

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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (FIRST)</b>
	)	
v.	)	Before Panel No. 1
	)	
Staff Sergeant (E-5)	)	No. ACM 40437
<b>DIETRICH A. SMITH,</b>	)	
United States Air Force	)	12 May 2023
<i>Appellant</i>	)	

**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 Assignment of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **19 July 2023**. The record of trial was docketed with this Court on 21 March 2023. From the date of docketing to the present date, 52 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

KASEY W. HAWKINS, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

**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 12 May 2023.

Respectfully submitted,

KASEY W. HAWKINS, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

**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
	)	
Staff Sergeant (E-5)	)	ACM 40437
DIETRICH A. SMITH, 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 12 May 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**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (SECOND)</b>
	)	
v.	)	Before Panel No. 1
	)	
Staff Sergeant (E-5)	)	No. ACM 40437
<b>DIETRICH A. SMITH,</b>	)	
United States Air Force	)	12 July 2023
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **18 August 2023**. The record of trial was docketed with this Court on 21 March 2023. From the date of docketing to the present date, 113 days have elapsed. On the date requested, 150 days will have elapsed.

On 15 December 2022, a military judge sitting as a general court-martial found Appellant guilty, in accordance with his plea, of one charge and one specification of wrongful possession of child pornography in violation of Article 135, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), dated 23 February 2023. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 14 months, and to be dishonorably discharged. R. at 337; EOJ. The convening authority took no action on the findings or sentence.<sup>1</sup> ROT Vol. 1, Convening Authority Decision on Action – *United States v. SSgt Dietrich A. Smith*, dated 6 February 2023.

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<sup>1</sup> The Convening Authority Decision on Action Memorandum stated the convening authority suspended the adjudged forfeitures, however, no forfeitures were adjudged in this case. *See* EOJ at 3. This error was likely predicated by an error in the Statement of Trial Results which listed “adjudged forfeitures” as part of the sentence when the Court adjudged no forfeitures. *Id.* The

The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and 29 appellate exhibits; the transcript is 338 pages. Appellant is currently confined.

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

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

Respectfully submitted,

KASEY W. HAWKINS, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

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military judge exercised its authority under Rule for Courts-Martial 1104(b)(2)(B)(ii) to correct the Convening Authority Decision on Action Memorandum and declared the provision suspending adjudged forfeitures a "legal nullity." *Id.*

**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 12 July 2023.

Respectfully submitted,

KASEY W. HAWKINS, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

**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
	)	
Staff Sergeant (E-5)	)	ACM 40437
DIETRICH A. SMITH, 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 12 July 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**

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee</i>	)	<b>ENLARGEMENT OF TIME (THIRD)</b>
	)	
v.	)	Before Panel No. 1
	)	
Staff Sergeant (E-5)	)	No. ACM 40437
<b>DIETRICH A. SMITH,</b>	)	
United States Air Force	)	11 August 2023
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a third enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 September 2023**. The record of trial was docketed with this Court on 21 March 2023. From the date of docketing to the present date, 143 days have elapsed. On the date requested, 180 days will have elapsed.

On 15 December 2022, a military judge sitting as a general court-martial at Minot Air Force Base, North Dakota, found Appellant guilty, in accordance with his plea, of one charge and one specification of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. R. at 306; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), dated 23 February 2023. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 14 months, and to be dishonorably discharged. R. at 337; EOJ. The convening authority took no action on the findings

or sentence.<sup>1</sup> ROT Vol. 1, Convening Authority Decision on Action – *United States v. SSgt Dietrich A. Smith*, dated 6 February 2023.

The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and 29 appellate exhibits; the transcript is 338 pages. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant’s case. An enlargement of time is necessary to allow counsel to fully review Appellant’s case and advise Appellant regarding potential errors.

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

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

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<sup>1</sup> The Convening Authority Decision on Action Memorandum stated the convening authority suspended the adjudged forfeitures, however, no forfeitures were adjudged in this case. *See* EOJ at 3. This error was likely predicated by an error in the Statement of Trial Results which listed “adjudged forfeitures” as part of the sentence when the Court adjudged no forfeitures. *Id.* The military judge exercised his authority under Rule for Courts-Martial 1104(b)(2)(B)(ii) to correct the Convening Authority Decision on Action Memorandum and declared the provision suspending adjudged forfeitures a “legal nullity.” *Id.*

**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 11 August 2023.

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

**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
	)	
Staff Sergeant (E-5)	)	ACM 40437
DIETRICH A. SMITH, 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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 14 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>
	)	<b>ENLARGEMENT OF TIME (FOURTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Staff Sergeant (E-5)	)	No. ACM 40437
<b>DIETRICH A. SMITH,</b>	)	
United States Air Force	)	8 September 2023
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a 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 **17 October 2023**. The record of trial was docketed with this Court on 21 March 2023. From the date of docketing to the present date, 171 days have elapsed. On the date requested, 210 days will have elapsed.

