

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (FIRST)
)	
v.	)	Before Panel No. 1
)	
Captain (O-3),	)	No. ACM 40418
RUSTY C. THOMAS,)	
United States Air Force,	)	7 April 2023
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **16 June 2023**. The record of trial was docketed with this Court on 16 February 2023. From the date of docketing to the present date, 50 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,



DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 7 April 2023.

Respectfully submitted,



DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force



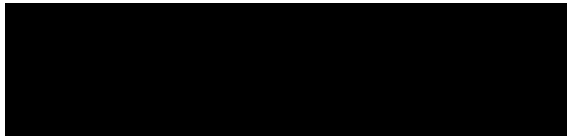
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Captain (O-3)	)	ACM 40418
RUSTY C. 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.

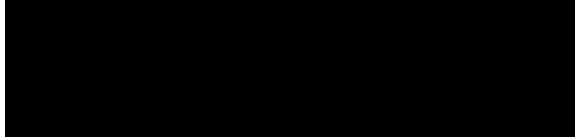


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 10 April 2023.



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



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (SECOND)
)	
v.	)	Before Panel No. 1
)	
Captain (O-3),	)	No. ACM 40418
RUSTY C. THOMAS,)	
United States Air Force,	)	9 June 2023
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his second enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **16 July 2023**. The record of trial was docketed with this Court on 16 February 2023. From the date of docketing to the present date, 113 days have elapsed. On the date requested, 150 days will have elapsed.

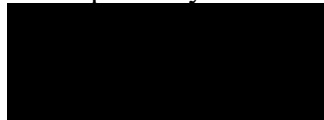
On 4 November 2021, 28 February 2022-4 March 2022, 15 August 2022, and 19 August 2022, Appellant was tried by a general court-martial at Kadena Air Base, Japan and Joint Base Lewis-McChord, Washington. Consistent with his pleas, a military judge convicted Appellant of one charge and two specifications of wrongful possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 651. A charge and two specifications of attempted viewing of child pornography, in violation of Article 80, UCMJ, were withdrawn and dismissed pursuant to a plea agreement. R. at 745. The military judge sentenced Appellant to a total of 18 months confinement and a dismissal. *Id.*

The record of trial consists of 7 volumes. The transcript is 746 pages. There are four Prosecution Exhibits, 14 Defense Exhibits, 50 Appellate Exhibits, and no Court Exhibits. Appellant is currently in confinement.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,



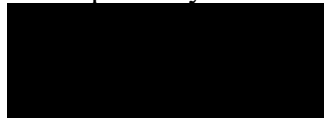
DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 9 June 2023.

Respectfully submitted,



DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force



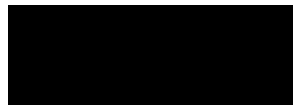
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Captain (O-3)	)	ACM 40418
RUSTY C. 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.



OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 9 June 2023.



OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (THIRD)
)	
v.	)	Before Panel No. 1
)	
Captain (O-3),	)	No. ACM 40418
RUSTY C. THOMAS,)	
United States Air Force,	)	7 July 2023
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his third enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **15 August 2023**. The record of trial was docketed with this Court on 16 February 2023. From the date of docketing to the present date, 141 days have elapsed. On the date requested, 180 days will have elapsed.

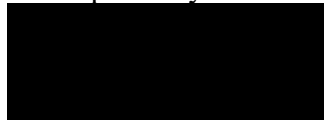
On 4 November 2021, 28 February 2022 - 4 March 2022, 15 August 2022, and 19 August 2022, Appellant was tried by a general court-martial at Kadena Air Base, Japan, and Joint Base Lewis-McChord, Washington. Consistent with his pleas, a military judge convicted Appellant of one charge and two specifications of wrongful possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 651. A charge and two specifications of attempted viewing of child pornography, in violation of Article 80, UCMJ, were withdrawn and dismissed pursuant to a plea agreement. R. at 745. The military judge sentenced Appellant to a total of 18 months confinement and a dismissal. *Id.*

The record of trial consists of 7 volumes. The transcript is 746 pages. There are four Prosecution Exhibits, 14 Defense Exhibits, 50 Appellate Exhibits, and no Court Exhibits. Appellant is currently in confinement.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,



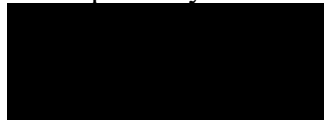
DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 7 July 2023.

Respectfully submitted,



DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force



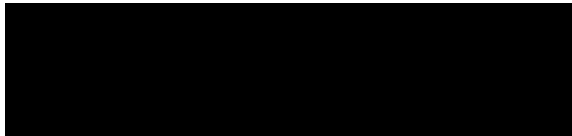
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Captain (O-3)	)	ACM 40418
RUSTY C. 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.

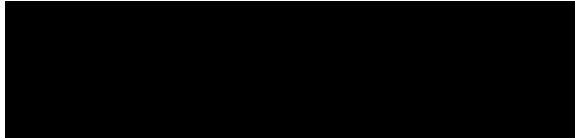


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



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 7 July 2023.



