

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

<b>UNITED STATES,</b>	)	<b>NOTICE OF DIRECT</b>
<i>Appellee,</i>	)	<b>APPEAL PURSUANT TO</b>
	)	<b>ARTICLE 66(b)(1)(A), UCMJ</b>
v.	)	
	)	
Master Sergeant (E-7),	)	No. ACM SXXXXXX
<b>DARYL A. THOMAS,</b>	)	
United States Air Force,	)	14 February 2024
<i>Appellant.</i>	)	

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

From 8-10 August 2022, Appellant, Master Sergeant (MSgt) Daryl A. Thomas, was tried by a special court-martial at Whiteman Air Force Base, Missouri. R. at 1, 222. A military judge, consistent with Appellant’s pleas, found Appellant guilty of one charge and two specifications of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ), and one additional charge and three more specifications of wrongful use of a controlled substance, also in violation of Article 112a, UCMJ. R. at 8, 53. A panel of officers sentenced Appellant to be reprimanded, to be reduced to the grade of E-5, to forfeit \$750.00 of his pay for twelve months, and to perform hard labor without confinement for two months. R. at 220. The convening authority took no action on the findings or the sentence. Record of Trial (ROT) Vol. 1, *Convening Authority Decision on Action* – United States v. MSgt Daryl A. Thomas, dated 25 August 2022.

On 3 January 2024, the Government mailed Appellant the required notice of his right to appeal within 90 days. Pursuant to Article 66(b)(1)(A), UCMJ, Appellant files his notice of direct appeal with this Court.

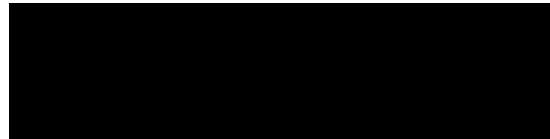
Respectfully submitted,



SAMANTHA M. CASTANIEN, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
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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 Air Force Government Trial and Appellate Operations Division on 14 February 2024.



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

<b>UNITED STATES</b> <i>Appellee</i>	)	No. ACM _____
	)	
	)	
v.	)	
	)	
<b>Daryl A. THOMAS</b>	)	<b>NOTICE OF</b>
<b>Master Sergeant (E-7)</b>	)	<b>DOCKETING</b>
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	

On 14 February 2024, this court received a notice of direct appeal from Appellant in the above-styled case, pursuant to Article 66(b)(1)(A), Uniform Code of Military Justice, 10 U.S.C. § 866(b)(1)(A).

As of the date of this notice, the court has not yet received a record of trial in Appellant's case.

Accordingly, it is by the court on this 14th day of February, 2024,


**ORDERED:**

The case in the above-styled matter is referred to Panel 1.

**It is further ordered:**

The Government will forward a copy of the record of trial to the court forthwith.



**FOR THE COURT**  
  
**TANICA S. BAGMON**  
Appellate Court Paralegal

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

UNITED STATES <i>Appellee</i>	)	No. ACM _____
	)	
	)	
v.	)	
	)	<b>ORDER</b>
Daryl A. THOMAS	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 14 February 2024, Appellant filed a “Notice of Direct Appeal Pursuant to Article 66(b)(1)(A), UCMJ,” with this court. The court docketed the above-styled case on 14 February 2024 and ordered the Government to “forward a copy of the record of trial to the court forthwith.” Over 120 days have elapsed, and, to date, the record has not been provided to the court.

Accordingly, it is by the court on this 25th day of June, 2024,

**ORDERED:**

Not later than **25 July 2024**, Government will forward a copy of the record of trial to the court.

Should the record of trial not be provided by 25 July 2024, the court reporter, or an appropriate designee, shall provide a memorandum for record stating the status of the processing of the record of trial in this case not later than **26 July 2024** to the Government to submit to this court in a motion to attach. *See* A.F. Ct. Crim. App. R. 23.3(b). Until the record of trial is returned to the court, such a memorandum of record will be prepared and submitted to the court every seven days thereafter.



FOR THE COURT



FLEMING E. KEEFE, Capt, USAF  
Deputy Clerk of the Court

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

UNITED STATES	)	No. ACM 22083
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Daryl A. THOMAS	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 13 September 2024, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant’s assignments of error. The Government opposed 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 17th day of September 2024,

**ORDERED:**

Appellant’s Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **26 November 2024**.

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



FOR THE COURT

[Redacted signature area]

Commissioner

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

<b>UNITED STATES,</b>	)	<b>APPELLANT’S MOTION</b>
<i>Appellee,</i>	)	<b>FOR ENLARGEMENT</b>
	)	<b>OF TIME (FIRST)</b>
v.	)	
	)	Before Panel No. 1
Master Sergeant (E-7)	)	
<b>DARYL A. THOMAS,</b>	)	No. ACM 22083
United States Air Force,	)	
<i>Appellant.</i>	)	13 September 2024

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

Pursuant to Rule 23.3(m)(2) and (6) of this Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file Assignments of Error (AOE). Pursuant to Rule 23.3(m)(2), Appellant requests an enlargement for a period of 60 days, which will end on **26 November 2024**.

Appellant’s direct appeal was docketed with this Court on 14 February 2024. At the time of docketing, the Court had not received the record of trial and ordered it delivered forthwith. *Notice of Docketing*, dated 14 February 2024. After one order for compliance, dated 25 June 2024, the Government delivered the record of trial to the Court on 29 July 2024, 166 days after docketing. Sixty days from 29 July 2024 is 27 September 2024, the deadline for Appellant’s AOE brief, absent any extensions of time. Rule 18(d).

From the date of docketing (14 Feb. 2024) to the present date, 212 days have elapsed. From the date this Court received the record of trial (29 Jul. 2024) to the present date, 46 days have elapsed. On the date requested, 120 days will have elapsed from the date the Court received the record of trial and 286 days will have elapsed since docketing.

From 8-10 August 2022, Appellant was tried by a special court-martial at Whiteman Air Force Base, Missouri. R. at 1, 528.<sup>1</sup> A military judge, consistent with Appellant's pleas, found Appellant guilty of two charges and five specifications of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ). R. at 16-17, 20, 92. A panel of officers sentenced Appellant to be reprimanded, to be reduced to the grade of E-5, to forfeit \$750.00 of his pay for twelve months, and to perform hard labor without confinement for two months. R. at 18, 525. The convening authority took no action on the findings or the sentence. Record of Trial (ROT) Vol. 1, Convening Authority Decision on Action – United States v. MSgt Daryl A. Thomas, dated 25 August 2022.

Without the verbatim transcript, the record of trial is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. Appellant is not currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned 33 cases; 20 cases are pending before this Court (14 cases are pending AOE's); 12 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF); and one case is pending a petition to the United States Supreme Court. Eight cases have priority over the present case:

1. *United States v. Casillas*, No. 24-0089/AF – Undersigned counsel is currently researching and drafting the Reply Brief for a four-issue appeal to the CAAF, due 16 September 2024. Undersigned counsel anticipates oral argument for this case will be later this year, which will likely impact her ability to review Appellant's case.

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<sup>1</sup> Citations to the record are citations to the verbatim transcript.

2. *United States v. Leipart*, No. 23-0163/AF – The CAAF issued a decision in this case on 1 August 2024. Undersigned counsel anticipates filing a petition of certiorari to the United States Supreme Court within 90 days, barring any extensions.

3. *United States v. Folts*, No. ACM 40322 – On 26 August 2024, this Court issued an opinion in this appellant’s case. Undersigned counsel is working with civilian appellate defense counsel on next steps, including drafting a petition and supplement to the CAAF.

4. *United States v. Giles*, No. ACM 40482 – This AOE was submitted on 5 September 2024. Upon receipt of the Government’s Answer Brief, undersigned counsel will assess whether a Reply Brief is warranted and then draft any such Reply.

5. *United States v. Singleton*, No. ACM 40535 (EOT 8) – The trial transcript is 1,738 pages long and the record of trial is comprised of twelve volumes containing six Prosecution Exhibits, 17 Defense Exhibits, one Court Exhibit, and 89 Appellate Exhibits. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

6. *United States v. Gray*, No. ACM 24007 – The record of trial for this direct appeal is four volumes consisting of seven Prosecution Exhibits, nine Defense Exhibits, and 20 Appellate Exhibits. The transcript is 399 pages. This appellant is not currently confined. Counsel has not yet completed her review of this appellant’s record.

7. *United States v. Kim*, No. ACM 24007 (EOT 5 requested) – The record of trial for this direct appeal is five volumes consisting of five Prosecution Exhibits, three Defense Exhibits, 27 Appellate Exhibits, and one court exhibit. The transcript is 421 pages. This appellant is not currently confined. Counsel has not yet completed her review of this appellant’s record.

