

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

UNITED STATES <i>Appellee</i>	)	No. ACM 40599
)	
v.)	
	)	ORDER
Joshua T. TOOTHMAN Airman (E-2) U.S. Air Force <i>Appellant</i>	)	Panel 3

On 30 May 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 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 5th day of June, 2024,

ORDERED:

Appellant’s Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **9 August 2024**.

Beginning with the fifth request for enlargement of time shall, in addition to the matters required under this court’s Rules of Practice and Procedure, include a statement as to: (1) whether Appellant was advised of 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.

Appellant’s counsel are further advised that any future requests for enlargements of time that, if granted, would expire more than 360 days after docketing, will not be granted absent exceptional circumstances.



FOR THE COURT



OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

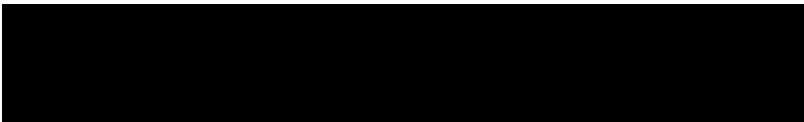
UNITED STATES	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME (FIRST)
)	
v.	)	Before Panel 3
)	
Airman (E-2)	)	No. ACM 40599
JOSHUA T. TOOTHMAN,)	
United States Air Force	)	30 May 2024
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **9 August 2024**. This case was docketed with this Court on 11 April 2024. From the date of docketing to the present date, 49 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,




TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

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 30 May 2024.

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

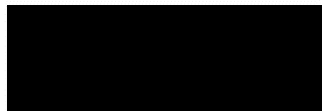
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman (E-2)	)	ACM 40599
JOSHUA T. TOOTHMAN, USAF,)	
<i>Appellant.</i>	)	Panel No.3
)	

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

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

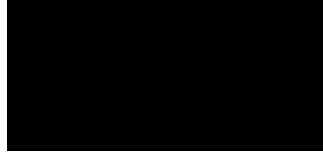
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



BRITTANY M. SPEIRS, Maj, USAFR
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 3 June 2024.



BRITTANY M. SPEIRS, Maj, USAFR
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

UNITED STATES	)	APPELLANT'S MOTION FOR
<i>Appellee</i>	)	ENLARGEMENT OF TIME (SECOND)
)	
v.	)	Before Panel 3
)	
Airman (E-2)	)	No. ACM 40599
JOSHUA T. TOOTHMAN,)	
United States Air Force	)	1 August 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 (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his second enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **8 September 2024**. This case was docketed with this Court on 11 April 2024. From the date of docketing to the present date, 112 days have elapsed. On the date requested, 150 days will have elapsed.

On 16 January 2024, R. at 2, 99, Appellant was tried by a general court-martial sitting as a military judge alone. R. at 1, 12. Consistent with his pleas, R. at 13, Appellant was found guilty of one charge and specification of abusive sexual contact, in violation of Article 120, Uniform Code of Military Justice (UCMJ). R. at 28. The military judge sentenced Appellant to a bad conduct discharge, confinement for six months, forfeitures for six months, a reduction to the pay grade of E-1 (Airman Basic (AB)), and a reprimand. R. at 99. The convening authority took no action with respect to the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action—*United States v. Airman Joshua T. Toothman*. Appellant is not confined.




GRANTED
5 AUG 2024

The ROT is three volumes consisting of nine prosecution exhibits, one defense exhibit, and 16 appellate exhibits. The transcript is 99 pages long.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has been advised of his right to a timely appeal. Appellant has not been advised of this request for this enlargement of time. Appellant has not provided a limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement. Undersigned counsel has not provided Appellant with an update on the status of undersigned counsel's progress on his case.

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
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

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 1 August 2024.