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



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF TIME (FOURTH)
<i>Appellee</i>)	
)	
v.	)	Before Panel No. 1
)	
Captain (O-3)	)	No. ACM 40418
RUSTY C. THOMAS)	
United States Air Force	)	8 August 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **14 September 2023**. The record of trial was docketed with this Court on 16 February 2023. From the date of docketing to the present date, 173 days have elapsed. On the date requested, more than 210 days will have elapsed.¹

On 4 November 2021, 28 February 2022 - 4 March 2022, and 15 August 2022 - 19 August 2022, Appellant was tried by a general court-martial at Kadena Air Base, Japan, and Joint Base Lewis-McChord, Washington. R. at 1, 95, and 512. Consistent with his pleas, a military judge convicted Appellant of one charge and two specifications of wrongful possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 651. A charge and two specifications of attempted viewing of child pornography, in violation of Article 80, UCMJ, were withdrawn and dismissed, R. at 745, pursuant to the plea agreement. Appellate

¹ In a previous filing submitted on the same date, the motion indicated “180 days will have elapsed.” This motion corrects that number to “210.” This motion is intended to substitute in that motion’s place. The earlier filing is hereby withdrawn.

Exhibit 49 at 2. On 19 August 2022, the military judge sentenced Appellant to a total of 18 months confinement and a dismissal. R. at 745. Pursuant to the plea agreement, the convening authority deferred and waived automatic forfeitures until the date that the military judge signs the Entry of Judgement. Record of Trial (ROT), Vol. 1, Entry of Judgement at 3; Appellate Exhibit 49 at 2. The convening authority took no other action. ROT, Vol. 1, Entry of Judgement at 3.

The record of trial consists of six volumes. The transcript is 746 pages. There are six prosecution exhibits, 16 defense exhibits, 50 appellate exhibits, and no court exhibits. Appellant is currently in confinement. Undersigned counsel has not reviewed the record of trial.

Counsel is currently assigned 14 cases; 9 cases are pending initial AOE's before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Three cases before this Court have priority over this case:

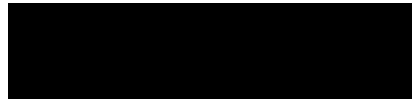
- 1) *United States v. Stelly*, ACM 40425 – The record of trial is four volumes consisting of three prosecution exhibits, five defense exhibits, and 10 appellate exhibits; the transcript is 109 pages. Undersigned counsel is presently reviewing the record of trial.
- 2) *United States v. Daughma*, ACM 40385 – The record of trial is nine volumes consisting of 18 prosecution exhibits, five defense exhibits, 64 appellate exhibits, and one court exhibit; the transcript is 841 pages.
- 3) *United States v. Logan*, ACM 40407 – The record of trial is seven volumes, consisting of seven prosecution exhibits, 12 defense exhibits, 26 appellate exhibits, and three court exhibits; the transcript is 657 pages.


In addition, undersigned counsel, who was previously assigned as an Area Defense Counsel, is detailed to two general courts-martial. These trials are scheduled for the weeks of 14 August 2023 (*United States v. Maj Anthony R. Lavy*) and 28 August 2023 (*United States v. Jaime R. Quinones-Reyes*). Both trials will take priority over the instant case. Finally, undersigned counsel was only recently assigned to the Appellate Defense Division, arriving on station on 26 July 2023.

Appellant was advised of his right to a timely appeal. 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 Honorable Court grant the requested enlargement of time.

Respectfully submitted,

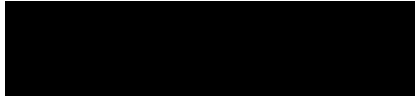


TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force


CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 8 August 2023.

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force



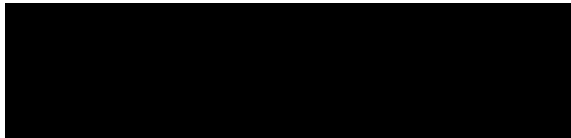
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Captain (O-3)	)	ACM 40418
RUSTY C. 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.

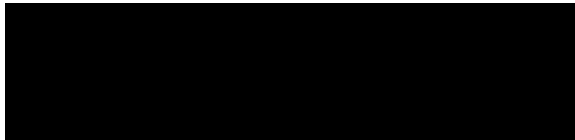


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 9 August 2023.



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



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

UNITED STATES	)	No. ACM 40418
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Rusty C. THOMAS)	
Captain (O-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 2 February 2024 counsel for Appellant submitted a Motion for Enlargement of Time (Tenth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 7th day of February, 2024,

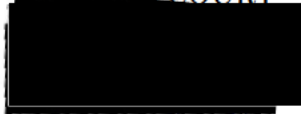
ORDERED:

Appellant's Motion for Enlargement of Time (Tenth) is **GRANTED**. Appellant shall file any assignments of error not later than **12 March 2024**.

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



FOR THE COURT



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR WITHDRAWAL OF
<i>Appellee,</i>	)	APPELLATE DEFENSE COUNSEL
)	
v.	)	Before Panel No. 1
)	
Captain (O-3),	)	No. ACM 40418
RUSTY C. THOMAS,)	
United States Air Force,	)	22 August 2023
<i>Appellant.</i>)	

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

Pursuant to Rules 12(b), 12.4, and 23.3(h) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel respectfully requests to withdraw as counsel in the above-captioned case. Captain Trevor Ward has been detailed substitute counsel in undersigned counsel’s stead and filed a pleading on Appellant’s behalf on 8 August 2023. A thorough turnover of the record between counsel has been completed. The undersigned counsel will be departing from the Air Force Appellate Defense Division and beginning a new assignment on 5 September 2023.

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

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

Respectfully submitted,



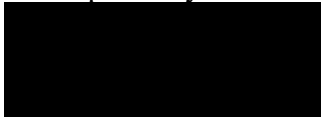
DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 22 August 2023.

