IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman (E-2), **Grayson N. Adams,** United States Air Force, *Appellant.*	))))))))))	**NOTICE OF DIRECT APPEAL PURSUANT TO ARTICLE 66(b)(1)(A), UCMJ** No. ACM SXXXXX 14 March 2024

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

On 4 & 25 October 2021, a special court-martial convened at Barksdale Air Force Base, Louisiana, convicted Airman (Amn) Grayson N. Adams, consistent with his pleas, of one charge and two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 921 (2018); and one charge and three specifications of wrongful use of a controlled substance in violation of Article 112a, UCMJ, 10 U.S.C. § 912a (2018). The military judge sentenced Amn Adams 60 days of confinement, reduction the rank of E-1, and forfeitures of pay of $1,000 per month for three (3) months. (Record of Trial (ROT) Vol. 1, Entry of Judgment, dated 24 November 2021; R. at 83.)

On 20 December 2023, the Government purportedly sent Amn Adams the required notice by mail of his right to appeal within 90 days. Pursuant Article 66(b)(1)(A), UCMJ, Amn Grayson N. Adams files his notice of direct appeal with this Court.

Respectfully submitted,

[redacted]

MICHAEL J. BRUZIK, 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) 612-4784
Email: michael.bruzik@us.af.mil

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 14 March 2024.

Respectfully submitted,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4784
Email: michael.bruzik@us.af.mil

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM _____**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF**
Grayson N. ADAMS	)	**DOCKETING**
Airman (E-2)	)	
U.S. Air Force	)	
Appellant	)	

On 14 March 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 15th day of March, 2024,

ORDERED:

The case in the above-styled matter is referred to Panel 2.

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 22018**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Grayson N. ADAMS	)	
Airman (E-2)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 17 September 2024, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant's assignments of error. The Government opposes the motion.

From the date of docketing to when this enlargement would end, 253 days will have elapsed, and from the date of receipt of the record of trial to when this enlargement would end, 120 days will have elapsed.

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 20th day of September, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **23 November 2024.**

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

Appellant's counsel is advised that any subsequent motions for enlargement of time shall include, in addition to matters required under this court's Rules of Practice and Procedure, statements as to: (1) whether Appellant was advised of Appellant's right to a timely appeal, (2) whether Appellant was provided an update of the status of counsel's progress on Appellant's case, (3) whether Appellant was advised of the request for an enlargement of time, and (4) whether Appellant agrees with the request for an enlargement of time. Counsel is not required to re-address item (1) in each subsequent motion for enlargement of time if counsel previously replied in the affirmative.

Counsel may request, and the court may order *sua sponte*, a status conference to facilitate timely processing of this appeal.

Appellant's counsel is further advised that any future requests for enlargements of time that, if granted, would expire more than 390 days after docketing, will not be granted absent exceptional circumstances.

[redacted]
OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman (E-2) **GRAYSON N. ADAMS,** United States Air Force, *Appellant.*	**MOTION FOR ENLARGEMENT OF TIME (FIRST)** Before Panel No. 2 No. ACM 22018 17 September 2024

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

Pursuant to Rule 23.3(m)(2) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **23 November 2024**. The case was docketed with this Court on 15 March 2024. This Court acknowledged receipt of the record of trial on 26 July 2024. From the date of that receipt to the present date, 53 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

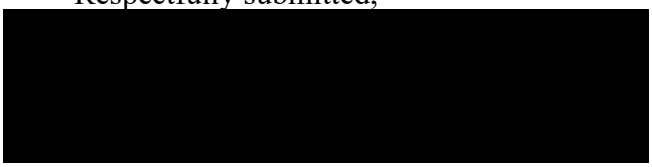
[redacted]

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

18 September 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman (E-2) GRAYSON N. ADAMS, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 22018 Panel No. 2

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 18 September 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman (E-2) **GRAYSON N. ADAMS,** United States Air Force, *Appellant.*	**MOTION FOR ENLARGEMENT OF TIME, OUT OF TIME (SECOND)** Before Panel No. 2 No. ACM 22018 18 November 2024

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

Pursuant to Rule 23.3(m)(2) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his second enlargement of time to file an Assignments of Error (AOE).[1] Appellant requests an enlargement for a period of 30 days, which will end on **23 December 2024**. The case was docketed with this Court on 15 March 2024. This Court acknowledged receipt of the record of trial on 26 July 2024. From the date of that receipt to the present date, 115 days have elapsed. On the date requested, 150 days will have elapsed.

On 25 October 2021, a special court-martial convened at Barksdale Air Force Base, Louisiana, convicted of Airman (Amn) Grayson N. Adams, consistent with his pleas, of two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ); and two specifications of unlawful use of a controlled substance and one specification unlawful possession of a controlled substance in violation of Article 112a, UCMJ. (R. at 225.) The military judge sentenced Amn Adams to be reduced to the grade of E-1, to forfeit $1000 pay

[1] Counsel originally submitted a timely motion for enlargement of time in this case on 15 November 2024. However, this submission has scrivener's error in the date listed in the case caption. Counsel respectfully withdraws that motion and submits this one instead. Good cause exists to file this motion out of time because counsel submitted the original motion on time.

per months for three months, and to be confined for 60 days. (R. at 299.) The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action.)

The record of trial contains a 299-page transcript. There are two prosecution exhibits, three defense exhibits, and 17 appellate exhibits. Amn Adams is not currently in confinement. Amn Adams has been advised of his right to appellate review and of this request for an enlargement of time. Amn Adams agrees to the request. Counsel has updated Amn Adams as to the status of the case.

Undersigned counsel is currently assigned 20 cases; 11 cases are pending initial AOEs before this Court. Undersigned counsel's top priorities are as follows:

1) *United States v. Hilton*, ACM 40500 – The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. This case is on its thirteenth enlargement of time. Counsel has completed reviewing the record of trial and has begun drafting and assignment of errors.
2) *United States v. Jenkins*, ACM S32765 – The record of trial consists of three volumes stored in electronic format. The transcript is 138 pages. There are four prosecution exhibits, one defense exhibit, four appellate exhibits, and one court exhibit. This case is on its ninth enlargement of time.
3) *United States v. Titus*, ACM 40557 - The record of trial consists of four volumes. The transcript is 142 pages. There are five prosecution exhibits, five defense exhibits, 31 appellate exhibits, and five court exhibits. This case is on its eighth enlargement of time.

Through no fault of appellant, counsel has been working on other assigned matters and has been unable to begin reviewing the record of trial in this case. Accordingly, an enlargement of time is necessary for counsel to fully review Appellant's case and advise on potential errors. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and yet to begin reviewing the record of trial

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

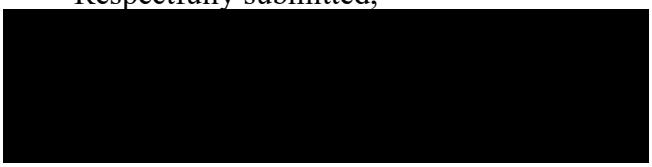
Respectfully submitted,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

19 November 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman (E-2) GRAYSON N. ADAMS, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 22018 Panel No. 2

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 19 November 2024.

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

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 22018**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Grayson N. ADAMS	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 16 December 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Third) requesting "an enlargement for a period of 30 days, which will end on **22 January 2025**" to submit Appellant's assignments of error. The Government generally opposes the motion.

Counsel for Appellant cites Rule 23.3(m)(4) of this court's Rules of Practice and Procedure but fails to provide "the number of days that have elapsed since the case was first docketed with the court," and "the number of days that will have elapsed since docketing on the date requested." Appellant's case was docketed with this court on 15 March 2024.* Appellant's motion should have reflected 276 days from date of docketing to date of this motion (16 December 2024), and 313 days from date of docketing to date requested (*i.e.*, 23 January 2025). Given the irregularities in calculations and considering the maximum periods of enlargements of time allowed, this court will grant Appellant's motion for an enlargement of time to end on 25 January 2025.

For cases, like Appellant's, filed pursuant to Article 66(b)(1)(A), Uniform Code of Military Justice, 10 U.S.C. § 866(b)(1)(A), Rule 18(d)(2) of the Joint Rules of Appellate Procedure allows an appellant to file no later than 60 days from the date the Government provides a completed copy of the verbatim transcript to the court. *See* JT. CT. CRIM. APP. R. 18(d)(2), 6(a)(1). However, Appellant is not required to provide days elapsed from date of court's receipt of the record of trial. Instead, Appellant must comply with this court's Rule 23.3(m)(4) when requesting an enlargement of time.

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

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* The court "acknowledged receipt of the record of trial" on 29 July 2024, and not on 26 July 2024 as stated in Appellant's motion.

Accordingly, it is by the court on this 19th day of December, 2024,

ORDERED:

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

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman (E-2) **GRAYSON N. ADAMS,** United States Air Force, *Appellant.*	**MOTION FOR ENLARGEMENT OF TIME (THIRD)** Before Panel No. 2 No. ACM 22018 16 December 2024

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

Pursuant to Rule 23.3(m)(2) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his third enlargement of time to file an Assignments of Error (AOE).[1] Appellant requests an enlargement for a period of 30 days, which will end on **22 January 2025**. The case was docketed with this Court on 15 March 2024. This Court acknowledged receipt of the record of trial on 26 July 2024. From the date of that receipt to the present date, 143 days have elapsed. On the date requested, 180 days will have elapsed.

On 25 October 2021, a special court-martial convened at Barksdale Air Force Base, Louisiana, convicted of Airman (Amn) Grayson N. Adams, consistent with his pleas, of two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ); and two specifications of unlawful use of a controlled substance and one specification unlawful possession of a controlled substance in violation of Article 112a, UCMJ. (R. at 225.) The military judge sentenced Amn Adams to be reduced to the grade of E-1, to forfeit $1000 pay

[1] Counsel originally submitted a motion for enlargement of time on 16 December 2024 at approximately 2124. That motion contained an error in the case caption. Counsel respectfully withdraws that motion and submits this one instead.

per months for three months, and to be confined for 60 days. (R. at 299.) The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action.)

The record of trial contains a 299-page transcript. There are two prosecution exhibits, three defense exhibits, and 17 appellate exhibits. Amn Adams is not currently in confinement. Amn Adams has been advised of his right to appellate review and of this request for an enlargement of time. Amn Adams agrees to the request. Counsel has been in communication with Amn Adams concerning the status of the case, but does not have a substantive update at this time.

Undersigned counsel is currently assigned 20 cases; 11 cases are pending initial AOEs before this Court. Undersigned counsel's top priorities are as follows:

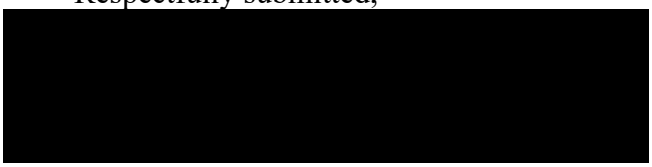
1) *United States v. Hilton*, ACM 40500 – The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. This case is on its fourteenth enlargement of time. Counsel has been working an assignment of errors with civilian counsel.
2) *United States v. Titus*, ACM 40557 - The record of trial consists of four volumes. The transcript is 142 pages. There are five prosecution exhibits, five defense exhibits, 31 appellate exhibits, and five court exhibits. This case is on its ninth enlargement of time.
3) *United States v. Rodriguez*, ACM 40565 - The record of trial consists of two volumes. The transcript is 86 pages. There are two prosecution exhibits, six defense exhibits, and five appellate exhibits. This case is on its eighth enlargement of time.

Through no fault of appellant, counsel has been working on other assigned matters and has been unable to begin reviewing the record of trial in this case. Accordingly, an enlargement of time is necessary for counsel to fully review Appellant's case and advise on potential errors.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and yet to begin reviewing the record of trial

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

Respectfully submitted,

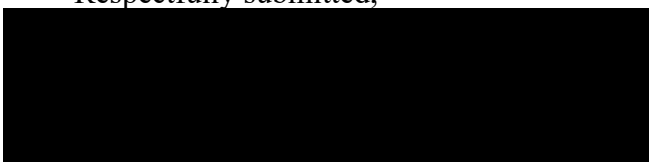


MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 16 December 2024.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
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(240) 612-4770

18 December 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman (E-2) GRAYSON N. ADAMS, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 22018 Panel No. 2

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
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 18 December 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman (E-2) **GRAYSON N. ADAMS,** United States Air Force, *Appellant.*	**MOTION FOR ENLARGEMENT OF TIME (FOURTH)** Before Panel No. 2 No. ACM 22018 17 January 2025

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his fourth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **24 February 2025**. The case was docketed with this Court on 15 March 2024.[1] This Court acknowledged receipt of the record of trial with the verbatim transcript on 29 July 2024. From the date of that receipt to the present date, 172 days have elapsed. On the date requested, 210 days will have elapsed.

On 25 October 2021, a special court-martial convened at Barksdale Air Force Base, Louisiana, convicted of Airman (Amn) Grayson N. Adams, consistent with his pleas, of two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ); and two specifications of unlawful use of a controlled substance and one specification unlawful possession of a controlled substance in violation of Article 112a, UCMJ. (R. at 225.) The military judge sentenced Amn Adams to be reduced to the grade of E-1, to forfeit $1000 pay

[1] From the date of docketing until the present, 308 days have elapsed. From the date of docketing until the date requested, 346 days will have elapsed.

per months for three months, and to be confined for 60 days. (R. at 299.) The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action.)

The record of trial contains a 299-page transcript. There are two prosecution exhibits, three defense exhibits, and 17 appellate exhibits. Amn Adams is not currently in confinement. Amn Adams has been advised of his right to appellate review and of this request for an enlargement of time. Amn Adams agrees to the request. Counsel has been in communication with Amn Adams concerning the status of the case, but does not have a substantive update at this time.

Undersigned counsel is currently assigned 20 cases; 10 cases are pending initial AOEs before this Court. Undersigned counsel's top priorities are as follows:

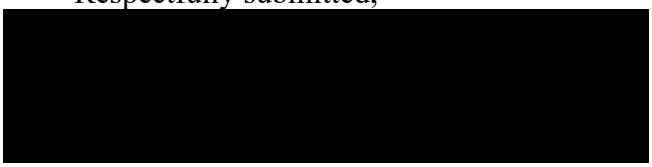
1) *United States v. Rodriguez*, ACM 40565 – The record of trial consists of two volumes. The transcript is 86 pages. There are two prosecution exhibits, six defense exhibits, and five appellate exhibits. This case is on its ninth enlargement of time.
2) *United States v. Sanger*, ACM S32773 – The record of trial consists of two electronic volumes. The transcript is 141 pages. There are four prosecution exhibits, one defense exhibit, and four appellate exhibits. This case is on its seventh enlargement of time.
3) *United States v. Licea*, ACM 40602 - The record of trial consists of seven electronic volumes, and the transcript is 173 pages. There are 12 prosecution exhibits, five defense exhibits, 22 appellate exhibits, and one court exhibit. This case is on its sixth enlargement of time.

Through no fault of appellant, counsel has been working on other assigned matters and has been unable to begin reviewing the record of trial in this case. Accordingly, an enlargement of time is necessary for counsel to fully review Appellant's case and advise on potential errors.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and yet to begin reviewing the record of trial

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

Respectfully submitted,

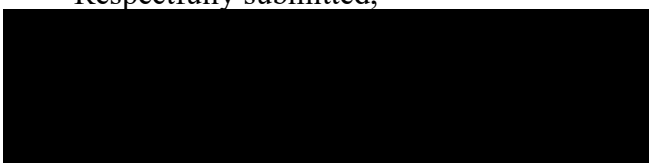


MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 17 January 2025.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

21 January 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman (E-2) GRAYSON N. ADAMS, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 22018 Panel No. 2

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
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 January 2025.

[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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman (E-2) **GRAYSON N. ADAMS,** United States Air Force, *Appellant.*	**MOTION FOR ENLARGEMENT OF TIME (FIFTH)** Before Panel No. 2 No. ACM 22018 13 February 2025

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his fifth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **26 March 2025**. The case was docketed with this Court on 15 March 2024.[1] This Court acknowledged receipt of the record of trial with the verbatim transcript on 29 July 2024. From the date of that receipt to the present date, 199 days have elapsed. On the date requested, 240 days will have elapsed.