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

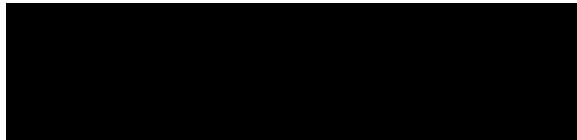
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman (E-2)	)	ACM 40599
JOSHUA T. TOOTHMAN, USAF,)	
<i>Appellant.</i>	)	Panel No.3
)	

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

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

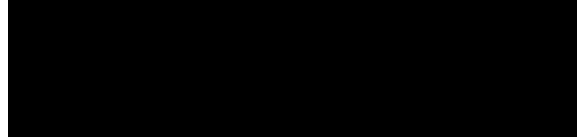
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(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 5 August 2024.



MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME (THIRD)
)	
v.	)	Before Panel 3
)	
Airman (E-2)	)	No. ACM 40599
JOSHUA T. TOOTHMAN,)	
United States Air Force	)	29 August 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 (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his third enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **8 October 2024**. This case was docketed with this Court on 11 April 2024. From the date of docketing to the present date, 139 days have elapsed. On the date requested, 180 days will have elapsed.

On 16 January 2024, R. at 2, 99, Appellant was tried by a general court-martial sitting as a military judge alone. R. at 1, 12. Consistent with his pleas, R. at 13, Appellant was found guilty of one charge and specification of abusive sexual contact, in violation of Article 120, Uniform Code of Military Justice (UCMJ). R. at 28. The military judge sentenced Appellant to a bad conduct discharge, confinement for six months, forfeitures for six months, a reduction to the pay grade of E-1 (Airman Basic (AB)), and a reprimand. R. at 99. The convening authority took no action with respect to the findings or sentence. Record of Trial (ROT), Vol. 1, Convening

Decision on Action—*United States v. Airman Joshua T. Toothman*. Appellant is not



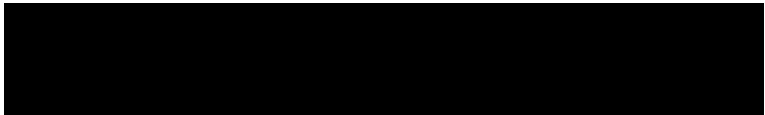
GRANTED
5 SEP 2024

The ROT is three volumes consisting of nine prosecution exhibits, one defense exhibit, and 16 appellate exhibits. The transcript is 99 pages long.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has been advised of his right to a timely appeal. Appellant has not been advised of this request for this enlargement of time. Appellant has not provided a limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement. Undersigned counsel has not provided Appellant with an update on the status of undersigned counsel's progress on his case.

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

Respectfully submitted,

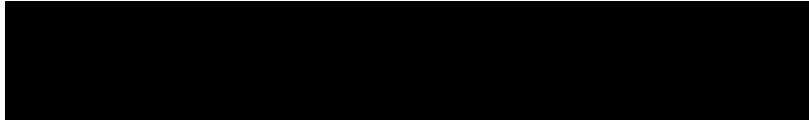


TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

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 29 August 2024.

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

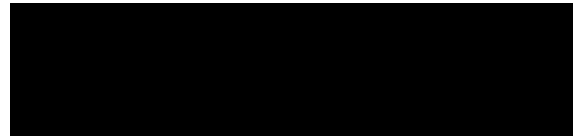
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman (E-2)	)	ACM 40599
JOSHUA T. TOOTHMAN, USAF,)	
<i>Appellant.</i>	)	Panel No.3
)	

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

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

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



MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(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 4 September 2024.



MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME (FOURTH)
)	
v.	)	Before Panel 3
)	
Airman (E-2)	)	No. ACM 40599
JOSHUA T. TOOTHMAN,)	
United States Air Force	)	28 September 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 his fourth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **7 November 2024**. This case was docketed with this Court on 11 April 2024. From the date of docketing to the present date, 150 days have elapsed. On the date requested, 210 days will have elapsed.

