Air Force	)	20 April 2022
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Airman Jorgediego Rivera-Moyet, the Appellant, hereby moves for a fourth enlargement of time to file an Assignment of Errors. Appellant requests an enlargement for a period of 30 days, which will end on **27 May 2022**. The record of trial was docketed with this Court on 29 September 2021. From the date of docketing to the present date, 203 days have elapsed. On the date requested, 240 days will have elapsed.

On 29 July 2021, at a general court-martial convened at Joint Base Langley-Eustis, Virginia, Amn Rivera-Moyet was, consistent with his pleas, found guilty of one charge and two specifications of attempt to record the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880<sup>1</sup> (Charge I and its specifications), and one charge, four specifications of recording the private area of another person without that person's

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<sup>1</sup> Unless otherwise specified, all references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.)

consent and under circumstances in which that person had a reasonable expectation of privacy, and three specifications of distributing a recording of the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy, in violation of Article 120c, UCMJ, 10 U.S.C. § 920c (Charge II and its specifications). Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2021. A military judge sentenced Amn Rivera-Moyet to fifteen months confinement for Charge I, Specification 1, thirteen months confinement for Charge I, Specification 2, thirteen months confinement for Charge II, Specifications, 1, 2, 3, and 4 respectively, fifteen months confinement for Charge II, Specifications 5, 6, and 7 respectively (with all confinement to be served concurrently), a bad conduct discharge, and a reduction to the grade of E-1. *Id.* The convening authority took no action on the findings and sentence. ROT Vol. 1, Convening Authority Decision on Action, 11 August 2021. Amn Rivera-Moyet is currently confined.

The trial transcript is 106 pages, and the record of trial consists of three volumes containing five prosecution exhibits, four defense exhibits, four appellate exhibits, and one court exhibit. Undersigned counsel currently represents fifteen clients, with eleven Assignments of Error briefs pending before this Court. Counsel is also currently assigned to a petition for review before the Court of Appeals for the Armed Forces (CAAF). This case is counsel's seventh priority case before this Court, behind *United States v. Cooper* (ACM 40092, 1,785 pages), *United States v. McCameron* (ACM 40089, 1,227 pages), *United States v. Calloway* (ACM S32509, 215 pages), *United States v. Brown* (ACM 39854 (f rev), 214 pages), *United States v. Gale* (ACM 40165, 213 pages), and *United States v. Berry* (ACM 40170, 87 pages). Since Amn Rivera-Moyet's last

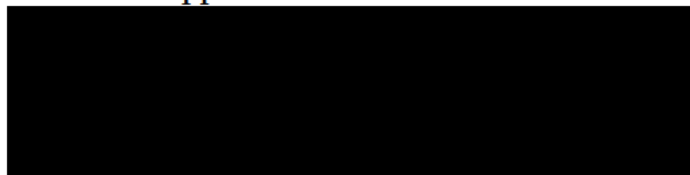
request for an enlargement of time, counsel prepared a supplemental brief to CAAF in *United States v. Vargas* (ACM 38991 (f rev)), has prepared an Assignments of Error brief in *Cooper*, and begun review of the record of trial in *McCameron*. Through no fault of Amn Rivera-Moyet, counsel has been unable to review the record of trial in this case, advise Amn Rivera-Moyet appropriately, and draft an Assignments of Error brief, and will not be able to do so before this Court's current deadline.

**WHEREFORE**, Appellant respectfully requests this Honorable Court grant this requested fifth enlargement of time for the submission of an Assignment of Errors brief for good cause shown.

Respectfully submitted,

A black rectangular redaction box covering the signature of Eshawn R. Pawlley.

ESHAWN R. PAWLLEY, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

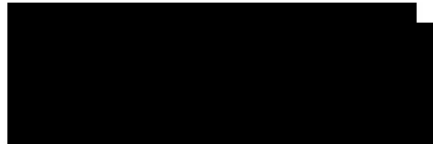
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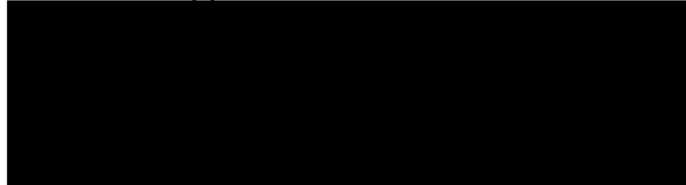
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 20 April 2022.

Respectfully submitted,

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E Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

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

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM 40178
JORGEDIEGO RIVERA-MOYET, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	


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

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

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



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force

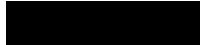


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 22 April 2022.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



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

UNITED STATES	)	No. ACM 40178
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Jorgediego RIVERA-MOYET	)	
Airman (E-2)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 20 April 2022, counsel for Appellant submitted a Motion for Enlargement of Time (Fifth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure. Accordingly, it is by the court on this 26th day of April, 2022,

**ORDERED:**

Appellant's Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant shall file any assignments of error not later than **27 May 2022**.

Any subsequent motions for enlargement of time shall, in addition to the matters required under this court's Rules of Practice and Procedure, include a statement as to: (1) whether Appellant was advised of his right to a timely appeal, (2) whether Appellant was advised of the request for an enlargement of time, and (3) whether Appellant agrees with the request for an enlargement of time.



FOR THE COURT

[Redacted Signature]

ANTHONY F. ROCK, Maj, USAF  
Deputy Clerk of the Court

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

<b>UNITED STATES</b>	)	<b>APPELLANT’S</b>
<i>Appellee</i>	)	<b>MOTION FOR ENLARGEMENT</b>
	)	<b>OF TIME (SEVENTH)</b>
	)	
	)	
v.	)	Before Panel No. 1
	)	
Airman (E-2)	)	No. ACM 40178
<b>JORGEDIEGO RIVERA-MOYET</b>	)	
United States Air Force	)	16 June 2022
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Airman Jorgediego Rivera-Moyet, the Appellant, hereby moves for a seventh enlargement of time to file an Assignments of Error brief. Appellant requests an enlargement for a period of 30 days, which will end on **26 July 2022**. The record of trial was docketed with this Court on 29 September 2021. From the date of docketing to the present date, 260 days have elapsed. On the date requested, 300 days will have elapsed.

On 29 July 2021, at a general court-martial convened at Joint Base Langley-Eustis, Virginia, Amn Rivera-Moyet was, consistent with his pleas, found guilty of one charge and two specifications of attempt to record the private area of another person without that person’s consent and under circumstances in which that person had a reasonable expectation of privacy in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880<sup>1</sup> (Charge I and its specifications), and one charge, four

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<sup>1</sup> Unless otherwise specified, all references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.)

specifications of recording the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy, and three specifications of distributing a recording of the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy, in violation of Article 120c, UCMJ, 10 U.S.C. § 920c (Charge II and its specifications). Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2021. A military judge sentenced Amn Rivera-Moyet to fifteen months confinement for Charge I, Specification 1, thirteen months confinement for Charge I, Specification 2, thirteen months confinement for Charge II, Specifications, 1, 2, 3, and 4 respectively, fifteen months confinement for Charge II, Specifications 5, 6, and 7 respectively (with all confinement to be served concurrently), a bad conduct discharge, and a reduction to the grade of E-1. *Id.* The convening authority took no action on the findings and sentence. ROT Vol. 1, Convening Authority Decision on Action, 11 August 2021. Amn Rivera-Moyet is currently confined at Naval Consolidated Brig Chesapeake, Virginia, and is projected to be released from confinement on 22 July 2022.