8. *United States v. Hunt*, No. ACM 24007 (EOT 5) – The record of trial is three volumes consisting of six Prosecution Exhibits, two Defense Exhibits, and 18 Appellate Exhibits. The

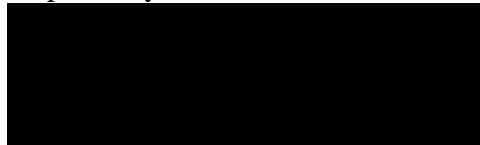
transcript is 423 pages. This appellant is not currently confined. Counsel has not yet completed her review of this appellant's record.

Additionally, military appellate defense counsel took on eight cases from departing military appellate defense counsel. Three of these cases are now pending petitions and supplements to the CAAF; their timing may impact Appellant's case. The remaining cases are awaiting a decision from this Court and the CAAF. Depending on timing and next steps, these other cases may be prioritized over Appellant's case.

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

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

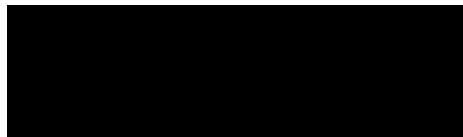
Respectfully submitted,



SAMANTHA M. CASTANIEN, Capt, USAF  
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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
	)	
Master Sergeant (E-7)	)	ACM 22083
DARYL A. THOMAS, 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.

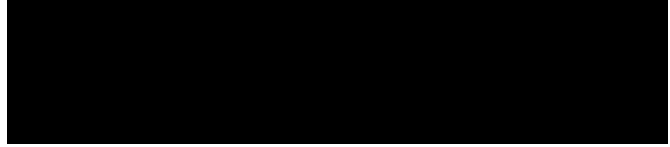
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

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Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
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in violation of Article 112a, Uniform Code of Military Justice (UCMJ). R. at 16-17, 20, 92. A panel of officers sentenced Appellant to be reprimanded, to be reduced to the grade of E-5, to forfeit \$750.00 of his pay for twelve months, and to perform hard labor without confinement for two months. R. at 18, 525. The convening authority took no action on the findings or the sentence. Record of Trial (ROT) Vol. 1, Convening Authority Decision on Action – United States v. MSgt Daryl A. Thomas, dated 25 August 2022.

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Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned 38 cases; 24 cases are pending before this Court (17 cases are pending AOE's), 14 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF), and two cases are pending petitions to the United States Supreme Court. To date, eight cases have priority over the present case:

1. *United States v. Casillas*, No. 24-0089/AF – On 29 October 2024, the CAAF ordered additional briefing in this case. Briefs are currently due 9 December 2024.

2. *United States v. Leipart*, No. 24A288 – The CAAF issued a decision in this case on 1 August 2024. Undersigned counsel will file a petition of certiorari to the United States Supreme Court by 29 December 2024.

3. *United States v. Johnson*, No. 24-0004/SF – Undersigned counsel filed this two-issue Grant Brief on 4 November 2024. Any reply brief will be due after the Government's answer in December.

4. *United States v. Wells*, No. 23-0219/AF – The CAAF issued a decision in this case on 24 September 2024. Undersigned counsel anticipates filing a petition of certiorari to the United States Supreme Court by 23 December 2024, barring any extensions.

5. *United States v. Folts*, No. ACM 40322 – On 26 August 2024, this Court issued an opinion in this appellant’s case. As this Court denied the motion for reconsideration, undersigned counsel is now working with civilian appellate defense counsel on drafting the petition and supplement to the CAAF, due in early December.

6. *United States v. Singleton*, No. ACM 40535 – Undersigned counsel anticipates withdrawing from this case to allow a more available appellate defense counsel to take over. The new counsel has already made an appearance, and withdrawal is pending client consultation and turnover.

7. *United States v. Gray*, No. ACM 40648 – Undersigned counsel filed her motion to withdraw in this case today, 13 November 2024, which is now pending this Court’s action.

8. *United States v. Kim*, No. ACM 24007 – The record of trial for this direct appeal is five volumes consisting of five Prosecution Exhibits, three Defense Exhibits, 27 Appellate Exhibits, and one court exhibit. The transcript is 421 pages. This appellant is not currently confined. Counsel has not yet completed her review of this appellant’s record.

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

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

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

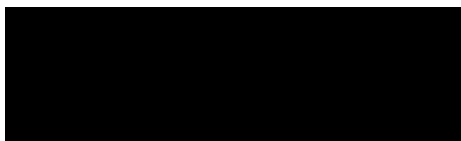
Respectfully submitted,



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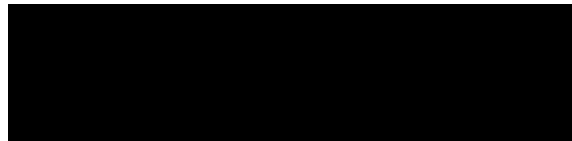
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UNITED STATES,	)	UNITED STATES' GENERAL
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	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Master Sergeant (E-7)	)	ACM 22083
DARYL A. THOMAS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

**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.

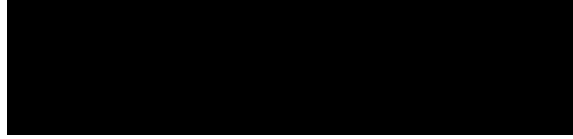
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force  
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Appellant guilty of two charges and five specifications of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ). R. at 16-17, 20, 92. A panel of officers sentenced Appellant to be reprimanded, to be reduced to the grade of E-5, to forfeit \$750.00 of his pay for twelve months, and to perform hard labor without confinement for two months. R. at 18, 525. The convening authority took no action on the findings or the sentence. Record of Trial (ROT) Vol. 1, Convening Authority Decision on Action – United States v. MSgt Daryl A. Thomas, dated 25 August 2022.

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1. *United States v. Casillas*, No. 24-0089/AF – On 29 October 2024, the CAAF ordered additional briefing in this case. Briefs are due today, 9 December 2024. Oral argument is scheduled for 14 January 2025, which undersigned counsel will begin preparing for following completion of the next two priorities listed below.

2. *United States v. Leipart*, No. 24A288 – The CAAF issued a decision in this case on 1 August 2024. Since Appellant's last enlargement of time, undersigned counsel drafted the petition of certiorari to the United States Supreme Court. The filing is undergoing final review and editing before being sent to the printer. It will be filed by 29 December 2024.

3. *United States v. Folts*, No. 25-0043/AF – On 26 August 2024, this Court issued an opinion in this appellant’s case. Since Appellant’s last enlargement of time, undersigned counsel drafted two issues for the supplement to the petition for grant of review and is working with civilian appellate defense counsel to finalize the filing, due to the CAAF on 26 December 2024.

4. *United States v. Johnson*, No. 24-0004/SF – Undersigned counsel filed this two-issue Grant Brief on 4 November 2024. Any reply brief will be due after the Government’s Answer, which is due 20 December 2024.

5. *United States v. Wells*, No. 24A520 – The CAAF issued a decision in this case on 24 September 2024. Undersigned counsel will file a petition of certiorari to the United States Supreme Court by 21 February 2025.

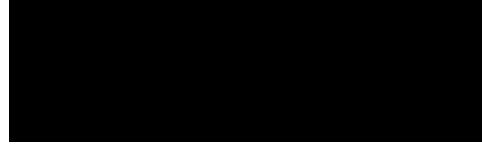
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Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant’s case. An enlargement of time is necessary to allow counsel to fully review Appellant’s case and advise him regarding potential errors.

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

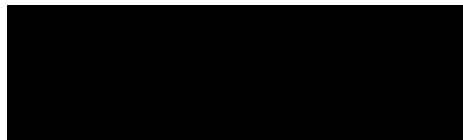
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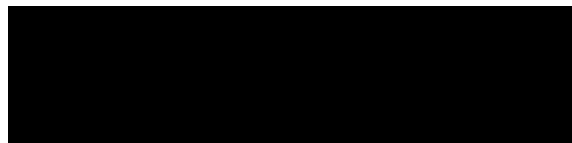
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<i>Appellant.</i>	)	Panel No. 1
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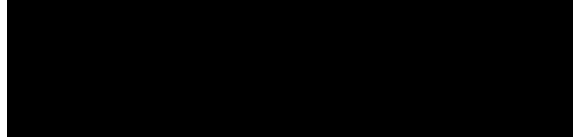
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United States Air Force  
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From 8-10 August 2022, Appellant was tried by a special court-martial at Whiteman Air Force Base, Missouri. R. at 1, 528.<sup>1</sup> A military judge, consistent with Appellant's pleas, found Appellant guilty of two charges and five specifications of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ). R. at 16-17, 20, 92. A panel of officers sentenced Appellant to be reprimanded, to be reduced to the grade of E-5, to forfeit \$750.00 of his pay for twelve months, and to perform hard labor without confinement for two months. R. at 18, 525. The convening authority took no action on the findings or the sentence. Convening Authority Decision on Action – United States v. MSgt Daryl A. Thomas, dated 25 August 2022.

