

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT'S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(FIRST)
v.	)	
	)	Before Panel No. 1
Airman (E-2)	)	
<b>NICHOLAS J. MOORE,</b>	)	No. ACM 40442
United States Air Force	)	
<i>Appellant</i>	)	23 May 2023

**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 an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 60 days, which will end on **2 August 2023**. The record of trial was docketed with this Court on 4 April 2023. From the date of docketing to the present date, 49 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 23 May 2023.

**MATTHEW L. BLYTH, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762**

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

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM 40442
NICHOLAS J. MOORE, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 24 May 2023.

MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT'S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(SECOND)
v.	)	
	)	Before Panel No. 1
Airman (E-2)	)	
<b>NICHOLAS J. MOORE,</b>	)	No. ACM 40442
United States Air Force	)	
<i>Appellant</i>	)	21 July 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **1 September 2023**. The record of trial was docketed with this Court on 4 April 2023. From the date of docketing to the present date, 108 days have elapsed. On the date requested, 150 days will have elapsed.

On 9-13 January 2023, at a general court-martial at Hill Air Force Base, Utah, a panel of officer and enlisted members found Appellant, Airman (Amn) Nicholas J. Moore, guilty of one specification of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920 (2018). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 8 March 2023.) The members sentenced Amn Moore to 18 months' confinement, forfeiture of all pay and allowances, reduction to the grade of E-1, and a dishonorable discharge. (EOJ.) The convening authority took no action on the findings or sentence and disapproved a request to waive forfeitures.

(Convening Authority Decision on Action, ROT Vol. 1, 10 February 2023.)

The record of trial consists of 11 prosecution exhibits, 9 defense exhibits, 40 appellate exhibits, and 1 court exhibit. The transcript is 674 pages. Amn Moore is currently confined.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 21 July 2023.

**MATTHEW L. BLYTH, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762**

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

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM 40442
NICHOLAS J. MOORE, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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

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



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 25 July 2023.

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

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

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(THIRD)</b>
v.	)	
	)	Before Panel No. 1
Airman (E-2)	)	
<b>NICHOLAS J. MOORE,</b>	)	No. ACM 40442
United States Air Force	)	
<i>Appellant</i>	)	22 August 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **1 October 2023**. The record of trial was docketed with this Court on 4 April 2023. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 9-13 January 2023, at a general court-martial at Hill Air Force Base, Utah, a panel of officer and enlisted members found Appellant, Airman (Amn) Nicholas J. Moore, guilty of one specification of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920 (2018). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 8 March 2023.) The members sentenced Amn Moore to 18 months’ confinement, forfeiture of all pay and allowances, reduction to the grade of E-1, and a dishonorable discharge. (EOJ.) The convening authority took no action on the findings or sentence and disapproved a request to waive forfeitures.

(Convening Authority Decision on Action, ROT Vol. 1, 10 February 2023.)

The record of trial consists of 11 prosecution exhibits, 9 defense exhibits, 40 appellate exhibits, and 1 court exhibit. The transcript is 674 pages. Amn Moore is currently confined.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762

**CERTIFICATE OF FILING AND SERVICE**

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

**MATTHEW L. BLYTH, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762**

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

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM 40442
NICHOLAS J. MOORE, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 24 August 2023.

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

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

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(FOURTH)</b>
v.	)	
	)	Before Panel No. 1
Airman (E-2)	)	
<b>NICHOLAS J. MOORE,</b>	)	No. ACM 40442
United States Air Force	)	
<i>Appellant</i>	)	22 September 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **31 October 2023**. The record of trial was docketed with this Court on 4 April 2023. From the date of docketing to the present date, 171 days have elapsed. On the date requested, 210 days will have elapsed. The previous version of this motion is withdrawn because of a date in the number of dates elapsed.

On 9-13 January 2023, at a general court-martial at Hill Air Force Base, Utah, a panel of officer and enlisted members found Appellant, Airman (Amn) Nicholas J. Moore, guilty of one specification of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920 (2018). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 8 March 2023.) The members sentenced Amn Moore to 18 months’ confinement, forfeiture of all pay and allowances, reduction to the grade of E-1, and a dishonorable discharge. (EOJ.) The convening authority took no action

on the findings or sentence and disapproved a request to waive forfeitures. (Convening Authority Decision on Action, ROT Vol. 1, 10 February 2023.)

The record of trial consists of 11 prosecution exhibits, 9 defense exhibits, 40 appellate exhibits, and 1 court exhibit. The transcript is 674 pages. Amn Moore is currently confined.

Counsel is currently assigned 24 cases, with 8 pending initial brief before this Court. Counsel has not yet begun review in this case. There are 5 pending cases before this Court with higher priority:

1. *United States v. Conway*, 40372. The record of trial consists of 6 prosecution exhibits, 17 defense exhibits, 10 appellate exhibits, and 1 court exhibit. The transcript is 128 pages. Counsel has completed the brief and will file shortly.
2. *United States v. Cook*, ACM 40333. The trial transcript is 639 pages long and the record of trial is comprised of 11 volumes containing 28 prosecutions exhibits, 10 defense exhibits, 48 appellate exhibits, and zero court exhibits. Counsel has completed review of half of the record.
3. *United States v. Denney*, ACM 40360. The record of trial consists of 17 prosecution exhibits, 11 defense exhibits, and 5 appellate exhibits. The transcript is 99 pages. Counsel has reviewed much of this case, but there is an issue that may result in remand.



