IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**NOTICE OF DIRECT APPEAL PURSUANT TO ARTICLE 66(b)(1)(A), UCMJ**
v.	)	
Senior Airman (E-4) **NANCY E. ZIESCHE,** United States Air Force, *Appellant.*	)	No. ACM SXXXXX
	)	18 April 2024

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

On 21 November 2023, Appellant, Senior Airman (SrA) Nancy E. Ziesche, was tried by a special court-martial comprised of a military judge alone at Joint Base McGuire-Dix-Lakehurst, New Jersey. R. at 1, 14, 20. Consistent with her pleas, Appellant was found guilty of one charge and one specification of failing to obey a lawful order in violation of Article 92, Uniform Code of Military Justice (UCMJ); one additional charge and three specifications in violation of Article 86, UCMJ (one specification for failure to go and two specifications for absence from unit); one additional charge and one specification of resisting apprehension in violation of Article 87a, UCMJ; one additional charge and one specification of breach of restriction in violation of Article 87b, UCMJ; and one additional charge and one specification of false official statement in violation of Article 107, UCMJ. R. at 19, 21-22, 92. A variety of other charges and specifications that Appellant did not plead guilty to were withdrawn and dismissed with prejudice in accordance with a plea agreement. R. at 92, 174; Record of Trial (ROT), Vol. 1, *Entry of Judgment in the Case of* United States v. SrA Nancy E. Ziesche (*EOJ*), dated 14 December 2023.

The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for a total of 65 days. R. at 173. Appellant was awarded 55 days of pretrial confinement credit. R. at 95, 97. The convening authority took no action on the findings or the

sentence. ROT, Vol. 1, *Convening Authority Decision on Action* – U.S. v. SrA Nancy E. Ziesche, dated 6 December 2023.

On 21 March 2024, the Government mailed Appellant the required notice of her right to appeal within 90 days. Pursuant to Article 66(b)(1)(A), UCMJ, 10 U.S.C. § 866(b)(1)(A), Appellant files her notice of direct appeal with this Court.

Respectfully submitted,

[redacted]

SAMANTHA M. CASTANIEN, Capt, USAF
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Appellate Government Division on 18 April 2024.

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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM _____**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF**
Nancy E. ZIESCHE	)	**DOCKETING**
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	

On 18 April 2024, this court received a notice of direct appeal from Appellant in the above-styled case, pursuant to Article 66(b)(1)(A), Uniform Code of Military Justice, 10 U.S.C. § 866(b)(1)(A).

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

Accordingly, it is by the court on this 18th day of April, 2024,

ORDERED:

The case in the above-styled matter is referred to Panel 3.

It is further ordered:

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

FOR THE COURT

[redacted]

TANICA S. BAGMON
Appellate Court Paralegal

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 24022**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Nancy E. ZIESCHE	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 3**

On 18 April 2024, Appellant filed with this court a notice of direct appeal pursuant to Article 66(b)(1)(A), Uniform Code of Military Justice, 10 U.S.C. § 866(b)(1)(A)—the court docketed Appellant's case the same day. In this court's notice of docketing, it further ordered the Government to "forward a copy of the record of trial to the court forthwith." The government forwarded the record of trial to this court on 29 April 2024.

On 17 June 2024 (60 days after docketing and 49 days after Appellant's counsel received the completed record of trial), 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 June, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (Third) is **GRANTED**. Appellant shall file any assignments of error not later than **24 July 2024.**

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]

OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	**APPELLANT'S MOTION**
Appellee,	)	**FOR ENLARGEMENT**
	)	**OF TIME (FIRST)**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4)	)	
NANCY E. ZIESCHE,	)	No. ACM 24022
United States Air Force,	)	
Appellant.	)	17 June 2024

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 Assignments of Error. Appellant requests an enlargement for a period of 60 days, which will end on **27 August 2024**.[1]

Appellant's direct appeal was docketed with this Court on 18 April 2024. At the time of docketing, the Court had not received the record of trial and ordered it delivered forthwith. Notice of Docketing, dated 18 April 2024. The Government forwarded Appellant's record of trial to this Court on 29 April 2024. From the date of docketing (18 Apr. 24) to the present date, 60 days have elapsed. From the date this Court received the record of trial (29 Apr. 24) to the present date, 49 days have elapsed. On the date requested, 120 days will have elapsed from the date the Court received the record of trial and 131 days will have elapsed since docketing.

[1] This date was calculated by adding 120 days to the date the Court received the record of trial, 29 April 2024, as briefs are to be filed within 60 days of the Court receiving the record of trial. *See* A.F. CT. CRIM. APP. R. 18(d) (dictating a brief will be filed within 60 days of appellate counsel being notified the record was referred to the Court).

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

Respectfully submitted,

[redacted]

SAMANTHA M. CASTANIEN, Capt, USAF
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 17 June 2024.

[redacted]

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
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21 June 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) NANCY E. ZIESCHE, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 24022 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.

[redacted]

J. PETE FERRELL, 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 21 June 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
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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 24022**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Nancy E. ZIESCHE	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 3**

On 18 April 2024, Appellant filed with this court a notice of direct appeal pursuant to Article 66(b)(1)(A), Uniform Code of Military Justice, 10 U.S.C. § 866(b)(1)(A); the court docketed Appellant's case the same day. In this court's notice of docketing, it further ordered the Government to "forward a copy of the record of trial to the court forthwith." The government forwarded the record of trial to this court on 29 April 2024.

On 17 June 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. On 25 June 2024, the court granted Appellant's motion via order. However, it was brought to the court's attention that the order included a scrivener's error, therefore the court is rescinding its 25 June 2024 order.

Accordingly, it is by the court on this 26th day of June, 2024,

ORDERED:

The court's 25 June 2024 order is **RESCINDED**.

It is further ordered that Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **27 August 2024**.

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]

OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SECOND)**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4) **NANCY E. ZIESCHE,** United States Air Force, *Appellant.*	)	No. ACM 24022
	)	12 August 2024

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 an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **26 September 2024**.

Appellant's direct appeal was docketed with this Court on 18 April 2024. At the time of docketing, the Court had not received the record of trial and ordered it delivered forthwith. Notice of Docketing, dated 18 April 2024. The Government forwarded Appellant's record of trial to this Court on 29 April 2024. From the date of docketing (18 Apr. 24) to the present date, 116 days have elapsed. From the date this Court received the record of trial (29 Apr. 24) to the present date, 105 days have elapsed. On the date requested, 150 days will have elapsed from the date the Court received the record of trial and 161 days will have elapsed since docketing.

On 21 November 2023, at a special court-martial convened at Joint Base McGuire-Dix-Lakehurst, New Jersey, a military judge, consistent with Appellant's pleas, found her guilty of one charge and one specification of failure to obey a lawful order, in violation of Article 92, Uniform Code of Military Justice (UCMJ); one additional charge and one specification of failure to go to appointed place of duty and two specifications of absence from unit without authority, in violation of Article 86, UCMJ; one additional charge and one specification of resisting

apprehension, in violation of Article 87a, UCMJ; one additional charge and one specification of breach of restriction, in violation of Article 87b, UCMJ; and one additional charge and one specification of false official statement, in violation of Article 107, UCMJ. R. at 1, 14, 19-22, 92. Pursuant to a plea agreement, various specifications of the above charges and additional charges and their specifications were withdrawn and dismissed with prejudice. R. at 19-22, 92, 174.

The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for a total of 65 days (confinement for each specification running consecutively). R. at 173. The convening authority took no action on the findings or sentence. Record of Trial (ROT), Vol. 1, *Convening Authority Decision on Action* – U.S. v. SrA Nancy E. Ziesche, dated 6 December 2023.

The trial transcript is 174 pages long and the record of trial is four volumes comprised of four Prosecution Exhibits, 13 Defense Exhibits, and 16 Appellate Exhibits. Appellant is not currently confined.

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

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

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

Respectfully submitted,

[redacted]

SAMANTHA M. CASTANIEN, Capt, USAF
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 12 August 2024.

[redacted]

SAMANTHA M. CASTANIEN, Capt, USAF
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13 August 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) NANCY E. ZIESCHE, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 24022 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.

[redacted]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
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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 13 August 2024.

[redacted]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	**APPELLANT'S MOTION**
Appellee,	)	**FOR ENLARGEMENT**
	)	**OF TIME (THIRD)**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4)	)	
NANCY E. ZIESCHE,	)	No. ACM 24022
United States Air Force,	)	
Appellant.	)	13 September 2024

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) brief. Appellant requests an enlargement for a period of 30 days, which will end on **26 October 2024**.

Appellant's direct appeal was docketed with this Court on 18 April 2024. At the time of docketing, the Court had not received the record of trial and ordered it delivered forthwith. Notice of Docketing, dated 18 April 2024. The Government forwarded Appellant's record of trial to this Court on 29 April 2024. From the date of docketing (18 Apr. 24) to the present date, 148 days have elapsed. From the date this Court received the record of trial (29 Apr. 24) to the present date, 137 days have elapsed. On the date requested, 180 days will have elapsed from the date the Court received the record of trial and 191 days will have elapsed since docketing.

On 21 November 2023, at a special court-martial convened at Joint Base McGuire-Dix-Lakehurst, New Jersey, a military judge, consistent with Appellant's pleas, found her guilty of one charge and one specification of failure to obey a lawful order, in violation of Article 92, Uniform Code of Military Justice (UCMJ); one additional charge and one specification of failure to go to appointed place of duty and two specifications of absence from unit without authority, in

violation of Article 86, UCMJ; one additional charge and one specification of resisting apprehension, in violation of Article 87a, UCMJ; one additional charge and one specification of breach of restriction, in violation of Article 87b, UCMJ; and one additional charge and one specification of false official statement, in violation of Article 107, UCMJ. R. at 1, 14, 19-22, 92. Pursuant to a plea agreement, various specifications of the above charges and additional charges and their specifications were withdrawn and dismissed with prejudice. R. at 19-22, 92, 174.

The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for a total of 65 days (confinement for each specification running consecutively). R. at 173. The convening authority took no action on the findings or sentence. Record of Trial (ROT), Vol. 1, *Convening Authority Decision on Action* – U.S. v. SrA Nancy E. Ziesche, dated 6 December 2023.

The trial transcript is 174 pages long and the record of trial is four volumes comprised of four Prosecution Exhibits, 13 Defense Exhibits, and 16 Appellate Exhibits. Appellant is not currently confined.

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

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

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

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

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

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

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

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

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

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

9. *United States v. Thomas*, No. ACM 22083 - The record of trial for this direct appeal is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

10. *United States v. Marin Perez*, No. ACM S32771 - The trial transcript is 108 pages long and the record of trial is an electronic ROT, which is one volume of 381 pages. There are four Prosecution Exhibits, fourteen Defense Exhibits, four Appellate Exhibits, and one Court Exhibit. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

11. *United States v. Marschalek*, No. ACM S32776 - The trial transcript is 198 pages long and the record of trial is comprised of two volumes containing nine Prosecution Exhibits, twelve Defense Exhibits, one Court Exhibit, and three Appellate Exhibits. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

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

Additionally, military appellate defense counsel took on eight cases from departing military appellate defense counsel. Three of these cases are now pending petitions and supplements to the CAAF; their timing may impact Appellant's case. The remaining cases are

awaiting a decision from this Court and the CAAF. Depending on timing and next steps, these other cases may be prioritized over Appellant's case.

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

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

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 13 September 2024.

SAMANTHA M. CASTANIEN, Capt, USAF
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17 September 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) NANCY E. ZIESCHE, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 24022 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.

[redacted]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
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(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 17 September 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**
Appellee,	)	**FOR ENLARGEMENT**
	)	**OF TIME (FOURTH)**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4)	)	
NANCY E. ZIESCHE,	)	No. ACM 24022
United States Air Force,	)	
Appellant.	)	15 October 2024

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) brief. Appellant requests an enlargement for a period of 30 days, which will end on **25 November 2024**.

Appellant's direct appeal was docketed with this Court on 18 April 2024. At the time of docketing, the Court had not received the record of trial and ordered it delivered forthwith. Notice of Docketing, dated 18 April 2024. The Government forwarded Appellant's record of trial to this Court on 29 April 2024. From the date of docketing (18 Apr. 24) to the present date, 180 days have elapsed. From the date this Court received the record of trial (29 Apr. 24) to the present date, 169 days have elapsed. On the date requested, 210 days will have elapsed from the date the Court received the record of trial and 221 days will have elapsed since docketing.

On 21 November 2023, at a special court-martial convened at Joint Base McGuire-Dix-Lakehurst, New Jersey, a military judge, consistent with Appellant's pleas, found her guilty of one charge and one specification of failure to obey a lawful order, in violation of Article 92, Uniform Code of Military Justice (UCMJ); one additional charge and one specification of failure to go to appointed place of duty and two specifications of absence from unit without authority, in

violation of Article 86, UCMJ; one additional charge and one specification of resisting apprehension, in violation of Article 87a, UCMJ; one additional charge and one specification of breach of restriction, in violation of Article 87b, UCMJ; and one additional charge and one specification of false official statement, in violation of Article 107, UCMJ. R. at 1, 14, 19-22, 92. Pursuant to a plea agreement, various specifications of the above charges and additional charges and their specifications were withdrawn and dismissed with prejudice. R. at 19-22, 92, 174.

The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for a total of 65 days (confinement for each specification running consecutively). R. at 173. The convening authority took no action on the findings or sentence. Record of Trial (ROT), Vol. 1, *Convening Authority Decision on Action* – U.S. v. SrA Nancy E. Ziesche, dated 6 December 2023.

The trial transcript is 174 pages long and the record of trial is four volumes comprised of four Prosecution Exhibits, 13 Defense Exhibits, and 16 Appellate Exhibits. Appellant is not currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned 37 cases; 22 cases are pending before this Court (15 cases are pending AOEs); 13 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF); and two cases are pending petitions to the United States Supreme Court. Fourteen cases have priority over the present case:

1. *United States v. Giles*, No. ACM 40482 – Undersigned counsel is completing the Reply Brief, due today, 15 October 2024.

2. *United States v. Johnson*, No. 24-0004/SF – On 24 September 2024, the CAAF specified two issues in this case for briefing. Undersigned counsel inherited this case from an appellate

defense counsel who changed duty assignments. This appellant's brief, which counsel is currently drafting, is due on 24 October 2024.

3. *United States v. Wood*, USCA Dkt. No. 25-0005/AF – Undersigned counsel is drafting what is anticipated to be a three-issue supplement to the petition for grant of review to the CAAF, due 29 October 2024.

4. *United States v. Casillas*, No. 24-0089/AF – Undersigned counsel filed the Reply Brief on 16 September 2024. Oral argument is expected to occur in December, although it has yet to be formally scheduled.

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

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

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

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

9. *United States v. Gray*, No. ACM 40648 – The record of trial for this direct appeal is four volumes consisting of seven Prosecution Exhibits, nine Defense Exhibits, and 20 Appellate Exhibits. The transcript is 399 pages. This appellant is not currently confined. Counsel has not yet completed her review of this appellant's record.

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

11. *United States v. Thomas*, No. ACM 22083 - The record of trial is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

12. *United States v. Marin Perez*, No. ACM S32771 - The trial transcript is 108 pages long and the record of trial is an electronic ROT, which is one volume of 381 pages. There are four Prosecution Exhibits, fourteen Defense Exhibits, four Appellate Exhibits, and one Court Exhibit. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

13. *United States v. Marschalek*, No. ACM S32776 - The trial transcript is 198 pages long and the record of trial is comprised of two volumes containing nine Prosecution Exhibits, twelve Defense Exhibits, one Court Exhibit, and three Appellate Exhibits. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

14. *United States v. Brown*, No. ACM S32777 - The trial transcript is 133 pages long and the record of trial is three volumes containing nine Prosecution Exhibits, one Defense Exhibit, four

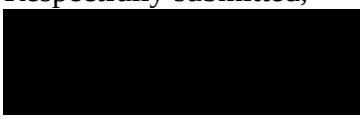
Appellate Exhibits, and one Court Exhibit. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

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

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

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

Respectfully submitted,



SAMANTHA M. CASTANIEN, Capt, USAF
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 15 October 2024.