On 25 October 2021, a special court-martial convened at Barksdale Air Force Base, Louisiana, convicted of Airman (Amn) Grayson N. Adams, consistent with his pleas, of two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ); and two specifications of unlawful use of a controlled substance and one specification unlawful possession of a controlled substance in violation of Article 112a, UCMJ. (R. at 225.) The military judge sentenced Amn Adams to be reduced to the grade of E-1, to forfeit $1000 pay

[1] From the date of docketing until the present, 335 days have elapsed. From the date of docketing until the date requested, 376 days will have elapsed.

per months for three months, and to be confined for 60 days. (R. at 299.) The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action.)

The record of trial contains a 299-page transcript. There are two prosecution exhibits, three defense exhibits, and 17 appellate exhibits. Amn Adams is not currently in confinement. Amn Adams has been advised of his right to appellate review and of this request for an enlargement of time. Amn Adams agrees to the request. Counsel has been in communication with Amn Adams concerning the status of the case, but does not have a substantive update at this time.

Undersigned counsel is currently assigned 20 cases; 8 cases are pending initial AOEs before this Court. Undersigned counsel's top priorities are as follows:

1) *United States v. Sanger*, ACM S32773 – The record of trial consists of two electronic volumes. The transcript is 141 pages. There are four prosecution exhibits, one defense exhibit, and four appellate exhibits. This case is on its ninth enlargement of time.
2) *United States v. Licea*, ACM 40602 - The record of trial consists of seven electronic volumes, and the transcript is 173 pages. There are 12 prosecution exhibits, five defense exhibits, 22 appellate exhibits, and one court exhibit. This case is on its seventh enlargement of time.
3) *United States v. Torres Gonzalez*, ACM 24001 – The record of trial consists of six volumes and a 608-page transcript. There are 46 prosecutions exhibits, eight defense exhibits, and 25 appellate exhibits. This case is on its eighth enlargement of time.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters which has prevented him from completing an in-depth review of the record of trial. Undersigned counsel has recently been detailed to *United States v. Cook*, a case which the C.A.A.F. granted for review on 29 January 2025. The grant brief and joint appendix are due for

that case on 19 February 2025. Additionally, counsel has been hard at work on an Assignment of Errors in *United States v. Sanger*. That case has presented wide complexity, and counsel anticipates raising multiple errors before this Court. Counsel is also in preparations for oral argument before this Court in *United States v. Jenkins* which are taking place on 5 March 2025. These efforts have been strained by medical issues that one of counsel's close family members has experienced which has required counsel to drive to the Walter Reed Medical Center two days a week for treatment during hours of operation. Accordingly, an enlargement of time is necessary for counsel to continue reviewing the record of trial and to advise appellant on potential errors.

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

Respectfully submitted,

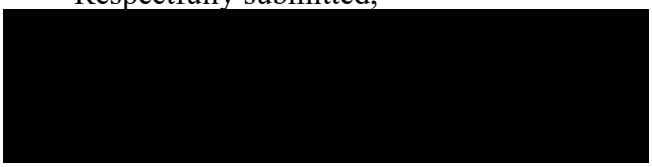
[redacted]

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 13 February 2025.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

19 February 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman (E-2) GRAYSON N. ADAMS, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 22018 Panel No. 2

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 Assignments of Error in this case.

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

[redacted]

THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel
Government Trial and
Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 19 February 2025.

THOMAS J. ALFORD, Lt Col, USAFR
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 22018**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Grayson N. ADAMS	)	
Airman (E-2)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 14 March 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Sixth) requesting an enlargement for a period of 30 days to submit Appellant's assignments of error. Appellant's counsel avers he "has been working on other assigned matters and has been unable to complete an in-depth review of the record of trial" and "various priorities [in other cases] have prevented counsel from being able to dedicate the time necessary to work on this case." Appellant's counsel notes the days from receipt of the verbatim transcript to the enlargement date requested. In a footnote, Appellant's counsel states: "From the date of docketing until the present, 364 days have elapsed. From the date of docketing until the date requested, 406 days will have elapsed."

The Government generally opposes the motion.

In an order dated 20 September 2024 granting Appellant's Motion for Enlargement of Time (First), this court notified counsel "that any future requests for enlargements of time that, if granted, would expire more than 390 days after *docketing*, will not be granted absent exceptional circumstances." (Emphasis added.)

In an order dated 19 December 2024 granting Appellant's Motion for Enlargement of Time (Third), this court clarified that, in his motion, Appellant "should have reflected [the] days from date of *docketing* to date requested." (Emphasis added.) This court reminded Appellant's counsel that "Appellant is not required to provide days elapsed from date of court's receipt of the record of trial. Instead, Appellant must comply with this court's Rule 23.3(m)(4) when requesting an enlargement of time."

Rule 23.3(m)(4) of this court's Rules of Practice and Procedure requires counsel to provide "the number of days that have elapsed since the case was first *docketed* with the Court," and "the number of days that will have elapsed

since *docketing* on the date requested." (Emphasis added.) This requirement is separate from Rule 18(d)(2) of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals, which affords an appellant 60 days after receipt of a verbatim transcript to file a brief. *See* JT. CT. CRIM. APP. R. 18(d)(2).

The court has considered Appellant's motion, the Government's opposition, and the Rules of Practice and Procedure applicable to this court. Appellant's counsel has failed to show exceptional circumstances for this request for enlargement of time that, if granted, would expire more than 390 days after docketing.

Accordingly, it is by the court on this 19th day of March, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (Sixth) is **DENIED**.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman (E-2) **GRAYSON N. ADAMS,** United States Air Force, *Appellant.*	**MOTION FOR ENLARGEMENT OF TIME (SIXTH)** Before Panel No. 2 No. ACM 22018 14 March 2025

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his sixth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **25 April 2025**. The case was docketed with this Court on 15 March 2024.[1] This Court acknowledged receipt of the record of trial with the verbatim transcript on 29 July 2024. From the date of that receipt to the present date, 228 days have elapsed. On the date requested, 270 days will have elapsed.

On 25 October 2021, a special court-martial convened at Barksdale Air Force Base, Louisiana, convicted of Airman (Amn) Grayson N. Adams, consistent with his pleas, of two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ); and two specifications of unlawful use of a controlled substance and one specification unlawful possession of a controlled substance in violation of Article 112a, UCMJ. (R. at 225.) The military judge sentenced Amn Adams to be reduced to the grade of E-1, to forfeit $1000 pay

[1] From the date of docketing until the present, 364 days have elapsed. From the date of docketing until the date requested, 406 days will have elapsed.

per months for three months, and to be confined for 60 days. (R. at 299.) The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action.)

The record of trial contains a 299-page transcript. There are two prosecution exhibits, three defense exhibits, and 17 appellate exhibits. Amn Adams is not currently in confinement. Amn Adams has been advised of his right to appellate review and of this request for an enlargement of time. Amn Adams agrees to the request. Counsel has been in communication with Amn Adams concerning the status of the case.

Undersigned counsel is currently assigned 18 cases; 7 cases are pending initial AOEs before this Court. Undersigned military counsel's top priorities before this Court are as follows:

1) *United States v. Torres Gonzalez*, ACM 24001 – The record of trial consists of six volumes and a 608-page transcript. There are 46 prosecution exhibits, eight defense exhibits, and 25 appellate exhibits. This case is on its eighth enlargement of time
2) *United States v. Licea*, ACM 40602 – The record of trial consists of seven electronic volumes, and the transcript is 173 pages. There are twelve prosecution exhibits, five defense exhibits, twenty-two appellate exhibits, and one court exhibit. This case is on its seventh enlargement of time.
3) *United States v. Quinones Reyes*, ACM 40636 – The record of trial consists of seven volumes with a 199-page transcript. There are four prosecution exhibits, 19 defense exhibits, 25 appellate exhibits, and one court exhibit. This case is on its sixth enlargement of time.

Through no fault of appellant, undersigned counsel has been working on other assigned matters and has been unable to complete an in-depth review of the record of trial. During the previous enlargement of time, counsel was occupied with the completion of a grant brief before

the Court of Appeals for the Armed Forces in *United States v. Cook*, which counsel submitted on 19 February 2025. Counsel also submitted a reply brief to this Court in *United States v. Hilton* on 24 February 2025 and an assignment of errors to this Court for *United States v. Sanger* on 28 February 2025. Additionally, counsel was in preparation for oral arguments before this Court in *United States v. Jenkins* which was scheduled to take place on 5 March 2025. Counsel submitted a supplemental brief in that case on 12 March 2025. These various priorities have prevented counsel from being able to dedicate the time necessary to work on this case. Accordingly, an enlargement of time is necessary for counsel to fully review Appellant's case and advise on potential errors.

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

Respectfully submitted,

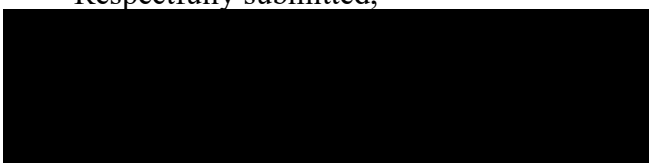
[redacted]

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 14 March 2025.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
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(240) 612-4770

18 March 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman (E-2) **GRAYSON N. ADAMS,** United States Air Force. *Appellant*	))))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME Before Panel No. 2 No. ACM 22018 18 March 2025

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

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

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman (E-2) **GRAYSON N. ADAMS,** United States Air Force, *Appellant.*	**MOTION FOR ENLARGEMENT OF TIME (SIXTH)** Before Panel No. 2 No. ACM 22018 19 March 2025

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his sixth enlargement of time to file an Assignment of Error (AOE).[1] Appellant requests an enlargement for a period of 14 days, which will end on **9 April 2025**. The case was docketed with this Court on 15 March 2024.[2] Per JT. CT. CRIM. AP. R. 18(d)(2), the timeline for filing an initial brief for cases subject to "non-automatic appeal" begins on the date that the Government provides "the Court a complete record, including a verbatim transcript, and provide[s] a copy to the defense." This rule became effective 17 May 2024 and has been acknowledged by this Court as establishing the operative timeline for submission of an assignment of errors. Order, *United States v. Norris*, No. ACM 24045, 20 December 2024.

This Court acknowledged receipt of the record of trial with the verbatim transcript on 29 July 2024. Undersigned counsel received a copy of the verbatim transcript that same day, but was

[1] Appellant submitted a motion requesting a sixth enlargement of time on 14 March 20215. The enlargement requested in that motion was for 30 days to end on 25 April 2025. This Court denied that motion on 19 March 2025.

[2] From the date of docketing until the present, 369 days have elapsed. From the date of docketing until the date requested, 390 days will have elapsed.

not provided a copy of the audio from the original proceedings, or any certification accompanying the transcript. From the date of that receipt to the present date, 233 days have elapsed. On the date requested, 254 days will have elapsed.

On 25 October 2021, a special court-martial convened at Barksdale Air Force Base, Louisiana, convicted of Airman (Amn) Grayson N. Adams, consistent with his pleas, of two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ), and two specifications of unlawful use of a controlled substance and one specification of unlawful possession of a controlled substance in violation of Article 112a, UCMJ. (R. at 225.) The military judge sentenced Amn Adams to be reduced to the grade of E-1, to forfeit $1000 pay per months for three months, and to be confined for 60 days. (R. at 299.) The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action.)

The record of trial contains a 299-page transcript. There are two prosecution exhibits, three defense exhibits, and seventeen appellate exhibits. Amn Adams is not currently in confinement. Amn Adams has been advised of his right to appellate review and of this request for an enlargement of time. Amn Adams agrees to the request. Counsel has been in communication with Amn Adams concerning the status of the case.

Undersigned counsel is currently assigned eighteen cases; seven cases are pending initial AOEs before this Court. Undersigned counsel's top priorities before this Court are as follows:

1) *United States v. Adams*, ACM 22018 – This is the instant case.
2) *United States v. Torres Gonzalez*, ACM 24001 – The record of trial consists of six volumes and a 608-page transcript. There are forty-six prosecution exhibits, eight defense exhibits, and twenty-five appellate exhibits. This case is on its ninth enlargement of time.

3) *United States v. Licea*, ACM 40602 – The record of trial consists of seven electronic volumes, and the transcript is 173 pages. There are twelve prosecution exhibits, five defense exhibits, twenty-two appellate exhibits, and one court exhibit. This case is on its ninth enlargement of time.

4) *United States v. Quinones Reyes*, ACM 40636 – The record of trial consists of seven volumes with a 199-page transcript. There are four prosecution exhibits, nineteen defense exhibits, twenty-five appellate exhibits, and one court exhibit. This case is on its sixth enlargement of time.

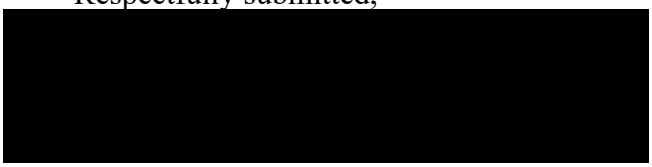
Through no fault of appellant, undersigned counsel has been working on other assigned matters and has been unable to complete an in-depth review of the record of trial. During the previous enlargement of time, counsel was occupied with the completion of a grant brief before the Court of Appeals for the Armed Forces in *United States v. Cook*, which counsel submitted on 19 February 2025. Counsel also submitted a reply brief to this Court in *United States v. Hilton* on 24 February 2025 and an AOE to this Court for *United States v. Sanger* on 28 February 2025. Additionally, counsel was preparing for oral arguments before this Court in *United States v. Jenkins* which was scheduled to take place on 5 March 2025. Although that argument was eventually cancelled, counsel lost an entire duty day of work doing to a real-world building evacuation and, rather than counsel's work related to the argument in *Jenkins* being completed on 5 March 2025, instead shifted priorities, at this Court's invitation, to complete a supplemental brief in *Jenkins* on 12 March 2025. These various priorities have prevented counsel from being able to dedicate the time necessary to work on this case.

Counsel's most recent top priority was completion of an assignment of errors in *United States v. Torres Gonzalez*. Counsel had completed substantial work on the brief for that case with

the intent of then immediately shifting focus to *United States v. Licea*. Counsel's priority for those cases was driven by the fact that counsel had been in receipt of complete records of trial with verbatim transcripts for much longer than the instant case. Both cases are in their ninth enlargement of time. Given this Court's denial of the previous motion for enlargement of time filed in this case on 14 March 2025, counsel has reoriented this case as his top priority. However, an enlargement of time is necessary for counsel to fully devote the time necessary to complete work on it. Should this Court be disinclined to grant the motion, Counsel requests a status conference.

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

Respectfully submitted,

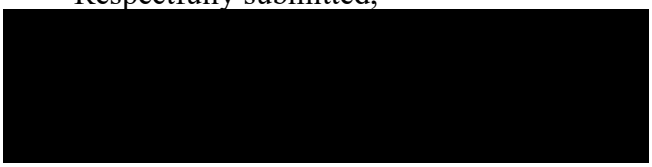


MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 19 March 2025.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
Appellee,	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Airman (E-2)	)	
GRAYSON N. ADAMS,	)	No. ACM 22018
United States Air Force.	)	
Appellant	)	20 March 2025

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

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

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 20 March 2025.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman (E-2) **GRAYSON N. ADAMS,** United States Air Force, *Appellant.*	**MOTION FOR ENLARGEMENT OF TIME (SEVENTH)** Before Panel No. 2 No. ACM 22018 2 April 2025

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his seventh enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 7 days, which will end on **16 April 2025**. The case was docketed with this Court on 15 March 2024.[1] Per JT. CT. CRIM. AP. R. 18(d)(2), the timeline for filing an initial brief for cases subject to "non-automatic appeal" begins on the date that the Government provides "the Court a complete record, including a verbatim transcript, and provide[s] a copy to the defense." This rule became effective 17 May 2024 and has been acknowledged by this Court as establishing the operative timeline for submission of an assignment of errors. Order, *United States v. Norris*, No. ACM 24045, 20 December 2024.

This Court acknowledged receipt of the record of trial with the verbatim transcript on 29 July 2024. Undersigned counsel received a copy of the verbatim transcript that same day, but was not provided a copy of the audio from the original proceedings, or any certification accompanying

[1] From the date of docketing until the present, 383 days have elapsed. From the date of docketing until the date requested, 397 days will have elapsed.

the transcript. From the date of that receipt to the present date, 247 days have elapsed. On the date requested, 261 days will have elapsed.