4. *United States v. Williams*, ACM 40410. The record of trial consists of 10 prosecution exhibits, 15 defense exhibits, and 73 appellate exhibits. The transcript is 1,769 pages. Counsel has not yet begun review of this record.
5. *United States v. Moore*, ACM 40423. The record of trial consists of 5 prosecution exhibits, 1 defense exhibit, 11 appellate exhibits, and 1 court exhibit. The transcript is 88 pages. Counsel has not yet begun review of this record.

Through no fault of Amn Moore, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. Amn Moore was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Amn Moore's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762

**CERTIFICATE OF FILING AND SERVICE**

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

**MATTHEW L. BLYTH, Maj, USAFR  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762**

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

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM 40442
NICHOLAS J. MOORE, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 26 September 2023.

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

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

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(FIFTH)</b>
v.	)	
	)	Before Panel No. 1
Airman (E-2)	)	
<b>NICHOLAS J. MOORE,</b>	)	No. ACM 40442
United States Air Force	)	
<i>Appellant</i>	)	22 October 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **30 November 2023**. The record of trial was docketed with this Court on 4 April 2023. From the date of docketing to the present date, 201 days have elapsed. On the date requested, 240 days will have elapsed.

On 9-13 January 2023, at a general court-martial at Hill Air Force Base, Utah, a panel of officer and enlisted members found Appellant, Airman (Amn) Nicholas J. Moore, guilty of one specification of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920 (2018). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 8 March 2023.) The members sentenced Amn Moore to 18 months’ confinement, forfeiture of all pay and allowances, reduction to the grade of E-1, and a dishonorable discharge. (EOJ.) The convening authority took no action on the findings or sentence and disapproved a request to waive forfeitures.

(Convening Authority Decision on Action, ROT Vol. 1, 10 February 2023.)

The record of trial consists of 11 prosecution exhibits, 9 defense exhibits, 40 appellate exhibits, and 1 court exhibit. The transcript is 674 pages. Amn Moore is currently confined.

Counsel is currently assigned 26 cases, with 9 pending initial brief before this Court. Counsel has not yet begun review in this case. There are four pending cases before this Court with higher priority:

1. *United States v. Cook*, ACM 40333. The trial transcript is 639 pages long and the record of trial is comprised of 11 volumes containing 28 prosecutions exhibits, 10 defense exhibits, 48 appellate exhibits, and zero court exhibits. Counsel has completed the brief and will file after consultation with client.
2. *United States v. Denney*, ACM 40360. The record of trial consists of 17 prosecution exhibits, 11 defense exhibits, and 5 appellate exhibits. The transcript is 99 pages. Counsel has reviewed much of this case.
3. *United States v. Williams*, ACM 40410. The record of trial consists of 10 prosecution exhibits, 15 defense exhibits, and 73 appellate exhibits. The transcript is 1,769 pages. Counsel has not yet begun review of this record.
4. *United States v. Moore*, ACM 40423. The record of trial consists of 5 prosecution exhibits, 1 defense exhibit, 11 appellate exhibits, and 1 court exhibit. The transcript is 88 pages. Counsel has not yet begun review of this record.

Through no fault of Amn Moore, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. Amn Moore was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Amn Moore's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762

**CERTIFICATE OF FILING AND SERVICE**

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

**MATTHEW L. BLYTH, Maj, USAFR  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762**



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

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM 40442
NICHOLAS J. MOORE, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 25 October 2023.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT'S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(SIXTH)
v.	)	
	)	Before Panel No. 1
Airman (E-2)	)	
<b>NICHOLAS J. MOORE,</b>	)	No. ACM 40442
United States Air Force	)	
<i>Appellant</i>	)	20 November 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **30 December 2023**. The record of trial was docketed with this Court on 4 April 2023. From the date of docketing to the present date, 230 days have elapsed. On the date requested, 270 days will have elapsed.

On 9-13 January 2023, at a general court-martial at Hill Air Force Base, Utah, a panel of officer and enlisted members found Appellant, Airman (Amn) Nicholas J. Moore, guilty of one specification of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920 (2018). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 8 March 2023.) The members sentenced Amn Moore to 18 months' confinement, forfeiture of all pay and allowances, reduction to the grade of E-1, and a dishonorable discharge. (EOJ.) The convening authority took no action on the findings or sentence and disapproved a request to waive forfeitures.

(Convening Authority Decision on Action, ROT Vol. 1, 10 February 2023.)

The record of trial consists of 11 prosecution exhibits, 9 defense exhibits, 40 appellate exhibits, and 1 court exhibit. The transcript is 674 pages. Amn Moore is currently confined.

Counsel is currently assigned 27 cases, with 8 pending initial brief before this Court. Counsel has not yet begun review in this case. There are two pending cases before this Court with higher priority:

1. *United States v. Williams*, ACM 40410. The record of trial consists of 10 prosecution exhibits, 15 defense exhibits, and 73 appellate exhibits. The transcript is 1,769 pages. Counsel has reviewed approximately one third of the record.
2. *United States v. Moore*, ACM 40423. The record of trial consists of 5 prosecution exhibits, 1 defense exhibit, 11 appellate exhibits, and 1 court exhibit. The transcript is 88 pages. Counsel has not yet begun review of this record.

Through no fault of Amn Moore, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. Amn Moore was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Amn Moore's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 20 November 2023.

**MATTHEW L. BLYTH, Maj, USAFR  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762**

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

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM 40442
NICHOLAS J. MOORE, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 22 November 2023.