SAMANTHA M. CASTANIEN, Capt, USAF
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16 October 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) NANCY E. ZIESCHE, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 24022 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.

[redacted]

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 16 October 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
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(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIFTH)**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4) **NANCY E. ZIESCHE,** United States Air Force, *Appellant.*	)	No. ACM 24022
	)	13 November 2024

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) brief. Appellant requests an enlargement for a period of 30 days, which will end on **25 December 2024**.

Appellant's direct appeal was docketed with this Court on 18 April 2024. At the time of docketing, the Court had not received the record of trial and ordered it delivered forthwith. Notice of Docketing, dated 18 April 2024. The Government forwarded Appellant's record of trial to this Court on 29 April 2024. From the date of docketing (18 Apr. 24) to the present date, 209 days have elapsed. From the date this Court received the record of trial (29 Apr. 24) to the present date, 198 days have elapsed. On the date requested, 240 days will have elapsed from the date the Court received the record of trial and 251 days will have elapsed since docketing.

On 21 November 2023, at a special court-martial convened at Joint Base McGuire-Dix-Lakehurst, New Jersey, a military judge, consistent with Appellant's pleas, found her guilty of one charge and one specification of failure to obey a lawful order, in violation of Article 92, Uniform Code of Military Justice (UCMJ); one additional charge and one specification of failure to go to appointed place of duty and two specifications of absence from unit without authority, in

violation of Article 86, UCMJ; one additional charge and one specification of resisting apprehension, in violation of Article 87a, UCMJ; one additional charge and one specification of breach of restriction, in violation of Article 87b, UCMJ; and one additional charge and one specification of false official statement, in violation of Article 107, UCMJ. R. at 1, 14, 19-22, 92. Pursuant to a plea agreement, various specifications of the above charges and additional charges and their specifications were withdrawn and dismissed with prejudice. R. at 19-22, 92, 174.

The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for a total of 65 days (confinement for each specification running consecutively). R. at 173. The convening authority took no action on the findings or sentence. Record of Trial (ROT), Vol. 1, *Convening Authority Decision on Action* – U.S. v. SrA Nancy E. Ziesche, dated 6 December 2023.

The trial transcript is 174 pages long and the record of trial is four volumes comprised of four Prosecution Exhibits, 13 Defense Exhibits, and 16 Appellate Exhibits. Appellant is not currently confined.

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

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

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

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

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

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

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

7. *United States v. Gray*, No. ACM 24007 – Undersigned counsel anticipates withdrawing from this case to allow a more available appellate defense counsel to take over. The new counsel has already made an appearance, and withdrawal is pending client consultation and turnover.

8. *United States v. Kim*, No. ACM 24007 – The record of trial for this direct appeal is five volumes consisting of five Prosecution Exhibits, three Defense Exhibits, 27 Appellate Exhibits,

and one court exhibit. The transcript is 421 pages. This appellant is not currently confined. Counsel has not yet completed her review of this appellant's record.

9. *United States v. Thomas*, No. ACM 22083 - The record of trial is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

10. *United States v. Marin Perez*, No. ACM S32771 - The trial transcript is 108 pages long and the record of trial is an electronic ROT, which is one volume of 381 pages. There are four Prosecution Exhibits, fourteen Defense Exhibits, four Appellate Exhibits, and one Court Exhibit. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

11. *United States v. Marschalek*, No. ACM S32776 - The trial transcript is 198 pages long and the record of trial is comprised of two volumes containing nine Prosecution Exhibits, twelve Defense Exhibits, one Court Exhibit, and three Appellate Exhibits. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

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

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

confidential communication with counsel wherein she consented to the request for this enlargement of time.

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

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF
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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 13 November 2024.

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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13 November 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) NANCY E. ZIESCHE, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 24022 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.

[redacted]

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 13 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

UNITED STATES,	)	**APPELLANT'S MOTION**
Appellee,	)	**FOR ENLARGEMENT**
	)	**OF TIME (SIXTH)**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4)	)	
NANCY E. ZIESCHE,	)	No. ACM 24022
United States Air Force,	)	
Appellant.	)	9 December 2024

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) brief. Appellant requests an enlargement for a period of 30 days, which will end on **24 January 2025**.

Appellant's direct appeal was docketed with this Court on 18 April 2024. At the time of docketing, the Court had not received the record of trial and ordered it delivered forthwith. Notice of Docketing, dated 18 April 2024. The Government forwarded Appellant's record of trial to this Court on 29 April 2024. From the date of docketing (18 Apr. 24) to the present date, 235 days have elapsed. From the date this Court received the record of trial (29 Apr. 24) to the present date, 224 days have elapsed. On the date requested, 270 days will have elapsed from the date the Court received the record of trial and 281 days will have elapsed since docketing.[1]

On 21 November 2023, at a special court-martial convened at Joint Base McGuire-Dix-Lakehurst, New Jersey, a military judge, consistent with Appellant's pleas, found her guilty of one charge and one specification of failure to obey a lawful order, in violation of Article 92,

[1] This motion for an enlargement of time is being submitted well in advance to avoid any issues while detailed appellate defense counsel is on leave from 13-21 December 2024.

Uniform Code of Military Justice (UCMJ); one additional charge and one specification of failure to go to appointed place of duty and two specifications of absence from unit without authority, in violation of Article 86, UCMJ; one additional charge and one specification of resisting apprehension, in violation of Article 87a, UCMJ; one additional charge and one specification of breach of restriction, in violation of Article 87b, UCMJ; and one additional charge and one specification of false official statement, in violation of Article 107, UCMJ. R. at 1, 14, 19-22, 92. Pursuant to a plea agreement, various specifications of the above charges and additional charges and their specifications were withdrawn and dismissed with prejudice. R. at 19-22, 92, 174.

The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for a total of 65 days (confinement for each specification running consecutively). R. at 173. The convening authority took no action on the findings or sentence. Record of Trial (ROT), Vol. 1, *Convening Authority Decision on Action* – U.S. v. SrA Nancy E. Ziesche, dated 6 December 2023.

The trial transcript is 174 pages long and the record of trial is four volumes comprised of four Prosecution Exhibits, 13 Defense Exhibits, and 16 Appellate Exhibits. Appellant is not currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Appellate defense counsel is currently assigned 38 cases; 21 cases are pending before this Court (16 cases are pending AOEs), 15 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF), and two cases are pending petitions to the United States Supreme Court. To date, nine cases have priority over the present case:

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

for 14 January 2025, which undersigned counsel will begin preparing for following completion of the next two priorities listed below.

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

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

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

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

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

7. *United States v. Thomas*, No. ACM 22083 - The record of trial is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The

verbatim transcript is 528 pages. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

8. *United States v. Marin Perez*, No. ACM S32771 - The trial transcript is 108 pages long and the record of trial is an electronic ROT, which is one volume of 381 pages. There are four Prosecution Exhibits, fourteen Defense Exhibits, four Appellate Exhibits, and one Court Exhibit. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

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

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

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

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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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 9 December 2024.

SAMANTHA M. CASTANIEN, Capt, USAF
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9 December 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) NANCY E. ZIESCHE, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 24022 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.

[redacted]
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 9 December 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SEVENTH)**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4) **NANCY E. ZIESCHE,** United States Air Force, *Appellant.*	)	No. ACM 24022
	)	13 January 2025

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

Pursuant to Rule 23.3(m)(3) and (6) of this Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE) brief. Appellant requests an enlargement for a period of 30 days, which will end on **23 February 2025**.

Appellant's direct appeal was docketed with this Court on 18 April 2024. At the time of docketing, the Court had not received the record of trial and ordered it delivered forthwith. Notice of Docketing, dated 18 April 2024. Eleven (11) days later, on 29 April 2024, the Government provided Appellant's record of trial to this Court. Rule 18(d)(2) of the Joint Rules of Appellate Procedure directs that "an appellant's brief shall be filed no later than 60 days" after the Government provides a complete record, including a verbatim transcript, to the Court and the defense. From the date this Court received the record of trial on 29 April 2024 to the present date, 259 days have elapsed. On the date requested, 300 days will have elapsed from the date the Court received the record of trial. From the date this Court docketed Appellant's case without the complete record of trial to the present date, 270 days have elapsed, and on the requested date, 311 days will have elapsed.

On 21 November 2023, at a special court-martial convened at Joint Base McGuire-Dix-Lakehurst, New Jersey, a military judge, consistent with Appellant's pleas, found her guilty of

one charge and one specification of failure to obey a lawful order, in violation of Article 92, Uniform Code of Military Justice (UCMJ); one additional charge and one specification of failure to go to appointed place of duty and two specifications of absence from unit without authority, in violation of Article 86, UCMJ; one additional charge and one specification of resisting apprehension, in violation of Article 87a, UCMJ; one additional charge and one specification of breach of restriction, in violation of Article 87b, UCMJ; and one additional charge and one specification of false official statement, in violation of Article 107, UCMJ. R. at 1, 14, 19-22, 92. Pursuant to a plea agreement, various specifications of the above charges and additional charges and their specifications were withdrawn and dismissed with prejudice. R. at 19-22, 92, 174.

The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for a total of 65 days (confinement for each specification running consecutively). R. at 173. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action – U.S. v. SrA Nancy E. Ziesche, dated 6 December 2023.

The trial transcript is 174 pages long and the record of trial is four volumes comprised of four Prosecution Exhibits, 13 Defense Exhibits, and 16 Appellate Exhibits. Appellant is not currently confined.

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

Since Appellant's last request for an extension of time, undersigned counsel filed the petition for certiorari for *United States v. Leipart* with the United States Supreme Court, filed with

the CAAF the three-issue supplement to the petition for grant of review in *United States v. Folts*, No. 25-0043/AF, filed two additional petitions and supplements to the CAAF (*United States v. Scott* and *United States v. Lawson*), and completed the reply brief, along with two motions and their associated replies, in *United States v. Johnson*, No. 24-0004/SF, also for the CAAF. To date, seven cases have priority over the present case:

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

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

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

to work *Wells* simultaneously with *United States v. Kim*, No. ACM 24007. Undersigned counsel will begin briefing *Wells* following *Johnson*, and then turn to *Kim*.

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

5. *United States v. Thomas*, No. ACM 22083 - The record of trial is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

6. *United States v. Marin Perez*, No. ACM S32771 - The trial transcript is 108 pages long and the record of trial is an electronic ROT, which is one volume of 381 pages. There are four Prosecution Exhibits, fourteen Defense Exhibits, four Appellate Exhibits, and one Court Exhibit. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

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

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

confidential communication with counsel wherein she consented to the request for this enlargement of time.

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

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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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 13 January 2025.

SAMANTHA M. CASTANIEN, Capt, USAF
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14 January 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) NANCY E. ZIESCHE, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 24022 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 opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

[redacted]

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

CERTIFICATE OF FILING AND SERVICE

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

[redacted]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 24022**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Nancy E. ZIESCHE	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 3**

On 10 February 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Eighth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 13th day of February, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (Eighth) is **GRANTED**. Appellant shall file any assignments of error not later than **25 March 2025**.

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

FOR THE COURT

[redacted]

OLGA STANFORD, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	**APPELLANT'S MOTION**
Appellee,	)	**FOR ENLARGEMENT**
	)	**OF TIME (EIGHTH)**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4)	)	
NANCY E. ZIESCHE,	)	No. ACM 24022
United States Air Force,	)	
Appellant.	)	10 February 2025

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

Pursuant to Rule 23.3(m)(3) and (6) of this Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file an Assignments of Error (AOE) brief. Appellant requests an enlargement for a period of 30 days, which will end on **25 March 2025**.

Appellant's direct appeal was docketed with this Court on 18 April 2024. At the time of docketing, the Court had not received the record of trial and ordered it delivered forthwith. Notice of Docketing, dated 18 April 2024. Eleven (11) days later, on 29 April 2024, the Government provided Appellant's record of trial to this Court. Rule 18(d)(2) of the Joint Rules of Appellate Procedure directs that "an appellant's brief shall be filed no later than 60 days" after the Government provides a complete record, including a verbatim transcript, to the Court and the defense. From the date this Court received the record of trial on 29 April 2024 to the present date, 287 days have elapsed. On the date requested, 330 days will have elapsed from the date the Court received the record of trial. From the date this Court docketed Appellant's case without the complete record of trial to the present date, 298 days have elapsed, and on the requested date, 341 days will have elapsed.

On 21 November 2023, at a special court-martial convened at Joint Base McGuire-Dix-Lakehurst, New Jersey, a military judge, consistent with Appellant's pleas, found her guilty of one

charge and one specification of failure to obey a lawful order, in violation of Article 92, Uniform Code of Military Justice (UCMJ); one additional charge and one specification of failure to go to appointed place of duty and two specifications of absence from unit without authority, in violation of Article 86, UCMJ; one additional charge and one specification of resisting apprehension, in violation of Article 87a, UCMJ; one additional charge and one specification of breach of restriction, in violation of Article 87b, UCMJ; and one additional charge and one specification of false official statement, in violation of Article 107, UCMJ. R. at 1, 14, 19-22, 92. Pursuant to a plea agreement, various specifications of the above charges and additional charges and their specifications were withdrawn and dismissed with prejudice. R. at 19-22, 92, 174.

The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for a total of 65 days (confinement for each specification running consecutively). R. at 173. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action – U.S. v. SrA Nancy E. Ziesche, dated 6 December 2023.

The trial transcript is 174 pages long and the record of trial is four volumes comprised of four Prosecution Exhibits, 13 Defense Exhibits, and 16 Appellate Exhibits. Appellant is not currently confined.

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

Since Appellant's last request for an extension of time, undersigned counsel completed oral argument in *United States v. Casillas*, No. 24-0089/AF (14 Jan. 2025) and in *United States v.*

Johnson, No. 24-0004/SF (29 Jan. 2025). Undersigned counsel also wrote the petition of certiorari for *United States v. Wells*, No. 24A520, which is now pending printing. Filing must be accomplished by 21 Feb. 2025. At this time, six cases have priority over the present case, though some will be worked in tandem:

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

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

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

question specifically articulated to the CAAF). Undersigned counsel intends to work the supplement to the petition simultaneously with *United States v. Thomas*, No. ACM 22083.

4. *United States v. Thomas*, No. ACM 22083 - The record of trial is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

5. *United States v. Marin Perez*, No. ACM S32771 - The trial transcript is 108 pages long and the record of trial is an electronic ROT, which is one volume of 381 pages. There are four Prosecution Exhibits, fourteen Defense Exhibits, four Appellate Exhibits, and one Court Exhibit. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

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

Additionally, *United States v. Marschalek*, No. ACM S32776, is likely to take priority over Appellant's case due to the Government's prohibition of reservist telework. A reservist, Lt Col Ghiotto, was assigned to take lead on *Marschalek*. Due to recent Government action, Lt Col Ghiotto is no longer authorized to perform telework Inactive Duty Training, which is how he works on *Marschalek.* As this situation continues to evolve, it is very possible undersigned counsel will have to take lead on *Marschalek* soon. Since *Marschalek* has been docketed for a longer period than Appellant's case, it will be prioritized over Appellant's case if this occurs.

