

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

<b>UNITED STATES</b>	)	<b>No. ACM S32788</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>ORDER</b>
<b>Joshua J. WALDRON</b>	)	
<b>Airman (E-2)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	<b>Panel 3</b>

On 6 September 2024, counsel for Appellant submitted a Consent Motion to Examine Sealed Materials, requesting both parties be allowed to examine sealed transcript pages 20–52 and the associated audio recording to those pages which pertain to a closed hearing; Defense Exhibit A; and Appellate Exhibits II–IV. All requested items were reviewed by trial and defense counsel at Appellant’s court-martial.

In reviewing the disk marked as “CLOSED SESSION ONLY 28 AUG 23 DISC 1 OF 1,” the court discovered that this disk was mislabeled. Although it was labeled “closed audio,” it contains audio from an open session. Instead, the disk labeled “OPEN SESSION ONLY 28 AUG 23 DISC #1 of 3” contains closed session audio corresponding to the sealed transcript pages 20–52, running from 28:20–1:24:20 on this disc.\* The court orders correction of these erroneously marked disks in its decretal paragraph below.

Appellate counsel may examine sealed materials released to counsel at trial “upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities.” Rule for Courts-Martial 1113(b)(3)(B)(i), *Manual for Courts-Martial, United States* (2024 ed.).

The court finds Appellant’s counsel has made a colorable showing that review of the sealed materials is reasonably necessary to fulfill counsel’s duties of representation to Appellant. This court’s order permits counsel for both parties to examine the materials.

Accordingly, it is by the court on this 17th day of September 2024,  
**ORDERED:**

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\* The earlier part of this disk (00:00–28:19) covers the unsealed portion of the proceedings.

Appellant's Consent Motion to Examine Sealed Materials is **GRANTED**, contingent upon corrections to the labeling and sealing of the closed session audio as will be detailed below.

Appellate defense counsel and appellate government counsel may view **trial transcript pages 20–52 and the associated audio recording to those transcript pages; Defense Exhibit A; and Appellate Exhibits II–IV**, subject to the following conditions:

To view the sealed materials, counsel will coordinate with the court.

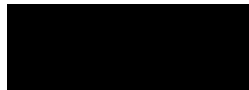
No counsel granted access to the materials may photocopy, photograph, reproduce, disclose, or make available the content to any other individual without the court's prior written authorization.

**It is further ordered:**

Upon completion of the court's Article 66, Uniform Code of Military Justice, 10 U.S.C. § 866, review of Appellant's case, the Government will take steps to correct the erroneously marked disks containing the closed session audio corresponding to pages 20–52 of the trial transcript as demarcated above.



FOR THE COURT



CAROL K. JOYCE  
Clerk of the Court

UNITED STATES, ) **CONSENT MOTION**  
 ) **TO EXAMINE SEALED**  
 ) **MATERIALS**  
 )  
 v. ) Before Panel No. 3  
 )  
 Airman (E-2) ) No. ACM S32788  
 **JOSHUA J. WALDRON** )  
 United States Air Force, ) 6 September 2024  
 ) *Appellant.* )

- 1) Appellate Exhibits II through IV.
- 2) Defense Exhibit A.<sup>1</sup>
- 3) Audio recording of closed session.
- 4) Sealed transcript pages of closed session.

On 19 March 2024, Appellant was tried by a special court-martial at Fort George G. Meade, Maryland. Contrary to his pleas, the military judge found Appellant guilty of one charge with one specification of dereliction of duty, in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892; and one charge with one specification of drunk and disorderly,

<sup>1</sup> Undersigned counsel notes that Defense Exhibit A was ordered sealed by the Military Judge (R. at 216-17) but it was not sealed and is contained within undersigned counsel's copy of the Record of Trial. Counsel asks to be able to retain and review the exhibit.

in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 717; Entry of Judgment (EOJ), dated 2 April 2024. The military judge sentenced Appellant to be reduced to the grade of E-1, and to be discharged from the service with a bad-conduct discharge. R. at 934; EOJ. The convening authority took no action on the findings and approved the sentence in its entirety. Convening Authority Decision on Action – *United States v. Joshua J. Waldron*, dated 27 March 2024.

