

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee</i>	)	TIME (FIRST)
)	
v.	)	Before Panel No. 1
)	
Technical Sergeant (E-6)	)	No. ACM 40359
NICHOLAS S. SHANOR,)	
United States Air Force	)	16 December 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)(2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **22 February 2023**. The record of trial was docketed with this Court on 25 October 2022. From the date of docketing to the present date, 52 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 16 December 2022.

Respectfully submitted,

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Technical Sergeant (E-6)	)	ACM 40359
NICHOLAS S. SHANOR, 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.

MATTHEW J. NEIL, Lt Col, USAF
Director of Operations, 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 19 December 2022.

MATTHEW J. NEIL, Lt Col, USAF
Director of Operations, 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	)	MOTION FOR ENLARGEMENT OF
<i>Appellee</i>	)	TIME (SECOND)
)	
v.	)	Before Panel No. 1
)	
Technical Sergeant (E-6)	)	No. ACM 40359
NICHOLAS S. SHANOR,)	
United States Air Force	)	15 February 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **24 March 2023**. The record of trial was docketed with this Court on 25 October 2022. From the date of docketing to the present date, 113 days have elapsed. On the date requested, 150 days will have elapsed.

On 2 August 2022, consistent with his pleas,¹ Appellant was convicted by a military judge at a general court-martial convened at Eglin Air Force Base (AFB), FL, of one charge and one specification of negligent dereliction of duty in violation of Article 92, UCMJ, one charge and two specifications of assault consummated by a battery in violation of Article 128, UCMJ, and an additional charge with three specifications of assault consummated by a battery in violation of Article 128, UCMJ. R. at 106. The military judge sentenced Appellant to be reduced to the grade of E-4, to be confined for a total of 3 months,² and to be discharged with a bad conduct discharge.

¹ Pursuant to a plea agreement, one charge and three specifications of sexual assault and one specification of abusive sexual contact in violation of Article 120, UCMJ, were withdrawn and dismissed with prejudice. ROT, Vol. 1, Entry of Judgment, dated 19 September 2022.

² Appellant was sentenced to be confined for 3 months (for the Specification of Charge II), to be confined for 2 months (for Specification 1 of Charge III), and to be confined for 2 months (for

R. at 158. The convening authority took no action on the findings or sentence. ROT, Vol. 1, Decision on Action, dated 14 September 2022. The convening authority denied Appellant's request to have his automatic forfeitures and reduction in grade deferred. *Id.*

The record of trial consists of 4 prosecution exhibits, 0 defense exhibits, and 15 appellate exhibits; the transcript is 159 pages. Appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and not yet begun her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

—
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

Specification 2 of Charge III), to be confined for 2 months (for Specification 1 of the Additional Charge), to be confined for 2 months (for Specification 2 of the Additional Charge), and to be confined for 3 months (for Specification 3 of the Additional Charge), with all the sentences for running concurrently. R. at 158.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 15 February 2023.

Respectfully submitted,

—
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Technical Sergeant (E-6)	)	ACM 40359
NICHOLAS S. SHANOR, 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 16 February 2023.

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

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee</i>	)	TIME (THIRD)
)	
v.	)	Before Panel No. 1
)	
Technical Sergeant (E-6)	)	No. ACM 40359
NICHOLAS S. SHANOR,)	
United States Air Force	)	17 March 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **23 April 2023**. The record of trial was docketed with this Court on 25 October 2022. From the date of docketing to the present date, 143 days have elapsed. On the date requested, 180 days will have elapsed.

On 2 August 2022, consistent with his pleas,¹ Appellant was convicted by a military judge at a general court-martial convened at Eglin Air Force Base (AFB), FL, of one charge and one specification of negligent dereliction of duty in violation of Article 92, UCMJ, one charge and two specifications of assault consummated by a battery in violation of Article 128, UCMJ, and an additional charge with three specifications of assault consummated by a battery in violation of Article 128, UCMJ. R. at 106. The military judge sentenced Appellant to be reduced to the grade of E-4, to be confined for a total of 3 months,² and to be discharged with a bad conduct discharge.