On 16 January 2024, R. at 2, 99, Appellant was tried by a general court-martial sitting as a military judge alone. R. at 1, 12. Consistent with his pleas, R. at 13, Appellant was found guilty of one charge and specification of abusive sexual contact, in violation of Article 120, Uniform Code of Military Justice (UCMJ). R. at 28. The military judge sentenced Appellant to a bad conduct discharge, confinement for six months, forfeitures for six months, a reduction to the pay grade of E-1 (Airman Basic (AB)), and a reprimand. R. at 99. The convening authority took no action with respect to the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Decision on Action—*United States v. Airman Joshua T. Toothman*. Appellant is not



GRANTED

2 OCT 2024

The ROT is three volumes consisting of nine prosecution exhibits, one defense exhibit, and 16 appellate exhibits. The transcript is 99 pages long.

Undersigned counsel is assigned 22 cases, 14 of which are pending initial AOE's before this Court. One case before the Court of Appeals for the Armed Forces (CAAF) takes priority over this case: *United States v. Daughma*. Undersigned counsel has completed a draft of a supplement to petition to grant review, and will file it no later than 30 September 2024. In addition, the following cases before this Court take priority over the instant one.

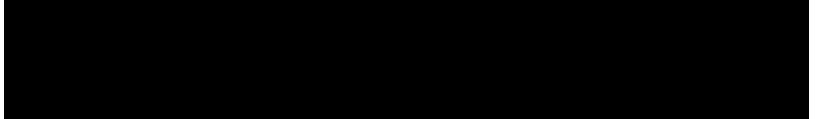
- 1) *United States v. Pulley*, ACM 40438 – The record of trial is 11 volumes, consisting of 22 prosecution exhibits, five defense exhibits, and 66 appellate exhibits; the transcript is 730 pages. While filings are complete in this case, undersigned counsel has moved this Court for oral argument; should this Court grant oral argument, preparation for such would take priority over the instant case.
- 2) *United States v. Couty*, ACM 40484 – The record of trial is seven volumes, consisting of 20 prosecution exhibits, two defense exhibits, two court exhibits, and 29 appellate exhibits; the transcript is 868 pages. Undersigned counsel filed a reply brief on 19 September 2024.
- 3) *United States v. Kelnhofner*, ACM 23012 – The record of trial is two volumes, consisting of 18 prosecution exhibits, three defense exhibits, and 11 appellate exhibits; the transcript is 494 pages. Undersigned counsel filed an initial assignment of errors brief on 23 September 2024; the Government's answer is due no later than 23 October 2024, with any reply due on 30 October 2024.
- 4) *United States v. Moreno*, ACM 40511 – The record of trial is six volumes, consisting of 59 appellate exhibits, 12 prosecution exhibits, and seven defense exhibits; the transcript is 531 pages. Civilian co-counsel has begun reviewing the record.

- 5) *United States v. Gibbs*, ACM 40523 – The record of trial is seven volumes, consisting of 40 appellate exhibits, 26 prosecution exhibits, 11 defense exhibits, and one court exhibit; the transcript is 1,084 pages. Undersigned counsel has identified at least one issue in this record. This appellant is currently confined.
- 6) *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages. This appellant is currently confined.
- 7) *United States v. Barlow*, ACM 40552 – The record of trial is four volumes, consisting of six prosecution exhibits, nine defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 338 pages. This appellant is not currently confined.
- 8) *United States v. Beyer*, ACM 40566 – The record of trial is seven volumes, consisting of four prosecution exhibits, four defense exhibits, 66 appellate exhibits, and one court exhibit; the transcript is 939 pages. A draft assignments of errors has been completed and will be filed no later than 30 September 2024.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has been advised of his right to a timely appeal. Appellant has not been advised of this request for this enlargement of time. Appellant has not provided a limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement. Undersigned counsel has not provided Appellant with an update on the status of undersigned counsel's progress on his case.

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

Respectfully submitted,

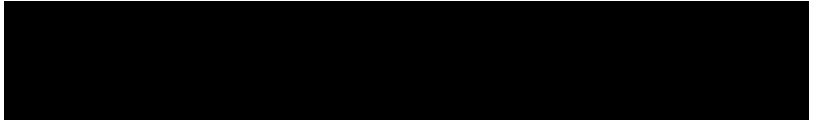


TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 28 September 2024.