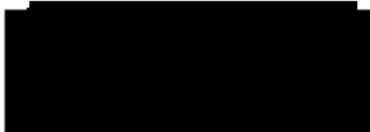

The trial transcript is 106 pages, and the record of trial consists of three volumes containing five prosecution exhibits, four defense exhibits, four appellate exhibits, and one court exhibit. Undersigned counsel currently represents fourteen clients, with ten Assignments of Error briefs pending before this Court. This case is counsel's fifth priority case before this Court, behind *United States v. McCameron* (ACM 40089, 1,227 pages), *United States v. Calloway* (ACM S32509, 215 pages), *United States v. Gale* (ACM 40165, 213 pages), and *United States v. Berry* (ACM 40170, 87 pages). Since

Amn Rivera-Moyet's last request for an enlargement of time, counsel prepared a reply to the United States' answer to a supplemental brief to a petition to the Court of Appeals for the Armed Forces (CAAF) for a grant of review in *United States v. Vargas* (ACM 38991 (f rev)), and continued to review the record of trial and prepare an Assignment of Errors brief in *McCameron*. Through no fault of Amn Rivera-Moyet, counsel has been unable to review the record of trial in this case, advise Amn Rivera-Moyet appropriately, and draft an Assignment of Errors brief, and will not be able to do so before this Court's current deadline.

Counsel has advised Amn Rivera-Moyet of his right to speedy appellate review, and of this request for an enlargement of time. Amn Rivera-Moyet concurs with this request for a seventh enlargement of time.

**WHEREFORE**, Appellant respectfully requests this Honorable Court grant this requested seventh enlargement of time for the submission of an Assignments of Error brief for good cause shown.

Respectfully submitted,

  
ESHAWN R. PAWLLEY, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  


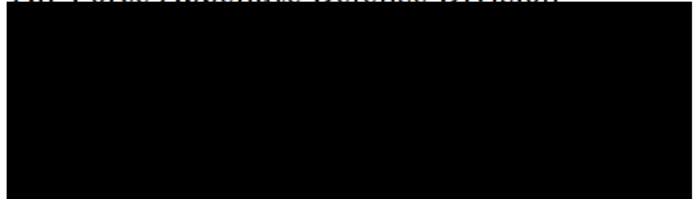
**CERTIFICATE OF FILING AND SERVICE**

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 16 June 2022.

Respectfully submitted,

A black rectangular redaction box covering the signature of Eshawn R. Bawley.

ESHAWN R. BAWLEY, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

A large black rectangular redaction box covering the contact information of Eshawn R. Bawley.



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


UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM 40178
JORGEDIEGO RIVERA-MOYET, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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


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

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

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




JOHN P. PATERA, Maj, USAF  
Appellate Government Counsel, Government Trial  
and Appellate Operations Division  
Military Justice and Discipline  
United States Air Force




**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 16 June 2022



JOHN P. PATERA, Maj, USAF  
Appellate Government Counsel, Government Trial  
and Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>APPELLANT'S</b>
<i>Appellee</i>	)	<b>MOTION FOR ENLARGEMENT</b>
	)	<b>OF TIME (EIGHTH)</b>
	)	
	)	
v.	)	Before Panel No. 1
	)	
Airman (E-2)	)	No. ACM 40178
<b>JORGEDIEGO RIVERA-MOYET</b>	)	
United States Air Force	)	19 July 2022
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Airman Jorgediego Rivera-Moyet, the Appellant, hereby moves for an eighth enlargement of time to file an Assignments of Error brief. Appellant requests an enlargement for a period of 30 days, which will end on **25 August 2022**. The record of trial was docketed with this Court on 29 September 2021. From the date of docketing to the present date, 293 days have elapsed. On the date requested, 330 days will have elapsed.

On 29 July 2021, at a general court-martial convened at Joint Base Langley-Eustis, Virginia, Amn Rivera-Moyet was, consistent with his pleas, found guilty of one charge and two specifications of attempt to record the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880<sup>1</sup> (Charge I and its specifications), and one charge, four

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<sup>1</sup> Unless otherwise specified, all references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.)

specifications of recording the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy, and three specifications of distributing a recording of the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy, in violation of Article 120c, UCMJ, 10 U.S.C. § 920c (Charge II and its specifications). Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2021. A military judge sentenced Amn Rivera-Moyet to fifteen months confinement for Charge I, Specification 1, thirteen months confinement for Charge I, Specification 2, thirteen months confinement for Charge II, Specifications, 1, 2, 3, and 4 respectively, fifteen months confinement for Charge II, Specifications 5, 6, and 7 respectively (with all confinement to be served concurrently), a bad conduct discharge, and a reduction to the grade of E-1. *Id.* The convening authority took no action on the findings and sentence. ROT Vol. 1, Convening Authority Decision on Action, 11 August 2021. Amn Rivera-Moyet is currently confined at Naval Consolidated Brig Chesapeake, Virginia, and is projected to be released from confinement on 22 July 2022.

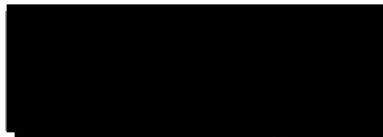
The trial transcript is 106 pages, and the record of trial consists of three volumes containing five prosecution exhibits, four defense exhibits, four appellate exhibits, and one court exhibit. Undersigned counsel currently represents sixteen clients, with ten Assignments of Error briefs pending before this Court. This case is counsel's fourth priority case before this Court, behind *United States v. Calloway* (ACM S32509, 215 pages), *United States v. Gale* (ACM 40165, 213 pages), and *United States v. Berry* (ACM 40170, 87 pages). Since Amn Rivera-Moyet's last request for an enlargement of time,

counsel prepared and submitted an Assignments of Error brief in *United States v. McCameron* (ACM 40089), reviewed the records of trial in *Calloway* and *Gale*, and prepared a grant brief for submission to the Court of Appeals for the Armed Forces (CAAF) in *United States v. McAlhaney* (ACM 39979, USCA Dkt. No. 22-0170/AF). Through no fault of Amn Rivera-Moyet, counsel has been unable to review the record of trial in this case, advise Amn Rivera-Moyet appropriately, and draft an Assignment of Errors brief, and will not be able to do so before this Court's current deadline.

Counsel has advised Amn Rivera-Moyet of his right to speedy appellate review, and of this request for an enlargement of time. Amn Rivera-Moyet concurs with this request for an eighth enlargement of time.

**WHEREFORE**, Appellant respectfully requests this Honorable Court grant this requested eighth enlargement of time for the submission of an Assignment of Errors brief for good cause shown.


Respectfully submitted,



, Maj, USAF

Appellate Defense Counsel

Air Force Appellate Defense Division



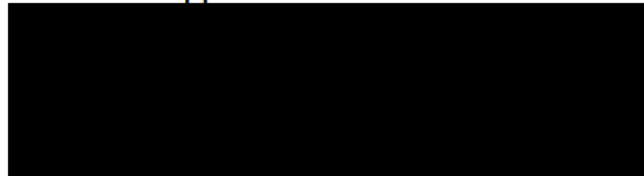
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 19 July 2022.