On 25 October 2021, a special court-martial convened at Barksdale Air Force Base, Louisiana, convicted of Airman (Amn) Grayson N. Adams, consistent with his pleas, of two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ), and two specifications of unlawful use of a controlled substance and one specification of unlawful possession of a controlled substance in violation of Article 112a, UCMJ. (R. at 225.) The military judge sentenced Amn Adams to be reduced to the grade of E-1, to forfeit $1000 pay per months for three months, and to be confined for 60 days. (R. at 299.) The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action.)

The record of trial contains a 299-page transcript. There are two prosecution exhibits, three defense exhibits, and seventeen appellate exhibits. Amn Adams is not currently in confinement. Amn Adams has been advised of his right to appellate review and of this request for an enlargement of time. Amn Adams agrees to the request. Counsel has been in communication with Amn Adams concerning the status of the case.

Undersigned counsel is currently assigned eighteen cases; seven cases are pending initial AOEs before this Court. Undersigned counsel's top priorities before this Court are as follows:

Undersigned counsel is currently assigned to represent eighteen service members; seven cases are pending initial AOEs before this Court. Undersigned counsel's priorities for initial briefs before this Court are as follows:

1) *United States v. Adams*, ACM 22018 – This is the instant case.
2) *United States v. Torres Gonzalez*, ACM 24001 – The record of trial consists of six volumes and a 608-page transcript. There are forty-six prosecution exhibits, eight

defense exhibits, and twenty-five appellate exhibits. This case is on its ninth enlargement of time. A brief is due to this Court on 14 April 2025.

3) *United States v. Licea*, ACM 40602 – The record of trial consists of seven electronic volumes, and the transcript is 173 pages. There are twelve prosecution exhibits, five defense exhibits, twenty-two appellate exhibits, and one court exhibit. This case is on its ninth enlargement of time. A brief is due to this Court on 18 April 2025.

4) *United States v. Quinones Reyes*, ACM 40636 – The record of trial consists of seven volumes with a 199-page transcript. There are four prosecution exhibits, nineteen defense exhibits, twenty-five appellate exhibits, and one court exhibit. This case is on its seventh enlargement of time. A brief is due to this court on 21 April 2025.

Through no fault of appellant, undersigned counsel has been working on other assigned matters and been unable to complete an assignment of errors in this case. Exceptional circumstances exists because on 21 March 2025 this Court denied undersigned counsel's request for enlargement of time in *United States v. Copp*, ACM 24029 without explanation and without an opportunity to file a timely renewed request due to the 27 March 2025 filing deadline for an assignment of errors. This forced counsel to rework his priorities in order to comply the deadline, at the expense of cases such this one. Counsel also had to balance *United States v. Copp* with completion of reply brief to the Court of Appeals for the Armed Forces in *United States v. Cook*, which is due for submission on 2 April 2025.

Counsel emphasizes that he has been working diligently over the past several months. Counsel has worked almost every weekend, including those with Federal holidays, and has frequently remained in the office late into the night as reflected in the time that this request is being submitted. Counsel worked through Thanksgiving, Christmas, and New Year. During and

February and March, counsel had to tend to medical care of a close family member that required treatment three days a week at the Walter Reed Medical Center. Because this individual was unable to drive, counsel had to do so for them. This took substantial time out of counsel's day which he made up for by frequently working late into the night/early morning, and across the weekend.

Counsel has completed an in-depth review of the record of trial in this case and identified issues. Counsel does not anticipate requesting any additional enlargements of time. However, the additional time is necessary so that counsel can ensure zealous advocacy, complete all internal review procedures, and ensure that the brief complies with Amn Adams's interests. While counsel has been working diligently on this case, he has had to balance it with his work on *United States v. Cook*, and also a reply brief in *United States v. Sanger* which is due to this Court on 7 April 2025. Should this Court be inclined to deny this request for an enlargement of time, counsel requests a status conference. However, an enlargement of time is necessary for counsel to complete the important work on an assignment of errors.

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

Respectfully submitted,

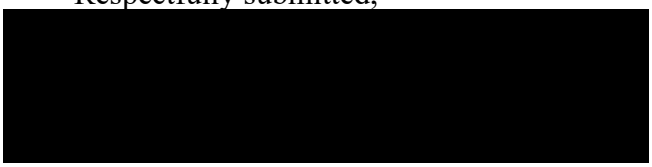
[redacted]

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 2 April 2025.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES'
	)	OPPOSITION TO
Appellee,	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Airman (E-2)	)	
GRAYSON N. ADAMS,	)	No. ACM 22018
United States Air Force.	)	
Appellant	)	3 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 300 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 8 months combined for the United States and this Court to perform their separate statutory responsibilities.

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

JOCELYN Q. WRIGHT, 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 3 April 2025.

JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel
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,*	)	**BRIEF ON BEHALF OF APPELLANT**
v.	)	Before Panel No. 2
Airman (E-2), **GRAYSON N. ADAMS,** United States Air Force, *Appellant.*	)	No. ACM 22018
	)	16 April 2025

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

I.

Whether the sentence adjudged against Airman Adams was inappropriately severe because it did not account for the mitigating circumstances surrounding the charged offenses.

II.

Whether this case should be remanded for correction of the Record of Trial due to the absence of a certified verbatim transcript as required by R.C.M. 1114(a)(2) and Department of Air Force Instruction 51-201, *Administration of Military Justice*, ¶ 20.47.1 (January 24, 2024).

III.

Whether Airman Adams is entitled to relief for excessive delay in the processing of his court-martial after entry of judgment under Article 66(d)(2), 10 U.S.C. § 866(d)(2), due to the Government's untimely provision of the record of trial and verbatim transcript.

IV.

Whether the entry of judgment erroneously subjects Airman Adams to a restriction on firearm ownership in violation of his Second Amendment right to bear arms.

Statement of the Case

On 25 October 2021, a special court-martial convened at Barksdale Air Force Base, Louisiana, convicted Airman (Amn) Grayson N. Adams, consistent with his pleas, of two specifications of dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ)[1], and two specifications of unlawful use of a controlled substance and one specification of unlawful possession of a controlled substance in violation of Article 112a, UCMJ. (R. at 225.) The military judge sentenced Amn Adams to be reduced to the grade of E-1, to forfeit $1,000 pay per month for three months, and to be confined for sixty days. (R. at 299.) The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action.)

Statement of Facts

H.M. and E.H. were two security forces members at Barksdale Air Force Base that were tending to an unrelated matter at dormitory when they received a radio dispatch that an individual might have been shot in the dormitory. (Pros. Ex. 1 at 1, R. at 20.) The dispatch went out during the early morning hours. (R. at 102.) H.M. and E.H received this message while in close proximity to Amn Adams's dorm room, which H.M. described by stating, "I was right outside Airman [Adams]'s dorm room. If I were in his room, I could see my location, so that's how close I was. But I was outside." (R. at 20.) Neither of the security forces members heard any gunshots, but made their way to Airman Adams's dorm room "without even knowing the direction of where [they] were supposed to be going." (R. at 21, 43.) The radio dispatch elaborated that the gunshot was an attempted suicide. (R. at 94.)

[1] Unless otherwise noted, all references to the U.C.M.J., the Rules for Courts-Martial (R.C.M.), and the Military Rules of Evidence (Mil. R. Evid.) are to the versions in the *Manual for Courts-Martial, United States* (2019 ed.) (*M.C.M.*).

Upon arrival at Amn Adams's dorm room, H.M. and E.H. knocked on the quad[2] door which was answered by a Caucasian male who looked like he had just woken up. (R. at 21.) When H.M. told the unidentified male the purpose of the visit, the male responded, "I haven't heard anything. I don't know of any shots fired." (R. at 44.) E.M. felt a suspicion that something was going on in Amn Adams's room in the quad, but did not testify to hearing any shouting or banging sounds. (R. at 22.) H.M. was familiar with Amn Adams because H.M. would see Amn Adams in the Security Forces Squadron, of which they both belonged to. (R. at 66.)

Upon realizing that the room belonged to Amn Adams, H.M. yelled at Amn Adams to forcefully order him to exit. (R. at 23, 45.) While doing so, both H.M. and E.H. held their firearms in a drawn position. (R. at 45.) Amn Adams explained that he did not have a weapon and pleaded with H.M. not to shoot him as he exited the room with his hands in the air. (R. at 22, 24, 76.) Amn Adams remained cooperative throughout this interaction. (R. at 46.) H.M. observed that Amn Adams had blood on the left side of his face in a single spot that resembled a trickle of sweat. (R. at 24, 206.) Amn Adams was wearing only his pants as the blood dripped down his face. (R. at 54.) H.M. ordered Amn Adams to drop to his knees and lay prone on his stomach while H.M. searched Amn Adams's dorm room. (R. at 25.) E.H. described this as putting Amn Adams "at a disadvantage . . . so [they] could detain him." (R. at 76.) Amn Adams remained in that position for several minutes. (R. at 119.)

Inside, H.M. saw nothing out of the ordinary other than broken glass on the floor, which appeared to come from a mirror. (R. at 26.) Meanwhile, other security forces members arrived on the scene and placed Amn Adams in handcuffs. (R. at 27-28.) Although H.M. could not recall Amn Adams's exact words, he testified that Amn Adams responded with "something to the effect

[2] A quad room is a dorm setup in which there are four separate rooms joined by common area.

of yes" when asked if H.M. could do another search of his room. (R. at 29) ("He didn't seem like he had anything to hide.") When pressed further on this, H.M. elaborated, "I don't remember precisely [what he said] but he gave me the impression he was good." (R. at 53, 68.) No documentation was ever created to memorialize the consent. (R. at 58.)

Amn Adams was not provided medical attention until all the rooms in the quad had been searched. (R. at 80.) He was taken outside, and continued to comply with the instructions he was given. (R. at 124.) Security forces members testified that Amn Adams did not appear to be sober, but medical personnel found him to be mentally coherent and answering questions appropriately. (R. at 103, 135.) Moreover, medical personnel confirmed that Amn Adams did not have any injuries due to gunshots. (R. at 135.) H.M. eventually realized that Amn Adams had not fired a gun, speculating that his injuries had something to do with the shattered mirror. (R. at 51-52.)

During the second search of Amn Adams's dorm room, H.M. discovered two firearms, an AK-47 and a Smith & Wesson MP Shield, along with ammunition and multiple magazines. (Pros. Ex. 1 at ¶ 5.) Additionally, H.M. discovered two methamphetamine tablets and a makeshift pipe assembled from aluminum foil that contained Hydrocodone residue. (*Id.* at ¶¶ 8-10.) Amn Adams chose to plead guilty to the charges related to the items discovered in his dorm room as well as unlawful use of methamphetamine. (R. at 225.)

During sentencing, Amn Adams offered two unsworn statements, one written and one verbal. In the written statement, he discussed his sheltered upbringing and desire to join the Air Force to pursue a career in law enforcement. (Def. Ex. C.) While accepting responsibility for his actions, Amn Adams felt he was overtaken with temptations that he struggled to manage while being away from home for the first time. (*Id.*) ("Temptations I had never face[d] before proved too great and led me down a road that once I embarked upon it, kept bringing me to worse and

worse placed.") During his verbal unsworn statement, Amn Adams explained that he had been dealing with medical issues that required him to take prescription medications that interfered with his judgment. (R. at 287.) This was supported by medical record assembled in law enforcement's investigative report, as well as the stipulation of fact. As to the firearms, Amn Adams emphasized that he had no intention to hurt anyone, which indeed he did not do, but that he possessed the weapons found in his dorm room out of interest in "unique guns." (R. at 287.)

During trial counsel's sentencing argument, the Government emphasized the dorm room incident, referring to the items in Amn Adams's dorm room as a "recipe for disaster." (R. at 290.) It suggested that Amn Adams needed to be held accountable for "[w]rongfully using hydrocodone and methamphetamine while having access to loaded [weapons]," even though he was not charged with unlawfully using a firearm. (R. at 292.) The Government suggested that the events on that date represented a detriment to safety. (R. at 291.) It also referred to the actual charges as being dangerous in nature and advocated for a heightened sentence that would protect society. (R. at 291.)

I.

The sentence adjudged against Airman Adams was inappropriately severe because it did not account for the mitigating circumstances surrounding the charged offenses.

Standard of Review

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

Law & Analysis

Under the applicable version of Article 66(d), UCMJ, this Court may only approve "the sentence or such part or amount of the sentence, as the Court finds correct in law and fact and

determines, on the basis of the entire record, should be approved." Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) (2018). "Article 66(c)'s sentence appropriateness provision is a sweeping congressional mandate to ensure a fair and just punishment for every accused." *United States v. Baier*, 60 M.J. 382, 384 (C.A.A.F. 2005) (citations omitted) (internal quotation marks omitted). This Court's broad power to ensure a just sentence is distinct from the convening authority's clemency power to grant mercy. *See United States v. Nerad*, 69 M.J. 138, 146 (C.A.A.F. 2010). In assessing sentence appropriateness, this Court considers "the particular appellant, the nature and seriousness of the offense[s], the appellant's record of service, and all matters contained in the record of trial." *United States v. Sauk*, 74 M.J. 594, 606 (A.F. Ct. Crim. App. 2015) (en banc) (alteration in original) (citation omitted).

The sentence adjudged against Amn Adams was inappropriately severe because it did not fully account for the mitigating circumstances behind the underlying conduct. As a particular appellant, the entirety of the matters contained in the record of trial undermined the notion that he was a criminally minded individual bent on creating a dangerous situation. To the contrary, he was a young Airman struggling with life away from his structured upbringing and dealing with medical issues.

The Government's characterization of the nature and seriousness of the offenses was highly overstated. Although it described the dorm room incident as a "recipe for disaster" and tried to paint Amn Adams as a danger to those around him, this does not comport with what actually happened. Amn Adams did not engage in any violent crime, there were no victims, and the interaction with security forces was entirely happenstance. While firearms and unlawful substances formed the nucleus of the charges, there was no material harm resulting from them. To the contrary, the dorm room incident involved a substantial element of heavy-handed law

enforcement tactics that only aggravated the situation. H.M. and E.H. testified that they arrived at Amn Adams dorm room to respond to a shots-fired call, but it is abundantly clear that nothing of that sort actually happened. This is evidenced by the fact that no security forces member actually heard gunshots. When they arrived at the quad, the individual who answered the door had actually been sleeping. (R. at 21.) Despite this, law enforcement treated Amn Adams like a criminal right from the very beginning by ordering him out of his room with weapons drawn and then placing him on the floor in handcuffs. (R. at 25.)

Amn Adams apparently allowed security forces to search his dorm room, without which the evidence supporting the court-martial would not have been discovered, despite the high state of duress created solely by the Government's actions. (R. at 29.) Amn Adams remained highly cooperative throughout the interaction. The situation was thus devoid of any real aggravation. As a young Airman, Amn Adams had not yet developed a substantial military record but continued to cooperate through the military justice process by pleading guilty and accepting responsibility for his actions.

In the aggregate, all of the matters contained in the record weigh against the sentence imposed against Amn Adams, particularly the hefty forfeitures that were adjudged against him. Given this, the sentence was inappropriately severe, and this Court should address that by reassessing the sentence by setting aside the forfeitures, along with any other relief as this Court deems appropriate.

II.

This case should be remanded for correction of the record of trial due to the absence of a certified verbatim transcript as required by R.C.M. 1114(a)(2) and Department of Air Force Instruction 51-201, *Administration of Military Justice*, ¶ 20.47.1 (January 24, 2024).

Additional Facts

On 20 December 2023, the Government sent Amn Adams a written notice of his right to file for appeal within 90 days (90-day letter), along with a copy of the record of trial (ROT). (ROT, Vol. 1.) This copy of the ROT contained a summarized transcript. On 15 March 2024, this Court docketed this case after Amn Adams filed his notice of direct appeal. The docketing order instructed the Government to provide the Court with a copy of the record of trial. On 26 July 2024, the Government provided this Court with a copy of the ROT, including a verbatim transcript. However, the verbatim transcript was not certified.

Standard of Review

Whether a record of trial is incomplete or not substantially verbatim is reviewed *de novo*. *United States v. Henry*, 53 M.J. 108, 110 (C.A.A.F. 2000).

