

**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. 2               |
|                          | ) |                                  |
| Airman First Class (E-3) | ) | No. ACM 40512                    |
| <b>DAVID A. DUTHU</b>    | ) |                                  |
| United States Air Force  | ) | 20 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)(2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **28 December 2023**. The record of trial was docketed with this Court on 30 August 2023. From the date of docketing to the present date, 51 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,

HEATHER M. CAINE, 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 20 October 2023.

Respectfully submitted,

**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 First Class (E-3) | ) | ACM 40512                 |
| DAVID A. DUTHU, USAF,    | ) |                           |
| <i>Appellant.</i>        | ) | Panel No. 2               |
|                          | ) |                           |

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

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

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

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 October 2023.

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

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

|                          |   |                                  |
|--------------------------|---|----------------------------------|
| <b>UNITED STATES</b>     | ) | <b>MOTION FOR ENLARGEMENT OF</b> |
|                          | ) | <b>TIME (SECOND)</b>             |
|                          | ) |                                  |
| v.                       | ) | Before Panel No. 2               |
|                          | ) |                                  |
| Airman First Class (E-3) | ) | No. ACM 40512                    |
| <b>DAVID A. DUTHU</b>    | ) |                                  |
| United States Air Force  | ) | 20 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)(2) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **27 January 2024**. The record of trial was docketed with this Court on 30 August 2023. From the date of docketing to the present date, 112 days have elapsed. On the date requested, 150 days will have elapsed.

On 29 March 2023, at a general court-martial convened at Scott Air Force Base, Illinois, Appellant was found guilty, consistent with his pleas, one specification of Article 115, Uniform Code of Military Justice (UCMJ); two specifications of Article 128, UCMJ; and one specification of the additional charge in violation of Article 134, UCMJ. Record of Trial (ROT), Vol. 1, *Entry of Judgement*, 11 May 2023. He was found not guilty, consistent with his pleas, of one specification of Article 80, UCMJ. *Id.* The military judge sentenced Appellant to a reduction to the rank of E-1, 28 months’ confinement, and a bad conduct discharge. *Id.* Appellant was awarded 273 days of pretrial confinement credit. *Id.* The convening authority took no action on the findings. ROT, Vol. 1, *Convening Authority Decision on Action*, 14 April 2023. The convening authority suspended the reduction in rank for a period of six months from 14 April

2023 for the benefit of Appellant's spouse and dependents via the waiver of all automatic forfeitures of pay for a period of six months. *Id.*

The trial transcript is 178 pages long and the record of trial is comprised of three volumes containing two prosecution exhibits, 10 defense exhibits, nine appellate exhibits, and one court exhibit. Appellant is currently confined.

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

HEATHER M. CAINE, 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 20 December 2023.

Respectfully submitted,

HEATHER M. CAINE, 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>MOTION FOR ENLARGEMENT OF</b> |
| <i>Appellee</i>          | ) | <b>TIME (THIRD)</b>              |
|                          | ) |                                  |
| v.                       | ) | Before Panel No. 2               |
|                          | ) |                                  |
| Airman First Class (E-3) | ) | No. ACM 40512                    |
| <b>DAVID A. DUTHU</b>    | ) |                                  |
| United States Air Force  | ) | 17 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)(2) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **26 February 2024**. The record of trial was docketed with this Court on 30 August 2023. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 29 March 2023, at a general court-martial convened at Scott Air Force Base, Illinois, Appellant was found guilty, consistent with his pleas, one specification of Article 115, Uniform Code of Military Justice (UCMJ); two specifications of Article 128, UCMJ; and one specification of the additional charge in violation of Article 134, UCMJ. Record of Trial (ROT), Vol. 1, *Entry of Judgement*, 11 May 2023. He was found not guilty, consistent with his pleas, of one specification of Article 80, UCMJ. *Id.* The military judge sentenced Appellant to a reduction to the rank of E-1, 28 months’ confinement, and a bad conduct discharge. *Id.* Appellant was awarded 273 days of pretrial confinement credit. *Id.* The convening authority took no action on the findings. ROT, Vol. 1, *Convening Authority Decision on Action*, 14 April 2023. The convening authority suspended the reduction in rank for a period of six months from 14 April



2023 for the benefit of Appellant's spouse and dependents via the waiver of all automatic forfeitures of pay for a period of six months. *Id.*

The trial transcript is 178 pages long and the record of trial is comprised of three volumes containing two prosecution exhibits, 10 defense exhibits, nine appellate exhibits, and one court exhibit. Appellant is currently confined.