Without the verbatim transcript, the record of trial is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. Appellant is not currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Appellate defense counsel is currently assigned 38 cases; 19 cases are pending before this Court (16 cases are pending AOE's), 17 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF), and two cases are pending before the United States Supreme Court (one is pending a petition).

Since Appellant's last request for an extension of time, undersigned counsel filed the petition for certiorari for *United States v. Leipart* with the United States Supreme Court, filed with the CAAF the three-issue supplement to the petition for grant of review in *United States v. Folts*, No. 25-0043/AF, filed two additional petitions and supplements to the CAAF (*United States v. Scott* and *United States v. Lawson*), and completed the reply brief, along with two motions and

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<sup>1</sup> Citations to the record are citations to the verbatim transcript.

their associated replies, in *United States v. Johnson*, No. 24-0004/SF, also for the CAAF. To date, four cases have priority over the present case:

1. *United States v. Casillas*, No. 24-0089/AF – Undersigned counsel is preparing for oral argument scheduled for tomorrow, 14 January 2025. The CAAF will be hearing *Casillas* and *United States v. Valentin-Andino*, No. 24-0208/AF, on the same day. Consequently, undersigned counsel is also assisting with preparation for the *Valentin-Andino* oral argument by being available for moots and reading the briefings. Oral argument preparation is undersigned counsel’s sole focus at this time, having finished submitting several filings related to firearm cases last week (*Johnson, Scott, Lawson*).

2. *United States v. Johnson*, No. 24-0004/SF – Undersigned counsel is preparing for oral argument on 29 January 2025. Preparation for oral argument will start immediately after the *Casillas* oral argument on 14 January 2025. Undersigned counsel cancelled leave to accommodate the CAAF’s briefing schedule and ensure adequate preparation time for the granted issues in this case.

3. *United States v. Wells*, No. 24A520 – The CAAF issued a decision in this case on 24 September 2024. From the date of decision, this appellant has 90 days to file a petition of certiorari to the United States Supreme Court. 28 U.S.C. § 1259(3); Supreme Court Rule 13(1). Due to undersigned counsel’s schedule, undersigned counsel requested a 60-day extension to file the petition for *Wells*. Supreme Court Rule 13(5). Thus, undersigned counsel will file a petition of certiorari to the United States Supreme Court by 21 February 2025. Undersigned counsel intends to work *Wells* simultaneously with *United States v. Kim*, No. ACM 24007. Undersigned counsel will begin briefing *Wells* following *Johnson*, and then turn to *Kim*.

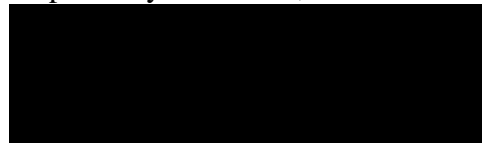
4. *United States v. Kim*, No. ACM 24007 – The record of trial for this direct appeal is five volumes consisting of five Prosecution Exhibits, three Defense Exhibits, 27 Appellate Exhibits, and one Court Exhibit. The transcript is 421 pages. This appellant is not currently confined. Counsel has not yet completed her review of this appellant’s record.

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

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

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

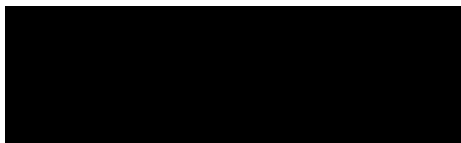
Respectfully submitted,

A large black rectangular redaction box covering the signature of Samantha M. Castanien.

SAMANTHA M. CASTANIEN, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: samantha.castanien.1@us.af.mil

## **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 Air Force Government Trial and Appellate Operations Division on 13 January 2025.



SAMANTHA M. CASTANIEN, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: samantha.castanien.1@us.af.mil

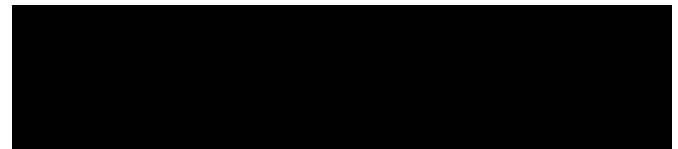
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Master Sergeant (E-7)	)	ACM 22083
DARYL A. THOMAS, 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.

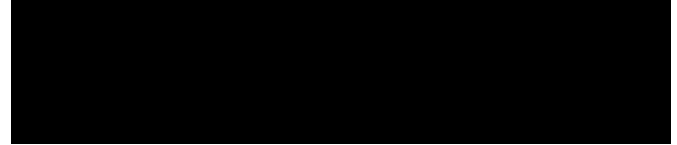
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations  
Government Trial and Appellate Operations  
Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 14 January 2025.



JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations  
Government Trial and Appellate Operations  
Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

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

<b>UNITED STATES,</b>	)	<b>APPELLANT’S MOTION</b>
<i>Appellee,</i>	)	<b>FOR ENLARGEMENT</b>
	)	<b>OF TIME (FIFTH)</b>
v.	)	
	)	Before Panel No. 1
Master Sergeant (E-7)	)	
<b>DARYL A. THOMAS,</b>	)	No. ACM 22083
United States Air Force,	)	
<i>Appellant.</i>	)	10 February 2025

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

Pursuant to Rule 23.3(m)(3) and (6) of this Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **26 March 2025**.

Appellant’s direct appeal was docketed with this Court on 14 February 2024. At the time of docketing, the Court had not received the record of trial and ordered it delivered forthwith. Notice of Docketing, dated 14 February 2024. After one order for compliance, dated 25 June 2024, the Government delivered the record of trial to the Court on 29 July 2024, 166 days after docketing. Rule 18(d)(2) of the Joint Rules of Appellate Procedure directs that “an appellant’s brief shall be filed no later than 60 days” after the Government provides a complete record, including a verbatim transcript, to the Court and the defense. From the date this Court received the record of trial on 29 July 2024 to the present date, 196 days have elapsed. On the date requested, 240 days will have elapsed from the date the Court received the record of trial. From the date this Court docketed Appellant’s case without the complete record of trial to the present date, 362 days have elapsed, and on the requested date, 406 days will have elapsed.

From 8-10 August 2022, Appellant was tried by a special court-martial at Whiteman Air Force Base, Missouri. R. at 1, 528.<sup>1</sup> A military judge, consistent with Appellant's pleas, found Appellant guilty of two charges and five specifications of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ). R. at 16-17, 20, 92. A panel of officers sentenced Appellant to be reprimanded, to be reduced to the grade of E-5, to forfeit \$750.00 of his pay for twelve months, and to perform hard labor without confinement for two months. R. at 18, 525. The convening authority took no action on the findings or the sentence. Convening Authority Decision on Action – *United States v. MSgt Daryl A. Thomas*, dated 25 August 2022.

Without the verbatim transcript, the record of trial is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. Appellant is not currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Appellate defense counsel is currently assigned 37 cases; 18 cases are pending before this Court (16 cases are pending AOE's), 17 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF), and two cases are pending before the United States Supreme Court (one is pending a petition).

Since Appellant's last request for an extension of time, undersigned counsel completed oral argument in *United States v. Casillas*, No. 24-0089/AF (Jan. 14, 2025) and in *United States v. Johnson*, No. 24-0004/SF (Jan. 29, 2025). Undersigned counsel also wrote the petition of certiorari for *United States v. Wells*, No. 24A520, which is now pending printing. Filing must be accomplished by 21 Feb. 2025. To date, three cases have priority over the present case:

---

<sup>1</sup> Citations to the record are citations to the verbatim transcript.

1. *United States v. Kim*, No. ACM 24007 - The record of trial for this direct appeal is five volumes consisting of five Prosecution Exhibits, three Defense Exhibits, 27 Appellate Exhibits, and one Court Exhibit. The transcript is 421 pages. This appellant is not currently confined. Counsel has not yet completed her review of this appellant's record.

2. *United States v. Braum*, No. 25-0046/AF – On 4 February 2025, the CAAF granted review of one issue in this case. The Grant Brief is due on 25 February 2025, and while undersigned counsel is not lead on this case, she will be assisting with the joint appendix and review of the brief. Undersigned counsel intends to work this case simultaneous with *Kim*.