During the proceedings, the military judge sealed Appellate Exhibit II, the Defense’s Motion *In Limine* and to Permit Use of Confidential Communications pursuant to Military Rule of Evidence (MRE) 513; Appellate Exhibit III, the Government’s response to that Motion; and Appellate Exhibit IV, the Victims’ Counsel’s response to that Motion. R. at 54. The Military Judge closed the MRE 513 hearing discussing these motions, R. at 19, and sealed the transcript of that session, R. at 54. The military judge sealed Defense Exhibit A upon the government’s motion to seal. R. at 216-7. Each of these materials was available to the parties at trial.

### **Law**

Pursuant to Rule for Court Martial (R.C.M.) 1113(b)(3)(B)(i), “materials presented or reviewed at trial and sealed . . . may be examined by appellate counsel upon a colorable showing to the reviewing or appellate authority that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities[.]”

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

*United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998).

Air Force regulations governing professional duties and conduct of appellate defense counsel

impose upon counsel, *inter alia*, a duty to provide “competent representation,”<sup>2</sup> perform “reasonable diligence,”<sup>3</sup> and to “give a client his or her best professional evaluation of the questions that might be presented on appeal...[to] consider all issues that might affect the validity of the judgment of conviction and sentence...[to] advise on the probable outcome of a challenge to the conviction or sentence...[and to] endeavor to persuade the client to abandon a wholly frivolous appeal or to eliminate contentions lacking in substance.”<sup>4</sup> These requirements are consistent with those imposed by the state bar to which counsel belong.<sup>5</sup>

This Court may grant relief “on the basis of the entire record” of trial. Article 66, UCMJ, 10 U.S.C. § 866. Appellate defense counsel detailed by the Judge Advocate General shall represent accused servicemembers before this Court. Article 70, UCMJ, 10 U.S.C. § 870.

### **Analysis**

The parties “presented” and “reviewed” the sealed materials at trial. It is reasonably necessary for Appellant’s counsel to review these sealed exhibits for counsel to competently conduct a professional evaluation of Appellant’s case and to uncover all issues which might afford him relief. Because examination of the materials in question is reasonably necessary to the fulfillment of counsel’s Article 70, UCMJ, duties, and because the materials were made available to the parties at trial, Appellant has provided the “colorable showing” required by R.C.M. 1113(b)(3)(B)(i) to permit his counsel’s examination of sealed materials and has shown good cause to grant this motion.

The Government consents to both parties viewing the sealed materials detailed above.

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<sup>2</sup> Air Force Instruction (AFI) 51-110, *Professional Responsibility Program*, Attachment 2: Air Force Rules of Professional Conduct, Rule 1.1 (11 Dec. 2018).

<sup>3</sup> *Id.* at Rule 1.3.

<sup>4</sup> AFI 51-110, Attachment 7: Air Force Standards for Criminal Justice, Standard 4-8.3(b).

<sup>5</sup> Undersigned counsel is licensed to practice law in Connecticut.

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

Respectfully submitted,

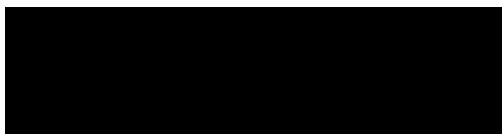


JORDAN L. GRANDE, Capt, USAF  
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Office: (240) 612-4770  
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**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 6 September 2024.

Respectfully submitted,



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Appellate Defense Counsel  
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**UNITED STATES AIR FORCE  
COURT OF CRIMINAL APPEALS**

UNITED STATES	)	No. ACM S32788
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Joshua J. WALDRON	)	
Airman (E-2)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 3</b>

This case was docketed with the court on 30 July 2024. On 20 September 2024, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant’s assignments of error. The Government 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 25th day of September, 2024,

**ORDERED:**

Appellant’s Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **27 November 2024**.

Any subsequent requests for enlargement will be considered individually on their merits.