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

Respectfully submitted,

HEATHER M. BRUHA, 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 17 January 2024.

Respectfully submitted,

HEATHER M. BRUHA, 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 OUT OF TIME       |
|                          | ) |                           |
| Airman First Class (E-3) | ) | ACM 40512                 |
| DAVID A. DUTHU, USAF,    | ) |                           |
| <i>Appellant.</i>        | ) | Panel No. 2               |
|                          | ) |                           |

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

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

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

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 18 January 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>MOTION FOR ENLARGEMENT OF TIME (FOURTH)</b> |
| <i>Appellee</i>          | ) |  |
|                          | ) |  |
| v.                       | ) | Before Panel No. 2                             |
|                          | ) |  |
| Airman First Class (E-3) | ) | No. ACM 40512                                  |
| <b>DAVID A. DUTHU</b>    | ) |  |
| United States Air Force  | ) | 15 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)(2) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **27 March 2024**. The record of trial was docketed with this Court on 30 August 2023. From the date of docketing to the present date, 169 days have elapsed. On the date requested, 210 days will have elapsed.

On 29 March 2023, at a general court-martial convened at Scott Air Force Base, Illinois, Appellant was found guilty, consistent with his pleas, one specification of Article 115, Uniform Code of Military Justice (UCMJ); two specifications of Article 128, UCMJ; and one specification of the additional charge in violation of Article 134, UCMJ. Record of Trial (ROT), Vol. 1, *Entry of Judgement*, 11 May 2023. He was found not guilty, consistent with his pleas, of one specification of Article 80, UCMJ. *Id.* The military judge sentenced Appellant to a reduction to the rank of E-1, 28 months’ confinement, and a bad conduct discharge. *Id.* Appellant was awarded 273 days of pretrial confinement credit. *Id.* The convening authority took no action on the findings. ROT, Vol. 1, *Convening Authority Decision on Action*, 14 April 2023. The convening authority suspended the reduction in rank for a period of six months from 14 April

2023 for the benefit of Appellant's spouse and dependents via the waiver of all automatic forfeitures of pay for a period of six months. *Id.*

The trial transcript is 178 pages long and the record of trial is comprised of three volumes containing two prosecution exhibits, 10 defense exhibits, nine appellate exhibits, and one court exhibit. Appellant is currently confined.

Undersigned counsel is currently assigned 23 cases, with 15 initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Since filing a Motion for EOT 3 in this case, undersigned counsel filed the Brief on Behalf of Appellant in *United States v. Hennessy* (ACM 40439) with this Court and the Supplement to the Petition for Grant of Review in *United States v. Edwards* (ACM 40349) with the Court of Appeals for the Armed Forces (CAAF). Undersigned counsel also spent around 12 hours preparing for moots, assisting in moots, and attending oral arguments. Undersigned counsel was second chair at the oral argument before the CAAF on 7 February 2024 in *United States v. Guihama* (ACM 40039).

This is undersigned counsel's fifth priority case before this Court following:

1. *United States v. Holmes* (Misc. Dkt. No. 2024-1): The current transcript is 489 pages long and the current record of trial is comprised of 14 volumes. Undersigned counsel will begin review of the record once the Petitions and Supplements to the Petitions for *United States v. Greene-Watson* (ACM 40293) and *United States v. Emerson* (ACM 40297) are filed with the CAAF.

2. *United States v. Sherman* (ACM 40486): The trial transcript is 469 pages long and the record of trial is comprised of five volumes containing 17 prosecution exhibits, 12 defense exhibits, 25 appellate exhibits, and one court exhibit.
3. *United States v. Martell* (ACM 40501): The trial transcript is 1,032 pages long and the record of trial is comprised of eight volumes containing nine prosecution exhibits, 32 defense exhibits, 48 appellate exhibits, and one court exhibit.
4. *United States v. Cunningham* (ACM 23010): The trial transcript is 149 pages long and the record of trial is comprised of two volumes containing 14 prosecution exhibits, four defense exhibits, 11 appellate exhibits, and zero court exhibits.

Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,

HEATHER M. BRUHA, 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 15 February 2024.

Respectfully submitted,

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



5 March 2024

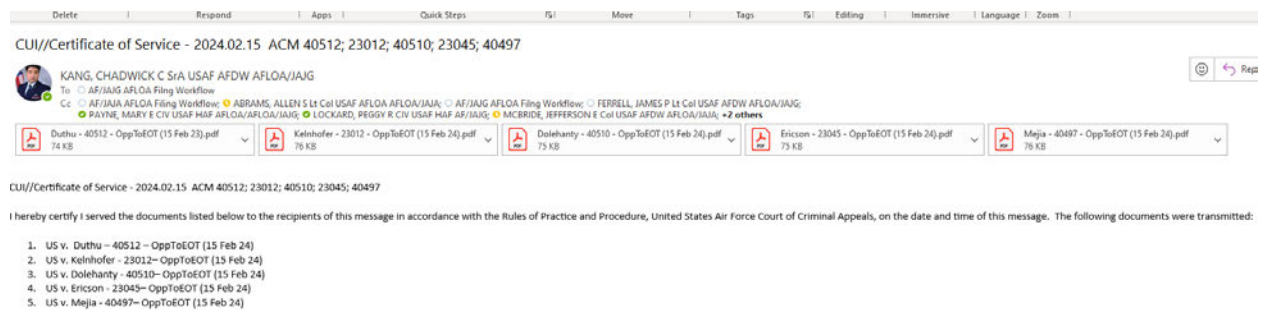
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

|                          |   |                            |
|--------------------------|---|----------------------------|
| UNITED STATES,           | ) | MOTION FOR LEAVE TO FILE   |
| <i>Appellee,</i>         | ) | UNITED STATES' OUT OF TIME |
|                          | ) | GENERAL OPPOSITION TO      |
| v.                       | ) | APPELLANT'S MOTION FOR     |
|                          | ) | ENLARGEMENT OF TIME        |
|                          | ) |                            |
| Airman First Class (E-3) | ) | ACM 40512                  |
| DAVID A. DUTHU, USAF,    | ) |                            |
| <i>Appellant.</i>        | ) | Panel No. 2                |
|                          | ) |                            |

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

Pursuant to Rules 23(d), 23.2 and 23.3(m)(7), of this Court's Rules of Practice and Procedure, the United States hereby enters its Motion for Leave to File and the United States' Out of Time General Opposition to Appellant's 15 February 2024 Motion for Enlargement of Time to file an Assignment of Error in this case.

This response is being filed out of time because the United States accidentally served the wrong workflow box when filing the EOT opposition on 15 February 2024.



The error did not come to the United States attention until the motions were granted without opposition. The United States understands that this Court has already granted an enlargement of time in this case, but would still like to put its general opposition to that enlargement of time on the record. The United States filed an out of time opposition to this motion on 26 February 2024,

however, that opposition was returned without action because it was not styled as a “motion for leave to file.” The United States has now styled the opposition as a “motion for leave to file.”

WHEREFORE, the United States respectfully requests this Court grant its motion for leave to file an out of time opposition.

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 5 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**

|                          |   |   |
|--------------------------|---|---|
| <b>UNITED STATES</b>     | ) | <b>MOTION FOR ENLARGEMENT OF TIME (FIFTH)</b> |
| <i>Appellee</i>          | ) |   |
|                          | ) |   |
| v.                       | ) | Before Panel No. 2                            |
|                          | ) |   |
| Airman First Class (E-3) | ) | No. ACM 40512                                 |
| <b>DAVID A. DUTHU</b>    | ) |   |
| United States Air Force  | ) | 15 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)(2) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **26 April 2024**. The record of trial was docketed with this Court on 30 August 2023. From the date of docketing to the present date, 198 days have elapsed. On the date requested, 240 days will have elapsed.