Such an occurrence would qualify as an exceptional circumstance justifying approval of EOTs exceeding the 360-day mark in Appellant's case. *See* Order (June 26, 2024).

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

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

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF
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Air Force Appellate Defense Division
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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 10 February 2025.

SAMANTHA M. CASTANIEN, Capt, USAF
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12 February 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) NANCY E. ZIESCHE, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 24022 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 opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 341 days in length. Appellant's nearly yearlong delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two thirds of 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 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.

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

CERTIFICATE OF FILING AND SERVICE

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

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

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 24022**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Nancy E. ZIESCHE	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 3**

Appellant's case was docketed with this court on 18 April 2024. Thereafter, Appellant and this court received the verbatim transcript from Appellant's court-martial on 29 April 2024. Pertinent to our evaluation of whether good cause exists for any future enlargements of time is the length of the record of trial and verbatim transcript in Appellant's case. The verbatim transcript is 174 pages, and the record of trial is composed of only 4 volumes containing 4 prosecution exhibits, 13 defense exhibits, and 16 Appellate Exhibits in a guilty plea, judge along, plea agreement case.

On 10 March 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Ninth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion. This motion, if granted would expire 360 days after Appellant received the copy of the verbatim transcript for his court-martial.

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

Accordingly, it is by the court on this 13th day of March, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (Ninth) is **GRANTED**. Appellant shall file any assignments of error not later than **24 April 2025**.

Further requests by Appellant for enlargements of time will likely necessitate a status conference insofar as any future enlargements of time will involve Appellant filing her assignment of errors brief more than 360 days after receiving the 174-page verbatim transcript of her court-martial.

FOR THE COURT

[redacted]

OLGA STANFORD, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	**APPELLANT'S MOTION**
Appellee,	)	**FOR ENLARGEMENT**
	)	**OF TIME (NINTH)**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4)	)	
NANCY E. ZIESCHE,	)	No. ACM 24022
United States Air Force,	)	
Appellant.	)	10 March 2025

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

Pursuant to Rule 23.3(m)(3) and (6) of this Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file an Assignments of Error (AOE) brief. Appellant requests an enlargement for a period of 30 days, which will end on **24 April 2025**. Recognizing this Court recently noted, "Further requests by Appellant for enlargements of time may necessitate a status conference," Order (Feb. 13, 2025), and that previously this Court stated any EOT request that would expire more than 360 days after of docketing would only be granted for "exceptional circumstances," Order (June 26, 2024), if this Court intends to deny this request for an EOT, undersigned counsel requests a status conference.

Appellant's direct appeal was docketed with this Court on 18 April 2024. At the time of docketing, the Court had not received the record of trial and ordered it delivered forthwith. Notice of Docketing, dated 18 April 2024. Eleven (11) days later, on 29 April 2024, the Government provided Appellant's record of trial to this Court. Rule 18(d)(2) of the Joint Rules of Appellate Procedure directs that "an appellant's brief shall be filed no later than 60 days" after the Government provides a complete record, including a verbatim transcript, to the Court and the defense. From the date this Court received the record of trial on 29 April 2024 to the present date, 315 days have elapsed. On the date requested, 360 days will have elapsed from the date the Court

received the record of trial. From the date this Court docketed Appellant's case without the complete record of trial to the present date, 326 days have elapsed, and on the requested date, 371 days will have elapsed.

On 21 November 2023, at a special court-martial convened at Joint Base McGuire-Dix-Lakehurst, New Jersey, a military judge, consistent with Appellant's pleas, found her guilty of one charge and one specification of failure to obey a lawful order, in violation of Article 92, Uniform Code of Military Justice (UCMJ); one additional charge and one specification of failure to go to appointed place of duty and two specifications of absence from unit without authority, in violation of Article 86, UCMJ; one additional charge and one specification of resisting apprehension, in violation of Article 87a, UCMJ; one additional charge and one specification of breach of restriction, in violation of Article 87b, UCMJ; and one additional charge and one specification of false official statement, in violation of Article 107, UCMJ. R. at 1, 14, 19-22, 92. Pursuant to a plea agreement, various specifications of the above charges and additional charges and their specifications were withdrawn and dismissed with prejudice. R. at 19-22, 92, 174.

The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for a total of 65 days (confinement for each specification running consecutively). R. at 173. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action – U.S. v. SrA Nancy E. Ziesche, dated 6 December 2023.

The trial transcript is 174 pages long and the record of trial is four volumes comprised of four Prosecution Exhibits, 13 Defense Exhibits, and 16 Appellate Exhibits. Appellant is not currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned 38 cases; 19 cases are pending

before this Court (18 cases are pending AOEs), 18 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF), and one case is pending before the United States Supreme Court. To date, six cases have priority over the present case:

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

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

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

4. *United States v. Marin Perez*, No. ACM S32771 – This case has been docketed for a similar time as *United States v. Thomas*, No. ACM 22083, but the number of EOT requests exceeds *Thomas* by four. In balancing docketing time, the number of EOTs and this Court's associated orders, and the size of the records, this case has been moved up in priority. This appellant's transcript is 108 pages long and the record of trial is an electronic ROT, which is one volume of 381 pages. There are four Prosecution Exhibits, fourteen Defense Exhibits, four Appellate Exhibits, and one Court Exhibit. This appellant is not currently confined. Undersigned counsel has not yet completed her review of this appellant's record.

5. *United States v. Thomas*, No. ACM 22083 - The record of trial is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

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

This Court has stated "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*." Order (June 26, 2024). After Appellant's case was docketed, it took the Government 11 days to deliver the record of trial to the Court and defense. This delay caused the "exceptional circumstances" requirement from the order to be triggered at this time (rather than during any following EOT request), and the Government driven delay should be considered the exceptional circumstance to justify granting this EOT request. Undersigned counsel desires to complete review of Appellant's case as soon as possible but has been unable to do so to her high workload.[1] Based on undersigned counsel's docket, workload, and office responsibilities,[2] undersigned counsel anticipates being able to review Appellant's case during April, but needs the requested additional time to do so. There is good cause to grant the EOT based on workload alone, but the Government-caused delay is the qualifying "exceptional circumstance" that also justifies granting this request for an EOT.

[1] Per this Court's definition of "exceptional circumstances," "routine workload alone" is insufficient to constitute "exceptional circumstances." Order, *United States v. Evangelista*, slip op. at 2 n.3, No. ACM 40531 (Dec. 6, 2024). Whether undersigned counsel's high workload constitutes "extraordinary, unusual, or unforeseeable circumstances," *id.*, is a question for this Court to resolve. Nevertheless, Appellant desires the assistance of undersigned counsel in her appeal and good cause exists to grant this EOT request.

[2] This includes participating in moots for at least two more oral arguments, attending oral arguments at the CAAF on 19 March and 9 April, and attending the CAAF ceremony at the Tomb of the Unknown Solider.

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

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

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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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 10 March 2025.

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
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11 March 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4) **NANCY E. ZIESCHE**, United States Air Force.	)	No. ACM 24022
Appellant	)	11 March 2025

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 371 days in length. Appellant's yearlong delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two thirds of 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 Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

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

CERTIFICATE OF FILING AND SERVICE

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

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

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 24022**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Nancy E. ZIESCHE	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 3**

On 14 April 2025, 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.

On 18 April 2025, the court held a status conference to discuss the progress of this case. Appellant was represented by Captain Samantha M. Castanien; Mr. Dwight H. Sullivan from the Appellate Defense Division was also present. Major Vanessa Bairos represented the Government. Captain Castanien provided certain updates to information provided in Appellant's motion, and reaffirmed her belief that Appellant would require no additional enlargements of time beyond the tenth. In response to questions from the court, Captain Castanien provided additional information regarding her other assigned cases and elaborated upon points raised in the motion. Major Bairos maintained the Government's opposition to the motion but did not specifically challenge or comment on written or oral representation by the Defense.

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

Accordingly, it is by the court on this 18th day of April, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (Tenth) is **GRANTED**. Appellant shall file any assignments of error not later than **24 May 2025**.

FOR THE COURT

[redacted]

OLGA STANFORD, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (TENTH)**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4) **NANCY E. ZIESCHE,** United States Air Force, *Appellant.*	)	No. ACM 24022
	)	14 April 2025

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

Pursuant to Rule 23.3(m)(3) and (6) of this Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file an Assignments of Error (AOE) brief. Appellant requests an enlargement for a period of 30 days, which will end on **24 May 2025**.

Due to the size of Appellant's record, undersigned counsel anticipates this being the last EOT request, but she needs the additional requested time in order to complete briefing in two other cases, to include another AOE that is in the same position as Appellant's, i.e., a short record on EOT 10, docketed over 360 days, and requiring "exceptional circumstances" for EOT approval. Without the additional time, undersigned counsel will not be able to provide competent representation to Appellant or her other clients. She is the only detailed counsel to Appellant's case, has an established attorney-client relationship with Appellant, and no other Air Force Appellate Defense Counsel is available to take over Appellant's case. Recognizing this Court recently noted, "Further requests by Appellant for enlargements of time will likely necessitate a status conference," Order (Mar. 13, 2025), and that previously this Court stated any EOT request that would expire more than 360 days after of docketing would only be granted for "exceptional circumstances," Order (June 26, 2024), **undersigned counsel requests a status conference.**

Appellant's direct appeal was docketed with this Court on 18 April 2024. At the time of docketing, the Court had not received the record of trial and ordered it delivered forthwith. Notice of Docketing, dated 18 April 2024. Eleven (11) days later, on 29 April 2024, the Government provided Appellant's record of trial to this Court. Rule 18(d)(2) of the Joint Rules of Appellate Procedure directs that "an appellant's brief shall be filed no later than 60 days" after the Government provides a complete record, including a verbatim transcript, to the Court and the defense. From the date this Court received the record of trial on 29 April 2024 to the present date, 350 days have elapsed. On the date requested, 390 days will have elapsed from the date the Court received the record of trial. From the date this Court docketed Appellant's case without the complete record of trial to the present date, 361 days have elapsed, and on the requested date, 401 days will have elapsed.

On 21 November 2023, at a special court-martial convened at Joint Base McGuire-Dix-Lakehurst, New Jersey, a military judge, consistent with Appellant's pleas, found her guilty of one charge and one specification of failure to obey a lawful order, in violation of Article 92, Uniform Code of Military Justice (UCMJ); one additional charge and one specification of failure to go to appointed place of duty and two specifications of absence from unit without authority, in violation of Article 86, UCMJ; one additional charge and one specification of resisting apprehension, in violation of Article 87a, UCMJ; one additional charge and one specification of breach of restriction, in violation of Article 87b, UCMJ; and one additional charge and one specification of false official statement, in violation of Article 107, UCMJ. R. at 1, 14, 19-22, 92. Pursuant to a plea agreement, various specifications of the above charges and additional charges and their specifications were withdrawn and dismissed with prejudice. R. at 19-22, 92, 174.

The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for a total of 65 days (confinement for each specification running consecutively). R. at 173. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action – U.S. v. SrA Nancy E. Ziesche, dated 6 December 2023.

The trial transcript is 174 pages long and the record of trial is four volumes comprised of four Prosecution Exhibits, 13 Defense Exhibits, and 16 Appellate Exhibits. Appellant is not currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Undersigned counsel is currently assigned 37 cases; 20 cases are pending before this Court (17 cases are pending AOEs), and 17 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). Since Appellant's last request for an extension of time, undersigned counsel filed a supplement to the petition for grant of review in two cases, *United States v. Giles*, No. 25-0100/AF, and *United States v. Hogans*, No. 25-0119/AF, filed AOEs in two cases, *United States v. Kim*, No. ACM 24007, and *United States v. Marin Perez*, No. ACM S32771, and completed briefing in *United States v. Braum*, No. 25-0046/AF. To date, due to this Court's various orders, only two cases have priority over Appellant's case:

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

2. *United States v. Kim*, No. ACM 24007 – Undersigned counsel is awaiting the Government's Answer brief, due 18 April 2025, and upon receipt, will assess whether a Reply brief is warranted.

This Court has stated "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*." Order (June 26, 2024) (first emphasis added). Per this Court's definition of "exceptional circumstances," "routine workload alone" is insufficient to constitute "exceptional circumstances." Order, *United States v. Evangelista*, slip op. at 2 n.3, No. ACM 40531 (Dec. 6, 2024). Undersigned counsel desires to complete review of Appellant's case as soon as possible but has been unable to do so due to her high workload. But, to be clear, there is nothing "routine" about undersigned counsel's high workload. As the result of (1) two recent Supreme Court filings, (2) a highly unusual volume of cases before the CAAF for the Air Force Appellate Defense Division (including her own docket of 17 cases and the Division's nine oral arguments in the last four months, two of which were undersigned counsel's),[1] (3) the volume of cases coming to the Division for review, and (4) recent disruptions to many of this Division's Reserve judge advocates' ability to perform drills (this includes recent fiscal hurdles and impediments), undersigned counsel has not been able to provide effective assistance of counsel to several of her clients with cases pending before this Court without seeking tenth or higher enlargements of time. These are exceptional circumstances sufficient to justify granting this EOT request.

Furthermore, Appellant has a constitutional right to effective assistance of counsel before this Court. *See, e.g.*, *Diaz v. Judge Advocate General of the Navy*, 59 M.J. 34, 37 (C.A.A.F. 2003) ("An accused has the right to effective representation by counsel through the entire period of review following trial, including representation before the Court of Criminal Appeals and [the CAAF] by appellate counsel appointed under Article 70, UCMJ, 10 U.S.C. § 870 (2000)."). So do

[1] For the remaining cases before the CAAF, undersigned counsel participated in over twelve moots to assist her various colleagues.

undersigned counsel's other clients, including those before the CAAF. It is not possible for all those service members' constitutional right to effective assistance of counsel to be honored without additional extensions of time. Where, as here, an overtaxed appointed defense system renders timely representation impossible, resulting delays are attributable to the Government. *See Vermont v. Brillon*, 556 U.S. 81, 94 (2009). This Court should consider ordering the Government to provide greater personnel resources to the Air Force Appellate Defense Division to ensure that Airmen's and Guardians' constitutional rights to both effective assistance of appellate counsel and timely appellate review can be satisfied. Currently, there are inadequate resources available to do both.

Additionally, because of this Court's requirement for "exceptional circumstances" in this case, another case that has been docketed longer than Appellant's but does not have similar EOT requirements has been lowered in priority, specifically, *United States v. Thomas*, No. ACM 22083. This direct appeal has been docketed with this Court since February 14, 2024 (425 days to date). While that case is also a plea, this appellant was sentenced by members, rendering the record much larger than Appellant's. By causing Appellant's case to be prioritized over *Thomas* out of concern this EOT will not be granted because the Court's prior decisions have indicated workload is an insufficient justification, this Court's order has created additional delay in *Thomas* and caused disparate and arbitrary treatment amongst appellants.

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

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

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 14 April 2025.

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

UNITED STATES,	)	UNITED STATES' OPPOSITION
	)	TO APPELLANT'S MOTION FOR
Appellee,	)	ENLARGEMENT OF TIME
	)	
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4)	)	
NANCY E. ZIESCHE,	)	No. ACM 24022
United States Air Force.	)	
Appellant	)	16 April 2025

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant 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 390 days in length. Appellant's over 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 more than 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 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.

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

CERTIFICATE OF FILING AND SERVICE

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

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

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 24022**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF PANEL CHANGE**
Nancy E. ZIESCHE	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	

It is by the court on this 6th day of May, 2025,

ORDERED:

That the Record of Trial in the above-styled matter is withdrawn from Panel 3 and referred to Panel 2 for appellate review.