Undersigned appellate defense counsel entered his appearance in this case on 11 August 2023 due to the permanent change of assignment of Appellant’s previous appellate defense counsel, Maj Kasey Hawkins, effective 31 July 2023. A motion to withdraw from Maj Hawkins is expected to be forthcoming.

On 11-12 July and 15 December 2022, a military judge sitting as a general court-martial at Minot Air Force Base, North Dakota, found Appellant guilty, in accordance with his plea, of one charge and one specification of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. Record (R.) at 306; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), dated 23 February 2023. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 14

months, and to be dishonorably discharged. R. at 337; EOJ. The convening authority took no action on the findings or sentence.<sup>1</sup> ROT Vol. 1, Convening Authority Decision on Action – *United States v. SSgt Dietrich A. Smith*, dated 6 February 2023.

The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and 29 appellate exhibits; the transcript is 338 pages. Appellant is currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing 24 clients; ten clients are pending initial AOE's before this Court.<sup>2</sup> Six cases currently have priority over this case:

- 1) *United States v. Driskill*, ACM 39889 (f rev), USCA No. 23-0066/AF – The record of trial is 14 volumes consisting of 17 prosecution exhibits, four defense exhibits, and 169 appellate exhibits; the transcript is 2062 pages. Undersigned counsel is preparing to present oral argument in this case to the U.S. Court of Appeals for the Armed Forces on 25 October 2023.
- 2) *United States v. Taylor*, ACM 40371 – The record of trial is six volumes consisting of six prosecution exhibits, one court exhibit, 12 defense exhibits, and 36 appellate

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<sup>1</sup> The Convening Authority Decision on Action Memorandum stated the convening authority suspended the adjudged forfeitures; however, no forfeitures were adjudged in this case. *See* EOJ at 3. This error was likely predicated by an error in the Statement of Trial Results which listed “adjudged forfeitures” as part of the sentence when the Court adjudged no forfeitures. *Id.* The military judge exercised his authority under Rule for Courts-Martial 1104(b)(2)(B)(ii) to correct the Convening Authority Decision on Action Memorandum and declared the provision suspending adjudged forfeitures a “legal nullity.” *Id.*

<sup>2</sup> Since the filing of Appellant’s last request for an enlargement of time, counsel reviewed approximately half of the six-volume record and drafted a motion in *U.S. v. Taylor*, ACM 40371, completed his review of the two-volume record in *U.S. v. Ollison*, ACM S32745, and filed a motion for reconsideration in *U.S. v. Gonzalez Hernandez*, ACM S32732. Additionally, counsel attended the Joint Appellate Advocacy Training on



- exhibits; the transcript is 396 pages. Undersigned counsel has reviewed approximately two-thirds of the record.
- 3) *United States v. Ollison*, ACM S32745 – The record of trial is two volumes consisting of three prosecution exhibits, one defense exhibit, and nine appellate exhibits; the transcript is 142 pages. Undersigned counsel has completed his review of the record of trial in this case.
  - 4) *United States v. Brown*, ACM S32747 – The record of trial is three volumes consisting of five prosecution exhibits, 12 defense exhibits, and four appellate exhibits; the transcript is 139 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case, but additional counsel has been detailed to assist with this case and is reviewing the record of trial.
  - 5) *United States v. Myers*, ACM S32749 – The record of trial is four volumes consisting of seven prosecution exhibits, nine defense exhibits, and 26 appellate exhibits; the transcript is 656 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
  - 6) *United States v. Patterson*, ACM 40426 – the record of trial is 8 volumes consisting of 12 prosecution exhibits, eight defense exhibits, two court exhibits, and 75 appellate exhibits; the transcript is 987 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

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

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

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

**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 8 September 2023.

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

**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
	)	
Staff Sergeant (E-5)	)	ACM 40437
DIETRICH A. SMITH, 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 11 September 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**