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



Appellant's counsel is 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

[Redacted signature]

Commissioner

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

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee</i>	)	<b>ENLARGEMENT OF TIME (FIRST)</b>
	)	
v.	)	Before Panel 3
	)	
Airman (E-2)	)	No. ACM S32788
<b>JOSHUA J. WALDRON,</b>	)	
United States Air Force	)	20 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)(1) and (2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **27 November 2024**. This case was docketed with this Court on 30 July 2024. From the date of docketing to the present date, 52 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,



JORDAN L. GRANDE, Capt, USAF  
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Air Force Appellate Defense Division  
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Email: jordan.grande@us.af.mil

**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 20 September 2024.

Respectfully submitted,



JORDAN L. GRANDE, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
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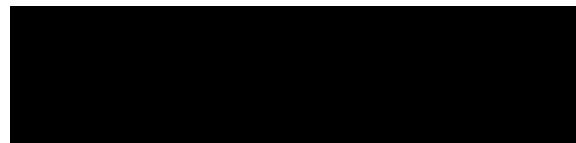
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM S32788
JOSHUA J. WALDRON, 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.

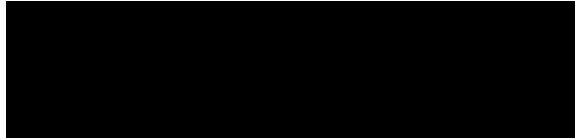
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 24 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**

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee</i>	)	<b>ENLARGEMENT OF TIME (SECOND)</b>
	)	
v.	)	Before Panel 3
	)	
Airman (E-2)	)	No. ACM S32788
<b>JOSHUA J. WALDRON,</b>	)	
United States Air Force	)	17 November 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 an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **27 December 2024**. This case was docketed with this Court on 30 July 2024. From the date of docketing to the present date, 110 days have elapsed. On the date requested, 150 days will have elapsed.

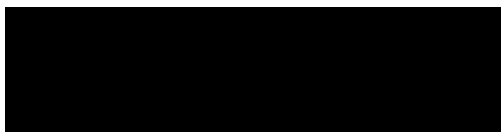
On 28 August 2023, and from 4-8 March 2024, Appellant was tried by a special court-martial sitting as a military judge alone at Fort George G. Mead, Maryland. R. at 1, 63, 827. Appellant was convicted, contrary to his pleas of one charge and one specification of dereliction of duty, in violation of Article 92, Uniform Code of Military Justice (UCMJ), and one charge and one specification of drunk and disorderly, in violation of Article 134, UCMJ. R. at 114, 717. The military judge sentenced Appellant to a reduction in grade to E-1 and a bad-conduct discharge. R. at 934. The convening authority took no action on the findings or sentence. e-ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Joshua J. Waldron*, dated 27 March 2023.

The record of trial is an e-ROT consisting of 23 prosecution exhibits, no court exhibits, 15 defense exhibits, and 45 appellate exhibits; the transcript is 934 pages.

Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. Undersigned counsel has not yet completed her review of the Record of Trial. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has not yet been advised of his right to a timely appeal, though undersigned counsel has attempted to provide an update on the status of undersigned counsel's progress on this case and the request for this enlargement of time.

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

Respectfully submitted,



JORDAN L. GRANDE, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: jordan.grande@us.af.mil

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 17 November 2024.

Respectfully submitted,



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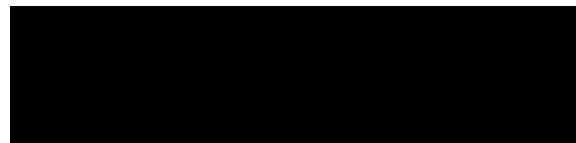
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM S32788
JOSHUA J. WALDRON, 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.

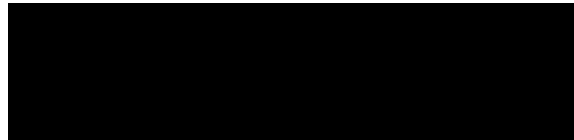
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 19 November 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**

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee</i>	)	<b>ENLARGEMENT OF TIME (THIRD)</b>
	)	
v.	)	Before Panel 3
	)	
Airman (E-2)	)	No. ACM S32788
<b>JOSHUA J. WALDRON,</b>	)	
United States Air Force	)	5 December 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 an enlargement of time to file a Motion to Abate Proceedings *Ab Initio*, or, if denied, an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **26 January 2025**. This case was docketed with this Court on 30 July 2024. From the date of docketing to the present date, 128 days have elapsed. On the date requested, 180 days will have elapsed.