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

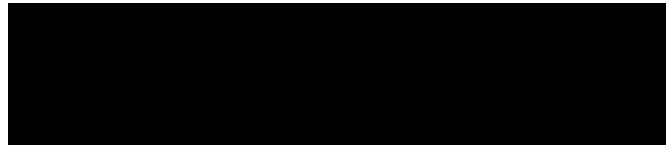
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman (E-2)	)	ACM 40599
JOSHUA T. TOOTHMAN, USAF,)	
<i>Appellant.</i>	)	Panel No.3
)	

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

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

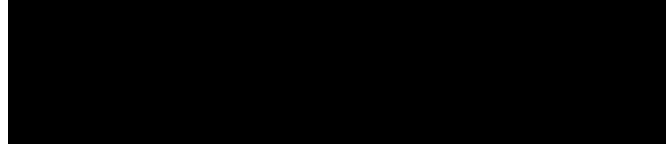
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 1 October 2024.



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

UNITED STATES	)	APPELLANT’S MOTION FOR
<i>Appellee</i>	)	ENLARGEMENT OF TIME (FIFTH)
)	
v.	)	Before Panel 3
)	
Airman (E-2)	)	No. ACM 40599
JOSHUA T. TOOTHMAN,)	
United States Air Force	)	29 October 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 his fourth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **7 December 2024**. This case was docketed with this Court on 11 April 2024. From the date of docketing to the present date, 201 days have elapsed. On the date requested, 240 days will have elapsed.

On 16 January 2024, R. at 2, 99, Appellant was tried by a general court-martial sitting as a military judge alone. R. at 1, 12. Consistent with his pleas, R. at 13, Appellant was found guilty of one charge and specification of abusive sexual contact, in violation of Article 120, Uniform Code of Military Justice (UCMJ). R. at 28. The military judge sentenced Appellant to a bad conduct discharge, confinement for six months, forfeitures for six months, a reduction to the pay grade of E-1 (Airman Basic (AB)), and a reprimand. R. at 99. The convening authority took no action with respect to the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action—*United States v. Airman Joshua T. Toothman*. Appellant is not



GRANTED
29 OCT 2024

The ROT is three volumes consisting of nine prosecution exhibits, one defense exhibit, and 16 appellate exhibits. The transcript is 99 pages long.

Undersigned counsel is assigned 22 cases, 14 of which are pending initial AOE's before this Court. One case before the Court of Appeals for the Armed Forces (CAAF) takes priority over this case: *United States v. Valentin-Andino*. Undersigned counsel is drafting an initial brief to the CAAF, which is due on 30 October 2024. In addition, the following cases before this Court take priority over the instant one.

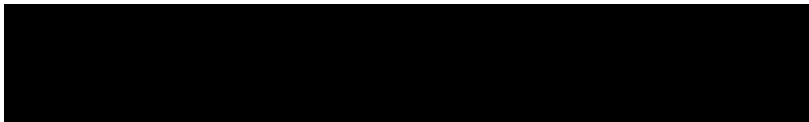
- 1) *United States v. Moreno*, ACM 40511 – The record of trial is six volumes, consisting of 59 appellate exhibits, 12 prosecution exhibits, and seven defense exhibits; the transcript is 531 pages. Undersigned counsel has completed a review of the record and identified several potential errors.
- 2) *United States v. Gibbs*, ACM 40523 – The record of trial is seven volumes, consisting of 40 appellate exhibits, 26 prosecution exhibits, 11 defense exhibits, and one court exhibit; the transcript is 1,084 pages. Undersigned counsel has begun a review of the exhibits and has identified at least one issue in this record. This appellant is currently confined.
- 3) *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages. This appellant is currently confined.
- 4) *United States v. Barlow*, ACM 40552 – The record of trial is four volumes, consisting of six prosecution exhibits, nine defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 338 pages. This appellant is not currently confined.
- 5) *United States v. Beyer*, ACM 40566 – The record of trial is seven volumes, consisting of four prosecution exhibits, four defense exhibits, 66 appellate exhibits, and one court