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



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

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(SEVENTH)</b>
v.	)	
	)	Before Panel No. 1
Airman (E-2)	)	
<b>NICHOLAS J. MOORE,</b>	)	No. ACM 40442
United States Air Force	)	
<i>Appellant</i>	)	20 December 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **29 January 2024**. The record of trial was docketed with this Court on 4 April 2023. From the date of docketing to the present date, 260 days have elapsed. On the date requested, 300 days will have elapsed.

On 9-13 January 2023, at a general court-martial at Hill Air Force Base, Utah, a panel of officer and enlisted members found Appellant, Airman (Amn) Nicholas J. Moore, guilty of one specification of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920 (2018). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 8 March 2023.) The members sentenced Amn Moore to 18 months’ confinement, forfeiture of all pay and allowances, reduction to the grade of E-1, and a dishonorable discharge. (EOJ.) The convening authority took no action on the findings or sentence and disapproved a request to waive forfeitures.

(Convening Authority Decision on Action, ROT Vol. 1, 10 February 2023.)

The record of trial consists of 11 prosecution exhibits, 9 defense exhibits, 40 appellate exhibits, and 1 court exhibit. The transcript is 674 pages. Amn Moore is currently confined.

Counsel is currently assigned 26 cases, with 9 pending initial brief before this Court. Counsel has not yet begun review in this case. There are two pending cases before this Court with higher priority:

1. *United States v. Williams*, ACM 40410. The record of trial consists of 10 prosecution exhibits, 15 defense exhibits, and 73 appellate exhibits. The transcript is 1,769 pages. Counsel has reviewed approximately one third of the record.
2. *United States v. Moore*, ACM 40423. The record of trial consists of 5 prosecution exhibits, 1 defense exhibit, 11 appellate exhibits, and 1 court exhibit. The transcript is 88 pages. Counsel has not yet begun review of this record.

Counsel argued before the CAAF in *United States v. Palik*, Dkt. No 23-0206, on 6 December 2023, and prepared briefings for the CAAF in *United States v. Zimmerman* (ACM 40267) on 10 December 2023, and has filings due in *United States v. Cornwell* (ACM 40335) on 2 January 2024, and *United States v. Kroetz* (ACM 40301) on 10 January 2024. Counsel also will be working on a reply brief in *United States v. Cook* (ACM 40333).

Additionally, counsel has served as fill-in Director of Staff at JAJ for two weeks in December and will likely do so again for two weeks in January. This was due to an unforeseen medical situation.

Through no fault of Amn Moore, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. Amn Moore was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Amn Moore's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 20 December 2023.

**MATTHEW L. BLYTH, Maj, USAFR  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762**

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

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION
	)	FOR ENLARGEMENT OF TIME
v.	)	
	)	
Airman (E-2)	)	ACM 40442
NICHOLAS J. MOORE, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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

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

JOCELYN Q. WRIGHT, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 20 December 2023.

JOCELYN Q. WRIGHT, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force

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

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(EIGHTH)</b>
v.	)	
	)	Before Panel No. 1
Airman (E-2)	)	
<b>NICHOLAS J. MOORE,</b>	)	No. ACM 40442
United States Air Force	)	
<i>Appellant</i>	)	21 January 2024

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **28 February 2024**. The record of trial was docketed with this Court on 4 April 2023. From the date of docketing to the present date, 292 days have elapsed. On the date requested, 330 days will have elapsed.

On 9-13 January 2023, at a general court-martial at Hill Air Force Base, Utah, a panel of officer and enlisted members found Appellant, Airman (Amn) Nicholas J. Moore, guilty of one specification of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920 (2018). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 8 March 2023.) The members sentenced Amn Moore to 18 months’ confinement, forfeiture of all pay and allowances, reduction to the grade of E-1, and a dishonorable discharge. (EOJ.) The convening authority took no action on the findings or sentence and disapproved a request to waive forfeitures.



(Convening Authority Decision on Action, ROT Vol. 1, 10 February 2023.)

The record of trial consists of 11 prosecution exhibits, 9 defense exhibits, 40 appellate exhibits, and 1 court exhibit. The transcript is 674 pages. Amn Moore is currently confined.

Counsel is currently assigned 22 cases, with 7 pending initial brief before this Court. Counsel has not yet begun review in this case. There are two pending cases before this Court with higher priority:

1. *United States v. Williams*, ACM 40410. The record of trial consists of 10 prosecution exhibits, 15 defense exhibits, and 73 appellate exhibits. The transcript is 1,769 pages. Counsel has reviewed approximately three quarters of the record.
2. *United States v. Moore*, ACM 40423. The record of trial consists of 5 prosecution exhibits, 1 defense exhibit, 11 appellate exhibits, and 1 court exhibit. The transcript is 88 pages. Counsel has completed review of this record.

Since the last enlargement of time, counsel spent significant time as fill-in Director of Staff at JAJ. This was due to an unforeseen medical situation. Additionally, counsel has filed three supplements to petitions for grant of review to the CAAF. (*United States v. Zimmermann*, ACM 40267; *United States v. Cornwell*, ACM 40335; and *United States v. Kroetz*, ACM 40301.)

Through no fault of Amn Moore, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. Amn Moore

was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Amn Moore's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 21 January 2024.

**MATTHEW L. BLYTH, Maj, USAFR  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762**

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

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION
	)	FOR ENLARGEMENT OF TIME
v.	)	
	)	
Airman (E-2)	)	ACM 40442
NICHOLAS J. MOORE, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 23 January 2024.