Law and Analysis

The record of trial is "the very heart of the criminal proceedings and the single element essential to [] meaningful appellate review." *United States v. Credit*, 4 M.J. 118, 119 (C.M.A. 1977). A record of trial must contain the court-martial proceedings and any evidence or exhibits considered by the court-martial in determining the findings or sentence. R.C.M. 1112(b). The president has mandated that a certified verbatim transcript shall be prepared when "required . . . under regulation prescribed by the Secretary concerned." R.C.M. 1114(a)(2). The Secretary of the Air Force requires preparation of a certified verbatim transcript in "*all* general and special

courts-martial in which there is a finding of guilty." Department of Air Force Instruction (DAFI) 51-201, Administration of Military Justice, ¶ 20.47.1 (January 24, 2024) (emphasis added). Amn Adams was entitled to a certified verbatim transcript by operation of these authorities. However, the verbatim transcript included in the ROT is uncertified.

A substantial omission renders a ROT incomplete and raises a presumption of prejudice that the Government must rebut. *Henry*, 53 M.J. at 111. The Government's failure to include a certified verbatim transcript is a substantial omission that renders the ROT incomplete and warrants remand for correction. *United States v. Donley*, No. ACM 40350, 2024 CCA LEXIS 115, at *5-6 (A.F. Ct. Crim. App. Mar. 19, 2024); *United States v. Blackburn*, No. ACM 40303, 2023 CCA LEXIS 386 (A.F. Ct. Crim. App. Sep. 11, 2023) (order); *United States v. Portillos*, No. ACM 40305, 2023 CCA LEXIS 321 (A.F. Ct. Crim. App. Aug. 1, 2023); *United States v. Stafford*, No. ACM 40131, 2022 CCA LEXIS 654 (A.F. Ct. Crim. App. Nov. 8, 2022) (order); *United States v. Lampkins*, No. ACM 40135, 2022 CCA LEXIS 750 (A.F. Ct. Crim. App. Oct. 25, 2022) (order).

The Rules for Courts-Martial contemplate only one method for correcting a ROT found to be incomplete after it has reached the appellate court: the incomplete ROT must be returned to the military judge for correction. R.C.M. 1112(d)(2); *see, e.g.*, *United States v. Welsh*, No. ACM S32719, 2022 CCA LEXIS 631, at *2–3 (A.F. Ct. Crim. App. October 26, 2022) (explaining R.C.M. 1112(d) provides for correction of a record of trial found to be incomplete or defective after authentication and returning the ROT for correction); *United States v. Mardis*, No. ACM 39980, 2022 CCA LEXIS 10, at *9–10 (A.F. Ct. Crim. App. January 6, 2022). R.C.M. 1112(d)(2) specifically states, "A superior competent authority may return a [ROT] to the military judge for correction under this rule." This rule says nothing about correcting a ROT by attaching materials to the appellate record. *Id.* Moreover, the rule states, "The military judge *shall* give notice of the

proposed correction to all parties and permit them to examine and respond to the proposed correction." *Id.* (emphasis added). Attaching materials to the appellate record to correct it would neglect this required step in the correction process. Amn Adams's ROT should be corrected in accordance with the procedures set forth in R.C.M. 1112(d)(2), which necessitates remanding the ROT to the military judge for correction.

III.

Amn Adams is entitled to relief for excessive delay in the processing of his court-martial after entry of judgment under Article 66(d)(2), 10 U.S.C. § 866(d)(2) due to the Government's untimely provision of the record of trial and verbatim transcript.

Additional Facts

The military signed the entry of judgment in this case on 23 November 2021. (Record of Trial, Vol. 1, Entry of Judgement.) On 23 December 2022, Congress amended Article 66, UCMJ, to allow for appellate review in all cases not subject to automatic review so long as a timely notice of appeal was filed within ninety days of the accused being informed of their right to do so. P.L. 117-263, 136 Stat. 2584, § 544(d) (December 23, 2022). At the time of the change, Amn Adams had not exhausted the review process under Article 69, UCMJ. From the date of that enactment, 361 days elapsed before the Government provided Amn Adams with written notice of his right to direct appeal and a copy of the record of trial with the summarized transcript. (Record of Trial, Vol. 1, Notice of Right to Submit Direct Appeal.) After this case was docketed and this Court ordered the Government to produce the record of trial on 15 March 2024, the Government did not provide the presently incomplete record of trial to this Court until 26 July 2024, during which time

133 days had elapsed.[3] To date, the Government has not provided a certified verbatim transcript of the lower proceedings.

Standard of Review

This Court reviews issues of speedy post-trial review and excessive delay de novo. *United States v. Anderson*, 82 M.J. 82, 85 (C.A.A.F. 2022) (citing *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006)).

Law & Analysis

Under Article 66(d)(2), this Court may provide appropriate relief where there is "excessive delay in the processing of the court-martial after the judgment was entered into the record." 10 U.S.C. § 866(d)(2). In this case, Amn Adams was subject to excessive delay in two instances. The first of these was the 361 days that it took for the Government to notify him of his right to appeal, and the second is the 133 days that elapsed from the docketing of this case to the Government's provision of the still incomplete record of trial to this Court. Collectively, this amounts to 494 days of delay entirely attributable to the Government. This Court should conclude that the excessive and unwarranted nature of these delays calls for appropriate relief.

In *United States v. Valentin-Andino*, ___ M.J. ___, 2025 C.A.A.F. LEXIS 248, at *10 n.4 (C.A.A.F. 2025), the United States Court of Appeals for the Armed Forces (C.A.A.F.) identified Article 66(d)(2) as the sole governing provision of the U.C.M.J. for addressing whether relief is warranted due to excessive post-trial delay. "Appropriate relief" is available under Article 66(d)(2)

[3] Neither of the time spans referenced above account for the period of time that had elapsed between the Government's provision of the 90-day letter and Amn Adams election to seek appellate review. Amn Adams does not attribute any delays occasioned by that period to the Government, but does assert that the Government is solely responsible for the 361-day delay in the provision of the 90-day letter and the 133-day delay in the provision of the presently uncertified transcript.

merely upon a demonstration of excessive delay, provided that the relief is "suitable under the facts and circumstances of the case." *Valentin-Andino*, 2025 C.A.A.F. LEXIS 248, at *2. The plain text of Article 66(d)(2) does not require a showing of prejudice. *United States v. Atencio*, No. ACM S32783, 2024 CCA LEXIS 543, at *6 (A.F. Ct. Crim. App. December 20, 2024). In this case, the excessive delay is demonstrable and apparent from the sheer timeline involved in the Government's production of the notice of right to appeal letter and the partial record of trial. Both of these matters were solely in the control of the Government and left Amn Adams unable to exercise his right to appellate review under Article 66(b)(1)(A). Even accepting, for the sake of argument, that Amn Adams did not immediately file his notice of appeal until some time after the Government sent the letter notifying him of his right to direct appeal, this does not mitigate against the almost year-long period that had elapsed from when his case become eligible for direct appeal before the Government complied with the notice requirement under Article 65(c)(1) that triggered the window for Amn Adams to appeal to this Court. The delay in this case was further aggravated by the 133 days that elapsed before the Government provided the still incomplete record of trial. Both of these timelines are sufficient to demonstrate excessive delay under Article 66(d)(2) and warrant appropriate relief.

Per the standard announced in *Valentin-Andino*, relief is suitable under the facts and circumstances of this case. *Valentin-Andino*, 2025 C.A.A.F. LEXIS 248, at *2. This is informed by the non-exclusive factors outlined in *United States v. Gay*, 74 M.J. 736 (A.F. Ct. Crim. App. 2015). *See Atencio*, 2024 CCA LEXIS 543, at *6 (applying the *Gay* factors in the context of Article 66(d)(2). These factors may include the following:

> 1. How long did the delay exceed the standards set forth in *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006)?
>
> 2. What reasons, if any, has the government set forth for the delay?

> 3. Is there some evidence of harm (either to the appellant or institutionally) caused by the delay?
>
> 4. Has the delay lessened the disciplinary effect of any particular aspect of the sentence, and is relief consistent with the dual goals of justice and good order and discipline?
>
> 5. Is there any evidence of institutional neglect concerning timely post-trial processing, either across the service or at a particular installation?
>
> 6. Given the passage of time, can this court provide meaningful relief in this particular situation?

Gay, 74 M.J. at 744. No single factor is dispositive in this analysis. *Id.* In this case, the following considerations demonstrate that the delays at issue were excessive and that relief is suitable under the facts and circumstances of this case.

A. The delays collectively exceed the standards arising from *Moreno*, 63 M.J. at 129.

The delays created by the Government collectively exceed the standards in *Moreno* and are presumptively unreasonable. In that case, the C.A.A.F. recognized a presumption of unreasonable delay in post-trial processing where convening authority action was not taken within 120 days, and the case was not docketed with this court within 30 days. *Id.* at 142. This Court has interpreted this to mean that delays exceeding 150 days total are presumptively unreasonable. *United States v. Livak*, 80 M.J. 631 (A.F. Ct. Crim. App. 2020) (finding a "150-day threshold appropriately protects an appellant's due process right to timely post-trial and appellate review and is consistent with our superior court's holding in *Moreno*"). In this case, the Government's first delay in providing the notice of right to direct appeal letter more than doubled this threshold, nearly reaching a year in time. Similarly, the Government's provision of the still-incomplete record of trial was 133 days. Collectively, both of these delays – which do not include the period of time between the notice of right to appeal letter and Amn Adams filing his case with this Court – add

up to 494 days which vastly exceeds the *Moreno* standard and demonstrates that the delays were excessive.

Importantly, the excessive nature of the delays is cognizable under Article 66(d)(2) in spite of this case not falling under automatic review. In *United States v. Boren*, No. ACM 40296 (f rev), 2025 CCA LEXIS 103 (A.F. Ct. Crim. App. Mar. 19, 2025), this Court limited *Livak*'s application in cases filed under Article 66(b)(1)(A). This is because in such cases the "appellant is now in the driver's seat in determining whether post-conviction review is concluded." *Id*. at *47. However, the two delays at issue in this case are distinguishable because they were both occasioned by matters entirely within the Government's control. The first of these was the provision of the notice of right to appeal letter that triggered Amn Adams's timeline to file for appeal with this Court, the second being the 133 days that it took for the Government to provide the record of trial. In both instances, Amn Adams was not the one controlling the process, rather it was the Government. The landscape of post-trial delay was also addressed by this Court in *United States v. Gray*, No. ACM 2025 CCA LEXIS 122 (A.F. Ct. Crim. App. March 24, 2025). This Court recognized that "it is possible that an appellant could demonstrate a case-specific facially unreasonable delay." *Id.* at *17. This case certainly features that because of the excessive delays attributable entirely to the Government.

B. No justification exists for the excessive delays.

The excessive delays are not justified by anything in the record of trial. The initial assembly of the record of trial with the summarized transcript appears to be the product of normal case processing. The record of trial contains no commentary on the period of time between when the court reporter chronology ends and the notice of right to appeal letter was finally sent. Meanwhile, the still uncertified verbatim transcript contains no commentary whatsoever for why

it took so long. The relatively small size of the record of trial should have enabled the Government to assemble it much more expediently. *See Atencio*, 2024 CCA LEXIS 543, at *9 (holding that where the record of trial was only three volumes and the transcript was only 120 pages, "It stretched credulity to believe such an in inordinate amount of time was necessary to transcribe and assemble the record of trial."); *United States v. Hennessy*, No. ACM , 2024 CCA LEXIS 343, at *36 (A.F. Ct. Crim. App. August 20, 2024) (finding that seven months to transcribe 1,169 pages "simply too long to be reasonable absent any attending extraordinary circumstances.").

C. The delay resulted in harm to both Amn Adams and the military justice institution.

The excessive delay has harmed Amn Adams by impeding his ability to exercise his right to appellate review. The Government accountable delays have resulted in Amn Adams having to wait a total of 494 days. While the text of Article 66(d)(2) does not require a showing of prejudice, the C.A.A.F. has long recognized the "impairment of a convicted person's grounds for appeal" as a form of prejudice that violates the principles of due process. Such is the case here where Amn Adams ability to exercise his appellate rights has been severely inhibited by the delays. "[D]elay in the administrative handling and forwarding of the record of trial and related documents to an appellate court [] is the least defensible of all and worthy of the least patience." *United States v. Dunbar*, 31 M.J. 70, 73 (C.M.A. 1990). The reason this Court should have little patience with the Government is because "this stage involves no discretion or judgment; and, unlike an appellate court's consideration of an appeal, this stage involves no complex legal or factual issues or weighing of policy considerations." *Id*. Like the appellant in *United States v. Turpiano*, Amn Adams has been "impeded in his ability to exercise his post-trial rights because of the actions, or more aptly delayed actions, of the Government." No. ACM 38873 (f rev), 2019 CCA LEXIS 367, at *19 (A.F. Ct. Crim. App. Sep. 10, 2019).

The circumstances of this case also show institutional neglect from the Government that harms the standing of the military justice system. The general lack of urgency in the Government's post-trial processing of Amn Adams cases raises concerns that this Court has previously seen as problematic. *Atencio*, 2024 CCA LEXIS 543, *9. Institutional failure is also present because the Government's failure to provide a complete and legally complaint record of trial is in accord with the Government's continual struggle with timely and accurate post-trial processing. In *Valentin-Andino*, this Court recognized systemic problems indicating institutional neglect as evidenced by the high volume of cases that had to be remanded because of incomplete records of trial. 2025 CAAF LEXIS 248, at *4. The Government's failure to timely produce a complete record of trial that includes a certified verbatim transcript is indicative of this continued institutional problem. Accordingly, the harm suffered by both Amn Adams as an individual and the intuitional harm underpins the excessive delay shown in this case.

D. The delay has not lessened the punitive effect of Amn Adams adjudged forfeitures, and relief can be granted while still upholding the dual goals of justice and good order and discipline.

Amn Adams adjudged forfeitures have continued to carry the same punitive impact that they did when the punishment was first adjudged. This is distinct from forms of punishment which expire after a certain duration, such as confinement. Accordingly, the opportunity for Amn Adams to receive relief is still ripe. Additionally, appropriate relief in the form of setting aside the forfeitures would still allow for justice and good order and discipline to be maintained. This is because Amn Adams will continue to bear convictions for the offenses that he pleaded guilty to. Moreover, he served his period of confinement and has experienced a reduction in rank. The remaining punishment is sufficient to account for his offenses, while setting aside the forfeitures will address the excessive post-trial delays incurred by the Government. Despite the passage of

time, this Court can still give meaningful and appropriate relief to Amn Adams by setting aside the forfeitures that were adjudged against him. Doing so will provide Amn Adams financial relief which would be to his benefit. This factors also weighs in favor of this Court addressing the excessive delay under Article 66(d)(2). Accordingly, this Court should find that the 494 days of total delay created by the Government were excessive and that appropriate relief would consist of setting the adjudged forfeitures. Accordingly, Amn Adams respectfully asks this Court to set aside his sentence in order to grant appropriate relief.

IV.

The entry of judgment erroneously subjects Amn Adams to a restriction on firearm ownership violation of his Second Amendment right to bear arms.

Standard of Review

Whether post-trial processing was properly completed is reviewed de novo. *United States v. Zegarrundo*, 77 M.J. 612, 613-14 (A.F. Ct. Crim. App. 2018) (citing *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000)). This Court reviews questions of jurisdiction, law, and statutory interpretation de novo. *United States v. Vanzant*, 84 M.J. 671, 680 (A.F. Ct. Crim. App. 2024), r*ev. granted*, USCA Dkt. No. 24-0182, ___ M.J. ___, 2024 CAAF LEXIS 640 (C.A.A.F. Oct. 17, 2024).

Law & Analysis

The Courts of Criminal Appeals possess "limited jurisdiction, defined entirely by statute." *United States v. Arness*, 74 M.J. 441, 442 (C.A.A.F. 2015) (citation omitted). In *United States v. Williams*, 85 M.J. 121, 126 (C.A.A.F. Sep. 5, 2024), the C.A.A.F. rejected the authority of the Courts of Criminal Appeals to address the firearms prohibition in the statement of trial results (STR) under Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1). But this Court remains empowered by statute to correct the unconstitutional deprivation of Amn Adams's Second Amendment right to

bear arms through Article 66(d)(2), UCMJ. 10 U.S.C. § 866(d)(2) (2019). *See also Williams* 85 M.J. at 127 (considering relief under that statute but rejecting it only because of the unique procedural posture of the case).