This panel letter supersedes all previous panel assignments.

FOR THE COURT

[redacted]

OLGA STANFORD, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MERITS BRIEF ON BEHALF OF APPELLANT**
v.	)	
	)	Before Panel No. 2
Senior Airman (E-4) **NANCY E. ZIESCHE,** United States Air Force, *Appellant.*	)	No. ACM 24022
	)	22 May 2025

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

Submission of Case Without Specific Assignment of Error

The undersigned appellate defense counsel attests she has, on behalf of Appellant, carefully examined the record of trial in this case. Appellant does not admit the findings and sentence are correct in law and fact. She submits the case to this Court on its merits with no specific attorney-raised assignments of error during this stage of appellate processing. Appellant does, however, personally raise one issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). *See* Appendix.

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 22 May 2025.

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
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APPENDIX

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), Appellant, Senior Airman (SrA) Nancy R. Ziesche, through appellate defense counsel, personally requests that this Court consider the following matter:

WHETHER APPELLANT'S PLEA OF GUILTY WAS INVOLUNTARY OR OTHERWISE COERCED.

Statement of the Case

On November 21, 2023, at a special court-martial convened at Joint Base McGuire-Dix-Lakehurst (McGuire), New Jersey, a military judge, consistent with SrA Ziesche's pleas, found her guilty of one charge and one specification of failure to obey a lawful order, in violation of Article 92, Uniform Code of Military Justice (UCMJ); one additional charge and one specification of failure to go to appointed place of duty and two specifications of absence from unit without authority, in violation of Article 86, UCMJ; one additional charge and one specification of resisting apprehension, in violation of Article 87a, UCMJ; one additional charge and one specification of breach of restriction, in violation of Article 87b, UCMJ; and one additional charge and one specification of false official statement, in violation of Article 107, UCMJ. R. at 1, 14, 19-22, 92. Pursuant to a plea agreement, various specifications of the above charges and additional charges and their specifications were withdrawn and dismissed with prejudice. R. at 19-22, 92, 174.

The military judge sentenced SrA Ziesche to be reprimanded, reduced to the grade of E-1, and confined for a total of sixty-five days (confinement for each specification running consecutively). R. at 173. SrA Ziesche received fifty-five days of pretrial confinement credit. R. at 95-96. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action.

On April 18, 2024, SrA Ziesche filed a notice of direct appeal with this Court. Notice of

Docketing (Apr. 18, 2024). This Court docketed her direct appeal the same day. *Id*.

Statement of the Facts

SrA Ziesche's father was one of the most important people in her life. R. at 148. "He absolutely meant the world to [her]." *Id*. When was diagnosed with cancer, she was nearing the end of her initial four-year enlistment as an intelligence analyst. R. at 28-29, 148; Pros. Ex. 1 at 1. She extended her initial enlistment for eleven months to accept a humanitarian assignment to be closer to her ailing father. *Id*. Shortly after SrA Ziesche took her humanitarian assignment to McGuire, her father died suddenly. R. at 142, 149. His death broke her. *Id*. It was at this point, her Air Force career—successful by all accounts up until then—took a turn.

A few months after her father passed away, SrA Ziesche unexpectedly became pregnant at the age of thirty-four. R. at 149. SrA Ziesche already had one son, a brilliant fifteen-year-old who loved tennis. *Id*. But SrA Ziesche was solo-parenting him because her husband lived in Germany. *See* R. at 72, 140, 142 (referencing how her husband lives in Germany). Her new unit did not require her to have a family care plan, despite the fact her husband lived across the ocean. Appellate Ex. VIII at 160.

SrA Ziesche's pregnancy was fraught. In June 2022, she went to the emergency room and learned she had a placenta tear. R. at 149-50. Her civilian provider, an obstetrician and gynecologist from Lenox ObGyn,[1] recommended bed rest in August 2022. Appellate Ex. VIII at 191. Her unit, the 87th Medical Support Squadron, conferred with military medical providers and denied bed rest. Pros. Ex. 1 at 2. In early October, her civilian medical provider indicated her pregnancy related conditions were worsening. Appellate Ex. VIII at 192. Telework was

[1] The medical provider's information is available at https://www.lenoxobgyn.com/providers (last accessed May 22, 2025).

recommended, along with other work accommodations. *Id*. In late October, her civilian provider once again recommended "strict bed rest for the remainder of her pregnancy." Appellate Ex. VIII at 193. The unit again declined to accommodate this medical recommendation. *See* Appellate Ex. VIII at 194-96 (showing repeated requests for SrA Ziesche to be put on bed rest thereafter).

In early November, SrA Ziesche's provider explained SrA Ziesche was suffering from "worsening sciatica," "herniated lumbar disc," and "weakness of lower extremity," all de-strengthening her legs, which could cause her to fall and rupture her placenta. Appellate Ex. VIII at 194. Bed rest was once again recommended. *Id*. In mid-November, her civilian provider—again—recommended her for "rest and absence from work," as her provider had concerns about SrA Ziesche's serious health complications and high-risk pregnancy. Appellate Ex. VIII at 195. Her command did not grant bed rest. Pros. Ex. 1 at 2.

Instead, during her difficult pregnancy, the unit gave her four disciplinary actions. Appellate Ex. VIII at 208-216. All had to do with not adhering to work standards: failure to report on time, failure to show, not arriving in uniform, etc. *Id*. Every response detailed SrA Ziesche's pregnancy complications and concerns: "My goal is to serve the needs of the Air Force but most importantly to provide and protect the life of my unborn child." *Id*.; Appellate Ex. VIII at 211.

Following an Equal Opportunity complaint against her commander, SrA Ziesche was given thirty days of convalescent leave in December. Appellate Ex. VIII at 141-42, 202. Her baby, FZ, was born on December 25, 2022, a week early. Pros. Ex. 1 at 2; *see* Appellate Ex. VIII at 191 (showing due date as January 1, 2023).

After FZ was born, SrA Ziesche was on convalescent leave. Pros. Ex. 1 at 2; Appellate Ex. VIII at 156. Her unit expected her back on February 8, 2023. Appellate Ex. VIII at 77-78, 156. The unit was investigating government travel card misuse from two years prior in 2021 and

intended serving her with more administrative paperwork. Appellate Ex. VIII at 156, 217. That would have to wait. SrA Ziesche asked for her parental leave, which was granted. Pros. Ex. 1 at 59. During this time, SrA Ziesche requested to voluntarily separate from the Air Force due to pregnancy and hardship. R. at 114, 122. Her request was approved. R. at 115. Her approved voluntary separation date was August 16, 2023. *Id*.

Unfortunately, SrA Ziesche did not separate on August 16, 2023. Instead, her unit initiated involuntary separation and then court-martial proceedings, to include pretrial confinement, due to the conduct underlying SrA Ziesche's court-martial. Appellate Ex. VIII at 224; R. at 116-20; Pros. Ex. 1 at 8. But behind SrA Ziesche's conduct remained one thought: her child, FZ. *See* Pros. Ex. 1 at 1-8, 23-24, 28 (detailing SrA Ziesche's explanations for her conduct); R. at 30-75 (explaining her conduct during her guilty plea inquiry).

Throughout SrA Ziesche's plea colloquy, there was a consistent theme. R. at 30-75. It would have been very difficult to comply with the unit's orders, demands, and the overall requirements of the Air Force because of SrA Ziesche's legal requirement to take care of her baby. *Id*. Childcare continuously was an issue and the reason SrA Ziesche did not report to work on time or at all. R. at 36, 38, 43-44. Protecting her child was SrA Ziesche's number one priority; even during her apprehension, she was always concerned about being with, and protecting, her daughter. R. at 56-57. There was no inability, impossibility, mental incapacity, or duress defenses available for these offenses; SrA Ziesche affirmatively disclaimed such defenses. R. at 34, 38, 43-44, 51-53, 59-60, 70, 75.

Despite no legal defense applying to her plea, SrA Ziesche felt coerced to plead guilty under all the circumstances. Appellant's Motion to Attach a Document; Declaration at 1-3 [hereinafter Decl.]. She was ordered into pretrial confinement and ripped away from her baby,

when her husband was on the other side of the world. Decl. at 1-2; R. at 56-60. She was limited in her ability to speak and coordinate with her defense counsel, a point the military judge emphasized on the record. R. at 99 ("Trial counsel, I'm going to remind you that literally two days ago you actually refused to make her available to her defense counsel."); Decl. at 1. SrA Ziesche was subject to illegal recordings by her unit, which the Government only disclosed on the eve of trial. Decl. at 1. Her command also reported a false Child Protective Services (CPS) claim against her on the date her command facilitated her apprehension and pretrial confinement. Decl. at 1-2; Pros. Ex. 1 at 6-8. Her pretrial confinement conditions put an immense strain on her and were the basis of a waived Article 13, UCMJ, or R.C.M. 304 motion. Decl. at 1-3; R. at 82-83, 95, 150; *see* Appellate Ex. VIII at 173 (showing she was housed with the local population). Childcare, the driving issue for everything in this court-martial, remained a problem after SrA Ziesche's involuntary confinement. Decl. 1-3. No one was available to take care of FZ, which added to the mounting pressure from her family overall. *Id*.

ARGUMENT

SRA ZIESCHE'S PLEA OF GUILTY WAS INVOLUNTARY OR OTHERWISE COERCED.

Standard of Review

"[A] guilty plea must be both voluntary and intelligent if it is to represent a constitutionally valid predicate for a conviction." *Brady v. United States*, 397 U.S. 742, 748 (1970). The voluntariness of a guilty plea is a question of law, reviewed de novo. *United States v. Rankin*, No. 202300100, 2024 CCA LEXIS 279, at *10 (N-M. Ct. Crim. App. July 12, 2024) (citing *Marshall v. Lonberger*, 459 U.S. 422 (1983)).

Law and Analysis

"[A]lthough a guilty plea waives several rights to which an accused or appellant is entitled, a plea of guilty may yet be attacked as involuntary or coerced. If coercion is proved, the plea must be set aside." *United States v. Caylor*, 40 M.J. 786, 788 (A.F.C.M.R. 1994) (citations omitted). "Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality." *Boykin v. Alabama*, 395 U.S. 238, 242-43 (1969).

The voluntariness of a plea "can be determined only by considering all of the relevant circumstances surrounding it." *Brady*, 397 U.S. at 749 (citing *Haynes v. Washington*, 373 U.S. 503, 513 (1963); *Leyra v. Denno*, 347 U.S. 556, 558 (1954)). For example, the Government cannot "produce a plea by actual or threatened physical harm or by mental coercion overbearing the will of the defendant." *Brady*, 397 U.S. at 750.

The standard as to the voluntariness of a guilty plea is

> A plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes).

Brady, 397 U.S. at 755. (cleaned up). In evaluating the *Brady* standard, the Navy-Marine Corps Court of Criminal Appeals has applied the First Circuit's two-part Fifth Amendment due process test. *United States v. Montoya*, No. NMCCA 200700933, 2009 CCA LEXIS 75, at *4 (N-M. Ct. Crim. App. Feb. 24, 2009) (citing *Ferrara v. United States*, 456 F.3d 278, 290 (1st Cir. 2006)). An appellant first "must show that some egregiously impermissible conduct . . . antedated the entry of his plea. Second he must show that the misconduct influenced his decision to plead guilty or, put another way, that it was material to that choice." *Ferrara*, 456 F.3d at 290 (citations omitted).

Here, the totality of the Government's conduct against SrA Ziesche was egregiously impermissible under the circumstances. She had an extremely difficult pregnancy following a personal tragedy. R. at 142, 149-50; Appellate Ex. VIII at 191-96. The Air Force reassigned her to a new unit with a mission she was not trained for, that, through the course of her pregnancy, she was not able to accomplish due to medical complications. R. at 148; Pros. Ex. 1 at 1; Appellate Ex. VIII at 208-216. Recognizing her incompatibility with the Air Force following her pregnancy, SrA Ziesche submitted and was approved a voluntary separation due to hardship and pregnancy. R. at 114-15, 122.

But, as SrA Ziesche experienced it, the unit had other plans and continued to target her with paperwork knowing her voluntary separation was approved. Appellate Ex. VIII at 207 (listing the nine disciplinary actions she received from October 2022 to August 2023). The Air Force terminated her voluntary separation and put her in a position where she could not comply with her job requirements without neglecting her child. *See* R. at 30-75 (detailing how every charged offense related to SrA Ziesche prioritizing her child's care); R. at 116-18 (explaining how the separation paperwork was terminated via preferral). The Air Force continued to pressure her rather than letting her separate—and that resulted in pretrial confinement and forced separation from her baby. Pros. Ex. 1 at 6-8; R. at 56-57; *see* Decl. at 1-2 (supporting that the allegation of child abuse occurred on the same day SrA Ziesche's apprehension). The Air Force arrested a single mother for failing to show up to work, causing her to leave her baby literally kicking and screaming, as she was put into county jail with the general population. Pros. Ex. 1 at 8; Decl. at 1-3; R. at 82-83, 150; *see* Appellate Ex. VIII at 173 (showing she was housed with the local population).

The Air Force coerced SrA Ziesche into a position where she was forced to plead guilty to protect her child. The Air Force separated a mother from her infant daughter and called CPS with

a false report of abuse and neglect. Pros. Ex. 1 at 6-8; R. at 56-57; Decl. at 1-2. SrA Ziesche learned the report was closed with no action, Decl. at 2, which makes sense when it was the Air Force that interfered with SrA Ziesche's ability to provide care to her daughter in the first place. The Air Force was also responsible for forcing SrA Ziesche's disabled mother to drive SrA Ziesche's car home and take care of FZ when SrA Ziesche's mother was physically unfit to do either because of a chronic spinal condition. Decl. at 1. Even though the allegation of abuse and neglect was closed without issue, this did not stop SrA Ziesche's concern that New York, the state where SrA Ziesche lived, would also investigate based on the allegation by the Air Force to New Jersey CPS officials. *See* Decl. at 1-2 (discussing how the report was made to New Jersey CPS but SrA Ziesche lived in New York). Air Force agents repeatedly risked the life of FZ from the moment she was conceived by (1) denying her mother the care and bed rest she needed until Equal Opportunity was involved (Appellate Ex. VIII at 141-42, 191-96, 202); (2) by targeting her mother with unnecessary paperwork when a voluntary separation was already approved (Appellate Ex. VIII at 207); and (3) by violently separating her from her mother at nine months with no guardian in the United States able to take care of her (Pros. Ex. 1 at 8; Decl. at 1-3). The Air Force put extreme pressure on SrA Ziesche when it had already agreed to voluntarily separate her, which jeopardized the life and welfare of FZ. This all led to SrA Ziesche being put in an impossible position before trial, amounting to mental coercion overbearing her will.

On top of the Air Force's conduct that impacted FZ, the Air Force acted in a way that colored the fairness of the proceeding. Various members of SrA Ziesche's own command had been surreptitiously recording conversations with her without her permission or knowledge, something that was only disclosed right before trial. Decl. at 1. The Air Force interfered with an attorney-client relationship by not providing defense counsel access to SrA Ziesche to prepare for trial. R.

at 99; Decl. at 1. As asserted by trial defense counsel, the Air Force appears to have violated its own regulations by housing SrA Ziesche (a pretrial detainee) in a county jail with the general population (post-trial inmates), subjecting her to drug addicts, murderers, and prostitutes. Decl. at 1-3; R. at 82-83, 150; Appellate Ex. VIII at 173. The Air Force repeatedly demonstrated a willingness to misuse authority to achieve its ends. It succeeded—by getting SrA Ziesche to plead guilty through a collection of conduct that overbore her will. Decl. at 1-3.