On 29 March 2023, at a general court-martial convened at Scott Air Force Base, Illinois, Appellant was found guilty, consistent with his pleas, one specification of Article 115, Uniform Code of Military Justice (UCMJ); two specifications of Article 128, UCMJ; and one specification of the additional charge in violation of Article 134, UCMJ. Record of Trial (ROT), Vol. 1, *Entry of Judgement*, 11 May 2023. He was found not guilty, consistent with his pleas, of one specification of Article 80, UCMJ. *Id.* The military judge sentenced Appellant to a reduction to the rank of E-1, 28 months’ confinement, and a bad conduct discharge. *Id.* Appellant was awarded 273 days of pretrial confinement credit. *Id.* The convening authority took no action on the findings. ROT, Vol. 1, *Convening Authority Decision on Action*, 14 April 2023. The convening authority suspended the reduction in rank for a period of six months from 14 April

2023 for the benefit of Appellant's spouse and dependents via the waiver of all automatic forfeitures of pay for a period of six months. *Id.*

The trial transcript is 178 pages long and the record of trial is comprised of three volumes containing two prosecution exhibits, 10 defense exhibits, nine appellate exhibits, and one court exhibit. Appellant is currently confined.

Undersigned counsel is currently assigned 23 cases, with 15 initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Since filing a Motion for EOT 4 in this case, undersigned counsel filed the Petition and Supplement to Petition for Grant of Review in *United States v. Greene-Watson* (ACM 40293) with the Court of Appeals for the Armed Forces (CAAF); the Petition and Supplement to Petition for Grant of Review in *United States v. Emerson* (ACM 40297) with the CAAF; and the Brief on Behalf of Appellant in *United States v. Arroyo* (ACM 40321 (f rev)) with this Court. Undersigned counsel also spent around 8 hours preparing for moots, assisting in moots, and attending oral arguments.

This is undersigned counsel's fifth priority case before this Court following:

1. *United States v. Holmes* (Misc. Dkt. No. 2024-1): The current transcript is 489 pages long and the current record of trial is comprised of 14 volumes. Undersigned counsel has reviewed the record and is drafting Appellee's Answer, which is currently due 20 March 2024. Undersigned counsel will then need to file the reply in *United States v. Hennessy* (ACM 40439) currently due 21 March 2024.

2. *United States v. Sherman* (ACM 40486): The trial transcript is 469 pages long and the record of trial is comprised of five volumes containing 17 prosecution exhibits, 12 defense exhibits, 25 appellate exhibits, and one court exhibit. Of note, this Court has ordered an outreach oral argument in *Arroyo* currently scheduled for 10 April 2024, so undersigned counsel will also have to prepare for that prior to being able to finish review and drafting of the AOE in this case.
3. *United States v. Martell* (ACM 40501): The trial transcript is 1,032 pages long and the record of trial is comprised of eight volumes containing nine prosecution exhibits, 32 defense exhibits, 48 appellate exhibits, and one court exhibit.
4. *United States v. Cunningham* (ACM 23010): The trial transcript is 149 pages long and the record of trial is comprised of two volumes containing 14 prosecution exhibits, four defense exhibits, 11 appellate exhibits, and zero court exhibits.

Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,

HEATHER M. BRUHA, 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 15 March 2024.

Respectfully submitted,

HEATHER M. BRUHA, 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 OUT OF TIME       |
|                          | ) |                           |
| Airman First Class (E-3) | ) | No. ACM 40512             |
| DAVID A. DUTHU, USAF,    | ) |                           |
| <i>Appellant.</i>        | ) | Panel No. 2               |
|                          | ) |                           |

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

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

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

THOMAS J. ALFORD, Lt Col, USAFR  
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 18 March 2024.

THOMAS J. ALFORD, Lt Col, USAFR  
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>MOTION FOR ENLARGEMENT OF</b> |
| <i>Appellee</i>          | ) | <b>TIME (SIXTH)</b>              |
|                          | ) |                                  |
| v.                       | ) | Before Panel No. 2               |
|                          | ) |                                  |
| Airman First Class (E-3) | ) | No. ACM 40512                    |
| <b>DAVID A. DUTHU</b>    | ) |                                  |
| United States Air Force  | ) | 16 April 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)(2) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **26 May 2024**. The record of trial was docketed with this Court on 30 August 2023. From the date of docketing to the present date, 230 days have elapsed. On the date requested, 270 days will have elapsed.