Respectfully submitted,



DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee</i>	)	TIME (FIFTH)
)	
v.	)	Before Panel No. 1
)	
Captain (O-3)	)	No. ACM 40418
RUSTY C. THOMAS)	
United States Air Force	)	6 September 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **14 October 2023**. The record of trial was docketed with this Court on 16 February 2023. From the date of docketing to the present date, 202 days have elapsed. On the date requested, 240 days will have elapsed.

On 4 November 2021, 28 February 2022 - 4 March 2022, and 15 August 2022 - 19 August 2022, Appellant was tried by a general court-martial at Kadena Air Base, Japan, and Joint Base Lewis-McChord, Washington. R. at 1, 95, and 512. Consistent with his pleas, a military judge convicted Appellant of one charge and two specifications of wrongful possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 651. A charge and two specifications of attempted viewing of child pornography, in violation of Article 80, UCMJ, were withdrawn and dismissed, R. at 745, pursuant to the plea agreement. Appellate Exhibit 49 at 2. On 19 August 2022, the military judge sentenced Appellant to a total of 18 months confinement and a dismissal. R. at 745. Pursuant to the plea agreement, the convening authority deferred and waived automatic forfeitures until the date that the military judge signs the Entry of

Judgement. Record of Trial (ROT), Vol. 1, Entry of Judgement at 3; Appellate Exhibit 49 at 2. The convening authority took no other action. ROT, Vol. 1, Entry of Judgement at 3.

The record of trial consists of six volumes. The transcript is 746 pages. There are six prosecution exhibits, 16 defense exhibits, 50 appellate exhibits, and no court exhibits. Appellant is currently in confinement. Undersigned counsel has not reviewed the record of trial.

Counsel is currently assigned 14 cases; 9 cases are pending initial AOE's before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

One case before the Court of Appeals for the Armed Forces has priority over this case: *United States v. Smith*. On 6 September 2023, C.A.A.F. granted on one issue. In accordance with C.A.A.F.'s order, Appellant's initial brief is due on 6 October 2023. In addition, four cases before this Court have priority over the instant case:

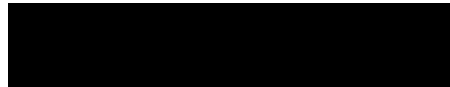
- 1) *United States v. Knodel*, 40018 – The record of trial is seven volumes consisting of 18 prosecution exhibits, 62 defense exhibits, 24 appellate exhibits, and one court exhibit; the transcript is 727 pages. The *Dubay* record of trial is an additional seven volumes consisting of 48 appellate exhibits; the transcript is 1,475 pages. Undersigned counsel is reviewing the *Dubay* transcript.
- 2) *United States v. Stelly*, ACM 40425 – The record of trial is four volumes consisting of three prosecution exhibits, five defense exhibits, and 10 appellate exhibits; the transcript is 109 pages. Undersigned counsel is presently reviewing the record of trial.

- 3) *United States v. Daughma*, ACM 40385 – The record of trial is nine volumes consisting of 18 prosecution exhibits, five defense exhibits, 64 appellate exhibits, and one court exhibit; the transcript is 841 pages.
- 4) *United States v. Logan*, ACM 40407 – The record of trial is seven volumes, consisting of seven prosecution exhibits, 12 defense exhibits, 26 appellate exhibits, and three court exhibits; the transcript is 657 pages.

Appellant was advised of his right to a timely appeal. 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 Honorable Court grant the requested enlargement of time.

Respectfully submitted,



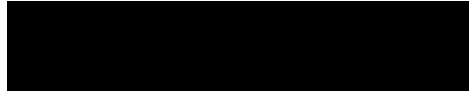
TREVOR N. WARD, Capt, USAF
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United States Air Force



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Appellate Defense Division
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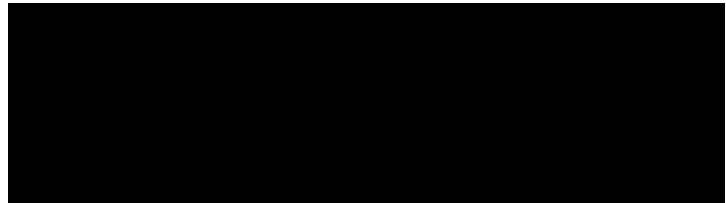
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Captain (O-3)	)	ACM 40418
RUSTY C. 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.

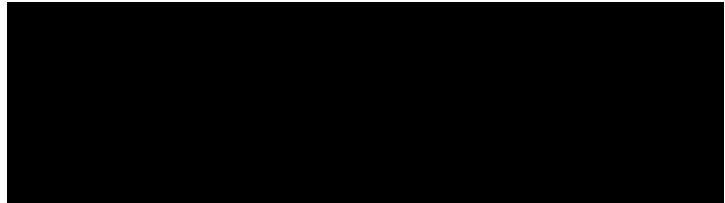


PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



CERTIFICATE OF FILING AND SERVICE

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PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF TIME (SIXTH)
<i>Appellee</i>)	
)	
v.	)	Before Panel No. 1
)	
Captain (O-3)	)	No. ACM 40418
RUSTY C. THOMAS)	
United States Air Force	)	5 October 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **13 November 2023**. The record of trial was docketed with this Court on 16 February 2023. From the date of docketing to the present date, 231 days have elapsed. On the date requested, 270 days will have elapsed.