SrA Ziesche attested that but for the Government's conduct, she would not have felt coerced to plead guilty. Decl. at 1, 3. It was not just one of the Government's actions, but all of them that forced SrA Ziesche to plead guilty. In her words, "I made the gut-wrenching decision to plead guilty, not because I believed I was guilty, but because I had to protect my children and survive." Decl. at 3. Each action by the Government risked FZ and her older brother more and more. The Government's misconduct was material to her choice to plead guilty. Considering the entirety of the circumstances, SrA Ziesche's guilty plea was coerced or otherwise involuntary due to the Government's misconduct antedating her court-martial.

WHEREFORE, SrA Ziesche personally and respectfully requests that this Court set aside and dismiss the findings and set aside the sentence.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	**APPELLANT'S MOTION TO**
Appellee,	)	**ATTACH A DOCUMENT**
	)	
v.	)	
	)	Before Panel No. 2
Senior Airman (E-4)	)	
NANCY E. ZIESCHE,	)	No. ACM 24022
United States Air Force,	)	
Appellant.	)	22 May 2025

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

Pursuant to Rules 23.3(b) of this Honorable Court's Rules of Practice and Procedure, Senior Airman (SrA) Nancy Ziesche (Appellant) moves to attach the following document to the Record of Trial: SrA Nancy Ziesche's Declaration, dated 22 May 2025 [hereinafter Decl.].

The declaration is relevant and necessary to this Court's evaluation of the error personally raised by SrA Ziesche regarding the involuntariness of her guilty plea. Merits Brief on Behalf of Appellant at Appendix. SrA Ziesche's declaration details the circumstances surrounding her guilty plea and why her plea was involuntary or otherwise coerced. Decl. at 1-3. It explains that SrA Ziesche did not believe she was guilty, but felt forced to admit otherwise for the safety of her children and her own survival. Decl. at 1-3.

In *United States v. Jessie*, 79 M.J. 437, 445 (C.A.A.F. 2020), the Court of Appeals for the Armed Forces continued the practice of allowing consideration of matters outside the record to resolve issues reasonably raised by materials in the record but not fully resolvable by those materials. At trial, SrA Ziesche disclaimed any coercion or involuntariness in pleading guilty. *E.g.*, R. at 78, 90-91. However, the voluntariness of a plea "can be determined only by considering all of the relevant circumstances surrounding it." *Brady v. United States*, 397 U.S. 742, 749 (1970) (citing *Haynes v. Washington*, 373 U.S. 503, 513 (1963); *Leyra v. Denno*, 347 U.S. 556, 558

(1954)). The declaration provides the surrounding circumstances that are behind SrA Ziesche's otherwise unequivocal renunciations on the record and calls them into question. Decl. at 1-3. Furthermore, it contextualizes a number of SrA Ziesche's statements during her providence inquiry where she asserted childcare prevented her from complying with the law. R. at 30-75. These comments during the guilty plea raise a concern about involuntariness, which the declaration expands on. Without the information in the declaration, this Court cannot consider all the relevant circumstances and resolve the issue.

WHEREFORE, SrA Ziesche requests this Court grant this motion to attach.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 22 May 2025.

Respectfully submitted,

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	ANSWER TO ASSIGNMENT OF ERROR
v.	)	Before Panel No. 2
Senior Airman (E-4) **NANCY F. ZIESCHE** United States Air Force, *Appellant.*	)	No. ACM 24022 23 June 2025

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

ISSUE PRESENTED

WHETHER APPELLANT'S PLEA OF GUILTY WAS INVOLUNTARY OR OTHERWISE COERCED.

STATEMENT OF CASE

On 7 August 2023, Appellant was charged with one charge and specification of failure to go in violation of Article 86 and one charge and three specifications of failure to obey a lawful order in violation of Article 92, UCMJ. On 23 September 2023, Appellant was ordered into pretrial confinement. On 5 October 2023, Appellant was charged with one additional charge, four specifications of failure to go and three specifications of absence without leave in violation of Article 86; one additional charge and specification of resisting apprehension in violation of Article 87a; one additional charge and specification of breaching restriction in violation of Article 87b; one additional charge and specification of dereliction of duty in violation of Article 92; one additional charge and specification of false official statement in violation of Article 107; and one additional charge and specification of assault upon a person in the execution of law

enforcement duties in violation of Article 128, UCMJ. Charge I was also withdrawn and dismissed without prejudice on 5 October 2023. Appellant was arraigned on 13 October 2023.

On 20 November 2023, Appellant offered to enter into a plea agreement to plead guilty and not guilty as follows:

Charge	**UCMJ**	**Plea**	**Sentence Modification**
Charge I	Article 86	N/A	N/A
Charge II, Specification 1	Article 92	Guilty	Minimum 1 day of confinement, maximum 2 days confinement.
Charge II, Specifications 2 and 3	Article 92	Not Guilty	N/A
Additional Charge I, Specification 4	Article 86	Guilty	Minimum 2 days confinement, maximum 3 days confinement
Additional Charge I, Specification 6	Article 86	Guilty	Minimum 5 days confinement, maximum 15 days confinement
Additional Charge I, Specification 7	Article 86	Guilty	Minimum 8 days confinement, maximum 20 days confinement
Additional Charge I, Specifications 1, 2, 3, and 5	Article 86	Not Guilty	N/A
Additional Charge II	Article 87a	Guilty	Minimum 30 days confinement, maximum 70 days confinement
Additional Charge III	Article 87b	Guilty	Minimum 2 days confinement, maximum 5 days confinement
Additional Charge IV	Article 92	Not Guilty	N/A
Additional Charge V	Article 107	Guilty	Minimum 5 days confinement, maximum 25 days confinement
Additional Charge VI	Article 128	Not Guilty	N/A

(App. Ex. XV).

In exchange, Appellant would enter into a reasonable stipulation of fact with the Government for the charges to which she would plead guilty. (Id.; Pros. Ex. 1, *Stipulation of Fact*, dated 21 November 2023). In addition to the confinement limits above, Appellant's

maximum punishment would exclude a bad conduct discharge. (Id.). All periods of confinement would run consecutively. (Id.).

On 20 November 2023, the convening authority accepted the plea agreement. (Id.). On 21 November 2023, Appellant pled guilty in accordance with the terms of the plea agreement. (ROT, Vol 1, *Entry of Judgement*, dated 14 December 2023). The military judge sentenced Appellant to a total of 65 days confinement with 55 days of pretrial confinement credit, reduction to the rank of Airman Basic, and a reprimand. (Id.; R. at 173).

STATEMENT OF FACTS

Charged Offenses

Appellant was assigned to the 87th Medical Support Squadron (87 MDSS) at Joint Base McGuire-Dix-Lakehurst (JBMDL) from October 2022 until September 2023. (R. at 29). Appellant was pregnant in October 2022 and gave birth to FZ in December 2022. (Pros. Ex. 1 at 2).

Appellant took maternity and convalescent leave until 3 May 2023. (Id.). Based on her pregnancy and childbirth hardship, Appellant started a voluntary separation process that her commander approved on 23 May 2023 with an effective date of 15 August 2023. (Id.).

During the week of 14 to 19 June 2023, Appellant was ordered to complete her DD 2807-1 as part of her separation process. (Id.). She knew of this order but failed to comply with it. (Id.; R. at 31). On 22 June 2023, Appellant was ordered to report to work at 0830 on 23 June 2023 for her SHPE appointment as part of her out-processing. (Pros. Ex. 1 at 4; R. at 36). Appellant was aware of this appointment and that it was mandatory but chose not to go because she had a daycare appointment for FZ. (Id.).

Following preferral of charges on 7 August 2023, Appellant's voluntary separation was terminated. (ROT, Vol 1, *Charge Sheet*, dated 21 August 2023; R. at 40).

Over the next month, Appellant was absent without leave more than she was present for duty.

Starting on 8 August 2023, Appellant absented herself from 87 MDSS until 20 August 2023. (Pros. Ex. 1 at 4-5). On 20 August 2023, Appellant met with the Chaplain before reporting to her unit with her child. (Pros. Ex. 1 at 5). Appellant then requested and was granted leave from 21 August 2023 until 25 August 2023, with her first duty day back as Monday, 28 August 2023. (Pros. Ex. 1 at 5; R. at 40).

However, Appellant did not report into work on 28 August 2023 and remained absent until 11 September 2023. (Id.). Appellant was "upset and overwhelmed" because her voluntary separation had been rescinded. (Id.). Appellant stated her inability to find childcare prevented her from coming into work until 11 September 2023, but no one physically prevented her from returning and she could have done so. (Pros. Ex. 1 at 5; R. at 43). Appellant stated her personal hardships did not constitute "a legal justification or excuse for [her] unauthorized absence." (R. at 44). Instead of reporting in person, Appellant "tried to check in virtually." (R. at 40). Appellant knew she was required to report to work without her dependent or be on approved leave. (R. at 42).

On 13 September 2023 and as a result of her absences, Appellant's commander restricted her to the limits of JBMDL beginning on 14 September 2023. (Pros. Ex. 1 at 5; R. at 46, 68). Appellant received a written order restricting her to base and multiple supervisors informed Appellant that she was restricted to base. (R. at 68). Appellant then absented herself from 87 MDSS from 14 September 2023 until 28 September 2023. (Id.). Appellant knew she was

supposed to report to work on those days, but she was "hopeless and very depressed about the uncertainty for [her] future and not being able to separate." (R. at 46). Appellant "no longer felt comfortable going to [87 MDSS]." (Id.). Between 14 September 2023 and 28 September 2023, Appellant remained outside the confines of JBMDL. (Pros. Ex. 1 at 6; R. at 69).

Appellant's absence without leave ended on 28 September 2023 when she was apprehended by military law enforcement and placed in pretrial confinement. (Pros. Ex. 1 at 6; R. at 56). At the time of her apprehension, Appellant physically resisted apprehension by EM, an Air Force Office of Special Investigations (AFOSI) agent. (Pros. Ex. 1 at 6; R. at 57). Appellant denied having "a legal excuse or defense" for resisting apprehension. (R. at 60).

It eventually came to light that Appellant had deliberately submitted requests for leave through LeaveWeb with a false address. (R. at 72). While Appellant claimed to be taking leave in New York state, she had actually traveled to Germany to visit her husband where he lived. (Id.). Appellant did this on divers occasions between 21 October 2022 and 21 August 2023. (Id.).

Legal Representation

Appellant was initially represented by civilian defense counsel. (App. Ex. II). However, civilian defense counsel withdrew from representation on 5 September 2023. (Id.).

On 7 September 2023, Appellant's area defense counsel moved for a mental examination of Appellant, which was granted on 12 September 2023. (App. Ex. V, VI).

Appellant was placed in pretrial confinement on 28 September 2023. (App. Ex. VIII). She had two trial defense counsel represent her at her 7-day pretrial confinement review hearing on 4 October 2023. (Id.).

On 13 October 2023, Appellant had her sanity board, from which the board-certified psychiatrist found she was not suffering from a mental disease or defect at the time of the board or at the time of the charged offenses. (App. Ex. XIV).

During Appellant's arraignment on 13 October 2023, Appellant was represented by two trial defense counsel. (R. at 3). Appellant acknowledged that her civilian defense counsel had been released. (R. at 4).

Trial defense counsel filed a 238-page motion to release Appellant from pretrial confinement on 19 October 2023. (Id.). On 31 October 2023, trial defense counsel also filed a motion to compel appointment of an expert consultant in forensic psychology for Appellant. (App. Ex. XI). The military judge granted the motion on 6 November 2023. (App. Ex. XIII).

The military judge denied defense's pretrial confinement motion on 18 November 2023. (App. Ex. X).

Plea Colloquy

Appellant thoroughly read and signed her plea agreement. (R. at 77-78). Appellant understood the contents of her plea agreement and was not forced "in any way to enter into" the agreement. (R. at 78). The plea agreement contained "all of the understandings or agreements that [she had] in this case." (Id.). No one made any promises to Appellant "that are not written into th[e] agreement in an attempt to get [her] to plead guilty." (Id.). Trial counsel and trial defense counsel both asserted Appellate Exhibit XV was the "full and complete agreement" in Appellant's case and there were "no other agreements." (Id.).

Appellant stated she understood the charges and specifications as explained to her by her defense counsel. (R. at 79). Appellant understood she had the "legal and moral right to plead not guilty" and that the prosecution had the burden of proving her guilt "beyond a reasonable

doubt." (Id.). Appellant understood she was waiving her right to a trial by court-martial by members and that she had elected to be tried by military judge alone. (R. at 80). Appellant stated she understood the difference between trial by members and trial by military judge alone and her waiver of trial by members was "a free and voluntary act." (Id.). Appellant understood that waiving her right to be tried by members also meant she would be sentenced by the military judge alone. (Id.). Appellant also understood she was waiving her right to have the government travel witnesses on her behalf. (R. at 84). Appellant further understood she was waiving her right to confront witnesses against her and her right to avoid self-incrimination with respect to the guilty plea. (R. at 86). Appellant understood that if she told the military judge anything untrue, her statements could be used against her under charges of perjury or making false statements. (R. at 25).

Appellant understood she was giving up her right to file certain motions and that a possible outcome of this was preclusion by the trial or appellate court to grant her relief based on those motions. (R. at 81). No one forced Appellant to make that provision, it originated from the defense, and Appellant "freely and voluntarily" agreed to it to "receive what [she] believe[d] to be a beneficial agreement.". (R. at 82). Appellant specifically acknowledged that, as part of her plea agreement, she was waiving her right to file a motion with respect to her pretrial confinement and the allegation that she had been housed with the "general population." (R. at 83).

When outlined by the military judge, Appellant agreed with the maximum punishment authorized by law for the offenses to which she pled guilty and the sentence limitations provided by the plea agreement. (R. at 76-77, 84-85).

Appellant also understood which specifications she pled guilty to, and which were being withdrawn and dismissed with prejudice. (R. at 79, 86). Appellant was satisfied with her two trial defense counsel and "no person or persons made any attempt to force or coerce [her] into making th[e] offer or to plead guilty." (R. at 86). Appellant stated that her "counsel fully advised [her] of the nature of the charges against [her], the possibility of defending against them, any defense that might apply, and the effect of the guilty plea." (R. at 86-87).

Finally, Appellant understood that with her guilty plea, she was asserting that she was "in fact guilty of the offenses to which" she offered to plead guilty and that she offered to plead guilty "because it will be in [her] best interest in accordance with conditions" stated in the plea agreement. (R. at 86). No one "made any threat or tried in any way to force [Appellant] to plead guilty." (R. at 90). Appellant pled guilty "voluntarily and of [her] own free will." (Id.).

ARGUMENT

I.

APPELLANT'S GUILTY PLEA WAS VOLUNTARY AND WAS NOT COERCED.

Additional Facts

Appellant stated she was "under extreme duress" when she made her plea, and that her "foremost concern at the time was the safety and welfare of [her] children and family." (App. Decl. at 1). Appellant believed the "overwhelming pressures [she] faced made it impossible for [her] to make a free and voluntary decision." (Id.).

First, Appellant stated that she had limited access to her trial defense counsel. (Id.). She stated that her trial defense counsel informed her that, if she refused to plead guilty, she would remain in confinement awaiting trial under at least March 2024. (Id.). Appellant also stated her trial defense counsel "left [Appellant] with the impression" that trial defense counsel "would no

longer be able to serve as [her] counsel" if Appellant did not offer a plea agreement. (Id.). Appellant felt the "prospect of remaining incarcerated for several additional months or even longer was unbearable." (Id.). Per the military judge's scheduling order, Appellant's special court-martial was scheduled to begin on 20 November 2023 and anticipated to conclude on 22 November 2023. (App. Ex. I).