Respectfully submitted,

A black rectangular redaction box covering the signature of the Appellate Defense Counsel.

Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

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

UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM 40178
JORGEDIEGO RIVERA-MOYET, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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

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



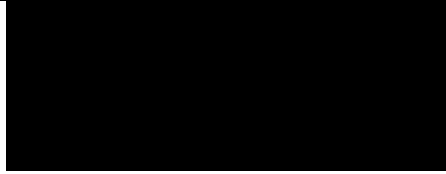
THOMAS J. ALFORD, Lt Col, USAFR  
Appellate Government Counsel, Government  
Trial and Appellate Operations Division  
Military Justice and Discipline  
United States Air Force





**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 21 July 2022.



THOMAS J. ALFORD, Lt Col, USAFR  
Appellate Government Counsel, Government  
Trial and Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>APPELLANT'S</b>
<i>Appellee</i>	)	<b>MOTION FOR ENLARGEMENT</b>
	)	<b>OF TIME (SIXTH)</b>
	)	
	)	
v.	)	Before Panel No. 1
	)	
Airman (E-2)	)	No. ACM 40178
<b>JORGEDIEGO RIVERA-MOYET</b>	)	
United States Air Force	)	20 May 2022
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Airman Jorgediego Rivera-Moyet, the Appellant, hereby moves for a sixth enlargement of time to file an Assignment of Errors. Appellant requests an enlargement for a period of 30 days, which will end on **26 June 2022**. The record of trial was docketed with this Court on 29 September 2021. From the date of docketing to the present date, 233 days have elapsed. On the date requested, 270 days will have elapsed.

On 29 July 2021, at a general court-martial convened at Joint Base Langley-Eustis, Virginia, Amn Rivera-Moyet was, consistent with his pleas, found guilty of one charge and two specifications of attempt to record the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880<sup>1</sup> (Charge I and its specifications), and one charge, four

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<sup>1</sup> Unless otherwise specified, all references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.)

specifications of recording the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy, and three specifications of distributing a recording of the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy, in violation of Article 120c, UCMJ, 10 U.S.C. § 920c (Charge II and its specifications). Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2021. A military judge sentenced Amn Rivera-Moyet to fifteen months confinement for Charge I, Specification 1, thirteen months confinement for Charge I, Specification 2, thirteen months confinement for Charge II, Specifications, 1, 2, 3, and 4 respectively, fifteen months confinement for Charge II, Specifications 5, 6, and 7 respectively (with all confinement to be served concurrently), a bad conduct discharge, and a reduction to the grade of E-1. *Id.* The convening authority took no action on the findings and sentence. ROT Vol. 1, Convening Authority Decision on Action, 11 August 2021. Amn Rivera-Moyet is currently confined at Naval Consolidated Brig Chesapeake, Virginia.

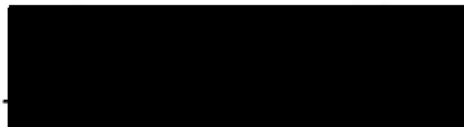
The trial transcript is 106 pages, and the record of trial consists of three volumes containing five prosecution exhibits, four defense exhibits, four appellate exhibits, and one court exhibit. Undersigned counsel currently represents fourteen clients, with ten Assignments of Error briefs pending before this Court. This case is counsel's fifth priority case before this Court, behind *United States v. McCameron* (ACM 40089, 1,227 pages), *United States v. Calloway* (ACM S32509, 215 pages), *United States v. Gale* (ACM 40165, 213 pages), and *United States v. Berry* (ACM 40170, 87 pages). Since Amn Rivera-Moyet's last request for an enlargement of time, counsel prepared a reply

to the United States' answer to a supplemental brief to a petition to the Court of Appeals for the Armed Forces (CAAF) for a grant of review in *United States v. Vargas* (ACM 38991 (f rev)), submitted to CAAF a supplemental brief to another petition for a grant of review (*United States v. McAlhaney*, ACM 39979), prepared an Assignments of Error brief in *United States v. Cooper* (ACM 40092) (prior to that case being remanded by this Court), and continued to review the record of trial in *McCameron*. Through no fault of Amn Rivera-Moyet, counsel has been unable to review the record of trial in this case, advise Amn Rivera-Moyet appropriately, and draft an Assignments of Error brief, and will not be able to do so before this Court's current deadline.

Counsel has advised Amn Rivera-Moyet of his right to speedy appellate review, and of this request for an enlargement of time. Amn Rivera-Moyet concurs with this request for a sixth enlargement of time.

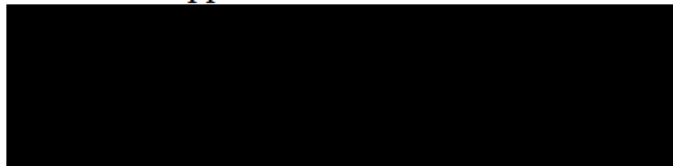
**WHEREFORE**, Appellant respectfully requests this Honorable Court grant this requested sixth enlargement of time for the submission of an Assignment of Errors brief for good cause shown.

Respectfully submitted,



USAF

Appellate Defense Counsel  
Air Force Appellate Defense Division



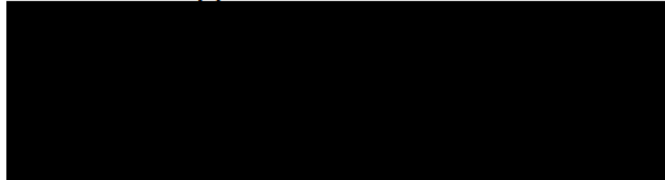
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 20 May 2022.

Respectfully submitted,

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E. [Redacted] Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

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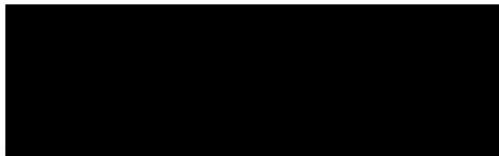

**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM 40178
JORGEDIEGO RIVERA-MOYET, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

**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.

  
JOHN P. PATERA, Maj, USAF  
Appellate Government Counsel, Government Trial  
and Appellate Operations Division  
Military Justice and Discipline  
United States Air Force  


**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 May 2022.

[REDACTED]

JOHN P. PATERA, Maj, USAF  
Appellate Government Counsel, Government Trial  
and Appellate Operations Division  
Military Justice and Discipline  
United States Air Force  
[REDACTED]

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

UNITED STATES	)	No. ACM 40178
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Jorgediego RIVERA-MOYETT	)	
Airman (E-2)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 19 July 2022, counsel for Appellant submitted a Motion for Enlargement of Time (Eighth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

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 July, 2022,

**ORDERED:**

Appellant's Motion for Enlargement of Time (Eighth) is **GRANTED**. Appellant shall file any assignments of error not later than **25 August 2022**.