3. *United States v. Giles*, No. ACM 40482 – This Court issued the decision in this appellant's case on 23 December 2024. The petition for grant of review must be filed by 21 February 2025 (within 60 days of this Court's decision). See *United States v. Rodriguez*, 67 M.J. 110, 111 (C.A.A.F. 2009) (citing *Bowles v. Russell*, 551 U.S. 205 (2007)) (holding if an appellant fails to file a petition on time, the appellant loses the right to appeal). In light of *Kim* and *Braum*, undersigned counsel will request a 21-day extension to file the supplement to the petition. C.A.A.F. R. 19(a)(5)(A). To be clear, a supplement to the petition is not a carbon copy of the AOE filed at this Court. Issues must be framed and presented differently for the CAAF. Failure to present or preserve an issue to the CAAF risks losing the ability to argue a certain way. See, e.g., *United States v. Leipart*, \_\_ M.J. \_\_, No. 23-0163, 2024 CAAF LEXIS 439, at \*22 (C.A.A.F. Aug. 1, 2024) (cautioning counsel about how issues are raised and narrowing the scope of the issue to the question specifically articulated to the CAAF). Undersigned counsel intends to work the supplement to the petition simultaneously with Appellant's AOE.

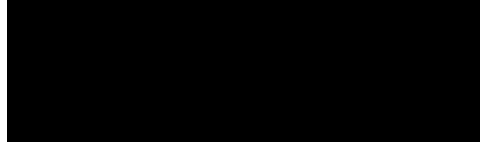
Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on his case. Appellant was advised of the

request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

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

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

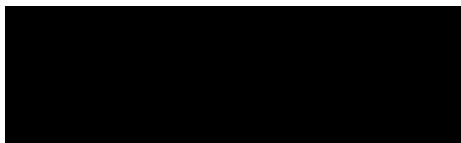
Respectfully submitted,



SAMANTHA M. CASTANIEN, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: samantha.castanien.1@us.af.mil

## **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 Air Force Government Trial and Appellate Operations Division on 10 February 2025.



SAMANTHA M. CASTANIEN, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
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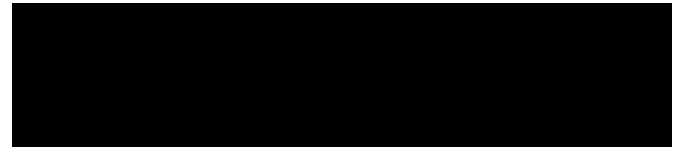
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Master Sergeant (E-7)	)	ACM 22083
DARYL A. THOMAS, 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.

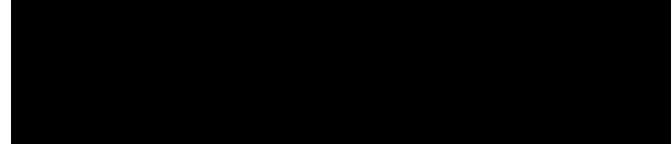
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations  
Government Trial and Appellate Operations  
Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

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



JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations  
Government Trial and Appellate Operations  
Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

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

<b>UNITED STATES</b>	)	<b>No. ACM 22083</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>NOTICE OF</b>
<b>Daryl A. THOMAS</b>	)	<b>PANEL CHANGE</b>
<b>Master Sergeant (E-7)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	

It is by the court on this 26th day of February, 2025,

**ORDERED:**

The record of trial in the above styled matter is withdrawn from Panel 1 and referred to Panel 2.

This panel letter supersedes all previous panel assignments.



C [Redacted] D, SrA, USAF  
Appellate Court Paralegal



From 8-10 August 2022, Appellant was tried by a special court-martial at Whiteman Air Force Base, Missouri. R. at 1, 528.<sup>1</sup> A military judge, consistent with Appellant's pleas, found Appellant guilty of two charges and five specifications of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ). R. at 16-17, 20, 92. A panel of officers sentenced Appellant to be reprimanded, to be reduced to the grade of E-5, to forfeit \$750.00 of his pay for twelve months, and to perform hard labor without confinement for two months. R. at 18, 525. The convening authority took no action on the findings or the sentence. Convening Authority Decision on Action – *United States v. MSgt Daryl A. Thomas*, dated 25 August 2022.

Without the verbatim transcript, the record of trial is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. Appellant is not currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned 38 cases; 19 cases are pending before this Court (18 cases are pending AOE), 18 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF), and one case is pending before the United States Supreme Court. To date, four cases have priority over the present case:

1. *United States v. Giles*, No. 25-0100/AF – Since Appellant's last request for an EOT, undersigned counsel drafted the supplement to the petition for the grant of review, which underwent peer and leadership review and will be filed on or before 12 March 2025.

2. *United States v. Kim*, No. ACM 24007 – Undersigned counsel completed drafting the AOE, which is pending review for filing on or before 23 March 2025.

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<sup>1</sup> Citations to the record are citations to the verbatim transcript.

3. *United States v. Braum*, No. 25-0046/AF – The Grant Brief was filed on 25 February 2025. Any reply brief will be due at the end of March, with which military appellate defense counsel will likely assist.

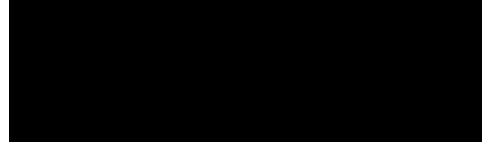
4. *United States v. Marin Perez*, No. ACM S32771 – This case has been docketed for a similar time as Appellant's but the number of EOT requests exceeds Appellant's by four. In balancing docketing time, the number of EOTs and this Court's associated orders, and the size of the records, this case has been prioritized over Appellant's. This appellant's transcript is 108 pages long and the record of trial is an electronic ROT, which is one volume of 381 pages. There are four Prosecution Exhibits, fourteen Defense Exhibits, four Appellate Exhibits, and one Court Exhibit. This appellant is not currently confined. Undersigned counsel has not yet completed her review of this appellant's record.

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

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

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

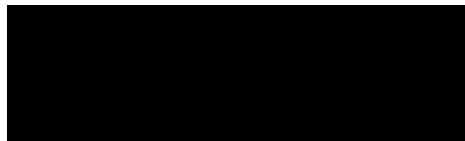
Respectfully submitted,



SAMANTHA M. CASTANIEN, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: samantha.castanien.1@us.af.mil

**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 Air Force Government Trial and Appellate Operations Division on 10 March 2025.



SAMANTHA M. CASTANIEN, Capt, USAF  
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Air Force Appellate Defense Division  
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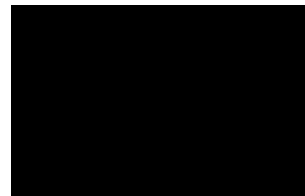
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
	)	Before Panel No. 2
	)	
Master Sergeant (E-7)	)	No. ACM 22083
<b>DARYL A. THOMAS,</b>	)	
United States Air Force	)	
<i>Appellant.</i>	)	11 March 2025

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

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

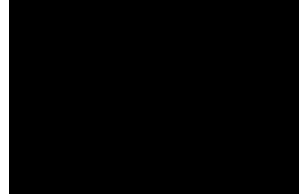
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4809

**CERTIFICATE OF FILING AND SERVICE**

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



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4809



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Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned 37 cases; 20 cases are pending before this Court (17 cases are pending AOE's), and 17 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). Since Appellant's last request for an extension of time, undersigned counsel filed a supplement to the petition for grant of review in two cases, *United States v. Giles*, No. 25-0100/AF, and *United States v. Hogans*, No. 25-0119/AF, filed AOE's in two cases, *United States v. Kim*, No. ACM 24007, and *United States v. Marin Perez*, No. ACM S32771, and completed briefing in *United States v. Braum*, No. 25-0046/AF. However, as a result of this Court's orders in *United States v. Brown*, No. ACM S32777, that case had to be prioritized over Appellant's. Appellant was advised of this development and the potential that

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<sup>1</sup> Citations to the record are citations to the verbatim transcript.

another case, *United States v. Ziesche*, No. ACM 24022, may also have to be prioritized over Appellant's. Thus, to date, two cases remain prioritized over the present case:

1. *United States v. Brown*, No. ACM S32777 – The trial transcript is 133 pages long and the record of trial is three volumes containing nine Prosecution Exhibits, one Defense Exhibit, four Appellate Exhibits, and one Court Exhibit. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

2. *United States v. Ziesche*, No. ACM 24022 – The trial transcript is 174 pages long and the record of trial is four volumes comprised of four Prosecution Exhibits, 13 Defense Exhibits, and 16 Appellate Exhibits. This appellant is not currently confined. Undersigned has not yet completed her review of the record of trial.