Second, Appellant alleged her leadership illegally recorded her and filed "a false and malicious report" against her with Child Protective Services (CPS) concerning the wellbeing of FZ. (Id.).

Third, Appellant complained that her conditions in confinement were "harsh, unsanitary, and dangerous." (Id. at 2). Appellant alleged that she "was exposed to violence, drugs, and life-threatening health risks with minimal medical care available." (Id.). Appellant claimed this caused a "devasting" "mental and physical strain" on her. (Id.).

Fourth, Appellant complained that her leadership team did not offer her accommodations for childcare when she struggled to secure some for FZ, which made it harder for her to avoid "accusations of dereliction." (Id.). She accused her leadership team of "misconduct, harassment, and retaliation" against her that demonstrated they were "willing to misuse their authority without accountability." (Id.).

Finally, Appellant claimed that at the time of her trial, her husband "pleaded with [her] to resolve the situation quickly." (Id.). Appellant stated that "[p]rotecting [her] children from unnecessary trauma became [her] absolute priority." (App. Decl. at 2).

Standard of Review

"[T]he governing standard as to whether a plea of guilty is voluntary for purposes of the Federal Constitution is a question of federal law." Marshall v. Lonberger, 459 U.S. 422, 431,

103 S. Ct. 843, 849 (1983). "[T]he military judge's determinations of questions of law arising during or after the plea inquiry are reviewed de novo." United States v. Inabinette, 66 M.J. 320, 321 (C.A.A.F. 2008). This Court applies "the substantial basis test, looking at whether there is something in the record of trial, with regard to . . . the law, that would raise a substantial question regarding the appellant's guilty plea." Id.

Law and Analysis

R.C.M. 910(c)(1)-(6) outline the military judge's obligation to advise an accused of certain rights prior to accepting a guilty plea. Under R.C.M. 910(d), the military judge must ensure a guilty plea is voluntary:

> by addressing the accused personally, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement . . . The military judge shall also inquire whether the accused's willingness to plead guilty results from prior discussions between the convening authority, a representative of the convening authority, or trial counsel, and the accused or defense counsel.

"Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." Brady v. United States, 397 U.S. 742, 748 (1970). "The voluntariness of [an appellant]'s plea can be determined only by considering all of the relevant circumstances surrounding it." Id. at 749. "[A] plea of guilty may yet be attacked as involuntary or coerced. If coercion is proved, the plea must be set aside." United States v. Caylor, 40 M.J. 786, 788 (A.F.C.M.R. 1994) (internal citations omitted). The Government may "not produce a plea by actual or threatened physical harm or by mental coercion overbearing the will of the defendant." Brady, 397 U.S. at 750. However, "being required to select from an array of unfavorable choices does not constitute a threat." Caylor, 40 M.J. at 789.

In United States v. Mezzanatto, SCOTUS said:

> The plea bargaining process necessarily exerts pressure on defendants to plead guilty and to abandon a series of fundamental rights, but we have repeatedly held that the government may encourage a guilty plea by offering substantial benefits in return for the plea. While confronting a defendant with the risk of more severe punishment clearly may have a discouraging effect on the defendant's assertion of his trial rights, the imposition of these difficult choices is an inevitable -- and permissible -- attribute of any legitimate system which tolerates and encourages the negotiation of pleas.

513 U.S. 196, 209-10 (1995) (internal citations and quotations omitted).

To start, Appellant makes no claim that the factual basis for her guilty plea was improvident or deficient. Instead, Appellant claims that her overall plea was involuntary and coerced. However, there is nothing present in the record of trial to raise a substantial question regarding the voluntariness of Appellant's guilty plea. From trial defense counsel's on-the-record assertions, Appellant knew she was waiving her ability to file a motion with respect to her pretrial confinement conditions. (R. at 83). She agreed to this waiver. (Id.). The military judge walked Appellant through each of her rights as required by R.C.M. 910(c). (R. at 25, 78-90). In accordance with R.C.M. 910(d), the military judge further asked appellant if she had been forced or threatened into taking a guilty plea, and Appellant answered in the negative. (R. at 90). Appellant stated she made the plea agreement voluntarily. (Id.). She stated no one coerced her. (R. at 87). Appellant's plea was voluntary, and it should not be set aside.

This Court is not obligated to accept post-trial assertions by Appellant that are inconsistent with Appellant's on-the-record assurances. United States v. Muller, 21 M.J. 205, 207 (C.M.A. 1986). NMCCA dealt with a similar issue in United States v. Inong, 57 M.J. 501 (N-M Ct. Crim. App. 2002) *aff'd*, 58 M.J. 460 (C.A.A.F. 2003). There, the appellant argued that "he was told the only way out of solitary confinement was to sign a pretrial agreement." Id. at

503 n.5 (internal quotations omitted). NMCCA noted that during the plea inquiry, Appellant stated under oath that "no one had threatened or forced him to enter into the pretrial agreement, that he entered into the agreement voluntarily, and that the written pretrial agreement encompassed the entire agreement." Id. Considering this, NMCCA did not find the appellant's plea improvident. Id.

NMCCA later utilized Inong in United States v. Hancock, 2011 CCA LEXIS 114 (N-M Ct. Crim. App. June 28, 2011) (unpub. op). In Hancock, Appellant claimed he only signed the pretrial agreement while "in maximum custody under illegal and inherently coercive conditions." Id. at *15 (internal quotations omitted). NMCCA rejected the appellant's argument because he had made consistent statements on-the-record that his guilty plea was voluntary, he signed the plea agreement voluntarily, and no other agreements existed. Id. at *17. NMCCA also rejected the appellant's argument that "illegal pretrial punishment" made his confinement "inherently coercive." Id. at *18. His post-trial claims were insufficient to overcome his "on-the-record assurances of voluntariness." Id.

Here, as in Hancock, the military judge questioned Appellant about whether there were any outside agreements or whether she had been forced or threatened to sign the agreement. (R. at 78, 90; Hancock, unpub. op. at *17). Appellant answered in the negative to both. (Id.). She "consistently responded with on-the-record assurances that" she was pleading guilty voluntarily, that she signed the plea agreement voluntarily, and that no other agreements existed. (R. at 78, 80, 82, 90; Hancock, unpub. op. at *17). To the extent Appellant feels her pretrial confinement conditions strained her mentally, they do not rise to anything "inherently coercive;" Appellant was not placed in solitary confinement like the appellant in Hancock, nor does she make any allegations as to *how* her experience in confinement was so unique and severe that her will was

overborne. Brady, 397 U.S. at 750; (App. Decl. at 2). Appellant's desire to leave confinement quickly was a permissible factor for her to consider when deciding whether to plead guilty, as "[e]very accused who signs a pretrial agreement does so for some future benefit, most often for relief from post-trial confinement." Hancock, unpub. op. at *18.

Furthermore, Appellant's placement in pretrial confinement and separation from her children were unequivocally linked to her own actions. While not in entirely consecutive days, Appellant was absent without leave for over 30 days between August and September 2023. (Pros. Ex. 1 at 4-5). Her first two absences were just under two weeks long each. (Id.). This led her commander to restrict her to the limits of JBMDL on 14 September 2023. (Pros. Ex. 1 at 5). Despite knowing about her restriction to base (R. at 68), Appellant remained outside of JBMDL for another two weeks until she was apprehended by military authorities on 28 September 2023. (R. at 56, 60). Had Appellant reported to duty as she was ordered, she would not have been restricted or confined, and would not have been separated from her children.

"Under these circumstances, the appellant's posttrial assertions do not justify questioning [her] otherwise provident guilty pleas." United States v. Eberle, 41 M.J. 862, 865 (A.F. Ct. Crim. App. 1995) (internal citations omitted) (both defense and government counsel asserted on the record that there was no agreement outside the plea agreement and the accused did not object.). Appellant had no questions "as to the meaning and effect of the plea of guilty," voluntarily signed it, and voluntarily complied with the terms by pleading guilty on 21 November 2023. (R. at 78, 90). Her post-trial assertions that she was suffering from "mental and physical strain," that her husband desired for her to resolve the situation "quickly to stabilize [their] family and prevent further financial hardship," and her child's placement with Appellant's mother (App. Decl. at 2) did not constitute mental coercion under Brady or render her plea

involuntary. Notably, these are circumstances are not unique to Appellant and are circumstances that might be faced by anyone against whom charges have been brought, confined or otherwise. These hardships did not make it "impossible" for Appellant to voluntarily plead guilty. (App. Decl. at 1).

The Government does not doubt the sincerity of Appellant's desire to be reunited with FZ, or that such a desire factored into Appellant's willingness to plead guilty. But separation from her child does not amount to force or threats against her. R.C.M. 910(d). Appellant was not threatened because she had to "select from an array of unfavorable choices" when deciding whether to plead guilty. Caylor, 40 M.J. at 789. Unfortunate as it is, parents placed in confinement are necessarily separated from their children – however, Appellant's own actions are what caused her confinement and subsequent separation from her children. This does not create an "inherently coercive" setting that renders a subsequent guilty plea involuntary. Hancock, unpub. op. at *18. Neither does separation from one's child amount to "mental coercion" overbearing Appellant's will. Brady, 397 M.J. at 750. While Appellant was concerned with the wellbeing of her child (App. Decl. at 2), there were no allegations of threats of harm made against her or her child leading up to her court-martial. Appellant was not coerced to plead guilty, and therefore this Court should not set aside her guilty plea.

This Court should not give much weight to Appellant's assertion that she was not able to adequately consult with her trial defense counsel, especially considering Appellant has made no formal ineffective assistance of counsel complaint against either of her counsel.[1] Appellant claimed she was only able to speak with her trial defense counsel "under constrained

[1] If Appellant had made such a complaint against her counsel, each of her counsel would have then had the opportunity to respond to Appellant's newfound complaints against them, which undoubtedly would dispute the various claims Appellant now makes against them.

circumstances and right before trial began." (App. Decl. at 1). Despite Appellant's declaration, it is clear from the record that Appellant engaged with her trial defense counsel at least as early as September 2023.

Firstly, trial defense counsel filed multiple motions on her behalf, including a request that she be brought before a sanity board on 7 September 2023 and that a forensic psychologist be appointed to the case on 31 October 2023. (App. Ex. V, VIII, and XI). In the motion for a sanity board, trial defense counsel specifically stated that the request was based on "conversations with [Appellant]" that "provide[d] defense counsel with reason to believe that [Appellant] lacked mental responsibility for the charged offenses." (App. Ex. V. at 1). Secondly, Appellant must have discussed the terms of the plea agreement with her defense counsel before it was submitted to the Government on 20 November 2023, especially considering the somewhat unique breakdown of the proposed confinement for each charge. (App. Ex. XV). Thirdly, Appellant must have provided her trial defense counsel with the names of character witnesses for sentencing. Trial defense counsel introduced eight character statements in Appellant's favor with dates ranging from 17 to 20 November 2023, meaning Appellant must have engaged with them prior to 17 November 2023 in preparation for the special court-martial. (Def. Ex. E-L).

Finally, Appellant's own words at her court-martial show her newfound claims are without merit. She agreed that she had enough time to discuss her agreement with her counsel. (R. at 89.) She agreed that she was satisfied with her defense counsel's advice concerning the plea agreement. (Id.) She agreed that she had enough time and opportunity to discuss the entire case with her defense counsel. (R. at 90.) She agreed that she, in fact, had fully consulted with her defense counsel and received the full benefit of their advice. (Id.) She agreed that she was satisfied that her defense counsel's advice was in her best interest. (Id.) And she agreed that she

was satisfied with her trial defense counsel. (Id.) Considering these facts and circumstances, there is no basis to find their communications created a substantial question on the voluntariness of Appellant's plea.

Appellant's poor relationship with her leadership team did not amount to mental coercion or threats to make her guilty plea involuntary and so does not raise a substantial question regarding the voluntariness of her plea. Appellant decried her leadership's treatment of her beginning with her pregnancy and ending with her court-martial. (*See* App. Decl.) However, the actions taken by her leadership team to give her administrative paperwork for failing to report to work, ensure her presence at work and trial by restricting her to base, and ultimately ordering her into confinement are all lawful action permitted by the UCMJ. *See* R.C.M. 305 and 305. Lawful actions taken by Appellant's leadership did not amount to threats or mental coercion that overbore Appellant's will or leave her in an inherently coercive environment. Brady, 397 U.S. at 750; Hancock, unpub. op. at *18.

The facts that make up the basis of Appellant's guilty plea show that Appellant continued to flaunt her leadership's orders and belie her argument that she felt she could not "safely fight [her] charges." (App. Decl. at 2). From June 2023 until September 2023, Appellant continued to be absent from her place of duty, breached her commander's order restricting her to base, and physically resisted apprehension by military law enforcement. (Pros. Ex. 1 at 2-8). Appellant did not change her behavior and fought her leadership's orders until she was physically placed in confinement. Appellant had the willpower to balk her leadership's orders until she was in confinement, and her assertion now that her leadership "abused the situation to manipulate the system" rings false. (App. Decl. at 1).

With respect to FZ's welfare, the stipulation of fact stated that Appellant's mother was called to take custody of FZ when Appellant was placed in confinement. (Pros. Ex. 1 at 7-8). Despite her declaration, there was no reference to utilizing CPS contained within the stipulation of fact. Turning to Appellate Exhibit VIII, Appellant's commander was not *wrong* to plan to call CPS in the event Appellant returned to military control with her infant daughter: Once Appellant was in custody, *someone* would have to take custody of FZ, be it her husband as suggested by the legal office or CPS if no one else was available. And, as stated above, Appellant's separation from FZ did not amount to mental coercion or force her to enter into a plea agreement. Having to make a "difficult choice" between litigating the offenses against her and being released from confinement faster under the terms of the plea agreement is not threat or force; it is "inevitable" in a system that permits plea agreements. Mezzanotto, 513 U.S. at 210.

Turning to alleged recordings Appellant claims her leadership made, Appellant provides no details regarding who made the recordings, when or where they were made, or what they contained. (App Decl. at 1.). Further, Appellant fails to explain how these alleged recordings caused her to involuntarily plead guilty. Importantly, Appellant stated she became aware of these alleged recordings on "the eve of [her] trial." Taking this phrase literally, that would mean she learned of the recordings on 20 November 2023. Appellant had already submitted a plea agreement on 20 November 2023, which would have necessitated earlier conversations with her defense counsel before she could have learned of these recordings. (App. Ex. XV). These supposed recordings had no bearing on her decision to offer a plea agreement in the first place. Furthermore, as part of this plea agreement, Appellant elected to be tried by a military judge alone, and waived her right to a trial by members. (Id, *see also* R. at 80). Thus, at the time of her trial, she knew her leadership would not serve as factfinders at her special court-martial or in

any way impact her ability to "receive a fair trial." (*See* App. Decl. at 1). These alleged recordings did not amount to threats against Appellant and did not render her plea involuntary on 21 November 2023.

Overall, all of the complaints Appellant now raises to this Court for the first time are ones she was seemingly aware of at trial but failed to raise at that time, leaving this Court cause to speculate as to the existence of the full facts surrounding Appellant's newly raised claims. However, this Court has stated that it "will not speculate on the existence of facts that might invalidate a plea especially where the matter raised post-trial contradicts an appellant's express admissions on the record." United States v. Bonior, No. ACM 39755, 2020 CCA LEXIS 466, at *15 (A.F. Ct. Crim. App. 22 December 2020 (*quoting* United States v. Cummings, No. ACM 39446, 2019 CCA LEXIS 389, at *20-22 (A.F. Ct. Crim. App. 3 Oct. 2019) (unpub. op.); United States v. Johnson, 42 M.J. 443, 445 (C.A.A.F. 1995)).