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



FOR THE COURT

[Redacted signature]

F  
Commissioner

Capt, USAF



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

<b>UNITED STATES</b>	)	<b>APPELLANT'S</b>
<i>Appellee</i>	)	<b>MOTION FOR ENLARGEMENT</b>
	)	<b>OF TIME (NINTH)</b>
	)	
	)	
v.	)	Before Panel No. 1
	)	
Airman (E-2)	)	No. ACM 40178
<b>JORGEDIEGO RIVERA-MOYET</b>	)	
United States Air Force	)	18 August 2022
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Airman Jorgediego Rivera-Moyet, the Appellant, hereby moves for a ninth enlargement of time to file an Assignments of Error brief. Appellant requests an enlargement for a period of 30 days, which will end on **24 September 2022**. The record of trial was docketed with this Court on 29 September 2021. From the date of docketing to the present date, 323 days have elapsed. On the date requested, 360 days will have elapsed.

On 29 July 2021, at a general court-martial convened at Joint Base Langley-Eustis, Virginia, Amn Rivera-Moyet was, consistent with his pleas, found guilty of one charge and two specifications of attempt to record the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880<sup>1</sup> (Charge I and its specifications), and one charge, four

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<sup>1</sup> Unless otherwise specified, all references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.)

specifications of recording the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy, and three specifications of distributing a recording of the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy, in violation of Article 120c, UCMJ, 10 U.S.C. § 920c (Charge II and its specifications). Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2021. A military judge sentenced Amn Rivera-Moyet to fifteen months confinement for Charge I, Specification 1, thirteen months confinement for Charge I, Specification 2, thirteen months confinement for Charge II, Specifications, 1, 2, 3, and 4 respectively, fifteen months confinement for Charge II, Specifications 5, 6, and 7 respectively (with all confinement to be served concurrently), a bad conduct discharge, and a reduction to the grade of E-1. *Id.* The convening authority took no action on the findings and sentence. ROT Vol. 1, Convening Authority Decision on Action, 11 August 2021. Amn Rivera-Moyet is not currently confined.


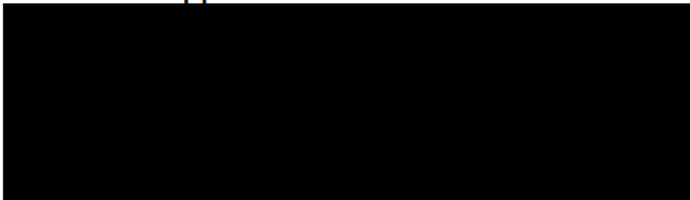
The trial transcript is 106 pages, and the record of trial consists of three volumes containing five prosecution exhibits, four defense exhibits, four appellate exhibits, and one court exhibit. Undersigned counsel currently represents sixteen clients, with seven Assignments of Error briefs pending before this Court. This case is counsel's first priority case before this Court. Since Amn Rivera-Moyet's last request for an enlargement of time, counsel prepared and submitted an Assignments of Error brief in *United States v. Cooper* (ACM 40092) and *United States v. Berry* (ACM 40170) and completed his Article 70, UCMJ duties in *United States v. Gale* (ACM 40165) and *United States v. Calloway* (ACM S32509 (f rev)). Counsel has completed review of the

record of trial in this case and is in the process of preparing an Assignments of Error brief. Through no fault of Amn Rivera-Moyet, counsel has been unable to complete this brief and will not be able to do so before this Court's current deadline.

Counsel has advised Amn Rivera-Moyet of his right to speedy appellate review, and of this request for an enlargement of time. Amn Rivera-Moyet concurs with this request for an ninth enlargement of time.

**WHEREFORE**, Appellant respectfully requests this Honorable Court grant this requested ninth enlargement of time for the submission of an Assignment of Errors brief for good cause shown.

Respectfully submitted,

  
ESHAWN R. RAWLLEY, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  


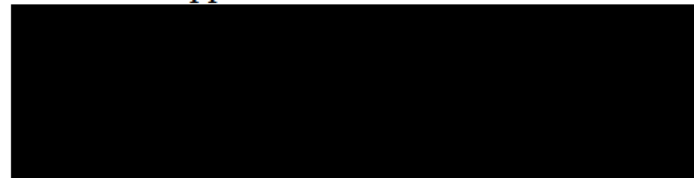
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 18 August 2022.

Respectfully submitted,

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Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

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

UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM 40178
JORGEDIEGO RIVERA-MOYET, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

The United States respectfully maintains that, short of a death penalty case or other extraordinary circumstance, it should not take any appellant nearly a year to submit a brief to this Court. If Appellant's new motion is granted, the defense delay in this case will be 360 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves approximately 6 months combined for the United States and this Court to perform their separate statutory responsibilities.

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

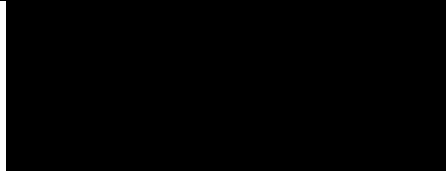


THOMAS J. ALFORD, Lt Col, USAFR  
Appellate Government Counsel, Government  
Trial and Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



**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 August 2022.



THOMAS J. ALFORD, Lt Col, USAFR  
Appellate Government Counsel, Government  
Trial and Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	BRIEF ON BEHALF OF
<i>Appellee</i>	)	APPELLANT
	)	
	)	
	)	
v.	)	Before Panel No. 1
	)	
Airman (E-2)	)	No. ACM 40178
<b>JORGEDIEGO RIVERA-MOYET</b>	)	
United States Air Force	)	13 September 2022
<i>Appellant</i>	)	

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

ASSIGNMENT OF ERROR

WAS IT PLAIN ERROR TO ADMIT A REHABILITATION  
POTENTIAL OPINION DURING SENTENCING PROCEEDINGS  
BECAUSE THE WITNESS WHO OFFERED IT LACKED  
SUFFICIENT INFORMATION AND KNOWLEDGE?

STATEMENT OF THE CASE

On 29 July 2021, at a general court-martial convened at Joint Base Langley-Eustis, Virginia, Airman (Amn) Jorgediego Rivera-Moyet, Appellant, was, consistent with his pleas, found guilty of one charge and two specifications of attempt to record the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880<sup>1</sup> (Charge I and its specifications). He was also found guilty, consistent with his pleas, of one charge, four specifications of recording the private area of another person without that person's

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<sup>1</sup> Unless otherwise specified, all references to the UCMJ and the Rules for Courts-Martial (R.C.M.) are to the *Manual for Courts-Martial, United States* (2019 ed.).



consent and under circumstances in which that person had a reasonable expectation of privacy, and three specifications of distributing a recording of the private area of another person without that person's consent and under circumstances in which that person had a reasonable expectation of privacy, in violation of Article 120c, UCMJ, 10 U.S.C. § 920c (Charge II and its specifications). Record of Trial (ROT) Vol. 1, Entry of Judgment, 11 August 2021. A military judge sentenced Appellant to a bad conduct discharge, fifteen months confinement for Charge I, Specification 1, thirteen months confinement for Charge I, Specification 2, thirteen months confinement for Charge II, Specifications, 1, 2, 3, and 4 respectively, fifteen months confinement for Charge II, Specifications 5, 6, and 7 respectively (with all confinement to be served concurrently), and a reduction to the grade of E-1. *Id.* The convening authority took no action on the findings and sentence. ROT Vol. 1, Convening Authority Decision on Action, 11 August 2021.