Additionally, undersigned counsel also anticipates prioritizing any Reply brief in *Kim* or *Marin Perez* over Appellant's case, although the impact of that to Appellant's case should be limited to a short delay.

This reprioritization is driven by the Court's orders in *Brown* and *Ziesche*, which both have stated that "any future requests for [EOTs] that, if granted, would expire more than 360 days after docketing, *will not* be granted absent *exceptional circumstances*." Order, *United States v. Brown*, No. ACM S32777, slip. op. at 2 (June 6, 2024) (emphasis added); Order, *United States v. Ziesche*, No. ACM 24022, slip. op. at 2 (June 6, 2024) (emphasis added). Per this Court's definition of "exceptional circumstances," "routine workload alone" is insufficient to constitute "exceptional circumstances." Order, *United States v. Evangelista*, No. ACM 40531, slip op. at 2 n.3, (Dec. 6, 2024). Nevertheless, undersigned counsel desires to complete review of *Brown*, *Ziesche*, and Appellant's case as soon as possible but has been unable to do so due to her high workload.

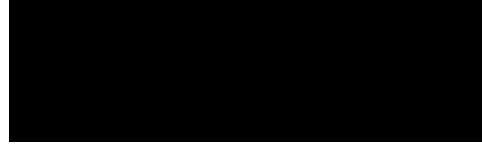
Notably, each appellant has a constitutional right to effective assistance of counsel before this Court and the CAAF. *See, e.g., Diaz v. Judge Advocate General of the Navy*, 59 M.J. 34, 37 (C.A.A.F. 2003) (“An accused has the right to effective representation by counsel through the entire period of review following trial, including representation before the Court of Criminal Appeals and [the CAAF] by appellate counsel appointed under Article 70, UCMJ, 10 U.S.C. § 870 (2000).”). Undersigned counsel has 37 clients; it is not possible for each service members’ constitutional right to effective assistance of counsel to be honored without additional extensions of time. Thus, the new prioritization for Appellant’s case is an attempt to balance this Court’s orders in undersigned counsel’s other cases with undersigned counsel’s obligation to provide effective assistance of counsel to each client, including Appellant.

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

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

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

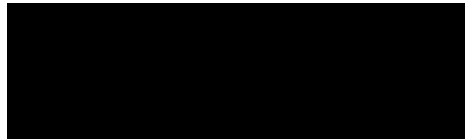
Respectfully submitted,



SAMANTHA M. CASTANIEN, Capt, USAF  
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**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 Air Force Government Trial and Appellate Operations Division on 14 April 2025.



SAMANTHA M. CASTANIEN, Capt, USAF  
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**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

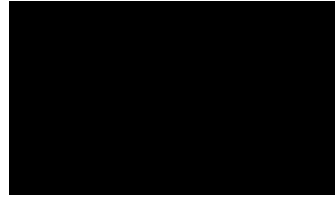
<b>UNITED STATES,</b>	)	UNITED STATES' OPPOSITION
	)	TO APPELLANT'S MOTION
<i>Appellee,</i>	)	FOR ENLARGEMENT OF TIME
	)	
v.	)	
	)	Before Panel No. 2
Master Sergeant (E-7)	)	
<b>DARYL A. THOMAS,</b>	)	No. ACM 22083
United States Air Force.	)	
<i>Appellant</i>	)	16 April 2025

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 300 days in length. Appellant's 10 month 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

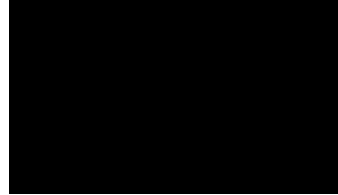
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4809

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 16 April 2025.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4809

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

UNITED STATES	)	No. ACM 22083
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Daryl A. THOMAS	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 11 May 2025, 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, prior filings in this case, case law, and this court’s Rules of Practice and Procedure.

Accordingly, it is by the court on this 16th day of May, 2025,

**ORDERED:**

Appellant’s Motion for Enlargement of Time (Eighth) is **GRANTED**. Appellant shall file any assignments of error not later than **24 June 2025**.

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



FOR THE COURT



CAROL K. JOYCE  
Clerk of the Court



From 8-10 August 2022, Appellant was tried by a special court-martial at Whiteman Air Force Base, Missouri. R. at 1, 528.<sup>1</sup> A military judge, consistent with Appellant's pleas, found Appellant guilty of two charges and five specifications of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ). R. at 16-17, 20, 92. A panel of officers sentenced Appellant to be reprimanded, to be reduced to the grade of E-5, to forfeit \$750.00 of his pay for twelve months, and to perform hard labor without confinement for two months. R. at 18, 525. The convening authority took no action on the findings or the sentence. Convening Authority Decision on Action – *United States v. MSgt Daryl A. Thomas*, dated 25 August 2022.

Without the verbatim transcript, the record of trial is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. Appellant is not currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned 37 cases; 19 cases are pending before this Court (15 cases are pending AOE's), and 18 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). Since Appellant's last request for an extension of time, undersigned counsel wrote and filed the Reply Brief for *United States v. Kim*, No. ACM 24007, and reviewed the record in *United States v. Brown*, No. ACM S32777, whereupon after being properly advised, that appellant elected to withdraw from appellate review. Undersigned counsel also reviewed the record in *United States v. Ziesche*, No. ACM 24022, and is drafting the AOE for this appellant.

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<sup>1</sup> Citations to the record are citations to the verbatim transcript.

Undersigned counsel intends to turn to Appellant's case after completion of the following three priorities, all which should be substantively completed by 21 May 2025:

1. *United States v. Marin Perez*, No. ACM S32771 – The Government filed its Answer Brief in this case at 11:25 PM ET on 9 May 2025. Undersigned counsel is currently completing the Reply Brief for this case, due to this Court by 16 May 2025.

2. *United States v. Baumgartner*, USCA Dkt. No. 25-0135/AF – Undersigned counsel is coordinating with civilian appellate defense counsel in this case to file a supplement to the petition for grant of review, due to the CAAF on 20 May 2025.

3. *United States v. Ziesche*, No. ACM 24022 – Undersigned counsel completed her review of this case and conferred with this appellant. She is currently writing the AOE, which is due to this Court by 24 May 2025.

While undersigned counsel is sitting second chair for oral argument in *United States v. Folts*, USCA Dkt. No. 25-0043/AF, on 20 May 2025 and attending the 2025 Continuing Legal Education and Training Program of the CAAF on 14 and 15 May 2025, neither of these obligations should delay further review of Appellant's case nor delay completion of the cases prioritized over his, as noted above.

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

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review

Appellant's case and advise him regarding potential errors.

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

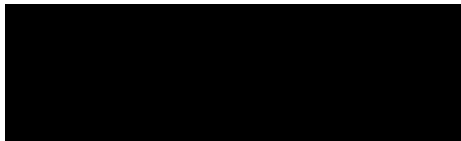
Respectfully submitted,



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Email: samantha.castanien.1@us.af.mil

## **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 Air Force Government Trial and Appellate Operations Division on 11 May 2025.



SAMANTHA M. CASTANIEN, Capt, USAF  
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Email: samantha.castanien.1@us.af.mil

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

<b>UNITED STATES,</b>	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 2
Master Sergeant (E-7)	)	
<b>DARYL A. THOMAS,</b>	)	No. ACM 22083
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	13 May 2025
	)	

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 330 days in length. Appellant’s nearly yearlong 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 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.



JG [REDACTED] USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

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



JG [Redacted] USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800



From 8-10 August 2022, Appellant was tried by a special court-martial at Whiteman Air Force Base, Missouri. R. at 1, 528.<sup>1</sup> A military judge, consistent with Appellant's pleas, found Appellant guilty of two charges and five specifications of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ). R. at 16-17, 20, 92. A panel of officers sentenced Appellant to be reprimanded, to be reduced to the grade of E-5, to forfeit \$750.00 of his pay for twelve months, and to perform hard labor without confinement for two months. R. at 18, 525. The convening authority took no action on the findings or the sentence. Convening Authority Decision on Action (Aug. 25, 2022).

Without the verbatim transcript, the record of trial is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. Appellant is not currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned 40 cases; 20 cases are pending before this Court (15 cases are pending AOE's), and 20 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). Since Appellant's last request for an extension of time, undersigned counsel filed the brief in *United States v. Ziesche*, No. ACM 24022, filed the reply brief in *United States v. Marin Perez*, No. ACM S32771, and drafted the primary issue for the supplement to the petition for grant of review in *United States v. Baumgartner*, USCA Dkt. No. 25-0135/AF. Undersigned counsel also sat second chair at oral argument in *United States v. Folts*, USCA Dkt. No. 25-0043/AF, on 20 May 2025, attended the 2025 Continuing Legal

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<sup>1</sup> Citations to the record are citations to the verbatim transcript.