On 28 August 2023, and from 4-8 March 2024, Appellant was tried by a special court-martial sitting as a military judge alone at Fort George G. Mead, Maryland. R. at 1, 63, 827. Appellant was convicted, contrary to his pleas of one charge and one specification of dereliction of duty, in violation of Article 92, Uniform Code of Military Justice (UCMJ), and one charge and one specification of drunk and disorderly, in violation of Article 134, UCMJ. R. at 114, 717. The military judge sentenced Appellant to a reduction in grade to E-1 and a bad-conduct discharge. R. at 934. The convening authority took no action on the findings or sentence. e-ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Joshua J. Waldron*, dated 27 March 2023.

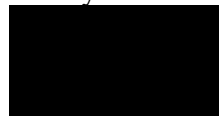
The record of trial is an e-ROT consisting of 23 prosecution exhibits, no court exhibits, 15 defense exhibits, and 45 appellate exhibits; the transcript is 934 pages.

On 11 November 2024, the Appellant tragically and unexpectedly passed away. The undersigned was retained by the Appellant's family on 21 November 2024 to represent the Appellant before this Honorable Court. The undersigned is awaiting receipt of the Appellant's certified Certificate of Death from the Maryland Division of Vital Records to support the Motion to Abate Proceedings *Ab Initio*.

Through no fault of Appellant, due to recently being retained, the undersigned has been unable to prepare a brief for Appellant's case. The undersigned has not yet completed a review of the Record of Trial. An enlargement of time is necessary to allow the undersigned to fully review Appellant's case, conduct legal research, and draft both (1) a Motion to Abate Proceedings *Ab Initio*, and (2) if necessary, an AOE brief. The requested enlargement of time is also necessary for the Maryland Division of Vital Records to complete the certified Certificate of Death and mail it to the Appellant's family and the undersigned. The Appellant is deceased and unable to consent to the enlargement of time.

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

Respectfully submitted,



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National Security Law Firm  
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Washington, DC 20036  
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Email: carl@nationalsecuritylawfirm.com

**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 December 2024.

Respectfully submitted,



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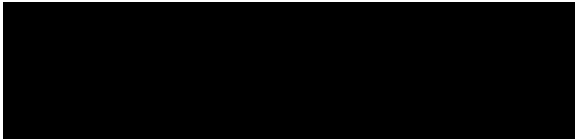
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' NON-
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM S32788
JOSHUA J. WALDRON, 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 does not oppose to Appellant's Motion for Enlargement of Time to file an Assignment of Error or Motion to Abate in this case.

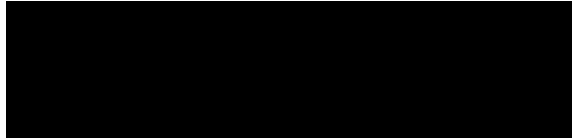
WHEREFORE, the United States respectfully requests that this Court grant Appellant's enlargement motion.



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, civilian appellate defense counsel, and to the Air Force Appellate Defense Division on 5 December 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**

<b>UNITED STATES</b>	)	<b>MOTION TO ABATE PROCEEDINGS</b>
<i>Appellee</i>	)	<b><i>AB INITIO</i></b>
	)	<b>AND MOTION TO ATTACH</b>
v.	)	
	)	Before Panel 3
Airman (E-2)	)	
<b>JOSHUA J. WALDRON,</b>	)	No. ACM S32788
United States Air Force	)	
<i>Deceased</i>	)	19 December 2024

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

Pursuant to Rule 23.3(l) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel submits this motion for abatement *ab initio*, as the Appellant, Airman (Amn) Joshua J. Waldron, died on 11 November 2024 while his case was pending review under Article 66(d), Uniform Code of Military Justice (UCMJ) before this Court. Further, undersigned counsel asks that the document located at Appendix A of this pleading be attached to the record of the above-captioned proceeding pursuant to Rules 23(b) and 23.3(b). Undersigned counsel possesses a physical certified copy of the death certificate contained in Appendix A.

**Chronological Statement of Facts**

On 28 August 2023, and from 4-8 March 2024, the Appellant was tried by a special court-martial sitting as a military judge alone at Fort George G. Mead, Maryland. R. at 1, 63, 827. The Appellant was convicted, contrary to his pleas, of one Charge and Specification of dereliction of duty, in violation of Article 92, UCMJ, 10 U.S.C. § 892, and one Charge and Specification of drunk and disorderly, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 114, 717. The military judge sentenced the Appellant to a reduction in grade to E-1 and a bad-conduct discharge. R. at 934. The convening authority took no action on the findings or sentence. e-ROT, Vol. 1,



CADA, dated 27 March 2023. On 30 July 2024, the Appellant's case was docketed with this Court. On 11 November 2024, the Appellant died. Appendix A.