Here, Appellant's "express admissions on the record" wholly contradict her newfound post-trial claim that she was "under extreme duress," that it was "impossible for [her] to make a free and voluntary decision," and "felt coerced to accept a plea deal." (App. Decl. at 1). On the record, Appellant repeatedly stated that she was pleading guilty voluntarily and of her own free will, that she entered into her plea agreement (which she submitted) voluntarily, that she was satisfied with her defense counsel and their advice, that no one had made any threat or tried in any way to force her to plead guilty, and that she fully understood the meaning and effect of her guilty plea. (R. at 90-91.)

From both the record of trial and Appellant's declaration, there is nothing that raises a substantial question as to whether Appellant's plea was voluntary. Inabinette, 66 M.J. at 321. Therefore, this Court should not set aside Appellant's conviction.

CONCLUSION

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's claim and affirm the findings and sentence in this case.

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 23 June 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*,	)	**REPLY BRIEF ON BEHALF OF APPELLANT**
v.	)	
	)	Before Panel No. 2
Senior Airman (E-4) **NANCY E. ZIESCHE,** United States Air Force, *Appellant*.	)	No. ACM 24022
	)	30 June 2025

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

Senior Airman (SrA) Nancy E. Ziesche, Appellant, files this reply brief (*see* Appendix) to the United States's Answer to Assignment of Error (June 23, 2025). She does so in addition to the arguments she previously and personally raised, pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). *See* A.F. Ct. Crim. App. R. 18(b) (noting *Grostefon* issues "shall comply with Service Court rules"); A.F. Ct. Crim. App. R. 18.3 (stating the requirements for reply briefs); *see also* Merits Brief on Behalf of Appellant at Appendix (May 22, 2025) (covering the original arguments by Appellant).

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 30 June 2025.

Respectfully submitted,

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APPENDIX

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), Appellant, Senior Airman (SrA) Nancy R. Ziesche, through appellate defense counsel, personally requests that this Court consider the following matter in response to the United States's Answer to Assignment of Error (June 23, 2025) [hereinafter Ans.]:

ARGUMENT

SRA ZIESCHE'S PLEA OF GUILTY WAS INVOLUNTARY OR OTHERWISE COERCED.

1. The misconduct and retaliation against SrA Ziesche, ignored or minimized by the Government, is evidence before this Court and key to evaluating the circumstances of why SrA Ziesche's plea was involuntary.

SrA Ziesche submitted a sworn declaration documenting her leadership's actions. Declaration (May 22, 2025) [hereinafter May Decl.]. The declaration included a description of illegal recordings, an unlawful transfer of her vehicle,[1] and a false child abuse and neglect report[2]—among other Government actions SrA Ziesche experienced around the time of her plea. *Id*. at 1-2. The record of trial contained instances of abuse of authority, refusal to honor medical profiles, retaliation based on pregnancy, and Government misconduct. *See, e.g.*, Appellate Ex. VIII at 141-42 (detailing how the Equal Opportunity Office was involved); Appellate Ex. VIII at 195 (noting consistent denial of bedrest for a high-risk pregnancy); Appellate Ex. VIII at 207 (listing the nine disciplinary actions she received from October 2022 to August 2023); R. at 83 (discussing

[1] This action would appear to violate N.J. REV. STAT. § 2C:20-10 (2024), which prevents conveyance of a vehicle to another individual without consent of the owner.

[2] New Jersey law prevents disclosure of Findings and Closing Letters prepared during New Jersey Divisions of Child Protection and Permanency's involvement with families. N.J. REV. STAT. § 9:6-8.10a (2024). However, the document could be requested, *see id.*, and provided under seal to the Court. SrA Ziesche respectfully requests this Court conduct additional fact-finding, to include ordering disclosure of these documents to show the report of child abuse and neglect by her leadership was false.

waiver of possibly additional pretrial confinement credit due to Government violation of Rule for Courts-Martial 304). The call to Child Protective Services, which the Government defended as "not *wrong*," was coupled with Government agents forcibly removing a mother from her infant for simply *not showing up to work.* Ans. at 17; Pros. Ex. 7-8 (detailing why law enforcement apprehended SrA Ziesche). The Government's answer omitted or minimized all of this.

The amount of force, pressure, and resources expended on a single mother who could not maintain childcare and was trying to separate as a result should alarm anyone. But in this context, what is critical is that these actions caused more than just separation from her children and unlawful confinement conditions. May Decl.; *see* R. at 82-83 (discussing the Rule for Courts-Martial 304 issue). The Government put egregious pressure on SrA Ziesche from multiple angles to produce a guilty plea, including via her own Government-provided trial defense counsel, who left SrA Ziesche with the impression that if she did not plead guilty, she would lose her attorney and would remain in confinement for several more months. May Decl. at 1.

These issues are not something this Court need "speculate" on, nor are they mere inferences. *See* Ans. at 18 (citing *United States v. Bonior*, No. ACM 39755, 2020 CCA LEXIS 466, at *15 (A.F. Ct. Crim. App. Dec. 22, 2020)). Rather, these are facts properly before this Court for consideration via SrA Ziesche's declaration—especially since the Government did not challenge the motion to attach. *See* Appellant's Motion to Attach a Document (showing it was stamped "Granted" on May 30, 2025, without opposition). It is this evidence, coupled with other facts in the record, that paints the complete picture of SrA Ziesche's circumstances and why the Air Force's—or Government's—misconduct influenced her decision to plead guilty or was material to that choice. *Ferrara v. United States*, 456 F.3d 278, 290 (1st Cir. 2006)).

Additionally, the escalation of behavior by SrA Ziesche's leadership beginning from the start of her pregnancy is all within the record. The Government solely focuses on SrA Ziesche's

misconduct and her in-court admissions to combat the sworn declaration. But what the Government focused on is only a piece of the narrative. Of course, it goes without saying, that someone who is coerced into pleading guilty will make whatever statements necessary to effectuate the plea. As with coercive law enforcement interrogations, providing the answer that the Government is seeking is the only way to remove the coercive tactics or receive the benefit promised. *See, e.g.*, *Lynumn* v. *Illinois*, 372 U.S. 528, 534 (1963) (holding a woman's confession was coerced after she was told by law enforcement to "cooperate" or her children would be taken away from her). If SrA Ziesche did not plead guilty on November 21, 2023, she believed she would have: (1) lost her counsel; (2) remained in confinement for months; (3) perpetuated her children's endangerment in the care of someone who was physically unfit to parent them; (4) jeopardized her custody due to a false report by her leadership; (5) experienced physical and mental deterioration in civilian confinement; and (6) been the victim of continued abuse of authority by her leadership. Pleading guilty removed these conditions. That is why this Court is required to evaluate "all of the relevant circumstances surrounding" the plea. *Brady v. United States*, 397 U.S. 742, 749 (1970). There is more to evaluate than just SrA Ziesche's statements on the record and her confinement conditions. The year and a half she spent struggling with her leadership over her pregnancy and childcare, which should have resulted in separation but instead resulted in a federal conviction, is part and parcel to her plea because it created the conditions bearing down on SrA Ziesche on November 21, 2023.

Consideration of all the relevant surrounding circumstances renders both of the non-binding Navy-Marine Corps Court of Criminal Appeals cases the Government cited irrelevant. Ans. at 11-12 (citing *United States v. Inong*, 57 M.J. 501 (N-M Ct. Crim. App. 2002), *aff'd*, 58 M.J. 460 (C.A.A.F. 2003); *United States v. Hancock*, NMCCA 201000400, 2011 CCA LEXIS 114 (N-M. Ct. Crim. App. June 28, 2011)). The two case analogies the Government mustered on this

issue only focus on unlawful pretrial confinement and those conditions. *Inong*, 57 M.J. at 502-04; *Hancock*, 2011 CCA LEXIS 114, at *15-18. Conversely, SrA Ziesche's circumstances are much more involved and include other issues: the Government impeded defense counsel access; the Government endangered an infant; the Government targeted a single mother who tried to separate because she could not care for her children and perform military duties at the same time; the Government recorded SrA Ziesche without her knowledge or consent thereby creating SrA Ziesche's belief she would not be tried fairly. May Decl. 1-3; R. at 99, 114-15, 122; Appellate Ex. VIII 191-96, 208-16.

SrA Ziesche also requested this Court consider an additional declaration with more specificity on the medical and mental health conditions she had while in confinement to rebut the Government's assertion about severity. Appellant's Motion to Attach a Document (June 30, 2025); Declaration (June 30, 2025) [hereinafter June Decl.]; *see* Ans. at 12 (arguing how SrA Ziesche made no allegation as to how her confinement experience was so unique or severe that her will was overborne). While the military judge ensured SrA Ziesche understood the lack of mental responsibility defense and disclaimed it, there was no discussion about SrA Ziesche's mental health at the time she pled guilty. R. at 51-54. At the time, she was suffering from severe gynecological symptoms following her pregnancy, chronic pain, depression, and post-traumatic stress disorder. June Decl. at 1-2. Some of her diagnoses predate confinement, others were derived from what she experienced during her incarceration. *Id.*; *see* R. at 46 (mentioning hopelessness and depression during the charged timeframe). As she asserted in her declarations, the mental and physical harm she was suffering was one of the reasons she felt forced to plead guilty. May Decl. at 2; June Decl. at 2. It thus remains that her experience in confinement cannot be viewed in isolation. *All* of the relevant circumstances surrounding SrA Ziesche's guilty plea must be

considered. *Brady*, 397 U.S. at 749. Only looking at the illegal pre-trial confinement against the admissions on the record would be error.

2. The Government misunderstood the significance of the deprivation of trial defense counsel and the implications.

SrA Ziesche attested that she had minimal time to consult with her trial defense counsel. May Decl. at 1. The military judge outed the Government about this fact on the record: "Trial counsel, I'm going to remind you that literally two days ago you actually refused to make her available to her defense counsel." R. at 99. The Government makes no comment on this in its answer. This was two days before trial, on November 18th, that the Government was impeding defense representation. *Id*. In those two days, that was when a plea deal was agreed upon, but not finalized. There was a one-day continuance, from November 20th to November 21st, because a plea was reached. R. at 18. But the plea was signed the day before trial on November 20th and the stipulation of fact was signed the day of trial. Pros. Ex. 1 at 12; Appellate Ex. XV at 4-6. Combining those facts with the military judge's comment, SrA Ziesche's sworn declaration is more accurate than the Government's speculation about how much time she truly had to communicate with her counsel. The Government obscures the lack of communication SrA Ziesche had with her counsel by only highlighting communications pre-dating pretrial confinement and shortly thereafter. Ans. at 14-15.

Furthermore, this is not an ineffective assistance of counsel claim, though the Government attempts to make it out to be. Ans. at 14. Rather, this is about how SrA Ziesche's will was overborne and she was forced to plead guilty because of actions by the Government—*not* her counsel. SrA Ziesche can attest that her will was overborne while still believing her counsel advised her in accordance with her best interest. *Compare* May Decl. (detailing the coercive circumstances), *with* R. at 90 (agreeing her counsel's advice was in her best interest). This appeal

is not an attack on her trial defense counsel but on how the Government produced a plea through mental coercion to overcome SrA Ziesche's will and produce a guilty plea.

No matter how many statements SrA Ziesche made during her court-martial, when looking at the complete circumstances SrA Ziesche was under—to include everything in the record that supports her declaration—pleading guilty was not a free or informed decision. SrA Ziesche's decision was made under compulsion, pressure, fear, and desperation, especially after being (1) denied medical care, (2) separated from her baby and her son, and (3) left without access to basic services while confined. SrA Ziesche was a loyal and high-performing Airman who served with distinction for over three years until systemic failure and targeted Government action left her with no options. The calculated conduct by the Government operated as more than just SrA Ziesche "select[ing] from an array of unfavorable choices." Ans. at 14 (citing *United States v. Caylor*, 40 M.J. 786, 789 (A.F.C.M.R. 1994)). Her will was overborne by impermissible conduct prior to the entry of the plea that was material to the choice to plead guilty. *Ferrara*, 456 F.3d at 290.

WHEREFORE, SrA Ziesche personally and respectfully requests that this Court set aside and dismiss the findings and set aside the sentence.

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 24022**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Nancy E. ZIESCHE	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 30 June 2025, counsel for Appellant submitted a Motion to Attach, specifically requesting to attach the following to the record of trial: a Declaration from the Appellant, dated 28 June 2025. The Government opposed this motion.

The court has considered Appellant's motion, Government's opposition, case law, and this court's Rules of Practice and Procedure. The court grants Appellant's motion; however, it specifically defers consideration of the applicability of *United States v. Jessie*, 79 M.J. 437 (C.A.A.F. 2020), and related case law to the attachment until it completes its Article 66, UCMJ, 10 U.S.C. § 866, review of Appellant's entire case.

Accordingly, it is by the court on this 21st day of July, 2025,

ORDERED:

Appellant's Motion to Attach dated 30 June 2025 is **GRANTED**.

FOR THE COURT

[redacted]

OLGA STANFORD, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION TO ATTACH A DOCUMENT**
v.	)	
	)	Before Panel No. 2
Senior Airman (E-4) **NANCY E. ZIESCHE,** United States Air Force, *Appellant.*	)	No. ACM 24022
	)	30 June 2025

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

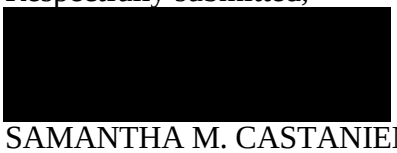
Pursuant to Rule 23.3(b) of this Honorable Court's Rules of Practice and Procedure, Senior Airman (SrA) Nancy Ziesche (Appellant) moves to attach the following document to the Record of Trial: SrA Nancy Ziesche's Declaration, dated 28 June 2025 [hereinafter June Decl.].

The declaration is relevant and necessary to this Court's evaluation of the error personally raised by SrA Ziesche regarding the involuntariness of her guilty plea. Merits Brief on Behalf of Appellant at Appendix (May 22, 2025). This declaration supports SrA Ziesche's reply brief and focuses on responding to an argument raised by the Government in its answer brief. Specifically, SrA Ziesche provides additional factual predicate for her argument about how her confinement experience was "so unique or severe that her will was overborne" due to the medical and mental health conditions she was suffering from at the time. *See* United States's Answer to Assignment of Error at 12 (June 23, 2025) (arguing how SrA Ziesche made no allegation as to how her confinement experience was so unique or severe that her will was overborne). Medical information was referenced in her original declaration, but did not go into specific detail. Declaration at 2 (May 15, 2025). As the Government has argued SrA Ziesche's explanation for why her plea was coerced is insufficient, SrA Ziesche moves for the opportunity to elaborate on her original declaration and provide specific information.

In *United States v. Jessie*, 79 M.J. 437, 445 (C.A.A.F. 2020), the Court of Appeals for the Armed Forces continued the practice of allowing consideration of matters outside the record to resolve issues reasonably raised by materials in the record but not fully resolvable by those materials. At trial, SrA Ziesche disclaimed any coercion or involuntariness in pleading guilty. *E.g.*, R. at 78, 90-91. However, the voluntariness of a plea "can be determined only by considering all of the relevant circumstances surrounding it." *Brady v. United States*, 397 U.S. 742, 749 (1970) (citing *Haynes v. Washington*, 373 U.S. 503, 513 (1963); *Leyra v. Denno*, 347 U.S. 556, 558 (1954)). The declaration provides additional relevant circumstances to explain how her plea was involuntary or otherwise coerced. June Decl. at 1. Furthermore, it contextualizes the sanity board determination and a number of SrA Ziesche's statements during her providence inquiry that gave the impression SrA Ziesche was not suffering from any mental health diagnoses. R. at 46, 51-54 (mentioning SrA Ziesche was "hopeless and very depressed," but disclaiming any mental responsibility defense); Appellate Exhibit XIV. The mere fact a sanity board was conducted and the guilty plea inquiry delved into additional questions regarding mental health raise a concern about SrA Ziesche's mental state, which is relevant to the circumstances surrounding her decision to plead guilty. Without the information in the declaration, this Court cannot consider all the relevant circumstances and resolve the issue SrA Ziesche raised.