On 4 November 2021, 28 February 2022 - 4 March 2022, and 15 August 2022 - 19 August 2022, Appellant was tried by a general court-martial at Kadena Air Base, Japan, and Joint Base Lewis-McChord, Washington. R. at 1, 95, and 512. Consistent with his pleas, a military judge convicted Appellant of one charge and two specifications of wrongful possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 651. A charge and two specifications of attempted viewing of child pornography, in violation of Article 80, UCMJ, were withdrawn and dismissed, R. at 745, pursuant to the plea agreement. Appellate Exhibit 49 at 2. On 19 August 2022, the military judge sentenced Appellant to a total of 18 months confinement and a dismissal. R. at 745. Pursuant to the plea agreement, the convening authority deferred and waived automatic forfeitures until the date that the military judge signs the Entry of

Judgement. Record of Trial (ROT), Vol. 1, Entry of Judgement at 3; Appellate Exhibit 49 at 2. The convening authority took no other action. ROT, Vol. 1, Entry of Judgement at 3.

The record of trial consists of six volumes. The transcript is 746 pages. There are six prosecution exhibits, 16 defense exhibits, 50 appellate exhibits, and no court exhibits. Appellant is currently in confinement. Undersigned counsel has not reviewed the record of trial.

Counsel is currently assigned 14 cases; 9 cases are pending initial AOE's before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

One case before the Court of Appeals for the Armed Forces has priority over this case: *United States v. Smith*. On 6 September 2023, C.A.A.F. granted on one issue. In accordance with C.A.A.F.'s order, Appellant's initial brief is due on 6 October 2023. Undersigned counsel has been preparing this initial brief, which will be filed with C.A.A.F. on 5 October 2023. In addition, four cases before this Court have priority over the instant case:



- 1) *United States v. Knodel*, 40018 – The record of trial is seven volumes consisting of 18 prosecution exhibits, 62 defense exhibits, 24 appellate exhibits, and one court exhibit; the transcript is 727 pages. The *Dubay* record of trial is an additional seven volumes consisting of 48 appellate exhibits; the transcript is 1,475 pages. Undersigned counsel has been working on supplemental briefing for this matter, which will be submitted to this Court on 5 October 2023.

- 2) *United States v. Stelly*, ACM 40425 – The record of trial is four volumes consisting of three prosecution exhibits, five defense exhibits, and 10 appellate exhibits; the transcript is 109 pages. Undersigned counsel is presently reviewing the record of trial.
- 3) *United States v. Daughma*, ACM 40385 – The record of trial is nine volumes consisting of 18 prosecution exhibits, five defense exhibits, 64 appellate exhibits, and one court exhibit; the transcript is 841 pages.
- 4) *United States v. Logan*, ACM 40407 – The record of trial is seven volumes, consisting of seven prosecution exhibits, 12 defense exhibits, 26 appellate exhibits, and three court exhibits; the transcript is 657 pages.

Appellant was advised of his right to a timely appeal. 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 Honorable Court grant the requested enlargement of time for good cause shown.



Respectfully submitted,


TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force


CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 5 October 2023.

Respectfully submitted,


TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force


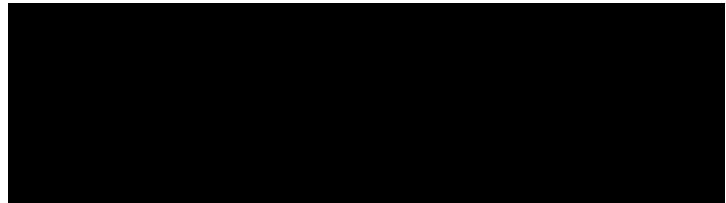
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Captain (O-3)	)	ACM 40418
RUSTY C. 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.

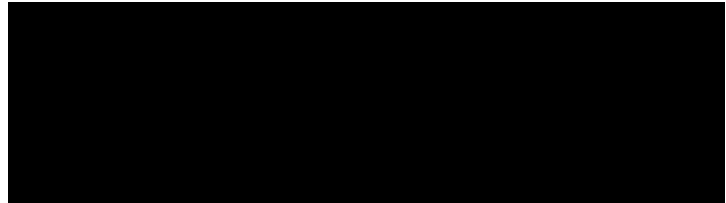


PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 5 October 2023.



PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee</i>	)	TIME (SEVENTH)
)	
v.	)	Before Panel No. 1
)	
Captain (O-3)	)	No. ACM 40418
RUSTY C. THOMAS)	
United States Air Force	)	6 November 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **13 December 2023**. The record of trial was docketed with this Court on 16 February 2023. From the date of docketing to the present date, 263 days have elapsed. On the date requested, 300 days will have elapsed.

On 4 November 2021, 28 February 2022 - 4 March 2022, and 15 August 2022 - 19 August 2022, Appellant was tried by a general court-martial at Kadena Air Base, Japan, and Joint Base Lewis-McChord, Washington. R. at 1, 95, and 512. Consistent with his pleas, a military judge convicted Appellant of one charge and two specifications of wrongful possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 651. A charge and two specifications of attempted viewing of child pornography, in violation of Article 80, UCMJ, were withdrawn and dismissed, R. at 745, pursuant to the plea agreement. Appellate Exhibit 49 at 2. On 19 August 2022, the military judge sentenced Appellant to a total of 18 months confinement and a dismissal. R. at 745. Pursuant to the plea agreement, the convening authority deferred and waived automatic forfeitures until the date that the military judge signs the Entry of

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The record of trial consists of six volumes. The transcript is 746 pages. There are six prosecution exhibits, 16 defense exhibits, 50 appellate exhibits, and no court exhibits. Appellant is currently in confinement. Undersigned counsel has not reviewed the record of trial.