¹ Pursuant to a plea agreement, one charge and three specifications of sexual assault and one specification of abusive sexual contact in violation of Article 120, UCMJ, were withdrawn and dismissed with prejudice. ROT, Vol. 1, Entry of Judgment, dated 19 September 2022.

² Appellant was sentenced to be confined for 3 months (for the Specification of Charge II), to be confined for 2 months (for Specification 1 of Charge III), and to be confined for 2 months (for

R. at 158. The convening authority took no action on the findings or sentence. ROT, Vol. 1, Decision on Action, dated 14 September 2022. The convening authority denied Appellant's request to have his automatic forfeitures and reduction in grade deferred. *Id.*

The record of trial consists of 4 prosecution exhibits, 0 defense exhibits, and 15 appellate exhibits; the transcript is 159 pages. Appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and not yet begun her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

— —
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

Specification 2 of Charge III), to be confined for 2 months (for Specification 1 of the Additional Charge), to be confined for 2 months (for Specification 2 of the Additional Charge), and to be confined for 3 months (for Specification 3 of the Additional Charge), with all the sentences for running concurrently. R. at 158.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 17 March 2023.

Respectfully submitted,

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Technical Sergeant (E-6)	)	ACM 40359
NICHOLAS S. SHANOR, 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.

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 20 March 2023.

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 <i>Appellee,</i>	)	APPELLANT’S MOTION TO
	)	EXAMINE SEALED MATERIAL
)	
v.)	
	)	Before Panel No. 1
Technical Sergeant (E-6))	
NICHOLAS S. SHANOR,	)	Case No. ACM 40359
United States Air Force)	
<i>Appellant</i>	)	Filed on: 31 March 2023
)	

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

Pursuant to Rules 3.1 and 23.3(f) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves to examine the sealed material in Appellant’s record of trial: Appellate Exhibits (App. Ex.) VII, VIII, IX, X, XI, XII, XIII, and transcript pages 24-39. These exhibits, which reference Mil. R. Evid. 412 evidence, were released to trial counsel and defense counsel and ordered sealed by the military judge.

In accordance with R.C.M. 1113(b)(3)(B)(i), which requires a colorable showing that examination of these materials is reasonably necessary to appellate counsel’s responsibilities, undersigned counsel asserts that review of the referenced exhibits is necessary to conduct a complete review of the record of trial and be in a position to advocate competently on behalf of Appellant. A review of the entire record is necessary because this Court is empowered by Article 66(c), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(c), to grant relief based on a review and analysis of “the entire record.” To determine whether the record of trial yields grounds for this Court to grant relief under Article 66(c), UCMJ, 10 U.S.C. §866, counsel must therefore examine “the entire record.”

Although Courts of Criminal Appeals have a broad mandate to review the record unconstrained by an appellant's assignments of error, that broad mandate does not reduce the importance of adequate representation. As we said in *United States v. Ortiz*, 24 M.J. 323, 325 (C.M.A. 1987), independent review is not the same as competent appellate representation.

United States v. May, 47 M.J. 478, 481, (C.A.A.F. 1998). The sealed material must be reviewed in order for counsel to provide “competent appellate representation.” *Id.* Therefore, military defense counsel’s examination of sealed materials is reasonably necessary to fulfill their responsibilities in this case, since counsel cannot perform their duty of representation under Article 70, UCMJ, 10 U.S.C. §870, without first reviewing the complete record of trial.

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

Respectfully submitted,

—
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 31 March 2023.

Respectfully submitted,

JENNA M. ARROYO, ~~Maj~~, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’ RESPONSE
<i>Appellee,</i>	)	TO APPELLANT’S MOTION
	)	TO EXAMINE
v.	)	SEALED MATERIAL
)	
Technical Sergeant (E-6)	)	ACM 40359
NICHOLAS S. SHANOR, 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 responds to Appellant’s Motion to Examine Sealed Material. The United States does not object to Appellant’s counsel reviewing the materials listed in Appellant’s motion –which appear to have been available to all parties at trial – so long as the United States can also review the sealed portions of the record as necessary to respond to any assignment of error that refers to the sealed materials. The United States respectfully requests that any order issued by this Court also allow counsel for the United States to view the sealed materials.