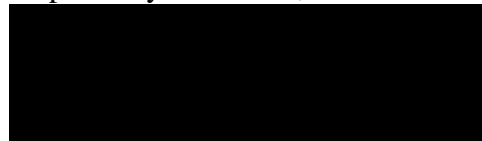
Education and Training Program of the CAAF on 14 and 15 May 2025, and reviewed the record of trial for *United States v. Watkins*, No. ACM 40639.<sup>2</sup> No case is prioritized over Appellant's.

Undersigned counsel has completed her review of Appellant's record and identified one possible assignment of error. However, additional time is needed to fully advise Appellant and ensure his right to personally file additional assignments of error under *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), is fulfilled. Appellant requests a fifteen-day extension to complete coordination, research, and drafting of his appeal.

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

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

Respectfully submitted,



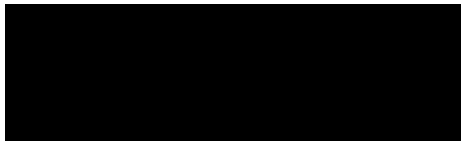
SAMANTHA M. CASTANIEN, Capt, USAF  
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Email: samantha.castanien.1@us.af.mil

---

<sup>2</sup> This case was prioritized over Appellant's due to an order by the Court. Order, *United States v. Watkins*, slip op. at 2, No. ACM 40639 (May 22, 2025) ("Any future request for an enlargement of time may be looked upon unfavorably absent exceptional circumstances."); see Order, *United States v. Evangelista*, slip op. at 2 n.3, No. ACM 40531 (Dec. 6, 2024) (detailing that "routine workload" is insufficient justification for "exception circumstances"). The appellant in *Watkins* elected to withdraw from appellate review after fully consulting with undersigned counsel.

## **CERTIFICATE OF FILING AND SERVICE**

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



SAMANTHA M. CASTANIEN, Capt, USAF  
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**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

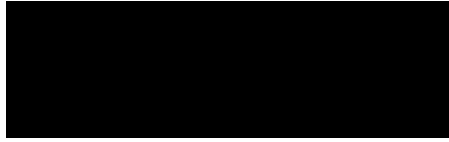
<b>UNITED STATES,</b>	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
	)	
v.	)	Before Panel No. 2
	)	
Master Sergeant (E-7)	)	No. ACM 22083
<b>DARYL A. THOMAS,</b>	)	
United States Air Force,	)	18 June 2025
<i>Appellant.</i>	)	

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 345 days in length. Appellant’s nearly year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 6 months combined for the United States and this Court to perform their separate statutory responsibilities.

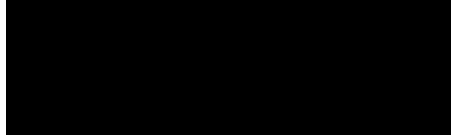
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 18 June 2025.



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

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

<b>UNITED STATES,</b>	)	<b>BRIEF ON BEHALF OF</b>
<i>Appellee,</i>	)	<b>APPELLANT</b>
	)	
v.	)	Before Panel No. 2
	)	
Master Sergeant (E-7)	)	No. ACM 22083
<b>DARYL A. THOMAS,</b>	)	
United States Air Force,	)	9 July 2025
<i>Appellant.</i>	)	

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

**ASSIGNMENT OF ERROR**

**WHETHER MASTER SERGEANT THOMAS’S TWO-RANK  
REDUCTION IS INAPPROPRIATELY SEVERE.**

**STATEMENT OF THE CASE**

From 8-10 August 2022, Master Sergeant (MSgt) Daryl A. Thomas was tried by a special court-martial at Whiteman Air Force Base, Missouri. R. at 1, 528.<sup>1</sup> A military judge, consistent with MSgt Thomas’s pleas, found him guilty of two charges and five specifications of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ).<sup>2</sup> R. at 16-17, 20, 92. A panel of officers sentenced MSgt Thomas to be reprimanded, to be reduced to the grade of E-5, to forfeit \$750.00 of his pay for twelve months, and to perform hard labor without confinement for two months. R. at 18, 525. The convening authority took no action on the findings or the sentence. Convening Authority Decision on Action (Aug. 25, 2022).

MSgt Thomas filed a notice of direct appeal with this Court pursuant to Article 66(b)(1)(A), UCMJ. Notice of Direct Appeal (Feb. 14, 2024). Article 65, UCMJ, review was completed in his

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<sup>1</sup> Citations to the record are citations to the verbatim transcript.

<sup>2</sup> All citations to the UCMJ are to version of code reprinted in the 2019 Manual for Courts-Martial.

case on November 2, 2022, but the Government mailed MSgt Thomas a notice telling him he could appeal his case on January 3, 2024. Entry of Judgment at 2 (Sep. 7, 2022); Notice of Right to Submit Direct Appeal to the Air Force Court of Criminal Appeals (Jan. 3, 2024). This Court docketed MSgt Thomas’s case on February 14, 2024. Notice of Docketing (Feb. 14, 2024).

### **STATEMENT OF FACTS**

“[D]uring my assignment at the Joint Support Communications Element [JCSE], Tampa, I deployed on several missions, and . . . experienced quite a bit of trauma. . . . I’ve lived with that for a while, and I continue to do so, now.” R. at 38. MSgt Thomas “hunt[ed] down bad guys” at his JCSE assignment; he had “dark missions” that “nobody [could] know about . . . as far as . . . the official records . . . .” R. at 456. What his records do reflect is “combat service” during 2016, which was during the time he was assigned to the JCSE. Pros. Ex. 1 at 1; Pros. Ex. 2 at 33. He also earned the Afghanistan Campaign Medal with one bronze star<sup>3</sup> and the Global War on Terror Expeditionary Medal.<sup>4</sup> Pros. Ex. 1 at 2.

The trauma from the JCSE assignment infected MSgt Thomas’s dreams: “He described, you know, one night just waking up or his son is in his room in his bed and, like, a black hole opens up underneath and his son is like just snatched down.” R. at 457. MSgt Thomas would wake

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<sup>3</sup> The Afghanistan Campaign Medal is earned either for participating in Operation ENDURING FREEDOM or being “engaged in actual combat against the enemy and under circumstances involving grave danger of death or serious bodily injury from enemy action, regardless of the time in Afghanistan.” Air Force’s Personnel Center, *Afghanistan Campaign Medal*, <https://www.afpc.af.mil/Fact-Sheets/Display/Article/421949/afghanistan-campaign-medal/> (last visited Jun. 18, 2025). A bronze star is authorized for campaigns, to include “Transition I” and “Transition II” spanning July 1, 2011, to “TBD.” *Id.*

<sup>4</sup> The Global War on Terror Expeditionary Medal cannot be “for the same act, achievement, or period of service” as the Afghanistan Campaign Medal. Air Force’s Personnel Center, *Afghanistan Campaign Medal*, <https://www.afpc.af.mil/Fact-Sheets/Display/Article/421949/afghanistan-campaign-medal/> (last visited Jun. 18, 2025).

up, running around frantic, looking for his son to make sure that he was still there. R. at 457-58. His son was his world. R. at 457.

MSgt Thomas testified under oath that due to his deployments, he sought treatment when he was in Tampa and was diagnosed with “PTSD,” post-traumatic stress disorder. R. at 38. “I believed that I was stronger than the diagnosis, that I could overcome it, with my mental health condition. And, but in reality, I was struggling with basic things like just going to Walmart with my family, and being in public places, like -- things of that nature.” R. at 38. MSgt Thomas thought that when he left JCSE, things would get better. R. at 38. To his dismay, they did not. R. at 38.

MSgt Thomas sought coping mechanisms for his PTSD. R. at 38. He bought supplements, multi-vitamins, and unmarked pills. R. at 39. Those pills, MSgt Thomas would come to find out, contained methamphetamines. “I know it’s not an excuse. And I, you know, the pills were unmarked, and I should have used better judgment.” R. at 39. MSgt Thomas acknowledged that, as a twenty-two-year Master Sergeant, he knew better. R. at 39. But he was in pain. R. at 39. And the routine of supplements, to include the pills, helped to normalize him, to get him back to who he was. R. at 39-40.