exhibit; the transcript is 939 pages. An initial assignments of error brief was filed on 30 September 2024. The Government filed for an enlargement of time to answer that that brief yesterday, 28 October 2024.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has been advised of his right to a timely appeal. Appellant has been advised of this request for this enlargement of time. Appellant has provided a limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement. Undersigned counsel has provided Appellant with an update on the status of undersigned counsel's progress on his case, a communication which Appellant agreed to disclose to this Court.

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
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

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 29 October 2024.

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

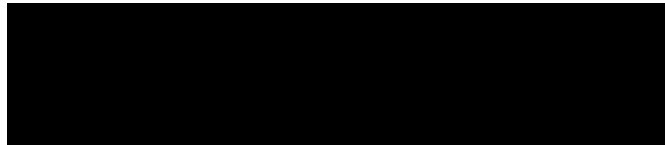
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman (E-2)	)	ACM 40599
JOSHUA T. TOOTHMAN, USAF,)	
<i>Appellant.</i>	)	Panel No.3
)	

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

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

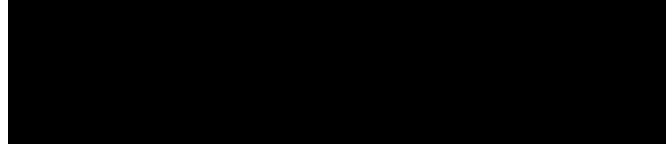
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 29 October 2024.



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**

UNITED STATES	)	No. ACM 40599
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF
Joshua T. TOOTHMAN	)	PANEL CHANGE
Airman (E-2))	
U.S. Air Force)	
<i>Appellant</i>)	

It is by the court on this 4th day of December, 2024,

ORDERED:

The record of trial in the above styled matter is withdrawn from Panel 3 and referred to a Special Panel for appellate review.

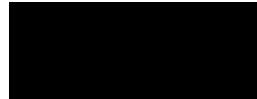
The Special Panel in this matter shall be constituted as follows:

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge
GRUEN, PATRICIA A., Colonel, Appellate Military Judge
MASON, BRIAN C., Lieutenant Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.



FOR THE COURT



TANICA S. BAGMON
Appellate Court Paralegal

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

UNITED STATES	)	No. ACM 40599
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Joshua T. TOOTHMAN)	
Airman (E-2))	
U.S. Air Force)	
<i>Appellant</i>	)	Special Panel

This case was docketed with the court on 11 April 2024. On 1 December 2024 (234 days after docketing), counsel for Appellant submitted a Motion for Enlargement of Time Out of Time (Sixth) 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 4th day of December, 2024,

ORDERED:

Appellant’s Motion for Enlargement of Time Out of Time (Sixth) is **GRANTED**. Appellant shall file any assignments of error **not later than 6 January 2025**.

Counsel should not assume any subsequent requests for enlargement of time will be granted. Each request will be considered on its merits.

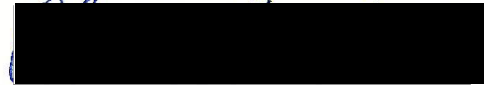
Appellant’s counsel are reminded that any subsequent motions for enlargement of time, shall include, in addition to matters required under this court’s Rules of Practice and Procedure, statements as to: (1) whether Appellant was advised of Appellant’s right to a timely appeal, (2) whether Appellant was 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.

Given the amount of time already elapsed from docketing through this current enlargement of time request, Appellant’s counsel are advised that any requests for future enlargements of time may necessitate a status conference prior to the court taking action on any forthcoming request. Appellant’s counsel are further reminded any future requests for enlargements of time, if granted,

which would expire more than 360 days after docketing will be viewed unfavorably by the court, absent exceptional circumstances.