The United States would not consent to Appellant’s counsel viewing any exhibits that were reviewed in camera but not released to the parties unless this Court has first determined there is good cause for Appellant’s counsel to do so under R.C.M. 1113.

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

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
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 4 April 2023.

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

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

UNITED STATES	)	No. ACM 40359
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Nicholas S. SHANOR)	
Technical Sergeant (E-6))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 31 March 2023, Appellant’s counsel submitted a Motion to Examine Sealed Materials, specifically, Appellate Exhibits VII–XIII and transcript pages 24–39.

The motion states the materials were reviewed by counsel at trial and that examination of these sealed materials is reasonably necessary to fulfill appellate counsel’s responsibilities. The Government does not oppose the motion, as long as the materials were viewed by both counsel at trial and Government counsel can also examine the sealed materials.

Appellate counsel may examine sealed materials released to counsel at trial “upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities.” Rule for Courts-Martial 1113(b)(3)(B)(i), *Manual for Courts-Martial, United States* (2019 ed.).

The court has considered Appellant’s motion, the Government’s response, case law, and this court’s Rules of Practice and Procedure. The court has reviewed the requested material. The court also finds that appellate defense counsel has made a colorable showing that review of the material is reasonably necessary to a proper fulfillment of appellate defense counsel’s responsibilities.

Accordingly, it is by the court on this 6th day of April, 2023,

ORDERED:

Appellant’s Motion to Examine Sealed Materials is **GRANTED**. Appellate defense counsel and appellate government counsel are authorized to examine **Appellate Exhibits VII–XIII and transcript pages 24–39**, subject to the following conditions:

To examine these materials, counsel will coordinate with the court.

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



FOR THE COURT

FLEMING E. KEEFE, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee</i>	)	TIME (FOURTH)
)	
v.	)	Before Panel No. 1
)	
Technical Sergeant (E-6)	)	No. ACM 40359
NICHOLAS S. SHANOR,)	
United States Air Force	)	14 April 2023
<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 (m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **23 May 2023**. The record of trial was docketed with this Court on 25 October 2022. From the date of docketing to the present date, 171 days have elapsed. On the date requested, 210 days will have elapsed.

On 2 August 2022, consistent with his pleas,¹ Appellant was convicted by a military judge at a general court-martial convened at Eglin Air Force Base (AFB), FL, of one charge and one specification of negligent dereliction of duty in violation of Article 92, UCMJ, one charge and two specifications of assault consummated by a battery in violation of Article 128, UCMJ, and an additional charge with three specifications of assault consummated by a battery in violation of Article 128, UCMJ. R. at 106. The military judge sentenced Appellant to be reduced to the grade

¹ Pursuant to a plea agreement, one charge and three specifications of sexual assault and one specification of abusive sexual contact in violation of Article 120, UCMJ, were withdrawn and dismissed with prejudice. ROT, Vol. 1, Entry of Judgment, dated 19 September 2022.

of E-4, to be confined for a total of 3 months,² and to be discharged with a bad conduct discharge. R. at 158. The convening authority took no action on the findings or sentence. ROT, Vol. 1, Decision on Action, dated 14 September 2022. The convening authority denied Appellant's request to have his automatic forfeitures and reduction in grade deferred. *Id.*

The record of trial consists of 4 prosecution exhibits, 0 defense exhibits, and 15 appellate exhibits; the transcript is 159 pages. Appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters³ and has yet to complete her review of Appellant's case. Counsel is currently assigned 22 cases; 12 cases are pending initial AOE's before this Court. This is military counsel's seventh priority⁴ case. The following cases have priority over the present case:

1. *United States v Robles*, ACM 40280 – The record of trial is 8 volumes; the trial transcript is 399 pages. There are 18 prosecution exhibits, 6 defense exhibits, and 15 appellate exhibits. Counsel has reviewed Appellant's ROT, has consulted with Appellant on issues to raise, is researching the issues, and is drafting Appellant's Assignments of Error due to this Court on 7 May 2023.