Counsel is currently assigned 18 cases; 13 cases are pending initial AOE's before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

Two cases before the Court of Appeals for the Armed Forces have priority over this case: (1) *United States v. Smith* and (2) *United States v. Robles*. On 3 November 2023, the Government filed its answer to Appellant's brief in *United States v. Smith*. Undersigned counsel is currently working to draft the reply to that answer, which is due on 13 November 2023. Undersigned counsel is also drafting the supplement to the petition for *United States v. Robles*, which will be filed today, 6 November 2023. In addition, four cases before this Court have priority over the instant case:

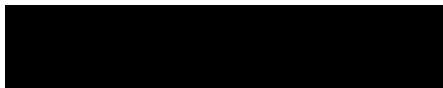
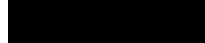
- 1) *United States v. Daughma*, ACM 40385 – The record of trial is nine volumes consisting of 18 prosecution exhibits, five defense exhibits, 64 appellate exhibits, and one court exhibit; the transcript is 841 pages. Undersigned counsel has completed a review of the unsealed transcript.
- 2) *United States v. Stelly*, ACM 40425 – The record of trial is four volumes consisting of three prosecution exhibits, five defense exhibits, and 10 appellate exhibits; the transcript is 109 pages. Undersigned counsel is presently reviewing the record of trial.

- 3) *United States v. Logan*, ACM 40407 – The record of trial is seven volumes, consisting of seven prosecution exhibits, 12 defense exhibits, 26 appellate exhibits, and three court exhibits; the transcript is 657 pages.
- 4) *United States v. Pulley*, ACM 40438 – The record of trial is 11 volumes, consisting of 22 prosecution exhibits, five defense exhibits, and 66 appellate exhibits; the transcript is 730 pages.

Appellant was advised of his right to a timely appeal. 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 Honorable Court grant the requested enlargement of time for good cause shown.

Respectfully submitted,


TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force


CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 6 November 2023.

Respectfully submitted,

[REDACTED]

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Captain (O-3)	)	ACM 40418
RUSTY C. 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 opposition to Appellant's Motion for Enlargement of Time.

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

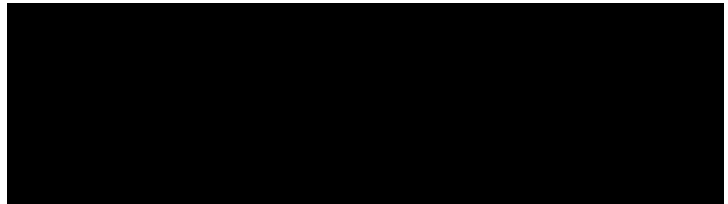


PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, to Civilian Defense Counsel, and to the Air Force Appellate Defense Division on 8 November 2023.



PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
	)	TIME (EIGHTH)
)	
v.	)	Before Panel No. 1
)	
Captain (O-3)	)	No. ACM 40418
RUSTY C. THOMAS)	
United States Air Force	)	6 December 2023
)	
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **12 January 2023**. The record of trial was docketed with this Court on 16 February 2023. From the date of docketing to the present date, 293 days have elapsed. On the date requested, 330 days will have elapsed.

On 4 November 2021, 28 February 2022 - 4 March 2022, and 15 August 2022 - 19 August 2022, Appellant was tried by a general court-martial at Kadena Air Base, Japan, and Joint Base Lewis-McChord, Washington. R. at 1, 95, and 512. Consistent with his pleas, a military judge convicted Appellant of one charge and two specifications of wrongful possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 651. A charge and two specifications of attempted viewing of child pornography, in violation of Article 80, UCMJ, were withdrawn and dismissed, R. at 745, pursuant to the plea agreement. Appellate Exhibit 49 at 2. On 19 August 2022, the military judge sentenced Appellant to a total of 18 months confinement and a dismissal. R. at 745. Pursuant to the plea agreement, the convening authority deferred and waived automatic forfeitures until the date that the military judge signs the Entry of

Judgement. Record of Trial (ROT), Vol. 1, Entry of Judgement at 3; Appellate Exhibit 49 at 2. The convening authority took no other action. ROT, Vol. 1, Entry of Judgement at 3.

The record of trial consists of six volumes. The transcript is 746 pages. There are six prosecution exhibits, 16 defense exhibits, 50 appellate exhibits, and no court exhibits. Appellant is currently in confinement. Undersigned counsel has not reviewed the record of trial.

Counsel is currently assigned 18 cases; 13 cases are pending initial AOE's before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

One case before the Court of Appeals for the Armed Forces have priority over this case: *United States v. Smith* and (2) *United States v. Robles*. Oral argument is scheduled for 16 January 2023. Undersigned counsel has begun to prepare for oral argument. In addition, four cases before this Court have priority over the instant case:

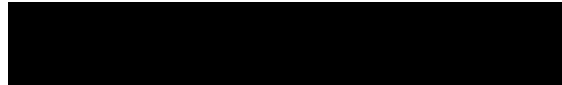
- 1) *United States v. Daughma*, ACM 40385 – The record of trial is nine volumes consisting of 18 prosecution exhibits, five defense exhibits, 64 appellate exhibits, and one court exhibit; the transcript is 841 pages. Undersigned counsel has reviewed the unsealed transcript and exhibits and is conducting legal research.
- 1) *United States v. Stelly*, ACM 40425 – The record of trial is four volumes consisting of three prosecution exhibits, five defense exhibits, and 10 appellate exhibits; the transcript is 109 pages. Undersigned counsel is presently reviewing the record of trial.