FOR THE COURT



OLGA STANFORD, Capt, USAF
Deputy Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee</i>	)	TIME OUT OF TIME (SIXTH)
)	
)	
v.	)	Before Panel No. 3
)	
	)	No. ACM 40599
Airman (E-2))	
JOSHUA T. TOOTHMAN)	
United States Air Force)	
<i>Appellant</i>	)	1 December 2024

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

Under Rules 18.5 and 23.3(m) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a sixth enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of thirty days, which would end on **6 January 2025**.

There is good cause for this pleading being out of time. Undersigned counsel submitted Appellant’s sixth motion for an enlargement of time in a timely manner, on 27 November 2024. Undersigned counsel included the correct ACM number and information concerning Appellant’s trial and record of trial, but put the wrong name and rank in the caption. That same day, the Court’s paralegal e-mailed undersigned counsel requesting undersigned counsel withdraw the original pleading and submit a corrected copy. Undersigned counsel did not receive that e-mail until after the Court’s 28-29 November closure for the Thanksgiving holiday. Undersigned counsel considered filing a motion to amend but, to avoid confusing the parties and based on the Court’s guidance, files this motion for an enlargement out of time instead.

This case was docketed 234 days ago, on 11 April 2024. On the date requested, 270 days will have elapsed. Appellant is not currently confined.

The prosecution's allegation against Appellant was tried by a military judge sitting as a general court-martial at Hurlburt Field, Florida, on 16 January 2024.¹ R. at 2, 99. Consistent with his pleas, Appellant was convicted of one charge containing one specification of abusive sexual contact, in violation of Article 120, Uniform Code of Military Justice, 10 U.S.C. § 920. R. at 13, 28. The military judge sentenced Appellant to a bad-conduct discharge, confinement for six months, forfeiture of all pay and allowances for six months, a reduction to the pay grade of E-1 (Airman Basic (AB)), and a reprimand. R. at 99. The convening authority took no action with respect to the findings or sentence. Convening Authority Decision on Action.

The record of trial is three volumes. It contains a ninety-nine-page transcript, nine prosecution exhibits, four defense exhibits, and sixteen appellate exhibits.

Undersigned counsel has completed review of the first two volumes of the record and will be leading completion of Appellant's Assignments of Error. Captain Trevor Ward remains assigned as Appellant's counsel and has not filed a motion to withdraw, but Captain Ward's caseload consists of twenty-five cases overall, seventeen cases pending initial briefing before this Court, and seven cases presently prioritized over Appellant's. Those cases are set out below but, due to undersigned counsel undertaking the case, will not impact the review of Appellant's case:

- 1) *United States v. Valentin-Andino*, ACM No. 40815, USCA Dkt. No. 24-0208/AF – Captain Ward filed an opening brief in this case on 30 October 2024. The Government's Answer was due on 2 December 2024, following the Thanksgiving holiday. On 26 November 2024, the Government filed motion for an enlargement of time due to the Government's "holiday obligations." That enlargement was granted,

¹ Subsequent to Appellant's trial, the military judge was reassigned and is now undersigned counsel's supervising attorney; however, due to that conflict, she did not assign undersigned counsel to Appellant's case and has no involvement in undersigned counsel's representation of Appellant.