<b>UNITED STATES,</b>	)	<b>MOTION FOR WITHDRAWAL OF</b>
<i>Appellee,</i>	)	<b>APPELLATE DEFENSE COUNSEL</b>
	)	
v.	)	Before Panel No. 1
	)	
Staff Sergeant (E-5),	)	No. ACM 40437
<b>DIETRICH A. SMITH,</b>	)	
United States Air Force,	)	12 September 2023
<i>Appellant.</i>	)	

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

Pursuant to Rules 12(b), 12.4, and 23.3(h) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel respectfully requests to withdraw as counsel in the above-captioned case. The Judge Advocate General has reassigned undersigned counsel from the Air Force Appellate Defense Division to the Air Force Military Justice Law and Policy Division. Undersigned counsel’s primary duties in her new assignment do not afford sufficient time for continued competent representation of Appellant. Major Frederick Johnson has been detailed substitute counsel in undersigned counsel’s stead and made his notice of appearance on 11 August 2023. Counsel have completed a thorough turnover of the record.

Appellant has been advised of this motion to withdraw as counsel and consents to undersigned counsel’s withdrawal. A copy of this motion will be delivered to Appellant following its filing.

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

Respectfully submitted,

KASEY W. HAWKINS, Maj, USAF  
Chief, Military Justice Policy  
Military Justice Law & Policy Division (JAJM)  
1500 West Perimeter Road, Suite 1130  
Joint Base Andrews NAF, MD 20762-6604

**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 12 September 2023.

Respectfully Submitted,

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604



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

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
	)	<b>ENLARGEMENT OF TIME (FIFTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Staff Sergeant (E-5)	)	No. ACM 40437
<b>DIETRICH A. SMITH,</b>	)	
United States Air Force	)	10 October 2023
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a 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 **16 November 2023**. The record of trial was docketed with this Court on 21 March 2023. From the date of docketing to the present date, 203 days have elapsed. On the date requested, 240 days will have elapsed.

On 11-12 July and 15 December 2022, a military judge sitting as a general court-martial at Minot Air Force Base, North Dakota, found Appellant guilty, consistent with his pleas, of one charge and one specification of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. Record (R.) at 306; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), dated 23 February 2023. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 14 months, and to be dishonorably discharged. R. at 337; EOJ. The convening authority took no

action on the findings or sentence.<sup>1</sup> ROT Vol. 1, Convening Authority Decision on Action – *United States v. SSgt Dietrich A. Smith*, dated 6 February 2023.

The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and 29 appellate exhibits; the transcript is 338 pages. Appellant is currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing 25 clients; 18 clients are pending initial AOE's before this Court.<sup>2</sup> Five cases currently have priority over this case:

- 1) *United States v. Driskill*, ACM 39889 (f rev), USCA No. 23-0066/AF – The record of trial is 14 volumes consisting of 17 prosecution exhibits, four defense exhibits, and 169 appellate exhibits; the transcript is 2062 pages. Undersigned counsel is preparing to present oral argument in this case to the U.S. Court of Appeals for the Armed Forces on 25 October 2023.
- 2) *United States v. Taylor*, ACM 40371 – The record of trial is six volumes consisting of six prosecution exhibits, one court exhibit, 12 defense exhibits, and 36 appellate exhibits; the transcript is 396 pages. Undersigned counsel has reviewed approximately two-thirds of the record.

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<sup>1</sup> The Convening Authority Decision on Action Memorandum stated the convening authority suspended the adjudged forfeitures; however, no forfeitures were adjudged in this case. *See* EOJ at 3. This error was likely predicated by an error in the Statement of Trial Results which listed “adjudged forfeitures” as part of the sentence when the Court adjudged no forfeitures. *Id.* The military judge exercised his authority under Rule for Courts-Martial 1104(b)(2)(B)(ii) to correct the Convening Authority Decision on Action Memorandum and declared the provision suspending adjudged forfeitures a “legal nullity.” *Id.*

<sup>2</sup> Since the filing of Appellant’s last request for an enlargement of time, counsel filed a motion to compel discovery in *U.S. v. Taylor*, ACM 40371, and drafted and filed an AOE in *U.S. v. Ollison*, ACM S32745. Additionally, counsel was on leave

- 3) *United States v. Brown*, ACM S32747 – The record of trial is three volumes consisting of five prosecution exhibits, 12 defense exhibits, and four appellate exhibits; the transcript is 139 pages. Undersigned counsel has not yet reviewed the record of trial in this case, but additional counsel has been detailed to assist with this case and has completed reviewing the record of trial.
- 4) *United States v. Myers*, ACM S32749 – The record of trial is four volumes consisting of seven prosecution exhibits, nine defense exhibits, and 26 appellate exhibits; the transcript is 656 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 5) *United States v. Patterson*, ACM 40426 – the record of trial is 8 volumes consisting of 12 prosecution exhibits, eight defense exhibits, two court exhibits, and 75 appellate exhibits; the transcript is 987 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time.