## **STATEMENT OF FACTS**

### *Appellant's Background*

Appellant was born in Caguas, Puerto Rico. Defense Exhibit (DE) C at 1. Raised as an only child in Texas by his mother, a police officer, and his stepfather, a soldier in the United States Army, Appellant was the kind of kid who was enamored with books, who "came home [from school], grabbed something to eat, and went back to studying for hours." DE B at 1; DE C at 1; DE D at 1. He participated in track and field and cross country through middle and high school, but as a shy kid without many friends, he struggled to fit in. DE C at 3; DE D at 1. Appellant described himself as "socially awkward and more reserved," and admitted to struggling with understanding "social

cues.” Prosecution Exhibit (PE) 3 at 5. After high school, Appellant enrolled at the University of North Texas before transferring to the University of Texas at Dallas. DE D at 2.

Before long, Appellant decided to put his college studies on hold, and his parents encouraged him to enlist in the Armed Forces. *Id.* Appellant swore his oath of enlistment on 17 January 2018. DE C at 5. After completing basic military training, Appellant trained to become a munitions specialist. DE D at 2. In the summer of 2019, Appellant deployed to Al Udeid Air Base (AB), Qatar, with the 379th Expeditionary Maintenance Squadron. PE 1 at 1.

#### *Appellant’s Misconduct*

While deployed, Appellant was housed with several other airmen in “double stack” (DS) 13, a lodging building on Al Udeid AB. *Id.* Male residents of DS 13 shared a common bathroom. *Id.* On various dates between July and October 2019, Appellant filmed men while they masturbated in private stalls in the DS 13 common bathroom, without the consent of those men. *See generally* PE 1. Appellant did so by standing on the toilet in the stall immediately next to the stall in which the men were masturbating and reaching his phone over the stall divider to point the phone’s video camera at the men. R. at 31. On or about 27 October 2019, in the manner described above, Appellant filmed JA while he masturbated in one of the bathroom stalls. PE 1 at 1. While masturbating, JA heard a noise and looked up to see a dark-complexioned hand holding a phone over the stall divider to his right. *Id.* JA banged on the stall divider and said “What the fuck bro” and “What the fuck are you thinking?” *Id.* Receiving no response, JA exited the bathroom and told his roommate about what had happened. *Id.* While

speaking with his roommate, JA noticed Appellant exit the bathroom and run to his dormitory room. *Id.* at 1-2.

JA reported the incident to Security Forces, who proceeded to interview the occupants of every room in DS 13 located within the vicinity of the common bathroom. *Id.* at 2. After locating Appellant, Security Forces staged a “show up,” meaning they concealed JA and brought Appellant into JA’s line of view; JA then positively identified Appellant. *Id.* Appellant waived his Article 31, UCMJ rights and made a statement, wherein he admitted to going to the bathroom but denied taking pictures or recording anyone while they masturbated. *Id.* Pursuant to a search authorization, investigators seized Appellant’s phone, in which they discovered twenty-seven photographs and thirty-six videos depicting five men masturbating in a bathroom stall.<sup>2</sup> *Id.* Investigators also discovered communications between Appellant and ZP, another airman, to whom Appellant transmitted media depicting three of the aforementioned five men masturbating. *Id.*

Appellant was charged with attempting to make a recording of JA and another unidentified male while they masturbated (Charge I and its Specifications). He was also charged with recording four other men while they masturbated (Charge II, Specifications 1-4) and distributing media depicting three of those other men masturbating (Charge II, Specifications 5-7). ROT Vol. 1, Charge Sheet, 16 February 2021.

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<sup>2</sup> JA was one of six men Appellant either recorded or attempted to record, but investigators did not recover any videos depicting JA from Appellant’s phone.

### *Appellant's Accountability and Apology*

Appellant told the military judge he was “deeply sorry” for his actions. R. at 65, 94. He added, “No matter what happens to me, I will always carry the shame, and the disappointment in my head and my heart for however long I have left in this world.” DE D at 1. Appellant apologized to the court, his squadron, his commander, the Air Force, his parents, his family, and “to the victims of my actions, to those who my actions hurt the most.” *Id.*

### **ARGUMENT**

**IT WAS PLAIN ERROR TO ADMIT A REHABILITATION POTENTIAL OPINION DURING SENTENCING PROCEEDINGS BECAUSE THE WITNESS WHO OFFERED IT LACKED SUFFICIENT INFORMATION AND KNOWLEDGE.**

#### **Additional Facts**

Appellant's squadron commander at JB Langley-Eustis and accuser, Maj ML, testified for the government during sentencing proceedings. R. at 88-91; ROT Vol. 1, Charge Sheet, 16 February 2021. When trial counsel asked how long he had known Appellant, Maj ML responded, “I’ve known that he was an airman within my squadron for about a year.” R. at 88. When asked whether he had interacted with Appellant, Maj ML replied, “On occasion, yes.” *Id.* Following these questions, trial counsel asked Maj ML, “Based on your interactions with [Appellant] as his commander, have you formed an opinion about his rehabilitative potential?” R. at 89. Maj ML responded, “Not based off interaction, but based off conversations with supervisors and flight chiefs I have, yes.” *Id.* Maj ML then opined, “I believe [Appellant's] rehabilitation potential is low.” *Id.*

Defense counsel did not object to Maj ML's testimony, nor voir dire him. R. at

88-89. On cross-examination, defense counsel sought to undermine the foundation and basis for Maj ML's testimony by noting Maj ML: was not Appellant's deployed commander; met Appellant only after Appellant was under criminal investigation; only interacted with Appellant "approximately" once a week; never mentored Appellant; never met his family; never administered initial or midterm feedback with Appellant or issued him an Enlisted Performance Report; and, never personally observed Appellant's work performance. R. at 89-90. Maj ML admitted on cross-examination that he only knew about Appellant's work performance because of what Appellant's supervisors and flight chiefs told him. R. at 90.

On redirect examination, trial counsel asked Maj ML to elaborate on why he believed Appellant had low rehabilitative potential. R. at 91. Maj ML responded, "I believe he has low rehabilitative potential just because he shows a trend of negative actions when it comes to sexual interactions with others." *Id.*

### **Standard of Review**

A military judge's decision to admit or exclude evidence is reviewed for an abuse of discretion. *United States v. Ediger*, 68 M.J. 243, 248 (C.A.A.F. 2010). Failure to object to the admission of evidence at trial forfeits appellate review of the issue absent plain error. *United States v. Kasper*, 58 M.J. 314, 318 (C.A.A.F. 2003). Plain error is established when: (1) there is error; (2) which was plain, clear, or obvious, and (3) the error resulted in material prejudice to the appellant's substantial rights. *United States v. Hardison*, 64 M.J. 279, 281 (C.A.A.F. 2007).