² Appellant was sentenced to be confined for 3 months (for the Specification of Charge II), to be confined for 2 months (for Specification 1 of Charge III), and to be confined for 2 months (for Specification 2 of Charge III), to be confined for 2 months (for Specification 1 of the Additional Charge), to be confined for 2 months (for Specification 2 of the Additional Charge), and to be confined for 3 months (for Specification 3 of the Additional Charge), with all the sentences for running concurrently. R. at 158.

³ Since the filing of Appellant's last EOT, counsel filed a brief in *United States v. Flores*, ACM S32728 on 21 March 2023.

⁴ Counsel will also be filing a reply brief in *United States v. Jones*, ACM 40226, due 18 April 2023 and will be filing a Supplement to Petition for Grant of Review to the Court of Appeals for the Armed Forces in *United States v. Kitchen*, ACM 40155, due 20 April 2023.

2. *United States v. Arbo*, ACM 40285 – The record of trial is 2 volumes; the trial transcript is 118 pages. There are 6 prosecution exhibits, 2 defense exhibits, and 6 appellate exhibits. Counsel has reviewed Appellant’s ROT and is consulting with Appellant on issues to raise.

3. *United States v. Blackburn*, ACM 40303 – The record of trial is 6 volumes; the trial transcript is 519 pages. There are 8 prosecution exhibits, 8 defense exhibits, and 43 appellate exhibits. Counsel has begun reviewing Appellant’s ROT and will be setting up an appointment to view sealed materials in his case.

4. *United States v. Irvin*, ACM 40311 - The record of trial is 2 volumes; the trial transcript is 81 pages. There are 4 prosecution exhibits, 11 defense exhibits, and 14 appellate exhibits. Counsel has not yet begun her review of Appellant’s ROT.

5. *United States v. Graves*, ACM 40340 - The record of trial is 5 volumes; the trial transcript is 122 pages. There are 3 prosecution exhibits, 1 defense exhibits, and 5 appellate exhibits. Counsel has not yet begun her review of Appellant’s ROT.

6. *United States v. Pittman*, ACM 40298 - The record of trial is 6 volumes; the trial transcript is 341 pages. There are 14 prosecution exhibits, 13 defense exhibits, and 30 appellate exhibits. Counsel has not yet begun her review of Appellant’s ROT.

Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant’s case and advise Appellant regarding potential errors.

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

Respectfully submitted,

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 14 April 2023.

Respectfully submitted,

—
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Technical Sergeant (E-6)	)	ACM 40359
NICHOLAS S. SHANOR, 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 17 April 2023.

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

UNITED STATES	)	MOTION TO WITHDRAW FROM
<i>Appellee</i>	)	APPELLATE REVIEW AND ATTACH
)	
v.	)	Before Panel No. 1
)	
Technical Sergeant (E-6)	)	No. ACM 40359
NICHOLAS S. SHANOR,)	
United States Air Force	)	28 April 2023
<i>Appellant</i>)	

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

Pursuant to Rule 16 of the Rules of Practice and Procedure of the United States Air Force Court of Criminal Appeals and Rule for Courts-Martial (R.C.M.) 1115, Appellant moves to withdraw his case from appellate review. Appellant has fully consulted with Major Jenna Arroyo, his appellate defense counsel, regarding this motion to withdraw. No person has compelled, coerced or induced Appellant by force, promises of clemency, or otherwise, to withdraw his case from appellate review. Further, pursuant to Rules 23(b) and 23.3(b), undersigned counsel asks this Court to attach the two-page document appended to this pleading to the record of this proceeding. The appended document is necessary to comply with R.C.M. 1115(d).

WHEREFORE, Appellant respectfully requests this Honorable Court to grant this motion to withdraw from appellate review, and to grant this request to attach matters to the record.

Respectfully submitted,

~~JENNA M. ARROYO, Maj, USAF~~
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 28 April 2023.

Respectfully submitted.