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

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

**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 10 October 2023.

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

**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
	)	
Staff Sergeant (E-5)	)	ACM 40437
DIETRICH A. SMITH, 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 11 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**

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee</i>	)	<b>ENLARGEMENT OF TIME (SIXTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Staff Sergeant (E-5)	)	No. ACM 40437
<b>DIETRICH A. SMITH,</b>	)	
United States Air Force	)	9 November 2023
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a 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 **16 December 2023**. The record of trial was docketed with this Court on 21 March 2023. From the date of docketing to the present date, 233 days have elapsed. On the date requested, 270 days will have elapsed.

On 11-12 July and 15 December 2022, a military judge sitting as a general court-martial at Minot Air Force Base, North Dakota, found Appellant guilty, consistent with his pleas, of one charge and one specification of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. Record (R.) at 306; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), dated 23 February 2023. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 14 months, and to be dishonorably discharged. R. at 337; EOJ. The convening authority took no



action on the findings or sentence.<sup>1</sup> ROT Vol. 1, Convening Authority Decision on Action – *United States v. SSgt Dietrich A. Smith*, dated 6 February 2023.

The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and 29 appellate exhibits; the transcript is 338 pages. Appellant is currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing 27 clients; 18 clients are pending initial AOE's before this Court.<sup>2</sup> Six cases currently have priority over this case:

- 1) *United States v. Gause-Radke*, ACM 40343, USCA No. 24-0028/AF – The record of trial is eight volumes consisting of 12 prosecution exhibits, six defense exhibits, 42 appellate exhibits, and four court exhibits; the transcript is 1167 pages. Undersigned counsel has petitioned the CAAF to grant review in this case and is drafting the supplement to the petition, which must be filed by 28 November 2023.
- 2) *United States v. Gonzalez Hernandez*, S32732, USCA No. 24-0030/AF – The record of trial is five volumes consisting of three prosecution exhibits, one defense exhibit, 31

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<sup>1</sup> The Convening Authority Decision on Action Memorandum stated the convening authority suspended the adjudged forfeitures; however, no forfeitures were adjudged in this case. *See* EOJ at 3. This error was likely predicated by an error in the Statement of Trial Results which listed “adjudged forfeitures” as part of the sentence when the Court adjudged no forfeitures. *Id.* The military judge exercised his authority under Rule for Courts-Martial 1104(b)(2)(B)(ii) to correct the Convening Authority Decision on Action Memorandum and declared the provision suspending adjudged forfeitures a “legal nullity.” *Id.*

<sup>2</sup> Since the filing of Appellant’s last request for an enlargement of time, counsel prepared for and presented oral argument to the U.S. Court of Appeals for the Armed Forces (CAAF) as lead counsel in *U.S. v. Driskill*, ACM 39889 (f rev), USCA No. 23-0066/AF, assisted in the preparation and sat second chair for oral argument in *U.S. v. Jennings*, ACM 40282, participated in practice oral arguments for two additional cases, completed his review of the record of trial and began drafting the AOE in *U.S. v. Taylor*, ACM 40371, and petitioned the CAAF for review and began drafting the supplements to the petitions in both *U.S. v. Gause-Radke*, ACM 40343, USCA No. 24-0028/AF, and *U.S. v. Gonzalez Hernandez*, ACM S32732, USCA No. 24-0030/AF. Additionally, counsel attended the Appellate Judges Education Institute Summit

- appellate exhibits, and two court exhibits; the transcript is 249 pages. Undersigned counsel has petitioned the CAAF to grant review in this case and is drafting the supplement to the petition, which must be filed by 28 November 2023.
- 3) *United States v. Taylor*, ACM 40371 – The record of trial is six volumes consisting of six prosecution exhibits, one court exhibit, 12 defense exhibits, and 36 appellate exhibits; the transcript is 396 pages. Undersigned counsel has completed his review of the record of trial and begun drafting the AOE.
  - 4) *United States v. Lake*, ACM 40168 – The record of trial is 17 volumes consisting of 101 prosecution exhibits, 14 defense exhibits, and 135 appellate exhibits; the transcript is 1418 pages. Undersigned counsel is preparing to petition the CAAF to grant review in this case.
  - 5) *United States v. Myers*, ACM S32749 – The record of trial is four volumes consisting of seven prosecution exhibits, nine defense exhibits, and 26 appellate exhibits; the transcript is 656 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
  - 6) *United States v. Patterson*, ACM 40426 – the record of trial is 8 volumes consisting of 12 prosecution exhibits, eight defense exhibits, two court exhibits, and 75 appellate exhibits; the transcript is 987 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

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

informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time.