- 2) *United States v. Logan*, ACM 40407 – The record of trial is seven volumes, consisting of seven prosecution exhibits, 12 defense exhibits, 26 appellate exhibits, and three court exhibits; the transcript is 657 pages.
- 3) *United States v. Pulley*, ACM 40438 – The record of trial is 11 volumes, consisting of 22 prosecution exhibits, five defense exhibits, and 66 appellate exhibits; the transcript is 730 pages.

Appellant was advised of his right to a timely appeal. 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 Honorable Court grant the requested enlargement of time for good cause shown.

Respectfully submitted,

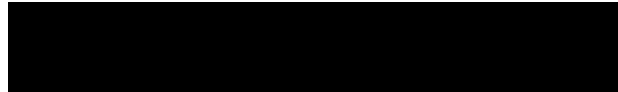


TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force


CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 6 December 2023.

Respectfully submitted,

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

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

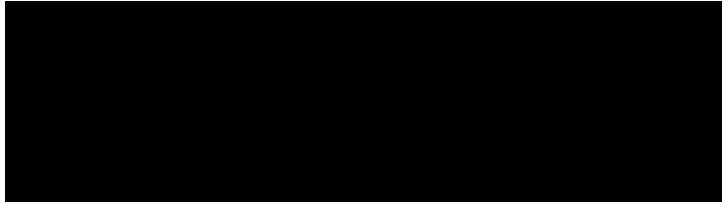
UNITED STATES,)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Captain (O-3)	)	ACM 40418
RUSTY C. THOMAS, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

**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 opposition to Appellant's Motion for Enlargement of Time.

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

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

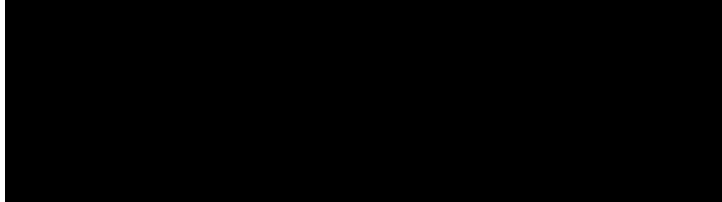


PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

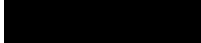


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 8 December 2023.



PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



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

UNITED STATES	)	No. ACM 40418
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Rusty C. THOMAS)	
Captain (O-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 6 December 2023, counsel for Appellant submitted a Motion for Enlargement of Time (Eighth) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

The court has considered Appellant’s motion, the Government’s opposition, case law, and this court’s Rules of Practice and Procedure. Accordingly, it is by the court on this 8th day of December, 2023,

ORDERED:

Appellant’s Motion for Enlargement of Time (Eighth) is **GRANTED**. Appellant shall file any assignments of error not later than **12 January 2024**.*

Appellant’s counsel is advised that given the number of enlargements granted thus far, the court will continue to closely examine any further requests for an enlargement of time.



FOR THE COURT



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

* The court notes that Appellant’s motion incorrectly identifies the end date as 12 January 2023.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee</i>	)	TIME (NINTH)
)	
v.	)	Before Panel No. 1
)	
Captain (O-3)	)	No. ACM 40418
RUSTY C. THOMAS)	
United States Air Force	)	5 January 2024
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **11 February 2024**. The record of trial was docketed with this Court on 16 February 2023. From the date of docketing to the present date, 323 days have elapsed. On the date requested, 360 days will have elapsed.

On 4 November 2021, 28 February 2022 - 4 March 2022, and 15 August 2022 - 19 August 2022, Appellant was tried by a general court-martial at Kadena Air Base, Japan, and Joint Base Lewis-McChord, Washington. R. at 1, 95, and 512. Consistent with his pleas, a military judge convicted Appellant of one charge and two specifications of wrongful possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 651. A charge and two specifications of attempted viewing of child pornography, in violation of Article 80, UCMJ, were withdrawn and dismissed, R. at 745, pursuant to the plea agreement. Appellate Exhibit 49 at 2. On 19 August 2022, the military judge sentenced Appellant to a total of 18 months confinement and a dismissal. R. at 745. Pursuant to the plea agreement, the convening authority deferred and waived automatic forfeitures until the date that the military judge signs the Entry of

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Appellant was advised of his right to a timely appeal. 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 Honorable Court grant the requested enlargement of time for good cause shown.

Respectfully submitted,

[REDACTED]

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 5 January 2024.

Respectfully submitted,

A large black rectangular redaction box covering the signature of Trevor N. Ward.

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

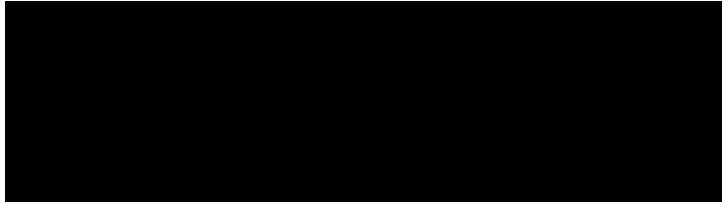
UNITED STATES,)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Captain (O-3)	)	ACM 40418
RUSTY C. THOMAS, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

**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 opposition to Appellant's Motion for Enlargement of Time.

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

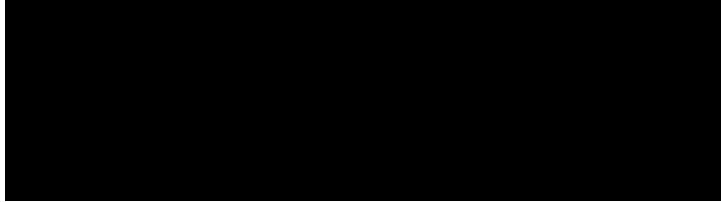


J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

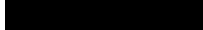


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 8 January 2024.