JENNA M. ARROYO, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

APPENDIX

WAIVER/WITHDRAWAL OF APPELLATE RIGHTS IN GENERAL AND SPECIAL COURTS-MARTIAL SUBJECT TO REVIEW BY A COURT OF CRIMINAL APPEALS
(For use in courts-martial referred on or after 1 January 2019)

I have read the attached entry of judgment in my case dated 20220919.

I have consulted with Maj Jenna M. Arroyo, my ~~(associate)~~ defense counsel concerning my appellate rights and I am satisfied with his/her advice.

I understand that:

1. If I do not waive or withdraw appellate review –

- a. My court-martial will be automatically reviewed by the Air Force Court of Criminal Appeals per Article 66(b)(3) or is eligible for direct review by the _____ Court of Criminal Appeals per Article 66(b)(1)(A-B).
- b. The Court of Criminal Appeals will review my case to determine whether the findings and sentence are correct in law and fact and whether the sentence is appropriate.
- c. After review by the Court of Criminal Appeals, my case could be reviewed for legal error by the United States Court of Appeals for the Armed Forces on petition by me or on request of the Judge Advocate General.
- d. If the Court of Appeals for the Armed Forces reviews my case, my case could be reviewed for legal error by the United States Supreme Court on petition by me or the Government.
- e. I have the right to be represented by military counsel, at no cost to me, or by civilian counsel, at no expense to the United States, or both, before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, and the Supreme Court.

2. If I waive or withdraw appellate review –

- a. My case will not be reviewed by the Court of Criminal Appeals, or be subject to further review by the Court of Appeals for the Armed Forces, or by the Supreme Court under 28 U.S.C. § 1259.
- b. My case will be reviewed by a judge advocate per Article 65(d)(3). Upon completion of that review, I may submit an application for consideration by The Judge Advocate General under Article 69(b), for review limited to the issue of whether this waiver or withdrawal was invalid under the law. See R.C.M. 1201(h)(4)(B).
- c. An Article 69(b) application must be filed within one year after the date of completion of review under Article 65(d)(3), if I can show good cause for filing later the period may be extended up to three years after the completion date.
- d. I may file a waiver of appellate review at any time after entry of judgment.
- e. I may file withdrawal from appellate review any time before such review is completed.
- f. A waiver or withdrawal, once filed, cannot be revoked, and bars further appellate review. A waiver or withdrawal may not be filed in any case where the sentence includes death.

3. Whether or not I waive or withdraw appellate review, I may petition the Judge Advocate General for a new trial under Article 73 on the grounds of newly discovered evidence or fraud on the court at any time within three years after the date of the entry of judgment.

I understand the foregoing, and I (waive my rights to appellate review) withdraw my case from appellate review. I make this decision freely and voluntarily. No one has made any promises that I would receive any benefit from this waiver/withdrawal, and no one has forced me to make it.

Nicholas S. Shanor

Technical Sergeant

TYPED NAME OF ACCUSED

RANK OF ACCUSED

SIGNATURE OF ACCUSED

DATE

27 April 2023

STATEMENT OF COUNSEL

(Check appropriate block)

- 1. I represented the accused at his/her court-martial
- 2. I am associate counsel detailed under R.C.M. 1115(b). I have communicated with the accused's (detailed) (individual military) (civilian) (appellate) defense counsel concerning the accused's waiver/withdrawal and discussed this communication with the accused.
- 3. I am substitute counsel detailed under R.C.M. 1115(b).
- 4. I am civilian counsel whom the accused consulted concerning this matter. I am a member in good standing of the bar of _____
- 5. I am appellate defense counsel for the accused.

I have advised the accused of his/her appellate rights and of the consequences of waiving or withdrawing appellate review. I was given a reasonable opportunity to examine the record of trial and any attachments in the accused's case before advising the accused. The accused has elected to (waive) (withdraw) appellate review.

Jenna M. Arroyo

AF/JAJA

TYPED NAME OF COUNSEL

UNIT OF COUNSEL

Major

RANK OF COUNSEL

BUSINESS ADDRESS (If Civilian Counsel)

SIGNATURE OF COUNSEL

DATE

28 April 2023