WHEREFORE, SrA Ziesche requests this Court grant this motion to attach.

Respectfully submitted,



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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 30 June 2025.

Respectfully submitted,

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' OPPOSITION TO MOTION TO ATTACH
v.	)	Before Panel No. 2
Senior Airman (E-4) **NANCY E. ZIESCHE** United States Air Force *Appellant.*	)	No. ACM 24022 6 July 2025

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

Pursuant to Rules 23(c) and 23.3(b) of this Court's Rules of Practice and Procedure, the United States respectfully requests this Honorable Court deny Appellant's Motion to Attach, dated 30 June 2025.

Opposition to Motion to Attach

The United States opposes the attachment of Appellant's declaration dated 30 June 2025 because it is outside the record and is not "necessary for resolving issues raised by materials in the record." United States v. Jessie, 79 M.J. 437, 444 (C.A.A.F. 2020).

The Court may consider matters outside the record where: (1) such documents are "necessary for resolving issues raised by materials in the record"; and (2) the issues are not "fully resolvable by those materials" already in the record. Id. at 444-45. The default is a rule of exclusion "because the text of Article 66[(d)], UCMJ, does not permit the [courts of criminal appeals] to consider matters that are outside the entire record." Id. at 445.

Appellant previously filed a motion to attach a declaration dated 22 May 2025, which the Government did not oppose, and this Court granted that motion. (App. Mot., dated 22 May 2025). Within that declaration, Appellant presented information in support of her personally

submitted assignment of error that her guilty plea was involuntary and coerced. (App. Decl., dated 22 May 2025). The Government then filed a responsive brief based on that declaration and corresponding error. (Gov. Br., dated 23 June 2025).

Now, Appellant asks this Court to attach a *second* declaration to the record on the grounds that it is "relevant and necessary to this Court's evaluation of the error personally raised by [Appellant] regarding the involuntariness of her guilty plea." (App. Mot., dated 30 June 2025). Despite submitting a previous declaration outlining why her plea was coerced or involuntary, Appellant asks this Court to now consider her medical history preceding her arrival at Joint Base McGuire-Dix-Lakehurst (JBMDL), how that medical history affected her time in confinement, and how her transition into "civilian life" has been "extraordinarily difficult." (App. Decl., dated 30 June 2025).

This Court should deny Appellant's motion to attach a second declaration. The information in Appellant's second declaration is not "necessary for resolving issues" raised by the record because this Court can do so with Appellant's first declaration from 22 May 2025. (App. Decl., dated 22 May 2025).

Moreover, while Appellant may reply to the Government's brief under Rule 18(d), this right should not include a second chance to introduce new "relevant circumstances surrounding" her guilty plea. Brady v. United States, 397 U.S. 742, 749 (1970). Appellant already took her opportunity under Jessie to explain her circumstances with her leadership and while she was in confinement, and why she felt her guilty plea was coerced and involuntary. (App. Decl., dated 22 May 2025). Nothing contained in Appellant's second declaration is new information that she could not have included in the first. (App. Decl., dated 30 June 2025). It is in the interest of judicial economy and fairness that appellants be expected to submit all relevant information to

this Court at the time of their initial assignment of error. The information in the second declaration was known to Appellant on 22 May 2025. Appellant should not reap the benefit of introducing this information for the first time in a reply brief when the Government can only respond by moving for permission to submit a supplemental filing under Rule 18.4.

In addition, paragraph 6 of Appellant's second declaration is irrelevant to the assigned error. Appellant's struggle adapting to civilian life has no bearing on whether her guilty plea was voluntary in November 2023.

CONCLUSION

Because Appellant already submitted a declaration related to her guilty plea, her second declaration is neither necessary nor relevant. Jessie, 79 M.J. at 442. In addition, Appellant had the opportunity to submit the information contained within her second declaration at the time she submitted her assignment of error, and she chose not to do so. For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's motion to attach her second declaration.

[redacted]

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 6 July 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) **NANCY E. ZIESCHE,** United States Air Force, *Appellant*.	))))))))))	**MOTION FOR LEAVE TO FILE SUPPLEMENTAL ASSIGNMENT OF ERROR AND SUPPLEMENTAL ASSIGNMENT OF ERROR** Before Panel No. 2 No. ACM 24022 2 July 2025

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

Pursuant to Rules 18.4 and 23(d) of this Court's Rules of Practice and Procedure, Appellant, Senior Airman (SrA) Nancy R. Ziesche, hereby moves for leave to file a supplemental assignment of error. As detailed below, there is good cause for the supplemental pleading.

On June 30, 2025, the same day SrA Ziesche submitted her reply brief, this Court decided *United States v. Norris*, No. ACM 24045, slip op. (A.F. Ct. Crim. App. June 30, 2025). In *Norris*, this Court ordered the entry of judgment to be corrected to reflect that the convening authority withdrew and dismissed charges and specifications after referral. *Id.* at 2, 8-9. The appellant in *Norris* had been arraigned on these charges, but both Rule for Courts-Martial (R.C.M.) 1101 and R.C.M. 1111 dictate that *referral* is the prerequisite for including a charge and specification in the post-trial documents. *Id.* at 8.

After confirming the rule, case law, and SrA Ziesche's record, it became evident that her Entry of Judgment (EOJ) and Statement of Trial (STR) results contained a similar error. EOJ (Dec. 14, 2023); STR (Nov. 26, 2023). Although SrA Ziesche was not arraigned on "Charge I"[1] on the

[1] As in *Norris*, the trial counsel lined through "Charge I" and its specification and indicated they were withdrawn and dismissed without prejudice. *Compare Norris*, No. ACM 24045, slip op. at 7,

Charge Sheet with a preferral date of August 7, 2023, referral occurred on August 10, 2023. Charge Sheet (Aug. 10, 2023). "Charge I" and its specification were later "withdrawn and dismissed without prejudice" on October 5, 2023. *Id.* The withdrawal and dismissal occurred pre-arraignment but post-referral. *Compare* Charge Sheet at 1 (Aug. 10, 2023), *with* R. at 1. "Charge I" and its specification are not on the EOJ or STR. EOJ; STR.

Following *Norris*, this is a clear and obvious error in the record, one the Court would have likely corrected on its own. *See, e.g.*, *United States v. Schneider*, No. ACM 40403, 2024 CCA LEXIS 288, at *1, *29-31 (A.F. Ct. Crim. App. July 16, 2024) (correcting sua sponte an erroneous "not guilty" finding where the charge had been dismissed with prejudice pursuant to plea agreement). The fact that this error in the EOJ became apparent upon review of *Norris*, which this Court decided on the same day SrA Ziesche filed her reply brief, constitutes good cause to consider this supplemental assignment of error and SrA Ziesche's argument on the issue.

Appellant requests this Court grant this motion to file a supplemental assignment of error.

SUPPLEMENTAL ASSIGNMENT OF ERROR

WHETHER THE ENTRY OF JUDGMENT SHOULD BE MODIFIED TO REFLECT THAT THE CONVENING AUTHORITY WITHDREW AND DISMISSED CHARGE I AFTER REFERRAL.

Supplemental Statement of the Case

SrA Ziesche filed her opening brief on May 22, 2025. Merits Brief on Behalf of Appellant (May 22, 2025). Her case was submitted on the merits, and SrA Ziesche personally raised one issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). *Id*. The Government responded

with Charge Sheet (Aug. 10, 2023). While the other charge listed on the Charge Sheet, "Charge II," was not renumbered (at least on the copy contained in the Appellate Defense Division's record), the EOJ, STR, transcript, and plea agreement all refer to this second charge as "the Charge." EOJ; STR; R. at 21, 30; Appellate Ex. XV at 1.

on June 23, 2025, and noted that SrA Ziesche had been charged with one charge and one specification of failure to go in violation of Article 86, UCMJ, on August 7, 2023. Answer to Assignment of Error at 1 (June 23, 2025) (Ans). The Government also listed this charge, "Charge I," in a chart covering the details of the plea agreement. Ans. at 2. Neither party noted that both the EOJ and the STR failed to contain "Charge I," its specification, and the disposition. EOJ; STR.

Supplemental Statement of Facts

SrA Ziesche was arraigned on October 13, 2023. R. at 1. All the offenses on which she was arraigned are captured in the EOJ and in the STR. EOJ; STR. Before arraignment, on October 5, 2023, the trial counsel indicated on the Charge Sheet that the convening authority ordered "Charge I" and its specification (one charge and one specification of failure to go, an Article 86, UCMJ, offense) to be withdrawn and dismissed, without prejudice.[2] Charge Sheet (Aug. 10, 2023). "Charge I" and its specification are not contained on the post-trial documents, although referral occurred on August 10, 2023. Rather, the EOJ and STR indicate there was only one charge (with associated specifications) referred before "additional charges" were preferred and referred. EOJ; STR. This is consistent with how the charges were discussed at trial and in the plea agreement. R. at 19, 21, 30; Appellate Ex. XV at 1. Nevertheless, the EOJ and STR do not include summaries, pleas, findings or other dispositions for "Charge I" and its specification.

[2] The substance of this withdrawn and dismissed charge and specification appears to make up four of the seven Article 86, UCMJ, specifications in Additional Charge I, preferred and referred on Oct. 5, 2023. *Compare* Charge Sheet at 1 (Aug. 10, 2023) (charging SrA Ziesche with failing to go to her unit on "divers occasions" between June 13, 2023, and June 23, 2023), *with* Charge Sheet at 1 (Oct. 5, 2023) (charging SrA Ziesche with failing to go to her unit on four different days: June 13, 2023; June 20, 2023; June 21, 2023; and June 23, 2023). Of these four specifications of Additional Charge I, three were withdrawn and dismissed with prejudice pursuant to a plea agreement. R. at 92, 174; Appellate Ex. XV at 2; Charge Sheet at 1 (Oct. 5, 2023).

ARGUMENT

THE ENTRY OF JUDGMENT SHOULD BE MODIFIED TO REFLECT THAT THE CONVENING AUTHORITY WITHDREW AND DISMISSED CHARGE I AFTER REFERRAL.

Standard of Review

This Court reviews proper completion of post-trial processing de novo. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citation omitted).

Law and Analysis

R.C.M. 1101(a)(1)(B)-(C) provides that an STR shall consist of findings for each charge and specification *referred* to trial, including both the pleas of the accused and the finding or other disposition of each charge and specification. (emphasis added).

R.C.M. 1111(b)(1)(B)-(C) has analogous requirements for the EOJ; it must contain pleas and findings for each charge and specification *referred* to trial. (emphasis added).

This Court faced an identical issue in *United States v. Ericson*, No. ACM 23045, 2024 CCA LEXIS 538, at *9 (A.F. Ct. Crim. App. Dec. 17, 2024). There, the post-trial documents omitted a missing seventh specification to a charge that had been referred but then later was "withdrawn and dismissed" prior to arraignment. *Id*. at *4, *9. This Court noted that "regarding findings, each charge and specification referred to trial must be included" in the STR and EOJ. *Id*. at *9. The Court determined it was error to not include the "previously existing seventh specification originally referred to trial." *Id*.

As in *Ericson*, here, both the EOJ and STR contain findings on only the *arraigned* offenses, ultimately the offenses to which SrA Ziesche entered pleas. EOJ; STR. The referred "Charge I" and its specification are missing. *Compare* EOJ, *and* STR, *with* Charge Sheet (Aug. 10, 2023).

Therefore, both post-trial documents fail to properly include the "findings" as required under R.C.M. 1101 and 1111.

This Court can modify a judgment in the performance of its duties and responsibilities. R.C.M. 1111(c)(2). The EOJ is such a judgment, and this Court would be acting upon the "findings," as authorized by Article 66(d)(1), UCMJ. *See* Article 66(d)(1)(A), UCMJ, 10 U.S.C. § 866(d)(1)(A) ("The Court may act only with respect to the findings . . . as entered into the record."); *United States v. Williams*, 85 M.J. 121, 126 (C.A.A.F. 2024) (holding that the term "findings" is a term of art as defined by the President in R.C.M. 1101(a)(1)); *United States v. Johnson*, __M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499, at *3-4 (C.A.A.F. June 24, 2025) (tailoring and further specifying this Court's authority to act under Article 66, UCMJ).

In both *Ericson* and *Norris*, this Court corrected this type of error through modifying the EOJ pursuant to R.C.M. 1111(c)(2). *Ericson*, No. ACM 23045, 2024 CCA LEXIS 538, at *10; *Norris*, No. ACM 24045, slip op. at 8-9. Based on the plain language of the Rules for Courts-Martial that require findings for all *referred* charges and specifications in both the STR and EOJ, this Court should modify the EOJ to correctly reflect "Charge I" and its specification when performing its duties under Article 66, UCMJ.[3]

If this Court agrees to modify the EOJ, the modification may introduce some confusion into the record in a manner that warrants particular care in whatever decision this Court issues. In making this correction, as in *Norris*, the Court would be required to renumber what the EOJ lists as the "Charge" to "Charge II," mirroring what is still listed on the Charge Sheet dated August 10, 2023. *See Norris*, No. ACM 24045, slip op. at 8-9 (renumbering the charges); Charge Sheet (Aug. 10,

[3] Notably, the Government did not oppose correcting the same or similar error in either *Norris* or *Ericson*. *Norris*, No. ACM 24045, slip op. at 8; *Ericson*, No. ACM 23045, 2024 CCA LEXIS 538, at *9-10.

2023) (showing trial counsel did not renumber the charges, at least on the copy provided to the Air Force Appellate Defense Division). The potential confusion arises because the missing "Charge I" is never discussed at the court-martial, nor is it discussed in the plea agreement. *See* Appellate Ex. XV at 1 (failing to list "Charge I" or its specification, only listing "the Charge"). "Charge II" is consistently referred to as "the Charge" throughout the court-martial and on the plea. R. at 21, 30; Appellate Ex. XV at 1. Thus, this modification, required by R.C.M. 1111 and supported by this Court's repeated modifications to other EOJs (to include as recently in *Norris*), means that the various references throughout the record and the offer for plea agreement would not align with the EOJ or the Charge Sheet (Aug. 10, 2023).

To alleviate any possible confusion, SrA Ziesche requests that the Court make clear in its decision that (1) the court-martial proceedings, her offer for plea agreement, and various other items throughout the record make no reference to a "Charge I" or "Charge II," and (2) throughout the record what would now be entered as "Charge II" was consistently referred to as "the Charge" and its specification. Doing so would ensure any future litigation or administrative processes would be able to understand the record of trial.

SrA Ziesche respectfully requests this Court modify the EOJ to accurately reflect the summaries, pleas, findings, and other dispositions on all referred charges and specifications.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 2 July 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' RESPONSE TO MOTION FOR LEAVE TO FILE
v.	)	Before Panel No. 2
Senior Airman (E-4) **NANCY E. ZIESCHE** United States Air Force *Appellant.*	)	No. ACM 24022 9 July 2025

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States responds to Appellant's Motion for Leave to File a Supplemental Assignment of Error. The United States does not oppose Appellant's motion to file a supplemental assignment of error.

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

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I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 9 July 2025.

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