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

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

UNITED STATES	)	No. ACM 40442
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Nicholas J. MOORE	)	
Airman (E-2)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 21 January 2024 counsel for Appellant submitted a Motion for Enlargement of Time (Eighth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure. Accordingly, it is by the court on this 25th day of January, 2024,

**ORDERED:**

Appellant's Motion for Enlargement of Time (Eighth) is **GRANTED**. Appellant shall file any assignments of error not later than **28 February 2024**.

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



FOR THE COURT

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	CONSENT MOTION TO EXAMINE
<i>Appellee</i>	)	SEALED MATERIALS
	)	
v.	)	
	)	No. ACM 40442
Airman (E-2)	)	
<b>NICHOLAS J. MOORE</b>	)	Before Panel 1
United States Air Force	)	
<i>Appellant</i>	)	15 February 2024
	)	

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

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and Rule 23.3(f)(1) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel hereby moves for both appellant and appellee to examine the following materials:

- Appellate Exhibit XI: Defense Motion to Admit Evidence under MRE 412, ROT Vol. 2.
- Appellate Exhibit XII: Government Response to Defense Motion to Admit Evidence Under MRE 412, ROT Vol. 2.
- Appellate Exhibit XIII: Victims’ Counsel’s Response to Defense Motion to Admit Evidence Under MRE 412, ROT Vol. 2.
- Appellate Exhibit XIV: Defense Supplemental Motion and Notice #2 of Intent to Admit Evidence Under MRE 412, ROT Vol. 2.
- Appellate Exhibit XV: Government Response to Defense Supplemental Motion to Admit Evidence Under MRE 412, ROT Vol. 2.
- Appellate Exhibit XVI: Victims’ Counsel’s Response to Defense Supplemental Motion to Admit Evidence, ROT Vol. 2.
- Appellate Exhibit XVII: Ruling: Motions to Admit Evidence Under MRE 412, ROT Vol. 2.



- Appellate Exhibit XXIII: Defense Supplements to Supplemental Motion to Admit Evidence Under MRE 412, ROT Vol. 3.
- Transcript Pages 36-93. This is the closed session related to the Mil. R. Evid. 412 motions.
- Sealed Audio, 9 Jan 2023, ROT Vol. 1

The above-listed exhibits, transcript, and audio all relate to litigation of Mil. R. Evid. 412 motions. Both trial counsel and trial defense counsel had access to the exhibits and were present for the relevant sealed discussions. (R. at 35, 97.) The military judge sealed the exhibits and relevant transcript portions. (App. Ex. XXV.) Counsel provides a full list of implicated items, but it is difficult for counsel to determine the scope of the military judge's ruling and whether the Defense received all the relief it requested. R.C.M. 1113(b)(3)(B)(i) requires a colorable showing that examining these materials is reasonably necessary to fulfill appellate counsel's responsibilities. For Mil. R. Evid. 412 motions and rulings, it is indispensable for counsel to review the sealed portions and determine whether the military judge erred in his ruling.

More broadly, to determine whether the record of trial yields grounds for this Court to grant relief under Article 66(d), UCMJ, 10 U.S.C. § 866(d), appellate defense counsel must examine "the entire record."

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

*United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998). Undersigned counsel must review the sealed materials to provide "competent appellate representation." *See id.*

Accordingly, good cause exists in this case since undersigned counsel cannot fulfill his duty of representation under Article 70, UCMJ, 10 U.S.C. § 870, without first reviewing the exhibits, transcript, and audio. Undersigned counsel also moves for the Government to be able to examine the same documents.

The Government unconditionally consents to this motion for both it and undersigned counsel to examine the materials listed above.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762

**CERTIFICATE OF FILING AND SERVICE**

I certify that this document was sent via email to the Court and the Appellate Government Division on 15 February 2024.

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762

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

UNITED STATES	)	No. ACM 40442
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Nicholas J. MOORE	)	
Airman (E-2)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 15 February 2024, counsel for Appellant submitted a Consent Motion to Examine Sealed Materials, requesting both appellate defense counsel and appellate government counsel be allowed to examine Appellate Exhibits XI–XVII, XXIII, transcript pages 36–93, and the sealed audio, dated 9 January 2023, located in Volume 1 of the record of trial. Trial counsel and trial defense counsel had access to the exhibits at trial and were present for the relevant sealed discussions.

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

The court finds counsel for Appellant has made a colorable showing that review of sealed materials is reasonably necessary for a proper fulfillment of appellate defense counsel’s responsibilities. This court’s order permits both appellate defense counsel and appellate government counsel to examine the materials.

Accordingly, it is by the court on this 21st day of February, 2024,

**ORDERED:**

Appellant’s Consent Motion to Examine Sealed Materials is **GRANTED**. Appellate defense counsel and appellate government counsel may view **Appellate Exhibits XI–XVII, XXIII, transcript pages 36–93 and the sealed audio**, described above, subject to the following conditions:

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

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



FOR THE COURT

CAROL K. JOYCE  
Clerk of the Court



(Convening Authority Decision on Action, ROT Vol. 1, 10 February 2023.)

The record of trial consists of 11 prosecution exhibits, 9 defense exhibits, 40 appellate exhibits, and 1 court exhibit. The transcript is 674 pages. Amn Moore is currently confined.

Counsel is currently assigned 22 cases, with 7 pending initial brief before this Court. Counsel has reviewed approximately one half of the record. There is one pending case before this Court with higher priority:

*United States v. Williams*, ACM 40410. The record of trial consists of 10 prosecution exhibits, 15 defense exhibits, and 73 appellate exhibits. The transcript is 1,769 pages. Counsel has completed the AOE and will file shortly.