Article 66(d)(2), UCMJ, authorizes this Court to "provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the" entry of judgment (EOJ). *Id.* Amn Adams meets each of the statutory thresholds: (1) an error, (2) raised by appellant, (3) occurring after the entry of judgment under Article 60c, UCMJ. *Id.*; *Williams* 85 M.J. at 127. Because only two categories of 18 U.S.C. § 922(g) could possibly apply to Amn Adams, and its reflection in his post-trial paperwork runs afoul of the superior protection found in the Second Amendment, this Court can and should direct correction, consistent with its authority under Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2).

A. Amn Adams has demonstrated error: the unconstitutional application of what appears to be 18 U.S.C. § 922(g)(1) and/or 18 U.S.C. § 922(g)(3) to him.

Facially, two parts of 18 U.S.C. § 922 could conceivably apply to Amn Adams: 18 U.S.C. § 922(g)(1)'s prohibition arising from a conviction of a crime punishable by imprisonment for a term greater than one year and (g)(3)'s prohibition resulting from unlawful use of a controlled substance. None of the other provisions have application.

The relevance of 18 U.S.C. § 922(g)(1) is undermined by the absence of violence in Amn Adams's case. Given this, the purported statutory application of 18 U.S.C. § 922(g)(1) must yield to the superior protection afforded by the Constitution. "The military has a hierarchical scheme as to rights, duties, and obligations." *United States v. Romano*, 46 M.J. 269, 274 (C.A.A.F. 1997). Above all is the Constitution, under which applicable statutes must fall in line. *See id.* "While a lower source on the hierarchy may grant additional or greater rights than a higher source, those additional rights may not conflict with a higher source." *Id.* As applied to Amn Adams, the

question then becomes: Does the purported application of the lifetime firearm ban enumerated in 18 U.S.C. § 922(g)(1) comport with the Second Amendment?

When evaluating that question, the Supreme Court of the United States has articulated the governing test:

> [W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The [G]overnment must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 17 (2022) (quoting *Konigsberg v. State Bar of Cal.*, 336 U.S. 36, 49 n.10 (1961)).

Broadly speaking, and though not without limitation, the Second Amendment "confer[s] an individual right to keep and bear arms." *District of Columbia v. Heller*, 554 U.S. 570, 595, 626 (2008). As such, the Second Amendment plainly covers Amn Adams's right to keep and bear arms, even after his conviction. And, as *Bruen*'s test set out above makes clear, it then falls on the Government to show why its lifetime regulation of that right—here, purportedly through 18 U.S.C. § 922(g)(1)—comports with America's "historical tradition of firearm regulation." 597 U.S. at 17.

The Supreme Court most recently took up the contours of this assessment in *United States v. Rahimi*, 602 U.S. 680 (2024). Concluding that 18 U.S.C. § 922(g)(8) "fits comfortably within [the Nation's historical] tradition," the Court employed a methodology considering whether the regulation at issue is "relevantly similar"—as opposed to identical—to those acceptable to the Nation's founding generation. *Id*. at 691-92. The determination was clear under the facts specific to *Rahimi* because "the Government offer[ed] ample evidence that the Second Amendment permits the disarmament of individuals who pose" what the Court described as "a clear threat of physical violence to another." *Id.* at 692, 697. But the Court cabined its approval, limiting its affirmance

to temporary disarmament after a finding of a credible threat to physical safety and noting the vital nexus found between 18 U.S.C. § 922(g)(8) and the historical tradition of "banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse." *Id.* at 697 (citations omitted), *see also id.* at 701 (rejecting the contention "responsible" is the governing principle in any situation).

Amn Adams presents no special danger of misuse because violence is the keystone to this analysis. *See id.* at 1901. Without it, 18 U.S.C. § 922(g)(1) cannot constitutionally apply to Amn Adams. Indeed, the distinction between violent and nonviolent offenses is important and lies deeply rooted in history and tradition:

> [A]ctual "longstanding" precedent in America and pre-Founding England suggests that a firearms disability can be consistent with the Second Amendment to the extent that . . . its basis credibly indicates a present danger that one will misuse arms against others and the disability redresses that danger.

C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun*, 32 Harv. J.L. & Pub. Pol'y 695, 698 (2009) (emphasis added). Prior to 1961, "the original [Federal Firearms Act] had a narrower basis for a disability, limited to those convicted of a 'crime of violence.'" *Id.* at 699. Earlier, the Uniform Firearms Act of 1926 and 1930 stated that "a person convicted of a 'crime of violence' could not own or have in his possession or under his control, a pistol or revolver." *Id.* at 701, 704 (quotations omitted). A "crime of violence" meant "committing or attempting to commit murder, manslaughter, rape, mayhem, assault to do great bodily harm, robbery, [larceny], burglary, and housebreaking." *Id.* at 701 (quotations omitted). It was not until 1968 that Congress "banned possession and extended the prohibition on receipt to include any firearm that ever had traveled in interstate commerce." *Id.* at 698. "[I]t is difficult to see the justification for the complete lifetime ban for all felons that federal law has imposed only since 1968." *Id.* at 735.

The Third Circuit adopted this logic last year to conclude that 18 U.S.C. § 922(g)(1) was unconstitutional as applied to an appellant with a conviction for making a false statement to obtain food stamps, which was punishable by five years of confinement. *Range v. AG United States*, 124 F.4th 218, 232 (3d Cir. 2024). Evaluating 18 U.S.C. § 922(g)(1) in light of *Bruen*, the Third Circuit noted that the earliest version of the statute prohibiting those convicted of crimes punishable by more than one year of imprisonment, was from 1938, and "applied only to violent criminals." *Id.* at 229. It found no "relevantly similar" analogue to imposing lifetime disarmament upon those who committed nonviolent crimes. *Id.* at 228. The Third Circuit went beyond that, though, to also observe, founding-era laws often prescribed the forfeiture of the weapon used to commit a firearms related offense without affecting the perpetrator's right to keep and bear arms generally. *Id.* at 230. The Third Circuit stated that even if the appellant had used a gun, "[G]overnment confiscation of the instruments of crime (or a convicted criminal's entire estate) differs from a status-based lifetime ban on firearm possession," strongly calling into question the constitutionality of any lifetime firearm ban. *Id.* at 231. Amn Adams's convictions for entirely non-violent offenses have the effect under the Constitution of precluding him from being subject to a lifetime firearms ban.

Similarly, a lifetime firearms ban is unjustified under 18 U.S.C. § 922(g)(3)'s prohibition based on unlawful use of or addiction to controlled substances. Although Amn Adams is convicted of unlawfully using controlled substances, this alone does not meet the definition required to trigger the prohibition. Rather, the Government must prove that the drug use "was sufficiently consistent, 'prolonged' and close in time to his gun possession." *United States v. Williams*, 216 F. Supp. 2d 568, 575 (E.D. Va. 2002) (quoting *United States v. Edwards*, 38 F. App'x 134, 138 (4th Cir. 2002). Infrequent drug use is insufficient for the prohibition to apply. *United States v. Purdy*, 264 F.3d 809, 812 (9th Cir. 2001). Federal courts that have upheld the prohibition based on drug

use have done so because of the period of use was extensive. *See United States v. Patterson*, 431 F.3d 832, 836 (5th Cir. 2005) (appellant admitting he used marijuana regularly and that he would difficulty complying with release conditions barring drug use); *United States v. Cook*, 914 F.3d 545, 555 (7th Cir. 2019) (appellant admitting he used marijuana almost daily for nearly ten years). Amn Adams convictions do not demonstrate the type of extensive drug use identified by federal courts as required for 18 U.S.C. § 922(g)(3) to apply.

B. The error on the indorsement to the EOJ occurred after the entry of judgment.

The alleged error is an "error . . . in the processing of the court-martial after the" entry of judgment. 10 U.S.C. § 866(d)(2). The applicable Air Force regulation required that "[a]fter the EOJ is signed by the military judge and returned to the servicing legal office, the [Staff Judge Advocate] signs and attaches to the [EOJ] a first indorsement, indicating whether . . . firearm prohibitions are triggered." DAFI 51-201 at ¶ 20.41 (emphasis added). The firearm denotation on the First Indorsement that accompanies the EOJ into the record of trial explicitly happens after the EOJ is signed by the military judge pursuant to Article 60c, UCMJ. *Id.* That is just what happened here, with the First Indorsement to the EOJ digitally signed hours after the military judge's signature. *Compare* EOJ at 3, *with* EOJ at 4.

C. Jurisdiction under Article 66(d)(1), UCMJ, is distinct from Article 66(d)(2), UCMJ.

This Court's authorized "duties" are set out across the entirety of Article 66(d). As such, when an error occurring after entry of judgment is raised by an appellant, Article 66(d)(2), UCMJ, provides an independent jurisdictional basis. *Williams*, 85 M.J. at 126.

This Court's authority to review the erroneous firearm ban under Article 66(d)(2), UCMJ, is consistent with this Court's published opinion in *United States v. Vanzant*, 84 M.J. 671 (A.F. Ct. Crim. App. 2024). In *Vanzant*, this Court determined it did not have authority to act on collateral

consequences that are not a part of the findings or sentence under Article 66(d)(1), UCMJ. *Id.* at *23 ("Article 66(d), UCMJ, provides that a CCA 'may act only with respect to the findings and sentence as entered into the record under [Article 60c, UCMJ, 10 U.S.C. § 860c].'"). The Court of Appeals for the Armed Forces agreed with this interpretation. *See Williams*, 84 M.J. at 126. But whereas *Vanzant* and *Williams* concern those matters leading up to the EOJ, Amn Adams is asking this Court to review an error in post-trial processing after the EOJ under Article 66(d)(2), UCMJ, which this Court did not analyze in *Vanzant*. *See Vanzant*, 84 M.J. 671, 680 (quoting the language of Article 66(d)(1), UCMJ, not (d)(2)).

Vanzant does not control review of this issue as raised under Article 66(d)(2), UCMJ. *But see, e.g.*, *United States v. Lawson*, No. ACM 23034, 2024 CCA LEXIS 431, at *2 (A.F. Ct. Crim. App. Oct. 17, 2024) (broadly summarizing *Vanzant* as standing for the proposition that "the 18 U.S.C. § 922 firearm prohibition notation included in the staff judge advocate's indorsement to the [EOJ] is beyond a Court of Criminal Appeals' statutory authority to review"). The characterization of *Vanzant* in *Lawson* is incorrect. The 18 U.S.C. § 922 firearm prohibition notation included in the First Indorsement to the EOJ is not beyond this Court's statutory authority to review under Article 66(d)(2), UCMJ. *See Williams*, 85 M.J. at 126 (calling Article 66(d)(2), UCMJ, the "error-correction authority"); *but see United States v. Pulley*, No. ACM 40438 (f rev), 2024 CCA LEXIS 442, at *3 (A.F. Ct. Crim. App. Oct. 24, 2024) (citing *Vanzant* and *Williams* for this Court's inability to correct the firearm prohibition, but without analyzing Article 66(d)(2), UCMJ). Article 66(d)(1), UCMJ, is distinct, and that section is all *Vanzant* analyzes.

Using the Court of Appeals for the Armed Forces' analysis in *Williams*, this Court should find jurisdiction under Article 66(d)(2), UCMJ, and ensure correction of the unconstitutional firearms error in post-trial processing tied to the facts of Amn Adams's court-martial. To effectuate

any remedy, this Court should use its power under Rule for Courts-Martial 1112(d)(2), which permits this Court to send a defective record back to the military judge for correction. This is appropriate because the First Indorsement is a required component of the EOJ, albeit not part of the "findings" and "sentence," and the error materially affects Amn Adam's constitutional rights. R.C.M. 1111(b)(3)(F); R.C.M. 1112(b)(9) (2024); DAFI 51-201, at ¶ 20.41. This Court should, therefore, remand the record to correct the EOJ's unconstitutional firearm prohibition or grant other relief it deems warranted to effectuate the same.

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 Government Trial and Appellate Operations Division on 16 April 2025.

Respectfully submitted,

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	ANSWER TO ASSIGNMENTS OF ERROR
v.	)	Before Panel No. 2
Airman (E-2) **GRAYSON N. ADAMS** United States Air Force *Appellant.*	)	No. ACM 22018 16 May 2025

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

ISSUES PRESENTED

I.[1]

WHETHER THE SENTENCE ADJUDGED AGAINST AIRMAN ADAMS WAS INAPPROPRIATELY SEVERE BECAUSE IT DID NOT ACCOUNT FOR THE MITIGATING CIRCUMSTANCES SURROUNDING THE CHARGED OFFENSES.

II.

WHETHER THIS CASE SHOULD BE REMANDED FOR CORRECTION OF THE RECORD OF TRIAL DUE TO THE ABSENCE OF A CERTIFIED VERTBATIM TRANSCRIPT AS REQUIRED BY R.C.M. 1114(a)(2) AND DEPARTMENT OF AIR FORCE INSTRUCTION 51-201, ADMINISTRATION OF MILITARY JUSTICE, 20.47.1 (JANUARY 24, 2024).

III.

WHETHER AIRMAN ADAMS IS ENTITLED TO RELIEF FOR EXCESSIVE DELAY IN THE PROCESSING OF HIS COURT-MARTIAL AFTER THE ENTRY OF JUDGMENT UNDER ARTICLE 66(d)(2), 10 U.S.C. § 866(d)(2), DUE TO THE GOVERNMENT'S UNTIMELY PROVISION OF THE RECORD OF TRIAL AND VERBATIM TRANSCRIPT.

[1] The United States challenges this petition on jurisdictional grounds.

IV.

WHETHER THE ENTRY OF JUDGMENT ERRONEOUSLY SUBJECTS AIRMAN ADAMS TO A RESTRICTION ON FIREARM OWNERSHIP IN VIOLATION OF HIS SECOND AMENDMENT RIGHT TO BEAR ARMS.

STATEMENT OF CASE

The United States generally agrees with Appellant's statement of the case. Appellant received Article 65(d) review on 28 June 2022. Thus, his court-martial was final under Article 57(c)(1) before the 23 December 2022 change to Article 66 that would purportedly give this Court jurisdiction over his court-martial. *See* Pub. L. No. 117-263, § 544(b)(1)(A), 136 Stat. 2395, 2582 (23 Dec. 2022). The United States asserts that this Court has no jurisdiction to review Appellant's case, but recognizes this Court's contrary, published decision in United States v. Vanzant, 84 M.J. 671 (A.F. Ct. Crim. App. 28 May 2024). The United States continues to assert this position regarding lack of jurisdiction in case of additional litigation at our superior Court.

STATEMENT OF FACTS[2]

On 8 November 2020, M.H. and E.H., 2d Security Forces Squadron, responded to the Stratofortress dormitory building at Barksdale Air Force Base, Louisiana, "based upon a report of an individual who may have been shot." (Pros. Ex. 1 at 1.). M.H. and E.H. arrived on scene, heard shouting from inside the dorm room and "challenged the person inside to come out with their hands up." (Pros. Ex. 1 at 1.). Appellant complied with the orders, opened the door, and allowed law enforcement personnel to apprehend him. (Pros. Ex. 1 at 1.).

M.H. and E.H. noticed blood on Appellant's head and hands as well as shattered glass on the floor. (Pros. Ex. 1 at 1.). Appellant consented to M.H. searching Appellant's room, and law

[2] In his brief, Appellant asserts facts from testimony received at the motion hearing. These facts were not later admitted into evidence at the trial.

enforcement personnel discovered a loaded AK-47 firearm with multiple banana clips of ammunition as well as a Smith and Wesson MP Shield handgun with multiple magazines of ammunition. (Pros. Ex. 1 at 2.). Law enforcement personnel discovered two pills of methamphetamine in a plastic bag along with a hard-plastic card and plastic straw, a mirror (later testing revealed residual amounts of crushed methamphetamine on the surface), and a homemade smoking device (later testing revealed residual amounts of Hydrocodone). (Pros. Ex. 1 at 2.).

Additionally, according to M.H. and E.H., Appellant's methamphetamine use resulted in noticeable effects including dilated pupils, restlessness and short-term memory loss. (Pros. Ex. 1 at 2.). The effects lasted a few hours, and Appellant required medical observation. (Pros. Ex. 1 at 2.).

In his oral unsworn testimony and Care inquiry[3], Appellant admitted to the wrongful use of Methamphetamine and Hydrocodone, the wrongful possession of Methamphetamine, and to dereliction of duty for the failure to register and store his firearms and ammunition properly. (R. at 233-235, 238-239, 244-245, 252-253, 258-260, 287).

ARGUMENT

I.

APPELLANT'S APPROVED SENTENCE IS APPROPRIATE.