J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
	)	TIME (TENTH)
)	
v.	)	Before Panel No. 1
)	
Captain (O-3)	)	No. ACM 40418
RUSTY C. THOMAS)	
United States Air Force	)	2 February 2024
)	
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **12 March 2024**. The record of trial was docketed with this Court on 16 February 2023. From the date of docketing to the present date, 351 days have elapsed. On the date requested, 390 days will have elapsed.

On 4 November 2021, 28 February 2022 - 4 March 2022, and 15 August 2022 - 19 August 2022, Appellant was tried by a general court-martial at Kadena Air Base, Japan, and Joint Base Lewis-McChord, Washington. R. at 1, 95, and 512. Consistent with his pleas, a military judge convicted Appellant of one charge and two specifications of wrongful possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 651. A charge and two specifications of attempted viewing of child pornography, in violation of Article 80, UCMJ, were withdrawn and dismissed, R. at 745, pursuant to the plea agreement. Appellate Exhibit 49 at 2. On 19 August 2022, the military judge sentenced Appellant to a total of 18 months confinement and a dismissal. R. at 745. Pursuant to the plea agreement, the convening authority deferred and waived automatic forfeitures until the date that the military judge signs the Entry of

Judgement. Record of Trial (ROT), Vol. 1, Entry of Judgement at 3; Appellate Exhibit 49 at 2. The convening authority took no other action. ROT, Vol. 1, Entry of Judgement at 3. Appellant is not currently confined.

The record of trial consists of six volumes. The transcript is 746 pages. There are six prosecution exhibits, 16 defense exhibits, 50 appellate exhibits, and no court exhibits. Appellant is currently in confinement. Undersigned counsel has not reviewed the record of trial.

Counsel is currently assigned 19 cases; 16 cases are pending initial AOE's before this Court. Four cases before this Court have priority over the instant case:

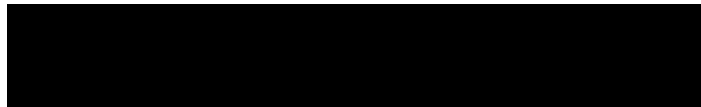
- 1) *United States v. Daughma*, ACM 40385 – The record of trial is nine volumes consisting of 18 prosecution exhibits, five defense exhibits, 64 appellate exhibits, and one court exhibit; the transcript is 841 pages. Undersigned counsel has completed his review of this case, and will be filing an Assignment of Errors brief on 7 February 2024.
- 2) *United States v. Logan*, ACM 40407 – The record of trial is seven volumes, consisting of seven prosecution exhibits, 12 defense exhibits, 26 appellate exhibits, and three court exhibits; the transcript is 657 pages.
- 3) *United States v. Stelly*, ACM 40425 – The record of trial is four volumes consisting of three prosecution exhibits, five defense exhibits, and 10 appellate exhibits; the transcript is 109 pages. Undersigned counsel is presently reviewing the record of trial.
- 4) *United States v. Pulley*, ACM 40438 – The record of trial is 11 volumes, consisting of 22 prosecution exhibits, five defense exhibits, and 66 appellate exhibits; the transcript is 730 pages.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Accordingly, an enlargement of

time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised of his right to a timely appeal. 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 Honorable Court grant the requested enlargement of time for good cause shown.

Respectfully submitted,

A large black rectangular redaction box covering the signature of Trevor N. Ward.

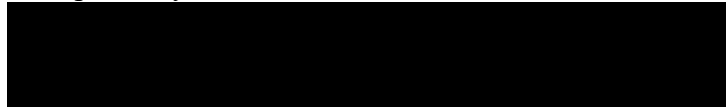
TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

A small black rectangular redaction box covering contact information.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 2 February 2024.

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Captain (O-3)	)	ACM 40418
RUSTY C. 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 opposition to Appellant's Motion for Enlargement of Time.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 390 days in length. Appellant's a 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 5 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that not only has Appellant's counsel has not yet reviewed the record of trial at this late stage of the appellate process, there is little prospect of them doing so in the near future, given that they assert there are four cases with a higher priority than this one.

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

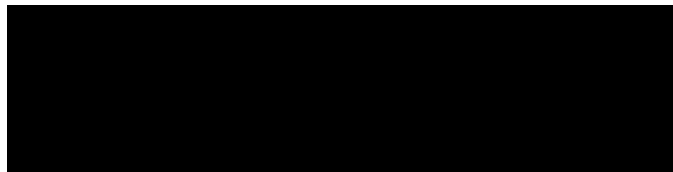


J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 5 February 2024.



J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



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

UNITED STATES	)	No. ACM 40418
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Rusty C. THOMAS)	
Captain (O-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 2 February 2024 counsel for Appellant submitted a Motion for Enlargement of Time (Tenth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 7th day of February, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (Tenth) is **GRANTED**. Appellant shall file any assignments of error not later than **12 March 2024**.

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



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
	)	TIME (ELEVENTH)
)	
v.	)	Before Panel No. 1
)	
Captain (O-3)	)	No. ACM 40418
RUSTY C. THOMAS)	
United States Air Force	)	5 March 2024
)	
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **11 April 2024**. The record of trial was docketed with this Court on 16 February 2023. From the date of docketing to the present date, 383 days have elapsed. On the date requested, 420 days will have elapsed.