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

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

**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 9 November 2023.

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

**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
	)	
Staff Sergeant (E-5)	)	ACM 40437
DIETRICH A. SMITH, 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 15 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 (SEVENTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Staff Sergeant (E-5)	)	No. ACM 40437
<b>DIETRICH A. SMITH,</b>	)	
United States Air Force	)	8 December 2023
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a seventh enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **15 January 2024**. The record of trial was docketed with this Court on 21 March 2023. From the date of docketing to the present date, 262 days have elapsed. On the date requested, 300 days will have elapsed.

On 11-12 July and 15 December 2022, a military judge sitting as a general court-martial at Minot Air Force Base, North Dakota, found Appellant guilty, consistent with his pleas, of one charge and one specification of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. Record (R.) at 306; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), dated 23 February 2023. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 14 months, and to be dishonorably discharged. R. at 337; EOJ. The convening authority took no

action on the findings or sentence.<sup>1</sup> ROT Vol. 1, Convening Authority Decision on Action – *United States v. SSgt Dietrich A. Smith*, dated 6 February 2023.

The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and 29 appellate exhibits; the transcript is 338 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing 26 clients; 19 clients are pending initial AOE's before this Court.<sup>2</sup> Four matters currently have priority over this case:

- 1) *United States v. Lake*, ACM 40168, USCA No. 24-0047/AF – The record of trial is 17 volumes consisting of 101 prosecution exhibits, 14 defense exhibits, and 135 appellate exhibits; the transcript is 1418 pages. Undersigned counsel has petitioned the CAAF to grant review in this case and is drafting the supplement to the petition, which must be filed by 20 December 2023.
- 2) *United States v. Taylor*, ACM 40371 – The record of trial is six volumes consisting of six prosecution exhibits, one court exhibit, 12 defense exhibits, and 36 appellate

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<sup>1</sup> The Convening Authority Decision on Action Memorandum stated the convening authority suspended the adjudged forfeitures; however, no forfeitures were adjudged in this case. *See* EOJ at 3. This error was likely predicated by an error in the Statement of Trial Results which listed “adjudged forfeitures” as part of the sentence when the Court adjudged no forfeitures. *Id.* The military judge exercised his authority under Rule for Courts-Martial 1104(b)(2)(B)(ii) to correct the Convening Authority Decision on Action Memorandum and declared the provision suspending adjudged forfeitures a “legal nullity.” *Id.*

<sup>2</sup> Since the filing of Appellant’s last request for an enlargement of time, counsel prepared and filed the supplements to the petition for grant of review to the United States Court of Appeals for the Armed Forces (CAAF) in both *U.S. v. Gause-Radke*, ACM 40343, USCA No. 24-0028/AF, and *U.S. v. Gonzalez Hernandez*, ACM S32732, USCA No. 24-0030/AF, petitioned the CAAF for review and began drafting the supplement to the petition in *U.S. v. Lake*, ACM 40168, USCA No. 24-0047/AF, and participated in practice oral arguments for four additional cases.



exhibits; the transcript is 396 pages. Undersigned counsel has completed his review of the record of trial and begun drafting the AOE.

- 3) *United States v. Myers*, ACM S32749 – The record of trial is four volumes consisting of seven prosecution exhibits, nine defense exhibits, and 26 appellate exhibits; the transcript is 656 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 4) *United States v. Patterson*, ACM 40426 – the record of trial is 8 volumes consisting of 12 prosecution exhibits, eight defense exhibits, two court exhibits, and 75 appellate exhibits; the transcript is 987 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time.

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

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

**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 8 December 2023.

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

**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.	)	
	)	
Staff Sergeant (E-5)	)	ACM 40437
DIETRICH A. SMITH, 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.

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 12 December 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 (EIGHTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Staff Sergeant (E-5)	)	No. ACM 40437
<b>DIETRICH A. SMITH,</b>	)	
United States Air Force	)	8 January 2024
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an eighth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **14 February 2024**. The record of trial was docketed with this Court on 21 March 2023. From the date of docketing to the present date, 293 days have elapsed. On the date requested, 330 days will have elapsed.