Through no fault of Amn Moore, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. Amn Moore was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Amn Moore's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)

1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762



**CERTIFICATE OF FILING AND SERVICE**

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

**MATTHEW L. BLYTH, Maj, USAFR  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762**

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

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION
	)	FOR ENLARGEMENT OF TIME
v.	)	
	)	
Airman (E-2)	)	ACM 40442
NICHOLAS J. MOORE, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 20 February 2024.

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

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

UNITED STATES	)	No. ACM 40442
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Nicholas J. MOORE	)	
Airman (E-2)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 13 January 2023, Appellant was tried by a general court-martial at Hill Air Force Base, Utah. Contrary to his pleas, members found Appellant guilty of one specification of sexual assault without consent, in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920.\*

After Appellant’s counsel requested to inspect the record of trial docketed with this court, we discovered the disc purporting to contain recordings of all open sessions of trial is blank. The envelope containing the blank disc is labeled, “CUI[,] US v. AMN MOORE RECORDINGS[,] ALL OPEN SESSIONS[,] 9,10,11,12,13 JAN 2023.”

Even more problematic to this issue is the note in the transcription of the proceeding stating, “[The court reporter noticed the audio had not been recording for the first 45 minutes of the proceedings. The summary of the lost audio is contained in Appellate Exhibit XIX. The transcript begins during the cross-examination of Ms. [H].” The court notes Appellate Exhibit XIX does not contain a complete summary of the lost audio, nor any indication as to who prepared this purported summary.

While not all inclusive, we note other discrepancies from the record of trial. They are as follows:

- (1) Original Special Order A-13 is missing. The record only includes the corrected copy;
- (2) Prosecution Exhibits 3, AF Form 910, 31 March 2022, is missing;

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\* All references in this order to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.) (2019 *MCM*). The relevant Rules for Courts-Martial (R.C.M.) for the purposes of this order are to the 2019 *MCM* and the *Manual for Courts-Martial, United States* (2024 ed.) (2024 *MCM*) are substantively indifferent; therefore, all references to the R.C.M. in this order are to the 2024 *MCM*.

(3) Prosecution Exhibit 7, Signed Memorandum / Abstinence Letter (19 April 2021) is missing; and

(4) Prosecution Exhibit 9 does not include attachment 2, specifically text messages.

Rule for Courts-Martial (R.C.M.) 1112(b) and 1112(b)(1), specifically states that a record of trial shall contain “the court-martial proceedings and . . . any evidence or exhibits considered by the court-martial in determining the findings or sentence,” as well as “[a] substantially verbatim recording of the court-martial proceedings except sessions closed for deliberations and voting.” As such, we find the record of trial is substantially incomplete because it does not include the recordings of trial.

Accordingly, it is by the court on this 1st day of March, 2024,

**ORDERED:**

Not later than **19 March 2024**, counsel for the Government shall **SHOW GOOD CAUSE** as to why this court should not set aside the findings and sentence and return the case to the appropriate convening authority for action consistent with R.C.M. 1112(d).



FOR THE COURT

CAROL K. JOYCE  
Clerk of the Court

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

<b>UNITED STATES,</b>	)	<b>UNITED STATES' ANSWER</b>
<i>Appellee,</i>	)	<b>TO SHOW CAUSE ORDER</b>
	)	
v.	)	Before Panel No. 1
	)	
Airman (E-2)	)	
<b>NICHOLAS J. MOORE</b>	)	No. ACM 40442
United States Air Force	)	
<i>Appellant.</i>	)	19 March 2024

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

**ISSUE PRESENTED**

**WHETHER THIS COURT SHOULD SET ASIDE THE FINDINGS AND SENTENCE AND RETURN THE CASE TO THE APPROPRIATE CONVENING AUTHORITY FOR ACTION CONSISTENT WITH R.C.M. 1112(d).**

**STATEMENT OF CASE**

On 12 January 2023, a panel of members, sitting at a general court-martial at Hill Air Force Base, found Appellant guilty of Charge I, Specification 1 for sexual assault in violation of Article 120, UCMJ. (R. at 630.) The members sentenced Appellant to 18 months of confinement, a dishonorable discharge, forfeiture all pay and allowances, and a reduction in grade to E-1. (R. at 672.)

**STATEMENT OF FACTS**

During the initial Article 39(a), UCMJ, session, which included arraignment and a motions hearing, the court reporter informed the military judge that the recording equipment malfunctioned. (R. at 14.) At this point, the military judge took a recess to discuss with the court reporter and counsel what portion of the hearing was not recorded and what corrective

measures to take to cure this defect. (R. at 15.) The court reporter confirmed that the first 45 minutes of court-martial was not recorded. (R. at 2.) The verbatim transcript began during the cross-examination of Ms. JH, which occurred during an Article 39(a), UCMJ, session for the defense motion in limine to preclude introduction of evidence offered under Mil. R. Evid. 413. (R. at 16.) Ms. JH was the only witness who testified during the unrecorded portion of the initial hearing. (Id.) “The parties agreed that reconstruction of the record in accordance with R.C.M. 1112(d)(3) was an appropriate remedy rather than proceeding anew from the beginning of trial.” (R. at 16.) Furthermore, both trial counsel and trial defense counsel agreed to create a summary of Ms. JH’s testimony and a listing of all the exhibits previously entered into the record. (R. at 16.) The military judge confirmed that the court would “take verbatim elections of the accused and re-advise him of certain rights, and then summarize the remaining of the initial proceedings.” (R. at 17.) Trial counsel and trial defense counsel did not object to the military judge’s proposed remedies. (Id.)