Methamphetamines can be prescribed to people in pill form as “Desoxyn.” R. at 358-59. Individuals who take methamphetamines without a prescription are “recreational” users—but that is simply because they do not have a prescription. R. at 370. Methamphetamine medication can treat “hyperactivity, weight loss and . . . narcolepsy.” R. at 359. Some of the effects of methamphetamine are increased blood pressure and increased focus and attentiveness. R. at 361. Methamphetamine also fights fatigue and is a stimulant. R. at 361. Oral ingestion of methamphetamine does not create a euphoric “rush,” but it will create “a longer lasting period of excitement” or “attentiveness.” R. at 366. Furthermore, the effects of the pill form of methamphetamine are nothing like what shows like “Breaking Bad” depict. R. at 359-61. Rather,

Desoxyn is prescribed like Adderall for Attention Deficit Disorder. R. at 359.

MSgt Thomas admitted, under oath, he took methamphetamine in pill form orally in April 2021 and again from October 2021 to December 2021. *See* R. at 37-87 (detailing his guilty plea inquiry). Some of the unmarked pills he took during that timeframe were to help him sleep, while others helped him focus. R. at 44, 46, 54, 63. A stranger told him the pills would make him feel better—and they did. R. at 45. While he did not know the pills specifically contained methamphetamines, he deliberately avoided finding out what was in the pills. R. at 40, 46, 48. He stopped taking the pills after his second positive urinalysis test, when he realized something in his supplement regimen was causing him to test positive. R. at 53, 62, 67. However, near October, he still had some pills left over and he was in a lot of pain. R. at 62. He took the pills again. R. at 62-72. Later, sometime in November and in December, he took the pills again because he was “in a dark place,” “they made [him] feel better,” and helped him “cope with [his] pain.” R. at 73-74, 81-82. He apologized under oath for using the pills. *E.g.*, R. at 74, 82.

During his unsworn statement to the members, MSgt Thomas told them: “I wish I could go back and change my behaviors and cancel my decisions, but I can’t do that. I wish I had just been fully honest from the get go with myself, most importantly.” R. at 461. MSgt Thomas took responsibility for his actions and pled guilty. R. at 461; *see* R. at 37-87 (detailing his guilty plea inquiry).

MSgt Thomas had an excellent career up until mid-April 2021. Pros Exs. 1, 2; Def. Exs. A, B, C, D, E. When he first used the pills, he was going through the Transition Assistance Program, the program servicemembers are required to undergo to separate or retire. R. at 417. MSgt Thomas had not hit the retirement button yet, but at twenty-two years of service, he was retirement eligible. R. at 418. During his unsworn, he asked the members for a simple request: “Please allow me to fight for my career and be a father to my son and allow me to show you that

I can be the man that these people have sat here and told you who they think that I am . . . .” R. at 462. He knew his career was coming to an end one way or another. R. at 462. But a concern lurked in the background of this request—High Year Tenure. With already twenty-two years of service, any rank reduction would have forced MSgt Thomas to separate through High Year Tenure. R. at 517. This collateral consequence from sentencing was not something for the members to consider. R. at 521. But the members were advised that a punitive discharge would preclude the possibility of retirement and the benefits that flow from retirement. R. at 480.

The Government never asked for a reduction in rank, instead focusing entirely on a bad-conduct discharge. R. at 488-495. The trial defense counsel told the members to take money from MSgt Thomas, to restrict him, to give him hard labor—but not to give him confinement or a bad-conduct discharge. R. at 500-01. The members followed closely to trial defense counsel’s recommendation—but they also reduced MSgt Thomas in rank by two grades, something neither party recommended. R. at 525.

## **ARGUMENT**

### **MASTER SERGEANT THOMAS’S TWO-RANK REDUCTION IS INAPPROPRIATELY SEVERE CONSIDERING THE MITIGATING AND EXTENUATING EVIDENCE.**

#### *Standard of Review*

Sentence appropriateness is reviewed de novo. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).

#### *Law*

Article 66(d)(1), UCMJ, provides that this Court may affirm only “the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved.” The words “such part or such amount of the

sentence” require this Court to review the appropriateness of *each* punishment in the adjudged sentence. *United States v. Jessie*, 79 M.J. 437, 440 (C.A.A.F. 2020) (explaining that “a CCA may not affirm any portion of a sentence that it finds excessive”); *United States v. Nerad*, 69 M.J. 138, 142 (C.A.A.F. 2010) (explaining that “a CCA may approve only that part of a sentence that it finds ‘should be approved’”).

This Court has “broad discretion to determine whether a sentence should be approved, a power that has no direct parallel in the federal civilian sector.” *United States v. Behunin*, 83 M.J. 158, 161 (C.A.A.F. 2023). And, while this Court does not grant relief as a matter of clemency, *United States v. Sauk*, 74 M.J. 594, 606 (A.F. Ct. Crim. App. 2015) (en banc), it is required to “do justice.” *Nerad*, 69 M.J. at 146. In assessing sentence appropriateness, this Court considers “the particular appellant, the nature and seriousness of the offense, the appellant’s record of service, and all matters contained in the record of trial.” *Id.* (citation modified). This Court also takes into consideration “uniformity and evenhandedness of sentencing decisions.” *United States v. Sothen*, 54 M.J. 294, 296 (C.A.A.F. 2001).

### *Analysis*

MSgt Thomas served twenty-two years in the United States Air Force and had a stellar career. Pros Exs. 1, 2; Def. Exs. A, B, C, D, E. As a father, he taught his son the importance of taking responsibility for one’s actions. R. at 461-62. And MSgt Thomas exemplified that value at his court-martial when he took responsibility for taking pills containing methamphetamine. His court-martial was after eight months of *not* testing positive for methamphetamines. Entry of Judgment; Charge Sheet (Jan. 20, 2022). Had he tested positive again between December and his court-martial, the Government would have responded as it did before, such as with referring an additional charge. *See id.* (showing an additional charge was preferred after another positive test occurred in October 2021). However, no additional specifications, no administrative paperwork,

no witnesses, nothing, showed that MSgt Thomas continued to use methamphetamines after 2021. Rather, from December to August, MSgt Thomas began a journey of recovery and accepting responsibility.

MSgt Thomas was struggling with PTSD from his duties as a military member. The record does not—and likely could not—reflect the specifics of his responsibilities while at JCSE to include what he saw or what he had to do for his country. But the brief mention of the nightmare MSgt Thomas had paints a picture—the ground opening up and swallowing his son whole, erasing him from earth. While suffering through dreams of his son dying is not an excuse, the circumstances explain why MSgt Thomas continued to take pills that made him alert. Methamphetamines combat narcolepsy. To continue to perform as he did under the circumstances is admirable.

Notably, this is not a service member shooting-up or smoking meth at a party just to get high. MSgt Thomas took unmarked pills that contained a stimulant in April when he did not know for certain the pills contained an illegal substance. But he did so to help him continue to be the Air Force member he always was. He took the pills again from October to December because he was suffering and he did not want to give up on the life he had in the military. He had not submitted a retirement request and even at his court-martial, he asked the members to let him fight for his career. But a two-rank reduction did not allow him to do that because of High Year Tenure. While this Court and the members cannot consider such administrative collateral consequences, any reduction was inappropriately severe because of his circumstances, his service record, and the nature of the offense.

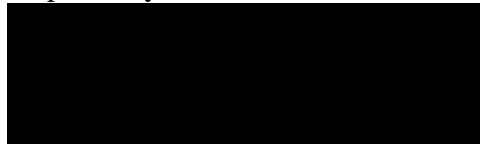
Pleading guilty under these circumstances is critical. A guilty plea is a matter in mitigation that *must* be considered. R. at 482. A guilty plea is also the first step in rehabilitation. *Id.* MSgt Thomas stopped taking the pills for eight months and he continued to perform in the unit. MSgt

Thomas was having nightmares about his child disappearing into the ground—as a result of the Air Force missions he was required to perform. For these missions, and many more, he was rewarded with medals and accolades. But there was a hidden cost for which he sought help in Tampa. When he moved to his new duty location, the coping mechanisms he learned failed him and he abused prescription medication for four months in order to continue serving.

Altogether, balancing this particular individual, his service record, and all the matters contained in the record against this particular crime and its circumstances does not warrant a reduction in rank to E-5. *No one* recommended a rank reduction. And a two-rank reduction is not appropriate under all the circumstances.

**WHEREFORE**, Appellant requests that this Court disaffirm the portion of the sentence reducing MSgt Thomas to the grade of E-5.

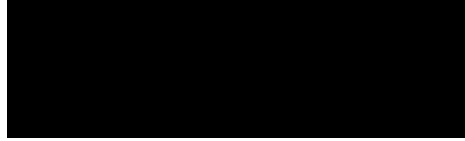
Respectfully submitted,



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## **CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 9 July 2025.