On 29 March 2023, at a general court-martial convened at Scott Air Force Base, Illinois, Appellant was found guilty, consistent with his pleas, one specification of Article 115, Uniform Code of Military Justice (UCMJ); two specifications of Article 128, UCMJ; and one specification of the additional charge in violation of Article 134, UCMJ. Record of Trial (ROT), Vol. 1, *Entry of Judgement*, 11 May 2023. He was found not guilty, consistent with his pleas, of one specification of Article 80, UCMJ. *Id.* The military judge sentenced Appellant to a reduction to the rank of E-1, 28 months’ confinement, and a bad conduct discharge. *Id.* Appellant was awarded 273 days of pretrial confinement credit. *Id.* The convening authority took no action on the findings. ROT, Vol. 1, *Convening Authority Decision on Action*, 14 April 2023. The convening authority suspended the reduction in rank for a period of six months from 14 April

2023 for the benefit of Appellant's spouse and dependents via the waiver of all automatic forfeitures of pay for a period of six months. *Id.*

The trial transcript is 178 pages long and the record of trial is comprised of three volumes containing two prosecution exhibits, 10 defense exhibits, nine appellate exhibits, and one court exhibit. Appellant is currently confined.

Undersigned counsel is currently assigned 21 cases, with 15 initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Since filing a Motion for EOT 5 in this case, undersigned counsel filed the Appellee's Answer in *United States v. Holmes* (Misc. Dkt. No. 2024-1) and the Reply Brief in *United States v. Hennessy* (ACM 40439) with this Court. Undersigned counsel planned and orchestrated the all-day Human Trafficking Training Event held at the Smart Center on Monday, 25 March 2024. Undersigned counsel also argued on behalf of SrA Arroyo (ACM 40321 (f rev)) at the outreach oral argument on 10 April 2024 with this Court. Additionally, undersigned counsel spent around 5 hours preparing for another colleague's moots, assisting in moots, and attending oral argument.

This is undersigned counsel's fourth priority case before this Court following:

1. *United States v. Douglas* (ACM 40324 (f rev)): On 22 March 2024, this Court granted in part the appellant's motion for an enlargement of time. As such, any additional AOE must be filed by 2 May 2024. Prior to drafting the additional AOE, undersigned counsel must file the Reply Brief in *Arroyo* currently due 18 April

2024. Undersigned counsel does not anticipate waiting until 2 May 2024 to file the additional AOE in *Douglas*.

2. *United States v. Sherman* (ACM 40486): The trial transcript is 469 pages long and the record of trial is comprised of five volumes containing 17 prosecution exhibits, 12 defense exhibits, 25 appellate exhibits, and one court exhibit. Undersigned counsel anticipates beginning review of the record of trial on 22 April 2024.
3. *United States v. Martell* (ACM 40501): The trial transcript is 1,032 pages long and the record of trial is comprised of eight volumes containing nine prosecution exhibits, 32 defense exhibits, 48 appellate exhibits, and one court exhibit. Depending on timing, undersigned counsel may need to prepare for oral argument in *United States v. Holmes* (Misc. Dkt. No. 2024-1) currently scheduled for 31 May 2024 prior to filing the Brief on Behalf of Appellant in *Martell*.

Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,

HEATHER M. BRUHA, 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 16 April 2024.

Respectfully submitted,

HEATHER M. BRUHA, 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.                       | ) |                           |
|                          | ) |                           |
| Airman First Class (E-3) | ) | No. ACM 40512             |
| DAVID A. DUTHU, USAF,    | ) |                           |
| <i>Appellant.</i>        | ) | Panel No. 2               |
|                          | ) |                           |

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

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

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

J. 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 16 April 2024.

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

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

|                          |   |   |
|--------------------------|---|---|
| <b>UNITED STATES</b>     | ) | <b>MOTION FOR ENLARGEMENT OF TIME (SEVENTH)</b> |
| <i>Appellee</i>          | ) |   |
|                          | ) |   |
| v.                       | ) | Before Panel No. 2                              |
|                          | ) |   |
| Airman First Class (E-3) | ) | No. ACM 40512                                   |
| <b>DAVID A. DUTHU</b>    | ) |   |
| United States Air Force  | ) | 16 May 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)(2) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **25 June 2024**. The record of trial was docketed with this Court on 30 August 2023. From the date of docketing to the present date, 260 days have elapsed. On the date requested, 300 days will have elapsed.