Trial counsel and trial defense counsel, together, created a summary of the unrecorded proceedings. (*Personal Declaration from Maj JA - Missing Audio in U.S. v. Amn Nicholas J. Moore*, dated 15 March 2024.)<sup>1</sup> There were concerns that if the trial court were to proceed anew, Ms. JH’s testimony would come out differently and the parties would still have to “capture for the record in some way that there was some kind of inconsistent statement.” (Id.) Thus, the parties created a written summary “fairly quickly during an extended comfort break that would lead toward more quickly proceeding with the trial and maintaining judicial economy.” (Id.) Trial counsel accepted all edits from trial defense counsel. (Id.) At no point did trial defense

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<sup>1</sup> The United States is moving to attach the declaration along with this answer.



counsel request or even suggest that the court should re-accomplish the missing audio portion. (Id.)

The military judge summarized on the record that trial counsel announced that the charges had been properly referred to this court for trial. The military judge also had all counsel restate their qualifications for the record. (R. at 18-21.) The military judge then went over Appellant's right to counsel and his forum rights. (R. at 19-20.) Next, Appellant reentered pleas. (R. at 22-23.) Appellant pleaded not guilty the charge and its specification. (R. at 23.)

Lastly, the military judge noted that counsel worked together to summarize the unrecorded proceedings, which included a list of the appellate exhibits previously entered and a summary of Ms. JH's testimony. (R. at 23.) At this point the military judge marked the written summary as Appellate Exhibit XIX. (R. at 23.) The military judge then read Ms. JH's summarized testimony into the record. (R. at 23-25.) Both parties agreed that Appellate Exhibit XIX was a fair and accurate summarization of the unrecorded proceedings. (R. at 25.) The court-martial continued with no disruption.

After Appellant's appellate counsel requested to inspect the record of trial, this Court noted the following: (1) The disc containing recordings of all open sessions of trial was blank; (2) the verbatim transcript explained that the first 45 minutes of the proceedings were not recorded; and (3) Appellate Exhibit XIX, which was the summary of the lost audio, did not contain a complete summary of the lost audio, nor was there any indication as to who prepared the summary. (*Order*, dated 1 March 2024.) This Court found that the record of trial was substantially incomplete because it did not include the recordings of trial. And as a result this Court ordered the United States to show good cause why it should not set aside the findings and

sentence and return the case to the appropriate convening authority for action consistent with R.C.M. 1112(d). (Id.)

### **ARGUMENT**

**THIS COURT SHOULD NOT SET ASIDE THE FINDINGS AND SENTENCE AND RETURN THE CASE TO THE CONVENING AUTHORITY BECAUSE THE LOWER COURT PROPERLY RECONSTRUCTED THE RECORD IN ACCORDANCE WITH R.C.M. 1112(d)(3).**

#### *Standard of Review*

“Whether a transcript is substantially verbatim is a question of law” reviewed de novo. United States v. Tate, 82 M.J. 291, 294 (C.A.A.F. 2022) (citing United States v. Davenport, 73 M.J. 373, 376 (C.A.A.F. 2014)). This Court must decide whether the transcript is substantially verbatim. Id. If not, the Court must decide whether the military judge’s remedy upon discovering the recording malfunction was proper in that it created a substantially verbatim transcript. Id. Whether the record of trial is incomplete is also a question of law that the Court reviews de novo. United States v. Henry, 53 M.J. 108, 110 (C.A.A.F. 2000).

#### *Law and Analysis*

The military judge’s remedies to reconstruct the record created a substantially verbatim transcript. As a result, this Court should not set aside the findings and sentence. If parts of the record are incomplete, a military judge may act by any of the following means:

- (A) reconstructing the portion of the record affected;
- (B) dismissing affected specifications;
- (C) reducing the sentence of the accused; or
- (D) if the error was raised by motion or on appeal by the defense, declaring a mistrial as to the affected specifications.

R.C.M. 1112(d)(3). The Discussion to the Rules for Courts-Martial elaborates on digital recording failures:

Where there is an electronic or digital recording failure or loss of court reporter notes, the record should be reconstructed as completely as possible. If the interruption is discovered during trial, the military judge should summarize or reconstruct the portion of the proceedings which has not been recorded. If both parties agree to the summary or reconstruction of the proceedings, the proceedings may continue. If either party objects to the summary or reconstruction, the trial should proceed anew, and the proceedings repeated from the point where the interruption began.

R.C.M. 1112(d), Discussion.

Portions of Appellant's trial were not captured verbatim. But the military judge, along with counsel, cured the recording defect in accordance with R.C.M. 1112(d)(3) by reconstructing the unrecorded portion of the record that created a substantially verbatim transcript required by R.C.M. 1112(b)(1). Trial counsel and trial defense counsel worked together to create Appellate Exhibit XIX that summarized Ms. JH's testimony and listed all the appellate exhibits already entered into the record. (R. at 23.) Also, the military judge readvised Appellant of his rights and Appellant reentered pleas. (R. at 19-23). The Discussion to the Rules for Courts-Martial explains that if there is a digital recording failure, then a military judge should summarize or reconstruct the portion of the proceedings which has not been recorded. R.C.M. 1112(d), Discussion. That is exactly what occurred in this case. The military judge, along with both trial and trial defense counsel reconstructed portions of the record, such as Appellant's rights advisement and pleas, and also created a summary of the unrecorded testimony and listed all the appellate exhibits entered into the record.