### **Law**

"The only appropriate witness is one who can be helpful to the court-martial

when it acts in making the determination of a fact in issue.” *United States v. Bish*, 54 M.J. 860, 863 (A.F. Ct. Crim. App. 2001) (internal quotations omitted) (citing *United States v. Ohrt*, 28 M.J. 301, 304 (C.M.A. 1989)). A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has *personal* knowledge of the matter. Mil. R. Evid. 602 (emphasis added). With respect to lay opinion testimony, only those opinions which are logically and legally relevant (*see* Mil. R. Evid. 401, 403), rationally based on *the witness’ perception*, and helpful to clearly understanding the witness’s testimony or to determining a fact in issue (*see* Mil. R. Evid. 701 (emphasis added)) are admissible.

Trial counsel may present evidence in the form of opinions concerning an accused’s rehabilitative potential. R.C.M. 1001(b)(5)(A). “Rehabilitative potential” refers to an accused’s potential to be restored, through vocational, correctional, or therapeutic training or other corrective measures to a useful and constructive place in society. R.C.M. 1001(b)(5). The witness’ rehabilitative potential opinion must have foundation, meaning the witness must possess “*sufficient* information and knowledge about the accused [e.g., information and knowledge about the accused’s character, performance of duty, moral fiber, determination to be rehabilitated, and nature and severity of the offense] to offer a rationally-based opinion that is helpful to the sentencing authority.” R.C.M. 1001(b)(5)(B) (emphasis added); *Ohrt*, 28 M.J. at 304. The witness’ rehabilitative potential opinion must have a proper basis for admission as well, meaning it must be based on “*relevant* information and knowledge possessed by the witness, and must relate to the accused’s personal circumstances.” R.C.M.

1001(b)(5)(C) (emphasis added).<sup>3</sup> A witness's opinion regarding the severity of the offense or offenses may not serve as the principal basis for an opinion of the accused's rehabilitation potential. R.C.M. 1001(b)(5)(C); *see also United States v. Horner*, 22 M.J. 294, 296 (C.M.A. 1986).

Courts have been particularly guarded about the pernicious effects of unlawful command influence creeping into sentencing hearings in the form of commander testimony regarding an accused's rehabilitation potential. *See United States v. Griggs*, 61 M.J. 402, 409 (C.A.A.F. 2005) ("The chief concerns underlying these cases are the need to have a 'rational basis for' an opinion concerning rehabilitation and the importance of avoiding command influence in the sentencing process. These concerns coincide with the UCMJ's overarching concern regarding undue command influence.").

### **Analysis**

Maj ML's opinion of Appellant's "low" rehabilitative potential lacked foundation for admissibility, because Maj ML did not possess sufficient or relevant information and knowledge about Appellant for this opinion to be rationally-based. Maj ML revealed the paucity of his knowledge of Appellant when, in response to the question "How long have you known [Appellant]?", he tacitly denied "knowing" Appellant at all, and instead answered the question by noting how long he had been aware that Appellant was assigned to his unit. Maj ML further revealed his dearth of knowledge

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<sup>3</sup> *See also Ohrt*, 28 M.J. at 303 ("Mil. R. Evid. 701 governs admissibility of lay-opinion, and it applies to evaluative statements offered under R.C.M. 1001(b)(5).") and *United States v. Eslinger*, 70 M.J. 193, 202 (C.A.A.F. 2011) (Erdmann, J., dissenting) ("[T]he requirement for a witness to possess a rational basis for an opinion concerning the rehabilitative potential of an accused found in R.C.M. 1001(b)(5), is also embodied in both [Mil. R. Evid.] 602 and [Mil. R. Evid.] 701[.]").

of Appellant’s “character, his performance of duty as a servicemember, his moral fiber, and his determination to be rehabilitated” when he admitted his opinion of Appellant’s rehabilitative potential was “[n]ot based [on] interaction,” but on hearsay “conversations” with others.

While this Court and its sister courts have found instances in which a witness’s command relationship to an accused can amount to “sufficient information” to establish proper foundation,<sup>4</sup> none have apparently done so when a witness explicitly concedes on direct examination that their opinion is not rooted in personally-obtained information, i.e. in their “personal” (Mil. R. Evid. 602) “perception” (Mil. R. Evid. 701).

When Maj ML was invited to elaborate on the foundation and basis for his opinion on redirect examination,<sup>5</sup> his answer only underscored the inadequacy of the foundation and basis for his opinion, and compounded the error caused by its admission. Maj ML’s answer revealed his opinion was grounded in Appellant’s “trend of negative actions when it comes to sexual interactions with others.” Maj ML did not elaborate further, and thus it is unknown whether he was referring to the fact that Appellant had filmed multiple men without their consent over the course of several

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<sup>4</sup> *See Bish*, 54 M.J. at 863 (A.F. Ct. Crim. App. 2001) (a commander who had reviewed the accused’s performance reports and interacted with her during unit social events had sufficient information and knowledge (and, therefore, a rational basis) to offer a rehabilitative potential opinion); *see also United States v. Powell*, 45 M.J. 637, 640 (N.M. Ct. Crim. App. 1997) (trial counsel “minimally” established an adequate foundation for the rehabilitative opinions of two officers who indirectly supervised and a third who immediately supervised the accused for several months).

<sup>5</sup> This was permissible under R.C.M. 1001(b)(5)(F) insofar as defense counsel, in asking Maj ML about specific instances when Appellant had been “courteous” and “professional” towards Maj ML, expanded the admissible scope of Maj ML’s opinion. R. at 90.



months (thus arguably constituting a “trend”), or to the fact that Appellant also received nonjudicial punishment for “failing to refrain from sending inappropriate texts and photographs” to another airman. PE 3. Consequently, the military judge considered Maj ML’s opinion of Appellant’s rehabilitative potential which appeared to be principally based on the offenses to which Appellant had been found guilty, in violation of R.C.M. 1001(b)(5)(C).

The military judge’s admission and consideration of Maj ML’s opinion was plain error. It was plain and obvious that Maj ML’s testimony failed to satisfy the requirements of R.C.M. 1001(b)(5) because it was plain and obvious from his testimony that his offered opinion stemmed exclusively from the opinions of others and the severity of the offenses. Appellant was prejudiced by its admission. A military commander’s opinion naturally carries considerable weight in a justice system in which “commanders...retain awesome and plenary responsibility.” *See United States v. Jenkins*, 60 M.J. 27, 29 (C.A.A.F. 2004). A commander’s weighty opinion is even more impactful at sentencing, and its admission at sentencing proceedings is in some instances “fraught with danger of undue and unlawful influence.” *United States v. Aurich*, 31 M.J. 95, 97 (C.M.A. 1990).<sup>6</sup> While a military judge is presumed to know the law (*United States v. Erickson*, 65 M.J. 221, 225 (C.A.A.F. 2007)), here, the military judge did not *sua sponte* ask Maj ML additional questions to determine the true basis of his opinion, nor did the military judge make a record of what portions of Maj ML’s

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<sup>6</sup> In *Aurich*, the court examined whether the military judge erred in allowing the accused’s commander to testify that he did not want the accused back in his unit. *Id.* at 95.

testimony he would or would not consider.