Additional Facts

The maximum punishment authorized is a reduction to the grade of E-1, forfeiture of two thirds pay per month for twelve months, twelve months confinement, and a bad conduct discharge. Rules for Courts-Martial (R.C.M.) 201(f)(2). However, the plea agreement limited the maximum

[3] United States v. Care, 40 C.M.R. 247 (C.M.A 1969).

sentence to include no more than 150 days confinement (any adjudged confinement to run concurrently), reduction in grade to E-1, and forfeiture of two thirds pay per month for twelve months. (App. Ex. XVI, at 2.). In addition, the plea agreement excluded a bad conduct discharge. (App. Ex. XVI, at 2.).

The military judge advised Appellant of his forum rights, and Appellant elected military judge alone. (R. at 224; App. Ex. XVI at 1.). The military judge sentenced Appellant to a reduction in grade to E-1; forfeiture of $1000.00 pay for three months; 60 days confinement (to run concurrently: Specification 1 of Charge I - 20 days; Specification 2 of Charge I - 10 days; Specification 1 of Charge II - 45 days; Specification 2 of Charge II - 60 days; and the Specification of the Additional Charge - 30 days). (R. at 299.). The convening authority approved the sentence without modification. (*Convening Authority Decision on Action*, 21 November 2021, ROT Vol. 1.).

During the sentencing phase of trial, Appellant admitted three exhibits into evidence, one character letter, a picture presentation, and written unsworn statement. (Def. Ex. A-C).

Standard of Review

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

Law

Sentence appropriateness is assessed "by considering the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the record of trial." United States v. Anderson, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009).

Although this Court has great discretion to determine whether a sentence is appropriate, the Court has no authority to grant mercy. United States v. Nerad, 69 M.J. 138, 146 (C.A.A.F. 2010) (citation omitted). Unlike the act of bestowing mercy through clemency, which was delegated to other channels by Congress, CCAs are entrusted with the task of determining sentence appropriateness, thereby ensuring the accused gets the punishment he deserves. United States v. Healy, 26 M.J. 394, 395-96 (C.M.A. 1988).

Analysis

Appellant's sentence is appropriate and should be affirmed as entered on the Entry of Judgment. (*Entry of Judgment*, 24 November 2021, ROT, Vol. 1.).

Appellant asserts facts not in evidence and the facts cannot be considered.

During sentencing, the court-martial may consider any evidence admitted by the military judge during the findings proceeding as well as evidence admitted by the military judge during the presentencing proceeding. R.C.M. 1002(g). Appellant erroneously refers to witnesses' testimony not in evidence and seeks to characterizes this evidence as factors in mitigation, *e.g.* "substantial element of heavy-handed law enforcement tactics" and "law enforcement treated Amn Adams like a criminal." (App. Br. at 2-4, 6-7). This evidence stems from witness testimony at the motions hearing, not from evidence or witness testimony during the trial. Since the facts are not admitted in evidence, the military judge did not consider these facts during sentencing, and this Court should only consider evidence admitted at trial.

The military judge properly considered the evidence.

Appellant asserts the military judge failed to consider: (1) Appellant's personal and medical struggles; (2) that no material harm occurred as a result of the crimes; (3) Appellant's cooperation with law enforcement; and (4) that the crimes involved no aggravating circumstances.

(App. Br. at 6-7). However, this Court should determine, based on the nature of the offenses and considering all the evidence, the military judge appropriately sentenced Appellant.

First, Appellant's personal struggles fail to outweigh the significance of his crimes, specifically, the possession and use of two Schedule II controlled substances. Appellant attributes his "foolish decisions" to "the strangeness of being out in the real world" and outside his "faith bubble." (Def. Ex. C at 1.). However, Appellant fails to pinpoint any specific issues aside from gaining independence and coping with homesickness. Id. To deal with personal struggles, Appellant could have sought guidance from the chaplain, his family, his religious community, or his unit, but instead Appellant chose "foolish decisions," specifically, ingesting and snorting methamphetamine as well as "crush[ing] up the hydrocodone pills" and ingesting the pills "by smoking the hydrocodone through an improvised smoking device." (R. at 258-259.). Appellant's own words in his unsworn statement demonstrate the minimization of his culpability, his low rehabilitative potential, and the necessity for punishment.

Appellant's failure to adhere to the firearm and ammunition storage regulations demonstrates Appellant's lack of rehabilitative potential. The 2nd Bomb wing commander ordered all personnel to register and store personal firearms and ammunition with the Security Forces armory. (Pros. Ex. 1 at 1-2; R. at 233-234.). Appellant knew of his duty, both the commander's order and the Air Force regulation, but he "intentionally chose to ignore it" and explained "[p]lease know that my decision to store these weapons in my dormitory were done entirely out of precaution for my own safety." Id. Appellant acted solely to protect himself and without regard for the safety of others as the wing commander's order ensures the safety and security of base personnel. Again, Appellant's own words demonstrate the minimization of his crimes, his low rehabilitative potential, and the necessity for punishment.

Regarding medical struggles, the military judge reopened the Care inquiry after Appellant's unsworn oral statement because Appellant alluded to medical dependency. (R. at 288.). Appellant, however, clarified he could have refrained from using hydrocodone or methamphetamine. (R. at 288-289.). Appellant knowing used hydrocodone and methamphetamine to alter his mental state but asserted medical issues as a mitigation factor to minimize his accountability. (R. at 287-289). Appellant demonstrates his low rehabilitative potential as well as the necessity of confinement as punishment. The adjudged sentence is appropriate.

Second, Appellant claims the military judge adjudged an inappropriately severe sentence because no material harm resulted from Appellant's crimes. Appellant fails to acknowledge the facts and circumstances surrounding the convictions. Appellant did not simply possess the loaded AK-47 firearm in his dorm room, Appellant possesses the loaded AK-47 firearm while under the influence of methamphetamine. Appellant admits the methamphetamine created an "[i]ntoxicating feeling comparable to alcohol" and "an altered sense of reality." (R. at 248, 256; Pros. Ex. 1 at 2.). "[T]he effects of the "high" were sufficiently potent that they [the effects] were noticeable" to responding law enforcement, lasted a few hours, and ultimately led Appellant to undergo medical observation. (Pros. Ex. 1 at 2.). The effects included "dilated pupils, restlessness and short-term memory problems." (Pros. Ex. 1 at 2.). Appellant discounts the serious nature of possessing a loaded AK-47 firearm, in his dorm room on Barksdale Air Force Base, while under the influence of a mind-altering substance.

Third, the military judge appropriately recognizes Appellant's cooperation with law enforcement as the military judge adjudged a sentence significantly lower than permitted under the plea agreement and requested by trial counsel. The military judge sentenced Appellant to a

reduction in grade to E-1; forfeiture of $1000.00 pay for three months (maximum permitted: 2/3 pay for three months); 60 days confinement (maximum permitted: 150 days confinement); and therefore, the military judge considered Appellant's cooperation with law enforcement. (*Entry of Judgment*, 24 November 2021, ROT, Vol. 1.).

Finally, Appellant claims the offenses lack any aggravating factors. However, this assertation minimizes the facts. Appellant did not possess a loaded AK-47 firearm in his dorm and later ingest methamphetamine off-base, away from the firearm. Rather, Appellant, in his dorm room on Barksdale Air Force Base, ingested and felt the effects of methamphetamine while in possession of a loaded AK-47 firearm as well as an unloaded Smith and Wesson MP Shield handgun with multiple magazines of ammunition. Additionally, Appellant minimizes his drug use. Appellant, referring to the methamphetamine, admits "[w]hile I originally did not know what the pills were, I knew they were illegal drugs and intentionally ingested them because I knew they were illegal drugs and I wanted to felt the effects." (R. at 252-256; Pros. Ex. 1 at 2.). Appellant bought an unknown contraband substance, crushed up the pill and snorted the unknown contraband substance to get high. Id. Appellant did not care about the type of drug, but only getting high. Appellant engaged in extremely risky behavior and abandoned any concerns for his health or safety. Appellant also crushed up hydrocodone pills and ingested the pills by smoking the hydrocodone through an aluminum homemade smoking apparatus. (R. at 258-259; Pros. Ex. 1 at 2.). The facts and circumstances surrounding the charged offenses support the adjudged sentence.

Evaluating the facts and circumstances in the record of Appellant's individual case, the seriousness of his offenses, his service record, his particular character, his rehabilitative potential, and in consideration of the entire record, this Honorable Court should leave his sentence undisturbed and affirm his entire approved sentence.

II.

THE RECORD OF TRIAL DOES NOT CONTAIN A SUBSTANTIAL OMISSION.

Additional Facts

B.S. performed the duty of court reporter for the court-martial, produced a summarized transcript, and provided a Record of Trial certification, dated 24 November 2021. (*Certification of the Record of Trial*, 29 November 2021, ROT Vol. 2.). R.C.M. 1114 and Air Force Instruction (AFI) 51-201, *Administration of Military Justice*, para 13.46 (15 April 2021), only required a certified verbatim transcript for sentences resulting in more than six months confinement or a punitive discharge and therefore, in November 2021, based upon Appellant's sentence, the record of trial did not require a verbatim transcription.

On 14 March 2024, Appellant filed his notice of direct appeal. (*Notice of Direct Appeal*, 14 March 2024). This Court docketed the case on 15 March 2024 and ordered the Government to provide this Court with a copy of the record of trial. (*Notice of Docketing*, 15 March 2024). At the time, R.C.M. 1114 and DAFI 51-201, para. 20.47 (14 April 2022), did not require a summarized transcription based upon Appellant's sentence. However, as a courtesy and of its own accord, the Government directed a verbatim transcription produced and detailed a second court reporter. The second court reporter, B.B., who had not been present at trial, produced the verbatim transcript and provided a certification of the verbatim transcript on 1 July 2024. (*Certification of Transcript*, 1 July 2024, ROT Vol. 2.). Trial counsel certified the transcript on 6 June 2024, and trial defense counsel attested to her examination of the transcript on 12 June 2024. (*Trial Counsel's Certification of Transcript*, 6 June 2024, ROT Vol. 3; *Defense Counsel's Examination of Transcript*, 12 June 2024, ROT Vol. 3.).

Although Appellant complains that verbatim transcript was not certified (App. Br. at 8), there is a certification present in the ROT. However, that certification was not completed by the court reporter present at the trial.

Standard of Review

Whether an omission from a record of trial is "substantial" is a question of law reviewed *de novo*. United States v. Stoffer, 53 M.J. 26, 27 (C.A.A.F. 2000). Proper completion of post-trial processing is a question of law subject to *de novo* review. United States v. Sheffield, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 22 Jul. 2004).

Law and Analysis

Requirements of Certified Record of Trial

R.C.M. 1112(b) requires the record of trial to contain "the court-martial proceedings and includes any evidence or exhibits considered by the court-martial in determining the finds or sentence" as well as a "substantially verbatim recording of the court martial proceedings." R.C.M. 1112(c) requires the court reporter to provide a certification of the record of trial.

Here, the record of trial includes the audio recording of the court-martial and thus satisfies the requirements of R.C.M. 1112(b)(1). Additionally, B.S., the court report at trial, attached a certification of the record of trial in accordance with R.C.M. 1112(c).

Attachments to the Certified Record of Trial

R.C.M. 1112(f)(8), *Attachments for Appellate Review*, requires the inclusion of "any transcription of the court-martial proceeding created pursuant to R.C.M. 1114." R.C.M. 1114(a)(2) mandates a certified verbatim transcription as required by court order or under regulations prescribed by the Secretary. The verbatim transcript constitutes an attachment to the record of trial. R.C.M. 1114(d)

Here, Appellant filed notice of his direct appeal under Article 66(b)(1)(A), UCMJ and this Court ordered the production of a copy of the record of trial. In response, the Government, of its own accord, ordered a second court reporter, B.B., to transcribe the trial. B.B. provided a certification of the verbatim transcript and subsequently attached the transcript to the certified record of trial in accordance with R.C.M. 1112(f)(8). (*Reporter's Chronology*, ROT Vol. 2*; Certification of the Transcript*, 1 July 2024, ROT Vol. 2; *Record*, ROT Vol. 3.).

Certification of the Verbatim Transcription

Department of the Air Force Manual (DAFMAN), 51-203, *Records of Trial*, para. 3.7.1 (21 April 2021), states, "[t]he detailed court reporter is responsible for certifying the quality and authenticity of the transcript or portion of the verbatim or summarized transcript, and method used to transcribe the proceeding. Even when the record is transcribed by another court reporter, the *court reporter present during the proceeding will review the record for accuracy and sign a certification to be inserted in the record after the court reporter chronology*." (Emphasis added).

In this case, although B.B. transcribed the court-martial from the audio recording, B.B. did not attend the trial proceedings and the record does not contain a proper court reporter certification in accordance with DAFMAN 51-203, para. 3.7.1. Because B.S. did not certify the verbatim transcript certification, this Court must determine whether the lack of a court reporter certification, by the court reporter present for the court-marital, constitutes a substantial omission of the record of trial.

Substantial Omission

"A substantial omission renders a record of trial incomplete and raises a presumption of prejudice that the Government must rebut." United States v. Henry, 53 M.J. 108, 111 (C.A.A.F. 2002) (citations omitted). An omission is qualitatively substantial when it directly relates to the

sufficiency of the Government's evidence on the merits and cannot be recalled with any degree of fidelity. United States v. Lashley, 14 M.J. 7, 9 (C.M.A. 1982).

Substantial omissions included: unrecorded sidebar conferences that involved the admission of evidence; argument concerning court member challenges; in a worthless check case, a letter of dishonor used to show mens rea; the omission of a videotape showing the accused flying during Desert Shield/Storm, admitted and shown during sentencing; and the absence of three defense exhibits. Henry, 53 M.J. at 111 (citing United States v. Gray, 7 M.J. 296 (C.M.A. 1979); United States v. Sturdivant, 1 M.J. 256 (C.M.A. 1976); United States v. McCullah, 11 M.J. 234 (C.M.A. 1981); United States v. Seal, 38 M.J. 659 (A.C.M.R. 1993); United States v. Stoffer, 53 M.J. 26 (C.A.A.F. 2000).).

Additionally, "[i]nsubstantial omissions from a record of trial do not raise a presumption of prejudice or affect that record's characterization as a complete one" and noted insubstantial omissions include the absence of photographic exhibits of stolen property; a flier given to the members; a court member's written question; and an accused's personnel record. Id. at 111 (citing United States v. Carmans, 9 M.J. 616 (A.C.M.R. 1980); United States v. Johnson, 33 M.J. 1017 (A.C.M.R. 1991); United States v. Harper, 25 M.J. 895 (A.C.M.R. 1988).).

In an unpublished opinion, this Court in United States v. Martinez, 2022 CCA LEXIS 324, at *122-123 (A.F. Ct. Crim. App. 2022) (unpub. op.), examined whether the lack of a court reporter certification of a verbatim transcript constituted a substantial omission. The appellant highlighted the lack of the court reporter transcript certification and asserted the substitution of trial counsel's transcript certification violated AFMAN 51-203 (requiring the court reporter to certify the verbatim transcription). Id. This Court noted while "trial counsel's certification here arguably ran afoul of their requirements," the appellant failed to identify any transcription errors or omissions

in the record. Id. The appellant also failed to identify any prejudice from the error, and this Court did not perceive any prejudice from the error, especially since the appellant had access to the recording of the court-marital proceedings. Id.

The lack of court reporter certification does not constitute a substantial omission. First, the purpose of transcription is to aid the appellate review of the court-martial proceedings and here, the transcript presents no indicia of unreliability. R.C.M. 1114 requires the certification of the transcript, while DAFMAN 51-203, para. 3.7. requires the court reporter, present at the court-martial proceeding, to certify the record of trial. The transcript certification embodies a post-trial procedural requirement with the purpose of safeguarding the reliability of the transcription. However, in this case, Appellant raised no question as the reliability of the transcription. The second court reporter, B.B., certified her transcription of the court-martial proceedings based upon the audio recording. Appellant did not asset any errors or omissions in the transcript. Trial defense counsel examined the transcript and trial counsel certified the transcript. Aside from the lack of a certification, the transcript presents no indicia of unreliability, and therefore, the transcript can be used for appellate review.