Equally important, all parties agreed to reconstruct the portion of the record affected. (R. at 17.) Trial defense counsel never objected to the agreed upon remedies and never suggested to start proceedings anew. (*Personal Declaration from Maj JA – Missing Audio in U.S. v. Amn Nicholas J. Moore*, dated 15 March 2024.) As explained in the Discussion to the Rules for

Courts-Martial, “[i]f both parties agree to the summary or reconstruction of the proceedings, the proceedings may continue.” R.C.M. 1112(d), Discussion. That is what happened in this case. Furthermore, this Court should treat this issue as waived. Trial defense counsel had full opportunity to request another course of action, such as recall the witness for more testimony, add details to the summary, or start proceedings anew. Trial defense counsel did not request another course of action, nor did she object to the proposed way forward, which was an intentional abandonment of a known right. In light of this, Appellant also has no argument that he was prejudiced by the course of action chosen. Appellant should not be entitled to a windfall now, when he was given the opportunity to chart a different course of action at trial but chose not to take it. For these reasons, the military judge’s remedies, absent any objections from both parties, led to a substantially verbatim transcript. See Tate, 82 M.J. at 294 (emphasizing that “a transcript need not be actually verbatim but will suffice when it is substantially verbatim”).

Although this Court found that the record of trial was substantially incomplete, the Rules for Courts-Martial require only a “*substantially* verbatim recording of the court-martial proceedings....” R.C.M. 1112(b)(1) (emphasis added). Our superior court noted that literal compliance with the requirement to produce a verbatim transcript is impossible. United States v. Lashley, 14 M.J. 7, 8 (C.M.A. 1982). So in determining whether a transcript is verbatim, the threshold question is: was the omitted material, in this case the unrecorded session, qualitatively or quantitatively substantial? Id. at 9. Here, only 45 minutes of the initial session was not recorded compared to the rest of the proceedings that spanned over five days that was recorded. Thus, the unrecorded material was not a quantitatively substantial omission.

Moreover, the unrecorded session was not a qualitative substantial omission. Omissions are qualitatively substantial when it is “related directly to the sufficiency of the Government’s

evidence on the merits,’ and ‘the testimony could not ordinarily have been recalled with any degree of fidelity.’ Davenport, 73 M.J. at 377 (quoting Lashley, 14 M.J. at 9.) Although arraignment and parts of Ms. JH’s testimony, during a motions hearing, were not recorded, this was not a qualitative substantial omission because the trial court took proper actions to create a substantially verbatim record. The military judge ensured that Appellant’s rights advisement and pleas were reconstructed on the record. (R. at 19-23.) Further, counsel for both sides summarized Ms. JH’s testimony immediately after she testified eliminating any concerns of inaccurateness and fidelity. (R. at 23.) At that, trial counsel incorporated all edits provided by trial defense counsel. (*Personal Declaration from Maj JA – Missing Audio in U.S. v. Amn Nicholas J. Moore*, dated 15 March 2024.) The unrecorded testimony did not directly relate to the sufficiency of the government’s evidence on the merits because it occurred during a motions hearing. *See Davenport*, 73 M.J. at 377. With that in mind, Ms. JH’s testimony during the prosecution’s case-in-chief, before members, was recorded and transcribed verbatim. (R. at 522-539.) Therefore, this Court should not have any concerns that the unrecorded portion of trial resulted in a substantial omission directly related to the sufficiency of the Government’s evidence on the merits. The summary created by trial and defense counsel also fulfilled the requirements for reconstruction of the record under R.C.M. 1112(d). Per the Discussion to the Rules for Courts-Martial, reconstruction of the record can involve a summary of the unrecorded proceedings, and by definition, a summary is not completely verbatim. *See* R.C.M. 1112(d), Discussion; *see also Summary*, MERRIAM WEBSTER DICTIONARY (Online Ed. 2024) (defining summary as covering the main points succinctly). Ultimately, Appellant did not suffer any prejudice as a result of the malfunctioning recording device because the record of trial is substantially verbatim, and this Court can conduct meaningful appellate review.

In United States v. Credit, 4 M.J. 118, 119 (C.M.A. 1977), our superior court said that the purpose of a verbatim transcript is for a court to conduct meaningful appellate review, which this Court can do in this case. The only question raised by the missing testimony is whether the military judge abused his discretion in admitting the Mil. R. Evid. 413 evidence. But this Court can see the substance of the Mil. R. Evid. 413 evidence presented during the motions hearings. This Court has access to the parties' respective motions and the military judge's ruling, in addition to the summary of Ms. JH's unrecorded testimony and the portion of Ms. JH's recorded motions testimony, which included her cross-examination, redirect examination, and examination by the military judge. This should be more than enough for the Court to review this issue. In his ruling, the military judge incorporated paragraphs 1-5 of the Defense's motion. (App. Ex. X at para 3.) And the government agreed with these facts detailed in paragraphs 1-5 of the Defense's motion. (App. Ex. IX at para 1.) The military judge's findings of fact were supported by facts established on the record, such as the parties' motions, Ms. JH's summarized testimony found in Appellate Exhibit XIX, as well as Ms. JH's recorded motion's testimony that captured her cross-examination, redirect examination, and examination by the military judge. (*See* R. at 2-14; App. Exs. X, XIX.) Thus, there should be no concerns that this Court cannot conduct a meaningful appellate review.