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

UNITED STATES,	)	BRIEF ON BEHALF
<i>Appellee,</i>	)	OF THE UNITED STATES
	)	
	)	Before Panel No. 2
v.	)	
	)	No. ACM 22083
	)	
Master Sergeant (E-7)	)	8 August 2025
<b>DARYL A. THOMAS, USAF</b>	)	
<i>Appellant.</i>	)	

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

**ASSIGNMENT OF ERROR**

**WHETHER MASTER SERGEANT THOMAS’S  
REDUCTION IS INAPPROPRIATELY SEVERE.**

**STATEMENT OF THE CASE**

The Government largely concurs with Appellant’s statement of the case. Following his conviction of two charges and five specifications of wrongful use of a controlled substance in violation of Article 112a, UCMJ, Appellant asked the convening authority to waive the adjudged two grade reduction in rank. (Submission of Matters, 10 August 2022, ROT Vol. 5). The convening authority declined to take any action on either the findings or the sentence. (Convening Authority Decision on Action, 25 August 2022, ROT Vol. 5). Subsequently, on 2 November 2022, the case, along with the reduction in rank, was certified under Article 65(d), UCMJ. (Entry of Judgment at 2). Appellant now petitions this Court to grant relief from the reduction in rank—an action the convening authority refused to take. (App. Br. at 8).

Notably, Appellant’s court-martial became final pursuant to Article 57(c)(1), UCMJ, prior to the amendments to Article 66, UCMJ, which he cites as the basis for this Court’s jurisdiction. *See* Pub. L. No. 117-263, § 544(b)(1)(A), 136 Stat. 2395, 2582 (23 Dec. 2022).

Although the United States maintains that this Court lacks jurisdiction to review Appellant’s case, it acknowledges this Court’s contrary published decision in United States v. Vanzant, 84 M.J. 671 (A.F. Ct. Crim. App. 28 May 2024). Nonetheless, the United States continues to assert its position on jurisdiction in anticipation of any further litigation at a higher court.

### **STATEMENT OF FACTS**

Appellant began ingesting unmarked pills sold in plastic baggies, from what he described as a “shady” source, after 22 years of service in the Air Force. (R. at 38–40). Appellant conceded he should have known better that the pills likely contained an illicit substances. (R. at 39). Yet he deliberately avoided learning what the pills were made of. (R. at 40–42). The pills made Appellant more focused, gave him more energy, sometimes they helped him sleep, and sometimes they had no effect. (Id.)

Rather than exercising caution or responsibility, Appellant made these pills a part of his daily supplement regimen. (R. at 44). As a result, Appellant tested positive for methamphetamines in April 2021. (Id.) Still, he continued to use the pills daily and tested positive again in May 2021. (R. at 53). Appellant told his leadership he would stop taking the pills, and when he did stop taking them, he had an intervening “clean” drug test. (R. at 67). This solidified Appellant’s knowledge that the pills contained contraband, more specifically, methamphetamine. (Id.) Five months after Appellant learned the pills contained methamphetamine, in October 2021, he was still using them—and failed a third drug test. (R. at 66–68). Appellant, now completely aware of the drugs he was abusing, and the legal and career ramifications he was facing, pending a court-martial, used the methamphetamine pills *again* in November to December 2021. (R. at 73).

The panel members heard Appellant’s statements about his drug abuse. (R. at 399, playing of the *Care Inquiry* to the panel). The panel heard Appellant’s explanation for using methamphetamine, about his bad dreams, and his desire to “feel better”. (Id.) They heard all the mitigating evidence about his career and history in the Air Force, and they sentenced him accordingly to a reprimand, a reduction in grade to E-5, to forfeit \$750.00 of pay every month for a year and to perform hard labor without confinement for two months. (R. at 18, 525.)

## **ARGUMENT**

### *Standard of Review*

The standard of review for sentence appropriateness is a de novo review. United States v. Lane, 64 M.J. 1, 2 (C.A.A.F. 2006). The Court may only affirm the sentence if it finds the sentence to be “correct in law and fact and determines, on the basis of the entire record, [it] should be approved.” Article 66(d)(1), UCMJ.

### *Law and Analysis*

Sentence appropriateness is assessed “by considering the particular appellant, the nature and seriousness of the offense, the appellant’s record of service, and all matters contained in the record of trial.” (United States v. Anderson, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009). Although this Court has great discretion to determine whether a sentence is appropriate, the Court lacks any authority grant mercy. United States v. Nerad, 69 M.J. 138, 146 (C.A.A.F. 2010) (citation omitted). Unlike the act of bestowing mercy through clemency, which was delegated to other channels by Congress, CCAs are entrusted with the task of determining sentence appropriateness, thereby ensuring the accused gets the punishment he deserves. United States v. Healy, 26 M.J. 394, 395-96 (C.M.A. 1988).

### *Nature and Seriousness of the Offense*

Appellant, a Master Sergeant with decades of experience, repeatedly abused methamphetamine over several months. This was not a mistake on Appellant's part; it was a deliberate choice. Appellant initially sought out "supplements" in the form of pills from an un reputable source and intentionally remained ignorant of their contents. Appellant's willful blindness was short-lived. Appellant tested positive for methamphetamine on two occasions (R. at 67). After these two positive urinalysis results, Appellant possessed full knowledge that he had been using methamphetamine as part of daily supplement regimen. (R. at 67). Despite this, Appellant continued to abuse methamphetamine and tested positive again in October 2021. (R. at 68). Then faced with a court-martial, Appellant *again* abused methamphetamine by taking the pills in November or December 2021. (R. at 82). Appellant's sentence, including the reduction in rank is appropriate for this behavior, especially considering Appellant continued to abuse drugs after multiple positive drug screens.

### *Sentencing Evidence*

The sentencing evidence presented to the panel included both aggravating and mitigating factors. The most significant aggravating factor was the appellant's continued use of the unmarked pills after learning they contained methamphetamine. In contrast, the appellant's sentencing case introduced several mitigating considerations, including his diagnosis of post-traumatic stress disorder, the associated nightmares, and the stress he experienced. (R. at 38). Additional mitigating factors included the appellant's meritorious military career, his guilty plea, and his acceptance of responsibility for his conduct. (R. at 38-39). The panel heard those mitigating factors, and Appellant's explanation for his drug use, as presented during his *Care*

inquiry. In consideration of the mitigating evidence, the panel issued a fair sentence, well below the maximums they were permitted to consider.

Appellant now argues that his drug use deserves additional consideration from this Court. Appellant claims his method of drug use—using methamphetamine to “cope” rather than engaging in more stereotypical forms of abuse like “shooting-up or smoking meth at a party”—should further mitigate his sentence. (App. Br. at 6). Appellant also contends that he should be rewarded because he remained drug-free for a period prior to his court-martial. (App. Br. at 6.) First, the panel already considered this evidence and, in response, granted Appellant a fair sentence. Second, there is no evidence in the record confirming whether Appellant used illegal drugs after December 2021. Regardless, abstaining from methamphetamine use is not a mitigating factor, it is the expected baseline. Ceasing use after four positive urinalysis results and the referral of charges does not warrant additional relief from this Court.

Appellant’s brief offers no other factual or legal basis for this Court to grant relief. Appellant’s assertion that trial counsel did not recommend a reduction in rank is irrelevant. (App. Br. at 8). The military judge instructed the panel on the consequences they may consider, including the consequences of a bad conduct discharge. (R. at 479-481). While trial counsel did not ask for the harshest sentence, they did argue for a bad conduct discharge and 30 days of confinement. (R. at 488). The panel weighed the evidence and decided on a lesser punishment; reprimand, a reduction in grade to E-5, to forfeit \$750.00 of pay for a year and to perform hard labor without confinement for two months. Appellant should not be entitled to additional relief because the panel adopted a sentence with less severe consequences than the sentence trial counsel argued for.

*Collateral Consequences*

The panel was properly instructed regarding the retirement ramifications that could be considered as part of Appellant's sentence. (R. at 520). Appellant contends that the imposed sentence had collateral consequences, specifically forcing a High Year Tenure retirement, preventing him from continuing his service. (App. Br. at 5). Appellant correctly concedes that neither the panel nor this Court, can consider such consequences. (Id.) Appellant's plea regarding the consequence of a High Year Tenure, and a forced retirement, is a request for mercy. That is outside the purview of this court. This Court should not grant any relief on the two-grade reduction based on this consequence of Appellant's conviction.

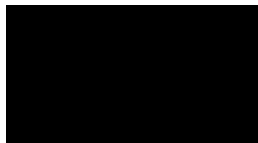
This Court should affirm the sentence in this case.

**CONCLUSION**

**WHEREFORE**, the United States respectfully requests that this Honorable Court affirm the sentence in this case.

**/s/Devana Unis**

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FOR

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**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 8 August 2025.

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