### **Law & Argument**

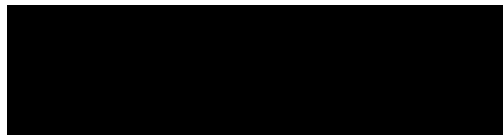
“Review by a Court of Criminal Appeals pursuant to Article 66, is an appeal of right.” *United States v. Ribaud*, 62 M.J. 286, 288 (C.A.A.F. 2006) (citing *United States v. Rorie*, 58 M.J. 399, 406 (C.A.A.F. 2003)). “[D]eath during the pendency of an appeal of right abates the proceedings *ab initio*.” *Ribaud*, 62 M.J. at 289.

*Ab initio* means “From the beginning.” *Black’s Law Dictionary* (11th ed. 2019). Accordingly, the death of the Appellant during the pendency of an appeal abates not merely the appellate proceedings, but all proceedings, from the point of preferral of charges onward. *United States v. Rorie*, 58 M.J. 399, 400 (C.A.A.F. 2003). “It is the longstanding and unanimous view of the lower federal courts that the death of an appellant during the pendency of his appeal of right from a criminal conviction abates the entire course of the proceedings brought against him.” *Ribaud*, 62 M.J. at 288 (quoting *United States v. Mochlenkamp*, 557 F.2d 126, 128 (7th Cir. 1977)). “It is as if the defendant had never been indicted and convicted.” *United States v. Logal*, 106 F.3d 1547, 1551-52 (11th Cir. 1997). “It is not until that appeal of right is complete that we can rest assured the interests of justice have been served.” *Ribaud*, 62 M.J. at 288 (citing *United States v. Wright*, 160 F.3d 905, 905, 908 (2d Cir. 1998)).

The other service’s Courts of Criminal Appeal (CCAs) have routinely granted abatement *ab initio* when an appellant has died while pending Article 66 review. *E.g.*, *United States v. Malfe*, 2022 CCA LEXIS 199 (N-M. Ct. Crim. App. Mar. 30, 2022); *United States v. Hubbert*, 61 M.J. 705 (C.G. Ct. Crim. App. 2005); *United States v. Robinson*, 60 M.J. 923 (A. Ct. Crim. App. 2005).

**WHEREFORE**, pursuant to *Ribaudo*, this Court should abate the entire course of the proceedings which have been brought against the Appellant, setting aside the findings and the sentence, dismissing the charges, and restoring all rights, privileges, and property of which the Appellant was deprived by virtue of the execution of any portion of his sentence. Further this Court should attach the document appended to this pleading to the record of the above-captioned proceeding.

Respectfully submitted,

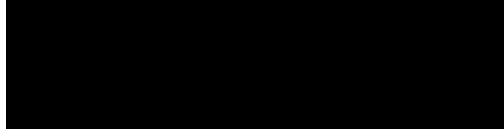


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**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 19 December 2024.

Respectfully submitted,



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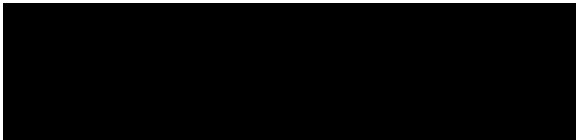
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' RESPONSE
<i>Appellee,</i>	)	TO APPELLANT'S MOTION TO
	)	ABATE PROCEEDINGS
v.	)	<i>AB INITIO</i> AND MOTION TO
	)	ATTACH
	)	
Airman (E-2)	)	ACM S32788
JOSHUA J. WALDRON, 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 does not oppose to Appellant's Motion to Abate Proceedings *Ab Initio* and Motion to Attach.

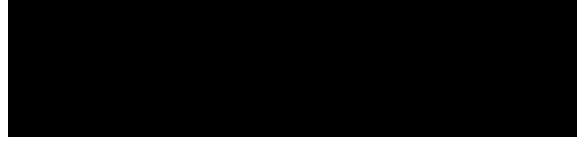
WHEREFORE, the United States respectfully requests that this Court grant Appellant's motion.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
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**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 27 December 2024.



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