On 29 March 2023, at a general court-martial convened at Scott Air Force Base, Illinois, Appellant was found guilty, consistent with his pleas, one specification of Article 115, Uniform Code of Military Justice (UCMJ); two specifications of Article 128, UCMJ; and one specification of the additional charge in violation of Article 134, UCMJ. Record of Trial (ROT), Vol. 1, *Entry of Judgement*, 11 May 2023. He was found not guilty, consistent with his pleas, of one specification of Article 80, UCMJ. *Id.* The military judge sentenced Appellant to a reduction to the rank of E-1, 28 months’ confinement, and a bad conduct discharge. *Id.* Appellant was awarded 273 days of pretrial confinement credit. *Id.* The convening authority took no action on the findings. ROT, Vol. 1, *Convening Authority Decision on Action*, 14 April 2023. The convening authority suspended the reduction in rank for a period of six months from 14 April



2023 for the benefit of Appellant's spouse and dependents via the waiver of all automatic forfeitures of pay for a period of six months. *Id.*

The trial transcript is 178 pages long and the record of trial is comprised of three volumes containing two prosecution exhibits, 10 defense exhibits, nine appellate exhibits, and one court exhibit. Appellant is currently confined.

Undersigned counsel is currently assigned 19 cases, with 12 initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Since filing a Motion for EOT 6 in this case, undersigned counsel filed an Opposition to the Government's Motion to Cite Supplemental Authorities in *United States v. Arroyo* (ACM 40321 (f rev)) with this Court; the Brief on Behalf of Appellant in *United States v. Douglas* (ACM 40324 (f rev)) with this Court; an Opposition to the Government's Motion for Reconsideration: Citation of Supplemental Authorities in *Arroyo* with this Court; and Motions to Withdraw from Appellate Review and Motions to Attach in *United States v. Johnson* (ACM S32774) and *United States v. Willems* (ACM 40562) with this Court. Motions to Withdraw from Appellate Review and Motions to Attach require review of the records in order to advise appellants of their options and coordination with appellants on getting the DD Form 2330s completed. Undersigned counsel also spent around 5 hours preparing for a colleague's moots, assisting in moots, and attending oral argument. Of note, the FOA Sports Day was held Friday, \_\_\_\_\_; the Court of Appeals for the Armed Forces (CAAF) Continuing Legal Education (CLE) training was/is being held \_\_\_\_\_ and Memorial Day weekend—including a Family Day—is \_\_\_\_\_

Additionally on 7 May 2024, the CAAF granted review of one issue in *United States v. Greene-Watson* (ACM 40293) with the Grant Brief currently now due 26 June 2024.

This is undersigned counsel's third priority case before this Court following:

1. *United States v. Sherman* (ACM 40486): The trial transcript is 469 pages long and the record of trial is comprised of five volumes containing 17 prosecution exhibits, 12 defense exhibits, 25 appellate exhibits, and one court exhibit. Undersigned counsel completed review of the record of trial and drafted three potential AOE's in the case. However, due to issues with the confinement facility and coordination on a declaration from the Appellant, undersigned counsel will not be able to complete minor portions of the AOE for civilian appellate defense counsel until after a call with the Appellant Friday morning.
2. *United States v. Holmes* (Misc. Dkt. No. 2024-1): On 5 April 2024, this Court ordered oral argument scheduled for 31 May 2024. Undersigned counsel has already built her oral argument binder, but will begin more substantive preparations after the CAAF CLE training. Undersigned counsel also had to complete review of another client's record of trial and anticipates submitting a motion for withdrawal from appellate review and motion to attach this week.

Of note, this case moved up in priority for undersigned counsel to attempt to get review done prior to going on leave at the end of June. Given the Grant Brief in *Greene-Watson* will be due to the CAAF before the end of June and takes priority, it is highly unlikely undersigned counsel would be able to finish review of *Martell's* record prior to taking leave as it is substantially longer than *Duthu*.

Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,

HEATHER M. BRUHA, 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 16 May 2024.

Respectfully submitted,

HEATHER M. BRUHA, 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.                       | ) |                           |
|                          | ) |                           |
| Airman First Class (E-3) | ) | ACM 40512                 |
| DAVID A. DUTHU, USAF,    | ) |                           |
| <i>Appellant.</i>        | ) | Panel No. 2               |
|                          | ) |                           |

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its 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 17 May 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**

|                                 |   |                      |
|---------------------------------|---|----------------------|
| <b>UNITED STATES</b>            | ) | <b>No. ACM 40512</b> |
| <i>Appellee</i>                 | ) |                      |
|                                 | ) |                      |
| v.                              | ) |                      |
|                                 | ) | <b>ORDER</b>         |
| <b>Davis A. DUTHU</b>           | ) |                      |
| <b>Airman First Class (E-3)</b> | ) |                      |
| <b>U.S. Air Force</b>           | ) |                      |
| <i>Appellant</i>                | ) | <b>Panel 2</b>       |

On 16 May 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Seventh) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

In the motion, and consistent with this court’s Rules of Practice and Procedure, Appellant’s counsel identified her cases with priority over Appellant’s case, and her progress on those cases.

The United States Court of Appeals for the Armed Forces “will apply a presumption of unreasonable delay where appellate review is not completed and a decision is not rendered within eighteen months of docketing the case before the Court of Criminal Appeals.” *United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006). If granted, almost ten months will have elapsed between docketing and submission of Appellant’s brief.

The court has considered Appellant’s motion, the Government’s opposition, case law, and this court’s Rules of Practice and Procedure. Accordingly, it is by the court on this 20th day of May, 2024,

**ORDERED:**

Appellant’s Motion for Enlargement of Time (Seventh) is **GRANTED**. Appellant shall file any assignments of error not later than **25 June 2024**.

Appellant’s counsel should not rely on subsequent requests for enlargement of time being granted; each request will be considered on its merits. Appellant’s counsel is advised that any future requests for enlargements of time that, if granted, would expire more than 390 days after docketing, will not be granted absent exceptional circumstances.

Any subsequent motions for enlargement of time shall, in addition to the matters required under this court’s Rules of Practice and Procedure, include a statement as to: (1) whether Appellant was advised of Appellant’s right to a

timely appeal, (2) whether Appellant was provided an update of the status of counsel's progress on Appellant's case, (3) whether Appellant was advised of the request for an enlargement of time, and (4) whether Appellant agrees with the request for an enlargement of time. Counsel is not required to re-address item (1) in each subsequent motion for enlargement of time.



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>MOTION TO WITHDRAW FROM</b> |
| <i>Appellee</i>          | ) | <b>APPELLATE REVIEW AND</b>    |
|                          | ) | <b>MOTION TO ATTACH</b>        |
|                          | ) |                                |
| v.                       | ) | Before Panel No. 2             |
|                          | ) |                                |
| Airman First Class (E-3) | ) | No. ACM 40512                  |
| <b>David A. Duthu</b>    | ) |                                |
| United States Air Force  | ) | 7 June 2024                    |
| <i>Appellant</i>         | ) |                                |

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

Pursuant to Rule 16 of this Honorable Court’s Rules of Practice and Procedure, and Rule for Courts-Martial (R.C.M.) 1115, Appellant hereby moves to withdraw his case from appellate review. Appellant has fully consulted with Maj Heather M. Bruha, his appellate defense counsel, regarding this motion to withdraw. No person has compelled, coerced, or induced Appellant by force, promises of clemency, or otherwise to withdraw his case from appellate review. Further, pursuant to Rules 23(b) and 23.3(b) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel asks this Court to attach the two-page document appended to this pleading to Appellant’s Record of Trial. The appended document is necessary to comply with R.C.M. 1115(d) and Rule 16.1 of this Honorable Court’s Rules of Practice and Procedure.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the above captioned motion to withdraw from appellate review and likewise grant his request to attach matters to the record.

Respectfully submitted,

HEATHER M. BRUHA, 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 7 June 2024.

Respectfully submitted,

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