Military judges are also fallible military officers—despite their training, their decisions are susceptible to the effects of bias, such as partiality towards commanders or fellow field grade officers,<sup>7</sup> and the inability to disregard information once it is learned. *See* Andrew J. Wistrich et al, Can Judges Ignore Inadmissible Information? The Difficulty of Deliberately Disregarding. 153 U. Pa. L. Rev. 1251, 1310-11 (2005) (finding, *inter alia*, that 265 participating trial judges handed out harsher sentences after learning of inadmissible sentencing evidence despite ninety percent of them agreeing to disregard the evidence). The military judge sentenced Appellant to the maximum confinement term (fifteen months) permissible under the terms of the plea agreement, making manifest the prejudice caused by the plain error of admitting and considering Maj ML's unsupported opinion.

**WHEREFORE**, Appellant respectfully requests this Honorable Court reassess his sentence.

Respectfully submitted,

  
E. [Redacted] Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  


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<sup>7</sup> The military judge who presided over Appellant's court-martial was of field grade (O-5). R. at 1.

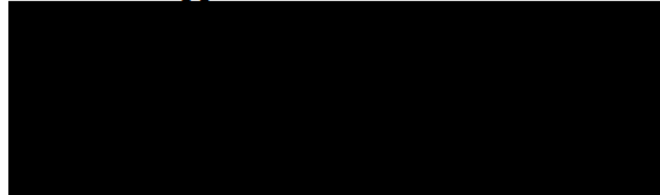
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 13 September 2022.

Respectfully submitted,

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E [redacted], USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

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

UNITED STATES,	)	UNITED STATES' ANSWER
<i>Appellee,</i>	)	TO ASSIGNMENT OF ERROR
	)	
v.	)	No. ACM 40178
	)	
Airman (E-2)	)	Panel No. 1
JORGEDIEGO RIVERA-MOYET, USAF,	)	
<i>Appellant.</i>	)	

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

**ISSUE PRESENTED**

**WAS IT PLAIN ERROR TO ADMIT A REHABILITATION  
POTENTIAL OPINION DURING SENTENCING  
PROCEEDINGS BECAUSE THE WITNESS WHO OFFERED  
IT LACKED SUFFICIENT INFORMATION AND  
KNOWLEDGE?**

**STATEMENT OF THE CASE**

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

**STATEMENT OF FACTS**

The United States generally accepts Appellant's statement of facts.

**ARGUMENT**

**THE MILITARY JUDGE DID NOT PLAINLY ERR BY  
PERMITTING APPELLANT'S COMMANDER TO TESTIFY  
REGARDING HIS OPINION ON APPELLANT'S  
REHABILITATIVE POTENTIAL, NOR DID THE  
COMMANDER'S TESTIMONY PREJUDICE APPELLANT.**

***Additional Facts***

Appellant's commander, Maj ML, was the Government's only sentencing witness. At the time of Appellant's court-martial, Maj ML had been Appellant's commander for "[a]lmost one year." (R. at 88.) Maj ML interacted with Appellant "[o]n occasion," but he ultimately based his

opinion regarding Appellant's rehabilitative potential on "conversations with [Appellant's] supervisors and flight chiefs[.]" (R. at 88-89.) Based on those conversations, Maj ML believed Appellant had "low" rehabilitative potential. (R. at 89.)

On cross-examination, however, Maj ML acknowledged that Appellant was "not a bad worker[.]" (R. at 90.) Maj ML also testified that he never mentored Appellant, did not provide Appellant with any feedback, nor did he personally observe Appellant's work performance. (R. at 90.) During his re-direct examination, when asked to elaborate why Maj ML believed Appellant had low rehabilitative potential, Maj ML stated that Appellant had "low rehabilitative potential ... because he show[ed] a trend of negative actions when it [came] to sexual interactions with others." (R. at 91.) Defense counsel did not object during the Government's direct or re-direct examinations of Maj ML.

In addition to Maj ML's testimony during the pre-sentencing proceeding,<sup>1</sup> the Government introduced the Personal Data Sheet of Appellant, (Pros. Ex. 2); an Air Force Form 3070, Record of Nonjudicial Punishment Proceedings documenting Appellant's violation of Article 92, UCMJ, 10 U.S.C. § 892, for sending inappropriate text messages and photographs of Appellant's penis to another Airman, (Pros. Ex. 3); and a Letter of Reprimand issued to Appellant for being absent without leave, in violation of Article 86, UCMJ, 10 U.S.C. § 886, (Pros. Ex. 4). The Government's exhibits were admitted by the military judge with no objection from the Defense. (*See* R. at 86.)

The Special Victims' Counsel introduced a two-page written victim impact statement from SrA JA, which was included in the record as Court Exhibit A. (*See* R. at 92.) The Defense did not voice any objections to the victim's statement. (*Id.*)

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<sup>1</sup> The Government introduced Prosecution Exhibit 1, the Stipulation of Fact, which detailed Appellant's several crimes, prior to Appellant's Care inquiry. (R. at 12.) It was later admitted without objection, subject to the military judge's acceptance of Appellant's guilty plea. (*Id.* at 21.)

The Defense introduced four exhibits in its case-in-chief: An index of exhibits, (Def. Ex. A); a letter of support from Mr. NP, (Def. Ex. B); miscellaneous photographs of Appellant, which included captions of those photos, (Def. Ex. C); and a written unsworn statement from Appellant, (Def. Ex. D). After the military judge relaxed the rules of evidence, the Government lodged no objection to any of the exhibits, and all four were admitted into evidence. (R. at 93.) The Government offered no rebuttal evidence. (R. at 94.)

### *Standard of Review*

In the absence of an objection, this Court reviews a decision to admit presentencing evidence for plain error. See United States v. Maynard, 66 M.J. 242, 244 (C.A.A.F. 2008). Under that standard, Appellant has the burden to demonstrate that (1) an error was committed; (2) the error was plain, or clear, or obvious; and (3) the error resulted in a material prejudice to a substantial right. Id. (quoting United States v. Hardison, 64 M.J. 279, 281 (C.A.A.F. 2007)).

### *Law*

“Rehabilitative potential” refers to the accused’s potential to be restored, through vocational, correctional, or therapeutic training or other corrective measures to a useful and constructive place in society.” Rule for Courts-Martial (R.C.M.) 1001(b)(5). The Government is permitted to present in pre-sentencing “evidence in the form of opinions concerning the accused’s previous performance as a servicemember and potential for rehabilitation.” R.C.M. 1001(b)(5)(A). The witness providing such opinion evidence “must possess sufficient information and knowledge about the accused to offer a rationally-based opinion that is helpful to the sentencing authority.” R.C.M. 1001(b)(5)(B). “Relevant information and knowledge include, but are not limited to, information and knowledge about the accused’s character, performance of duty, moral fiber, determination to be rehabilitated, and nature and severity of the offenses.” Id.

“An opinion regarding the accused’s rehabilitative potential must be based upon relevant information and knowledge possessed by the witness ... and must relate to the accused’s personal circumstances.” R.C.M. 1001(b)(5)(C). A witness’s opinion regarding rehabilitative potential is also “limited to whether the accused has rehabilitative potential and to the magnitude or quality of any such potential.” R.C.M. 1001(b)(5)(D).

“On cross-examination, inquiry is permitted into relevant and specific instances of conduct.” R.C.M. 1001(b)(5)(E). And, on redirect examination, “the scope of opinion testimony ... may be expanded, depending upon the nature and scope of the cross-examination.” R.C.M. 1001(b)(5)(F). Specifically, a witness “may offer an opinion on matters beyond the scope of the accused’s rehabilitative potential if an opinion about such matters was elicited during cross-examination of the witness ... and is otherwise admissible.” R.C.M. 1001(b)(5)(F), Discussion.