Second, the lack of a proper certification does not impact the evidence on the merits. Previous cases of substantial omissions typically constitute insufficiencies of the evidence on the merits (*e.g.*, unrecorded sidebars involving evidence omission, arguments concerning court members, omission of findings evidence, omission of sentencing evidence). Here, the verbatim certification does not impact any evidence or exhibits considered by the court-marital, and Appellant raised no concerns regarding errors or omissions in the transcription. Additionally, the location of the certification, as an attachment to the record of trial, indicates the procedural nature of the document, as opposed to documentary evidence relating to the merits. While conceivable

the lack of a certification could constitute a substantial omission (assuming the transcription contained numerous or egregious errors and omissions), in this case, the transcription contains no noted errors or omissions and therefore, the lack of the certification does not impact the evidence on the merits.

Finally, Appellant did not suffer prejudice. Similar to Martinez, Appellant identifies an error, but Appellant fails to articulate the relevance of the error as well as fails to explain any harm arising from the lack of a certification. Appellant, nor trial defense counsel, identify any error or omission in the verbatim transcription. Additionally, and also similar to Maritnez, Appellant has access to the audio recording of the court-marital proceedings. Finally, based on his sentence, neither the R.C.M. or the DAFI in effect at the time required the Government to produce a verbatim transcription, only a summarized transcript. The Government provided Appellant with a verbatim transcript as a courtesy to ensure thorough representation by counsel and Article 66 review. Consequently, Appellant suffered no prejudice from the absence of the court reporter certification. Therefore, the lack of court reporter certification does not constitute a substantial omission.

This Court should deny this assignment of error and find the lack of a court reporter certification did not prejudice Appellant. Thus, remand of the record for correction is unnecessary.

III.

APPELLANT IS NOT ENTITLED TO RELIEF FOR ANY POST-TRIAL DELAY.

Additional Facts

The court sentenced Appellant on 25 October 2021. (*Entry of Judgment*, 24 November 2021, ROT, Vol. 1.). On 28 June 2022, Appellant received his Article 65(d) review and therefore, final judgment in accordance with Article 57(c)(1)(A), UCMJ (2019). (*Entry of Judgment*, 24 November 2021, ROT Vol. 1.). On 23 December 2022, Congress amended Articles 66 and 69, UCMJ[4]. As amended, Article 66 expanded the CCA's jurisdiction to any judgment of a court-martial, irrespective of sentence, that includes a finding of guilty. Art. 66(b)(1)(A) (2022). On 20 December 2023, the Government notified Appellant of the right to a direct appeal. (*Notice of Right to Submit Direct Appeal*, 20 December 2023, ROT Vol. 1.). On 10 January 2024, Appellate Defense Counsel received the record of trial, excluding the verbatim transcription. (*Receipt of the Record of Trial*, 10 January 2024).

On 14 March 2024, Appellant filed a "Notice of Direct Appeal Pursuant to Article 66(b)(1)(A)." (*Notice of Direct Appeal*, 14 March 2024). On 15 March 2024, this Court ordered the Government to forward a copy of the record of trial. (*Notice of Docketing*, 15 March 2024).

At the time of Appellant's sentencing, the applicable regulation required verbatim transcripts for all findings of guilt only if the sentence included death, dismissal, punitive discharge, or confinement for more than six months. (*Entry of Judgment*, 24 November 2021, ROT, Vol. 1.). DAFMAN 51-203, para. 11.1.1, 11.1.1.1; R.C.M. 1114. Because Appellant's

[4] National Defense Authorization Act for Fiscal Year 2023 (FY23 NDAA), Pub. L. No. 117-263, §544, 136 Stat. 2395 (Dec. 23, 2022).

sentence did not trigger a verbatim transcription, the court reporter, B.S., prepared and completed a summarized transcript.

On 26 March 2024, the second court reporter, B.B., received the assignment to transcribe the court-martial. (*Reporter's Chronology*, ROT Vol. 2.). During the period of transcription, the court reporter also transcribed six other courts-martial. (*Reporter's Chronology*, ROT Vol. 2.). On 17 May 2024, the court reporter sent the transcription for attorney review. (*Reporter's Chronology*, ROT Vol. 2.). On 6 June 2024, trial counsel certified the transcription and on 12 June 2024, trial defense counsel acknowledged examination of the transcript. (*Trial Counsel's Certification of Transcript*, 6 June 2024, ROT Vol. 3; *Defense Counsel's Examination of Transcript*, 12 June 2024, ROT Vol. 3.). The court reporter sent the final transcription to the Barksdale legal office on 1 July 2024. (*Reporter's Chronology*, ROT Vol. 2.). This Court received the record of trial on 26 July 2024. (*Receipt of Record of Trial*, 26 July 2024, ROT Vol 1.). From the date Appellant filed his notice of appeal (14 March 2024) until the date this Court received the record of trial (26 July 2024), 134 days elapsed.

Subsequently, Appellant requested and received seven enlargements of time, all opposed by the Government. (*Motion for Enlargement of Time*, 17 September 2024, 18 November 2024, 16 December 2024, 17 January 2025, 13 February 2025, 19 March 2025, 2 April 2025). Appellant submitted his brief on 16 April 2025. (App. Br. at 1). From the date this Court received the record of trial (26 July 2024) until the date the Appellant filed his Brief (16 April 2025), 264 days elapsed.

Standard of Review

This Court reviews *de novo* an appellant's entitlement to relief for post-trial delay. United States v. Livak, 80 M.J. 631, 633 (A.F. Ct. Crim. App. 2020) (citing United States v. Moreno, 63 M.J. 129, 135 (C.A.A.F. 2006)).

Law and Analysis

This Court applies an aggregate standard threshold to ensure appellants' due process rights to timely post-trial and appellate review are protected. Livak, 80 M.J. at 633. To avoid unreasonable delay, the entire period from the end of trial to docketing on appeal must be within 150 days. Id. at 633-634. Additionally, in Moreno, CAAF held that a presumption of unreasonable post-trial delay should be applied when appellate review is not complete, and a decision is not rendered within 18 months of docketing before the Court of Criminal Appeals. *See* Moreno, 63 M.J. at 142. When evaluating whether a case has been docketed within the appropriate timeframe, this Court has not required the ROT to be complete and without errors to stop the clock. *See* United States v. Muller, No. ACM 39323 (rem), 2021 CCA LEXIS 412 (A.F. Ct. Crim. App. 16 August 2021) (unpub. op.). Moreover, this Court held so long as a record is docketed within the 150-day Livak standard, an appellant is not entitled to unreasonable post-trial delay when the record is later found to be incomplete. Muller, upub. op. at 16. When a case does not meet either the 150-day Livak standard or the 18-month Moreno standard, the delay is presumptively unreasonable. *See* Moreno, 63 M.J. at 135 (citing Barker v. Wingo, 407 U.S. 514, 530 (1972)). When a delay is presumptively unreasonable, courts apply a balancing test to determine whether a due process violation occurred, which includes: (1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of the right of timely review and appeal; and (4) prejudice, which considers preventing oppressive pretrial incarceration, minimizing anxiety of the accused, and limiting the possibility of an impaired defense. Id. All four factors are considered together and "[n]o single factor is required for finding a due process violation and the absence of a given factor will not prevent such a finding." Id. at 136.

To find a due process violation when there is no prejudice under the fourth Barker factor, a court would need to find that, "in balancing the other three factors, the delay is so egregious that tolerating it would adversely affect the public's perception of the fairness and integrity of the military justice system." United States v. Toohey, 63 M.J. 353, 362 (C.A.A.F. 2006). In United States v. Valentin-Andino, __ M.J. __, No. 24-0208, slip op. at 10 (C.A.A.F. 31 March 2025), CAAF determined "[i]f a Court of Criminal Appeals decides relief is warranted for excessive post-trial delay under Article 66(d)(2), that relief must be "appropriate," meaning it must be suitable considering the facts and circumstances surrounding that case."

The Government met the 150-day Livak standard, and the 18-month Moreno standard has not been violated.

In assessing Appellant's claims, this Court must first determine whether the post-trial delay is facially unreasonable. Moreno, 63 M.J. at 136. Appellant argues the delay in this case was presumptively unreasonable under specific time standards established in Moreno, 63 M.J. at 142. (App. Br. at 13.). However, the Moreno time standards do not apply to non-automatic appeals under Article 66(b)(1), UCMJ (2022), since non-automatic appeals differ procedurally from automatic appeals and did not exist at the time of Moreno. The proper trigger point for the Moreno clock in cases involving non-automatic appeals should be the date of the filing of the notice of appeal.

The Livak standard requires a case to be docketed within 150 days of the Entry of Judgment. *See* Livak, 80 M.J. at 633. However, in US v Boren, this Court stated "the 150-day threshold established in Livak does not apply to appeals by an accused under Article 66(b)(1)(A), UCMJ, filed after Congress amended Articles 66 and 69, UCMJ, effective 23 December 2023 [sic]." United States v. Boren, No. ACM 40296, 2025 CCA LEXIS 103 at *47 (A.F. Ct. Crim. App. 19 March 2025). Specifically, the "statutory changes substantially altered the sequence of

post-trial events" and did not establish a new specific timeframe for a facially unreasonable delay to cover the time from sentence to docketing in direct-appeal cases. Id. Additionally, Appellant maintains substantial control in Article 66(b)(1)(A) cases as the Appellant decides whether to appeal after the completion of the Article 65, UCMJ, review. Id. at *47-48. Based upon Boren, using the filing date standard as the trigger date both recognizes the Appellant's significant control in the appeal process as well as maintains Government accountability for speedy post-trial appeals.

Here, Appellant filed his notice of appeal on 14 March 2024, and this Court docketed the case the next day, 15 March 2024. The court reporter produced a verbatim transcript, and this Court received the record of trial on 26 July 2024, thus constituting 134 days attributable to the Government, approximately 4.5 months. Appellant's enlargement of time delays account for 264 days, approximately 8.5 months.

Applying the filing notice standard, the days elapsed fall within the acceptable timeframes. Regarding Moreno, this case (approximately 14 months) falls within the 18-month timeframe, and any prejudice to Appellant is speculative at this point. Regarding Livak, this case (134 days) falls within the 150 day timeframe.

Appellant erroneously includes all days prior to the notice of appeal and the Appellant should not be granted relief.

Appellant claims the days elapsed between the enactment of the FY23 NDAA, 23 December 2022, until the Appellant received notice of his rights, 21 December 2023, should be included in the post-trial processing timeline and attributed to the Government. (App. Br. at 11.). However, Appellant fails to cite any caselaw or any statutory requirement and fails to recognize the procedural challenges arising from this change in law.

First, assuming arguendo, the trigger point precedes Appellant's notice of filing, the trigger date should not begin at the enactment of the FY23 NDAA on 23 December 2022. The FY23

NDAA contained no specific guidance regarding which cases new law applied, and this question is currently under review at the Court of Appeals for the Armed Forces. *See* United States v. Folts, No. 25-0043/AF, 2025 CAAF LEXIS 220 (C.A.A.F. Mar. 24, 2025). Retroactively binding the Government to the enactment date, an unanticipated date, unfairly prejudices the Government, since the Government lacked any guidance to determine which courts-martial qualified from the expanded appellant rights. Further, the FY23 NDAA failed to include any language requiring a notification under Article 65(c) within a specified timeframe, especially for cases in which there was already a final judgment as to the legality of the proceedings under Article 57(c)(2).

Assuming arguendo, the 150-day Livak standard applies, a facially unreasonable delay occurred and therefore, this Court must determine whether a due process violation exists under a Barker analysis.

First, the length of the delay alone is not sufficient. The CAAF previously found a delay of nearly 500 days was not so great a delay as to cause public doubt on the "military justice system's fairness and integrity." *See generally* Anderson, 82 M.J. at 86 (holding 481 days of Government delay between sentencing and convening authority action would not "caus[e] the public to doubt the entire military justice system's fairness and integrity."). Given this delay is not as egregious, relief is not required.

Second, regarding the reasons for the delay, much of the delay stems from the unique circumstances involving the amendment to Article 66 and the expansion of the right to appellate review. Appellant's court-martial concluded 424 days prior the enactment of the FY23 NDAA. Although this Court has found jurisdiction over cases like Appellant's, the issue is currently under review at the Court of Appeals for the Armed Forces. In light of the unsettled nature of the issue

and lack of guidance, the length of time it took to deliver the notice of right to appeal was not unreasonable.

The Government provided the entire record of trial, including a previous nonexistent verbatim transcript, 134 days post-filing. However, after 10 January 2024, Appellant's defense counsel possessed the record of trial, excluding the verbatim transcription, for review. Regarding the court reporter, during this 134 day timeframe, the court reporter transcribed six other courts-martial. The court reporter's workload reflects the Government's commitment to processing both current and previous courts-martial in a timely manner. While these delays are attributed to the Government and factor in Appellant's favor, based upon the unique circumstances, this Court should not weigh it heavily against the Government.

The third Barker factor favors the Government. The third Barker "factor calls upon [this Court] to examine an aspect of [Appellant's] role in this delay. Moreno, 63 M.J. at 138. Specifically, whether Appellant "object[ed] to any delay or assert[ed] his right to timely review and appeal prior to his arrival at this court." Id. While failing to demand timely review and appeal does not waive that right, only if Appellant actually "asserted his speedy trial right, [is he] 'entitled to strong evidentiary weight'" in his favor. Id. (quoting Barker, 407 U.S. at 528). Appellant did not assert his right to speedy appellate review. Additionally, Appellant requested seven enlargements of time, equaling 264 days and an amount of time 130 days longer than the Government delay. Therefore, this factor should weigh in favor of the Government.

Fourth, the prejudice factor also favors the Government. The Supreme Court has recognized three interests that should be considered when determining prejudice due to post-trial delay: (1) prevention of oppressive incarceration pending appeal; (2) undue anxiety and concern; and (3) limiting the possibility that a convicted person's grounds for appeal and defenses, in cases

of retrial, might be impaired. Barker, 407 U.S. at 532. "Of those, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." Id. Here, Appellant fails to allege any particularized anxiety or impairment of a retrial. Appellant is not incarcerated nor awaiting a punitive discharge. While Appellant served 60 days of confinement, Appellant agreed to this period in exchange for other favorable conditions (time limitations on confinement as well as removing the option of a punitive discharge). (App. Ex. XVI at 2). The delay did not impair the Appellant's grounds for appeal as Appellant's own extension of time exceeded the Government delay. Therefore, this factor weighs in favor of the Government.

Because no prejudice exists in Appellant's case, the Court must examine, under Toohey, whether the delay is "so egregious that tolerating it would adversely affect the public's perception of the fairness and integrity of the military justice system." 63 M.J. at 362. The Court looks at all four Barker factors considering the public perception standard. Id. In Toohey, the Navy-Marine Court of Criminal Appeals took 47 months between docketing and their decision. 63 M.J. at 357. This far exceeded Moreno's 18-month threshold for appellate review and negatively affected the public's perception of fairness in the military justice system. 63 M.J. at 358. But here approximately 14 months elapsed and thus, this case does not meet the 18-month Moreno threshold. Because no facially unreasonable delay occurred and any prejudice to Appellant remains speculative, a determination about the public's perception of the fairness and integrity of the military justice system amounts to a premature forecast.

Appellant could be entitled to appropriate relief under Article 66(d)(2) if this Court determines an excessive post-trial delay occurred. Valentin-Andino, __ M.J. __, No. 24-0208, slip op. at 9-10. After the CAAF decision in Valentin-Andino, it remains unclear as to whether the Gay factors still apply to determine whether Appellant is entitled to relief under Article 66(d)(2).

United States v. Gay, 74 M.J. 736 (A.F. Ct. Crim. App. 2015). However, assuming arguendo the Gay factors apply, in deciding whether to invoke Article 66, UCMJ, to grant relief as a "last recourse," this Court in Gay considered a non-exhaustive list of factors, including:

> (1) How long the delay exceeded the standards set forth in Moreno;
>
> (2) What reasons, if any, the Government set forth for the delay, and whether there is any evidence of bad faith or gross indifference to the overall post-trial processing of this case;
>
> (3) Whether there is some evidence of harm (either to the appellant or institutionally) caused by the delay;
>
> (4) Whether the delay has lessened the disciplinary effect of any particular aspect of the sentence, and is relief consistent with the dual goals of justice and good order and discipline;
>
> (5) Whether there is any evidence of institutional neglect concerning timely post-trial processing; and
>
> (6) Given the passage of time, whether the court can provide meaningful relief.

Gay, 74 M.J. at 744.