- making the Government's Answer due on 5 December 2024. Any reply would then be due on 12 December 2024.
- 2) *United States v. Pulley*, ACM No. 40438 (f rev) – This appellant intends to file a petition for grant of review and corresponding supplement to the Court of Appeals for the Armed Forces (CAAF). The petition and corresponding supplement are due on 18 December 2024. Captain Ward is presently conducting research and has begun drafting the supplement in that case.
 - 3) *United States v. Washington*, ACM No. 38761 (reh) – This appellant intends to file a petition for grant of review and corresponding supplement to the CAAF. The petition and corresponding supplement are due on 17 December 2024. Captain Ward has not yet begun research or drafting of the corresponding supplement. However, as newly assigned counsel, Captain Ward has completed a review of the entire record (approximately 2,000 pages) and all corresponding decisions in this case.
 - 4) *United States v. Kelnhofer*, ACM No. 23012 – This appellant intends to file a petition and corresponding supplement to the CAAF. The petition and supplement are due no later than 9 January 2025. Captain Ward has not begun research or drafting.
 - 5) *United States v. Evangelista*, ACM 40531 – The record of trial is ten volumes, consisting of fifty-six appellate exhibits, eighteen prosecution exhibits, twelve defense exhibits, and one court exhibit. The transcript is 1,439 pages. The appellant is currently confined.
 - 6) *United States v. Barlow*, ACM 40552 – The record of trial is four volumes, consisting of six prosecution exhibits, nine defense exhibits, sixteen appellate exhibits, and two court exhibits. The transcript is 338 pages. The appellant is not currently confined.

7) *United States v. Beyer*, ACM 40566 – The record of trial is seven volumes, consisting of four prosecution exhibits, four defense exhibits, sixty-six appellate exhibits, and one court exhibit. The transcript is 939 pages. An initial Assignments of Error brief was filed on 30 September 2024. The Government’s Answer brief is due on 12 December 2024.

This is undersigned counsel’s only case pending initial briefing before any court.

Undersigned counsel’s only other case, *United States v. Mitton*, ACM No. 40616, is pending the Government’s Answer brief by 16 December 2024. This is otherwise undersigned counsel’s top-priority case. Undersigned counsel has reviewed the record of trial, completing it on Saturday, 30 November 2024. In reviewing the second volume on 27 November 2024, undersigned counsel identified in Appellant’s post-trial submission of matters to the convening authority that Appellant’s trial defense counsel asserted an issue with Appellant’s post-trial confinement and the possibility of ineffective assistance of counsel in sentencing argument that require further review and discussion with Appellant. Both of those issues, along with at least four other potential issues identified in undersigned counsel’s review of case, require further research and discussion with Appellant.

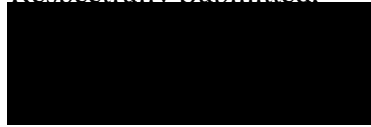
As Deputy Chief of the Appellate Defense Division, undersigned counsel is also assigned to carry out a variety of duties over the duration of the requested enlargement beyond his own docket. Those include (1) administering the Military Justice and Discipline Directorate’s annual climate survey of approximately 400 personnel, which just closed on 22 November 2024, had reports become available 26 November 2024, and for which undersigned counsel must review over 500 pages of reports to brief the Director on 6 December 2024, (2) supervisory review of various briefs to be filed with this Court and the Court of Appeals for the Armed Forces, (3)

assisting Division counsel with eight scheduled moot arguments in the next thirty days to prepare those counsel for three two scheduled oral arguments before the CAAF, (4) leading the Judge Advocate General's Corps' coordination with communications units at seven different installations across the Department of the Air Force in order to evaluate new legal research and writing software designed to accelerate and improve litigators' capabilities, (5) drafting the Appellate Defense Division's request for additional manpower for upcoming fiscal years, (6) overseeing the Appellate Defense Division's quarterly and end-of-year award packages, and (7) four hours of scheduled meetings to develop technological tools to facilitate better operations of the Appellate Defense Division. Undersigned counsel also has scheduled leave 23-27 December 2024 due to a childcare closure that week, and scheduled medical appointments on 9 December 2024 for a leg injury, 16 December 2024 for a surgery consultation, and 2 January 2025 for physical therapy concerning the leg injury. Through no fault of Appellant, the requested time is needed to finish researching potential issues identified during review of the case, further consult with Appellant, and complete drafting of any Assignments of Error. Additional motions requesting further enlargement of time are not anticipated at this time.

Appellant has been advised of his right to a timely appeal, counsel's progress on Appellant's case, and of this request for an enlargement of time. Due to only identifying the issues set out in the post-trial submission of matters on 27 November 2024 and the timing of undersigned counsel's communications with Appellant, undersigned counsel has not yet confirmed Appellant's agreement to this specific request for an enlargement of time, but nevertheless makes this request based on Appellant's previously disclosed representations to counsel and objections.