On 11-12 July and 15 December 2022, a military judge sitting as a general court-martial at Minot Air Force Base, North Dakota, found Appellant guilty, consistent with his pleas, of one charge and one specification of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. Record (R.) at 306; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), dated 23 February 2023. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 14 months, and to be dishonorably discharged. R. at 337; EOJ. The convening authority took no

action on the findings or sentence.<sup>1</sup> ROT Vol. 1, Convening Authority Decision on Action – *United States v. SSgt Dietrich A. Smith*, dated 6 February 2023.

The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and 29 appellate exhibits; the transcript is 338 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing 27 clients; 19 clients are pending initial AOE's before this Court.<sup>2</sup> Three matters currently have priority over this case:

- 1) *United States v. Myers*, ACM S32749 – The record of trial is four volumes consisting of seven prosecution exhibits, nine defense exhibits, and 26 appellate exhibits; the transcript is 656 pages. Undersigned counsel has reviewed approximately three quarters the record of trial in this case.
- 2) *United States v. Stafford*, ACM 40131 – The record of trial is 21 volumes consisting of 17 prosecution exhibits, 16 defense exhibits, five court exhibits, and 186 appellate exhibits; the transcript is 2282 pages. Undersigned counsel is reviewing this Court's

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<sup>1</sup> The Convening Authority Decision on Action Memorandum stated the convening authority suspended the adjudged forfeitures; however, no forfeitures were adjudged in this case. *See* EOJ at 3. This error was likely predicated by an error in the Statement of Trial Results which listed "adjudged forfeitures" as part of the sentence when the Court adjudged no forfeitures. *Id.* The military judge exercised his authority under Rule for Courts-Martial 1104(b)(2)(B)(ii) to correct the Convening Authority Decision on Action Memorandum and declared the provision suspending adjudged forfeitures a "legal nullity." *Id.*

<sup>2</sup> Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed the supplement to the petition for grant of review with the Court of Appeals for the Armed Forces (CAAF) in *U.S. v. Lake*, ACM 40168, USCA No. 24-0047/AF; prepared and filed the AOE in *U.S. v. Taylor*, ACM 40371; reviewed approximately three quarters of the record in *U.S. v. Myers*, ACM S32749; and participated in practice oral arguments for an additional case.



recent opinion in this case in preparation for a potential petition to the CAAF for a grant of review.

- 3) *United States v. Patterson*, ACM 40426 – the record of trial is 8 volumes consisting of 12 prosecution exhibits, eight defense exhibits, two court exhibits, and 75 appellate exhibits; the transcript is 987 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time.

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

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

**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 8 January 2024.

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

**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.	)	
	)	
Staff Sergeant (E-5)	)	ACM 40437
DIETRICH A. SMITH, 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 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.

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 10 January 2024.

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

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

UNITED STATES	)	No. ACM 40437
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Dietrich A. SMITH	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 8 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 11th 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 **14 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**

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee</i>	)	<b>ENLARGEMENT OF TIME (NINTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Staff Sergeant (E-5)	)	No. ACM 40437
<b>DIETRICH A. SMITH,</b>	)	
United States Air Force	)	7 February 2024
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a ninth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **15 March 2024**. The record of trial was docketed with this Court on 21 March 2023. From the date of docketing to the present date, 323 days have elapsed. On the date requested, 360 days will have elapsed.

On 11-12 July and 15 December 2022, a military judge sitting as a general court-martial at Minot Air Force Base, North Dakota, found Appellant guilty, consistent with his pleas, of one charge and one specification of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. R. at 306; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), dated 23 February 2023. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 14 months, and to be dishonorably discharged. R. at 337; EOJ. The convening authority took no action on the

findings or sentence.<sup>1</sup> ROT Vol. 1, Convening Authority Decision on Action – *United States v. SSgt Dietrich A. Smith*, dated 6 February 2023.