Applying the Gay factors, this Court should not grant Appellant sentencing relief. First, Moreno does not apply, and this Court previously determined Livak does not apply. However, assuming arguendo, a standard similar to the Livak standard applies, this Court is not required to grant Appellant relief. Contrary to Appellant's assertions, the Government did not display gross indifference or evidence of institutional neglect in processing Appellant's case, rather the Government's actions demonstrate a delayed but understandable response to a statutory change to the expansion of the rights of the accused, the extent of which is still subject to dispute. Regarding the pre-notification delay, this delay reflects the time required to retroactively review courts-martial convictions and notify the applicable service members. Between notification and Appellant's filing, the Government delivered the record of trial, excluding the verbatim transcript, to Appellant's defense counsel on 10 January 2024 (21 days after notification). Regarding the

post-filing delay, per the chronology, the court reporter worked on Appellant's case in addition to her other assigned six cases from March to July 2024. (*Reporter's Chronology*, ROT Vol. 2.). The unexpected Article 66 amendment as well as the lack of institutional procedural guidelines regarding compliance, specifically, the inability to produce verbatim transcripts for all eligible Article 66 cases, both attributed to the post-filing delay. To correct this procedural issue, the Air Force updated policies to align with the new appellate rights and now require verbatim transcripts in all general and special courts-martial with a finding of guilty to avoid any future similar delays. Department of the Air Force Instruction 51-201, *Administration of Military Justice*, dated 3 October 2024, para. 20.47.1. Both the assignment of the verbatim transcripts as well as the Department wide policy changes demonstrate the Government's acknowledgment and active response to the expanded appellate rights of the accused. Neither the pre-notification delay nor the post-filing delay arise to the level of gross indifference or institutional neglect but rather reflect the unique circumstances in this case.

Additionally, Appellant asserts the delay caused harm in the ability to exercise appellate review. However, Appellant received the record of the trial, excluding the verbatim transcript, on 10 January 2024, approximately two months prior to Appellant asserting his right to direct appeal. Appellant also did not assert his right to speedy post-trial processing and subsequently requested extensions in the amount of 264 days. Further, Appellant asserts the delay caused harm in the ability to exercise his appellate review, but Appellant failed to state any specific harm or explain how the delay impacted Appellant's ability to exercise appellate review. Since Appellant did not experience any prejudice, a remedy is not warranted. A balancing of the six Gay factors weighs in the Government's favor, and no egregious or prejudicial delay yet exists requiring post-trial sentencing relief from this Court. This Court should deny this assignment of error.

IV.

THIS COURT DOES NOT HAVE JURISDICTION TO DECIDE WHETHER THE FIREARM PROHIBITION IN THE GUN CONTROL ACT OF 1968, 18 U.S.C. § 922, IS CONSTITUTIONAL BECAUSE IT IS A COLLATERAL ISSUE NOT SUBJECT TO REVIEW UNDER ARTICLE 66, UCMJ. EVEN IF THIS COURT DID POSSESS JURISDICTION TO REVIEW THIS ISSUE, AIR FORCE INSTRUCTION REQUIRED THE STATEMENT OF TRIAL RESULTS AND ENTRY OF JUDGMENT TO ANNOTATE APPELLANT'S CRIMINAL INDEXING. FINALLY, 18 U.S.C. § 922 IS CONSTITUIONAL AS APPLIED TO APPELLANT.

Additional Facts

Appellant pleaded guilty to one specification of the wrongful possession of methamphetamine, a Schedule II Controlled Substance, in violation of Article 112a, UCMJ; one specification of the wrongful use of methamphetamine, a Schedule II Controlled Substance, in violation of Article 112a, UCMJ; one specification of the wrongful use of Hydrocodone, a Schedule II Controlled Substance, in violation of Article 112a, UCMJ. (*Entry of Judgment*, dated 24 November 2021, ROT, Vol. 1.). The Staff Judge Advocate's first indorsement to the Entry of Judgment and Statement of Trial Results states: "Firearm Prohibition Triggered Under 18 U.S.C. § 922: Yes." (*Statement of Trial Results*, dated 25 October 2021, ROT, Vol. 1; *Entry of Judgment*, dated 24 November 2021, ROT, Vol. 1.).

Standard of Review

The scope and meaning of Article 66, UCMJ, is a matter of statutory interpretation, which is reviewed de novo. United States v. Lepore, 81 M.J. 759, 760-61 (A.F. Ct. Crim. App. 2021).

Law and Analysis

"[A]n unlawful user of…any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))" cannot lawfully possess a firearm. 18 U.S.C. §

922(g)(3). 21 U.S.C. § 802(6) defines the term "controlled substance" as, "a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this title [21 USCS § 812]."

Appellant asserts the 18 U.S.C. § 922 annotation unconstitutionally applied a firearm restriction. (App. Br. at 17.). Appellant states any prohibitions on the possession of firearms imposed runs afoul of the Second Amendment, U.S. CONST. AMEND. II, the Supreme Court's interpretation of that amendment in N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022). Appellant's constitutional argument is without merit and is a collateral matter beyond this Honorable Court's authority to review.

This Court lacks jurisdiction to determine whether Appellant should be criminally indexed in accordance with 18 U.S.C. § 922.

This Court recently held in its published opinion in United States v. Vanzant, 84 M.J. 671 (A.F. Ct. Crim. App. 28 May 2024), that 18 U.S.C. § 922(g)'s firearm prohibitions and the criminal indexing requirements that follow that statute are collateral consequences of the conviction, rather than elements of the findings or sentence, and therefore these are beyond the scope of this Court's jurisdiction under Article 66, UCMJ. Id. at 673.

The Statement of Trial Results and Entry of Judgment were prepared correctly in accordance with the applicable Air Force Instruction.

Even if this Court maintains jurisdiction to review this issue, Appellant admitted to and was found guilty of one specification of the wrongful possession of methamphetamine, a Schedule II Controlled Substance, in violation of Article 112a, UCMJ; one specification of the wrongful use of methamphetamine, a Schedule II Controlled Substance, in violation of Article 112a, UCMJ; one specification of the wrongful use of Hydrocodone, a Schedule II Controlled Substance, in violation of Article 112a, UCMJ. (R. at 244, 250, 252, 258-259, 261.). The Staff Judge Advocate

properly annotated the provision on the Entry of Judgment to reflect Appellant's conviction. (*Entry of Judgment*, 24 November 2021, ROT, Vol. 1.). The annotation occurred within one year of Appellant's court-martial conviction and the Staff Judge Advocate acted in accordance with the procedures in DAFI 51-201, para. 15.28 (January 2019). (*Entry of Judgment*, 24 November 2021, ROT, Vol. 1.). Thus, the Staff Judge Advocate followed the appropriate Air Force regulations in signing the first indorsement to the Entry of Judgment and Statement of Trial Results.

The Firearm Prohibition in the Gun Control Act of 1968 is Constitutional as Applied to Appellant.

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST., amend. II. But as the Supreme Court has repeatedly emphasized, "the right secured by the Second Amendment is not unlimited." District of Columbia v. Heller, 554 U.S. 570, 626 (2008); *see* N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 20 (2022); McDonald v. City of Chicago, 561 U.S. 742, 786 (2010) (plurality opinion). "[T]he right was *never* thought to sweep indiscriminately." United States v. Rahimi, 602 U.S. 680, 144 S. Ct. 1889, 1897, Docket No. 22-915, 2024 U.S. LEXIS 2714 (21 June 2024) (slip op.).

18 U.S.C. 922(g)(3) prohibits the possession of a firearm by a person, "who is an unlawful user of…any controlled substance." 27 C. F. R. § 478.11 defines an unlawful user as "any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician" and "[a]n inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year." For members of the Armed Forces, an inference of current use "may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial

conviction..." Id. Appellant admitted to and was convicted of the wrongful use of both methamphetamine and Hydrocodone. The Staff Judge Advocate's annotation on the Entry of Judgment occurred within one year of Appellant's court-martial conviction. Because Appellant has been convicted of a crime of wrongful drug use, the application of 18 U.S.C. 922(g) to Appellant is constitutional.

Appellant, based on a non-binding opinion in US v Williams, 216 F. Supp. 2d 568, 575 (E.D. Va. 2002) (quoting United States v. Edwards, 38 F. App'x 134, 138 (4th Cir. 2002)), claims his conviction of unlawful use of controlled substances does not alone trigger the provisions of 18 U.S.C 922(g)(3), but rather the Government must prove the drug use was prolonged and close in time to his gun possession. (App. Br. at 21.). In Williams, the court determined evidence of one-time use cannot sustain a conviction under 18 U.S.C. 922(g)(3). Id. at 575. However, in this case, the Appellant admitted to the wrongful use of both the use of methamphetamine and Hydrocodone. Additionally, in his Care inquiry when referring to his Hydrocodone use, Appellant states, "I would crush up the hydrocodone *pills* and ingest them by smoking the hydrocodone through an improvised smoking device" and "I also took hydrocodone outside of the prescribed time frame *at least* one time." (Emphasis added; R. at 258-259.). Appellant states pills, not pill, and admits to Hydrocodone use "at least" one time. Additionally, the Appellant admitted to the wrongful use of Methamphetamine as well. Therefore, the facts in this case differ from Williams.

Additionally, Appellant asserts the Entry of Judgment firearm prohibition stems from "18 U.S.C. 922(g)(1) and/or 18 U.S.C. 922(g)(3)." (App. Br. at 18). 18 U.S.C. 922(g)(1) applies to members who have been "convicted in any court of, a crime punishable by imprisonment for a term exceeding one year." Here, the special-court martial forum limits the maximum term of imprisonment to one year and therefore 18 U.S.C. 922(g)(1) does not apply to Appellant's

conviction. R.C.M. 201(f)(2). Additionally, Appellant failed to provide any evidence the Entry of Judgment notation resulted in an 18 U.S.C. 922(g)(1) classification. Therefore, 18 U.S.C. 922(g)(1) is not applicable.

Finally, Appellant erroneously asserts the 18 U.S.C. 922(g)(3) prohibition equates to a lifetime firearms ban. However, Air Force Manual 71-102, Air Force Criminal Indexing, dated 21 July 2020, para 4.3.3.1 explains the 18 U.S.C. 922(g)(3) prohibition "results in a one-year firearms prohibition beginning from the date of the qualifying condition." Therefore, Appellant's prohibition lasted one year from the date of the qualifying condition (25 October 2021) and the ban since expired. Appellant provided no evidence demonstrating the Appellant remained under an 18 U.S.C. 922(g)(3) code for disqualification of the possession of firearms.

Finally, Appellant did not suffer any prejudice. Appellant failed to provide any evidence of an error of an improper coding under 18 U.S.C. 922(g). Appellant also failed to provide evidence of a current 18 U.S.C. 922(g) prohibition. Assuming arguendo, improper coding existed, the proper remedy constitutes applying for expungement.

Because Appellant's constitutional argument is without merit and is a collateral matter beyond this Honorable Court's authority to review, the Court should deny the assignment of error.

CONCLUSION

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's claims 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 16 May 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
Airman (E-2), **GRAYSON N. ADAMS,** United States Air Force, *Appellant.*	)	No. ACM 22018
	)	23 May 2025

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

Appellant, Airman (Amn) Grayson N. Adams, pursuant to Rule 18(d) of this Court's Rules of Practice and Procedure, files this Reply to the Government's Answer (Ans.), dated 16 May 2025. In addition to the arguments in his opening brief (Opening Br.), filed on 16 April 2025, Amn Adams submits the following arguments for the issues below.

I.

Airman Adams's sentence was inappropriate based on the entirety of the record of trial, which this Court should take into consideration under the review authority granted by Article 66, Uniform Code of Military Justice, 10 U.S.C. § 866 (2018).

The sentence imposed against Amn Adams warrants reconsideration based on the entirety of the matters contained in the record, much of which were mitigating. The Government urges this Court to "only consider evidence admitted at trial" while focusing on the matters directly before the military judge. (Ans. at 5.) That is not the correct standard. Per the relevant version of Article 66, this Court may only affirm "the sentence of such part or amount of the sentence, as the Court finds correct in law and fact and determines, *on the basis of the entire record*, should be approved." 10 U.S.C. 866(d)(1) (2018) (emphasis added). This is an "awesome, plenary, *de novo*

power of review" that gives this Court "*carte blanche* to do justice." *United States v. Kelly*, 77 M.J. 404, 405 (C.A.A.F. 2018) (internal citations removed). This Court has affirmed Article 66's broad mandate to consider "all matters contained in the record of trial." *United States v. Anderson*, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009). This is a review in which this Court independently determines whether the sentence is appropriate, not whether the military judge committed error. *United States v. McAlhaney*, 83 M.J. 164, 167 (C.A.A.F. 2023).

In spite of the strong mitigation outlined in Amn Adams's initial brief (Opening Br. at 6-7), the Government emphasizes the same arguments that it made during sentencing. This includes suggesting that the concurrently charged use of a controlled substance while there was a loaded firearm in his dorm room justifies the sentence. (Ans. at 7.) But this disregards the fact that the firearm offense, which was not an unlawful possession but merely a failure to register the weapon and store it in the Security Forces' armory, had no relation to the controlled substance offense. Amn Adams did not interact with the firearm at all when he was observed under the influence. The relationship between these two offenses is only related by the fact that they were investigated and charged concurrently. This Court should take into account all of the matters contained in the record, which supports a holding that the sentence adjudged was inappropriate and should be reassessed.

II.

The Government was required to provide a certified verbatim transcript in accordance with R.C.M. 1114(a)(2) and the regulation promulgated by the Secretary of the Air Force.

The Government was required by its own regulation to provide a certified verbatim transcript of the court-martial proceedings. The Government attempts to sidestep this by citing to an Air Force regulation which was published before Department of Air Force Instruction (DAFI)

51-201, *Administration of Military Justice*, (January 24, 2024), going so as far to describe the provision of an uncertified verbatim transcript as a mere courtesy. (Ans. 11, 14). DAFI 51-201, which was in effect at the time that Amn Adams filed his appeal with this Court, requires the preparation of a certified verbatim transcript. ¶ 20.47.1. The Secretary of the Air Force ordered mandatory compliance with the regulation, to include that provision. *Id.* at ¶ 1.1. This requirement is in accordance with the broader principle that a government agency must abide by its own rules and regulations where they pertain to personal interests. *United States v. Williams*, 68 M.J. 252, 256 (C.A.A.F. 2010).

The Government relies on the unpublished case *United States v. Martinez*, No. ACM 39903 (f rev), 2022 CCA LEXIS 324, at *115 (A.F. Ct. Crim. App. May 31, 2022). However, that case was decided before the 2024 issuance of DAFI 51-201. That instruction is the relevant authority for the record of trial in this case. Per Article 54, Uniform Code of Military Justice, the record of trial must "contain such matters as the President may prescribe by regulation. 10 U.S.C. § 854(c)(1). The President, in turn, has mandated that a certified verbatim transcript be prepared when prescribed by regulations of the Secretary concerned. R.C.M. 1114(a)(2). The Secretary of the Air Force extended this requirement to all courts-martial, regardless of the forum or the sentence imposed. DAFI 51-201, ¶ 20.47.1. This Court should decline to adopt the regulatory framework that may have existed at the time of Amn Adams's court-martial rather than the one in effect at the time he filed his appeal. This is because DAFI 51-201 places specific requirements for record of trial handling at the time that notice of appeal is filed, namely to include transmission of a compliant record to this Court. *Id.* at ¶ 24.11.1.2.2.2. This Court has recognized receipt of the certified verbatim transcript as an important and operative event in the timeline of a non-automatic review case. *United States v. Dawson*, No. ACM 24041, 2025 CCA LEXIS 182, at *25

(A.F. Ct. Crim. App. Apr. 28, 2025); *United States v. Boren*, No. ACM 40296 (f rev), 2025 CCA LEXIS 103, at *44 (A.F. Ct. Crim. App. Mar. 19, 2025). Where a certification requirement exists, it must be completed by "the person legally entrusted with that responsibility." *United States v. Kaag*, 48 C.M.R. 776, 777 (C.M.A. 1974). Given the requirement for the certification, its absence in this case is a substantial omission that raises the presumption of prejudice that the Government has not rebutted and cannot rebut. Accordingly, this Court should remand this case for correction of the record of trial.

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 Government Trial and Appellate Operations Division on 23 May 2025.

Respectfully submitted,

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