### *Analysis*

Appellant’s single allegation of error in this case is that “Maj ML’s opinion of Appellant’s ‘low’ rehabilitative potential lacked foundation for admissibility ... because Maj ML did not possess sufficient or relevant information and knowledge about Appellant for [his] opinion to be rationally-based.” (App. Br. at 8.) Appellant is mistaken.

The military judge did not plainly err by permitting Maj ML’s opinion testimony, and Appellant was not prejudiced even if admission of the testimony was erroneous. *First*, Maj ML possessed “sufficient information and knowledge about [Appellant] to offer a rationally-based opinion” regarding Appellant’s rehabilitative potential since he was Appellant’s commander for over one year, and, as his commander, Maj ML conversed with Appellant’s supervisors and flight chiefs, who were in a better position to observe Appellant’s character and duty performance on a day-to-day basis. *See* R.C.M. 1001(b)(5)(B). By gathering input from Appellant’s direct

supervisors, Maj ML was doing exactly what he was supposed to do as a commander, and rather than limiting the basis for his opinion,<sup>2</sup> the foundation for his opinion was expanded since it included the perspectives of Appellant's direct supervision. Maj ML's opinion, therefore, was not merely based upon his limited interactions in his capacity as Appellant's commander. After Maj ML sought and received input from Appellant's direct supervision regarding Appellant's duty performance and character, and considering the character and severity of Appellant's offenses,<sup>3</sup> Maj ML possessed both the knowledge and relevant information from which he could form his own opinion as to Appellant's rehabilitative potential. *See* R.C.M. 1001(b)(5)(C). Accordingly, Maj ML possessed "sufficient information and knowledge (and therefore, a rational basis) to state such an opinion." United States v. Bish, 54 M.J. 860, 863 (A.F. Ct. Crim. App. 2001).

*Second*, other than generally citing to the Rules for Courts-Martial and the Military Rules of Evidence, Appellant provides this Court with no case law to support his argument that Maj ML must have *personally observed* Appellant's duty performance, character, and the like prior to rendering an opinion concerning Appellant's rehabilitative potential. Quite the opposite,

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<sup>2</sup> Several decisions from our superior Court have concluded that experts can collect and compile information and use it to form an opinion regarding an accused's rehabilitative potential without running afoul of R.C.M. 1001(b)(4). *See, e.g., United States v. Ellis*, 68 M.J. 341, 346 (C.A.A.F. 2010) (reviewing Static 99 appraisal and case exhibits sufficient to render opinion); United States v. Gunter, 29 M.J. 140, 141 (C.M.A. 1989) (reviewing data from a drug rehabilitation file was sufficient basis); United States v. Stinson, 34 M.J. 233, 235 (C.M.A. 1992) (reviewing accused confession; observing the guilty plea inquiry; reviewing the report of investigation and statements by the victim; reviewing the accused's mental health records; and interviewing the victim was sufficient basis); United States v. Scott, 51 M.J. 326, 328 (C.A.A.F. 1999) (reviewing an accused's unsworn statement and two mental health evaluations was sufficient basis).

<sup>3</sup> The opinion of the witness "regarding the severity or nature of the accused's offense or offenses may not serve as the *principal basis* for an opinion of the accused's rehabilitative potential." R.C.M. 1001(b)(5)(C) (emphasis added); *see also United States v. Horner*, 22 M.J. 294 (C.M.A. 1986). The record demonstrates that Appellant's overall pattern of misconduct, not the merely the nature or severity of his offenses, undergirded Maj ML's opinion. (*See* R. at 91.)



Appellant notes in his brief that “this Court and its sister courts have found instances in which a witness’s command relationship to an accused can amount to ‘sufficient information’ to establish proper foundation[.]” (App. Br. at 9); *see also, e.g., Bish*, 54 M.J. at 863 (a commander who reviewed appellant’s performance reports and interacted with her during unit social events had sufficient information and knowledge to offer an opinion); *United States v. White*, No. ACM 39600, 2020 CCA LEXIS 235 (A.F. Ct. Crim. App. 15 July 2020) (unpub. op.) (Appellant’s first sergeant, who had limited professional interactions with appellant, nonetheless had an adequate foundation to provide her opinion that his rehabilitative potential was “low”); *United States v. Powell*, 45 M.J. 637, 640 (N.M. Ct. Crim. App. 1997) (trial counsel minimally established adequate foundations for “indirect” supervisors who testified concerning appellant’s rehabilitative potential). Thus, even if the military judge erred by permitting the testimony, the lack of caselaw indicating that such testimony is erroneous demonstrates that the military judge did not *plainly err* by permitting Maj ML to render his opinion in the absence of an objection. *See United States v. Warner*, 73 M.J. 1, 4 (C.A.A.F. 2013) (at a minimum, an error is “plain” when it is “clear under current law.” (quoting *United States v. Olano*, 507 M.J. 725, 734 (1993))).

*Third*, Appellant has not demonstrated any prejudice to a substantial right. Maj RL’s testimony was but a small piece of the Government’s entire sentencing case, which included the non-judicial punishment Appellant received—while under investigation and pending a court-martial—for sending unsolicited and inappropriate texts and photographs of his penis to another Airman, (Pros. Ex. 3), as well as the Letter of Reprimand Appellant received—again, while under investigation and pending a court-martial—for being absent without leave, (Pros. Ex. 4). These exhibits amply demonstrated Appellant’s poor disciplinary record given his short time in the Air Force. *See* R.C.M. 1001(b)(2) (permitting evidence of an accused’s service record). And, this

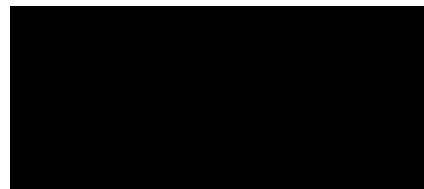
evidence, in conjunction with his convictions, were the obvious material considerations which made the punitive discharge and fifteen-month confinement term appropriate punishments in this case. In addition to the sentencing evidence, the Government's case was further strengthened by the seven-page stipulation of fact, which detailed Appellant's crimes. (*See* Pros. Ex. 1.)

In contrast, the Defense sentencing case was relatively weak in that it relied upon a single letter of support, some photographs, and Appellant's written and verbal unsworn statements. Finally, since the case was tried by military alone and the basis of the commander's opinion was well set forth, this Court can be confident that the military judge placed Maj ML's testimony in its proper context. *See United States v. Horner*, 22 M.J. 294, 296 (C.M.A. 1986).

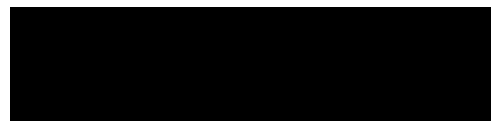
In sum, Appellant was not prejudiced by Maj ML's brief testimony, and he is accordingly not entitled to relief.

### **CONCLUSION**

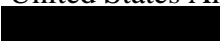
**WHEREFORE**, this Court should affirm the findings and sentence.



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**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 11 October 2022 via electronic filing.



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