On 4 November 2021, 28 February 2022 - 4 March 2022, and 15 August 2022 - 19 August 2022, Appellant was tried by a general court-martial at Kadena Air Base, Japan, and Joint Base Lewis-McChord, Washington. R. at 1, 95, and 512. Consistent with his pleas, a military judge convicted Appellant of one charge and two specifications of wrongful possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 651. A charge and two specifications of attempted viewing of child pornography, in violation of Article 80, UCMJ, were withdrawn and dismissed, R. at 745, pursuant to the plea agreement. Appellate Exhibit 49 at 2. On 19 August 2022, the military judge sentenced Appellant to a total of 18 months confinement and a dismissal. R. at 745. Pursuant to the plea agreement, the convening authority deferred and waived automatic forfeitures until the date that the military judge signs the Entry of

Judgement. Record of Trial (ROT), Vol. 1, Entry of Judgement at 3; Appellate Exhibit 49 at 2. The convening authority took no other action. ROT, Vol. 1, Entry of Judgement at 3. Appellant is not currently confined.

The record of trial consists of six volumes. The transcript is 746 pages. There are six prosecution exhibits, 16 defense exhibits, 50 appellate exhibits, and no court exhibits. Undersigned counsel and civilian co-counsel, Mr. Emmanuel Tapon, have reviewed the unsealed exhibits and transcript. Counsel for Appellant have identified several potential issues and have begun research on those issues. In addition, civilian co-counsel—who served as Appellant's trial defense counsel—has previously reviewed the sealed materials. A consent motion for undersigned and government counsel to review sealed materials is forthcoming.

Civilian co-counsel has no priorities over the instant case. Undersigned counsel is currently assigned 18 cases; 14 cases are pending initial AOE's before this Court. Three cases before this Court have priority over the instant case for the undersigned:

- 1) *United States v. Daughma*, ACM 40385 – The record of trial is nine volumes consisting of 18 prosecution exhibits, five defense exhibits, 64 appellate exhibits, and one court exhibit; the transcript is 841 pages. Undersigned counsel filed an AOE in this case on 7 February 2024. The Government's answer is due on 8 March 2024, with any reply by this appellant due on 15 March 2024. This appellant is confined.
- 2) *United States v. Logan*, ACM 40407 – The record of trial is seven volumes, consisting of seven prosecution exhibits, 12 defense exhibits, 26 appellate exhibits, and three court exhibits; the transcript is 657 pages. Undersigned counsel has reviewed the sealed and unsealed record, identified various issues, and has begun research on those issues. This appellant is not confined.

3) *United States v. Pulley*, ACM 40438 – The record of trial is 11 volumes, consisting of 22 prosecution exhibits, five defense exhibits, and 66 appellate exhibits; the transcript is 730 pages. On 21 February 2024, undersigned counsel filed a consent motion to review sealed materials. Undersigned counsel has not yet reviewed the record in this case. This appellant is confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant’s case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant’s case and advise Appellant regarding potential errors. Appellant was advised of his right to a timely appeal. 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 Honorable Court grant the requested enlargement of time for good cause shown.

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 5 March 2024.

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Captain (O-3)	)	ACM 40418
RUSTY C. 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 opposition to Appellant's Motion for Enlargement of Time.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 420 days in length. Appellant's a 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 4 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that not only has Appellant's counsel has not yet fully reviewed the record of trial at this late stage of the appellate process, there is little prospect of them doing so in the near future, given that they assert there are three cases with a higher priority than this one.

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

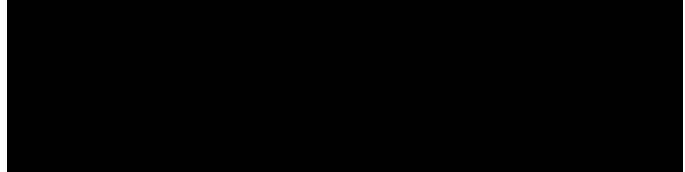


J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

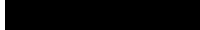


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 6 March 2024.



J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION TO WITHDRAW FROM
<i>Appellee</i>	)	APPELLATE REVIEW AND
	)	MOTION TO ATTACH
)	
v.	)	Before Panel No. 1
)	
Captain (O-3)	)	No. ACM 40418
RUSTY C. THOMAS)	
United States Air Force	)	2 April 2024
<i>Appellant</i>)	

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

Pursuant to Rule 16 of this Honorable Court’s Rules of Practice and Procedure, and Rule for Courts-Martial (R.C.M.) 1115, Appellant hereby moves to withdraw his case from appellate review. Appellant has fully consulted with Capt Trevor N. Ward, his appellate defense counsel, regarding this motion to withdraw. No person has compelled, coerced, or induced Appellant by force, promises of clemency, or otherwise to withdraw his case from appellate review.

Further, pursuant to Rules 23(b) and 23.3(b) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel asks this Court to attach the two-page document appended to this pleading to Appellant’s Record of Trial. The appended document is a Department of Defense Form 2330, signed by Appellant and undersigned counsel. The appended document is necessary to comply with R.C.M. 1115(d) and Rule 16.1 of this Honorable Court’s Rules of Practice and Procedure.

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

Respectfully submitted,

A large black rectangular redaction box covering the signature of Trevor N. Ward.

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force

A small black rectangular redaction box covering contact information.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 2 April 2024.

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force