The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and 29 appellate exhibits; the transcript is 338 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing 30 clients; 19 clients are pending initial AOE's before this Court.<sup>2</sup> Two matters currently have priority over this case:

- 1) *United States v. Stafford*, ACM 40131, USCA Dkt. No. 24-0080/AF – The record of trial is 21 volumes consisting of 17 prosecution exhibits, 16 defense exhibits, five court exhibits, and 186 appellate exhibits; the transcript is 2282 pages. Undersigned counsel has petitioned the CAAF for a grant of review and is preparing the supplement to the petition in this case, which must be filed by 13 February 2024.
- 2) *United States v. Patterson*, ACM 40426 – the record of trial is 8 volumes consisting of 12 prosecution exhibits, eight defense exhibits, two court exhibits, and 75 appellate

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<sup>1</sup> The Convening Authority Decision on Action Memorandum stated the convening authority suspended the adjudged forfeitures; however, no forfeitures were adjudged in this case. *See* EOJ at 3. This error was likely predicated by an error in the Statement of Trial Results which listed “adjudged forfeitures” as part of the sentence when the Court adjudged no forfeitures. *Id.* The military judge exercised his authority under Rule for Courts-Martial 1104(b)(2)(B)(ii) to correct the Convening Authority Decision on Action Memorandum and declared the provision suspending adjudged forfeitures a “legal nullity.” *Id.*

<sup>2</sup> Since the filing of Appellant’s last request for an enlargement of time, counsel finished reviewing the four-volume record and prepared and filed the AOE in *U.S. v. Myers*, ACM S32749; petitioned the Court of Appeals for the Armed Forces (CAAF) for a grant of review and began preparing the supplement to the petition in *U.S. v. Stafford*, ACM 40131, USCA Dkt. No. 24-0080/AF; prepared and filed a reply to the Government’s answer in *U.S. v. Taylor*, ACM 40371; prepared and filed a nine-page motion and a nine-page response to a government motion in *U.S. v. Bartolome*, ACM 22045; and participated in practice oral arguments for four additional cases. Additionally, counsel was heavily involved in the preparations for the Judge Advocate General’s Corps 75th Anniversary Event



exhibits; the transcript is 987 pages. Undersigned counsel is beginning to review the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time.

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

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

**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 7 February 2024.

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

**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.	)	
	)	
Staff Sergeant (E-5)	)	ACM 40437
DIETRICH A. SMITH, 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 started 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.

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 8 February 2024.

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**

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee</i>	)	<b>ENLARGEMENT OF TIME (TENTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Staff Sergeant (E-5)	)	No. ACM 40437
<b>DIETRICH A. SMITH,</b>	)	
United States Air Force	)	5 March 2024
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a tenth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **14 April 2024**. The record of trial was docketed with this Court on 21 March 2023. From the date of docketing to the present date, 350 days have elapsed. On the date requested, 390 days will have elapsed.

On 11-12 July and 15 December 2022, a military judge sitting as a general court-martial at Minot Air Force Base, North Dakota, found Appellant guilty, consistent with his pleas, of one charge and one specification of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. R. at 306; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), dated 23 February 2023. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 14 months, and to be dishonorably discharged. R. at 337; EOJ. The convening authority took no action on the

findings or sentence.<sup>1</sup> ROT Vol. 1, Convening Authority Decision on Action – *United States v. SSgt Dietrich A. Smith*, dated 6 February 2023.

The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and 29 appellate exhibits; the transcript is 338 pages. Appellant is not currently confined. Undersigned counsel has begun reviewing the record of trial in this case.<sup>2</sup>

Counsel is currently representing 28 clients; 19 clients are pending initial AOE's before this Court.<sup>3</sup> Two matters currently have priority over this case:

- 1) *United States v. Patterson*, ACM 40426 – the record of trial is 8 volumes consisting of 12 prosecution exhibits, eight defense exhibits, two court exhibits, and 75 appellate exhibits; the transcript is 987 pages. Undersigned counsel has reviewed the record of trial and is drafting the AOE in this case.
- 2) *United States v. Taylor*, ACM 40371 – The record of trial is six volumes consisting of six prosecution exhibits, one court exhibit, 12 defense exhibits, and 36 appellate

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<sup>1</sup> The Convening Authority Decision on Action Memorandum stated the convening authority suspended the adjudged forfeitures; however, no forfeitures were adjudged in this case. *See* EOJ at 3. This error was likely predicated by an error in the Statement of Trial Results which listed “adjudged forfeitures” as part of the sentence when the Court adjudged no forfeitures. *Id.* The military judge exercised his authority under Rule for Courts-Martial 1104(b)(2)(B)(ii) to correct the Convening Authority Decision on Action Memorandum and declared the provision suspending adjudged forfeitures a “legal nullity.” *Id.*

<sup>2</sup> The record of trial contains sealed materials. A consent motion to examine sealed materials is being filed concurrently with this motion for enlargement of time.