In addition, the United States has confirmed that the base legal office has copies of all other recorded sessions other than the lost 45-minute session. Therefore, remand, not set aside, would be appropriate to properly attach these recordings to the record of trial.

For all these reasons, there is good cause not to set aside the findings and sentence. Granting the United States' Motion to Attach, which was filed contemporaneously with this Answer, remedies any doubt as to the creation of Appellate Exhibit XIX. Appellate Exhibit XIX

along with the military judge's reconstruction of the record created a substantially verbatim recording of Appellant's court-martial in accordance with R.C.M. 1112(b)(1). Thus, Appellant is not entitled to relief because the trial court took corrective measures that led to a substantially verbatim transcript.

### **CONCLUSION**

For these reasons, the United States respectfully requests that this Honorable Court not set aside the findings and sentence and return the case for action consistent with R.C.M. 1112(d).

VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force  
Appellate Defense Division on 19 March 2024.

VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



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

<b>UNITED STATES,</b> <i>Appellee,</i>	)	<b>UNITED STATES’ MOTION TO ATTACH A DOCUMENT</b>
	)	
v.	)	Before Panel No. 1
	)	
Airman (E-2)	)	
<b>NICHOLAS J. MOORE</b>	)	No. ACM 40442
United States Air Force	)	
<i>Appellant.</i>	)	19 March 2024

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

Pursuant to Rules 23 and 23.3(b) of this Honorable Court’s Rules of Practice and Procedure, the United States respectfully moves to attach the Appendix to this motion. This Court found that the record of trial was substantially incomplete due to a portion of Appellant’s court-martial that was not recorded. (*Order*, dated 1 March 2024.) As a result, this Court issued a Show Cause Order for the United States to show good cause as to why this Court should not set aside the findings and sentence and send the case to the convening authority for appropriate action consistent with R.C.M. 1112(d). (*Id.*) The Appendix to this motion is a two-page declaration from Maj JA, special trial counsel, dated 15 March 2024, where he explained how the trial court reconstructed the unrecorded portion of Appellant’s court-martial.

This Court noted that Appellate Exhibit XIX did not indicate who prepared the summary of the unrecorded session. Attachment of the appendix is both relevant and necessary for this Court’s review of the appellate record to explain who created Appellate Exhibit XIX and how the parties came to an agreement on how to reconstruct the unrecorded session. Attachment of this Appendix is also consistent with United States v. Jessie, 79 M.J. 437, 455 (C.A.A.F. 2020)

because it relates to “issues raised by materials in the record but not fully resolvable by those materials.”

WHEREFORE, the United States respectfully requests that this Honorable Court grant the motion.

VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force

MARY ELLEN PAYNE  
Associate Chief  
Government Trial and Appellate Operations Division  
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United States Air Force

**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 19 March 2024.

VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force

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

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(TENTH)</b>
v.	)	
	)	Before Panel No. 1
Airman (E-2)	)	
<b>NICHOLAS J. MOORE,</b>	)	No. ACM 40442
United States Air Force	)	
<i>Appellant</i>	)	19 March 2024

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **28 April 2024**. The record of trial was docketed with this Court on 4 April 2023. From the date of docketing to the present date, 350 days have elapsed. On the date requested, 390 days will have elapsed. Counsel withdraws the previously filed motion of the same name because it contained an error in the date calculation.

On 9-13 January 2023, at a general court-martial at Hill Air Force Base, Utah, a panel of officer and enlisted members found Appellant, Airman (Amn) Nicholas J. Moore, guilty of one specification of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920 (2018). (Entry of Judgment (EOJ), 8 Mar. 2023.) The members sentenced Amn Moore to 18 months’ confinement, forfeiture of all pay and allowances, reduction to the grade of E-1, and a dishonorable

discharge. (EOJ.) The convening authority took no action on the findings or sentence and disapproved a request to waive forfeitures. (Convening Authority Decision on Action, 10 Feb. 2023.)

The record of trial consists of 11 prosecution exhibits, 9 defense exhibits, 40 appellate exhibits, and 1 court exhibit. The transcript is 674 pages. Amn Moore is not currently confined.

Counsel is currently assigned 20 cases, with 6 pending initial briefs before this Court. No case has higher priority. Counsel has reviewed the record and completed the brief. However, counsel must await the resolution of this Court's show-cause order to the Government, whose answer is due today. *United States v. Moore*, No. ACM 40442, ORDER, 1 Mar. 2024. Counsel files this motion in an abundance of caution because it is uncertain whether this Court will act before the deadline for the brief in this case, which is currently 29 March 2024.

Through no fault of Amn Moore, undersigned counsel cannot yet file the assignment of errors because of the pending show-cause order. Amn Moore was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to adjust according to this Court's action following the show-cause order.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Government Trial and Appellate Operations Division on 19 March 2024.

**MATTHEW L. BLYTH, Maj, USAFR  
Appellate Defense Counsel  
Appellate Defense Division (AF/JAJA)  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762**

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

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION
	)	FOR ENLARGEMENT OF TIME
v.	)	
	)	
Airman (E-2)	)	ACM 40442
NICHOLAS J. MOORE, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 390 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 over two-thirds of the 18-month standard for this Court to issue a decision, which only leaves less than 6 months combined for the United States and this Court to perform their separate statutory responsibilities. Since Appellant's counsel states that he has completed the brief in this case, the United States does not believe that resolution of the show cause order is necessary before Appellant files his brief.



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

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 20 March 2024.

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