WHEREFORE, this Court should grant the requested enlargement of time.

Respectfully Submitted,



ALLEN S. ABRAMS, Lieutenant Colonel, USAF
Deputy Chief
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews, MD 20762
(240) 612-4770
allen.abrams.1@us.af.mil

Counsel for Appellant

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 1 December 2024.



ALLEN S. ABRAMS, Lieutenant Colonel, USAF
Deputy Chief
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews, MD 20762
(240) 612-4770
allen.abrams.1@us.af.mil

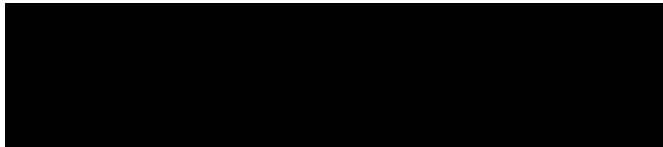
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME OUT OF TIME
)	
Airman (E-2)	)	ACM 40599
JOSHUA T. TOOTHMAN, USAF,)	
<i>Appellant.</i>	)	Panel No.3
)	

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

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

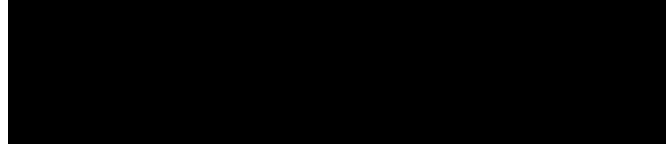
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 3 December 2024.



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

UNITED STATES	)	MOTION TO WITHDRAW FROM
<i>Appellee</i>	)	APPELLATE REVIEW AND ATTACH
)	
)	
v.	)	Before Special Panel
)	
	)	No. ACM 40599
Airman (E-2))	
JOSHUA T. TOOTHMAN)	
United States Air Force)	
<i>Appellant</i>	)	30 December 2024

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

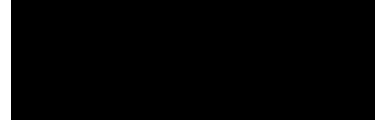
Pursuant to Rule 16 of the Joint Rules of Appellate Procedure, Rule 16.1 of this Court’s Rules of Practice and Procedure, and Rule for Courts-Martial 1115, Appellant, Airman Joshua T. Toothman, moves to withdraw his case from appellate review.

Appellant has fully consulted regarding this motion to withdraw with Lieutenant Colonel Allen Abrams, serving as appellate defense counsel. No person has compelled, coerced, or induced Appellant to withdraw from appellate review by force, promises of clemency, or otherwise.

Further, pursuant to Rules 23(b) of the Joint Rules of Appellate Procedure and 23.3(b) of this Court’s Rules of Practice and Procedure, Appellant asks this Court to attach the six-page document appended to this pleading to the record of this proceeding. The document is Appellant’s completed DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals*, to include the entry of judgment referenced on the top line of the form, and is therefore necessary to comply with R.C.M. 1115(d) and Rule 16.1 of this Court’s Rules of Practice and Procedure.

WHEREFORE, this Court should grant this motion to withdraw from appellate review and attach the requested document to the record.

Respectfully Submitted,

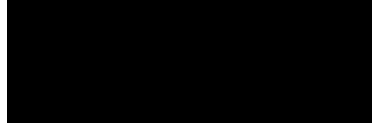


ALLEN S. ABRAMS, Lieutenant Colonel, USAF
Deputy Chief
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews, MD 20762
(240) 612-4770
allen.abrams.1@us.af.mil

Counsel for Appellant

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 30 December 2024.



ALLEN S. ABRAMS, Lieutenant Colonel, USAF
Deputy Chief
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews, MD 20762
(240) 612-4770
allen.abrams.1@us.af.mil