<sup>3</sup> Since the filing of Appellant’s last request for an enlargement of time, counsel prepared and filed the supplement to the petition for grant of review with the Court of Appeals for the Armed Forces (CAAF) in *U.S. v. Stafford*, ACM 40131, USCA Dkt. No. 24-0080/AF; reviewed the eight-volume record of trial and began drafting the AOE in *U.S. v. Patterson*, ACM 40426; prepared and filed a citation to supplemental authority with the CAAF in *U.S. v. Driskill*, ACM 39889 (f rev), USCA Dkt. No. 23-0066/AF; and participated in practice oral arguments for one additional case.

exhibits; the transcript is 396 pages. Undersigned counsel is preparing to present oral argument as lead counsel in this case on 21 March 2024.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time.

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

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604



**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 5 March 2024.

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604

**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.	)	
	)	
Staff Sergeant (E-5)	)	ACM 40437
DIETRICH A. SMITH, 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 almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 5 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

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 6 March 2024.

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, <i>Appellee,</i>	)	<b>CONSENT MOTION TO EXAMINE SEALED MATERIALS</b>
	)	
	)	
	)	
v.	)	Before Panel No. 1
	)	
Staff Sergeant (E-5)	)	No. ACM 40437
<b>DIETRICH A. SMITH,</b>	)	
United States Air Force,	)	5 March 2024
<i>Appellant.</i>	)	

**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 Rules 3.1, 23.1(b), and 23.3(f)(1) of this Honorable Court’s Rules of Practice and Procedure, Appellant, Staff Sergeant Dietrich A. Smith, hereby moves this Court to permit appellate counsel for the Appellant and the Government to examine Attachments 4 and 7 to Prosecution Exhibit 1 and Appellate Exhibit XII in Appellant’s record of trial.

**Facts**

On 11-12 July and 15 December 2022, a military judge sitting as a general court-martial at Minot Air Force Base, North Dakota, found Appellant guilty, consistent with his pleas, of one charge and one specification of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. R. at 306; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), dated 23 February 2023. In the course of the proceedings, the court admitted a stipulation of fact, which included seven attachments, as Prosecution Exhibit 1. R. at 256; Pros. Ex. 1. The military judge sealed two of the attachments, Attachments 4 and 7, because they contain contraband or other sexually explicit material. R. at 282. The military judge also sealed Appellate Exhibit XII, which contains contraband the Government asked the military

judge to consider in relation to a motion. R. at 32. Trial defense counsel had the opportunity to view Appellate Exhibit XII. R. at 30.

### **Law**

Appellate counsel may examine materials presented or reviewed at trial and sealed, as well as materials reviewed *in camera*, released to trial or defense counsel, and sealed, upon a colorable showing to the appellate authority that examination is reasonably necessary to a proper fulfillment of the appellate counsel's responsibilities under the UCMJ, the Manual for Courts-Martial, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional conduct. R.C.M. 1113(b)(3)(B)(i).

Air Force regulations governing professional duties and conduct of appellate defense counsel impose upon counsel, *inter alia*, a duty to provide "competent representation," perform "reasonable diligence," and to "give a client his or her best professional evaluation of the questions that might be presented on appeal...[to] consider all issues that might affect the validity of the judgment of conviction and sentence...[to] advise on the probable outcome of a challenge to the conviction or sentence...[and to] endeavor to persuade the client to abandon a wholly frivolous appeal or to eliminate contentions lacking in substance." Air Force Instruction (AFI) 51-110, *Professional Responsibility Program*, Attachment 2: Air Force Rules of Professional Conduct, Rule 1.1, Attachment 7: Air Force Standards for Criminal Justice, Standard 4-8.3(b) (11 December 2018). These requirements are consistent with those imposed by the state bar to which counsel belongs.<sup>1</sup>

This Court may grant relief "on the basis of the entire record" of trial. Article 66, UCMJ, 10 U.S.C. § 866. Appellate defense counsel so detailed by The Judge Advocate General shall

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<sup>1</sup> Counsel of record is licensed to practice law in Georgia.

represent accused servicemembers before this Court. Article 70, UCMJ, 10 U.S.C. § 870. This Court's "broad mandate to review the record unconstrained by appellant's assignments of error" does not reduce "the importance of adequate representation" by counsel; "independent review is not the same as competent appellate representation." *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998).

### **Analysis**

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

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

**WHEREFORE**, Appellant respectfully requests this Honorable Court grant this motion and permit examination of the aforementioned sealed materials contained within the original record of trial.

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews, MD 20762-6604



**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 5 March 2024.

Respectfully submitted,

FREDERICK J. JOHNSON, Maj, USAF  
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